

STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas
The Honorable B. Alex Hyman, Post-Conviction Relief Court Judge

Appellate Case No. 2025-002475

State of South Carolina

Petitioner,

v.

Braxton L. Hare, #373172

Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) 2015-GS-23-09117; 09118
)
)
)
STATE OF SOUTH CAROLINA)
) PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
)
BRAXTON LAVON HARE AND)
WILLIAM HUNTER)
)
) DEFENDANTS)

July 12-13, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge; and a
jury.

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

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APRIL HERRON
Official Court Reporter

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25

1 THE COURT: Let's wait until the other Defendant
2 gets here.

3 MR. WARDER: I apologize, Your Honor.

4 THE COURT: All right. Now, what?

5 MR. WARDER: Your Honor, the first thing -- and
6 we can set it like this. The courtroom security
7 informed me that Defendants couldn't sit next to each
8 other, the Co-defendants. I want to jointly use the
9 strikes, so I need to be -- the attorneys beside --
10 Mr. Hamilton and myself sitting side by side so we
11 can, at least, indicate to each other what we want to
12 do when we use our joint strikes.

13 THE COURT: That doesn't interfere with
14 security's policy. Two of you sit next to each
15 other, that's fine.

16 MR. WARDER: Okay. I've been told earlier that.

17 THE COURT: Okay.

18 All right. Is there anything we need to do
19 before we get the jury up here?

20 MR. MOYER: I don't think before we get the
21 jury. Before we start the trial, we will have to
22 have a Neil v. Biggers hearing, so what I was going
23 to ask the Court to do is draw a jury, probably let
24 the panel go -- the rest of the panel go, then do the
25 Neil v. Biggers hearing, then proceed into the trial.

1 THE COURT: Okay. Any other motion we're going
2 to entertain before the --

3 MR. WARDER: Yes, sir.

4 THE COURT: Okay.

5 MR. WARDER: My Co-defendant is charged with
6 another crime, my client was not there. In other
7 words, he's charged with a failure to stop for a blue
8 light. I want to sever that case from my case. I
9 don't think all of that should come in. It doesn't
10 relate to my client.

11 THE COURT: I'm not sure you have standing to
12 move to sever the charges against the Co-defendant.

13 MR. WARDER: Well, I would move to sever the
14 Defendants if the State insist on trying that charge
15 with this one.

16 MR. MOYER: And we would try -- we will bring in
17 that aspect of the case as well. Your Honor, I would
18 argue against severing the Defendants in that -- even
19 if we were trying Mr. Warder's client without
20 Mr. Hamilton's client, who was charged with failure
21 to stop, we would seek to bring in evidence of that
22 failure to stop.

23 To give you just a brief overview of the facts,
24 we have an attempted murder that took place at 10:30
25 in the morning. The Defendants were in a black

1 Mercedes. About an hour or a little over an hour
2 later, that black Mercedes was seen by the police and
3 a high speed chase ensued, ending up with that
4 vehicle getting in an accident.

5 Mr. Warder's client was not in the vehicle at
6 that time. However, we will have testimony from
7 witnesses, including the victim and the school
8 resource officer that Mr. Warder's client was in that
9 vehicle both before the shooting and after the
10 shooting. And he got out of the vehicle prior to the
11 high speed chase. The high speed -- so the vehicle
12 is going to be very integral to the presentation of
13 this whole case. That this black Mercedes, which
14 Mr. Warder's client was in, was in the chase just a
15 little over an hour after the actual shooting
16 happened. And in addition to that, some evidence was
17 found in the vehicle that the jury can arguably look
18 to as being evidence of this Defendant's guilt.

19 So either way, whether we try them together or
20 try them separately, evidence of that failure to
21 stop, we would argue, would clearly be admissible
22 against Mr. Warder's client.

23 THE COURT: Okay. So why should I sever it?

24 MR. WARDER: Your Honor, I think prejudicial,
25 has no probative value. You know, certainly, the

1 failure to stop has no bearing on what my client did
2 at another incident the same day, whether he shot
3 with intent to kill anybody.

4 THE COURT: Okay. Well, I'm going to find that
5 any potential prejudice does not outweigh the
6 probative value.

7 MR. WARDER: Certainly. And for the record,
8 Your Honor, the panel has 18 schoolteachers in it as
9 a result of transfers. I would move to disqualify
10 them for cause, Your Honor.

11 THE COURT: Because of their jobs?

12 MR. WARDER: Well, partly, but mostly, this is a
13 case that they're going to show evidence that my
14 client was at an expulsion hearing the morning this
15 happened. And I think the fact that the school
16 resource officer will be here testifying as to my
17 client being present at the school for an expulsion
18 hearing could prejudice those jurors and make it hard
19 for them to give a completely unbiased juror.

20 MR. MOYER: May it please the Court, Your Honor.
21 We don't have to put in evidence that it was an
22 expulsion hearing. We're going to put into evidence
23 that Mr. Warder's client had to go to school for a
24 hearing or a meeting. We have no reason to bring up
25 the fact that it was an expulsion hearing.

1 THE COURT: Okay. Well, that would be very
2 questionable character evidence unless it's got some
3 tight connection with what happened.

4 So, you got to do more than that, Mr. Warder.
5 And based on that, I'm not going to throw out the
6 jury panel. Okay.

7 Anything else?

8 MR. WARDER: I wasn't asking for the whole
9 panel, I was just asking for those to be.

10 THE COURT: I'm not going to throw out
11 schoolteachers just because of what you said. You
12 got anything else to show prejudice on their part?
13 We haven't even qualified them for this case.

14 MR. WARDER: That's right.

15 THE COURT: So, before we even begin that
16 process, you want me just to throw them out summarily
17 because of their profession?

18 MR. WARDER: And the fact that the hearing is --

19 THE COURT: They're not going to mention it was
20 an expulsion hearing.

21 MR. WARDER: There's probably no one in the
22 school system that knows how that system works would
23 conclude that he was not there for an expulsion
24 hearing.

25 THE COURT: Where do you get that? You got any

1 kind of objective evidence to show that?

2 MR. WARDER: No, there's no way I can get that.

3 THE COURT: All right. We're not going to throw
4 out a jury panel based on conjecture and theory.

5 Anything else before we bring the jury up?

6 MR. HAMILTON: Your Honor, just for the record,
7 I'd like to join Mr. Warder in asking the Court --
8 and the Court had already ruled that you're not going
9 to separate the failure to stop based on it being a
10 complete separate offense.

11 THE COURT: Okay. It doesn't sound like it's
12 completely separate to me.

13 All right. Anything else?

14 MR. MOYER: We're ready to draw the jury, Your
15 Honor.

16 THE COURT: Any requested voir dire from
17 anybody?

18 MR. MOYER: We do not.

19 MR. WARDER: No, sir, Your Honor.

20 MR. HAMILTON: No, Judge.

21 THE COURT: All right. Well, let's get the jury
22 up here.

23 Let me -- for the media, no photographing of the
24 jury, no photographing of the documents or
25 conversations of the lawyers with their various

1 clients. And we -- no photographing, no recording
2 when we're out of session. Okay. All right.

3 Okay. We're bringing the jury up.

4 Mary, you getting them coming?

5 THE CLERK: Yes, sir, already called them.

6 THE COURT: Got to clear the courtroom.

7 Mr. Moyer, attempted murder carries how much?

8 MR. MOYER: Carries up to 30 years.

9 THE COURT: And that is a violent no parole
10 offense?

11 MR. MOYER: That's correct, Your Honor.

12 THE COURT: Okay.

13 MR. WARDER: We got five and five; is that
14 right?

15 MR. MOYER: Yes, sir.

16 THE COURT: I'm sorry?

17 MR. WARDER: We trying together, we get
18 additional strikes. It looks to me like we get up to
19 20 strikes?

20 THE COURT: Twenty? Where do you figure that?
21 Five each.

22 MR. MOYER: We have 30 jurors total.

23 THE COURT: Total.

24 MR. MOYER: So, we can have one alternate, that
25 should make up 30 total.

1 MR. WARDER: Not arguing with the Court, it just
2 looks to me like under 14-7-1110, that we would be
3 entitled to -- joint Defendants are jointly tried no
4 more than 20 peremptory challenges.

5 THE COURT: In misdemeanors where there's no
6 more than one Defendant tried jointly, no more than
7 10. You don't -- you get -- if there was one
8 Defendant being tried, they get five strikes.

9 MR. WARDER: Right.

10 THE COURT: So, I'm giving you five a piece.

11 MR. WARDER: Well, I respectfully take exception
12 to that, Your Honor.

13 THE COURT: Okay, that's fine, it's in the
14 record.

15 Well, Mr. Moyer, you're willing to waive your
16 right to 10 strikes? The last sentence of that
17 statute says: In felonies where there's more than
18 one Defendant tried jointly, the State has 10
19 challenges.

20 MR. MOYER: Yes, sir, Your Honor, we'll go with
21 five strikes.

22 THE COURT: Okay.

23 MR. MOYER: Your Honor, if it please the Court,
24 you have my witness list. I would ask that the
25 Defense provide you with a witness list.

1 THE COURT: I've already asked them, they said
2 they don't have anybody.

3 MR. MOYER: Oh, I'm sorry.

4 THE COURT: Do you have a witness list?

5 MR. WARDER: No, Your Honor.

6 MR. HAMILTON: We do not have a witness list.

7 THE COURT: They don't have one.

8 (WHEREUPON, the jury venire enters the
9 courtroom.)

10 THE COURT: All right. Ladies and gentlemen,
11 welcome up to courtroom four. You've been qualified
12 to serve generally for the week. And now, we're
13 going to qualify you to serve specifically on this
14 case. And in order to do that, I need to introduce
15 the case to you. I want to tell you that there are
16 two -- or three indictment with two Defendants, each
17 with two charges against them. And I will tell you
18 at the outset that each Defendant and each charge
19 must be judged solely on its own merit unrelated to
20 the other charges. So, each charge must stand or
21 fall on its own under the law and the evidence.
22 We'll talk more about that if you are selected to be
23 on the jury.

24 But let me go ahead and introduce the cases to
25 you. The first case is a two-count indictment. It

1 is the State of South Carolina vs. Braxton Lavon
2 Hare. It's an indictment for attempted murder.

3 MR. MOYER: May it please the Court, may we
4 approach?

5 THE COURT: Yeah.

6 (WHEREUPON, an off-the-record bench conference
7 was held in the presence of the jury but out of
8 the hearing of the jury.)

9 THE COURT: All right, ladies and gentlemen, I
10 misspoke. This is a one-count indictment for
11 attempted murder. And this is against Braxton Lavon
12 Hare. It's indictment number 2015-GS-23-9117. And
13 it alleges that Braxton Lavon Hare did in Greenville
14 County on or about the first day of September, 2015,
15 unlawfully and with malice aforethought and with the
16 intent to kill attempt to kill [REDACTED] [REDACTED] in
17 violation of the laws and statutes of this state.

18 The second indictment is 2015-GS-23-9118. This
19 is State of South Carolina vs. Braxton Lavon Hare,
20 and it is an indictment for failure to stop for a
21 blue light. This indictment alleges that Braxton
22 Lavon Hare did in Greenville County on or about the
23 first day of September, 2015, willfully, knowingly
24 and unlawfully commit the offense of failure to stop
25 for a law enforcement vehicle, in that the said

1 Defendant, while driving on a road, street or highway
2 of the state did intentionally fail to stop when
3 signaled to do so by a law enforcement vehicle using
4 blue lights and/or a siren. Also, in violation of
5 the statutes and laws of this state.

6 The next indictment is the State of South
7 Carolina, County of Greenville, Indictment No.
8 2015-GS-23-9870, the State vs. William Timyan Hunter,
9 an indictment for attempted murder. And this
10 indictment alleges that William Timyan Hunter did in
11 Greenville County on or about the first day of
12 September, 2015, unlawfully and with malice
13 aforethought and with the intent to kill attempt to
14 kill [REDACTED] in violation of the statutes and
15 laws of this state.

16 To these indictments, these two Defendants have
17 pled not guilty. And as such, certain rights attach
18 to them, which belong to each and every person in
19 this country charged with a crime. And that is that
20 they are presumed to be innocent unless and until the
21 charging body, in this case, the State of South
22 Carolina, can prove to a jury beyond a reasonable
23 doubt each and every element of each offense that
24 they are charged with. I ask you to please keep that
25 in mind throughout the course of these proceedings.

1 Additionally, these documents which I read to
2 you are nothing more than they appear to be, and that
3 the pieces of paper. And they are the formal
4 documents which allow the allegations made in this
5 case to wind their way through the court system to
6 arrive here in court for disposition. They are not
7 evidence and you should not take any inference or
8 make any presumption from the fact that they issue
9 with respect to the question of guilt or innocence.
10 That is established by applying the law to the
11 evidence that is presented here in the courtroom.
12 Please keep that in mind throughout the course of the
13 proceedings.

14 Now, before I move into the questioning,
15 qualifications for this case, I'd ask the lawyers to
16 stand, introduce themselves and their clients.

17 Okay, Mr. Moyer.

18 MR. MOYER: My name is Mark Moyer. I work for
19 the 13th Circuit Solicitor's Office.

20 MR. FOWLER: I'm Bran Fowler. I also work for
21 the 13th Circuit Solicitor's Office.

22 MR. HAMILTON: Good morning. My name is Ernie
23 Hamilton and I'm an attorney here in Greenville. I
24 represent Braxton Hare.

25 MR. WARDER: I'm Richard Warder. It's my

1 privilege to be here today representing William
2 Hunter. Thank you.

3 THE COURT: All right. Is there any member of
4 the jury panel who is related by blood or marriage,
5 or who has a business, personal or social
6 relationship with any of the attorneys involved in
7 this matter or any member of the 13th Circuit
8 Solicitor's Office? If so, please stand.

9 All right. Yes, ma'am, hang on one second. And
10 your name and number, please ma'am?

11 PROSPECTIVE JUROR: Brandi Massey, Juror 79.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR: My husband's cousin works at
14 the solicitor's office.

15 THE COURT: Your husband's cousin, okay. And in
16 what capacity?

17 PROSPECTIVE JUROR: She's an assistant
18 solicitor.

19 THE COURT: Would the fact that you have that
20 relationship impair your ability to be fair and
21 impartial in this case to either the State or the
22 Defense?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Could you judge this case based
25 solely on the merits of the evidence presented in

1 this courtroom and the law as I would give it to you?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Okay. Thank you.

4 Is there any member of the jury panel related by
5 blood or marriage, or who has a business, personal or
6 social relationship with either Mr. William Timyan
7 Hunter, Mr. Braxton Lavon Hare or Mr. [REDACTED] [REDACTED]
8 If so, please stand.

9 All right. Yes, ma'am, your name and number?

10 PROSPECTIVE JUROR: Laura Galvis, Juror No. 39.

11 I purchased a car from [REDACTED] a couple years ago,

12 [REDACTED] [REDACTED]

13 THE COURT: Okay. How long ago?

14 PROSPECTIVE JUROR: About two years ago. And
15 his roommate worked with me as well.

16 THE COURT: All right. Would the fact that you
17 have that relationship with Mr. [REDACTED] prevent you
18 from being fair and impartial to either the State or
19 the Defense?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: And could you judge this case based
22 solely on the merits of the evidence presented in the
23 courtroom and the law as I would give it to you?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Okay. Thank you, ma'am.

1 All right. I'm going to read a list of
2 potential witnesses and I'll need to know the same
3 about these folks, so please pay attention. Willie
4 Wright; Michael Nunez, with the sheriff's office;
5 Matt Owens, with the sheriff's office; Travis Estes,
6 with the sheriff's office; Jim Perry, with the
7 sheriff's office; William Brewer, with the sheriff's
8 office; Christopher Hines, with the sheriff's office;
9 Tirissa Johnson, with the sheriff's office; Patrick
10 Galvin, with the police department; Collis Flavell,
11 with the police department; Dustin Sherbert, with the
12 police department; Dar Shaw, with the department of
13 public safety; and Kara Bennick, with the department
14 of public safety.

15 Is there any member of the jury panel related by
16 blood or marriage, or who has a business, personal or
17 social relationship with any of those potential
18 witnesses whose name I've just read? If so, please
19 stand.

20 (There was no response.)

21 THE COURT: All right. Is there any member of
22 the jury panel who has any knowledge about the events
23 that are alleged in these indictments? If so, please
24 stand.

25 (There was no response.)

1 THE COURT: Okay. Is there any juror or family
2 member of a juror who has ever been a victim of or
3 charged with these type of offenses? If so, please
4 stand.

5 (There was no response.)

6 THE COURT: Is there any member of the jury
7 panel aware of or have any bias or prejudice towards
8 either the State or the Defense? If so, please
9 stand.

10 (There was no response.)

11 THE COURT: Is there any member of the jury
12 panel who is a member of or contributor to a group
13 whose primary concern is the promotion of law
14 enforcement or victim's rights? Examples are MADD,
15 SADD, or CAVE. If so, please stand.

16 Yes, ma'am, your name and number, please, ma'am?

17 PROSPECTIVE JUROR: Angela Peters, 95. While in
18 school, I was a member of SADD. I think at some
19 point, also, MADD while my children were in school.

20 THE COURT: Would the fact that you have those
21 prior affiliations limit your ability to be fair and
22 impartial in this case to either the State or the
23 Defense?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: Could you judge this case based

1 solely on the merits of the evidence presented in
2 court along with the law as I will give it to you?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: All right. Thank you, ma'am.

5 PROSPECTIVE JUROR: I was also --

6 THE COURT: Well, your name and number, ma'am?

7 PROSPECTIVE JUROR: Emily Painter, 91. I, from
8 my undergrad, did an extensive project on MADD.

9 THE COURT: All right. Would the fact that you
10 did -- were involved with that project, would that
11 impair your ability to be fair and impartial in this
12 case to either the State or the Defense?

13 PROSPECTIVE JUROR: No, sir.

14 THE COURT: Could you judge this case based
15 solely on the merits of the evidence and the law as I
16 would give it to you?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: All right. Thank you, ma'am.

19 All right. Is there any juror who knows of any
20 reason whatsoever why you should not serve in this
21 case, with particular emphasis on your ability to be
22 fair and impartial to both the State and the Defense
23 and to judge this case based solely on the evidence
24 presented in this courtroom and the law as I will
25 give it to you? If you cannot do that, please let us

1 know right now.

2 (There was no response.)

3 THE COURT: Anything further from the State?

4 MR. MOYER: No, Your Honor.

5 THE COURT: From the Defense?

6 MR. HAMILTON: Nothing from the Defense.

7 MR. WARDER: No, Your Honor.

8 THE COURT: All right. Okay.

9 Mary.

10 THE CLERK: When I call your name, if you will
11 please stand in place, then wait for further
12 instructions.

13 Juror 111, Carl Bruce Smith:

14 (Carl Bruce Smith, a white male, stood.)

15 THE CLERK: What says the State?

16 MR. MOYER: Please present Mr. Smith.

17 THE CLERK: What says the Defendants?

18 MR. HAMILTON: Please seat the jury in this
19 case.

20 THE CLERK: All right, sir, if you will please
21 come have a seat in the jury box.

22 Juror 81, Timothy McCurry.

23 (Timothy McCurry, a white male, stood.)

24 THE CLERK: What says the State?

25 MR. MOYER: Please present Mr. McCurry.

1 THE CLERK: What says the Defendants?

2 MR. HAMILTON: Swear Mr. McCurry.

3 THE CLERK: Sir, please come around, have a seat
4 in the jury box.

5 Juror 98, Orialis Restrepo Garces.

6 (Orialis Restrepo Garces, an Hispanic female,
7 stood.)

8 THE CLERK: What says the State?

9 MR. MOYER: Please excuse the juror in this
10 case.

11 THE CLERK: All right, you may be seated.
12 You've been excused from this case.

13 Juror 130, Kathy Young.

14 (Kathy Young, a white female, stood.)

15 THE CLERK: What says the State?

16 MR. MOYER: Please excuse the juror in this
17 case.

18 THE CLERK: All right, you may be seated, ma'am.
19 You've been excused from this case.

20 Juror No. 106, Barbara Simmons.

21 (Barbara Simmons, a black female, stood.)

22 THE CLERK: What says the State?

23 MR. MOYER: Please present Ms. Simmons.

24 THE CLERK: What says the Defendants?

25 MR. HAMILTON: Swear Ms. Simmons.

1 THE CLERK: Ms. Simmons, please come have a seat
2 in the jury box.

3 Juror No. 71, Amanda Kralick.

4 (Amanda Kralick, a white female, stood.)

5 THE CLERK: What says the State?

6 MR. MOYER: Please present Ms. Kralick.

7 THE CLERK: What says the Defendants?

8 MR. HAMILTON: Excuse the juror in this case,
9 please.

10 THE CLERK: You may be seated, ma'am. You've
11 been excused in this case.

12 Juror No. 2, Ginger Adams.

13 (Ginger Adams, a white female, stood.came
14 forward.)

15 THE CLERK: What says the State?

16 MR. MOYER: Please excuse this juror.

17 THE CLERK: You may be seated. You've been
18 excused from this case.

19 Juror No. 88, Daniel Olinger.

20 (Daniel Olinger, a white male, stood.came
21 forward.)

22 THE CLERK: What says the State?

23 MR. MOYER: Please present Mr. Olinger.

24 THE CLERK: What says the Defendants?

25 MR. HAMILTON: Excuse the juror in this case,

1 please.

2 THE CLERK: You may be seated, sir. You've been
3 excused from this case.

4 Juror 33, Elliott Fayssoux.

5 (Elliott Fayssoux, a white male, stood.)

6 THE CLERK: What says the state?

7 MR. MOYER: Please present Mr. Fayssoux.

8 THE CLERK: What says the Defendants?

9 MR. HAMILTON: Swear the juror.

10 THE CLERK: Mr. Fayssoux, please come have a
11 seat in the jury box.

12 Juror 115, Michael Spinelli.

13 (Michael Spinelli, a white male, stood.)

14 THE CLERK: What says the State?

15 MR. MOYER: Please present Mr. Spinelli.

16 THE CLERK: What says the Defendants? No. 115.

17 MR. HAMILTON: Please swear the juror.

18 THE CLERK: Sir, please come have a seat in the
19 jury box.

20 Juror 57, Kristi Horne.

21 (Kristi Horne, a white female, stood.)

22 THE CLERK: What says the State?

23 MR. MOYER: Please present Ms. Horne.

24 THE CLERK: What says the Defendants?

25 MR. HAMILTON: Excuse the juror in this case,

1 please.

2 THE CLERK: All right, ma'am, you may be seated.

3 You've been excused from this case.

4 Juror 91, Emily Painter.

5 (Emily Painter, a white female, stood.)

6 THE CLERK: What says the State?

7 MR. MOYER: Please present Ms. Painter.

8 THE CLERK: What says the Defendants?

9 MR. HAMILTON: Excuse the juror in this case,
10 please.

11 THE CLERK: All right, ma'am, please be seated.

12 You've been excused from this case.

13 Juror No. 105, Marshall Shepherd.

14 (Marshall Shepherd, a white male, stood.)

15 THE CLERK: What says the State?

16 MR. MOYER: Please present Mr. Shepherd.

17 THE CLERK: What says the Defendants?

18 MR. HAMILTON: Excuse the juror in this case,
19 please.

20 THE CLERK: All right, sir, please be seated.

21 Juror 59, Jann Howell.

22 (Jann Howell, a white female, stood.)

23 THE CLERK: What says the State?

24 MR. MOYER: Please present Ms. Howell.

25 THE CLERK: What says the Defendants?

1 MR. HAMILTON: Excuse the juror in this case,
2 please.

3 THE CLERK: You may be seated. You've been
4 excused from this case.

5 Juror 95, Angela Peters.

6 (Angela Peters, a white female, stood.)

7 THE CLERK: What says the State?

8 MR. MOYER: Please present Ms. Peters.

9 THE CLERK: Thank you.

10 What says the Defendants?

11 MR. HAMILTON: Excuse the juror in this case.

12 THE CLERK: All right, ma'am, you may be
13 excused. Please be seated.

14 Juror 69, Richard Kirby.

15 (Richard Kirby, w white female, stood.)

16 THE CLERK: What says the State?

17 MR. MOYER: Please present Mr. Kirby.

18 THE CLERK: What says the Defendants?

19 MR. HAMILTON: Seat Mr. Kirby.

20 THE CLERK: Mr. Kirby, please come have a seat
21 in the jury box.

22 Juror 79, Brandi Massey.

23 (Brandi Massey, a white female, stood.)

24 THE CLERK: What says the State?

25 MR. MOYER: Please present Ms. Massey.

1 THE CLERK: What says the Defendants?

2 MR. HAMILTON: Excuse the juror from this case.

3 THE CLERK: All right, ma'am, you may be seated.

4 Juror 19, Joseph Cignarale.

5 (Joseph Cignarale, a white male, stood.)

6 THE CLERK: What says the State?

7 MR. MOYER: Please present Mr. Cignarale.

8 THE CLERK: What says the Defendants?

9 MR. HAMILTON: Swear the juror.

10 THE CLERK: Sir, please come have a seat in the
11 jury box.

12 Juror 39, Laura Galvis.

13 (Laura Galvis, a Hispanic female, stood.)

14 THE CLERK: What says the State?

15 MR. MOYER: Please present Ms. Galvis.

16 THE CLERK: What says the Defendant?

17 MR. HAMILTON: Excuse the juror in this case,
18 please.

19 THE CLERK: You may be seated, please.

20 Juror 78, Ricky Martin.

21 (Ricky Martin, a black male, stood.)

22 THE CLERK: What says the State?

23 MR. MOYER: Please excuse the juror in this
24 case.

25 THE CLERK: You may be seated, sir. You've been

1 excused from this case.

2 Juror 27, Rosemary Diaz Caraballo.

3 (Rosemary Diaz Caraballo, a Hispanic female,
4 stood.)

5 THE CLERK: What says the State?

6 MR. MOYER: Please present the juror.

7 THE CLERK: What says the Defendants?

8 MR. HAMILTON: Swear the lady.

9 THE CLERK: Ma'am, please come have a seat in
10 the jury box.

11 Juror 108, Deanna Sizemore.

12 (Deanna Sizemore, a white female, stood.)

13 THE CLERK: What says the State?

14 MR. MOYER: Please excuse this juror.

15 THE CLERK: You may be seated, ma'am.

16 Juror 109, Angella Smith.

17 (Angella Smith, a white female, stood.)

18 THE CLERK: What says the State?

19 MR. MOYER: Please present the juror.

20 THE CLERK: What says the Defendants?

21 MR. HAMILTON: Excuse the juror in this case,
22 please.

23 THE CLERK: You may be seated, ma'am.

24 Juror 131, Seroj Zadoorian.

25 (Seroj Zadoorian, a white male, stood.)

1 THE CLERK: What says the State?

2 MR. MOYER: Please present Mr. Zadoorian.

3 THE CLERK: What says the Defendants?

4 MR. HAMILTON: Seat the juror.

5 THE CLERK: Sir, please come have a seat in the
6 jury box.

7 Jury panel 17, Sally Calder.

8 (Sally Calder, a white female, stood.)

9 THE CLERK: What says the State?

10 MR. MOYER: Please present Ms. Calder.

11 THE COURT: What says the Defendants?

12 MR. HAMILTON: Swear the lady.

13 THE CLERK: Ma'am, please come have a seat in
14 the jury box.

15 Juror 92, Allan Perry.

16 (Allan Perry, a white male, stood.)

17 THE CLERK: What says the State?

18 MR. MOYER: Please present Mr. Perry.

19 THE CLERK: What says the Defendants?

20 MR. HAMILTON: Seat Mr. Perry.

21 THE CLERK: All right, sir, please have a seat
22 in the jury box.

23 Juror 123, Michael Watkins.

24 (Michael Watkins, a white male, stood.)

25 THE CLERK: What says the State?

1 MR. MOYER: Please present Mr. Watkins.

2 THE CLERK: What says the Defendants?

3 MR. HAMILTON: Please swear Mr. Watkins.

4 THE CLERK: Sir, please have a seat in the jury
5 box.

6 THE COURT: One and two. One alternate.

7 THE CLERK: Juror 47, Jamie Harbin.

8 (Jamie Harbin, a white male, stood.)

9 THE CLERK: What says the State?

10 MR. MOYER: Please present Mr. Harbin.

11 THE CLERK: What says the Defendants?

12 MR. HAMILTON: Seat the gentleman.

13 THE CLERK: All right, sir, please have a seat
14 in the jury box.

15 THE COURT: All right. Any exceptions or
16 objections to the jury as impaneled pursuant to
17 Batson or Jeb?

18 MR. MOYER: Not from the State, Your Honor.

19 MR. HAMILTON: None from the Defense, Your
20 Honor.

21 THE COURT: All right.

22 All right, ladies and gentlemen, for those of
23 you who were not selected on this jury, I would ask
24 you to return to the jury assembly room. Thank you.

25 (WHEREUPON, the jury venire was excused at

1 approximately 10:41 a.m.)

2 THE COURT: All right, ladies and gentlemen,
3 appreciate your serving. And again, let me emphasize
4 how important your performing this civic duty is to
5 your community. I hope that you will find at the
6 conclusion of the week that this has been a rewarding
7 and satisfying experience for you.

8 I want to tell you that we have a dispute about
9 the facts in this case, which can't be resolved in
10 any fashion other than to ask a jury, you folks, to
11 come up here and listen to the evidence presented in
12 this courtroom and the law as I will give it to you
13 and reach a decision which resolves this dispute.

14 I would remind you that every person charged
15 with an offense in this country is presumed to be
16 innocent unless and until the charging body in this
17 case, the State of South Carolina, can prove to you,
18 the jury, beyond a reasonable doubt, each and every
19 offense that is charged. And I would again remind
20 you that each individual charge against each
21 individual defendant stands or fails on its own
22 merit. And you must sort of put a China wall up
23 between all of those when you're reaching your final
24 decision.

25 I would also remind you that the indictments

1 that I've published to you are not evidence and
2 they're just the documents that allow the case to
3 wind its way through our system to arrive here for
4 disposition. You should make no -- take no inference
5 or make a presumption from the fact that they issued.
6 They are just documents and they are not evidence.

7 Now, I break a trial into five parts so you all
8 have a procedural roadmap about where you are and
9 what's coming next. The first part -- you can break
10 it into a lot of difference parts, but the first part
11 of my five-part roadmap are the opening statements to
12 you from the attorneys. And the opening statements
13 to you are brief and they are non-argumentative. The
14 second part of the trial is the meat and potatoes of
15 every case, and that is the presentation of the
16 testimony and the evidence in the case. The third
17 part of the trial is after all the evidence has been
18 presented, the attorneys make their closing arguments
19 to you. It's an opening statement, brief and
20 non-argumentative and a closing argument where the
21 attorneys advocate their position and urge you to
22 resolve the dispute in their favor based on the law
23 and the evidence. The fourth part of the trial will
24 be when I charge you what the law is as it applies to
25 this case. And the fifth part of the trial will be

1 when you all retire to your jury room to deliberate
2 this case and resolve the dispute. . The parts are not
3 of equal length, but, at least, you'll have an idea
4 of where you are and what's coming next if you can
5 hang onto that little roadmap.

6 I'm sure I'll ask you all to do a lot of things
7 throughout the course of the trial, but there are
8 three main things I ask you to do. . The first is to
9 keep an open mind. We have to go through all the
10 questioning about the qualifications for this case to
11 ensure that we have a fair and impartial juror which
12 will judge this matter based only on the evidence
13 presented in this courtroom and the law and
14 uninfluenced by outside factors.

15 The second thing I do is to keep -- pay
16 attention. If you were to let your mind wander off a
17 little bit during the trial, you might miss an answer
18 to a question. You might miss the way a witness
19 answers a question, or what we call a witness'
20 demeanor, and that might become important in your
21 deliberations at the conclusion of the trial. And if
22 you weren't paying attention, then you would be at a
23 disadvantage during those deliberations.

24 The third thing that I ask you to do and I
25 instruct you to do, and this is vital, is that you

1 not discuss the case, the facts of this case with
2 anyone until you are free to deliberate at the end of
3 trial. That means when we break for lunch, you can't
4 talk about it with the bailiffs, you can't talk it
5 about among yourselves, and you can't talk about it
6 with someone you might see at lunch. Even an
7 innocent comment from someone who you like and trust
8 might impact your state of mind in this case and that
9 would not be fair to the parties involved in this
10 case. It would not be fair to your fellow jurors.
11 And, most importantly, it would not be fair to
12 yourselves to allow someone who is not making the
13 sacrifices that each of you are making, who is not in
14 this courtroom listening to and looking at the
15 evidence presented and the law to have any input in
16 the outcome of this case. We don't care what those
17 people think. And we're only interested in what you,
18 the jury, thinks and how you resolve this case. That
19 also includes not doing research, not going to visit
20 some location that you might hear during the course
21 of trial, not getting on the internet and not
22 tweeting.

23 Okay. Now, I would tell you this, that you, the
24 jury, are the sole judges of the facts. And a trial
25 judge is not allowed to have an opinion about the

1 facts in this case. It is up to you all to determine
2 what you think is true and what you think is not true
3 and what the correct evidence is. So, please don't
4 think by anything I might say or do throughout the
5 course of the trial that I have such an opinion, I
6 don't. The law does not allow it. And it's up to
7 you all to be the judges of the facts.

8 The same law that makes you the judges of the
9 facts, makes me the judge of the law. So, if you all
10 have any opinion as to what you think the law is or
11 what the law ought to be and it disagrees with what I
12 tell you the law is throughout the trial and at the
13 conclusion of the trial, you're going to swear an
14 oath in a little bit to set aside your own opinion
15 and apply the law precisely as I state it to you.
16 That ensures that every person is tried under the
17 same law in this country.

18 Ladies and gentlemen, a couple of things that I
19 will tell you. From time to time, the lawyers -- you
20 saw them approach the bench. We had what we call a
21 bench conference. There may be times when I excuse
22 you all to your jury room and we discuss things out
23 of your presence. I want you to understand that we
24 may well be trying to keep something from you, but we
25 are not trying to deceive you in any way. We may be

1 discussing a disputed piece of evidence that should
2 not be admitted. And I think you can understand that
3 you shouldn't hear that if it's not constitutionally
4 proper evidence that should be admitted at trial. We
5 also discuss things like logistics and times and all
6 that sort of thing. So, just remember that we are
7 not trying to deceive you in any way when we do that.

8 I'm going to excuse you all to your jury room.
9 I'm going to ask you all to do the first thing for
10 me, and that is to determine from among the first
11 12 -- an alternate is not allowed to serve as a
12 foreperson. If you all can decide who you would like
13 your foreperson to be. The foreperson is the
14 moderator of the deliberations or discussions at the
15 conclusion of the trial and also the jury's
16 spokesperson here in the courtroom should that become
17 necessary.

18 So with that, ladies and gentlemen, I'm going to
19 excuse you to your jury room and we'll get back to
20 you just as quickly as we can. Thank you.

21 (WHEREUPON, the jury left open court at
22 approximately 10:49 a.m.)

23 THE COURT: All right, sir, what do we have?
24 You've got a Neil v. Biggers?

25 MR. MOYER: We do, Your Honor.

██████████ DIRECT BY MR. MOYER

1 (WHEREUPON, State's Exhibits Nos. 1-3 were
2 marked for identification only.)

3 MR. MOYER: Ready, Your Honor?

4 THE COURT: Yeah.

5 MR. MOYER: The State calls ██████████ to
6 the stand.

7 THE CLERK: Mr. ██████████ please come forward,
8 pause at the end of the bench. Please place your
9 left hand on the Bible and raise your right hand.

10 ██████████ after being duly
11 sworn, testified as follows:

12 THE CLERK: Thank you. Please be seated. And
13 sir, would you please state your name for the record.

14 THE WITNESS: ██████████.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. MOYER:

18 Q Mr. ██████████ I'm going to be asking you some
19 questions. If you will look over here at me and move up a
20 little bit closer to the microphone. Okay. Tell The
21 Court how old you are.

22 A I'm 24 years old.

23 Q Okay. Where were you employed back in September
24 of 2015?

25 A At the Greenville Driving School.

██████████ DIRECT BY MR. MOYER

1 Q Okay. What did you do for the Greenville
2 Driving School?

3 A I was a manager and instructor.

4 Q So, you would actually take vehicles owned by
5 the school and go out and instruct students as part of
6 your job?

7 A Yes, sir. I pick up a student and basically
8 tutor them on how to drive. I would be in the passenger
9 side, just basically teaching them the rules of the road,
10 things like that.

11 Q Okay. And what kind of vehicle did you drive?

12 A It was a Toyota Corolla.

13 Q What did it look like?

14 A It was a bright yellow, four-door sedan covered
15 in red stickers.

16 Q What were the stickers?

17 A A branding of the company, Greenville Driving
18 School, driver training, phone number, stuff like that.

19 Q Now, were you driving that vehicle on the
20 morning of September 1st of 2015?

21 A Yes, sir.

22 Q Did an incident happen that morning that led to
23 the arrest of these two Defendants for these charges of
24 attempted murder?

25 A Yes, sir.

██████████ DIRECT BY MR. MOYER

1 Q Okay. Without going into all the details about
2 what happened, just what exactly did the men do?

3 A Basically, they shot at me. Fired weapons and
4 guns at me.

5 Q Okay. From -- were they in a vehicle?

6 A Yeah, from their vehicle. Basically, they drove
7 up along side of me and fired straight at me through the
8 front of the vehicle.

9 Q Okay. I'm going to ask you a few more questions
10 about the people that were in that car in just a minute.
11 Let's move on to later in that day. Were you asked to
12 view some photo lineups to see if you would be able to
13 identify these men?

14 A Yes, sir, shortly after.

15 Q It was the same day?

16 A Yes, sir.

17 Q Do you remember around what time of day it was?

18 A It was around 2:00 p.m.

19 Q Around what time was the shooting?

20 A Around 10:30 a.m.

21 Q Okay. Where were you when you were shown these
22 photographic lineups?

23 A At the detention center, the Greenville -- I
24 don't know what it's called.

25 Q The law enforcement center?

██████████ DIRECT BY MR. MOYER

1 A The law enforcement center, the detention
2 center, where the jail is.

3 Q You met with some officers in their offices to
4 go over this?

5 A Yes.

6 Q How many different groups of photographs were
7 you shown? How many different lineups, actual lineups,
8 were you shown?

9 A Two.

10 Q Okay.

11 A On that day.

12 Q On that day, yes. Now, did you pick people out
13 to both of those lineups?

14 A No, sir.

15 Q Okay. And which one did you pick somebody out
16 of?

17 A The first lineup I was shown.

18 Q Okay. So, let's start off with the first lineup
19 that you were shown. I'm going to hand you what's been
20 marked as State Exhibit No. 1, which is, for the record, a
21 group of six different individual photographs. If you
22 would, just take a minute to look through this, look
23 through that grouping of photographs and see if you can
24 identify that.

25 A (Witness complies.) Yes, sir. This is the

██████████ DIRECT BY MR.. MOYER

1 first lineup I was shown.

2 Q How are you able to identify it?

3 A I numbered and initialed -- on that day when I
4 was shown them, the detective had me initial on these
5 exact pieces of paper.

6 Q Okay. And --

7 A This was the lineup.

8 Q Okay, that was the lineup that you were shown.
9 Okay. Now, when the detectives showed you that lineup,
10 were you led to believe by any of the officers who you
11 were dealing with that you had to or that you should pick
12 somebody out of the lineup?

13 A No, sir. They made it clear that if I didn't
14 recognize anybody in these pictures that it would be no
15 problem at all. I needed to be 100 percent sure before
16 telling them that it was, you know --

17 Q That you recognized somebody?

18 A Yes, sir.

19 Q Did you feel any -- so you didn't feel any
20 pressure to pick somebody out then?

21 A No, sir.

22 Q Okay. Was there any influence given by any of
23 the officers or was there any suggestiveness towards any
24 particular photograph in that grouping?

25 A No, sir. The same as you just did, basically,

██████████ DIRECT BY MR. MOYER

1 handed me the packet and asked me to go through it by
2 myself.

3 Q Okay. Now, I want to go back now and ask you a
4 few questions about the actual incident. Again, we're not
5 going to go into all the details at this time, I'm just
6 going to ask you about your observation of the two men who
7 were in the vehicle, okay. So, around what time -- you
8 already said it was about 10:30 in the morning?

9 A Yes, sir.

10 Q So, it was daylight out?

11 A Yes, sir.

12 Q Okay. All right. How close to this vehicle
13 were you actually -- how close to this other vehicle from
14 which you were shot were you at any point during that
15 altercation?

16 A During -- when the shooting actually took place,
17 I was maybe about eight foot away from my -- from my -- my
18 body to the outside edge of their vehicle.

19 Q Okay. So, was the vehicle in an adjacent lane
20 to yours?

21 A Yes, sir, it was in the right-hand lane directly
22 next to mine, but pretty close to my side of the lane.
23 You know, they were right next to my car.

24 Q So, you were in the left lane and that car was
25 in the right lane.

██████████ DIRECT BY MR. MOYER

1 A Well, I was in -- there was a three-lane road
2 where it happened. I was in the middle-hand lane. They
3 were in the right-hand lane directly next to me, like I
4 said. Basically, lined up perfectly with the driver. So,
5 the driver was literally lined up if I was just right here
6 with the judge right here.

7 Q Okay. So, about as close as the judge is from
8 you?

9 A Just about, yes, sir.

10 Q Now, was there a period of time that you were
11 going down the road before the shooting happened? In
12 other words, were you able to look at them for a little
13 period of time or was the shooting simultaneous?

14 A No, no. I had -- basically, they had approached
15 from behind me and I noticed them in my rearview mirror
16 driving erratically. Being a driving instructor, of
17 course, I knew my best option would be to get out of their
18 way with the way they were driving. So, I moved to the
19 left to allow them -- for them to go past. But in that,
20 they got up next to me, slowed down to the same speed I
21 was doing and kind of hung with me. Then the altercation
22 took place and then they shot.

23 Q Okay. So, were you going the speed limit?

24 A Probably a few miles an hour below the speed
25 limit or right at the speed limit, yes, sir.

██████████ DIRECT BY MR. MOYER

1 Q Okay. So, being in that vehicle, were you
2 careful about --

3 A Excessively. In the driver's ed vehicle, we
4 never speed, never really break any laws. We take our
5 time really and drive the right way.

6 Q Okay. Now, what kind of vehicle were they in?

7 A They were in a late model black Mercedes
8 E-Class, four-door sedan.

9 Q Now, as far as you know -- well, did you
10 recognize the vehicle as having seen that particular
11 vehicle in the past as far as you know?

12 A No, sir. No, sir. It's a very common vehicle,
13 but I definitely didn't recognize it or recognize either
14 of them from any past experience in my life.

15 Q That was my next question, did you recognize the
16 men as having ever seen or --

17 A Never.

18 Q Okay.

19 A Never. This was the first I saw either of them.

20 Q Okay. Now, during this period of time when they
21 were next to your vehicle, was your -- was the -- was the
22 passenger window up or down?

23 A My passenger side window was up initially, but
24 as they were next to me, I began to roll my window down.
25 And basically, it was maybe about two or three inches down

██████████ DIRECT BY MR. MOYER

1 when the time of the shooting happened.

2 Q Now, is that window tinted or anything?

3 A No, sir, clear window. It's a driver's ed car.

4 We don't have any tint on our windows.

5 Q So, there was nothing obstructing your view then
6 into that other vehicle?

7 A.. Not at all.

8 Q Was the driver's window up or down in the
9 Mercedes?

10 A Down.

11 Q Okay.

12 A I believe all of their windows were down.

13 Q Now, did you get a good look at the people in
14 the car?

15 A Yes, sir.

16 Q How many people were in the car?

17 A Two, the driver and the passenger.

18 Q The passenger front of the vehicle?

19 A Yes, sir, front seat.

20 Q And you were able to get a good enough look at
21 them to be able to identify them later?

22 A Yes, sir, I looked straight in their face.

23 Q Both men?

24 A Both men. Got a good clear look of their faces.

25 Q Do you remember the description that you gave to

██████████ DIRECT BY MR. MOYER

1 the officers after you ended up calling 9-1-1 and officers
2 responded?

3 A Yes, sir.

4 Q How did you describe them?

5 A Light-skinned black male was the driver, tall,
6 and about -- I think about 19, 20 years old, I think what
7 I said, around there. And the passenger was a
8 darker-skinned black male, looked to be a little bit
9 younger, maybe about 17, 18, around there.

10 Q Okay. All right.

11 A Sorry, I'm a little nervous.

12 Q Okay. No problem. Now, so back to this lineup
13 then. You were shown that lineup just a few hours after
14 the actual --

15 A Yes, sir.

16 Q After the actual incident took place. Okay, now
17 when you were shown that lineup, State's Exhibit No. 1,
18 when you looked at it, were you able to make an
19 identification?

20 A Yes, sir.

21 Q Which photograph was it? And if you need to
22 look through again to refresh your memory, do so.

23 A Yes, sir, it was the fourth photo in the lineup.

24 Q Okay. Did you have any doubt about that
25 selection?

██████████ DIRECT BY MR. MOYER

1 A Not at all. As soon as I flipped that page, I
2 recognized that face.

3 Q Okay.

4 A He has a very distinctive jawline and very
5 distinctive facial structures.

6 Q Okay. Did you look over all those pictures
7 carefully?

8 A Yes, sir.

9 Q Okay. And after you made that selection, did
10 you tell the detective which photograph you selected?

11 A Yes, sir, I pointed it out to the detective and
12 then basically showed him definitely this one.

13 Q All right. And you were asked to write on that
14 form?

15 A Yes, sir. He had me just describe here,
16 basically, just explain in my handwriting that this is the
17 person. I wrote here, Looks like the driver of the
18 vehicle. He was aggressive and the shooter.

19 Q Okay. So, now State's Exhibit No. 1, does this
20 look substantially in the same condition now as it did
21 when you were shown that photograph back on September the
22 1st of 2015?

23 A Yes, sir. Other than that red sticker, it is
24 exactly the way it was then.

25 MR. MOYER: Your Honor, at this time, we would

██████████ DIRECT BY MR. MOYER

1 move to have State's Exhibit No. 1 entered into the
2 record for purposes of this pre-trial hearing.

3 THE COURT: Any objection?

4 MR. WARDER: Nothing from the Defendant.

5 THE COURT: Identify your client.

6 MR. WARDER: Yes, sir.

7 THE COURT: Who is it?

8 MR. WARDER: I represent William Hunter, Your
9 Honor.

10 THE COURT: Okay. Just identify none from
11 Defendant Hunter, if you would.

12 MR. HAMILTON: No objection from the Defendant,
13 Braxton Hare.

14 THE COURT: Okay. All right.

15 (WHEREUPON, State's Exhibit No. 1 was admitted
16 into evidence.)

17 BY MR. MOYER:

18 Q Okay. Now, after being shown that lineup, were
19 you then shown a second lineup on that day?

20 A Yes, sir.

21 Q Okay. Was it shown to you right after that
22 lineup?

23 A Yes, sir.

24 Q Okay. Let me hand you State's Exhibit No. 2.
25 And this once again, is an exhibit consisting -- for the

██████████ DIRECT BY MR. MOYER

1 record, consisting of six different photographs. And
2 would you take a look through that and see if you
3 recognize that?

4 A Yes, sir. This is the lineup I was shown, the
5 second lineup I was shown. But I was unable to identify
6 anybody from this lineup.

7 Q Okay, I'm going to get to that in just a second.
8 Having looked through that, does that look substantially
9 in the same condition now as it was when you were shown
10 that lineup?

11 A Yes, sir. I also initialed all of this the same
12 as the other one on that day. Other than the red sticker
13 that you guys have, it's the same exact condition.

14 MR. MOYER: At this time, the State would seek
15 to introduce State's Exhibit No. 2 into the record
16 for purposes of this hearing.

17 MR. WARDER: I have no objection to it coming in
18 for this hearing.

19 THE COURT: For which defendant? You've got to
20 identify the Defendant so we can keep the record
21 straight.

22 MR. WARDER: William Hunter.

23 THE COURT: Thank you.

24 MR. HAMILTON: May it please the Court, we have
25 no objections for Braxton Hare.

██████████ DIRECT BY MR. MOYER

1 THE COURT: All right. Thank you.

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

4 BY MR. MOYER:

5 Q Okay. Once again, I'll ask you, was this lineup
6 shown to you in the same manner as the first one shown to
7 you?

8 A Yes, sir. Basically, the detectives just said
9 hey, we have a lineup here to show you. We'd like you to
10 take a look at it and see if you recognize these people.
11 They handed me the packet of photographs and just kind of
12 left me to the side to look through them and take my time.
13 I took a good while with that one. But like I said, I
14 wasn't able to identify anybody.

15 Q Okay. So, there was -- once again, there no
16 suggestiveness about the way they gave it to you or
17 pressure to pick somebody out?

18 A No.

19 Q And you looked at the lineup carefully?

20 A I looked -- especially the second one, I looked
21 over two or three times. And like I said, could not give
22 identify anybody.

23 Q So, you were able to say then that the passenger
24 of the vehicle was not in that lineup; is that right?

25 A Yes, sir.

██████████ DIRECT BY MR. MOYER

1 Q Okay. Now, were you later shown a third lineup?

2 A Yes, sir.

3 Q When did that take place?

4 A The next day.

5 Q And around what time was that?

6 A It was also around 2:00 p.m. that very next day.

7 Q It happened at the law enforcement center as
8 well.

9 A Yes, sir, same place, same office with the same
10 detectives.

11 Q Okay. And they gave you a call and had you come
12 down?

13 A Yes, sir. They just called me that morning and
14 asked me to come in, that they had another lineup for me
15 to take a look at.

16 Q Okay. Did they show that third lineup to you in
17 the same way they showed you the first two the previous
18 day?

19 A Yes, sir. Just basically brought me in, had me
20 sit down with them, again, just handed me the packet and
21 hey, you know, we'd like for you to look through these.
22 If you do recognize the passenger of the vehicle in here,
23 you know, point him out to us. If not, it's okay.

24 Q Okay. Was there any suggestiveness?

25 A No, sir.

██████████ DIRECT BY MR. MOYER

1 Q Did they put any pressure on you to pick
2 somebody out of that lineup?

3 A No pressure at all.

4 Q Okay. I want to hand you once again a packet of
5 six photographs, this is State's Exhibit No. 3. If you
6 would, just take a look through that and see if you can
7 identify what I've just handed you?

8 A Yes, sir. This is the -- definitely the lineup
9 from the second day.

10 Q Okay. Is it in substantially the same condition
11 now other than that sticker on the top as it was when they
12 showed it to you on September the 2nd?

13 A Yes, sir.

14 MR. WARDER: Your Honor, no objection from the
15 Defendant William Hunter.

16 THE COURT: Thank you.

17 MR. MOYER: The State does move State's Exhibit
18 No. 3 in.

19 THE COURT: Any objection?

20 MR. HAMILTON: No objection from the Defendant
21 Braxton Hare.

22 THE COURT: Okay.

23 MR. MOYER: State moves to have Exhibit 3
24 entered into the record for purposes of the hearing.

25 THE COURT: Okay. It's in. No objection.

██████████ DIRECT BY MR. MOYER

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

3 BY MR. MOYER:

4 Q So, when you looked through that packet of
5 photographs on September 2nd of 2015, were you able to
6 identify anyone out of that photograph?

7 A Yes, sir. The very first picture here in the
8 lineup was the passenger in the vehicle.

9 Q Okay. Did you have any doubt about that
10 selection?

11 A No doubt whatsoever.

12 Q And you looked over -- once again, you looked
13 over all the pictures carefully?

14 A I looked through all of them to be fair and to
15 look through all of them. But from memory, sir, that face
16 just stands out and that's definitely the passenger of
17 that vehicle when the shooting took place.

18 Q Okay. Now, once again, the detective had you
19 write on the picture the person that you chose?

20 A Yes, sir, I wrote here -- initialed and wrote
21 here, Passenger in the vehicle pulled and pointed a gun at
22 me first, then the driver followed.

23 Q Okay.

24 A But this is definitely him.

25 Q Okay.

██████████ CROSS BY MR. WARDER

1 MR. MOYER: All right. That's all the questions
2 I have for you at this time. Please answer any
3 questions that Defense attorneys have for you.

4 THE COURT: Okay. Cross?

5 CROSS-EXAMINATION

6 BY MR. HAMILTON:

7 Q Mr. ██████████ I just want to know, you're saying
8 this happened on a three-lane road, Mills Avenue, or do
9 you know the name of the road?

10 A Yes, sir, it is Mills Avenue.

11 Q And Mills Avenue is three lanes?

12 A Yes, sir.

13 Q Okay.

14 A From where it changes from Church Street --

15 MR. HAMILTON: Your Honor, I object to the
16 response. He's answered.

17 THE COURT: Well, you just answered the
18 question. Okay.

19 Anything else? Any cross?

20 MR. WARDER: I have some questions.

21 THE COURT: Okay.

22 CROSS-EXAMINATION

23 BY MR. WARDER:

24 Q What time of day was this?

25 A What time was what, sir?

██████████ CROSS BY MR. WARDER

1 Q What time of the day did the incident take place
2 that you're picking --

3 A The shooting occurred right around 10:30. I'm
4 not sure on the exact time, but it was around 10:30,
5 slightly before because the 911 call I made was right at
6 about 10:30. So it was a few minutes, you know, maybe a
7 minute or two before that -- or 10:30, at least.

8 Q Okay. You called a minute or two after and
9 that's how you're sure of the time?

10 A Yes, sir. Yes, sir.

11 Q And you know the time of the 911 call because
12 somebody showed you that?

13 A Well, I made it, yes, sir.

14 Q I mean, how do you know the time? Did you look
15 at your watch when you were calling 911?

16 A No, sir.

17 Q Okay.

18 A I know what time it was. It was right around
19 10:30 a.m.

20 Q Okay. Has somebody showed you a piece of paper
21 that said what time the 911 call was received?

22 A Yes.

23 Q Okay. Now, could you see the guns in the car?

24 A Yes, sir.

25 Q And you saw what color they were?

██████████ CROSS BY MR. WARDER

1 A Yes, sir.

2 Q And the first one that was pointed at you, what
3 color was it.

4 A Black.

5 Q Okay. The second one that was pointed at you
6 was what.

7 A Stainless steel.

8 Q So, the passenger had a black gun?

9 A Yes, sir.

10 Q Okay. And the driver had a stainless steel?

11 A Yes.

12 Q Could you tell which gun shot at you?

13 A No, sir. If I was able to actually identify
14 which gun the bullet came from, I would be dead right now.

15 Q Okay.

16 MR. WARDER: Thank you. That's all the
17 questions I have right now.

18 THE COURT: Redirect?

19 MR. MOYER: No further questions for this
20 witness, Your Honor.

21 THE COURT: Thank you, sir. You can step down.

22 MR. MOYER: State calls Matt Owens to the stand.

23 THE CLERK: Sir, please place your left hand on
24 the Bible and raise your right hand --

25 THE COURT: Whoa, wait a minute. Whoa, whoa,

MATT OWENS-DIRECT BY MR. MOYER

1 whoa. What did he say?

2 MR. HARE: He just walked by and said something
3 to me first.

4 THE COURT: Well, let me tell you something. No
5 communication between you and the witnesses in this
6 case, do you understand?

7 MR. HARE: Okay. You tell him --

8 THE COURT: Do you understand that?

9 MR. HARE: I understand.

10 THE COURT: I'm sorry, sir, stand up when I'm
11 speaking to you, stand up. Do you understand that?

12 MR. HARE: Yeah.

13 THE COURT: All right, go ahead.

14 MATT OWENS, after being duly sworn,
15 testified as follows:

16 THE CLERK: Thank you. Please be seated. State
17 your name for the record.

18 THE WITNESS: Matthew Owens.

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MR. MOYER:

22 Q Where do you work, sir?

23 A Greenville County Sheriff's Office.

24 Q How long have you been in law enforcement?

25 A I've been in law enforcement 16 years.

MATT OWENS-DIRECT BY MR. MOYER

1 Q Okay. Has that all been with the sheriff's
2 office?

3 A No, sir, I started with the Greenville County in
4 2004, so I've been there 13 years.

5 Q Okay. What is your position now with the
6 sheriff's office?

7 A I'm a school resource officer.

8 Q What was your position September the --
9 September 1st of 2015?

10 A I was in the armed robbery unit as an
11 investigator.

12 Q So, you participated in this investigation of
13 this case that's before the Court?

14 A I did.

15 Q And the incident took place on what date and
16 around what time?

17 A September 1st, 2015, approximately 10:30 in the
18 morning.

19 Q Okay. And two men were taken into custody on
20 the same day as suspects, is that correct?

21 A Yes, sir.

22 Q Who were they?

23 A Braxton Hare and Jaquan Salter.

24 Q All right. Around what time were they taken
25 into custody?

MATT OWENS-DIRECT BY MR. MOYER

1 A I would say around 11:00, somewhere around
2 there.

3 Q Okay. What led to them being taken into
4 custody?

5 A That was a vehicle pursuit involving the
6 sheriff's office and a black Mercedes, which is the
7 vehicle description in which the victim in the shooting
8 provided that the suspects were driving. When I arrived
9 on scene at the wreck, based on the description of what
10 the victim said, the vehicle and the description of the
11 suspects, I was able to determine that one, if not both of
12 these gentleman, could possibly be one of the suspects in
13 the shooting.

14 Q So, Mr. Salter also fit the same general
15 description as --

16 A Yes.

17 Q The description that was given out by
18 Mr. [REDACTED] earlier?

19 A Yes, sir.

20 Q At this time, did you know about a William
21 Hunter having been involved?

22 A No, sir.

23 Q Okay. So, did you participate in the showing of
24 the photographic line to the victim that he just testified
25 about?

MATT OWENS-DIRECT BY MR. MOYER

1 A I did.

2 Q Okay. This took place at the law enforcement
3 center?

4 A Yes, sir.

5 Q In your office?

6 A Yes, sir.

7 Q And you called the victim to come over there to
8 view the lineups?

9 A Yes, sir.

10 Q Okay. And around what time of day was it that
11 you showed the lineups?

12 A I believe 1400 hours, 2:0 p.m.

13 Q Okay. Now, you and the other investigators
14 involved put together the photographic lineups of Braxton
15 Hare and Jaquan Salter to show the lineup?

16 A Yes, sir.

17 Q I'm sorry, to show the victim? All right. So,
18 let's start up off with the first one. Which one did you
19 show to Mr. [REDACTED] first?

20 A The lineup of Braxton Hare.

21 Q When you say the name Braxton Hare, you're
22 referring to the Defendant in this case, Mr. Braxton Hare?

23 A Yes, sir, the Defendant wearing the blue suit.

24 Q How many -- you put together six different
25 photographs?

MATT OWENS-DIRECT BY MR. MOYER

1 A Yes, sir.

2 Q Mr. Hare was one of them?

3 A Yes, sir.

4 Q Where was Mr. Hare -- the lineup should be in
5 front of you, State's Exhibit 1. Which number was
6 Mr. Hare when you put together the lineup?

7 A Number four.

8 Q Okay. Now, how did you present the lineup to
9 Mr. Kingwill?

10 A I basically say the same thing. I always start,
11 The person responsible for this incident may or may not be
12 in this photo lineup, so do not feel obligated to pick
13 somebody out. If you do see somebody you recognize,
14 please stop, explain to me why you recognize that person.
15 Always start from number one, go to number six. Do not
16 flip flop. Do not compare photos. You can look at them
17 as many times as you want to. Start with number one, go
18 to number six.

19 Q So, you didn't put any pressure on him that he
20 needed to or should pick somebody out?

21 A No, sir.

22 Q Was there any influence given to Mr. [REDACTED] as
23 to any particular photograph in that display?

24 A No, sir.

25 Q Okay. Now, did Mr. [REDACTED] select a photograph

MATT OWENS-DIRECT BY MR. MOYER

1 from that first lineup?

2 A Yes, sir.

3 Q And whose photograph did he select?

4 A Braxton Hare, photograph number four.

5 Q And that was the Defendant you just pointed out
6 in the courtroom?

7 A Yes, sir.

8 Q Did he indicate where in the vehicle Braxton
9 Hare was?

10 A He was the driver.

11 Q Then you asked him to make those markings on the
12 photograph to indicate his chose?

13 A Yes, sir. He initials every photo.

14 Q Okay. Okay. Then did you show Mr. [REDACTED]
15 that second lineup, State's Exhibit No. 2?

16 A Yes, sir.

17 Q Who was the subject of that lineup?

18 A Salter.

19 Q Okay. That was that other individual who was in
20 the black Mercedes when it was --

21 A Yes, sir.

22 Q Okay. Once again, there's six photographs?

23 A Yes, sir.

24 Q Where was Mr. Salter in that lineup?

25 A I believe number five. Number five.

MATT OWENS-DIRECT BY MR. MOYER

1 Q And you presented that lineup to Mr. [REDACTED]
2 the same that you showed him the first lineup?

3 A Yes, sir.

4 Q Okay. Did Mr. Kingwill select anyone from that
5 lineup?

6 A No, sir.

7 Q Okay. Okay. Now, did you have occasion to then
8 show him a third lineup?

9 A Yes, sir.

10 Q When did that take place?

11 A September 2nd, I think it was around 1445,
12 2:45 p.m.

13 Q So, the following day, close to the same
14 timeframe?

15 A Yes, sir.

16 Q What led to -- and who was the subject or the
17 object of that lineup?

18 A William Hunter.

19 Q What led to you showing a lineup with Mr. Hunter
20 in it?

21 A I received a phone call from Deputy Estes, who
22 is the school resource officer at Carolina High School,
23 and he provided me information that he witnessed
24 Mr. Hunter and Mr. Braxton Hare together, basically,
25 before and after the timeframe of the shooting in the

MATT OWENS-DIRECT BY MR. MOYER

1 black Mercedes.

2 Q Okay. And you put together the lineup the same
3 way you did the other two?

4 A Well, this particular lineup, we had to go
5 through SLED to get this lineup.

6 Q How is that different from the way you put
7 together to other two lineups?

8 A So, when we put it together, we have a database
9 that we use where we can pull pictures. And from SLED, we
10 have to actually e-mail them and request -- we might not
11 have his photo in our system, so we have to get SLED or
12 DMV to put together a photo lineup and then send it back.
13 So we'll give them the information, the name, the date of
14 birth, and then they will put their lineups together.

15 Q Okay. So, these photographs from Mr. Hunter
16 then all came from the Department of Motor Vehicle
17 photographs?

18 A Yes, sir.

19 Q Okay. Now, you showed it to Mr. [REDACTED] in the
20 same manner you showed him the two photographs the day
21 before?

22 A Yes, sir.

23 Q Did you assert any pressure on him to pick
24 somebody out of the lineup?

25 A No, sir.

MATT OWENS-CROSS BY MR. WARDER

1 Q Did you influence his decision in any way as to
2 which photograph to pick?

3 A No, sir.

4 Q Now, when Mr. [REDACTED] looked through that third
5 lineup, did he pick anyone out of that lineup?

6 A Yes, sir. Photograph number one, Mr. Hunter.

7 Q Once again, did you ask him to make any markings
8 on that photograph to indicate his choice?

9 A Yes, sir.

10 Q And he did so?

11 A Yes, sir, initials each page.

12 Q So, once again, the photograph that he picked
13 out, is that person here in the courtroom today?

14 A Yes, sir. He is the gentleman wearing the white
15 shirt and blue-ish tie, I guess.

16 Q Defendant William Hunter?

17 A Yes, sir.

18 MR. MOYER: I have no further questions for this
19 witness at this time.

20 THE COURT: Cross?

21 MR. HAMILTON: No questions, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. WARDER:

24 Q When one of the photographs was identified as
25 being a person in the car, did you have the witness write

MATT OWENS-CROSS BY MR. WARDER

1 some more on the photograph?

2 A Yes, sir.

3 Q Okay. And the writings that were put on the
4 photograph, did you tell them what to say in those?

5 A No, sir.

6 Q Were those the product of their own choice of
7 words and terms?

8 A Yes, sir.

9 Q And you didn't suggest whether they were to call
10 one person a shooter or not call them a shooter?

11 A No, sir. All I did is say -- I asked them who
12 is this person and what did he do. And he explained it.

13 Q And did you give him time to think about before
14 they wrote down?

15 A Did I give him time?

16 Q Yeah, to consider write what they wanted to?
17 You didn't rush him, in other words?

18 A No, sir, no.

19 Q Okay. And out of the first lineup, the witness
20 would have wrote it on one photograph and out of the third
21 lineup, he would have wrote on one photograph, is that
22 right?

23 A Yes, sir. He will initial each picture and then
24 he makes a selection, then he will write a sentence on
25 that specific picture.

1 MR. WARDER: Thank you, Your Honor.

2 THE COURT: Any redirect?

3 MR. MOYER: No, Your Honor. And no further
4 witnesses.

5 THE COURT: All right. Thank you. You can step
6 down.

7 Any argument? Any motion? I haven't heard a
8 motion yet.

9 (There was no response.)

10 THE COURT: Okay. No motion to suppress the
11 identification. All right. I'm going to find that
12 they were not unduly suggestive and I find that it
13 was reliable so I'm going to allow the lineups in.

14 MR. MOYER: The State is ready to proceed.

15 THE COURT: All right. Well, we're going to
16 take a short break.

17 I'm going to caution everyone that there's to be
18 no communication between the parties involved and the
19 witnesses in this case. And if there's another
20 communication like that, I'm going to deal with it
21 very harshly. Okay. Emotions run high in a trial
22 and you need to keep them under check.

23 We'll take about a 10 minute break. Thank you.

24 (WHEREUPON, a short break was taken.)

25 (WHEREUPON, State's Exhibits Nos. 4-13 were

1 marked for identification only.)

2 THE COURT: We're going to change the seating
3 arrangement. He's not going to sit next to the
4 aisle.

5 All right. The jury has indicated that Juror
6 No. 19 is going to be their foreperson.

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

9 THE COURT: All right. Anything else before we
10 bring the jury and swear the jury?

11 MR. MOYER: Not from the State, Your Honor.

12 THE COURT: Anything from the Defense?

13 MR. WARDER: Not from the Defendant William
14 Hunter.

15 MR. HAMILTON: None from the Defendant Braxton.
16 Hare.

17 THE COURT: All right. Let me -- before they
18 come, be careful in the testimony of Officer Owens in
19 front of the jury with respect to the mentioning of
20 SLED. We're not going to put their character into
21 issue or where the photographs come, okay. Let's be
22 careful about that.

23 MR. MOYER: We will not be going into that at
24 all. I just did that for purposes of the hearing.

25 THE COURT: Okay. I just want to caution

1 everybody about that.

2 MR. MOYER: Thank you.

3 (WHEREUPON, the jury came into open court at
4 approximately 11:48 a.m.)

5 THE COURT: All right, ladies and gentlemen,
6 we're ready to proceed with the trial. And at this
7 time, I'll ask the Clerk to place you under oath, so
8 please stand.

9 THE CLERK: Please raise your right hand for
10 oath in this case. The response is, I will.

11 (WHEREUPON, the jury was sworn.)

12 THE CLERK: Thank you. Please be seated.

13 THE COURT: All right, ladies and gentlemen,
14 we're ready to commence the trial of the case. We'll
15 proceed now to the brief non-argumentative opening
16 statements.

17 Mr. Moyer.

18 OPENING STATEMENT

19 MR. MOYER: Thank you, Your Honor, may it please
20 the Court.

21 Good morning, Mr. Foreman, ladies and gentlemen
22 of the jury. As I've stated earlier, my name is Mark
23 Moyer. I work for 13th Circuit Solicitor's Office.
24 It is the privilege of myself and Mr. Fowler to
25 represent the State in this matter that is before

1 you. Let me start off my just quickly thanking you
2 all for your service. I know you didn't volunteer to
3 be here, but I hope you understand the important
4 service that you are doing to your community. It's
5 always difficult to anticipate how long a trial will
6 last. I think we will finish tomorrow before 5:00,
7 if not maybe midday. Like I said, it's hard to say
8 for sure, but it's going to be a relatively short
9 trial.

10 Now, I'm going to give you just a short opening
11 statement. What I'm going to do is three things.
12 I'm going to tell you what this case is about. I'm
13 going to give you a brief preview of the evidence
14 that you're going to hear, then I'm going to mention
15 just one matter of law that is going to be
16 particularly relevant in this case.

17 What is this case about? This case is about a
18 random and completely unprovoked attack against one
19 of our citizens of Greenville County on September the
20 1st of 2015. You're going to hear in this case that
21 ██████████ was shot at while he was driving in
22 his vehicle. He was shot at twice from another
23 vehicle. If it had not been for quick reaction and a
24 little bit of luck, we would be in a murder trial
25 here today instead of an attempted murder trial. Let

1 me give you little brief preview of what you're going
2 to hear in this case.

3 Mr. [REDACTED] worked for a driving school. He
4 taught kids how to drive. He had a very distinctive
5 vehicle. It was bright yellow. It had big red
6 lettering all over it with the name of the company
7 and phone numbers advertising this company. He was
8 working on the morning of September the 1st of 2015.
9 He was driving down Church Street, he was heading
10 towards Mills Avenue. He was just driving along like
11 any other normal working day of his life. He notices
12 in his rear-view mirror a black Mercedes driving
13 erratically, weaving in and out of lanes, driving
14 fast. Mr. [REDACTED] moves over a lane. He was in the
15 right-hand lane, he moves over into the left because
16 based on the traffic pattern, he could tell that
17 would be the best way for this vehicle to go on by
18 him.

19 The testimony is going to be that the vehicle
20 came up, but did not go on past him. He began
21 parallelling his vehicle. Mr. [REDACTED] looked over
22 into the vehicle, this black Mercedes next to him, he
23 saw two men in that vehicle. The men were yelling,
24 they were saying things. Mr. [REDACTED] began to roll
25 down his window -- he's going to elaborate on this

1 more to you when he testifies as the first witness in
2 this case. He started rolling down his window and
3 looked over at those men.

4 Now, he's somewhat used to some behavior like
5 this. Like I said, this car is very distinctive.
6 It's a driving school vehicle. They're sometimes the
7 butt of jokes and pranks by kids or whatever, so this
8 is not too unusual. But this vehicle continues to
9 parallel him. He starts to roll down his window and
10 he looks over at the two men in that vehicle, one in
11 the driver's seat, one in the passenger's seat.

12 And as he looks over there, he hears some
13 comments coming from the car. The passenger pulls up
14 a pistol, points right at him. This car is in the
15 lane directly to his right. The passenger -- I'm
16 sorry, that was the passenger first. The driver then
17 does the same thing. Pulls out a pistol, pointing
18 directly at him. Mr. [REDACTED] sees the driver's
19 hand. His perception picks up the hand like -- the
20 driver, like beginning to tense up like he was about
21 to fire. Mr. [REDACTED] ducked down into his seat,
22 swerving his car a little bit. The shots rang out,
23 two shots. The first one shatters the passenger
24 window this he had begun to roll down, presumably
25 going through his driver's side window, which was

1 already down. The second one hit the door of the
2 vehicle, hit some structure in that door to keep it
3 going through towards where he was. Both of these
4 shots fired directly at him.

5 Mr. [REDACTED] looked up, he sees the Mercedes
6 speeding up. He actually has the presence of mind to
7 follow it for a short distance hoping to get the tag
8 number, which he doesn't get. The vehicle turned
9 into a residential neighborhood. Mr. [REDACTED]
10 thought it too risky to continue following, so he
11 stopped, called law enforcement.

12 You're also going to hear from the school
13 resource officer from Carolina High School, a school
14 not too far away from there. This teacher -- I'm
15 sorry, officer is going to provide testimony that he
16 saw Braxton Hare and William Hunter in the black
17 Mercedes both a short period of time before the
18 shooting and a short period of time after. The short
19 period of time before, he saw the vehicle come to the
20 school and leave with Braxton Hare driving and
21 William Hunter in the passenger seat. And then a
22 short time after the shooting, that same vehicle
23 pulls up with Braxton Hare driving and William Hunter
24 getting out and going into school.

25 You're also going to hear another thread of

1 testimony in this case, which involves that failure
2 to stop charge that is against Braxton Hare. What
3 that is going to be about is that an hour, hour and a
4 half after the shooting, that black Mercedes is
5 spotted by law enforcement. Now, at this time, as I
6 said, William Hunter has been dropped off. Braxton
7 Hare picked up another guy. A guy named Jaquan
8 Salter. Jaquan Salter is now riding in the black
9 Mercedes.

10 Well, the police see the vehicle and a high
11 speed chase ensued. And it's pretty long, 10 to 15
12 minutes. Lots of law enforcement involved,
13 helicopters taking video. You're going to watch the
14 video that was taken from the helicopter that
15 followed this vehicle. As I said, it lasts, I think,
16 10 to 15 minutes or so. The vehicle ends up going
17 off road, this black Mercedes, through some woods,
18 comes back out on Piedmont Highway. More officers
19 chase, the car does a U-turn, comes around, goes to
20 make a turn onto a side road and slams into a vehicle
21 driven by the name of Willie Wright. Willie Wright
22 was just on his lunch break, was about to go back to
23 work when he gets slammed into by this vehicle. Goes
24 unconscious. He wakes up in an ambulance a short
25 time later going to the hospital.

1 You're going to hear from some other witnesses,
2 some other officers who are going to testify to you
3 about photo lineups and matters like that. That's a
4 brief overview of the testimony that you're going to
5 hear in this case.

6 One matter of law I want to finish up by talking
7 to you about. His Honor is going to instruct you
8 fully on the law at the end of this case, all of the
9 law that is applicable. One matter of law is
10 something I want to talk to you about now because I
11 want you to think about it as we go through this
12 trial. It's something we call accessory liability.
13 It's kind of a technical term. Another term used for
14 that is one that's a little more easy to understand.
15 It's called the hand of one is the hand of all. And
16 what that law means is that when two or more people
17 are engaged in criminal activity together, each
18 person is responsible for what the other does.

19 You're going to hear testimony that while
20 Mr. [REDACTED] thought the driver was about to squeeze
21 off that shot and that's what it looked like, at
22 least, that first shot, he ducked down. He didn't
23 see who actually pulled that trigger. So, that's why
24 this law is applicable to you and is important in
25 this case because we have two people working

1 together. Both of them pointing guns directly at
2 Mr. [REDACTED] face before these shots were fired
3 from that vehicle.

4 So, in closing, I want to ask you at this time
5 to just listen closely and pay close attention to all
6 the testimony you hear and the evidence that is
7 presented in court. Use your common sense and your
8 good judgment to weigh that evidence. Then at that
9 time of this case, do justice. Thank you.

10 THE COURT: All right. Opening statements?

11 MR. HAMILTON: May it please the Court?

12 THE COURT: Yes.

13 OPENING STATEMENT

14 MR. HAMILTON: Mr. Moyer, ladies and gentlemen
15 of the jury, good day, I am Ernie Hamilton. I
16 represent Braxton Hare, which is sitting there next
17 to me. Mr. Moyer told you part of the story, and he
18 told it well. However, it is -- where it's not as
19 clear -- were it as clear as he stated it were, we
20 wouldn't be here. It's pretty much like -- the story
21 he told is like when you buy a book and the inside
22 cover tells you a summary of what happened, but it
23 don't tell you everything that happened. Often, the
24 inside cover is incomplete and tells you only half.
25 I's like to tell you that the other half of the

1 story, the other half of this case, that my client
2 and Mr. Warder's client did not kill anybody.

3 Now, I know the judge told you that this
4 indictment is the document that brought us here in an
5 attempt to kill, attempted murder, but nobody was
6 killed. So, we can relax here. It's not the great
7 murder case of the century. Nobody was killed in
8 this case. And please forgive me if it appears that
9 I'm trying to minimize the severity and the
10 seriousness of this matter, I am not. But nobody was
11 really killed in our city, this great city of
12 Greenville.

13 This happened on September 1st, during school,
14 about 10:28. These two boy should have been in
15 school. They were not in school. And if you're not
16 no school, nothing good is going to happen, and
17 nothing good did happen. Nothing good happened. And
18 I believe that the evidence will show that the victim
19 in this case, also, did not like the fact that these
20 two boys was riding around in a late model Mercedes.

21 Now, it's important that you, as jurors, take
22 your oath seriously. But understand, nobody was
23 killed. This is a not reality TV show or fake news
24 or video game where somebody got killed. Nobody got
25 killed in this thing. I say that because this case

1 will require you to think critically and consciously.

2 See, Braxton, he will tell you when he takes the
3 stand in his own words what happened. And his story
4 will be exactly like Mr. Moyer said that his
5 witnesses going to say. And he's going to tell you
6 what was recorded to the police, except who started
7 the road rage exchange. This was a road rage
8 exchange. But what on earth -- and there is evidence
9 that there is one gunshot. There's evidence the
10 State -- made by the State there was two shots, but
11 the physical evidence is that there was one shot.

12 But what on earth, you have to just be a little
13 concerned about in this case, started the whole
14 thing? Greenville is an up and coming city and
15 everybody is coming here and this type of thing
16 happened. But nobody was killed. So, we don't have
17 to be sympathetic and the victim's family seeking
18 justice and this thing in your decision making. I
19 believe the evidence will show you that the victim,
20 if he was so fearful of his life, he chased after
21 them. Mr. Moyer said that he did chase after them,
22 you know, he was so concerned and if you didn't have
23 a great deal of involvement with the --

24 But what was this all about, the road rage type
25 thing? And that's not going to be nothing that --

1 that's not going to be nothing that we can put away
2 lightly. The incident that happened right here is in
3 violation of the law and we're here today to dispute
4 it. But the key to it that you need to relax and
5 take your job seriously. And all lives matters and
6 the law in this state, it matters and I trust that
7 you will follow the law in this case. And that's all
8 Braxton and William Hunter want you to do is follow
9 the law in this case. And the truth is all what
10 we're seeking in this case about what happened in
11 this case.

12 Now, it was -- I just got one little note to
13 mention that there is a failure to stop for a blue
14 lights, Braxton didn't stop. And we're not going to
15 waste your time in deciding that. That happened and
16 he should have stopped. But we have to try all the
17 facts together. But the focus is that nobody was
18 killed in this case, and what really happened.

19 THE COURT: All right, Mr. Warder.

20 OPENING STATEMENT

21 MR. WARDER: Thank you, Your Honor. I'm going
22 to be coming last in this trial. I get to stand up
23 after everybody else. You can pretty well adopt the
24 flavor of, at least, part of what the issues are.
25 And the testimony that we're going to present is

1 going to show, like Mr. Hamilton suggested, that
2 there were words exchanged. The testimony will show
3 that there was gesture. It wasn't, as will come out,
4 it was words exchanged, words that were insulting to
5 my client.

6 And my client is here today because he picked up
7 a gun and pointed it. He never shot it. Never did
8 anything else. He was trying to get everybody to get
9 away, to put separation between the two cars that
10 were exchanging words. He fired not one shot. He
11 was as surprised as anybody else when he heard a
12 gunshot. This is a case where my client never had an
13 intention to kill anybody. Never had an intention to
14 injure anybody. One, that there would be no conflict
15 and one that would end it. And in a foolish moment
16 he displayed a gun.

17 I submit to you that if this was a pointing and
18 presenting a pistol charge, my client would be
19 guilty. If this was a minor in possession of a gun,
20 my client would be guilty. In the charge the State
21 has elected, that he intended to kill somebody, he
22 said I never did an act to injure anybody. My client
23 was only trying to get somebody to stop trying to
24 pick a fight.

25 I ask you to listen to the testimony, and you're

1 going to find out there's so many changes in the
2 trail. The victim said my client didn't have
3 anything, wasn't the shooter, didn't do it. Today,
4 the victim is saying, well, he did. Does somebody
5 tell the truth more immediately after or does the
6 truth get better when they get months and months down
7 the road, choose their words and editing not what
8 happened, but what they would like to see happen.
9 And when you hear the testimony of Mr. [REDACTED]
10 today, you will also hear some tape recordings. I
11 saw some notes he wrote about what really happened
12 within a short time, minutes afterwards, hour
13 afterwards. I submit to you, you should compare what
14 he wrote contemporaneously and said contemporaneously
15 with the testimony you will hear in this courtroom.
16 I think at the end of this case, there will be
17 sufficient evidence to show a gunshot was fired, not
18 by my client. My client did not plan or intend to
19 injury another. My client is not guilty. And I
20 think the evidence will show that. Thank you very
21 much.

22 THE COURT: All right, ladies and gentlemen,
23 right at sort of -- we're going to break for lunch,
24 okay. I don't want to go too late. So we will --
25 I'll ask y'all to be back at 1:30, that's an hour and

1 15 minutes. Does that give everyone enough time for
2 lunch? Okay. Remember not to discuss the case, you
3 don't know much about it, and we will see you back at
4 1:30.

5 Everyone else remain seated.

6 (WHEREUPON, the jury left open court at
7 approximately 12:10 p.m.)

8 THE COURT: Okay. See everybody at 1:30.

9 (WHEREUPON, a lunch break was taken.)

10 THE COURT: Any discussion about the resolution
11 other than a jury trial?

12 MR. WARDER: I'm trying to have that now.

13 THE COURT: Well, the time has come. It's fish
14 or cut bait.

15 Let me talk to the lawyers up here for a second.

16 (WHEREUPON, an off-the-record bench conference
17 was held.)

18 THE COURT: Ready to bring in the jury?

19 MR. WARDER: Bring the jury, Your Honor.

20 THE COURT: Okay.

21 If there's going to be any early resolution, it
22 happens now. This jury walks back into this
23 courtroom, there will be none.

24 You can ask him a question, but you better make
25 it quick.

1 MR. HUNTER: Can I ask you question?

2 THE COURT: You better talk to your lawyer about
3 that.

4 MR. HUNTER: If you'll give me another chance,
5 sir?

6 THE COURT: I'm not going to tell you what I'm
7 going to do. If you want to make an early
8 resolution, you do it now. Otherwise, the jury is
9 coming and the chips will fall where they may.

10 MR. HUNTER: I got a son. I got a family.

11 THE COURT: Everybody has a family, that's not
12 the question.

13 (WHEREUPON, there was a brief pause.)

14 THE COURT: Okay. You got 30 seconds to make a
15 decision about the rest of your life. All right, now
16 or never. Now or never.

17 All right, bring the jury.

18 MR. HUNTER: I'll take it.

19 THE COURT: All right, hold up, hold up a
20 second, hold up. I'm going to have to ask y'all to
21 go back to the hallway for a second. Thank you.

22 MR. WARDER: I think that was an, I'll I take
23 it, Your Honor.

24 THE COURT: That's what I heard. If he's going
25 to do it, bring him around, sign him up, get it done

1 now.

2 You're not part of this. You keep your mouth
3 shut. Do you understand?

4 Mr. Warder, what are we doing?

5 (There was no response.)

6 THE COURT: All right, the jury is standing in
7 the hallway and I'm not sending them -- I'm not
8 bringing them in and sending them out again.

9 Are they out in the hallway?

10 THE BAILIFF: Yes, sir.

11 MR. WARDER: Yes.

12 MR. HUNTER: Yes.

13 MR. WARDER: Come around here.

14 THE COURT: Take them back to the jury room.
15 Tell them it won't be long.

16 Mr. Hunter, let me just tell you, you're looking
17 there asking me a question. I'm not going to tell
18 you what I'm going to do. You have to make the
19 decision whether or not you want to enter a guilty
20 plea or not. Then depending on what you do for the
21 remainder of the trial, that will impact what happens
22 to the sentence you get, any sentence you get. Okay.
23 That's where it stands.

24 MR. HUNTER: Can I please ask you one more
25 question?

1 THE COURT: What?

2 MR. HUNTER: Do I have a chance getting
3 probation?

4 THE COURT: I have no idea what's your chances.
5 I don't know much about the case. But you're looking
6 at.--

7 What's he looking at?

8 Thirty years. And how old are you?

9 MR. HUNTER: Eighteen.

10 THE COURT: Eighteen. You haven't been alive as
11 long as you're going to spend in prison if you get 30
12 years. If you're not sure you want to do this,
13 Mr. Hunter, don't do it.

14 MR. HUNTER: I just don't want to throw my life
15 away. I apologize for what I did --

16 THE COURT: Well, it's not time just now to do
17 that.

18 MR. WARDER: This isn't mitigation. That will
19 be some other time.

20 THE COURT: All right.

21 All right, Mr. Hunter, you are --

22 Mr. Warder, let me ask you this, is there any
23 question as to his competency?

24 MR. WARDER: No, Your Honor, there's not.

25 THE COURT: Have you had any -- Mr. Hunter, if

1 you would raise your right hand.

2 WILLIAM HUNTER, after being duly
3 sworn, testified as follows:

4 THE COURT: Okay, put your hand down.

5 EXAMINATION

6 BY THE COURT:

7 Q All right. This indictment -- you've heard me
8 publish the indictment and it is for attempted murder.
9 The State is allowing you to tender a plea to assault and
10 battery of a high and aggravated nature. This carries up
11 to 20 years in prison, okay. It is also a violent
12 offense, which impacts parole eligibility. It is a most
13 serious offense and that --

14 Is this most serious?

15 MR. MOYER: It's serious. I'm sorry if I
16 checked -- ABHAN is serious, not most serious.

17 BY THE COURT:

18 Q So, with three convictions for serious offenses,
19 you're eligible for life in prison without parole?

20 A I'm eligible for life in prison for this charge?

21 Q No, listen to me. Listen to me.

22 MR. WARDER: Listen to the judge for God's sake.

23 BY THE COURT:

24 Q If you get three convictions for offenses that
25 are serious, then you are eligible for life in prison

WILLIAM HUNTER-EXAMINATION BY THE COURT

1 without parole. This is one, okay. All right. Does that
2 make sense? Do you understand that?

3 A I feel like I being tricked.

4 Q No, you're not being tricked. I'll tell you
5 straight, I'm not going to trick you. Do you understand
6 what that means? That it's a serious offense? Do you
7 understand?

8 A Yes, sir.

9 Q Okay. I understand you're in a tough spot.

10 A I think you're fixing to give me some time.

11 Q You may well get it. You could get up to 20
12 years is what I'm telling you. That's the maximum on this
13 offense. Do you understand that?

14 A But you know what you going to give me before
15 you do it.

16 Q No, I do not.

17 MR. WARDER: He doesn't. He's waiting to see
18 what happens to you.

19 BY THE COURT:

20 Q Do you understand all your rights at a trial by
21 a jury?

22 A Sir?

23 Q Do you understand all your right at a trial by a
24 jury? We're in the middle of jury trial right now, do you
25 understand that?

WILLIAM HUNTER-EXAMINATION BY THE COURT

1 A (The witness nods.)

2 Q Do you have any questions about your rights at a
3 jury trial?

4 A (The witness shook his head.)

5 Q You have to speak.

6 A Yes, sir.

7 Q You do have questions? What are they?

8 A (The witness shook his head.)

9 Q Well, you're shaking your head no, what does
10 that mean?

11 A I just don't want you to throw my life away,
12 sir.

13 Q Mr. Hunter, you need not to worry about that
14 right at this moment. You told me you want to enter a
15 guilty plea. Is that right?

16 A He telling me to.

17 Q Well, do you not want to? Because, hey, the
18 jury is out there.

19 A I don't know what's best for me. Look at my
20 momma, she's 50 something years old. What if she dies, I
21 can't make it to the funeral. I got a kid to take care
22 of.

23 Q Listen to me, Mr. Hunter, either you're going to
24 enter a guilty plea, which admits you violated the law for
25 your conduct or you don't and the jury will decide whether

WILLIAM HUNTER-EXAMINATION BY THE COURT

1 or not your conduct violated the law. So, now is the time
2 to make the decision. If you want to go back and have the
3 jury do it, I'm fine with that. I don't care. I'm going
4 through a jury trial one way or another.

5 A So, the jury can give me 20 years?

6 Q No, I'm the one who will determine the sentence.

7 MR. WARDER: It will be 30. What you're on
8 trial for carries up to 30 years. This carries 20.

9 BY THE COURT:

10 Q Do you want to plead guilty or not? I've got a
11 jury back there and I'm not going to make them wait much,
12 longer. This is your decision, son. It's up to you to
13 make that call.

14 (WHEREUPON, Mr. Hunter and Mr. Warder had an
15 off-the-record conversation.)

16 BY THE COURT:

17 Q This is what's going to happen. If you enter
18 your guilty plea, I'm going to accept the plea and I'm not
19 going to give you a sentence right now. I'm going to
20 defer the sentence until the conclusion of this trial. Do
21 you understand that? But the maximum sentence you could
22 get on this charge, if you plead guilty, is 20 years. The
23 maximum you can get, if you go to trial and are convicted,
24 is 30 years. Okay. Do you understand that?

25 A (There was no response.)

WILLIAM HUNTER-EXAMINATION BY THE COURT

1 Q Do you understand the question I asked you?

2 A I do, but.

3 THE COURT: Mr. Moyer, let me ask you this, what
4 is -- you've reduced the charge, is there some -- in
5 exchange for what?

6 MR. MOYER: He would have to -- you know, we
7 call him as a witness in the trial and have him
8 testify about what happened that day. And at the end
9 of the trial, we would ask Your Honor to judge -- or
10 to -- before you sentence him to consider how
11 cooperative he was, how truthful he was and take all
12 that into consideration when you sentence him. Of
13 course, give him some credit if he is truthful and
14 cooperative and if he takes responsibility now.
15 Obviously, we would not ask any of that if he's found
16 guilty at trial. But that would be our position.

17 BY THE COURT:

18 Q All right, do you understand all that,
19 Mr. Hunter? Mr. Hunter, I'm talking to you now. This is
20 between you and me. Do you understand what the prosecutor
21 has told me?

22 A Yes, sir.

23 Q All right. And are you -- is that acceptable
24 with you?

25 A (The witness nods.)

WILLIAM HUNTER-EXAMINATION BY THE COURT

1 Q You have to speak.

2 A Yeah. Yes, sir.

3 Q Okay. And do you want to enter this guilty
4 plea?

5 A It's going to be on your name. Yes, sir.

6 Q All right. And are you guilty?

7 A Of assault and battery high and aggravated? I'm
8 guilty of pointing and presenting. I want to know -- I
9 don't know what assault and battery high and aggravated
10 is, Mr. Miller.

11 THE COURT: A jury is going to make this
12 determination.

13 MR. HUNTER: I'm taking the plea. I'm telling
14 you, I'm taking it.

15 THE COURT: No.

16 BY THE COURT:

17 Q Tell me what you did.

18 A I pointed a firearm at [REDACTED] [REDACTED] I never
19 shot him, sir.

20 Q And you were in the car?

21 A Yes, sir.

22 Q Tell me a minute or two sequence of what
23 happened.

24 A I was in the car and I never shot him.

25 Q Well, what happened before you pulled up to the

WILLIAM HUNTER-EXAMINATION BY THE COURT

1 stoplight?

2 A Well, he almost made us wreck and he started
3 making rude gestures like uh-uh, like that, uh-uh, like
4 that, and start reaching. So, I mean.

5 Q Where were you seated in the car?

6 A I was seated in the passenger seat.

7 Q In the front or the back?

8 A Passenger front.

9 Q Okay. And who was driving?

10 A My Co-defendant.

11 Q Can you tell me his name?

12 A You know his name.

13 Q Uh?

14 A Braxton Hare.

15 Q Look, you might be making the right call based
16 on what you're telling me, but you need to accept
17 responsibility for this, okay? Do you understand?

18 A Just don't take me away from my family, please.

19 Q Well, you can talk about that when the time
20 comes for sentencing. This is whether or not I accept
21 your guilty plea, okay. It's two separate things. And
22 so, what happened then?

23 A He took me to my school meeting.

24 Q No, no, you pulled up, you pulled a gun out and
25 what else happened?

WILLIAM HUNTER-EXAMINATION BY THE COURT

1 A He shot him.

2 Q Who?

3 A Braxton.

4 Q Shot where?

5 A He shot one time. He's saying there's two
6 gunshots. He never shot twice.

7 Q Where?

8 A He hit the car door.

9 Q At who, Brett [REDACTED]

10 A Yes, sir.

11 Q Okay. Are you satisfied with your lawyer?

12 A I don't know. I just hope you don't give me no
13 serious time.

14 Q Is there anything you think your lawyer should
15 have done that he hasn't done?

16 A (There was no response.)

17 Q Has he been over the discovery with you and
18 counseled with you?

19 A Yes, he send my motions in.

20 Q Okay. And is there anything else you can think
21 of that he should do or should have done?

22 A Should have gotten me probation or something.

23 Q No, that's not up to him. I'm just talking
24 about his work preparing the case to come to court. Is
25 there anything else that you can think of that he should

WILLIAM HUNTER-EXAMINATION BY THE COURT

1 have done?

2 A I got everything I need.

3 Q Okay. All right.

4 THE COURT: I've heard the facts in the Neil v.
5 Biggers hearing. Is there anything different that
6 you need to present to me with respect to coming up
7 with substantial, factual basis?

8 MR. MOYER: Your Honor, at this time, I also
9 would incorporate my opening statement, too, which
10 give a picture of the facts, but at this time --

11 MR. HUNTER: It was only one gunshot, it was
12 never two.

13 THE COURT: Let me tell you, Mr. Hunter, you're
14 going to get a chance to testify and you're going to
15 be under oath. He's going to call you as a witness,
16 okay. And you're going to testify at Mr. Hare's
17 trial.

18 MR. HUNTER: Why I have to testify against him,
19 though, sir?

20 THE COURT: You don't have to. And I'll tell
21 you right now, we'll just stand this -- you can just
22 go sit down and we'll bring this jury back. If you
23 don't want to do that, tell me now. I'm tired of
24 messing around. This is big-boy court and it's time
25 to make a big-boy decision.

WILLIAM HUNTER-EXAMINATION BY THE COURT

1 MR. HUNTER: All right, man, I'm taking the
2 plea, but.

3 THE COURT: All right.

4 I accept the plea as being freely and
5 voluntarily made with the advice of a very competent
6 attorney with whom he states he's well satisfied and
7 there is clearly a substantial, factual basis for the
8 plea. I'm going to defer the sentence to the
9 conclusion of the trial.

10 MR. MOYER: Thank you, Your Honor.

11 THE COURT: Okay, are we ready to get started?

12 MR. MOYER: Yes, sir, we are.

13 THE COURT: Okay.

14 (WHEREUPON, the jury came into open court at
15 approximately 1:55 p.m.)

16 THE COURT: All right, ladies and gentlemen,
17 welcome back. Thank you for your patience. I hope
18 you had a nice lunch.

19 Call your first witness.

20 MR. MOYER: May it please the Court, Your Honor,
21 the State calls [REDACTED] to the stand.

22 THE CLERK: Mr. [REDACTED] if you'll please pause
23 at the end of the bench, place your left hand on the
24 Bible.

25 MR. MOYER: Your Honor, may we approach Your

1 Honor real quick?

2 THE COURT: All right, come on.

3 (WHEREUPON, an off-the-record bench conference
4 was held in the presence of the jury but out of
5 the hearing of the jury.)

6 THE CLERK: Please raise your right hand.

7 [REDACTED] after being duly

8 sworn, testified as follows:

9 THE CLERK: Thank you. Please be seated.

10 THE COURT: All right, Mr. Foreman, ladies and
11 gentlemen of the jury, before we begin the testimony
12 in the case, I want to tell you that Mr. William
13 Hunter has entered a guilty plea in this matter,
14 okay. I want to emphasize to you that each -- as I
15 told you in my opening comments to you, each
16 indictment and each Defendant, the case against them,
17 stands and falls on its own merit without regard to
18 what any other charge or any other Defendant does.
19 Keep that in mind throughout the course of this case.
20 Thank you very much.

21 All right. Mr. Moyer.

22 MR. MOYER: Thank you, Your Honor, may it please
23 the Court.

24 DIRECT EXAMINATION

25 BY MR. MOYER:

██████████ DIRECT BY MR. MOYER

1 Q Would you state your full name, Mr. ██████████

2 A ██████████

3 Q How old are you?

4 A Twenty-four.

5 Q You married or single?

6 A Single.

7 Q No children?

8 A No, sir.

9 Q Okay. Where did you go to school?

10 A Woodruff.

11 Q Woodruff High School?

12 A Yes, sir.

13 Q So, you grew up in that area?

14 A Yes, sir, Spartanburg County.

15 Q Okay. Let me take you back to September 2015,

16 what did you do for a living?

17 A I was a driving instructor for the Greenville
18 Driving School. I also managed there for about two years.

19 Q Okay. And how long had you worked for that
20 company?

21 A About eight years.

22 Q So, how old were you when you started working
23 there?

24 A I think about 14, I started working as a
25 mechanic, just fixing cars for them and cleaning their

██████████ DIRECT BY MR. MOYER

1 cars for them and worked my way up from there.

2 Q Who owns the company?

3 A My father.

4 Q That's this gentleman seated here, Brian

5 ██████████

6 A Yes, sir.

7 Q How many people worked at the company, do you
8 know?

9 A I'm not a hundred percent sure at the time.

10 Q Do you know how many drivers there were?

11 A At that time, I would say we had about eight
12 drivers on the road.

13 Q Okay.

14 A Around -- like I said, I'm not a hundred percent
15 sure on that.

16 Q Okay. So, you weren't the only driver, I guess
17 is what I'm getting at?

18 A No, sir, not at all.

19 Q Okay. So, you were managing the company at that
20 time?

21 A Partly, yes.

22 Q But you also would train drivers as well?

23 A Yes, sir. Yes, sir. I was an instructor --
24 first and foremost, I was an instructor. I taught more
25 than anything else.

██████████ DIRECT BY MR. MOYER

1 Q Would you do that pretty much every day of the
2 week?

3 A Yes, sir.

4 Q You remain at that job now?

5 A No, sir.

6 Q When did you stop that employment?

7 A After this incident occurred.

8 Q So, that's when you stopped. Was it your
9 decision to working there?

10 A It was mainly my decision. I just no longer
11 felt safe enough to be in one of those marked vehicles
12 where I'm in a situation like what I've been put in here
13 now. It really had a big effect on me and I had to change
14 professions.

15 Q And you make less money now than you used to
16 make?

17 A Yeah, now, I'm just working as just a basic
18 mechanic. I been doing that since this happened, a year
19 and a half or so ago. Yeah, I stopped doing that. Now,
20 I'm just working as a mechanic wherever I kind of can.

21 Q Okay. Let's go back to that date, September the
22 1st of 2015. Were you working on that morning?

23 A Yes, sir, I was actually on my way to go pick up
24 a student.

25 Q Okay. Now, did you ever go to school to pick up

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1 students?

2 A Yes, sir. Yes, sir. Actually, our instructors
3 pick up every day after school. As the students let out,
4 they would actually pick up -- where the parents picked
5 their students up, we'd pick them up, take them out
6 driving and then drop them off at home later on.

7 Q Would you go to Carolina High School?

8 A I've been there a few times, yes, sir.

9 Q Okay. You weren't going there this day, were
10 you?

11 A Not that day, no, sir.

12 Q Okay. You were kind of heading in that
13 direction?

14 A Yes, sir. On that day, I was headed to go pick
15 up a homeschooled student, so I wasn't headed towards the
16 school at all. But we were in that area near Carolina
17 High School.

18 Q Okay. What road were you on when this incident
19 --

20 A Mills Avenue.

21 Q Mills Avenue, okay. All right. Let's talk
22 about the vehicle you were in. We'll show a picture in a
23 little bit, but can you just describe to the jury what
24 that vehicle looked like?

25 A It was a Toyota Corolla, small four-door sedan,

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1 bright yellow, had sign writing all over it, you know,
2 bright red sign writing, lettering and the name of the
3 company and phone number and all that kind of stuff.

4 Q Okay. Okay. So, you just told us that you were
5 on Mills Avenue. Do you remember what lane you were in
6 when you first noticed something?

7 A Yes, sir. I was driving down -- I was in the
8 right-hand lane, just driving daily through traffic.
9 Obviously, being a driving instructor, I was in the
10 right-hand lane where I was supposed to be. As I saw
11 their vehicle approaching from the rear, driving
12 erratically, causing a lot of problems, darting between
13 traffic and stuff, I just made a conscious decision that I
14 needed to get out of their way. Based on the way cars
15 were, there were cars to my left and -- well, in the
16 left-hand lane and everything and behind me. I decided to
17 move over to the middle lane, because it's a three-lane
18 road there, so they would have a clear path on the right
19 side to sail by me at their high rate of speed that they
20 were traveling at.

21 Q You're talking about the black Mercedes?

22 A Yes, sir.

23 Q All right. So, you moved over to that next
24 lane?

25 A Right. And as they came up beside me, they

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1 slowed down to my speed, kind of matched speed with me. I
2 noticed the driver and the passenger windows down. They
3 were jumping around in the car, kind of dancing around. I
4 guess they were listening to some music or something, just
5 out joyriding or whatever they were doing. And I noticed
6 them kind of yelling at me out of their window. My
7 passenger side window was completely up, so I had no idea
8 what they were saying or anything like that.

9 Q Okay. Now, let me stop you right there for one
10 minute and clarify a few things. You said your passenger
11 window was up, what about your driver's side window?

12 A My driver's side window was down because I was
13 on that side just getting some air. It was all the way
14 down.

15 Q Okay. So now, when you first noticed this black
16 Mercedes, you say you saw it in your rear-view mirror?

17 A Yes, sir.

18 Q Now, had you had any -- before you saw it in the
19 rear-view mirror, had you had any -- had you seen the
20 vehicle or had any confrontation with the vehicle or
21 anything of that nature?

22 A No, sir, not at all. Not at all. It was just
23 saw a vehicle approaching from the rear that was driving
24 erratically. And as an instructor, you know, I notice a
25 lot of things that most people wouldn't notice, you know.

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1 And, obviously, being I teach -- or did teach children how
2 to drive, I have to be pretty on point. I was just trying
3 to get out of the way, basically, so I moved over and
4 everything.

5 Q Were you a careful driver, particularly when you
6 were in this marked car?

7 A Yes. Yes.. We have -- in the driving school, we
8 have -- if you do one little thing wrong, miss a signal,
9 you know, pick up your cell phone to answer a phone call,
10 anything like that, we get 20 phone calls down at the
11 office complaining about how our driving instructors are
12 driving like an idiot and stuff like that. So, we are
13 always very careful when we are out on the road, just a
14 little below the speed limit, signal far ahead of time,
15 giving plenty of space. You know, driving the way people
16 are supposed to drive.

17 Q And you have the -- the phone number is clearly
18 marked on the side of the --

19 A Down the side of the whole car and on the back,
20 yes, sir.

21 Q Okay. Has the company name and everything on
22 it?

23 A Yes, sir..

24 Q Now, as far as you know, did you recognize that
25 Mercedes or had you ever seen it before as far as you

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1 know?

2 A Never seen the vehicle at all.

3 Q Okay.

4 A It was recognizable car, base model, just a flat
5 black E-Class four-door sedan. You know, living in
6 Greenville, there's probably about, at least, 20 of them
7 that's riding around. It's a common enough car, but never
8 seen that one specifically, no.

9 Q How about the two men who were in it, had you
10 ever --

11 A Never.

12 Q Did you know them or had you ever seen them as
13 far as you know?

14 A No, sir, never in my life had any interaction
15 with them or seen them out anywhere.

16 Q So, when you saw that car in your rear-view
17 mirror and you moved over into the center lane, did you at
18 that time have any reason to suspect that the car was
19 coming after you or anything?

20 A No, sir. Like I said, what I originally thought
21 was that they were just basically driving like idiots.
22 And they were going fast and I needed to get out of their
23 way to let them continue doing their thing. So, I moved
24 over to just let them sail by, being that would be the
25 safest thing for me to do. Then when I noticed -- you

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1 know, they kind of matched speed with me, at that point, I
2 just assumed they were playing a joke on me or messing
3 with me, which happens a lot with driving instructors.
4 It's kind of a game teenagers like to play where they mess
5 with the new kid who's learning how to drive, mess with
6 the driver's ed instructor. So, I basically assumed that
7 that was what was going on.

8 Q So, that was a fairly routine --

9 A Very common.

10 Q -- thing to happen?

11 A Very common for every driving instructor. But
12 it's usually just they go up and honk the horn at you.
13 They go yell something at you just to mess with you or to
14 mess with the young student driving the car, you know.

15 Q What would you do when something like that would
16 happen?

17 A Normally, I would say just, you know, ignore it
18 or, at most, wave them away and ask them to leave us
19 alone. If it did cause an actual issue for the student
20 driving, at that point, I would probably just have the
21 student slow down and pull over and let that person
22 continue driving. Like I said, there wasn't a student in
23 the car. I was just driving by myself. And when I did
24 notice them dancing around like that and stuff, I waved
25 them away and asked -- you know, basically, to say get out

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1 of here, you know, it's not funny, just leave me alone.

2 Q Okay. And was your window up or down at that
3 point?

4 A Up.

5 Q And so, just show us what you did with your
6 hand.

7 A Just like a move-along kind of a wave, you know.

8 Q Okay. What sort of response did you get from
9 the two men who were in the car?

10 A Well, Mr. Hare started to hang out of his --
11 kind of out of his window, yelling stuff at me kind and
12 waving his arms around and stuff. So then --

13 Q He was the driver of the vehicle?

14 A Yes, sir, he was driving.

15 Q Okay.

16 A So, then I began to roll my passenger window
17 down to see what they were saying or, at least, tell them
18 leave me alone. As I begun to roll the window down, at
19 that point, Mr. Hunter, the passenger, as the window was
20 coming down, I watched him, he picked a gun up out of his
21 lap, pointed it me just like this right here and within
22 another millisecond right after, Mr. Hare did the same,
23 pulled the gun up like this, pointed it straight at my
24 face. I mean, I literally stared down the barrel of that
25 gun. I watched him --

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1 Q Okay, let's stop you right there for one minute.

2 Okay. So, how far down did you roll your window, would
3 you say?

4 A About two, three inches.

5 Q Okay. Maybe about that much, so the gap at the
6 top, not much at all. Could you hear anything that was
7 being said?

8 A Yes, they were yelling -- I heard -- one thing I
9 distinctly heard was white boy. And that's really --
10 there was a lot of loud music and stuff playing as well,
11 but one thing I definitely heard was something white boy.

12 Q Okay. And you said the passenger in the
13 vehicle, who was Mr. Hunter, who was in the courtroom
14 earlier, is that correct?

15 A Yes, sir.

16 Q You saw him -- he pointed the gun first?

17 A Yes, sir.

18 Q Did he have to reach into a glove box or under
19 the seat or where did that gun come from?

20 A He picked it up straight out of his lap. He was
21 kind of slumped down in the car, kind of leaned down, kind
22 of against the door like this, whereas as Mr. Hare was up
23 and all around, moving around. But Mr. Hunter there, he
24 just kind of looked, pulled it up and pointed it.

25 Q He pointed it straight at your face?

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1 A Straight at my face.

2 Q And then the Defendant in this case, Braxton
3 Hare, you said he -- did he have to reach for a gun?

4 A No, sir.

5 Q Where did that come from?

6 A Also, just came up. Almost like they had it --
7 they must have had it just laying in their lap or
8 something because it just straight up. Literally,
9 straight at my face.

10 Q All right. Let's talk a little bit about how
11 close this vehicle was to you. Was it still paralleling
12 you?

13 A Yeah, they were matching speed with me.

14 Q Okay.

15 A No matter what I was doing, they were just --
16 like I said, they came up fast. But as they got next to
17 me, they just slowed down and then they were just sitting
18 there right next to me, just matching speed with me. Keep
19 in mind, this is all happening in the space of
20 milliseconds. We're not talking about, you know, a whole
21 five miles of driving next to each other, we're talking
22 about in the space of about two or three blocks. This was
23 really fast.

24 Q Okay. We'll show a map in a few minutes to give
25 the jury an idea of that. So, was William Hunter's gun --

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1 it was pointed at you then?

2 A Yes, sir.

3 Q Okay. And what about the gun that Braxton Hare
4 had?

5 A That one, also, pointed straight at my face.
6 Like I said, I stared at the barrel of both of these
7 weapons, down the barrel.

8 Q Now, were you -- did you look both of these men
9 in the face?

10 A Yes, sir, before the guns came up, I was already
11 looking at them trying to figure out what the issue was or
12 what they were yelling at, but yeah, I was looking over
13 looking straight at them. So, I got a -- you know, I saw
14 both of their faces clear, you know, kind of locked eyes
15 with them even.

16 Q Did you get a good enough look at them at that
17 time to be able to identify them later in photographic
18 lineups?

19 A Yes, sir. Yes, sir. Perfect, I mean, right
20 look -- I mean, we're talking about distance -- they
21 weren't as far as the Judge is from me now. I mean, I was
22 there driving a small, small car and they were just in
23 next car over right there.

24 Q Have you been able to recognize them in court
25 today?

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1 A Yes, sir.

2 Q So, William Hunter the young man who is not here
3 anymore, he was the passenger?

4 A He was the passenger. The gentleman that was
5 sitting over in the corner with the white button-up shirt
6 on, that was Mr. William Hunter. And Mr. Braxton Hare is
7 right there in that blue suit.

8 Q All right. So, after you looked at them and you
9 saw the guns pointed right at you, what did you do?

10 A Well, as Mr. Hare's gun came up, I was looking
11 at the gun and I saw him begin to squeeze and -- it's
12 something you can see when you have -- you know, when
13 somebody points a gun at you, you see their hand tighten
14 up. And as I saw that, I knew I was dead, I hit the deck.
15 I just threw my head down. I actually hit my head on my
16 gear selector I got so low in that car so fast.

17 Q All right. Did you remain in the lane you were
18 in?

19 A No, the car swerved to the left. With me
20 jumping down, obviously, my hand pulled the wheel down or
21 maybe my knee picked it up, the car went off kind of into
22 the middle lane as I did that, yes.

23 Q What happened as you were doing that?

24 A Bang, bang, they fired the gun. It was,
25 basically -- like I said, I watched him kind of squeeze,

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1 that was the start of him firing. I hit the deck and all
2 I heard was bang, bang. And I kind of stayed down for
3 half a second, but it stopped. I looked up and they were
4 taking off. So at that point, I tried to follow --

5 Q Okay. We'll get to that in a minute. Let me
6 ask a few more questions about that. So was the bang,
7 badge just as you were -- that was before you actually
8 swerved over a little bit?

9 A Just as I was moving my head down. I mean, it
10 was instantaneous. I mean, it was instantaneous. Like I
11 said, he was -- as he's pulling the trigger, I was moving
12 my head and it was pretty quick.

13 Q Let's talk about the first shot. Were you able
14 to tell if that first shot hit anything or -- in your
15 vehicle?

16 A Well, the window, passenger side window was
17 shattered, but there was no indication on the inside of
18 the car of that bullet hitting anywhere. So, best that I
19 could distinguish, it went straight through my driver's
20 side window as well.

21 Q Okay. And if it had been on the line going
22 through that window, is that where it would have kept
23 going?

24 A Yes, sir. Yes, sir. It would have been a
25 little head shot there.

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1 Q So, that was my next question, had you not
2 ducked down, was that -- was that bullet on a path --
3 would you have been in the path of that bullet?

4 A That gun was pointed straight -- like I said, I
5 was looking down the barrel. It was pointed straight for
6 my face.

7 Q So, the first shot then shattered the window,
8 that passenger window?

9 A Yes, sir.

10 Q Now, was the second shot, how quickly did it
11 come after the first shot?

12 A Very quickly. I mean, it was bang, bang. It
13 wasn't -- probably faster than I can say it. I just
14 remember hearing two loud bangs.

15 Q Okay.

16 A And I was -- I was -- I was freaking out. You
17 know, I was head down, you know, what is going on. And
18 when I peeked up, you know, like I said, they were then
19 kind of taking off, speeding off.

20 Q Now, at that time, did you know whether or not
21 that second shot struck your vehicle in any --

22 A No, I actually didn't.

23 Q Later, you were able -- we'll talk about that in
24 a minute, but were you able to see --

25 A Yes.

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1 Q -- whether it had hit your car?

2 A Yes, sir, I did.

3 Q Okay. So, when you looked up, the black
4 Mercedes was speeding away?

5 A Yes, sir.

6 Q What did you do?

7 A At that point, you know, they were taking off,
8 so I figured I needed to make chase and either get their
9 tag and get a description of the vehicle, something,
10 follow them somehow because, obviously, they just tried to
11 kill me. I needed to get law enforcement involved and
12 everything. So, I tried to follow them, but I couldn't
13 keep up. Their vehicle was just too fast.

14 Q So, you weren't able to get a tag number?

15 A I wasn't able to get a tag number or anything
16 like that, but I got a really good description of the
17 vehicle and gave that to the officers on the phone.

18 Q Okay. Then when you weren't able to continue
19 following the vehicle, what did you do?

20 A I pulled over at a CVS pharmacy and parked
21 there, kind of hopped out of the car. You know, I was
22 freaking out, you know, my heart was racing. I didn't
23 really know what to do. I was like just frazzled and
24 freaking out. So, I was like looking around. I had seen
25 the road that they went down and I briefly thought maybe I

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1 should go down there and find them. But then I didn't
2 want to do that and get into a situation where I was going
3 to get shot up in a dead-end neighborhood or something
4 like that. So, what I did was I just stopped, got out of
5 the car, tried to compose myself, called the police,
6 called 911 and waited there for them to get there.

7 Q Okay. Do you remember taking a look of a map
8 with me of that area?

9 A Yes, sir.

10 Q Okay. Let me show you -- wait a minute, let me
11 get this marked.

12 (WHEREUPON, State's Exhibit No. 14 was marked
13 for identification only.)

14 BY MR. MOYER:

15 Q Okay. I'm going to show you State's Exhibit No.
16 14. Is this the map that you have been able to take a
17 look at previous to today?

18 A Yes, sir.

19 Q Does that show -- is that an accurate
20 representation of the layout of the road that you just
21 described to the jury where this happened?

22 A Yes, sir.

23 MR. MOYER: Your Honor, at this time, we ask
24 State's Exhibit 14 moved into evidence.

25 THE COURT: Any objection?

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1 MR. HAMILTON: No objection, Your Honor.

2 THE COURT: Okay.

3 MR. HAMILTON: From the Defendant, Braxton Hare.

4 (WHEREUPON, State's Exhibit No. 14 was admitted
5 into evidence.)

6 BY MR. MOYER:

7 Q Let me ask you to step down for a minute,
8 Mr. Kingwill.

9 A (The witness complies.)

10 Q Let me move it just a little bit closer to the
11 jury so they can see it. If you can step over here where
12 you can see the map, also. I'm going to use a laser
13 pointer for a minute and ask you to describe what
14 exactly -- what road is this here?

15 A This is Mills Avenue, the three-lane road where
16 the shooting took place.

17 Q And what's been marked as 718 Mills Avenue, what
18 is this?

19 A That's the CVS where I eventually stopped and
20 got out of the vehicle and called the police.

21 Q Okay. Do you know what this landmark is up
22 here?

23 A That's the Lofts. The old mills building that
24 they turned into apartments right at the end of Church,
25 start of Mills.

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1 Q Now, I'm going to hand this laser pointer to
2 you. Now, using that top button there, if you can just
3 use that to show the jury where was it that you first saw
4 the black Mercedes in your rear-view mirror?

5 A I was coming out from downtown Greenville, so
6 kind of up -- past up here somewhere, basically, coming
7 down this road heading in that direction. I noticed them
8 coming up in my rear-view before the red light right here
9 at the Lofts. All right. Now, as you come down here,
10 this road splits into three lanes. I was coming down -- I
11 merged into the right-hand lane as it opened up,
12 maintained the right-hand lane, and this is where they
13 were flying up and getting real close to me. Right about
14 here, I merged, got into that middle-hand lane and
15 continue driving to allow them to pass. Then they started
16 to catch up. They got up next to me, continued, they were
17 doing their dancing around and stuff like that, yelling.
18 I began to roll my window down. And between about here
19 and about here, somewhere in this area is where the
20 shooting actually took place.

21 Then like I said, I kind of got into the
22 median right there and then looked up and they were taking
23 off. By the time I looked up, their car was already right
24 about here. I took off out of the median, started heading
25 that way. Then they were taking a right on this road

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1 that's marked in black, then they flew down that road. By
2 the time I got to where I was turning on that road, they
3 had already taken a right at this corner right here and
4 they were heading down that road. Like I said, once I got
5 to here, I pulled in the CVS and stopped because there was
6 no way I was going to be able to catch up and get a tag
7 number or anything like that. So I just stopped and
8 called 911; kind of sat and cried for a minute.

9 Q Okay. Have a seat again, thank you.

10 A (The witness complies.)

11 Q Now, that area you just described, that's all in
12 Greenville County, correct?

13 A Yes, sir. This is Mills Avenue coming up
14 towards 85. Church Street, the main road right out here.

15 Q Now, I'm going to show you -- so you remained
16 there at the CVS after you made the call to 911?

17 A Yes, sir.

18 Q And did police officers show up there?

19 A Yes, sir. They were there very quick.

20 Q Do you remember an officer -- an officer came by
21 to take some photographs and look for evidence and so
22 forth?

23 A Yes, sir. They had a CSI unit come out, who
24 collected the bullet fragments that were lodged inside the
25 door and, you know, took pictures and got all of their

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1 evidence that they needed. At that point, I was just kind
2 of sitting on the curb praying it would all go away.

3 Q You were watching the officers?

4 A Yes, sir, I was just sitting on the curb letting
5 them do their work. Like I said, they did all their
6 forensic stuff, looked for what all they could find and
7 then they let me go.

8 Q Let me show you State's Exhibit Nos. 4, 5, 6,
9 and 7. Take a quick look at those. If you would, just
10 take a look at each one of those photographs, then I'm
11 going to ask you a couple of questions about them. Do you
12 recognize them?

13 A Yes, sir. This is from the scene.

14 Q Is that your car?

15 A Yes, sir, this is the vehicle I was driving that
16 day.

17 Q Are they -- is that -- so is that where your car
18 was at the CVS?

19 A Yes, sir, parked right behind the CVS,
20 basically, that small cut-off road that's marked in black
21 there. If you were to take a left into the CVS parking
22 lot where that police officer's car, it's that road right
23 behind it. It's the road that they drove down.

24 Q Are these true and accurate representations of
25 the way your car looked when that officer came out there

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1 to take those pictures?

2 A Yes, sir.

3 Q There's nothing changed or added or anything
4 about the pictures at this time?

5 A No, sir, they look great.

6 MR. MOYER: At this time, I will have State's
7 Exhibits -- I would move to have State's Exhibit Nos.
8 4, 6, and 7 entered into evidence.

9 MR. HAMILTON: Your Honor, the Defendant has no
10 objection to the admission.

11 THE COURT: All right. Thank you.

12 (WHEREUPON, State's Exhibits Nos. 4, 6 & 7 were
13 admitted into evidence.)

14 BY MR. MOYER:

15 Q All right. Were you watching as the officer
16 opened the back of the door to get the projectile out of
17 the door?

18 A Yes, sir.

19 Q Did you see him hold up the projectile that he
20 got?

21 A Yes, sir, he showed me.

22 Q Let me show you Exhibits 5, 8, and 9. By taking
23 a look at those photographs, does that look -- are they
24 accurate representations of the projectile as the officer
25 was pulling them out of the car?

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1 A Yes, sir.

2 Q And you observed him do that and saw him?

3 A Yes, sir. He actually struggled for a minute to
4 find where the bullet had lodged in -- behind the belt,
5 but, yes, sir, they're accurate.

6 MR. MOYER: I move to have State's Exhibits 5,
7 8, and 9 entered into evidence.

8 MR. HAMILTON: No objection, Your Honor.

9 THE COURT: Okay.

10 (WHEREUPON, State's Exhibits Nos. 5, 8 & 9 were
11 admitted into evidence.)

12 BY MR. MOYER:

13 Q If you would, would you please tell the jury
14 what is State's Exhibit No. 4. Can you tell the jury what
15 it is that we see in that photograph?

16 A Basically, that's where I parked right after the
17 shooting happened. Like I said, behind those police
18 officers' cars in a small cut-off road.

19 Q I'm just concerned about this right here. Is
20 this your vehicle?

21 A Yeah, yeah, that's the driver's ed car I was
22 driving. That's the vehicle that was -- that the incident
23 occurred in, yes.

24 Q And you described as bright yellow with the red
25 lettering. Is that what this is?

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1 A Yes, sir.

2 Q Is that the phone number right here of the
3 driver's school?

4 A Yes, sir.

5 Q Is there more of the same sort of information on
6 the back here?

7 A Yes, sir.

8 Q Okay. Let me show you State's Exhibit No. 6.
9 Let me draw -- is that a picture of your car?

10 A Yes, sir. Yes, sir, that's showing where the
11 second bullet struck the door.

12 Q Okay, that was my next question. Can you tell
13 us was -- prior to being shot at on Mills Avenue, was this
14 whole here in the passenger door?

15 A No, sir, there was nothing wrong with that
16 vehicle prior to this happening. New paint and new
17 stickers and everything.

18 Q And a closer shot of that, State's Exhibit No.
19 7, is that --

20 A Yes, sir.

21 Q And that hole was not in your vehicle before it
22 was shot at on September 1st, 2015?

23 A No, sir, there was no hole at all.

24 Q Okay. I'm going to back up to State's Exhibit
25 No. 6 for a minute. Can you see what is -- was there any

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1 amount of glass left in that door after the shots were
2 fired?

3 A There was a small amount inside the door, but
4 most of the glass come into the inside of the vehicle all
5 around on the seat, in the floorboard and stuff like that.
6 There was a small amount inside the door, but not a whole
7 lot. Most of the glass was inside the car.

8 Q If I can focus on this place right here. I'm
9 going to zoom in just a little bit. Remember -- take a
10 look at the picture and tell us -- do you remember what
11 that is right there sticking out of the door?

12 A A piece of glass.

13 Q That was just a little piece of glass that was
14 still left over?

15 A Yes, sir.

16 Q So, not fallen out?

17 A Yes, sir. It's tempered glass that holds
18 together after it's shattered for the most part, so that's
19 a little piece.

20 Q And State's Exhibit No. 5, is that the inside of
21 your door?

22 A Yes, sir. Once the officer removed the interior
23 door panel, that's showing basically where the bullet had
24 struck.

25 Q Okay. That's a little piece of bullet that was

██████████ DIRECT BY MR. MOYER

1 found?

2 A One of the fragments, yes.

3 Q If we look down in here, is that a little bit of

4 --

5 A That's a small, small amount of glass.

6 Q Like broken glass?

7 A Yes, sir.

8 Q Then State's Exhibit No. 9. That's a picture of
9 that bullet that the officer held up?

10 A That is the larger bullet fragment that he
11 found, yes.

12 Q All right. Now, did you have a chance to
13 take -- to see the photographs that were recovered or that
14 were taken later that day of the black Mercedes that was
15 involved in the accident? Have you ever had a chance to
16 take a look at any of those pictures?

17 A I believe I have. I don't really remember what
18 exactly it looked like, but I do remember seeing one
19 picture of it where it hit a truck.

20 Q Let me show you State's Exhibit 10.

21 A Yes.

22 Q Taking a look at that picture, do you recognize
23 any of the vehicles in that picture?

24 A Yes, sir, that's the black Mercedes that they
25 were driving when I was shot.

██████████ DIRECT BY MR. MOYER

1 Q Okay. Okay. Now, how close is that area? Is
2 it fairly close to Caroline High School?

3 A Yes, sir. Yes, sir, it is. It's probably only
4 about two to three miles away from Carolina High School
5 where the incident took place.

6 Q Okay. Now, after the forensics officers were
7 done with your car, did you leave?

8 A Once all the officers had completed and kind of
9 talk to me for a while, calmed me down enough to where I
10 could continue and I could move on with my day, yes, sir.
11 I took the vehicle and I drove it back to our office, the
12 driver's ed office and dropped it off there.

13 Q Okay. Did you get a call later that day from
14 officers?

15 A Yes, sir.

16 Q What was the purpose of that call?

17 A It was actually the detective that gave me a
18 call to come in. Said that he had caught the suspect and
19 he wanted me -- to bring me in for a photo lineup to
20 identify them.

21 Q Okay. Now -- so, when they had you -- so, did
22 you go to the law enforcement center to look at some
23 photographs?

24 A Yes, sir. Yes, sir, that same day, just a few
25 hours later after -- like I said, after I dropped the car

██████████ DIRECT BY MR. MOYER

1 off back at the driver's ed office, they gave me a call,
2 so I headed straight down, went straight there to the law
3 enforcement center here in Greenville.

4 Q Okay. How many lineups were you shown on that
5 day?

6 A Two.

7 Q Okay. Did you identify people out of both
8 lineups?

9 A Not out of both, no, sir.

10 Q Okay. Which one did you identify someone out
11 of?

12 A The first lineup they showed me.

13 Q And around what time of day was this?

14 A It was around 2:00 p.m.

15 Q Okay. So, just a couple hours after the
16 incident?

17 A Yes, sir, just a few hours later.

18 Q Okay. I'm going to show you State's Exhibit No.
19 1, which you have previously taken a look at today, have
20 you not?

21 A Yes, sir.

22 Q Is that the first lineup that you were shown?

23 A Yes, sir, it is.

24 Q And you're able to recognize it by your initials
25 and your writing on the lineup?

██████████ DIRECT BY MR. MOYER

1 A Yes, sir.

2 Q Okay. And that's a true and accurate -- I'm
3 sorry, that exhibit is in substantially the same condition
4 now as it was when it was shown to you back on
5 September 1st?

6 A Yes, sir, this is the exact lineup. I mean, you
7 can see my handwriting on it and it's the exact piece of
8 paper that the detective handed me that day.

9 MR. MOYER: Your Honor, at this time, we move to
10 have State's Exhibit No. 1 entered into evidence.

11 MR. HAMILTON: Without objection, Your Honor.

12 THE COURT: All right. Thank you.

13 (WHEREUPON, State's Exhibit No. 1, was received
14 into evidence in previous testimony.)

15 BY MR. MOYER:

16 Q Okay. Now, when the officer handed you that
17 photo lineup, did the officer lead you to believe that you
18 had to or that you should pick somebody out of that
19 lineup?

20 A No, sir. No, sir. The detectives made it very
21 clear that it was completely up to me, that I just needed
22 to look through them. If I could definitely identify
23 somebody, you know, great, do that. But if not, it's
24 okay. You know, they said it may or may not be in that
25 lineup.

██████████ DIRECT BY MR. MOYER

1 Q Okay. So, did they influence your decision in
2 any way as far as putting undue exposure or focus on any
3 particular picture?

4 A No, sir, they, basically, handed me the packet
5 and asked me to go through one at a time and look through
6 them, that I could take as much time as I like. They were
7 very calm and easy about. They let me take my time to
8 look at it myself and kind of left me alone to decide.

9 Q Now, when you looked through those six pictures
10 in State's Exhibit No. 1, were you able to make an
11 identification?

12 A Yes, sir, on picture number four.

13 Q In picture number four. How were you able to
14 identify -- who were you able to identify that person as
15 being?

16 A Braxton Hare. Very easy to recognize. As soon
17 as I flipped through the fourth picture, there, bam,
18 that's him.

19 Q Was there any question in your mind that was
20 him?

21 A No, sir, 100 percent. I know that face. I'd
22 recognize his face anywhere. He's very distinctive in the
23 way he looks.

24 Q Okay. Did you look over all six of those
25 pictures?

██████████ DIRECT BY MR. MOYER

1 A Yes, sir.

2 Q Okay. And you were careful about your decision?

3 A Yes, sir. Well, I looked through them and I
4 identified him, then I continued, I look through, made
5 sure -- you know, I didn't want to testify against
6 somebody who wasn't even there.

7 Q Were you able to say which person he was in that
8 vehicle?

9 A Yes, sir.

10 Q And which person was he?

11 A The driver.

12 Q Okay. All right. Then at the officer's
13 request, did you make any notations or writings on that
14 picture?

15 A Yes. They had me initial each picture as I
16 looked at it. Then they had me write a sentence on the
17 picture that I identified.

18 Q Okay.

19 A Basically, what I wrote on this one is that yes,
20 this is the driver, looks like the driver of the vehicle.
21 He was aggressive and the shooter.

22 Q Okay.

23 A That's basically.

24 Q Now, you were then shown a second lineup by the
25 officers?

██████████ DIRECT BY MR. MOYER

1 A Yes, sir.

2 Q Let me show you State's Exhibit No. 2, is that
3 the second lineup that was shown to you?

4 A Yes, sir.

5 Q By the detectives?

6 A Yes, sir.

7 Q And did they handle it the same way as they did
8 that first one?

9 A Yes, sir.

10 Q Didn't put any pressure on you to pick someone
11 out?

12 A No, sir, they just handed it to me and said
13 please go through this. If you see it, great, if not,
14 that's fine.

15 Q Okay.

16 A Just let me do it on my own.

17 Q So, since you had already picked the driver out,
18 were at this time looking for the passenger of the
19 vehicle?

20 A Yes, sir. I'd say in my mind I was kind of
21 trying to find him in the pictures. But no, I didn't
22 identify anybody in this lineup.

23 Q So, he was not in that -- the passenger was not
24 in that lineup?

25 A No, sir, not at all. There was a few that

██████████ DIRECT BY MR. MOYER

1 looked kind of like him, but not in this one. He's not in
2 there.

3 Q And you told the officer that the passenger was
4 not depicted in any of those pictures?

5 A Yes, sir, I told the detective he was definitely
6 not.

7 MR. MOYER: Your Honor, at this time, we move
8 State's Exhibit No. 2 entered into evidence.

9 THE COURT: Any objection?

10 MR. HAMILTON: No objection, Your Honor.

11 THE COURT: Okay.

12 (WHEREUPON, State's Exhibit No. 2, was received
13 into evidence in previous testimony.)

14 BY MR. MOYER:

15 Q Then, were you then later shown a third lineup?

16 A Yes, sir, the next day.

17 Q Okay. And so, this was September the 2nd of
18 2015?

19 A Yes, sir.

20 Q And around what time was this?

21 A It was also around 2:00 p.m. Again, the
22 detectives had called me, said hey, you know, we've got a
23 lineup we'd like you to come in and look at and see if you
24 can identify the passenger in the vehicle. And I went in,
25 same kind of thing. Sat down with them, talked for a

██████████ DIRECT BY MR. MOYER

1 minute, then they showed me the lineup. And that was
2 about it.

3 Q So, once again, they didn't try to influence
4 your decision as far as which picture to chose?

5 A No, sir. The detective, they were great. They
6 were really calm and helpful -- well, they just kind of
7 let me sit down by myself and think about it and look at
8 them carefully. Didn't really even talk to me while I was
9 looking through. They just let me be and let me decide.

10 Q Okay. Let me show you State's Exhibit No. 3.
11 Is that the lineup you were shown on September the 2nd,
12 2015?

13 A Yes, sir.

14 MR. MOYER: Your Honor, at this time, I move to
15 have State's Exhibit No. 3 entered into evidence.

16 MR. HAMILTON: No objection.

17 THE COURT: Okay.

18 (WHEREUPON, State's Exhibit No. 3, was received
19 into evidence in previous testimony.)

20 BY MR. MOYER:

21 Q Now, when you were shown that lineup, were you
22 able to make an identification?

23 A Yes, sir, almost immediately. On the first
24 picture here, I was able to identify William Hunter as the
25 passenger.

██████████ DIRECT BY MR. MOYER

1 Q At this time, did you know the names of either
2 of these men?

3 A No, sir. No, sir.

4 Q So, you were just going -- their names aren't
5 written on there, are they?

6 A No, sir. No, sir. There's no name on it at
7 all. Just off of his face, mainly, his eyes and nose that
8 I identified him from.

9 Q Were you sure about that decision?

10 A Yes, sir, 100 percent positive.

11 Q And the officer again asked you to write on that
12 picture?

13 A Yes, sir. Once again, I initialed all of them
14 because I did look through all six. Even though I hit on
15 the first one, still looked through all six, initialed all
16 of them. And then I wrote here, This was the passenger in
17 the vehicle. He pulled and pointed the gun at me first
18 and then the driver followed.

19 Q Okay. All right. Now, you and your father
20 actually saved the actual door, did you not?

21 A Yes, sir.

22 Q From the vehicle that was shot?

23 A Yes, sir. When I got back that day to the
24 office with the work vehicle, obviously, talked with my
25 dad, let him know what happened. And what we did then is

██████████ DIRECT BY MR. MOYER

1 we removed the door from the vehicle because it was the
2 only part that had actual damage. We removed the door and
3 we stuck it in the storage container under lock and key
4 until just a few weeks ago when we brought it in here for
5 evidence for this trial.

6 Q All right. So, I think your father is going to
7 get it now.

8 So, if you would, bring it to the court
9 reporter to have it marked.

10 (WHEREUPON, State's Exhibit No. 15 was marked
11 for identification only.)

12 MR. MOYER: Mr. Kingwill, if you can just maybe
13 lean it against there for the jury to see.

14 BY MR. MOYER:

15 Q All right. Mr. ██████████ will you just step
16 down and take a look at State's Exhibit No. 15. Are you
17 able to recognize what that is?

18 A Yes, sir, that's the door from the car. It's
19 the same as you just saw in the pictures. That's where
20 the bullet entered right there.

21 Q So, other than -- I mean, is this door in
22 substantially the same condition now as it was --

23 A Exactly the same.

24 Q Wait a minute, we've got to be careful about
25 talking over each other because the court reporter has to

██████████ DIRECT BY MR. MOYER

1 write everything down. Let me finish my question. It is
2 in substantially the same condition now as it was after it
3 was shot and after the law enforcement officers took a
4 look at it and took pictures?

5 A Yes, sir. Yes, sir. We pulled the door off the
6 car that same day, put it inside a container and held it
7 locked up so nobody could get to it. It sat just like
8 that. The door panel's still off on the inside from where
9 the officer removed it.

10 MR. MOYER: Your Honor, at this time, I'd move
11 to have State's Exhibit 15 entered into evidence?

12 THE COURT: Any objection?

13 MR. HAMILTON: Your Honor, I would have to
14 object in that this door is in the possession of the
15 civilian and not according to normal --

16 THE COURT: Hold on a second. Y'all come up
17 here.

18 (WHEREUPON, an off-the-record bench conference
19 was held in the presence of the jury but out of
20 the hearing of the jury.)

21 THE COURT: All right. I'm going to allow the
22 admission subject to your objection.

23 (WHEREUPON, State's Exhibit No. 15 was admitted
24 into evidence.)

25

██████████ DIRECT BY MR. MOYER

1 BY MR. MOYER:

2 Q And at the level of the -- I don't know if I
3 have the right term but whatever the mechanism is that
4 holds the window, has that been moved since you -- it got
5 shot?

6 A No, sir. It has the electric -- window.
7 Obviously, so all that happened here, essentially,
8 unplugged it from the car, took out the five bolts that
9 hold it, we put it down. Nothing has been tampered with,
10 nothing's been removed. So, once we unplugged it, so we
11 could transport it, you can push it up or down if you'd
12 like, it's not going to move. Until you add current to
13 that motor.

14 Q So, where the bullet hole is?

15 A Yes, sir.

16 Q Is that above or below whatever that prod is
17 where that would hold the window?

18 A It is below. Because like I said, the window
19 was only cracked about two to three inches. It was only
20 cracked to about that. So, that bar is right about there
21 in the door going across there right now. So, that was
22 clearly pretty far below another three inches below where
23 the actual glass was inside that door.

24 Q Okay. So, that shot should not hit the glass?

25 A No, sir, no, sir, it didn't strike any glass.

██████████ CROSS BY MR. HAMILTON

1 It hit inside the bracket, lodged inside -- up the inside
2 of a bolt. Which is the only thing stopping that bullet
3 from hitting me right here in my side. I'm kind of tall
4 so I sit pretty back low in the car. The trajectory was
5 straight for me, right here.

6 MR. MOYER: Okay, you can have a seat again,
7 thank you. Please answer any question the Defense
8 may have.

9 THE COURT: Cross?

10 CROSS-EXAMINATION

11 BY MR. HAMILTON:

12 Q Well, let's just pick up from the beginning
13 where -- you finished high school at Woodmont -- Woodruff
14 High School?

15 A Woodruff.

16 Q Woodruff High School?

17 A Woodruff, South Carolina. It's in Spartanburg
18 County, but yes, Woodruff, South Carolina.

19 Q Did you take up auto mechanic there?

20 A No, sir.

21 Q And you immediately started working as driving
22 instructor?

23 A No, sir.

24 Q Okay.

25 A I began working there while I was still in

██████████ CROSS BY MR. HAMILTON

1 school as a part-time mechanic. I'm very good with
2 mechanics. I'm very good with cars. I always have been
3 since I was a little kid. My dad let me work there while
4 I was still in school to earn a little extra pocket money
5 so I could go out and have fun with my friends and stuff.
6 But yeah, I worked there as a mechanic for a couple years.
7 Once I turned 21 and I was old enough to be an actual
8 instructor, because you have to be age 21 before you're
9 allowed to teach teenagers how to drive, then I became an
10 instructor shortly after my birthday and I began
11 instructing.

12 Q After your 21st birthday?

13 A Yes, sir.

14 Q And at Woodruff, do they still teach auto
15 mechanic? You took up auto mechanic?

16 A No, sir, they don't teach that at all.

17 Q So, you was a --

18 A It's just a high school. They don't have any
19 extra stuff like that. They're very small.

20 Q So, you learned on the job auto mechanic?

21 A Yes, sir.

22 Q Then you said you became a manager at the
23 driving business. What was the name of the business, the
24 driving?

25 A Greenville Driving School.

██████████ CROSS BY MR. HAMILTON

1 Q Greenville?

2 A Greenville Driving School, yes, sir.

3 Q Then you were the manager. Then some of your
4 duties as manager is what?

5 A Well, basically, my duties as manager was to
6 maintain all the vehicles, keep them -- all the vehicles
7 checked, just general maintenance on them. Then also
8 dealing with the instructors, taking supplies here and
9 there, collecting the money from the classes. Just
10 general management of the company, yes.

11 Q Okay. All right. Were you involved in any high
12 school sports or --

13 A No, sir.

14 Q -- social activity?

15 A No, sir.

16 Q Okay. All right. So, driving instructor was
17 working with your dad, you said there was about eight
18 other driving instructors?

19 A At that time, yes.

20 Q About eight, but you're sure how many?

21 A I'm not 100 percent sure, sir, no. It kind of
22 fluctuates, depending on the time of year. Like right now
23 during the summertime, we're very busy. We have a lot of
24 instructors on the road. Wintertime, it slows down.
25 Sometimes we slow down to only having two or three

██████████ CROSS BY MR. HAMILTON

1 instructors on the road at a time.

2 Q Were you in management at the time you were on
3 this assignment?

4 A Well, I was instructing at the time that this
5 happened, but, yes, I was also manager at the school at
6 that time, yes.

7 Q Okay.

8 A It's a family business. This is not a big
9 corporation. This is a small family business.

10 Q Sure. It's not no whole lot of people. You
11 have eight or ten, but you don't know?

12 A My father, my sister and I ran it together.
13 so we were basically -- he was the big man in charge, he
14 kind of ran the whole place. And my sister and I assisted
15 him with the management doing, you know, managerial
16 duties.

17 Q Small corporation?

18 A Yes.

19 Q Company?

20 A Yes.

21 Q But you don't know how many people you had
22 working with you?

23 A At that exact time -- keep in mind, this was
24 almost two years ago now.

25 Q Okay. All right. Do you have any black

██████████ CROSS BY MR. HAMILTON

1 employees there?

2 A Any black employees?

3 Q Yeah.

4 A Currently, yes.

5 Q You do?

6 A Yes. I don't see --

7 Q All right.

8 A I'm sorry, I just didn't see how that is
9 relevant.

10 THE COURT: You don't need to make comments,
11 just answer the question.

12 THE WITNESS: Okay.

13 BY MR. HAMILTON:

14 Q So, then are you involved in training the
15 driving instructors as a manager?

16 A Yes, sir.

17 Q Okay. All right. And part of the training, do
18 you have to be certified or is there --

19 A Yes, sir, I'm certified by the State of South
20 Carolina.

21 Q Okay. What are those state regulations?

22 A I'm sorry, I don't understand what you're
23 asking.

24 Q What do the state regulations require in driver
25 training?

██████████ CROSS BY MR. HAMILTON.

1 A What is the requirement to become an instructor
2 is what you asking?

3 Q Please.

4 A Okay. You have to be of the age of 21 or older.

5 Q Okay.

6 A You must have a pretty clear driving record. No
7 moving -- I think it was like no moving violations. It's
8 been so long since I've seen -- no criminal history or
9 anything like that, and you have to be of good moral
10 character.

11 Q Good moral character?

12 A Yes, sir.

13 Q And you were certified at the age of 21?

14 A Yes, sir.

15 Q All right. This incident happened in 2015; two
16 years ago?

17 A (The witness nods.)

18 Q You had just gotten certified?

19 A No --

20 Q How long had you been certified --

21 A No, sir, that is incorrect.

22 Q How long had you been certified?

23 A I'm no longer certified. After that happened,
24 I, basically, relinquished my licensing and I stopped
25 doing driver's education. But at the point that this

██████████ CROSS BY MR. HAMILTON

1 happened, I had been certified for, at least, a year and a
2 half.

3 Q Okay. A year and a half.

4 A I'd been originally certified, I believe it was
5 in January. Yeah, actually, year and a half, year and
6 three-quarters, almost two years I'd been certified and
7 instructing.

8 Q Okay. And instructing. So, in order to be an
9 instructor, is there any specific institution or schools
10 or courses that you have to --

11 A You have to pass an examination given by the
12 State of South Carolina Department of Motor Vehicles.

13 Q Okay. And then is there any pre-training for
14 that examination or is there any classes you have to
15 attend?

16 A No.

17 Q You just take the test without classes?

18 A Yes.

19 Q Okay. All right. Is there a handbook?

20 A Yes.

21 Q In that handbook, does it detail the regulations
22 and policy?

23 A Yes.

24 Q Okay. And what are some of the policy
25 instructions required to be adhered to during the teaching

██████████ CROSS BY MR. HAMILTON

1 of driving?

2 A I do not understand.

3 MR. MOYER: Your Honor, I would object to this
4 line of questioning. I just don't see the relevancy.

5 THE COURT: Where are you going with this,
6 Mr. Hamilton?

7 MR. HAMILTON: I'm getting there right now,
8 Judge.

9 THE COURT: All right. He can answer the
10 question.

11 THE WITNESS: I don't understand the question.

12 BY MR. HAMILTON:

13 Q Are you -- the question is, is what skills and
14 what teaching methods do you have to have?

15 A Like I said, there's an examination and an
16 interview process that you have to go through with the
17 South Carolina DMV, all right. Basically, you have to
18 know pretty much everything about driving. There's a book
19 about that thick that I had to study for a couple months.
20 I had to learn all the rules and regulations on driving
21 schools and how to teach and everything. And then there
22 is an interview process with the head of driver
23 improvement down in Columbia at the DMV headquarters.
24 It's basically an interview process from them to decide
25 whether or not I am of good enough moral character to

██████████ CROSS BY MR. HAMILTON

1 teach students how to drive.

2 Q And then part of that is -- where I'm getting to
3 is, do they have specific incidents that you teach
4 students on how to interact when they're involved in road
5 rage? When people pull up beside you, what do you do, you
6 slow down, you speed up? What do you do?

7 A I don't actually believe there's a set guideline
8 on how to deal with a road rage scenario because each and
9 every one would be different. Now, what I would teach my
10 students if I was still a teacher would be to simply slow
11 down, allow the vehicle to pass and move over. If they
12 decide to follow you, continue driving until you get to a
13 stay place, such as a police department, a fire
14 department, or a very public area where somebody else can
15 see what happens and somebody can help you if you're in
16 need of help.

17 Q Okay. All right. Let's get to that. Did you
18 do that in this case? Did you -- if a student had been in
19 the car, what would you have instructed the student to do?

20 A If the student had been driving?

21 Q Right.

22 A I would have asked them to slow down, and then
23 see where it went from there. Depending on the other
24 vehicle's reaction to what you're doing, you would --
25 that's on-the-fly kind of a thing. There's no right or

██████████ CROSS BY MR. HAMILTON

1 wrong answer to that, sir.

2 Q Okay. Let me get my questions here. So, let me
3 ask you, is driving a privilege or a right that you have
4 in this state?

5 A In the State of South Carolina, driving is a
6 privilege. It's something that is earned.

7 Q Okay. And is it not true that part of your
8 training as an instructor, you are to cover defensive
9 driving?

10 A Yes, sir, we teach defensive driving.

11 Q You teach defensive driving. And defensive
12 driving involves road rage, is that correct?

13 A No, sir.

14 Q Road rage does not -- is not --

15 A That is incorrect.

16 Q Okay. What factor in on road -- in your policy
17 at your school, how do you teach your students to deal
18 with that?

19 A We teach them to focus on what they're doing on
20 the road and to pay attention.

21 Q Okay. All right.

22 A Like I said, that type of situation -- I already
23 answered that question. We teach our students if they are
24 in a situation with an aggressive driver who's being
25 aggressive towards them to slow down and let them pass.

██████████ CROSS BY MR. HAMILTON

1 If they do not feel like passing, if they want to fight or
2 something like that or have an altercation and they start
3 to follow you, we teach them to go to a public place, such
4 as a police station, fire department or somewhere public
5 enough with enough people that somebody will be able to
6 assist you.

7 Q Okay. All right. So, how safe is it to engage
8 with someone you don't know -- even in a friendly
9 situation, if I see a friend of mine, how safe is it for
10 me to reach over or push the button to roll the window
11 down and talk to them? Is that something that is part of
12 the etiquette of driving or?

13 A In the America that I live in and the America
14 I'd like to live in, sir, I sure do think it would be fine
15 to talk to somebody else on the side of the road. I
16 believe if somebody has an issue with you while they're
17 going down the road, you should be able to just say hey,
18 man, leave me alone. Hey, leave me alone. You should be
19 able to do that without being shot.

20 Q Okay. All right. Is it unusual for two cars
21 to -- going the speed limit you stated earlier, that as
22 part of your culture, and everybody should, follow the
23 speed limit. And two cars happen to be going parallel
24 together, that's not a problem? Do you -- to obey the
25 speed limit, that's not a harassing -- is that a

ROSS BY MR. HAMILTON

1 harassment or is that just a coincidence?

2 A What you just said, just two cars going parallel
3 down the side of the road, no, that's just a coincidence.
4 I personally teach my students not to drive along side
5 other people because sometimes, you need an escape route.
6 If something were to happen in front of you, that you can
7 move over quickly out of the way of harm. So, I always
8 teach my students, if someone is parallel to you, back off
9 the gas a little bit so they can get ahead of you so you
10 have an escape route.

11 Other than that, talking back to our kind
12 of situation where Mr. Hare was driving parallel to me, he
13 was kind of hanging out of his window yelling things at
14 me. In that case, like I said, I began to roll my window
15 down to hear what he had to say. And I did not have a
16 student with me. It was just me in the vehicle. And I
17 wanted to find out what the situation was. Because
18 honestly, before the guns came out, I wasn't concerned. I
19 don't feel like I live in a dangerous place. My whole
20 life -- or the whole time I've lived here in Greenville,
21 I've always felt very safe and very happy up until this
22 situation happened.

23 So yeah, I thought it was a better idea to
24 roll my window down slightly, figure out what was -- what
25 his problem was or what was going on. And like I said,

██████████ CROSS BY MR. HAMILTON

1 that didn't work out for me. I guess I made the wrong
2 call on that specific situation. I should have just
3 jumped on the brakes and got behind them.

4 Q But your attention was drawn to that automobile
5 before --

6 A Because -- go ahead. Sorry, I didn't mean to
7 interrupt.

8 Q That's okay. Before it came up to you, you saw
9 him back?

10 A Yes, sir. Like I said, as a driving instructor,
11 I watch everybody on the road. I watch cars behind me
12 equally as much as I watch the cars in front of me. And
13 that's something I just learned through training is I have
14 to watch what's coming up behind me so that I know when
15 I'm teaching a student that, you know, everybody around us
16 is safe, that we're in a safe situation. If we have to
17 jump on the brakes, there's not somebody tailgating us or
18 anything like that. But yes, I noticed them driving
19 erratically ahead of time.

20 Q And you say that you noticed them back on Church
21 Street. This is Mills Avenue?

22 A Right, I noticed them before that light. At the
23 Lofts, there's a red light right there.

24 Q There's a right light.

25 A I noticed them coming up aggressively before

██████████ CROSS BY MR. HAMILTON

1 that point. We actually got stopped at that red light,
2 okay, and they were five, six cars behind me --

3 Q You say --

4 THE COURT: Wait, wait, let him finish his
5 answer. Don't talk over him.

6 Go ahead.

7 THE WITNESS: We were stopped at that red light
8 and they were, like I said, five or six cars behind
9 me. As the light turned green and I continued --
10 went to the right-hand lane, continued to notice them
11 jumping through cars, cars, cars, cars, cars. And
12 that's why it took the length of time from there all
13 the way to down -- where the line on the street right
14 there is before they actually got close to me. And I
15 moved over for them to pass.

16 BY MR. HAMILTON:

17 Q Okay. Just for my sake, at the red light, they
18 were still behind you some distance?

19 A Yes, sir, they were about -- like I said, about
20 five or six car lengths behind me.

21 Q And that was the first time you saw them? I
22 mean, you didn't see them on up further on Mills Avenue,
23 on Church Street or anything?

24 A Right.

25 Q Did you pass them?

██████████ CROSS BY MR. HAMILTON

1 A No, I never passed them, no.

2 Q They came up on you?

3 A They came up from behind me driving
4 aggressively, yes, sir.

5 Q Then you finally saw them -- they finally come
6 up beside you and you wanted to know, you know, what was
7 their problem?

8 A Right, because they slowed down to match speed
9 with me. Instead of continuing at the 50 to 60 miles an
10 hour that they were traveling in a 35 speed limit zone,
11 instead of just continuing driving fast, they decided to
12 slow down and mess with me, you know. I don't know why.
13 I still -- I would love an answer why. I've been sitting
14 for a long time now.

15 THE COURT: Just be responsive to his questions.

16 THE WITNESS: I'm sorry.

17 THE COURT: All right.

18 BY MR. HAMILTON:

19 Q But you determined fairly quickly that there
20 were two teenagers in a car?

21 A Yes, sir.

22 Q And for the life of yourself, you couldn't
23 figure out how they were driving such a nice car? You
24 told that to the police?

25 A Yeah, it seemed very odd that two young people

██████████ CROSS BY MR. HAMILTON

1 that were acting -- I don't know a nice way to say it, but
2 so crazy would be driving such a nice car. I mean, that's
3 a nice car. I wish I could afford that car.

4 Q You weren't jealous of that fact? What kind of
5 car do you own personally?

6 A Personally, I have a 5 series BMW.

7 Q Nice car?

8 A Yes, sir.

9 Q So, do y'all have black students?

10 A Yes, sir.

11 Q Do you? Okay. So, you don't have any outside
12 state regulations -- you say the state don't have
13 regulations and instructions for instructors on road rage,
14 but do your school have an in-house policy with dealing
15 with road rage?

16 A Sir, I've already outlined that we teach them to
17 first slow down. If that does not work and the aggressor
18 continues to follow you and seems to want an altercation
19 to go to somewhere, such as the police department, fire
20 department or public place with enough people that will be
21 able to help you.

22 Q Right. Okay. And you have that -- isn't it
23 true that, historically, at your company that people take
24 pot shots at you and your company all the time. They do
25 that all the time?

████████████████████ CROSS BY MR. HAMILTON

1 A Teenagers like to joke around. It's funny to
2 them to mess with the teenage driver that's that learning,
3 you know. I don't know why they do it, but teenagers like
4 to make fun of driver's ed cars.

5 Q And that's why y'all tell the students slow
6 down, pull over, let them go on?

7 A Because 99 percent of the time, you just let off
8 the gas a little bit and go five miles an hour under the
9 speed limit and they're not going to mess with you
10 anymore. They're just going to keep driving.

11 Q But this time, you were sick and tired of it,
12 isn't that true?

13 A No, sir. I don't know where you're getting at
14 --

15 Q This time you didn't let them go by, you --

16 MR. MOYER: Just ask that he be allowed to
17 answer.

18 THE COURT: Yeah.

19 THE WITNESS: That was incorrect. That was an
20 assumption. That's not true.

21 BY MR. HAMILTON:

22 Q What's not true?

23 A What you just said, that I was sick and tired of
24 people doing this. I wasn't sick and tired of anything.
25 I was just on my way to work.

████████████████████ CROSS BY MR. HAMILTON

1 Q Okay. Well, do people take pot shots when you
2 have a student in there?

3 A Mostly, yes, when there's a student driving.
4 The most common is for them to come up and honk the horn
5 right next to the student to try and scare the student
6 into do something, you know, like swerving or something
7 like that.

8 Q Right. But this time, you didn't follow that
9 pattern, you rolled your window down? Why did you roll
10 your window down?

11 A No, sir. Actually, I did because, like I said,
12 I got out of their way, all right, stayed below the speed
13 limit to allow them to go past. They did not go past.
14 They got right next to me and started yelling things. And
15 like I said, Mr. Hare, at one point, was hanging his arms
16 all the way out the car at me, I mean, his head out the
17 car and yelling something at me. So yeah, I wanted to
18 find out what he had to say. I don't feel like there's
19 anything wrong with that, but I rolled my window down.
20 And as I -- like I said, as I started rolling my window
21 down, that was just gun up, gun up.

22 Q Okay.

23 A I didn't really have an opportunity to really do
24 much else. It was kind of that was any initial reaction
25 to find out what the problem was. And as I was trying to

██████████ CROSS BY MR. HAMILTON

1 do that, the incident occurred.

2 Q Right. So this time, you needed to find out
3 what was the problem rather than slow down, pull in on the
4 driveway, pull off, right? You needed to know what the
5 problem was?

6 A Right.

7 Q Okay. So, why did you want to talk to them?

8 A Because they were coming up from behind at a
9 high rate of speed, almost double what the speed limit in
10 that area was, driving erratically. And then instead of
11 passing me when they had a clear path of travel, they
12 decided to slow down and match speed with my vehicle. I
13 assumed there must be a reason. And then they're yelling
14 at me and stuff, so I assumed there must be a reason. So,
15 yes, I decided to roll my window down and hear what was
16 going on and we could figure the situation out and diffuse
17 the situation.

18 Yes, I will teach my students to go to a
19 public place, but I'm a grown man. You know, I'm okay
20 with dealing with a situation myself. I don't really need
21 to go to the fire department to help me with somebody
22 that's a little bit mad at me. You know, generally
23 speaking, people just talk. They'll say something -- if
24 he was me at me for something, I could have just
25 apologized and we could have both moved on with our life.

██████████ CROSS BY MR. HAMILTON

1 Q So, you've done that before, roll your window
2 down --

3 A Many occasions on the side of the road where a
4 simple apology is all that's needed. As a driving
5 instructor, obviously, our students make a lot of mistakes
6 as well. So, when a student makes a mistake, like going
7 over the yellow line or something and scaring another
8 driver, hitting the brakes too hard, the driver gets
9 enraged, they start honking on their horn, a lot of times,
10 all it takes is for me to say listen guy, it's a student.
11 Calm down. We're sorry. He's learning. And it's okay.
12 But like I said, this is a completely different situation.

13 Q Yeah. Okay. So, you've done this before. The
14 solicitor in his opening statement, he said that you could
15 not see the shot -- in his opening, he said you couldn't
16 see. Was he wrong about that, that you couldn't see the
17 gunshot?

18 A Well, sir, if I had seen the gun fire, I would
19 be dead.

20 Q Okay.

21 A Okay. Because it was pointed at my face. I
22 watched him squeeze. And knowing that when you -- I've
23 shot guns many times in my life. I was raised learning
24 how to shoot properly, target practicing, stuff like that.
25 So, I pretty well know that hey, if somebody hand is

████████████████████ CROSS BY MR. HAMILTON

1 squeezing, they're firing. So, as I saw that happening,
2 it was within milliseconds that that gun was up, squeezed
3 and I was down.

4 Q Right.

5 A And then I heard the gunshots. If I had waited
6 to see the bullet coming out or the muzzle flash, I
7 wouldn't be here today and we would be dealing with a
8 murder trial.

9 Q All right. So, you did see him squeeze, though?

10 A Yes, sir.

11 Q Squeeze one time or two times?

12 A Well, the second time, I would have already been
13 dead. So, I saw him squeeze, I hit the deck. I saw him
14 squeeze one time, yes. And I got down -- I got down so
15 hard that I had a big old bruise right here on my face
16 couple days after from how hard I hit the gear shift in my
17 car, I ducked so hard.

18 Q You had a bruise on your face?

19 A Uh-huh.

20 Q Now, it didn't make itself known that day when
21 you were talking to --

22 A It didn't swell up or anything, but it was
23 bruised right in here in my arch.

24 Q It was covered up with your eyebrows?

25 A No, sir, I said it was bruised, not covered up.

██████████ CROSS BY MR. HAMILTON

1 Bruised in my arch, the arch area.

2 Q Only you could see the bruise, though?

3 A I'm sure most people if I was face-to-face with
4 them could have seen it, but.

5 Q When you met with the police officers, did they
6 ask you if you were all right, were you hit?

7 A Yes, they did. I said, Yes, sir, I'm fine. I
8 just want to get these people found so that they don't
9 kill somebody.

10 Q Okay. All right. And then you say I got this
11 bruise on my face?

12 A Well, at that point, I didn't know I had a
13 bruise. I hadn't had a chance to go look at myself in a
14 vanity yet.

15 Q On the scene, did you tell the police that when
16 you ducked that you ducked so purposely that you hit the
17 gear shift?

18 A I don't believe I told the officer like that,
19 that seemed irrelevant.

20 Q I'm sorry. Didn't you just say you ducked to
21 the point that you got a bruise on your head? What did
22 you hit?

23 A The gear selector, sir. It's in the center of
24 the vehicle right here next to your knee.

25 Q But that day when it happened, when you ducked,

██████████ CROSS BY MR. HAMILTON

1 when you saw the gun, when you saw him squeeze, you didn't
2 tell the police officer?

3 A I told the police officer exactly what I did. I
4 didn't mention that I was injured and I didn't want to go
5 to the hospital or to the doctor for this because this is
6 a small thing. What I was worried about was that that man
7 got caught, that's what I was worried about. I was
8 worried about giving the description of the vehicle. I
9 was worried about telling the officers where that vehicle
10 had gone and, you know, talking to them about the
11 important things.

12 Q Right.

13 A Not my slight injury, which was very irrelevant.

14 Q Okay. All right. So, then when the driver of
15 the Mercedes had the gun pointed at you, you could see the
16 barrel of the gun?

17 A Yes, sir.

18 Q What type of gun was it?

19 A It was a handgun, semi-automatic stainless steel
20 handgun. It had a stainless steel barrel. I'm not sure
21 on the color of the grip --

22 Q Okay.

23 A -- or what type of grip it was because his hand
24 was covering it, but it was definitely a semi-automatic
25 handgun with a stainless steel barrel.

██████████ CROSS BY MR. HAMILTON

1 Q Stainless steel. And was there another type of
2 gun?

3 A Yes, the passenger, Mr. William Hunter, had a
4 black, also, semi-automatic, completely black gun.

5 Q You couldn't have got them switched up, the
6 driver had the stainless steel and the passenger?

7 A No, sir.

8 Q You sure about that?

9 A I have a very good memory.

10 Q Okay. You weren't worried about bumping those
11 cars as you were driving along and trying to communicate
12 with them?

13 A No, no, sir. I've been driving since I was 15.
14 I can hold a car straight.

15 Q Right. Right. How long have you been familiar
16 with handguns?

17 A Since I was about eight.

18 Q Eight years old? Okay. Then when he
19 squeezed -- you know, you were saying that it was pointed
20 at you, when you squeeze, if you're not skilled with it,
21 wouldn't it pull one way or the other? Sometimes, if
22 you're not a marksman? Don't it take a marksman to hold a
23 steady aim?

24 A I'm sure it does, yes. I've never had a problem
25 personally, but I'm sure some people would.

██████████ CROSS BY MR. HAMILTON

1 Q All right. When you saw the squeeze, did you
2 see -- you didn't see the fire. You immediately ducked or
3 you ducked when you saw the gun?

4 A No, I ducked when I saw him squeeze. See,
5 Mr. Hunter, the passenger, pulled his gun first.

6 Q Okay.

7 A He went gun up. And almost immediately,
8 Mr. Hare pulled his gun up. And then as I saw that gun, I
9 was looking straight at the gun. Okay. And as I saw --
10 as I was looking at the gun, I watched his hand start
11 crimp down and squeeze and that's when I hit the deck, all
12 right.

13 Q Now, you know how a gun -- you're familiar with
14 it, when somebody squeeze, don't the bullet come out right
15 when the squeeze happen?

16 A No, sir. No, sir. No, sir. Where I saw the
17 squeeze is in his hand, right here, not in his trigger.
18 Yeah, I mean, you've got to squeeze and then bang. It's
19 not a --

20 Q Everything happened in a millisecond?

21 A Right.

22 Q Okay.

23 A Like I said, I saw him -- the way I saw his
24 hand, the way his hand was acting, the way it was
25 squeezing, is that he was firing, so I hit the deck.

████████████████████ CROSS BY MR. HAMILTON

1 Q And you could have been mistaken on whether or
2 not he was squeezing or doing something else?

3 A Possibly, but the bullets come out. I wasn't
4 mistaken about that.

5 Q Well, you ducked the bullet. Did you hear a
6 bullet go whoosh?

7 A No, sir. I heard bang, bang.

8 Q Bang, bang.

9 A I was -- was about all I heard.

10 Q And you also -- when you ducked, was it your
11 right eye that hit or -- because did you kind of look and
12 see while you ducked?

13 A Driving the car, right?

14 Q Okay.

15 A We've got an issue. There's a gear in the
16 center console right here and a gear selector right here.
17 I'm driving the car now, I'm looking.

18 Q Boom. That's about how low you going, too,
19 right?

20 A Right. Down and my hand, unfortunately, I
21 believe came down with me and that's why my vehicle went
22 into the median of the road.

23 Q So, when you told the police that you saw the
24 window shatter, you didn't see the window shatter --
25 shatter, I'm sorry?

████████████████████ CROSS BY MR. HAMILTON

1 A I did when I looked up and it was shattered all
2 over the inside of my car.

3 Q Right.

4 A And there was glass everywhere on the inside of
5 my car.

6 Q Glass inside the car?

7 A Right. From where the window was shot out,
8 there was glass on the seat, there was glass on the floor.
9 There was even glass all the way on my lid. I mean, there
10 was glass everywhere.

11 Q So, you didn't see the firing shot, you only
12 heard the shot?

13 A Right.

14 Q Okay.

15 A I don't think anybody would be able to see a
16 shot actually happen and survive.

17 THE COURT: Okay, don't volunteer, just respond
18 to the questions. And let's don't replew the same
19 row again.

20 BY MR. HAMILTON:

21 Q So, let's -- you taken good care of the
22 evidence.

23 A I haven't. My father being --

24 Q You don't know where it's been?

25 A -- the owner of the driving school, like I said,

██████████ CROSS BY MR. HAMILTON

1 we locked it up and it's been in that locked-up container
2 ever since.

3 Q Okay. So, it is your theory that the police
4 came and looked at it and you testified that the bullet
5 got lodged in there, right?

6 A I was stating a fact, sir, not a theory. Yes,
7 the police did look at it and they took photos. The crime
8 scene investigator pulled the bullet fragments out of the
9 door.

10 Q And so, it's a fact that the bullet hit the
11 inside, it came in at that level and did not come out the
12 other side?

13 A Yes, sir.

14 Q It stayed in there?

15 A You can see a bolt that's bent up on the bottom
16 right-hand corner of it right there, that's the bolt that
17 the bullet hit up against that stopped it.

18 THE COURT: You got to keep your voice up.

19 THE WITNESS: Sorry.

20 If you look on the inside of the door panel
21 here, there's a big indentation or the bracket for
22 the window regulator is bolted to the outer frame of
23 the door, and that is bent out about a half-inch out
24 from where the bullet struck. That thicker metal,
25 luckily, stopped the bullet.

████████████████████ CROSS BY MR. HAMILTON

1 BY MR. HAMILTON:

2 Q So, when it hit that bolt to the point that it
3 indented it, right?

4 A Yes, sir.

5 Q It indented it, did it -- didn't it make a
6 sound? It wasn't a quiet -- it was a loud noise for that
7 to happen?

8 A When you fire a gun, a loud -- the sound from
9 the gun is so loud that I sincerely doubt you would be
10 able to hear anything else.

11 Q Well, that's the bang, bang?

12 A Right, but as soon as that bang is over, the
13 bullet is already moved. It's already stopped moving. I
14 mean, bullets are really fast. You don't --

15 Q And then the bullet ricocheted inside and broke
16 the window?

17 A No, sir.

18 Q Okay. Okay. And then --

19 A The bullet fragment -- I'm sorry.

20 Q Now, this -- your car and the Mercedes, your car
21 sits a little lower than the Mercedes, right?

22 A I'm not sure. I don't believe so.

23 Q They're equal footing then, the same --

24 THE COURT: He answered the question, okay.

25 Asked and answered. He doesn't know. Let's move on.

████████████████████ CROSS BY MR. HAMILTON

1 BY MR. HAMILTON:

2 Q I show you what's been marked as State's Exhibit
3 No. 9. And that is the fragment of the bullet; is that
4 correct?

5 A Yes, sir.

6 Q Then State's Exhibit No. 8, the fragment of the
7 bullet?

8 A Yes, sir.

9 Q All right. And State's Exhibit No. 5 shows the
10 inner mechanism. And does it show how far the window is
11 down?

12 A This photograph does not, sir, but it does show
13 where the bullet struck on the inside.

14 Q Right.

15 A And a piece of fragment that the officer was
16 able to get out, that is the same fragment that is in this
17 picture.

18 Q Right. And there's also glass on the inside
19 there?

20 A Yes, sir.

21 Q Glass on the inside?

22 A Yes, sir.

23 Q You don't have pictures of glass on the
24 passenger side of your car -- of the driver's car, do you?

25 A Sir, I'm the victim. I don't have any pictures

██████████ REDIRECT BY MR. MOYER

1 at all.

2 Q All right. So, no question that the car was
3 drivable and you pursued -- after ducking your head, you
4 pursued to try to catch up with them?

5 A I attempted to, yes, sir. But like I said, they
6 were gone. I mean, that fast car, couldn't catch up.

7 MR. HAMILTON: That's all we have, Your Honor.

8 THE COURT: All right, any redirect?

9 MR. MOYER: Just a couple.

10 REDIRECT EXAMINATION

11 BY MR. MOYER:

12 Q First of all, you were asked about other people,
13 kids taking pot shots at you. I just want to make sure we
14 understand what we're talking about here. Has anyone ever
15 actually fired a gun at you before?

16 A No, sir, this is the first time I've ever I had
17 somebody try to shoot at gun at me.

18 Q So, by pot shots, we're just talking about
19 people --

20 A I believe he was referring to like joking and
21 laughing and jokes and stuff like that.

22 Q And you're sure there were two shots fired; is
23 that correct?

24 A Yes, sir, I heard two.

25 MR. MOYER: Nothing further, thank you. Wait a

██████████ REDIRECT BY MR. MOYER

1 minute, one moment.

2 BY MR. MOYER:

3 Q Did you ever swerve your vehicle towards them or

4 --

5 A No, sir.

6 Q -- at any point during this ordeal?

7 A No, sir. If anything, I swerved away from them
8 when I ducked. But that's the only swerve that I did.

9 MR. MOYER: Okay. I have nothing further.

10 Thank you.

11 THE COURT: All right. Thank you, you may stand
12 down.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Mr. Foreman, ladies and
15 gentlemen, we've been going at it for a couple hours.
16 We'll take just a short break. Don't discuss the
17 case. We'll get back with you in about 10 minutes or
18 so. Thank you.

19 (WHEREUPON, the jury left open court at
20 approximately 2:57 p.m.)

21 THE COURT: All right. Take about 10 minutes.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: All right. Let's bring the jury.

24 (WHEREUPON, the jury came into open court at
25 approximately 3:46 p.m.)

MICHAEL NUNEZ-DIRECT BY MR. FOWLER

1 THE COURT: All right. Call your next witness.

2 MR. FOWLER: Yes, sir, Your Honor, may it please
3 the Court, the State calls Deputy Michael Nunez.

4 THE CLERK: Sir, if you would please place your
5 left hand on the Bible and raise your right hand.

6 MICHAEL NUNEZ, after being duly sworn,
7 testified as follows:

8 THE CLERK: Thank you. Please be seated. State
9 your name for the record.

10 THE WITNESS: Deputy Michael Nunez.

11 DIRECT EXAMINATION

12 BY MR. FOWLER:

13 Q Okay, Deputy Nunez, how long have you been with
14 the Greenville County Sheriff's Office?

15 A About two and a half, maybe more, years?

16 Q Back in September 2015, how long had you been
17 there?

18 A About nine months.

19 Q Okay. So, this is fairly early on in your
20 career?

21 A Yes, it is.

22 Q Okay. But on September 1st, 2015, did you
23 respond to a call to a shooting?

24 A Yes, sir. About 10:30, give or take a couple of
25 minutes, the call was received by our dispatch and they

MICHAEL NUNEZ-DIRECT BY MR. FOWLER

1 dispatched it to me to respond.

2 Q Did you respond to that location to CVS over
3 there on Mills Avenue, kind of near the K-Mart?

4 A Yeah, right there by Mills and Murray.

5 Q Was the victim, Mr. [REDACTED] [REDACTED] there when
6 you got there?

7 A Yes, sir, he was.

8 Q Was he agitated or was he worked up?

9 A Yeah, definitely seemed like he was coming off
10 maybe an adrenaline high. He was very amped up.

11 Q But he wasn't physically wounded or anything as
12 far as you could tell?

13 A No, I didn't notice any injuries on him and he
14 didn't disclose any to me.

15 Q You asked him if he was all right?

16 A I did, I asked if he needed an ambulance. He
17 said that he didn't.

18 Q Did you ask him if he was able to identify the
19 people who shot at him?

20 A Yeah, he provided me with a description of two
21 black males, one dark skinned, one light skinned, early --
22 late teens, early 20's, and the light-skinned black male
23 had some facial hair.

24 Q Did he provide a description of the vehicle they
25 were in?

MICHAEL NUNEZ-DIRECT BY MR. FOWLER

1 A Yeah, he said -- and I don't remember the year,
2 excuse me, a late model Mercedes, dark color four-door
3 sedan.

4 Q Were you able to call this up?

5 A Yeah, I radioed into dispatch -- actually, I
6 think I called them on the phone to put out over the
7 radio. Also, my sergeant showed up on scene and I gave it
8 to him and he put it out over the radio.

9 Q Okay. Is that a BOLO, is that a Be On The
10 Lookout?

11 A Yeah, it's to notify every other unit that can
12 hear the radio traffic.

13 Q That's what I was about to ask. Can you explain
14 to us the reason behind the BOLO, what that is?

15 A It's to allow for a unit that is on scene and
16 has credible information that can assist other deputies
17 around the area what to look for and what direction maybe
18 to ahead or what neighborhood to canvass.

19 Q Okay. When you were there, did you have a
20 chance to look at the victim's vehicle?

21 A Yes, I did.

22 Q And this appears to be the door from that
23 vehicle, correct?

24 A Yes, sir, it does.

25 Q Okay. Was that hole in the door when you got

MICHAEL NUNEZ-CROSS BY MR. HAMILTON

1 there?

2 A It was, about halfway down somewhere in the red
3 lettering.

4 Q Okay. And that window was shot out when you got
5 there?

6 A Yeah, it was completely shattered. There was
7 glass all over the inside of the front part of the car.

8 Q So, there was glass all in the passenger and
9 driver's compartment area?

10 A Yes, there was also some in the wheel well of
11 the driver's side.

12 Q Okay.

13 MR. FOWLER: That's all I've got. If you'll
14 answer any questions Defense counsel might have.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MR. HAMILTON:

18 Q Deputy Nunez, that's how you pronounce it?

19 A Pretty close, sir.

20 Q Okay, that's good. Now, you say you saw the
21 bullet hole, is it any way that you examined the bullet
22 hole in the automobile?

23 A No, I didn't. I didn't touch anything except to
24 open the door and see the inside of the door to see the
25 glass and everything inside. Also, I was there when

MICHAEL NUNEZ-CROSS BY MR. HAMILTON

1 forensics responded at the scene. I mean, I saw what they
2 did.

3 Q So, forensics took the door apart, you didn't
4 take the door apart?

5 A No, I did not.

6 Q Okay. All right. But you did talk with and
7 examine -- well, not examine, but you was in his presence.
8 Did you see any physical marks where he struck his head?
9 Did he mention that he did?

10 A No, I didn't notice any injuries.

11 Q Any injuries on him at all? Okay. But he was
12 still kind of upset about it, rightfully so, right?

13 A He was extremely upset.

14 Q Upset about it. And he told you what happened?

15 A Yeah. He was crying at one point and he was
16 very agitated.

17 Q Agitated, yes, sir. And just mad about what
18 happened. All right.

19 MR. FOWLER: Your Honor, I object, that is not
20 what the witness said. That was a comment not a
21 question.

22 THE COURT: Yes, ask questions, don't testify.

23 BY MR. HAMILTON:

24 Q Well, did he -- did he tell you that he ducked
25 in his seat?

MICHAEL NUNEZ-CROSS BY MR. HAMILTON

1 A Yes.

2 Q He ducked in his seat. But he didn't tell you
3 that he hit his head?

4 A No.

5 Q Okay. All right. Did he tell you that he heard
6 two loud pops?

7 A Yes, sir.

8 Q Pops, right. Then -- and then in the report, it
9 said he believe they were gunshots. He thought they were
10 gunshots, but he wasn't sure.

11 A Correct.

12 Q That they were gunshots. And the window was
13 shattered. Did he say how far his window was up or did he
14 let his window down?

15 A He told me that window was down four inches,
16 three to four inches, something like that.

17 Q Did he say three or four inches? Did you write
18 that in your report?

19 A I did not write that in my report.

20 Q Okay. Do you recall him saying three or four
21 inches?

22 A He say that it was slightly opened.

23 Q But he didn't say three or four-

24 A He didn't specify.

25 Q Okay. But he did say he let his window down?

MICHAEL NUNEZ-CROSS BY MR. HAMILTON

1 A Yes.

2 Q Okay. All right. Did he tell you his action in
3 it, that he waved at the people in the other car?

4 A Yes, sir, he said he made a gesture for them to
5 move on.

6 Q A gesture for them to move on, okay. And did he
7 say that the passenger in the black Mercedes had a silver
8 semi-automatic?

9 A Is that's what my report says, that's what he
10 told me.

11 Q Yeah. All right. So, the passenger had the
12 silver, okay. Then did he say the driver had a -- what
13 kind of gun did he tell you that the driver had?

14 A I believe he said it was black.

15 Q It was a black gun. Okay. Did he tell you how
16 far he followed the people in the other car?

17 A He didn't specify a distance, no.

18 Q Okay. And when you looked at the door, could
19 you tell whether or not it was -- what direction the
20 bullet was going?

21 A It appeared to come from the outside of the
22 vehicle and head into the door.

23 Q All right. Did you -- could you see where it
24 exit through the door?

25 A It didn't appear to exit through the door. When

MICHAEL NUNEZ-REDIRECT BY MR. FOWLER

1 I witnessed forensics take off the interior panel, it
2 looked like the core lead bullet had disintegrated upon
3 striking a thick metallic object inside the door and the
4 copper jacket had fallen down into the bottom of the door.

5 Q Then when you say the -- what appeared to be the
6 jacket, the copper fell down, did you determine whether or
7 not the lead was found?

8 A You'd have to ask forensics that.

9 Q Okay. All right. Because from your
10 understanding, there's parts to the bullet, some kind of
11 jacket around it and then the lead?

12 A Yeah.

13 Q Okay. All right.

14 MR. HAMILTON: That's all I have of that
15 witness.

16 MR. FOWLER: Just real quick.

17 REDIRECT EXAMINATION

18 BY MR. FOWLER:

19 Q You heard him specifically say he heard two loud
20 pops that he thought to be gunshots, correct?

21 A Yes, sir, he was very emphatic about two
22 distinct pops.

23 MR. FOWLER: That's all I've got, Judge.

24 THE COURT: Thank you, sir. You can step down.

25 Call your next witness.

WILLIAM ESTES-DIRECT BY MR. FOWLER

1 MR. FOWLER: The State would William Estes.

2 THE CLERK: Sir, place your left hand on the
3 Bible raise your right hand.

4 WILLIAM ESTES, after being duly sworn,
5 testified as follows:

6 THE CLERK: Thank you. Please be seated.
7 Please state your name for the record.

8 THE WITNESS: William Travis Estes.

9 DIRECT EXAMINATION

10 BY MR. FOWLER:

11 Q Mr. Estes, did you previously work for the
12 Greenville County Sheriff's Office?

13 A I did.

14 Q Were you working for them back in September of
15 2015?

16 A I was.

17 Q What was your role with the sheriff's office
18 back then?

19 A I was the school officer at Carolina High
20 School.

21 Q Okay. How long had you been there by that
22 point?

23 A At Carolina, almost six years.

24 Q And while you were there, did you come to know
25 Braxton Hare and William Hunter?

WILLIAM ESTES-DIRECT BY MR. FOWLER

1 A I did.

2 Q How long had you known them?

3 A They were both students there for probably, at
4 least, a couple of years.

5 Q So, you can easily recognize them on sight?

6 A Oh, absolutely.

7 Q Okay. Did you see them on the morning of
8 September 1st, 2015?

9 A Yes.

10 Q Okay. Do you remember what kind car they were
11 driving?

12 A A black Mercedes.

13 Q Do you remember what time you first saw them at
14 the school? And I've got your report from that day if it
15 would help refresh your recollection.

16 A Yes, please. First time was in the morning,
17 probably around the time high school starts, I'd say
18 nine-ish.

19 Q Okay. I think if you look on your next page,
20 you've got the exact time.

21 A 9:40.

22 Q Okay. And they left after you first saw them at
23 9:40, correct?

24 A Yes, they did.

25 Q Did you see them come back later?

WILLIAM ESTES-DIRECT BY MR. FOWLER

1 A Yes.

2 Q At what time did you see them come back?

3 A Around 10:30.

4 Q How are you able to know those times so
5 precisely?

6 A We have video surveillance that we can go back
7 and check to get an exact time if we want to. I just
8 happened to know -- I was in the front office when William
9 came in, so I knew exactly what time it was then.

10 Q Okay.

11 A For the second time.

12 Q And that second time they came back by, did both
13 of them stay at school or just one of them?

14 A Just William.

15 Q And Braxton drove off in the black Mercedes,
16 correct?

17 A Correct.

18 Q When they got back to school the second time
19 about 10:30, did you know about the shooting at that
20 point?

21 A No, I did not.

22 Q Okay. Did Mr. Hunter -- was there a reason that
23 Braxton drove off and William stayed?

24 A William had some sort of meeting at the school,
25 so that's the reason why he was coming back.

WILLIAM ESTES-DIRECT BY MR. FOWLER

1 Q If we can look -- hold on just a second.

2 (WHEREUPON, State's Exhibit No. 16 was marked
3 for identification only.)

4 MR. HAMILTON: Judge, may I approach with a
5 matter?

6 THE COURT: All right.

7 (WHEREUPON, an off-the-record bench conference
8 was held in the presence of the jury but out of
9 the hearing of the jury.)

10 BY MR. FOWLER:

11 Q Okay. Mr. Estes, real quick, can you tell me is
12 this a map of, I guess, western Greenville, South
13 Carolina?

14 A It is.

15 Q Is that a fair and accurate representation of
16 the area?

17 A Yes.

18 Q If you can step ever here real quick so the jury
19 can see it. This right here, 718 Mills Avenue, this is
20 about where that CVS is; correct?

21 A Yes.

22 Q 726, this is Carolina High?

23 A That's Carolina High. So, it's right there,
24 yes.

25 Q Okay. All right.

CHRIS HINES-DIRECT BY MR. FOWLER

1 MR. FOWLER: Your Honor, the State moves to
2 introduce into evidence State's Exhibit No. 16, a map
3 of Greenville and it shows Carolina High.

4 MR. HAMILTON: Without objection.

5 THE COURT: No objection.

6 MR. FOWLER: All right. Thank you, Judge.

7 (WHEREUPON, State's Exhibit No. 16 was admitted
8 into evidence.)

9 MR. FOWLER: That's all I've got, Your Honor,
10 for Mr. Estes.

11 THE COURT: Okay, cross?

12 MR. HAMILTON: Your Honor, no questions, Your
13 Honor.

14 THE COURT: All right. Thank you. You can step
15 down.

16 MR. FOWLER: Your Honor, the State calls Deputy
17 Hines.

18 THE CLERK: Sir, place your left hand on the
19 Bible and raise your right hand.

20 CHRIS HINES, after being duly sworn,
21 testified as follows:

22 THE CLERK: Thank you. Please be seated. State
23 your name for the record.

24 THE WITNESS: Chris Hines, H-I-N-E-S.

25 DIRECT EXAMINATION

CHRIS HINES-DIRECT BY MR. FOWLER

1 BY MR. FOWLER:

2 Q Okay, Deputy Hines; what do you do for the
3 sheriff's office?

4 A I am lieutenant over our traffic division and
5 our air support and I'm also our chief pilot for our air
6 support unit.

7 Q On September 1st, 2015, were you flying in
8 Greenville County?

9 A I was.

10 Q Okay. Did you hear radio traffic regarding a
11 black Mercedes?

12 A We did.

13 Q Did you respond to the area that radio traffic
14 came from?

15 A Yes.

16 Q Okay. When you got there, did you see a car
17 matching that description?

18 A Yes. When we arrived in that area, the vehicle
19 with -- one of our units had actually engaged in a
20 pursuit. We arrived overhead a brief time later and
21 observed a black Mercedes on, I believe it was south on
22 Piedmont Highway at a high rate of speed.

23 Q And y'all began to follow it, correct?

24 A That's correct.

25 Q Y'all have a camera that captures this?

CHRIS HINES-DIRECT BY MR. FOWLER

1 A We do.

2 Q Do you remember watching a copy of film that
3 camera captured in Mr. Moyer's with me and Mr. Moyer?

4 A That's correct.

5 Q Did you initial a DVD that was a copy of that?

6 A That's correct. And that is the retrieval of
7 the actual video from the recording system.

8 Q And is this that DVD?

9 A Yes.

10 Q Is this a fair and accurate representation of
11 what y'all saw that day?

12 A For the most part, yes. The camera operator is
13 watching the TV screen trying to keep the car on the TV
14 screen. Helicopter is moving around, so it maybe -- the
15 actual camera may be -- come off the vehicle from time to
16 time, but, visually, I maintain visual contact with the
17 car as I'm flying the helicopter.

18 Q So, you're flying the helicopter watching the
19 car and the camera guy working the camera and it might go
20 off frame for a second or two?

21 A That's correct?

22 Q Y'all haven't messed with it or altered it?

23 A No.

24 (WHEREUPON, State's Exhibit No. 17 was marked
25 for identification only.)

CHRIS HINES-DIRECT BY MR. FOWLER

1 MR. HAMILTON: Your Honor, we would stipulate
2 that there was a chase and he failed to stop.

3 THE COURT: Well, that's all right. We'll let
4 them --

5 MR. FOWLER: We want to play the video.

6 THE COURT: I know you want to play it.

7 (WHEREUPON, State's Exhibit No. 17 was
8 published.)

9 BY MR. FOWLER:

10 Q All right. So, what car is that that we see
11 right there? Where did it go? Right there coming in the
12 intersection?

13 A That would be the black Mercedes.

14 Q That's the one that y'all had gotten the alert
15 about, correct?

16 A That's correct.

17 Q All right. So, now it's a little jerky, so
18 y'all are -- there's no audio on this video?

19 A That's right. It's just plain video, no audio.

20 Q So, y'all are relaying stuff done to deputies on
21 the ground, correct?

22 A That's correct.

23 Q Okay. So, he's going -- and would it be --
24 would y'all tell the deputies on the ground maybe even
25 back off a little bit when y'all have good visual on them

CHRIS HINES-DIRECT BY MR. FOWLER

1 like this?

2 A Yeah, the actual initial pursuing deputy, Deputy
3 Brewer, instructed him to back off and do a loose trail
4 instead of being right on the suspect vehicle.

5 Q Why do y'all do that?

6 A Well, hopefully, their driving behavior will
7 change and they'll slow down and stop putting other
8 people's lives in danger driving in a reckless manner
9 trying to evade. And also, for the safety of our
10 officers.

11 Q Now, do you remember about how long y'all were
12 in the air chasing him?

13 A On this particular case, probably 10 to 15
14 minutes. There will be a time stamp. The time stamp may
15 not be precise with our dispatch date and time, but it
16 should be pretty close.

17 Q And the chase pretty well continues as this,
18 correct?

19 A That's correct.

20 Q We're going to go ahead and skip forward a
21 little bit toward the end of the chase, if that's all
22 right. Okay. So, do you remember what's going on here?

23 A The car actually went down a dead-end street, I
24 believe it was Burbank Court off of Rodvale, under some
25 trees and we were searching -- the camera operator was

CHRIS HINES-DIRECT BY MR. FOWLER

1 trying to search there. It goes to our clear screen
2 trying to look at the vehicle through the trees. Then we
3 observe the vehicle come out in the parking lot of --
4 which is Lakeside Park, which is the baseball fields there
5 off of Highway 20.

6 Q That's the vehicle right there?

7 A That's correct.

8 Q And that's his bumper hanging off?

9 A Correct.

10 Q And this is Highway 20?

11 A Yes.

12 Q Okay. From here, they just essentially arrest
13 them and put them in the back of the police car, correct?

14 A Yes. Once they're taken into custody, they put
15 them in the car.

16 Q Okay.

17 MR. FOWLER: Your Honor, the State would move to
18 have admitted into evidence what I believe is going
19 to be State's 17, a DVD from the helicopter of Deputy
20 Hines chase.

21 MR. HAMILTON: Your Honor, I believe we object
22 to it being cumulative.

23 THE COURT: Being what?

24 MR. HAMILTON: They've seen -- the jury has seen
25 it and it's already in evidence.

CHRIS HINES-DIRECT BY MR. FOWLER

1 THE COURT: Yeah, so I'm going to allow him to
2 put the disk in. Okay.

3 (WHEREUPON, State's Exhibit No. 17 was admitted
4 into evidence.)

5 BY MR. FOWLER:

6 Q Deputy Hines, I'm going to show you a map. Can
7 you tell me, is this a map of kind of southwest Greenville
8 County?

9 A It is.

10 Q And is this a fair and accurate representation
11 of the roads in that area?

12 A Yes, sir.

13 Q Okay. You can come over here so the jury can
14 see. So, if we look -- if we remember that video, it
15 showed some ball fields, did it not?

16 A That's correct.

17 Q Is that those ball fields?

18 A Yes, it is, right here. Lakeside Park.

19 Q Can you show me on this map about where that
20 wreck took place?

21 A Actually, on Highway 20, which is labeled right
22 here, so it will be right -- actually, the restaurant or
23 the building that's in the white circle the vehicle ran in
24 front of is actually at that intersection service. So,
25 come on Highway 20 from the ball fields, maybe a half a

CHRIS HINES-DIRECT BY MR. FOWLER

1 mile from that.

2 Q Generally, this is the area y'all were chasing
3 them, correct?

4 A Right. We started over here off of South Old
5 Piedmont and it ended up going down to Highway 25 and then
6 came back in that direction.

7 Q So, they came all the way from 20 to 25, then
8 back over to 20?

9 A Basically, made -- pretty much if you look at a
10 figure eight kind of is the easiest way to describe it.

11 MR. HAMILTON: Your Honor, I think this has
12 already been shown in the video.

13 THE COURT: I'm going to allow him to do it.

14 Don't lead. Is this map in evidence?

15 MR. FOWLER: I'm about to put it in, sir.

16 THE COURT: Well, you need to do that before you
17 show it to a jury.

18 MR. FOWLER: Yes, sir.

19 (WHEREUPON, State's Exhibit No. 18 was marked
20 for identification only.)

21 MR. FOWLER: Your Honor, the State moves to
22 enter State's No. 18, a map of Greenville.

23 MR. HAMILTON: We object to the duplication.

24 THE COURT: All right, overruled.

25 Go ahead.

CHRIS HINES-DIRECT BY MR. FOWLER

1 (WHEREUPON, State's Exhibit No. 18 was admitted
2 into evidence.)

3 BY MR. FOWLER:

4 Q Again, could you just show us generally the area
5 where y'all were chasing?

6 A Yes. Started in this general area, encompasses
7 all around close to the dialysis center, then came back to
8 this same general area.

9 Q And these little gray streets right here, are
10 those neighborhood streets?

11 A Yes, it's all residential. Your main highways
12 are in red or main thoroughfare is red or black or the
13 green.

14 Q All right. Thank very much. And this is all in
15 Greenville County?

16 A That's correct?

17 MR. FOWLER: That's all I've got, Your Honor.

18 THE COURT: Cross?

19 MR. HAMILTON: No questions, Your Honor.

20 THE COURT: All right. Thank you. You can step
21 down.

22 Call your next witness.

23 MR. FOWLER: Yes, sir, the State calls Deputy
24 Brewer.

25 THE CLERK: Sir, place your left hand on the

WILLIAM BREWER-DIRECT BY MR. FOWLER

1 Bible and raise your right hand.

2 WILLIAM BREWER, after being duly

3 sworn, testified as follows:

4 THE CLERK: Thank you. Please be seated. State
5 your name for the record.

6 THE WITNESS: William Brewer.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. FOWLER:

10 Q Deputy Brewer, how long have you worked with the
11 sheriff's office?

12 A Roughly, nine and a half years.

13 Q And you were working with them back in
14 September of 2015, correct?

15 A Yes, sir, I was.

16 Q On September 1st, 2015, that morning, do you
17 remember driving down Whitehorse Road?

18 A Yes, sir.

19 Q Where were you going?

20 A I was actually working a side job, so we work
21 the schools in between our actual shifts, and I was going
22 from one school to the next.

23 Q Did you hear something come over the radio, a
24 BOLO, for these suspects?

25 A I did. I heard a BOLO come out about a black

WILLIAM BREWER-DIRECT BY MR. FOWLER

1 Mercedes with two black males, one being light-skinned,
2 and they were involved in some type of shooting over near
3 Mills Avenue.

4 Q Did you see a vehicle or any people that matched
5 that description?

6 A I did. Well, I was somewhat at the southern
7 end, just right above 85 on Whitehorse Road and I saw a
8 vehicle and suspects matching that description pass me.
9 So, I called into dispatch just to confirm the BOLO.
10 Because like I said, I'm working a side job, I'm not too
11 much into the radio, but some of the things we overhear,
12 some keywords we pick up and that was one -- the shooting
13 was one of the keywords. So, they confirmed the BOLO and
14 the description of the vehicle and the suspects.

15 Q Okay. So, after dispatch confirmed the BOLO,
16 what did you do?

17 A We saw each other, for the most part, at the
18 same time. It was kind of that awkward glance. And
19 after, like I said, I confirmed it, continued going just
20 somewhat just to kind of give off that I'm not really
21 paying attention to you. And I waited until they pulled,
22 in my rear-view mirror, into the Citgo and I flipped
23 around and tried to get out with them at the Citgo.

24 Q When you pulled into the Citgo, what did that
25 do?

WILLIAM BREWER-DIRECT BY MR. FOWLER

1 A The driver was already out of the vehicle and he
2 jumped back in the vehicle and they fled from me at that
3 time.

4 Q Okay. Did you have your lights and sirens on
5 then?

6 A Not then. Whenever he jumped into the vehicle
7 is whenever I actually turned on my lights and siren.

8 Q Were you in uniform?

9 A I was.

10 Q Was your vehicle marked?

11 A Yes, sir.

12 Q Do you have any doubt that they saw and heard
13 your lights and siren?

14 A Yes, sir, they saw me... No doubt at all.

15 Q Were you even able to get out of the car?

16 A No, sir. I was just pulling into the lot.

17 Q Okay. So, after they pulled out, you -- what
18 did you do?

19 A I initiated my pursuit. I told dispatch that I
20 was actually pursuing the possible suspect vehicle. After
21 it was approved by the supervisor, we continued to case --
22 or I continued to chase.

23 Q How fast did y'all end up going?

24 A At some point -- I know the second time we ended
25 back onto 25 down at Augusta Park, we were going over 120

WILLIAM BREWER-DIRECT BY MR. FOWLER

1 miles per hour. I think my GPS actually had us at 127,
2 that was my vehicle. That Mercedes was well past that.
3 It was out in front of my Crown Vic, leaps and bounds.

4 Q And you were coordinating with the helicopters
5 and the other officers, correct?

6 A Yes, sir. I also work on the aviation team, so
7 Lieutenant Hines knows me personally, started radioing
8 down to me personally and telling me basically which way
9 the vehicle was going. Because like I said, at certain
10 points, it was definitely out performing my vehicle.

11 Q Okay. So, you -- they entered -- did they go in
12 the woods at all in their vehicle?

13 A Like I said, at certain points, they were
14 pulling away so fast that I couldn't keep up with them. I
15 overheard on my radio, Lieutenant Hines saying that they
16 were in the woods somewhere. They went down a dead-end
17 road. So, I just started going back to the general area
18 just in case they popped out. And that's whenever they
19 popped out, I was basically right there at Piedmont
20 Highway again.

21 Q Okay. So, you saw them pop out on Piedmont
22 Highway?

23 A I didn't see them pop out. Lieutenant Hines
24 radioed and said that they popped out and I was basically
25 at that intersection -- I'm not really sure of the road,

WILLIAM BREWER-DIRECT BY MR. FOWLER

1 but I was right there almost to the stop sign of a side
2 road entering onto Piedmont Highway, just sort of their
3 location closer to Whitehorse Road.

4 Q But you saw their vehicle on Highway 20?

5 A Whenever I pulled onto Highway 20, yes, I did
6 pick them back up again.

7 Q Okay. What did they do as they went down the
8 highway?

9 A They were going down Highway 20 away from
10 Whitehorse Road. Like I said, I was closer to the
11 Whitehorse Road side. My understanding, whenever they saw
12 other units at that location, where they -- initially the
13 wreck happened, they flipped around and started heading
14 back my way. I positioned my car in the median, expecting
15 them to pass me. I was just going to jump back in the
16 pursuit. When they saw me and I think another unit behind
17 me, they actually tried to make a hard right and just kind
18 of bulldoze or plow into that Dodge truck.

19 Q So, you saw them hit that truck?

20 A Yes, sir.

21 Q What did they do after they hit the truck?

22 A Mr. Hare came out of the passenger seat. He
23 trampled all over the passenger to get out, and he took
24 off running through the parking lot. I stopped my vehicle
25 and took off pursuit. As we saw on the helicopter, I was

WILLIAM BREWER-DIRECT BY MR. FOWLER

1 actually the top unit that made initial contact with
2 Mr. Hare.

3 Q So, you were the guy who basically tackled
4 Mr. Hare in the parking lot?

5 A Right.

6 Q Then was there another person in the vehicle as
7 well?

8 A Yes, sir, that was Mr. Salter with the vehicle.
9 He stayed in the vehicle, though.

10 Q Did you actually arrest him as well?

11 A Yes, sir. I came back to assist -- once he was
12 detained, I left him with another officer, came back to
13 assist -- because only one unit was with the secondary --
14 the other -- the passenger of the vehicle. So, I came
15 back to him and relieved him from the officer that
16 actually had him at gunpoint and then placed him in the
17 back of my vehicle.

18 Q When you put him in his vehicle, did he have
19 anything -- in your vehicle, sorry, did he have anything
20 on his person?

21 A Right. Search, seizure to arrest to check for
22 weapons and stuff. Obviously, since this is a shooting
23 call, I found actually shell casings in an outer pair of
24 pants, like sweatpants, but they're kind of cargo
25 sweatpants shorts.

WILLIAM BREWER-DIRECT BY MR. FOWLER

1 Q Just to be clear, that is the -- the driver of
2 the vehicle, the driver of the black Mercedes, is he in
3 the courtroom right now?

4 A The driver is, yes, sir. It's Mr. Hare in the
5 blue suit.

6 Q Okay. I'm going to show you some pictures and
7 if you can tell me if they're a fair and accurate
8 representation of the scene as you remember it they day?

9 A Yes, sir.

10 Q All right.

11 MR. FOWLER: Your Honor, the State moves to
12 enter State Exhibits 10 through 13, pictures of the
13 wreck.

14 MR. HAMILTON: Again, Judge, this is already in
15 evidence.

16 THE COURT: Those pictures aren't in evidence.

17 MR. HAMILTON: The video is. It's cumulative.

18 THE COURT: Well, I don't find it cumulative.

19 Go ahead.

20 (WHEREUPON, State's Exhibits Nos. 10-13 were
21 admitted into evidence.)

22 BY MR. FOWLER:

23 Q So, is that the vehicle -- that black Mercedes,
24 that's the one we've been talking about?

25 A Yes, sir, that's the vehicle the suspects were

WILLIAM BREWER-DIRECT BY MR. FOWLER

1 in.

2 Q And that's the Dodge truck you saw them hit,
3 correct?

4 A Yes, sir.

5 Q So, you were kind of back in here when you saw
6 this wreck happen?

7 A Yes, sir. If you remember the helicopter video,
8 I was actually the first car to pull up from that side.
9 So, I mean, I had an eyewitness view of all the wreck.

10 Q Okay. Then that's another picture there of the
11 Mercedes. So, it hit right about there on the driver's
12 door?

13 A Yes, sir.

14 Q Here we are again. That's the building --
15 that's about where he got to when you --

16 A Yes, sir.

17 Q Okay. So, from this picture, it looks like he
18 hit the door and then kind of kept going?

19 THE COURT: Ask questions, do not testify.

20 Go ahead.

21 BY MR. FOWLER:

22 Q Can you tell kind of the trajectory of the car
23 from the damage to the vehicles here?

24 A Like I said, whenever he went to go make that
25 right-hand turn, it was too fast for conditions. He

WILLIE WRIGHT-DIRECT BY MR. FOWLER

1 plowed that vehicle. He tried to turn, but the tires
2 wouldn't allow him. The front tires would not keep up
3 with the speed.

4 Q Okay. Okay.. And these events occurred in
5 Greenville County, correct?

6 A Yes, sir, they did.

7 MR. FOWLER: That's all I've got, Judge.

8 THE COURT: Cross?

9 MR. HAMILTON: No questions, Your Honor.

10 THE COURT: All right. Thank you. You may
11 stand down.

12 MR. FOWLER: The State calls Willie Wright.

13 THE CLERK: Place your left hand on the Bible
14 and raise your right hand.

15 WILLIE WRIGHT, after being duly sworn,
16 testified as follows:

17 THE CLERK: Thank you. Please be seated. Sir,
18 please state your name for the record.

19 THE WITNESS: My name is Willie Wright, the
20 third.

21 THE CLERK: Thank you, sir.

22 DIRECT EXAMINATION

23 BY MR. FOWLER:

24 Q Okay, Mr. Wright, how old are you?

25 A Fifty-two.

WILLIE WRIGHT-DIRECT BY MR. FOWLER

1 Q All right. What do you do for a living?

2 A Trainer.

3 Q Where are you a trainer?

4 A [indiscernible] Logistics.

5 Q Were you working there back in September of
6 2015?

7 A Yes, I was.

8 Q Okay. How long have you worked there?

9 A Fifteen years.

10 Q Okay. Do you remember September 1st, 2015, were
11 you involved in a car wreck?

12 A Yes, I was.

13 Q Okay. Is that your Dodge truck we saw that was
14 hit?

15 A Yes, it was.

16 Q Where were you heading that day?

17 A I was headed back to work from lunch.

18 Q Were you stopped anywhere or were you actively
19 driving?

20 A I was stopped at the stop sign.

21 Q Okay. Do you remember seeing a black Mercedes
22 go by?

23 A It went by.

24 Q What did you see after they went by?

25 A I saw a police car come behind them and turn

WILLIE WRIGHT-DIRECT BY MR. FOWLER

1 around, came back. I just waited to see what was going
2 on. And he just couldn't make that turn, so ran into me.
3 That was it.

4 Q Where on your car did he hit you?

5 A The driver's side.

6 Q Okay. Did -- what's the next memory you have
7 after being hit?

8 A Getting transported to the hospital.

9 Q So, it knocked you out?

10 A Yes, it did.

11 Q Were you hurt?

12 A Yes, I was.

13 Q Were you hurt badly? How long did you stay in
14 the hospital?

15 A A couple days.

16 Q Okay. Did it scare you at all when you saw
17 this?

18 A It shocked me pretty bad, you know.

19 Q Uh-huh. Okay. Did you have any chance to maybe
20 you get a look at the people driving the Mercedes or?

21 A No, I didn't. I just braced myself for the
22 impact.

23 Q Yes, sir.

24 MR. FOWLER: That's all I've got, Judge.

25 THE COURT: Cross?

JAQUAN SALTER-DIRECT BY MR. MOYER

1 MR. HAMILTON: We have no questions of this
2 witness.

3 THE COURT: All right. Thank you very much.
4 You may step down. Thank you, sir.

5 THE WITNESS: Thank you.

6 THE COURT: All right. Call your next witness.

7 MR. MOYER: The State's going to call Jaquan
8 Salter.

9 THE COURT REPORTER: How do you spell his first
10 name?

11 MR. MOYER: J-A-Q-U-A-N, S-A-L-T-E-R.

12 THE COURT REPORTER: Thank you.

13 THE CLERK: Mr. Salter, if you'll come around,
14 please. Please put your left hand on the Bible,
15 raise your right hand.

16 JAQUAN SALTER, after being duly sworn,
17 testified as follows:

18 THE CLERK: Thank you. Please come around and
19 be seated. State your name for the record.

20 THE WITNESS: Jaquan Salter.

21 THE COURT: All right, let me get you to move up
22 close to the microphone, speak into it so we can hear
23 your voice.

24 THE WITNESS: Jaquan Salter.

25 DIRECT EXAMINATION

JAQUAN SALTER-DIRECT BY MR. MOYER

1 BY MR. MOYER:

2 Q Mr. Salter, I'm going to be asking you questions
3 over here, so move up just a little bit closer. We've got
4 to make sure all the jurors can hear you. Would you spell
5 your first name for the court reporter?

6 A J-A-Q-U-A-N.

7 Q Okay. How you spell your last name?

8 A S-A-L-T-E-R.

9 Q How old are you, Mr. Salter?

10 A Eighteen.

11 Q You're from Greenville?

12 A Yeah.

13 Q Okay. Now, obviously, you're -- right now,
14 you're staying at the Greenville County Detention Center,
15 is that right?

16 A Yeah.

17 Q Okay. And that -- is that for something that's
18 unrelated to this incident that happened with the shooting
19 of the car?

20 A Yeah.

21 Q Okay. You're in for -- it's accessory after the
22 fact to a felony, right, is that the charge you're --

23 A Yes, sir.

24 Q And you're waiting court for that, is that true?

25 A Yes, sir.

JAQUAN SALTER-DIRECT BY MR. MOYER

1 Q Okay. Now, who were you living with before you
2 got into the trouble and got locked up?

3 A My grandfather.

4 Q That's here in Greenville?

5 A Yeah.

6 Q Okay. Now, let me take you back to September
7 the 1st of 2015, almost a couple of years ago. Was that
8 you that was in the black Mercedes with Braxton Hare when
9 it got in that accident?

10 A Yes, sir.

11 Q So, was there anyone else in the car with you
12 two?

13 A No, sir.

14 Q Just you and Mr. Hare?

15 A Yes, sir.

16 Q I'm sorry?

17 A Yes, sir.

18 Q How do you know Mr. Hare?

19 A Grow up with him.

20 Q Okay. How long have you known him?

21 A I can't tell you exactly how long.

22 Q Were you in elementary school or middle school
23 would you say?

24 A Middle.

25 Q All right, middle school. You were from the

JAQUAN SALTER-DIRECT BY MR. MOYER

1 same neighborhood?

2 A Yeah.

3 Q What about William Hunter?

4 A Grow up with him.

5 Q So, you know him just about as well as you know
6 Mr. Hare?

7 A About the same time.

8 Q Okay. Whose car is that Mercedes?

9 A I can't tell you exactly who.

10 Q So, you don't know who owns it, but would Braxton
11 drive that car a lot?

12 A Yes, sir.

13 Q How often would he drive it, every day or every
14 once in a while?

15 A Every day.

16 Q Okay. Do you know if it belonged to his mom or
17 his dad or any other relatives?

18 A I believe so.

19 Q You believe it belonged to his mom or dad or
20 somebody else?

21 A (The witness nods.)

22 Q But you don't know, is that correct?

23 A Yes, sir.

24 Q So, was Mr. Hare, Braxton Hare, driving that car
25 when you saw him on September 1st of 2015?

JAQUAN SALTER-DIRECT BY MR. MOYER

1 A Yes, sir.

2 Q Where were you when you got picked up by him?

3 A At my house.

4 Q What's the address of your house?

5 A [REDACTED] Road.

6 Q [REDACTED] Road?

7 A (The witness nods.)

8 Q Is that kind of close to Carolina High School?

9 A Yes, sir.

10 Q Okay. So, how did you know -- did Braxton Hare
11 just show up at your house that morning or did you know he
12 was coming?

13 A I know.

14 Q How did you know he was coming?

15 A He called me.

16 Q And did he call you a long time before he showed
17 up or?

18 A No.

19 Q A short while before he showed up?

20 A Yeah.

21 Q Okay. You have to answer yes or no. You can't
22 just nod your head.

23 A Oh, yeah.

24 Q Was it just him speaking or was there anyone
25 else speaking?

JAQUAN SALTER-DIRECT BY MR. MOYER

1 A Just him.

2 Q What -- tell us about the conversation, what was
3 said?

4 A He just told me he was on the way to my house,
5 and that was really it.

6 Q Did he say anything about anything that had just
7 happened?

8 A No, sir.

9 Q He didn't talk about what he was up to or
10 anything that was going on?

11 A No, sir.

12 Q Okay.

13 A He just told me he was on the way.

14 Q Told you he was on the way. So, did he talk
15 about -- so, was he in the car at the time he called you?

16 A Yes, sir.

17 Q Now, do you remember talking to some officers at
18 another time and telling them about that conversation?

19 MR. HAMILTON: Your Honor, I think he's leading
20 the witness.

21 MR. MOYER: I think I can impeach a witness.

22 THE COURT: Don't lead, but go ahead.

23 BY MR. MOYER:

24 Q All right. Have you ever told anybody else
25 anything different about the conversation that you had

JAQUAN SALTER-DIRECT BY MR. MOYER

1 with Braxton Hare?

2 A No. I just said he was leaving the store and he
3 was on the way to my house. After he came and got me, we
4 went to the store.

5 Q Okay. So, that's where you went after he came
6 and got you?

7 A Yes, sir.

8 Q Okay. Now, after he came -- so he picked you up
9 at your house, your granddad's house. And did you have
10 any conversation about what he had been doing or anything
11 that had happened?

12 MR. HAMILTON: Your Honor, here again, he's
13 leading.

14 MR. MOYER: That's not leading.

15 THE COURT: No, that's not. Just go ahead.

16 BY MR. MOYER:

17 Q Did you have any conversation with him about
18 anything that may have happened?

19 A No, we was talking about what we was going to
20 do. I told him to take me to the store. After we went to
21 the store, I seen a police and I told him to go because I
22 had warrants.

23 Q Okay. And where were you when this happened?

24 A Where was I at?

25 Q Yeah.

JAQUAN SALTER-DIRECT BY MR. MOYER

- 1 A You talking about the high speed chase?
- 2 Q When you saw the police?
- 3 A Citgo.
- 4 Q You were at a Citgo. And you saw a police
- 5 officer, did you see blue lights?
- 6 A Yes.
- 7 Q Did you hear sirens?
- 8 A Yeah.
- 9 Q Okay. So, tell us what happened after -- did he
- 10 take off in the vehicle?
- 11 A Yeah.
- 12 Q In the Mercedes? Did he get going pretty fast?
- 13 A Yes, sir.
- 14 Q Now, did you ever see him with anything during
- 15 that chase?
- 16 A No, I had something.
- 17 Q What did you have?
- 18 A A weapon.
- 19 Q You had a weapon?
- 20 A Yeah.
- 21 Q Did anybody else have a weapon?
- 22 A No.
- 23 Q Okay. Now, do you remember having spoken to
- 24 police officers on a former date and time and said
- 25 something different about that?

JAQUAN SALTER-DIRECT BY MR. MOYER

1 A No, sir. I said I seen him prior to the
2 incident with a...

3 Q You saw him prior to the incident with what?

4 A With a weapon before.

5 Q When?

6 A Before all this happened.

7 Q How long before?

8 A About like a week.

9 Q So, you've seen him with a gun before?

10 A (The witness nods.)

11 Q Did you tell an officer that Braxton Hare threw
12 a pistol out of the window while you were on that high
13 speed chase?

14 MR. HAMILTON: Your Honor.

15 THE COURT: What? What's the objection?

16 MR. HAMILTON: Your Honor, he's leading. He's
17 stating what he said. He didn't ask him.

18 MR. MOYER: I'm asking him --

19 THE COURT: Okay, just ask him what he told the
20 officers, then you can...

21 BY MR. MOYER:

22 Q What did you tell the officer about whether or
23 not Braxton Hare had gun or not?

24 A That same day I was intoxicated, I told them he
25 had gun.

JAQUAN SALTER-DIRECT BY MR. MOYER

1 Q I'm sorry? Say that again.

2 A I said the same day I was intoxicated, I told
3 him he had a gun.

4 Q The same day you were intoxicated?

5 A Yeah.

6 Q When were you intoxicated?

7 A That day we had both went to jail after the high
8 speed chase.

9 Q I'm sorry?

10 A The day on the highway speed chase,
11 September 1st.

12 Q You were intoxicated, is that what you said?

13 A Yeah.

14 Q Around what time of day was this?

15 A What time of day what?

16 Q That that high speed chase was.

17 A Around like 12:00 or 1:00.

18 Q So, you were intoxicated on what?

19 A Marijuana.

20 Q How intoxicated were you?

21 A I don't know.

22 Q But you're intoxicated. So, you're trying to
23 tell me that's why you told the officer that he threw the
24 gun out the window?

25 A Yes, sir.

JAQUAN SALTER-DIRECT BY MR. MOYER

1 Q Was it true or not true?

2 A What was true?

3 Q When you told the officer that Braxton Hare --

4 A Oh, yeah.

5 MR. HAMILTON: Your Honor, he --

6 THE CLERK: Wait a minute. What's your
7 objection?

8 MR. HAMILTON: I object, Your Honor, that he's
9 leading the witness. He's making a statement. He's
10 testifying.

11 THE COURT: No, I overrule. I'm going to allow
12 it. Go ahead.

13 THE WITNESS: It's true.

14 BY MR. MOYER:

15 Q So, it was true that he threw a gun out the
16 window?

17 A Yeah.

18 Q At what point -- tell me about the gun. Where
19 did the gun come from?

20 A I don't know.

21 Q Was it under the seat? Was it in his pocket?

22 A No, it was in his lap.

23 Q I'm sorry, say that again.

24 A In his lap.

25 Q In his lap. Okay. What window did he throw it

JAQUAN SALTER-DIRECT BY MR. MOYER

1 out of?

2 A Passenger.

3 Q He threw it out the passenger seat. Where were
4 you sated?

5 A Passenger.

6 Q Was the window down or did you have to roll the
7 window down?

8 A No, it was down.

9 Q The window was down. So, he reached over and
10 threw a pistol out of the window?

11 A Yeah.

12 Q Okay. Now, you also talked -- we talked about
13 this phone call that was made from Braxton earlier. Did
14 you hear just Braxton on that phone call or did you hear
15 anybody else?

16 A Both.

17 Q Okay. What did you -- what was the nature of
18 that conversation?

19 A Oh, that he was on the way to come get me.

20 Q Okay. Now, let me ask you about this as well,
21 when you were interviewed by police officers after this,
22 at some point, did you not tell the officers that they
23 told you about an incident that had just happened?

24 MR. HAMILTON: Objection.

25 THE COURT: On what basis?

JAQUAN SALTER-DIRECT BY MR. MOYER

1 MR. HAMILTON: He's testifying. He's --

2 THE COURT: No, overruled. Go ahead.

3 BY MR. MOYER:

4 Q Do you want me to rephrase the question, repeat
5 the question?

6 A Yes, sir.

7 Q On another occasion when you -- now, after --
8 after you got arrested there after the car crashed, you
9 were taken back to the law enforcement center and officers
10 spoke to you, right?

11 A (The witness nods.)

12 Q You've got to say yes -- yes?

13 A Yes, sir.

14 Q And during that conversation, did you tell the
15 officers that during that phone call, Braxton Hare told
16 you about something that had just happened?

17 A Yes, sir.

18 Q What did you tell the officers that Braxton had
19 told you?

20 A About the shooting.

21 Q About the shooting?

22 A (The witness nods.)

23 Q What did he say about the shooting?

24 A He didn't say nothing. He just said something
25 about a shooting. He didn't tell me no specific thing.

JAQUAN SALTER-DIRECT BY MR. MOYER

1 Q He said something about a shooting?

2 A Yeah.

3 Q Well, what did -- like, did he say he shot into
4 the air or he -- I mean, what --

5 A He didn't say nothing.

6 Q I'm sorry?

7 A He didn't tell me no specific thing.

8 Q Well, what specifics do you recall that he told
9 you about the shooting?

10 A He just said there was a shooting.

11 Q He said there was a shooting?

12 A Yeah.

13 Q Did he -- how did he sound when he called you?

14 A Like normal, hisself.

15 Q He sounded like himself?

16 A (The witness nods.)

17 Q Okay. And so, he just -- elaborate on that a
18 little bit more. So, he just called you up and said there
19 was a shooting and that's it?

20 MR. HAMILTON: Objection.

21 THE COURT: What basis?

22 MR. HAMILTON: Asked and answered.

23 THE COURT: No, I'm going to overrule.

24 Go ahead.

25

JAQUAN SALTER-DIRECT BY MR. MOYER

1 BY MR. MOYER:

2 Q I'm asking you to tell us a little bit more
3 about that conversation with him about this shooting?

4 A He didn't say nothing. He just said something
5 about a shooting and he was on the way to come get me.

6 Q And you didn't ask him -- so, someone called you
7 up and said out of the blue there was shooting and you
8 didn't say well --

9 A I wasn't really worried about it. I was at home
10 asleep.

11 Q You were at home asleep?

12 A Yeah.

13 Q Okay. So, he said there was a shooting and he
14 said he was coming to get you. When he came and got you,
15 did you ask him about this shooting?

16 A No, sir.

17 MR. HAMILTON: Your Honor, this is the same
18 question, different form.

19 THE COURT: Okay. Overruled.

20 But don't beat a dead horse, Mr. Moyer. Go
21 ahead.

22 BY MR. MOYER:

23 Q Did you ask him about the shooting?

24 A I really wasn't worried about it.

25 Q You weren't worried about getting in a car with

JAQUAN SALTER-DIRECT BY MR. MOYER

1 somebody who just said they were in a shooting?

2 A. (The witness shook his head.)

3 MR. HAMILTON: Objection, Your Honor, argument.

4 THE COURT: No, overruled.

5 Go ahead.

6 BY MR. MOYER:

7 Q You weren't worried about getting in a car with
8 somebody who just said they were involved in a shooting?

9 A No, sir.

10 Q So, you didn't ask him about it?

11 A No, sir.

12 Q He didn't tell you any more about it?

13 A No, sir.

14 Q But you saw a gun in his lap?

15 A Yes, sir.

16 Q And you didn't ask him about that?

17 A (The witness shook his head.)

18 Q You didn't ask him if that was the gun that was
19 just used in the shooting?

20 A No, sir.

21 Q You assumed it was?

22 A I didn't assume nothing.

23 Q Okay. Now, after you all ran into the other
24 truck at the end of the car chase with the police, you got
25 arrested by some police officers, right?

JAQUAN SALTER-DIRECT BY MR. MOYER

1 A Yeah.

2 Q And you had some things in your pocket that the
3 police officers took, right?

4 A Yes, sir.

5 Q What was that?

6 A A phone and some bullet shells.

7 Q Some bullet shells. Were they bullet shells
8 that still had bullets in them or had they already been
9 shot?

10 A Already been shot.

11 Q So, the shell casings, is that correct?

12 A (The witness nods.)

13 Q Where did they come from?

14 A Them was shell casings I already had.

15 Q They were shell casings you already had?

16 A Yes, sir.

17 Q Where did you have those from?

18 A I don't know.

19 Q Huh?

20 A It was just some shells I had kept.

21 Q You had kept from where?

22 A I just had kept them.

23 Q You just got up that morning and put shell
24 casings in your pocket before you went out with Mr. Hare?

25 MR. HAMILTON: Objection.

JAUAN SALTER-DIRECT BY MR. MOYER

1 THE COURT: On what basis? Stand up if you're
2 going to make an objection, Mr. Hamilton.

3 MR. HAMILTON: Your Honor, he is leading the
4 witness. The answer is in the question.

5 THE COURT: Overruled.

6 Go ahead.

7 THE WITNESS: No, them shell casings, I already
8 had them.

9 BY MR. MOYER:

10 Q You already had them. When did you get them?

11 A I don't know an exact time, but I already had
12 them from when I had a weapon.

13 Q That day?

14 A No, not that same day.

15 Q What caliber shell casings were these?

16 A .380 and .32.

17 Q How many .380 shell casings were there?

18 A I don't know right off the bat.

19 Q Okay. Now, once again, let me ask you, did you
20 ever tell one of these officers a different story about
21 where those shell casings came from?

22 A No.

23 MR. HAMILTON: Your Honor, he started off by
24 once again, that's my basis. He's asked that
25 question and it's been answered.

JAQUAN SALTER-DIRECT BY MR. MOYER

1 MR. MOYER: Your Honor, under the rules, I'm
2 allowed --

3 THE COURT: Yeah, overruled.

4 Go ahead.

5 BY MR. MOYER:

6 Q Do you recall -- once again, when you were
7 interviewed by the police officers, they asked you about
8 those shell casings, didn't they?

9 A Yes, sir.

10 Q And you told them something different then than
11 you're telling them today, didn't you?

12 A Not that I recall.

13 Q You don't recall telling the officers that you
14 picked those shell casings up out of the cup holder?

15 A No, sir. They was already mine that I got
16 caught with in my pocket.

17 Q So, you're telling us that's what you told the
18 officers back then?

19 A Yes, sir.

20 Q You didn't tell them a different story about
21 that?

22 A If I did, I don't recall.

23 Q You don't recall?

24 A No, sir.

25 Q But if you did, which would be true, what you're

JAQUAN SALTER-DIRECT BY MR. MOYER

1 saying today or what you said back then?

2 A Today.

3 Q Okay. Well, why would you have told the
4 officers something different back then?

5 A I don't know.

6 Q You don't know?

7 A No, sir.

8 Q Okay. One moment, please. What kind of guns
9 did you have?

10 A 380.

11 Q 380?

12 A Yes, sir.

13 Q What about that -- did you have a 32, also?

14 A No, sir.

15 Q How did you have a 32 shell casing in your
16 pocket?

17 A One shell I had found.

18 Q You had found it?

19 A Yeah, at my house.

20 Q When had you shot those rounds?

21 A Like a week prior.

22 Q Why did you put them in your pocket that morning
23 before you got up?

24 A I was keeping them.

25 Q You were keeping them in your pocket? You

JAQUAN SALTER-DIRECT BY MR. MOYER

1 didn't want --

2 A No, no, I was just keeping them. I really think
3 it was in my bookbag, then I had some more bullets, but I
4 had got rid of them.

5 Q You had some more bullets in your bookbag?

6 A Yeah, but I had got rid of them. I don't how
7 many shells I had because I had forgot about them.

8 Q So, you just like to carry them around with you
9 in your pocket?

10 A No, sir.

11 Q Why did you have them in your pocket that day?

12 A I had some bullets and some shells that I
13 already had.

14 Q Okay. So, was Braxton -- how was Braxton Hare
15 acting when he picked you up?

16 A Cool.

17 Q What does that mean?

18 A I don't know how he supposed to act.

19 Q Was he acting any different than any other time?

20 A No, sir.

21 Q Did he seem upset?

22 A No, sir.

23 Q Did he seem angry?

24 A No, sir.

25 Q Just seemed normal?

JAQUAN SALTER-CROSS BY MR. HAMILTON

1 A Yes, sir.

2 Q Okay. And he didn't talk any more about this
3 shooting?

4 A No, sir.

5 Q And you didn't ask him any more about this
6 shooting?

7 A I never asked him about it.

8 Q You weren't curious why?

9 A No, sir.

10 Q That's not something that seemed out of the
11 ordinary for you --

12 THE COURT: We've been down that road. Move on.

13 MR. MOYER: All right. Please answer any
14 questions Defense may have.

15 THE COURT: All right. Cross?

16 CROSS-EXAMINATION

17 BY MR. HAMILTON:

18 Q Okay. Mr -- is it Jaquan? Jaquan, right?
19 Jaquan Salter?

20 A Yes, sir.

21 Q And we were talking about how long you've known
22 Braxton. What middle school did you go to?

23 A I went the Tanglewood.

24 Q So, when did you meet Braxton?

25 A Probably -- I don't know exactly when, but

JAQUAN SALTER-CROSS BY MR. HAMILTON

1 sometime around that time.

2 Q All right. Braxton didn't go so Tanglewood, he
3 went to Lakeview, right?

4 A I guess.

5 Q Okay. All right. Now, the solicitor was asking
6 you about talking to the police. You've got a false
7 information -- you've given false information to police
8 before, haven't you?

9 A Yes, sir.

10 Q And that's something you do. Now, today, are
11 you trying to say what you remember?

12 A Sir?

13 Q Are you trying to say what you actually remember
14 and what happened today? You're not giving my false
15 statement?

16 A No, sir.

17 Q Okay. All right. And the solicitor want you to
18 say that you talked about -- told the police Braxton was
19 involved in a shooting, right?

20 A Yes, sir.

21 Q Did Braxton tell you that he was trying to kill
22 somebody or had any intent to --

23 A No, sir.

24 Q To shoot and kill somebody?

25 A No, sir.

JAQUAN SALTER-CROSS BY MR. HAMILTON

1 Q Did he say yeah, I just got through trying to
2 kill somebody?

3 A No, sir.

4 Q Okay. All right. And then the guns, you've
5 known Braxton to have guns?

6 A Yeah.

7 Q And have you ever seen him shoot at anybody?

8 A No, sir.

9 Q Try to kill them?

10 A No, sir.

11 Q So, his attitude when you got with him, he's a
12 cool dude, right?

13 A Yes, sir.

14 Q All right.

15 MR. HAMILTON: That's all I have, Judge.

16 THE COURT: Anything else?

17 MR. MOYER: One matter. Maybe we can approach?

18 THE COURT: Yeah, come on up.

19 (WHEREUPON, an off-the-record bench conference
20 was held in the presence of the jury but out of
21 the hearing of the jury.)

22 THE COURT: All right. Ladies and gentlemen,
23 we're -- it doesn't look like we -- I was going to
24 see if we could get in another short witness or two
25 today, but it doesn't look like we're going to have

1 that opportunity, so we're going to break for the
2 day.

3 Remember, please, what I told you about not
4 discussing this case with anybody. I will tell you,
5 we all know it's human nature that when you go home
6 and you see friends or you see family, they're going
7 to be interested in what you're doing. They're going
8 to be interested in knowing about it. And you cannot
9 discuss it, and remember why. Don't do any research,
10 don't get on the internet, don't go visit the scene,
11 don't get on some social media site. Everything
12 you're going to need to know to make a decision about
13 how to resolve this dispute should come from what you
14 learn in this courtroom from the constitutionally
15 proper evidence that's presented and the law that I
16 give to you.

17 With that, I'll ask y'all to be back at 9:30 in
18 the morning. Have a pleasant night.

19 (WHEREUPON, the jury left open court at
20 approximately 4:55 p.m.).

21 THE COURT: All right. You need to take him?

22 THE DEPUTY: Yes, sir.

23 THE COURT: Okay. All right, anything before we
24 break?

25 MR. MOYER: No, Your Honor.

1 MR. HAMILTON: Nothing further.

2 THE COURT: Okay. All right. 9:30.

3 (WHEREUPON, the proceedings were concluded for
4 the day to be reconvened on Wednesday, July 13,
5 2017.)

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1 July 13, 2017

2 MR. WARDER: Your Honor, may we approach?

3 THE COURT: Yeah.

4 (WHEREUPON, an off-the-record bench conference
5 was held.)

6 THE COURT: All right. Anything before we get
7 this jury?

8 MR. MOYER: I just want to put one thing on the
9 record, Your Honor. Because I don't think we'll have
10 a break before the third witness testifies, Matt
11 Owens, regarding some evidence that we plan to
12 introduce with him. We collected a backpack that had
13 some items in it. Collected that from that black
14 Mercedes, and the backpack had a spent round or some
15 live rounds in it. It also had two handkerchieves,
16 masks. Just for the record, I want to say out of an
17 abundance of caution, to avoid any possibility of the
18 hint of any unrelated criminal activity, we're going
19 to omit those items from the testimony. So, just
20 want to make sure that's part of the record now.
21 Unless, you know, the door gets opened in some other
22 fashion.

23 THE COURT: Do you intend to introduce the
24 backpack?

25 MR. MOYER: We do.

1 THE COURT: Without its full contents?

2 MR. MOYER: Well, I mean, we're happy to
3 introduce it, but, like I said, just out of an
4 abundance of caution of the hint because there was no
5 mask used in this particular case. The Defendant has
6 been -- has other pending charges, including armed
7 robbery and other items. So just out of the -- the
8 possibly the jury could draw an inference that those
9 masks were to be used for other criminal activity.

10 THE COURT: Are they masks?

11 MR. MOYER: Well, bandannas, large bandannas.
12 Unless Mr. Hamilton's not worried about that, I'm
13 happy to introduce it.

14 MR. HAMILTON: Of course, Your Honor, we're just
15 trying to be fair. There's some apprehension. He
16 knows that it is very close to being highly
17 prejudicial and improper. It has nothing to do
18 with -- it's too close.

19 THE COURT: Too close to what?

20 MR. HAMILTON: Too close to being beyond the
21 rules of improper admission to evidence and relevancy
22 and prejudicial value.

23 THE COURT: Two bandannas?

24 MR. HAMILTON: Yeah, two.

25 THE COURT: Two bandannas.

1 Is that -- what's your concern, Mr. Moyer? What
2 color are the bandannas?

3 MR. MOYER: Well, they're black and white. This
4 was in the summer. I mean --

5 MR. HAMILTON: No, we're saying we don't want
6 it. Now, he's saying he wants to put them in or keep
7 them out?

8 THE COURT: No, he said he wasn't going to put
9 them in.

10 MR. HAMILTON: Okay.

11 THE COURT: What about the shell?

12 MR. MOYER: There's a spent 9mm shell casing
13 that was in the backpack. There were also some live
14 rounds, some 380 -- there were ten 380 live rounds in
15 the pack.

16 THE COURT: You say they're unconnected to this
17 case?

18 MR. MOYER: No, those items, we would seek to
19 introduce because it gives the -- it goes to
20 establish the evidence of firearms being in that
21 vehicle.

22 THE COURT: Yeah.

23 MR. MOYER: So, we would seek to introduce
24 those.

25 THE COURT: So, the only thing you're talking

1 about are the two bandannas?

2 MR. MOYER: That's correct.

3 THE COURT: Well, I'm just curious if they
4 should be introduced as Court's Exhibits so that
5 should this case go -- result in a conviction and be
6 appealed, I mean, I'm just trying to think down the
7 road about the record.

8 MR. MOYER: Okay.

9 THE COURT: I don't want there to be any
10 allegation that the State was hiding evidence. Do
11 you agree with that?

12 MR. HAMILTON: I agree with that, Judge.

13 THE COURT: Okay.

14 MR. MOYER: So, if it please the court, Your
15 Honor, the State would seek to introduce as Court's
16 Exhibits two bandannas that were seized by Detective
17 Owens.

18 THE COURT: Let me just ask you this, do you
19 have a plastic bag you can put them in? You don't
20 have to do that right this minute. Okay.

21 MR. MOYER: Okay.

22 THE COURT: We'll just get something to put them
23 so they can be entered as one exhibit.

24 For the record, I would just say I observed
25 Mr. Moyer remove the two bandannas in question from

1 inside the backpack, this red backpack. Okay. All
2 right.

3 You want to look at them, Mr. Hamilton? Any
4 question about that? Here they are. This is what --
5 we're going to introduce them as a Court's Exhibit so
6 they're in the record so there's no question that --

7 MR. HAMILTON: Yeah.

8 THE COURT: Down the road.

9 (WHEREUPON, Court's Exhibit No. 2 was marked for
10 identification only.)

11 THE COURT: All right.

12 (WHEREUPON, State's Exhibit No. 19 was marked
13 for identification only.)

14 THE COURT: Are we ready?

15 MR. MOYER: State's ready, Your Honor.

16 THE COURT: Mr. Hamilton?

17 MR. HAMILTON: The Defense is ready.

18 THE COURT: All right. Your client looks a
19 little perplexed about the bandannas.

20 They're just going into the record. The jury's
21 not going to see them. Do you understand that?

22 MR. HARE: Yes, sir.

23 THE COURT: Okay. Okay.

24 (WHEREUPON, the jury came into open court at
25 approximately 9:50 a.m.)

1 THE COURT: All right, ladies and gentlemen,
2 welcome back. I hope y'all had a pleasant evening.
3 We're ready to commence -- or recommence the trial.

4 Mr. Moyer.

5 MR. MOYER: Thank you, your Honor, may it please
6 the Court. State calls Dar Shaw to the stand.

7 THE CLERK: Place your left hand on the Bible,
8 raise your right hand.

9 DAR SHAW, after being duly sworn,
10 testified as follows:

11 THE CLERK: Thank you. Please be seated. State
12 your name for the record.

13 THE WITNESS: Darwin Shaw, S-H-A-W.

14 DIRECT EXAMINATION

15 BY MR. MOYER:

16 Q Where are you employed, sir?

17 A With the Department of Public Safety Forensic
18 Division in Greenville County.

19 Q How long have you been with the forensic
20 division in Greenville County?

21 A Eighteen and a half years.

22 Q How long have you been in law enforcement?

23 A Forty years this month.

24 Q Okay. So, was that all with the sheriff's
25 office or did you work in other law --

DAR SHAW-DIRECT BY MR. MOYER

1 A No, I was with another department for 21 years.

2 Q Is that in this state?

3 A No, it was in Nebraska.

4 Q Okay. Now, tell the jury what you do as a
5 forensic officer with Greenville County?

6 A I'm also the supervisor/supervisory role as far
7 as reading reports, checking off the reports. I also
8 respond to crime scene calls for any agency within
9 Greenville County, process the scene for them, including
10 photographic documentation, latent print processing and
11 collection of evidence and then doing a report for
12 testimony purposes.

13 Q How is it that you are called out to a scene?
14 Who makes the decision for you to be called out?

15 A The agency does, the deputy who's on scene makes
16 a decision. They put a call into the dispatcher, who then
17 sends us a message on the MBT, which is a computer
18 terminal to let us know that there's a call holding, the
19 type of call. It provides basic information as far as the
20 call is concerned. We respond then to the location they
21 have us go to.

22 Q Okay. And do you do services just for
23 Greenville County Sheriff's Office or other agencies in
24 the county?

25 A All agencies within Greenville County, all the

DAR SHAW-DIRECT BY MR. MOYER

1 municipalities. I've done work for the FBI, DEA, ATF,
2 whoever request our services.

3 Q Okay. All right. Now, were you called out to a
4 location on September the 1st of 2015?

5 A Yes, I was.

6 Q Okay. What was the location that you were
7 called out to?

8 A It was a CVS pharmacy on Mills Avenue.

9 Q Okay. Do you remember the address on Mills
10 Avenue?

11 A I would have to look at my report.

12 Q Okay. I hand you a document, is that the report
13 you generated from this case?

14 A Yes, it is.

15 Q Does that refresh your memory to take a look at
16 that report?

17 A Yes. It's Mills Avenue.

18 Q Okay. And what time was it that you got the
19 call to go to that location?

20 A I got the call at about 11:05 in the morning,
21 and I got there approximately 11:25.

22 Q Okay. How is it that -- when you go to a call,
23 for example, this one, how is it that you determine what
24 exactly needs to be done at a call like this?

25 A Well, with experience, you -- we know what is

DAR SHAW-DIRECT BY MR. MOYER

1 expected, not only from the agency, but what I would want
2 as far as an officer, which would be photographs and to
3 collect any possible evidence. Knowing that it was a
4 gunshot situation where a weapon had been fired, I would,
5 of course, want to try to find any evidence relating to
6 the shooting to try to identify it to a specific weapon.

7 Q Okay. And so, is that -- what did you then do
8 in this case? You took photograph?

9 A I took photographs of the vehicle. Where was a
10 projectile hole in the passenger door, I photographed it
11 and then put a scale up to it and photographed it. The
12 scale is basically to show length and width to kind of
13 maybe get an approximate size or the caliber.

14 Q Okay. Did you collect any evidence?

15 A Yes, I did.

16 Q What was that?

17 A Copper jacket, which is the outside covering.
18 When you have a full projectile, you have the cartridge
19 itself. The cartridge casing is when the bullet is fired,
20 that's what left. What comes out of the bullet -- a lot
21 of times, if it's a revolver, it will just be lead, a lead
22 core. In this case, it had a copper jacket around the
23 core, which it apparently separated at impact and all I
24 could find was the copper jacket and not the lead core
25 itself.

DAR SHAW-DIRECT BY MR. MOYER

1 Q We'll show -- the photographs that we for this
2 case of that vehicle were taken by you; is that right?

3 A Yes, they were.

4 Q We'll show you a couple of those photographs in
5 a minute, but before we do so, can you describe to the
6 jury about where you found this copper jacket and how you
7 went about finding it?

8 A Well, when I looked inside of the car, opened up
9 the car door, I looked for a hole that would be
10 corresponding to the hole on the outside of the door. I
11 didn't find any plastic, I didn't find the hole, which led
12 me to believe that the projectile would be inside of the
13 door itself. So, I took screws out and I removed the door
14 panel. And then there's a plastic vapor barrier inside.
15 I pulled it out of the way and then got down into the
16 broken glass along the bottom inside the door itself
17 looking for the projectile.

18 Q Okay. So, there was broken glass then inside
19 the door?

20 A Yes, it was.

21 Q Do you remember broken glass on the outside of
22 the car, too?

23 A No, because it didn't happen at that location.
24 It happened at a different location and the victim just
25 drove the vehicle there..

DAR SHAW-DIRECT BY MR. MOYER

1 Q What about inside the car, though?

2 A Inside the car, there was some, yes.

3 Q Okay. Okay. Well, let's take a look at a
4 couple of photographs that you've taken. I want to hand
5 you a laser pointer. That top button there activates the
6 pointer. So, let's start off with State's Exhibit No. 4.
7 Tell the jury what that is.

8 A This is just an overall photograph of the
9 vehicle that had been struck. And the deputies vehicle
10 was there as well, so it was included in the photograph.

11 Q Okay. And that's the CVS that the vehicle is
12 sort of parked up against, that wall back there?

13 A That is correct.

14 Q And State's Exhibit No. 6?

15 A This is a close-up photograph -- not a close-up,
16 but this is showing where the projectile struck the front
17 passenger door. This is a scale that we use to put next
18 to any kind of projectile hole or injuries. It's a
19 measuring scale, one-inch scale. So -- it has magnets on
20 the back, so I attached it to the side of the door and
21 photographed it.

22 Q And State's Exhibit 7?

23 A That is just a close-up photograph of the same
24 hole in the front passenger door.

25 Q State's Exhibit No. 5?

DAR SHAW-DIRECT BY MR. MOYER

1 A This is the inside of the door. This is the
2 bottom edge of the door. As you can see, this is the
3 plastic vapor-barrier that I pulled out of the way. Down
4 along inside, there's a trough in there. There is a hole
5 where any water that gets in can drain out. That is the
6 copper jacket that I found down amongst the glass in the
7 bottom of the door.

8 Q So, it was just sort of resting in the bottom
9 then?

10 A Yes, as I was going through -- I used a pen and
11 went through the broken pieces of glass and I saw it. I
12 couldn't -- because of the depth of this, I couldn't
13 photograph the copper jacket down inside the door, so
14 where I found it; I picked it up and just photographed in
15 the approximately area directly above where it was found.

16 Q State Exhibit No. 8?

17 A That's just a closer photograph showing the
18 copper jacket as it was pulled out from inside the door.

19 Q State's Exhibit 9?

20 A Again, that is just a -- that's a closer
21 photograph yet, just to show how much was actually there
22 as far as what was recovered.

23 Q So, was that the -- are these two -- I'm showing
24 now State's Exhibits 8 and 9. Are they two different
25 pieces of the jacket or are they just --

DAR SHAW-CROSS BY MR. HAMILTON

1 A No. They're the same, just different position.

2 Q Showing different angles of that particular
3 piece. Okay. So, in order to do any testing with that,
4 if you had had a potential firearm in the case, is it
5 possibly to try to match -- to try to have that matched up
6 against the firearm to see if it was shot out of the
7 firearm?

8 A That would be the intent, yes.

9 Q Okay. But if you didn't have a firearm,
10 obviously, there's nothing you can do with regards to
11 that, is there?

12 A That's correct.

13 Q One moment, please.

14 MR. MOYER: Okay. Please answer any questions
15 the Defense may have.

16 CROSS-EXAMINATION

17 BY MR. HAMILTON:

18 Q Okay. Mr. Shaw, you -- from your experience,
19 are you able to tell from looking at that what direction
20 the bullet -- this is State's Exhibit No. 15, what the
21 direction in the hole that bullet would enter?

22 A I can tell you that it entered from the outside
23 to the inside.

24 Q Okay. All right. Let's come down --

25 MR. HAMILTON: Your Honor, may he step down?

DAR SHAW-CROSS BY MR. HAMILTON

1 THE COURT: Yeah.

2 BY MR. HAMILTON:

3 Q Let's come down here and see. Now, you can --
4 just for the sake of pointing, could you point which way
5 the hole -- from your experience and examining holes, can
6 you look at that hole and say what projectile, did it come
7 in this way, did it come in that?

8 A You're ask about the angle which it --

9 Q Yes.

10 A It all depends. Maybe not with this. What I
11 have to do is look at the inside of the door and look for
12 an impact area on the inside. Now, I can see that there's
13 some paint missing on the inside next to a bolt.

14 Q Uh-huh.

15 A It would be approximate. But approximately that
16 angle.

17 Q That angle?

18 A Yes, sir.

19 Q Okay. And coming from a car -- if this was
20 another car eight feet away maybe?

21 A No, sir, this is deceiving because the car is
22 not on -- the door is not on the car, which is going to
23 elevate this door and make it seem higher --

24 Q Oh, I'm sorry, that's a very good point. That's
25 why you're the expert. So, we need to set it about where

DAR SHAW-CROSS BY MR. HAMILTON

1 the car would be. If we set it on the chair, would it be
2 the right --

3 A No, that would be too high.

4 Q Too high.

5 A You've got the rocker panel. The door
6 probably -- the bottom of the door would be maybe 10 to 12
7 inches higher. That would make it too high. But a normal
8 car door where it hits somewhere along in there. But this
9 is at a descending angle, so it's kind of going from high
10 to low.

11 Q High to low.

12 A But I can't -- because, typically, if this
13 penetrated the inside, I could have taken a trajectory rod
14 and run it through this hole and run it through the other
15 and using an angle finder and would have been able to
16 determine an approximate right to left, left to right and,
17 also, the elevation of it. But because it did not, I only
18 have one hole that I can basically compare it to.

19 Q Thank you. Thank you. Okay. So, basically, on
20 the information that you had, it is a high-low entrance?

21 A Looking at that impact area, in my opinion, it
22 goes from high to low?

23 Q Okay. Thank you. Thank you very much. So now,
24 this jacket that you found that's identified -- there's
25 two, State's Exhibit No. 9 and State's Exhibit No. 8,

DAR SHAW-CROSS BY MR. HAMILTON

1 those are -- you say it's not the bullet itself, it's
2 something that covers the lead portion of the bullet?

3 A That's correct.

4 Q Okay. Okay. And then the well that it was
5 found in, State's Exhibit No. 5, you couldn't find the
6 lead portion?

7 A I could not with the door intact. May not have
8 been able to anyway. I have, at times, been able to
9 remove the door from the car. Bullet's, when they go in,
10 they can go anywhere. They can get struck, get lodged.
11 If that door were turned upside down and banged on the
12 floor, it's possible it could be in there. But I couldn't
13 find it.

14 Q Okay. So, it could be in there right now?

15 A It could be.

16 Q Well, what about -- you said the water drain --
17 where the water slips out of the door, drains out, could
18 it have went through the water drain?

19 A Probably not.

20 Q No way it did that?

21 A It probably did not.

22 Q Oh, okay. All right. What about the bouncing
23 around inside there, the lead portion, it wouldn't have
24 just boom, stuck and just laid there because it came off
25 the cover, right -- or you did say that, I'm sorry. I'm

DAR SHAW-CROSS BY MR. HAMILTON

1 repeating what you said. Is it not true that the
2 bullet --

3 A The lead core separated from the jacket.

4 Q Is it not true that the lead core bounced all --
5 could have bounced all around inside that door?

6 A It was not found in the general area of where
7 the copper jacket was found, so it could have been -- it
8 could be anywhere. It could have gone anywhere inside the
9 door. It didn't come through the door panel, so it didn't
10 go inside the car. So, it had to have been one or two
11 things, either it was inside the door lodged and could no
12 find it or the projectile impacted the core, popped out
13 and the jacket stayed inside. But I doubt that that
14 happened. It's more than likely in there somewhere.

15 Q Okay. Then, I guess, what I'm asking you is to
16 give the possibility that the glass was broken and
17 portions of the glass was down -- the glass was not all
18 the way up, some of it was down and some of the glass
19 inside the door, could it have been struck by the lead
20 portion, juggling around, zinging around inside that door
21 and lodging somewhere else to its final resting place,
22 breaking the glass at the lower portion?

23 A Any kind of impact, like getting struck with a
24 projectile could break the glass.

25 Q Yeah.

DAR SHAW-CROSS BY MR. HAMILTON

1 A Even if the window is not all the way down.

2 Q Right.

3 A Or partially down. But unless that door was
4 taken apart and the window track was looked at to see if
5 it was hit, you know, the impact itself could have broken
6 to glass.

7 Q The impact of one shot --

8 A Of the projectile.

9 Q Of the projectile could have broken the glass?

10 A Could have, yes, sir.

11 Q Okay. And you said you've got 40 years in law
12 enforcement?

13 A Yes, sir.

14 Q Eighteen years as forensics?

15 A Yes, sir.

16 Q And that would support that happening? It's not
17 out of the realm of possibility?

18 A You are asking my opinion and that's what I'm
19 giving you.

20 Q Thank you very much. Let me ask you another
21 opinion.

22 MR. MOYER: First off, I object. He's not
23 been --

24 THE COURT: He hasn't been as an qualified
25 expert.

DAR SHAW-CROSS BY MR. HAMILTON

1 BY MR. HAMILTON:

2 Q Well, from your experience --

3 Well, I mean, he's --

4 Yeah, from your --

5 Okay, we'll move on from that part and go
6 to -- I was going to another portion here. The part where
7 in State's Exhibit No. 15, you indicated that there was a
8 bolt or a metal portion that indicated where the lead
9 portion struck. Is there a dentation there?

10 A There is a slight protrusion and the paint is
11 gone next to the bolt. That's where it kind of gives me
12 an idea as to the probability of where that projectile
13 impacted inside.

14 Q And it being the bullet -- it didn't penetrate
15 it because of how strong it is, that metal portion inside
16 the door?

17 A Correct.

18 Q So, would that create a pop sound, a pop, pop --
19 if someone heard a gunshot pop or a popping --

20 MR. MOYER: Your Honor, I object. I don't see
21 how --

22 THE COURT: Let him ask -- this is
23 cross-examination.

24 Ask the question. Go ahead.

25 MR. HAMILTON: Thank you, Your Honor.

DAR SHAW-CROSS BY MR. HAMILTON

1 BY MR. HAMILTON:

2 Q Would that make a loud sound in the structure of
3 the car? Could you hear that sound?

4 A I would be speculating. I've never been in a
5 car when a weapon has been fired and struck the car.

6 THE COURT: Okay, not going to testify to
7 speculation.

8 MR. HAMILTON: Okay.

9 BY MR. HAMILTON:

10 Q Anyway, that metal portion was so thick that a
11 bullet could not penetrate it?

12 A That bullet did not penetrate it.

13 Q Did not penetrate it. And you have no
14 experience in what sound that could make?

15 A That's correct.

16 Q Okay. All right. All right. From your -- but
17 based on your experience, would some type of sound have
18 been made?

19 A Oh, I would almost think so, yes.

20 Q Yes, yes. Okay. All right. All right. So,
21 you took photographs of the car and you stated you
22 couldn't get deep down in there inside the -- State's
23 Exhibit No. 5, you know, there's a little well inside
24 there. The casing was down in there and you couldn't take
25 a picture down there, but there was glass all down in

DAR SHAW-CROSS BY MR. HAMILTON

1 there, right?

2 A Yes, sir.

3 Q And you can even see some of the glass in
4 State's Exhibit No. 5?

5 A Yes, sir.

6 Q You can, you can see some of the glass. But if
7 you look deep down in there, there's a lot of glass in
8 there. You searched for the bullet in there and couldn't
9 find it, right?

10 A Correct.

11 Q Okay. All right. And then you said there was
12 glass on the seat?

13 A You didn't ask about the seat. You just asked
14 inside the car.

15 Q Yeah. Okay. But I'm going to ask you.

16 A From the window being -- from the window being
17 partially down, some of that glass that breaks can fall
18 outside and fall inside.

19 Q On the inside. All right. But we don't know
20 how much glass because you didn't take a picture of that.
21 Don't you usually take pictures of that, too?

22 A Not necessarily. My concern was the door
23 itself, not the aftermath of the glass, as far as where it
24 would have been because I knew it didn't happen there.

25 Q Pardon me?

DAR SHAW-CROSS BY MR. HAMILTON

1 A Because I knew it did not happen -- the car had
2 driving to the CVS pharmacy. Had it happened -- had I
3 been called to the original scene, yes, I would have
4 photographed any glass on the ground next to the car.

5 Q So, the crime scene had been deteriorated and
6 wasn't perfected -- yeah, it changed?

7 A That's right, it had been moved.

8 Q Had it been at Mills Avenue, you would have took
9 pictures. All right, let me ask you, you determined that
10 the window was partially down. Did you know that without
11 somebody telling you or did you figure that out?

12 A You can look at -- when you look inside, you can
13 see where the window track is.

14 Q Okay.

15 A Without it being moved, the position that the
16 track is in can you whether the window was up or down.

17 Q Okay. All right. All right. Then part of your
18 training, when you first hit the scene, do you get a
19 summation as to what happened?

20 A Yes, sir. Typically, if an officer is there, I
21 will ask the officer tell me what happened so I can write
22 the information down. If the victim is there, I'll ask
23 the victim as well.

24 Q So, you talked to the victim?

25 A I did.

DAR SHAW-CROSS BY MR. HAMILTON

1 Q Okay. So, talking to the victim, you gather the
2 information to conduct your investigation?

3 A Correct.

4 Q And you use that information knowing that -- how
5 many shots were fired?

6 A My understanding was there was one fired that
7 struck the vehicle.

8 Q Okay. That struck the vehicle?

9 A According to what the victim told me at the time
10 was that the driver was the only one that shot?

11 Q The driver is the only one that shot.

12 A That's the statement that he made to me.

13 Q Okay. All right. Did you have any information
14 there was anybody else in the car?

15 A Yeah, there was two -- there was two
16 individuals. My understanding is that both of them had
17 guns.

18 Q Okay.

19 A That was the information that was given to me.
20 Now, whether anybody else fired that didn't hit the car, I
21 don't know.

22 Q Okay. So, based on that information, you
23 conducted your investigation. You needed that
24 information?

25 A I would look at the car to see if it had been

DAR SHAW-CROSS BY MR. HAMILTON

1 struck more than once, but I found it had only been hit
2 one time.

3 Q One time. Okay. And you was told that it was
4 only one shot.

5 A I was told that the driver is the one that
6 fired.

7 Q Okay. All right. Do you have any information
8 that the bullet struck the window from the outside,
9 breaking the glass?

10 A I know the glass was broken and the door was
11 struck. As far as whether it hit the glass or the
12 vibration, I don't know. I didn't tear the door apart to
13 look at it.

14 Q Okay. All right. Then you was called in based
15 on the police -- the way you received information to come
16 to a scene -- coming to the scene was to investigate a
17 drive-by shooting, a shooting?

18 A A weapon discharge where a vehicle had been
19 struck, yes.

20 Q Yeah, weapon discharge and vehicle had been
21 struck. Was there any information whether or not somebody
22 was trying to kill somebody?

23 A That was not verbally stated.

24 Q Okay. Okay. All right. Was there any
25 information that anybody was hurt?

DAR SHAW-REDIRECT BY MR. MOYER

1 A No, there was no information on that.

2 Q Okay. Would that information have been useful
3 in your investigation?

4 A Which information?

5 Q That somebody was hurt.

6 A It would have changed the status. It would have
7 changed it -- rather than a shooting, it could have been
8 attempted murder or if somebody was hit, it would have
9 been a gunshot victim. I would have then had a different
10 scene to go to, which I would be looking for blood. I
11 would have had to try to locate a victim and take
12 photographs of the victim and injuries and so on if that
13 were the case.

14 MR. HAMILTON: Thank you. That's all the
15 questions we have.

16 THE COURT: Redirect?

17 MR. MOYER: Yes, a couple follow-up questions.

18 REDIRECT EXAMINATION

19 BY MR. MOYER:

20 Q Now, you never put in your report anywhere about
21 how many shots may have been fired; is that right?

22 A That's correct.

23 Q So, you don't know how many shots were fired, do
24 you?

25 A That's right.

DAR SHAW-REDIRECT BY MR. MOYER

1 Q You know how many shots -- how many markings
2 there were in the car?

3 A So, I know the car was struck one time.

4 Q Are you aware of the fact that -- was the
5 investigating officer Nunez still on the scene when you
6 arrived?

7 A Yes.

8 Q Okay. And you're aware of the fact that he was
9 the one who was conducting the interview with [REDACTED]
10 [REDACTED], the victim, as far as all the details about what
11 happened?

12 A Correct.

13 Q So, it's not your job to get all of the details
14 in the investigation, is it?

15 A That's correct.

16 Q It's your job just to find out enough
17 information to do --

18 A To work the scene as far as because of the
19 vehicle being struck.

20 Q So, if the victim had told the investigating
21 officers that there were two shots fired, that's not
22 something that you would contradict, is it?

23 A Again, I may not be aware of that information.

24 Q Okay. Now, let me also ask you about -- you
25 know, it seems very obvious, as you stated, that if a

DAR SHAW-REDIRECT BY MR. MOYER

1 bullet hits an object, it's going to make a noise. Seems
2 common sense, correct?

3 A Yes, sir.

4 Q All right. Now, if a shot is fired from a
5 distance of a few feet into a piece of metal like this
6 door, would that sound not be simultaneous -- considering
7 how fast a bullet goes, would the sound of the bullet
8 hitting the door from a matter of a few feet away not be
9 simultaneous with the gunshot itself?

10 A I would think that it would be. I mean, from
11 experience I know that the impact is immediate or almost
12 immediate after it leaves the barrel from a short distance
13 and changes as it gets farther. If it's up close, yes, it
14 would be simultaneous.

15 Q I mean, I guess all bullets are fast, but a 9mm
16 is a rapid -- rapidly fired -- it's a very fast bullet, is
17 that not right?

18 A Any weapon is -- or any projectile is, yeah.

19 Q Okay.

20 MR. MOYER: I have no further questions.

21 THE COURT: Any recross?

22 MR. HAMILTON: None, Your Honor.

23 THE COURT: All right. Thank you.

24 Okay. Call your next witness.

25 MR. MOYER: The State calls William Hunter.

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 Your Honor, we ask the witness be excused.

2 THE COURT: Any objection?

3 MR. HAMILTON: No objection.

4 THE COURT: Okay. Thank you very much.

5 THE CLERK: Sir, if you'll please come around
6 here. If you'll please pause at the end of the
7 bench, please place your left hand on the Bible and
8 raise your right hand.

9 WILLIAM HUNTER, after being duly
10 sworn, testified as follows:

11 THE CLERK: Thank you. Please be seated. State
12 your name for the record.

13 THE WITNESS: William Hunter.

14 THE CLERK: Move in a little bit, please.

15 THE WITNESS:: William Hunter.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. MOYER:

19 Q Okay, Mr. Hunter, I'm going to be asking you
20 some questions from over here, okay. You need to make
21 sure you lean up into this microphone so the jury can all
22 hear you, okay? Let me start off by asking you how old
23 are you?

24 A Eighteen, sir.

25 Q What's your date of birth?

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 A [REDACTED].

2 Q Okay. So, back in September the 1st of 2015,
3 you were how old?

4 A Sixteen.

5 Q You were 16 when the incident happened. Okay.
6 Now, you had been going to Carolina High School?

7 A Yes, sir.

8 Q What grade were you in?

9 A Ninth.

10 Q Okay. Now, you pled guilty yesterday to the
11 charge of assault and battery of a high and aggravated
12 nature, is that not right?

13 A Yes, sir, I did.

14 Q And you've not been sentenced yet; is that
15 correct?

16 A No, sir.

17 Q So, how much time are you facing now as opposed
18 to how much time you were facing?

19 A I don't know, but I signed a plea of zero to 20.

20 Q Zero to 20. And you're aware that charge you're
21 facing is zero to 30?

22 A Yeah, for something I didn't do.

23 Q Well, we'll get to that in just a minute. You
24 pled guilty yesterday; is that not right?

25 A Yes, sir, because I don't want to lose at trial.

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 Q Okay. You have to just answer the question that
2 ask, okay. You'll have a chance maybe on
3 cross-examination to elaborate some more, but just be
4 careful to answer the question that I ask, okay? Okay,
5 Mr. Hunter?

6 A Yes, sir.

7 Q Okay. Thank you. Now, let me ask you this,
8 have you ever spoken to me?

9 A No, sir.

10 Q Okay. You haven't spoken to Mr. Fowler either?

11 A No, sir.

12 Q Okay. So, you haven't spoken to either one of
13 us about what you're going to testify to here today, have
14 you?

15 A No, sir.

16 Q You had one conversation with the investigators
17 when you were initially arrested, right?

18 A Yes, sir.

19 Q Other than that, you haven't spoken to any of us
20 about it?

21 A No, sir.

22 Q Okay. Now, did anybody make any promise to you
23 about what your sentence is going to be when this case is
24 over?

25 A No, sir.

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 Q All right. Well, let's go back to September 1st
2 of 2015. And I just want you to tell the jury what
3 happened that day, okay?

4 A I was in the car and there was a road rage
5 accident. We pulled up beside a vehicle. I pointed a
6 firearm. He shot into the car door. And after that, he
7 took me to my school meeting. After that, they went on a
8 high speed chase and I got locked up a week later.

9 Q Okay. Well, let's go into this a little bit
10 more. You said he fired, who fired?

11 A Yes, sir, he shot one time.

12 Q Who is he?

13 A Braxton.

14 Q Braxton Hare, the Defendant in this case?

15 A Yes, sir.

16 Q Okay. Let's back up a little bit. So, you went
17 to school initially that morning before the shooting, is
18 that right?

19 A Yes, sir. My -- I thought it was time for me to
20 go to my school meeting, but it wasn't until 10:30 and I
21 had arrived at like 9:45.

22 Q How did you get to school that day?

23 A Braxton.

24 Q Okay. What kind of car was Braxton in?

25 A Mercedes.

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 Q That black Mercedes that was in -- he was in the
2 wreck in later that day?

3 A Yes, sir.

4 Q Okay. How long has he had that black Mercedes?

5 A I don't know, sir.

6 Q But he had it for a while?

7 A I don't know.

8 Q You had ridden in it before?

9 A Yes, sir.

10 Q Okay. So, where did he pick you up from?

11 A Home.

12 Q Where did you live?

13 A Sun Bridge Road.

14 Q What address is that?

15 A Number Lotman Drive.

16 Q Did you live close to Jaquan Salter?

17 A Kind of.

18 Q Okay. Y'all have been friends for quite a
19 while?

20 A Yes, sir.

21 Q You've been friends with Braxton Hare for quite
22 a while?

23 A Yes, sir.

24 Q How long have you known Mr. Hare?

25 A About four years.

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 Q Okay. So, Mr. Hare picked you up at your house
2 and you had the firearm?

3 A Yes, sir.

4 Q What caliber firearm was it?

5 A 380.

6 Q And it was loaded?

7 A Yes, sir.

8 Q And you got in the car to go to school with the
9 firearm?

10 A Yes, sir -- no, no, I wasn't going to take it in
11 there.

12 Q Okay. But you had it in the car?

13 A Yes, sir.

14 Q Then you got to school somewhere 9:30 or 9:45 or
15 whatever. And did you go inside the school?

16 A Yes, sir.

17 Q Did Mr. Hare go inside the school?

18 A Yes, sir.

19 Q And that's when you found out your meeting
20 wasn't until later?

21 A 10:30.

22 Q Meeting was supposed to be 10:30. So, then you
23 left. Mr. Hare was driving?

24 A (The witness nods.)

25 Q You have to say yes or no. You can't just --

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 A Yes, sir.

2 Q Okay. Thank you. And so, where did you go from
3 there?

4 A Sports Academy.

5 Q What did --

6 MR. HAMILTON: Your Honor, I --

7 THE COURT: What?

8 MR. HAMILTON: I object to the line where this
9 is leading to.

10 MR. MOYER: May we --

11 MR. HAMILTON: May we approach, Judge?

12 MR. MOYER: May we approach, Your Honor?

13 THE COURT: All right.

14 (WHEREUPON, an off-the-record bench conference
15 was held in the presence of the jury but out of
16 the hearing of the jury.)

17 BY MR. MOYER:

18 Q Okay. So, you went -- from school, you went to
19 Sports Academy?

20 A Yes, sir.

21 Q And that's over on Woodruff Road?

22 A I don't know where it was at, sir.

23 Q What did you do at Sports Academy?

24 A Stole bullets.

25 Q What kind of bullets?

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 A 380.

2 Q You're not aware they were 9mm bullets?

3 A I know what I stole, sir, and it was 380
4 bullets.

5 Q You stole some 380 bullets?

6 A Yes, sir.

7 Q Why did you steal 380 bullets.

8 A Stole them, sir, because I had a weapon?

9 Q Did you leave your weapon in the car?

10 A Yes, sir.

11 Q Did you get chased out of Sports Academy?

12 A Yes, sir.

13 Q And so you and Braxton -- did Braxton leave his
14 gun in the car, too?

15 A Yes, sir.

16 Q What kind of gun did Braxton have?

17 A I don't remember.

18 Q You don't know what caliber it was?

19 A No, sir.

20 Q So, you got out to the black Mercedes and -- did
21 the people at Sports Academy chase you guys out into the
22 parking lot?

23 A They chased me out.

24 Q Chased you out?

25 A (The witness nods.)

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 Q Then Mr. Hare picked you up near the exit of the
2 parking lot?

3 A Yes, sir.

4 Q Okay. And then when you were leaving there,
5 where were you headed?

6 A The school meeting.

7 Q You're headed to that school meeting that was
8 supposed to be at 10:30?

9 A Yes, sir.

10 Q Do you remember what road you took to get back
11 there?

12 A I know we passed Mills Avenue, that's when the
13 accident happened.

14 Q Okay. You call it an accident. Let's talk a
15 little bit more about that. So, you -- when did you first
16 see that bright yellow car that ended up getting shot?

17 A When we almost wrecked into it.

18 Q Okay. Tell me about that. First off, where
19 were you?

20 A Right before -- you know where Subway is on
21 Mills Avenue?

22 Q Right.

23 A The Subway on Mills Avenue at the red light.

24 Q Okay. So, tell me about this almost accident.

25 A The car stopped, almost wrecked.

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 Q Okay. I'm sorry, which car stopped?

2 A The Mercedes.

3 Q So, the Mercedes that you were in?

4 A (The witness nods.)

5 Q Elaborate a little bit more. How did that
6 almost wreck?

7 A Because of him, [REDACTED] [REDACTED]

8 Q What happened --

9 A He hopped out of traffic and flicked us off.

10 Q He flicked you off.

11 A And thought it was funny.

12 Q Okay. Now, how did that almost make you almost
13 wreck?

14 A I don't know. He almost made us wreck, though.
15 We had to stop at the red light.

16 Q How did you almost wreck? Did you almost go off
17 the road, did you almost hit another car?

18 A We almost hit his car.

19 Q You almost hit his car?

20 A Yes, sir.

21 Q How did you -- what lane were you in?

22 A I don't remember, sir.

23 Q Okay. Was he on your right side, or on your
24 left side, or behind you, or in front of you?

25 A In front of us.

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 Q He was in front of you?

2 A He was behind us, but he hopped out of traffic
3 and went in front of us and almost made us wreck.

4 Q Then what happened then?

5 A He flipped us off and kept going.

6 Q Okay. Then what happened?

7 A He pulled --- Braxton pulled up beside him.

8 Q So, he went on ahead?

9 A Yeah.

10 Q And then what did Braxton do?

11 A Shoot.

12 Q Well, before we get to that, when --

13 A I pointed my firearm first, sir.

14 Q Actually, even before that. So, when the yellow
15 car took off, what did Braxton do in the Mercedes?

16 A Pulled up beside him.

17 Q Okay. So, did he have to catch up to the
18 vehicle?

19 A Yes, sir.

20 Q Did he have to go kind of fast?

21 A No, sir.

22 Q Did you get stuck at a red light at any point?

23 A We got stuck at a red light.

24 Q Okay. Was the yellow car stuck at the same red
25 light?

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 A No, sir. I just told you, he made the green
2 light.

3 Q So, he made the green light, you got stuck at
4 the red light and then, Braxton caught up to the yellow
5 car.

6 A Yes, sir.

7 Q Then what happened when he caught up to the
8 yellow car?

9 A I pulled a firearm out because he was making
10 rude gestures.

11 Q What kind of firearm?

12 A I told you I had a 380, sir.

13 Q Where -- had you just loaded it with the bullets
14 that you stole or was it already loaded?

15 A You said did I load it? No, I had like two or
16 three of them in there. I didn't put none in.

17 Q Okay. So, the bullets you stole, you didn't put
18 in?

19 A No, sir.

20 Q Okay. So, it was already loaded. And where had
21 you -- where was the gun before you pointed it

22 Mr. [REDACTED]

23 A In my pocket, sir.

24 Q In your pocket?

25 A (The witness nods.)

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 Q You pulled out, and did you say anything to
2 Mr. [REDACTED]

3 A Before I pulled it out, I was asking why he do
4 that.

5 Q You were asking him why he did that?

6 A Yeah, why he almost made us wreck.

7 Q And you pointed the gun at him?

8 A Yeah, after he started making rude gestures,
9 making fun of us, like it was funny.

10 Q What did Mr. Hare do?

11 A He shot the gun, sir.

12 Q When did he pull his gun out?

13 A After me?

14 Q So, you said you pulled yours out first?

15 A Yes, sir.

16 Q Okay. Then Mr. Hare pulled the gun out and
17 fired?

18 A Shot into the car, sir.

19 Q Shot into the car. Then what happened?

20 A I think he took me to my school meting.

21 Q Okay. Could you see where the bullet hit the
22 car?

23 A No, sir.

24 Q You just know he shot into the car?

25 A Shot into the car door, sir.

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 Q Then you -- what did the yellow car do after
2 Braxton Hare shot into the car?

3 A I think he tried to follow behind us, but I
4 think he pulled into the CVS or something.

5 Q Okay. Did Braxton have to go pretty fast to get
6 away?

7 A No, sir.

8 Q He just drove slowly away after shooting as if
9 nothing happened?

10 A Basically.

11 Q Okay. So, how fast were you going?

12 A Not fast.

13 Q The speed limit?

14 A About 30 miles.

15 Q Thirty miles an hour after he just shot into a
16 car?

17 A (The witness nods.)

18 Q What were y'all talking about after he shot into
19 the car?

20 A Nothing.

21 Q You didn't have anything to say about it?

22 A Just quiet.

23 Q Just quiet. Braxton didn't say anything about
24 it?

25 A Not that I recall.

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 Q And you didn't say anything about it?

2 A Just went to my school meeting, sir.

3 Q So, then you got to school. Where did you get
4 dropped off at school?

5 A Where I get dropped off after school?

6 Q Yeah, when you got to the school?

7 A At home with my mother.

8 Q I'm sorry?

9 A At home with my mother.

10 Q I'm sorry, I didn't ask the question right. So,
11 Braxton drove you to Carolina High School, right?

12 A Yes, sir.

13 Q Did Braxton just drop you off or did he --

14 A Dropped me off at the school.

15 Q Dropped you off at school. Did Braxton go in
16 the school at that time?

17 A No, sir.

18 Q So, he drove away?

19 A Yes, sir.

20 Q And you went in the school. What did you do
21 with your gun?

22 A When I went in the school?

23 Q Yes.

24 A I put it under the car.

25 Q Put it under the car?

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 A Yes, sir.

2 Q What do you mean under the car?

3 A Under my mother's car. She didn't know.

4 Q Where was your mother's car?

5 A Parked at Carolina High School.

6 Q Why was your mother's car at Carolina High

7 School?

8 A Because I got dropped off and I was meeting her
9 there.

10 Q So, your mom was meeting you there. So, you saw
11 her car and you went and put your gun under her car?

12 A Yes, sir.

13 Q What about the bullets that you stole?

14 A They was in my pocket.

15 Q How many bullets were there?

16 A I don't know, but it was a box full.

17 Q And you were able to fit the whole box in your
18 pocket?

19 A Yes, sir.

20 Q So, you put the box of bullets in your pocket
21 and you went into --

22 A I just had the ammunition, though, with the
23 bullets in it. I threw the box away.

24 Q Threw the box away. You put the bullets in your
25 pocket?

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 A Yes, sir.

2 Q Okay. And you went into school and you saw your
3 mom?

4 A Yes, sir. She was in there with me.

5 Q And you met with some teachers or school
6 officials, right?

7 A Yes, sir.

8 Q Did you say anything about this incident that
9 just happened?

10 A No, sir.

11 Q You didn't say anything about Braxton Hare just
12 shooting at somebody?

13 A No, sir.

14 Q How did you feel about that?

15 A I don't know.

16 Q How did you feel about Braxton just having shot
17 at somebody?

18 A I really don't know, sir.

19 Q Okay. You don't remember how you felt at that
20 time?

21 A Just felt hot.

22 Q Felt -- I'm sorry, what?

23 A Felt hot, like my face --

24 Q Felt hot?

25 A My face probably messed up.

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 Q I'm sorry, I don't understand. You felt --

2 A I felt like I was in trouble.

3 Q You felt like you were in trouble?

4 A Yes, sir.

5 Q So, at that point, you didn't know Mr. [REDACTED]

6 had been hit by a bullet, did you?

7 A I really assumed that he didn't get shot, sir,
8 because he followed us, so I knew he was okay. When he
9 shot into the car door, I know he didn't get shot.

10 Q You don't know if he was wounded, do you?

11 A Not really, sir, but I wouldn't thought he was
12 hit.

13 Q You wouldn't have thought so?

14 A No, sir.

15 Q You knew he wasn't dead, right, because he was
16 following you, but don't know if he'd been hit in the leg
17 --

18 MR. HAMILTON: Your Honor, I object. He's
19 answered the question.

20 THE COURT: No overruled.

21 Go ahead.

22 BY MR. MOYER:

23 Q Hit in the leg or the arm or anything like that?

24 A No, sir.

25 Q But you didn't say anything to anyone at school?

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 A No, sir.

2 Q Didn't say anything to your mom?

3 A No, sir.

4 Q Didn't say anything to the school resource
5 officer?

6 A No, sir.

7 Q All right. And then when you left school, where
8 did you go?

9 A I went home with my mother.

10 Q Okay. Now, when did you find out about the
11 accident that Braxton was in?

12 A What do you mean by that, sir?

13 Q When he got in the chase with the police and hit
14 the other car?

15 MR. HAMILTON: Your Honor, I can't understand
16 how he could know anything about that.

17 THE COURT: He can answer what he knows.

18 BY MR. MOYER:

19 Q When did you find out about it?

20 A It was on the news, sir.

21 Q That same day?

22 A Yes, sir.

23 Q That's when you found out about it?

24 A (The witness nods.)

25 Q And you got arrested about a week later, didn't

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 you?

2 A Yes, sir.

3 Q And during that time, you didn't say anything
4 about what happened?

5 A No, sir.

6 Q Are you familiar with a backpack that was in the
7 car, a red backpack?

8 A No, sir.

9 Q If I showed this to you, can you take a look at
10 it and see if this looks familiar at all to you?

11 A No, sir.

12 Q It doesn't look familiar.

13 A No, sir.

14 Q Do you remember it being in the car?

15 A Yeah, but I didn't see that.

16 Q You didn't see this in the car, you don't
17 remember this?

18 A No, I didn't see that, sir.

19 Q You didn't see it. So, if there were 380
20 bullets in that backpack, would they --

21 MR. HAMILTON: Your Honor, how can he answer?

22 He said he's never seen it.

23 THE COURT: Yeah, he says he doesn't know about
24 it. That's getting into argument.

25

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 BY MR. MOYER:

2 Q Did you leave any bullets in the car?

3 A No, sir. I never took the bullets or the
4 ammunition, sir.

5 Q Okay. When Braxton fired that shot, do you
6 remember his spent shell casing, do you remember where it
7 went?

8 A No, sir.

9 Q You don't know?

10 A (The witness shook his head.)

11 Q Do you remember any other shell casings inside
12 the car?

13 A No, sir.

14 Q Okay. Why did you point the gun at

15 Mr. [REDACTED]

16 A Because he was making rude gestures. I mean, I
17 was in the wrong and I apologize for what I did. But I
18 was young at the time. I'm older and wiser and smarter.
19 And I ask that you forgive me, I ask that Judge Miller
20 forgive me. I apologize for my actions.

21 Q So, it was because he was being rude?

22 A Yes, sir.

23 Q So, you weren't threatened in any way?

24 A No, sir.

25 Q You weren't doing it in self-defense?

WILLIAM HUNTER-DIRECT BY MR. MOYER

1 A No, sir.

2 Q Mr. [REDACTED] never pointed a gun at you?

3 A No, sir.

4 Q He never threatened you in any way?

5 A No, sir.

6 Q So, you did it just out of anger.

7 A No, sir, I was hard-headed then. I was
8 hard-headed, sir.

9 Q So, what was --

10 A I didn't listen to my mom. I didn't listen to
11 nobody. I was young.

12 Q So, what was your reason for doing it?

13 A He almost made us wreck, sir. He thought it was
14 funny.

15 Q So, for that reason, you pointed a gun at him?

16 A Yes, sir.

17 Q So, there was no threat coming from
18 Mr. [REDACTED] car that could have justified you taking a
19 shot at him, was there?

20 A Sir, I never shot him, sir.

21 Q I'm just saying, if you had shot, it would not

22 --

23 A I never shot. What do you mean if I had shot?
24 I never shot. You trying to talk me into saying that I
25 shot when I didn't.

WILLIAM HUNTER-CROSS BY MR. HAMILTON

1 Q You had no reason to fire the gun, did you?

2 A No, sir.

3 Q In fact, you had no reason to point the gun, did
4 you?

5 A I pointed the gun, sir, I told you that.

6 MR. MOYER: Okay. Please answer any questions
7 the Defense may have.

8 CROSS-EXAMINATION

9 BY MR. HAMILTON:

10 Q Mr. Hunter, you and Braxton been knowing each
11 other for many, many years?

12 A Yes, sir.

13 Q And on this day, did -- what happened is that
14 the victim in this case cut you off or tried to cut you
15 off?

16 A Yes, sir.

17 Q Okay... Then you caught up with him?

18 A Yes, sir.

19 Q Then he made some gesture at you and then you
20 pointed your gun at him?

21 A Yes, sir.

22 Q All right. Did you intend to shoot him and kill
23 him?

24 A No, sir.

25 Q All right. You said Braxton pulled his gun out...

WILLIAM HUNTER-CROSS BY MR. HAMILTON

1 He actually shot his gun?

2 A Yes, sir.

3 Q Did Braxton -- from what y'all was going
4 through, y'all's friendship and what happened, was he
5 trying to shoot and kill him?

6 A No, sir.

7 MR. MOYER: I object, Your Honor.

8 THE COURT: Yeah, I sustain that. That's asking
9 for speculation.

10 BY MR. HAMILTON:

11 Q Okay. But you knew he shot into the door?

12 A Yes, sir.

13 Q All right. And then you knew that the person
14 that shot his door, you were surprised that he was
15 following y'all. You could tell that he was trying to
16 follow you, could you, or he was just behind you? Which
17 one was it?

18 A Yes, sir.

19 Q He was following you?

20 A (The witness nods.)

21 Q And then you just went on to school?

22 A Yes, sir. That was my whole purpose of getting
23 in the car that day.

24 Q Yeah, to go back to school. Y'all had an
25 excursion and you made your meeting on time?

WILLIAM HUNTER-CROSS BY MR. HAMILTON

1 A Yes, sir.

2 Q Okay. All right. When you -- Braxton almost
3 hit his car because -- the victim's car because he
4 switched lanes or he put -- what did he do?

5 A He came from the back of us and went in front of
6 us and almost made us wreck.

7 Q Okay. All right. You said that you pled
8 guilty?

9 A To assault and battery high and aggravated
10 nature.

11 Q Okay. Did you -- okay. And are you satisfied
12 that -- you said you apologized for that?

13 A Yes, sir. I truly do.

14 Q Okay. Do you understand what assault and
15 battery -- assault and battery of high and aggravated
16 nature is?

17 A Can you tell me, sir?

18 Q You plea guilty to it, is that what you wanted
19 to do?

20 A Not really, sir.

21 Q You was afraid of being convicted of attempted
22 murder?

23 A Yes, sir, for something I didn't do.

24 Q You didn't try to attempt to murder nobody?

25 A No, sir.

WILLIAM HUNTER-REDIRECT BY MR. MOYER

1 MR. HAMILTON: Thank you. That's all I have.

2 REDIRECT EXAMINATION

3 BY MR. MOYER:

4 Q Are you aware of the law about the hand of one
5 is the hand of all? Was that explained to you by your
6 lawyer?

7 MR. HAMILTON: Your Honor, I don't know if
8 that's --

9 THE COURT: No. What's your objection?

10 MR. HAMILTON: That that's appropriate redirect.

11 THE COURT: Yes, it is, based on your
12 questioning, it is.

13 Go ahead.

14 BY MR. MOYER:

15 Q You're aware that the hand of one is the hand of
16 all; is that right?

17 A Yes, sir.

18 Q Your lawyer explained that to you?

19 A No, sir.

20 Q Even if you didn't shoot him, you're accepting
21 responsibility for what your Co-defendant did; is that
22 right?

23 A Say that again, sir.

24 Q That you're responsible for what your
25 Co-defendant, Braxton Hare, did?

WILLIAM HUNTER-REDIRECT BY MR. MOYER

1 A Yeah, but he didn't try to kill him, sir.

2 Q But you understand the hand of one is the hand
3 of all; is that right? And that's why you pled guilty?

4 A Now I understand.

5 Q Now, when you were speaking to the investigator
6 when you were arrested, and you --

7 MR. HAMILTON: Your Honor, now, he's going
8 beyond.

9 THE COURT: I don't know where he's going.

10 Let's see.

11 Is this in response to cross?

12 MR. MOYER: It is, Your Honor.

13 THE COURT: All right.

14 BY MR. MOYER:

15 Q The rude comments that you mentioned that were
16 made by Mr. [REDACTED] you never mentioned that during the
17 interview with the investigator, did you?

18 A I don't remember. I don't remember, sir.

19 Q You don't remember?

20 A It been so long.

21 Q But if he had made rude gestures to you, would
22 you not have -- would that not have been important to you
23 to mention to the investigator?

24 MR. HAMILTON: Your Honor.

25 THE COURT: Yeah, what's the objection?

WILLIAM HUNTER-REDIRECT BY MR. MOYER

1 MR. HAMILTON: Your Honor, he's asking for an
2 opinion, not a fact.

3 THE COURT: He's asking about his state of mind,
4 okay.

5 Isn't that where you're going, Mr. Moyer?

6 MR. MOYER: Yes, sir.

7 THE COURT: Okay.

8 BY MR. MOYER:

9 Q I mean, if it was important to you that
10 Mr. Kingwill made rude comments to you, would you have not
11 mentioned that to the investigator when he was
12 interviewing you?

13 A I don't remember what I even talked about to the
14 investigator, sir. It been so long, sir.

15 Q Okay. Well, if it had been important -- if it
16 had happened, would you not have mentioned it a week after
17 the fact after this happened?

18 A No, sir. I didn't want to go to jail.

19 MR. MOYER: Nothing further.

20 THE COURT: Okay. All right. You can step
21 down. Thank you.

22 All right, Mr. Foreman, ladies and gentlemen of
23 the jury, it's probably a good time for a little
24 morning break. So, let's take about 10 minutes or so
25 and we'll get back with you. Don't discuss the case.

1 All right.

2 (WHEREUPON, the jury left open court at
3 approximately 10:53 a.m.)

4 THE COURT: All right, let me talk to the
5 lawyers up here. We'll be in recess for a second.

6 (WHEREUPON, an off-the-record bench conference
7 was held.)

8 (WHEREUPON, a short break was taken.)

9 THE COURT: All right. Get the jury.

10 MR. MOYER: Before we bring the jury in, there's
11 one matter about a witness that was subpoenaed by
12 Mr. Hamilton just a few minutes ago. I would just
13 ask to bring this up now to try to clear it up
14 because that witness is busy with some other matters.

15 From everything I understand Mr. Hamilton is
16 going to attempt to get in with this witness, I don't
17 believe it is admissible. I think it's clearly not
18 admissible. It's hearsay. He wants to get in the
19 audio recording of the victim's statements through
20 Dave Warner. First off, Dave Warner didn't conduct
21 the interview. Secondly, if even if he had, the
22 interview is hearsay, so it would not be admissible
23 at this point. So, for those reasons, we'd ask the
24 investigator be relieved of his subpoena.

25 MR. HAMILTON: Judge, in the video recording,

1 the victim testified that he was taken to the law
2 enforcement and they video taped his statement. And
3 there is some contradiction of what he testified here
4 in court and as to what he told the investigators.
5 The original officer who conducted the interview,
6 Kevin Morano, was fired to two years ago, so he is
7 not available to authenticate or to show the video
8 was taken. But Kevin -- David Warner, the
9 supervisor, approved it saying this is -- we've got a
10 witness unavailable, but we do have a supervisor to
11 show that this is the DVD or recording.

12 THE COURT: Why would you be introducing it?

13 MR. HAMILTON: To show the difference in the
14 statement as to what happened.

15 THE COURT: Impeachment?

16 MR. HAMILTON: Impeachment, yes.

17 MR. MOYER: The proper way to do that would have
18 been to confront the witness -- under the rules, he
19 would have to confront the witness.

20 THE COURT: Confront the witness at the time of
21 the --

22 MR. MOYER: He testified. I mean, it could have
23 come in through the witness. He could have shown
24 him, isn't it true you gave a statement.

25 THE COURT: Yeah, yeah, I know that.

1 MR. MOYER: Would it refresh your memory? He
2 could have said yes, or he could have -- he could
3 have shown segments of the tape. I'm not sure there
4 is any inconsistencies, but even if there were, that
5 could have and should have been brought up when that
6 witness was testifying.

7 THE COURT: Right, that's impeachment. I'll
8 just have to think. I'm not sure I'm going to allow
9 it. I mean, it's not appropriate under the rules,
10 but I'll think about it. Have you viewed it?

11 MR. HAMILTON: I've seen the --

12 THE COURT: What specific impeachment is there?

13 MR. HAMILTON: Well --

14 THE COURT: We're not just going to put it up
15 and play the whole thing, in other words. So, if you
16 know specifically what you think is impeachable, I'll
17 consider it. But you'll have to do that at another
18 time.

19 All right. You got Matt Owens. What else do
20 you have?

21 MR. MOYER: I believe he will be the last
22 witness. Maybe just one brief chain of custody
23 witness, depending on how it goes with the
24 investigator, but otherwise the investigator will be
25 the last one.

1 THE COURT: Okay. All right.

2 (WHEREUPON, the jury came into open court at
3 approximately 11:10 a.m.)

4 THE COURT: All right, Mr. Moyer.

5 MR. MOYER: The State calls Matt Owens to the
6 stand.

7 THE CLERK: Sir, if you please place your left
8 hand on the Bible, raise your right hand.

9 MATT OWENS, after being duly sworn,
10 testified as follows:

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MR. MOYER:

14 Q State your name, please.

15 A Matthew Owens.

16 Q And you formally were an investigator with the
17 sheriff's office, is that right?

18 A I was.

19 Q Okay. What is your position with the sheriff's
20 office now?

21 A I am school resource officer.

22 Q What school are you with now?

23 A Wade Hampton.

24 Q How long have you been in law enforcement?

25 A Sixteen years.

MATT OWENS-DIRECT BY MR. MOYER

1 Q All of that been with the sheriff's office?

2 A No, sir.

3 Q Where else have you --

4 A I worked at Spartanburg County Sheriff's Office
5 for almost two years, then the Greenville Spartanburg
6 Airport Police Department for about a year. I started in
7 2001.

8 Q And you were in the -- an investigator in which
9 area of the department of the sheriff's office?

10 A I was an investigator for the armed robbery
11 division.

12 Q Okay. And is that where you were in
13 September of 2015?

14 A I was.

15 Q Okay. And you became involved in the
16 investigation of this case that is currently underway?

17 A I did.

18 Q When did that take place?

19 A September 1st, 2015.

20 Q Did you respond to any of the locations that
21 were subject of this incident?

22 A I responded to the actual vehicle collision on
23 Piedmont Highway, I think it was Davis road. I think that
24 was the intersection where the wreck happened.

25 Q The wreck of the Mercedes?

MATT OWENS-DIRECT BY MR. MOYER

1 A Yes, sir.

2 Q Into Mr. Willie Wright's car?

3 A Yes, sir.

4 Q Or truck, I mean. Were you aware of the
5 incident with Mr. [REDACTED] prior to that?

6 A Yes, sir. We had knowledge that a black
7 Mercedes was involved in a shooting, an attempted murder
8 case, and it was occupied by two -- one young
9 light-skinned black male and another young black male.

10 Q Now, when you arrived at that location, was the
11 Mercedes still there?

12 A It was.

13 Q Were the occupants of that Mercedes at the
14 location?

15 A They were. However, they were secured in the
16 back seat of patrol vehicles. And they were separated,
17 they weren't seated together in the same patrol vehicle.

18 Q Now, at that time, were you aware of the
19 information that Deputy Estes testified to yesterday about
20 Mr. Hunter being in the car immediately before and after?

21 A No, sir. At that time, we had no knowledge of
22 William Hunter, who he was or his involvement in this case
23 whatsoever.

24 Q When did you find out about that?

25 A The following day, on the 2nd, September 2nd.

MATT OWENS-DIRECT BY MR. MOYER

1 Q So, at this time, did you work the incident as
2 if the two men who was in the vehicle were suspects in
3 that shooting with Mr. [REDACTED]

4 A Yes, sir.

5 Q Did you have the two men taken to law
6 enforcement center?

7 A Yes, sir.

8 Q Were you made aware of the shell casings that
9 were found in Mr. Salter's pocket?

10 A Yes, sir, I was.

11 Q Do you remember the number and caliber of those
12 shell casings?

13 A I want to say it was three .380s and one 32, I
14 believe, in the shell casings.

15 Q Okay. Now -- all right. Now, when you had the
16 two men brought back to the law enforcement center,
17 Mr. Salter and Mr. Hare, did you then have any contact
18 with the victim, Mr. [REDACTED]

19 A Yes, sir. We contacted the victim and asked him
20 to come down to the law enforcement center to take a look
21 at some photographs.

22 Q Okay. And did he come that same day?

23 A He did.

24 Q Do you remember around what time of day was it
25 that you had him go to observe these photo lineups?

MATT OWENS-DIRECT BY MR. MOYER

1 A I would say around 2:00 in the afternoon,
2 somewhere around in there.

3 Q Okay. Did you and other investigators present
4 the photo lineups to Mr. [REDACTED]

5 A Yes, sir.

6 Q Mr. [REDACTED] has already testified about this a
7 good bit, so I can narrow down my questions, but let me
8 start off with State's Exhibit No. 1. Is this the photo
9 lineup that you showed to Mr. [REDACTED] initially?

10 A Yes, sir.

11 Q And you and the investigators put that lineup
12 together?

13 A Yes, sir.

14 Q And who was the subject of that particular photo
15 lineup?

16 A Braxton Hare.

17 Q Where was he in that?

18 A He was the fourth photo.

19 Q Can you just tell the jury briefly how it was
20 that you presented the photo lineup to Mr. [REDACTED] and
21 asked him to look at it?

22 A So, basically, we put six individuals picture in
23 a binder. We hand the binder over to the victim and say
24 the same thing basically over and over again. It usually
25 goes something like the person responsible for this may or

MATT OWENS-DIRECT BY MR. MOYER

1 may not be in this photo lineup, so do not feel obligated
2 or pressured to pick somebody. If you do see somebody you
3 recognize, explain to me why you recognize that person.
4 We ask them to start at number one to go all the way to
5 number six. We give them as much time as possible. We
6 tell them to please do not flip flop through the
7 photographs. Do not compare them. It's one through six
8 individually.

9 Q Okay. And you showed the lineup to
10 Mr. [REDACTED] And tell us what the results were of that
11 showing the lineup?

12 A Mr. [REDACTED] positively identified Braxton Hare
13 as the shooter and the driver in this incident.

14 Q Did he show a high level of confidence about his
15 decision?

16 A Yes, sir.

17 Q Then you showed the second lineup, State's
18 Exhibit No. 2, to Mr. [REDACTED] right after that?

19 A Yes, sir.

20 Q You presented it to him in the same fashion as
21 the first one?

22 A Yes, sir.

23 Q What was Mr. [REDACTED] response when he was
24 shown that lineup?

25 A He did not pick anybody out.

MATT OWENS-DIRECT BY MR. MOYER

1 Q Whose picture was in State's Exhibit No. 2?

2 A This was Jaquan Salter. He was the fifth
3 photograph. He was the passenger of the Mercedes when it
4 was wrecked.

5 Q Okay. So, at that point, you had the driver of
6 the vehicle identified, but not the passenger, is that
7 right?

8 A Yes, sir.

9 Q Now, let me take you to the following day,
10 September 2nd, 2015. Did you participate in the search of
11 the black Mercedes?

12 A I did.

13 Q Where did that take place?

14 A It was, I believe, 657 Keith Drive, which is our
15 service center. There's a section there that we put --
16 impound cars.

17 Q Okay. That was the vehicle that was at the
18 location of that wreck the day previous where Braxton Hare
19 and Jaquan Salter were taken into custody?

20 A Yes, sir.

21 Q Did you seize anything from the vehicle?

22 A Yes, sir.

23 Q What particularly did you seize?

24 A I know there was a backpack. There was some
25 holsters.

MATT OWENS-DIRECT BY MR. MOYER

1 Q Let me stop you there for a minute. So, this
2 backpack, where was the backpack?

3 A The backpack was located in the floorboard of
4 the front passenger seat.

5 Q Were there items in that backpack?

6 A Yes, sir.

7 Q Multiple items?

8 A Yes, sir.

9 Q Did you eventually take that backpack with the
10 contents and put it in the property and evidence room?

11 A I did.

12 Q And did you then bring that to court both
13 yesterday and today?

14 A I did.

15 Q Okay. Would it refresh -- when you take items
16 to the property and evidence room, do you have to fill out
17 some paperwork to show exactly what it is you're putting
18 into evidence?

19 A Yes, sir. We have to write down exactly what
20 we're putting in as far as the description, then the
21 quantity, however many of those items we have, and then
22 the time, date and so forth.

23 Q Would it refresh your memory if you had a chance
24 to look at the paperwork that you filled out when you put
25 those items into property and evidence to tell us what

MATT OWENS-DIRECT BY MR. MOYER

1 exactly you did?

2 A Absolutely.

3 Q All right. The paperwork I'm handing you now,
4 do you recognize that?

5 A I do.

6 Q Is that the paperwork you filled out with the
7 inventory of those items?

8 A Yes, sir.

9 Q Would you tell us what was inside that backpack
10 that was in the front seat of the Mercedes?

11 A What was inside the backpack?

12 Q Yes.

13 A There was a black and white bandanna, a white
14 and black bandanna?

15 MR. HAMILTON: Your Honor, I object.

16 MR. MOYER: Okay.

17 THE COURT: Yeah, just keep -- that's all right.
18 Keep going.

19 THE WITNESS:: There's a cell phone case, couple
20 cell phone cases, blue tooth speaker, ten 380 ammo,
21 one 9mm Luger ammo and a styrofoam ammo holder.

22 BY MR. MOYER:

23 Q Okay. And you said you put those items into the
24 property and evidence room?

25 A Yes, sir.

MATT OWENS-DIRECT BY MR. MOYER

1 Q When did you do so?

2 A It says here it's dated on September 3rd.

3 Q September 3rd of?

4 A 2015.

5 Q Okay. Let me show you State's Exhibit No. 19.

6 And can you tell us what is that exhibit?

7 A It's the backpack and the items that I just
8 mentioned.

9 Q Okay. So, that is the backpack you seized from
10 the black Mercedes on September the 2nd, 2015?

11 A Yes, sir.

12 Q Okay. And that you put into evidence on
13 September 3rd?

14 A Yes, sir.

15 Q And that you brought to court yesterday and
16 today?

17 A Yes, sir.

18 Q With the contents, is that correct?

19 A Yes, sir, just described.

20 Q Is it in substantially the same condition now as
21 they were when you collected them and put them in property
22 and evidence?

23 A Yes, sir.

24 MR. MOYER: At this time, we move to have this
25 exhibit moved into evidence.

MATT OWENS-DIRECT BY MR. MOYER

1 THE COURT: Any objection?

2 MR. HAMILTON: Yes, Your Honor, I need to object
3 on the basis of the -- can I approach, Judge?

4 THE COURT: Okay.

5 (WHEREUPON, an off-the-record bench conference
6 was held in the presence of the jury but out of
7 the hearing of the jury.)

8 THE COURT: Okay.

9 MR. HAMILTON: Your Honor, we object on the
10 basis of inadmissibility.

11 THE COURT: All right. Well, overruled.

12 Go ahead.

13 (WHEREUPON, State's Exhibit No. 19 was admitted
14 into evidence.)

15 BY MR. MOYER:

16 Q So, there was one spent round in that backpack,
17 one fired round?

18 A It just says one 9mm Luger ammo. I mean, I can
19 take a look at it and give a little bit more detail for
20 you.

21 Q If you would, please take a look at the contents
22 of the backpack and find the 9mm that was referred to.

23 A (The witness complies.) Yes, one 9mm shell
24 casing.

25 Q And the 380 ammo, they were live rounds?

MATT OWENS-DIRECT BY MR. MOYER

1 A Yes, sir.

2 Q Okay. Now, did you -- that's all the questions
3 I have about that evidence at this time. You can put it
4 back in there. Did you then have occasion to show a third
5 photo lineup?

6 A I did.

7 Q And that was -- when did that take place?

8 A On September 2nd.

9 Q Okay.

10 A 2015.

11 Q Okay. What led you showing this third lineup?

12 A This is when I received a phone call from Deputy
13 Estes informing me that he saw Braxton Hare and William
14 Hunter together in the black Mercedes at the Carolina High
15 School during the same timeframe when this occurred.
16 Right after this timeframe.

17 Q Okay. So, you called Mr. Kingwill to come back
18 to the law enforcement center?

19 A I did.

20 Q And you showed him a photo lineup with
21 Mr. Hunter in it?

22 A I did.

23 Q And did you present it to them the same way you
24 showed the lineups to Mr. [REDACTED] the day previous?

25 A Yes, sir.

MATT OWENS-DIRECT BY MR. MOYER

1 Q What was the results of showing this lineup with
2 Mr. Hunter in it?

3 A Mr. [REDACTED] positively identified Mr. Hunter as
4 the passenger in the vehicle.

5 Q Okay. And what was the level of confidence that
6 he exhibited in that decision?

7 A Very confident.

8 Q Now, you did an interview with Mr. Hunter, is
9 that correct?

10 A I was -- I was there, yes.

11 Q You were present for that interview?

12 A Yes.

13 Q And during -- and that was on what date?

14 A I want to say September 9th.

15 Q Would it refresh your memory to take a look at
16 the paperwork --

17 A Sure.

18 Q -- that was filled out on that date?

19 A Yes, sir.

20 Q By looking at that paperwork, does it refresh
21 your memory as to the date that interview was given?

22 A Yes, sir, September 9th, 2015.

23 Q Okay. And during your interview with
24 Mr. Hunter, did he ever make any reference to the victim
25 having made any rude gestures to him?

MATT OWENS-DIRECT BY MR. MOYER

1 MR. HAMILTON: Objection.

2 THE COURT: On what basis?

3 MR. HAMILTON: Calling for hearsay. He's not
4 the one -- he's going to repeat what he heard
5 somebody say, hearsay.

6 MR. MOYER: It's Rule 613 for prior inconsistent
7 statement, Your Honor.

8 THE COURT: Okay. Overruled. Go ahead.

9 THE WITNESS: No, he did not say anything about
10 any verbal sayings or stuff like that.

11 BY MR. MOYER:

12 Q Okay. So, what was the extent of whatever
13 disagreement he says happened between their car and
14 Mr. [REDACTED]

15 A The only information he provided me was that
16 Mr. Kingwill flipped him the bird, that was it. There was
17 no mention of any type of road rage, none of that. Just
18 extended the middle finger at somebody.

19 Q And no talk of almost wrecking the car or
20 anything like that?

21 A No, sir.

22 Q That was a pretty extensive interview?

23 A Yes, sir. I think it was approximately about 30
24 minutes long.

25 Q You have to shoot your firearm as part of your

MATT OWENS-CROSS BY MR. HAMILTON

1 job as far as practicing?

2 A Yes, sir, quite often.

3 Q Do you ever shoot into metal targets?

4 A Yes, sir.

5 Q You ever shoot at real close range into a metal
6 target?

7 A Yes, sir.

8 Q Any sound that's produced by a metal object that
9 you're shooting at at a distance a few feet away, tell us
10 about in your experience how that sound is in conjunction
11 with the sound of your shot?

12 A Sure. So, in training, we shoot from several
13 distances. Obviously, the closer you are to a target, as
14 soon as you pull the trigger and the firearm goes off, you
15 don't hear anything. I haven't heard it hit something as
16 soon as I pull the trigger. Now, the further I go back,
17 you know, seven, 12, 15 yards, you hit a metal target, you
18 hear the firearm and then you hear, almost simultaneously,
19 a ping of it hitting the metal, the bullet hitting the
20 metal. And that's from seven, 12, 15 yards. Obviously,
21 the closer you get, you don't have that delay. You just
22 basically hear the sound of the firearm go off.

23 MR. MOYER: Please answer any questions the
24 Defense may have.

25 CROSS-EXAMINATION

MATT OWENS-CROSS BY MR. HAMILTON

1 BY MR. HAMILTON:

2 Q Mr. Owens, I think it's important that we do
3 talk about this closeness of a metal -- a bullet hitting a
4 metal object, not being able to penetrate it and bouncing
5 all around internal parts of the car. From your
6 experience, that could happen as well, right?

7 A It's a possibility, yes, sir.

8 Q It would break the glass or the glass is halfway
9 down or portion down, then it would hit, the lead part
10 ricochet all in there and break the glass?

11 A I have never shot into a vehicle, so I have -- I
12 mean, it's a possibility, but I've never shot into a
13 vehicle, so I can't sit here and tell you.

14 Q It's a possibility. And it's a possibility that
15 it could make a sound after striking, after the bullet
16 striking. The sound of the shot and the striking of a
17 metal?

18 A Yes, sir.

19 Q Okay. And then this backpack belonging to --
20 where did you find this located?

21 A In the passenger seat floorboard.

22 Q All right. And you was in the courtroom when
23 Slater said that was his backpack, right -- when Salter
24 said that was his backpack?

25 A I believe so, yes, sir.

MATT OWENS-CROSS BY MR. HAMILTON

1 Q And the contents belonged to him?

2 A I think I remember that.

3 Q Yeah, yeah, okay. But when you talked to
4 Mr. Hunter, he only mentioned that the victim in this case
5 flipped him a bird, did he say that, bird?

6 A Yes, sir.

7 Q Said he flipped him a bird. But he didn't say
8 there was road rage?

9 A No, sir.

10 Q Okay. And he didn't say that hey, we almost
11 wrecked?

12 A No, sir.

13 Q But he didn't try to give an explanation as to
14 what was the bird about?

15 A No, sir.

16 Q Did you ask him about well, what did he flip you
17 a bird for? What did you do to him -- what did Braxton
18 Hare as the driver to cause him to flip a bird?

19 A He didn't explain -- never explained that.

20 Q Never explained that?

21 A Uh-huh.

22 Q And the reason why he said he offered that
23 information was to explain his actions?

24 A Say that one more time.

25 Q The reason why he said the man shot a bird at me

MATT OWENS-CROSS BY MR. HAMILTON

1 and therefore, why would he give that statement?

2 A Because I asked him what happened.

3 Q Okay. Did he say what he did?

4 A No -- well, yeah, he did.

5 Q What did he say?

6 A He just said he sat there.

7 Q Did he say he pointed the gun at him?

8 A No.

9 Q But he did say the man shot a bird at him?

10 A Uh-huh.

11 MR. HAMILTON: That's all we have.

12 MR. MOYER: Nothing further from this witness.

13 THE COURT: Thank you, you can step down.

14 MR. MOYER: Your Honor, at this time, the State
15 rests.

16 THE COURT: All right. Mr. Foreman, ladies and
17 gentlemen of the jury, this is one of those times I
18 need to discuss a couple legal issues with the
19 attorney, so I'm going to excuse you back to your
20 jury room. We'll get right back with you. Don't
21 discuss the case yet. Thank you.

22 (WHEREUPON, the jury left open court at
23 approximately 11:33 a.m.)

24 THE COURT: All right, any motions?

25 MR. HAMILTON: Your Honor, at this time, we

1 would ask the Court to move for a directed verdict on
2 the failure of the State to prove there was any
3 specific intent to commit serious bodily harm.
4 There's no evidence of the victim being struck by a
5 bullet or there is no evidence that there was any
6 intention in this matter that there was attempted
7 murder in this case.

8 THE COURT: Okay. No. Denied.

9 All right. Let me just --

10 Mr. Hare, raise your right hand.

11 BRAXTON HARE, after being duly sworn,
12 testified as follows:

13 EXAMINATION

14 BY THE COURT:

15 Q Okay, stand up for me. I want you to understand
16 that you have an absolute constitutional right to testify
17 in your own defense in this matter. You have an equal
18 absolute constitutional right not to testify. It cannot
19 be held against you. I will give an instruction to the
20 jury should you so desire to that effect, that they can't
21 consider it in their deliberations.

22 Whether or not you testify is a decision
23 that you need -- I'm sure you have and need to discuss
24 with your attorney. There are certain strategic benefits
25 and potential down side to testifying, but that's all a

1 strategic matter and you need to discuss that with your
2 attorney. And you -- but I want you to understand that in
3 the end it is a constitutional right that belongs to only
4 you and the decision about whether or not to testify is
5 yours and yours alone. Do you understand all that?

6 A Yes, sir.

7 Q Have you made a decision about what you're doing
8 to do?

9 A Yes, sir.

10 Q I'm sorry?

11 A Yes, sir.

12 Q And what is that?

13 A Testify..

14 Q You're going to testify?

15 A Yeah.

16 THE COURT: Okay. All right. Well, we'll take
17 a short recess. I'm going to let Mr. Hamilton talk
18 to you.

19 And I -- is there -- I can't think of any good
20 reason to allow the admission of the video?.

21 MR. HAMILTON: Your Honor, we withdraw that.

22 THE COURT: All right. Let just take about five
23 minutes.

24 Talk to your client. Well, you can go back in
25 there to talk.

1 (WHEREUPON, a short break was taken.)

2 THE COURT: All right, we ready to go? Is there
3 any impeachable offenses?

4 MR. MOYER: Your Honor, he has a shoplifting,
5 the same shoplifting as his Co-defendant had. He was
6 convicted of that. As far as his juvenile record
7 goes, I'm not saying he has robbery on it -- I don't
8 have his record with me right now. We have someone
9 who is going to get it to verify that. But it's my
10 understanding he has a robbery as a juvenile on his
11 record.

12 MR. HAMILTON: But he don't have that, Judge,
13 and he's not going to use that, I'm not sure.

14 MR. MOYER: If we can confirm it by the time he
15 testifies.

16 THE COURT: All right. Okay.

17 MR. HAMILTON: Your Honor, I think -- after
18 counseling with my client, he's indicated to me that
19 he would forgo testifying in this matter.

20 EXAMINATION

21 BY THE COURT:

22 Q All right, Mr. Hare, you're still under oath.
23 Please stand. Tell me what you want to do.

24 A I'm not going to testify, sir.

25 Q Not going to?

BRAXTON HARE-EXAMINATION BY THE COURT

1 A No, sir.

2 Q All right. Do you have any questions you want
3 to ask me about that? You understand it fully and you're
4 satisfied?

5 A Yes, sir.

6 THE COURT: All right. Okay. You going to put
7 anything else --

8 You can have a seat. Thanks.

9 You going to put anything else up?

10 MR. HAMILTON: Nothing further, Judge. The
11 Defense will rests.

12 THE COURT: Okay. Y'all got any requests to
13 charge?

14 MR. FOWLER: Judge, we ask that the inferred
15 malice of use of a deadly weapon be charged in this
16 case. I know there's State v. Belcher that takes
17 that out in some situations, but State v. Belcher,
18 what they say is that charge is inappropriate where
19 there's evidence presented that would reduce,
20 mitigate, excuse or justify the homicide. They're
21 dealing with a murder case. I don't know that we've
22 got any evidence thus far that would reduce,
23 mitigate, excuse, or justify a homicide in this case
24 had Mr. [REDACTED] been hit. So, I think we can still
25 get that charge.

1 MR. HAMILTON: Your Honor, I object to it. I
2 don't think that there is any evidence that will
3 allow that use of a deadly weapon.

4 THE COURT: Inference of malice with use of a
5 deadly weapon?

6 MR. HAMILTON: Yeah.

7 THE COURT: Why wouldn't there be? The only
8 evidence is that there was -- he shot a bird. How
9 does that --

10 Do you have the case?

11 MR. FOWLER: I've got State v. Belcher right
12 here, yes, sir.

13 THE COURT: Okay.

14 MR. HAMILTON: Your Honor, I've read it and it
15 says that the charge of inference of malice could be
16 inferred but was no longer good law in South
17 Carolina.

18 THE COURT: Based on the facts of that case,
19 right?

20 MR. FOWLER: Yes, sir. It goes on to say where
21 evidence has been shown that would reduce, mitigate
22 or excuse the homicide. That case, they argued
23 self-defense, so I think the issue was they were
24 charging self-defense and an inferred malice charge
25 from the use of a pistol and they kind of realized

1 those two things are inconsistent and don't make
2 sense.

3 MR. HAMILTON: Your Honor, I would ask the Court
4 not to charge -- include that as evidence of malice.

5 THE COURT: Well, I don't think -- I'm going to
6 charge it.

7 MR. FOWLER: Judge, we also ask for an ABHAN
8 charge as well. It's a lesser included of attempted
9 murder. And I think we've got pretty well an
10 admission to it at this point, so we just ask that be
11 explicitly charged as well.

12 THE COURT: How about it, Mr. Hamilton?

13 MR. HAMILTON: Your Honor, I think that my
14 client would rely on the -- that there's no --
15 there's no evidence of aggravated assault in this
16 case and that that would not be a lesser charge that
17 the jury could reach. They either find him guilty of
18 attempted murder or not guilty.

19 MR. FOWLER: I mean, Judge, it says in the
20 statute that it's a lesser included of attempted
21 murder and the statute finds ABHAN as great bodily
22 injury of another person results or the act is
23 accomplished by means likely to produce death or
24 great bodily injury. I would say that a gunshot
25 could certainly produce death or great bodily injury.

1 THE COURT: All right. Let's just take a minute
2 and let me --

3 (WHEREUPON, there was a brief pause.)

4 THE COURT: All right. Well, I'm going to
5 charge it as a lesser included. It's statutorily
6 defined that way.

7 MR. FOWLER: That's all the State's got, Judge.

8 THE COURT: All right. Anything?

9 MR. HAMILTON: Yes, Your Honor, I ask that the
10 Court include the statutory language of -- and
11 requirement that -- that attempted murder would
12 require a specific intent to kill. And the
13 definition of specific intent means that he
14 consciously intended the contemplated act.

15 MR. FOWLER: Judge, you know, when I read
16 through the charge book, I see where it says intent
17 may also be inferred when its demonstrated the
18 defendant voluntary and willfully commits an act the
19 natural tendency of which is to destroy another's
20 life. I think that's a more appropriate charge in
21 this case. I mean, the natural tendency of pointing
22 a gun at somebody and shooting at them seems pretty
23 clearly like they could destroy their life to me.

24 MR. HAMILTON: May it please the Court?

25 THE COURT: Yeah.

1 MR. HAMILTON: My client indicated to me that if
2 it's allowable could he testify in his defense?

3 THE COURT: Yeah, of course, he can testify.

4 All right. You ready to go?

5 MR. HARE: Yes, sir.

6 Okay. Let's bring the jury.

7 (WHEREUPON, the jury came into open court at
8 approximately 12:00 p.m.)

9 THE COURT: All right.. Mr. Hamilton.

10 MR. HAMILTON: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. HAMILTON: The Defendant wishes to take the
13 stand.

14 THE COURT: All right. Come on around and take
15 the oath.

16 THE CLERK: Sir, please place your left hand on
17 the Bible and raise your right hand.

18 BRAXTON HARE, after being duly sworn,
19 testified as follows:

20 THE CLERK: Thank you. Please be seated.
21 Please state your name for the record.

22 THE WITNESS: Braxton Hare.

23 THE CLERK: Thank you.

24 DIRECT EXAMINATION

25 BY MR. HAMILTON:

BRAXTON HARE-DIRECT BY MR. HAMILTON

1 Q Okay, Braxton, how old are you?

2 A Nineteen years old.

3 Q How old were you on September 1st?

4 A Seventeen years old.

5 Q Seventeen?

6 A Yes, sir.

7 Q All right. Where do you live?

8 A Currently?

9 Q Where were you living back then?

10 A 914 Staunton Bridge Road.

11 Q All right. You've been in and out of school?

12 A Yes, sir.

13 Q Okay. And you've had some problems as a
14 juvenile with violations of the law?

15 A Yes, sir.

16 Q And you satisfied those violations? You owned
17 up to them?

18 A Yes, sir.

19 Q And even in this case, they were talking about
20 shoplifting on the day that this happened and you entered
21 a guilty plea on that shoplifting?

22 A Yes, sir.

23 Q All right. So, on this day when you were
24 driving -- you was taking Hunter to school, isn't that
25 true?

BRAXTON HARE-DIRECT BY MR. HAMILTON

1 A Yes, sir.

2 Q All right. Then as you was driving -- what
3 happened when you were on the way to take Hunter to his
4 school meeting?

5 A When I took him --

6 Q Go ahead.

7 A When we first went to the school, he went in,
8 but he said he didn't have the right time, so he came back
9 out.

10 Q Okay. All right. Did you go in?

11 A No, sir.

12 Q Okay. All right. But then when y'all was
13 coming back from Woodruff Road, did you see the victim in
14 his automobile, the yellow driver's car?

15 A Yes, sir.

16 Q When did you first see that car?

17 A I was in the middle lane and he came from --
18 there was a lot of traffic and he swerved in front of us
19 and we almost hit his back end and he stayed in the middle
20 line.

21 Q Okay. All right. Did that upset you?

22 A Yes, sir.

23 Q All right. So, what did you do about it?

24 A Well, when I caught to him after a red light, I
25 was beside him, he was waving his hand, doing his middle

BRAXTON HARE-DIRECT BY MR. HAMILTON

1 finger and laughing. And then when I seen -- my window
2 was already down looking at him and he start reaching down
3 and then I -- well, I pointed my gun, I shot a gun at
4 the -- I tried to hit the wheel so I would scare him off
5 and I didn't know what he was about to do. I thought he
6 was endangering my life by reaching down like picking up a
7 weapon.

8 Q All right. Were you trying to shoot and kill
9 him?

10 A No, sir, I was trying to scare him off so I
11 could get away. There was a lot of traffic and I couldn't
12 speed up and get away from him.

13 Q How many times you fired the gun?

14 A One shot.

15 Q Were you hanging out the car, playing loud
16 music?

17 A Yes, sir, I was playing loud music, but I wasn't
18 hanging out the car.

19 Q And when William Hunter pulled his gun, you see
20 him pull his gun?

21 A No, sir, I didn't see William Hunter. I was --
22 he was in the middle lane and I was in the right lane, so
23 I'm looking towards my left and William Hunter toward my
24 right, so I didn't see him pull out no gun, sir.

25 Q But you don't have any doubt that he did -- if

BRAXTON HARE-DIRECT BY MR. HAMILTON

1 he said he did, he did?

2 A I mean, I can't say I seen something -- I can't
3 say yes to something I didn't see.

4 Q Okay. All right. All right. So, did you see
5 the victim try to follow you?

6 A Yes, sir, in my rear-view.

7 Q Were you trying to get away from him?

8 A Yes, sir.

9 Q Okay. All right. And then you went on to
10 Carolina High School, is that what happened?

11 A Yes, sir. I dropped William Hunter back at his
12 school.

13 Q Okay. All right. What made you point the gun
14 at the automobile?

15 A Because he made me mad. He swerved in front of
16 me. And when I got that close on him, there was a lot of
17 traffic and he started doing all kind of stuff with his
18 hand. And I seen him reaching down, so I thought I was in
19 danger. I thought he was going to pull a gun or throw a
20 weapon at me, so I decided -- I tried one time to get him
21 away from me and I tried to get away, but there was a lot
22 of traffic and I couldn't just speed up and pass him.

23 Q Did you aim at him?

24 A No, sir. I aimed down trying to aim at the
25 tire.

BRAXTON HARE-DIRECT BY MR. HAMILTON

1 Q What type of marksman are you, are you able to
2 shoot what you aiming at?

3 A Yes, sir.

4 Q Okay. All right. Did you purposely aim at the
5 wheel or what was you aiming at?

6 A I was really aiming at the wheel, at the tire
7 and I think I hit the door.

8 Q All right.

9 A It was moving, the car was moving.

10 Q Okay. Now, when you point it at him, did you
11 squeeze your hand or did you move in any kind of way, the
12 gun?

13 A What you mean by that?

14 Q I mean, did you say anything before you fired
15 the gun or did you gesture anything?

16 A No, sir, I ask him what he say.

17 Q What he say.

18 A I ask him what he say because his window was
19 down.

20 Q All right. Did you --

21 A I mean, his window was up, so I couldn't hear
22 what he was saying. I could just see his hand doing
23 middle fingers and doing crazy stuff.

24 Q Then he pulled his window down?

25 A Yes, sir.

BRAXTON HARE-DIRECT BY MR. HAMILTON

1 Q Then when he pulled his window down, did you try
2 to shot at him at that time or when did you decide to
3 shoot?

4 A I shot at him when he was reaching down. I shot
5 down to get him away from me when he reached down,
6 whatever he was doing when he reached down.

7 Q Then you immediately drove off?

8 A Yes, sir.

9 Q Okay. Were you trying to hit him with the
10 gunshot?

11 A No, sir.

12 Q What was your intention?

13 A Just to scare him off so I can get William
14 Hunter back to school because his mom -- he had a meeting
15 at school. He had to be there at a certain time.

16 Q Okay. All right. And so, then after you got
17 into William Salter's car -- or William Salter got in your
18 car at the same school or different school?

19 A You said Salter get in the car with me at the
20 school?

21 Q Yeah, where did he get in the car at?

22 A No, no, I went to his house and picked him up.

23 Q You went to his house, okay. And then when did
24 you see the police come after you?

25 A I had caught contact with the police on

BRAXTON HARE-DIRECT BY MR. HAMILTON

1 Whitehorse Road a little bit before the Citgo. I pulled
2 in the Citgo. I was going to purchase some gas. And when
3 I -- when I was about to walk in the store, I happened to
4 look back and seen them pull in, I went back to the car,
5 ran back to the car. And I got in the car and sped off.

6 Q Okay. All right. So, why didn't you stop for
7 the police?

8 A Because I ain't got no license.

9 Q Okay. All right. Have you ever had a driver's
10 license?

11 A No, sir.

12 Q So, you knew that was wrong to run from the
13 police?

14 A I don't know all the law. This was my first
15 time doing it, but.

16 Q All right. But did you know that you were
17 supposed to stop when the police got behind you?

18 A I don't know.

19 Q All right. Well, today, you know that -- are
20 you saying you're not guilty of running from the police?

21 A No, sir. Now, I know the laws and statute, yes,
22 sir, I'm guilty of running from -- of failure to stop for
23 a blue light.

24 Q Okay.

25 A Yeah.

BRAXTON HARE-DIRECT BY MR. HAMILTON

1 Q Okay. All right. So, you're charged with
2 attempted murder in this case?

3 A Yes, sir, attempted murder with attempt to kill
4 and failure to stop for blue lights.

5 Q Okay. All right. And your intent in this
6 matter, were you trying to kill somebody?

7 A No, sir. I was trying to get him away from me.
8 There was too much traffic, I couldn't drive fast. It was
9 really low speed there and a lot of traffic.

10 Q Okay. All right. So -- and then we talked
11 about you having past -- the shoplifting is a part of the
12 things that you been through. You plea guilty to that,
13 right?

14 A Yes, sir.

15 Q Were you were involved in the -- as a juvenile
16 in a robbery intent.

17 A It was a strong armed robbery, yes, sir.

18 Q All right. Nobody was hurt in that?

19 A No, sir.

20 Q Okay. All right. But on this day, did you try
21 to kill somebody?

22 A On September 1st?

23 Q Yeah.

24 A No, sir.

25 Q Have you ever seen this guy before, the victim

BRAXTON HARE-CROSS BY MR. MOYER

1 in this car?

2 A Seen the victim?

3 Q Uh-huh.

4 A No, sir. Well, no, on September 1st, I seen
5 him.

6 Q You seen him?

7 A Oh, yes, sir, but not no other time.

8 Q All right. Is it important that you remember
9 how many times you fired the gun?

10 A Yes, sir. I fired one shot.

11 Q Okay. Why is it that you would think they say
12 you shot twice.

13 MR. MOYER: Objection.

14 THE COURT: Yeah, you're asking for speculation
15 on that, Mr. Hamilton.

16 BY MR. HAMILTON:

17 Q Did you shoot two times?

18 A No, sir.

19 MR. HAMILTON: Answer any questions Mr. Moyer
20 may have.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. MOYER:

24 Q Okay, Mr. Hare, so you have been adjudicated in
25 juvenile court for robbery, is that right?

BRAXTON HARE-CROSS BY MR. MOYER

1 A Strong armed robbery.

2 Q Which is robbery?

3 A Yes, sir.

4 Q And you talked about -- this shoplifting you
5 talked about, that's the one that Mr. Hunter was talking
6 about when he testified a short while ago, right?

7 A I'm talking about the one on Woodruff Road.

8 Q On Woodruff Road at Sports Academy?

9 A Yes, sir.

10 Q You were held responsible for those bullets that
11 were stolen, right? At Sports Academy?

12 A What bullets you talking about? I never got
13 caught with any bullets.

14 Q Right, but that's what was stolen at Sports
15 Academy, right?

16 A I don't remember.

17 Q You don't remember? Why did you go over to
18 Sports Academy that day?

19 A I don't remember.

20 Q You don't remember?

21 A No, sir.

22 Q What did you buy?

23 A I didn't buy anything.

24 Q Because Mr. Hunter stole bullets, right?

25 A I don't know, sir.

BRAXTON HARE-CROSS BY MR. MOYER

1 Q But that's what you pled guilty?

2 A I pled guilty to it.

3 Q Yeah. You don't remember what you pled guilty
4 to?

5 A Shoplifting.

6 Q Right, for stealing bullets with Mr. Hunter.

7 A I didn't caught with any bullets. I pled to
8 shoplifting.

9 Q Right, because Mr. Hunter stole the bullets and
10 you were participating in that along with him, isn't that
11 right?

12 A I don't know what he stole.

13 Q So, you just pled guilty for no reason?

14 A Yes, sir.

15 Q For no reason? And you got a fine, right, or
16 time served or something like that?

17 A I don't remember.

18 Q Okay. Now, let's go back to that day and talk a
19 little bit about what took place. So, there's no question
20 then that you were driving the black Mercedes on September
21 the 1st of 2015?

22 A Saw what now?

23 Q You were driving that black Mercedes?

24 A Yes, sir.

25 Q And whose car is that?

BRAXTON HARE-CROSS BY MR. MOYER

1 A It's my mother's.

2 Q Were you able to drive it all the time?

3 A No, sir.

4 Q Just certain times?

5 A No, sir. If I have to wait a minute and see
6 where she going in another car or asleep so I can steal
7 the keys or something.

8 Q Steal the keys, okay.

9 A Steal the keys and go to the store or something.

10 Q So, you were driving the black Mercedes and you
11 went and picked up Mr. Hunter at his house, right?

12 A Yes, sir.

13 Q And you -- when you got in the car you took the
14 gun with you that day?

15 A Yes, sir.

16 Q What kind of gun was it?

17 A I don't remember.

18 Q You know you're not supposed to have a gun,
19 right?

20 A Yes, sir.

21 Q And you don't remember what kind of gun you
22 took?

23 A No, sir, it was two year ago. No, sir.

24 Q Where did you get the gun from?

25 A I don't remember, sir.

BRAXTON HARE-CROSS BY MR. MOYER

1 Q You don't remember where you kept it?

2 A You say where I found the gun at?

3 Q No, no, no, no. Before you got in your mom's
4 car, the black Mercedes, where did you go and get the gun?
5 Was it on your bed, was it in your closet?

6 A I don't remember, sir.

7 Q But got a gun. And it was loaded?

8 A Yes, sir, it had to be loaded because I didn't
9 load it in the car or nothing, sir.

10 Q So, you got in the car to go to take William
11 Hunter school with a loaded pistol, right?

12 A Yes, sir.

13 Q And you don't remember what kind of pistol it
14 was?

15 A No, sir, I don't remember.

16 Q I mean, was it your pistol or was it someone's
17 in the house where you lived?

18 A No, sir, I found it.

19 Q You found it?

20 A Yes, sir.

21 Q Was it your only pistol?

22 A Yes, sir.

23 Q So, you don't remember what kind of pistol you
24 had?

25 A No, sir.

BRAXTON HARE-CROSS BY MR. MOYER

1 Q What did you end up doing with that pistol?

2 A I don't remember, sir.

3 Q You don't remember that either?

4 A No, sir.

5 Q Do you remember throwing it out of the window
6 during the high speed chase?

7 A No, sir.

8 Q So, you don't know about that either.

9 A No, sir.

10 Q But you got in a car with the pistol, it was
11 loaded, then you and got William Hunter and William had a
12 pistol?

13 A I don't know, sir. I didn't see him with a
14 pistol, no, sir.

15 Q So, the whole purpose of getting him was y'all
16 drove over to the school. Well, what happened when you
17 got over to the school?

18 A I picked him up from, I think, his mother's
19 house and she was -- I think she was telling him don't go,
20 something, got a school meeting. I told her I was doing
21 to check on it and make sure that he goes. So, we went to
22 his school, the Carolina High School. He went in for like
23 maybe a minute, couple minutes and came back out and was
24 like, it's not the right time. We got to come back.

25 Q Did you wait there for him?

BRAXTON HARE-CROSS BY MR. MOYER

1 A Yes, sir, in the parking lot.

2 Q Why were you waiting for him if he was supposed
3 to go into the school?

4 A Make sure -- he told me to wait to make sure he
5 had the right time.

6 Q What did he do with the pistol before he went in
7 the school?

8 A I don't know. I didn't know he had a pistol,
9 sir, I just told you that a couple times already.

10 Q Did he go into school with the pistol, do you
11 know?

12 A You just asked me the question, no, sir.

13 Q So, you don't know? You didn't see him take it
14 out of his pocket and put it under the seat or put it
15 anywhere?

16 A No, sir.

17 Q So, he went in, you waited there and he came
18 back out?

19 A A couple minutes later, like two minutes.

20 Q And that's when y'all went over to Sports
21 Academy?

22 A Yes, sir.

23 Q Okay. And that's where y'all stole the bullets?

24 A I didn't steal any bullets. I don't know if he
25 stole any bullets, sir.

BRAXTON HARE-CROSS BY MR. MOYER

1 Q Well, y'all didn't leave the store together, did
2 you? Do you remember --

3 A No, sir.

4 Q Do you remember --

5 A The school or the store?

6 Q The store?

7 A Yeah; yeah -- no, we didn't leave out together.
8 We went in separate and we came out separate.

9 Q Why did you -- I'm sorry, I didn't mean to cut
10 you off.

11 A Go ahead.

12 Q I don't mean to interrupt you. Go ahead.

13 A Go ahead.

14 Q So, y'all went into the store separately?

15 A Yes, sir.

16 Q And you came out of the store separately. Why
17 did you do that?

18 A I don't know. Doing our own shopping.

19 Q What were you looking for?

20 A I don't remember what I was looking for that
21 day. Usually, I got to Sports Academy to get my jerseys,
22 football, basketball jersey, baseball.

23 Q Did you see store employees chasing him out of
24 the store?

25 A No, sir.

BRAXTON HARE-CROSS BY MR. MOYER

1 Q So, you got in your car first and you started
2 driving away, didn't you?

3 A Yes, sir. The reason I believe they charged me
4 with shoplifting because they had -- I was walking out the
5 store or whatever and the man came up to me and was like,
6 who was the man you was with or whatever, he got caught
7 stealing bullets or whatever. And he told me he got me on
8 trespass since I wouldn't tell what he was in there for.
9 He say he got caught with bullets or something, so he
10 charged me with it. Asked me for my name, sir, and I told
11 him.

12 Q And you picked him up when he -- after he had
13 ran out of the store, you picked him up near the exit,
14 didn't you?

15 A It was right in front of the store, but I don't
16 know if he ran out, though. He was right in front of the
17 store. I think he was coming from McDonald's, something
18 like that.

19 Q Then you started driving back to -- you started
20 driving back to take him to school for his meeting, right?

21 A Yes, sir.

22 Q And that's where this incident that you said
23 took place which the yellow car?

24 A Yes, sir. On Mills Avenue.

25 Q And you said the car cut you off?

BRAXTON HARE-CROSS BY MR. MOYER

1 A Yes, sir.

2 Q Describe a little bit more about what you mean
3 by cut you off.

4 A I was in the middle lane, sir. There was a lot
5 of traffic. We playing music. I'm not paying attention
6 to the cars. The car just come beside me and cut and
7 swerve in front of me, whatever. Again, he was in the
8 middle lane. It's a lot of traffic and stuff in front of
9 me. I go to get in the right lane. I'm beside him, cars
10 in front of me, a lot of traffic. He doing stuff with his
11 hands. I'm looking at him and he reached down, so that's
12 when I shot one shot down trying to scare him off because
13 I thought if I reached -- self-defense, I thought he was
14 about to endanger my life.

15 Q So, he cut you off a few blocks before, didn't
16 he? According to your testimony, he cut you off a few
17 blocks --

18 A I never said he cut me off a few blocks. He was
19 right there on Mills Avenue, sir.

20 Q So, that all happened right then at the same
21 time?

22 A Yes, sir, came from -- yes, sir.

23 Q So, he cut you off and he didn't drive on ahead?

24 A It was a lot of traffic, sir, I don't remember.
25 He wasn't driving fast after he cut us off.

BRAXTON HARE-CROSS BY MR. MOYER

1 Q There's a lot here you didn't seem to remember
2 other than the things that seem to help you. So, when he
3 cut you off, did he -- did he drive up ahead and you had
4 to drive up and catch him?

5 A I don't remember, sir. I pulled beside him --
6 some kind of way I got beside him again -- well, it was
7 the first we really like parallel got beside each other.

8 Q So, why did you do that?

9 A Just move out the way, just came up beside him.
10 We just happened to get beside each other. There was a
11 lot of traffic.

12 Q So, you weren't mad anymore?

13 A I wasn't worried about until I happen to look
14 over and he was doing gestures and middle fingers and
15 stuff and he pulled -- I wasn't worried about the middle
16 fingers and all that gestures. I don't remember -- I
17 probably did the same thing back, but the only thing I
18 remember when he start reaching down is when I felt
19 endangered, that's when I started to scare him away..

20 Q Well, we'll get to that in just a minute. So,
21 you're saying then he cut you. Did that make you mad when
22 he cut you off?

23 A Made me feel some type of way, yes, sir.

24 Q So, when you went and drove up next to him, you
25 weren't mad at him at that point?

BRAXTON HARE-CROSS BY MR. MOYER

1 A I mean, I had let it go. I really don't
2 remember that part. When he cut me off, I was mad.

3 Q And there's a reason you didn't keep on driving.
4 Why did you just stay parallel with him?

5 A He was adamant, sir. There was a lot of
6 traffic, sir. I couldn't go ahead. I was in the right
7 lane at first, then in the middle lane. He swerved around
8 me and got in the lane in front of me, sir.

9 Q And your testimony -- what do you mean by he
10 reached down?

11 A I seen his arm go down, like reaching down for
12 something.

13 Q Well, I mean, show us. Describe -- show us what
14 he did.

15 A Driving the car, he reached -- he was driving
16 the car, he like reached down like -- I don't know. He
17 say he was -- in his testimony, he said he was --

18 Q I'm not worried about what he said, I'm worried
19 about what you say --

20 A I just told you.

21 Q -- he saw.

22 A What he say, he saw what I saw.

23 Q What you say you saw him do. Which hand do you
24 say you saw him reach?

25 A Had to be his left. I just know his shoulders

BRAXTON HARE-CROSS BY MR. MOYER

1 and his head went down and his right hand was still on the
2 steering wheel.

3 Q So, your testimony is just because someone
4 reaches, you think it's all right to shoot at them?

5 A First, he was doing gestures already, sir.

6 Q What kind of gestures?

7 A He was doing all this stuff like giving us the
8 middle fingers and laughing at us.

9 Q So, you're telling me that if somebody does a
10 gesture and just happens to put his hand down, it's okay
11 to shoot at them?

12 A I felt in danger, sir. I thought he was
13 reaching for something, sir.

14 Q Have you never seen somebody else reach? So,
15 you think that's all it takes --

16 A Not after gestures. I've seen somebody reach
17 before when they was driving, but he was doing gestures,
18 like middle fingers and aggressive, so I thought -- I
19 mean, I'm thinking he endangering my life. He already
20 doing gestures, he mad at me about something. So, he
21 reaches down, anything could have been down there. I'm
22 supposed to just let him do anything to me?

23 Q So, you're telling us that all it takes, is for
24 something to be --

25 A Aggressive.

BRAXTON HARE-CROSS BY MR. MOYER

1 Q Give a rude gesture and then put their hand down
2 and you're going to shoot at them, is that what you're
3 saying?

4 A That's what happened that day, sir. This
5 incident, it all happened in a matter of time, a couple of
6 seconds, sir.

7 Q Where was your gun?

8 A I don't remember where mine was at.

9 Q Well, if this all happened so quickly and you
10 shot at him as soon as he put his hand down, that gun had
11 to have been right there in your lap?

12 A I mean, I don't remember, sir.

13 Q Wasn't in the glove box, was it?

14 A I don't remember, sir, I just told you that.

15 Q Was it under the seat?

16 A I don't remember that, sir. You asking the same
17 question. I don't remember where the gun was at, sir.

18 Q Do you not think that's an important detail?

19 A I don't remember. I can't tell you something
20 that I don't know.

21 Q Well, just be logical about it, if you were able
22 to shoot at him that quickly, that gun had to be really
23 close access to you?

24 A I don't know, sir. I don't remember.

25 Q If you had to reach over to the glove box -- if

BRAXTON HARE-CROSS BY MR. MOYER

1 you felt so scared, why didn't you put on the brakes and
2 let him go on by?

3 A Sir?

4 Q If you felt so scared, why did you not just put
5 on the brakes and let him go on by?

6 A Because he was reaching for something, sir.

7 Q Okay. Would not putting --

8 A It was a lot of traffic, sir. It all
9 happened -- I told you it was an instant -- it was a
10 reaction.

11 Q So, would not stopping and slowing down be your
12 first reaction if you think someone is about to shoot you?

13 A Can you ask the question again?

14 Q So, if you're so scared that you think your life
15 is in danger because somebody reached, would not your
16 first reaction be either to speed up or slow down?

17 A It was a reaction, sir. It all happened in a
18 matter of time, sir.

19 Q So, you didn't speed up?

20 A No, sir, I couldn't speed up. There was too
21 much traffic.

22 Q You didn't put your foot on the brake?

23 A I don't think so. I don't remember that.

24 Q So, you didn't do it?

25 A I don't remember.

BRAXTON HARE-CROSS BY MR. MOYER

1 Q You pulled a gun?

2 A Yes, sir.

3 Q And you shot at him?

4 A No, sir, I shot at the tire, sir. I shot down.

5 Q That's where you shot. Do you dispute that's
6 where the bullet went?

7 A Yes, sir, it shooting down. The car he was in
8 is way bigger, wider and taller, sir. In order for the
9 bullet to go down under the thing, I had to shoot down or
10 be level like this, sir.

11 Q You didn't shoot in the air, did you?

12 A No, sir, I shot down to scare him away, sir.

13 Q You didn't -- you shot down, how do you
14 consider -- you didn't hit the ground, did you?

15 A Only shot one shot and that's the bullet wound
16 right there, I guess.

17 Q Were you worried about hurting anybody?

18 A I wasn't trying to hurt anybody. I know I
19 wasn't going to hurt him.

20 Q Shooting like that, you're not worried about
21 hurting somebody?

22 A I'm trying to shoot down, sir. I'm wasn't
23 trying to hurt the man.

24 Q If somebody is standing here in my position
25 shot -- pointed a gun towards you and instead of pointing

BRAXTON HARE-CROSS BY MR. MOYER

1 right here, pointed right here, would you not feel like
2 your life was in danger?

3 A Sir, I was wasn't trying to hurt him.

4 Q He's right behind that window. You don't think
5 shooting right here, we're talking a matter of inches, you
6 don't think that's putting someone's life in danger?

7 A Sir, I wasn't trying to shoot the man, sir, or
8 kill the man.

9 Q That's not the question I asked. You don't
10 think shooting at somebody --

11 A Possibility.

12 Q It is a possibility, isn't it?

13 MR. HAMILTON: Objection, Judge.

14 THE WITNESS:: Well, I wasn't shooting at him,
15 sir.

16 THE COURT: Whoa, whoa.

17 Based on what?

18 MR. HAMILTON: Based on he's asked the same
19 question.

20 MR. MOYER: I'm not getting a good -- I'm not
21 getting an answer.

22 MR. HAMILTON: He can't --

23 THE COURT: Okay. Get to it, don't be
24 repetitive.

25

BRAXTON HARE-CROSS BY MR. MOYER

1 BY MR. MOYER:

2 Q You're telling me --

3 A I just answered that question, sir.

4 Q And what's the answer?

5 THE COURT: No, sir, no, sir, answer the
6 question.

7 THE WITNESS: I just answered it, sir.

8 THE COURT: Answer his questions again and then
9 we'll move on.

10 THE WITNESS: What was the question, sir?

11 BY MR. MOYER:

12 Q The question is if you're shooting at somebody
13 behind that door and it's a matter of this many inches
14 between life and death, you don't think that's putting
15 someone's life in danger?

16 A No, sir.

17 Q You don't?

18 A I wasn't trying to kill him, sir.

19 Q So if you had been behind that door, you
20 wouldn't have considered your life in danger?

21 MR. HAMILTON: Your Honor, he said that was
22 going to be the last --

23 THE WITNESS: You just asked the question and
24 you just asked it again.

25 THE COURT: You respond to questions. You don't

BRAXTON HARE-CROSS BY MR. MOYER

1 make comments, do you understand?

2 THE WITNESS: Yes, sir.

3 MR. HAMILTON: Your Honor, I object. He
4 repeated the same question.

5 MR. MOYER: It's not the same question.

6 THE COURT: Ask it one more time.

7 BY MR. MOYER:

8 Q So, you're telling me if you had been seated
9 behind that door and someone pointed a pistol at you from
10 a matter of that distance and it was this far away, you
11 wouldn't consider your life in danger?

12 A You just ask that question, sir. I said no,
13 sir.

14 Q Okay, you wouldn't. All right. Did you ever
15 consider anybody -- let's say his life wasn't in danger.
16 You're driving down a very busy road in downtown
17 Greenville County, aren't you? Downtown Greenville, close
18 to the city, weren't you?

19 A Yes, sir.

20 Q There are businesses along there, true?

21 A I don't know about businesses, there's
22 restaurants and stuff like that.

23 Q Restaurants, offices, there are houses?

24 A On Mills Avenue? Maybe off Mills Avenue, but
25 not like along the road. I don't know that. I don't know

BRAXTON HARE-CROSS BY MR. MOYER

1 if there's houses on that road.

2 Q A lot of traffic?

3 A Yes, sir.

4 Q There are sidewalks that go up on either side of
5 that road?

6 A Yes, sir.

7 Q People walk up and down that road?

8 A Most likely, the sidewalks.

9 Q Uh-huh. Did you take into consideration anybody
10 else on that road, either driving or walking or in a
11 house?

12 A It was all in a matter of time, sir, a reaction,
13 sir.

14 Q It's a yes or no question. Did you consider
15 anybody else that could have been hurt?

16 A Not at that time, sir. It was all in a matter
17 of time.

18 Q And so, your testimony is that you weren't --
19 you weren't trying to hurt him. After you fired the shot
20 or shots, what did you do?

21 A After I fired the shot?

22 Q Uh-huh.

23 A Tried to -- I believe there was a car in front
24 of me, I was waiting on it to move, so I just kept going
25 on and I bear off to the right and took William Hunter to

BRAXTON HARE-CROSS BY MR. MOYER

1 school, Carolina High School.

2 Q What did you see his car do, the yellow car?

3 A When I looked in my rear-view, he was chasing,
4 trying to come along behind us, but when I bear off to the
5 right, I believe -- it's a stop sign right there, I didn't
6 see him no more.

7 Q Well, right after you shot -- did you see the
8 bullet hit his car?

9 A No, sir.

10 Q Did you know where you had hit? Did you know
11 whether or not you hit this car when you shot?

12 A No, sir.

13 Q So, you don't know?

14 A No, sir.

15 Q What did he do right as you shot? Did you see
16 him duck down?

17 A I don't remember that, sir.

18 Q Did you see him swerve?

19 A I don't remember that. I don't remember that,
20 sir.

21 Q So, you don't remember if he slowed down or
22 stopped or --

23 A I remember he tried to come behind us after I
24 had got up a little bit.

25 Q No, I mean before that. I'm talking about right

BRAXTON HARE-CROSS BY MR. MOYER

1 after you shot. Do you remember if he stopped or slowed
2 down or swerved?

3 A No, sir. I just remember when I got up to like
4 the turn-off; he was trying to come behind us.

5 Q He was following you, right?

6 A Yes, sir.

7 Q And you took off, right?

8 A Yes, sir.

9 Q You didn't want him to get your tag number?

10 A I mean, I felt in danger. I didn't know if he
11 had another gun or anything, sir. I was just trying to
12 get away. The whole time I was trying to get him away
13 from me, separate each other.

14 Q What do you mean my another gun? You never saw
15 him with a gun, did you?

16 A I didn't say another gun. I say I didn't know
17 if he had a gun. He was reaching down, so my instincts, I
18 thought he had a gun, that's why I tried to scare him off
19 to get him away from.

20 Q But you never saw him with a gun?

21 A No, sir.

22 Q Never saw him with a weapon?

23 A No, sir.

24 Q He never threatened your life?

25 A With gestures, yes, sir, it made me feel unsafe.

BRAXTON HARE-CROSS BY MR. MOYER

1 Q So, you took off, then you took William to
2 school and you dropped him off, right?

3 A Yes, sir.

4 Q And then, you left right from there?

5 A Yes, sir.

6 Q Do you remember calling Mr. Salter?

7 A My phone wasn't on right then, but I know
8 William was on the phone with him and he told me to come
9 get him.

10 Q So, William called Mr. Salter?

11 A Yes, sir, I believe so. Either he called him --
12 I don't remember that, but I know he was using his phone.
13 I didn't have my phone.

14 Q So, William got on the phone with Mr. Salter and
15 they were talking?

16 A Yes, sir.

17 Q Okay. And do you remember what they were
18 talking about?

19 A No, sir, I don't remember that. Most likely,
20 had to tell them that -- I can't remember, either Salter
21 told me to come get him or I told him I'm about to come
22 get him.

23 Q But you remember what they were talking about?

24 A No, sir.

25 Q So, you told Salter you going to go pick him up?

BRAXTON HARE-CROSS BY MR. MOYER

1 A I don't remember that, sir. I know I ain't get
2 on the phone with him, though.

3 Q Okay. Somehow he had to know you were coming,
4 right?

5 A Yes, sir.

6 Q So, you get over to this house, you don't tell
7 him about this incident, this shooting?

8 A No, sir.

9 Q Just a normal --

10 A Yes, sir.

11 Q And when you took William to school, you never
12 ran into the school and ask to speak to the school
13 resource officer and let them know about this scary
14 situation you'd just been in?

15 A No, sir. No, sir.

16 Q You never told somebody that you were so scared
17 for your life you had to shoot at somebody?

18 A No, sir.

19 Q And you didn't call the police, right?

20 A No, sir.

21 Q Didn't tell William to get on the phone with the
22 police because there was some guy who just endangered your
23 life?

24 A No, sir.

25 Q So, then you went and got Mr. Salter and then

BRAXTON HARE-CROSS BY MR. MOYER

1 you went to the Citgo and you saw a police officer?

2 A Yes, sir.

3 Q And you took off?

4 A When I got out the car, he pulled in, sir.

5 Q Okay. And you knew they were probably after
6 you, right? For shooting at somebody?

7 A I don't remember. It was an incident. It just
8 happened.

9 Q I mean, you said that was the first time you
10 ever ran from the police?

11 A Yes, sir.

12 Q Why this time and why no other times?

13 A Because that kind of a car, I guess, and I ain't
14 had no license and I knew he came in. I told you we made
15 eye contact, so I guess he had to do a U-turn or
16 something.

17 Q Well, how would the police officer know you
18 didn't have a license?

19 A I mean, if he got behind the car, he was pulling
20 in, he probably would have asked me.

21 Q Well, you took off because you knew you had just
22 done something wrong, right?

23 A No, sir.

24 Q You don't think shooting at somebody was
25 something wrong?

BRAXTON HARE-CROSS BY MR. MOYER

1 A I believe it was self-defense, sir.

2 Q Well, when the officer got behind you, did you
3 not pull over on the side of the road and say hey, listen,
4 officer let me tell you something just happened. I just
5 had to defend myself by shooting at another human being
6 because I thought my life was in danger?

7 A You asking me did I do that?

8 Q Yeah.

9 A Oh, no, sir.

10 Q You took off?

11 A Because I don't have a license.

12 Q You got up to speeds of 120 miles an hour?

13 A I don't remember, sir.

14 Q You were going fast?

15 A I don't remember, sir.

16 Q Did you see the helicopter above?

17 A I don't remember. I don't remember that, sir.

18 Q You don't remember the helicopter?

19 A No, sir.

20 Q And this chase lasted what --

21 A No, I seen the helicopter in the video, but that
22 day, I don't recall seeing them or hearing them.

23 Q And this thing lasted what, 15, 20 minutes that
24 you were being chased by the police?

25 A I don't remember that either, sir, exactly how

BRAXTON HARE-CROSS BY MR. MOYER

1 long it was.

2 Q In fact, one time, you even drove off the road
3 and drove through some woods, didn't you?

4 A I don't remember that, sir.

5 Q You don't remember that either. You remember
6 hitting Mr. Willie Wright's truck?

7 A Yes, sir, I remember that.

8 Q And you having a hard time driving your car at
9 that point because it was all damaged from driving through
10 the woods?

11 A I don't remember that, sir.

12 Q Did you see the video with your bumper hanging
13 off the back?

14 A Yes, sir.

15 Q How did that happen?

16 A I don't remember that either, sir.

17 Q You don't remember that either. Well, isn't the
18 truth, sir, that you were taking off from the police at
19 such high speeds and driving off the road because you knew
20 that what you had done was pretty serious and you knew you
21 were in trouble with the police for having just shot at
22 somebody; isn't that true?

23 A No, sir. I fled, took off because I didn't have
24 no license. I didn't want to go to jail, sir.

25 MR. MOYER: Nothing further.

BRAXTON HARE-REDIRECT BY MR. HAMILTON

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY MR. HAMILTON:

4 Q Just one question. On the -- you had no idea on
5 why the police was chasing you, right?

6 A (There was no response.)

7 Q You didn't know why the police was chasing you,
8 is that you were saying?

9 A No, sir.

10 Q All right. But you know that was wrong now?

11 A I didn't know it was September 1st, but now, I
12 do, sir.

13 Q Okay.

14 MR. MOYER: That's all we have.

15 THE COURT: All right. You can step down.

16 Okay. Call your next witness.

17 MR. HAMILTON: Your Honor, the Defense rests.

18 THE COURT: All right. Let me talk to the
19 lawyers up here for a quick second.

20 (WHEREUPON, an off-the-record bench conference
21 was held in the presence of the jury but out of
22 the hearing of the jury.)

23 THE COURT: All right, Mr. Foreman, ladies and
24 gentlemen of the jury, we're going to break for
25 lunch, and ask you to be back at 2:00. Okay. The

1 case is almost yours to decide, so don't talk about
2 it yet with anybody. Don't do any research. We'll
3 see you back at 2:00. Thank you..

4 (WHEREUPON, the jury left open court at
5 approximately 12:38 p.m.)

6 THE COURT: All right. Let's talk about the
7 charge now. Anything? Any other requests?

8 MR. MOYER: No, I -- just anticipating anything
9 that may come from that testimony, if there's any
10 argument of self-defense or accident or any other
11 defenses like that coming in, we would argue there
12 was no testimony that came forward from the Defense
13 case that would substantiate any defenses of that
14 nature.

15 THE COURT: All right. Anything?

16 MR. HAMILTON: Yes, sir, Your Honor. There is
17 some indication that he felt threatened and that the
18 use of deadly force by malice would negate the urge
19 for the Court to charge that.

20 THE COURT: Well, I don't find that there's any
21 self-defense charge here. I mean, just because he
22 says it doesn't make it true. If you look at
23 circumstances surrounding this entire event, I don't
24 find that he meets the requirements of self-defense.
25 So I'm not going to charge it.

1 Anything else?

2 MR. HAMILTON: Just ask specific intent, Judge.

3 MR. FOWLER: We'd ask that you also -- Your
4 Honor, I have no problem at all if you charge
5 specific intent just as long as you also charge that
6 intent may also be inferred when it is demonstrated
7 the Defendant voluntarily and willfully commits an
8 act the natural tendency of which is to destroy
9 another's life.

10 THE COURT: I'm going to charge inferred malice,
11 use of a deadly weapon. I'm going to do a little
12 more research into specific intent, but right now,
13 what I would intend to charge with the attempted
14 murder, I would define intent as meaning the
15 intending the result which actually occurs, not
16 accidentally or involuntarily. Intent may be shown
17 by acts and conduct of the Defendant and other
18 circumstances from which you may naturally and
19 reasonably infer intent. Evidence of the character
20 of the act, the character of the instrument used, the
21 manner in which it was used, the purpose to be
22 accomplished and the resulting wounds or injuries may
23 be considered in determining the intent in which the
24 act was committed. Intent may also be inferred when
25 it was demonstrated that the Defendant voluntarily

1 and willfully commits an act the natural tendency of
2 which is to destroy another's life.

3 MR. FOWLER: We have no problem with that.

4 THE COURT: Okay. All right. We'll see y'all
5 at 2:00.

6 (WHEREUPON, a lunch break was taken.)

7 THE COURT: Y'all want circumstantial evidence
8 charge? I can't think of any circumstantial
9 evidence.

10 MR. MOYER: I don't think so.

11 THE COURT: What about it, Mr. Hamilton?

12 MR. HAMILTON: Your Honor, there are some
13 circumstances that could be tied together.

14 THE COURT: Like what? What proof of
15 circumstantial evidence? I can't think of it. Help
16 me out.

17 MR. HAMILTON: Okay, I can't think of nothing,
18 either.

19 THE COURT: I'm going to say this to the
20 audience. I understand there's been some interaction
21 that's inappropriate. And if hear about it again, I
22 will treat it as contempt of court and punish it.
23 So, no more interaction. Is that clear to everybody?
24 Okay.

25 All right. Anything before we bring the jury

1 back?

2 MR. FOWLER: None from the State, Your Honor.

3 MR. HAMILTON: Nothing from the Defense.

4 THE COURT: Okay. All right. Well, I'm going
5 to limit y'all to 30 minutes apiece on your
6 arguments. And we're going to run -- State opens in
7 full, Defendant.

8 MR. HAMILTON: Your Honor, we'd like to open on
9 the law.

10 THE COURT: Uh?

11 MR. HAMILTON: The State will open on the law.

12 THE COURT: Open in full, you go and they get
13 reply. Okay. And the State gets reply. You put up
14 evidence, so. All right.

15 Anyone have any objection to that?

16 MR. MOYER: That's the rules as we understand
17 them, Judge.

18 THE COURT: Yeah, hopefully, they will clarify
19 it a little better.

20 All right. Let's get the jury.

21 I am charging accessory -- accomplice liability,
22 not accessory.

23 (WHEREUPON, the jury came into open court at
24 approximately 2:04 p.m.)

25 THE COURT: All right. Ladies and gentlemen,

1 welcome back. I hope y'all had a pleasant lunch. If
2 you remember what I told you in my opening comments
3 to you yesterday about the five parts of the trial,
4 we have now completed the first two parts of the
5 trial. So, the opening statements of the lawyers,
6 all of the testimony and all of the evidence that's
7 going to be presented in this case is now in. And
8 that's all there is and there won't be no more, so to
9 speak. We're going to move now to the closing
10 arguments of the attorneys. You all have paid great
11 attention throughout the course of the trial and I
12 ask you to continue to do so as you listen to the
13 arguments from these attorneys.

14 All right.

15 CLOSING STATEMENT

16 MR. FOWLER: Ladies and gentlemen, Braxton Hare
17 has shown a clear and willful disregard for human
18 life. It is by the grace of God that we are trying
19 him for attempted murder and failure to stop for a
20 blue light and not murder and failure to stop for a
21 blue light. And that, ladies and gentlemen, is
22 despite the best efforts of the Defendant. Frankly,
23 folks, you do not get a pass on an attempted murder
24 for being a bad shot.

25 Now, as you know, on September 1st, 2015, the

1 Defendant was traveling down Mills Avenue when he got
2 caught in some traffic. Something we have all done.
3 However, instead of taking a deep breath or maybe
4 honking his horn, he pulled out a gun, looked [REDACTED]
5 [REDACTED] straight in the face and shot him. He
6 didn't do this because he was scared of Mr. [REDACTED]
7 He didn't do it because he was worried about being in
8 traffic. He did this because he wanted to kill him.
9 He wasn't bothered by the fact that on the other side
10 of Mr. [REDACTED] there was five other lanes of
11 traffic, and then a sidewalk, and then businesses,
12 and then a crowded neighborhood. He wasn't really
13 even bothered about the traffic. He just wanted to
14 inflict pain and fear and maybe have a little fun
15 while doing it.

16 Fortunately for [REDACTED] he ducked and the first
17 bullet went through the passenger window and out the
18 open driver's window. However, look where this
19 second bullet impacted the door. It's about
20 three-quarters of the way down the door. I put to
21 you that shows the Defendant pointed his gun at
22 Mr. [REDACTED] and then when he ducked, adjusted his
23 aim and fired again. He wasn't trying to scare him
24 or just pop off some rounds in the sky. He was
25 trying to kill him. Less than an inch of steel

1 aluminum likely saved Mr. [REDACTED] life that day.

2 So, what did the Defendant do after that? Well,
3 he went and picked up his friend, went to a gas
4 station to go get a drink. Fortunately, at the gas
5 station, he encountered a sheriff's deputy. However,
6 once again, the Defendant proved that he is willing
7 to put anybody's life at risk as long as it could
8 help him out. He knew he was supposed to stop.
9 However, he fled, and at speeds of over 120 miles an
10 hour all across southern Greenville County he led the
11 sheriff's office on a chase. It only ended when the
12 Defendant almost took his second life of the morning
13 and ran into Mr. Willie Wright's truck, who was just
14 sitting at a stop sign on his lunch break.

15 And, you know, the thing is, folks, the Defense
16 and The State essentially agree on these facts. The
17 Defense doesn't dispute that the Defendant pointed a
18 gun and shot at Mr. [REDACTED] The Defense doesn't
19 dispute that the Defendant ran from a policeman. The
20 Defendant essentially admits the charges of assault
21 and battery of a high and aggravated nature and
22 failure to stop for a blue light. The only place
23 where the State and the Defense differ is that I
24 would put to you that pointing a gun at someone and
25 pulling the trigger shows intent to kill; whereas,

1 the Defendant would not.

2 Really, folks, this is a simple case. Braxton
3 Hare pulled up next to someone. He pointed a gun at
4 him and from mere feet away, he pulled the trigger.
5 That is attempted murder. Braxton Hare then
6 encountered a police officer, that police officer
7 activated his lights and siren. Braxton Hare fled
8 from that policeman. That is failure to stop for a
9 blue light. Folks, this is not the actions of a
10 scared child or boys just being boys and trying to
11 have some fun, this is deadly serious behavior.

12 Now, after the attorneys are done with our
13 closing, the Judge is going to instruct you on the
14 law. He's going to tell you that to prove attempted
15 murder, the State must show that the Defendant
16 attempted to kill another person with malice
17 aforethought, either expressed or implied. I don't
18 have to tell you all this, but malice is essentially
19 a legal world for evil intent. It may be inferred
20 from conduct showing a total disregard for human
21 life. And inferred malice may also arise when the
22 deed is done with a deadly weapon. Clearly, a pistol
23 is a deadly weapon.

24 Finally, folks, the Judge will tell you the act
25 has to have been intentional. Intent means intending

1 the result which actually occurs, not accidentally or
2 involuntary. He will further tell you that intent
3 may also be inferred when it is demonstrated that the
4 Defendant voluntarily and willfully commits an act,
5 the natural tendency of which destroys another life.
6 Folks, I can think of no act whose natural tendency
7 is more likely to destroy another's life than by
8 pointing a gun at someone and pulling a trigger.

9 Lastly, the Judge is going to charge you on the
10 standard of proof that the State carries in every
11 criminal case. And that is beyond a reasonable
12 doubt. That is the highest burden of proof that any
13 party carries in any court in all the country. And,
14 folks, the State welcomes that burden because these
15 are serious matters that we deal with up here in
16 General Sessions court. Matters like attempted
17 murder.

18 And I'm sure most of you heard the phrase beyond
19 a reasonable doubt before. However, I would caution
20 you that, though, almost everyone has heard those
21 words spoken, not as many people are as familiar with
22 the exact definition of beyond a reasonable doubt.
23 It does not mean beyond all doubt. It does not mean
24 without a doubt. The courts often define beyond a
25 reasonable doubt as a doubt which would cause a

1 reasonable man to hesitate to act. For example, I'm
2 sure some, if not all of you, own your own home.
3 Before you bought that house, you looked at various
4 properties on the market. You compared pluses and
5 minuses of each of those, and you probably compared
6 several different loan offers from different banks.
7 You hesitated, examined the evidence and, ultimately,
8 made a decision. Now, you may still today harbor
9 some doubt as to whether or not that decision was the
10 right decision. However, I would put to you that
11 that decision was beyond a reasonable doubt. You
12 hesitated to act, examined the evidence and,
13 ultimately, made a call.

14 And that's exactly what I want you to do in this
15 case, folks. I want you to go back in your jury room
16 and carefully and deliberatively look at all the
17 evidence that's been put forward in this case. Think
18 about all the testimony you've heard over the past
19 day and a half. And after hesitating to act, I want
20 you to reach the only verdict this evidence allows.
21 And that is the Defendant is guilty of failure to
22 stop for a blue light and guilty of attempted murder.
23 Thank you. It's been a pleasure working with you.

24 THE COURT: All right, Mr. Hamilton.

25 CLOSING STATEMENT

1 MR. HAMILTON: May it please the Court.

2 Ladies and gentlemen, I'm going to try to be as
3 quick as I can. I've got a lot of stuff I need to
4 cover. There is somewhat of a time restraint and I
5 have to try to work within that time limit. After
6 I'm done, the prosecutor can come back up and talk
7 with you. But just keep in mind, when they do come
8 back up, what would be my response to that.

9 I just wanted to start out that in the old days,
10 there would have been a charge of assault and battery
11 and intent to kill. But now that we have the new law
12 of attempted murder, it kind of took out assault and
13 battery with intent to kill. So, in the old days,
14 murder and assault and battery with the intent to
15 kill was the only thing that happened is that had the
16 victim lived, it would have been murder. So, in
17 attempted murder, you know, if the victim lived, then
18 it's not murder. So, we don't have it anymore the
19 lesser charge to attempted murder. The old assault
20 and battery with intent to kill is assault and
21 battery of high and aggravated nature. And I believe
22 the Court will say that if you don't think that he
23 tried to murder him, he did -- it was aggravated
24 assault, he shot the gun and that was highly
25 aggravated.

1 And that is what William Hunter pled guilty to
2 in the -- remember, he first he started out with
3 assault -- with attempted murder, then he said well,
4 they give him a offer, a plea bargain. He testified.
5 We'll let you plea to assault and he's waiting on a
6 sentence. But anyway, why would he take that? Why
7 did he say that he did not try to attempt to kill
8 him? He did not try to attempt to kill anyone. He
9 pointed a gun at him. And the solicitor said that
10 malice can be inferred. The Court may tell you that
11 the use of a deadly weapon, you can infer malice.
12 So, why is it that he was allowed to plead guilty
13 to -- or given a deal to make that change?

14 So, I believe it is because that in the
15 beginning when you first got selected for the jury,
16 both of them were charged with the same thing. But
17 the evidence was going to show that even though he
18 pointed a gun, that was no malice or even though it
19 could be inferred by the pointing of gun, but there
20 was only one shot and it couldn't put the two
21 shots -- make two shots out of one to get him to have
22 the battery of the assault in the criminal mechanism
23 of this whole thing. So, we'll give you a deal for
24 high and aggravated -- I don't know how they got that
25 out of him, but it's deal, and a deal is a deal, and

1 he would just say what happened.

2 So -- but even if we just think for one second
3 that if William Hunter hadn't shot the gun, he would
4 have blew Braxton's eardrum all to pieces if he had
5 shot the gun in there. So therefore, it's logical
6 for them to make that deal with them because they
7 couldn't prove attempted murder on him. But they
8 think they can prove attempted murder against
9 Braxton. And that is their burden. The Judge will
10 say that they would have to prove each and every
11 element of the indictment of attempted murder. And
12 the Judge is going to read you what attempted murder
13 is. And the burden is upon them. He don't have to
14 defend himself. They got to prove and satisfy each
15 one of you that he tried to kill the victim in this
16 case. And that's what the burden is.

17 So, what did the evidence show? That Braxton
18 tried to kill somebody? No. No. And there's a term
19 in law enforcement where you overcharge somebody.
20 And we believe that attempted murder is an
21 overcharge. But the government and our law
22 enforcement agency are kind of lackadaisical about
23 that because they say, well, we'll overcharge them,
24 then let the jury decide, you know. Well, it wasn't
25 attempted murder, but it was assault of a high and

1 aggravated nature, so let's find him guilty of that.
2 So, no problem -- I mean, they -- but is that fair
3 to -- is that okay? Is that well -- and you find him
4 guilty of the lesser offense and all is well. But
5 all is not well and it is the responsibility of all
6 our governmental officials to treat all our citizens
7 in this country fairly, not to be overbearing. The
8 government don't have to overbearing because it
9 breeds mistrust and a lot of misunderstanding.

10 But even if you pass judgment -- and you have a
11 right to come up to some conclusion, but if you pass
12 judgment on Braxton that he's a juvenile delinquent
13 and he is less than acceptable character of a person
14 entitled to the privileges of this country, he still
15 is a natural born citizen and the constitution
16 mandates he be treated as such, as a citizen of this
17 country entitled to the protections of these laws.

18 And there are many other serious crimes that
19 could have been brought before you, but you're here
20 on this road rage case. And this -- it's a road rage
21 case. And it could have been a very terrible case.
22 It could have been somebody was killed or somebody
23 walking down the street, but that didn't happen. It
24 didn't happen. It's just the two people encountered
25 each other and there was this interaction. So -- and

1 could have been, but it did not -- the action that we
2 heard in this courtroom did not raise to the level of
3 attempted murder. Did not raise to the level of
4 assault of a high and aggravated nature. It was some
5 malicious damage, the bullet hole, the window
6 shattered in the car, malicious damage to personal
7 property.

8 So, the solicitor opens and says something about
9 we could have been hearing two cases, the gun with
10 the driver, of course, being killed, that could have
11 happened. Then after the big chase all over
12 Greenville County, he ran into another car and could
13 have killed Mr. Willie Wright. But that didn't
14 happen. And then, was he charged with attempting
15 kill Willie Wright, who was at a stop sign standing
16 there? No, they explained it away. They said, well,
17 you know, he was trying to make a turn and his car
18 was positioned so the wheels couldn't make that turn
19 and that's how it happened. And Mr. Willie Wright
20 went to the hospital, he was hurt. It's a civil
21 case. It wasn't attempted murder. That was not a
22 crime there.

23 Same in this case. It was a road rage case. In
24 this case, the victim -- I can't pronounce his last
25 name, he was in the car and the bullet hit the car,

1 but he struck his own head on the insurance -- the
2 steering column or the gear column and that was told
3 to us not to be a big deal. He said well, I hit my
4 head, no big deal. He didn't go to the hospital.
5 But there is a charge that came out of there. He was
6 disturbed only about two teenagers that got the best
7 of him in road exchange.

8 Now, Willie Wright went to the hospital. There
9 was no charges about that collision or that encounter
10 where somebody was trying to kill him, and he was
11 put. No charges. This person wasn't even hurt.
12 Don't have a scar on him. Oh, he talks about a scar
13 that shows up two or three days later, but the police
14 officer said nobody ever seen that. But it was all a
15 civil case. This case -- a civil case involving
16 malicious damage.

17 Nobody was killed is the point. And even
18 though -- I ask you to forgive me and don't hold it
19 against me. I'm not trying to minimize what could
20 have happened, but what happened? Nobody was hurt.
21 Nobody was killed. In the case you have today, no
22 one was killed. And the shot was made purposely to
23 damage a car. That was the crime. Braxton did not
24 try to kill anyone. Now, the victim was not hurt.
25 He was not hurt by the damage to his car. He said he

1 was hurt, but it was not reported. There was no
2 visible mark at the time. In court, he remarkably
3 reports that the two guys with the guns tried to kill
4 him. What triggered that statement? Because that
5 statement wasn't made when he was going through the
6 forensics. The officer reported that he responded to
7 a shooting, to a drive-by shooting, not to a
8 attempted murder. But when he was talking to the
9 deputy that day moments after it happened -- and
10 Deputy Nunez responded to a drive-by shooting. And
11 also, it was clear that he rolled his window down and
12 he was making a gesture.

13 And because he was concerned about these people
14 driving -- you could almost see the blood boil as he
15 addressed their conduct. You know, he's a driver,
16 he's been trained, he's been studying, and he teaches
17 driving, and he's aware of driving conduct. And
18 these people, these idiots, he said, was driving and
19 he just for the life of him couldn't figure out what
20 these idiots are doing. He was concerned -- he told
21 me that he was a grown man and did not have to take
22 nothing from anybody he felt was putting down his
23 students or him in the driving automobile that he was
24 in. You saw that when he was trying to explain, you
25 know, the policy and proper response if you felt like

1 somebody was coming up against you being aggressive
2 to back off, slow down, take another route, stuff
3 like that, you know, and then -- and that's what he
4 says about a student, but when it came to him, yet,
5 he failed to use the same road defensive driving. He
6 currently stated that he had to explain -- and he had
7 to explain that -- he told me, I explained it
8 already. I teach my people how to respond to that.
9 You ask him the same question over and over. Then
10 when a student is confronted with the road
11 confrontation, you should slow down, let them pass,
12 pull over in a different direction, but he was a
13 grown man.

14 And think about this as a matter of fact. He
15 believes it okay to talk to other drivers who display
16 a problem with students driving. This is a
17 student -- hey, this is a student, give them a break.
18 Give these people a break. He said that's okay to do
19 that. This is his conduct toward the type of driving
20 that he testified to. But as he dropped his head and
21 admitted that this time, this time, it may have been
22 the wrong one to try to educate about the rules of
23 road.

24 Maybe I should have let this one go, but he
25 wanted to say hey, you need to know how to drive.

1 But he is now -- but all this is now in the police
2 hands. As the police investigated the shooting of
3 the car, different theories of charges surfaced.
4 We've got the shooting of the car, what happened,
5 malicious damage. He did not initially fear for his
6 life when he pursued the teens after the incident
7 happened, but he was upset about the damage to the
8 car. Only here in court, he did not realize as it
9 was written all over his face that had he followed
10 his training, things would have been different. Had
11 he done what a grown person, what an instructor,
12 this -- we wouldn't be here had he done that.

13 But because of Braxton's actions, not his
14 actions, but Braxton's actions, things are not as bad
15 as we could have been sitting here talking about.
16 Because of Braxton's action. Because he wasn't
17 trying to kill him. He was trying to shoot the
18 gun -- shoot the car. What did he say, damage the
19 car, shoot the wheel, but not him. Not him.

20 Now, is Braxton a troubled child? Yes. He's
21 mixed race. He was not that good in school. He is
22 very immature and he's mischievously playful. His
23 intentions in this case, though, was to do something
24 to the car. And after the grown man flipped him off,
25 he did a juvenile act.

1 Now, we live in the culture where video games
2 and real-life TV start out as entertainment for young
3 people, but has given them, I believe, a false sense
4 of reality. You know, kids do things. They shoot,
5 they kill, they do stuff of damage and destruction on
6 the video game. They turn it off and turn it back
7 on. On TV, people do violent stuff, turn it off.
8 Then next week, it's a different story. You know,
9 just like -- but when you do that in reality, it is a
10 great deal of consequences involved.

11 So, Braxton's conduct, if you don't believe him,
12 could very well make you think he crossed the line.
13 He knows that, but if you believe that he did not
14 intend to kill the victim, then he is not guilty of
15 murder. He's not guilty of murder. He is guilty of
16 failure to stop for a blue light, and he says that.
17 He did -- he did not want to waste your time in doing
18 that because the solicitor, they bring the case and
19 then they're in charge of the charges and they're in
20 all full control of what is being brought to you
21 today. He admits that happened.

22 He is not guilty of murder or attempted murder.
23 He wanted to damage the car. So, all that points
24 back to is the two shots, what happened and what he
25 tried to do to show the malice and the intention to

1 kill somebody. But why not if you're going to shoot
2 at somebody and try to kill them, why not empty your
3 gun and shoot and try to kill them? Why not do that?
4 Four or five shots? Why not? Why didn't that
5 happen?

6 Now, this take on what -- and the Judge will
7 tell you what malice means and he told you what
8 malice means, but just think about the evil,
9 mean-spirited wickedness it would take to kill
10 somebody. To kill somebody. We're talking evil.
11 That's murder. That's the definition of murder. But
12 even in a murder case and someone died -- an act that
13 someone died, the act is done out of a fit of rage
14 and the law -- the law allows for manslaughter and
15 not murder. It's not murder; but it's manslaughter.
16 And murder is big boy court. I've heard this Judge
17 say before this is big boy court. A murder is big
18 boy court. But y'all have got to hear my plea for
19 Braxton and Braxton did not have any intention of
20 killing the victim in this case. He did not do that.
21 But for him shooting down and not responding the way
22 the victim.

23 So, the Judge will tell you that a specific
24 intent to kill maybe and normally is inferred from
25 surrounding circumstances. Well, you've got to have

1 specific intent to kill. This is an attempt case,
2 and you've got to have intent. Not general intent,
3 well, you know, he was a bad shot and, you know, he
4 was aiming this way and that way, generally. But no,
5 specific intent to kill. That's the law. That's why
6 we don't have assault and battery with the intent to
7 kill anymore. We only have attempted murder. And if
8 the person dies, it's murder.

9 So, the specific intent to kill maybe and
10 normally is inferred from the surrounding
11 circumstances. What are the surrounding
12 circumstances? You've heard that all in court. Such
13 as the character of the attack. Well, the character
14 of the attack. What I mean is did he step out in a
15 normal murder case and just sit there and wait for
16 him to turn the corner, and then he turned the corner
17 and you shot. You know, the carelessness, the
18 circumstances surrounding the use of a deadly weapon.
19 Well, he shot with a gun. The nature and the extent
20 of the victim's injury. Well, what was the injury
21 after he shot the gun? What was his intention? Did
22 he shoot at him to kill him or -- no, he was shooting
23 at the car. So, all that is specific intent to show
24 his intentions. Attempted murder.

25 The law is simple, attempted -- attempt is a

1 specific intent crime. The act constituting the
2 attempt must be done with the intent to commit that
3 particular crime. Attempted murder. You have to
4 have the intent to murder somebody. To constitute an
5 attempt, there must be an intent to commit a
6 particular crime. Although, murder alone may be
7 committed without intent here. Like murder, stuff
8 malicious, if somebody dies, well, I didn't try to
9 kill him, but my action was total reckless with total
10 disregard and he ended up killed. In an attempted
11 murder, attempt to commit murder requires a specific
12 intent to kill. Not assault and battery with the
13 intent to kill, but a specific intent. In other
14 words, the completion of such acts is the defendant's
15 purpose. What was Braxton's purpose? To hit the
16 wheel, hit the car, and then he sped away. That was
17 his purpose. He accomplished -- did he accomplish
18 his purpose? Yes. Did he intend to kill somebody?
19 No.

20 So, to constitute intent, there must be intent
21 to commit a particular crime, although murder alone
22 is not -- in other words, the contemplation for that
23 specific attempted murder would require the specific
24 intent to kill and conduct towards that end. What
25 conduct did Braxton -- or not Braxton, but the State

1 of South Carolina show you Braxton did to further his
2 intent to kill? Now, you can infer that he used a
3 gun. But infer is not evidence, it's not the
4 intention. You've got information that he used the
5 gun to shoot down at the car. He damaged the car and
6 get away.

7 Now, I appreciate the technology and the
8 resources of our law enforcement agency here in
9 Greenville. Well, we have that TV show, CSI, or
10 whatever. You know, they got the guy with so many
11 years of experience came out and took the picture.
12 You'll have those pictures out there. And he showed
13 you in his opinion, well, there was a gun -- and this
14 is important because, you know, they say it was two
15 shots and everybody -- you know, this other officer
16 got up and said well, in all my years, you got to be
17 so far away before you can hear the bang, bang. You
18 know, you shot, then ping. You hear -- when you're
19 real close you're so close, you hear it all at the
20 same time. But the only forensic evidence of
21 shooting is the one shot.

22 And then so, a forensic person who takes on the
23 task of looking at the evidence or going through
24 trying to find the evidence, he talked to the people
25 involved, all right, what we got here? Say somebody

1 got shot here. He say okay. Then they say it was
2 two shots? Well, the victim -- he said, I talked to
3 the victim and I don't know anything about two shots.
4 I know that there was a shot. But I had that
5 information and based on that information, there was
6 no -- and he even said that yeah, he needs to know
7 all the information that is surrounding.

8 He even said, Because I didn't know whether this
9 was an attempted murder case, or I didn't know
10 whether or not this was a drive-by shooting. I
11 didn't know whether or not -- you remember when he
12 said that. He said, I didn't know what kind of case
13 it was, but the information they was giving me didn't
14 indicate that that was -- because had I known that,
15 had I known that, I may have treated it a little
16 different, maybe.

17 But in this case, it was important to support
18 the Defense in that the bullet, the projectile was
19 going a downward motion rather than a parallel motion
20 or a motion that the State wants you to believe was
21 intended to kill somebody. The motion that the
22 forensic expert told you yesterday -- or told you
23 that it was a downward motion and it did not
24 penetrate all the way through. And that this glass
25 breaking could have happened -- because they couldn't

1 find anything, but it's consistent with the lead
2 portion of the ricochet all through and breaking the
3 glass.

4 And then at that point, then that glass --
5 because one thing about glass that we all know is
6 that you can break it here at this spot, but then it
7 shatters all the way through if the force of a bullet
8 ricochet caused it to crack. You know, the violent
9 and riveting of the bullet caused it to shatter, no
10 matter what portion that it hit because the gunshot
11 did that. And the bullet would have -- it's

12 consistent that that happened. So, we do appreciate
13 that. But there is no physical evidence of two
14 shots. There is evidence of one shot. Then you can
15 see how easy it is to determine that that shot was
16 consistent to what Braxton told you it was.

17 So, why is it so important that we say it was
18 only one bullet? One bullet fired. Well, it goes
19 back to specific intent and no intent to commit
20 murder. Why is it important that the State says it
21 was two shots? Well, it's the victim's narrative.
22 After talking to the police, they trying to figure
23 out that one of the two people in this car and one of
24 them -- one of them had the shot at the window and he
25 must missed it. But, you know, you can use your own

1 experience -- and the Court will tell you that you
2 can always use your own common sense and your own
3 everyday experience. If a bullet comes by you that
4 close, you duck your head or you -- it comes by you
5 before you duck your head, you will hear (attorney
6 made a noise). But the victim said he did not hear a
7 bullet zing by him.

8 I think we all agree that the conduct displayed
9 was unlawful. But because this is the great
10 country -- this is the greatest country in the world,
11 our system of justice is set up so that you, the
12 jury, not just the prosecuting authorities, you, the
13 jury, determine the guilt or innocence of a person
14 accused of murder. Because if you find him guilty,
15 you're convicting him of murder in the first degree,
16 except the victim did not die.

17 MR. FOWLER: Judge, we're not charging him with
18 murder in the first degree.

19 THE COURT: All right, that's all right.

20 Finish your argument. Wind it up.

21 MR. HAMILTON: The victim did not die, -- except
22 he did not die. Braxton Hare did not kill the
23 victim. The victim did not have a scratch on him.
24 And he lived to tell you just how he was murdered --
25 or almost murdered without a scratch. Without a

1 scratch.

2 William Hunter did not have the courage to stand
3 on the truth. Because the truth is there was no
4 attempted murder in this case. I think we all can --
5 there's no attempted murder. He took a deal because
6 you never know, you never know what a jury will do.
7 But this is the system that we have. This is the
8 greatest system in the world. And juries do the
9 right thing from my experience.

10 Is there evidence that Braxton fired a gun?
11 Well, we don't have a gun. We've got bullets. We
12 got him saying it, but you don't have a gun. So, he
13 didn't shoot him with his finger, but you don't have
14 a gun. You don't have a gun. Let's give Braxton
15 some credit here about the truth. Is there evidence
16 that Braxton pointed a gun? Well, the victim said
17 the driver of the car had a gun. Braxton says I have
18 a gun. Is there evidence that Braxton damaged
19 personal property? He said, Yeah, I shot the car. I
20 tried to shoot the car. Is there evidence a gun
21 used -- or where is the gun today? You know, there
22 is a bullet hole.

23 Then the glass in the -- there's no glass -- you
24 say glass is on the left there, that the bullet hit
25 the glass off. I can't remember what the evidence is

1 on the glass part, but the specialist -- not expert,
2 but the specialist said they moved from the scene
3 where it happened to another scene, so therefore, we
4 don't know all about that, but there's glass all in
5 there. And it's clear that the bay was lower and
6 that it had been moved and then ricocheted off that.

7 So, what evidence is there to show Braxton's
8 intentions? Because you have to have specific intent
9 to kill somebody. You can infer it from this, you
10 can infer it from that. But you've got to decide
11 that, what was his intentions? The pointing of the
12 gun, that's one point. The pointing of the gun. All
13 right, what does that tell you? Okay, charge him
14 with pointing a gun. The discharging of a gun. He
15 fired a gun. Okay, charge him with firing a gun
16 within the city limits. The bullet hole in the car,
17 his intentions. Okay, charge him with malicious
18 damage to personal property. He ran from the police.
19 Okay, charge him with failure to stop. There is no
20 evidence a man was murdered. Nobody died. Attempted
21 murder? Nobody died. Nobody was hurt and almost
22 died. Well, William Wright, but he wasn't charged
23 with trying to kill William Wright. He was hurt.

24 One of the several violations of law Braxton
25 could be guilty of, but you are not asked to decide

1 these, pointing, malicious damage. You're not asked
2 to decide those violations. Only if he murdered a
3 man, and the man did not die. Well, attempted murder
4 is murder, but the person don't die. Please be fair.
5 Find him not guilty of the offense of murder. Their
6 is no evidence he intended to kill anyone, but there
7 is evidence he did not, did not specifically intend
8 to kill anyone. Thank you.

9 CLOSING STATEMENT

10 MR. MOYER: Ladies and gentlemen, just very
11 briefly. The Defense counsel is exactly right. This
12 is the best system in all the world for deciding
13 disputes between the State people and between people
14 and each other. And any decisions that were made by
15 William Hunter, as the Judge will tell, you should
16 have no bearing on your decision in this case. As we
17 talked about at the beginning of the trial, each of
18 the Defendants is charged and tried individually.

19 Further, Defense counsel is right, the law
20 changed from assault and battery with intent to kill
21 to assault and battery of a high and aggravated
22 nature and attempted murder. However, I think he
23 tries to complete to you that there's an additional
24 element of attempted murder, that the State has to
25 prove that someone was injured to prove attempted

1 murder. That is just not true.

2 As the Judge will tell you, as I told you a
3 little while ago, the State has to prove that the
4 Defendant attempted to kill another person with
5 malice aforethought, either expressed or implied.
6 Well, we will never know what was going through
7 Braxton Hunter's head that day. However, the law,
8 which we've all agreed is the best we can come up
9 with, provides for that. It says intent may also be
10 inferred when it is demonstrated that the Defendant
11 voluntarily and willfully an act, the natural
12 tendency of which is to destroy another's life.

13 Again, ladies and gentlemen, what natural
14 tendency can you think of where if someone points a
15 gun at someone else and pulls the trigger that
16 doesn't end with them dying? If pointing a gun at
17 someone and shooting at them doesn't show intent to
18 kill, I don't know what does.

19 Now, finally, folks, you know, the Defense
20 counsel wants to give the Defendant some credit for
21 not having a gun on his person when he was finally
22 arrested. I don't think the Defendant deserves any
23 credit for throwing the gun out of a window in the
24 middle of a police pursuit. He also talks about some
25 evidence we don't have. Ladies and gentlemen, I put

1 to you in every criminal and civil case ever tried in
2 the history of the United States, there has been
3 evidence that both sides wish they had. This,
4 unfortunately, is the real world and we have to deal
5 with what we've got. However, I put to you that this
6 is more than enough evidence to show attempted
7 murder. That this is, in fact, the only conclusion
8 that can be drawn from that evidence, that he
9 attempted to kill [REDACTED] [REDACTED]

10 Thank you very much and I look forward to your
11 verdict.

12 JURY CHARGE

13 THE COURT: All right. Ladies and gentlemen of
14 the jury, during this trial, you and I have certain
15 duties to perform. As the trial judge, it's my
16 responsibility to preside over the trial of the case
17 and to rule on the admissibility of evidence offered
18 during the trial. It's also my duty to charge you
19 the law applicable to the case and it is your duty,
20 as jurors, to accept and apply the law as I now state
21 it to you. As I told you my opening comments, if you
22 think you have any idea as to what the law is or what
23 the law ought to be and it does not agree with what I
24 now tell you the law is, you must set aside your own
25 opinion and apply the law precisely as I state it to

1 you.

2 I also remind you that in every case tried in
3 this court before a jury, the jury is the sole and
4 exclusive judge of the facts and a trial judge cannot
5 comment on or make any statement about the facts in a
6 case. So, please don't think by anything I may have
7 said or done throughout the course of the trial I
8 have such an opinion, I do not. And you all are the
9 sole judges of the facts.

10 I would again instruct you that the fact that
11 the Defendant was arrested, charged and indicted in
12 this case is not evidence of guilt, nor does it
13 create any presumption or inference of guilt. These
14 documents are simply the formal written instruments
15 which contain the charges made against this Defendant
16 and they serve as the formal document by which the
17 case is processed and brought into court for
18 disposition.

19 And there are two indictment in this case and
20 they charge two separate offenses against this
21 Defendant. And they are attempted murder, and
22 failure to stop for a blue light. Each indictment
23 charges a separated and distinct offense. And you
24 must decide each indictment separately on the
25 evidence and the law applicable to that indictment

1 uninfluenced by your decision as to any other
2 indictment. The Defendant may be convicted or
3 acquitted on any or all of the offenses charged. And
4 you will be asked to write a separate verdict of
5 guilt or not guilty for each indictment.

6 Now, necessarily, you must consider and
7 determine the credibility or believability of the
8 witnesses who have testified in the case. It becomes
9 your duty as jurors to evaluate the evidence and
10 determine which evidence convinces you that it is
11 true. And in determining the believability of the
12 witnesses, you may have believe one over several, or
13 several over one. You may believe a part of the
14 testimony of a witness and reject the remaining part.
15 You may believe the testimony of a witness in its
16 entirety or reject that same testimony in its
17 entirety. You may consider whether the witness has
18 an interest in the result of the trial, whether the
19 witness is prejudice towards either the State or the
20 Defense, the opportunity for the witness to have seen
21 the matters and things about which the witness has
22 testified, and the way the witness acts on the
23 witness stand, or what we call a witness's demeanor.

24 Now, you've also heard evidence that the
25 Defendant was convicted of a crime, other than the

1 one for which he is now on trial. This evidence may
2 be considered by you if you conclude it is true, only
3 in deciding whether the Defendant's testimony is
4 believable and for no other purpose. You must not
5 consider the Defendant's prior record as any evidence
6 of the Defendant's guilt on either of the charges
7 that we are trying here today.

8 Now, the Defendant had pled not guilty to these
9 indictments and that plea puts the burden on the
10 State to prove the Defendant guilty. A person
11 charged with committing a criminal offense in South
12 Carolina is never required to prove themselves
13 innocent. And I charge you that it is a cardinal and
14 important rule of the law that a defendant in a
15 criminal trial will always be presumed to be innocent
16 of the crime for which the indictment has issued
17 unless guilt has been proven by evidence satisfying
18 you, the jury, of guilt beyond a reasonable doubt.
19 And a reasonable doubt is the kind of doubt which
20 would cause a reasonable person to hesitate to act.
21 A reasonable doubt may arise from the evidence which
22 is in this case or from the lack or absence of
23 evidence in the case. And you, the jury, must
24 determine whether or not reasonable doubt exist as to
25 the guilt of this Defendant. And the State has the

1 burden of proving each and every element of each
2 crime beyond a reasonable doubt.

3 I also tell you that if a crime is committed by
4 two or more people who are acting together in
5 committing a crime, the act of one is the act of all.
6 A person who joins with another to accomplish an
7 illegal purpose is criminally responsible for
8 everything done by the other person which occurs as a
9 natural consequence of the acts done in carrying out
10 the common plan and purpose. For example, two people
11 can be guilty of killing another person when only one
12 of the two had a gun. There was only one bullet and
13 only one of the two fired the shot that caused the
14 death. If two or more people are together, acting
15 together, assisting each other in committing the
16 offense, the act of one is the act of all or as it is
17 sometimes said, the hand of one is the hand of all.

18 Now, the Defendant is charged with attempted
19 murder. In order to prove this crime, the State must
20 prove the Defendant attempted to kill another person
21 with malice aforethought, either expressed or
22 implied. And malice is hatred, ill will or hostility
23 towards another person. It is the intentional doing
24 of a wrongful act without just cause or excuse and
25 with an intent to inflict an injury or under

1 circumstances that the law will infer an evil intent.

2 Now, malice aforethought does not require that
3 malice exists for any particular length of time
4 before the act is committed. But malice must exist
5 in the mind of the Defendant just before and at the
6 time the act is committed. Therefore, there must be
7 a combination of a previous evil intent and the act.

8 Malice aforethought may be expressed or
9 inferred. These terms expressed and inferred do not
10 mean different kinds of malice, but merely the manner
11 in which malice may be shown to exist. That is
12 either by direct evidence or by inference from the
13 facts and circumstances which are proved. Expressed
14 malice is shown when a person speaks words, which
15 express hatred or ill will for another or when the
16 person prepared beforehand to do the act which was
17 later accomplished. For example, lying in wait for a
18 person or any other acts of preparation going to show
19 that the deed was within the Defendant's mind would
20 be expressed malice.

21 Malice may be inferred from conduct showing a
22 total disregard for human life. Inferred malice may
23 also arise when the deed is done with a deadly
24 weapon. And a deadly weapon is any article,
25 instrument or substance which is likely to cause

1 death or great bodily harm. And whether an
2 instrument has been used as a deadly weapon depends
3 on the facts and circumstances of each case. The
4 following are examples of instruments which may be
5 deadly weapons: A pistol, a shotgun, a rifle, a
6 dirk, a dagger, a knife, a slingshot, metal knuckles,
7 a razor, gasoline, a firebomb or Molotov cocktail, a
8 lighter fluid and a gun may be a deadly weapon even
9 if it is not operating.

10 Now, if facts are proved beyond a reasonable
11 doubt sufficient to raise an inference of malice in
12 your -- to your satisfaction, this inference would
13 simply be an evidentiary fact to be considered by
14 you, the jury, along with all of the other evidence
15 in the case. And you may give it the weight that you
16 decide it should receive.

17 Intent means intending the result which actually
18 occurs, not accidentally or involuntarily. Intent
19 may be shown by acts and conduct of the Defendant and
20 other circumstances from which you may naturally and
21 reasonably infer intent. Evidence of the character
22 of the act, the character of the instrument used, the
23 manner in which it was used, the purpose to be
24 accomplished, and the resulting wounds or injuries
25 may be considered by you, the jury, in determining

1 the intent with which the act was committed. Intent
2 may also be inferred when it is demonstrated that the
3 Defendant voluntarily and willfully commits an act,
4 the natural tendency of which is to destroy another's
5 life.

6 Now, if you find that the State has failed to
7 prove the Defendant guilty beyond a reasonable doubt
8 of attempted murder, you must decide then whether the
9 State has proved the Defendant is guilty of assault
10 and battery of a high and aggravated nature. So, if
11 you find that they have not met their burden to prove
12 attempted murder, then you must consider the lesser
13 included offense of assault and battery of a high and
14 aggravated nature.

15 And a person commits the offense of assault and
16 battery of a high and aggravated nature if the person
17 unlawfully injures another person and either great
18 bodily injury to another person results or the act is
19 accomplished by means likely to produce death or
20 great bodily injury. Great bodily injury means
21 bodily injury which causes a substantial risk of
22 death or which causes serious permanent disfigurement
23 or protracted loss or impairment of the function of a
24 bodily member or organ.

25 The Defendant is also indicted for and charged

1 with failure to stop for a blue light. In order to
2 prove this crime, the State must prove beyond a
3 reasonable doubt that the Defendant was driving a
4 motor vehicle, that the Defendant was driving a motor
5 vehicle on a road, street or highway of this state,
6 that the Defendant was signaled to stop by a law
7 enforcement vehicle by means of a siren or flashing
8 light, and that the Defendant did not stop. And in
9 determining whether or not there are mitigating
10 circumstances which would justify the Defendant's
11 failure to stop for a blue light, you may consider
12 actual road conditions, actual roadside conditions,
13 other conditions, such as lightening and weather,
14 officer, driver and/or passenger safety, and any
15 other circumstances you believe would reasonably
16 mitigate the alleged violation. An official signal
17 requiring a motorist to stop may be a siren or
18 flashing lights, and both are not required.

19 And intent to increase the speed of a vehicle or
20 in some other manner to avoid the pursuing law
21 enforcement vehicle when signaled by a siren or
22 flashing light may be considered as evidence of
23 failure to stop for a blue light. However, it is
24 merely an evidentiary fact to be taken into
25 consideration by you, along with all the other

1 evidence in the case and to be given the weight that
2 you, the jury, thinks it should receive.

3 Now, ladies and gentlemen, as I told you at the
4 outset, each of these indictment must stand or fail
5 on its own merit. They each must be considered
6 individually based on the evidence and the law that
7 applies to each individual charge. I will tell you
8 that with respect to each of these cases, there are
9 two possible verdicts that you may reach. One is
10 guilty and one is not guilty. If you find --

11 We have prepared a verdict form, which will come
12 back into the jury room with you, Mr. Foreperson. I
13 think it's self-explanatory.

14 The first one is for you to consider as to the
15 charge for failure to stop for a blue light. You all
16 consider that and if you come to a decision, there's
17 an appropriate box to check. The second one is for
18 attempted murder. If you find that the State has
19 failed to prove attempted murder, then you would
20 indicate that. And then you must consider whether or
21 not the State has proven assault and battery of a
22 high and aggravated nature.

23 I want to tell you, your verdict must be
24 unanimous. All 12 of you must agree on each verdict.
25 And your verdict cannot be based on sympathy,

1 passion, prejudice, emotion or any other
2 consideration that is not in evidence in this case.
3 You have no friends to reward and you have no enemies
4 to punish.

5 Now, ladies and gentlemen, I'm going to excuse
6 you all to your jury room. I'm going to ask you not
7 to begin your deliberations just yet. I need to go
8 over my charge that I've just given you on the law
9 with the attorneys to make sure I didn't misstate
10 something or omit something. When the verdict comes,
11 along with all the evidence, you may begin your
12 deliberations. And I think that will be in short
13 order. So, at this time, I'll excuse everyone with
14 the exception of Mr. Harbin.

15 (WHEREUPON, the jury left open court at
16 approximately 3:06 p.m.)

17 THE COURT: Mr. Harbin, I'm sorry to single you
18 out. You are just as qualified and you've made every
19 sacrifice that each of those 12 people have.
20 Unfortunately, I can't allow you to go back in there.
21 The law only allows 12. But I want to thank you for
22 your service. I'm happy to tell you that you are
23 finished for the week. You're welcome to stay, go,
24 whatever you'd like to do.

25 Once again, thank you so much. You can talk

1 about it with whoever you want to or whenever you
2 want to. I will tell you this, if someone approaches
3 you and bothers you about it and won't leave you
4 alone, you just find out who that is and tell us and
5 we will alert the sheriff's department. We're not
6 going to have a juror be bothered, harassed or
7 intimidated for their service. Thank you very much.

8 (WHEREUPON, the alternate was excused.)

9 THE COURT: All right. Any exception or
10 objection to the charge from the State?

11 MR. MOYER: No, Your Honor.

12 THE COURT: Defense?

13 MR. HAMILTON: Your Honor, I would just ask if
14 the Court could have used the word specific intent,
15 is that not the standard?

16 THE COURT: I think my charge incorporates that
17 and follows the law. I didn't use those specific, so
18 I'm not -- your exception is noted.

19 MR. HAMILTON: Okay.

20 THE COURT: Anything else?

21 (There was no response.)

22 THE COURT: All right. Here's the verdict form.
23 Y'all want to look at it and make sure the evidence
24 is all together and let's get them working.

25 All right, we'll be ease.

1 I remind everyone what I told you prior to the
2 closing arguments. All right. thank you.

3 (WHEREUPON, deliberations began at approximately
4 3:12: p.m.)

5 (WHEREUPON, court was in recess awaiting a
6 verdict.)

7 THE COURT: All right, got a question from the
8 jury. It says: Is physical injury required to
9 entail battery?

10 The answer to that is no.

11 Can we have both offenses read to us again?

12 Looking at State v -- or Melon v. Lane,
13 physical injury is -- this is a quote, is not an
14 element of battery.

15 Okay, let's bring them back.

16 (WHEREUPON, the jury came into open court at
17 approximately 4:06 a.m.)

18 THE COURT: All right, ladies and gentlemen, I
19 have your note. With respect to the first question:
20 Is physical injury required to entail battery?

21 I quote, Physical injury is not an element of
22 battery.

23 Okay. And the second question, Can we have both
24 offenses read to us again?

25 I'm not sure what two and three means. So, I'll

1 just charge you the law that I charged before. Okay.

2 The Defendant is charged with attempted murder.

3 In order to prove this crime, the State must prove
4 the Defendant attempted to kill another person with
5 malice aforethought, either expressed or implied.

6 Malice is hatred, ill will or hostility towards
7 another person. It is the intentional doing of a
8 wrongful act without just cause or excuse with an
9 intent to inflict an injury, or under circumstances
10 that the law will infer an evil intent. Malice
11 aforethought does not require that malice exist for
12 any particular time before the act is committed, but
13 malice must exist in the mind of the defendant just
14 before and at the time of the act, the time the act
15 is committed. Therefore, there must be a combination
16 of the previous evil intent and the act.

17 And malice aforethought may be expressed or
18 inferred. These terms, expressed and inferred, do
19 not mean different kinds of malice, but merely the
20 manner in which malice may be shown to exist. That
21 is either by direct evidence or by inference from the
22 facts and circumstances which are proved. Expressed
23 malice is shown when a person speaks words which
24 express hatred or ill will for another person or when
25 the person prepared beforehand to do the act which

1 was later accomplished. For example, lying in wait
2 for a person or any other acts of preparation going
3 to show that the deed was within the defendant's mind
4 would be expressed malice.

5 Malice may be inferred from conduct showing a
6 total disregard for human life. Inferred malice may
7 also arise when the deed is done with a deadly
8 weapon. A deadly weapon is an article, instrument or
9 substance which is likely to cause death or great
10 bodily harm. And whether an instrument has been used
11 as a deadly weapon depends on the facts and
12 circumstances of each case. The following are
13 examples of instrument which may be deadly weapons:
14 A pistol, a shotgun, a rifle, a dirk, a dagger, a
15 knife, a slingshot, metal knuckles, a razor,
16 gasoline, firebomb, Molotov cocktail and lighter
17 fluid. And a gun may be a deadly weapon even if it
18 is not operating.

19 Now, if facts are proved beyond a reasonable
20 doubt sufficient to raise an inference of malice to
21 your satisfaction, this inference would be simply an
22 evidentiary fact to be considered by you, the jury,
23 along with the other evidence in the case. And you
24 may give it the weight you think it should receive.

25 Intent means intending the result which actually

1 occurs, not accidentally or involuntarily. Intent
2 may be shown by acts and conduct of the Defendant and
3 other circumstances from which you may naturally and
4 reasonably infer intent. Evidence of the character
5 of the act, the character of the instrument used, the
6 mean in which it was used, the purpose to be
7 accomplished, and the resulting wounds or injuries
8 may be considered in determining the intent with
9 which the act was committed. Intent may also be
10 inferred when it is demonstrated that the Defendant
11 voluntarily and willfully commits an act, the natural
12 tendency of which is to destroy another's life. That
13 was attempted murder.

14 If you find that the State has failed to prove
15 the Defendant is guilty of attempted murder, you must
16 decide whether the State has proved that the
17 Defendant is guilty of assault and battery of a high
18 and aggravated nature. And that is defined as, a
19 person commits the offense of assault and battery of
20 a high and aggravated nature if the person unlawfully
21 injures another person and great bodily injury to
22 that person results or the act is accomplished by
23 means likely to produce death or great bodily injury.
24 And great bodily injury means bodily injury which
25 causes a substantial risk of death or which causes

1 serious permanent disfigurement or protracted loss or
2 impairment of the function of a bodily member or
3 organ.

4 The Defendant is also charged with failing to
5 stop for a blue light. In order to prove this crime,
6 the State must prove beyond a reasonable doubt that
7 the Defendant was driving a motor vehicle, that the
8 Defendant was driving a motor vehicle on a road,
9 street or highway of this state, that the Defendant
10 was signaled to stop by a law enforcement vehicle by
11 means of a siren or flashing light, and that
12 Defendant did not stop.

13 In determining whether or not there are
14 mitigating circumstances which would justify the
15 Defendant's failure to stop for a blue light, you may
16 consider actual road condition, roadside conditions,
17 other conditions, such as lighting and weather,
18 officer, driver and/or passenger safety, and any
19 other circumstances you believe to reasonably
20 mitigate the alleged violation. An official signal
21 requiring a motorist to stop may be a siren or
22 flashing lights and both are not required. An
23 attempt to increase the speed of a vehicle or in some
24 other manner to avoid the pursuing the law
25 enforcement vehicle when signaled by a siren or

1 flashing light may be considered as evidence of
2 failure to stop for a blue light. However, it is
3 merely an evidentiary fact to be taken into
4 consideration by you, along with all the other
5 evidence in the case and be given the weight that you
6 decide it should receive.

7 If y'all need anything more, please let me know,
8 otherwise, I'll ask you to retire to your jury room
9 and continue deliberations.

10 (WHEREUPON, the jury left open court and
11 continued deliberations at approximately
12 4:15 p.m.)

13 THE COURT: All right. We'll be at ease.

14 (WHEREUPON, court was in recess awaiting a
15 verdict.)

16 (WHEREUPON, Court's Exhibit No. 3 was marked for
17 identification only.)

18 THE COURT: All right. Get the jury.

19 (WHEREUPON, the jury came into open court at
20 approximately 5:01 p.m.)

21 VERDICT

22 THE COURT: All right, Mr. Foreman, I understand
23 you've reached a verdict?

24 THE FOREMAN: We have, Your Honor.

25 THE COURT: All right. If you would, please

1 hand it to the bailiff.

2 All right. Madam Clerk, would you publish,
3 please.

4 THE CLERK: Yes, sir.

5 Your Honor, in the case of 2015-GS-23-09117 and
6 09118, The State of South Carolina vs. Braxton Hare.
7 Number one, as to the charge of failure to stop for
8 blue light, we, the jury, find the Defendant guilty.
9 As to the charge of attempted murder, we, the jury,
10 find the Defendant not guilty. As to the charge of
11 assault and battery of a high and aggravated nature,
12 we, the jury, find the Defendant guilty. This is
13 signed by our foreperson, Mr. Cignarale.

14 Ladies and gentlemen, if you agree this is the
15 verdict you reached in your deliberations room, would
16 you please raise your right hand.

17 (WHEREUPON, all members of the jury raised their
18 right hand.)

19 THE COURT: Anything further for the jury from
20 the State?

21 MR. MOYER: No, your Honor.

22 THE COURT: From the Defense?

23 MR. HAMILTON: Nothing further, Judge.

24 THE COURT: All right, Mr. foreman, ladies and
25 gentlemen of the jury, I want to thank you all very

1 much for your service this week. I hope that what I
2 told you early on, that you would feel a sense and
3 satisfaction and reward, I hope that is true. If
4 it's not true right at this moment, I hope that you
5 will develop an appreciation for the great service
6 you've done for your fellow citizens. Sitting on a
7 jury is a privilege and it's a great responsibility.
8 And I think you all now fully understand that. And
9 you are -- we are most appreciative of your hard
10 work.

11 You're now free to talk about it with whoever
12 you would like to. And if you want to do that,
13 great. If someone comes to you and wants to talk
14 about it and you don't want to talk about it and they
15 won't leave you alone, let us know, let the clerk of
16 court's office know and we'll get the sheriff's
17 office involved because we're not going to have any
18 jurors be intimidated because of their service to
19 their fellow citizens.

20 So, thank you very much. I'm happy to tell you
21 that you're finish for the week. So, thank you.
22 Okay.

23 (WHEREUPON, the jury left open court and was
24 excused at approximately 5:05 p.m.)

25 THE COURT: Okay. Got anything? Any motions,

1 anything?

2 MR. HAMILTON: None, Your Honor.

3 THE COURT: Well, I'm going to accept that you
4 renew your prior motions. I'm going to rule the same
5 way.

6 MR. HAMILTON: Yeah.

7 THE COURT: Okay. All right.

8 SENTENCING FOR BRAXTON HARE

9 All right, come on around.

10 Got any jail days?

11 MR. MOYER: 518.

12 THE COURT: All right, any victim input?

13 MR. MOYER: I believe the victim would like to
14 address the Court.

15 THE COURT: All right, go ahead.

16 THE VICTIM: This incident has made a huge
17 impact on my life, in particular, but it's not that
18 I'm the only victim here. Not in any way. When this
19 happened, I was forced to stop my career, a career I
20 had worked, I don't know, at least, six, seven, eight
21 years to build. And I had to end that career and
22 then, basically, my whole life up until that point.
23 And I had to, basically, get down to bare brass and
24 start all over again. I don't feel safe driving
25 around in my city. I had to stay in doors for months

1 to feel safe, not just to walk downtown. If there's
2 going to be any sort of lenience -- it's not my
3 place, but I would definitely ask that you aren't
4 lenient at all. That you do make sure that you
5 really get a good message across to him and his
6 friends that this isn't how society is supposed to
7 work.

8 THE COURT: All right. Thank you very much.

9 All right, any prior criminal history,
10 Mr. Moyer?

11 MR. MOYER: Your Honor, as you've heard, he was
12 just 17 when this incident happened, so he had just
13 become an adult, but he had had a juvenile record.
14 You've heard the robbery conviction. He had the
15 conviction for shoplifting, the incident that
16 happened on the very day that this incident happened.
17 He had a possession of -- well, I'm sorry. So, that
18 would be his criminal history.

19 Your Honor, I would also add that he has not
20 been to court yet on other charges, but he has shown
21 a tendency towards violence for the entire time that
22 he has been an adult, the short period of time that
23 he has. Those cases are still pending and we
24 anticipate coming to court.

25 We did -- the officers did a phone dump on his

1 phone and it was just absolutely chalked full of him
2 posing with pictures with guns, shooting -- videos of
3 him shooting the guns in the air, holding the guns.
4 It is our position that he is a -- he is a violent
5 individual, as shown by the incident that the
6 Defendant was just convicted for. And this is one of
7 the few times I would ever even ask for a particular
8 sentence after a verdict. Your Honor, we would ask
9 that Your Honor give him the maximum sentence on this
10 case due to the extreme level of violence he has
11 shown and we would consider to be a threat to the
12 community.

13 I believe the officer may -- I'm not sure if the
14 officer wishes to address the Court or.

15 OFFICER OWENS: Yes, Your Honor. During this
16 investigation that we handled, some of the
17 defendants, co-defendants that we talked to and we
18 confirmed that Mr. Hare is in a gang called the Cross
19 Tracks. That is a very violent gang. I've had
20 first-hand knowledge of investigating multiple
21 incidents in that gang. They are known to be
22 extremely violent. In fact, nine gang members not
23 too long have been sentenced for a very long time for
24 home invasions, armed robberies, attempted murders,
25 so on and so forth. So, this is -- I consider them

1 dangerous.

2 THE COURT: Okay. Thank you very much.

3 Anything you want to tell me, Mr. Hamilton?

4 MR. HAMILTON: Your Honor, I just stand with him
5 and the jury heard all and the Court heard him on the
6 stand. And he do have a family here in Greenville,
7 some of them are here. And he had indicated to me
8 that he wanted to apologize to the Court. And I just
9 ask the Court to allow me to make that statement for
10 him.

11 THE COURT: He's right there.

12 Anything you want to tell me?

13 MR. HARE: I apologize for my mistakes and to my
14 mom, sir.

15 THE COURT: Okay. Wow. Where did you get the
16 gun?

17 MR. HARE: What?

18 THE COURT: The gun.

19 MR. HARE: I don't remember, sir. It was like
20 three, four years ago, sir.

21 THE COURT: Yeah. Twenty years and three years.
22 Good luck.

23 MR. MOYER: Thank you, Your Honor.

24 THE COURT: All right. I'm going to ask
25 everyone to stay seated and allow the victim to be

1 escorted out of the court.

2 MR. MOYER: Your Honor, do we want to sentence
3 the co-defendant at this time? I know Mr. Warder is
4 here.

5 MR. WARDER: Yes, sir.

6 THE COURT: Oh, yeah, we'll do that.

7 SENTENCING FOR WILLIAM HUNTER

8 If you're ready to go. Okay. You want to say,
9 all right.

10 Where is he? Where is Hunter?

11 How many days has he been in?

12 MR. MOYER: 460.

13 THE COURT: 460, all right.

14 All right, Mr. Warder, anything you want to tell
15 me?

16 MR. WARDER: Yes, sir. Your Honor, my client
17 comes from a caring family. His family's been here
18 for all of this trial. They all worked with me and
19 my office. I have a client that has some health
20 problems. He's had some -- he was -- at the time
21 this happened, he was taking asthma medicine. He has
22 problems with asthma. He's had -- been to -- he's
23 ACDC and there's another that goes along with that,
24 the mental, I can't remember. ADHD, I'm sorry, he's
25 been treated for that.

1 Your Honor, he's a young man that's been in jail
2 for two years almost. During that time, he's had a
3 child born. He has a girlfriend that's stuck by him.
4 She's in here today. Two years -- the years between
5 16 and 18 change you. He spent them in jail thinking
6 about why he was there. Every time I would see him,
7 we'd talk about why he can't get back and raise his
8 child, that he's young and he wants to raise his
9 child. He needs to help his girlfriend with his
10 child. When we've been down here today -- yesterday
11 on the sentence, he says, Do something. I've got to
12 be with my child. I got to help.

13 People do change. I think he stands an
14 excellent chance not to be in this again. Not to be
15 in trouble like this. We've talked about how guns
16 just make trouble. Young people and guns just
17 doesn't work. And he knows that, his family knows
18 that.

19 I urge you, Your Honor, to be lenient on him.
20 This is a man that if didn't serve another day in
21 jail would be appreciably changed. He would not go
22 back there. I urge you to leave him in a situation
23 where he can become a part of the community, where he
24 can become that father, where it's just another child
25 that grows up with a father in prison.

1 THE COURT: All right. Do you have anything,
2 criminal history, anything?

3 MR. MOYER: He had the shoplifting that you've
4 heard about. He had a contempt of court. And they
5 would be the only adjudications on his record.

6 I would have one other thing to add, I'm not
7 sure if the victim wishes to address the Court
8 regarding this Defendant, too.

9 THE VICTIM: Yes, sir. I would not feel safe
10 having this man out. I've had him contacting me
11 while he was on house arrest prior to being put in
12 jail. He was contacting me on Facebook. He's from
13 the same area that Mr. Hare and Mr. Salter are from,
14 the Staunton Bridge, gang ridden area. And this is
15 just the last cry for help here. He was the
16 instigator.

17 THE COURT: What about this inappropriate --
18 what contact? I'd like to know more about that.

19 THE VICTIM: I've spoken about it, but the
20 messages were not able to be recovered from Facebook.
21 They were deleted.

22 THE COURT: What?

23 MR. HUNTER: I told him that I apologize for
24 what I did and I wasn't the one that shot him.
25 That's all I said, sir. I'm not a threat to society

1 or a menace to society.

2 I apologize to you, sir, for what I did. I
3 don't want you to feel scared for your life.

4 THE VICTIM: I appreciate that.

5 THE COURT: You talk to me. He can hear you.

6 MR. HUNTER: I don't want him to feel scared for
7 his life, sir. I don't want to do a day in prison,
8 sir. Please just give me another chance. I got my
9 momma and my girl and them back there. I don't want
10 to lose them. They're going through enough. And my
11 momma, she around the age of 50 something years old.
12 I can't do no time in prison, something happen to her
13 and I can't be there. Just please give me another
14 chance.

15 MR. MOYER: If I can just make one other
16 comment, Your Honor?

17 THE COURT: Yes.

18 MR. MOYER: Our initial plea offer -- and I
19 think this is already in the record from Mr. Warder,
20 at least, he mentioned it earlier in court.
21 Initially, made an offer of 13 years on this
22 Defendant if he would plea guilty early and cooperate
23 against the co-defendant, whom we considered to be a
24 more dangerous person based on numerous factors,
25 including all the other charges that he has pending

1 against him. On the eve of trial, my plea offer
2 actually went down to eight years as I was fully
3 evaluating the case, but that was if he would, you
4 know, meet with us and cooperate and be completely
5 truthful.

6 As you heard, he -- well, as you know, he pled
7 guilty as the trial was starting yesterday. So, as
8 far as his level of cooperation, I can't say that it
9 was -- it was complete. We never had the chance to
10 meet with him. I felt like we were pulling teeth to
11 get him to testify. His testimony did conflict with
12 that of the victim of what we believe are some of the
13 facts, known facts and several different matters.
14 So, I just wanted the Court to be aware of that.

15 Your Honor, of course, heard him testify and has
16 your own judgment as to the truthfulness of his
17 testimony. But that was the extent of our plea
18 negotiations throughout.

19 THE COURT: Okay. Anything else you want to
20 tell me?

21 THE VICTIM: Yes, sir. I never got to finish, I
22 was cut off by him.

23 THE COURT: Okay, go ahead.

24 THE VICTIM: Okay, thank you. He was the
25 instigator in this thing. He pulled the gun and

1 pointed it first. He started this. I really -- I
2 mean, I really -- just basically begging that you
3 don't show this man mercy just because he has a
4 child. He's brought his child into court to watch
5 him. This is not a man that actually cares about his
6 children or cares about his life at all. This is
7 somebody who deserves to be in jail.

8 THE COURT: All right, anything else?

9 MR. WARDER: No, sir.

10 MR. MOYER: No, Your Honor.

11 THE COURT: Well, I'm going to take into
12 consideration the fact that he did testify and I'm
13 going to take into consideration what I consider to
14 be the intimidating nature of his co-defendant. I'm
15 going to give him eight years.

16 All right, good luck.

17 MR. HUNTER: Do I have a chance for parole?

18 THE COURT: They'll explain all that to you.

19 MR. MOYER: Thank you, Your Honor.

20 MR. WARDER: Thank you, Your Honor.

21 THE COURT: All right. I have signed an order
22 allowing the State to substitute a photograph of the
23 car door because we can't store it. All right.

24 MR. MOYER: Okay. The photographs that we have
25 in evidence, are they sufficient?

1 THE COURT: No, do another one.

2 MR. MOYER: Do another one, okay.

3 (WHEREUPON, the proceedings were concluded.)

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APRIL F. HERRON, Court Reporter

Appendix 411

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
Braxton Hare,

Applicant,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-23-00737

APPLICATION FOR POST-CONVICTION RELIEF

20 FEB 5 AM 10:04
Call Wave/extension: 00064180

As required by Rule 71.1(b), SCRCP, this application is in conformity with Form 5 of the SCRCP Appendix of Forms.

1. Place of Detention: Applicant is detained in the South Carolina Department of Corrections at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899.
2. Name and location of Court which imposed sentence: Greenville County Court of General Sessions, 305 E North St # 202, Greenville, SC 29601.
3. Name(s) of co-defendant(s) (if any): William Hunter.
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-23-09117 (Attempted Murder).
 - (b) 2015-GS-23-09118 (Failure to Stop for a Blue Light)
5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) July 13, 2017.
 - (b) Twenty (20) year sentence; Assault and Battery of a High and Aggravated Nature.
 - (c) Three (3) year sentence: Failure to stop for a Blue Light.
6. A finding of guilty was made:
 - (a) After a trial by jury before the Honorable Edward W. Miller (July 12-13, 2017).

7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?
 - (a) Yes.
8. If you answered "yes" to number (7), list:
 - (a) The name of each Court to which you appealed:
 - i. South Carolina Court of Appeals.
 - (b) The result in each Court to which you appealed:
 - i. Affirmed conviction and sentence (S.C. Court of Appeals).
 - (c) The date of each result:
 - i. February 6, 2019 (Unpublished Opinion).
 - (d) If known, citations of any written opinions or ordered entered pursuant to such result:
 - i. State v. Hare, Op. No. 2019-UP-055 (S.C. Ct. App. filed February 6, 2019).
 - ii. Appellate Case No. 2017-001567.
9. If you answered "no" to number (7), state your reasons for not appealing:
 - (a) Not applicable. Applicant filed a Direct Appeal of his conviction and sentence.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Trial Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Trial Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different. See Strickland v. Washington, 466 U.S. 668 (1984).

(b) Appellate Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 3 and 14 of the South Carolina Constitution. Specifically, Appellate Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984); *Evitts v. Lucey*, 469 U.S. 387 (1985); *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991).

11. State concisely and in the same order the facts which support each of the grounds set out in number (10):

(a) Trial Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:

(i) Trial Counsel failed to have Applicant evaluated by a qualified medical professional for criminal responsibility and competency to stand trial prior to his trial.

(ii) Trial Counsel failed to move for a *Blair* hearing prior to trial to determine Applicant's competency to stand trial. See *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code §§ 44-23-410 and 430.

(iii) Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738,

743 (2004); Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015)

- (iv) Trial Counsel failed to properly argue and preserve for appellate review the issue of requesting a jury instruction on specific intent to kill.
- (v) Trial Counsel failed to object and preserve for appellate review the Trial Court's jury instruction regarding intent where the charged offense required the charge of specific intent to kill. See, e.g., State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017).
- (vi) Trial Counsel failed to request a jury instruction for the lesser-included offenses of Attempted Murder; specifically, Assault and Battery, First Degree when it was objectively reasonable and necessary given the facts and circumstances of the case. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"); Stacy v. Solem, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that "labeling counsel's actions as "trial strategy" does not automatically immunize an attorney's performance from sixth amendment challenges.").
- (vii) Trial Counsel failed to present all reasonable and necessary evidence to the Trial Court during the sentencing phase in mitigation of Applicant's potential sentence.
- (b) Appellate Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:
 - (i) If Trial Counsel did preserve the issue of whether the Trial Court erred in providing a jury instruction that did not include the specific intent to kill for appellate review, Appellate Counsel failed to file a merits brief in the South Carolina Court of

Appeals and failed to file a Petition for Rehearing in the Court of Appeals to preserve Applicant's ability to file a Petition for Writ of Certiorari to the Court of Appeals in the South Carolina Supreme Court.

12. Prior to this application, have you filed with respect to this conviction:
- (a) Any petition in a State Court under South Carolina Law? Applicant filed a Direct Appeal before the S.C. Court of Appeals.
 - (b) Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court.
 - (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (8)? No.
 - (d) Any other petitions motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of number (12), list with respect to each petition, motion, or application:
- (a) The specific nature thereof: Not applicable.
 - (b) The name and location of the Court in which each was filed: Not applicable.
 - (c) The disposition thereof: Not applicable.
 - (d) The date of each such disposition: Not applicable.
14. Has any ground set forth in number (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.
15. If you answered "yes" to number (14), identify:
- (a) The grounds which have been presented:
 - i. Not applicable.

(b) The proceedings in which each ground was raised:

i. Not applicable.

16. If any ground set forth in number (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, issues not preserved for appellate review, and/or were not appropriate to raise or were not properly raised on Direct Appeal.

17. Were you represented by an attorney at any time during the course of:

(a) Your plea hearing? Not applicable.

(b) Your trial? Yes.

(c) Your sentencing? Yes.

(d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence?
Yes.

(e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.

18. If you answered "yes" to one or more parts of number (17), list:

(a) The name and address of each attorney who represented you:

(i) Ernest Hamilton, PO Box 10672, Greenville, SC 29603.

(ii) Robert Pachak and Taylor D. Gilliam, PO Box 11589, Columbia, SC 29201.

(iii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

(i) Ernest Hamilton represented Applicant at trial.

(ii) Robert Pachak and Taylor Gilliam represented Applicant on direct appeal.

(iii) Dayne C. Phillips is currently representing Applicant on this application for Post-Conviction Relief.

19. State clearly the relief you seek in filing this application:

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of trial and appellate counsel.

20. Are you now under sentence from any other court that you have not challenged?

Yes, 2015-GS-23-11000 (Carjacking without great bodily harm), and Applicant is filing in conjunction with this PCR action. Applicant is filing an application for post-conviction relief against that conviction and sentence as well.

[Verification Page to Follow]

20 FEB 5 AM 10:05
Paul Wickens@scir.org

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Braxton Hare,	)	Case No. 2020-CP-23-00737
Applicant,	)	
v.	)	VERIFICATION
State of South Carolina,	)	
Defendant.	)	

I, Dayne C. Phillips, Esq., on behalf of my client, Braxton Hare, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof, that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attached in this application; and that the matters and allegations therein set forth are true.


 Dayne C. Phillips
 PRICE BENOWITZ LLP
 1614 Taylor Street, Suite D.
 Columbia, SC 29201
 O: 803-272-4503
 C: 803-807-0234
 F: 803-380-8035
 dayne@pricebenowitz.com

SWORN to and subscribed before me this 3rd
 day of February, 2020.

Courtney Powers (L.S.)
 Notary Public

My Commission Expires: May 2, 2027.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Braxton Hare,	)	Case No. 2020-CP-23-0737
	)	
Applicant,	)	
	)	AMENDED APPLICATION FOR
v.	)	POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

28 MAR 15 PM 1:54
Paul Wickensinner CDC GUL SC

As required by Rule 71.1(b), SCRCP, this application is in conformity with Form 5 of the SCRCP Appendix of Forms.

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4. The indictment number(s) upon which and the offenses for which sentence was imposed:
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5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) July 13, 2017.
 - (b) Twenty (20) year sentence; Assault and Battery of a High and Aggravated Nature.
 - (c) Three (3) year sentence; Failure to stop for a Blue Light.
6. A finding of guilty was made:
 - (a) After a trial by jury before the Honorable Edward W. Miller (July 12-13, 2017).

7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?
- (a) Yes.
8. If you answered "yes" to number (7), list:
- (a) The name of each Court to which you appealed:
- i. South Carolina Court of Appeals.
- (b) The result in each Court to which you appealed:
- i. Affirmed conviction and sentence (S.C. Court of Appeals).
- (c) The date of each result:
- i. February 6, 2019 (Unpublished Opinion).
- (d) If known, citations of any written opinions or ordered entered pursuant to such result:
- i. State v. Hare, Op. No. 2019-UP-055 (S.C. Ct. App. filed February 6, 2019).
- ii. Appellate Case No. 2017-001567.
9. If you answered "no" to number (7), state your reasons for not appealing:
- (a) Not applicable. Applicant filed a Direct Appeal of his conviction and sentence.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Trial Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Trial Counsel's unreasonably deficient performance fell below an objective standard of reasonableness "under prevailing professional norms" and prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would

have been different. See Strickland v. Washington, 466 U.S. 668 (1984) (establishing the standard for ineffective assistance of counsel claims); see also Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). Therefore, “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result”. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland, 466 U.S. at 692).

- (b) Appellate Counsel denied Applicant’s right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. Specifically, Appellate Counsel’s unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Appellate Counsel’s errors, the result of the proceeding would have been different. See Strickland v. Washington, 466 U.S. 668 (1984); Evitts v. Lucey, 469 U.S. 387 (1985); Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991).

11. State concisely and in the same order the facts which support each of the grounds set out in number (10):

- (a) **Trial Counsel’s acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations, and all allegations raised by Applicant in the prior pleadings filed in this action are incorporated by reference as if fully set forth verbatim below:**

1. Trial Counsel failed to have Applicant evaluated by a qualified medical professional for criminal responsibility and competency to stand trial prior to his trial.
2. Trial Counsel failed to move for a Blair hearing prior to trial to determine

Applicant's competency to stand trial. See *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code §§ 44-23-410 and 430.

3. Trial Counsel failed to properly prepare for trial, meet with Applicant, and provide adequate/accurate advice to Applicant prior to trial.
4. Trial Counsel failed to share, discuss, and advise Applicant regarding the State's evidence, the elements of the offenses, his constitutional rights, and the sentencing ranges.
5. Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015)
6. Trial Counsel failed to properly move for and preserve for appellate the severance of Applicant's Failure to Stop for Blue Light charge.
7. Trial Counsel failed to submit to any *voir dire* questions to elicit bias from the venire to ensure Applicant received a fair and impartial jury.
8. Trial Counsel failed to object to the Trial Court's decision to limit the number of peremptory strikes Trial Counsel had during jury selection.
9. Trial Court failed to properly move for and preserve for appellate review the suppression of pre-trial identification procedures for Applicant.
10. Trial Counsel improperly commented during his opening statement that Applicant.

and his Co-Defendant was doing nothing good (prejudicial attack on Applicant's character).

11. Trial Counsel improperly commented during his opening statement that Applicant was going to testify despite that he had a right not to testify or present any evidence. See *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"); *Stacy v. Solem*, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that "labeling counsel's actions as "trial strategy" does not automatically immunize an attorney's performance from sixth amendment challenges.").
12. Trial Counsel improperly conceded Applicant's guilt on the failure to stop for a blue light charge during opening statement.
13. Trial Counsel failed to move for a continuance and recusal the Trial Counsel who took the Co-Defendant's plea after jury selection and sentencing was deferred until after the co-defendant's testimony in this trial, and when the Trial Court presented the indictment for attempted murder to the jury prior to Co-Defendant's guilty plea to Assault and Battery of a High and Aggravated Nature, and the jury being notified that the Co-Defendant had pled guilty during the break.
14. Trial Counsel failed to properly object and preserve for appellate review the Trial Court's admission of the car door when it was in the possession of the victim's family member and not in the custody of the police (implicating possible discovery (*Brady* and Rule 5, SCRCrimP) violation and chain of custody issues).

15. Trial Counsel routinely failed to put bench conferences on the record to preserve the arguments and rulings for appellate review (no explanation or proffer on the record).
16. Trial Counsel failed to properly challenge the ballistics evidence using supplemental motions of discovery or through adequate cross-examination.
17. Trial Counsel improperly stipulated to the car chase video recording when there was no proper foundation, and the charge should have been severed prior to trial.
18. Trial Counsel failed to object to the State's questioning of witness Salter about whether he had ever previously seen Applicant with a gun under Rules 403 and 404(B), SCRE.
19. Trial Counsel failed to object to Darwin Shaw's testimony regarding the firing of weapons into metal when he was not qualified as an expert and would have exceeded the scope of expertise if qualified in a general area under Rules 701 and 702, SCRE.
20. Trial Counsel failed to properly impeach the alleged victim on cross-examination when he subsequently tried to admit into evidence a video recorded interview through witness Dave Warner, and Trial Counsel refused his request.
21. Trial Counsel failed to move for a mistrial, or at a minimum, a curative instruction, after the State elicited irrelevant and unduly prejudicial testimony from Matt Owens regarding two bandanas being inside the bookbag found in Applicant's vehicle, when the Trial Court had previously ruled that the bandanas were not admissible.
22. Trial Counsel failed to object to Matt Owens's testimony regarding the firing the weapons into metal and distances when he was not qualified as an expert and would

- have exceeded the scope of expertise if qualified in a general area.
23. Trial Counsel improperly questioned Applicant on direct examination regarding propensity character evidence about him shoplifting under Rules 401, 403, and 404(b), SCRE.
 24. Trial Counsel improperly questioned Applicant on direct examination regarding a strong-arm robbery that occurred when he was a juvenile under Rules 403 and 404(B), SCRE.
 25. Trial Counsel failed to move for a directed verdict and a new trial after the close of the Defendant's case.
 26. Trial Counsel failed to object to Prosecutor's improper burden-shifting example of reasonable doubt and comparing it to a loan during the State's closing argument in violation of Applicant's Due Process right to a fair trial.
 27. Trial Counsel failed to and properly preserve for appellate review the Prosecutor's improper comments on inferring malice from use of the deadly weapon.
 28. Trial Counsel improperly conceded Applicant's guilt to the charge of Assault and Battery of a High and Aggravated Nature during his closing argument.
 29. Trial Counsel improperly referred to Applicant as a juvenile delinquent in his closing argument (prejudicial propensity character).
 30. Trial Counsel improperly conceded Applicant's malice to damage the alleged victim's property during closing argument.
 31. Trial Counsel improperly presented Applicant as a troubled child of mixed race who was not good in school during his closing argument.
 32. Trial Counsel failed to request and properly argue for a jury instruction on self-

- defense (under the “any evidence” standard) based on Applicant’s testimony that he was acting on appearances. See State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989); Douglas v. State, 332 S.C. 67, 504 S.E.2d 307 (1998).
33. Trial Counsel failed to object to the incorrect standard used by the Trial Court for the self-defense jury instruction (“any evidence” standard).
 34. Trial Counsel failed to request and properly argue for a jury instruction on acting on appearances for self-defense.
 35. Trial Counsel failed to request and properly argue for a jury instruction on being lawfully armed in self-defense.
 36. Trial Counsel failed to request and properly argue for the Logan circumstantial evidence jury instruction.
 37. Trial Counsel failed to object to and preserve for appellate review the unduly prejudicial inferred malice jury instruction on the use of a deadly weapon.
 38. Trial Counsel failed to object to and preserve for appellate review the accomplice liability jury instruction.
 39. Trial Counsel failed to request a jury instruction for Assault and Battery, First Degree, as a lesser-included offenses of Attempted Murder when the Trial Court agreed to charge ABHAN. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding “counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness”); Stacy v. Solem, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that “labeling counsel’s actions as “trial strategy” does not automatically immunize an attorney’s performance from

sixth amendment challenges.”).

40. Trial Counsel failed to present all reasonable and necessary evidence to the Trial Court during the sentencing phase in mitigation of Applicant’s potential sentence.

41. Trial Counsel failed to provide the Trial Court with evidence regarding Applicant’s intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox’s report.

(b) Appellate Counsel’s acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:

(i) If Trial Counsel did preserve the issue of whether the Trial Court erred in refusing to submit the jury instruction for self-defense to the jury, Appellate Counsel failed to file merits brief in the South Carolina Court of Appeals raising this issue on the “any evidence” standard and failed to file a Petition for Rehearing in the Court of Appeals to preserve Applicant’s ability to file a Petition for Writ of Certiorari to the Court of Appeals in the South Carolina Supreme Court.

12. **Prior to this application, have you filed with respect to this conviction:**

(a) **Any petition in a State Court under South Carolina Law?**

Applicant filed a Direct Appeal before the S.C. Court of Appeals.

(b) **Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief?**

No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court.

(c) **Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (8)?** No.

(d) **Any other petitions motions or applications in this or any other Court?** No.

13. If you answered "yes" to any part of number (12), list with respect to each petition, motion, or application:
 - (a) The specific nature thereof: Not applicable.
 - (b) The name and location of the Court in which each was filed: Not applicable.
 - (c) The disposition thereof: Not applicable.
 - (d) The date of each such disposition: Not applicable.
14. Has any ground set forth in number (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.
15. If you answered "yes" to number (14), identify:
 - (a) The grounds which have been presented:
 - i. Not applicable.
 - (b) The proceedings in which each ground was raised:
 - i. Not applicable.
16. If any ground set forth in number (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
 - (a) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, issues not preserved for appellate review, and/or were not appropriate to raise or were not properly raised on Direct Appeal.
17. Were you represented by an attorney at any time during the course of:
 - (a) Your plea hearing? Not applicable.
 - (b) Your trial? Yes.
 - (c) Your sentencing? Yes.
 - (d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence?

Yes.

- (e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed?

Yes.

18. If you answered "yes" to one or more parts of number (17), list:

- (a) The name and address of each attorney who represented you:

- (i) Ernest Hamilton, PO Box 10672, Greenville, SC 29603.
- (ii) Robert Pachak and Taylor D. Gilliam, PO Box 11589, Columbia, SC 29201.
- (iii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.

- (b) The proceedings at which each attorney represented you:

- (i) Ernest Hamilton represented Applicant at trial.
- (ii) Robert Pachak and Taylor Gilliam represented Applicant on direct appeal.
- (iii) Dayne C. Phillips is currently representing Applicant on this application for Post-Conviction Relief.

19. State clearly the relief you seek in filing this application:

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of trial and appellate counsel.

20. Are you now under sentence from any other court that you have not challenged?

Yes, 2015-GS-23-11000 (Carjacking without great bodily harm), and Applicant is filing in conjunction with this PCR action, Applicant is filing an application for post-conviction relief against that conviction and sentence as well.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Braxton Hare,

Applicant,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Case No. 2023 – CP – 23 – 0737

CERTIFICATE OF SERVICE

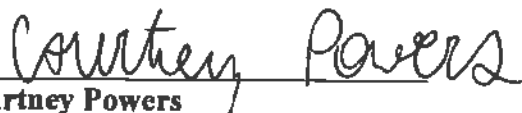
23 MAR 15 PM 1:56
Paul Wickensimer COC GIL SC

I hereby certify that I have this date served the within and foregoing Amended Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Taylor Smith, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

The Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 E North St.
Greenville, SC 29601-2121

By:



Courtney Powers

Paralegal for Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.
Columbia, SC 29201
C: (803) 216-5561
F: (803) 380-8035
courtney@pricebenowitz.com

March 8, 2023

Appendix 431

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Braxton Hare,

Plaintiff,

vs.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2020 - CP - 23 - 0737

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

Submitted By: Dayne C. Phillips, Esq.
Address: 1614 Taylor Street, Ste. D.,
Columbia, SC 29201

SC Bar #: 77712
Telephone #: (803) 807-0234
Fax #: (803) 380-8035
Other: 803-272-4503
E-mail: dayne@pricebenowitz.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 ____ -NI- ____ - ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) _____ ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature:



Date: March 7, 2023

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

DAVID BENOWITZ
ADMITTED DC, MD & VA
CHAD SHELTON
ADMITTED SC
CHAD PROPST
ADMITTED SC

KERRI CASTELLINI
ADMITTED DC & MD
KUSH ARORA
ADMITTED MD & DC
JOHN YANNONE
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SHAWN SUKUMAR
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RAMMY BARBARI
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TAMMY BEGUN
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10505 JUDICIAL DRIVE, SUITE 203
FAIRFAX, VA 22030

March 8, 2023

The Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 E North St.
Greenville, SC 29601-2121

Re: Braxton Hare v. State
AMENDED APPLICATION FOR POST-CONVICTION RELIEF
Case No.: 2020CP2300737

Dear Mr. Wickensimer:

I have enclosed an original and one copy of the Amended Application for Post-Conviction Relief, along with a Certificate of Service for filing.

I would greatly appreciate you filing the enclosed application and returning the clocked-in copy to me. Thank you for your assistance with filing this document.

Sincerely,


Dayne C. Phillips, Esq.
(803) 807-0234

Enclosures (noted)
cc: Braxton Hare
Taylor Smith, Esq.

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WWW.PRICEBENOWITZ.COM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Braxton Hare, #373172,	)	Case No.: 2020-CP-23-0737
	)	
Applicant,	)	RETURN AND MOTION FOR A
	)	MORE DEFINITE STATEMENT
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its return to the application for post-conviction relief filed by Braxton Hare (Applicant) through counsel on February 5, 2020, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated according to an order of commitment of the Greenville County Clerk of Court. During its May of 2016 term, the Greenville County Grand Jury indicted Applicant for attempted murder (2015-GS-23-9117), the possession of a weapon during the commission of a violent crime (same), and the failure to stop for a blue light (2015-GS-23-9118). Applicant was represented by Ernest Hamilton, Esquire (trial counsel), and Assistant Solicitors L. Mark Moyer and Brann W. Fowler, both of the Thirteenth Circuit Solicitor's Office, prosecuted the case. On July 12, 2017, through July 13, 2017, Applicant proceeded to a jury trial with the Honorable Edward W. Miller presiding. At the conclusion of trial, the jury found Applicant guilty of the failure to stop for a blue light, not guilty of attempted murder, and guilty of assault and battery of a high and aggravated nature, the lesser-included offense of attempted murder. Judge Miller sentenced Applicant to imprisonment for twenty years for assault and battery of a high and aggravated nature and for three years for the failure to stop for a blue light. On July 14, 2017, the State dismissed the charge for the possession of a weapon during the commission of a violent

crime due to prosecutorial discretion.

Trial counsel filed a timely notice of appeal. Appellate Defenders Robert M. Pachak and Taylor Davis Gilliam, both of the South Carolina Commission on Indigent Defense, represented Applicant on appeal. Senior Assistant Deputy Attorney General John Benjamin Aplin represented the State. Pachak filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), on Applicant's behalf and moved to be relieved as counsel. Pachak argued therein that the trial court erred in failing to instruct the jury that the specific intent to kill is an element of attempted murder. Applicant did not file a pro se response. The South Carolina Court of Appeals dismissed the appeal in an unpublished opinion. State v. Hare, Op. No. 2019-UP-055 (S.C. Ct. App. filed February 6, 2019) (per curiam). The remittitur was issued on February 26, 2019.

II. Current Application

Applicant alleges the following in his application for post-conviction relief:

- I. Trial counsel was constitutionally ineffective for:
 - a. Failing to have Applicant evaluated by a qualified medical professional for criminal responsibility and competency to stand trial;
 - b. Failing to move for a hearing before trial, pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), in order to determine whether Applicant was competent to stand trial;
 - c. Failing to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense;
 - d. Failing to properly argue and preserve for appellate review the issue of requesting a jury instruction on the specific intent to kill;
 - e. Failing to object and preserve for appellate review the trial court's jury instruction regarding intent where the charged offense required a jury charge on the specific intent to kill;
 - f. Failing to request a jury instruction on first-degree assault and battery, the lesser-included offense of attempted murder; and
 - g. Failing to present all reasonable and necessary evidence during the sentencing phase of trial in mitigation; and
2. Appellate counsel was constitutionally ineffective for:
 - a. Failing to file a merits brief and a petition for rehearing arguing the trial court erred in not instructing the jury that the specific intent to

kill is an element of attempted murder, if trial counsel preserved the issue for appellate review.

Applicant prays that the PCR court would grant post-conviction relief and vacate his convictions and sentences and remand for a new trial.

Attached to this return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject convictions; the records of the Greenville County Clerk of Court regarding the charge dismissed by the State; the records from Applicant's direct appeal, including appellate counsel's brief and the Court of Appeals' opinion; Applicant's records from the South Carolina Department of Corrections; and the application for post-conviction relief. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Response to Claims of the Ineffective Assistance of Counsel

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, at 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C.

441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, at 690). Applicant must overcome this presumption to receive relief. Cherry, at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.” Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (S.C. Ct. App. 2014). Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

In order for a defendant to be competent to stand trial, he must have “sufficient present ability to consult with his lawyer with a reasonable degree of relational understanding” and must

have a “rational as well as factual understanding of the proceedings against him.” Dusky v. United States, 362 U.S. 402 (1960) (per curiam) (internal quotations omitted); Ramirez v. State, 413 S.C. 351, 366, 776 S.E.2d 101, 110 (S.C. Ct. App. 2015) (citing Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992)), rev’d on other grounds, Ramirez, at 22, 795 S.E.2d at 845. A defense attorney may reasonably rely upon his own perceptions in determining whether a mental competency evaluation is required. Jeter, at 233, 417 S.E.2d at 596. If an applicant for post-conviction relief establishes that his trial counsel’s performance was deficient due to counsel’s failing to request a mental competency evaluation, the applicant must then demonstrate that there is a reasonable probability he was incompetent at the time of trial in order to be entitled to relief. See Ramirez, at 22, 795 S.E.2d at 845 (applying this prejudice standard in a case in which applicant pleaded guilty but mentally ill after one mental evaluator concluded he was competent to stand trial but another concluded applicant was severally mentally retarded) (citation omitted).

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney’s “[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.” Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel’s

decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (S.C. Ct. App. 2014).

During the charge conference at Applicant's trial, trial counsel requested that the trial court instruct the jury that the specific intent to kill is an element of attempted murder and that "the definition of specific intent means that he consciously intended the contemplated act." Tran. 310. After the defense rested, trial counsel again requested that the trial court instruct the jury on specific intent. Tran. 349.

During closing argument, trial counsel argued that the State had the burden of proving that Applicant "tried to kill the victim in this case." Tran. 360. Trial counsel argued the evidence did not show that Applicant "tried to kill somebody" Tran. 360. He argued that Applicant "did not try to kill anyone." Tran. 363. He argued "Applicant wasn't trying to kill [the victim]. He was trying to shoot the gun – shoot the car. What did he say, damage the car, shoot the wheel, but not [the victim]." Tran. 366. As trial counsel told the jury, if it believed "that [Applicant] did not intend to kill the victim, then he is not guilty" Tran. 367. The jury could find Applicant guilty of attempted murder only if they found he had the "specific intent to kill. This is an attempt case, and you've got to have intent. Not general intent, well, you know, he was a bad shot and, you know, he was aiming this way and that way, generally. But no, specific intent to kill. That's the law." Tran. 368-69. Trial counsel went to great lengths to reinforce this point to the jury throughout his closing argument. Tran. 369-77.

The trial court did not instruct the jury that the specific intent to kill is an element of attempted murder. Tran. 385-86. The jury, though, found Applicant was not guilty of attempted murder. Tran. 397.

The trial court instructed the jury on assault and battery of a high and aggravated nature, the lesser-included offense of attempted murder, by quoting from South Carolina Code Section 16-3-600. Tran. 394-95. That instruction was as follows:

[A] person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person and great bodily injury to that person results or the act is accomplished by means likely to produce death or great bodily injury. And great bodily injury means bodily injury which causes a substantial risks of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

Tran. 394-95. Subsequently, the jury found Applicant guilty of this crime. Tran. 397.

Applicant argues trial counsel was constitutionally ineffective for failing to preserve the issue of the trial court's not instructing the jury that the specific intent to kill was is an element of attempted murder, but he cannot show that there is a reasonable likelihood the outcome of trial would have been different had he done so because Applicant was acquitted of attempted murder.

A defendant is entitled to a jury instruction on a lesser-included offense if "there is evidence from which it could be inferred [that] a defendant committed a lesser rather than a greater offense." State v. Fields, 356 S.C. 517, 522-23, 589 S.E.2d 792, 795 (S.C. Ct. App. 2003) (citing State v. Mathis, 287 S.C. 589, 340 S.E.2d 538 (1986)). South Carolina Code Section 16-3-600(C) provides:

- (1) A person commits the offense of assault and battery in the first degree if the person unlawfully:
 - (a) injures another person, and the act:
 - (i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent; or
 - (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or
 - (b) offers or attempts to injure another person with the present ability to do so, and the act:
 - (i) is accomplished by means likely to produce death or great bodily injury;

or
(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

The undersigned submits that Applicant likely cannot show he is entitled to relief upon any of the claims raised in his application; however, because the claims may raise questions of fact not conclusively refuted by the record, Respondent requests an evidentiary hearing to fully resolve the matter. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV. Response to Claims of the Ineffective Assistance of Appellate Counsel

A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." Jones, at 754.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. Southerland, at 616, 524 S.E.2d at 836. Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Applicant was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, Applicant must show that, but for appellate counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434,

581 S.E.2d 834, 835 (2003).

The undersigned submits Applicant likely cannot show he is entitled to relief based upon his claim that appellate counsel was constitutionally ineffective for failing to file a merits brief arguing the trial court erred in not instructing the jury that the specific intent to kill is an element of attempted murder because, although appellate counsel did raise the issue in his brief pursuant to Anders, Applicant was not entitled to relief on that argument because he was acquitted of attempted murder. Applicant also likely cannot show he is entitled to relief based upon appellate counsel's not filing a petition for rehearing when the South Carolina Court of Appeals dismissed the appeal because, as appellate counsel correctly recognized, the issue did not have merit. However, because these claims may raise questions of fact not conclusively refuted by the record, Respondent requests an evidentiary hearing to fully resolve the matter. See Sharper, at 265, 305 S.E.2d at 248).

V. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant's allegations. Applicant claims trial counsel was constitutionally ineffective for failing to move for a hearing to determine whether Applicant was competent to stand trial and to have Applicant's competency evaluated by a medical professional, but he fails to explain how doing so would have resulted in a different outcome at trial and for the reasons for which trial counsel would have allegedly had justification in questioning Applicant's competency. Applicant claims trial counsel was constitutionally ineffective for failing to conduct an adequate investigation and obtain all evidence available for Applicant's defense, but fails to explain what actions trial counsel should have done during his trial preparation that he did not do, fails to explain what additional items of evidence trial counsel should have uncovered that he did not, and fails to explain how that additional preparation or

evidence would have resulted in a different outcome at trial. Applicant claims that trial counsel was constitutionally ineffective for failing to object when the trial court did not instruct the jury that the specific intent to kill is an element of attempted murder and that appellate counsel was constitutionally ineffective for failing to raise the issue in a merits brief on appeal, but fails to explain how Applicant suffered any prejudice when he was acquitted of attempted murder. Applicant claims that trial counsel was constitutionally ineffective for failing to request a jury instruction on first-degree assault and battery as the lesser-included offense of attempted murder, but fails to explain upon what basis Applicant was entitled to the jury instruction and how the outcome of trial would have been different had the instruction been given. Applicant claims trial counsel was constitutionally ineffective for failing to present evidence in mitigation during the sentencing phase of trial, but fails to explain what additional evidence trial counsel should have introduced that he did not and what different that would have made in Applicant's sentence.

The Uniform Post-Conviction Procedure Act requires that Applicant must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon an applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974). Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Respondent moves pursuant to Rule 12(e), SCRCF, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the relevant allegation(s).

VI. Denial of All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRCF. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) ("If, however, the proposed amendment is complicated (factually or legally) and would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a more

definite statement as requested herein and then hold an evidentiary hearing into Applicant's claims.

Respectfully submitted,

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Attorney General

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May 14, 2020

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Braxton Hare, #373172,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-23-0737

CERTIFICATE OF SERVICE

1. Undersigned is counsel of record for the Respondent in the above-captioned action.

2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020, "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."

3. Undersigned has served a copy of the **Return and Motion for a More Definite Statement** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Dayne C. Phillips, Esquire
dayne@pricebenowitz.com

DATED this 14th day of May 2020.

s/Taylor Zane Smith
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1 State of South Carolina) Court of Common Pleas
2 County of Greenville) Thirteenth Judicial Circuit
3
4 Braxton Lavon Hare,) Transcript of Record
5 Applicant/Petitioner,)
6 vs.) 2020-CP-23-00736
7 State of South Carolina,) 2020-CP-23-00737
8 Respondent.)

9
10 May 13, 2024
11 Greenville, South Carolina

12 B E F O R E:

13 The Honorable B. Alex Hyman, Judge

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

15 Dayne C. Phillips, Esquire
16 On behalf of the Applicant/Petitioner

17 Julianna E. Battenfield, Assistant Attorney General
18 On behalf of the State of South Carolina

19 Stacy S. Johnson, RPR
20 Circuit Court Reporter

21

22

23

24

25

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E X H I B I T S

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2	A/P-1	Psychological Evaluation Addendum	4	12
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1 (The following proceedings were held May 13, 2024,
2 beginning at 9:55 AM.)

3 (Applicant's/Plaintiff's Exhibit Number 1 and 2 were
4 marked for identification.)

5 THE COURT: All right. Mr. Phillips, Ms. Battenfield,
6 are we ready to proceed?

7 MR. PHILLIPS: Yes, Your Honor.

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

10 MR. PHILLIPS: Thank you, Your Honor. I believe
11 the State had indicated they were gonna do a little bit
12 of a brief procedural history for Your Honor and for the
13 record.

14 THE COURT: I'm happy to hear it.

15 MS. BATTENFIELD: Good morning. May it please the
16 Court?

17 THE COURT: Yes, ma'am.

18 MS. BATTENFIELD: Juliana Battenfield for the
19 Respondent, the Attorney General's Office. Judge, this
20 morning we have two separate cases for Braxton Hare.
21 I believe Mr. Phillips has indicated we're gonna start
22 with the trial, and that's 2020-CP-23-00737. And
23 Mr. Hare proceeded to trial on an amended murder
24 indictment, Indictment Number 2015-GS-23-9117, and he
25 was found guilty of the lesser included ABHAN or assault

1 and battery high and aggravated, as well as failure to
2 stop for a blue light, and that indictment number is
3 2016-GS-23-9118, and he was given twenty years by Judge
4 Miller on July 19th of 2017.

5 After that, Mr. Hamilton, who's here today, Judge,
6 the original defense attorney, he appealed. The direct
7 appeal ended in an unpublished opinion in February 2019.
8 The PCR was filed February 5, 2020. We did our return
9 five months later. Mr. Phillips filed an amended PCR
10 application on March 15, 2020.

11 And, Judge, just for purposes of a Federal habeas
12 later, I just want to briefly put the continuance on the
13 record.

14 So on March 10, 2022, the defense moved for a
15 continuance in the PCR, and May 10, 2022, the State moved
16 for a continuance because our witnesses were unavailable.
17 September 9, 2022, the defense moved for a continuance
18 for Dr. Maddox needed to meet with Applicant again, and
19 March 15, 2023, last year, we moved -- the State moved
20 for a continuance to review the medical information
21 Mr. Dayne provided. In May 2023, it was a mutual
22 continuance, Judge, and then two more. One, there was
23 one in September 2023, Applicant moved for a continuance,
24 and then another in January of 2024, Applicant moved for
25 a continuance.

1 Judge, we have -- Mr. Phillips has raised forty --
2 forty-two grounds from the trial. I have divided them
3 into sixteen different categories for my witnesses. And
4 then we also have the plea, which we're going to move to
5 incorporate Donna Maddox's testimony into the plea so she
6 doesn't have to testify twice --

7 THE COURT: Okay.

8 MS. BATTENFIELD: -- and that number is
9 2020-CP-23-0736, and he pled guilty to carjacking.

10 THE COURT: All right. Thank you.

11 Mr. Phillips, any opening that you want to make?

12 MR. PHILLIPS: No, Your Honor. We reserve that for
13 later at the appropriate time.

14 THE COURT: All right.

15 MR. PHILLIPS: We would call Dr. Maddox as our first
16 witness.

17 (Whereupon, Donna Schwartz Maddox was duly sworn by
18 the Clerk of Court.)

19 THE CLERK: You may be seated. And please state your
20 full name for the record.

21 THE COURT: All right. Good morning, Ms. Maddox.
22 How are you?

23 THE WITNESS: Good morning.

24 THE COURT: Good to see you.

25 THE WITNESS: Thank you.

1 My full name is Donna, middle name Schwartz,
2 S-C-H-W-A-R-T-Z, and last name Maddox, M-A-D-D-O-X.

3 DONNA SCHWARTZ MADDOX,
4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. PHILLIPS:

7 Q. Good morning, Dr. Maddox.

8 A. Good morning.

9 Q. If you could, give a brief background into your
10 education and training.

11 A. Absolutely. I graduated from Furman University in
12 1985 with a bachelor of arts degree in psychology. I
13 graduated from medical school in 1989, from the University
14 of South Carolina School of Medicine, and then I completed
15 a four-year residency in general psychiatry at the William
16 S. Hall Institute and slash University of South Carolina,
17 and then I completed an additional year of training in
18 forensic psychiatry, and I completed that in 1994. I've
19 worked at the Department of Mental Health for a number of
20 years, then the University of South Carolina for, I think,
21 fourteen, fifteen years, and then I finished my State
22 service with twenty-eight years at the Department of Mental
23 Health at Patrick Harris Hospital where I was treating
24 patients. I retired from there five years ago and I've
25 been in private practice in forensic psychiatry, and I am

1 licensed to practice medicine in South Carolina.

2 Q. Now as far as your experience, you've touched on that
3 already, in state court how many times have you been
4 qualified as an expert witness?

5 A. Over eight hundred and fifty times.

6 Q. And what specific area have you been qualified in?

7 A. Forensic psychiatry, which is any issue where a
8 mental status has to do with a legal issue, so it could
9 be in civil courts, family court, probate, Federal
10 courts, criminal matters, post-conviction relief matters,
11 sexually violent predator trials, personal injury cases,
12 malpractice. Pretty much most areas. I specialize and I
13 go over the country and I do a lot of Federal habeas work
14 for death penalty cases as well.

15 MR. PHILLIPS: Your Honor, at this time the Applicant
16 would move to admit Ms. Donna -- Dr. Maddox as an expert
17 witness in forensic psychiatry.

18 MS. BATTENFIELD: No objection, Judge.

19 THE COURT: All right. Dr. Donna Maddox will be
20 deemed an expert in forensic psychiatry.

21 BY MR. PHILLIPS:

22 Q. Dr. Maddox, you had an opportunity to review records
23 in this case and meet with Mr. Hare?

24 A. I did.

25 Q. All right. And if you could -- if you could kind of

1 give an overview of the records you reviewed and the
2 meetings that you had with him.

3 A. Sure. Originally you had provided me prior to my
4 first evaluation -- I saw him twice, Your Honor.

5 THE COURT: Okay.

6 A. The first time that I evaluated him I had mainly his
7 legal proceedings, his school records, and also the trial
8 transcripts, so I read through those. I interviewed
9 Mr. Hare on July 21, 2020. That was during COVID, so we
10 had to do the evaluation virtually. After I evaluated
11 him, I had learned that he had had a closed-head injury
12 and so I requested some more records and Mr. Phillips very
13 kindly got -- he had an MRI of his brain and he had medical
14 records where he was treated in Seneca, in Oconee, so I got
15 those records, and then I evaluated him again because I
16 needed to perform a cognitive exam on him since he had had
17 a history of closed-head injury, and I saw him the second
18 time on November 4, 2022.

19 Q. And you issued two different reports in this case.
20 Essentially an initial report and then an addendum?

21 A. Yes, sir. And the addendum was after the second
22 evaluation updating my cognitive exam and then outlining
23 the medical records we had reviewed.

24 Q. Thank you.

25 MR. PHILLIPS: Your Honor, may I approach?

1 THE COURT: Yes, sir.

2 BY MR. PHILLIPS:

3 Q. Dr. Maddox, I'm gonna hand you what's been marked as
4 Plaintiff's Exhibits 1 and 2. Exhibit 1 is the amended
5 report -- or, excuse me, the addendum report, the most
6 recent, and then the second is the initial report. If you
7 could take a moment to review those.

8 A. Yes, these are my reports.

9 Q. And as far as the sources of information that's listed
10 in those reports, those are the documents that you reviewed
11 in preparation for your meetings with Mr. Hare?

12 A. Yes.

13 MR. PHILLIPS: Your Honor, at this time I would move
14 to admit Plaintiff's Exhibit 1 and 2 into evidence.

15 THE COURT: Any objection?

16 MS. BATTENFIELD: Judge, I had a conversation with
17 Mr. Phillips pre-trial and there is a flash drive with
18 over a thousand pages of documents with fourteen sections
19 of psychiatric evaluations, DJJ records, et cetera.
20 Mr. Phillips and I were talking beforehand and the State
21 would inquire as to your preferences of whether the
22 psychiatric report -- we would just stipulate that is
23 available and all these other documents are available or
24 whether we should admit them under seal because they are
25 DJJ reports, there's school reports. There's all kind of

1 personal identifying information. So we would inquire as
2 to Your Honor's preference about those things to make sure
3 none of these things become public record.

4 THE COURT: But it's all on a flash drive?

5 MR. PHILLIPS: I have put it on a flash drive, Your
6 Honor.

7 THE COURT: I would prefer to have it just admitted
8 under seal.

9 MR. PHILLIPS: Yes, Your Honor. There's absolutely
10 no objection from either party and we discussed that and
11 believe that would be appropriate.

12 THE COURT: All right. Has that been marked?

13 MR. PHILLIPS: No, Your Honor, but we can mark it.

14 MS. BATTENFIELD: Your Honor, in that case we have
15 no objection to these coming in.

16 THE COURT: All right.

17 (Applicant's/Plaintiff's Exhibit Number 3 was marked
18 for identification.)

19 MR. PHILLIPS: And, Your Honor, for the record,
20 the flash drive is being marked as Plaintiff's Exhibit
21 Number 3 and I would move to admit that flash drive into
22 evidence at this time.

23 THE COURT: And her -- her two reports are 1 and 2?

24 MR. PHILLIPS: Yes, Your Honor.

25 And for the Court's review, I'm handing up copies of

1 those reports, and Number 1 is on top.

2 THE COURT: Thank you.

3 All right. Plaintiff's 1, 2 and 3 are admitted.

4 (Applicant's/Plaintiff's Exhibit Number 1,
5 psychological evaluation addendum; Number 2, psychological
6 evaluation; and Number 3, a flash drive with documents,
7 were admitted into evidence.)

8 BY MR. PHILLIPS:

9 Q. Dr. Maddox, if you could, explain during your meetings
10 what are you looking -- or even from the document review,
11 medical records-wise leading into the meetings, as well
12 as your meetings, what -- what are you looking for as a
13 forensic psychiatrist in terms of your review?

14 A. Sure. The methodology I use is normally I will review
15 records. You have to remember in forensic psychiatry
16 because there's a legal standard, we have to do a little
17 bit more than you would in just a general psychiatric
18 practice. You have to make sure there's collateral
19 records, you're trying to verify whether the information
20 you're getting from the client is accurate, so that's
21 always helpful. What I do is I'll review records and then
22 I'll perform a history and then what's called a mental
23 status examination.

24 What I'm looking for are things that need to come to
25 the Court's attention. Is there a history of learning

1 disorders, were there problems that could lead to mental
2 illness such as trauma during childhood or problems during
3 birth. You're looking for things like difficulties with
4 education and then you're looking for family histories
5 of mental illness. So basically I'm trying to make a
6 psychiatric diagnosis. Either there's a mental illness or
7 some kind of mental defect that should come to the Court's
8 attention in terms of whether it's an issue for competency
9 for criminal responsibility or for mitigation during
10 sentencing.

11 Q. And specifically here, although allegations were
12 raised regarding competency, your main report is addressing
13 issues regarding intellectual deficits for mitigation. Is
14 that fair to say?

15 A. Yes. Yes.

16 Q. Could you expound on that?

17 A. Absolutely. What happened in this case, Your Honor,
18 he was seventeen when these crimes occurred and, as you
19 know, there's extensive medical literature, young men
20 and women, their brains don't finish developing until
21 they're twenty-four. So the typical seventeen-year-old
22 is beginning to get judgment. The frontal part of their
23 brain is developing, so they start to get good judgment.
24 In this case, I don't think it's fair to compare Mr. Hare
25 to other seventeen-year-olds at the time because he had a

1 history of a significant closed-head injury that I will
2 explain. He also had intellectual disability. He was
3 diagnosed with borderline intellectual functioning, so his
4 IQ was lower than the typical seventeen-year-old as well.
5 So he had two very unique factors about him.

6 His closed-injury, he was on a moped and got hit by
7 a van when he was younger, and he woke up in a ditch. He
8 was unconscious. He was taken to Ocone Hospital. He had
9 a contusion of the face. He -- they had an MRI ordered.
10 Anyway, he did have some cognitive deficits. His family
11 had noted that he had problems with his memory after the
12 concussion. So those are just things that you have to take
13 into account when you're comparing him to other young men.

14 First of all, his brain was very immature and more
15 immature than other seventeen-year-olds at the time of his
16 offense. Secondly, he ran into some issues in his trial.
17 What happened is there was a period of time where he was
18 uncertain whether he would testify or not. He finally
19 decided to testify in his trial in chief and then I believe
20 in the guilty plea during sentencing Judge Miller was
21 asking him some questions and one of the questions he asked
22 him was where did he get the gun and Mr. Hare told him he
23 could not remember, and it appears -- it looked like his
24 inability to remember could have been volitional and
25 oppositional to the Court, and in my opinion it was not,

1 and I think had Judge Miller had known the history of him,
2 that he had intellectual deficits and a closed-head injury,
3 and when persons with those kinds of brains are under
4 stress, their brain, when they're anxious, they don't
5 think very clearly, and I don't think that Mr. Hare was
6 intentionally trying to be oppositional or not answer a
7 question to Judge Miller, and I think it affected the
8 sentencing. He got the maximum sentence.

9 Q. And so based on your training and experience, it's
10 your expert opinion that your findings after reviewing
11 his medical records and meeting with him on two separate
12 occasions, it's your expert opinion that you would have
13 been able to testify to these findings at the mitigation
14 phase of his trial after he was convicted, as well as the
15 guilty plea, in terms of his intellectual deficit, his
16 closed-head injury and how that affects his thinking, his
17 mood, essentially his rational understanding of the
18 proceedings?

19 A. Yes. And -- and also had he had -- even though in
20 my opinion I think he was competent, looking back, you
21 know, he's following testimony, he's got -- he's got the
22 capacity. Now he doesn't necessarily know everything. He
23 told me he was lost. That some of the legal terms going
24 on he was not familiar with, but he still had the capacity
25 to understand those things. Whether he was prepared or not

1 is another issue, but I also think had he had a competency
2 examination these things would have come to light. The
3 school records would have been obtained. There would have
4 -- the school records themselves even not knowing that he
5 had a closed-head injury are very telling. He had language
6 deficits, he did poorly in math. He scored in the fourth
7 percentile in reading, so 96 percent of the other children
8 his age were better at reading. The low IQ scores would
9 have been revealed. So even with just those records in
10 themselves there would have been enough information there
11 to understand that his brain was probably less mature than
12 peers his age. The reason I say that, his co-defendant was
13 a sixteen-year-old and the other co-defendant was older
14 than him and outweighed him, so he also was someone that
15 could be influenced and more likely to be influenced. I
16 don't know the cognitive functioning of his co-defendants,
17 but just given his cognitive deficits I think that would
18 have been an area I would have testified in as well.

19 Q. And so as an expert in forensic psychology, it's your
20 opinion that this would have been material or critical
21 mitigation evidence that could have been presented at the
22 sentencing phases for both the trial and the guilty plea?

23 A. Yes. I would have -- had you retained me or a defense
24 attorney, I would have recommended -- and I may have even
25 recommended we have a Blair hearing just to have it on

1 record to protect the record and then that's also a place
2 where you can introduce that testimony. Some judges don't
3 like to have separate sentencing hearings, so even in a
4 Blair hearing that information could have come out to be
5 used later.

6 Q. And then, I guess, just to make it clear, we had
7 previously raised a competency issue. You deemed based
8 on your review that he is competent to stand trial.
9 That's not what you're testifying to today. What you're
10 testifying to today is specifically your expert opinion
11 regarding his intellectual deficits, as well as the
12 closed-head injury and then, of course, your assessment
13 of that based on reviewing his medical records and your
14 interviews with him?

15 A. Yes.

16 Q. I just wanted to make sure that's -- that's clear.
17 And so you still believe that a Blair hearing would have
18 potentially been necessary for the Court to feel
19 comfortable to have all that information?

20 A. That would have been one of the venues to get that
21 information in had it -- but, yes, had you retained me, I
22 would have and we had -- I would have recommended a Blair
23 hearing just because given his deficits and low IQ, the
24 closed-head injury, sometimes before trial people's
25 functioning, their cognitive impairment, can get worse if

1 they're anxious. That's why they do neuro psych testing.
2 The reason they do testing is they put somebody under a
3 time limit and they make them anxious on purpose, but
4 sometimes our brain deficits don't show up until you're
5 stressed or until your brain's under anxiety. So sometimes
6 court is similar to that for people. Some people are so
7 anxious that they have more trouble maybe getting the right
8 -- finding the right words, being able to follow questions.
9 But based on looking at the transcript, he -- in my
10 opinion, he was competent and he was competent to testify.
11 Q. And how many times have you testified as an expert in
12 mitigation? Separate from trial. In mitigation.
13 A. Plenty. Plenty. Normally in guilty pleas, but also
14 after a trial. Hundreds of times.
15 Q. And based on, again, your review of the medical
16 records and your interviews with him, what is your expert
17 opinion in terms of presenting this mitigation during -- I
18 guess in terms of how you would have presented it to Judge
19 Miller had you been retained from the initial mitigation
20 standpoint from the trial? You know, knowing that you
21 would have been hired pre-trial in preparation for if he
22 was found guilty that you could presented that and
23 testified in front of Judge Miller in mitigation.
24 A. Yes, I would have done two separate things. First of
25 all, if he had -- say he had pled and we were in front of

1 the judge, I would have examined him the morning of the
2 hearing to make sure that he was still competent. I would
3 have instructed or informed Judge Miller that -- that we
4 probably would need to speak a little slower during the
5 proceedings, make sure -- take breaks to make sure that he
6 understood what was going on because of his deficits.

7 Number two, I would have outlined exactly what his
8 diagnoses were, and it's borderline intellectual
9 functioning, which means that his IQ is less than 80,
10 but higher than 69, in that he doesn't function as
11 intellectually disabled, but he has borderline functioning.
12 I would have diagnosed him with what's called an
13 unspecified neurocognitive disorder. That means that I
14 know he had some brain damage from the closed-head injury.
15 He also has a history of ADHD as a child. He was on
16 Ritalin and medications for that, so I would have at length
17 talked about those illnesses and that they would further
18 impair, number one, his judgment. They would make him more
19 susceptible to being outsmarted by other people who are
20 higher functioning than him.

21 And then, thirdly, I had also diagnosed him with a
22 bit of trauma disorder, and all of those things I would
23 have taken into account and recommended that he have mental
24 health treatment when he was detained at the Department of
25 Corrections and then I would have contacted the Department

1 of Corrections and provided his records to make sure that
2 he had a continuity of care.

3 Q. And so based on your review of both the trial
4 transcript and specifically the sentencing hearing and
5 the plea hearing transcript, was any of that presented to
6 Judge Miller?

7 A. Not that I'm aware of. I did not see any information.

8 MR. PHILLIPS: Thank you.

9 No further questions, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. BATTENFIELD:

12 Q. Dr. Maddox, I didn't know you went to Furman. I was
13 also a Furman grad. Go Paladins.

14 A. Yes.

15 Q. So, Dr. Maddox, I know you just -- in both the trial
16 and the plea and Mr. Hare's PCR application, I know
17 Mr. Phillips just went through this with you, but you are
18 saying at the time of Mr. Hare's plea and also at the time
19 of his trial he was -- according to your expert opinion he
20 would have been competent to stand trial and plead guilty?

21 A. Yes. Yes, based on what I've read and just the
22 colloquy, answering questions. His capacity's impaired,
23 but he had enough capacity and it's clear in looking at
24 the record that he understood the things being asked, but
25 I think where his deficit showed up during the plea and

1 the trial was his waxing and waning, looking like maybe
2 he would take the stand, maybe he would not, and then
3 answering select questions. I think that misled -- or
4 the judge may have misinterpreted that hesitation or
5 ambivalence as being volitional when in my opinion it was
6 not.

7 Q. Okay. And from Ramirez versus State, this is the
8 competency standard just for the record. It's 419 South
9 Carolina 14, a 2017 case. The first prong is sufficient
10 present ability to consult with his lawyer.

11 A. Yes.

12 Q. You're saying he had the ability to consult?

13 A. Yes, and he did.

14 Q. Great. With a rational degree of reasonable rational
15 understanding?

16 A. Yes.

17 Q. Okay. So he understood the proceedings, he understood
18 how much time he was facing?

19 A. Yes. There were some areas that he was not clear
20 on, but, again, it's not just -- it's the capacity. It's
21 not what you actually know, it's do you have the capacity
22 to know it. So he may not have been prepared, he may not
23 have -- you know, maybe he and his attorney -- what he
24 says is he wasn't sure, he felt lost, he was relying upon
25 his attorney, but he still had the capacity. Whether he

1 actually knew it or not is really not the issue. It's does
2 he have the capacity to understand those things, and he
3 did.

4 Q. He did. Okay. And then the second prong is what we
5 just talked about, is whether he had a rational factual
6 understanding of the proceedings against him. You're
7 saying he did?

8 A. Yes, he did. He knew he was going to trial. He knew
9 he wanted to testify. He was self-protective and thought
10 that his story would help him in his -- in his proceedings.

11 Q. Great. Okay. Now I'm gonna show you a couple of
12 things really fast and then I'll be done. I really
13 appreciate your testimony this morning.

14 So just briefly, the offenses we're talking about
15 this morning, there was an August 22, 2015, armed robbery,
16 and there was an August 21, 2015, carjacking.

17 A. Yes.

18 Q. So same week about -- on or about, but that's a
19 separate offense?

20 A. Correct.

21 Q. And then the trial we're talking about was for
22 September 1, 2015?

23 A. Yes.

24 Q. Just a couple of days later that was originally
25 indicted for attempted murder and failure to stop for blue

1 light, right?

2 A. Yes.

3 Q. All right. So it was all about August 2015 -- August,
4 September 2015?

5 A. Yes.

6 Q. Now I'm gonna show you three report cards from
7 Section 10 and Section 8 of Plaintiff's 3, and I'm gonna
8 show you them and I'd like you to -- so the first one just
9 for the record is from Lakeview Middle School printed on
10 June 3, 2011, and then I'm gonna ask you -- so that was
11 before his incident with the car --

12 A. Correct.

13 Q. -- and the bicycle? And the car accident would have
14 been March 3, 2012?

15 A. Correct.

16 Q. And then I'm gonna show you a report card dated
17 May 31, 2012, from Seneca Middle School, I believe.

18 A. Yes.

19 Q. And that would have been after the car accident.
20 And then I'm gonna show you a State of South Carolina
21 transcript dated August 20, 2015, so right in this same
22 period of crimes, and I'm gonna ask you to read the grades
23 on here for the judge.

24 A. Sure.

25 MS. BATTENFIELD: May I approach, Judge?

1 THE COURT: Yes.

2 BY MS. BATTENFIELD:

3 Q. If you could just go through one by one.

4 A. Absolutely.

5 Q. Well, first, do you recognize those? Are those part
6 of what you reviewed?

7 A. Yes.

8 Q. And those are fair and accurate?

9 A. Yes.

10 Q. Great. Thanks.

11 A. Okay. The first is Lakeview Middle School and this
12 was the fourth quarter report card and the final grades
13 printed on June 3, 2011, and he is in the seventh grade,
14 in English --

15 Q. And I've circled the grades, the final.

16 A. Yes. Well, this one, the first page, is not circled,
17 but --

18 Q. I apologize.

19 A. That's okay. In English, the fourth quarter, his
20 grade was a 69, but he did pass for the year and had an 83,
21 which --

22 Q. I'm just concerned with the final grades, if that's
23 okay?

24 A. Okay. Sure. The final grade was an 83, which is
25 a C, in English. Student reading, the final grade is a 79,

1 which is a C. In social studies, the final grade was a 79,
2 which is a C. I don't know what ADD is. I'm sorry. The
3 score was 100. In math, his final score was a 79, which
4 is a C. In PE, the final score was a 93, which is an A.
5 And in science, the final score was a 75, which is a D.

6 Q. Okay. And that was before the car accident, correct?

7 A. Yes.

8 Q. All right. Thanks.

9 A. I'm looking -- he also was in Special Ed. I do not
10 see -- this one I do not see that -- if it's designated
11 as Special Ed. I don't know if the report cards would do
12 that.

13 Q. Sure.

14 A. Okay. The second was 2011 through 2012. And was your
15 -- the question was this was after the accident and the
16 fourth quarter grades --

17 Q. Yes.

18 A. -- or the final grades? Okay. So --

19 Q. About two or three months after the accident.

20 A. Yes. May 31, 2012. So that would have been two
21 months.

22 Q. Sure.

23 A. His fourth quarter he had a 92 in language arts, but
24 noted late, incomplete, missing work. Science, he had an
25 85 for the final. Social studies, an 85. Keyboarding, a

1 97. Math, an 86. And PE a 93.

2 Q. So A's and B's and this is after the car accident?

3 A. Correct.

4 Q. So he went from A's, B's, C's and D's to A's and B's
5 after the car accident?

6 A. Right.

7 Q. All right.

8 A. But I don't know -- I think you might be -- we could
9 be comparing apples and oranges. It's gonna depend on the
10 teacher, the class. He was also in a different school,
11 so also keep in mind -- but, yes, I think that's very fair
12 to say his grades certainly were stable and better. A
13 little bit worse in PE, but, yes. And then his high school
14 transcript --

15 Q. And this is right around the same time as all the
16 crimes, right, August 2015?

17 A. Correct, but keep in mind now at Birchwood High
18 School, I worked at DJJ for fifteen years, that school is
19 much easier. The children loved going to school at DJJ
20 because their classroom pace is a little bit slower, so
21 they tend to do a little bit better.

22 Q. Sure. Now, Dr. Maddox, speaking of which, if I could
23 just briefly stop you, so we're talking about the times of
24 the crimes right now and so Mr. Hare was at school in DJJ
25 at the time, but not incarcerated in DJJ, correct?

1 A. Correct.

2 Q. Okay. Great.

3 A. Yeah, so the transcript from high school comes from
4 Birchwood from 2013 to 2014, Sandhills from 2013 to 2014,
5 Carolina Academy in 2012, 2013, and then Birchwood again in
6 2014, '15. So it looks like the yearly grades in English
7 was a 98. Physical science is 76. World history, a 79.
8 PE, an 89. Art, a 97. Algebra I, an 88. Carpentry, a 93.
9 Welding, 75.

10 English at Sandhills, which would have been -- it
11 looks like in the same year, I don't know which came first,
12 a 93. Geography, a 72. Algebra, an 85. Carpentry, an 80.

13 And then at Carolina Academy is sports -- leisure
14 sports class, 79. And at Birchwood, sound design and
15 recording, an 82. And digital desktop publishing, a 90.

16 Q. So it sounds like mostly A's and B's about this time
17 during the crimes, correct?

18 A. Two C's, yes, but the majority -- let's see. It looks
19 like three A's, a lot of B's, and a few C's.

20 Q. Okay. I mean, so your testimony is that Mr. Hare has
21 cognitive deficits that would have affected him at trial?

22 A. Yes.

23 Q. Unlike another criminal defendant, any other ordinary
24 criminal defendant?

25 A. Correct.

1 Q. He would have had more issues understanding what was
2 happening at trial other than any criminal defendant?

3 A. Not necessarily. It just would have taken him longer.
4 Where his deficits are -- I did -- I did some testing on
5 him. We already know he had a little bit of weakness in
6 language, and that's -- that was preexisting, that was from
7 his borderline intellectual functioning, and we know that
8 he had difficulties with attention, he had a history of
9 ADHD, so it would just take him longer. It doesn't mean
10 that his processor was necessarily broken, it just means,
11 number one, it might take him longer to process things.

12 And then, secondly, if he's anxious, he's gonna have
13 a little bit more impairment. It may take him longer. He
14 might not -- again, his memory deficits. Just for the
15 record, he still does not know where he got the gun. I
16 asked him about that years later and he still doesn't
17 recall that. So it's more -- more you could have seen him
18 maybe feeling comfortable making a decision, not trusting
19 his judgment. So in terms of him being able to talk about
20 what happened, I don't think that would -- that kind of
21 memory was not affected with him.

22 Q. Okay. So because -- I mean, it seems like across all
23 of this time, before and after the car accident and then
24 during the crimes, he's had really good grades for the most
25 part?

1 A. Yes. Overall.

2 Q. So would you say -- would it be fair to say having
3 all of this information or a great expert like you would
4 have made Mr. Hare more comfortable at trial, but not
5 necessarily impacted whether he had a fair trial?

6 A. Say that again, please.

7 Q. So were -- were Mr. Hare's defense attorney to have
8 gotten all of this and then the judge were to have had
9 this and say accommodations would have been made during the
10 trial, Mr. Hare would have been more comfortable at trial,
11 but in your expert opinion did it affect his right to a
12 fair trial?

13 A. No, I don't think it did, but -- but I think in terms
14 of a sentencing issue, what would have happened -- say the
15 time when he was not sure whether he wanted to take the
16 stand or not, I would have -- had I been there I would have
17 met with him and tried to understand and then would have
18 explained to the judge his -- his ambivalence is due to
19 these things and not volitional behavioral issues or him
20 being disrespectful of the Court.

21 Q. Sure. But legally the judge was not required to give
22 him a lesser sentence because of any of these things,
23 correct?

24 A. Not at all. Not at all, no.

25 Q. Okay.

1 MS. BATTENFIELD: Thank you, Dr. Maddox.

2 THE WITNESS: You're welcome?

3 MS. BATTENFIELD: May I approach to --

4 THE COURT: Yes.

5 MS. BATTENFIELD: Thank you so much.

6 No further questions, Judge.

7 MR. PHILLIPS: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. PHILLIPS:

11 Q. Dr. Maddox, in terms of your expert opinion, and
12 you can tell me what the -- what your findings would be,
13 someone with his IQ and intellectual deficit, does that --
14 how does that affect their ability, their judgment, their
15 decisionmaking, their responses, whether they're
16 influenced? Could you go into that again?

17 A. Yes. Again, if you're looking at brain development,
18 even though he was seventeen at the time these offenses
19 happened, he was functioning less than a 17-year-old
20 because of his intellectual deficits, and then cumulative
21 to that was the history of the closed-head injury. So
22 he would have been probably more consistent with a
23 16-year-old. Again, a psychologist, they have -- they're
24 able to do -- when they do testing, they can use some of
25 the scales and extrapolate back to what a chronological

1 age is, but I think it's very fair to say and I can say
2 with a reasonable degree of medical certainty that he was
3 functioning less than the typical 17-year-old peer his age.

4 Q. And they had his IQ at one point listed as 76, below
5 80; is that fair to say?

6 A. Yes, I believe -- I believe there's also one of 72,
7 but, yes, they've consistently been in the borderline range
8 of intellectual functioning.

9 Q. Now in terms of his grades, does that have any effect
10 in relation to your findings or expert opinions here today?

11 A. Well, what he tells me is that he tries hard. I'm
12 actually surprised -- I didn't recall his grades being
13 that good, but I told you he had a -- he has a very good
14 mom. His mom's successful, she's employed. There were
15 periods of time where she would be out of the county.
16 There was one period where she was in Afghanistan for
17 twenty-two months. He would have caretakers who would
18 make sure that he did well in school. I mean, he was
19 nurtured and he was cared for, so -- and he was -- his
20 family encouraged him to do well. So it tells me that he
21 tries really hard at what he does.

22 And, in fact, Your Honor, the first time I saw him
23 he was in McCormick and then the second time I evaluated
24 him he had been moved to Lee and he was so much happier
25 because they have an education program there. He really

1 wants to get his GED and so that was one of the things he
2 was concerned about. So he continues -- he tries really
3 hard and he wants to do well and he wants to achieve, and
4 that's -- that's pretty typical in people with intellectual
5 disabilities. They -- they want to do better. They --
6 they recognize at some level that they have some deficits
7 and they want to do better and want to learn.

8 Q. And in terms of your findings on the intellectual
9 deficit and, again, with -- specifically as to mitigation
10 and his closed-head injury, is it based on -- again,
11 based on your prior expert testimony in other cases with
12 mitigation and, of course, your findings in this case,
13 is it your expert opinion that this would be critical
14 mitigation evidence that Judge Miller would have been able
15 to assess and needed to hear?

16 A. Yes, and based on my experience with Judge Miller,
17 he's very open and he always -- he listens to those things
18 and he takes them into account. What sentences, I can't
19 tell you, but I know that he listens and I know that he
20 takes those things into account.

21 Q. Right, because ultimately he has the discretion,
22 but he did not have this information to use in his
23 consideration in imposing a sentence; is that fair?

24 A. Correct. And I think what -- the other issue I would
25 have brought up, if you look at his legal history, he

1 didn't get into trouble until after these -- until this
2 closed-head injury. He had not had that history before.
3 So he had been along on a track to succeed.

4 MR. PHILLIPS: Thank you. No further questions.

5 THE COURT: Anything else, Ms. Battenfield?

6 MS. BATTENFIELD: No, Judge. Thank you.

7 THE COURT: All right. Dr. Maddox, you can step
8 down.

9 THE WITNESS: Thank you.

10 May I be excused, Your Honor?

11 THE COURT: Yes, ma'am. Any --

12 MS. BATTENFIELD: No objection.

13 MR. PHILLIPS: No objection, Your Honor.

14 And just for the record, through consent or
15 stipulation, that we're going to have her testimony
16 apply to both PCR applications.

17 THE COURT: All right.

18 MR. PHILLIPS: Thank you.

19 (Witness excused.)

20 THE COURT: All right. Mr. Phillips, you can call
21 your next witness.

22 MR. PHILLIPS: The next witness would be Mr. Braxton
23 Hare.

24 (Whereupon, Braxton Lavon Hare was duly sworn by the
25 Clerk of Court.)

1 THE CLERK: Thank you. You may be seated. Please
2 state your full name for the record.

3 THE WITNESS: Braxton Lavon Hare.

4 BRAXTON LAVON HARE,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PHILLIPS:

8 Q. Good morning, Mr. Hare.

9 A. Good morning.

10 Q. If you could -- I think, yeah, you've already
11 identified yourself. Could you explain how you met your
12 lawyer, Mr. Ernest Hamilton, the first time? Do you
13 remember when?

14 A. I don't remember the first visit. No, sir.

15 Q. Specifically could you describe the representation
16 in terms of once you were arrested for those charges, the
17 attempted murder, the failure to stop for a blue light
18 charges, could you go into how you were -- had you retained
19 Mr. Hamilton?

20 A. I know I just remember him coming to visit me a couple
21 of times just going over the case and showing me my motion
22 for discovery.

23 Q. And so your mother retained him on your behalf?

24 A. What's retained mean?

25 Q. Hired him.

1 A. Oh, yes, sir.

2 Q. And so specifically once he was hired, he came to the
3 jail and saw you?

4 A. Correct.

5 Q. And during those meetings you said he did discuss the
6 case with you?

7 A. Correct.

8 Q. And how many times did he come to meet with you there
9 at the jail?

10 A. Approximately like five times. Five, six times.

11 Q. And during those five to six times, what did you
12 discuss with him?

13 A. Just going over the evidence and like --

14 Q. And, if you could, kind of explain as best you can
15 when you say go over the evidence, did he have paperwork
16 that he would sit down with you? What all did you-all
17 discuss?

18 A. We went over the motion for discovery, we went over
19 the evidence, and when -- when they gave us a plea deal,
20 we went over the plea deals.

21 Q. And so -- and ultimately you rejected that deal and
22 went forward with the trial?

23 A. Yes, sir.

24 Q. All right. Now talk to me, in preparation for the
25 trial, was there specific conversations you had regarding

1 your rights at a trial, potential defenses?

2 A. No, sir.

3 Q. All right. So your meetings mainly contained -- or
4 the discussions was related to the evidence?

5 A. Yes, sir.

6 Q. Did you-all discuss whether you would testify?

7 A. At the last moment during trial.

8 Q. And so when you say during trial, literally before you
9 -- like right before you went to testify?

10 A. During a break. During a break.

11 Q. And so you had never -- prior to that point, you and
12 him had never discussed whether you would testify at your
13 trial?

14 A. No, sir.

15 Q. The first time was during a break?

16 A. Yes, sir.

17 Q. During the actual trial?

18 A. From what I remember, yes, sir.

19 Q. Was there any other specific discussions about any,
20 again, legal motions that was gonna be presented, motions
21 to suppress or any other legal process or procedure,
22 anything about the trial? Did you-all discuss in
23 preparation, prior to that trial starting, what was gonna
24 happen at that trial?

25 A. No, sir.

1 Q. So your meetings were pretty much to review the
2 evidence?

3 A. Yeah, just like, you know, they had given me a plea.
4 I think my last plea was like twenty -- twenty years. Like
5 we just -- I didn't feel I would go through with the plea
6 deal or like -- because I had more than one charge. There
7 were a lot of charges, so I knew I had to go to court more
8 than one time. So we was just basically trying to get like
9 all of it concurrent or whatever, but I didn't know about
10 no trial.

11 Q. And so in terms -- so he's discussing those plea
12 offers to you and you decided to reject them and go to
13 trial? That was your decision?

14 A. Yes, sir. Before I knew that they could -- I thought
15 I was going to trial for attempted murder, so that's what
16 I thought I was going to trial for, that's what I was
17 preparing myself for, so that's why I went to go there. I
18 didn't know they could change the lesser included offense
19 and throw me -- throw some different charges at me after
20 I got -- pled guilty. I mean, not guilty of attempted
21 murder. I didn't know they could switch it up and hit me
22 with another charge.

23 Q. Well, I guess that -- that would be one of my next
24 questions. So prior to the trial, was there any
25 discussions about potential lesser included offenses?

1 A. No, sir.

2 Q. So you were under the impression if you went to
3 trial for attempted murder, you had to be found guilty on
4 attempted murder and there would be no other charges that
5 they could find you guilty of?

6 A. No, sir. Because it wasn't on my indictment paper.

7 Q. All right. And that was not discussed any further?
8 There was no discussion with him prior to trial regarding
9 a lesser included offense?

10 A. No, sir.

11 Q. Now in terms of your sentencing ranges or the elements
12 of what constituted an attempted murder, did you-all have
13 any discussions about that? In other words, what the law
14 defines attempted murder?

15 A. Yes, sir.

16 Q. All right. And what did you believe attempted murder
17 meant under the law?

18 A. Like actually harming somebody, actually like -- like
19 -- yeah, harming somebody, you know, shooting them or
20 whatever.

21 Q. Was there any discussions regarding a specific intent
22 to kill?

23 A. I believe so.

24 Q. Okay. And in terms of -- with, again, sentencing
25 ranges, did you know how much time were you were facing

1 prior to going to trial?

2 A. Yes, sir. My plea deal.

3 Q. No, in terms of the charges themselves, did you know
4 what the maximum sentence was for attempted murder?

5 A. Yes, sir.

6 Q. And what was that?

7 A. Zero to thirty, I believe.

8 Q. That's right. And so you-all did discuss that at
9 least in context of the plea offers?

10 A. Yes, sir.

11 Q. Okay. And in terms of, again, legal issues, was there
12 any discussion regarding trying to move to sever charges or
13 challenge the identification in the case?

14 A. No, sir. I don't know what that is, sir.

15 Q. All right. So there was no discussions about
16 potential -- challenging legal issues or potential
17 defenses?

18 A. No, sir.

19 Q. Was there any discussions in regards to what the theme
20 or theory of the defense was going to trial?

21 A. Break that down a little bit more. I don't
22 understand.

23 Q. In other words, in meeting -- in preparation for trial
24 prior to you actually physically being in court for the
25 trial, was there a discussion saying this is what our --

1 what we're gonna present to the jury if we go to trial as
2 to why you would be not guilty?

3 A. Yeah. Yes, sir. We talked about that, I believe.

4 Q. And when you say you believe, what was your belief?

5 A. Like just let me know what -- like what's the statute
6 of limitations of the charge, like zero to thirty for
7 attempted murder.

8 Q. And I guess -- and I apologize. I might have been
9 more confusing than I needed to be. So prior to the trial,
10 was there any discussion about what he was gonna present,
11 what your defense would be at trial?

12 A. No, sir. I just -- no, sir. I think I was just --
13 I think he told me he was just gonna handle everything, do
14 all the talking, and then during trial I changed my mind
15 and then that's when I testified on my behalf.

16 Q. And when you say you changed your mind, you meant
17 about testifying?

18 A. Yes, sir.

19 Q. You initially thought you weren't gonna testify?

20 A. No, sir.

21 Q. And you-all had the discussion during that break?

22 A. Yes, sir.

23 Q. And what did he tell you during that discussion during
24 the break?

25 A. I can't remember exactly. I can't remember.

1 Q. But whatever the discussion was, you decided that you
2 were gonna testify at that point?

3 A. Yes, sir.

4 Q. And you-all had never prepped or done anything?

5 A. I changed my mind because I think they had read --
6 I think the judge or somebody had read the statute of
7 limitations of attempted murder and I realized that that
8 wasn't attempted murder, so that's what made me change my
9 mind during trial.

10 Q. All right. And so you were saying you heard the judge
11 basically describe what attempted murder was and you -- at
12 that point you were gonna move forward with testifying?

13 A. Basically, yeah. Yes, sir.

14 Q. Now in terms of, again, any other issues, once your
15 co-defendant pled guilty when the trial started or during
16 that selection process when he plead guilty, was there any
17 discussion by your lawyer to move for a continuance, to
18 move for a mistrial, to move for recusal of the judge that
19 was holding his sentence in abeyance since he was gonna
20 testify in your case?

21 A. No, sir. That -- that had something to do with it,
22 too. I had -- me and my co-defendant agreed on our going
23 to trial and then at the last minute in the holding cell
24 they was saying they were gonna go ahead and plead guilty
25 to it and they were gonna testify on me, so I was just like

1 I'm gonna testify and say like -- on my behalf just to try
2 to cover up, you know what I'm saying? Like I didn't
3 really -- I didn't attempt to murder him, you know what
4 I'm saying? I wasn't attempting to murder him. I was
5 just trying -- it was road rage and I was trying really to
6 protect myself and keep going, you know what I'm saying?

7 Q. Understood. Because your testimony was essentially a
8 self-defense type testimony?

9 A. Yes, sir.

10 Q. And I guess that will maybe help clarify what I was
11 trying to ask earlier. Was there any discussion prior to
12 trial about a self -- self-defense?

13 A. Yes, sir. Me and my lawyer. Yeah. Yeah.

14 Q. And describe that part then, what that discussion was
15 like.

16 A. Like it was road rage, you know what I'm saying? So
17 it was road rage and I -- you know what I'm saying? I
18 seen the man clutching on something, so I was assuming he
19 was gonna do something to me, so I was just trying to get
20 him out of the way. Like I said, I only shot one time to
21 keep on going, you know what I'm saying, and take my
22 co-defendant to school, but -- so that's why -- that's why
23 I testified and said I wasn't trying to kill him. I was
24 trying to -- self-defense, you know.

25 Q. And in terms of your case, during the trial was there

1 any other discussions about what was going on during the
2 trial? Was it -- did you have an active role in that at
3 all?

4 A. What do you mean by that?

5 Q. In other words, was he discussing anything with you
6 during the trial about what was going on or --

7 A. During the trial, no, sir.

8 Q. Okay. And in terms of --

9 A. I mean, yeah, yeah. He was -- yeah, he was --

10 Q. Go ahead.

11 A. Yeah, we was going through things like. Yeah. I
12 mean, just like have a conversation about what's going on
13 and stuff.

14 Q. And in preparation for trial, just to make sure and
15 be clear, there's some concessions he makes in opening
16 statement that he also makes in closing statement. Did he
17 basically tell you prior to trial that he was gonna admit
18 guilt on certain things at trial?

19 A. No, sir.

20 Q. Did he get your permission to do that?

21 A. No, sir.

22 Q. And so during opening statement and closing whenever
23 he made concessions regarding your guilt, those were not
24 based on your -- you did not give permission prior to trial
25 to do that?

1 A. No, sir.

2 Q. Now in terms of him referencing your prior criminal
3 history regarding a juvenile record, those things, did
4 you-all discuss any of that prior to trial?

5 A. No, sir.

6 Q. All right. So when he brought those things up, that
7 was a decision he made himself?

8 A. Yes, sir.

9 Q. And I guess I just want to be clear in terms of the
10 specifics with self-defense. What exactly did you-all
11 discuss prior to trial?

12 A. That that was the game plan. Like it was
13 self-defense, you know what I mean? I wasn't trying to
14 attempted murder him.

15 Q. And so at that point the theory was or the strategy
16 was self-defense, but you-all had never prepared for you
17 to testify?

18 A. No, sir.

19 Q. All right. So you-all never had any back and forth
20 or prep for you to testify?

21 A. No, sir.

22 Q. Or discussions until that break?

23 A. No, sir.

24 Q. But the theme of the case, the defense that was gonna
25 be presented, was self-defense?

1 A. Yes, sir.

2 Q. Okay.

3 MR. PHILLIPS: A moment, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. PHILLIPS:

6 Q. In terms of, again, preparation for trial, was there
7 any discussion from your lawyer about trying to obtain any
8 records regarding your head injury or school records or --

9 A. No, sir.

10 Q. Medical records? Was there any discussions about any
11 of that?

12 A. No, sir.

13 Q. Was there any discussions about having you seek an
14 evaluation, whether it would be a private evaluation?

15 A. No, sir.

16 MR. PHILLIPS: No further questions, Your Honor.

17 THE COURT: All right. Thank you.

18 Ms. Battenfield.

19 MS. BATTENFIELD: Thank you, Judge.

20 CROSS-EXAMINATION

21 BY MS. BATTENFIELD:

22 Q. Good morning, Mr. Hare. How are you?

23 A. Good morning to you.

24 Q. Now, Mr. Hare, while you were testifying during trial
25 -- because you testified for quite a while in your defense,

1 right?

2 A. Right.

3 Q. Your defense attorney brought up a few of your DJJ --
4 I know there was a shoplifting one. He talked about it at
5 trial. He asked you about it at trial. Do you remember
6 that?

7 A. I believe -- I don't remember it, but I kind of -- you
8 talking about my defense or my --

9 Q. Your defense attorney, Mr. Hamilton.

10 A. Ask the question again.

11 Q. He asked you at trial about certain things like
12 shoplifting, prior -- different offenses on your prior
13 record, right?

14 A. I can't remember.

15 Q. That's all right. We can move on. I want to talk to
16 you about your plea agreement really fast because I know
17 you mentioned it and you said the solicitor, Mr. Mark
18 Moyer, he had offered you a plea agreement, right, before
19 trial?

20 A. I don't know who offered it, but somebody offered me
21 a deal. Not the same day of trial, but --

22 Q. Sure. Yeah.

23 A. -- like a month or two before, something like that.

24 Q. Okay. And you said it was a plea offer.

25 A. Yeah. I don't know who offered the plea, but, yeah,

1 my lawyer acknowledged me that I had a plea.

2 Q. Great. And -- but the offer was, to my understanding,
3 if you would plead guilty to assault and battery high and
4 aggravated or what's called ABHAN, you wouldn't go to trial
5 on the attempted murder, right?

6 A. No. Assault and battery was never brought up until
7 after I got -- founded not guilty of attempted murder.

8 Q. Okay. Because you just said a second ago you were
9 offered a plea offer for ABHAN.

10 A. No, that's not what I said.

11 Q. So what was the plea offer for?

12 A. I think my last plea was -- it was twenty and then
13 twenty-five, I believe.

14 Q. Not the carjacking. You pled guilty to carjacking,
15 but I'm talking about before the attempted murder trial.
16 I'm only talking about the attempted murder and the failure
17 to stop right now.

18 A. Okay.

19 Q. So you were offered a plea agreement before that
20 trial, to plead guilty before that trial, right?

21 A. Right, to attempted murder.

22 Q. Okay.

23 A. It was never ABHAN until I got founded not guilty of
24 attempted murder, right then and there, and then it hit
25 me they found me guilty of ABHAN without preparing me or

1 nothing. I was never prepared to go for the statute of
2 limitations of ABHAN. I never heard of ABHAM -- ABHAN up
3 until I got found not guilty of attempted murder.

4 Q. Okay. But you chose to not plead guilty and go to
5 trial, right? It was your choice?

6 A. Yeah.

7 Q. Great. Now I was reading the transcript just a
8 second ago of your testimony. So do you remember what you
9 told the judge and told the jury at your trial as to what
10 happened?

11 A. A little bit.

12 Q. So that morning it was around 10:30 in the morning,
13 right?

14 A. It had to be before -- it had to be before that because I
15 was trying to take my co-defendant to school. He had just
16 got suspended from school and I was trying to make sure he
17 go to school.

18 Q. Sure. But it was -- it was during the school day,
19 right?

20 A. Yeah. So it happened like 8:30 or nine. It could
21 have been ten because he had meeting that day.

22 Q. Sir?

23 A. It could have been somewhere around there because he
24 did have a meeting, but it was somewhere in the morning
25 time, right.

1 Q. Okay. And you were driving a black Mercedes?

2 A. Yes, ma'am.

3 Q. And your co-defendant was in the passenger seat?

4 A. Yes, ma'am.

5 Q. And then what happened? You pulled up next to the
6 individual in the other vehicle and it was -- to my
7 understanding it was a yellow vehicle, it was a drivers ed
8 vehicle, so a teacher who's teaching other students how to
9 drive?

10 A. I don't know.

11 Q. And it might -- may or might not -- excuse me -- may
12 or may not have red letters on the side that said driving
13 school?

14 A. Yeah.

15 Q. Okay. So when you came across this vehicle, what
16 happened?

17 A. It was road rage. I thought he was -- I don't
18 remember exactly how it started, how it happened, but I
19 know it was road rage and I thought he was clutching, I
20 thought he was bending -- he was fixing on bending over
21 to grab something, so I was like just go ahead and I kept
22 going and he came up beside me and I only shot one time and
23 I kept going, kept going. I thought he was trying to harm
24 me, so.

25 Q. So road rage on your part or his part?

1 A. I mean, both.

2 Q. Okay.

3 A. Road rage. We was both like having a little like
4 arguments through the window and I kept going. Like that's
5 a slow car. I kept going, it ended up beside me again, so
6 then that's when I seen him clutching and then I shot.

7 Q. Sure. So on Appendix 313, this is your -- your
8 testimony, you said I was in the middle lane and he came
9 from -- there's a lot of traffic and he swerved in front of
10 us and he almost hit -- we almost hit his back end and he
11 stayed in the middle line. Does that sound right?

12 A. It could be. I don't -- I don't remember --

13 Q. All right.

14 A. -- exactly what happened that day.

15 Q. And then later on Appendix 313 you were asked the
16 question: So what did you do about it? And you answered
17 -- this is at line 24: Well, when I caught to him after a
18 red light I was beside him. He was waving his hand, doing
19 his middle finger, this is now on Appendix 314, the top,
20 and laughing, and then when I seen -- my window was already
21 down looking at him and he started reaching down and then I
22 -- well, I pointed my gun, I shot a gun at -- I tried to
23 hit the wheel so I would scare him off and I didn't know
24 what he was about to do. I thought he was endangering my
25 life by reaching down like picking up a weapon. Right?

1 A. Right.

2 Q. Does that sound about right?

3 A. I can't remember exactly, but, yeah.

4 Q. And then later it says you fired the gun one time,
5 right?

6 A. Correct.

7 Q. So you don't contest pointing the gun at him and
8 firing, correct?

9 A. What's contest mean?

10 Q. You're not saying that's not true? Like you did point
11 the gun, right?

12 A. From what I remember, yeah.

13 Q. Okay. Did you ever see a weapon in his hand?

14 A. I think so. I couldn't see 'cause like he had a bag
15 or something over his hand. There was something in his
16 hand, yeah.

17 Q. Okay. Because you testified at trial that you only
18 saw him reaching down.

19 A. Yeah. Correct. Yeah. Correct.

20 Q. Okay. And did any part of his vehicle ever hit your
21 vehicle?

22 A. I can't remember.

23 Q. Were --

24 A. I can't remember.

25 Q. Were you ever actually in danger from him?

1 A. Yeah.

2 Q. Like your body being hurt?

3 A. No. You say my body was hurt?

4 Q. Were you ever in danger of him -- of your body being
5 hurt by him?

6 A. Yeah, I thought -- yeah, I thought he was about to
7 harm me.

8 Q. Right. Okay. And then after that -- what happened
9 after that? Was that the end of the incident? You shot at
10 him and then what happened?

11 A. Yeah, I believe that was it.

12 Q. All right. And then you took your co-defendant to
13 school after that?

14 A. Yeah.

15 Q. All right.

16 A. Correct.

17 Q. And then -- so there's a separate charge that you were
18 also tried for at the same time. Failure to stop for a
19 blue light. Do you remember what happened with that?

20 A. No.

21 Q. Did you pick up another person that day after -- in
22 your same black Mercedes?

23 A. I don't remember. No. Yeah. Yeah. Yeah. Yeah. I
24 caught my other co-defendant in the car.

25 Q. Okay.

1 A. Oh, yeah. That's what -- that's where the failure to
2 stop for blue lights come from.

3 Q. Okay. And what happened with that? Law enforcement,
4 how did you meet them that day?

5 A. They hit the blue lights and got behind us or
6 whatever. I really don't remember all that.

7 Q. And did you stop?

8 A. I don't remember.

9 Q. Did you conduct a ten to 15-minute high speed car
10 chase through the city of Greenville with law enforcement;
11 do you remember?

12 A. Yeah. I remember that. Yeah. Yeah.

13 Q. Okay. And that was -- I mean, you conceded that at
14 trial, right? You were guilty of that, right? Because
15 they -- they caught you in the car driving.

16 A. Correct.

17 Q. Okay. So you never said I was not guilty of that.
18 You said from the beginning hey, you know, I was guilty of
19 that?

20 A. Correct.

21 Q. Okay.

22 A. I didn't say that, but correct. I was found guilty.

23 Q. All right.

24 MS. BATTENFIELD: Thank you, Mr. Hare.

25 No further questions, Judge.

1 THE COURT: Mr. Phillips.

2 MR. PHILLIPS: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MR. PHILLIPS:

5 Q. As to the failure to stop for a blue light charge,
6 was there any discussion in preparation for trial that
7 Mr. Hamilton had with you about moving to sever that? In
8 other words, to have a separate trial to make the attempted
9 murder trial separate, basically requesting that the Court
10 have the attempted murder trial separate from the failure
11 to stop for a blue light? Did you-all discuss that at all?

12 A. No, sir.

13 MR. PHILLIPS: No further questions, Your Honor.

14 THE COURT: All right.

15 All right. Mr. Hare, you may step down.

16 (Witness excused.)

17 MR. PHILLIPS: Your Honor, the Applicant would call
18 Ernest Hamilton as the next witness.

19 THE CLERK: Place your left hand on the Bible and
20 raise your right hand.

21 (Whereupon, Ernest Hamilton was duly sworn by the
22 Clerk of Court.)

23 THE CLERK: Thank you. You may be seated. And
24 please state your full name for the record.

25 THE WITNESS: My name is Ernest Hamilton.

1 THE COURT: Thank you, Mr. Hamilton.
2 Counsel.

3 MR. PHILLIPS: Thank you, Your Honor.

4 ERNEST HAMILTON,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PHILLIPS:

8 Q. Good morning, Mr. Hamilton.

9 A. Good morning.

10 Q. If you could, kind of describe how you were retained
11 in this case.

12 A. I believe I was referred to Braxton's family through
13 an associate of mine and --

14 Q. His mother came and hired you?

15 A. -- his mother came and hired me, yeah.

16 Q. And, I guess, specifically I wanted to go to in
17 preparation for the trial, you did meet with him?

18 A. I did. I did.

19 Q. And you-all went over the discovery?

20 A. We went over the discovery.

21 Q. And so ultimately when you went to trial, this was a
22 joint trial of both co-defendants and charges; is that fair
23 to say?

24 A. That's fair.

25 Q. And so he had a co-defendant named William Hunter?