

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-000669
Opinion No. 2025-UP-383 (S.C. Ct. App. filed November 26, 2025)

The State of South Carolina,

Respondent,

v.

Ernest Condre Bethel,

Petitioner.

APPENDIX

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Appellate Case No. 2023-000669

The State of South Carolina,

Respondent,

v.

Ernest Condre Bethel,

Appellant.

RECORD ON APPEAL

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		2019-GS-40-08051
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		2019-GS-40-08053
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	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ERNEST BETHEL,	)	
	)	
DEFENDANT,	)	

April 17 - 20, 2023
Columbia, South Carolina

BEFORE:

THE HONORABLE CLIFTON NEWMAN, JUDGE; and a jury.

APPEARANCES:

DANIEL GOLDBERG, ASSISTANT SOLICITOR
NICHOLAS FOWLER, ASSISTANT SOLICITOR
Attorneys for the State

JUSTIN KATA, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

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1 THE COURT: Welcome, are we now ready to proceed?

2 MR. GOLDBERG: Yes, Your Honor.

3 THE COURT: Mr. Bethel, if you'll stand for a moment.

4 You're Ernest C. Bethel?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And Mr. Kata is your lawyer?

7 THE DEFENDANT: Justin Kata, yes, sir.

8 THE COURT: And Mr. Kata, have you explored plea
9 negotiations, options with the State?

10 MR. KATA: Your Honor, we have. No formal offers
11 have been made. We're prepared to go to trial.

12 THE COURT: Are you prepared for trial, Mr. Bethel?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Very good. Thank you.
15 Anything before the jury comes up?

16 MR. GOLDBERG: Nothing from the State, Your Honor.

17 MR. KATA: Your Honor, only I would ask that the
18 witnesses be sequestered at the appropriate time.

19 THE COURT: Any objection to that?

20 MR. GOLDBERG: No, Your Honor.

21 THE COURT: All right. The State will be allowed to
22 have certain victims here, any alleged victims, any
23 assisting clerk's officer. We're ready for a jury panel.

24 Any objection to any requested voir dire?

25 MR. KATA: No objections from the defendant.

1 THE COURT: All right.

2 Welcome, ladies and gentlemen. I am Clifton Newman.
3 I am presiding in this courtroom. You all have been sent
4 here for jury selection. I'll have the State call the
5 case and we'll proceed with it.

6 Mr. Solicitor.

7 MR. GOLDBERG: Thank you, Your Honor. May it please
8 the Court. The State calls Ernest C. Bethel on two
9 indictments for murder, two indictments for attempted
10 murder and one indictment for possession of a weapon
11 during the commission of a violent crime.

12 THE COURT: All right. Ladies and gentlemen, the
13 State has called for trial the case of the State vs.
14 Ernest C. Bethel. He has been indicted by the grand jury
15 of Richland County for the offenses of murder, two counts,
16 attempted murder, two counts mentioned, and possession of
17 a weapon during the commission of a violent crime.

18 He has pled not guilty to these charges. He is
19 presumed to be not guilty. He cannot be found guilty
20 unless the State presents evidence which convinces a jury
21 of his guilt beyond a reasonable doubt. And that is the
22 purpose of a trial, to determine whether the State can
23 meet that burden.

24 Mr. Ernest C. Bethel, if you'll stand and look at the
25 jury.

1 Counsel, if you'll stand and introduce yourself.

2 MR. KATA: Thank you, Your Honor. My name is Justin
3 Kata. I represent Mr. Ernest Bethel.

4 THE COURT: All right. You may be seated.

5 And the State is represented through the 5th circuit
6 Solicitor's Office.

7 Who are the solicitors?

8 MR. GOLDBERG: Good afternoon. My name is Dan
9 Goldberg.

10 MR. FOWLER: And my name is Nick Fowler.

11 THE COURT: If any member of the jury panel is a
12 friend, relative, associate, acquaintance of the
13 defendant, Mr. Bethel, or any of the lawyers, if so,
14 please stand.

15 All right. Tell me your juror number, please.

16 PROSPECTIVE JUROR: Juror number is 231.

17 THE COURT: Number 231. Tell me why you're standing.

18 PROSPECTIVE JUROR: I went to law school with
19 Mr. Fowler.

20 THE COURT: Would that fact affect your ability to be
21 a fair and impartial juror?

22 PROSPECTIVE JUROR: No, sir, Your Honor.

23 THE COURT: All right. Thank you.

24 PROSPECTIVE JUROR: If Your Honor please, John
25 Castle, 162. I know Mr. Kata.

1 THE COURT: Yes, sir, Mr. Castle. Would that fact
2 affect your ability to be fair and impartial?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Thank you.

5 I have a number of questions to ask to assist with
6 the jury selection.

7 The incidents alleged in the indictments,
8 Mr. Goldberg, can you tell us when and where it occurred?

9 MR. GOLDBERG: Your Honor, the incidents alleged,
10 conduct that is alleged to have occurred on August the
11 22nd, 2019, at McCary's Bar on Bush River Road in Richland
12 County.

13 THE COURT: All right. Thank you. Ladies and
14 gentlemen, the incident is alleged to have occurred
15 August 22nd, 2019, in Richland County, McCary's Bar and
16 Grill on Bush River Road resulting in the alleged death of
17 the victims in the case.

18 The alleged victims being --

19 MR. GOLDBERG: That would be Tolliver Wise and
20 Christopher Lott.

21 THE COURT: And the other alleged victims?

22 MR. GOLDBERG: Cameron Jenkins and Gregory Martin.

23 THE COURT: Thank you.

24 Any member of the jury panel has heard anything about
25 this case, knows anything about this case or if you know

1 any of the alleged victims whose names were just called,
2 if so, please stand.

3 All right. Yes, sir, tell me your jury number.

4 PROSPECTIVE JUROR: 241.

5 THE COURT: 241, tell me why you're standing.

6 PROSPECTIVE JUROR: I know one of the victims.

7 THE COURT: All right. Which one did you know?

8 PROSPECTIVE JUROR: Todd.

9 THE COURT: Pardon?

10 PROSPECTIVE JUROR: Yeah, personal name.

11 THE COURT: Todd?

12 PROSPECTIVE JUROR: Uh-huh.

13 THE COURT: All right. And the fact that you -- who
14 is Todd?

15 PROSPECTIVE JUROR: Wise.

16 THE COURT: Oh, Wise, okay. The fact that you knew
17 him, would that affect your ability to be fair and
18 impartial?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: So we will not consider you to serve on
21 the case, but stay with us. Have a seat. Thank you.

22 Has any member of the jury panel or any member of
23 your immediate family ever been the victim of a crime of
24 violation, such as an assault or shooting or murder or
25 armed robbery or burglary or rape? If so, please stand.

1 All right, sir. We've excused you. You don't have
2 to stand any more for any of those questions.

3 Ladies and gentlemen, I want to remind you that when
4 you came in for jury duty, you took an oath to give
5 complete and truthful responses that all questions that
6 you are asked that pertain during the jury qualifications
7 process that y'all spent a long time going through this
8 morning and also applied to jury selection.

9 So I certainly understand that jurors are hesitant to
10 stand up and wanting to talk in court, but under your oath
11 as jurors, you must give complete and truthful responses.
12 So if any of these questions apply to you, you must
13 provide the information.

14 If you do not wish to speak openly about any answer
15 to any question, if you'll raise your hand and tell me
16 your juror number, we'll have you come forward at the end
17 of the process, but you must give complete and truthful
18 responses to all these questions.

19 So, again, with regard to either you or any member of
20 your immediate family ever having been a victim of a
21 violent crime, including rape, robbery, murder, burglary
22 or shootings of some sort of, if so, please stand.

23 All right. Tell us your jury number.

24 PROSPECTIVE JUROR: 320.

25 THE COURT: Tell me why you're standing.

1 PROSPECTIVE JUROR: It was like years ago, my father
2 got -- it was like when my sister was born, my father got,
3 like, kidnapped and that's all I know.

4 THE COURT: All right. Would that affect your
5 ability to be a fair and impartial juror?

6 PROSPECTIVE JUROR: No, Your Honor.

7 THE COURT: All right. Thank you very much.
8 Anyone else?

9 (There was no response.)

10 Has any member of the jury panel or your immediate
11 family ever been accused of a crime of violation? If so,
12 please stand.

13 (There was no response.)

14 THE COURT: No one is standing.

15 If you've ever been represented by Mr. Kata or Barney
16 Giese or Mr. Goldberg, Mr. Fowler or anyone in the
17 Solicitor's Office, if so, please stand. If you've ever
18 been represented by any of the lawyers or any firms that
19 are associated with, including Mr. Kata or his firm,
20 Barney Giese, Mr. Goldberg, Mr. Fowler or other
21 Solicitor's Office? If so, please stand.

22 (There was no response.)

23 If you or any member of your immediate family has
24 ever been accused of or convicted of a drug offense? If
25 so, please stand.

1 Yes, sir. Tell us your juror number.

2 PROSPECTIVE JUROR: 131.

3 THE COURT: Tell me why you're standing.

4 PROSPECTIVE JUROR: My stepson was accused of a
5 marijuana charge.

6 THE COURT: Would that prevent you from being a fair
7 and impartial juror?

8 PROSPECTIVE JUROR: No, sir.

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

10 Yes, ma'am.

11 PROSPECTIVE JUROR: 194, my brother accused of drug
12 charges.

13 THE COURT: Accused of what?

14 PROSPECTIVE JUROR: Drug charges.

15 THE COURT: Would that prevent you from being a fair
16 and impartial juror?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: Thank you.

19 Yes, ma'am.

20 PROSPECTIVE JUROR: Juror number 67, I have multiple
21 cousins doing time right now on drug charges.

22 THE COURT: Would that fact affect your ability to be
23 a fair and impartial juror?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: All right. Thank you.

1 If you support any organization or belong to any
2 organization the mission of which is to support
3 defendant's rights or prisoner's rights or victim's
4 rights, if so, please stand?

5 (There was no response.)

6 If you are related -- if you or any member of your
7 immediate family or close personal friend or acquaintance
8 work in law enforcement, with any law enforcement
9 department, if so, please stand.

10 And tell me your juror number and where they work.

11 PROSPECTIVE JUROR: 131. My cousin was a police
12 chief in North, South Carolina. And I got a cousin that
13 works for the deputy sheriff in York County.

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR: 189, my father was a deputy
16 sheriff in Florida.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR: 160, my nephew is a police
19 officer in Michigan.

20 THE COURT: Thank you.

21 PROSPECTIVE JUROR: 358, my wife works for SLED.

22 THE COURT: Works for?

23 PROSPECTIVE JUROR: SLED.

24 THE COURT: Thank you.

25 PROSPECTIVE JUROR: 119, my brother works for the

1 police in Virginia.

2 THE COURT: All right. Thank you.

3 If you've ever been a customer or visitor to McCary's
4 Bar and Grill at 851 Bush River Road, please stand, if
5 you've ever been over there to McCary's Bar and Grill.

6 Sir, we've excused you already. Thank you.

7 Ladies and gentlemen, we're going to select 14 of you
8 to be the jury in this case and we must have 14 jurors who
9 are fair and impartial. And so in that connection, if any
10 of you know anything about this case or have heard
11 anything about this case or have seen anything or think
12 you've seen something about this case in the news or
13 through any other source, if so, please stand.

14 Some additional witnesses who may testify include
15 Investigator Clay Short and Alvarez from the sheriff's
16 department, Investigator Hook, Gregory D. Martin --

17 If any of the folks are here, I need you to stand.

18 Gregory D. Martin standing there. Thank you.

19 Cameron Jenkins, standing there. Melody Taylor, John
20 Miller, Kerry Ross, Amircle Wright, Kayosha Roseboro,
21 Colecious Bethel, standing back there, Anthony Bethel,
22 standing there, Naheim Green, Xnia Collins, India Guider,
23 standing back there, Angel Harrison, Roderick Branch.

24 Additional witnesses may include Destiny Chantelle
25 Gibbs, Devin Gregg, Arcadia Bethel, Anthony Andre Bethel,

1 who is standing back there, Naheim Green, India -- I'm
2 sorry, Reco Jacobs, Kerry Ross, Arille Jones, Brad
3 Roberts, Melanie Taylor, Tarneshe Hampton, Angel Harrison,
4 Robert Freeman, Brandy Patterson, Robert Hobbs, Justin
5 Martin from the Solicitor's Office, Carey Shealey from
6 Statewide Security, someone from Happy Daddy's Towing,
7 custodian of record from Richland 9-1-1.

8 The following folks from EMT: Andrew Fowler, Elise
9 Clark, Melissa Cureton, Phillip Rush, Laurie Morris, David
10 Schwab, Ryan McMenamy, Christopher Malone, Carlock, Nurse
11 Amber Riddle. From Prisma Health, Dr. Christopher Watson
12 from Prisma.

13 From the Richland County Sheriff's Department, the
14 following deputies: Joshua Peebles, Kyle McGregor, David
15 Fairbanks, Grover Kelli, Norman Jenkins, Joshua Fabel,
16 Michael Leahy, Hardison King, Jacob Murphy, Jeffrey
17 Rustin, Andrew Ellison, Sarah Merriman, Sergeant Stephen
18 Dauway.

19 The following investigators: Caraly Alvarez, Brandon
20 Rast, Investigator Hook, Jerry Maldonado, Taima Jordan,
21 Kevin Isenhoward, Sean Kilcoyne, Clay Short, Scott Faust,
22 Vicki Rains, Justin Britt.

23 Criminal scene investigators from the sheriff's
24 department include Franklin Rainsford, Sarah Sara
25 Humphries, Michelle Seay, Michael Pritchard, Tim Lee,

1 Chief Stan Smith. Also from the sheriff's department,
2 Ronnie Rhyne, Scot McManus, Melody Galinski, Patricia
3 hart, Howard Kleber, Christine Ellison, Kelly McMilan,
4 Darius Lane, Ashleigh Dixon, James Beilman, Jason Roach,
5 Alexander Fulmer, Courtney Turner, Christine Barrickman,
6 Terri Gleason, David McClure, Amanda Metz, Teresa Woods,
7 Patty Hart.

8 From the Columbia Police Department: Officer Taylor
9 Steiner, Officer Joseph Dwyer, Officer Davis, Investigator
10 Jessica Nowlin, Sergeant Erskine Moody.

11 From SLED: Lieutenant Finney, Tracy McKinnon, Sarah
12 Preston, Tyler Sturkie, Bailey Haynes, Jamie Hall,
13 Jennifer Nates, Oliver Cartwright, Erin Zalewski.

14 From the coroner's office in Richland County: Ann
15 Neeley, Rachel Manley, Christine Benson, Kristen Bell,
16 David Vincent, Bethany Davidson, O. Bey, Crystal
17 Armstrong, Hannah Jefferson, Williams Stevens, Lauren
18 Miklia, and pathologist, Dr. Amy Durso and Dr. Darren
19 Monroe.

20 If you know any of those folks, your friend,
21 relative, associate or have any relationship with any of
22 them, please stand.

23 And ladies and gentlemen, I was stating earlier,
24 we're going to pick 14 of you. The case will likely go
25 from now until Thursday or so. We, typically, work from

1 9:00, 9:30 to 5:00, 5:30 most days.

2 We need jurors who are available to give their full
3 focus and attention to this trial, so if you know of any
4 reason why you should not be selected to be on this jury,
5 please stand.

6 If you know any reason you should not be selected, I
7 need to know now not after you're selected because we have
8 44 people out there. We're going to pick 14 and send the
9 rest of you back downstairs. Not 44, we have 43.

10 If you know any reason you should not be selected,
11 let me know at this time. If you did not respond to any
12 question that you did not wish to respond to openly,
13 please stand.

14 Anything else the State or the defense would like for
15 me to ask?

16 MR. GOLDBERG: Nothing from the State, Your Honor.

17 MR. KATA: No, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, if
19 you'll give the clerk your attention. Ladies and
20 gentlemen, when you come forward, please tell us who you
21 are and where you are employed. Remain seated.

22 THE CLERK: I'm going to call you by your number.
23 When I call you by your number, if you would gather your
24 belongings, come step up here, right about here, turn
25 around and face the attorneys, please.

1 Juror Number 8.

2 (WHEREUPON, Juror Number 8, a black male, came
3 forward.)

4 THE COURT: Since she's identifying you by juror
5 numbers, you don't need to tell us your name, just state
6 where you're employed.

7 PROSPECTIVE JUROR: Contract manager, Blue Cross Blue
8 Shield South Carolina.

9 THE CLERK: What says the State?

10 MR. FOWLER: Please seat the juror.

11 THE CLERK: What says the defense?

12 MR. KATA: Please seat the juror.

13 THE CLERK: Thank you, sir. Have a seat in the jury
14 box right over there.

15 Juror 187.

16 (WHEREUPON, Juror Number 187, a white female, came
17 forward.)

18 PROSPECTIVE JUROR: Elizabeth Malsick. I'm a
19 housewife now.

20 THE CLERK: What says the State?

21 MR. GOLDBERG: Please present the juror.

22 THE CLERK: Thank you.

23 What says the defense?

24 MR. KATA: Please strike the juror.

25 THE CLERK: Strike the juror?

1 MR. KATA: Strike the juror.

2 THE CLERK: Thank you. You can have a seat in the
3 back, please.

4 Strikes are five and ten.

5 THE CLERK: Juror Number 177.

6 (WHEREUPON, Juror Number 177, an Asian female, came
7 forward.)

8 PROSPECTIVE JUROR: I am a homemaker.

9 THE CLERK: What says the State?

10 MR. GOLDBERG: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. KATA: Please strike this juror.

13 THE CLERK: Thank you. Have a seat in the back,
14 please.

15 Juror Number 324.

16 (WHEREUPON, Juror Number 324, a black female, came
17 forward.)

18 PROSPECTIVE JUROR: I don't work.

19 THE CLERK: What says the State?

20 MR. GOLDBERG: Please excuse the juror.

21 THE CLERK: Thank you. Have a seat.

22 Juror Number 165.

23 (WHEREUPON, Juror Number 165, a white female, came
24 forward.)

25 PROSPECTIVE JUROR: I'm a retired pharmacist.

1 THE CLERK: What says the State?

2 MR. GOLDBERG: Please present the juror.

3 THE CLERK: Thank you.

4 What says the defense?

5 MR. KATA: Please strike the juror.

6 THE CLERK: Thank you. Have a seat in the back.

7 Juror Number 102.

8 (WHEREUPON, Juror Number 102, a black female, came
9 forward.)

10 PROSPECTIVE JUROR: Supervisor at UPS.

11 THE CLERK: What says the State?

12 MR. GOLDBERG: Please present the juror.

13 THE CLERK: Thank you.

14 What says the defense?

15 MR. KATA: Seat the juror.

16 Thank you. Have a seat in the jury box, please.

17 Juror Number 99.

18 (WHEREUPON, Juror Number 99, a black male, came
19 forward.)

20 PROSPECTIVE JUROR: Life insurance sales support.

21 THE CLERK: What says the State?

22 MR. GOLDBERG: Please present the juror.

23 THE CLERK: Thank you.

24 What says the defense?

25 MR. KATA: Please seat the juror.

1 THE CLERK: Seat the juror.
2 You can have a seat in the jury box box, please.
3 Juror Number 320.
4 (WHEREUPON, Juror Number 320, a Hispanic male, came
5 forward.)
6 PROSPECTIVE JUROR: Sam's Club.
7 THE CLERK: What says the State?
8 MR. GOLDBERG: Please present the juror.
9 THE CLERK: Thank you.
10 What says the defense?
11 MR. KATA: Please seat the juror.
12 THE CLERK: Seat the juror.
13 Thank you. You can have a seat in the jury box,
14 please.
15 Juror Number 358.
16 (WHEREUPON, Juror Number 358, a black male, came
17 forward.)
18 PROSPECTIVE JUROR: City of Columbia Parks and
19 Recreation.
20 THE CLERK: What says the State?
21 MR. GOLDBERG: Please present the juror.
22 THE CLERK: Thank you.
23 What says the defense?
24 MR. KATA: Please strike the juror.
25 THE CLERK: Strike the juror.

1 Thank you. You can have a seat in the back.

2 Juror Number 45.

3 (WHEREUPON, Juror Number 45, a black female, came
4 forward.)

5 PROSPECTIVE JUROR: I do grocery pick up at Kroger
6 and also after-school care.

7 THE CLERK: What says the State?

8 MR. GOLDBERG: Please present the juror.

9 THE CLERK: Thank you.

10 What says the defense?

11 MR. KATA: Please seat the juror.

12 THE CLERK: Thank you.

13 You can have a seat in the jury box, please.

14 THE COURT: Does that mic work?

15 THE CLERK: No.

16 THE COURT: It doesn't work?

17 THE CLERK: It does not work, I don't believe.

18 THE COURT: All right.

19 THE CLERK: Juror Number 88.

20 (WHEREUPON, Juror No. 88, a white male, came
21 forward.)

22 PROSPECTIVE JUROR: Editor in chief at a
23 pharmaceutical publication.

24 THE CLERK: What says the State?

25 MR. GOLDBERG: Please present the juror.

1 THE CLERK: Thank you.

2 What says the defense?

3 MR. KATA: Please strike the juror.

4 THE CLERK: Thank you. Please have a seat in the
5 back.

6 Juror Number 202.

7 (WHEREUPON, Juror Number 202, a black male, came
8 forward.)

9 PROSPECTIVE JUROR: Manufacturing supervisor at Shaw
10 Industries.

11 THE CLERK: What says the State?

12 MR. GOLDBERG: Please excuse the juror.

13 THE CLERK: Excuse the juror. Thank you.

14 You can have a seat in the back.

15 Juror Number 38.

16 (WHEREUPON, Juror Number 38, a black male, came
17 forward.)

18 PROSPECTIVE JUROR: I'm a support specialist at J.B.
19 Wright International.

20 THE CLERK: What says the State?

21 MR. GOLDBERG: Please present the juror.

22 THE CLERK: Thank you.

23 What says the defense?

24 MR. KATA: Please strike the juror.

25 THE CLERK: Thank you.

1 Have a seat in the back.

2 Juror Number 160, 160.

3 (WHEREUPON, Juror Number 160, a white female, came
4 forward.)

5 PROSPECTIVE JUROR: Housewife.

6 THE CLERK: What says the State?

7 MR. GOLDBERG: Please present this juror.

8 THE CLERK: What says the defense?

9 MR. KATA: Strike this juror.

10 THE CLERK: Strike the juror. Thank you.

11 Have a seat in the back.

12 Juror Number 356.

13 (WHEREUPON, Juror Number 356, a black male, came
14 forward.)

15 PROSPECTIVE JUROR: I mix concrete at Concrete
16 Supply.

17 THE CLERK: What says the State?

18 MR. GOLDBERG: Please present the juror.

19 THE CLERK: Thank you.

20 What says the defense?

21 MR. KATA: Please seat the juror.

22 THE COURT: Sir, tell me again where you worked.

23 PROSPECTIVE JUROR: Concrete Supply.

24 THE COURT: Concrete Supply?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE CLERK: Juror Number 120.

2 (WHEREUPON, Juror Number 120, a white female, came
3 forward.)

4 PROSPECTIVE JUROR: Social work case manager for
5 Encompass Health.

6 THE CLERK: What says the State?

7 MR. GOLDBERG: Please present the juror.

8 THE CLERK: Thank you.

9 What says the defense?

10 MR. KATA: Please seat the juror.

11 THE COURT: Thank you.

12 Have a seat in the jury box.

13 Juror Number 89.

14 (WHEREUPON, Juror Number 89, a Hispanic female, came
15 forward.)

16 PROSPECTIVE JUROR: I'm a receptionist.

17 THE CLERK: What says the State?

18 MR. GOLDBERG: Please present the juror.

19 THE CLERK: Thank you.

20 What says the defense?

21 MR. KATA: Please seat the juror.

22 THE CLERK: Thank you.

23 You can have a seat in the jury box, please.

24 Juror Number 109.

25 (WHEREUPON, Juror Number 109, a white female, came

1 forward.)

2 PROSPECTIVE JUROR: Stay-at-home parent and
3 homemaker.

4 THE CLERK: What says the State?

5 MR. GOLDBERG: Please present the juror.

6 THE CLERK: Thank you. What says the defense?

7 MR. KATA: Please strike the juror.

8 THE CLERK: Thank you.

9 You can have a seat in the back.

10 Juror Number 231.

11 (WHEREUPON, Juror Number 231, a white male, came
12 forward.)

13 THE CLERK: This is Juror Number 231.

14 PROSPECTIVE JUROR: Attorney.

15 THE CLERK: What says the State?

16 MR. GOLDBERG: Please excuse the juror.

17 THE CLERK: Thank you.

18 You can have a seat in the back.

19 Juror Number 131.

20 (WHEREUPON, Juror Number 131, a white male, came
21 forward.)

22 PROSPECTIVE JUROR: Assistant manager at KJ Market.

23 THE CLERK: What says the State?

24 MR. GOLDBERG: Please present the juror.

25 THE CLERK: Thank you.

1 What says the defense?

2 MR. KATA: Seat the juror.

3 THE CLERK: Thank you.

4 You can have a seat in the jury box, please.

5 Juror Number 361, 361.

6 (WHEREUPON, Juror Number 361, a black male, came

7 forward.)

8 PROSPECTIVE JUROR: Graphic illustrator.

9 THE CLERK: What says the State?

10 MR. GOLDBERG: Please present the juror.

11 THE CLERK: Thank you.

12 What says the defense?

13 MR. KATA: Seat the juror.

14 THE CLERK: Thank you.

15 You can have a seat in the jury box, please.

16 Juror Number 353.

17 (WHEREUPON, Juror Number 353, a white male, came

18 forward.)

19 PROSPECTIVE JUROR: Federal attorney.

20 THE CLERK: What says the State?

21 MR. GOLDBERG: Please present the juror.

22 THE CLERK: Thank you.

23 What says the defense?

24 MR. KATA: Please strike the juror.

25 THE CLERK: You can have a seat in the back, please.

1 Thank you.

2 Juror Number 189.

3 (WHEREUPON, Juror Number 189, a white male, came
4 forward.)

5 PROSPECTIVE JUROR: Legal U.S.

6 THE CLERK: What says the State?

7 MR. GOLDBERG: Please excuse the juror.

8 THE CLERK: Excuse the juror. Thank you.

9 You can have a seat in the back.

10 Juror Number 337.

11 Mr. Goldberg, I saw you nod. You okay?

12 MR. GOLDBERG: (Nods in the affirmative.)

13 (WHEREUPON, Juror Number 337, a black female, came
14 forward.)

15 PROSPECTIVE JUROR: Full time ministry.

16 THE CLERK: What says the State?

17 MR. GOLDBERG: Present the juror.

18 THE CLERK: What says the defense?

19 MR. KATA: Present the juror.

20 THE CLERK: Thank you.

21 Have a seat in the jury box.

22 Juror Number 194.

23 (WHEREUPON, Juror No. 194, a black female, came
24 forward.)

25 THE COURT: Mr. Brown, what's going on?

1 PROSPECTIVE JUROR: I have a conflict that I didn't
2 mention earlier. I was too hesitant to share.

3 THE COURT: Why are you telling him? He's not the
4 judge.

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: All right. The parties approach.

7 (WHEREUPON, a bench conference was held.)

8 THE COURT: Didn't you hear me talking?

9 PROSPECTIVE JUROR: I did. I'm so sorry. I panicked
10 and I apologize. I have ADHD and I don't think I have the
11 capacity to sit and do this.

12 THE CLERK: How old are you?

13 PROSPECTIVE JUROR: Twenty-three.

14 THE COURT: Twenty-three. You look about 18.

15 She said she has ADHD, can't serve, scared to tell me
16 all of that.

17 What kind of work did you say you do?

18 PROSPECTIVE JUROR: I'm in full-time ministry.

19 THE COURT: That means you go to school or you're a
20 preacher.

21 PROSPECTIVE JUROR: In the realm of things, yes.

22 THE COURT: In the realm of things. What does that
23 mean?

24 PROSPECTIVE JUROR: So I minister to college
25 students, college graduates and I work with college

1 students to, like, share the gospel with them.

2 MR. KATA: I'll leave that in your discretion.

3 THE COURT: She says she can't do it.

4 Why can't you do it?

5 PROSPECTIVE JUROR: I just don't have the capacity,
6 like, the mental capacity.

7 THE COURT: You take medicine?

8 PROSPECTIVE JUROR: I do and I haven't had my
9 medicine today.

10 THE COURT: Okay. We're not going to put you through
11 it.

12 PROSPECTIVE JUROR: I'm sorry.

13 THE COURT: That's all right. Not a problem.

14 All right. We're going to excuse this juror from
15 service.

16 THE CLERK: 337, is that your number?

17 PROSPECTIVE JUROR: (Nods in the affirmative.)

18 THE COURT: Okay.

19 THE CLERK: Okay. 194.

20 PROSPECTIVE JUROR: Accounting manager for Blue Cross
21 Blue Shield.

22 MR. KATA: I apologize. I didn't catch the number.

23 THE CLERK: I'm sorry, 194.

24 Can you just repeat that?

25 PROSPECTIVE JUROR: Accounting manager, Blue Cross

1 Blue Shield.

2 THE CLERK: What says the State?

3 MR. GOLDBERG: Please present the juror.

4 THE CLERK: Thank you.

5 And the defense?

6 MR. KATA: Please seat the juror.

7 THE CLERK: Thank you.

8 Have a seat in the jury box.

9 Juror Number 214.

10 (WHEREUPON, Juror Number 214, a black female, came
11 forward.)

12 PROSPECTIVE JUROR: HR for the VA.

13 THE CLERK: What says the State?

14 MR. GOLDBERG: Please present the juror.

15 THE CLERK: Thank you.

16 What says the defense?

17 MR. KATA: Please seat the juror.

18 THE CLERK: Thank you.

19 Have a seat in the jury box, please.

20 Twelve?

21 THE COURT: Two alternates.

22 THE CLERK: Two alternates.

23 Juror Number 67.

24 (WHEREUPON, Juror Number 67, a black female, came
25 forward.)

1 PROSPECTIVE JUROR: I am a lifestyle blogger.

2 THE CLERK: What says the State?

3 MR. GOLDBERG: Please excuse the juror.

4 THE CLERK: Thank you.

5 You can have a seat in the back.

6 Juror Number 200.

7 (WHEREUPON, Juror Number 200, a white male, came
8 forward.)

9 PROSPECTIVE JUROR: I'm a retired electrician for the
10 school district, and I do work in my garage now.

11 THE CLERK: Does the State challenge for cause?

12 MR. GOLDBERG: No, ma'am.

13 THE CLERK: What says the defense?

14 MR. KATA: Please seat the juror.

15 THE CLERK: Thank you.

16 You can have a seat in the jury box, please.

17 Juror Number 162.

18 (WHEREUPON, Juror Number 162, a white male, came
19 forward.)

20 PROSPECTIVE JUROR: Lawyer.

21 THE CLERK: What says the State?

22 MR. GOLDBERG: Please excuse the juror.

23 THE CLERK: Thank you.

24 You can have a seat.

25 Juror Number 168.

1 (WHEREUPON, Juror Number 168, a black male, came
2 forward.)

3 PROSPECTIVE JUROR: Small business owner.

4 THE CLERK: Does the State challenge for cause?

5 MR. GOLDBERG: No.

6 THE CLERK: What says the defense?

7 MR. KATA: Please seat the juror.

8 THE CLERK: Thank you.

9 Have a seat in the jury box.

10 THE COURT: Any matters of law regarding jury
11 selection?

12 MR. GOLDBERG: Just a moment, Your Honor. (Pause).

13 Nothing from the State, Your Honor.

14 MR. KATA: Nothing from the defense.

15 THE COURT: All right. Very well.

16 Ladies and gentlemen, you all have been selected to
17 be the jury in this case. Once you are selected to be on
18 a jury, you cannot discuss the case at all with anyone or
19 each other until I tell you the time to do so, which will
20 be after you've heard the entire case.

21 First, we're going to excuse the people who were not
22 selected and have y'all return downstairs. And thank you
23 all for coming up.

24 (WHEREUPON, the unselected members of the jury left
25 the courtroom.)

1 THE COURT: All right. Ladies and gentlemen, we're
2 going to have you go to the jury room to get acquainted
3 with each other and then we'll need you back at 2:15.
4 We'll get the case started and then we'll give you more
5 details at that time. See you back at 2:15.

6 (WHEREUPON, the jury left the courtroom at 1:15 p.m.)

7 THE COURT: So do we any pretrial matters we need to
8 talk about?

9 MR. GOLDBERG: Your Honor, just a couple of quick
10 housekeeping matters. I can come back to that.

11 MR. KATA: Your Honor, real quick, there's just two
12 things. One is, at some point in time, I anticipate the
13 State is going to put in a video recorded interrogation of
14 my client.

15 We'll have to do the standard Denno hearing on that.
16 And then, also, I'll be moving to suppress any hearsay
17 statements or burden shifting comments by law enforcement
18 according to State v. Washington and State v. Brewer.

19 We've actually been in discussions over the last week
20 trying to whittle down what we can agree on, gets redacted
21 and then we can bring to Your Honor what we can agree gets
22 redacted. I think we've come to an agreement on most of
23 those issues.

24 THE COURT: State v. Washington and?

25 MR. KATA: And State v. Brewer. I have courtesy

1 copies of those cases.

2 Your Honor, the second issue that is going to -- I
3 imagine will come up is testimony of a prior incident,
4 allegations of a prior shooting. And, of course, we would
5 object to that under inadmissible --

6 THE COURT: Prior shooting by the defendant?

7 MR. KATA: Yes, Your Honor.

8 THE COURT: At the same place?

9 MR. KATA: At the same place, different time and some
10 different people.

11 THE COURT: Oh, goodness. Okay.

12 MR. KATA: So, Your Honor, we would object to that.
13 I don't know if you want to take that up as the testimony
14 comes in.

15 THE COURT: All right. Mr. Goldberg.

16 MR. GOLDBERG: Your Honor, as far as the issues with
17 the defendant's statement, Mr. Kata is correct, there are
18 a number of things I believe we're in agreement about in
19 terms of redactions of his recorded interview that would I
20 think clearly not be admissible under Washington and
21 Brewer. We are working on that.

22 As far as actually conducting a Jackson vs. Denno
23 hearing in regards to that statement, the case officer
24 that took the statement actually works for the FBI
25 currently and has moved out of state. She's in

1 Pennsylvania. We've spoken to her. She has a mandatory
2 training to attend in Virginia tomorrow.

3 And so our intention would be to -- if it pleases the
4 court to have a brief Denno hearing prior to her testimony
5 on Wednesday. I don't anticipate the Denno hearing taking
6 that long, personally in light of the progress that
7 Mr. Kata and I have made should we go that route.

8 MR. KATA: I have no objection to doing that.

9 MR. GOLDBERG: We would not talk about his statement
10 in opening as a result thereof.

11 THE COURT: How about the prior shooting?

12 MR. GOLDBERG: As to the prior shooting, I'm happy to
13 do whatever Your Honor pleases in terms of talking about
14 it some now or going into it as the testimony develops
15 from the witnesses. I can give you a brief synopsis of it
16 if you'd like or we can deal with it at the time.

17 THE COURT: Well, of course, I don't know anything
18 about the case and nothing about this shooting or the
19 prior shooting.

20 MR. GOLDBERG: In a nutshell, Your Honor, the
21 allegations in this case are that on August 19th,
22 Mr. Bethel arrived at the incident location; that
23 according to witnesses who both worked and patronized the
24 bar, he was not allowed to be there because of this prior
25 incident that occurred a week or two before at the bar.

1 And so when he came inside, it's alleged that he was met
2 at the front door by employees and patrons saying,
3 essentially, hey, you're not supposed to be here. An
4 altercation ensued.

5 He then after the altercation goes out of the front
6 door of the business. He begins to walk away from the
7 business -- and this part is all on the video the State
8 intends to introduce.

9 He begins to walk away from the front door several
10 steps before he stops, turns, takes a step or two towards
11 the door and fires into the closed doors of the bar
12 striking the four victims in the case and then he flees
13 the location. That's the dimestore version of the
14 allegations in this case.

15 There are witnesses in the case who would -- are
16 prepared to testify about the prior incident that would
17 have occurred two weeks prior, I believe, depending upon
18 who you ask.

19 I couldn't get the exact date correct. But,
20 essentially, Mr. Bethel is alleged to be at the bar. He
21 got into some sort of tiff with another patron, another
22 female inside the bar. He goes to go outside. There's a
23 drink in hand.

24 According to a witness who was working the door, they
25 asked him to not take the drink outside. He refused to do

1 so. An altercation ensues between the defendant and that
2 person.

3 Mr. Bethel then goes outside the witness doorman, so
4 to speak, then follows him and tells him he's not allowed
5 to come back, at which point, the witness says that he
6 hears gunshots from the parking lot area of where
7 Mr. Bethel was.

8 There was a second witness in the case who was
9 actually present at the August 22nd shooting and the prior
10 shooting, the prior incident, who also is prepared to
11 testify that she was outside smoking when this incident I
12 just described about the prior incident occurred and that
13 she actually saw the defendant shoot into the air and
14 leave the location.

15 And then there's several other employees and folks
16 from the bar who worked at the bar who said that as of the
17 night in question for this, August 22nd, that they were
18 aware that Mr. Bethel was not allowed to be at the bar.

19 So it's really kind of a twofold issue, I think, in
20 terms of part one would be the testimony about whether he
21 was not allowed to be there as a result of this prior
22 incident, we'll call it. And then part two of that would
23 be whether or not the State would be allowed to go into
24 the specifics of that incident to include the shots being
25 fired into the air. That's the broad view.

1 THE COURT: Was he charged during the prior?

2 MR. GOLDBERG: No, sir, he was not.

3 THE COURT: Okay.

4 MR. GOLDBERG: There was no law enforcement
5 notification provided.

6 THE COURT: All right. Mr. Kata.

7 MR. KATA: Your Honor, that's an accurate summary of
8 what I believe the testimony will be. There was no charge
9 in the previous incident or report or collection of a
10 video or anything. I mean, it was just an event people
11 say happened that has no documentation behind it.

12 Your Honor, in terms of the twofold answer, I mean, I
13 have an extreme objection to any mention of a prior
14 shooting. I have less of an objection to, you know,
15 discussions about whether he was given notice not to be
16 back. I think those are two different things. I think
17 once we go into the facts of the specific shooting, it
18 becomes unduly prejudicial.

19 THE COURT: Well, these identification issues, if
20 there's no question that somebody was killed, a couple of
21 folks were killed and all that, then the question becomes
22 who did it and why. And if you have people who identifies
23 Mr. Bethel based on that prior occasion, then that becomes
24 an issue in the case to some extent.

25 MR. GOLDBERG: And as I understand it, I don't want

1 to put words in Mr. Kata's mouth, but I don't believe
2 identification is an issue in this case.

3 MR. KATA: Right, identity is not an issue in this
4 case.

5 THE COURT: All right. We'll see what goes, what
6 comes. Everyone knows it's an issue, so we'll deal with
7 it.

8 MR. KATA: Thank you, Your Honor.

9 MR. GOLDBERG: Yes, sir.

10 THE COURT: In so many instances, things that are
11 ruled out end up coming in anyway in some type of way.

12 MR. GOLDBERG: Just very quickly, since we mentioned
13 the idea of identification just a moment ago, I wanted to
14 put on the record that Mr. Kata and I did speak about
15 whether there was a necessity for a Biggers hearing for
16 two of the witnesses who identified Mr. Bethel in a photo
17 lineup.

18 We agree that in light of the fact that those
19 witnesses were familiar with Mr. Bethel and there's no
20 assertion by the defense that the State unduly suggested
21 his identification, in other words, they're not
22 challenging identification, then we would agree that no
23 Biggers hearing would be necessary and we wanted to put
24 that on the record.

25 THE COURT: Is that right, Mr. Kata?

1 MR. KATA: That's correct, Your Honor.

2 THE COURT: Very good. Anything else?

3 MR. KATA: Your Honor, I just have the two courtesy
4 copies.

5 THE COURT: Sure.

6 All right. We'll be ready for this case at 2:15.

7 (WHEREUPON, a lunch break was taken.)

8 (WHEREUPON, State's Exhibit Nos. 1 through 4 marked
9 for identification only.)

10 THE COURT: Are we ready for the jury?

11 MR. GOLDBERG: Your Honor, I've got copies of a
12 couple of things before the Court. This is a body cam of
13 the responding officer, photographs and videos in the
14 case.

15 THE COURT: Okay.

16 MR. GOLDBERG: And two other matters very quickly.
17 First one is Mr. Kata and I agreed to a stipulation
18 regarding chain of custody on establishing a sufficient
19 foundation as to the collection of physical evidence that
20 the remaining members of the chain would not be required.
21 The evidence was otherwise properly handled and not
22 tampered with.

23 THE COURT: Is that right, Mr. Kata?

24 MR. KATA: That's correct.

25 THE COURT: All right.

1 MR. GOLDBERG: And the last thing I brought up, not
2 trying to make things more difficult than they have to be,
3 but it dawned on me that the witnesses have been
4 sequestered, but there were several members of the
5 defendant's friends and family that were on that list, as
6 well, both sides listed. I'm not asking one thing or the
7 other. I'm bringing it to the Court's attention.

8 THE COURT: I understand. Quite often when the
9 defendant makes a motion, it boots the defendant's folks
10 out of the courtroom, but it goes both ways sequestered by
11 the State and sequestered by defense. So if the defense
12 wants sequestration, that applies to the defense
13 witnesses, as well as State's witnesses.

14 MR. KATA: We do want sequestration.

15 THE COURT: You know the people who you called who
16 stood up, they need to leave. So on the defense witness
17 list, other than law enforcement, you called Gregory
18 Martin, Cameron Jenkins. Those are victims, right?

19 MR. GOLDBERG: Yes, sir, those are victims.

20 THE COURT: They have the right to stay. Melanie
21 Taylor, John Miller, Kerry Ross, Melanie Taylor, Amircle
22 Wright, Kayosha Roseboro.

23 MR. GOLDBERG: None of those are present in the
24 courtroom.

25 THE COURT: Okay. Naheim Green, Anthony Bethel,

1 Colecious Bethel, Naheim Green, Xnia Collins, India
2 Guider, Angel Harrison, Roderick Branch.

3 We'll be at ease for just a moment and then I'll have
4 the jury ready to come.

5 (Pause.)

6 (WHEREUPON, the jury entered the courtroom at 2:37
7 p.m.)

8 THE BAILIFF: The jurors are seated, Your Honor.

9 THE COURT: All right. Welcome back, ladies and
10 gentlemen. You all may stand to be sworn.

11 THE CLERK: Ladies and Gentlemen of the jury, please
12 stand and raise your right hand to be sworn.

13 You shall well and truly try and true deliverance
14 make, between the State of South Carolina, and the
15 defendant at bar, whom you shall have in charge, and a
16 true verdict give, according to the law and the evidence,
17 so help you God.

18 You may be seated.

19 THE COURT: All right. Ladies and gentlemen, you all
20 have been selected and sworn to be the jury in the case of
21 the State vs. Ernest Condry Bethel.

22 Mr. Bethel has been indicted by the grand jury of
23 Richland County charging him with the murder of
24 Christopher Lott, charges him with the murder of Tolliver
25 Wise, charges him with the attempted murder of Gregory

1 Martin, charges him with the attempted murder of Cameron
2 Jenkins and charges him with possession of a weapon during
3 the commission of a violent crime.

4 A violent crime is being murder and attempted murder.
5 He has pled not guilty to each of these charges, and that
6 plea puts the burden on the State to prove him guilty. He
7 is presumed to be not guilty. The State has the burden of
8 proving him guilty and that's the purpose of the trial.

9 Your role as jurors is to listen intently to the
10 evidence to sit there and to remain focused on the case,
11 to pay attention so that you'll be in a position to
12 deliberate at the end and decide whether the defendant is
13 guilty or not guilty based on the evidence presented.

14 I look forward to working with you on this case.
15 We'll try to keep it moving. We'll take breaks as is
16 necessary. If at any time you become uncomfortable and
17 need a break, get the Court's attention and we'll take a
18 break.

19 Later in the process, I will appoint one of you to
20 serve as the foreperson of the jury and that person will
21 have the responsibility of serving as the spokesperson of
22 the jury. That person will have the responsibility of
23 presiding over the jury deliberations and that person will
24 have the responsibility of completing the verdict forms
25 representing the unanimous verdict of the jury.

1 In just a moment, we'll start with opening statements
2 first by the State. Then the defense will have an
3 opportunity to do the same. We'll then begin hearing
4 witnesses. Your role as jurors, also, will be to evaluate
5 the credibility of witnesses who testify and of the
6 evidence presented during the trial.

7 From the State.

8 MR. FOWLER: Thank you, Your Honor. May it please
9 the Court.

10 THE COURT: Yes, sir, Mr. Fowler.

11 OPENING STATEMENT:

12 MR. FOWLER: This is why we're here today,
13 Christopher Lott, Tolliver Wise, Cameron Jenkins and
14 Gregory Martin. Now, Christopher Lott and Tolliver Wise,
15 unfortunately, are not here to tell us their story.
16 Cameron Jenkins and Gregory Martin, they are here.
17 They're going to tell you their story. They're going to
18 tell you about why we're here.

19 We are here because on August 22nd, 2019, shortly
20 after 2:00 a.m. at a bar named McCary's. It's on Bush
21 River Road, probably about ten minutes away from here.
22 Ernest Bethel is arrives. He's greeted at the door by
23 Tolliver Wise, Mr. Jenkins up there, another man named
24 John Miller. They indicate to him that he is not allowed
25 in the club. He's been banned.

1 An altercation ensues, last for about a minute and a
2 half. Ernest is pushed out the front door of the
3 establishment. Christopher Lott pulls that door and holds
4 it shut. Ernest is out there with only the two people
5 that he arrived with.

6 Now, what does Ernest do next? Does he leave, call
7 it a night? It's 2:00 a.m., might as well go home? No.
8 Ernest makes a choice that night. And what he does next
9 is nothing short of a catastrophe in the truest sense of
10 the word. I sat, myself, Mr. Goldberg, we discussed it.
11 Even catastrophe doesn't do justice to what happened that
12 night.

13 You're going to see what Ernest did. It's caught on
14 video surveillance from the bar. Ernest Bethel walks away
15 from the front door and then doubles back, pushes past his
16 friends and unloads a hail of gunfire directly into the
17 front door of McCary's bar.

18 You'll see on that video the depravity of what Ernest
19 Bethel did that night. Ernest Bethel maliciously and
20 intentionally sought to create a catastrophe that night.
21 He wanted to cause as much harm to everyone on the other
22 side of that door as he possibly could.

23 Now, as I said, Cameron and Greg are going to tell
24 you their story. Cam's going to tell you he was the head
25 bartender at McCary's that night, was just trying to

1 ensure there was a smooth operation all night. Somebody
2 indicated to him that Ernest had showed up, wasn't allowed
3 there.

4 Cameron goes over, tries to peacefully address the
5 situation, politely asks Ernest to leave. Greg did the
6 same. He was the cook that night, doing a little bar
7 backing. He comes over to assist in any way he can, just
8 trying to keep everything smooth.

9 Like I said, fortunately, they're here to tell you
10 the story. Cam is going to tell you about the bullet
11 that's still in his neck. Greg is going to tell you about
12 the bullet he took to the chest. But Christopher Lott,
13 he's not. That video that you're going to see is going to
14 tell his story because he died in the hospital several
15 hours after he was shot holding that front door.

16 You're going to see him try to keep everybody calm,
17 try to break up this altercation that occurred. You're
18 going to see him close that door, hold it to keep
19 everybody separated so that nothing else goes wrong.

20 The video is also going to tell you the story of
21 Tolliver Wise. Tolliver Wise only wanted to keep things
22 calm, same as everybody that night. When Ernest fired
23 through that front door, Tolliver Wise did everything he
24 could to defend his friends inside that bar.

25 Tolliver shot back at Ernest. Again, what does

1 Ernest do when Tolliver shoots at him? Ernest is standing
2 beside his car, car door opened. Ernest shoots back at
3 Tolliver, hitting him once in the chest. You're going to
4 see Tolliver on that video. He died right there on the
5 floor of that bar.

6 At the end of this trial, you're going to be firmly
7 convinced that Ernest Bethel had one goal that night, one
8 intentional catastrophic goal and that was to kill
9 everyone on the other side of the front door of McCary's.
10 After you see that video and you hear that testimony, you
11 will be convinced beyond a reasonable doubt that Ernest
12 Bethel succeeded in killing Christopher Lott and Tolliver
13 Wise and he is guilty of their murders.

14 Now, he intentionally tried and, thankfully, failed
15 to kill Cameron Jenkins and Gregory Martin. Once again,
16 after all the evidence, you will be convinced beyond a
17 reasonable doubt that he attempted to murder those two men
18 up there and that he is guilty of using a deadly weapon to
19 bring about that catastrophic result of that violent
20 crime.

21 Thank you.

22 THE COURT: Mr. Kata.

23 MR. KATA: May it please the Court.

24 OPENING STATEMENT:

25 MR. KATA: Good afternoon. Ladies and gentlemen, I,

1 also, want to talk about why we're here. The State
2 mentioned an altercation and they left it at that. I,
3 also, want to talk about why we're here because on the
4 night this happened -- you're going to see a video of him
5 shooting a weapon.

6 It's him. He did that. But let's talk about what
7 happened before he shot. That's what I want you to look
8 at, I want you to look at the other video. The video of
9 Mr. Bethel walking into the bar calmly and then being
10 approached by four people, being punched in the face,
11 thrown against the wall, thrown on the ground and shoved
12 outside.

13 At that point, let's talk about Mr. Wise. Mr. Bethel
14 sees Mr. Wise pull a gun. That's the altercation they're
15 talking about. And as we go through this trial, I'm
16 asking you, look at both videos. They're going to be
17 played and be reviewed. You're going to have that
18 opportunity.

19 Ladies and gentlemen, at the end of this trial, I'm
20 going to argue to you that Mr. Bethel based on what
21 happened to him that night had no other choice but to do
22 what he did to save his own life, based on the
23 altercation. His goal wasn't to wreak havoc. His goal
24 was to get home alive after being attacked.

25 Thank you very much.

1 THE COURT: First witness.

2 MR. FOWLER: The State calls Deputy Kyle McGregor.

3 THE CLERK: Place your left hand on the Bible.

4 KYLE MCGREGOR, after being duly sworn,
5 testified as follows:

6 THE CLERK: Please have a seat. State your name for
7 the record.

8 THE WITNESS: Kyle McGregor.

9 DIRECT EXAMINATION:

10 BY MR. FOWLER:

11 Q All right. Deputy McGregor, it's obvious, but tell
12 us what you do.

13 A I'm a Master Deputy with the Richland County
14 Sheriff's Department.

15 Q Were you a deputy on August 22nd, 2019?

16 A Yes, I was.

17 Q Tell me about that night just kind of generally,
18 where were you, what's going on?

19 A I was working night shift in the region four area,
20 which is Broad River Road, Bush River, all the way out to
21 Chapin.

22 Q Are you familiar with the incident we're here for
23 today?

24 A Yes, sir.

25 Q How did you come to be involved in that?

1 A I was responding to an unrelated call at 911 Bush
2 River Road, the Comfort Inn.

3 Q I'm just going to show you this for demonstrative
4 purposes. Can you see this broad area right here?

5 A Yes, sir.

6 Q What is that?

7 A Columbia.

8 Q All right. What county is Columbia in?

9 A Richland County.

10 Q And you said you were at the Comfort Inn?

11 A Yes, sir, 911 Bush River Road.

12 Q Is that it right there?

13 A Yes, sir.

14 Q So you were at the Comfort Inn responding to a call?

15 A Yes, sir.

16 Q What happened when you were at the Comfort Inn?

17 A I exited my patrol vehicle and almost immediately
18 following getting out of my vehicle, I heard a large
19 number of what sounded like gunfire in close proximity to
20 where I was. Following hearing the gunfire, I exited the
21 parking lot, put it out on the radio and started looking
22 for the source.

23 MR. FOWLER: Your Honor, can I have him step off the
24 stand just a brief moment?

25 THE COURT: Yes.

1 BY MR. FOWLER:

2 Q If you would, would you show us where you started and
3 kind of the route you took and where you ended up after
4 you heard those gunshots?

5 A So I was right here by this bump out when I exited my
6 vehicle and heard the shots. I wrapped around the parking
7 lot to turn around. That's when I called it out on the
8 radio. I made a left on this street right here, got to
9 about here, realized it wasn't coming from the
10 neighborhood, did a U-turn, came back down to Bush River
11 Road when I located the source of the shots at 851 Bush
12 River Road. That's McCary's Bar and Grill.

13 Q And that's, also, Richland County?

14 A Yes, sir.

15 Q I'm going to show you what's been premarked as
16 State's 1. Do you recognize that, Deputy McGregor?

17 A Yes, sir.

18 Q What is that?

19 A That's a DVD of my body-worn video from the incident.

20 Q From the night of August 22nd, 2019?

21 A Yes, sir.

22 Q Is that a fair and accurate representation of that
23 night?

24 A Yes, sir.

25 Q How do you know that's the video you watched?

1 A I watched it prior to coming here and initialed the
2 DVD.

3 MR. FOWLER: Your Honor, at this time, I would move
4 State's 1 into evidence.

5 MR. KATA: No objection.

6 THE COURT: So admitted.

7 (WHEREUPON, State's Exhibit No. 1 was admitted into
8 evidence.)

9 BY MR. FOWLER:

10 Q All right. Before we play that, I believe you said
11 you arrived at McCary's. Do you recognize this
12 photograph?

13 A Yes, sir, that's the front door of McCary's.

14 Q All right. Is that how it looked when you got there
15 that night?

16 A Yes, sir.

17 Q Minus the crime scene markers?

18 A Yes, sir.

19 Q And that's a fair and accurate representation of that
20 door?

21 A Yes, sir, it is.

22 MR. FOWLER: Your Honor, at this time, I'd move
23 State's 2 into evidence.

24 MR. KATA: No objection.

25 THE COURT: It's admitted.

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

3 BY MR. FOWLER:

4 Q Just show you -- this is State's No. 2 on the screen
5 right here?

6 A Yes, sir.

7 Q And that's how that door looked that night when you
8 got there?

9 A Yes, sir.

10 Q Minus the crime scene markers?

11 A Minus the crime scene markers, yes, sir.

12 Q I'm going to play your --

13 MR. FOWLER: Your Honor, may I publish the body cam
14 to the jury?

15 THE COURT: Yes, sir, it's in evidence.

16 Is that right, Mr. Kata?

17 MR. KATA: That's correct.

18 (WHEREUPON, the body cam was played.)

19 BY MR. FOWLER:

20 Q If you need to stop at any point in time, let me
21 know.

22 (WHEREUPON, the body cam was continued.)

23 Q I'm going to back that up just a little bit. Tell us
24 what that is we're hearing at the beginning of that video.

25 A So what you're seeing right now is the sound of '300

1 seconds that it records before you start actually
2 recording. And that's several gunshots coming from my
3 six o'clock.

4 Q Let me see if I can get this video turned up just a
5 little.

6 THE COURT: Is there a volume on that?

7 MR. FOWLER: I'm sorry, Your Honor?

8 THE COURT: Can you play it louder?

9 MR. GOLDBERG: Yes.

10 Q Are you at McCary's right there?

11 A Yes, sir.

12 Q Is that about how it sounded that night?

13 A That's about right, yes, sir.

14 Q What are you doing right here?

15 A So after coming through the door, it's kind of a
16 triage to figure out who can be helped and who can't, so
17 this guy look like he was the worst off that was still
18 breathing.

19 Q So let's orient the jury a little bit. So right now,
20 you've entered the front door, correct?

21 A Yes, sir.

22 Q All right. Which direction have you gone?

23 A To my right.

24 Q Okay. And where was this gentleman that you were
25 working on?

1 A He was about three-quarters of the way underneath the
2 pool table.

3 (WHEREUPON, the body cam was continued.)

4 Q Okay. So you were just working with that gentleman
5 that was underneath the pool table. Who's up here or what
6 is up here?

7 A That's another victim. I believe, if my memory
8 serves me right, he was shot in the chest.

9 THE COURT: Sir, can you adjust your mic some, talk
10 into it?

11 THE WITNESS: Yes, sir.

12 (WHEREUPON, the body cam was continued.)

13 Q All right. This is the front door over here,
14 correct?

15 A Yes, sir.

16 Q So who is this?

17 A His name escapes me, but he is the fourth victim. He
18 was coming through the door all the way to the left.

19 Q So there's three victims to the right of the entry
20 way; is that right?

21 A Yes, sir.

22 Q And then there's one additional victim to the left?

23 A Yes, sir.

24 Q Total of four victims; is that right?

25 A Yes, sir.

1 Q Deputy McGregor, what are your typical duties when
2 you respond to something like this?

3 A First thing we, typically, try to do is get EMS on
4 the way because, obviously, our medical skills are
5 limited. Triaging people and doing what we can on the
6 medical side and then setting up crime scene, notifying
7 investigations and crime scene to respond.

8 Q So once EMS responds, crime scene responds, what do
9 you do next?

10 A Typically, once the scene is turned over to them,
11 I'll write the initial incident report, which is what my
12 findings were responding first. And then we just hold the
13 scene and if they need us to separate witnesses, we'll
14 separate witnesses. It's pretty much their show at that
15 point. So we do whatever they need us to do.

16 Q So at that point after the initial triage with four
17 victims, you're just doing crowd control; is that right?

18 A Yes, sir.

19 MR. FOWLER: No further questions, Your Honor.

20 THE COURT: Mr. Kata?

21 MR. KATA: Thank you, Your Honor.

22 CROSS-EXAMINATION:

23 BY MR. KATA:

24 Q Good afternoon, Deputy.

25 A Good afternoon.

1 Q So it's safe to say you arrived for the aftermath,
2 correct?

3 A Yes, sir.

4 Q So you weren't present when they punched my client in
5 the face?

6 A No, sir.

7 Q Or pushed him against the wall?

8 A No, sir.

9 Q Or threw him on the ground?

10 A No, sir.

11 Q You weren't there to witness any of that?

12 A No, sir, I wasn't.

13 Q And you weren't there to see Tolliver Wise with a
14 weapon?

15 A No, sir, I wasn't.

16 MR. KATA: No more questions, Your Honor.

17 REDIRECT EXAMINATION:

18 BY MR. FOWLER:

19 Q You were present to see the four bodies on the
20 ground; were you not?

21 A Yes, I was.

22 MR. FOWLER: No further questions.

23 THE COURT: Anything further?

24 (There was no response.)

25 You may step down.

1 THE COURT: Next witness.

2 MR. FOWLER: Your Honor, just briefly, Deputy
3 McGregor, is it okay to be excused? He has military duty.

4 THE COURT: Every witness is free to be excused when
5 they step down.

6 MR. FOWLER: Thank you, Your Honor. The State calls
7 Investigator Brandon Rast.

8 BRANDON RAST, after being duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION:

11 BY MR. FOWLER:

12 Q Investigator Rast, where are you employed?

13 A I'm currently employed with TD Bank.

14 Q Where were you employed in August of 201?

15 A I was a senior investigator with the Richland County
16 Sheriff's Department.

17 Q What were just generally some of your
18 responsibilities?

19 A At the time, I was a digital forensics examiner, so I
20 would go and retrieve surveillance video, process the
21 video, make sure it got to the investigators, also, do
22 extractions on digital devices, like cell phones and
23 tablets.

24 Q Were you involved in video recovery for a murder
25 investigation that happened on August 22nd, 2019?

1 A Yes.

2 Q How did you come to be involved in that
3 investigation?

4 A I was notified that there had been an incident at
5 McCary's Bar and it was requested that I make contact with
6 the -- somebody at the bar, manager, restaurant owner to
7 get access to the surveillance video. We were granted
8 permission to gather that video.

9 I made those arrangements and met with the -- with
10 someone in the bar to pull the video. That's what we did,
11 pulled the video and got it as evidence.

12 Q I'm going to show you what's been premarked as
13 State's Exhibit 4. Do you recognize this?

14 A Yes, I do.

15 Q What is that?

16 A It's a DVD containing video from McCary's Bar.

17 Q And you initialed this?

18 A Yes.

19 Q Tell us a little bit about how you pulled this video?

20 A It would have been directed to the D.V.R. on site.
21 D.V.R. is digital video recorder. It's a piece of
22 hardware that has a hard drive on it that stores digital
23 media, in this case, video.

24 So I would have gone to it, accompanied by the bar
25 owner or their designee and put a thumb drive, a USB drive

1 into the USB port, cued up the timeframe, looked for the
2 incident. We would have bracketed the incident by a few
3 minutes on the other side and downloaded all angels of
4 that video to the thumb drive.

5 Q Did you find the answer to the question?

6 A Yes.

7 Q And you captured an entire timeframe encapsulating
8 the incident?

9 A Yes.

10 Q And once you did that, what did you do with the flash
11 drive you had?

12 A The flash drive is property of the sheriff's
13 department. We take it back to the office. We use any
14 cloud based storage and distribution software, it's called
15 evidence.com. We upload the video to evidence.com. We
16 give permission to the investigators assigned to the case
17 to download that video so they can view it and add to
18 their investigation.

19 Q Did you check to make sure that video worked when you
20 got back to the sheriff's department?

21 A Yes.

22 MR. FOWLER: Your Honor, at this time, I'd move to
23 have State's 4 admitted into evidence?

24 MR. KATA: No objection.

25 THE COURT: So admitted.

1 (WHEREUPON, State's Exhibit No. 4 was admitted into
2 evidence.)

3 BY MR. FOWLER:

4 Q Investigator Rast, did you collect any more video?

5 A Yes.

6 Q Where did you collect that video from?

7 A There's a cell phone store next door to the bar or
8 adjacent to the bar. I gathered some video from that cell
9 phone store because it had an external camera that went
10 into that parking lot.

11 Q Was it the same sort of general process as McCary's
12 video?

13 A Yes.

14 Q Do you recognize that?

15 A Yes.

16 Q And you initialed it?

17 A Yes.

18 Q This is the Boost Mobile video?

19 A Boost Mobile video.

20 Q And you checked this when you got back to the
21 sheriff's department to make sure it played?

22 A Yes.

23 MR. FOWLER: Your Honor, at this time, I'd move
24 State's 3 into evidence.

25 MR. KATA: No objection.

1 THE COURT: It's admitted.

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

4 BY MR. FOWLER:

5 Q Did you have any further involvement other than the
6 video collection?

7 A No.

8 MR. FOWLER: No further questions.

9 THE COURT: Mr. Kata.

10 MR. KATA: No.

11 THE COURT: No further questions. You may step down.
12 Next witness.

13 MR. FOWLER: Thank you, Your Honor. The State calls
14 Cameron Jenkins.

15 THE CLERK: Would you state your full name, please.

16 THE WITNESS: Cameron Stuart Jenkins.

17 THE CLERK: Would you spell your middle name, please?

18 THE WITNESS: S-T-U-A-R-T.

19 CAMERON JENKINS, after being duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION:

22 BY MR. GOLDBERG:

23 Q Mr. Jenkins, good afternoon.

24 A Good afternoon.

25 Q I know they just told you this, but I'm just going to

1 remind you, make sure you speak loud enough so the jury
2 can hear you and Madam Court Reporter can hear you, okay?

3 A Yes, sir.

4 Q And, of course, the court. All right. Mr. Jenkins,
5 will you tell this jury a little bit about yourself, where
6 you came from, where you grew up, things like that?

7 A I'm from Swansea, South Carolina. I've been a
8 bartender for 16 years. That's pretty much what I've done
9 since I was 18. I've worked in bars since I was 18. Do
10 you want me to go further?

11 Q That's all right. Thank you. You went to Swansea
12 High School?

13 A Yes.

14 Q Okay. You said you've been bartending for about 16
15 years. Where in South Carolina have you been doing that?

16 A Mostly in Richland County, most of it is in Columbia.
17 I work now in Lexington.

18 Q Okay. Currently, you do?

19 A I do. I think it's a safer town.

20 Q And back in August of 2019, you worked at McCary's;
21 is that right?

22 A That's correct.

23 Q How long had you worked at McCary's at that time?

24 A Three months, four months tops, give or take.

25 Q Three or four months. Describe for the jury a little

1 bit about what your role was at McCary's?

2 A Obviously, making drinks, serving drinks, take care
3 of financial transactions, opening and closing the bar,
4 making sure the business ran and, also, anything unusual;
5 usually as far as things like that, just, basically,
6 running a bar. That's, essentially, it.

7 Q And, generally speaking, on an average night at
8 McCary's, can you describe what the bar is like in terms
9 of how crowded it is, what kind of activities is going on,
10 the type of folks that go there, things like that?

11 A So I didn't go in until 10:00 p.m. We didn't start
12 getting busy until 2:00 or 3:00. Average night, I'd be
13 there until 6:00. Weekend maybe, I've been there as late
14 as 10:00 a.m. But for the most part, a pretty chill
15 crowd. A little bit of rowdiness, but for the most part,
16 everyone gets along. A lot of service industry people.

17 Q A lot of service industry folks, you said?

18 A That's correct.

19 Q On this particular night, you came in about what
20 time?

21 A About 10:00.

22 Q And it begins to get crowded around 2:00 a.m., you
23 said?

24 A Give or take, a little after 2:00 a.m. when you start
25 getting busy.

1 Q Generally speaking, when you say crowded, are we
2 talking 15, 20 people or like 100, 200 people?

3 A Not 200, fire marshal wouldn't allow that. It's not
4 a big place. I would think packed, maybe 50 to 70 would
5 probably be total. But I mean, on an average night, you
6 can do maybe 30 people. It's been many in there at one
7 time, but, usually, it's more than that. I'd say 30 to
8 50.

9 Q How would you classify August 19th, 2022, in terms of
10 how crowded it was?

11 A Not crowded, business as usual for that hour.
12 Actually, probably a little bit busier than the 2:00 a.m.
13 time than usual.

14 Q And the customers in the bar on this particular
15 night, were you familiar with any of them?

16 A Yeah, I mean, basically, you see the same people
17 every night. Whether I knew their name or not, that's one
18 thing. I mean, I hear a lot of names. I knew faces.
19 That's, basically, everyone there. There were no
20 strangers there that night.

21 Q Tell the jury a little bit about what the setup was
22 in terms of who was working and what their roles were.

23 A I guess as far as payroll goes that I know were
24 people that worked for that bar, that would be myself and
25 Gregory. He was my cook slash bar back. He was going to

1 be there until after 2:00 anyway. And then myself, I was
2 the bartender and whatever else you want to call that,
3 bartender.

4 Q And you said Gregory, you're referring to Greg
5 Martin?

6 A Greg Martin, that's correct.

7 Q This jury has heard a couple of other names. I'm
8 going to ask you about those folks. Let's start with
9 Tolliver Wise. Who is that?

10 A So Tolliver, he, basically, was like family there.
11 Everyone knew him, everyone liked him. Tolliver was a
12 nice dude. He worked at Grade A Grill as a bouncer. He
13 was a sweetheart.

14 Q And was he in the bar frequently?

15 A All the time, almost every night, almost every night.

16 Q What about Christopher Lott?

17 A Chris came in a good bit. I didn't know Chris, as
18 well as I knew Tolliver. Chris didn't live in the bar
19 like Tolliver did. I didn't see him every time like I saw
20 Tolliver. I'm not saying that in a disparaging way, you
21 know what I'm saying. I'm not saying the man was a drunk,
22 I'm just saying he hung out there. But he was there, he
23 was always very nice, easy-going guy. I never had any
24 issue whatsoever with him in any way.

25 Q All right. Now, let's talk about the defendant,

1 Ernest Bethel. Had you seen him in the bar previously?

2 A Absolutely. We met each other several times.

3 Q Several times, you said?

4 A Several times, yes.

5 Q And describe the nature of your relationship to the
6 extent that there was a relationship between you and Mr.
7 Bethel?

8 A I mean, besides serving someone alcohol, we had good
9 banter. We had a good relationship. I never really had
10 any real problems with him. He was straight, like, there
11 were no issues whatsoever.

12 Q When you say banter, what do you mean by that?

13 A Basically, him trying to talk shit and me talking
14 shit back.

15 Q In a playful way?

16 A In a playful way, just joking banter, common thing in
17 bars.

18 Q Okay. So on August 22nd, 2019, that night you were
19 working, to your knowledge, was Mr. Bethel allowed to be
20 there at McCary's?

21 A I was not told anything beforehand. I was told as I
22 was working. The night in question that got him banned, I
23 did not work that night and I made that clear.

24 Q All right. So when he arrived at -- well, let me
25 back up. He did arrive at McCary's on this evening,

1 correct?

2 A Yes.

3 Q I'm going to get to the video in a moment, but at
4 some point, you made your way over to try to talk to him;
5 is that right?

6 A That's correct.

7 Q Why did you go over there to talk to him?

8 A I was, basically, informed of what had happened. I'm
9 pretty sure he was the one who confirmed it, nonetheless.
10 I went over there. Like, hey, I was told you can't be
11 here. It's not my decision. I don't know. You can call
12 up here and talk to my boss. If you didn't do anything,
13 call.

14 Q Okay. Okay. I'm going to show you some of the video
15 clips from inside the bar that night. Are you able to
16 see?

17 A Yes.

18 (WHEREUPON, video was played.)

19 Q All right. Describe for the jury -- this is camera
20 13 on State's Exhibit 4. If you could describe kind of
21 what we're looking at here.

22 A All right. So that's, obviously, a bar top at
23 McCary's. You can see Todd there, his lady angel. You
24 can see Mike there, the shorter guy in the pink shirt.

25 Q Okay. Where are you located?

1 A I'm located behind the bar. That's a good place for
2 the bartender to be.

3 Q Right. And the gentleman you're talking to here, who
4 is that?

5 A That is Tolliver Wise.

6 Q Okay. And who is this right here?

7 A I believe that's Chris, if I remember correctly.

8 Q Chris Lott?

9 A Yes.

10 Q And you said -- who is this?

11 A That's Mike. I can't remember Mike's last name.
12 He's, essentially, the guy -- Mike was, essentially, the
13 reason I worked there. He was the person that kind of
14 connected me with that job.

15 Q And the individual sitting right here in the corner
16 of the car, who was that?

17 A That would be Greg Martin.

18 Q Okay. At this point, is there anything unusual about
19 what's going on in the bar that night?

20 A No, that's business as usual.

21 Q That's Mr. Wise hugging and saying goodbye. It
22 appears as though he's exiting the bar; is that right?

23 A Tolliver would come in and out of the bar all the
24 time.

25 (The video was continued to be played.)

1 Q It's about 2:26 a.m. at this point?

2 A That's correct.

3 Q It appears as though you're speaking to this
4 gentleman right here. Who is that?

5 A John John.

6 Q Who is John John?

7 A Someone that lived at the bar, essentially, lived
8 right down the street. Owners knew him, managers knew
9 him, you know, very similar to Tolliver's situation as far
10 as, like, everyone knew him.

11 Q All right. So --

12 A That was him telling me, essentially, he wasn't --
13 what happened and I was like, What?

14 Q Let me ask you this. Why are you walking around the
15 bar at this point. What has captured your attention
16 downstairs?

17 A At this point, he's not supposed to be there.

18 Q He who?

19 A Ernest Bethel. It's not supposed to be there. I am
20 going to tell him that he's not supposed there and inform
21 him in case he doesn't know.

22 Q And the person we're talking about, Mr. Bethel,
23 that's the defendant sitting over here, correct?

24 A That's correct.

25 Q Now, I want to shift your focus to camera six. What

1 is this an image of?

2 A That is right outside the front door at McCary's.

3 Q The individual that appears here at 2:25:55, who do
4 you recognize that to be?

5 A That is the defendant.

6 Q Walking up to the front of the bar?

7 A That's correct.

8 Q Why is he trying to look in like that? Like, is
9 there -- let me ask you this --

10 MR. KATA: Objection.

11 Q Describe for me --

12 MR. KATA: Objection, calls for speculation.

13 MR. GOLDBERG: I'm going to rephrase it.

14 BY MR. GOLDBERG:

15 Q Describe for me what the front doors are like in
16 terms of whether you're able to see through them clearly
17 or anything else?

18 A So the front doors at that time was a lot different.
19 Alcohol memorabilia, there's signs. You can look into the
20 bar, but you cannot see it clearly. You have to look
21 through the signage, essentially.

22 Q The signage. So we'll see more of these, but in
23 State's No. 2 that's already in, is that kind of what
24 you're talking about?

25 A That's exactly what I'm talking about.

1 Q Where it says Bud Light?

2 A (Nods in the affirmative.)

3 Q He actually goes into the car, correct?

4 A That's correct.

5 Q All right. Let's go to camera seven now. And
6 generally describe the orientation of where this camera
7 is?

8 A Okay. So this camera is closer to -- if I remember,
9 more towards like the Golden T, arcade-type games. It
10 looks right through the front door, not quite that easy.
11 The pool tables are farther to the left out of there and
12 the bar is farther to the right. So it's, essentially,
13 the middle right of the doors.

14 Q All right. Now, as we come up at 2:26 a.m., again,
15 this is another angle, who do you recognize that to be
16 coming in the front door?

17 A That's the defendant.

18 Q And who is he speaking to?

19 A That would be Tolliver Wise.

20 Q Okay. Now, I'm going to back up real quick because I
21 see you come in the frame, you make a hand gesture. Can
22 you talk a little bit about in just a moment what that
23 hand gesture is that you make as you walk up?

24 A So that hand gesture to me I thought was the
25 universal sign of no, you got to go, like, you got to cut

1 it off, friend.

2 Q And earlier, you were describing what you told him
3 about hey, you can take it up with my boss?

4 A Absolutely.

5 Q Is that what's happening here?

6 A Absolutely. I'm like hey, man, obviously, I'm being
7 very congenial about it.

8 Q All right. What was your goal at this point?

9 A So from all of my times working the bar, the goal is
10 always deescalation. And it hadn't even -- in my opinion,
11 my professional opinion, nothing had escalated, so
12 everything was going pretty well at this point. Nothing
13 had become physical. It was just happening because he
14 wasn't supposed to be there. And that's my job, is to
15 make sure the bar rules are adhered to.

16 Q Who, if anyone, did you hear threaten Mr. Bethel at
17 this point?

18 A I heard no one make a -- what I would say is a
19 physical threat or a physical threat to him.

20 Q All right. Now, I'm going to ask you about what's
21 going to come up in just a moment. Again, who is that?

22 A That is John.

23 Q John, okay. What are we going to see John do here in
24 a second?

25 A You're going to see John throw a drink on the

1 defendant.

2 Q Throw a drink on?

3 A On the defendant.

4 Q And after that, what occurs?

5 A If I remember correctly, he defended -- pushes John's
6 back against that wall and then starts swinging and
7 there's a scuffle and he is taken to the ground and pushed
8 out the door.

9 Q All right. Now, I see you jump in there and grab
10 ahold of Mr. Bethel. What was your purpose there?

11 A My goal was to -- ideally, was to, at least, help to
12 keep him from swinging, from attacking and just to break
13 it up, just to break it up and keep it from escalating.

14 Q And you actually ended up going down to the ground?

15 A I absolutely did.

16 Q Now, at this point, what is happening with
17 Mr. Bethel?

18 A He is being escorted off the premises or out the
19 door.

20 Q And we see the door shut, right? Who is that?

21 A That is Mr. Lott, Chris Lott.

22 Q And at this point, where is Mr. Bethel?

23 A Outside of the front doors.

24 Q Does anyone else standing in this vicinity go
25 outside?

1 A No.

2 Q Describe for the jury what you just saw.

3 A I just saw the defendant unload his handgun through
4 the front door of McCary's and hitting several people,
5 including myself.

6 Q Where were you shot?

7 A I was shot in the neck on the left side.

8 Q Upon being shot, what did you do after that?

9 A I jumped to the floor once I noticed -- I looked at
10 Greg once I was shot, I looked at him and he was shot
11 pretty much right after. And at that point, I jumped to
12 the ground, told him to stay where he was and I climbed
13 behind tables for cover.

14 Q And as this is occurring -- who is that again in the
15 black?

16 A That's Tolliver Wise.

17 Q Wise. When this skirmish was taking place in front
18 of the door, at what point did you see anyone brandish a
19 firearm?

20 A There were no weapons brandished at that point or
21 before.

22 Q Until this point, correct?

23 A As far as inside the bar, that's correct.

24 Q Yes, inside. Thank you. Is that you actually coming
25 by right there?

1 A Yeah, that's me.

2 Q Where were you going?

3 A I was going to get towels for everybody, that was it.

4 Q Mr. Wise ended up on the ground, correct?

5 A That is correct.

6 Q All right, sir. Let's go to camera nine. Can you
7 describe this camera angle in relation to the previous one
8 we just saw, camera seven?

9 A Yes, so if I remember correctly, this camera is where
10 I exited the bar, came around the bar. That camera is
11 above that kind of doorway there. Through the bar, it
12 overlooks, essentially -- not as far back, but that's the
13 front door. It's like a triangle from the front door,
14 essentially. From that angle, you have a triangle-type
15 view.

16 Q So in other words, here to the right of the screen,
17 that's about where the front door is; is that correct?

18 A That's correct.

19 Q And, again, this is who coming in?

20 A That is the defendant.

21 Q Same thing we saw earlier, different angle, correct?

22 A Absolutely.

23 Q The color is a little different in this video than
24 the previous one. I think in the previous video, Mr. Wise
25 had on what appeared to be a black shirt, but is that, in

1 fact, Mr. Wise here?

2 A That is Mr. Wise.

3 Q And that's you walking up, correct?

4 A That is correct.

5 Q At this point, Mr. Bethel goes out the front door.

6 What did you think was going to happen next in terms of
7 where you needed to be or what you were going to need to
8 do?

9 A At that point, I mean, as far as I was concerned, the
10 situation had been deescalated and he had been removed
11 from the bar, so it was nothing.

12 Q Okay. All right. We'll move on to one more angle of
13 the altercation, we'll call this, from camera five.
14 Again, just to orient everyone, you described the pool
15 tables earlier. What is this here? Is that the front
16 door?

17 A That's correct, that is the front door.

18 Q All right. That's the group that we've seen gathered
19 by the front, correct?

20 A That's correct.

21 Q Just before Mr. Miller throws the drink; is that
22 right?

23 A That's correct.

24 Q Once you and Mr. Bethel went down to the ground and
25 you began to separate, why did you disengage from him?

1 Why didn't you physically engage with him at that point?

2 A Because I wasn't attacking him. I was deescalating
3 the situation. I was trying to remove him from the
4 property. It was not an attack.

5 Q Is that you?

6 A That's correct.

7 Q And one other question, where does Mr. Lott go after
8 he's been shot? Is that him?

9 A That is Mr. Lott right there. I think behind the
10 pool table, underneath, I believe.

11 Q Camera 11, what is this depicting?

12 A I'm sorry, will you repeat the question?

13 Q What is this depicting?

14 A So that camera is, essentially, showing the shooting
15 as it happens from that angle of the bar. That one is
16 closer to the men's restroom door.

17 Q That was you?

18 A Yeah, going back towards the towels behind the bar.

19 Q All right. Two more angles and then we'll move on.
20 Camera three, this is kind of looking from towards the
21 front -- from the front door to the back of the bar; is
22 that right?

23 A The back is located, if you walk through the front
24 doors, it would be to your immediate right of the farthest
25 right, so yes.

1 Q I see you having to crawl away. Who is this again?

2 A That is Greg Martin.

3 Q Okay. And Mr. Lott was on the other side of the pool
4 table, right?

5 A That is correct.

6 Q Again, we're on camera three at 2:29 and 20 seconds.
7 You're about to come back in the frame. What are you
8 trying to do when you come back in the picture?

9 A I'm trying to get towels to help stop Greg's
10 bleeding.

11 Q What ends up happening to you?

12 A I'm notified that I have a hole in my neck and I'm
13 told to, essentially, put pressure on that and lay down to
14 keep from bleeding out.

15 Q Did you, essentially, stay there until EMS arrived?

16 A I did.

17 Q When EMS got there, what did they do?

18 A If I remember correctly, they, basically, pulled me
19 up and put me in an ambulance and took me to the hospital.

20 Q All right. And the last camera angle. I'll go back
21 to camera six, which was the front door looking out in the
22 parking lot, correct?

23 A That is correct.

24 Q This is just about before 2:28 a.m. And what are we
25 looking at here coming up on 2:28?

1 A We are watching the defendant and the people that
2 were with him exiting the building.

3 Q So those two individuals, the male and female there,
4 were they part of -- well, let me ask you this, back up.
5 Who did those two individuals arrive to McCary's with?

6 A I believe they arrived with the defendant.

7 Q Did anyone else -- did you ever see anyone else from
8 the group of patrons, employees go outside the bar at this
9 point?

10 A I did not.

11 Q So you said EMS came, right?

12 A That's correct.

13 Q Took you to the hospital?

14 A Uh-huh.

15 Q When you got there, what did they do to you? Do you
16 remember?

17 A I don't. They, essentially, put me to sleep,
18 essentially, so they could put a breathing apparatus like
19 a trachea down my throat. I woke up a day or two later,
20 something like that. And they stopped the bleeding,
21 essentially. That's all they did was stop the bleeding.

22 Q Did they operate on you?

23 A They did not. I was told that as far as where it was
24 located, it would do more damage to take it out to try and
25 operate.

1 Q So where is the projectile now?

2 A It's still in my neck.

3 Q Now, we talk earlier about -- let me back up. What
4 kind of treatment did you have to receive for being shot
5 at?

6 A Like, physical medical treatment or just treatment in
7 general?

8 Q General?

9 A Okay. Physically, like I said, they pretty much
10 stopped the bleeding, some wounds for that. I was on
11 psych leave for a few months. I was on post-trauma meds.

12 Q You talked earlier a little bit about some of the
13 things that were said and the engagement that you had with
14 Mr. Bethel and everyone else by the front of the bar. So
15 it's fair to ask, we saw you take what appeared to be a
16 shot of liquor, right?

17 A Absolutely.

18 Q Can you describe whether you were partying or what
19 your state of mind was like as all this was occurring?

20 A Absolutely not. I had been working that long. That
21 shot was, essentially, like, well, it's going to be
22 uncomfortable, you know what I mean. It's uncomfortable
23 for me to say this to him, essentially. Like, I didn't
24 have a bad rapport with him. I'm the bearer of bad news,
25 essentially. Down she goes, I'll get it over with,

1 essentially, is my thought process.

2 Q Back at this time in 2019, were you also battling
3 some substance abuse issues?

4 A Absolutely. I was a heroin addict.

5 Q Absolutely. Had you used on this particular night?

6 A I had.

7 Q Can you describe for the jury how that did or did not
8 impair your judgment or how that impacted you that night?

9 A Absolutely. I had a routine. I could not at that
10 point in my life function at all without the drugs, so I
11 had to do it in order to work, but I had to -- there was a
12 shot for being able to function and there was a shot if I
13 was trying to quote, unquote get high. At that point,
14 maybe 9:30, something like that, hours before this even
15 happened, before I came to work.

16 Q So in terms of your ability to think or your reflexes
17 or anything like that, was that impaired as a result in
18 your mind?

19 A Not in my mind at all.

20 Q Do you still use heroin?

21 A Absolutely not.

22 Q What did you do afterwards to try to deal with that?

23 A I kept using. It got worse. I went to detox and
24 then I did -- I was lucky enough to do three years in Drug
25 Court.

1 Q Did you bottom out eventually with being arrested on
2 a drug charge in Lexington County?

3 A Absolutely, that was before I worked at McCary's,
4 though. That was two to three years before I even got
5 there I got those charges. I just hadn't been convicted.

6 Q I see. And then you, ultimately, did a treatment
7 program as a result?

8 A I did treatment and probation. It was part of my
9 deal.

10 Q And you said you no longer use, correct?

11 A That's correct.

12 Q Did you ever go back to McCary's?

13 A I mean, I have been back there, but not to work.

14 Q You didn't go back to work after this incident?

15 A I did not.

16 Q And your current job, you don't have to name where,
17 but how long have you been at your most recent job?

18 A So August of 2019, so December of 2019 I've been in
19 that job.

20 Q That's in the service industry as well?

21 A That's in the bar industry.

22 Q Last question, Mr. Jenkins. Just, again, your goal
23 when you approached Mr. Bethel at the door was to do what?

24 A It was just to have him leave the establishment. I'm
25 mutual, you know, I'm just doing my job.

1 MR. GOLDBERG: Thank you, sir. Please answer any
2 questions of Mr. Kata?

3 THE COURT: Mr. Kata.

4 MR. KATA: May it please the Court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION:

7 BY MR. KATA:

8 Q Good afternoon, Mr. Jenkins.

9 A Good afternoon.

10 Q How long had you been working at McCary's?

11 A Three to four months at this point.

12 Q You testified a moment ago your relationship with
13 Mr. Bethel had been pleasant?

14 A Yes. We had no issue whatsoever.

15 Q You guys would banter?

16 A Absolutely.

17 Q And, in fact, the night of this incident, I mean, you
18 did not -- you had no knowledge that he was banned from
19 McCary's, did you?

20 A Until the night of, correct.

21 Q And someone informed you of that that night?

22 A That's correct.

23 Q Let me ask you about that. Let's just say there's
24 some other person that's banned?

25 A Uh-huh.

1 Q How do you guys communicate about that between you
2 and your employer? Is there a list, is there a
3 photograph, what is there?

4 A That would be up to the person that made that
5 decision to ban them.

6 Q Okay.

7 A As for me, I would make a list because documentation
8 is key, but it is a privately owned bar, so there is not a
9 corporate structure as to how to handle that on paper to
10 each individual.

11 Q Understood. So while we can agree that there being
12 paperwork would be the best practice, there was no
13 paperwork on this case?

14 A Absolutely.

15 Q In fact, when you walked over to Mr. Bethel and told
16 him, he was surprised about that, wasn't he?

17 A I cannot say how he felt. I can say how he acted,
18 but I can't say exactly if he was or he was not.

19 Q Fair enough. Let's go to the video of the bar.

20 (WHEREUPON, the video was played.)

21 Q All right. We're looking at the bar. I'd like to go
22 back over who everybody is. This is you?

23 A That is me.

24 Q Okay. You're an employee and bartender?

25 A That's correct.

1 Q And this is Mr. Martin?

2 A That's correct.

3 Q He's an employee?

4 A That's is correct.

5 Q Who is this?

6 A That's Christopher Lott.

7 Q That's Christopher Lott. Is he employed by the club?

8 A He is not from my understanding.

9 Q All right. And who is this in the white shirt?

10 A That is John.

11 Q Is he employed by the club?

12 A He is not.

13 Q And let's go, is Tolliver Wise on this video?

14 A He is.

15 Q Where is Tolliver Wise?

16 A Tolliver is the one closest to the camera. He's the

17 tall gentleman, white shirt.

18 Q That just picked up the bag?

19 A That just picked up the bag and gave Chris a hug,

20 that's correct.

21 Q Is he an employee at the club?

22 A He is not a payroll employee, he is not.

23 Q All right. So they're patrons?

24 A Yes.

25 Q That you had been serving that night?

1 A I can't say for sure. I, obviously, just served
2 Chris a drink and everything. So I served him, at least,
3 one drink.

4 Q Let's take you to the camera seven. Of course, you
5 recognize this?

6 A I do. I recognize this well.

7 Q And this is the doorway?

8 A That's correct.

9 Q Let's go to State's Exhibit No. 2. Do you recognize
10 that photograph?

11 A I do.

12 Q And this is a photograph of the door, correct?

13 A That's correct.

14 Q And this door, while it does have advertisements on
15 it, I mean, you agree that you can see through this door?

16 A If you're looking through the advisements. You
17 cannot see through the advertisements. You can see
18 through the glass that the advisements are not covering.

19 Q So the glass is visible?

20 A The glass not covered by the advertisements, correct.

21 Q Okay. So it's not like that door in the corner of
22 the courtroom right there that you can't see anything,
23 correct?

24 A Correct.

25 Q This is Tolliver here, a patron?

1 A That's correct.

2 Q And you testified that's Mr. Bethel, the one that
3 just gave Tolliver a hug?

4 A Yes. That's correct.

5 Q Who is that again?

6 A That is John.

7 Q John. You're walking up. Your testimony is that you
8 were trying to deescalate everything?

9 A First, I was informing him that he was not allowed in
10 there. There is nothing to deescalate at that point.

11 Q At that point in time, you were putting him on
12 notice?

13 A I was letting him know that he was banned. I had to
14 let him know that he was banned.

15 Q And your intention in walking up to him and having
16 that conversation was to?

17 A It was to inform him that he was no longer welcome or
18 allowed into the club and he had to leave because he was
19 not welcome.

20 Q You were engaging almost as the role of the
21 peacekeeper?

22 A Absolutely. You see my hands in my pocket.

23 Q Now, at this point right here, who is that?

24 A That's Christopher Lott.

25 Q Let's watch that part again. He actually walks up

1 and slides in between you and Mr. Bethel, doesn't he?

2 A He did, that's correct.

3 Q And actually stepped in and almost pressed you almost
4 to the side so that he was in between you and Mr. Bethel?

5 A I wouldn't say he pressed me. That's a little much.

6 Q But he got in between you and Mr. Bethel. And he's a
7 customer?

8 A That is a customer.

9 Q At this point right here, how close is Mr. Tolliver
10 to Mr. Bethel at that point in the conversation?

11 A At that point, they're as close as you and me.

12 Q And at this point, you're trying to deescalate?

13 A It hadn't escalated yet. They're just talking.

14 Q But you weren't escalating anything?

15 A Nothing had been escalated. They were just talking
16 at this point. Everyone was talking.

17 Q So everybody was just talking until John John?

18 A That and doing things to try to deescalate it.
19 That's when it escalated, I'd say.

20 Q So nothing escalated until John John escalated it?

21 A Until that drink was thrown. But I mean, that
22 depends. I'm a bartender by trade. Alcohol has never
23 killed anyone unless you ingest it. I've never had a
24 condom being put on me, herpes, personally, but I'm very
25 careful with acids and things like that so... [sic]

1 Q Okay. I'll fast forward it. It's the same angle.

2 You walk up here, correct?

3 A That's correct.

4 Q Everybody is just talking. Nothing is being

5 escalated?

6 A No, just talking at this point.

7 Q At this point, Mr. Tolliver is very close to Mr.

8 Bethel, correct? Can you see what kind of hand motion

9 he's doing at Mr. Bethel? Is he making a motion like
10 this?

11 A I can't see where his fingers are. It looks to me
12 like his hand is flat, like a soothing gesture, but it's a
13 grainy video.

14 Q There's no doubt he was animated?

15 A That was Tolliver Wise.

16 Q And John John throws the drink and then comes at him
17 with his arms?

18 A I would say that John John threw the drink and
19 reacting to the fist going back and forth, I would say
20 from when I was watching.

21 Q This is Tolliver Wise right here, the individual in
22 the black shirt?

23 A That's correct.

24 Q That person in the black shirt, that's Tolliver Wise,
25 the person with his elbow high?

1 A I believe so.

2 Q He's putting his hand like this?

3 A That's not what I see, but I can't say.

4 Q Is that Tolliver Wise's elbow?

5 A I can't say if that's an elbow or not.

6 Q But that person is Tolliver Wise, no doubt about
7 that?

8 A That person is Tolliver Wise, yes.

9 Q And he's standing right in front of State's Exhibit
10 No. 2?

11 A He is standing in front of the door, that's correct.

12 Q The door?

13 A He is standing by that door.

14 Q Do the patrons of the bar ordinarily take such an
15 active role in managing issues?

16 A I wouldn't say managing issues, no. They take a role
17 when it is a key role they do try to speak sense into one
18 another because it is a community like that.

19 Q Because if they wouldn't have ever told you that he
20 was banned, there's no record that you have that
21 established that, is there?

22 A Not until that night that it was confirmed to me.

23 MR. KATA: Beg the Court's indulgence.

24 (Pause.)

25 No more questions for this witness.

1 THE COURT: Any redirect?

2 MR. GOLDBERG: Very briefly, Your Honor.

3 REDIRECT EXAMINATION:

4 BY MR. GOLDBERG:

5 Q A couple questions, Mr. Jenkins.

6 A Sure.

7 Q We can start right here. Mr. Kata was asking you
8 about camera seven with Mr. Bethel going out the door
9 right there?

10 A Yes. That's correct.

11 Q And he was talking about Mr. Wise being by the front
12 door, correct?

13 A That's correct.

14 Q At this point, is that door opened or closed?

15 A That door is on its way to being closed. I don't
16 think it's quite closed yet. Closing, closing and closed.

17 Q Okay. And using the same camera seven, we know by
18 now very well the drink is thrown, right?

19 A Correct.

20 Q After Mr. Bethel and Mr. Miller engage right there
21 and you take Mr. Bethel where?

22 A Around the mid section. We end up on the ground.

23 Q Okay. Where is Mr. Miller now?

24 A Mr. Miller is on the opposite side away from him and
25 he's also being restrained from behind.

1 Q Two more quick questions. Mr. Kata asked you about
2 the doors. And, again, this shows Mr. Bethel doing what?

3 A It appears as if he is looking through the windows of
4 the bar.

5 Q And he appears to be how close to said window?

6 A He is eye-to-eye with it, essentially, I would say.

7 Q Okay. You've had occasion to go into this bar
8 through those doors how many times you think, ballpark?

9 A What was the question?

10 Q If you had to guess, how many times have you come up
11 walking through those doors yourself, about how many times
12 do you think you've done that?

13 A A hundred, 120. I've walked through those doors a
14 lot.

15 Q When you approach those towards, how many times are
16 you able to see clearly through them what's going on
17 inside?

18 A You can't really see that clearly. You can't see
19 everything going on like that. You have to get close to
20 it to see through it like that.

21 Q Close like that?

22 A I mean, if I was doing that, it wouldn't be how I
23 would look through it.

24 Q All right. When Mr. Bethel went out and the door
25 closed, in your mind, what was the state of this

1 altercation?

2 A It was done. When you're in a bouncer situation,
3 you're out the doors, you bounce, but you don't follow it
4 through. Like, you're out the door. It's done.

5 MR. GOLDBERG: Thank you.

6 THE COURT: You're welcome.

7 Anything further?

8 MR. KATA: No, Your Honor.

9 THE COURT: Okay. Thank you. You may step down.

10 We'll take a 15-minute break. Please go to the jury
11 room. Please do not discuss the case.

12 (WHEREUPON, the jury left the courtroom at 4:10 p.m.)

13 THE COURT: Okay. We'll take 15 minutes.

14 MR. GOLDBERG: Thank you, Your Honor.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: All right. Are we ready for Mr. Bethel?
17 Ready for the jury?

18 MR. KATA: Your Honor, I spoke with the State and
19 Felicia Bethel and Anthony Bethel are my client's parents.
20 They were both on the witness list and they were
21 sequestered.

22 THE COURT: You got any problem with them?

23 MR. FOWLER: No problem with that.

24 (WHEREUPON, the jury entered the courtroom at 4:31
25 p.m.)

1 THE BAILIFF: The jury is seated, Your Honor.

2 THE COURT: Okay. Next witness.

3 MR. GOLDBERG: Thank you, Your Honor. The State
4 calls Gregory Martin.

5 THE CLERK: Would you state your full name, please.

6 THE WITNESS: Gregory Devon Martin.

7 THE CLERK: What's your middle name?

8 THE WITNESS: Devon.

9 THE CLERK: Spell it.

10 THE WITNESS: D-E-V-O-N.

11 GREGORY MARTIN, after being duly
12 sworn, testified as follows:

13 THE CLERK: Thank you. Have a seat.

14 DIRECT EXAMINATION:

15 BY MR. GOLDBERG:

16 Q Mr. Martin, good afternoon.

17 A Good afternoon.

18 Q Can you please tell this jury a little bit about
19 where you're from and who you are?

20 A I've lived in South Carolina most of my life. Moved
21 to Indiana to be close to family. Factory work, but I've
22 done, like, bartending, cooking, something in between, but
23 just worked my whole life.

24 Q Okay. And where did you grow up?

25 A Started off in Charleston and moved up here, I want

1 to say, in 2009, been here up until a year ago.

2 Q Taking you back to August 2019. You were working at
3 McCary's Bar at that time?

4 A Yes, sir.

5 Q How long had you been working there?

6 A Five, six months, I would say.

7 Q We've heard a little bit about it, but tell the jury
8 a little bit about what your role was there at McCary's.

9 A I was bar back, slash, cook, just made food, ordered,
10 restocked beer at the bar, glasses, stuff like that.

11 Q And on this particular night, August 19th of 20 --
12 excuse me, August 22nd of 2019, what, if anything, was
13 unusual about that night up to this point?

14 A Wasn't nothing unusual, started off as a normal
15 night, maybe a little bit busier early on than normal, but
16 other than that, it seemed like a good night.

17 Q About what time did you get to work?

18 A About 10:00 or 11:00.

19 Q And as we've seen, this all occurred a little after
20 2:00 a.m. that night. Did your role change at all
21 throughout the night or are you just cooking and bar
22 backing throughout the whole night?

23 A Pretty much, that's what I do the whole night.
24 Sometimes, I go out there and conversate with customers,
25 make sure everything's going good, checking out orders.

1 But pretty much, that's what I do all night.

2 Q How would you describe the atmosphere in McCary's
3 that night?

4 A Very happy, a lot of people laughing having a good
5 time, smiling.

6 Q And you, of course, know Mr. Jenkins, right?

7 A Uh-huh.

8 Q Did you know Tolliver Wise?

9 A Yes, sir.

10 Q And how did you know him?

11 A Tolliver would come there a lot of the nights I
12 worked there, just sit there, have drinks with him. Fun
13 guy. Fun guy.

14 Q What about Christopher Lott?

15 A That was probably the first night I met him. He
16 seemed like a really good guy, too.

17 Q And regarding the defendant, Mr. Bethel, had you seen
18 him in McCary's before?

19 A Yes, sir.

20 Q Can you talk about how often you saw him there?

21 A Maybe once every weekend, once every other weekend.
22 I've seen him up there a couple of times.

23 Q Did you ever have any encounters with him, you ever
24 talk to him or anything like that?

25 A I talked in passing, sometimes making quick jokes

1 here and there. Didn't really have any bad feelings about
2 him or anything like that.

3 Q So this night on August 22nd, what was your
4 understanding about whether or not Mr. Bethel was allowed
5 to be at McCary's?

6 A I knew he was banned, was not allowed to be there.

7 Q And what was that -- in general terms, what was that
8 due to?

9 A The incident that happened --

10 MR. KATA: Objection.

11 THE COURT: Objection is overruled.

12 THE WITNESS: There was an incident that happened a
13 few weeks, at least, a few weeks prior beforehand where he
14 got into an argument with the bouncer.

15 BY MR. GOLDBERG:

16 Q Who was that bouncer?

17 A Kerry Ross.

18 Q Kerry Ross. Mr. Bethel and Mr. Ross got in an
19 argument a couple weeks prior?

20 A Yes, sir.

21 Q That's what you knew gave rise to the banning?

22 A Yes, sir.

23 Q Were you present that night?

24 A Yes, sir.

25 Q Of the prior incident?

1 A Yes, sir.

2 Q Did you -- what, if anything, did you see about this
3 altercation between Mr. Bethel and Mr. Ross?

4 A There was an argument going on between them. Then
5 the defendant exited the building --

6 THE COURT: Just a moment, counsel approach.

7 MR. GOLDBERG: Yes, sir.

8 (WHEREUPON, there was a bench conference.)

9 THE COURT: You may proceed.

10 MR. GOLDBERG: Thank you, Your Honor.

11 BY MR. GOLDBERG:

12 Q So the incident a couple weeks before this involving
13 Mr. Bethel and Mr. Ross?

14 A Yes, sir.

15 Q Can you describe again what you saw leading up to the
16 point that they went outside?

17 A I just remember seeing them arguing, hand motions,
18 just looked like they were talking, like there was nothing
19 good about it.

20 Q And where did Mr. Bethel and where did Mr. Ross both
21 go?

22 A Well, bethel went out the door and Ross stayed
23 inside.

24 Q Where were you, outside or inside?

25 A Inside.

1 Q After you've seen this encounter happen, what, if
2 anything, did you hear?

3 A I heard gunshots outside.

4 Q You didn't ever go outside, though, right?

5 A No.

6 Q And so then coming back to this night, August 19th,
7 you were saying earlier in regards to how you knew that --
8 why you knew Mr. Bethel was not allowed in the bar?

9 A Correct.

10 Q And that it was a result of that incident?

11 A Yes, sir.

12 Q So we saw on camera earlier, and I'm not going to go
13 through every camera angle again, but just a couple of
14 them just to highlight where you are and what you see.
15 This is camera 13 at 2:24 a.m. Is that you behind the bar
16 there?

17 A Yes, sir.

18 Q Moving ahead to 2:26:40, what are you doing here when
19 you get up? Why are you getting up?

20 A I assume this is around the time where the
21 altercation was happening at the door, so probably willing
22 to help out, trying to diffuse the situation.

23 Q And you had seen -- well, had you already seen
24 Mr. Bethel come in?

25 A Yes.

1 Q And, again, we're talking about Ernest Bethel. Is
2 that Mr. Bethel seated right over there?

3 A That is.

4 Q Okay. Moving over to camera seven, 2:26:50 and
5 change. Is that you walking around?

6 A Yes, sir.

7 Q What is your goal as you're walking over there at
8 this point?

9 A Just to make sure everything stays calm. Because I
10 know he's not supposed to be there, but I don't want
11 anybody to get -- I just want everybody to stay calm, just
12 trying to watch the situation.

13 Q What is the status of this door usually at this time
14 of night?

15 A Normally, it should be locked.

16 Q Was it locked on this particular night?

17 A I'm not too sure.

18 Q All right. Now, that's you in the blue shirt, right?

19 A Yes, sir.

20 Q At any point during this whole encounter, we'll call
21 it -- let me back up, who, if anyone, during this
22 encounter did you see brandishing a firearm?

23 A I didn't see anyone.

24 Q How about up to this point?

25 A I still didn't see anything like that.

1 Q Can you describe your recollection of what we just
2 saw happen to you?

3 A Somebody started shooting through the door after the
4 door has been shut and he was pushed out. I assume, I see
5 the video, he brandished the firearm, started firing
6 through there.

7 Q And what did that do to you?

8 A I was shot in my chest and into my heart.

9 Q I'm sorry. Can you repeat that?

10 A I was shot in my chest. It entered my heart. Blew
11 my esophagus apart, blew my liver in half, part of my
12 intestines had to be removed, a lot of other serious
13 things happened.

14 Q How long were you in the hospital?

15 A Twenty-six days.

16 Q Did you have surgery?

17 A Yes.

18 Q More than one?

19 A Yes, sir.

20 Q How many?

21 A I know I had, at least, three major surgeries on the
22 first two days I was in there.

23 Q Were you conscious throughout all of this?

24 A My first three days in there, I guess they had me in
25 a medical coma because I couldn't breathe, I couldn't eat

1 alone. So I don't remember anything until three days
2 later.

3 Q What did you think when you came to?

4 A I forgot it all happened. I saw my family's face and
5 everything came back to me. I couldn't believe it.

6 Q Did you have to undergo any rehab once you were
7 released from the hospital?

8 A They asked me to. Not really.

9 Q Now, this camera three, that's Mr. Lott on that side
10 of the pool table, correct?

11 A Yes, sir.

12 Q Is that you on the floor right there?

13 A Yes, sir.

14 Q What was going through your mind at this point?

15 A I'd been shot, my legs are not working. I'm about to
16 die.

17 Q Were you able to see or talk to Mr. Lott or anything?

18 A He wasn't responsive, but I could see him on the
19 floor.

20 Q He was not responsive?

21 A No.

22 Q And then eventually Mr. Jenkins comes back around,
23 right?

24 A Yes, sir.

25 Q Did you know that he had been shot?

1 A Not at first. And then as people were trying to help
2 out, he was holding his neck. He's got a bullet in his
3 neck, too.

4 Q How about Mr. Wise, did you know that he had been
5 shot?

6 A I didn't find out about Tolliver until two weeks into
7 my hospital stay.

8 Q He was laying on the other side of the bar?

9 A Correct.

10 Q All right. For camera six here -- all right. I want
11 to ask you a little bit about the entrance to McCary's.
12 Where did you usually enter the building?

13 A Front door.

14 Q Front door. Okay. And when you worked there, how
15 was the front door arranged in terms of advertisements or
16 wraps, as they call them, things like that?

17 A They had a lot of wraps on the door, wasn't easy,
18 like, to visualize what's going on behind the door. It's
19 not a clear wrap. A lot of that stuff covers most of what
20 you could see.

21 Q The wraps cover up most of what you could see?

22 A Yes, sir.

23 Q So could you see anything?

24 A Not clearly, if anything, you could see. You might
25 be able to make outlines of people, but you can't make out

1 faces, you can't make out details.

2 Q Moving ahead in time here on camera six. All right.
3 We see Mr. Bethel over here; is that right?

4 A Yes, sir.

5 Q Okay. On the other side of this wall here where he's
6 stand, are there windows over there?

7 A Not windows you can see through. It was just the
8 wall pretty much.

9 Q Just the wall, correct?

10 A Correct.

11 Q So from where he is, the closest point to where
12 anybody could even try to see anything would be where?

13 A If you want to see something clearly from back there,
14 you can't see anything clearly.

15 MR. GOLDBERG: One moment, Your Honor.

16 (Pause.)

17 Thank you, Your Honor.

18 Thank you, Mr. Martin. Those are all my questions.

19 Please answer any questions Mr. Kata has.

20 THE COURT: Mr. Kata.

21 MR. KATA: May it please the Court.

22 CROSS-EXAMINATION:

23 BY MR. KATA:

24 Q Mr. Martin, I'll show you State's Exhibit No. 2,
25 which is a photograph of the entryway to the bar.

1 A Yes, sir.

2 Q Do you recognize that photograph?

3 A Yes, sir.

4 Q Is that an accurate picture of the bar door?

5 A I think so.

6 Q Mr. Martin, you testified a minute ago that you knew
7 that he was banned. Did you ever provide any
8 documentation to him in writing that he was banned?

9 A I wasn't the one who banned him, so I wouldn't be
10 able to provide the documentation of that.

11 Q Was there any behind the bar?

12 A Not that I know of. I don't have the power to ban
13 somebody, so I don't know where the paperwork is.

14 Q That's outside the scope of your employment?

15 A Yes, sir.

16 Q You testified earlier about Kerry Ross getting into
17 an altercation with Mr. Bethel?

18 A Yes, sir.

19 Q You testified that after that altercation, Kerry Ross
20 stayed inside the bar?

21 A That's what I remember.

22 Q Never left?

23 A Never left.

24 Q And that photograph, State's Exhibit No. 2, is an
25 accurate photograph of what the doors looked like that

1 evening?

2 A I think so. It's been three years, so I'm not sure.
3 It looks like those are the doors.

4 Q To the best of your knowledge?

5 A Yes, sir.

6 MR. KATA: Beg the Court's indulgence.

7 (Pause).

8 No more questions, Your Honor.

9 THE COURT: Anything further?

10 MR. GOLDBERG: No.

11 THE COURT: Nothing further. You may step down.

12 MR. GOLDBERG: Your Honor, may we approach the bench.

13 THE COURT: Yes.

14 Stand for a moment, get a good stretch in.

15 (WHEREUPON, there was a bench conference.)

16 THE COURT: So ladies and gentlemen, we're going to
17 stop now for the day and start back at 9:30 tomorrow
18 morning.

19 Please remember you're not to discuss the case with
20 anyone. Inquiring minds would like to know. You'll have
21 to resist the temptation to discuss the case with anyone,
22 do any kind of research or anything concerning the case.
23 It would be unfair for your fellow jurors.

24 You must decide the case in the courtroom with the
25 people who heard the exact same thing that you have heard,

1 not someone out on the streets or at your home. Please do
2 not discuss the case. We'll see you tomorrow morning at
3 what time?

4 THE JUROR: 9:30.

5 THE COURT: Have a good evening.

6 (WHEREUPON, the jury left the courtroom at 4:54 p.m.)

7 THE COURT: All right. Is there anything else before
8 we leave for the day?

9 MR. KATA: Not from the defense.

10 MR. GOLDBERG: No, Your Honor.

11 THE COURT: Okay. We'll resume at 9:30 tomorrow and
12 we'll break about 4:30 tomorrow afternoon.

13 MR. GOLDBERG: Thank you, Your Honor.

14 (WHEREUPON, the proceedings were adjourned)

15 (April 18, 2023).

16 (WHEREUPON, State's Exhibits Nos. 5 - 52 were marked
17 for identification only.)

18 THE COURT: All right.

19 MR. GOLDBERG: Good morning.

20 MR. KATA: Good morning.

21 THE COURT: Are you ready for the jury?

22 MR. GOLDBERG: Your Honor, just briefly before the
23 jury comes, a couple of housekeeping matters. I'm trying
24 to plan out as best I can. I anticipate we'll get through
25 the bulk of our witnesses today. It's possible we could

1 get to the end, just kind of depends on how fast we go.
2 That being said, there are a couple of witnesses who have
3 some quirks with scheduling and childcare issues and
4 things like that. We're trying to work around as best we
5 can.

6 We may have to ask for five or ten minutes here and
7 there, depending on how that shakes. I think we should
8 get through pretty much everybody we have today.

9 THE COURT: Okay.

10 MR. GOLDBERG: I just wanted to make you aware. So
11 if the court could grant some leniency with that if the
12 time comes, I would appreciate it.

13 Then number two, the next witness is the crime scene
14 investigator. We've gone through all the photos with
15 Mr. Kata. I don't believe there's any objections except
16 for one photograph. I'll hand it up to the court.

17 There's a grouping of photos from the inside of the
18 bar, just kind of showing the layout from still photos of
19 where everything is. And there's one photo that's
20 premarked as State's 9 for ID that has Mr. Wise present in
21 the photo. I believe Mr. Kata has an objection to that.

22 MR. KATA: Your Honor, we object to that photo based
23 on 403. I think the prejudice substantially outweighs the
24 probative value of that.

25 THE COURT: What, the body?

1 MR. KATA: Yes, Your Honor.

2 THE COURT: That's a typical photograph that's
3 admitted in my view. I mean, there's no -- typically, a
4 prejudicial photo is something close up, bloody, gory, but
5 just the body is not -- I'm not saying just the body, but
6 a body is not considered unduly prejudicial if it shows --
7 has some probative value. I don't know what your --

8 What's the probative value, Mr. Goldberg?

9 MR. GOLDBERG: Your Honor, it's probative of the
10 interior of the bar, goes to show kind of positioning of
11 everything inside. And the videos show that to some
12 extent, but you can't really see that particular area of
13 the bar where Mr. Wise ends up from that angle.

14 THE COURT: Okay.

15 MR. KATA: Your Honor, I'd just put on the record I
16 think there's other photographs that can establish the
17 layout of the bar. Our position would be the probative
18 value of that photograph is no greater than a number of
19 other photographs that they intend to submit without
20 objection.

21 THE COURT: All right. I'll rule in the course of it
22 being offered after hearing the context of everything. I
23 don't see anything, a 403 violation with the photograph,
24 but I'll rule that it's presented.

25 MR. GOLDBERG: Thank you, Your Honor. The last thing

1 I have -- and I failed to ask Mr. Kata about this, but we
2 have a couple of lay witnesses coming up. I just wanted
3 to make sure we were all on the same page regarding any
4 prior convictions we would be asking about regarding those
5 witnesses, specifically, Mr. Ross, Mr. Miller and
6 Mr. Wright.

7 MR. KATA: We'll be on the same page before they get
8 called, Your Honor.

9 MR. GOLDBERG: Okay. Thank you.

10 THE COURT: Okay. Bring the jury.

11 (WHEREUPON, the jury entered the courtroom at 9:47
12 a.m.)

13 THE BAILIFF: The jury is seated.

14 THE COURT: Good morning. Welcome back, ladies and
15 gentlemen. Day number two.

16 Your next witness, please.

17 MR. GOLDBERG: Thank you, Your Honor. May it please
18 the Court. The State calls Investigator Franklin
19 Rainsford.

20 THE CLERK: Would you state your full name, please?

21 THE WITNESS: Investigator Franklin Rainsford.

22 THE CLERK: Spell your last name, please.

23 THE WITNESS: R-A-I-N-S-F-O-R-D.

24 FRANKLIN RAINSFORD, after being duly
25 sworn, testified as follows:

1 THE CLERK: Thank you. You can have a seat.

2 DIRECT EXAMINATION:

3 BY MR. GOLDBERG:

4 Q Good morning.

5 A Good morning.

6 Q Investigator, will you tell the jury who you are,
7 where you work and what you do?

8 A Investigator Franklin Rainsford. I'm a crime scene
9 investigator with the Richland County Sheriff's
10 Department.

11 Q What is a crime scene investigator?

12 A A crime scene investigator responds out to crime
13 scenes, anywhere from a burglary, homicide, suicide,
14 assaults and other scenes as requested.

15 Q How long have you been in law enforcement?

16 A About 16 years now total, about 11 years in crime
17 scene.

18 Q Okay. And what sort of training and education and
19 experience did you have to become a crime scene
20 investigator?

21 A We have pretty extensive in-house training covering
22 topics from crime scene processing, assessing the scenes,
23 shooting reconstruction, blood stain pattern analysis,
24 crime scene preservation.

25 Q Back in August of 2019, were you working in crime

1 scene in Richland County?

2 A I was.

3 Q Okay. And were you called out to a crime scene at
4 851 Bush River Road?

5 A Yes, sir.

6 Q What was the nature of the call you got?

7 A It was a homicide call.

8 Q Okay. And when you arrived, what did you observe
9 about the scene?

10 A Well, the scene was secured, the parking lot and the
11 inside of the business was secured with crime scene tape.
12 The crime scene log was being maintained at that point.

13 Q Were any of the victims still present on the scene at
14 that point?

15 A I was advised that three victims had been
16 transported, but there was one victim inside the bar
17 unresponsive.

18 Q And that was later identified as Tolliver Wise,
19 correct?

20 A Correct.

21 Q So when you get to a crime scene like this where
22 you've been told there's been a shooting with multiple
23 victims, what is it that you're going there to do and to
24 look for?

25 A To document the crime scene, locate any evidence in

1 and around the building, collect it, preserve it for
2 further analysis.

3 Q Is it your job to do any of the testing at this
4 point?

5 A No, sir, I don't test any substances or items
6 collected at that point.

7 Q And when you say collected, what does that mean?

8 A Depending on the nature of the item, but it's all --
9 I'll photograph an item. I'll see an item of evidence.
10 I'll photograph it, mark it with a marker, photograph it
11 again. Collect it individually, typically, inside of an
12 envelope or a bag or something until I get back to
13 headquarters, at which point, it will be submitted to
14 evidence and property.

15 Q Generally speaking, is it better from your standpoint
16 to collect more rather than less?

17 A Yes, sir.

18 Q And why would that be?

19 A You just don't know what's going to be probative at
20 that time at the scene, so we kind of have one shot to get
21 everything done correctly so we have to collect all those
22 items that we think would be significant later on.

23 Q Even if they may end up not being, right?

24 A Correct.

25 Q All right. So when you got to this scene, what did

1 you begin by doing?

2 A I started by doing a walk-through with the deputies
3 on the scene. They kind of give me a rundown of what they
4 observed. And then at that point, I started taking
5 photographs of the scene. I was assisted by now-Sergeant
6 Humphries and Investigator Pritchard at the scene. But
7 marking and identifying fired cartridge casings and other
8 firearms evidence inside the parking lot. That's where I
9 started and then I worked my way into the building.

10 Q All right. I want to show you a group of photographs
11 here, have you take a look. I'm going to show you first
12 what's been marked as State's 5 through 8. If you can
13 generally describe what those are, just generally
14 speaking.

15 A These would be exterior of the bar.

16 Q And State's 9 through 13, what are those generally
17 of?

18 A These would be overall photographs from the inside of
19 the bar.

20 Q All right. And do all those photographs fairly and
21 accurately depict the bar as it appeared on that
22 particular night?

23 A It does.

24 MR. GOLDBERG: Your Honor, at this time, we'd offer
25 State's 5 through 13 into evidence.

1 MR. KATA: Your Honor, 5 through 8, no objections,
2 No. 9 subject to my previous objection, and no objection
3 to the rest.

4 THE COURT: Okay. Can I see all of them?

5 MR. GOLDBERG: Yes, sir.

6 (Pause.)

7 THE COURT: They are all admitted.

8 MR. GOLDBERG: Thank you, Your Honor.

9 (WHEREUPON, State's Exhibits Nos. 5 through 13 were
10 admitted into evidence.)

11 MR. GOLDBERG: Your Honor, I was going to say the
12 rest of the photographs I have are on a disc that I
13 provided.

14 THE COURT: Okay.

15 BY MR. GOLDBERG:

16 Q Okay. So Investigator Rainsford, if you could just
17 kind of describe for the jury a bit what we're seeing here
18 in 5 through 8.

19 A This photograph is the exterior of the bar looking
20 from Bush River Road back towards the bar. Next
21 photograph is more direct, head on into the bar. And then
22 this last photograph would be the far side of the parking
23 lot looking towards the building.

24 Q All right. And the next group here, if you could
25 identify them by number.

1 A State's Exhibit No. 8 is showing the front doors of
2 the building from the exterior. State's Exhibit No. 9 is
3 the interior just standing inside the front door. State's
4 Exhibit No. 10 is looking to my left or to my right
5 standing inside the bar.

6 State's Exhibit No. 11 is looking towards the back
7 right corner as I'm standing at the door. State's Exhibit
8 No. 12 is if I'm standing at that far back right corner
9 previously mentioned looking back towards kind of the
10 front door in the bar area. And State's Exhibit No. 13 is
11 a photograph of the back left, the area of the bar looking
12 back towards the front door.

13 Q Why is it important to take photographs of the
14 interior and exterior of the crime scene location?

15 A It's just to generally document how the scene is when
16 I first arrived before we start doing any kind of thorough
17 searching and collecting any evidence, just to show us
18 what the scene is like when I was there when I first
19 arrived.

20 Q All right. You indicated a moment ago that you began
21 your investigation by collecting some items that were
22 located in the parking lot, correct?

23 A Yes, sir, fired cartridge casings, or FCC's, and
24 other firearms evidence, which would be like fragments of
25 a bullet or partial copper jackets, things that aren't a

1 full projectile that possibly could come from a firearm or
2 other firearms.

3 Q Okay. You referenced fired cartridge casings, what
4 does that mean?

5 A Fired cartridge casings, when you think of an unfired
6 bullet, kind of the top of it has the bullet or
7 projectile. That's encased in a copper or a brass
8 cylinder. And as the firearm is discharged, the
9 projectile will go out the front of the barrel, the fired
10 cartridge casings is ejected to the side. And that's what
11 I collected is a fired cartridge casings or shell.

12 Q All right. I want to show you now State's 14 through
13 23 for ID, and have you just describe what those are
14 photos of.

15 A These are photographs of the cartridge casings that I
16 collected. At this point, I had gone down and placed
17 markers to identify them and mark them for collection
18 purposes.

19 Q Do these photos fairly and accurately depict those
20 fired cartridge casings as they appeared that night?

21 A They do.

22 MR. GOLDBERG: Your Honor, at this time, we'd offer
23 State's 14 through 23.

24 MR. KATA: Without objection.

25 THE COURT: They're admitted.

1 (WHEREUPON, State's Exhibit Nos. 14 through 23 were
2 admitted into evidence.)

3 BY MR. GOLDBERG:

4 Q All right. Try this a different way. I'm showing
5 you State's 14 and 15.

6 A Marker A is a fired cartridge casing collected in the
7 middle of the parking lot.

8 Q Okay. And then go with State's 16 for now?

9 A That would be three fired cartridge casings that I
10 marked on the driver's side of the vehicle.

11 Q Seventeen, 18 and 19 are?

12 A Closeups of the individual cartridge casing.

13 Q Closeups of 16?

14 A Yes, sir.

15 Q All right. And now, State's 20?

16 A It shows three more fired cartridge casings from the
17 passenger side of the vehicle.

18 Q So this is the opposite side of the car that the
19 first grouping was found?

20 A Correct.

21 Q And 21 through 23?

22 A Close-up photographs of the fired cartridge casings.

23 Q And, again, the reason for the broad photo and the
24 up-close photo is what?

25 A Just to establish where they are in the scene and the

1 closeups show you what each individual item is.

2 Q Channeling back to that more rather than less theory,
3 correct?

4 A Yes, sir.

5 Q Okay. All right. Now, we have State's 24 through 28
6 for ID. Again, what are those?

7 A These are photographs of fired cartridge casings at
8 the further -- in the parking lot away from the building,
9 again, showing the overall and up-close photographs of
10 each individual fired cartridge casings.

11 Q Twenty-four through 28 a fair and accurate depiction
12 as it appeared that night?

13 A Yes, sir.

14 MR. GOLDBERG: Your Honor, I'd offer 24 through 28.

15 MR. KATA: Without objection.

16 THE COURT: Admitted.

17 (WHEREUPON, State's Exhibit No. 24 through 28 were
18 admitted into evidence.)

19 BY MR. GOLDBERG:

20 Q You were talking about State's 24. Can you describe
21 that in relation to the bar?

22 A There was one row of parked cars right in front of
23 the building and then a driveway and then another set of
24 parking spaces. That shows the further lineup of parking
25 spaces away from the bar.

1 Q And 25 through 28 are up-close photos of those
2 casings in 24, correct?

3 A Correct.

4 Q All right. What did you do after you collected those
5 items?

6 A Observed impact points to the front of the bar
7 itself.

8 Q I show you State's No. 2 that's already in evidence.
9 Is that what you're referring to?

10 A Yes, sir.

11 Q When you say impact point, can you describe what an
12 impact point is?

13 A Impact points are what we call projectile or bullet
14 holes, basically.

15 Q At that point, that was the front door, correct?

16 A Yes, sir.

17 Q Once you observed that, did you then move inside the
18 business?

19 A At that point, we did go inside the bar and start
20 further marking evidence, marking items for collection.

21 Q All right. State's 29 through 34. Is that more
22 firearms evidence that you found inside the bar?

23 A Yes, sir, the firearms evidence collected from
24 various locations inside the bar.

25 Q Those photos are a fair and accurate depiction?

1 A Yes, sir.

2 MR. GOLDBERG: Your Honor, we'd offer 29 through 34.

3 MR. KATA: Without objection.

4 THE COURT: Admitted.

5 (WHEREUPON, State's Exhibit Nos. 29 through 34 were
6 admitted into evidence.)

7 BY MR. GOLDBERG:

8 Q Again, these are closeups you said, like, State's 29
9 are more firearms evidence on the floor?

10 A Yes, sir.

11 Q Thirty through 34 are additional closeups; is that
12 right?

13 A Yes, sir.

14 Q How long does it take to process a scene like this
15 one?

16 A It just depends on the size and scope of the scene.
17 This particular one took about three, almost four hours.

18 Q All right. One last grouping of photos regarding
19 firearms evidence. This is State's 35 through 44?

20 A These are, also, other firearms evidence and fired
21 cartridge casing in and around business.

22 Q Are those photos a fair and accurate depiction of
23 what appeared?

24 A Yes, sir.

25 MR. GOLDBERG: Your Honor, we'd offer State's 35

1 through 44?

2 MR. KATA: Without objection.

3 THE COURT: It's admitted.

4 (WHEREUPON, State's Exhibit Nos. 35 through 44 were
5 admitted into evidence.)

6 BY MR. GOLDBERG:

7 Q I'm just going to draw your attention to a couple of
8 these at this point, specifically State's No. 37.

9 A Yes, sir.

10 Q Where is that?

11 A Just inside the doors of the business.

12 Q And then State's No. 40?

13 A Just inside the business right in front of the door.

14 Q What did you have that listed as, that item?

15 A As a projectile.

16 Q Projectile. Did you also observe some impact points
17 inside the bar?

18 A I did. There was one impact point into the side
19 wall, side wall closest to Bush River Road and to the back
20 wall impact appointments.

21 Q Inside the business?

22 A Correct.

23 Q State's 45 through 52 for ID, are those showing
24 impact points from inside the bar?

25 A Yes, sir. These are -- State's Exhibit 45 shows two

1 impact points above the door. 46 shows an overall of the
2 back wall. State's Exhibit 47 shows the two impact points
3 to the back wall. State's Exhibit 48 and 49 are midrange
4 to closeups. State's Exhibit 50 is a closeup of the
5 impact point to the side wall. State's Exhibit 51 is kind
6 of an overall shot of the inside of the bar looking to a
7 side wall. And State's Exhibit 52 is a closeup of the
8 impact point of the back wall.

9 Q Once again, these photos fairly and accurately depict
10 those points?

11 A Yes, sir.

12 MR. GOLDBERG: State's 45 through 52 offered into
13 evidence?

14 MR. KATA: Without objection.

15 THE COURT: It's admitted.

16 MR. GOLDBERG: Thank you.

17 (WHEREUPON, State's Exhibit Nos. 45 through 52 were
18 admitted into evidence.)

19 BY MR. GOLDBERG:

20 Q When you talk about an impact point. I'm going to
21 show you State's Exhibit 52. Is that a good example of
22 what we're talking about?

23 A Yes, sir.

24 Q What happens when a projectile enters a wall?

25 A One of two things can happen. It can either stick or

1 stay in the wall or it can pass through. A penetrating
2 impact point will go into the wall and exit the wall.

3 Q State's 50, another example of that?

4 A Yes, sir, impact point of the wall.

5 Q And then 10 and 11, those were above the front door;
6 is that right?

7 A Yes, sir.

8 Q Marked with your markers number 10 or 11, correct?

9 A Yes, sir.

10 Q All right. We talk a lot about firearms evidence and
11 shell casings, but you're there to collect other evidence,
12 as well?

13 A Yes, sir.

14 Q Did you have an opportunity to collect some other
15 items non-firearms related, as well?

16 A Yes, sir. I also marked and collected some clothing
17 items from the side of the bar, specifically, some black
18 shorts, keys, gray shift, blue shirt, folding knife and
19 some cell phones.

20 Q I got a little bit ahead of myself. Going back one
21 last time to the firearms evidence, what's been marked as
22 State's 57 and 58?

23 A Yes, sir.

24 Q What are the contents of 57?

25 A Fifty-seven is the other firearms evidence that I

1 collected from the scene and projectile?

2 Q And 58?

3 A Fifty-eight is the fired cartridge casings and one
4 projectile in the wall that were collected.

5 Q So the contents of these are the physical items that
6 you just described that we saw in those photos that you
7 actually collected?

8 A The one from the wall, I did not collect. I believe
9 it was collected by Sergeant Holt.

10 Q The other evidence that you referenced, upon
11 collecting them, what to you do with them?

12 A They're individually packaged and I transport them to
13 headquarters. Normally, I would package and collect them,
14 but in this case, those items were turned over to Sergeant
15 Humphries, Sergeant Holt now, to be submitted to evidence
16 and property.

17 Q Okay. All right. Thank you for going back. You
18 were talking before I changed course on you about clothes
19 and other items that you collected. I want to show you
20 State's 53, 54, 55 and 56, and have you just generally
21 describe what those are photographs of.

22 A State's Exhibit 56 is a gray shirt, State's Exhibit
23 55 is a pair of blue shorts or a blue shirt, 53 is a
24 folding knife. State's Exhibit 54 seems to be a midrange
25 photograph with two pool tables that were inside the

1 business.

2 Q All right. Do those fairly and accurately depict the
3 scene?

4 A Yes.

5 MR. GOLDBERG: Your Honor, I'd offer State's 53
6 through 56.

7 MR. KATA: Without objection.

8 THE COURT: So admitted.

9 (WHEREUPON, State's Exhibit Nos. 53 through 56 were
10 admitted into evidence.)

11 BY MR. GOLDBERG:

12 Q Let's talk about 53 and 54 first. You referenced a
13 folding knife; is that right?

14 A Yes, sir.

15 Q Can you hold up that photo and show the jury where
16 that is located in that photo?

17 A That would be up here.

18 Q Under your finger?

19 A Yes, sir.

20 Q And, generally, where is that in the bar?

21 A In front -- or behind the front door, there were two
22 pool tables inside the business. And this was in between
23 the two pool tables.

24 Q Okay. And in State's 53, what is the nature of the
25 folding knife? Is it opened or closed?

1 A It's closed.

2 Q Is that the way it was when you located it on the
3 floor?

4 A Yes, sir.

5 Q And, again, you said in 54, this is over by the two
6 pool tables, correct?

7 A Yes, sir.

8 Q I see the blue shirt there, as well. And that's
9 State's 55. And then 56 is the gray shirt?

10 A Yes, sir.

11 Q Those were, also, found near the pool tables; is that
12 right?

13 A Yes, sir.

14 Q And those were -- I'm going to show you the actual
15 shirts. Those were the shirts left behind by Mr. Martin
16 and Mr. Lott, correct?

17 A I do not know whose shirts they were. I marked it,
18 photographed it and collected it.

19 Q All right.

20 (WHEREUPON, State's Exhibit No. 53 - 68 were marked
21 for identification only.)

22 BY MR. GOLDBERG:

23 Q All right. This is State's 59 for ID. If you would
24 just check out that label there.

25 A Yes, sir, that's the gray shirt.

1 Q All right. Is that the shirt?

2 A Yes, sir.

3 Q And then 60, what is State's 60?

4 A That's the blue shirt.

5 MR. GOLDBERG: Your Honor, at this time, we'd offer
6 State's 59 and 60 into evidence.

7 MR. KATA: Without objection.

8 THE COURT: They're admitted.

9 (WHEREUPON, State's Exhibit Nos. 59 and 60 were
10 admitted into evidence.)

11 BY MR. GOLDBERG:

12 Q All right. State's 59, gray shirt, what would be the
13 reasoning, generally, for collecting an item such as this?

14 A Again, for documentation and to process or determine
15 if it was involved or the nature that it was involved
16 inside the scene, possibly, locate the victim who was shot
17 with it and just to document that it was there on the
18 scene with reddish-brown stains, bullet holes in them.

19 Q Do you see any defects or holes in this item?

20 A Yes, sir.

21 Q Can you point that out?

22 A (Witness complied.)

23 Q Right in the middle. And this item appears to have
24 been cut in some way. Are you familiar with what EMS does
25 when they arrive at scenes like this?

1 A Roughly, yes, sir. They will render aid and, often,
2 that will involving cutting or removing clothing items
3 from victims on the scene.

4 Q All right. State's No. 60 now. Let me show that to
5 you. Again, this, also, appears to be cut, as well.
6 Would that be for the same reason?

7 A Yes, sir.

8 Q Do you see any potential defects or holes in this, as
9 well?

10 A Yes, by the arm, there's a reddish-brown stain
11 presumably blood on the shirt.

12 Q Here on the right side over by my right hand?

13 A Yes, sir.

14 Q Upon collecting all the clothing items that you
15 talked about, what, if anything, did you do after that?

16 A Then we addressed -- I observed the black male
17 identified as Tolliver Wise being close to the bar with
18 his head leaning towards the bar towards the front door.

19 Q State's No. 9 that's already admitted. Is that him
20 in the picture?

21 A Yes, sir, on the left side of the photograph.

22 Q All right. So what did you do when you went over to
23 Mr. Wise?

24 A At that point, the deputy coroners were on scene.
25 Generally, on homicides or death scenes, the Coroner's

1 Office and crime scene work together and collect --
2 document the body and collect any evidence that may be
3 there.

4 Q Okay. All right. Upon finishing up your
5 investigation and collection of this crime scene, did you
6 have any further involvement with this investigation?

7 A No, sir, but then I did -- I was requested to provide
8 a crime scene sketch a few weeks ago. I did create that
9 and that would be the next involvement.

10 Q Just to kind of help orient the location of
11 everything?

12 A Yes, sir, but I did not process or document anything
13 else that night.

14 Q All right. Thank you, sir. Those are all the
15 questions?

16 THE COURT: Cross-examination?

17 MR. KATA: May it please the Court.

18 CROSS-EXAMINATION:

19 BY MR. KATA:

20 Q Good morning.

21 A Good morning.

22 Q Investigator, how many crime scenes have you
23 photographed in your career?

24 A Hundreds by this point.

25 Q And I'm going to show you what's marked as State's

1 Exhibit No. 8. It's a photograph of the front doors of
2 the bar; is that correct?

3 A Yes, sir.

4 Q And you talked about impact points and you mentioned
5 that there were impact points in the glass?

6 A Yes, sir.

7 Q Okay. Were you able to determine how many impact
8 points there were in that glass?

9 A To the glass itself or to the doors overall?

10 Q To the glass on the doors?

11 A To the glass. I'd have to look back at the photo to
12 be accurate. Seven to the left-hand side of the door and
13 one on the right-hand side. There was one impact point to
14 the frame of the door.

15 Q Okay. You, also, testified that you collected shell
16 casings from within the bar, correct?

17 A Yes, sir.

18 Q Okay. And going back to impact points on the glass,
19 I mean, this is clear glass right here, right?

20 A Of some sort.

21 Q Some sort of laminate or plastic?

22 A Correct.

23 Q Now, it appears from the photographs and based on
24 your experience, I mean, when an impact point hits a piece
25 of glass, it disrupts the integrity of the glass, correct?

1 A Possible, yes.

2 Q It's likely?

3 A Uh-huh.

4 Q So it would be safe to say that the glass that's in
5 photograph eight of the State's Exhibit is more difficult
6 to see through after the impact points than before they
7 were there, correct?

8 A I don't personally know what these doors would have
9 looked like beforehand. There is that kind of a screen if
10 you look at a photograph of an ad for beer on it, so I
11 don't know how well you'd be able to see inside versus
12 outside.

13 Q Because your role is coming in after an event?

14 A Correct.

15 Q And not before?

16 A Correct.

17 Q But you would agree an impact points disrupts the
18 integrity of whatever substance it hits?

19 A Depending on what the substance is.

20 Q And the knife that you collected, that was by these
21 two doors?

22 A It was further back in the bar area, but yes, it was
23 inside the bar.

24 MR. KATA: No more questions.

25 THE COURT: Anything further?

1 MR. GOLDBERG: No, sir.

2 THE COURT: Thank you, sir.

3 Next witness.

4 MR. GOLDBERG: Your Honor, the State calls Sarah
5 Holt.

6 THE CLERK: Would you state your full name, please?

7 THE WITNESS: Sarah Holt.

8 THE CLERK: Could you spell your first name, please?

9 THE WITNESS: S-A-R-A.

10 SARA HOLT, after being duly sworn,
11 testified as follows:

12 THE CLERK: Thank you. Be seated.

13 DIRECT EXAMINATION:

14 BY MR. GOLDBERG:

15 Q Good morning.

16 A Good morning.

17 Q Will you please tell this jury a little bit about
18 yourself, where you work and what you do?

19 A Sarah Holt. I'm the sergeant over the crime scene
20 unit at the Richland County Sheriff's Department. I've
21 been in the crime scene unit about seven years now. I've
22 been in law enforcement for 13. And my job is to oversee
23 the crime scene unit, conduct training with the new
24 employees, conduct continuous training with the older
25 employees. I process scenes. I'm also the on-call

1 supervisor every fourth week, so that means if at night
2 somebody -- one of our investigators needs additional
3 help, they will call me out.

4 Q What were you doing in August of 2019 with the
5 department?

6 A I was -- I believe I was a senior analyst at that
7 point.

8 Q Okay. Did you have an opportunity to respond to this
9 crime scene location on August 22nd?

10 A I did.

11 Q And what did you do upon arrival?

12 A Upon arrival, I assisted Investigator Rainsford with
13 marking evidence and marking impact points and then
14 attempt to collect projectiles from those impact points.

15 Q Can you talk about why it would be necessary for more
16 than one investigator to be there?

17 A It's always better to have another set of eyes at a
18 seen. There's some stuff that one investigator may not
19 see that another investigator would see. Especially if
20 you've been at the scene for several hours, a new set of
21 eyes going in may be able to catch some stuff that may be
22 missed.

23 Q And you referenced some impact points that you
24 assisted with?

25 A Correct.

1 Q Can you tell us what you did with those?

2 A So there were three impact points that were on the
3 wall inside of the business, so my job was to try to
4 collect projectiles from inside the impact points.

5 Q Did you find any?

6 A I collected one.

7 Q Which impact point was that from?

8 A That would be from impact point number 12.

9 Q Thirteen and 14 had no projectile?

10 A We were not able to recover projectile from 13 and
11 14.

12 Q What might be some reasons why that would be?

13 A Depending upon the impact point if it did perforate
14 the building, which means it would have gone through the
15 entire building or out on the other side somewhere. It,
16 also, could have dropped inside the wall making it hard to
17 be able to collect it if it was in a cinderblock or
18 somewhere. The other thing is if it hits the wall, it
19 could have fragmented into a million tiny pieces, which
20 means we wouldn't have been able to collect it.

21 Q All right. Investigator Rainsford talked about a
22 number of fired cartridge casings and other firearms
23 evidence that was collected at the scene that night, some
24 of which he turned over to you. What did you do with
25 those items upon receiving them from him?

1 A So once I received those items, I went back to
2 headquarters and I processed those items for fingerprints
3 and DNA. Once those items were processed, I then packaged
4 them and submitted them to evidence and property.

5 Q Why would you try to process a fired cartridge casing
6 and the like for fingerprints?

7 A Any piece of evidence we potentially could get a
8 fingerprint or DNA off of, we want to process it to make
9 sure that we do our job to the best of our ability.

10 Q Were you able to get any identifiable fingerprints
11 from any of that firearms evidence?

12 A I was not.

13 Q And those items you said were submitted into
14 evidence?

15 A They were.

16 Q Were they altered or tampered with in any way?

17 A Not that I'm aware of.

18 Q And you would not have done any further analysis
19 regarding the firearms or comparing it to weapons or
20 anything of that nature, correct?

21 A No, I would not have.

22 Q That would be somebody else?

23 A Correct.

24 Q In fact, in this case, that was Investigator Roach?

25 A It may have been, yes.

1 Q All right. Did you have further involvement after
2 that particular night?

3 A I did. After I processed the evidence at our lab, I
4 then attended the autopsy of Mr. Wise.

5 Q What was the purpose of you attending the autopsy?

6 A So when we go to autopsy, we just take additional
7 photographs of the body. We are then given anything that
8 may have been collected from the body of evidentiary
9 value, such as projectiles. We, also, collect the
10 clothing. I will, also, collect DNA swabs from the
11 victim. I will collect nail scrapings, gunshot residue
12 kit. Anything else that may be of potential evidence on
13 the body, I will collect it.

14 Q Did you, in fact, collect a projectile from the
15 autopsy of Mr. Wise?

16 A I did. I receive the projectile from the autopsy.

17 Q State's No. 62 for ID. What do you recognize that to
18 be?

19 A This is the projectile from the back of Mr. Wise that
20 I received from the coroner's office from autopsy.

21 Q And State's No. 63?

22 A This is the black t-shirt that I collected from
23 autopsy.

24 Q And you then submitted those into evidence?

25 A I did.

1 MR. GOLDBERG: Your Honor, at this time, we'd offer
2 State's 62 and 63?

3 MR. KATA: Without objection.

4 THE COURT: They're admitted.

5 (WHEREUPON, State's Exhibits Nos. 62, 63 were
6 admitted into evidence.)

7 BY MR. GOLDBERG:

8 Q This is from State's 63, the shirt you collected,
9 correct?

10 A Correct.

11 Q Does it appear to have any defects of any kind in
12 there?

13 A There is one defect.

14 Q Is that located here by my left hand?

15 A Correct. It's up at the top right.

16 Q And, again, this shirt appears to have been cut.
17 What Investigator Rainsford just talked about, that same
18 reason here most likely?

19 A Correct. If it hadn't been cut by EMS, when we get
20 to autopsy, if it's still on the body, the assistant to
21 the pathologist will cut the clothing off sometimes if
22 it's hard to get the clothing off.

23 Q Upon concluding your role there at autopsy, did you
24 have any further involvement in the case?

25 A I did not.

1 MR. GOLDBERG: I believe those are all my questions.

2 Thank you.

3 MR. KATA: No questions for this witness.

4 THE COURT: Thank you. You may step down.

5 Next witness?

6 MR. GOLDBERG: The State calls Michelle Seay.

7 THE CLERK: Would you state your full name, please?

8 THE WITNESS: Michelle Seay.

9 THE CLERK: Spell your last name, please.

10 THE WITNESS: S-E-A-Y.

11 MICHELLE SEAY, after being duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION:

14 BY MR. FOWLER:

15 Q Investigator Seay, what to you do for the sheriff's
16 department?

17 A I am currently employed at the Richland County
18 Sheriff's Department as a crime scene investigator and
19 latent print analyst.

20 Q What was your involvement in the case that we're here
21 for today?

22 A My involvement in the case that we're here today was
23 I attended the autopsy of Christopher Lott.

24 Q What did you do at the autopsy of Christopher Lott?

25 A At the autopsy for Christopher Lott, I documented the

1 decedent's body and I collected buccal swabs, standard
2 head hairs and pubic hair, a GSR kit, which is a gunshot
3 residue kit and I received projectiles from the coroner's
4 office.

5 Q What to you mean you received projectiles from the
6 coroner's office?

7 A As a crime scene investigator, I don't personally
8 collect projectiles from the bodies. Those are collected
9 by the pathologist, who then hands them over to a
10 representative from the coroner's office. From there,
11 they are chained over to me that, meaning that chain of
12 custody shows the items were handed from one individual to
13 another, so I received them.

14 Q What did you do with them after you received the
15 projectiles?

16 A I packaged them in an envelope, sealed them in
17 evidence tape, initialed and dated it and I placed it in
18 evidence and property.

19 Q I'm going to show you what's been marked as State's
20 61. Do you recognize this?

21 A I do.

22 Q What is that?

23 A It was an envelope containing the two projectiles and
24 the fragment that I received during the autopsy.

25 Q So can you hold these up and tell us what they are?

1 A This one is a projectile that the pathologist
2 collected from the body. They were packaged this way not
3 by me. They were actually packaged this way by the
4 coroner's office. The larger envelope is what I packaged
5 them in. This is a projectile that was, also, collected
6 from the body. And these are the fragments collected from
7 the body.

8 Q All right. So going back, what was that one again?

9 A Projectile.

10 Q And that was recovered from where?

11 A I would need to see the envelope to see what was
12 written on it. It's posterior abdomen.

13 Q And that's the same with these other two?

14 A Yes, sir. It's written on there.

15 Q And before I open this envelope, that's how you
16 submitted it into evidence?

17 A Yes, sir.

18 Q That's how you received it?

19 A Yes, sir.

20 MR. FOWLER: Your Honor, at this time, I'd move
21 State's 61 into evidence?

22 MR. KATA: No objection.

23 THE COURT: So admitted.

24 (WHEREUPON, State's Exhibit No. 61 was admitted into
25 evidence.)

1 MR. FOWLER: No further questions.

2 MR. KATA: No questions of this witness.

3 THE COURT: You may step down.

4 Next witness.

5 MR. FOWLER: Your Honor, the State called Kerry Ross.

6 THE COURT: Let's all stand for a moment, get a

7 little stretch in.

8 (Pause).

9 THE CLERK: State your name for the record.

10 THE WITNESS: Kerry Ross.

11 THE CLERK: Spell your first name, please.

12 THE WITNESS: K-E-R-R-Y.

13 KERRY ROSS, after being duly sworn,
14 testified as follows:

15 THE CLERK: Thank you. Have a seat right there.

16 DIRECT EXAMINATION:

17 BY MR. FOWLER:

18 Q Mr. Ross, where do you work?

19 A McCary's Bar and Grill.

20 Q All right. What do you do there?

21 A I'm a bartender and assistant manager.

22 Q And what are your duties as bartender and assistant
23 manager?

24 A Serving drinks, have conversation with the patrons, a
25 multitude of different things.

1 Q Have you ever worked the door?

2 A I have.

3 Q How long have you been at McCary's?

4 A Over five years now.

5 Q So you were working there back in August of 2019?

6 A Yes.

7 Q Now, do you remember the night of August 22nd, 2019,
8 when the shooting took place out there?

9 A Vaguely, yes.

10 Q But you weren't there?

11 A I wasn't there.

12 Q Okay. But you were there a week or two prior?

13 MR. KATA: Objection, 404(b).

14 THE COURT: Counsel approach.

15 (WHEREUPON, a bench conference was held.)

16 MR. FOWLER: Judge, this is what we talked about
17 yesterday. This is just the bouncer that banned him.

18 THE COURT: What is the objection?

19 MR. KATA: My objection of the prior act.

20 THE COURT: He's going to say he kicked him out the
21 week before.

22 MR. FOWLER: He's going to say he kicked him out the
23 week before and then subsequent to that, he went back
24 inside and heard gunshots.

25 THE COURT: Okay. I'll overrule your objection.

1 The objection is overruled.

2 BY MR. FOWLER:

3 Q So a week or two prior to the shooting that we're
4 here for today, were you involved in an incident involving
5 Mr. Bethel?

6 A Yes, sir.

7 Q Tell us about that incident.

8 A He came to the bar. He had a few people with him.
9 Some didn't have their ID, so they didn't get in. He came
10 in, was in for awhile. I don't remember, like, the
11 specific timeframe he was in there. Throughout the time
12 he was in there, he punched me and then walked out the
13 door. I banned him, told him not to come back. He walked
14 around the building. I looked at the cameras, walked
15 through the building to the back door and he was firing a
16 weapon up into the air.

17 Q So let me back up, there's a lot there. So why did
18 he punch you to start?

19 A I have no idea.

20 Q But at that point, you made a decision that he was
21 banned from the club?

22 A Yes.

23 Q So after he punched you, where did the defendant go?

24 A Outside. He walked out the front door.

25 Q And around the building?

1 A Yes.

2 Q And you followed him?

3 A I walked around. I started to follow him and I went
4 back in and I walked through the building to go through
5 the back door.

6 Q Because he was behind the establishment?

7 A Yes.

8 Q When you got outside, what did you say to him?

9 A At that point, I really didn't say anything. I just
10 opened the door. He was standing by the door and started
11 firing into the air.

12 Q Before that, you told him he was banned from the
13 club?

14 A Yes. After he punched me and he walked through the
15 front door, I told him he was banned, not to come back
16 anymore.

17 Q And that's this man right here?

18 A Yes.

19 Q And after that, you heard the gunshots?

20 A Yes.

21 Q So from then on, he was banned from McCary's; is that
22 correct?

23 A That's it.

24 Q In the nights that you worked at McCary's between
25 that incident and the night of August 22nd, the shooting

1 we're here for today, did you ever see the defendant at
2 McCary's again between those two times?

3 A No, no.

4 MR. FOWLER: No further questions, Your Honor.

5 THE COURT: Yes, sir.

6 MR. KATA: May it please the Court.

7 CROSS-EXAMINATION:

8 BY MR. KATA:

9 Q Good morning, Mr. Ross.

10 A Good morning.

11 Q All right. So, of course, you weren't there the
12 night of August 22nd?

13 A I was not.

14 Q Okay. But you were there the night previously to
15 what you just testified to?

16 A It was like a week or two earlier.

17 Q Okay. And you testified that Mr. Bethel punched you
18 in the face?

19 A Yes.

20 Q Okay. Knocked you on the ground?

21 A No.

22 Q Just punched you in the face?

23 A Yeah.

24 Q And that you chased him outside, told him not to come
25 back?

1 A Yes.

2 Q And then you heard gunshots?

3 A I walked back in the building, I walked through the
4 building to the back door.

5 Q And you attributed that to him?

6 A Yes.

7 Q Did you call the police?

8 A No, I did not.

9 Q You didn't call the police?

10 A No.

11 Q Okay. What other steps did you take to document what
12 had happened to you in any kind of way?

13 A Just told the bartender and I told my manager what
14 had happened at the time.

15 Q Okay. So you just told the manager?

16 A And the bartender that was working that night.

17 Q Okay. Didn't document this in any way?

18 A No.

19 Q Didn't call the police?

20 A No.

21 Q Everyone though you had just been attacked?

22 A Yeah.

23 Q And a gunshot had been fired?

24 A Yes.

25 Q No report was made to anybody?

1 A No.

2 MR. KATA: Beg the Court's indulgence.

3 (Pause.)

4 No more questions, Your Honor.

5 THE COURT: Any redirect?

6 REDIRECT EXAMINATION:

7 BY MR. FOWLER:

8 Q All right. Did Ernest Bethel know he was banned from
9 McCary's?

10 A Yes.

11 Q You told him to his face?

12 A Yes.

13 Q After he fired the shots, did he leave immediately
14 after that?

15 A Yes.

16 Q That's why you didn't call the police, the situation
17 was over with?

18 A Yes.

19 MR. FOWLER: No further questions, Your Honor.

20 THE COURT: Anything further?

21 MR. KATA: No, Your Honor.

22 THE COURT: Thank you, sir. You may step down. Next
23 witness.

24 MR. GOLDBERG: Your Honor, if I may check to see if
25 our next witness has arrived.

1 THE COURT: In the meanwhile, I'll have the jury take
2 a break. If you'll go to the jury room. Please do not
3 discuss the case.

4 (WHEREUPON, the jury left the courtroom at 10:43
5 a.m.)

6 THE COURT: Who is going to be the next witness?

7 MR. GOLDBERG: It depends on which ones have arrived.
8 It could be a lay witness from the bar or it could be the
9 emergency room doctor.

10 THE COURT: Yes, sir.

11 Yes, sir?

12 THE DEFENDANT: Hey, I want -- Your Honor, is it
13 possible for me to get my whole video played in this case,
14 not cuts and shorts, like, the whole entire video?

15 THE COURT: Well, the State presents their case, then
16 you and your lawyer will present your case. So that's up
17 to you all what you offer.

18 THE DEFENDANT: Well, to my knowledge, I don't know
19 what they plan on doing. I'm not seeing what they are
20 planning. They're cutting it out, so I don't know what
21 they plan. I don't know the evidence they're using
22 against me. I don't even know because they're not letting
23 me see it. So, I mean, is that any type of violation?

24 THE COURT: You said they're not allowing you to see
25 what?

1 THE DEFENDANT: I'm not able to see the evidence that
2 my lawyer presents for me and I'm not even able to see
3 what they're presenting for them on their side.

4 THE COURT: All right.

5 THE DEFENDANT: So I don't know what they're using
6 against me. Is that any type of violation?

7 THE COURT: Well, Mr. Goldberg, did you provide
8 copies of the exhibits to the defense?

9 MR. GOLDBERG: All of the videos have been provided
10 in discovery to the defense. I can't say as to whether or
11 not Mr. Kata reviewed them with his client, but they were
12 provided to the defense, yes, sir.

13 THE DEFENDANT: I'm talking about just straight in
14 the court.

15 MR. KATA: He's talking about when the TV is facing
16 that way, he can't see it. That's what he's talking
17 about.

18 THE DEFENDANT: And, Your Honor, I've seen this whole
19 video from the time it came. This video has been chopped
20 and pieces and glitches are in it and they're hiding
21 things that are supposed to be shown for my defense.

22 THE COURT: Well, it's not your defense. It's the
23 State's prosecution. You'll have an opportunity to
24 present your defense and to show the jury through your
25 lawyer whatever evidence you want them to show you. The

1 State says they provided -- given y'all a copy of the
2 video. They've, also, put a disc on there and given a
3 copy for me to look at to follow it.

4 So if we have a position and problem with the
5 defendant being able to look at things that he wants to
6 look at, of course, this is just being brought to my
7 attention, so I can't address it -- I can't address
8 anything that happened yesterday. I can only deal with
9 what you're now asking me.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have additional videos you're
12 going to play?

13 MR. GOLDBERG: Just to be clear, Your Honor, I
14 understand what he's saying now that he can't see it when
15 it's being published to the jury, but just to make the
16 record clear, the videos that have been published to the
17 jury so far are the videos in their original form as was
18 collected by the investigators and provided to the defense
19 in discovery.

20 They were not spliced or cut in any way. The State
21 intends to offer some versions of the video later in that
22 way where they are pieced together through an appropriate
23 witness at that time. And I plan to provide a copy to the
24 court so the court can review and Mr. Kata can review it,
25 but that stuff has not yet been played. As for whether or

1 not he can see the board, I don't have --

2 THE COURT: Any additional videos that are played,
3 they'll need to be played where the defendant can see them
4 and jurors are going to have to be repositioned in some
5 kind of way. The defense has a right to see what's being
6 offered.

7 MR. GOLDBERG: I'm thinking maybe either this way or
8 over there, but that's pretty far from the jury.

9 Does the projector work?

10 THE CLERK: I think so.

11 MR. GOLDBERG: We can see if the projector works and
12 try to hook it up to the board.

13 THE COURT: All right. Why can't you just play it
14 where it is and the jurors turn around and look?

15 MR. GOLDBERG: You mean like this?

16 THE COURT: Whatever angle where the defense can see
17 it. I mean, he's -- because he's locked up, he can't move
18 around.

19 MR. GOLDBERG: Right. My one concern about -- and
20 I'll do whatever the court suggests. My one concern about
21 that is that that presentation when it occurs will take a
22 few minutes. It's not going to be quick per se, so if
23 we're talking about the juror's moving, I just wanted to
24 bring that to the court's attention.

25 THE COURT: I mean, can they turn and see it from

1 where they're sitting?

2 MR. GOLDBERG: I don't know that the back row can
3 really see it from this angle, to be honest with you.
4 It's kind of hard to tell.

5 This seems a little -- it's not ideal.

6 THE COURT: Push it some more, angle it more toward
7 the jury.

8 MR. GOLDBERG: Can the defendant see that?

9 THE COURT: Can you see that, Mr. Bethel?

10 THE DEFENDANT: I can see that.

11 THE COURT: Everybody can see it. Everybody is
12 satisfied.

13 Is the screen working?

14 MR. GOLDBERG: We can do that, too, if you want.

15 THE COURT: Can it come down with these barriers?

16 MR. GOLDBERG: I don't know if the screen can come
17 down, though, because of the glass.

18 THE CLERK: It's not going to come down with the
19 glass.

20 MR. GOLDBERG: Right. It's going to run into the
21 glass partition.

22 THE COURT: That's the same glass I've been
23 complaining about for a year now.

24 MR. KATA: Your Honor, it's a lot better than not
25 seeing it at all.

1 THE COURT: We can see it over there. I guess, they
2 could run two TVs at the same time. Can't do that,
3 though.

4 MR. GOLDBERG: It's possible we could connect that to
5 that, I'm not sure. It depends on if we've got proper
6 tables to do so. We can try it.

7 We're happy to experiment with connecting --

8 THE COURT: All right. We'll take about ten minutes.
9 See what you can work out.

10 MR. GOLDBERG: That's not the next witness anyway.

11 THE COURT: All right.

12 MR. GOLDBERG: Thank you.

13 THE COURT: We'll take a few minutes then. Before
14 moving into that, you'll have your IT person look at it
15 and figure out something a little better.

16 THE DEFENDANT: Thank you, Your Honor.

17 THE COURT: All right.

18 (WHEREUPON, a short break was taken.)

19 MR. FOWLER: Your Honor, I believe we were able to
20 get the tech all hooked up.

21 THE COURT: Okay.

22 MR. FOWLER: I think we can simultaneously display
23 this on both screens and we'll move it in a way that he
24 can see both.

25 THE COURT: So if he can see that one, then he --

1 MR. FOWLER: Yeah, we're going to wheel this to where
2 it's been and let him deal with that one.

3 THE COURT: Yes, sir.

4 THE DEFENDANT: Hey, I don't want to go to trial with
5 him. I don't feel like he got my best heart of interest
6 in my case. Since I've had him, he has done nothing for
7 me. Nothing I've asked him. I've been telling him to do
8 stuff and he has not been doing it since I had him.

9 Even I'm telling him things to say, he's not doing
10 it. He's not bringing witnesses, he's not calling them.
11 He's lying consistently. I've got witnesses that will
12 tell you that. We done got in multiple arguments. I
13 don't fell like I'm safe with him.

14 He done cussed my mama out, you know what I'm saying.
15 And he done lied to my family members multiple times on
16 multiple occasions. I mean, I feel like I just can't
17 continue this case. I fired him months ago. I don't care
18 if you give me a month to get back in court --

19 THE COURT: We're in the middle of a trial. If you
20 drop your lawyer during the trial, you have to represent
21 yourself. We don't stop the cases. We're in a trial
22 where the case has been pending for some time.

23 We're in the middle of the trial. The jury is
24 selected. The jury has heard some of the case. They'll
25 continue hearing the case. Now, a lawyer's job is to help

1 you and to assist you. You cannot dictate to a lawyer
2 what questions to ask and exactly what to do. He has his
3 own --

4 THE DEFENDANT: Pardon me.

5 THE COURT: -- professionalism. He has to make his
6 own professional judgment and he uses that to assist you.
7 It may not all come out the way you'd like for it to come
8 out.

9 It's a tough decision that you have to make, but if
10 you decide you want to get rid of your lawyer in the
11 middle of a trial, then you're going to have to continue
12 with the trial being your own lawyer.

13 If you want to make your arguments and ask your
14 questions and question the witnesses and bring in
15 witnesses and all that, that will be your job to do
16 without the assistance of a lawyer. The lawyer is here to
17 assist you. Obviously, it's your case. You're the one in
18 jail.

19 You're the one that will have to deal with whatever
20 consequences of the jury's decision, but the State has
21 provided you with a lawyer. You haven't paid him, have
22 you?

23 THE DEFENDANT: Yeah, I paid him.

24 THE COURT: Well, you retained him. He's a retained
25 counsel.

1 THE DEFENDANT: Months before this, Your Honor, I
2 told him to relieve himself as counsel. He didn't do it.
3 He didn't put the motion in. I informed him relieve
4 yourself from counsel. He never put the motion in, Your
5 Honor, like, six months ago.

6 THE COURT: Well, then prior to the beginning of
7 trial, I inquired as to whether or not the parties were
8 ready for trial, you said you're ready to go to trial.
9 Everyone says they're ready and we're in the trial. You
10 can't just say okay, let's go home. Let's stop the trial.
11 We don't stop trials.

12 Mr. Kata, what's your thoughts?

13 MR. KATA: Your Honor, I mean, I'm willing to
14 proceed. I mean, that's his issue he brought up to the
15 court.

16 THE DEFENDANT: It's a conflict.

17 THE COURT: Pardon me?

18 THE DEFENDANT: It's a conflict.

19 THE COURT: Well, do you want to represent yourself?
20 I mean, you have a Constitutional Right to be your own
21 lawyer. It's your case. If you want to represent
22 yourself and do everything that you say he's not doing, to
23 ask whatever questions, question the witnesses, argue to
24 the jury, you can represent yourself. You have that
25 right. Of course, you have the right to counsel. And if

1 you can't afford counsel, the State gives you one free of
2 charge, but you've retained him as the lawyer of your
3 choice.

4 THE DEFENDANT: I can do that if I got all my stuff.
5 I'll represent myself if I got all my stuff. I need my
6 full video that they cut up in pieces. I need my full
7 motion, full motion, all my evidence they got against me
8 that I seen none of.

9 My lawyer didn't put in any motion. I don't know
10 nothing about most of the evidence that's been presented.
11 If I can get all my stuff that I got against me, then I'll
12 go. I mean, they're bringing up multiple things I know
13 nothing about. I mean, this is my life right here at
14 stake.

15 THE COURT: Your lawyer has filed discovery motions.
16 There's an order signed by Judge Benjamin way back in
17 August of 2020. It appears the defendant has been
18 appointed the Richland County Public Defender as his
19 counsel.

20 Did you originally have a public defender?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Then you retained Mr. Kata. Discovery
23 motions were filed in the case, filed by the public
24 defender way back then.

25 I'll give you a moment to talk. You'll have to speak

1 from a distance. Give him an opportunity to be seated.
2 He can sit on that row and then if you need to chat with
3 your family about whether or not you're going to represent
4 yourself or whether Mr. Kata is going to continue
5 representing you. I see people behind you making
6 reactions. I assume they must be related to you.

7 THE DEFENDANT: Mama and dad.

8 THE COURT: You can stand up and talk, have a
9 conversation.

10 (Pause.)

11 Yes, sir?

12 THE DEFENDANT: I'll go with him.

13 THE COURT: You want to proceed with Mr. Kata
14 representing you?

15 THE DEFENDANT: I don't have no choice.

16 THE COURT: Well, you have a choice.

17 THE DEFENDANT: Represent myself. I mean, what type
18 of time limit do I have to prepare myself?

19 THE COURT: You know, we're in the middle of a trial.
20 You're saying that you want to relieve your lawyer because
21 he's not asking the questions you want him to ask --

22 THE DEFENDANT: Pardon me, Your Honor, sorry.

23 THE COURT: Go ahead.

24 THE DEFENDANT: I'm saying because I'm not getting my
25 case presented the way I'm asking it to be presented. I'm

1 not getting my full potential of my case at all.

2 THE COURT: Well, you haven't presented your case
3 yet. Right now, we're hearing the State's case. And when
4 the State rests their case, then it will be time to
5 present your case. Now, he is examining and
6 cross-examining. He is cross-examining witnesses. You
7 said he's not asking questions you want him to ask, but,
8 you know, he's a lawyer who makes -- he's conferring with
9 you, but he has to use his independent judgment as a
10 lawyer in questioning witnesses.

11 But when the State rests their case, I'm going to
12 tell the jury that the State has rested. It's now, the
13 defense's turn. And you'd have a right to testify or not
14 testify, bring in any witnesses you have, present any --
15 whatever evidence you want the jury to hear. But in the
16 end, it will be up to the jury to decide whether you're
17 guilty or not guilty based on the evidence that is
18 presented.

19 THE DEFENDANT: Well, the reason I feel like that,
20 too, is because when I said I wanted to see the TV, he
21 snapped when I came back in. That's why I'm like oh, you
22 snap on me for what? I just want to see what I'm being
23 presented.

24 THE COURT: Well, we've set it up. Of course, the
25 State has provided copies of videos -- or, you know, the

1 camera is out there and whatever video that will be showed
2 to the jury will be on that screen right there. You'd be
3 able to see it as the jury is seeing it. I'm looking at
4 it on the screen up here. You'll be able to see whatever
5 it is.

6 THE DEFENDANT: Let's proceed, Your Honor.

7 THE COURT: Sir?

8 THE DEFENDANT: I said let's proceed, Your Honor.

9 THE COURT: All right. State ready?

10 MR. GOLDBERG: Yes, sir. I don't mean to insert
11 myself into the situation as it appears to be resolved,
12 but I do feel it important to make it clear for the record
13 just going forward, Mr. Bethel did reference a previous
14 motion to be relieved at some time that never got filed,
15 never got heard or something of that nature that nobody
16 seemed to address. I just want to make sure everybody is
17 on the same page about where we are on that.

18 THE COURT: What happened to that, Mr. Kata?

19 MR. KATA: Yes, Your Honor. I mean, Mr. Bethel had
20 previously expressed his desire to have me fired. We had
21 a meeting, we talked about it, went over our plan and he
22 indicated he wanted to proceed with me.

23 THE DEFENDANT: A week before trial.

24 MR. KATA: A week before trial, but he indicated he
25 wanted to proceed with me.

1 MR. GOLDBERG: Thank you.

2 THE COURT: All right. If you'll bring the jury.

3 (WHEREUPON, the jury entered the courtroom at 11:32
4 a.m.)

5 THE BAILIFF: The jury is seated, Your Honor.

6 THE COURT: Very good. Thank you.

7 Welcome back.

8 Your next witness.

9 MR. GOLDBERG: Thank you, Your Honor. The State
10 called Christopher Watson.

11 THE CLERK: Could you state your full name, please?

12 THE WITNESS: Christopher Watson.

13 THE CLERK: Speak up a little.

14 THE WITNESS: Christopher Watson.

15 CHRISTOPHER WATSON, after being duly
16 sworn, testified as follows:

17 THE CLERK: Have a seat right there.

18 DIRECT EXAMINATION:

19 BY MR. GOLDBERG:

20 Q Dr. Watson, good morning.

21 A Good morning.

22 Q Can you tell the jury where you're employed?

23 A I'm at Prisma Health Midlands.

24 Q What do you do for Prisma Health?

25 A I'm an acute care surgeon. Also, known as --

1 THE COURT: Doctor, would you raise that mic and talk
2 into it?

3 THE WITNESS: I'm an acute care surgeon, trauma
4 surgeon.

5 Q All right. Can you tell the jury a little bit about
6 your background, education, training and experience?

7 A Yeah, I was trained in medical school in Georgia
8 University. I finished in 1996, started my residence
9 here. I finished my residency here in 2007 and trained in
10 surgical care at the University of Virginia in 2008 to
11 2009. Been a trauma surgeon. I started doing trauma
12 surgery and been doing it ever since, so close to 20
13 years.

14 Q When you say trauma surgery, what does that mean?

15 A Anybody who's involved in a major injury or trauma, I
16 will take care of them in the hospital. Some people think
17 we're ER doctors, but we're the surgeons that come in when
18 someone gets a bad trauma, gunshots, knives, car crashes,
19 that sort of thing, especially if they need an operation
20 or ICU admission.

21 Q If you had to ballpark it, how many trauma-type
22 patients have you seen?

23 A We are the busiest in the State and we admit and see
24 probably 4,000 traumas a year. So of all the trauma that
25 are seen, I'll see most of the traumas at some point when

1 they're in the hospital. So 4,000 over 20 years is a lot,
2 80,000.

3 MR. GOLDBERG: Your Honor, at this time, I'd offer
4 Dr. Watson as an expert in acute care surgery.

5 MR. KATA: No objection.

6 THE COURT: He's so qualified.

7 MR. GOLDBERG: Thank you, Your Honor.

8 BY MR. GOLDBERG:

9 Q So when we talk about acute care, acute care surgery,
10 can you talk about what that means?

11 A Yeah, it's sort of a new term. In the past, we were
12 trauma surgeons, then we took on ICU trauma service and
13 then we've added on the emergency general surgery part.
14 So it's just three parts to that one. So it's trauma
15 surgery, surgery critical care and emergency general
16 surgery. We do all three of those things at some point
17 throughout the span of a month.

18 Q I want to turn your attention to August 22nd of 2019.
19 Were you working on that evening?

20 A I was.

21 Q And were you working in this same role?

22 A Yes.

23 Q And did you have an opportunity to come into contact
24 with three different victims from this case?

25 A Yes.

1 Q All right. Can you describe how that unfolded?

2 A Yes. So they're all alerted as level one traumas,
3 which is the highest alert. They had penetrating trauma
4 to major parts of their body. They all presented to the
5 emergency room. Typically, fairly sequentially in order
6 we put them into rooms. I'll go see each patient and
7 triage each patient and decide if they're going to the
8 next step.

9 Q Penetrating trauma meaning what?

10 A Mostly, it's gunshot wounds and knives.

11 Q You say you put them in the room to triage them. Can
12 you explain what that means?

13 A We have two trauma bays and if we have three
14 patients, we have a secondary trauma room. All go to the
15 trauma rooms, the big team will converge on these
16 patients. I'll make a quick assessment as to what the
17 next steps may be. It may be to the operating room. It
18 may be ongoing resuscitation and blood products. And in
19 the operating room, it may be imaging or to the ICU.

20 Q Were those assessments made on the three patients in
21 this case?

22 A Yes, they were.

23 Q As a result, who did you address first?

24 A These are all trauma numbers. I'm going to refer to
25 these names as secondary. We don't give names of people

1 who are involved in assaults because of their safety, so I
2 won't actually refer to this. But they all came in
3 simultaneously, but the most initially severe was
4 Christopher Lott.

5 Q What was the nature of his injuries at that time?

6 A He had upper torso, shoulder and abdomen, belly
7 injuries. I believe he had one to the abdomen and two to
8 the upper shoulder on the left side.

9 Q What types of injuries did they appear to be?

10 A They were gunshot wounds.

11 Q Okay. So when you see a situation like that
12 involving him, what steps do you take to try to address
13 his medical needs?

14 A We have to assess to make sure they're stable enough
15 to be able to move from that spot. And we provide an
16 immediate resuscitation and then decide go to the
17 operating room or further imaging, CT scan.

18 Q Do you recall if he was conscious or alert at this
19 time?

20 A I believe he was, but not for long. We intubated him
21 fairly quickly after he arrived. He was conscious, but
22 minimally so. I think he had a GCS of seven.

23 Q What --

24 A It's just a thing we use to kind of determine level
25 of consciousness in trauma. So it goes from three to 15,

1 so he was definitely less than -- when you're eight or
2 less, we have to intubate.

3 Q All right. So what steps did you all then take to
4 try to treat him?

5 A So everything is A, B, C, D, E. We treat all
6 patients in a certain order. So he through the standard
7 ATLS protocol, maintaining airway, which is intubation.
8 Then we assess breathing and circulation and hemorrhage
9 and try to control all of that at once. Once he's
10 intubated, we start working on other things. He was in
11 shock, so his blood pressure was really low, so we
12 initiated blood transfusions and got some O negative
13 blood. He had some minimum response to that. We placed a
14 chest tube in because he had what looked like blood on his
15 left lung.

16 Q And what, ultimately, was the result of your care of
17 Mr. Lott?

18 A He went to the operating room from the ER
19 immediately.

20 Q What type --

21 A He had an emergency operation. His was two parts.
22 The chest tube was placed to control the blood on his left
23 chest. We have a threshold of operating on the chest.
24 And the initial amount was below that threshold, so we
25 thought the chest tube was adequate. We operated on his

1 belly because he had an obvious injury to his belly. So
2 we explored his abdomen.

3 We had to open his abdomen, look at everything. We
4 started from the top, go all the way to the bottom, take
5 care of bleeding first and take care of everything that's
6 leaking material. Second, gastric and stool. We address
7 those secondary. And then if they're very, very sick, we
8 may not complete the operation at that time. We just try
9 to control those things, the immediate threats to life
10 first.

11 So on him, we had to address his liver and some small
12 bowel injuries. We don't always do definitive care, which
13 means we may take out intestines and not put back in
14 immediately because they're too sick. We may disconnect
15 it and come back later. We had fairly significant liver
16 injury and small bowel injury that I noticed immediately.

17 Q And upon taking these steps surgically to try to save
18 him, so to speak, were you able to do that?

19 A Initially, we were. So, initially, we got control of
20 the liver hemorrhage and the intestine injury. We were
21 transporting him to the ICU. As soon as he got to the
22 ICU, his left chest tube just started pouring out a lot of
23 blood, so we had to take him back to the operating room
24 for chest surgery.

25 We did an immediate opening of his chest, got control

1 of what was bleeding and actually went upstairs
2 controlling it until we got in the operating room where we
3 tried to do definitive care. We called in three
4 additional surgeons, two vascular surgeons and a
5 cardiovascular surgeon.

6 We were fairly certain that he had injury to the main
7 blood vessel that comes from your heart. These injuries
8 sometimes aren't immediately bleeding, but they tend to
9 tear loose. That's what happened to him.

10 So when it did come loose, we were able to, at least,
11 get our hand on it. We tried to deploy a stint to cover
12 it, which is a synthetic tube. We put it inside that
13 vessel and covered that hole. Before we could do that, he
14 went into cardiac arrest. I think he received 30 units of
15 blood and 30 units of plasma during all this stuff. So
16 he, basically, got his blood replaced three times over.

17 Q And once he goes into cardiac arrest?

18 A We perform CPR. We try to resuscitate. At that
19 point, it's too late.

20 Q And he was pronounced deceased in the operating room?

21 A In the operating room.

22 Q So while this is going on with Mr. Lott, what is
23 taking place -- I believe Mr. Martin had some internal
24 wounds and Mr. Jenkins had a neck injury, what's going on
25 with him at this time?

1 A All right. So I triaged these differently. So the
2 neck injury, I sent for further evaluation with a C.A.T.
3 scan because he was stable, but it was in a zone two,
4 which is a very important area of your neck that has all
5 your blood vessels and your swallowing tube and your
6 breathing tube and all those things, so those are all at
7 risk.

8 Then the other patient was sent to the operating
9 room, as well. So -- for the abdominal injury. So I had
10 to do, basically, two cases simultaneously with help of a
11 fellow surgeon and a couple of resident surgeons.

12 Q All right. So in regards to Mr. Martin and the
13 abdominal-type injuries, what steps did you take to
14 address those injuries?

15 A It was a similar laparotomy, which is opening the
16 belly up and doing a sequential exploration from top to
17 bottom and taking care of that. This was a liver injury,
18 had to control this liver injury.

19 This one was very midline, meaning towards the
20 middle. And it was -- that's a place -- that's one of the
21 more difficult places to control hemorrhage. If there's
22 an injury behind the liver, trying to get to that, you
23 have to actually move the liver out of the way, which is
24 really tough in this situation because everything was
25 pouring blood.

1 So we addressed that initially and he had damage
2 control surgery, as well because I'm dealing with three
3 gunshot wounds at once. He gets the initial source
4 control. He makes it off the operating room table. He
5 has to have multiple operations after that for various
6 things.

7 Q And he actually remained in the hospital for several
8 weeks after that, right?

9 A Yeah. He had a repeat operation by one of my
10 partners because -- intended because we left open just to
11 resuscitate him. He had some further liver removal. The
12 esophagus, which is the swallowing tube, had some blast
13 injury to it.

14 So we had to, basically, wrap the stomach around the
15 esophagus in case it opened up. He, also, had some
16 congenital things, appendix, we took it out and hooked his
17 bowel back together. And he had another operation to
18 close all that down. He had three, two days apart.

19 Q The type of injuries that Mr. Martin sustained, in
20 your opinion, were those life threatening?

21 A Yes. Especially, the liver injury. The I.V. -- one
22 of the veins that was an injury on him was one of his
23 hepatic veins, meaning one of the veins that drain the
24 liver. We lose patients like that routinely if we don't
25 get control of that bleeding. If I had to put a number on

1 it, probably three-quarters of people with that injury
2 don't survive.

3 Q Fortunately, Mr. Martin is here with us. Regarding
4 Mr. Jenkins, the neck injury, can you talk about that?

5 A Yeah, he had a similar injury to his neck. It was
6 in, like I said, zone two, which is below where your
7 jawbone starts, down to where your breastbone starts. All
8 this is very important things, the main blood vessel to
9 your brain, the main blood vessel from your brain.

10 A lot of your nerves that come and control stuff come
11 through that area, as well as your airway. He had some
12 hoarseness when it came in, which made us worry that he
13 had an aorta injury.

14 So he was intubated in the ED just to make sure. If
15 he does have an injury there and he starts getting a blood
16 clot or swelling, he can lose his airway. Before that
17 happens, we can put the airway in while we're doing that
18 work. That's what happened. He got the shot right there.
19 I believe it was on the left side.

20 Q Mr. Jenkins testified earlier that the bullet is
21 still in his neck. Why is that?

22 A We don't remove bullets. Everybody asks us why we
23 don't, but we never do. It's not like it's going to get
24 better when the bullet comes out. It usually hurts worse.
25 You have to dig into areas and pull things out. You

1 typically injure other things trying to get there. So
2 unless it's affecting something like a nerver or a blood
3 vessel, we leave those in place because that's safer.
4 They can have long-term consequences from the retained
5 foreign body.

6 Q In your opinion, the wound to Mr. Jenkins' neck, was
7 that life threatening, as well?

8 A Yes.

9 Q Why is that?

10 A The same reason. It's such a small place with so
11 many important things. One inch one way or the other
12 would have hit one of those structures. If your main
13 artery, your brain is hit, you have a massive stroke, that
14 degree of stroke. That, typically, results in so much
15 edema in your brain that your brain herniates and you
16 become brain dead.

17 MR. GOLDBERG: One moment.

18 (Pause.)

19 Doctor, those are all my questions. Thank you.

20 THE COURT: Mr. Kata?

21 MR. KATA: No questions for this witness.

22 THE COURT: Thank you, Doctor.

23 Next witness.

24 MR. GOLDBERG: The State calls Amircle Wright.

25 THE CLERK: State your full name, please.

1 THE WITNESS: Amircle Bertel (phonetic) Wright.

2 THE CLERK: Could you spell your first name, please?

3 THE WITNESS: A-M-I-R-C-L-E.

4 THE CLERK: And your last name?

5 THE WITNESS: Wright, W-R-I-G-H-T.

6 THE CLERK: Thank you.

7 AMIRACLE WRIGHT, after being duly
8 sworn, testified as follows:

9 THE CLERK: Thank you. You can have a seat right
10 there.

11 DIRECT EXAMINATION:

12 BY MR. FOWLER:

13 Q Ms. Wright, let's start with a little introduction to
14 the jury of why you're here. Can you tell us who those
15 people right there are listed on that pad to you?

16 A Tolliver Wise is my brother.

17 Q He's your brother. Did you, also, know Christopher
18 Lott?

19 A Yes.

20 Q How did you know him?

21 A I met him through Tolliver.

22 Q What about Cameron Jenkins, did you know him?

23 A As a member of the McCary's Bar family.

24 Q Did you attend McCary's fairly regularly?

25 A Yes, sir.

1 Q So you knew most of the staff?

2 A Yes, sir.

3 Q Including Cameron Jenkins and Gregory Martin?

4 A Yes, sir.

5 Q Now, Ms. Wright, you are in sort of a unique
6 position. You were at McCary's on two separate occasions
7 that are significant. You were here on August 22nd, 2019,
8 the night of the shooting, correct?

9 A Yes, sir.

10 Q And then you were, also, there a couple weeks prior
11 when something happened?

12 A Yes, sir.

13 Q And who was involved in the altercation two weeks
14 prior to this?

15 MR. KATA: Objection, 404(b).

16 THE WITNESS: Mr. --

17 MR. FOWLER: Hold on, hold on.

18 THE COURT: Nature of the objection again?

19 MR. KATA: 404(b).

20 THE COURT: Response?

21 MR. FOWLER: Your Honor, this is the same content
22 we've discussed previously. I believe he's just renewing
23 his objection to it.

24 THE COURT: Objection is overruled.

25 MR. FOWLER: Thank you, Your Honor.

1 BY MR. FOWLER:

2 Q Proceed, what were you saying?

3 A Mr. Bethel was there.

4 Q And do you see Mr. Bethel in this courtroom?

5 A Yes, sir.

6 Q He's sitting at that table over there?

7 A Yes, sir.

8 Q Okay. Tell us what happened the incident a couple of
9 weeks before?

10 A Mr. Bethel had got into an altercation with a female
11 and Mr. Ross had intervened. And in the mix of
12 intervening, he got into an altercation with Mr. Ross and
13 that led to him being barred from the bar for a couple of
14 weeks.

15 Q And so after the altercation with Mr. Ross, what did
16 Mr. Bethel do?

17 A He proceeded outside, probably like a quarter to 8:00
18 in the morning on a Monday morning shooting in the air.

19 Q Were you outside when he did that?

20 A Yes, sir.

21 Q Did you see him do that?

22 A Yes, sir.

23 Q And did he leave immediately after that?

24 A Yes, sir.

25 Q Now, you were there when he shot into the air?

1 A Yes, sir, I was outside.

2 Q And so in your statement to the police, you said
3 Tolliver pulled out his gun because he knew what Ernest
4 was going to do; is that correct?

5 A Yes, sir.

6 Q I've actually jumped ahead of myself a little bit.
7 I'm going to back up. Your night on August 22nd, it did
8 not start at McCary's, did it?

9 A No.

10 Q I believe at some point you were at a Reggae bar; is
11 that correct?

12 A Yes, sir.

13 Q Did you see anyone in this courtroom come into the
14 Reggae bar that night?

15 A Besides the usual, me, John and Mr. Bethel.

16 Q So Mr. Bethel came to the Reggae bar while you were
17 there?

18 A Yes, sir.

19 Q And this is before you went to McCary's?

20 A Yes, sir.

21 Q Did Mr. Bethel say anything to you?

22 A He asked me where are you going next. I'm, like, I'm
23 going to McCary's. He was, like, I'm going, too. I said,
24 You know you can't go. You know you can't go for about
25 two weeks because of the incident prior. He was like,

1 Well, I'm just going to tell them that was my twin
2 brother. I said, Now, you know, don't just come around
3 here. We were sitting at the bar that night at the
4 Reggae.

5 Q So he knew that he was not allowed at McCary's that
6 night?

7 A Yes.

8 Q And he eventually showed up anyways?

9 A Yes.

10 Q Ms. Wright, I'm going to play you just a small clip
11 of this video. I know you said you forgot your glasses at
12 home. If you can't see it, feel free to come down closer.
13 I just want you to point yourself out to the jury in this
14 video if you could?

15 A I'm going to have to come down.

16 Q Yes.

17 A I can't see. I'm over here in this corner.

18 Q You were already here at this point?

19 A What time is this?

20 Q This is about five minutes before the shooting?

21 A Yeah, I'm over here in the corner, like, closer
22 towards the bathroom.

23 THE COURT: Which video are you playing?

24 MR. FOWLER: Your Honor, I'm about to play angle 15
25 of the McCary's video.

1 (The video was played for the jury.)

2 BY MR. FOWLER:

3 Q Do you recognize this man right here?

4 A Yes.

5 Q Who is that?

6 A That's my brother.

7 Q What's your brother's name?

8 A Tolliver Wise.

9 Q And do you recognize this lady right here in the
10 back?

11 A Yes. That's my sister, Lorraine.

12 Q And who is this right here?

13 A That was his friend.

14 Q Uh-huh. Who is that?

15 A I believe -- it has to be because Cam didn't have
16 that on. Cameron didn't have that on.

17 Q Okay. Let's start from right there?

18 A This is me.

19 Q That's you?

20 A And this is E-Lo.

21 Q I'm sorry, who is with you?

22 A Kayosha.

23 Q But that is you?

24 A Yes.

25 Q And this is Tyler?

1 A Yes.

2 Q Okay. You can get back up there.

3 MR. FOWLER: And, Your Honor, I switched back to
4 angle seven and I'm about a minute and 45 seconds.

5 Q So this is you arriving at McCary's?

6 A Yes. We were going there to watch Chris and Tolliver
7 finish off their pool time. It started at Reggae's and
8 when Reggae's closed, they were going to finish their pool
9 time at McCary's.

10 Q And that was Christopher Lott and Mr. Tolliver Wise?

11 A Yes.

12 Q Who is this who just walked in?

13 A I'll have to step down. I cannot see.

14 Q Do you know who walked in the bar after you?

15 A I want to say it was Mr. Bethel.

16 Q Okay. So right --

17 A Him and another gentleman.

18 Q Okay.

19 So who is Mr. Bethel talking to right here, the man
20 in the black shirt?

21 A That's my brother, Tolliver.

22 Q And, again, this is you?

23 A Yeah.

24 Q I'm going to skip ahead just a little bit here,
25 Ms. Wright.

1 Do you recall what happened when Mr. Bethel got
2 outside the bar?

3 A I heard gunshots. And I'm thinking he was doing the
4 same thing he did weeks prior, which was shooting in the
5 air, but Tolliver is, like, No, he's shooting through the
6 door. And that's when he told us to go -- me and Angel to
7 go in the bathroom. And I proceeded to push Angel towards
8 the bathroom like Tolliver requested.

9 Q And did you hear anything after the gunshots?

10 A I want to say because -- I want to say it had to be,
11 at least, more than 32 shots.

12 Q Did you hear anybody yelling after the gunshots?

13 A I heard Tracy, the other customer, and I heard
14 Tolliver. I proceeded to look behind the bathroom door.
15 Tolliver was falling down the wall and that's when Angel
16 said, I think your brother's been shot. I'm like, No,
17 Tolliver, he couldn't.

18 He was on the other side. I wouldn't think that he
19 was, but when we got out of the bathroom, I performed CPR
20 on him and (crying) I did everything I could to try to
21 save him.

22 And I told her to put her hand on his stomach and
23 count to five, get to five, continue to proceed with CPR
24 while I go check on everybody else. I went to check on
25 everything else.

1 Cameron was laying on the floor and he had a towel
2 holding his neck, so I was -- Cameron got shot in the neck
3 and Mike had Greg over by the pool table and was applying
4 pressure to his wounds. That's when Chris Lott's
5 girlfriend. I think her name was Nicole or something, she
6 was there. And he's done shooting. And when that
7 happened, Chris fell over.

8 Q And Ms. Wright, this is going to be my last question.
9 I know this is hard, but were you able to save Tolliver's
10 life that night?

11 A No, because I didn't know he got shot twice. I
12 didn't know that one hit his chest cavity. Because when I
13 gave him CPR, he sort of absorbed the blood. I told Angel
14 to cock his head so that way, you can give him some space
15 to get some oxygen.

16 MR. FOWLER: Thank you. Thank you, Ms. Wright. I
17 appreciate you being here. I know it's tough. If you can
18 answer any questions Mr. Kata has for you.

19 MR. KATA: May it please the Court, Your Honor.

20 CROSS-EXAMINATION:

21 BY MR. KATA:

22 Q Ms. Wright, the State asked you questions about the
23 statement that you were giving to law enforcement on
24 August 22nd, 2019, at 3:43 in the morning. Do you
25 remember giving a written statement to law enforcement?

1 A Yes, I do.

2 Q Okay. At that date and time?

3 A Yes.

4 Q Okay. The written statement that you gave law
5 enforcement, was that in your own handwriting?

6 A Yes.

7 Q So you wrote it yourself?

8 A Yes.

9 Q Signed the bottom?

10 A Yes. And any marks that I made, I had to initial by
11 it where everybody scratched off on the statement.

12 Q Okay. And did law enforcement ask you about whether
13 when you wrote that statement it was the truth or not?

14 A Yes.

15 Q Okay. Did you indicate to them that what you wrote
16 down was the truth?

17 A Yes, I did.

18 Q Do you recall in that statement making a statement to
19 law enforcement that Tolliver, who is your brother, right?

20 A Yes.

21 Q Okay. Do you recall making a statement that Tolliver
22 pulled his pistol out and that's when E-Lo started
23 shooting?

24 A E-Lo was shooting prior to that, prior to Tolliver
25 pulling his gun out because we already knew what he was

1 going do due to the last incident.

2 Q So you don't recall making that statement?

3 A Yes, I do.

4 Q The statement that Tolliver pulled his pistol out.
5 That's when E-Lo started shooting?

6 A Yes.

7 Q Do you need --

8 A The same type E-Lo -- the door wasn't all the way
9 closed by the time -- when they was tossing him out the
10 door. And Tolliver's back was against the wall, the
11 podium or whatnot and he pulled out the gun. Because,
12 like I said, we all knew what Mr. Bethel was going to do.

13 Q Ms. Wright, would it be helpful for you to look at a
14 copy of your statement?

15 A I don't need a copy. I remember this day like no
16 other.

17 MR. KATA: Your Honor --

18 THE WITNESS: I was walking away from that front
19 door. He directed us, told me to take the girl to the
20 bathroom.

21 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
22 identification only.)

23 MR. KATA: Your Honor, I'd like to hand the witness a
24 copy of her statement marked as Defendant's Exhibit No. 1
25 for ID.

1 MR. FOWLER: Your Honor, she said she remembers. I
2 don't think she needs to be refreshed on anything.

3 THE COURT: You can hand her a copy if you'd like to.

4 MR. KATA: Your Honor, I'd move to enter a copy of
5 her statement into evidence.

6 THE COURT: First, you want to hand her a copy --

7 MR. FOWLER: Your Honor, she hasn't looked at it yet.

8 BY MR. KATA:

9 Q This is exactly what I just told you. Okay. So on
10 page two, is it not written that Tolliver pulled his
11 pistol out, that's when E-Lo start shooting?

12 A Yes, the first shot that came through, I thought he
13 was shooting through the air. Tolliver was like, no, he's
14 shooting through the door. Get the girls in the bathroom.

15 Q So you had a conversation with Tolliver in between
16 shots?

17 A Yeah, because I was standing right there across from
18 him. We was right there at the bar and he was backed up
19 against the podium.

20 Q Ms. Wright, you didn't write that down. You wrote
21 that Tolliver pulled his pistol out and that's when E-Lo
22 started shooting. Is that not what you wrote?

23 A Yes, that's what I wrote. Because he already knew
24 what E-Lo was going to do. He started letting off rounds
25 through the door. And like I said, I assumed he was

1 shooting in the air. When I heard something like glass
2 broke, I thought maybe somebody dropped a beer over at the
3 pool tables or whatnot. He was like no, he's shooting
4 through the door. Get the girl and go in the bathroom.

5 Q Let's go back to the Reggae bar. Your position is
6 that you saw Mr. Bethel at the Reggae bar?

7 A Yes.

8 Q Your position is, also, that you saw him on a prior
9 occasion firing a gun off right in front of you?

10 A Yes.

11 Q Did you call the police about an individual shooting
12 a firearm into the air two weeks prior?

13 A No, I didn't call the police about that. I think
14 whoever is at the bar did. I made a notation of it or
15 something. My phone was in there on the charger back
16 there on the wall where you go towards the bathroom at.

17 Q Then however many days later, you claim to see
18 Mr. Bethel at another bar, the same person that fired a
19 gun off right in front of you and you had a conversation
20 with him?

21 A Yeah, I mean, I know him.

22 Q Okay. You didn't call the police then?

23 A No, because when he shot the gun up in the air that
24 morning, my phone was in the bar on the charger.

25 Q I understand. But when you ran into him again, you

1 didn't decide to call the police then and report what
2 happened prior to it?

3 A We never had an altercation. Like, he was harmless
4 to me.

5 Q All right. And you, also, said that Tolliver Wise
6 was at the Reggae bar, too, playing pool?

7 A Yes, he works there.

8 Q And he was playing pool prior to going to McCary's
9 this night?

10 A Yes. He had worked the other location that day in
11 Cayce, so the owner gave him the day off on the second
12 location.

13 Q Did Tolliver Wise get in any kind of disagreement
14 with Mr. Bethel at the Reggae bar that night?

15 A No.

16 Q All right. Ms. Wright, I want to go back to the
17 statement you wrote at 3:27 a.m., okay. Who did you give
18 the statement to? Do you remember the officer's name?

19 A I don't remember the officer's name. He was probably
20 like 5'8", 260 pounds.

21 Q Okay. All right. When he gave you the form to put
22 pen to paper, did you not write down that Tolliver pulled
23 his pistol out, that's when E-Lo started shooting?

24 A This is right here in the statement. Like I said,
25 when he started shooting --

1 Q And that's what you wrote, correct?

2 A Yes.

3 Q Do you have pending charges against you right now?

4 A Yes, I do.

5 Q What is the charge?

6 A Unlawful neglect towards a child. Pretty much, I
7 used during my pregnancy.

8 Q Which office is prosecuting that case?

9 A Detective Wise.

10 Q Is that in Richland County?

11 A Yes.

12 Q Has anybody promised you anything?

13 A No.

14 Q Are you expecting anything?

15 A No.

16 Q But you stand by your written statement?

17 A I sure do.

18 Q Tolliver pulled out his gun and then Mr. Bethel
19 started shooting?

20 A Yes.

21 MR. KATA: No more questions, Your Honor.

22 THE COURT: Any redirect?

23 REDIRECT EXAMINATION:

24 BY MR. FOWLER:

25 Q Ms. Wright, I just want to be clear, the only reason

1 that Mr. Wise had his gun out that night was because of
2 what Mr. Bethel did prior and the fact that Mr. Bethel was
3 firing through the front door of McCary's; is that right?

4 A Yes, sir.

5 MR. FOWLER: I have no further questions.

6 RE-CROSS-EXAMINATION:

7 BY MR. KATA:

8 Q You didn't write in your written statement that Mr.
9 Bethel was firing through the window and Tolliver pulled
10 out his gun, did you?

11 A No, I don't think I did.

12 Q No, you didn't. You wrote Tolliver pulled out his
13 pistol and that's when E-Lo started shooting, correct?

14 A Yes, sir.

15 MR. KATA: No more questions.

16 THE COURT: All right. You may step down.

17 Next witness.

18 MR. FOWLER: Your Honor, the State calls Investigator
19 Roach.

20 THE CLERK: Would you state your name for the record,
21 please.

22 THE WITNESS: Jason Roach.

23 THE CLERK: Jason Roach.

24 THE WITNESS: Yes, ma'am.

25 JASON ROACH, after being duly sworn,

1 testified as follows:

2 THE CLERK: You can have a seat right there.

3 DIRECT EXAMINATION:

4 BY MR. FOWLER:

5 Q Hello, Investigator Roach.

6 A Good afternoon.

7 Q Where do you work and what do you do there?

8 A I'm employed at the Richland County Sheriff's
9 Department forensic sciences lab. I'm currently a crime
10 scene latent print processing analyst. I transferred to
11 the crime scene unit in February of this year, but,
12 previously, I was a firearms examiner.

13 Q All right. Tell me about how you became a firearms
14 examiner.

15 A I was hired by the Georgia Bureau of Investigations
16 division of forensic science in Atlanta, Georgia, in
17 January of 2010 where I underwent a 26-month training
18 program with in-house training as well as practical,
19 hands-on training. I went to the northeast to
20 approximately eight different firearm manufacturers to
21 understand how a firearm was made.

22 I then underwent academic learning for all components
23 of a cartridge, which is a single round of ammunition, so
24 bullets, the cartridge casings, gunpowder and the primer
25 on the end and the functionality of firearms and the

1 interaction of ammunition so the firearm when it fires,
2 the markings left on it from the bullet on the cartridge
3 case. I spent five months with a comparison microscope,
4 which is two microscopes connected to one bridge. It's
5 like looking at two things at the same time. I did
6 approximately 300 hours and 1,000 comparisons on that.

7 I then underwent a mock trial, we call it, where we
8 get a case and it's treated just like evidence. We go
9 through a mock trial. I didn't sleep, and I passed that.
10 And then I received a letterhead of supervised caseworker,
11 which means I work a full case and another fully qualified
12 examiner works behind me until I get into a better
13 understanding of all the standard operating procedures and
14 how casework should flow.

15 And approximately in March, April of 2012, I received
16 a letter of independent casework, which means I'm allowed
17 to work cases independently. And they go through the
18 normal verification as well as control processes until
19 they're released.

20 I worked there until June of 2018. I had an
21 opportunity to come back to South Carolina, my home. I
22 started work July of 2018 at the Richland County Sheriff's
23 Department forensic sciences lab in the same capacity as a
24 firearms examiner.

25 Since I moved from one lab to another, the way the

1 accreditation works, I have to go through their case
2 supervised casework period to understand their operating
3 procedures. And then I worked there until February of
4 this year when I transferred to crime scene.

5 Q So those methods that you talked about when you're
6 comparing bullets and analyzing them, are those reliable
7 methods?

8 A Yes.

9 Q And are those generally used throughout the law
10 enforcement community?

11 A Yes, for firearms examiners, yes, sir.

12 Q About how many examinations would you say you've done
13 ballpark?

14 A I know I've done over 1,000 cases. And I can't give
15 you a good ballpark for individual examinations because
16 there's so many per case. I would say, at least, a few
17 thousand to be conservative.

18 Q Have you ever been qualified as an expert?

19 A I have, yes, sir.

20 Q How many times?

21 A Seventy-one times.

22 Q And I think we discussed previously, 70 of those are
23 in the State of Georgia?

24 A Seventy is in the State of Georgia and one is in
25 Richland County.

1 Q Here in this courthouse, correct?

2 A Yes, sir.

3 MR. FOWLER: Your Honor, at this time, I would move
4 to have Investigator Roach qualified as an expert in
5 firearms and tool mark examination.

6 MR. KATA: Without objection.

7 THE COURT: He's so qualified.

8 Ladies and gentlemen, expert witnesses can offer
9 opinions where lay witnesses cannot.

10 BY MR. FOWLER:

11 Q Mr. Roach, before we start talking about this case, I
12 want to give the jury a little guidepost. Can you step
13 down here? I'm just going to hand you this. Could you
14 describe what that is and just kind of talk about the
15 various parts of what goes into that so the jury knows
16 what we're talking about?

17 A What we're looking at here is what we call a
18 cartridge. Some would call it a bullet. But a bullet is
19 not a cartridge. A cartridge is a single unit of
20 ammunition.

21 You have your bullet here. It's housed inside the
22 case along with the propellant or gunpowder. And on the
23 rear here is a little sort of primer. That's what a
24 firing pin or striker of the firearm hits, has a small
25 substance inside of it, it causes a spark, it then burns

1 the gunpowder.

2 It burns rapidly for a chemical reaction. So the
3 pressure builds and the weakness point is the bullet. So
4 it pushes the bullet in and out of the barrel.

5 In this particular case, this is a nine millimeter
6 Luger cartridge, so a nine millimeter pistol handgun would
7 have a slide on top. So after the bullet exits, the force
8 left behind this cartridge case pushes the slide back,
9 expelling this cartridge case or ejecting it. And then
10 the magazine that goes in the grip, there's more
11 cartridges to restart the process again and the process
12 will continue.

13 Q And so just before I get you back up there, when we
14 talk about tool marks made from a firearm, where kind of
15 generally do we see those on the cartridge and the
16 projectile itself?

17 A During the machine process, there are certain things
18 that are controlled by the manufacturer, the width of the
19 bullet, the cartridge case. The same with the firearm,
20 the width of the barrel and the chamber and how it works
21 and interacts with it.

22 So the markings that are left on the bullet are left
23 from entering and exiting the barrel. The cartridge case
24 is where it stays -- the barrel, there's a place called a
25 chamber where it stays. When it's fired, that chamber

1 holds the cartridge case. If there's nothing holding it,
2 it would burn and rupture the cartridge case like a
3 firecracker. It's a rapid burning.

4 It's what we call operates. What it does is it fills
5 any small space, so it spreads it out. So any markings in
6 the chamber are left in from when it goes in, when it
7 fires and when it's pulled out and ejected.

8 So the extractor, part of the slide, grips this
9 little extractor groove, pulls out of the chamber once
10 it's been fired and then there's a little post on the
11 other side opposite that hits it as the slide goes back to
12 knock it out of the way so that a new cartridge if there's
13 one available and reloads. That's why they call it
14 automatic loader. It reloads itself until there's no more
15 ammunition.

16 Q Thank you. You can step back.

17 A (Witness complies.)

18 Q All right. Now, let's turn to what you were asked to
19 do in this case. Can you tell me what you did?

20 A Yes, sir, there were bullets and cartridge cases,
21 projectiles that were submitted, as well as the firearm
22 and magazines that were submitted in this case. My job
23 was to break those down into what they were and what the
24 pieces are and compare them to one another and make test
25 fires compared to the gun that was submitted, as well as

1 test the functionality to see if the gun worked properly.

2 Q I'm going to show you what's been premarked as
3 State's 57 and 58. Do you recognize those?

4 A I do recognize State's Exhibit 58 by the Richland
5 County Sheriff's Department case number, as well as the
6 bar coding here, as well as my seal and initial was on
7 here, but it appears it's already been opened to be
8 presented at court, as well, as State's Exhibit 57, as I
9 said earlier, with the same case number, as well, as the
10 bar codes, as well as my seal and initial that was
11 originally there.

12 Q All right. So you conducted a firearms analysis on
13 all of those objects up there with you?

14 A Yes, sir.

15 MR. FOWLER: Your Honor, at this time, I would move
16 to have State's 57 and 58 admitted into evidence.

17 MR. KATA: Without objection.

18 THE COURT: It's in evidence.

19 (WHEREUPON, State's Exhibit Nos. 57 and 58 were
20 admitted into evidence.)

21 BY MR. FOWLER:

22 Q And I'm going to show you what's already been
23 admitted as State's 61 and 62 and we can work our way
24 through your report. I'd like to start with items 31
25 through 42.

1 A Yes.

2 Q Tell me about items 31 through 42, what you observed
3 and concluded?

4 A I may refresh with my notes?

5 Q Yes.

6 A It's a lot of items.

7 Q Please.

8 A My exhibits, items 31 through 42 were all 40-caliber
9 cartridge cases, which means they were fired from a
10 40-caliber firearm. They were all fired from one firearm,
11 the same firearm. We do not have a firearm that went with
12 those, what we call class characteristics, caliber, how
13 it's designed and how it shoots.

14 Class characteristics think about you're in a parking
15 garage, and there's a bunch of red Ford F-150s and you'll
16 have blue Honda Accords. Those all have the same class,
17 but they're different. One is a car, one is a truck, but
18 the class, if we want to look at something further, we can
19 get down to the individual characteristics, which I'll get
20 to later.

21 But we didn't have a gun to compare these particular
22 items to. All we could do was compare it to one another
23 and see if they came from a compatible firearm. And then
24 if they had enough class characteristics, like I said
25 earlier, a Ford F-150 truck versus a blue Honda Accord.

1 We could give a possible list of firearms --

2 Q Would you -- oh, I'm sorry, I cut you off. Would you
3 mind just pulling out 31 through 42, please?

4 A Yes, sir.

5 Q I'm sorry I interrupted you, please.

6 A No. The list that was created -- the one list that
7 was created in these particular firearms were consistent
8 with Glock 40-caliber Smith and Wesson firearms, the
9 generation one through four we call it. Glock has gone
10 through different generations of particular firearms.
11 Generation one through four is like a rectangle. When
12 they're fired on that primer I told you about, it leaves
13 an impression that looks like a rectangle. The new
14 generations five looks like a tear drop.

15 So in this particular case, the other class
16 characteristics, we said Glock 40-caliber pistols
17 generation one through four. But it, also, says undefined
18 manufacturers should be considered because Glock has
19 released its patent. So there are some guns that we call
20 home brew or firearms that, also, look like guns, like a
21 clone. So we, also, added that in there, as well since we
22 don't have the actual firearm to compare, but we put that
23 statement in there because of investigation.

24 Q So in your opinion, items, I believe, it was 31
25 through 42 were all fired by the same firearm?

1 A Correct.

2 Q Is that correct?

3 A Yes.

4 Q And those were all -- do you recall what the specific
5 make and model of those were?

6 A They were various ones. I'd have to check the actual
7 head stamps. The head stamp has on the back telling you
8 the caliber and who the manufacturer would be.

9 Q Okay. And --

10 A The 31 through 42 all had the same manufacturer.
11 They were made by the Federal Cartridge company.

12 Q Okay. So your item 31, which was listed as marker A,
13 that's from the parking lot near the entrance, and that's
14 pretty much the same all the way through 38; is that
15 correct?

16 A Check mine. It's 31 -- now, I'm not privy to all the
17 information once it gets to me. Sometimes the reports are
18 not written or not posted, so I go by those marker numbers
19 and a lot of things that are on mine.

20 Q Okay.

21 A So 31 through 42 were marked markers A through G, so
22 alpha through golf, and I through M, India through Mike,
23 respectively, that was all that was written as a marker
24 number. I don't know the necessary locations in regards
25 to that because I didn't work the crime scene.

1 Q Okay. And then in regard to item 49, 43, 44 and item
2 three, can you tell us what those items are and then what
3 your ultimate conclusion was of them?

4 A Yes, item three was a bullet jacket and items 43 and
5 44 were fired cartridge cases, all consistent with nine
6 millimeter Luger caliber. The item three bullet jacket
7 that was recovered and item 43 and 44 cartridge cases that
8 were recovered were fired by the nine millimeter firearm
9 that was submitted, which was a Kel-Tec nine millimeter
10 firearm.

11 Q So you actually had the firearm to compare those to?

12 A Yes, we compared the cartridge cases. We compared
13 them and said these were both fired from the same firearm.
14 I looked at the class characteristics. It's a nine
15 millimeter and the firing pin. And then I said well, I
16 have a Kel-Tec that was also submitted. So I took that
17 Kel-Tec, made test fires. Making a test fire, I take same
18 type of ammunition and I have a water tank.

19 It was a 600-gallon water tank. And I shoot the
20 firearm into the shooting port of it and that water slows
21 down the pistol so I can have a pristine sample. And I
22 would then compare the test fires together on the same
23 comparison microscope to find the specific pattern that's
24 left there by the tool marks in the barrel. And then I
25 would compare it to the evidence. And I was able to

1 compare the cartridge casings and the bullets from item 49
2 and the firearm that was submitted and concluded that the
3 bullet jacket, item three, and cartridge cases were all
4 fired by the submitted firearm.

5 Q Can I have that, please?

6 A Yes, sir.

7 Q So the nine millimeter cartridge casings that you
8 compared, there were only two of those cartridge casings,
9 correct?

10 A Correct, yes, sir.

11 Q And those both matched the nine millimeter handgun
12 that you were presented; is that correct?

13 A Yes, sir.

14 Q But for the 40 Smith and Wesson that were all fired
15 from the same gun, you were presented with one, two,
16 three, four, five, six, seven, eight, nine, ten, 11, 12 of
17 those?

18 A Correct, that's all that was submitted.

19 Q And those were all fired from the same firearm?

20 A Correct, yes, sir. I don't know which particular one
21 because there was none submitted to compare it to.

22 MR. FOWLER: No further questions, Your Honor.

23 THE COURT: Yes, sir.

24 MR. KATA: May it please the Court.

25 CROSS-EXAMINATION:

1 BY MR. KATA:

2 Q Investigator, when you receive these items to test,
3 you're not given much detail, are you?

4 A No, sir, we don't get much detail because reports are
5 still being written and, also, we don't want to know what
6 happened because we may not know what has happened, so we
7 try to stay away from it and remain unbiased so that we
8 can just talk for the evidence because it can't speak for
9 itself.

10 Q So you complete the scientific tests?

11 A Yes.

12 Q So when you get the case file, you wouldn't have been
13 told that the nine millimeter gun was found inside the bar
14 or anything of that nature or whose it was or nothing like
15 that?

16 A Unless it was specifically marked on the box or
17 something like that that was significant, we don't know
18 where it came from. It may have a location, like an
19 address, but I don't recall that address being on it.
20 They were submitted under that case number and I was
21 assigned that case to work it to completion.

22 Q Understood. But in this case, a Kel-Tec nine
23 millimeter was collected and submitted to you for testing?

24 A I'm sorry, something in my throat. Yes, sir, that's
25 correct.

1 MR. KATA: Thank you. No further questions.

2 THE COURT: Anything further?

3 MR. FOWLER: Nothing from the State, Your Honor.

4 THE COURT: Thank you, sir. You may step down.

5 THE WITNESS: Thank you, Your Honor.

6 MR. GOLDBERG: Your Honor, the State calls Dr. Amy

7 Durso.

8 THE CLERK: State your full name.

9 THE WITNESS: Amy Durso.

10 THE CLERK: Would you spell your first name, please?

11 THE WITNESS: A-M-Y.

12 AMY DURSO, after being duly sworn,
13 testified as follows:

14 THE CLERK: Thank you. Have a seat right there.

15 DIRECT EXAMINATION:

16 BY MR. GOLDBERG:

17 Q Good morning.

18 A Good morning.

19 Q Good afternoon. Dr. Durso, please tell the jury a
20 little bit about yourself.

21 A I'm Dr. Amy Durso. I'm a forensic pathologist, which
22 means I'm a medical doctor, but my main duties include
23 doing autopsies or examinations after death, primarily for
24 the Richland County coroner's office.

25 Q And how long have you been in the field of forensic

1 pathology?

2 A About 12 years.

3 Q If you had to ballpark, how many autopsies have you
4 performed in your career?

5 A I actually do keep count. It's a little over 3700 at
6 this point.

7 Q And did you have an opportunity to conduct an autopsy
8 on one Christopher Lott in this case?

9 A I did on August 23rd, 2019.

10 Q All right. Will you tell the jury a little bit about
11 what you're trying to do and what your goal is when you're
12 doing an autopsy?

13 A So we describe everything outside the body,
14 identifying marks, height, weight. And then we look at
15 the outside of the body, the external examination and we
16 document injuries, abnormalities, anything out of the
17 ordinary, as well as just physical characteristics. And
18 then we are able to open up the body, open up all the
19 organs and, also, remove the top of the skull, remove the
20 brain, look at that, as well.

21 We're, basically, there to document anything that's
22 wrong. Whether it's gunshot wounds, heart attacks. It's,
23 basically, the same procedure, but if there's a gunshot
24 wound, we do track the wound and try to recover any
25 projectiles.

1 Q All right. Is that what you did in this case?

2 A It is.

3 Q And what sort of injuries or abnormalities did you
4 observe about Mr. Lott?

5 A Mr. Lott had two gunshot wounds to his body. There
6 was an entrance on the left side of his upper back and an
7 entrance wound on the right abdomen that corresponded to
8 two different gunshot wounds.

9 Q If I could have you step down for just a moment. I'm
10 going to show you what's been premarked as State's 66. Do
11 you recognize that?

12 A I do.

13 Q What to you recognize that to be?

14 A That is a copy of one of the body diagrams we use at
15 autopsy with my notes on it.

16 Q Is this copy a fair and accurate depiction of the
17 original?

18 A Yes.

19 MR. GOLDBERG: Your Honor, I'd offer State's 66 into
20 evidence.

21 MR. KATA: Without objection.

22 (WHEREUPON, State's Exhibit No. 66 was admitted into
23 evidence.)

24 BY MR. GOLDBERG:

25 Q I'm going to hold this for you. If you wouldn't mind

1 -- I'm just going to hold it up for the jury. So if you
2 would mind coming describing what you were saying just a
3 moment ago about the injuries you saw?

4 A Right. So there's a gunshot entrance here in the
5 back labeled gunshot wound A. I just pick letters as I
6 see the gunshot wounds. I don't know what order it came
7 in. So this goes through there.

8 I'm not the best artist. This isn't the same body
9 habitus of the person of Mr. Lott, but there's a little
10 piece of this arm that kind of folds over this part of the
11 back. And the jacket, so the surrounding part of the
12 projectile was actually lodged in the back, kind of here
13 in this arm right here.

14 The rest of this projectile after going through the
15 back actually goes into the chest cavity and hits the left
16 upper lobe of the lung and then it hits the aorta arch.
17 So from your heart, you have this large vessel called an
18 aorta.

19 It's about this big around with your hands like this.
20 It comes off, it curves around, delivers your blood from
21 your heart to your entire body. So this is a major
22 vessel. And if it's hit by a projectile, there's very
23 little chance of survival.

24 So it hits this causing extreme bleeding. I was
25 actually able to recover the lead core. The rest of the

1 projectile which is floating in the blood in the left side
2 of his chest.

3 Q All right. So I'll show you State's 68. What do you
4 recognize that to be?

5 A So this is showing the main entrance wound, as well,
6 as the arm pulled up. You can see where I had recovered
7 the jacket fragment from this part of the left arm.

8 Q And State's 67?

9 A These are the three projectile pieces that I
10 recovered at the autopsy of Mr. Lott.

11 Q And do these photos fairly and accurately depict them
12 as they appeared that day?

13 A They do.

14 MR. GOLDBERG: Your Honor, I would offer 67 and 68
15 into evidence.

16 MR. KATA: Without objection.

17 THE COURT: Admitted.

18 (WHEREUPON, State's Exhibit Nos. 67 and 68 were
19 admitted into evidence.)

20 BY MR. GOLDBERG:

21 Q If you can describe here in State's 68 again. You
22 were talking about the entry wound.

23 A Right. So his head is up this way, fingers down
24 here. So with the left side of the arm lifted up, so you
25 can see the arm was down, so the arm must have been down

1 at the time he was shot in his left arm and a little piece
2 of the jacket veers off and breaks off.

3 You can see this is an entrance wound. And that's
4 what we call an abrasion collar, so as a projectile enters
5 the skin, it pulls in for a fraction of a second as it
6 goes in. So this has the characteristics of an entrance
7 with this little abrasion collar around it. We are able
8 to track the path after we open the body and are able to
9 see what else it incorporates. In this case, it was the
10 lung and the arch of the aorta.

11 Q And 67 are the projectiles you references; is that
12 right?

13 A Yes. So this is the little jacket fragment we got
14 from the left arm and this is the rest of that projectile
15 we got. So it was just floating around his left chest
16 cavity in the blood. We recovered it there. And this is
17 the projectile from what I labeled gunshot wound B on the
18 diagram, so this is the other gunshot wound. This one
19 actually enters this right abdomen here.

20 It had perforated the intestine. The intestine was
21 actually removed during emergency surgery, so he was able
22 to make it to the hospital, did an emergency surgery. So
23 the piece of intestine actually went to surgical pathology
24 and I was able to look at it there and it was just a hole
25 intestine with no projectile left in it. And then I was

1 able to actually find the lead core portion of this
2 projectile, this one here within this -- so this part of
3 the abdominal wall, so it just goes in here and it's back
4 here.

5 Q Okay. Thank you. So if I followed you correctly,
6 for lack of a better word, three wounds, but two
7 projectiles?

8 A Exactly, he was only shot twice.

9 Q One of those went through two different parts of his
10 body?

11 A Correct.

12 Q And then one of those projectiles appears to have
13 split into a fragment of some kind?

14 A Correct, the jacket kind of tore off.

15 Q Is that uncommon?

16 A Not uncommon.

17 Q Was there anything else noteworthy about Mr. Lott or
18 his injuries?

19 A Those were the two, you know, gunshot wounds. Other
20 than that, there was a laceration to his right forehead.
21 It did not contribute to his death. And those were all
22 the major injuries. He had a slightly enlarged heart that
23 didn't lead to his death. It was the gunshot wound that
24 killed him.

25 MR. GOLDBERG: Thank you, Doctor.

1 THE COURT: Yes, sir.

2 MR. KATA: May it please the Court.

3 CROSS-EXAMINATION:

4 BY MR. KATA:

5 Q Good morning, Doctor.

6 A Good morning.

7 Q When you conduct an autopsy, you run all kinds of
8 tests, correct?

9 A We do draw blood for toxicology, yes.

10 Q Did you run a tox on Mr. Lott?

11 A Yeah, I drew blood and it was sent off to SLED for
12 toxicology testing, yes.

13 Q Do you recall the results?

14 A Yeah, I have it listed here in my report. So we
15 actually in this case got blood from -- he survived
16 several hours in the hospital, so they were actually able
17 to get the blood when he first arrived at the hospital.
18 His alcohol level was .233 percent.

19 Q .233 percent?

20 A Yes.

21 MR. KATA: No more questions.

22 THE COURT: Anything further?

23 MR. GOLDBERG: No, sir.

24 THE COURT: Thank you. You may step down.

25 All right. Time to break for lunch. Will restart at

1 two o'clock. Please do not discuss the case.

2 (WHEREUPON, the jury left the courtroom at 12:42
3 p.m.)

4 THE COURT: Anything before we break?

5 MR. GOLDBERG: The only thing I've got, Your Honor,
6 is just I'll provide to you and Mr. Kata a copy of a
7 PowerPoint that we intend to bring up in front of a
8 witness this afternoon so that you and Mr. Kata can review
9 it. Otherwise, nothing else from the State.

10 MR. KATA: Your Honor, I'll review it during the
11 lunch break. No other issues.

12 THE COURT: Yes, sir.

13 Is this a statement by Mr. Bethel?

14 MR. GOLDBERG: Your Honor, at this time, we don't
15 anticipate offering the statement at all. I would
16 anticipate it's very possible that we could get just on
17 the brink of resting this afternoon. And I think the only
18 other thing to decide would be if that statement was going
19 to go in, but it's looking like we're not going to go that
20 route.

21 THE COURT: The one that you just handed up?

22 MR. GOLDBERG: That is not a statement. That is a
23 PowerPoint with video, the video from the bar and a --

24 THE COURT: Did you hand up the statement you want us
25 to look at?

1 MR. GOLDBERG: No, sir. No, sir. Because at this
2 point, I don't anticipate going into that this afternoon.

3 THE COURT: Okay.

4 MR. GOLDBERG: Or possibly at all.

5 THE COURT: All right. Very good. Two o'clock.

6 MR. GOLDBERG: Thank you, Your Honor.

7 (WHEREUPON, a lunch break was taken.)

8 (WHEREUPON, State's Exhibit Nos. 69 through 72 were
9 marked for identification only.)

10 THE COURT: Mr. Kata, are we ready to go?

11 MR. KATA: We're ready. They haven't brought him up
12 yet. I think they're on the way.

13 THE COURT: Okay. You can bring the jury.

14 MR. KATA: Your Honor, can we just address the
15 PowerPoint before they come in?

16 THE COURT: Okay. Yes, sir.

17 MR. KATA: Your Honor, we would object to the
18 introduction of that exhibit on PowerPoint. Your Honor,
19 it's a conglomeration of a number of exhibits that are
20 already in evidence. To enter them in again under another
21 exhibit number would be cumulative. All of those exhibits
22 are already in evidence. Entering them twice would be
23 unnecessary and prejudicial to my client. It would be no
24 different than entering in every picture two times. Your
25 Honor, we would object to the entry of that exhibit.

1 THE COURT: All right. Mr. Fowler, Mr. Goldberg.

2 MR. GOLDBERG: Thank you, Your Honor. I would refer
3 the court to Rule 1006 of South Carolina Rules of
4 Evidence, which talks about the contents of voluminous
5 recordings which cannot conveniently be examined in the
6 court may be presented in the form of a summary provided
7 the underlying data is admissible in evidence.

8 In this situation, the underlaying data is in
9 evidence. The videos have already been put in through
10 other witnesses, State's Nos. 3 and 4 most notably, the
11 Bank of America video and the McCary's video.

12 One of the key issues that's come up throughout the
13 case in cross-examination by Mr. Kata is to some extent
14 where the defendant was, where Mr. Wise was at certain
15 points while all this is happening and who saw what from
16 each other.

17 So part of what the PowerPoint has to offer is it
18 allows the jury to see multiple camera angles
19 simultaneously as noted by the time stamps on the videos
20 so they can see these events happening at different angles
21 at the same time.

22 When you talk about voluminous recordings, you've got
23 all together each camera angle played individually from
24 start to finish would be over three hours of video. It's
25 been condensed down into what's been provided on the

1 PowerPoint.

2 The versions that are in the PowerPoint still fairly
3 and accurately depict the videos collected by law
4 enforcement. The changes, so to speak, that have been
5 made to them are minimal in that you've got a couple of
6 slides where two camera angles are side-by-side playing at
7 the same time.

8 You have a couple of slides where different camera
9 cuts or clips and camera angles are put together
10 continually on a loop in the timestamp order pursuant to
11 the time stamps on each camera. You have one slide where
12 there's a highlighted portion of the defendant walking up
13 to the door from the outside. And this gives the jury the
14 opportunity to view the full picture of this as though
15 they were there.

16 I would argue, additionally, that the objection --
17 the issue is really more about the weight of the evidence,
18 not the admissibility. If Mr. Kata wants to cross-examine
19 Mr. Martin about anything he did, about how it was put
20 together, I'm certainly going to ask him about how to put
21 it all together.

22 And finally, Your Honor, I'd just point out that this
23 same witness, Mr. Martin, was allowed to testify in this
24 court in front of Your Honor in a different matter, it's
25 State vs. Roland, in, essentially, the exact same manner.

1 There was underlying surveillance video that was
2 already into evidence. He put some of those videos
3 together in a continuous loop based on some time stamps
4 and continuity. He highlighted some frames, zoomed in on,
5 things of that nature. He did split screens in that case,
6 as well. He was allowed to testify and that presentation
7 was admitted into evidence in that case.

8 So for those reasons, we would ask that Mr. Martin be
9 allowed to testify and that PowerPoint be admitted.

10 THE COURT: Mr. Kata.

11 MR. KATA: Your Honor, just in response to Rule 1006,
12 I mean, the Rule states that voluminous records which
13 cannot be conveniently be examined in court. Your Honor,
14 I don't think the parties have had any problem displaying
15 videos before. I mean, the clips themselves are
16 relatively short. It's not hours and hours and hours of
17 footage.

18 Your Honor, we started the trial yesterday and we're
19 already moving through at a pretty good pace and we played
20 all those videos. So I don't think they're so voluminous
21 that additional exhibits summarizing them alleviates any
22 challenge to conveniently being able to be examined. I
23 mean, if it was eight hours of tape to go through, sure, I
24 understand, but, Your Honor, there's been no problems
25 displaying what's already been admitted.

1 MR. GOLDBERG: Your Honor, if I may?

2 THE COURT: Yes.

3 MR. GOLDBERG: I would just add in response to that
4 that it's also in regard to the convenience issue, the
5 jury is going to be back there without the benefit of
6 somebody, like the lawyers, like Mr. Martin, who knows
7 exactly where to start and stop these things on these
8 videos.

9 They're going to have to look at one camera and try
10 to figure out where all this happens, stop, start. And
11 then if they want to compare that with another angle at
12 the same time, go out of that video, go back to another
13 video clip and find that point, much the way we were doing
14 when we were presenting it, but we all knew where to look
15 already.

16 So this allows them to be able to see all that
17 without having to do that on their own. However, if they
18 choose to do it on their own, they can because they're in
19 evidence, as well.

20 THE COURT: Anything else?

21 MR. KATA: No, Your Honor.

22 THE COURT: The State has the burden of proving the
23 defendant guilty beyond a reasonable doubt. The State has
24 to convince each and every juror of guilt based on the
25 testimony of witnesses and credibility of the evidence

1 offered.

2 This evidence is admissible as proof as part of the
3 State's case in chief. It's not based on Rule 1006, but
4 just based on the proper presentation of evidence during
5 the trial. So I overrule the objection.

6 MR. KATA: Thank you, Your Honor.

7 THE COURT: Bring the jury.

8 (WHEREUPON, the jury entered the courtroom at 2:28
9 p.m.)

10 THE COURT: The one you gave us does not open.
11 Hopefully, yours opens. The one given to us does not
12 open.

13 MR. GOLDBERG: Oh, it does not open.

14 THE BAILIFF: The jury is seated.

15 THE COURT: Very good. Welcome back.

16 You may proceed.

17 MR. FOWLER: Thank you, Your Honor. May it please
18 the Court. The State calls Dr. Darren Monroe.

19 THE CLERK: Would you state your full name, please?

20 THE WITNESS: Darren Monroe.

21 THE CLERK: Would you spell your first name, please?

22 THE WITNESS: D-A-R-R-E-N.

23 DARREN MONROE, after being duly sworn,
24 testified as follows:

25

1 THE CLERK: Thank you. Have a seat.

2 DIRECT EXAMINATION:

3 BY MR. FOWLER:

4 Q Dr. Monroe, where do you work?

5 A I work at Professional Pathologist Services, which is
6 a private physician group here in town.

7 Q And what are your duties at that job?

8 A I'm a forensic pathologist and that, essentially,
9 involves just doing autopsies to determine the cause of
10 death.

11 Q And tell us a little bit about your background, how
12 you were trained and got into this profession.

13 A So after undergraduate and graduate school, I went to
14 four years of medical school and then four years of
15 residency in pathology and then another year, which is a
16 fellowship in forensic pathology.

17 Q Can you ballpark how many autopsies you've done?

18 A Around 2500.

19 Q Have you been qualified as an expert in the field of
20 forensic pathologist?

21 A Yes, I have.

22 Q How many times?

23 A Twenty or 25.

24 MR. FOWLER: Your Honor, at this time, I would move
25 to have Dr. Darren Monroe qualified as an expert in

1 forensic pathologist?

2 MR. KATA: Without objection.

3 THE COURT: He's so qualified.

4 BY MR. FOWLER:

5 Q Dr. Monroe, did you have an occasion to perform an
6 autopsy on a Tolliver Wise?

7 A Yes, I did.

8 Q Would you mind sharing some of your observations and
9 conclusions related to that autopsy?

10 A So the main findings in this autopsy case were that
11 there was a gunshot wound to the chest and that became the
12 cause of death, actually, a single penetrating gunshot
13 would not to the chest.

14 Q Dr. Monroe, I'm going to show you what's been marked
15 as State's 64. To you recognize that?

16 A Yes, I do.

17 Q What is that?

18 A This is a copy of one of the autopsy diagrams we used
19 in the case.

20 Q And you created this?

21 A Yes.

22 MR. FOWLER: Your Honor, at this time, I'd move to
23 have State's 64 admitted into evidence?

24 MR. KATA: Without objection.

25 THE COURT: It's admitted.

1 (WHEREUPON, State's Exhibit No. 64 was admitted into
2 evidence.)

3 BY MR. FOWLER:

4 Q Can you tell us what we're looking at here on this
5 piece of paper?

6 A This is just a body diagram that we use to make any
7 drawings of any findings that we come across. At the top,
8 there's normal things we look at in all cases, height,
9 weight, that sort of thing. There's, also, a note here on
10 the side that there were bags over the hands, which is
11 standard in homicide cases like this for people to
12 potentially collect evidence from the hands.

13 Q Doctor, would you look at these and tell me if you
14 recognize these?

15 A Yes, I do.

16 Q Okay. What are those?

17 A These are photographs from the autopsy. One is an
18 x-ray that we take during the autopsy. One is a far-away
19 shot of the entrance gunshot wound. One is a close-up
20 shot of that and one is of the projectile that we
21 recovered.

22 Q Do these fairly and accurately depict your
23 recollection of the gunshot wound of Mr. Wise?

24 A Yes, they do.

25 MR. FOWLER: Your Honor, at this time, I would move

1 to have State's 69 through 72 admitted into evidence.

2 MR. KATA: Without objection.

3 THE COURT: They're admitted.

4 (WHEREUPON, State's Exhibit Nos. 69 through 72 were
5 admitted into evidence.)

6 BY MR. FOWLER:

7 Q I'm going to show you 70, 71. Again, you said that's
8 a far-away shot of the gunshot wound of Mr. Wise?

9 A Yes, it was.

10 Q And this is a closeup of that?

11 A Yes, sir.

12 Q So tell us, what was -- this gunshot wound was the
13 cause of his death?

14 A Yes, it was.

15 Q What was the trajectory of this bullet's flight path
16 through his body?

17 A The trajectory of this projectile was left to right,
18 front to back and downward.

19 Q Did it penetrate any organs?

20 A Yes, it did.

21 Q What organs did it penetrate and how?

22 A So the first thing is it entered the chest about
23 here, so it went through the skin and muscle of the chest.
24 It then went through what we call the fourth intercostal
25 space, which is the space between the rib bones

1 themselves. It went through the left lung, the heart, the
2 right lung, one of the back right intercostal spaces.
3 Again, that's just a space between the ribs. And then it
4 stopped in the soft issues on the right back. And that's
5 where we recovered the projectile from.

6 Q I'm going to ask you to show me State's 69. This is the
7 x-ray. Can you tell what you say that is depicting?

8 A This x-ray is a chest x-ray. The head would be up
9 here. This shows just the chest area. And right here is
10 the projectile itself on the right side.

11 Q Right. So the entrance would have been over here on
12 the left side with the bullet lining up on the right side?

13 A Correct.

14 Q Now, I think -- correct me if I'm wrong, you said the
15 bullet penetrated his heart?

16 A Yes, it did.

17 Q What kind of damage did that do to his heart?

18 A So the projectile went through what we call the left
19 ventricle, the septum and the right ventricle. The septum
20 is just the part of the heart that separates the
21 ventricles. And the ventricles themselves are the main
22 part of the heart. That's what's pumping blood, the left
23 one to your whole body and the right one just to your
24 lungs. These are devastating, almost very quickly fatal.
25 There's nothing that you would have been able to do before

1 that.

2 Q Did it penetrate one or both of his lungs?

3 A It penetrated both of the lungs. It went through
4 both right and left lung.

5 Q And you were able to recover that projectile?

6 A Yes, I was.

7 Q Is that what's depicted in State's 72?

8 A Yes.

9 Q I always like to ask this. In your opinion as a
10 medical doctor, had Mr. Wise been shot on an operating
11 table in a hospital, is it likely that he could have
12 survived that gunshot wound?

13 A This would not be survivable.

14 Q Did you determine the manner of his death?

15 A I have an opinion on the manner of death.

16 Q Yeah, what is your opinion on the manner of his
17 death?

18 A This is a homicide.

19 Q And in your opinion, what is the cause of his death?

20 A Cause of death, I put as a single penetrating gunshot
21 wound of the chest.

22 MR. FOWLER: I have no further questions, Your Honor.

23 CROSS-EXAMINATION:

24 BY MR. KATA:

25 Q Dr. Monroe, good afternoon. Doctor, when you first

1 come in contact with cases as part of your role, what are
2 you providing? You're providing what?

3 A It depends on each individual case. We're initially
4 contacted by one of the deputy coroners and they are the
5 one who do the scene investigation and they provide us
6 with whatever details that they can come up with. In this
7 case, about all I got was there was a 29-year-old male who
8 was shot.

9 Q Okay. And that's the information that you have when
10 you start doing your job, which is to do what?

11 A My job is to conduct an autopsy to determine the
12 cause and manner of death.

13 Q Okay. So the basis of your opinion -- because, of
14 course, you weren't at the bar -- you weren't at the
15 location of where this happened, were you?

16 A No, I wasn't.

17 Q Okay. So you weren't at McCary's?

18 A No.

19 Q Okay. And you were provided information this was a
20 29-year-old deceased and you start doing your examination?

21 A Yes.

22 Q And that's the basis for your opinion and conclusion
23 that this was a homicide?

24 A No.

25 Q That's all the information that you had?

1 A The determination of the cause and manner of death
2 comes from my autopsy, as well as the scene investigation,
3 so it's not only one thing.

4 Q Okay. But you weren't there to make any kind of
5 call, whether he was acting in self-defense or not, were
6 you?

7 A I have no idea about that.

8 Q Right. Okay. Do you take a toxicology test?

9 A Yes, we do.

10 Q For your evaluation? Did you do that in this case?

11 A Yes, we did.

12 Q Okay. What were the results for Mr. Wise?

13 A Mr. Wise's toxicology in the blood showed an ethanol
14 level, which is just alcohol, of 0.1 gram per deciliter.
15 To put that in perspective, 0.08 is the legal limit to
16 drive. His vitreous ethanol level was a 0.084.

17 MR. KATA: Thank you, Doctor. No more questions.

18 THE COURT: Anything further?

19 MR. FOWLER: Briefly, Your Honor.

20 REDIRECT EXAMINATION:

21 BY MR. FOWLER:

22 Q Doctor, when we spoke last week, you indicated to me
23 that there was something of note about the size and shape
24 of the entrance wound?

25 MR. KATA: Objection, outside the scope of

1 cross-examination.

2 THE COURT: The objection is sustained.

3 MR. FOWLER: I have no further questions, Your Honor.

4 THE COURT: Anything further?

5 (There was no response.)

6 You may step down.

7 Call your next witness.

8 MR. GOLDBERG: Thank you, Your Honor. The State
9 calls Justin Martin.

10 THE CLERK: Could you state your name, please?

11 THE WITNESS: Justin Andrew Martin.

12 JUSTIN MARTIN, after being duly sworn,
13 testified as follows:

14 THE CLERK: Thank you. Have a seat right there.

15 DIRECT EXAMINATION:

16 BY MR. GOLDBERG:

17 Q All right. Good afternoon, sir. Tell the jury where
18 you work.

19 A I work for Fifth Circuit Solicitor's Office.

20 Q How long have you worked for the Solicitor's Office?

21 A A little over six years.

22 Q What is your role in the Solicitor's Office?

23 A I am a body cam and video analyst.

24 Q What does that mean?

25 A I help gather and distribute evidence from law

1 enforcement agencies to the solicitors and defense. I
2 help troubleshoot video and digital evidence on technical
3 issues that arise, and I provide demonstrative and
4 redaction services for trials and motion hearings.

5 Q What did you do prior to coming to work for the
6 Solicitor's Office?

7 A I was -- I ran the government access channel for
8 Richland County government. It's a channel that runs 24
9 hours a day on AT&T, U-Verse and Time Warner Cable. I
10 maintained all of the video delivery systems and I created
11 the content, including live broadcast of counsel sessions
12 and other pertinent government business.

13 Q How long did you have that job?

14 A Five years.

15 Q Okay. Turning back to your duties here in the
16 Solicitor's Office, is part of your duties to review
17 surveillance footage, things of that nature?

18 A Yes, sir.

19 Q Footage from places like bars?

20 A Yes, sir.

21 Q Restaurants?

22 A Absolutely.

23 Q Street cameras?

24 A Uh-huh.

25 Q Body-worn camera by officers?

1 A Yes, dash cam.

2 Q In some instances, does that include the editing of
3 that footage?

4 A It does.

5 Q How do you go about doing that?

6 A We generally look for the video evidence that
7 actually has action that is pertaining to an incident or
8 case. Oftentimes, when we receive evidence from a law
9 enforcement agency, they will provide us with a tremendous
10 amount of video evidence when the amount of video that
11 actually pertains to the case might only be a few minutes.
12 Sometimes we'll receive video clips that are an hour long,
13 but the only pertinent video that is associated with that
14 case could be just a few seconds or we might receive ten
15 videos, we might see 500 of a single incident.

16 Q What about in a situation like this case where
17 there's multiple camera angles involved?

18 A So, oftentimes, when we receive video from
19 surveillance systems at different businesses or homes or
20 something of that nature, the cameras can be positioned in
21 various places throughout the house and, oftentimes, the
22 cameras that we are set only three or four of them catch
23 anything actionable as part of the incident.

24 Q All right. State's No. 3 and State's No. 4 that are
25 already in evidence. Do you recognize those?

1 A I do.

2 Q Okay. And State's 3 is the Boost Mobile surveillance
3 footage, correct?

4 A From the retail store that used to be at that
5 location.

6 Q And State's 4?

7 A That's the video from McCary's Bar and Grill.

8 Q And you've had the opportunity to review those,
9 correct?

10 A I have.

11 Q Talking about State's 4, the McCary's Bar video,
12 approximately how much content is on those videos?

13 A We received 16 files from McCary's -- from law
14 enforcement of the McCary's surveillance system. Each
15 file pertained to one specific camera and those videos
16 lasted between ten minutes and 50 seconds and 12 minutes.

17 Q You talked about how some camera system have
18 different video players earlier and you can -- can you
19 explain how some of those work in terms of if you can only
20 watch one camera angle at one time or you can watch many
21 simultaneously, things like that?

22 A So this is a system I expect would be a few years
23 older. The pixel ratio on it suggests that it probably
24 came out probably about a decade ago. It is limited in
25 that the files that we were provided did not include like

1 proprietary software that would run all the cameras in
2 unison timed up together so you could see multiple angles
3 at the same time. Sometimes that is the case with some
4 other businesses, but that was not the case with McCary's.

5 Q So what did you do in order to try to piece those
6 cameras together in that way?

7 A I have software that I can drop the video into and
8 then I can match each video so that it's at the same time
9 as you're watching and then I can cut out the part so that
10 you can switch between cameras, follow the action. And I
11 can take -- let's say there's something small on the
12 screen, a lot of people might call it like zooming in, but
13 generally it's -- you would increase the scale of the
14 video later and then you would position it. So something
15 that's only happening in a corner on the screen which
16 would make that fill out the display fuller, make it a
17 little easier to see.

18 Q So, for example, you could take a camera showing the
19 inside of the front door and a camera on the outside of
20 the front door and display them at the same time?

21 A That's right. Split the screen space either
22 vertically or horizontally so you could see two of the
23 feeds at the same time.

24 Q Were you asked to do things like that in this case?

25 A Yes.

1 Q What was the focus of what you were looking at in
2 putting those things together in this case?

3 A The activity of the defendant arriving, entering the
4 business, the altercation that occurred inside of the
5 business and then the events inside the business and in
6 the parking lot immediately following.

7 Q All right. You were able to actually combine all
8 those clips in some form or fashion to give a more
9 streamlined view, if you will, of what's occurring?

10 A That's correct.

11 Q And those were pulled from the videos collected by
12 Richland County Sheriff's Department?

13 A That's correct.

14 Q Are there any additional features, for lack of a
15 better word, that you may have inserted into some of the
16 clips that will be displayed?

17 A So I can, also, take a video and duplicate a layer to
18 maybe add a little bit of brightness and contrast to kind
19 of highlight a specific area on the screen, if something
20 is moving around on it. Some of the video that we had was
21 pretty dark, so it helps you see the action of somebody
22 moving around on the screen.

23 Q What about speed, the speed of videos, can you slow
24 them down, speed them up, things of that nature?

25 A I can do that, yes.

1 Q Even with all the types of things we're talking
2 about, the clips that you put together in State's 65 for
3 ID, are they still a fair and accurate depiction of the
4 videos as they were collected by the sheriff's department?

5 A Yes, sir.

6 Q How do you ensure continuity in these videos?

7 A In some instances when you have different
8 surveillance systems, if we're at a business or pod on the
9 side of the street or something, the camera has, like, a
10 power outage, the time that's burnt into the image of the
11 video might not necessarily match up with another system
12 or another camera that's maybe a few hundred feet away,
13 but you can tell that it is the same time because of the
14 action taking place on camera, the individuals entering
15 the business, another individual leaving and what are they
16 wearing.

17 You can time those things up to see even if the video
18 footage has a different time burned into the image that
19 those circumstances would not happen under those very
20 particular -- they're not going to walk out the exact same
21 way. They're not going to walk in. Four people will
22 enter, one person will leave ten seconds later. That's
23 how we establish continuity.

24 Q Did you also have occasion to work with some diagrams
25 in regards to the bar, as well?

1 A That's right.

2 Q What do those diagrams generally show and what was
3 the purpose of that?

4 A I'll use images or diagrams of the layout, perhaps,
5 like, a map showing you where the video camera is located
6 and the direction that the camera is facing because these
7 cameras can be oriented any number of ways, they can be
8 located any number of positions.

9 So I use diagrams to kind of indicate what video
10 you're going to see and where it is recorded from to give
11 a sense of place of that evidence and where it originated
12 from.

13 Q And those diagrams fairly and accurately depict the
14 locations of the cameras and the directions they're
15 pointing at McCary's?

16 A Yes, sir.

17 Q I'm going to show you what's been marked as States 65
18 for ID. Do you recognize that?

19 A Yes, sir.

20 Q What is this?

21 A That's my initials.

22 Q And what is this a disc of?

23 A That's a presentation that I built off those videos.

24 Q That we've just been talking about?

25 A Yes, sir.

1 MR. GOLDBERG: Your Honor, at this time, we'd offer
2 65 into evidence?

3 MR. KATA: Subject to previous objection.

4 THE COURT: It's admitted.

5 MR. GOLDBERG: Thank you, Your Honor.

6 (WHEREUPON, State's Exhibit No. 65 was admitted into
7 evidence.)

8 BY MR. GOLDBERG:

9 Q All right. Mr. Martin, I'm going to ask you to come
10 on down from the witness stand if you can. Just keep your
11 voice up so the court reporter -- actually, I'll switch
12 sides just to make sure everybody can hear you loud
13 enough.

14 A That should not be a problem.

15 Q All right.

16 A This first slide just kind of gives an indication of
17 the location of the incident. Everybody is familiar, this
18 is downtown Columbia. There's a little square here at the
19 intersection of Bush River Road and I-26 near where the
20 incident took place.

21 This is a zoomed-in Google earth map. All of the
22 video cameras that we received from law enforcement
23 regarding this case were between McCary's Bar and there
24 was at some point a Boost Mobile retail store right here.
25 We received some video camera footage from them, 11 files.

1 It only equaled about 11 minutes. They were in four K,
2 but it was extremely dark and we had 15 frames per second.
3 So that's the amount of pictures per second that the video
4 shows you.

5 Q What are these two markers on that map image?

6 A We received 11 files. Five files point from this
7 camera. And they were sequential. They started at one
8 time and when one ends, the next one immediately picked
9 up. So we had five files from that angle and we had six
10 files from that angle. And this is a combination of all
11 the video footage cut down. This is the defendant pulling
12 out in this car here and this is the only pertinent
13 information from this angle.

14 Q What can you tell us about the noted timestamp on the
15 Boost Mobile video?

16 A These videos, the timestamp on these is off by about
17 20 minutes, probably closer to 17 minutes. They're --
18 this actually took place about 15 minutes later. This is
19 the highlight. You'll see the defendant exit out of this
20 vehicle and follow him as he goes in and approaches the
21 bar. He'll stand here, pause, look inside of the door,
22 the window door, and then he'll enter.

23 Q And that was the highlighting you were talking about
24 earlier?

25 A Yes. He is no longer on the screen at the same time.

1 The highlight will come back as he reenters the frame.

2 Q I'm going to skip ahead a little bit while he's in
3 the bar. He's in the bar a couple of minutes?

4 A Yes.

5 Q This is fast-forwarded two minutes, correct?

6 A Yes. You can see some individuals crowding around
7 the front of the door here. You can start to see some
8 activity happening there inside of the door. In just a
9 moment, the highlight will come back as he exits the door.
10 Going off to the side of the door and reaches back in.

11 He'll reemerge from this side of this van that's
12 parked beside that car, pop up, appears to shoot, steps
13 behind the car and they get back in. The car will turn
14 back on. You'll see the brake lights come on. The car
15 exits the parking lot on the Bush River Road side and then
16 heads east on Bush River Road.

17 Okay, so this slide indicates here, you'll see
18 McCary's Bar and Grill. This is McCary's Bar and Grill.
19 We mentioned before, there's 16 surveillance cameras.
20 These were 960 pixels by 480 pixels, but they're 30 prints
21 per second. 16 files in total, there was 176 minutes of
22 video.

23 So this is rotated from the last screen. Before,
24 this was facing north, but to fill up more space on the
25 display to give a clearer view, now we've twisted it, this

1 is west and that's north. These are the glass double
2 doors, the main entrance to McCary's. This is the
3 approximate location of the pool tables.

4 There's some other tables down here. I don't have
5 markers for jukeboxes and all that fancy stuff. There's a
6 jukebox here. There's some video games back in this
7 corner. You'll notice a round table. This is the bar
8 area and this is the kitchen area. Some bathrooms are
9 down here, but we didn't really focus on back there
10 because the cameras are provided there.

11 These are all the locations of all the cameras.
12 These cameras didn't capture any of the action pertinent
13 to the incident. And these are the numbers associated.
14 When you watch the videos for these videos, there is a
15 burn into the image of the video that says cam zero one.
16 And those are indicated by the -- you can see here where
17 each one of the locations that were in use, but it's
18 burned into the image of the actual video. So when it
19 changes, you can see that it's a different camera angle.
20 Q So, for example, when we've shown the jury earlier
21 and said it was camera seven, it said on the screen burned
22 in camera seven?

23 A Uh-huh, yes, sir. So these are all the cameras that
24 we were using in this presentation. As I said before, the
25 cameras that were over here captured absolutely no

1 activity at all. And then there were a few more over here
2 where somebody would enter a room and then immediately
3 leave.

4 These are the cameras that we are going to use in the
5 first section here. It's all video outside following the
6 defendant as he enters.

7 Q What camera does that start with?

8 A Camera ten.

9 Q What time does that indicate?

10 A 2:25 a.m. And just like before, a white car pulls
11 up. You'll see him exit out of the door on the
12 passenger's side and approach McCary's Bar. This is
13 another angle over to the left of the previous.

14 Q Just to be clear just because it kind of jumped from
15 one camera to the other, can you talk about what you were
16 explaining earlier about how you put that together like
17 that?

18 A Yeah, so --

19 Q I'll let it run.

20 A The videos all generally start at the same time. You
21 don't to move it back and forth to get it to line up in
22 time, but I'll take -- in this instance, we had five
23 different camera angles. I'll put all of them and line
24 them up in time so they're all running concurrent and then
25 I will cut the sections out, the higher video level so

1 that you'll actually see the defendant as he's moving
2 through the space.

3 Q I'm going to move ahead just a bit because the jury
4 has seen this already a few times. This is camera nine;
5 is that correct?

6 A Yes, sir.

7 Q Camera six?

8 A Yes, sir. He moves off to the side and reaches in.

9 Q Camera eight, correct?

10 A Yes, sir. Camera ten. It will stay on this camera.
11 This is the last action we see of the defendant from the
12 McCary's video.

13 So the next section is a split screen, so you can see
14 two angles at the same time. We use camera six, which we
15 previously saw. These are both angles you've already
16 seen. You can see inside and out the door at the same
17 time.

18 Q That's camera eight, right?

19 A And then camera six, we've before. Camera five, we
20 have not previously seen. It's located back in this
21 corner. It's a little bit further away. It offers
22 another angle, as well.

23 Q And then the timestamps are lined up?

24 A That's right. Again, another split screen. Both of
25 these angles have been previously viewed. This is a

1 horizontal split screen to give you a different
2 perspective slightly.

3 Q Camera six and seven?

4 A Seven on the bottom, six on the top. This is that
5 same slow motion. This is running at 20 percent speed, so
6 it's lumped in with the normal speed. See the defendant
7 is standing off to the side of the door. He reaches in.

8 Okay. This is a longer cut. This follows more so
9 the actions of the people inside of McCary's from the
10 moment that the defendant goes out the front door. These
11 are the cameras that we use, including those.

12 Q And it indicates a couple different angles from
13 inside the bar, right?

14 A That's correct. As we've seen on this video before,
15 it kind of gives you a look at some of the other things
16 going on in the bar at the time.

17 Q Does it remain on this angle?

18 A It will switch very shortly. Just shows people
19 moving around, rearranging themselves.

20 Q I guess I should ask you this. There's obviously no
21 audio connected to any of these cameras, correct?

22 A That's correct.

23 Some of the patrons, again, are starting to render
24 aid. There's the individual who was hit in the neck.
25 You'll see running around looking for rags or something to

1 deliver to some of the other folks to try to, I assume,
2 add some compression to their wounds. You'll see him lay
3 down here shortly. There's an individual under here that
4 was directly in the doorframe, he collapsed underneath
5 that pool table.

6 Richland County Sheriff's Department responds
7 shortly, probably within another minute or so. And this
8 is the best angle to see what occurs inside and out at the
9 same time. That's it.

10 Q All right. And aside from putting this together, did
11 you have any other investigative role or anything of that
12 nature in this case?

13 A No, sir.

14 MR. GOLDBERG: Thank you. That's all I have.

15 THE COURT: By the defense?

16 MR. KATA: May it please the Court.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION:

19 BY MR. KATA:

20 Q Good afternoon, Mr. Martin.

21 A Good afternoon.

22 Q Your role in the Solicitor's Office is a technical
23 role, correct?

24 A Yes, sir.

25 Q And, essentially, you take different pieces of

1 technology and you combine them together to give different
2 perceptions of different events?

3 A I take the evidence that we receive and make it so
4 that the defense and the solicitors can properly view it.
5 And in cases where it's acceptable, we condense it into
6 something that is a little more easy to digest.

7 Q Sure. And let's talk about perception.

8 I mean, you would agree with me that perceiving
9 something on TV is different than perceiving something in
10 real life, correct?

11 A There is potential for things to be shot, the camera
12 angles can sometimes make things difficult to understand
13 the depth, the difference in how far away something is.

14 Q And, of course, these don't sounds, so that's an
15 obvious one?

16 A Yes, sir.

17 Q But you've been to a sporting event before, correct?

18 A Yes.

19 Q You would agree that what you perceive in person at a
20 sporting event is much different than you perceive
21 watching it at home?

22 A Yes. Absolutely.

23 MR. KATA: No more questions, Your Honor.

24 THE COURT: Anything further?

25 MR. GOLDBERG: No, sir.

1 THE COURT: Thank you. You may step down.

2 We'll take a break now. When you return, the juror
3 in the foreperson's seat, is that Calvin Klein on your
4 shirt?

5 THE JUROR: Say what now?

6 THE COURT: It says Calvin Klein, right?

7 THE JUROR: Yes.

8 THE COURT: What's your juror number?

9 THE JUROR: 214.

10 THE COURT: Juror Number 214. Where did you go?

11 Number 214, you'll be the foreperson of the jury.

12 Once you claimed the foreperson's seat, for the most part
13 once you claim that seat, many times you become the
14 foreperson. But I was going to appoint you as the
15 foreperson anyway, so you're the foreperson of the jury.
16 So as the spokesperson of the jury, you preside over the
17 jury deliberations and complete the verdict form
18 representing the unanimous verdict of the jury at the end
19 of the trial. Thank you.

20 If you'll take a break.

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

22 THE COURT: All right. What's next, Mr. Goldberg?

23 MR. GOLDBERG: Your Honor, I believe that's all we're
24 going to put up.

25 THE COURT: All right. The State intends to rest

1 now?

2 MR. GOLDBERG: Yes, sir.

3 THE COURT: All right. And Mr. Kata, are you ready
4 to proceed?

5 MR. KATA: Your Honor, at this point, I would ask if
6 they're going to rest now, we'll have, of course, a
7 directed verdict motion, but I would like, hopefully, if I
8 can take up that motion in the morning and spend -- we
9 were going to break at 4:30. I think if I spent an hour
10 with my client here at the courthouse today, that will
11 streamline tomorrow significantly.

12 THE COURT: Okay.

13 MR. KATA: Because I have some things I need discuss
14 with him that are coming up that would be beneficial for
15 him.

16 THE COURT: All right. Do you want me to engage in a
17 colloquy with him regarding his right to testify or not
18 testify.

19 MR. KATA: Yes, Your Honor.

20 THE COURT: Today?

21 MR. KATA: And then I can discuss that with him over
22 the evening and have an answer first thing in the morning.

23 THE COURT: All right. We told the jury to take a
24 break. We'll take a few minutes, let them use the
25 restroom, whatever, we'll come out, have the State rest

1 and then we'll quit for the day.

2 MR. GOLDBERG: Thank you.

3 THE COURT: Yep.

4 (WHEREUPON, a short break was taken.)

5 THE COURT: If the jury is ready, they can come back
6 in.

7 THE BAILIFF: Yes, sir.

8 (WHEREUPON, the jury entered the courtroom at 3:25
9 p.m.)

10 THE BAILIFF: The jury is present.

11 THE COURT: Mr. Goldberg.

12 MR. GOLDBERG: Your Honor, may it please the Court.

13 At this time, the State of South Carolina rests its case.

14 THE COURT: Ladies and gentlemen, that is the State's
15 case. The State has rested its case. Next, will be the
16 defendant's turn. We will pick that up tomorrow morning
17 at 9:30, so we're done for the day. Please do not discuss
18 the case with anyone overnight and we'll see you back at
19 9:30 tomorrow morning.

20 (WHEREUPON, the jury left the courtroom at 3:30 p.m.)

21 THE COURT: Do you want to make a motion?

22 MR. KATA: Your Honor, I would ask if I could make
23 the motion in the morning. I'd like to discuss it with my
24 client.

25 THE COURT: All right. In the interim, we'll proceed

1 with speaking with the defendant concerning his right to
2 testify or not testify.

3 MR. KATA: Yes, Your Honor.

4 THE COURT: If you'll come around Mr. Bethea --
5 Mr. Bethel, not Bethea.

6 ERNEST BETHEL, after being duly sworn,
7 testified as follows:

8 THE COURT: Mr. Bethel, at this time, I'm going to
9 explain to you certain of your rights. If you'll take
10 your hands out of your pockets, please. The State has now
11 rested its case and after hearing motions, if the case
12 proceeds, we'll then be at the stage where you will have a
13 right to present your defense.

14 Now, you have a right to claim the protections given
15 to you by the 5th Amendment to the Constitution of the
16 United States. And that amendment states in part that no
17 person shall be compelled in any criminal case to be a
18 witness against themselves. That means that you cannot be
19 required to testify, but you do have the right to testify
20 on your own behalf if you would like to.

21 No one can make you testify. Whether or not you
22 testify -- assuming the case goes forward, whether or not
23 you testify is a personal right and no one can waive this
24 right except you. Do you follow me?

25 THE DEFENDANT: Yes, sir. Yes, Your Honor.

1 THE COURT: If you decide to testify, you will be
2 subject to the same rules that govern other witnesses.
3 And you may be examined and cross-examined on any relevant
4 issue.

5 In addition, if you have any convictions involving
6 dishonesty or false statements or for crimes punishable by
7 more than -- by imprisonment for more than one year and I
8 determine that the probative value of admitting this
9 evidence outweighs its prejudicial effect to you, the
10 solicitor then will be able to introduce your record to
11 attack your credibility.

12 Does the defendant have a criminal record involving
13 any issues, Mr. Goldberg?

14 MR. GOLDBERG: Your Honor, he has convictions from
15 2014, January 2014, assault and battery third degree and
16 malicious injury to property. And then, also, in 20 --
17 November of 2013, conviction for obstructing justice,
18 which he received nine years. And then in 2019, a
19 conviction of unlawful carrying of a weapon.

20 THE COURT: All right. So the issue of whether or
21 not your record can be introduced to attack your
22 credibility would be something that the court -- or I
23 would have to make a determination.

24 Is it likely the State would seek to introduce
25 anything?

1 MR. GOLDBERG: Your Honor, I think the -- yes, sir,
2 the assault, the obstruction and the unlawful carrying of
3 a weapon.

4 THE COURT: So that's an issue that would be taken up
5 and if I determine that the probative value of admitting
6 that evidence outweighs any prejudicial effect to you, the
7 State would be able to introduce your record to attack
8 your credibility.

9 If you decide to testify, this decision on your part
10 must be freely, voluntarily and intelligently made with
11 knowledge of the protections given to you by the 5th
12 Amendment and the consequence of your decision to testify.

13 If you decide not to testify, I'll instruct the
14 jurors that they cannot give the fact that you did not
15 testify any consideration whatsoever and that there is to
16 be absolutely no prejudice to you because you did not
17 testify.

18 It is left entirely up to you whether or not you
19 testify. You may talk with your attorney Mr. Kata, your
20 family, friends or anyone else you want to talk to about
21 it, but the final decision would be left entirely up the
22 you.

23 Do you understand what I've explained?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any questions about what I've

1 explained to you?

2 THE DEFENDANT: Yes, sir. I have a question.

3 THE COURT: Yes, sir.

4 THE DEFENDANT: Anything over ten years old, can they
5 bring it up in trial?

6 THE COURT: Typically not within -- of course, ten
7 years old may not necessarily mean when the crime was
8 committed, but when you were released from custody,
9 supervision, parole, whatever it might be. But, again,
10 whether or not that would be admitted would be something
11 that I would hear the lawyers and make a decision
12 concerning.

13 Any other questions about what I've explained?

14 THE DEFENDANT: No, sir.

15 THE COURT: And Mr. Goldberg has said that the
16 nine-year sentence was in what year, 2013?

17 MR. GOLDBERG: November of 2013, Your Honor.

18 THE COURT: And he was released from supervision?

19 MR. GOLDBERG: I don't know when he was released. I
20 know that was the date of the -- actually, I'm sorry, I
21 apologize. That's incorrect. The codefendant -- there
22 was a codefendant, for lack of a better word, who was
23 sentenced on the murder case in November of 2013. I have
24 Mr. Bethel's obstruction in which he received a nine-year
25 sentence being received by the Department of Corrections

1 on January 14th of 2014, so the conviction would have been
2 pretty close in time to that. I can get the official date
3 pulled, but it would have been --

4 THE COURT: Conviction was in ten years and it
5 carried more than one year imprisonment.

6 MR. GOLDBERG: Yes, sir.

7 THE COURT: So, again, we'll have to discuss that
8 further with Mr. Kata since the State indicates it would
9 intend to use that conviction to impeach his credibility,
10 Rule 609.

11 Mr. Kata has indicated that the two of you want to
12 talk some more about whether or not you should or should
13 not testify and he's going to -- you're going to spend
14 some time between now and 9:30 tomorrow morning talking
15 about that and some other things, at which time, you can
16 let me know whether or not you wish to testify.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Any other questions about anything?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: All right. Thank you.

21 MR. KATA: Thank you, Your Honor.

22 THE COURT: All right. Very well. We'll be in
23 recess then until 9:30.

24 MR. GOLDBERG: Thank you, Your Honor.

25 THE COURT: Is there anything you want me to consider

1 on whether his record should come in?

2 MR. KATA: No.

3 (WHEREUPON, the proceedings were adjourned.)

4 (April 19, 2023).

5 THE COURT: Good morning.

6 MR. KATA: Good morning. Good morning, Your Honor.

7 He's still being brought up.

8 THE COURT: So today, we're going to need to break at
9 three o'clock. We've ordered lunch for the jury, so we
10 want to work on through, maybe only take about 15 minutes
11 and then stop at 3:00.

12 MR. KATA: I'm prepared.

13 THE COURT: Anything before the jury comes in?

14 MR. KATA: Your Honor, I have a motion for a directed
15 verdict pursuant to South Carolina Criminal Rules of
16 Procedure 19.

17 THE COURT: Okay. What's the basis for the motion?

18 MR. KATA: Your Honor, the basis for the motion is
19 that the State has failed to present competent evidence
20 tending to prove the charges in the indictment.

21 Your Honor, if I could start with the two indictments
22 that allege that Ernest Bethel on or about August 22nd,
23 2019 attempt to kill Gregory Martin with malice
24 aforethought either expressed or implied, that's
25 indictment number 2019-GS-40-08052 and 2019-GS-40-08053.

1 Your Honor, I'd like to take those two up first.

2 Your Honor, no competent evidence has been presented that
3 there was a specific intent to kill Cameron Jenkins or
4 Gregory Martin.

5 I believe the record is void of that. There's, also,
6 substantial facts that support the fact that this was a
7 justified action taken by Mr. Bethel and, therefore, that
8 those elements are void. There's no expressed evidence
9 pending that he knew they were there or had any ill will
10 towards them or had any action that was targeted towards
11 those people. So, Your Honor, for those reasons, we would
12 move for a directed verdict of not guilty on those two
13 counts.

14 In regards to the two charges of murder, indictment
15 number 2019-GS-40-08054 and 08051, Your Honor, Mr.
16 Bethel's position is that there's no credible evidence
17 presented up to this point as to the element of malice and
18 that there's substantial facts to support self-defense in
19 this case and that his actions were justified based on all
20 the exhibits and testimony. And, therefore, he should
21 have a directed verdict of not guilty.

22 He does wish for me to hand up the case of State v.
23 Smith. It's a Supreme Court case issued just a couple of
24 years ago that ruled similarly, including that malice may
25 not be inferred from the use of a deadly weapon and that

1 is no longer good law. Mr. Bethel has asked me to hand up
2 that case as part of my motion.

3 Your Honor, in terms of the last indictment,
4 possession of a weapon during a violent crime, Mr.
5 Bethel's position is that no violent crime occurred due to
6 the facts that have been presented that it was a
7 self-defense case and his actions were justified and,
8 therefore, no violent crime was committed and, therefore,
9 that charge should be dismissed.

10 THE COURT: What says the State?

11 MR. GOLDBERG: May it please the Court, Your Honor.
12 As the court is aware, the standard is whether there's any
13 evidence to support the elements of the charge. Taken in
14 the light most favorable to the state, we believe there is
15 enough for the jury to take these matters up on each of
16 the charges.

17 There's been evidence presented in the record in the
18 form of testimony and video evidence as to why Mr. Bethel
19 was not allowed there due to prior altercation and how the
20 whole matter unfolded.

21 And then the evidence and testimony explained with
22 him leaving the bar and the altercation ended at that
23 point and him firing seven times through the door where he
24 knew those people had been standing who he had just been
25 in this altercation with.

1 It was a group altercation with him. They were all
2 still standing there with the door closed when moments
3 later, he fires through the door at the very location
4 where they were all standing, to include people that he
5 had just argued with, people he had physical contact with
6 and standing right there assisting and putting hands on
7 him and vice versa breaking up the altercation.

8 He then moves into a different part of the parking
9 lot and fires five more times for a total of, at least, 12
10 shots into this specific area where he knew them to be
11 with the intention of eliminating them at that period of
12 time, specifically, intending to eliminate them as a
13 result of what had just taken place. So if you take all
14 that in the light most favorable to the State, we believe
15 it's enough for the jury to consider.

16 THE COURT: Response?

17 MR. KATA: Your Honor, we stand on our arguments we
18 previously made.

19 THE COURT: The evidence taken in the light most
20 favorable to the State, at this point, is evidence, which
21 if the jury believes, is sufficient to convict the
22 defendant and I deny the motions.

23 MR. GOLDBERG: Thank you, Your Honor.

24 THE COURT: Anything else before the jury comes?

25 MR. GOLDBERG: No, sir.

1 MR. KATA: Your Honor, I think there's one issue. We
2 are going to present a case.

3 THE COURT: Okay. Will Mr. Bethel be your first
4 witness?

5 MR. KATA: He will, Your Honor.

6 THE COURT: Mr. Bethel, if we can continue our
7 conversation from yesterday. If you'll come around --
8 actually, just stay right there.

9 As we discussed yesterday, you have the right to
10 present your defense. At this point, you have the right
11 to testify or not testify. Whether or not you testify is
12 a personal right that only you can waive.

13 As you were told, it's your decision of whether you
14 testify or not. Should you testify and the court
15 concludes that the probative value of admitting any
16 criminal record outweighs the prejudicial effect to you,
17 the State then would be able to introduce your record to
18 attack your credibility.

19 You indicated you wanted to talk further with your
20 lawyer about whether or not you wanted to testify. And
21 you all have talked about it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you made up your mind?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And you plan to testify?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. Very good. Thank you.

3 MR. KATA: Your Honor, we do have a matter of one
4 prior conviction.

5 THE COURT: All right. Let's talk about it.

6 MR. KATA: Your Honor, that is an obstruction of
7 justice conviction from 2014. It's roughly nine years
8 old, the day of the conviction.

9 Your Honor, our position is that the probative value
10 is substantially outweighed by the unfair prejudice to
11 Mr. Bethel. And I know the cut off is ten, but Judge,
12 nine years is really, really close.

13 If it would have been one year up to this, okay. Two
14 years, okay, three, maybe, four, I understand, but I mean,
15 we're at nine. We're pushing up to ten, almost a decade
16 ago. It's just so remote in time that I think the
17 probative value of any statements that he would have made
18 then would have no real bearing on what he perceived or
19 engaged in now.

20 THE COURT: What says the State?

21 MR. GOLDBERG: Your Honor, did you not rule a moment
22 ago that we would be allowed to ask him about that?

23 THE COURT: I'm sorry, I can't hear you.

24 MR. GOLDBERG: Did you not already rule a moment ago
25 prior to Mr. Kata's speaking just now that we were allowed

1 to ask about the obstruction? I thought you did.

2 THE COURT: No, I have not ruled.

3 MR. GOLDBERG: I'm sorry. I misunderstood.

4 THE COURT: I've indicated to Mr. Bethel that should
5 the Court determine that the probative value outweighs the
6 prejudicial effect, then the State could use the record to
7 attack his credibility.

8 MR. GOLDBERG: I understand.

9 THE COURT: Counsel Kata moved that the court not
10 allow his criminal record based on the conviction being
11 nine years old, not ten.

12 MR. GOLDBERG: I would just reference the record to
13 609(b) the time limit does say evidence and convictions
14 more than ten years is allowed. So, obviously, with his
15 conviction taking place within the last ten years, I think
16 it fits squarely within the ten-year time period. Unless
17 the court decides to prohibit based on 403, the ten-year
18 rule does not apply here. We do believe that it is
19 probative.

20 Mr. Bethel's credibility is squarely at issue. The
21 evidence in the case has been presented about him firing.
22 That appears to be undisputed. And the question is why.
23 The jury is going to hear from him in a moment.

24 He's going to get to tell his story. So his
25 credibility is squarely at issue. And the prior

1 conviction for obstruction of justice goes directly to his
2 credibility in that he was unable to stay out of the way
3 of entering the law enforcement investigation previously.

4 THE COURT: All right. Mr. Kata.

5 MR. KATA: Your Honor, I'm aware there's no hard
6 ten-year rule, but nine years ago, I mean, it's a
7 significant period of time. As time goes by, things
8 become less relevant. I think that deletes the probative
9 value of any questions here today.

10 THE COURT: Of course, in passing the law, the court
11 came up with a cutoff time and either you can use the
12 court's analogy, if there's time on the clock, there's
13 time on the clock, if there's not, there's not.

14 The Court -- Legislature, in passing the law,
15 determined that the ten-year cutoff time is a time in
16 which the court should consider evidence of conviction.
17 If the period is more than ten years since the date of
18 conviction or of the release of the witness from the
19 confinement imposed for that conviction, whichever is the
20 later date. So if he received a ten-year sentence nine
21 years ago for obstruction of justice, it really is not
22 nine years unless he was given nine years and immediately
23 released.

24 Did you ascertain his release date?

25 MR. GOLDBERG: I was not able to get the release

1 date, no, sir. But even if it was the lowest amount of
2 time of 25 percent of conviction, that would be a little
3 over two years from 2014, puts you in the 2016, which is
4 seven years, within the ten-year window.

5 THE COURT: If they ending up arguing for a directed
6 verdict -- Mr. Kata argues there is substantial evidence
7 of self-defense and that, therefore, the directed verdict
8 should have been granted -- of course, we have not heard
9 any testimony indicating self-defense.

10 I presume that testimony will come from the
11 defendant, which places the defendant's credibility at
12 issue versus the testimony and other evidence offered by
13 the State.

14 In determining whether or not prior record should be
15 used on the issue of credibility where the credibility of
16 the defendant and other witnesses is essential to the
17 case, that is a factor to determine whether the probative
18 value outweighs any danger of unfair prejudice.

19 The trial court must make -- the trial court is to
20 balance the interest involved assuming facts and
21 circumstances supporting the decision, thus the trial
22 court must state whether the probative value of conviction
23 substantially outweighs the prejudicial effect, but, also,
24 why.

25 And the fact that should be considered would be the

1 impeachment value, prior crime, point in time and the
2 witness's subsequent history, similarities between the
3 past crime and the crime charged, the importance of the
4 defendant's testimony and the centrality of the
5 credibility issue.

6 Typically, where the crimes are similar and I'm
7 not -- I don't know the details of the obstruction of
8 justice, but when the crimes are similar, that weighs
9 against admitting it on that for that reason. Typically,
10 if someone has a record for armed robbery and they're
11 charged with armed robbery, you don't allow an armed
12 robbery conviction to impeach the defendant.

13 Not knowing the obstruction of justice, but the court
14 said -- I mean, the State said yesterday related to a
15 murder, the court will not consider the similarities
16 within the past defense, but the court is -- should
17 consider the importance of the defendant's testimony and
18 the centrality of the credibility issue.

19 There is no testimony in the record regarding
20 self-defense and the credibility of the defendant in
21 asserting self-defense would be a critical and essential
22 issue for the jury to consider in deciding and the court
23 would give an instruction as to credibility of witnesses
24 and prior record of the defendant if requested. Balancing
25 all factors, the court would admit the criminal record to

1 attack the defendant's credibility.

2 Anything else?

3 MR. KATA: Your Honor, my client does have leg chains
4 on.

5 THE COURT: He has what?

6 MR. KATA: He has his leg shackles on.

7 THE COURT: All right. So you all will need to take
8 off the leg chains so he can walk up like he's walking in
9 off the street.

10 MR. KATA: Your Honor, I'm also going to ask him to
11 come off of the witness stand to get closer to the TV.

12 THE COURT: We'll have the officers there.

13 MR. KATA: I just wanted to bring that up for their
14 sake.

15 THE COURT: If he moves, don't tackle him. If you
16 need more security, get more security.

17 Are we ready to proceed?

18 MR. KATA: The defense is ready.

19 THE COURT: Okay.

20 MR. GOLDBERG: Yes, sir.

21 THE COURT: Okay. Bring the jury.

22 (WHEREUPON, the jury entered the courtroom at 10:13
23 a.m.)

24 THE BAILIFF: The jury is present, Your Honor.

25 THE COURT: Madam Forelady, how is the jury doing?

1 THE FOREMAN: Doing good.

2 THE COURT: You know you're the forelady?

3 THE FOREMAN: Yes.

4 THE COURT: All members of the jury, has anyone
5 violated the Court's order that the case not be discussed,
6 and it's not been discussed in your presence?

7 (There was no response.)

8 Hearing nothing, I assume the jury is complying with
9 the order of the court that the case not be discussed
10 until the Court authorizes you to discuss it, which is
11 after you've heard the entire case and the instructions of
12 law and the closing arguments.

13 You've heard the State's case. It's now, the
14 defense's turn.

15 You may proceed.

16 MR. KATA: May it please the Court. The defense
17 calls Ernest Bethel.

18 ERNEST BETHEL, after being duly sworn,
19 testified as follows:

20 THE CLERK: You may be seated in the witness stand
21 and, please, state your name again for the record.

22 THE WITNESS: My name is Ernest C. Bethel.

23 DIRECT EXAMINATION:

24 BY MR. KATA:

25 Q Mr. Bethel, good morning.

1 A Good morning.

2 Q First, let's start. Tell the jury about yourself,
3 where did you grow up?

4 A I grew up in Columbia, South Carolina in Woodfield
5 Apartments. I grew up in a Christian home. I played the
6 piano for church. My dad is a pastor. I mean, I never
7 was raised doing violence. I mean, I don't have a
8 criminal -- really a criminal record at all.

9 Q Okay. How far did you go in school?

10 A I went to the 11th grade.

11 Q How many family members do you have?

12 A A million, it seems like. I mean, a lot.

13 Q Okay. Are you nervous right now?

14 A I mean, it's my first time. I'm not used to talking
15 in front of a bunch of people, it's my first time figuring
16 it, all I got.

17 Q I understand. Let's take you to August 22nd, 2019.

18 MR. KATA: Your Honor, if I could ask for him to step
19 down and move closer to the TV --

20 THE COURT: Yes, sir.

21 MR. KATA: -- at this time?

22 BY MR. KATA:

23 Q Ernest, is that you on film there?

24 A Yes, sir.

25 Q Ernest, tell the jury, where were you earlier in the

1 day leading up to coming to McCary's on August 22nd?

2 A How far back do you want me to go?

3 Q Did you attend a funeral?

4 A Yeah, I went to one of my cousin's funeral on my
5 dad's side. He was gunned down out there in Irmo, and it
6 was a senseless gun thing. I had a couple drinks. I went
7 out there at 555 and had a couple of drinks out there
8 and --

9 Q Ernest, what is 555?

10 A That's another bar on Farrow Road. I met with --

11 Q Who were you with at 555?

12 A I was by myself. I came there by myself.

13 Q And then you're at 555 by yourself. How did you end
14 up getting from 555 to McCary's?

15 A Well, I seen a guy I grew up with in Woodfield, and
16 he was with his girl. It was her birthday and she was --
17 she had just graduated from medical school. And it was
18 her birthday and she graduated from medical school, and
19 she wanted to have some drinks at 555. It was closing
20 down. I said, we can go to Reggae. So we went to Reggae.
21 Reggae, everybody was walking out of there, so I was
22 like --

23 Q So Reggae was closed when you guys got there?

24 A Yes.

25 Q And you got a ride with them 555 to Reggae?

1 A Right.

2 Q Reggae is closed?

3 A Right.

4 Q And then you guys come here?

5 A Right.

6 Q All right. That's you walking up to the door?

7 A Uh-huh.

8 Q And you look into the glass. Why did you look into
9 the glass?

10 A I looked into the glass because about three or four
11 weeks prior to this, I got into an altercation with the
12 doorman and he's a bouncer. So when I went to the bar, I
13 was looking for him to speak to him to see if we could
14 come up with an understanding because it was nothing but
15 an argument.

16 We went back and forth about him -- me having people
17 he didn't want in his bar. I mean, I didn't know why, but
18 we exchanged words. He cursed, I cursed. I walked out
19 got in my car and I left.

20 Q Ernest, you heard the testimony of a prior shooting
21 in the air. Did you ever shoot a gun at McCary's Bar --

22 A Absolutely not. I never shot a gun that night at
23 McCary's. It was nothing serious enough for me to shoot a
24 gun. It was no reason for me to have a gun, be shooting a
25 gun for nothing over an argument. That was not serious

1 enough for me to shoot a gun. It was no reason. Don't
2 even make sense to me to shoot a gun. For what?

3 Q Mr. Bethel, okay. At any time before you showed up
4 and walked in that door, did you receive anything from
5 McCary's Bar indicating you were not allowed to return?

6 A Absolutely not. We exchanged words. He said what he
7 said. I said what I said. While he was talking, I was
8 already walking away when we was arguing. He said that I
9 was okay coming in there. I said what I said, he said
10 what he said. I walked off.

11 He never told me you're banned, don't ever come back.
12 He never said that. He never said you're banned, don't
13 ever come back. Anybody tell you, when it comes to
14 trespassing, I don't play with that because I know if you
15 trespass, you're going to get locked up. I don't play
16 with that.

17 Q All right. So you never received anything from
18 anybody?

19 A Absolutely not.

20 Q A letter, nothing?

21 A Absolutely nothing.

22 Q How many times have you been to McCary's before?

23 A Many times. I mean, I come there two or three times
24 a weekend -- a week.

25 Q Okay. All right. That's you walking through the

1 door. Change cameras. Mr. Bethel, who's that walking in
2 the door?

3 A That's me.

4 Q Describe that interaction with Mr. Tolliver.

5 A That was a handshake that ended in a hug, indicating
6 peace. I mean, I ain't got no problem with nobody. I
7 ain't come with no kind of indications or nothing to
8 anyone at all. I came in peace. And that was, basically,
9 me showing, like, I don't have no problem with him. We
10 was just having a conversation.

11 Q Who is walking up to you right now?

12 A John Miller.

13 Q Describe this interaction for the jury.

14 A When he walked up, he walked up immediately high
15 style. From the beginning, he was like immediately
16 saying --

17 MR. GOLDBERG: Objection.

18 THE COURT: What's the response? Mr. Kata?

19 MR. KATA: Your Honor --

20 THE COURT: Response to the objection.

21 MR. KATA: It's what the defendant perceived in the
22 moment. It's extremely relevant to what happened, his
23 perception.

24 THE COURT: What says the State?

25 MR. GOLDBERG: Your Honor, I believe it's

1 inadmissible hearsay as to what Mr. Miller said to him.

2 At this point, I don't object to him saying that he was

3 hostile as he approached. That's his perception. His

4 perception is he's hostile, but when he gets into what was

5 actually said, I would object to the hearsay.

6 THE COURT: Restate the question and you may proceed.

7 BY MR. KATA:

8 Q Mr. Bethel, I asked you to describe this encounter,
9 okay, when Mr. Miller walked up to you. Okay, what was
10 your interpretation of what he was saying to you?

11 A My interpretation was that he meant business. He
12 wasn't coming to me humble at all, and he doesn't even --
13 this is not even -- he has no -- he doesn't work here. I
14 know this is a bar with family, but he doesn't work here.
15 I mean, I want to talk to the people who work there.

16 If I can't be there, let them explain to me why.
17 That's exactly what I'm trying to tell him, telling these
18 guys at this point. So my facial expression is, like,
19 what, why can't be here, you know. They explained to me,
20 so I'm like the bartenders are on the way. That's why I'm
21 looking this way because that's the bartender right there.
22 And I'm trying to talk to him.

23 Q Who is the bartender?

24 A Him right there.

25 Q Cameron Jenkins?

1 A Cameron Jenkins.

2 Q And when he came up, okay, what was he trying to do?

3 A He was, basically, trying to, like, cool them down
4 because they were intoxicated and they was already --
5 like, they already had it out for me as soon as I came in
6 there. And he was just really trying to get an
7 understanding of the situation.

8 I mean, he was, like, you can't be in here. I'm
9 like, I don't know that. Nobody ever told me that. So he
10 was explaining to me what he was explaining to me.

11 He keeps --

12 MR. KATA: Stop it right there.

13 THE WITNESS: He keeps enticing the situation,
14 continually saying things like --

15 MR. GOLDBERG: Objection.

16 THE COURT: I'll overrule the objection. You may
17 proceed.

18 THE WITNESS: I'm explaining to him, You don't got
19 nothing to do with this. He has people who work here.
20 Let him explain to me what's going on, you know. Let him
21 explain to me what's going on. That's what I'm telling
22 him right there. Let him explain to me what's going on.

23 BY MR. KATA:

24 Q All right. So those conversations continue?

25 A Right.

1 Q Who is that who walked up?

2 A That's Christopher Lott.

3 Q Mr. Bethel, as the conversations continues, what is
4 your perception of these four people standing right in
5 front of you?

6 A The four patrons, my perception of them was it was a
7 hostile matter. They had it out for me. They really was
8 aggressive. They were really making me feel where I
9 couldn't turn my back and walk off because I felt like I
10 was going to get attacked.

11 As soon as my head was turned, I felt like I was
12 going to get hit by something. I was just trying to bring
13 understanding to the bartender. And he explained to me
14 like this -- he let me know this is why they're saying
15 that.

16 I'm like, I ain't never did none of that. And he
17 explained to me this. That's why when I turned to that
18 side, John Miller just out of nowhere just throwed a drink
19 and started the whole thing. At that point, I'm just
20 trying to stop everybody from --

21 Q Mr. Bethel, when he throws the cup at you, did he
22 strike you at the same time?

23 A I can't remember if he strikes me. I just remember
24 him throwing the cup. When he threw the cup, everything
25 just -- I was just getting attacked from different angles,

1 so I didn't know which way to go.

2 I didn't know where it was coming from. I just --
3 basically, at that point, I was like oh, Lord, they're
4 trying to hurt me, so I'm like I got to get out. I'm
5 trying to go and they snatched me back that way.

6 Q Did he punch you in the face?

7 A Absolutely, multiple times.

8 Q You were hit in the head?

9 A Yeah, slammed into the table.

10 Q And then that's you that's been taken to the ground?

11 A Absolutely. Right there. Pause it.

12 Where they got him blocked off at, they were standing
13 -- surrounding me. I was laying down. I remember laying
14 down looking up with multiple people surrounding me. And
15 y'all got that part of it? Where?

16 Where I was on the ground, I'm trying to fight my way
17 out of the door, but they're trying not to put me out.
18 They're trying to snatch me in. They're trying to keep me
19 in the bar. They're not pushing me out. They're not
20 saying we're trying to diffuse it. I'm pulling away and
21 they're actually pulling me in, trying to keep me in to
22 continue the attack.

23 Q Mr. Bethel, you're in the doorway at this point?

24 A Right.

25 Q You go out through the door?

1 A Right.

2 Q So at this point in time, you are exiting the door?

3 A Right.

4 Q Now, are you able to see in the door at that point?

5 A Absolutely. I'm looking.

6 Q We're going to watch the other video in a minute. So
7 you're out the door and you can see in?

8 A Right.

9 Q Can you still see the people?

10 A I see everything. I'm watching everybody and
11 everybody's body language. At this point, I know they're
12 out to hurt me, so I'm watching everybody's body language.
13 I know these people trying to hurt me, man. And I seen
14 them. I seen them on multiple occasions come up behind
15 people with guns, Tolliver Wise.

16 I ain't want to hurt that man that night. I didn't
17 want to hurt these people that night. Because I just did
18 it when they first grabbed me. I see the man go -- right
19 there. Right there. So right there, he made the gesture
20 like I know what he going to do. I got something for
21 that. Before the door closed, the man pulled his pants
22 up. I'm backed up. I'm backing up behind this. And once
23 I seen him do that, once I seen Tolliver go for the gun,
24 I'm like hiding behind the wall, I'm getting behind the
25 wall. So I backed up behind them.

1 Q Mr. Bethel, at this point in time, did you see the
2 gun?

3 A Yeah, I seen the gun, yes.

4 Q He was going for the gun. In fact, that's
5 Mr. Tolliver Wise there that had the gun in his hand?

6 A Right. Stop. Right there. She trying to -- I'm
7 still in the bar at this point.

8 Q At this point, what were you doing right here?

9 A I'm on this angle right here. I'm watching the door.
10 I'm seeing them and I'm watching him. He got his hand on
11 the door. Right behind, you got Tolliver and the person I
12 went with, they got into an altercation.

13 Q That's you walking backwards like that?

14 A Yeah?

15 Q And you're looking in the door?

16 A Yeah.

17 Q Mr. Bethel, this is a different angle, same period of
18 time. Describe your perception at that moment.

19 A I'm seeing him going for the gun. I'm seeing him
20 reaching for it. I'm looking at it. I'm watching him go
21 for the gun. I heard what he said. Right there, I said
22 -- Tolliver Wise said, I know what y'all gone do. I got
23 something for that. I heard more threats coming from
24 there.

25 Q Now, Mr. Bethel, at that period of time when you

1 perceived that, did you fear for your life at that point?
2 What did you think?

3 A At that moment right there, I feel like I ain't never
4 felt in my life before. I really felt like they were
5 about to kill me right then and there. I thought about my
6 whole family.

7 I thought about my son on the way. I thought about
8 my mama and my daddy. I had to think about my life, so I
9 like -- and that's when I heard don't go out there with a
10 gun. I heard it from inside. I heard them say it.

11 I'm like, Oh, Lord. They said -- he's like don't go
12 out there with a gun. Somebody at the door, I don't know
13 who it was, don't go out there with a gun. So I'm still
14 hearing this commotion coming from the inside. They're
15 about to come out, too.

16 Q Mr. Bethel, those emotions are hidden here. As you
17 look back through the door, okay, after what had happened
18 inside?

19 MR. GOLDBERG: Objection, Your Honor. I just ask
20 that --

21 MR. KATA: I'll rephrase, Your Honor.

22 MR. GOLDBERG: Thank you.

23 BY MR. KATA:

24 Q Mr. Bethel, you're going through all those emotions
25 after what?

1 A After just being this all in my mind combined with
2 being attacked and all that. And I just seen him go for a
3 gun, I'm thinking I'm about to be out numbered with guns
4 at this point. They're about to out number me with guns.
5 So I thought I hadn't got no other choice.

6 At this moment, I got to do what I got to do. I got
7 to make it home. I seen Tolliver pull a gun on multiple
8 occasions. I seen other people at the bar with guns. I
9 seen them do this, so I know when he's intoxicated, he can
10 get dangerous.

11 So right there, I walked out. And I'm still trying
12 to go, but I'm hearing them saying don't go out there with
13 a gun, so -- press play. They try to stop me, like, no,
14 they're about to shoot, bro. That's what I hear right
15 there. They're about to shoot. I said, I can't let him
16 come out here with a gun.

17 I didn't want to kill people, man. I didn't want to
18 do that, man.

19 I'm sorry for y'all, man. I'm sorry. I have to deal
20 with this everyday. I got to really deal with this, man,
21 for real. I'm reliving this in my body and soul, man,
22 reliving it, man. I'm sorry about y'all, man. I ain't
23 want to see that happen to you, man. I don't want to do
24 stuff like that. I don't ever want to do that. I got to
25 relive this, man, in my heart and body and soul. I got to

1 relive this. I'm reliving this everyday for the last
2 three days, man. That's the look of fear like oh, Lord.
3 And the door continuously bouncing. I'm like, they about
4 to come out, man.

5 Q Mr. Bethel, why did you move over to where you moved
6 over?

7 A I moved over to block myself to get hit when they
8 come out with guns because they were coming out. I
9 blocked myself. Show it. Show them a different angle. I
10 had to hide behind the thing right there to take cover and
11 ran that way and that's when I heard bullets coming
12 through the door. We heard them fly past our head, so I
13 ran straight. You got the parking lot part?

14 Q Mr. Bethel, at that point in time, did you feel that
15 there was anything else that you could do to avoid --

16 A At that time, I couldn't avoid it at all. At that
17 point in time, I could not avoid them taking my life. I
18 felt -- I believed -- it appeared to me that it was over.
19 I had no other way.

20 It appeared to me in my mind right then and there
21 that they're about to try to take my life. That's what it
22 looked like to me. I seen a gun. I seen too much
23 movement in front of the door. It just appeared to me
24 that they were about to kill me, so I had to do -- I had
25 to save my life, man.

1 Q Mr. Bethel, describe for jury this angle from the
2 Boost Mobile camera?

3 A That's me fearing for my life right there and that's
4 me trying to run to the car to go get in the car or in
5 front of the car. I let out two shots right there. I
6 didn't let out five shots, I let out two shots right
7 there. And the door is still locked. I still can't get
8 in. They're shooting the door. I'm trying to get in the
9 car saying it's time to go. I'm trying to go. The door
10 is locked. When I pulled on the handle of the door, it
11 was locked. So you got bullets coming through the door
12 directly at us. The guy that I was with, he looked at me,
13 he said, bro --

14 MR. GOLDBERG: Objection.

15 THE COURT: Sustained.

16 BY MR. KATA:

17 Q Mr. Bethel, when you were going from the door to the
18 car, could you tell what was happening?

19 A Yeah, there were shots being fired.

20 Q Could you hear it?

21 A You could hear it going past your head. He told me,
22 he said bro, a bullet just flew past my head. I said,
23 just go to the car, run to the car. And in protection to
24 him, I shot. Because I couldn't get in the door.

25 When I tried to get in the door, the door was locked.

1 I'm like, open the door, open the door, it was like boom,
2 boom. And then I tried to get back in the car. I tried
3 to get in the car again and the door is still locked. I'm
4 pulling on the handle and the door finally came open. I
5 think they had an automatic unlock button. I had to
6 continue to yank on the door.

7 Q Mr. Bethel, why couldn't you get in that car?

8 A They was trying to get in the car. I was like, open
9 the door, open the door.

10 Q Was it your car?

11 A It wasn't my car.

12 Q Did you have the keys to the car?

13 A Absolutely not. They forgot how to even unlock the
14 door at that point. They're trying to figure out how to
15 unlock the door. I'm like dog, we're going to ride past
16 and they're probably go to shoot through the car.

17 Q Mr. Bethel, when you were at that car and you fired
18 two shots back in the bar, were you in fear for your life?

19 A I feared for my life.

20 Q Did you feel like there was anything else you could
21 do but do what you did on that day?

22 A I felt like there was nothing else I could have done.
23 I mean, combined with them attacking me and the feeling I
24 felt, it was a feeling I never felt.

25 I mean, it was a feeling I never felt and you went

1 straight for the gun. If I'm leaving, I'm trying to
2 leave, why would you go for a gun? You left me no other
3 choice. You left me no other choice. While I was in the
4 bar, I could have at any time pulled a gun. I never did
5 that. I ain't never pulled no gun. I ain't -- in this
6 bar, they don't search nobody. Nobody that goes in there
7 gets searched.

8 There's multiple guns in this bar. I don't know if
9 any one of y'all been in there, it is multiple guns in
10 this bar. When I seen him pull a gun, I just knew for
11 sure there's more guns coming out now. They're coming
12 out. I had to think about my family and me and my son
13 that was in my wife's belly, and I go to work to take care
14 of.

15 MR. GOLDBERG: Your Honor, objection, not responsive
16 to any question.

17 THE COURT: Objection is sustained.

18 BY MR. KATA:

19 Q Mr. Bethel, the actions that you took on that night,
20 were those based on what you saw?

21 A It was based upon what I saw and what it appeared to
22 me to be.

23 Q And it was based upon what you experienced?

24 A What I experienced from the inside to the outside of
25 the bar.

1 Q And you felt like that was your only option?

2 A That was all I could have did. That's the only
3 option left.

4 Q Mr. Bethel, have a seat back in the witness box,
5 please.

6 Mr. Bethel, you have a prior charge for obstruction
7 of justice, correct?

8 A Yes, sir.

9 Q And that's on your record?

10 A Absolutely.

11 Q Okay. And that is part of your past?

12 A Right.

13 Q Is everything that you told the jury today the truth?

14 A Truth and nothing but the truth.

15 Q And everything that you've told the jury is what you
16 experienced?

17 A What I felt, what I experienced and what it appeared
18 to me to be and how it left me no other choice.

19 Q And everything that you did, you did to save your own
20 life?

21 A Save my life and the people that I was with.

22 MR. KATA: No more questions for this witness, Your
23 Honor.

24 Mr. Bethel, please answer any questions the State
25 has.

1 THE WITNESS: Absolutely.

2 THE COURT: Cross-examination?

3 MR. GOLDBERG: Your Honor, may we approach briefly.

4 THE COURT: All right. Ladies and gentlemen, I'm
5 going to have you go to the jury room for a break. Please
6 do not discuss the case.

7 THE BAILIFF: Justin, Justin.

8 THE COURT: Mr. Bethel, wait until the jury leaves.

9 (WHEREUPON, the jury left the courtroom at 10:46
10 a.m.)

11 THE COURT: Do you need to ask your lawyer something?

12 MR. KATA: Your Honor, I think he indicated to me he
13 needs some water.

14 THE COURT: You need some water?

15 THE WITNESS: Yes, sir.

16 THE COURT: Yes, sir, Mr. Goldberg.

17 MR. GOLDBERG: Thank you, Your Honor. Mr. Bethel on
18 direct examination testified to I don't have a criminal
19 record really at all, other convictions.

20 It's the State's position that by virtue of that
21 statement that he has opened the door to being asked about
22 his other convictions on his record to include,
23 specifically, prior conviction for assault, which was --
24 assault and battery third degree in 2014 and unlawful
25 carrying of a weapon in 2019.

1 I know previously those were not going to come up by
2 virtue of the 609 analysis, but it's the State's position
3 as a result of those comments that he made to the jury
4 that the State be allowed to ask him about that.

5 THE COURT: Mr. Kata.

6 MR. KATA: Your Honor, I don't dispute that that
7 testimony was had. His testimony was he doesn't have much
8 of a record. I tend to agree with him, that wasn't much
9 of a record. I still think the prejudicial effect of that
10 outweighs any probative value in that line of
11 cross-examination.

12 THE COURT: I really don't have a criminal record.
13 Those were his words, weren't they? I don't really have a
14 criminal record. That's not true. You cannot mislead the
15 jury, so he's opened the door for that testimony on
16 cross-examination.

17 MR. GOLDBERG: Thank you, Your Honor.

18 THE COURT: All right.

19 Do you need a break or are you ready to go?

20 MR. GOLDBERG: Good to go.

21 MR. KATA: I didn't see, but did he get some water?

22 THE COURT: Yeah, he got some water.

23 You need a restroom break or anything, Mr. Bethel?

24 Are you good?

25 THE WITNESS: If I can speak to my lawyer real quick?

1 THE COURT: You can't discuss your testimony with him
2 because he's about to cross-examine you. You can't talk
3 to your lawyer in between your testimony and
4 cross-examination.

5 We'll be at ease for just a minute. You can stand
6 and stretch a little bit.

7 (WHEREUPON, a short break was taken.)

8 MR. GOLDBERG: Your Honor.

9 THE COURT: Yes, sir.

10 MR. GOLDBERG: I made a mistake in only thinking
11 about the three potentials we had discussed previously and
12 then during the break, I went back and reminded myself
13 that those aren't the only convictions on his record.
14 There are others. Those are the only three we took up
15 yesterday as potentials under 609.

16 THE COURT: What else do you have?

17 MR. GOLDBERG: Yes, sir, I knew the others generally
18 under 609.

19 THE COURT: All right.

20 MR. GOLDBERG: A 2010 conviction for driving under
21 suspension; 2011, operation of a retail business without a
22 license, 2013, malicious injury to personal property, less
23 than \$2,000; and then the aforementioned assault and
24 battery third from 2014, same conviction date as malicious
25 injury to courthouse, then the obstruction conviction in

1 2014, the unlawful weapon in 2019.

2 So the ones that I left out were the DUS, the
3 operating business without a license, malicious injury to
4 property and another malicious injury.

5 THE COURT: Unlawful something about a courthouse.
6 What did you say?

7 MR. GOLDBERG: Your Honor, I think that's honestly
8 written somewhat inartfully on the rap sheet. It says
9 malicious injury, willful injury to courthouse. In my
10 experience, that, typically, refers to if someone is in
11 the county jail, for example, and they break something,
12 like, the sprinkler or fire alarm or something of that
13 nature, they will charge them with, basically, that.

14 THE COURT: Did you do that, Mr. Bethel?

15 THE DEFENDANT: Broke the sprinkler when I was about
16 19 years old.

17 THE COURT: Broke the sprinkler, okay.

18 Any further comment, Mr. Kata?

19 MR. KATA: No, Your Honor.

20 THE COURT: All right. I'm going to exclude the DUS
21 and operating a business without a license, even though
22 they all are impeached, the credibility on the issue of
23 not having a criminal record, I think the court will just
24 exclude those two.

25 MR. GOLDBERG: Yes, sir. Just so we're on the same

1 page, that leaves the malicious injury to property in
2 2013, assault and battery third and malicious injury to
3 courthouse in 2014, the obstruction in 2014 and the
4 unlawful carrying in 2019?

5 THE COURT: Yes, sir.

6 MR. GOLDBERG: Thank you.

7 THE COURT: Okay. If you'll bring the jury.

8 (WHEREUPON, the jury entered the courtroom at 10:56
9 a.m.)

10 THE BAILIFF: The jury is seated, Your Honor.

11 THE COURT: Okay. Thank you.

12 MR. GOLDBERG: Thank you, Your Honor.

13 CROSS-EXAMINATION:

14 BY MR. GOLDBERG:

15 Q You killed two people, right?

16 A Yes, sir.

17 Q Severally injured two others?

18 A Yes, sir.

19 Q You inflicted a lot of damage that night, right?

20 A I mean, yeah, I inflicted a lot of damage that night.

21 Q You go out drinking from time to time, right?

22 A Yes, sir.

23 Q Go to bars?

24 A Yes, sir.

25 Q Restaurants?

1 A Yes, sir.

2 Q Clubs, right?

3 A Yes, sir.

4 Q Do a little partying?

5 A Yes, sir.

6 Q Drink a little bit when you go out, right?

7 A Yes, sir.

8 Q Sometimes at McCary's?

9 A Yes, sir.

10 Q And you testified you've been to McCary's several

11 times?

12 A Right.

13 Q Many times, I think you said, right?

14 A Right.

15 Q More than five times?

16 A I don't know exactly how many times.

17 Q Let's start with this, have you been there more than

18 once?

19 A Absolutely.

20 Q More than three times?

21 A Yes, sir.

22 Q More than five?

23 A Yes, sir.

24 Q More than ten?

25 A Yes, sir.

1 Q More than 20?

2 A I've probably been there 20 times.

3 Q Okay. You knew other people that frequented the bar,
4 right?

5 A I knew of other people.

6 Q You've seen some of the same people in the bar when
7 you go there these 20 times?

8 A Yes, sir, I don't know them.

9 Q But you've seen them before?

10 A Seen them before.

11 Q Talk to them a little bit?

12 A When I go to McCary's, I have people who I go to
13 McCary's with. I mean, just regular hey, you know.

14 Q Familiar with some of the staff that works there?

15 A Familiar with them, yes, sir.

16 Q Familiar with some of the bartenders?

17 A Familiar with them, yes, sir.

18 Q Mr. Jenkins?

19 A Yes, sir.

20 Q You've talked to him before, right?

21 A Yes, sir.

22 Q Even had what I think he described a banter with him
23 right from time to time?

24 A I don't know what that is.

25 Q Friendly discussions?

1 A Get a drink, thank him for the drink and back to it.

2 Q Greg Martin, talk to him before?

3 A I spoke with him just, like, on a walk-by, not like a
4 friendship or anything like that.

5 Q Tolliver Wise, you've seen him before and talked to
6 him?

7 A Yeah, I've seen Tolliver Wise before.

8 Q And on this night, you actually hugged him when you
9 walked in?

10 A Yes, sir.

11 Q Tapped him up, I think you said?

12 A Absolutely.

13 Q This was a familiar place to you?

14 A Right.

15 Q Somewhere you like to spend time?

16 A Right.

17 Q To have a good time?

18 A Have a good time.

19 Q To party?

20 A Right.

21 Q On this night when you get there, you walk up to the
22 door by yourself?

23 A Right.

24 Q You rode there with these two other people, right?

25 A Right.

1 Q You get out of the car first, correct?

2 A Correct.

3 Q And you walk up to the door by yourself, right?

4 A Right.

5 Q And you had been drinking that night already?

6 A I had a few drinks, I was not intoxicated?

7 Q You were not intoxicated?

8 A I mean, I had a few drinks. I wasn't tipsy. I
9 wasn't like out of it. You know, I wasn't drunk to the
10 maximum where I'm not thinking straight. I had a few
11 drinks.

12 Q Let's back up a little bit. You had a few drinks.
13 You just now said you weren't intoxicated, but then you
14 said you were tipsy. So which one is it?

15 A The type of tipsy to me is like when you just have
16 about three, four, five drinks. I mean, just you're
17 feeling nice. It's not to where you're like drunk or you
18 made the wrong choice, you know what I'm saying.

19 Q After this event took place, about a week later, you
20 were actually questioned by law enforcement about this
21 incident, correct?

22 A Right.

23 Q I think it was on August 30th, about eight days
24 later; is that right?

25 A Right.

1 Q And you were questioned by two investigators,
2 correct, a male and female?

3 A Correct.

4 Q Investigator Alvarez was the female, correct?

5 A Correct.

6 Q And Investigator Hook was the male?

7 A Right.

8 Q And they asked you questions and you freely agreed to
9 answer their questions, right?

10 A I did.

11 Q Okay. You choose to do that voluntarily?

12 A It was more like forced. They let me know they're
13 not coming down here, a three-hour drive, just for
14 nothing. They made sure -- they really forced me. Like,
15 I was -- I had just gotten in a crash and I was -- I mean,
16 I just had a lot on my mind.

17 I said, give me a cigarette, and I'll say something,
18 but I already knew they weren't on my side. I knew they
19 weren't with me. From the time they came in there, they
20 were telling me to say that I F'd up and that I was wrong.
21 And they were already saying this when I came in there.
22 So they was already, basically, trying to -- they wasn't
23 on my side from the beginning.

24 Q They asked you some questions and you answered them?

25 A Absolutely.

1 Q And in order to document this, they recorded that
2 interview with you, correct?

3 A Correct.

4 Q And you've actually seen that interview, have you
5 not?

6 A Right.

7 Q You've watched it?

8 A Yes, sir.

9 Q Okay. And when you met with them on that date, on
10 August 30th, you told them twice that you were drunk this
11 night?

12 A When I met with them, I was drunk that day.

13 Q You, also, told them that you were drunk on
14 August 22nd. You told them twice?

15 A Yeah, I did.

16 Q Okay. So you walked up to the door by yourself,
17 right?

18 A Right.

19 Q You had already been out to several places?

20 A Right.

21 Q And you were drunk?

22 A I felt nice. Y'all are -- I'm explaining this to
23 y'all. I know the investigator is not for me. The
24 investigators, they don't work for you. They work against
25 you, so I know that.

1 So when I'm talking to them, it's -- it was
2 particularly -- honestly the reason I even said anything
3 to them, which I shouldn't have, but I needed a cigarette.
4 I was depressed. I was stressed out. I had so much
5 pressure on me. And I was willing to just say whatever I
6 had to say to get a cigarette.

7 Q So you told them you were drunk in order to get -- on
8 the night of August 22nd in order to get them to give you
9 a cigarette?

10 A Yeah, that's the honest truth. I'm not even lying.

11 Q So when you walked in the door, your friends are
12 sitting in the car?

13 A Right.

14 Q And you get close to the door. We saw a minute ago,
15 you peeked through the door, right?

16 A Yeah, I do that frequently, but on that particular
17 night, I peeked through the door because I was looking
18 for --

19 Q Kerry Ross, right?

20 A Kerry Ross.

21 Q The gentleman that you got in the altercation with
22 previously?

23 A Right, verbal altercation with and I was going to
24 tell him, like -- I was, like, I know we got into it.

25 Kerry Ross, he's just not the easiest -- he's an easygoing

1 person, but he's not the easiest person to talk to about
2 that.

3 He can be really aggressive and stuff like that.
4 Like, when he thinks something and he says something,
5 that's that and he -- it ain't much debating on it. So
6 when I went to the door, I was peeking through the door
7 because I was preparing myself for when I see him, you
8 know what I'm saying. I was going to say hey, come out
9 here and talk to me real quick so we can talk about that
10 night. Come to an understanding --

11 Q I'm sorry, go ahead.

12 A I wanted to come to an understanding about that
13 night.

14 Q Okay. So you -- well, right up on that glass and had
15 your body up against that door to look in there, right?

16 A Right.

17 Q But you didn't see him in there?

18 A No, I didn't see him in there.

19 Q He wasn't there that night, right? You never saw
20 him? So when you didn't see him, you went inside the bar?

21 A Right.

22 Q After you go inside, then your friends come in behind
23 you, right?

24 A Yes, sir.

25 Q And you end up in this, we'll call it a discussion

1 for right now, right?

2 A Yes, sir.

3 Q And you were greeted first by Mr. Wise, correct?

4 A Repeat that.

5 Q You were greeted by Mr. Wise first?

6 A Yes, sir.

7 Q And y'all hugged and dabbed it up. And before long,
8 as we've seen, this interaction takes place where all
9 these other folks come over, yeah?

10 A Right.

11 Q And the point of this whole issue is whether you're
12 allowed to be there or not?

13 A Right. At that point, they're telling me -- I want
14 to hear from the man that worked there if I can be there.

15 Q And Mr. Jenkins came over, right? He works there?

16 A Right.

17 Q He came over there and told you you weren't allowed
18 to be over there?

19 A While people were coming around me and surrounding
20 me.

21 Q You wanted --

22 A While I was being swarmed.

23 Q You wanted to hear from somebody who worked there,
24 right?

25 A Right.

1 Q Mr. Jenkins works there?

2 A Right.

3 Q And he came over and told you you weren't allowed to
4 be there?

5 A Right, but he was explaining it to me. He didn't say
6 you're not allowed to be here. He was explaining to me
7 why I couldn't be there. It wasn't just like a one-word
8 thing. He was saying this, saying that while I had people
9 coming from this side in a hostile manner making threats.
10 And I'm telling them oh, I'm talking to him. He works
11 here. Y'all don't work here.

12 Q But other people who knew you weren't allowed to be
13 there?

14 A They're patrons. They don't make that decision.

15 Q I didn't ask if they made the decision of whether you
16 could be there, but they knew you weren't supposed to be
17 there?

18 A I don't know what they knew.

19 Q They were telling you not to be there; were they not?

20 A They were saying, yes, sir.

21 Q Which would imply that they knew you weren't supposed
22 to be there?

23 A I didn't know I wasn't supposed to be there. Whether
24 they knew or not, I mean, I didn't know. I had to get
25 from them two. Once they said it, then, okay. I can't be

1 there.

2 Q You never heard that before?

3 A I never heard it before.

4 Q Kerry Ross didn't tell you that the night that you
5 knocked him down or punched him rather?

6 A Never did none of that.

7 Q Didn't happen?

8 A Didn't happen.

9 Q You talked to Amircle Wright about it?

10 A I did not talk to Amircle Wright none that night.

11 Q Didn't --

12 A I talked to her sister that night. I didn't even see
13 her in that bar that night. I seen her sister. Her
14 sister was telling me, she was like, I'm about to go to
15 McCary's. That's what put in my mind okay, I'm about to
16 go to McCary's, too.

17 Because the people I'm with, they want to have some
18 more drinks. There's a million bars in Columbia. If I
19 couldn't go to that bar, okay, I'll go to another bar.
20 It's not worth killing someone over a bar.

21 Q You told Amircle Wright that you were going to lie
22 and tell them that was your twin brother, and that's why
23 you could be there?

24 A I never told her that. Never talked to her, period.

25 Q Tolliver Wise told you you couldn't be there?

1 A Tolliver Wise didn't tell me that.

2 Q That night?

3 A He did not.

4 Q He never said anything when y'all were by the front
5 door?

6 A Tolliver Wise never talked to me about that.

7 Q Okay. So at no point was he arguing with you about
8 whether you should be there or not?

9 A When I first came in --

10 Q At what point did Mr. Wise tell you you were not
11 allowed to be at the bar?

12 A Mr. Wise never told me. When they came around,
13 that's when Wise started defending -- going into that
14 situation about oh, yeah, you don't need to be here.
15 They've been waiting on you. That's what he said, they've
16 been waiting on you. They've been waiting on you to come
17 back. That's what he kept saying, they've been waiting on
18 you to come back.

19 Q He told you you didn't need to be there?

20 A He told me -- he tell me they've been waiting on you
21 to come back. They say you can't be here, but that's
22 not -- when I first came in that bar, that's not what he
23 was speaking to me about.

24 Q I didn't ask you what he said when you first walked
25 in. I asked you at what point he said that. But you just

1 cleared it up. John Miller, also, told you you weren't
2 supposed to be there?

3 A Yeah, he said that. John Miller said that from the
4 beginning when he came over there.

5 Q And Chris Lott told you that, too?

6 A Chris -- no, when Christopher Lott came over there to
7 me, he was telling me -- Christopher Lott was saying this,
8 he said -- he was, like, man, just leave, don't, don't,
9 don't -- he was like just go man, just go. And he -- he's
10 telling me to leave and I'm telling him -- I never seen
11 Christopher Lott a day in my life. He's just a dude that
12 walk up on me with big muscles and stuff. And I'm like, I
13 don't know who this guy is. I've never seen these people
14 before.

15 Q So Mr. Lott told you that you needed to leave, right?

16 A Mr. Lott does not work there.

17 Q Mr. Lott told you you should leave?

18 A Right.

19 Q Mr. Jenkins, the bartender, told you you should
20 leave?

21 A Jenkins, he was explaining to me why I am being told
22 to leave.

23 Q Mr. Miller told you you should leave?

24 A Correct.

25 Q And Mr. Wise, as well, right?

1 A While I'm being surrounded.

2 Q This whole conversation at the front door for nearly
3 two full minutes as we've seen on this video is about you
4 needing to leave, right?

5 A That conversation when I was being surrounded was not
6 only about me leaving. It was people sitting there making
7 threats, telling me what they'll do and being in a hostile
8 manner. It wasn't like a humbly oh, just leave.

9 It wasn't somewhere I could just turn around and turn
10 my back. I was talking to one guy while people walking up
11 on me. I'm talking to the bartender.

12 He's explaining to me in -- he's explaining to me,
13 which like continually telling me, like, all right, this
14 is why you -- I'm saying the word, but he's explaining to
15 me, expressing to me why I'm not supposed to be there,
16 what they're saying. And while I'm hearing that, you got
17 people walking around me, surrounding me.

18 So while he's explaining to me and addressing me
19 telling me why I'm not supposed to be there, I'm being
20 surrounded by people from behind him making threats, on
21 the side of him making threats.

22 They're all saying different things. You got to
23 remember these people are not in their right mind. All of
24 them was drunk. So everybody is saying different things,
25 choosing different words. The only person I'm trying to

1 talk to right now is the bartender because I know he's in
2 this situation right now because Ross was not there.

3 Q They were drunk the same way you were drunk?

4 A Like I said, I felt nice.

5 Q We've seen that Mr. Miller threw a drink at you?

6 A Right.

7 Q And you testified a moment ago that he threw that
8 drink at you out of nowhere, right? That's what you said
9 up here on direct, he threw a drink on you out of nowhere,
10 correct?

11 A Yeah, he threw a drink out of nowheres.

12 Q You put your hand up in his face before he threw the
13 drink?

14 A I did. I told him -- it wasn't like a hand, like get
15 back. It was more like man, watch out. I'm talking to
16 him. I'm not talking to you.

17 Q You put your hand up to Mr. Miller's face?

18 A It wasn't close to his face like that. It wasn't
19 like in his face to where I'm assaulting him, I'm
20 assaulting him. Man, I'm talking to this guy right here.
21 I'm not talking to you.

22 Q You put your hand up to Mr. Miller's face?

23 A Right.

24 Q Before he threw the thing?

25 A It wasn't in his face. My hand was not in his face.

1 My hand was like brother, I'm talking to him. I'm not
2 talking to you. You don't work here.

3 Q You put your fingers up to his face before he threw
4 the drink on you, correct?

5 A I did not put my fingers in his face.

6 Q Right there, you didn't?

7 UNIDENTIFIED MAN: No, he didn't. You can see it
8 clear on the damn tape.

9 THE COURT: Get that person to leave the courtroom.

10 UNIDENTIFIED MAN: You want to just come. I'm out,
11 man.

12 (WHEREUPON, the person was escorted from the
13 courtroom.)

14 BY MR. GOLDBERG:

15 Q We'll play it for you again. I'll back it up a
16 couple of seconds for you.

17 Your hand, right? Right there, you don't put your
18 hand up in his face?

19 A I don't do my hand like that. I said, I'm not
20 talking to you. I'm talking to him. You said did I put
21 my hand up to his face like that? No, I did not point
22 fingers in his face. I said I'm not talking to him. I'm
23 talking to you. I didn't say like you saying. You saying
24 that I put two fingers up to his face. I said no, I said
25 like this. And that's what it showed. I did not put two

1 fingers up in his face in no type of way.

2 Q You put your hand up in his face before he threw the
3 drink, correct?

4 A I put my hand up to his face, that's correct.

5 Q Then the fight happens, right? The drink gets thrown
6 and you fight?

7 A Correct.

8 Q Mr. Jenkins comes over, grabs ahold of you, right?

9 A Once we start fighting, I don't remember what.

10 Q Come on, Mr. Bethel, you've watched the video as much
11 as we have. You don't see Mr. Jenkins come up and try to
12 grab ahold of you?

13 A When the fight started on the video, you can't tell
14 who grabbing who. Can you tell? That other one isn't so
15 clear. Where my hand is at?

16 Q That's not --

17 A I cannot tell who that is, sir.

18 Q You know who that is, right?

19 A Yeah, I know exactly who that is.

20 Q That's Mr. Jenkins, right?

21 A Yeah, Mr. Jenkins.

22 Q Well, let's just watch him on camera seven and see
23 where he goes?

24 A I ain't never know.

25 Q He grabbed you, right, trying to get between you and

1 Mr. Miller?

2 A Everybody was grabbing me, punching me, doing
3 whatever they wanted at that point.

4 Q They ended up letting you get up off the ground?

5 A I don't know how I got off the ground. I just know
6 when I got off the ground, I was trying to make it out of
7 there.

8 Q You're on your feet right now, right? Right in the
9 middle of that?

10 A When I was on the ground, I asked my home boys, I
11 said, bro, how did I get off the ground? He said he
12 picked me -- he helped me off the ground. I said -- when
13 I got off the ground, my main objective was to pull my way
14 out the door and I had to pull away from these people.
15 See.

16 Stop it right there for a second. See, he helped me
17 up off the ground. He said he helped me. That's what he
18 actually did. I didn't see that part. Yeah, he helped me
19 off the ground. That's how I got off the ground.

20 Q None of the other people tried to keep you on the
21 ground?

22 A I don't know what they was doing. I just know I was
23 being attacked.

24 Q Show me on the video where they tried to keep you on
25 the ground?

1 A Where they tried to keep me on the ground?

2 Q Yeah.

3 A Back it up. Play it. Do you want me to -- can I
4 unlock this or no?

5 Q You can do whatever you want.

6 A No, I can't do that.

7 Looks like to me they're trying to hold me on the
8 ground.

9 Q You got up pretty easy?

10 A Barely.

11 Q But you got up?

12 A Forcefully.

13 Q And you got out?

14 A I had to pull my way out. They were trying to hold
15 me in there. I'm trying to pull my way out. There's
16 people that won't let me go. See.

17 Q You walked back out, backed out, right?

18 A That's clearly showing they was trying to hold me.

19 Q When they let go, you backed out the door?

20 A That's what I did.

21 Q Then you were outside and they were all inside. They
22 didn't come outside?

23 A They were coming out.

24 Q They did not come outside, correct?

25 A It appeared to me they were coming out.

1 Q Did they or did they not go out the doors?

2 A It appeared to me they were.

3 Q I'm not asking you, sir, what it appeared like. I'm
4 asking you whether any of those people actually walked out
5 the door?

6 A No, sir, not from the camera, but it looked like they
7 was coming, more than one.

8 Q And when you started backing those last couple of
9 steps out the door, nobody hit you?

10 A They were pulling out guns --

11 Q Nobody hit you when you were going out the door?

12 A If I'm going out the door, why you pulling --

13 Q Mr. Bethel, did anyone hit you when you were on your
14 way out the door?

15 A Like I said from the beginning, I don't know who was
16 hitting me. I don't know how many --

17 Q Mr. Bethel, please answer. It's a very simple
18 question. When you take the last couple of steps out the
19 door, does anyone punch you? Does anyone hit you?

20 A I'm not sure, sir.

21 Q Does anyone kick you?

22 A I'm not sure.

23 Q Does anyone shove you?

24 A I'm not sure.

25 Q This is when you get out the door, right?

1 A Yeah.

2 Q This is camera six from -- I guess we should -- since
3 we've been talking about it through Mr. Kata's direct and
4 my cross-examination, we're talking about State's Exhibit
5 No. 4, the McCary's video. This is camera six. 2:28 on
6 the dot, right?

7 A Right.

8 Q You're out the door?

9 A Right.

10 Q The only other person out there is the girl you came
11 with, right?

12 A I had no access to get out and get away.

13 Q My question is, is she the only other person outside
14 the door at this moment?

15 A Yes, sir.

16 Q You're not on the ground, right?

17 A Right.

18 Q You're on your feet?

19 A Right.

20 Q You're not crawling?

21 A No, I'm not crawling. I'm on my feet.

22 Q Nobody is striking you at this moment?

23 A No, sir.

24 Q The only people you're outside with are the people
25 you came with?

1 A Right.

2 Q 2:28:00 -- 2-2-8-zero, you reach for your gun right
3 there, right?

4 A Yeah, I sure did.

5 Q You've got to make sure it's still there?

6 A Trying to make sure it didn't fall down my leg,
7 trying to make sure I'm safe, trying to make sure I'm
8 ain't going to just die. That's what I was doing.

9 Q You immediately reached for your gun?

10 A Immediately, they was reaching for their gun. They
11 was reaching for stuff.

12 Q You immediately reached for your gun, right?

13 A I reached for my gun when I got out that door.

14 Q 2:28:00 with no one else around, and then as we've
15 seen, you walk up to the left, correct?

16 A And look at him going for his gun.

17 Q I'm asking you about what you did, sir. You walked
18 up to the left?

19 A Yes, sir.

20 Q The other person you came with is outside now?

21 A Right.

22 Q And now, you're behind this wall, right, 2:28:04; is
23 that right? You still have your hand on your gun?

24 A Right, I think.

25 Q You purposely walk over there away from the doors,

1 right?

2 A To take cover. I seen him go for a gun.

3 Q You walked over there on purpose?

4 A Right, to take cover.

5 Q Had your hand on the gun on purpose?

6 A Just like he did.

7 Q Right?

8 A I didn't hear what you said.

9 Q You had your hand on your gun on purpose, right?

10 A Purposely for self-protection, absolutely, yeah, I
11 did.

12 Q And then you stopped, you turned, and you raised the
13 gun, right?

14 A I stopped when he came to get me.

15 Q And then you fired?

16 A Yeah, because I feared for my life.

17 Q Before you did that, you had to push by your friend,
18 correct?

19 A Yeah, I pushed my friend.

20 Q Right there?

21 A Yeah, they were standing right beside me. I seen him
22 go for a gun. I seen movement. I heard them say gun --
23 don't go out there with a gun, and that's when I shot.

24 Q You said you're from the same neighborhood as this
25 guy?

1 A Yeah.

2 Q What's his name, Mr. Green; is that right?

3 A Uh-huh.

4 Q A friend of yours?

5 A We from the same neighborhood. We are not friends.

6 We just, like, associates. I see him, say, what's up.

7 We're all from the same neighborhood. I don't go to his
8 house and hang around.

9 Q It's fair to say you wouldn't want anything bad to
10 happen to him?

11 A Well, I don't want nothing bad to happen to nobody.

12 Q Right, you don't want anything bad to happen to him?

13 A Nobody.

14 Q You don't want anything bad to happen to her, right?

15 A I don't want anything bad to happen to nobody.

16 Q I think you testified on direct that part of what you
17 were doing when you were firing back from the car later is
18 you were trying to protect them, as well; is that right?

19 A Right.

20 Q So right here when you're off to the left, they're
21 walking toward you, they have their backs to the bar,
22 right?

23 A Right. They're over drunk.

24 Q And you push them out of way?

25 A They're not paying passenger, I am.

1 Q You push them out of the way right there, right?

2 A I told them they're coming out.

3 Q Coming out? Is that door opened or closed?

4 A That door is swinging. I'm hearing them saying don't
5 go out there with the gun. That's what I'm hearing them
6 say.

7 Q Is that door open or closed right now?

8 A I feared for my life.

9 Q Is that door opened or closed?

10 A It's not secured.

11 Q Is it opened or closed?

12 A It's not secured, sir.

13 Q Mr. Bethel, it's an easy question, is the door opened
14 or closed?

15 A I just answered it.

16 Q You have not answered it.

17 A It's not secured.

18 Q I'm not asking you if it's secured. I'm asking you
19 if that video right there at this moment at 2:28:07 shows
20 that door is opened or closed?

21 A That door is not secured. It's closed, but it's not
22 secured. It's bouncing back and forth. It's waving.

23 Q Mr. Bethel --

24 A It's not like it's just shut. It's not that they
25 were away from the door.

1 Q You answered it. You said it was closed. Thank you.

2 Now, when you shoot, you don't shoot down in the
3 ground, right? Right?

4 A I covered myself and shot.

5 Q You didn't shoot down in the ground?

6 A I'm not a professional. I don't just be shooting.
7 I'm not a professional, sir.

8 Q You didn't shoot down into the ground?

9 A I don't know where I shot. I just shot and keep
10 running to the car.

11 Q We can show you what angle you shot. You shot right
12 through the door, right? Isn't that what that just
13 showed?

14 A Yeah.

15 Q So you didn't shoot in the ground?

16 A No.

17 Q You didn't shoot up in the air?

18 A No.

19 Q You didn't shoot above the door. You didn't shoot
20 past the door, right? You shot directly into the door?

21 A Right, to stop the --

22 Q Right where all those people were just standing,
23 right?

24 A Just stopped it. They just -- they all had guns
25 particularly. They all was a danger to my life and the

1 people I was with. They all was dangerous. They was
2 trying to hurt me. They was coming out to hurt me.

3 Q They all had guns?

4 A Possibly.

5 Q You didn't see any guns?

6 A I seen a gun.

7 Q You didn't see any guns while you were inside from
8 any of those people? While you were inside?

9 A I go to this bar all the time.

10 Q I'm asking you about when you were inside right
11 before you get outside, August 22, 2019, 2:27 and 50
12 seconds or whatever it is, right before you go outside,
13 that whole minute-and-a-half, you didn't see anybody with
14 guns?

15 A Yes, I did.

16 Q No, you didn't.

17 A I seen Tolliver Wise with a gun.

18 Q You saw him with a gun?

19 A I seen him go for the gun. I seen him with the gun.

20 Q When you were inside the bar -- my question is when
21 you were inside the bar?

22 A No, you just said at 2:28 right there.

23 Q Right --

24 A Right before --

25 Q Let me rephrase I. I'll rephrase it, okay? I'll be

1 clear about it. I'll be clear about it. When you were
2 inside the bar -- back at 2:26 is when you first walked in
3 the bar. And then you get outside the doors just before
4 2:28. So between 2:26 --

5 A And that's when --

6 THE COURT REPORTER: Your Honor, I can only take one
7 person speaking at a time.

8 THE COURT: Mr. Bethel, he's asking you a question.
9 You have to be quiet until he gets through answering the
10 question before you start answering.

11 BY MR. GOLDBERG:

12 Q Between 2:26 when you walked in the door and just
13 before 2:28 when you walked out, you never saw anyone
14 inside that bar with a gun?

15 A When I was walking out, I seen somebody with a gun.

16 Q I'd like for you to answer my specific question,
17 please.

18 A That's what you just asked me.

19 Q Between 2:26 and 2:28 when you were inside the bar,
20 you never saw anyone with a gun?

21 A Not when I was inside the bar.

22 Q Thank you.

23 This gun that you had, when law enforcement was
24 talking to you when they placed you under arrest, did you
25 turn it in to them?

1 A No, sir.

2 Q You talked to them about a lot of things when they
3 interviewed you, right, about this night, August 22nd?

4 A I talked to them, I explained it.

5 Q They obviously asked you what happened, correct?

6 A Right. I told them I was attacked.

7 Q You also told them that you didn't shoot that night.
8 Do you remember telling them that?

9 A I wasn't going to give them too much information.

10 Q Excuse me?

11 A I was not giving them too much information.

12 Q You were not giving them too much information?

13 A They weren't on my side.

14 Q So you agree that you told them -- when they asked
15 you about what happened, you told them that you did not
16 shoot that night?

17 A Yeah, I didn't want to let too much of what I had
18 going on because I knew they were going to turn it around
19 and flip it around just like I knew they would.

20 Q And you, also, told them that they don't have you on
21 video shooting, right?

22 A I told them that, yes, sir.

23 Q You didn't just tell them that once, you told them
24 that twice? You told them the third time they didn't have
25 you on video shooting, right?

1 A I don't know exactly how many times I told them that.

2 Q You agree it was multiple times?

3 A Yeah, I was scared. I didn't know what to tell them.

4 I didn't know about self-defense. I was scared. I was
5 scared for my life.

6 Q You didn't know about self-defense?

7 A I didn't.

8 Q You, also, told them that no one could say that you
9 pulled the trigger, right. You told them that twice?

10 A Right.

11 Q And you told them that you only heard gunshots?

12 A No, I didn't say I only heard gunshots. I said I
13 heard gunshots and I ran for my life.

14 Q You told them that twice?

15 A I don't know how many times I told them, I just told
16 them.

17 Q You lied to them?

18 A Yeah, I lied to him. I sure did.

19 Q You've dealt with law enforcement before, right?

20 A Right.

21 Q You've got a couple prior convictions. Mr. Kata
22 pointed out that you were convicted in 2014 of obstruction
23 of justice; is that right?

24 A Misdemeanor.

25 Q My question is whether you were convicted of

1 obstruction of justice?

2 A Yeah.

3 Q And you were also convicted of malicious injury to
4 property in 2013?

5 A Still no violent crime, killing nobody, shooting
6 nobody.

7 Q You were convicted of assault and battery third
8 degree in 2014?

9 A Right.

10 Q Right?

11 A Right.

12 Q You were convicted of malicious injury to a facility?

13 A Right.

14 Q In 2014, right?

15 A Right.

16 Q You were convicted of unlawfully carrying a weapon in
17 2019?

18 A Right.

19 Q Right.

20 MR. GOLDBERG: One moment, Your Honor.

21 (Pause.)

22 BY MR. GOLDBERG:

23 Q Mr. Kata asked you about the shooting, the part of
24 the shooting when you were back by the car, right, when
25 you had moved to the vehicle you said was locked and you

1 couldn't get into, right?

2 A Yes, sir.

3 Q And you testified there was nothing else you could
4 do?

5 A There wasn't. He was firing through the door.

6 Q Was there anybody standing in your way by the
7 vehicle?

8 A No, sir.

9 Q Was there anybody holding you down or holding you
10 back?

11 A There's bullets flying through the air.

12 Q Okay. When you got out of the bar here, is there any
13 fencing around this area? Is it like an enclosed patio or
14 is it open to the parking lot?

15 A Yeah, but he had a gun.

16 Q It's open to the parking lot, right?

17 A I can't get away fast enough to stop him from
18 shooting.

19 Q I'm asking you not about anybody else. I'm asking
20 you about what's around you. There's no fencing, right?

21 A There's some people around bars.

22 MR. GOLDBERG: Your Honor, I would ask that the
23 witness be responsive to my particular question.

24 THE COURT: Did you understand the question,
25 Mr. Bethel?

1 THE WITNESS: Yes, sir.

2 THE COURT: All right.

3 BY MR. GOLDBERG:

4 Q Mr. Bethel, when you're outside, there's no
5 enclosure, right?

6 A No, sir.

7 Q There's no fencing?

8 A No, sir.

9 Q No patio chairs or tables. It's just an open parking
10 lot, right?

11 A You just asked me, yeah.

12 Q Yeah. And when you walked this way down past the
13 doors or even the wall down that way, no fencing down
14 there, right?

15 A Right.

16 Q No --

17 A I had to get away from that door.

18 Q No tables, right?

19 A Something like that.

20 Q I'd like for you to answer my questions, please.
21 There's no tables down that side of the wall?

22 A No, sir.

23 Q No chairs, no fences, just an open parking lot,
24 right?

25 A Right.

1 Q You haven't sustained any injuries to your legs at
2 this point, right? No broken ankle, no broken leg or
3 anything of that nature?

4 A No, sir.

5 Q Didn't even twist your leg, did you?

6 A I don't know about twisting. I know it wasn't
7 broken.

8 Q Okay. Were there any other random people behind you
9 at this point or were the only people out there the people
10 you came with?

11 A I'm not sure who was in the cars. I can't tell you
12 about that.

13 Q Nobody, sir?

14 A I didn't see anybody. I know this guy pulled out a
15 gun. I feared for my life.

16 Q Nobody is stopping you from walking, right? Nobody
17 is blocking your path, right?

18 A (There was no response).

19 Q Right?

20 A Right.

21 Q But you did shoot into the bar?

22 A Yeah, they was coming out.

23 Q You killed two people, correct?

24 A Yes, sir.

25 Q Severally injured two others, right?

1 A Yes, sir.

2 Q And then you denied all of that when law enforcement
3 asked you about it, right?

4 A Yeah, I wasn't telling nobody nothing.

5 MR. GOLDBERG: That's all I have.

6 THE COURT: Redirect?

7 MR. KATA: Briefly, Your Honor.

8 REDIRECT EXAMINATION:

9 BY MR. KATA:

10 Q Mr. Bethel, in your interview with law enforcement,
11 did you tell them that you were attacked?

12 A Yes.

13 Q It wasn't at first, but you told them you were
14 attacked?

15 A Yes, sir.

16 Q And when you were in the parking lot and you were
17 going back to the car and you were perceiving bullets
18 coming at you, were the doors to the bar opened or closed?

19 A They were still closed.

20 Q They were closed when Tolliver Wise was firing his
21 weapon?

22 A Right.

23 MR. KATA: No more questions, Your Honor.

24 THE COURT: Anything further?

25 MR. GOLDBERG: No, sir.

1 THE COURT: All right. You may step down.

2 And, ladies and gentlemen, we'll take a break for a
3 moment. Please do not discuss the case.

4 (WHEREUPON, the jury left the courtroom at 11:44
5 a.m.)

6 THE COURT: All right. I'll give you a chance to
7 secure Mr. Bethel.

8 Mr. Kata, do you have any other witnesses?

9 MR. KATA: No others witnesses, Your Honor.

10 THE COURT: Does the defense rest?

11 MR. KATA: The defense rests.

12 THE COURT: Will the State offer reply?

13 MR. GOLDBERG: No, sir; no, sir.

14 THE COURT: All right. Ready to do closing
15 arguments?

16 MR. GOLDBERG: In just a few minutes, maybe 15, 20
17 minutes.

18 MR. KATA: I brought a watch.

19 MR. GOLDBERG: Or even 30 if you're willing to give
20 it.

21 THE COURT: All right. We'll have the jury come back
22 in, rest in the presence of the jury, and then I'll give
23 them another break for 30 minutes.

24 MR. GOLDBERG: Thank you, Your Honor.

25 (WHEREUPON, the jury entered the courtroom at 11:47

1 a.m.)

2 THE BAILIFF: The jury is seated, Your Honor.

3 THE COURT: All right. Thank you. You may call your
4 next witness.

5 MR. KATA: Your Honor, at this time, the defense
6 rest.

7 THE COURT: All right. Ladies and gentlemen, you've
8 heard the defense in this case.

9 Any reply by the State?

10 MR. GOLDBERG: No, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, that
12 means you've heard all the testimony in the case. The
13 next thing will be closing arguments. We're going to take
14 a break for one half hour.

15 We ordered lunch for the jury, but I'm told it won't
16 be here until after 1:00 or 1:30 or something. But we're
17 going to take half an hour, so you'll have snacks back
18 there. I'm sure you do. Eat some of those and we'll
19 reconvene in about half an hour. If you'll go to the jury
20 room.

21 (WHEREUPON, the jury left the courtroom at 11:48
22 a.m.)

23 THE COURT: Okay. Prior to the closing arguments, we
24 need to talk about jury charges.

25 I see the State has handed up some charge about kill

1 zone, kill-zone theory. Anything the State wants to say
2 about that?

3 MR. FOWLER: Your Honor, I won't say very much. I
4 trust you've seen the memo in support. Just to say that
5 this is a very new theory in South Carolina. I believe as
6 of 2002, Court of Appeals case written by Judge Hewitt, a
7 2022 case. That case was tried in front of the Honorable
8 Steven John. The Horry County Court of Appeals upheld the
9 attempted murder conviction on that theory. While it is
10 new in South Carolina, Your Honor, Judge Hewitt cites a
11 case from California People vs. Bland, that case is
12 from 2002.

13 The People V. Bland, the California case, actually
14 gets that theory from Maryland in a 1993 case, State v.
15 Ford. So this is a theory that's been around the nation
16 for a really long time. We're just now getting it in
17 South Carolina.

18 The charge that the State submitted to Your Honor is
19 actually modeled off of a California jury pattern
20 instruction. And I have all the relevant cases if Your
21 Honor would like to be read them in their entirety. And I
22 could answer any specific questions, but I submitted the
23 brief that I think covers it.

24 THE COURT: All right. Mr. Kata.

25 MR. KATA: Thank you. May it please the Court, Your

1 Honor. I would object to that charge. I mean, it's based
2 on foreign law outside of the State. Our Supreme Court
3 has not endorsed that charge yet or made a ruling on
4 whether or not that's appropriate. I, also, object to the
5 repeated use of kill zone in the language of the charge.

6 First off, whether something is a kill zone or not is
7 a theory. The jury has every ability to determine whether
8 there's a specific intent using the previous charges for
9 these kinds of cases, Your Honor. Also, I think using
10 kill zone over and over again is commenting on the facts.
11 It gets into the fact of interpreting the evidence which
12 is solely for the jury. So for those reasons, I would
13 object to that charge.

14 MR. FOWLER: And, Your Honor, I just very briefly
15 would add that the kill zone language comes actually
16 directly from the California jury charge I modeled this
17 after.

18 I believe Judge Hewitt in his opinion on the Court of
19 Appeals refers to it as a zone of fatal harm. The State
20 is happy to change the language to zone of fatal harm,
21 which the Court of Appeals has acknowledged and approved.

22 THE COURT: Mr. Kata.

23 MR. KATA: Your Honor, that charge has kill zone all
24 over it. That's what was submitted. I still was going to
25 say, I mean, the proposed charge that was submitted has

1 kill stone all over it. I think that's just over the top
2 of what we need to be putting in a jury charge.

3 MR. FOWLER: I'd be happy to change that over lunch,
4 Your Honor. That's about ten keys strokes on my computer.

5 MR. KATA: Your Honor, it's, also, part of know what
6 to change it to since the Supreme Court hasn't given
7 guidance on what actually should be put in the charge.

8 MR. FOWLER: We actually do, Your Honor. It's State
9 v. Williams. They call it a zone of fatal harm.

10 MR. KATA: The Court of Appeals has, but the Supreme
11 Court has not.

12 THE COURT: Do you have a proposed charge that you
13 handed up?

14 MR. FOWLER: Yes, Your Honor. I took to it your
15 chambers, but I can hand one up. Your Honor, this is the
16 State's memo in support, but that is the actual charge
17 itself. Your Honor, the language that I added to that, I
18 just added directly into Your Honor's attempted murder
19 charge.

20 THE COURT: We just had a trial about two weeks ago,
21 State v. Martin Dixon, and the charge was attempted
22 murder. Both sides agreed on the charge that the
23 defendant consciously intended to completion of acts
24 constituting a murder, performance of a matter which tend
25 but failed to kill a human being and such acts are done

1 with expressed malice mainly with the intent to kill.

2 Let's see.

3 Anyone have the standard circumstances charge, as
4 well?

5 So with regard to murder, malice can be further
6 expressed or implied, right, on murder?

7 MR. GOLDBERG: Your Honor, I actually have -- in all
8 candor with the court, I have a question about that just
9 to make sure.

10 THE COURT: Whether there can be inferred malice --

11 MR. GOLDBERG: In a self-defense case, yes, sir.

12 MR. KATA: I would object to that.

13 THE COURT: Well, I asked a question and you raised
14 an objection. How about responding to my question.

15 MR. KATA: Yes, Your Honor, I don't believe there's
16 the ability to make an inference in a self-defense case.

17 MR. GOLDBERG: I think I have to agree based on State
18 v. Smith; is that right?

19 MR. KATA: Right.

20 MR. GOLDBERG: I believe that's what that is.

21 THE COURT: Well, my review is that the State's
22 request to charge is an inappropriate comment on the
23 facts, so I have a problem with that requested charge.

24 What about the requested self-defense charge? Any
25 objection by the State?

1 MR. GOLDBERG: Your Honor, I believe we would just go
2 with your standard self-defense charge. We don't have a
3 specific --

4 THE COURT: Did you look at Mr. Kata's request?

5 MR. GOLDBERG: Oh, I'm sorry. I apologize.

6 THE COURT: It's two pages.

7 MR. GOLDBERG: Yes, sir.

8 THE COURT: Is there anything in your request other
9 than the standard self-defense charge?

10 MR. KATA: Your Honor, it's the standard request.

11 THE COURT: All right. So standard self-defense.
12 The court is not going to give the kill zone theory. The
13 facts are the facts. The State can argue whatever you
14 want to.

15 MR. GOLDBERG: Thank you. One other that I thought
16 of. I don't have a proposed charge, but it just dawned on
17 me based on the defendant's testimony about voluntary
18 intoxication, as he admitted he was drunk, I believe that
19 would be appropriate for the jury to be charged that is
20 not a defense.

21 MR. KATA: I have no objection.

22 THE COURT: All right. It's a part of the standard
23 self-defense charge to include that.

24 MR. GOLDBERG: Okay.

25 MR. KATA: Just at this time, I would renew my

1 previous motion for directed verdict, incorporating the
2 testimony of the defendant and all other prior objections.

3 THE COURT: All right. The court denies that motion
4 for the reasons stated.

5 All right. So we're going to take some additional
6 time, about 15 minutes at this point.

7 MR. GOLDBERG: Thank you.

8 THE COURT: All right.

9 MR. KATA: Thank you, Your Honor.

10 (WHEREUPON, a short break was taken.)

11 THE COURT: Ready for the jury?

12 MR. GOLDBERG: Yes, sir.

13 THE COURT: All right. We're ready for the jury.

14 (WHEREUPON, the jury entered the courtroom at 12:41
15 p.m.)

16 THE BAILIFF: The jury is seated, Your Honor.

17 THE COURT: Very good. Thank you.

18 Ladies and gentlemen, you've heard all the testimony
19 and evidence. It's time for closing arguments.

20 First, by the State.

21 MR. GOLDBERG: Thank you, Your Honor. May it please
22 the Court.

23 THE COURT: Yes, sir.

24 CLOSING STATEMENT:

25 MR. GOLDBERG: Mr. Kata.

1 The devastation that Ernest Bethel created, the
2 catastrophe, if you will, you heard about it. You've seen
3 it over and over and over again on this board right here.
4 The four families can never ever forgot what's happened
5 here. And it's difficult to wrap your head around. It's
6 hard to understand that four people paid the price for one
7 man's choices. For what? For what?

8 Ernest Bethel's choices resulted in catastrophic
9 devastation. It resulted in Christopher Lott's internal
10 organs getting carved up by multiple bullets traveling
11 through his body.

12 It resulted in Tolliver Wise taking a bullet through
13 the heart. He was literally shot through the heart.
14 Cameron Jenkins being shot in the neck, the bullet still
15 lodged in his neck one inch away from death. And Greg
16 Martin undergoing surgery to save his life several times
17 over the period of approximately 26 days. All due to this
18 man's choice, his actions, his choices changed these
19 people's lives and cost these people their lives.

20 Your job is to take all of this that's been presented
21 to you, all the little pieces, all the facts, put them
22 together and then use your common sense to think about
23 what's presented to you, to think about the arguments that
24 I'll make, that Mr. Kata will make so that you can get a
25 clearer picture despite what's on video. You can get a

1 clearer picture in your mind of what actually happened and
2 why on August 22nd, 2019.

3 That picture is going to show you that you Ernest
4 Bethel must be held accountable. He's got to be held
5 responsible for his actions. And they were his actions,
6 his choices. Don't let yourselves get distracted from the
7 facts in this case. He brutally murdered two people and
8 he left two others lying on a barroom floor like a piece
9 of trash at the end of the night.

10 It was cold, it was malicious and it was intentional.
11 What it was not was self-defense. That is not what
12 happened in this case. We're going to talk a lot more
13 about that. And because of that reason, he's got to be
14 held accountable.

15 This case is not about how much Chris Lott had to
16 drink that night really. It's not about how much Tolliver
17 Wise or anybody else had to drink that night, really.
18 It's not about how sporting events are perceived on TV
19 versus how they're perceived in real life. It's not about
20 the nuances of Amircle Wright's statement, what she wrote
21 down, didn't write down. And it's, certainly, not about
22 what formal documentation the members of this bar may or
23 may not have done about the defendant being made. That's
24 not what this is about. This case is about holding
25 Mr. Bethel responsible for the intentional acts that he

1 committed on his own not in self-defense when he killed
2 Chris Lott, killed Tolliver Wise and when he tried to kill
3 Greg Martin and Cameron Jenkins.

4 I want to talk to you about the law for a few
5 minutes. Obviously, you've heard testimony, seen evidence
6 that make up the facts as you see them in the case.
7 You're going to decide the facts. You're the fact
8 finders.

9 The Judge is going to tell you about the law in our
10 state. Once I'm done and Mr. Kata is done, the judge is
11 going to tell you about the law that you need to apply in
12 this case.

13 So I'm going to give you a little bit about that. If
14 I say anything different than His Honor tells you, you
15 take his word for it. He's the sole judge of the law.

16 As you know, there are two counts of murder before
17 you. Murder has, perhaps, the simplest definition of any
18 crime in our state. It is very simply the unlawful
19 killing of another with malice aforethought.

20 As far as Mr. Lott goes and Mr. Wise goes, it's
21 undisputed that they were killed and that they were killed
22 by Mr. Bethel. You might be thinking well, what is
23 malice, what does that mean? That's really the crux of a
24 murder charge, is what is malice? Did the defendant act
25 with malice?

1 That, also, applies to the attempted murder charges
2 regarding Mr. Jenkins and Mr. Martin. That is defined as
3 attempting to kill another person with a specific attempt
4 to kill with malice aforethought. So, in other words, an
5 act which may tend to, but fails to actually kill another
6 human in interest of the process. Try to kill them, but
7 it doesn't work. Regardless, they both need malice to be
8 proven by the State in order for the defendant to be found
9 guilty.

10 So what does malice mean? Well, malice is a legal
11 term. It's not something that people walk around
12 necessarily talking about in their daily life. It's some
13 ways it is described as hatred, ill will, a wicked or
14 depraved heart.

15 There's even some more poetic language that's
16 sometimes to describe things like a heart devoid of a
17 social duty or somebody's fatally bent on mischief, things
18 like that. But in the end, it is the intentional doing of
19 a wrongful act without cause or excuse and inflicting
20 injury. That's part of the equation here. Hatred, ill
21 will, malice.

22 The evidence of malice in this case is overwhelming
23 if you really, really look at it and you really think
24 about it. When you watch those videos, you see Mr. Bethel
25 walk out of the bar and the door close in front of him.

1 And we're going to talk a lot about that door and it's
2 position and where everybody is standing. But when he
3 goes out that door, he walks away and then he fires not
4 once, not twice, seven times, seven times directly into
5 the door, a door that he knows directly on the other side
6 of which are a crowded group of people that he has
7 literally seconds before been standing with and
8 interacting with. Seconds before. And he fires
9 intentionally directly in there seven times. Those shots
10 are fire with intent to kill. Those shots are fired out
11 of hatred and ill will out of what's just occurred. Those
12 shots are fired by somebody who is fatally bent on
13 mischief.

14 He then moves to a safer spot for himself, back into
15 the parking lot over by the car that he arrived in and
16 fires again. Mr. Wise, as you've seen, has in between
17 this time taken to firing to defend himself and the others
18 in the bar. And Mr. Bethel then fires the fatal blow
19 against Mr. Wise. All of that, fueled by the ill will
20 that he held towards those folks.

21 You saw him. He wasn't real happy about them talking
22 to him and telling him he couldn't be there, even though I
23 submit to you he knew he wasn't supposed to be there. He
24 was pretty upset about that. He didn't like it. He
25 didn't even like talking about it, really.

1 He took it out on them. And he took it out on them
2 in what's been described as a hail of gun fire
3 intentionally through the door where people were standing
4 just on the other side. That is malice. That is malice
5 that led to two people's deaths and malice that led to two
6 people that he was trying to kill.

7 The State has the burden of proof in every single
8 criminal case. And that burden means that we have to
9 prove our case to you all beyond a reasonable doubt. Some
10 of you might have heard that term before, so let's talk a
11 minute about what that means. What does it mean for the
12 State to be required to prove its case beyond a reasonable
13 doubt? It doesn't mean that the case has to be proven to
14 you all beyond all doubt or any doubt, just a reasonable
15 doubt.

16 So what does that mean? A reasonable doubt is the
17 kind of doubt that causes a reasonable person to hesitate
18 to act. Put another way, proof beyond a reasonable doubt
19 is that which leaves you firmly convinced of the
20 defendant's guilt.

21 So after hearing the testimony, looking at the
22 evidence, watching the videos, hearing from me, hearing
23 from Mr. Kata and hearing from the Judge, you go back in
24 that jury room and you start talking about this case and
25 the central question being did Mr. Bethel act in

1 self-defense or did he fire through those doors in an
2 effort to kill those people?

3 The question for you to answer is are you firmly
4 convinced that he fired through there to kill? And the
5 evidence in this case overwhelmingly supports that you
6 will be officially convinced of this case.

7 The State has met its burden in this case by giving
8 you a combination of direct evidence, like the testimony
9 of people who were there, who saw, heard what happened and
10 came and told you about it, the videos.

11 The circumstantial evidence, which is evidence that
12 you can infer from the chain of facts. So, like, for
13 example, if you have questions about the videos and
14 timestamps and they're not on the same screen, you can
15 look at those, make inferences about that.

16 The law makes no distinction between direct evidence
17 and circumstantial evidence. They carry the same weight.
18 It's just two different ways of looking at ways to prove
19 something.

20 I want to mention before I get into something else
21 just so I don't forgot, the Judge is also going to tell
22 you about what's known as voluntary intoxication. And you
23 heard from Mr. Bethel, we kind of went back and forth
24 about how much he had to drink that night, was he drunk,
25 was he tipsy, things of that nature. And honestly, as it

1 pertains to his legal responsibility here before you
2 today, it really doesn't matter if he was intoxicated.

3 The Judge is going to tell you that voluntarily
4 getting intoxicated, drinking to whatever level is not a
5 defense to a crime. That does not absolve him from
6 whatever decisions that he makes that night.

7 Another way that will aid you in deciding whether the
8 state has met its burden of proof is by judging the
9 credibility of the witnesses. Another way to think about
10 that is the believability of the witnesses. So how do you
11 do that? You do it all the time. You do it almost every
12 day of your life, not even know you're doing it. You
13 might be on the elevator with somebody. You might be at
14 the water cooler. You might be in the restaurant getting
15 lunch, standing in line and you hear people talking, maybe
16 talking to you. And somewhere in your mind while this is
17 going on, you are thinking deep down, is this person
18 believable? Are they credible? Y'all have tons of life
19 experience with that.

20 And you get to use that here and decide what value to
21 put on testimony that's been provided by witnesses. And
22 you can do that by looking at their demeanor on the stand.
23 Are they forthright with what they have to say? Are they
24 hesitant in offering whatever information they've been
25 asked about? Is their testimony consistent or is it

1 inconsistent? Have they been lying about things? Was
2 their testimony corroborated by any other evidence in the
3 case? Did the witness have some reason to be biased or
4 prejudice or to even say the things they said? These are
5 all the things that you get to use to help decide whether
6 the folks on the witness stand are telling the truth. And
7 you can use that to help you decide whether the state has
8 met its burden.

9 In a perfect world, you would hear from Chris Lott
10 and you would hear from Tolliver Wise. They would be able
11 to come in here and sit on this stand and look you in the
12 eyes the way Cameron Jenkins and Gregory Martin did and
13 tell you for themselves exactly what was said and what
14 happened right there that night. We know they can't do
15 that. Mr. Bethel made sure of that.

16 You did get to hear from Cameron Jenkins. You got to
17 hear from Greg Martin. And you got to hear from the
18 defendant and a couple others, Amircle Wright, as well.
19 So I ask you to consider when you're thinking back on all
20 of their testimony, which of those witnesses had the most
21 reliable information? Which of them had the least
22 reliable information? Who was believable on the stand?

23 I'm not going to go back through our entire direct
24 and cross-examination with Mr. Bethel that literally
25 happened within the last hour. You all were watching.

1 You all were paying attention. You heard the questions.
2 You heard his answers. You make your own judgment about
3 whether he's being truthful or not. It was right there on
4 display.

5 The Judge is the sole judge of the law, but as I
6 said, y'all are the judges of the facts. So when talking
7 about this, that means you can believe everything somebody
8 tells you, you can believe some of it, or you can believe
9 none of it. That is totally up to you as a juror, your
10 decision.

11 So speaking of credibility, let's talk about what
12 Mr. Bethel told you regarding self-defense and what
13 self-defense means, because the Judge is going to tell you
14 about that, too.

15 In our state, four things that make up self-defense
16 from a legal standpoint. One, Mr. Bethel has to be
17 without fault in bringing on the difficulty. Number two,
18 Mr. Bethel has to be in actual imminent danger of death or
19 serious bodily injury or he actually has to believe that
20 he's in imminent danger and immediate danger of death or
21 great bodily injury. That's two.

22 If that's his belief, then number three, the question
23 to be asked is would a reasonably prudent person -- a
24 reasonable person of normal ordinary courage, firmness,
25 whatever word you want to use, would that person have

1 entertained the same belief? In other words, would an
2 ordinary person -- a reasonable person of ordinary
3 courage, would they, also, have felt like they were in
4 imminent danger of death or great bodily injury? That's
5 number three. And number four, that Mr. Bethel had no
6 other means of avoiding the danger.

7 Mr. Bethel has to prove nothing. Let me be clear
8 about that. He doesn't have been to prove those four
9 things. The State has to disprove self-defense, but let
10 me be clear about that. The burden does not require the
11 State to disprove all four of those.

12 If any or all of those elements are disproven beyond
13 a reasonable doubt, if you don't think beyond a reasonable
14 doubt that one of those four exists, self-defense doesn't
15 hold up. It doesn't apply.

16 So if you take an honest look at this, at what's been
17 presented, what he told you and you think about it in
18 terms of this self-defense, it doesn't work. It doesn't
19 fit. I'm going to tell you briefly why.

20 We'll talk about the first element, the defendant is
21 without fault in bringing on the difficulty. Let's go
22 back through a little bit about why that doesn't work. I
23 submit to you that Mr. Bethel knew he was not allowed to
24 go to McCary's. He knew what happened before. Kerry Ross
25 came in here and told you on the stand that he told him

1 directly, you're gone. You're banned. Don't come back.

2 Amircle Wright told you that she saw him earlier that
3 night right beforehand at Reggae Grill and told him when
4 McCary's came up, you can't go there. And he gave her
5 some story about how he was going to try to get around
6 that, something about a twin brother, didn't really make
7 any sense. But he knew he wasn't supposed to be there.
8 He goes anyway.

9 He brings a gun with him to the bar. He comes
10 inside. When he's approached by these folks inside, he
11 refuses to leave after, what, at least, four people tell
12 him he couldn't be there, shouldn't be there, needs to
13 leave.

14 It was some back and forth about exactly what was
15 said. Y'all got the gist of it. They told him look, man,
16 you need to go. He refuses to go. He then puts his hands
17 in John Miller's face.

18 Go back and watch that video when you get in the
19 back. Watch that video. I believe it's camera nine, is
20 the grainy one, and then camera seven is the clearer one.
21 You go back and look at that, you're going to see his hand
22 go up and you're going to see his hand touch John Miller's
23 face.

24 It sure looks to me like it's like this. That's up
25 to you to decide. It could have been this, as he said, it

1 could have been this. It sure looked like this, but,
2 regardless, he put his hand on his face. And when you see
3 that, you will see Mr. Miller's immediate reaction. And
4 then he turns and then he throws the drink.

5 And then as soon as he gets out the door, as you saw,
6 right at 2:58 on the dot, he puts his hand on his gun.
7 Mr. Bethel is entirely at fault in bringing on this
8 difficulty for all of those reasons.

9 When you move on to the danger portion of
10 self-defense. We'll call it number two and three. That
11 he was either actually in imminent danger or he reasonably
12 believed he was in imminent danger and whether an
13 ordinary -- a reasonable person of ordinary courage would
14 have acted in the same way. There was no imminent danger
15 when he got out the door. It was over.

16 We're going to go through that here in a minute. It
17 was over. The door was closed. You see from all angles
18 everybody who was gathered there inside is standing
19 inside. No one is trying to go out. It's not like
20 somebody was trying to go out and somebody was holding
21 them back and they're all banging in the door, hold me
22 back, yelling. There was none of that. Look at it.
23 Everybody is standing there.

24 I'd play it over and over for you again, but you've
25 seen it a lot already. I'm trying to be respectful of

1 that. You can watch it as much as you want in the jury
2 room. It's over. He's out the door. There is no
3 imminent danger. Christopher Lott actually pulls the door
4 closed. Nobody is going out, nobody is coming after him.

5 So the question is, at that moment, what would a
6 reasonable person do in that situation? Would that
7 reasonable person pull their gun out and immediately fire
8 into the bar? Would they hold their gun for a minute,
9 even think about it and then leave through a wide open
10 parking lot? Or would a reasonable person right then feel
11 that they were in such danger that they had no choice, no
12 other choice but to fire blindly through that door at all
13 those people standing right there? There's no way.
14 That's not reasonable. That is not reasonable to think
15 that an ordinary person of the same courage would do that.
16 Use your common sense. You can use your common sense when
17 you think about these things.

18 That kind of blends in to number four that he had no
19 other means of avoiding the danger. Again, he did have
20 plenty of other means to avoid the danger. As I just
21 stated, the door is closed, no one has come outside.

22 No one is coming outside. He's got a wide open
23 parking lot behind him. There's no fencing, no tables,
24 you heard me go through all of that. It's gone. It's
25 other.

1 He started to go that way. He got about four steps
2 past the doors over this concrete wall. When you look at
3 some of these photos, like, State's 16, he's past that
4 pillar and light I'll call it, he's over here. It's over.
5 It's like seven or eight seconds. The door still hasn't
6 come back open. All he has to do is keep going. All he
7 has to do is keep going. His friends are walking right
8 behind him.

9 And I thought it was interesting when we talked about
10 that. When you see that video, you see his two friends
11 with their backs turned to the door. He testified about
12 how when he got to the car, he was trying to protect him.
13 If he was so afraid at 2:08 and zero seconds when he puts
14 his hand right here to go for his gun the first time, if
15 he's so afraid that it causes him to do that and then as
16 he's walking, he's going to stop and decide, oh, man,
17 they're coming after me. I hear them coming. They're
18 threatening. This is going to be bad. I need to save
19 myself. I need to save them.

20 What does he do to warn the two people with him?
21 Does he do anything? Does he tell them to get down? Does
22 he tell them to run? No, he shoves Mr. Green towards the
23 door to where he thinks this perceived threat is coming
24 from.

25 He pushes him towards it actually and goes through

1 him to get over there and fire. He's not protecting
2 anybody. He's the aggressor. He's the reason this
3 happened. He's not the victim in this.

4 And he continued to walk away as he started to. It
5 would not have increased the danger of him being killed.
6 He told you he didn't feel like he could go because he
7 thought they were coming and they were going to shoot him
8 up and that was going to be the end of it. So he couldn't
9 keep going. It was increasing the chances he would be
10 harmed or killed. It would have decreased it for everyone
11 had he just kept going. Nobody was coming out.

12 Tolliver Wise -- if you watch the video, Tolliver
13 Wise does not move to come back towards the door to go
14 fire until those shots have already been fired, those
15 shots by the defendant. He's off to the right.

16 He's over here around the area where the scuffle with
17 Mr. Miller happened on the inside of the bar. He only
18 goes to the door to shoot after Mr. Bethel shoots into the
19 bar. I know Mr. Bethel said, Well, I saw Mr. Wise with a
20 gun. Okay. All right. We'll get to that. We'll talk
21 about that and why that's not believable, why that's not
22 possible.

23 I thought it was interesting that Mr. Bethel told you
24 that the altercation with Mr. Ross two weeks prior, I
25 believe he said it was not serious enough for me to shoot

1 a gun over an argument.

2 I mean, how serious was this incident on August 22nd?
3 Was that serious enough for him to shoot a gun? There's
4 testimony before you that he fired shots. And in the Mr.
5 Ross incident, even though he said he didn't and that
6 wasn't serious enough, was this?

7 He got a drink thrown on him after he put his hands
8 on a man. He got a drink thrown on him. His pride was
9 hurt. His pride was hurt. He got a drink thrown on him,
10 so he started swinging. Yeah, other people intervened and
11 grabbed ahold of them. That's what happens in bar,
12 especially at 2:00 in the morning when people have been
13 drinking. If somebody gets physical, other people get in
14 there and they try to break it up. You watch that video,
15 nobody is attacking him.

16 The issue was with Mr. Miller, right, that's what
17 started this thing, the physical. Mr. Miller is over
18 here. Mr. Jenkins takes Mr. Bethel this way. And
19 everybody else, you watch it -- when you watch it, they're
20 trying to end it.

21 How can anybody keep on drinking, having a good night
22 and staying out to 6:00 a.m. like they do at McCary's if
23 it gets any worse at that point? Nobody wanted that. It
24 was over. Not for him. He couldn't let it go. Could not
25 let it go.

1 I'm not going to go back through every single witness
2 that testified in front of you. You all were paying close
3 attention and heard what they said. You saw the body cam
4 from the first officer that was on the scene, McGregor,
5 the carnage that he observed when he walked in there, the
6 chaos.

7 You know, of course, Jenkins and Martin were right
8 were there, Mr. Ross. The crime scene folks, they came in
9 here, they tried to do their job, right. They collected
10 what evidence they could, took photos. They did their
11 job. That's not what this case is about.

12 You know, the firearms evidence was collected. It
13 did show you which -- even though no gun was found, which
14 fired cartridge casings were from the same gun, which
15 would be the one standing right where you see Mr. Bethel
16 and the ones out by the car. Those are different from the
17 ones found inside by Mr. Wise. So it just corroborates
18 what you see there.

19 Dr. Watson told you about the nature of the injuries
20 that everybody had, how lucky those two up there are for
21 being here today. And then, of course, the pathologist
22 told you about how they died and what killed them.

23 Let's talk about common sense for a minute. I
24 mentioned earlier that that's certainly a tool in your
25 tool bag when you're considering this case. You can use

1 your common sense and apply it as you see fit with the law
2 and the facts.

3 So let's think about this. In order for self-defense
4 to work, you would have to believe that Mr. Bethel
5 actually thought he was allowed to be there, okay, that he
6 peeked through the door and that if he -- which I thought
7 it was interesting, why would he peek through the door
8 like that that close if he thought he was allowed to be
9 there.

10 He told you he was looking for Mr. Ross. Like, why
11 would he walk up there and look in with his body up
12 against the door trying to see if Mr. Ross was there if he
13 was allowed to be there? Why wouldn't he just walk
14 inside?

15 It would have been just like any other time. He
16 could have walked inside and looked for Mr. Ross then, but
17 no, he was scoping it out. He knew he wasn't supposed to
18 be there. Didn't see Ross, so he thought he was good to
19 go.

20 It wasn't until then, interestingly enough, if you
21 check out the Boost Mobile camera, as well, that you'll
22 see his two friends then walk up towards the bar as well.
23 He walks up first and until he's got the green light to go
24 in, they're not coming up there. I found that really
25 interesting.

1 You would have to believe that, obviously, as we
2 talked about that he actually thought they were coming
3 outside to attack him and that a reasonable person would
4 have thought the same thing. We've covered that. And, of
5 course, you'd also have to believe, as we're going to show
6 you in a minute, you'd have to believe his testimony that
7 he actually saw Tolliver Wise coming.

8 You'd have to believe that? Do you believe that?
9 The video tells the tale, but you would have to believe
10 that. And even if you believed all that, you would have
11 to believe that he truly had no other choice.

12 He had no other choice but to blindly fire up to 12
13 times through a door into a group of people, seven times
14 at first, while leaning around a corner, even though
15 nobody else was outside except the people he came with,
16 that he had no other choice than to do that. Is that
17 reasonable? Is it reasonable to believe all of those
18 things? No. No. It makes no sense.

19 And it does not fit with the evidence in the case,
20 which is why when he was interviewed by law enforcement,
21 what did he do? He lied. His trial isn't about being a
22 liar. Everybody tells little lies here and there, that's
23 not what it's about. This is a pretty big one. Multiple
24 times, he told them he didn't have a gun. He told them he
25 never shot.

1 He told them he never pulled the trigger. He told
2 them he was never on video shooting. The whole crux of
3 why we're here. They asked him about it and he lied to
4 them about it. His story doesn't make sense. It's
5 tailored to fit what he thinks can get him out from being
6 held accountable for his actions. It's manufactured.
7 It's invented.

8 The defense has tried to draw your attention to
9 everything except the credible evidence that points to
10 Mr. Bethel's guilt. The victims were drinking. Yeah,
11 they were at a bar. Of course, they were drinking.
12 There's no documentation about him being banned. All
13 right. This is not corporate America in McCary's bar.

14 There's no HR department. And in a way, to some
15 extent, it really didn't matter whether he was actually
16 banned, although I would submit that he knew that because
17 Mr. Ross knew that and he talked to Ms. Wright about it.
18 And as soon as he gets in the door, they're telling him to
19 leave. But it doesn't really matter if there's some
20 official documentation or not because the moment that he
21 crosses into that bar, they're all right there saying hey,
22 man, you've got to go. You can't be here. All he had to
23 do was leave. That's all he had to do.

24 What else is the defense throwing at you? Cameras
25 can be misleading. Well, you can be the judge of that.

1 Look at that yourself. The defendant was attacked, right.
2 As I told you a minute ago, he's the one, I submit to you,
3 that actually started it.

4 He touched Mr. Miller with his hand. That's what
5 caused the drink to be thrown. Mr. Miller stays off to
6 the side during the fight. Mr. Jenkins and others are
7 trying to break it up. And that actually reminds me, if
8 there was an angry mob in there that was going to get him,
9 that was coming after him in the way that he describes,
10 wouldn't that have happened while they had him inside,
11 while he was on the ground before he goes out the door?
12 Wouldn't they have all continued to be on top of him,
13 holding him down and doing whatever he thinks they were
14 going to do then?

15 How would it make any sense for them if they wanted
16 to attack him to let him get up, let him go out the door
17 and let him walk away? That doesn't make any sense at
18 all. The thing was over. Tolliver Wise wasn't even a
19 part of it at all.

20 And actually, when you look at that skirmish, the
21 defendant is the last one to actually shove anybody. He's
22 getting up off the ground. They're pulling him up. The
23 fellow in a red shirt still has his hands on him and
24 Mr. Bethel pushes him off of him and then goes up.

25 They weren't trying to keep him in there. Why would

1 they be trying to keep him in there? They've been trying
2 to get him to leave. He testified that they were holding
3 him. They've been trying to get him to leave the whole
4 time he was there.

5 Mr. Bethel has based his entire defense in this case,
6 essentially, on the idea that he saw Tolliver Wise reach
7 pull a gun, reach for a gun. That's it. If you really
8 want to boil it down, he's based everything on that. That
9 he acted the way he did because he said that he saw
10 Tolliver reach -- which I think Mr. Kata described it
11 during the testimony as Mr. Wise went elbow high, I think
12 is the word he used when he showed the clip, right.
13 That's not what happened. That is not what happened.
14 Mr. Bethel didn't see Mr. Wise's gun. Mr. Wise saw
15 Mr. Bethel's gun. That's what happened. Go to the
16 evidence. 2:28, this is camera six, 2:28 and zero
17 seconds. He had just gotten out the door. Where is his
18 hand? Reaching for the gun. The door is opened.

19 So the question is, where is Mr. Wise at this moment?
20 Because according to Mr. Bethel, he would have already
21 seen the gun from Mr. Wise. That's why he's going for his
22 because he saw the gun, right, he saw Wise's gun. 2:28
23 and zero seconds. So where is Mr. Wise? Has he pulled
24 his gun yet? Camera seven, 2:28 and zero seconds. That's
25 Mr. Wise. We haven't gotten to elbow high yet. Elbow

1 high is at 2:28:04. 2:28 zero. Elbow high, 2:28:04.
2 Where is Bethel at 2:28:04? 2:28:04, see that mailbox.
3 See where he is. He's over here. He doesn't see that
4 gun. There's no way. You can't see it. But why I saw
5 his gun? Why I saw Bethel's gun when he's reaching for it
6 at 2:28:00.

7 So Wise is reaching, going elbow high because he
8 knows Bethel has a gun. But what does Wise do? He
9 doesn't just start shooting, no. He goes this way. He
10 pulls his gun out as he gets over there, but look where is
11 he at this point.

12 He's behind the wall. He's behind this wall. No
13 windows there. There's the shots. He hasn't even hardly
14 turned to come back that way. He's still over here when
15 shots were fired. Tolliver Wise is not the reason this
16 happened. He is not the one at fault. You see that.
17 Ernest Bethel is the one who did that.

18 Your job, as I told you, is to put all of this
19 together and reach your own conclusion, but you have to
20 stay focused. You have to stay focused on the credible
21 evidence, the believable evidence in the case. Use your
22 common sense and you'll get a picture of what happened and
23 why it happened on August 22nd.

24 Mr. Bethel sits over there an innocent man and that
25 presumption of innocence is often described as a robe of

1 ripeness, cloaked in a robe of righteousness. The
2 evidence that you've seen in this case blows that robe
3 right off of him. It exposes him. It exposes him for the
4 malicious killer that he is and it allows you to clearly
5 see the one thing that he's tried to convince you
6 otherwise of.

7 He is not the victim. As much as he wants to get up
8 here and have you believe that, he's not the victim. He
9 is and he is. And those two people who are in the ground
10 are the victims. They are not at fault for how this
11 happened. He is.

12 There is one reasonable conclusion for you to reach
13 in this case. Mr. Bethel is guilty. The ill will that he
14 had towards that group where he opens fire through that
15 door intentionally into this zone where all these people
16 are standing right behind the door, knowing they're going
17 to be struck, knowing somebody is going to die.

18 His senseless violence gunned these people down.
19 Those were his words, senseless violence. His senseless
20 violence gunned these people down and it resulted in
21 catastrophic devastation, costing two people their lives.
22 It almost cost two others their lives.

23 Hold Mr. Bethel responsible for what he did, find him
24 guilty of the murder of Christopher Lott, find him guilty
25 of the murder of Tolliver Wise, find him guilty of the

1 attempted murder of Cameron Jenkins, the attempted murder
2 of Greg Martin, find him guilty of possession of a weapon
3 during those violent crimes.

4 Thank you.

5 THE COURT: Mr. Kata.

6 CLOSING STATEMENT:

7 MR. KATA: Your Honor, if I please the Court.

8 Ladies and gentlemen of the jury, the prosecution
9 just got up here and talked about pieces of a puzzle. So
10 I want to jump right into what those pieces are.

11 I agree with them that they have the burden to
12 disprove self-defense in this case. We have no burden on
13 ourselves. Okay. That role is totally to the State and
14 that is something that they are in charge of, okay.

15 I, also, agree about the four elements of
16 self-defense. The first one is the defendant must be
17 without fault in bringing on the difficulty, okay. Let's
18 talk about that first. We heard all week about this prior
19 incident.

20 This incident where Mr. Bethel had gotten into an
21 argument and fired guns into the air and did all these
22 things that no one called the police about at all.
23 Multiple people claimed that they saw Mr. Bethel firing
24 the guns into the air, probably from you to me and nobody
25 made one phone call to anyone about that happening.

1 The State didn't put up one witness -- just like at
2 the beginning of the case, Deputy McGregor. They played
3 his body cam video where he's sitting in the car and they
4 heard pow, pow, pow. And they put him on the stand and
5 said, hey, did you hear these shots? Yeah, I did.

6 Well, I bet that there were officers working that
7 night of this shooting. Where were they? Where is
8 anything else that that happened? It wasn't presented by
9 the State apart from saying it happened, and I submit it
10 didn't happen, not the shooting.

11 Let's talk about when he walked into the bar. The
12 defendant must be without fault in bringing on the
13 difficulty. He walks into the bar. We've seen these
14 videos a hundred times. We're not going to go through
15 them all again.

16 You guys will have access to every one of them. He
17 walks in and he's approached by the other people, Cameron
18 Jenkins, Gregory Martin, Christopher Lott and Tolliver
19 Wise. Let's go to the testimony of Christopher Jenkins.
20 He's the bartender.

21 He walks over -- and I must have asked him a couple
22 times about what his intentions were to deescalate things
23 and his response was there was nothing to deescalate until
24 John Miller threw his drink. There was nothing to
25 deescalate. We went back and forth on that a couple of

1 times and that was his testimony. There was no aggression
2 per Mr. Bethel. There was nothing to deescalate.

3 Today, through cross-examination of Mr. Bethel, the
4 State brings up that John Miller got his face touched by
5 Mr. Bethel. Today, that came up. Where is John Miller?
6 We watched him all week. The man that through the drink,
7 swinging, where's he? He's here. Not called by the
8 State. It's their burden.

9 Where is the manager from McCary's? Where is the
10 owner? Yeah, they make a big -- yes, I've asked a lot of
11 questions about written notice. They call it corporate
12 America. Ladies and gentlemen, I call it can we make sure
13 that he knew he shouldn't have been there. That's all we
14 were looking for. How do we affirmatively know that he
15 wasn't supposed to be there? But nobody was called from
16 upper management.

17 Let's move to prong two. Prong two of self-defense,
18 the defendant must have been in actual imminent danger of
19 losing his life or sustaining serious bodily injury. Or
20 he must have actually believed he was imminent danger of
21 losing his life or sustaining serious bodily injury.
22 That's prong two. There's another part of prong two, but
23 I'm going to come back to that.

24 There's not another piece of law that says a
25 defendant in a self-defense case has the right to act on

1 appearances.

2 A defendant must have believed he was in imminent
3 danger, not that he was actually in such danger because he
4 had the right to act on appearances. And under the
5 circumstances as they appeared to him, he believed he was
6 in such danger and a reasonable prudent person of ordinary
7 firmness and courage would have entertained the same
8 belief.

9 You can act on appearances. That means that you can
10 act on what you see. You can act on what happens to you.
11 What happened to Mr. Bethel was that he went into that
12 bar, was approached by four individuals -- and you guys
13 can interpret that.

14 You guys have the tapes. You can watch it, okay. He
15 was struck, okay, by somebody now that they're saying had
16 a hand in their face, but Mr. Miller did not come in here
17 and say that.

18 He was not put on the stand to say that he got a hand
19 in his face. He was thrown against the wall. And you
20 guys have seen the rest a hundred times. We watched it
21 for three days in slow motion and rewinding and we've
22 spent a lot of time on it.

23 Well, Mr. Bethel didn't have that kind of time to
24 make a decision like we had. He had seconds to make his
25 decision. He had seconds to act on the appearances that

1 he was perceiving. Seconds. He didn't have the luxury
2 that we have of dissection and repetition like we've been
3 doing for the last three days.

4 Now, the second component is reasonableness. Would a
5 reasonable ordinary person do the same thing that he did
6 with what he perceived? Well, I submit that they would.
7 I'll start with just a hypothetical.

8 Let's go with a hypothetical that I see somebody pull
9 a gun or a reasonable person sees somebody pull a gun. I
10 don't think it's unreasonable for somebody to recognize
11 that as danger. That's not out of bounds. That's not out
12 of this world. That is somebody perceiving that they saw
13 a gun. He testified that he saw a gun. He testified that
14 he saw Tolliver Wise pull a gun. He told you that.
15 That's what he perceived.

16 If his defense is based upon his belief of imminent
17 danger, a reasonably prudent person of ordinary firmness
18 and courage would have entertained the same belief, the
19 belief that if you see somebody pull a gun, that is
20 dangerous, that something bad could happen. That's not
21 unreasonable. That is a legitimate interpretation of what
22 you see and he has the right to act on appearances.

23 Now, we've gone back and forth all week, too, about
24 could you see in the door, could you not see in the door.
25 You know, what did the door look like. We talked about

1 did the door look like the one in the corner. No, it
2 doesn't.

3 Well, please look at State's Exhibit No. 2. It's not
4 an opaque door. It's not a door that you cannot see
5 through, period. They want to focus on Mr. Bethel firing
6 through the door and that it was a blind shot, totally
7 blind shot. No way he knew who was over there. Well,
8 State's Exhibit No. 2 is not a blind shot.

9 Tolliver Wise when he returned fire didn't open the
10 door. He's aimed down the sight, shot through the same
11 door. It's not a blind shot for Mr. Bethel or for
12 Mr. Wise.

13 Prong four, the defendant had no other probable means
14 of avoiding the danger of losing his own life or
15 sustaining serious bodily injury than to act as he did in
16 this particular instance.

17 Ladies and gentlemen, he testified that he couldn't
18 run away. He testified that the car that brought him
19 there was not his. He testified that the door was locked.
20 And he, also, testified that when he was going back to the
21 van, shots were coming at him from Mr. Wise. The
22 situation wasn't over. It wasn't done. That's why he
23 couldn't just walk out of the parking lot and head next
24 door.

25 Ladies and gentlemen, those are the pieces of puzzle

1 the State doesn't have. They have to have the pieces of
2 the puzzle, I agree. They don't have those. They don't.
3 And that's why you cannot convict Mr. Bethel of murder or
4 attempted murder. There's too many questions on this. It
5 goes to his testimony. Okay, they don't want you to
6 believe it. They don't want you to believe that he saw a
7 gun. And it may be hard to believe him. The tape is hard
8 to watch. It may be difficult to believe Mr. Bethel.

9 But I submit you don't have to, you don't have to
10 believe him because we have Amircle Wright, Tolliver
11 Wise's sister. His sister was interviewed by the police
12 at 3:00 a.m. in the morning after this event. And she
13 wrote her statement on law enforcement letterhead. She
14 told them that it was the truth.

15 She testified to what she wrote down. And she
16 testified to this -- she testified to what she wrote. She
17 testified that she wrote down based upon her perception of
18 what she saw was that Tolliver pulled his gun and then
19 Mr. Bethel started shooting.

20 Tolliver pulled his gun and then Mr. Bethel started
21 shooting. That's not Mr. Bethel's statement. That's
22 hers, documented that night. It's what she perceived.
23 It's what she was. It's the same thing he saw. It's the
24 same thing. You don't have to believe him. She's got no
25 reason to lie on that. She just told what happened.

1 Tolliver pulled his gun and Mr. Bethel fired.

2 That's not any different than the reasonableness
3 analogy I gave earlier, the hypothetical. That's why you
4 can't convict Mr. Bethel of murder. That's the missing
5 puzzle piece. That's why they have not disproved
6 self-defense because of his sister. And what she wrote
7 down that night is exactly identical to what Mr. Bethel
8 perceived. And that's why you can't convict him, that's
9 why we're asking you not to convict him, not with that.
10 Not with that. For those reasons, we're asking you to
11 find him not guilty.

12 THE COURT: Reply by the State?

13 MR. GOLDBERG: May it please the Court.

14 THE COURT: Yes.

15 CLOSING STATEMENT:

16 MR. GOLDBERG: Mr. Kata just told you that you Ernest
17 Bethel was without fault in bringing on the difficulty;
18 that there was no aggression from him and there was
19 nothing to deescalate. Look at the video. You look at
20 that hand that's up. What prompts John Miller to throw
21 that drink.

22 He asked about whether we affirmatively knew that he
23 shouldn't be there. We did know that. You do know that.
24 You heard it from Mr. Jenkins. Mr. Jenkins came over
25 there and told you he knew that. He came in here and he

1 told you he walked over to Mr. Bethel and told him you
2 can't be here. Mr. Martin knew Mr. Bethel couldn't be
3 there, he told you that. Tolliver Wise was clearly
4 telling him that he wasn't supposed to be there. He knew
5 that.

6 Prong two/three, the imminent threat issue that he
7 talked about. Mr. Kata told you about how a defendant has
8 a right to act an appearances. That's 100 percent the law
9 of our land and that you can act on what you see.

10 I just showed you, he did not see the gun. You go to
11 2:28:00 and you look at Mr. Bethel standing there with his
12 hand on his gun and then you look at Mr. Wise and where he
13 is and whether his arm has gotten elbow high, as it was
14 described, then he came up there, yes.

15 Nothing happened for another four seconds. And even
16 then, the gun is not out. The gun doesn't get out until
17 he goes over here a couple seconds later. He didn't see
18 the gun. He couldn't have.

19 Now, I know he's talking about Ms. Wright and what
20 she saw and what she had got in here to testify to and I
21 don't want you to believe that Mr. Bethel saw a gun. He
22 didn't see it. It's not that I don't want you to believe
23 that. I would argue you that the video shows you.

24 She came in here and she told you what she thought,
25 right. That goes back to credibility. You can believe

1 all of what she says, you can believe part of it. You can
2 believe none of it. She told you what she thought.
3 That's for you to decide whether what she told you is more
4 likely of what happened or what this shows is more likely
5 to happen, where this shows exactly where these people are
6 and where the guns are, and he didn't see the gun. He
7 never saw it. But Wise saw Bethel's gun, which is why he
8 even started to go here because he saw Bethel reaching for
9 his gun.

10 He testified that he saw the gun pulled. Okay. And
11 then, you know, it's not unreasonable -- Mr. Kata said
12 it's not unreasonable to be in fear if you see somebody
13 pulling a gun. Yeah, I agree if you see somebody pulling
14 a gun, it's probably not unreasonable to see that, but he
15 didn't see it. So the question is do you believe him? Is
16 he credible? Does it line up with the video? No.

17 Now, whether he could see through the door or not see
18 through the door, our argue is that he could see through
19 the door. If he could see through the door, he would see
20 all the people standing behind it where he directly
21 pointed his gun and fired seven times. It's not up there
22 like this, not down here like this, not like this, but
23 directly at the door they were standing behind.

24 It's your job now. Think about what you heard. You
25 go back and look at it. There's only one reasonable

1 conclusion to reach and that is he's not the victim. He
2 did not have the right to do what he did. We've proven
3 that to you beyond a reasonable doubt. We respectfully
4 ask that you find him guilty on all charges.

5 Thank you.

6 THE COURT: All right. Ladies and gentlemen, I'm
7 going to have you go back to the jury room for a few
8 minutes while I discuss something with the lawyers,
9 scheduling. Please do not discuss the case. Don't eat
10 your lunch. Come back in a few minutes.

11 (WHEREUPON, the jury left the courtroom at 1:49 p.m.)

12 THE COURT: All right. Scheduling-wise, as I
13 mentioned earlier, we're going to quit at 3:00 or so. I
14 have to be at the Supreme Court at 3:15. And it probably
15 takes 20 minutes to charge the jury and gather exhibits
16 and all that, it will be about 2:30.

17 So I'm thinking to let them go for the day because
18 when they're at 3:15, I don't want to leave at 4:00 or
19 whatever to come back for a verdict today. I'm thinking
20 about letting them go, charge them and let them deliberate
21 in the morning. Alternatively, they could deliberate for
22 a short period of time and then leave. So what do you
23 think?

24 MR. GOLDBERG: It's a conundrum, but I would
25 respectfully ask in light of the pressure of it all, from

1 all the evidence that's been presented and the arguments
2 of both sides that they be allowed to start.

3 THE COURT: All right. Mr. Kata.

4 MR. KATA: Your Honor, I have no objection to them
5 starting. We've come this far.

6 THE COURT: All right. You don't think they'll
7 forget by tomorrow, do you, Mr. Goldberg?

8 MR. GOLDBERG: I feel like they've been paying close
9 attention. Certainly, Your Honor.

10 THE COURT: We have the issue of the lunch that got
11 here at 1:30, I believe, and they haven't eaten.

12 MR. KATA: Your Honor, they have had a long day. I
13 mean, continuity purposes, maybe it's better for tomorrow,
14 I don't know.

15 THE COURT: Did the lunch ever come here for the
16 jury, Ms. Adams?

17 THE CLERK: It's there. It is.

18 THE COURT: They're not trying to eat it, are they?

19 THE CLERK: No, we told them they couldn't.

20 THE COURT: I'm going to let them go and charge -- I
21 think the law is once they're charged, they are to begin
22 deliberating immediately. So we'll charge them and let
23 them begin in the morning.

24 So if you'll bring them back in.

25 (WHEREUPON, the jury entered the courtroom at 1:52

1 p.m.)

2 THE BAILIFF: The jury is seated.

3 THE COURT: Thank you. You've heard the evidence and
4 the closing arguments. The next thing will be I will
5 charge you on the law and then you'll deliberate in an
6 effort to reach a verdict in this case. I have another
7 commitment later this afternoon. And rather than start
8 you all with the deliberations, I know you haven't eaten
9 lunch, I believe it would create a problem later today for
10 me, so we're going to excuse you to, you know, take your
11 lunch with you, if you would like, excuse you and resume
12 at 9:30 tomorrow morning.

13 So please do not discuss the case. We'll start back
14 at 9:30 tomorrow morning. You'll get the jury charge and
15 deliberate. You've heard all the evidence. You've heard
16 the lawyers' arguments. I'll give you the law and you can
17 deliberate. We'll see you all tomorrow morning.

18 (WHEREUPON, the jury left the courtroom at 1:55 p.m.)

19 THE COURT: Okay. Well, perhaps, you all can have
20 the exhibits ready to go. No one has said anything about
21 how the jury is going to look at these videos, you know.
22 The parties are in agreement with sending the exhibits
23 back and a computer to play them on?

24 MR. KATA: We'll figure out a plan and make sure they
25 have a computer.

1 MR. GOLDBERG: It's a clean computer. Mr. Kata can
2 check it when we break. I think it's the one we normally
3 send out.

4 MR. KATA: We'll make sure all that is taken care of.

5 THE COURT: Okay. We'll resume at 9:30.

6 MR. KATA: Thank you, Your Honor.

7 (WHEREUPON, the proceedings were adjourned.)

8 (April 20, 2023).

9 THE COURT: Good morning. Anything before the jury
10 comes in?

11 MR. FOWLER: Nothing from the State.

12 MR. KATA: Nothing from the defense.

13 THE COURT: Okay. They can come on in.

14 (WHEREUPON, the jury returned to open court at 9:48
15 a.m.)

16 THE BAILIFF: The jury has been seated, Your Honor.

17 THE COURT: Thank you. Good morning.

18 THE FOREMAN: Good morning.

19 JURY CHARGE:

20 THE COURT: Madam Forelady and members of the jury,
21 you've heard the testimony and received the evidence and
22 heard the arguments of the State and the defendant. I
23 will now explain to you the law that applies in this case.

24 Under the Constitution and laws of South Carolina,
25 you are the finders of the facts. I do not have the right

1 to pass upon the facts or to express any opinion that I
2 might have as to them because this is a matter solely for
3 you, the jury, to determine.

4 As jurors, then, it is your duty to determine the
5 effect, the value, the weight and the truth of the
6 evidence, the weight of the evidence presented during this
7 trial.

8 As the trial judge, it's my responsibility to preside
9 over the trial of the case. I have a duty to rule upon or
10 pass upon the admissibility of the evidence offered during
11 the trial.

12 You are to consider only the testimony which has been
13 presented from this witness stand, together with exhibits
14 and other evidence which have been made a part of the
15 record and any stipulations of counsel. I have the
16 additional duty to charge you the law applicable to this
17 case. As the presiding judge, I am the sole judge of the
18 law.

19 It is your duty as jurors to accept and apply the law
20 as I now state it to you and then deliberate in an effort
21 to reach a verdict. And, finally, I charge you in this
22 regard that you should not be concerned with what you
23 think the law ought to be, but rather what I tell you that
24 the law is.

25 You are also the judges, the sole judges of the

1 credibility, that is the believability of the witnesses
2 who have testified and of the evidence offered.

3 In considering credibility, you may take into
4 consideration many things, such as the demeanor or manner
5 of testifying, whether the witness had reason or has
6 reason to be biased or prejudice and whether the testimony
7 was contradicted on the one hand or supported and
8 corroborated on the other hand.

9 You may believe a small portion of a witness's
10 testimony and disregard the larger or vice versa. All
11 these things you will consider bearing in mind that you
12 should give the defendant the benefit of any reasonable
13 doubt.

14 It becomes your duty as jurors to analyze and to
15 evaluate the evidence and determine that evidence which
16 convinces you of its truth.

17 You've heard evidence that the defendant was
18 convicted of crimes other than the ones for which he is
19 not on trial. This evidence may be considered by you if
20 you conclude it's true only in deciding whether the
21 testimony of the defendant is believable and for no other
22 purpose. You must not consider the defendant's prior
23 record as any evidence of the defendant's guilt of the
24 charges we are trying today.

25 Now, the Rules of Evidence ordinarily do not permit

1 witnesses to testify to conclusions or opinions. An
2 exception to this rule exists for witnesses we call expert
3 witnesses.

4 An expert witness is a witness who by education and
5 experience has become expert in some art, science,
6 profession or calling and that witness may state an
7 opinion as to the relevant and material matter in which
8 the witness claims to be an expert and may, also, state
9 the reasons for the opinion.

10 You should consider any expert opinion received in
11 evidence in this case and, like any other evidence, give
12 it the weight that you think it deserves. If you decide
13 that the opinion of an expert is not based on sufficient
14 education and experience or if you conclude the reasons
15 given in support of the opinions are not sound or that the
16 opinion is outweighed by other evidence, you may disregard
17 the opinion entirely.

18 An expert witness is to be given no greater weight --
19 their testimony is to be given no greater weight than that
20 of other witnesses simply because the witness is an
21 expert. Further, you are not required to accept an
22 expert's opinion even though it is not contradicted.

23 There are two types of evidence which are generally
24 presented during a trial. Direct evidence and
25 circumstantial evidence.

1 Direct evidence directly proves the existence of a
2 fact and does not require deduction. Circumstantial
3 evidence is proof of a chain of facts and circumstances
4 indicating the existence of a fact. Crimes may be proven
5 by direct or circumstantial evidence.

6 The law makes no distinction between the weight or
7 value to be given either direct or circumstantial
8 evidence. However, to the extent the State relies on
9 circumstantial evidence, the circumstances must be
10 consistent with each other and when taken together point
11 conclusively to the guilt of the accused beyond a
12 reasonable doubt.

13 If these circumstances merely portray the defendant's
14 behavior as suspicion, the proof has failed. The State
15 has the burden of proving the defendant guilty beyond a
16 reasonable doubt. This burden rests with the State
17 regardless of whether the State relies on direct evidence,
18 circumstantial evidence or some combination of the two.

19 The fact that the defendant was arrested, charged and
20 indicted in this case is not evidence and cannot be
21 considered by you as evidence of guilt, nor does it create
22 any presumption or inference of guilt. The indictments
23 are simply the formal written instruments which contain
24 the charges made against the defendant. The indictments
25 are the formal documents by which this case is brought

1 into court.

2 The defendant, Ernest Bethel, has pled not guilty to
3 the indictments and that plea puts the burden on the State
4 to prove the defendant guilty.

5 A person charged with committing a criminal offense
6 in South Carolina is never required to prove himself
7 innocent. I charge you that it is an important rule of
8 the law that the defendant in a criminal trial, no matter
9 what the seriousness of the charge may be will always be
10 presumed to be innocent of the crime for which the
11 indictment was issued unless guilt has been proven by
12 evidence satisfying you of that guilt beyond a reasonable
13 doubt.

14 This presumption of innocence does not end when you
15 begin your deliberations, but it accompanies the defendant
16 throughout the trial until you reach a verdict of guilt
17 based on evidence satisfying you of that guilt beyond a
18 reasonable doubt.

19 The presumption of innocence is like a robe of
20 righteousness placed about the shoulders of the defendant,
21 which remains with the defendant until it has been
22 stripped from the defendant by evidence satisfying you of
23 the defendant's guilt beyond a reasonable doubt. The
24 presumption of innocence is not a mere legal theory. It's
25 not just a legal phrase. It is a substantial right to

1 which every defendant is entitled unless you, the jury,
2 are satisfied from the evidence of the guilt of the
3 defendant beyond a reasonable doubt.

4 The State must prove the defendant guilty beyond a
5 reasonable doubt. So what is a reasonable doubt in the
6 law? A reasonable doubt is a doubt which makes a
7 reasonable, honest, sincere and conscientious juror
8 hesitate to act.

9 Proof beyond a reasonable doubt must therefore be
10 proof of such a convincing character that a reasonable
11 person would not hesitate to rely and act upon it in the
12 most important of his or her own affairs. Proof beyond a
13 reasonable doubt can, also, be described as proof that
14 leaves you firmly convinced of the defendant's guilt.

15 Now, there are very few things in this world that we
16 know with absolute certainty. And in criminal cases, the
17 law does not require proof that overcomes every possible
18 doubt. If based on your consideration of the evidence,
19 you are firmly convinced that the defendant is guilty of a
20 crime charged, you must find him guilty.

21 If on the other hand, you think there is a real
22 possibility that he is not guilty, you must give him the
23 benefit of the doubt and find him not guilty.

24 The indictments in this case allege five separate
25 offenses against the defendant. The indictments are

1 indictment number one, murder of Tolliver Wise; indictment
2 number two, murder of Christopher Lott; indictment number
3 three, attempted murder of Gregory Martin; indictment
4 number four, attempted murder of Cameron Jenkins;
5 indictment number five, possession of a weapon during the
6 commission of a violent crime.

7 Each indictment charges a separate and distinct
8 offense. You must decide each indictment separately on
9 the evidence and the law applicable to it uninfluenced by
10 your decision as to any other indictment. The defendant
11 can be convicted or acquitted on any or all of the
12 offenses charged. You'll be asked to write a separate
13 verdict of guilty or not guilty for each indictment.

14 The defendant is charged with the murder of Tolliver
15 Wise and Christopher Lott. The State must prove beyond a
16 reasonable doubt that the defendant killed Tolliver Wise
17 and Christopher Lott with malice aforethought.

18 Malice is hatred, ill will or hostility towards
19 another person. It is the intentional doing of a wrongful
20 act without just cause or excuse and with the intent to
21 inflict an injury or under circumstances that the law
22 would infer an evil intent.

23 Malice aforethought does not require that malice
24 exist for any particular time before the act is committed,
25 but malice must exist in the mind of the defendant just

1 before and at the time the act is committed. Therefore,
2 there must be a combination of the previous evil intent
3 and the act.

4 Malice is shown when a person expresses hatred or ill
5 will for another or when the person prepared beforehand to
6 do the act which was later accomplished. For example,
7 lying in wait for a person or other acts of preparation
8 going to show that the deed was in the mind of the
9 defendant to show malice.

10 The defendant is charged with attempted murder, two
11 counts. In order to prove this crime, the State must
12 proof the defendant had the specific intent to kill
13 Gregory Martin and/or Cameron Jenkins with malice
14 aforethought.

15 Specific intent means that the defendant consciously
16 intended the completion of acts constituting murder.
17 Attempted murder is the attempt to kill a person with
18 malice or, more completely defined, attempted murder is
19 the performance of an act or acts which tend but fail to
20 kill a human being and such acts are done with malice,
21 mainly, the deliberate intent to kill.

22 Malice is hatred, ill will or hostility towards
23 another person, the intentional doing of a wrongful act
24 without just cause or excuse and with an intent to inflict
25 an injury.

1 Malice aforethought, as I stated before, does not
2 require that malice exist for any particular time before
3 the act is committed, but malice must exist in the mind of
4 the defendant just before and at the time the act is
5 committed.

6 Therefore, there must be a combination of previous
7 evil intent in the act. And malice is shown when a person
8 expresses hatred or ill will for another or the person
9 prepared beforehand to do the act later accomplished, such
10 as lying in wait or other acts of preparation going to
11 show that the deed was in the mind of the defendant and
12 that would show malice.

13 A specific attempt included an intent to do a
14 particular criminal act along with an act falling short of
15 the act intended, the State must show more than mere
16 preparation and intent. Therefore, there must be some
17 overt act intended in the effort to commit the crime.

18 The defendant is also charged with possession of a
19 weapon during the commission of a violent crime. The
20 State must prove beyond a reasonable doubt that the
21 defendant was in possession of a firearm during the
22 commission of a violent crime. A firearm is any weapon
23 which will, is designed to or may be readily converted to
24 express a projectile.

25 In order to find the defendant guilty of possession

1 of a weapon during the commission of a violent crime, you
2 must first find the defendant guilty of a violent crime.
3 Murder and attempted murder are violent crimes. The State
4 must proof beyond a reasonable doubt that the weapon
5 furthered, advanced or helped in the commission of a
6 crime.

7 The defendant has raised the defense of self-defense.
8 Self-defense is a complete defense. If established, you
9 must find the defendant not guilty. There are four
10 elements required by law to establish self-defense.

11 First, the defendant must be without fault in
12 bringing on the difficulty. Second, the defendant must
13 have been in actual imminent danger of losing his life or
14 sustaining serious bodily injury or he must have actually
15 believed he was in imminent danger of losing his life or
16 sustaining serious bodily injury. Third, if his defense
17 is based upon his belief of imminent danger, a reasonably
18 prudent person of ordinary firmness and courage would have
19 entertained the same belief.

20 If the defendant actually was in imminent danger,
21 then the circumstances were such as would warrant a person
22 of ordinary prudence, firmness and courage to shoot the
23 fatal shot in order to save himself from serious bodily
24 harm or losing his own life.

25 Four, the defendant had no other probable means of

1 avoiding the danger of losing his own life or sustaining
2 serious bodily injury than to act as he did in this
3 particular instance.

4 These are the elements of self-defense. A defendant
5 on a self-defense case has the right to act on
6 appearances. A defendant must believe he was in imminent
7 danger, not that he was actually in imminent danger, but
8 he had the right to act on appearances and under the
9 circumstances as they appeared to him, he believed he was
10 in such danger and a reasonable prudent person of ordinary
11 firmness and courage would have entertained the same
12 belief.

13 Words accompanied by hostile acts may, depending on
14 the circumstances, establish self-defense. Self-defense
15 is not available to one who uses language so disparaging
16 that a reasonable person would expect it to bring on a
17 physical encounter, which did actually contribute to bring
18 it on.

19 The defendant has no duty to retreat if by doing so
20 he increases his danger of being killed or suffering great
21 bodily injury. If the defendant is justified in firing
22 the first shot, the defendant is justified in continuing
23 to shoot until it is apparent that the danger to his life
24 and body has ceased. Ordinarily, a defendant is not
25 justified in shooting or employing a deadly weapon after

1 the adversary has been disarmed or disabled.

2 There is no burden upon the defendant to prove
3 self-defense. The defendant is not required to prove any
4 element of self-defense. That burden is on the State to
5 disprove self-defense beyond a reasonable doubt. The
6 State may disprove self-defense by disproving any or all
7 elements of self-defense beyond a reasonable doubt.

8 If you have a reasonable doubt of the defendant's
9 guilt after considering all the evidence, including the
10 evidence of self-defense, then you must find the defendant
11 not guilty. On the other hand, if you have no reasonable
12 doubt of the defendant's guilt after considering all the
13 evidence, including the evidence of self-defense, then you
14 must find the defendant guilty.

15 The issue of intoxication has risen during this
16 trial. Voluntary intoxication is not a defense to a crime
17 A person who voluntarily becomes intoxicated is just as
18 responsible for the acts committed while intoxicated as
19 when the person is not intoxicated.

20 While the arguments of counsel are a beneficial part
21 of the trial, you should remember that the statements by
22 counsel are not evidence. In presenting their arguments,
23 counsel often referred to the evidence.

24 However, you should base your verdict on the evidence
25 as you remember it. If there are any conflicts between

1 the recollection of counsel about the evidence and your
2 own recollection, you should rely on your own
3 understanding.

4 Madam Forelady and members of the jury, I am required
5 to charge you the law as I have done through these
6 instructions now being given to help guide you to a lawful
7 and just verdict. Whether some of these instructions will
8 apply will depend upon what you find to be the facts.

9 The fact that I've instructed you on various subjects
10 must not be considered as indicating an opinion of this
11 court as to what you -- excuse me. An opinion of this
12 court as to what you should find to be the facts or what
13 your verdict should be.

14 Now, you've been chosen and sworn to give the parties
15 a fair and impartial trial. When you've done so, you will
16 have complied with your oath and no one will have the
17 right to criticize your verdict.

18 You must not be influenced by opinions or expressions
19 of opinions you may have heard outside of the courtroom,
20 but rather should base your verdict solely on the
21 testimony of the sworn witnesses who took the stand, the
22 exhibits received into evidence and the law which I have
23 stated.

24 You should not be swayed by caprice, passion,
25 prejudice or improper sympathy for or against anyone.

1 Remember you have no friends to reward or enemies to
2 punish and all parties are entitled to a fair and
3 impartial trial.

4 It is your duty to -- as jurors to consult with one
5 another and to deliberate in an effort to reach an
6 agreement. Each of you must decide this case for
7 yourself, but only after impartial consideration of all of
8 the evidence with your fellow jurors.

9 In the course of your deliberation, do not hesitate
10 to re-examine your own views and change your opinion if
11 you become convinced it is erroneous. However, do not
12 surrender your honest conviction as to the weight or
13 effect of the evidence solely because of the opinion of
14 your fellow jurors or for the mere purpose of returning a
15 verdict.

16 As I stated earlier, you are the judges, the judges
17 of the facts. Your verdict must represent the considered
18 judgment of each juror. In other words, the verdict must
19 be unanimous.

20 Now, you may have noticed that I have read these
21 instructions. I do so to give you the law as accurately
22 as possible. I will give you a copy of these instructions
23 to have in the jury room. You may refer to these
24 instructions to assist you in your deliberations. You
25 must consider the instructions as a whole and not follow

1 some and ignore others.

2 Madam Forelady, it will be your duty to preside over
3 the deliberations of the jury.

4 And during your deliberations, if you should desire
5 to communicate with the court, please reduce your message
6 or question to writing signed by your foreperson and the
7 foreperson only and pass the note to the bailiff, who will
8 bring it to my attention. I will then respond as promptly
9 as possible either in writing or by having you return to
10 the courtroom.

11 I caution you, however, with regard to any message or
12 question you might send that you should never state or
13 specify your numerical division at the time.

14 Now, you've heard the evidence and you've heard the
15 law. Whatever your verdict, Madam Forelady, you will
16 indicate the verdict on the back of each indictment and
17 then sign and date your verdict. You should have back
18 there -- you have five indictments and there's a spot on
19 there that says verdict, write guilty or not guilty, sign
20 and date the verdict when you get to that point.

21 Remember that although the foreperson is the only
22 juror who writes the verdict, it is not hers alone. The
23 verdict has to be unanimous.

24 And Madam Forelady, you're not authorized to write
25 the verdict until all of you have agreed on the verdict.

1 Now, we have 14 people here and we can only use 12 to
2 deliberate, so from the first 12 jurors, if you cannot
3 continue or participate in the deliberations, any of you
4 for any reason, please let me know by raising your hand,
5 if you have some problem or you have to go and you cannot
6 continue with deliberations?

7 (There was no response.)

8 Okay. All jurors appear to be good to go, so,
9 therefore, when the jurors leave, the two alternates on
10 the back row will remain with us.

11 I did get a question from a juror about next week?
12 Next week? We're still on Thursday of this week. This is
13 the only case that y'all have to do and you'll be released
14 from jury duty after this case. So unless you deliberate
15 into next week. Next Wednesday, is that what the note
16 said? I have a trip planned for next Wednesday. That's a
17 long time away. This is the only case that you'll sit on,
18 but thanks for the question.

19 So I'm going to send you to the jury room. Do not
20 begin deliberations until you've received a copy of this
21 jury charge, the indictments and the exhibits. And once
22 you receive these things -- those exhibits will include a
23 laptop if you want to play or view certain of the exhibits
24 that are in digital form or video form. Wait to receive a
25 copy of the jury charge, the indictments and exhibits.

1 Once you receive these things, that will be your signal to
2 begin your deliberations.

3 Once you begin deliberations, you will deliberate
4 until you've reached a verdict, at which time, you'll
5 knock on the door, advise the bailiff and we will bring
6 you out to receive your verdict.

7 So please go to the jury room, everyone except the
8 alternates. If the alternates have -- if there's anything
9 in the jury room belonging to the alternates, the bailiffs
10 will bring those things out.

11 (WHEREUPON, the jury left the courtroom at 10:20
12 a.m.)

13 THE COURT: Are there any additions or exceptions to
14 the charge?

15 MR. GOLDBERG: Nothing from the State.

16 MR. KATA: Nothing from the defense, Your Honor.

17 THE COURT: You can gather up those exhibits. I'm
18 sure you've done some advanced work, and you have them
19 ready already.

20 MR. KATA: They're ready to go.

21 THE COURT: Okay. Good.

22 So two alternates, y'all made it through the trial.
23 We cannot use you to deliberate. We pick extra people
24 just in case something happens to one of the jurors and
25 then we have to plug you in to fill in. And that last

1 young lady just made it.

2 She was stuck in traffic, I understand, on 77 as we
3 all are these days. If you take 77 or 26, might be stuck,
4 but she made it in the nick of time, so all other jurors
5 are good to stay, so you all will not need to participate
6 in deliberations.

7 You all are done with jury duty. I'm not sure why
8 this other person thinks that it would go into next
9 Wednesday, but you're done already.

10 What do we have for them, Madam Clerk? Words of
11 wisdom to the jurors?

12 THE CLERK: Your work excuse is downstairs. Your
13 money will be put on your card tomorrow. Your lunch will
14 be here at noon. You can come back. You can wait. I'll
15 hold it for you, whatever you'd like. Just come into the
16 back in a second and you can let me know.

17 THE COURT: We'll just eat it for you. You might not
18 want to wait. But you're welcome to wait and y'all come
19 in the audience and wait to see what the verdict is going
20 to be if you want to.

21 For the next year, you're not qualified to serve.
22 Two additional years, you may choose not to serve. No
23 person is required to serve more often than once every
24 three years in this court. So you've done your jury duty
25 for awhile. So thank you all very much. You're good to

1 go.

2 (The alternates were excused from the courtroom.)

3 THE COURT: You can give it to them. They'll take
4 it.

5 (WHEREUPON, the jury began deliberations at 10:24
6 a.m.)

7 (WHEREUPON, a short break was taken.)

8 (The jury sent out a note at 1:20 p.m.)

9 THE COURT: So I have a note from the jury, and the
10 note says, Judge, we have doubts for the self-defense on
11 elements three and four. Need clarity. Number three,
12 what is considered reasonable for the person? Please
13 provide clarity. Do we have to have all elements to be
14 considered self-defense?

15 So y'all can take a look at the note.

16 THE CLERK: Your Honor, may I approach? They're
17 asking if the --

18 THE COURT: I talked to them.

19 THE CLERK: Okay.

20 MR. KATA: Your Honor, if I could talk to my client?

21 THE COURT: Yes.

22 (Pause.)

23 What says the State?

24 MR. GOLDBERG: Thank you, Your Honor. Well, I would
25 say one of two things, I suppose. Either for some reason

1 they want you to reread them self-defense, you could; or
2 since they have a copy of it, of the charge, you could
3 just direct them to that language that they already have
4 and that's the language of the law. That's self-defense
5 in the case. I don't think the question merits further
6 charge or it's something different than what you've
7 already done.

8 THE COURT: What says the defense?

9 MR. KATA: Your Honor, I almost take the same
10 position. They have a copy of the law. Whether we reread
11 it to them, they have a copy themselves. They have the
12 law.

13 I'm not sure we can comment more than that and help
14 them interpret it. They have the charge. If they're
15 having trouble applying the facts of the law, I don't
16 think we can assist them.

17 THE COURT: All right. I actually think they're sort
18 of stuck on the structure of the self-defense charge. I
19 gave them the self-defense charge that the defense
20 requested and the self-defense charge the defense
21 requested based on the cite that you have, State v.
22 Fuller.

23 State v. Fuller says self-defense charge in each case
24 should be specifically tailored to adequately reflect the
25 facts and theories presented by the defendant. And

1 then -- but the requested charge is not a standard -- it's
2 not the standard charge of self-defense. It has this
3 language at the end of it.

4 There is no burden on the defendant to prove
5 self-defense. The defendant is not required to prove any
6 element of self-defense. The burden is on the State to
7 disprove self-defense beyond a reasonable doubt. The
8 State may disprove self-defense by disproving any or all
9 elements of self-defense beyond a reasonable doubt.

10 So one of the questions, the last one, Do we have to
11 have all elements to be considered self-defense?

12 Among the earlier questions about what is reasonable
13 and all that, the question about do we have to have all
14 elements to be considered self-defense? The requested
15 charge says any -- the State would disprove self-defense
16 by disproving any or all elements of self-defense beyond a
17 reasonable doubt.

18 That's the language. That's not standard language.
19 The standard language says the State has the burden of
20 disproving self-defense by proof beyond a reasonable
21 doubt. Of course, the State argues that the defense that
22 if the State disproves any one of them, there is no
23 self-defense because the defendant must establish each
24 element, the four elements required to use self-defense.

25 If the State disproves any of those elements, there

1 is no self-defense. So that's what I'm struggling with,
2 what do I tell them in trying to answer this question?
3 Specifically, do we have to have all the elements to be
4 considered self-defense? It can be answered yes or no or
5 it can be answered with an explanation.

6 What says the State?

7 MR. FOWLER: Judge, I like your explanation you gave
8 just now. Just tell them exactly as you told it, if the
9 State disproves any one of the four elements of
10 self-defense, then self-defense it's not complete. I
11 think that clearly answers their question.

12 THE COURT: Mr. Kata.

13 MR. KATA: The language that's in there now, I mean,
14 it says any or all are disproven. I mean, I read that as
15 disprove any element beyond a reasonable doubt is
16 disproven.

17 THE COURT: If the State disproves any element?

18 MR. KATA: Any element.

19 THE COURT: Then there is no self-defense.

20 MR. KATA: Then there's no self-defense. I mean,
21 even the language that's in there says the same thing.

22 THE COURT: Well, it says it, but it says it in a way
23 that I think may cause them to ask the question. I think
24 it's clear to all of us who know the law whether -- for
25 the layperson of the jury, they may want to a response to

1 their question in a manner that everyone acknowledges to
2 be consistent with the law.

3 MR. KATA: Your Honor, I understand your position. I
4 don't think the charges that were presented were
5 misleading in any kind of way.

6 THE COURT: No, it's not misleading. They understand
7 all the words.

8 MR. KATA: All the words. I mean, these questions
9 are hard because you're always trying to guess where
10 they're coming from, so there's always a degree of
11 speculation to this. You know, our position would be to
12 reread what they have, that would be our position.

13 THE COURT: All right. Bring the jury.

14 (WHEREUPON, the jury entered the courtroom at 1:32
15 p.m.)

16 THE BAILIFF: The jury has been seated, Your Honor.

17 THE COURT: Thank you.

18 Madam Forelady and members of the jury, you sent out
19 a note to me. The note reads, Judge, we have doubts for
20 self-defense on elements three and four. Need clarity.
21 Number three, what is considered reasonable for the
22 person? And then it has a note, please provide clarity.
23 And do we have to have all elements to be considered
24 self-defense? So I'm going to recharge you on the law of
25 self-defense.

1 The defendant has raised the defense of self-defense.
2 Self-defense is a complete defense. If established, you
3 must find the defendant not guilty.

4 There are four elements required by law to establish
5 self-defense. First, the defendant must be without
6 difficulty in bringing on -- without fault, I'm sorry.
7 First, the defendant must be without fault in bringing on
8 the difficulty.

9 Second, the defendant must have been in actual
10 imminent danger of losing his life or sustaining serious
11 bodily injury, or he must have actually believed he was in
12 imminent danger of losing his life or serious bodily
13 injury.

14 Third, if his defense is based upon his belief of
15 imminent danger, a reasonably prudent person of ordinary
16 firmness and courage would have entertained the same
17 belief.

18 If the defendant actually was in imminent danger,
19 then the circumstances were such as would warrant a person
20 of ordinary prudence, firmness and courage to shoot the
21 fatal shot in order to save himself from serious bodily
22 harm or losing his life.

23 Fourth, the defendant had no other probable means of
24 avoiding the danger of losing his own life or sustaining
25 serious bodily injury than to act as he did in this

1 particular instance.

2 These are the elements of self-defense. A defendant
3 in a self-defense case has a right to act on appearances.
4 A defendant must have believed he was in imminent danger,
5 not that he was actually in such danger because he had the
6 right to act on appearances and under circumstances as
7 they appeared to him. He believed he was in such danger
8 and a reasonable prudent person of ordinary firmness and
9 courage would have entertained the same belief.

10 Words accompanied by hostile acts may, depending on
11 circumstances, establish self-defense. Self-defense is
12 not available to one who uses language so disparaging that
13 a reasonable person would expect it to bring on a physical
14 encounter and which did actually contribute to bring it
15 on.

16 The defendant has no duty to retreat if by doing so,
17 he increases his danger of being killed or suffering great
18 bodily injury.

19 If the defendant is justified in firing the first
20 shot, the defendant is justified in continuing to shoot
21 until it is apparent that the danger to his life and body
22 had ceased. Ordinarily, a defendant is not justified in
23 shooting or employing a deadly weapon after the adversary
24 has been disarmed or disabled.

25 There is no burden upon the defendant to prove

1 self-defense. The defendant is not required to prove any
2 element of self-defense. The burden is on the State to
3 disapprove self-defense beyond a reasonable doubt. The
4 State may disapprove self-defense by disproving any or all
5 elements of self-defense beyond a reasonable doubt.

6 If you have a reasonable doubt of guilt of the
7 defendant after considering all the evidence, including
8 the evidence of self-defense, then you must find the
9 defendant not guilty.

10 On the other hand, if you have no reasonable doubt of
11 the defendant's guilt after considering all the evidence
12 including the evidence of self-defense, then you must find
13 the defendant guilty.

14 Now, pertaining to the specific questions that you
15 sent out, Judge, we have doubts for self-defense on
16 elements three, and four. Need clarity.

17 Of course, I have no way of knowing exactly what you
18 mean when you say we have doubts on self-defense on
19 elements three and four, need clarity.

20 I read -- given to you each element of self-defense
21 and the State has the burden of disproving any or all of
22 those elements. Should the State disprove any one of
23 them, there is no self-defense because in order to
24 establish self-defense -- there are four elements required
25 to establish self-defense, not one element, not two

1 elements, not three element, but four elements. And so
2 the State has the burden of disproving any or all of the
3 elements.

4 Number three, what is considered reasonable for the
5 person? What is reasonable that's -- the law does not
6 really define what is reasonable. We are each confronted
7 every day with deciding what is reasonable under a given
8 circumstance and that's a term that does not provide a
9 legal definition.

10 So what is reasonable? Anyone can ask that question
11 at any time, but reasonable is, typically, what the
12 average person or person of reasonable prudence as the
13 definition mentions.

14 A person of reasonable -- let's see, find it again.
15 What a person of ordinary prudence, firmness and courage
16 would consider under a given circumstance. So the
17 reasonableness is what -- you might say what the average
18 person, what is reasonable. That's for you to determine.
19 That's a jury question for you to determine what is
20 reasonable under the circumstances.

21 Fourth, the last question, Do we have to have all
22 elements to be considered self-defense? Do we have to
23 have all elements?

24 The State has the burden of disproving any or all
25 elements of self-defense and that is written in the

1 instructions.

2 The State may disprove self-defense by disproving any
3 or all elements of self-defense beyond a reasonable doubt.

4 The defendant has no burden to prove self-defense,
5 but the State has the burden of disproving self-defense
6 beyond a reasonable doubt. They may do so by disproving
7 any or all elements of self-defense.

8 I trust that I've responded to your questions and ask
9 that you all resume deliberations.

10 (WHEREUPON, the jury left the courtroom at 1:43 p.m.)

11 THE COURT: Any additions or exceptions to the
12 charge?

13 MR. GOLDBERG: Not from the State.

14 MR. KATA: None from the Defense.

15 THE COURT: All right. We'll be at ease waiting for
16 the jury.

17 (WHEREUPON, a short break was taken.)

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

20 THE COURT: I understand that there's a verdict. You
21 may bring the jury.

22 THE BAILIFF: Yes, Your Honor.

23 (WHEREUPON, the jury returned to open court with a
24 verdict at 3:21 p.m.)

25 THE BAILIFF: The jury has been seated, Your Honor.

1 THE COURT: Thank you, sir.

2 Madam Forelady, if you'll stand for me.

3 THE FOREMAN: Yes, sir.

4 THE COURT: Have you reached a verdict?

5 THE FOREMAN: Yes, sir, we have.

6 THE COURT: Is it unanimous?

7 THE FOREMAN: Yes, sir.

8 THE COURT: Okay. If you'll pass it up. You may be
9 seated.

10 THE COURT: If the defendant will rise, stand.

11 Madam Clerk, you may publish the verdicts.

12 THE CLERK: All right. Yes, sir.

13 May it please the Court. The State of South
14 Carolina, Court of General Sessions, the State V. Ernest
15 Condre Bethel, docket number 2019-GS-40-08051, an
16 indictment charging murder of Christopher Lott. The
17 verdict is guilty, signed by the foreperson, Juror Number
18 214, April 20th, 2023.

19 Indictment number 2019-GS-40-8050, the State of South
20 Carolina V. Ernest Condre Bethel, an indictment charged in
21 murder of Tolliver Wise, the verdict is guilty, signed by
22 foreperson 214, April 20th, 2023.

23 And indictment number 2019-GS-40-08053, the State of
24 South Carolina V. Ernest Condre Bethel, an indictment
25 charging attempted murder of Cameron Jenkins. The verdict

1 is guilty, signed by foreperson 214, April 20th, 2023.

2 Indictment number 2019-GS-8052, the State V. Ernest
3 Condre Bethel, an indictment for attempted murder of
4 Gregory Martin. The verdict is guilty signed by
5 foreperson 214, April 20th, 2023.

6 Indictment number 2019-GS-40-08054, the State V.
7 Ernest Condre Bethel, an indictment for possession of a
8 weapon during a violent crime. The verdict is guilty,
9 signed by foreperson 214, April 20th, 2023.

10 Madam Forelady, is this your verdict -- are these
11 your verdicts and the verdicts of the entire panel?

12 THE FOREMAN: Yes.

13 THE COURT: Anymore individual polling requested?

14 MR. KATA: Yes, Your Honor.

15 THE COURT: Madam Clerk, if you will poll the jurors
16 individually according to their juror number.

17 THE CLERK: Yes, sir.

18 As to the indictment charging the murder of --

19 THE COURT: You can call them all?

20 THE CLERK: Can I call them as one?

21 THE COURT: Yes, group by group.

22 Is that okay, Mr. Kata?

23 MR. KATA: Yes, sir.

24 THE CLERK: Okay. As I call your number, I'm going
25 to ask you two questions, if you would answer accordingly.

1 Juror Number 214, was this your verdict?

2 THE FOREMAN: Yes.

3 THE CLERK: Is this still your verdict?

4 THE FOREMAN: Yes.

5 THE CLERK: Thank you.

6 Juror Number 8, was this your verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: Juror Number 102, was this your verdict?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: Juror Number 99, was this your verdict?

15 JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 JUROR: Yes.

18 THE CLERK: Juror Number 320, was this your verdict?

19 JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR: Yes.

22 THE CLERK: Juror Number 45, was this your verdict?

23 JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 JUROR: Yes.

1 THE CLERK: Juror Number 356, was this your verdict?
2 JUROR: Yes.
3 THE CLERK: Is it still your verdict?
4 JUROR: Yes.
5 THE CLERK: Juror Number 120, was this your verdict?
6 JUROR: Yes.
7 THE CLERK: Is it still your verdict?
8 JUROR: Yes.
9 THE CLERK: Juror Number 89, was this your verdict?
10 JUROR: Yes.
11 THE CLERK: Is it still your verdict?
12 JUROR: Yes.
13 THE CLERK: Juror Number 131, was this your verdict?
14 JUROR: Yes.
15 THE CLERK: Is it still your verdict?
16 JUROR: Yes.
17 THE CLERK: Juror Number 361, was this your verdict?
18 JUROR: Yes.
19 THE CLERK: Is it still your verdict?
20 JUROR: Yes.
21 THE CLERK: Juror Number 194, was this your verdict?
22 JUROR: Yes.
23 THE CLERK: Is it still your verdict?
24 JUROR: Yes.
25 THE CLERK: Your Honor, the jury has been polled.

1 THE COURT: Thank you. The verdict is a unanimous
2 verdict of the jury.

3 Any post-trial motions at this time?

4 MR. KATA: Yes, Your Honor. At this time, I'd ask to
5 renew all prior objections and ask the court to grant a
6 new trial.

7 THE COURT: Any response by the State?

8 MR. GOLDBERG: No, Your Honor.

9 THE COURT: All right. This was a matter for the
10 jury to determine. As I indicated to them during the
11 instructions, this is solely a matter for the jury to
12 determine.

13 The evidence presented in the case is not overly
14 complicated. And that during these times when things are
15 caught on video and the evidence is presented to the jury
16 for the jury to evaluate and the defendant offered his
17 defense of self-defense. And the jury obviously gave it
18 great consideration, particularly in asking questions for
19 clarification and having deliberated rated for a good
20 period of time before and after the instructions.

21 There were no controversial rulings during the trial.
22 I think the case was fairly presented and a well job --
23 presented by well-prepared lawyers who did a good job on
24 each side. The jury has decided the case. I support the
25 jury's verdict and I deny your motion.

1 MR. KATA: Yes, Your Honor.

2 THE COURT: Now, ladies and gentlemen, after you find
3 someone guilty, then it becomes my job to impose a
4 sentence. I've found that most jurors like to see the
5 case all the way through, so we'll now move into
6 sentencing at this time.

7 From the State?

8 MR. GOLDBERG: Thank you, Your Honor. May it please
9 the Court. One moment, please.

10 (Pause.)

11 Your Honor, if I may, at this time, Cameron Jenkins
12 would like to address the Court.

13 THE COURT: Sure. I'll be happy to hear from any and
14 everybody.

15 THE VICTIM: Your Honor, I'm not happy to be here
16 right now. I'm not happy with the verdict for anybody.
17 It doesn't bring me any comfort that he was found guilty
18 of that, even though I know it's the truth.

19 I know what happened that night and he knows what
20 happened that night, but, you know, that is what it is.
21 It doesn't keep me up at night that he shot me. That's
22 not why I'm here. That's what this is.

23 Through the whole time, I wonder had I known you had
24 a gun -- had I known he had a gun, would I have went for
25 it? No. Had I known, maybe I could have jumped on his

1 back and tried to choke him to the ground and I would have
2 been on my back and he would have been on his back on top
3 of me. Then it would be exposed. And that's like a
4 turning left instead of right kind of thing, I don't think
5 about that. It keeps me up at night a lot.

6 The only comfort that I'm going to get from this is
7 that maybe it keeps him up at night, too, over what could
8 I have done different knowing how this would all end. I
9 forgive him for shooting me. That is what it is. I don't
10 take it personally.

11 I don't forgive him for killing Chris. I don't
12 forgive him for shooting Greg and I don't forgive him for
13 killing Tolliver. He's lucky today. He's lucky that he
14 had somebody his family could pay or that the State could
15 give him to fight for his life.

16 Chris didn't get that on that fucking pool table.
17 Tolliver didn't get it either. And I won't be disparaging
18 his name, even though I understand it. I get it. I get
19 it. That's not what makes me lose sleep at night.

20 When I'm up at night and you're up at night, and
21 we're both wondering what could we have done differently.
22 I'd like to think that you'll know that I'll be up, too,
23 and we can talk then, you know. But it's just -- it's a
24 tragedy all around for everybody. I'm sorry it happened,
25 and I'm sorry I couldn't do more.

1 THE COURT: Okay. Thank you, sir.

2 VICTIM'S COUSIN: My name is Vonda Lott Baker.

3 Christopher Lott, Jr. was my cousin. And I often referred
4 to him as Christopher Robin, even though he was younger
5 than me.

6 And this is my first time being in a situation like
7 this because my cousin was a lifeline for me. If I wanted
8 to be a dull person, he was there to provide
9 entertainment, and I loved him, you know.

10 He had children. And now, they are going to be
11 without a father. And that's the hard part because I
12 speak from experience knowing what it means not to have
13 him there present, so they're all going to miss their dad.
14 And just as he said, nobody is going to find peace in this
15 situation, but the peace that we can get is from our
16 Father above. And that's the only way we're going to be
17 able to sleep at night and find forgiveness.

18 So I stand for my mother here that was like a mother
19 to Christopher. She took him into her home. He was our
20 cook, he was our grill person. He was always there, you
21 know, through his faults and everything.

22 I say to myself, why were you there that night? Why
23 could you not have been some place else? But he was and
24 he's not here with us anymore. And I would love to hold
25 my cousin one last time by a pit fire down that country

1 road in Sumter, South Carolina where we grew up with my
2 grandmother, but we won't have that chance again. And
3 he's going to be gone and missing his people, too.

4 I'm sad for y'all today, as well. My heart aches for
5 my mother that she had to come to this courtroom and see
6 all this, but she was strong enough for it.

7 I thank you. I thank you for the justice today.
8 It's the justice that God, you know, he himself has
9 bestowed and who knows what's going to come out of this.
10 That's all I have to say about all that.

11 I'm going to miss my cousin tremendously. Some
12 children are going to miss their father that they won't
13 have there as a guide. No, we are not perfect, we are
14 not, none of us are, but he will be greatly missed and I
15 love him to death. That's it. We're going to get through
16 this. Day-by-day, one day at a time. Thank you for
17 allowing me to speak.

18 THE COURT: Thank you.

19 MR. MARTIN: Greg Martin, I'm one of the victims.
20 It's been a hard week having to sit here and relive
21 everything that's been keeping me up the last three years,
22 having to listen to audio, all of us dying on the ground,
23 people screaming out save my brother, save everybody,
24 right. Had to sit there and listen to everything. I'm
25 glad justice was served today.

1 It's going to keep me up the rest of my life, but
2 there's two people that aren't alive and he's still alive,
3 so he's got it better than the two people that aren't
4 here. All the people in the bar are having nightmares
5 because of that. I'm just happy that justice is served.

6 THE COURT: Thank you, sir.

7 MR. GOLDBERG: Your Honor, the fourth family of
8 Mr. Wise, his uncle was here earlier in the week. He
9 spent a couple of days here watching. He had some other
10 things he had to tend to and he wasn't able to be here
11 today, but his uncle was here on his behalf.

12 Your Honor has heard Mr. Bethel's prior record. Just
13 to state it one more time for the record, he has prior
14 convictions from 2010 for driving under suspension; 2011,
15 operation of a business without a license; 2013, malicious
16 injury to property less than \$2,000; 2014, assault and
17 battery third degree and malicious injury to jail or
18 courthouse; 2014, obstruction of justice, he received nine
19 years on that, and then unlawful carrying of a weapon in
20 2019.

21 THE COURT: Do you have some factual background or
22 context regarding this obstruction of justice?

23 MR. GOLDBERG: Your Honor, that -- I know that it
24 stemmed or revolved around a murder case from an
25 establishment here in Richland County called Mr. Lucky's

1 that used to exist over on Broad River Road, in which a
2 codefendant named James Bethel was, ultimately, convicted
3 and sentenced to 50 years on that case.

4 Ms. Campbell was the prosecutor on that case back in
5 2013. The defendant before you was charged in connection
6 with that. I'm not positive of his role in that, but he
7 was, ultimately, allowed to plead to the charge of
8 obstruction of justice for his role in that case.

9 THE COURT: And his sentence was?

10 MR. GOLDBERG: Nine years.

11 THE COURT: In 2014.

12 MR. GOLDBERG: Yes, sir. Mr. Bethel, James Bethel
13 was convicted in November of 2013, and I think this
14 defendant, Ernest Bethel, was in January of 2014.

15 THE COURT: Then the next conviction following that
16 was what?

17 MR. GOLDBERG: The unlawful carrying of a weapon in
18 July of 2019, which would have been -- that conviction of
19 the unlawful carrying of a weapon would have been less
20 than one month prior to this incident.

21 THE COURT: That's July 2019?

22 MR. GOLDBERG: July 26th of 2019 was the court date
23 for the unlawful carrying of a weapon.

24 THE COURT: And then this occurred August 22nd, 2019,
25 three weeks later?

1 MR. GOLDBERG: Yes, sir, that's correct.

2 THE COURT: All right. Thank you.

3 From the defense, Mr. Kata.

4 MR. KATA: May it please the Court, Your Honor. Your
5 Honor, Mr. Bethel's family is here in support of him.

6 They've been behind him his whole life. They're here.

7 They love him very much. I know that. Your Honor, it's

8 been a week-long trial. All we can ask for is as much

9 mercy as the court can show.

10 THE COURT: All right. Any of his family members
11 want to say anything?

12 MR. KATA: Your Honor, I believe his father does.

13 THE COURT: Yes, sir.

14 FATHER: How you doing, Your Honor. I want to --

15 THE COURT: Speak a little louder.

16 THE FATHER: I'd like to apologize, my deep apology
17 for the situation that took place. Ernest Bethel ain't no
18 bad boy. He just got in a situation. They were jumping
19 on him and that's what came out of it.

20 As I watched the video, it was my first time seeing
21 it, also. Like, any man would have did the same thing
22 people trying to beat you down. But I asked -- Ernest is
23 -- we have 11 children.

24 Ernest is the seventh child. He's the seventh child.
25 And we raised our children right. Just look at the world

1 today, some of the stuff going on. So many kids getting
2 into a situation. And I'd just ask that the court have
3 mercy on him when sentencing him, just have as much mercy
4 as you can because he is a good boy. I mean, he's a good
5 kid.

6 THE COURT: Thank you, sir.

7 THE MOTHER: Yes. My sympathy to the family, and we
8 apologize for everything that everybody is going through,
9 also. But like my husband said, Ernest was raised.
10 Ernest was not put out just to raise himself. Ernest was
11 raised.

12 Ernest knows right from wrong, and I know what
13 everybody -- what the outcome came of it. And I know what
14 everybody ruled, but my son is one of the people that if
15 somebody else was trying to do something wrong to
16 somebody, he would be the one to stand up and say that's
17 not right.

18 And for the Court to rule him as a murderer without
19 seeing that his life was in danger, too, and give him some
20 sympathy, it's real hurtful, and I'm hurtful for them,
21 too. But I'm also hurtful that my son was put in a
22 position that he couldn't explain himself or be walked out
23 the door to be able to talk to somebody so that his life
24 was not put in danger and not being as sensitive to
25 everybody else what they were going through. But I know

1 my son, and he loved people and that's his biggest problem
2 is that he trusted everybody too much.

3 (crying.)

4 (Pause.)

5 FATHER: Your Honor, we just ask that you have mercy
6 on Ernest when it comes to sentencing him. He's been put
7 in a position that -- I mean, being hit in the head like
8 he did and being beat down like he did. He wasn't in the
9 right stage of mind when all that took place. Have mercy
10 on him as you sentence him.

11 THE COURT: Yes, sir. Thank you.

12 FATHER: All right.

13 THE COURT: Mr. Bethel, if you'll come around for
14 sentencing.

15 There is one other person that stood up back there.

16 Yes?

17 THE COUSIN: Yes, I want to speak on my cousin's
18 behalf. Ernest was a nice guy. He is a nice guy. He's a
19 father, too. I apologize for any situation that it caused
20 for y'all, also, but he also has children, too. And I
21 know my cousin would not have done that if he wasn't under
22 stress and threaten for his life.

23 He's been raised right. We all have a loss, as well
24 as y'all have. He has a loss, too. He has kids, too.
25 But everybody went out that night to have a nice time, but

1 he was put under some pressure that caused, you know, a
2 situation that happened. But I just want to let y'all
3 know, if y'all have a heart, if you believe in God and
4 Jesus Christ --

5 THE COURT: When you say y'all, who are you talking
6 to?

7 THE COUSIN: I'm talking about everybody.

8 THE COURT: It's not in everybody's hands. It's in
9 my hands now, so talk to me.

10 THE COUSIN: Yeah, Your Honor. Can you just have
11 mercy on him and just know that he wasn't in his right
12 mind. He was probably just in the wrong place at the
13 wrong time, but I'm just pleading for his life. Give him
14 a second chance.

15 THE COURT: All right. One more person. Yes, ma'am,
16 tell us your name, please.

17 THE SISTER: Arnica Bethel.

18 THE COURT: Yes.

19 THE SISTER: I'm his oldest sister. I just want to
20 say my brother is not a murderer. He don't have the heart
21 to just murder somebody, maliciously going out to kill
22 somebody.

23 I think he was put in a bad situation, and he did
24 make a bad decision. I don't know what all happened
25 because I didn't see the video, but I know my brother.

1 He's not going to just murder somebody. That's my little
2 brother.

3 THE COURT: Okay. Thank you.

4 All right. Mr. Bethel, anything you'd like to say?

5 THE DEFENDANT: Yeah. I'd like to say I would never
6 just murder anybody. I feared for my life that night. I
7 have high sympathy for the family, and I think about it
8 all the time.

9 I get on my knees and cry for the family. I pray for
10 the family all the time. If I hadn't seen that gun that
11 night, Your Honor, I would not have shot. Everything was
12 happening so fast.

13 I hadn't had -- it wasn't enough time to make a
14 decision. I had to worry about my life, too. Don't give
15 up on me. I'm coming back. I promise you.

16 THE COURT: Anything else?

17 THE DEFENDANT: I would not kill nobody. I would
18 never do that. I ain't known to shoot people. I got in a
19 situation with my cousin, and I got nine years telling a
20 lie, for withholding evidence from the police. I was just
21 used in the situation for that. I still had to do nine
22 years out of my life for nothing, just for not cooperating
23 with the State in helping them find my cousin.

24 THE COURT: Well, we each find ourselves in
25 situations in life where we have to make choices and

1 decisions, and we have to deal with the consequences of
2 the choices and the decisions that we make.

3 Having listened to the testimony in this case, when
4 you were involved in a conflict there at the club or the
5 restaurant and knowing that it wasn't a good place for you
6 to be or a good place you were welcome to come to, whether
7 you were officially banned or fought with someone or
8 whatever the circumstances were earlier, you knew that
9 that was a place you were not welcome to be and you chose
10 to go there. Not only did you choose to go there, you
11 chose to go there with a loaded weapon concealed in your
12 clothing.

13 Then you had a choice to walk away or run away, and
14 you made a choice to fire through a door. And some people
15 were lucky and some people were unlucky. And, of course,
16 at two, three o'clock in the morning, you know, some
17 people say nothing good happens in a club after hours with
18 people drinking and with weapons. And folks are
19 apologizing here today, but the families of the victims,
20 they're not here for any apologies, they're here for
21 justice.

22 I think I often think of oh, what peace we often
23 forfeit by the choices that we make. I can tell that
24 you've come from a good family. I've observed your
25 family, your mother and father and other family members.

1 Of course, even the one that jumped up and shouted,
2 disrupted the court is probably a good person himself, but
3 you have gone astray somewhere, and that's what's led you
4 to this situation today.

5 You've had a lot of brushes with the law. It may not
6 be a record to you, as you said from the witness stand, I
7 don't have a record, but the various reasons that you had
8 to be in court and to be given a bond in this situation or
9 maybe probation in that situation, a sentence in that
10 situation, but then despite that, even within three weeks
11 or so of being in court, of being accused of having an
12 unlawful weapon, then you go to a place with a loaded gun
13 and shoot through the door and shoot up people, killing
14 people. Those are choices that you make -- you made and
15 now, these are the consequences.

16 A murder, as you know, I'm sure, is the most serious
17 crime, carries a minimum sentence of 30 years and maximum
18 of life. Attempted murder carries a maximum sentence of
19 30 years. So you're facing two life sentences plus 60
20 years for attempted murder. And you have the guys here
21 for the attempted murder and one has a bullet in his --

22 Is it in your face or where is it (indicating)?

23 A bullet in his neck. And the other victim,
24 Mr. Martin, you know, obviously --

25 What's your disability now, Mr. Martin?

1 MR. MARTIN: Physically, I'm fine. Everything has
2 healed up besides the scars and stuff.

3 THE COURT: Psychologically and otherwise impaired
4 based on all that he's just explained and based on the
5 choices you made. I don't know whether it's true or not.
6 The girl says, you know you can't go from there. You've
7 been banned from there. She said you said well, I'll just
8 act like I'm his twin brother. Do you have a twin
9 brother?

10 THE DEFENDANT: No, sir.

11 THE COURT: He said I'll just act like it's a twin
12 brother or whatever. You had a choice to go home. You
13 had a choice to leave that place. You, apparently, had
14 friends that were trying to get you to move on, go ahead
15 and you turned your back, pulled a gun and fired through
16 that door.

17 That was -- that choice you made was one that, as the
18 gentleman said, he hopes you reflect on it all the time.
19 Of course, you said you're having a hard time dealing with
20 the death of the people you killed, as well as your own
21 predicament. It is what it is and we have to deal with
22 what we have.

23 Anything else before sentencing is announced?

24 MR. KATA: No, Your Honor.

25 THE COURT: For each count of attempted murder, the

1 sentence is 30 years. For murder, each count, the
2 sentence is 50 years. The sentences will run concurrent,
3 and you'll get credit for time served.

4 On the weapons charge, does he get a sentence on that
5 or no? Well, you don't get a sentence if the sentence is
6 life, right?

7 MR. GOLDBERG: That's correct, Your Honor, so you are
8 able to sentence him on that.

9 THE COURT: So the sentence is not life, so the
10 sentence is five years on the weapons charge. Good luck
11 to you, Mr. Bethel.

12 THE DEFENDANT: All right.

13 (The defendant left the courtroom.)

14 (His Honor dismissed the jury.)

15 (Whereupon, the proceedings were concluded.)
16
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Richland County, South Carolina, on the 17 - 20th days of
April, 2023.

August 31, 2023

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF Richland
STATE

VS.

Ernest Condre Bethel

AKA:
Race: BLACK Sex: M Age: 30
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Columbia, SC 29223-3745
DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019 - GS - 40 - 08050

A/W#: 2019A4010900238
Date of Offense: 8/22/2019
S.C. Code § 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder / Murder

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s Initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Goldberg, Dan 72620 SC Bar # [REDACTED] Defendant SC Bar# [REDACTED]

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,

for a determinate term of 50 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by
SCDOC. 1,317 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or
§ 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Ernest Condre Bethel INDICTMENT/CASE#: 2019 - GS - 40 - 08050

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____ \$ _____

§14-1-206 (Assessments 107.5 %)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

	\$
	\$
\$100	\$ 100.00
\$100	\$
\$12	\$
\$25	\$
\$25	\$ 25.00
\$150	\$
\$41	\$
\$50	\$
\$40/ea	\$
TBD	\$

\$500	\$
TBD	\$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: Jeannette McBride
Court Reporter: AmbrogioPresiding Judge: C. NeundJudge Code: 2129Sentence Date: April 20, 2023

WITNESSES

(S) Caraly I Alvarez
– Richland County Sheriff Dept

ARREST WARRANT NUMBER

2019A4010900238

ACTION OF GRAND JURY

TRUE BILL

Keith R. Jones
Foreperson of Grand Jury

Date: DEC 18 2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2019GS4008050

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2019

74

**THE STATE
vs.**

Ernest Condre Bethel

**Indictment for
MURDER**

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 17, 2019,
the Grand Jurors of Richland County present upon their oath:

MURDER

That Ernest Condre Bethel did in Richland County, on or about August 22, 2019, kill the victim, Toliver Wise, with malice aforethought, either express or implied, by means of gunshot wound, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BYRON E. GIPSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

Ernest Condre Bethel

AKA:

Race: BLACK Sex: M Age: 30

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Columbia, SC 29223-3745

DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019 - GS - 40 - 08051

A/W#: 2019A4010900239

Date of Offense: 8/22/2019

S.C. Code § 16-03-0010

CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Murder / Murder

In violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Goldberg, Dan

72620 SC Bar #

Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,

for a determinate term of 50 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. 13 17 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Ernest Condre Bethel INDICTMENT/CASE#: 2019 - GS - 40 - 08051

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____ \$ _____

\$14-1-206 (Assessments 107.5 %)		\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: _____
Court Reporter: _____Presiding Judge: _____
Judge Code: _____
Sentence Date: _____

WITNESSES

(S) Caraly I Alvarez
- Richland County Sheriff Dept

ARREST WARRANT NUMBER

2019A4010900239

ACTION OF GRAND JURY

TRUE BILL

Kenneth L. Jones
Foreperson of Grand Jury
Date: DEC 18 2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2019GS4008051

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2019

74

THE STATE
vs.

Ernest Condre Bethel

**Indictment for
MURDER**

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 17, 2019,
the Grand Jurors of Richland County present upon their oath:

MURDER

That Ernest Condre Bethel did in Richland County, on or about August 22, 2019, kill the victim, Christopher Lott, with malice aforethought, either express or implied, by means of gunshot wound, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BYRON E. GIPSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

Ernest Condre Bethel

AKA:

Race: BLACK Sex: M Age: 30DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Columbia, SC 29223-3745DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019 - GS - 40 - 08052A/W#: 2019A4010900240Date of Offense: 8/22/2019S.C. Code § 16-03-0029CDR Code #: 3410

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Attempted Murderin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s Initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:Dan
Goldberg, Dan72620
SC Bar #

Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,
for a determinate term of 30 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by
SCDOC. 1,317 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.Pursuant to 18 U.S.C. § 922 and § 16-25-30 It is unlawful for a person convicted of a violation of § 16-25-20 or
§ 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Ernest Condre Bethel INDICTMENT/CASE#: 2019 - GS - 40 - 08052

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

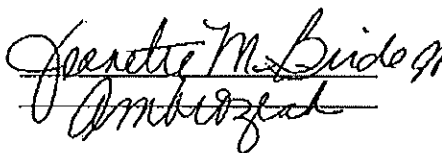
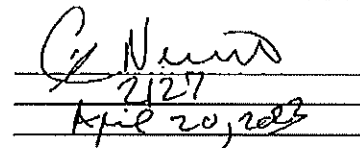
Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____

		\$
§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (If paid in installments)	TBD	\$
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ 3.75
	TOTAL	\$ 125.75

Clerk of Court/ Deputy Clerk:
Court Reporter:Presiding Judge:
Judge Code:
Sentence Date:
2127
April 20, 2023

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

DOCKET NO. 2019GS4008052

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2019

74

THE STATE
vs.

Ernest Condre Bethel

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

WITNESSES

(S) Caraly I Alvarez

- Richland County Sheriff Dept

ARREST WARRANT NUMBER

2019A4010900240

ACTION OF GRAND JURY

TRUE BILL

Kenneth R. Jones
Foreperson of Grand Jury

DEC 18 2019

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 17, 2019,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Ernest Condre Bethel did in Richland County on or about August 22,
2019, with the intent to kill, attempt to kill GREGORY MARTIN with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.


BYRON E. GIPSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

Ernest Condre Bethel

AKA:

Race: BLACK Sex: M Age: 30

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Columbia, SC 29223-3745

DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019 - GS - 40 - 08053

AW#: 2019A4010900241

Date of Offense: 8/22/2019

S.C. Code § 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Attempted Murder

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Goldberg, Dan

SC Bar # 72620

Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,

for a determinate term of 30 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 1,317 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Ernest Condre Bethel INDICTMENT/CASE#: 2019 - GS - 40 - 08053

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____

		\$
§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ 3.75
TOTAL		\$ 128.75

Clerk of Court/ Deputy Clerk:
Court Reporter:

Janetta McBride
Ambriz

Presiding Judge:
Judge Code:
Sentence Date:

C. W. W.
2127
April 20, 2023

WITNESSES

(S) Caraly I Alvarez
-- Richland County Sheriff Dept

ARREST WARRANT NUMBER**2019A4010900241****ACTION OF GRAND JURY****TRUE BILL**

Foreperson of Grand Jury

Date:

DEC 18 2019**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2019GS4008053**The State of South Carolina****County of****Richland****COURT OF GENERAL SESSIONS****DECEMBER TERM 2019****74**

THE STATE
vs.

Ernest Condre Bethel

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

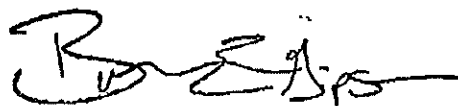
INDICTMENT

At a Court of General Sessions, convened on December 17, 2019,
the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Ernest Condre Bethel did in Richland County on or about August 22,
2019, with the intent to kill, attempt to kill CAMERON JENKINS with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



BYRON E. GIPSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE

VS.

Ernest Condre Bethel

AKA:

Race: BLACK Sex: M Age: 30DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Columbia, SC 29223-3745DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019 - GS - 40 - 08054A/W#: 2019A4010203579Date of Offense: 8/22/2019S.C. Code § 16-23-0490CDR Code #: 0549

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Weapons / Poss. weapon during violent crime, If not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. [REDACTED] (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:[Signature]
Goldberg, Dan72620
SC Bar #

Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by
SCDOC. 1,317 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or
§ 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Ernest Condre Bethel INDICTMENT/CASE#: 2019 - GS - 40 - 08054

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

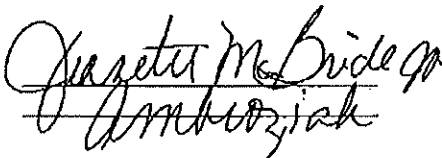
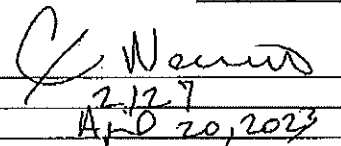
Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of	\$	Beginning	\$
§14-1-206 (Assessments 107.5 %)			\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100		\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100		\$
§56-5-2995 (DUI Assessment)	\$12		\$
§56-1-286 (DUI Breath Test)	\$25		\$
§14-1-212 (Law Enforce. Funding)	\$25		\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150		\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$
§50-21-114(BUI Breath Test Fee)	\$50		\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$
3% to County (if paid in installments)	TBD		\$
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500		\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD		\$ 3.75
TOTAL			\$ 128.75

Clerk of Court/ Deputy Clerk:
Court Reporter:Presiding Judge:
Judge Code:
Sentence Date:
2127
Apr 20, 2023

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

DOCKET NO. 2019GS4008054

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2019

74

THE STATE
vs.

Ernest Condre Bethel

Indictment for
POSSESSION OF A WEAPON DURING
VIOLENT CRIME

SC Code: 16-23-0490
CDR Code: 0549

WITNESSES

(S) Caraly I Alvarez

- Richland County Sheriff Dept

ARREST WARRANT NUMBER

2019A4010203579

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

DEC 18 2019

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 17, 2019,
the Grand Jurors of Richland County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

That Ernest Condre Bethel did in Richland County, on or about August 22,
2019, possess a firearm, or visibly display what appeared to be a firearm,
during the commission or attempted commission of a violent crime, in
violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



BYRON E. GIPSON, SOLICITOR

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

A handwritten signature in black ink, appearing to read "Dayne C. Phillips", is written over a horizontal line.

Dayne C. Phillips, Esq.

SC Bar No. 77712

Price Benowitz LLP

1614 Taylor Street, Suite D

Columbia, SC 29201

(803) 807-0234

ATTORNEY FOR APPELLANT

October 3, 2024

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-000669

The State of South Carolina,

Respondent,

v.

Ernest Condre Bethel,

Appellant.

FINAL BRIEF OF APPELLANT

Dayne Phillips
PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 807-0234

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE TRIAL COURT ERRED BY ADMITTING EVIDENCE OF APPELLANT'S ALLEGED INVOLVEMENT IN A PRIOR SHOOTING AT THE SAME LOCATION WHEN THE STATE FAILED TO PROVE THE PRIOR BAD ACT BY CLEAR AND CONVINCING EVIDENCE, THE PROPENSITY EVIDENCE WAS NOT LOGICALLY RELEVANT TO A MATERIAL FACT AT ISSUE, AND THE STRIKING SIMILARITY OF THE EVIDENCE ENHANCED THE SUBSTANTIAL UNFAIR PREJUDICE TO APPELLANT.

STATEMENT OF THE CASE

On December 18, 2019, the Richland County Grand Jury indicted Appellant, Ernest Bethel, for two counts of Murder, two counts of Attempted Murder, and one count of Possession of a Weapon During the Commission of a Violent Crime (Indictment Nos. 2019GS4008050–8054). (R. 424 – 441)

On April 17, 2023, Appellant proceeded to trial before the Honorable Clifton Newman and a jury. (R. p. 1–421). Justin Kata, Esq., represented Appellant, and Deputy Solicitor Daniel Goldberg and Assistant Solicitor Nicholas Fowler prosecuted the case on behalf of the State. The jury returned a guilty verdict for all five indictments on April 20, 2023. (R. p. 401, line 11 – 402, line 9). The Trial Court sentenced Appellant to fifty (50) years imprisonment for each Murder conviction, thirty (30) years imprisonment for each Attempted Murder conviction, and five (5) years imprisonment for the Possession of a Weapon During the Commission of a Violent Crime conviction. (R. p. 419, line 25 – 420, line 11). The Trial Court imposed concurrent sentences for all convictions.

On April 25, 2023, Appellant timely filed a Notice of Appeal. This appeal follows.

STATEMENT OF THE FACTS

On August 22, 2019, Appellant and two acquaintances arrived at McCary's Bar and Grill. Upon entering the bar, Appellant encountered Tolliver Wise who was standing at the door preparing to exit the building. Appellant and Wise shook hands and "ended in a hug, indicating peace." (R. p. 76, lines 14-19; p. 91, line 25; p. 92, lines 1-4; p. 271, line 25; p. 272; lines 1-6).

Several individuals in the bar, which included John Miller and Christopher Lott, then walked over to Appellant in a hostile manner and surrounded him. (R. p. 272, lines 11-25; p. 273, lines 1-22). One of the bartenders, Cameron Jenkins, and his co-worker, Gregory Martin, also approached the group and tried to calm the situation. (R. p. 273, lines 23-25; p. 274, line 1; p. 92, lines 5-22). Appellant testified that Jenkins intervened "*because they were intoxicated and they already had it out for me the moment I walked in there.*" (R. p. 273, lines 2-7) (emphasis added). Appellant testified that he perceived the four (4) individuals surrounding him in an aggressive and hostile manner. (R. p. 275, lines 6-10).

Suddenly, John Miller, threw a drink in Appellant's face and a physical altercation ensued. (R. p. 77, lines 20-25; p. 78; lines 1-3; p. 94, lines 16-20; p. 275, lines 16-20). Appellant testified that he was hit in the face and head multiple times and slammed into a table during this attack by the group of men. (R. p. 276, lines 6-9). Appellant ultimately backed out of the building and testified that he noticed Tolliver Wise pulling up his pants, signaling that he was going for his gun. (R. p. 276, lines 10-25; p. 277, lines 1-3; p. 277, lines 16-25; p. 278, lines 1-7).

In response to Wise's actions, Appellant pulled his gun and began firing at him. Wise also shot his gun from inside the bar, and Appellant returned fire. (R. p. 282, lines 1-24). Jenkins, Martin, Lott, and Wise were wounded during the shooting. Wise and Lott ultimately died as result of their injuries. (R. p. 224, lines 4-13; p. 173, lines 17-25; p. 174, lines 1-21).

Pre-Trial

During a pre-trial hearing, Defense Counsel objected to the admissibility of Appellant's alleged involvement in a prior shooting at the same location. (R. p. 38, lines 2-14; p. 40, line 15 – 43, line 2). Specifically, after Defense Counsel reiterated that the alleged incident occurred “[a]t the same place, different time and some different people[,]” the Trial Court remarked, “Oh, goodness.” (R. p. 38, lines 9-11). Defense Counsel restated, “So, Your Honor, we would object to that [testimony].” (R. p. 38, lines 12).

In response, the State informed the Trial Court that Appellant was allegedly banned from the bar due to a prior shooting. (R. p. 39, lines 11-25, p. 40, line 15 – 43, line 2). Specifically, the Prosecutor conceded that he “couldn’t get the exact date correct” of when the alleged prior shooting occurred and that there is no supporting documentary evidence of the alleged shooting (i.e., no police report). (R. p. 40, line 19; p. 42, lines 4-5).

The State believed the admissibility of the alleged prior incident is a “twofold issue...in terms of part one would be the testimony of whether he was not allowed to be there as a result of this prior incident... And then part two of that would be whether or not the State would be allowed to go into the specifics of that incident to include the shots being fired into the air.” (R. 41, lines 19-25). The Trial Court then inquired whether Appellant was charged for the alleged prior shooting, and the State confirmed he was not arrested because “there was no law enforcement notification provided.” (R. p. 42, lines 4-5).

In response, Defense Counsel argued, “I have an extreme objection to any mention of a prior shooting” and “less of an objection to...discussions about whether he was given notice not to be back.” (R. p. 42, lines 12-16). Defense Counsel reiterated, “I think once we go into the facts of the specific shooting, it becomes unduly prejudicial.” (R. p. 42, lines 16-18). Notably, Defense

Counsel informed the Trial Court that “identity is not an issue in this case.” (R. p. 43, lines 3-4).

The Trial Court ultimately deferred ruling on this issue until the presentation of evidence during trial: “Everyone knows it’s an issue, so we’ll deal with it.” (R. p. 43, lines 5-7).

Trial

During the State’s direct examination of Gregory Martin who worked at the bar, the State inquired, “So[,] this night on August 22nd, what was your understanding about whether or not Mr. Bethel was allowed to be at McCary’s?” Martin responded, “I knew he was banned, was not allowed to be there.” The State then asked, “And what was that -- in general terms, what was that due to?” Defense Counsel contemporaneously objected as Martin attempted to discuss the alleged prior incident, and the Trial Court immediately overruled the objection. (R. p. 102, lines 3-11).

Martin proceeded to testify that he was at the bar the night of the alleged prior incident and witnessed an argument between Appellant and Kerry Ross. (R. p. 102, line 12 – 103, line 5). As Martin began to describe Appellant’s actions once he exited the bar, the Trial Court interrupted the testimony and instructed the attorneys to approach for a bench conference. (R. p. 103, lines 6-8). The Trial Court then instructed the State to proceed with his line of questioning. (R. p. 103, lines 9-10). Martin ultimately testified that he heard gunshots from outside of the bar while he was inside the bar. (R. p. 104, lines 1-5).

On cross-examination, Martin testified that he was not aware of any documentation banning Appellant from the bar because “I wasn’t the one who banned him, so I wouldn’t be able to provide the documentation of that... I don’t have the power to ban somebody[.]” (R. p. 110, lines 6-13).

Kerry Ross, who is a bartender and assistant manager at McCary’s Bar and Grill, conceded on direct examination that he was not present for the shooting that occurred on August 22, 2019.

(R. p. 148, lines 7-11). The State then asked him, “But you were there a week or two prior?” Defense Counsel objected under Rule 404(b), SCRE. The Trial Court requested another bench conference, and Defense Counsel indicated his previous “objection of the prior act” during the earlier bench conference on this issue. (R. p. 148, lines 12-19).

In response, the State informed the Court, “He’s going to say he kicked him out the week before and then subsequent to that, he went back inside and heard gunshots.” The Trial Court replied, “Okay, I’ll overrule your objection. The objection is overruled.” (R. p. 148, line 22 – 149, line 1). Ross also claimed that he and Appellant were involved in a physical altercation a few weeks before the shooting.

Ross maintained Appellant arrived at the bar with a few people who did not have their IDs, and Ross denied entry to those people but allowed Appellant inside the bar. (R. p. 149, lines 9-11). Ross alleged that Appellant subsequently punched him in the face and left the bar. Ross also claimed that he informed Appellant that he was not allowed to return to the bar. (R. p. 150 lines 14-16). Appellant supposedly then walked to the back of the building where Ross heard gunshots. (R. p. 149, lines 13-16; p. 150, lines 9-20).

During cross-examination, Ross conceded that he did not call the police or file a police report after allegedly being punched in the face by Appellant and witnessing Appellant shoot a gun outside of a public business. Ross also admitted that he had not provided Appellant with any documentation placing him on a trespass notice to ban him from the property. Ross maintained that he had informed his manager and one of the bartenders on duty that night about the incident but had not documented it in any other way. (R. p. 152, line 7 – 153, line 1).

Defense Counsel again objected under Rule 404(b), SCRE, during the direct examination of Amircle Wright, who was allegedly present during both incidents. The Trial Court then asked

for a response from the State when Defense Counsel reiterated his objection under Rule 404(b), SCRE. The State replied, “Your Honor, this is the same content we’ve discussed previously. I believe he’s just renewing his objection to it.” The Trial Court overruled the objection. (R. 180, lines 13-24).

Wright testified that Appellant allegedly got into an altercation with a female in the bar, prompting Ross to intervene. (R. p. 181, lines 10-12). Wright then claimed that she was outside of the bar and witnessed Appellant shooting in the air. (R. p. 181, lines 15-24). Following a series of questions regarding the alleged prior incident, the State asked Wright, “And so in your statement to police, you said Tolliver [Wise] pulled out his gun because he knew what [Appellant] was going to do; is that correct?” Wright responded, “Yes, sir.” (R. p. 182, lines 2-5). Notably, in response to a question regarding Appellant’s actions on the night of August 22, 2019, Wright testified, “I heard gunshots. And *I’m thinking he was doing the same thing he did weeks prior, which is shooting in the air....*” (R. p. 186, lines 1-5) (emphasis added).

On cross-examination, Defense Counsel attempted to impeach Wright based on her prior inconsistent statement to police that Wise pulled his gun before Appellant started shooting, after Wright testified, “[Appellant] was shooting prior to that, prior to Tolliver [Wise] pulling his gun out *because we already knew what he was going to do due to the last incident.*” (R. p. 188, line 24 – 189, line 1) (emphasis added). Wright also admitted that she never called the police or filed a police report because “when he shot the gun up in the air that morning, my phone was in the bar on the charger.” (R. p. 191, lines 11-25; p. 192, lines 1-4). Wright also conceded that she saw Appellant after the alleged prior shooting and did not call the police because he was “harmless” to her. (R. p. 192, lines 3-4).

Notably, Appellant testified that he did not shoot a gun during the prior incident and that he was never told that he could not come back to the bar. (R. p. 270, line 20 – 271, line 16). He did admit that, although there was an exchange of words, “[Ross] never told me you’re banned, don’t ever come back.” (R. p. 271, lines 11-13).

The jury began deliberations at 10:24 a.m. on April 20, 2023, and the jury sent out a note at 1:20 p.m. (stating that they “have doubts for the self-defense on elements three and four. Need clarity. Number three, what is considered reasonable for the person? Please provide clarity. Do we have to have all elements to be considered self-defense?”). (R. p. 391, lines 5-14). The Trial Court recharged the law on self-defense and answered the questions contained in the jury note. The jury left the courtroom at 1:43 p.m. to continue deliberations and returned their verdicts at 3:21 p.m. (R. p. 400, lines 10-24).

ARGUMENT

I. THE TRIAL COURT ERRED BY ADMITTING EVIDENCE OF APPELLANT’S ALLEGED INVOLVEMENT IN A PRIOR SHOOTING AT THE SAME LOCATION BECAUSE THE STATE FAILED TO PROVE THE PRIOR BAD ACT BY CLEAR AND CONVINCING EVIDENCE, THE PROPENSITY EVIDENCE WAS NOT LOGICALLY RELEVANT TO A MATERIAL FACT AT ISSUE, AND THE STRIKING SIMILARITY OF THE EVIDENCE ENHANCED THE SUBSTANTIAL UNFAIR PREJUDICE TO APPELLANT.

Generally, evidence of a person’s character is not admissible to prove the person acted “in conformity therewith on a particular occasion.” Rule 404(a), SCRE. Under Rule 404(b), SCRE, evidence of a person’s “other crimes, wrongs, or acts” are inadmissible to prove a person’s general character “in order to show action in conformity therewith.” However, evidence of other bad acts are admissible when that evidence tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; or (5) the identity of the person charged with the commission of the crime on trial. *See State v. Lyle*, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923).

The proponent of prior bad act evidence must demonstrate it has a legitimate purpose, “i.e., the evidence does something more than prove a person has propensity to commit crimes.” *Johnson v. State*, 433 S.C. 550, 555, 860 S.E.2d 696, 699 (Ct. App. 2021). This Court recently explained the State’s initial burden in seeking to admit prior bad act evidence against a criminal defendant *Johnson v. State*:

In a criminal case, the State must convince the trial court that the prior bad act evidence is logically relevant to a material fact at issue in the case: “If it is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime.”

Id. (quoting *State v. Lyle*, 125 S.C. 406, 417, 118 S.E. 803, 807 (1923)). This Court also held that

trial courts are to apply the logical relevancy test with “rigid scrutiny.” *Id.* at 556, 860 S.E.2d at 699.

Specifically, if the trial court concludes the prior bad act evidence serves a purpose other than to show the defendant’s proclivity for criminal conduct and the purpose is one listed under Rule 404(b), then such evidence is admissible unless its “probative value is substantially outweighed by the danger of unfair prejudice.” Rule 403, SCRE; *see Johnson*, 433 S.C. at 556, 860 S.E.2d at 699. The danger of unfair prejudice is also enhanced when the prior bad act is “strikingly similar” to the one for which the appellant is being tried. *State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984).

Notably, if the prior bad act did not result in a prior conviction, the state must prove the prior bad act by clear and convincing evidence. *See Johnson*, 433 S.C. at 556, 860 S.E.2d at 699. Our Supreme Court explained that clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established, and such proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal. *See State v. Fletcher*, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008) (citation omitted).

Discussion

In this case, the Trial Court erred by admitting evidence of Appellant’s alleged involvement in a prior shooting at the same location because the State failed to prove the prior bad act by clear and convincing evidence, the propensity evidence was not logically relevant to a material fact at issue, and the striking similarity of the evidence enhanced the substantial unfair prejudice to appellant. *See* Rules 403 and 404(b), SCRE; *see Johnson*, 433 S.C. at 556, 860 S.E.2d at 699; *Gore*, 283 S.C. at 121, 322 S.E.2d at 13.

“This type of prior bad act evidence is precisely what Rules 403 and 404(b) of the South Carolina Rules of Evidence seek to exclude from trials.” *State v. Robinson*, 438 S.C. 421, 439, 882 S.E.2d 883, 893 (Ct. App. 2023) (citing *Johnson*, 433 S.C. at 559, 860 S.E.2d at 701 (“The rules of evidence recognize verdicts are still rendered by human hands, not the artificial workings of algorithms, and emotion has its place. Rule 403 ensures emotion stays in its place.”); *Id.* at 556–57, 860 S.E.2d at 700 (“Rule 404(b) bars the use of prior bad act evidence to prove character, deeming it useless to the factfinder, for such use does not make any legitimate fact at issue more or less probable.”)). “The purpose of the rules of evidence is to facilitate fair proceedings that bring forth the truth, not the whole truth, from its shroud of smoke and mirrors in a manner that will secure fair and just outcomes at trial.” *Robinson*, 438 S.C. at 439, 882 S.E.2d at 893 (citing Rule 102, SCRE).

A. The State failed to prove Appellant’s alleged involvement in a prior shooting at the same location by clear and convincing evidence.

The State failed to prove Appellant’s alleged involvement in a prior shooting at the same location by clear and convincing evidence because none of the State’s witnesses called the police or filed a police report about the incident. *See generally Johnson*, 433 S.C. at 556, 860 S.E.2d at 699. Martin admitted that he did not see Appellant shoot a gun during the prior incident because he was inside the bar when he heard gunshots. (R. p. 104, lines 1-5).

Wright, who also claimed to see Appellant shooting a gun during the prior incident, admitted that she also never called the police or filed a police report because her “phone was in the bar on the charger.” (R. p. 191, lines 11-25; p. 192, lines 1-4). Wright acknowledged that she saw Appellant after the alleged prior shooting and did not call the police despite being an alleged eyewitness to the incident. Therefore, the Trial Court erred by admitting evidence of Appellant’s alleged involvement in a prior shooting at the same location because the State failed to prove the prior bad act by clear and convincing evidence.

B. Appellant's alleged involvement in a prior shooting at the same location was not logically relevant to a material fact at issue.

Appellant's alleged involvement in a prior shooting at the same location was not logically relevant to a material fact at issue. *See* Rule 404(b), SCRE; *Johnson*, 433 S.C. at 556, 860 S.E.2d at 699 (“In a criminal case, the State must convince the trial court that the prior bad act evidence is logically relevant to a material fact at issue in the case.”). Similar to this Court's recent decision in *State v. Robinson*, Appellant “admitted on the stand to shooting [the] Victim”. *Robinson*, 438 S.C. 421, 882 S.E.2d 883 (Ct. App. 2023). Defense Counsel also informed the Trial Court that identity was not an issue when the issue was addressed pre-trial. (R. p. 43, lines 3-4).

Unlike in *Johnson*, motive and intent were not critical in connecting Appellant to the crime because this propensity evidence was unnecessary to show why Appellant shot into the bar or to dispel that Appellant acted in self-defense. *Id.*, 433 S.C. at 556, 860 S.E.2d at 699. Therefore, the the Trial Court erred by admitting evidence of Appellant's alleged involvement in a prior shooting at the same location because this propensity evidence was not logically relevant to a material fact at issue.

C. The striking similarity of Appellant's alleged involvement in a prior shooting at the same location enhanced the substantial unfair prejudice to Appellant.

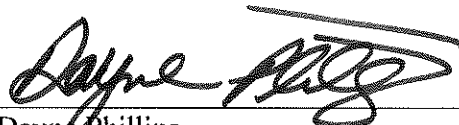
The striking similarity of Appellant's alleged involvement in a prior shooting at the same location enhanced the unfair prejudice to Appellant and substantially outweighed any probative value. *See* Rule 403, SCRE; *State v. Kelley*, 319 S.C. 173, 177, 460 S.E.2d 370 (1995) (“It is well settled that evidence should be excluded when its probative value is outweighed by its prejudicial effect.”). When comparing this Court's decision in *Robinson* to the facts in this case, “the State presented much evidence that was substantially prejudicial to [Appellant's] case and confusing to the jury.” *Id.*, 438 S.C. at 438, 882 S.E.2d at 892.

The State presented numerous witnesses to testify about the alleged prior shooting and unrelated physical altercations with different people. (R. p. 149, lines 13-16; p. 150, lines 9-20). Specifically, Ross alleged that Appellant punched him in the face during the prior incident, and Wright testified that Appellant allegedly got into an altercation with a female in the bar during the prior incident. (R. p. 149, line 12; p. 181, lines 10-12). Notably, Wright's testimony amounted to the epitome of inadmissible propensity evidence: *"I heard gunshots. And I'm thinking he was doing the same thing he did weeks prior, which is shooting in the air... because we already knew what he was going to do due to the last incident."* (R. p. 186, lines 1-5; p. 188, line 24 – 189, line 1) (emphasis added). Therefore, the Trial Court erred by admitting evidence of Appellant's alleged involvement in a prior shooting at the same location because the striking similarity of this propensity enhanced the unfair prejudice to Appellant and substantially outweighed any probative value. *See Gore*, 283 S.C. at 121, 322 S.E.2d at 13.

CONCLUSION

Based on the foregoing reasons, Appellant Ernest Bethel respectfully requests that this Court reverse his convictions and sentences and remand this case to the Richland County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dayne Phillips", written over a horizontal line.

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Oct 03 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-000669

The State of South Carolina,

Respondent,

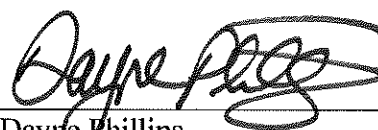
v.

Ernest Condre Bethel,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned Counsel certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.



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October 3, 2024

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-000669

The State of South Carolina,

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v.

Ernest Condre Bethel,

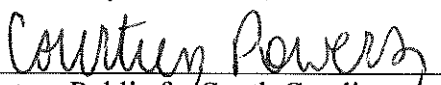
Appellant.

CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Final Brief of Appellant has been served upon **J. Anthony Mabry, Esquire**, at S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211, on **October 3, 2024**.


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SUBSCRIBED AND SWORN TO before me
this 3rd day of October, 2024.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

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Oct 23 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ERNEST CONDRE BETHEL,

APPELLANT.

Appellate Case No. 2023-000669

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STATEMENT OF ISSUE ON APPEAL

- I. Whether the trial court erred by admitting evidence of appellant's alleged involvement in a prior shooting at the same location when the State failed to prove the prior bad act by clear and convincing evidence, the propensity evidence was not logically relevant to a material fact at issue, and the striking similarity of the evidence enhanced the substantial unfair prejudice to appellant?

STATEMENT OF THE CASE

On August 22, 2019, appellant Ernest C. Bethel (“Bethel”) murdered Christopher Lott and Tolliver Wise and attempted to murder Cameron Jenkins and Gregory Martin all in Richland County. On December 18, 2019, the Richland County Grand Jury indicted Bethel for 2 counts of murder, 2 counts of attempted murder, and 1 count of possession of a weapon during a violent Crime (Indictment Nos. 2019-GS-40-8050 through 8054). Deputy Solicitor Dan Goldberg and Assistant Solicitor Nicholas Fowler prosecuted the case for the State. Justin Kata, Esquire, represented Bethel on the charges. On April 17, 2023, Bethel proceeded to a jury trial before the Honorable Clifton E. Newman, Circuit Court Judge. On April 20, 2023, the jury found Bethel guilty of both murders, both attempted murders and the weapon charge. Judge Newman sentenced Bethel to 50 years for each murder, 30 years for each attempted murder, and 5 years on the weapon charge. (Tr. pp. 1-421; Indictments). Bethel directly appealed to this Court raising 1 issue. (IBOA). This is the Final Brief of Respondent.

RESPONDENT'S STATEMENT OF FACTS

Approximately 1 to 2 weeks before the murders of Christopher Lott and Tolliver Wise and the attempted murders of Cameron Jenkins and Gregory Martin, appellant Ernest C. Bethel ("Bethel") was inside *McCary's* Bar and Grill (hereinafter *McCary's*) on Bush River Road in Columbia, S.C. While there, Bethel got into an altercation with a female patron of the bar. This led to a further altercation with the Assistant Manager of *McCary's*, Kerry Ross, who intervened in the altercation between Bethel and the female patron. Bethel eventually punched Ross in the face. Bethel left out the front door of the bar and eventually circled to the parking lot area at the back of the bar. Ross started out the front door behind Bethel and told him to his face that he was banned from *McCary's* and not to return. Ross then decided to go through the bar and to go out the rear door in pursuit of Bethel. When Ross opened the back door of the bar, Bethel was standing outside the back door with a firearm [a pistol] in his hand, and Bethel fired several shots up into the air. Ross then told the manager of *McCary's* and the bar tender that Bethel was banned from *McCary's*. (Tr. 147-53; 102-10; 180-92). There were 2 other witnesses to this incident beside Ross, Gregory Martin, who worked at the bar, and Amiracle Wright, a patron of the bar. (Tr. 147-53; 102-10; 180-92). Martin witnessed the same altercation between Bethel and Ross, and after Bethel left the bar, Martin heard gunshots fired outside the bar in the parking lot area. (Tr. 102-10). Amiracle Wright witnessed the same altercation Bethel had with Ross after Bethel got into an altercation with a female in the bar prompting Ross to intervene. Wright was then outside the bar in the parking lot area after this altercation between Bethel and Ross and witnessed Bethel firing the gun into the air. (Tr. 180-92).

A week or 2 later, on **August 22, 2019**, Bethel had 2 acquaintances drive him to *McCary's* at approximately 2:25 a.m. after first visiting 2 other bars in the area and drinking.¹ Bethel later admitted to police he was drunk when he arrived at *McCary's* on August 22nd. Bethel got out of the car first, leaving his 2 friends in their car. He approached the front door of *McCary's* this time carrying a loaded semi-automatic pistol hidden on his person and peered through a glass window in the front door to see who was inside. When Bethel did not see Assistant Manager Ross with whom he had the previous altercation and who had banned him from returning to *McCary's*, Bethel entered *McCary's* through the front door. After Bethel was able to enter the establishment, his 2 accompanying friends got out of their car and entered *McCary's* as well. Bethel's actions and the crimes he committed on August 22, 2019, were all recorded on several surveillance cameras, the footage of which was played for the jury. (Tr. 63-66; 66-98; 99-111; 179-94; 147-53; 296-98; State's Ex. 4 [*McCary's* video]; State's Ex. 65 [compilation of surveillance videos]; Tr. 231-47; State's Ex. 3 [neighboring business surveillance video]).

Immediately upon entry through the front door of *McCary's* on August 22, 2019, Bethel was met by Tolliver Wise, a regular patron, who shook Bethel's hand and hugged Bethel and eventually told Bethel he was not allowed to come in the bar. John Miller and Christopher Lott, 2 other regular patrons of *McCary's*, also walked over and told Bethel he needed to leave because he was banned from *McCary's*.² Bethel told the men he wanted to talk to someone who worked

¹ At the previous bar, Bethel ran into Amiracle Wright. Bethel told Wright that he was going to *McCary's* next. Wright warned Bethel that he should not go to *McCary's* because Bethel knew he had been banned from that establishment because of the previous incident. Bethel stated he was going anyway and would tell *McCary's* employees that it was his twin brother who was involved in the prior incident 1 to 2 weeks earlier. (Tr. 180-92).

² There was testimony *McCary's* and its regular patrons were a "community" that watched out for each other, hence several regular patrons of the bar told Bethel he had to leave because of the prior incident 1 to 2 weeks earlier. (Tr. 95, ll. 16-18; 69, ll. 16-20; 70, ll. 10-24; 74, ll. 3-10; 90;).

there. Cameron Jenkins, the bartender on duty, and Gregory Martin, the cook, walked over to diffuse the situation and told Bethel he was banned from *McCary's* and he had to leave. Bethel refused to listen to either man and argued with them and the nearby patrons. Bethel eventually stuck his hand in the face of 1 of the patrons, John Miller, as they were arguing, and Miller threw a drink on Bethel.³ Bethel responded by pushing and punching Miller and the 2 began to fight and went to the floor. Jenkins, the bartender, grabbed Bethel around the waist in an attempt to separate Bethel and Miller. Someone else grabbed Miller and restrained him. Jenkins eventually was able to pull Bethel away from Miller and with the help of others, push Bethel out the front door of *McCary's*. As the front door was shutting, Tolliver Wise, who had hugged Bethel when he entered the bar, saw Bethel outside the front door of the establishment reaching for his gun.⁴ Christopher Lott grabbed the front door handle from the inside of *McCary's* as the door was shutting and held the front door shut. After the door shut, Wise drew his gun because he anticipated what Bethel was going to do, fire shots. Wise was correct. (Tr. 63-66; 66-98; 99-111; 179-94; 301-04; State's Ex. 4; State's Ex. 65).

Video surveillance captured Bethel outside the front door of *McCary's* after the front door closed completing drawing his semi-automatic pistol and take several steps. Bethel then raised and pointed his semi-automatic pistol at the front door of *McCary's* and fired 7 shots through the

³ It appears on the surveillance video that Bethel actually touched Miller's face. As a result, Miller threw a drink on Bethel's person. (State's Ex. 4 & 65; See Tr. 63-66; 231-47; See also 366, ll. 16-21; 345-46).

⁴ There were multiple surveillance cameras which captured what occurred simultaneously both outside and inside *McCary's*. (Tr. 63-66; 231-47; State's Ex. 4; State's Ex. 3; State's Ex. 65). The cameras also showed what was occurring down to the seconds on a digital clock. At trial the State showed the actual surveillance video from *McCary's* [State's Ex. 4] and a separate exhibit showing each camera angle from *McCary's* side by side simultaneously as the crimes occurred [State's Ex. 65]. (Tr. 63-66; 231-47). This allowed the jury to see what was occurring outside *McCary's* at the same time as was what occurred inside *McCary's*. (Tr. 63-66; 231-47; State's Ex. 65; See also Tr. 356-57; 366-69).

front door striking 4 different victims, Wise, Lott, Jenkins, and Martin. Wise, who saw and heard the shots coming through the front door, was struck in the chest by 1 bullet but was able to get off return fire with a 9mm semi-automatic pistol after first telling his sister, Amira Wright, and a friend of hers to flee to the bathroom. Wise's sister thought Bethel was shooting up in the air again like the prior incident 1 to 2 weeks earlier, but Wise signaled to her that Bethel was shooting through the door and that she and her friend needed to flee to the bathroom. (Tr. 66-98; 99-111; 122-25; 179-94; 147-53; 167-78; 208-15; 223-31; State's Ex. 4; State's Ex. 65).

Two (2) of the victims, Christopher Lott and Tolliver Wise, died from the gunshot wounds inflicted by Bethel. The bar tender, Cameron Jenkins, who testified at trial, identified Bethel, and recounted exactly what occurred before the shooting, suffered a gunshot wound to the neck, and the fired bullet remained in his neck at trial. Gregory Martin, the cook, who also testified at trial, identified Bethel, and testified to what occurred, suffered catastrophic injuries and multiple surgeries but was able to survive the multiple gunshot wounds he received from Bethel. (Tr. 66-98; 99-111; 144-47; 179-94; 208-215; 223-31; 167-178; State's Ex. 4; State's Ex. 65).

After the crimes, Bethel ran to his acquaintances' car in the parking lot, turned, and fired 5 more shots back at *McCary's* indiscriminately. Bethel then fled the crime scene in his acquaintances' car. (Tr. 63-66; 122-25; 195-207; 282-86; 322-27; State's Ex. 4 [*McCary's* surveillance video]; State's Ex. 65 [surveillance video compilation]; State's Ex. 3 [surveillance video of neighboring business]). Bethel disposed of the semi-automatic pistol; therefore, it was never recovered. However, SLED's firearms expert was able to testify that all of the fired shell casings found outside *McCary's*, 12 in all, were fired by the same weapon. (Tr. 122-25; 195-207).

Bethel was arrested and charged with 2 counts of murder and 2 counts of attempted murder. Bethel was questioned several days later by the FBI. Bethel admitted he was present at the bar

and drunk. He denied he had a gun and denied he fired any bullets. He admitted at trial that he lied to police when interviewed about whether he had a gun or fired any shots. (Tr. 290-325).

Bethel testified at trial. He admitted he fired the 7 shots through the front door of *McCary's* and that he struck 4 separate people, killing 2, and severely wounding 2 others. He claimed he fired additional shots, only 2, when he got to his friend's car. He actually fired 5 shots near the car. He claimed he acted without malice and was merely acting in self-defense or defense of others [his friends] when he fired his weapon. The jury rejected the claim of self-defense finding the State had disproved self-defense. (Tr. 267-85; 290-325; 395-405).

Notably, in his closing argument to the jury, Deputy Solicitor Dan Goldberg pointed out to the jury that the surveillance video of the actual crimes showed Bethel's actions on a digital clock down to the second. The same cameras showed Wise's actions in response to Bethel's actions down to the second. Goldberg pointed out that the jury could watch the surveillance videos and see that Bethel reached for his gun before the front door even closed and Wise saw Bethel go for his gun, but Bethel could not see Wise pull his gun because of Bethel's position and seconds passed before Wise drew his gun. Goldberg also pointed out that in the video Bethel can be seen finishing drawing his weapon after the front door closed, and Bethel can be seen taking several steps and then pointing his firearm at the exterior of the front door and firing 7 shots into the front door of *McCary's* where the men who had just ejected Bethel would have been standing, striking and eventually killing Christopher Lott and Tolliver Wise and severely wounding the bartender Jenkins and the cook Martin. And, Goldberg pointed out that Bethel fired the 7 shots through the front door of *McCary's* before Wise was able to return fire. (Tr. 356-57; 366-69; See also State's Ex. 4 & State's Ex. 65; Tr. 231-47).

ARGUMENT I.

Judge Newman did not err in admitting the prior incident as it was *res gestae* of the crime evidence, evidence of malice, evidence of prior difficulties between the parties, and proper evidence under Rule 404(b) and 403, SCRE; further, the admission of the prior incident was harmless where it was cumulative to unobjected to testimony of Bethel being banned from the bar for a prior incident and there was overwhelming evidence of Bethel's guilt including video surveillance from multiple cameras capturing the crimes and disproving self-defense, and eyewitness' testimony of 2 surviving victims and also an eyewitness.

Bethel argues that Judge Clifton Newman erred in admitting evidence of the prior incident he was involved in at *McCary's* 1 to 2 weeks before the murders and attempted murders because it was allegedly improper SCRE 404(b) evidence that was not relevant to the case and not proved by clear and convincing evidence, and because of its similarity to the actual crimes its probative value was substantially outweighed by the danger of its' prejudicial effect under Rule 403, SCRE. (IBOA). Bethel is simply wrong.

The evidence was admissible because the prior incident was relevant to the issues in the case and was *res gestae* of the crime evidence, evidence of malice, evidence of prior difficulties between the parties, and proper Rule 404(b) evidence where the State proved the prior incident by clear and convincing evidence and the evidence was relevant where it showed motive, intent, and absence of mistake in shooting the victims where Bethel claimed self-defense at trial. Further, the probative value of this evidence was not substantially outweighed by the danger of prejudice under Rule 403, where the probative value of the prior incident was high since it led directly to Bethel being removed from *McCary's* the night of the crimes which directly led to Bethel shooting each victim and in the prior incident Bethel did not shoot anyone but only fired his gun up into the air. For each of these reasons, Judge Newman must be affirmed.

Further, even assuming *arguendo* error in admitting this evidence, its admission was harmless given the unobjected to testimony Bethel was banned from *McCary's* and the

overwhelming evidence of guilt including the detailed video surveillance footage of what occurred, the testimony of the surviving victims, another eyewitness' testimony, and Bethel's admissions at trial that he was the shooter, and he fired the shots the State contended he fired, and the jury rejected his self-defense argument as it should.

Standard of Review

The admission or exclusion of evidence is in the sound discretion of the trial judge who will only be reversed for an abuse of discretion. State v. Pittman, 373 S.C. 527, 577, 647 S.E.2d 144, 170 (2007); State v. Oglesby, 384 S.C. 289, 293, 681 S.E.2d 620, 622 (Ct. App. 2009). To constitute an abuse of discretion, the conclusions of the trial court must lack evidentiary support or be controlled by an error of law. Id.

Res gestae of the Crime

The evidence of the prior incident was admissible as “*res gestae* of the crime evidence.” This is a different basis to admit such evidence than Rule 404(b). See Anderson v. State, 354 S.C. 431, 435, 581 S.E.2d 834, 836 (2003) (holding appellant's threatening statement to victim formed part of the *res gestae* of the crime). “As such[,] the bar against admitting prior bad acts is not applicable.” Anderson, 354 S.C. at 435, 581 S.E.2d at 836. Evidence of other acts of the defendant or even crimes may be admitted under the *res gestae* of the crime theory:

One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence “furnishes part of the context of the crime” or is necessary to a “full presentation” of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘*res gestae*’ ” or the “uncharged offense is ‘so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ...’ [and is thus] part of the *res gestae* of the crime charged.” And where evidence is admissible to provide this “full presentation” of the offense, “[t]here is no reason to fragmentize the event under inquiry” by suppressing parts of the “*res gestae*.”

State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370–71 (1996)(quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir.1980)), *overruled on other grounds*, State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014). *Res gestae of the crime* recognizes evidence of other acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred. State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001), *overruled on other grounds* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004); State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). Under this theory, it is important that the temporal proximity of the other act be closely related to the charged crime. State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997).

The evidence of Bethel's actions during the prior incident 1 to 2 weeks before was properly admitted under the *res gestae* of the crime because it provided the whole context of the crimes in this case. See Adams, 322 S.C. at 122, 470 S.E.2d at 370–71. Admission of the testimony was necessary and relevant to a full presentation of the evidence in this case. What occurred in the prior incident provided context for the crimes at issue because the prior incident resulted in Bethel's being banned from *McCary's*, caused him to return the night of the crimes with a loaded firearm, caused him to look through the front door glass before entering *McCary's* on the night of the crimes, and caused the confrontation just inside the front door, and caused him to be removed from the bar physically, which directly led to the murders and attempted murders. The testimony regarding what occurred in the prior incident was relevant to show the complete, whole, unfragmented story regarding the crimes and why they occurred. See State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct.App.2002).

Furthermore, the acts were temporally related. Sweat, 362 S.C. 117, 606 S.E.2d 508 (prior CDV 2 months before murder was not too remote and was admissible). The prior shooting incident occurred only *1 to 2 weeks before the crimes*. On the night of the crimes, Bethel spoke to 1 murder victim's sister at another bar before Bethel had his 2 acquaintances drive him to *McCary's*. (Tr. 179-94). The murder victim's sister told Bethel while at the other bar that Bethel could not go to *McCary's* because he was banned from *McCary's* because of the prior shooting incident. (Tr. 179-94). Bethel stated he was going to *McCary's* anyway, and he was going to tell the bouncer or whoever checked him at the door that it was his twin brother who had committed the prior shooting incident. (Tr. 179-94). When Bethel arrived at *McCary's*, he approached the front door alone, armed with a loaded firearm hidden on his person, and peered through the front door to see who was inside before entering because of the prior incident. (Tr. 293-94; 296-97; State's Ex. 4 & 65). Bethel admitted at trial he peered through the window before he entered *McCary's* because he wanted to see if the assistant manager, Ross, was there before entering. (Tr. 293-94; 296-97). Ross was the assistant manager who banned him from the bar because of the prior shooting incident. (Tr. 147-53; 296-97).

At trial, Bethel claimed the prior incident as described by the State's witnesses did not occur at all; therefore, when he entered *McCary's* on the night in question, there was no reason or cause for an employee or patron to approach him and tell him he was banned and had to leave the bar. He denied he struck Assistant Manager Ross or fired a gun up in the air in the prior incident. According to Bethel, on the night of the crimes, the employees and patrons of *McCary's* were the aggressors, not him. The prior incident and Bethel's previous banning from *McCarry's* established Bethel was not without fault in bringing on the difficulty in a trial where Bethel claimed self-defense. The prior incident and Bethel's banning also established Bethel was the aggressor the

night of the crimes and should not have been at *McCary's* on the night of the crimes much less armed with a loaded pistol secreted on his person. The prior incident also established Bethel's *intent* when he was physically removed from *McCary's* on the night of the crimes, retribution, and the prior incident established Bethel's *malice* toward *McCary's* and its employees and patrons. The prior incident is so related to the actual crimes as to be inextricably intertwined. *See Adams*, 322 S.C. at 122, 470 S.E.2d at 371 ("The use of the cocaine here was inextricably intertwined with the robbery and murder. Under these circumstances, such evidence was properly admitted as part of the *res gestae* of the crime."). Indubitably, Bethel's prior actions 1 to 2 weeks before the murders and attempted murders was part of the entire scenario regarding the victims' murders and attempted murders. The prior incident at *McCary's* was the very reason Bethel was removed from *McCary's* the night of the crimes immediately before the shooting started and the 4 victims were shot. *State v. Johnson*, 439 S.C. 331, 887 S.E.2d 127 (2023)(defendant's acts in Dillon and Marlboro Counties most definitely provides context under *res gestae* theory to the Marion County domestic violence case); *State v. Wood*, 362 S.C. 520, 528, 608 S.E.2d 435, 439 (Ct. App. 2004)(defendant's murder of trooper 2 hours earlier was *res gestae* of failure to stop for a blue light and AWIK trial in another county); *State v. Hough*, 325 S.C. 88, 480 S.E.2d 77 (1997)(defendant's act after the crime of purchasing crack cocaine with money from the armed robbery for which he was on trial was part of the *res gestae* of the crime).

Bethel's prior actions toward Assistant Manager Ross **and** *McCary's* were admissible as *res gestae* of the crime. *Sweat, supra* (prior CDV was admissible evidence of *res gestae* of the crime of burglary and assault 2 months later after release from jail for CDV); *Gillian*, 360 S.C. 433, 601 S.E.2d 61 ("Under the *res gestae* theory, evidence other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in

understanding the context in which the crime occurred.”)(citing Owens, 346 S.C. 637, 552 S.E.2d 745; Adams, 354 S.C. 361, 580 S.E.2d 785). Here, Bethel was on trial for the murder of 2 patrons of *McCary’s* and the attempted murder of 2 employees of *McCary’s* after the victims either asked or told Bethel to leave because he was banned from *McCary’s* because of the prior incident. It was necessary for a full presentation of the case and for context, for the jury to understand the full nature of the relationship between Bethel **and** the patrons and employees of *McCary’s*, including the prior incident that resulted in Bethel being banned and told not to return to *McCary’s* which he did anyway. Because of what occurred in the prior incident, it explained why the patrons and employees acted as they did on the night of the crimes.⁵ As a result, the prior incident was admissible as *res gestae* of the crime, especially where the altercation or dispute the night of the murders was directly related to the prior incident which resulted in Bethel being banned from the establishment. Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (1996)(evidence of other crimes is admissible when it furnishes the context of the crime or is necessary for a full presentation of the case and is necessary to complete the story of the crime on trial by proving its context); Sweat (prior act of domestic abuse gave victim opportunity to escape her relationship with defendant; as a result she moved out, and he spent time in jail; he was upset, and 11 days after his release the crimes for which he was on trial occurred; the October abuse and events that followed provided the fact finder with an appropriate context in which to place the later attack).⁶

⁵ Wright testified that on the night of the crimes she initially thought Bethel was shooting up in the air *as he did 1 to 2 weeks earlier*. It was not until her brother, Wise, signaled her that she realized Bethel was shooting through the front door. It was then that she and a friend fled toward the bathroom of *McCary’s*. (Tr. 179-94).

⁶ See also King, 334 S.C. at 512, 514 S.E.2d at 582 (*res gestae* recognizes evidence of other bad acts may be an integral part of the crime or may be needed to aid the fact finder in understanding the context in which the crime occurred.); Wiles, 383 S.C. at 158-59, 679 S.E.2d at 176 (evidence of other crimes which supplies the context of the crime, or is intimately connected with and explanatory of the crime, is admissible as *res gestae*); State v. Martucci, 380 S.C 232, 669 S.E.2d

Moreover, the probative value of the evidence was not substantially outweighed the danger of its prejudicial effect. *See Owens*, 346 S.C. at 653, 552 S.E.2d at 753; *State v. Wood*, 362 S.C. 520, 527–29, 608 S.E.2d 435, 439–40 (Ct. App. 2004). Bethel’s actions on the previous occasion are all part of the *res gestae* of these crimes and were intertwined with and fully explained what occurred on the night of the crimes and why each person acted as they did. *United States v. Wright*, 392 F.3d 1269, 1276 (11th Cir.2004); (“[E]vidence of [defendant’s resistance to arrest] prior to the discovery of the firearm gives the jury the body of the story, not just the ending. Such evidence was ‘inextricably intertwined’ with the charged offense.”). The prior incident explained why these crimes occurred and everyone’s actions on the night of the crimes, including Bethel’s, and proved Bethel’s animus, malice, intent, and motive in perpetrating the shootings, and disproved he was without fault in bringing on the difficulty where he claimed self-defense and defense of others at trial, and the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice where in the prior incident Bethel did not shoot anyone, was not arrested, and only fired his gun up in the air after being told he was banned from *McCary’s*. *See Johnson*, 439 S.C. at 342–43, 887 S.E.2d at 132–33 (2023)(“The significant probative value of Johnson’s acts in Dillon and Marlboro Counties was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or any other consideration pertinent to a Rule 403 analysis”)

598 (Ct. App. 2008)(admission of prior incidents of abuse or neglect was needed to present overall view of the facts and to provide context in which the crime occurred, and demonstrated the culminating impact upon the child; evidence regarding the prior bad acts was relevant to show the complete, whole story relating to the charge of homicide by child abuse; *See State v. Bolden* 303 S.C. 41, 43, n. 1, 398 S.E.2d 494 (1990) (noting *res gestae* does not fit squarely within any of the 5 categories in *Lyle*); *State v. Smith*, 309 S.C. 442, 451, 424 S.E.2d 496, 501 (1996) (Toal, J. dissenting)(although there is some overlap between *Lyle* and the *res gestae*, *res gestae* is a separate method where other evidence of criminal acts can be admitted).

Evidence of Malice and Prior Difficulties between the Parties

Additionally, separate from *res gestae* of the crime, Judge Newman did not err in admitting the prior incident because it was separate evidence of Bethel's malice toward *McCary's* and its employees **and** prior difficulties between the parties, i.e. prior difficulties between Bethel **and** *McCary's* and its' employees. Contrary to Bethel's argument, the evidence was admissible not only under Rule 404(b), SCRE, to show motive, intent, and absence of mistake or accident where he claimed self-defense, but also under other case authority as evidence of malice, including prior difficulties between the parties, and of Bethel's state of mind. Blakely v. State, 360 S.C. 636, 602 S.E.2d 758 (2004); State v. Cooley, 342 S.C. 63, 536, S.E.2d 666 (2000); State v. Beck, 343 S.C. 129, 536 S.E.2d 679 (2000).

First, testimony that a defendant had threatened the victim before the crimes is admissible to show malice toward the victim. Blakely, 360 S.C. 636, 602 S.E.2d 759 ("It is well-settled that evidence of previous threats by the defendant is admissible to show malice."); Beck, 342 S.C. 129, 134, 536 S.E.2d 679, 682 (noting appellant's statement of intent to commit a crime was admissible as a statement or declaration made by one accused of a crime). "As such[,] the bar against admitting prior bad acts is not applicable." Anderson, 354 S.C. at 435, 581 S.E.2d at 836. Bethel's actions in the prior incident were in the nature of a threat. He punched Assistant Manager Ross in the face and then went outside the bar and just outside the back door raised a pistol in the air and fired several shots in the air in Ross's presence shortly after being told by Ross that he was banned from *McCary's* and not to return. A defendant's threats to injure or harm the victim are not necessarily prior bad acts that fall under Rule 404(b) but are independent evidence that is admissible to show malice, the defendant's criminal intent, and the defendant's state of mind. Beck, 342 S.C. 129, 536 S.E.2d 679. Such threats are admissible because they are relevant under Rule 401 & 402,

SCRE. Evidence is relevant and admissible if it tends to establish or make more or less probable a fact in issue or a matter in controversy. State v. Wiles, 383 S.C. 151, 158-59, 679 S.E.2d 172, 176 (2009); Beck, *supra* (testimony that defendant had made a statement of his intent to perpetrate certain crimes – albeit 4 months prior to the crime – was highly probative as to a manifestation of an intent to commit a fatal attack upon the victim; the evidence bore directly on the defendant’s identity as the killer as well as the establishment of motive, and was therefore admissible under Rule 401; the temporal attenuation between the defendant making the statement and the crime being committed, was of no moment in assessing its admissibility, and at most, the 4 month lapse was a matter bearing on the weight of the evidence, which was for the jury to determine); State v. Glenn, 328 S.C. 300, 492 S.E.2d 393 (Ct. App. 1997)(statements made by defendant 1 year before the incident, were relevant where the defendant was accused of injuring his victim in the same manner).

As a result, Bethel’s punching Assistant Manager Ross and firing a gun up in the air after being ejected from *McCary’s* and banned from the same just 1 to 2 weeks before the actual crimes was admissible under Rule 401 & 402, SCRE, because it established Bethel’s malice toward the bar and its’ employees, his criminal intent when returning later, and his state of mind upon returning to the bar on April 22nd with a loaded firearm concealed on his person. Blakely, *supra*; Beck; Glenn, 328 S.C. 300, 492 S.E.2d 393. Further, the probative value of this evidence was enhanced where Bethel asserted the defense that the shooting of all 4 victims was in self-defense or defense of others and without malice. Furthermore, the probative value of this evidence was enhanced where Bethel asserted the prior actions did not occur and he was never banned from *McCarry’s*. Any unfair prejudice was minimal where Bethel was not arrested for the prior incident and he only fired a gun up in the air; he did not shoot anyone. As a result, the probative value of

this evidence was not substantially outweighed by the danger of any unfair prejudice to Bethel. Rule 403, SCRE.

All of the evidence of the prior incident was also admissible to show prior difficulties between the parties. Bethel had animus and malice toward *McCary's* and its' employees because of the prior incident, and he returned 1 to 2 weeks later with a loaded firearm secreted on his person and looked through the front door to see if he could see Assistant Manager Ross before he entered. In a homicide case, prior difficulties between the parties are admissible to prove motive. State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004); Cooley, 342 S.C. 63, 536 S.E.2d 666 (evidence that accused and decedent had previous difficulties are admissible). The evidence is admissible to show the animus between the parties, including whether there was an abusive relationship between the defendant and the victim, and to aid the jury in deciding who was the probable aggressor. State v. Taylor, 333 S.C. 159, 168, 508 S.E.2d 870, 874 (1998); State v. Clinkscales, 231 S.C. 650, 99 S.E.2d 663 (1957); Cooley, *supra*.

Here, the prior difficulties between Bethel and *McCary's* and its' employees were just 1 to 2 weeks before the crimes. These acts were not so remote as to be unfairly prejudicial and require exclusion under Rule 403, SCRE. Sweat, 362 S.C. 117, 606 S.E.2d 508 (prior CDV 2 months before murder was not too remote and was admissible); Beck, *supra* (4 months between statement or threat and the crime went only to the weight of the evidence not its admissibility); Glenn, *supra* (statements made by defendant 1 year before the incident, were relevant where the defendant was accused of injuring his victim in the same manner); Cooley (where son's testimony about father's domestic abuse of mother was over 2 years prior to the date of the killing and son had not lived with his parents since then, son's testimony should have been excluded under Rule 403); State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999)(excluding evidence of Defendant's bad acts that

occurred more than 1 year before the crime on trial). This is true especially, where Bethel claimed the shooting of the victims in this case was in self-defense **and** Bethel returned to McCary's armed with a secreted semi-automatic weapon *just 1 to 2 weeks* after the prior incident where he was ejected and banned from the bar. (Tr. 310-34; 262-89).

The evidence was also admissible under 404(b), SCRE

Pursuant to Rule 404(b), SCRE,

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

Rule 404(b), of the SCRE, provides for the admission of such evidence, not to prove action in conformity therewith, but to prove motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Rule 404(b), SCRE. The substance of Rule 404(b) is the same as the rule of evidence stated in State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), followed prior to the adoption of the SCRE. Lyle, 125 S.C. at 416-17, 118 S.E. at 807. As noted, evidence of other bad acts or crimes is inadmissible, unless it can be shown by the prosecution the evidence is necessary to establish a material element of the crime charged. State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987). In State v. Bell, 302 S.C. 18, 393 S.E.2d 364 (1990), the Court defined the term "necessary" as being synonymous with the term relevant:

Bell requests that this Court limit the Lyle rule by finding that other acts evidence is admissible only if necessary. Relying mainly on State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987), Bell argues that the trial judge erred in admitting the other acts evidence because it was not needed. Bell notes that the testimony of an eyewitness who identified Bell as the abductor as well as other evidence linking him to the crime. In Johnson, we stated that evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged. 293 S.C. at 324, 360 S.E.2d at 319. Consistent with our rulings since Lyle, we define necessary as synonymous with relevant. Thus, evidence of other crimes is never admissible unless relevant to establish a material fact or element of the crime charged.

Bell, 302 S.C. at 27-28, 393 S.E.2d at 369.

Proof of Bad Act by Clear and Convincing Evidence

Bethel first claims the State did not prove the prior incident occurred by clear and convincing evidence because Bethel was not arrested or convicted for the prior incident. Bethel is simply wrong. “To be admissible, other crimes that are not the subject of conviction must be proved by clear and convincing evidence.” State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Appellate courts do not review a trial court's ruling on the admissibility of other bad acts by determining *de novo* whether the evidence rises to the level of clear and convincing. If there is any evidence to support the admission of the bad act evidence, the trial [court]'s ruling will not be disturbed on appeal. Id. at 6, 545 S.E.2d at 829.

Evidence of bad acts does not have to be proof beyond a reasonable doubt but need only be proven by clear and convincing evidence. State v. Pierce, 326 S.C. 176, 485 S.E.2d 913 (1997); Bell, 302 S.C. 18, 393 S.E.2d 364. Clear and convincing is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established, and such proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal. *See* State v. Fletcher, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008). Where a witness's testimony is the sole evidence of a bad act, the determination of the witness's credibility must be left to the trial judge who saw and heard the witness and is therefore in a better position to evaluate the witness's veracity. State v. Kirton, 381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008); State v. Tutton, 354 S.C. 319, 580 S.E.2d 186 (Ct. App. 2003). Should the trial judge determine the witness's testimony clearly and convincingly establishes the bad act occurred, an appellate court is bound by the trial judge's factual findings unless clearly erroneous. State v. Scott, 405 S.C. 489, 748 S.E.2d 236 (Ct. App. 2013); Kirton,

381 S.C. 7, 671 S.E.2d 107; Tutton, 354 S.C. 319, 580 S.E.2d 186. An appellate court will not conduct a *de novo* review of a trial judge's ruling on the admissibility of bad act evidence on the issue of whether the evidence rises to the level of clear and convincing evidence. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001); State v. Perry, 420 S.C. 643, 803 S.E.2d 899 (Ct. App. 2017). A trial judge's ruling admitting bad act evidence will be upheld on appeal if it is supported by any evidence. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300; State v. Smith, 391 S.C. 353, 705 S.E.2d 491 (Ct. App. 2011), *reversed on other grounds*, 406 S.C. 215, 750 S.E.2d 612 (2013); Sweat.

Here, contrary to Bethel's first argument in his brief, the State proved the facts of the prior incident, by clear and convincing evidence through the testimony of 3 different witnesses, which was sufficient. (Tr. 147-53; 99-111; 179-194). Here, Assistant Manager Kevin Ross testified to the prior incident (Tr. 147-53); Gregory Martin also testified to the incident (99-111); and, Amiracle Wright also testified to the prior incident (179-194). State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 Ct. App. 1998)(testimony of co-defendant with defendant when prior bad acts were committed was sufficient to meet the clear and convincing standard); State v. Aiken, 322 S.C. 177, 470 S.E.2d 404 (Ct. App. 1996)(testimony of co-defendant that defendant had been involved in prior robberies constituted clear and convincing evidence); Kirton, *supra* (testimony of 1 witness was clear and convincing evidence of prior bad act).⁷ This portion of Bethel's argument has no merit.

⁷See Sweat (in prosecution for burglary, ABWIK and AHAN, evidence of prior CDV for which defendant was arrested, but never convicted, after victim signed a statement the event did not actually happen, was nevertheless admissible at trial, where victim testified incident in fact occurred, and she only copied the statement at the request of defendant's sister and acquiesced in signing it because all she wanted was out of the situation; and, there was also testimony by a witness he saw bruises on victim's arms after the incident); State v. Ford, 334 S.C. 59, 512 S.E.2d 500 (1999)(testimony by victim he was previously robbed by the defendant, which was partially

The evidence was relevant

Bethel next argues in his brief that the prior incident was not relevant to any issue in the case and did not fit under any exception to Rule 404(b). Again, Bethel is wrong. See State v. Brooks, 341 S.C. 57, 61, 533 S.E.2d 325, 327 (2000) (stating there must be a logical relevance between the prior bad act and the crime for which the defendant is accused).

Bethel claimed at trial that the shootings of the 4 victims were in self-defense and defense of others. Bethel claimed the prior incident 1-2 weeks earlier as described by State's witnesses did not even occur, and he was not banned from *McCary's*. Bethel testified he did not hit Assistant Manager Ross in the prior incident, and he did not fire a gun up in the air 1-2 weeks earlier. Bethel claimed, as a result, when he entered *McCary's* on the night of the crimes, the patrons and employees had no reason to approach him, argue with him or remove him from the bar. According to Bethel, he was without fault in bringing on the difficulty, he acted reasonably, and he had no other means of avoiding the difficulty. (Tr. pp. 267-325).

The State's evidence showed to the contrary. Bethel's actions 1 to 2 weeks before the crimes are directly relevant to this case because the prior incident was what led to Bethel being banned from *McCary's* and what directly led to the confrontation just inside the front door on the night of the crimes. On the night of the crimes, Bethel was told to leave by employees and patrons of *McCary's* because of the prior incident which resulted in him being banned from *McCary's*, and

corroborated by a detective, was clear and convincing evidence of prior bad act); Scott, 405 S.C. 489, 748 S.E.2d 236 (in prosecution for CSC on a minor and lewd act, court did not err in allowing prior bad act testimony under 404(b) from 2 witnesses, where prior bad acts occurred 20 years before the defendant's arrest---the proffered 404(b) testimony was very specific and appeared credible; deference afforded to a trial judge's findings in this regard, and the court did not err in finding the bad act evidence was clear and convincing); State v. Atkins, 309 S.C. 542, 424 S.E.2d 554 (Ct. App. 1992)(prosecution failed to prove a subsequent bad act by clear and convincing evidence, where there was no identification of the defendant as the perpetrator).

he refused to leave even when told by employees of *McCary's* that he had to leave. Bethel continued to argue and eventually stuck his hand in the face of Miller and Miller threw a drink on Bethel resulting in the fight between Bethel and Miller that Jenkins and Martin tried to break up. This led directly to Bethel being pushed out of the front door of the bar and the door shut. Whereupon Bethel fired 7 shots indiscriminately into *McCary's* with the loaded weapon he carried secreted on his person killing 2 and wounding 2.

The prior incident also showed Bethel was the aggressor. The evidence of the prior incident showed Bethel knew he was banned from *McCary's*, and instead of staying away, he returned to *McCary's* 1-2 weeks later in a different vehicle carrying a loaded semi-automatic pistol hidden on his person, and then tried to enter *McCary's* without being caught. Upon being stopped and told by patrons and employees that he must leave because he was banned, Bethel did not leave but escalated the situation and continued to argue and eventually stuck his hand in the face of a patron instigating a physical conflict. This was especially relevant where Bethel claimed he acted in self-defense. This evidence negated that Bethel was without fault in bringing on the difficulty or that he acted reasonably in shooting indiscriminately into a crowded bar, or that he did not have another means of avoiding the difficulty. This evidence showed Bethel was at fault in bringing on the difficulty, he did not act reasonably, and he had other means of avoiding the difficulty. Bethel could have simply not returned to an establishment from which he was banned on the night of the crimes. Bethel's argument that the prior incident had no relevance to this case is simply false.

The evidence was admissible to prove motive, intent, and absence of mistake or accident

Bethel next argues that the prior incident does not fall under any exception to Rule 404(b), SCRE. Again, Bethel is wrong. Bethel's actions 1 to 2 weeks before the crimes were admissible to show motive, intent, and the absence of mistake or accident especially where he claimed self-

defense. Rule 404(b), SCRE. Here, Bethel's defense at trial was self-defense and defense of others and that he did not intentionally or maliciously shoot anyone or act with gross recklessness. He claimed the fact that he hit 4 people was an accident or mistake while acting in self-defense, not an intentional shooting with malice. As a result, his prior actions *1 to 2 weeks previous at McCary's*, his altercation with a female patron there and physical abuse of Assistant Manager Ross, and his firing a gun up in the air after being ejected and banned from the bar were admissible and their probative value increased to show motive, malice, intent, and the lack of accident or mistake in the shooting of the 4 victims in this case. State v. Key, 277 S.C. 214, 284 S.E.2d 781 (1981)(fact that defendant had threatened victim with a pistol on 2 or 3 different occasions was admissible in prosecution for ABHAN to show absence of mistake or accident in shooting the victim); State v. Smith, 337 S.C. 27, 522 S.E.2d 598 (Ct. App. 1999)(in murder and ABWIK prosecution, fact that defendant had previously been convicted for CDV against victim and made prior threats to kill the victim with a pistol, was admissible to refute defendant's claim the shooting was an accident); Martucci, 380 S.C. 232, 669 S.E.2d 59 (admission of prior incidents of abuse or neglect were not error where evidence was admissible as proof of intent and absence of accident, this was especially true because defendant disputed motive and intent to commit homicide by child abuse).⁸

⁸ See also Smith, 391 S.C. 353, 705 S.E.2d 491 (court did not err in admitting evidence defendant had broken child's leg about 3 months before child's death, the femur injury was highly relevant to show defendant's motive for attempting to "chemically restrain" the child with medicine, and was critical to show the overdose leading to death was not a mistake or accident); State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008)(where defendant was convicted of criminal solicitation of a minor, involving solicitation over the internet of a person defendant thought was a minor, but in fact a police officer, evidence of the defendant's previous chats with a Pennsylvania police officer were properly admitted under Rule 404(b), to prove among other things the absence of mistake, where defendant subsequently engaged in similar chats with a S.C. officer); State v. Talley, 77 S.C. 99, 57 S.E. 618 (1907)(where defendant was on trial for obtaining goods by false pretenses, having allegedly submitted a false claim for payment to a county, it was proper for the State to cross-examine him as to other duplicate claims which he had made against the county in the past; the State's case depended on whether the defendant had obtained double pay for services rendered

Bethel quotes State v. Robinson, 438 S.C. 421, 439, 882 S.E.2d 883, 893 (Ct. App. 2023)(citing Johnson, 433 S.C. at 559, 860 S.E.2d at 701) for the proposition that the evidence of the prior incident in this case is precisely what Rules 403 and 404(b) of the South Carolina Rules of Evidence seek to exclude from trials. Again Bethel is wrong. Robinson involved the State introducing into evidence a large amount of inadmissible *testimony about gang affiliation, membership, and conduct or activity* in a murder case in which there was testimony the shooting was provoked by a prior shooting earlier in the night, which was admissible. Robinson, 438 S.C. 439, 882 S.E.2d 883. In Johnson also, the evidence that was properly admitted was gang affiliation and activity where the murder was **directly related to gang activity and explained why the victim was murdered**. Id. Here, the prior incident was admissible for the reasons previously stated; it was *res gestae* of the crime, it was prior difficulties and threats between Bethel and *McCary's*; it proved motive, state of mind, intent, and who was the aggressor on the night of the crimes, and it proved malice toward *McCary's* and its employees and patrons, the absence of mistake or accident where the defendant claimed self-defense, and Bethel was not without difficulty in causing the conflict, did not act reasonably, and could have avoided the difficulty altogether by not returning to *McCary's* on August 22 armed with a loaded firearm, a place from which he was properly banned. The evidence also showed the reasonableness of the actions of the victims on the night in question, which could not be understood and comprehended without the jury understanding the details of the prior incident.

by fraud or by honest mistake; the burden being on the State to prove fraudulent intent, it was competent to prove past similar offenses); State v. Turbeville, 275 S.C. 534, 273 S.E.2d 764 (1981)(evidence of night-hunting was introduced in homicide trial to prove the absence of mistake or accident by the defendant).

The evidence was admissible under Rule 403, SCRE

Finally, Bethel also claims the probative value of this evidence was substantially outweighed by the danger of unfair prejudice to him under Rule 403, SCRE. Again, Bethel is wrong. The prior incident was just *1 to 2 weeks before* the murders and attempted murders in this case. The dispute Bethel had with patrons and employees immediately before the crimes in this case was directly related to the prior incident resulting in Bethel being banned from returning to the bar.

In addition to establishing the requirements for admissibility under Rule 404(b), the State must show “the probative force of the evidence when used for this legitimate purpose is not substantially outweighed by the danger of unfair prejudice from the inherent tendency of the evidence to show the defendant's propensity to commit similar crimes.” State v. Perry, 430 S.C. 24, 44, 842 S.E.2d 654, 665 (2020); *see* Rule 403, SCRE (providing a trial court may exclude relevant evidence when the probative value is substantially outweighed by the danger of unfair prejudice). “Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis.” State v. Gilchrist, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct. App. 1998).

A trial judge’s weighing of probative value verses prejudicial effect under Rule 403, SCRE, is reviewed under and abuse of discretion standard and should be reversed only in exceptional circumstances. State v. Gadson, 439 S.C. 278, 886 S.E.2d 719 (Ct. App. 2023)(referencing State v. Brooks, 428 S.C. 618, 635, 837 S.E.2d 236, 245 (Ct App. 2019)(quoting Collins, 409 S.C. at 534, 763 S.E.2d at 28); Sweat, *supra*. “A trial [court’s] balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise due to a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence.” State v. Holland, 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009); *quoting* State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-94 (Ct. App. 2001),

overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Only exceptional circumstances justify reversing the Circuit Court Judge's decision on 403 grounds. *State v. Huckabee*, 419 S.C. 414, 423, 798 S.E.2d 584, 589 (2017); *Hamilton*, 344 S.C. at 357, 543 S.E.2d at 593. "If there is any evidence to support the admission of the bad act evidence, the trial [courts]'s ruling will not be disturbed on appeal." See *Wilson*, 345 S.C. at 6, 545 S.E.2d at 829.

The prior incident and what occurred were necessary for the jury to understand why Bethel was banned from *McCary's* before the night in question and why everyone acted the way they did on the night of the crimes, i.e. approaching Bethel and telling him to leave. Rule 403, SCRE. The challenged evidence also showed without question that Bethel was not without fault in bringing on the difficulty on the night of the crimes because he had been banned from the bar for previously striking the Assistant Manager of the bar and shooting a gun up in the air, and he returned to the same bar again, after being warned by 1 victim's sister he should not return to *McCary's* because he was banned, but he did so anyway this time with a loaded semi-automatic pistol secreted on his person and argued with patron's and management about why he was banned leading to his expulsion from the club and then Bethel shooting through the front door 7 times indiscriminately. Further, no one contended Bethel shot at anyone in the prior incident, but he simply fired the gun up in the air. Nor was he arrested for the prior incident. As a result, there was no unfair prejudice to Bethel. Judge Newman's determination must be affirmed. *State v. Lyles*, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008)(the determination of whether the danger of unfair prejudice outweighs the probative value of evidence must be based on the entire record and will turn on the facts of each case).

The probative value of bad act evidence may be shown by the similarity of the crime charged, or whether a real connection can be drawn between the 2 incidents, and whether the

evidence is relevant to a material issue. Lyle, 125 S.C. 406, 118 S.E. 803; State v. Kennedy, 339 S.C. 243, 528 S.E.2d 700 (Ct. App. 2000). Here, after hearing argument on the admissibility of the evidence under 404(b) and Rule 403, Judge Newman implicitly found the testimony was relevant and its probative value was not substantially outweighed by the danger of prejudice to Bethel. The learned trial judge appropriately determined the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice to Bethel. Holland, 385 S.C. 159, 682 S.E.2d 898. Bethel has failed to show Judge Newman abused his discretion in admitting this evidence in this case. Id. Judge Newman's determination is fully supported by the record.⁹

Three (3) different witnesses testified to the prior incident which occurred only *1 to 2 weeks* before the murders and attempted murders. (Tr. 147-53; 99-104; 179-94). *McCary's* Assistant Manager Kevin Ross testified Ross punched him in the face. (147-53). Ross told Bethel to leave, and he was banned from returning to *McCary's*. (147-53). All 3 witnesses saw Bethel leave *McCary's* after the prior incident. And, 1 witness, Gregory Martin, then heard gunshots immediately outside the bar. (Tr. 99-104). Two (2) witnesses, Ross and Amiracle Wright, testified Bethel was holding a firearm [a pistol] in the parking area behind the bar and shooting the gun up into the air after the incident inside *McCary's*. (Tr. 147-53; 179-94). No one testified Bethel shot anyone on the prior occasion or shot at anyone, Bethel just shot up in the air. (Tr. 147-53; 179-94; 99-104). Just *1 to 2 weeks later*, Bethel returned to *McCary's* from which he was banned armed

⁹ Bethel cites to State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984). However, Gore dealt with the State questioning the defendant on trial for arson and murder, about a prior trailer fire involving another person the defendant lived with, in which the State admitted on appeal there was no probative evidence linking the defendant to the prior fire. The State did not even attempt to prove Gore committed the prior fire, just questioned him about the coincidence of a prior fire in the home of someone he lived with, prejudicing him before the jury. Id. Here, the State proved Bethel committed the prior incident by the testimony of 3 witnesses; the prior incident was just 1 to 2 weeks prior to the crimes; and the prior incident involved *McCary's* and 1 of its employees.

with a loaded semi-automatic pistol hidden on his person. Before going to *McCary's*, Bethel had 2 friends drive him to several other bars. At 1 of those bars, Amiracle Wright saw Bethel, and Bethel stated to Wright that he was going to *McCary's* bar. (Tr. 179-94). Wright told Bethel he could not go to *McCary's* because he was banned because of the prior incident. Bethel told Wright he was going anyway and would tell employees at *McCary's* it was his twin brother who committed the prior incident in order to get in the bar. (Tr. 179-94). Bethel then had his 2 friends drive him to *McCary's* where he approached the front door alone and looked inside to see if Assistant Manager Ross was present. When he did not see Ross, he immediately entered the bar and so did his 2 friends who followed. Bethel was then confronted by patrons and staff who informed him he would have to leave because he was banned because of the prior incident. An argument ensued. The tussle between Bethel and Miller then ensued where the bartender Jenkins was able to pull Bethel away from Miller and push Bethel out of the bar with help from others. Once the door closed, within seconds, Bethel fired 7 shots through the front door killing 2 and severely wounding 2 others. Judge Newman did not abuse his discretion in admitting this testimony as its probative value in the case was not substantially outweighed by the danger of unfair prejudice to Bethel because the prior incident and its details established the *res gestae* of the crime, Bethel's malice toward *McCary's* and anyone associated with *McCary's* including employees and patrons, prior difficulties between the parties, malice, intent, and showing Bethel was the aggressor, and Bethel's intent when he fired back into the club indiscriminately was malicious and his motive was retribution for being ejected from the bar, not self-defense. There is no merit to this appellate ground. Judge Newman must be affirmed.

Harmless error

Even assuming *arguendo* error in admitting any of the prior incident, it was harmless and

could not have affected the verdict. “Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.” State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006); This Court will not set aside a conviction for an insubstantial error not affecting the result when guilt is conclusively proven by competent evidence and no other rational conclusion could be reached. State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995); State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

The admission of any of the details of the prior incident was harmless. There was overwhelming un-objected to evidence Bethel was banned from *McCary's* because of something he did in a prior incident. (Tr. 71, ll. 21-24; 72; 74, 76-77; 88-89, 102, ll. 3-6). There was overwhelming evidence of Bethel's guilt including video surveillance footage of all of the crimes he committed and what occurred inside and outside *McCary's* at the time of the incident down to the second (**State's Ex. 4; State's Ex. 65; State's Ex. 3; Tr. 63-66; 231-47**), along with eyewitness' testimony of the bartender and surviving victim Jenkins (**Tr. 67-98**); the cook and surviving victim Martin (**99-111**); and, patron Amiracle Wright (**Tr. 179-94**). Further, ballistics showed Bethel fired a semi-automatic pistol 12 times indiscriminately into a crowded bar killing 2 and severely wounding 2 others. (Tr. 195-208; 208-15; 223-230; 167-78). Finally, identity was not an issue as Bethel admitted he was the shooter. State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004), *affirmed*, 373 S.C. 601, 646 S.E.2d 872 (2007)(Although trial judge erred in not limiting the amount of the evidence presented as to bad acts, such error was harmless, where other evidence established defendant's guilt beyond a reasonable doubt). As a result of the overwhelming evidence of Bethel's guilt, any error in the admission of the challenged evidence was harmless beyond a reasonable doubt on this record. State v. Brown, 424 S.C. 479, 493, 818 S.E.2d 735, 743 (2018)(“Where ‘guilt has been conclusively proven by competent evidence such

that no other rational conclusion can be reached,’ an insubstantial error that does not affect the result of the trial is considered harmless.’”) (quoting State v. Byers, 392 S.C. 438, 447, 710 S.E.2d 55, 60 (2011)).

CONCLUSION

For the above stated reasons, Bethel’s convictions and sentences for 2 counts of murder, 2 counts of attempted murder, and possession of a weapon during the commission of a violent crime must be affirmed.

Respectfully submitted,

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By: s/ J. Anthony Mabry

J. ANTHONY MABRY
ATTORNEYS FOR RESPONDENT

September 4, 2024
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ERNEST CONDRE BETHEL,

APPELLANT.

Appellate Case No. 2023-000669

PROOF OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to J. Anthony Mabry, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent has been forwarded to Appellant's counsel, Dayne C. Phillips, Esq., and Jamie E. Wilson, via email today, October 23, 2024 to dayne@pricebenowitz.com and to jwilson@collinsandlacy.com.

I further certify that all parties required by Rule to be served have been served.

This 23rd day of October, 2024.

s/ Donna D'Alessio
Donna D'Alessio, Legal Assistant to
J. Anthony Mabry,
Senior Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Ernest Condre Bethel, Appellant.

Appellate Case No. 2023-000669

Appeal From Richland County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2025-UP-383
Submitted November 20, 2025 – Filed November 26, 2025

AFFIRMED

Justin Martin Kata, of Justin M Kata - Attorney at Law,
LLC, and Dayne C. Phillips, of Price Benowitz LLP,
both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, Senior
Assistant Attorney General J. Anthony Mabry, and
Solicitor Byron E. Gipson, all of Columbia, for
Respondent.

PER CURIAM: Ernest Condre Bethel appeals his convictions for two counts of murder, two counts of attempted murder, and one count of possession of a weapon during the commission of a violent crime; and his aggregate sentence of fifty years' imprisonment. On appeal, Bethel argues the trial court erred in admitting evidence of his prior bad act when the State failed to prove the prior act by clear and convincing evidence, the prior act was not logically relevant to a material fact at issue, and the admission of the prior act caused substantial unfair prejudice. We affirm pursuant to Rule 220(b), SCACR.

We hold the trial court did not abuse its discretion in admitting evidence of Bethel's prior bad act. *See State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *id.* ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); Rule 404(b), SCRE (providing that evidence of the defendant's prior bad acts may be admissible for purposes other than to show the defendant's propensity for the charged offense). At trial, three eyewitnesses indicated that during the prior act—two weeks before the shooting that gave rise to the charged offenses—Bethel engaged in a physical altercation at a bar and ultimately fired a weapon. Therefore, we find the prior act was proven by clear and convincing evidence. *See State v. Stokes*, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009) (stating the defendant's prior bad acts must be shown by clear and convincing evidence when the defendant was not convicted of the prior acts). During the charged offenses, Bethel engaged in a physical altercation and shot four people at the same bar where the prior act occurred. At trial, the State presented evidence that Bethel was banned from the bar due to the prior incident, that he knowingly violated the ban when he arrived at the bar on the night of the charged offenses, and that others in the bar were enforcing the ban at the time of the charged offenses. Bethel testified that during the prior incident, he did not engage in a physical altercation or fire a weapon; and that on the night of the charged offenses, he was unaware of the ban and he shot in self-defense. Therefore, we find the facts of the prior act and its consequences were logically related to a determination of whether Bethel acted in self-defense—particularly, whether he brought on the difficulty—on the night of the charged offenses. *See State v. Beck*, 342 S.C. 129, 135, 536 S.E.2d 679, 682-83 (2000) (stating evidence of prior acts "must logically relate to the crime with which the defendant has been charged"); Rule 401, SCRE (defining relevant evidence as that "having any tendency" to make a material fact more or less likely); *State v. Wiggins*, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998) (recognizing the first element of self-defense requires that "[t]he defendant was without fault in bringing on the difficulty"). Although the

close similarity between the prior act and the charged offenses enhanced the likelihood of prejudice, we find the risk of prejudice did not substantially outweigh the probative value of the prior act regarding Bethel's self-defense theory. *See State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984) ("When . . . the previous alleged bad act is strikingly similar to the one for which the [defendant] is being tried, the danger of prejudice is enhanced."); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . .").

AFFIRMED.¹

MCDONALD, HEWITT, and TURNER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-000669

The State of South Carolina,

Respondent,

v.

Ernest Condre Bethel,

Appellant.

PETITION FOR REHEARING

Counsel for Appellant respectfully petitions for rehearing pursuant to Rule 221(a), SCACR, on the basis that this Court overlooked and misapprehended material facts and principles of law in affirming his convictions and sentences. Specifically, Appellant is requesting that this Court rehear the appeal based on the following reasons:

(1) The witness testimony presented by the State regarding Appellant's alleged involvement in a prior shooting at the same location did not satisfy the clear and convincing evidence standard to admit the prior bad act that did not result from a conviction. The number of witnesses testifying about an alleged event does make that testimony more credible. Gregory Martin admitted that he did *not* see Appellant shoot a gun during the prior incident because he was inside the bar when he heard gunshots. (R. p. 104, lines 1-5). Kerry Ross, who is a bartender and assistant manager at McCary's Bar and Grill, conceded on direct examination that

he was *not* present for the shooting that occurred on August 22, 2019. (R. p. 148, lines 7-11). Ross also claimed that he and Appellant were involved in an *unrelated* physical altercation a few weeks earlier. Amircle Wright admitted that she *never* called the police and did *not* file a police report because her “phone was in the bar on the charger” despite even seeing Appellant *after* the shooting (R. p. 191, lines 11-25; p. 192, lines 1-4). The Prosecutor conceded that he “*couldn’t get the exact date correct*” of when the alleged prior shooting occurred and that there is *no* supporting documentary evidence of the alleged shooting. (R. p. 40 – 42). Notably, this Court did not address whether the Trial Court made any findings regarding those witnesses’ credibility. *See generally State v. Fletcher*, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008) (citation omitted).

(2) The probative value of the prior bad act is substantially outweighed by the danger of unfair prejudice to Appellant because the act is “strikingly similar” to the one for which Appellant was being tried and was not mitigated by Appellant’s theory of self-defense. *See State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984). Wright’s testimony amounted to the epitome of inadmissible propensity evidence: “*I heard gunshots. And I’m thinking he was doing the same thing he did weeks prior, which is shooting in the air... because we already knew what he was going to do due to the last incident.*” (R. p. 186, lines 1-5; p. 188, line 24 – 189, line 1) (emphasis added). Notably, the State presenting evidence that Appellant had been involved in a prior shooting at the same location was not necessary for the State to prove elements of the charged offense or to disprove Appellant’s theory of self-defense. *Cf. Johnson v. State*, 433 S.C. 550, 555, 860 S.E.2d 696, 699 (Ct. App. 2021).

(3) This Court overlooked and misapprehended material facts and principles of law in finding that the Trial Court did not abuse its discretion in admitting evidence of a prior bad act because the State failed to prove the prior act by clear and convincing evidence, the prior act was

not logically relevant to a material fact at issue, and the admission of the prior act caused substantial unfair prejudice. *See* Rules 403 and 404(b), SCRE.

CONCLUSION

Based on the foregoing reasons, the Appellant respectfully requests that this Court grant the Petition for Rehearing.

Respectfully submitted,

s/ Dayne Phillips



Dayne Phillips

S.C. Bar No. 77712

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ATTORNEY FOR APPELLANT

December 9, 2025

RECEIVED

Dec 09 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No. 2023-000669

The State of South Carolina,

Respondent,

v.

Ernest Condre Bethel,

Appellant.

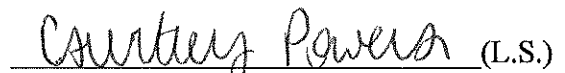
CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Petition for Rehearing has been served upon **J. Anthony Mabry, Esquire**, at S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211, on **December 9, 2025**.



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SUBSCRIBED AND SWORN TO before me
this 9th day of December, 2025.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027

The South Carolina Court of Appeals

The State, Respondent,

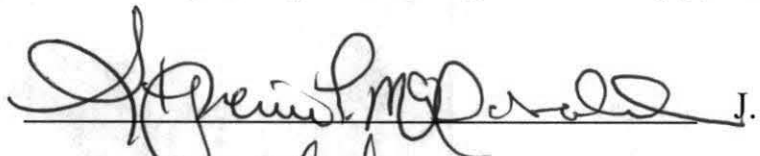
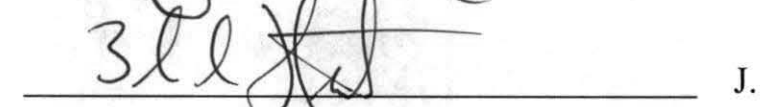
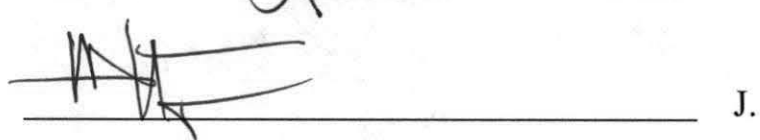
v.

Ernest Condre Bethel, Appellant.

Appellate Case No. 2023-000669

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:

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FILED
Jan 29 2026

App.506

Donald J. Zelenka, Esquire
The Honorable Clifton B. Newman