

STATE OF SOUTH CAROLINA

 ORIGINAL

In The Court of Appeals

APPEAL FROM COLLETON COUNTY

Diane Schafer Goodstein, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MAURIO DAETREL RIVERS,

APPELLANT

APPELLATE CASE NO. 2012-213729

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF COLLETON) IND. NO.: 2011-GS-15-00549
 2011-GS-15-00550
 2011-GS-15-00551

STATE OF SOUTH CAROLINA,)
)
) vs.) TRANSCRIPT OF RECORD
)
 MAURIO DAETREL RIVERS,)
)
) DEFENDANT.)
)

December 12 - 13, 2012

Walterboro, South Carolina

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE..

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None.

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COURT'S EXHIBITS

1. Note from Jury

1 **THE COURT:** Ladies and gentlemen, thank you so much
2 for being here this morning.

3 And at this time I'm going to call on the solicitor
4 to please call your next case for trial this week. Yes,
5 sir?

6 **MR. KNIGHT:** May it please the Court, Your Honor?

7 **THE COURT:** Yes, sir, Mr. Knight.

8 **MR. KNIGHT:** The State is ready in Indictment
9 2011-GS-15-549, an indictment for attempted murder;
10 Indictment 2011-GS-15-550, it's an indictment for
11 attempted murder; Indictment 2011-GS-15-551, possession of
12 a weapon during the commission of a violent offense.

13 These are the original indictments. They have been
14 true billed, and here is a list of proposed witnesses.

15 **THE COURT:** Thank you very much. All right, very
16 well.

17 Ladies and gentlemen, just as we did the other day,
18 in a moment I'm going to be reading to you some of the
19 allegations in the indictments, and as I understand there
20 are three of them. And again, I hasten to tell you that
21 to each one of these indictments that the defendant, who
22 you'll meet in just a moment, has pled not guilty. That
23 plea, of course, places upon the State the burden of
24 proving each and every allegation of each of these
25 indictments beyond a reasonable doubt.

1 Now, ladies and gentlemen, once I have read to you
2 some of the allegations of the indictment, then I'm going
3 to have the opportunity to introduce you to some folks and
4 then ask you some questions, and we will then select our
5 jury for this case.

6 Now, Mr. Bryan, have you had an opportunity to read
7 these indictments?

8 **MR. BRYAN:** Yes, Your Honor.

9 **THE COURT:** Very well, because I just wanted to make
10 sure you had reviewed them. Very well.

11 Ladies and gentlemen, I'm going to be reading to you
12 these indictments. The reason that I'm going to be doing
13 that is to find out whether or not any of you know or
14 think you may know, or have you heard or think you may
15 have heard, anything about these allegations.

16 And I'm going to begin with Indictment
17 2011-GS-15-00550. That reads in part and alleges that in
18 Colleton County, South Carolina, on or about July the
19 12th, 2011, that the defendant, Maurio Daetrel Rivers,
20 with malice aforethought, accompanied by a present ability
21 to complete the act and the intent to kill, either express
22 or implied, did attempt to kill the victim, Deputy J.
23 Eaches, with the Dorchester County Sheriff's Department
24 while on Augusta Highway by shooting at the victim, in
25 violation -- and there's a code section, it's South

1 Carolina Code of Laws, Section 16-3-29 of the South
2 Carolina Code of Laws, 1976, as amended.

3 Ladies and gentlemen, do any of you know or think you
4 may know, or have you heard or think you may have heard,
5 anything about this matter? If so, please stand at this
6 time.

7 **JUROR:** May I approach, please?

8 **THE COURT:** Sure. Absolutely. And if you'll tell me
9 your juror number as you come forward?

10 **JUROR:** Number Fifty-two.

11 **THE COURT:** Thank you. Come on forward.

12 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
13 THE RECORD OUT OF THE HEARING OF THE REMAINING JURY
14 PANEL:)

15 **THE COURT:** And I just need enough volume so our
16 court reporter can hear you.

17 **JUROR:** My husband is a police officer, and he was
18 just involved in a shooting. I don't think -- it's just
19 very difficult.

20 **THE COURT:** Yes, ma'am. That's okay. I see that you
21 are trembling and your voice is trembling, and I got that
22 you're emotional. You don't have to be involved in this
23 case. Okay?

24 And can you do this for me? If you would be so kind
25 as to not discuss this with your fellow jurors? Okay?

1 Thank you.

2 Pat, she's going to sit this one out, Number
3 Fifty-two.

4 **CLERK:** Oh, okay.

5 **THE COURT:** Fifty-two.

6 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
7 THE RECORD IN THE PRESENCE AND HEARING OF THE JURY PANEL:)

8 **THE COURT:** Fifty-two; right? Did I make that up?
9 Fifty-two is your number?

10 **JUROR:** Yes, ma'am.

11 **THE COURT:** Thank you so much.

12 Okay. All right. Now, ladies and gentlemen,
13 Indictment 2011-GS-15-551 alleges that in Colleton County,
14 South Carolina, on or about July the 12th, 2011, that the
15 defendant, Mr. Maurio Daetrel Rivers, did possess a
16 handgun or visibly displayed what appeared to be a handgun
17 during the commission or attempted commission of attempted
18 murder, a violent crime, in violation -- and there's a
19 section that's alleged, Section 16-23-490 of the South
20 Carolina Code of Laws, 1976, as amended.

21 Ladies and gentlemen, do any of you know or think you
22 may know, or have you heard or think you may heard,
23 anything about these allegations? If so, please stand at
24 this time.

25 (NO RESPONSE.)

1 **THE COURT:** And I find no one standing.

2 Now, ladies and gentlemen, Indictment 2011-GS-15-549
3 alleges in part that in Colleton County, South Carolina,
4 on or about July the 12th, 2011, that the defendant, Mr.
5 Maurio Daetrel Rivers, with malice aforethought,
6 accompanied by a present ability to complete the act and
7 the intent to kill either express or implied, did attempt
8 to kill the victim, Deputy J. Burnette -- or Burnette,
9 with the Dorchester County Sheriff's Department while on
10 Augusta Highway by shooting at the victim, in violation of
11 the South Carolina Code of Laws 16-3-29, of the South
12 Carolina Code of Laws, 1976, as amended.

13 Ladies and gentlemen, do any of you know or think you
14 may know, or have you heard or think you may have heard,
15 to include today anything about these allegations? If so,
16 please stand at this time.

17 (NO RESPONSE.)

18 **THE COURT:** And I find no one standing.

19 And again, let me repeat, ladies and gentlemen, Mr.
20 Rivers denies each and every one of these allegations
21 contained in each one of these indictments. That places
22 upon the State the burden to prove each and every
23 allegation beyond a reasonable doubt. And of course,
24 we'll have an opportunity to talk about that much more,
25 those of you who serve on this jury.

1 (WHEREUPON, THE JURY WAS DULY SWORN.)

2 CLERK: Thank you. You may be seated.

3 THE COURT: Okay. Was there anyone who failed to
4 take the oath? If so, please stand.

5 Okay. I find no one standing.

6 Now, ladies and gentlemen, I have a few preliminary
7 matters that I want to go over with you, and the reason
8 that I'm going to be doing this is that I think an
9 explanation at each juncture just makes it easier for you
10 to follow what is actually happening and what is to
11 happen. So that's the reason that I'm doing this.

12 I do want to mention though that -- Dr. Breland;
13 right?

14 FOREPERSON: Yes, ma'am.

15 THE COURT: Dr. Breland, you are our presiding juror,
16 and you know all about that. You didn't get to be the
17 presiding juror, because the matter was resolved; however,
18 you know what the presiding juror's duties are. Thank you
19 again for serving as our presiding juror.

20 Now, Ms. Whitman, you are our alternate. I'm going
21 to ask you to keep this seat or one of those other two
22 seats. You have three seats on this jury, but I'm going
23 to ask you to keep one of those three so I can keep up
24 with you as our alternate. And I promise it's not so we
25 know where to put the whoopy cushion. It's really so that

1 I can keep up with you as our alternate.

2 And that's the assignment of the seating. That's the
3 end of that.

4 Now, the rest of you, if you find a seat that you
5 like, keep it. If not, get here early. Get another seat.

6 There isn't any other assigned seating, but I do need
7 to keep up with our alternate and our presiding juror.

8 Now, ladies and gentlemen, before we begin this
9 trial, I'm going to tell you that this trial probably will
10 be different from what you may expect. Many people do not
11 have the chance to attend actual court sessions, as you're
12 now doing. And many, from watching television or movies
13 or reading books, think that trials are always full of
14 high drama, intense action, and riveting circumstances.

15 While all of these things may be true at times, this
16 trial is not for entertainment. It is a fundamental part,
17 maybe the fundamental part, of our democracy, a search for
18 the truth in an effort to be sure that justice is done
19 between the parties before the Court.

20 Searching for the truth and making sure that justice
21 is done is often slow, deliberate, and repetitive, the
22 opposite of what you may have seen on television or in the
23 movies or read in books. This courtroom, alas, this
24 courthouse, is a place of honor, dedicated to the
25 protection and the preservation of citizens's rights,

1 through what many have called the greatest system of
2 justice that people have ever created.

3 Ladies and gentlemen, the attorneys who are appearing
4 before you, they are advocates for the parties they
5 represent, but first and foremost, they are officers of
6 the Court. You should expect them to be ethical and
7 professional and competent. They are sworn as officers of
8 the Court to uphold the integrity and the fairness of our
9 judicial system and to help you in the search for the
10 truth.

11 Ladies and gentlemen, you have now taken an oath, and
12 you are the jury in this case. And you have taken this
13 oath to try this case and to reach a fair and just
14 verdict. And you are also expected to be professional,
15 reasonable, and ethical.

16 I want to thank you for accepting the important
17 responsibility of jury service and for your contribution,
18 your essential, your critical, contribution today to our
19 justice system.

20 Now, ladies and gentlemen, -- excuse me. The case
21 that we are about to try is the case of the State versus
22 Mr. Mauricio Daetrel Rivers.

23 What I am about to say to you is intended to serve as
24 an introduction to the trial of this case. These remarks
25 are not a charge on the law in this case. I will instruct

1 you on the law applicable to this case at the end of the
2 trial before you retire to consider your verdict. This is
3 merely an explanation of the procedure that we will follow
4 in the trial of this case, so that you may better
5 understand what is happening.

6 Ladies and gentlemen, Mr. Rivers has been accused of
7 three charges, and he has pled not guilty to each and
8 every one of these charges. The State, therefore, has the
9 burden of proving each of the elements of each of these
10 charges beyond a reasonable doubt. And it will be your
11 duty, ladies and gentlemen, to decide whether the State
12 has met that burden.

13 Your purpose as jurors is to find and to determine
14 the facts. You are the sole, the only, judges of the
15 facts. If at any time I make any comment regarding the
16 facts, I ask you in advance, please disregard that,
17 because I have no opinion regarding the facts. The law
18 doesn't allow me to have an opinion regarding the facts.

19 You are to determine the facts from the sworn
20 testimony that you hear and from other evidence which is
21 introduced into court. It is up to you to determine the
22 inferences which you feel may competently be drawn from
23 the evidence. It is especially important that you perform
24 your duty of determining the facts diligently and
25 conscientiously, because ordinarily there is no way to

1 correct an erroneous determination of the facts by a trial
2 jury.

3 On the other hand, and with equal emphasis, the same
4 law that makes you the judges of the facts makes me the
5 judge of the law. The law as given to you by the Court is
6 the only law that you may consider. You must accept and
7 follow it, even though you may disagree with it.

8 I cannot tell you what the facts are, and you cannot
9 disagree with me about what the law is or what it should
10 be. Maybe that would be a great discussion between you
11 and your legislature at some point in the future, but for
12 our system to work correctly, you must accept and apply
13 the law as I give it to you.

14 Ladies and gentlemen, your job is to find the facts
15 as you find them to be, based on the evidence in this case
16 and you will then take the law and apply it to those
17 facts, and that is how you will reach your verdict, which
18 will then be a true and just verdict under the solemn oath
19 that you just took as jurors.

20 Now, until I advise you to begin your deliberations,
21 you must not discuss this case with anyone, including your
22 fellow jurors, friends, family members, and anyone
23 involved in the case. After the case is submitted to you,
24 you must discuss it only in your jury room with your
25 fellow jurors.

1 The attorneys and the parties in this case have been
2 advised and they know that they are not to talk to you at
3 all. So, if you happen to see anyone involved in this
4 case and they don't even say hello, please know that they
5 are not being rude. They are simply following my
6 instructions.

7 It is important, ladies and gentlemen, that you keep
8 an open mind and that you not decide any issue in this
9 case until all of the evidence has been presented, the
10 parties have made their closing arguments, and I have
11 instructed you regarding the law applicable to this case.

12 It is your solemn responsibility to determine whether
13 the defendant, whether Mr. Rivers, is guilty or not
14 guilty, and your verdict must be based solely on the
15 evidence as it is presented to you in this trial and on
16 the law as I instruct you during and at the close of the
17 trial.

18 Now in just a moment the State will make what is
19 called an opening statement to you. And in that opening
20 statement, Mr. Knight will discuss with you what he
21 maintains the issues are in this case.

22 And, ladies and gentlemen, after he has had an
23 opportunity to make his opening statement, then Mr. Bryan
24 will have his opportunity to make an opening statement to
25 you and talk to you about what he believes the issues are

1 in this case.

2 Now, ladies and gentlemen, once you have heard the
3 opening statements, you will then hear the evidence in
4 this case, with the State going first.

5 Now, ladies and gentlemen, the evidence may be many
6 different things. It will be, no doubt, sworn testimony,
7 and it may be photographs and the like. You should pay
8 close attention to all of the evidence that is presented
9 in this case.

10 Now, ladies and gentlemen, in determining what the
11 true facts are in this case, you must decide whether or
12 not the testimony of the witnesses is believable. You
13 will make that determination, obviously, with regards to
14 each witness. That is determining the credibility, which
15 simply means the believability of each witness.

16 It will be my responsibility to rule as a matter of
17 law as to whether certain testimony is admissible at all
18 or not. But once testimony is admitted, whether or not
19 you believe it, that is a matter solely for you to
20 determine.

21 In deciding whether to believe a witness, you have
22 the right to consider the interest of any witness, the bias
23 of any witness, the prejudice of any witness, the
24 opportunity for the witness to have seen the matters and
25 the things about which the witness may testify, and of

1 course, the way the witness acts on the witness stand.

2 You have a right to consider anything that is in the
3 record that will help you evaluate the testimony of the
4 witnesses. That means it is your duty to pay close
5 attention to these witnesses, observe them, listen to
6 them, and pay close attention to the attorneys and to the
7 Court. Please do not let your thoughts wonder, but give
8 the strictest attention to the testimony in this case, so
9 that at the end of all of the testimony and the arguments
10 of counsel and the charge on the law by the Court, you
11 will then be in a position to determine what the true
12 facts are and to apply the law to both sides and thus
13 render your true and just verdict.

14 Now, ladies and gentlemen, once all of the evidence
15 is presented to you, the attorneys will have an
16 opportunity to make their closing arguments to you. Those
17 are true arguments, and that means that these lawyers, no
18 doubt, will emphasize certain portions and try to get you
19 to agree with their versions of the facts.

20 Ladies and gentlemen, finally, I want to talk to you
21 about the rules of evidence. You are learning that a
22 trial is a structured activity, and in sports, business,
23 or any other structured activity, there are certain rules
24 that both sides must obey when presenting evidence. They
25 are called, believe it or not, the Rules of Evidence, and

1 they have a definite purpose.

2 Their purpose is to ensure that the information that
3 you receive is the most trustworthy and reliable
4 information that is available. Ladies and gentlemen, you
5 will hear, no doubt, these attorneys from time to time
6 say: Objection.

7 And that is the means that they are given through our
8 rules to bring a possible violation of the rules of
9 evidence to my attention to judge this trial. Ladies and
10 gentlemen, because that is their only process, their only
11 means of doing that, you must not hold an attorney's
12 objection against his client, nor should you conclude from
13 my ruling on any objection that I favor one side or the
14 other, because I can assure you, I do not. It is simply
15 our procedure through which, and by which, an attorney can
16 raise a possible violation of the rules of evidence to my
17 attention.

18 Now, let me tell you how I will handle those
19 objections. Ladies and gentlemen, oftentimes the lawyers
20 will simply stand, and they will say: Objection.

21 And they may say a word or two: There's an objection
22 for hearsay, for example.

23 What they mean by that -- and I'll be able to rule on
24 it. You may hear me say that the objection is sustained,
25 which means that the objection was made and that there is

1 a violation of the rules of evidence, and that piece of
2 evidence cannot be received or received in that form and
3 that the objection was a proper objection.

4 You may hear me say: Overruled.

5 If I overrule an objection, that means that I have
6 made a determination that there is not a violation of the
7 Rules of Evidence and that piece of evidence may be
8 received.

9 Now, ladies and gentlemen, you may also from time to
10 time have seen me have the attorneys approach, and there
11 may be times where I will need to ask you to step to your
12 jury room while I hear a matter outside your presence. If
13 I ask for the attorneys to approach, or if I ask you to
14 step to your jury room, what is happening is that I need
15 to have a discussion with the attorneys to allow me to
16 make the ruling, and I wouldn't want anything that I might
17 say in ruling on the admissibility of evidence to be
18 considered by you as a comment on the facts. So that's
19 the reason that I'll either ask them to approach or ask
20 you to step to your jury room, is so that I might have a
21 word outside your presence and not be considered by you as
22 making a comment on the facts.

23 Now, ladies and gentlemen, in order to preserve
24 everyone's rights, I want to give the parties an
25 opportunity to object to anything that I have told you to

1 this point.

2 Any objection on behalf of the State?

3 **MR. KNIGHT:** Not from the State, Your Honor.

4 **THE COURT:** From the defense?

5 **MR. BRYAN:** No, Your Honor.

6 **THE COURT:** Very well.

7 Now, oftentimes jurors want to know about the taking
8 of notes, the taking of notes. Ladies and gentlemen,
9 there is an ongoing debate about taking notes, and it goes
10 like this. There can be a worry that as a juror takes a
11 note that they can miss something as it is coming from the
12 witness stand. The other concern about the taking of
13 notes is that if one juror has a note and another juror
14 doesn't have a note, it can be an undue amount of
15 influence placed upon the note.

16 Well, ladies and gentlemen, as a policy matter, let
17 me talk to you about my feeling about notes and what has
18 become my policy regarding notes. When cases are expected
19 to be of relatively short duration, then I ask jurors to
20 pay the closest of attention and not take notes. When
21 trials are expected to be of long duration, then I provide
22 for jurors the ability to take notes.

23 Now, this trial is expected to be of relatively short
24 duration. For that reason, I'm going to ask you to please
25 pay the closest of attention and not take notes.

1 Now, I've commented on the anticipated duration of
2 this trial, but I want you to know that I in no way demean
3 the importance of it. This trial is of the utmost
4 importance to the State, to Mr. Rivers, and to our system.
5 I just made the comment regarding the duration, because I
6 didn't want you to be worried about my decision not to
7 allow you to take notes.

8 Now, ladies and gentlemen, at this time I ask that
9 you please draw close as we listen to the opening
10 statements.

11 Mr. Knight?

12 **MR. KNIGHT:** May it please the Court, Your Honor?

13 **THE COURT:** Yes, sir.

14 **MR. KNIGHT:** Madam Forelady, ladies and gentlemen of
15 the jury, the issues in this case surround what the judge
16 at the end of the trial will charge you, is a person with
17 intent to kill attempts to kill another person with malice
18 aforethought, either implied or expressed commits that
19 offense or attempts to, attempted murder.

20 Now, the testimony you're going to hear basically is
21 this. On July the 12th of 2011 at around 7:00 o'clock in
22 the evening, Justin Eaches with the Dorchester County
23 Sheriff's Department was working on I-95. He observed a
24 black automobile violating a traffic statute.

25 He then proceeded to go after that black automobile.

1 I think it was an Acura. And he thought the vehicle was
2 going to stop, and then the vehicle took off going down 95
3 at speeds up to one hundred miles an hour, I think the
4 testimony is going to be. That's in Dorchester County.

5 It got off at I think Exit 68. It went down Augusta
6 Highway, I call it Highway 61, at speeds of ninety to a
7 hundred miles an hour, going all over the road.

8 Finally, another deputy, Joe Burnette, had to take
9 over the chase because Mr. Eaches had a vehicle problem.
10 And Lieutenant Burnette, Joe Burnette, saw some movement
11 by a passenger in said vehicle. The next thing he knows,
12 a person comes out of the sunroof and shoots at him and
13 hits the vehicle.

14 He has to force the vehicle off the road. It spins
15 and flips over. Before it flips over, there's some
16 additional shots fired. So that's the long and short of
17 what you're going to hear.

18 You'll see some videos, some audios. And that's the
19 case.

20 And, you know, Her Honor referred to it as it may be
21 a short trial. The length or the shortness of a trial
22 makes no difference. It is important to the State of
23 South Carolina and to the defendant that you listen to
24 each witness, observe the evidence that is submitted into
25 evidence, because you took an oath from Mrs. Grant that

1 you would truly try the case between the State of South
2 Carolina and the defendant.

3 Part of that oath is this. You will look, you will
4 listen, and you will remember, because at the end of this
5 trial, I'm going to ask you to return a guilty verdict on
6 two counts of attempted murder and one count of possession
7 of a weapon during the commission of a violent offense.
8 Thank you.

9 **THE COURT:** Thank you.

10 Mr. Bryan?

11 **MR. BRYAN:** Thank you, Your Honor.

12 I represent Mr. Rivers. He's charged with a very
13 serious crime, and I would just like you to keep in mind
14 that the State does have to prove this case beyond a
15 reasonable doubt.

16 A reasonable doubt is the kind of doubt to cause a
17 reasonable person to hesitate to act. It's not like a
18 civil trial, which is a lawsuit between two people where
19 it's whoever you believe the most.

20 It's an important distinction. It's a distinction
21 that's existed in our law for hundreds of years. It's a
22 protection we all have.

23 I'm going to ask you to do something which might
24 sound strange, but I'm going to ask you to pay close
25 attention to what the witnesses say in this trial and very

1 close attention to the videos and all the evidence in this
2 trial. And you'll see that they are just jumping to
3 conclusions and that Mr. Rivers didn't try to kill
4 anybody. Thank you for your time.

5 **THE COURT:** Thank you.

6 All right, Mr. Knight, please call your first
7 witness.

8 **MR. KNIGHT:** Justin Eaches.

9 **CLERK:** Please come forward and be sworn. Place your
10 left hand on the Bible and raise your right.

11 JUSTIN M. EACHES, after being duly sworn,
12 testified as follows:

13 **CLERK:** Please have a seat on the witness stand and
14 state your name after you're seated. I'm sure you need to
15 adjust the mic.

16 **WITNESS:** Yes, ma'am.

17 **THE COURT:** Please state your full name and spell
18 your name for our court reporter.

19 **WITNESS:** Justin Michael, and the last name is
20 Eaches, E-A-C-H-E-S.

21 DIRECT EXAMINATION

22 BY MR. KNIGHT:

23 Q May I call you Justin?

24 A Yes, sir.

25 Q Justin, who are you employed with?

1 **A** Dorchester County Sheriff's Office.

2 **Q** How long have you been employed with the Dorchester
3 County Sheriff's Office?

4 **A** Since 2001.

5 **Q** What's your training and experience with law
6 enforcement?

7 **A** Currently right now I'm assigned to the Interstate
8 Criminal Enforcement Unit, and also the K-9 Unit, and
9 Patrol Division.

10 **Q** Were you on duty on or about July the 12th of 2011?

11 **A** Yes, I was.

12 **Q** What area of Dorchester County were you working?

13 **A** I was at Interstate 95 Southbound at the 74 Mile
14 Marker.

15 **Q** Were you in a stationary position, or were you going
16 up and down the road?

17 **A** I was in a stationary position in the median.

18 **Q** In the median. At about 7:00 o'clock, what, if
19 anything, did you observe?

20 **A** I observed a black vehicle traveling southbound on
21 Interstate 95. As the vehicle was approaching, it entered
22 into -- partially into the emergency lane from the number
23 two lane, and then all the way over into the number one
24 lane, failing to use a turn signal.

25 **Q** And as a result of that, what did you do?

1 **A** I exited the median where I was stationary. I
2 attempted to stop the vehicle.

3 First what I attempt to do, due to traffic conditions
4 if they're clear, pull along side the vehicle, make sure
5 the occupants are wearing their seatbelt, try to identify
6 if -- how many occupants are in the vehicle and a
7 description and to make sure no children are in the
8 vehicle.

9 **Q** Did you do that on this occasion?

10 **A** Yes.

11 **Q** Describe to the jury how you identified who the
12 driver was.

13 **A** I pulled along side the vehicle, checked to see how
14 many occupants were inside the vehicle, again to see if
15 they had seatbelts on and to see if children were present
16 in the vehicle. What I was able to determine was there
17 was two males in the vehicle, both black males. One had
18 short twists in his hair, which was the passenger. The
19 driver had his hair pulled into a -- some type of pony
20 tail.

21 **Q** Were you able to identify who the driver was?

22 **A** Yes.

23 **Q** And who was the driver?

24 **A** The defendant.

25 **Q** Mr. Mauricio Rivers?

1 **A** Yes.

2 **Q** Okay.

3 (WHEREUPON, State's Exhibit No. 10 was marked for
4 identification only.)

5 **Q** I show you what's been marked for identification as
6 State's Exhibit Number Ten. Do you recognize that, sir?

7 **A** Yes.

8 **Q** Okay, sir. Describe to the jury what that is,
9 State's Exhibit Number Ten is.

10 **A** That is a picture of Mr. Rivers.

11 **Q** And it was taken on July the 12th, 2011?

12 **A** Yes.

13 **MR. KNIGHT:** At this time, Your Honor, the State
14 would move State's Exhibit Number Ten into evidence.

15 **THE COURT:** Any objection?

16 **MR. BRYAN:** No, Your Honor.

17 **THE COURT:** Very well. State's Exhibit One(sic.) in
18 evidence without objection. It is a photograph.

19 (WHEREUPON, State's Exhibit No. 10 was admitted into
20 evidence.)

21 **Q** Did you pursue after this vehicle?

22 **A** Yes, I did.

23 **Q** And what type of vehicle was it?

24 **A** It was a black Acura. At the time, it looked like a
25 new model Lincoln.

1 Q Okay.

2 (WHEREUPON, State's Exhibit No. 1 was marked for
3 identification only.)

4 Q I ask you if you can identify what's been previously
5 marked as State's Exhibit Number One?

6 A That would be the black Acura.

7 MR. BRYAN: No objection.

8 MR. KNIGHT: The State would move State's Exhibit
9 Number One into evidence.

10 THE COURT: I thought we did -- I -- what was the
11 other one?

12 COURT REPORTER: Number Ten, Your Honor.

13 MR. KNIGHT: Number Ten.

14 THE COURT: That was Number Ten.

15 Number One is in evidence, without objection.

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

18 Q State's Exhibit Number One, that's the black car you
19 followed?

20 A Yes.

21 MR. KNIGHT: May I publish to the jury, Your Honor?

22 THE COURT: You may.

23 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE WAS PUBLISHED
24 TO THE JURY.)

25 Q Did you activate your blue light and siren?

1 A Yes, I did.

2 Q And how far did you follow the vehicle?

3 A First, I activated my lights and I was behind the
4 vehicle. The vehicle ended up moving into the emergency
5 lane using his turn signal at that point. It continued in
6 the emergency lane at a constant speed, and then it ended
7 up changing lanes in an erratic manner, and then I
8 activated my siren.

9 Q And at what speed was that black Acura, which is
10 shown in State's Exhibit Number One, I believe? What was
11 the speed of that vehicle?

12 A At what point?

13 Q On I-95 in Dorchester County?

14 A After it moved out of the emergency lane back into
15 the lane of traffic, we got up to speeds of over a hundred
16 miles an hour.

17 Q Okay. And what exit did you come into Colleton
18 County on?

19 A At Colleton County, there is a bridge right before
20 the exit that says: Welcome to Colleton County.

21 And it was at that point there where we entered
22 Colleton County.

23 Q Okay. Did you seek assistance of any other deputy in
24 the chase of this black Acura?

25 A Yes. Before we entered into Colleton County, I had a

1 -- it was at the time a spare vehicle, which was from
2 another deputy who got a new vehicle, because mine was in
3 the shop. It was a Crown Vic, an older model Crown Vic.
4 So at that speeds, the car wasn't in great condition, so I
5 advised my lieutenant to go around me and take over the
6 pursuit.

7 Q And your lieutenant was who, sir?

8 A Lieutenant Burnette.

9 Q That's Lieutenant Joe Burnette?

10 A Yes, sir.

11 Q And he took over the pursuit?

12 A Yes, sir.

13 Q Would he be described as Car Number One in the
14 pursuit?

15 A At that point when he took over, yes, sir.

16 Q And what would you describe your car in the pursuit?

17 A Car Number Two.

18 Q Car Number Two.

19 (WHEREUPON, State's Exhibit No. 11 was marked for
20 identification only.)

21 Q I show you what's previously been marked as State's
22 Exhibit Number Eleven and ask you if you can identify
23 this, sir?

24 A That's going to be the in-camera video and audio, a
25 CD.

1 Q How do you know -- how do you know it's yours?

2 A It has my initials and name.

3 MR. BRYAN: No objection.

4 THE COURT: Very well.

5 MR. KNIGHT: The State would move State's Exhibit
6 Number Eleven into evidence.

7 THE COURT: Without objection.

8 (WHEREUPON, State's Exhibit No. 11 was admitted into
9 evidence.)

10 MR. KNIGHT: I'd like to publish it to the jury, Your
11 Honor.

12 THE COURT: Very well.

13 MR. KNIGHT: I would also ask the Court to allow Mrs.
14 Stallings, my investigator, to assist me because I can't
15 operate this computer.

16 THE COURT: Okay.

17 (WHEREUPON, STATE'S EXHIBIT NUMBER 11 WAS PUBLISHED
18 TO THE JURY.)

19 MR. KNIGHT: We'll stop it at this point, Your Honor.

20 THE COURT: Okay. Why don't you go ahead and blank
21 the screen?

22 MR. KNIGHT: Ma'am?

23 THE COURT: Go ahead and blank the screen.

24 MR. KNIGHT: Oh, I'm sorry.

25 THE COURT: Just because it's a distraction.

1 Thank you. Perfect. Thank you. All right.

2 Q You got out of your vehicle when the black car turned
3 over?

4 A Yes, sir.

5 Q What did you do?

6 A I attempted to pursue the subject with Lieutenant
7 Burnette, as Corporal Knight was right with me. As I
8 looked back, making sure that the vehicle that was upside
9 down, there was no occupants in it, there was about
10 fifteen people coming out of houses and everything towards
11 our vehicles, so I went back and secured our vehicles, due
12 to us having weapons and dogs in those vehicles.

13 Q Okay. There were two subjects in the pursuit?

14 A Yes.

15 Q What did the subjects do once the car turned over?

16 A They both ran from the vehicle.

17 Q Both ran from the vehicle?

18 A Yes.

19 Q Did you -- at any time did you chase either one of
20 these subjects?

21 A I attempted to go after the first subject that I saw
22 that had the longer hair go to a forty-five degree angle
23 into the woods. The other subject went straight. One
24 went off to the right, and the other one went straight.

25 MR. KNIGHT: If the Court could indulge me one

1 moment?

2 **THE COURT:** All right.

3 **Q** You went back and secured the vehicle, sir?

4 **A** Yes.

5 **Q** Did you observe anything around the vehicle?

6 **A** Yes. When -- when I went to make contact to see if
7 there was anybody else in the vehicle, which there wasn't,
8 there was a firearm just inside the vehicle. The vehicle
9 was upside down. So where the roof and the pillar was,
10 there was a handgun.

11 (WHEREUPON, State's Exhibit No. 7A was marked for
12 identification only.)

13 (WHEREUPON, State's Exhibit No. 7B was marked for
14 identification only.)

15 **Q** I show you what's been previously marked as State's
16 Exhibit Number 7A and 7B and ask you if you can identify
17 this, sir?

18 **A** Yes. That's the handgun I observed.

19 **Q** Do you want to look at 7B, too?

20 **A** That's the same -- same firearm.

21 **Q** Just different angles?

22 **A** Yes, sir.

23 **MR. KNIGHT:** I'd move State's 7A and 7B into
24 evidence, Your Honor.

25 **THE COURT:** Any objection?

1 **MR. BRYAN:** No objection.

2 **THE COURT:** Very well.

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

5 (WHEREUPON, State's Exhibit No. 7B was admitted into
6 evidence.)

7 **Q** And State's 7A and 7B are basically the same weapon.
8 Did you secure that weapon? Did you take the weapon?

9 **A** No.

10 **Q** You just identified it?

11 **A** I left it right where it was.

12 **MR. KNIGHT:** May I publish to the jury, Your Honor,
13 7A and 7B?

14 **THE COURT:** You may.

15 (WHEREUPON, STATE'S EXHIBIT NUMBERS 7A AND 7B WERE
16 PUBLISHED TO THE JURY.)

17 **Q** I show you again State's Exhibit Number One, which is
18 the photo of the black Acura.

19 **A** Yes, sir.

20 **Q** Are the windows tinted?

21 **A** No, sir.

22 **Q** Justin, if you would be so kind to answer any
23 questions Mr. Bryan may have?

24 **A** Yes, sir.

25 **THE COURT:** All right. Cross-examination?

1 **MR. BRYAN:** Thank you, Your Honor.

2 CROSS-EXAMINATION

3 **BY MR. BRYAN:**

4 **Q** Did you assist in the apprehension of Bronson
5 Shelley?

6 **A** I can barely hear you.

7 **Q** Oh, okay.

8 **A** I'm sorry.

9 **Q** I'll come up there. I'm sorry.

10 **A** I'm pretty sure I heard what you asked, but I just
11 want to make sure I heard you correctly.

12 **Q** Did you help in the -- or catch the co -- the other
13 -- the passenger in the car, Shelley Bronson or Bronson
14 Shelley?

15 **A** Yes.

16 **Q** Okay. Did he have a holster in his pocket?

17 **A** Yes.

18 **Q** And you said that when the two got out of the car,
19 one ran straight in the woods and the other cut off in a
20 forty-five degree angle?

21 **A** Correct.

22 **Q** The um -- well, I believe -- I believe that's it.
23 Thank you.

24 **A** Thank you.

25 **THE COURT:** Redirect?

DIRECT EXAMINATION OF FAYTHE GROOMS BY MR. KNIGHT

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1 **MR. KNIGHT:** No, ma'am. May he be excused?

2 **THE COURT:** Any objection?

3 **MR. BRYAN:** No, Your Honor.

4 **THE COURT:** Very well.

5 Call your next witness, please.

6 **MR. KNIGHT:** Faythe Grooms.

7 **THE COURT:** Please come forward to be sworn.

8 **CLERK:** Please place your left hand on the Bible and
9 raise your right.

10 FAYTHE GROOMS, after being duly sworn, testified
11 as follows:

12 **CLERK:** Please have a seat on the witness stand and
13 state your full name for the record.

14 DIRECT EXAMINATION

15 BY MR. KNIGHT:

16 **Q** State your full name, please, ma'am.

17 **A** Faythe Lynn Grooms, G-R-O-O-M-S.

18 **THE COURT:** Thank you.

19 Your witness.

20 You can pull that microphone up maybe up a little
21 bit. Great.

22 You may proceed.

23 **MR. KNIGHT:** Thank you, Your Honor.

24 **Q** Ms. Grooms, who are you employed with?

25 **A** The Dorchester County Sheriff's Office.

1 Q In what capacity?

2 A As a 911 Dispatcher.

3 Q And how long have you been a dispatcher?

4 A With the sheriff's office for five years.

5 Q Okay. Were you working on or about July the 11th of
6 -- no, July the 12th, excuse me, 2011, at about 7:00
7 o'clock?

8 A Yes, sir.

9 Q And you were taking calls like you normally do?

10 A Yes, sir.

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

13 Q Okay. I ask you if you can identify what's been
14 previously marked as State's Exhibit Number Twelve?

15 A Yes, sir. It's a radio transmission CD from the
16 communication center.

17 Q How do you know it's yours?

18 A My initials are on it.

19 MR. BRYAN: I may have an issue regarding this.

20 THE COURT: Okay. Well, let me have you approach.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
22 RECORD OUT OF THE HEARING OF THE JURY PANEL. THEREAFTER,
23 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
24 HEARING OF THE JURY PANEL:)

25 THE COURT: Without objection; is that right?

DIRECT EXAMINATION OF FAYTHE GROOMS BY MR. KNIGHT

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1 **MR. BRYAN:** No objection.

2 **THE COURT:** Very well. With that representation, and
3 this is State's Exhibit ---

4 **MR. KNIGHT:** Number Twelve.

5 **THE COURT:** --- Number Twelve is in evidence, with
6 the representation, ---

7 **MR. KNIGHT:** Yes, ma'am.

8 **THE COURT:** --- it's in without objection.

9 (WHEREUPON, State's Exhibit No. 12 was admitted into
10 evidence.)

11 **MR. KNIGHT:** May we publish?

12 **THE COURT:** You may.

13 **MR. KNIGHT:** Again, with the assistance of Mrs.
14 Stallings?

15 (WHEREUPON, STATE'S EXHIBIT NUMBER TWELVE WAS
16 PUBLISHED TO THE JURY.)

17 **Q** Answer any questions Mr. Bryan may have, please,
18 ma'am.

19 **THE COURT:** Cross-examination?

20 **MR. BRYAN:** No questions, Your Honor.

21 **THE COURT:** Very well.

22 Is this witness free to leave?

23 **MR. KNIGHT:** Please.

24 **MR. BRYAN:** No objection.

25 **THE COURT:** Very well. You are free to go.

1 Call your next witness, please.

2 MR. KNIGHT: Joe Burnette.

3 CLERK: Please come forward to be sworn. Put your
4 left hand on the Bible and raise your right.

5 JOSEPH BURNETTE, II, after being duly sworn,
6 testified as follows:

7 CLERK: Please have a seat on the witness stand and
8 state your name for the record.

9 WITNESS: My name is Joseph Dean Burnette, II,
10 B-U-R-N-E-T-T-E.

11 THE COURT: Your witness.

12 MR. KNIGHT: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. KNIGHT:

15 Q Mr. Burnette, who are you employed with, sir?

16 A Dorchester County Sheriff's Office.

17 Q In what capacity, sir?

18 A I'm a lieutenant over the K-9 Unit and the ICE Unit.

19 Q And how long have you been employed with the
20 Sheriff's Department in Dorchester County?

21 A I've been in for a total of seventeen years, and I've
22 been employed with Dorchester for a total of twelve of
23 those seventeen.

24 Q Okay. Were you working on or about July the 12th of
25 2011?

1 **A** I was.

2 **Q** And what area of Dorchester County were you working,
3 sir?

4 **A** I-95 southbound.

5 **Q** Southbound. Did you have an occasion to receive a
6 call from Justin Eaches?

7 **A** I did.

8 **Q** Approximately around 7:00 o'clock?

9 **A** Yes, sir.

10 **Q** And what request, if any, did he make of you?

11 **A** At the time, he had a vehicle that he was attempting
12 to stop. He notified me and advised me that the vehicle
13 wasn't stopping and asked for my assistance to help him
14 with that.

15 **Q** And you did so?

16 **A** I did. I was -- I actually had pulled up behind
17 another deputy to help him on a traffic stop he was on,
18 and I got called off of that to this.

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

21 **Q** I ask you if you can identify what's been previously
22 marked as State's Exhibit Number Thirteen?

23 **A** This is going to be the video from my in-car. I know
24 that because it's got my initials on it.

25 **MR. BRYAN:** No objection, Your Honor.

1 **THE COURT:** Very well.

2 **MR. KNIGHT:** The State would move State's Exhibit
3 Number Thirteen into evidence, Your Honor.

4 **THE COURT:** Without objection, it's in evidence.
5 (WHEREUPON, State's Exhibit No. 13 was admitted into
6 evidence.)

7 **MR. KNIGHT:** I would like to publish it at this time,
8 Your Honor.

9 **THE COURT:** All right.

10 **MR. KNIGHT:** Again, with the assistance of Mrs.
11 Stalling.

12 **THE COURT:** All right.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTEEN WAS
14 PUBLISHED TO THE JURY.)

15 **MR. KNIGHT:** Your Honor, may Mr. Bryan and I approach
16 before I ask anymore questions?

17 **THE COURT:** Ladies and gentlemen, I need for you to
18 step to your jury room. Do not discuss this matter or
19 allow anyone to discuss it with you. There is a matter
20 that I must take up outside your presence.

21 (DECEMBER 12, 2012, 12:21 P.M., WHEREUPON, THE JURY
22 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
23 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

24 **THE COURT:** Okay. I think they're out. Is the door
25 closed? I can't see.

1 **BAILIFF:** It's closed, Your Honor.

2 **THE COURT:** Okay. Okay. Now.

3 **MR. KNIGHT:** This is not going to the jury.

4 **THE COURT:** That's not the problem.

5 **MR. KNIGHT:** The problem is that after this there's a
6 discussion about ---

7 **THE COURT:** There's a discussion about a stolen car.

8 **COURT REPORTER:** Your Honor, may I request they speak
9 up?

10 **THE COURT:** Yeah. Exactly.

11 **MR. KNIGHT:** I didn't hear that.

12 **THE COURT:** I did.

13 **MR. KNIGHT:** But I know after that, there is.

14 **THE COURT:** No, I heard it. It was at 6.40. There
15 is a discussion on this tape about this vehicle being
16 stolen. Did you know that?

17 **MR. BRYAN:** At 6.40?

18 **THE COURT:** It's around 6.40. Yes. There is a
19 discussion on this tape about the vehicle being stolen.

20 **MR. BRYAN:** Can we replay that, Your Honor?

21 **THE COURT:** Yeah, and maybe it's: Check and see if
22 it's stolen.

23 **MR. KNIGHT:** I know it's ---

24 **THE COURT:** But there is a discussion about this car
25 being stolen. So let's go back and let's put that on the

1 record so we'll know what we're dealing with.

2 MR. KNIGHT: I warned you, because I knew it was
3 coming up later.

4 THE COURT: No, it's already in. There's -- there
5 was a mention of the car -- I don't -- I don't know
6 specifically ---

7 MR. KNIGHT: Okay.

8 THE COURT: --- whether they're asking to check and
9 see if it's stolen.

10 MR. KNIGHT: Right.

11 THE COURT: But the topic is already discussed. It's
12 around 6.40.

13 MR. KNIGHT: Go to 6.38, I guess.

14 THE COURT: Okay. So let's play it back.

15 MRS. STALLINGS: Do you want me to just forward to
16 that section, or go through all of it?

17 THE COURT: This is going to be awful for you. I
18 apologize in advance.

19 MRS. STALLINGS: It's fine.

20 THE COURT: I sort of try to think, okay, how many
21 seconds ago did I hear it? It's somewhere in that
22 vicinity, maybe about 5.50. Queue it up there, and let's
23 see what we've got.

24 (WHEREUPON, A PORTION OF STATE'S EXHIBIT NUMBER
25 THIRTEEN WAS PUBLISHED OUT OF THE PRESENCE OF THE JURY.

1 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
2 RECORD:)

3 **THE COURT:** There it was.

4 **MRS. STALLINGS:** Let me get something back on that
5 tag. Let me know if it's stolen.

6 **THE COURT:** Is that what it is?

7 **MR. KNIGHT:** That was the question.

8 **THE COURT:** Okay. Okay. All I heard was stolen.

9 **MRS. STALLINGS:** And then dispatch does reply.

10 **THE COURT:** Yeah. Go ahead.

11 (WHEREUPON, A PORTION OF STATE'S EXHIBIT NUMBER
12 THIRTEEN WAS PUBLISHED OUT OF THE PRESENCE OF THE JURY.
13 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
14 RECORD:)

15 **MRS. STALLINGS:** It's clear out of Charlotte.

16 **MR. KNIGHT:** The word was: Clear out of Charlotte.

17 **THE COURT:** Keep going and let's see if she says
18 anything else.

19 (WHEREUPON, A PORTION OF STATE'S EXHIBIT NUMBER
20 THIRTEEN WAS PUBLISHED OUT OF THE PRESENCE OF THE JURY.
21 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
22 RECORD:)

23 **MR. KNIGHT:** That's where we stopped it at.

24 (WHEREUPON, THE DVD WAS STOPPED AT 19:09:19.)

25 **THE COURT:** I think that was the extent of it, where

1 there was a request. Originally what I heard was -- I
2 heard the words: Stolen car.

3 And then there was a representation that it was not.
4 It apparently was a request to please just run it to see
5 if it is stolen, but there's no information given. I
6 guess she says it's clear, but I don't know what that
7 means.

8 **MR. KNIGHT:** The point I want to raise, though, Your
9 Honor, is later on, I can tell you because I've listened
10 to this enough, there is a discussion about a stolen
11 vehicle.

12 I think it's State's Exhibit Number Thirteen; right?

13 **COURT REPORTER:** Yes, sir.

14 **MR. KNIGHT:** That at the time it goes to the jury, my
15 recommendation to the Court, and you have discretion ---

16 **THE COURT:** Is not to ---

17 **MR. KNIGHT:** --- not to let it go. If they want to
18 hear it, bring them back in here.

19 **THE COURT:** If they want to hear it, we'll bring them
20 out.

21 **MR. KNIGHT:** I just wanted to get that clear right
22 now.

23 **THE COURT:** Yes. Yes.

24 My concern is satisfied, because it's clear to me
25 that there's just a request, and if there's a response,

1 the response is it's clear in Charlotte, whatever that
2 means. It sounds like it's not stolen. That it's clear
3 in Charlotte doesn't -- doesn't impart any information, so
4 that clears that up.

5 MR. BRYAN: Thank you, Your Honor.

6 THE COURT: Yes, absolutely.

7 Okay. Let's have the jury back.

8 MR. KNIGHT: I knew it was coming.

9 (DECEMBER 12, 2012, 12:31 P.M., WHEREUPON, THE JURY
10 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
11 WERE HELD IN THEIR PRESENCE.)

12 THE COURT: Okay. You may proceed.

13 Q Lieutenant, the video shows you hitting the vehicle,
14 the black Acura flipping over.

15 A Yes, sir.

16 Q Was that you getting out of your vehicle?

17 A It was.

18 Q With your dog?

19 A Yes.

20 Q And what did you do with your dog?

21 A At the time, in situations where people will run from
22 us, you heard me say that I would deploy the K-9. I do
23 that to let other deputies know the intentions of what's
24 going on here.

25 At this point, we only had a vehicle that was fleeing

1 prior to that, so he would be released on only the driver,
2 if he fled the scene. If he did not, the dog would not be
3 used for an apprehension at that point.

4 In this case, after I had been shot at, and that was
5 clearly done by the -- at the time that I saw, was by the
6 passenger. If they both ran, now which ever one I could
7 apprehend, I would.

8 So as I was -- after I had to force them off the road
9 and I come to a stop, I had another -- you could hear it
10 on the video, there's a loud noise. I later determined
11 that it was another gunshot that had come from the car.

12 So I went ahead and exited my car as fast as I could.
13 I got my dog. I got him out with me. I drew down on that
14 vehicle.

15 At the time I really couldn't see anybody from the
16 way the vehicle was flipped over on its roof. So I
17 started approaching. I tried to close a little bit of
18 distance.

19 At that point, I was probably twenty -- about
20 twenty-five yards away. Then I saw a subject run. Then I
21 saw another subject run. At that point, I gave my dog the
22 command to apprehend the subjects. And both of them ran
23 in the same general direction and then veered into the
24 woods.

25 At the time, I had no idea which one was which or who

1 he was chasing. So at that point, after I released him
2 for the apprehension, I was basically playing catch up
3 with him.

4 He did, in fact, apprehend a subject in the woods. I
5 ended up catching up with them and subsequently took the
6 subject into custody with a K-9 apprehension.

7 Q Which subject did you apprehend?

8 A Mr. Rivers.

9 Q That's the defendant here in the courtroom here
10 today?

11 A Yes, it is.

12 Q Were you carrying your service revolver that day?

13 A I was.

14 Q Did you fire it?

15 A I did not.

16 Q Okay. And you said after the car was rolled over and
17 your car was in front of this vehicle that had rolled
18 over?

19 A Yes. I stopped short of where the car had rested on
20 its roof.

21 Q And you heard additional shots?

22 A As I was -- in the video, you can clearly see it.

23 I'll try to explain it to you. As I was coming to a stop,
24 after I forcefully hit them, we were actually still
25 traveling right around ninety miles an hour, so I was

1 trying myself not to wreck. So I focused on trying to
2 control my car. Right just prior to me putting my car
3 into park, ---

4 Q Right.

5 A --- when I came to a stop, is when I heard the loud
6 noise. And as I was putting it in park and turned my head
7 to look, in the windshield you could see right above the
8 -- excuse me, right above the VIN plate that's on all the
9 cars, there was a gunshot, or what I believed to be a
10 gunshot.

11 THE COURT: Here you go.

12 (WHEREUPON, A CUP OF WATER WAS HANDED TO THE
13 WITNESS.)

14 WITNESS: Thank you.

15 Q Earlier in the video and audio, going down 61 and you
16 said you heard gunshots; is that correct?

17 A Yes. I was -- right.

18 Q Then, after the turn over of the vehicle, you heard
19 gunshots again.

20 A Yes.

21 Q Okay.

22 A During -- during the course of the -- during the
23 course of their vehicle going backwards, prior to it
24 flipping over is when I realized that I was being shot at
25 again.

1 Q Okay.

2 (WHEREUPON, State's Exhibit NO. 5 was marked for
3 identification only.)

4 Q I show you what's been marked as State's Exhibit
5 Number Five for identification. Can you identify that,
6 sir?

7 A Yes, sir. That's my car that I was in at the time
8 and this is the suspects' vehicle upside down on its roof.

9 Q Okay.

10 THE COURT: And what number was that?

11 MR. KNIGHT: Five, Your Honor.

12 THE COURT: Five.

13 MR. BRYAN: No objection.

14 MR. KNIGHT: I would move State's Exhibit Number Five
15 into evidence, Your Honor.

16 THE COURT: Any objection?

17 MR. BRYAN: None, Your Honor.

18 THE COURT: All right. State's Exhibit Number Five
19 in evidence without objection.

20 (WHEREUPON, State's Exhibit No. 5 was admitted into
21 evidence.)

22 MR. KNIGHT: May I publish?

23 THE COURT: Yes, you may.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER FIVE WAS PUBLISHED
25 TO THE JURY.)

1 (WHEREUPON, State's Exhibit No. 6A was marked for
2 identification only.)

3 (WHEREUPON, State's Exhibit No. 6B was marked for
4 identification only.)

5 (WHEREUPON, State's Exhibit No. 6C was marked for
6 identification only.)

7 Q I ask you if you can identify State's Exhibit Number
8 6A, 6B, and 6C?

9 A 6A is a frontal -- somewhat of a frontal shot of my
10 vehicle.

11 6B would be a more upclose shot of my vehicle from
12 the driver's side where you can see where the round
13 impacted the windshield.

14 And then 6C is an upclose picture of my bumper where
15 during the first initial shooting, the round hit my bumper
16 right under the grill.

17 MR. KNIGHT: The State would move 6A, 6B, and 6C into
18 evidence, Your Honor.

19 THE COURT: Any objection?

20 MR. BRYAN: No, Your Honor.

21 THE COURT: Very well. Exhibits -- State's Exhibits
22 6A, B, and C in evidence without objection.

23 (WHEREUPON, State's Exhibit No. 6A was admitted into
24 evidence.)
25

1 (WHEREUPON, State's Exhibit No. 6B was admitted into
2 evidence.)

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

5 MR. KNIGHT: With permission of the Court, may he
6 step down?

7 THE COURT: Yes, he may.

8 MR. KNIGHT: I want to publish this to the jury.

9 Q In 6B, Lieutenant Burnette, will you show the jury
10 where the ---

11 THE COURT: You're going to have to ---

12 MR. KNIGHT: You're going to have to stand ---

13 THE COURT: --- what you're going to have to do is
14 you're going to have to do it in three sections.

15 MR. KNIGHT: In parts.

16 WITNESS: Okay.

17 THE COURT: And keep your voice way big.

18 WITNESS: Okay.

19 A Like I said, on 6B, this is on the driver's side from
20 the front of my car where they took an up close picture.
21 This is the round that impacted my windshield, which is
22 near where the VIN plate is, and right directly behind
23 that is where obviously I would be sitting inside the car.
24 This here is our radar unit that's on the inside of the
25 car.

1 **THE COURT:** Now, if you'll show it down on that side?

2 **A** This is a picture of my car from the driver's side up
3 close from the front. This is the windshield. This is
4 where the round impacted the windshield, which is near
5 where the VIN plate is, and then I would sit back in this
6 area. And this is our radar unit right here that we have
7 in the cars.

8 Again, from the front of the car on the driver's
9 side. This is my windshield. This is where the round
10 impacted the windshield of my car where the VIN plate is
11 right in this area, and I sit back in here, and this is
12 our radar unit.

13 **Q** Thank you, sir. Take your seat.

14 Oh, I apologize. Step down again.

15 **THE COURT:** It's like calisthenics.

16 **Q** I show you 6C. Would you explain in sections to the
17 jury what 6C is?

18 **A** This is an even more up close picture of the front of
19 the car. This is the grill. This would be the bumper
20 under the grill, and this would be where during the first
21 shots that were fired the round impacted my bumper, which
22 is actually if this was backed out would be in line from
23 where I was sitting in my car, if that makes sense. This
24 was on the driver's side of the vehicle.

25 This is an up close picture of the front of my car.

1 This is the bumper. This is the grill. I would be
2 sitting back this way, and this is where the round
3 impacted the front of my car the first time I got shot at.

4 Again, this is an up close picture of the bumper of
5 my car. This is the grill. This is the bumper. I would
6 sit back this way. It's on the driver's side, and this is
7 where the round impacted my car from the first volley.

8 Q Thank you, sir. Have a seat, please.

9 Of your own knowledge, do you know whether any deputy
10 sheriffs from the Dorchester County Sheriff's Department
11 used their revolvers or fired them?

12 A Nobody in law enforcement returned fire at that
13 point.

14 Q Thank you, sir. Answer any questions Mr. Bryan may
15 have.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. BRYAN:

19 Q Burnette, you -- do you remember you testified
20 earlier in the trial of the codefendant in this case, Mr.
21 Bronson Shelley?

22 A Yes, sir.

23 Q Okay. And at that time you said you had done the K-9
24 apprehension of the driver?

25 A Right.

1 Q And you were the primary unit in the chase; right?

2 A At that point, yes, sir, I was.

3 Q And do you remember saying that the passenger shot at
4 you?

5 A He did. Yes.

6 Q Okay. And that the passenger looked at you?

7 A Yes, sir.

8 Q Now do you remember Mr. Rivers having any injuries
9 when he was apprehended by the dog?

10 A At the time, no. I didn't know the extent of
11 injuries until later.

12 Q But you had to call EMS.

13 A I always call EMS on a K-9 apprehension.

14 Q And he had serious scrotum injuries from the dog?

15 A I found out later it was, yes.

16 MR. BRYAN: Could we replay part of that, just the
17 ending of the -- let's see ---

18 THE COURT: Certainly, Mr. Bryan. I don't know how
19 to identify it, but hopefully we can get some assistance
20 to do that. You need to help her know what it is that you
21 want to see.

22 MR. BRYAN: I think 19:08:44.

23 MR. KNIGHT: Your Honor, may I approach?

24 THE COURT: Yes, you may.

25 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE

1 RECORD OUT OF THE HEARING OF THE JURY. THEREAFTER, THE
2 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
3 PRESENCE AND HEARING OF THE JURY:)

4 THE COURT: Do you want to do that outside the
5 presence of the jury?

6 MR. BRYAN: Yes, Your Honor.

7 THE COURT: Okay.

8 Ladies and gentlemen, I'm going to ask you to step to
9 your -- you won't be long. Just step to your jury room.
10 Assuming Mr. Dell cooperates. Do not discuss this matter
11 or allow anyone to discuss it with you. We're not going
12 to be long, though.

13 (DECEMBER 12, 2012, 12:45 P.M., WHEREUPON, THE JURY
14 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
15 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

16 MR. KNIGHT: Your Honor, the only issue is Jackie
17 Lawson, who has been working all night, would testify he
18 went to the scene of all the cars, and he would testify
19 that this occurred in Colleton County.

20 THE COURT: Oh, okay. Okay. So lots of people could
21 testify it was in Colleton County, that this occurred in
22 Colleton County. So ---

23 MR. KNIGHT: I'll ask him on redirect.

24 MR. BRYAN: I think almost any of his witnesses could
25 testify they crossed the Edisto River.

1 **THE COURT:** Right. It's where it is. I mean, these
2 guys know where they are.

3 **MR. KNIGHT:** I just like to be sure.

4 (WHEREUPON, A PORTION OF STATE'S EXHIBIT NUMBER
5 THIRTEEN WAS PUBLISHED OUT OF THE PRESENCE OF THE JURY.
6 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
7 RECORD:)

8 **THE COURT:** That's the portion that you would like to
9 replay?

10 **MR. BRYAN:** Yes, Your Honor.

11 **THE COURT:** Got it. The information about the car
12 being stolen is not in there. I did not hear it. Anybody
13 else hear it?

14 (NO RESPONSE.)

15 **THE COURT:** Okay. Now, you can reset it.
16 And we can have the jury back.

17 (DECEMBER 12, 2012, 12:55 P.M., WHEREUPON, THE JURY
18 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
19 WERE HELD IN THEIR PRESENCE.)

20 **THE COURT:** Mr. Bryan, do you want to pose a question
21 before the tape is played, or do you want to play the tape
22 and then pose the question?

23 **MR. BRYAN:** Well, play the tape and then ask the
24 question -- it might be good to ask the question first.

25 **THE COURT:** You want to ask the question first and

1 then play the tape. Okay.

2 Q We're going to replay this between when you tapped
3 the car and when it rolled over and everyone jumped out.
4 Just tell us when you heard that gun fire.

5 A Okay. You want me to point it out as soon as I hear
6 it?

7 Q Yes.

8 THE COURT: You want him to say like: Now.

9 MR. BRYAN: Uh-huh. Yes. Thank you.

10 THE COURT: Okay. Okay.

11 (WHEREUPON, A PORTION [19:08:29 TO 19:09:05] OF
12 STATE'S EXHIBIT NUMBER THIRTEEN WAS PUBLISHED TO THE
13 JURY.)

14 A Now.

15 Q Okay. You heard it about the time the back of the
16 car hit that bush or whatever it was?

17 A I think it was right around that time, yes.

18 Q Okay. And at the time, were the windows rolled down
19 in that car or were they up?

20 A I don't recall if they were or not.

21 Q We can replay that part. That might help.

22 A I know the sunroof was open.

23 Q Okay. Was there anyone in that video sticking their
24 head out the sunroof or sticking anything out that
25 sunroof?

- 1 **A** At this point right here?
- 2 **Q** Yes.
- 3 **A** No.
- 4 **Q** Now you remember when you testified earlier at the
5 trial of Bronson Shelley you said there was one shooter?
- 6 **A** There was one person I saw shoot, yes.
- 7 **Q** Okay.
- 8 **A** There was two volleys of shooting, though.
- 9 **Q** Okay.
- 10 **A** At separate times.
- 11 **Q** The pop, pop, pop, and then just before -- and then
12 that loud bang just as the car is ---
- 13 **A** Correct.
- 14 **Q** --- about to flip over?
- 15 **A** Correct.
- 16 **Q** Okay. And you think that loud bang could have been
17 caused by the car hitting something?
- 18 **A** Oh, no. That was -- that was a gunshot.
- 19 **Q** And a car spinning around at ninety miles an hour, do
20 you think it might sling some gravel?
- 21 **A** They were in grass. I don't know if there was gravel
22 over there or not.
- 23 **Q** Well, there's gravel on the road -- is there gravel
24 on the road?
- 25 **A** I'm sure some roads have gravel.

1 Q And some have gravel by the road where it comes
2 loose?

3 A I would imagine so, yeah.

4 Q Okay.

5 A The only thing was, at this point, by the time I
6 heard that loud bang, that car was already into the grass
7 traveling backwards. It had already been traveling for a
8 little distance backwards.

9 Once he spun around and came off the road, it was
10 actually going backwards like this before it made it to
11 the little tree or whatever it was before it rolled over.
12 So at that point, what I'm getting at, there was nothing
13 -- there's no friction.

14 I understand what you're saying as far as it's
15 turning it could kick stuff up, but at that point there
16 where I heard the gunshot or the round hit my windshield,
17 I didn't actually hear the gunshot, the car was actually
18 traveling in a manner where it's going backwards this way
19 on probably -- I would say they were at least twenty feet
20 off the side of the road.

21 Q Okay. Can I look at that photograph really quick?
22 What -- what's your windshield made out of?

23 A Safety glass.

24 Q Just ordinary car windshield?

25 A I would imagine so.

1 Q Okay. Do you see a bullet hole? Point the bullet
2 hole out to this jury, please.

3 A You can see the indentation, but the hole didn't -- it
4 wasn't all the way through. You can see where it hit and
5 pushed it in, but it didn't penetrate through.

6 Q So you're saying the windshield deflected the bullet?
7 Am I correct? Is that what you're saying?

8 A What do you mean deflected it?

9 Q Did the bullet go through the windshield?

10 A It did not go through the windshield, that I can
11 tell.

12 Q Didn't ---

13 A It had also traveled through another windshield prior
14 to getting to my windshield, so it loses a lot of velocity
15 at that point.

16 Q What's the range you're saying?

17 A I don't -- I don't understand what you're asking.
18 The range?

19 Q Well, you were there and you saw the video, and
20 you're saying that someone was shooting at you through the
21 car window, through the windshield at you.

22 A Right.

23 Q How far are we talking? Thirty feet? Forty feet?

24 A I would say, oh goodness, probably at that point
25 maybe they were fifteen yards away.

1 Q Fifteen yards?

2 A It could have been a little more, but I would
3 probably say around fifteen yards.

4 Q Which would be forty-five feet?

5 A Let's see. Fifteen yards. It's not fifteen yards, I
6 don't believe. Hang on, I'll figure it out for you. Give
7 me a minute. Yeah, you might be right. Forty-five --
8 forty-five feet. Yes.

9 MR. BRYAN: No further questions of this witness,
10 Your Honor. Thank you.

11 THE COURT: Very well.

12 Redirect?

13 MR. KNIGHT: Redirect.

14 REDIRECT EXAMINATION

15 BY MR. KNIGHT:

16 Q In response to Mr. Bryan's question, you said there
17 were two sets of volleys, one on the highway and then one
18 after the car spun around; is that correct?

19 A One as the car was traveling backwards.

20 Q Okay. The first volley and the second volley, did
21 that occur in Colleton County?

22 A Everything occurred in Colleton County, yes, sir.

23 Q Thank you. I have no further questions.

24 THE COURT: Very well.

25 All right. Any recross?

1 **MR. BRYAN:** None, Your Honor.

2 **THE COURT:** Very well.

3 Is this witness free to leave?

4 **MR. KNIGHT:** May he be excused?

5 **THE COURT:** Any objection?

6 **MR. BRYAN:** None, Your Honor.

7 **THE COURT:** Very well.

8 You're free to go.

9 All right. It's 1:00 o'clock. It's time for lunch.

10 Ladies and gentlemen, over the course of your lunch,
11 please be mindful, do not discuss this matter or allow
12 anyone to discuss it with you. You know, Walterboro is
13 bigger, actually gigantic compared to St. George, but it's
14 still a small town. Please be mindful if you happen to
15 see any of these folks out and about during lunch, I'm
16 sure they will not engage with you, but please understand
17 that they are not being rude. Of course, should anyone
18 try to approach you and talk to you about this case,
19 please get their name, if not their name a description,
20 and report it to me upon your return.

21 Remember, no social media and no investigation
22 regarding this matter. You must receive all of the
23 information from which you will make up your mind here in
24 court while court is in session. Do not discuss this
25 matter or allow anyone to discuss it with you.

1 Ladies and gentlemen, do you think you can get your
2 lunch and get back by 2:15? That's gives you a little
3 over an hour. You think?

4 Yeah? Yes. Good.

5 Then, we will reconvene at 2:15. You may be excused
6 at this time.

7 (DECEMBER 12, 2012, 1:01 P.M., WHEREUPON, THE JURY
8 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
9 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

10 **THE COURT:** All right. Anything before we take our
11 lunch; from the State?

12 **MR. KNIGHT:** No, ma'am.

13 **THE COURT:** From the defense?

14 **MR. BRYAN:** No, Your Honor.

15 **THE COURT:** I'll see y'all probably about, oh, I
16 don't know, a couple of minutes before 2:15 just to make
17 sure there aren't any motions before the jury returns.
18 Thank you. Have a good lunch.

19 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, AT 2:27
20 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD
21 OUT OF THE PRESENCE OF THE JURY:)

22 **THE COURT:** Anything before we bring the jury out;
23 from the State?

24 **MR. KNIGHT:** No, ma'am.

25 **MR. BRYAN:** No, Your Honor.

1 (DECEMBER 12, 2012, 2:27 P.M., WHEREUPON, THE JURY
2 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
3 WERE HELD IN THEIR PRESENCE.)

4 THE COURT: All right. I hope everyone had a good
5 lunch. At this time, we will continue with the State's
6 case. If you would please call your next witness?

7 MR. KNIGHT: May it please the Court, Your Honor?
8 James Ethridge.

9 THE COURT: Okay.

10 CLERK: Please come forward. Place your left hand on
11 the Bible and raise your right.

12 JAMES W. ETHRIDGE, after being duly sworn,
13 testified as follows:

14 CLERK: Please have a seat on the witness stand and
15 state your full name for the record.

16 WITNESS: James William Ethridge, E-T-H-R-I-D-G-E.

17 THE COURT: Thank you.

18 Your witness.

19 MR. KNIGHT: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. KNIGHT:

22 Q Mr. Ethridge, who are you employed with?

23 A At the current time, with the Orangeburg County
24 Sheriff's Office.

25 Q On or about July the 12th of 2011, who were you

1 employed with?

2 A Dorchester County Sheriff's Office.

3 Q In what capacity, sir?

4 A I was attached to the Crime Scene Unit.

5 Q And how long have you been involved in law
6 enforcement?

7 A Over -- over ten years.

8 Q Okay. Did you have an occasion to respond to a call
9 to 5519 Augusta Highway, also known as Highway 61?

10 A Yes, sir.

11 Q And what was the purpose for you going to that
12 incident scene?

13 A The incident -- an incident had taken place where
14 some of the patrol guys had gotten into a car chase, and
15 shots had been fired from the defendants in that case, and
16 I was asked to come out and process the scene.

17 Q Okay. When you say process the scene, what does that
18 mean?

19 A Collect evidence. Anything is a crime scene if
20 there's evidence that can be collected.

21 Q Okay.

22 A So at that point in time, I had a crime scene, which
23 was a roadside.

24 Q Okay. Did you also take photographs?

25 A I did. Yes, sir.

1 Q At the crime scene?

2 A Yes, sir. I did.

3 MR. KNIGHT: Judge, just to let you know, these have
4 been locked down. All the weapons have.

5 THE COURT: Thank you.

6 (WHEREUPON, State's Exhibit No. 15 was marked for
7 identification only.)

8 Q I show you what's been marked for identification as
9 State's Exhibit Number Fifteen. I'm going to ask you if
10 you can identify that, sir?

11 A May I look at my notes to get the serial number?

12 Q Yes, sir.

13 A Okay.

14 Q Do you recognize it?

15 A Yes, sir.

16 (WHEREUPON, State's Exhibit No. 16 was marked for
17 identification only.)

18 Q I also ask you if you can identify what's been marked
19 as State's Exhibit Number Sixteen?

20 A Yes, sir.

21 MR. KNIGHT: Your Honor, at this point I would move
22 State's Exhibit Number Fifteen, which is a weapon, and
23 State's Exhibit Number Sixteen, which are some casings,
24 into evidence.

25 THE COURT: Any objection?

1 **MR. BRYAN:** None, Your Honor.

2 **THE COURT:** Very well.

3 (WHEREUPON, State's Exhibit No. 15 was admitted into
4 evidence.)

5 (WHEREUPON, State's Exhibit No. 16 was admitted into
6 evidence.)

7 **Q** When you get through, would you put it back in there?

8 **A** Okay.

9 **Q** For safety sake. You've identified Number Fifteen as
10 a weapon that you secured?

11 **A** Yes, sir.

12 **Q** And where did you secure State's Exhibit Number
13 Fifteen from?

14 **A** All right. This was -- this is a Taurus .38 Special.

15 **Q** Yes, sir.

16 **A** This -- this was the weapon that was actually -- when
17 we rolled the car back over, this was the weapon that was
18 found on the ground.

19 **Q** Okay.

20 (WHEREUPON, State's Exhibit No. 3 was marked for
21 identification only.)

22 **Q** I show you what's been marked as State's Exhibit
23 Number Three for identification. Can you identify State's
24 Exhibit Number Three?

25 **A** Yes, sir. That's the actual -- that's going to be a

1 picture of the weapon lying on the ground in that grass.

2 Q Did you take that photograph?

3 A I took this photograph, yes, sir.

4 Q That's when you rolled the car back over?

5 A Yes, sir.

6 MR. KNIGHT: The State would move State's Exhibit
7 Number Three into evidence.

8 THE COURT: Any objection?

9 MR. BRYAN: Oh, no, Your Honor.

10 THE COURT: State's Exhibit Three in evidence without
11 objection.

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

14 MR. KNIGHT: May we publish?

15 THE COURT: Yes.

16 (WHEREUPON, STATE'S EXHIBIT NUMBER THREE WAS
17 PUBLISHED TO THE JURY.)

18 Q And sixteen?

19 A And these were actual -- these are the actual casings
20 that was collected from the weapon when I cleared it. It
21 was -- I cleared it. And that's casings. That's ---

22 Q I'm not an experienced weapons person. So the
23 casings were inside the revolver?

24 A Those were in the revolver. So all casings were
25 inside the weapon when I opened the cylinder up.

1 Q Okay.

2 A No bullets. They were all fired casings.

3 Q How many casings were in there?

4 A This is one, two, three, four, five.

5 MR. KNIGHT: Your Honor, instead of passing and
6 publishing to the jury, I'm just going to put them up
7 here, with permission of the Court.

8 THE COURT: Yes.

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

11 Q This is State's Exhibit Number Fourteen. Can you
12 identify it, please?

13 A Yes.

14 Q You can identify it?

15 A Yes, sir.

16 Q Okay.

17 MR. KNIGHT: The State would move State's Exhibit
18 Number Fourteen into evidence.

19 THE COURT: Any objection?

20 MR. BRYAN: No, Your Honor.

21 THE COURT: Very well. State's Exhibit Fourteen in
22 evidence without objection.

23 (WHEREUPON, State's Exhibit No. 14 was admitted into
24 evidence.)

25 Q Where did you find State's Exhibit Number Fourteen?

1 **A** Right. This weapon was actually in plain view. With
2 the car being upside downwards, you could visibly see in
3 the car and see this weapon lying right there, and
4 actually, it appeared just like this with the slide back.

5 **Q** What does the slide back mean?

6 **A** In other words, it was -- it was empty. All -- all
7 the bullets had been fired from this weapon. There was no
8 weapon -- there was no bullets in this weapon.

9 **Q** With that type weapon, how many bullets would the
10 weapon hold?

11 **A** I'd have to check the magazine.

12 **Q** Just take a look at it, please.

13 **A** They usually mark on it. I'm pretty sure this one
14 will hold eight. That's an eight round clip.

15 **Q** Eight round clip?

16 **A** I'm pretty sure it's an eight round clip.

17 **Q** At least five?

18 **A** Oh, yes, yes. It actually has holes for five where
19 you can see, but it should hold more down here in the
20 bottom. Yes, it's an eight round clip.

21 **Q** Okay. Thank you, sir.

22 I show you what's been marked as 7A and 7B. Can you
23 identify and tell me if that's the same weapon that is in
24 State's Exhibit Number Fourteen?

25 **A** Correct. These are the pictures that I took of the

1 weapon in the car.

2 Q 7A and 7B?

3 A Correct. They are both -- there's just two -- it's
4 just two angled shots. One is at a distance and one is
5 close up of that same weapon that you just showed me.

6 Q Which is State's Exhibit Number Fourteen.

7 A Correct. Yes, sir.

8 Q Okay.

9 (WHEREUPON, State's Exhibit No. 17 was marked for
10 identification only.)

11 (WHEREUPON, State's Exhibit No. 18 was marked for
12 identification only.)

13 (WHEREUPON, State's Exhibit No. 19 was marked for
14 identification only.)

15 Q I'm going to show you what's been marked for
16 identification as State's Exhibit Number Seventeen,
17 State's Exhibit Number Eighteen, and State's Exhibit
18 Number Nineteen and see if you can identify those, please.

19 A Yes.

20 Q You can identify them?

21 A Yes, sir.

22 MR. KNIGHT: The State would move into evidence
23 State's Exhibit Number Seventeen, State's Exhibit Number
24 Eighteen, State's Exhibit Number Nineteen.

25 THE COURT: Any objection?

1 **MR. BRYAN:** None, Your Honor.

2 **THE COURT:** Very well. In evidence.

3 (WHEREUPON, State's Exhibit No. 17 was admitted into
4 evidence.)

5 (WHEREUPON, State's Exhibit No. 18 was admitted into
6 evidence.)

7 (WHEREUPON, State's Exhibit No. 19 was admitted into
8 evidence.)

9 **Q** Describe to the jury what State's Exhibit Number
10 Seventeen is.

11 **A** Okay. This is a .45 auto caliber pistol. It's a
12 Colt -- a Colt.

13 **Q** And that's State's Exhibit Number?

14 **A** This is Number Seventeen.

15 **Q** Okay. Thank you, sir.

16 **A** Number Eighteen is the actual magazine clip that
17 actually belongs into the weapon.

18 Nineteen is actually -- these are the bullets that
19 was found in the magazine of the weapon. They were all
20 .45 caliber each. They are different brand bullets, but
21 these were all found in this weapon.

22 And this weapon, now, was actually located in the
23 glove box of the black in color Acura. We actually towed
24 the vehicle from the scene that evening.

25 The next day, we executed a search warrant on the

1 vehicle to do a thorough search of the car. This weapon
2 was in that vehicle, which this vehicle was secured
3 overnight in our locked impound lot.

4 Q Okay.

5 (WHEREUPON, State's Exhibit No. 2 was marked for
6 identification only.)

7 Q I show you what's been marked for identification as
8 State's Exhibit Number Two.

9 A Yes, sir.

10 Q Can you identify that, sir?

11 A Yes, sir. That's the actual -- that weapon that you
12 just showed me, that was the one that was actually -- this
13 is where it was found, in the glove box of that black
14 Acura.

15 Q And you took that photograph?

16 A I took this photograph. Yes, sir.

17 Q And you seized the weapon?

18 A Yes, sir.

19 MR. KNIGHT: I would move State's Exhibit Number Two
20 into evidence, Your Honor.

21 MR. BRYAN: No objection.

22 THE COURT: Very well.

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

25 MR. KNIGHT: May I publish to the jury, Your Honor?

1 **THE COURT:** You may.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO WAS PUBLISHED
3 TO THE JURY.)

4 (WHEREUPON, State's Exhibit No. 22 was marked for
5 identification only.)

6 **Q** I show you what's been marked as State's Exhibit
7 Number Twenty-two. Can you identify that, sir?

8 **A** Yes, sir.

9 **Q** You can?

10 **A** Yes, sir.

11 **Q** You take this photograph?

12 **A** Yes, sir, I did.

13 **MR. KNIGHT:** I would move State's Exhibit Number
14 Twenty-two into evidence, Your Honor.

15 **THE COURT:** Any objections?

16 **MR. BRYAN:** No objection, Your Honor.

17 **THE COURT:** Very well. It's in evidence without
18 objection.

19 (WHEREUPON, State's Exhibit No. 22 was admitted into
20 evidence.)

21 **Q** State's Exhibit Number Twenty-two, which is in
22 evidence, tell -- tell the jury what that is.

23 **A** That's the same Colt, the weapon, the .45 that was
24 found in the glove box. The only difference, this picture
25 is going to show where the magazine has been pulled from

1 the weapon. The weapon has been made safe.

2 In other words, I -- it had been -- it was cocked.
3 It was back, and it shows the actual bullets still in the
4 magazine as we found it. The only difference is, I made
5 the weapon safe and pulled the magazine out of it.

6 Q Thank you, sir.

7 MR. KNIGHT: May I publish to the jury, Your Honor?

8 THE COURT: You may.

9 (WHEREUPON, State's Exhibit No. 9A was marked for
10 identification only.)

11 (WHEREUPON, State's Exhibit No. 9B was marked for
12 identification only.)

13 (WHEREUPON, State's Exhibit No. 9C was marked for
14 identification only.)

15 (WHEREUPON, State's Exhibit No. 9D was marked for
16 identification only.)

17 (WHEREUPON, State's Exhibit No. 9E was marked for
18 identification only.)

19 (WHEREUPON, State's Exhibit No. 9F was marked for
20 identification only.)

21 (WHEREUPON, State's Exhibit No. 9G was marked for
22 identification only.)

23 (WHEREUPON, State's Exhibit No. 9H was marked for
24 identification only.)
25

1 (WHEREUPON, State's Exhibit No. 9I was marked for
2 identification only.)

3 Q I show you what's been marked for identification as
4 State's Exhibit 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H, and 9I. I
5 ask you if you can identify these, please?

6 A Yes, sir.

7 Q Did you also take these photographs, 9A thru I?

8 A Yes, sir.

9 MR. BRYAN: No objection.

10 THE COURT: Very well.

11 MR. KNIGHT: Your Honor, the State would move 9A thru
12 I into evidence.

13 THE COURT: Very well. It's in evidence without
14 objection.

15 (WHEREUPON, State's Exhibit No. 9A was admitted into
16 evidence.)

17 (WHEREUPON, State's Exhibit No. 9B was admitted into
18 evidence.)

19 (WHEREUPON, State's Exhibit No. 9C was admitted into
20 evidence.)

21 (WHEREUPON, State's Exhibit No. 9D was admitted into
22 evidence.)

23 (WHEREUPON, State's Exhibit No. 9E was admitted into
24 evidence.)
25

1 (WHEREUPON, State's Exhibit No 9F was admitted into
2 evidence.)

3 (WHEREUPON, State's Exhibit No. 9G was admitted into
4 evidence.)

5 (WHEREUPON, State's Exhibit No. 9H was admitted into
6 evidence.)

7 (WHEREUPON, State's Exhibit No. 9I was admitted into
8 evidence.)

9 Q Mr. Ethridge, looking at 9A thru 9I, what do those
10 photographs depict?

11 A These are actual shell casings that was located on
12 the highway, Highway 61. They are each marked as they
13 were collected where they were collected at, and they were
14 each marked with a different placard, I mean as in a
15 numbered placard where I marked them on the highway where
16 they were located at. They were -- you've got one, two,
17 three, four, five -- five -- five of these were the shell
18 casings.

19 Placard Six is -- Placard Six and Placard Seven are
20 going to be of actual fragments of bullets, not casings,
21 now. These are going to be actual fragments of bullets
22 that was located around the car that was turned upside
23 downwards.

24 These shell casings was located in various locations
25 away from the scene down the roadway. Where they first

1 started firing the shots through the sunroof, it was with
2 an automatic weapon, so the shell casings shot out of the
3 side of the weapon. So they were actually located on the
4 side of the road. They go up to where the crash occurred.

5 Q Then five and six, I think you indicated ---

6 A Five and six are actual bullet fragments that were
7 located around right in that same vicinity of where the
8 car -- the wreck was, where the car was turned back up on
9 its right side. In that area, that's where those two
10 fragments were located. That's what you're going to see
11 in six and seven.

12 MR. KNIGHT: May I publish to the jury, Your Honor?

13 (NO RESPONSE.)

14 MR. KNIGHT: May I publish to the jury, Your Honor?

15 THE COURT: You may.

16 (WHEREUPON, STATE'S EXHIBITS 9A - 9I WERE PUBLISHED
17 TO THE JURY.)

18 (WHEREUPON, State's Exhibit No. 20 was marked for
19 identification only.)

20 (WHEREUPON, State's Exhibit No. 21 was marked for
21 identification only.)

22 Q I show you what's been marked as State's Exhibit
23 Number Twenty and ask you if you can identify that, sir?

24 A Yes, sir.

25 Q You can?

1 **A** Yes, sir.

2 **Q** I also show you what's been marked as State's Exhibit
3 Number Twenty-one for identification. Can you identify
4 that, sir?

5 **A** Yes, sir.

6 **Q** How can you identify it?

7 **A** Well, those -- those boxes that they were in, when I
8 collected those shell casings and those fragment pieces,
9 on there it will have the location, it has my name, it has
10 the case number. It has all of my information on there,
11 date and times.

12 I put those casings in there, and they were sealed
13 with that red evidence tape. That was the tape that I put
14 on there, I initialed and dated, and those pieces were
15 sealed by me.

16 **Q** Thank you, sir.

17 **MR. KNIGHT:** The State would move State's Exhibit
18 Number Twenty into evidence, Your Honor.

19 **THE COURT:** All right. Any objection?

20 **MR. BRYAN:** None, Your Honor.

21 **THE COURT:** All right.

22 (WHEREUPON, State's Exhibit No. 20 was admitted into
23 evidence.)

24 **MR. KNIGHT:** The State would also move State's
25 Exhibit Number Twenty-one into evidence.

1 **THE COURT:** Any objection?

2 **MR. BRYAN:** No, Your Honor.

3 **THE COURT:** Very well. In evidence.

4 (WHEREUPON, State's Exhibit No. 21 was admitted into
5 evidence.)

6 **Q** State's Exhibit Number Twenty, I show you this, and
7 of course you've identified that you put them in the box.

8 **A** Correct. These -- these are the actual -- the actual
9 shell casings that was found that you see in the pictures,
10 these are the actual shell casings that was located on the
11 roadway. It's five of them.

12 **Q** And those ---

13 **A** Those would be your pictures. It should be pictures
14 one through five that you'll see. Each one is going to be
15 marked with a placard.

16 **Q** Right.

17 **A** I say placard. It's going to be a numbered marker, a
18 yellow marker. And also on this box it'll have a number
19 on it also.

20 **Q** Okay.

21 **A** To show the actual one that was found at that
22 location.

23 **Q** Okay. And I show you State's Exhibit Number
24 Twenty-one, which is in evidence.

25 **A** Okay. This is going to be the same. You see

1 pictures six and seven, these are the two fragments that I
2 spoke of. They're separated here.

3 One was placed in -- they were each in a separate
4 box, and they have a number on the side, seven and then
5 six, and the placards are marked with seven and six. So
6 you see those pictures, you can see that's exactly where
7 they was put in here, the exact item that you see in the
8 pictures.

9 Q You collected State's Exhibit Number Twenty,
10 Twenty-one, Fourteen, Fifteen, -- I'm just going through
11 all of them, and Fifteen, Fourteen, Seventeen, Eighteen,
12 and Nineteen. What did you do with those items?

13 A Well, they were all taken back to -- I secured them
14 personally, myself. They were all taken back to the
15 sheriff's office. And I did swab each one of them, and
16 then they were secured in individual boxes. They were
17 secured by me.

18 Q How do you mean secured?

19 A They were placed in a box. I usually put them down
20 with wire ties and secure them in the bottom of the box.

21 Q Right.

22 A And they are sealed with the evidence tape -- with
23 the tape.

24 Q So you sealed those boxes?

25 A I sealed those boxes myself, personally.

1 Q And you turned them in to the evidence vault?

2 A They were turned in to the evidence vault. Those
3 were to be sent to S.L.E.D. for further analysis, and they
4 were put in a bin, in a sealed bin for S.L.E.D., to be
5 sent to them.

6 (WHEREUPON, State's Exhibit No. 23 was marked for
7 identification only.)

8 Q I show you what's been marked as State's Exhibit
9 Number Twenty-three and ask you if you can identify that;
10 please, sir?

11 A Yes, sir.

12 Q Did you also take this photograph?

13 A Yes, sir.

14 MR. KNIGHT: I would move State's Exhibit Number
15 Twenty-three into evidence, Your Honor.

16 THE COURT: Any objection?

17 MR. BRYAN: None, Your Honor.

18 THE COURT: Very well.

19 (WHEREUPON, State's Exhibit No. 23 was admitted into
20 evidence.)

21 Q Tell the jury what State's Exhibit Number
22 Twenty-three is and where you found it.

23 A This is a box of Federal -- it's going to be
24 ammunition, Federal ammunition. It's actually the box of
25 it.

1 This was found in the black in color Acura. At this
2 point in time, it's a picture of it. It's sitting on the
3 car where I photographed the picture.

4 **Q** Okay, sir.

5 **MR. KNIGHT:** May I publish to the jury, Your Honor?

6 **THE COURT:** You may.

7 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-THREE WAS
8 PUBLISHED TO THE JURY.)

9 (WHEREUPON, State's Exhibit No. 8A was marked for
10 identification only.)

11 (WHEREUPON, State's Exhibit No. 8B was marked for
12 identification only.)

13 (WHEREUPON, State's Exhibit No. 8C was marked for
14 identification only.)

15 (WHEREUPON, State's Exhibit No. 8D was marked for
16 identification only.)

17 (WHEREUPON, State's Exhibit No. 8E was marked for
18 identification only.)

19 (WHEREUPON, State's Exhibit No. 8F was marked for
20 identification only.)

21 **Q** I show you what's been marked as State's Exhibit
22 Number 8A for identification, 8B, C, D, E, and F, and ask
23 you if you can identify this, please, sir?

24 **A** Yes, sir.

25 **Q** Did you take those photographs?

1 **A** Yes, sir. I took every one of them.

2 **MR. KNIGHT:** The State would move 8A thru 8F into
3 evidence, Your Honor.

4 **MR. BRYAN:** No objection.

5 **THE COURT:** Very well. 8A thru F, State's exhibits,
6 are in evidence without objection.

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

9 (WHEREUPON, State's Exhibit No. 8B was admitted into
10 evidence.)

11 (WHEREUPON, State's Exhibit No. 8C was admitted into
12 evidence.)

13 (WHEREUPON, State's Exhibit No. 8D was admitted into
14 evidence.)

15 (WHEREUPON, State's Exhibit No. 8E was admitted into
16 evidence.)

17 (WHEREUPON, State's Exhibit No. 8F was admitted into
18 evidence.)

19 **Q** Please explain to the jury each one, what they
20 depict.

21 **A** Okay.

22 **Q** And you took these on what date?

23 **A** These pictures were actually taken the next day
24 during the search warrant.

25 **Q** But you took them.

1 **A** Yes, sir. I took these pictures. In other words,
2 like I said, the car was taken back to the sheriff's
3 office, secured, and then the next day we did a -- because
4 this is daylight, we did a search warrant on the car to
5 see if there was any other evidence in the car.

6 These are actual pictures of the front windshield of
7 the black in color Acura. The first picture you'll see is
8 -- you'll see four -- you'll see four spots on this front
9 windshield.

10 **MR. KNIGHT:** Your Honor, may he step down and show it
11 to the jury?

12 **THE COURT:** Sure. Of course.

13 I don't think we'll have to worry about your voice.

14 **WITNESS:** No.

15 **THE COURT:** But what I need you to do is, you're
16 going to have to do it in sections.

17 **MR. KNIGHT:** Half here and half there.

18 **WITNESS:** Right. We can do that.

19 **THE COURT:** There you go.

20 **A** We'll start. This is going to be your first picture,
21 8A. You'll see here this is the front windshield of the
22 Acura, and you'll see each one of these are marked with an
23 evidence tape, is what it is. And on each one, you can
24 see them closer. They're actually marked with a number.

25 See each one. You've got four spots here on the

1 front windshield of the Acura. I'm sorry if I don't say
2 it the same. You can see all four of them. They're
3 represented -- they're marked with the evidence tape.

4 This is the front windshield, the very front
5 windshield. This is looking outward. This is looking
6 from the outside into the vehicle. Okay?

7 And then what you're going to see is 8B would be
8 where I told you each one of them was numbered. This will
9 be where it's marked Number One.

10 I put: Outside.

11 That means this is the outside of the windshield.
12 This is just a closeup shot of what you see on that, on
13 that windshield.

14 This still again is the front of the windshield of
15 the car marked showing as Number One, outward coming in.
16 It's the actual front windshield.

17 And then 8C, you see here it's marked as Number Two?
18 So this would be a second. It's the front windshield
19 again, marked -- clearly marked front windshield.

20 I put: Out.

21 This is an outward view looking into the -- looking
22 into the -- looking into the windshield, looking into the
23 car from the outer car. It's marked as Number Two.

24 Same thing. This is from the Acura. This is the
25 front windshield.

1 8D is going to be Number Three. It's the same
2 windshield. It's just a different spot. This is going to
3 be Number Three. This will be your third section.

4 Out. Same picture, outward going inward. Number
5 Three. Same windshield of the Acura, the black in color
6 Acura. It's going to be showing that same picture. This
7 is from outward.

8 8E would be Number Four. It's clearly marked Number
9 Four. Outward. Showing the same motion, the outer
10 windshield going in.

11 As I said, each one of them are scaled, so if you see
12 on here it's going to have a number where it's actually
13 scaled in inches. It gives you a picture of what size
14 hole you're looking at.

15 See Number Four? Same thing, outward, inward. This
16 is an outside shot of the front windshield.

17 This, 8F -- as I said the first pictures were taken
18 the day after. 8F is actually a picture that was taken
19 that night at the scene. This was before the evidence
20 tape was put on. This is just a good outer view where you
21 can actually see this is before the evidence tape was put
22 on there.

23 So I'm not depicting or pointing anything out. This
24 was just a general shot of that front windshield of the
25 Acura.

1 This was the actual on-scene picture of what it
2 looked like when we observed it. There's no evidence tape
3 or anything.

4 And that's all.

5 Q Okay. I'm going to show you what's been marked, and
6 it's in evidence as 8F. Those bullet projectiles that
7 went through 8F, was it on the passenger's side or the
8 driver's side?

9 A They could be more on the driver's side than the
10 passenger's side.

11 Q And that's in Number F, I think?

12 A 8F. Between there and then the middle section of the
13 windshield.

14 MR. KNIGHT: May he step down and show the jury what
15 the passenger's side and the driver's side looks like,
16 Your Honor?

17 THE COURT: Yes.

18 Q Again, splitting it up, show the passenger's side and
19 the driver's side.

20 A All right. This is um -- and this is actually, what
21 this picture is, is actually when we were rolling the car
22 over. So you can actually see in here -- also you see the
23 sunroof of the car at the top. Okay? So see where the
24 sunroof is open?

25 And if you split, it would be in half right here.

1 This would be -- this side would actually be your driver's
2 side. This side here would actually be your passenger's
3 side, and you can see where the markings are.

4 Same thing here. This would be the top of the car.
5 This is the sunroof, actually showing the sunroof open.
6 And this would be your driver's side of the car. This
7 would be your passenger's side of the car.

8 Same thing here. This is your roof, the top of the
9 car. The sunroof is open. And you would split it, your
10 driver's side, and this would be your passenger's side.

11 **MR. KNIGHT:** Thank you, sir. You may be seated.

12 May we publish to the jury, Your Honor?

13 **THE COURT:** You may.

14 (WHEREUPON, STATE'S EXHIBITS 8A THRU 8F WERE
15 PUBLISHED TO THE JURY.)

16 **Q** State's Exhibit Number Twenty and Twenty-one, did you
17 place those items in this box, or did you keep them
18 separate?

19 **A** They were separate.

20 **Q** Okay. And you turned it all in to the evidence
21 locker?

22 **A** Correct.

23 **Q** Okay.

24 **MR. KNIGHT:** Court's indulgence one moment, Your
25 Honor?

1 **THE COURT:** All right.

2 **Q** In State's Exhibit Number -- I think -- it's the last
3 one.

4 **MR. KNIGHT:** Was it Nineteen? Twenty? Twenty-one,
5 Madam Court Reporter?

6 **COURT REPORTER:** Eight.

7 **MR. KNIGHT:** Eight. Excuse me.

8 **Q** Does this picture reflect whether the projectile went
9 from the outside into the car or from the inside of the
10 car to the outside of the car?

11 **A** From the inside of the car to the outside of the car.

12 **Q** Thank you, sir.

13 **MR. BRYAN:** Your Honor, I don't know that he was
14 qualified as an expert on glass patterns, Your Honor.

15 **MR. KNIGHT:** That's all I have of this witness, Your
16 Honor.

17 **THE COURT:** It comes late.

18 **MR. BRYAN:** Oh, okay.

19 **THE COURT:** You can cross-examine. Cross-examine
20 now, as a matter of fact.

21 CROSS-EXAMINATION

22 **BY MR. BRYAN:**

23 **Q** In the other trial, on Bronson Shelley, you
24 testified. Where did you find the slugs, the projectile
25 pieces?

1 A They were in the area of where the car was located.
2 The projectiles?

3 Q Yeah.

4 A Yeah, they were in the area where the car was
5 located.

6 Q And they were like under the car?

7 A When we rolled the car over, that's when we found
8 those. Yes, sir.

9 Q Okay. So you didn't find them until you rolled the
10 car over.

11 A Right. Yes, sir.

12 Q So that was pretty much under the car.

13 A Correct. Yes, sir.

14 Q Okay. Now you -- you took swabs from the triggers of
15 the pistols?

16 A Yes, sir.

17 Q What would that have been for?

18 A Possibly for if DNA was on the weapons.

19 Q Okay. And DNA would have established conclusively
20 whether or not Mr. Rivers was shooting a pistol; wouldn't
21 it? If he was shooting a pistol, he would have left DNA
22 on the trigger; wouldn't he?

23 A Sometimes, yes, sir.

24 Q I mean, if it was his DNA on the trigger, that would
25 pretty much show it; wouldn't it?

1 **A** Right.

2 **Q** And if it was Shelley's DNA on the trigger, that
3 would mean Shelley was shooting the gun; wouldn't it?

4 **A** Correct.

5 **Q** So that would have been useful evidence to have
6 today; wouldn't it?

7 **A** Correct.

8 **Q** And there was one pistol that was in the car that was
9 completely undisturbed; right? It wasn't fired?

10 **A** There was a -- the weapon found in the glove box, is
11 that maybe what you're referring to?

12 **Q** Yeah.

13 **A** There was one weapon in the glove box.

14 **Q** Okay. And it hadn't been ---

15 **A** I can't say if it was -- I mean, ---

16 **Q** It had rounds in it.

17 **A** It had rounds in the magazine, yes, sir.

18 **Q** And it was still in the glove box when you got to it.

19 **A** When I found it, it was in the glove box. Yes, sir.

20 **Q** Okay.

21 **MR. BRYAN:** I've got no further questions of this
22 witness.

23 **THE COURT:** Okay. Is there any redirect?

24 **MR. KNIGHT:** No, ma'am. May he be excused?

25 **THE COURT:** Yes. Any objection?

1 MR. BRYAN: None, Your Honor.

2 THE COURT: Very well. You are free to go.

3 WITNESS: Thank you.

4 THE COURT: Call your next witness, please.

5 MR. KNIGHT: Earl um ---

6 THE COURT: Asbell.

7 MR. KNIGHT: --- Asbell.

8 CLERK: Please raise your right hand.

9 EARL V. ASBELL, JR., after being duly sworn,
10 testified as follows:

11 CLERK: Please have a seat on the witness stand and
12 state your name for the record.

13 WITNESS: My name is Earl Vincent Asbell, Jr., that's
14 A-S-B-E-L-L.

15 THE COURT: Your witness.

16 DIRECT EXAMINATION

17 BY MR. KNIGHT:

18 Q Mr. Asbell, who are you employed with, sir?

19 A Dorchester County Sheriff's Office.

20 Q How long have you been working there?

21 A Thirty-seven years.

22 Q In what capacity are you working in the sheriff's
23 office?

24 A I'm a lieutenant over the crime scene.

25 (WHEREUPON, A GLASS OF WATER WAS HANDED TO THE

1 WITNESS.)

2 WITNESS: Thank you.

3 THE COURT: You're very welcome.

4 Q Do you take evidence to S.L.E.D. and other labs?

5 A Yes, sir, sometimes.

6 Q In this situation in this case, there's so much of
7 it, I'm going to say State's Exhibit Number Seventeen,
8 Eighteen, and Nineteen is a Colt .45.

9 A That was not transported to S.L.E.D.

10 Q Okay. That's what I wanted to know.

11 State's Exhibit Number Fourteen, which is it looks
12 like a Beretta.

13 A That's the Bursa.

14 Q Yes, sir.

15 A Yes, sir. That's the Bursa Firestone .380, Serial
16 Number 823145.

17 Q And did you transport it to S.L.E.D.?

18 A Yes, sir, I did.

19 Q What was the condition of the weapon or the box you
20 transported it in?

21 A The boxes were sealed, and once I got there, S.L.E.D.
22 placed their yellow evidence tape on there, and then I
23 initialed it after they did that.

24 Q Okay. On State's Exhibit Number Fifteen, which is a
25 .38, ---

1 A Yes, sir. That's the Taurus .38 Special, Serial
2 Number HC26905.

3 Q Did you transport it to S.L.E.D.?

4 A Yes, sir, I did.

5 Q And was the box sealed?

6 A Yes, sir. It was sealed when I retrieved it.

7 Q Now, State's Exhibit Number Sixteen, was it inside
8 the box, which is State's Exhibit Number Fifteen?

9 A It says three RP .38 Special spent casings were
10 inside the box and two Winchester .38 Special shell
11 casings were in the box with the Taurus.

12 Q State's Exhibit Number Twenty, I'll ask you -- which
13 is in evidence, did you transport these to S.L.E.D.?

14 A Yes, sir. I transported five Federal .380 spent
15 casings, which means they were fired casings. And these
16 all have .380 casings on them.

17 Q How were they secured in your transport to S.L.E.D.?

18 A They were sealed in an envelope.

19 Q I show you what's in evidence as State's Exhibit
20 Number Twenty-one.

21 A Yes, sir. This is S.L.E.D. Item Number Eight and
22 Number Nine, a fired projectile and a piece of a
23 projectile. These also would have been sealed in an
24 envelope.

25 Q Okay. What if you had not sealed the boxes and the

1 casings? Would S.L.E.D. have accepted them?

2 A I'm sorry, I didn't hear you.

3 Q Had you not sealed the pistol and the projectiles and
4 the casings, would S.L.E.D. have accepted them if they had
5 not have been sealed?

6 A No, they would have made us seal them right there in
7 front of them, but they were already taped, and they had
8 me place the yellow evidence tape on them.

9 Q And who did you turn these items that I just referred
10 to, Twenty, Twenty-one, Fifteen, and ---

11 A They were turned over to Selena Kinard on July the
12 19th at 10:42 a.m. And I retrieved them all back from
13 S.L.E.D. from Nikki Hughes on September the 9th at 10:09
14 a.m.

15 Q Just to keep the record straight, Deputy Asbell,
16 State's Exhibit Number Fifteen and Sixteen, State's
17 Exhibit Seventeen, Eighteen, and Nineteen and Twenty and
18 Twenty-one, you turned all of those over to Selena Kinard?

19 A Yes, I did.

20 Q Okay. It's Lieutenant, actually, isn't it?

21 A Yes, it is.

22 Q I apologize.

23 A That's all right.

24 Q Answer any questions Mr. Bryan may have.

25 THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. BRYAN:

Q Detective Asbell, did you transport any gunshot residue kits?

A Yes, sir, I did. I transported two GSR kits.

Q All right.

A They are listed as John Doe One and John Doe Two.

Q So that would have been Mr. Shelley and Mr. Rivers?

A That's correct.

Q Okay. Did you transport any swabs?

A No, sir.

Q DNA?

A No, sir, I didn't.

Q Who would have made the decision to submit DNA evidence?

A It would have been up to the detectives.

Q Okay. But it was not done.

A No, sir. It was not.

MR. BRYAN: No further questions of this witness.

Thank you.

THE COURT: All right.

Redirect?

MR. KNIGHT: No, ma'am. May he be excused?

THE COURT: Any objection?

MR. BRYAN: No, Your Honor.

1 **WITNESS:** May I take the water?

2 **THE COURT:** May you take what?

3 **WITNESS:** The water.

4 **THE COURT:** Indeed, you may.

5 **WITNESS:** Thank you.

6 **THE COURT:** Yes, sir. Call your next witness.

7 **MR. KNIGHT:** Amy Stephens.

8 AMY STEPHENS, after being duly sworn, testified
9 as follows:

10 **CLERK:** Please have a seat on the witness stand and
11 state your name for the record.

12 **THE COURT:** State your full name for the record, and
13 then spell your last name.

14 **WITNESS:** Amy Stephens, S-T-E-P-H-E-N-S.

15 **THE COURT:** Your witness.

16 DIRECT EXAMINATION

17 BY MR. KNIGHT:

18 **Q** Ms. Stephens, who are you employed with?

19 **A** I'm employed with the South Carolina Law Enforcement
20 Division, also known as S.L.E.D.

21 **Q** And how long have you been employed with S.L.E.D.?

22 **A** Approximately seven years.

23 **Q** In what capacity are you employed with S.L.E.D.?

24 **A** I'm a forensic technician in the Evidence Control
25 Department. Our duties are to log in, package, and

1 transfer evidence for forensic analysis in criminal cases.

2 Q Okay. I show you what's been marked State's Exhibit
3 Number Fifteen and State's Exhibit Number Sixteen and ask
4 you if you received those at S.L.E.D.?

5 A I recognize the label that's located on State's
6 Exhibit Number Fifteen and Sixteen, which corresponds with
7 my chain of custody for Lab Number L11-08183, Container B.

8 Q And was it sealed when you got it?

9 A Yes, it was.

10 Q And what did you do with it?

11 A I received it off of our storage shelf in our
12 firearms intake area, and I transferred the evidence to
13 Michelle Eichenmiller, a forensic scientist in our
14 Firearms Department.

15 Q Okay. I show you what's in evidence as -- no, wrong
16 one.

17 THE COURT: There are too many boxes.

18 MR. KNIGHT: Yes, ma'am.

19 THE COURT: Next time they need to give you like pink
20 boxes and green boxes, blue boxes.

21 MR. KNIGHT: The inference is that I need help, Your
22 Honor; is that what you're saying?

23 THE COURT: Just need different color boxes. Cheer
24 it up a little bit.

25 Q Ms. Stephens, I ask you, did you receive State's

1 Exhibit Number Fourteen at S.L.E.D.?

2 A State's Exhibit Fourteen corresponds with actually
3 our Lab Number L11-08183, Item Number Six.

4 Q And was it secured when you got it, sealed?

5 A Yes, it was.

6 Q And what did you do with State's Exhibit Number
7 Fourteen?

8 A I transferred the evidence to Michelle Eichenmiller
9 of the Firearms Department.

10 Q I show you what's in evidence as State's Exhibit
11 Number Twenty. Did you receive that at S.L.E.D.?

12 A When I received it, it was actually in an envelope.
13 It was not packaged like this. I'm verifying that the lab
14 number written on the box that that corresponds with my
15 chain of custody L11-8183.

16 Q And it does?

17 A Yes.

18 Q And what did you do with it?

19 A The same as the others. I transferred the evidence
20 to Michelle Eichenmiller in the Firearms Department.

21 Q And I show you what's been marked as State's Exhibit
22 Number Twenty-one and ask you if you received that?

23 A Yes. The lab number that is written on the box
24 corresponds to my chain of custody L11-8183. I also
25 transferred these to Michelle Eichenmiller of the Firearms

1 Department.

2 MR. KNIGHT: If the Court would indulge me one
3 moment?

4 THE COURT: Yes, sir.

5 Q Ms. Stephens, if you would be so kind as to answer
6 any questions Mr. Bryan may have?

7 THE COURT: Cross-examination?

8 MR. BRYAN: None, Your Honor.

9 THE COURT: Very well. Is this witness free to
10 leave?

11 MR. KNIGHT: May she be excused, Your Honor?

12 THE COURT: Any objection?

13 MR. BRYAN: No, Your Honor.

14 THE COURT: Thank you.

15 Call your next witness, please.

16 MR. KNIGHT: Michelle Eichenburg -- Eichenburg?
17 Eichenmiller, excuse me.

18 THE COURT: You're going to get there.

19 MR. KNIGHT: Unless I've got another box.

20 THE COURT: You need different colored boxes.

21 MICHELLE EICHENMILLER, after being duly sworn,
22 testified as follows:

23 CLERK: Please have a seat on the witness stand and
24 state your name for the record.

25 THE COURT: And if you would please state your full

1 name for the record and spell your last name?

2 **WITNESS:** My name is Michelle Eichenmiller,
3 E-I-C-H-E-N-M-I-L-L-E-R.

4 **THE COURT:** Your witness.

5 DIRECT EXAMINATION

6 BY MR. KNIGHT:

7 **Q** Ms. Eichenmiller, who are you employed with?

8 **A** I'm employed with the South Carolina Law Enforcement
9 Division in the Forensic Lab. I work in the Firearms
10 Department.

11 **Q** How long have you been employed with S.L.E.D.?

12 **A** Almost seven years.

13 **Q** What is firearms identification?

14 **A** Firearms identification is the branch of forensic
15 science that deals with firearms and anything that could
16 have come from a firearm, such as bullets, cartridge
17 cases. There are also other examinations that we'll do.
18 We'll do serial number restorations. We do tool mark
19 examinations, and we do general rifling characteristics.
20 That's the case of if we don't get a firearm and we just
21 get a bullet.

22 **Q** What makes such identifications possible?

23 **A** Firearms, when they are manufactured, get different
24 small defects from the manufacturing process. And then
25 after they are bought by someone and used and abused, they

1 also get -- and used in the course of everyday, they get
2 different marks on them as well. Those marks are used to
3 identify particular bullets back to the firearm.

4 Q What specialized training have you had in your
5 present work?

6 A In order to become a firearms identification expert,
7 you have to go through an in-house training program.
8 There's no college to go to. I do have a Master's of
9 Science in Forensic Science, but once I got to S.L.E.D., I
10 had to complete the in-house training program. It was
11 three -- it was about four years.

12 I got signed off on in March of 2010, after doing a
13 lot of work with court qualified examiners. I did a lot
14 of microscopic comparisons on my own.

15 I also did -- I read a lot. I took a lot of tests,
16 and then at the end, I took a comprehensive exam that made
17 me become qualified to do cases on my own.

18 Q Have you testified previously in the field of
19 firearms identification?

20 A I have.

21 Q And in what courts have you testified?

22 A This morning in Lee County, and several other
23 counties in the state.

24 Q Have you been -- have you previously been qualified
25 as an expert in arms identification?

1 **A** Yes, sir.

2 **MR. KNIGHT:** Your Honor, I submit Ms. Eichenmiller as
3 a qualified expert in firearms identification.

4 **THE COURT:** Voir dire?

5 **MR. BRYAN:** No objection, Your Honor.

6 **THE COURT:** No objection.

7 Let me explain to the jury ---

8 **MR. KNIGHT:** Sure.

9 **THE COURT:** --- about this.

10 Ladies and gentlemen, normally under our Rules of
11 Evidence, a witness is not allowed to testify regarding
12 their opinions or the reasons for their opinions. There
13 is an exception, and that is when, by virtue of someone's
14 knowledge, training, experience, education, profession,
15 and the like, they have become an expert in some field.
16 Usually it's science or art or the like. Then they are
17 allowed to testify within the area of their expertise.

18 Ladies and gentlemen, expert testimony is given for
19 the purpose, of course, of helping you understand the
20 evidence and not for the purpose of controlling your
21 judgment. I'll give you an instruction further when I
22 give you the concluding instructions. I thought that
23 would be helpful at this point. And she is so qualified
24 as an expert.

25 Yes, sir, you may proceed.

1 **MR. KNIGHT:** May I proceed, Your Honor?

2 **Q** I show you State's Exhibit Number Fourteen, which is
3 in evidence, and I ask you if you have seen that or has it
4 come into your possession?

5 **A** Whenever I receive evidence, I always write the lab
6 number, the item number, and my initials on it. This is
7 the same firearm I examined in Lab Number L11-8183.

8 **Q** Describe in detail the examination you made of that
9 weapon.

10 **A** Whenever we receive a firearm in our department, we
11 do extensive photo documentation to document the condition
12 it came in. We also fill out worksheets to say if the
13 safeties work, the make, model, serial number, etcetera.
14 Then I test fire it to make sure it works, and then I use
15 those test fires to make my comparisons on the microscope.

16 **Q** Number Fifteen, State's Exhibit Number Fifteen, was
17 operational after you test fired it?

18 **A** Yes, it was.

19 **Q** Okay. I show you State's Exhibit Number Twenty,
20 which is in evidence, and ask you if those items in
21 State's Exhibit Number Twenty came into your possession?

22 **A** Yes, they were. These are the fired cartridge cases
23 that I examined in this case.

24 **Q** How can you identify that you examined those
25 cartridge cases?

1 **A** The same way. I put the lab number, the item number,
2 and my initials on each one.

3 **Q** Describe in detail the examination you made and any
4 conclusions you were able to reach.

5 **A** When we receive firearm components, we also photo
6 document them, and then we write them up on a worksheet.
7 Then I use test fires from a weapon, if it's submitted, to
8 compare under my comparison microscope. And then once we
9 do that, then I can render a conclusion if they were fired
10 by that firearm or not.

11 In this case, these fired cartridge cases were fired
12 by State's Exhibit Fourteen, the Bursa .380 pistol.

13 **Q** Thank you, ma'am.

14 Did you have an occasion to come into possession of
15 State's Exhibit Number Fifteen?

16 **A** This was an additional firearm that was submitted in
17 my Number L11-8183.

18 **Q** Did you perform an examination on that weapon?

19 **A** I did the same thing I did with the Bursa. I took
20 pictures, and then I test fired it to make sure it was
21 working. That's all I did with that one.

22 **Q** Okay. I show you State's Exhibit Number Twenty-one,
23 which is in evidence.

24 **A** These are the same items I examined in L11-8183.
25 They are two fired bullet jacket fragments.

1 Q Were you able to determine what weapon fired those?

2 A The larger fragment we determined was fired by
3 State's Exhibit Thirteen, the revolver.

4 Q No, I think it's Fifteen. It's on the revolver
5 itself.

6 A Oh, okay. Yeah, there it is. Okay. It was fired by
7 the revolver.

8 And then the smaller fragment, I'm not sure which
9 State's exhibit it is, but it's the smaller fragment, we
10 couldn't determine -- it was unsuitable for
11 identification. That means it had no marks of value on it
12 for me to do anything with it. I couldn't tell you if it
13 was fired by either gun or a different one.

14 Q Okay. Just to keep the record straight, State's
15 Exhibit Number Fifteen, which is the revolver, ---

16 THE COURT: Can you speak up? There was a sneeze.
17 I'm afraid our jurors could not hear you, Mr. Knight. I'm
18 sorry.

19 MR. KNIGHT: I'm sorry, Your Honor.

20 Q You referred to State's Exhibit Number Fifteen as a
21 revolver, but for the record, we have to know it's Fifteen
22 fired which one of those projectiles?

23 A State's Exhibit Fifteen fired -- I'm not sure which
24 one of these is the larger fragment.

25 Q Twenty-one.

1 **A** Twenty-one. So, State's Exhibit Fifteen fired
2 State's Exhibit Twenty-one.

3 **Q** Thank you, ma'am. I was just doing that for the
4 record.

5 Ms. Eichenmiller, if a revolver was fired inside of
6 an automobile, would that cause the fragmentation of those
7 bullets you referred to in State's Exhibit Number
8 Twenty-one?

9 **A** It depends on if it hit something.

10 **Q** If it hit a windshield.

11 **A** It could make that happen to the bullet.

12 **Q** Thank you, ma'am. Answer any questions Mr. Bryan may
13 have.

14 **THE COURT:** Cross-examination?

15 **MR. BRYAN:** None, Your Honor.

16 **THE COURT:** Very well. Is this witness free to
17 leave?

18 **MR. KNIGHT:** Yes, ma'am. May she be excused?

19 **THE COURT:** Yes.

20 Any objection?

21 **MR. BRYAN:** No, Your Honor.

22 **THE COURT:** Very well. You are free to go.

23 Ladies and gentlemen, we will now take our afternoon
24 break. We will take about fifteen minutes. Please step
25 to your jury room. Do not discuss this matter or allow

1 anyone to discuss it with you. For any of those that want
2 to smoke, let them smoke.

3 (DECEMBER 12, 2012, 3:25 P.M., WHEREUPON, THE JURY
4 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
5 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

6 **THE COURT:** We'll take our break.

7 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, THE
8 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE
9 PRESENCE AND HEARING OF THE JURY:)

10 **THE COURT:** Okay. Anything before we bring the jury
11 out; from the State?

12 **MR. KNIGHT:** Nothing from the State, Your Honor.

13 **THE COURT:** From the defendant?

14 **MR. BRYAN:** Nothing from the defendant, Your Honor.

15 **THE COURT:** Okay. Great.

16 Let us have the jury. Thank you.

17 (DECEMBER 12, 2012, 3:51 P.M., WHEREUPON, THE JURY
18 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
19 WERE HELD IN THEIR PRESENCE.)

20 **THE COURT:** Ladies and gentlemen, I hope you enjoyed
21 your break. At this time, we will continue with the
22 State's case.

23 Mr. Knight?

24 **THE COURT:** We call Tim Knight.

25 PAUL TIMOTHY KNIGHT, after being duly sworn,

1 testified as follows:

2 CLERK: Please have a seat on the witness stand, and
3 state your name for the record.

4 WITNESS: How are you doing, Your Honor?

5 THE COURT: Good.

6 WITNESS: Paul Timothy Knight, K-N-I-G-H-T.

7 THE COURT: All right. Your witness.

8 MR. KNIGHT: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. KNIGHT:

11 Q Mr. Knight, who are you employed with?

12 A The Dorchester County Sheriff's Office.

13 Q In what capacity, sir?

14 A Right now I'm a detective assigned to the Criminal
15 Investigation Division.

16 Q Were you working on or about July the 12th, 2011?

17 A Yes, sir.

18 Q In what capacity, sir?

19 A I was a member of the K-9 Team.

20 Q Did you have an occasion to go to the scene of 5519
21 Augusta Highway here in Colleton County?

22 A Yes, sir.

23 Q Tell the Court how, and the jury how, you got there.

24 A Sure. Just before Corporal Eaches initiated his
25 traffic stop on the defendant's vehicle, I was on I-95

1 Southbound conducting my own traffic stop when I heard by
2 a police radio that the defendant's vehicle was not
3 stopping for Corporal Eaches. I disengaged my traffic
4 stop and joined in the pursuit.

5 Q You were on I-95 South?

6 A Yes, sir.

7 Q Did you exit off of I-95 South?

8 A Yes, sir.

9 Q What road did you exit off on?

10 A We exited onto Highway 61.

11 Q Were you behind Lieutenant Burnette?

12 A At that time I was actually behind Corporal Eaches'
13 patrol car, who was following Lieutenant Burnette.

14 Q So you would have been the third ---

15 A Yes, sir.

16 Q --- car?

17 A Yes, sir.

18 Q When you got to the location, the black Acura had
19 overturned. What, if anything, did you do?

20 A I exited my patrol vehicle, and I observed Lieutenant
21 Burnette giving chase on foot. I joined him in the foot
22 chase with him into the woods after the suspects.

23 Q Did you apprehend a person, with the assistance of
24 Lieutenant Burnette?

25 A Yes, I did.

1 Q Who did you apprehend?

2 A The defendant, Mr. Rivers.

3 Q This guy? The gentleman sitting next to Mr. Bryan?

4 A Yes, sir.

5 Q Okay. How far were you behind Justin Eaches'
6 vehicle?

7 A The closest I got was probably several hundred yards.

8 Q Did your car have audio and video?

9 A Yes, it did.

10 Q Would it have shown anything different than the
11 previous two videos we've seen?

12 A No, sir.

13 Q Did you have a service revolver that day?

14 A Yes, I did.

15 Q Did you fire it?

16 A No, I did not.

17 Q Of your own knowledge, do you know if any other
18 deputy sheriff from Dorchester County fired their weapon?

19 A No, they did not.

20 Q Do you know of your own knowledge how many other
21 Dorchester County Sheriff's Deputies arrived at the scene?

22 A All total, maybe eight.

23 Q Okay. Do you know of your own knowledge what their
24 purpose of being there was?

25 A Their purpose for being there would be taking the

1 role of backup deputies, perimeter deputies. They're
2 trying to maintain the perimeter so that we could better
3 locate and contain the two defendants that fled the
4 vehicle.

5 Q You did not assist in the apprehension of Shelley
6 Bronson -- Bronson Shelley, excuse me.

7 A No, I did not.

8 Q Only on the defendant, Maurio Rivers.

9 A Yes, sir.

10 Q Okay. Thank you, sir. Answer any questions Mr.
11 Bryan may have.

12 THE COURT: Mr. Bryan, cross-examination.

13 MR. BRYAN: None, Your Honor.

14 THE COURT: Very well. Is this witness free to
15 leave?

16 MR. KNIGHT: Yes, Your Honor. May he be excused?

17 THE COURT: Any objection?

18 MR. BRYAN: None, Your Honor.

19 THE COURT: Thank you. You're free to go.

20 WITNESS: Thank you, Your Honor.

21 THE COURT: Call your next witness, please.

22 MR. KNIGHT: The State would rest, Your Honor.

23 THE COURT: Very well.

24 Ladies and gentlemen, you've now heard the witnesses
25 and received the evidence which you will from the State

1 in the State's case in chief. That signifies to me that
2 there are matters that I must take up outside your
3 presence.

4 I'm going to ask you to please step to your jury
5 room. Do not discuss this matter or allow anyone to
6 discuss it with you. We will be with you shortly.

7 (DECEMBER 12, 2012, 3:56 P.M., WHEREUPON, THE JURY
8 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
9 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

10 **THE COURT:** All right. Are there any motions?

11 **MR. BRYAN:** Your Honor, at this time the defense
12 would move for a directed verdict of acquittal for the
13 reason that the State has failed to present sufficient
14 evidence that the defendant has committed this crime.
15 I'll hand up a couple of Briefs I've done in support of
16 this motion, Your Honor.

17 **THE COURT:** Okay.

18 **MR. BRYAN:** For one thing, and this was more of an
19 issue at the other trial, but the specific intent to kill
20 seems to be pretty much required for an intent crime,
21 including attempted murder.

22 Also, nobody is saying that they say Mr. Rivers
23 shooting at anybody, so that makes this a circumstantial
24 evidence crime. And the level of evidence required on a
25 circumstantial evidence case is a little bit higher, and a

1 little bit more is required from the State. There has to
2 be substantial evidence, and that's addressed in one of
3 these Briefs, too, Your Honor.

4 **THE COURT:** Whoa. The State doesn't prove anything
5 by substantial evidence. The State has got to prove guilt
6 beyond a reasonable doubt. It's a lot more than
7 substantial evidence.

8 **MR. BRYAN:** Well, I meant for a directed verdict
9 motion, Your Honor. It's not a scintilla of evidence.

10 **THE COURT:** Okay. All right. Very well. All right,
11 I'm with you now.

12 **MR. BRYAN:** Your Honor, I think the most -- even if
13 you're looking at it in the light most favorable to the
14 State, was that there were two guns used. One man was
15 seen shooting. That man was not my client. There is no
16 evidence that my client was doing anything other than
17 driving the car. Everyone who saw him, he was driving.
18 He was running.

19 There is no evidence that he knew the passenger or
20 for how long or why the passenger was in the car or who
21 the car belonged to or anything of that nature. All that
22 we know is that Mr. Rivers, looking at it in the light
23 most favorable to the State, was driving a car from which
24 a passenger was firing a pistol.

25 The State might try to make some big deal out of

1 bullet holes in the windshield, but the passenger could
2 have quite as easily grabbed for another pistol. I think
3 it would be pretty clear that the driver of a car that's
4 just been hit is going to be white-knuckling the steering
5 wheel, not letting go and grabbing a gun and shooting,
6 Your Honor.

7 I mean, just looking at this in the light most
8 favorable to the State, the circumstantial evidence is
9 very -- it calls for speculation and guesswork, and
10 there's simply no way that a jury could find from this
11 evidence that he's guilty beyond a reasonable doubt.
12 Thank you.

13 **THE COURT:** Thank you so much, Mr. Bryan. I would
14 respectfully deny your motion. As you know, I am not
15 charged with the responsibility of weighing the evidence
16 but ascertaining whether or not there is evidence on each
17 and every element of the offense, not weighing it.

18 Now, let me say this. I am, of course, dealing at
19 this moment with the attempted murder indictments at this
20 moment, and I find that there is evidence on each and
21 every element of the offense from which the jury could
22 make a determination of guilt, and so I would respectfully
23 deny your motion. But let me hear from you with regards
24 to the third indictment, which is ---

25 **MR. KNIGHT:** Possession of a weapon during the

1 commission of a violent offense.

2 THE COURT: Yes, sir.

3 MR. KNIGHT: Well, Your Honor, obviously the jury
4 would have to find the defendant guilty of either one or
5 both of the attempted murder, because attempted murder is
6 defined as a violent offense. So absent a guilty verdict,
7 ---

8 THE COURT: And it would be your position that
9 possession is either direct or constructive possession of
10 the firearm; right?

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

12 THE COURT: I understand. All right.

13 Yes, sir, Mr. Bryan?

14 MR. BRYAN: Your Honor, there's no evidence of how
15 long Mr. Rivers was driving the car, whether it was his
16 car or someone else's car, whether he had knowledge of
17 what was in the car, whether he had control of the car,
18 particularly in light of the situation where a passenger
19 whips out a gun and starts shooting at people.

20 I think it's really hard to say you're in control of
21 a car when a passenger has a car and he's shooting at
22 people. That's kind of a situation where you just don't
23 argue with the man. You just try to -- you know.

24 And I think under all of this, even when you construe
25 the evidence in the light most favorable to the State, the

1 State has failed to produce sufficient evidence of this
2 crime.

3 **THE COURT:** Thank you so much, Mr. Bryan. Again, I
4 respectfully deny your motion for probably an involuntary
5 non-suit at this point but with prejudice, and the reason
6 being at this juncture I am charged with the
7 responsibility of taking the evidence and all inferences
8 in favor of the non-moving party and to determine whether
9 or not there is evidence on each and every element.

10 I find that there is evidence on each and every
11 element, because there is evidence from which the jury
12 could find direct or constructive possession of the
13 firearms during the commission of a violent crime. So I
14 would respectfully deny your motion, noting your exception
15 thereto.

16 Will you be calling witnesses?

17 **MR. BRYAN:** No, Your Honor.

18 **THE COURT:** All right. Then I would examine your
19 client at this time. Okay?

20 I'll have you rest before the jury, and then we will
21 argue and charge in the morning. We'll go over the charge
22 together, but we don't need to hold the jury to do that
23 work.

24 But at this point, I certainly would examine your
25 client. So bear with me just a moment.

1 All right. All right, Mr. Rivers, would you do me a
2 favor, please, and just stand and raise your right hand?

3 MAURIO D. RIVERS, after being duly sworn,
4 testified as follows:

5 THE COURT: Thank you, Mr. Rivers. Mr. Rivers, I
6 just have some questions that I'm going to need to ask of
7 you, and there are certain things that I'm going to
8 discuss with you. Okay?

9 DEFENDANT, MR. RIVERS: Yes, ma'am.

10 THE COURT: If you don't understand what I am saying
11 or you don't understand what I mean, don't you be shy.
12 You let me know that. There are many ways to explain any
13 one thing. Okay?

14 DEFENDANT, MR. RIVERS: Yes, ma'am.

15 THE COURT: And don't you hesitate to say: I don't
16 know what you're talking about.

17 You make that clear, because I will do my very best.
18 Okay?

19 DEFENDANT, MR. RIVERS: Yes, ma'am.

20 THE COURT: Because, Mr. Rivers, it is critical that
21 you understand what we're going to talk about. Okay?

22 DEFENDANT, MR. RIVERS: Okay.

23 THE COURT: All right. Mr. Rivers, we've now reached
24 the stage of the trial, just to be clear, the State has
25 rested, made motions, and we've reached the stage of the

1 trial where you may present your defense. You have the
2 right to claim the protections given to you by the Fifth
3 Amendment to the Constitution of the United States. And
4 that -- this amendment says in part that no person shall
5 be compelled in any criminal case to be a witness against
6 himself.

7 And this means, Mr. Rivers, that you cannot be
8 required to testify in this case. You have the right to
9 testify on your own behalf; however, no one can make you
10 testify. This is a personal right, and no one can waive
11 this right, except you.

12 You don't have to prove anything. The burden is, and
13 remains, on the State of South Carolina to prove guilt
14 beyond a reasonable doubt.

15 Now, if you do decide to testify, Mr. Rivers, you
16 would be subject to the same rules that govern other
17 witnesses, and you may be examined and cross-examined on
18 any relevant issue in this case. In addition, if you have
19 any convictions involving dishonesty or false statement or
20 for crimes punishable by imprisonment for more than one
21 year and I determine that the probative value of admitting
22 this evidence outweighs its prejudicial effect to you, the
23 solicitor will be able to introduce your record for the
24 purpose of attacking your credibility, and that only.

25 If you decide to testify, this decision on your part

1 must be freely, voluntarily and intelligently made, with
2 knowledge of the protections given to you by the Fifth
3 Amendment and the consequences of your decision to
4 testify.

5 If you decide not to testify, I will direct and
6 instruct the jurors that they cannot give the fact that
7 you chose not to testify any consideration whatsoever and
8 that there is to be absolutely no prejudice to you because
9 you did not testify. In fact, I will tell this jury that
10 they can't even discuss your decision not to testify in
11 the jury room, that that is not a matter for them to
12 discuss, that the burden is, and remains, on the State of
13 South Carolina. You don't have to prove anything. That's
14 a part of my charge.

15 Now, here's what's important, though. Your decision
16 to testify or not to testify, Mr. Rivers, is left, and
17 must be left, entirely up to you. Of course, I urge you
18 to continue to talk and continue your discussions with Mr.
19 Bryan. I'm sure you've been doing that. I want you to
20 speak with your family members or friends or people whose
21 opinion you trust, but you must know, Mr. Rivers, that the
22 final decision whether to testify or not to testify is
23 left entirely up to you. You have to make that decision.

24 Do you understand what I've explained to you?

25 **DEFENDANT, MR. RIVERS:** Yes, ma'am.

1 **THE COURT:** Do you have any questions about what I
2 have explained to you?

3 **DEFENDANT, MR. RIVERS:** No, ma'am.

4 **THE COURT:** Are you sure?

5 **DEFENDANT, MR. RIVERS:** Yes, ma'am.

6 **THE COURT:** Positive?

7 **DEFENDANT, MR. RIVERS:** Positive.

8 **THE COURT:** Now, Mr. Rivers, do you need to discuss
9 with Mr. Bryan or anyone else, family or friends, as I
10 said, your decision and whether you wish to testify or not
11 testify?

12 **DEFENDANT, MR. RIVERS:** I don't need to.

13 **THE COURT:** Are you ready to make that decision?

14 **DEFENDANT, MR. RIVERS:** Yes, ma'am.

15 **THE COURT:** All right. And have you made that
16 decision?

17 **DEFENDANT, MR. RIVERS:** Yes, ma'am.

18 **THE COURT:** Do you wish to testify or not to testify?

19 **DEFENDANT, MR. RIVERS:** No, ma'am. I wish not to
20 testify.

21 **THE COURT:** Thank you.

22 I think my hearing is going. I don't think it's you.
23 Very well. Understand that I will certainly give the
24 -- I will give the jury that instruction that I told you
25 about. Okay? Very well.

1 Thank you. You may be seated.

2 All right. Now, what I think we will do, gentlemen,
3 is I will have -- I will have the jury come back in and
4 then you'll rest on the record. Then I'm going to explain
5 to them that we'll have argument and charge in the morning
6 at 9:30.

7 Very well. Let me have my jury.

8 (DECEMBER 12, 2012, 4:11 P.M., WHEREUPON, THE JURY
9 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
10 WERE HELD IN THEIR PRESENCE.)

11 **THE COURT:** All right, ladies and gentlemen, before
12 you just took your leave from the courtroom, I told you
13 that you had heard the witnesses and received the evidence
14 that you would from the State in the State's case in
15 chief. We will now turn to the defense.

16 Mr. Bryan?

17 **MR. BRYAN:** The defense rests, Your Honor.

18 **THE COURT:** Very well.

19 Ladies and gentlemen, you have now received the
20 evidence which you will in this case. What remains for us
21 are the arguments of counsel and then my charge or the
22 instruction on the law, and then you will receive this
23 case for your deliberation.

24 Now, one of the first things they teach you as a baby
25 judge, and for goodness sake, I'm not a baby judge

1 anymore, I left that decades ago it seems, one doesn't
2 charge and argue after 4:00 o'clock in the afternoon. And
3 the reason for that is that that means that the jury will
4 get the case about 6:00 o'clock, and we don't want to do
5 that.

6 So, ladies and gentlemen, we've got some matters that
7 we will -- I'll be talking to the lawyers about so that we
8 will be ready in the morning, but we will hear the
9 arguments of counsel and then my charge on the law in the
10 morning at 9:30, in the morning at 9:30.

11 Now, ladies and gentlemen, you are not prepared to
12 deliberate. You are not prepared to discuss this matter,
13 so hence the instruction: Do not discuss this matter or
14 allow anyone to discuss it with you.

15 Now, some of my jurors, y'all have become frequent
16 flyers. You know that people at your house are going to
17 be hunting tonight, and it's perfectly fine for you to
18 say: You know the case that went to trial, that case
19 resolved, but alas, I was selected again.

20 That's perfectly fine to say. Again, if they're
21 curious, you can say it's a criminal matter, as opposed to
22 a civil matter, but beyond that, you must not discuss this
23 matter or allow anyone to discuss it with you.

24 Now particularly those that will have told whoever is
25 curious, now this will be night number two, and there

1 might be a little frustration. Remember, put it on the
2 judge. Don't you take any upset. You tell them the judge
3 said you can't talk about this matter.

4 Remember, when you have been discharged from your
5 service on this jury, I promise you there will be no
6 question in your mind that that has come, you will be at
7 liberty to talk about this case if you wish. But until
8 then, ladies and gentlemen, you must not discuss this
9 matter or allow anyone to discuss it with you.

10 When the time has come to deliberate with your fellow
11 jurors, there will be no question in your minds when that
12 time has come, because I'm going to tell you specifically:
13 It's time to deliberate.

14 Now, ladies and gentlemen, please keep that in your
15 mind over the balance of the evening. Now, ladies and
16 gentlemen, don't read anything, don't listen to anything
17 about this matter. I don't know whether or not there will
18 be any sort of publicity about it. I simply don't know
19 that, but you must not read anything or listen to anything
20 about this case, and that means the radio, the television,
21 and of course the Internet.

22 Do not access any social media with regards to this
23 matter. That means no tweeting, no blogging, no linking,
24 no FaceBook, no Space -- MySpace. You must receive all of
25 the information from which you will make up your mind here

1 in court while court is in session.

2 Don't do any Columbo. Don't do any investigation.
3 Don't go on the Internet to define different terms for
4 yourself. Again, you must receive all of the information
5 from which you will make up your minds here in court while
6 court is in session.

7 Ladies and gentlemen, with that admonition and those
8 instructions, I will say to you good evening, and I look
9 forward to seeing you in the morning at 9:30. Thank you
10 so much. You may go with the bailiff.

11 (DECEMBER 12, 2012, 4:16 P.M., WHEREUPON, THE JURY
12 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
13 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

14 **THE COURT:** Now that you have rested, you would renew
15 your motions as before, Mr. Bryan?

16 **MR. BRYAN:** Yes, Your Honor. I would once again
17 bring the Court's attention to the Briefs I handed up.

18 **THE COURT:** Yes.

19 **MR. BRYAN:** And the case of the State versus Odems,
20 which was decided last year, and also Jackson versus
21 Virginia from 1979, which more explicitly states the rule
22 I've cited.

23 And, once again, I would renew my motion. I think
24 the State has produced a modicum of evidence sufficient
25 for speculation and guesswork, but to say for the jury to

1 look at this and say beyond a reasonable doubt that my
2 client is guilty is ridiculous.

3 **THE COURT:** Thank you so much. And on the same
4 basis, respectfully, I deny your motion -- your motions,
5 and note your exceptions thereto.

6 Counsel, if you would be so kind, I would greatly
7 appreciate it if you would have an informal charge
8 conference with me. I would appreciate that greatly, and
9 go over the verdict form and the charge. And so if you
10 would retire to chambers and do that with me, I would be
11 so grateful.

12 Now, before you all leave, though, it is my
13 understanding that all of the exhibits that have been
14 admitted into evidence are State's exhibits; am I correct?

15 **MR. KNIGHT:** That's correct.

16 **THE COURT:** Very well. So you'll get the last
17 argument. Okay.

18 (WHEREUPON, THIS CASE WAS RECESSED FOR THE DAY.
19 THEREAFTER, ON DECEMBER 13, 2012, AT 9:55 A.M., THE
20 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE
21 PRESENCE OF THE JURY:)

22 **THE COURT:** All right. Is everybody ready? Are you
23 ready on behalf of the State for your closing?

24 **MR. KNIGHT:** Yes, ma'am.

25 **THE COURT:** On behalf of the defense?

1 **MR. BRYAN:** Yes, Your Honor.

2 **THE COURT:** Wonderful. I'm going to tell the jury
3 they'll first hear from you.

4 **MR. KNIGHT:** Yes, ma'am.

5 **THE COURT:** And then they'll hear from Mr. Bryan.

6 And we're ready to proceed. Very well. All right.
7 Let us have the jury.

8 (DECEMBER 13, 2012, 9:55 A.M., WHEREUPON, THE JURY
9 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
10 WERE HELD IN THEIR PRESENCE.)

11 **THE COURT:** Good morning, ladies and gentlemen. Good
12 morning.

13 We have traveled this week from being like summertime
14 to being like the dead of winter. It's not only cold, but
15 damp and cold.

16 Now, I want to tell you how we're going to be
17 proceeding this morning. The first thing that is going to
18 happen is that you're going to hear from Mr. Knight and
19 his closing argument on behalf of the State. And then
20 you're going to hear from Mr. Bryan in his closing
21 argument on behalf of Mr. Rivers.

22 Then there is going to be a very short break, which
23 is going to be self-explanatory when we reach that point.
24 Then I will deliver the charge or the instruction on the
25 law to you. And then there will be another very short

1 break, and then I'll explain that when we reach that
2 point. And then you will receive this case for your
3 deliberations.

4 So, ladies and gentlemen, at this time, I ask that
5 you please draw close as we listen to the closing
6 arguments of our attorneys.

7 Mr. Knight?

8 **MR. KNIGHT:** May it please the Court, Your Honor?

9 **THE COURT:** Yes, sir.

10 **MR. KNIGHT:** Madam Forelady, and ladies and gentlemen
11 of the jury, I want to discuss with you an important
12 principle. Part of the oath you took says this: You
13 must, you must, accept the law that His Honor charges you,
14 whether you like it or not. Whether you agree with it or
15 not, you must accept that law as the law to be applied to
16 the facts of this case.

17 Now I'm going to discuss with you the law, as I
18 understand it. I won't do as well as His Honor will do,
19 but I'm going to try.

20 The first thing we have is attempted murder.
21 Attempted murder is a person with intent to kill attempts
22 to kill another person with malice aforethought, either
23 expressed or implied, commits that offense. That's one
24 charge.

25 The other charge is possession of a weapon during the

1 commission of a violent offense. The South Carolina
2 Legislature has defined attempted murder as a violent
3 offense. Therefore, if you have a weapon and you're
4 convicted of it during the commission of that offense,
5 that's the possession of a weapon during the commission of
6 a violent offense.

7 Another principle that we live on and we go by in
8 this courtroom is called the credibility of the witnesses.
9 And basically that says this. You can believe part of a
10 witness's statement or none of a witness's statement, one
11 witness's testimony versus another. You can believe all
12 or none.

13 You also have to determine, when using this word
14 credibility, the demeanor of the witness on the stand, his
15 or her bias or prejudice. They can be prejudiced to
16 testify one way or the other. You do that by observing
17 the witnesses, and that's called the credibility of the
18 witnesses. And only you can make that decision. I can't
19 and His Honor can't. Only you can.

20 Another principle is called the hand of one is the
21 hand of all. It's sort of like if one commits an act and
22 the other one is participating, even though he didn't
23 commit that particular act, he's guilty also. I'll give
24 you a couple of examples.

25 You drive a car -- I drive the car to a convenience

1 store and the fellow with me has a weapon and he's going
2 in to rob the convenience store. He says: Keep the car
3 running.

4 I never go into the store, but I'm as guilty as he is
5 for robbing the store with a weapon.

6 Another example is I go with my friend. He says:
7 I'm going into the convenience store. You stand outside
8 and be my lookout.

9 I'm as guilty as he is. That's called the hand of
10 one is the hand of all. Even though I didn't go inside, I
11 didn't point the gun at the clerk, I'm as guilty as he is.

12 Now, mere presence, just because you're at the scene
13 of a crime doesn't mean that you're guilty, but if you
14 understand the plan, you understand what's going on,
15 you're participating, aiding, assisting in some form or
16 fashion, you're not there just as a result of mere
17 presence. You're participating in the event.

18 Intent, you know I first said with intent to kill
19 attempts to kill. Intent is a big word. Now, we can't
20 define intent. We can't look inside a person's brain and
21 say it's his intent to do this, his intent to do that, but
22 what we can do is look at his or her actions and the
23 participation of this event.

24 Actions sometimes speak louder than words. Most of
25 the time they do. And, for example, if I'm -- in this

1 instance, you saw it on the video. If you're trying to
2 get away from the police, what are you doing? You're
3 doing a hundred miles an hour. There's shooting.

4 And your intent is: I haven't done anything.

5 So you stay in the car when it flips over in the
6 grassy area off the road? No, you take off running. What
7 is your intent? That's important. Those actions show
8 what your intent is in this event.

9 The video speaks for itself. You saw it. Speeds up
10 to a hundred miles an hour on I-95 South, ninety to a
11 hundred miles an hour on Highway 61. You saw the bumping
12 of the vehicle by Lieutenant Burnette. It spins, rolls
13 over into a grassy area, not a rocky area, but a grassy
14 area.

15 You then see law enforcement chasing these
16 individuals. You don't see anybody staying in the car.
17 You see them running, trying to avoid apprehension after
18 this chase all over the world, so to speak, from 95 South
19 into Colleton County on Highway 61.

20 Justin Eaches told you how he identified the driver,
21 Maurio Rivers, back here. He pulled up parallel to the
22 vehicle, saw the hairstyle that Mr. Rivers had, and we
23 have a photograph showing on the same day that was his
24 hairstyle.

25 Officer Burnette, you heard him making a radio call

1 as to the events that were occurring that particular day.
2 He says he saw some movement by the passenger, and he saw
3 the passenger come out. Some people call it a moonroof.
4 I call it a sunroof, whatever. And there's fire -- shots
5 are fired.

6 What else did Officer Burnette testify to? When they
7 went off the road, they being the black Acura, it was spun
8 around, there was a second round of shots, a second round.
9 And I think in State's Exhibit 8F, you'll see where those
10 rounds were coming from; inside of the vehicle on the
11 driver's side.

12 Now remember, we've got testimony in this case that
13 there were three weapons, not one, not two, but three
14 weapons. Somewhere between seven and ten rounds were
15 fired. You have a diagram showing where they were on the
16 road, the side of the road. Then we have two fragments of
17 the .38 Special that were found.

18 And I think Michelle Eichenmiller's testimony is
19 very, very interesting. She tested two guns. Those guns
20 fired the casings that were found by Mr. Ethridge. And
21 the .38 Special, the fragments, were fired by the .38
22 Special, which Officer Ethridge found also.

23 But more importantly, I think she testified, and I
24 stand to be corrected if I'm wrong, you take what came off
25 the witness stand and not what I say, is that when the

1 bullet was fired from inside the car, it would cause a
2 fragment because it hit something. What did it hit? The
3 window. That's what all that testimony is about.

4 Now, think about this. Why would you run from the
5 police if you haven't done anything?

6 First we have a chase on I-95 South into Colleton
7 County, ninety to a hundred miles an hour. But more
8 importantly, the car is bumped by Lieutenant Burnette, it
9 flips over. If you haven't done anything, why would you
10 run to avoid apprehension? Flight is an inference of
11 guilt.

12 That's what this is all about. It's not mere
13 presence. It's avoiding apprehension and the inference of
14 guilt.

15 I submit to you, ladies and gentlemen of the jury,
16 that we have proved beyond a reasonable doubt that Maurio
17 Rivers is guilty of two counts of attempted murder and
18 possession of a weapon during the commission of a violent
19 offense. Thank you.

20 **THE COURT:** Thank you, Mr. Knight.

21 **MR. KNIGHT:** Yes, ma'am.

22 **THE COURT:** Mr. Bryan?

23 **MR. BRYAN:** May it please the Court?

24 **THE COURT:** Yes.

25 **MR. BRYAN:** Now you have to keep in mind that for

1 attempted murder there's a specific intent to kill. That
2 means you intended to kill somebody. That's just one
3 thing, but another thing is for accomplice liability, you
4 have to prove that the person not only knew of the crime,
5 but he was helping, he was assisting, he was
6 participating.

7 A person can be present. That doesn't make them
8 guilty.

9 If I drive a friend to a convenience store and he
10 robs it, I'm not guilty unless I knew that's what he was
11 doing and that's why I took him there. If I just drove
12 him there and he whips out a gun, to my surprise, I'm not
13 guilty. I didn't help. I didn't know.

14 Now what we do have, we've got testimony and we've
15 got video. If y'all want to see the video again, feel
16 free to ask. We'll play it for you.

17 The car started to pull over when that blue light
18 came on. Y'all saw that car go into the emergency lane
19 and slow down, and then it took off.

20 And then when the car rolled over, both of them ran,
21 but what did the officers say? One of them ran straight
22 into the woods and one of them ran at a forty-five degree
23 angle. One of them was running from -- both of them might
24 have been running from the police, but one of them was
25 also running from the other one.

1 There's no evidence that these two knew each other,
2 or if they knew each other how long they knew each other,
3 what they had in common, how long they had been riding,
4 how long they had been driving, nothing.

5 There's no DNA evidence. You saw the officer
6 testify, the detective: I took swabs of the trigger for
7 DNA analysis.

8 DNA analysis would have proven who had a finger on
9 that trigger. The State had that evidence. They did not
10 submit it. They didn't bring it to this courtroom today.
11 That would have been better than guesswork, and that's
12 what we have here today is guesswork and speculation.

13 Fingerprints; there is no testimony of any
14 fingerprints on any weapon or any magazine clip or bullets
15 or anything.

16 A gunshot residue kit was taken. No results of that
17 were presented to y'all today. That could have made a
18 difference.

19 We've got Officer Burnette saying he got -- he saw
20 Mr. Shelley get up. He was the passenger. There's no
21 doubt who was the passenger.

22 Eaches was the first. He said Mr. Shelley was the
23 passenger. Mr. Burnette said Mr. Shelley was the
24 passenger, and Mr. Burnette said he saw the passenger
25 shooting at him. And when you look at the video, you can

1 see the passenger hop up, and you can hear the gunshot
2 rounds. Pop, pop, pop, pop.

3 Then he said there was another gunshot. But when did
4 that gunshot happen? The car is spinning around backwards
5 and you hear that gunshot, what he calls a gunshot, as
6 soon as it hits something solid enough to flip that car
7 over.

8 Now, listen to it. Does that sound like a gunshot,
9 or does it sound like a massive object hitting another
10 massive object like a two and a half ton car hitting
11 something hard enough to make it bounce around and flip
12 over? Does it sound like a gunshot?

13 The State's theory appears to be that after this car
14 was struck by Officer Burnette, while it was spinning
15 around and rolling backwards and flipping over that Mr.
16 Rivers let go of the steering wheel and grabbed a gun and
17 fired rounds off through the windshield. When you drive a
18 car fast, if you've ever done it, the faster you go, the
19 more you have to control the car. Two hands. And when
20 that car is hit, what's your instinct? Both hands on the
21 steering wheel, trying to recover control of the car.
22 They're saying he did the opposite. He let go and let the
23 car do what it wants to do. I want to get a round off.

24 That's the State's theory. That is guesswork. That
25 is speculation. That is contrary to normal human

1 experience.

2 When y'all get picked to go on a jury, you're
3 entitled to rely on your everyday common experience. You
4 don't have to check in your common sense when you walk
5 into a courthouse.

6 Another thing, shooting at a policeman, there were
7 three cars after them. That was completely nuts. Number
8 one, you would have to stop all three officers, and then
9 where are you going to go in a wrecked car when you've got
10 more coming in, because every police car these days has a
11 radio? The State is going to ask you to say they were
12 both that crazy in that car. Do they have any evidence of
13 that?

14 Burnette said he saw a man shooting at him. He said
15 it was the passenger. He said he didn't see anyone else
16 shooting at him. He said he thought he got shot at and he
17 heard a bang, but if you watch the video, you see that
18 bang is when that car hits something and flips over.

19 And if you look at the timing on this, the shots come
20 out at it looks like 19:08:44. The car is hit at
21 19:09:00. That's sixteen seconds between the first round
22 and when the car is hit. Ten seconds later, the car is
23 rolling over. Five seconds after that, the officer is
24 already out of the car with the dog, chasing them.

25 How much reaction time is that? I mean, the guy is

1 driving the car, holding onto the steering wheel. And
2 they're assuming in that short, limited amount of time
3 he's going to let go of the steering wheel and grab a gun.
4 Doesn't it make a lot more sense to think that crazy
5 passenger had emptied one gun and had grabbed another?

6 And another thing is if you look at the photographs
7 of the windshield of the Acura, even assuming those are
8 bullet holes coming out of the front of the car, when you
9 look at the video, look at the angles of these two cars to
10 each other. You've got the Acura on the left side of the
11 road on the left shoulder rolling backwards, and you've
12 got the police car over here. If the passenger was going
13 to shoot towards the police car, he would have to shoot to
14 the left, at least at certain points. If the driver was
15 shooting, he'd be shooting out of the driver's window or
16 right next to the window pillar, windshield post. Just
17 look at the evidence.

18 Another strange thing is this crime happened, you
19 heard the testimony it happened in Colleton County, but
20 the investigation was done by detectives from Dorchester
21 County. The only reason apparently for that was the
22 victims were from Dorchester County. I don't know why.
23 There was no S.L.E.D. investigation. Colleton County
24 detectives weren't called out to do the work. It was all
25 in-house, and that might cast a little bit of doubt on

1 what exactly happened. I don't know. It's just unusual,
2 and I don't know what to make of that.

3 But if you look at the videos, if you listen to the
4 videos, if you look at the time on it and just use common
5 experience, if someone is driving fast, they're hanging
6 onto the wheel. If they're spinning around, they're
7 white-knuckling that steering wheel.

8 The State has already convicted the man that did the
9 shooting. All this case they have today is speculation
10 and guesswork, and that's no reason to send somebody to
11 prison, folks. That costs a lot of money. It ruins a
12 life.

13 I would just ask you to just pay attention to the
14 evidence. If you want to see the video again, ask for it.
15 They'll do it. And I thank you for your time.

16 **THE COURT:** Thank you, Mr. Bryan.

17 All right, here is that first break. Just stand up.
18 Do you know why I want you to do that? I just want to get
19 oxygen moving a little bit, because you've got to listen
20 to me for a little bit of time, so I want to be sure that
21 oxygen is moving and you've moved a little bit.

22 Now, let me ask you this question. Does anybody need
23 a comfort break, because it's going to take me probably
24 close to thirty minutes to deliver the charge to you? So
25 does anybody need a comfort break? Don't be shy.

1 **JUROR:** (RAISED HAND.)

2 **THE COURT:** Very well. Here's what we're going to
3 do. I'm going to send you all to your jury room,
4 everybody. See, you're the one that spoke up, but I bet
5 there are other people that need a little comfort break.

6 When you all have finished your comfort break, I want
7 you to knock at the door. We will be -- we will be
8 waiting on you. It won't be a set time, but when
9 everybody has had their comfort break, knock on the door.
10 At that point you're going to return, and I will deliver
11 the instruction or the charge to you.

12 Remember, do not discuss this matter or allow anyone
13 to discuss it with you, because you haven't heard my
14 instruction on the law. You are not prepared to
15 deliberate. Hence, you must not discuss this matter or
16 allow anyone to discuss it with you. When you finish your
17 comfort break, then you all will come back in at that
18 point.

19 If you will, go with your security detail and take
20 your comfort break. Thank you.

21 (DECEMBER 13, 2012, 10:15 A.M., WHEREUPON, THE JURY
22 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
23 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

24 **THE COURT:** All right, we'll be at ease until we hear
25 from our jury. Thank you, Counsel.

1 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, THE
2 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE
3 PRESENCE OF THE JURY:)

4 **THE COURT:** All right, bring us the jury, please.

5 (DECEMBER 13, 2012, 10:23 A.M., WHEREUPON, THE JURY
6 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
7 WERE HELD IN THEIR PRESENCE.)

8 **BAILIFF:** Your Honor, may I approach?

9 **THE COURT:** Yes, sir.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
11 RECORD AND OUT OF THE HEARING OF THE JURY. THEREAFTER,
12 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
13 PRESENCE AND HEARING OF THE JURY:)

14 **THE COURT:** I am so sorry. There is something I must
15 take up outside your presence. It's my fault, but you
16 won't be out of the courtroom more than one minute. I am
17 so -- it's my fault, my bad. If you will please just step
18 to your room. I apologize. My bad. Bad judge.

19 Just a moment. Bear with me just a moment.

20 (DECEMBER 13, 2012, 10:23 A.M., WHEREUPON, THE JURY
21 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
22 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

23 (THE DEFENDANT WAS BROUGHT INTO THE COURTROOM.)

24 **THE COURT:** All right. When the jury came back in
25 after their break, Mr. Rivers was not out, and so what I

1 did is just send the jury back out and told them there was
2 a matter I needed to take up outside their presence. I
3 told them it was my fault completely. I don't believe
4 they had an opportunity to notice that Mr. Rivers wasn't
5 here, and I didn't want Mr. Rivers escorted in from --
6 into the courtroom, so we sent the jury back out. Now Mr.
7 Rivers has joined us, and now we'll bring our jury out.

8 (DECEMBER 13, 2012, 10:25 A.M., WHEREUPON, THE JURY
9 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
10 WERE HELD IN THEIR PRESENCE.)

11 **THE COURT:** Wonderful. Madam Presiding Juror and
12 ladies and gentlemen of our jury, it is now my duty to
13 charge you regarding the law of this case. Now, that's
14 the term we use, charge. I'm going to instruct you on the
15 law. I'm going to try to condense some of what I spent
16 three years of law school doing, I'm going to see if I
17 can't condense it in a very short period of time and be
18 your instructor on the law.

19 Ladies and gentlemen, the State of South Carolina has
20 charged the defendant, Mr. Mauricio Rivers, with two
21 charges, two indictments it's also said, two counts of
22 attempted murder and one charge or one indictment of
23 possession of a weapon during the commission of a violent
24 crime.

25 Now, ladies and gentlemen, while I hold these

1 indictments up before you, I do remind you that the fact
2 that Mr. Rivers was arrested, charged, and indicted in
3 this case is not evidence in this case, nor does it create
4 any presumption or inference of guilt. These documents
5 are simply the formal written instruments which contain
6 the charges made against the defendant. They are formal
7 documents by which this case is brought into this court.

8 They are notice documents. I mean, you've got to
9 notify somebody that the State maintains, alleges, that
10 they violated a crime. That's all they are. They are
11 just notice documents. Now, they are not evidence of any
12 of the allegations that they contain.

13 Ladies and gentlemen, as I just -- we talked
14 yesterday, and I now repeat, Mr. Rivers has pled not
15 guilty to each and every one of these indictments, and
16 those pleas of not guilty place the burden on the State of
17 South Carolina to prove Mr. Rivers guilty beyond a
18 reasonable doubt.

19 Now, ladies and gentlemen, as we go through this
20 matter, I may refer to Mr. Rivers as the defendant. If I
21 say the defendant, I mean Mr. Rivers.

22 Now, ladies and gentlemen, a person charged with
23 committing a criminal offense or criminal offenses in
24 South Carolina is never, is never, required to prove
25 himself or herself innocent. The burden to prove guilt

1 is, and remains, on the State. I charge you that it is an
2 important rule of the law that a defendant in a criminal
3 trial, no matter of the seriousness of what the charge may
4 be or the charges may be, that person is always presumed
5 to be innocent of the crimes for which the indictments
6 were issued, unless guilt has been proven by evidence
7 satisfying you of that guilt beyond a reasonable doubt.

8 Ladies and gentlemen, the presumption of innocence
9 does not end when you begin your deliberation, but it
10 accompanies Mr. Rivers throughout the trial until you
11 reach a verdict of guilt based on evidence satisfying you
12 of that guilt beyond a reasonable doubt.

13 Ladies and gentlemen, the presumption of innocence is
14 not a mere legal theory. It is not merely a legal phrase.
15 It is a substantial right to which every defendant is
16 entitled, unless you, the jury, are satisfied from the
17 evidence of the defendant's guilt beyond a reasonable
18 doubt.

19 Now, what then is reasonable doubt in the law? A
20 reasonable doubt is the kind of doubt that would cause a
21 reasonable person to hesitate to act. A reasonable doubt
22 is the kind of doubt that would cause a reasonable person
23 to hesitate to act.

24 The State has the burden of proving the defendant,
25 Mr. Rivers, guilty beyond a reasonable doubt. Some of you

1 may have served as jurors in civil cases where you were
2 told that it was only necessary to prove that a fact was
3 more likely true than not true, which is by the greater
4 weight or the preponderance of the evidence. Ladies and
5 gentlemen, in criminal cases, the State's proof must be
6 more powerful than that. It must be beyond a reasonable
7 doubt.

8 Proof beyond a reasonable doubt is proof that leaves
9 you firmly convinced of the defendant's guilt. There are
10 very few things in this world that we know with absolute
11 certainty, and in criminal cases, the law does not require
12 proof that overcomes every possible doubt.

13 If based on your consideration of the evidence you
14 are firmly convinced that the defendant is guilty of the
15 crime charged, you must find him guilty. If, on the other
16 hand, you think there is a real possibility that the
17 defendant is not guilty, you must give the defendant the
18 benefit of the doubt and find him not guilty.

19 Now, ladies and gentlemen, you're going to consider
20 these indictments separately. You are going to consider
21 these indictments separately, and I'm going to talk to you
22 a little bit more about that in just a moment, but each of
23 the attempted murder indictments stand alone. You would
24 consider each of them. The State maintains the burden of
25 proving each of these indictments and each allegation in

1 each of these indictments beyond a reasonable doubt.

2 Now, the same is true with the indictment for
3 possession of a weapon during a violent crime. This
4 indictment, the State must prove each of the allegations
5 beyond a reasonable doubt, and with one exception, and
6 I'll talk about that in a moment. It stands also on its
7 own.

8 Now, ladies and gentlemen, I remind you that during
9 this trial, you and I have had certain duties to perform.
10 As the trial judge, it is my responsibility to preside
11 over the trial of this case, and I also have the duty to
12 rule on the admissibility of the evidence offered during
13 this trial. You are to consider only the competent
14 evidence before you. And that, what is that? Well,
15 that's the sworn testimony of the witnesses who have
16 testified in this case and any exhibits which are admitted
17 into evidence and inferences which can reasonably be
18 drawn.

19 Ladies and gentlemen, I have the additional duty to
20 charge you regarding the law applicable to this case. As
21 the presiding judge, I am the sole judge of the law of
22 this case, and it is your duty as jurors to accept and to
23 apply the law as I now state it to you. If you already
24 have any idea as to what the law is or what it should be,
25 you must abandon your preconceived idea, because you are

1 sworn by your oath to accept and to apply the law exactly
2 as I state it to you.

3 Ladies and gentlemen, in every case tried in this
4 court before a jury, the jury, you, become the sole, the
5 only, the exclusive judge of the facts in this case. A
6 trial judge cannot intimate, state, comment on, or make
7 any statement regarding the facts in the case, since you,
8 the jury, are the sole judges of the facts in this case.

9 You are not to infer from anything that may have --
10 that I may have said during the progress of this trial in
11 ruling upon the admissibility of evidence, or otherwise,
12 or anything that I say to you now during the course of
13 this instruction to you that I have any opinion about the
14 facts in this case. The law does not allow me to have an
15 opinion about the facts in this case. I don't have an
16 opinion regarding the facts in this case. That is a
17 matter solely for you to determine. As jurors, ladies and
18 gentlemen, it is your duty to determine the effect, the
19 value, the weight, and the truth of the evidence presented
20 during this trial.

21 Now, ladies and gentlemen, there are two types of
22 evidence which are generally presented during a trial.
23 One is called direct evidence. The other is called
24 circumstantial evidence.

25 Direct evidence is the testimony of a person who

1 claims to have actual knowledge of a fact, such as an
2 eyewitness. It is evidence which immediately establishes
3 the main fact to be proved.

4 Circumstantial evidence is proof of a chain of facts
5 and circumstances indicating the existence of a fact. It
6 is evidence which immediately establishes collateral facts
7 from which the main fact may or may not be inferred.
8 Circumstantial evidence is based on inference and not on
9 personal knowledge or observation.

10 I'm going to give you an example of what I'm talking
11 about. Ladies and gentlemen, I want you to imagine with
12 me it's February. It's cold. The sky has kind of that
13 gray look to it. Snow is forecast. You go outside after
14 supper and you look around and lo and behold, snow starts
15 knocking you in the face, and you look up and it's
16 snowing. Ladies and gentlemen, that's direct evidence.
17 You are literally an eyewitness to the fact that it is
18 snowing. If you were to say it's snowing, you would be an
19 eyewitness to the fact that it was snowing. That would be
20 direct evidence.

21 Now, my next example. We're still in February. It's
22 still cold. Snow is still forecast, but when you go out
23 about let's say 11:00 o'clock at night and you know snow
24 is forecast. The sky is kind of still that kind of gray.
25 You look around and what you see is a brown, crunchy

1 grass. You go in, go to bed. You wake up to go to work
2 the next day. You walk outside, and low and behold,
3 everywhere you can see, snow is covering everything.

4 Well, here's what you can testify to. Well, it's
5 February. It's very cold. Snow was forecast. When I
6 went to bed, there wasn't a thing but brown, crunchy
7 grass, but when I -- when I woke up the next morning and
8 went outside, snow covered everything. You can testify to
9 each of those as collateral facts which point to the fact
10 by inference that it snowed overnight. That's
11 circumstantial evidence that it snowed overnight, those
12 collateral facts that you testified to.

13 You didn't see it snow, but you know that it snowed.
14 You can say it snowed last night based on the inference.
15 In other words, you know the collateral facts, but then by
16 inference you know it snowed overnight.

17 Now, ladies and gentlemen, the law makes absolutely
18 no distinction between the weight or value to be given to
19 either direct or circumstantial evidence, nor is a greater
20 degree of certainty required of circumstantial evidence
21 than of direct evidence. You should weigh all the
22 evidence in the case, and after weighing all the evidence
23 if you are not convinced of the guilt of the defendant
24 beyond a reasonable doubt, you must find the defendant not
25 guilty. On the other hand, after hearing all of the

1 evidence in this case, if you are convinced of the guilt
2 of the defendant beyond a reasonable doubt, you must find
3 the defendant guilty. And, again, you will do that for
4 each of these indictments.

5 Now, ladies and gentlemen, necessarily then, you must
6 determine the credibility of witnesses who have testified
7 in this case. Credibility simply means believability.

8 It becomes your duty as jurors to analyze and
9 evaluate the evidence and to determine which evidence
10 convinces you of its truth. In determining the
11 believability of the witnesses who have testified in this
12 case, you may believe one witness over several witnesses
13 or several witnesses over one witness. You may believe a
14 part of the testimony of a witness and reject the
15 remaining part of the testimony of that same witness. You
16 may believe the testimony of a witness in its entirety, or
17 you may reject the testimony of a witness in its entirety.

18 You may consider whether any witness has exhibited to
19 you any interest or bias, prejudice, or other motive in
20 this case. And you may also consider the appearance and
21 the manner of the witness while on the witness stand.

22 Now, ladies and gentlemen, in this case you have
23 heard the testimony of a witness who was determined to be
24 an expert witness. Our Rules of Evidence ordinarily do
25 not permit witnesses to testify regarding their opinions

1 or conclusions. There is an exception to this rule, and
2 that exists for witnesses deemed to be expert witnesses.

3 A witness, who by education and experience,
4 knowledge, perhaps profession, has become an expert in
5 some field, perhaps art, science, profession, those
6 witnesses are allowed to give an opinion regarding the
7 subject the witness claims to be an expert, and they may
8 also give their reasons for their opinion or opinions.

9 You should consider any expert opinion given by a
10 witness, and like any other evidence, you give it the
11 weight that you think it deserves. If you decide that an
12 expert witness's opinion is not based on sufficient
13 education or experience, or if you decide that the reasons
14 given in support of the opinion are not sound, or that the
15 opinion is outweighed by other evidence, you may disregard
16 that opinion entirely.

17 An expert witness's testimony is to be given no
18 greater weight than that of other witnesses, simply
19 because the witness is an expert. And you do not have to
20 accept an expert's opinion, even though it is
21 uncontradicted or uncontroverted.

22 Now, ladies and gentlemen, I instruct you and I want
23 to emphasize that the fact that Mr. Rivers did not testify
24 is not a factor to be considered by you in any way in your
25 deliberation and in your consideration on the question of

1 whether Mr. Rivers is guilty or not guilty. The fact that
2 he chose not to testify must not be considered by you in
3 any manner whatsoever. A defendant has the constitutional
4 right to remain silent, and the assertion of this right
5 must not be considered by you in your deliberations.

6 I repeat, under your oath, you are to draw no
7 conclusion whatsoever from the fact that the defendant in
8 this case did not testify. The fact that this defendant
9 did not testify should not even be discussed in your jury
10 room.

11 Ladies and gentlemen, a defendant is not required to
12 prove he is not guilty, to prove his innocence. The
13 burden of proof is, and remains, on the State to prove
14 guilt beyond a reasonable doubt.

15 Now, an issue has been in this case regarding the
16 identification of the defendant, Mr. Rivers, as the person
17 who committed the crimes charged. The State has the
18 burden of proving identity beyond a reasonable doubt. You
19 must be satisfied beyond a reasonable doubt of the
20 accuracy of the identification of the defendant before you
21 may convict the defendant.

22 Identification testimony is an expression or belief
23 or impression by a witness. You must determine the
24 accuracy of the identification of the defendant.

25 You must consider the believability of each

1 identification witness in the same way as any other
2 witness. You may consider whether the witness had an
3 adequate opportunity to observe the offender at the time
4 of the offense. This will be affected by things like how
5 long or short time was available, how far or close the
6 witness was, the lighting condition, whether the witness
7 had the chance to see or know the person in the past.

8 Once again I instruct you, the burden of proof on the
9 State extends to every element of each of the crimes
10 charged, and this specifically includes the burden of
11 proving beyond a reasonable doubt the identity of the
12 defendant as the person who committed the crime, and you
13 will do this for each of these three indictments. If
14 after examining the testimony you have a reasonable doubt
15 as to the accuracy of the identification, you must find
16 the defendant not guilty.

17 Now, ladies and gentlemen, I'm going to now charge
18 you that if a crime is committed by two or more persons,
19 two or more people, who are acting together in committing
20 the crime, the act of one is the act of all. A person who
21 joins with another to commit an unlawful act is criminally
22 responsible for everything done by the other person which
23 happens as a probable or natural consequence of the acts
24 done in carrying out the common plan or purpose.

25 For example, ladies and gentlemen, two people can be

1 responsible and can be guilty of burglary if one -- only
2 one person went into the house and one person was the
3 lookout and driving the car or the getaway car and the
4 lookout but only one person actually went into the house
5 at night. Ladies and gentlemen, although only the one
6 person went into the house, both people are guilty of
7 burglary in the first degree because they acted together
8 in concert to commit a burglary.

9 Ladies and gentlemen, prior knowledge that a crime is
10 going to be committed, without more, is not sufficient to
11 make a person guilty of that crime. Mere knowledge that
12 another person is going to commit a crime, even if the
13 defendant is present when the crime is committed, is not
14 sufficient to convict the defendant as a principle. If
15 two or more people are together acting together assisting
16 each other in committing the offense, the act of one is
17 the act of all, or as it is sometimes said, the hand of
18 one is the hand of all.

19 Now, guilt as a principle is shown by actual or
20 constructive presence at the scene as a result of prior
21 arrangement. Therefore, a finding of a prior arranged
22 plan or common scheme is necessary for a finding of guilt
23 as a principle. The State must prove beyond a reasonable
24 doubt by competent evidence the theory of the hand of one
25 is the hand of all.

1 A principle in a crime is one who either actually
2 commits the crime or who is present, aiding, abetting, or
3 assisting in committing the crime. When a person does an
4 act in the presence of and with the assistance of another,
5 the act is done by both.

6 Whether two or more are acting with a common plan or
7 intent or are present at the commission of a crime --
8 excuse me. Let me begin again. Where two or more, acting
9 with a common plan or intent, are present at the
10 commission of a crime, it does not matter who actually
11 commits the crime. All are guilty. The hand of one is
12 the hand of all.

13 Present at the commission of crime means to be
14 sufficient near -- sufficiently near to aid and abet and
15 assist in the commission of the crime; however, mere
16 presence at the scene of a crime is not sufficient to
17 convict one as a principle on the theory of aiding and
18 abetting.

19 Intent is also a necessary element, for there must
20 have been a common design or intent to commit the crime,
21 and the crime must have been committed pursuant thereto
22 with the person aiding and abetting by some overt act.
23 Intent means intending the result which actually occurs,
24 not accidentally or involuntarily. Intent may be shown by
25 acts and conduct of the defendant and other circumstances

1 from which you may naturally and reasonably infer intent.
2 The State must prove these elements beyond a reasonable
3 doubt.

4 Mere presence at the scene is not sufficient to prove
5 someone guilty of a crime. A defendant's presence where a
6 crime is being committed or mere association with a person
7 who commits a crime does not make a defendant an
8 accomplice or an aider or abettor of the person committing
9 the crime.

10 The burden is on the State to prove the elements of
11 the crime charged. If you find, after reviewing all of
12 the evidence, that the State has proved that the defendant
13 was only present at the scene of the crime and that they
14 have not proved beyond a reasonable doubt any other
15 participation in the crime, then you must find the
16 defendant not guilty. The law is that proof of mere
17 presence at the scene of the crime is not sufficient to
18 find someone guilty.

19 Now, in order to establish criminal liability,
20 criminal intent is required. For example, the mental
21 state required to be proved by the State for a particular
22 crime might be purpose, intent, knowledge, recklessness,
23 or criminal negligence.

24 Criminal intent must be proven by the State beyond a
25 reasonable doubt. Criminal intent is always a matter that

1 must be determined by a jury from the circumstances
2 surrounding the situation.

3 There is no way to prove intent to a mathematical
4 certainty. There is no way medical science could dissect
5 a person's brain and determine what the person had in
6 mind, so the law says that criminal intent may be inferred
7 from the circumstances shown to have existed. This is how
8 you make a determination of whether or not the element
9 requiring intent was present.

10 It is not necessary to establish intent by direct and
11 positive evidence, but intent may be established by
12 inference in the same way as any other fact, by taking
13 into consideration the acts of the parties and all the
14 facts and circumstances of the case based on evidence
15 introduced during the trial of this case.

16 Criminal intent is a mental state, a conscious
17 wrongdoing. It is up to you to determine what the
18 defendant intended to do, based on the circumstances shown
19 to have existed.

20 Criminal intent can arise from action or a failure to
21 act. It may arise from negligence, recklessness, or an
22 indifference to duty or to circumstances that are
23 considered by the law to be the equivalent of criminal
24 intent.

25 Now, ladies and gentlemen, if you find the defendant

1 guilty of either charge or both charges of attempted
2 murder in this case, then you can also find the defendant
3 either guilty or not guilty of possession of a weapon
4 during the commission of a violent crime. If you find the
5 defendant not guilty of both charges of attempted murder,
6 then you may not find the defendant guilty of possession
7 of a weapon during a violent crime. You will be asked to
8 write a separate verdict of guilty or not guilty for each
9 charge, following the instructions on your verdict form.

10 I will now define these offenses for you. What do we
11 mean when we use the term attempt, attempt? This, of
12 course, we have the two charges of attempted murder. What
13 does attempt mean in the law?

14 An attempt is an effort to accomplish a crime which
15 does not succeed. An attempt includes a specific intent
16 to do a particular criminal act, along with an act falling
17 short of the act intended.

18 The State must show more than mere preparation and
19 intent. There must be some overt act committed in the
20 effort to commit the crime.

21 Intent means intending the result which actually
22 occurs, not accidentally or involuntarily. Intent may be
23 shown by acts and conduct of the defendant and other
24 circumstances from which you may naturally and reasonably
25 infer intent.

1 Now, Section 16-3-29 defines -- this is a statutory
2 provision, and it defines attempted murder. A person who,
3 with intent to kill, attempts to kill another person with
4 malice aforethought, either expressed or implied, commit
5 -- commits the offense of attempted murder.

6 What is malice? Malice is hatred, ill-will, or
7 hostility towards another person. It is the intentional
8 doing of a wrongful act, without just cause or excuse, and
9 with an intent to inflict an injury or under circumstances
10 that the law will infer an evil intent.

11 Malice aforethought does not required that malice
12 exist for any particular time before the act is committed,
13 but malice must exist in the mind of the defendant just
14 before and at the time that the act is committed.
15 Therefore, there must be a combination of the previous
16 evil intent and the act.

17 Malice aforethought may be expressed or inferred.
18 These terms, expressed and inferred, they don't mean
19 different kinds of malice but merely the manner in which
20 malice may be shown to exist; that is, either by direct
21 evidence or by inference from the facts and circumstances
22 which are proved beyond a reasonable doubt.

23 Express malice is shown when a person speaks words
24 which express hatred or ill-will for another, or when the
25 person prepared beforehand to do the act which was later

1 accomplished. For example, lying in wait for a person, or
2 any other act or preparation going to show that the deed
3 was within the defendant's mind would be expressed malice.
4 Malice may be inferred from conduct showing a total
5 disregard for human life.

6 Now, ladies and gentlemen, I've charged you with
7 regards to the law on attempted murder. I am now going to
8 charge you the law with regards to possession of a weapon
9 during the commission of or attempt to commit a violent
10 crime.

11 Ladies and gentlemen, the State must prove beyond a
12 reasonable doubt, that the defendant was in possession of a
13 firearm or visibly displayed what appeared to be a firearm
14 during the commission of a violent crime. A firearm means
15 any machine gun, automatic rifle, revolver, pistol, or any
16 weapon which will, is designed to, or may be readily
17 converted to expel a projectile.

18 In order to find the defendant guilty of possession
19 of a firearm during the commission of a violent crime, you
20 must find that the defendant -- you must find the
21 defendant guilty of either committing a violent crime or
22 attempting to commit a violent crime. I charge you that
23 the offense of attempted murder is a violent crime under
24 the laws of South Carolina.

25 Now, ladies and gentlemen, I have now charged you

1 regarding the law in order to help guide you to a fair and
2 just verdict in this case. You are the judges of the
3 facts in this case, and so based on your determination of
4 the facts in this case and the law as I've explained it to
5 you, you will soon begin your deliberations.

6 You have been selected as fair and impartial jurors.
7 You are sworn to fairly and impartially try and determine
8 the facts of this case, and when you comply with your oath
9 to do so, no one can criticize your verdict. You are to
10 decide this case based solely on the testimony you have
11 heard from the sworn witnesses who have testified before
12 you, along with the evidence which has been admitted in
13 this case, meaning the exhibits which have been admitted
14 in this case. You will have these exhibits with you in
15 your jury room -- in your jury room.

16 Now, ladies and gentlemen, you must decide the issues
17 in this proceeding without any bias or prejudice towards
18 or against either party. You cannot allow yourself to be
19 governed by passion or prejudice for or against any
20 person, by public opinion, or by any other arbitrary
21 factor. Both the defendant and the State have the right
22 to expect that each of you will carefully and impartially
23 consider all of the evidence in this case and that you
24 will follow the law as I have instructed you in reaching
25 your verdict in this case.

1 Now we're going to go over the verdict form. I'm
2 going to come down there to do it.

3 Ladies and gentlemen, even before we go over the
4 verdict form, I want to explain to you two things. First,
5 your verdict must be unanimous. This must be the verdict
6 of each and every one of you. This is not the verdict of
7 any one of you or of the majority of you. This is the
8 verdict, and must be the verdict, of each and every one of
9 you.

10 That should be a hint for you. Madam Alternate, I
11 want you to stay with me on this next occasion when the
12 jury leaves. Okay? Thank you.

13 Now, the other thing that I want to tell you, even
14 before we go over the verdict form, is that as to each of
15 these indictments, there are two possible verdicts. Now,
16 ladies and gentlemen, I've had to put these two possible
17 verdicts on this piece of paper, and they are in an order.
18 They could have been in the other order, but they are in a
19 particular order. Please don't take any hidden meaning
20 from the order in which these possible verdicts have been
21 placed on paper. It's just reality. If I'm going to put
22 two possible verdicts on this piece of paper, one has got
23 to be first and one has got to be second. There is no
24 hidden meaning in the order in which these matters have
25 been placed, these two possible verdicts, have been placed

1 on this paper.

2 Now, here is your verdict form. Ladies and
3 gentlemen, I'm going to read it to you. The first matter
4 is, Number One, as to the charge of attempted murder of
5 the alleged victim, Deputy J. Burnette, we the jury,
6 unanimously, see it says unanimously? My children think
7 I'm a nag. Y'all are going to be thinking I'm a nag by
8 the time y'all finish.

9 We, the jury, unanimously find the defendant, and
10 there are two possible verdicts, guilty or not guilty.
11 Now, remember, I could have just as easily put not guilty
12 first. There isn't a hidden meaning.

13 Ladies and gentlemen, based on the instruction as I
14 have given it to you, you will consider Number One, and
15 you will render your unanimous verdict.

16 Irrespective of what that verdict is, I want you to
17 circle it so there's no question what is the unanimous
18 verdict of the jury.

19 Now, ladies and gentlemen, Number Two states as
20 follows: We, as to -- excuse me. As to the charge of
21 attempted murder of the Deputy -- I'm reading upside down,
22 y'all. Excuse me. Deputy J. Eaches, we, the jury,
23 unanimously find the defendant, and again there are two
24 possible verdicts, guilty or not guilty.

25 Which ever is the unanimous verdict of the jury, you

1 will circle it so there's no question what is the
2 unanimous verdict of the jury.

3 Now, the third -- Number Three reads as follows: As
4 to the charge of possession of a weapon during the
5 commission of a violent crime, we, the jury, unanimously
6 find the defendant, and again two possible verdicts,
7 guilty and not guilty.

8 Which ever is the unanimous verdict of the jury, you
9 will circle that verdict.

10 I do want to tell you this, though. If you find Mr.
11 Rivers not guilty of attempted murder, and that's
12 contained in Number One and Number Two, if you find him
13 not guilty with regards to both charges of attempted
14 murder, then you don't consider Number Three. And the
15 reason is, is that as I have charged you, attempted murder
16 is a violent crime. So if he's not guilty of a violent
17 crime, he can't be guilty of possession of a weapon during
18 the commission of a violent crime. So if you find him not
19 guilty of One and Two, don't even consider Three.

20 Now, ladies and gentlemen, when you have finished
21 your deliberations and you have filled out your verdict
22 form, then you're going to sign it, and you know who you
23 are. And for your reference, just for your reference,
24 today is December the -- gosh, I was going to mess that
25 up. I'm so glad you're here. December 13th, 2012. I'm

1 going to ask you to, of course, sign and date the verdict
2 form.

3 Now, when you have finished your deliberations and
4 you have filled out your verdict form, you will return to
5 -- you will knock on the door, and you will be escorted
6 back into the courtroom. You will pass the verdict form
7 to one of my bailiffs who will pass it to me. You do not
8 publish the verdict.

9 Now, ladies and gentlemen, in just a moment I'm going
10 to ask you to step to your jury room with this
11 instruction: Do not discuss this matter or allow anyone
12 to discuss it with you.

13 And you ought to be saying to me right now: Now wait
14 a minute. You've been telling us for two days this was
15 when we were going to deliberate. What are you doing now?

16 So I'm going to tell you what I'm going to do now.
17 When you step back to your jury room on this next
18 occasion, I'm going to turn to these lawyers and I'm going
19 to ask them two questions: Have I given this jury all the
20 law that they may need for their deliberations, and have I
21 stated it for them correctly?

22 Now, ladies and gentlemen, sometimes I fail to give
23 juries all of the law that they may need for their
24 deliberations, and these lawyers let me know that. In the
25 event that I need to bring you back out because I have

1 failed to give you all of the law that you may need for
2 your deliberations, I ask you in advance, please don't
3 consider that -- when I bring you back out to give you
4 that additional part of the law, don't consider that with
5 any emphasis. Just know this is my chance to get this
6 right, to give you all of the law that you -- all of the
7 law that you might need for your deliberations.

8 Now, sometimes, and goodness knows it's unintended,
9 something may just come out wrong. Sometimes I need to
10 bring juries back out so that I can correct an error that
11 I have made. In the event that I need to bring you back
12 out for that reason, please allow me to correct my error
13 in your mind, I ask in advance.

14 Now, know that this is my chance to get this right to
15 give you all of the law that you may need for your
16 deliberations and to state it for you correctly. In the
17 event that I do not need to bring you back out, you will
18 be brought the verdict form and the exhibits and an
19 instruction to begin your deliberations. Now, in the
20 event that whoever brings you the verdict form and the
21 exhibits fails to specifically say, "Begin your
22 deliberations," trust me, if you have your verdict form
23 and your exhibits, it's time to begin your deliberations.

24 Now, I must tell you that all twelve of you must be
25 together for you to deliberate. So if somebody needs to

1 take a comfort break or whatever, you need to take a
2 break, stop your deliberations, take your break, and then
3 reconvene your deliberations when all twelve of you are
4 together again. You cannot deliberate unless all twelve
5 of you are together. So please keep that in mind as well.

6 Now, ladies and gentlemen, I want to leave you now
7 with this concluding thought, and it is this: The word
8 "verdict" comes from the Latin phrase "veridicto," which
9 means to speak the truth, to speak the truth, which is now
10 your task.

11 Please step to your jury room and do not discuss this
12 matter or allow anyone to discuss it with you, except for
13 my alternate.

14 (DECEMBER 13, 2012, 11:11 A.M., WHEREUPON, THE JURY
15 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
16 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

17 (WHEREUPON, THE ALTERNATE JUROR WAS RELEASED.)

18 **THE COURT:** Exceptions, additions from the State?

19 **MR. KNIGHT:** None, Your Honor.

20 **THE COURT:** From the defense?

21 **MR. BRYAN:** Um, ---

22 **THE COURT:** Are you trying to remember what it was
23 last night that you were concerned about?

24 **MR. BRYAN:** I thought it was specific intent, and I
25 think you did address that, but not in great detail.

1 **THE COURT:** Very well. Thank you so very much.
2 Thank you so much. I believe that it's covered pretty
3 well, but I note your exception for the record.

4 **MR. BRYAN:** Thank you, Your Honor.

5 **THE COURT:** Now, Counsel, here's what I need you to
6 do for me. If you would, please, individually look at
7 both the verdict form and the exhibits so that I can rest
8 assured that my lawyers have looked at each of the
9 exhibits going back to this jury carefully and concurred
10 that that's what's supposed to go back, because I am the
11 judge that had the confession in the back pocket of the
12 pants. So I'm a little sensitive about that. So I look
13 to my lawyers to help me one more time. So if y'all will,
14 look at these exhibits and know that what's going back to
15 the jury is what is supposed to be going back to this
16 jury.

17 **MR. BRYAN:** Now, Your Honor, with the videos, ---

18 **MR. KNIGHT:** They're staying out here.

19 **THE COURT:** They'll stay out here.

20 **MR. BRYAN:** And they could just look at them if they
21 want to.

22 **THE COURT:** Yes. You did a wonderful job of telling
23 them that.

24 **MR. BRYAN:** Thank you.

25 **THE COURT:** Thank you for that, Mr. Bryan. You were

1 very clear that if they need it, they can see it.

2 MR. KNIGHT: I'm satisfied, Your Honor, with all of
3 the exhibits.

4 THE COURT: Very well.

5 Mr. Bryan, please take your time and take a look.

6 MR. KNIGHT: I'm satisfied with the form of verdict.

7 MR. BRYAN: The evidence appears to be in order, Your
8 Honor.

9 THE COURT: Very well. We'll be in recess until we
10 hear from our jury.

11 (WHEREUPON, AT 11:16 A.M., THE EXHIBITS WERE TAKEN TO
12 THE JURY TO BEGIN DELIBERATIONS AND THIS CASE WAS RECESSED
13 UNTIL 12:24 P.M., WHEN THE FOLLOWING PROCEEDINGS WERE HELD
14 ON THE RECORD OUT OF THE PRESENCE OF THE JURY:)

15 THE COURT: All right. Y'all saw the note? Did
16 everybody see the note?

17 MR. KNIGHT: Yes, ma'am. It was to see Lieutenant
18 Burnette's video to start from the time the car flipped.

19 THE COURT: From the time -- right before the shots
20 were fired until it flipped.

21 MR. KNIGHT: The first shots fired until it was
22 flipped. It's only a few minutes.

23 And then the second thing was a charge again ---

24 THE COURT: The hand of one is the hand of all.

25 MR. KNIGHT: --- on the hand of one is the hand of

1 all.

2 MRS. STALLINGS: This is set at about thirty seconds
3 before the first round of shots.

4 THE COURT: That's where you are now?

5 MRS. STALLINGS: Yes, ma'am. Do you want me to get
6 closer than that?

7 THE COURT: You know, you're going to probably click
8 it, and you're going to go after it.

9 MRS. STALLINGS: I can play it at regular speed and
10 then pause it.

11 THE COURT: Just go with where you've got it.

12 All right. Let's bring our jury out.

13 (DECEMBER 13, 2012, 12:25 P.M., WHEREUPON, THE JURY
14 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
15 WERE HELD IN THEIR PRESENCE.)

16 THE COURT: Ladies and gentlemen, I got -- I got your
17 note, and we will play the tape that you have requested,
18 and then I am prepared to deliver the charge again to you,
19 that portion that you have requested. So I'm now going to
20 sit down and hit "Play".

21 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTEEN WAS
22 PLAYED TO THE JURY FROM 19:08:14 TO 19:09:16. THEREAFTER,
23 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
24 PRESENCE OF THE JURY:)

25 THE COURT: Thank you.

1 Ladies and gentlemen, I am now going to recharge you
2 regarding the hand of one is the hand of all. If a crime
3 is committed by two or more people who are acting together
4 in committing a crime, the act of one is the act of all.

5 A person who joins with another to commit an unlawful
6 act is criminally responsible for everything done by the
7 other person which happens as a probable or a natural
8 consequence of the acts done in carrying out the common
9 plan and purpose. For example, two people can be guilty
10 of burglary when only one of the people goes into the
11 house and the other person sits in the car as the lookout
12 and is the getaway driver.

13 If two or more people are together, acting together,
14 assisting each other in committing the offense, the act of
15 one is the act of all, or as it is sometimes said, the
16 hand of one is the hand of all.

17 In the example that I gave you, only one person went
18 into the house and actually committed the going into the
19 house, the burglary; however, both are responsible, both
20 are guilty if they are acting together, assisting each
21 other in committing the offense.

22 Prior knowledge that a crime is going to be
23 committed, without more, is not sufficient to make a
24 person guilty of that crime. Mere knowledge that another
25 person is going to commit a crime, even if the defendant

1 is present when the crime is committed, is not sufficient
2 to convict the defendant as a principle. Guilt as a
3 principle is shown by actual or constructive presence at
4 the scene as a result of prior arrangement. Therefore, a
5 finding of a prior arranged plan or common scheme is
6 necessary for a finding of guilt as a principle. The
7 State must prove beyond a reasonable doubt by competent
8 evidence the theory of the hand of one is the hand of all.

9 A principle in a crime is one who either actually
10 commits the crime or who is present, aiding, abetting, or
11 assisting in committing the crime. When a person does an
12 act in the presence of and with the assistance of another,
13 the act is done by both.

14 Where two or more, acting with a common plan or
15 intent, are present at the commission of a crime, it does
16 not matter who actually commits the crime. All are
17 guilty. The hand of one is the hand of all.

18 Present at the commission of crime means to be
19 sufficiently near to aid and abet and assist in the
20 commission of the crime; however, mere presence at the
21 scene of a crime is not sufficient to convict one as a
22 principle on the theory of aiding and abetting. Intent is
23 also a necessary element, for there must have been a
24 common design or intent to commit the crime, and the crime
25 must have been committed pursuant thereto with the person

1 aiding and abetting by some overt act.

2 Intent means intending the result which actually
3 occurs, not accidentally or involuntarily. Intent may be
4 shown by acts and conduct of the defendant and other
5 circumstances from which you may naturally and reasonably
6 infer intent. The State must prove these elements beyond
7 a reasonable doubt.

8 Ladies and gentlemen, I believe that that responds to
9 your requests. I ask that you please retire to your jury
10 room and continue your deliberations. And we are seeing
11 to getting some lunch for you, too.

12 (DECEMBER 13, 2012, 12:32 P.M., WHEREUPON, THE JURY
13 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
14 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

15 **THE COURT:** All right. Anything further from the
16 State at this time?

17 **MR. KNIGHT:** No, ma'am.

18 **THE COURT:** From the defense?

19 **MR. BRYAN:** No, Your Honor, but it might be better if
20 you explain probable and natural consequence, they may
21 conceivably be hung up on the hand of one is the hand of
22 all. I think you do address it and say a probable and
23 natural consequence, but you don't really explain that
24 element, and that might be where the jury is getting
25 confused.

1 **THE COURT:** Mr. Knight?

2 **MR. KNIGHT:** I think you sufficiently described to
3 the jury what a natural and probable consequence was when
4 you said with the aiding and abetting. I think that
5 showed the consequence of that aiding and abetting. I
6 don't think any additional definition of those words would
7 be necessary.

8 **THE COURT:** I'll note your exception for the record.
9 My concern is I think that the -- I think this particular
10 charge as a whole, I think it does two things. I think it
11 tries to talk about the fact that if people are working in
12 concert and it is an intention to work in concert, that
13 while each person may not do a particular act, that they
14 are -- that they are responsible for the commission of the
15 crime in its entirety. And -- and I think the charge
16 tries to differentiate that circumstance from somebody
17 that knows a crime is about to be committed and they just
18 happen to be there. And I think it does a pretty good job
19 of that.

20 I guess my concern about the natural and probable
21 consequences, because I don't know -- it's one of those
22 words that I think is pretty self-explanatory. What is
23 natural and what is probable? And I don't know how to
24 simplify it.

25 It seems to me that -- that those words are plain

1 words, and they are -- they are part of the definition, if
2 you will, but I note your exception for the record, and
3 respectfully not attempt to define natural and probable,
4 because I think that those are words that are a part of
5 the definition themselves.

6 But if they -- if they send another question that
7 highlights that perhaps that is a concern, I will
8 certainly revisit. But I think the charge in its entirety
9 is pretty complete and thank you for that.

10 All right. We will continue our recess until we hear
11 from our jury.

12 (WHEREUPON, THIS CASE WAS RECESSED. THEREAFTER, AT
13 2:15 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON THE
14 RECORD OUT OF THE PRESENCE OF THE JURY:)

15 **THE COURT:** All right, anything from the State before
16 we bring the jury out?

17 **MR. KNIGHT:** No, ma'am.

18 **THE COURT:** From the defense?

19 **MR. BRYAN:** Nothing from the defense, Your Honor.

20 **THE COURT:** Very well. Let us have our jury, please.

21 (DECEMBER 13, 2012, 2:15 P.M., WHEREUPON, THE JURY
22 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
23 WERE HELD IN THEIR PRESENCE.)

24 **CLERK:** Madam Forelady, have you reached a verdict?

25 **FOREPERSON:** Yes, ma'am.

1 **THE COURT:** Thank you.

2 That's the note. That needs to be made a Court's
3 exhibit.

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

6 **THE COURT:** All right. Thank you.

7 **CLERK:** Indictment Number 2011-GS-15-549,
8 2011-GS-15-550, 2011-GS-15-551, the State of South
9 Carolina versus Maurio Rivers, as to the charge of
10 attempted murder of the alleged victim, Deputy J.
11 Burnette, we, the jury, unanimously find the defendant
12 guilty.

13 As to the charge of attempted murder of Deputy J. --
14 what's that?

15 **THE COURT:** Eaches.

16 **CLERK:** Eaches, we, the jury, unanimously find the
17 defendant not guilty.

18 As to the charge of possession of a weapon during the
19 commission of a violent crime, we, the jury, unanimously
20 find the defendant not guilty, signed by the foreperson,
21 Hazel Breland.

22 If this is your verdict, please raise your right
23 hand.

24 (WHEREUPON, ALL JURORS RAISED THEIR RIGHT HAND.)

25 **CLERK:** Thank you.

1 **THE COURT:** All right. Anything further from the
2 State before we dismiss the jury?

3 **MR. KNIGHT:** Nothing from the State, Your Honor.

4 **THE COURT:** From the defense?

5 **MR. BRYAN:** Request a polling of the jury, Your
6 Honor.

7 **THE COURT:** Very well.

8 **CLERK:** As I call your name, please stand.

9 Hazel L. Breland, is this your verdict?

10 **JUROR:** Yes.

11 **CLERK:** Is it still your verdict?

12 **JUROR:** Yes.

13 **CLERK:** Thank you.

14 Iriel -- Amy D. Iriel, is this your verdict?

15 **JUROR:** Yes, ma'am.

16 **CLERK:** Is this still your verdict?

17 **JUROR:** Yes, ma'am.

18 **CLERK:** Tony F. Shider, is this your verdict?

19 **JUROR:** Yes, ma'am.

20 **CLERK:** Is it still your verdict?

21 **JUROR:** Yes, ma'am.

22 **CLERK:** You may have a seat.

23 Antwaun D. Manigo, is this your verdict?

24 **JUROR:** Yes.

25 **CLERK:** Is it still your verdict?

1 JUROR: Yes.

2 CLERK: Ada L. Bentley, is this your verdict?

3 JUROR: Yes.

4 CLERK: Is it still your verdict?

5 JUROR: Yes.

6 CLERK: Robert L. Edwards, is this your verdict?

7 JUROR: Yes.

8 CLERK: Is it still your verdict?

9 JUROR: Yes.

10 CLERK: Donna K. Myers, is this your verdict?

11 JUROR: Yes.

12 CLERK: Is it still your verdict?

13 JUROR: Yes.

14 CLERK: Anita L. Ford, is this your verdict?

15 JUROR: Yes.

16 CLERK: Is it still your verdict?

17 JUROR: Yes.

18 CLERK: Raheem T. Jones, is this your verdict?

19 JUROR: Yes, ma'am.

20 CLERK: Is it still your verdict?

21 JUROR: Yes, ma'am.

22 CLERK: Daniel I. Hawk, is this your verdict?

23 JUROR: Yes, ma'am.

24 CLERK: Is it still your verdict?

25 JUROR: Yes, ma'am.

1 **CLERK:** Ruby C. Dandridge, is this your verdict?

2 **JUROR:** Yes, ma'am.

3 **CLERK:** Is it still your verdict?

4 **JUROR:** Yes, ma'am.

5 **CLERK:** Teresa W. Childers, is this your verdict?

6 **JUROR:** Yes, ma'am.

7 **CLERK:** Is it still your verdict?

8 **JUROR:** Yes, ma'am.

9 **CLERK:** The jury has been polled.

10 **THE COURT:** Very well.

11 Anything further from the State at this time?

12 **MR. KNIGHT:** No, ma'am.

13 **THE COURT:** From the defense before we dismiss the
14 jury?

15 **MR. BRYAN:** No, Your Honor.

16 **THE COURT:** Very well.

17 Ladies and gentlemen, I want to thank you for your
18 service on this jury and on this jury panel this week.
19 That should be a clue to you that I'm about to be able to
20 dismiss you for the balance of the week, but I do want to
21 give you some instruction, especially since I told you
22 each and every time we've left each other that you cannot
23 discuss this matter or allow anyone to discuss it with
24 you. I will now share with you that you are at liberty to
25 talk about this case, if you want to. And if you don't

1 want to talk about it, that's perfectly fine.

2 And let me share with you that -- and I do this
3 because I'm afraid if I don't, then it will happen.

4 Ladies and gentlemen, if someone should want to talk to
5 you about this case, and you've shared with them, "No, I
6 don't want to talk about it," and they should persist, you
7 will contact your clerk of court. She will contact me,
8 and I will be happy to intercede on your behalf.

9 Now, having said that, I don't want anybody to be
10 concerned, because in fifteen years, maybe, arguably maybe
11 once there was a group doing some research and they
12 contacted a juror and maybe they were a little more --
13 they probably had an assignment, so they were a little
14 more aggressive than they may have been, and that's the
15 only time. So I make it a policy to always mention that
16 to jurors, because I know if I don't say it, it'll happen,
17 so that's why I do that.

18 Let me tell you and remind you that you are -- you
19 have an exemption for your jury service for 2013 and 2014.
20 I know you're upset, but remember, that's an exemption.
21 You can exercise it if you wish, and don't have to
22 exercise it if you do not wish.

23 I will tell you that you are now not eligible to
24 serve on a jury for the balance of 2012, but we only have
25 one more week of jury for this year, so I think y'all are

1 safe on that one. But in any event, I share that with you
2 nonetheless. Should you get home and there's a summons to
3 come to Common Pleas or General Sessions, I'm sorry to
4 share with you, but you're not eligible for that term of
5 court.

6 Now I used to tell people in Dorchester County that
7 the check was in the mail, but the clerk said: No, it's
8 not. Don't tell them that.

9 And I'm like: Oh, I thought maybe it was.

10 The check for your jury service is not in the mail,
11 but it will be very soon; right?

12 **CLERK:** Right. By the Finance Office.

13 **THE COURT:** By the Finance Office. Ladies and
14 gentlemen, no trip to Tahiti. It will get you to
15 Cottageville. It is a very small token of all that you
16 have given to us, and that is a whole bunch of your dear,
17 precious time, and for that I am so grateful.

18 On behalf of myself and behalf of all of our court
19 personnel and lawyers and all the folks in this matter, I
20 am so grateful that you have been so kind and have given
21 so much of your time, your energy and your effort to what
22 I would submit to you is the greatest system of justice
23 that people have ever come up with, because there are
24 people like you all over our country who have come
25 together this week, this day, to help fellow citizens

1 resolve disputes. It's a wonderful and powerful system,
2 and you have been an essential part of it. I will submit
3 to you that this is where the rubber meets the road in a
4 democracy, and I am so truly grateful to you.

5 Now those of you that are dashing off to work, we'll
6 be delighted to get in the clerk's office, ---

7 **CLERK:** In the General Sessions Office.

8 **THE COURT:** --- in the General Sessions Office that
9 is downstairs. When you exit the step, it's on the right.

10 **CLERK:** Right. The third door on the left.

11 **THE COURT:** The third door on the left. And on
12 behalf of myself and all of us, I just thank you so much.

13 Ladies and gentlemen, obviously you've given us so
14 much of your dear and precious time, if anybody has any
15 comments or questions or the like, if you want to retire
16 to your jury room, I'm happy to give you some of my time.
17 I'm delighted to do that. If you'll just retire to the
18 jury room and let them know.

19 For your informational purposes, though, we are going
20 to go forward at this time and I'm going to hear from the
21 attorneys and then go forward with sentencing regarding
22 Mr. Rivers, if you wish to remain.

23 Sometimes jurors want to know if they're allowed to.
24 Of course you are. So, if you wish to remain, you
25 certainly may remain, and you're fine where you are. If

1 you wish to retire, you're certainly welcome to do that.
2 I'll leave it up to you, but you go with my thanks and
3 have a happy holiday season. Thank you very much.

4 (WHEREUPON, THE JURY WAS RELEASED.)

5 THE COURT: All right.

6 MR. KNIGHT: May I approach, Your Honor?

7 THE COURT: Yes.

8 MR. KNIGHT: I just want to make sure I've got the
9 right sentencing sheet.

10 THE COURT: Sure.

11 MR. KNIGHT: It's 549.

12 THE COURT: All right. Okay. I want to hear Mr.
13 Rivers' record, please, and then I'll hear from Deputy
14 Burnette. Anything he wishes to tell me, I'm happy to
15 hear from him as well.

16 MR. KNIGHT: From the beginning?

17 THE COURT: Yes, sir.

18 MR. KNIGHT: Beginning in 1995, he was convicted of
19 crack cocaine, 4/20/1995; 11/8/1994, shoplifting;
20 4/15/1996 manufacture and distribution of marijuana; 12/4
21 of 1995, fraudulent check; 4 -- that was the start date;
22 2/18/1997, one, two, three, four, five, six, seven fraud
23 checks -- I'm wrong, twelve fraud check convictions,
24 that's 1/10/1997; 3/5/2003, it looks like possession of
25 cocaine, two counts; 8/5/2010, possession of marijuana, it

1 looks like it was in Atlanta, Georgia; and then there was
2 a charge of it looks like unlawful possession of a pistol
3 and the date was -- it looks like 4/15/1996. That's all.

4 Lieutenant Burnette does not wish to address the
5 Court.

6 MR. BRYAN: Your Honor, my review of the RAP sheet
7 shows fewer convictions for fraudulent check and the
8 Atlanta -- it shows an arrest but not a disposition.

9 THE COURT: I won't consider one.

10 MR. BRYAN: Thank you.

11 THE COURT: I'm listening to you, sir.

12 MR. BRYAN: Your Honor, Mr. Rivers is thirty-five
13 years old. He was working in Atlanta at two places, a
14 Nissan car dealership and Chevrolet as an assistant auto
15 detail manager. He's been there since 2005.

16 He's got three children. He's got a boy that's seven
17 and another one that's four and a girl that's two, and
18 he's engaged.

19 In 2007 he attended school at Trident Tech. He
20 studied film. In 2010 he got his job back in Atlanta as
21 the auto detailer. He was working.

22 He's got a bad record, Your Honor, but it's not the
23 worst I've seen, and it's old. It's not showing any
24 convictions for the last eight years. He's been trying to
25 straighten his life out, and we would just request the

1 mercy of the Court.

2 **THE COURT:** Thank you.

3 All right. I have written my sentence, and I know
4 Deputy Burnette -- I know that you haven't spoken, beyond
5 your testimony, but I feel compelled to say something to
6 you. The tape is remarkable in this regard. First of
7 all, I'm -- I've never seen an SUV go so fast. It was
8 remarkable.

9 And secondly, your calmness, your professionalism was
10 extraordinary throughout the entire process. I was truly
11 moved by that.

12 And I noticed that when the shots were fired and you
13 realized that the shots were fired, not only were you
14 calm, but obviously you made a decision. You had his tag
15 number, and you must have made a decision whether to back
16 off and hope to catch these folks later, or whether or not
17 there was a risk to the community at large.

18 And you can see that there were houses along the way.
19 And it's real clear to me that you made a decision to put
20 your life on the line and to stop these people who were,
21 (a), willing to wield weapons and to fire them into the
22 open. It was remarkable.

23 The way that you were able to control yourself and
24 not hurt yourself or your dog and that they were not hurt
25 or killed, and the way that you were able to tap that --

1 just tap that car going ninety miles an hour, at least,
2 and to end the car chase has to be beyond by the book. It
3 really ought to be used, the entire episode, your entire
4 conduct, ought to be used as a training film all over this
5 country.

6 I am very proud of your conduct. You did not pull
7 your weapon, even in the face of having been shot. You
8 didn't -- I understand -- I must comment about your
9 testimony is that when always when there is a K-9
10 apprehension: I always call EMS.

11 I understand that, but the restraint was remarkable.
12 You do great honor, sir, to your profession.

13 And, Mr. Rivers, for you I would say you obviously
14 have so many good qualities. You obviously work very
15 hard. You have three children that you care about,
16 obviously. If I could take this back, if I could cause
17 you to have made different decisions at so many different
18 spots along the way, I would do that.

19 If I could have made you -- you pulled over. If I
20 could have stuck glue on your tires and make that car stay
21 there, I would do that. I so wish that that decision had
22 stayed with you, because you made the right decision. You
23 did, Mr. Rivers, and I so wish that you had remained with
24 that decision. I do.

25 I am grateful that, although I understand you were

1 hurt and maybe as much by the K-9 apprehension as you were
2 from the vehicle accident, and I am sorry for that, I am
3 grateful that you are here and that you were not killed in
4 what could have been a fatal accident. I really am
5 grateful that you are here.

6 I so wish you had made different choices. I know it
7 happened very quickly, but I so wish that you had made
8 different choices along the way. And if I could take that
9 back, I would, because clearly there's good. You went to
10 school. You know, you sought employment, you sought good
11 employment. Obviously there were people that trusted you
12 to allow you to be in the position that you are in.

13 I am so, so sorry that you've found yourself in this
14 situation on this day. I truly am.

15 Now, at this point I would just simply ask is there
16 any reason why anyone would say at this point I should not
17 pass sentence on Mr. Rivers? I'm happy to hear from
18 anyone else that wishes to speak or any objection to
19 passing sentence at this time.

20 **MR. KNIGHT:** Nothing from the State, Your Honor.

21 **THE COURT:** Very well.

22 **MR. BRYAN:** None from the defense.

23 **THE COURT:** Yes, sir, Mr. Rivers?

24 **DEPUTY:** Do you want me to bring him to the mic,
25 ma'am?

1 **THE COURT:** He's fine. I can hear him.

2 **DEFENDANT, MR. RIVERS:** I would like to thank you for
3 your compassion in the whole situation. I would like to
4 apologize to Officer Burnette and Officer Eaches for what
5 they had to go through. That wasn't my intention that
6 that happen. It wasn't my plan, but I understand that,
7 you know, I am involved and I'm going to have to pay for
8 it. I look at it as the will of the Creator. That's it.

9 **THE COURT:** Well, it is my hope that you will
10 continue to be a guiding light for your children and that
11 you will use this mistake on your part to be a guiding
12 light for them.

13 All right. With regards to Indictment
14 2011-GS-15-549, which is an indictment for attempted
15 murder, Mr. Rivers, I am going to commit you to the State
16 Department of Corrections for a period of thirty years,
17 giving you credit for the time that you have served. And
18 I wish you good luck and peace.

19 **(END OF REQUESTED TRANSCRIPT OF RECORD.)**
20
21
22
23
24
25

State of South Carolina,) In the Court of General Sessions.
County of Colleton.)

Indictments Numbered
2011-GS-15-549, -550, -551, & -759.

The State of South Carolina)
)
)
)
Maurio Rivers.)
_____)

I. The crime of Attempted Murder requires a specific intent to kill.

A. For attempts in general, the State must prove a specific intent to complete the crime.

In South Carolina, attempted murder requires a specific intent to kill. The general rule in South Carolina is that to support a conviction for attempt, the state must prove that the defendant intended to complete the crime. For example, in *State v. Nesbitt*, 346 S.C. 226, 550 S.E.2d 864 (App 2001), it was held that the State must prove that the defendant's specific intent was accompanied by some overt act, beyond mere preparation, in furtherance of the intent, and there must be an actual or present ability to complete the crime. *Nesbitt* held that approaching a store wearing a disguise and carrying a gun and waving the gun at the door of the store was sufficient evidence of an attempted armed robbery.

B. The State Supreme Court has already held that Attempted Murder requires a specific intent to kill.

In *State v. Sutton*, 340 S.C. 393, 532 S.E.2d 283 (2000), the Supreme Court held that attempt is a specific intent crime, and attempted murder requires the specific intent to kill. The General Assembly passed the current statute after this decision, and showed no indication to modify this rule of law.

C. Other jurisdictions have ruled the same way.

Other jurisdictions have held the same. In *People v. Turk*, 428 N.E.2d 510 (Ill. App. 1981), at page 528: "[T]o obtain a conviction for attempt murder, the jury must be unambiguously instructed that defendant had the intent to kill the victim; intent to cause great bodily harm is not enough." Also, in *People v. Shields*, 370 N.E.2d 654 (Ill. App. 1977), the court held that the intent to cause death must be specifically alleged and proved to sustain a conviction for attempted murder.

In *Selby v. State*, 76 Md. App. 201, 544 A2d 14 (Md. App. 1988), the court recognized that Maryland has adopted the common law concept of attempt: intent to commit a particular offense coupled with some overt act in furtherance of the intent which goes beyond mere preparation. "In the literal sense, the word attempt means to try; it implies an effort to bring about a desired result. Hence, an attempt to commit a crime requires a specific intent." In the case of attempted murder, the specific intent must be to commit the crime of murder. The intent element of attempted murder also requires proof of a specific intent to kill. Where there is reasonable doubt of intent to kill, the defendant should be acquitted of attempted murder.

Recklessness or malice is not a substitute for a specific intent to kill. In *Flanagan v. State*, 675 S.W.2d (Tex. Crim. App. 1982), 741 the court held: "{A} specific intent to kill is a necessary element of attempted murder. The authorities in support of this interpretation are numerous and convincing. Intent to cause serious bodily injury is not the same as the intent to commit the offense of murder. New York is in agreement, In *People v. Perez*, 108 Misc. 2d 65, 437 N.Y.S.2d 46 (1981), the court held that one may not intentionally attempt to cause the death of another by a reckless act. This rule also applies in California. In *People v. Lee*, 738 P.2d 752 (Cal. 1987), the court held that specific intent to kill is a requisite element of attempted murder, and that mere implied malice is an insufficient basis on which to sustain such a charge. Implied malice instructions should never be given in relation to an attempted murder charge.

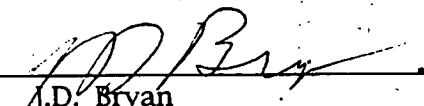
D. Other states have ruled that the requirement of specific intent precludes prosecutions for Attempted Felony Murder.

Other states have held to this rule in cases of attempted felony murder. In *People v. Davies*, 365 N.E.2d 628 (Ill App. 1977), the court held that: (1)

specific intent to kill is an element of attempted murder; (2) Felony murder does not require a specific intent to kill; and therefore (3) It is error to instruct the jury that attempted murder in the absence of a specific intent to kill.

In North Carolina, in *State v. Coble*, 351 N.C. 448, 527 S.E.2d 45 (N.C. 2000), the Supreme Court of that state held that the crime of attempt requires an act done with the specific intent to commit the underlying offense. The crime of attempted murder requires a specific intent to kill, and where the State alleges an attempt at murder in the second degree, which does not require a specific intent, there is no attempted murder. "[T]he crime of attempted murder is logically possible only where specific intent to kill is a necessary element of the underlying offense." A charge of attempted felony murder is a logical impossibility. A charge of attempted second-degree murder is likewise a logical impossibility because second-degree murder is based on recklessness, with no specific intent. The Supreme Court upheld the rule enunciated by a lower appellate court in *State v. Lea*, 126 N.C. App. 440, 485 S.E.2d 874 (N.C. App 1997), which held that a charge of "attempted felony murder" is a logical impossibility in that it would require the defendant to intend what is by definition an unintentional result. Attempt requires a specific intent, but felony murder in North Carolina requires no specific intent to kill.

Respectfully submitted,

BY: 

J.D. Bryan
Attorney for the Accused
P. O. Box 1111.
Walterboro, S.C. 29488
(843) 549-9455

WITNESSES

A. Inabinett, CCSO

ARREST WARRANT NUMBER

M104323

July 15, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 8/25/2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011-G 3-00549

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

Maurio Daetrel Rivers

Indictment for

Attempted Murder

SC Code: 16-03-0029

CDR Code: 3410

2011 AUG 25 PM 1:09

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

2011-GS-15-00549

At a Court of General Sessions, convened on August 25, 2011, the Grand Jurors of Colleton County present upon their oath:

Attempted Murder

That in Colleton County, South Carolina, on or about July 12, 2011, the Defendant, Maurio Daetrel Rivers, with malice aforethought accompanied by a present ability to complete the act and the intent to kill, either express or implied, did attempt to kill the victim, Deputy J. Burnette with the Dorchester County Sheriff's Office, while on Augusta Highway, by shooting at the victim; in violation of S.C. Code of Laws Section 16-03-0029 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Isaac M. Stone, III, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF _____ Collection
STATE _____ VS

Maurio Rivers

AKA

Race: _____ Sex: M Age: 35

DOB: 02-08-1977 SS#: 248-35-0770

Address:

City, State, Zip

ID#

SID#

CDI Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
ID: 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/CSC § 17-25-15
winner 1st or Lewd Act)The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Knight, Steve

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center.For a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred ☐ Def. Waives Hearing ☐ Ordered ☐

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

Set by SCDPPPS

Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 10% 5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47-9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$30	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90-5 (SCCJA Surcharge)	\$5	\$ 5.00
Fee to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP

_____ days hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/F beginning

Substance Abuse Counseling

Random Drug Alcohol testing

Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel.

§ 47-12 requires \$500 be paid to Clerk
during probation

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court: Patricia C. Grant

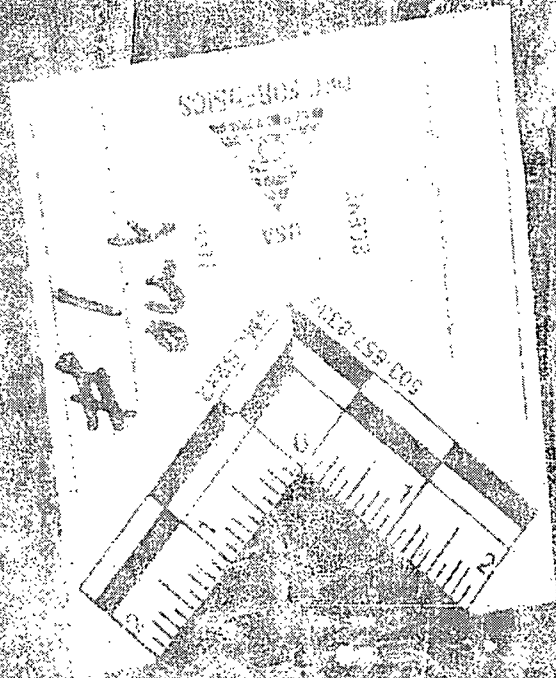
Court Reporter:

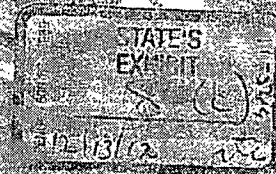
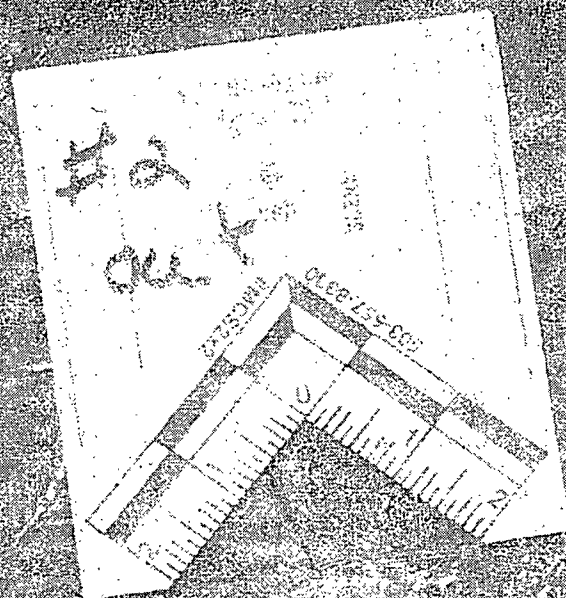
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21700 13, 20/12



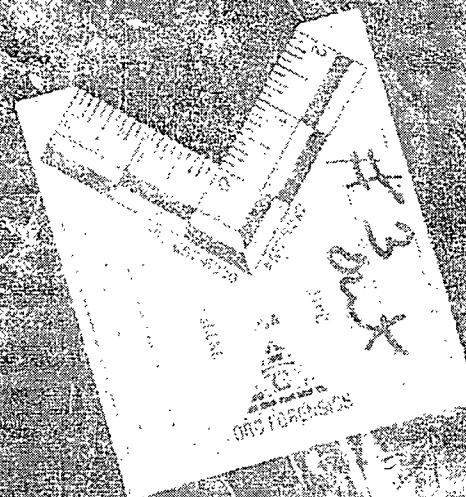
STATES
EXHIBIT
7-1
12/13/12

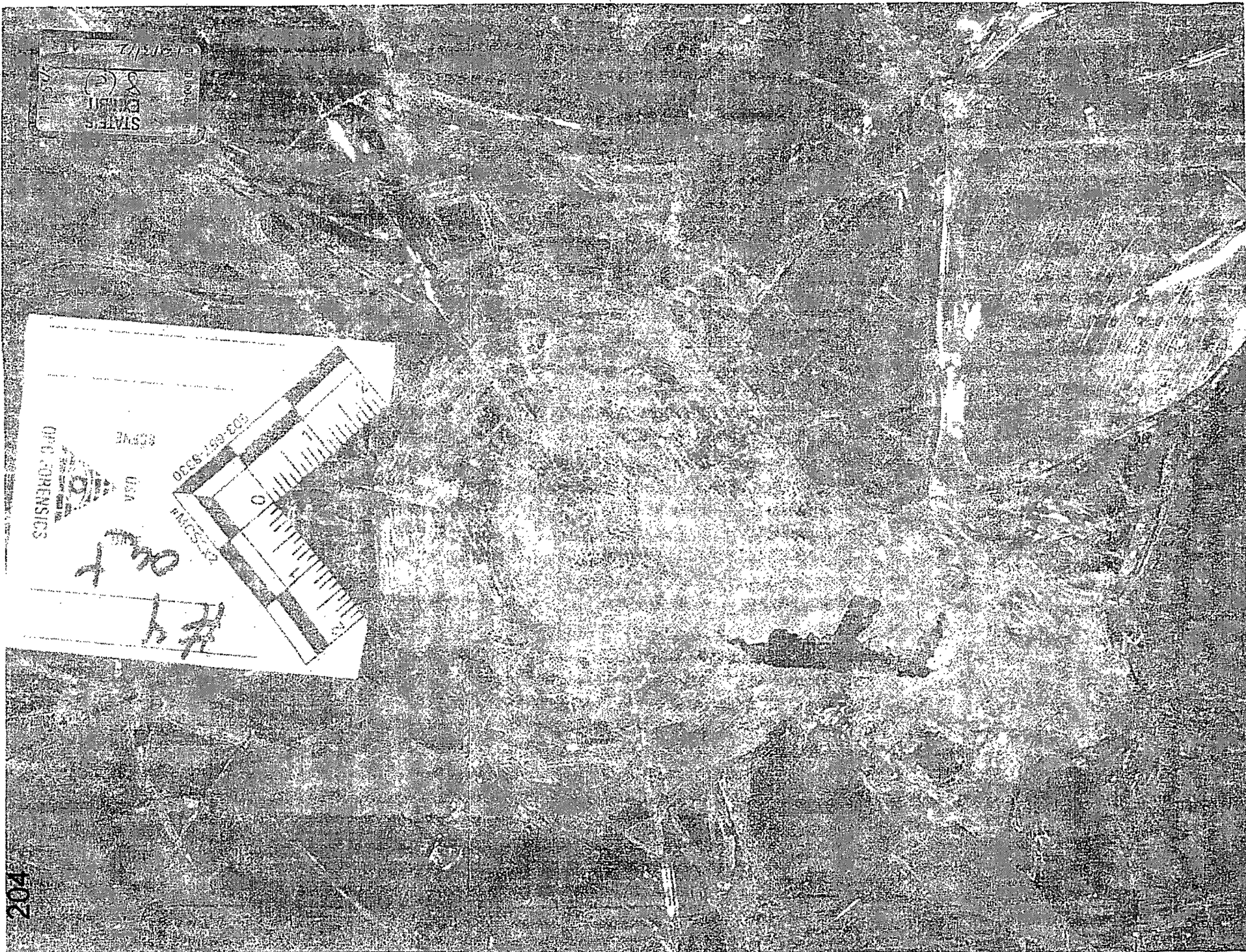




203

EXHIBIT
8-17







STATE'S
EXHIBIT
86-1312-1

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 27th, 2014



Carmen V. Ganjehsani
Appellate Defender

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

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Colleton County

Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

MAY 27 2014

THE STATE,

RESPONDENT, SC Court of Appeals

V.

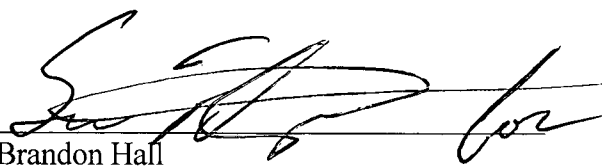
MAURIO DAETREL RIVERS,

APPELLANT

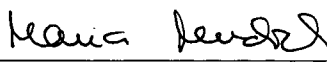
APPELLATE CASE NO. 2012-213729

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mary S. Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of May, 2014.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 27th day of May, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.