

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUL 19 2016

Appeal from Georgetown County

SC Court of Appeals

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMIE GILES,

APPELLANT

APPELLATE CASE NO. 2016-000219

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

J. BENJAMIN APLIN
Senior Assistant Attorney Deputy General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589
(803) 734-1330

Rembert Dennis Building
1000 Assembly Street
Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED FEBRUARY 1-4, 2016	1
VOIR DIRE.....	12
JURY SELECTION	35
COLLOQUY WITH DEFENDANT REGARDING PLEA OFFER.....	46
DEFENSE MOTION TO SEQUESTER WITNESSES	49
RULING BY THE COURT.....	49
DEFENSE MOTION FOR IMMUNITY HEARING	51
TESTIMONY	
JAMIE GILES (IN CAMERA)	
Direct examination by Mr. Hazzard	54
Cross examination by Mr. Todd	73
Redirect examination by Mr. Hazzard.....	87
TUVERA MCCREA (IN CAMERA)	
Direct examination by Mr. Todd	89
Cross examination by Mr. Hazzard	95
Redirect examination by Mr. Debusk.....	20
DANIEA KELLY (IN CAMERA)	
Direct examination by Mr. Todd	110
Cross examination by Mr. Hazzard	117
Redirect examination by Mr. Todd.....	126
MELVYN GARRETT (IN CAMERA)	
Direct examination by Mr. Todd	127
Cross examination by Mr. Hazzard	128
OPENING STATEMENT BY MR. TODD.....	167
OPENING STATEMENT BY MR. HAZZARD.....	169

TESTIMONY

DANIEA KELLY

Direct examination by Mr. Todd	174
Cross examination by Mr. Hazzard	185
Redirect examination by Mr. Todd.....	208

TUVERA MCCREA

Direct examination by Mr. Todd	210
Cross examination by Mr. Hazzard	219

ANTONIO PEPE

Direct examination by Mr. Todd	225
Cross examination by Mr. Hazzard	235

RODNEY KINLOCH

Direct examination by Mr. Todd	236
Cross examination by Mr. Hazzard	243
Redirect examination by Mr. Todd.....	253

WILBERT BURROUGHS

Direct examination by Mr. Todd	254
Cross examination by Mr. Hazzard	262

CHAKANA BROWN

Direct examination by Mr. Todd	267
Cross examination by Mr. Hazzard	273

MICHAEL THACKER

Direct examination by Mr. Todd	279

MELVYN GARRETT

Direct examination by Mr. Todd	289
Cross examination by Mr. Hazzard	303

BRENDA LAMBERT

Direct examination by Mr. Todd	309

WHITNEY BERRY

Direct examination by Mr. Todd	318
Cross examination by Mr. Hazzard	330
Redirect examination by Mr. Todd.....	331

STATE RESTS.....	332

DEFENSE MOTION FOR A DIRECTED VERDICT	333
RULING BY THE COURT.....	333
COLLOQUY WITH DEFENDANT ON HIS RIGHT TO TESTIFY	334
TESTIMONY	
JAMIE GILES	
Direct examination by Mr. Hazzard	339
Cross examination by Mr. Todd	374
DEFENSE RESTS	401
RENEWED MOTION FOR DIRECTED VERDICT	402
RULING BY THE COURT.....	404
CLOSING ARGUMENT BY MR. HAZZARD	410
CLOSING ARGUMENT BY MR. TODD	436
CHARGE ON THE LAW	443
VERDICT	472
DEFENSE MOTION TO SET ASIDE VERDICT AND FOR A NEW TRIAL.....	478
RULING BY THE COURT.....	479
SENTENCE.....	482
INDICTMENTS.....	485
CERTIFICATE OF COUNSEL	491

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GEORGETOWN) 2015-GS-22-169 through 172

The State,)
))
Plaintiff,) Transcript of Record
))
vs.) February 1-4, 2016
))
Jamie Lahuane Giles,)
))
Defendant.)

B E F O R E:

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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

Richard D. Todd, Jr., Esquire
Attorney for Plaintiff

Ronald W. Hazzard, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1	I N D E X	
2	(February 1, 2016.)	
3	Voir Dire.	12
4	Jury Selection	35
5	Motions.	44
6	(February 2, 2016.)	
7	Opening Instructions by Court.	161
8	Opening Statement by State	167
9	Opening Statement by Defense	169
10	Daniea Kelly	
11	Direct by State.	174
12	Cross by Defense	185
13	Redirect by State.	207
14	Tuvera McCrea	
15	Direct by State.	210
16	Cross by Defense	219
17	Antonio Pepe	
18	Direct by State.	225
19	Cross by Defense	235
20	Rodney Kinloch	
21	Direct by State.	236
22	Cross by Defense	243
23	Redirect by State.	253
24	Wilbert Burroughs	
25	Direct by State.	254

State v. Giles

3

1	Cross by Defense	262
2	Chakana Brown	
3	Direct by State.	267
4	Cross by Defense	273
5	Michael Thacker	
6	Direct by State.	279
7	Melvyn Garrett	
8	Direct by State.	289
9	Cross by Defense	303
10	(February 3, 2016.)	
11	Brenda Lambert	
12	Direct by State.	309
13	Whitney Berry	
14	Direct by State.	318
15	Cross by Defense	330
16	Redirect by State.	331
17	Motions.	333
18	Questioning of Defendant Re: Testifying	334
19	Jamie L. Giles	
20	Direct by Defense.	339
21	Cross by State	374
22	Motions.	402
23	(February 4, 2016.)	
24	Closing Argument by Defense.	410
25	Closing Argument by State.	436

State v. Giles

4

1	Charge	443
2	Question From Jury	464
3	Verdict.	471
4	Polling of Jury.	474
5	Motions.	477
6	Sentencing	480
7	Certificate.	484
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

State v. Giles

5

E X H I B I T S			
		ID	EVD
1			
2			
3	S-1	Photograph	230
4	S-2	Photograph	230
5	S-3	Photograph	230
6	S-4	Photograph	230
7	S-5	Photograph	230
8	S-6	Photograph	257
9	S-7	Photograph	257
10	S-8	Photograph	257
11	S-9	Photograph	257
12	S-10	Photograph	284
13	S-11	Photograph	284
14	S-12	Photograph	284
15	S-13	Photograph	284
16	S-14	Photograph	284
17	S-15	Photograph	284
18	S-16	Photograph	284
19	S-17	Photograph	284
20	S-18	Photograph	284
21	S-19	Photograph	284
22	S-20	Photograph	284
23	S-21	Photograph	284
24	S-22	Photograph	284
25	S-23	Photograph	284

State v. Giles

6

1	S-24	Photograph	284
2	S-25	Photograph	284
3	S-26	Photograph	284
4	S-27	Photograph	284
5	S-28	Photograph	284
6	S-29	Photograph	284
7	S-30	Photograph	284
8	S-31	Photograph	284
9	S-32	Photograph	284
10	S-33	Photograph	284
11	S-34	Photograph	284
12	S-35	Photograph	284
13	S-36	Photograph	284
14	S-37	Photograph	284
15	S-38	Photograph	284
16	S-39	Photograph	284
17	S-40	Photograph	284
18	S-41	Photograph	284
19	S-42	Photograph	284
20	S-43	Photograph	284
21	S-44	Photograph	284
22	S-45	Photograph	284
23	S-46	Photograph	284
24	S-47	Photograph	284
25	S-48	Photograph	284

State v. Giles

7

1	S-49	Photograph	284
2	S-50	Photograph	284
3	S-51	Photograph	284
4	S-52	Photograph	284
5	S-53	Photograph	284
6	S-54	Photograph	284
7	S-55	Photograph	284
8	S-56	Photograph	284
9	S-57	Photograph	284
10	S-58	Photograph	284
11	S-59	Photograph	284
12	S-60	Photograph	284
13	S-61	Photograph	284
14	S-62	Photograph	284
15	S-63	Photograph	284
16	S-64	Photograph	284
17	S-65	Photograph	284
18	S-66	Photograph	284
19	S-67	Photograph	284
20	S-68	Photograph	284
21	S-69	Photograph	284
22	S-70	Photograph	284
23	S-71	Photograph	284
24	S-72	Photograph	284
25	S-73	Photograph	284

State v. Giles

8

1	S-74	Photograph	284
2	S-75	Photograph	284
3	S-76	Photograph	284
4	S-77	Photograph	284
5	S-78	Photograph	284
6	S-79	Photograph	284
7	S-80	Photograph	284
8	S-81	Photograph	284
9	S-82	Photograph	284
10	S-83	Photograph	284
11	S-84	Photograph	284
12	S-85	Photograph	284
13	S-86	Photograph	284
14	S-87	Photograph	284
15	S-88	Photograph	284
16	S-89	Photograph	284
17	S-90	Photograph	284
18	S-91	Photograph	284
19	S-92	Photograph	284
20	S-93	Photograph	284
21	S-94	Photograph	284
22	S-95	Photograph	284
23	S-96	Photograph	284
24	S-97	Photograph	284
25	S-98	Photograph	284

State v. Giles

9

1	S-99	Photograph	284
2	S-100	Photograph	284
3	S-101	Photograph	284
4	S-102	Photograph	284
5	S-103	Photograph	284
6	S-104	Photograph	284
7	S-105	Photograph	284
8	S-106	Photograph	284
9	S-107	Photograph	284
10	S-108	Photograph	284
11	S-109	Photograph	284
12	S-110	Photograph	284
13	S-111	Photograph	297
14	S-112	Photograph	297
15	S-113	Photograph	297
16	S-114	Photograph	297
17	S-115	Photograph	297
18	S-116	Photograph	297
19	S-117	Photograph	297
20	S-118	Photograph	297
21	S-119	Photograph	297
22	S-120	Photograph	297
23	S-121	Photograph	297
24	S-122	Photograph	297
25	S-123	Photograph	297

State v. Giles

10

1	S-124	Photograph	297
2	S-125	Photograph	297
3	S-126	Photograph	297
4	S-127	Photograph	297
5	S-128	Photograph	297
6	S-129	Photograph	297
7	S-130	Photograph	297
8	S-131	Photograph	297
9	S-132	Photograph	297
10	S-133	Photograph	294
11	S-134	Photograph	294
12	S-135	Photograph	294
13	S-136	Photograph	294
14	S-137	Photograph	294
15	S-138	Photograph	294
16	S-139	Photograph	294
17	S-140	Photograph	294
18	S-141	Photograph	294
19	S-142	Photograph	294
20	S-143	Photograph	294
21	S-144	Photograph	294
22	S-145	Photograph	294
23	S-146	Photograph	294
24	S-147	Photograph	294
25	S-148	Photograph	294

State v. Giles

11

1	S-149	Photograph	294
2	S-150	Photograph	294
3	S-151	Photograph	294
4	S-152	Photograph	294
5	S-153	Photograph	294
6	S-154	Photograph	294
7	S-155	Photograph	294
8	S-156	Photograph	294
9	S-157	Photograph	294
10	S-158	Photograph	294
11	S-159	Photograph	294
12	S-160	Photograph	294
13	S-161	Photograph	294
14	S-162	Photograph	294
15	S-163	Photograph	294
16	S-164	Sketch	301
17	S-165	GSR Kit	321
18	S-166	GSR Report	304
19	D-1	GSR Report (ID only for Motion)	132
20	C-1	Foreperson Selection	142
21	C-2	Stipulation and Order	308
22	C-3	Charge	463
23	C-4	Question from Jury	464
24	C-5	Question from Jury	
25			

1 (On the record, February 1, 2016, State versus Jamie L.
2 Giles, 2015-GS-22-169 through 172. The following takes place
3 outside the presence of the jury panel.)

4 THE COURT: All right. Anything before we begin jury
5 selection?

6 MR. TODD: No, Your Honor, nothing from the State.

7 MR. HAZZARD: Your Honor, during jury qualification
8 downstairs this morning, I and Deputy Solicitor Richardson
9 approached the bench. One of the questions was raised as to
10 the number of strikes that the Defense is entitled to on the
11 offenses of two counts of attempted murder. As I said
12 downstairs, to my knowledge, unfortunately, for the Defense,
13 they're only entitled to five pursuant to Section 14-711-10,
14 South Carolina Code of Laws. I did a check during the break
15 of both statutory law and case law, did not find anything in
16 difference to that. So it is our understanding the Defense is
17 entitled to five preemptory challenges.

18 THE COURT: Okay. All right. Anything -- now, this is
19 two counts?

20 MR. HAZZARD: That's correct.

21 THE COURT: My understanding this case, two counts of
22 attempted murder, one count of possession of a weapon during
23 the commission of a violent crime and one count of discharging
24 a firearm into a vehicle; is that correct?

25 MR. HAZZARD: Yes, sir, Your Honor.

Voir Dire

13

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

2 THE COURT: All right. All right. Anything?

3 MR. TODD: The Court's indulgence, Your Honor.

4 I'm sorry, Your Honor. We're just clarifying one issue
5 we had with one of the victims in the case, Your Honor.

6 THE COURT: All right. All right. Anything further from
7 the State before we bring the jury panel in?

8 MR. TODD: No, sir.

9 THE COURT: Anything further from the Defense?

10 MR. HAZZARD: Nothing from the Defense, Your Honor.

11 THE COURT: All right. Now, who are the alleged victims
12 in this case?

13 MR. TODD: Your Honor, there are two victims in this
14 case, Tuvera McCrea. She is in the hall. She'll be coming in
15 in just a minute, and also --

16 THE COURT: Tuvera --

17 MR. TODD: Tuvera McCrea. Let me find my witness list
18 here.

19 THE COURT: All right. And who else?

20 MR. TODD: Daniea Kelly. Mr. Kelly is currently
21 incarcerated. He will be dressed out tomorrow, but today he's
22 here solely for the purpose of our -- Mr. Hazzard's hearing.
23 So we don't necessarily need him in the courtroom --

24 THE COURT: All right.

25 MR. TODD: -- before the jury in orange.

1 THE COURT: And let's see.

2 MR. TODD: And then our lead --

3 MR. HAZZARD: I would object to them changing his mode of
4 dress for his appearance before the jury for safety reasons if
5 only safety reasons. He is a detainee at the present time,
6 and I would think that it would be appropriate for him to
7 appear as such.

8 THE COURT: Well, I mean, if you can give me some, some
9 legal authority I'll, I'll do it. I mean, I don't know that I
10 can compel it.

11 MR. TODD: Your Honor, he'll be dressed the same way that
12 the Defendant is. He will also have the same manner of
13 protection as the Defendant and as the Defendant's currently
14 not dressed in orange.

15 THE COURT: And certainly if he takes the stand you can
16 certainly, you can --

17 MR. HAZZARD: The Defendant is on trial, and as such has
18 certain constitutional rights.

19 THE COURT: Yeah. But I mean, you can -- and you can
20 question him during cross examination --

21 MR. HAZZARD: Okay.

22 THE COURT: -- on his incarceration and where is he and
23 things of that nature so.

24 MR. HAZZARD: Okay.

25 MR. TODD: No problem with that.

Voir Dire

15

1 THE COURT: So I don't know. I mean, put it this way, if
2 you bring me something that says they have to clothe him in
3 his Department of Corrections clothing I'll order it, but I
4 don't know of anything that, that requires that. All right.

5 MR. HAZZARD: Yes, sir.

6 THE COURT: All right. Now, Mr. Hazzard, your client's
7 name is Jamie Lahuane -- how do you -- Lahuane?

8 MR. HAZZARD: How do you pronounce your middle name?

9 MR. GILES: It's Lahuane. It's Lahuane. It's Lahuane.
10 It's misspelled on my birth certificate.

11 THE COURT: Lahuane?

12 MR. GILES: Yes, sir.

13 THE COURT: Okay.

14 MR. HAZZARD: And the last name is a hard G, Giles.

15 THE COURT: Giles. Okay.

16 MR. HAZZARD: Yes, sir, Your Honor.

17 COURT REPORTER: Can he spell his middle name if you
18 don't mind?

19 MR. HAZZARD: As it appears it's L-A-H-U-A-N-E.

20 COURT REPORTER: Thank you.

21 THE COURT: All right. Jamie Lahuane Giles.

22 All right. Let's go ahead and bring the jury in.

23 (Whereupon, the following takes place in the presence of
24 the jury panel.)

25 THE COURT: All right. Ladies and gentlemen, welcome

1 back. We're getting ready to start the trial of the case of
2 the State of South Carolina versus Jamie Lahuane Giles. Now,
3 Mr. Giles has been indicted on two counts of attempted murder,
4 one count of possession of a weapon during the commission of a
5 violent crime and one count of discharging a firearm into a
6 vehicle.

7 Now, I've got a series of questions to go over with you.
8 You've all been qualified to serve as jurors for this term of
9 court, but the next series of questions I have to go over with
10 you is referred to as voir dire questioning. That is to
11 determine whether or not you're qualified -- oh, we still got
12 more jurors? Are these jurors?

13 MR. TODD: No, Your Honor, these are the --

14 THE COURT: Okay. All right. Tell them to go ahead and
15 come on in.

16 All right. These questions are referred to as voir dire
17 questioning. That's to determine whether or not you're
18 qualified to serve as jurors on this particular case, and it
19 also gives the attorneys some additional information that
20 assists them with the jury selection process. So as I told
21 you during jury qualifications, jurors are constantly taking
22 oaths just like witnesses are. So I'll need all members of
23 the jury panel to please stand and raise your right hand.

24 (Jury panel sworn by the Court.)

25 THE COURT: Thank you very much. You may be seated.

Voir Dire

17

1 Now, is there any member of the jury panel that did not
2 respond to the oath by saying, "I do"? If so, please stand.

3 (No response.)

4 THE COURT: All right. Very well. Now, as I said, this
5 is the case of the State of South Carolina versus Jamie
6 Lahuane Giles. Mr. Giles is charged with two counts of
7 attempted murder, one count of possession of a weapon during
8 the commission of a violent crime and one count of discharging
9 a firearm into an occupied vehicle, the allegations being that
10 on or about December the 3rd, 2014, Mr. Giles fired, discharged
11 a firearm into a vehicle in an attempt to kill Daniea, is that
12 how you pronounce it?

13 MR. TODD: Daniea.

14 THE COURT: Daniea.

15 MR. TODD: He pronounces it Daniea.

16 THE COURT: Daniea Kelly and Tavera McCrea. Where did
17 this allegedly occur?

18 MR. TODD: In Andrews, Your Honor.

19 THE COURT: All right. This is in Andrews, South
20 Carolina. Now, is there any member of the jury panel that has
21 heard anything, read anything, discussed anything or knows
22 anything about this case? If so, please stand.

23 MR. HAZZARD: The Court's indulgence, Your Honor.

24 THE COURT: All right. Are all of the jurors in the
25 courtroom now? Let's send the bailiff back out there and

1 let's make sure we've got all jurors because I understand
2 we've got them coming in late. So let's check in the hallway
3 and see if we've got any other jurors or anybody else that
4 needs to be in the courtroom before we proceed. Okay?

5 BAILIFF: Nobody else in sight, Judge.

6 THE COURT: All right. All right. I apologize, ladies
7 and gentlemen, but we're going to need to start this over. If
8 I could get all members of the jury panel to please stand and
9 raise your right hand while we administer the oath.

10 Is there any member of the jury -- oh, excuse me.

11 (Jury panel is sworn by the Court.)

12 THE COURT: Thank you very much.

13 Now, is there any member of the jury panel that did not
14 respond to the oath by saying, "I do", either time?

15 (No response.)

16 THE COURT: Thank you. All right. As I said, this
17 incident allegedly occurred on December the 3rd, 2014, in
18 Andrews, South Carolina. Is there any member of the jury
19 panel that has heard anything, read anything, discussed
20 anything?

21 (No response.)

22 (Court and clerk confer.)

23 THE COURT: All right. Well, let's call the roll to see
24 if all the jurors are here. All right. Ladies and gentlemen,
25 apparently there are some jurors that have not shown back up.

Voir Dire

19

1 So we're going to need to check and see if we've got everyone
2 here.

3 (Roll is called. Clerk and Court confer.)

4 THE COURT: All right. If we can just get somebody from
5 the Sheriff's Department to contact me so we can find out
6 where they are; okay? All right. All right. If they come in
7 late, then let's just have them wait. Okay? I'm going to
8 keep them out of this panel, but we'll go ahead.

9 All right. Ladies and gentlemen, we'll go forward with
10 the remainder of the jury panel. As I said, again, is there
11 anybody in the jury panel who has heard anything, read
12 anything, discussed anything or knows anything about this
13 case? If so, please stand. All right. The Defendant in this
14 case -- oh, yes, ma'am. Your name and number?

15 MS. DOZIER: Juror Number 88, Sonya Dozier.

16 THE COURT: All right. Ms. Dozier, if you'd come
17 forward, please. If you want to come on up, if you all want
18 to come on up.

19 (Whereupon, an off-the-record bench conference is held
20 with Juror Number 88, counsel for the State and counsel for
21 the Defense.)

22 THE COURT: I'm going to excuse Ms. Dozier, Juror Number
23 88, from this case.

24 Anyone else heard anything, read anything, discussed
25 anything or knows anything about this case? If so, please

1 stand.

2 (No response.)

3 THE COURT: All right. The Defendant is Jamie Lahuane
4 Giles. Is there any member of the jury panel related by blood
5 or marriage, have a close personal relationship, business
6 relationship, social relationship or any other type of
7 relationship with Mr. Giles? If so, please stand.

8 Thank you, sir.

9 (No response.)

10 THE COURT: The alleged victims in this case are Tuviera
11 McCrea and Daniea Kelly. Is any member of the jury panel
12 related by blood or marriage, have a close personal
13 relationship, business relationship, social relationship or
14 any other type of relationship with either Tuviera McCrea or
15 Daniea Kelly? If so, please stand.

16 (No response.)

17 THE COURT: All right. Please listen carefully as these
18 are potential witnesses who may testify in this case:
19 Lieutenant Melvyn Garrett of the Andrews Police Department;
20 Officer Quintard Tucker of the Andrews Police Department;
21 Officer Oliver Nesmith or Nesmith of the Andrews Police
22 Department; Officer Jason Creson, C-R-E-S-O-N, of the Andrews
23 Police Department; Officer Caresa Blunt of the Andrews Police
24 Department; Investigator Brenda Lambert of the Andrews Police
25 Department; Officer Stephanie Law of the Andrews Police

Voir Dire

21

1 Department; Investigator Michael Thacker of the Georgetown
2 County Sheriff's Office; Investigator Jason Dozier of the
3 Georgetown County Sheriff's Office; Daniea Kelly; Chakana
4 Latoya Brown; Rodney Kinloch or Kinloch, K-I-N-L-O-C-H;
5 Wilbert Burroughs; Phillip Bell; Tuvera McCrea; Dr. Antonio,
6 is it Pepe?

7 MR. TODD: Pepe.

8 THE COURT: Pepe, P-E-P-E, of the Grand Strand Surgical
9 Specialists; Whitney Berry of the State Law Enforcement
10 Division; Doris Yarborough of the State Law Enforcement
11 Division; and Amy Stephens of the State Law Enforcement
12 Division. Is there any member of the jury panel related by
13 blood or marriage, have a close personal relationship,
14 business relationship, social relationship or any other type
15 of relationship with any of these potential witnesses? If so,
16 please stand.

17 All right. Starting on the front. Sir, your name and
18 number?

19 MR. AVANT: Woody Avant, Juror Number 10.

20 THE COURT: All right. Mr. Avant, who is it that you
21 know?

22 MR. AVANT: Officer Jason Dozier is my brother's brother-
23 in-law.

24 THE COURT: Your brother's brother-in-law. Okay.

25 MR. AVANT: They're married to sisters.

1 THE COURT: All right. Now, how well do you know Mr.
2 Dozier?

3 MR. AVANT: I know him very well.

4 THE COURT: Okay. Would the fact that you know Mr.
5 Dozier influence your ability to give both the State and the
6 Defendant a fair and impartial trial?

7 MR. AVANT: I don't think so.

8 THE COURT: Okay. And I appreciate your saying you don't
9 think so, but I have to be sure that you're not influenced by
10 any outside source, and, and it's natural when you have
11 personal acquaintances. If you think that that acquaintance
12 would affect you in any way then we need to know that.

13 MR. AVANT: I can't say for sure it wouldn't, Judge.

14 THE COURT: Okay.

15 MR. AVANT: I've, I've known Jason for an awful long
16 time.

17 THE COURT: All right. Thank you very much, Mr. Avant.
18 I'm going to excuse you from this particular case, but stay
19 with us for right now. Okay? Thank you.

20 All right. The lady in the green top, your name and
21 number?

22 MS. HOLMES: Juror Number 152, Marjorie Holmes.

23 THE COURT: All right. Ms. Holmes, who is it that you
24 know?

25 MS. HOLMES: Resa Blunt.

Voir Dire

23

1 THE COURT: Who?

2 MS. HOLMES: Resa Blunt.

3 THE COURT: Oh, I see. And how do you pronounce it? I
4 might have pronounced it wrong. Caresa?

5 MS. HOLMES: I, I call her Resa.

6 THE COURT: Oh, you call her Resa, okay.

7 MS. HOLMES: Yes, sir.

8 THE COURT: All right. Now, how do you know Officer
9 Blunt?

10 MS. HOLMES: We, we were -- we worked together.

11 THE COURT: Where was this?

12 MS. HOLMES: At Quincy's. It was a couple of years, but
13 I know her as an associate.

14 THE COURT: Okay. How long ago did you work with her?

15 MS. HOLMES: Maybe two years, two, three years.

16 THE COURT: All right. Now, outside of that employment
17 do you know her? Do you all socialize together? Do you visit
18 regularly or how well do you --

19 MS. HOLMES: Not regularly, no, sir, not regularly.

20 THE COURT: Okay. Would your association with her -- do
21 you have any association with Officer Blunt outside of that
22 prior employment?

23 MS. HOLMES: How do you mean, sir? As what?

24 THE COURT: Are you all a member of any clubs together?
25 Do you go to the same church?

1 MS. HOLMES: No, sir.

2 THE COURT: Do you routinely visit one another, anything
3 like that?

4 MS. HOLMES: No, sir. Not like that.

5 THE COURT: All right.

6 MS. HOLMES: But when we see each other, you know, we
7 talk and whatever like that, but --

8 THE COURT: All right. And that's not uncommon in a town
9 the size of Georgetown and Andrews. Would your association
10 with Officer Blunt affect your ability to give both the State
11 and the Defendant in this case a fair and impartial trial?

12 MS. HOLMES: I can't say, sir.

13 THE COURT: Okay. All right. Thank you very much. I'm
14 going to excuse you from this particular case, but please stay
15 with us right now.

16 MS. HOLMES: Okay.

17 THE COURT: You were Ms. Holmes?

18 MS. HOLMES: Yes, sir.

19 THE COURT: All right. Thank you.

20 Yes, ma'am, your name and number?

21 MS. CHARLTON-LEWIS: Number 47, Shirley Charlton-Lewis.

22 THE COURT: All right. Ms. Charlton-Lewis, who is it
23 that you know?

24 MS. CHARLTON-LEWIS: I don't know Michael Thacker
25 personally but he does have cable with us, and I know he's

Voir Dire

25

1 been working closely with our, our business in helping catch
2 cable theft.

3 THE COURT: Okay.

4 MS. CHARLTON-LEWIS: So I don't know if that's something
5 you need to know or not.

6 THE COURT: Well, yes. It is. Is there any association
7 outside of the business relationship?

8 MS. CHARLTON-LEWIS: With me personally, no.

9 THE COURT: Okay. Would the relationship be such that it
10 would affect your ability to give both the State and the
11 Defendant a fair and impartial trial?

12 MS. CHARLTON-LEWIS: No, because I don't speak to him
13 unless I'm in the office if he comes in to pay his bill.

14 THE COURT: All right. Would you be able to disregard
15 that association in its entirety and base your decision in
16 this case exclusively on the testimony and evidence in this
17 case?

18 MS. CHARLTON-LEWIS: Yes.

19 THE COURT: Okay. Thank you very much, Ms. Charlton-
20 Lewis. I appreciate you bringing that to our attention.

21 All right. Anyone else that has any type of relationship
22 with any of these potential witnesses? If so, please stand.

23 (No response.)

24 THE COURT: All right. Prosecuting this case on behalf
25 of the State is Attorney Richard D. Todd, Jr., of the

1 Fifteenth Circuit Solicitor's Office. The Defendant is
2 represented by Attorney Ronald W. Hazzard. Now, is there any
3 member of the jury panel related by blood or marriage, have a
4 close personal relationship, business relationship, social
5 relationship or any other type of relationship with either of
6 these attorneys? If so, please stand.

7 (No response.)

8 THE COURT: Has any member of the jury panel ever been
9 represented by either of these attorneys? If so, please
10 stand.

11 (No response.)

12 THE COURT: Has any member of the jury panel ever been
13 involved in any legal action where either of these attorneys
14 represented another party to that action? If so, please
15 stand.

16 (No response.)

17 THE COURT: Is there any member of the jury panel who
18 either personally, has a family member or close personal
19 friend employed with the Fifteenth Circuit Solicitor's Office
20 or the Georgetown County Public Defender's Office? If so,
21 please stand.

22 (No response.)

23 THE COURT: Has any member of the jury panel ever been
24 the victim of a physical assault or a violent crime? If so,
25 please stand.

Voir Dire

27

1 All right. The lady on the second row, your name and
2 number?

3 MS. FLOYD: Mona Floyd, 106.

4 THE COURT: All right. Hold for a second. Just come
5 forward, please.

6 (Whereupon, an off-the-record bench conference is held
7 with Juror 106, attorney for the State and attorney for the
8 Defense.)

9 THE COURT: Yes, ma'am, your name and number?

10 MS. NORRIS: Alicia Norris, 242.

11 THE COURT: All right. Ms. Norris, if you'd come
12 forward, please.

13 (Whereupon, an off-the-record bench conference is held
14 with Juror 242, attorney for the State and attorney for the
15 Defense.)

16 THE COURT: Is there any member of the jury panel who
17 either personally, has a family member or a close personal
18 friend employed in law enforcement? If so, please stand.

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

20 MS. NICHOLS: Nancy Nichols, 241.

21 THE COURT: All right. Ms. Nichols, is this you, a
22 family member or who?

23 MS. NICHOLS: Family member.

24 THE COURT: Okay. And what is the relationship?

25 MS. NICHOLS: My son who's a police officer and his wife

1 is a lawyer.

2 THE COURT: Okay. And where is that?

3 MS. NICHOLS: The State of Maryland.

4 THE COURT: All right. Would the fact that your son is
5 employed with law enforcement, would that affect your ability
6 to give both the State and the Defendant in this case a fair
7 and impartial trial?

8 MS. NICHOLS: I don't believe so.

9 THE COURT: Okay. And again, I appreciate your honesty
10 in saying you don't believe so, but I have to be sure that
11 you're not influenced by any outside source, and if you think
12 your son's employment might affect your ability, particularly
13 in this case to give the Defendant a fair and impartial trial
14 then we need to know that.

15 MS. NICHOLS: I, I don't believe so.

16 THE COURT: Okay. And there again, can you disregard
17 your son's employment in its entirety, not consider it at all,
18 and base your decision in this case exclusively on the
19 testimony and evidence in this case?

20 MS. NICHOLS: I don't think so.

21 THE COURT: Okay. Thank you, Ms. Nichols, for bringing
22 that to our attention. I'm going to excuse you from this
23 particular case, but stay with us for right now. Thank you.

24 All right. Again, the lady in the green top, your name
25 and number?

Voir Dire

29

1 MS. HOLMES: Juror Number 152, Marjorie Holmes. I have a
2 niece.

3 THE COURT: All right. Ms. Holmes, I've already excused
4 you.

5 MS. HOLMES: Okay.

6 THE COURT: If I've excused you you don't need to respond
7 anymore.

8 MS. HOLMES: Okay. Thank you so much.

9 THE COURT: Thank you very much for bringing that to our
10 attention though.

11 MS. HOLMES: Okay.

12 THE COURT: All right. Yes, ma'am, again, and I
13 apologize. We have to create a record. So every time you
14 stand I'll need you to give your name and number.

15 Yes, ma'am, in the lavender shirt, your name and number?

16 MS. CHARLTON-LEWIS: Number 47, Shirley Charlton-Lewis.

17 THE COURT: All right. Ms. Charlton-Lewis, who -- is
18 this you or a family member?

19 MS. CHARLTON-LEWIS: Well, this would be my husband's
20 family.

21 THE COURT: Your husband, okay, where is he employed?

22 MS. CHARLTON-LEWIS: The DOT.

23 THE COURT: Wait a minute. I'm sorry. I can't.

24 MS. CHARLTON-LEWIS: The DOT.

25 THE COURT: Oh, with the Department of Transportation?

1 In what capacity?

2 MS. CHARLTON-LEWIS: Well, it would be Mr. Causey is my
3 husband's aunt's nephew, cousin.

4 THE COURT: Okay. All right. Tell me that again now.

5 MS. CHARLTON-LEWIS: Mr. Causey and my husband are
6 cousins.

7 THE COURT: Okay. All right. So he's related to your
8 husband.

9 MS. CHARLTON-LEWIS: Yes.

10 THE COURT: Okay. Would that employment affect your
11 ability to give both the State and Defendant in this case a
12 fair and impartial trial?

13 MS. CHARLTON-LEWIS: No.

14 THE COURT: Would you be able to disregard that
15 employment in its entirety and base your decision in this case
16 exclusively on the testimony and evidence in this case?

17 MS. CHARLTON-LEWIS: Yes.

18 THE COURT: Thank you very much for bringing that to our
19 attention. Is there any member of the jury panel who is a
20 member of or a contributor to any organization that has as its
21 primary function the enforcement of law enforcement or
22 victims' rights. Some of these organizations are Mothers
23 Against Drunk Drivers or Students Against Drunk Drivers,
24 Citizens Against Violent Crime, also known as CAVC and CASA,
25 Citizens Against Spousal Abuse. Any member of the jury panel

Voir Dire

31

1 a contributor to or a member of any of those organizations or
2 similar organizations? If so, please stand.

3 (No response.)

4 THE COURT: Has any member of the jury panel ever
5 participated in a program sponsored or administered by law
6 enforcement such as a Citizens Police Academy? If so, please
7 stand.

8 (No response.)

9 THE COURT: Any member of the jury panel a member of a
10 Neighborhood Watch Program? If so, please stand.

11 MS. DOYLE: Number 85, Christine Doyle.

12 THE COURT: All right. Ms. Doyle, you're a member of a
13 Neighborhood Watch Program?

14 MS. DOYLE: Not currently, Your Honor, but I have in the
15 past.

16 THE COURT: Okay. Would your participation in that
17 program affect your ability to give both the State and the
18 Defendant in this case a fair and impartial trial?

19 MS. DOYLE: No, sir.

20 THE COURT: Okay. Would you be able to -- excuse me, ask
21 one more. Would you be able to disregard your participation
22 in that program in its entirety and base your decision in this
23 case exclusively on the testimony and evidence in this case?

24 MS. DOYLE: Yes, sir.

25 THE COURT: Okay. Thank you for bringing that to our

1 attention. Anyone else ever been a member of a Neighborhood
2 Watch Program? If so, please stand.

3 (No response.)

4 THE COURT: Has any member of the jury panel ever been
5 arrested or charged with a crime? If so, please stand.

6 All right. The lady in the black shirt, your name and
7 number?

8 MS. COFFEY: 54, Deanna Coffey.

9 THE COURT: All right. If you'd come forward, please.

10 (Whereupon, an off-the-record bench conference is held
11 with Juror 54, attorney for the State and attorney for the
12 Defense.)

13 THE COURT: All right. Sir, your name and number?

14 MR. REED: Juror Number 264, Jumaine Reed.

15 THE COURT: All right. Sir, if you'd come forward,
16 please.

17 MR. REED: Yes, sir.

18 (Whereupon, an off-the-record bench conference is held
19 with Juror 264, attorney for the State and attorney for the
20 Defense.)

21 THE COURT: Juror Number 264 is excused from this case.

22 All right. Sir, your name and number?

23 MR. CURRY: 66, Jacob Curry.

24 THE COURT: All right. Mr. Curry, come forward, please.

25 (Whereupon, an off-the-record bench conference is held

Voir Dire

33

1 with Juror 66, attorney for the State and attorney for the
2 Defense.)

3 THE COURT: All right. Sir, your name and number?

4 MR. FERNANDEZ: Jerome Fernandez, 101.

5 THE COURT: All right. Sir, if you'd come forward,
6 please.

7 (Whereupon, an off-the-record bench conference is held
8 with Juror 101, attorney for the State and attorney for the
9 Defense.)

10 THE COURT: Sir, your name and number?

11 MR. GREEN, JR.: Juror Number 135, Richard Green, Jr.

12 THE COURT: All right. Sir, if you'd come forward,
13 please.

14 (Whereupon, an off-the-record bench conference is held
15 with Juror 135, attorney for the State and attorney for the
16 Defense.)

17 THE COURT: All right. Anyone else?

18 (No response.)

19 THE COURT: Thank you. Has any member of the jury panel
20 formed or expressed an opinion about any issue or matter
21 involved in this case? If so, please stand.

22 (No response.)

23 THE COURT: Is any member of the jury panel aware of any
24 bias or prejudice towards either the State of South Carolina
25 or the Defendant in this case? If so, please stand.

1 (No response.)

2 THE COURT: Is there any member of the jury panel that
3 was a member of the Grand Jury that issued the indictment in
4 this case? If so, please stand.

5 (No response.)

6 THE COURT: Does any member of the jury panel know of any
7 reason whatsoever why he or she should not serve as a juror in
8 this case, with particular emphasis being placed on your
9 ability to be fair and impartial to both the State and the
10 Defendant? If so, please stand.

11 (No response.)

12 THE COURT: All right. Any additional questions from the
13 State?

14 MR. TODD: No, Your Honor.

15 THE COURT: Any from the Defense?

16 MR. HAZZARD: None from the Defense, Your Honor.

17 THE COURT: All right. All right. Ladies and gentlemen,
18 in General Sessions Court what happens is your names are fed
19 into a computer. Those who are -- remain part of the jury
20 panel and they're generated on a list in random order. Now,
21 the Clerk of Court will call your name one at a time, and if
22 she calls your name please come forward and stand in front of
23 the attorneys, turn and face the attorneys. Now, each side
24 gets a certain number of strikes, and so, if you're struck
25 you'll resume your seat. If you're not struck and you're

Jury Selection

35

1 chosen on the jury you come over here and they'll direct you
2 into the jury box. So if your name is called please come
3 forward and bring with you any pocketbooks, coats, umbrellas,
4 whatever you might have. Now, if you're struck by either the
5 State or the Defendant please don't take it personally. It
6 just means that for whatever reason you don't fit a certain
7 profile that they're looking for in this particular case.
8 Oftentimes, I've known jurors to be struck in one case and
9 then taken by the same party in the next case or accepted in
10 the first case and struck in the second case, so there's
11 really no rhyme or reason. It just means that for whatever
12 reason you don't fit a certain profile they're looking for in
13 this particular case. So please don't take it personally. Be
14 patient for just a minute while we get this list and then
15 we'll be ready to move forward.

16 All right. Are we ready to go forward at this time?

17 MR. TODD: Yes, Your Honor. The State's ready.

18 THE COURT: All right.

19 MR. HAZZARD: The Defense is ready to proceed.

20 THE COURT: All right. Ladies and gentlemen, please
21 listen up, and if the clerk calls your name, please come
22 forward, stand in front of the attorneys and turn and face the
23 attorneys. Thank you.

24 THE CLERK: Juror Number 258, John Prochniak.

25 What says the State?

Jury Selection

36

1 MR. TODD: Please seat this juror.

2 THE CLERK: What says the Defense?

3 MR. HAZZARD: Please excuse the juror from the trial of
4 this particular case.

5 THE CLERK: You may return to your seat.

6 Juror Number 282, Matthew Seat.

7 What says the State?

8 MR. TODD: Please seat this juror.

9 THE CLERK: What says the Defense?

10 MR. HAZZARD: Please swear Mr. Seat.

11 THE CLERK: Please take a seat in the jury box.

12 Juror Number 265, Matthew Reed.

13 THE COURT: That's the gentleman that did not return.

14 THE CLERK: All right. Juror Number 13, Elizabeth
15 Barwick.

16 What says the State?

17 MR. TODD: Please seat this juror.

18 THE CLERK: What says the Defense?

19 MR. HAZZARD: Please swear the juror.

20 THE CLERK: Please take a seat in the jury box.

21 Juror Number 188, Chad Leberknight.

22 What says the State?

23 MR. TODD: Please seat this juror.

24 THE CLERK: What says the Defense?

25 MR. HAZZARD: Please swear the juror.

Jury Selection

37

1 THE CLERK: Please take a seat in the jury box.
2 Juror Number 290, Catherine Slattery.
3 What says the State?
4 MR. TODD: Please seat this juror.
5 THE CLERK: What says the Defense?
6 MR. HAZZARD: Please excuse the juror from the trial of
7 this particular case.
8 THE CLERK: You may return to your seat.
9 Juror Number 101, Jerome Fernandez, II.
10 What says the State?
11 MR. TODD: Please seat this juror.
12 THE CLERK: What says the Defense?
13 MR. HAZZARD: Please swear Mr. Fernandez.
14 THE CLERK: Please take a seat in the jury box.
15 Juror Number 305, James Suggs.
16 What says the State?
17 MR. TODD: Please seat this juror.
18 THE CLERK: What says the Defense?
19 MR. HAZZARD: Please swear the juror.
20 THE CLERK: Please take a seat in the jury box.
21 Juror Number 156, Sonya Hynds-Shanley.
22 THE COURT: Ma'am, I apologize. What's your name?
23 MS. HYNDS-SHANLEY: Sonya Hynds-Shanley.
24 THE COURT: All right. Thank you.
25 THE CLERK: What says the State?

Jury Selection

38

1 MR. TODD: Please seat this juror.
2 THE CLERK: What says the Defense?
3 MR. HAZZARD: Please swear the juror.
4 THE CLERK: Please take a seat in the jury box.
5 Juror Number 131, Joseph Grate.
6 What says the State?
7 MR. TODD: Please seat this juror.
8 THE CLERK: What says the Defense?
9 MR. HAZZARD: Please swear the juror.
10 THE CLERK: Please take a seat in the jury box.
11 Juror Number 194, Shada Linnen.
12 What says the State?
13 MR. TODD: Please seat this juror.
14 THE CLERK: What says the Defense?
15 MR. HAZZARD: Please swear the juror.
16 THE CLERK: Please take a seat in the jury box.
17 Juror Number 109, Nia Fulmore Valentin.
18 What says the State?
19 MR. TODD: Please seat this juror.
20 THE CLERK: What says the Defense?
21 MR. HAZZARD: The Court's indulgence, Your Honor.
22 THE COURT: All right.
23 MR. HAZZARD: Please swear Ms. Valentin.
24 THE CLERK: Please take a seat in the jury box.
25 Juror Number 66, Jacob Curry.

Jury Selection

39

1 What says the State?

2 MR. TODD: Please excuse this juror.

3 THE CLERK: You may return to your seat.

4 Juror Number 317, Roy Thomas Tucker, Jr.

5 What says the State?

6 MR. TODD: Please seat this juror.

7 THE CLERK: What says the Defense?

8 MR. HAZZARD: Please excuse the juror from the trial of

9 this particular case.

10 THE CLERK: You may return to your seat.

11 Juror Number 120, Trevor Goodwin.

12 What says the State?

13 MR. TODD: The Court's indulgence. Please seat this

14 juror.

15 THE CLERK: What says the Defense?

16 MR. HAZZARD: The Court's indulgence, Your Honor.

17 THE COURT: All right.

18 MR. HAZZARD: Please swear the -- swear the juror,

19 please.

20 THE CLERK: All right. You can take a seat in the jury

21 box.

22 Juror Number 119, Mitzi Goodie.

23 What says the State?

24 MR. TODD: Please seat this juror.

25 THE CLERK: What says the Defense?

Jury Selection

40

1 MR. HAZZARD: Please swear the juror.

2 THE CLERK: Please take a seat in the jury box.

3 Juror Number 193, Ethel Linnen.

4 What says the State?

5 MR. TODD: Please seat the juror.

6 THE CLERK: What says the Defense?

7 MR. HAZZARD: The Court's indulgence, Your Honor. Please
8 swear the juror.

9 THE CLERK: Take a seat in the jury box.

10 THE COURT: All right. Let's choose an alternate. The
11 State gets one strike, Defense gets two.

12 THE CLERK: Juror Number 54, Deanna Coffey.

13 What says the State?

14 MR. TODD: Please seat the juror.

15 THE CLERK: What says the Defense?

16 MR. HAZZARD: Please swear Ms. Coffey.

17 THE CLERK: Please take a seat in the jury box.

18 THE COURT: All right. Ladies and gentlemen, you'll be
19 the jury that'll preside over this first case. I'm going to
20 excuse you back to the jury room for just a few minutes while
21 I release the remainder of the jury panel. That'll give you
22 an opportunity to see where the jury room is and then we'll
23 bring you back out in just a few minutes. So follow the
24 bailiff. The bailiff will lead you out and we'll bring you
25 back in just a few minutes.

Jury Selection

41

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right. Any challenges to the selection
4 or composition of the jury by the State?

5 MR. TODD: No, Your Honor.

6 THE COURT: Any by the Defense?

7 MR. HAZZARD: None from the Defense, Your Honor.

8 THE COURT: All right.

9 (Remaining panel released with call-in instructions.)

10 THE COURT: All right. Anything from the State before we
11 bring the jury back in? I'm going to bring them back in and
12 cut them loose for the remainder of the day and what time do
13 we want to get started tomorrow?

14 MR. TODD: 9:30 sounds good, Your Honor.

15 THE COURT: 9:30. All right. Anything from the Defense
16 before we bring the jury back in?

17 MR. HAZZARD: Nothing from the Defense.

18 THE COURT: All right. Let's go ahead and bring the jury
19 in.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right. Ladies and gentlemen, welcome
23 back. This case that you will be presiding over, the State of
24 South Carolina versus Jamie L. Giles, we're going to be
25 starting it tomorrow morning. So I'm getting ready to excuse

1 you to go home for the remainder of the day, but I need you
2 back in the jury room tomorrow morning at 9:15 and we're going
3 to try to get started as soon after 9:15, probably about 9:30,
4 but that'll give you an opportunity to get a cup of coffee or
5 something of that nature. Please be back at 9:15 tomorrow
6 morning.

7 Now, when you come back tomorrow morning at 9:15 if I
8 could get you to do me a favor and that would be to select a
9 foreperson for this jury. Now, you may not know everyone, and
10 if you can't select a foreperson, don't worry about it. I can
11 appoint someone to serve as foreperson. Many judges appoint
12 their own foreperson. I like to give the jury the opportunity
13 to select one on their own accord if you're able to do so.

14 Now, the foreperson has no more authority, no more
15 influence, no more importance than any other juror. The sole
16 function of the foreperson is to act as a liaison between the
17 Court and the jury. If the jury has a question the foreperson
18 lets the Court know. If the jury has a need the foreperson
19 lets the Court know. When it's time to deliberate the
20 foreperson will preside over the deliberations and sign the
21 verdict forms, but other than that the foreperson has
22 absolutely no more authority, no more influence, no more
23 importance than any other juror. Now, the only restriction
24 would be, Ms. Coffey, at this point in time you're the
25 alternate. So you would not be eligible to serve as the

Jury Selection

43

1 foreperson. The rest of you, anybody can serve as foreperson.
2 So if you can select one just write his or her name on a sheet
3 of paper with their juror number, give it to the bailiff and
4 we'll proceed at that time.

5 Now, when we come back in the courtroom the foreperson
6 will always occupy the first seat on the front row closest to
7 the witness stand. Ms. Coffey, you'll always occupy the
8 alternate seat where you now sit. The rest of you are at
9 liberty to sit in whatever seat you like. If you want to sit
10 in the same seat throughout the trial of the case, you can do
11 that. If you want to alternate seats, you can do that as
12 well. The only requirement is that the foreperson occupies
13 the first seat on the front row, and the alternate occupies
14 the alternate seat unless and until you become a member of the
15 12-panel jury.

16 I'm going to excuse you to go home for the remainder of
17 the day, but I caution you, do not discuss this case even
18 among yourselves. I'll let you know when you can begin your
19 deliberations. Don't conduct any independent investigations.
20 Don't go looking on the internet or through the newspaper or
21 trying to find out anything about the case. I hope everybody
22 has a good evening and we'll see you back at 9:15 tomorrow
23 morning. Thank you very much.

24 (Whereupon, the following takes place outside the
25 presence of the jury.)

1 THE COURT: All right. What have we got pretrial?

2 MR. TODD: Your Honor, I think Mr. Hazzard has a motion
3 he'd like to present, but before he would start that --

4 THE COURT: All right.

5 MR. TODD: -- I would like to have my victim that's in
6 custody right now brought up so he can at least be a part of
7 this hearing and hear it.

8 THE COURT: Well, okay. All right. And who is --

9 MR. TODD: Daniea Kelly.

10 THE COURT: All right. Let's bring Daniea Kelly in. All
11 right. Now, Daniea Kelly is in the Department of Corrections?

12 MR. TODD: He's in Georgetown, Your Honor. He's under
13 their custody.

14 THE COURT: In the Georgetown Detention Center?

15 MR. TODD: Yes, sir.

16 THE COURT: Okay. But I mean, for security reasons, so I
17 understand.

18 MR. TODD: We'll have to stick one of these guys with
19 him.

20 THE COURT: Okay. That'll be fine.

21 MR. TODD: If you want we can put him on that first row
22 and sit Perry with him so.

23 THE COURT: Is that all right?

24 OFFICER: That's fine.

25 THE COURT: Okay. That'll be fine. Let's do that. Is

Motions

45

1 he in the holding cell or where is he?

2 OFFICER: He's downstairs, Your Honor.

3 THE COURT: Downstairs, okay.

4 (Mr. Kelly enters courtroom.)

5 THE COURT: All right. Mr. Hazzard, you have a motion?

6 MR. HAZZARD: Yes, sir, Your Honor. First, the Defense
7 would like to place the plea offer in this case on the record.
8 It is my understanding based on documentation received from
9 the Prosecutor's Office that the last offer of disposition in
10 this case would have been to a plea of assault and battery of
11 a high and aggravated nature with a negotiated sentencing
12 range of five to 12 years. I've spoken with Mr. Giles about
13 this on several occasions at great length. It is my
14 understanding that he has previously rejected that offer and
15 continues to this day to reject that offer, but I would want
16 the Court to have a colloquy with him and have that on the
17 record before we start this trial. Stand up, please, sir.

18 THE COURT: All right. All right. Hold for one second.

19 All right. Mr. Todd, let me ask you, is that offer still
20 available to the Defendant or not?

21 MR. TODD: No, Your Honor.

22 THE COURT: Okay.

23 MR. TODD: It's not available anymore.

24 THE COURT: All right. Is there any plea offer available
25 to the Defendant at this time?

1 MR. TODD: Your Honor, at this time he could plead
2 straight up to the two charges of attempted murder, and we
3 would dismiss the other two charges, but that is the end
4 offer.

5 THE COURT: Okay. With no recommendation?

6 MR. TODD: That's correct, Your Honor.

7 THE COURT: Okay. All right. Sir, if I could get you to
8 raise your right hand, please.

9 (Defendant is sworn by the Court.)

10 THE COURT: I understand your name is Jamie Lahuane
11 Giles?

12 MR. GILES: Yes, sir.

13 THE COURT: All right. Mr. Giles, you've been charged
14 with two counts of attempted murder, possession of a weapon
15 during the commission of a violent crime and discharging a
16 firearm into a vehicle. Now, I understand that previously a
17 plea offer was made, extended to you by the State where they
18 would let you plead guilty to assault and battery of a high
19 and aggravated nature and you would have received a negotiated
20 sentence of between five and ten years; is that correct?

21 MR. GILES: Five and 12, five to 12.

22 THE COURT: Five and 12 years, okay. My apologies, and I
23 understand you rejected that offer and it has now been
24 withdrawn; is that correct?

25 MR. GILES: Yes, sir.

Motions

47

1 THE COURT: All right. Now, the State has extended an
2 offer now that where you -- they will let you plead guilty to
3 two counts of attempted murder. They would dismiss the
4 discharging a firearm into a vehicle and possession of a
5 weapon during the commission of a violent crime, but you would
6 plead straight up to two counts of attempted murder. There
7 would be no negotiated sentence, no recommendation and it
8 would be up to the sentencing court to impose the sentence.
9 Do you understand that?

10 MR. GILES: Yes, sir.

11 THE COURT: All right. And you understand that for each
12 one of these charges for possession of -- excuse me, for
13 attempted murder you could receive up to 30 years for each
14 charge. You understand that?

15 MR. GILES: Yes, sir.

16 THE COURT: All right. Now, it's up to the sentencing
17 judge could sentence you to whatever the sentencing judge felt
18 was appropriate. There's no minimum sentence. There's no
19 maximum sentence, but you could receive up to 30 years in
20 prison. You could get anything from no jail time, time
21 served, probation or anywhere up to 30 years, and with this
22 being two charges you could actually receive up to 60 years if
23 they ran consecutive. Do you understand that?

24 MR. GILES: Yes, sir.

25 THE COURT: All right. Now, do you wish to accept or

1 reject that offer?

2 MR. GILES: Reject.

3 THE COURT: All right. You understand that if you reject
4 that offer it will be withdrawn at this time and it will not
5 be offered to you again. Do you understand that?

6 MR. GILES: Yes, sir.

7 THE COURT: All right. Now, you also understand that
8 possession of a weapon during the commission of a violent
9 crime carries a mandatory five-year sentence. That cannot be
10 reduced, suspended or anything of that nature. So if you're
11 convicted of that crime it carries a mandatory sentence of
12 five years. You understand that?

13 MR. GILES: Yes, sir.

14 THE COURT: And do you also understand that discharging a
15 firearm into a dwelling carries up to ten years and a \$1,000
16 fine. So if you're convicted on all four charges and they're
17 ordered to run consecutively, you could go to jail for 75
18 years and be fined \$1,000. Do you understand that?

19 MR. GILES: Yes, sir.

20 THE COURT: Now, do you still wish to reject that offer
21 and go to trial on all four charges?

22 MR. GILES: Yes, sir.

23 THE COURT: All right. Have you had an ample opportunity
24 to discuss this matter with your attorney?

25 MR. GILES: Yes, sir.

Motions

49

1 THE COURT: All right. Anything further you want placed
2 on the record in that regard, Mr. Hazzard?

3 MR. HAZZARD: No, Your Honor, thank you very much.

4 THE COURT: Anything further the State wants placed on
5 the record in that regard?

6 MR. TODD: No, Your Honor.

7 THE COURT: All right. All right. Mr. Hazzard, what
8 else?

9 MR. HAZZARD: The Defense -- you can have a seat. The
10 Defense would request that the State's witnesses be
11 sequestered pursuant to the South Carolina Rules of Evidence.

12 THE COURT: Any objection?

13 MR. TODD: No, Your Honor. The only exceptions to that
14 would be the ones that are allowed, which would be the two
15 victims and the lead investigator, Mr. Melvyn Garrett. We'd
16 also request any of the Defense witnesses, if there are any,
17 be under the same rules.

18 THE COURT: All right. Mr. Hazzard, any objection to the
19 Defense witnesses, if there are any, to be sequestered?

20 MR. HAZZARD: No objection, Your Honor.

21 THE COURT: All right. All right. We'll sequester all
22 witnesses in this case with the exception that Ms. McCrae, Mr.
23 Kelly, Officer Garrett and the Defendant can be in the
24 courtroom.

25 MR. TODD: Yes, sir.

1 THE COURT: All right.

2 MR. HAZZARD: Your Honor, if the Court chooses to address
3 the matter at this time, I would inquire as to whether the
4 State intends to attempt to use any of the Defendant's prior
5 record against him.

6 THE COURT: Have you got that information now?

7 MR. TODD: Yes, Your Honor, and he has prior convictions
8 for very similar crimes, and just under caution, Your Honor,
9 the State would only request that we could -- if he were to
10 take the stand, that we could only inquire as to is he
11 convicted of a -- is he a convicted felon so not to muddy the
12 waters. The previous crime he went to jail for I think right
13 before this was another ABHAN involving a gun where somebody
14 was shot at. So we think that would be a little, little dicey
15 to bring that one up.

16 THE COURT: All right.

17 MR. TODD: So just out of caution we'll --

18 THE COURT: So he's got a prior conviction for ABHAN, and
19 rather than bringing up the fact that it is a conviction for
20 ABHAN, you just intend to say that he -- question him on
21 whether or not he's ever been convicted of a felony?

22 MR. TODD: Yes, sir.

23 THE COURT: Okay. All right. Anything from the Defense
24 in that regard?

25 MR. HAZZARD: No, Your Honor.

Motions

51

1 THE COURT: All right.

2 MR. HAZZARD: Your Honor, at this time the Defense would
3 make a motion for a hearing pursuant to Section 16-11-410,
4 South Carolina Code of Laws, known as the Protection of
5 Persons and Property Act.

6 THE COURT: All right.

7 MR. HAZZARD: And specifically we would be relying on
8 provision 16-11-440, Subsection C.

9 THE COURT: What does that say?

10 MR. HAZZARD: A person who is not engaged in an unlawful
11 activity and who is attacked in another place where he has a
12 right to be, including, but not limited to be his -- not
13 limited to his place of business, has no duty to retreat and
14 has the right to stand his ground and meet force with force,
15 including deadly force, if he reasonably believes it is
16 necessary to prevent death or great bodily injury to himself
17 or another person or to prevent the commission of a violent
18 crime as defined in Section 16-1-60.

19 THE COURT: Okay. All right. Any objection from the
20 State?

21 MR. TODD: Your Honor, we're ready to proceed.

22 THE COURT: Okay. Let's take about a five-minute recess,
23 five or 10-minute recess. Then we'll come back and we'll
24 start, start that. Okay?

25 MR. HAZZARD: Thank you, Your Honor.

1 THE COURT: Let me see the attorneys for one second.

2 (Whereupon, a bench conference is held.)

3 OFF THE RECORD

4 (On the record. The following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. Mr. Hazzard --

7 MR. HAZZARD: Yes, sir, Your Honor.

8 THE COURT: -- anything? Are we ready to go forward?

9 MR. HAZZARD: Yes, sir, Your Honor.

10 THE COURT: All right. The State ready to go forward?

11 MR. TODD: Yes, Your Honor. There's just one thing I do
12 want to clarify in regards to my inquiring into the prior
13 record of Mr. Giles.

14 THE COURT: All right.

15 MR. TODD: Should there be an opportunity that he would
16 state that he's a man of peace or something would allow me to
17 go into further depth of his prior criminal record, the door's
18 opened on that, and I would like to inquire. However, it is
19 my normal questioning I do not -- I just want to make it clear
20 I wasn't looking to go into it under just normal questioning.

21 THE COURT: All right. All right. Does that answer any
22 questions you have in that regard?

23 MR. HAZZARD: Yes, sir, Your Honor.

24 THE COURT: Okay. All right. Mr. Hazzard, you ready to
25 proceed with the calling of your first witness?

Motions

53

1 MR. HAZZARD: Yes, sir, Your Honor. The Defense would
2 call Jamie Lahuane Giles to the stand.

3 THE COURT: All right. Mr. Giles, if you'd please come
4 around.

5 Whereupon, Jamie Lahuane Giles was called to the stand,
6 duly sworn by the clerk and testified as follows:

7 THE CLERK: Thank you. Please be seated and state your
8 name for the record.

9 MR. GILES: Jamie Giles.

10 THE COURT: All right. Mr. Giles, before we start this
11 hearing I need to let you know that even though you're
12 testifying, anything you say can and will be used against you
13 in the trial of your case. You understand that?

14 MR. GILES: Yes, sir.

15 THE COURT: All right. You still have the protections
16 afforded to you by the Fifth Amendment of the United States
17 Constitution that says no witness can be compelled to testify
18 against himself. So that being the case, I will allow you to
19 assert your Fifth Amendment Right if you choose to do so
20 during this hearing. Do you understand that?

21 MR. GILES: Yes, sir.

22 THE COURT: All right. Now, do you understand though if
23 you want to assert that right you'll need to do it before you
24 answer any question?

25 MR. GILES: Yes, sir.

1 THE COURT: All right. Anything further you want placed
2 on the record in that regard, Mr. Hazzard?

3 MR. HAZZARD: No, sir, Your Honor.

4 THE COURT: All right. Anything further the State wants
5 placed on the record in that regard?

6 MR. TODD: No, sir.

7 THE COURT: All right. Mr. Hazzard --

8 MR. HAZZARD: Yes, sir.

9 THE COURT: -- move forward with your questioning.

10 MR. HAZZARD: Thank you, Your Honor.

11 EXAMINATION

12 BY MR. HAZZARD:

13 Q Mr. Giles, where do you live?

14 A At the time of the incident I was staying at Lot 22, 810
15 Myrtle Road.

16 Q And what town is that in?

17 A Andrews, South Carolina.

18 Q Okay. And how long had you resided there? When did you
19 start living there?

20 A About four months prior to this incident.

21 Q Okay. Now, let me direct your attention to July 15th of
22 2014. Do you remember that day?

23 A Yes, sir.

24 Q Okay. If you would, please tell the Court what occurred
25 on that date.

Motions

55

1 A I just got back from Blakely, and I went to Mr.
2 Burroughs' place and had a few drinks, and a female I was
3 dealing with at the time, Brenda Brown, came in, and we got
4 into a argument, and the argument led to us going outside, and
5 it kept escalating, escalating. She took off her shoe, and we
6 still -- the arguing kept going, and she hit me with the shoe,
7 and out of reflex I hit her, and she went to the ground and
8 they came between us and break us up.

9 Q Who came between you to break you up?

10 A Some other guys been out there, and --

11 Q Okay. Was Daniea Kelly one of those guys?

12 A Nah. He didn't -- he wasn't one of the ones that break
13 us up.

14 Q Okay. Now, let me back you up a little bit. You
15 indicated that you went to Mr. Burroughs. Is that someone
16 commonly referred to as Punchy Burroughs?

17 A Yes, sir.

18 Q Okay. And he is the neighborhood bootlegger?

19 A Yeah. Bootlegger, candy man.

20 Q Uh-huh. So if you go over to Mr. Burroughs' trailer --
21 does Mr. Burroughs reside in the same trailer park where you
22 were residing at the time?

23 A Yes, sir. Lot 5.

24 Q Okay. So if you went over to Mr. Burroughs' house you
25 could buy say cigarettes, candy, have a mixed drink or buy a

1 bottle of beer; is that correct?

2 A Yes, sir.

3 Q Okay. To your understanding and your experience, did
4 people often go there, hang out and kind of socialize?

5 A Yes, sir.

6 Q Okay. Is that what you were doing on the evening of July
7 15th, 2014, with Ms. Brown?

8 A Yes, sir. Nah. I wasn't with Ms. Brown. I just came
9 back from Blakely, and me and another friend was in there.
10 She came in, and just like I say, argument escalated about me
11 and her relationship.

12 Q Okay. And you indicated that she hit you. You hit her.
13 She fell down, and some other individuals jumped in and
14 separated you.

15 A Yes, sir.

16 Q Okay. What happened then, sir?

17 A The arguments escalated again, and when that argument
18 starting escalating again, Mr. Kelly and Mr. Kinloch, Mr.
19 Kelly came over the top and hit me in the, hit me in the side
20 of the face, and somebody hit me from behind, and I went down
21 and that's when they started stomping me. It was --

22 Q And when you say they, who are you referring to?

23 A -- more, more than, more than Mr. Kelly and Kinloch. It
24 was a bunch of -- about, about, about five, six, maybe seven
25 people.

Motions

57

1 Q Okay.

2 A Started stomping me in my chest area and, and kicking me
3 in my side and stomach area.

4 Q Okay. Were Mr. Kelly and Mr. Kinloch involved in that
5 assault on you?

6 A Yes, sir.

7 Q Okay. To your knowledge was Mr. Kelly armed with a gun
8 at the time of this assault?

9 A After the assault he did pull one. He pull, he pull a
10 weapon out. I don't know what caliber or what make, you know,
11 but it wasn't -- it was a handgun.

12 Q Okay. So I apparently jumped ahead. So let's back up.
13 You say Mr. Kelly, Mr. Kinloch, Rodney Kinloch, is that who
14 you're referring to?

15 A Yes, sir.

16 Q Mr. Kelly, Mr. Kinloch and some other men beat you; is
17 that correct?

18 A Yes, sir.

19 Q Okay. How long did this take place? How long did this
20 beating take, take?

21 A 'Bout three, four, maybe five minutes.

22 Q Okay. And after the beating did you have any interaction
23 with Mr. Kelly?

24 A About a month and a half later he --

25 Q Let me ask you, let me -- I apologize. You indicated

1 that after the beating Mr. Kelly pulled a weapon on you.

2 Please tell the Court about that.

3 A Yeah. After, after everything started to break down,
4 subside, he went to his car and pull out a gun and cocked the
5 gun, and that's when I left the trailer park.

6 Q Okay.

7 A And went -- I got -- I, I own some property and a trailer
8 at 4 Holly Berry and I went there and spend the night.

9 Q When Mr. Kelly retrieved the gun from his vehicle and
10 cocked it, did he say anything to you or approach you or
11 anything of that nature?

12 A Say something about he wasn't retired yet or whatever.
13 He, he'd have to come out of retirement or something, and he
14 ain't much had nothing to do with what was going on.

15 Q Uh-huh. Okay. Were you in fear for your safety at that
16 time?

17 A Yes. I left the park, trailer park where I was staying
18 and went, went to my other house, well, my, my main house, my,
19 my place.

20 Q Okay. Now, as a result of the beating that you received
21 at the hands of Mr. Kelly, Mr. Kinloch and others, did you
22 sustain any injuries?

23 A A couple of days after it I noticed blood in my stool,
24 like little drops of blood in my stool. So I called my
25 primary doctor, Dr., Dr. Maddox at St. James Clinic and set up

Motions

59

1 an appointment, and somewhere around August the 4th that's when
2 I had the appointment, and she did a stool analysis and
3 checked like heart rate, and at the time I, I didn't give no
4 reason why my ribs was messed up and like my broken finger and
5 little other little incidents, but I, I told her about it. So
6 she did her tests and said if the blood in the stool get any
7 worse to go to the emergency room, go straight to the hospital
8 emergency room.

9 Q Okay. You indicated that your ribs were messed up. What
10 do you mean that your ribs were messed up?

11 A That from the kicking, they bruise, they was real -- I
12 was in a lot of pain like from bruised ribs.

13 Q Did you ever request any x-rays to see if you had any
14 fractured ribs or other fractures other than your broken
15 finger?

16 A No, no, sir, but it's in, it's in Dr. Maddox's report
17 when I went to her on the 4th that I did -- it's -- that, that
18 I did mention that my ribs was hurt, but I gave the excuse to
19 her like I, I do plumbing work and some help people out in
20 different like trades like carpentry, stuff like that, and I
21 was doing some demo work for a friend of mine, and a couple of
22 days after the beating and I got lightheaded in the rafters
23 and, and, and, and almost fall to the ground, and so I didn't
24 work no more until I seen Dr. Maddox and gave her what was all
25 the diagnosis.

1 Q And you saw Dr. Maddox approximately three weeks after
2 the incident on July 15th of 2014?

3 A Around, around August the 4th.

4 Q Okay.

5 A Right.

6 Q And did you -- and you said Dr. Maddox indicated that if
7 the blood in your stool got any worse that you should go to
8 the emergency room?

9 A Yes, sir.

10 Q Okay. Did you subsequently report to the emergency room?

11 A October the -- around October the 20th or something like
12 that.

13 Q Okay. And that would be the emergency room at Georgetown
14 Memorial Hospital?

15 A Yes, sir.

16 Q Okay. And was that related to the physical injuries you
17 sustained on July 15th of 2014?

18 A I believe so, and because I never had no bleeding. I had
19 cancer, colon cancer, had stage four colon cancer, and I had
20 surgery, and the bleeding was from where they had the -- where
21 they severed it and put it back together with the parts they
22 remove and put it back together. That's where the bleeding
23 was. They say I probably going to end up having that problem
24 at -- because some kind of how it's also that be coming
25 because I don't know why it on more men, but that was, that

Motions

61

1 was -- I, I felt like I never did had no problem like that
2 until this incident, but it started bleeding like real, real
3 thick and, and real heavy. Sometime the whole bowl be red
4 after that incident.

5 Q When you went to the emergency room was that Georgetown
6 -- at Georgetown Memorial Hospital, did you ever tell them
7 about the beating that you took?

8 A No, sir.

9 Q Okay. Why wouldn't you tell them that history?

10 A Because that, that's about, about two, two months prior
11 to that incident. About a month and a half after the incident
12 Mr. Kelly came to me and apologize, and I took him for a man
13 of his word and I accept his apology.

14 Q Uh-huh.

15 A So I didn't, I didn't follow it up. I didn't try to
16 pursue nothing about it.

17 Q You say Mr. Kelly came to you two months, approximately
18 two months or a month and a half after the incident.

19 A He was, he was in the trailer park, and he asked a friend
20 of his to -- could he, could he get me to talk to him, and I
21 agreed and he apologized, and I told him, you know, and he
22 told me -- he, he apologized, and I, I accept his apology,
23 just long as it don't happen no more with the guns.

24 Q Where did this discussion take place?

25 A At the Lot 4 or either 6, the one in front of Mr.

1 Burroughs.

2 Q So you were at someone else's residence?

3 A Yeah. I was going to Mr. Burroughs that particular
4 evening and, and that's when Mr. Bell stopped me and asked me
5 to -- could -- do I want to talk to Mr. Kelly.

6 Q Okay. So did you go into Mr. Bell's residence, talk to
7 him outside?

8 A We talked to him right outside -- we talked right
9 outside.

10 Q Okay. Was he, to your knowledge, carrying a weapon at
11 that time?

12 A Not to my knowledge.

13 Q Okay. Was anyone else with Mr. Kelly at that time?

14 A No, sir.

15 Q Okay. So it was just you and him?

16 A Me, him and Mr. Bell.

17 Q Okay. And so you're indicating Mr. Kelly apologized for
18 taking part in the beating and threatening you?

19 A Yes, sir.

20 Q Okay. And you accepted that apology?

21 A Yes, sir.

22 Q Okay. Let me turn your attention I believe it's to
23 December 3rd of 2014. Do you remember that date?

24 A Yes, sir.

25 Q Okay. If you would please tell the Court what occurred

Motions

63

1 on that evening.

2 A I had just left court in Andrews for some charges I had
3 got in November, and me and Brenda, we, we decided to -- her
4 -- one of her cousins, niece was going out of, moving out of
5 town, and she wanted to go to her mom's house to have a few
6 drinks. So I said I was going to walk over to Punchy's and
7 have me a few drinks. So I walked her over to her mom's
8 house, and I went over to Mr. Burroughs' house, and I was over
9 there about 30, 45 minutes, and I decided to call a friend,
10 and he came over, and he was asking me what went on in the
11 court and stuff, and I was explaining it to him and, and --

12 Q And the court you're talking about in municipal or city
13 court of Andrews?

14 A Yeah. And -- yes, sir. And, you know, I was kind of
15 frustrated because they didn't want to hear what I had to say.
16 They basically kicked me out of the court, told me -- they
17 dropped the charges but told me to leave the, leave the court.
18 So and he just was -- we just was drinking, unwinding, and,
19 and Mr. Kinloch and them came in. Mr. -- Brenda and her crew
20 came in and Mr. Kinloch came in after them, and --

21 Q When you say Mr. Kinloch, are you referring to Rodney
22 Kinloch?

23 A Yes, sir.

24 Q And that's the same individual you've testified took part
25 in your beating back on July 15th of 2014?

1 A Yes, sir.

2 Q Okay. Please continue.

3 A And he came in. He order him a drink, and, and some
4 strange reason he came in, he stood like about a foot from my
5 head, the back of my head and just was staring at me. So I
6 had to turn to the side and put my feet up on an amplifier at
7 Mr. Burroughs' bar. So he did that. He talked for a little
8 while with Mr. Bell and then they went outside. He came back
9 in about five minutes later and got some cigarettes and did
10 the same thing and went outside.

11 Q Okay. What do you mean when you say he did the same
12 thing?

13 A Came and stand up right behind the back of my head, and I
14 had to do -- I had to turn to the side again just to keep my
15 eye on him.

16 Q Did you speak to him either the first or second time he
17 entered Mr. Burroughs' trailer?

18 A I never said nothing to him.

19 Q Okay. So what happened after the second time he came and
20 stood right behind you?

21 A I turnt to the side and eventually leave and he went
22 outside and went to -- I don't -- I think -- I, I don't -- I'm
23 not sure whether it was that time or the, the -- or the next
24 time he came in there, but I think it's next time he came in
25 he walk over to the truck and was talking to Mr. Kelly on the

Motions

65

1 driver's side at the time. Mr. Kelly truck was parked.

2 Q Okay. Let's back up. So is your testimony that Mr.
3 Kelly was outside the trailer?

4 A Yes, sir. In his truck.

5 Q Okay. Please continue.

6 A And his truck was parked in the trailer in front of Mr.
7 Burroughs' yard. His truck was park in that yard, and Rodney
8 Kinloch went to the driver's side window and talked to Mr.
9 Kelly and Mr. Kelly hand him the gun, a gun.

10 Q Okay.

11 A And when, when he came -- when, when he did that I went
12 and holler at a friend of mine, Barney Wilson, and asked him,
13 "Yo, them boys just passed a gun." So I asked Mr. Wilson did
14 he still have his gun. He said, "Hold up," and so I went back
15 to the front to keep looking out the window at these guy and
16 when I got back to look out the window Mr. Kelly had already
17 done pull his truck almost up in front of Mr. Burroughs' house
18 like in the, in the door, not exactly in front of the door,
19 but he had done positioned his, his truck where from the
20 driver's side window he have a clear shot, a clear path at
21 anybody who coming out the door. So Mr. Wilson came back to
22 the bar, and we was standing at the bar talking about what I
23 just seen, and Mr. Kinloch came and then with the gun and
24 stood right, right up behind me again. So --

25 Q Did you see Mr. Kinloch with a gun at that point?

1 A Nah. I see when Mr. Kelly pass it to him. I didn't see
2 him with a gun at that point, but I seen when Mr. Kelly pass
3 one just like I said before I went to, to holler at Mr.
4 Wilson, and --

5 Q So at this point, and let me make sure I'm clear, at this
6 point Mr. Kinloch has re-entered Mr. Burroughs', Punchy's
7 trailer, this is now the fourth time?

8 A Yeah, about the fourth.

9 Q Okay. What happened then?

10 A That's when I got the gun from Mr. Wilson and tuck it
11 right there, and he came in again and that's when I had the
12 gun right there, and --

13 Q When you say right there --

14 A Under my armpit, under my jacket.

15 Q Okay.

16 A And he did the same thing, didn't bye or nothing, didn't
17 say nothing, and walked out. So after he -- after a couple of
18 minutes I, I told Mr. Wilson, I said, "Man, I'm going home."
19 He been like, "You, is you good?" I said, "Yeah. I good. I
20 got -- I'm going to -- I'll give this back to you later," and
21 --

22 Q When you say this what are you referring to?

23 A The gun.

24 Q Okay.

25 A The 9 mm gun, and I cocked it before I walked out and put

Motions

67

1 it right back in there.

2 Q Okay.

3 A When I, when I opened the door Mr. Kelly was in his truck
4 sitting in the truck and Rodney Kinloch was on the other side
5 of the porch.

6 Q Okay.

7 A And when I opened the door and turned and closed the
8 door, you know, turned back around, Mr. Kelly was reaching
9 for, like you pulling a gun, and that's when I pulled mine and
10 just let off a couple of shots.

11 Q Okay.

12 A Not even knowing as I hit them or not.

13 Q Okay. Now, was Mr. Kelly's -- was the driver's side of
14 Mr. Kelly's truck facing the front door of Mr. Burroughs'
15 trailer or was the passenger side of Mr. Kelly's truck next to
16 the front door of Mr. Burroughs' trailer?

17 A His driver's side.

18 Q Okay. So when you came out of Mr. Burroughs' door and
19 turned to close the door, could you see Mr. Kelly sitting in
20 his truck?

21 A Yes, sir.

22 Q Okay. Was the window rolled down or rolled up as you
23 recall?

24 A It's about halfway or a little better than halfway.

25 Q Okay. Were the windows tinted or do you recall?

1 A I don't recall them being tinted.

2 Q Okay. Could you see Mr. Kelly's activities inside the
3 truck?

4 A Just like I say, when I came out he was pulling, and I
5 know from his prior history that he, he do things like that,
6 and from the, from the incident with me in July. So I wasn't
7 going to take no chances on him harming me again.

8 Q And what do you mean when you say you know based on his
9 prior history? What do you know of Mr. Kelly's prior history?

10 A He deal with a lot of guns and be into like jumping
11 people, and, and from what I heard, I don't know how true it
12 is, he even was involved in a murder, you know. So I wasn't
13 going to risk him trying to murder me.

14 Q Okay.

15 A That was the old -- out -- just like I say, I took him as
16 a man of his word when, when he apologized to me. I wasn't
17 going to chance anything happening to me.

18 Q Okay. When you came out of Mr. Burroughs' trailer and
19 Mr. Kinloch is standing to the one side of the steps and Mr.
20 Kelly's truck is parked to the other side of the steps, what
21 did you think was about to happen?

22 A He was about to pull his gun and shoot.

23 Q Why did you think that?

24 A Because, just like I say, when, when Rodney Kinloch went
25 and talked to him on the thing he gave him a gun.

Motions

69

1 Q Okay.

2 A And Rodney Kinloch came back in the house after that.

3 Q Okay.

4 A And I feared for my life.

5 Q Okay. What happened when you began shooting?

6 A I just let off three shots, and Mr. Kinloch was on that
7 side. When I turned around, he was running back towards like
8 to the field and towards the road, Myrtle Road, and I came
9 down and walked over to the truck, and Mr. Kelly was breathing
10 for air and reaching for a gun, reaching, look, look like he
11 was still reaching for the gun, and I pointed the gun at him
12 and squeezed.

13 Q And what happened?

14 A Walked off. It must have been jammed or whatever.

15 Q All right. Did you chase down Mr. Kinloch or have any
16 further dealings with him at that point?

17 A Nah. I had -- when I walked off, I walked and looked in
18 front of the -- in the front yard of the trailer next to me,
19 and I left.

20 Q Okay. When did you first become aware of Mr. Kelly's
21 existence? Do you recall?

22 A When -- I started paying attention after Kinloch came in
23 the house the first time and stood behind me after he ordered
24 a drink, I started going to the window every time he come in
25 observing what, what was going on, just, just being curious

1 because his actions were -- weren't, weren't normal to me.

2 Q Okay.

3 A It was something fishy about his action.

4 Q At any time between the incident on July 15th of 2014 and
5 this incident in the beginning of -- or beginning of December
6 of 2014 did you ever see Rodney Kinloch at Mr. Burroughs'
7 trailer?

8 A The only time I seen -- I like -- I might have been
9 passing and seen Daniae, but the only time I talk or really
10 had interaction was like a month prior with Kelly. I never
11 seen Kinloch over there anymore.

12 Q Okay.. So it wasn't as if you were still going to Mr.
13 Burroughs' and Mr. Kelly or Mr. Kinloch would come in and
14 everybody would sit down and be fine. That never happened?

15 A No, sir.

16 Q Okay. Now, I think I didn't ask my question clearly
17 enough. Let me ask you this. Does Ms. -- at that time did
18 Mr. Kelly live in that trailer park? Does that trailer park
19 have a name?

20 A I don't -- I can't recall whether it do -- I can't -- I
21 don't know whether its name is -- I don't know what its name,
22 but --

23 Q Okay.

24 A -- I -- we just call it the trailer park.

25 Q Okay. But anyway there -- it's a trailer park community,

Motions

71

1 several trailers in there; correct?

2 A Yes, sir.

3 Q Okay. Did Mr. Kelly live in that trailer park community?

4 A No, sir.

5 Q To your knowledge did Mr. Kinloch live in that trailer
6 park community?

7 A No, sir.

8 Q Okay. All right. Based on your knowledge of the
9 neighborhood and the goings on, why was Mr. Kelly there?

10 A He deal with the person next door in front of Mr. -- in
11 front of Mr. Burroughs, Bell.

12 Q What do you mean he deals with him?

13 A That's who he be around. That's who he come to see.

14 Q Okay.

15 A On a regular.

16 Q All right. Based on your knowledge of the folks who live
17 in that community did Mr. or did Mr. Kelly sell drugs in that
18 community?

19 MR. TODD: Objection, Your Honor. We're getting a little
20 bit outside of the realm of -- we're going to his knowledge of
21 if he was scared not drug dealing and what all he knows from
22 the entire community.

23 MR. HAZZARD: And the thing about that is when you're
24 talking about one of the things in self defense is obviously
25 the Defendant has the right to act on appearances, and one of

1 those issues in appearances is, "What do I know of the person
2 of whom I am afraid, what do I know of their prior history,
3 their prior actions?" I mean, there's going to be a lot that
4 is going to be talked about as far as Mr. Kelly, his actions
5 in drug dealing and his most recent arrest and the
6 circumstances surrounding it so.

7 THE COURT: All right. Overruled. I'll allow it. Go
8 ahead.

9 BY MR. HAZZARD:

10 Q And if you don't have any knowledge, that's fine.

11 A I don't know whether he was dealing there, but I have
12 heard about him dealing, you know, so.

13 Q Okay. All right. But you don't have any personal
14 knowledge of seeing him deal drugs or anything of that nature?

15 A I never seen him. I never seen him.

16 Q Okay. All right. And do you have any knowledge as to
17 his reputation in that community?

18 A You mean, you clarify that?

19 Q Okay. Is he someone that people say -- when his name
20 comes up they say, "Well, you better watch out for him. He's
21 a bad man," or do they say he's a great guy and a pillar of
22 the community or have you never heard anybody say anything
23 about him?

24 A I just -- I knew him since like 2007 and, you know what
25 I'm saying, and from what I know since 2007 in the county, he,

Motions

73

1 he was a -- he a good person, but he, he, he mess around with
2 guns, he deal with guns. So that's somebody to me to be
3 careful and watch, watch your back around.

4 Q Okay. All right. Thank you. I have no further
5 questions. Please answer any questions the Court or Mr. Todd
6 may have.

7 THE COURT: All right. Cross examination.

8 MR. TODD: Thank you, Your Honor.

9 EXAMINATION

10 BY MR. TODD:

11 Q All right. Mr. Giles, I've just got a few questions.
12 Now, the incident in July, I think it was July 14th, 2014, or
13 July 15th, 2014.

14 A 15th.

15 Q Where were you that night?

16 A At -- when the incident happened I was at Mr. Burroughs'
17 when the argument between me and Ms. Brown escalated.

18 Q Okay. Punchy's house?

19 A Punchy's, yeah.

20 Q And is Punchy's house a place where just a lot of people
21 go?

22 A I mean, he got his people who come through.

23 Q I mean, do you need to be invited to go there or is it
24 just a place where everybody just kind of goes?

25 A Nah. It just someplace you can go.

1 Q Were you invited that night on -- in July to show up and
2 have some drinks?

3 A You, you go there anytime you want to do business, I
4 reckon, you know what I'm saying? You want to buy a beer or
5 whatever, you, you go, you know, you don't -- ain't no open
6 invitation or nothing, but you know what I'm saying, you, you
7 welcome if you spending your money.

8 Q So you, you went there just to have a few beers; is that
9 correct?

10 A When, on the 15th?

11 Q On the -- yeah, on the 15th.

12 A Yeah.

13 Q How many beers did you have? Do you recall?

14 A I wasn't there about five minutes. So the only thing I
15 ordered was -- I think I might have ordered a beer, that's it.
16 I might have ordered two beers and one for me and the guy who
17 been with me.

18 Q Who was the guy that was with you?

19 A Edward Warren, but he, he left right after he got his
20 beer. He just dropped me off.

21 Q Okay. And you said you got into an argument with a Ms.
22 Brown. Is that --

23 A Yes.

24 Q And it got physical?

25 A Yes.

Motions

75

1 Q And some people pulled you off?

2 A They separate us. Ain't nobody --

3 Q They separated you?

4 A They separate us.

5 Q And then it got physical again; is that correct?

6 A No.

7 Q It just got --

8 A The only time it got physical after that was when Mr.

9 Kelly came over the top.

10 Q Okay. And you saw Mr. Kelly come over the top and hit
11 you?

12 A I just saw the glare, but it was Mr. Kelly.

13 Q How do you know?

14 A Because he came running off his car. I could glimpse him
15 coming off -- in the peripheral coming off his car and jumping
16 in the air.

17 Q And did you see his face?

18 A I seen him come and he did a jump and kicked and hit me.
19 So if, if you want to say I see his face, yeah, I see in his
20 face that he -- that who did it. Okay? That's who did it.

21 Q Okay. Did he hit you again after that?

22 A I don't know. Somebody hit me from the back after he hit
23 me, and I went down.

24 Q Okay. And you said there was a bunch of people that were
25 kicking you and hitting you?

- 1 A Yes, sir.
- 2 Q Okay. And then you said you saw a gun that night that
- 3 Mr. Kelly had?
- 4 A Yes, sir.
- 5 Q Okay. Did he say anything to you?
- 6 A Just like I said, he, he said that, he said that, "I
- 7 think I'm in retirement or I got to come out of retirement."
- 8 I can't remember exactly what it said, but that's what he did
- 9 when he cock it.
- 10 Q And you took that as a threat?
- 11 A Yes.
- 12 Q Okay. Did anybody else say anything to you that night?
- 13 A No. Just me and Ms. Brown argument. That's it.
- 14 Q Did Mr. Kinloch say anything to you that night?
- 15 A Nah. But he was beside Kelly when Kelly pull the gun.
- 16 Q Do you know any of the other people that hit you or
- 17 kicked you or stomped you?
- 18 A Yes, sir.
- 19 Q Who else were those people?
- 20 A Just like Mr. Kelly, when, when he apologized I killed
- 21 everything dealing with all the rest of everybody, you know
- 22 what I'm saying? Look, I don't really see a need to bring up
- 23 nobody else.
- 24 Q Well, here's the thing --
- 25 A Ain't nobody else, ain't nobody else gave somebody a gun

Motions

77

1 and come pull and -- to pull a gun out on me, to try to pull a
2 gun out on me. Ain't, ain't none -- nobody else.

3 THE COURT: All right, sir. You're going to need to
4 answer the question though.

5 A Well, it was, it was a guy named Dickey, a guy named Kwez
6 [spelled phonetically], Twin, Rodney Kinloch, Daniea, and then
7 a couple of other people I can't, I can't remember their name.

8 Q Were they people that you had known for a while?

9 A It was some, some other people friends, you know what I'm
10 saying, who people I just seen around.

11 Q Did you -- do you fear those people when you're out?

12 A Nah. Because when I, when I -- just like I said, when I,
13 when I, when I accept the apology with him and even the next
14 day with the other guys, you know what I'm saying, we, we
15 killed everything.

16 Q But that was Mr. Kelly that apologized; right?

17 A Yeah. Mr. Kelly apologized.

18 Q Did anybody else apologize to you about the incident?

19 A I seen all of them the next day. We talked the next day.

20 Q So that killed everything, everybody apologized to you,
21 so you should have no fear of anybody; is that correct?

22 A If you say that.

23 Q I, I need to know. Did you have fear --

24 A If you say that.

25 Q -- of everybody or just Mr. Kelly from that group?

1 A The rest of them wasn't pulling guns.

2 Q Okay. Did you file a police report?

3 A No, sir.

4 Q And now, you said you went to the doctor a little while
5 later.

6 A I, I called like about two days, three days after that to
7 schedule an appointment. The close -- the earliest date they
8 could gave me -- they gave me was on the 4th of August.

9 Q So from July 15 till August the 4th you said you had blood
10 in your stool, and you went to the doctor for that. Did you
11 tell the doctor what happened to you?

12 A No, sir.

13 Q Why would you lie to the person that's supposed to be
14 helping you?

15 A What you mean lie?

16 Q Well, you did not tell them what happened.

17 A That don't mean it's a lie. I just told her what, what
18 was going on at the time. I was, I was -- blood was in my
19 stool a lot.

20 Q And did they ask you how, if you had any incidents or any
21 injuries that would cause this?

22 A They didn't go into how --

23 REPORTER: You all are talking over one another. Sorry.

24 A They, they, they know my --

25 THE COURT: Hold it. Wait a minute. Wait a minute. You

Motions

79

1 need to wait until he finishes asking the question and then
2 answer and then I'm going to direct him not to ask another
3 question until you're finished. Okay. Go ahead.

4 MR. TODD: I apologize, Your Honor.

5 BY MR. TODD:

6 Q Did you tell the doctors how you were injured?

7 A Most of the doctors at the emergency room from prior
8 record when I tell them something like it's something to do
9 like if I have stomach pains or blood in my stool, something
10 to do with my intestines or anything they normally do their
11 own research and know that because of my history with colon
12 cancer they normally run me through certain kind of tests. I
13 don't have to really go into details about what went on.

14 Q Did the doctor ask you if you had been involved in any
15 injuries prior to you coming in?

16 A I just answered it. I just answered that. They, they
17 don't, they don't really go into details about did this happen
18 or that happen, they just because of my track record. The
19 only thing I -- the -- I, I haven't explained going to the
20 hospital about my stomach since 2011. Anything having to do
21 with my stomach or my intestines or anything I haven't really
22 explained because soon as they -- I go to -- go to the
23 emergency room or whatever and, and they ask me about like
24 cancer or any -- did I ever had any surgery or anything and I
25 tell them colon cancer and stuff, they normally do they own

1 research.

2 Q Now, when Mr. Hazzard asked you about what you told the
3 doctor you said that you had been working up in the rafters
4 and had been injured from that.

5 A I told them I got, I got -- I did not say that. I got
6 light-headed, and I almost fell out the -- off -- out the --
7 out the rafters. I didn't say that what happened.

8 Q So you refused to tell them what had actually happened,
9 and you told them something else as the reason you were there.

10 A Look, I did get light-headed, and I got light-headed from
11 whatever. In my, in my -- I just found this out when I got
12 my, my, my medical records from Dr. Maddox office that I have
13 vertigo. That, that I never seen that in none of the records
14 they gave me. Maybe that can explain that. You, you want to
15 check through the medical records?

16 Q Let's move on to something else. Now, you said that you
17 saw Mr. Kelly a little while after that.

18 A Yes, sir.

19 Q And he apologized to you?

20 A Yes, sir.

21 Q And you said that that pretty much killed all the
22 animosity.

23 A From my part.

24 Q Okay. So then on December 3rd when he was around the same
25 area why were you suspicious of him?

Motions

81

1 A Because his partner's reaction and he gave his partner a
2 gun.

3 Q And where were you inside the house?

4 A Standing at the front door. Every time he walk in and
5 leave out I, I went to that front door to check on him
6 because, just like I said, his actions was suspicious.

7 Q So you were watching Mr. Kelly, you could clearly see him
8 in the car?

9 A Yes, sir.

10 Q Okay. And how far was his window rolled up? Was it all
11 the way up, all the way down?

12 A Just like I said, between halfway and about -- halfway
13 and three-quarter way up.

14 Q Were the lights on in his car?

15 A No, sir.

16 Q And what time of day was it?

17 A It was about nine, quarter to, quarter to nine, nine.

18 Q It was nighttime?

19 A Yes, sir.

20 Q And what color is Mr. Kelly's vehicle? What color was
21 Mr. Kelly's vehicle?

22 A Black. He was parked up under Mr. Burroughs' front
23 light, porch light.

24 Q Could you see clearly in the vehicle?

25 A Yes, sir.

1 Q Could you see Ms. McCrae in the vehicle?

2 A I couldn't see her. She was -- I, I really didn't know
3 whether she -- I didn't -- really didn't see her in there but
4 I, I, I, you know what I'm saying, my, my, my thing was I seen
5 her when they was parked like almost in front of the -- in
6 front of Mr. Burroughs' door when they was park in the other
7 yard, but when I walked out I didn't see her.

8 Q Did you see her after you shot Mr. Kelly?

9 A Yes, sir.

10 Q Where was she?

11 A She was standing at the back of the truck.

12 Q Did you see her get out of the vehicle?

13 A No, sir.

14 Q Did you see the door open on the other side?

15 A No, sir.

16 Q What did Mr. Kelly do after you shot him?

17 A He was over the steering -- or his head -- his face was
18 on the steering wheel reaching for the gun.

19 Q Did you see a gun?

20 A No, sir.

21 Q You got close enough to where you could see him, see his
22 face under the steering wheel.

23 A I didn't --

24 Q And you got close enough to put the gun into -- at him
25 and pull the trigger. That's what you testified before; is

Motions

83

1 that correct?

2 A I didn't get close enough to see his hand. The only
3 thing I seen I seen him reaching down, grabbing at something.
4 I couldn't look down into it. I didn't get -- walk all the
5 way up to it -- to him.

6 Q Okay. How many shots did you fire?

7 A Two or three.

8 Q And why did you quit shooting?

9 A Either it jammed or it was empty.

10 Q So even after he was slumped over you still pulled the
11 trigger?

12 A He was still trying to get, get the gun.

13 Q Why did you leave?

14 A Huh?

15 Q Why did you leave Punchy's house?

16 A Because I seen him giving the gun to Kinloch and I say I
17 was going home. I was actually going to my -- going to the
18 trailer park -- going to the -- going to the trailer we had at
19 22, Lot 22 in the trailer park, me and Brenda.

20 Q Why didn't you call the police?

21 A I didn't have my cell phone.

22 Q How many people were in the -- Punchy's house with you?

23 A About five, six.

24 Q Now, where'd your cell phone go? You said that you had
25 called Barney.

1 A I used Mr. Burroughs' phone.

2 Q Okay.

3 A I didn't have my cell phone on me at all.

4 Q Why didn't you call the police instead of calling for a
5 gun?

6 A I didn't call for no gun.

7 Q So Barney came over and brought his gun on his own?

8 A He was already -- when I called Barney, Barney was --
9 Barney came over -- Barney was over there before Rodney
10 Kinloch and them came over.

11 Q But you called him to come over?

12 A Before they even much came over.

13 Q Okay.

14 A It was -- as a matter of a fact, it was just me, him and
15 Punchy was in that -- at that -- at one time. No. Barney was
16 already over there.

17 Q So Barney has a cell phone?

18 A He was on his. What has that got to do with anything?

19 MR. HAZZARD: I'm going to object to the line of
20 questioning because based on the statute at hand, whether or
21 not he chose to call law enforcement or use a cell phone is
22 totally irrelevant.

23 THE COURT: All right. Overruled. I'll allow it. Go
24 ahead.

25 BY MR. TODD:

Motions

85

1 Q How long were you in the house after Mr. Kelly arrived?

2 A About 20, 30 minutes.

3 Q At what point in time did you decide to walk out and
4 shoot him? When was that decision made?

5 A I ain't never made that decision. He made that decision
6 when he went to pulling.

7 Q Why did you choose to leave the residence at that point
8 in time?

9 A Look. I've heard stories where he come in club busting
10 his guns and stuff like that and other people was in the
11 house. So I left. I, I, I was being the bigger man. I left.

12 Q Was there any way out of the house, other way out of the
13 house?

14 A That's the only way out.

15 Q And you were scared for your life inside the house?

16 A I didn't say that. I say I was leaving to avoid any
17 confrontation.

18 Q Why did you arm yourself?

19 A Because I seen him give Kinloch a gun.

20 Q If you were avoiding the confrontation why did you leave
21 the house with a gun?

22 MR. HAZZARD: I mean, again, I'm going to object unless
23 he's going to say that an option was for him to live in Mr.
24 Burroughs' residence for the rest of his life. It's
25 irrelevant.

1 THE COURT: Overruled. I'll allow it. Go ahead.

2 BY MR. TODD:

3 Q Would you please answer the question?

4 A I just thought it would be safe for me to leave. It was
5 -- safe for me to leave than to stay right there and the
6 things going escalating, about to escalate like that. So I, I
7 felt like my best bet was to be at home.

8 Q Did Mr. Kelly ever shoot back at you?

9 A I don't know.

10 Q Did Mr. Kelly ever point a gun at you?

11 A He didn't get chance.

12 Q Then why do you believe Mr. Kelly was going to shoot you?

13 A Because I know Mr. Kelly. Mr. Kelly have guns and he
14 gave one gun to his partner, and he wouldn't have moved his
15 vehicle if he wasn't planning to ambush me or try to attack,
16 attack me or come at me in any kind of way because why would
17 he move his vehicle? He was over, over next door to his, his,
18 his people house.

19 Q But you have watched for 20 minutes Mr. Kelly moving his
20 vehicle and getting into position from inside the house; is
21 that correct?

22 A That was -- he move his vehicle about, about five minutes
23 before I decided to leave because that's when, when I really
24 seen that things about to escalate, things was about to go
25 somewhere else, and I choose to leave to not take it there,

1 but I wasn't going out there without a gun.

2 Q If you were in fear for your life why would you leave the
3 residence? Why would you not call the police?

4 A I didn't have a phone, and I just handled it the way I
5 felt like I -- the best way I could handle it was to leave.

6 Q So you chose to shoot Mr. Kelly?

7 A In self defense.

8 MR. TODD: No further questions, Your Honor.

9 THE COURT: All right. Redirect.

10 MR. HAZZARD: Thank you, Your Honor. Very briefly.

11 REEXAMINATION

12 BY MR. HAZZARD:

13 Q The Prosecutor asked you about the other people involved
14 who jumped you on July 15th of 2014 and whether you were
15 deathly afraid of them. Any of the other people involved
16 known to carry guns on a regular basis?

17 A No, sir.

18 Q Any of those other people pull a gun on you on that night
19 on July 15th, 2014?

20 A No, sir.

21 Q And Mr. Todd keeps asking you why did you choose to leave
22 Punchy's. Was it an option for you to stay there
23 indefinitely?

24 A No. I wasn't going to stay there indefinitely.

25 Q Okay. And had you been able -- how far away was your

1 trailer from Mr. Burroughs' residence?

2 A About 125 yards, about --

3 Q About 125 yards. Had you made it to your residence and
4 been able to get inside your residence would Mr. Kinloch have
5 been able to walk in there and stand up behind you with a
6 loaded weapon?

7 A No, sir.

8 Q Repeatedly?

9 A No, sir.

10 Q Okay. Mr. Burroughs' trailer is fairly a standard
11 trailer. It does have a, a front door on one side of the
12 trailer and a back door on the opposite side of the trailer;
13 correct?

14 A Yes, sir.

15 Q Okay. But to your knowledge what condition is that back
16 door kept in?

17 A That's bolted, locked, I mean, padlock or either bolted
18 lock or something like that.

19 Q Okay.

20 A It, it, it, it -- it's not usable.

21 Q Okay. Because Mr. -- to your knowledge does Mr.
22 Burroughs keep a lot of valuables in there for his business?

23 A Valuables and like his music equipments and stuff like
24 that.

25 Q So it's not like you could have gone out the back door of

Motions

89

1 the trailer; is that your testimony?

2 A No, sir.

3 Q Okay.

4 MR. HAZZARD: Nothing further, Your Honor.

5 THE COURT: All right. You may step down.

6 MR. HAZZARD: That would be the Defense showing
7 for the purpose of the Protection of Persons and Property Act
8 hearing, Your Honor.

9 THE COURT: All right. Anything from the State?

10 MR. TODD: Yes, Your Honor. Tuvera McCrea.

11 THE COURT: All right.

12 Whereupon, Tuvera McCrea was called to the witness stand,
13 duly sworn by the clerk and testified as follows:

14 THE CLERK: Thank you. Please be seated.

15 THE COURT: Ms. McCrea, could I get you to spell your
16 first and last name?

17 MS. MCCREA: T-U-V-E-R-A, M-C-C-R-E-A.

18 THE COURT: I'm sorry, M-C-C?

19 MS. MCCREA: R-E-A.

20 THE COURT: R-E-A. Thank you.

21 All right, sir.

22 MR. TODD: Thank you, Your Honor.

23 EXAMINATION

24 BY MR. TODD:

25 Q Ms. McCrea, you were with Mr. Kelly on December 3rd, 2014;

1 is that correct?

2 A Yes.

3 Q And what time did he come pick you up that night.

4 A I would say about 8:50, 8:55, around that time, 8:45,
5 8:50, around that time.

6 Q And where do you live?

7 A Just my address, general address?

8 Q Well, then where did you live in relation to, to Punchy's
9 house?

10 A Not even four minutes away from Punchy.

11 Q So fairly close?

12 A Fairly close, yeah.

13 Q Now, who else was in the car with Mr. Kelly when he came
14 to pick you up?

15 A Just Rodney.

16 Q And why did you all go to Punchy's house that night?

17 A Because Rodney wanted a cigarette, so we went over.

18 Q Is Punchy's house a place where you can get a cigarette?

19 A Yeah. If he got them, he'll give them.

20 Q He's kind of the local guy that sells things out of his
21 house?

22 A Not particularly, but if he have it and someone ask for
23 it, I mean, he'll give it.

24 Q Now, is Punchy's house a place where a lot of people just
25 go and hang out?

Motions

91

1 A Sometimes, not a lot of people, just people, you know,
2 that he deal with, friends and things, but not just any random
3 people would just come and hang out.

4 Q Now, when you all went to this house that night how long
5 were you all there?

6 A When we pulled up we probably was there probably 20
7 minutes at the most, if I'm not mistaken, probably 20 minutes,
8 15, 20 minutes, probably 30.

9 Q And did you go inside?

10 A No. I didn't.

11 Q Where were you sitting?

12 A I was sitting in the passenger, I mean, the passenger
13 side.

14 Q And who was driving?

15 A Daniea was.

16 Q Now, did you see a gun on him that night?

17 A Not at all.

18 Q Did you ever see him take a gun from Mr. Kinloch?

19 A Not at all. No, sir.

20 Q Did you ever see Mr. Wilson?

21 A Jamie?

22 Q I mean, I'm sorry, yes, Mr. Jamie Giles. I'm sorry.

23 A No. I never saw him.

24 Q Okay. You never saw him inside the house?

25 A No. I never went inside the house.

1 Q Could you see him standing at the door?

2 A No. I remember seeing the door open and close a couple
3 of times from where we was parked the first time, but I never
4 really physically saw Mr. Giles.

5 Q Okay. Now, when Mr. Giles came out of the house
6 shooting, did you see him then?

7 A Yes. I did.

8 Q Okay. At that point in time did Daniea shoot back at
9 him?

10 A He -- no. He didn't. He didn't do anything. We were
11 talking at the time when the shooting happened. I was looking
12 out the passenger window, and I heard the shots fired, and the
13 next thing I heard was the truck window shatter, and I looked
14 over and I saw Daniea flinching, and then that's when I saw --
15 looked at the porch, just glimpsed at the porch and I saw the
16 silhouette of his body, and I looked down and I saw the fire
17 coming out of the barrel, and after I realized that, you know,
18 he was getting hit with the bullets I jumped out of the truck.

19 Q And where did you go?

20 A I hid under the truck on the side of the truck.

21 Q How many shots do you think were fired?

22 A About six, seven.

23 Q Did Daniea yell anything outside of the car? Did he yell
24 at anybody?

25 A No, sir. Because all the windows were up in the truck.

Motions

93

1 Q Were they all the way up?

2 A All the way up. It was cold that night. I remember.

3 Q Were his windows dark?

4 A Yeah. They were tinted.

5 Q Okay. At any point in time did Mr. Kinloch and Daniae,
6 Mr. Kelly talk about anybody inside the residence at Punchy's
7 house?

8 A When we pulled up the first time when we was park in
9 front of the trailer, Rodney did come out, and he said he, you
10 know, asked for a drink, but it was kind of pack in there, and
11 he did say, you know, there was people in there, and he did
12 mention, you know, Daniae did ask him who was all in there.
13 He was just like, you know, Boo Boo, Connor, you know, some
14 people was in there, and he was saying that Mr. Giles was
15 giving him a look. He actually said he went to shake Boo Boo
16 hand, but he didn't shake his hand back. So when he did come
17 out he was a little shook and scared because he said it was
18 two other guys with Mr. Giles and they were having a
19 conversation and was giving him looks, and so Daniae just told
20 him, you know, "Well, you know, just get your drink and your
21 cigarettes and, you know, we can go." So that's when Rodney
22 went back inside the house, and then he came back out, and at
23 that time when he went back in Daniae did pull the truck out
24 and parked it to the way that Mr. Giles said where the driver
25 side was facing the house, but we was just sitting in there

1 talking. By the time Rodney did came out, light his
2 cigarette, was standing on the opposite side of the porch, Mr.
3 Giles came out and started shooting at the truck.

4 Q But you all discussed leaving the residence?

5 A Uh-huh. Because Daniae just told him, you know, "You
6 don't feel right about it," you know, because he said Mr.
7 Giles and two other guys was, you know, giving him looks and
8 stuff. So he said, you know, "I'm just going to go ahead and
9 get my drink, my cigarettes and we can just go." So that's
10 when Daniae re-parked the truck so whenever Rodney came out we
11 just was going to leave.

12 Q Did you ever see Mr. Kinloch with a gun?

13 A No.

14 Q Did you ever see a gun that night on anybody other than
15 Mr. Giles?

16 A No, sir. Not at all.

17 MR. TODD: Thank you. I have no more questions.

18 THE COURT: Cross examination.

19 MR. HAZZARD: Thank you, Your Honor.

20 EXAMINATION

21 BY MR. HAZZARD:

22 Q Good afternoon, ma'am?

23 A Hi.

24 Q Okay. Let's, let's make sure we're clear on this. You
25 indicated that Mr. Kelly came and picked you up at

Motions

95

1 approximately 8:45 p.m.; is that correct?

2 A I'm not exactly sure of the time, but it was around that
3 time. It was close to 9:00 o'clock. Yes, sir.

4 Q Okay. Close to 9:00 o'clock, and you indicated your
5 residence is how far away from Punchy's trailer?

6 A Probably three, four minutes.

7 Q Okay. So then you would've gotten there about five after
8 nine?

9 A Yes, sir.

10 Q Okay. And you indicated that you all were there maybe 20
11 minutes; is that correct?

12 A Yes, sir.

13 Q Okay.

14 A Not that long. I'm not really sure.

15 Q Okay. So that gets you right around 9:30?

16 A Yes, sir.

17 Q Okay. And you called the police from the TD Bank parking
18 lot at around 10 p.m.?

19 A No, sir. I never called the police.

20 Q You didn't call the police? You didn't call 911?

21 A No, sir. I never did.

22 Q Okay. So they just happened to find you in the TD Bank
23 parking lot; is that correct?

24 A I never went to TD Bank. I was never in TD Bank parking
25 lot.

1 Q I'm sorry?

2 A That was Rodney you're talking about that was called the
3 police from TD Bank parking lot.

4 Q Okay. Did you ever call the police?

5 A No. No. I did not.

6 Q Okay. Then where were you and Mr. Kelly?

7 A We were in the truck. I jumped inside the driver seat to
8 get him out, to get us away from the trailer park after it
9 happened. So as we were going he actually got on his cell
10 phone and I'm -- he made a 911 call himself in between calling
11 his kids and things like that, but then he -- I actually got
12 on my cell phone and called my mom and let her know what
13 happened, and during then she just told me to stop at the
14 nearest place and that was where I stopped the truck because
15 the truck didn't have any brakes. So I --

16 Q Where was the nearest place that you stopped then?

17 A It was right at an intersection. I can't really remember
18 the street name. I'm thinking it was Morgan Avenue.

19 Q Okay. And how far away was that from the trailer park?
20 How far away was that from Punchy's trailer?

21 A Probably six minutes away. It's as far as I could have
22 got with no brakes.

23 Q Okay. So that gets you to about 9:36 p.m., but the call
24 came in after 10 p.m. So would it be fair to say that you
25 were actually there at Punchy's trailer more like 40 to 45

Motions

97

1 minutes?

2 A The shooting actually happened after 9:30 because I
3 remember looking at the clock because there was a guy that
4 walked in front of the truck twice and looked at me and Mr. --
5 me and Daniea in the truck. Someone walked out of Punchy's
6 house and walked in front of the truck really close to the
7 truck and look at both me and Mr. Kelly sitting in the truck,
8 and that's when Daniea looked over to me and said, "Do you
9 know who that guy is?" I said, no, I never saw him before.
10 It was not two or three minutes later he came back around and
11 walked and looked inside the truck and walked back into
12 Punchy's house.

13 Q Okay. So if you got to Punchy's trailer between nine and
14 9:05 and the shooting happened after 9:30 then that puts you
15 at Punchy's trailer for over 30 minutes; correct?

16 A Yes, sir.

17 Q Okay. And I guess I don't -- if Mr. Kinloch's sole
18 purpose for being there was to get a cigarette and get a
19 drink, that whole thing took more than 30 minutes for him to
20 get a cigarette and get a drink?

21 A No, sir. I mean, he did come out and say there -- it
22 was, you know, pack in there, but at the time Daniea did have
23 a conversation with someone else. Phil is his name. I don't
24 know his last name, but his friend that lives over there, he
25 was having a conversation with him at the time. So that was

1 pretty much it. They was having a conversation.

2 Q Okay. So then after Mr. Kinloch went in, got his drink
3 and got his cigarette he came back and got in the truck; is
4 that what happened?

5 A No. He, before he got his drink he said he was going in
6 first. His first time going in he came back out without
7 nothing. He ordered the drink, but he said it was packed. So
8 it was a wait, and he was just like, you know, "I told them
9 whatever they fix my drink or whatever, you know, just bring
10 it out." Daniae told him, "Well, since you don't feel
11 comfortable just go ahead and go back in there, get your drink
12 and get your cigarettes and we're going to leave."

13 Q Okay. So then he went in a second time?

14 A Yes.

15 Q Okay. And did he get his drink and his cigarette that
16 time?

17 A Yes. And when he walked back out and --

18 Q Did he come back and get in the truck then?

19 A No. He did not.

20 Q No.

21 A As soon as he walked out of the truck, I mean, walked out
22 of the house, and by the time he got to the side of the porch
23 to come around to the truck, that's when Mr. Giles came out
24 and started shooting.

25 Q Okay. I believe you told the Prosecutor that Mr. Kinloch

Motions

99

1 went in, went back in three or four times and that he was
2 standing on the opposite side of the porch when Mr. Giles came
3 out; is that a correct statement?

4 A Yes. I'm counting --

5 Q So if he was headed to the truck why would he be on the
6 opposite side of the porch?

7 A When you're walking out of Punchy the way it was, the way
8 the truck was parked, the driver's side was facing the door.

9 Q Facing what door, ma'am?

10 A Facing Punchy's door.

11 Q Okay.

12 A The way he was parked. So that would mean Rodney would
13 walk off of the porch and had to come around the front of the
14 truck and come to my side of -- the passenger side to the back
15 seat where he was sitting.

16 Q Yes, ma'am.

17 A So when he came off the porch and came to the opposite
18 side of the porch, he just stepped off the porch and that's
19 when Mr. Giles came out and started shooting.

20 Q Was he on the porch or was he by the truck when Mr. Giles
21 came out?

22 A He was by the porch.

23 Q So he was on the porch?

24 A No. He was by the porch on the ground.

25 Q Okay.

1 A So that means when Mr. Giles would walk out of the house
2 he would have to look to the side of the porch on the ground
3 to see Rodney because he was just right beside the porch.

4 Q Okay. Was he at the side of the truck, behind the truck,
5 in front of the truck?

6 A He was in front of the truck.

7 Q Okay. All right. Now, to your knowledge where did Mr.
8 Kelly live?

9 A Georgetown.

10 Q Okay. So that's some 30 something minutes away?

11 A Yes, sir.

12 Q Okay. And did he come specifically to see you or to do
13 something with Mr. Kinloch to your knowledge?

14 A Specifically just to hang out. I mean, we talked that
15 night and he said he was coming down and I, you know, he was
16 just like, "You want to get up and chill?" So that's what
17 happened.

18 Q So were you expecting Mr. Kinloch to be with him when he
19 arrived at your home that evening?

20 A Uh-huh. He told me Rodney was with him, and I was used
21 to being with him and Rodney because it's -- so.

22 Q Okay. So to your knowledge what were you and he and
23 Ronnie going to do?

24 A We went to Punchy's house.

25 Q Okay. But you and Mr. Kinloch sat in the truck; correct?

Motions

101

1 A Not at --

2 Q Or did you and Mr. Kinloch go inside?

3 A Me and Mr. Kinloch never went inside. Mr. Kinloch was
4 the only one to go inside Punchy's house. Me and Daniea never
5 got out of the truck.

6 Q You and Mr. Kelly never got out of the truck?

7 A Yes, sir.

8 Q Okay. But I thought you said you were there to go to
9 Punchy's house?

10 A I mean, we was going to Punchy's house but it was Mr.
11 Kinloch that wanted the drink and cigarettes. So that's what
12 we did. We rode over there.

13 Q Well, what were you expecting that you and Mr. Kelly were
14 going to be doing at Punchy's house?

15 A Nothing. I mean, we didn't, we didn't go to Punchy's
16 house to do anything. We went to go over there to get Rodney.
17 He asked to go to Punchy's to get a drink and a cigarettes,
18 some cigarettes. So Daniea took him over there, and our
19 initial plan was to get the drink and cigarettes and leave.

20 Q And go where?

21 A Back to my house.

22 Q Okay. And you're saying that Mr. Kelly came to your
23 residence for the purpose of seeing you; is that correct?

24 A Uh-huh, uh-huh.

25 Q That he had Mr. --

1 THE COURT: You need to answer yes or no.

2 A Oh, yes, sir.

3 Q That he happened to have Mr. Kinloch with him; is that
4 correct?

5 A Yes, sir.

6 Q That when they arrived at your residence Mr. Kinloch then
7 said that he wanted to go to Punchy's and get a cigarette and
8 a drink?

9 A I'm guessing that was the initial plan from the jump.

10 Q Okay. And so Mr. Kelly took Mr. Kinloch over there;
11 correct?

12 A Yes, sir.

13 Q Okay. If he -- if Mr. Kelly wanted to see you, if that
14 was his whole purpose of being in Andrews, why wouldn't he
15 just let Mr. Kinloch borrow his truck and go there and he
16 could stay at your house with you?

17 A No. That's, that's not what the plan was. I mean, we
18 talked on the phone. He said they were coming down. So I was
19 just like --

20 Q Coming down to do what? Sell drugs?

21 A No, sir.

22 Q Okay. Then coming down to do what?

23 A To see me. When he came --

24 Q That he and Mr. Kinloch were coming to see you?

25 A No. He was coming to see me. He's -- Rodney is his

Motions

103

1 friend. So Rodney is usually with Daniae most of the time.
2 So when Daniae comes to Andrews it's mostly to see me or to go
3 see his friend that lives in the trailer park.
4 Q Uh-huh.
5 A Uh-huh.
6 Q But this time there was supposed to be or Mr. Kelly was
7 supposed to be coming to see you?
8 A Yes, sir.
9 Q Okay. Not to go to Punchy's?
10 A No, sir. That --
11 Q To see you?
12 A Yes, sir.
13 Q And he arrived at your house?
14 A Yes, sir.
15 Q Then why did they leave your house?
16 A Why? Because in the conversation he was like, you know,
17 "You want to ride with us over to Punchy to get Cump, well,
18 Rodney a drink and some cigarettes." I was like okay.
19 Q Okay. And so you get there. Rodney gets out of the
20 truck; right?
21 A Yes, sir.
22 Q And he goes inside Punchy's?
23 A Yes, sir.
24 Q Did he get a cigarette?
25 A Yes, sir. After the fact, yes, sir.

1 Q Okay. Well, the first time he went in, did he get a
2 cigarette?

3 A No, sir.

4 Q But then he comes back out?

5 A Yes, sir.

6 Q Okay. Then he goes back in the second time; is that
7 correct?

8 A Yes, sir.

9 Q And the second time when he came back out did he have his
10 drink and his cigarette?

11 A Yes, sir.

12 Q Okay. But he never got in the truck?

13 A No, sir. He never had a chance to. He never had a
14 chance to because as soon as he got out of the house, walked
15 out of the house, I saw when he walked out of the house he --
16 I saw when he walked down the steps. In the midst of that, me
17 and Daniae were talking. I just kind of glimpsed over out the
18 passenger side of the window and that's when I heard the shots
19 fired, and when I looked back over that's when I saw Rodney
20 ran, and when I looked back over to see, after I heard the
21 shattered glass, I looked over and I saw the silhouette of Mr.
22 Giles standing on the porch shooting at the truck and Daniae
23 was getting hit by bullets.

24 Q So it's your testimony now that Mr. Kinloch only went in
25 Punchy's residence twice?

Motions

105

1 A I'm counting it twice. Yes, sir. It could have been
2 another time but as far as I saw it was twice.

3 Q Okay. Because you told the Prosecutor three times. You
4 recall that or no?

5 A Yes, sir.

6 Q Okay. So are you saying that you're mistaken? It was
7 only twice now or was it actually three times because you went
8 in the first time; right?

9 A Yes, sir.

10 Q And then he came back out; correct?

11 A Yes, sir.

12 Q And what -- and he came back to the truck that time;
13 right?

14 A Yes, sir. The way I --

15 Q And what did he say?

16 A Okay. The way I count it, he -- he went in, that's one
17 time. He came out, so that's two. He goes back in, that's
18 three, and when he comes out the, the last time that's how I
19 was counting it then, but what I'm saying as him walking in
20 and out that was only two times that I saw, but when I'm
21 counting it that's how I was counting it when I told the
22 Prosecutor.

23 Q Well, let's go through it. You and Mr. Kelly and Mr.
24 Kinloch in Mr. Kelly's truck arrive at Punchy's; correct?

25 A Yes, sir.

1 Q And where did Mr. Kinloch park and where did Mr. Kelly
2 park at that time?

3 A At that time he parked directly in front of -- in
4 Punchy's yard as the little room that it have. He, he parked
5 in the yard. We was sitting there. He had a conversation
6 with somebody else during the time.

7 Q Who had a conversation with someone else?

8 A Mr.-- Daniae was having a conversation with Phil. He was
9 having a conversation with him. Rodney was inside of the
10 house during then. He came back out, and he came -- actually
11 that time when he did come out and he told Daniae, you know,
12 "It's kind of pack in there. So it's going to be a wait." I
13 told him when he got my drink, you know, for him to bring it
14 out with the cigarettes and then he was just saying, Daniae
15 asked him, "Well, who all in there?" So he was just naming
16 the people that was in there. He was saying Boo Boo was in
17 there, well, Mr. Giles.

18 Q How many people did he name?

19 A He said Mr. Giles was in there, Connor was in there and
20 two other guys that was with Mr. Giles, and they were having a
21 conversation and looking at him where he said he walked over
22 to Mr. Giles to shake his hand thinking everything was okay
23 but he did not shake his hand. So that's why he came back out
24 and told Daniae, you know, he just didn't feel right. He, he,
25 he -- he looked scared to me when he was talking. So Daniae

Motions

107

1 was just like, "Well, just go ahead and get your things and
2 we'll leave."

3 Q So according to you Mr. Kinloch said there were four
4 people in there not including Mr. Burroughs, the owner of the
5 trailer, but that somehow the place was packed?

6 A Yes. If he --

7 Q And that's why he had to wait on his cigarette and his
8 drink?

9 A Yes.

10 Q Was there any other place -- now that you're saying Mr.
11 Kinloch came out and said he was fearful of Mr. Giles, it's
12 9:00 o'clock. What night of the week was this?

13 A I don't really remember what night exact, like what day
14 of the week it was.

15 Q Yes, ma'am. You don't know. Okay. Was there any other
16 place in Andrews that sold cigarettes and alcohol at 9:00
17 o'clock at night?

18 A Yes, sir. I mean, the general store is open, but a
19 loosey instead of you can't go to a general store and buy a
20 loosey, so like just one cigarette. He just wanted one
21 cigarette.

22 Q That's why you drive five minutes away to get one
23 cigarette?

24 A Yeah. I mean, Punchy's like three or four minutes away
25 so.

1 Q Okay. So he goes in. He says that Mr. Kinloch is
2 looking or that Mr. Giles is looking at him and won't
3 acknowledge him, according to you, and he comes back out and
4 tells this to Mr. Kelly; correct?

5 A Yes, sir.

6 Q Okay. And according to you Mr. Kelly then says, "Well,
7 go back in there where you're frightened and fearful with Mr.
8 Giles there and three other guys or two other guys, get your
9 one cigarette and your drink and then let's go"; is that
10 correct?

11 A Well, basically, there was no problem with Mr. Giles and
12 Daniae anymore. So that's why Daniae was telling, telling
13 Rodney there was no reason to be afraid because everything was
14 okay, go in and get whatever you said you were going to get
15 and come on so we can go.

16 Q How do you know what the relationship was between Mr.
17 Kelly and Mr. Giles?

18 A Because I wasn't around during the fight, but I did hear
19 about it from Mr. Kelly, and he did say that, you know,
20 everything was cool with them again. They went out and
21 everything. They went out together and everything after that.

22 Q Did he tell you why he pulled a gun on Mr. Giles?

23 A He never -- to me he never pulled any gun.

24 Q So he didn't tell you he did that?

25 A No. I mean, from the story that was going around from

Motions

109

1 the people that it happened no gun was ever pulled during that
2 fight.

3 Q No. I'm asking you about your discussion with Mr. Kelly.
4 You said you talked to Mr. Kelly about this; correct?

5 A Uh-huh.

6 Q Okay.

7 A Yes, sir.

8 Q Okay. So did he tell you he pulled a gun on Mr. Giles?

9 A No. He did not.

10 Q Okay. All right. Did he tell you he'd ever pulled a gun
11 on anyone?

12 A No. He did not.

13 Q Ever tell you he ever had a gun in his possession?

14 A No. He did not.

15 Q Okay.

16 MR. HAZZARD: No further questions.

17 THE COURT: All right. Redirect.

18 MR. TODD: No, Your Honor. We're good with this one.

19 THE COURT: All right. You may step down. The State can

20 --

21 MR. TODD: The State calls Mr. Daniea Kelly.

22 THE COURT: All right.

23 Whereupon, Daniea Kelly was called to the stand, duly
24 sworn by the clerk and testified as follows:

25 THE CLERK: Thank you. Please be seated and state your

1 name for the record.

2 MR. KELLY: Daniea Kelly.

3 THE COURT: All right. Mr. Kelly, could you spell your
4 first name and last name?

5 MR. KELLY: D-A-N-I-E-A, last name Kelly, K-E-L-L-Y.

6 THE COURT: All right. All right. Mr. Todd.

7 MR. TODD: Thank you, Your Honor.

8 EXAMINATION

9 BY MR. TODD:

10 Q Mr. Kelly, where do you live?

11 A Georgetown, Highmarket Street.

12 Q And have you been in Georgetown for a long time?

13 A Yes, sir.

14 Q And is this where you grew up?

15 A Yes, sir.

16 Q Okay. Let's go back to the first incident you had with
17 Mr. Giles over here on July 15th, 2014. Tell us about that
18 night.

19 A On July 15th, 2014, they was having a cookout at --
20 between -- at Burroughs' house and my friend, Phillip Bell,
21 house, two trailers side by side where I normally go at. At
22 the, at the current time Mr. Giles was actually real
23 intoxicated, was real drunk and got into it with Ms. Brown,
24 Ms. Brenda Brown, which was his girlfriend at the time, and
25 the altercation led from inside Punchy's house to the outside

Motions

111

1 where he was physically, you know, physically assaulting her.
2 She had a teenager son that approached as well was trying to
3 help her, which he was continued assaulting both of them. Me,
4 Phillip Bell and Rodney Kinloch we both came and restrained
5 him to hold her so she can get away to safety. Once we did
6 that, all that resumed.

7 Like about I say about two weeks later I came back down
8 to Andrews again. Mr. Giles came to me said he was
9 appreciated for us, you know, he really appreciated that
10 Phillip -- thanked Phillip Bell already, and he appreciated to
11 me that for not letting him go no farther because he was drunk
12 and under the influence, you know, was saving him from not
13 going to jail getting hisself into trouble. We never had no
14 fight. Never was, you know, ever was -- that one of us, that
15 -- if we had jumped him that night he'd went to the hospital
16 that night clearly. He wouldn't have just had no, no minor
17 injuries. Nobody, nobody -- we restrained him, and if you
18 ever -- if anybody know a person being drunk, we was
19 restraining him. He was doing more fighting with us than
20 anything, but it was never no, no, no closed fist. It was
21 just grabbing him and holding him down till she can get to her
22 safety, and that's what I did along with Rodney Kinloch; along
23 with Phillip Bell.

24 Q Now, on that night did you pull a gun on him?

25 A No, sir. Never had a gun that night. There was no need

1 for a gun with seven of us and him one, if we was trying to
2 assault him, which was only three of us restraining him.

3 Q Now, you mentioned Phillip Bell. Where was he staying?

4 A Phillip Bell where Punchy's located at, the trailers are
5 side by side. Punchy's house, you can actually walk out of
6 Punchy's front door and be in Phillip backyard, so they within
7 about ten feet away from each other, two trailers side-by-
8 side.

9 Q And how do you know Phillip Bell?

10 A I -- he grew up in Georgetown area. So I know him, you
11 know, for quite a while, just a good friend. He just moved to
12 Andrews, was dating the lady that lived right in front of
13 Punchy, Ms. Dorothy. So I normally go over there, and you
14 know, hang out with them from time to time.

15 Q So you have reason to be out there?

16 A Yeah. Then at the time I was dating Tavera McCrae. So,
17 you know, I always been going down there regular.

18 Q Now, let's go to the night that you got shot, December
19 3rd, 2014. Do you recall, do you recall all of that night?

20 A Yes, sir. Every last bit of it.

21 Q Okay. All right. Well, let's go to the early evening.
22 Had you had a conversation with Ms. McCrae?

23 A Yes, sir.

24 Q And did you go to pick her up at night?

25 A Yes, sir.

Motions

113

1 Q And what were you all going to do that night?

2 A Well, when I left work -- I got off work that night a
3 little after 8:00 o'clock and Rodney Kinloch was at the
4 barbershop with me. When I left the barbershop, we went to
5 McDonald's, got something to eat. We left McDonald's. This
6 was a Wednesday night, you know, nothing really typical going
7 on. So I called Tuvera McCrae and ask her what was she doing.
8 She said she wasn't doing nothing, just was in the house. I
9 said, "Well, we're not, we're not really busy. We're not
10 doing nothing." I said, "I'm going to come by and come pick
11 you up, come see you and that." When I went over there, we
12 started off just talking in the driveway, just hanging out.
13 Normally when I go over to her house most of the time Rodney
14 Kinloch is always present with me for the most part because he
15 like a orderly at the barbershop. So when I leave he normally
16 leave. I'm his ride home as well. So when we approach her,
17 he got in the back seat. She got in the passenger seat. I
18 was talking to her just talking and Rodney Kinloch stated that
19 he had wanted some cigarettes and something to drink. I was
20 like, "All right, cool, I'll take you," and the reason why he
21 didn't drive my truck over to the bootlegger's bar, which was
22 only four, three to four minutes away because he don't have no
23 license. That's why, that's why I said, okay, I'll take him.
24 So I drove over to Punchy's house. When he went inside
25 Punchy's house, she stated that it was packed because of how

1 the, how the area is set up it's just a little confined
2 kitchen area where the, where the, where the, where the, where
3 the location be at. So at five, six people in that area it
4 would be a congested area. It's not like his whole home is
5 open to it. It's just the kitchen area. So when he went in
6 there he went in there and placed his order. He observed Mr.
7 Giles and two other guys around each other. You know, he
8 caught a funny vibe.

9 MR. HAZZARD: I'm going to object because apparently he
10 wasn't in there. So I don't know why he's testifying to it.

11 THE COURT: All right sustained.

12 Q Just tell us about what you did that night and what you
13 observed that night.

14 A Okay. What I observed that night when I pulled up inside
15 Punchy's yard, I pulled up. My friend, Phillip Bell, which
16 was -- lived right in front of Punchy's, came up to the truck.
17 We just had a few words, just tell him we just hanging out,
18 you know, nothing to do, just ride out here to see Tuvera
19 right quick and I came to bring Rodney Kinloch over to get
20 some cigarettes. He was like, "Oh, okay." Rodney stepped out
21 the truck and asked if I wanted anything. I said no, I don't
22 wanted nothing. He asked Tuvera if she wanted something. She
23 said she'd take a drink and a cigarette. He was like, "All
24 right." That's when he went in. He came back out and stated
25 it was packed. That's why he didn't have nothing in his hand

Motions

115

1 at the time. He had other people in, in front of him. He
2 stated that while he was -- that when he stated what he
3 stated. So I was like, "Man, if you feel like that just go
4 ahead, get your stuff and let's go," you know what I'm saying?
5 When he went in, I observe him coming back off the porch. He
6 was like smoking a cigarette. The reason why he never made it
7 back in the truck because she'll tell you as well he'll tell
8 you, I don't allow no smoking in the vehicle. So, on his way
9 coming back to the truck that's why he was taking his time
10 smoking. Shortly after he was on his way coming back, the
11 truck window was up. It was extremely cold that night. The
12 truck window was up. I observed Mr. Jamie Giles coming on the
13 porch and letting off multiple shots before I black -- the
14 last I remember a lot of pain to the chest, and I blacked out.

15 Q Did you have a gun that night?

16 A No, sir.

17 Q Was there a gun in your car?

18 A No, sir.

19 Q Had you received a gun at all from anybody or traded a
20 gun with anybody that night?

21 A No, sir. And if I had a gun the distance the porch was
22 from where the truck was at and the window's up and the tinted
23 window he couldn't observe a gun in the truck if one was in
24 the truck, of which I didn't have a gun.

25 Q Did Mr. Kinloch have a gun that night?

1 A No, sir.

2 Q And did Ms. McCrae have a gun that night?

3 A No, sir. And if Mr. Kinloch had a gun outside when he

4 was clearly shooting at me Mr. Kinloch clearly wouldn't have

5 been running.

6 Q Now, between the incident where -- July 15th and December

7 3rd had you ever been anywhere where Mr. Giles was there as

8 well?

9 A Yes, sir.

10 Q And did you have a cordial relationship at that time?

11 A Yes, sir.

12 Q Did he show any fear or did he leave?

13 A No, sir.

14 Q Did he talk to you at all?

15 A Yes, sir.

16 Q Were your conversations --

17 A On several different occasions.

18 Q I'm sorry. Were your conversations cordial?

19 A What you talking about peace-wise like?

20 Q Yes.

21 A Yes, sir.

22 Q Okay.

23 MR. TODD: That's all the questions I have right now.

24 THE COURT: All right. Cross examination.

25 MR. HAZZARD: Thank you, Your Honor.

Motions

117

1 EXAMINATION

2 BY MR. HAZZARD:

3 Q I notice you're wearing an orange jumpsuit. I take it

4 you're in custody; is that correct?

5 A Yes, sir.

6 Q What are you in custody for, sir?

7 A A drug charge, and at the time of the -- at the time of

8 the scene the passenger who I was riding with had a gun in the

9 vehicle, which he claim -- owned up to his charges and

10 currently --

11 Q Are you charged with the guns as well?

12 A Yeah. Yes, sir.

13 Q Because there was more than one gun in the car; right?

14 A Yes, sir.

15 Q Okay. And it was your car; wasn't it?

16 A Yes, sir.

17 Q Okay. So you were in your car and there were two guns in

18 your car with a passenger; is that correct?

19 A Yes, sir.

20 Q And when was that?

21 A This was, this was October 15th, 2015.

22 Q Okay. And I notice based on documents provided to me by

23 the Prosecutor you have a conviction for possession of a

24 weapon from May 29th of 2007; is that correct?

25 A Yes, sir.

- 1 Q Was that a handgun?
- 2 A Yes, sir.
- 3 Q Okay. And on that same date you were convicted of
- 4 possession of cocaine; is that correct?
- 5 A Yes, sir.
- 6 Q Okay. Okay. Now, back in 2003 you were convicted of
- 7 strong-arm robbery; is that correct?
- 8 A Yes, sir.
- 9 Q Okay. At the time of this incident I think you told the
- 10 police or the police had the impression that you lived on I
- 11 think it was Fuzzy Drive?
- 12 A Yes, sir. Fuzzy Drive.
- 13 Q Okay. And that's in Georgetown; correct?
- 14 A Yes, sir.
- 15 Q That's about, what, about 30 miles away from Andrews?
- 16 A Yeah. That, that -- yes, sir. That's not where I live
- 17 that. That's just the original address I grew up at. I was
- 18 living at Highmarket Street.
- 19 Q Okay. So the police were incorrect at the address they
- 20 assumed --
- 21 A Yeah. Fuzzy Drive was just a address on my ID, a
- 22 home family member, a family address I grew up at.
- 23 Q Okay. Is that what was on your driver's license?
- 24 A Yes, sir.
- 25 Q But you weren't living there?

Motions

119

1 A No, sir.

2 Q Okay. And the truck you were driving who's the owner of
3 that vehicle?

4 A That was a rental at the time, sir.

5 Q Okay. Who rented the truck?

6 A Me.

7 Q You rented the truck?

8 A Yes, sir.

9 Q Okay. So it was in your name?

10 A Yes, sir.

11 Q With Florida tags on it?

12 A Yes, sir.

13 Q Okay. And where did you rent it from?

14 A Hertz in Georgetown.

15 Q Is it your testimony to this Court then you have never
16 sold drugs in that trailer park?

17 A No, sir.

18 Q Is that a no, that's not your testimony or no, you have
19 not?

20 A I never seen drug in that trailer park.

21 Q Okay. You ever sold any drugs anywhere else?

22 A No, sir. I never sold no drugs in the trailer park.

23 Q Not anywhere else?

24 A Anywhere else?

25 Q Yeah. You ever sold drugs anywhere else?

1 A Yeah. Back in 2007 when I got convicted of drug charge.

2 Q Okay. But the drugs and everything in the car in 2015
3 that ain't got nothing to do with you?

4 A No, sir. I mean, I mean, I don't know if I could -- I
5 don't know if this right here pertaining anything to the case,
6 but my attorney is back there and I have it on dockets where
7 the person who own up to his charges which was in my car, he,
8 he done wrote -- he own up to his stuff to the law
9 enforcement's office, and I'm just waiting on the process of
10 getting it dismissed.

11 Q Okay. But the reason they stopped your car at that time
12 was because they had a warrant for your arrest; right?

13 A Yes, sir.

14 Q And what was that warrant for?

15 A They said a drug warrant, but I haven't, haven't went
16 forward to court or nothing like that to get my motion and
17 like that.

18 Q Okay. So they think you sell drugs?

19 A Apparently. Yes, sir.

20 Q Okay. All right. Now, where did Mr. Kinloch live at
21 that time back in December of 2014?

22 A Georgetown County in Maryville.

23 Q Okay. So Mr. Kinloch lives in, in Georgetown, you live
24 in Georgetown. You go to see Ms. McCrae, I take it?

25 A Yes, sir.

Motions

121

1 Q Okay. She lives in Andrews and then you end up at Mr.
2 Burrough's trailer?

3 A Yes, sir.

4 Q Okay. For the purpose of buying a cigarette and getting
5 a drink?

6 A Yes, sir.

7 Q Okay. And what were you going to do with the drink?
8 What was Mr. Kinloch going to do with the drink?

9 A Mr. Kinloch was going to drink his drink.

10 Q And then do what?

11 A And we was going to leave.

12 Q And go where?

13 A Back to Ms. McCrae's current house.

14 Q Okay.

15 A It wasn't nothing specifically we were doing, we just
16 having an outing. You know, I was dating her at the time, and
17 my friend wanted to go get a drink, and she asked for a drink
18 as well. So we wasn't in no rush. It wasn't, wasn't nothing
19 specific, nothing going on. I never got out the truck, you
20 know. He went in there and do -- was going to get what he was
21 going to get and we was going back to her house.

22 Q And there weren't any convenience store anywhere around?
23 Is that a dry area of the county?

24 A This is a, this is a spot when I'm -- whenever I'm down
25 there and Mr. Kinloch is with me, he, he does support

1 Punchy's. So it wasn't never in mind of going to a different
2 gas station or nothing like that. You know, was only going to
3 get a, a -- two cup of drink and a few loose cigarettes. So
4 it wasn't really appropriate to go to a gas station.

5 Q Did he grow up in Andrews? Did he grow up around there?

6 A No, sir. We just know about the trailer park over there.
7 Yeah. So --

8 Q You just know about it?

9 A Yes, sir.

10 Q Okay.

11 A Be in there on a regular with Phillip Bell and taking --
12 being in Andrews all the time with Tuvera McCrae.

13 Q Okay. Now, you said that you didn't have a gun that
14 night; correct?

15 A Correct.

16 Q Okay. When you got shot, did you see where Mr. Giles
17 went?

18 A No, sir. I saw Mr. -- the last -- my first and last time
19 observing Mr. Giles is walking on the -- off of the porch. As
20 he was walking off -- on the porch and on the step he was
21 shooting multiple shots my way. My last thing I remember is a
22 lot of pain and I blacked out.

23 Q Okay. Okay. So then Ms. McCrae took it upon herself to
24 drive your truck away from Punchy's?

25 A Yes, sir. Her -- one -- it was, it was a lot of

Motions

123

1 screaming. I can recall her saying to, "Please don't die.
2 Please don't die," and they was shaking me and I got up. When
3 I got up they helped me in the passenger seat. She said she
4 was going to take me to her mom house.

5 Q Wait. Wait. Wait. Wait. I thought you blacked out?

6 A I did. I did blacked out.

7 Q At what point did you black out?

8 A I blacked out, and when she was shaking me what alert --
9 what brought me back. I was, I was, I was out. She was
10 shaking me and I remember just crying and yelling and that's
11 when I got up. I didn't even know what was going on when I
12 got up. When I got --

13 Q Okay. Where were you all at the time when you came to?

14 A We was still park in front of Punchy's house. We wasn't
15 at Punchy's house no more than about 20, 30 minutes. The,
16 the, the extra 10, 15 minutes occurred, you know, me in there
17 in, in the truck being -- laying down shot up. That where the
18 extra timeframe came in at.

19 Q And nobody called the police and had the police come to
20 Punchy's trailer?

21 A No, sir. She said she was going to call her mom's and
22 took me to her house. I said, "Please take me to the
23 hospital," because I, I was --

24 Q Okay. Wait a minute. Wait. Wait. Wait. I, I
25 apologize for interrupting you.

1 A Yes, sir.

2 Q Because I'm, I'm not understanding this. Let me make
3 sure I understand it. You indicate that you saw Mr. Giles
4 come outside and saw him shoot at your truck.

5 A Yes, sir.

6 Q And then you indicated that was the last thing you
7 remembered before you blacked out.

8 A I, I, I -- the last I remember feeling extreme pain to
9 the chest and I blacked out.

10 Q Okay. And when you came to you were still parked in
11 front of Mr. Burroughs' trailer; is that correct?

12 A Yes, sir.

13 Q Okay. And the police weren't there?

14 A No, sir.

15 Q An ambulance wasn't there?

16 A I got on, I got on my cell phone and I did dial 911 on
17 my cell phone.

18 Q While you were still in front of Mr. Burroughs' trailer?

19 A Yes, sir. Yes, sir.

20 Q And you said, "This is where I am. Come help me."

21 A I couldn't get -- I couldn't talk. Every time I try to
22 talk I was throwing up. I kept throwing up from the, I guess
23 the gunshot wound in my lungs. I couldn't talk. I dialed
24 911. I couldn't talk. The phone call dropped. I tried to
25 call my brother. I couldn't never get no conversation from

Motions

125

1 nobody. She said she was going to, you know, try to take me
2 to get help, and I just remember telling her to take me to the
3 hospital.

4 Q And did she take you to the hospital?

5 A No, sir.

6 Q She didn't?

7 A No, sir. She made it to where -- I don't know the exact
8 road, but we made up to where a train track is at in Andrews,
9 and right where the train track was at she pull over on the
10 side and she call her mom's. Her mom approached and called
11 the ambulance from right there, called 911. That's where they
12 came and got me from right there.

13 Q And she didn't think to call her mom or call 911 or --

14 A She called her mom.

15 Q Please listen to my question and, and then you can
16 respond. To what you observed, Ms. McCrae didn't think to
17 call her mother, call 911, call anyone while you were parked
18 in front of Punchy's?

19 A My observe, Ms. McCrae was crying and screaming. She was
20 out of her mind, and she kept on, she was, she was saying she
21 was going to call her mamma. She was, she was in a whole lot
22 of fear. She was crying and trying to get -- trying to
23 control herself and get herself together.

24 Q All right. Thank you. No further questions.

25 A Yes, sir. Thank you.

1 THE COURT: Redirect?

2 MR. TODD: Just briefly.

3 REEXAMINATION

4 BY MR. TODD:

5 Q Mr. Kelly, how many times were you hit by bullets?

6 A Three times. One times in the chest, one time in the hip
7 and one time in the leg, left with a bullet still lodged in my
8 chest and rods from my knees to my hip.

9 Q And did you lose a lot of blood that night?

10 A Yes, sir.

11 Q And did you aspirate all -- did you have -- was there
12 blood all over the car?

13 A All over the vehicle. Yes, sir.

14 Q Okay.

15 MR. TODD: That's all the questions I have.

16 THE COURT: All right. You may step down.

17 The State can call their next witness.

18 MR. TODD: Investigator Melvyn Garrett.

19 Whereupon, Melvyn Garrett is called to the stand, duly
20 sworn by the clerk and testified as follows:

21 THE CLERK: Thank you. Please be seated and state your
22 name for the record.

23 MR. GARRETT: My name is Melvyn Garrett.

24 THE COURT: All right. Mr. Garrett, could you spell your
25 last name, please?

Motions

127

1 MR. GARRETT: Certainly. G-A-R-R-E-T-T.

2 THE COURT: Thank you.

3 EXAMINATION

4 BY MR. TODD:

5 Q Investigator Garrett, were you called out that night to
6 the shooting?

7 A Yes.

8 Q And did you take over as lead investigator for this case?

9 A Yes. I did.

10 Q Okay. And did you go to the scene where the vehicle was?

11 A Yes.

12 Q And did you look inside the car and observe anything
13 inside the car?

14 A I did.

15 Q Did you briefly look for any shell casings or guns in the
16 car?

17 A Absolutely.

18 Q Did you find any of those items?

19 A I didn't see it. No.

20 Q Did you find a gun in the car?

21 A No.

22 Q Through the investigation did anybody find a gun along
23 the way from Punchy's house to the vehicle?

24 A No.

25 Q Did anyone retrace those steps?

1 A Yes.

2 Q Had anybody mentioned through your investigation and
3 through your interviews that Mr. Kelly had a gun that night?

4 A No. No. Not that I recall.

5 Q And to your knowledge was there any evidence of him
6 having a gun on scene at the incident?

7 A No.

8 Q That's all the questions I have.

9 THE COURT: Cross examination.

10 MR. HAZZARD: Thank you, sir.

11 EXAMINATION

12 BY MR. HAZZARD:

13 Q Is there any -- are there any incident reports that
14 document this search the Prosecutor says that the police
15 department went on on the route looking to see if anyone threw
16 a gun out of the window?

17 A I'm not sure. I'd have to look at the initial, the
18 initial reports.

19 Q Okay. Who did this search? Who undertook this search?

20 A If I'm not mistaken, the officers on duty would have gone
21 back to the trailer to where it happened and they look on the
22 way. I'm not sure whether it's documented or not, but that
23 would be standard.

24 Q Okay. I mean, would they have, you know, searched all
25 along the side of the road or just look at the roadway itself

Motions

129

1 or --

2 A Well, you know, they would look at the roadway, and if we
3 had -- if we knew exactly what route they took we would
4 certainly walk it but we don't know exactly which route they
5 took.

6 Q Did anyone ask Ms. McCrae what route she took?

7 A I'm not sure. I'd have to, I'd have to see the report.

8 Q Okay. So if you don't know what route she took, can't
9 really do a search for a gun; can you?

10 A Well, I don't know if it's in the report or not, but yes,
11 to answer your question, no, you can't.

12 Q Do you have a report here that will help refresh your
13 recollection that you can review?

14 A Sure. If you don't, if you don't mind I'll have a look.

15 Q All right.

16 MR. HAZZARD: The Court's indulgence, Your Honor.

17 BY MR. HAZZARD:

18 Q Have you had sufficient time to review the report, you
19 still --

20 A I have. Nobody -- there was no one that retraced any
21 steps --

22 Q Okay. Thank you, sir.

23 A -- or traveled the route.

24 Q Yes, sir. Now, as the lead investigator on this, you're
25 aware that Ms. McCrae and Mr. Kelly's hands were tested for

1 gunshot residue and that that test came back positive for both
2 of them; is that correct?

3 A Well, I can't -- I don't know exactly what the extent is
4 as far as the SLED request, but I did request that both of
5 them have GSR done.

6 Q Did you see they -- have you seen the SLED report?

7 A I have not.

8 MR. TODD: Objection, Your Honor.

9 Q Okay.

10 THE COURT: What's the objection?

11 MR. TODD: Your Honor, he did not do the SLED report. It
12 would take an expert to actually testify whether or not it was
13 there.

14 THE COURT: I think he just asked if he had seen it. So
15 I'm going to overrule the objection. I'm not going to let him
16 testify to it. Go ahead.

17 BY MR. HAZZARD:

18 Q Okay. How far away -- did you report to the scene where
19 Mr. Kelly's truck was pulled over on the side of the road?

20 A Yes.

21 Q Okay. How far away roughly is that from the trailer park
22 from Mr. Burroughs' trailer?

23 A A few minutes.

24 Q A few minutes?

25 A Yes.

Motions

131

1 Q Would that be two miles, three miles, five miles --

2 A Yeah. Between three and five miles.

3 Q Between three and five miles. All right. Thank you. No
4 further questions.

5 A You're welcome.

6 THE COURT: Redirect?

7 MR. TODD: No, Your Honor.

8 THE COURT: All right. You may step down.

9 MR. TODD: And Your Honor, that's the State's last
10 witness for this motion.

11 THE COURT: All right. Anything in reply?

12 MR. HAZZARD: Yes, Your Honor. The Court's indulgence.

13 THE COURT: All right.

14 MR. HAZZARD: For the purposes of this hearing I would
15 hand up the gunshot residue report for the Court to review in
16 its consideration of this matter.

17 MR. TODD: Objection, Your Honor. I think it would be
18 fine if there was someone here to testify as to what was in
19 it.

20 THE COURT: Well, I mean, where did the report come from?
21 Did you provide the report to him?

22 MR. TODD: Yes, sir.

23 THE COURT: Okay. All right. I'll allow it to go ahead
24 and comes in for the purposes of this hearing. Let's get it
25 marked. How do we want it?

1 MR. HAZZARD: Defense Exhibit, Defense Exhibit One for
2 the purpose of the hearing.

3 THE COURT: Can we do it that way? All right. Defense
4 Exhibit One for the purposes of this hearing, I'm going to
5 admit it into evidence for the purpose of this hearing --

6 MR. TODD: Your Honor --

7 THE COURT: -- over State's objection.

8 (Defense Exhibit Number One [GSR Report] marked for
9 identification.)

10 MR. TODD: Your Honor, this would not be allowed in the
11 prosecution of the case as far as beyond this hearing? Is
12 that correct, Your Honor?

13 THE COURT: But that's correct, not unless the, the
14 groundwork where they bring in whoever -- they're going to
15 have to authenticate the report before it's admissible. Okay?

16 MR. TODD: Yes, sir. As far as the chain and everything
17 else, I will.

18 THE COURT: The chain and things of that nature, but for
19 the purposes of this hearing since it was provided to him by
20 the State I'm going to allow it to come in.

21 MR. HAZZARD: But that would be the Defense showing, Your
22 Honor.

23 THE COURT: All right.

24 MR. TODD: Your Honor, if I may, there is one issue I
25 have with, with the report, and if I could just be heard on

Motions

133

1 the record.

2 THE COURT: All right. Let me hear from you on that.

3 MR. TODD: Your Honor, as far as the report goes, I
4 understand we've provided it to the Defense for their
5 purposes. Actually, the Defense requested that it be done.

6 MR. HAZZARD: It was ordered by Judge John that the test
7 be performed.

8 THE COURT: At whose request?

9 MR. HAZZARD: At the Defense request, Your Honor.

10 THE COURT: All right. All right. Go ahead.

11 MR. TODD: So SLED had to do the report. They've
12 actually told us that it is not standard procedure for them to
13 do reports of this nature because he is a victim in the case
14 and there's a lot of false positives. That is why an expert
15 would be needed to even refer to what happened. There's a lot
16 of things that can come into play as far as why there would be
17 a GSR on anybody such as closeness of the shots, how many
18 shots, their -- conduct of law enforcement.

19 THE COURT: Okay.

20 MR. TODD: And there's lots of way --

21 MR. HAZZARD: And I'm sure that they can bring somebody
22 from SLED who can testify to all of that.

23 MR. TODD: We could. However, Your Honor, I do not
24 believe it should be even considered for Your Honor at this
25 hearing.

1 THE COURT: Okay. Well, I mean, it's not in front of the
2 jury. You're going to have to lay the groundworks for that.
3 I am looking at the report. The report is dated November 20th,
4 2015. When was the actual testing done?

5 MR. TODD: The report -- the testing was done right then.
6 I mean, the testing as far as when the swabs were taken?

7 THE COURT: Yes.

8 MR. TODD: The swabs were taken the night of the
9 incident.

10 THE COURT: Okay. And then it was tested by SLED in
11 November of 2015 or --

12 MR. TODD: That's correct, Your Honor.

13 THE COURT: Okay. All right. All right. Anything
14 further from the Defense?

15 MR. HAZZARD: Nothing further from the Defense at this
16 time for the purposes of this hearing.

17 THE COURT: All right. All right. Any arguments?

18 MR. TODD: Your Honor, could we have a few minutes before
19 we start into arguments --

20 THE COURT: All right.

21 MR. TODD: -- so I can organize everything --

22 THE COURT: All right.

23 MR. TODD: -- and be ready to go?

24 THE COURT: All right. Let's take about a five or 10
25 minute recess and then we'll come back. Okay?

Motions

135

1 MR. TODD: Yes, sir. Thank you.

2 THE COURT: All right.

3 OFF THE RECORD

4 (On the record. The following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. Mr. Hazzard, let me hear from
7 you.

8 MR. HAZZARD: The Court's indulgence, Your Honor. We
9 need Mr. Giles back.

10 THE COURT: Oh, okay. I apologize. I thought he was
11 sitting out there.

12 MR. HAZZARD: All right. Thank you, Your Honor. May it
13 please the Court?

14 THE COURT: Yes, sir.

15 MR. HAZZARD: At the beginning of the hearing I indicated
16 that the Defense was proceeding under Subsection C of Section
17 16-11-440 of the South Carolina Code of Laws and that it says
18 a person who is not engaged in an unlawful activity and who is
19 attacked in another place where he has a right to be,
20 including, but not limited to, his place of business, has no
21 duty to retreat, has the right to stand his ground, meet force
22 with force, including deadly force if he reasonably believes
23 it is necessary to prevent death or great bodily injury to
24 himself or another. Reasonably believes is the key from the
25 Defense perspective based on what occurred to Mr. Giles on

1 July 15th of 2014, him being grievously injured at the hands of
2 Mr. Kelly and Mr. Kinloch, him seeing Mr. Kelly pull out a gun
3 and make a statement about, "It looks like I'm going to have
4 to come back out of retirement." That is significant given
5 Mr. Kelly's prior record with regard to possession of deadly
6 weapons. You know, no question Mr. Kelly testified to that.
7 When you look at it from that perspective, a man with a
8 conviction for strong-arm robbery, a man with a conviction for
9 possession of a weapon in 2007, a man who then again is
10 charged in 2015 again with possession of a weapon, that goes
11 to the issue of when you're talking about reasonable fear of
12 death or serious bodily injury, the Defendant is entitled to
13 consider everything about his putative assailants as far as
14 their standing in the community, what he personally knows
15 about the individual, what their record may be for turbulence
16 and violence in the community, and there is no question based
17 on that record Mr. Kelly has a record of turbulence and
18 violence. He has a record for robbing people. He has a
19 record for having a gun in his possession on multiple
20 occasions, and as you heard Mr. Giles testify, that that was
21 common knowledge, that that is the type of individual that he
22 felt that he was dealing with. In State versus Fuller, 297
23 S.C. 440, 377 S.E.2d 328, a 1989 case of the South Carolina
24 Supreme Court, the Court said that a person has the right to
25 act on appearances even if they're ultimately mistaken on the,

Motions

137

1 on the appearances that they act on. In State versus Starnes,
2 340 S.C. 312, 531 S.E.2d 907, a 2000 case of our South
3 Carolina Supreme Court, they held that a Defendant is not
4 required to wait until the adversary has armed themselves with
5 a weapon and has gotten the drop on him before he can act in a
6 way to defend himself, again, based on appearances. I
7 appreciate the Court's time and consideration in this hearing
8 because it did seem like both sides may have gotten somewhat
9 far afield, but I think both sides wanted the Court to have a
10 clear indication or as clear as possible as to the
11 circumstances surrounding what occurred.

12 Well, from the Defense perspective what did occur? Mr.
13 Giles is seated in a quasi-public place because Mr. Burroughs
14 opens his place for business, and no matter how illegally. He
15 is in a quasi-public place, minding his own business, and an
16 individual, Mr. Kinloch, who has done him grievous injury in
17 the past and who is associated with someone who has pulled a
18 weapon on him in the past, comes in, stands behind him, you
19 know, very close to him in a threatening posture or that is
20 the perception Mr. Giles had. This individual, Mr. Kinloch,
21 leaves, goes outside. Mr. Giles sees him talk to Mr. Kelly.
22 Mr. Kelly, according to Mr. Giles, passes Mr. Kinloch a
23 weapon. At that time Mr. Kinloch comes back in, stands behind
24 him, then goes back out. At this point then Mr. Kelly, whose
25 car has been parked perpendicular to Mr. Burroughs' trailer

1 and the front door of Mr. Burroughs' trailer, now at this
2 point suddenly car has pulled around, driver's-side window
3 directly at the trailer door, and what does Mr. Giles tell you
4 that happened then? Mr. Kinloch comes in again, exits again
5 after standing behind him in a threatening manner and takes up
6 a position opposite of the firing angle that Mr. Kelly had.
7 Now, you can listen to the State's witnesses. They try to say
8 it differently, but it comes out the same. Ms. McCrae who
9 says never saw a gun, don't know anything about a gun, but yet
10 moved the car in front of the door. Where was Mr. Kinloch?
11 On the other side of the porch, firing angle. Mr. Giles,
12 fearful for his life, said, "I've seen this movie before.
13 I've been beaten up before. I've been threatened with a gun
14 before. I'm just trying to go home." So what does he say?
15 "I left the trailer, and as soon as I walked out I see Mr.
16 Kelly reaching for what I believe is a weapon. I know that
17 Mr. Kinloch has an angle here. I know that Mr. Kelly is
18 reaching, and so, I defended myself." That is the full
19 purpose of the Protection of Property and -- or Persons and
20 Property Act, so an individual will not face criminal
21 prosecution for defending themselves. The statute also says,
22 literally has the right to stand his ground. Mr. Todd kept
23 saying, "Why didn't you try to go out the back door? Why
24 didn't you hide in the trailer?" He does not have to do that.
25 He doesn't have to do it under the common law, and now he

Motions

139

1 doesn't have to do that under the statutory law. We submit
2 that he was well within his rights to leave. We submit he was
3 well within his rights to defend his life. Now, they want to
4 say didn't have a gun, no gun around. Well, I think it's
5 strikingly strange, the Court has had the benefit of the SLED
6 report. What does it say? Says gunshot residue, items
7 consistent with gunshot residue found on both Ms. McCrae and
8 on Mr. Kelly, not on Mr. Kinloch, but Mr. Kinloch, if the
9 Court will recall, that's the one person who had the chance to
10 leave and not interact with the police until later, plenty of
11 time to wash his hands, clean up, get rid of any gun, but the
12 two people who didn't have that opportunity, oddly enough,
13 they have gunshot residue on them indicating either using a
14 gun or handling a gun, and I would submit --

15 THE COURT: But it doesn't indicate when; does it?

16 MR. HAZZARD: Well, I don't think gunshot residue --

17 THE COURT: I mean, the fact --

18 MR. HAZZARD: -- stays with you for any incredible length
19 of time, Your Honor.

20 THE COURT: Well, I don't know that. We don't have
21 anybody here to explain the report. So, I mean, I don't know.
22 I read the report. I understand what the report says, but
23 quite frankly, without someone here to explain it I don't know
24 what conclusions can be drawn from the report.

25 MR. HAZZARD: I think the conclusions that can be drawn

1 from it are that Mr. Kelly had a gun in his possession and at
2 some point Ms. McCrae handled that gun. What did she say?
3 "Met up with them at 8:45, 9:00 o'clock." When did this
4 occur? Sometime approximately after 9:30. Police arrive on
5 the scene 10:06. So yeah, that's your gun handling right
6 there because according to her she wasn't around them, had
7 nothing to do with them, they weren't around her, but within
8 an hour of them getting up together this incident occurs and
9 they've got gunshot residue on their hands.

10 THE COURT: All right.

11 MR. HAZZARD: So the position of the Defense is pursuant
12 to the Protection of Persons and Property Act Mr. Giles is
13 immune from criminal prosecution or civil liability, Your
14 Honor, and the Court should find such.

15 THE COURT: All right. All right. I note your motion.
16 I'm going to deny it. As I understand, the burden of proof is
17 on the Defendant to prove that he's entitled to relief under
18 16-11-440. It's the burden of proof is by a preponderance of
19 the evidence. I don't know if the State is going to be able
20 to disprove self-defense beyond a reasonable doubt, but my
21 ruling is that the Defendant has not proved by a preponderance
22 of the evidence that he is entitled to immunity under 16-11-
23 440. So I'm going to deny the motion. All right. Anything
24 further?

25 MR. TODD: No, Your Honor.

Motions

141

1 THE COURT: Anything further from the Defendant?

2 MR. HAZZARD: Nothing from the Defense at this time.

3 THE COURT: All right. We'll be in recess until -- well,
4 the jury's coming in at 9:15. I'll take, I'll take the bench
5 at 9:30. All right.

6 MR. TODD: Yes, sir.

7 THE COURT: All right.

8 MR. TODD: Thank you, sir.

9 (Adjourned for day.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (On the record, State v. Jamie L. Giles, 2015-GS-22-169
2 through 172, February 2, 2016. The following takes place
3 outside the presence of the jury.)

4 THE COURT: All right. The jury has selected Juror 109,
5 Nia Fulmore Valentin, as the foreperson. All right. So I'll
6 put that -- that's Court's Exhibit One.

7 (Court's Exhibit Number One [Foreperson Selection]
8 appropriately marked.)

9 THE COURT: All right. I understand we have some more
10 pretrial matters we need to deal with?

11 MR. TODD: Yes, Your Honor. The State has one issue we
12 would like to take up.

13 THE COURT: All right. And what is that?

14 MR. TODD: Your Honor, in regards to the questioning of
15 the victim, Mr. Daniea Kelly, and his current incarceration,
16 and I have a few rules to cite and also some case law. From
17 yesterday we learned that there was a line of questioning
18 that's going to go to his current charges, what he's charged
19 with, and him being incarcerated, which is that's what he is.
20 However, there's some case law and I'd like to cite the rules
21 quickly. Under Article 15 of the Victim Witness Services,
22 first of all, it states that, that the victim or witnesses to
23 a crime are to be treated with the same dignity, respect,
24 courtesy and sensitivity that extend to the -- the victim is
25 in a manner no less vigorous than to the protections of the

1 afforded criminal Defendants, which that would mean that if I
2 can't ask him question -- the Defendant questions, then the
3 pending charges that he has not been convicted of, I think,
4 would limit Defense counsel from asking, inquiring into those.
5 He has not been convicted of those. He's currently
6 incarcerated. However, that really is just to destroy his
7 character, and as far as the character, Rule 403, exclusion of
8 relevant evidence on grounds of prejudice, this states that
9 although relevant evidence may be excluded if it is, if its
10 probative value is substantially outweighed by the danger of
11 unfair prejudice, confusion of the issues or misleading the
12 jury or by consideration of undue delay, wasted time or
13 needless presentation of cumulative evidence. Your Honor, his
14 current charges are a year after the fact. His previous
15 charges absolutely would come in. I mean, there was some
16 crimes of violence, some drug charges. Those very much could
17 go to his character or, or even to his propensity for
18 violence. However, because these happened a year later after
19 this incident there's really no showing that he had a
20 propensity for violence at that time. Your Honor, I have a
21 case --

22 THE COURT: Well, let me ask you this, first before you
23 go on, what is it you're trying to suppress, him cross
24 examining your client as to what charges?

25 MR. TODD: As to the charges he's currently incarcerated

1 on.

2 THE COURT: And what are those?

3 MR. TODD: Those are drug charges. He has a count of
4 distribution, I believe a possession and a weapons charge.

5 THE COURT: All right. Distribution, and those are
6 pending charges or convictions?

7 MR. TODD: They're pending charges, Your Honor. He has
8 convictions for a, I believe it was a conspiracy charge under
9 federal prosecution. He has a, I believe, an ABHAN charge
10 from years ago. Those, I think, would be relevant, but his
11 stuff right now I just think it would mislead the jury as to,
12 you know, what he's currently like.

13 THE COURT: All right. So you're seeking to suppress any
14 cross examination or any reference to the victim's pending
15 charges for drug distribution, drug possession and weapons
16 possession.

17 MR. TODD: Yes, sir.

18 THE COURT: Okay. And when did those arise?

19 MR. TODD: Those arised [sic], I believe it was December
20 of 2015.

21 THE COURT: Okay.

22 MR. TODD: So they're a year after, after the fact.

23 THE COURT: All right. All right. Mr. Hazzard, what's
24 your position on that?

25 MR. HAZZARD: I believe they occurred October 15th of

State v. Giles

145

1 2015, if I'm not mistaken.

2 MR. TODD: That's correct.

3 MR. HAZZARD: But also our position, obviously, is his
4 character as a witness very much is in evidence. He is
5 testifying today before the jury and --

6 THE COURT: But I mean, they're pending charges. They're
7 not convictions.

8 MR. HAZZARD: Yes, sir.

9 THE COURT: Okay.

10 MR. HAZZARD: And there is no limitation with regard to
11 the issue of his turbulence and violence in the community.
12 That is the issue that is before the Court. That's the issue
13 that the jury has to pass on, and as he is testifying today
14 saying, "Yeah, I'm not a bad guy. I'm not a violent person.
15 I'm not anyone of that nature," that makes it very relevant
16 that the jury has the right to know that three or four months
17 prior to this testimony he's arrested, yet again, specifically
18 for having a gun in his possession, two guns in his
19 possession, arrested again for drug charges. Now, the Court
20 can give a limiting instruction that says he has not been
21 convicted of these charges and you can take it for what it's
22 worth, believe it or not believe it or give it whatever weight
23 that you deem appropriate but has not been convicted of these
24 charges, but I think for them to, A, change his clothes and
25 have him sitting up here as if he is, you know, a common man

1 off the street is simply misleading to the jury. Again, they
2 can place whatever weight on it they wish. They can say,
3 "Well, that's something that happened a year after. So we're
4 going to place little or no weight to that," but when you're
5 talking about a situation of a person's reputation for
6 turbulence and violence in the community, it would be very
7 misleading to have him sit up there and say, "Oh, no, I've
8 never, you know, carried a gun, never had a gun, never done
9 anything of that nature."

10 THE COURT: Well, certainly, if he says, "I've never
11 carried a gun, I've never had a gun," anything of that nature
12 then they've opened the door. I think what they're
13 referencing is you bringing it up when he hasn't opened the
14 door. You're saying by him taking the stand he opens the door
15 to that questioning?

16 MR. HAZZARD: Yes, sir. He places his character in
17 evidence.

18 THE COURT: All right.

19 MR. HAZZARD: And the Court indicated yesterday that I
20 would be allowed to ask him about that. If I had known that
21 you were going to say something different, I would have spent
22 time researching the issue.

23 THE COURT: Okay. Anything in reply?

24 MR. TODD: Your Honor, I mean, quite frankly, the
25 legislator has established that's basically what's good for

1 the goose is good for the gander.

2 THE COURT: Okay. What are you referencing?

3 MR. TODD: Well, Article 15, Section 16-3 --

4 THE COURT: Yes.

5 MR. TODD: -- 1501, that's the legislative intent.

6 THE COURT: To be treated with the same courtesies and
7 things like that. It doesn't -- I mean, as I understand this
8 comes under the prior bad act.

9 MR. TODD: Exactly.

10 THE COURT: Rules of --

11 MR. TODD: Prior bad acts, not subsequent bad acts would
12 be the issue that I have. These are things that happened
13 afterwards, almost a year afterwards, from December of 2014
14 till October of 2015.

15 THE COURT: All right.

16 MR. TODD: These are things that happened later.

17 THE COURT: All right. I'm going to have to take that
18 under advisement. I'll take a look at it.

19 MR. TODD: Okay.

20 THE COURT: I don't, I don't know.

21 MR. TODD: I have a case, Your Honor, for your
22 consideration.

23 THE COURT: All right. What does the case say?

24 MR. TODD: The case says basically the same thing. This
25 was a little bit different because the person was killed.

1 THE COURT: Okay.

2 MR. TODD: And they wanted to include a reference where a
3 person had seen the victim in this case with a gun the day
4 before and the Court found that that was too late in time, it
5 was, it was too far removed to even include that as a
6 character witness for basically someone that did something
7 before. It, it really didn't. He wasn't convicted of it. It
8 was just a reference of it.

9 THE COURT: Okay. Is there any case law that holds
10 contrary to that?

11 MR. TODD: Not that I could find. I mean, everything
12 that held contrary to that had to do with a witness that was
13 up testifying like a Co-Defendant whether a deal was made, and
14 there's a whole -- long line of questioning, a long line of
15 cases of that where there's a Co-Defendant who's testifying as
16 to what's going on. In that case because his honesty and
17 credibility was brought up because he's testifying for the
18 State and has pending charges with the State on that same
19 case, that the Defense could ask, "What is your deal, have you
20 been given a deal and these are your current pending charges,
21 which are the same as my clients. So what are you getting out
22 of it?" We're not in that same boat here. This isn't even a
23 related case and there are no offers.

24 THE COURT: All right.

25 MR. HAZZARD: And I would ask -- he referenced a case --

State v. Giles

149

1 I would ask for the case name so that I can check it out.

2 THE COURT: Yeah. What's --

3 MR. TODD: Okay. The case is State v. McCray, 413 S.C.
4 76. It's a Court of Appeals. I'll pass this forward, Your
5 Honor.

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

7 MR. TODD: Your Honor, that would be our, our only issue
8 today.

9 THE COURT: All right. I'll take it under advisement. I
10 need to go shepardize this, see if there's any subsequent
11 rulings or any contrary rulings, and then I'll let you know.

12 MR. TODD: Okay. And then also we're waiting on our
13 victim to get here. He's still not here. Oh, there he is.
14 Okay. I apologize. I didn't see him walk in.

15 THE COURT: All right. Anything from the Defense?

16 MR. HAZZARD: Your Honor, this morning the Prosecutor and
17 I were talking, and he asked if there was any possible plea
18 that Mr. Giles would take, and in that discussion he offered a
19 sentence range of five to 15 years.

20 THE COURT: For?

21 MR. HAZZARD: We did not discuss whether that would be
22 ABHAN or attempted murder, really almost the same. There are
23 some, some other side ancillary issues whether it's one or the
24 other. Attempted murder or ABHAN?

25 MR. TODD: Attempted murder.

1 MR. HAZZARD: Attempted, five to 15 years on attempted
2 murder.

3 THE COURT: That's negotiated or recommendation?

4 MR. HAZZARD: Well, it'd be negotiated obviously because
5 it would be a sentence range of five to 15. Discussed that
6 with Mr. Giles, and he has rejected that offer. I wanted to
7 place that on the record, have the Court have a colloquy with
8 Mr. Giles and confirm that. Stand up, please, sir.

9 THE COURT: All right. First, let me ask, Mr. Todd, the
10 offer plead to one, two counts?

11 MR. TODD: The two counts of attempted murder with a
12 range of five to 15 years.

13 THE COURT: And you would dismiss the other pending
14 charges?

15 MR. TODD: That's correct, Your Honor.

16 THE COURT: Negotiated sentence of five to 15 years?

17 MR. TODD: Yes, sir.

18 THE COURT: All right. All right. Mr. Giles, if you'd
19 raise your right hand, please.

20 (Whereupon, the Defendant is sworn by the Court.)

21 THE COURT: All right. You understand that the State has
22 extended another plea offer in this case, that offer being
23 that if you plead guilty to two counts of attempted murder
24 then there would be a negotiated sentence of which you would
25 receive a sentence of not less than five years but no more

1 than 15 years. Do you understand that?

2 MR. GILES: Yes, sir.

3 THE COURT: And you understand that the other charges
4 against you would be dismissed; do you understand that?

5 MR. GILES: Yes, sir.

6 THE COURT: All right. And do you wish -- have you had
7 an ample opportunity to discuss this plea offer with your
8 attorney?

9 MR. GILES: Yes, sir.

10 THE COURT: All right. And do you wish to accept or
11 reject this offer?

12 MR. GILES: Reject.

13 THE COURT: Do you understand once you reject this offer
14 then it will be withdrawn and it will not be offered back to
15 you? Do you understand that?

16 MR. GILES: Yes, sir.

17 THE COURT: And you understand that with the pending
18 charges against you, let's see, 30, 60 -- discharging a
19 firearm, that was how many years?

20 MR. HAZZARD: That's up to 10 years and/or up to a fine
21 not exceeding \$1000.

22 THE COURT: Okay. So for the two attempted murders,
23 possession of a weapon and discharging a firearm you're
24 looking at 75 years plus \$1000 fine. You understand that?

25 MR. GILES: Yes, sir.

1 THE COURT: And knowing that you still wish to reject the
2 offer from the State?

3 MR. GILES: Yes, sir.

4 THE COURT: All right. Anything further you want placed
5 on the record in that regard, Mr. Hazzard?

6 MR. HAZZARD: No, sir, Your Honor.

7 THE COURT: Anything further from the State in that
8 regard?

9 MR. TODD: No, Your Honor.

10 THE COURT: All right. Anything further from the State
11 before we take a break and let me do research on this
12 evidentiary question?

13 MR. TODD: No, sir.

14 THE COURT: Anything further from the Defense?

15 MR. HAZZARD: No, sir. If you could give an indication
16 of the length of the break I'll go downstairs and do some
17 research of my own.

18 THE COURT: Okay. I'm going to take -- to tell you the
19 truth, I'm going to go to Westlaw and pull this case up. I'm
20 going to see what other -- where it's referenced, and if
21 there's any Supreme Court cases, so probably about a 10-minute
22 break. Okay? All right. Thank you very much.

23 OFF THE RECORD

24 (On the record. The following takes place outside the
25 presence of the jury.)

1 THE COURT: All right. Gentlemen, as we discussed in
2 chambers, I'm going to grant the State's motion to suppress
3 questioning of the victim regarding his pending charges for
4 drug distribution, drug possession and weapons possession
5 unless the door is open. I think the Court of Appeals'
6 decision, State versus McCray, and some other Supreme Court
7 decisions basically support that decision, particularly when
8 these charges or prior bad acts, if you will, didn't arise
9 until some 10 months after the incidents that the Defendant is
10 now on trial for. So I'm going to grant that motion by the
11 State.

12 MR. HAZZARD: If I might be heard on that, Your Honor,
13 for the record.

14 THE COURT: All right.

15 MR. HAZZARD: The Defense position is that that evidence,
16 specifically the charge from October 15th or what has been said
17 to be October 15th of 2015 for possession of a weapon and a
18 drug offense that is currently pending and that finds Mr.
19 Kelly in, in County custody, should be admissible under Rule
20 404(A)(2) of the South Carolina Rules of Evidence. It
21 indicates that one of the exceptions to admissibility is the
22 character of a victim when raised by the Defendant, and the
23 Defense position is that his arrest, his incarceration,
24 especially taken in light with him now being charged with
25 charges that are similar to or possibly identical with

1 convictions he had in May of 2007, that the jury in passing on
2 his character and his credibility as he testifies in this
3 matter that they should be allowed to consider that in
4 determining what they perceive to be his credibility and his
5 believability. Also, the Supreme Court has held in a series,
6 a line of cases, starting with State versus Moody, 94 S.C. 26,
7 1913 case, and including State versus Franklin, 267 S.C. 240,
8 a 1976 case, that the general reputation for turbulence and
9 violence of a putative victim is always for the jury to
10 consider. Now, the specific incidences of the conduct as far
11 as did you hit someone with a baseball bat, did you stab
12 someone, did you shoot someone, that is not admissible for the
13 jury to consider, but the general reputation for turbulence
14 and violence in the community is always for the jury to
15 consider, and I would submit by withholding this information
16 from them, and again, they could put whatever weight on it
17 they chose as to, okay, he hasn't been convicted of it, okay,
18 it happened a year after, but you're talking about a pattern
19 of activity that spans eight years that I would think would be
20 appropriate for the jury to consider in passing on their
21 determination of a witness's credibility. I thank the Court
22 for the time to place my position on the record.

23 THE COURT: Okay. Well, and I -- and you just touched
24 something that I need to find out. The case that the State is
25 relying on -- let me hear from you on this, Mr. Todd.

State v. Giles

155

1 MR. TODD: Your Honor, our --

2 THE COURT: Basic -- well, in that case it said that the
3 witness could not testify to the victims basically discharging
4 a firearm the night before, the victim and the witness who was
5 offering the testimony were two separate people. They had --
6 the Defense sought to introduce the testimony of a witness who
7 said, "I was with the victim the night before. He fired a
8 gun," and this ruling said, no, that was inadmissible because
9 the Defendant didn't know about it, didn't show his state of
10 mind, he couldn't rely on it. Here you've got a witness who's
11 taking the stand. So there might be -- I'm backing up now.
12 There might be a distinction. This isn't them offering a
13 witness that says, "I know the State's witness has pending
14 charges for carrying -- weapons possession, drug possession,
15 stuff like this." This is where he's taking the stand. So is
16 there a distinction there?

17 MR. TODD: Your Honor, the difference, I believe, would
18 be, again, we take the Defendant's frame of mind as we
19 discussed on what he was relying on to go forth and protect
20 himself in advance of being shot at.

21 THE COURT: Well, and I agree with you except Mr. Hazzard
22 is saying, "We're not doing that to show my client's state of
23 mind when this happened. We're doing this to show that the
24 State is calling a witness who happens to be a victim in this
25 case to attack that witness's credibility. We're not calling

1 anybody else to call -- to attack his credibility or to show
2 his propensity for violence or the fact that he carries a
3 firearm or anything of that nature." This is someone who's
4 taken the stand.

5 MR. TODD: Yes, sir. And he has --

6 THE COURT: And I do see that as a distinction in the
7 case you handed up versus this case now.

8 MR. TODD: But, Your Honor, he hasn't been convicted of
9 those charges. They come a year later, and he should be
10 afforded the same rights that the Defendant has on bringing
11 up, you know.

12 THE COURT: Well, let me ask you this, Rule 404(A)(2),
13 when would that be applicable? When could you get in prior
14 bad acts of a witness --

15 MR. TODD: And they would be --

16 THE COURT: -- to attack their character?

17 MR. TODD: They would be prior bad acts, his prior bad
18 acts would be his previous convictions for drug possession,
19 and --

20 THE COURT: No. No. There's, there's case law out there
21 that says there is a distinction between admissibility for
22 convictions and convictions for bad acts.

23 MR. TODD: But, Your Honor, his whole goal is to smear
24 the victim in the case and to confuse the jury and that's what
25 he -- why he brought it up yesterday. I mean, his plan is to

State v. Giles

157

1 show, "Look, we were right because he's violent later. We
2 were right because that's who he is," and he made some
3 statements as to being part of a possible murder investigation
4 which I have no idea, exactly, and that's what the purpose of
5 bringing up all these things is to make him just seem like a
6 bad person. Now, he has things on his record. He has done
7 wrong in the past, but he should still get the same
8 opportunity and rights to be cloaked in innocence, not
9 counting his prior convictions. Now, we're very different on
10 the fact that I can't bring up and should not bring up his,
11 the degree and, and the types of charges he had in the past
12 because that would taint the Defendant's rights, but I think
13 we're a little bit on different grounds because of the right
14 to look into the reputation of his past and things that he has
15 been convicted of, but he has Fifth Amendment rights, Sixth
16 Amendment rights not to have to testify as to what he has
17 pending that he hasn't been charged with that happened later
18 on.

19 THE COURT: All right. Well, I'm going to, I'm going to
20 stay by my prior ruling, but I think there is a distinction
21 there, to what extent it makes a difference -- I think the
22 major reason for my ruling is the fact that these alleged bad
23 acts didn't occur until 10 months after the alleged incident
24 in this case.

25 MR. TODD: Thank you, Your Honor.

1 THE COURT: All right. So I'm going to stick by my prior
2 ruling and grant the State's motion to suppress. All right.
3 Anything else from the State?

4 MR. TODD: Nothing from the State, Your Honor.

5 THE COURT: Anything else from the Defense?

6 MR. HAZZARD: The Court wanted to address an issue
7 regarding a juror, I believe?

8 THE COURT: Yes. I understand we have someone here in
9 the courtroom. Sir, could you stand? What's your name?

10 MR. WASHINGTON: My name is Timothy Washington.

11 THE COURT: All right. Mr. Washington, you know there's
12 a Shada M. Linnen that's on the jury. You know her?

13 MR. WASHINGTON: Shada, no, sir. Ethel.

14 THE COURT: Oh, there's two of them. Oh, Ethel A.
15 Linnen.

16 MR. WASHINGTON: Yes, sir.

17 THE COURT: All right. Now, how do you know her?

18 MR. WASHINGTON: That's my fiancée. We're engaged.

19 THE COURT: Okay. All right. And I think we agree that
20 we'll just seat the alternate and excuse her since -- not that
21 you've done anything wrong, and I don't want to imply that
22 you've done anything wrong, but the fact that you've been
23 hearing some arguments --

24 MR. WASHINGTON: Okay.

25 THE COURT: -- that the jury is not privy to might create

State v. Giles

159

1 a problem legally, not, not that you've done anything wrong.
2 So I think we've agreed that we're going to excuse Ethel A.
3 Linnen, Juror Number 193; is that correct?

4 MR. TODD: Yes, sir, Your Honor.

5 THE COURT: Is that correct?

6 MR. HAZZARD: Yes, sir, Your Honor.

7 THE COURT: All right. Let's bring Ms. Linnen in, Juror,
8 Ethel A. Linnen, Juror 193, Ethel A. Linnen.

9 (Whereupon, Juror Number 193 enters the courtroom.)

10 THE COURT: All right, Ms. Linnen. All right. You are
11 Ethel A. Linnen?

12 MS. LINNEN: Yes.

13 THE COURT: Okay. All right. We're going to excuse you
14 from this particular jury. Not -- I don't want you to think
15 you've done anything wrong or that your fiancé has done
16 anything wrong, but the fact that he's in the courtroom when
17 we've been discussing the law, and I'll explain it to the jury
18 a little bit later as to why we do that, but to avoid even any
19 problems that may arise, I'm going to go ahead and excuse you
20 from this particular jury. Okay.

21 MS. LINNEN: Okay.

22 THE COURT: All right. Thank you. Do you have anything
23 in the jury room?

24 MS. LINNEN: No.

25 THE COURT: All right. You can stay with us. You can

1 watch the trial or you're free to go, whatever you want to do.

2 MS. LINNEN: Okay.

3 THE COURT: Okay. Sounds good. Thank you, ma'am. Yeah,
4 she can go that way. Now, you'll -- you should have been
5 given a phone number. You'll need to call that number after
6 six p.m. today and that'll give you some further instructions
7 on whether you need to return and when you need to return.
8 Okay.

9 MS. LINNEN: Thank you.

10 THE COURT: All right. Thank you very much.

11 (Whereupon, Juror Number 193 exits courtroom.).

12 THE COURT: All right. Anything from the State before we
13 bring the jury in?

14 MR. TODD: No, sir.

15 THE COURT: Anything from the Defense?

16 MR. HAZZARD: Nothing from the Defense, Your Honor.

17 THE COURT: All right. Let's go ahead and bring the jury
18 in.

19 (Whereupon, the following takes place in the presence of
20 the jury.)

21 THE COURT: No. She can, she can stay. We're going to
22 seat her. So you can sit wherever you like. That'll be fine.
23 All right. Ladies and gentlemen, welcome back. I apologize
24 for keeping you in the jury room for so long, but we did have
25 some matters we needed to address in preparation for the start

Opening Instructions by Court

161

1 of this trial. The first thing I understand, Ms. Valentin, is
2 -- am I pronouncing that correctly? Okay. I understand
3 you've been selected as foreperson. Is that correct?

4 MS. VALENTIN: Yes, sir.

5 THE COURT: All right. Thank you for serving in that
6 capacity, and if you'd always occupy the seat where you now
7 sit. Now, we've also had to -- I've excused Ms. Linnen from
8 the jury, and so, Ms. Coffey, you are now part of the regular
9 jury. Okay. You're no longer an alternate. You're part of
10 the 12-person jury, and so the rest of you are at liberty to
11 sit in whatever seat you like. As I said, during the trial of
12 the case you can occupy the same seat, alternate seats,
13 whatever makes you feel more comfortable. Ms. Valentin,
14 you're the only one that is restricted to the first seat on
15 the front row.

16 Now, as I told you during jury qualifications and voir
17 dire, just like witnesses, jurors are constantly taking oaths.
18 So I'll need you to stand and raise your right hand while the
19 Clerk of Court administers the oath for you to serve as jurors
20 on this particular case.

21 (Whereupon, the jury is sworn by the clerk.).

22 THE COURT: All right. Is there any member the jury that
23 did not respond to the oath by saying I do? If so, please
24 stand.

25 (No response.)

1 THE COURT: Very well.

2 Now, ladies and gentlemen, we are getting ready to start
3 the trial of the case of the State of South Carolina versus
4 Jamie Lahuane Giles. Now, before we begin the trial I want to
5 go over some things with you, some preliminary charges to let
6 you know that I know from watching TV, watching movies,
7 reading books, things like that, trials are often full of a
8 lot of suspense and lot of action, and while that might be the
9 case in this trial, it probably won't be. The primary
10 function of this trial is a search for the truth, what
11 happened. That is often a slow, deliberate, repetitive
12 process, the exact opposite of what you might be accustomed to
13 when you watch trials on TV, movies, for entertainment
14 purposes and things of that nature, but I hope you do find the
15 trial entertaining. I hope you find it educational, and I
16 want to thank you from the outset for serving as jurors in
17 this case.

18 The attorneys appearing before you are advocates for the
19 parties they represent, but first and foremost, they are
20 officers of the court. They're sworn to uphold the integrity
21 and fairness of our judicial system and to help you in a
22 search for the truth. You can expect them to be professional,
23 competent and ethical in the representation of their clients'
24 interests.

25 Now, what I now say to you is intended to serve as an

Opening Instructions by Court

163

1 introduction to the trial of this case. These remarks are not
2 a charge on the law of this case. I'll instruct you on the
3 law applicable to this case at the end of the trial before you
4 retire to consider your verdict. This is merely an
5 explanation of the procedure that we'll follow in this case so
6 that you can better understand what is happening.

7 Now, the Defendant is charged by four indictments. He is
8 charged by these indictments with attempted -- the attempted
9 murder of Tuvera McCrae. He is charged with the attempted
10 murder of Daniea Kelly. He is charged with discharging a
11 firearm into a vehicle and with possession of a weapon during
12 the commission of a violent crime. Now, I'll explain the
13 elements of these crimes to you at a later time when I charge
14 you on the law applicable to this case, but what you need to
15 know now is that these indictments are simply the charges by
16 which this case is brought into this court. They are not in
17 any sense evidence of any of the allegations contained in
18 them. The Defendant has pled not guilty to these indictments.
19 Therefore, the State has the burden of proving each of the
20 elements of the indictment beyond a reasonable doubt. It will
21 be your duty, ladies and gentlemen, to decide whether or not
22 the State has met that burden. Your purpose as jurors is to
23 find and determine the facts of this case. You're the sole
24 judge of the facts of this case. If at any time I make a
25 comment regarding the facts of this case you must disregard my

Opening Instructions by Court

164

1 comments. You are to determine the facts from the testimony
2 you hear and the other evidence introduced in court. It is up
3 to you to determine the inferences which you feel may properly
4 be drawn from that evidence. It is especially important that
5 you perform your duty of determining the facts diligently and
6 conscientiously because ordinarily there is no way to correct
7 an erroneous determination of the facts by a jury. Now, on
8 the other hand and with equal emphasis, the same law that
9 makes you the judge of the facts in this case makes me the
10 judge of the law. The law as given by the Court is the only
11 law that you can consider. You must accept and follow the law
12 as I give it to you, even though you may disagree with it.
13 Just as I cannot tell you what the facts of this case are, you
14 cannot disagree with me about the law to be applied in this
15 case. Your job is to take the law as I give it to you and
16 apply it to the facts as you find those facts to be from the
17 testimony of witnesses and any other evidence that is
18 introduced at trial. After doing that you will then render
19 your verdict, a true and just verdict under the solemn oath
20 that you just took as jurors.

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

Opening Instructions by Court

165

1 then discuss the case, but only in the jury room with your
2 fellow jurors. The attorneys and parties in the case have
3 been advised that they're not to talk to you at all either.
4 So they're not being rude. They're just following the
5 instructions of the Court.

6 Now, during the trial you're not to read or listen to or
7 watch any news reports about this case, if there is any. This
8 includes anything that may be in the newspaper or on the
9 internet, the radio or the television. You are not to
10 consider anything that you may have read or heard about the
11 case outside of the courtroom, whether that is before or
12 during the trial of this case. It is important that you keep
13 an open mind and not decide any issue in this case until all
14 of the evidence has been presented to you, the parties have
15 made their closing arguments and I've instructed you on the
16 law to be applied in this case. It is your solemn
17 responsibility to determine the guilt or innocence of the
18 Defendant, and your verdict must be based solely on the
19 evidence as it is presented to you in this trial and on the
20 law as I instruct you during and at the close of the trial.

21 Now, in just a moment the Solicitor will make what's
22 called an opening statement in which the Solicitor will
23 explain to you the issues in this case or at least what the
24 Solicitor thinks the issues in this case are. The attorney
25 for the Defendant may also make an opening statement, although

Opening Instructions by Court

166

1 he is not required to do so. What the attorneys tell you
2 during their opening statements is not evidence in this case.
3 It is only their contention as to what they feel the facts in
4 this case are. The evidence in this case will be presented to
5 you by testimony of sworn witnesses from the witness stand and
6 by any other exhibits that may be introduced into evidence.

7 Now, in determining what the true facts are in this case
8 you must decide whether or not the testimony of a witness is
9 believable. It will be my responsibility to rule as a matter
10 of law as to whether certain testimony is admissible at all or
11 not. However, once testimony is admitted into evidence
12 whether or not you believe it is solely for you to determine.
13 In deciding whether to believe a witness you have the right to
14 consider the interest of any witness, the bias of any witness,
15 the prejudice of any witness, the opportunity for the witness
16 to have seen the matters and things about which the witness
17 may testify and the way the witness acts on the witness stand.
18 You have the right to consider anything that is in the record
19 that will help you evaluate the testimony of the witness.
20 That means that it is your duty to pay close attention to the
21 witnesses, to observe them, to listen to them and to pay close
22 attention to the attorneys and to the Court. Don't let your
23 thoughts wander, but give strict attention to the testimony in
24 this case so at the end of all of the testimony, after the
25 arguments of counsel and a charge of the law by the Court you

Opening by State

167

1 will then be in a position to determine what the facts are and
2 to apply the law to those facts and render a just and true
3 verdict.

4 All right. Is there any challenges or additional charges
5 from the State?

6 MR. TODD: None from the State, Your Honor.

7 THE COURT: Any from the Defense?

8 MR. HAZZARD: None from the Defense, Your Honor.

9 THE COURT: All right. Ladies and gentlemen, we'll begin
10 the trial at this time with the opening statements by the
11 attorneys. As I told you, these opening statements are not
12 evidence. It's just the attorney's contention as to what they
13 think the facts in this case will show. Mr. Todd.

14 MR. TODD: Thank you, Your Honor.

15 December 3rd, 2014, in the Andrews Section of Georgetown
16 County off of Myrtle Road, this man over here, Mr. Jamie
17 Giles, shot into a car no less than six times in an attempt to
18 kill that man right there, Mr. Daniea Kelly. Sitting directly
19 beside him was Ms. Tuvera McCrae.

20 He came out of the trailer onto the porch. There was a
21 car parked just off the porch, fairly close range and fired
22 into that car, hitting Mr. Kelly three times, in the lower
23 chest, in the hip, upper thigh. He fired until there were no
24 bullets in the gun. If he had more he would have shot them,
25 but he fired until he couldn't fire anymore.

1 He's been charged with four different crimes, all of them
2 with the same incident, two counts of attempted murder because
3 he shot into the car where two people were sitting. He shot
4 multiple times trying to kill them using a firearm during the
5 commission of a violent crime and the other crime is shooting
6 into the -- into the occupied car. All stem from the same set
7 of facts.

8 Now, why did he do this? That's going to be a question.
9 You have to ask yourself whether he was reasonable in doing it
10 because they're going to have defenses. The reason he did, as
11 we believe, about six months before, a July party at the same
12 residence on Myrtle Road there was two trailers that were
13 throwing a little party. A bunch of people were there from
14 Andrews, some people from Georgetown. Things got a little
15 wild with Mr. Giles. He got into an argument with his
16 girlfriend. It went outside, and at some point in time it got
17 violent. It was broken up by some individuals. They'll tell
18 you about that. He was embarrassed in front of his friends..
19 They had seen each other several times before. Mr. Kelly had
20 actually apologized at some point in time saying, "Look, you
21 know, I'm sorry, but we didn't want the police showing up. We
22 didn't want any trouble," but it wasn't until six months later
23 Mr. Giles had his opportunity to get revenge on him, and
24 that's why he shot him because he was embarrassed by this man
25 right here, and he didn't care who was in the car with him.

Opening by Defense

169

1 He didn't care who was around. He just fired into the car.

2 Now, this case is very important to everybody here. It's
3 important to Mr. Giles. It's important to the Defendant.
4 It's important to society. You're going to hear testimony.
5 You're going to hear evidence. You're going to hear from a
6 lot of people about their version of what happened. They're
7 all going to be very similar, but everyone sits in a different
8 seat. They see things just a little bit different. We've all
9 seen different things when you're seeing one side of my face,
10 the other's seeing the other. So there's going to be a little
11 bit different perception, but the general facts are very much
12 the same. I ask that you please pay attention to everyone
13 that testifies, all the evidence and you consider everything,
14 and ultimately at the end we'll have another discussion about
15 what we've presented to you in the evidence. Thank you.

16 THE COURT: All right. Mr. Hazzard, does the Defense
17 wish to make an opening statement?

18 MR. HAZZARD: Yes, sir, Your Honor. May it please the
19 Court?

20 THE COURT: Yes, sir.

21 MR. HAZZARD: Good morning, ladies and gentlemen. Mr.
22 Todd is right about one thing, there's going to be a lot of
23 different points of view as to what occurred on the evening of
24 December 3rd, 2014. What evidence and testimony will show is
25 that back in July of 2014, Mr. Giles was beaten severely by

1 this young man here and some of his compatriots, that
2 subsequent to that beating that a gun was pulled out by that
3 young man seated right over there and brandished in Mr. Giles'
4 face. Evidence and testimony will show that on the evening of
5 December 3rd that Mr. Giles was at a residence. Mr. Giles
6 lives in the trailer park, and that's where all this took
7 place back in July of 2014 and in December of 2014, the same
8 trailer park, same area.

9 Mr. Giles was at the trailer of the neighborhood
10 bootlegger. In some communities there's an individual you can
11 go by their house or their apartment and you can buy loose
12 cigarettes or you can buy candy or you can stop in and sit
13 down and get a drink if you want, you know, and that's where
14 Mr. Giles was on this particular evening. Evidence and
15 testimony will show that Mr. Giles was there not bothering
16 anyone and he sees a compatriot of Mr. Rodney Kinloch, one of
17 the individuals who was involved in the beating back in July,
18 that this individual comes into the bootlegger's trailer.
19 Rodney is sitting -- Rodney comes in. Jamie's sitting there
20 having a beer, having a drink, minding his own business, that
21 Rodney Kinloch comes in, stands behind him, goes back out,
22 comes back in, stands behind him for a period of time, goes
23 back out. Evidence and testimony will show you that Jamie got
24 to be a little concerned, this person who had helped Mr. Kelly
25 administer this severe beating, beating that caused, evidence

Opening by Defense

171

1 and testimony will show, him to, you know, have -- literally
2 have blood in his stool. That's how bad the beating was, that
3 this individual was there, didn't come up, didn't say hi,
4 didn't extend a hand of fellowship, came up standing behind
5 him. Evidence and testimony will show that after the second
6 time Mr. Kelly's compatriot, Mr. Kinloch came in and stood
7 behind Jamie that Jamie said, "Well, what's going on here?
8 Maybe I can look out the window, see what's going on here,"
9 and evidence and testimony will show that at that time he sees
10 Mr. Kelly, the same man that five months before had racked a
11 gun in his face after kicking him and stomping on him on the
12 ground, who had threatened him, he sees that same man outside
13 in his truck. Evidence and testimony will show that when Mr.
14 Kelly and Ms. McCrae arrived at the bootlegger's trailer, the
15 truck is parked kind of perpendicular to the trailer. It's
16 parked one way, but that for reasons satisfactory only to
17 themselves, the truck ends up getting turned so that the
18 window of the truck is facing the door of the trailer.
19 Evidence and testimony will show that after Mr. Kinloch comes
20 out the third time he takes up a position on the opposite side
21 of the trailer steps, thus basically creating a triangle to
22 the door of the trailer, and evidence and testimony will show
23 that Mr. Giles is there and he's thinking -- well, he'll tell
24 you what he was thinking. Evidence and testimony will show
25 you that Mr. Giles left the trailer, walked out the front door

1 and when he walked out the front door he shot at Mr. Kelly,
2 shot at his truck. Now, the Prosecutor told you straight out
3 he was shooting at Mr. Kelly. He didn't shoot at Ms. McCrae,
4 didn't hit Ms. McCrae. Not sure why he's charged with
5 attempted murder with regard to her, have no idea, but that --
6 the State has the power to bring whatever charges they want.
7 They chose to bring that charge with regard to Ms. McCrae.

8 I don't think any of you have any question in your mind
9 what the Defense perspective is here, and that is the
10 perspective of self defense. Now, the law in South Carolina,
11 I believe the Judge will charge you before this trial is over,
12 is pretty clear with regard to what constitutes self defense,
13 and one of the things I think that the law says and I believe
14 the Judge will charge you on it is that an individual has the
15 right to act on appearances and that they do not have to wait
16 until their assailant or possible assailant gets the drop on
17 them. They don't have to wait until someone else fires first.
18 They don't have to wait to get shot. It's not like the Old
19 West. In the old westerns they always had, "Well, did he draw
20 on you?" Well, if a guy's standing out, in the old westerns,
21 if a guy is standing out in the middle of the street and he's
22 got his, his coat back like that and his hand on the gun, I
23 wouldn't think you'd have to wait for him to draw on you and
24 that's the law here in South Carolina. So, yes, Mr. Todd is
25 right. You will hear a lot of different perspectives as to

Opening by Defense

173

1 what people saw or thought they saw and what occurred, and it
2 will be your job to determine what actually happened and did
3 that constitute self-defense, did Mr. Giles' actions on the
4 night of December 3rd, 2014, constitute self-defense, defense
5 of self, did he do something to bring it on himself, but
6 listen to all of the evidence, and as Mr. Todd said we'll come
7 back and talk to you after all the evidence is in and give our
8 positions, our different positions on it, but also I ask you
9 listen to what all the witnesses say but also keep in mind --
10 they always say actions speak louder than words. Don't just
11 listen to what the witnesses say. Keep an eye on their
12 actions on that night, and I submit to you if you do that
13 you're going to return a verdict of not guilty. Thank you for
14 your time and your attention.

15 THE COURT: All right. Ladies and gentlemen, at this
16 time we'll begin the evidentiary portion of the trial. The
17 State can call their first witness.

18 MR. TODD: Thank you, Your Honor. The State calls Daniea
19 Kelly.

20 THE COURT: All right.

21 Whereupon, Daniea Kelly was called to the stand, duly
22 sworn by the clerk and testified as follows:

23 THE CLERK: Thank you. Please be seated and state your
24 name for the record.

25 MR. KELLY: My name is Daniea Kelly.

1 THE COURT: Mr. Kelly, if I could get you to spell your
2 first and last name, please.

3 MR. KELLY: First name is D-A-N-I-E-A, last name is K-E-
4 L-L-Y, Kelly, Daniea Kelly.

5 THE COURT: All right. Mr. Todd.

6 MR. TODD: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. TODD:

9 Q Mr. Kelly, we want to get to know a little bit about you.

10 A Yes, sir.

11 Q Where did you grow up?

12 A Georgetown, South Carolina.

13 Q And have -- were you born in Georgetown?

14 A No, sir. Born in New York, but I moved to Georgetown at
15 a very early age, at the age of eight. So I grew up in South
16 Carolina most all my life.

17 Q Where did you go to high school?

18 A Carvers Bay High and Choppee High School right in
19 Georgetown, South Carolina.

20 Q So would you consider yourself a local?

21 A Yes, sir.

22 Q Okay. Now, we've had a --

23 REPORTER: Don't get quite so close to that. Thank you.

24 A Okay.

25 Q We've had a, a few dates that we want to discuss. Let's

Daniea Kelly - Direct by State

175

1 go to July, I believe it was the 15th, 2014. Can you tell me
2 where you were that night?

3 A On July, July 15th, 2014, I was in Andrews, South
4 Carolina, in a trailer park, and on this evening while we was
5 in the trailer park Mr. Jamie Giles over there and his
6 girlfriend, Brenda Brown, got into an altercation which led to
7 him assaulting, beating her up badly, which led to me, myself,
8 Daniea Kelly, Ronnie Kinloch and Phillip Bell grabbing him and
9 restraining him, never fighting him, restraining him for her
10 safety so that she can get away and that's what we did, and --

11 Q Now, at that altercation were there a bunch of people
12 there?

13 A Yes, sir.

14 Q And was it just a celebration in general?

15 A Yes, sir. It was just a little cookout, little outing.

16 Q And how did you find out about this, this party?

17 A Ms. Tuvera McCrae back there, that's a very close friend
18 of mine. She from Andrews, South Carolina, as well as Phillip
19 Bell. They lived in Andrews, South Carolina, in the trailer
20 park, which I normally go over there and spend a lot of time
21 with them. They're friends of mine.

22 Q And Mr. Bell, he's, he's from Georgetown?

23 A Yes, sir.

24 Q And did you kind of grow up with him?

25 A Yes, sir. I've known him quite a while.

1 Q Okay. Now, on that night, ultimately, did Mr. Giles
2 leave the party?

3 A Yes, sir.

4 Q Okay. Did he walk off on his own?

5 A Yes, sir.

6 Q Okay. Now, let's go to December 3rd. Tell us what you
7 did that day into that night.

8 A On the evening of December 3rd it was a Wednesday night
9 just getting off work leaving the barbershop, me and Rodney
10 Kinloch went by McDonald's, got something to eat. After we
11 got something to eat, there just wasn't nothing to do. I
12 called my friend back Tuvera McCrae, I called her and asked
13 her what was she doing. She said she wasn't doing nothing. I
14 said me and Rodney Kinloch was going to come by for a little
15 while, was it okay. She stated yes. So we went out to
16 Andrews, went to her house. When we got to her home she got
17 -- she came outside. Rodney Kinloch got out of the passenger
18 truck seat and got in the back seat. She got in the front
19 seat with me. Rodney Kinloch then stated that he had wanted
20 some loose cigarette and that he had wanted to go to Punchy,
21 Mr. Burroughs' house in the trailer park, which was only like
22 four to five minutes away, and we drove over there. When we
23 got over there that's when Mr. Rodney Kinloch, you know, went
24 in to go purchase his loose cigarettes.

25 Q Now, you went to go visit Ms. McCrae. Were you all

Daniea Kelly - Direct by State

177

1 dating then?

2 A Yes, yes, sir.

3 Q Okay. So you would kind of consider her a girlfriend?

4 A Yes, sir.

5 Q And would you spend time with her just to go watch TV and
6 do things like that just to be with her?

7 A Yes, sir.

8 Q Okay. And what was your intention that night? Was it to
9 do something like that, just to be with her?

10 A Yes, sir.

11 Q Okay. Were there any hard plans that you were going to
12 get into, watch a movie or anything or was it just hang out?

13 A Just hang out. We was going to -- once we leave there we
14 was going to go back to her house just, just out and just
15 talking in the yard, what we normally always do when I'm down.

16 Q And have you been to Mr. Burroughs' house before?

17 A Yes, sir.

18 Q And how well did you know Mr. Burroughs?

19 A I knew Mr. Burroughs pretty well over a year, was going
20 to his, his establishment over a year.

21 Q And tell us about his, his house, his little
22 establishment there. What, what do you do when you get there?

23 A Well, he have a little establishment to where, you know,
24 he have his little, little juke joint where the music playing
25 in. He sells items from candies to drinks to sodas to loose

1 cigarettes to alcohol, just little, little kitchen little
2 area, little hangout area, well, you know, normally friends
3 that he allow come in, goes over and just have a little outing
4 from time to time.

5 Q Does he play music and stuff there for people?

6 A Yes, sir.

7 Q Okay. Now, on the night of December 3rd when you went to
8 Mr. Burroughs' house. and his nickname is Punchy; right?

9 That's what everybody called him?

10 A Yes, sir.

11 Q Okay. Did you go inside the residence?

12 A Never got out the vehicle, never went inside the
13 residence, sir.

14 Q What were you doing in your vehicle?

15 A Sitting down in the vehicle, window up talking to my
16 friend, Tuvera McCrae.

17 Q And were you all just talking in general about what you
18 did and everything that day?

19 A Yes, sir.

20 Q At any point in time were you planning on going in?

21 A No, sir.

22 Q Now, Mr. Kinloch wanted to go there and get a drink; is
23 that correct?

24 A Yes, sir. And some loose cigarettes.

25 Q And was your plans just to go there, stay for a few

Daniea Kelly - Direct by State

179

1 minutes and then head out?

2 MR. HAZZARD: Objection to leading.

3 THE COURT: Sustained.

4 BY MR. TODD:

5 Q What were your plans there? How long were you planning
6 on staying?

7 A Well, we had no intentions of staying there much time at
8 all. He was just going to get his -- what he was going to get
9 and we was leaving.

10 Q Now, when you pulled up to the residence how was your
11 vehicle facing?

12 A When I pulled up to the residence we pulled, we pulled
13 directly in the yard, and the reason why we backed out of the
14 yard because the way how the truck were, the long bed of the
15 truck was blocking the drive -- like blocking people that's
16 passing by. So the reason for me backing out and pulling
17 along sideways because I was having to drive -- if somebody, if
18 somebody was driving by, I would have -- partial of the truck
19 was blocking the roadway. So I backed out and parked on the
20 side so I wouldn't be blocking to enter the driveway nor
21 driving down the road, down the rock road.

22 Q So ultimately you parked your car kind of parallel to the
23 road?

24 A Yes, sir.

25 Q And was -- where was your driver's door facing?

1 A My driver door was facing the trailer.

2 Q How far from the porch of the trailer were you sitting in
3 your car?

4 A The distance from the trailer, the distance from the
5 porch of the trailer from me was probably, well, like to where
6 the -- like from me where that officer at from what a -- from
7 the, from the porch, from the top of the porch and from the
8 truck was at to the road was like right where the officer at
9 right there.

10 Q Okay. So you were fairly close?

11 A Yes, sir.

12 Q Tell us a little bit about your truck. What color is it?

13 A Black.

14 Q And are the windows tinted?

15 A Yes, sir.

16 Q Were they up that night?

17 A Yes, sir. It was extremely cold, December 3rd.

18 Q Now, you had stated Mr. Kinloch had gotten out of the car
19 and walked in --

20 A Yes, sir.

21 Q -- to the trailer. How many times did he go in and out?

22 A Twice.

23 Q When he went in the first time did he come out with a
24 drink or cigarettes?

25 A No, sir. He went in the first time and placed the order.

Daniea Kelly - Direct by State

181

1 He had a few people in --

2 MR. HAZZARD: Objection.

3 THE COURT: Sustained.

4 Q Did he come out with anything?

5 A No, sir.

6 Q Did he -- did you ask him who was in, inside?

7 A Yes, sir.

8 Q And to your knowledge were there quite a few people
9 inside the residence?

10 A Yes, sir.

11 Q Now, you said he went in a second time; is that correct?

12 A Yes, sir.

13 Q How long was he in that second time?

14 A He was in the second time maybe about, about four to five
15 minutes.

16 Q When he came out the second time was he carrying a drink
17 and cigarettes?

18 A Yes, sir.

19 Q Now, once he came out did you leave immediately once he
20 walked out the door?

21 A In between him walking from the porch to the vehicle,
22 that's when I observed Jamie Giles coming out of the -- and
23 standing on top of the steps like shooting multiple fires. So
24 we never got a chance to leave.

25 Q Now, you saw Mr. Giles?

- 1 A I saw Mr. Giles, sir.
- 2 Q And he stepped out of the residence and began firing?
- 3 A Yes, sir.
- 4 Q Do you know how many shots he fired?
- 5 A He fired about six to seven shots.
- 6 Q And were you hit by those shots?
- 7 A Yes, sir. I got hit in the chest one time where I still
- 8 have a bullet lodged at. I got hit in my upper hip and I got
- 9 hit in the leg where I have rods in my leg.
- 10 Q Now, were those bullets removed?
- 11 A The one in my chest is still lodged in my chest.
- 12 Q Okay. Now, once you were hit, did you see where Mr.
- 13 Giles went?
- 14 A No, sir. From extremely chest pain and bleeding, loss of
- 15 blood I just -- I, I blacked out for -- I blacked out
- 16 temporarily.
- 17 Q Now, did you say anything to Mr. Giles?
- 18 A No, sir.
- 19 Q Did you even look at him as he was coming out, I mean, as
- 20 far as trying to talk to him?
- 21 A No, sir.
- 22 Q Did you reach for anything, any weapons?
- 23 A No, sir.
- 24 Q Did you have a weapon on you that night?
- 25 A No, sir.

Daniea Kelly - Direct by State

183

1 Q Did Mr. or did Ms. McCrea have a weapon on her that
2 night?

3 A No, sir.

4 Q To your knowledge did Mr. Kinloch have a weapon on him?

5 A He didn't have no weapon at all, sir.

6 Q Now, you didn't drive after you got shot; is that
7 correct?

8 A Correct.

9 Q Tell me what you remember from the time you got --

10 A From the time --

11 Q -- shot until when the police arrived.

12 A The time I got shot I had -- from extreme pain, I could
13 remember the extreme pain in the chest and throwing up blood
14 and I blacked out temporarily, and I came back to a lot of
15 crying and screaming from Tavera McCrea. When I came back, I
16 noticed a large amount of blood. I try to -- every time I try
17 to talk I was constantly vomiting, throwing up blood. I got
18 on my cell phone, was trying to call my kids, let them know
19 because I was in this -- I was in the state of mind I'm dying
20 and extreme pain and I couldn't even really -- I, I try to
21 dial 911. I couldn't even talk because of throwing up blood
22 because of the -- where the bullet lodged at up under my arm
23 into my chests in my lung area. So I couldn't even, you know,
24 I couldn't even talk or do nothing. I was just trying to just
25 praying and trying, you know, get the message to my kids,

1 hoping I don't die.

2 Q And you left the residence; is that correct?

3 A Yes, sir.

4 Q And who drove you from the residence?

5 A Tuvera McCrea.

6 Q And where, where did you all go?

7 A We goes to -- it was like a train. I don't know the
8 exact road, but it was like a -- right in front of a train
9 station, and she -- the reason why she left from there because
10 --

11 MR. HAZZARD: Objection.

12 THE COURT: Sustained.

13 Q Just what you recall, not, not what anybody else --

14 A We drove -- she drove up into a little parking lot right
15 beside a train station and call her mom, which called
16 paramedics from there.

17 Q Okay. And so the paramedics arrived on scene?

18 A Yes, sir.

19 Q And where were you transported to?

20 A I was transported to Grand Strand Medical.

21 Q And how long were you there?

22 A I was there for about, going on about three weeks.

23 Q Okay. Now, you tried to call 911; is that what you said?

24 A Yes, sir.

25 Q And you had a hard time talking?

1 A Yes, sir.

2 Q Where were you sitting while Ms. McCrea was driving?

3 A I was slumped over like on the passenger seat and laying
4 over towards the door, on the door.

5 Q And was there a lot of blood?

6 A Yes, sir. Extreme a lot of blood.

7 Q That's all the questions I have right now. Please answer
8 anything Mr. Hazzard may have.

9 A Yes, sir.

10 THE COURT: Cross examination.

11 MR. HAZZARD: Thank you, Your Honor. May it please the
12 Court?

13 THE COURT: Yes, sir.

14 CROSS EXAMINATION

15 BY MR. HAZZARD:

16 Q Good morning, sir.

17 A Good morning, sir.

18 Q All right. Are you the same Daniea Kelly that was
19 convicted of strong arm robbery back in 2003?

20 A Yes, sir.

21 Q Okay. And are you the same Daniea Kelly convicted of
22 disorderly conduct in September of 2004?

23 A Yes, sir. I do have a, I do have a past, sir, but I
24 wasn't in a state of deserve to almost losing my life behind
25 the hands of Jamie Giles.

1 Q All right. Thank you, sir. Now, and you want this jury
2 to believe that everything you're saying is the truth;
3 correct?

4 A Yes, sir.

5 Q Okay. But are you the same Daniea Kelly that was
6 convicted of giving false information to the police in March
7 of 2005?

8 A I never gave false information to police officer. I'm,
9 I'm not aware of what you --

10 Q Were you convicted of that offense?

11 A No, sir.

12 Q You don't believe you were convicted of that offense?

13 A No. I'm not aware of what you --

14 Q All right. Were you ever convicted of fraudulent check
15 in June of 2014?

16 A Never had a bad check written ever in my life, sir.

17 Q So you deny being convicted of that offense?

18 A No, sir.

19 Q All right. Do you deny being convicted of possession of
20 an unlawful weapon and cocaine in May of 2007?

21 A I don't deny that I was convicted of that in 2007, sir.

22 Q Okay. And was that a state conviction or a federal
23 conviction?

24 A A federal conviction, sir.

25 Q Federal conviction, and that conviction was not a secret.

1 That was a matter of common knowledge; correct?

2 A Yes, sir.

3 Q Okay. Because people who knew you knew about it, people
4 in the neighborhood and the community knew about it; correct?

5 A Yeah. Like on the search procedure of the home, the
6 officer, yes, sir.

7 Q Yes, sir. Okay. But now on this incident, December 3rd
8 of 2014, you're saying you didn't have a gun that night.

9 A Didn't have a -- I didn't have a gun, sir.

10 Q Okay. Okay. And you deny that you had a gun in July of
11 2014, didn't have a gun that night?

12 A Yes, sir. Didn't have a gun in July neither, sir.

13 Q Okay. So the only time you've had a gun was May 29th when
14 you were convicted of the offense May 29th of 2007?

15 A Yes, sir.

16 Q That was the only time?

17 A Sir?

18 Q That was, that was the only time you ever had a gun in
19 your possession?

20 A Yes, sir. That's the only time I ever had a gun in my
21 possession what I've been convicted of.

22 Q Okay. Is that the only time you've ever had a gun in
23 your possession?

24 A That's the only time I ever had a gun in my possession
25 what I been convicted of, sir.

1 Q Okay. So when you were charged October 15th of 2015 for
2 having two guns in your possession you didn't have those guns
3 in your possession?

4 MR. TODD: Objection, Your Honor.

5 THE COURT: Overruled.

6 A They were in the vehicle. They was not mine, sir.

7 Q And whose vehicle were you in?

8 A That was in my -- I was in my vehicle, sir.

9 Q Okay. But December of 2014 you didn't have a gun in your
10 possession?

11 A No, sir.

12 Q Okay. All right. So what time by your recollection did
13 you pick up Ms. McCrea?

14 A I pick up Ms. McCrea about, about nine, about ten after
15 nine.

16 Q Okay. And you indicated something about a barbershop.
17 Is that where you were working at the time?

18 A Strictly Business Barbershop in Georgetown, sir.

19 Q Okay. And do you own that business or --

20 A No, sir. I work off of Jason Collins.

21 Q Okay. And what did you do there?

22 A Cut hair, sir.

23 Q Okay. Do you have a barber's license?

24 A No, sir. It's a barbering school to where you can go
25 there and you cut hair and work towards your hours getting

Daniea Kelly - Cross by Defense

189

1 your barber's license. That's why I was attending. So it was
2 my job as well as I was enrolled in barber college.

3 Q Okay. And so of course at some point you completed
4 barber college, I take it?

5 A No, sir. I'm still, I'm still currently, still currently
6 going. I'm still --

7 Q You're still attending to this day?

8 A Prior -- I'm still, I'm still enrolled in the barber
9 college.

10 Q And which barber college would this be?

11 A Strictly Business Barber College owned by Jason Collins.

12 Q And it's your statement to this Court and this jury that
13 you are currently enrolled and attending classes at this
14 point?

15 A Yes, sir. Well, prior to me -- I'm still in, I'm still
16 enrolled in the barbershop, sir, I mean, I'm still enrolled in
17 the barbershop.

18 MR. TODD: Your Honor, asked and answered, and we keep
19 going down this same line of questioning.

20 THE COURT: Okay. Overruled. I'll allow it. Go ahead.

21 MR. HAZZARD: Your Honor, I'm going to ask at this point
22 if we can approach very briefly.

23 THE COURT: All right. Come on up.

24 (Whereupon, a bench conference is held in the presence
25 but out of the hearing of the jury.)

1 BY MR. HAZZARD:

2 Q All right, sir. Perhaps I did not ask the question
3 clearly. So please allow me to restate it, and please listen
4 very carefully to my question before you answer. At this
5 point in time -- well, let me ask you this. When was the last
6 time you attended a class at Strictly Business Barber College?

7 A October 15th.

8 Q October 15th of?

9 A 2015.

10 Q Okay. All right. Now, the vehicle that you were
11 operating that night was a rental vehicle; correct?

12 A Correct.

13 Q Okay. And Hertz wouldn't rent you a truck because I
14 think there was a question about the windows on the vehicle
15 and how tinted they were. Hertz wouldn't rent you a truck
16 with illegally tinted windows; would they?

17 A The window was already tinted, but it made it more darker
18 because I -- what time of the hour it was. It was after -- it
19 was, it was night hours.

20 Q Okay. But did they seem to be legally tinted to you?

21 A But the windows are tinted.

22 Q Legally tinted?

23 A Yes, sir. They, they do do legally --

24 Q Okay. Okay.

25 A -- tinted on rentals.

Daniea Kelly - Cross by Defense

191

1 Q Okay. And when did you rent that truck roughly?

2 A I had that rental prior to him -- prior to the incident
3 about three weeks prior. I had the rental for about three
4 weeks.

5 Q Okay. So that would be approximately the second week of
6 November then of 2014, thereabouts?

7 A Yes, sir. Around, around, around -- I had it before
8 Thanksgiving in November, so around about the 14th or 15th of
9 November.

10 Q Okay.

11 A Up until December 3rd.

12 Q Okay. And you maintained that vehicle in your possession
13 or did you maintain that vehicle in your possession from the
14 time of rental up until December 3rd of 2014?

15 A Yes, sir.

16 Q Okay. All right. Now, you indicated, I think you told
17 the jury that you picked up Ms. McCrea about what -- or got to
18 her house about what time?

19 A About ten after nine.

20 Q Okay.

21 A Nine, roughly around that, around that time. It wasn't
22 -- around that, around that time.

23 Q Okay. And let me be very clear about something, May of
24 2007 when you were convicted of possession of cocaine and
25 possession of a weapon I think you testified that that was as

1 a result of a search of your home by the police?

2 A Yes, sir.

3 Q Okay. You were a drug dealer; correct?

4 A Yes, sir. 2007.

5 Q Okay. And when did you stop being a drug dealer?

6 A I went to prison and I was currently incarcerated all the
7 way to 2012, sir.

8 Q Okay. And so you weren't a drug dealer after that time?

9 A Yes, sir.

10 Q Okay. All right. So you would not have been in Andrews
11 some 30 miles away from where you live? Would that be a fair
12 statement? You live in Georgetown, right, or lived in
13 Georgetown; right?

14 A Yes, sir. Because I was dating Tuvera McCrea.

15 Q Okay. So you didn't go over to the trailer park for the
16 purpose of selling any drugs there?

17 A No, sir. Never sold no drugs in that trailer park.

18 Q Okay. And when you took Mr. Kinloch with you, you
19 normally take him with you on a date?

20 A No, sir. He took -- he went with me because he -- work
21 was at the same establishment where I was at that day when I
22 left the barbershop. So he was already riding with me, and I
23 ask him do he mind going to Andrews with me and he agreed. So
24 I said yeah. We went on.

25 Q Well, when he left the barbershop with you to your

1 statement, where were, where were you supposed to be taking
2 him? Was he riding with you because you were supposed to be
3 taking him home or --

4 A Yes, sir. I normally be a ride for him, but we went to
5 McDonald's afterwards and I asked him if he don't mind riding
6 with me to Andrews. He didn't have nothing to do. So he
7 agreed.

8 Q Okay. Was there any indication as to what time in the
9 middle of a work week you were going to bring him back to
10 Georgetown?

11 A No. It wasn't no specific time, sir.

12 Q Okay. So your version is that he just rode with you to
13 see your girlfriend just to be riding with you?

14 A Yeah. He's a very close friend of mine, so that wouldn't
15 be -- that wouldn't have been a problem he riding with me to
16 go see my girlfriend.

17 Q Got you. So you get to her home at about 10 after nine.

18 A Correct.

19 Q And then this person riding with you decides they want to
20 go somewhere else.

21 A Correct.

22 Q Okay. And so all of you load up in the car and go to the
23 trailer park?

24 A Correct.

25 Q Okay. And the reason for going to the trailer park your

1 testimony is so that Mr. Kinloch could get a drink and a
2 cigarette?

3 A Yes, sir. He went to go get some loose cigarettes.

4 Q Okay. Do they have convenience stores in Andrews?

5 A Yeah. They have convenience store in Andrews, sir, but
6 this, this particular place is only like four to five minutes
7 away. It was the closest, convenient place, and he went to go
8 get some loose cigarettes. So this convenience store don't
9 actually sell the loose cigarettes.

10 Q Uh-huh. Got you. Okay. So you then all load up in the
11 car and go to the trailer park; correct?

12 A Correct.

13 Q Okay. And when you get there -- now, let's, let's be
14 clear on something here. We're talking about the trailers.
15 The trailers are actually, if this is the road leading into
16 the trailer park going this way --

17 A Uh-huh.

18 Q -- the trailers are actually perpendicular to the road;
19 right?

20 A Uh-huh. Yes, sir.

21 Q Okay. So when we're talking about Mr. Burroughs' trailer
22 and whoever's trailer was next to him, we're talking about a
23 trailer here, and then a trailer here; right?

24 A Yes, sir.

25 Q Okay. So let's assume this is Mr. Burroughs' trailer.

1 Here's the road that leads into the trailer park. Here's the
2 back of his trailer. Here's the front door.

3 A Yes, sir.

4 Q All right. The other trailer over here, the same way,
5 just like another table like this. When you pulled up and you
6 pulled in, how did you park your vehicle?

7 A From my angle right here, sir, to where Mr. -- the way
8 his trailer was, his trailer was like -- if his trailer was
9 right here --

10 Q Yes, sir.

11 A -- and another trailer is right here, sir, I came -- when
12 I turn off of Myrtle Road and turn in, I turn directly into
13 his driveway.

14 Q Okay.

15 A After being in the driveway, the back end of my truck was
16 in the road. So I backed out of the driveway and was facing
17 alongside of the trailer. So, therefore, the way I was facing
18 I was facing back the road to where I could leave out and my
19 driver's side'll be facing the door. If somebody exit off --
20 exit from Mr. Burroughs' house, my driver's side was on that
21 side, but my reason for backing out of the yard and come right
22 there was because I was blocking the driveway, his driveway as
23 well as pack -- the back end of the truck was still semi in
24 the road. So I pull on the side so I wouldn't be blacking
25 neither the road nor his home door, front door driveway.

1 Q Other than Mr. Burroughs' trailer and the trailer
2 directly parallel to it, are there any other trailers beyond
3 that? There are no other trailers beyond Mr. Burroughs'
4 trailer and the one parallel to it; are there?

5 A Yes, sir. It -- Mr. Burroughs' trailer is actually in
6 the middle of two other -- there's a trailer on this side and
7 there's, and there's a trailer on this side.

8 Q Yeah. And they were all parallel; right, like Dominos in
9 a row; right?

10 A Yes, sir.

11 Q So when you say I'm in between Mr. Burroughs' trailer
12 long-ways like this and the other trailer here, and I'm parked
13 perpendicular like this, here's the roadway. Nobody is
14 driving through there between the two trailers; are they?

15 A Sir, not off of the main highway. The road where Mr. --
16 where the trailer park is located at they have rock roads.
17 They have side roads.

18 Q Okay.

19 A So by me pulling in Mr. Burroughs' trailer, when I pull
20 in directly in his yard, the back end still was in the, in
21 the, in the rock road driveway. So therefore, there's traffic
22 still going by. So that's why I backed out and pull on the
23 side so I won't be blocking the driveway of his yard, nor the
24 driveway or the, or the road passing.

25 Q Okay. So that's your version as to why you ended up with

1 your driver's side window facing the door of the trailer?

2 A Correct. Because -- by -- with my driver's side facing
3 that way, when Mr. Kinloch retrieve his cigarettes and come
4 back and get in the truck, that's the -- that's the route I'll
5 be going back out, the same route I came in.

6 Q Okay. And you -- you testified, I believe, that Mr.
7 Burroughs', the bootlegger's trailer is within five minutes of
8 where Ms. McCrea lived?

9 A Four to five minutes, sir. Yes, sir.

10 Q Okay. So you got to her house about ten after nine. Did
11 you stay there for any length of time or did you all just --

12 A We probably was at her house -- we was in her yard for
13 probably about another five minutes just talking.

14 Q Okay. So that gets us up to about 9:15.

15 A About 9:15.

16 Q Okay.

17 A I want to be correct with this timeframe. I wasn't aware
18 of my watch or nothing like that. So I'm just giving a rough
19 time, but I know the hours. I know it was the nine, the 9:00
20 o'clock hour. So you know, I'm just being roughly with the
21 timeframe it was, so.

22 Q All right. Thank you, sir.

23 A Just want to be honest on that.

24 Q You want to be honest now?

25 A No. I'm going to be honest with my whole statement, my

1 whole, my whole testimony.

2 Q All right. Thank you, sir. Okay. So at thereabout it
3 would be around 9:20 then when you arrived at Mr. Burroughs'
4 trailer?

5 A Yes, sir. Roughly around 9:20.

6 Q Okay. And you testified to the jury that the purpose for
7 going to the trailer was to obtain a loose cigarette and a
8 drink.

9 A Yes, sir.

10 Q Okay. And when you arrived around 9:20, did Mr. Kinloch
11 get out of the truck and go in the trailer?

12 A Yes, sir.

13 Q Okay.

14 A Before, before he exit the vehicle he asked me if I
15 wanted anything out --

16 MR. HAZZARD: Objection. Objection.

17 THE COURT: Sustained.

18 BY MR. HAZZARD:

19 Q I'm asking that you tell me what you said, saw, things of
20 that nature, not what someone else said, please.

21 A No. No one else said that. He got out of my vehicle.
22 Before exiting the vehicle asked me did I wanted anything or
23 did she want anything.

24 THE COURT: Okay. Now -- oh, okay. I'll allow that.

25 Go ahead.

Daniea Kelly - Cross by Defense

199

1 Q Okay.

2 A I stated no. She stated she was good. That's when he
3 exited the vehicle and say he was going to get his cigarette,
4 drink.

5 Q Okay. And so then around 9:20 he goes in the trailer,
6 and it's your testimony that basically you were there how long
7 you figure?

8 A When he went inside he placed the order, came right back
9 out.

10 MR. HAZZARD: Objection.

11 A How long prior to her --

12 THE COURT: You need to listen to his question and answer
13 the question. You can't testify as to what somebody said or
14 unless you observed it personally.

15 A No. I'm not -- I'm -- yes, sir.

16 THE COURT: If he's inside and you're not in there and
17 you don't know it personally, you can't testify to it.

18 A Yes, sir.

19 THE COURT: Okay. All right. Go ahead.

20 MR. HAZZARD: Thank you, Your Honor.

21 BY MR. HAZZARD:

22 Q Okay. I'll rephrase the question. You got there about
23 9:20. About how long were you there before Ms. McCrea drove
24 you away or do you have any idea? You may not have any idea.

25 A Ms. -- I, I don't -- I can't really state because I was,

1 I was going -- there was, you know, me getting me -- keep
2 trying to get myself gathered, you know what I mean, and I was
3 trying to get myself collected from loss of blood, and you
4 know, I was going through my situation, extreme pain, and so I
5 don't, I don't, I don't know what time it was at this time. I
6 was more concerned about my life.

7 Q Yes, sir. Okay. And with regard to Mr. Kinloch I think
8 you told Mr. Todd that when Mr. Giles came out of the
9 residence you were parked with your driver's side window
10 facing the door of the trailer; is that correct?

11 A Yes, sir.

12 Q And that Mr. Kinloch was on the other side of the trailer
13 steps; is that correct?

14 A No, sir. I never stated that to him.

15 Q Okay. Where was Mr. Kinloch then by your testimony --

16 A I --

17 Q -- when Mr. Giles came out?

18 A Mr. Kinloch was on his way walking to the truck when Mr.
19 Giles came out.

20 Q Okay. All right. And so he was walking directly towards
21 your door or --

22 A He was, he was going to go around the front part to get
23 in the passenger, the back passenger side where he was at. He
24 never got a chance to make it around there before he had to
25 take off running for his life because of multiple gunshots

Daniea Kelly - Cross by Defense.

201

1 from Mr. Giles.

2 Q So he was walking past, by your testimony then, he was
3 walking past the driver's side door of your truck?

4 A He was approaching the truck, and I already know what
5 side he was going on because he was going back on the side he
6 got out of.

7 Q Okay. And he was going to walk in front of the truck?

8 A Correct.

9 Q All right. But he didn't get hit by any bullets?

10 A No, sir.

11 Q But yet he was walking past where you were and walking in
12 front of the truck?

13 A Yes, sir.

14 Q All right. All right.

15 MR. HAZZARD: THE Court's indulgence, Your Honor.

16 THE COURT: All right.

17 BY MR. HAZZARD:

18 Q And I believe that you testified that you attempted to
19 call 911 or call the police, but you couldn't talk; is that
20 correct?

21 A Yes, sir. My phone call didn't -- they disconnect my
22 phone call, and when I try to place another call I try to call
23 my kids. Then I still couldn't really do no talking on the
24 phone with no one.

25 Q Okay. Let me get this right. Your testimony is that you

1 called 911 and they disconnected your phone call?

2 A I called 911, but couldn't talk. Every time I try to
3 talk on the phone I was, I was throwing up, shortening of
4 breath. I couldn't, I couldn't talk to nobody on the phone.

5 Q Did anyone from 911 dispatch ever call your phone back?

6 A Yes, sir.

7 Q And when was that, sir?

8 A They, they was calling back the same time.

9 Q Okay. And but yet you never talked to them?

10 A No, sir.

11 Q Because you were trying, according to you, to talk to
12 your children?

13 A I was -- I couldn't -- I was trying to -- at the time
14 when they was calling back, they lost, they lost call, lost
15 service. They was calling my phone back. When they was
16 calling my phone back I already I just went to contact and I
17 called my kids' mom. I couldn't talk to them neither, but
18 they was, they was calling on my line again, but I couldn't
19 talk --

20 Q Okay.

21 A -- due to a lot of blood and a lot of throwing up. I
22 couldn't talk to nobody on the phone.

23 Q Okay. And I think your testimony was you observed that
24 Ms. McCrea didn't call 911 or call the police either; correct?

25 A Ms. McCrea was -- Ms. McCrea was --

1 Q What did you observe, sir?

2 A I observe Ms. McCrea extremely out of control, crying,
3 fearing for her life and just trying to get out -- just trying
4 to get from that scene because she didn't know if Mr. Giles
5 was going to come back or return or kill her or shoot her or
6 anything. So I observed her trying to get to safety.

7 Q Okay. But not calling the police?

8 A No, sir. She got to -- when she got to safety that's
9 when she made a call to her mom and her mom called the police.

10 Q Okay. And this all would not have been because you told
11 her to drive you away from the scene --

12 A No.

13 Q -- because you -- please hear, hear my question out.

14 A Yes, sir.

15 Q Thank you. -- because you needed to get rid of the gun
16 that was in your truck and the drugs that were in your truck?

17 A I couldn't even talk to even delay [sic] a message like
18 that, but that wasn't the reason. She got away from the scene
19 because she was fear her life for him coming back and
20 retaliating. She just was in the trailer park. She didn't
21 know what he was going to do. So the fear of her life was to
22 get away and try to get from around, get from out of that, the
23 area before any --

24 Q So that's what you think she was doing.

25 A I know that's how she was acting because I, I observe her

1 extremely crying and, and scared and for her life, so.

2 Q Let me ask you this, you testified earlier that from what
3 you could observe there was several people in Mr. Burroughs'
4 trailer; correct?

5 A No, sir.

6 Q Okay. So you didn't know if anybody was in Mr.
7 Burroughs' trailer?

8 A I'm not going to -- I can't -- I'm going off of who was
9 in there because of what they said. I didn't -- I never got
10 out. I never went in there. So I don't know who was in
11 there.

12 Q Okay. But you know that Mr. Kinloch entered the trailer
13 and then subsequently came back out at least twice; correct?

14 A Correct.

15 Q Okay. And did, and did you know whether or not anyone
16 else, including Mr. Burroughs, was in there?

17 A Off of -- I'm going off of --

18 Q No. Just what you saw.

19 A No, sir.

20 Q Okay. Do you know where Ms. McCrea was when you were
21 getting shot?

22 A She --

23 Q Do you know if she was still in the truck or whether she
24 had gotten out of the truck?

25 A Had no idea, sir.

1 Q Okay. All right.

2 A I know prior to me -- before I got shot she was sitting
3 right in the passenger seat of the vehicle.

4 Q Uh-huh. But at some point she ends up outside the truck
5 -- how did you end up in the passenger seat, sir?

6 A I end up in the passenger seat because, well, I guess
7 from when I -- no, I'm not going to guess, from my shot I was
8 already laying across the driver, the driver's seat. My
9 bottom end was in the driver's seat, and my upper part was
10 laying across in the passenger seat, and I -- from extreme
11 pain and loss of blood I temporarily blacked out, and when I
12 came to by her she helped me over to the driver's seat and
13 was, you know, saying she going to -- you know, "Don't get up
14 out of there, get out of there," and fear for her life.

15 Q Okay. I'm sorry. Please continue your answer. I
16 apologize.

17 A That's well -- that's how I got in the passenger seat,
18 sir.

19 Q Okay. Do you recall whether she was pulling you from the
20 passenger's seat over or pushing you from outside the driver's
21 seat over into the passenger seat?

22 A No. She was on her side like pulling me over because I
23 was shot in the hip. So I couldn't move. My whole bottom end
24 was -- I couldn't move my -- I was just in it -- my legs
25 couldn't even move. So she had to help me over.

1 Q So she pulled you on top of her?

2 A No, sir. She, she was just pulling me over. She had the
3 passenger door open like trying -- helping me over to the
4 driver's side, to the passenger side.

5 Q So she was outside the truck at this point?

6 A Yes, sir. When the shooting incident occurred she got
7 out for her safety.

8 Q Okay. Okay. So when the shooting started she got out of
9 the truck?

10 A Uh-huh.

11 Q Okay. But instead of running off like Mr. Kinloch
12 because I think you testified Mr. Kinloch ran for his life;
13 correct?

14 A Correct.

15 Q Instead of running off like Mr. Kinloch, she puts you in
16 the passenger seat. She gets in the driver's seat and drives
17 five miles down the road?

18 A She drove probably about two to three miles down the
19 road.

20 Q And drove two or three miles down the road, didn't call
21 the police. She didn't call the police to your knowledge; did
22 she?

23 A To my knowledge she got away from the scene for fear for
24 her life. She got to a safe place so she can call.

25 Q Her mother?

Daniea Kelly - Cross by Defense

207

1 A Yes, sir..

2 Q Not the police?

3 A Yes, sir.

4 Q Okay. All right. How often have you had the opportunity
5 to discuss your testimony in this case with Mr. Todd, the
6 Prosecutor?

7 A How often?

8 Q Yes, sir.

9 A Not often at all.

10 Q Is that twice, three times, one time?

11 A I gave him my statement once.

12 Q To whom did you give the statement, sir?

13 A Mr. Todd.

14 Q Okay. And where did that take place?

15 A At the courthouse. I don't, I don't -- I can't -- I
16 don't know exact what room it was but it was some, some months
17 back like in about August.

18 Q Okay.

19 MR. HAZZARD: The Court's indulgence, Your Honor.

20 THE COURT: All right.

21 MR. HAZZARD: No further questions, Your Honor.

22 THE COURT: All right. Redirect?

23 MR. TODD: Just briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. TODD:

1 Q On December 3rd did you know that Mr. Giles was in
2 Punchy's house?

3 A I know he was in there from a statement that --

4 MR. HAZZARD: Objection.

5 A -- Kinloch made when he came out, but I didn't know he
6 was in there.

7 THE COURT: Well, I'm going to allow that. Go ahead. Go
8 ahead.

9 MR. HAZZARD: Okay.

10 Q But did you know he was at the house before you went
11 there?

12 A No, sir. Didn't have a idea who was there before I got
13 there.

14 Q Now, did you go there with the intention of ambushing Mr.
15 Giles at all?

16 A I didn't went there with the intention of no violence at
17 all, sir.

18 Q Okay. And did you intend on leaving once the drink was,
19 was had there?

20 A Yes, sir.

21 Q And did you get rid of a gun?

22 A No, sir. Never had a gun.

23 Q Did you get rid of drugs?

24 A No, sir. Never had drugs on me that night.

25 Q Were you having difficulty having a conversation with Ms.

Daniea Kelly - Redirect by State

209

1 McCrea after you got shot?

2 A Yes, sir.

3 Q Did you have difficulty talking with anybody after you
4 had been shot?

5 A Yes, sir. I called my kids. I, I couldn't even relay
6 the message to them. So I was just praying to myself.
7 Couldn't talk, just constantly throwing up blood, short of
8 breath in my lungs.

9 Q Did you have any animosity or hatred towards Mr. Giles at
10 all?

11 A None at all, sir. Me and Mr. Giles actually after the
12 incident that I, I was in restrained him from going to jail
13 that night, me and him saw each other on several different
14 occasions after that, shook hands, talked, wasn't no problem
15 with us whatsoever.

16 Q Thank you. That's all the questions I have.

17 THE COURT: All right. You may step down.

18 All right. The State can call your next witness.

19 MR. TODD: Ms. Tavera McCrea.

20 Whereupon, Tavera McCrea was called to the stand, duly
21 sworn by the clerk and testified as follows:

22 THE CLERK: Thank you. Please be seated and state and
23 spell your first and last name for the record.

24 MS. MCCREA: Tavera McCrea, T-U-V-E-R-A, M-C-C-R-E-A.

25 THE COURT: All right, sir.

1 MR. TODD: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. TODD:

4 Q Ms. McCrea, tell us a little bit about yourself. Where
5 are you from?

6 A I'm from Andrews, South Carolina.

7 Q Were you born in Andrews?

8 A I was born in Georgetown, but --

9 Q Have you lived in Andrews most of your life?

10 A Yes, sir.

11 Q How old are you?

12 A 21.

13 Q And on December 3rd, 2014, what was your plans that night?

14 THE COURT: Excuse me. You need to speak into the
15 microphone a little bit more. There you go. Thank you. I
16 apologize. Go ahead.

17 Q What, what were your plans that night?

18 A That night was just chilling with Daniea and Rodney.

19 Q Now, what were you doing earlier that day? What had you
20 done that day just if you can recall? It's been a while, but
21 --

22 A I can't recall what I did earlier that day. I think I
23 had a -- I was at home with my mom, and my older sister came
24 down from Columbia.

25 Q So you had been at home that night?

Tuvera McCrea - Direct by State

211

1 A Uh-huh. Yes, sir.

2 Q And did you talk to -- how did Mr. Kelly come out to
3 Andrews? Did he just drive out or did you just talk to him on
4 the phone?

5 A I talked to him on the phone before he left Georgetown.

6 Q Now, were you all dating?

7 A Yes, sir.

8 Q Okay. And from that would, would Mr. Kelly just come
9 over and hang out with you and do -- just hang out with you to
10 be with you?

11 A Yes, sir.

12 Q Did you always have plans of where to go out when he
13 would come to see you?

14 A Not always have plans, just kind of a spur of the moment.
15 If we decided to do something we would do it.

16 Q Did you ever have nights where you just drive around and
17 talk?

18 A Yes, sir.

19 Q Now, did you have any plans the next day so you had to
20 get back early?

21 A No, sir.

22 Q Now, tell me about Mr. Burroughs' house. Had you been
23 there before?

24 A Yes, sir.

25 Q How often had you gone to Mr. Burroughs' house?

1 A Quite often.

2 Q And what did you do when you're at Mr. Burroughs' house?

3 A I would go over and talk to him mostly, probably have a
4 cigarette or something with him. That's about it.

5 Q From what you recall were there often people, other
6 people there other than Mr. Burroughs?

7 A Sometimes. Yes, sir.

8 Q Was he known for just having people over?

9 A Sometimes, mostly. People would be over like just people
10 that he would talk to on a daily, but not just random people
11 all the time.

12 Q So it was people he knew would come over?

13 A Yes, sir.

14 Q Now, had you bought cigarettes or other things from him
15 in the past?

16 A Yes, sir.

17 Q Is that kind of what Punchy's house was, was for?

18 A No. Not all the time, no.

19 Q But he was a place where you could go?

20 A Yeah.

21 Q Now, on December 3rd you said Mr. Kelly had come to see
22 you. Now, tell us how you got to Punchy's house?

23 A I got in the truck with Daniae and Rodney and we went
24 over to Punchy's house.

25 Q And where did you ride in his car?

Tuvera McCrea - Direct by State

213

1 A The front passenger seat.

2 Q And once you got to Punchy's house, did you get out and
3 go into the residence?

4 A No, sir.

5 Q Did you see Daniea get out?

6 A No, sir.

7 Q Okay. What did you all do?

8 A We sat in the truck and talked and waited on Rodney.

9 Q Now, did you have a gun that night?

10 A No, sir.

11 Q Did you see Daniea with a gun?

12 A No, sir.

13 Q Did you ever leave his side while you were in the car?

14 A Never.

15 Q And you were -- you rode with Mr. Kinloch as well; is
16 that correct?

17 A Yes, sir.

18 Q And where did he ride?

19 A In the back passenger seat.

20 Q And did --

21 A Well, in the back seat on the passenger side. I'm sorry.

22 Q Was this a four-door truck?

23 A Yes, sir.

24 Q Okay. So you didn't have to move forward to let him in
25 or anything like that?

- 1 A No, sir.
- 2 Q And what were you wearing that night; do you recall?
- 3 A Yes, sir. I had on, I think, some sweats or jeans and a
4 pink sweater.
- 5 Q Was it cold that night?
- 6 A Yes, sir.
- 7 Q When you all were sitting in the car did you have the
8 windows down?
- 9 A No, sir.
- 10 Q Where -- how were the windows? Were they all the way up?
- 11 A They were all the way up. Yes, sir.
- 12 Q And do you know how dark the tint is in, in the car?
- 13 A It was pretty dark. It wasn't illegally dark, but it was
14 dark.
- 15 Q Dark enough to where you couldn't see inside the car at
16 night?
- 17 A Yes, sir.
- 18 Q Okay. Now, what did you see -- from what I understand as
19 Mr. Giles came out, did you see his face?
- 20 A Yes, sir. I did see his face.
- 21 Q Now, did you see him holding a gun?
- 22 A Yes, sir.
- 23 Q Did you see Daniae make any movements or anything towards
24 Mr. Giles?
- 25 A No, sir.

Tuvera McCrea - Direct by State

215

1 Q Tell us what happened the second he walked out, that Mr.
2 Giles walked out the door.

3 A I did not see the very second he walked out the door
4 because I was turned looking outside of the passenger window
5 just a -- just look because once I saw Rodney coming out I
6 just kind of looked over and then I heard the gunshots, and
7 then right when I was about to look over and say, "Daniea, you
8 hear that," I saw Rodney ran. I saw his coat just ran in
9 front of the truck, and I looked over. The next thing I felt
10 was just basically and heard was the glass of the driver side
11 of the window shatter and then I saw with the shots I just saw
12 Daniea like flinching and I looked and I saw Mr. Giles
13 standing on the porch firing the gun at the truck.

14 Q And what did you do once that happened?

15 A I jumped. Once I realized what was going on, I, I jumped
16 out of the truck and hid below the truck under the truck.

17 Q Now, how long were you under the truck?

18 A Until I heard the gun come -- like clicking and then from
19 under the truck where I was hiding I could see he walked down
20 off the steps and he walked to the driver's side of the truck,
21 and I heard the gun click again, and then that's when I got
22 off the ground and moved, started to back away from the truck
23 kind of near the back of the truck, and then that's when I saw
24 him. He walked on the opposite side to what the back of the
25 truck and just kind of stopped and look at me and then walked

1 away.

2 Q Did he say anything at all?

3 A No. He didn't.

4 Q He just walked away?

5 A He just like kind of just looked down at the gun and just
6 walked away.

7 Q Now, what did you do after that?

8 A After that -- I'm sorry. After that I ran to the door,
9 the passenger door and I opened it and I saw Daniea laying
10 across the seat, and I like -- saw was his like eyes was just
11 kind of rolled in the back of his head. So started to shake
12 him, and you know, scream for, scream for him to get up and
13 wake up, and he did grasp [sic] for air and his -- he kind of
14 grasped for air and came back, and I was just like, "We got to
15 get out of here." So he was holding his side, and he really
16 couldn't move. So I was just like, "You got to try to move,"
17 and he did use the little strength he did to help me kind of
18 move him over to the passenger side, and I went around, ran
19 around to the driver's side of the truck, opened the door and
20 tried to push, kind of push him over to the side, to the
21 passenger side more where he -- that's where he sat, and I got
22 into the driver's side and cranked up the truck and pulled
23 away.

24 Q Now, you got in the car to drive away. Were you scared?

25 A Yes, sir.

Tuvera McCrea - Direct by State

217

1 Q And where were you going?

2 A I was -- my first thought was to go home, which probably
3 was crazy, but I did. I just kind of was like, "I'm going to
4 take you" -- I just wanted to get to safety. I wanted to get
5 to my mom's house and just try to call the police from there,
6 but to me it wasn't really -- I, I wasn't thinking police. I
7 was just, I was just more scared of just seeing all the blood
8 and him throwing up and was trying to talk and we got on his
9 cell phone and tried to -- was calling but I, I was mostly
10 just screaming like, you know, trying to keep him awake
11 because it seemed like he was going in and out instead of
12 trying to breathe and instead of trying to make phone calls at
13 the same time.

14 Q And where did you stop your car?

15 A I stopped my car at -- it was a -- it's an insurance
16 place, and it's a little alleyway. I stopped there because
17 the train was on the track at the time when I was trying to
18 make it to the hospital because that's where he was telling me
19 to take -- he was just saying, "Just get me -- please get me
20 to the hospital. Please pray for me. Please just get me to
21 the hospital."

22 Q And who did you call ultimately? Who'd you end up
23 talking to?

24 A The first person I called was my mom, which I stopped the
25 truck, well, get the truck to stop because we didn't have any

1 brakes. So when I was driving the truck basically I was
2 standing up with the truck pressing on the brakes because we
3 really didn't have any brakes at all, at all. So the truck
4 was just kind of slipping and sliding over the -- on the road,
5 and I just remember looking at the dash and seeing that it was
6 saying low brake fluid, and I was just trying to stop it, and
7 once I finally did get stopped the first person I did call was
8 my mom.

9 Q And to your knowledge did she call the police?

10 A Yes. She did.

11 Q Okay. And did the police arrive on scene?

12 A Once the train got off the track. Yes, sir.

13 Q Okay. And did the EMS come as well?

14 A Yes, sir.

15 Q And do you know where they took Daniae from there?

16 A To the hospital.

17 Q Okay. Would you say it was a very terrifying event?

18 A It was very, very terrifying. I never been through
19 anything like that in my life.

20 Q And you probably don't want to go through that again?

21 A No. I still have flashbacks and memories.

22 Q Thank you. That's all the questions I have. Please
23 answer anything Mr. Hazzard may have.

24 THE COURT: Cross-examination.

25 MR. HAZZARD: Thank you, Your Honor. May it please the

1 Court?

2

CROSS EXAMINATION

3 BY MR. HAZZARD:

4 Q Good morning, ma'am, or I guess it's good afternoon now.
5 Okay. You left the trailer park where this incident occurred
6 and drove a couple of miles down the road; is that correct?

7 A Yes, sir.

8 Q Okay. Didn't call the police. Didn't call 911 at the
9 trailer park; right?

10 A No, sir.

11 Q Okay. And I believe your testimony to the jury is the
12 reason you pulled over after a couple of miles down the road
13 is because this rental vehicle didn't have brakes?

14 A No. I pulled where I stopped at because the train was on
15 the track. There was no way for me to get over the track on
16 either way. If you're in Andrews the train track once the
17 train is on the track is blocking off a whole -- the other
18 side of the town. So I couldn't get over to get onto to get
19 to Georgetown. I stopped.

20 Q And is it your testimony -- so you're saying there was a
21 train on the track there?

22 A Yes, sir.

23 Q And is it your testimony to this jury then that after
24 your mother called 911 that the EMS workers were just sitting
25 on the other side of the tracks waiting on the train to move?

1 A Basically. Yes, sir.

2 Q All right. All right. Okay. So you stopped because of
3 the train, but stopping was hard because the truck didn't have
4 brakes?

5 A Yes, sir. That's why I pulled in into an alleyway
6 because that the speed I was going it was like I could get a
7 little traction and stop but it was a line of cars. So I just
8 kind of swerved into the alleyway until the truck came to a
9 complete stop.

10 Q So there were cars on the other side of the train tracks
11 where this train was on your side?

12 A Yes, sir.

13 Q All right. All right. Did any of the people who came to
14 assist you while you were waiting on the train to move did any
15 of them give a statement to the police?

16 A No, sir. Actually when we stopped I sat in the truck for
17 a moment. My mom actually, when I was on the phone with her,
18 I told her where we were. She came to where we were, and then
19 that's when she called the police. When she got there that's
20 when she called the EMS.

21 Q Well, how was she able to get past the train?

22 A My house is not over the train track. It's behind the
23 train track on the same side of the town where Punchy house
24 is.

25 Q Got you. So when you tell Mr. Todd that your initial

Tuvera McCrea - Cross by Defense

221

1 reaction in leaving was you wanted to go home I'm assuming now
2 you're testifying that you actually went in the opposite
3 direction of home?

4 A No. Leaving Punchy's house I could go home from the way
5 that I was, but when I told Daniea, I was like, "Let's just go
6 to my house and we can just call the EMS from there." He
7 just, with the breath that he had, he said, "No, just get me
8 to a hospital. Just please get me to a hospital." So instead
9 of turning to go home I went straight on to go through town to
10 go to Georgetown.

11 Q So you were going to drive him all the way to Georgetown
12 as opposed to simply notifying the police and EMS that someone
13 needed assistance, someone had been shot?

14 A No. Eventually I knew we wasn't -- I was telling him at
15 the same time we wasn't going to make it to the hospital. We
16 didn't have any brakes. I kept saying that we don't have any
17 brakes. "We're not, we're not going to make it that far." So
18 as -- when we got to the point where the train was that's when
19 I just kind of just pulled over and I just said, you know,
20 "I'm going to call my mamma and let her know what happened."

21 Q Okay. So the reason for leaving that area was not to get
22 far enough away to dispose of a gun or guns and dispose of any
23 other contraband that might have been in the truck?

24 A No, sir.

25 Q All right. How were you employed when this occurred?

1 A How was I employed?

2 Q Yeah. Where were you working on December 3rd of 2014?

3 A I'm thinking I was working at Prince George in Georgetown
4 if I'm not mistaken.

5 Q Okay. And to your knowledge was Mr. Kelly employed or
6 was he just going to barber school?

7 A Barber school was his employment, also. He works as a
8 barber and he goes -- he's in barber school.

9 Q So is your testimony they paid him to be a barber even
10 though he was a student?

11 A He still made money from cutting hair. Yes, sir.

12 Q All right. And was that how Mr. Kinloch was employed?

13 A I'm not sure how Rodney was employed. I'm not sure.

14 Q Okay. To your knowledge did Mr. Kelly have any other
15 lawful occupation at that time?

16 A No, sir.

17 Q Okay. Oh, what time do you believe that you left Mr.
18 Burroughs' trailer?

19 A I'm not going to give an exact time, but I know it was
20 after 9:30.

21 Q All right. How long do you believe you all were in front
22 of Mr. Burroughs' trailer?

23 A Fifteen, 20 minutes at the most if I'm correct. I'm not
24 sure.

25 Q Okay. If you're not sure that is fine.

1 A Yes, sir.

2 Q All right. Thank you.

3 MR. HAZZARD: No further questions for this witness.

4 THE COURT: All right. Redirect?

5 MR. TODD: No, Your Honor.

6 THE COURT: All right. You may step down. Let me see
7 the attorneys for a second.

8 MR. HAZZARD: Your Honor, may we approach?

9 THE COURT: Yes.

10 (Whereupon, a bench conference is held in the presence
11 but out of the hearing of the jury.)

12 THE COURT: All right. Ladies and gentlemen, we've
13 decided it's a good time for us to go ahead and break for
14 lunch. So I'm going to allow you to go to lunch on your own.
15 Please be back in the jury room at about 1:45. That'll give
16 you about an hour and a half to eat lunch, get back and we'll
17 try to resume the trial as soon after 1:45 as we can. Do not
18 discuss the case even among yourselves. It's too early for
19 deliberations. Don't conduct any independent investigation.
20 Don't go looking on the internet or through the newspaper or
21 try to find anything out about the case. Hope everybody has a
22 good lunch, and we'll see you back at 1:45. Thank you very
23 much.

24 (Whereupon, the following takes place outside the
25 presence of the jury.).

1 THE COURT: All right. Anything from the State before we
2 recess?

3 MR. TODD: No, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. HAZZARD: One thing for scheduling, in talking to Mr.
6 Todd this morning he indicated that he had arranged for the
7 folks from SLED to come tomorrow morning, and as an officer of
8 the court I'm taking him at his word on that.

9 MR. TODD: Yes, sir.

10 MR. HAZZARD: Okay.

11 THE COURT: Okay.

12 MR. HAZZARD: So but that's all from the Defense until
13 after lunch, Your Honor.

14 THE COURT: All right. We'll be in recess. I'll try to
15 take the bench at 2:00 o'clock, have them coming back at 1:45
16 and then we'll, we'll get -- resume at 2:00 o'clock. Okay?

17 MR. TODD: Yes, sir.

18 THE COURT: All right.

19 MR. HAZZARD: Thank you, Your Honor.

20 OFF THE RECORD

21 (On the record. The following takes place outside the
22 presence of the jury.)

23 THE COURT: All right. Anything from the State before we
24 bring the jury back in?

25 MR. TODD: No, Your Honor. We're ready to proceed.

Antonio Pepe - Direct by State

225

1 THE COURT: Anything from the Defense?

2 MR. HAZZARD: Nothing from the Defense, Your Honor.

3 THE COURT: All right. Let's bring the jury in.

4 (Whereupon, the following takes place in the presence the
5 jury.)

6 THE COURT: All right. Ladies and gentlemen, welcome
7 back. I hope everybody had a good lunch. We are ready to
8 resume with the trial of the case. Mr. Todd, the State can
9 call your next witness.

10 MR. TODD: Thank you, Your Honor. The State calls Dr.
11 Antonio Pepe.

12 THE COURT: All right. Sir, come around here.

13 Whereupon, Antonio Pepe was called to the stand, duly
14 sworn by the clerk and testified as follows:

15 THE CLERK: Thank you. Please be seated and state and
16 spell your last name for the record.

17 MR. PEPE: My name is Antonio Pepe, spelled A-N-T-O-N-I-
18 O, last name is Pepe, P-E-P-E.

19 DIRECT EXAMINATION

20 BY MR. TODD:

21 Q Dr. Pepe, we need to learn a little bit about you.

22 A Okay.

23 Q Currently where do you work?

24 A Grand Strand Trauma Center.

25 Q And what do you do there?

1 A I'm the trauma medical director at the facility and I do
2 trauma surgery, acute general surgery and surgical critical
3 care.

4 Q Okay. And tell us a little bit about your education and
5 training leading you up to your current position now.

6 A Okay. Well, I grew up in Vancouver, British Columbia,
7 and I finished my first bachelor of science degree at the
8 University of British Columbia, went on to graduate
9 physiology, did an honors graduate physiology studies there,
10 and then subsequent to that, Simon Fraser University for an
11 honors in kinesiology, all leading up to medical school, was
12 accepted to medical school and completed that in four years,
13 and my training then switched over to University of Memorial
14 in Newfoundland in Canada where I did two years of internal
15 medicine with a view to go into cardiology, interventional
16 cardiology and switched over to surgery with a view of doing
17 critical care or surgical critical care with the subspecialty
18 in trauma. During those years I spent four months at the R.
19 Adams Cowley Shock Trauma Center at -- in Baltimore training
20 with Dr. Scalia in trauma for four months, and subsequently
21 applied to several universities for fellowship in trauma.
22 There were 25 schools that I applied to, couldn't afford to go
23 to 25 schools. So I applied to my top three. My top three
24 included Baltimore Shock Trauma, Cook County in Chicago and
25 also Ryder Trauma Center in Miami, was accepted in all three,

Antonio Pepe - Direct by State

227

1 and I went down to Miami, and in Miami I completed a two-year
2 fellowship in trauma and surgical critical care and was hired
3 on as a trauma attending, and I practiced there for
4 approximately five years. One of my practice managers who
5 developed the level, level I trauma center in Miami moved up
6 to Myrtle Beach to start a trauma center noting that there was
7 a need and was asked to come up here, and I did the same with
8 some of my friends to bring them up here to help develop a
9 trauma center, and so for the last four years I've been here
10 trying to develop a trauma center for, for the South Carolina,
11 Myrtle Beach area, Horry County, and we've done a great job
12 since then.

13 Q Now, it sounds like you've done a lot of surgeries?

14 A Yes, sir.

15 Q Roughly, how many surgeries do you do a year?

16 A Well, starting with the residency, I was involved with
17 approximately 1500 surgeries during my residency, which is a
18 lot for residency, but I would say I am, to be honest, I'm
19 basically the highest producer at the hospital. So I do the
20 most surgeries at the hospital from our -- for our group.
21 It's hard to estimate how many surgeries we do, but we see an
22 average -- since 2011 our traumas have increased from 1700 to
23 3500 traumas, plus we do approximately 3000 to 3500 general
24 surgery cases a year as well. So we see on average six to
25 7000 surgical cases, some of which go on to surgery, some of

1 which are managed non-operatively.

2 Q And with your experience have you ever been qualified as
3 an expert in Circuit Court before?

4 A Yes. There was one or two other occasions.

5 Q Okay.

6 MR. TODD: Your Honor, at this time I would like to move
7 to have Dr. Pepe offered as an expert in trauma surgery.

8 THE COURT: All right. Any challenges or questions by
9 the Defense?

10 MR. HAZZARD: No, Your Honor..

11 THE COURT: All right. I find this witness to be an
12 expert in the field of trauma, surgical and critical care.

13 Now, ladies and gentlemen, I'll give you some
14 instructions on expert testimony when I charge you on the law,
15 but for now all you need to know is typically a witness can
16 only testify as to their personal knowledge, what they saw,
17 what they smelled, what they tasted, things of that nature.
18 There is an exception for witnesses who are qualified as an
19 expert, which means that in addition to testifying to his
20 personal observations Dr. Pepe can render an opinion in the
21 field in which he's qualified as an expert. All right. Mr.
22 Todd.

23 MR. TODD: Thank you, Your Honor.

24 BY MR. TODD:

25 Q Dr. Pepe, let's go to December 3rd, 2014. At that time

Antonio Pepe - Direct by State

229

1 Mr. Daniea Kelly was brought to, to your medical care. Do you
2 recall this case?

3 A Yes. I do.

4 Q Okay. Can you tell us a little bit about his condition
5 when he was brought in?

6 A Well, he was brought in as a level I trauma alert, which
7 is the highest priority trauma, anticipating declining
8 cardiovascular, respiratory, neurosystems and potential life-
9 threatening injuries. So when he arrived he had several
10 injuries that were potentially life-threatening that required
11 immediate attention that we were able to deliver at that time.

12 Q And you did perform surgery on him; is that correct?

13 A Well, I performed a, a chest tube thoracoscopy on his
14 left side, meaning he required a tube to drain the blood that
15 was in -- and the air that was in his left chest cavity.

16 Q Now, do you use x-rays to view the people that are
17 brought in for trauma to assess the situation?

18 A If they're stable enough to sustain x-rays we'll proceed
19 with x-rays or we'll go directly to the OR, but in this case
20 we had time to go through x-rays.

21 Q Doctor, if you would, take a look at these pictures,
22 State's One through Five.

23 A Okay.

24 Q And do you recall these?

25 A Yes. I do.

1 Q Okay. And those are pictures of who?

2 A This is Mr. Daniea Kelly.

3 Q Okay. And is that a fair and accurate depiction of the
4 pictures that were taken --

5 A Yes.

6 Q -- the X-rays that were taken that day?

7 A Yes.

8 Q They haven't been altered in any way other than putting
9 them on cardboard?

10 A Not that I can, not than I can tell from these. No.

11 MR. TODD: Your Honor, at this time I'd like to move
12 State's Exhibit One through Five into evidence.

13 THE COURT: Any objection?

14 MR. HAZZARD: No objection.

15 THE COURT: All right. State's Exhibit One, Two, Three,
16 Four and Five are admitted into evidence without objection.

17 (State's Exhibit Numbers One through Five [Photographs -
18 X-Rays] admitted into evidence and appropriately marked.)

19 BY MR. TODD:

20 Q Dr. Pepe, if you could, and as you explain what the
21 injuries are and where the bullets are, kind of tilt them
22 towards the jury --

23 A Sure.

24 Q -- so they can see them, but starting with State's
25 Exhibit One working through item Five if you could please

Antonio Pepe - Direct by State

231

1 explain these to us.

2 A Of course, sure. So these, these films would indicate
3 for anybody that comes into the hospital as a level I trauma,
4 which is the highest level activation with the risk of, of
5 threat to life or a limb and/or limb. So I guess image one is
6 a whole body x-ray where you can see starting from the top
7 there is a bullet fragment in the chest with a large amount of
8 bruising around that left lung compared to the right lung,
9 which is very clear.. We know there's injury on this side. We
10 have a bullet in his left hip area, which does not appear to
11 be causing any injury to the associated nearby bony structures
12 and there -- at that site there are no real life-threatening
13 structures. Then we have another bullet fragment here in the
14 left thigh, which has fragmented and caused a fracture of the
15 femur on this side here.

16 Q If you would go on to --

17 A Number two.

18 Q Number two.

19 A X-ray number two reveals a bullet still remaining within
20 the chest cavity. I'm not sure if you can appreciate the
21 haziness on this side compared to the clear lung field on the
22 right. This indicates with this mechanism blood or bruising
23 of the left lung. By definition with this injury you'll have
24 air within the lung space called a pneumothorax, which he did
25 have, and also blood in the chest, called a hemothorax, which

1 he also did have. This x-ray here we use a paperclip to
2 demonstrate the entrance of a bullet or entrance of a site of
3 injury. So that's what that's there for, and what we see is a
4 large fragment of bullet here with shrapnel components sort of
5 forming the tail. It's hard to depict from which side the
6 entrance but it appears that the entrance was -- is -- goes
7 from here in this direction here, and I'm not sure if you can
8 appreciate but there's also a fracture of the femur, spiral
9 fracture of the femur. That may have been the result of the
10 bullet impacting and, and the patient planting his foot and
11 then causing this fracture to complete. That's right over
12 here. That required surgical intervention. With this also
13 we'd be concerned about the blood supply going to the leg at
14 this point. We did perform a CTA, which is a specific
15 angiogram to look at the blood vessels, and those were normal.

16 Q Now, if you would explain to us, that type of injury to
17 the thigh and the way the, the bullet has traveled, how much
18 blood would you lose from that type of injury?

19 A Well, our teaching is when we see trauma patients and we
20 have to estimate the blood loss in patients our estimations
21 are for every rib fracture you can lose about 150 cc's of
22 blood. A Coke can is 300 cc's to give you a reference. For
23 every rib fracture 150 cc's, a femur fracture with associated
24 muscle injury you can lose up to about 100 or 1.5 liters per
25 thigh potentially. With an open wound you can actually bleed

Antonio Pepe - Direct by State

233

1 out into the environment, and that's blood you really can't
2 account for, and that would be determined on the nature of the
3 injury, how long the patient's been in the environment and not
4 seeking any medical attention. That can vary.

5 Q So an injury like that could be life-threatening?

6 A Yeah. A class IV, class III shock is approximately 30
7 percent of your blood loss. Class IV shock approaches 40
8 percent of your blood loss, and 1.5 liters is pretty close to
9 25 to 30 percent of your blood loss. You usually have about
10 five liters of blood in you. So it could be -- it can be
11 quite significant. Then our fifth is that of the bullet
12 fragment in the left hip, which is on the outside. It's hard
13 to tell if this is more front or back because it's only one
14 view, but it does not appear to be any injury to the hip or
15 the -- to the pelvis area with this injury.

16 Q So that injury would not be life-threatening generally?

17 A It all depends on the trajectory of this bullet. If this
18 bullet entered on this side and it stopped right there, no.
19 If it entered on this side, the opposite side and made its way
20 across to here, yes.

21 Q Okay.

22 A So it depends on the trajectory.

23 Q Now, you've walked us through these bullet injuries and
24 talk to us about the extent of injuries and the shrapnel and
25 blood loss, in your expert opinion, based on the injuries you

1 saw on Dania Kelly, if he had not sought medical attention as
2 quickly as he did could these have been life-threatening
3 injuries?

4 A Yes. We don't know the course that these would have
5 taken, but these, these injuries do -- are injuries that can
6 lead to life-threatening injuries. That's why he was made a
7 level I trauma alert. So we have a ready pre-admission
8 criteria to establish the nature of a patient's injury before
9 they come in, and that would allow the hospital time to
10 prepare for the highest level activation. So it's a -- it's
11 the highest level response that we provide a patient. So the
12 nature of his injuries, yes, they were potentially life-
13 threatening and, and with a hemopneumothorax you can continue
14 to bleed. It could be rapid or slow bleed, and you can
15 continue to lose air into that left lung, and that could have
16 resulted in a tension pneumothorax or a significant blood
17 loss. Same thing with the femur, the femur could have
18 contributed to continued blood loss into the thigh and also
19 out from the entrance wound, and that could also contribute to
20 significant blood loss, and so just with the femur alone he
21 would have had potentially, you know, up to 30 percent of his
22 blood loss accounted for there, and that's approaching class
23 IV shock where a patient becomes unresponsive. If he was left
24 in an environment by himself without, without any help, it
25 could have been maybe an hour, two hours before he would've

1 gone into class IV shock potentially, but the response was
2 very quick from the EMS, and they started resuscitation
3 immediately. They come to us already resuscitated, with the
4 resuscitation in active mode, and then we continue on from
5 there, and it was determined that we were able to determine
6 that these injuries with a chest tube in place sort of staved
7 off any progression and with the treatment of the leg with the
8 rod and controlling hemorrhage that way we were able to stop
9 any further progression of his injuries.

10 Q Thank you, Doctor.

11 A You're welcome.

12 Q Answer any questions Mr. Hazzard may have.

13 THE COURT: Cross-examination.

14 MR. HAZZARD: Thank you, Your Honor. May it please the
15 Court?

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION

18 BY MR. HAZZARD:

19 Q Good afternoon, Doctor. How are you, sir?

20 A Very well. Thank you, sir.

21 Q Thank you. Is there anything about your diagnosis or
22 treatment of Mr. Kelly that would allow you to know whether or
23 not at around 9:40 p.m. on December 3rd, 2014, he had a gun in
24 his possession or brandished a firearm?

25 A No. I was not aware.

1 Q All right. No further questions.

2 THE COURT: Anything on redirect?

3 MR. TODD: No, Your Honor. We just asked that Dr. Pepe
4 be released from his subpoena.

5 THE COURT: All right. Any objection?

6 MR. HAZZARD: No objection, Your Honor.

7 THE COURT: All right. You may step down. You're free
8 to go.

9 A Thank you, Your Honor.

10 THE COURT: Thank you. The State can call their next
11 witness.

12 MR. TODD: Thank you, Your Honor. Mr. Rodney Kinloch.

13 Whereupon, Rodney Kinloch was called to the stand, duly
14 sworn by the clerk and testified as follows:

15 THE CLERK: Thank you. Please be seated and state and
16 spell your last name for the record.

17 MR. KINLOCH: Rodney Kinloch.

18 THE COURT: All right. Mr. Kinloch, could you spell your
19 last name, please?

20 MR. KINLOCH: K-I-N-L-O-C-H.

21 THE COURT: All right. Mr. Todd.

22 MR. TODD: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. TODD:

25 Q Mr. Kinloch, where are you from?

Rodney Kinloch - Direct by State

237

- 1 A Georgetown.
- 2 Q You grew up in Georgetown?
- 3 A Yes, sir.
- 4 Q And how long have you known Mr. Kelly?
- 5 A About five, six years now, roughly.
- 6 Q And where do you -- where did you work say July of 2014?
- 7 A Well, I was, I was kind of working at the barbershop and
- 8 doing landscaping.
- 9 Q Okay. Now, in December were you working only at the
- 10 barbershop as well or were you doing other --
- 11 A Only at the barbershop then.
- 12 Q What was your job at the barbershop?
- 13 A Cleaning up around the shop.
- 14 Q Do you work fairly long hours? Were you there all day?
- 15 A I wouldn't say all day. No.
- 16 Q Did you stay till close a lot of times?
- 17 A Most of the time.
- 18 Q Was that to clean up after everyone got their hair cut
- 19 and everything?
- 20 A Yeah.
- 21 Q Now, let's go to July, I believe it was the 14th, 2014.
- 22 Did you go to a party over at Mr. Punchy's house?
- 23 A Yes, sir.
- 24 Q And who did you go with?
- 25 A Me and Mr. Kelly.

1 Q And did you happen to meet Mr. Giles while you were
2 there?

3 A Not formally meet him, but I saw him there.

4 Q And did you see him arguing with anybody?

5 A He was arguing with a female.

6 Q And did that argument get heated?

7 A Kind of, yeah.

8 Q Okay. At any point did you have -- did you touch Mr.
9 Giles?

10 A The only thing that I did was like try to separate the
11 two parties because he had like a screwdriver or something in
12 his hand trying to go after the woman, and like I just came
13 between them like, nah, I -- you're -- I'm not going to sit
14 there and let you hurt a female, like I didn't physically like
15 grab him or touch him or anything like that.

16 Q You didn't hit him?

17 A Huh-uh.

18 Q You didn't stop him?

19 A No. I didn't stop him. No.

20 Q Okay. Now, why do you stop him -- why did you intervene
21 in this argument between the two of them?

22 A Because I guess how I was raised if a man trying to hurt
23 a female and I'm sitting right there I couldn't see myself
24 letting it go down. I couldn't see myself letting another man
25 harm a female.

Rodney Kinloch - Direct by State

239

1 Q So the only reason you touched him was to keep him from
2 hurting a lady?

3 A Yeah.

4 Q Now, let's go to December 3rd, 2014. You were Ms. -- with
5 Mr. Kelly that night as well?

6 A Yes, sir.

7 Q And tell us were you working that night?

8 A No, sir. I didn't work that night. No.

9 Q And what were you doing with Mr. Kelly?

10 A Just hanging out, having conversations.

11 Q And where did you go with him that night?

12 A We came to Andrews, went to Andrews.

13 Q Who did you go to see?

14 A Went to go see Ms., Ms. Tuvera.

15 Q And did you go see her often?

16 A I would say often.

17 Q Were you usually with Mr. Kelly?

18 A Uh-huh.

19 Q Did you have a driver's license then?

20 A No, sir.

21 Q Okay. And tell us about that night. What were your
22 plans?

23 A Just to go hang out, nothing major.

24 Q And what sent you to Punchy's house, Mr. Burroughs?

25 A What, what made me go in the house that night?

1 Q Yeah. Why'd you go?

2 A Oh, just, just something to do. We just we heard that
3 they have something over there. We decided to just go over
4 there, sit for a little while, have a little, little
5 conversation, have some laughs, stuff like that.

6 Q And do you recall what time you arrived there?

7 A I couldn't be precise what time we got there.

8 Q Was it after nine?

9 A Yeah. I'll say it was after nine. Yeah.

10 Q It was dark outside?

11 A Yeah. It was dark.

12 Q What was the temperature like?

13 A It wasn't cold because I didn't really have no big jacket
14 or nothing. So it wasn't like -- I'd say mid-warm, a little,
15 little bit warm.

16 Q Now, when you got to Mr. Punchy's or Wilbert Burroughs'
17 house, did you go in?

18 A Yes, sir.

19 Q And who was inside of the house?

20 A I don't really remember by names, but by faces I, I
21 remember who I saw in the house. When I, when I got in there,
22 I saw Mr. Giles. I don't know who the other guy was standing
23 beside him. It was another girl and Mr., Mr. Punchy.

24 Q Okay. Now, did you talk to Mr. Giles while you were in
25 there?

Rodney Kinloch - Direct by State

241

1 A Went to try to shake my hand everybody. He didn't give
2 me no type of acknowledgement that he wanted to shake my hand.
3 So I pulled my hand back and started just keep talking to
4 everybody else.

5 Q And how many times did you go in and out of the house
6 that night?

7 A I'd say probably about two to three times probably.

8 Q Okay. Now, explain to us, were you present when Mr.
9 Giles had shot at the truck?

10 A Well, when the shots got fired I ran because like the way
11 I was standing outside I heard, I heard the door open, and
12 when I looked I heard a gun cock and I just took off running
13 so.

14 Q Did you see who was coming out?

15 A No. I didn't see who came out the door.

16 Q So you didn't wait to see who was there?

17 A No. No, sir.

18 Q Where did you go?

19 A I went up, I guess that's Myrtle Street. I guess that's
20 what it is. I ran towards that way and just went all the way
21 to the head of the road till I got to the TD Bank.

22 Q And did you see anyone get shot that night?

23 A I didn't see somebody get shot. I mean, I heard the
24 shots, but I didn't actually see anybody getting shot.

25 Q So you just ran to get out of there?

1 A Yes, sir.

2 Q Now, had you had any arguments or anything with, with Mr.
3 Giles?

4 A That night?

5 Q At all.

6 A No. Didn't argue with him or nothing.

7 Q Did you know that he was going to be at Mr. Punchy's
8 house before you went there?

9 A No.

10 Q Were you planning on staying at Punchy's house all night?

11 A No. Wasn't no all night thing, no.

12 Q Was it your intent to leave after you got your, your
13 drink?

14 A Yeah. Because by the time I even got a drink we probably
15 was there for about 10, 15 minutes, because like every time we
16 do go over there we don't stay there long. We just sit there
17 for a little bit and leave.

18 Q Did you have a gun that night?

19 A No, sir.

20 Q Did you give Mr. Kelly a gun that night?

21 A No, sir. No, sir.

22 Q Did you give Ms. McCrae a gun that night?

23 A No, sir.

24 Q To your knowledge did either of them have a gun that
25 night?

Rodney Kinloch - Cross by Defense

243

1 A No, sir.

2 Q Did you ever see Daniea with a gun?

3 A No, sir.

4 Q Did Daniea ever go inside the residence?

5 A No, sir.

6 Q Did you see Daniea make any threatening movements or
7 anything towards Mr. Giles?

8 A No, sir. He -- Mr. Kelly never got out the truck.

9 Q So he stayed inside the truck the entire time?

10 A Uh-huh.

11 THE COURT: I'm sorry. You need to say yes or no.

12 A Yes, sir. I'm sorry. Yes, sir.

13 THE COURT: All right.

14 Q Okay. That's all the questions I have. Please answer
15 any questions Mr. Hazzard may have.

16 THE COURT: Cross examination.

17 MR. HAZZARD: Thank you, Your Honor. May it please the
18 Court.

19 CROSS EXAMINATION

20 BY MR. HAZZARD:

21 Q Good afternoon, sir. How are you?

22 A Fine.

23 Q What is your date of birth, sir?

24 A

25 Q And you are the Rodney Kinloch convicted of shoplifting

1 in October of 2006; is that correct?

2 A Yes, sir.

3 Q And convicted of assault and battery in December of 2010;
4 is that correct?

5 A Yes, sir.

6 Q Okay. Now, you said that you were working at this
7 barbershop; correct?

8 A Yes, sir.

9 Q How does the school work there?

10 A It's, it's basically just like if you're trying to become
11 a barber the guy who runs the business he, he kind of helps
12 you out to show you the ropes and stuff to become a barber.

13 Q Okay. So it's not actually a school then? It's kind of
14 an apprenticeship?

15 A I -- if you want to say it like that, yes, sir, I guess
16 so.

17 Q Well, I mean, do you take classes and get grades?

18 A No. I didn't take no classes or nothing. It was just
19 like basically be like a side job just cleaning up, stuff like
20 that, just put a little bit of money in my pocket.

21 Q Okay. And were you working anywhere else?

22 A I was doing landscaping before I started working in the
23 barbershop.

24 Q Okay. But when you were working at the barbershop, that
25 was your only employment?

Rodney Kinloch - Cross by Defense

245

1 A Yes, sir. At that time. Yes, sir.

2 Q How did you and Mr. Kelly meet?

3 A Well, he used to affiliate with a family member of mine.
4 So that's how I meet him at.

5 Q Affiliate?

6 A Well, go out, talk to, whatever, whatever you want to
7 call it, relationship.

8 Q Okay. Now, you don't live in Andrews; correct?

9 A No, sir.

10 Q Okay. And he doesn't live in Andrews?

11 A No, sir.

12 Q Okay. But you both end up over there at this trailer
13 park on a fairly regular basis; correct, or at least back then
14 you did; correct?

15 A Yes, sir.

16 Q Now, was Mr. Kelly selling drugs in that trailer park or
17 the related area during that time?

18 A Not to my knowledge. No, sir.

19 Q Okay. So it's your testimony that you and he went to
20 Andrews that night to go to Mr. Burroughs' trailer?

21 A No, sir.

22 Q Then why would you go there?

23 A We, we went there originally go meet Ms. Tuvera and then
24 we decided -- I told him like, yo, I wanted to get me a couple
25 of looseys and a drink, and he was like, "Okay. Well, we'll

1 go over there."

2 Q Okay.

3 A We sat there, got my drink and my looseys, sat there and
4 talked for a while and the -- after that we was planning on
5 leaving. Then all that stuff, other stuff happened.

6 Q Okay. So it's your testimony that you sat where and
7 talked for a while?

8 A I was outside. After I, after I felt -- because when I
9 went inside and I saw the eye contact that Mr. Giles and his
10 -- whoever his friend was I saw the eye contact they gave me.
11 So that made me feel kind of nervous. So that's when I went
12 back outside. I told the other guy, like, "Well, when my
13 stuff ready just can you bring it outside for me," and I
14 didn't go back in from there.

15 Q Okay. I guess I'm a little confused. You told Mr. Todd
16 you were in and out two or three times. Was that your
17 testimony?

18 A Yeah. That's -- that was the times I was telling the guy
19 to fix my, my stuff for me and seeing that he was going to
20 bring it outside for me.

21 Q Okay. And you told Mr. Todd that Mr. Giles was in there,
22 a friend of his was in there, a woman was in there and Mr.
23 Punchy Burroughs was in there, that there were four people in
24 there; correct?

25 A Yes, sir. The people that I remember seeing. Yes, sir.

Rodney Kinloch - Cross by Defense

247

1 Q Okay. And they weren't in a position where Mr. Burroughs
2 could just fix your drink and hand you your cigarettes and you
3 could go on your way?

4 A Well, to be completely honest, I don't even remember who
5 was on -- behind the counter to even fix my drink. The guy
6 who I asked, he was standing right there in front of us. So I
7 was like, "Well, can you just get mine when mine ready and
8 just bring it outside for me." He was like, "Okay."

9 Q Okay. And I believe you told Mr. Todd you weren't sure
10 what time that you and Mr. Kelly and Ms. McCrea arrived there;
11 correct?

12 A Uh-huh. Yes, sir.

13 Q Okay. Were you concerned about traveling in that truck?

14 A No, sir.

15 Q Did it seem to have any type of mechanical issues or
16 problems to you?

17 A The only thing that I could remember is the brakes were
18 kind of slipping here and there. That was about it.

19 Q And this was a rental vehicle?

20 A Yes, sir.

21 Q Okay. Now, your testimony is that on July 15th of 2014
22 Mr. Giles was attacking somebody with a screwdriver?

23 A Yes, sir.

24 Q And that's how you recall it?

25 A Yes, sir.

1 Q Okay. Do you recall Mr. Kelly having a gun on that
2 evening?

3 A No, sir.

4 Q Okay. Are you aware of Mr. Kelly ever having a gun in
5 his possession?

6 A Every time I would been with him I never seen a gun in
7 his possession.

8 Q Okay. And your testimony I believe was that you -- well,
9 I guess you told Mr. Todd you went to Punchy's just for
10 something to do and then you changed it to, "I went there
11 because I wanted some cigarettes and a drink."

12 A That's something to do if I'm not mistaken.

13 Q All right. Do you recall who all you spoke to while you
14 were there?

15 A I talked to a guy named Phil. Who else did I talk to? I
16 talked to Mr. Punchy. The other girl that was there I kind of
17 spoke to her here and there. That was about it. I didn't
18 really speak to nobody else.

19 Q Okay. And all these folks were on the inside?

20 A Yes, sir.

21 Q And Mr. Giles was on the inside?

22 A Yes, sir.

23 Q Okay. He didn't attack you at any point; did he?

24 A No. He didn't.

25 Q He didn't threaten you in any way or say anything

Rodney Kinloch - Cross by Defense

249

1 threatening to you?

2 A No, sir. It was just the, the look him and his associate
3 just gave me. That's what kind of made me kind of nervous, I
4 guess, if that's what you want to call it nervous.

5 Q Okay. Okay. So let's back up. The three of you arrive
6 outside the trailer. You arrived in the truck; correct?

7 A Yes, sir.

8 Q Okay. And what did you do when you all arrived?

9 A I got out. They sat in the truck, started talking for a
10 while. I was talking to the guy, Phil, and then that's when
11 me and him just -- we sat -- he was on the porch. I was like
12 on the ground. We was just sitting there talking.

13 Q Okay. And at what point did you decide to go in and get
14 a drink?

15 A When Mr. -- when the guy Phil was saying like, "I'm about
16 to go in and get me a drink," and I was like, "Well, I'm going
17 to go in there with you, too, and get one," and then when we
18 went in that's when I saw Mr. Giles and the other guy in
19 there, and when I saw the look that they gave me that's when I
20 told the guy Phil, I was like, "When -- well, when my stuff
21 finish can you just bring it outside for me." He was like,
22 "All right."

23 Q Okay. So then what did you do?

24 A I went back outside. I went to Mr. Kelly. I was like, I
25 said, "Man, something don't feel right." I was like, "I got a

1 bad vibe about something," and he was, he was just saying
2 like, "Man, you ain't, you ain't worry about that man. We, we
3 out here chilling. I mean, man, them boys ain't going to say
4 nothing to you." I say, "Yeah. I understand all that, but
5 something, something don't feel right." So he was like, "Man,
6 just don't worry about it. Just stay outside, whatever,
7 finish talking to Phil, whatever." I was like, "All right."
8 I was like, "I'm going to go get me one more cigarette and a
9 drink and we gonna' leave." He was like, "All right," and
10 like I just kept seeing somebody just coming back and forth,
11 but I never -- I didn't knew who it was, and the last time
12 that they came back they left again, and when I, I watched
13 them leave till I couldn't see them no more and probably not
14 even 10 seconds after I couldn't see them no more that's when
15 I heard the door come open. I heard the cock and I ran.

16 Q Okay. Let me back you up then. You came outside and
17 went and talked to Mr. Kelly at the truck; correct?

18 A Uh-huh. Yes, sir.

19 Q Okay. And then after you talked with him did you go back
20 inside?

21 A No, sir. I went back to where I was originally standing
22 at where me and Phil was talking.

23 Q Okay. And were you on the porch or away from the porch?
24 Where were you?

25 A I was kind of like between the truck and the porch on the

Rodney Kinloch - Cross by Defense

251

1 ground.

2 Q Okay. And so did anyone ever bring you your drink?

3 A Mr. Phil brought my drink outside.

4 Q Okay. So then by your testimony you actually only went
5 inside once then?

6 A I, I know I went in there two times. I know that. I did
7 go in there two times. Like I said, it's been two or three,
8 but I know for sure I went in there two times..

9 Q Okay. All right. And after the gentleman brought you
10 your drink what did you do then?

11 A Still continued to be outside sitting talking, normal
12 stuff.

13 Q Did you ever go back to the truck again?

14 A To see if he was about ready. That's about the only time
15 I really went back to the truck.

16 Q Okay. It sounds -- how much time passed between the time
17 you got there and the time you ran away?

18 A I'm not too sure. It -- I couldn't -- I'm not -- to be
19 honest, to be sure, I'm not sure.

20 Q Okay. But enough time for you to go inside, talk to
21 three or four people, come back outside, talk to at least one
22 person, go back inside a second time, come back outside and
23 drink your drink. Would that be a fair statement?

24 A Around, around, yeah, around that time. Yeah.

25 Q Okay. And you said that you heard what sounded like a

1 gun, what, being cocked?

2 A Yes, sir.

3 Q Okay. But you never saw it being cocked?

4 A No, sir.

5 Q Was the person to your back or --

6 A Well, how the door was positioned, if I would have saw
7 somebody at the door I would have seen like their front part
8 of their body, their face from head to toe.

9 Q I mean, were you back at the truck at this point or
10 sitting on the stairs or where were you?

11 A I was in the -- between the area of the truck and the
12 porch, standing in the middle about in that -- when that --
13 around that time that happened when the door opened.

14 Q So you were facing the truck?

15 A Like I was kind of facing the next-door-neighbor's
16 trailer. Like the way I was positioned like I was more facing
17 their trailer, but the truck and the other trailer was beside
18 me.

19 Q So the person -- so the door was to your back?

20 A I wouldn't say to my back, like probably to the, to the
21 right of me or how, how I was standing like to the right of
22 me.

23 Q Okay. So when you ran off, which direction did you run?

24 A Well, when you come, when you come in, when you leaving
25 out that's the -- you make the left. So I went that left way,

Rodney Kinloch - Redirect by State

253

1 that whole road, that's Myrtle.

2 Q So you ran past the truck and just kept on going?

3 A No. At -- the -- I -- the truck was on this side of me.
4 I couldn't run past the truck. I ran past Mr. Punchy's
5 trailer.

6 Q So you ran in the opposite direction of the trailer?

7 A Yeah. Like going like I'm going back out.

8 Q All right. Thank you. No further questions.

9 THE COURT: All right. Redirect?

10 MR. TODD: Just briefly.

11 REDIRECT EXAMINATION

12 BY MR. TODD:

13 Q Now, the way you were standing you said that the door was
14 off towards your right?

15 A Yes, sir.

16 Q And you didn't see the person's face that came out?

17 A No, sir.

18 Q Did you see a gun?

19 A No, sir.

20 Q So all you heard was the door open, cocking the gun --

21 A Cock and started running.

22 Q Were you armed?

23 A No, sir.

24 Q Okay. That's all the questions I have.

25 THE COURT: All right. You may step down.

1 MR. TODD: Mr. Wilbert Burroughs.

2 THE COURT: All right.

3 MR. TODD: Can Mr. Kinloch be released from his subpoena?

4 THE COURT: Any objection?

5 MR. HAZZARD: No objection, Your Honor.

6 THE COURT: All right. He's free to go.

7 MR. TODD: Go all the way up, straight up there.

8 Whereupon, Wilbert Burroughs was called to the stand,
9 duly sworn by the clerk and testified as follows:

10 THE CLERK: Thank you. Please be seated and state and
11 spell your name for the record.

12 THE COURT: You need to come around here. All right,
13 sir. You may be seated, and if you'd spell your first and
14 last name, please.

15 MR. BURROUGHS: W-I-L-B-E-R-T, Burroughs is B-U-R-R-O-U-
16 G-H-S.

17 THE COURT: All right. Thank you, sir. All right. Mr.
18 Todd.

19 MR. TODD: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. TODD:

22 Q Mr. Burroughs, what's your nickname?

23 A They call me Punchy.

24 Q Call you Punchy. And where do you live?

25 A West Myrtle Road, Lot Five.

Wilbert Burroughs - Direct by State

255

1 Q Okay. And that's in Andrews; is that correct?

2 A Yes. Yes, sir.

3 Q Tell us a little bit about yourself. Are you from
4 Andrews?

5 Q No. I'm originally from Williamsburg County, but I moved
6 to Andrews when I was six.

7 Q Okay. So you've, you've been in Andrews for a long time?

8 A Yes, sir.

9 Q Okay. Now, your house, do you have friends come over
10 quite a bit?

11 A I have like people come over.

12 Q And what do you all do? Do you have some drinks?

13 A Yes, sir. We have some drinks. We chill, listen to
14 music. We ain't about all that crazy stuff.

15 Q So you just try to have a quiet night?

16 A Yes, sir.

17 Q Do a lot of your friends come over kind of unannounced?

18 A Mostly they'll call me on my phone and let me know that
19 they coming.

20 Q Do some people just pop in at night just to see if
21 anything is going on?

22 A Like some of my cousins and stuff'll pop in.

23 Q Okay. Now, I want to ask you a few questions about,
24 about where you live.

25 A Okay.

1 Q If you would, please take a look at Six, Seven, Eight and
2 Nine.

3 A Yes, sir. All right.

4 Q Do you recognize these -- this place?

5 A Yes, sir.

6 Q Where is that?

7 A This is my counter when you come in the door.

8 Q That's the inside of your house?

9 A Yes, sir.

10 Q Okay. Go on to the next one. Where is that?

11 A This, this, this is the inside of my kitchen right here.

12 Q Okay. Go on to the next one, sir.

13 A This is my front room as you're opening the door and
14 coming in and that's my counter again with my amplifier in the
15 front of it.

16 Q Okay. If you would go on to the next one.

17 A Yes. This is my front room again with my stereo and the
18 chair across from the stereo and the TV.

19 MR. TODD: Your Honor, at this time I'd like to place
20 these into evidence.

21 THE COURT: Any objection?

22 MR. HAZZARD: If I could see the particular pictures,
23 Your Honor.

24 THE COURT: All right.

25 MR. HAZZARD: Very briefly. The Court's indulgence.

Wilbert Burroughs - Direct by State

257

1 No objection, Your Honor.

2 THE COURT: All right. State's Exhibits Six, Seven,
3 Eight and Nine are admitted into evidence without objection.

4 MR. TODD: Thank you, Your Honor.

5 (Whereupon, State's Exhibit Numbers Six, Seven, Eight and
6 Nine [Photographs] admitted into evidence and appropriately
7 marked.)

8 BY MR. TODD:

9 Q Mr. Burroughs, take a quick look at State's Six. Will
10 you explain to us what that is?

11 A Yes. This is my counter as you're coming in the door
12 with my table sitting next to the window across from my stove,
13 my refrigerator and my china cabinet right there.

14 Q Now, on December 3rd, 2014, do you recall this night?

15 A Yes, sir.

16 Q And what significant happened that night?

17 A That night, Jamie Giles call me and ask me could he come
18 over, take a drink and chill with me, and when he came, after
19 he came then that's when Barney and them came and I left and I
20 went to the store, got a pack of cigarettes and a box of Black
21 and Mild, and when I came back I went back and sit down in the
22 kitchen at my table, and I was sitting there talking to his
23 girlfriend, Brenda Brown, and at that time that's when I saw
24 him and Barney Wilson talking back and forth. Whoever the
25 other guy was I don't know who he was, but anyway, they was

- 1 talking back and forth, and that's when I heard Barney say,
2 "Man, why you ain't never tell me that. Man, why you ain't
3 never tell me that." Then he say, "Say no more," like that,
4 and the next thing I know I saw Boo Boo had on a brown jacket.
5 It looked kind of like, the, the sleeves out of it looked kind
6 of black and white to me, but the other part of it was brown,
7 and I thought he was walking outside. The next thing I know I
8 heard the gun went off, but I ain't never saw him shoot, but I
9 did heard the gun went off about six or seven or seven times.
- 10 Q So you, you said Boo Boo. Who's that?
- 11 A Well, that's his nickname, but anyway, Jamie Giles.
- 12 Q Okay. Just wanted to make, make it clear who --
- 13 A I made a mistake. Sorry about that.
- 14 Q It's fine. Now, did you see Mr. Kinloch come in that
15 night? Do you recall him being there?
- 16 A Well, I had -- well, he came in and spoke to me and asked
17 me for a cigarette and a drink and I gave it to him.
- 18 Q And --
- 19 A And after that whatever went down I was on the inside of
20 the house.
- 21 Q And was Mr. Kinloch in the house when everything went
22 down?
- 23 A No, sir. He was gone.
- 24 Q Did you ever see Mr. Kelly that night?
- 25 A No. I never knew he was out there.

Wilbert Burroughs - Direct by State

259

- 1 Q So, he never came into your house that night?
- 2 A No, sir.
- 3 Q What about Ms. McCrae, did you see her that night?
- 4 A No, sir.
- 5 Q And do you know Ms. McCrae?
- 6 A That's my cousin.
- 7 Q Okay. Now, you said you heard the shots?
- 8 A Yes, sir.
- 9 Q And so you didn't see --
- 10 A No, sir.
- 11 Q -- anything that happened?
- 12 A No, sir.
- 13 Q Now, what did you do when you heard the shots?
- 14 A I panic.
- 15 Q Panicked?
- 16 A Yes. And then --
- 17 Q Did you drop to the ground, did you run out the back
- 18 door?
- 19 A I took off and went down my hallway.
- 20 Q Okay. Now, do you have a back door to your residence?
- 21 A I have -- yes, sir. I have a back door where my bathroom
- 22 is and where my kitchen is.
- 23 Q And is it usually locked?
- 24 A Yes. It's, it's, it's usually locked because I live
- 25 alone.

1 Q And what kind of lock is on it?

2 A I have like two padlocks at the top because one of my
3 doorknobs is broke at my house at my bathroom coming across my
4 bathroom onto my room and that's the only way I have to keep
5 it locked.

6 Q So are those hard to open?

7 A Yes. From the outside it is.

8 Q But from the inside it's pretty easy to open those up?

9 A If I open my -- if, if, if I use my keys.

10 Q Okay. And do you keep the keys in your house?

11 A Yeah. I keep my keys with me at all times, but the one I
12 got to the back locks is, you know, I don't have them on me.
13 I left them at the house.

14 Q Okay. Now, who all was inside of your house that night?
15 If you could, just, just say their, their legal names, not,
16 not their street names. That way we know.

17 A Okay. I'm, I'm sorry.

18 Q No. That's fine.

19 A Brenda Brown, Chakana Brown, Jamie Giles was at my house
20 that night, Barney Wilson and that's about all I can remember.

21 Q Okay. Did you ever see Mr. Kinloch when he came in with
22 a gun?

23 A I never was outside, sir. I never saw none of that.

24 Q Okay. Did you ever look out at, at Mr. Kelly?

25 A No, sir. When I got back from the store, I, I stayed in

Wilbert Burroughs - Direct by State

261

1 the kitchen all the time.

2 Q Now, on that picture you're holding right there that's a
3 picture of what?

4 A My kitchen.

5 Q Okay. And where did you sit?

6 A This is the chair what I was sitting in right here.

7 Q Okay.

8 A That's the chair that I was sitting in right there.

9 Q So you, you were in that seat most of the night?

10 A Yes. Right by the window.

11 Q And when shots were fired you said you hit the, hit the
12 ground?

13 A I took off and hit the floor in the hallway.

14 Q Okay. If you would just take a look at State's Number
15 Eight, could you explain what that is?

16 A That's the door. That's the counter where my amplifier
17 at, that's the rocking chair, that's my recliner, my chair
18 with my recliner's on it and that's my stereo across from it
19 and my TV.

20 Q Okay. Is that the main portion of your house where
21 people would stay?

22 A That's the main portion that they would come and sit down
23 in.

24 Q So when you have people over that's where they are?

25 A Yes. Uh-huh. Yes, sir.

1 Q If you would take a look at State's Number Seven.

2 A Okay. This is the inside of my kitchen. This is the
3 counter with my microwave and the dish rack together. This is
4 my sink, and this is where I sit sometime like behind my
5 counter, but this is where Brenda Brown was sitting right
6 here.

7 Q Now, from that picture is -- where's the hallway or can
8 you see the hallway where that back door is?

9 A The hallway is like straight down going back to my, to
10 where my bedroom.

11 Q Okay. So it's not that far to go to your back hallway if
12 you needed to leave out the back door?

13 A No, sir.

14 Q Okay. That's all the questions I have right now. Please
15 answer any questions Mr. Hazzard may have.

16 THE COURT: Cross-examination?

17 MR. HAZZARD: Thank you, Your Honor. May it please the
18 Court?

19 CROSS EXAMINATION

20 BY MR. HAZZARD:

21 Q Good afternoon, sir. Is there anyone else in that
22 trailer park that is related to you?

23 A No, sir.

24 Q Okay. But Ms. McCrae is your cousin you said?

25 A That's my cousin, but she doesn't live in the trailer

1 park.

2 Q Yes, sir. Now, how do you know Mr. Kelly and Mr.
3 Kinloch? Do they live in the trailer park?

4 A No, sir.

5 Q Okay. And so how do you know them?

6 A I just had met them through my cousin.

7 Q You met them through your cousin?

8 A Yes.

9 Q Okay. Now, you indicated that -- and how long ago did
10 you meet them do you think?

11 A Around about December sometime as I can remember to my
12 knowledge.

13 Q I'm sorry. I didn't understand what you said, sir.

14 A I said round about a few days before December as I can
15 remember.

16 Q A few days before this incident?

17 A The month of December they came in, yes, was not last
18 year, I mean, not last year but the year before this year.

19 Q How long had you known them as of the date of this
20 incident?

21 A I don't really know them know them like that, but then
22 from the time I had known them that, you know, they, they were
23 always cool with me. When, when, when we see each other we'll
24 speak to each other in passing and stuff.

25 Q Okay. How long prior to the incident do you think it was

1 when you first came into contact with them?

2 A That was before -- rephrase that again.

3 Q Okay. You remember the incident Mr. Todd was asking you
4 about on December 3rd of 2014; right?

5 A Yes.

6 Q Okay. How long was it before that that you first came
7 into contact with Mr. Kelly and Mr. Kinloch?

8 A I had just known them for about maybe like about,
9 estimate for about a couple of weeks or whatever, but like I
10 say, they all was cool with me.

11 Q Okay. So you didn't know them or know anything of them
12 in July of 2014 when the incident occurred with them and Mr.
13 Giles at your residence?

14 A Oh, yes. Yes. I'm sorry. I'm sorry. Yes. But I was
15 on the inside when that happened.

16 Q Okay. But you knew who they were at that time?

17 A Yes. Yes.

18 Q All right. Thank you, sir.

19 A Like I say, I, I didn't quite remember everything, but
20 I'm telling you the truth.

21 Q Yes, sir. Thank you. So you indicated that you left
22 your house around nine p.m. or is it a correct statement to
23 say you left your house around nine p.m. and Mr. Kelly's truck
24 wasn't there when you left?

25 A As I can remember, sir, when I went to the store and when

1 I came back I saw the truck, but I never knew who was in the
2 truck, sir.

3 Q So was the truck there when you left and went to your
4 storage unit?

5 A As I can remember I'm not too sure about that. Like I
6 said, when I got back from the store the truck was there. I
7 didn't never know who struck it was because I never saw, you
8 know, nobody got out the truck or anything.

9 Q Yes, sir. Do you recall whether the truck was there when
10 you left to go to your storage unit?

11 A I don't recall that, sir. I don't even much remember.

12 Q Okay.

13 A Like I said, just like I said, I went to the store, I
14 came back, that's when I noticed the truck was there, and I
15 went on in the house, like I said, sit down at my kitchen, lit
16 me a Black and Mild and I was smoking that.

17 Q And when you returned to notice the truck, I believe you
18 said because the windows were tinted you couldn't even tell
19 that anybody was inside; is that correct?

20 A No, sir. It was, it was very dark.

21 Q Okay. Okay.

22 A It was very dark, and as a matter of fact, I never went
23 back outside.

24 Q Yes, sir. So when you went back inside and had your
25 Black and Mild, you said that Mr. Giles called beforehand and

1 said, "Hey, is it okay if I stop by"; is that a correct
2 statement?

3 A That was early before I had left and went to the store.
4 Yes.

5 Q Yes, sir. About what time did Mr. Giles arrive?

6 A I didn't look at the time, sir.

7 Q How long was it before you left to go to the store that
8 Mr. Giles arrived?

9 A I didn't even much estimate on it, sir.

10 Q All right. Now, when Mr. Kinloch came in he ordered
11 what, a cigarette or cigarettes and a drink of some -- an
12 alcoholic beverage from you; is that correct?

13 A Well, he asked for a cigarette and he asked for a drink
14 and I gave it to him.

15 Q So he asked for it and you gave it to him?

16 A Yes. He asked for it and I gave it to him.

17 Q Just like that?

18 A He asked and I gave it to him. Yes, sir. Just like
19 that.

20 Q All right. Now, you indicated that you have padlocks on
21 the back door; is that correct?

22 A Yes, sir. I have two padlocks on one of the doors at my
23 kitchen that's on the back of the house, and one at whenever
24 you're going down the hallway. I have two back padlocks.

25 Q Okay.

Chakana Brown - Direct by State

267

1 MR. HAZZARD: I have no further questions, Your Honor.

2 THE COURT: All right. Redirect?

3 MR. TODD: No, Your Honor. We're done with this witness.

4 THE COURT: All right. You may step down.

5 MR. TODD: The State calls Ms. Chakana Brown.

6 THE COURT: All right.

7 Whereupon, Chakana Brown was called to the stand, duly
8 sworn by the clerk and testified as follows:

9 THE CLERK: Thank you. Please be seated and state your
10 name for the record.

11 MS. BROWN: Chakana Brown.

12 THE COURT: All right. Ms. Brown, could you spell your
13 first name, please?

14 MS. BROWN: C-H-A-K-A-N-A.

15 THE COURT: All right. All right. Mr. Todd.

16 MR. TODD: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. TODD:

19 Q Ms. Brown, we want to learn a little bit about you.

20 Where are you from?

21 A From Andrews.

22 Q And have you been there most of your life?

23 A Yes.

24 Q Okay. And where do you live in Andrews?

25 A In a trailer park on Jones Avenue.

1 Q Okay. Do you live near Mr., Mr. Burroughs who just --

2 A Yes.

3 Q -- was up here? How do you know Mr. Burroughs?

4 A Friends, neighbors, family.

5 Q And have you on occasion gone to Mr. Burroughs' house
6 before?

7 A Yes.

8 Q Okay. Now, in mid-July 2014, do you recall an incident I
9 believe it was with your aunt and, and Mr. Giles?

10 A Yes.

11 Q Okay. Were you there that night?

12 A Yes.

13 Q Can you tell us about that incident?

14 A They had a argument about something. I don't know what
15 the argument was about, but he left from the middle of the
16 trailer park, went across the street and he came out with a
17 screwdriver in his hand coming towards my aunt, and we all try
18 to, you know, push him back so he wouldn't hurt her, and
19 that's the fight, that's how the fight began, and we all
20 jumped on him and that was that.

21 Q And did you guys restrain him, keep him from --

22 A Yes. We did try.

23 Q Okay. Did he fight back?

24 A Yes.

25 Q And did anybody stomp him, beat him, I mean, was he beat

Chakana Brown - Direct by State

269

1 down before he left?

2 A Yes.

3 Q Okay. So do you recall Mr. Kelly being involved with
4 that?

5 A I haven't seen him out there.

6 Q Okay. Do you recall Mr. Kinloch being involved with that
7 altercation?

8 A No.

9 Q Okay. Now, from that night did he -- did Mr. Giles leave
10 on his own?

11 A Yes. He took off running.

12 Q Okay. So he was able to get up and walk and run away?

13 A Yes.

14 Q Do recall if he was intoxicated that night?

15 A Yes.

16 Q Okay. How long had he -- had you been there?

17 A I was there for like two hours before this happened, and
18 I walk outside and that's when the incident happened outside
19 the door.

20 Q Okay. Do you recall Mr. Giles being there earlier that
21 night in the incident?

22 A Yes.

23 Q Had he been there drinking for a while?

24 A Yes.

25 Q Okay. Now, from that incident and that was close to Mr.

1 Punchy's house; is that correct?

2 A Yes.

3 Q Okay. Now, from that incident on December 3rd, 2014, were
4 you at Mr. Punchy's house that night?

5 A Yes.

6 Q And what time do you recall arriving there?

7 A Like 9:30.

8 Q And who do you recall being inside the house?

9 A It was myself, Mr. Burroughs, Mr. Giles, Barney and my
10 aunt.

11 Q Okay. And tell us a little bit about anybody that came
12 and left. Do you recall who came and left?

13 A Phil, Phillip, he left. He was outside. That was the
14 only person that left and went outside that time.

15 Q Okay. Did you see Mr. Kinloch at all that night?

16 A I seen him when he came -- no, I didn't, didn't see Mr.
17 Kinloch.

18 Q Okay.

19 A That's Clump; right?

20 Q The gentleman back here with the --

21 A Yes. Okay. Yes.

22 Q Okay.

23 A He was -- he did come inside.

24 Q He came inside?

25 A Yes.

Chakana Brown - Direct by State

271

- 1 Q Do you recall what he did?
- 2 A He came and got a drink and a cigarette.
- 3 Q Okay. And did you see him leave?
- 4 A Yes.
- 5 Q Now, tell us about Mr. Giles that night. Had he, he been
- 6 drinking?
- 7 A Yes.
- 8 Q Was he intoxicated that night?
- 9 A Not really.
- 10 Q Okay.
- 11 A Maybe, he didn't look it at first.
- 12 Q All right. What about Mr. Wilson you said was there,
- 13 was, was he intoxicated?
- 14 A Yes. He was drinking, too.
- 15 Q Okay. Now, did you see Mr. Wilson with a firearm?
- 16 A No. I did not.
- 17 Q Did you see Mr. Giles with a firearm?
- 18 A Yes.
- 19 Q Now, what did he do with that firearm?
- 20 A He walked past me by the door, opened the door and just
- 21 started shooting and walk off the step and walk to Mr. Kelly's
- 22 vehicle and then he just turned back, look around and walked
- 23 off.
- 24 Q Did he say anything as he left?
- 25 A No.

1 Q He didn't say a single thing?

2 A No.

3 Q How long was -- were you all inside the residence that
4 night?

5 A I just had got there. I probably was there probably like
6 30 or 45 minutes before that happened.

7 Q Okay. Did Mr. Giles seem like he was afraid?

8 A No.

9 Q Was -- did he seem like he was concerned with anything?

10 A Not at first. No.

11 Q You said not at first. What, what gives you to believe
12 that he was --

13 A When he saw Mr. Kinloch then he went to the door, he
14 opened it, and he closed the door back. He went to Barney and
15 said, "That's that nigger right there. I'm going to jail
16 tonight." So he went in the back and made a phone call to
17 someone, a short guy, and he came back with the jacket that
18 Mr. Giles had on wrapped up. He went into the back room, put
19 the jacket on, came by me again, look back at me, did a little
20 smirk and open the door and just started shooting.

21 Q So he called somebody?

22 A Yes.

23 Q They came?

24 A Yes.

25 Q And then he walked out and shot?

Chakana Brown - Cross by Defense

273

1 A Yes.

2 Q Did you see Mr. Kelly at all that night?

3 A No.

4 Q Did you see Ms. McCrae that night?

5 A No. I did not.

6 Q That's all the questions I have.

7 THE COURT: Cross examination?

8 MR. HAZZARD: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. HAZZARD:

11 Q Okay. So your recollection -- first of all, you
12 indicated that Brenda Brown, who was in a relationship with
13 Mr. Giles, that's your aunt; is that correct?

14 A Yes. Yes.

15 Q Okay. Okay. And that you're friends with Punchy
16 Burroughs?

17 A Yes.

18 Q Okay. How long have you known him?

19 A I know Punchy half my life.

20 Q Okay. And you're in the trailer, and you're the one
21 person who hears Mr. Giles say, "I'm going to jail tonight"?

22 A Yes.

23 Q Okay. And you said that -- you said that Mr. Giles
24 called somebody?

25 A He told Barney to call whoever the guy was and he came

1 over back to Punchy's house.

2 Q Okay.

3 A Then the shirt, the jacket that he had on was wrapped up.
4 He didn't have no jacket on at first.

5 Q Okay. And who all was present when this guy came in?

6 A It was me, Mr. Giles, Mr. Wilbert and Barney and my aunt
7 inside.

8 Q Okay. So Brenda Brown was in there as well?

9 A Yes.

10 Q But Mr. Kinloch wasn't in there?

11 A No. He was already outside.

12 Q And Mr. Phillip wasn't in there?

13 A No. He was on the porch.

14 Q Okay. So this guy would've had to walk past him then?

15 A Yes.

16 Q Okay. Okay. And you said that you think you got there
17 around, around about 9:30?

18 A Yes.

19 Q And that you were there approximately 30 to 45 minutes
20 before the incident occurred?

21 A Yes.

22 Q Okay. And I think you told Mr. Todd that on July 15th of
23 2014 that Jamie was beaten down out there; is that a correct
24 statement?

25 A Yes.

Chakana Brown - Cross by Defense

275

1 Q Okay. But I think you told him also that you didn't see
2 Mr. Kelly or Mr. Kinloch?

3 A They was already gone. I didn't see them two. They -- I
4 didn't see them then. After they pulled him off her then we
5 all -- my family, we all jumped on him.

6 Q So, they were already gone at that point?

7 A Yes.

8 Q Did you see them when they were there?

9 A At first, yes, because we all was outside.

10 Q Okay. And the beating was such that Mr. Giles had to
11 take off running?

12 A Yes.

13 Q Okay. But you didn't see Mr. Kinloch or Mr. Kelly with a
14 gun on July 15th, 2014, did you, ma'am?

15 A No. I did not.

16 Q Okay. How long have you known Mr. Kelly and Mr. Kinloch?

17 A I only met them twice, the day of the first incident and
18 the day the shooting happened.

19 Q And that's the only two times you've ever seen them?

20 A Yes.

21 Q How often do you go to Mr. Burroughs' trailer?

22 A Every day mostly.

23 Q And you've only seen Mr. Kelly and Mr. Kinloch on two
24 occasions?

25 A Yes. Correct.

1 MR. HAZZARD: The Court's indulgence, Your Honor.

2 THE COURT: All right.

3 BY MR. HAZZARD:

4 Q Where do you work, ma'am?

5 A Nowhere right now.

6 Q Okay. Where did you work back in December of 2014?

7 A Nowhere. I just had came back home from Florida.

8 Q Okay. How do you eat if you don't work?

9 A My mother helps me.

10 Q Okay. Do you live with your mother?

11 A No.

12 Q Okay. And does your mother subsidize you going to
13 Punchy's every day?

14 A Yes.

15 Q All right. And Brenda Brown is your mother's sister?

16 A Yes.

17 Q Did you -- when you went there, did you see the black
18 truck out in front of Punchy Burroughs' trailer?

19 A I didn't notice the vehicle until the shooting happened.

20 Q Okay. So you didn't notice the vehicle until you came
21 back to the door at the time of the shooting?

22 A Yes.

23 Q All right. When Mr. Kinloch came in, did you speak with
24 him at any point?

25 A Yes. I spoke. I said hey.

1 Q Okay. And did Mr. Kinloch speak to Mr. Giles at any
2 point?

3 A He tried to shake his hand and he just pushed back.

4 Q Okay. And where was Mr. Giles sitting?

5 A He was standing up at the bar.

6 Q Okay. Was he near the front door?

7 A Yes.

8 Q Okay. And -- all right. Thank you. No further
9 questions.

10 THE COURT: Redirect?

11 MR. TODD: No, Your Honor.

12 THE COURT: All right. You may step down.

13 MR. TODD: And Your Honor, may we take a short break?

14 THE COURT: Yeah. I think it's a good time for us to
15 take a break. All right. Ladies and gentlemen, it's a good
16 time for us to take our afternoon break, give you an
17 opportunity to stretch your legs, use the restroom, whatever
18 the case may be. Do not discuss the case even among
19 yourselves. Don't conduct any independent investigation.
20 We'll take about a 10 or 15 minute break and then we'll come
21 back and resume the trial then. Thank you very much.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right. Anything from the State before we
25 recess?

1 MR. TODD: No, Your Honor.

2 THE COURT: Anything from the Defense?

3 MR. HAZZARD: No, sir, Judge.

4 THE COURT: All right. Let's take about a 10 or 15-
5 minute break.

6 OFF THE RECORD

7 (On the record. The following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. Anything from the State before we
10 bring the jury in?

11 MR. TODD: No, Your Honor.

12 THE COURT: Anything from the Defense?

13 MR. HAZZARD: No, sir, Judge.

14 THE COURT: All right. Let's go ahead and bring the jury
15 in.

16 (Whereupon, the following takes place in the presence of
17 the jury.)

18 THE COURT: All right. Ladies and gentlemen, welcome
19 back. We're ready to resume the trial of the case. Mr. Todd,
20 the State can call their next witness.

21 MR. TODD: Thank you, Your Honor. The State calls
22 Investigator Michael Thacker.

23 THE COURT: All right.

24 Whereupon, Michael Thacker was called to the stand, duly
25 sworn by the clerk and testified as follows:

Michael Thacker - Direct by State

279

1 THE CLERK: Thank you. Please be seated and state, state
2 and spell your last name for the record.

3 MR. THACKER: Michael Thacker, T-H-A-C-K-E-R.

4 THE COURT: All right, sir.

5 MR. TODD: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. TODD:

8 Q Investigator Thacker, tell us a little bit about
9 yourself. Where are you from?

10 A Originally from Tennessee. I've lived in Georgetown for
11 the last 30 plus years. I work at the Georgetown County
12 Sheriff's Office.

13 Q What is your current position there?

14 A In criminal investigations.

15 Q And tell us from the time you went to the academy what
16 you did to get into that position?

17 A Sure. I worked -- I was a patrol for some time, two
18 years, I believe, and then transferred to the criminal
19 investigations, and this is my 16th year. So I've been there
20 since, and from that time have taken probably over a thousand
21 at this time hours of crime scene training, certified through
22 the International Association of Identification as a certified
23 crime scene analyst for crime scene investigation,
24 reconstruction.

25 MR. HAZZARD: Your Honor, if I might, I apologize for the

1 interruption. I am not sure if the Prosecutor is laying
2 groundwork to have him qualified as an expert. I know
3 Investigator Thacker and know him to be eminently qualified.
4 So if that is what he is doing, if he'll say what the area of
5 expertise is we may be able to speed things up a little bit.

6 THE COURT: All right. You offering him?

7 MR. TODD: I wasn't even going that route. I was
8 actually just trying to let the jury know what, what he did to
9 get in his position but --

10 THE COURT: All right.

11 MR. TODD: -- so we're just, we're just going to talk
12 about what he did on that night. So we're not going to go
13 into of those questions.

14 THE COURT: All right.

15 MR. HAZZARD: Okay.

16 THE COURT: That'll be fine. Thank you.

17 BY MR. TODD:

18 Q Well, let's just get on with it then. Now, how did you
19 become involved with the State versus Jamie Giles? What's --
20 what was your role?

21 A I was notified by my captain, Captain Pierce, on the 4th,
22 I think it was the 4th of December, 2014. They had been in
23 contact with the Andrews Police Department in reference to a
24 scene that they had and they had requested that we work and
25 process a vehicle that was involved in that scene. From that

Michael Thacker - Direct by State

281

1 point I was advised by Captain Pierce that he was in contact
2 with Captain Garrett from Andrews Police Department to get the
3 proper paperwork for me, which included search warrants and
4 the information for the case. The vehicle was transported to
5 our office and secured in our locked storage building, and at
6 that point I waited the paperwork with the search warrant to
7 begin processing the vehicle, which that was on the 5th.

8 Q So the, the vehicle wasn't at the scene where it was --
9 of the crime as far as what -- when you did the processing of
10 the vehicle, it was not at the scene of the crime?

11 A No. When I was involved the vehicle was brought from
12 Andrews. I couldn't -- at the time I wouldn't, you know, I
13 wouldn't have known where exactly it would've been. It was
14 brought at the direction of Andrews Police Department to our
15 facility at their request for us to process it.

16 Q Okay. And you began processing it on the 5th of December;
17 is that what you said?

18 A The 5th. Yes.

19 Q Okay. Tell us a little bit about what you -- when you
20 process a vehicle.

21 A Well, the vehicle, well, as far as the process I went
22 through or --

23 Q Just in general tell us what you do to, to process it and
24 then walk us through what you did with this vehicle in
25 particular.

1 A Okay. Sure. With any, any of the scenes that I process
2 the, the first thing I'll do is, is get up some general
3 information about the, the incident. Then I'll do a visual
4 inspection of the property or vehicle, in this, in this case,
5 the exterior of it and make notations of anything that I
6 observe on the vehicle, at which point then I'll photograph
7 the vehicle as I have found it. After photographing the
8 vehicle, what I'll do, and in this case, identify the damage
9 that was obvious on the vehicle on the exterior with scales
10 where I can photograph any of that damage with scales and put
11 numbering system to it where I can place that in my notes.
12 After that, do another check of the vehicle to make sure that
13 I haven't looked over anything. At that point I will go to
14 the interior of the vehicle, the same process, photograph the
15 areas, identify any potential items that could be related to
16 that case. Sometimes I don't know anything that particular it
17 may be. So we'll make note of anything that I may want to
18 collect, give them numbers again, photograph those items with
19 numbers, do a collection. In this case, after I do those
20 points, then I have trajectory rods that were placed in these
21 holes in the vehicle to get a generalized angle of the path of
22 the bullets and try to match those items up to anything on the
23 interior. Once I do that, photograph those items and then
24 I'll do a, a search of the vehicle more in-depth of the seats,
25 under the seats, any openings, compartments, things of that

Michael Thacker - Direct by State

283

1 nature.

2 Q So you do a very thorough search of the vehicles after
3 you do the initial assessments? So you, you get in-depth,
4 checking all the crevices and everything for evidence?

5 A Yes, sir.

6 Q And you said you take a lot of pictures?

7 A Take quite a few.

8 Q In the case, in this case did you take a bunch of
9 pictures that day?

10 A Yes.

11 Q If you would, please take a look at these pictures.
12 They've been previously marked as State's 10 through 110.
13 Please take a look at those.

14 A Okay. All right. Okay.

15 Q Now, since you've had the opportunity to look at those
16 hundred pictures, are those the pictures that you took of the
17 vehicle?

18 A Yes.

19 Q Are they a fair and accurate depiction of the vehicle as
20 you got it?

21 A Yes.

22 Q Have they been altered in any way?

23 A Only by the items I placed in for the photographs for
24 the, the rods and the numbers with scales.

25 Q Okay. So all the altering was on your part as you're

1 taking pictures of the vehicle?

2 A Yes.

3 Q But the pictures have not been altered from what you
4 took?

5 A No.

6 Q Okay.

7 MR. TODD: Your Honor, at this time I'd like to place
8 these in evidence.

9 THE COURT: Any objection?

10 MR. HAZZARD: No objection, Your Honor.

11 THE COURT: All right. State's Exhibits 10 through 110
12 are admitted into evidence without objection.

13 (Whereupon, State's Exhibit Numbers 10 through 110
14 [Photographs] admitted into evidence and appropriately
15 marked.)

16 MR. TODD: Your Honor, permission to publish these?

17 THE COURT: All right.

18 BY MR. TODD:

19 Q Investigator Thacker, walk us through what you did in
20 this case particularly, and then I'm going to ask you to point
21 out a few things in these pictures, but walk us through what
22 you did.

23 A Okay. Well, once I review the paperwork that was
24 provided to me with the search warrant, make sure that that
25 information is accurate, then one of the first things, again,

Michael Thacker - Direct by State

285

1 I will do a -- kind of an overall walk-through of the exterior
2 of the vehicle to identify anything, any obvious things that I
3 may come across, photograph the vehicle as I find it. After
4 that, then I'll go back and identify these marks whether it be
5 a damage. In this case it would be the holes that were on the
6 damaged part of the door.

7 Q Now, you found holes in the door?

8 A Yes.

9 Q If you would take a --

10 A The driver door.

11 Q In the driver's door. If you would take a look at
12 State's 11?

13 A Okay.

14 Q How many holes did you find in the door?

15 A There were six that I located from the door. There's
16 seven, there's seven markers here. One of them I was able to
17 through a rod track the trajectory of it through the mirror
18 into the side of the door, and actually that one's not a hole.
19 It didn't -- it lost energy it appears and didn't penetrate
20 the door. So it fell off. So that one, which is -- I'd have
21 to look at the closer to give you the actual number, but that
22 one has an indention in the door but it didn't penetrate the
23 door.

24 Q And you said you marked, marked these?

25 A Yes.

1 Q If you would take a look at State's Exhibit Number Ten.

2 Are these the markers you used?

3 A Yes. These are the trajectory rods that were used.

4 Q And did you measure the trajectory at all?

5 A I did not do the, the angle because basically with this I
6 was processing this vehicle in our shop, not at the scene of
7 where it occurred. So I wouldn't have any reference points to
8 go to to match those angles up.

9 Q What did you use these trajectory rods for?

10 A What those are -- basically, what they do is they'll show
11 the, the path that this bullet would have taken, and the two
12 things it's going to do is, one, it's going to -- we're going
13 to be able to follow the path, and, and find where this bullet
14 or, or fragment in most cases ended up, and on the other end
15 from the exterior side you can get the approximate angle of
16 which the shot came in or the bullet path came in, and what
17 that'll help you with at times will be the, the extreme
18 distance from the vehicle that, that a normal person may fire
19 a weapon as opposed to any elevated heights. So you'll be
20 able to follow that back.

21 Q Now, did you remove any bullet fragments from, from this
22 vehicle?

23 A I did. There were some fragments that were recovered
24 from inside.

25 Q Do you recall how many you removed?

Michael Thacker - Direct by State

287

1 A I would have to look at my report to reference it. I
2 know there were several.

3 Q Do you have your report with you or --

4 A I do.

5 Q Okay. If you mind --

6 A Sure.

7 Q -- wouldn't mind just take a look at your report.

8 A I have what I identified as Number 14, that was a bullet
9 fragment. Number 17 was the jacketing that was all that was
10 left over. So that was just part of a projectile, not the
11 whole thing. Sometimes they'll break apart. Number 18,
12 again, was a fragment, and then number 22 was actually a
13 projectile. That would have been a fired round.

14 Q Did you find any unspent rounds, any the whole bullet
15 with, casing, powder, anything like that in the vehicle?

16 A No.

17 Q Did you -- you thoroughly searched this vehicle; is that
18 correct?

19 A Yes, sir.

20 Q You did not find anything of that nature?

21 A I did not.

22 Q Did you find any firearms in the vehicle?

23 A I did not.

24 Q Did you find any drugs in the vehicle?

25 A I did not.

1 Q Did you look for any things like that while you were
2 searching?

3 A Yes.

4 Q And what was in the vehicle, just generally, what all did
5 you find in the vehicle?

6 A What I recovered was the fragments and the projectile.
7 There was also blood evidence inside the vehicle where we
8 swabbed that, that evidence. Aside from that, there was
9 general items, cups and clothing, and again, I could, I could
10 refer back to my notes if I, if I need to.

11 Q No. That's sufficient. You've, you've covered any of
12 these things, and just you used to work with Chief Garrett; is
13 that correct?

14 A Yes.

15 Q And has he on occasion asked the Georgetown Police
16 Department or the Georgetown -- the, the Georgetown Sheriff's
17 Department to process any of the vehicles?

18 A Yes. It's, it's not an uncommon practice. I have
19 processed scenes for the surrounding agencies over, over time.

20 Q That's all the questions I have right now. Thank you.

21 THE COURT: All right. Cross examination?

22 MR. HAZZARD: Thank you, Your Honor. No questions for
23 this witness.

24 THE COURT: All right. You may step down.

25 A Thank you.

Melvyn Garrett - Direct by State

289

1 THE COURT: Thank you very much. The State can call its
2 next witness.

3 MR. TODD: Thank you, Your Honor. Lieutenant Melvyn
4 Garrett. Can Investigator Thacker be released from his
5 subpoena?

6 THE COURT: Any objection?

7 MR. HAZZARD: No objection, Your Honor.

8 THE COURT: He's free to go. Thank you very much.

9 MR. TODD: Thank you, Your Honor.

10 Whereupon, Melvyn Garrett was called to the stand, duly
11 sworn by the clerk and testified as follows:

12 THE CLERK: Thank you. Please be seated and state your
13 name and spell your last name for the record.

14 MR. GARRETT: My name is Melvyn Garrett, G-A-R-R-E-T-T.

15 DIRECT EXAMINATION

16 BY MR. TODD:

17 Q Officer Garrett, what is your current rank?

18 A Captain.

19 Q You're a captain of which agency?

20 A Andrews Police Department.

21 Q And how long have you been captain there?

22 A A year and a half.

23 Q Okay. And where did you work before going to Andrews?

24 A Georgetown County Sheriff's Office.

25 Q How long were you with them?

1 A Thirteen years.

2 Q And what was your capacity there while you were with
3 Georgetown?

4 A I worked in several. My last was criminal
5 investigations.

6 Q How long were you in investigations?

7 A Five, six years.

8 Q Now, as captain are you often investigating crimes that
9 take place in Andrews?

10 A Yes. I do.

11 Q Are a lot of times are you the lead investigator?

12 A Yes. I am.

13 Q In this case particularly are you the lead investigator
14 in this case?

15 A Yes. I am.

16 Q What does it mean to be the lead investigator?

17 A Well, I coordinate all of the efforts. I work the crime
18 scene, the ones that I hadn't turned over to another agency,
19 and collect the evidence and then I'll also delegate certain
20 roles to other officers.

21 Q So there may be officers that do interviews of some of
22 the witnesses and they would report back to you?

23 A Certainly.

24 Q So generally you have an understanding of the entire
25 investigation even though you don't do every single facet of

Melvyn Garrett - Direct by State

291

1 it?

2 A That's correct.

3 Q Okay. In this particular case did you go to the crime
4 scene itself?

5 A Yes. I did.

6 Q Did you take pictures while you were there?

7 A Yes. I did.

8 Q Did you go to the scene where the vehicle was?

9 A Yes. I did.

10 Q Did you take pictures of that scene?

11 A Yes. I did.

12 Q Now. Let's go -- approximately what time were you called
13 out to be there?

14 A Somewhere around 10, 10:30 that evening.

15 Q Okay. And who had called you to come out?

16 A I'm not sure whether it was central dispatch or one of
17 the officers, but that would, you know, that's normally what
18 happens, either dispatch or one of the officers will call.

19 Q Now, which scene did you go to first? The --

20 A Went to where the vehicle was first.

21 Q Okay. Was Mr. Kelly there when you arrived?

22 A No. He had been transported by EMS already.

23 Q So to your knowledge he was moved pretty quickly from the
24 time the original call was made?

25 A Yes.

1 Q Was Ms. McCrae there?

2 A Yes. She was.

3 Q Okay. Did you talk to Ms. McCrae that night?

4 A Very briefly.

5 Q Okay. Did you search the vehicle that night?

6 A No. No. I didn't.

7 Q What did you do to the vehicle?

8 A I took photographs initially to document how it was when
9 I found it, secured the vehicle and had it towed and
10 transported to Georgetown County Sheriff's Office and, and
11 locked away.

12 Q To your knowledge, did anybody go and remove anything
13 from the car before your arrival?

14 A No. What, what, what we'll do is we'll mark it with
15 evidence tape. I'll sign it so if anybody tampers with it
16 I'll know.

17 Q And do you have -- generally have officers that are close
18 by to secure the scene till you get there?

19 A Absolutely.

20 Q And did that take place that night?

21 A Yes. It did.

22 Q Now, once you secured that scene where did you go from
23 there?

24 A I went to the scene where the shooting actually occurred.

25 Q And do you recall if anybody was on scene or who was on

Melvyn Garrett - Direct by State

293

1 scene?

2 A No. I don't recall right offhand. I'm sure Punchy was
3 there. He lives there, Mr. Burroughs. There was quite a bit
4 of law enforcement there to help secure that scene as well
5 because we had the two, two scenes to secure.

6 Q Now, Mr. Punchy lives over on Myrtle Avenue; is that
7 correct?

8 A That's correct.

9 Q Now, is that a trailer park?

10 A Yes. It is.

11 Q Are there multiple trailers there?

12 A Absolutely.

13 Q More than ten?

14 A Yes.

15 Q Okay. Are they fairly closely situated by each other?

16 A For the most part. There's different sections of the
17 trailer park, but for the most part they're close together.

18 Q Now, did you process the scene at, at the house?

19 A Yes. I did.

20 Q What types of items did you find at the house?

21 A I found some blood puddling out in the yard. I found
22 some shell casings, and I've also found a spent round.

23 Q You found a spent round?

24 A Yes.

25 Q So just the projectile itself?

1 A Just the projectile.

2 Q Okay. And you took pictures of all this; is that
3 correct?

4 A Yes. I did.

5 Q Let's do this, let's take a look at the first place you
6 went took pictures. If you would please take a look at
7 State's 133 through 163.

8 A Okay.

9 Q Did you have a chance to look at all of them?

10 A I did.

11 Q Are those the pictures you took of, of the scene that
12 night?

13 A Yes. They are.

14 Q Have they been altered in any way?

15 A No. They have not.

16 Q Are they a fair and accurate depiction of the scene as
17 you saw it that night?

18 A Yes. They are.

19 MR. TODD: Your Honor, at this time I'd move to have
20 these placed into evidence and publish to the jury.

21 THE COURT: Any objection?

22 MR. HAZZARD: No objection, Your Honor.

23 THE COURT: All right. State's Exhibits 133 through 163
24 are admitted into evidence without objection.

25 (Whereupon, State's Exhibit Numbers 133 through 163

Melvyn Garrett - Direct by State

295

1 [Photographs] admitted into evidence and appropriately
2 marked.)

3 BY MR. TODD:

4 Q Now, let's take a look at a few of these pictures. If
5 you'd look at State's 140. Would you explain to us what that
6 picture --

7 A This is a picture of the vehicle as I found it.

8 Q And it has been secured?

9 A Yes. It has.

10 Q And how was it secured?

11 A Crime scene tape.

12 Q Okay. Take a look at State's Exhibit 150. What is a
13 picture of that?

14 A This is a picture of the inside of the vehicle from the
15 passenger side.

16 Q And why did you think that was significant to take a
17 picture of that?

18 A Well, it shows the amount of blood that I observed when I
19 first got there.

20 Q Okay. If you would take a look at State's 159.

21 A Okay.

22 Q And who is this?

23 A It's a picture of Mr. Kinloch.

24 Q And where did he come from?

25 A He, he was at the TD Bank. He, he was calling for law

1 enforcement. He said that he was around a shooting and, you
2 know, we, we couldn't tell what was going on. We didn't know
3 whether he was a victim or whether he was a witness. They had
4 an officer go pick him up and bring him back to me.

5 Q So you guys kept him in custody to figure out what was
6 going on?

7 A Absolutely.

8 Q At this point in time did you know who you were looking
9 for or what you were looking at?

10 A No. Not necessarily. I, I think that Mr. Giles might
11 have been identified as the shooter already, but I didn't know
12 what his involvement was yet.

13 Q So you didn't just jump the gun and say, "No, let's go
14 get this guy." You, you broke down everything and stopped
15 everybody and tried to assess the situation?

16 A Absolutely. Absolutely.

17 Q If you would take a look at State's 160?

18 A Okay.

19 Q And what is that?

20 A This is a picture of Ms. McCrae's hands.

21 Q And why did you think it was important to take a picture
22 of her hands?

23 A Well, anytime there's a person in close proximity to a
24 shooting we always want to document the condition of their
25 hands, and, and hers there were -- they were bloodstained.

Melvyn Garrett - Direct by State

297

1 Q Now, let's go to the next set of pictures that you took.

2 Take a look at State's Exhibits 111 to 132.

3 A Okay.

4 Q Do you recognize those photos?

5 A Yes. I do.

6 Q Are those the photos you took?

7 A Yes. They are.

8 Q Are those the photos you took that night?

9 A Yes. They are.

10 Q Have they been altered in any way?

11 A No. They have not.

12 Q Are they a fair and accurate depiction of the scene as
13 you saw it that night?

14 A Yes. They are.

15 MR. TODD: Your Honor, at this time permission to move
16 these into evidence and publish to the jury.

17 THE COURT: Any objection?

18 MR. HAZZARD: No objection, Your Honor.

19 THE COURT: All right. State's Exhibits 111 through 132
20 admitted into evidence without objection.

21 (Whereupon, State's Exhibit Numbers 111 through 132
22 [Photographs] admitted into evidence and appropriately
23 marked.)

24 BY MR. TODD:

25 Q Investigator Garrett, I'm sure I've messed those up as I

1 was getting them in order, but if you would take a look at
2 those --

3 A Okay.

4 Q -- just for a minute. If you would, explain to us what
5 you did that night, the pictures you took and walk us through
6 the process of how you processed the scene that night.

7 A Okay. Well, my - the process is going to be similar to
8 what Investigator Thacker testified to. When you first arrive
9 on scene you want to gather as much information as you can.
10 So I wanted to know what happened, when it happened, how it
11 happened. I'll take a look at the scene, the way it is,
12 photograph it the way it is and then we'll start looking for
13 evidence. We'll mark it, photograph it again, take GPS
14 coordinates. We'd also take measurements from two reference
15 points. In theory I should be able to put that evidence back
16 where it was if I went today except for the blood.

17 Q Now, if you would, just look through the pictures, try to
18 remember which pictures you took first and why you took them
19 and explain that to the jury, your process with the pictures.

20 A Okay. All righty. Well, the first two pictures were
21 just to document the crime scene the way it was. So it just,
22 it showed the incident, the area where it happened and the
23 incident or the area to the left of it, which would also be
24 the trailer, the second trailer that I took measurements from.

25 Q Okay. Please continue on.

Melvyn Garrett - Direct by State

299

1 A Okay. The next set of pictures as we walk over, as I
2 walked over the scene I started looking for evidence to match
3 what everybody said happened. They said it was a shooting.
4 So naturally I'm looking for shell casings. I'm looking for
5 spent rounds. I understand that a vehicle was shot. So I'm
6 looking for pieces of a vehicle, anything that, that might be
7 consistent with a shooting. So these are the next set was the
8 evidence that I found as it was before it was touched.

9 Q And these are the -- what was found before anything was
10 touched?

11 A Three shell casings, one spent round, shards of glass
12 from the window that was shattered, and, and there's some
13 miscellaneous items, specifically that cup, but I didn't know
14 whether it was significant or not. So we photographed it.

15 Q And did you mark these items?

16 A Yes. I did.

17 Q So these are the items you had beforehand as you found
18 them that night?

19 A That night. Yes, sir.

20 Q Okay. Please continue on.

21 A Okay. The next set of pictures I would have taken would
22 show all of the -- well, you know, once we -- once I identify
23 the evidence then I'll mark it with tent markers, number
24 markers, one through the last item. Once they're all marked
25 I'll take a picture from a distance to show the evidence in

1 close proximity to each other. That would be the next picture
2 or the next two pictures. Now, it was extremely -- that night
3 it was really misty. So you'll, you'll see that in the
4 pictures, but that's what the next two pictures are just
5 showing all of the evidence where it's at and how close or far
6 apart it was, and the next set of pictures just show
7 individually the tent markers and what they're actually
8 marking.

9 Q So these next pictures are --

10 A They just --

11 Q -- same pictures, but marked?

12 A Right. They're same pictures. They're marked and that's
13 it.

14 Q Now, so that you can remember where these things go later
15 on, do you draw a sketch of, of the area of the crime scene?

16 A Absolutely.

17 Q And you drew a sketch and labeled it; is that correct?

18 A Yes.

19 Q And you label it with the numbers that you associate with
20 the pictures you took; is that correct?

21 A That's correct.

22 Q Would you take a look at this, excuse me, would you take
23 a look at State's 164 for just a moment?

24 A Okay. Yes.

25 Q Do you recognize that?

Melvyn Garrett - Direct by State

301

1 A I do.

2 Q Is that your sketch?

3 A Yes. It is.

4 Q And that is your freehand sketch, you didn't actually go
5 out and measure every inch and make it to scale; is that
6 correct?

7 A That's correct.

8 Q Okay. But you did mark where these were approximately,
9 where they were from another, another item; is that correct?

10 A Yes. I did.

11 MR. TODD: Your Honor, permission to place this into
12 evidence and publish to the jury.

13 THE COURT: Any objection?

14 MR. HAZZARD: No objection, Your Honor.

15 THE COURT: All right. State's Exhibit 164 admitted into
16 evidence without objection.

17 (Whereupon, State's Exhibit Number 164 [Sketch] admitted
18 into evidence and appropriately marked.)

19 BY MR. TODD:

20 Q So the purpose of this is to place all of the evidence
21 you collected from the scene back where it was later; is that
22 correct?

23 A Well, it gives a general idea of what I was looking at
24 when I got there, an overall.

25 Q Now, looking at your picture you drew --

1 A Uh-huh.

2 Q -- what are these two lines?

3 A Those are the two trailers.

4 Q Do you recall whose trailer is which?

5 A I do. The one to my right, your left, is going to be Mr.

6 Burroughs, and the other trailer is going to be Phil Phillips.

7 Q Okay. And where is the rock road, which direction does

8 it run with --

9 A It runs north and south, but it's right, you know, to the

10 bottom part of the trailers as the paper is sitting.

11 Q Okay. Now, when you processed this scene you found all

12 spent rounds; is that correct?

13 A I found shell casings and one spent round, yes.

14 Q Okay. So it was -- you didn't find any full bullets

15 intact with powder, primer, the bullet as we would think it

16 would be?

17 A No. No. I did not.

18 Q Did you find any guns in the vicinity?

19 A No. I did not.

20 Q Was Mr. Jamie Giles there?

21 A No. He was not.

22 Q When did Mr. Giles present himself to the police?

23 A It was three or four days later he turned himself in at

24 the PD or the Police Department.

25 Q So he, he came to the PD and turned himself in?

Melvyn Garrett - Cross by Defense

303

1 A Yes. He did.

2 Q At that time were you looking for him?

3 A Yes. We were.

4 Q Did you have warrants for his arrest?

5 A Yes. We did.

6 Q Through your investigation did you believe there was any
7 other shooters?

8 A No. No. I did not.

9 Q Did you believe anybody else was involved with this?

10 A No. No.

11 Q Thank you. That's all the questions I have. Please
12 answer Mr. Hazzard may have.

13 A Will do.

14 THE COURT: All right. Mr. Hazzard, cross examination.

15 MR. HAZZARD: Thank you, Your Honor. May it please the
16 Court?

17 CROSS EXAMINATION

18 BY MR. HAZZARD:

19 Q Captain Garrett --

20 A Yes, sir.

21 Q -- Jamie turned himself in on the following day; correct?

22 A I don't know, maybe so, could be.

23 Q Okay. So you're not sure whether he turned himself in or
24 how he ended up in police custody?

25 A No. I'm sure he turned himself in. I was there. I'm

1 just not sure whether it was a day later or a couple of days
2 later.

3 Q Okay. All right. Now, you indicated that you were with,
4 I think, the Georgetown County Sheriff's Office for 13 years
5 and for the last year and a half I believe you said you've
6 been with the Andrews Police Department; is that correct?

7 A That is correct.

8 Q Okay. Based on your experience in this area, do you have
9 knowledge of the reputation of Dania Kelly for turbulence and
10 violence in this community?

11 A No. Not really. I hadn't dealt with him much at all.
12 When I was in Georgetown County I was primarily assigned to a,
13 a different area. So no. I don't -- I didn't know him.

14 Q So you haven't dealt with him much?

15 A I hadn't dealt with him at all.

16 Q You haven't with him at all. Okay. You don't have an
17 opinion based on your knowledge and experience of his
18 reputation in this community; is that correct?

19 A That's correct.

20 Q Okay. Now, what is the approximate distance between Mr.
21 Burroughs' trailer and the trailer next to it as depicted in
22 your drawing?

23 A Ten feet, 15 feet.

24 Q Okay. Now, when you went there to the trailer park, did
25 you -- was anyone else there at that time?

1 A Law enforcement was there. The owner of the trailer was
2 there. I'm not sure about anybody else. You know, my primary
3 goal was to process the scene.

4 Q Okay. Did you do -- and so you didn't do any interviews
5 of any of the bystanders, anything of that nature?

6 A No. Not that I recall.

7 Q All right. Thank you. I have no further questions.

8 A Okay.

9 THE COURT: Redirect?

10 MR. TODD: No, Your Honor.

11 THE COURT: All right. You may step down.

12 A Thank you, Judge.

13 MR. TODD: Your Honor, may we approach?

14 THE COURT: Yes.

15 (Whereupon, a bench conference is held in the presence,
16 but out of the hearing of the jury.).

17 THE COURT: All right. Ladies and gentlemen, we've
18 decided it's a good time for us to go ahead and break for the
19 day. So I'm going to go ahead and send you home for the
20 remainder of the evening. Do not discuss the case even among
21 yourselves. Don't discuss it with any family or friends.
22 Don't conduct any independent investigations into the case.
23 I'm going to give you -- be back at 9:30 tomorrow morning in
24 the jury room. We'll try to get started as soon after 9:30 as
25 we can. Hope you have a good evening, and you're free to go

1 for the remainder of the day. Thank you very much.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right. Anything from the State before we
5 recess for the day?

6 MR. TODD: No, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. HAZZARD: No, Your Honor.

9 THE COURT: All right. We'll be in recess till 9:30
10 tomorrow morning.

11 MR. TODD: Thank you, Your Honor.

12 (Adjourned for the day.)

13

14

15

16

17

18

19

20

21

22

23

24

25

State v. Giles

307

1 (On the record, State v. Jamie L. Giles, 2015-GS-22-169
2 through 172, February 3, 2016. The following takes place
3 outside the presence of the jury.)

4 THE COURT: All right. Gentlemen, my law clerk has given
5 me stipulation and order, basically says the parties stipulate
6 the testimony of Officer Stephanie Law of the Andrews Police
7 Department concerning chain of custody for SLED Lab L15-11423,
8 and the testimony from Doris Yarborough of SLED concerning
9 chain of custody for SLED Lab L- -- L15-11423, and testimony
10 from Amy Stephens of SLED concerning chain of custody for SLED
11 Lab L15-11423. Does that mean that you are stipulating that
12 the testimony of these witnesses would establish the chain of
13 custody for SLED Lab L15-11423? Is that the stipulation?

14 MR. HAZZARD: That is the Defense stipulation, Your
15 Honor, not only those witnesses, if there are any other
16 witnesses perceived to be in the chain for that particular
17 item, that particular test, the gunshot residue test in this
18 case or the analysis thereof, the Defense would stipulate to
19 the chain of custody in that regard. My understanding is the
20 SLED analyst who actually performed the analysis is coming to
21 testify, and we're fine with the chain of custody with regard
22 to what she received and analyzed.

23 THE COURT: Okay. So in other words, her testimony as to
24 the analysis, you're not going to object to any of that
25 testimony based upon a break in the chain of custody or a

1 challenge to the chain of custody?

2 MR. HAZZARD: Correct.

3 THE COURT: Okay. Is that the State's position, too?

4 MR. TODD: It is, Your Honor. There is one other
5 individual, Quintard Tucker. He actually took the swab from
6 Mr. Kelly. However, he passed it to Brenda Lambert. Mr.
7 Hazzard has said that he will stipulate to that as well so
8 that Brenda Lambert would be the only person testifying from
9 --

10 THE COURT: Okay.

11 MR. TODD: -- from the agency.

12 THE COURT: So, basically, as I understand, there is no
13 objection or challenge to the chain of custody for SLED Lab
14 Test L15-11423?

15 MR. HAZZARD: That is correct, Your Honor.

16 THE COURT: Okay. Is that correct?

17 MR. TODD: Yes, sir.

18 THE COURT: All right. Let me -- I'll go ahead and sign
19 this order. All right. And I guess we'll just put this as
20 Court's, another Court's Exhibit. What would that be?

21 REPORTER: Two.

22 THE COURT: Court's Exhibit Two.

23 (Court's Exhibit Number Two [Stipulation] appropriately
24 marked.)

25 THE COURT: All right. Anything from the State before we

Brenda Lambert - Direct by State

309

1 bring the jury in?

2 MR. TODD: No, sir.

3 THE COURT: Anything from the Defense?

4 MR. HAZZARD: Nothing from the Defense, Your Honor.

5 THE COURT: All right. Let's bring the jury in.

6 (Whereupon, the following takes place in the presence of
7 the jury.)

8 THE COURT: All right. Ladies and gentlemen, welcome
9 back. I hope everyone had a good evening. We're now ready to
10 resume the trial of this case. The State can call your next
11 witness.

12 MR. TODD: Thank you, Your Honor. The State calls Brenda
13 Lambert.

14 Whereupon, Brenda Lambert is called to the stand, duly
15 sworn by the clerk and testified as follows:

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

18 MS. LAMBERT: Brenda Lambert.

19 THE COURT: All right. Mr. Todd.

20 MR. TODD: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. TODD:

23 Q Investigator Lambert, I need to know a little bit about
24 you. Where are you from?

25 A I'm from Andrews.

1 Q And did you grow up there?

2 A Yes, sir.

3 Q And you work with the Andrews Police Department; is that
4 correct?

5 A Yes, sir. I do.

6 Q How long have you worked there?

7 A I've been with Andrews since 2011.

8 Q Okay. And how long have you been in law enforcement?

9 A Since 1999.

10 Q And can you tell us about how you became an officer?

11 A Yes, sir. I was hired by Williamsburg County Sheriff's
12 Office. I went to the academy in Columbia. I was with
13 Williamsburg County from '99 until I come to Andrews in 2011.

14 Q And when did you become an investigator?

15 A I became an investigator in 2006 while I worked at
16 Williamsburg County Sheriff's Office.

17 Q Through your training, did you learn to remove trace
18 evidence from individuals?

19 A Yes, sir. I did.

20 Q And you were involved with the case versus Jamie Giles;
21 is that correct?

22 A Yes, sir.

23 Q And you responded on December 3rd, 2014?

24 A Yes, sir.

25 Q Can you tell us about what you did when you responded to

Brenda Lambert - Direct by State

311

1 the scene?

2 A When I responded to the scene I met with Captain Garrett.
3 He was the primary on the scene. Then I got up with McCrae
4 and Kinloch and I took them to Georgetown County Sheriff's
5 Office for an interview where I did a GSR kit on both of
6 those.

7 Q Okay. And what is a GSR? Just tell us what it is.

8 A It is a gun residue kit where you check their hands to
9 see if they shot a gun.

10 Q Okay. And tell us a little bit about that process, what
11 that means when you --

12 A Okay.

13 Q -- deal with their hands.

14 A The new kits have stamps in them. It has right front,
15 right back, left front, left back, and what you do is you take
16 the stamp and you stamp it across their hand and you put the
17 cap back on it. You do the same to the both front and back of
18 left front and back of right, and then it's a kit that I put
19 it in, and it has a seal across it, and I seal it and I fill
20 the information out and I put it in my evidence bin and it
21 goes to SLED.

22 Q And how long after you went to the scene of the crime did
23 you take those stamps; do you recall?

24 A If I'm not mistaken once I got to the scene, got those in
25 the car, went straight to the Sheriff's Office, did the GSR

1 kits on them and then we did the interviews, approximately 30
2 minutes, 45 minutes from the time I arrived on scene.

3 Q And were they in your care, custody during that time?

4 A The ---

5 Q The, the two people you took the GSR from?

6 A Yes, sir. Once I got there they were placed in my car.

7 Q Okay. And did they wash their hands or anything before
8 that?

9 A No, sir.

10 Q And would you let them wash their hands if they wanted
11 to?

12 A No, sir.

13 Q Okay. Once you took the stamps, what do you, what do you
14 do with the, the swabs that you took or the stamps?

15 A Once -- the kit comes in a white packet. You open it.
16 You take the stamps out, and once you do their hands you put
17 the cap back on it, and it has a paper that you fill out and
18 it has a front, a chain of custody that you fill out, and it
19 has a red strip that goes on the back of it. I initial and
20 date it when I seal it up and it stays sealed until it goes to
21 SLED.

22 Q So you sealed those items up once they were done?

23 A Yes, sir. I did.

24 Q Okay. And nobody opened those afterwards?

25 A No, sir.

Brenda Lambert - Direct by State

313

1 Q Okay. And do you have those items with you?

2 A Yes, sir. I do.

3 Q Okay. Are those the items you have in your hand? I'm
4 sorry.

5 A Yes, sir. This is them.

6 Q Okay.

7 MR. TODD: The Court's indulgence.

8 A This is the way they come from SLED sealed up. I have
9 not unsealed them.

10 Q Okay. If you would please take a look at State's 165 and
11 is that the package that you sent?

12 A Yes, sir. This is the packet.

13 Q Okay. Now, there was one other person that GSR was taken
14 from; is that correct?

15 A Yes, sir.

16 Q And was he on scene when you arrived?

17 A He was there, but he was transported by ambulance.

18 Q And did somebody go and collect GSR from him?

19 Q Yes, sir. Officer Tucker that works with us he went to
20 the hospital at the beach and he did the GSR on him.

21 Q And did he do it the same way?

22 A Yes, sir.

23 Q And did he bring it back to you?

24 A Yes, sir. He sealed it. When it came back to me, it had
25 the red seal on the back with his initials on it. It was put

1 in evidence along with these two, and they were all three
2 taken to SLED at the same time.

3 Q Okay. And did you request the SLED analysis of trace
4 evidence? Were you the one that did that?

5 A Yes, sir.

6 Q Okay. All right. That's all the questions I have right
7 now.

8 A Okay.

9 THE COURT: Cross-examination.

10 MR. HAZZARD: No questions for this witness, Your Honor.

11 THE COURT: All right. You may step down.

12 MR. TODD: Your Honor, may she be released from her
13 subpoena?

14 THE COURT: Any objection?

15 MR. HAZZARD: No objection, Your Honor.

16 THE COURT: All right. She's free to go. Thank you very
17 much.

18 A Thank you, sir.

19 THE COURT: The State can call your next witness.

20 MR. TODD: Your Honor, if we may take a short break while
21 we wait for the SLED agent to get here. She should be here in
22 the next 15 minutes.

23 THE COURT: Okay. All right. Ladies and gentlemen,
24 we're going to take a short break, excuse you back to the jury
25 room while we wait for the next witness to get here. Do not

Brenda Lambert - Direct by State

315

1 discuss the case even among yourselves. Don't conduct any
2 independent investigation, and we'll bring you back out
3 shortly. Thank you very much.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. Is the screens on you all's table
7 flashing anything?

8 MR. TODD: I hadn't noticed, Your Honor.

9 MR. HAZZARD: I have not noticed it on the Defense table.

10 THE COURT: Okay. It might just be mine. I just keep --
11 I just want to make sure that nothing is going up for the
12 jury. It's just like it says input video and it keeps doing
13 that and I don't know if it's just on mine or what. That's
14 what I wanted to check and see.

15 THE CLERK: Okay.

16 THE COURT: All right. I kept watching the jury and I
17 never saw any of them look down to the screen. So I'm
18 assuming if it's not on you all's, it's not on theirs either,
19 and it's just on this one here. So -- all right. Anything
20 from the State before we recess?

21 MR. TODD: No, sir.

22 THE COURT: Anything from the Defense?

23 MR. HAZZARD: Nothing from the Defense other than I would
24 request the Court to inquire of the bailiff if he sees it on
25 the jurors' screens over there.

1 THE COURT: Okay. Let's -- well, I mean, mine's not up
2 now, and it's --

3 BAILIFF: I don't see it --

4 THE COURT: Okay. And mine is, too. Like I said, it's,
5 it's, it's a little square and at the top it says video and in
6 the middle it says input signal and then it'll flash about
7 two, three times, and then it'll just go blank.

8 MR. TODD: I haven't noticed it, but I've been focusing
9 on other things, so.

10 THE COURT: Yeah. Okay.

11 BAILIFF: Not one of those little buttons on the bottom
12 of your screen maybe.

13 THE COURT: I don't know. I don't know what it does.
14 So, all right. See right there. There -- it's doing it now.
15 Do you all see anything now? Look on the jury.

16 MR. HAZZARD: No, sir, not on the Defense screen.

17 THE COURT: Okay. There's nothing on the witness'. Look
18 and see if you see anything on the --

19 BAILIFF: No.

20 THE COURT: All right. Mine, it's dark now.

21 MR. TODD: I can tell they're on.

22 THE COURT: All right. Mine's dark now. Okay. Well, I
23 mean, just ask what it is, and if there's anything I need to
24 -- I can see it. All right. Look right quick and see if
25 there's any in the jury box. It's on right -- well -- all

Brenda Lambert - Direct by State

317

1 right. It's flashing now. Well, it just went off. It just
2 went off again. Just sit there for a second and let's see if
3 it pops back up and let me know -- all right. It's on now.
4 Is there anything up now?

5 BAILIFF: No.

6 THE COURT: Okay. Nothing in the jury box. Yeah. It's
7 in an ECO mode, whatever that is. All right. We'll be in
8 recess.

9 MR. TODD: Thank you.

10 OFF THE RECORD

11 (On the record. The following takes place outside the
12 presence of the jury.)

13 THE COURT: All right. The witness is here?

14 MR. TODD: Yes, sir.

15 THE COURT: All right. Anything from the State before we
16 bring the jury back in?

17 MR. TODD: No, sir.

18 THE COURT: Anything from Defense?

19 MR. HAZZARD: Nothing from the Defense.

20 THE COURT: All right. Let's bring the jury in.

21 (Whereupon, the following takes place in the presence of
22 the jury.)

23 THE COURT: All right. Ladies and gentlemen, welcome
24 back. We appreciate your patience. Mr. Todd, the State can
25 call your next witness.

1 MR. TODD: Thank you, Your Honor. The State calls
2 Whitney Berry.

3 Whereupon, Whitney Berry was called to the stand, duly
4 sworn by the clerk and testified as follows:

5 THE CLERK: Thank you. Please be seated and state your
6 name for the record.

7 MS. BERRY: My name is Whitney Berry.

8 THE COURT: Ms. Berry, could you please spell your last
9 name?

10 MS. BERRY: Yes, sir. B-E-R-R-Y.

11 THE COURT: Thank you. All right. Mr. Todd.

12 MR. TODD: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. TODD:

15 Q Ms. Berry, who do you work for?

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

18 Q And what do you do for them?

19 A I am an analyst in the trace evidence department, and I
20 specialize in the analysis of gunshot residue.

21 Q Now, tell us a little bit about your education on how you
22 came to get that job.

23 A I have a Bachelor's of Science from -- in chemistry from
24 the University of South Carolina, and when I was hired on at
25 SLED I began our nine-month in-house gunshot residue training

Whitney Berry - Direct by State

319

1 program, which included readings, instrumentation, the theory
2 behind scanning electron microscopy, as well as hands on
3 practical analysis, written tests, testimony, observation and
4 working under a qualified analyst. I have also attended the
5 Hooke College of Applied Sciences and taken their scanning
6 electron microscopy course for gunshot residue.

7 Q And through this training how long have you been
8 analyzing trace evidence?

9 A I've been with SLED in analyzing GSR for approximately
10 three years now.

11 Q And roughly how many different, I guess, specimens would
12 you call them have you analyzed, just a rough estimate?

13 A Probably about 700 different GSR kits, give or take.

14 Q Okay. And have you ever testified as an expert in trace
15 evidence before?

16 A Yes, sir. I have.

17 Q How many times have you done that?

18 A About 25.

19 Q Okay.

20 MR. TODD: Your Honor, at this time I've like to move Ms.
21 Berry as an expert in trace evidence.

22 THE COURT: All right. Any challenges or questions from
23 the Defense?

24 MR. HAZZARD: If, if it's with regard to trace evidence
25 as it relates to gunshot residue, no objection.

1 THE COURT: All right. I find this witness to be an
2 expert in the field of trace evidence analysis. All right.

3 MR. TODD: Thank you, Your Honor.

4 BY MR. TODD:

5 Q Ms. Berry, what was -- did you have the opportunity to
6 analyze some evidence regarding the State versus Jamie Giles;
7 do you recall?

8 A Yes, sir. I did.

9 Q Okay. If you would please take a look at State's 165.
10 Are you familiar with this package?

11 A Yes, sir. I am.

12 Q Okay. And what is that package of?

13 A This is lab number L15-11423, container A, which is said
14 to contain, I believe, two GSR kits, three GSR kits.

15 Q And that package, is it sealed the way you sealed it
16 last?

17 A Yes. It is.

18 Q Okay. Would you mind opening that package?

19 A Okay.

20 Q I have a pair of scissors there if you need them.

21 A (Complies with request)

22 Q And what are those of?

23 A These are Tri Tech gunshot residue kits. Each one has
24 its own unique identifying item number to correspond with this
25 case. Everything that enters the door at SLED is given a

Whitney Berry - Direct by State

321

1 unique case number. Every container is given its container
2 number and each item has its own individual item number.
3 These are printed on a bar code label so that we can track
4 electronically via chain of custody where the evidence is at
5 any given point of time.

6 Q And those three packages are they sealed as if you had
7 sealed them before?

8 A Yes. They are.

9 Q Have they been altered in any way?

10 A No. Not that I can tell.

11 MR. TODD: Your Honor, at this time I'd like to move
12 those into evidence as State's 165.

13 THE COURT: Any objection?

14 MR. HAZZARD: No objection, Your Honor.

15 THE COURT: All right. State's Exhibit 165 admitted into
16 evidence without objection.

17 (Whereupon, State's Exhibit Number 165 [GSR Kits]
18 admitted into evidence and appropriately marked.)

19 MR. TODD: Thank you, Your Honor.

20 BY MR. TODD:

21 Q Now, you analyzed these kits; is that correct?

22 A Yes, sir.

23 Q Tell us a little bit about your process of -- what does
24 that mean to analyze a kit? Just walk us through what, what
25 GSR is first and then, and then what you do.

1 A Gunshot residue is the primer residue from a cartridge or
2 a bullet once it is expelled from a gun. These -- this primer
3 residue is composed of three metal elements, lead, barium and
4 antimony. SLED hand outs GSR collection kits free of charge
5 to any agency in the state. The reason we hand them out is
6 because we do the quality assurance on these. So they send us
7 the lot of tape that they're going to put on it and I double
8 check it and QA it. Every kits comes with a pair of
9 disposable gloves, evidence tape to seal it, sample collection
10 containers, instructions for how to collect, as well as an
11 information sheet on the person that it's being collected on.
12 These sample containers are labeled for the different parts of
13 the hand that we want to collect from. So we want to collect
14 from the palm of the hand and the back of the hand. Inside
15 each one of these containers is a little sticky tab, a little
16 black sticky tab. It's like a sticker and you place it on
17 whatever you're trying to sample, most commonly hands, and you
18 continue to sample until it's no longer tacky or sticky.
19 These are then resealed, put back in their container with the
20 information sheet, sealed with the evidence tape and submitted
21 to SLED. Once I get them I open them and verify that the
22 container was sealed and then I take these sticky tabs and I
23 load them on a scanning electron microscope. So I put them on
24 the scanning electron microscope and a beam of electrons
25 similar to a laser beam goes back and forth across the surface

Whitney Berry - Direct by State

323

1 and it will detect any particles that might be on it that are
2 microscopic and it will also take an x-ray of those particles
3 to tell me what they're made of, that way I can see both the
4 shape or morphology of the particles and I can see their
5 composition. In order for us to call something gunshot, as
6 gunshot residue it has to be molten or round in shape and it
7 has to contain those three elements of lead, barium and
8 antimony.

9 Q Now, you did an analyst, you analyzed this case; is that
10 correct?

11 A Yes, sir.

12 Q And there was three separate samples from or three
13 different individuals that samples were taken from; is that
14 correct?

15 A Yes, sir.

16 Q If you could tell us your results, what did, what did you
17 find? I have previously marked State's 166. Is that familiar
18 to you?

19 A Yes, sir. This is a copy of my report.

20 Q So that's a copy of your report as it was that you made
21 it?

22 A Yes, sir.

23 Q Has anything been, anything been changed or altered other
24 than the sticker saying evidence on it?

25 A No, sir.

1 MR. TODD: Your Honor, at this time I'd move to place
2 this into evidence as State's 165.

3 A 166.

4 MR. TODD: And publish it -- 166 and publish it to the
5 jury.

6 THE COURT: Any objection?

7 MR. HAZZARD: If I could review it right quick.

8 THE COURT: All right.

9 MR. HAZZARD: No objection, Your Honor.

10 THE COURT: All right. State's Exhibit 166 is admitted
11 into evidence without objection.

12 MR. TODD: Thank you, sir.

13 (Whereupon, State's Exhibit Number 166 [GSR Report]
14 admitted into evidence and appropriately marked.)

15 BY MR. TODD:

16 Q If you would tell us what your results are?

17 A On the gunshot residue kit that was collected from,
18 probably going to mispronounce this, Tavera Lynn McCrae, the
19 right hand had round particles associated with gunshot residue
20 found. Particles associated with gunshot residue are known to
21 come from a variety of different environmental factors. These
22 factors can include items you might find at the hardware
23 store, different things in the environment, something you
24 might come into contact with your job. These particles are
25 associated with the gunshot residue or are associated with the

Whitney Berry - Direct by State

325

1 residue produced by a gunshot or gunfire. The left hand, one
2 particle of gunshot residue was found. So that was one molten
3 particle containing lead, barium and antimony. On the GSR kit
4 collected from Daniea Kelly, the right hand was negative, so
5 no gunshot residue was found, and the left hand had one
6 particle consistent with gunshot residue and one particle
7 associated with gunshot residue found. These particles can
8 come from, again, additional sources outside of gunshot
9 residue. On the GSR kit from Rodney Kinloch, both the right,
10 right hand and left hand were negative. So no gunshot residue
11 was found. In the case of a negative, the absence of gunshot
12 residue on the hands can be consistent with an individual not
13 having fired a weapon. It can be consistent with an
14 individual who has somehow removed possible gunshot residue
15 from their hands either by washing their hands, wiping their
16 hands or bleeding profusely. Other environmental factors such
17 as rain or heavy wind could also potentially remove gunshot
18 residue or it could have been greater than four to six hours
19 after the incident when they were sampled. On a living person
20 we only expect to find gunshot residue on the hands up to six
21 hours after a given incident, and that's because gunshot
22 residue is very fragile. If you think about having flour on
23 your hands in your kitchen, every time you clap your hands or
24 touch something a little bit of the flour comes off, and
25 that's very similar to how gunshot residue can transfer. So

1 you don't necessarily have to wash your hands to get rid of
2 flour. You can just wipe it off. It's the same concept.

3 Q So is the only way that you can get gunshot residue on
4 your hands is from firing a gun?

5 A No. You can get gunshot residue on your hands from
6 firing a gun, being in the vicinity to the firing of a gun or
7 coming into contact with something that was in the vicinity to
8 the firing of a gun.

9 Q What do you mean by vicinity?

10 A The vicinity would be the area around. So, for example,
11 the majority of gunshot residue follows the bullet or the
12 projectile towards its target and it comes out of the gun in a
13 cone pattern. So as it's coming out anyone or anything
14 standing in that cone area has the potential to get gunshot
15 residue on them, and you could also potentially get gunshot
16 residue from standing next to or behind somebody who's firing
17 a gun or coming into contact with the gun itself if someone
18 put it down and then you came after and picked it up you could
19 possibly get gunshot residue on your hand that way, or if you
20 came into contact with the gun, anything in that cone area
21 between the shooter and the target.

22 Q If you could, draw out what you mean by cone just so you
23 can explain a little bit better. I have a pen for you.

24 THE COURT: Let's make sure she's near a microphone where
25 the court reporter can pick up whatever she needs to.

Whitney Berry - Direct by State

327

1 MR. TODD: Yes. I will.

2 REPORTER: She'll be okay with that little round one
3 right there. You see that little black circle, that's a
4 microphone.

5 Q How close -- will that work with the microphone? Judge,
6 I don't want to block you out. So I'm not sure --

7 THE COURT: That's fine.

8 A Let's just say there's a reason I didn't go to art
9 school. So when the gun is fired you have your projectile
10 going on presumably a straight path and then this cone of GSR
11 would encompass anything that's in its -- that's in that area.
12 So it can stop because of the ground. It can stop if there is
13 what we call an intervening object such as a wall or a window
14 or another person. If you're standing here, if you're the
15 shooter, the GSR would potentially get on your hands from a
16 little plume that would come out about here. If you've ever
17 seen an old Western movie when they fire a gun, that little
18 plume of smoke that comes out around the hands, that's your
19 cloud of gunshot residue.

20 Q So would you say there's more gunshot residue coming out
21 of the barrel of the gun versus the plume?

22 A Yes. There is more coming out of the barrel of the gun.

23 Q And you said that there is intervening things that can
24 stop the gunshot residue such as a window?

25 A Yes, sir.

1 Q If a window is broken out of a car with a, with a shot
2 and more bullets went into the car, would there be gunshot
3 residue in the vehicle?

4 A There could be, but I mean, it would depend on the
5 caliber of gun, the distance, different factors like that.

6 Q Well, let's just give this scenario. Let's say that a
7 person is standing 10 to 15 feet away from a vehicle, fires
8 seven shots into a vehicle, six or seven shots with a 9 mm
9 handgun, would you expect there to be gunshot residue inside
10 of the vehicle?

11 A Not necessarily. I would say it would depend on the
12 ammunition used as well as if it was -- obviously, if you're
13 firing into a car it would most likely be an outdoor shooting.
14 So could also depend on it -- what the weather was like that
15 day, if there was a strong wind or something that could have
16 moved the GSR from that straight path. Also, if you bust out
17 a window firing at it, the majority of the GSR we would expect
18 would hit the outside of the car, not so much the inside of
19 the car.

20 Q If the first shot were to shatter the window and
21 additional shots were fired into the vehicle, could there be
22 gunshot residue in that vehicle?

23 A There could be.

24 Q Okay. Would you expect there to be a lot?

25 A It would, again, depend on distance and how far the shots

Whitney Berry - Direct by State

329

1 were, how far away the shots were fired.

2 Q Okay. If you would have a seat. I've got a few more
3 questions to ask you, but thank you. I'll move this out of
4 your way.

5 A Thank you.

6 Q Now, in your report you stated that Mr. Kelly had one
7 particle of gunshot residue on his hand?

8 A Yes, sir.

9 Q And would that be consistent with someone firing a gun
10 inside of a vehicle?

11 A No.

12 Q Would that be -- what about Ms. Tuvera McCrae? She had
13 some on her hands?

14 A I would say that that would also not be consistent with
15 having fired a gun inside a vehicle if she was also inside the
16 vehicle.

17 Q So is there a possibility that two people sitting inside
18 of a vehicle, 10 feet away from a shooter as a shooter is
19 firing into the vehicle that the passengers and driver of that
20 vehicle could have gunshot residue on them?

21 A Yes. It's possible.

22 Q Thank you. That's all the questions I have right now.

23 A All right.

24 THE COURT: Cross examination.

25 MR. HAZZARD: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. HAZZARD:

3 Q Ms. Berry, my understanding of your testimony based on
4 Mr. Todd's questioning and specifically his last question is
5 that, yes, it's possible that the occupants of a car could end
6 up with some gunshot residue on their person, but not
7 probable. Would that be a fair statement?

8 A Again, it would depend on the condition of the gun used,
9 the distance at which it was fired from, different factors
10 like the ammunition that was used. Certain ammunitions have
11 more primer in them than others. It would depend on how they
12 were seated because we only sample the hands. So if someone
13 was in a car and their hands are down by their side for
14 whatever reason, we may not find gunshot residue on their
15 hands if they were fired at.

16 Q Okay. And I believe in your report you also indicated
17 that a negative result for gunshot residue can come from
18 circumstances such as an individual sweating profusely or
19 having blood on their hands?

20 A Yes, sir.

21 Q Okay. Would you as an expert expect to find more gunshot
22 residue -- well, let me ask you like this. If someone even
23 handles a gun that has been fired at some point, can that
24 leave an amount of residue on their hands?

25 A It has the potential to leave transfer particles on the

Whitney Berry - Redirect by State

331

1 hands. No studies have been done as far as how much transfer
2 that could result in, and again, it would depend on the gun
3 like how clean it was. If someone had recently cleaned it,
4 you obviously would not expect to find residue on it still.

5 Q Okay. Would you as an expert expect to find more residue
6 on the hands of someone who has recently fired a gun versus
7 someone who has simply handled a gun?

8 A Yes. I would.

9 Q All right. Thank you, ma'am. No further questions.

10 THE COURT: Redirect?

11 MR. TODD: Just briefly.

12 REDIRECT EXAMINATION

13 BY MR. TODD:

14 Q I just have a few quick questions. Would you expect a
15 gunshot victim to have gunshot residue on them?

16 A Absolutely.

17 Q Would you expect someone that rendered aid to a gunshot
18 victim to potentially have gunshot residue on them?

19 A Yes. They could potentially have gunshot residue on
20 them.

21 Q Thank you.

22 THE COURT: All right. You may step down.

23 A All right.

24 MR. TODD: Your Honor, may Ms. Berry be released from her
25 subpoena?

1 THE COURT: Any objection?

2 MR. HAZZARD: No objection.

3 THE COURT: All right. You're free to go. Thank you.

4 A Thank you.

5 REPORTER: She needs to leave whatever was in that bag.

6 I don't know what was in the bag.

7 A Those are up there.

8 REPORTER: Okay.

9 A This is just my demo.

10 REPORTER: Okay. Thanks.

11 THE COURT: Okay. All right. So the exhibits are still
12 up there? Okay.

13 MR. TODD: Yes, sir.

14 THE COURT: All right. Let's go ahead and give Grace the
15 exhibits that were -- that she was referencing.

16 All right. The State can call their next witness.

17 MR. TODD: Your Honor, that is the State's case.

18 THE COURT: All right. Ladies and gentlemen, the State
19 has presented their case and has rested and so now is the time
20 of the trial where I need to take up some matters of law with
21 the attorneys. So I'm going to excuse you back to the jury
22 room, and I tell you why we do that. It's not that I'm trying
23 to hide anything from you or keep anything from you, but as I
24 told you in the opening charges you, and you alone, decide the
25 facts of this case, and you decide the facts based upon the

Motions

333

1 testimony of witnesses and other evidence that is introduced
2 during the trial. I decide the law to be applied in this
3 case. Well, oftentimes, when I discuss the law to be applied
4 in this case with the attorneys it requires me as the Judge
5 and the attorneys to reference factual issues. Well, what we
6 say is not evidence, and so we don't want you to be influenced
7 by anything that I might say or anything the attorneys might
8 say when we discuss the law to be applied in this case to
9 influence your decision on what the facts of this case are and
10 that's why we excuse you back to the jury room. It'll give
11 you an opportunity to stretch your legs, use the restroom,
12 whatever the case may be. I still caution you it's too early
13 for deliberations. So don't discuss the case. Don't conduct
14 any independent investigations, and we'll bring you back in
15 just a few minutes. Thank you very much.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. Any motions?

19 MR. HAZZARD: At this time, Your Honor, the Defense makes
20 a motion for a directed verdict. The Defense submits that the
21 evidence presented by the State even taken in the light most
22 favorable to the State is not sufficient to warrant submitting
23 the case to the jury for their consideration.

24 THE COURT: All right. I note your motion. I'm going to
25 deny it. I think there's enough to submit to the jury based

1 upon what's been presented thus far. Anything else?

2 MR. TODD: No, sir.

3 THE COURT: Anything from the Defense?

4 MR. HAZZARD: Your Honor, the Court may at this time wish
5 to have a colloquy with Mr. Giles regarding his right to
6 testify or to remain silent.

7 THE COURT: All right. All right, sir. If I could get
8 you to stand and raise your right hand, please.

9 (Whereupon, the Defendant is sworn by the clerk.)

10 THE COURT: All right. Sir, your name is Jamie Lahuane
11 Giles?

12 MR. GILES: Yes, sir.

13 THE COURT: All right. Mr. Giles, at this time I'm going
14 to explain to you certain rights that you have, and if you do
15 not understand anything I say, please let me know. Okay?

16 MR. GILES: All right, sir.

17 THE COURT: All right. If you want me to explain
18 anything in more detail, please let me know. Do you
19 understand that?

20 MR. GILES: Yes, sir.

21 THE COURT: All right. We've reached the stage of the
22 trial where you may present your defense. You have the right
23 to claim protections given to you by the Fifth Amendment of
24 the United States Constitution which states in part that no
25 person shall be compelled in any criminal case to be a witness

Questioning of Defendant Re: Rights

335

1 against himself. This means that you cannot be required to
2 testify in this case. You have the right to testify on your
3 own behalf. However, no one can make you testify. This is a
4 personal right and no one can waive this right except for you.
5 If you decide to testify, you will be subject to the same
6 rules that govern other witnesses and you may be examined and
7 cross examined on any relevant issue in this case. In
8 addition, if you have any convictions involving dishonesty or
9 false statement or for crimes punishable by imprisonment for
10 more than one year and this Court determines that the
11 probative value of admitting this evidence outweighs its
12 prejudicial effect to you, the Solicitor will be able to
13 introduce your record to attack your credibility. Now, I
14 understand that he does have a prior criminal record; is that
15 correct?

16 MR. TODD: Yes, Your Honor.

17 THE COURT: All right. And that would be for assault and
18 battery of a high and aggravated nature?

19 MR. TODD: Yes, sir.

20 THE COURT: All right. And as I understand, the State
21 intends if he takes the stand to say he has been convicted of
22 a felony; is that correct?

23 MR. TODD: That's correct, Your Honor.

24 THE COURT: All right. But you're not going to reference
25 the crime itself unless he offers testimony that allows for

1 the introduction of that testimony.

2 MR. TODD: That's correct, Your Honor.

3 THE COURT: All right. All right. So, Mr. Giles, if you
4 take the stand, the State will be allowed to cross examine you
5 as to whether or not you have ever been convicted of a felony,
6 and depending upon your testimony, they may be able to
7 introduce the fact that you have a prior conviction for
8 assault and battery of a high and aggravated nature. Do you
9 understand that?

10 MR. GILES: Yes, sir.

11 THE COURT: All right. If you decide to testify, the
12 decision on your part must be freely, voluntarily and
13 intelligently made, with the knowledge of the protections
14 given to you by the Fifth Amendment and the consequences of
15 your decision to testify. If you decide not to testify, I
16 will instruct the jurors that they cannot give the fact that
17 you did not testify any consideration whatsoever, and that
18 there is to be absolutely no prejudice to you because you did
19 not testify. It is left entirely up to you whether or not you
20 testify. You may talk with your attorney, your family and
21 friends or anyone else, but the final decision will be left
22 entirely up to you. Now, do you understand what I've
23 explained to you?

24 MR. GILES: Yes, sir.

25 THE COURT: All right. Do you have any questions about

Questioning of Defendant Re: Rights

337

1 what I've explained to you?

2 MR. GILES: No, sir.

3 THE COURT: All right. Have you had an ample opportunity
4 to discuss this with your attorney and with whoever else you
5 want to testify -- you want to talk to in this case?

6 MR. GILES: Yes, sir. I have.

7 THE COURT: All right. Are we ready to go forward? Do
8 you wish to testify in this case?

9 MR. GILES: Yes, sir.

10 THE COURT: Okay. Anything further the Defense wants
11 placed on the record in that regard?

12 MR. HAZZARD: No, sir, Your Honor.

13 THE COURT: Anything further the State wants placed on
14 the record in that regard?

15 MR. TODD: No, sir, Your Honor.

16 THE COURT: All right. Let's take about a five-minute
17 break and then we'll come back and we'll go straight into the
18 Defense. Okay?

19 MR. TODD: Yes, sir.

20 MR. HAZZARD: Yes, sir.

21 THE COURT: All right.

22 OFF THE RECORD

23 (On the record. The following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. Anything from the State before we

1 bring the jury in?

2 MR. TODD: No, Your Honor.

3 THE COURT: Anything from the Defense?

4 MR. HAZZARD: The Court's indulgence, Your Honor.

5 THE COURT: All right.

6 MR. HAZZARD: I'm going to put his water up here so he
7 doesn't have to carry it in front of the jury.

8 THE COURT: That'll be fine.

9 MR. HAZZARD: Otherwise, nothing from the Defense, Your
10 Honor.

11 THE COURT: All right. Let's go ahead and bring the jury
12 in.

13 (Whereupon, the following takes place in the presence of
14 the jury.)

15 THE COURT: All right. Ladies and gentlemen, welcome
16 back. The State has presented their case in chief, and now is
17 the time of the trial where the Defendant can present a
18 defense if he chooses to do so. Mr. Hazzard, the Defendant
19 can call their first witness.

20 THE COURT: Thank you, Your Honor. May it please the
21 Court? The Defense calls Jamie Lahuane Giles.

22 THE COURT: All right.

23 Whereupon, Jamie Lahuane Giles was called to the stand,
24 duly sworn by the clerk and testified as follows:

25 THE CLERK: Thank you. Please be seated and state your

Jamie Giles - Direct by Defense

339

1 name for the record.

2 MR. GILES: Jamie Giles.

3 DIRECT EXAMINATION

4 BY MR. HAZZARD:

5 Q Please spell your last name for the record.

6 A G-I-L-E-S.

7 Q All right. Thank you, sir. Jamie, how old are you?

8 A 31. I mean 41, I'll be 42 in a few more days.

9 Q Okay. And you have a birthday coming up on the 15th of
10 this month and you'll be 42; is that correct?

11 A Yes, sir.

12 Q All right. And where'd you grow up?

13 A Andrews, South Carolina.

14 Q Okay. Have you lived there all of your life, basically?

15 A Pretty much.

16 Q Okay. And where did you go to high school?

17 A Andrews High.

18 Q Okay. Did you graduate from Andrews High School?

19 A Yes, sir.

20 Q And what year was that if you recall?

21 A 1993.

22 Q Okay. Now, do you have any children?

23 A A son.

24 Q And how old is he?

25 A Twenty.

1 Q And where does he live?

2 A Augusta, Georgia.

3 Q Okay. Now, is your father still alive?

4 A Yes, sir.

5 Q And what is his name?

6 A Jimmy Giles.

7 Q And what does Mr. Giles, your father, what, what does he
8 do or what did he do for a living?

9 A He retired from the school district, a maintenance, doing
10 plumbing and maintenance at -- with the school district,
11 Georgetown County School District.

12 Q And how many years did he work there?

13 A About 10.

14 Q Okay. Now, is your mother alive or is she deceased?

15 A Deceased.

16 Q Okay. And what did she do before she passed?

17 A She worked at Federal Mogul in Sumter.

18 Q Okay. Now, as for you, what's the last job that you
19 held?

20 A Well, since I was diagnosed with cancer I do like part --
21 I help my dad out a lot doing plumbing work. Sometimes like
22 somebody in the community might want me to do some kind of
23 plumbing work or something like that I'll do it.

24 Q Okay. Are you considered to be totally disabled?

25 A I was fighting to get my disability back, but I, I

Jamie Giles - Direct by Defense

341

1 haven't gotten it.

2 Q Okay. And so right now what you're doing is you do --
3 working with your father doing plumbing and, and other
4 construction related things for people around the area?

5 A Yes, sir.

6 Q Okay. Now, before that, you were in the United States
7 Navy and received a medical discharge; is that correct?

8 A Yes, sir.

9 Q Okay. And how long have you, how long have you lived in
10 that trailer park that we've been talking about all week?

11 A Not long. Four, five months.

12 Q Okay. Let me ask you this, before the events of July 15th
13 of 2014, how long had you lived there before that date?

14 A About two months, three months.

15 Q Okay. So you moved there --

16 A At a friend's house, not at that, not at Lot 22, but it
17 was a friend house further up in that trailer park.

18 Q Okay. And when you lived there or when you moved there
19 were you already dating Ms. Brenda Brown or did you start
20 dating her after you started residing at the trailer park?

21 A We was dating then, before, before, before.

22 Q All right. Now, what occurred on July 15th of 2014? What
23 do you recall about that day?

24 A Me and Ms. Brown had a argument earlier that morning, and
25 we pretty much called it quits, and I left and I went to

1 Blakely and got up with another female friend and been in
2 Blakeley just about all day till, till about 11:30, 12:00
3 o'clock that night.

4 Q Okay. And at some point after 11:30 or 12:00 o'clock
5 that night did you end up back in the trailer park around the
6 area of Punchy Burroughs' trailer?

7 A I went to Punchy when I got back in town.

8 Q Okay. And why did you go there?

9 A Just to have a drink and to chill out until I get ready
10 to go to my partner house.

11 Q Okay. Now, was Ms. Brown there at that time? Was she at
12 Punchy's trailer at that time?

13 A Not when I arrived.

14 Q Okay. Did you see her sometime later on that evening?

15 A A few minutes later she popped up.

16 Q Okay. And did you -- what happened then, sir?

17 A A argument started inside Punchy and led to the outside
18 up the street from Punchy.

19 Q Okay. And what were you arguing about?

20 A She had said something that I felt like it was disrespect
21 to my -- to me and my father because we do a lot of work for
22 people in the community and around, around Andrews area.

23 Q Okay. And when you say you do a lot of work for people
24 in the community, what are you referring to specifically?

25 A Plumbing, plumbing, plumbing and like handiwork.

Jamie Giles - Direct by Defense

343

1 Q Okay. Okay. And do you always do it for pay or do you
2 oftentimes donate your time and your talents?

3 A I don't get paid sometime. I, I help my dad. He, he do
4 a lot of things just to help out, you know, other people.

5 Q Okay.

6 A Sometime he pay me, you know, if I need it. Need money
7 bad enough he'll pay me sometime. I tell him just hold on to
8 it.

9 Q Okay. So you and she, you and Ms. Brown were involved in
10 an argument; is that correct?

11 A Yes, sir.

12 Q Okay. And at, at some point during that argument did she
13 physically assault you?

14 A As we was walking down the street, down the gravel road,
15 she had already took off her shoes and she -- as we were
16 arguing and walking she hit me in my face with the, with the
17 shoe.

18 Q Okay. Where were you all going?

19 A We was just walking. Basically I was walking to try to
20 get away from everybody else, and she was raising, you know,
21 still talking loud and both of us got loud, and so something
22 happened and she hit, she swung and hit me in my face.

23 Q Now, you say you were trying to get away from everybody
24 else. Were you and she walking together or was she kind of
25 following behind you or --

1 A We were walking side-by-side basically.

2 Q Okay. But you all weren't necessarily going anyplace
3 together?

4 A No, sir. Just, just, just getting away from the crowd.

5 Q Okay. All right. And at that point how many people
6 would you say were in this crowd you're referring to?

7 A About seven, eight.

8 Q Okay. So as you're walking I think you said that she hit
9 you shoe with her shoe?

10 A Yes, sir.

11 Q Okay. And what did you do in response?

12 A Out of reflex I hit her and she went to the ground.

13 Q Okay. Did you ever pull out a screwdriver, threaten her
14 with a screwdriver?

15 A No, sir.

16 Q Okay. Are you proud of the fact that you hit her and put
17 her to the ground?

18 A No, sir.

19 Q Okay. So --

20 A The next night --

21 Q I'm sorry. Go ahead.

22 A The next night she came over to my house. I, I, I got a
23 trailer on -- four -- at, at -- address Holly, Holly Berry
24 Drive, and she came over there the next night and apologize to
25 me, you know, basically.

1 Q Okay. After that whole incident occurred, at any point
2 after July 15th did you and Ms. Brown continue your
3 relationship?

4 A We started back the next night.

5 Q Okay. So you hit her. She goes to the ground. What
6 happened then?

7 A People start getting in between us and separated us.

8 Q Okay.

9 A And, and earlier in the, in the, in the -- Daniae said it
10 was him, but it wasn't him, but like her son and a couple of
11 his friends and some people just came in and separated us.

12 Q Okay.

13 A And after awhile we started arguing again.

14 Q Okay. Were you still standing at the same point where
15 she had hit you and you hit her?

16 A Yes, sir. Pretty much.

17 Q Okay. So at some point that evening did you have
18 interaction with Daniae Kelly and Rodney Kinloch?

19 A When, when it started back escalating Daniae Kelly just
20 came from the right side. I could see him out my peripheral
21 and hit me in the side of my face, and somebody hit me from
22 the back, and I went down, and they started kicking me in the
23 side and in like stomach area. I had bruises in the back of
24 my head and neck.

25 Q How long did this go on?

1 A About, about a minute or so until I could get out, get
2 out, get out, you know, get, get a far enough distance from
3 them. That's when he brandished a gun and started waving it.

4 Q And when you say he, who are you referring to?

5 A Daniea Kelly.

6 Q Okay. And was he one of the people who was kicking you
7 initially?

8 A Yes, sir. He, he started off. I wouldn't -- I don't
9 know how long he stayed, you know, kept doing it, but he was
10 -- he started it basically when he came over and hit me in my
11 face.

12 Q Okay. To your knowledge, is he -- had you had, prior to
13 that day had you had any issues with him?

14 A We was cool because I knew him from 2007, and he used to
15 cut my hair and, and I went out with him about a month or so
16 before this incident. He, you know, he asked me to ride with
17 him and Phil out, out to a club over on this side of town --
18 well, over in Choppee area.

19 Q Okay. But this person that you had been cool with, did
20 he have anything to do with the discussion between you and Ms.
21 Brown and the altercation between you and Ms. Brown?

22 A No, sir.

23 Q Do you know whether he was intoxicated or do you have any
24 idea?

25 A No, sir.

1 Q I, I, I just, just like I say, I was in Blakely most of
2 the, most of the day till, till about 11, 11:30 about -- it's
3 in Williamsburg County about 20, 20, 25 minutes away.

4 Q Okay. From Andrews?

5 A Yes, sir. About 20 minutes, 15, 20 minutes.

6 Q Okay. So Mr. Kelly, I think you testified, punched you,
7 and you went down and then he -- and was Mr. Kinloch involved
8 as well as far as kicking, kicking you and everything while
9 you were down?

10 A Yes, sir.

11 Q Okay. How were you able to get away? What did you have
12 to do to get away?

13 A When I found a opening I got a little distance between me
14 and them and I went to my house at 4 Holly Berry Drive.

15 Q Okay. Did you have to run from the area?

16 A I ran from that right, right in the vicinity of where,
17 where the assaulting took place.

18 Q Okay. And prior to you running, I think you said that
19 Mr. Kelly brandished a gun?

20 A Yes, sir.

21 Q Tell, tell me about that, if you would?

22 A After I got a little distance away he pull out his gun,
23 cocked it and was like, "Yo, you going to make me come out of
24 retirement," and stuff like that.

25 Q Had you pulled a weapon on him?

1 A No, sir.

2 Q Had you threatened him in any way?

3 A No, sir.

4 Q Okay. To your knowledge around the neighborhood was Mr.
5 Kelly known to carry a weapon?

6 A I know he, he -- that was one of his charges in 2007
7 when, when we was locked up together when, like I said, he
8 used to cut my hair. It was dealing with a gun and, and word
9 out, you know, he always deal with guns.

10 Q All right. All right. But up until that point you and
11 he had never, never had an issue as far as you know?

12 A No, sir.

13 Q Okay. So, now, from that point what injuries did you
14 sustain as a result of, of what Mr. Kelly and others did on
15 that night?

16 A When I -- I set up appointment with, with my primary
17 doctor, Dr. Maddox at St. James Clinic. She set me an
18 appointment for about three, two, two and a half weeks like on
19 August the 4th, and I went in, explained to her about I had
20 bruised ribs and a broken finger, possibly a broken finger and
21 most of the swelling, well, most of the bruises and stuff like
22 in the back of my head and everything else was pretty much all
23 right, but a couple of days after the incident I noticed
24 blood, little specks of blood in my stool, and that was one of
25 the main reasons why I was calling and scheduled an

Jamie Giles - Direct by Defense

349

1 appointment to see her, and --

2 Q How long did that persist?

3 A Till -- the bleeding?

4 Q Yes, sir.

5 A Till October the 21st, 20th, 21st. I ended up having to go
6 to the hospital.

7 Q So for approximately three months you had that issue?

8 A Yes, sir. Yes sir.

9 Q Okay. And did you have that -- let me ask you this, as a
10 result of going to see, because you can't tell me what the
11 doctor said, the doctor is not here, or what any healthcare
12 professionals said, but as a result of seeing Dr. Maddox, and
13 you didn't tell Dr. Maddox that you'd got beaten up; did you?

14 A No, sir.

15 Q Why not?

16 A Basically it had already happened, and I left it alone.
17 It had already happened, and, and I just left it alone really.

18 Q Okay. Now, as a result of your interaction with Dr.
19 Maddox, did you subsequently end up going to the emergency
20 room sometime afterward?

21 A Well, she, she had told me if, if --

22 Q You can't tell me what she told you.

23 A All right.

24 Q But as a result of your --

25 A But it, it, it, it started got -- getting worser

1 throughout the, the period of time from between I seen her
2 until I got admitted at Georgetown Memorial. So I end up
3 getting admitted to Georgetown Memorial behind it.

4 Q Okay. And when you went to Georgetown Memorial did you
5 tell the doctors there what had happened?

6 A Well, I just gave them the advice Dr. Maddox told me.

7 Q Okay. But you didn't tell them that anyone had beaten
8 you up; had -- did you?

9 A No, sir.

10 Q Why not?

11 A Because it was a dead issue.

12 Q Okay. All right. Now, did you progressively or
13 subsequently get better physically following the beating?

14 A The treatment I got in the hospital it -- all, all the
15 bleeding stopped.

16 Q Okay.

17 A And I was all right.

18 Q How long was it before your, your ribs healed up?

19 A About, about a month, a month and a half.

20 Q Okay. Now, did anyone ever diagnose you with having
21 broken or cracked ribs?

22 A No, sir.

23 Q Okay. But the pain from it it took about 30 to 45 days
24 to go away; is that correct?

25 A Yes, sir.

Jamie Giles - Direct by Defense

351

1 Q Okay. Now, in this time period from the time you went to
2 see Dr. Maddox you were able to get an appointment and get in
3 there the beginning of August, about two and a half weeks
4 after the incident; is that correct?

5 A Yes, sir.

6 Q From that point, when was the next time you had any
7 interaction with Mr. Kelly?

8 A About a month after, after the incident I was going to
9 Punchy to get a shot of liquor and a couple of looseys, and
10 Phil saw me and told me, asked me if I feel like talking to
11 Daniea, and I told him when I get out of Punchy house stop by
12 his house.

13 Q Okay. Does Phil live basically right next door to
14 Punchy?

15 A In front of Punchy.

16 Q Okay. His trailer is here and Phil's trailer is there?

17 A Yes, sir.

18 Q Okay. So Phil asked you if you felt like talking to
19 Daniea?

20 A Yes, sir.

21 Q And where, where was this conversation supposed to take
22 place?

23 A We talked in, in the front yard of Phil yard.

24 Q Okay. And what time of day or night was it?

25 A About like one, 2:00 o'clock in the day.

1 Q Okay. Did you feel threatened at that point?

2 A Nah. Because Phil told me he wanted to apologize. So I
3 did what I felt was right and, and killed the beef, killed
4 whatever he wanted to call it because.

5 Q Okay. Anytime up to that point had you said anything
6 threatening about Mr. Kelly or retaliated in any way?

7 A No, sir. I left it alone.

8 Q Okay. So you talked to Mr. Kelly about a month after the
9 incident, which would be, I guess, to about the middle to the
10 end of August; would that be correct?

11 A Yes, sir.

12 Q Okay. And what was your understanding of things between
13 you and Mr. Kelly after that discussion?

14 A You know, we said what we said, and pretty much I ain't
15 had no more other -- I, I didn't bother him or really had no
16 kind of interaction or nothing with him.

17 Q Okay.

18 A You know, that he pulled a gun, brandished a gun, I mean,
19 I don't think a man like me anyway I wouldn't want him as a
20 friend.

21 Q Okay. When he pulled the gun in July, were you afraid or
22 worried for your safety?

23 A Yes, sir.

24 Q Okay. So you talked to him the middle to the end of
25 August in the middle of the day. Now, was, was Phil present

1 during this discussion?

2 A Yes, sir.

3 Q Okay. So you had kind of a mediator. Was anyone else
4 present?

5 A No, sir.

6 Q Okay. And after that point, any interaction with Mr.
7 Kelly from that point, the middle to the end of August 2014,
8 and December 3rd of 2014?

9 A None.

10 Q Okay. What was the status of your relationship with
11 Brenda Brown between the end of August 2014 and December 3rd of
12 2014?

13 A We was together, a couple. Other than that little
14 incident July 15th, which we, we, like I said, that morning it
15 was over, pretty much over and then we went our way.

16 Q At some point or at that point were you and Ms. Brown
17 living together?

18 A Yes, sir. We had got a trailer together and was renting
19 a trailer in Lot 22 in the same trailer park.

20 Q Okay. And when did that happen?

21 A In, in July.

22 Q Okay.

23 A End of July.

24 Q Before or after July 15th?

25 A After, like a, like a day, like, like about two days

1 later we, we moved in together.

2 Q Okay. So now let me ask you about the incident that
3 occurred on December 3rd, 2014. Do you remember the incidents
4 that occurred on that day?

5 A Yes, sir.

6 Q Okay. Take me through that day, if you would. Were you
7 at, were you -- let me ask you this way. You were at Andrews
8 Municipal Court earlier that day; correct?

9 A Yes, sir.

10 Q Okay. Because you had some, some Municipal Court charge;
11 right?

12 A Some charges. Yes, sir.

13 Q And you went to court and what happened to the charge?

14 A It got dismissed.

15 Q Okay. So what time did you leave Andrews Municipal Court
16 you think?

17 A Me and Brenda got home about, about 7:45, 8:00 o'clock.

18 Q Okay. I'm sorry. You said you and who?

19 A Me and Brenda.

20 Q Okay. So she went with you?

21 A Yeah. She was out in the car.

22 Q Okay. And so you finished up with your court appearance
23 about 8 p.m.?

24 A Yeah. Pretty much.

25 Q 7:45?

Jamie Giles - Direct by Defense

355

1 A That's what time we got home about, about 7:45, 8:00
2 o'clock.

3 Q Okay. And what did you do when you got back to Lot 22
4 there in the trailer park?

5 A She got a call from Chakana and Ruthie Brown, Ruthie Mae
6 Brown saying that 'Kana was leaving to move to Florida that --
7 the next day and they wanted to have some drinks. So we, we
8 put on some jackets and, you know, everything. She called her
9 son over to babysit the two younger kids and --

10 Q Okay. Who do these younger kids belong to?

11 A Brenda and her, her ex, well, it was her ex, William
12 Rutledge.

13 Q Okay. And how old were these children?

14 A At the time I think Quamain was about 11 and Noria was
15 about five, four, five.

16 Q Okay. So these children were living in the home with you
17 and Brenda?

18 A Yes, sir.

19 Q Okay. And when did they move in, the same, back in July?

20 A Yes, sir.

21 Q Okay. So it's you and the two kids and Brenda that live
22 there. Anybody else live there at Lot 22?

23 A Her oldest son, Kwez, spends the night every now and
24 then.

25 Q Okay. All right. So when you said Chakana Brown called,

1 is that the young lady that testified yesterday, I believe it
2 was?

3 A Yes, sir.

4 Q Okay. And what is her relationship to Brenda?

5 A Her niece.

6 Q Okay. So Chakana called, said she was moving, wanted to
7 get everybody together, have some drinks; is that correct?

8 A Yes, sir.

9 Q All right. And so you indicated you called Brenda's son.
10 How old is he?

11 A She called him.

12 Q Okay.

13 A He's about 18, 19 now.

14 Q Okay.

15 A Probably like about 19 by now.

16 Q Okay. And he was going to come over and babysit while
17 you all were out?

18 A He, he did. Yes, sir.

19 Q Okay. So you said you put jackets on. You get kind of
20 dressed up?

21 A Yes. Not, not really. We, we was together all day. We
22 went and pay bills in Georgetown. I drove her to pay bills
23 and, you know, we just hang out, did, did -- put up -- start
24 putting up the Christmas tree and lights and stuff, and that's
25 when the call -- well, then I went to court and came back, and

Jamie Giles - Direct by Defense

357

1 --

2 Q And then you got the phone call?

3 A Yeah. She got the phone call, and I walked over to her
4 mother house where they all was at and we -- me and her sister
5 and her niece really ain't, ain't close, close, but we all
6 right, but I, I told her she can go ahead to her mom's house.
7 I walk her to her mom's house and I walked over to Punchy's
8 house.

9 Q Okay. So you didn't necessarily want to stay with all of
10 Brenda's family because you're not really close with her
11 sister and her sister's daughter?

12 A Yeah. Basically.

13 Q Okay. All right. To your understanding, had the sister
14 and the niece ever gotten over what happened on July 15th of
15 2014?

16 A I don't know. Like I say, sometimes we cool, sometimes
17 we not.

18 Q Okay. So after you walked her over there to her -- so
19 her mother lives there in the trailer park as well?

20 A Yes, sir.

21 Q All right. So after you walked her over to her mother's
22 house and other family members are there, where -- what did
23 you decide to do and where did you go?

24 A I told her I was going to Punchy's to chill out at
25 Punchy's and, you know, she said they'll be over there in a

1 little while. So I went to Punchy, and when I got to Punchy's
2 I got a drink and just sit back and chill and think for a
3 little bit and ask him could I use his phone because something
4 had happened to mine a week or two before, something like
5 that, about a week before or something, and I called Barney
6 Wilson.

7 Q And who is Barney Wilson? Is he a friend of yours?

8 A A friend. Yes, sir.

9 Q Okay. And how long have you known Barney?

10 A Probably all my life, all his life, rather.

11 Q Okay. He is younger than you?

12 A Yes, sir.

13 Q Okay. So you called Barney and what happened then?

14 A Well, earlier that day I had talked to him and he told me
15 after I get out of court, you know, to call him and let him
16 know what's happened, what, what happened. So we was at
17 Punchy's, you know, just discussing about court and things,
18 things what's, what's going on with me, basically.

19 Q And what do you mean when you say things that were going
20 on with you?

21 A I tried to ask -- I, I -- when I got locked up in
22 November I had a doctor's appointment and some kind of how
23 Andrews Police, Stephanie Law said that I had a arson charge.
24 So basically --

25 Q Okay. I don't want you to say what someone said. When

Jamie Giles - Direct by Defense

359

1 you say you got locked up in November, is that about the case
2 that -- the city court case that you --

3 A Yes, sir.

4 Q -- got dismissed in December?

5 A Yes, sir.

6 Q Okay. But there was some issue regarding medical
7 treatment that you didn't receive?

8 A Receive, yes, sir.

9 Q Okay. And so you and Barney were discussing that?

10 A Yeah.

11 Q Okay. Among other things?

12 A Uh-huh.

13 Q Okay. Do you have any recollection as to what time you
14 got -- roughly what time you got to Punchy's?

15 A About eight, about 8:15, 8:30.

16 Q Okay.

17 A Because it -- we wasn't long -- we wasn't in the house
18 long before she got the call from Chakana and Ruthie Brown,
19 Ruthie Mae Brown.

20 Q Okay. And when you got to Punchy's, who was there?

21 A Phil and Punchy, but Phil had left, and me and Punchy was
22 just there, and I -- that's when I asked him to use the phone
23 to call Barney Wilson.

24 Q And what happened? Who else, who was the next person to
25 arrive?

1 A I really can't remember, you know what I'm saying? He
2 had a couple of people that came in and leave, you know.

3 Q Okay. Now, when you say you went over to Punchy's to,
4 you know, have a drink and, and get a couple of cigarettes or
5 whatever, is that something that you are paying for?

6 A Yes, sir.

7 Q Okay. So he is basically running a business out of his
8 home?

9 A Yes, sir.

10 Q Okay. And so other people were coming in. Did it appear
11 to you from what you observed that they were also acting as
12 customers or were they just friends dropping by from what you
13 recall?

14 A Yes, sir.

15 Q Which was it?

16 A Customers.

17 Q Customers. Okay. All right. And at some point did
18 Barney Wilson get there?

19 A Yes, sir.

20 Q All right. And you and he sit down and have a drink
21 together?

22 A I, I had already had a drink when I got there, when I,
23 when I first got there. So he was like, "Yo, man, I drink one
24 more drink with you, but we can drink some beer." So it was
25 like, "Yo, Punchy, you still got some forties." So I was

Jamie Giles - Direct by Defense

361

1 like, "Shit, shoot, you know, me and you probably can share a
2 40, man. I'm not trying to drink no whole 40." So Punchy had
3 to go out to the barn, and he asked Barney to go out with him.

4 Q Okay. Did he indicate why he wanted Barney to go to the
5 barn? When you say the barn, did he have kind of a storage
6 unit near his trailer?

7 A Yeah. It's a, it's a little storage unit. That's where
8 he -- little storage unit where he keep most of the beer and
9 stuff at.

10 Q Okay. And he asked Barney to go help him with that?

11 A Yes, sir.

12 Q Okay. Was anyone else in Punchy's house while Punchy was
13 gone?

14 A Just me. I stood like in the doorway, and him and Barney
15 went outside to the barn and got the, the beer and the juices
16 and whatnot.

17 Q Okay. Now, how long were they gone?

18 A A couple of minutes. The barn ain't that far from the
19 front porch. It's a couple of minutes.

20 Q All right. So, he comes back. At that point when, when
21 they come back is it still just the three of you, you, Barney
22 and Punchy?

23 A Yes, sir.

24 Q All right. At some point did Rodney Kinloch come in?

25 A Brenda and some of the -- her crew she had at her mom's

1 house, they came in along with a couple of other people, and
2 at that time Barney was like, "Since you all -- since you
3 leaving," was talking to Chakana, "Since you leaving tomorrow
4 I'll buy all you all a drink." He pull out \$20 and bought all
5 of them a drink, you know, and sat the change up under his cup
6 on the counter, and --

7 Q Had he and Chakana, to your knowledge, previously had a
8 relationship?

9 A Yes, sir.

10 Q Okay. So he said he was going to buy all of them a
11 drink?

12 A Yes, sir. So he bought the drinks and then a couple of
13 minutes later Rodney came in.

14 Q All right.

15 A Ordered a drink, stood up behind me like, like, like
16 something was wrong with him, like weird, weird acting.

17 Q Okay.

18 A And --

19 Q Did you speak with him at any point?

20 A No, sir.

21 Q Okay. Did he ever approach you and try to shake your
22 hand or speak with you?

23 A No, sir. That's the first time I saw him since that
24 incident happened on July the 15th. I, I didn't really have no
25 words for him.

Jamie Giles - Direct by Defense

363

1 Q Okay. So he came and stood, ordered his drink and stood
2 behind you. What happened next?

3 A He left, went outside. A few minutes later he came back
4 in, ordered some cigarettes, and because of this, and left and
5 after he left, I, I felt like that was some kind of weird
6 acting suspicious type, type of action. So I peeped to the
7 window, and he stood up on the -- if, if I'm facing Punchy
8 door from the inside it'll be the right side of the porch on
9 the side of the, right side of the porch, and at that time
10 Phillip, Phil was on the porch, sitting on the porch. They
11 was talking and Daniea truck was in Phil yard further up from
12 the trailer, from like the back of Daniea truck was almost
13 parallel to the, to like halfway in the front side of, of Phil
14 trailer.

15 MR. HAZZARD: The Court's indulgence, Your Honor.

16 THE COURT: All right.

17 MR. HAZZARD: May I approach the witness, Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. HAZZARD:

20 Q All right. Sir, I'm going to show you a picture that has
21 been marked as State's Exhibit 121 and is in evidence and ask
22 you to take a look at this picture and see if you recognize
23 what is depicted in the picture, specifically is that kind of
24 a shot that shows Phil's trailer and Punchy's trailer?

25 A Yes, sir.

1 Q All right. Now, in this picture, as you look at it, is
2 -- where is Punchy's trailer? Is it on the right-hand side as
3 you look at the picture or the left-hand side?

4 A On the right-hand side.

5 Q Okay. So Punchy's trailer is on the right-hand side,
6 Phil's trailer is on the left-hand side; is that correct?

7 A Yes, sir.

8 MR. HAZZARD: Request to publish, Your Honor.

9 THE COURT: All right.

10 BY MR. HAZZARD:

11 Q When you first saw Daniea's truck or what turned out to
12 be Daniea's truck, you were saying that it was -- was he
13 parked with the nose of the truck like where it could hit
14 Phil's trailer? Was he parked alongside Phil's trailer? Was
15 he parked so that the back of his truck could hit Phil's
16 trailer?

17 A Alongside it.

18 Q Okay.

19 A Phil's trailer is hitting here. It was parked that way.

20 Q Okay. So that's where it was when you first noticed it
21 when you looked out the window?

22 A Yes, sir.

23 Q Okay. So I think you indicated at this point Barney
24 Wilson -- or not Barney Wilson, that Mr. Kinloch had been in
25 on two occasions, ordered a drink and then came back in and

Jamie Giles - Direct by Defense

365

1 ordered some cigarettes; is that correct?

2 A Yes, sir.

3 Q Okay. What, what did you see then? What did you do
4 then? What happened next, sir?

5 A He came back in and just stood, came and stood right
6 behind me with his arms like this, just stood maybe about a
7 foot away from the back of my head. So I had to turn to the
8 side, put my feet up on the amplifier that Punchy had to, you
9 know, just watch my back, and after a few seconds he walked
10 back outside.

11 Q Okay.

12 A He walked back outside and went to Dania truck.

13 Q Okay.

14 A To the driver's door and said some words and Dania hand
15 him a gun.

16 Q You saw this?

17 A Yes, sir. I was looking at the -- out the window of the
18 door.

19 Q Okay.

20 A And when, when he did that, at that time Barney Wilson
21 was in the bathroom and Jermaine Hanna was sitting in the sofa
22 opposite of the, of the bar, the bar and I asked him -- I went
23 and sat beside him. I asked him, I said, "Well, isn't that
24 Rodney, the Clump?" I said, I asked him, "Is that Clump," and
25 when I asked him he say, "Yeah," and because him and Tuvera

1 mamma is close friends or whatever, and --

2 Q Rodney and Tuvera's mother or --

3 A Nah. Jermaine Hanna and Tuvera mamma was close friends
4 at one time, and he was, "Yeah," he was like, "Yeah." So I
5 went in the bathroom and asked Barney did he still have his
6 gun on him because when Barney -- that was one of the reason
7 Punchy asked him to go outside, Barney accidentally open up
8 his shirt and, and he had a gun, and when, when I -- after I,
9 I walked back to the bathroom to see what I -- the question I
10 asked, I said, "You still got that gun?" He was like, "Hold
11 up. I'm on the phone," and so I walked back in the front room
12 by the bar where I was and just keep peeping back and forth
13 out the window, you know, just making sure, and he came around
14 and then Clump came in again, Rodney Kinloch came in again and
15 stood, stood behind me again. So at that time after he leave
16 I told him to let me hold the gun, and I put the gun in my
17 jacket under my arm, and --

18 Q What was your purpose for getting the gun from Mr.
19 Wilson?

20 A Because I already done see Daniea hand Rodney Kinloch a
21 gun.

22 Q Okay. Why did you think it had anything to do with you?

23 A Because I wasn't saying nothing and his, his action was
24 strange. So I felt like something was happening. Just like I
25 say, I never seen him till that night after the 15th thing,

1 July the 15th.

2 Q Okay. At this point to your knowledge did Mr. Kelly's
3 car or his truck did it ever move from where it was parked
4 beside Phil's trailer?

5 A Yes. After I came back and checked again out of the
6 window after he left the fourth time Kelly truck was parked in
7 Punchy yard now nose towards Myrtle Road with a direct line at
8 the Punchy's front door.

9 Q Now, what do you mean a direct line at Punchy's front
10 door?

11 A The way I been thinking after I done seen him hand
12 Kinloch a gun was like it's a case I come out there or
13 something happen that it's, it's, it's a, it's a perfect place
14 to ambush or fire a shot.

15 Q Okay. So am I correct in saying you're saying that there
16 was a direct line from the driver's side door to Punchy's
17 door?

18 A Yes, sir.

19 Q Okay. Okay. So what did you do when you saw that the
20 truck had moved?

21 A That's when I, that's when I, I had, I had already had
22 the gun and I felt strange and I was thinking about leaving,
23 and so when he came in again and left I said, well, you know
24 what I'm saying, I said, I told Barney I was like, "Yo, man,
25 I'm going to slide. I'm going to the house," and he was like,

1 "Yo, you straight?" I said, "Yeah, I got, I got this if, you
2 know, I need something," and I opened the door.

3 Q Why didn't you ask -- let me ask you, why didn't you ask
4 Punchy to let you out of the -- why didn't you go out the back
5 door?

6 A It's padlock, and he keeps it locked.

7 Q Okay. Does he ever let anybody go in and out of that
8 door to your knowledge?

9 A No, sir. I never seen it open.

10 Q Okay.

11 A Neither one of his backdoors on the backside of the
12 trailer.

13 Q Okay. Did it ever cross your mind to get Punchy's phone
14 and call the police?

15 A Nah. I just, I just was trying to avoid a situation.

16 Q Okay.

17 A So home was the best place for me. That's the way I
18 feel.

19 Q Okay. All right. What happened when you opened -- first
20 of all, did you have any conversation with Chakana Brown that
21 evening that you recall or know of?

22 A We just speak, you know, I ain't had nothing -- we speak,
23 and that was about it.

24 Q Okay. Did you make the statement that, you know, you
25 were going to -- that that's that person right there meaning

1 Rodney Kinloch, out the door and then, "I'm going to jail
2 tonight?" Did you ever make that statement to her or anybody
3 else?

4 A Nah. Me and Barney, she overheard me and Barney talking
5 about, you know, I missed my doctor's appointment on November
6 the 7th, and, you know, I don't know whether, whether -- that
7 was a follow up from when I was in the emergency room when I
8 got admitted to the hospital, and I was like, "I don't even
9 much know what's going on as far as with my health. I don't
10 know whether the cancer back or what," you know what I'm
11 saying, so I had like -- I was -- I had some kind of animosity
12 going on with myself I reckon.

13 Q Okay. You say you didn't know if the cancer was back or
14 not. You indicated that you had or were diagnosed with colon
15 cancer. How -- when were you diagnosed with colon cancer?

16 A 2011 I was diagnosed stage IV colon cancer.

17 Q Okay. To your knowledge in --

18 A 2011, I mean.

19 Q Okay. To your knowledge in 2014 was it in remission or
20 were you told it was in remission?

21 A It was in remission in 2011, but from what doctors have
22 told me throughout -- since, since, since I got diagnosed, you
23 know, cancer can come back, and when it come back a lot of
24 times it's more aggressive. So I was really -- I wanted to
25 know the results of the tests I, I missed.

1 Q Okay. Got you. So you opened the door to leave, I take
2 it; is that correct?

3 A Yes, sir.

4 Q And what happened then?

5 A As I turn to close the door, when I turned back around
6 Mr. Kelly was pulling up, and before -- and I just reach in my
7 and squeeze off a couple of shots, and I don't know whether I
8 hit him or what, but I just fired like two, three shots. At
9 the time I, I figured it was two or three shots.

10 Q Okay. Why did you shoot at Mr. Kelly?

11 A Because my life, I felt like my life was threatened
12 because I -- I seen him gave Kinloch a gun, and he had already
13 done move his truck in a direct line. Even when I walked out
14 the door, instead of going to the right to go the back way to
15 where -- to my -- to me and Brenda's house, I was going to
16 walk straight down the steps and between Mr. Kelly truck and
17 Phil house and go around to my -- to me and Brenda's place.

18 Q Okay. So with that route that you just mentioned would
19 that have allowed you to basically avoid an interaction with
20 Mr. Kelly?

21 A Yes, sir.

22 Q Okay. But you came out the door and you said what did
23 you see?

24 A Mr. Kelly pulling what appear to be a gun, and I pulled
25 mine and just squeeze off three shots, but by the report it

Jamie Giles - Direct by Defense

371

1 said three shots, three 9 mm bullets, so I'm assuming it was
2 three shots.

3 Q Okay. Did Mr. Mr. Kelly say anything to you?

4 A Nah. No, sir.

5 Q Did you say anything to him?

6 A No, sir.

7 Q Did Mr. Kinloch raise a weapon that you saw?

8 A Nah. But I didn't see him, but he was -- when I came out
9 he was to the right of the, to the right of the porch.

10 Q Okay.

11 A Earlier he said he was in front of the -- in between the
12 porch on the left side of the porch and truck. He was
13 standing to the right of the porch.

14 Q Okay. Okay. So he would have been, if this is you
15 coming out of the trailer, he is on this side of you and Mr.
16 Kelly is on this side of you?

17 A Yes, sir.

18 Q All right. Are you truly aware of how many times you
19 pulled the trigger? Like at that moment, were you aware of,
20 "I'm pulling the trigger?"

21 A Just like I told you earlier just then and before, I say
22 I squeezed off two or three shots.

23 Q Okay. Could you have squeezed off more than two or three
24 shots?

25 A No, sir.

1 Q Okay.

2 A And if the gun was empty or if it jam, if it empty, I, I
3 never knew how much bullets was in the gun. So, I mean, I
4 know I didn't squeeze no more than three times.

5 Q Okay. Do you recall ever squeezing the trigger and
6 nothing happening?

7 A Yes, sir.

8 Q Okay. And were you aware -- did you see Tuvera McCrae on
9 the other side of Daniea Kelly?

10 A I seen them when they was park parallel to Phil trailer.
11 I seen somebody else in it. When I walked out I didn't see
12 Tuvera in the truck.

13 Q Okay. Did you shoot at Ms. McCrae?

14 A No, sir, not knowingly.

15 Q Okay. Do you recall walking past Ms. McCrae as you left?

16 A Yes, sir, at the rear of the truck.

17 Q Okay. All right. So after you fired however many shots
18 you fired, what did you do then, sir?

19 A I walk because Kinloch was right to the right of me.
20 When I walked down I walked by the truck, looked in the truck,
21 hold the gun up, and at that time Daniea Kelly was over the
22 steering wheel reaching down like he trying to grab something,
23 and I squeezed again, and I walked to the rear of the truck
24 walking and looked at Tuvera and walked in front and looked
25 and see whether Kinloch was around there, and after that I

Jamie Giles - Direct by Defense

373

1 walked towards Jones.

2 Q Okay. Did you ever actually -- I'm sorry. Did you ever
3 actually see Mr. Kinloch run way?

4 A No, sir.

5 Q Okay. Did you see him when you came out of Punchy's
6 trailer, when you came out the door? Did you see him to your
7 right?

8 A Yes, sir.

9 Q Okay. What did you do when you walked away from Mr.
10 Kelly's car?

11 A I say I looked and see whether he was around that way and
12 I went the opposite way because I knew if, if he wasn't where
13 he was from the start where he had to run back between the two
14 trailers wherever he went.

15 Q So at that point you were still concerned about possibly
16 being attacked by Mr. Kinloch?

17 A Yes, sir.

18 Q Okay. All right. When you went the opposite way from
19 where you saw Mr. Kinloch head, where did you go?

20 A I walked back towards Jones to -- I stopped at a trailer
21 -- the home boy I told you I stayed with a little while,
22 stopped there and then walked out, walked up to Jones.

23 Q What is Jones?

24 A Jones Avenue.

25 Q Okay. All right. What time did you go to the police

1 department and turn yourself in on December the 4th?

2 A Around 10:00 o'clock, 10 p.m., somewhere around that
3 time.

4 Q Okay. All right. Did the police come looking for you
5 or, or anything of that nature to your knowledge?

6 A No. I had talked to my grandmother and my sister, and
7 they had already done called Officer, Officer Nesmith and told
8 them that I was coming to turn myself in.

9 Q All right. And so they didn't have to put out any big
10 dragnet or manhunt for you?

11 A No, sir.

12 Q All right. What happened to the gun that was in your
13 possession that night?

14 A I left it at my partner's house.

15 Q Okay. Did the police ever ask you where the gun was and
16 then try to retrieve it to your knowledge?

17 A Nah.

18 Q Okay. Please answer any questions that Mr. Todd or the
19 Court may have.

20 A All right.

21 THE COURT: All right. Cross examination.

22 MR. TODD: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. TODD:

25 Q Now, Mr. Giles, help me understand this. You're claiming

Jamie Giles - Cross by State

375

1 that you had to shoot at Mr. Kelly and hit him in order to
2 save your own life; is that correct?

3 A I don't know whether I hit him or not.

4 Q Well, you know now?

5 A I don't know now.

6 Q You don't know if you hit him after all the testimony you
7 heard?

8 A Huh-uh.

9 Q Okay. Now, but you admit shooting into the car?

10 A Yes, sir.

11 Q And you shot as many shots as you could into that car?

12 A Two or three.

13 Q But it could have been more; is that correct?

14 A Couldn't.

15 Q So you're denying that there was six shots in the car?

16 A I, I told my lawyer from the start when we first -- I, I
17 -- when I first ever talked to him I told him I shot a couple
18 of times, you know, I ain't -- I -- it wasn't no seven, no
19 six, no seven, five. I told him a couple of times, two or
20 three shots.

21 Q So you disagree with the assessment that the crime scene
22 investigator did that there was six bullets, possibly seven in
23 the car, three were found and three were found inside of the
24 victim?

25 A I agree with what Officer Garrett found, three, two or

1 three shell casings.

2 Q Okay. Now, I'm, I'm having a hard time understanding
3 this. So let's go back to July, July 15th, I believe it was --

4 A Yes, sir.

5 Q -- of 2014. Had you had a few drinks that night?

6 A I had one drink when I got, got into town. I told you I
7 was in Blakely just about all day till that happened.

8 Q Okay. But when you returned back to go to Punchy's house
9 did you have a drink then?

10 A I got a drink.

11 Q Okay.

12 A I got two. I got -- bought the guy who brought -- who
13 took me to Blakely and brought me back one, and I got one.

14 Q Okay. And then you started talking to your -- Ms. Brown,
15 is that her name?

16 A She popped up a couple of minutes after I got there.

17 Q And you talked with her for a little bit?

18 A Yeah. Basically arguing.

19 Q And she hit you, is that what you're claiming?

20 A The argument escalated inside Punchy house. We walked
21 down the street and, and basically, she, she, she took off her
22 shoes as we were walking and hit me in the face.

23 Q And you hit her immediately afterwards?

24 A Yeah. Yes, sir. Out of reflex.

25 Q Taking her to the ground?

Jamie Giles - Cross by State

377

1 A Yes, sir.

2 Q And that's when people try to restrain you and stop you
3 from doing anything further; is that correct?

4 A Yes, sir.

5 Q Okay. And at that point were you still arguing with her?

6 A It, it, it escalated again.

7 Q Okay. Just moments after that?

8 A A few, about -- within about a minute.

9 Q And how many people were around you at that time?

10 A About six or seven.

11 Q Okay. And you stated that Mr. Kelly jumped over top,
12 kind of from the side and hit you in the face?

13 A Yes, sir.

14 Q And did you go to the ground from that hit?

15 A No, sir. Somebody hit me from the -- in the back --

16 Q Okay.

17 A -- afterwards. After he hit me somebody hit me in the
18 back and I went down.

19 Q And then you said a group of people attacked you?

20 A Yes, sir.

21 Q Do you know who that group was?

22 A I gave you all and Chakana Brown basically told you she
23 was involved, too, and --

24 Q Well, I want to hear from you who all the people were.

25 A Kelly, Mr., Mr. Kelly, Mr. Kinloch, Kwez, one of his

1 friend kid, one named Dickey and that's, that's about all I
2 can remember.

3 Q Were these Georgetown people or, or some of them Andrews
4 people?

5 A Well, Kwez homeboy kid was from Andrews. The rest of
6 them is -- Chakana Brown, Andrews. The rest of them -- Dickey
7 is from Georgetown or the Oatland area. The rest of them are
8 from --

9 Q But they're all people you know?

10 A Yes, sir.

11 Q Okay. And it scared you that night? That's what you're
12 saying? That, that scared you; is that correct?

13 A No. Because what scared me is when he start brandishing
14 a gun. Just like the next day everything was cool with
15 everybody who was from like Andrews, you know what I'm saying.

16 Q So you got beat up pretty bad from what I understand; is
17 that what you're stating?

18 A Yes, sir.

19 Q And a gun was brandished at you?

20 A Yes, sir.

21 Q Did you call the police or file a report?

22 A No, sir.

23 Q Why not?

24 A I just didn't. I don't -- if I knew what I knew now I
25 probably would have, but I just forgave, forgave what, forgave

1 people what, what they did, you know. I just forgave them.

2 Q So you forgave everybody?

3 A Yes, sir.

4 Q Welcome back, shaking hands, open arms, it's all water
5 under the bridge?

6 A Everybody that I seen I forgave, everything was good.

7 Q So you had no fear after that?

8 A Everybody I seen that the next day everything was good.

9 Q But you were hurt pretty bad; is that correct?

10 A Yes, sir.

11 Q And you went to the doctor because you had blood in your
12 stool?

13 A Yes, sir.

14 Q And you said you had colon cancer before?

15 A Yes, sir.

16 Q And is blood in the stool one of the things that you had
17 while you had colon cancer?

18 A After months and months I -- it -- I didn't know it was
19 stool, but it was dead, dead blood which was black, but after
20 the beating it was red, you know, red blood. So the dead
21 blood cells in my stool, when I found out I had colon cancer
22 was one of the first things I found out that one of the first
23 thing that, one of the first symptoms that I noticed when,
24 when -- before I got the diagnosis with colon cancer.

25 Q Okay. So when you went to the doctor several weeks later

1 because there was blood in your stool and all of these other
2 injuries that you had, you did not tell the doctor what, what
3 happened?

4 A No, sir.

5 Q What did you tell the doctor was going on with you?

6 A Tell him I had a hurt ribs. She, she checked my chest
7 and gave me some kind of, looked at my finger and, and did
8 some stress test type stuff.

9 Q But in, in her trying to diagnose you, did you give her
10 any information that would help her at all, that would help
11 explain why you had these problems?

12 A Nah.

13 Q You just kept your mouth shut and let the doctor try to
14 figure it out?

15 A I just gave her the symptoms. That's all. She never
16 asked. She asked like what, what was wrong and I told her
17 what was wrong, my ribs sore, my hand, finger. Another thing
18 was from more medication, prescription medication that I was
19 on and everything else, you know, did a stress test basically,
20 basically this is like a checkup, but I gave her like some
21 input on the ribs and stuff like that.

22 Q And did she diagnose why there was blood in your stool?

23 A Nah. She did a stool analysis where I had to -- she -- I
24 had to collect stool for three days, and when I took it back
25 to the office she told me, well, that I, I, I -- she gave me

Jamie Giles - Cross by State

381

1 some instructions and I followed them.

2 Q Were you diagnosed with cancer again?

3 A She wouldn't know that. I got, I got about three, four
4 different doctors I see at any given time.

5 Q But you refused to tell a doctor what -- you just did not
6 tell your doctor why you had these injuries; is that correct?

7 A I didn't tell her.

8 Q Okay. All right. So after that incident you did have
9 opportunity to meet with Mr. Kelly just randomly about a month
10 later; is that what you stated before?

11 A Yes, sir.

12 Q Okay. And you met at, at Phil's house who lives right
13 next to Punchy?

14 A Yes, sir.

15 Q And he apologized and you apologized. Everything was
16 good from what I understand; is that correct?

17 A Yes, sir.

18 Q Okay. So you had no fear of him; right?

19 A Not at that time.

20 Q Okay. So from the initial time till then had you, had
21 you been afraid of running into him from the time of the
22 beating?

23 A I, I avoided him. Well, I, I never sit and hold a
24 conversation, or if I see him I was passing through. We never
25 had no contact.

1 Q Okay. And how about Mr. Kinloch? You said you've never
2 seen him.

3 A I haven't seen him since till -- since July the 15th. I
4 hadn't seen him since -- till December the 3rd.

5 Q Okay. Well, let's jump right into December the 3rd. All
6 right. That night you stated you went over to Punchy's house
7 approximately what time? Do you recall?

8 A About 8:15, 8:30.

9 Q And you had stayed over there and you had been drinking
10 and just hanging out; is that correct?

11 A Yeah. I had a couple of drinks, a beer, well, split a
12 40, and drank two, one while I was waiting on Barney and one
13 when Barney Wilson got there and we split a 40.

14 Q And so Barney Wilson's a good friend of yours? You've
15 known him half your life?

16 A Yeah. We been knowing each other for a long time.

17 Q Okay. And during that night Mr. Kinloch came in and that
18 was the first time you had seen him; is that correct?

19 A I really didn't pull -- pay attention to him. He had on
20 a camouflage jacket, a coat, a big coat, and I didn't --
21 really didn't pay him much attention the first time he came in
22 there. It just he was acting strange.

23 Q What do you mean by acting strange?

24 A Like I said, after the second time he came in there he
25 just stood -- like the first time he stood up waiting on his

Jamie Giles - Cross by State

383

1 drink behind me, and the second time when he came in for the
2 cigarettes he stood up and was like staring at the back of my
3 head less than about a foot or less away from the back of my
4 head, and then the third time, and, and every time he did that
5 he came in he did the same thing, and so, I kind of got a
6 little suspicious of his -- him being suspicious.

7 Q Inside Punchy's house is it very well lit?

8 A The kitchen well lit. The living room kind of not as lit
9 as the kitchen where he, where he mainly be at in the kitchen.

10 Q And you arrived 8:30 you said. It was dark outside
11 because it was December; right?

12 A Yes, sir.

13 Q And you said earlier you're wearing a jacket and
14 everybody else seemed to be wearing jackets. Was it cold
15 outside?

16 A It was chilly.

17 Q All right. So Barney Wilson came in and then later on
18 that night Mr. Kinloch came in several times and made you feel
19 uneasy. What -- when did you realize that Mr. Kelly was
20 outside?

21 A After the second time this, like I said, I noticed the
22 strange behavior of Mr. Kinloch, and that's when I started
23 peeping out the window to see what was going on just because
24 I, I had a little bit of suspicion about him after -- the way
25 he was acting towards me like standing behind me and stuff

1 like that.

2 Q And what window were you looking out?

3 A Punchy has a -- when -- well, at the time he had a window
4 in his front door about eye level.

5 Q And you could look out and see the black truck; is that
6 correct?

7 A Yes, sir.

8 Q And could you tell who was in the black truck when you
9 were looking out?

10 A I knew it was Daniaea because I had seen Daniaea like
11 passing through driving that truck, and after I found out it
12 was Kinloch I pretty much was positive it was Daniaea.

13 Q So you couldn't actually see anything inside the truck?

14 A Not from the back, not from where it was park alongside
15 the trailer.

16 Q And do you recall if his windows are tinted?

17 A I couldn't. If it was I -- the way he move -- when he
18 move it in front of the door I could see inside the truck from
19 the light from Punchy porch light.

20 Q And what color is Daniaea's truck?

21 A Black.

22 Q Or was his truck? Black?

23 A Yes, sir.

24 Q And the lights outside of Punchy's house, is there just a
25 porch light?

- 1 A Yes, sir. Kind of bright, bright porch light.
- 2 Q Okay. So you got nervous? Is that my understanding?
- 3 A Yes, sir. Well, not necessarily nervous, I, I --
- 4 suspicious.
- 5 Q So you got suspicious, and you said that you saw Daniae
- 6 hand Mr. Kinloch a, a gun?
- 7 A Yes, sir.
- 8 Q And where was his truck parked when that happened?
- 9 A Alongside Phil's trailer.
- 10 Q What color was the gun?
- 11 A I didn't see it. I seen -- I didn't see the exact color
- 12 of the gun but I seen the, the way it looked. It, it was a
- 13 gun. I could tell it was a gun.
- 14 Q You could just tell it was a gun?
- 15 A Yes, sir.
- 16 Q Could you tell if it was a revolver or semiautomatic?
- 17 A Looked like a, looked like a revolver from where I seen.
- 18 Q And how far was Daniae's truck parked from the front door
- 19 where you were looking out, from me to you? A little closer?
- 20 A A little closer, about right -- back up -- about a --
- 21 about right there.
- 22 Q So if you're looking out the window --
- 23 A Yeah. About, I, I -- that's what -- probably where,
- 24 where his back glass was.
- 25 Q Okay. So say --

1 A About 20, 25 feet, something like that.

2 Q I'd say that's closer to 12, wouldn't you, 12 to 15?

3 A Well, about, about 20 feet, I'll give it -- my, my
4 estimation about where the truck was parked about, the back
5 glass is about 20 feet from Punchy's front door.

6 Q Okay. That's fair enough. So, after you saw the gun
7 change hands or what you believe was a gun, what did you do at
8 that point?

9 A That's when I went and sat down by Jermaine Hanna, and I
10 asked him was that Clump or Rodney Kinloch. Well, I call him
11 Clump, who hangs with Daniea Kelly, and he said, yeah, that
12 was him, and that's when I went in the back and asked Barney
13 -- I -- did -- I didn't -- he, too, told me, when I knocked on
14 the door he said, "Hold up," and when he came back I asked him
15 did he still had his gun. That's when -- I didn't take it
16 right then, but when Kinloch came back in the house again
17 that's when -- and left, that's when I got the gun from Mr.
18 Wilson.

19 Q Now, why does Mr. Wilson carry a gun?

20 A You got to ask -- he, he don't --

21 MR. HAZZARD: Objection. Calls for speculation.

22 THE COURT: Sustained.

23 Q How did you know he had a gun?

24 A He showed -- he accidentally showed it when, when he
25 first got to Punchy house. Punchy, Mr., Mr. Wilbert know who

Jamie Giles - Cross by State

387

1 -- Burroughs knew he had a gun. That was one of the reasons
2 why Mr. Burroughs asked him to go outside with him.

3 Q And you say you've known Barney Wilson for a long time,
4 almost all of his life?

5 A Yes, sir.

6 Q Is he a convicted felon?

7 MR. HAZZARD: Objection to relevance, Your Honor.

8 THE COURT: Sustained.

9 Q Well, let's go to this. You ask him for your gun? You
10 asked Mr. Wilson for his gun?

11 A Yes, sir. Standing beside, at the bar. Yes, sir.

12 Q Are you a convicted felon?

13 A Yes, sir.

14 Q Okay. Are you allowed to have a firearm?

15 A No, sir.

16 Q Okay. And you were in Punchy's house drinking bootleg
17 liquor?

18 A Yes, sir.

19 Q Because Mr. Burroughs doesn't have a liquor license?

20 A No, sir.

21 Q And you paid him cash for the liquor?

22 A Yes, sir.

23 Q Okay. So you take the gun and you were inside the house;
24 is that correct?

25 A Yes, sir. In his trailer, mobile home.

- 1 Q And there's a front door?
- 2 A Yes, sir.
- 3 Q And there's a back door?
- 4 A Two back doors on the backside of the trailer.
- 5 Q Two back doors. Are they both padlocked?
- 6 A Yes, sir.
- 7 Q Was Punchy in the house with you?
- 8 A Yes, sir.
- 9 Q Did you ask anyone to lock the front door?
- 10 A The front door normally stays locked. People normally
- 11 have to knock on it to -- for him to open it or whoever he
- 12 allows to open his door.
- 13 Q So no one could have easily come inside the house to
- 14 attack you; is that correct?
- 15 A No, sir.
- 16 Q Did you ask Punchy to unlock the back doors for you?
- 17 A No, sir.
- 18 Q Why did you not ask him?
- 19 A Because after things started escalating my main concern
- 20 was to avoid confrontation and I was leaving. I was going
- 21 home.
- 22 Q When did things escalate?
- 23 A It -- when, when it escalate when I seen Daniea hand
- 24 Kinloch the gun.
- 25 Q What you think is a gun; is that correct?

Jamie Giles - Cross by State

389

1 A I just gave you a description. It was a revolver. So
2 evidently it was a gun.

3 Q Okay. We'll take your word on that. That's what you
4 said. Now, had anyone said anything to you aggressive inside
5 the house?

6 A No, sir.

7 Q Had anyone made any motions or any aggressive movements
8 towards you inside the house?

9 A No, sir.

10 Q Did anyone have a cell phone inside the house?

11 A A couple of people might have did.

12 Q You, you know that Barney Wilson had a cell phone; is
13 that correct?

14 A Yes, sir.

15 Q Did you ask Mr. Wilson to call the police?

16 A No, sir.

17 Q You had said earlier you had talked to Punchy on the
18 phone; is that correct?

19 A I didn't say I talk to Punchy on the phone.

20 Q Someone had talked to Punchy on the phone?

21 A I didn't say -- I, I say -- I didn't say I talk to Punchy
22 at all on the phone.

23 Q Did you see a phone in Mr. Punchy's possession?

24 A I talked to Barney Wilson on the phone, Punchy phone.

25 Q You used Punchy's phone to call Mr. Wilson?

1 A Yes, sir.

2 Q Okay. That's, that's what I was trying to get to. I
3 apologize.

4 A That's all you should have asked.

5 Q And did you ask Punchy to use his phone to call the
6 police?

7 A No, sir.

8 Q Now, you've lived in Andrews all your life pretty much?

9 A Pretty much.

10 Q Do you know where the Andrews Police Department is?

11 A Yes, sir.

12 Q How far is the Andrews Police Department from Punchy's
13 house?

14 A About three, four miles, about four miles.

15 Q Fairly close, is that a fair statement, very close?

16 A Yes, sir.

17 Q Now, let's get to the moment when you decided to leave.
18 What time was that?

19 A I had to been at Punchy's house I don't think it was -- I
20 really don't think it was a whole hour, about a hour -- it
21 might have been about a hour.

22 Q So 9:30, is that a fair estimate of when you wanted to
23 leave?

24 A Yes, sir.

25 Q Okay. And you said when you stepped out on the front

1 porch -- how many steps did you take before you fired the
2 first shot?

3 A I walked clearly on the front porch, and I closed the
4 door, and when I turned back around and looked I saw Daniea
5 pulling up.

6 Q So Punchy's door was about this far away from Daniea's
7 truck; is that correct? That's what you stated earlier is
8 about what you said was 20 feet, but we're about this same
9 distance?

10 A Yeah.

11 Q Okay. So you stepped out on the porch.

12 A A little further.

13 Q Two steps getting through the door so you can close the
14 door?

15 A Nah. Daniea truck was a little further back. When I'm
16 outside of the -- on the porch it's a little bit further back,
17 about right there.

18 Q Okay. So not much further than that.

19 A Uh-huh.

20 Q So your two steps didn't really go very far. Is that
21 what you're stating?

22 A Yeah. Pretty much.

23 Q Okay.

24 A That's about, that about right, accurate right there.

25 Q Was his window up or down?

- 1 A I'm saying it look like it was halfway or like three
2 quarter of the way up. That's what -- that's what I, I seen.
- 3 Q Could you see --
- 4 A Or that's what I thought I seen.
- 5 Q Okay. Could you see Ms. McCrae sitting next to him?
- 6 A No, sir.
- 7 Q Could you clearly see Mr. Kelly sitting in that vehicle?
- 8 A Yes, sir.
- 9 Q Okay. Did you see him holding a gun?
- 10 A I seen him pulling and, like I say, he -- our track
11 record and knowing him and I done seen him give Mr. Kinloch a
12 gun I felt threatened and I was going home.
- 13 Q You felt threatened. So then you wanted to go home?
- 14 A Yes, sir.
- 15 Q You didn't feel threatened and feel that maybe you should
16 find some other way to get away?
- 17 A I live in that trailer park. I'm going home in that
18 trailer park.
- 19 Q But you never thought of any other way to stop bloodshed;
20 is that --
- 21 A I did. I was leaving.
- 22 Q Now, you said you went to your partner's house after
23 that. You didn't go home?
- 24 A No, sir.
- 25 Q Where did you go?

Jamie Giles - Cross by State

393

1 A I went to the trailer on the next -- it's just before you
2 get to the next street and went in there for a second and
3 left, went up Jones Avenue.

4 Q So your whole goal was to get out so you could go home,
5 and you didn't go home?

6 A Not after firing, not after the shots.

7 Q Now, whose house was it that you went to, the person's
8 name just so we know?

9 A Call him Bucci.

10 Q Bucci. What's his real name?

11 A I don't know. That's all I ever know him by was Bucci.

12 Q How long have you known Bucci?

13 A A good while.

14 Q And you've never learned his real name?

15 A No, sir.

16 Q Did you give Bucci your gun?

17 A No, sir.

18 Q Where did you take your gun?

19 A I left it around his house somewhere.

20 Q You just left a gun around a man's house?

21 A Yes, sir.

22 Q Does he have any kids?

23 A No, sir. Not living with him. I doubt, so they stays at
24 the house.

25 Q His kids never come over?

1 A I have seen them over there, but not on a regular. As a
2 matter of fact him and his old lady had got back together
3 recently and they don't even stay there. He don't hardly stay
4 there.

5 Q Where around the house did you leave it? Like if I
6 wanted to go get it right now where can I go to get it?

7 A Probably gone.

8 Q Did Bucci ever told you he found it?

9 A Probably got destroyed, thrown away.

10 Q Why would someone throw it away?

11 A Just to get rid of it.

12 Q Did you tell someone to get rid of it?

13 A No.

14 Q Okay. Where'd you go after that, after you left Bucci's
15 house?

16 A I walk up Jones and caught a ride.

17 Q Who did you catch a ride with?

18 A A friend.

19 Q Who's your friend?

20 A Smattie, a guy named Smattie took me out of town.

21 Q A guy named Smattie?

22 A Yeah.

23 Q What's Smattie's full name?

24 A All I ever know him is by Smattie.

25 Q He took you out of town?

1 A Yes, sir.

2 Q And why'd you leave town?

3 A To get my thoughts together, to get -- prepare myself to
4 turn myself in.

5 Q Why didn't you call the police?

6 A I didn't have my phone.

7 Q Did Bucci have a phone?

8 A I really -- I'm not even sure whether Bucci was there.

9 There was a couple of guys in there and then I left.

10 Q Did you ask any of those guys for phones?

11 A No. I didn't -- I don't -- I didn't want to involve
12 nobody else in my trouble.

13 Q Did you know any of the other guys at Bucci's house?

14 A Yeah.

15 Q Who were they?

16 A It was two girls. I don't know their name and I, I do
17 recall John.

18 Q A guy named John?

19 A Yeah.

20 Q John from Andrews?

21 A I don't know him like that. I don't, I don't think he's
22 from Andrews.

23 Q So these people that you don't know very well just let
24 you in their house with a gun?

25 A I used to stay there. I had a key anyway. If they

1 didn't want to let me in when I knocked I had a key.

2 Q Okay. So when you went out of town with Smattie did he
3 have a gun or did he have a phone? Did you ask him?

4 A I'm pretty sure he had one, but I, I didn't see him use
5 one. I'm pretty sure he had a gun, no, I mean, a phone
6 though.

7 Q Did you ask him to use the phone so you could call the
8 police?

9 A No, sir.

10 Q Where'd you go when Smattie took you out of town?

11 A Blakely, Blakely area.

12 Q And where did you -- you went to Blakely, but whose house
13 did you go to?

14 A Somebody he knew.

15 Q Who's that?

16 A I don't know the guy. That's one of his acquaintance. I
17 don't know the guy. I just -- he just wanted me to get out to
18 be safe till I decided what I wanted to do, which was to turn
19 myself in.

20 Q So you fled is what you did?

21 A If that's what you want to call it.

22 Q You got out of town?

23 A Yeah. To get myself together.

24 Q Now, earlier Mr. Hazzard had said that the police asked
25 where the gun was. Did you give them any information?

Jamie Giles - Cross by State

397

1 A I don't recall Mr. Hazzard asking that.

2 Q No. He, he asked that. He asked if the law enforcement
3 asked you where the gun was.

4 A Oh, they -- the law enforcement didn't ask me either.

5 Q Did they ask you any questions?

6 A No.

7 Q Okay. If you acted in self-defense why didn't you stay
8 to explain that to everyone there?

9 A Kinloch, I seen Daniea Kelly give Kinloch a gun, and
10 Kinloch was still roaming or somewhere around that trailer
11 park. My best bet was to get somewhere safe, and just like I
12 said, I got out of town and turned myself in the next day.

13 Q And did you talk to police on the phone?

14 A I talk, after my sister and my grand -- I talked with my
15 sister and my grandmother. One of my aunts contacted one of
16 my uncle, and I gave him the, the address where I was at, and
17 I gave them the area I was at. He didn't meet me at that, at
18 that address, but we met up and he called Officer Nesmith, and
19 turn myself into Officer Nesmith about 10:00 o'clock on the 4th
20 at the Andrews Police Department.

21 Q That's all the questions I have. Thank you.

22 A Thank you.

23 THE COURT: Redirect?

24 MR. HAZZARD: Nothing further, Your Honor.

25 THE COURT: All right. You may step down.

1 A All right.

2 THE COURT: All right. Ladies and gentlemen, we're going
3 to go ahead and break for lunch. I'm going to let you go to
4 lunch on your own. Let's be back -- let's see. It's about
5 ten till one. Let's be back at about 2:45 and we'll try to
6 get started as soon after 2:45 as we can. That'll give you
7 about an hour and 45 minutes to eat lunch and then we'll try
8 to get started as soon after that as we can. Do not discuss
9 the case even among yourselves. It's too early for
10 deliberations. Don't conduct any independent investigations.
11 I hope everybody has a good lunch and we'll see you back at
12 2:45. Thank you very much. Oh, where is that -- who has --
13 oh, he's got it right there. Thank you.

14 (Whereupon, the following takes place outside the
15 presence of jury.)

16 THE COURT: All right. Anything from the State before we
17 recess?

18 MR. TODD: No, Your Honor.

19 THE COURT: Anything from the Defense?

20 MR. HAZZARD: Nothing from the Defense, Your Honor.

21 THE COURT: All right. At this time do you anticipate
22 any other witnesses on the Defense calling?

23 MR. HAZZARD: No, Your Honor.

24 THE COURT: Okay. At this time do you anticipate, and if
25 anything comes up, that's fine, you all let me know. At this

State v. Giles

399

1 point in time given the current status, do you anticipate any
2 rebuttal witnesses?

3 MR. TODD: No, Your Honor. I think we've covered
4 everything.

5 THE COURT: Okay. All right. Sounds good. All right.
6 We'll be back at 2:45.

7 OFF THE RECORD

8 (On the record. The following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. Anything from the State before we
11 bring the jury in?

12 MR. TODD: No, sir. We're just waiting for the victim.

13 THE COURT: Oh, okay. He hasn't come in yet.

14 MR. TODD: Other than that, no, sir.

15 THE COURT: All right. Anything from the Defense before
16 we bring the jury in?

17 MR. HAZZARD: Just a housekeeping matter, Your Honor. My
18 understanding is we discussed is that the Defense is going to
19 rest on the record. After that, I don't know if you want to
20 do the motions that come with that. If so, that is fine. Can
21 we do the charge conference in the morning to allow myself and
22 Mr. -- you have my proposed charges. Mr. Todd has not had an
23 opportunity to get his completely there, and there are a
24 couple of other things I would like to look at as well.

25 THE COURT: Okay.

1 MR. HAZZARD: So I would request, respectfully, that we
2 do the charge conference in the morning. I don't think it'll
3 take too long.

4 THE COURT: Yeah. I don't have a problem doing that. Is
5 that all right?

6 MR. TODD: Yes, sir, that'd be wonderful.

7 THE COURT: Okay. As a matter of a fact, over lunch what
8 -- that's what I've been working on is jury charges, and I
9 pretty much -- I can, to be quite honest with you, I can
10 probably give you a copy of -- well, I don't know. I'll have
11 them for you first thing in the morning. I've pretty much got
12 them completed except for a charge on self defense, number
13 one, and number two, I needed to check with you, and I'll
14 check with you after we excuse the jury on any lesser included
15 charges or if there's any requests in that regard. Okay?

16 MR. HAZZARD: Yes, Your Honor.

17 THE COURT: All right. Anything further from the Defense
18 before we bring the jury in?

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

20 THE COURT: All right. I think we're going to bring them
21 in. You'll rest on the record. I'll let you reserve any
22 motions while I go ahead and see if there's anything in reply
23 and the no, then I'll excuse the jury and then we'll address
24 the motions that we generally do at the close of the Defense.
25 Okay.

State v. Giles

401

1 MR. HAZZARD: Yes, sir.

2 MR. TODD: Yes, sir.

3 THE COURT: All right. Let's bring the jury in

4 (Whereupon, the following takes place in the presence of
5 the jury.)

6 THE COURT: All right. Ladies and gentlemen, welcome
7 back. We're now ready to resume the trial of the case. Mr.
8 Hazzard, the Defense can call your next witness.

9 MR. HAZZARD: Thank you very much, Your Honor. May it
10 please the Court? At this time the Defense rests, Judge.

11 THE COURT: All right. All right. Mr. Todd, anything in
12 reply?

13 MR. TODD: No, Your Honor.

14 THE COURT: All right. All right, ladies and gentlemen,
15 the Defense has rested their case. The State doesn't have
16 anything in reply. So all of the evidence to be presented to
17 you and all the testimony to be presented to you in this trial
18 has now been presented. The only thing left is the closing
19 arguments by the attorneys, a charge on the law and then your
20 deliberations. However, that's going to take some time for us
21 to get the charges and me discuss these charges with the
22 attorneys. So given the time of day, I'm going to go ahead
23 and let you take off a little bit early today, going to send
24 you home for the remainder of the day. I'm going to ask that
25 you please be back at 9:30 tomorrow morning and we'll resume

1 the trial at that time. Again, I caution you, it's still too
2 early for deliberations. So don't talk about the case even
3 among yourselves. Don't conduct any independent
4 investigations. I hope everybody has a good evening, and
5 we'll see you back at 9:30 tomorrow morning. Thank you very
6 much.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. Any motions?

10 MR. HAZZARD: Your Honor, at this time the Defense renews
11 its motion for a directed verdict of not guilty on all of the
12 charges. The basis of that motion is we would submit that the
13 evidence submitted, excuse me, by the State is not sufficient
14 to warrant sending it to the jury, even taking that evidence
15 in the light most favorable to the State, would like to
16 specifically direct the Court's attention to the attempted
17 murder charge against Mr. Giles relative to the victim, Tavera
18 McCrae. Our position is there has been absolutely no
19 testimony whatsoever that he attempted to or intended to
20 injure her in any way, did not shoot specifically at her.
21 When he did see her, simply walked past her, and in fact,
22 testified that he initially did not see her in the vehicle,
23 did not see her until after the shooting had occurred. We
24 would submit that a directed verdict of not guilty would
25 especially be appropriate with regard to that charge, Your

Motions

403

1 Honor.

2 THE COURT: All right. What's the State's position?

3 MR. TODD: Your Honor, and Your Honor, we do believe
4 there's sufficient evidence to send this to the jury. We
5 believe we've met the burden on -- the grounds that are stated
6 for it, and as far as the testimony from all the victims has
7 and actually the Defendant himself that he did shoot into the
8 car, he intended to shoot in the car and he stated that he was
9 in fear, he could not see everything in the car, but his
10 intent was to shoot into the vehicle to protect himself.
11 That's what he's claiming. With that we would say there would
12 also be a transferred intent, his whole intent was to shoot
13 inside the vehicle to stop what he says was someone coming
14 forward to him. Ms. McCrae was sitting just inches away from
15 the other Defendant -- the other victim in the case. So, Your
16 Honor, we'd argue there was transferred intent, if not direct
17 intent for shooting into the car itself.

18 THE COURT: All right.

19 MR. TODD: He just didn't hit her.

20 THE COURT: Anything in reply?

21 MR. HAZZARD: And if I could very briefly reply, Judge,
22 the statute says on its face a person who with intent to kill
23 attempts to kill another person with malice aforethought
24 either express or implied commits the offense of attempted
25 murder. I would submit that with regard to this statute

1 transferred intent is not an issue for the Court to consider
2 in determining whether a directed verdict of not guilty is
3 appropriate. The statute on its face has to be an intent to
4 kill, definitely shot at the person he was shooting at,
5 definitely hit the person he was shooting at, didn't hit --
6 the transferred intent would be if he had hit her. We, we
7 respectfully submit that does not apply in this case.

8 THE COURT: All right. I'm going to deny your motion. I
9 understand your argument, but as I recall his testimony, he
10 knew that there was another person in the car. He might not
11 have known specifically that it was Ms. McCrae, but he said he
12 did know that there was another person in the vehicle when he
13 fired the shot into the car. So I'm going to deny your
14 motion. Anything else?

15 MR. HAZZARD: Nothing further from the Defense at this
16 time.

17 THE COURT: All right. Anything from the State?

18 MR. TODD: No, sir.

19 THE COURT: All right. We'll have the charge conference
20 -- I'll get you a copy of my charges. You can look at it.
21 Off the top of your head right now, and I'm not going to hold
22 you to it at this point in time, but while I'm preparing
23 charges tonight, is there any lesser charges you want included
24 in that charge?

25 MR. HAZZARD: The Court's indulgence, Your Honor.

Motions

405

1 THE COURT: Okay.

2 (Whereupon, the Defense attorney and Defendant confer.)

3 MR. HAZZARD: Your Honor, I think it's something that I'm
4 sure we'll address a little more fully in the morning, but at
5 this point the Defense perspective is we would want all
6 possible lesser includeds that would be applicable to the
7 case.

8 THE COURT: Okay. All right. Well, I'll need to take a
9 look. I know you've got assault and battery with intent to
10 kill.

11 MR. HAZZARD: What you got now is assault and battery of
12 a high and aggravated nature and then assault and battery
13 first and possibly assault and battery second maybe, maybe
14 not.

15 THE COURT: Okay. I'll take a look at it then and I'll
16 see.

17 MR. HAZZARD: All right.

18 THE COURT: But you're saying anything that might fit the
19 category of a lesser included you want it added into that?

20 MR. HAZZARD: Yes, sir, Your Honor. My understanding
21 based on my recollection of reading the statute says now the
22 way it's all codified is each statute specifically says, like
23 assault and battery of a high and aggravated nature
24 specifically says it is a lesser included of attempted murder.
25 Assault and battery first specifically says it's a lesser

1 included of assault and battery of a high and aggravated
2 nature. So if the Court finds that based on the balance of
3 what the statute says that it would be applicable, then the
4 Defense would agree to those lesser included.

5 THE COURT: All right. Anything specifically the State
6 wants included, and I'm not saying I'm going to include it.
7 I'm just saying while I'm drafting it I can go ahead and put
8 it in there because it's a lot easier to delete it from a
9 charge than going back and adding it tomorrow morning.

10 MR. TODD: Your Honor, we kind of have a weird position
11 in this. There's been a recent case, and I was talking to Mr.
12 Hazzard about it earlier. It's State versus Cook, and this is
13 a recent Supreme Court case which put us in a position where
14 we really can't argue for or against.

15 THE COURT: I got you.

16 MR. TODD: So we're just kind of -- we're here.

17 THE COURT: I guess I need to read that. I didn't know
18 that case --

19 MR. TODD: I've got a copy of it for you so.

20 THE COURT: Okay.

21 MR. TODD: It contradicts a few other cases that came out
22 before where it said that the lesser included should be
23 included and then now this one says, well, we shouldn't be the
24 ones making that argument.

25 THE COURT: I see. Okay.

Motions

407

1 MR. TODD: Okay.

2 THE COURT: All right. I'll take a look at that. I'll
3 go ahead and add the lesser, and like I said, I'm not going to
4 hold you to it. I can -- with it being on the computer you
5 can just hit delete, you can block it and delete a lot easier
6 than you can block it and add to it. So that won't be a
7 problem. All right. All right. Anything from the State
8 before we recess?

9 MR. TODD: No, sir.

10 THE COURT: Anything from the Defense?

11 MR. HAZZARD: Nothing from the Defense, Your Honor.

12 THE COURT: All right. We'll be in recess until 9:30
13 tomorrow morning on this case.

14 MR. HAZZARD: Yes, sir.

15 MR. TODD: Your Honor, I got the case for you. I'll go
16 ahead and --

17 THE COURT: All right

18 (Adjourned for the day.)

19

20

21

22

23

24

25

1 (On the record, February 4, 2016, State versus Jamie L.
2 Giles, 2015-GS-22-169 through 172. The following takes place
3 outside the presence of the jury.)

4 THE COURT: All right. Gentlemen, you've had a chance to
5 review my charges. We've discussed it in chambers. Some
6 charges have been made that we've already discussed. Is there
7 anything at this time, any objections to the proposed charges
8 as in the final draft from the State?

9 MR. TODD: No, Your Honor.

10 THE COURT: Any from the Defense?

11 MR. HAZZARD: None from the Defense, Your Honor.

12 THE COURT: All right. Anything from the State before we
13 bring the jury in?

14 MR. TODD: No, sir.

15 THE COURT: Anything from the Defense?

16 MR. HAZZARD: Nothing from the Defense, Your Honor.

17 THE COURT: All right. We'll bring the jury in. Let's
18 go ahead and bring them in. Mr. Hazzard, you'll close, then
19 the State'll close.

20 MR. TODD: Yes, sir.

21 (Whereupon, the following takes place in the presence of
22 the jury.)

23 THE COURT: All right. Ladies and gentlemen, welcome
24 back. I apologize for keeping you in the jury room for so
25 long, but we did have matters of law that I needed to take up

State v. Giles

409

1 with the attorneys and that did take some time. Also, I want
2 to take this opportunity to thank everybody for being so
3 prompt this week. You have been prompt, and I want to thank
4 you for doing that. It's a, it's a great assistance to the
5 Court when we don't have to sit around and wait for jurors to
6 return, and thank you for that.

7 Now, we've reached the stage of the trial where all of
8 the evidence and exhibits have been presented to you. Now is
9 the time where the attorneys make their closing arguments in
10 this case. Now, just like their opening statements, these
11 closing arguments are not evidence in the case. It is simply
12 the attorney's contention as to what they think the evidence
13 has shown and the law to be applied in this case. If at any
14 time during their argument an attorney references a fact that
15 is different from the facts as you find them to be or
16 references the law that is different from the law as I will
17 charge you at the close of their arguments, then you're to
18 disregard that portion of their closing arguments because
19 their arguments are not evidence on the facts, and it is not a
20 charge on the law, but it is their opinion as to what the
21 facts are and the law to be applied in this case. All right.
22 Mr. Hazzard.

23 MR. HAZZARD: Yes, sir, Your Honor. May it please the
24 Court?

25 THE COURT: Yes, sir.

1 MR. HAZZARD: Judge Culbertson, Assistant Solicitor
2 Todd, ladies and gentlemen of the jury, good morning. On
3 December 3rd of 2014 Jamie Giles shot into a vehicle that was
4 occupied by Dania Kelly and Tuvera McCray. He struck Mr.
5 Kelly with, I believe the testimony was, three projectiles.
6 The question becomes why did that happen? Why did that
7 happen? Why did he walk out of Punchy Burroughs' trailer,
8 pull a gun and shoot? We have told you from the moment this
9 trial began that this was an issue of self defense and self
10 preservation. Obviously, the State sees it differently.

11 You've heard Jamie testify as to what happened, as to
12 what he observed, as to what he perceived and how he acted as
13 a result. You've heard Mr. Kelly testify. You've heard Ms.
14 McCrea testify. You've heard Mr. Kinloch testify, and you've
15 heard some other folks testify, and what Jamie says happened,
16 the facts and circumstances leading up to the moment when he
17 opened that door and stepped out and began shooting is totally
18 different from what Mr. Kelly, Ms. McCrea, Mr. Kinloch,
19 Chakana Brown, other folks, totally different from what they
20 say. Well, the question then becomes who do you believe,
21 because if you think back to Tuesday morning, I believe, when
22 I gave my opening statement, I told you then actions speak
23 louder than words. People can say anything, but what are the
24 facts with regard to the actions that actually occurred?
25 Okay.

Closing Argument by Defense

411

1 To buy the State's version of events as to why a man
2 walked out of the door of a trailer and started shooting, you
3 have to believe Mr. Kelly, Ms. McCrea, Mr. Kinloch. Well,
4 what did they tell you? They tell you that Mr. Kelly and Mr.
5 Kinloch were going to go see Ms. McCrea, that Mr. Kelly and
6 Ms. McCrea were dating, and for some reason Mr. Kinloch was
7 going to tag along on the date. So the three of them are at
8 Ms. McCrea's house, and then some way or another they end up,
9 for whatever reason, going to Mr. Burroughs' trailer, going to
10 the bootlegger's house, the juke joint, whatever you want to
11 call it. Some of them say, "Yeah, we were going to" -- I
12 believe Mr. Kinloch says, "Yeah, we were going to go over
13 there, hang out for a little while." Mr. Kelly says, "No.
14 Mr. Kinloch just wanted to get a drink, get a couple of
15 cigarettes and we were going to be in and out," and that's
16 what Ms. McCrea says. She backs up her boyfriend, "We were
17 going to be in and out."

18 So then I'm asking them, "Okay. If you were going to be
19 in and out, how is it that you ended up there for the better
20 part of an hour?" Okay. Because if there was no other plan
21 in place, if there was no other reason to stay there, then
22 their theory holds up, so to speak, that if it was a matter
23 of, "We were going to be in and out and we were going to be
24 gone," and this just -- this unprovoked attack from Jamie
25 Giles was just something that no one saw coming, then the

1 issue becomes how is it that you went to a place that you
2 passed every possible convenience store on the way but stopped
3 there to get a drink and get some cigarettes and you were
4 going to be out. Well, what was the basis for the delay in
5 staying there? What did, what did Mr. Kinloch say? He said,
6 "Well, what happened is this, I went in and there were a lot
7 of people in there, and it was crowded and then I got a bad
8 vibe, and I told this other guy, 'Just bring my drink outside.
9 I'm not even going to stay in here.'" That's his reason for
10 going in and out.

11 What did Punchy Burroughs testify to? He said, "Yeah.
12 Rodney Kinloch came in. He ordered a drink. I gave it to
13 him," and I said, "Just like that," and he said, "Just like
14 that." Okay. So there goes your excuse for why we, being Mr.
15 Kelly, Ms. McCrea and Mr. Kinloch, are hanging around Punchy
16 Burroughs' trailer all that time because remember one thing
17 that everyone has testified to is that when they arrive Mr.
18 Kelly, Ms. McCrea and Mr. Kinloch, the truck is parked
19 parallel and beside Mr. Phil's trailer. Mr. Phil's trailer is
20 here, and Mr. Burroughs' trailer is parallel to it like that.
21 You've seen the picture, picture 121 that I passed around for
22 you. Well, initially, the truck is parked right beside Mr.
23 Phil's trailer, and what did Jamie tell you? Jamie said,
24 "Yeah. Kinloch comes in multiple times, standing right behind
25 me, behind me for so long to the extent I eventually have to

Closing Argument by Defense

413

1 turn around just to see what is going on," and if you want to
2 talk about whether or not someone had an intention to commit a
3 crime that night, what did Jamie say? "I had to ask somebody,
4 'Is that Rodney Kinloch,'" because he said, "I hadn't seen him
5 since they beat me down and threatened me on July 15th. I
6 hadn't seen Mr. Kinloch. I didn't even know it was him." So
7 the whole issue of Mr. Kinloch saying, "Yeah. I went in and,
8 and I tried to shake his hand," because Mr. -- I don't believe
9 Mr. Burroughs ever testified to that. Mr. Burroughs is
10 standing right there. He's the one serving the drinks. He
11 didn't say anything about Mr. Kinloch coming in and shaking or
12 trying to shake Jamie's hand or anything of that nature as he
13 testified to because in the State's case it's all about,
14 "There was no ill will. There was no animosity. There was no
15 tension in the air from their side of things, McCrae, Kelly
16 and Kinloch," but Punchy Burroughs says, "Yeah. I gave him
17 his drink and he went back outside." That was it, simple as
18 that. That, that he got -- he got the drink, no other reason
19 to be there. "You got your cigarettes. You got your drink,
20 take it on down the road." No. What did Jamie testify to,
21 and what you'll have to decide is which testimony is most
22 consistent with what we know. Jamie says, "My day was like
23 this, had a little matter in City Court of Andrews. Me and my
24 girlfriend went to the city court, pled my case, found not
25 guilty, came on back home, we're at home with the kids, get a

1 call from my girlfriend's people," in this case Chakana Brown
2 who testified here, saying, "Hey. I'm leaving town, but I
3 want to have a little get together before I go, you know, can
4 you come over to your mamma's house," right there in the same
5 trailer park. Brenda says, "Sure. That sounds like a great
6 idea." Jamie says, "Okay. That's fine. Put, put my little
7 jacket on, get kind of dressed up for it," and goes over
8 there. Well, apparently, you know, all the family's sitting
9 around talking and everything, and he says Chakana's not a big
10 fan of his and another family member isn't a big fan of his,
11 and a lot of people don't really want to spend a whole lot of
12 time with their in-laws anyway. So he says, "You know what,
13 I'm going to go on down the road a little bit, going down the
14 way," still in the same trailer park, "to Punchy's, sit there,
15 have a couple of drinks. You all come on down when you feel
16 like it." So that's what he does. He goes down there. Who's
17 there? He says it's him and it's Punchy initially. Then
18 calls his friend, Bernard Wilson, says, "Hey. You want to
19 come down, have a couple of drinks?" He says, "Sure." He
20 eventually arrives.

21 They sit there. Jamie has his drink. Bernard says,
22 "Yeah. Let's have another drink." What does Jamie say? "Not
23 that I want to get all drunk up," he says, "Well, you know,
24 I'll split a beer with you. You know, I don't want to really
25 do any shots or anything like that?" Why? "Because my

Closing Argument by Defense

415

1 girlfriend and her family are going to be coming here at some
2 point." Okay.

3 That happens and he's sitting there. Some people come
4 in. Some people go out. Then Mr. Kinloch comes in, and
5 according to Jamie, comes in, stands behind him, just kind of
6 glaring at him, gets a cigarette or something of that nature,
7 goes back out, comes back in, standing there, standing behind
8 him, goes back out, goes to the truck, and at that point Jamie
9 goes, "Well, hey, what in the world -- what is it with this
10 guy. Let me check what's going on here," looks out the
11 window. What does he see? Rodney Kinloch and Dania Kelly,
12 Dania Kelly in the truck, Rodney Kinloch standing there
13 talking to him, and Jamie's thinking, "I thought everything
14 was fine, but once I see Dania Kelly handing a gun out the
15 window to Mr. Kinloch, apparently things aren't fine. So I
16 better watch my back."

17 Kinloch comes in again, because even Mr. Kinloch
18 admitted, "I was in there two, three times, maybe four." So
19 he says, "I better watch my back." At that point, and, and
20 the State, and it's funny, I, I really don't understand the
21 point of it, but it's not for me to know, they make a lot of
22 talk about, "Oh, the windows on the truck were tinted. The
23 windows on the truck were tinted. How could you tell what was
24 going on in the truck, the windows were tinted?" If the
25 windows were that tinted and the windows were up, Jamie Kelly,

1 or I mean Jamie Giles wouldn't have been shooting at the
2 truck. What did Punchy Burroughs say? "Yeah. The windows
3 were up when I came back from going to my little storage unit.
4 I didn't even know if anybody was in the truck or not. The
5 truck's still parked over there by Phil's, windows are up."
6 So obviously windows got lowered because Jamie knew who was in
7 there, and Jamie knew who was in there because he saw Daniae
8 Kelly hand the gun to Rodney Kinloch, and even at that point
9 what does Jamie say he's thinking? "Okay. This is really not
10 good, but okay, might be okay." Then what happens that is not
11 in dispute? Truck goes from by Mr. Phil's, turns around to
12 where the driver's side window is now facing the door of
13 Punchy's trailer, got a clear shot at that point to the door
14 of Punchy's trailer. Why? What did Daniae Kelly tell you is
15 the reason why he moved the truck? He said, "Oh, well, I
16 mean, the truck was kind of in the way, and so I needed to
17 move it so people could drive through." Look at picture
18 number 121 again. You got -- on the right side of the picture
19 you've got Punchy's trailer. On the left side of the picture
20 you can see Phil's trailer. It doesn't matter whether you're
21 parked here or whether you're parked there. The difference is
22 going to be the same as far as the blocking, and what's
23 important to me is if you look at that picture, he's talking
24 about people driving through. There aren't any other trailers
25 back there. Look at the picture. Look in the, in the, in the

Closing Argument by Defense

417

1 background of the picture. There aren't any other trailers
2 back there. There ain't nobody driving through there anyway,
3 but that's an excuse as to why the truck had to get moved so
4 that now the window is facing Mr. Burroughs' door.

5 What else did Jamie tell you and what did I tell you in
6 my opening statement? I said, "When Jamie came out the door
7 what he saw and what he knew was that if this is the door to
8 Punchy's trailer, these are the steps, Rodney Kinloch is to
9 the right of the steps and the truck and that driver's window
10 is there creating a triangular kill zone."

11 Now what did they say? What did Mr. Kelly and Mr. McCrae
12 [sic], the State's witnesses they want you to rely on, what
13 did they say? They said, "Well, no, Rodney wasn't ever to the
14 right of the stairs. He was never over there. He was over
15 here by the truck," and think very carefully what Mr. Kelly
16 especially said, I believe Ms. McCrae said it, too, but
17 definitely Mr. Kelly said, "No. When Jamie came out the door,
18 you know, I mean, we were getting ready to leave because
19 Rodney was walking to the truck. The truck's right here.
20 Rodney's walking to the truck, and he -- because he's going to
21 go around the front of the truck to get back in the truck,"
22 and I -- and I'm sure you saw the confused look on my face,
23 and I think I asked him, I said, "Well, okay. If Mr. Kinloch
24 is over here by the truck and Jamie comes out of the door and
25 starts shooting, how was he not in the line of fire," and Mr.

1 Kelly said something about, "Well, no. I mean, he was going
2 around the front of the truck and then he ran off that way."
3 What did Mr. Kinloch tell you, "Yeah. I was to the right of
4 the stairs and I ran in the opposite direction," but why does
5 -- why does Mr. Kelly have to make it seem different than it
6 is? Because they don't want you to realize it is self
7 defense, because if it wasn't self defense say, "Yeah. Rodney
8 was standing here talking to somebody, smoking a cigarette. I
9 was sitting there talking to Tavera, minding my own business.
10 The next thing I know a guy comes out and starts shooting."
11 Why does the story need to be different? Why does it need to
12 be inconsistent? Why can't Rodney be here? Well, for them
13 Rodney can't be here if Rodney's standing here with a gun and
14 you're in the truck and you're reaching in like this as this
15 young man is coming out of the door, but that's what Rodney
16 Kinloch says. He says, "Yeah. I was over here. The truck's
17 over there. I heard him." You want to talk about somebody
18 obviously got some experience with a gun? What did Rodney
19 say? "I never even saw the gun. I heard him pull the gun,
20 and I started running." That's some experience with a gun.
21 Okay. Jamie told you, "I wanted to get out of there. I
22 didn't think I needed to be there. I can't slip out the back
23 door. The back door is all padlocked. I got to go out the
24 front door," and the Prosecutor, Mr. Todd, kept asking him,
25 "Well, why didn't you call the police, Jamie? Why didn't you

Closing Argument by Defense

419

1 call the police? Why didn't you call the police?" You can
2 call the police this time. Remember, this is where this man
3 lives. This trailer park is where he lives. Daniea Kelly
4 doesn't live there. Daniea Kelly and Mr. Kinloch, but more so
5 Daniea Kelly, they're the ones always coming around, but this
6 is where Jamie lives. He ain't got nowhere else to go. So,
7 yeah, he can call the police this time. Say the police come
8 out there and maybe roust Mr. Kelly or maybe Mr. Kelly leaves
9 before the police get there. What about the next time? What
10 about when he wants to go to the store? Every time he leaves
11 his trailer is he supposed to call for a police escort?
12 That's what the State is asking you to decide and say because
13 you have the right to live your life not in fear or
14 intimidation. We all have that right, and what did Jamie tell
15 you, "I came out that door. I was ready to defend myself, but
16 not planning on defending myself, but once I saw Daniea Kelly
17 raise up, he's in the seat, and he raises up, I've seen that
18 movie before. I lived that movie on July 15th of 2014, and I
19 wasn't going there again. I defended myself."

20 The State says this isn't self defense because that's
21 what Mr. Kelly and Ms. McCrae say, but let's go back to July
22 15th of 2014. What did Mr. Kelly say? He said, "Oh, no. I
23 never laid a hand on him other than to -- me and Mr. Kinloch
24 all we did was help restrain him because he was drunk and
25 belligerent and so we just, you know, we just restrained him

1 is what we did." What did the State's other witness, Chakana
2 McCrae say or Chakana Brown say? She said, "Yeah. Basically
3 beat him like a dog. Beat him down to the ground." Kicked
4 him, stomped him to the point where a 40 year old man had to
5 not walk, not say, "Okay. You got me. You win. The fight's
6 over," a 40 year old man, according to her, had to run away,
7 and do you think maybe the 40 year old man, the Navy veteran
8 ran away when, as he testified, he sees Daniea Kelly pull out
9 a gun on July 15th, 2014, and do you think that experience of
10 being beaten so severely that, graphic and hate to say it, but
11 you've heard it, you have blood in your stool for the next
12 three months. Is that something where you say, "I'm not going
13 through that again under any circumstances," because this
14 isn't a situation where Jamie was aching for retribution. You
15 didn't hear anybody say Jamie was going around the trailer
16 park saying, "I can't wait to get a hold of those guys. I'm
17 going to show them." What did Jamie say because really when
18 you're talking about a classic self defense case it would be
19 easier for us if it was a situation where, yeah, the guy was
20 like just, you know, harassing you every day, but what did
21 Jamie say? Jamie a hundred percent told you the truth. He
22 said, "No. About a month afterwards, Phil kind of acted as a
23 peacemaker. He said, 'Hey, Daniea wants to talk to you. Do
24 you mind talking to him,'" and both sides agree that a talk
25 occurred. Now, Daniea claims that Jamie apologized to him for

Closing Argument by Defense

421

1 being drunk and belligerent. Jamie says Daniea apologized to
2 him for beating him down and pulling a gun on him, but there's
3 no question that they had a conversation, that was apparently,
4 you know, non-threatening at that point in time because these
5 guys know each other. What did Jamie sit on the stand and
6 tell you? He said, "Yes." Mr. Todd asked him. He said, "Are
7 you a convicted felon?" He says, "Yes. I have a felony on my
8 record," and he said, "That's where I met Daniea Kelly in
9 2007, met him when we were in jail, knew him then." What did
10 Mr. Kelly tell you because remember part of this is that Mr.
11 Kelly didn't pose any threat to Jamie Giles. That's what the
12 State is trying to sell you here, and again, not that Mr. Todd
13 is trying to mislead you. He's in the same boat that I am.
14 He wasn't there. I wasn't there. All we know is what we are
15 told and what the evidence shows us. So Mr. Kelly, the
16 putative victim, says, "Yeah. I, I didn't, you know, pose any
17 threat to Mr. Giles or do anything of that nature," but what
18 did Mr. Kelly say on the stand? He said, "Yeah. I was
19 convicted of guns and drugs back in 2007," and I didn't even
20 ask him this. He volunteered it and said, "Yeah. That was
21 when the police came to my house with a search warrant." Now,
22 how do you have to be living your life that the police go to a
23 judge and get a search warrant to go in your home? But okay,
24 we'll let that pass. People, people can change and people can
25 be better. Right? They can be rehabilitated. That is what

1 our system is about. I asked him then, "Well, okay.
2 Illegally possessed a gun back then, no problem. You haven't
3 done that since. Have you?" And what did he say? He said,
4 "Oh, no, no, not me." I said, "Oh. Well, wait a minute now,
5 Chief. Weren't you arrested on October 15th of 2015 for having
6 two guns and more drugs in your car?" "Oh, well, yeah." Is
7 that someone who seems like a person who wouldn't have a gun
8 in their possession? Eight years, ain't nothing changed.
9 Ain't a thing changed in eight years, and what did he say
10 about the October 15th, 2015, is that, "Yeah. The guns weren't
11 mine. They're, they're the fellow in the car." I said,
12 "Okay. I can appreciate that. Whose car was it?" "My car."
13 "How many guns were in it?" "Two guns." Is this someone who
14 strikes you as a peaceful and law-abiding individual, and is
15 this someone who strikes you as someone whose words are worthy
16 of belief?

17 So anyway, Jamie says, "I walked out the door, and if
18 anything hadn't jumped off, I've got my protection, but I'm
19 just going to walk home," but he says, "As soon as I come out
20 that door and I turn to close the door, when I turned back I
21 see Daniae Kelly raising up, and I wasn't going to take a
22 chance," and I believe the Judge will tell you as part of the
23 law, as I mentioned in my opening, that a person acting in
24 self defense has the right to act on the appearance of what he
25 sees, and he does not have to wait until his assailant or

Closing Argument by Defense

423

1 possible assailant gets the drop on him. He doesn't have to
2 wait until the guy's got the gun out pointed at him. He has
3 the right to act on that appearance, and I believe the Judge
4 will also tell you that someone acting in self defense has the
5 right in considering, "Am I truly in danger here or, or is it
6 legitimate for me to think I'm in danger here," they have the
7 right to consider prior difficulties. He has the right to
8 have in his mind, "This, okay, this is how this went down on
9 July 15th of 2014. I don't know why suddenly this guy's got
10 another issue with me. All I know is Rodney Kinloch, his home
11 boy, is coming in, standing up behind me, posting up behind me
12 every chance he gets, mean mugging me, eyeing me down. He's
13 going out to the car. He's getting a gun. I know Daniae
14 carries guns. Now he's moved the truck to where he's looking
15 right at the door that I've got to come out of."

16 Mr. Kelly and Ms. McCrea say that there was not a gun in
17 that vehicle. Actions speak louder than words. After Jamie
18 shot in self defense, what happens then? Daniae claims he
19 tried to call 911, but they hung up on him, which I've never
20 heard of such in my life. Tavera says, "No. I didn't call
21 the police, didn't call 911." "Why didn't you?" What did she
22 say? "Well, my first thought, as crazy as it was, was to get
23 him to safety, get him to my mother's house where I live."
24 Okay. I'll go with you on that, but what happens then?
25 "Well, why did you stop two, three miles down the road or

1 whatever?" "Well, got to the train tracks." There was
2 supposedly a train there even though EMS didn't have a problem
3 once they were notified, but anyway, supposedly there was a
4 train there. "So that's why I stopped, plus the truck's got
5 bad brakes, but I called my mom and my mom came to us."
6 "Well, wait a minute, how, how is she going to do that? You
7 know, there's, there's that train there." "Oh, well, I mean,
8 I live in the other direction." "Okay. So your first thought
9 as you watched Jamie Giles walk away, just walk away, didn't
10 point a gun at anybody else, didn't shout at anybody else,
11 didn't say anything to anybody else, as he just walks away is,
12 'Got to get to my mom's house.'" Okay. "But then I'm going
13 to go in the opposite direction." Well, how does she explain
14 that? "Well, then Dania said, 'Drive me to Georgetown
15 Hospital. Drive me basically 30 miles,'" and that's when you
16 get to the issue of the truck has no brakes. You think the
17 best option is to drive in the truck with no brakes for 30
18 miles rather than calling EMS, and why is this important? Why
19 is this significant? Because I submit to you, ladies and
20 gentlemen, the need to get away from that scene, no matter
21 what the distance was, was so that a gun or guns could be
22 gotten out of that truck, can't have that in there. I don't
23 even care if he had drugs on him, even though he always seems
24 to have guns and drugs, "I ain't worried about drugs, had to
25 get the gun out of the truck." So he got -- "We can't be

Closing Argument by Defense

425

1 here. So we got to be out of here. We got to get somewhere
2 away from here, enough to toss it, ditch it, throw it
3 somewhere, do whatever," and that's why you have that, again,
4 inconsistent story of, "Why did -- why'd you leave instead of
5 calling the police, you law-abiding citizen?" "Well, I was
6 not thinking right. Thought I'd get him to my mom's house."
7 Well, but you went the other way from your mom's house."
8 "Well, but then I was going to take him to the hospital with
9 no brakes but then got stopped by the train that EMS didn't
10 see or didn't have any problem with," but I submit to you all
11 of that is a smoke screen for you because needed to get the
12 gun out of there.

13 Now, why did they need to get the gun out of there? Why?
14 Because if there's a gun in there, then once again, Jamie's
15 telling you the truth as to what he observed and what caused
16 his reaction. Okay. Everything that Mr. Kelly and Ms. McCrae
17 has testified to has been completely and totally inconsistent,
18 but set forth to make it seem as if Jamie was not acting in
19 self defense.

20 Yeah. Daniae says, "Yeah, July 15th, we never beat Jamie
21 up," but Chakana Brown says the exact opposite. Said he
22 didn't have anything to do with guns after a 2007 conviction,
23 then admitted he had them with him October 2015. The whole
24 thing about Rodney on the way back to the truck, practically
25 according to him Rodney is beside the truck on the driver's

1 side. He's beside the truck. When the shooting happens
2 Rodney says, "No, man, I was on the other side of the porch,
3 and I went in the opposite direction."

4 You know, the same with Ms. McCrae, she claimed that Mr.
5 Kinloch was in front of the truck because, again, Rodney's got
6 to be over here on the, on the left hand side so that you
7 don't have that triangulation that we discussed in the opening
8 statement.

9 The law of self defense says that, and the Judge will,
10 will explain it to you in much better detail than I possibly
11 can, but my understanding of the law of self defense is it has
12 four elements. Number one is the Defendant is without
13 difficulty -- is without fault in bringing on the difficulty.
14 I can't go up to my friend, punch him in the face, and then
15 when he pulls a knife on me, I get to shoot him, can't do
16 that, have to be without fault in bringing on the difficulty.
17 What was Jamie doing? Jamie was sitting at Punchy's minding
18 his own business, hadn't thought about Daniea Kelly, hadn't
19 thought about Rodney Kinloch, didn't care about anything,
20 minding his own business. He comes out the door, and when he
21 comes out the door and Mr. Kelly raises up on him, that's when
22 he acts.

23 The second element is the Defendant has to actually
24 believe that he was in imminent danger, immediate danger of
25 death or serious bodily injury or actually was in that danger.

Closing Argument by Defense

427

1 So you're either actually in danger or you have the right to
2 believe that you're in danger, and you talk about believing
3 death or serious bodily injury, he's already suffered serious
4 bodily injury at this man's hands. He knows this man always
5 has a gun with him. He knows this. So I would submit to you
6 he has the right to believe that he is in serious bodily
7 injury, and the third thing is a reasonably prudent man of
8 ordinary firmness and courage would have believed himself to
9 be in danger. So you can't say, "Well, the girl selling Girl
10 Scout cookies on the corner she looks a little shady, so I, I
11 think I might have to, you know, whack her with a stick."
12 No. Any ordinary person of reasonable and, and firmness and
13 courage would feel the same way, and I submit if you've taken
14 the beating that he took at the hands of someone that you knew
15 carried weapons, you'd have that right, and the fourth is that
16 the Defendant had no other means of avoiding the danger, and
17 that's where the rubber meets the road. That's where the
18 rubber meets the road, and that's where we talk about the
19 issue of, "Well, you could have called the police."
20 Theoretically he could have, no question about it, that time,
21 but what about the next time and what about the next time and
22 what about the next time and when does it end? When do you
23 actually have the right to defend yourself, and one of the
24 reasons Jamie says he didn't call the police is he doesn't go
25 out there and confront them. He simply walks out the door

1 because he is trying to walk home, but he sees the movement,
2 and at that point there isn't any time to call the police. So
3 should he not have armed himself and possibly end up being the
4 victim in the case and get shot? Is that what the State would
5 have happen? So I don't think the issue of any other means of
6 avoiding the danger because when he walks out that door there
7 ain't no time to dial 911.

8 The interesting thing to me is that there are some -- you
9 may ask why, why do these folks say what they say? If they're
10 not telling the truth, why do they say what they say? Well,
11 look at the relationships that are involved here. Tuvera
12 McCrae was dating Daniea Kelly, and you can tell their
13 testimony is very much in lockstep. Punchy Burroughs is
14 Tuvera McCrae's cousin. Okay. Chakana Brown, the woman who
15 said and the one person who was in the, in the trailer that
16 night, in Punchy's trailer that night that claimed -- you
17 could tell she really doesn't like Jamie says, "Yeah. Jamie
18 goes to the door, and he turned back and smirked at me and
19 said, 'I'm going to jail tonight.'" Well, amazingly, Punchy
20 and no one else in there heard that statement. So give that
21 the credence you think it deserves, but also think how
22 credible is a witness who would make that up? But Chakana
23 Brown is Brenda Brown's niece, and remember how all this began
24 on July 15th, Jamie and Brenda are dating. Jamie, and you want
25 to talk about telling the truth, Jamie doesn't lie about it.

Closing Argument by Defense

429

1 He says, "Yeah. She hit me, and I smacked her to the ground,
2 not proud of it, but I did it," and that's when everything
3 jumped off. He could have come in here and lied and said,
4 "Yeah. We had a disagreement, and for reasons unknown to me
5 these other people jumped in and beat me up." He says, "No.
6 I'm not proud of it. She hit me. I reacted and I smacked her
7 to the ground." Well, the woman he smacked to the ground,
8 Chakana Brown is her niece. That is Chakana Brown's aunt.
9 Okay. And Daniea Kelly and Rodney Kinloch apparently are best
10 friends. So you've got this whole circle of everybody with a
11 reason to try to protect and alter what happened that night,
12 but if you want to know which way the wind is blowing, don't
13 look at the big oak tree, look at the leaves on the trees, and
14 that's where you get those inconsistencies. That's where you
15 get the whole, "Oh, no, Rodney was over here by the truck with
16 us. I don't know why he thought we were setting up an
17 ambush," and Rodney, who's not in the courtroom when they're
18 testifying says, "No. No. I was on the other side of the
19 steps. Soon as I heard the gun I took off in the opposite
20 direction." Why the inconsistency? Okay. Why those
21 inconsistencies if what you're saying is true. The truth is
22 beautiful and it is simple and it's beautiful in its
23 simplicity. The truth does not change. The truth doesn't
24 have any holes in it. The truth doesn't have any
25 inconsistencies, and if what they are saying is not true, ask

1 yourself why. Why? Because they will say and do whatever it
2 takes basically to say that Jamie was not acting in self
3 defense.

4 In his opening, Assistant Solicitor Todd said, "Yeah.
5 You got a lot of different people. They see things from
6 different angles." There's nothing about this that's a
7 different angle type of situation. There is no way to take a
8 situation where, "Did you beat a man down to the ground?"
9 "No. Not us. All we did was restrain him." Chakana Brown,
10 "Yeah, beat him, stomped him, kicked him, sent him running."
11 There's no way that those two things can ever be consistent.
12 So somebody is telling the truth and somebody isn't. Why?
13 There's no way that, "No, Rodney was over here by us at the
14 truck," and Rodney's like, "No, I ran the other direction
15 because I was on the other side." There's no way to make that
16 consistent. So someone isn't telling the truth.

17 When Rodney says, "Yeah. I had to hang around for 20, 25
18 minutes because, you know, my drink wasn't ready, and there
19 were a lot of people in there," and Punchy Burroughs, who was
20 probably one of the most uncooperative witnesses I've had in
21 20 some years of practicing law, Punchy Burroughs says, "No.
22 He asked for a drink and cigarettes, gave it to him, just like
23 that." There's no making these two things come together. So
24 you've got to ask why, why the inconsistencies, why does it
25 have to be that way, and you want to talk about somebody

Closing Argument by Defense

431

1 being, being uncooperative, remember when Mr. Burroughs
2 testified it took me, I think, about three or four ways of
3 rephrasing the question, which simply was, "How long have you
4 known Mr. Kelly and Mr. Kinloch," and he said, "Well, I don't
5 really know them like that," and then he said, "Well, you
6 know, I, I -- it's been a little while," and then he said, "I
7 met them a couple of weeks before December 3rd, 2014," which
8 would be fine, but I said, "Okay. So you're saying you didn't
9 know them at all back on July 15th of 2014 when the beating
10 occurred right out in front of your trailer?" And he goes,
11 "Oh, well, yeah, I knew them then." Why, why, why is there
12 this need to change and subvert the facts? If this man out of
13 anger and malice and hate just walked out the door and started
14 shooting, why is there the need to change all of these facts?
15 The reason there's the need to change all of these facts is
16 because what I said to you in my opening statement, what Jamie
17 said to you from the witness stand, that's exactly how it went
18 down, and what is the significance of that? If Jamie is
19 telling the truth, which he is, then what he has done has
20 acted in self defense, and what is the significance, ladies
21 and gentlemen, of self defense? I believe that Judge
22 Culbertson will tell you the law in South Carolina says self
23 defense is a complete defense. It is a complete defense. You
24 have the right to self preservation and to protect your life
25 and that is what happened here.

1 The State makes a big point of the fact that Ms. McCrae
2 was in the truck. Yes. She was in the truck. No question
3 about it. He wasn't aiming at her, never aimed at her, and in
4 fact, walked right past her, and I think, in my junior pop
5 psychology brain, I think Jamie was so hysterically fearful
6 that he kind of blacked out, and don't take that, oh, well,
7 that's an excuse. No. He knew what he was doing when he
8 started pulling the trigger. I'm not saying he didn't. He
9 was acting in self-defense, but what other reason would there
10 be for a man to sit on this witness stand and say, "Well,
11 yeah, I think I pulled the trigger two, three times." "No.
12 Jamie, you pulled it more than that." You know, Michael
13 Thacker, and you got the pictures there showing the different,
14 you know, cones and where they -- goes into the truck, but if
15 you're not in a situation where you have almost blacked out,
16 think about what even the State's witnesses said, "Yeah. He
17 shot. He shot. He shot. He shot until it went click, and
18 then he just walks away." Walked past Ms. McCrae and just
19 kept on walking. Is that someone who's a hundred percent
20 there at that particular second, but that's the kind of
21 hysterical fear and concern that people can have, but no,
22 don't think that I'm saying, no, he was not in his right mind.
23 No. No. He knew what he was doing. He was defending his
24 life when he pulled that gun and started shooting, no
25 question, but I believe that just the fear and the anxiety and

Closing Argument by Defense

433

1 the aggravation of the situation was such that it's just like,
2 "Oh, oh, oh, oh, oh, oh, oh," and it's like, "What, what do I
3 do? What, where am I, where do I go from here?" But that's
4 why the inconsistencies have to happen, and that's what --
5 because in order for -- the Judge, I believe, will, will tell
6 you that, again, self-defense is a complete defense, and the
7 burden is on the State to disprove it. The burden is on the
8 State to disprove it, to disprove Jamie's testimony to you,
9 and in order for them to do that, to disprove it, you've got
10 to buy what Rodney Kinloch said, you've got to buy what Daniea
11 Kelly said, you've got to buy what Tavera McCrae says and all
12 their inconsistencies and say somehow that is the truth, and I
13 would submit I don't believe you'll do that. I believe as a
14 jury searching for the truth you will weigh these
15 inconsistencies because the Judge, I believe, will tell you
16 that as jurors determining what the facts of the case are you
17 have the right to believe all of what a witness says, part of
18 what a witness says, none of what a witness says. You have
19 the right to believe one witness against many, many witnesses
20 against one. Your job is to find the truth, wherever it may
21 be, and I submit to you when you start weighing out the
22 inconsistent statements of Mr. Kelly, Ms. McCrae, Mr. Kinloch,
23 Mr. Burroughs that you will say the truth does not reside here
24 and that the truth resides there.

25 The Judge will tell you that the law says you have to, in

1 order to return a verdict of guilty, have to find Jamie guilty
2 beyond a reasonable doubt, and what is a reasonable doubt?
3 It's a doubt for which you can give a reason. I submit to you
4 if somebody came to me and said, "Well, Mr. Kelly says this
5 happened, but Mr. Kinloch says something different, Ms. McCrae
6 said this happened, but the evidence tends to point otherwise,
7 Mr. Kinloch says this happened, but Mr. Burroughs says
8 something different, Mr. Kelly says this happened, but Ms.
9 Brown says something different," my position would be I got a
10 doubt. I've got a doubt.

11 Look at what Jamie said in its entirety and it is all a
12 hundred percent consistent. The one thing I had a beef with
13 Jamie about was when Assistant Solicitor Todd was asking him,
14 "Okay. Now, you managed to get away from there. You went to
15 your friend's house and somebody drove you to Blakely. Who
16 was it," and Jamie hesitated because Jamie's kind of that
17 person that, "I don't want other people to be involved in my
18 misery." In fact, and is that not the truth? Because when he
19 went to the doctor in August, happened on July 15th, called the
20 doctor, said, "I need to make an appointment." They got him
21 in the first week of August. He didn't tell them how he got
22 injured. When he has to go back to the emergency room in
23 October, he doesn't tell them how he got injured. Why?
24 Because what did he say? "I was going to let it go. I was
25 going to let it go. They'd been drinking. I'd been drinking.

Closing Argument by Defense

435

1 Things happen. I was going to let it go. Me and Mr. Kelly
2 had talked about it. Everything seemed to be good." So is
3 that the kind of man that on December 3rd suddenly walks out of
4 the door for no good reason and starts shooting or was there a
5 reason to? I'd submit if you look at Jamie's testimony in its
6 entirety and the various inconsistent statements that the
7 State has presented, that you will find that the truth lies
8 here, and that that truth is not guilty due to self defense
9 because there's going to be a lot of different verdicts,
10 options that you have because he's charged with two counts of
11 attempted murder, then you have assault and battery of a high
12 and aggravated nature under that, assault and battery first
13 degree under that, assault and battery second degree under
14 that and assault and battery third degree under that. You
15 know, and you will -- I think the Judge will say that you, you
16 have to choose one of them or not guilty. Well, obviously,
17 our position is self defense is a complete defense, not guilty
18 completely down the line.

19 With regard to possession of a weapon during a violent
20 crime and firing into the vehicle, once again, self defense is
21 a complete defense to any and all charges, but listen
22 carefully to the law as the Judge describes and explains it to
23 you and gives it to you. This happened, I believe, 429 days
24 ago, 429 days ago. Jamie was sitting in Blakely probably
25 around midnight, one in the morning and it's interesting

1 because the Prosecutor said, "Well, you said you wanted to go
2 home. Why didn't you go home?" What did Jamie tell you?
3 "Once I left there I knew Rodney Kinloch was still running
4 around that trailer park with a gun. The last place I could
5 go then was home," but does he go on some go into hiding or go
6 on some wild, you know, spree across the country? Does he try
7 to go to Mexico? No. What does he do? Very next morning
8 comes back, goes to the police station, turns himself in.
9 That's a man who did what he needed to do at that moment in
10 time.

11 Return a verdict that speaks the truth, ladies and
12 gentlemen, and in this case that verdict is not guilty. I
13 thank you for your time. I thank you for your attention, and
14 I sincerely thank you for the privilege of appearing before
15 you.

16 THE COURT: Mr. Todd.

17 MR. TODD: Thank you, Your Honor. When I opened up, I
18 told you that there was no question about what happened, that
19 this man walked out of a trailer, fired six or seven shots
20 into a vehicle driven by Mr. Kelly, and riding next to him was
21 Ms. McCrae. There's no question that happened. Everyone
22 that's testified has been very consistent that that's exactly
23 what happened. There is no doubt when someone uses a gun and
24 fires every round they have until it clicks their intent is to
25 kill everybody in that car, mainly the person they were

Closing Argument by State

437

1 closest to. Mr. Kelly got hit three times, two of those by --
2 any one of those by themselves, the one in the hip wasn't
3 life-threatening. The other two, the doctor said they were.
4 He could have bled out.

5 McCrae's now 21 years old. This was about two years ago.
6 She was out hanging out with Mr. Kelly, much like many people
7 do around here, people in Andrews, live in Georgetown,
8 including Pawleys sometimes going out is just that. You're
9 just going out to hang out with somebody and ride around. I
10 can tell you I did it many, many times, go and pick up my
11 friends and we just ride around. We go to people's houses
12 just to hang out. I still do that to this day, come and watch
13 a game, go and have a drink. Usually it takes a little bit
14 longer than you think.

15 That night they went to Punchy's house. There was a guy
16 named Phillip Bell that lived right next door, Georgetown boy.
17 Mr. Kelly talked to him. Mr. Kinloch talked to him. They
18 were there for a little while. Now, there's some things that
19 I asked very specifically everybody, on what they saw and what
20 they heard. Everyone who testified, again, said the same
21 thing, he walked out the door and started firing.

22 Now, the law is very clear on how a person is supposed to
23 act, and the law is very clear on the type of person in that
24 situation and would it be reasonable, a reasonable person, a
25 normal everyday person of firmness in normal personality,

1 normal fear, how would they act?

2 Mr. Giles' testimony was very interesting. It sounded
3 very interesting, very paranoid, and one of the things that
4 was very interesting was the fact that he could feel someone
5 staring at the back of his head without seeing him and that
6 caused fear in him. I can't see out the back of my head. I
7 don't know many people that can, and is that enough, because
8 someone's possibly staring at the back of your head, is that
9 enough to believe your life's in danger to the point where you
10 go to someone else, arm yourself, rack the gun, say, "I'm
11 going to jail tonight," and unload on a car out in front of,
12 out in front of you?

13 Now, everyone was fairly consistent with what happened,
14 which was the reason for this happening, the July 15th beating.
15 Mr. Kelly said he didn't beat him. Ms. Brown, interestingly
16 enough, said, "No, he didn't beat him. My family beat him.
17 He wasn't there. There was seven of us that beat him down
18 because he was attacking my aunt." He should be fearful of
19 all those people, not the guy who said, "I didn't beat him and
20 I didn't -- I wasn't part of that." They even came together
21 at some point in time and said the beef was over. They both
22 apologized, all things were good, and when I asked about
23 calling the police and talking to the doctor about what
24 happened, the answers kind of give you -- give me a mindset.
25 I would imagine someone that's looking for street justice,

Closing Argument by State

439

1 someone that was embarrassed in front of his people in his
2 town by some outsider from Georgetown, and it just so happens
3 on the day when Mr. Giles is having a bad day, out of his own
4 words said, "I had some personal animosity. I was angry
5 because of my" -- what he thought was his cancer coming back,
6 which kind of goes back to how bad was this beating. Let's
7 say it was a bad beating. Still, his reason for the problems
8 was blood in his stool and everything else, didn't tell his
9 doctor the truth, didn't call police, but it made him paranoid
10 enough to arm himself and trying to kill someone.

11 Ms. McCrae was just a passenger in the vehicle, and Mr.
12 Kelly was in the vehicle, and we hear this and they could see
13 him very clearly. I want to show you a view pictures.
14 They're all in evidence, and I do want you when you get these
15 back in evidence take a look at everything. It gives you a
16 picture of what it was like that night, everything that
17 happened, you get a whole picture, and it also pieces together
18 the testimony and shows you what is true. State's 121 is a
19 picture in between the two trailers on that night. That's
20 Punchy's porch light. That's not the brightest place in the
21 world. If you've got a parked car with the windows up, you're
22 not going to be able to see very much at all. This is another
23 interesting picture. 140, it's a little bit better lit here.
24 This is where the car was found where the police took custody
25 of the vehicle so they could process it. If you look at the

1 windows, the ones that are closed and rolled up, you can't see
2 anything in that car. You couldn't see if a person was in
3 there or not, and you sure couldn't see if somebody was
4 reaching down to grab a gun, a fictional gun, where now there
5 was two of them because one was handed out in probably the
6 worst ambush ever. This man was being ambushed he says,
7 triangulated. They were waiting for him to come out, and one
8 of them runs at the racking of a gun, and the other one gets
9 shot, pretty bad ambush, one against two or three as we're,
10 you know, being told that they were all there to ambush him,
11 and during the split second he walked out the door from this
12 distance and a car with the windows rolled up he saw a man
13 reaching down to grab a gun. Is that reasonable? Does that
14 sound like someone who's claiming self defense? Does it sound
15 right? Does the evidence that we have, the pictures, does it
16 point to that? Now, we also heard that a gun was passed from
17 inside the car from Mr. Kelly to Mr. Kinloch, and I
18 specifically said, "Well, what color was the gun?" "Don't
19 know, but I'm sure it was a revolver, but I don't know what
20 color it was." Does that sound reasonable to you? I then
21 asked because I wanted to know, and there's some things that
22 just have never been answered where Mr. Giles went after that,
23 and we had some interesting testimony of where he went, who he
24 talked to and why he didn't call the police.

25 Now, some -- there are some very important factors with

Closing Argument by State

441

1 self defense. Again, there's no question of what happened.
2 This man shot into a car. He used a firearm, and he attempted
3 to kill two people that were sitting inside the car. To claim
4 self defense he has to be without fault of bringing on the
5 difficulty, that's number one, and I would submit to you
6 that's going to be hard for you all to get past. A man was
7 inside of a house, by his own testimony. The doors were
8 locked. The back doors were padlocked. The only person who
9 had the key was Mr. Punchy. He was safe in there. He was
10 absolutely safe. He brought on the difficulty by walking out
11 with his loaded, cocked weapon and started firing into the
12 car, but let's just go on just to see how far we go. Imminent
13 danger, he has to believe that he's in actual imminent danger
14 of death or serious bodily injury, and there's a series of
15 ways he can believe this, prior bad acts and everything else,
16 these bad acts in which Mr. Kelly was accused of having a gun
17 at a beat down, which this gentleman was the only one that saw
18 him there, the only person that claims he saw a gun, and
19 again, the night of the incident, and that person has to be
20 reasonable. It's not his belief. It's a reasonable person's
21 belief of sound mind, that normal person, everyday person how
22 would they react in the situation, would have absolutely not
23 act this way. They would not be in fear because someone walks
24 behind him and he thinks that they're staring at him, and then
25 the last one is the most important one, no other ways to avoid

1 the danger. There were so many ways to avoid the danger. Why
2 do we care about that? In our society bloodshed is the last
3 resort. There were so many ways for him to avoid the danger.
4 The police department was not but four minutes from that
5 location. There's no way -- they were there for 20 minutes.
6 The police could have been there right away. Him claiming
7 there's a man outside with a gun, they could have been there
8 quickly, could have apprehended him, this fictional gun that
9 we hear about all the time, but let's say he wanted to sneak
10 out the back door. Mr. Punchy had the keys, could have let
11 him out, could have slipped out.

12 Now, we've heard that there's only a few trailers in this
13 trailer park. However, there's a lot of trailers in this
14 trailer park. It's a trailer park. On -- just by Mr. Giles'
15 statements, he's lived in several of them himself in that same
16 location. A road over is where he ran to. There was other
17 people there. There are many ways he could have avoided the
18 situation altogether. He didn't want to avoid that situation.
19 He wanted his justice. Some out-of-town boy was there that he
20 didn't like. He was embarrassed by him before, and he was
21 going to take him out because he was having a rough time
22 himself, and he was going out and he was taking somebody with
23 him. He had animosity, was worried about his results. He'd
24 had cancer before. It's sad. It's really sad that someone
25 thinks that way.

Charge

443

1 I told you in the beginning this is a very important
2 case. It is. There's two people over here that have waited
3 that four hundred and plus days to get justice. They've had
4 to wait to tell their story, to tell the truth and that is
5 what this is. When everyone tells the truth, the story comes
6 out. Everyone has been consistent on what happened, how it
7 happened and everyone has been honest. These aren't all Mr.
8 Kelly's people, a man from Andrews, lived there his whole life
9 but they're telling the truth because they want the truth to
10 come out. They want the same thing I want, this gentleman
11 right here to be held accountable for what he did. You can't
12 do that in this society. You can't do that here. Please hold
13 him accountable. Find him guilty on all charges. Thank you.

14 THE COURT: All right. Ladies and gentlemen, all of the
15 evidence in this case has been presented to you. The
16 attorneys have made their closing arguments, and now is the
17 time of the trial where I will charge you with the law to be
18 applied in this case.

19 I'll give you a copy of these instructions in written
20 form, and during your deliberations, you may refer to the
21 instructions to guide your decision-making. You must consider
22 the instructions as a whole and not follow some instructions
23 and ignore others, and I also ask that you return the
24 instructions to the Court at the time your verdict is
25 rendered.

1 Now, the indictments in this case allege several
2 different offenses against the Defendant. The charges against
3 the Defendant in this case are two counts of attempted murder,
4 discharging a firearm into a vehicle and possession of a
5 firearm during the commission of a violent crime.

6 Each indictment charges a separate and distinct offense.
7 You must decide each indictment separately on the evidence and
8 the law applicable to it uninfluenced by your decision as to
9 any other indictment. The Defendant may be convicted or
10 acquitted on any or all of the offenses charged. You'll be
11 asked to write a separate verdict of guilty or not guilty for
12 each indictment.

13 I remind you that the fact the Defendant was arrested,
14 charged and indicted in this case is not evidence in this case
15 and cannot be considered by you as evidence of guilt in this
16 case, nor does the Defendant's arrest, charge or indictment
17 create any presumption or inference of guilt. These
18 indictments are simply the formal written instruments which
19 contain the charges made against the Defendant. They are the
20 formal documents by which this case is brought into this
21 court.

22 The Defendant pleads not guilty to these indictments.
23 That plea puts the burden on the State to prove the Defendant
24 guilty. A person charged with committing a criminal offense
25 in South Carolina is never required to prove his innocence.

Charge

445

1 I charge you that an important rule of the law is that the
2 Defendant in a criminal trial, no matter what the seriousness
3 of the charge may be, will always be presumed to be innocent
4 of the crime for which the indictment was issued unless guilt
5 has been proven by evidence satisfying you of that guilt
6 beyond a reasonable doubt.

7 This presumption of innocence does not end when you begin
8 your deliberations, but it accompanies the Defendant
9 throughout the trial until you reach a verdict of guilt based
10 on evidence satisfying you of that guilt beyond a reasonable
11 doubt.

12 The presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the Defendant
14 which remains with the Defendant until it has been stripped
15 from the Defendant by evidence satisfying you of the
16 Defendant's guilt beyond a reasonable doubt.

17 The presumption of innocence is not a mere legal theory.
18 It is not just a legal phrase. It is a substantial right to
19 which every Defendant is entitled unless you, the jury, are
20 satisfied from the evidence of the Defendant's guilt beyond a
21 reasonable doubt.

22 Now, what is a reasonable doubt in the law? A reasonable
23 doubt is the kind of doubt that would cause a reasonable
24 person to hesitate to act. Proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced of the Defendant's

1 guilt. We know very few things in this world with absolute
2 certainty, and in criminal cases the law does not require
3 proof that overcomes every possible doubt. If, based on your
4 consideration of the evidence, you are firmly convinced that
5 the Defendant is guilty of the crime charged, you must find
6 the Defendant guilty. If on the other hand, you think a real
7 possibility exists that the Defendant is not guilty, you must
8 give the Defendant the benefit of the doubt and find him not
9 guilty.

10 I remind you that during this trial, you and I have
11 certain duties to perform. As the trial judge, my
12 responsibility is to preside over the trial of this case. I
13 also have the duty to rule on the admissibility of evidence
14 offered during this trial. You are to consider only the
15 competent evidence before you. If any testimony was ordered
16 stricken from the record in this case during this trial, you
17 must disregard that testimony. You are to consider only the
18 testimony which has been presented from the witness stand, any
19 exhibits which have been made a part of the record in this
20 case and any stipulations of counsel.

21 I have the additional duty to charge you the law
22 applicable to this case. As the presiding judge, I am the
23 sole judge of the law of this case. Your duty as jurors is to
24 accept and apply the law as I now state it to you. If you
25 have any idea as to what the law is or what the law ought to

Charge

447

1 be and your idea is different from what I now tell you the law
2 is, you must disregard your idea of what the law is or ought
3 to be because you are sworn to accept the law and apply the
4 law exactly as I state it to you.

5 In every case tried in this court before a jury, the jury
6 is the sole and exclusive judge of the facts in a case. A
7 trial judge cannot intimate, state, comment on or make any
8 statement to a trial jury about the facts in a case. Since
9 you, the jury, are the sole judge of the facts in this case,
10 you are not to infer from what I have said during the progress
11 of this trial in ruling upon the admissibility of evidence, or
12 otherwise, or anything that I say 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. This is a matter solely
16 for you, the jury, to determine.

17 As jurors, your duty is to determine the effect, value,
18 weight and truth of the evidence presented during this trial.
19 Necessarily, you must determine the credibility of witnesses
20 who have testified in this case. Credibility simply means
21 believability. Your duty as jurors is to analyze and to
22 evaluate the evidence and determine which evidence convinces
23 you of its truth. In determining the believability of
24 witnesses who have testified in this case, you may believe one
25 witness over several witnesses or several witnesses over one

1 witness. You may believe a part of the testimony of a witness
2 and reject the remaining part of the testimony of that same
3 witness. You may believe the testimony of a witness in its
4 entirety or reject the testimony of a witness in its entirety.
5 You may consider whether any witness has exhibited to you any
6 interest, bias, prejudice or other motive in this case. You
7 may also consider the appearance and manner of the witness
8 while on the witness stand.

9 The rules of evidence ordinarily do not permit witnesses
10 to testify to opinions or conclusions. An exception to this
11 rule exists for witnesses we call expert witnesses. A witness
12 who, by education and experience, has become expert in some
13 art, science, profession or calling may state an opinion as to
14 the relevant and material -- as to the relevant and material
15 matter, in which the witness claims to be an expert, and may
16 also state the reasons for the opinion. You should consider
17 any expert opinion received in evidence in this case and, like
18 any other evidence, give it the weight you think it deserves.
19 If you decide that the opinion of an expert witness is not
20 based on sufficient education and experience, or if you
21 conclude that the reasons given in support of the opinion are
22 not sound, or that the opinion is outweighed by other
23 evidence, you may disregard the opinion entirely. An expert
24 witness' testimony is to be given no greater weight than that
25 of other witnesses simply because the witness is an expert.

Charge

449

1 Further, you're not required to accept an expert's opinion,
2 even though it is not contradicted.

3 Now, one of the witnesses in this case has a criminal
4 record. A person who has a past criminal record is competent
5 to testify during a trial. A past record does not affect the
6 ability of that witness to testify. The past record may only
7 be considered by you, if at all, in determining the witness'
8 believability. Remember, you are the sole judge of the facts
9 in this case and the believability of any and all of the
10 witnesses.

11 Also, you have heard evidence that the Defendant was
12 convicted of a crime other than the one for which the
13 Defendant is now on trial. This evidence may be considered by
14 you, if you conclude it is true, only in determining whether
15 the Defendant's testimony is believable, and for no other
16 purpose. You must not consider the Defendant's prior record
17 as any evidence of the Defendant's guilt of the charges in
18 this trial.

19 In order to establish criminal liability, criminal intent
20 is required. For example, the mental state required to be
21 proven by the State for a particular crime might be purpose,
22 intent, knowledge, recklessness or criminal negligence.
23 Criminal intent must be proven by the State beyond a
24 reasonable doubt. Criminal intent is always a matter that
25 must be determined by the jury from the circumstances

1 surrounding the situation. No way exists to prove intent to a
2 mathematical certainty. Medical science cannot dissect a
3 person's brain and determine what the person had in mind, so
4 the law says that criminal intent may be inferred from the
5 circumstances shown to have existed. This is how you make a
6 determination of whether or not the element requiring intent
7 is present. Intent does not have to be established by direct
8 and positive evidence. Intent may be established by inference
9 in the same way as any other fact, by taking into
10 consideration the acts of the parties and all of the facts and
11 circumstances of the case. Criminal intent is a mental state,
12 a conscious wrongdoing. You must determine what the Defendant
13 intended to do based on the circumstances shown to have
14 existed. Criminal intent can arise from action or a failure
15 to act. It may arise from negligence, recklessness or an
16 indifference to duty or to consequences that is considered by
17 the law to be the equivalent of criminal intent.

18 Now, as I have previously advised you, the Defendant is
19 charged with two counts of attempted murder, discharging a
20 firearm into a vehicle and possession of a weapon during the
21 commission of a violent crime.

22 To convict the Defendant of attempted murder, the State
23 must prove that the Defendant attempted to kill another person
24 with malice aforethought, either express or implied.
25 Malice is hatred, ill will or hostility towards another

Charge

451

1 person. It is the intentional doing of a wrongful act without
2 just cause or excuse and with an intent to inflict an injury
3 or under circumstances that the law will infer an evil intent.
4 Malice aforethought does not require that malice exists for
5 any particular time before the act is committed, but malice
6 must exist in the mind of the Defendant just before and at the
7 time of the act -- and at the time the act is committed.
8 Therefore, there must be a combination of previous evil intent
9 and the act.

10 Malice aforethought may be express or inferred. These
11 terms, express and inferred, do not mean different kinds of
12 malice but merely the manner in which the malice is shown to
13 exist. That is either by direct evidence or inference from
14 the facts and circumstances which are proved. Express malice
15 is shown when a person speaks words which express hatred or
16 ill will for another or when the person prepared beforehand to
17 do the act which was later accomplished. For example, lying
18 in wait for a person or any other acts of preparation going to
19 show that the deed was within the Defendant's mind would be
20 express malice.

21 If facts are proved beyond a reasonable doubt sufficient
22 to raise an inference of malice to your satisfaction, this
23 inference would be simply an evidentiary fact to be considered
24 by you, the jury, along with the other evidence in the case,
25 and you may give it the weight you decide it should receive.

1 A specific intent to kill is an element of attempted
2 murder. Intent means intending the result which actually
3 occurs, not accidentally or involuntary. Intent may be shown
4 by acts and conduct of the Defendant and other circumstances
5 from which you may naturally and reasonably infer intent.
6 Evidence of the character of the act, the purpose to be
7 accomplished and the resulting wounds or injuries may be
8 considered in determining the intent with which the act was
9 committed. Intent may also be inferred when it is
10 demonstrated that the Defendant voluntarily and willfully
11 commits an act, the natural tendency of which is to destroy
12 another's life.

13 If you find that the State has failed to prove the
14 Defendant guilty of attempted murder, you must then decide if
15 the State has proven by a preponderance of the evidence that
16 the Defendant is guilty of assault and battery of a high and
17 aggravated nature. A person commits the offense of assault
18 and battery of a high and aggravated nature if the person
19 unlawfully injures another person and great bodily injury to
20 another person results, or the act is accomplished by means
21 likely to produce death or great bodily injury.

22 Great bodily injury means bodily injury which causes a
23 substantial risk of death or which causes serious, permanent
24 disfigurement or protracted loss or impairment of the function
25 of a bodily member or organ.

Charge

453

1 If you find that the State has failed to prove the
2 Defendant guilty of assault and battery of a high and
3 aggravated nature, you must then decide if the State has
4 proven beyond a reasonable doubt that the Defendant is guilty
5 of assault and battery in the first degree. A person commits
6 the offense of assault and battery in the first degree if the
7 person unlawfully offers or attempts to injure another person
8 with the present ability to do so and the act is accomplished
9 by means likely to produce death or great bodily injury. The
10 definition of great bodily injury is the same for assault and
11 battery in the first degree as it is for assault and battery
12 of a high and aggravated nature.

13 Assault -- if you find that the State has failed to prove
14 the Defendant guilty of assault and battery in the first
15 degree, you must then decide if the State has proven beyond a
16 reasonable doubt that the Defendant is guilty of assault and
17 battery in the second degree.

18 Excuse me. I need to go back. If you find that the
19 State has failed to prove the Defendant guilty of assault and
20 battery of a high and aggravated nature, you must then decide
21 if the State has proven assault and battery of the first
22 degree. The person commits the offense of assault and battery
23 in the first degree if the person unlawfully offers or
24 attempts to injure another person with the present ability to
25 do so and the act is accomplished by means likely to produce

1 death or great bodily injury. If you find that the State has
2 failed to prove the Defendant guilty of assault and battery in
3 the first degree, you must then decide if the State has proven
4 beyond a reasonable doubt that the Defendant is guilty of
5 assault and battery in the second degree.

6 Now, a person commits the offense of assault and battery
7 in the second degree if the person unlawfully injures another
8 person, or offers or attempts to injure another person with
9 the present ability to do so, and either moderate bodily
10 injury to another person results or moderate bodily injury to
11 another person could have resulted.

12 Moderate bodily injury means physical injury that
13 involves prolonged loss of consciousness or that causes
14 temporary or moderate disfigurement or temporary loss of the
15 function of a bodily member or organ or injury that requires
16 medical treatment when the treatment requires the use of
17 regional or general anesthesia or injury that results in a
18 fracture or dislocation. Moderate bodily injury does not
19 include one-time treatment and subsequent observation of
20 scratches, cuts, abrasions, bruises, burns, splinters or any
21 other minor injuries that do not ordinarily require extensive
22 medical care.

23 If you find that the State has failed to prove the
24 Defendant guilty of assault and battery in the second degree,
25 you must then decide if the State has proven beyond a

Charge

455

1 reasonable doubt that the Defendant is guilty of assault and
2 battery in the third degree.

3 A person commits the offense of assault and battery in
4 the third degree if the person unlawfully injures another
5 person or offers or attempts to injure another person with the
6 present ability to do so.

7 Now, the Defendant is also charged with discharging a
8 firearm into a vehicle. To convict the Defendant of this
9 crime, the State must prove beyond a reasonable doubt that the
10 Defendant discharged or caused to be discharged unlawfully a
11 firearm at or into any vehicle, aircraft, watercraft or other
12 conveyance, device or equipment while it is occupied.

13 The Defendant is also charged with possession of a weapon
14 during the commission of a violent crime. To convict the
15 Defendant of this crime, the State must prove beyond a
16 reasonable doubt that the Defendant was in possession of a
17 firearm arm or visibly displayed what appeared to be a firearm
18 during the commission of a violent crime.

19 A firearm means any machine gun, automatic rifle,
20 revolver, pistol or any weapon which will, is designed to or
21 may be readily converted to expel a projectile. In order to
22 find the Defendant guilty of possession of a weapon during the
23 commission of a violent crime, you must first find the
24 Defendant guilty of either committing a violent crime or
25 attempting to commit a violent crime. Attempted murder is a

1 violent crime. The State must also prove beyond a reasonable
2 doubt that the weapon furthered, advanced or helped in the
3 commission of the crime.

4 The Defendant raises the defense of self defense. Self
5 defense is a complete defense and, if it is established, you
6 must find the Defendant not guilty. The State has the burden
7 of disproving self defense by proof beyond a reasonable doubt.
8 If you have a reasonable doubt of the Defendant's guilt after
9 considering all of the evidence, including the evidence of
10 self defense, then you must find the Defendant not guilty. On
11 the other hand, if you do not have a reasonable doubt of the
12 Defendant's guilt after considering all of the evidence,
13 including the evidence of self defense, then you must find the
14 Defendant guilty.

15 The following elements are required to establish self
16 defense. First, the Defendant must be without fault in
17 bringing on the difficulty. If the Defendant's conduct was
18 the type which was reasonably calculated to and did provoke a
19 deadly assault, the Defendant would be at fault in bringing on
20 the difficulty and would not be entitled to an acquittal based
21 on self defense.

22 The second element of self defense is that the Defendant
23 was actually in imminent danger of death or serious bodily
24 injury or that the Defendant actually believed he was in
25 imminent danger of death or serious bodily injury. If the

Charge

457

1 Defendant was actually in imminent danger, it must be shown
2 that the circumstances would have warranted a person of
3 ordinary firmness and courage to strike the fatal blow to
4 prevent death or serious bodily injury. If the Defendant
5 believed he was in imminent danger of death or serious bodily
6 injury, it must be shown that a reasonable prudent person of
7 ordinary firmness and courage would have had the same belief.
8 In deciding whether the Defendant actually was, or believed he
9 was, in imminent danger of death or serious bodily injury, you
10 should consider all of the facts and circumstances surrounding
11 the crime, including the physical condition and
12 characteristics of the Defendant and the victims.

13 The Defendant does not have to show that he was actually
14 in danger. It is enough if the Defendant believed he was in
15 imminent danger and a reasonably prudent person of ordinary
16 firmness and courage would have had the same belief. The
17 Defendant has the right to act on appearances even though the
18 Defendant's beliefs may have been mistaken. You must decide
19 whether the Defendant's fear of immediate danger of death or
20 serious bodily injury was reasonable and would have been felt
21 by an ordinary person in the same situation.

22 Once the right to self defense arises, a Defendant is not
23 required to wait until his adversary is on equal terms. He
24 has the right to act under the law of self-preservation and
25 prevent his assailant from getting the drop on him. Evidence

1 of prior difficulties between the Defendant and the victim may
2 be considered in deciding whether a threat existed, whether
3 the Defendant had a reason to believe a threat existed and how
4 serious that threat was.

5 The final element of self defense is that the Defendant
6 had no other probable way to avoid the danger of death or
7 serious bodily injury than to act as the Defendant did in this
8 particular instance.

9 A person cannot be required to make an exact calculation
10 as to the degree or amount of force which may be needed to
11 avoid death or serious bodily harm. Therefore, in self
12 defense, the Defendant has the right to use the force needed
13 to avoid death or serious bodily harm. The force used in self
14 defense does not have to be limited to the degree or amount of
15 force used by the victim. The Defendant has the right to use
16 so much force as appeared to be necessary for complete self-
17 protection and which a person of ordinary reason and firmness
18 would have believed to be needed to prevent death or serious
19 bodily harm.

20 Now, if the Defendant is justified in defending himself
21 and in firing the first shot, then the Defendant is also
22 justified in continuing to shoot until it is apparent that the
23 danger or death of [sic] serious bodily injury has completely
24 ended.

25 Now, as to the charges of attempted murder, there are six

Charge

459

1 possible verdicts for each indictment. As to the charges for
2 discharging a firearm into a vehicle and possession of a
3 weapon during the commission of a violent crime, there are two
4 possible verdicts for each indictment. No significance
5 whatsoever is to be given to the order in which I state these
6 possible verdicts to you. I simply have to state one first,
7 one second and so forth.

8 On the charges of attempted murder, your possible
9 verdicts are: One, we, the jury, find the Defendant guilty of
10 attempted murder; or two, we, the jury, find the Defendant
11 guilty of assault and battery of a high and aggravated nature;
12 or three, we, the jury, find the Defendant guilty of assault
13 and battery in the first degree; or four, we, the jury, find
14 the Defendant guilty of assault and battery in the second
15 degree; or five, we, the jury, find the Defendant guilty of
16 assault and battery in the third degree; or the sixth possible
17 verdict is we, the jury, find the Defendant not guilty.

18 On the charge of discharging a firearm into a vehicle,
19 your possible verdicts are guilty or not guilty. On the
20 charge of possession of a weapon during the commission of a
21 violent crime, your possible verdicts are guilty or not
22 guilty.

23 Ladies and gentlemen, your verdicts must be unanimous.
24 As stated before, you must decide each indictment separately
25 on the evidence and the law applicable to that indictment

1 uninfluenced by your decision as to any other indictment.

2 Ms. Valentin, as foreperson, when the jury agrees on a
3 verdict, you will check the appropriate verdict on the verdict
4 form. There's a verdict form for each indictment, and you'll
5 need to fill out each verdict form, check the appropriate
6 verdict, then sign your name as foreperson, then knock on the
7 door and let the bailiff know that the jury has, has reached a
8 verdict. Once you reach a unanimous verdict on each
9 indictment, fill this out, knock on the door and let us know
10 and we'll bring you back into the court to publish your
11 verdict at that time.

12 Now, I'm going to excuse you back to the jury room in
13 just a few minutes, but do not begin your deliberations until
14 you're told to do so by the bailiff. We have to check to see
15 if there are any additional charges or corrections to the
16 charges from the attorneys. If there are and they're
17 required, I'll bring you back in and make those corrections or
18 additional charges. If there are none, then we'll send all of
19 the exhibits back to the jury room with the verdict forms and
20 the bailiff will instruct you to begin your deliberations, but
21 do not start your deliberations until you're instructed to do
22 so by the bailiff.

23 Also, we have lunch here for you. Now, the jury -- you
24 can do whatever you want to do. If you want to deliberate
25 while you eat lunch you can deliberate while you eat lunch.

Charge

461

1 If you want to wait and begin your deliberations after you eat
2 lunch you can begin your deliberations after you each lunch.
3 However, the entire jury must do the same thing. You can't
4 have some jurors eat lunch while the others deliberate, but
5 whether you want to deliberate during lunch or whether you
6 want to wait until you finish lunch, I'll leave that up to you
7 and you can decide. So I'm going to excuse you back to the
8 jury room. I think they're going to go ahead and get your
9 lunch ready for you. Do not begin deliberations until you're
10 told to do so by the bailiff.

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right. Any challenges or additional
14 charges from the State?

15 MR. TODD: No, Your Honor.

16 THE COURT: Any from the Defense?

17 MR. HAZZARD: Yes, sir, Your Honor. If I heard
18 correctly, I think there's a little glitch in the assault and
19 battery high and aggravated nature charge, and I think that
20 kind of came from switching over from assault and battery with
21 intent to kill, but I thought I heard you say, "You must
22 decide," and I guess this was from attempted murder to assault
23 and battery of a high and aggravated nature, but I thought I
24 heard you say, "You must decide if the State has proven by a
25 preponderance of the evidence," as opposed to beyond a

1 reasonable doubt when it came to assault and battery of a high
2 and aggravated nature.

3 THE COURT: Let me see. Yep. I do have, and why I wrote
4 that in there I do not know. So I'll need to bring the jury
5 back out and tell them that all of these charges require proof
6 beyond a reasonable doubt. Okay?

7 MR. HAZZARD: Yes, sir.

8 THE COURT: And I'm just going to strike through that by
9 a preponderance of the evidence and put beyond a reasonable
10 doubt. Okay?

11 MR. HAZZARD: Yes, sir.

12 THE COURT: All right. I don't know, I don't know how
13 that got in there. All right. Let's go ahead and bring the
14 jury back in.

15 Any other challenges?

16 MR. HAZZARD: Nothing further from the Defense, Your
17 Honor.

18 MR. TODD: I didn't see anything else. I didn't even
19 catch that one, so.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right. Ladies and gentlemen, welcome
23 back. It was brought to my attention when I was charging you
24 with the crimes alleged in this case and the possible verdicts
25 that I misspoke as to the, the burden of proof. The State has

Charge

463

1 the burden of proof of proving any crime in this case beyond a
2 reasonable doubt. Okay? I misspoke on one of the charges and
3 said a preponderance of the evidence. That is not the
4 evidence or the degree of proof needed. All proof must be
5 proven by the State beyond a reasonable doubt. All right.
6 Thank you very much. I'll excuse you back to the jury room.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. I'm going to mark these charges
10 as Court's Exhibit Three, and I'm, as I said in the
11 instructions, I'm going to send them back with the verdict
12 forms and the exhibits. Let's make sure we've got all the
13 exhibits.

14 (Court's Exhibit Number Three [Charges] appropriately
15 marked.)

16 THE COURT: Anything further from the State?

17 MR. TODD: No, Your Honor.

18 THE COURT: Anything from the Defense?

19 MR. HAZZARD: Nothing from the Defense, Your Honor.

20 THE COURT: All right. Let's make sure we've got all the
21 exhibits. Let me put this together with those.

22 (Exhibits reviewed by counsel for State and counsel for
23 Defense and approved.)

24 THE COURT: They can go ahead and begin their
25 deliberations. Yeah.

1 (Deliberations begin at 12:15 p.m.)

2 THE COURT: All right. Anything from the State?

3 MR. TODD: No, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. HAZZARD: No, sir, Your Honor.

6 THE COURT: All right. We'll be in recess in this case
7 until we get a verdict.

8 OFF THE RECORD

9 (On the record. Question from jury at 1:14 p.m. The
10 following takes place outside the presence of the jury.)

11 THE COURT: All right. We've gotten a question from the
12 jury. Says, "Was the gun given to Mr. Rodney after the
13 truck," -- wait, "Was the gun given to Mr. Rodney after the
14 truck was backed in, Nia Valentin, 2-4-16." I'm just going to
15 put that is an issue of fact that the jury must decide.

16 MR. HAZZARD: All right.

17 THE COURT: Does that sound agreeable to the State?

18 MR. TODD: Yes, sir.

19 THE COURT: That sound agreeable to the Defense?

20 MR. HAZZARD: Yes, sir, Your Honor.

21 THE COURT: All right. Let me -- I'm just signing my
22 name, putting Judge. That'll be Court's Exhibit what?

23 REPORTER: Four.

24 THE COURT: Court's Exhibit Four.

25 (Court's Exhibit Number Four [Question from Jury])

Question from Jury

465

1 appropriately marked.)

2 THE COURT: All right. If you'd just take that back in.
3 Yeah. Don't throw it away. Hold onto it and just put it back
4 there for them.

5 All right. Anything from the State?

6 MR. TODD: No, sir.

7 THE COURT: Anything from the Defense?

8 MR. HAZZARD: Nothing from the Defense at this time.

9 THE COURT: All right. We'll stay in recess until we
10 hear something or get another question.

11 OFF THE RECORD

12 (On the record. Question from jury at 1:36 p.m. The
13 following takes place outside the presence of the jury.)

14 THE COURT: It's really three questions. "What does the
15 transcript testimony say from Mr. Giles in regarding what he
16 said pertaining to Rodney obtaining the gun from Mr. Kelly,
17 his testimony of how the truck was positioned when Mr. Kelly
18 handed Mr. Rodney the gun, and his testimony of when he saw
19 the truck and how it was moved." All I know is to say if you
20 want to listen to the testimony of Mr. Giles we'll replay the
21 testimony for you.

22 MR. TODD: Yes, sir. I think that'd be the only cure for
23 that.

24 THE COURT: Okay. I mean, do we -- okay. Let me -- I'm
25 just going to put if you want -- how do I want to word it?

1 MR. HAZZARD: I would just, may it please the Court, I'd
2 just bring them back in and tell them that.

3 THE COURT: Okay.

4 MR. HAZZARD: And they can kind of talk amongst
5 themselves and say is that what you want to do, and of course
6 the Court normally tells them we'll start it at the beginning
7 and -- or if you know a certain point, whether it's direct
8 examination or cross, and we'll start it wherever and we'll go
9 until you hold your hand up and say, "We've heard enough."

10 THE COURT: Is that agreeable?

11 MR. TODD: I think that's probably the best thing to do.

12 THE COURT: Okay.

13 MR. HAZZARD: And I don't have a problem with you
14 stepping to the door and telling them that.

15 THE COURT: I'd rather bring them back in and do it on
16 the record.

17 (Reporter and Court confer.)

18 MR. TODD: And Your Honor, if you're going to bring them
19 out again, I've sent messages to bring up everybody. They
20 were eating lunch down there so.

21 THE COURT: Okay. That'll be fine.

22 (Reporter and Court confer.)

23 THE COURT: The first part of his testimony deals with
24 the incident back in July. Their question deals with the
25 incidences of December --

Question from Jury

467

1 MR. HAZZARD: 3rd.

2 THE COURT: -- 13th.

3 MR. HAZZARD: Uh-huh.

4 THE COURT: Do we want to have her go ahead and fast
5 forward through the first part of his testimony and just start
6 when he starts talking about the December 13th issue or how do
7 we --

8 MR. HAZZARD: From the Defense perspective it depends on
9 how long it would take Madam Court Reporter to do that. I
10 know her to be incredibly quick, but I was thinking once the
11 jury comes in you can verify with them specifically that
12 that's what they want as opposed to them saying -- well, no,
13 go ahead and -- go ahead and, and cue it up at that point
14 during the direct, I guess, but it would probably be quicker
15 just to go back to the start of the direct than to find it.
16 Would that be accurate?

17 (Court and Reporter confer.)

18 MR. HAZZARD: That works for the Defense.

19 THE COURT: Okay. See, the problem I've got and, and my
20 question is is when we get to that part what I hesitate to do
21 is -- of course, I don't know because it's addressed on both
22 direct and cross examination.

23 MR. HAZZARD: And that's something that the Defense has
24 no objection to the Court having a colloquy with the jury and
25 reminding them it is addressed on both direct and cross. "Do

1 you want to hear" -- because they may just want to hear the
2 cross. I don't know, but you can ask them, have a colloquy
3 with them and ask them, "Do you know? Do you want to hear all
4 of it, direct and cross, as far as that issue? Do you just
5 want to hear the direct? Do you just want to hear the cross,"
6 and whatever they say I'm fine with. I mean, maybe they can
7 give you some guidance as to exactly what they want to hear.

8 MR. TODD: It is covered on both direct and cross. It
9 may be better just to play them the entire portion so they can
10 hear everything again since they had questions about pieces of
11 it.

12 THE COURT: Yeah.

13 MR. HAZZARD: What you can is, "If your issue is
14 specifically with regard to Mr. Kinloch allegedly receiving
15 the gun, we're going to play you the portion where it's
16 addressed on direct and then the portion where it's addressed
17 on cross," if you wish to address it in that way.

18 MR. TODD: And that might be hard to do because I think I
19 asked several different times about the process as I was going
20 through my questioning so I mean.

21 THE COURT: Yeah. Okay.

22 MR. TODD: I think it'd just be safe to play, Your Honor.

23 THE COURT: All right. I think I'm going to bring them
24 out and just tell them that they are asking a question
25 regarding a witness' testimony. The Court cannot give them

Question from Jury

469

1 any guidance. It's up to them to decide. If they want to
2 hear the testimony of Mr. Giles we'll play it back for them.

3 MR. HAZZARD: The only thing I would posit to the Court
4 is in my experience juries are pretty good about knowing
5 specifically what they want to hear, and if they can give the
6 Court that guidance of specifically what they want to hear,
7 then normally it's cued up at that point and the Judge says,
8 you know, "When you're, when you've heard all you need to
9 hear, Madam Forelady, raise your hand, let us know."

10 THE COURT: Well, but by the -- yeah. Typically --

11 (Court and Reporter confer.)

12 THE COURT: I'm just going to, I'm just going to ask them
13 if they want to hear the testimony. If they want to hear it
14 we'll play it back for them.

15 MR. HAZZARD: Okay.

16 THE COURT: All right.

17 MR. TODD: Thank you.

18 THE COURT: All right. Let's --

19 (Court and Reporter confer.)

20 THE COURT: All right. Anything from the State before we
21 bring the jury in?

22 MR. TODD: No, sir.

23 THE COURT: Anything from the Defense?

24 MR. HAZZARD: Nothing from the Defense, Your Honor.

25 THE COURT: All right. Let's go ahead and bring the jury

1 in.

2 (Whereupon, the following takes place in the presence of
3 the jury.)

4 THE COURT: All right. Ladies and gentlemen, welcome
5 back. I've got your, your question. It says, "What does the
6 transcript testimony say from Mr. Giles in regarding what he
7 said pertaining to Rodney obtaining the gun from Mr. Kelly,
8 his testimony of how the truck was positioned when Mr. Kelly
9 handed Mr. Rodney the gun and his testimony of when he saw the
10 truck and how it was moved." All right. All we can do is
11 play you back the testimony of Mr. Giles for you to listen to
12 it again if you want to hear Mr. Giles' testimony. Is that
13 what you want to do?

14 FOREPERSON: Yes.

15 THE COURT: Okay. I hear some -- all right. We've got
16 it cued up, let's go ahead play Mr. Giles' testimony. If you
17 have trouble hearing just raise your hand.

18 (Testimony of Jamie Giles, direct examination only,
19 played in open court.)

20 THE COURT: Hold for a second. Yes, ma'am?

21 FOREPERSON: That's enough right there.

22 THE COURT: You've heard enough?

23 FOREPERSON: Yes.

24 THE COURT: All right. I'll send you back to the jury
25 room. You can resume your deliberations.

Verdict

471

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right. Anything further from the State?

4 MR. TODD: No, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. HAZZARD: No, sir, Your Honor.

7 THE COURT: All right. We'll stand in recess until we
8 hear something from the jury.

9	OFF THE RECORD

10 (On the record. Verdict reached at 3:40 p.m. The
11 following takes place outside the presence of the jury.)

12 THE COURT: All right. I understand the jury has reached
13 a verdict. Anything from the State before we bring the jury
14 in?

15 MR. TODD: No, Your Honor.

16 THE COURT: Anything from the Defense?

17 MR. HAZZARD: Nothing from the Defense, Your Honor.

18 THE COURT: All right. Let's go ahead and bring the jury
19 in.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right. Ladies and gentlemen, welcome
23 back. Ms. Valentin, I understand the jury has reached a
24 verdict on all four indictments; is that correct?

25 FOREPERSON: Yes, sir.

1 THE COURT: All right. Have you completed the verdict
2 forms?

3 FOREPERSON: Yes, sir.

4 THE COURT: All right. If you'd please hand them to the
5 bailiff. Thank you, sir.

6 (Complies with request and Court reviews.)

7 THE COURT: All right. I'll ask the clerk to please
8 publish the verdict.

9 THE CLERK: State of South Carolina versus Jamie Giles,
10 indictment number 2015-GS-22-00170, charging the Defendant
11 with attempted murder of Daniea Kelly, we, the jury, find the
12 Defendant guilty of assault and battery of a high and
13 aggravated nature; State of South Carolina versus Jamie Giles,
14 indictment number 2015-GS-22-00171, charging the Defendant
15 with attempted murder of Tavera McCrea, we, the jury, find the
16 Defendant guilty of assault and battery in the third --

17 THE COURT: No.

18 THE CLERK: We, we, the jury, find the Defendant not
19 guilty.

20 JUROR: Oh, no, no, no, no.

21 THE COURT: It's been scratched out several times. Here
22 -- hand me -- hand that verdict form back because you've
23 checked several times, struck out several times, checked
24 several times. Please circle the verdict.

25 (Complies with request.)

Verdict

473

1 THE COURT: All right.

2 THE CLERK: You want me to read that again?

3 THE COURT: Please.

4 THE CLERK: Okay. State of South Carolina versus Jamie
5 Giles, indictment number 2015-GS-22-00171, charging the
6 Defendant with attempted murder of Tuvera McCrea, we, the
7 jury, find the Defendant --

8 (Court and Clerk confer.)

9 THE CLERK: We, the jury, find the Defendant guilty of
10 assault and battery in the third degree.

11 State of South Carolina versus Jamie Giles, indictment
12 number 2015-GS-22-00171, charging the Defendant with
13 possession of a weapon during the commission of a violent
14 crime, we, the jury, find the Defendant guilty.

15 State of South Carolina versus Jamie Giles, indictment
16 number 2015-GS-22-00172, charging the Defendant with
17 discharging a firearm into a vehicle or occupied conveyance,
18 we, the jury, find the Defendant guilty.

19 THE COURT: All right. Ladies and gentlemen of the jury,
20 if this -- these are your verdicts please signify by raising
21 your right hand.

22 (All jurors raise right hand.)

23 THE COURT: All right. Let the record reflect that all
24 jurors raised their right hand. Any polling of the jury by
25 the Defendant?

1 MR. HAZZARD: Yes, sir, Your Honor.

2 THE COURT: All right. All right. Ladies and gentlemen,
3 I'm going to poll the jury, and what that means is when I call
4 out your jury number I'm going to ask that you stand, and when
5 you stand I'm going to ask you two questions, number one, is
6 this your -- are these your verdicts, and number two, are
7 these still your verdicts. After you answer those questions
8 you can then be seated.

9 Juror Number 282, are these your verdicts?

10 JUROR 282: Yes, sir.

11 THE COURT: Are they still your verdicts?

12 JUROR 282: Yes, sir.

13 THE COURT: Thank you.

14 Juror Number 13, are these your verdicts?

15 JUROR 13: Yes, sir.

16 THE COURT: Are they still your verdicts?

17 JUROR 13: Yes, sir.

18 THE COURT: Thank you.

19 Juror Number 188, are these your verdicts?

20 JUROR 188: Yes, sir.

21 THE COURT: Are they still your verdicts?

22 JUROR 188: Yes, sir.

23 THE COURT: Thank you.

24 Juror Number 101, are these your verdicts?

25 JUROR 101: Yes, sir.

Polling of Jury

475

1 THE COURT: Are they still your verdicts?
2 JUROR 101: Yes, sir.
3 THE COURT: Thank you.
4 Juror Number 305, are these your verdicts?
5 JUROR 305: Yes, sir.
6 THE COURT: Are they still your verdicts?
7 JUROR 305: Yes, sir.
8 THE COURT: Thank you.
9 Juror Number 156, are these your verdicts?
10 JUROR 156: Yes, sir.
11 THE COURT: Are they still your verdicts?
12 JUROR 156: Yes, sir.
13 THE COURT: Thank you.
14 Juror 131, are these your verdicts?
15 JUROR 131: Yes, sir. Yes, sir.
16 THE COURT: Are they still your verdicts?
17 JUROR 131: Yes, sir.
18 THE COURT: Thank you.
19 Juror 194, are these your verdicts?
20 JUROR 194: Yes, sir.
21 THE COURT: Are they still your verdicts?
22 JUROR 194: Yes, sir.
23 THE COURT: Thank you.
24 Juror 109, are these your verdicts?
25 JUROR 109: Yes, sir.

1 THE COURT: Are they still your verdicts?
2 JUROR 109: Yes, sir.
3 THE COURT: Thank you.
4 Juror 120, are these your verdicts?
5 JUROR 120: Yes, sir.
6 THE COURT: Are they still your verdicts?
7 JUROR 120: Yes, sir.
8 THE COURT: Thank you.
9 Juror 119, are these your verdicts?
10 JUROR 119: Yes, sir.
11 THE COURT: Are they still your verdicts?
12 JUROR 119: Yes, sir.
13 THE COURT: Thank you.
14 Juror 54, are these your verdicts?
15 JUROR 54: Yes, sir.
16 THE COURT: Are they still your verdicts?
17 JUROR 54: Yes, sir.
18 THE COURT: Thank you.
19 All right. Ladies and gentlemen, that will not only
20 conclude your duty as jurors for this case, but it concludes
21 your duty as jurors for the week. We don't have any other
22 cases to call this week, and I want to thank you for your
23 service. I know it's not an easy thing. I know it's not a
24 fun thing. I know it's not what anybody wants to do, but we
25 cannot function as a court without your participation and

Motions

477

1 without your presence, and I really want to thank you for
2 being here this week and for serving on this jury and for
3 performing your duty as jurors. You've done it
4 conscientiously. You've done it diligently, and I want to
5 thank you for your service.

6 I'm going to excuse you for the remainder of the week.
7 You have a one-year disqualification from serving jury duty.
8 You have a three-year exemption. I hope you don't exercise
9 your exemption because we need good jurors, and I want to
10 thank you for your service. You're free to go at this time
11 and thank you again very much.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. Any post-trial motions at this
15 time?

16 MR. HAZZARD: Your Honor, on behalf of the Defense,
17 first, the Defense would like to view the verdict forms.

18 THE COURT: All right.

19 MR. HAZZARD: When the clerk was reading them she said
20 2015-0170 guilty of ABHAN; 2015-0171 then guilty, then not
21 guilty, then guilty of assault and battery third; then 2015-
22 0171 again, which was guilty, and I think that's the
23 possession of a weapon during the commission of a violent
24 crime; and then 0172, I believe, is discharging a firearm into
25 a vehicle.

1 THE COURT: You know, and that's -- what I did is I did
2 write -- I did have the wrong indictment number on the
3 possession of a weapon during the commission of a violent
4 crime. That should have been on the verdict form, indictment
5 2015-GS-22 -- that is 171.

6 MR. HAZZARD: The attempted murders are 170 and 169.

7 THE COURT: 169, that's correct. So I had the wrong
8 indictment number on the verdict form for the attempted murder
9 of Tuvera McCrea, but I do have attempted murder of Tuvera
10 McCrea, if you want to come take a look at it. You're
11 correct.

12 (Counsel for Defense reviews verdict form.)

13 THE COURT: All right. Any motions?

14 MR. HAZZARD: At this time, Your Honor, the Defense makes
15 a motion to set aside the jury verdicts and for a new trial.
16 The Defense submits that even in the light most favorable to
17 the State, there wasn't sufficient evidence for the verdicts.
18 Also, with regard to the form of the verdicts, it appears that
19 there was a great deal of confusion. The Court has indicated
20 on the record things were scratched out, redone, scratched
21 out, checked, not checked. I would submit that for the
22 purpose of determining that justice be fully and completely
23 done, that this verdict and this proceeding be set -- or the
24 verdict be set aside and a new trial granted to the Defendant.

25 THE COURT: All right. Your motion's noted. I'm going

Motions

479

1 to deny it as to indictment 2015-GS-22-170, attempted murder
2 of Daniea Kelly, indictment 2015-GS-22-171, possession of a
3 weapon during the commission of a violent crime and indictment
4 2015-GS-22-172, discharging a firearm into a vehicle. Let me
5 hear from the State on the charge of attempted murder of
6 Tuvera McCrea, if you want to take a look at the verdict
7 sheet. What happened I did have the wrong indictment number,
8 and it looks like they have checked several verdicts,
9 scratched them out, checked again, X'd, scratched it out,
10 initialed and then circled, so if you want to take a look at
11 it.

12 MR. TODD: Your Honor, actually the State's position is
13 you did poll the entire jury. You asked them specifically if
14 that was their, their verdict. I believe that would be
15 curative to any of -- and any mistakes while checking the
16 boxes, but they did, in fact, state their, their belief and
17 their feelings on that.

18 THE COURT: All right. Anything in reply with regard to
19 the charge of attempted murder of Tuvera McCrea? They found
20 him guilty of assault and battery in the third degree on that
21 charge.

22 MR. HAZZARD: Nothing in reply, Your Honor.

23 THE COURT: Okay. All right. I'm going to deny your
24 motion. I'm going to leave it in as a guilty verdict of
25 assault and battery in the third degree.

1 MR. TODD: Your Honor, may I pass forward the sentencing
2 sheets?

3 THE COURT: All right. Any reason -- any other motions
4 by the Defense?

5 MR. HAZZARD: No, Your Honor.

6 THE COURT: All right. Any reason why we can't go ahead
7 and impose sentence?

8 MR. HAZZARD: No, Your Honor.

9 THE COURT: All right. You got the sentencing sheets?

10 MR. TODD: Yes, sir.

11 THE COURT: All right. Thank you.

12 All right. Mr. Hazzard, anything in mitigation?

13 MR. HAZZARD: Your Honor, the Court has seen Mr. Giles'
14 demeanor throughout the course of this trial, has had the
15 opportunity to watch him testify and review him, has heard
16 about his life's story, that he's 41 years old, a life
17 resident of Andrews, a '93 graduate of Andrews High School, a
18 veteran of the United States Navy, medically discharged, that
19 he is a survivor to this point, fortunately for him, of colon
20 cancer, that he has a son who's 20 years old, lives in
21 Augusta, Georgia, and works helping his father, Jimmy, do
22 plumbing and maintenance work in the Andrews area, that his
23 mother, Ida, has been deceased, unfortunately, for some time,
24 and Your Honor has heard the entire facts and circumstances
25 surrounding the case.

1 Jamie has been incarcerated on this charge for 427 days
2 as of today. He has already paid quite a high price for his
3 actions and the decision that he made on that night of
4 December 3rd, 2014. We ask the Court in looking at all of the
5 evidence, all of the facts and circumstances surrounding this
6 case, to fashion a verdict or fashion a sentence that is
7 justice, but justice that is tempered with mercy, Your Honor.

8 THE COURT: All right. Thank you.

9 All right. Mr. Giles, anything you want to say?

10 MR. GILES: Apologize for my actions, and I'm ready to
11 get it over with.

12 THE COURT: All right. Thank you.

13 Any victims wish to speak?

14 MR. TODD: Yes, Your Honor. Mr. Kelly would like to
15 speak.

16 THE COURT: All right. You need to come forward to a
17 microphone. All right, sir. Please give the court reporter
18 your name.

19 MR. KELLY: Daniea Kelly.

20 THE COURT: All right. Mr. Kelly, what would you like to
21 say?

22 MR. KELLY: I just ask that the Court just take into
23 consideration of my lifetime of pain and suffering injuries
24 with a rod being in my leg which enables me to even run or
25 bend my leg or do any squats or anything. I just ask that

1 they take into consideration I still cough up blood because of
2 a bullet still lodged in my chest that they couldn't remove
3 and I still suffer a lot of pain, you know, on a daily base on
4 that. So I ask the Court take that in consideration in
5 sentencing.

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

7 MR. KELLY: Thank you.

8 THE COURT: Anyone else want to speak?

9 MR. TODD: No, Your Honor.

10 THE COURT: All right. Prior record?

11 MR. TODD: Your Honor, he has a record which we had
12 discussed previously, and Your Honor, I would like to pass
13 forward his sentencing sheets and the indictments for these
14 charges he was crime -- charged with. He has an assault with
15 intent to kill, and he also has an ABHAN. Both of the --
16 these incidents involved guns and shooting people. So we have
17 a pattern of behavior, Your Honor, that I believe the Court
18 should take into consideration in giving the sentence.

19 THE COURT: All right.

20 MR. HAZZARD: The Court's indulgence, Your Honor.

21 THE COURT: All right. All right. Thank you.

22 All right. On indictment 2015-GS-22-170, conviction for
23 assault and battery of a high and aggravated nature, the
24 sentence of the Court is that you be confined to the State
25 Department of Corrections for 20 years; 2015-GS-22-172, for

Sentencing

483

1 discharging a firearm into an occupied vehicle, the sentence
2 of the Court is that you be confined to the State Department
3 of Corrections for 10 years; on charge 2015-GS-22-171,
4 possession of a firearm during the commission of a violent
5 crime, the sentence of the Court is that you be confined to
6 the State Department of Corrections for five years; on 2015-
7 GS-22-169, assault and battery in the third degree, the
8 sentence of the Court is that you be confined to the county
9 detention center for 30 days. You'll receive credit for any
10 time served thus far. The sentences will run concurrent.

11 All right. Anything further?

12 MR. TODD: Nothing from the State, Your Honor.

13 MR. HAZZARD: We'd simply ask that the sentence sheets
14 actually reflect 427 days.

15 THE COURT: Yeah. I'll put it on all of them. I, I put
16 it on the assault and battery third degree, but I'll go back
17 and I'll put that on all of them.

18 MR. HAZZARD: Thank you, sir.

19 THE COURT: Thank you.

20 All right. Anything further from the State?

21 MR. TODD: No, Your Honor.

22 THE COURT: Anything further from the Defense?

23 MR. HAZZARD: Not with regard to this matter, Your Honor.

24 THE COURT: All right.

25 (Adjourned.)

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Trial held in the case of The State v. Jamie Lahuane Giles, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on February 1 through 4, 2016.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Grace L. Hurley, CVR-CM-M
Official Reporter

April 5, 2016.

WITNESSES

Andrews Police Department

DOCKET NO. 2015GS2200170

The State of South Carolina

County of Georgetown

Richard D. Todd, Jr.

14G01159

COURT OF GENERAL SESSIONS

FEBRUARY, 2015 TERM

ARREST WARRANT NUMBER

2014A2210800173

CDR: 3410 §16-03-0029

DOI: 12/3/2014

THE STATE

vs.

JAMIE LAHUANE GILES

JONES AVE

ANDREWS, SC 29510-3107

DOB:

SSN:

B / M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Ronald W. Hazzard

Indictment for

VERDICT

ATTEMPTED MURDER

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

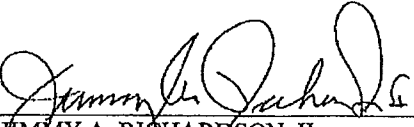
At a Court of General Sessions, convened on February 25, 2015, the Grand Jurors of Georgetown County present upon their oath:

ATTEMPTED MURDER

CDR: 3410 §16-03-0029

That Jamie Lahuane Giles did in Georgetown County on or about December 3, 2014 with intent to kill Danica Kelly, attempt to kill the victim with malice aforethought, either expressed or implied in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Andrews Police Department

487

REST WARRANT NUMBER

DIRECT INDICTMENT

CDR: 0549 §16-23-0490

DOI: 12/3/2014

ACTION OF GRAND JURY

TRUE BILL

Janet Langley
person of Grand Jury
Date: 2-25-15

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS2200171

The State of South Carolina

County of Georgetown

Richard D. Todd, Jr.

14G01159

COURT OF GENERAL SESSIONS

FEBRUARY, 2015 TERM

THE STATE

vs.

JAMIE LAHUANE GILES

JONES AVE

ANDREWS, SC 29510-3107

DOB:

SSN:

B / M

ATTORNEY: Ronald W. Hazzard

Indictment for

POSSESSION OF A WEAPON
DURING THE COMMISSION OF A
VIOLENT CRIME

Jimmy A. Richardson, II, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on February 25, 2015, the Grand Jurors of Georgetown County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 §16-23-0490

That Jamie Lahuane Giles did in Georgetown County, on or about December 3, 2014, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Andrews Police Department

DOCKET NO. 2015GS2200172

The State of South Carolina

County of Georgetown

Richard D. Todd, Jr.

14G01159

COURT OF GENERAL SESSIONS

FEBRUARY, 2015 TERM

REST WARRANT NUMBER

DIRECT INDICTMENT

CDR: 2907 §16-23-0440(B)

DOI: 12/3/2014

THE STATE

vs.

JAMIE LAHUANE GILES

JONES AVE

ANDREWS, SC 29510-3107

DOB:

SSN:

B / M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Ronald W. Hazzard

Indictment for

DISCHARGING A FIREARM INTO
OCCUPIED CONVEYANCE

Jimmy A. Richardson, II, Solicitor

VERDICT

Barret Langley
person of Grand Jury
Date: 2-25-15

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

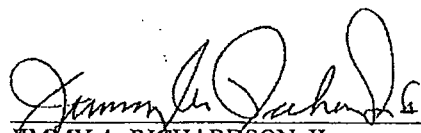
At a Court of General Sessions, convened on February 25, 2015, the Grand Jurors of Georgetown County present upon their oath:

DISCHARGING FIREARM INTO OCCUPIED CONVEYANCE

CDR: 2907 §16-23-0440(B)

That Jamie Lahuane Giles did in Georgetown on or about December 3, 2014, discharge or cause to be discharged unlawfully, firearms at or into a vehicle, aircraft, watercraft, or other conveyance, device, or equipment, while it was occupied, in violation of Section 16-23-0440, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

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 South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19TH day of July, 2016

RECEIVED

JUL 19 2016

SC Court of Appeals

491

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 South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19TH day of July, 2016