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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY

Donald B. Hocker, Circuit Court Judge

APR 07 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MIDREVIUS AMONE BROWN,

APPELLANT

APPELLATE CASE NO. 2013-002764

RECORD ON APPEAL

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State of South Carolina)
County of Greenwood) Court of General Sessions
) 2013-GS-24-01126

State of South Carolina)
 vs.) Transcript of Record
)
Medrevious Amone Brown)
 DEFENDANT)

November 7, 2013
Greenwood, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Judge

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

Shannon Odom, Assistant Solicitor
Attorney for the State

Robert Tinsley, Esq.
Shane Goranson, Assistant Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

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EXHIBITS

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(There were no exhibits introduced.)

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1 THE COURT: All right.

2 MS. ODOM: Your Honor, standing before you is
3 Medrevious Brown. He is here on a motion to reconsider
4 bond. Your Honor heard his bond motion back in May and
5 set bond at \$250,000.00. The charges he is on are DUS,
6 failure to stop for a blue light, attempted murder,
7 possession of a weapon during a violent crime, breaking
8 and entering into a motor vehicle and grand larceny. He
9 is represented for bond purposes by Robert Tinsley of the
10 Greenwood Bar. And, Your Honor, it is my understanding
11 that the defendant has written out a motion for a speedy
12 trial. It is not in the clerk's file and I just heard
13 about this this morning but if that is something that you
14 want to hear I will be glad to speak on it this morning.

15 THE COURT: All right. Mr. Tinsley, let me hear you
16 on bond first.

17 MR. TINSLEY: Yes, Judge, I am joined by Shane
18 Goranson who is his underlying attorney on the charges.
19 Your Honor, a lot of water has gone under the bridge since
20 we did this bond. One, in addition to what I have written
21 out there he had a violation of probation, never got out
22 of jail of course. But they brought him up and violated
23 and terminated it. He went to the Department, he did the
24 time, didn't get in any trouble down there, got out and
25 came back to Greenwood County jail still under a quarter

1 of a million dollar bond. He attempted to file a speedy
2 file motion which probably constitutionally is acceptable.
3 It is not what I would do or Mr. Goranson would do. Of
4 course, when he was down at the prison, Mr. Goranson is so
5 busy in courts that he doesn't have time to go down there
6 and, you know, and draw it up himself. But he is prepared
7 to go ahead and represent him but it is still our
8 contention, he has lived with his grandparents over here
9 at 215 Jacob Street, John and Mary Williams. That he
10 could get a job, curfew at night. Since he has filed this
11 speedy trial motion, what August the 9th?

12 MR. BROWN: Yes, sir.

13 MR. TINSLEY: I think that all of these things
14 considered along with what I wrote is a cause for some
15 sort of release of Mr. Brown because he is working on a
16 year and he, it is kind of a unique circumstance in
17 particular with that violation. I don't know why the DUS
18 wasn't moved at that time.

19 THE COURT: What does he have left still pending?

20 MS. ODOM: He has got DUS, failure to stop for a blue
21 light, attempted murder, possession of a weapon during a
22 violent crime, auto break in and a grand larceny. And,
23 Judge, I can speak to the underlying facts if you want to
24 hear a little bit about that. Mr. Tinsley said that he
25 went to the Department of Corrections on a probation

1 violation, is that right?

2 MR. TINSLEY: Yes.

3 MS. ODOM: It was my understanding, at least a couple
4 of months that probation told me they were holding off
5 with doing anything with him and the probation warrant is
6 still in the clerk's file. So if he says he went down
7 there I guess he did but probation had told me that they
8 weren't doing anything on his violation.

9 THE COURT: Where does he stand?

10 MR. GORANSON: They have terminated his probation.

11 MR. TINSLEY: And he went to the Department.

12 MR. GORANSON: Yes.

13 THE COURT: You don't handle that case anyway, you
14 just see the original warrant there.

15 MS. ODOM: I do.

16 MR. GORANSON: I handled that, he did admit to a
17 violation of probation.

18 MS. ODOM: I am not sure what condition he violated
19 on but if he was on probation and violated for whatever
20 reason, he was being supervised and that didn't work out,
21 picks up these new charges that are extremely serious. I
22 just don't believe he is entitled to a bond reduction.
23 Your Honor, as far as a speedy trial goes, I can try this
24 case, probably try it next week but more realistically the
25 week after next, the week of November 18th. One of the

1 victim's is here with me. I have never had a problem of
2 getting ahold of them. Mr. Duncan is the victim on the
3 grand larceny and the B&E motor vehicle and those
4 allegations that the defendant went to his vehicle and
5 stole a gun and a large amount of cash.

6 THE COURT: Is that the case you would like to try
7 would be that one? The attempted murder is something
8 else, isn't it?

9 MR. GORANSON: That's right.

10 MS. ODOM: It is. Now the victim on the attempted
11 murder is Mr. Duncan's stepson. And those allegations are
12 that shots were fired. And then the failure to stop for a
13 blue light was sometime in between those when law
14 enforcement tried to stop Mr. Brown.

15 THE COURT: This is an event and then some other
16 event and then failure to stop was the last event.

17 MS. ODOM: Right. There are codefendants that I need
18 to speak with but I can try this case November 18th but
19 absolutely I could try it in December. I just need to
20 know if Mr. Goranson is going to be the defendant's
21 attorney. I know at one time the defendant had wanted to
22 fire Mr. Goranson or Mr. Tinsley, is he just going to be
23 on the bond. I just need to know who is going to
24 represent him.

25 MR. TINSLEY: I told you I am just on the bond and

1 Mr. Goranson is his attorney. It is our position, it is
2 funny that after the alleged grand larceny motor vehicle
3 which the evidence against Mr. Brown is that some young
4 kid who said he was involved with it. The video hasn't
5 shown anything to that affect. And then the other victim,
6 his stepson shows up on his side of town from the opposite
7 end of town and the shooting occurred. Nobody was injured
8 in any of this physically. I think, one good option would
9 be that if he, you know, if not be tried during the two
10 week term that he would be ordered released and at least
11 be allowed to try to live with his grandparents and work
12 and get back on track. We are overcrowded over there at
13 the jail.

14 THE COURT: All right, hang on. Ms. Odom gets this
15 ready to try the week of the 18th are you ready?

16 MR. GORANSON: We have not been provided with the key
17 evidence that is in the possession of law enforcement. It
18 is a videotape.

19 THE COURT: Can you get the videotape to him. If you
20 get the videotape can you try it?

21 MR. GORANSON: Yes, I think so.

22 THE COURT: She says she can.

23 MR. GORANSON: I mean we obviously need time to
24 prepare based on what is in the video.

25 THE COURT: Can you get the videotape to him by the

1 end of the week or by tomorrow?

2 MS. ODOM: I am going over to see law enforcement
3 today on other cases so I can certainly get him the video.
4 But, Your Honor, I would like to look at the cases to
5 determine which one I definitely want to try if I can have
6 until tomorrow to tell Mr. Goranson which one will be
7 tried.

8 THE COURT: Tomorrow by 2:00 o'clock you got to tell
9 him what you are going to call on the 18th. I am going to
10 be here on the 18th, 19th doing general sessions non-jury.
11 What I will do is take this under advisement until then,
12 you will know whether you are going forward, you will know
13 whether you have got everything and which case you are
14 going forward for. If there is anything pretrial or a
15 status conference we need on this case we are going to do
16 it then.

17 MS. ODOM: And, Your Honor, one more thing. There is
18 a CSC that is up first that week and then a burglary
19 first. So we wouldn't be first but I wouldn't want things
20 in front of us affecting this case. So are you saying for
21 certain if this isn't called that the defendant will get
22 out on a PR bond?

23 THE COURT: No, I am taking it under advisement until
24 the 18th and we will have a better idea what is coming
25 down the pipe and I will make my decision on this bond

1 motion then. But I won't make any decision. Right now
2 you are telling me you think very likely this is the third
3 case?

4 MS. ODOM: Yes.

5 THE COURT: And Mr. Goranson is involved in case one
6 and two?

7 MS. ODOM: The first case is with Patricia Bolin, but
8 I don't think he is involved. The second case is with
9 Townes Jones and myself. So he is not involved.

10 THE COURT: So he is not being extracted by the prior
11 first two cases.

12 MS. ODOM: I think he has a case next week but I am
13 not sure how that would affect.

14 THE COURT: Any chance you can get it ready the prior
15 week?

16 MS. ODOM: For next week?

17 THE COURT: He probably won't be ready but I was just
18 asking.

19 MR. GORANSON: I understand her having me, I believe
20 she is going to try everything she can to get that video
21 we have been waiting on for about a year.

22 THE COURT: General sessions non-jury is what I am
23 scheduled for that week. If y'all are ready to go the
24 18th and the jury is here and I get permission from Court
25 Administration to pick a jury and try it in this building

1 somewhere and we do two jury trials simultaneously. Do
2 y'all want to go with that.

3 MS. ODOM: I wouldn't have an issue with it. The
4 only problem, we have got that front courtroom that we
5 have done trials in before. I have no issue with that.
6 The only thing that I think might would pop up was if we
7 had the first jury in here going and we pick a jury and
8 start going in the other courtroom as if, you know, if
9 there were a conviction and an appeal issue is that the
10 second trial didn't have pick of the entire jury panel.

11 THE COURT: We have picked two juries before and we
12 line them up, have jury one and jury and two.

13 MS. ODOM: That won't be an issue.

14 THE COURT: That won't be an issue. You have got a
15 fair jury from the jury venire, citizens of Greenwood
16 County, that is what is required. Numerous times I have
17 picked jury one and jury two, dismiss the panel and then
18 call the first panel back and start after lunch and then
19 the second panel is on call to come back Tuesday,
20 Wednesday, whatever. So that is not a problem. As long
21 as during qualifications we find enough to constitute 30
22 on the list from which the clerk to call, as long as we
23 have got enough it is okay.

24 MS. ODOM: Your Honor, I think that is an excellent
25 idea because I don't think it would take a whole lot of

1 time, maybe a couple of days.

2 THE COURT: I a scheduled for the back side of the
3 non-jury week. I can't imagine Court Administration
4 telling me I can't do it. Y'all are responsible for
5 communicating with one another to let me know if y'all
6 want to do that.

7 MR. GORANSON: If you will hear Mr. Brown on his
8 motion to relieve me.

9 THE COURT: On his motion to relieve you?

10 MR. GORANSON: Yes.

11 THE COURT: You want to get rid of this guy?

12 MR. BROWN: I haven't had time to speak with Mr.
13 Goranson about my case or what is going on.

14 THE COURT: You have this speedy trial motion,
15 assuming I would grant your motion and you get a trial in
16 ten days, your prosecutor is ready. You have two defense
17 lawyers standing here with you in a different fashion. So
18 what is your, what do you want to do?

19 MR. BROWN: I would like to, you know, speak with
20 Shane Goranson. Before I do that, before I would fire him
21 because, like I say, I haven't received, as far as what I
22 need done for my case. And as far as that speedy trial
23 motion, that was just a rough draft of what I just copied.
24 Like I said, I filled in the blanks and I turned it in to
25 the Clerk of Court and I spoke to Shane Goranson then.

1 And he said that he was aware of it. I don't know how she
2 is not aware of it.

3 THE COURT: Aware of what.

4 MR. BROWN: The speedy trial that I put in.

5 THE COURT: She knew of it, she just didn't see it in
6 the clerk's file.

7 MR. BROWN: Okay. I had it notarized and everything.
8 Proper precautions took place.

9 MR. TINSLEY: In conclusion I will just say, Your
10 Honor, that he is from Greenwood, all of his ties are
11 here, he lived with his grandparents and that he is not a
12 threat to the community. In our opinion he is off of any
13 probation or anything from the past. He just needs to sit
14 down and talk with Mr. Goranson. He doesn't realize the
15 magnitude of his job, you know, with the number of cases
16 he gets and all.

17 THE COURT: He will have a couple of minutes I
18 imagine right now to speak with him.

19 MR. GORANSON: Sure.

20 THE COURT: You talk with him right now. And here is
21 the thing. Mr. Tinsley is not ready to go on trial, he is
22 not really a candidate to represent you on the 18th. Mr.
23 Goranson is a lot more familiar with the file, he needs
24 another piece of evidence that Ms. Odom is going to get
25 for him today or tomorrow. He can be ready on the 18th.

1 If I grant your motion to relieve him and appoint someone
2 else, another attorney to represent you, that lawyer is
3 very unlikely to be ready to go to trial on Monday, the
4 18th.

5 MR. TINSLEY: Or even Wednesday the 20th.

6 THE COURT: The problem I have got is, if I grant
7 your motion and cut him loose your motion for a speedy
8 trial is going to kind of lose some wind in the sails
9 because a new lawyer can't get up to speed in ten days.
10 He is more or less ready except for filling in a few spots
11 with the evidence he is going to get. Just so you
12 understand.

13 MR. BROWN: I understand but, you know, so be it. It
14 would be somewhere around January the 9th where the six
15 months would be up for my speedy trial. So if I did
16 decide to relieve Shane Goranson on my case then another
17 attorney would have time to, you know, go over my case. I
18 have been here since March 26th, I have requested all of
19 the evidence from Ms. Odom and haven't come up with it
20 yet.

21 THE COURT: Talk to Mr. Goranson and Mr. Goranson
22 will let Ms. Odom know and the two of them will let me
23 know what you want to do.

24 MR. BROWN: All right.

25 MR. TINSLEY: So my motion is in abeyance until the

1 week of the 18th. Thank you, Your Honor.

2 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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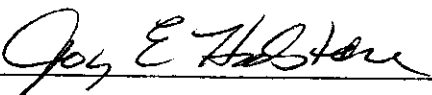
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1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Greenwood, South
14 Carolina on the 7th day of November, 2013.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17
1819 March 5, 2014
2021 
2223 Joy E. Holston, Court Reporter
24

25 My Commission expires: March 13, 2016

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,)
)
 PLAINTIFF,)
)
 -VS-)
)
 MIDREVIOUS BROWN,)
)
 DEFENDANT.)
 _____)

2013-GS-24-01126
2013-GS-24-00127

TRANSCRIPT OF RECORD

NOVEMBER 18-22, 2013
GREENWOOD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE, AND A JURY

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

ATTORNEY FOR PLAINTIFF:

SHANNON ODOM, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

SHANE GORANSON, ESQUIRE
THOMAS ADDUCCI, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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1 MS. NELSON: So I asked Shane to look --

2 THE COURT: Sure.

3 MS. NELSON: -- after Shannon saw the pending charge
4 and I just didn't -- I didn't recognize --

5 THE COURT: Right.

6 MS. NELSON: -- the name. I didn't want the court to
7 think I was --

8 THE COURT: No, no. The Court would not think that
9 because you do have one or two pending cases and -- you
10 know, on your desk at any given time, right?

11 MS. NELSON: I have a few.

12 THE COURT: Okay. All right. I guess the only other
13 matter -- and maybe you all have some other things we need
14 to talk about. Back in chambers when we were reviewing voir
15 dire questions we reviewed the motion that the Defense filed
16 to include the use of the word victim in describing Kelvin
17 Martin, and I think I had indicated, and certainly either
18 side or both sides can put anything on the record that you
19 want to in this particular matter, that I would give in my
20 preliminary charge to the jury that if they hear the term or
21 word victim that they are to consider that, you know, an
22 alleged victim, because right now we're only dealing with
23 allegations and it's the State's burden to prove each and
24 every element of the offense, the allegations, beyond a
25 reasonable doubt. I think the Solicitor had indicated some

1 concern that possibly some of her witnesses may
2 inadvertently use the word victim. Certainly the motion by
3 the State is so noted. And hopefully the -- kind of a
4 preliminary curative instruction will take care of any issue
5 on that -- on that matter.

6 With that said, anything on the record on that
7 particular point by the State?

8 MS. ODOM: No, sir.

9 THE COURT: All right. Defense anything on that?

10 MR. GORANSON: No, sir, Your Honor.

11 THE COURT: Okay. Thank you very much. Anything else
12 we need to take up? You said, Solicitor, that there may be
13 some motion that we'll need to deal with in the morning?

14 MS. ODOM: Your Honor, this case does involve a photo
15 lineup, so I'm not sure if we'll need to do a *Neil v.*
16 *Biggers* hearing.

17 THE COURT: Okay. Any anticipation on that?

18 MR. GORANSON: There may be some other motions that
19 we're making tomorrow morning, Your Honor, but -- and *Neil*
20 *v. Biggers* might be one. We -- I'm still working on the
21 case basically.

22 THE COURT: Okay. I understand. Well, let's plan then
23 -- let's start those motions at 9:00. Madame Court
24 Reporter, is that okay with you?

25 COURT REPORTER: Yes, sir.

1 THE COURT: All right. So let's start those at 9:00.
2 Hopefully we can cover everything.

3 Now, the jury typically comes through the courtroom to
4 get to the jury room, right?

5 THE BAILIFF: Yes.

6 THE COURT: You'll just keep them out there?

7 THE BAILIFF: Yes.

8 THE COURT: Okay, good. So we'll be at recess until
9 9:00 in the morning. All right. Thank you.

10 TRIAL DAY 2 - 11/19/2013

11 THE COURT: We're starting the case of *State versus*
12 *Brown* and I understand we've got some pretrial matters that
13 we need to tend to. Okay? Mr. Goranson, you're standing,
14 so I'll turn the record over to you.

15 MR. GORANSON: Thank you, Your Honor. Basically this
16 morning I come before you, and Mr. Brown comes before you,
17 on a motion to dismiss the charges against him in this case.
18 By way of background, we -- meaning our office, received an
19 application for Mr. Brown for our services. We filed a Rule
20 5 Brady Motion. That was received by the Solicitor's Office
21 on April 18th. Apparently there was a little bit of --
22 well, there was some discrepancies in his representation.
23 Mr. Robert Tinsley was going to represent Mr. Brown for a
24 bond hearing and the Solicitor's Office had Mr. Tinsley down
25 as his lawyer. On July -- sometime late July I told the

1 Solicitor that I needed the information in Mr. Brown's case
2 because I was going to be representing him from there on
3 out. On July 30th I received an incident report and a
4 criminal history from Mr. Brown.

5 I should also note that Mr. Brown has been locked up
6 every day since his arrest on March 25th. He has not been
7 released from jail. He has been in custody the entire time.

8 So on that date, July 30th, I received an incident
9 report and a criminal history from Mr. Brown. Then later on
10 -- we have to skip all the way to November 15th is when I
11 received the photo lineup along with the appropriate
12 paperwork for Mr. Brown's case. That's just -- or actually
13 starting the --

14 THE COURT: Last Friday.

15 MR. GORANSON: Four days ago, yeah. Additionally, on
16 that day I got a copy of an evidence log and I was made
17 aware of some shell casings that were found at the scene
18 just prior to receiving the evidence log. But the only
19 reason I found out about that, Your Honor, is because I
20 asked the Solicitor what she intended to introduce into
21 evidence. But if you look at this packet that I have here,
22 and I'm going to hand this up, the incident report mentions
23 absolutely nothing about any shell casings that were
24 gathered at the scene of the supposed shooting. I did not
25 receive a copy of the evidence log, so I did not have any

1 idea that there were these other shell casings at the scene.

2 Obviously that changes a defense in a shooting case.

3 And, Your Honor, Mr. Brown does have Sixth Amendment rights
4 of counsel. He does have a Sixth Amendment right to present
5 a full defense. And so, what I'm asking you to do is
6 dismiss this case. Now, the reason I am asking you to do
7 that is because our defense has been irreparably harmed by
8 the State's actions in this case. You can see by the
9 evidence log that the gun that was supposedly used in this
10 shooting was returned to the brother or the cousin of the
11 accuser. And they list the same address for those people,

12 Ashcroft Drive. That gun was returned to Tyranna Martin
13 on May 29th, 2013 before I had any opportunity to inspect or
14 investigate anything about this shooting. We could have had
15 ballistics testing done to determine whether the shell
16 casings fired from inside the gun -- inside the car, excuse
17 me, of the accuser, Kelvin Martin, matched the gun. We
18 could have had ballistics testing done to determine whether
19 shell casings that were supposedly found at the scene of the
20 shooting matched the gun that the accuser had showing the
21 accuser was the only one who fired any rounds that day, or
22 it could show that that gun was not used at all in the
23 shooting that day. And the reason that that is possible is
24 because is because after riding around with the accuser one
25 of the police officers involved, Captain McAllister asked

1 the accuser to retrieve the gun from where he had stashed it
2 with his cousin. And so, he goes off camera, comes back
3 with a gun, don't even know if it's the one that matches the
4 shell casings that are in evidence, and says yeah, this is
5 the gun. It's got an empty clip. So that gun is gone.
6 It's no longer in evidence. It hasn't been there since May
7 29th. I only knew about the two shell casings that were
8 found in the car when I received the incident report on July
9 30th. I just found out about the six shell casings that
10 were supposedly found at the scene on Friday. But there's -
11 - have you look at *Cheeseboro. State v. Cheeseboro*. I've
12 got a cite for you. Yeah, that was a case where the South
13 Carolina Supreme Court back in 2001, the cite is 346 S.C.
14 526, 552 S.E.2d 300. "To establish a due process violation
15 based on the destruction of evidence the Defendant must
16 demonstrate that, one, the State destroyed the evidence in
17 bad faith, or that the evidence possessed in a exculpatory
18 value apparent before the evidence was destroyed and the
19 Defendant cannot obtain other evidence of comparable value
20 by other means." Now, we can't exactly know whether this
21 gun possessed exculpatory value, but it is our position that
22 it did, and it is our position that it needed to be tested
23 before it was returned to anyone and released from the
24 investigation in this case.

25 As we all know, that the police, pursuant to *Kyles v.*

1 Whitley, and for purposes of Brady, the prosecution team
2 includes not only the prosecution but also includes the law
3 enforcement personnel. And the prosecutor's office cannot
4 get around a Brady obligation to disclose material evidence
5 by keeping itself in ignorance or compartmentalizing
6 information about different aspects of the case. We're not
7 saying it's bad faith on the part of the Solicitor's Office
8 here, Your Honor. It doesn't matter though for this line of
9 inquiry.

10 This case rests on the credibility of one witness who
11 lied repeatedly to the investigating officer. And
12 everything, the evidence -- all the evidence comes from him;
13 the gun, shell casings, it all comes from him. And we're --
14 we have been materially hampered in putting the State's case
15 to the test. Now, I see that as a PCR issue in that from
16 4th Circuit S.C. 2011, *Elmore v. Ozmint*, Sixth Amendment
17 violated where the defense counsel did not independently
18 investigate analyzed forensic evidence. Obviously
19 ballistics testing in this case could have proved to be
20 completely exculpatory or completely inculpatory. We just -
21 - we won't know and we've lost that chance forever. And I
22 don't think that Mr. Brown should have to suffer the
23 consequences for that when he's facing 30 years in prison on
24 this charge.

25 Just to make sure I cover everything, evidence is

1 favorable recused if it weakens any aspect of the State's
2 case. That's *Kyles*.

3 THE COURT: What is that, *Kyles* versus -- what was
4 that?

5 MR. GORANSON: *Kyles* versus *Whitley*, Your Honor.

6 THE COURT: *Whitely*?

7 MR. GORANSON: Yes, sir.

8 THE COURT: And do you have a cite on that?

9 MR. GORANSON: I do. 514 U.S. 419.

10 THE COURT: And the other case, *Elmore* versus --

11 MR. GORANSON: *Ozmint*, 661 F3rd 783. That's at 859.
12 That's a relatively lengthy opinion.

13 In *Kyles* the disclosure of inconsistent statements
14 would have resulted in a markedly weaker case for the state
15 and a markedly stronger one for the defense, and that's
16 essentially what we have here, Your Honor. With that gun
17 and the ballistics testing done, the case would be either
18 much stronger for the state or much stronger for the defense
19 and we've been hampered in pursuing that information.

20 THE COURT: So the gun that the State maintains was
21 used by the Defendant --

22 MS. ODOM: Your Honor --

23 MR. GORANSON: By the accuser.

24 MS. ODOM: If I could offer a little factual
25 background. I know you're not --

1 THE COURT: That may be helpful so I can get a little
2 bit better handle on where the Defense is coming from.

3 MS. ODOM: Yes, sir. Back in March of this year
4 officers responded to a shooting. Captain McAllister, who's
5 with me today, met with the victim who had left the shooting
6 -- fled the shooting and went to an apartment complex.
7 Captain McAllister spoke with the victim. The back
8 windshield of the victim's car and the rear passenger side
9 window had been shot out and there was -- the trunk had been
10 shot as well. The victim told Captain McAllister that he
11 was driving down the street and the Defendant, and someone
12 else who is with the Defendant he knew as Bow Wow, and he
13 knew the Defendant as Dre, they flagged him down. Asked --
14 you know, motioned for him to come over there so they could
15 speak with him. When he went over there an argument ensued.
16 It had been alleged that Dre had broken into the victim's
17 step-father's car. That this Defendant, along with a
18 different Co-Defendant, had broken into the victim's step-
19 father's car --

20 THE COURT: Not the car that was shot?

21 MS. ODOM: Not the car that was shot. And stole a
22 large amount of cash and a gun. So on this day when the
23 victim pulled up to the Defendant and Bow Wow an argument
24 ensued and Dre pulled out a gun and shot fired -- fired
25 several shots at the victim as the victim drove away.

1 Initially the victim told the officer that he did not fire
2 any shots back at the Defendant. However, the officer found
3 two shell casings in the victim's car, and after speaking
4 with the victim, the victim then admitted yes, he did fire
5 some shots back at the Defendant. So the gun that was in
6 evidence is the gun the victim used to fire shots back at
7 the Defendant. It's not the gun that the Defendant was
8 using. So --

9 THE COURT: Where's the gun that is claimed that the
10 Defendant is using -- that the Defendant used?

11 MS. ODOM: It was never recovered. So that gun that
12 the victim gave to Captain McAllister that day that he
13 admitted to using when he returned fire was actually -- it
14 belonged to a family and the gun was released to a family
15 member.

16 Now, that's just a little factual background. I'm not
17 sure if you want me to go ahead and respond to Mr. Goranson
18 --

19 MR. GORANSON: Well, I'd like to add something to that.

20 THE COURT: Yeah, add to it, and then let me ask Mr.
21 Goranson maybe a couple of questions. And then I'm
22 certainly going to give you full opportunity to respond to
23 the legal arguments. I'm still trying to get a good handle
24 on --

25 MR. GORANSON: Sure.

1 THE COURT: -- on the allegations here.

2 MR. GORANSON: Sure. Essentially the officer replied
3 to a Phoenix Place apartment complex where the accuser, Mr.
4 Martin, was waiting for the officer. The officer asked him
5 repeatedly -- somebody told him repeatedly somebody shot at
6 his car, somebody shot at his car, somebody shot at his car.
7 Finally the officer says -- gives him the legal definition
8 of self-defense and where it's legal to hold a gun in the
9 car and he says yes, okay, I shot.

10 The reason that the gun is so significant in this case,
11 Your Honor, is because they're both 380 -- all the rounds
12 are 380 caliber. They could all have been fired from the
13 same exact weapon. And you have one person who's mad about
14 some money supposedly being stolen saying -- after lying
15 repeatedly, saying that Mr. Brown shot -- shot at the
16 accuser. But we don't know which bullets came from where.
17 And, you know, I would like to know -- I think I did say
18 earlier that there's nowhere in any of this paperwork that I
19 have where these shell casings were supposedly found.
20 There's no pictures of any shell casings on the ground. We
21 spoke -- the Solicitor and I, Mr. Adducci, had a
22 conversation with the officer who's on the chain of custody
23 on the evidence log and he says, I don't know why my name is
24 tied to those six rounds. Those six shells. I didn't find
25 them, McClinton did. He just handed them to me. So we have

1 no idea where they came from. We have no way of preparing a
2 defense for that. And there's no bullets found anywhere in
3 the accuser's car. No bullets passed through the vehicle
4 and no bullets are found. No bullet holes in his car. And
5 he's saying that he was 30 feet away from the shooter. No
6 bullet holes in his car.

7 Your Honor, this rests on the credibility of somebody
8 who lied to the police repeatedly. There's no evidence to
9 support his story. We have no way of preparing a defense
10 when we cannot perform ballistics testing on the gun that
11 could have potentially fired every since round in this case.
12 And Mr. Brown should not be hampered in his defense because
13 they released a weapon that was involved in a shooting with
14 an ongoing investigation.

15 THE COURT: All right. So we've got two shell casings
16 found in the victim's car, okay, which the State maintains
17 they came from a family member's gun that the victim did
18 later admit yes, I fired back at the Defendant. I mean,
19 that's the State's position. And then you have six shell
20 casings that we have. The Defense doesn't know where you
21 maintain they came from. Where does the State maintain that
22 these six shell cases -- where they were found?

23 MS. ODOM: The parking lot.

24 THE COURT: In the parking lot.

25 MR. GORANSON: Could I ask what document references

1 that?

2 THE COURT: Where's that information from? I mean,
3 which witness is going to --

4 MS. ODOM: McClinton.

5 THE COURT: All right. So --

6 MR. GORANSON: That's not a document, Your Honor.
7 McClinton prepared no documents in this case.

8 THE COURT: Right. Okay. Let me hear from the State.
9 We'll land the plane on this eventually. I'm still -- still
10 a little confused, but that's -- that's sometimes pretty
11 easy for me to be confused. But, Solicitor, let me -- let
12 me just go ahead and hear from you and we'll --

13 MS. ODOM: And, Your Honor, just a little more
14 background. I know you heard a motion last week for the
15 Defendant by Mr. Goranson. So I gave you a little
16 background then, but I'm just going to reiterate --

17 THE COURT: Reiterate, because I may not remember what
18 you told me last week.

19 MS. ODOM: The week before last, November the 7th, I
20 had been in Abbeville Court that week but I came back to
21 Greenwood and the Defendant had made a motion -- had made
22 another motion for a bond hearing for Mr. Tinsley, and then
23 he also -- he made a motion for a speedy trial. And so,
24 Judge Griffith asked me when I could have this case ready.

25 THE COURT: I do remember that. You telling me that

1 last week.

2 MS. ODOM: And I told him I thought it was a fairly
3 straightforward case. That I could probably have it ready
4 this week. But Mr. Goranson, he didn't have a lot of the
5 items. He didn't have a lot -- or there's not a lot to it,
6 but he had an incident report and criminal history, but that
7 I would try to get it ready for this week. So things have
8 been trickling in. We were in court last week. We've been
9 in court this week. This is actually my fifth week in court
10 in two different counties. But I have been speaking with
11 the officers last week and this week; Captain McAllister,
12 Officer Shockley, Kenya Griffin the evidence custodian. You
13 know, we've all been trying to get this ready to get it
14 together. So the reason this is going kind of piecemeal is
15 because the Defendant asked for a speedy trial and the judge
16 asked me to get it ready and I am. Now --

17 THE COURT: Was any -- and I understand that and, you
18 know, maybe if you had -- you may have preferred to have a
19 little more time to get this together. I understand what is
20 all -- what's taken place on that.

21 MS. ODOM: So, but just -- you know, that's what
22 happened two weeks ago --

23 THE COURT: Right.

24 MS. ODOM: -- for a speedy trial. And so, I understand
25 Mr. Goranson is saying, you know, we just got this, we just

1 got this, we haven't had time. Well, we just knew about
2 that this trial would be called this week 12 days ago, 10
3 days ago, however long it's been. So, you know, I kind of
4 feel like they're arguing both sides of it. They're wanting
5 their cake and eating it, too. You know, they wanted this
6 called as soon as they could, but then again they knew what
7 they had. Now, that's just a little background why this is
8 being called so quickly after the speedy trial motion.

9 Now, getting to the shell casings. The gun that the
10 victim fired, it has been returned. But I may -- you know,
11 I didn't think about this until Mr. Goranson just brought it
12 up. I may could get it back. It's not that the State has
13 destroyed the evidence. We haven't destroyed it, you know.
14 It is potentially still out there. I could potentially
15 still get this gun back. But even that, Your Honor, the
16 shell casings, there's two from inside the car. There's six
17 other shell casings. They appear to look different. But
18 those shell casing could still be tested, and when they're
19 tested against each other it's my understanding that it
20 could be determined if they were fired from a different gun.
21 So -- but there hasn't -- you know, he's just asking for the
22 case to be thrown out. He's not asking for time to do a
23 test. He's not even asking to do a test at all. He's just
24 asking for the case to be thrown out and I think that's --

25 THE COURT: Well, you know, from what I've heard so far

1 I'm not inclined to dismiss. Now, what I may consider is
2 possibly some sort of continuance to allow some additional
3 work on this, understanding that your client, Mr. Goranson,
4 did want a speed trial. It was his pro se motion that he
5 filed and it didn't come from your office, as I recollect;
6 is that right?

7 MS. ODOM: I believe that's right. The Defendant wrote
8 it out himself.

9 THE COURT: Yes.

10 MR. GORANSON: Your Honor, I started off by talking
11 about how Mr. Brown has been in jail every day since March
12 25th. Now, it doesn't matter in this case if the State had
13 the case ready to go in June. They still wouldn't have had
14 the gun and we still wouldn't have been able to do testing
15 on it. The gun has been gone for five months. And from
16 what -- it's given back to the accuser's brother or cousin.
17 They live at the same address according to some of this
18 paperwork we have. From what I understand, a little
19 sandpaper on the firing pin will do wonders for a ballistic
20 test. Now, the right to present a defense, the right to a
21 fair and speed trial is not mutually exclusive. He's got
22 both. He's got a right to both; a speedy trial and a right
23 to present a full and fair defense. We talked about this in
24 a meeting yesterday, discovery issues that are an ongoing
25 problem. Rule 5 says 30 days. It's been, I don't know, 180

1 days and we're just now getting this trickling in of stuff,
2 including the recorded statement of the accuser. We got a
3 statement last night from the -- a recorded statement from
4 law enforcement by the accuser. And this is -- I don't know
5 how to prepare a defense for him when material evidence that
6 is favorable, according to us, is unavailable for us to test
7 and put the government to its test, and I would be
8 ineffectively representing him if the court would require me
9 to have tested that evidence, you know, by now. And then
10 the discovery process does not begin when something is
11 placed on the trial docket, regardless of whether there's a
12 speedy trial request or not. So I just think that the case
13 has been -- our defense has been irreparably harmed by the
14 actions of the state. Good or bad faith doesn't matter. We
15 are now seriously lacking in ability to present a defense
16 because we can't have that gun tested. And so, that's why
17 we're asking you to throw out the case.

18 THE COURT: All right. Solicitor?

19 MS. ODOM: Thank you, Your Honor. He just said bad
20 faith doesn't matter, but it does. You have to establish
21 that the evidence was destroyed in bad faith, and there's no
22 bad faith here. They were --

23 THE COURT: Okay. I'll give you a chance to respond,
24 Mr. Goranson.

25 MS. ODOM: No one in the police department, you know,

1 was looking to harm this case in any way or harm the
2 Defendant by returning the weapon. There's no bad faith
3 here. And the evidence, you know, is -- it hasn't been
4 established that it's been destroyed. I understand what
5 he's saying that, oh, the gun could be altered. The shell
6 casings are still there. The shell casings could be tested,
7 the two against the six, to be determined if they were fired
8 from a different gun. So the evidence is still there. The
9 statement that --

10 THE COURT: Why wasn't that done? Was that not -- I
11 mean, I don't know if you can speak for the officers or not.
12 But if you've got shell casings obtained from two different
13 locations it kind of seems to me that that would be
14 something that you would want to do just to kind of rule out
15 any possibility that one gun was involved, you know. So can
16 you speak to that? Maybe you can't. I don't know.

17 MS. ODOM: You know, Your Honor, every investigation is
18 different. It wasn't done in this case. Now, as far as the
19 two minute statement goes that was found yesterday,
20 yesterday when we picked a jury Detective Jeff Crisp came
21 over here and helped me pick a jury and he got to looking at
22 everything and went back to the detective's office and
23 pulled Mr. Brown's grand larceny case and a two minutes
24 statement -- or, I think, two minute 12 second statement
25 from the victim in this case was in that case. And Mr.

1 Goranson and I went over there yesterday with Detective
2 Crisp and listened to the statement. There's nothing new in
3 there. I wouldn't be asking to introduce it anyway. I have
4 the victim here to testify. And to be honest, Your Honor,
5 with Mr. Tinsley involved in this, I'd asked Mr. Tinsley
6 several times if he was going to represent the Defendant on
7 the case in chief and I always got a wishy-washy answer;
8 maybe, maybe not, you know. And then he continued to
9 represent him just on the bond. I wasn't quite sure which
10 way to handle it. But, you know, I think that throwing it
11 out is just a very extreme measure.

12 THE COURT: All right. You want one last comment on
13 this?

14 MR. GORANSON: Well, yes. And then -- yes, and then
15 some other comments. But on this issue of the *Brady*
16 violation I think *Cheeseboro* is very clear on that. I gave
17 you the cite on that. And I'll just say it again. The
18 Defendant must demonstrate that the evidence possessed an
19 exculpatory value apparent before the evidence was destroyed
20 and that the evidence -- that the Defendant cannot obtain
21 the evidence for comparable value other means. And so, I
22 would just say that if you don't have an opportunity to
23 actually look at it to determine whether it's exculpatory
24 you have to give the benefit of the doubt to the Defendant
25 in the case.

1 As far as any confusion about who was representing Mr.
2 Brown, my conversations with Mr. Tinsley have always been
3 crystal clear. He was representing him on bond only. I
4 think Mr. Brown would testify to the same thing if he had
5 to. Mr. Tinsley would testify to the same thing. And that
6 -- all that was cleared up by an email on July 30th where
7 the Solicitor and I communicated about the case and I
8 assumed that I would be representing Mr. Brown for the case
9 in chief. And that's really -- it doesn't even matter,
10 because she's just getting the stuff six months down the
11 line.

12 THE COURT: Okay. Let me ask you this, Mr. Goranson.
13 Let's assume just for the sake of this particular question
14 I'm going to ask you, just assume that I deny your motion to
15 dismiss. Take that assumption. What would be your
16 preference? Go forward today along the lines of your
17 client's request for a speedy trial, or continue it to give
18 some additional opportunity for whether, you know,
19 ballistics to -- you know, ballistic testing on the shell
20 casings and whatever else. What would be -- again, with the
21 assumption that I deny your motion to dismiss what would be
22 your preference?

23 MR. GORANSON: My preference would be to go forward
24 today, suppress the shell casings, suppress the new -- their
25 new information. Contrary to what the Solicitor says there

1 is new information in that statement that I received last
2 night. I would be asking for you to suppress that as well.

3 THE COURT: Okay. So that's kind of a second motion
4 that you have?

5 MR. GORANSON: That's the second --

6 THE COURT: Depending upon my actual ruling on your
7 first motion.

8 MR. GORANSON: Pending -- pending the motion -- pending
9 the ruling on the first one. That would be -- that would be
10 our fallback. Mr. Brown has been waiting long enough and
11 they're just going to keep trickling stuff in apparently
12 without our ability to confront it.

13 THE COURT: Okay. Well, let's go ahead -- let me hear
14 your second motion, and then I'm going to just take a few
15 minutes to read -- I'm going to read these cases that you've
16 given me. But let's go ahead and get everything out on the
17 table and --

18 MR. GORANSON: Well, the second thing is, not only was
19 *Brady* violated in this case but also Rule 5. These items --
20 the recording is a tangible object, the shell casings are
21 obviously tangible objects in this case, that were not
22 turned over to the Defense within 30 days, Rule 51C. Count
23 down to Rule C -- or subsection C they have a continuing
24 duty to disclose. Those shell casings, your honor, I don't
25 think they would have ever come to my attention, that six

1 extra ones. I don't think they would ever have come to my
2 attention until the day of trial had I not went out and
3 asked the Solicitor what she planned to introduce. And I
4 had no knowledge of that.

5 THE COURT: The two, that was disclosed in July --

6 MR. GORANSON: Yes.

7 THE COURT: -- and the six were disclosed last Friday;
8 is that correct?

9 MS. ODOM: Yes, Your Honor. I went over, I think, last
10 Thursday, and looked through the evidence just getting ready
11 for trial and that's when I saw the six --

12 THE COURT: Right.

13 MS. ODOM: -- or at some point last week I had went
14 over -- and just to clarify, are you moving us to the six,
15 the two or all eight?

16 MR. GORANSON: It was the six. So, you know, we're
17 making a motion to dismiss based on spoliation of the
18 evidence with the gun not being in evidence, the late
19 disclosure under Rule 5 and *Brady*. You know, if you look at
20 the policies for maintaining evidence this procedure was not
21 done according to policy. And also I heard about -- just
22 recently heard about people being interviewed at the barber
23 shop saying they didn't see anything. That's nowhere in any
24 of these reports. No names or addresses of witnesses spoken
25 to. Obviously if witnesses didn't see anything, that could

1 be exculpatory for our client.

2 THE COURT: Okay. You've just learned that there are
3 witnesses out there that claim that they didn't see
4 anything?

5 MR. GORANSON: Yes.

6 THE COURT: You just learned that how and when?

7 MR. GORANSON: I learned it last week at a meeting
8 Friday. Yeah, the meeting Friday when we found out that
9 Officer Shockley said I don't know why my name is attached
10 to those six shell casings. He also talked about another
11 officer, McClinton, going to interview some people at the
12 barber shop that was right where this incident had happened.

13 THE COURT: Okay. So we got some potential witnesses
14 that were interviewed and that was not disclosed to your
15 office and then for you to disclose that to Defense?

16 MS. ODOM: Your Honor, it wasn't included in the
17 incident report. And when we -- we got to talking, the
18 officers and I -- and last Friday Mr. Goranson came down to
19 my office and I actually called Captain McAllister on the
20 phone and he had Officer Shockley with him. They were on
21 shift that day. And Officer Shockley got on the phone, and
22 I put it on speaker phone so -- and that's -- we were asking
23 about the evidence sheet, because on the evidence sheet it
24 says that the six shell casings that Shockley collected
25 them, gave them to McAllister who put them in evidence. So

1 we were asking Shockley, you know, where did these shell
2 casings come from, and he said that McClinton, he picked
3 them up and gave them to Shockley. And that --

4 THE COURT: When all -- when was that done? When --
5 the exchange of the shell casings, when was that done?

6 MS. ODOM: When were they picked up?

7 THE COURT: Yeah. I mean, they were picked up --

8 MS. ODOM: The day it happened.

9 THE COURT: The day it happened. And they're not in
10 existence? These six casings were not disclosed to the
11 Defense until last Friday? I mean, and again, you were just
12 made aware of it. But --

13 MS. ODOM: It just -- whatever --

14 THE COURT: And that wasn't in the incident --
15 initially incident report or anything like that?

16 MS. ODOM: No, Your Honor. Just for whatever reason it
17 wasn't included in the incident report. And I didn't double
18 check with the officer about these things until I was
19 getting the case ready for trial.

20 Now, the witnesses, Your Honor, that's not in the
21 incident reporter either, but McClinton had went into the
22 barber shop that's right next to the parking lot and asked,
23 you know, does anybody want to talk, did anybody see
24 anything, and no one would speak to him. So there's no
25 witness names. We don't know who they were. We just know

1 that the people inside were reluctant to speak with him.

2 THE COURT: Okay. So it was not where they got
3 witnesses that said, wait, we were here but we didn't see
4 anything. You're saying that they just refused to talk with
5 the police?

6 MS. ODOM: Right. That's the State's position. They
7 just --

8 THE COURT: So that's a little different, Mr. Goranson,
9 than what you may have thought took place.

10 MS. ODOM: We don't know who the witnesses are, or they
11 may not be witnesses at all. They just were very reluctant
12 to speak with the police.

13 THE COURT: All right. So let me just make sure what I
14 have to rule on is your first motion is to dismiss based
15 upon the spoliation of evidence, *Brady* violation, et cetera?

16 MR. GORANSON: That's correct.

17 THE COURT: Okay. And then in the alternative, if I
18 were to deny that motion, then you're asking for suppression
19 of the six shell casings found on the day of the scene -- or
20 day of the alleged incident but not disclosed to you until
21 last Friday?

22 MR. GORANSON: That's correct, and there's two reasons
23 for that. One is there's no way to determine the
24 reliability of that evidence --

25 THE COURT: Right.

1 MR. GORANSON: -- and the second is -- or to contest
2 that evidence. And the second is there's a *Brady* violation
3 and a Rule 5 issue in that.

4 THE COURT: Okay. Solicitor, let me ask you this. Is
5 it your -- is it the State's plan to introduce the six shell
6 casings into evidence?

7 MS. ODOM: Yes, Your Honor.

8 THE COURT: Okay.

9 MS. ODOM: I think they're important to our case.

10 THE COURT: All right. But you have no evidence to
11 point those shell casings to any particular gun?

12 MS. ODOM: No. There are six shell casings in a
13 parking lot. It just gives some credence to the victim's
14 statement that there -- that they were in the parking lot
15 shooting back and that shell casings were there. If we
16 don't introduce them then the Defense could bring it up,
17 well, there were no -- the State hasn't introduced shell
18 casings, so... And, Your Honor, we have them here today.
19 It's apparent from just looking at them that two match and
20 then the other six match. The back of the casings, that
21 they're different. That they fit the same type of gun but
22 that they're different shells.

23 MR. GORANSON: I would think that would need to be
24 determined by an expert.

25 MS. ODOM: Well, I can look and tell they look

1 different. I'm not getting into expert level --

2 THE COURT: Right. I guess what I would have to
3 determine, does that go to -- not necessarily to an issue of
4 admissibility but go to an issue of weight. So, okay.
5 Anything else I need to rule on before we take a little
6 break?

7 MS. ODOM: Your Honor, before the trial were to get
8 started I'd want to get into how much we can discuss that
9 prior allegation that the Defendant had broken into the
10 victim's step-dad's car, because he is charged with that.
11 That's not what we're here about today, but that is the
12 basis of why the argument began. And on the in car video
13 it's talked about a lot. So I need to know so my victim
14 won't speak about it if he's not supposed to or be limited -
15 - I mean, and also Ms. Watson to do the opening, she needs
16 to know so we won't bring it up if we're not supposed to.

17 THE COURT: Okay. Are you wanting -- I assume you want
18 to bring it up.

19 MS. ODOM: Right. We want to bring it up.

20 THE COURT: And I understand you're wanting some
21 guidance from the court so you don't cross over any lines.
22 I understand that. But are you wanting it in under some
23 sort of *State v. Lyle* theory? Is that kind of where the
24 State is coming from?

25 MS. ODOM: Yes, Your Honor. It's a motive. If we

1 don't have it the case isn't going to make sense.

2 THE COURT: All right. You want to speak -- speak to
3 that, Mr. Goranson?

4 MR. GORANSON: I would think it would be our position
5 that it would be up to us to open the door to that issue in
6 this case.

7 THE COURT: They're wanting it in under *State v. Lyle*
8 which would not require you to open the door, so...

9 MR. GORANSON: Well, I mean, there's some -- it's an
10 act that hasn't been subject to a conviction yet, so they'd
11 have to --

12 THE COURT: Right. Well, of course, *State v. Lyle*
13 doesn't require convictions. If I were to allow it in, and
14 again, if, I would not allow in the fact that he has been
15 criminally charged. But -- that's for sure. I would not
16 allow that. But the act -- the allegation of the act itself
17 is what I need to determine whether or not it comes under
18 *State versus Lyle* for the State to bring it out.

19 MR. GORANSON: And I apologize. I had a lot to get
20 ready for in --

21 THE COURT: I know. I understand.

22 MR. GORANSON: Is it *Lyle* or is it 404(b)?

23 THE COURT: Same thing. Same thing. Because *State v.*
24 *Lyle*, you know, prior bad acts, common scheme or plan,
25 motive, intent, and that's basically what 404 says. So

1 we're dealing with the same thing.

2 MR. GORANSON: I have nothing further to add to that,
3 Your Honor.

4 THE COURT: Okay.

5 MS. ODOM: Can I just add one real quick thing?

6 THE COURT: Okay.

7 MS. ODOM: With these six shell casings, Your Honor. I
8 just want to make it clear I respect whatever judgement Your
9 Honor hands down, but the State does -- would like to
10 introduce those into evidence. I understand that Mr.
11 Goranson just found out about them last week. I just did,
12 too, and that's, you know, my fault for not going over there
13 sooner and looking at them. Looking at what's in evidence.
14 But if I had had a little more time to get this ready for
15 trial, if I knew it was going to be on the trial docket,
16 say, in December instead of, you know, my fifth week of
17 court in a row --

18 THE COURT: Right.

19 MS. ODOM: -- I would have given him a little more
20 time, I would have a little more time, and there -- you
21 know, I would just ask that --

22 THE COURT: Right. And I'm not faulting anybody. I
23 realize the realities and the practicalities of getting
24 cases ready for trial and the workload that both sides have.
25 I understand that. You know, you got to remember, you know,

1 I haven't been on this side of the bench, you know -- you
2 know, I was sitting over there where you all were not too
3 long ago and I understand how the real world operates. And
4 I keep that in mind as I deal with issues such as this. So
5 you can rest assured that I don't forget my past, okay, and
6 what you all have to go through. Okay?

7 Let's -- let's take a break. I assume the jury is
8 still over -- still over there. We just -- if you could
9 just go over there and tell them that we are working. We
10 are trying to sort through some issues and I just don't want
11 them to think that we're, you know, back in back drinking
12 coffee not doing anything.

13 THE BAILIFF: Yes, sir.

14 THE COURT: Okay. Thank you, Jimmy. Appreciate it.

15 All right. Everybody be at ease for just a little bit
16 and let me -- Mr. Goranson, you're still standing.

17 MR. GORANSON: Sorry.

18 THE COURT: Do you want to throw something else at me?

19 MR. GORANSON: I'll shut up for a minute.

20 THE COURT: No, no, no. I'm just -- this is the last
21 opportunity. Okay. Everybody be at ease.

22 (Whereupon, the court was in recess from 9:53 a.m. to
23 10:27 a.m.)

24 THE COURT: Okay. I certainly fully considered the
25 motions that have been made. We've read the cases that have

1 been offered. Even looked at a couple other cases on our
2 own.

3 Concerning the motion to dismiss, I'm going to deny
4 based upon *State versus Cheeseboro*. We've read that case
5 thoroughly. And because the court cannot find any bad faith
6 on the part of the State. And two, I think there has to be
7 a showing of apparent -- and that word is actually used in
8 the case, apparent exculpatory value concerning the gun, and
9 just saying that it might have some exculpatory value I
10 don't think meets that level. So based upon *State versus*
11 *Cheeseboro* I'm going to deny the motion to dismiss.

12 Concerning any evidence of breaking into the motor
13 vehicle, I will suppress any evidence as to that. I don't
14 think that particular situation rises to the level of what
15 404 and *State versus Lyle* requires insofar as motive, common
16 scheme or plan. That sort of thing. So there will be no
17 evidence from any witness that the Defendant broke into the
18 motor vehicle, stole a gun, whatever was intended to be
19 brought out in that respect.

20 You've got a puzzled look on your face. Do I need to -
21 -

22 MS. ODOM: I just want to make it clear. So none of my
23 witnesses are allowed --

24 THE COURT: Can testify that the Defendant broke into
25 the victim's father's car, I think it was, stole a gun,

1 stole money. None of that can be brought out. That will
2 all be suppressed.

3 MS. ODOM: Okay. So the victim can't say we were
4 arguing because --

5 THE COURT: He can say we were arguing. He just can't
6 say why they were arguing.

7 MS. ODOM: Can he say that they had a prior dispute?

8 THE COURT: Well, yeah. I mean, I think they can say a
9 prior dispute. But no evidence that this man broke into the
10 car. Okay? All right. And then the third matter is
11 concerning the shell casings. Now, this is the one I
12 struggled with the most. I'm very concerned that law
13 enforcement did not present the six shell casings.
14 Certainly have no fault with the Solicitor's Office, but I'm
15 very concerned that the six shell casings were not disclosed
16 to Defense until last Friday. But we considered a case,
17 *State versus Kerr*, and certainly considered -- I think the
18 final analysis, you still have to look at a 403 prejudice --
19 probative value versus prejudice. *State versus Kerr* stands
20 for the proposition that discovery violation in and of
21 itself does not necessarily require suppression. So you
22 have to still look at a 403. And I think the probative
23 value does outweigh the prejudice. So I'm going to allow
24 the six shell casings in.

25 Now, with all that said, I think the posture of this

1 case and the work that law enforcement -- I'm being a little
2 critical. You may take offense to what I say, but I'm going
3 to say it anyways. I think it gives the Defense a wealth of
4 argument to make to the jury concerning -- concerning this
5 case because of how this case was handled, what was done,
6 what was not done. Now, that's just an observation on my
7 part. That is not in any way to be construed as a basis for
8 any of my rulings. Okay? I'm just making an observation.

9 So just to reiterate. Motion to dismiss is denied.
10 We'll allow the evidence of the shell casings into evidence
11 with one little caveat concerning that. I don't think since
12 the shell casings were not tested I don't think anybody can
13 say they came from different guns, and I don't think that
14 necessarily means that they did come from different guns.
15 But, I mean, certainly you can, you know, show them that
16 they appear to be different. But I don't think we have any
17 witnesses that can say because they look different they came
18 from different guns. I don't think we've got anybody who
19 can testify to that and no one will be permitted to offer
20 that kind of testimony. But the shell casings in and of
21 itself, the six, can come in. Okay?

22 MR. GORANSON: Then I just have one question, is that
23 *State v. Kerr* talks about the discovery violation in and of
24 itself. Does that contemplate the examination of the entire
25 record and all the evidence viewed as a whole?

1 THE COURT: I don't think it was a -- *State versus Kerr*
2 was a DUI case and there were some photographs of the
3 vehicles involved in the accident that created the DUI
4 situation and the photographs had not been disclosed. I
5 don't think the court necessarily addressed that particular
6 point, if I understand where you're coming from on that.

7 MR. GORANSON: Right. I mean, because the State's case
8 rests on the credibility of one witness.

9 THE COURT: All right. So your point again, Mr.
10 Goranson, is what?

11 MR. GORANSON: That the only reason those shell casings
12 -- the only reason that anybody believes that they were from
13 somebody else's gun is the word of the accuser.

14 THE COURT: Right.

15 MR. GORANSON: That's the only way we have any
16 information about those.

17 THE COURT: Right.

18 MR. GORANSON: So I just -- when you look at -- and
19 we're not going to get to hear all of the accuser's
20 different stories until we get into trial, but he told a
21 bunch of different ones. And even in the incident report
22 the officer notes that he wasn't truthful, which is being
23 nice about it.

24 THE COURT: Right, okay. So maybe I'm missing your
25 point. So your point is what?

1 MR. GORANSON: That the significance of those shells
2 rests on the credibility of the accuser because he's saying
3 they came from someone else. And therefore -- and therefore
4 the discovery violation takes on a higher significance than
5 photos in a DUI case. And if you have to look at the whole
6 thing in the totality of the evidence that was presented in
7 the case that's what you have. The shell casings and the
8 word of the accuser. That's it. And presumably in the DUI
9 there's a blood test and all this other evidence.

10 THE COURT: Right. I don't --

11 MR. GORANSON: If the shell casings are coming in I
12 would request a continuance so we may prepare a defense in
13 this case.

14 THE COURT: All right. Well, now, it was my
15 understanding, Mr. Goranson, when I asked you previously if
16 -- if I were to deny your motion to dismiss then did you
17 want to go forward because of the speed trial motion or the
18 -- or continue the case, and I think -- not that you don't
19 have a right to change your position, but you had informed
20 me that you wanted to go forward.

21 MR. GORANSON: I apologize for any misunderstanding.
22 What I thought you were asking me and I thought my position
23 was, if you're not going to dismiss our position would be to
24 suppress and go forward and then -- I don't think we
25 contemplated what would happen if the shell casings were

1 coming in.

2 THE COURT: All right. Basically then what -- if I
3 continue the case then what do you want to do with respect
4 to the shell casings?

5 MR. GORANSON: Well, I just -- all along, up until
6 Friday at 10:00 a.m., about there, I thought there were no
7 shell casings in evidence that were supposedly coming from
8 Michael. Okay? And so, that's the defense we prepared
9 quickly, because the Solicitor wanted the case tried this
10 week.

11 THE COURT: Let me just stop you. You knew in July
12 that there were two shell casings that were found in the --
13 in the accuser's vehicle, correct? You knew that?

14 MR. GORANSON: Yes. To be clear, that is correct. We
15 knew about the two in the shooter's car. We did not know
16 about the six that supposedly came from a parking lot.

17 THE COURT: Right. Right.

18 MR. GORANSON: And so, at that point, with no bullet
19 holes in the accuser's car we're left with no other thought
20 than the accuser is the one who fired the gun and that's --
21 that's it. That's the extent of the defense. Defendant
22 didn't fire a gun. Now we may have to prepare a self-
23 defense. We have to reanalyze the case essentially now that
24 we've got this new evidence that was disclosed to us Friday,
25 you know, as a result of my asking for it. I mean, the

1 Solicitor did not come up to me after she learned about this
2 and tell me I learned last night that there are shell
3 casings. I had to ask her. And we can try the case later
4 on this week. I just need a little --

5 THE COURT: All right. So you're not asking for a
6 continuance beyond this term?

7 MR. GORANSON: Correct.

8 THE COURT: When would you realistically be ready to
9 start back?

10 MR. GORANSON: Thursday morning.

11 THE COURT: Let me hear from the Solicitor.

12 MS. ODOM: Your Honor, if I could have just a moment.

13 THE COURT: Yeah. You need -- do you all need to take
14 five?

15 MS. ODOM: No, sir. Just 20 seconds.

16 THE COURT: Okay. You want me to time you?

17 (Whereupon, a brief recess was held.)

18 MS. ODOM: Your Honor, just a couple of things. It
19 just seems to me that, you know, a self-defense angle was
20 there from the beginning. I mean, the incident report says
21 that the Defendant shot at the victim, the victim shot back.
22 So self-defense I feel like was there from the very
23 beginning. Just because these six shell casings have come
24 to light doesn't mean that a self-defense claim was never
25 there.

1 THE COURT: Right.

2 MS. ODOM: It's been from the beginning, or from that
3 day that the victim shot as well. So I feel like --

4 THE COURT: Right. I mean, the allegations have always
5 been that the Defendant fired a gun. And the fact that now
6 there is possible proof -- depending upon how the jury views
7 it, possible proof that the Defendant had a gun doesn't
8 alter the fact that the allegations have always been that
9 the Defendant shot a gun.

10 MS. ODOM: Right. And also -- so I just don't feel
11 like the self-defense would warrant a two day continuance.
12 I can see more from the standpoint of they want to get the
13 casings tested and we should continue it until December to
14 give them time to get shell casing tested.

15 THE COURT: But that's not the request. The request is
16 to further analyze his self-defense argument, as I
17 understand it. Anything further, Solicitor?

18 MS. ODOM: No, sir.

19 THE COURT: Mr. Goranson, your motion to continue is
20 respectfully denied. I tend to agree with the State that,
21 you know, it's always been claimed, and that was the basis
22 of this charge that your Defendant allegedly shot a gun.
23 And the fact that shell casings have been found doesn't
24 change or alter the fact that if there was a self-defense
25 argument it certainly could have been maintained and can

1 still be maintained now. So I don't think the -- finding
2 out about six shell casings last Friday, which I don't like,
3 but that would not, I don't believe, automatically now allow
4 for a self-defense argument. So I'm going to deny your
5 motion.

6 MR. GORANSON: If I could, Your Honor. We were all at
7 the meeting yesterday and I think everybody in this
8 courtroom expressed dismay with the state of the discovery
9 process --

10 THE COURT: Right. And --

11 MR. GORANSON: -- in the circuit. And I just don't --
12 I'm worried that this is never going to end for our clients
13 if something doesn't happen.

14 THE COURT: Right. I understand. And I don't like it
15 either. But I think at the end of the day the final
16 analysis I've got to make a decision based purely on a legal
17 basis on how I rule on your motions. Now, my rulings, does
18 that reflect an acquiescence in how discovery, without
19 throwing fault on anybody in the Solicitor's Office or
20 anything, does that show that I agree with, condone or
21 acquiesce in how discovery is handled? Absolutely not. But
22 again, at the end of the day I've got to make rulings based
23 upon a legal basis and a legal basis only, and the fact that
24 I don't like the fact that, you know, several days before
25 trial you find out about these shell casings. Do I like the

1 fact that discovery trickled in starting in July until --
2 until now? No. I don't condone that. But the fact that I
3 don't like it can't be a basis -- I know what you wanted me
4 to do is to pop their hand and say, okay, I'm dismissing the
5 case. You all can start doing a better job with responding
6 to discovery. I know that's what you want me to do, but I
7 don't think -- I don't think that's proper. I don't think
8 that's proper at all, Mr. Goranson, for me to slap their
9 hand and say, okay, I'm going to make a -- you're going to
10 learn a lesson out of this. I think the way to resolve
11 these discovery issues is what Judge Griffith, Judge Addy
12 and I attempted yesterday is to start the dialog, start the
13 conversation, set some rules, set some procedures, set some
14 parameters on how discovery is going to be handled to remedy
15 the situation. But to make an example out of this is not
16 what I'm going to do. And I know what you want me to do,
17 but I don't think that's proper.

18 MR. GORANSON: I understand that, Your Honor.

19 THE COURT: And I don't -- and I apologize. I
20 shouldn't be getting up on a soapbox and -- I shouldn't be.

21 MR. GORANSON: I understand this is a series case, and
22 I understand -- I understand what you're telling me about
23 that.

24 THE COURT: Right.

25 MR. GORANSON: I just -- you've already ruled, but I'm

1 upset that I don't have a little bit more time. I'm only
2 asking for a little bit more time to prepare a defense for
3 my client.

4 THE COURT: Okay. Well, Madame Court Reporter, let's
5 go off the record for just a moment.

6 (Off the record.)

7 THE COURT: What I want to do is I'm going to go ahead
8 and grant a very short continuance, but I want to start this
9 case back at 2:00 tomorrow afternoon. So that'll give you
10 some time to figure out what, if anything, you need to do.
11 And just whatever -- I understand that there is another
12 potential case, but it involves you. Solicitor Taylor has
13 it and Solicitor Odom says, well, Mr. Goranson is the
14 defense lawyer so that -- we're not going to call that. I
15 mean, that would defeat the purpose for her continuing this
16 one until tomorrow at 2:00.

17 MR. GORANSON: Thank you.

18 THE COURT: So we'll just -- whatever -- what work that
19 you all can drum up until then. So I'm trying to -- trying
20 to compromise, trying to be fair, so that's what we'll do.
21 I need to bring the jury out and go ahead and cut them loose
22 until 2:00. And so, that's --

23 MS. ODOM: And, Your Honor, I'm not sure if you wanted
24 to -- just real quick. If you wanted to handle a potential
25 *Neil v. Biggers*. I don't know if they were going to do

1 that. We can go ahead and do that this morning or --

2 THE COURT: Yeah.

3 MR. GORANSON: I don't think we're going to -- that
4 motion's not going to be necessary.

5 THE COURT: Oh, okay. All right. Well, let's bring the
6 jury out. Let me excuse them until 2:00. And so, then you
7 all will be good to go and we'll deal with your case with
8 Mr. Jones and go from there.

9 (Whereupon, the jury entered the courtroom at 11:01
10 a.m.)

11 THE COURT: Good morning. I appreciate your patience.
12 At least we were able to get you over here from over there
13 so you have some snacks and coffee and restrooms and
14 whatever. So we're trying to look out for you. We have
15 been working very diligently on this case. There have been
16 a lot of legal issues that I had to -- and we're continuing
17 to work on those legal issues with these good lawyers that
18 I've got here. Any time you have good lawyers there's
19 always a lot of work for the judge to do. So we're not
20 quite ready to get started with the case. So I know you
21 don't want to spend the rest of the day back here in this
22 room, so I'm going to excuse you, and I'll need for you to
23 be back here promptly at 2:00 tomorrow afternoon at which
24 time we'll get started with the case. But we just got some
25 more work to do, and so, we're just not quite ready to get

1 the case started. So 2:00 tomorrow afternoon.

2 I'll remind you as I did yesterday, don't talk about
3 this case with anyone. Again, you may have a friend, family
4 member, somebody may ask you about this case, even though
5 you know very little about it. You still can't talk about
6 it among yourselves nor with anyone else. So with all that
7 being said, have a good afternoon and evening. We'll see
8 you tomorrow at 2:00.

9 (Whereupon, the jury exits the courtroom at 11:03 a.m.)

10 THE COURT: Anything else we need to take up on the
11 record before we recess this case until tomorrow? Anything
12 from the State?

13 MS. ODOM: I don't believe so. No, sir.

14 THE COURT: Okay. From the Defense?

15 MR. GORANSON: No, sir.

16 THE COURT: Okay. Thank you very much. We'll see you
17 folks 2:00 tomorrow.

18 MR. GORANSON: Thank you, Your Honor.

19 TRAIL DAY 3-11/20/2013

20 (Whereupon, a map was pre-marked as State's Exhibit 1
21 and photos were pre-marked as State's Exhibit's 2-7 for
22 identification.)

23 THE COURT: Okay. Let's bring the jury out.

24 (Whereupon, the jury entered the courtroom at 2:19
25 p.m.)

1 THE COURT: Let the record reflect that the jury is
2 back in. You all can have you seat. And good afternoon.

3 (Whereupon, jury responds with good afternoon)

4 THE COURT: You ready to get started?

5 (Whereupon, jury responds with yes.)

6 THE COURT: Good. We need to do two things. One, we
7 need to have you sworn in, and then two, I will appoint a
8 foreperson of the jury. So Madame Clerk, would you please
9 swear the jury in.

10 MADAME CLERK: Would every stand and raise your right
11 hand.

12 (Whereupon, jury complies.)

13 (Whereupon, jury is sworn at 2:21 p.m.)

14 THE COURT: Thank you, Madame Clerk. I now will
15 appoint a foreperson of the jury and I'm going to appoint
16 Ms. Findley who's seated here in the second row. You will
17 always maintain this first seat. Okay? And then Ms.
18 Pollard, the alternate, you will always maintain that seat.
19 Everybody else you can sit where you like. Now, I
20 understand that there's some unwritten tradition in
21 Greenwood County that jurors typically take the same seat
22 each time when you come out from a break or coming in in the
23 morning. You don't have to, but if that's what you all
24 would like to do then you perfectly are free to do that.
25 But we at least have to have the forelady, Ms. Findley, in

1 THE COURT: And from the Defense?

2 MR. GORANSON: No, sir.

3 THE COURT: Thank you very much. All right.
4 Solicitor?

5 MS. WHITE: Thank you, Your Honor, may it please the
6 court.

7 THE COURT: Thank you.

8 OPENING STATEMENT

9 BY MS. WHITE: Good afternoon, ladies and gentlemen. I
10 want to introduce you all to Kelvin Martin. He's sitting
11 over here in the orange shirt. On March 23rd of this year
12 Mr. Brown over here, in the tie, in broad daylight, right
13 across from the old post office on Phoenix Street, tried to
14 kill him. Tried to shoot him. Mr. Martin and Mr. Brown, a
15 little bit of bad blood there. Mr. Martin was driving home
16 from work. It was about 4:00 in the afternoon. He was
17 driving home, driving down Pressley. Saw Mr. Brown and
18 another individual with him and they flagged them down. You
19 know, waived them over to talk to him. So he goes over,
20 pulls in, rolls down his passenger window. A little bit of
21 an argument starts, and before he knows what's going on Mr.
22 Brown reaches in the car, pulls out a handgun and pop, pop,
23 pop, right here. Broad daylight, 4:00, streets of
24 Greenwood, public place. Anybody could have been around.
25 Well, Mr. Martin obviously immediately floors it. Drives

1 away. He had a gun, a relative's firearm in his car, so in
2 self-defense he turns around and fires back just to cover
3 driving off. And he drives off and calls law enforcement
4 immediately. Law enforcement comes out. They conduct an
5 investigation.

6 And one of the things I want you all to think about.
7 The judge told you all just a few minutes ago this isn't
8 CSI. It's not something we see on TV where in 30 minutes
9 we've got DNA, we've got, you know, this, that and the other
10 that proves beyond all shadow of a doubt that the Defendant
11 did it. What we've got -- what would we have in a case like
12 this. What would you expect to see. Well, you'd expect to
13 see damage to Mr. Martin's car, which we've got. The back
14 window shot out and the passenger window in the back shot
15 out. There's also damage to his trunk. So we'd expect to
16 see that. You'd also expect to see shell casings. And
17 where would we expect to see them? We'd expect to see them
18 in the parking lot, and from him firing in the car we'd
19 expect to see them in the car, and we have that. And we
20 have the testimony of Mr. Martin. That's what we have in
21 this case.

22 Now, one of the most important things you all bring in
23 here today is your commonsense and you use your commonsense
24 when you're matching up the testimony with the evidence in
25 deciding what you all think happened. And when you're

1 listening the testimony you're evaluating the credibility of
2 a witness. And, like I said, you're using your commonsense.
3 Is what he's saying, does it match up with the evidence.
4 I'll go on and tell you all. Mr. Martin, he was scared. He
5 was not forthcoming with the police at first. He did not
6 say, yeah, I fired back, until the police started looking at
7 it and say, well, come on. There are shell casings in your
8 car. And then he told them, yeah, you're right. I did
9 shoot back. So I'll go on and tell you all that. He was
10 scared. He was not forthcoming at first. But when you
11 listen to his testimony think about does it make sense with
12 the entire scene, does it make sense with what we're seeing
13 on the evidence. Also when you're listening to testimony
14 you're thinking about does this person have a reason to lie.
15 Does this person have a reason to tell something different
16 than what happened. What are their motivations. What are
17 their biases. And those are just some of the things I want
18 you all to think about.

19 Now, the judge told you that we have the burden of
20 proving the case beyond a reasonable doubt. That's a burden
21 that we welcome, because what that means is when you all go
22 back there it's not we think he did it beyond all shadow of
23 a doubt. We are 100 percent convinced. It means that when
24 you go back there and you say did it happen. Yes. That you
25 are firmly convinced that it happened the way we -- we say

1 it happened. That's what beyond a reasonable doubt means.
2 We could never convince -- I couldn't convince 12 of you all
3 beyond a reasonable doubt where we should go to dinner
4 tonight. You can never convince 12 people beyond all doubt,
5 but you can be firmly convinced. And when all the testimony
6 is done, when all the evidence is in, Ms. Odom and I are
7 convinced that you all will find Mr. Brown guilty of
8 attempted murder and possession of a weapon during
9 commission of a violent crime. Thank you.

10 THE COURT: Thank you, Solicitor. Defense? Mr.
11 Goranson?

12 MR. GORANSON: Can I set this right here?

13 THE COURT: Sure, yeah.

14 OPENING STATEMENT

15 BY MR. GORANSON: Midrevious Brown did not do what he is
16 accused of doing. He didn't do it. I was sitting in my
17 office trying to think about how I was going to present this
18 case to you and I thought that I would just approach it like
19 I would approach telling anyone about this case. You're
20 going to hear evidence in this case that the accuser, Kelvin
21 Martin, was the shooter. And you're going to hear evidence
22 in this case that Kelvin Martin lied repeatedly to law
23 enforcement. And you're going to hear about the police work
24 that was done based upon those lies, and you'll hear about
25 the shoddy police work that was done. And at the end of

1 this trial the only thing you're going to be convinced of
2 beyond a reasonable doubt is that Kelvin Martin lied.

3 My name is Shane Goranson, that's Tom Adducci, and
4 we're representing Mr. Brown. It is our pleasure to
5 represent him. And when you're listening to the evidence in
6 this case I would like, at the end of this case when all the
7 evidence is over, I would like you to consider the following
8 equation. An unreliable witness, plus unreliable police
9 work equals -- I'll let you fill in the blanks. Please
10 listen to all the evidence in this case. Listen to what you
11 think should happen, what didn't happen, and what did
12 happen, and come back with a verdict of not guilty. Thank
13 you.

14 THE COURT: Thank you very much, Mr. Goranson.

15 Madame Forelady and ladies and gentlemen of the jury,
16 we're going to take a very short break before we start in to
17 witness testimony. So if you would go back into your jury
18 room, and again, it'll be just for a few minutes.

19 (Whereupon, the jury exits the courtroom at 2:41 p.m.)

20 THE COURT: Okay. We need to deal with the issue
21 possibly of some prior convictions of a witness. Do we need
22 to discuss that?

23 MS. ODOM: Yes, sir. My first witness is going to be
24 the victim, Kelvin Martin. He does have some criminal
25 history.

1 THE COURT: All right. Are you aware of his criminal
2 history, Mr. Goranson, and if so, do you intend to try to
3 impeach him? Because I think what the State's wanting to
4 know is what you intend to impeach him on and make sure that
5 it falls squarely within, you know, the rule.

6 MR. GORANSON: Well, he's got a conviction for assault
7 and battery of a high and aggravated nature.

8 THE COURT: She gave it to us in chambers and I can't
9 remember.

10 MR. GORANSON: I think I've got it right here.

11 MS. ODOM: He has an ABHAN in 2010 and other
12 convictions.

13 MR. GORANSON: And at that time -- it's one of those
14 things, I think. I can't remember if that was before this
15 format or not. I mean, at the time I think it was a 10 year
16 misdemeanor.

17 THE COURT: It was in 2010?

18 MR. GORANSON: Yes.

19 MS. ODOM: That's the 10 year misdemeanor on this
20 incident sheet.

21 MR. GORANSON: I mean, it would be our position that
22 that is a felony in most places and I think that could be
23 used to impeach him.

24 THE COURT: What is the position? Is that the only
25 crime you want to impeach on is the 2010 ABHAN?

1 MR. GORANSON: The burglary third degree convictions,
2 we may use it as well, Your Honor.

3 THE COURT: Burglary third. When was that year?

4 MS. ODOM: 2001.

5 THE COURT: Okay. I don't believe that would work,
6 would it? 2001?

7 MS. ODOM: Your Honor, the State's position is that it
8 shouldn't be allowed in. It's been more than 10 years.

9 THE COURT: Right.

10 MR. GORANSON: Is that a crime of dishonesty?

11 THE COURT: Burglary third?

12 MR. GORANSON: I apologize for not having that in here.

13 THE COURT: No. We're going to -- we need to determine
14 that.

15 MR. GORANSON: Because I think the rule says -- I think
16 the rule says any crime involving dishonesty and --

17 THE COURT: Right. You're right. And that's what we
18 need to determine, if burglary third gets in that. I know
19 shoplifting is.

20 MR. GORANSON: Right. Shoplifting on the larceny --

21 MS. ODOM: Your Honor, it would just be the State's
22 position that a crime of dishonesty -- shoplifting involves
23 a theft. Larceny certainly involves theft. Forgery you're
24 being dishonest. But burglary isn't a crime of dishonesty.
25 It's outside the 10 year limit, and I just don't believe

1 that that is --

2 THE COURT: I mean, you do agree, Solicitor, that a
3 crime of dishonesty can be more than 10 years. Unless I
4 make -- in my discretion make a ruling that the prejudicial
5 effect outweighs probative value. But other than that, you
6 would agree that dishonesty crimes do fall outside the 10
7 year, correct?

8 MR. GORANSON: Right.

9 THE COURT: Correct, Solicitor?

10 MS. ODOM: Yes, sir.

11 THE COURT: Okay. I just want to make sure we're on
12 the same page.

13 MR. GORANSON: There is a case, *State v. Hilliard* from
14 2010. It is an unpublished opinion, but it does state that
15 -- let's see. That prior burglary offense involving taking
16 from a residence. It was a crime of dishonesty under
17 609.82. And that's following a court of appeals *Hunter v.*
18 *Staples*.

19 THE COURT: What's that case?

20 MR. GORANSON: It looks like there may need to be an
21 inquiry into the nature of the burglary.

22 THE COURT: Yeah. Yeah. It would seem like to me not
23 all would fall under that. You'd have to kind of look at
24 the facts of each case. And I guess at this stage where
25 we're at we really don't know what the facts of that

1 conviction.

2 MR. GORANSON: I can give you the cite on *Hunter v.*
3 *Staples* if you like.

4 THE COURT: Okay. What is that cite?

5 MR. GORANSON: 515 S.E.2d 261, and the pin cite is 267.

6 THE COURT: Okay. Do we have any information on that
7 2001?

8 MS. ODOM: Yes, sir, Your Honor. I've pulled the
9 clerk's files and I have the warrants here with me.

10 THE COURT: Okay. How about while I'm looking at that
11 case can you share what you've got with Mr. Goranson?

12 MS. ODOM: Yes, sir.

13 THE COURT: Maybe you all can come to some agreement.

14 (Whereupon, discussions were held off the record.)

15 THE COURT: What are the facts on that conviction,
16 Solicitor?

17 MS. ODOM: Your Honor, it appears from the warrants
18 that Mr. Martin, along with a co-defendant, did enter into a
19 home and take various items including a VCR.

20 THE COURT: All right. Well, in light of that case it
21 says armed robbery is a crime of dishonesty. So I think
22 based upon the facts of that burglary third it would
23 certainly appear to me to be one of dishonesty because it
24 was taking certain things and would be synonymous with
25 larceny, shoplifting, that sort of thing. So unless you all

1 have anything else to refute that from the State I would
2 allow it to be used if so determined by the Defense for
3 impeachment purposes. Unless you have anything else to give
4 me on that point.

5 MS. ODOM: Not on that one, Your Honor.

6 THE COURT: All right. And do you have any position as
7 to the ABHAN 2010 conviction?

8 MS. ODOM: Your Honor, it is a misdemeanor. I
9 understand that it carries up to 10 years. He did receive
10 probation on it, I believe.

11 THE COURT: Right. Isn't Rule 609 carries more than
12 one year it can -- and within -- within a 10 year period of
13 time --

14 MR. GORANSON: Right.

15 THE COURT: -- carrying a possible more than one year
16 it fits in 609?

17 MR. GORANSON: That's correct.

18 MS. ODOM: Yes, sir.

19 THE COURT: All right. So I'm going to allow both
20 ABHAN 2010 conviction, burglary third 2001 conviction to be
21 used for impeachment purposes of the victim if so determined
22 by the Defense.

23 MS. ODOM: And, Your Honor, just for the record, the
24 Defendant has a few burglary third convictions, but Mr.
25 Goranson will only be able to address one.

1 THE COURT: I'm not --

2 MS. ODOM: Oh, the victim. Mr. Martin, the victim in
3 this case. He has three burglary third convictions from
4 2001. Only one of them has an associated petty larceny
5 limit, and that's the one we discussed.

6 THE COURT: Right.

7 MS. ODOM: -- and Mr. Goranson --

8 THE COURT: Let him look at what you have on the other
9 ones and make sure he's --

10 MR. GORANSON: Your Honor, one of those warrants says
11 that he broke in in order to commit a crime inside, so --

12 THE COURT: I'm going to go ahead and just limit it to
13 the one unless --

14 MR. GORANSON: There's one more we're checking on.

15 THE COURT: Okay.

16 MS. ODOM: The other warrant also says just with intent
17 to commit a crime. It doesn't say whether --

18 THE COURT: Well, I don't think -- I don't think intent
19 would rise to the level. So I'm going to limit you to the
20 one.

21 MR. GORANSON: I understand.

22 MS. ODOM: And just one more thing, Your Honor. He'll
23 be able to talk about -- just ask the victim in this case if
24 he was convicted but not the facts about those cases,
25 correct?

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1 THE COURT: Right. Right. I mean, your impeachment is
2 limited to the crime and when the crime -- when he was
3 convicted of the crime. He can't get into the facts of it.
4 That's correct.

5 MR. GORANSON: Yes, sir.

6 THE COURT: Okay. Bring the jury out.

7 (Whereupon, the jury entered the courtroom at 2:53
8 p.m.)

9 THE COURT: Let me see the lawyers real quick. One
10 other real quick thing.

11 (Whereupon, a side bar was held.)

12 THE COURT: Let the record reflect that the jury is
13 back in and the State will begin. Solicitor.

14 MS. ODOM: Thank you, Your Honor. The State calls
15 Kelvin Martin.

16 KELVIN MARTIN, having been first duly
17 sworn, testified as follows:

18 THE COURT: Your witness, Solicitor.

19 MS. ODOM: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. ODOM:

22 Q Can you state your name for the record?

23 A Kelvin Martin.

24 Q Mr. Martin, how old are you?

25 A Thirty-one.

1 Q And do you remember earlier this year the day of March
2 the 23rd?

3 A Yes, ma'am. I do.

4 Q What were you doing that day?

5 A I was leaving from work headed to my girlfriend's
6 house.

7 Q And where were you working at the time?

8 A At Shoney's in Greenwood.

9 Q And when you were leaving work and headed to your
10 girlfriend's house did you go straight there or did you make
11 a stop along the way?

12 A Yes. I stopped when I was flagged down.

13 Q Tell me what road you were on when you were flagged
14 down?

15 A If I'm not mistaken, it's Pressley. Pressley Street,
16 if I'm not mistaken.

17 Q And who flagged you down?

18 A Chris -- I don't know his real name, so I'll just call
19 him what I know him by. Bow Wow and Dre.

20 Q Dre, okay. And kind of describe to me how they flagged
21 you down.

22 A When I was passing by they kind of threw their hands up
23 on the air like -- like the motion signal, come here.

24 Q Okay. And what did you do?

25 A I pulled into a nearby -- where used to be a bank at,

1 and kind of turned around and went back where they were.

2 Q Okay. And when you went back where they were what
3 happened?

4 A An argument broke out about previous problem that we
5 had before and --

6 Q Now, were you still in your car?

7 A Yes. I never left my car, period.

8 Q Okay. So when you went back where were they at?

9 A They was kind of standing to the right of me like kind
10 of like behind me a little bit.

11 MS. ODOM: Your Honor, permission to approach the
12 witness?

13 THE COURT: Certainly.

14 Q I'm going to show you what's been marked as State's
15 Exhibit 1 just for identification purposes. Do you
16 recognize what this is?

17 A Yes, ma'am.

18 Q And what is that?

19 A This is just a printout of the surrounding Greenwood
20 County, pretty much where the area where I was when this
21 incident happened.

22 Q And is that a fair and accurate representation of the
23 incident location?

24 A Yes, ma'am.

25 MS. ODOM: Your Honor, at this time the State would

1 move to introduce this into evidence as State's Exhibit 1.

2 THE COURT: And what says the Defense?

3 MR. GORANSON: No objection.

4 THE COURT: All right. Without objection, it'll be
5 marked as State's 1 into evidence.

6 (Whereupon, State's Exhibit 1 was entered into
7 evidence.)

8 MS. ODOM: Your Honor, permission to publish this?

9 THE COURT: Yes.

10 MS. ODOM: And, Your Honor, permission for the witness
11 to get off the stand.

12 THE COURT: Certainly.

13 MS. ODOM: All right. Mr. Martin, if you will, come
14 down here with me. I'm going to have you point out on the
15 map.

16 (Whereupon, the witness stepped down from the witness
17 stand and approached State's Exhibit 1.)

18 THE COURT: And I would just ask the witness to speak
19 up loud since he doesn't have the benefit of his microphone
20 at the witness stand, because we need to hear what you have
21 to say, sir.

22 THE WITNESS: Okay.

23 Q Mr. Martin, if you will, just show which direction you
24 were driving.

25 A I was going from this direction headed left.

1 THE COURT: A little louder, sir.

2 A I was coming from right to left, from the end of
3 Pressley Street to the left side from --

4 Q So you were coming --

5 A -- from this direction (indicating).

6 Q And where in the parking -- which parking lot were they
7 in?

8 A This one. This parking lot right here (indicating).

9 I'm trying to make sure I'm looking at it correct. Yes,
10 this parking lot right here (indicating).

11 Q Okay. Show me a little bit of the surroundings on the
12 map. What is -- what is this (indicating)?

13 A This is Rick's Uptown Cafeteria and right here is a
14 barber shop, if I'm not mistaken. Right in this area right
15 there (indicating). And this is -- this is the old bank I
16 think I turned around in right here (indicating). Yes,
17 that's correct.

18 Q So looking back at this, this is Rick's Café. You were
19 driving --

20 MR. GORANSON: Objection, Your Honor. Asked and
21 answered.

22 THE COURT: Well, she can reask just for clarification
23 purposes, but try not to lead. Okay?

24 A I apologize. This is the parking lot right here
25 (indicating). Yes, that's correct. I apologize. This -

1 MR. GORANSON: Non-responsive, Your Honor.

2 MS. ODOM: But he is --

3 THE COURT: Overruled.

4 MS. ODOM: Thank you, Judge.

5 Q Okay. So you were driving up this way (indicating)?

6 A Yes, ma'am.

7 Q Okay. Show me where you turned around.

8 A As I came up this way I was flagged right about here
9 and made a right and right into this bank -- used to be an
10 old bank, and turned around and I came back out, and I came
11 back up this road, pulled in kind of forward and backed up
12 and parked my car right here where my passenger side would
13 have been facing them.

14 MS. ODOM: Okay. Mr. Martin, if you would go back up
15 on the stand.

16 (Whereupon, the witness returns to the witness stand.)

17 Q So when you got turned around, you went and turned
18 around, came back and turned around, you got there and
19 started speaking with them, what side of the vehicle were
20 they on?

21 A Well, Mr. Brown was on -- he was closest to me, so he
22 would have been on the passenger side of the other vehicle,
23 and the other guy, he was on the driver's side. So they was
24 both on opposite sides of the vehicle.

25 Q Okay. But Dre was closest to you?

1 A Yes.

2 Q Okay. And did you stay in your car?

3 A Yes, ma'am. I never got out of my car.

4 Q Did you roll any windows down?

5 A My driver's side passenger window. I'm sorry. My
6 passenger window in the front. I'm sorry.

7 Q Okay. Your front passenger window.

8 A Yes.

9 Q And you -- okay. And so, you had your front -- your
10 passenger side window rolled down, and you all began to
11 speak?

12 A Yes, ma'am.

13 Q How far away were they from you?

14 A I would say from where I'm sitting maybe to that wall
15 there closest to those double doors.

16 Q Okay. And how long do you think you were there? How
17 long did you all speak?

18 A Maybe about a good 45 seconds and then shots were
19 fired.

20 Q Well, tell me about that. Who fired the shots?

21 A Mr. Brown fired those shots at me.

22 Q Well, be a little more detailed. Tell me exactly what
23 happened. You all were speaking?

24 A Well, we were sitting there, and we was arguing rather,
25 and he said I'm going to murder this fool and before I know

1 it my windows were getting shot out.

2 Q Did you see him pull the gun out?

3 A Yes, ma'am. I did.

4 Q And where did he pull the gun from?

5 A From the passenger side of the car where he was, so he
6 reached back in the car and got the gun out.

7 Q Okay. So they were at their car, you were at your car.

8 Now, was he -- was his door open in the car he was at?

9 A Yes, ma'am. He was.

10 Q Was he sitting in the car or --

11 MR. GORANSON: Objection, leading.

12 THE COURT: Try to rephrase.

13 MS. ODOM: Thank you, Your Honor.

14 Q Where was he at in the car, or was -- where was he at?

15 A When I first approached he was sitting in the driver --
16 I mean, in the passenger side with the door open. And then
17 when I got there he kind of got out and kind of stood there
18 in between the door without it being closed.

19 Q And where did he get the gun from?

20 A From the passenger side of the car.

21 Q Okay. And when he started firing at you what happened?

22 A I just mashed the gas and pulled off and kind of
23 panicked. My cousin left his firearm in my car the night
24 before and I just kind of defended myself and shot back at
25 him, and then I left and called the cops.

1 Q Now, when you -- when you were shooting back at him, I
2 mean, were you -- describe that to me.

3 A Well, when the first shots were fired I kind of ducked
4 down in the seat and pulled off, and as I got to the
5 intersection out there in the road I made a right and I
6 looked over at him and my passenger -- the passenger window
7 was down so I fired two shots out the window and kept going.
8 He was still shooting as I was pulling off.

9 Q And what kind of damage did he do to your car when he
10 fired the gun?

11 A My windows was shot out. It's a bullet grazing in the
12 back of my trunk and that's pretty much --

13 MR. GORANSON: Objection, Your Honor.

14 THE COURT: And the nature of your objection?

15 MR. GORANSON: His characterization of the dent on the
16 trunk.

17 THE COURT: Repeat the question, Solicitor, and let me
18 hear the answer again. I want to make sure I know what he
19 answered.

20 MS. ODOM: Your Honor, I just asked him to describe the
21 damage, and then he described --

22 THE COURT: All right. Describe the damage so I can
23 hear your testimony so I can rule on Mr. Goranson's
24 objection.

25 A My windows were shot out and my trunk had a bullet

1 grazing on the back of the trunk.

2 THE COURT: Okay. So your objection is the bullet
3 grazing on the trunk?

4 MR. GORANSON: Yes, sir.

5 THE COURT: Okay. Well, lay a foundation and see if
6 he's able to characterize what is on the trunk as a bullet
7 grazing and then I'll deal with the -- with the objection.
8 Lay some foundation.

9 MS. ODOM: Yes, sir, Your Honor. Your Honor, I was --
10 I'm going to show the Defendant -- the victim some pictures.

11 THE COURT: Okay. Do that. Let's put your objection
12 on hold, and you can certainly renew it and we'll deal with
13 it.

14 MS. ODOM: Your Honor, permission to approach the
15 witness.

16 THE COURT: Yes, ma'am.

17 Q I'm going to show you what's been marked as State's
18 Exhibit Number 2 for identification purposes only. Do you
19 recognize what that is?

20 A Yes. That's my vehicle.

21 Q And can you -- is that your vehicle before or after
22 this incident?

23 A After the incident.

24 Q State's Number 3. Describe to me what that is.

25 A That's my rear window. And that's after the incident,

1 too.

2 Q Now, is that the rear passenger side or --

3 A Passenger side.

4 Q This is State's 4. What is that?

5 A That's glass in my seat from my windows being knocked
6 out.

7 Q State's 5. What is that?

8 A That's the bullet grazing that I said that was on my
9 trunk earlier.

10 Q Now, there's one more picture, State's 6. Do you know
11 what that is?

12 A And that's also a picture of it. Of the bullet grazing
13 that I just mentioned earlier.

14 Q And are all these pictures fair and accurate
15 representations of your vehicle after this incident?

16 A Yes, ma'am.

17 MS. ODOM: The State would move to introduce Exhibits
18 2, 3, 4, 5 and 6 into evidence.

19 THE COURT: Okay. As to the pictures, any objections?

20 MR. GORANSON: No objections.

21 THE COURT: All right. 2 through 6 will be admitted
22 into evidence.

23 (Whereupon, State's Exhibits 2-6 were entered into
24 evidence.)

25 THE COURT: Now, do you want to renew your objection?

1 And I think it would be related to 5 and 6.

2 MR. GORANSON: No, Your Honor.

3 THE COURT: All right. The objection has been
4 withdrawn.

5 MR. GORANSON: Thank you.

6 THE COURT: Thank you very much.

7 MS. ODOM: Your Honor, permission to publish all these
8 to the jury?

9 THE COURT: Yes.

10 Q Mr. Martin, can you see the TV screen from where you're
11 sitting?

12 A Yes, ma'am.

13 Q Can you tell me what that is?

14 A That's the bullet grazing that I spoke on earlier on
15 the rear of my trunk. And that's also another picture of
16 it. That's my window when it was shot out. And that's my
17 passenger rear window when it was shot out. And that's the
18 glass in the seat from where my windows were shot out.

19 Q Which seat is this?

20 A That is the backseat of the vehicle.

21 Q And, Mr. Martin, just to be clear. That damage,
22 including the broken windows and the trunk, when did that
23 damage occur?

24 A On the day of the incident.

25 Q Okay. Now, after you left where did you go?

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1 A I went to my girlfriend's apartment in Phoenix Place.

2 Q And what did you do when you got there?

3 A I called the cops and then I called my mother.

4 Q And did the officers respond?

5 A Yes, they did.

6 Q Now, what did you tell the officer when he got there?

7 A When he got there I told him that Mr. Brown and Bow Wow
8 had shot my windows out, and I never did say anything about
9 me shooting back at him.

10 Q And why didn't you say anything to him about it?

11 A Because, for one, I was scared. Two, I'm a convicted
12 felon myself and I don't supposed to be around a firearm.
13 So I was kind of scared I was going to get myself in
14 trouble, until I was further explained to that...

15 Q Okay. And just a few more things. Can you -- is the
16 person who shot you, Dre, is he in the courtroom today?

17 A Yes, ma'am. He is.

18 Q Can you point him out?

19 A He's sitting right there in the white shirt with a tie
20 on.

21 (Whereupon, witness points to Defendant.)

22 MS. ODOM: Your Honor, can the record reflect that the
23 victim has pointed the Defendant out?

24 THE COURT: So reflected. So noted for the record.

25 Q And, Mr. Martin, we're -- what county did this happen

1 in?

2 A In Greenwood.

3 Q And what city was that in?

4 A Greenwood.

5 Q So you were able to tell the officer who did this?

6 A Yes, ma'am.

7 Q Were you ever shown -- after you told the officer who
8 did this were you shown a lineup?

9 A Yes, ma'am. They came to my job the following day.

10 Q And were you able to pick the Defendant out of the
11 lineup?

12 A Yes, ma'am. I did.

13 Q All right, Mr. Martin. So what did you know the
14 Defendant as? What name did you know?

15 A Dre.

16 Q So you didn't know his last name?

17 A No, I didn't.

18 Q And you didn't know his first name?

19 A No, I didn't.

20 Q But you knew who he was?

21 A Yes. I knew who he was.

22 MS. ODOM: May I approach, Your Honor?

23 THE COURT: Sure.

24 Q Mr. Martin, can you tell me what that is?

25 A That's a lineup.

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1 Q And have you ever seen this before?

2 A Yes, ma'am. They showed that to me at my job that day.

3 Q And can you tell me what -- what that piece of paper
4 is?

5 A That's where it says that I picked him out of that
6 lineup.

7 Q Okay. And that -- this is the same as you saw it that
8 day?

9 A Yes, ma'am.

10 MS. ODOM: Your Honor, I would move to have this
11 entered into evidence as State's Exhibit 8.

12 THE COURT: Do we have -- do we have six pictures, 2
13 through 7?

14 MS. ODOM: Yes. 2 through 7 and 7 isn't entered yet.

15 THE COURT: 7 has not been entered yet. Okay. You
16 want it as one exhibit, both pages?

17 MS. ODOM: Whatever would be easiest for the court
18 reporter.

19 THE COURT: What says the Defense?

20 MR. GORANSON: No objection.

21 THE COURT: All right. Without objection, it'll be
22 marked as Number 8, as one exhibit. And just staple it
23 together.

24 (Whereupon, State's Exhibit 8 was entered into
25 evidence.)

1 Q All right, Mr. Martin. Now, which number did you
2 pick?

3 A Number four.

4 Q And you were able to tell the officer Dre?

5 A Yes, ma'am.

6 Q Now, after speaking with some other people were you
7 able to tell the officer the Defendant's last name?

8 A Yes.

9 Q Now, when you all were at the apartments and the
10 officer was questioning you did you -- did you give him the
11 gun that you had fired?

12 A Yes, I did.

13 MS. ODOM: I beg the court's indulgence just one
14 moment.

15 THE COURT: Sure.

16 MS. ODOM: Okay. Mr. Martin, if you will just answer
17 any questions that Mr. Goranson has for you.

18 THE COURT: Any cross examination from the Defense?

19 MR. GORANSON: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. GORANSON:

22 Q Can you see the map?

23 A Yes, I can.

24 Q You said that -- you were talking about this parking
25 lot right here?

1 A Yes.

2 Q And you pulled up in this area?

3 A Yes.

4 Q Where did you park?

5 A Closest to the sidewalk right there where that pen --

6 kind of where you have that pen at.

7 Q Right there (indicating)?

8 A Yes.

9 Q Okay. And the other car was parked facing in?

10 A Yes.

11 Q Right about here?

12 A Yes.

13 Q So nose in?

14 A Yes.

15 MS. ODOM: What --

16 MR. GORANSON: Can we approach or --

17 THE COURT: Yeah.

18 (Whereupon, a side bar was held.)

19 MS. ODOM: Can we approach one more moment, Your Honor?

20 THE COURT: Well, you want to first --

21 MR. GORANSON: That's fine.

22 THE COURT: Well, yeah, come on.

23 MR. GORANSON: I apologize, Your Honor. If I could

24 just have the court's indulgence. I -- it's my first time

25 doing this.

1 THE COURT: If it involves technology, I certainly
2 understand. Now, what we can do, if you're going to need a
3 few minutes to get it ready and going, we can go ahead and
4 take our afternoon break.

5 MR. GORANSON: I think I've got it.

6 Q Okay, Mr. Martin. Sorry about the delay there. Did
7 you know you were being videotaped on that day?

8 A Yes.

9 Q Okay. And you knew your words were being recorded?

10 A Yes.

11 Q Okay. And you told police exactly what happened the
12 first time you spoke with him?

13 A Yes.

14 Q Okay. And you told them that you were driving down
15 Phoenix Street -- or Pressley Street. There's some
16 ambiguity about that. But you were driving down Phoenix
17 Street?

18 A Uh-huh (affirmative.)

19 THE COURT: You need to give a verbal yes or no --

20 THE WITNESS: Yes.

21 THE COURT: -- or whatever your response is instead of
22 --

23 MR. GORANSON: Okay. And I'm not going to show any of
24 this video unless it becomes necessary to show it. So I
25 don't know if we -- we can just leave it up there.

1 THE COURT: Yeah.

2 MR. GORANSON: But I -- I don't know if --

3 THE COURT: That's fine. You can leave it like that.

4 It'll be ready to go if you have to.

5 Q And you said they waived you down? That was your
6 statement?

7 A Yes.

8 Q And then you said what he was reaching for?

9 A Yes.

10 Q And then your windows were shot out?

11 A Yes.

12 Q Okay. And you also told police that you didn't have
13 anything to shoot?

14 A Yes, I did.

15 Q And you told -- and you kind of laughed about it after
16 that, right?

17 A I'm not quite sure.

18 Q Okay. And then later I think your mom arrived, right?

19 A Yes.

20 Q And you told your mom that you just ducked when you
21 heard gunshots?

22 A Yes.

23 Q You didn't mention anything about being shot -- or
24 shooting from your car, did you?

25 A I didn't at first.

1 Q And you didn't tell anybody that you hid the gun?

2 A No, I didn't.

3 Q And then later -- a little bit later on you told the
4 police about this prior dispute?

5 A Yes.

6 Q And you told the police that a guy named Bow Wow waived
7 at you?

8 A Yes.

9 Q And you slowed down?

10 A Yes.

11 Q And you had your window down? Your passenger window
12 down? Your front --

13 A Yes.

14 Q -- passenger windows down? And you said I didn't have
15 anything to do with that?

16 A Yes. Yes.

17 Q And you started to pull off? You started to pull off
18 after that, right? That's what you told police?

19 A Yes, initially, I guess.

20 Q And so, then you said a guy -- the guy Dre was reaching
21 into the car?

22 A Yes.

23 Q And you asked what he was reaching for?

24 A Yes.

25 Q And then you got shot at?

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1 A Yes.

2 Q And then you went to Phoenix Place?

3 A Yes.

4 Q Okay. And then Mr. McAllister came out to Phoenix
5 Place, correct?

6 A Yes.

7 Q Where your car was parked?

8 A Yes.

9 Q And you told him that was your car?

10 A Yes.

11 Q And you confirmed what you -- the officer gave you his
12 understanding and you confirmed that, right?

13 A Yes.

14 Q And then Captain McAllister found two shell casings in
15 your car, right?

16 A Yes.

17 Q And then you told him that you didn't have a gun in
18 your car?

19 A Yes, at first.

20 Q And you told him that he could search your car
21 completely?

22 A Yes.

23 Q And you knew there wasn't a gun in the car at that
24 point?

25 A Yes.

1 Q And then you told Captain McAllister if you had a gun
2 you would have hidden it by now, right?

3 A Yes, I did say that.

4 Q All right. So eventually, after talking to Captain
5 McAllister a couple of times, you went to the area of
6 Speedy's Barber Shop with him, right? You rode with him?

7 A Yes.

8 Q And on the way you spoke with him?

9 A Yes.

10 Q And you knew that conversation was being recorded?

11 A Yes.

12 Q And you told him that you were on the phone with your
13 girlfriend when this happened?

14 A Yes.

15 Q And you told him that after it happened you came
16 straight back to Phoenix Place?

17 A Yes.

18 Q And you told him you called your mom?

19 A Yes.

20 Q And you told him you called the police after that?

21 A Yes.

22 Q And then you told the police you stood outside and you
23 waited for them to get there?

24 A Yes.

25 Q You left out the part about hiding the gun?

1 A Yes.

2 Q And you waited for the police. So basically you hid
3 the gun and you called the police?

4 A Yes.

5 Q And then you described -- then you got to -- I think by
6 that point you had arrived at Speedy's, at that area, the
7 parking lot near there, and you describe what happened. And
8 then this time you told the police that you pulled into the
9 parking lot, as you testified earlier, right?

10 A Yes.

11 Q And then you backed up --

12 A Uh-huh (affirmative.)

13 Q -- and you pulled up to the curb --

14 A Uh-huh (affirmative.)

15 Q -- and then there was --

16 A Yes. Yes.

17 Q Thank you. And then there was some words exchanged?

18 A Yes.

19 Q You said that Dre reached into a car and shots were
20 fired?

21 A Yes.

22 Q And you pulled off?

23 A Yes.

24 Q And you went back to Phoenix Place?

25 A Yes.

1 Q All right. While you were in the car Captain

2 McAllister had to explain what the law was to you, didn't

3 he?

4 A Yes.

5 Q And he told you all about where it was legal to keep a

6 gun, didn't he?

7 A Yes.

8 Q And he told you when it was legal to shoot at somebody,

9 didn't he?

10 A Yes.

11 Q And that's when you told Mr. McAllister that you were

12 shooting out of your car?

13 A Yes.

14 Q And then you told him that the gun was your cousin's

15 gun?

16 A Yes.

17 Q And you told him that the gun was at your cousin's

18 house?

19 A No.

20 MR. GORANSON: I've got the sound muted until I get to

21 the spot I need.

22 (Whereupon, an excerpt of a video recording was

23 played.)

24 MR. GORANSON: Did everybody hear that?

25 THE COURT: I couldn't.

1 THE WITNESS: I could.

2 THE COURT: I don't know about the jury.

3 MR. GORANSON: I apologize.

4 THE COURT: The jury is shaking their head no, they
5 could not hear it either, so you may want to work on that
6 volume.

7 What we're going to do, we're going to go ahead, ladies
8 and gentlemen of the jury, and take an afternoon break and
9 give the attorneys an opportunity to get all this ready in
10 place. So if you'll just retire briefly to your jury room.
11 Remind you not to discuss this case among yourselves,
12 anything about the case, and maybe get a quick little snack
13 or quick little drink or bathroom break. Okay? Bring you
14 back out shortly.

15 (Whereupon, the jury exits the courtroom at 3:32 p.m.)

16 MR. GORANSON: May I try this?

17 THE COURT: Yeah. I want you to try it and have it in
18 good shape.

19 MS. ODOM: Your Honor, if -- I mean, can the witness.

20 THE COURT: Yeah. You can step down. You can't talk
21 with anybody about your testimony, but you can certainly
22 step down and take you a break as well.

23 (Whereupon, the witness steps down from the witness
24 stand.)

25 (Whereupon, a brief recess was taken.)

1 THE COURT: Are we ready to start back?

2 MS. ODOM: Yes, Your Honor.

3 THE COURT: Mr. Goranson, are you set up in good shape?

4 MR. GORANSON: Yes.

5 THE COURT: Okay. The witness come back to the witness
6 stand. Take a seat, please. And bring the jury out.

7 (Whereupon, the witness returns to the witness stand.)

8 (Whereupon, the jury enters the courtroom at 3:43 p.m.)

9 THE COURT: Okay. Let the record reflect the jury is
10 back in. Mr. Goranson.

11 MR. GORANSON: Thank you.

12 Q I think we left off with you said -- you told the
13 police that the gun was at your cousin's house. Is that --

14 A Yes, I did say that, but --

15 Q You did say that?

16 A Yes, I did say that.

17 Q And I think a minute ago you said you shot twice.
18 That's not true, is it?

19 A Yes.

20 Q Didn't you tell the police you shot three times out of
21 your car?

22 A I'm not quite sure. I thought I told him twice. There
23 was only two shell casings in my car.

24 Q So because there were only two shell casings in your
25 car, that's why you're saying you shot twice now?

1 A To be honest with you, yes.

2 (Whereupon, an excerpt of a video was played.)

3 Q Does that sound right?

4 A Yes. I remember saying that.

5 Q And then you told Captain McAllister that you didn't go
6 there to start any trouble with them?

7 A No.

8 Q You told him that?

9 A Yes, I told him that.

10 Q But you did go there and you unloaded your clip?

11 A No, I did not unload a clip.

12 Q Your clip was not empty when you returned it to the
13 officer?

14 A Yes, it was.

15 Q You unloaded the clip?

16 A Yes. It wasn't but two shells in there.

17 Q You shot three times, sir.

18 MS. ODOM: Objection. Not a question.

19 Q You said you shot three times, did you not?

20 A Yes, I said that. But due to the circumstances -- with
21 bullets flying at your head, sir, you wouldn't think clearly
22 neither.

23 Q Okay. And you told the police that you just left
24 Shoney's?

25 A Yes.

1 Q And you got off work at 3:30 that day, right?

2 A If I'm not mistaken, that's correct.

3 Q And you went to Phoenix Place?

4 A Yes.

5 Q And then you got the gun from your cousin?

6 A Did I get it from him?

7 Q You got the gun from your cousin. That's my -- is that
8 right?

9 A Yes. He left it in my car the night before.

10 Q When did you find out that he had left it in your car?

11 A He called me while I was at work and told me I left my
12 gun in your car.

13 Q And where did he say he left it?

14 A He said he left it in the glove box.

15 Q Okay. So after you got off from work, went to Phoenix
16 Place, then you went looking for the people that you had the
17 prior dispute with, didn't you?

18 A No.

19 Q You -- after you saw them -- after you unloaded the
20 clip you went back to Phoenix Place and hid the gun, right?

21 A Yes.

22 Q Okay. And you told the police that you sped off when
23 shots were fired?

24 A Yes.

25 Q But you never told the police when you fired the shots,

1 did you?

2 A I'm not sure. Not sure.

3 Q And you never told the police that you reached over
4 into the glove box while you were fleeing the scene to pull
5 out a gun to turn the safety off to then fire back, did you?

6 A No.

7 Q You did say you were ducking bullets though, right?

8 A Yes.

9 Q But you never said you reached under the seat and
10 pulled a gun out?

11 A I'm not quite sure what I said, if I did say anything.

12 Q Okay. So just going back for a moment to this parking
13 lot here is where you say it happened. And you say that the
14 other car was parked right here (indicating), right?

15 A Somewhere in that vicinity.

16 Q And it was facing in, right?

17 A Yes.

18 Q So the passenger side of the vehicle was closest to the
19 passenger side of your vehicle?

20 A Yes.

21 Q Okay. And just for clarification. You mentioned you
22 were a convicted felon?

23 A Yes.

24 Q And that was for convictions for burglary in the third
25 degree?

1 A Yes.

2 MR. GORANSON: I beg the court's indulgence for just
3 one moment.

4 Q Sir, isn't it true that you shot your own back window
5 out?

6 A No, sir. It's not.

7 Q But the shell casings landed in the backseat, right?

8 A Yes.

9 Q Did the shell casings eject to the right of the gun?

10 A Yes.

11 MR. GORANSON: No further questions at this time.

12 THE COURT: Redirect from the State?

13 MS. ODOM: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. ODOM:

16 Q How long ago did this happen?

17 A I'm not even quite sure the date that it happened.

18 Q You testified earlier March 23rd.

19 A Yes.

20 Q Seven months ago?

21 A Yes.

22 Q Do you remember every little specific detail of seven
23 months ago?

24 A No, I don't.

25 Q Do you remember being shot at seven months ago?

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1 A Yes, I remember that.

2 Q Do you remember being scared for your life?

3 A Yes.

4 Q Do you remember speeding away trying to get away from
5 someone shooting at you?

6 A Yes.

7 MS. ODOM: No further questions.

8 THE COURT: Recross?

9 MR. GORANSON: Nothing further, Your Honor.

10 THE COURT: Okay. Thank you for your testimony. You
11 can step down. State call your next witness.

12 MS. ODOM: The State calls Officer McClinton.

13 WESLEY McCLINTON, having been first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. ODOM:

17 Q Officer, can you give me your full name for the
18 record?

19 A Wesley Brown McClinton.

20 Q And where do you work?

21 A Greenwood City Police Department.

22 Q How long have you worked there?

23 A Approximately two and a half years.

24 Q And what did you do before you were a police
25 officer?

1 A I was in the military, Army.

2 Q Now, what are your duties as a police officer?

3 A Respond to service calls, patrol traffic.

4 Q And were you working back on March 23rd of this
5 year?

6 A Yes, ma'am.

7 Q Did you have an opportunity to respond to a
8 shooting that day?

9 A Yes, ma'am.

10 Q Officer, I'm going to put a map on the overhead.
11 Can you see that from where you're sitting?

12 A Yes, ma'am.

13 Q Now, when you had an opportunity to work on this
14 case this did you respond to the scene of the shooting?

15 A Not initially, but shortly after. Yes, ma'am.

16 Q And what did you do when you responded to the
17 scene?

18 A When I responded to the scene my primary job was
19 to try to locate any type of evidence, anything that was
20 recently involving the crime.

21 Q Okay. And were you in the parking lot that day?

22 A Yes, ma'am.

23 Q Now, did you find anything in the parking lot?

24 A Yes, ma'am.

25 MR. GORANSON: If we could just get him to lay the

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1 proper foundation for where he was.

2 THE COURT: Okay.

3 MS. ODOM: Your Honor, can I have him come off the
4 stand and point to --

5 THE COURT: Sure, yeah. To point at the map. Sure.

6 (Whereupon, the witness steps down from the witness
7 stand.)

8 MS. ODOM: If you will, come on this side of me.

9 THE COURT: And, Officer, speak up loud since you don't
10 have the benefit of your microphone at the witness stand.

11 THE WITNESS: Yes, sir.

12 Q Can you point to the parking lot that you responded to
13 that day? First of all, point to a couple of things around.
14 Tell me what's on this map.

15 A I believe this to be the old Bank of America.

16 THE COURT: Maybe, Solicitor, use a pen. I think that
17 might work better than the hand.

18 A I believe this to be the old Bank of America here. And
19 this would have been the old drive thru behind the Bank of
20 America. This being the barber shop here, and the entrance
21 into both parking lots off of Pressley Street right here.

22 Q All right. Now, point to which parking lot you
23 responded to.

24 A This is the parking lot I responded to.

25 Q Okay. And tell me what you found, if you found

1 anything.

2 A At the time we responded there were no vehicles in this
3 parking lot. It was completely vacant. This small parking
4 area right here was full. I believe we found two to three
5 shell casings just on the other side of the curb located
6 around the vehicle tires that were in this area.
7 Approximately three more scattered around in the area right
8 here directly across from where the previous ones were
9 found.

10 Q Okay. And did you pick up those shell casings?

11 A Yes, ma'am. I did.

12 MS. ODOM: All right. If you will go back to the
13 stand. Thank you.

14 (Whereupon, witness returned to the witness stand.)

15 Q Now, after you found shell casings what else did you
16 do, if anything?

17 A After I found the shell casings?

18 Q Did you do anything else with the investigation?

19 A I went into the barber shop, Speedy's Barber Shop, and
20 tried to see if I can gather any kind of information from
21 anybody that was inside at the time, whether they saw any
22 vehicles or descriptions or individuals leaving the area. I
23 wasn't provided any information from any of the patrons
24 inside the store.

25 Q Now, after you collected those shell casings who did

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1 you give them to?

2 A I gave them to Officer Shockley.

3 MS. ODOM: Your Honor, may I approach the witness?

4 THE COURT: Certainly.

5 Q I'm going to hand you a bag. Can you tell me what's in
6 that bag?

7 A Looks to be six small caliber shell casings.

8 Q And to the best of your recollection, are those --

9 A Yes.

10 Q So there's -- tell me again what's in the bag.

11 A Eight shell casings in a plastic wrapper.

12 Q Okay. Now, are these -- are these shell casings that
13 are grouped together the ones you collected that day?

14 MR. GORANSON: Objection, Your Honor. I don't think
15 they've laid the proper foundation what's in that bag.

16 THE COURT: Well, I think -- this officer can be asked
17 what the six shell casings that he got from the parking lot
18 are they in the bag. I think he can be asked that, and he
19 can say yes, no or he doesn't know.

20 MR. GORANSON: I think that -- do we need to approach?
21 Should I approach or -- my opinion, Your Honor, is that she
22 can ask him what he found.

23 THE COURT: Right.

24 MR. GORANSON: To identify what he found. Not what's
25 in that bag.

1 THE COURT: Well, I think I'm going to allow the
2 Solicitor to ask this witness what the six shell casings
3 that he found in the parking lot, are they in the bag. And
4 then I don't know how he's going to respond, but she can ask
5 him that. Your objection is so noted.

6 MS. ODOM: Thank you, Your Honor.

7 Q Officer, those six shell casings down here that I just
8 asked you, are these the shell casings that you found in the
9 parking lot?

10 A To my knowledge, yes, ma'am.

11 MS. ODOM: Thank you. If you will, answer any
12 questions Mr. Goranson has.

13 THE COURT: Okay. Any cross, Mr. Goranson?

14 MR. GORANSON: Yes, sir.

15 CROSS EXAMINATION

16 BY MR. GORANSON:

17 Q You described the shell casings as small caliber. What
18 did you mean by that? What caliber are they?

19 A I believe them to be 380 caliber.

20 Q Okay. So let's talk a little bit about your training.
21 You've had the basic law enforcement training?

22 A Yes.

23 Q At the Criminal Justice Academy, right?

24 A Yes.

25 Q And you've also been trained some, I imagine, at the

1 Greenwood Policy Department?

2 A Yes.

3 Q And you're familiar with the Police Department manual,
4 right?

5 A Yes.

6 Q Okay. General order number 2-07, you're familiar with
7 the manual generally, right?

8 A No, sir.

9 Q You're not familiar with the manual generally?

10 A No. Not specifically.

11 Q Would it help you if I showed you what general order 2-
12 7 was to refresh your recollection about it?

13 A Yes.

14 Q Okay. I'm going to hand up to you what's been -- or
15 what is Greenwood Police Department Procedure Manual. If
16 you would, tell me what the subject of this section of the
17 manual is.

18 A The subject of this section is Records Administration.

19 Q Okay. And if you look over that, just the first page
20 briefly, does that refresh your recollection as to what's in
21 there?

22 A Somewhat. Yes, sir.

23 Q Thank you. So if I told you that in there it said the
24 importance of having well written and complete reports
25 cannot be over emphasized, you -- that's in there, right?

1 A More than likely.

2 Q Yes. And generally in law enforcement the police
3 record system is going to depend on the work product of the
4 officer in the field, right?

5 A Yes, sir.

6 THE COURT: You need to speak up Officer, please.

7 THE WITNESS: Yes, sir.

8 Q And any time you have a criminal offense you're going
9 to need to write -- record what happened down in an incident
10 report, correct?

11 A Correct.

12 Q And have supplemental reports when necessary?

13 A When necessary.

14 Q And you would do that to explain or expand, continue
15 with information from an incident report?

16 A Correct.

17 Q And so, what you want in an investigation is a complete
18 record of what happened, right?

19 A Correct.

20 Q And you want an accurate record of what happened,
21 right?

22 A Correct.

23 Q And that's because these documents keep information
24 that may be used to prosecute somebody someday, right?

25 A Correct.

1 Q And that prosecution could result in some serious
2 repercussions for the person being charged, right?

3 A Correct.

4 Q But you didn't write a supplemental report in this
5 case, did you?

6 A No, sir.

7 Q Okay. And that's -- that's from the second section of
8 the manual. I have just one more. I'm not going to --
9 there's no need to go into most of it. But I just -- I do
10 want to talk briefly about section nine. Do you remember
11 section nine?

12 A No, sir.

13 Q If I showed you what the title of that was and the
14 first page would that refresh your recollection?

15 A More than likely.

16 Q All right. I'm going to hand you what I've got as
17 general order number nine there. If you could read over
18 that and tell me if that refreshes your recollection about
19 that section.

20 A Collection and Preservation of Evidence.

21 Q Okay. You remember going over that kind of material,
22 right?

23 A Yes, sir.

24 Q Thank you, sir. And were you the officer in charge of
25 securing the scene at that Speedy's parking lot?

1 A No, sir.

2 Q Okay. Who was the officer in charge of securing that
3 scene?

4 A Captain McAllister.

5 Q Captain McAllister, okay. Was he there the whole time?

6 A Yes. He was there -- he was the initial -- got there
7 before anybody.

8 Q Okay. And what is your understanding of where he was
9 sort of from start to finish of that call?

10 A Start to finish, Captain McAllister responded to
11 Phoenix Place Apartments, I believe. Made contact with
12 someone there and then came back to the incident scene where
13 I was called. I'm not 100 percent sure where he was at from
14 the beginning to the end --

15 Q Right.

16 A -- but that's where I came in.

17 Q I think that's right. And did he leave you in charge
18 of that scene while he --

19 A No, sir.

20 Q Okay. But eventually he left while you were there,
21 right?

22 A No, sir.

23 Q He did not leave while you were there?

24 A No, sir. Not as far as I can remember.

25 Q Okay. So -- all right. Did you create a crime scene

1 log?

2 A No, sir.

3 Q Did you take pictures of where the shell casings were
4 found?

5 A Yes, sir.

6 MR. GORANSON: I think we have a matter of law, Your
7 Honor.

8 THE COURT: Okay.

9 (Whereupon, a sidebar was held.)

10 THE COURT: Madame Forelady and ladies and gentlemen of
11 the jury, I have a matter of law to discuss with the -- with
12 the attorneys, so I'm going to have to send you back to your
13 jury room.

14 (Whereupon, the jury exited the courtroom at 4:06 p.m.)

15 THE COURT: Okay, Mr. Goranson. I'd be glad to hear
16 from you.

17 MR. GORANSON: Your Honor, these shell casings were --
18 were a main part of the motion I brought before you the
19 other day --

20 THE COURT: Right.

21 MR. GORANSON: -- to dismiss this case or suppress the
22 shell casings. And part of the reason for that was they
23 were disclosed to us Friday before the trial, November 15th.
24 We asked for all the information that the State has, all the
25 information of pictures. The officer just testified about

1 pictures that are in existence which we were never made
2 aware of.

3 THE COURT: Right.

4 MR. GORANSON: It's in possession of the prosecution
5 team for *Brady* purposes. These items could be crucial to
6 our defense, Your Honor, and this is something that has been
7 kept from us.

8 THE COURT: Right.

9 MR. GORANSON: And right now we're in the middle of
10 this trial. The jury has heard about this. We didn't know
11 about it. I request that you dismiss the case or declare a
12 mistrial.

13 THE COURT: All right. Let me hear from the State.

14 MS. ODOM: Your Honor, if we could just ask the witness
15 a few more questions. It could have been that he was
16 confused about what the question was.

17 THE COURT: All right. Well, let's -- all right. Let
18 the court conduct an examination of this witness since we're
19 outside the presence of the jury.

20 Officer, you just testified a moment ago that pictures
21 were taken of these shell casings that you located at the
22 parking lot?

23 THE WITNESS: Yes, sir.

24 THE COURT: Did you take those pictures?

25 THE WITNESS: I'm not a hundred percent if I took the

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1 pictures or not, Your Honor. I know that any time I'm
2 dealing with evidence at a crime scene that's -- that's what
3 I do is take pictures of the shell casings before they're
4 collected. And I know that most of the other officers do,
5 too. A hundred percent whether the pictures were taken by
6 me, I'm not a hundred percent sure of that.

7 THE COURT: All right. But you -- but is it your
8 testimony, Officer, that there are pictures. You're just
9 not a hundred percent sure if you took them or if another
10 officer took them. Is that your testimony?

11 THE WITNESS: Yes, sir.

12 THE COURT: Where are those pictures?

13 MS. ODOM: Your Honor, this is the first time hearing
14 it, too, as well. Captain McAllister is here in the
15 courtroom with me. He says there aren't any pictures of the
16 shell casings that were in the parking lot. There's
17 pictures of the shell casings that were in the victim's car.

18 THE COURT: Well, I mean, this officer is testifying
19 under oath that yes, there are pictures taken of the shell
20 casings from the parking lot. I mean, I hear what you're
21 telling me that -- what the Captain is saying. But I'm
22 listening to this witness here and he says that there are
23 pictures. He's not a hundred percent sure he took them but
24 they were taken. And I'm asking where the pictures, or
25 where are the pictures.

1 MS. ODOM: Your Honor, nobody remembers any -- or
2 Captain McAllister doesn't remember taking these pictures.
3 I don't know if there are any pictures at all of those shell
4 casings.

5 THE COURT: Let me ask this. Officer, when is the last
6 time you've seen these pictures?

7 THE WITNESS: I've never seen the pictures, Your Honor.
8 I --

9 THE COURT: Wait a minute. Let me just stop you here.
10 Hate to interrupt you.

11 THE WITNESS: Yes.

12 THE COURT: Why -- was your testimony was that there
13 are pictures, you're just not certain if you took them or if
14 another officer took them?

15 THE WITNESS: I know there was mention of pictures
16 taken of shell casings, Your Honor. I never saw the photos.
17 And I'm not a hundred percent sure whether they was the ones
18 taken in the parking lot or the pictures taken in the
19 vehicle. I just remember tell of someone taking pictures of
20 shell casings.

21 THE COURT: All right.

22 THE WITNESS: And I apologize if there was any
23 confusion there.

24 MS. ODOM: Your Honor, all I can say is we've been
25 working like crazy to get this ready for trial, and perhaps

1 as we were getting it ready perhaps the Officer saw pictures
2 of the other shell casings and --

3 THE COURT: So, I mean, basically what the State is
4 telling me, Mr. Goranson, that there are -- and you can make
5 a lot of hay out of his testimony. But they're telling me
6 that, in fact, there are no pictures of the shell casings
7 found in the parking lot and there may be pictures of the
8 two found in the car maybe. I don't know. But there are no
9 pictures.

10 MR. GORANSON: There's been, Your Honor, so much about
11 this case that is deeply troubling to me.

12 THE COURT: I understand that. But I've got to go on
13 what I'm being told. Now, you know, why this witness -- and
14 you can certainly under cross examination when the jury is
15 brought back out, you can just grill him all you want to
16 concerning his testimony about the pictures. But the State
17 is telling me that, in fact, there are no pictures in
18 existence and this -- this witness is wrong.

19 I mean, certainly if pictures surfaced now then we
20 probably would be looking at a mistrial. But I'm being told
21 by the State that there are no pictures and this witness is
22 -- he's either confused or uninformed or whatever.

23 MR. GORANSON: He testified without hesitation, Your
24 Honor, when I asked him about --

25 THE COURT: Well, I understand that. I understand

1 that. But again -- and we can put the Captain up under oath
2 for him to testify that, in fact, there has never been any
3 pictures of the shell casings. I'll be glad to do that to
4 substantiate the record. But there are none -- I'll even
5 let you cross examine, if you would like, outside the
6 presence of the jury, this witness for purposes of your
7 motion, and we'll put the Captain up and let you examine him
8 for purposes of your motion, if you would like.

9 MR. GORANSON: I mean, I think he testified
10 unequivocally at first. I'm fine with that, for the record.

11 THE COURT: All right. Do you want the Captain to
12 testify that, in fact, there's never been any pictures of
13 the shell casings in the parking lot?

14 MR. GORANSON: We'll get to the Captain when he's
15 called as a witness.

16 THE COURT: All right.

17 MR. GORANSON: But I would object to going forward.
18 I'm not, you know, backing out from my request for a
19 mistrial just for purposes of --

20 THE COURT: Well, again, if the contrary were true
21 that, in fact, there are pictures, then yeah, I think we'd
22 be in -- certainly in a different situation.

23 MR. GORANSON: Just for the record, he testified
24 initially that he took the pictures.

25 THE COURT: Okay. So we're still in cross examination,

Wesley McClinton-Cross-Examination (Cont.)

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1 so you can certainly engage in whatever cross examination.

2 MS. ODOM: Your Honor, I'm not sure if he testified
3 that he took the pictures.

4 MR. GORANSON: Let's roll it back.

5 MS. ODOM: I would just like to hear it, so there's no
6 confusion.

7 THE COURT: Okay. Madame Court Reporter, if you could
8 assist us. We're off the record now so the court reporter
9 can go back to his testimony.

10 (Whereupon, discussions were held off the record.)

11 THE COURT: Let the record reflect that the court
12 reporter was able to go back to the testimony in question.
13 Both Mr. Goranson and Solicitor Odom had a chance to listen
14 to the testimony. And do one of you all want to state what
15 you heard?

16 MS. ODOM: Sure, Your Honor. Mr. Goranson asked the
17 witness did you take pictures of the shell casings and the
18 witness said yes.

19 THE COURT: Okay. All right. Anything else before the
20 jury comes out?

21 MS. ODOM: No, sir.

22 MR. GORANSON: No, sir.

23 THE COURT: Thank you very much. Bring the jury out,
24 please.

25 (Whereupon, the jury entered the courtroom at 4:20

1 p.m.)

2 THE COURT: Let the record reflect the jury is back in.

3 And, Mr. Goranson, I think we're in your cross examination
4 of this witness.

5 MR. GORANSON: Thank you.

6 Q Office McClinton, you just testified under oath that
7 you took pictures of where the shell casings were found?

8 A I did.

9 Q And now we're saying that's not true?

10 A Yes.

11 Q Is there anything else about your testimony so far that
12 you need to change?

13 A No.

14 Q So you never filled out a supplemental incident report
15 about the shells?

16 A No, sir.

17 Q And you've never wrote down anywhere where they were
18 found?

19 A No, sir.

20 THE COURT: Wait one second. A cell phone is going
21 off. Everybody be careful about your cell phones now.
22 Okay? Make sure that they are off. Go ahead.

23 Q And you never made a sketch of where the shell casings
24 were found?

25 A No, sir.

1 Q So the evidence of where those shell casings were found
2 is in your head?

3 A Yes, sir.

4 Q And Police Department policy is to write down
5 information and enter it into a database, isn't it?

6 A Yes, sir.

7 Q To write down important information about a case?

8 A Right.

9 Q But that didn't happen in this case?

10 A No, sir.

11 MR. GORANSON: No further questions at this time.

12 THE COURT: Thank you. Anything on redirect?

13 MS. ODOM: Yes, sir. Just briefly.

14 REDIRECT EXAMINATION

15 BY MS. ODOM:

16 Q Officer, how many cases do you work in a year? Just an
17 estimate?

18 A Quite a bit. I don't have a number.

19 Q You work a good many cases though?

20 A Yes, ma'am.

21 Q And how long did you say you've been an officer?

22 A A little over two and a half years, I believe.

23 Q Have you ever testified in general sessions court
24 before? This is --

25 A No, ma'am. This is my first time.

1 Q First time testifying. Are you a little nervous?

2 A Yes, ma'am.

3 Q Now, who was -- who was your captain on the shift?

4 A Captain McAllister.

5 Q And did he write the report?

6 A Yes, ma'am. He did.

7 MS. ODOM: Thank you.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Anything on recross?

10 MR. GORANSON: Yes.

11 RECROSS EXAMINATION

12 BY MR. GORANSON:

13 Q You've just testified that you work a lot of cases,
14 right?

15 A I do.

16 Q And that's part of why it's so important to write
17 things down, right?

18 A That's correct.

19 MR. GORANSON: No further questions.

20 THE COURT: Thank you for your testimony, Officer. You
21 can step down. State, call your next witness.

22 MS. ODOM: Thank you, Your Honor. The State is going
23 to call Officer McClinton -- Shockley. I'm sorry, Your
24 Honor. I'm getting the officers confused.

25 LEON BLAKE SHOCKLEY, having been first

Leon Shockley-Direct Examination

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1 duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. ODOM:

4 Q Officer, can you state your full name for the record?

5 A Officer Leon Blake Shockley.

6 Q And where do you work?

7 A Greenwood City Police Department.

8 Q How long have you worked there?

9 A Just under a two years.

10 Q All right. And were you working back on March 23rd,
11 2013?

12 A Yes, ma'am.

13 Q And did you have an opportunity to respond to a
14 shooting that day?

15 A Yes, ma'am.

16 Q Can you tell me, did you respond to the scene?

17 A Yes, ma'am. I did.

18 Q And while you were at the scene what did you do?

19 A Well, initially while in route we -- I assisted in a
20 traffic stop. Once I cleared up from that I went to Captain
21 McAllister who was with the victim at Phoenix Place
22 Apartments. Once I got down there I assisted with him. We
23 went back to the incident location where the shooting took
24 place, and that's where I began canvassing the area for
25 evidence.

1 Q And did anyone give you any evidence?

2 A Yes. Officer McClinton gave me six shell casings.

3 MS. ODOM: May I approach the witness?

4 THE COURT: Certainly.

5 Q Do you recognize this bag?

6 A Yes, ma'am.

7 Q Can you tell me what's in that bag?

8 A That's the shell casings that Officer McClinton gave
9 me.

10 Q Now, there's two groups of shell casings in there.

11 A Yes, ma'am.

12 Q Tell me - Okay. Tell me how many shell casings he
13 gave you?

14 A He gave me six.

15 Q And what did you do with the shell casings?

16 A Me and Captain McAllister took them to City Hall to be
17 placed into evidence along with the other two.

18 Q Okay. So you gave them to Captain McAllister?

19 A No. I did not give them to him. I showed them to him
20 and then he told me to hang on to them to take to City Hall.

21 Q Okay. And you all went together to City Hall?

22 A Yes. To place them into evidence.

23 Q Okay. When you say City Hall, is that where the Police
24 Department is at?

25 A Yes, ma'am.

Leon Shockley-Direct Examination

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1 MS. ODOM: Your Honor, if I could, I'd like to get
2 these marked just for identification purposes only --

3 THE COURT: Sure.

4 MS. ODOM: -- so I can be clear on the record when I've
5 referring to items.

6 THE COURT: Okay. And what number would that be?

7 MS. ODOM: Nine.

8 (Whereupon, a bag of shell casings was marked State's
9 Exhibit 9 for identification.)

10 Q Officer Shockley, also in the bag with the shell
11 casings that's been marked as State's Exhibit 9 for ID
12 purposes is the Evidence Property Report. Can you look at
13 this for me?

14 A Yes, ma'am.

15 Q Is your name on there?

16 A Yes, ma'am. Released by.

17 Q Okay. So your name is on there as giving the shell
18 casings to who?

19 A Captain McAllister.

20 Q Now I'm going to hand you State's Exhibit 8. Do you
21 recognize what this is?

22 A Yes, ma'am.

23 Q And tell me what that is.

24 A It's a photo lineup to the victim to ID the suspect.

25 Q Okay. So when you took the -- when did you take the ID

1 -- the photo lineup?

2 A The next day.

3 Q Okay. You took it the next day to him?

4 A Yes, ma'am.

5 Q And where were you all at when you took it to him?

6 A At his work at Shoney's.

7 Q And who did he identify?

8 A I took it to him and I told him the suspect may or may
9 not be in the photo lineup and told him to look at it, and
10 when he did he picked the Defendant.

11 MS. ODOM: Please answer any questions Mr. Goranson has
12 for you.

13 THE COURT: Any cross examination.

14 MR. GORANSON: Yes, sir.

15 CROSS EXAMINATION

16 BY MR. GORANSON:

17 Q You've been a police officer for almost two years?

18 A Yes, sir.

19 Q You passed the basic law enforcement at the Criminal
20 Justice Academy?

21 A Yes, sir.

22 Q You've been trained in Greenwood, too, right?

23 A Yes, sir.

24 Q And you've been trained as a first responder?

25 A Yes.

Leon Shockley-Cross-Examination

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1 Q Okay. Did you take any pictures of where the shell
2 casings were found?

3 A I do not recall.

4 Q Did anybody take pictures of where the shell casings
5 were found?

6 A I do not recall.

7 Q You've seen pictures of where the shell casings were
8 found?

9 A No. I haven't seen a picture of it.

10 Q And you were -- you know on the -- did you fill out the
11 incident -- or the evidence log?

12 A Yes.

13 Q Okay. And you were listed as the person who found the
14 shell casings on that, correct?

15 A Yes.

16 Q But -- you found the shell casings?

17 A No. Officer McClinton did.

18 Q Okay. But you were the officer noted on the log who
19 found the shell casings?

20 A Yes.

21 Q And on that log you didn't describe where the shell
22 casings were found, did you?

23 A I do not recall.

24 Q If I showed you the document would it refresh your
25 recollection? Does that look like the document?

1 A Yes.

2 Q Did that refresh your recollection?

3 A Yes.

4 Q And did you describe where the shells were found?

5 A No.

6 Q You had the shell casings fingerprinted, right?

7 A No, I did not.

8 Q Okay. Did you have them sent off for ballistics
9 testing?

10 A No, I did not.

11 Q All right. Let me take you to the scene at Phoenix
12 Place when you first responded. You arrived, I think,
13 Officer McAllister was already there?

14 A Yes.

15 Q And you --

16 THE COURT: Sit closer to the microphone, please, sir.

17 THE WITNESS: Yes.

18 Q You searched the car of -- Mr. Martin's car, right?

19 A I was there looking around the car.

20 Q And you were looking for bullet holes, right?

21 A Yes.

22 Q You didn't find any bullet holes on the inside of the
23 car, did you?

24 A I don't recall.

25 Q Okay. Do you -- you didn't find any bullets in the

Leon Shockley-Cross-Examination

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1 car, did you?

2 A I don't recall.

3 Q You didn't write down that you found bullets, did you?

4 Did you create --

5 A Say it again.

6 Q Did you write any kind of report after this incident?

7 A No, I -- no. I did not write a report.

8 Q And you would agree with me that writing a report is a
9 good idea so you remember stuff, or it's at least stored on
10 paper, right? You would agree with that? You have to
11 answer out loud.

12 A Say it again.

13 Q You work a lot of cases, right, Officer?

14 A Right.

15 Q Each case has different details, right?

16 A Right.

17 Q And sometimes when you get called out for something you
18 have to -- you end up charging somebody with a crime, right?
19 Do you arrest people?

20 A Yes.

21 Q And they're being prosecuted, right?

22 A Right.

23 Q And there are different facts and circumstances in
24 every case where you arrest somebody, right?

25 A Right.

1 Q Names, dates, information, different evidence

2 collected, right?

3 A Right.

4 Q So you would agree with me that it's a good idea to

5 write that stuff down because you have a big case load?

6 A Right.

7 Q And somebody's future depends on the information being

8 put down correctly?

9 A Right.

10 Q But you didn't do that in this case?

11 A I was there to assist Captain McAllister.

12 Q But you did not write anything down about that day, did

13 you?

14 A No, I didn't.

15 Q All right. The right rear window of the accuser,

16 Kelvin Martin's car was broken, right?

17 A I can't remember which window was busted out.

18 Q All right. Well, would you disagree with me if I said

19 it was the right rear window?

20 A No. I can't remember which one it was.

21 Q Okay. You don't remember anything about the car?

22 A I remember the trunk was -- had a bullet hole in it.

23 Q There were no bullet holes in the car, were there, that

24 you found?

25 A Projectiles?

Leon Shockley-Cross-Examination

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1 Q Bullet holes. Were there bullet holes in the car?

2 A In the trunk lid.

3 Q There's not a hole in the trunk lid. Can I show you
4 this picture? This is State's -- State's Exhibit 6. Is
5 that a hole?

6 A A dent.

7 Q It's not a hole?

8 THE COURT: Did you respond verbally to the question.
9 What was your answer?

10 THE WITNESS: Dent.

11 Q All right. So while you were on the scene there were -
12 - the accuser, Mr. Martin, was there, right, at Phoenix
13 Place?

14 A Yes.

15 Q And Captain McAllister was there?

16 A Yes.

17 Q We can agree on that, right?

18 A Yes.

19 Q And you spoke to a woman who said she was Mr. Martin's
20 girlfriend?

21 A Yes.

22 Q She told you that she was on the phone with Mr. Martin
23 when this happened?

24 MS. ODOM: Objection, Your Honor. He's asking for an
25 answer that calls for hearsay.

1 MR. GORANSON: Your Honor, I need to -- I feel like I
2 need to address this issue a little bit further.

3 THE COURT: Okay. Well, let's -- just come up for a
4 sidebar and let's see if we can just address it and then put
5 whatever we need to on the record at the subsequent time.

6 (Whereupon, a sidebar was held.)

7 Q There was a woman at the scene who gave information
8 that may have been relevant to the investigation?

9 A Yes.

10 Q And did you ever follow up with her?

11 A No, I did not.

12 Q And when you received the six shell casings what
13 condition were they in? Can you describe how they were
14 handed to you?

15 A They were in a bag. Clear plastic bag.

16 MR. GORANSON: No further questions.

17 THE COURT: Anything in redirect from the Solicitor?

18 MS. ODOM: Just briefly, Judge.

19 REDIRECT EXAMINATION

20 BY MS. ODOM:

21 Q The piece of paper that Ms. Goranson handed you earlier
22 is a -- I'm going to hand you the original, which is in the
23 evidence bag. He had asked you if you wrote on there where
24 you found the shell casings. Look over the entire incident
25 report and tell me if that is on there -- or, excuse me --

Leon Shockley-Redirect Examination

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1 A Pressley and Phoenix Street.

2 MS. ODOM: And I had handed the witness State's 9.

3 Q And Officer, who wrote the incident report?

4 A Captain McAllister.

5 Q Is that usual? Is that typically how it is that one
6 person writes the incident report?

7 A Yes.

8 Q And he is your captain?

9 A Yes.

10 Q And he wrote it?

11 A Yes, ma'am.

12 Q And I just want to be clear. Also, Mr. Goranson --

13 MR. GORANSON: Objection, leading.

14 THE COURT: Well, all she said was I want to be clear,
15 so -- but go ahead and state your question and if you want
16 to renew your objection then certainly you have the right
17 to. Go ahead.

18 MR. GORANSON: Thank you, Your Honor.

19 Q Mr. Goranson asked you on cross if you had searched the
20 inside of the victim's vehicle, and I -- that's what I want
21 to know. Did you search the inside of the vehicle?

22 A No.

23 MS. ODOM: Thank you, Officer.

24 THE COURT: Anything on recross?

25 MR. GORANSON: Yes.

25 DONALD MITCHELL McALLISTER, JR., having

Mitchell McAllister-Direct Examination

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1 been first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. ODOM:

4 Q Captain, can you state your full name for the record?

5 A Donald Mitchell McAllister, Jr.

6 Q And where do you work?

7 A Greenville City Police Department.

8 Q How long have you worked there?

9 A Just under 12 years.

10 Q And what are your duties now?

11 A As captain of patrol I'm responsible for the persons
12 that are under me; a Lieutenant and several other patrol
13 officers. We respond to Greenwood 911 calls, crimes such as
14 shootings and burglaries. Those sort of incidents.

15 Q And have you always been on the road?

16 A No, ma'am.

17 Q What else have you done within the police department?

18 A I've actually worked for investigations four and a half
19 years.

20 Q Were you working on March 23rd of this year?

21 A Yes, ma'am. I was.

22 Q And did you respond to a shooting?

23 A I did.

24 Q Now, when you got the call that there had been a
25 shooting where did you go?

1 A Actually I responded to the area of Phoenix Place
2 Apartments on Phoenix Street.

3 Q Okay. Now, did -- and why did you respond there?

4 A When the original call came out we were dispatched that
5 an incident had possibly occurred at Phoenix Place, so
6 that's why I went to Phoenix Place.

7 Q And was the victim there?

8 A Yes, ma'am. He was.

9 Q And tell me a little bit about -- about what happened
10 when you got to the apartments. Did you speak with the
11 victim?

12 A I did.

13 MR. GORANSON: May we approach briefly, Your Honor.

14 THE COURT: I think I know what you -- what you want.

15 MR. GORANSON: Yes.

16 THE COURT: Let me just take an opportunity at this
17 time to explain to the jury, and I think the prior witness
18 used the word victim and Solicitor has used the word victim.
19 It's really alleged victim because until a jury -- until
20 you, the jury, determines whether or not the Defendant
21 committed a crime then all of what we're dealing with at
22 this point in time are allegations. So if you hear the word
23 victim you need to consider it to be alleged victim,
24 because, again, everything are allegations at this point in
25 time.

Mitchell McAllister-Direct Examination

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1 Was that the --

2 MR. GORANSON: Yes. Thank you.

3 THE COURT: Okay. Thank you. You may proceed,
4 Solicitor.

5 MS. ODOM: Thank you, Your Honor.

6 Q As I was saying, Captain. What happened when you got
7 to the apartments?

8 A When I got there I found Mr. Martin who was standing by
9 a vehicle that he described as his. You could obviously see
10 from the vehicle that the back windshield was busted out, as
11 well as one of the other windows.

12 Q Okay. I'm going to put some pictures up on the
13 projector.

14 MR. GORANSON: May we approach briefly, Your Honor,
15 about those pictures?

16 THE COURT: The pictures that are in evidence?

17 MR. GORANSON: Yes, sir.

18 THE COURT: Okay.

19 (Whereupon, a sidebar was held.)

20 THE COURT: All right. Madame Forelady and ladies and
21 gentlemen of the jury, we have a legal matter that we need
22 to take up with the lawyers, so I'm going to ask that you
23 retire to the jury room. We're going to try to proceed a
24 little bit longer. I'm not going to -- we're not going to
25 keep you real late this evening, but we would like to keep a

1 the others out.

2 (Whereupon, the jury enters the courtroom at 5:00 p.m.)

3 THE COURT: Let the record reflect the jury is resent.
4 Solicitor, you may proceed with your direct examination of
5 this officer.

6 MS. ODOM: Thank you, Your Honor.

7 Q All right, Captain McAllister. When you responded to
8 the apartments did you have the opportunity to look inside
9 Mr. Martin's car?

10 A Yes, ma'am.

11 Q And tell me what was inside the car?

12 A A lot of shattered glass, as well as two shell casings.

13 Q And what did you do with those two shell casings?

14 A I took those into possession and placed them into
15 evidence.

16 Q And I'm going to show you State's 9. Can you tell me
17 what's all in this evidence bag?

18 A Yes, ma'am. Approximately eight shell casings.

19 Q And are the two shell casings that you took from Mr.
20 Martin's car in the bag?

21 A Yes, ma'am. They're separated right here in this bag.

22 Q And tell me where the other shell casings came from.

23 A These shell casings came from the incident location
24 parking lot in front of Speedy's Barber Shop, in that area.

25 Q And who gave them to you?

Mitchell McAllister-Direct Examination (Continued)

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- 1 A Officer Shockley gave them to me.
- 2 Q Captain McAllister, did you write the incident report?
- 3 A I did.
- 4 Q And is that typical for one officer to write the
- 5 report?
- 6 A Yes, ma'am. Normally the first officer responding to
- 7 the incident location is the officer that writes the
- 8 incident report.
- 9 Q Okay. And did you prepare the photo lineup?
- 10 A Yes, ma'am. I did.
- 11 Q And have you prepared it what did you do with it?
- 12 A The next morning I gave it to Officer Shockley, the
- 13 lineup and the photo affidavit, and asked him to take that
- 14 to the victim -- or to the -- Mr. Martin and see if the
- 15 person that he had called Dre, or Mr. Brown, or Dre Brown,
- 16 was actually in that photograph.
- 17 Q And I hand you what's been marked as State's 8. Do you
- 18 recognize that that is?
- 19 A Yes, ma'am. That's the lineup I prepared.
- 20 MS. ODOM: Your Honor, if I may have just one moment.
- 21 THE COURT: Sure.
- 22 Q All right, Captain. I'm sorry about that. Getting
- 23 back to the casings.
- 24 A Yes, ma'am.
- 25 Q Can you tell me where in the car you found those?

1 A The two cases here were found in the backseat of the
2 vehicle. If you need me to explain, I'd like -- I'll try
3 and explain where they where.

4 Q Yeah. Explain to me where they were.

5 A If you're seated in the vehicle, say this would be my
6 steering wheel, this location, this being my window,
7 passenger door -- rear passenger door and rear passenger
8 behind the driver in this area, one shell casing was found
9 in this area here, but the other shell chasing was found
10 towards the door over in this section, I believe. Probably
11 back a little bit further.

12 Q Okay. I'm going to show you what's been marked as
13 State's 7 for ID. Do you recognize what that is?

14 A Yes, ma'am. That's one of the shell casings in the
15 back corner door.

16 Q Okay. And that's -- that picture is a fair and
17 accurate representation?

18 A Yes, ma'am.

19 MS. ODOM: Your Honor, I'd like to move to have this
20 State's 7 for ID introduced into evidence.

21 THE COURT: Mr. Goranson?

22 MR. GORANSON: No objection.

23 THE COURT: Okay. Without objection it will be Number
24 7 into evidence for the State.

25 (Whereupon, State's Exhibit 7 was entered into

Mitchell McAllister-Direct Examination (Continued)

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1 evidence.)

2 Q So the seat that's in the picture is the back driver's
3 side seat?

4 A Yes, ma'am. It would be the area seat directly behind
5 the driver.

6 Q And so, this shell casing was on the frame of the door?

7 A Yes, ma'am. We opened the door and it positioned
8 itself there.

9 Q Now, just a little bit about an operation of a -- well,
10 first of all, did the victim -- did he give you the gun that
11 he said he had fired?

12 A Yes, ma'am.

13 Q And did he -- can you tell me why a shell casing -- I
14 want to talk about the operation of a gun.

15 A Yes, ma'am.

16 Q Why would there be a shell casing in the backseat?

17 A Normally it would be consistent with a shell casing
18 ejecting to the right-hand side of a firearm, which most
19 pistols do, just over to the right-hand side. If someone
20 were reaching back or something of that nature it could go
21 in that direction, headed towards the back of the car.

22 Q So if Mr. Martin had fired a gun and had it towards the
23 back of his vehicle the shell casing would have ejected to
24 the right?

25 A That would have been consistent with where they landed.

1 Again, if this were the steering wheel, passenger seat --
2 rear passenger seat in this direction, that would have been
3 consistent going off that direction from a firearm.

4 Q And Mr. Martin told you -- who did he tell you was the
5 person who had shot at him?

6 A Initially he said Dre -

7 MR. GORANSON: Objection, hearsay.

8 THE COURT: Excuse me?

9 MR. GORANSON: Hearsay.

10 THE COURT: I think she said what Mr. Martin said.

11 MS. ODOM: Yes, sir.

12 THE COURT: Okay. Denied. Overruled.

13 A He told me that Dre shot him. On further questioning
14 he said the only thing I remember is his last name is Brown.
15 Dre Brown.

16 THE COURT: And I think that's consistent with his
17 testimony, so that's why I overruled the objection, Mr.
18 Goranson.

19 Q And using that information is that what you used to
20 prepare the lineup?

21 A It was. Yes, ma'am.

22 MS. ODOM: Captain, if you will, answer any questions
23 Mr. Goranson has.

24 THE COURT: Cross.

25 CROSS EXAMINATION

1 BY MR. GORANSON:

2 Q You prepared the incident report in this case, correct?

3 A I did.

4 Q You've investigated a lot of cases, correct?

5 A Yes.

6 Q And you're trained to produce incident reports?

7 A Yes, sir.

8 Q And as -- you report what happens during the course of
9 an investigation?

10 A As accurate as possible, yes.

11 Q And that's important, because somebody might be
12 prosecuted based on that investigation?

13 A That's true.

14 Q And that's part of your basic training at the Criminal
15 Justice Academy, correct?

16 A Yes, sir.

17 Q And with the Greenwood Police Department? That's part
18 --

19 A Yes, sir. Yes, sir. That's correct.

20 Q So you responded to Phoenix Place the date -- March
21 23rd you responded you responded to Phoenix Place?

22 A Yes, sir.

23 Q And you activated an in-car camera, correct?

24 A Yes, sir.

25 Q On your way there? It comes on when the blue lights

1 are on?

2 A Yes, sir. That's right.

3 Q So you've -- you prepared that DVD for the State,
4 right?

5 A And I believe it was placed into evidence. I think the
6 evidence --

7 Q Okay. And have you looked at it in preparation for
8 trial?

9 A Briefly once or two places. Not the whole video. No,
10 sir. Not in its length.

11 Q Okay. So you arrived on the scene at about 4:20 in the
12 afternoon --

13 A Okay.

14 Q -- on Phoenix Place?

15 A I don't know without the incident report or without the
16 time stamp --

17 Q If I showed you the incident report?

18 A Yeah, sure. Yes, sir. It appears 4:20.

19 Q Thank you. And you spoke with three gentlemen when you
20 arrived, correct?

21 A Possibly. I --

22 Q Christopher Calhoun, Michael Richardson and another
23 gentleman, I believe.

24 A Okay. I remember speaking to Mr. Martin. I'm not
25 certain to the rest of it. I really don't remember.

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1 Q Okay. So you spoke with Mr. Martin. And all this is
2 recorded on your dash camera, right?

3 A Yes, sir. I believe so.

4 Q All right. And when you first talked to Mr. Martin he
5 told you that he'd been driving by and two guys waved at
6 him, right?

7 A Yes, sir. That was in it.

8 Q And he told you he asked what are you reaching for,
9 what are you reaching for, right?

10 A Later on during the conversation. Yes, sir.

11 Q So he didn't tell you that at first?

12 A No, sir. I don't believe so.

13 Q All right. And he also told you that he didn't have
14 anything to shoot?

15 A I believe from testimony I've heard today that that's
16 been -- that's what was shown and what's been shown on the
17 video, that that would be correct.

18 Q Okay. And the other officer on the scene was Officer
19 Shockley, right?

20 A Yes, sir. I believe he responded there.

21 Q Were there any other officers on the scene?

22 A Not at Phoenix Place. No, sir.

23 Q Okay. And Mr. Martin -- Mr. Martin told you that he
24 had just come from Shoney's, right?

25 A Yeah. He told me he was on his way home from work.

1 Q All right. And he said there was some prior dispute
2 involving Mr. Martin's step-dad?

3 A That's correct.

4 Q All right. And so, then you got another story from Mr.
5 Martin and it was -- he told you he was passing by Speedy's
6 Barber Shop, Bow Wow waved and he slowed down?

7 A Yes, sir.

8 Q Okay. And then there was some words exchanged and then
9 Mr. Martin told you that's when he started to drive off and
10 asked Dre what are you reaching for, right?

11 A Yes, sir. Somewhere in that conversation.

12 Q All right. And then he told you he drove to Phoenix
13 Place?

14 A Yes, sir.

15 Q He didn't say anything about shooting a gun?

16 A No, sir. Not initially.

17 Q Okay. And then you asked him if it was his car?

18 A Yes.

19 Q Mr. Martin's car. And you reviewed his statement with
20 him. You told him -- you've got to confirm -- you confirmed
21 with him that they were on the side of the road. Dre
22 started reaching for something. Kelvin Martin took off
23 driving. And that's when the shot came through the back
24 window?

25 A I believe that's right.

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- 1 Q And you searched Kelvin Martin's car?
- 2 A Yes, sir. That's correct.
- 3 Q And you were looking for evidence that someone shot the
- 4 car?
- 5 A That's true.
- 6 Q And you didn't find any bullets in the car?
- 7 A Any --
- 8 Q Bullets.
- 9 A -- bullets?
- 10 Q Projectiles.
- 11 A Like a -- a projectile? No, sir.
- 12 Q And you didn't find any holes in the car? On the
- 13 inside of the car, the interior of the vehicle?
- 14 A No, sir.
- 15 Q And there was glass broken on the passenger side on the
- 16 -- at the rear window of the passenger side, right?
- 17 A Yes, sir. There was glass broken there.
- 18 Q And the only other glass broken was the rear
- 19 windshield, right?
- 20 A Yes, sir. Pretty much the entire rear windshield.
- 21 Q Okay. The rear window on the left side of the car
- 22 wasn't damaged?
- 23 A No, sir.
- 24 Q And the front windshield was not damaged?
- 25 A Not to my knowledge.

1 Q Okay. Do you recall there being two video displays in
2 the back head rests of --

3 A I do not.

4 Q Okay. Anyway, you didn't find any broken equipment
5 inside the vehicle?

6 A No, sir. Not that was apparent. That's right.

7 Q And so, you searched the car and you found two shell
8 casings?

9 A That's correct.

10 Q And that's when you said, Mr. Martin, you know what
11 this means, right? And that's the first time you confronted
12 him with the fact that some -- you thought someone had shot
13 from inside the car?

14 A Yes, sir. The bullet casings were consistent.

15 Q All right. And as you testified earlier, the
16 semiautomatic shells eject to the right?

17 A Yes, sir.

18 Q You asked him if you could search his car? You asked
19 Mr. Martin if you could search his car?

20 A Yes, sir. That's correct.

21 Q And he told you, yeah, you can search it completely.
22 There's nothing in there.

23 A Yes, sir. That's correct.

24 Q All right. And then you told him something that I
25 found interesting after that. You said, well, if you had a

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1 gun in your car you would have been smart enough to get rid
2 of it by now.

3 A Okay.

4 Q Do you remember saying that?

5 A I don't.

6 Q Would you say that you didn't say that?

7 A I have no idea. I mean, I would have to watch the
8 video.

9 THE COURT: Stipulation maybe?

10 MS. ODOM: Your Honor, he didn't say he did or didn't
11 say it, so I don't think it can be offered for impeachment.

12 THE COURT: You all come up here just a minute. Wait a
13 minute --

14 MR. GORANSON: Sorry, sorry, sorry. I'm going to mute
15 it right now.

16 (Whereupon, the video recording was played.)

17 Q Is that --

18 A Yeah, that's me. Absolutely.

19 Q Okay. So up to that point he had already -- he
20 maintained consistently that he did not have a gun?

21 A Yeah, I believe so. Yes, sir.

22 Q And that statement, I would have, would lead you to
23 believe that he was, you know -- he led you to believe that
24 he didn't have a gun by that statement, too, right?

25 A By the statement that --

1 Q I would have hidden it.

2 A Isn't that what I said on the video?

3 Q He said -- I can play it again. But my recollection is
4 that you said you would have hidden it and he said yeah, I
5 would have.

6 Q Okay. So I just want to review where we are. Kelvin
7 Martin said he was driving during the first statement. Bow
8 Wow waved at him --

9 MS. ODOM: Objection, Your Honor. Asked and answered.
10 They've been over this.

11 MR. GORANSON: I'll move on.

12 THE COURT: I think it has been asked and answered,
13 unless there's just another particular point you want to get
14 into on cross.

15 Q So at that point he lied to you? Mr. Martin lied to
16 you?

17 A If by omission of just leaving that fact out then yes,
18 sir.

19 Q He did say, "I ain't had nothing to shoot," right?

20 A I will stipulate that if it's on the video then that's
21 correct. He said that.

22 Q Would that be a lie?

23 A Yes, sir.

24 Q So he lied to you?

25 A Okay. Yes, sir.

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1 Q And then you told them that they needed to get their
2 story straight however they needed to?

3 A Okay.

4 Q Did you say that, sir?

5 A You would have to play it.

6 MS. ODOM: Judge, I'm sorry. I had to object again.
7 This is the same objection as earlier. He didn't admit it
8 or deny it. It cannot be introduced for impeachment. I
9 think he's using this to try to get around that he's
10 introducing extrinsic evidence without introducing evidence.

11 THE COURT: Okay. So noted. Overruled. Try to get to
12 the right spot there, Mr. Goranson.

13 MR. GORANSON: I do.

14 (Whereupon, the video recording was played.)

15 Q That was your statement, right?

16 A That was. Yes, sir.

17 Q All right. That's when a female gave some information
18 that she might have as valuable -- could be valuable for the
19 case, about being on the phone with Mr. Martin?

20 A Possibly. Yes, sir.

21 Q Okay. And you never followed up with anybody about
22 that?

23 A I think that while we were there basically I had the
24 conversation that I did have with her, and I don't remember
25 what her name was. I apologize. Then she said that he

1 called her on the way to Phoenix Place and explained to her
2 what happened. So basically, again, it was an issue of she
3 wasn't there but she was able to tell us that he was calling
4 while -- you know, right after that happened. So that's the
5 statement she had given us, I believe.

6 Q Okay. But you never talked with her again after that
7 day?

8 A No, sir.

9 Q And you had the car searched again, right?

10 A Sir?

11 Q You searched the car again a second time?

12 A I did. Yes, sir.

13 Q All right. And you didn't find any projectiles?

14 A No, sir.

15 Q All right. And at some point you believe that somebody
16 else had been in the car with Kelvin Martin?

17 A I don't remember that.

18 Q Okay. If I showed you -- okay. So the entire time you
19 were at Phoenix Place Kelvin Martin insisted that he did not
20 have a gun?

21 A Not the entire time. I believe there before we left he
22 actually did change his statement to say that he did have a
23 gun. It was either between -- it was between there or on
24 the way back to the actual incident location when he advised
25 me of that information.

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1 Q So you left Phoenix Place with Mr. Martin in your car?

2 A Yes, sir.

3 Q And you talked with him on the way to the scene?

4 A Yes, sir.

5 Q And he told you after the incident he called his mom

6 and he called his girlfriend --

7 A Okay.

8 Q -- and he came straight back to Phoenix Place?

9 A Yes, sir. He did tell me he came back to Phoenix
10 Place.

11 Q Okay. And he told you that he called the police and
12 just waited for the police to show up?

13 A That's correct.

14 Q All right. He didn't tell you he hid a gun in the
15 meantime?

16 A No, sir. He did not.

17 Q Okay. Once you arrived at the scene by Speedy's Barber
18 Shop that's when Mr. Martin first told you that he had
19 pulled into that driveway, correct?

20 A Yeah. Actually he walked me through the whole process
21 that he pulled in, he pulled up, he pulled back, and he
22 pulled where his passenger side would have been towards the
23 parking lot.

24 Q And that was new to you at that -- until that point in
25 time, right?

- 1 A That information was new. Yes.
- 2 Q He told you some words were exchanged?
- 3 A Yes, sir.
- 4 Q And that he saw Dre reach into a car?
- 5 A That's correct.
- 6 Q And that's when he said what are you reaching for, and
- 7 then he said that's when shots were fired and he sped off
- 8 and went back to Phoenix Place, right?
- 9 A I believe that's consistent with what he said.
- 10 Q All right. So then, I imagine, that's kind of when you
- 11 got tired of hearing that and you said -- you described to
- 12 Mr. Martin the right to have a gun in the car if it's in the
- 13 right spot, right?
- 14 A Yes, sir. I did.
- 15 Q And you told him it was legal to have a gun in the
- 16 glove compartment?
- 17 A I believe if I explained the law to him, that's one of
- 18 the places that would have been pointed out that it was
- 19 legal to have a firearm.
- 20 Q Okay. And you told him you needed to know why there
- 21 were 380 shell casings in the back of his car?
- 22 A That's correct.
- 23 Q And you told him that if he was shooting back at
- 24 someone that you needed to know that?
- 25 A That's true.

1 Q And you told him that if he didn't say somebody was
2 shooting back it might not be a conviction in the case?

3 A I don't know. I don't know if I said that or not.

4 Q Okay. But you told him you believed somebody in his
5 car was shooting?

6 A That somebody inside of his car -- yes, sir. I did
7 tell him that.

8 Q Okay. And you asked him if he was the one shooting
9 back?

10 A I did.

11 Q And he told you yes?

12 A Yes, sir.

13 Q And he told you he shot three times?

14 A I believe that's what he told me originally. Yes, sir.

15 Q And you found two shell casings in his car?

16 A That's correct.

17 Q All right. Then you told him you understood why he
18 wasn't forthcoming?

19 A I did. Yes, sir.

20 Q All right. And then you went through what might happen
21 if Martin didn't say that someone else had shot at him
22 first?

23 A I'm not sure what the question is there.

24 Q Well, I'm asking you if you went over what -- with Mr.
25 Martin what would happen if he didn't say that somebody was

1 shooting at him first.

2 A I explained the South Carolina law for, you know, self-
3 defense.

4 Q Okay. And then he told you that he used his cousin's
5 gun, right?

6 A The one -- that is correct. I believe that's -- I
7 believe that's who he told me it actually belonged to.

8 Q Okay. And then he told you that the gun was at his
9 cousin's house?

10 A I'm not 100 percent positive about that. I know he
11 told me that the gun was at Phoenix Place, and that's why we
12 went to Phoenix Place.

13 Q Kelvin Martin told you that shots were fired and he hit
14 the gas, right?

15 A Yes, sir. I believe that's probably correct.

16 Q And you told him you weren't mad at him?

17 A Yes, sir.

18 Q And you told him when facts don't add up you think
19 somebody's lying?

20 A That's correct.

21 Q And you got back to Phoenix Place after that?

22 A Yes, sir.

23 Q And you told Kelvin Martin to go get the gun?

24 A Yeah. Actually, he told me if I would go back that he
25 would get me the gun. So, I mean, I had a conversation with

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1 him and he said okay, go back and let's go get the gun.

2 Q And just he walked off to get the gun, right?

3 A That's correct.

4 Q And that's a weapon that was potentially used in a
5 crime?

6 A Yes, sir.

7 Q And he brought you a gun?

8 A That's correct. A 380.

9 Q Okay. And he told you it was his cousin's gun?

10 A That's correct.

11 Q And you didn't conduct any testing on that weapon, did
12 you?

13 A No, sir.

14 Q And you didn't conduct any testing on the shell
15 casings, did you?

16 A No, sir.

17 Q And then after that you said thanks for being honest
18 with me, sort of in closing?

19 A That sounds correct.

20 Q Earlier -- I think at some point you described -- you
21 know, said I understand why you weren't forthcoming, when
22 you were talking to him.

23 A Yes, sir.

24 Q Forthcoming means willing to divulge information,
25 right?

- 1 A Yes, sir.
- 2 Q So he was forthcoming when he told you that he would
- 3 have been smart enough to hide a gun, right?
- 4 A I mean, I wouldn't give an opinion. I think. I mean,
- 5 exactly -- ask me again.
- 6 Q Well, he didn't tell you that he hid a gun, did he?
- 7 A No. He did not tell me that he hid a gun. Not
- 8 originally.
- 9 Q And a lie is when somebody tells you something that
- 10 isn't true, right?
- 11 A That's correct.
- 12 Q And so, he lied when he told you he didn't have
- 13 anything to shoot?
- 14 A That would be correct.
- 15 Q Okay. You never found a bullet anywhere in Kelvin
- 16 Martin's car?
- 17 A That's correct.
- 18 Q The rear windshield was broken?
- 19 A That's correct.
- 20 Q The front windshield was not broken?
- 21 A Correct.
- 22 Q Right rear window was broken?
- 23 A Correct.
- 24 Q Left rear window not broken?
- 25 A Correct.

1 Q The gun is not in evidence today?

2 A I don't believe so. I don't know.

3 Q If I showed you the evidence log would you -- would
4 that --

5 A Yeah. I mean, potentially. I don't have anything to
6 do with it once I put it into evidence.

7 Q Describe for me what happened with that gun.

8 A It appears on 5/29/13 the evidence custodian gave it to
9 -- I can't read the first name, but it's Martin.

10 Q Can you tell me the date that it was returned, please?

11 A Yes, sir. I can. It was 5/29/13.

12 Q Thank you.

13 A Yes, sir.

14 Q Did you ever follow up with any other witnesses that
15 you spoke to at the scene, other than Mr. Martin?

16 A The other witnesses -- that I know of, there were no
17 witnesses to the actual incident.

18 Q Excuse me. When you -- the three gentlemen -- you
19 didn't follow up with three gentlemen that you spoke to when
20 you first arrived at Phoenix Place?

21 A No, sir. Because from what I was able to determine
22 they knew nothing about the incident or the incident
23 location. Therefore, there was no relevancy to -- they
24 didn't have anything to say that was adding to the actual
25 case.

1 Q Okay. You never suspected that they were involved?

2 A No, sir. I -- there was no evidence at the time to
3 lead me to believe that anyone else was involved there.

4 Q You never followed up with any girlfriend? I think you
5 talked about that. You never spoken about the cousin -- you
6 never spoke to the cousin about whether that gun was his,
7 did you?

8 A I don't recall.

9 Q And you never spoke with the cousin about whether he
10 left it in Kelvin Martin's car, did you?

11 A I don't recall.

12 Q Okay. Well, you wrote the incident report in this
13 case, right?

14 A Yes, sir.

15 Q And have you reviewed it prior to testimony today?

16 A Yes, sir. I have.

17 Q And anywhere in there is it -- do you say that you
18 talked to anybody about whose gun it was besides Kelvin
19 Martin?

20 A No. I don't think that it says anything in there.

21 Q If I showed it to you would it refresh your
22 recollection?

23 A Yeah.

24 (Whereupon, Counsel provides Witness with the incident
25 report.)

1 A No, sir. It doesn't appear that it's in there.

2 Q And that is the complete incident report you compiled?

3 A That was the finished incident report. That's right.

4 Q It says page four of four, so that would make it --
5 this complete, right?

6 A Yes, sir. That would be it.

7 Q And no supplemental report anywhere?

8 A No, sir.

9 Q Okay. So you never spoke with the cousin who
10 supposedly owned the gun about where he left it in the car?

11 A No, sir.

12 Q And Mr. Martin, I think he said the gun was at his
13 cousin's house and he brought you a gun from Phoenix Place,
14 right? From somewhere at Phoenix Place?

15 A He took me to Phoenix Place where he basically said
16 that's where it was. So we went to Phoenix Place. He said
17 that's where --

18 Q And he brought you a gun?

19 A That's correct.

20 Q And you were the reporting officer in this? That's the
21 right name for it, isn't it, reporting officer?

22 A Yes, sir. That's what we would use. Yes, sir.

23 Q Okay. So you'd be sort of in charge of this incident
24 report?

25 A Yes, sir. I would agree.

1 Q Okay. And if anybody else had anything to contribute
2 they would write an incident report or you would write it?

3 A It depends on if it occurred that day or not. If it
4 occurred that day that I might actually write it into the
5 incident report or have them write it into the incident
6 report depending on what the nature of what they did was.

7 Q So you didn't right anything about six shell casings
8 found in the parking lot?

9 A No, sir. I did not. It was advertently left out.

10 Q Okay. We talked a little bit about general order 901,
11 collection and preservation of evidence. Are you familiar
12 with that generally?

13 A Yes, sir.

14 Q Part of the progression of crime scene processing is
15 photographing, right?

16 A In some instances. Yes, sir.

17 Q Okay. Where it might be useful to show where an item
18 was located?

19 A Yes, sir.

20 Q Okay. And there are no photographs taken of any shell
21 casings near Speedy's Barber Shop? Is that your testimony?

22 A The parking lot was videoed, as in the video. But no,
23 the actual individual location of each shell was not taken.

24 Q Did the video show the retrieval of any shells?

25 A I'm not sure. Like I said, I haven't reviewed the

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1 entire video. I'm not certain that it did.

2 Q Did you fill out the evidence log?

3 A No. I actually believe Officer Shockley filled out the
4 evidence log. He and I were together at City Hall.

5 Q Also, your police department believes in taking
6 fingerprints when possible, right?

7 A If possible, yeah.

8 Q Yeah. Fingerprints are positive, specific and
9 establish beyond a reasonable doubt whether somebody has
10 touched a weapon or object related to a crime, right?

11 A I don't know that I'm authorized -- when I say -- yeah.
12 I mean, it can, yes.

13 Q Right.

14 A I mean, it could. It's possible.

15 Q Right. But there was no fingerprint analysis done in
16 this case?

17 A No, sir. Not off the shell casings. No, sir.

18 Q Okay. But it's possible to pull fingerprints off of
19 guns and ammunition, right? It's possible?

20 A I'm sure. Yes, sir.

21 Q And somebody would have to touch a bullet to load it
22 into a clip, right?

23 A Potentially. Yes, sir.

24 Q I was reading the manual and it talked about crime
25 scene technicians. Do you have a crime scene technician?

- 1 A We do.
- 2 Q Was that person called out to the scene?
- 3 A No, they were not.
- 4 Q Okay. They would be called for like a major crime,
- 5 right?
- 6 A Normally, yes, sir. But it's a large crime scene is
- 7 where they're used most.
- 8 Q Okay. And they could gather fingerprints, a crime
- 9 scene technician?
- 10 A Can they?
- 11 Q Yeah.
- 12 A Yes, sir. They have that ability on some surfaces.
- 13 Q And they can take photographs?
- 14 A Yes, sir.
- 15 Q They're equipped with cameras?
- 16 A Yes, sir.
- 17 Q You were equipped with a camera that day, right?
- 18 A Yes, sir. I was.
- 19 MR. GORANSON: If I could have the court's indulgence
- 20 for just one moment.
- 21 THE COURT: Sure.
- 22 MR. GORANSON: No more questions at this time.
- 23 THE COURT: Okay. Any redirect?
- 24 MS. ODOM: Just a very few questions.
- 25 THE COURT: Sure. That's fine. Go ahead.

1 REDIRECT EXAMINATION

2 BY MS. ODOM:

3 Q Captain McAllister, can you just -- we've been talking
4 about casings and projectiles and bullets a lot. Can you
5 explain the difference between a casing and a bullet?

6 A Yes, ma'am. If I may, can I use this here? Is that --

7 THE COURT: Sure, yeah.

8 A This would be what we refer to as a casing. It's
9 actually the part that would hold the powder. The
10 projectile would actually be what a lot of people would call
11 the bullet that actually comes out of the gun.

12 Q So the casings in the back of the car were fired
13 bullets?

14 A Yeah, they were spent casings. In other words, a
15 projectile had been fired from them. They were empty.

16 Q And is it usual for the more you speak with a witness
17 or a victim the more detail you get?

18 A Absolutely. Yes, sir -- yes, ma'am. The more you talk
19 with a person, especially right after a traumatic incident,
20 facts become more available to them and there starts to
21 become more information that they actually recall. Because
22 the first time it's fight or flight and basically you
23 respond and to react how you're going to react. And as you
24 settle down stuff begins to come back to memory and actually
25 more accurate information does come toward the end.

1 Q So did Mr. Martin appear shook up when you first got
2 out there?

3 A Absolutely.

4 Q And 30 minutes later he was able to kind of communicate
5 with you more?

6 A Yes, ma'am. After I talked with Mr. Martin -- the more
7 I talked with him the more I would -- this way or -- I just
8 kind of engaged him in conversation. He tended to get a
9 little less excited about what had happened, and that's when
10 the information began to flow a little bit more freely from
11 Mr. Martin.

12 Q And you told the victim that you needed the full story?

13 A That's correct.

14 Q And his second -- the first time he told you he didn't
15 fire a gun but the second --

16 A Yes, sir -- yes, ma'am.

17 Q -- story he said he did fire the gun. Was that
18 consistent with the casings in the back of the vehicle?

19 A Yes, ma'am. The place -- and the way he said he fired
20 was consistent with where they would have been located.

21 Yes, ma'am.

22 Q So his story was very consistent with the evidence?

23 A Yes, ma'am.

24 MR. GORANSON: Objection. Move to strike that
25 testimony, Your Honor. That's not an issue for the jury to

1 decide.

2 THE COURT: Well, I guess she can ask him his testimony
3 was consistent with whatever he found in his investigation.
4 I think that would be proper. So you may want to rephrase
5 that question.

6 MS. ODOM: Thank you, Your Honor.

7 Q Was the story consistent with what you found in your
8 investigation?

9 A Yes, ma'am. It was.

10 Q And did Mr. Martin give you the gun voluntarily?

11 A Yes, ma'am.

12 RECROSS EXAMINATION

13 BY MR. GORANSON:

14 Q Do you think that he forgot that he had shot a gun in
15 his first couple of stories?

16 A I don't know. I can only go with what he told me.

17 MR. GORANSON: No. Further questions.

18 THE COURT: Thank you for your testimony, Officer. You
19 can step down.

20 (Whereupon, the witness stepped down from the witness
21 stand.)

22 THE COURT: Okay. Madame Forelady and ladies and
23 gentlemen of the jury, we're going to recess for the
24 evening. I would want you to be back here promptly at 10:00
25 in the morning. I remind you not to discuss this case,

1 We've got great bailiff staff and they're just such fine
2 people. So -- but happy birthday and I hope you have many
3 more.

4 THE BAILIFF: Lynn was responsible for the cupcakes. I
5 just passed it on to her and she --

6 THE COURT: Well, only in Greenwood we have such a fine
7 staff. Everybody. I'm going to give everybody credit for
8 the cupcakes.

9 Solicitor, are you ready?

10 MS. ODOM: Yes, sir.

11 THE COURT: All right. If you'll call your next
12 witness, please, ma'am.

13 MS. ODOM: The State calls Kenya Griffin.

14 KENYA GRIFFIN, having been duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. ODOM:

18 Q Can you state your full name for the record?

19 A It's Kenya Griffin.

20 Q And where do you work?

21 A I work for the Greenwood City Police Department.

22 Q How long have you worked there?

23 A A little over 10 years.

24 Q And what is your current job duty?

25 A I am the evidence custodian and crime scene technician.

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1 Q And can you tell me a little bit about being the
2 evidence custodian. What does that involve?

3 A I'm responsible for maintaining custody of any evidence
4 that is turned in by our officers. The evidence is logged
5 in. I keep track of it. Any evidence that needs to be
6 taken to SLED for processing I'm responsible for that also.

7 Q I'm going to hand you what's been marked as State's
8 Exhibit 9 for ID purposes. Can you tell me what that is?

9 A It's -- the yellow paper is an evidence sheet which our
10 officers fill out when they turn in evidence. And this
11 evidence is shell casings.

12 Q And can you tell me if you received that evidence?

13 A Yes, ma'am. I did. On -- I think it's -- it looks
14 like March the 24th, 2013 I removed it from my evidence
15 locker to place into our evidence room.

16 Q Can you tell me a little bit about the evidence locker,
17 how that works?

18 A Our evidence lockers are in the hallway of the police
19 department. It's for officers to turn in evidence when I'm
20 not on duty. Once they put it into the evidence locker they
21 lock it. Nobody else has a key except for me and an
22 alternate custodian. So once they lock it they can't come
23 back and get evidence out unless I open up the locker.

24 Q So you received that evidence from the locker?

25 A Yes, ma'am.

1 Q And has it been changed or altered in any way since you
2 received it?

3 A No, ma'am. It was logged in and placed into the
4 evidence room on shelf C-4 where it's been until it was
5 removed for court.

6 MS. ODOM: Your Honor, at this time the State would
7 move to have State's 9 entered into evidence.

8 THE COURT: And what says the Defense?

9 MR. GORANSON: No objection.

10 THE COURT: All right. Without objection Exhibit 9 has
11 previously been marked for identification purposes only, now
12 is evidence in the case on behalf of the State.

13 (Whereupon, State's Exhibit No. 9 was entered into
14 evidence.)

15 MS. ODOM: Please answer any questions Mr. Goranson has
16 for you.

17 THE COURT: Cross examination?

18 CROSS EXAMINATION

19 BY MR. GORANSON:

20 Q You're an evidence custodian and a crime scene
21 technician?

22 A Yes, sir. I am.

23 Q Okay. And your job is to maintain the integrity of the
24 evidence collected in criminal cases?

25 A That's correct.

Kenya Griffin-Cross-Examination

200

1 Q That's the evidence custodian part?

2 A That's correct.

3 Q And you're also -- do you ever train officers on how to
4 preserve a crime scene? Have you ever done that?

5 A No, sir. I have not.

6 Q But you're trained --

7 A Yes, sir.

8 Q -- in crime scenes?

9 A Yes, sir.

10 Q You were trained to take photographs of crime scenes?

11 A Yes, sir.

12 Q And you were trained to maybe do crime scene diagrams
13 or sketches?

14 A Yes, sir.

15 Q And in -- I think in the manual it states that there's
16 always a crime scene technician on call; isn't that right?

17 A That's correct.

18 Q There's actually a crime scene vehicle, too, right?

19 A That's correct.

20 Q That's got all the stuff you need to help preserve a
21 crime scene?

22 A Right.

23 Q And as far as you know, none of that was used in this
24 case, right?

25 A No, sir. It was not.

1 Q You weren't called to the scene?

2 A No, sir. I was not.

3 Q And I think you testified about the package being on
4 the shelf from the time it was turned in until the time of
5 the trial?

6 A Correct.

7 Q That's not exactly true. Was there a gun attached to
8 that package that was returned?

9 A The gun was actually packaged separately.

10 Q Okay. You never received any bullets or actual
11 projectiles in evidence in this case, did you?

12 A No, sir. I did not.

13 Q And you never received any photographs that go with the
14 shell casings?

15 A No, sir.

16 Q And I have this article that was on the Greenwood City
17 website and it's an article that comes from the newspaper.
18 I'm just going to ask you about some of the qualifications
19 that are listed in here. It says that you are trained in
20 advanced fingerprint retrieval?

21 MS. ODOM: Objection, Your Honor. I'm not sure what
22 he's referencing.

23 Q Are you trained in advanced --

24 THE COURT: Wait a minute. Wait a minute. Do I have
25 an objection to this line of questioning?

1 MS. ODOM: Judge, he hasn't laid a foundation. He's
2 using something she's never seen. He's using a newspaper
3 article. There's no foundation here.

4 THE COURT: Well, I think, if I understand what Mr.
5 Goranson is doing, he's asking this witness concerning
6 qualifications and he just has something that he is
7 referencing. Is that correct?

8 MR. GORANSON: That's correct.

9 THE COURT: Well, I guess maybe in fairness before you
10 continue, just show --

11 MR. GORANSON: Sure.

12 THE COURT: -- the Solicitor what you've got there.

13 MR. GORANSON: No problem.

14 THE COURT: And then we'll see if she has any further
15 objections.

16 (Whereupon, Counsel complies with request of the
17 court.)

18 THE COURT: Do you want to continue with your
19 examination?

20 MR. GORANSON: Yes.

21 Q The article talks about advanced fingerprint recovery.
22 Have you been trained in that?

23 A Yes, sir. I did attend the National Forensics Academy
24 in Tennessee for training and crime scene processing. Yes,
25 sir.

1 Q And part of that training was advanced fingerprint
2 retrieval?

3 A Yes, sir.

4 Q And you didn't retrieve any fingerprints in this case,
5 did you?

6 A There was no request made for me to process any of the
7 evidence for fingerprints.

8 MR. GORANSON: No further questions.

9 THE COURT: Any redirect?

10 MS. ODOM: Yes, sir, Your Honor, briefly.

11 REDIRECT EXAMINATION

12 BY MS. ODOM:

13 Q Officer, in the article you say that you often get
14 questions from friends and family comparing your job to CSI.
15 You say in the article that the different -- differences are
16 vast. Is that true, that --

17 A That is true. A lot of the CSI shows portray that
18 there's fingerprints on everything and that results are
19 instance and that's often not the case.

20 Q And are you called out on every scene?

21 A No. No, I'm not.

22 Q And how many cases would you say you work a year?

23 A I typically work two to three a month, so probably
24 maybe 15 or 20 a year.

25 Q But it's not unusual for you to not be called out on a

1 scene?

2 A No, if it's not a serious scene. The supervisor makes
3 the determination whether or not they want to call me out,
4 and often times they don't.

5 MS. ODOM: That's all.

6 THE COURT: Anything in recross?

7 RECROSS EXAMINATION

8 BY MR. GORANSON:

9 Q Did you look for fingerprints on these shell casings?

10 A No, sir. I did not.

11 MR. GORANSON: Nothing further.

12 THE COURT: Okay. Thank you for your testimony,
13 Officer. You can step down. Anything further from the
14 State?

15 MS. ODOM: No, sir.

16 THE COURT: Does the State rest?

17 MS. ODOM: Yes, sir. The State rests. Yes.

18 THE COURT: All right. Madame Forelady and ladies and
19 gentlemen of the jury, we'll need to take a break at this
20 point in time. There's a few matters I need to take up with
21 the lawyers. So if you hadn't had the birthday cupcakes yet
22 then maybe you'll have time to eat some of those. Again, I
23 remind you don't start deliberating about this case. Don't
24 talk about this case among yourselves. Have a good break.

25 (Whereupon, the jury exists the courtroom at 10:32

1 a.m.)

2 THE COURT: Anything from the Defense?

3 MR. GORANSON: Yes. We would renew all of our prior
4 motions, ask for a directed verdict in this case on both
5 charges based on the grounds of insufficient evidence.

6 THE COURT: So noted and denied. Mr. Brown, let's --
7 are you all ready to deal with the issue of testimony from
8 your client?

9 MR. GORANSON: Yes, we are.

10 THE COURT: All right. Mr. Brown, if you'll please
11 stand and remind you that you're under oath. And I went
12 through just a few minutes ago with you concerning your
13 rights related to testifying or not testifying and you had
14 requested that you want to spend some more time with your
15 lawyers before you made that decision. Have you had
16 sufficient time now to talk with your lawyers about whether
17 or not to testify?

18 MR. BROWN: Yes, sir.

19 MR. GORANSON: And what is your decision? Are you
20 planning to testify or not testify?

21 MR. BROWN: Not testify.

22 THE COURT: Okay. Thank you very much, Mr. Brown.
23 Does the Defense plan to put up any case?

24 MR. GORANSON: No, sir.

25 THE COURT: All right. The evidentiary record in this

1 case is now closed. We need to take a break so I can
2 finalize the final charge, get a copy to the lawyers to
3 review, and then we can discuss that. So everybody be at
4 ease and we'll take a break.

5 (Whereupon, the court was in recess from 10:35 a.m. to
6 11:37 a.m.)

7 THE COURT: We're back on the record and the court has
8 provided both sides with the court's final charge. Let me
9 hear first from the State. Any requests to change or any
10 objections or exceptions to what the court has provided?

11 MS. ODOM: Yes, sir, Your Honor. With regards to the
12 attempted murder charges --

13 THE COURT: Direct me to the page number, if you would,
14 Solicitor.

15 MS. ODOM: We're on page 14. The attempted murder
16 charge starts on page 14. I'm trying to find the spot -- I
17 think -- actually I think we're talking about 17. Page 17.

18 THE COURT: Page 17?

19 MS. ODOM: Where it states -- I think the Defense also
20 had this question. A specific intent to kill is not an
21 element of attempted murder but there must be a general
22 intent to commit serious bodily injury. I don't think -- I
23 think that's under the old ABWIK.

24 THE COURT: Right.

25 MS. ODOM: But the intent to kill is actually an

1 element now.

2 THE COURT: All right. Does the Defense agree with
3 that?

4 MR. GORANSON: Yes, we do.

5 THE COURT: Okay. So what I'll do, I'll just say a
6 specific intent to kill is an element of attempted murder
7 and take out the rest of that sentence, and then go with
8 intent means intending the result, et cetera, et cetera. Is
9 that satisfactory to both sides?

10 MS. ODOM: Yes, sir.

11 MR. GORANSON: Yes.

12 MS. ODOM: And again turning to the ABHAN charge, I
13 think it's tracking the old language with circumstances of
14 aggravation rather than the statutory definition. We're at
15 page 18 and 19. What we would ask to be charged is
16 basically just the language of the statute, and that's --
17 I'm looking at 16-3-600.

18 THE COURT: Right.

19 MS. ODOM: A person commits the offense of assault and
20 battery of a high and aggravated nature if the person
21 unlawfully injures another person and great bodily injury
22 results, or the act is accomplished by means likely to
23 produce death or great bodily injury, and then define great
24 bodily injury.

25 THE COURT: I'll tell you. If you would do this -- are

1 you okay with that, Mr. Goranson?

2 MR. GORANSON: Yes, sir.

3 THE COURT: So what I will do -- if you could just
4 print out a copy of that statute --

5 MS. ODOM: Yes, sir.

6 THE COURT: -- and highlight what you want me to
7 charge, let Mr. Goranson see it and I don't have a problem
8 with that. You know, sometimes when we're putting these
9 charges together and you pull from this source and this
10 source sometimes we don't get it exactly -- you know, and
11 that's why I like to review all this with you. So when we
12 get to the ABHAN charge then -- and it needs to read assault
13 and battery of a high and aggravated nature. And stop --
14 I'm looking at page 18, first paragraph, stop at nature, and
15 then take out the remaining, and then charge the statute.
16 Is that correct?

17 MS. ODOM: Yes, sir.

18 THE COURT: Mr. Goranson?

19 MR. GORANSON: Stop at nature under that first full
20 paragraph?

21 THE COURT: Right. And then the balance of the ABHAN
22 on page 18 and page 19 --

23 MR. GORANSON: Yes.

24 THE COURT: -- take out.

25 MR. GORANSON: Yes.

1 THE COURT: Okay. So, Solicitor, if you can print me
2 out a copy of the statute.

3 MS. ODOM: Yes, sir. I think that's the only thing.

4 THE COURT: Okay, good.

5 MS. ODOM: And, Your Honor, the indictment numbers on
6 page three, it says 11-GS-24. It should actually be 13.
7 And then on the verdict form.

8 THE COURT: All right. It's 13?

9 MS. ODOM: Yes, sir.

10 THE COURT: All right. Would either side have any
11 problems with me just on the verdict form penning 13 instead
12 of 11, instead of reprinting it again?

13 MR. GORANSON: No.

14 MS. ODOM: No, Judge.

15 THE COURT: We'll do that. Now, does the Defense have
16 any additions?

17 MR. GORANSON: Yes, sir. Well, subtraction actually.
18 *State v. Belcher*. We're looking at page 16, *State v.*
19 *Belcher*.

20 THE COURT: Now, those -- yeah, those case cites, now,
21 are not going to be charged. That's just --

22 MR. GORANSON: No. No. I'm not going to -- what I'm
23 mentioning is there's a charge on page 16 about inferred
24 malice.

25 THE COURT: Wait a minute. Page 16?

1 MR. GORANSON: Yes, sir. Third line.

2 THE COURT: Third line, "Inferred malice may also arise
3 when the deed is done with a deadly weapon."

4 MR. GORANSON: Yes, sir. *State v. Belcher* at 385 S.C.
5 597. It says that is no longer good law.

6 THE COURT: No longer good law when the defense of
7 self-defense is raised.

8 MR. GORANSON: I don't think it's limited to self-
9 defense. It's anything that would show --

10 THE COURT: Well, any affirmative defense that is
11 raised by the Defense, and in this case there was none. Am
12 I not correct on that, Solicitor?

13 MS. ODOM: You are. And I'm looking at a jury charge
14 instructing that, "Malice may be inferred from the use of a
15 deadly weapon is no longer good law where evidence is
16 presented that would reduce, mitigate, excuse or justify."

17 THE COURT: Yeah, and I don't think there's been any
18 mitigating evidence, has there?

19 MR. GORANSON: Yeah, I would agree with you on that
20 insofar as we should only be talking about attempted murder
21 with the jury. The State has said this may be less than
22 attempted murder, then I think that's -- they believe that
23 there's less evidence of his culpability and they're missing
24 the intent to kill. And so, that's why we would argue that
25 *State v. Belcher* would apply.

1 MS. ODOM: I think we're talking about apples and
2 oranges. *State v. Belcher* is a self-defense situation where
3 the fact that he was using a gun and alleged in self-defense
4 couldn't be used to show the intent to kill, whereas here
5 there's been no allegation of self-defense.

6 THE COURT: All right. So let me make sure I
7 understand, Mr. Goranson. You're argument that there is
8 mitigation arises simply by virtue of the fact that the
9 State has requested a lesser included charge to be given to
10 the jury. Is that a fair statement of your position?

11 MR. GORANSON: Yeah. They've asked for -- they believe
12 that it may be a lesser crime. There may be some
13 mitigation. They're the ones that brought up this heat of
14 passion thing that --

15 THE COURT: No. We're not in heat of passion. This is
16 not a heat of passion situation.

17 MR. GORANSON: I understand that. But they were trying
18 to explain why a lesser charge would apply. And if they
19 want to do that, that's fine. But I think that would
20 provide us with a *State v. Belcher* situation here.

21 THE COURT: Well, I don't think the intent of *Belcher* -
22 - the mitigation -- what *Belcher* is looking at -- and it was
23 a self-defense case. But, you know, self-defense, accident,
24 those sorts of things that is the mitigation that I think
25 *Belcher* is concerned with, the fact that a lesser included

1 offense is being charged -

2 MR. GORANSON: Well, and there is evidence that the
3 accuser shot -- shot out of his car at somebody else, so...

4 THE COURT: Right.

5 MR. GORANSON: I think that needs to be taken into
6 account, too.

7 MS. ODOM: But, Your Honor, there's been no affirmative
8 self-defense or accident claim made here.

9 THE COURT: Let me look at this *State vs. Belcher* real
10 quick. Let's look at *State vs. Belcher*. What is the
11 correct year on the indictment number? Because on the
12 witness list we've got 2012. So is it '13; is that correct?

13 MS. ODOM: Your Honor, I believe -- it's 2013. I
14 believe you all still have the indictments up there. But
15 it's 2013.

16 THE COURT: I'm looking at *Belcher* and it's a pretty
17 lengthy opinion, so I'm not suggesting that I have read and
18 digested the entire opinion. However, I'm looking at a
19 statement by the court. If you have it pulled up it's under
20 Section Roman numeral two, capital A. And it says "Where a
21 jury is asked to consider a lesser included offense of
22 murder, or a defense such as self-defense, *Belcher* asserts
23 inference charge violates our common law and our
24 constitutional prohibition." And then, of course, they say,
25 "We elect to decide this appeal solely under common law and,

1 of course, they then ruled that it was an improper charge.
2 So looking at that it would appear that Mr. Goranson's
3 argument may have some merit to it. And even though we
4 don't have a self-defense situation, that I think probably
5 most of the time would be involved with in this particular
6 issue, it would look like to me that I would need to take
7 that charge out.

8 MR. GORANSON: Thank you.

9 THE COURT: But I'll be glad to -- I mean, the State,
10 I'll be glad to hear anything further from you on that.
11 Because again, I've not read the whole the case and I can
12 take some time, if you want me to.

13 MS. ODOM: The only thing, I looked at the citing
14 history on *Belcher*, and I was just glancing at that, and I'm
15 looking at *In Re: Walter M.* where the opinion states because
16 -- and this is a family court case. But because the family
17 court could infer malice from the defendant's use of a
18 deadly weapon it was sufficient to overcome a motion for a
19 directed verdict. And there's a footnote stating that they
20 don't find *Belcher* controlling. And I don't think -- and
21 this looks like it's not in the self-defense context. Now,
22 going back to the -- again, the -- I don't think there's any
23 evidence to mitigate the intent. But I'll respect the
24 court's ruling on it.

25 THE COURT: Right. I think, too -- and it's an

1 interesting issue, and I think to -- I think to ere on the
2 side of caution I'm going to take that out. So really all
3 you want me to take out, Mr. Goranson, would be -- I'm
4 looking on page 16, first full paragraph, "Inferred malice
5 may also arise when the deed is done with a deadly weapon."
6 Is that enough to take out?

7 MR. GORANSON: Yeah. The rest -- that paragraph.

8 THE COURT: You want the rest of the paragraph --
9 "Malice may be inferred from conduct showing a total
10 disregard for human life, leave that in there. "Inferred
11 malice may also arise when the deed is done with a deadline
12 weapon," and take out the remaining of that -- well --

13 MR. GORANSON: Yes, sir. The remainder of the
14 paragraph.

15 THE COURT: But -- then what about the next paragraph,
16 "Examples of a deadly weapon"?

17 MR. GORANSON: Yeah, I think that goes with it.

18 THE COURT: Could you print out that statute for me?

19 MS. ODOM: Yes, sir.

20 THE COURT: Okay, good. Thank you. And just highlight
21 what you want me to charge. Show it to them before you give
22 it to me, please.

23 MS. ODOM: May I approach, Your Honor?

24 THE COURT: Certainly. Mr. Goranson, now concerning
25 the ABHAN charge, you're in agreement to charge what has

1 been handed to me by the Solicitor and that comes straight
2 out of the statute --

3 MR. GORANSON: Correct.

4 THE COURT: -- 16-3-600 she's highlighted?

5 MR. GORANSON: Yes. Does the charge go back there with
6 them or --

7 THE COURT: No. I'm only required, I think, in just
8 certain cases -- I typically -- especially when we've got a
9 charge I've marked up and that sort of thing. So my plan
10 was not to give it to them. Anybody have any objections to
11 that?

12 MS. ODOM: No, sir.

13 THE COURT: So going back to the inference, I'm going
14 to take out -- if we look on page 16 after the sentence,
15 "Malice may be inferred from conduct showing a total
16 disregard for human life," period. Take out the remainder
17 of that paragraph and the following paragraph and pick up
18 with, "If facts are proved beyond a reasonable doubt."

19 MR. GORANSON: Yes, sir. Thank you.

20 THE COURT: But that is -- that's a real interesting
21 issue. Anything else from the Defense as far as the charge?

22 MR. GORANSON: No, sir.

23 THE COURT: Anything else we need to put on the record
24 before we bring out the jury? And we are going to feed the
25 jury lunch, so that will certainly help a little bit. And

1 since the Defense put up no evidence you then intend to take
2 advantage of closing?

3 MR. GORANSON: Yes, sir.

4 THE COURT: I mean, second on closing?

5 MR. GORANSON: Yes, sir.

6 THE COURT: Anything else? All right. If you'll bring
7 the jury out.

8 (Whereupon, the jury entered the courtroom at 11:37
9 a.m.)

10 THE COURT: Let the record reflect the jury is back in.
11 You all can have a seat. Thank you very much for your
12 patience. We were just trying to make sure everything was
13 in order to conclude this matter by way of the closing
14 arguments that the lawyers will be making in just a moment
15 and the court's final charge. The lawyers will make their
16 closing arguments. Again, their arguments are not evidence
17 just like their opening arguments are not evidence, but it's
18 just a statement of their positions as far as what they
19 believe that -- you know, what's been proven. And certainly
20 if they state something that you -- that does not coincide
21 with your memory then you rely on what you remember that to
22 be. Certainly nothing that they would do there would be
23 intentional. They just may misstate something. You always
24 go on what your memory of the facts and the evidence to be.
25 Pay very close attention to the closing arguments.

1 Both sides will work very hard in putting their closing
2 arguments together, so please give them your close undivided
3 attention.

4 Solicitor?

5 MS. ODOM: Thank you, Your Honor.

6 CLOSING ARGUMENT

7 BY MS. ODOM: If shots were flying at your head you
8 wouldn't think clearly either. That's what you heard from
9 Mr. Martin yesterday when he took the stand. This incident
10 happened in the middle of town in the middle of the day just
11 a short distance from the courthouse.

12 I'm going to take you back on that day. We're going to
13 go over the facts. March 23rd of this year Mr. Martin left
14 work and was headed to his girlfriend's. On his way there
15 he was flagged down. You heard him testify he was flagged
16 down by Bow Wow. Bow Wow and Dre were together. Mr. Martin
17 turned around, went back and parked, rolled down his
18 passenger side window and leaned over and conversation
19 began. It didn't last long. It became heated. There had
20 been that prior incident before and they started arguing.
21 You heard Mr. Martin say that the Defendant, Dre, uttered
22 something to the effect of I'm going to murder this guy.
23 I'm going to murder this fool. Reaches into the vehicle
24 that Dre's at, pulls out a gun, points it at Mr. Martin and
25 starts firing. Mr. Martin, his adrenaline is pumping. He

1 panics. And it's a scary situation being shot at. He hits
2 the gas. Has a gun in his vehicle. He pulls it out,
3 returns fire. Leaves the scene. And what does he do next?
4 He calls police. The police are notified. They immediately
5 respond. Now, Mr. Martin doesn't tell Captain McAllister
6 initially that he returned fire. And you heard from him on
7 that yesterday. You heard what Mr. Martin said. He was
8 scared. He had just been shot at. Yeah, he returned fire.
9 He was scared for his life. He didn't want to go to jail.
10 Someone had just tried to kill him and he was scared to
11 death.

12 Now, you heard bits -- little bitty snippets of that
13 video, and one of the snippets you heard some easy going
14 conversation. Captain McAllister was speaking with the
15 victim. They were laughing a little. You know, Captain
16 McAllister spoke with that victim for a while. He spoke
17 with Mr. Martin for a while. Now, you may think that's
18 weird. You know, this is a series situation and why is
19 there any laughing going on. You heard from Captain
20 McAllister, you know, if you don't know someone, they'd just
21 been shot at and you walk up to them and start talking, you
22 know, the situation is very tense. Captain McAllister said
23 if you want to put them at ease a little, talk to him,
24 figure out what happened. And after they spoke Mr. Martin
25 admitted, yes, I did return fire.

1 Now, during the case a lot of attention was given to
2 the police work. I almost felt like we spent more time
3 talking about the police than we did the actual situation.
4 And it's a common strategy, it is, when the Defense, when
5 the facts aren't in their favor, attack something else.
6 Divert the attention. Attack the police. But, you know,
7 they're not on trial here. I mean, Mr. Goranson may get up
8 and say, oh, yeah, they are on trial. You all saw those
9 officers yesterday, and that's one of the things you can
10 consider. The judge is going to tell you. You can think
11 about the testimony of each witness. You can believe parts
12 of it, disbelieve parts of it, believe everything,
13 disbelieve everything. That is up to you all. You all sat
14 through this whole trial. You saw every witness testify.
15 You saw exactly what I did. You can gauge each witness.
16 You all make that determination. But when it comes to those
17 officers those two, Shockley and McClinton, first time
18 testifying in general sessions court. They're newer guys.
19 They're nervous as all get out. You know, keep that in
20 mind. You know, Captain McAllister, he's been on the force
21 a lot longer. He seemed a little more cool, but still. A
22 lot of things -- and Mr. Goranson got into what the officers
23 -- what about this part of the manual or that part of the
24 manual, or why didn't you write the report and why did just
25 you write a report. All these little nitpicky things. Does

1 any of that change what actually happened? No. Does the
2 fact that Captain McAllister wrote the report instead of
3 another officer, does that change what happened? No. What
4 happened that day is that Mr. Martin was flagged down by a
5 guy named Bow Wow and then the Defendant, Dre. He goes over
6 there, rolls down his window, starts talking, an argument
7 ensues, Dre pulls out a gun and makes a statement to him,
8 I'll murder this guy, starts firing. That's what happened.
9 That's what matters.

10 Now, Mr. Goranson had an easel out here in his opening
11 for a little math and he said one lying witness plus one
12 shoddy police investigation equals not guilty. No. I'll
13 give you some more math. One Defendant firing a gun at one
14 victim equals guilty. That is what this case is. Now,
15 the's going to harp on that. He's going to harp on the
16 police work. He's going to harp on the fact that the victim
17 initially didn't mention a thing about firing back. He's
18 going to say Mr. Martin is a liar. You can't believe what
19 he's saying. He changed his story once. I'm not calling
20 him an angel by any means. Don't get me wrong. I mean, he
21 was honest with you. He said he was scared. He wasn't
22 supposed to have that gun. He's a convicted felon from 12
23 years ago. I mean, he's a teenager, or however old he was
24 he had a burglary. He was up front with you. He said it.
25 I didn't even ask him. He brought it up. He was scared to

1 death.

2 Now, I'm going to go over the elements of the crime
3 with you, and the judge is going to tell you all this again.
4 So if talk a little fast or you don't catch something, don't
5 worry, because what I'm telling you the judge is going to
6 tell you again.

7 So he is charged with attempted murder. That's what
8 this case is about. And it's pretty straightforward. It's
9 exactly what it sounds like. Attempted murder is when the
10 Defendant attempts to kill another person with malice
11 aforethought. Now, the malice aforethought might be a
12 little tricky for you, but really it's not. It just means
13 that before the Defendant committed the act that he had some
14 malice. And malice is just -- it's hatred, ill-will or
15 hostility towards another person. You shouldn't have any
16 doubt in your mind that the Defendant hated Mr. Martin.
17 That he bore some ill-will towards him and that he was
18 hostile. He pulled out a gun, pointed it at him and fired.
19 He has that malice. Attempted murder. Did he attempt to
20 kill him? You point out a gun and point it at somebody 30
21 feet away and start firing into their vehicle you're trying
22 to kill them. And he said it. He said right before he
23 started firing, I'm going to murder this guy. That is the
24 attempted murder.

25 Now, the judge is also going to charge you -- or tell

1 you about another crime that if you say, well, it's not
2 attempted murder, the judge is going to say you can also
3 find him guilty of assault and battery of a high and
4 aggravated nature. Now, that is when the Defendant
5 unlawfully attempted to commit a violent injury upon another
6 person and have the present ability to complete the
7 attempted injury. I'm just going to read it for you one
8 more time. Assault and battery high and aggravated nature.
9 A lot of times we'll call it ABHAN just for short. The
10 Defendant unlawfully attempted to commit a violent injury
11 upon another person and the Defendant had the present
12 ability to complete the attempted injury. In this case it's
13 where the Defendant, he's attempting to commit a violent
14 injury. He's attempting to shoot Mr. Martin. That's the
15 violent injury, shooting him. And had the present ability
16 to complete the injury. He did, because he shot at him.
17 That's the ability.

18 Now, also you'll hear a lot about reasonable doubt.
19 That's the standard that you're going to have to use.
20 You're going to have to be convinced beyond a reasonable
21 doubt that this happened. You heard Ms. White in her
22 opening mention it. Firmly convinced is what it means. You
23 have to be firmly convinced that the Defendant is guilty.
24 Are you firmly convinced? When you are, that is when you'll
25 vote guilty. It's not every single possible doubt in the

1 world. That's impossible. There's no way that every single
2 little doubt that you can ever have would be satisfied. And
3 it's not required. What is required is that you're firmly
4 convinced. Your firmly convinced that the Defendant pulled
5 out his gun, made a statement, pointed it at Mr. Martin and
6 started firing.

7 Now, when you go back in the jury room you're also
8 going to get to see the evidence. You're going to get the
9 whole everything. You're going to get to look at the
10 pictures. I know we've been throwing them up on the screen
11 a lot and you haven't got to hold them. But you're going to
12 be able to look at everything we have. Everything that's
13 been introduced into evidence. I'm going to go over the
14 evidence briefly with you.

15 The shell casings. The two shell casings from the
16 victim's car. And then the six shell casings from the
17 parking lot. Now, in the victim's car remember back --
18 remember where Captain McAllister said they were found.
19 They were found in the backseat. So let's go over this
20 positioning. When the victim is flagged down and he pulls
21 into the parking lot and pulls around, he's in the driver's
22 seat, steering wheel in front of him, rolls down the
23 passenger side window, they're on that side of him. The
24 Defendant is where you all are and I'm where Mr. Martin is.
25 Rolled down the passenger side window, leaned over and they

1 start talking. And when the Defendant pulls out that gun
2 and points it at him and starts firing, he panics and speeds
3 off. Now, think about the damage in the car. The back
4 passenger side window busted out. You've got a picture of
5 it. That back passenger side window is busted out. I'm
6 going to go ahead and put this up. That is that back
7 passenger side window. So when Mr. Martin is at his car
8 he's leaned out. You can see the front window rolled down.
9 He's leaned over talking. They start firing. That back
10 passenger side window busted out. What else is busted out?
11 The back glass. Now, think about that. That is consistent
12 with Mr. Martin's testimony. That he sped off.

13 Now, if you're -- and you can look at the map, too.
14 When you're driving away -- you know, Mr. Martin, he's
15 moving. The Defendant, he's in the parking lot. He's
16 driving away. The back glass shot out. Now, the trunk.
17 You can see it in that picture and you can see it closer in
18 a couple other pictures. Look at that picture. The trunk.
19 As he's driving off he's being shot at.

20 Now, there are -- get back to those two shell casings.
21 Mr. Martin talking. Dre starts shooting. He grabs his gun,
22 Mr. Martin does, and returns fire. Where are those shell
23 casings? They're in the backseat. There's one of them. In
24 the back. That one was down at the frame of the door. The
25 bottom frame of the door. Think where that is. That is

1 behind the driver's side seat. Think about it. Use your
2 common sense. What makes sense? The -- Mr. Martin,
3 steering wheel, has the gun firing back trying to get away.
4 Firing to cover himself. When that casing ejects from the
5 gun it shoots to the right. It goes to the right when it
6 comes out of the gun, like this. It comes out of the gun
7 it's going to go behind him and land exactly where it
8 landed. Mr. Martin's testimony, the evidence in the case,
9 it's consistent. Yeah, I wish he would have been up front
10 and told the officer to begin with I fired back. I wish he
11 would have. But it does not change anything. It does not
12 change the fact that Dre pulled out a gun and started
13 shooting at him. Yes, he returned fire, but it doesn't
14 change anything.

15 Now, another thing that Mr. Goranson had asked the
16 victim about, well, did you come looking for him. Talking
17 about did Mr. Martin go looking for Dre. He had just got
18 off of work. Put in a shift at Shoney's and was headed to
19 see his girlfriend. He didn't go looking for him. It's
20 probably a coincidental thing. He drove by where they were.
21 They -- Bow Wow and Dre flagged him down. The victim didn't
22 go looking for trouble.

23 Now, and that's another thing use your common sense on.
24 If Mr. Martin was looking to do harm to them do you think he
25 would have pulled into that parking lot like that? You can

1 see on the map. He pointed out to you how he pulled into
2 that parking lot. No, that's not how it would have
3 happened. If he had been looking for trouble he wouldn't
4 have been coming down Pressley and then that parking lot
5 right there that you all are familiar with, right there is
6 the parking lot this happened in. Would he have pulled up
7 in there, the edge, and leaned over and talked to them? No.
8 If he wanted to do them harm -- if he wanted to do Dre harm
9 what he would have done is a drive by. Rolled out his
10 window, leaned out and fired. There would have been no
11 damage to his car. Because if he wanted to do them harm he
12 would have done it quick with him window down, bam, bam, bam
13 and kept going. They wouldn't have had a chance to do that
14 damage. Dre would not have had a chance to do that damage
15 to the car. It just does not make sense. What does make
16 sense is what happens. That he was flagged down, went to
17 the parking lot, rolled down his window, he started being
18 shot at. His back passenger side window was shot out. His
19 rear windshield shot out. A dent in the trunk. The casings
20 in his car in the backseat as he was leaving, fleeing the
21 scene, gun behind him. Just trying to get away. That's
22 what makes sense.

23 Probably the most important thing in this case is
24 common sense. Just use yours. Don't get back there and get
25 bogged down. Think about it. Are you firmly convinced that

1 the Defendant pulled out a gun. That he tried to kill Mr.
2 Martin. That he shot into his car. He had that malice
3 aforethought. It just means malice before you did the act.
4 It doesn't have to be years or days, weeks. It can be a
5 second. It could be an instant. I'm going to kill this
6 guy. Got the gun, bam, bam, bam, bam. And think -- I keep
7 mentioning the shell casings in Mr. Martin's car. What
8 about those six shell casings in the parking lot? In the
9 parking lot where Mr. Martin said Dre was. Dre was in that
10 parking lot. When the officers responded he wasn't there.
11 Those six shell casings were.

12 This is my last opportunity to speak to you. The last
13 time I'll be in front of you. After I get done speaking Mr.
14 Goranson will get up here and give his closing argument.
15 The judge will tell you the law, to charge you on what
16 you've got to do, and then you'll go back in the jury room
17 and deliberate. So it's kind of hard going first. I'll
18 admit it. Because I don't know what Mr. Goranson is going
19 to say. I've got to kind of guess. You know, a pretty good
20 guess how the testimony went. He's going to attack the
21 police. He's going to attack the victim. When it's all
22 said and done, you've got to use your common sense. Easy to
23 see what happened. Easy to see it. And regardless of what
24 you think about Mr. Martin, what you think about law
25 enforcement, did this happen. Yes, it did. Are you firmly

1 convinced. Yes. Are you going to go back there and
2 deliberate and vote guilty. Yes. Because in the end, I
3 mean, enough is enough. The middle of the day, the middle
4 of town. Thank you.

5 THE COURT: Thank you, Solicitor. Mr. Goranson, you
6 ready?

7 MR. GORANSON: Yes, sir.

8 CLOSING ARGUMENT

9 BY MR. GORANSON: I'm just going to respond quickly to
10 what the Assistant Solicitor said. You know, the officers
11 were nervous. I certainly understand that. I'm nervous.
12 But it doesn't lower the bar in this process. Okay? You
13 still have to maintain a high standard here, and the
14 standard is proof beyond a reasonable doubt. I just want to
15 mention that.

16 Now, I want to start off by saying Mr. Brown didn't do
17 it. He did not do what he is accused of. The issues in
18 this case are, I think, the reliability of the witness and
19 the unreliable police work. And before we get to really a
20 discussion on the facts of this case let's talk about this
21 system that we're working in here. The American justice
22 system is the greatest system on earth. It does have it's
23 flaws but it is the best. And the reason it's best is the
24 amount of protections that it provides each and every one of
25 us should we find ourselves in Mr. Brown's shoes. An

1 innocent person wrongly accused of a crime that he did not
2 commit. And no one is more important in that process than
3 you, the 12 of you, because it's your job to make sure that
4 those protections apply in this case.

5 Now, this can be an incredibly difficult job for you,
6 because you hold the fate of a man in your hands. That is a
7 grave responsibility that most people will never ever know
8 or experience. But on the other hand, the job can be really
9 simple. And the question that you have to answer is not
10 what happened that day. The question is not -- is Mr. Brown
11 an innocent person. The only question you have to answer
12 today is whether the State proved these charges beyond a
13 reasonable doubt. And if you have questions that maybe you
14 would doubt, that is normal. That is normal and it's okay.
15 And in that case you have doubts, or one doubt, then your
16 choice is easy and you have to vote not guilty. Okay?

17 So before we start talking -- and again, there's three
18 principles that I want to talk to you about. The judge is
19 going to talk to you about them, but I think they're
20 fundamental. I think they're crucial to our system of
21 justice, so I think they're worth a little bit more
22 discussion. The presumption of innocence. This is a cloak,
23 a protection of innocence that each and every one of us
24 wears as citizens of this great country. And that cloak
25 cannot be removed unless and until the State has met it's

1 very high burden of proof beyond a reasonable doubt. A
2 burden which I think the State has not met in this case.
3 Now, this applies to all of us should we ever be accused of
4 any crime, but it only works if all of us -- every member of
5 this community believes in this principle. We all have to
6 believe in it. And before you were sworn as jurors you
7 agreed to uphold that part of the law, that Mr. Brown would
8 be innocent. As he sits here before you today he remains
9 innocent and the cloak may not be removed unless and until
10 the State has met its burden and you've gone back there and
11 deliberated on whether or not that's happened. So as he
12 sits here today he's still -- right now he's an innocent
13 man. You must presume him innocent.

14 The next concept is the burden of proof. In this
15 country we do not require anyone to prove that they are not
16 guilty. It is the State's burden. If the State wants to
17 take somebody's liberty, wants to take away somebody's
18 rights, the founding fathers set forth this principle that
19 the State must bear the entire burden of proof. Okay? This
20 is about the value of human dignity and human liberty and
21 the price that has to be paid if the government wants to
22 take it from them. You want to take his freedom, you want
23 to take his liberty, you got to do it the right way. That's
24 the State's burden. You've got questions that weren't
25 answered in this case, you cannot look to Mr. Brown to have

1 answered them for you. You must hold that against the
2 State. Those questions can be the basis for a reasonable
3 doubt.

4 Judge Hocker is going to tell you about Mr. Brown's
5 right to remain silent. And he does. He has the right to
6 remain silent. He does not have to say anything. We don't
7 ask a witness to get up on the witness stand and say I'm
8 innocent. I didn't do that. We don't do that in this
9 country. And Mr. Brown has made his statement in this case
10 loud and clear when he pled not guilty and asked for a jury
11 trial.

12 Now, the last principle, the Solicitor mentioned it,
13 beyond a reasonable doubt. Proof must be beyond a
14 reasonable doubt. You must be firmly convinced that Mr.
15 Brown did what he is accused of. You might -- if you do
16 think he might have done it, he probably did it, I'm fairly
17 sure he did it, in each of those cases that's not enough.
18 In each of those cases you would have to vote not guilty if
19 that's how you felt. This is the highest standard of proof
20 we have in any court system in this country. Higher than
21 taking somebody's property from them in a civil setting, or
22 taking other rights from them in a civil setting. Higher
23 than the standard that the court's use to take somebody's
24 children away from them. Okay? Proof beyond a reasonable
25 doubt. The highest system we have in this country. And

1 pardon me if I read some of this. If I miss out on stating
2 any of these facts I would regret it forever, so I want to
3 let you know I do believe this is the issue in this case.
4 You have an unreliable witness who admitted to lying. You
5 have police work -- you heard about the police work and
6 we'll talk about that a little bit. That that equals a not
7 guilty verdict. This -- this evidence in this case is not
8 worthy of a conviction of one of the most serious charges we
9 have.

10 First question. Can Mr. Martin be relied upon? He
11 lied repeatedly about shooting and not having a gun. And
12 his story didn't just change once. I mean, first he says he
13 just slowed down. Got waived down and there was a
14 discussion and the shooting started. Then later on he said
15 he stopped. And you heard Mr. McAllister -- Captain
16 McAllister, say that he got Mr. Martin to confirm that he
17 stopped on the road. The guys were on the side of the road.
18 They shot out the back window. Then later on in the car it
19 was, oh, yeah. I pulled in, pulled up, pulled back -- or
20 backed up and pulled up to the curb. Those are big changes.
21 And he's saying that the car was 30 feet away when he was
22 getting shot at. And then after getting coached by Mr.
23 McAllister about what the law is and when it's okay then he
24 admits to shooting. He still never told him where the gun
25 was in the car. The first time I heard that he got it from

1 the glove box was right up here. And I think if you're
2 getting shot out you don't leave out the part where you're
3 speeding off with one hand, reaching over to the glove box,
4 pulling the gun out, turning the safety off and shooting
5 back. I mean, that's an integral part of the whole thing.
6 And even after he admitted shooting he still never told that
7 part of the story. After he admitted to shooting he still
8 never told that part of the story. You heard him testify
9 yesterday that he shot twice. We heard before he said he
10 shot three times. At that point he knew there were only two
11 shell casings in the car. He testified he shot through the
12 open passenger window, but I think that the location of the
13 shell casings in the car which show that he shot through the
14 back passenger window. All the shell casings are off to the
15 right.

16 And the police in this case, they had a witness who had
17 lied. They knew he lied and he had mislead them. And, you
18 know, he says -- the police officer says you're smart
19 enough. You would have hidden the gun by now, you know, if
20 you had one. He said, oh, yeah, I would have. I would
21 have. I ain't had nothing to shoot. He said that, too. He
22 said I came back here and called the police and waited. He
23 never really mentioned the fact that he went and hid the
24 gun. Then you heard him testify he hid the gun before he
25 called the police. Okay? Think about that. He even

1 mislead his own mother by leaving out the part about
2 shooting back. You know, I have to wonder about what he
3 would feel about misleading people he doesn't know.

4 So the police didn't even bother to check to see if his
5 story matched the evidence. They didn't take pictures of
6 any shell casings in the parking lot, which could
7 potentially disprove one of his stories. Or maybe they did
8 take pictures and they don't want us to see them. I don't
9 know. They didn't fingerprint the shell casings to see who
10 had touched them, even though they can fingerprint stuff.
11 The manual says this is great evidence. You need to get the
12 fingerprints. And you heard the evidence technician. She's
13 qualified and able to do advanced fingerprint retrieval, and
14 they don't do that in this case when it could prove beyond a
15 reasonable doubt he touched those bullets. I just don't
16 understand that.

17 They didn't bother to write down crucial pieces of
18 information. And the Solicitor said, you know, oh, you
19 can't get all the fingerprint stuff in 30 minutes, can you.
20 Well, it's been 244 days and they didn't even look to see if
21 there were fingerprints. I mean, maybe there weren't
22 fingerprints on the bullets. I don't know. On the casings.
23 Maybe they weren't there. But they didn't look. And when
24 you have a witness who's proven himself to be unreliable why
25 wouldn't you look to just check.

1 Ballistics testing. They didn't do any ballistics
2 testing. They returned one of the weapons used in a
3 potential crime when there's a lying witness. Think about
4 that missing evidence that could have been gained from that
5 gun that we don't have here today. So Mr. Martin said he
6 shot out the front passenger window during his testimony,
7 but let's -- let's take a look at something here. Officer
8 Shockley didn't write anything down in this case. You heard
9 him. And he also didn't remember too much. But he did
10 remember that they didn't find any bullets or projectiles in
11 the car. And I think everybody agreed on that. Him and
12 Captain McAllister. And now let's get a car going here.
13 I'll do my best on this. That's going to be the front of
14 the car. That'll be a side window here, a side window here.
15 Rear windshield, side window, side window. There are no
16 bullet holes in the car, right? No bullet holes in the side
17 of the car here. Supposedly six shots from about 30 feet
18 away. And no bullet holes here on the side of the car.
19 Now, we have this window broken, right? And we have this
20 window. And the officers testified that this window is
21 fine, this window fine, this window fine. This window is
22 rolled down. Let's think about a bullet entering this
23 vehicle from the side. Either that window gets broken or
24 there's a bullet hole somewhere in the car. Let's talk
25 about a bullet going through back here. Either this gets

1 broken or it's in the headrest of the car, and there's going
2 to be a bullet hole or bullet in the car. How in the world
3 could a bullet go through the side and not impact some
4 interior part of the car in another window. That doesn't
5 make sense. What makes sense is the driver shooting out of
6 his own car.

7 I think what we're looking at here is there was a prior
8 dispute. The accuser left work. He went to Phoenix Place.
9 We know that because he says after the shooting he went back
10 to Phoenix Place, right? He said that twice. I went back
11 to Phoenix Place. So that means he was there before. And
12 he got a gun from Phoenix Place from his cousin. That's
13 what he testified to, right? He got a gun from Phoenix
14 Place and he gave it to the officer after getting coached on
15 what to say after lying repeatedly. He never said where the
16 gun came from within the car or how he took the safety off
17 and shot back. And I think that's because the gun was right
18 there in the front. He went from work to Phoenix Place to
19 ride around looking for these guys about the prior dispute.

20 They say that he -- they say that he panicked and that's
21 why he lied. But he testified before he called the police
22 he hid the gun. That's not panic. That's planning. That's
23 planning. Think of all the evidence from this case that you
24 have, think about whether it's reliable, and come back with
25 the only verdict supported by this evidence. A verdict of

1 not guilty. Thank you.

2 THE COURT: Thank you, Mr. Goranson. Would you mind
3 moving the --

4 MR. GORANSON: Sorry.

5 THE COURT: That's okay. We're just all going to be at
6 ease for just a couple of minutes. I want our court
7 reporter just to be able to catch her breath for just a
8 minute. So we'll all be at ease. The jury remain in the
9 jury box.

10 (Whereupon, a brief recess was held.)

11 THE COURT: Madame Forelady and ladies and gentlemen of
12 the jury, I remind you that during this trial you and I have
13 had certain duties to perform. As the trial judge it has
14 been my responsibility to preside over the trial of this
15 case, and I also have had the duty to rule the admissibility
16 of the evidence offered during this trial. You are to
17 consider only the competent evidence before you. I don't
18 remember this being the case, but if there was any testimony
19 ordered stricken from the record in this case during this
20 trial you must disregard that testimony. You are to
21 consider only the testimony which has been presented from
22 the witness stand any exhibits which have been a part of the
23 record in this case and any stipulations of counsel. I have
24 the additional duty to charge you the law applicable to this
25 case. As the presiding judge I am the sole judge of the law

1 of this case, and it is your duties as jurors to accept and
2 apply the law as I now state it to you. If you already have
3 any idea as to what the law is or what the law ought to be
4 and it does not agree with what I now tell you the law is,
5 you must abandon this idea because you are sworn to accept
6 the law and apply the law exactly as I state it to you. And
7 if you'll remember, I told you that very same thing at the
8 beginning of this case. In ever case tried in this court
9 before a jury the jury becomes the sole and exclusive judge
10 of the facts in the case. A trial judge cannot intimate,
11 state, comment on or make any statement to a trial jury
12 about the facts in a case. Since you, the jury, are the
13 sole judge of the facts of this case you are not to infer
14 from what I have said during the progress of this trial in
15 ruling upon the admissibility of evidence or otherwise, or
16 anything that I say now during the course of this
17 instruction to you that I have any opinion about the facts
18 in this case. The law does not allow me to have an opinion
19 about the facts in this case. I do not have an opinion.
20 This is a matter solely for you, the jury, to determine. As
21 jurors it is your duty to determine the effect, value,
22 weight and truth of the evidence presented during this
23 trial.

24 I charge you on the law applicable to this case. You
25 must consider the charge as a whole and not focus on some

1 portions to the exclusion of the other portions. The
2 indictments -- and I told you this at the outset. The
3 indictments charges the Defendant with attempted murder and
4 possession of a weapon during the commission of a violent
5 crime. I remind you that the fact that the Defendant was
6 arrested, charged and indicted in this case is not evidence
7 in this case and cannot be considered by you as evidence of
8 guilt in this case, nor does it create any presumption or
9 inference of guilt. These two documents are simply the
10 formal written instruments which contains the charges made
11 against the Defendant. It is the informal document by which
12 this case -- or documents, rather, by which this case is
13 brought into this court.

14 The indictments in the case allege several different
15 offenses against the Defendant. The charges in indictment
16 13-GS-24-1126 is attempted murder, and indictment 13-GS-24-
17 1127 is the possession of a weapon during the commission of
18 a violent crime. Each indictment charges a separate and
19 distinct offense. You must decide each indictment
20 separately on the evidence and the law applicable to it
21 uninfluenced by your decision as to any other indictment.
22 The Defendant may be convicted or acquitted or any or all of
23 the offenses charged. You'll be asked to write a separate
24 verdict of guilty or not guilty as concerns each indictment.

25 Now, the Defendant has pled not guilty to both of these

1 indictments, and that plea puts the burden on the State to
2 prove the Defendant guilty. A person charged with
3 committing a criminal offense in South Carolina is never
4 required to prove himself or herself innocent. I charge you
5 that it is an important rule of the law that the Defendant
6 in a criminal trial, no matter what the seriousness of the
7 charge or charges may be, will always be presumed to be
8 innocent of the crime for which the indictment was issued
9 unless guilt has been proven by evidence satisfying you of
10 that guilt beyond a reasonable doubt. This presumption of
11 innocence does not end when you begin your deliberations,
12 but it accompanies the Defendant throughout the trial until
13 you reach a verdict of guilt based on the evidence
14 satisfying you of that guilt beyond a reasonable doubt. The
15 presumption of innocence is like a robe of righteousness
16 placed about the shoulders of the Defendant which remains
17 with the Defendant until it has been stripped from the
18 Defendant by evidence satisfying you of the Defendant's
19 guilt beyond a reasonable doubt. Presumption of innocence
20 is not mere legal theory. It's not just a legal phrase that
21 lawyers and judges use. It is a substantial right to which
22 every Defendant is entitled unless you, the jury, are
23 satisfied from the evidence of the Defendant's guilt beyond
24 a reasonable doubt. The State has the burden of proving the
25 Defendant guilty beyond a reasonable doubt. Some of you may

1 have served as jurors in civil cases where you were told by
2 the judge that it is only necessary to prove that a fact is
3 more likely true than not true, such as by the greater
4 weight or the preponderance of the evidence. In criminal
5 cases, however, the State's proof must be more powerful than
6 that. It must be beyond a reasonable doubt. Proof beyond a
7 reasonable doubt is proof that leaves you firmly convinced
8 of the Defendant's guilt. There are very few things in this
9 world that we know with absolute certainty and in criminal
10 cases the law does not require proof that overcomes every
11 possible doubt. If based on your consideration of the
12 evidence you are firmly convinced that the Defendant is
13 guilty of the crimes charged, you must find the Defendant
14 guilty. If on the other hand you think there's a real
15 possibility the Defendant is not guilty as to the crimes
16 charged, you must give the Defendant the benefit of the
17 doubt and find him not guilty.

18 And Madame Forelady and ladies and gentlemen of the
19 jury, there are two types of evidence which are generally
20 presented during a trial; that being direct evidence and
21 circumstantial evidence. Direct evidence directly proves
22 the existence of a fact and does not require deduction.
23 Circumstantial evidence, however, is a proof of a chain of
24 facts and circumstances indicating the existence of a fact.
25 Crimes may be proven by circumstantial evidence. The law

1 makes no distinction between the weight or value to be given
2 to either direct or circumstantial evidence. However, to
3 the extent the State relies on circumstantial evidence, all
4 of the circumstances must be consistent with each other, and
5 when taken together point conclusively to the guilt of the
6 accused beyond a reasonable doubt. If these circumstances
7 merely portray the Defendant's behavior as suspicious, the
8 proof has failed. The State has the burden of proving the
9 Defendant guilty beyond a reasonable doubt. This burden
10 rests with the State regardless of whether the State relies
11 on direct evidence, circumstantial evidence, or a
12 combination of the two.

13 Necessarily, Madame Forelady and ladies and gentlemen
14 of this jury, you must determine the credibility of
15 witnesses who have testified in this case. Credibility
16 simply means believability. It becomes your duty as jurors
17 to analyze and to evaluate the evidence and determine which
18 evidence convinces you of its truth. In determining the
19 believability of witnesses who have testified in this case
20 you may believe one witness over several witnesses, or
21 several witnesses over one witness. You may believe a part
22 of the testimony of a witness and reject the remaining part
23 of the testimony of that same witness. You may believe the
24 testimony of a witness in its entirety or reject the
25 testimony of a witness in its entirety. You may consider

1 whether any witness has exhibited to you any interest, bias,
2 prejudice or other motive in the case. You may also
3 consider the appearance and manner of a witness while on the
4 witness stand.

5 Now, a person who has a past criminal record is
6 competent to testify during a trial. A past record does not
7 affect the ability of that witness to testify. The past
8 record may only be considered by you, if at all, in
9 determining the witness's believability. Remember, Madame
10 Forelady and ladies and gentlemen of this jury, you are the
11 sole judges of the facts in this case and of the
12 believability of any and all of the witnesses.

13 Now, there have been evidence presented that witnesses
14 have made prior statements which are not consistent with the
15 witness's present testimony. You may use this evidence to
16 decide whether to believe the witness, but you may also use
17 evidence of the earlier contradictory statements to
18 determine the truth of those statements. It is up to you to
19 decide whether to believe the earlier statements or the
20 testimony given at this trial.

21 If a witness has shown to have knowingly testified
22 untruthfully concerning any material matter you may consider
23 this in determining whether to trust the witness's testimony
24 as to other matters. You may reject all testimony of that
25 witness or give all or part of the testimony the weight you

1 think it justly deserves.

2 Now, I instruct you and emphasize that the fact that
3 the Defendant did not testify is not a factor to be
4 considered by you in any way in your deliberation and in
5 your consideration on the question of the guilt or the
6 innocence of this Defendant. It must not be considered by
7 you in any manner whatsoever. A Defendant has the
8 constitutional right to remain silent, and the assertion of
9 this right must not be considered by you in your
10 deliberations. I repeat. Under your oath, you are to draw
11 no conclusion whatsoever from the fact that the Defendant in
12 this case did not testify. The fact that this Defendant did
13 not testify should not even be discussed in the jury room.
14 The burden of proof, as I have stated to you, is on the
15 State. The Defendant is not required to prove his
16 innocence. The burden of proof remains on the State to
17 prove guilt beyond a reasonable doubt.

18 An issue in this case is the identification of the
19 Defendant as the person who committed the crime or crimes
20 charged. The Defendant has the burden -- the State has the
21 burden of proving identify beyond a reasonable doubt. You
22 must be satisfied beyond a reasonable doubt of the accuracy
23 of the identification of the Defendant before you may
24 convict the Defendant. Identification testimony is an
25 expression, a belief, or impression by a witness. You must

1 determine the accuracy of the identification of the
2 Defendant. You must consider the believability of each
3 identification witness in the same way as any other witness.
4 You may consider whether the witness had an adequate
5 opportunity to observe the offender at the time of the
6 offense. This will be affected by things like how long or
7 short a time was available, how far or close the witness
8 was, the lighting conditions, and whether the witness had
9 the chance to see or know the person in the past. Once
10 again, I instruct you the burden of proof on the State
11 extends to every element of the crime or crimes charged.
12 And this specifically includes the burden of proving beyond
13 a reasonable doubt the identity of the Defendant as the
14 person who committed the crimes charged. If after examining
15 the testimony you have a reasonable doubt as to the accuracy
16 of the identification, you must find the Defendant not
17 guilty.

18 In this case there are allegations of spoliation or
19 destruction of evidence. The State not only has the burden
20 of proof of guilty but also it has the burden of producing
21 evidence which could establish the innocence of the
22 Defendant. When evidence is lost or destroyed by a party
23 you may infer that the evidence which was lost or destroyed
24 by that party would have been adverse to that party. If you
25 first -- if you find first that evidence was spoiled or

1 destroyed, and if you further find that the evidence could
2 have established the innocence of the Defendant, you may
3 then consider those facts in deciding whether or not the
4 State has met its burden of proof.

5 And Madame Forelady and ladies and gentlemen of the
6 jury, the Defendant is charged with attempted murder. In
7 order to prove this crime the State must prove the Defendant
8 attempted to kill another person with malice aforethought,
9 either expressed or implied. Malice is hatred, ill-will or
10 hostility towards another person. It is the intentional
11 doing of a wrongful act without just cause or excuse and
12 with an intent to inflict an injury, or under circumstances
13 that the law will infer an evil intent. Malice aforethought
14 does not require that malice exists for any particular time
15 before the act is committed, but malice must exist in the
16 mind of the Defendant just before and at the time of the act
17 when it is committed. Therefore, there must be a
18 combination of the previous evil intent and the act. Malice
19 aforethought may be expressed or inferred. These terms
20 express and infer do not mean different kinds of malice but
21 merely the manner in which malice may be shown to exist.
22 That is either by direct evidence or by inference from the
23 facts and circumstances which are proved. Expressed malice
24 is shown when a person speaks words which express hatred or
25 ill-will for another, or when the person prepared beforehand

1 to do the act which was later accomplished. For example,
2 and just as an example to explain, lying in wait for a
3 person or any other acts of preparation going to show that
4 the deed was within the Defendant's mind would be expressed
5 malice. Malice may be inferred from conduct showing a total
6 disregard for human life. The facts are proved beyond a
7 reasonable doubt sufficient to raise an inference of malice
8 to your satisfaction this inference would be simply an
9 evidentiary fact to be considered by you, the jury, along
10 with the other evidence in the case and you may give it the
11 weight you decide it should receive.

12 A specific intent to kill is an element of attempted
13 murder. Attempt means intending the result which actually
14 occurs. Not accidentally or involuntarily. Intent may be
15 shown by acts and conduct of the Defendant and other
16 circumstances from which you may naturally and reasonably
17 infer intent. Evidence of the character of the act. The
18 character of the instrument, the manner in which it was
19 used, the purpose to be accomplished and the resulting
20 wounds or injuries may be considered in determining the
21 intent with which the act was committed. Intent may also be
22 inferred when it is demonstrated that the Defendant
23 voluntarily and willfully commits an act, a natural tendency
24 of which is to destroy another's life.

25 Now, Madame Forelady and ladies and gentlemen of the

1 jury, if you find that the State has failed to prove that
2 the Defendant intended to kill another person and/or the
3 State failed to prove that the Defendant acted with malice
4 aforethought, either expressed or implied, you must then
5 decide whether the State has proved by evidence beyond a
6 reasonable doubt that the Defendant is guilty of assault and
7 battery of a high and aggravated nature. The State must
8 prove beyond a reasonable doubt a circumstance of
9 aggravation. Now, a person commits the offense of assault
10 and battery of a high and aggravated nature, if the person
11 unlawfully injures another person and great bodily injury to
12 another person results, or the act is accomplished by means
13 likely to produce death or great bodily injury. Great
14 bodily injury means bodily injury which causes a substantial
15 risk of death or which causes serious permanent
16 disfigurement or protracted loss or impairment of the
17 function of a bodily member or organ.

18 Now, the Defendant is charged with possession of a
19 weapon during the commission of or attempt to commit a
20 violent act or crime. The State must prove beyond a
21 reasonable doubt that the Defendant was in possession of a
22 firearm or visibly displayed what appeared to be a firearm
23 during the commission of a violent crime. A firearm means
24 any machine gun, automatic rifle, revolver, pistol or any
25 weapon which will, is designed to or may be readily

1 converted to expel a projectile. A knife means an
2 instrument or tool with a sharp cutting blade, whether or
3 not fastened to a handle which can be used to inflict, cut,
4 slash or wound. In order to find the Defendant guilty of
5 possession of a weapon during the commission of a violent
6 crime you must first find the Defendant guilty of either
7 committing a violent crime or attempting to commit a violent
8 crime. Both attempted murder and assault and battery of a
9 high and aggravated nature are violent crimes. The State
10 must prove beyond a reasonable doubt that the weapon further
11 advanced or helped the Defendant in the commission of the
12 crime.

13 Now, Madame Forelady and ladies and gentlemen of the
14 jury, I'm going to come down to the jury box and explain to
15 you the verdict form which hopefully will give you some
16 explanation in your deliberations in reaching a verdict.
17 This is what's called a verdict form. And number one, it
18 says, "As to the charge of attempted murder we find the jury
19 -- we, the jury, find the Defendant," either guilty or not
20 guilty. Now, the order that guilty or not guilty has been
21 placed is of no significance. And it says if the verdict is
22 guilty then you go to number three, which we'll look at in
23 just a moment. If your verdict on number one is not guilty,
24 then you go to number two. And number two says, "As to the
25 charge of assault and battery of a high and aggravated

1 nature, we, the jury, find the Defendant," and either mark
2 guilty or not guilty. If your verdict is guilty on number
3 two then you go to number three. If your verdict is not
4 guilty, then you stop and you -- Madame Forelady, you sign
5 the verdict form which is on the second page. Number three
6 says, "As to the charge of possession of a weapon during the
7 commission of a violent crime, we, the jury, find the
8 Defendant," either guilty or not guilty. So there has to be
9 markings here. I think it's pretty self-explanatory. And
10 you would sign as the foreperson of this jury. It's already
11 dated.

12 Now, what I'm going to ask that you do at this time is
13 to retire to your jury room. Don't start your deliberations
14 yet until I've had a chance to talk with the lawyers to make
15 sure that my charge is proper, if there's any additions or
16 corrections that they feel like are necessary. When the
17 Bailiff brings you the verdict form, the two indictments and
18 the exhibits that have been put into evidence in this case,
19 when he brings those to you then at that time you would then
20 start your deliberations. And also at that time the
21 alternate would leave the jury room and would come out here.
22 Now, I know that you've ordered lunch and that will be
23 brought to you so that you can eat your lunch while you
24 deliberate or eat your lunch first. However you want to do
25 it. That's going to be left up to you, the jury. And I

1 guess the alternate can eat the lunch out here or wherever
2 you would like to take it. So at this time retire to your
3 jury room. Don't start your deliberations until those
4 documents are brought to you. Okay? Thank you very much?

5 (Whereupon, the jury exits the courtroom at 1:04 p.m.)

6 THE COURT: Any objections or exceptions from the State
7 as to the court's charge?

8 MS. ODOM: No, sir, Your Honor.

9 THE COURT: And from the Defense?

10 MR. GORANSON: None, sir.

11 THE COURT: Thank you very much. Let's get this stuff
12 together. If the lawyers would meet me at the court
13 reporter's desk to make sure we have all the exhibits.

14 (Whereupon, the jury began deliberations at 1:06 p.m.)

15 (Whereupon, Letter from Jury was marked as Court's
16 Exhibit No. 1)

17 (Whereupon, the jury enters the courtroom at 2:30 p.m.)

18 THE COURT: Let the record reflect the jury is back in.
19 How was lunch? Was it okay? Everybody enjoy it? I've got
20 your note. The first is a question, "If a witness has a
21 pending case can he still testify," and then you've got Bow
22 Wow in parenthesis. My instruction to you is that you are
23 to consider the facts based upon the evidence and testimony
24 presented and apply -- whatever facts you determine them to
25 be, apply those facts to the law as I instructed you.

1 (Whereupon, the jury existed the courtroom at 2:30
2 p.m.)

3 (Whereupon, the court was in recess from 2:30 p.m. to
4 3:09 p.m.)

5 THE COURT: Let's bring them out, please.

6 (Whereupon, the jury entered the courtroom at 3:09
7 p.m.)

8 THE COURT: I apologize for interrupting your
9 deliberations. I just realized that I failed to tell you,
10 even though it is on the verdict form, that your verdict
11 must be unanimous among the 12 of you. And that should have
12 come from me and it was just a complete oversight, even
13 though on the second page of the verdict form right above
14 where the Forelady signs it says that the verdict is
15 unanimous, but it should have also come from me. So I am
16 instructing you know that whatever verdict that you reach
17 much be unanimous among the 12 of you. Again, I apologize
18 for interrupting your deliberations. And now if you'll go
19 back to the jury room. Thank you.

20 (Whereupon, the jury exists the courtroom at 3:09 p.m.)

21 THE COURT: Just remind people in the gallery, no
22 showing of any outward verbal emotion of any kind when the
23 verdict is published. Mr. Willingham, if you'd bring them
24 out, please.

25 (Whereupon, the jury entered the courtroom at 4:55

1 p.m.)

2 THE COURT: Let the record reflect the jury is in.
3 Everyone can remain seated, and I want the Defendant and his
4 attorneys to stand, please.

5 Madame Forelady, I understand from the bailiff that the
6 jury has reached a verdict?

7 MADAME FORELADY: Yes, we have.

8 THE COURT: And was that verdict -- or is that verdict
9 rather unanimous among the 12 of you?

10 MADAME FORELADY: Yes, it is.

11 THE COURT: Okay. Would you hand the verdict form to
12 Mr. Willingham. Madame Clerk, would you publish the
13 verdict, please.

14 MADAME CLERK: Yes, sir. The State of South Carolina,
15 the County of Greenwood, in the case *State of South Carolina*
16 *versus Midrevious Amone Brown*, in the Court of General
17 Sessions, case number is 2013-GS-24-1126 and 2013-GS-24-
18 1127. As to the charge of attempted murder, we, the jury,
19 find the Defendant not guilty. As to the charge of assault
20 and battery of a high and aggravated nature, we, the jury,
21 find the Defendant guilty. As to the charge of possession
22 of a weapon during the commission of a violent crime, we,
23 the jury, find the Defendant guilty.

24 THE COURT: Does either side wish for the jury to be
25 pooled? From the State?

1 Everybody have a good evening. I'll see you in the morning.
2 Solicitor Taylor, have a good trip to Florida.

3 MR. TAYLOR: Thank you, Judge. Enjoy your birthday
4 tonight.

5 THE COURT: Okay. Thank you.

6 (Whereupon, the proceeding adjourned at 5:15 p.m.)

7 Trial Day 4-11/22/13

8 SENTENCE OF THE COURT

9 THE COURT: We're on the record this morning in the
10 matter of *State versus Midrevious Brown*. Just for purposes
11 of the record, yesterday on November 21st the jury returned
12 a verdict of guilty on two offenses; assault and battery of
13 a high and aggravated nature and possession of a weapon
14 during the commission of a violent crime. Because of the
15 late hour of the day the court determined that we would
16 conduct the sentencing phase of this matter this morning.

17 So let me -- I'm going to hear from the State first and
18 anybody that they want to put up to speak to the court, and
19 then I'll turn everything over to the Defense. Okay?
20 Solicitor?

21 MS. ODOM: Thank you, Your Honor. Your Honor, I'm
22 going to start out with letting you know what the criminal
23 history is of the Defendant. He had a -- pled guilty to an
24 assault and battery first degree in 2011. Your Honor, that
25 charge involved Mr. Brown shooting someone. It happened

1 here in Greenwood. He did have a firearm and shot at
2 someone and actually hit them. He received a probationary
3 sentence on that case because of mitigating circumstances.
4 He also has a receiving stolen goods from 2012, and from
5 2012 an open container and a giving false information
6 charge.

7 Judge, the victim isn't here today but I did make
8 contact with him yesterday. He does want Mr. Brown to
9 receive prison time. He would be here but is in Greenville
10 with his brother who is having health issues.

11 Judge, the State would ask for prison time on Mr.
12 Brown. This was an extremely serious incident. It involved
13 a gun. Mr. Brown shot at the victim. This could have been
14 much more serious. We do believe that he needs substantial
15 prison time. He was on probation for another shooting when
16 this occurred. Judge, I know the police department feels
17 the same way. Detective Crisp is over here with me.
18 Captain McAllister wasn't able to make it this morning, but
19 the police department wanted to make it clear that this was
20 an important case and that, you know, enough is enough.
21 That they want the Defendant to receive prison time as well.

22 THE COURT: All right. Thank you, Solicitor, very
23 much. I'm going to turn it over to Mr. Goranson. I know
24 you have a lot of folks, Mr. Adducci, so I'm just going to
25 turn it over. And however you want to do it. If any of the

1 family members or the folks that you have behind you, if
2 they want to address the court, certainly I would be glad to
3 hear from them. They would need to be sworn in. So I'm
4 just going to let you go ahead and handle your presentation
5 in whatever fashion that you would like to handle it.

6 MR. GORANSON: Sure. I think I'll start off and let
7 some family members speak, and then maybe --

8 THE COURT: Okay. Whoever is going to address the
9 court. Maybe the clerk can just swear them all in at one
10 time.

11 MR. GORANSON: Sure.

12 THE COURT: So whoever would like to address the court
13 from the family, if you would just stand where you are.
14 Raise your right hand. That will indicate that you're going
15 to address the court and the clerk will swear you in all at
16 one time.

17 (Whereupon, the Clerk of Court swore in the family
18 members as a group.)

19 MR. GORANSON: Mr. Brown is 22 years old. He's got two
20 children; a son who he got to see today for the first time
21 in several months, and a daughter who is two years old. And
22 when I was watching them it was -- him and his son
23 interacting it was really difficult because you could tell
24 that they had a -- they still had a bond even though they
25 haven't -- his son hasn't seen his father in a while. And

1 he obviously has a family that loves him very much. They've
2 been here all week. They've been talking to me throughout
3 this case. And I know that he loves his family very much,
4 based on our conversations.

5 Mr. Brown never had any trouble with DJJ or anything
6 like that, despite having one of the most disturbing things
7 happen to him at a young age that I've ever heard any young
8 person having to experience. His mother -- I asked him
9 about his mom and he said, "Oh, my mother died when I was
10 six," and that's the part -- the first part of the story as
11 to what happened, and then that's when he told me that his
12 step-father shot and killed her while they were all in the
13 car together. Step-dad, mom, Mr. Brown and his sister were
14 all in the car together. Mr. Brown was six-years-old. Mr.
15 Brown was hurt. He did see his mother killed, and he
16 covered up his sister and tried to protect her from being
17 harmed. And then the step-father turned the gun on himself.
18 So that obviously is a traumatic experience in anyone's
19 life, and to have that happen at such a young age is going
20 to increase the impact of that. He never really got any
21 counseling from that, and I think that probably affected him
22 in ways that would be very hard for anybody to understand if
23 they hadn't experienced it themselves. So I do want to tell
24 you that about him.

25 As you know, the statute provides for a range starting

1 at zero and going up to 20 years. I would say to the court
2 that that is a continuum, and I think where we are in terms
3 of the facts and circumstances of this case is on the lower
4 end of that continuum. There may have been some fault on my
5 part in choosing which defense to present in this case.

6 So I've been meeting with Mr. Brown for the last five
7 months or so and I've enjoyed every single meeting that I've
8 had with him. He's a smart guy and he's a nice person. And
9 yesterday for the first time we sat down and we had a meal
10 together and I just felt like when you sit down and break
11 bread with somebody you really, really get to know them a
12 little bit more, and I really enjoyed meeting him in that
13 setting and talking to him and learning more about his life.
14 He's worked at the Stony Point Country Club as a dishwasher
15 and he told me he really liked being out there working out
16 there. He worked there for about six months and then they -
17 - it's a seasonal job, and he was working up to become a
18 cook there as well. He's got a ton of potential, and I'm
19 going to let his family talk to you about that.

20 THE COURT: Okay. The family members that are going to
21 address the court, when you come up get to the microphone
22 and just state your name and your relationship to Mr. Brown
23 and then I'll be glad to hear anything that you would like
24 to tell me. Yes, sir.

25 MR. BROWN: How you doing today, Your Honor?

1 THE COURT: I'm fine. And yourself?

2 MR. BROWN: I'm actually the father of Midrevious
3 Brown. And all that I heard and all that has come across
4 the board, being that he had went through some traumatic
5 things with his mother, I'd have to say that -- you know,
6 and I'm very well at fault for a lot of things that has
7 taken place because I really was not there to be a father
8 figure because I was actually dealing with a lot of things
9 like drugs and alcohol and whatnot. So it's sort of like
10 left him without a role model as a father, and I think it
11 like probably created a disturbance between him having, you
12 know, being settled in some areas within himself, you know,
13 being without a mother. So, you know, I mean, I'm -- I
14 don't know what the circumstance were, but I know I tried to
15 have, you know -- talking with the victim and whatnot and
16 they were wanting money at the time. So it's -- you know,
17 if you can, just have mercy on him as much as you possibly
18 can. I am very well at fault with this matter, so if you
19 can, please consider it.

20 THE COURT: Thank you very much, sir. Yes, sir.

21 MR. WILLIAMS: I am his step-grandfather. I raised
22 him.

23 THE COURT: And your name, sir?

24 MR. WILLIAMS: John R. Williams. I raised him from the
25 time he was born until the accident with his mother. In a

1 way, I would like to speak on behalf of his son. I know
2 that's a long time for him to be gone, but he don't need to
3 be the same way he just did him. That was something that he
4 promised me that he wouldn't do, but I think he got up with
5 the wrong crowd. And he's not basically a bad kid, bad
6 child, but I would like to see him, you know, not get as
7 much -- the maximum that he could.

8 THE COURT: Thank you very much, sir. Yes, ma'am. And
9 your name?

10 MS. BROWN: Good morning. My name is Shannon Brown and
11 Dre's my nephew. His mother was my sister.

12 THE COURT: Yes, ma'am.

13 MS. BROWN: In the course of all this I was talking to
14 my nephew. He has changed. He has grown up a lot during
15 this. And like I said, he's not a bad person. For whatever
16 reason God dealt him a bad hand. What happened to him as a
17 little boy should have never happened to anyone. No one
18 should ever had to experience seeing their mother killed in
19 front of them. And I know it has affected him. I'm not
20 making excuses, but it affected him. And it would affect an
21 adult, let alone a child. He's just made some wrong
22 choices, and we talked about that. But he told me that he
23 wants to be here for his son. He does not want this life.
24 And he looked me square in my eye when he told me. That's
25 the first time he's ever done that. He looked me square in

1 my eye and he said, Auntie, I don't want this life. I want
2 to be here for my son. I don't want him to grow up without
3 me. And I told him, I said, Dre, that's good. That's a
4 start. I said, you get through this, that's what you do.
5 You be here for your son. So I just ask you -- he has --
6 this is not all of his family. This is just the only ones
7 that could come. I have never, and I never will, give up on
8 him. We will always be here for him and to support him in
9 any way he needs. So I just beg of you, I beg of you, just
10 have mercy. I mean, if he's done wrong, so be it. He
11 needs to be punished. But just have mercy, please. Just
12 think of his children, and all of us. We're going to be
13 here. We're going to be here to help him in any way we can.
14 We love him. And like I said, he just got dealt -- for
15 whatever reason, God dealt him this hand and he didn't
16 handle it the best way. But how do you handle that, you
17 know. How do you handle what happened to him. I know he's
18 searching and probably just feels lost, but he's really not.
19 He's just trying to find his way. He just lost his way. So
20 I just ask you, just be lenient. Give him time to be here
21 for his son and for his children. Just give him that time
22 to break the chain, for lack of a better word. To break the
23 chain and be a father to his children. I know that's what
24 he wants, because he told me that and I could tell he was
25 sincere. That was the first time I seen that growth and

1 that change in him when I talked to him and he told me that,
2 and I believe him. And I want him to have that chance to do
3 that. So I just ask the court to just have mercy.

4 THE COURT: Thank you, ma'am.

5 MR. WATSON: Your Honor --

6 THE COURT: Yes, sir. Your name, sir?

7 MR. WATSON: Bernard Watson.

8 THE COURT: Yes, sir, Mr. Watson.

9 MR. WATSON: I represent Mt. Moriah Baptist Church
10 where Pastor Raymond Adams is the pastor, and I'm a deacon
11 at the church. And we're doing everything we can to help
12 our youth that seems to get lost. And often our pastor
13 preach on Sunday morning the choices that you make and the
14 consequences. Dre grew up in the church. Mother, all of us
15 grew up together. For whatever reason, the choices that he
16 made. But all I can say is have mercy upon him. Thank you,
17 Your Honor.

18 THE COURT: Thank you very much, sir. Anybody else?
19 Is that -- okay. Yes, ma'am. Your name, please, ma'am.

20 UNIDENTIFIED FAMILY MEMBER: I'm Dre's grandmother.
21 I'm not a good speaker. But I had raised Dre ever since he
22 been born. And now it seem like I'm going to have to do the
23 same thing with his child, which I was trying -- I always
24 told him take care of your children. Oh, my God. I just -
25 please, for God's sake. Thank you.

1 THE COURT: Thank you, ma'am. Anybody else? Anything
2 further, Mr. Goranson, Mr. Adducci, Mr. Brown?

3 MR. BROWN: No, sir.

4 THE COURT: Anything further?

5 MR. GORANSON: Nothing further.

6 MS. ODOM: Judge, if I could -- I apologize.

7 THE COURT: That's okay. No. I was going to turn back
8 over to the State to make any response. Go ahead, please.

9 MS. ODOM: Thank you, Your Honor. I just want to say a
10 couple of things, and then Detective Crisp wanted to
11 mentioned a few things as well. Someone said during this
12 that the victim had wanted money. I just want to make it
13 clear, every time I ever spoke with Mr. Martin he never
14 mentioned anything about money. And Mr. Martin himself is a
15 parent. You know, this could have been very tragic further
16 if Mr. Martin had been killed. His children would not have
17 had a father. I'm absolutely sympathetic to Mr. Brown
18 losing his mother like he did, but he, more than anyone
19 else, should have knew the dangers of guns. This isn't his
20 first incident firing a gun. He wasn't thinking about his
21 children when he shot at Mr. Martin or anyone else, or any
22 child that could have been caught in the crossfire. Your
23 Honor, at this time, Jeff Crisp would like to say a few
24 things.

25 THE COURT: Yes, sir, Detective. What would you like

1 to tell me, sir?

2 MR. CRISP: Yes. I'm Lieutenant Jeff Crisp with the
3 Greenwood Police Department. I just want you to take into
4 consideration during sentencing all the gun violence we've
5 had in previous -- this previous year. In the years past
6 we've had upwards of maybe two or three a year homicides.
7 This year alone we've worked 16, three being just last week.
8 The gun violence in Greenwood, I guess, is definitely a
9 tragic events. Under the circumstances I'm sure he's sorry
10 for what he's done. But, you know, on the other hand -- I
11 know in this situation no one was actually injured. No one
12 was hit. But it certainly wasn't due to lack of trying. If
13 there was -- if he was injured we'd be working another
14 murder case. So just take into consideration the ongoing
15 gun violence. If he was to receive a light sentence I feel
16 certain, even according to this history, he's shot before,
17 if he got out he would -- anytime soon he would definitely
18 be on the same -- same road.

19 THE COURT: Thank you very much, Detective.

20 MS. ODOM: And, Your Honor, I would just add one of the
21 purposes of sentencing is to serve as a deterrent to future
22 conduct and we would ask the court to take the deterrent
23 affect into consideration.

24 THE COURT: Thank you very much. Anybody else like to
25 say anything? Okay. If we could just take about five

1 minutes. If you want to stand down and I'll be -- we'll be
2 back on the record in just a few moments.

3 (Whereupon, the court took a brief recess.)

4 THE COURT: Okay. We're back on the record. Let me
5 make several comments, observations before I pass
6 sentencing. First of all, I think the lawyers for both
7 sides did an excellent job in the presentation of their
8 respective cases and their representation of their
9 respective clients. And, Mr. Goranson, I don't think you
10 should consider at all if the outcome may be different if
11 you took another tact or another approach or another defense
12 in this case. I don't see it that way. Oftentimes people
13 like to blame the lawyers for outcome of the cases and
14 that's just not -- that's just not the way things work.
15 I've been around this thing a long time and people love to
16 blame the lawyers, but that's not the case, and it's
17 certainly not the case here in the Brown case. Yes, sir.

18 MR. GORANSON: I just want to make 100 percent clear,
19 Mr. Brown did not blame me for one single thing. He thanked
20 me profusely. I was blaming myself. His family thanked me.

21 THE COURT: Well, you shouldn't blame yourself. Okay?
22 I appreciate very much the comments from the family, and I
23 certainly recognize how -- number one, how traumatic this
24 situation is for the family. I appreciate the sincere --
25 the sincerity that the family has shown. And I think

1 probably more significant than anything else is that the
2 father himself recognized that he was not in the home, and
3 that if he had been in the home then maybe Mr. Brown would
4 not be in the situation he is in today, and how unfortunate
5 it is that we have so many homes where the father's not in
6 there. Now, you may say, well, wait a minute, Judge. Does
7 that indicate that you're going to be lenient on Mr. Brown
8 so he can be in the home for his children. No. No. But
9 maybe things would be different if you had been in the home.
10 And I appreciate your honesty. I don't appreciate the fact
11 that you were not in the home. I don't appreciate that.
12 But I do appreciate your honesty here today.

13 MR. BROWN: Thank you, sir.

14 THE COURT: You know, I don't know what it is about
15 Greenwood. Greenwood is a great town. There are a lot of
16 great people in Greenwood, and I just -- I enjoy so much
17 holding court in Greenwood and working with everybody. But
18 I don't understand why guns are so much a problem in
19 Greenwood versus every other county I've been in. I don't
20 know why. I'm from Laurens just 20 miles down the road.
21 We've got gun problems, sure, but we don't have it like
22 Greenwood, and why it is I don't know. I don't know.

23 Mr. Brown, you know, if I could -- if I could waive a
24 magic wand and just make everything all right to do away
25 with the tragedy that you experienced when you were six-

STATE OF SOUTH CAROLINA

COUNTY OF

THE STATE GREENWOOD

v.

Midrevius Amone Brown

IN THE COURT OF GENERAL SESSIONS
FOR THE EIGHTH JUDICIAL CIRCUIT

Indictment Number(s):

2013-GS-24-1126 & 2013-GS-24-1127

Motion to Reconsider Sentence

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2013 DEC. 5 AM 8:45

Midrevius Brown was arrested on March 26, 2013. He has been in custody since that date. On July 18, 2013 the state provided an incident report and a criminal history on Brown. No other evidence was produced until after the case was scheduled for trial during a hearing on November 7th or 8th, 2013. That hearing took place in front of Judge Griffith. Brown (Brown) appeared in Greenwood General Sessions court for a jury trial during the week of November 18th, 2013. Jury selection took place during the morning of November 18th, 2013. After jury selection a circuit-wide meeting was held, discussed below, and the trial commenced on November 19, 2013. Following the jury trial Brown was found guilty of Assault and Battery of a High and Aggravated Nature (ABHAN) and Possession of a Weapon During a Violent Crime. Brown was acquitted on the charge of Attempted Murder. Judge Hocker sentenced Brown on November 22, 2013 to a term of fifteen (15) years of incarceration for the ABHAN conviction and a concurrent five (5) year term for the Possession of a Weapon During a Violent Crime. Brown moves to have the Court reconsider the sentence imposed on November 22nd, 2013 based on the following facts.

- 1) In the week prior to trial the Assistant Solicitor on the case, Shannon Odom, offered Mr. Brown a plea deal in which he would admit to committing an Assault and Battery 1st degree and allow the judge to impose a sentence. This offer was made at a time

when critical evidence in the case had not been disclosed to the defense. Counsel for Brown neglected to mention this during the sentencing hearing.

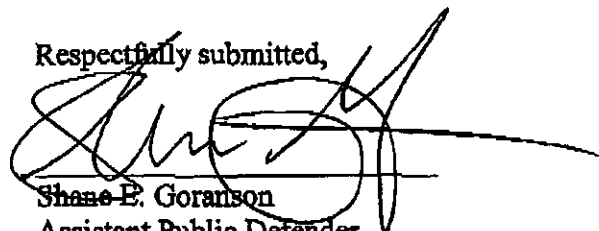
- 2) At a meeting conducted during the afternoon of November 18, 2013 many lawyers who practice criminal law in the Eighth Judicial Circuit met to discuss issues with the manner in which the criminal docket was being handled. The meeting was organized by Judge Griffith and also attended by Judge Addy and Judge Hocker. Judge Griffith made an analogy to "Wal-mart justice, Belk justice, and Neiman Marcus justice" and made an effort to explain the costs to defendants regarding the relative timing of case resolution. The analogy was meant to encourage people to plead guilty early on in their case in exchange for a "lower cost" sentence. Delays in pleading guilty would result in a "higher price" sentence. All of this discussion contemplated full disclosure of discovery materials prior to having to accept or reject any offer so that justice in each case would not be compromised. In this case Brown never received an opportunity to get a "Wal-Mart" sentence due the investigation and production of evidence by the state. He did, however get a "Wal-Mart" investigation and production of evidence. The state failed to turn over critical evidence (six .380 shell casings) until Friday November 15, 2013 just days before the trial scheduled for Monday November 18, 2013, the state failed to perform any forensic testing on the weapon and/or shell casings recovered (the Jimenez Arms .380 semi-automatic pistol, the two (2) .380 shell casings found in the accuser's car, six (6) .380 shell casings allegedly found in the parking lot near Speedy's barbershop), the state returned critical evidence in a criminal case in the form of a .380 Jimenez Arms semi-automatic pistol to a family member of a known shooter in this incident. Furthermore, the state failed to secure the crime scene, failed to create a crime scene log or document the recovery of crucial evidence in this case (the six .380 shell casings), and failed, until November 15, 2013 to turn over the complete photo lineup paperwork which conflicted with information in the incident report (incident report reflected accuser identified Brown at position six, the line up paperwork said position four) government's production of evidence represented "Wal-Mart justice" but Brown was not given a "Wal-Mart sentence."
- 3) To the extent Brown's silence played a factor in the sentence Brown received Brown requests that the Court reconsider that factor. Mr. Brown chose to exercise his right to remain silent under the 5th and 14th Amendments to the United States Constitution as well as Article 1 section 12 of the South Carolina Constitution. An accused's right against self-incrimination exists in the sentencing phase just as it does in the trial. *Mitchell v. United States*, 526 U.S. 314, 327-29 (1999) ("The Fifth Amendment by its terms prevents a person from being 'compelled in any criminal case to be a witness against himself.' U.S. Const., Amdt. 5. To maintain that sentencing proceedings are not part of 'any criminal case' is contrary to the law and to common sense. . . . Our holding today is a product of existing precedent . . . in which the Court could 'discern no basis to distinguish between the guilt and penalty phases of respondent's capital murder trial so far as the protection of the Fifth Amendment privilege is concerned.'"). To the best of Brown's recollection the Court took specific issue with "not having heard from [Brown]." Brown was found guilty in a case where self

defense was a plausible defense. Brown respects the decision of the jury, however he does disagree with it. Remorse is a certainly a factor to be considered after a guilty plea where the defendant has admitted committing a wrong however, Brown asserted his right to remain silent under the Constitutions of the United States and South Carolina and exercise of that right should have no bearing on the sentencing.

Brown now requests that the judge reconsider the sentence imposed and consider, for the first time, that the solicitor's office had offered Mr. Brown a deal which carried a maximum of ten years, and reconsider the "Wal-Mart justice" forced upon Brown by the timing and sequence of production of evidence in this case which did not give him adequate opportunity for a plea at an early stage in the case so that he could have received a "Wal-Mart sentence." Brown requests that the Court lower the sentence in this case.

IT IS SO MOVED.

Respectfully submitted,



Shane E. Goranson
Assistant Public Defender
Greenwood County
600 Monument Street, Suite 208
Greenwood, South Carolina 29646
(864) 229-9505

December 3, 2013
Greenwood, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

THE COURT OF GENERAL SESSIONS

Indictment No. 2013-GS-24-1126
2013-GS-24-1127

State of South Carolina

vs.

ORDER

Midrevius Amone Brown

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2014 JAN 8 PM 4 32

THIS MATTER IS BEFORE THE COURT on Defendant's Motion to Reconsider Sentence. Defendant was charged with Attempted Murder and Possession of a Weapon During Commission of a Violent Crime. Defendant was tried by jury and convicted of the lesser included Assault and Battery of a High and Aggravated Nature (ABHAN) and Possession of a Weapon During the Commission of a Violent Crime. This Court sentenced Defendant to fifteen (15) years incarceration for the ABHAN conviction and five (5) years incarceration for the Possession of Weapon During the Commission of a Violent Crime. The two sentences are to run concurrent.

Counsel for Defendant filed a Motion to Reconsider based on the fact that Defendant believes this Court improperly held the Defendant's right to remain silent Under the Fifth Amendment during the sentencing phase against him. Any statement made by this Court in regards to the Defendant's silence was merely an observation and had no bearing on the sentencing decision. This Court, however, did consider the Defendant's prior criminal record. The Court found, particularly relevant, that the Defendant was on probation for prior shooting at the time of the incident that gave rise to the current case.

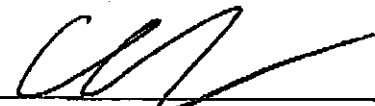
As to the discovery issue, this was dealt with during and at the conclusion of the trial.

#1
DBA

As to the plea offer issue, the fact that the Solicitor offered Defendant a plea deal which would have allowed Defendant to admit guilt to a lesser offense than the offense he was ultimately convicted does not constitute a basis to re-sentence the Defendant.

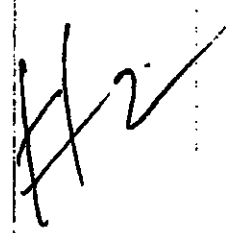
Consequently, the Defendant's Motion to Reconsider Sentence is denied on all three grounds.

IT IS SO ORDERED.



Donald B. Hocker
Circuit Court Judge

December 19, 2013
Greenwood, South Carolina

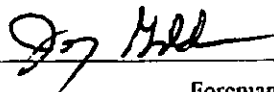


WITNESSES

Mitch McAllister
Greenwood Police Department

WARRANT NUMBER

2013A2420100293



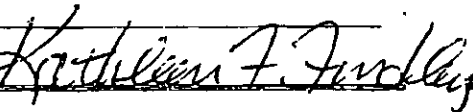
Foreman of the Grand Jury

Date: 7/12/13

VERDICT

Not B.I.

Foreman



THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

July Term, 2013

Indictment # 13GS24- 1126

THE STATE

vs.

Midrevius Amone Brown

INDICTMENT FOR

ATTEMPTED MURDER

16-03-0029

CDR: 3410

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR
ATTEMPTED MURDER
16-03-0029

At a Court of General Sessions, convened on the 12th day of July, 2013, the Grand Jurors of Greenwood County present upon their oath:

That Midrevius Amone Brown, in Greenwood County, on or about March 23, 2013 willfully and unlawfully, with the intent to kill and with malice aforethought, attempted to kill Kelvin Martin, in violation of Section 16-3-29 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided


Assistant Solicitor

WITNESSES

Mitch McAllister
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

July Term, 2013

Indictment # 11CS24

1127

WARRANT NUMBER

2013A2420100294

THE STATE

VS.

Midrevious Amene Brown.

[Signature]

Foreman of the Grand Jury

Date 7/12/13

VERDICT

True Bill

INDICTMENT FOR

POSSESSION OF A FIREARM OR KNIFE
DURING THE COMMISSION OF A CRIME
16-23-0100

Foreman

Kathleen F. Funder

CDR. 0549

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

**POSSESSION OF A FIREARM OR KNIFE
DURING THE COMMISSION OF A CRIME
16-23-0490**

At a Court of General Sessions, convened on the 12th day of July, 2013, the Grand Jurors of Greenwood County present upon their oath:

That Midrevius Amone Brown, in Greenwood County, on or about March 23, 2013 possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Attempted Murder, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

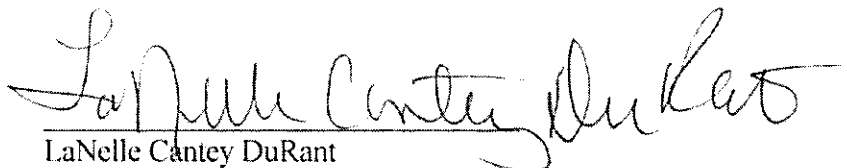
Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Assistant 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 the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 2nd, 2015

A handwritten signature in cursive script, reading "LaNelle Cantey DuRant".

LaNelle Cantey DuRant
Appellate Defender

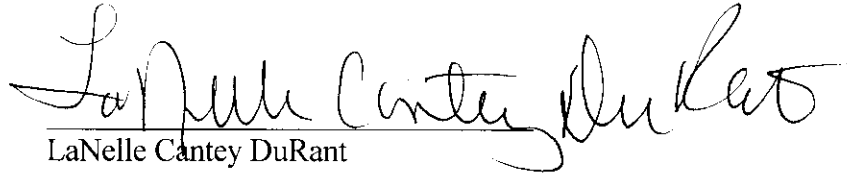
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 2nd, 2015

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LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Donald B. Hocker, Circuit Court Judge

RECEIVED

APR 07 2015

CC Court of Appeals

THE STATE,

RESPONDENT,

V.

MIDREVIUS AMONE BROWN,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of April, 2015.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 2nd day of April, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.