

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable J. Mark Hayes, Circuit Court Judge

RECEIVED

DEC 12 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JUSTIN DRU FAILE,

APPELLANT

APPELLATE CASE NO. 2015-000305

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
**STATE’S EXHIBIT #1 (AERIAL PHOTO OF SCENE), STATE’S EXHIBIT #2 (CD-
INCIDENT CLIP), STATE’S EXHIBIT #3 (PHOTOS OF THE SCENE), STATE’S
EXHIBIT #5 (PHOTOS), STATE’S EXHIBIT #6 (CD WITH AUDIO OF 911 CALL),
STATE’S EXHIBIT #7 (SERGEANT WRIGHT IN-CAR VIDEO), STATE’S EXHIBIT #10
(PHOTOS), STATE’S EXHIBIT #11 (AERIAL PHOTO OF SCENE), STATE’S EXHIBIT
#12 (CD WITH PHOTOS OF BOBBY TRADER), DEFENDANT’S EXHIBIT #1 (CD WITH
PHOTOS OF JUSTIN FAILE)**

State of South Carolina.,)
)
)
 County of York.)

In the General Sessions
 Court of York

Case No.: 2014-GS-46-02038
 2014-GS-46-02039
 2014-GS-46-02040
 2014-GS-46-02041
 2014-GS-46-02042

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-)
)
 Justin Dru Faile.,)
)
 Defendant.)
)

Transcript of Record

February 9-12, 2015
 York, South Carolina

B E F O R E:

The Honorable J. Mark Hayes, judge, and a jury.

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 To the Honorable John C. Hayes, III

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-N

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I-N-D-E-X - CON'TE-X-H-I-B-I-T-S

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St.1	Aerial Photo		
	Scene Incident		P.127
St.2	CD-Incident Clip		P.392
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St.5	Photos/a-g	P.259	
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	Photos/victim Bobby Trader		
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St.7	CD/Sgt. Wright's		
	in-car video		P.90
St.8	Box w. personal items		
	of victim	P.108.	P.145
St.8(a)	Right tennis shoe		
	from St.8	P.108.	P.145
St.8(b)	Sweat pants from St.8 .	P.108.	P.145
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I-N-D-E-X - CON'TE-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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St.13	Glock 23 .40 caliber handgun	P.239	P.240
Def.1	CD/Defendant Justin Faile.		P.362
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Ct.6	Jury note @ 02:33 p.m. (2/12/15).		P.470

Reporter's Note: All exhibits were filed with the York
County Clerk of Court's Office.

1 (COURT IN SESSION MONDAY, FEBRUARY 9, 2015 AT 02:30
2 P.M..)

3 THE COURT: All right, I believe we are ready to -
4 Bring in the defendant.

5 (DEFENDANT JUSTIN FAILE ENTERS COURTROOM.)

6 THE COURT: I believe that we are ready to proceed
7 with the case of State of South Carolina versus Justin -
8 pronounced Faile?

9 MS. INZERILLO: Yes, Your Honor.

10 THE COURT: Justin Faile. I've got - I've have been
11 handed indictments State versus Justin Faile pointing and
12 presenting. That's Indictment 2014-02038. State versus
13 Justin Faile possession of a firearm during the commission
14 of a violent crime, 2014-02042 the State versus Justin
15 Faile indictment for attempted murder. Indictment Number
16 2014-02040 the State versus Justin Faile for an indictment
17 attempted murder. Indictment 2014-02041 and the State of
18 South Carolina - the State versus Justin Faile indictment
19 for attempted murder, Indictment Number 14-02039.

20 Now, my understanding is the State's not proceeding
21 with all of these cases?

22 SOLICITOR EPTING: That is correct, Your Honor.

23 For strategic purposes the State has elected to
24 proceed on Indictment 14-0-2-0-4-1 which is attempted
25 murder. That's the one involving the victim Bobby Trader.

1 And 2014-0-2-0-3-9, that is indicted as attempted murder
2 and with the victim Zachary Cleveland. We're electing to
3 proceed under the lesser included offense of assault and
4 battery of a high and aggravated nature on that charge
5 alone.

6 The arraigning charges, Your Honor, we would dispose
7 of at the conclusion of this case.

8 Your Honor, may Dan Porter approach the Clerk's office
9 to get some paperwork that's up from this morning.

10 Thank you, Your Honor.

11 MADAM CLERK: Just take it all.

12 THE COURT: You may take it all.

13 All right. I've been provided the State's witness
14 list. I've also been provided a list of potential witnesses
15 by the Solicitor's office as well.

16 Doctor Heidi - Is it Wilbok?

17 SOLICITOR EPTING: Weilbach.

18 THE COURT: Weilback. And Alex Eps . . .

19 SOLICITOR EPTING: Espinal I believe.

20 THE COURT: Espinal. Okay. I've also been provided a
21 defendant's request for venire that I have reviewed and
22 also the Motions in Liming that's been filed by the State.

23 My understanding is the jury is all present.

24 SOLICITOR EPTING: That's my understanding as well,
25 Your Honor. I would propose if the Court's in agreement

1 that we select them, that we hold off swearing them until
2 tomorrow morning and continue with what pretrial either
3 side my have after selecting the jury.

4 THE COURT: Any objection from the Defense?

5 MS. INZERILLO: No, Your Honor.

6 THE COURT: All right. Madam Clerk, how do you we get
7 a jury up here?

8 MADAM CLERK: I'll call and they'll bring it up. Mr.
9 Dunlop will bring us a panel up.

10 THE COURT: Okay.

11 MADAM CLERK: Are we ready?

12 THE COURT: I believe that we are ready. I'm checking
13 the strikes and I do not see where it is five and ten. I
14 think it is five and five.

15 SOLICITOR EPTING: That's the State's understanding as
16 well, Your Honor.

17 THE COURT: Is that correct?

18 MS. INZERILLO: That's our's as well, Your Honor.

19 THE COURT: All right. What I'll do is I'll - while
20 they're bringing them up I'm gonna step in the back and you
21 all come and get me when they get in here and I'll come
22 back out here.

23 SOLICITOR EPTING: Yes, sir, Your Honor.

24 Your Honor, very briefly, and this doesn't need to be
25 on the record.

1 SOLICITOR EPTING: There are multiple counts of B and
2 E Auto from what I can recall.

3 THE COURT: But that's the only one that would fit in
4 that rule?

5 SOLICITOR EPTING: To the best of my recollection,
6 Your Honor. And I apologize, I had his rap sheet I believe
7 somewhere in my office and our case management system is
8 not pulling up our courtroom computer. Knowing that I
9 would say at least that. In the meantime, Your Honor,
10 after we break from court I can pull his NCIC record or we
11 can address this more closer to when Mr. Faile elects
12 whether to testify or not.

13 THE COURT: What question is it Yeah, get her make
14 sure she has the copy that you have and make sure I have a
15 copy that you have and we can address it as we get closer
16 to it to show that we're all on the same page as to what
17 we're talking about.

18 SOLICITOR EPTING: Certainly.

19 THE COURT: Okay.

20 MS. INZERILLO: In light of that, Your Honor, to
21 address your question. Mr. Epting and I have been
22 discussing any potential redactions and I will start with
23 the in-car videos. It would appear that each side at least
24 at this point if the defense does throw a case would intend
25 to introduce in-car videos by at least two first responders

1 one on behalf of the state and possibly one on behalf of
2 the defense.

3 In our conversations for the court's knowledge and for
4 the record, there was - after the shooting the police were
5 called to the scene pretty immediately. Sergeant Wright
6 and Deputy Davis were two of the first officers to arrive
7 at the scene and so their body mics and their in-car video
8 systems do capture essentially a very chaotic scene as they
9 get to the scene and they're calling for backup. And they
10 are also trying to sort of disburse orders to folks.

11 Your Honor, I've spoken with Mr Epting about this in
12 great detail and I registered my objection to any dispatch
13 traffic as they're driving there. The in-car picks up
14 dispatch radioing in what turns out to be erroneous
15 information about the scene, information such as the
16 shooter has left the scene which causes the officers to
17 drive there with full blue lights and siren.

18 Mr. Faile as it turned out had not left the scene but
19 was unconscious and so with that erroneous information I do
20 not with - want that in front of a jury.

21 I believe by agreement on both of those tapes we've
22 agreed not to have that information played before the jury.
23 It would be easy to start the tape after that. The defense
24 would have some objections to Sergeant Wright's tape. The
25 - Sergeant Wright as he gets on the scene and essentially

1 becomes a scene commander. As a result of that he is
2 receiving information and giving information so the bulk of
3 the defense's objections to that tape would involve him
4 reciting information to either the lieutenant or to other
5 detectives that come onto the scene.

6 There are parts of that tape where another officer who
7 I do not see on the state's witness list comes and gives a
8 recitation of a statement that was given to him by an eye
9 witness that I believe he mischaracterizes. Because that
10 officer is not on the witness list he is not subject to
11 cross examination. And so it would be parts of that tape
12 would be subject to redaction.

13 Mr. Epting and I have discussed this. I believe that
14 there are parts through redaction where we can address I
15 believe the intent is to perhaps not to show the jury the
16 entire video and I would just inquire of the state as to
17 the end time because I believe some of this the defense's
18 objections arise perhaps after the initial - when they get
19 to the scene and they are trying to clear the scene of the
20 victims as well as - -

21 SOLICITOR EPTING: And, Your Honor, I would ask
22 liberty to check my Phone. I sent a request to IT later on
23 that has the exact start and the exact stop point so I
24 could put it on the record if the Court would request but
25 it's on my phone. If I can pull up my phone and start

1 checking.

2 THE COURT: Okay. Well pull your phone up.

3 SOLICITOR EPTING: Thank you, Your Honor.

4 SOLICITOR EPTING: Your Honor, the start time on the
5 protected copy of Lee Wright I would propose to start at
6 02:04:50. By my review of the tape that's approximately as
7 he arrives at the Palmetto Club and begins to pull into the
8 parking lot. That cuts out a lot of the dispatched
9 conversation. And we would end at approximately 02:31:25.
10 By my estimation that is approximately - the approximate
11 time that the ambulance is leaving with both of my victims.

12 THE COURT: And you all are proposing that during that
13 time that the audio and the visual - the pictures as well
14 as the audio is played?

15 SOLICITOR EPTING: Yes, Your Honor. I can take a
16 close look at the tape. I agree that certainly if Lee
17 Wright is being given information from other people that
18 aren't being called as witnesses then that needs to be
19 taken out.

20 However, him reciting information that's not hearsay I
21 think it's a different story. It seems to me like most of
22 what he's reciting is what he has done as far as securing
23 the scene and as far as his investigation.

24 MS. INZERILLO: Your Honor, by my notes for that
25 section that may cut off right before my concern about the

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1 Rock Hill P.D. reciting the statement and I will double
2 check that along -

3 SOLICITOR EPTING: And I believe that's correct. I
4 believe Officer Riviera is the officer that the defense is
5 concerned about and that was part of the reason we chose to
6 cut off at that point too if I'm not mistaken.

7 THE COURT: Okay.

8 MS. INZERILLO: My second objection as to what's
9 included in that section is because of the nature of his
10 body mic you pick up the audio of Mr. Trader on the ground
11 before EMS arrives and Mr. Trader is making several
12 statements. Depending on the order of witnesses I believe
13 Mr. Trader - if Sergeant Wright is called first, Mr. Trader
14 would not be subject to cross examination as to those
15 statements and so it would be considered hearsay.

16 However obviously the court can take that into
17 consideration depending on what order of witnesses and so
18 we put that before the court. There are essentially
19 statements that as to what Mr. Trader is feeling, what he's
20 yelling and they are trying to get EMS there. That would
21 be hearsay for Sergeant Wright. But obviously I believe
22 Mr. Trader can testify to that.

23 SOLICITOR EPTING: Your Honor, I would ask the court
24 to allow us to introduce that subject to looking that up to
25 Mr. Trader's - Mr. Trader's subsequent testimony. In

1 candor to the court we very much intend on calling ---- and
2 therefore he will be subject to cross examination by the
3 defense as required by the case law and constitution.

4 THE COURT: If by chance that the defense does not
5 call him I would revisit that but it sounds like I would
6 probably allow it in subject to that. So if they don't
7 call him later I'll try to come up with another remedy.

8 MS. INZERILLO: Okay. And I would just make the court
9 aware that I believe the statements are of such a nature
10 the emotional nature I don't think the jury can unheard
11 those type of statements because he is in distress and
12 certainly would be a emotional connection that the jury
13 could have.

14 THE COURT: That's a different type of objection.
15 What is it that he's saying or what is it that he is
16 --

17 SOLICITOR EPTING: He is at one point I believe he
18 yells I'm dying. He yells he can't feel his legs. He
19 yells for help, when's the ambulance gettin in here.
20 That's a little bit cleaned up. I do feel that it is part
21 of our presentation of the case. Part of the jury's
22 determination is going to have to be the severity of his
23 injuries as both for attempted murder and possible lesser
24 included's they consider. I don't believe it runs a foul
25 of 403 cause it does have some approbative value. I don't

1 believe that the approbative value is substantially
2 outweighed by unfair prejudice.

3 THE COURT: They've been hitting us up on that stuff.
4 Photographs in cases, you know, warning us about paying
5 better attention to inflaming the jury.

6 SOLICITOR EPTING: They have. And is Your Honor
7 referring to the dog - the animal mauling case? I believe
8 the latest case of that actually came down in favor of the
9 state as far as introducing those to the extent that these
10 cases aren't pretty to begin with and it's hard to make - -

11 THE COURT: I would probably still allow it at this
12 time. It would be tough for me to exclude that type of
13 evidence based on an emotional or say that's over play to
14 the jury so I would be inclined to allow it in right now
15 naturally subject to Mr. Trader being called as a witness.

16 MS. INZERILLO: Your Honor, at this time I believe the
17 only other discussions I've had with Mr. Epting are
18 regarding any 911 calls. With the court's permission I
19 would like to listen to those just one more time before I -
20 I don't think there's anything to be redacted out of that
21 and so it would be a very quick - -

22 SOLICITOR EPTING: I agree with that. There was a
23 young woman who stayed near Mr. Trader as they were waiting
24 for the ambulance. I think that a valuable call for our
25 case cause it does reveal yelling. It does capture part of

1 the subsequent fight after Mr. Trader is wounded and they
2 are attempting to disarm Mr. Faile and you do hear
3 additional gun shots that will be a major part of our case
4 particularly as to Zachary Cleveland our second victim.
5 But more than happy to retake up the issue tomorrow
6 morning.

7 THE COURT: How long were those 911 tapes?

8 SOLICITOR EPTING: The 911 call I believe is fifteen
9 to twenty minutes long.

10 THE COURT: What witness is gonna be used to present
11 those?

12 SOLICITOR EPTING: That would be Amanda Charles.

13 THE COURT: Is she early?

14 SOLICITOR EPTING: No. She would be later in our
15 case.

16 THE COURT: Okay.

17 MS. INZERILLO: I don't think it would - I can
18 certainly get that information to Mr. Epting this evening
19 so it won't get the jury in late. In the vein of
20 redactions, Your Honor, I have due to technical limitations
21 in our office at the request of Mr. Epting assist us with
22 getting copies that can be redacted to keep this process
23 going Mr. Epting has been sort of fantastic in assisting us
24 with this. As the court can see the majority of these
25 tapes are from law enforcement and they are on a propriety

1 software that law enforcement has so I did just wish to
2 make the court aware is we are trying to keep this case
3 moving at a good pace and we are waiting on - One copy was
4 made that the defense would be able to redact pursuant to
5 any court orders and we've attempted to Mr. Epting is
6 working on getting us another copy. But I did wish to
7 make the court aware of that now because we are trying to
8 keep things moving. But we are a little bit at a loss
9 because we don't have the technology in our office to over
10 come - to redact these commercial videos as we go through
11 them.

12 THE COURT: Or if you come up with something in the
13 morning we'll take it up in the morning.

14 MS. INZERILLO: I appreciate that, Your Honor.

15 SOLICITOR EPTING: Your Honor, assuming that the
16 defense's motions are over I would want to - I would like
17 to put on the record that the defendant was made an offer
18 of a cap of fifteen to assault and battery of a high and
19 aggravated nature and through the defense counsel sometime
20 back has indicated that he has rejected that offer. I just
21 wanted to put that on the record, maybe get an affirmation
22 from the defendant that that is correct on the record.

23 MR. FAILE: Yes, sir.

24 THE COURT: All right.

25 SOLICITOR EPTING: Your Honor, two pistols were seized

1 from Bobby Trader's vehicle that night pursuant to a search
2 warrant. The officers I believe at that time were still
3 trying to figure out what exactly happened in the parking
4 lot. Bobby Trader couldn't tell them exactly cause he was
5 critically injured and I think they seized those as a
6 precautionalry measure. It turns out through all my
7 investigations and all the information I can find that
8 those pistols had nothing to do with this case, that they
9 stayed in the vehicle the entire time and were eventually
10 returned to Bobby Trader. I would ask that the defense be
11 precluded from asking questions about those given that it
12 appears there is a relevancy problem as well as a 403
13 problem from the state's position from mentioning that.

14 MS. INZERILLO: Your Honor, I think Mr. Trader has a
15 reputation for using guns. He has a reputation amongst
16 people and certainly if there is any testimony to that we
17 would want the opportunity to go further into that. This
18 is of course ---- case in which we might possibly make that
19 relevant. There was a gun found. I believe Mr Trader's
20 commonly uses guns and it is true that in this case it
21 appears that perhaps the gun stayed in the car but I would
22 ask the court to give the defense leave that if it does
23 become relevant in any testimony that we be allowed to lead
24 to get into that.

25 THE COURT: I would not rule at this stage to tell

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1 them that they could not go into it but probably in order
2 for me to do the approbative value prejudicially effect
3 analysis I would actually have to hear testimony to
4 actually tell them they could not go into it. But if the
5 defense already knows there is a likelihood that it would
6 not be relevant we need to lay - be sure that there is a
7 foundation laid.

8 MS. INZERILLO: Yes, Your Honor.

9 SOLICITOR EPTING: Your Honor, I believe that's all
10 from the state. As Ms. Inzerillo mentioned we're gonna try
11 to get a copy of that tape to her as quickly as possible.
12 It's a little bit time consuming because essentially the
13 only way that we've been able to get a copy from the secure
14 software is by doing a video caption which basically you
15 play the video on one screen, the software captures that as
16 it plays and then we save that to a different file so it's
17 sort of time consuming.

18 THE COURT: Okay. All right, then we'll step down
19 until in the morning. I'll see you all at nine thirty.

20 I would encourage the - I know the state has mentioned
21 that they made an offer and the offer was rejected but I
22 would still encourage the parties that are participating in
23 this case to continue to explore the possibility of a
24 resolution. I have as a private lawyer I tried many cases
25 and frequently the juror's determination was not what I

1 liked or expected but frequently after we interview jurors
2 after the case was over their decisions that they made were
3 based on factors that me and my opposing counsel never
4 really thought were that significant to ca but yet for some
5 reason the jury picks up on something that lawyers thought
6 was that the jury completely sees but in a different way it
7 goes onto a different direction in making their decision.

8 The benefit in having pretrial discussions and the
9 benefit to both the state and the defense is try and see if
10 there is a middle ground, that there is some give and take,
11 is that both sides have their ability in their ability to
12 have some control over the outcome. When you discuss the
13 resolution of a case neither side likes the idea of having
14 to give. But in order to get that resolution that
15 resolution that is fair that resolution that we're asking
16 these twelve people on this jury after these lawyers have
17 worked years on a case collecting evidence analyzing law
18 and weigh the value of evidence and the nonvalue of
19 evidence to then ask this jury of twelve people they get to
20 introduce to the events that occurred on these nights to
21 tell this jury that in a matter of probably twelve hours of
22 testimony you go in that back room and you sit back there
23 with eleven other strangers and you come up with a decision
24 in this case that is a huge burden that those twelve people
25 will do. Those twelve people that will be back there in

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1 that jury room will do their duty and they will do it to
2 the best of their ability but it is an ominous
3 responsibility that we ask them to do. So if this case can
4 be resolved, because the lawyers have met with me, and
5 there are some disturbing facts that go either way in this
6 case, but if this case can be resolved I would encourage it
7 to be resolved so that the parties that are most affected
8 by this case can still have some control over the outcome
9 and some control over their lives and to be able to move on
10 with their lives. But with that said I will see y'all in
11 the morning at nine thirty.

12 MS. INZERILLO: Thank you, Your Honor.

13 SOLICITOR EPTING: Thank you, Your Honor.

14 (COURT IN RECESS AT 04:05 P.M..)

15 (COURT BACK IN SESSION TUESDAY, FEBRUARY 10, 2015 AT
16 10:46 A.M..)

17 THE COURT: You may be seated.

18 (DEFENDANT, JUSTIN FAILE, ENTERS COURTROOM AT 10:47
19 A.M..)

20 THE COURT: All right, I believe that we are ready to
21 proceed with the trial in the case. Did the defense have a
22 matter about the indictments to put on the record?

23 MS. INZERILLO: Yes, Your Honor, May it please the
24 court. Your Honor, there was some discussion yesterday
25 about the indictments in this case. Mr. Faile has been

1 indicted and the state intends to move forward on two
2 counts of attempted murder. Indictment Numbers 2014-0-2-0-
3 3-9 and Indictment Number 2014- ---

4 SOLICITOR EPTING: I believe that's 4-1.

5 MS. INZERILLO: --- 0-2-0-3- I'm sorry, 0-2-0-4-1.

6 I understand it may be the state's intention to ask
7 the jury for a verdict on a ABHAN charge in reference to
8 2014-0-2-0-3-9 but I did wish to make the defense's
9 position clear that Mr. Faile is under an attempted murder
10 indictment and did not wish the record to reflect any
11 acquiescence to a reduction in charge in any unindicted
12 charge of ABHAN at this time. I don't think that was made
13 clear on the record yesterday so we wish to correct on
14 that.

15 SOLICITOR EPTING: And the state's position is that by
16 virtue of him being indicted for attempted murder he's
17 indicted for a lesser included that falls under there so he
18 is in fact indicted for ABHAN, as well as AB first, or AB
19 second, AB third on all of these specifically the
20 included's, lesser included's that's in the statute.

21 THE COURT: All right. What I will instruct the jury
22 when I start the case is that the defendant is charged and
23 indicted with attempted murder and assault and battery of a
24 high and aggravated nature. The fact - My understanding is
25 the fact that the state is not pursuing the second

1 attempted murder does not relieve the state of their
2 obligation to establish the burden of proof on the elements
3 of assault and battery of a high and aggravated nature.
4 But I will instruct them that he - that they will be
5 considering one particular and one assault and battery of a
6 high and aggravated nature.

7 SOLICITOR EPTING: Thank you, Your Honor.

8 THE COURT: Anything else before we bring the jury in?

9 MS. INZERILLO: Yes, Your Honor, just briefly.

10 At the conclusion of pretrial yesterday there was one
11 additional issue for redaction purposes. There was an
12 outstanding 911 call that the state does intend to
13 introduce. The defense would just make note of an
14 objection to that along the same lines of an objection to
15 the in-car that the state intends to introduce.

16 On the 911 call it can be clearly heard a victim and
17 some people yelling and screaming in the back ground. We
18 believe that this would have an emotional effect on the
19 jury and certainly depending on the order of witnesses this
20 would be hearsay as well. We would not an objection to
21 that. It would be in a similar vein to an objection the
22 court has already ruled on on the in-car but we did wish to
23 make some more objection as it was not ruled on yesterday.

24 THE COURT: And I believe in chambers the state
25 indicated that would not come up until later in the trial

1 and I'll have a chance to rule on it --

2 SOLICITOR EPTING: That is correct, Your Honor. By
3 the time that tape came up I anticipate the voices that are
4 on that tape would have already been subject to cross
5 examination. And the same arguments for that that apply to
6 the in-car as far as them being approbative by showing the
7 state of the scene by them indicating - having some
8 indication on the defendant - on the victim's injuries
9 which goes to elements of my defense I think would also
10 apply to the 911 tape.

11 THE COURT: Okay. All right, anything else before we
12 bring them in?

13 SOLICITOR EPTING: Nothing from the state, Your Honor.

14 MS. INZERILLO: No, Your Honor.

15 THE COURT: All right, let's bring the jury in.

16 (JURY REENTERS COURTROOM AT 10:52 A.M..)

17 THE COURT: Ladies and gentlemen, thank you for your
18 patience while we try to conclude the matters of law. In
19 the twelve years I've been doing this job sometimes I have
20 problems estimating how much time it's gonna take for us to
21 discuss matters and this was one of those times so please
22 accept my apologies for keeping you in the back so long.

23 Ladies and gentlemen, we are now at the position where
24 we can begin the trial of the case. Before we actually
25 begin the trial of the case I need for the Clerk of Court

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1 to swear you in so if you will please stand and raise your
2 right hand and repeat out loud as the Clerk instructs you
3 to do so.

4 (PETIT JURY SWORN AT 10:53
5 A.M..)

6 MADAM CLERK: Let the record show all affirm.

7 (ALL JURORS AFFIRMED.)

8 THE COURT: Thank you, you may be seated.

9 Ladies and gentlemen, we will now begin the trial of
10 the case the State versus Justin Faile. Now before we
11 begin this trial I want to tell you that this trial
12 probably will be different from what you might expect.

13 Many people do not have the chance to attend an actual
14 court of session as you are doing now and may think from
15 watching television or reading books that trials are always
16 full of high drama, intense action, and riveting
17 circumstances. Now while all of these things may be true,
18 this trial is not for entertainment. It is a fundamental
19 part of our democracy. A search for the truth in a effort
20 to make sure that justice is done between the parties that
21 are present before the court.

22 In searching for the truth, Ladies and gentlemen, in
23 making sure that justice is done is an often slow,
24 deliberate, and repetitive. Just the opposite of what
25 maybe you've seen in television or watched in movies or

1 wonder but give strict attention to the testimony in this
2 case so that at the end of all the testimony, after the
3 arguments of counsel and the charge on the law by the
4 court, you will then be in a position to determine what the
5 true facts are and to apply the law to those facts and thus
6 render a true and just verdict.

7 It is your added duty, Mr. Foreman, to preside in the
8 jury room and to be the jury spokes person here in the
9 courtroom. It will also be your duty to write the verdict
10 in this case but I will give you further instruction on
11 that at the end of the trial in this case.

12 Now in order to preserve everyone's rights I will give
13 the state and the defense an opportunity to object to
14 anything that I have said during the course of these
15 instructions.

16 Any exceptions from the State?

17 SOLICITOR EPTING: None from the state, Your Honor.

18 THE COURT: Any from the defense?

19 MS. INZERILLO: No, Your Honor.

20 THE COURT: At this time, ladies and gentlemen, we
21 will receive the opening statements.

22 SOLICITOR EPTING: Thank you, Your Honor, may it
23 please the court. Ms. Inzerillo.

24 Ladies and gentlemen, we're here today because Justin
25 Faile, seated over there at the defense table, involved

1 himself in a fight, that prior to his interaction he had
2 nothing to do with, that in involving himself with that
3 fight he reaches in his waistband pulls out a pistol and
4 points it and then he shoots several people and they
5 attempt to disarm him. That's what this case is about.

6 Earlier that night the testimony will bear it's a
7 relatively normal night at the location where this occurred
8 Palmetto Sports Bar, Sports Club. There was a birthday
9 party going on. One of my victims Zachary Cleveland was
10 there, he was having drinks, having a good time playing
11 pool. But some of my witnesses that you will hear up there
12 on the witness stand actually hung out with the defendant
13 Justin Faile, had some drinks with him, played pool with
14 him.

15 It wasn't until later that night around closing time
16 that an incident happened with one of my victim's cousins.
17 That cousin was told to leave. Zachary Cleveland escorted
18 him out before any other trouble happens, tries to get him
19 to a truck in the parking lot. Tries to get him to leave.
20 They go to that truck and they get into that truck.
21 Unbeknownst to them they're being followed out to that
22 truck by an individual named Sam Fitcher who we know now is
23 Sam Fitcher. You'll hear him described as a man with a big
24 bushy beard who starts yelling things at the individual who
25 is being kicked out. Not Zach Cleveland but the other

1 one.

2 And also it's unbeknownst to them Justin Faile has
3 followed them and in Justin Faile's waistband is a forty
4 caliber glock. They begin to pull out. You will see the
5 video of them pulling out. You will see Justin Faile start
6 to speed up, approach the car as they begin to leave the
7 bar. You will see Sam Fitcher, that man with the beard,
8 walk up to my victim Zach Cleveland's truck, reach into the
9 passenger window and begin to fight with the passenger.

10 At that point Zach Cleveland puts the car in park gets
11 out. This man is leaning in his window fighting with the
12 person he's trying to get out of there and at that point
13 Justin Faile steps in. You will see the tape.

14 He reaches out, pulls out a glock forty and sticks it
15 in Zach Cleveland's face. Unbeknownst to Justin Faile
16 Zachary Cleveland's little brother is watching this
17 incident happen across the parking lot. He sees the gun,
18 he's worried about his brother. Zach Cleveland will
19 testify gun in his face finger on the trigger.

20 Bobby will testify sees the gun in his brother's face.
21 He runs over to try to help his brother. He reaches Justin
22 Faile attempts to hit him and grab the gun to get a hold of
23 it and they both go down to the ground. At that point Sam
24 Fitcher who will testify here today will testify that he
25 ran; that he saw a gun in Justin Faile's hand and he ran.

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1 The other witnesses will testify that as Bobby Trader
2 and Justin Faile fell to the ground that at some point
3 shortly after Justin Faile shot him multiple times. You
4 will hear from the doctor that treated Bobby Trader. You
5 will see pictures of his injuries. He has wounds from his
6 thigh all the way to his back. Shot multiple times with a
7 forty caliber pistol. At that point the testimony will
8 show other people come and they grab Justin Faile. They
9 are trying to get the gun from him.

10 They're grabbing the gun. They are hitting Justin
11 Faile to try to get him to get the gun away. They're
12 choking him to try to get the gun away. All that testimony
13 you will hear. Justin is not giving up the gun. The
14 testimony will show Justin's not saying anything. He's not
15 calling for help, he's not calling for people to call the
16 police. He's not saying anything. What he's not doing is
17 giving up the gun.

18 The struggle continues, more people join in. Again
19 hitting, choking, grabbing at the gun, anything to get that
20 gun away from him and Justin Faile fires again. He shoots
21 Zach Cleveland the man who was driving the truck one time
22 in the thigh initially. And then as Zach continues to
23 struggle to get the gun away Zach again later hit in the
24 foot. Eventually Justin Faile fires that gun so much that
25 it runs out of bullets; forty caliber shells littered

1 throughout the parking lot.

2 At that point eventually they get the gun away from
3 him. Once the gun is run dry, back an empty gun they get
4 it from him. Shortly after the police arrive. They begin
5 to give medical attention to Zachary Cleveland and Bobby
6 Trader. They handcuff Justin Faile who at that point
7 received injuries. You will hear during the course of this
8 case that after the gun was taken away that some of the
9 family members continued to hit Justin Faile.

10 You will also hear that they were charged for any
11 blows that were struck after the gun was taken away. You
12 will hear about Bobby Trader's injuries. His injuries were
13 so severe that he had to actually be air lifted to CMC in
14 North Carolina. He couldn't go to PMC, he couldn't go by
15 ambulance. He had to be air lifted. You'll hear about his
16 treatment that in his early twenties he has to have a full
17 hip replacement due to the bullet shattering his hip and
18 that he has multiple gunshot wounds pretty much all over
19 his body.

20 You will hear about Zachary Cleveland's injuries and
21 the lingering effect of those injuries on his ability to
22 move his leg. You will hear all those things here on the
23 stand. You will hear about the treatment. You will see a
24 surveillance video of what happened that day or what
25 happened late that night. And at the end of this case

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1 after all the evidence is in where I'm gonna have a second
2 chance to come up to give my closing argument. The judge
3 will instruct you in full on the law of this case. Just as
4 a brief primer there's two charges here.

5 One is attempted murder and that's pretty simple. One,
6 Justin Faile shot Bobby Trader. Was he attempting to kill
7 him? And you will ask yourself how far away was he when he
8 shot those rounds? How many times did he shoot? Where did
9 he shoot? As to the assault and battery of a high and
10 aggravated nature to Zachary Cleveland that's a little bit
11 more complicated. Where was Zachary Cleveland injured and
12 did that injury arise to great bodily injury?

13 Part of that is does he have impairment of one of his
14 limbs for a long time.

15 Ladies and gentlemen, we are required to prove this
16 case to you beyond a reasonable doubt as the judge
17 instructed you and I'm sure you'll hear multiple times
18 during the course of this trial. That's not beyond any
19 doubt. Beyond a reasonable doubt. It's our burden, we
20 welcome it. It's our - at the end of this case I feel
21 confident after you've heard all the evidence, after
22 everyone has testified, after all the evidence is in, that
23 you will return the only verdict in this case that speaks
24 the truth. The only verdict that is fair and just in light
25 of the facts that will be presented during the course of

1 week. Ladies and gentlemen, that's guilty to both charges
2 as charged. I thank you for your time and attention.

3 MS. INZERILLO: May it please the Court.

4 On December 13th, 2013 Justin Faile went to a party at
5 the Palmetto Sports Bar. He was hanging out with some
6 friends, the night went on. And over in the evening as
7 friend Sam Fitcher was upset over something he saw in the
8 parking lot.

9 His friend Sam Fitcher walked up to a guy in a truck
10 and Justin followed him. His friend Sam Fitcher punched
11 the guy in the truck. Justin didn't even know that was
12 going to happen. The guy in the truck got out, the driver
13 got out came around the side of the truck. Justin Faile
14 pulled the gun.

15 Justin Faile pulled a gun and when he pulled the gun
16 he started walking backwards. After that shots were fired
17 people were shot.

18 Ladies and gentlemen, the issue in this case isn't
19 what. It's why and how. You won't hear a dispute from the
20 defense in this case that Bobby Trader was shot. You won't
21 hear a dispute from the defense in this case that Zachary
22 Cleveland was shot. What you will hear from the defense in
23 this case is that Justin Faile only shot in self defense.

24 One of the things I love about the modern times is
25 that we have the power of video. And in this case a great

1 majority of this evening is on video. Justin Faile fired
2 those shots until he was dog piled. He fired in self
3 defense.

4 The solicitor just stood up and he explained to you
5 his burden. He has to prove the charges against Mr. Faile
6 beyond a reasonable doubt. He has to prove that Mr. Faile
7 fired that evening with an intent to kill. The defense ask
8 that you listen to the testimony in this case. And watch
9 and listen to the evidence that is presented to you in the
10 duration of this case.

11 There was no intent to kill. Mr. Faile fired in self
12 defense. Why did he fire? How did he fire? The solicitor
13 indicated that he wished to prove to you beyond a
14 reasonable doubt assault and battery of a high and
15 aggravated nature. He has to also prove that beyond a
16 reasonable doubt.

17 Mr. Faile did not intend to kill that night. What the
18 evidence will show is that when he pulled the gun no shots
19 were fired until he was hit. Until Bobby Trader ran across
20 the parking lot and blind sided a man holding a gun; that
21 he was shot after he hit a man holding a gun. The evidence
22 will show that a second round of shots came after Mr. Faile
23 was beaten mercifullessly by a number of people for ninety
24 seconds to two minutes. The evidence will also show that
25 even after Mr. Faile emptied the clip people continued to

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1 beat Mr. Faile.

2 This isn't a case about what. There was a shooting on
3 December 13th at the Palmetto Sports Bar. Mr. Faile was the
4 shooter. The issue is why. Thank you.

5 THE COURT: Is the State ready to call their first
6 witness?

7 SOLICITOR EPTING: We are, Your Honor. The state
8 calls Lee Wright to the stand.

9 THE COURT: Sir, if you will just come on up here and
10 let the Clerk of Court swear you in.

11 MADAM CLERK: Raise your right hand.

12 (WHEREUPON, HENRY LEE WRIGHT,
13 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 MADAM CLERK: Thank you. You may have a seat.

15 THE COURT: Have a seat in the witness -

16 DIRECT EXAMINATION

17 SERGEANT HENRY WRIGHT BY SOLICITOR EPTING:

18 Q. Would you please state your name for the record?

19 A. Henry Lee Wright, Junior.

20 Q. And how are you employed?

21 A. I'm employed as a sergeant with the York County
22 Sheriff's Office.

23 Q. How long have you been with the sheriff's office?

24 A. In August it will be fourteen years.

25 Q. If you could for the jury just briefly describe the

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1 duties that you have as a member of the sheriff's office.

2 A. I supervise a patrol shift in the Rock Hill District.

3 Some of my duties - I mean I just basically supervise the

4 guys. I go on calls with them making sure that they get

5 their paperwork done properly. Making sure that they're

6 doing their responsibilities as well as answer calls for

7 service.

8 Q. So you're a supervisor?

9 A. Uh-huh.

10 Q. Make sure officers respond to calls; is that correct?

11 A. Yes, sir.

12 Q. Did you respond to call to the Palmetto Sports Club
13 the early morning hours of December 14th, 2013?

14 A. I did.

15 Q. Would you please tell the jury about what you saw
16 there that night?

17 A. The call came out as a shots fired, person shot by
18 some type of firearm. I responded to the scene Code III,
19 blue lights and sirens. I was the first officer on scene;
20 when I arrived on scene I saw a large group of people, two
21 lying on the ground. I got out was gonna render aide; at
22 that point they told me that - I witnessed another guy
23 laying on top of someone and they told me that that was the
24 shooter. At that point I went over and told him to get off
25 and began attempting to handcuff him.

1 Q. The guy laying on top of someone, was he hitting him
2 or harming him in any way that you could see?

3 A. No.

4 Q. Just penning him down then basically?

5 A. Yes, sir.

6 Q. The two people - So initially you stayed with him; is
7 that correct?

8 A. Correct.

9 Q. What happens next?

10 A. That night once I got him handcuffed we don't leave
11 prisoners or people that we detain so I had to wait for
12 another officer to arrive on scene - It was very hectic -
13 after another officer to get on scene, at that point I had
14 that officer standby with him so I could render aide to the
15 other two people.

16 Q. The person they identified as the shooter, did you
17 interact with him in any way?

18 A. I tried to but he wasn't responsive back to me.

19 Q. Unconscious?

20 A. Yes, sir.

21 Q. You placed him handcuffs to secure him; is that
22 correct?

23 A. That is correct.

24 Q. And did someone eventually take him over?

25 A. Yes.

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1 Q. And who was that person?

2 A. Deputy Chad Davis.

3 Q. Okay. And at that point what do you do after that?

4 A. At that point I went over to the other two individuals
5 I observed that one had been shot in the leg and I believe
6 the foot. I can't say a hundred percent because it was a
7 lot of blood but it was a lot of going on. But then there
8 was the other individual was shot multiple times.

9 Q. Okay. Are they near the building or are they near
10 any other landmark?

11 A. They're closer out to the road to the edge of the
12 parking lot, toward the back side of the business parking
13 lot.

14 Q. And I believe your testimony was one in the leg and
15 foot and the other multiple places you can't tell; is that
16 correct?

17 A. Right.

18 Q. Can you describe his appearance for the jury?

19 A. Excuse me, I couldn't - -

20 Q. Could you describe his appearance for the jury?

21 A. I mean he was covered in blood. It appeared that
22 there were multiple shots. He was in pain, you know,
23 yelling. I could just imagine what I would feel like if I
24 had been shot. You know yelling lots of - -

25 MS. INZERILLO: Objection, Your Honor, to the

1 observation.

2 THE COURT: I sustain the objection.

3 SOLICITOR EPTING: We'll move on.

4 Q. Without saying what they told you did you have a
5 chance to speak with him?

6 A. Briefly.

7 Q. And after you spoke with him briefly what if anything
8 did you do?

9 A. What was that last question?

10 Q. After you spoke with him briefly what if anything
11 did you do?

12 A. My job at that point was to maintain the integrity
13 of the scene. At that point we began - I began giving
14 instructions to my officers to take down names, date of
15 births, telephone numbers, of any possible witnesses and
16 just basically maintaining the integrity of the scene,
17 making sure that people weren't coming into the scene that
18 hadn't already been there cause we didn't want any evidence
19 or anything like that destroyed.

20 Q. You mentioned the scene several times. Are we
21 talking about a crime scene here?

22 A. Yes, sir.

23 Q. And if I heard your testimony correctly, that you are
24 trying to maintain the integrity of that crime scene?

25 A. Correct.

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1 Q. What type of things do you see on the crime scene
2 that might be of note to the case today?

3 A. Well during the incident I observed shell casings that
4 were laying on the ground. I observed a glock, black in
5 color glock pistol laying on the ground near where the I
6 believe Mr. Faile was laying. And then obviously the one
7 was on the victims.

8 Q. Did you have to make safe that pistol in any way?

9 A. At that time I did not touch it. I did have an
10 officer stand with it to make sure that no one was around
11 it.

12 Q. Could you tell if it was loaded?

13 A. I couldn't tell.

14 Q. So you maintain the crime scene and you're telling
15 people to do things like collect information and trying to
16 keep people out of the crime scene. Do you call for any
17 support services?

18 A. Yes. I immediately call for our forensic's unit as
19 well as our criminal investigation division.

20 Q. And who if anyone is calling for ambulances?

21 A. We had already called for ambulances. Our dispatch
22 center automatically when they have something like that has
23 EMS on standby. They normally stage until the scene is
24 secure so they were already in route. Our job was
25 basically just to tell them how many victims we had and how

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1 many people needed medical treatment.

2 Q. And did those people eventually receive medical
3 treatment?

4 A. They did.

5 Q. Do you recall who was loaded up in an ambulance
6 first?

7 A. I can't recall who was the first one.

8 Q. Was everyone eventually loaded up in an ambulance
9 and taken away?

10 A. Yes, sir.

11 Q. And at that point what is your role now that the
12 victims are off the scene?

13 A. It's still maintaining the integrity of the scene
14 and making sure that evidence is not being destroyed; that
15 people that don't need to be inside the crime scene any
16 other citizens things of that nature. We did kind of a
17 walk through the parking lot folding pieces of paper noting
18 different shell casings and different things that may be
19 pertinent to the case.

20 Q. So you're marking things that you see as possibly
21 relevant when FSU arrives?

22 A. Correct.

23 SOLICITOR EPTING: Beg the Court's indulgence.

24 (PAUSE.)

25 Q. Did this incident occur in York County?

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1 A. Yes.

2 Q. Or at least the incident that you responded to?

3 A. Yes, sir.

4 Q. You had mentioned arriving on Code III and the blue
5 lights and all that; is that correct?

6 A. That is correct.

7 Q. Is your cruiser equipped with a video recording
8 system?

9 A. It is.

10 Q. And did it produce a tape that night?

11 A. It did.

12 Q. Have you - Well prior to -

13 SOLICITOR EPTING: I beg the Court's indulgence.

14 I beg the Court's indulgence.

15 (PAUSE AT 11:25 A.M..)

16 MS. INZERILLO: Your Honor, may we take up a matter of
17 law before we continue?

18 THE COURT: All right. Ladies and gentlemen, this is
19 one of those times we have to take up a matter of law
20 outside of your presence. If you would please do not have
21 any discussion about anything involving the case but you
22 may retire back to the jury deliberation and we'll get back
23 just shortly.

24 (JURY EXITS COURTROOM AT 11:26 A.M..)

25 THE COURT: Yes, ma'am.

1 MS. INZERILLO: I appreciate that, Your Honor.

2 Mr. Epting has made some additional redactions to this
3 tape and I just wanted a chance to listen to it prior to it
4 being published to the jury.

5 SOLICITOR EPTING: Do you want me to play it on the
6 over head?

7 MS. INZERILLO: If you would like or we could -

8 THE COURT: I'll tell you what. Let the staff take a
9 break. We will stand at ease for a moment and let you take
10 a listen to the tape.

11 MS. INZERILLO: Thank you, Your Honor.

12 THE COURT: All right. We'll stand at ease.

13 Officer, you may step down but don't have any
14 discussions.

15 (COURT AT EASE AT 11:27 A.M..)

16 (COURT BACK IN SESSION AT 11:58 A.M..)

17 THE COURT: Thank you. You may keep your seats or be
18 seated.

19 Are we ready with the video?

20 MS. INZERILLO: I've reviewed the video, Your Honor.

21 With the court's permission if I could just state my
22 objections on the record so we won't have to interrupt the
23 testimony again. I have reviewed the redacted video the
24 State intends to introduce and I will just note some
25 objections. The video is of the scene and there was some

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1 discussion of this at pretrial so I would renew any and all
2 previous objections in pretrial to Sergeant Wright's in-car
3 video more specifically now that I've reviewed the redacted
4 video. And now that we have the order of witnesses which
5 what I couldn't specifically refer to in pretrial. What
6 might be the first witness no one else obviously has
7 testified and so I would specifically renew the objection
8 regarding any other comments, conversations by any other
9 people on the tape including those especially on the
10 witness list.

11 There's lots of conversations between Mr. Trader, I
12 believe Mr. Cleveland, perhaps some other people on the
13 witness list on the scene. I believe that's hearsay and
14 also intended to arouse the sympathy and emotion of the
15 jury. There are - There is at least one statement early on
16 in the video in which one person not able to clearly
17 identify does state on the video that Mr. Faile had the gun
18 earlier in the bar. That certainly has not been testified
19 to and that include the hearsay. As the tape progresses
20 Sergeant Wright I believe pursuant as he's testified as
21 scene commander has - is narrating to other people who come
22 onto the scene and that narration is still contained in the
23 video.

24 I believe Sergeant Wright can testify to anything that
25 he did but I believe the narration should be redacted from

1 the video. I believe, Your Honor, that that covers it. I
2 would renew previous objections to him saying on the video
3 watch blood. I know he has testified to that. I believe
4 that would be his personal observation as to what he
5 considered blood but I would outside his testimony today
6 would ask to redact that.

7 SOLICITOR EPTING: Your Honor, I would reply the same
8 reply when this issue initially came up of introducing
9 statements of Bobby Trader and or Zach Cleveland on the
10 tape. They are both present in the courtroom here today,
11 Your Honor, I full anticipate calling both of them sometime
12 today frankly. So they will testify, Your Honor, as an
13 officer of the court I assure the court that.

14 As to the narrations it's my understanding that most
15 of what Wright is narrating is things that he has observed
16 with his own two eyes. For instance, when I arrived here
17 the victim who was hurt real bad was laying here and the
18 guy that got shot in the foot was here, things of that
19 nature. I found brass casings over here when I got there
20 so placed a note down there. There are those types of
21 narrations. Again as to identifying the blood, I think
22 based on the common knowledge of what it looks like he can
23 say that that is blood again without saying that is Bobby
24 Trader's blood or that is Zach Cleveland's blood or whose
25 or Justin Faile's blood.

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1 THE COURT: Okay. All right, I'm going to based on
2 what's been argued to me I'm going to go ahead and allow
3 the video to be viewed by the jury with the present audio
4 subject to the state is representing they will be calling
5 those witnesses. The state doesn't call those witnesses
6 that would make them subject to confrontation cross
7 examination I might change my mind and come up with a
8 different remedy.

9 The narration, any narration that's made by this
10 officer on the video is still subject to cross examination
11 and it would either be that we had the officer narrate on
12 the video or we have the officer narrate here, so, I mean
13 don't do them both so that he's narrating with that subject
14 to cross examination.

15 And as far as the issue of the blood, my understanding
16 of the disputed issues that are going to be in this case, I
17 think there is common sense would be there will be blood
18 there. Now if there is any identification of this blood
19 belongs to X or it belongs to Y and he's not assigned to X
20 so that I would not allow that. Okay.

21 SOLICITOR EPTING: Thank you, Your Honor.

22 MS. INZERILLO: Thank you, Your Honor.

23 THE COURT: All right, lets' bring the jury back in.

24 (JURY REENTERS COURTROOM AT 12:04 P.M..)

25 THE COURT: Is the State ready to proceed?

SERGEANT LEE WRIGHT: DIRECT BY SOLICITOR EPTING

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1 SOLICITOR EPTING: The State's ready, Your Honor.

2 Your Honor, may I approach the witness?

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION - CONTINUED

5 SERGEANT LEE WRIGHT BY SOLICITOR EPTING:

6 Q. Sergeant Wright, I'm handing you what's been marked
7 as State's Exhibit Seven. Its on a sleeve, you can take it
8 out of the sleeve and take a look at it and review it.

9 (WITNESS COMPLIES.)

10 Q. Sergeant Wright, do you recognize State's Exhibit
11 Seven?

12 A. I do.

13 Q. What do you recognize it to be?

14 A. It's a copy of the in-car video I was running that
15 night.

16 Q. Have you reviewed a copy of that?

17 A. I have.

18 Q. Of that particular CD?

19 A. I have.

20 Q. How do you know it's that particular CD that you
21 reviewed?

22 A. Because I initialed it and dated it.

23 Q. And is it a fair and accurate depiction?

24 A. It is.

25 SOLICITOR EPTING: Your Honor, at this time the State

SERGEANT LEE WRIGHT: DIRECT BY SOLICITOR EPTING

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1 would seek to introduce State's Exhibit Seven into
2 evidence.

3 THE COURT: Subject to the previous stated objection I
4 will allow it.

5 (WHEREUPON, STATE'S EXHIBIT NUMBER SEVEN, IDENTIFIED
6 AND MARKED, RECEIVED INTO EVIDENCE.)

7 SOLICITOR EPTING: The State would seek to publish.

8 THE COURT: Yes, sir.

9 SOLICITOR EPTING: Now, Sergeant, while this ques up,
10 this tape has audio so if you wish to speak or to interject
11 at any point, please, just raise your hand so I can pause
12 the video so that the court reporter can take down what's
13 being said.

14 A. Yes, sir.

15 SOLICITOR EPTING: I beg the Court's indulgence.

16 Your Honor, for the record, at this time the State's
17 publishing State's Exhibit Seven on the screen in the
18 courtroom.

19 Your Honor, I beg the court's indulgence, I believe we
20 need to restart the computer, the cable has been
21 disconnected.

22 (PAUSE.)

23 SOLICITOR EPTING: Your Honor, I believe we are ready
24 to proceed and I do apologize to the court.

25 THE COURT: Okay.

1 (WHEREUPON, STATE'S EXHIBIT NUMBER SEVEN PUBLISHED TO
2 THE JURY AT 12:11 P.M..)

3 Q. At this point, Deputy Wright, who are you speaking
4 with?

5 A. Mr. Faile.

6 (STATE'S EXHIBIT NUMBER SEVEN CONTINUES TO BE
7 PUBLISHED.)

8 Q. Who are you speaking with now, Sergeant?

9 A. It appears that's Bobby Trader at that point.

10 (STATE'S EXHIBIT NUMBER SEVEN CONTINUES/PUBLISHED.)

11 Q. And where is Bobby Trader? That's not you on the
12 screen right now; is that correct?

13 A. That is correct. That is another officer that works
14 for me.

15 Q. You're off screen talking with Bobby Trader?

16 A. Correct.

17 Q. And is he sitting up, standing, down?

18 A. I can't recall. He's on the ground, I can't recall
19 if he's sitting up or if he's laying flat.

20 (STATE'S EXHIBIT NUMBER SEVEN CONTINUES/PUBLISHED.)

21 Q. And its probably obvious to the jury at this point,
22 but who - with whom are you speaking with at this point?

23 A. I can't remember his name. It's the other individual,
24 the one that was shot in the leg and the foot.

25 (STATE'S EXHIBIT NUMBER SEVEN CONTINUES/PUBLISHED.)

SERGEANT LEE WRIGHT: DIRECT BY SOLICITOR EPTING

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1 Q. In the interest of time, at some point did Zachary
2 Cleveland get loaded up in an ambulance as well?

3 A. That is correct.

4 Q. Do you know where he was eventually taken to?

5 A. Do I know where?

6 Q. Uh-huh.

7 A. Is Mr. Cleveland the one that was shot in the leg or
8 the foot?

9 Q. Where was the one - Let me ask it like this. Where
10 was the one who was shot in the leg and the foot taken to?

11 A. I believe he was taken to - I can't say with one
12 hundred percent - - -

13 Q. Okay.

14 A. - -- certainty but I think he was taken to Piedmont.

15 Q. What about the other guy?

16 A. The other two were taken to CMC.

17 Q. And do you know how he was taken?

18 A. One was flown and one was driven by a ambulance.

19 Q. Okay. There was more on this tape; is that correct?

20 A. That is correct.

21 Q. Is it more of the same of what we're seeing here?

22 A. Pretty much yes, sir.

23 Q. You're continuing to secure the scene and continuing
24 to collect evidence, continuing to collect information?

25 A. Yes, sir.

SERGEANT LEE WRIGHT: CROSS BY MS. INZERILLO

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1 SOLICITOR EPTING: That's all the questions that I
2 have
3 for you at this time. Please answer any questions Ms.
4 Inzerillo may have for you.

5 MS. INZERILLO: May it please the court, Your Honor.

6 CROSS-EXAMINATION

7 SERGEANT LEE WRIGHT BY MS. INZERILLO:

8 Q. So that - I'm gonna sort of start from the end and
9 work backwards if that's all right.

10 A. Perfect.

11 Q. That last little bit we heard on the tape when you're
12 saying he has a nice little knot on him, is he breathing.
13 You're referencing Mr. Faile at that point; is that right?

14 A. Correct.

15 Q. And that by my count is about nine minutes on that
16 tape; is that right?

17 A. Correct.

18 Q. Okay. So from the time you arrive on the scene about
19 nine minutes in is about the time that you're trying to
20 figure out whether Mr. Faile is breathing?

21 A. Correct.

22 Q. Okay. And when you'd gotten on the scene and your
23 first interaction with Mr. Faile is to run to him to put
24 cuffs on him because he's been identified as the shooter?

25 A. Correct.

SERGEANT LEE WRIGHT: CROSS BY MS. INZERILLO

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1 Q. And you - We hear on the tape you yelling at him
2 saying roll over, roll over, roll over; is that right?

3 A. Correct.

4 Q. And he didn't respond?

5 A. Correct.

6 Q. He didn't roll over?

7 A. No, ma'am.

8 Q. He didn't make any movements at all?

9 A. No, ma'am.

10 Q. Do you recall that evening having to take his arm
11 and kind of drag him a few feet and then cuff him?

12 A. Yes.

13 Q. Okay. So in terms of it - And I would describe it as
14 dead weight. Would you sort of agree with that?

15 A. Correct.

16 Q. On this video you interacted with - Well, that evening
17 you interacted with Mr. Faile, Mr. Trader, and Mr.
18 Cleveland; is that correct?

19 A. Correct.

20 Q. And that evening as we saw on the video, Mr. Trader
21 was able to give you his name?

22 A. Correct.

23 Q. He was able to give you his date of birth?

24 A. Correct.

25 Q. He was able to tell you that he was from Rock Hill?

1 A. Correct.

2 Q. He was able to tell you his age, twenty-three?

3 A. Correct.

4 Q. He was able to when you ask what happened tell you
5 that a guy pulled a gun on his little brother so he stuck
6 him. Do you recall that?

7 A. Correct.

8 Q. And you followed up cause you wasn't sure what
9 stuck meant so you said, with a knife; is that correct?

10 A. Correct.

11 Q. He is also yelling some other things including some
12 obscenities and that from the duration that he's there; is
13 that correct?

14 A. I cant' say a hundred percent. There were a lot of
15 people cursing.

16 Q. Okay. When he's put into the ambulance he is in a
17 upright position on the - what they call it - the little
18 rolling board thing; is that correct?

19 A. Gurney.

20 Q. The Gurney. Thank you. That's why you're the officer
21 and I'm not.

22 A. I'll be honest with you, I don't recall which
23 individual was which individual ---

24 Q. Okay.

25 A. --- so I can't tell you if he was sittin up or laying

SERGEANT LEE WRIGHT: CROSS BY MS. INZERILLO

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1 flat.

2 Q. Absolutely. But if that was on your tape you
3 wouldn't contest that?

4 A. No.

5 Q. Okay. And if the person in the upright position on
6 your tape is moving his head you wouldn't contest that?

7 All right. He's also able to relay to you and those
8 around him that he - what his sensations were; that he
9 can't feel his leg, that kind of thing?

10 A. Correct.

11 Q. This occurred in December; is that correct?

12 A. Correct.

13 Q. And you responded about two o'clock in the morning?

14 A. Rough estimate.

15 Q. And you were one of the first to arrive?

16 A. Correct.

17 Q. Would you estimate that you got there about one to
18 two minutes after the call came in?

19 A. I can't say a hundred percent what my response time
20 but it would have been pretty quick.

21 Q. So it wouldn't have been an hour??

22 A. No it would have been more minutes.

23 Q. Do you recall whether on that evening in December
24 if it was cold?

25 A. I can't recall.

1 Q. Do you recall if it was unseasonably warm that
2 evening?

3 A. I can't recall. I mean I can say that some of my
4 officers were wearing toboggans and things like that.

5 Q. Okay. Mr. Cleveland was also on the scene; is that
6 correct?

7 A. Correct.

8 Q. And he also was able to relay where he was shot?

9 A. Correct.

10 Q. To you? Okay. That he was shot in the foot and the
11 leg ---

12 A. Correct.

13 Q. --- ;is that correct? Also in this sort of group
14 of people there were also people sort of talking on the
15 phone and having conversations around this; is that
16 correct?

17 A. There was a lot going on. My main focus was the
18 individuals that were involved in the altercation.

19 Q. Okay. So a lot of the conversation that we're hearing
20 on your tape is not necessarily all conversations directed
21 to you and your officers. It's a lot of other outside
22 chatter?

23 A. I would say that's a fair statement.

24 Q. Okay. Now, you also interacted with Mr. Faile that
25 evening; is that correct?

SERGEANT LEE WRIGHT: CROSS BY MS. INZERILLO

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1 A. Excuse me, I'm sorry.

2 Q. You interacted with Mr. Faile that evening?

3 A. Not necessarily.

4 Q. Okay. And do you answer not necessarily because
5 Mr. Faile was unconscious to you the entirety?

6 A. That is correct.

7 Q. So Mr. Faile was unable to give you his name?

8 A. That is correct.

9 Q. He was unable to tell you the extent of his injuries?

10 A. Correct.

11 Q. He was unable to move from the face down position
12 in which you found him?

13 A. Correct.

14 Q. He was unable to tell you whether he was warm or cold?

15 A. Correct.

16 Q. He was unable to tell you his age?

17 A. Correct.

18 Q. He was unable to sit up?

19 A. Correct.

20 Q. He was unable to tell you where he lived?

21 A. Correct.

22 Q. He was unable to tell you his date of birth?

23 A. Correct.

24 Q. He was unable to tell you the events of that evening?

25 A. Correct.

1 Q. Do you recall Mr. Faile being loaded by EMS that
2 evening?

3 A. I know that all three of them were transported so
4 yes I do recall him being transported.

5 Q. Do you recall Mr. Faile having being required to be
6 loaded by the backboard that is used for back injuries by
7 EMS?

8 A. I don't recall.

9 Q. Do you recall EMS having to lift him because he is
10 unable to move himself?

11 A. I don't recall.

12 Q. Do you recall the Gurney - -

13 SOLICITOR EPTING: Your Honor, I believe that's been
14 ask and answered. He doesn't remember him being loaded
15 into the ambulance or the details of it.

16 THE COURT: All right. I'll let her ask it.

17 Go ahead.

18 Q. Do you recall the Gurney being used by Mr. Faile
19 lying flat and not in an upright position?

20 A. I can't. I don't recall.

21 Q. There were multiple people transported by EMS that
22 evening?

23 A. Correct.

24 Q. And it's your recollection that two of them were
25 taken to Charlotte that evening; is that correct?

SERGEANT LEE WRIGHT: CROSS BY MS. INZERILLO

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1 A. From my recollection correct.

2 Q. Okay. And Mr. Faile was one of them taken to
3 Charlotte that evening?

4 A. Correct.

5 Q. Now there are some conversations and information on
6 this tape regarding a third person being shot in the bar.
7 Do you recall that?

8 A. Correct.

9 Q. Is it your understanding that that person was shot
10 in the parking lot and ran inside the bar?

11 A. I never spoke with him. The only information I had
12 was that there was another injured party that was inside.
13 I sent one of my other officers inside ---

14 Q. Okay.

15 A. --- to check and interview him or talk to him.

16 Q. So was it - Did you get any information that evening
17 to indicate anyone was shot inside the bar?

18 A. To my recollection my dealings inside the bar was
19 very limited because once the CID came, arrived on scene,
20 they took over the investigation.

21 Q. Okay. And CID are detectives?

22 A. Correct.

23 Q. Okay. So to make sure we're on the same page, you
24 as a first responder your job is to one protect essentially
25 life; is that correct?

1 A. Correct.

2 Q. So what we see on the video is you essentially a
3 scene command trying to make sure that anyone who is
4 injured gets proper care?

5 A. Correct.

6 Q. And at the same time you're doing that you are also
7 trying to preserve the scene to make sure that anything
8 that can be critical or any detectives or forensics is
9 preserved as well?

10 A. Correct.

11 Q. So that's the crime scene preservation that you
12 described with Mr. Epting?

13 A. Correct.

14 Q. And as we saw on the tape when you arrived at the
15 scene, this is a public parking lot; is that correct?

16 A. Correct.

17 Q. Okay. And so when you arrived you had a group of
18 people sort of in the corner of the public area: is that
19 correct?

20 A. Correct.

21 Q. And then you had Mr. Faile in another part of the
22 public area?

23 A. Correct.

24 Q. And when you got there nothing was cordoned off?

25 A. Correct.

SERGEANT LEE WRIGHT: CROSS BY MS. INZERILLO

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1 Q. So what you were dealing with is people running in
2 and out of this what turned out to be a scene that you were
3 having to deal with?

4 A. Until I had other officers on scene that is correct.

5 Q. Okay. And necessary in that in the course of the
6 evening EMS also sort of had to walk through the scene
7 because they had to provide care to the injured?

8 A. Correct.

9 Q. So throughout the evening if you noticed something on
10 the ground you had to make sure people were aware of it?

11 A. Right.

12 Q. Okay. And by way of example you noticed that there
13 was a gun on the ground?

14 A. Correct.

15 Q. So throughout the evening if EMS came close you'd
16 point it out to them there was a gun on the ground?

17 A. By the time EMS got on scene I already had an officer
18 stationed with the gun.

19 Q. Okay. But that's to make sure that in case the gun -
20 step on the gun anything like that?

21 A. Correct.

22 Q. Now, necessarily in this scene there's bullets on the
23 ground?

24 A. I don't believe there were any live bullets found.
25 There were shell casings.

1 Q. Shell casings. Okay. And the ground at this scene
2 is sort of like a soft gravel. It's not pavement?

3 A. Right.

4 Q. Okay. And it was raining that night. Do you recall?

5 A. I don't recall.

6 Q. Okay. So a good part of your job is trying to as
7 best as you can preserve the scene once you get there and
8 can keep control of it?

9 A. Correct.

10 Q. But in the events of this evening as we saw on the
11 tape there were already people walking through the scene
12 before you could cordoned it off?

13 A. Correct.

14 Q. Okay. This might be a obvious question, but you
15 didn't see the shooting; is that correct?

16 A. That's correct.

17 Q. And you didn't see any of the events leading up to
18 the shooting?

19 A. That's correct.

20 Q. You didn't see how the gun got on the ground?

21 A. That's correct.

22 Q. You didn't see how any of the injuries took place?

23 A. Correct.

24 Q. You didn't see how anyone got shot?

25 A. Correct.

SERGEANT LEE WRIGHT: CROSS BY MS. INZERILLO

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1 Q. When you interacted with Mr. Faile you had a chance
2 to observe what he looked like; is that correct?

3 A. Briefly.

4 Q. Okay. And do you recall that evening indicating that
5 your perception was Mr. Faile had been beat all to hell?

6 A. I don't recall saying that but I said he was - Uh -
7 I got a copy of the incident report. That he was badly
8 beaten. Appeared to be badly beaten.

9 Q. And do you recall seeing him beaten about the face?
10 Marks on his face?

11 A. Yes, ma'am.

12 Q. Do you recall seeing lacerations on his face, cuts,
13 bruises?

14 A. Definitely some bruising. I can't remember if there
15 were any cuts.

16 Q. Okay. Do you recall seeing bruising around his rib
17 cage?

18 A. I didn't lift his shirt up.

19 Q. Okay. What else did you recall seeing about Mr.
20 Faile injuries wise to make you believe that he had been
21 beaten pretty badly?

22 A. I mean just basically the way he was not responsive to
23 me when I began talking to him, the bruising and stuff on
24 the face. I mean obviously there was a small amount of
25 blood on his face as well.

SERGEANT LEE WRIGHT: CROSS BY MS. INZERILLO
REDIRECT BY SOLICITOR EPTING

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1 Q. And in the course of your job you've seen people
2 non-responsive for many different reasons?

3 A. Yes, ma'am.

4 Q. And you've seen people beaten up before?

5 A. Yes, ma'am.

6 MS. INZERILLO: Your Honor, I have no further
7 questions.

8 THE COURT: Any redirect to what she went into?

9 SOLICITOR EPTING: Very briefly, Your Honor.

10 REDIRECT EXAMINATION

11 SERGEANT LEE WRIGHT BY SOLICITOR EPTING:

12 Q. Ms. Inzerillo ask you about whether Bobby Trader said
13 he stuck Mr. Faile; is that correct?

14 A. Correct.

15 Q. Did he clarify that that he actually punched him?

16 A. Correct.

17 Q. That it was - It was not a knife; is that correct?

18 A. Correct.

19 Q. You stated to Ms. Inzerillo that Mr. Faile was not
20 giving you his name, his address, any of those information?

21 A. Correct.

22 Q. But you can't testify whether he gave those to anybody
23 else on the scene can you?

24 A. That's correct.

25 SOLICITOR EPTING: No further questions.

1 THE COURT: All right, thank you, sir, you may step
2 down. Any reason why the witness cannot be excused?

3 (WITNESS LEAVING WITNESS STAND.)

4 SOLICITOR EPTING: No, Your Honor. We would ask that
5 he be excused.

6 THE COURT: Will the lawyers approach for a moment?

7 SOLICITOR EPTING: Your Honor, may we approach
8 briefly?

9 THE COURT: Yes, please.

10 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
11 THE JURY AT 12:37 P.M..)

12 THE COURT: All right, Ladies and gentlemen, I
13 discussed with the attorneys scheduling and the lengthy of
14 witnesses and breaks and after doing that I believe that
15 this is a wise time for us to take a lunch break. Taking a
16 look at - as the older I get the worse my eye sight is -
17 but I think in taking a look at that clock back on the back
18 wall - twenty till?

19 I'm gonna ask you if you would to be back in the jury
20 deliberation room by two o'clock and then we'll resume the
21 presentation of the testimony. I need to remind you that
22 you can't have any discussions among yourselves or with
23 anyone else anything involving the case. Don't do any type
24 of independent research or investigation into anything
25 involving the case. You've heard of a location. Don't

1 just out of curiosity say well while I'm out at lunch I'm
2 gonna drive by that place. Don't do that at all. Just be
3 sure you base all the decision that you're gonna make in
4 this case based on the evidence and the law that you
5 receive in this courtroom. But at this time you may go
6 with the bailiff and we'll see you back at two o'clock.

7 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:39 P.M..)

8 THE COURT: All right. Do you want to bring your
9 witnesses in and let me be sure that I instruct them on the
10 sequestration rules?

11 SOLICITOR EPTING: Your Honor, I believe we've already
12 let our witnesses go but I do have present in the courtroom
13 the victims who will be witnesses in this case.

14 THE COURT: Okay. You need to remind anybody that
15 will be testifying or potentially will be testifying in
16 this case, the lawyers and I have discussed the rules of
17 sequestration. Just please do not have any discussions
18 among yourselves about anything involving the case.

19 Do not approach any witnesses that maybe you know that
20 potentially might testify in this case. Do not approach
21 them about the testimony that's been presented or might be
22 presented in this case. And so those are the basic rules
23 of sequestration. We don't want anybody that's not in this
24 courtroom to be able to know what's going on in this
25 courtroom that gives the jury, give the lawyers an

1 opportunity to be sure that truthful and accurate
2 information is presented to the jury.

3 I appreciate your following my instructions and thank
4 you all very much for your attention during the course of
5 this trial. But at this time we will stand at ease until
6 two o'clock.

7 SOLICITOR EPTING: Thank you, Your Honor.

8 (COURT IN LUNCH RECESS AT 12:42 P.M..)

9 (WHEREUPON, STATE'S EXHIBIT NUMBERS EIGHT, EIGHT-A,
10 EIGHTY-B, PREMARKED FOR IDENTIFICATION.)

11 (COURT BACK IN SESSION AT 02:00 P.M..)

12 THE COURT: You may be seated.

13 (DEFENDANT, JUSTIN FAILE, REENTERS COURTROOM.)

14 THE COURT: Is the state ready to call their next
15 witness?

16 SOLICITOR GROVE: Yes, Your Honor.

17 THE COURT: Anything from the defense before we
18 bring the jury back?

19 MS. INZERILLO: No, Your Honor.

20 THE COURT: Let's bring the jury back.

21 What witness please?

22 SOLICITOR GROVE: Zachary Cleveland.

23 (JURY REENTERS COURTROOM AT 02:02 P.M..)

24 THE COURT: Now is the State ready to call their next
25 witness?

ZACHARY CLEVELAND: DIRECT BY SOLICITOR GROVE

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1 SOLICITOR GROVE: Yes, Your Honor. Zachary Cleveland.

2 THE COURT: All right. Mr. Cleveland, would you come
3 right up here and let the Clerk of Court swear you in
4 please.

5 MADAM CLERK: Please raise your right hand, place your
6 left on the Bible.

7 (WHEREUPON, ZACHARY
8 CLEVELAND, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
9 FOLLOWS:)

10 MADAM CLERK: You may have a seat.

11 THE COURT: Please have a seat in the witness stand.

12 SOLICITOR GROVE: May it please the Court.

13 THE COURT: Yes, ma'am.

14 DIRECT EXAMINATION

15 ZACHARY CLEVELAND BY SOLICITOR GROVE:

16 Q. Please state your name for the record?

17 A. Zachary William Cleveland.

18 Q. And, Mr. Cleveland, where are you from?

19 A. I'm from Rock Hill, South Carolina.

20 Q. And about how long have you lived here?

21 A. Since about ten years.

22 Q. Okay. And what do you do for a living?

23 A. Construction.

24 Q. Now, I want to talk to you about the night of December
25 13th in the early morning hours of December 14th, 2013.

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1 Where were you that night?

2 A. I was at Palmetto Sports Bar.

3 Q. Okay. And were you familiar with the Palmetto Sports
4 Club? You had been there before?

5 A. Yes, ma'am.

6 Q. Why were you there that night?

7 A. I was invited by my little brother to a birthday
8 party.

9 Q. And who's your little brother?

10 A. Bobby Lynn Trader.

11 Q. And whose birthday was it?

12 A. His girlfriend at the time Becky Shelly.

13 Q. Okay. So was the usual crowd at the Palmetto Club
14 that night?

15 A. Some were and the rest. Not really. It was very
16 crowded that night.

17 Q. Okay. Would you say there were more people there
18 than on a usual night?

19 A. Yes, ma'am.

20 Q. Okay. But as far as the night goes leading up to the
21 incident that happened in the early morning house, was a
22 pretty uneventful night?

23 A. Yeah.

24 Q. Nothing unusual happened that you know of during the
25 course of the evening?

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1 A. No, ma'am, just a regular ole hanging out.

2 Q. Okay. Did you have any issues with anyone that night?

3 A. No, ma'am, I did not.

4 Q. So everyone was basically hanging out at this bar
5 having a good time?

6 A. Yes, ma'am.

7 Q. And you were drinking?

8 A. Yes I was.

9 Q. Did you know Justin Faile at the time?

10 A. No I did not.

11 Q. Did you hang out with him that night?

12 A. I did.

13 Q. Had you ever hung out with him before that night?

14 A. No I had not.

15 Q. Okay. And when you say you hung out with Justin
16 Faile, what did you guys do?

17 A. We played a game of pool together.

18 Q. Okay.

19 A. And that was as far as it goes.

20 Q. Can you point out Justin Faile for the jury?

21 A. Yeah. He's sitting over there.

22 Q. And what is he wearing?

23 A. A blue shirt.

24 Q. Okay.

25 SOLICITOR GROVE: Let the record reflect that the

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1 defendant is wearing a blue shirt and is sitting at the
2 defense table.

3 (WITNESS INDICATED TO DEFENDANT JUSTIN FAILE SEATED AT
4 DEFENSE TABLE.)

5 Q. So you were both drinking, you were both playing pool
6 together?

7 A. Yes, ma'am.

8 Q. Okay. Who is Logan Brooks?

9 A. My cousin.

10 Q. So Logan is your cousin?

11 A. Yes.

12 Q. And he was there that night as well?

13 A. Yes he was.

14 Q. And he was there for the birthday?

15 A. Yes he was.

16 Q. Okay. And when you say your brother was there as
17 well, you mean Bobby?

18 A. Yes, ma'am, I do.

19 Q. Okay. Was Bobby drinking that night?

20 A. No.

21 Q. And going back to Logan Brooks. Logan is your cousin?

22 A. Yes.

23 Q. Did he get into an altercation that night?

24 A. He did.

25 Q. Did you see it happen?

1 A. No, ma'am, I didn't.

2 Q. So you didn't see the altercation that Logan Brooks,
3 your cousin, got into that night?

4 A. No I did not.

5 Q. Did you hear about it?

6 A. I did.

7 Q. Okay. How did you hear about it?

8 A. From Becky Shelly.

9 Q. Okay. So what prompted you to leave the Palmetto
10 that night?

11 A. I could usually by closing time all the bars get a
12 little feisty and I could just kind of sense something was
13 fixin to happen so I was leaving.

14 Q. Okay. About what time were you leaving?

15 A. I guess it was about ten or fifteen minutes before
16 the bar closed.

17 Q. Okay. What time does the bar close?

18 A. Two o'clock.

19 Q. Okay. Who were you leaving with?

20 A. By myself.

21 Q. Okay. Was anyone else going to leave with you?

22 A. No.

23 Q. Okay. So you were leaving the Palmetto Club around
24 2:00 a.m., and what happened as you were trying to leave?

25 A. I walked out of the bar and started going towards my

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1 truck. About half way there Becky Shelly come around the
2 side of the bar hollerin my name asking me to please come
3 get Logan he's startin to try to start a fight with people
4 so and so forth so I turned around and come back and as I
5 come back around the bar I see Logan so I approach him
6 tellin him to come on let's go it's time to leave. You
7 know I keep trying to get him to leave with me and he
8 still, you know, just excited cause I guess he just got in
9 a fight he was still loud and obnoxious. We finally get
10 around back and we keep on headin toward my truck. I keep
11 pushin him toward my truck tellin him please let's go. And
12 we finally get toward my truck and the gun I now I know as
13 Samuel Fitcher - I did not know him at the time - is
14 walking behind us running his mouth to Logan saying why
15 don't you fight somebody your own size blah, blah, blah.

16 I'm tellin Logan get in my truck let's go please,
17 please, please. Finally he gets in I get in crank the
18 truck up put it in reverse and I back out and I turn and
19 back out and as I go to drive Samuel Fitcher runs up and
20 attacks my cousin through my passenger window. And at that
21 time I put the truck in park and I got out and come around
22 the rear end of my truck and when I did Justin Faile was
23 standing there with a pistol in my face.

24 Q. Okay. And I want to stop you right there and go back
25 a little bit just to clarify something. So you were going

1 to go get Logan to leave?

2 A. Yes, ma'am.

3 Q. Because Logan had got into an altercation?

4 A. Yes.

5 Q. Did he get into a fight - As far as you knew he was
6 not getting into a fight. Who had he gotten into a fight
7 with?

8 A. I have no idea.

9 Q. Okay. So he had gotten into a fight with another
10 person entirely?

11 A. Yes, ma'am.

12 Q. But you wanted to leave the situation and take him
13 with you?

14 A. Yes, ma'am, I did.

15 Q. Okay. So as you're leaving Logan is all excited
16 still and roweled up and the person at the time you said
17 you now know him as Samuel Fitcher at the time did you know
18 that person?

19 A. I did not.

20 Q. Can you describe what he looked like?

21 A. He had a big beard.

22 Q. Okay.

23 A. That's about as good as I can describe him.

24 Q. Okay. And he and your cousin Logan were exchanging
25 words?

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1 A. Yes, ma'am.

2 Q. Yelling at each other?

3 A. Yes, ma'am.

4 Q. Okay. So you get into the driver side of the truck?

5 A. Yes, ma'am.

6 Q. Okay. And Logan's in the passenger side of the
7 truck?

8 A. Yes he is.

9 Q. So were there any weapons involved at the point when
10 Mr. Fitcher came up to the passenger side of the truck?

11 A. No, ma'am, there wasn't.

12 Q. Okay. When Mr. Fitcher came up to the side of the
13 truck and you say that he attacked your cousin, what did he
14 do?

15 A. He punched him through the window and like that's
16 about all I seen and I put the truck in park and got out.

17 Q. Okay. So it's a punch, it's a fist fight at that
18 point?

19 A. Yes.

20 Q. Okay. And you got out of the car?

21 A. I did.

22 Q. Sam Fitcher had come through the window with his fist
23 and punched your cousin?

24 A. Yes he did.

25 Q. Okay. So you got out of the driver's side to get him

1 off of your cousin?

2 A. I did.

3 Q. Okay. And at that point that's when you see Justin
4 Faile?

5 A. Yes.

6 Q. At that point had he been involved in any of the
7 steps that led up to where you were?

8 A. No, ma'am.

9 Q. Okay. And what did you notice about Justin Faile?

10 A. He was standing there with his hood on with a pistol
11 pointed at me.

12 Q. Okay. Did Sam Fitcher notice that Justin Faile had
13 a gun?

14 A. I don't think so. Him and Logan was -

15 MS. INZERILLO: Objection to speculation.

16 THE COURT: I'll sustain the objection.

17 BY SOLICITOR GROVE:

18 Q. How did Sam Fitcher react?

19 A. I honestly don't know. I wasn't paying attention.

20 Q. That's understandable.

21 MS. INZERILLO: Objection to the comments, Your Honor.

22 SOLICITOR GROVE: Sorry, Your Honor.

23 Q. Did Logan - I'll just go past there.

24 So at that point you saw that Justin Faile had a gun?

25 A. Yes, ma'am.

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1 Q. What happened?

2 A. He's standing there with a gun pointed at me and I put
3 my hands in the air like you know what are you doing. At
4 that time I seen my brother Bobby come running from the -
5 up above 'em at the parking lot and I'm still standing
6 there like this and Bobby comes runnin and about ten foot
7 before he got there Justin Faile noticed and he turned and
8 he fired and Bobby hit him and they scuffled around on the
9 ground. And as soon as they - like Bobby contacted with
10 him I started running towards 'em and all I can hear is gun
11 shots boom, boom, boom, boom, boom, just constant gun shot.
12 So I jumped on top of 'em and grabbed the gun in my hand
13 which I had third degree burns on my hand right here for
14 about two months after that from holding the pistol while
15 he was shootin trying to get it from him. And I grabbed
16 him off of Bobby and attempted to drag him away from Bobby,
17 get him away from him cause he was shootin. Had the gun in
18 one - my left hand and I had my arm around his neck trying
19 to choke him pretty much.

20 And he fell to the ground and when he did I was still
21 on top of him and he tucked the gun under his stomach and
22 when he did that he started shootin again and that's when
23 he shot me in my foot. And then I guess he ran out of
24 bullets at that time or something because no more shots
25 were fired. And I remember Jennifer Shelly coming and

1 running down there and like grabbing me and pulling me up
2 and I was still trying to go after Justin and I realized I
3 was shot in my leg so I went and laid down beside Bobby to
4 make sure he was okay and just tended to Bobby about the
5 rest of the time I was there.

6 Q. Okay. So to go back to Bobby coming up, you said that
7 Bobby is your younger brother?

8 A. Yes.

9 Q. Are you blood related?

10 A. No, ma'am.

11 Q. Did you grow up with him?

12 A. I sure did.

13 Q. Okay. And you call him your brother?

14 A. My dad dated his mother for a long time.

15 Q. Okay. So when you went over to where Justin Faile -
16 After Bobby had rushed Justin Faile, and this is after he's
17 already pulled the gun on you, why did you go over to where
18 Justin and Bobby were?

19 A. It was just instinct I guess. I wanted to help get
20 the gun because Bobby was screaming you shot me you shot
21 me. And as I was headed that way all I could hear was him
22 screaming and gun shots so I just - He I guess tried to
23 save my life so I was wantin to save his at the same time.

24 Q. And you said that Justin kept firing the gun. Do you
25 remember how many times the gun went off?

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1 A. I don't but it was a lot.

2 Q. And did Justin Faile say anything during all of this?

3 A. Not that I can recall.

4 Q. When you were trying to get the gun from Justin Faile,
5 did anybody else come up to help you?

6 A. At the time I didn't realize anybody coming. My
7 adrenalin was pumpin, I was just paying attention to him.
8 But was I viewed the video of it I kind of remembered
9 people coming afterwards but at the time no I did not.

10 Q. So you don't remember a time anybody else was trying
11 to get the gun away?

12 A. No, ma'am.

13 Q. Okay. When you were trying to get the gun away the
14 gun was still going off?

15 A. Yes it was.

16 Q. Okay. And during the struggle Justin Faile still had
17 the gun?

18 A. He did.

19 Q. Did somebody eventually get the gun?

20 A. Yes they did.

21 Q. Who eventually got the gun?

22 A. Logan Brooks.

23 Q. Okay. And just to clarify, Logan is your cousin?

24 A. He is.

25 Q. And he was the guy in the passenger seat of your

1 truck?

2 A. Yes, ma'am.

3 Q. What did he do when he got the gun from Justin Faile?

4 A. He held it up in the air and said I got the gun, I got
5 the gun and a bunch of people told him just to lay it down
6 and he sat it down on the ground.

7 Q. And you went to lay by Bobby?

8 A. I did.

9 Q. And you went to do that after you realized you had
10 been shot?

11 A. Yes, ma'am.

12 Q. When you mentioned Jennifer Shelly who's Jennifer
13 Shelly?

14 A. Becky Shelly's mother. She's the bartender at
15 Palmetto.

16 Q. Okay. So she works at the bar?

17 A. Yes, ma'am.

18 Q. When you realized you had been shot where did you
19 realize you had been shot?

20 A. I know I was shot in my upper thigh cause I looked
21 down and seen a hole in my pants and a bunch of blood and
22 my foot was hurting but I couldn't see the bullet hole or
23 anything so I didn't know if I was shot there for sure or
24 not.

25 Q. Okay. When you went over to Bobby what was Bobby

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1 doing at that point?

2 A. He was laying on his side screaming saying he shot me,
3 Zach, he shot me. And I was asking him where -

4 MS. INZERILLO: Objection to the hearsay, Your Honor.

5 THE COURT: I am going to allow it. He was
6 responding. He ask him.

7 A. I'm sorry.

8 Q. I'm sorry, we were talking about Bobby. Bobby was
9 lying on his side. How long did the cops - How long before
10 the cops and the EMS arrived?

11 A. I - It seemed like forever but I guess they got there
12 pretty quick.

13 Q. Okay. And what did you do or say when the EMS
14 arrived?

15 A. I told them to get Bobby because they were - he was
16 shot more and, you know, I was just wanting them to get him
17 out of there.

18 Q. Okay. After Bobby was secured did you get medical
19 treatment?

20 A. I did.

21 Q. Okay. Were you awake when they put you in the
22 ambulance?

23 A. Yes I was.

24 Q. Okay. And do you remember being taken in the back?

25 A. Yes I do.

1 Q. Where did they take you?

2 A. To Piedmont Medical Center.

3 Q. Okay. And that's here in Rock Hill?

4 A. Yes, ma'am.

5 Q. Can you please tell the jury about your course of
6 treatment at Piedmont?

7 A. I remember going in and they took me straight back to
8 a room and put me in a room by myself and put two cops
9 outside of the room just in case anybody tried to come in
10 that wasn't supposed to. Nurses came in assessed my wounds
11 looked at my leg ask me if I knew where I was shot at and I
12 told 'em where I knew I was shot and that's about it.

13 Q. Okay.

14 A. They did what they could to help me.

15 Q. And what happened to your clothes?

16 A. I have no idea. I guess they were bagged and given
17 to detectives.

18 Q. Okay. Were you given pain medication?

19 A. I was.

20 Q. Did the bullets go through and through?

21 A. Yes they did.

22 Q. Where on your thigh were you shot?

23 A. In my upper thigh right here and it came out in the
24 back of my leg.

25 Q. Can you please stand and show the jury? Just indicate

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1 again where you were shot.

2 A. I was shot right here and it came out back here.

3 (WITNESS STOOD AND DEMONSTRATED.)

4 Q. Thank you. And where on your foot were you shot?

5 A. In between these two toes right here.

6 (WITNESS DEMONSTRATED TO FOOT.)

7 Q. And were you treated and released?

8 A. I'm sorry.

9 Q. Were you treated and released that same night?

10 A. That following morning yes, ma'am.

11 Q. Okay.

12 A. The same night but morning time.

13 Q. And did the doctor's indicate there was anything else
14 they could do for you at the hospital?

15 A. Nothing really. They said they probably had to
16 surgically remove my toes if the x-rays didn't come back
17 good enough.

18 Q. Were you able to keep your toe?

19 A. I was.

20 Q. Did you go and check on Bobby at that point?

21 A. Yes.

22 Q. And where did you go?

23 A. I - When I left the hospital I went home and then
24 immediately went straight to Charlotte Medical Center.

25 Q. Okay. Were you able to drive?

1 A. No I was not.

2 Q. Okay. After this occurred were you able to walk?

3 A. No I wasn't.

4 Q. What impairments did you suffer?

5 A. I couldn't put any pressure on my leg or my foot. I
6 laid in my bed for about a month and a half. I had to have
7 one of my friends come to live with me because my wife
8 couldn't pick me up or help me to do anything.

9 Q. Could you walk without a wheel chair or crutches?

10 A. No.

11 Q. And how did you get around?

12 A. I got around in a wheelchair but my friend had to
13 push me around and help me.

14 Q. How long did you have to be in a wheelchair?

15 A. I believe it was about two months.

16 Q. And how old were you when you got shot?

17 A. I was twenty-four years old.

18 Q. And you spent the next two months in a wheelchair?

19 A. Yes, ma'am.

20 Q. Did you have any long term loss of use of your leg
21 or toe?

22 A. My toes are still stiff. I can't bend them or move
23 them. The upper part of my leg is still numb from nerve
24 damage. I can't really feel it. I can't run like I used
25 to. I can't jump. And that's about it.

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1 Q. You say you can't run. You can walk but you can't
2 break out into a - -

3 A. Yeah into a sprint. I can't do it. It just hurts
4 too much.

5 Q. All right. Mr. Cleveland, you talked about the
6 Palmetto Sports Club earlier and you said you were familiar
7 with it?

8 A. Yes, ma'am.

9 Q. And you had been there multiple times?

10 A. Yes, ma'am.

11 Q. Would you recognize a picture of it if you were
12 shown?

13 A. Yes, ma'am, I would.

14 Q. Can you tell me what's on that paper?

15 A. That's a picture of the Palmetto Sports Bar.

16 Q. Do you - How do you recognize that?

17 A. I'm just familiar with how it looks and the - Just
18 familiar with it.

19 Q. What is that? What is this a picture of?

20 A. It's a picture of the bar where I was shot at.

21 Q. And what is this area around the bar?

22 A. That's the back parking lot. And that's Porter Road
23 and Firetower Road.

24 Q. Okay. And is it in the same or similar - It looks
25 as the same or similar condition as it was when you were

1 there that night?

2 A. Yes, ma'am, it does.

3 Q. Okay. Can you just go ahead and take that?

4 SOLICITOR GROVE: The State would - The State seeks to
5 enter State's Exhibit One into evidence.

6 MS. INZERILLO: No objection.

7 THE COURT: Without objection. Has it been marked?

8 SOLICITOR GROVE: Yes, Your Honor, it's marked as
9 State's Exhibit One.

10 THE COURT: All right. Be entered as State's Exhibit
11 One.

12 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE, IDENTIFIED AND
13 MARKED, RECEIVED INTO EVIDENCE.)

14 SOLICITOR GROVE: Your Honor, the State seeks to
15 publish State's Exhibit One to the jury.

16 THE COURT: You just gonna hand it to them?

17 SOLICITOR GROVE: We have a -

18 THE COURT: Okay. Then do that.

19 SOLICITOR GROVE: --- that exact same picture put
20 on the screen.

21 THE COURT: Okay.

22 SOLICITOR GROVE: For the record the State is placing
23 State's Exhibit One on the screen.

24 THE COURT: Okay, do that.

25 THE COURT: Now he's got State's One in his hand.

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1 SOLICITOR GROVE: Yes, Your Honor.

2 THE COURT: Well why don't you publish State's One
3 that he has in his hand? I have no way of any level of
4 confidence that that is what's being shown up there. You
5 need to publish to the jury what you gave the witness.

6 SOLICITOR GROVE: Yes, Your Honor.

7 THE COURT: Okay.

8 SOLICITOR GROVE: Thank you. I need to --

9 THE COURT: I beg your pardon?

10 SOLICITOR GROVE: I need to publish this exact thing
11 to the jury.

12 THE COURT: You can publish it on your machine.

13 SOLICITOR GROVE: Okay.

14 SOLICITOR EPTING: Your Honor, may we approach?

15 THE COURT: Okay, why don't you approach? I've never
16 seen this happen.

17 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
18 THE JURY AT 02:25 P.M..)

19 THE COURT: Ladies and gentlemen, I am going to need
20 for you to retire back to the jury deliberation room. I
21 have a matter of law I need to take up with the attorneys.
22 Please do not have any discussions among yourselves about
23 anything involving the case.

24 (JURY EXITS COURTROOM AT 02:26 P.M..)

25 THE COURT: All right. I want to make sure the record

1 is clear because I have never seen take place what I just
2 witness take place, for a witness on a stand is given a
3 piece of evidence, leave the evidence sitting in his lap,
4 and the Court is then ask to be able to publish, publish
5 that evidence to the jury and then all of a sudden a
6 picture goes up on the screen and there has been nothing in
7 the record of the case that links the picture that's being
8 thrown on the screen to what picture is in the lap of the
9 witness I cannot - I understand from a bench conference
10 that the State does not have an Elmo that typically I guess
11 I do see and you take the actual exhibit from the witness
12 and put it on the Elmo it is then published so that there
13 is a connection with the jury from what the witness has
14 just identified to the Elmo and that that's not possible.

15 But I have never seen what happened take place just
16 then.

17 SOLICITOR EPTING: Your Honor, typically what we do
18 with our resident judges is we give this copy so that they
19 have this back there to the jury for them to deliberate.
20 We put an electronic copy up on the screen and our first
21 question is, is what's on the screen right now is that the
22 exact same mirror image picture of State's Exhibit One?
23 We've done that with our resident judges on a regular
24 basis. I should have cleared that with Your Honor prior to
25 us doing this cause I don't know - I don't know how you all

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1 do things. We find that the digital image is a lot clearer
2 than when we place it on the Elmo. Again that's my fault,
3 Your Honor, and not Ms. Grove's. I'm the senior attorney
4 on this case and I apologize for that for any hard feelings
5 on the part of the Court as to this.

6 THE COURT: I have no hard feelings. But I simply
7 want this trial done in the efficient way; that I have some
8 confidence that something that's already thrown up in front
9 of a jury and published to them and then afterwards ask the
10 witness a question. You see you use the Elmo you actually
11 take the same document from the witness and then publish it
12 as opposed to publishing something to the jury and then
13 after it's being seen ask the jury is that it.

14 SOLICITOR EPTING: Your Honor, I think here to forward
15 to resolve this issue what I would propose to do is do a
16 paper copy that they can take back to the room and also a
17 CD what the witness can view as having reviewed saying
18 those are the same pictures that are on that have been
19 marked.

20 THE COURT: I mean - And I apologize if the State and
21 the Defense does not understand why this particular judge
22 has a little bit of sensitivity as to what gets published
23 to the jury. There is a lawyer that worked for the public
24 defender's office that knows all too well the hiccups that
25 can occur between things that are represented to the court

1 and to a witness as to what's in them and what gets
2 published and what goes up in front of a jury.

3 There was a gentleman that had to be retried and was
4 convicted of a some heinous crime. I believe it was a
5 murder. And subsequently the Court of Appeals had to
6 reverse that. I declared the mistrial in the original case
7 because that piece of evidence that got published to the
8 jury was not what was represented as what was going to be
9 published. It's something far different got published to
10 the jury. Not by any probably nefarious reason; by a
11 mistake that led to that person not being able to be
12 prosecuted again.

13 So there is a reason for my concern. It is not simply
14 that I'm trying to nick pick.

15 SOLICITOR EPTING: I understand the Court's concern
16 and I apologize for not putting the things in place to
17 address that at this point, Your Honor.

18 THE COURT: Okay. All right, so what do you want to
19 do?

20 SOLICITOR EPTING: In the future I know we could put
21 these on a disc. With him on the stand I don't know if we
22 have time to do that or not.

23 THE COURT: Or you could ask him in advance of
24 publishing if the thing you're gonna publish - before you
25 publish it - is the same that's in his lap.

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1 SOLICITOR EPTING: Gotha. We could perhaps bring him
2 around to the screen to see what is --

3 THE COURT: What ever you want to do but - You know my
4 concern is not being nick pick. I've actually had that
5 experience where something got published that was not the
6 same thing that the witness said was the exhibit.

7 SOLICITOR EPTING: And I - At this point I think I
8 understand the Court's concern. We'll take steps in the
9 future as we go along in this case to address those, Your
10 Honor.

11 THE COURT: Okay. All right. So what do you want to
12 do with this witness?

13 SOLICITOR EPTING: Your Honor, the next stage I would
14 have him come around to our desk, see this picture, ask him
15 is this a exact copy of State's Exhibit One and then at
16 that point publish that to the screen.

17 THE COURT: I'd rather you not do that at this point
18 because I would not be able to explain to the ladies and
19 gentlemen of the jury why I had the concern and why I had
20 us to go through this process. I'm not gonna have them sit
21 there and question my rulings and then me have to explain
22 it to them so I'd rather you come up with another idea for
23 using your exhibit and understanding what my concern is
24 with it in the future processes in this trial so that my
25 concern will alleviate it.

1 SOLICITOR EPTING: We could perhaps have him come down
2 in front of the jury with the paper, whatever questions or
3 whatever details Ms. Grove wishes to get out of him address
4 those.

5 THE COURT: I think that's a - Unless the defense
6 objects or has other concerns I think that's a reasonable
7 alternative.

8 MS. INZERILLO: No, Your Honor.

9 THE COURT: Okay. Let's do that. All right.

10 SOLICITOR EPTING: Thank you, Your Honor.

11 THE COURT: Anything else before we bring the jury in?

12 SOLICITOR EPTING: Nothing from the State, Your Honor.

13 MS. INZERILLO: No, Your Honor.

14 THE COURT: All right. Let's bring the jury in.

15 (JURY REENTERS COURTROOM AT 02:34 P.M..)

16 THE COURT: Is the State ready to continue?

17 SOLICITOR GROVE: Yes, Your Honor.

18 Your Honor, may I approach the witness?

19 THE COURT: Yes, ma'am.

20 DIRECT EXAMINATION - CONTINUES

21 ZACHARY CLEVELAND BY SOLICITOR GROVE:

22 Q. Mr. Cleveland, would you be able to stand here with
23 me in front of the jury so that they can look at the aerial
24 photograph of the Palmetto Sports Bar?

25 A. Yes, ma'am. Okay.

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1 THE COURT: Mr. Cleveland, when you go down there be
2 sure you speak up loud enough because you're gonna be
3 facing that way and this lady over here's got to be able to
4 hear you.

5 A. Yes, sir.

6 THE COURT: Thank you.

7 (WITNESS LEAVES WITNESS STAND.)

8 SOLICITOR GROVE: Thank you, Mr. Cleveland.

9 Q. Now, we're gonna stand to show the jury but can you
10 point out to the jury, without covering up the photo, about
11 where your car - your truck was parked that night?

12 A. My truck was parked in the back right here.

13 (WITNESS INDICATED ON EXHIBIT.)

14 A. In the very far end of the parking lot.

15 Q. Okay. And can you point out for the jury where you
16 were at the point where you were trying to pull out of the
17 parking lot?

18 A. Yes. I was parked over here and I backed out and then
19 I went to pull out of this entrance right here.

20 (WITNESS INDICATED ON EXHIBIT.)

21 Q. And can you point out to the jury where you stopped
22 your truck?

23 A. It was stopped somewhere in this area.

24 Q. And can you point out to the jury about where you
25 were shot?

1 A. In this same area of where my truck was stopped at.

2 Q. And can you point out to the jury where you and Bobby
3 Trade went after you both had been shot?

4 A. We laid in front of my truck close to the entrance.

5 Q. Okay. Thank you, Mr. Cleveland.

6 (WITNESS RETURNS TO WITNESS STAND.)

7 Q. And, Mr. Cleveland, have you reviewed a copy of the
8 surveillance video?

9 A. I have.

10 Q. Okay. And we have established you are pretty familiar
11 with the lay out of the Palmetto Sports Club. I'm handing
12 you an exhibit marked as State's Exhibit Two. Do you
13 recognize that?

14 A. I do.

15 Q. And what do you recognize it to be?

16 A. The video of me and my brother being shot.

17 Q. And how do you recognize that?

18 A. Because it's signed and dated.

19 Q. Who signed and dated it?

20 A. Me.

21 Q. And when did you sign and date that?

22 A. On the 15th.

23 Q. Okay. And did you sign and date it after you had
24 watched the video?

25 A. I did.

ZACHARY CLEVELAND: DIRECT BY SOLICITOR GROVE

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1 Q. Okay. Is it a fair and accurate depiction of what
2 happened on the night of December 13th?

3 A. Yes, ma'am, it is.

4 Q. Okay.

5 SOLICITOR GROVE: Your Honor, at this time the State
6 seeks to publish - to enter State's Exhibit Three into
7 evidence.

8 MS. INZERILLO: Your Honor, I would object to this
9 piece of evidence coming in through this witness. I don't
10 believe he can provide the proper foundation as this is a
11 piece of evidence that came through a surveillance -

12 THE COURT: All right. The lawyers want to approach a
13 moment? You all approach.

14 MS. INZERILLO: Okay.

15 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
16 OF THE JURY AT 02:40 P.M..)

17 THE COURT: I will allow the video to be introduced
18 into evidence subject to the owner being called later.

19 SOLICITOR GROVE: Thank you, Your Honor.

20 (WHEREUPON, STATE'S EXHIBIT NUMBER THREE, IDENTIFIED
21 AND MARKED, RECEIVED INTO EVIDENCE.)

22 Your Honor, at this time the State seeks to publish
23 State's Exhibit Three to the jury.

24 THE COURT: All right, subject to the objection I'll
25 allow it.

1 SOLICITOR GROVE: For the record State's Exhibit Three
2 is on the screen.

3 Mr. Cleveland, please watch Exhibit Three.

4 (STATE'S EXHIBIT NUMBER THREE PUBLISHED TO THE JURY AT
5 02:40 P.M..)

6 Q. Mr. Cleveland, do you recognize anybody on this video?

7 A. I do.

8 Q. Who do you recognize?

9 A. Myself, Becca Shelly, and Jane Jolley.

10 Q. And about where are you standing?

11 A. In the middle in between the two females on the left
12 of the screen.

13 Q. Okay.

14 A. Or in the middle of the screen.

15 Q. Mr. Cleveland, do you recognize anybody else in this
16 video right now?

17 A. I do.

18 Q. Who do you recognize?

19 A. Rich Hinson.

20 Q. Who is Rick Hinson?

21 A. A friend who is also known as Lil Rick.

22 Q. Okay. And what is he wearing?

23 A. He's the one closest to everyone wearing a blue shirt
24 and jeans.

25 Q. Okay. And he's at the bottom. Where is he on the

ZACHARY CLEVELAND: DIRECT BY SOLICITOR GROVE

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1 screen?

2 A. Bottom right corner.

3 Q. Okay. Do you recognize the man in the white shirt?

4 A. Yes. That's Richard.

5 Q. Okay. Who is Richard?

6 A. He is the owner of Palmetto.

7 Q. Okay. At this point who's walking to the truck?

8 A. Me and my cousin Logan.

9 Q. Okay. Where is the truck?

10 A. It's in the back right corner. The only vehicle in
11 the right corner of the video.

12 Q. So what's happening at this point?

13 A. I'm tellin Logan to get in the vehicle and Richard
14 and Lil Rick and Justin Faile is in the video now too.
15 They're just standing there doing I don't know.

16 (STATE'S THREE CONTINUES TO BE PUBLISHED TO JURY.)

17 Q. Mr. Cleveland, who's walking out towards the truck
18 at this point?

19 A. Samuel Fitcher.

20 Q. Okay. Is anybody else walking out towards the truck?

21 A. Richard the owner of the bar.

22 Q. Okay. Why was he walking out to the truck?

23 A. Because he was trying to intervene -

24 MS. INZERILLO: Objection to speculation.

25 THE COURT: I sustain the objection.

1 BY SOLICITOR GROVE:

2 Q. So at this point can you describe what's going on
3 that night?

4 A. Richard is telling Logan he needs to get in the truck
5 and leave. And I'm telling him please let's go, come on
6 I'm ready to go, get in the truck. Samuel Fitcher is
7 standing there still running his mouth to Logan and Logan's
8 doing the same to him and that's what's going on right now.

9 Q. Okay. At this point who's the man in the white shirt?

10 A. That's Richard.

11 Q. Okay. And he walked away from your truck?

12 A. Yes he did.

13 Q. Okay. Are you and Logan both in the truck at this
14 point?

15 A. We are.

16 Q. Can you point out who's on the screen at this point?

17 A. Justin Faile and Samuel Fitcher.

18 Q. Who's who?

19 A. Justin Faile is the one that walked up and put his
20 hood on and he's coming up behind Samuel Fitcher which is
21 at the top right of the screen.

22 Q. So what's happening right here?

23 A. Samuel Fitcher is attacking my cousin through my
24 truck window.

25 Q. And who's standing at the front of your truck?

ZACHARY CLEVELAND: DIRECT BY SOLICITOR GROVE

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1 A. That would be Justin Faile.

2 Q. So at this point what's happening?

3 A. I got out of the truck and was coming to get Samuel
4 Fitcher off of my cousin.

5 Q. Okay. At this point what's happening here?

6 A. Justin Faile is standing there with a pistol in my
7 face.

8 Q. And you're at the back of your truck?

9 A. Yes, ma'am.

10 Q. Okay. And who is this in the right hand corner?

11 A. That's my brother.

12 Q. What is he wearing?

13 A. A white shirt.

14 Q. Okay. So at this point what happens?

15 A. Justin sees him before he gets there and he turns
16 and started shootin and Bobby attacks him and tackles him
17 to the ground.

18 Q. Okay. Right there, what happened right here?

19 A. Gun shots were going everywhere. Just repeat fires
20 and I guess everybody was panicking.

21 Q. And what's going on over by the truck? I know that
22 this happens a lot off camera but.

23 A. I'm going towards Justin Faile which he's done shot
24 my brother and I'm trying to get the gun from him so that
25 it stops shootin.

1 Q. Had you reached him at this point?

2 A. I don't believe so.

3 Q. What's happening at this point?

4 A. I'm wrestling with him to get the gun from him.

5 Q. At this point had shots been fired?

6 A. Yes, ma'am.

7 Q. And was he continuing to fire?

8 A. He was and not while I was holding him trying to get
9 the gun from him.

10 Q. Does he still have the gun at this point?

11 A. He does.

12 Q. Are people kicking and hitting him at this point?

13 A. Yes I believe so.

14 Q. And let me clarify. By that I mean are people
15 kicking and hitting Justin Faile at this point?

16 A. I believe so yes.

17 Q. Are they kicking and hitting him and trying to get
18 the gun away?

19 A. Yes they are.

20 Q. And he still has the gun at this point?

21 A. Yes he does.

22 Q. Does he still have the gun at this point?

23 A. Yeah I believe so. He started shootin again after
24 he laid down and I was on top of him. He started firing
25 again as he laid on top of the gun and that's when he shot

ZACHARY CLEVELAND: DIRECT BY SOLICITOR GROVE

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1 me in my foot.

2 (STATE'S EXHIBIT THREE CONTINUES TO BE PUBLISHED.)

3 Q. At this point has Logan gotten the gun away from him?

4 A. I'm not sure. I can't really tell.

5 Q. At this point is he still shooting?

6 A. That's when he shot me in my foot. He started firing
7 again.

8 Q. Did you get shot in one part of your body earlier?

9 A. I did.

10 Q. Which part did you get shot in earlier?

11 A. In my upper leg whenever I got on top of him the first
12 time to get the gun from him after he had shot my brother.

13 Q. So at this point he starts shooting again?

14 A. Yes, ma'am.

15 Q. And what happened to you then?

16 A. I was shot in my left foot.

17 Q. Okay. At this point do you recognize where you are?

18 A. I believe I'm towards the front of my truck.

19 Q. And where are you going?

20 A. To check on my brother Bobby.

21 Q. Okay. So at this point you left. Justin is where?

22 A. He's still on the ground where the people are
23 standing.

24 Q. Okay. At this point what just happened?

25 A. Logan got the gun from him.

1 Q. How do you know that?

2 A. Because I seen him pick his arm up like this ---

3 (WITNESS DEMONSTRATED.)

4 A. --- and say I got the gun and I remember seeing
5 that.

6 Q. Okay. And what did you say at that point?

7 A. Put the gun on the ground.

8 Q. And where are you at this point?

9 A. I believe I'm laying with my brother.

10 Q. Okay. Mr. Cleveland, what were you wearing that
11 night?

12 A. Tennis shoes, sweat pants, and a long sleeve shirt I
13 believe.

14 Q. Would your recognize the clothes if you were shown
15 them again?

16 A. I would.

17 SOLICITOR GROVE: May I approach, Your Honor?

18 Q. I'm showing you a box marked as State's Exhibit Eight
19 right now. And within this are two items marked as State's
20 Exhibit A and State's Exhibit B. This is marked as State's
21 Exhibit A and this is marked as State's Exhibit B.

22 And just to clarify, this box is marked as State's
23 Exhibit Eight as a whole and the two items that are being
24 entered are State's Exhibit A and State's Exhibit B.

25 The State would ask to enter State's Exhibit A and

ZACHARY CLEVELAND: DIRECT BY SOLICITOR GROVE

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1 State's Exhibit B.

2 THE COURT: There is no foundation yet to have them
3 admitted through this witness.

4 SOLICITOR GROVE: Yes, Your Honor.

5 Q. Mr. Cleveland, do you recognize State's Exhibit Eight
6 A?

7 A. I do.

8 Q. What does this appear to be?

9 A. My shoe.

10 Q. And how do you know that to be your shoe?

11 A. It was a gift from my wife. I've only worn them
12 like twice.

13 Q. Okay. So you recognize State's Exhibit A as?

14 A. My right shoe.

15 Q. Okay. And when were you wearing these last?

16 A. At the night I was shot at Palmetto Sports Bar.

17 Q. Okay. And do you recognize State's Exhibit B?

18 A. Yes, ma'am, I do.

19 Q. And what do you recognize these as?

20 A. My sweat pants I was wearing the night I was shot.

21 Q. And how do you know these are the same sweat pants
22 you were wearing?

23 A. Because there is a bullet hole in the leg where I
24 was shot at.

25 Q. And were these your pants before that? You wore these

ZACHARY CLEVELAND: DIRECT BY SOLICITOR GROVE

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1 before

2 A. Yes, ma'am, I had.

3 Q. Okay.

4 SOLICITOR GROVE: The State moves to enter State's
5 Exhibit Eight A and State's Exhibit Eight B into evidence.

6 MS. INZERILLO: No objection.

7 THE COURT: Without objection be State's Eight A and
8 Eight B.

9 (WHEREUPON, STATE'S EXHIBIT EIGHT A AND EIGHT B
10 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

11 SOLICITOR GROVE: And the State would move to publish
12 State's Exhibit Eight A and Eight B to the jury.

13 THE COURT: Just as long as you don't hand it to them
14 that's fine.

15 SOLICITOR GROVE: Yes, Your Honor.

16 (SOLICITOR PUBLISHED STATE'S EXHIBIT EIGHT A AND B TO
17 THE JURY.)

18 Q. Mr. Cleveland, you said that this was the shoe you
19 were wearing that night?

20 A. Yes, ma'am.

21 Q. And it's which foot did you wear it on?

22 A. That's my right shoe. I was shot in my left foot.

23 Q. Okay. And, Mr. Cleveland, you said you recognized
24 these as the pants you were wearing that night?

25 A. Yes, ma'am, I do.

ZACHARY CLEVELAND: DIRECT BY SOLICITOR GROVE
CROSS BY MS. INZERILLO

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1 Q. Okay. And - Let me hold these up. Which side of
2 the pants are facing you?

3 A. The back side.

4 Q. Okay. And so which side of the pants are these?

5 A. That's the front.

6 Q. Okay. So is it fair to say this is your right?

7 A. Yes, ma'am.

8 Q. And what is that?

9 A. That's a gun shot and blood stain.

10 SOLICITOR GROVE: Nothing further, Your Honor.

11 THE COURT: Please answer any questions the defense
12 may have.

13 CROSS-EXAMINATION

14 ZACHARY CLEVELAND BY MS. INZERILLO:

15 Q. So, Mr. Cleveland, let me make sure I'm getting this
16 right. On this evening you're at a party for your
17 brother's then girlfriend; is that correct?

18 A. Yes, ma'am.

19 Q. And everything's going well until essentially that
20 girl ask you to take Logan Brooks home.

21 A. Yes, ma'am.

22 Q. Because essentially that girl tells you Logan Brooks
23 is causing some problems at the party.

24 A. She does.

25 Q. He got in a fight with a guy?

1 A. He did.

2 Q. Punched the guy out?

3 THE COURT: Sir, if you would, the lady beside you
4 is a court reporter, she's taking down everything that's
5 said. You're gonna need to say the words not shakes of
6 your head. She cannot write that down as well as that last
7 person back there in that jury she needs to be able to hear
8 you as well ---

9 A. Yes, sir.

10 THE COURT: --- so speak up. Thank you.

11 SOLICITOR GROVE: Objection. He said he didn't see
12 the actual altercation with Logan that night.

13 MS. INZERILLO: He can testify as to what he
14 understands.

15 THE COURT: Well I'm sorry. I was instructing the
16 jury. I didn't even get to hear the response so I cannot
17 rule on the objection when I did not hear the response.

18 MS. INZERILLO: I ask him -

19 THE COURT: Okay. And so you want to ask the question
20 again?

21 MS. INZERILLO: Yes, Your Honor.

22 THE COURT: Okay.

23 Q. He punched the guy out?

24 A. The guy I heard from Becky Shelly yes.

25 Q. Okay. And so she ask you to take Logan home?

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1 A. She ask me to come get him yes, ma'am.

2 Q. Okay. And you weren't drinking before you got to the
3 party but you were drinking while you were there; is that
4 right?

5 A. Yes, ma'am.

6 Q. In fact you told officers that took your statement
7 that night that you had become extremely intoxicated while
8 you were there.

9 A. No I did not.

10 Q. You didn't say that to officers?

11 A. Not that I recall no.

12 Q. Would it refresh your recollection to see a copy of
13 that statement that you gave the officers?

14 A. I - Yeah.

15 MS. INZERILLO: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes, ma'am.

18 MS. INZERILLO: Permission to approach the witness
19 again?

20 THE COURT: Yes, ma'am.

21 Q. I'll show you that one as well. Okay.

22 Now do you recall telling the officers you were
23 extremely intoxicated that evening?

24 A. No, ma'am, because it says Logan was outside extremely
25 intoxicated. I had been drinking and I was drunk but I was

1 not extremely intoxicated to where I couldn't clarify what
2 had happened to me that night.

3 Q. Okay, I'm gonna read from this statement that you
4 just reviewed. Correct?

5 A. Yeah.

6 Q. And this statement was given to Detective Motts that
7 morning at 6:00 a.m.; is that correct?

8 A. I believe so yes.

9 Q. Okay. And I gave you a second statement dated 12/19
10 which was five days later that you had a chance with
11 Detective Neely to review that statement and make any
12 changes or corrections; is that correct?

13 A. Yes, ma'am, it is.

14 Q. And Detective Neely is the guy sitting right behind
15 the solicitor's table?

16 A. Yes, ma'am, he is.

17 Q. Okay. So he gave you a chance to change, amend, take
18 out, add anything; is that correct?

19 A. Yes he did.

20 Q. Okay. Said you had not been drinking prior to going
21 but became extremely intoxicated once there; is that
22 correct? Talking about you?

23 A. I started drinking and was drunk, yes.

24 Q. Okay. And in fact it says you played several games
25 of pool with the man who shot him.

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1 A. Yes.

2 Q. You also did tell that to detectives?

3 A. Yes, ma'am.

4 Q. Okay. And you did testify here today the man who
5 shot you?

6 A. Is Justin Faile.

7 Q. Okay. At what point did you learn Justin Faile's
8 name?

9 A. Uh - After the police had come and took our reports
10 and told me who he was.

11 Q. Okay. So the night that you're talking to Detective
12 Motts you didn't know who Justin Faile was?

13 A. I did not.

14 Q. In fact throughout this entire statement you keep
15 saying the guy who shot me, that guy. You don't know who
16 Justin Faile is; is that correct?

17 A. Yes, ma'am, I don't know.

18 Q. But today you're very sure Justin Faile is sitting
19 at the defense table, you can point him out in the video,
20 all that?

21 A. Yes, ma'am, I can.

22 Q. Okay. And it's a year later?

23 A. Yeah.

24 Q. Now, the day - Let me back up. The statement that
25 you gave to Detective Motts you continue to say that an

1 unknown male with a thick dark beard ran up to the
2 passenger side of the truck and struck Logan with a closed
3 fist; is that correct?

4 A. Yes, ma'am.

5 Q. Okay. And you testified that you now know that person
6 as Sam Fitcher?

7 A. Yes, ma'am.

8 Q. You didn't tell that detective anything about Sam
9 Fitcher mouthing off, jawing from the middle of the parking
10 lot, anything about that; is that correct?

11 A. I don't recall.

12 Q. Okay. It's not in your statement that you gave on
13 December 14th.

14 A. I'm sorry. What?

15 Q. That its not in your statement that you gave on
16 December 14th.

17 A. I don't understand what you're saying.

18 Q. In the statement that you just reviewed - - -

19 A. Oh, yes, ma'am.

20 Q. None of that is in your statement about Sam Fitcher
21 mouthing off, about having to try - Logan mouthing off, Sam
22 Fitcher mouthing off before you guys get in the truck, none
23 of that's in there.

24 A. Okay.

25 Q. Is that correct?

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1 A. Yes.

2 Q. Okay. And when you review it with Detective Neely
3 you add all that in which is five days later; is that
4 correct?

5 A. Yes.

6 Q. But that's your testimony here today?

7 A. Yes it is.

8 Q. And your statement continues that another unknown
9 subject who today you're sure is Justin Faile ran up and
10 pulled out a gun.

11 A. Yes, ma'am.

12 Q. That's what you said at the time. You advise that
13 your brother Bobby ran up and tackled the gunman and that
14 they all started to wrestle when the gun started to
15 discharge. Is that what you said at the time?

16 A. I don't believe so, no.

17 Q. Okay. Would you like to review your statement again?

18 A. Yes.

19 Q. Okay.

20 (WITNESS REVIEWS DOCUMENT.)

21 A. All right.

22 Q. That's what it says. And when you met with Detective
23 Neely on the 19th - -

24 THE COURT: I'm sorry, I didn't hear a response.

25 MS. INZERILLO: I'm sorry.

1 A. Yes.

2 Q. And when you met with Detective Neely five days later
3 the only thing about that interaction that you changed is
4 to clarify that that person pulled out a gun when you came
5 around the truck; is that correct?

6 A. And that I was already outside when Becky Shelly
7 approached me to come get Logan because I was fixin to
8 leave.

9 Q. Okay. But those were the only two things you changed?

10 A. Yes, ma'am.

11 Q. Okay. So all this stuff you just testified today
12 about my hands were up I was like whoa dude stop that, none
13 of that's in your statement.

14 All right. And this was a statement you gave four
15 hours after it happened; is that correct?

16 A. Yes, ma'am.

17 Q. All right. Now, let's talk a little bit more about
18 your testimony today. Your testimony today is Sam Fitcher
19 walks up to the car after sort of jawing with your cousin
20 Logan. And I believe you used the word attacked him in the
21 truck; is that correct?

22 A. Yes, ma'am.

23 Q. Okay. And when you saw that you jumped out of the
24 driver's side of the truck and came around the truck; is
25 that right?

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1 A. I put my truck in park and got out and come around
2 the back side of my truck.

3 Q. And you're drinking that night. Right?

4 A. Yes I was.

5 Q. Probably shouldn't have been driving?

6 A. No, ma'am, I shouldn't have.

7 Q. Okay. So you come around the back of the truck
8 towards the situation?

9 A. Yes, ma'am.

10 Q. Sam Fitcher didn't punch you?

11 A. No he did not.

12 Q. And your testimony today is that you walk up with
13 your hands in the air say hey man what are you doing?

14 A. No, ma'am.

15 Q. That's what you just testified to on direct; is that
16 correct?

17 A. No.

18 Q. Is that not what you just testified to?

19 A. No, ma'am.

20 Q. Do you not recall testifying to that about half an
21 hour ago?

22 A. Yes. I come around my truck and when I did Justin
23 Faile was standing there with the pistol in my face already
24 and that's when I had my hands up.

25 Q. Okay.

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1 A. It had nothing to do with Samuel Fitcher in my
2 truck window. It had to do with Justin Faile having a gun
3 in my face is the reasons my hands are up in the air.

4 Q. Okay. So when you came around the truck and you saw
5 the gun in your face, you didn't stop?

6 A. Yes I did. I stopped and put my hands up.

7 Q. Okay. So your testimony today is that you put your
8 hands up?

9 A. I put my hands up.

10 MS. INZERILLO: Your Honor, may we publish the video
11 to the jury?

12 THE COURT: All right.. Can we get the lights?
13 Lights?

14 (COURTROOM LIGHTS DIMMED.)

15 MS. INZERILLO: Now this fight doesn't involve you;
16 is that right?

17 A. No it does not.

18 (VIDEO PUBLISHED TO JURY AT 03:15 P.M..)

19 Q. Now this is you racing around the back of the truck.
20 Right?

21 A. Yes, ma'am.

22 Q. You go forward. You go forward, he's got the gun out.
23 Right?

24 A. Yes he does.

25 Q. He doesn't shoot at you at this point?

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1 A. No, ma'am, he doesn't.

2 Q. Okay. He doesn't shoot over your head?

3 A. No.

4 Q. He doesn't shoot your feet?

5 A. No he does not.

6 Q. You are not shot at or hit at any point in this
7 interaction between you and Mr. Faile' is that correct?

8 A. At this moment on the video no, ma'am, I was not.

9 Q. Okay. You go forward. You're going towards him; is
10 that right? Watch the video. I'll play it again.

11 (VIDEO CONTINUES TO PLAY.)

12 Q. You're going towards him? Towards him, towards him,
13 am I correct?

14 A. Yeah.

15 Q. Towards him? Am I correct?

16 A. No you're not.

17 Q. Okay. You are going towards him. What is Mr. Faile
18 doing? Is he going backwards?

19 A. He is.

20 Q. You're going towards him still. Am I correct on
21 this?

22 A. Yes you are.

23 Q. He still has the gun in your face; is that right?

24 A. Yes he does.

25 Q. And you're still going towards him?

- 1 A. Yes, ma'am.
- 2 Q. Am I correct?
- 3 A. Yes.
- 4 Q. Okay. And he's still going backwards. Am I correct?
- 5 A. Yes.
- 6 Q. This is Bobby Trader?
- 7 A. Yes, ma'am.
- 8 Q. Okay. I'm gonna back up again.
- 9 You race around. Is this Bobby Trader?
- 10 A. Yes, ma'am.
- 11 Q. He has just darted from here to here; is that correct?
- 12 A. Yes, ma'am.
- 13 Q. At the same time that you have raced from behind
- 14 the truck; is that correct?
- 15 A. Yes, ma'am.
- 16 Q. All right. Same thing again. He's running; is that
- 17 correct? And you're still moving forward?
- 18 A. Yes.
- 19 Q. Same?
- 20 A. Yeah.
- 21 Q. He's running, you're moving forward?
- 22 A. Yeah.
- 23 Q. Justin's moving back; is that correct? The person
- 24 you now know as Justin.
- 25 A. Yes, ma'am.

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1 Q. Okay. Same?

2 A. Yes, ma'am.

3 Q. Same?

4 A. Yes.

5 Q. Are you shot at this point?

6 A. No, ma'am.

7 Q. Is Bobby shot at this point?

8 A. No, ma'am.

9 Q. Has Bobby just jumped on Justin Faile?

10 A. He did.

11 Q. Are you still here? Are you still here?

12 A. Yes, ma'am.

13 Q. On the video. So you are still in front of Justin
14 Faile; is that correct?

15 A. Yes, ma'am.

16 Q. Logan Brooks when this is going on is he inside the
17 truck or outside of the truck?

18 A. As far as I can remember he was still inside the
19 truck.

20 Q. Is this him right here with the white shirt?

21 A. I believe so, yes.

22 Q. Okay. Your recollection of this night, Mr. Cleveland,
23 does your recollection come from the video or does it come
24 from your memory?

25 A. It comes from my memory.

1 Q. Okay. How much of this night do you recall from
2 your memory and how much do you recall from watching
3 this video?

4 A. I recall most of what I said the night it happened
5 from everything I could remember cause I had been shot. I
6 was delirious. I had been shot full of pain medication, I
7 had been drinking, and I was in shock to be honest with
8 you. And I didn't watch this video until probably seven or
9 eights months after I had been shot.

10 Q. Okay. So all of the details that you recall ---

11 A. Yes, ma'am.

12 Q. --- that you did not tell the police that night,
13 do you recall from watching this video seven to eight
14 months later?

15 A. Most of them yes I do.

16 Q. Okay. So it's safe to say when you spoke to Detective
17 Motts and Detective Neely within a week of it that was your
18 recollection of the events?

19 A. That's when I could remember at the time, yes.

20 Q. Okay. Well I'm gonna let this play for a moment.

21 At this point everybody's off screen.

22 A. Yes, ma'am.

23 Q. Is that fair?

24 A. Yes, ma'am.

25 Q. Including you?

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1 A. Yes, ma'am.

2 Q. You, Logan, Bobby Trader, and Justin Faile are
3 somewhere not in this picture.

4 A. Yes, ma'am.

5 Q. Is that fair? Okay. Now, your testimony today is
6 that somewhere in this section and somewhere after that you
7 got third degree burns on your hand from grabbing his gun.

8 A. Yes, ma'am.

9 Q. Okay. Did you tell the doctor's at the time you got
10 third degree burns?

11 A. I mean it wasn't like a blister burn but it was a
12 burn from me holding - And no I did not tell the doctors.

13 Q. Do you understand what third degree burns are?

14 A. Yes I do.

15 Q. Okay. Are you aware that none of the doctors found
16 burns on your hands?

17 A. Yes.

18 Q. Now, at this point in the video you have now come
19 back into the screen; is that correct?

20 A. Yes, ma'am.

21 Q. You're part of this sort of glob of people; is that
22 right?

23 A. Yes, ma'am.

24 Q. All right. You're in this glob, Logan Brooks is in
25 this glog; is that correct?

1 A. Yes. But I didn't know that until I seen the video
2 afterwards.

3 Q. Fair enough. I'll give you that. Somewhere in this
4 glob is the person you now know as Justin Faile?

5 A. Yes, ma'am.

6 Q. Okay. Now, is it your testimony today that at this
7 point in the evening you have been shot in the thigh?

8 A. Yes, ma'am.

9 Q. All right. So your testimony a year later is that
10 at this point you are shot in the thigh?

11 A. Yes, ma'am.

12 Q. Okay. And you just testified that as a result of
13 being shot in the thigh you have nerve loss, running and
14 sprinting and that type of thing.

15 A. The end of my foot too is.

16 Q. You're not a runner by trade?

17 A. I'm sorry.

18 Q. You do construction?

19 A. I'm sorry, what?

20 Q. You do construction; is that correct?

21 A. Yes, ma'am.

22 Q. Okay. All right, so you're in this blur of people
23 right here?

24 A. Yes, ma'am.

25 Q. So in this group of people Justin, one, two, three,

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1 four, five, six, another person, one, two, three. You're
2 testimony is punching someone like this ---

3 (ATTORNEY INZERILLO PUNCHES FIST INTO PALM OF HAND.)

4 Q. --- is the way to divest a gun from someone who's on
5 the ground. That's your testimony?

6 A. No, ma'am.

7 Q. Cause let me back it up, I want to make sure we're
8 all clear on what we're seeing. One, two, three, four.

9 Are we clear on that? One, two, three.

10 (ATTORNEY INZERILLO PUNCHES FIST INTO PALM OF HAND.)

11 Q. That's what we're seeing on this video; is that
12 correct?

13 A. Yes, ma'am.

14 Q. Now your testimony is that was to get the gun away
15 from Justin Faile. Correct?

16 A. Yes, ma'am.

17 Q. Okay. One, two, - Oh, we're continuing. I'm sorry.

18 Let me restart my count again. Oh here's kicking one.

19 Now you're in this group; is that correct?

20 A. Yes I'm on top of Justin Faile.

21 Q. Okay. With a hurt thigh?

22 A. Yes.

23 Q. Okay.

24 A. I didn't know at the time that I was shot in my thigh.

25 Q. Okay. So here he's in this and in order to get the

1 gun away from him we've got kicking one, two, three. Now
2 we have four people come in all standing; is that correct?

3 A. It appears so, yes.

4 Q. Okay. We now have a fifth person coming in; is that
5 correct?

6 A. Yes.

7 Q. Okay. Now, a sixth person coming in. We've got
8 someone here punching; is that correct?

9 A. Yes, ma'am.

10 Q. Okay. And here more people are coming; is that
11 correct?

12 A. Yes.

13 Q. You see these people here that I'm circling around?

14 A. Yes, ma'am, I do.

15 Q. And these people here ---

16 A. I do.

17 Q. --- that I'm circling around?

18 A. Yes.

19 Q. Do they appear to be assisting?

20 A. No, ma'am. One does, the others don't.

21 Q. Assisting how? He's talking on the phone.

22 A. I just see Richard walking towards us and the other
23 group of people leaving.

24 Q. Okay. So your testimony is when people are running
25 that's a second set of shots?

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1 A. Yes. That's when he shot me in my foot.

2 Q. Okay. And this is where you get shot in your foot.

3 And at this point more fighting; is that correct?

4 A. Yes, ma'am.

5 Q. More kicking, one, two, punching here, kicking here.

6 You're in this malay still; is that correct?

7 A. Yes. I'm laying on top of him right now.

8 Q. Okay. How can you tell that from this video?

9 A. Because I wasn't standing up kicking him at any
10 point. I was wrestling with him the whole time and had my
11 hand on the gun and one arm around his neck trying to get
12 him down.

13 Q. Okay. So you just testified that your entire
14 memory of this incident comes from the two statements you
15 just gave to the detectives; is that right?

16 A. Yeah.

17 Q. And now where in these statements do you mention
18 holding him down by the neck and being on top of him and
19 fighting?

20 A. To be completely honest with you they were taking
21 my statement and stuff when I was drunk and shot up full of
22 morphine and so.

23 Q. Okay.

24 A. I could see how it could be completely different or
25 not even what I could recall because I was in shock when I

1 gave the statement. I had just been shot.

2 Q. So five days later when Detective Neely came to you
3 and ask you to review the statement and to make any changes
4 ---

5 A. Yeah.

6 Q. --- you didn't change any of those details. You
7 didn't add any of those details; is that right?

8 A. No I didn't.,

9 Q. Okay. You didn't add any details saying look
10 Detective Neely, I was on top of him, I never stood up and
11 kicked him, anything like that?

12 A. Yes, ma'am.

13 Q. Okay. Now this beating has gone on approximately
14 ninety seconds to two minutes; is that correct?

15 A. Yes, ma'am.

16 Q. At this point is anyone standing?

17 A. Yes, ma'am.

18 Q. Just Ms. Shelly?

19 A. Yes I believe that's her.

20 Q. Is anyone standing and kicking him?

21 A. I believe so, yes.

22 Q. Do you see anyone standing?

23 A. Just Ms. Shelly.

24 Q. Did she ever kick him?

25 A. Ms. Shelly?

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1 Q. Uh-huh.

2 A. No.

3 Q. Okay. Is this the point in the video in which
4 someone actually gets the gun away from Mr. Faile?

5 A. I believe so.

6 Q. This is the point in which you limp away; is that
7 correct?

8 A. Yes it is.

9 Q. Okay. This is the point in which you get shot in
10 the foot?

11 A. No I was already shot in the foot at the time.

12 Q. So at this point two - well over two minutes later
13 is when you stop?

14 A. Yes.

15 Q. Is that right?

16 A. Yes.

17 Q. You walk away?

18 A. Yes I do.

19 Q. And you walk over to where Bobby Trader is?

20 A. Yes, ma'am.

21 Q. Is that correct? So when the police get there and
22 they find you next to Bobby Trader that's where you
23 maneuvered yourself to be?

24 A. Yes, ma'am.

25 Q. Okay. Now, this is the point in which Logan Brooks

- 1 gets the gun; is that correct?
- 2 A. I believe so, yes.
- 3 Q. Grabs it and he holds it up in the air?
- 4 A. Yes, ma'am.
- 5 Q. Is that correct? And that's because the gun was
- 6 under Mr. Faile?
- 7 A. Yes.
- 8 Q. Now, were you shot in the left or the right foot?
- 9 A. In the left foot.
- 10 Q. In the left foot?
- 11 A. Yes, ma'am.
- 12 Q. But you identified this as a bullet hole?
- 13 A. No I did not.
- 14 Q. Did you not identify this when Ms. Grove was
- 15 questioning you?
- 16 A. Yes I did and I said that's my right shoe. I was
- 17 shot in the left foot.
- 18 Q. Okay. When she ask you how you recognized it did
- 19 you not say that's the bullet hole in my shoe?
- 20 A. No. I said that's my shoe. She never ask me if I
- 21 could see a bullet hole in the shoe.
- 22 Q. You testified on direct that you were shot in the
- 23 thigh and it went through your leg; is that correct?
- 24 A. Yes, ma'am.
- 25 Q. How tall are you?

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1 A. About five, ten; five, eleven.

2 Q. How much do you weigh?

3 A. As of right now I weigh about 2-0-5.

4 Q. These are the pants you were wearing that night?

5 A. Yes, ma'am.

6 Q. When you were in the hospital you were released the
7 next morning?

8 A. Yes, ma'am.

9 Q. They didn't have to do any surgery on you?

10 A. No, ma'am, they didn't.

11 Q. They didn't have to do anything that required any
12 regional or general anesthesia?

13 A. No, ma'am.

14 Q. This isn't the first time you've been charged with
15 getting into a fight; is that correct?

16 SOLICITOR EPTING: Your Honor, I'm going to object to
17 that.

18 THE COURT: I'll sustain the objection unless there is
19 a foundation.

20 MS. INZERILLO: May we approach, Your Honor.

21 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
22 THE JURY AT 03:37 P.M..)

23 THE COURT: All right, I'll sustain the State's
24 objection as to the question.

25 You want to rephrase the question?

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1 MS. INZERILLO: Thank you, Your Honor.

2 BY MS. INZERILLO:

3 Q. Mr. Cleveland, have you ever been convicted or do
4 you have a conviction of a crime that carries over a year?

5 A. I don't think so, no.

6 Q. Do you have a conviction out of North Carolina for --

7 MS. INZERILLO: I beg the Court's indulgence, Your
8 Honor.

9 (PAUSE.)

10 SOLICITOR EPTING: May we approach again? I
11 apologize.

12 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
13 THE JURY AT 03:37 P.M..)

14 BY MS. INZERILLO:

15 Q. Okay, Mr. Cleveland, let me ask you this.

16 Do you have a conviction from North Carolina for
17 assault inflicting serious injury aggravated physical
18 abuse?

19 A. Yes, ma'am, I do.

20 Q. Okay.

21 MS. INZERILLO: I have no further questions.

22 THE COURT: Any redirect limited to what she went
23 into?

24 SOLICITOR GROVE: Nothing from the State, Your Honor.

25 THE COURT: All right. Thank you, sir, you may step

1 down.

2 (WITNESS LEAVING WITNESS STAND.)

3 THE COURT: All right, Ladies and gentlemen, you've
4 been sitting over there for quite some time. We're gonna
5 take a short break. I need to remind you not to have any
6 discussions among yourselves about anything involved in the
7 case but you may retire back to the jury deliberation room
8 and we'll get back here shortly.

9 (JURY EXITS COURTROOM AT 03:39 P.M..)

10 THE COURT: We're gonna step down for just a minute
11 but before we reconvene will the lawyers step back to the
12 chambers after - before you come back to figure out the
13 scheduling?

14 SOLICITOR EPTING: Certainly, Your Honor.

15 (COURT IN RECESS AT 03:40 P.M.)

16 (COURT BACK IN SESSION AT 03:54 P.M..)

17 (WHEREUPON, COURT'S EXHIBIT ONE IDENTIFIED AND MARKED,
18 RECEIVED INTO EVIDENCE.)

19 THE COURT: You may be seated.

20 (WHEREUPON, STATE'S EXHIBIT NUMBER NINE, PREMARKED FOR
21 IDENTIFICATION.)

22 THE COURT: You ready to call the next witness?

23 SOLICITOR EPTING: I believe we are, Your Honor.

24 THE COURT: All right. Well let's bring the jury back
25 in.

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1 (JURY REENTERS COURTROOM AT 03:56 P.M..)

2 THE COURT: Is the State ready to call their next
3 witness?

4 SOLICITOR EPTING: We are, Your Honor. As the State's
5 next witness the State calls Doctor Heidi Weilbach.

6 THE COURT: If you would just come right up here at
7 the Clerk and she will swear you in.

8 MADAM CLERK: Please raise you right hand, place your
9 left on the Bible.

10 (WHEREUPON, HEIDI WEILBACH,
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 MADAM CLERK: Thank you. You may have a seat.

13 THE COURT: Please have a seat in the witness stand.

14 DIRECT EXAMINATION

15 DOCTOR HEIDI WEILBACH BY SOLICITOR EPTING:

16 Q. Good afternoon.

17 A. Afternoon.

18 Q. Could you please state your name for the record?

19 A. Yes. I'm Heidi Weilbach.

20 Q. And how are you occupied?

21 A. I'm a general surgeon in Charlotte, North Carolina.

22 Q. And how long have you been a general surgeon?

23 A. I have been in practice ten years.

24 Q. What center do you work at?

25 A. I work at CMC Main Hospital in CMC University

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1 Hospitals.

2 Q. And you're obviously a doctor; is that correct?

3 A. That's correct.

4 Q. What if any formal education did you have to undergo
5 to become a doctor?

6 A. Four years of college, four years of medical school,
7 and then five years of general surgery training.

8 Q. Did you have any additional training outside of that
9 to become specialized?

10 A. No. I went straight through to general surgery and
11 then started practice after my residency.

12 Q. And what did your residency involve?

13 A. Approximately fifteen or sixteen months of intensive
14 trauma specific general surgery training. And then further
15 education in all aspects of general surgery so breast
16 surgery, colon surgery, gallbladder, et cetera.

17 Q. So you have surgical training and expertise?

18 A. Yes.

19 Q. What about training in emergency medicine?

20 A. Emergency medicine no more trauma, surgical trauma.

21 Q. Surgical trauma - - -

22 A. Yes.

23 Q. Were you so employed December of 2013?

24 A. Yes.

25 SOLICITOR EPTING: Your Honor, at this time based upon

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1 her experience, her training, and her education I would ask
2 that she be declared an expert in the area of trauma and
3 medicine.

4 THE COURT: Trauma medicine.

5 Any objection to the witness being so qualified?

6 MS. INZERILLO: Your Honor, may we approach?

7 THE COURT: Uh-huh.

8 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
9 OF THE JURY AT 03:59 P.M..)

10 MS. INZERILLO: Your Honor, may I have the court's
11 permission to voir dire the witness?

12 THE COURT: Yes, ma'am.

13 CROSS-EXAMINATION

14 DOCTOR HEIDI WEILBACH BY MS. INZERILLO:

15 Q. Doctor Weilbach, what is encompassed in the definition
16 of trauma medicine?

17 A. With the Court's permission I suppose I'd like to
18 clarify that I'm an expert in trauma surgery. Trauma
19 surgery involves the surgical assessment of patients who
20 have been potentially critically injured or injured in a
21 potentially life threatening fashion. It involves
22 identifying their injuries, stabilizing their injuries,
23 assessing them for further injuries and then making an
24 appropriate disposition whether that's hospital admission,
25 further care by other specialist, or discharge home.

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1 Q. What is your job right now?

2 A. I am a general surgeon in private practice. I cover
3 trauma care at CMC Main Hospital as I have done for a
4 decade on the weekends.

5 Q. So your job is when someone is sent up to CMC you
6 assist whether they need trauma services or whether they
7 are handed off essentially to another doctor?

8 A. Right. We assess them when they arrive into the
9 emergency department. They - Somehow they've been triaged
10 by emergency medicine services according to well published
11 criteria. And then establish whether the suspicion from
12 EMS is warranted, whether the injuries truly are life
13 threatening, if so, respond and resuscitate patients. For
14 stable patients try to access them for other injuries. And
15 then make further dispositions as I explained earlier.

16 Q. In your job do you perform trauma surgery?

17 A. I do.

18 Q. And that is if surgery is needed at the point of
19 entry due to the trauma?

20 A. Correct.

21 Q. Okay. And if is not needed then your expertise would
22 dictate that you pass them on to something else?

23 A. It tends to be a little more complicated than that.
24 Most of trauma surgery is not entirely all surgical. We do
25 a lot of medicine and accessing and waiting for patients to

1 recover from non-surgical ailments. Non-surgical trauma
2 such as rib fractures or fractures that don't require
3 surgery so there is some medicine involved but as compared
4 to an emergency medicine physician who has broad training
5 in all aspects of all kinds of emergency medical and
6 surgical conditions my specific expertise is in the
7 surgical management of trauma patients and their subsequent
8 care.

9 Q. After the trauma is realized do you continue with the
10 patient?

11 A. The trauma service continues with the patient. My
12 involvement may end at the end of my shift but my
13 colleagues who arrive after my shift is over will continue
14 the care that I started, in the same way I assume care when
15 I arrive to continue what they had started.

16 Q. So your trauma care is within the confines of your
17 shift?

18 A. Yes.

19 Q. Okay.

20 MS. INZERILLO: Your Honor, subject to what Doctor
21 Weilbach has testified to, we would have no objection to
22 her testimony being limited to the confines of what she has
23 just explained. She has put forth a narrow - whereas it is
24 a wide job description she has I believe factually placed
25 herself in sort of a narrow time frame of the relation to

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1 the case so we don't have an objection to her
2 qualifications, however, we would have an objection to
3 possible testimony.

4 THE COURT: All right. The State have any objection
5 to her being qualified as a trauma surgeon?

6 SOLICITOR EPTING: No, Your Honor. I was going to
7 suggest that addition myself.

8 THE COURT: All right. Then, ladies and gentlemen, I
9 need to instruct you that normally a person cannot give
10 opinion testimony. Normally when a person testifies they
11 must testify as to what either they saw, heard, or sensed
12 by smell or something of that nature. However there is an
13 exception when someone is qualified because of education or
14 experience. They are permitted to give opinion in - they
15 are permitted to give their opinion in certain areas if the
16 court qualifies them that way.

17 This witness will be qualified in the area of trauma
18 as a trauma surgeon to give opinion testimony in that area.
19 That does not mean that you must accept the opinion, but it
20 is evidence for you to use anyway that you see fit and to
21 give it the weight and credibility you believe is
22 appropriate.

23 SOLICITOR EPTING: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 DOCTOR HEIDI WEILBACK BY SOLICITOR EPTING:

1 Q. Now, Doctor Weilbach, I believe in questioning by
2 Ms. Inzerillo you stated that part of your duties as a
3 trauma surgeon is diagnose some of the causes and diagnose
4 injuries; is that correct?

5 A. Correct.

6 Q. That's going to - Is it fair to say that's going to
7 inform your treatment?

8 A. Correct.

9 Q. Were you working in December of last year of 2013?

10 A. Yes.

11 Q. And at what facility were you working on the early
12 morning hours of December 14th and the late night hours of
13 December 13th?

14 A. I was working at CMC Main as a trauma surgeon.

15 Q. And did you have occasion to treat a patient by the
16 name of Bobby Trader?

17 A. I did.

18 Q. How did Bobby Trader come to your facility?

19 A. I'm sorry, the question for clarification, Mr.
20 Trader is the defendant or the plaintiff?

21 Q. The victim.

22 A. Okay. So the gentleman presented having sustained
23 several gun shot wounds in what we were told by
24 transporting medical EMS medical services had been a fight
25 in a bar.

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1 Q. And could you elaborate on the number of gunshot
2 wounds locations or would you rather have your report?

3 A. If I could see my report from that evening that would
4 be helpful.

5 SOLICITOR EPTING: I beg the Court's indulgence.

6 Your Honor, may we approach briefly?

7 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
8 OF THE JURY AT 04:07 P.M..)

9 SOLICITOR EPTING: Your Honor, may I approach the
10 witness?

11 Q. Doctor Weilbach, I'm gonna hand you what's been
12 marked State's Exhibit Nine. If you would please look over
13 that and flip through it.

14 (WITNESS COMPLIES.)

15 Q. Do you recognize - Well, look up at me when you are
16 done looking over it.

17 A. Okay.

18 Q. Do you recognize State's - State's Exhibit Nine?

19 A. Yes.

20 Q. What is State's Exhibit Nine?

21 A. It is the dictated History and Physical from the
22 patient's admission. He was known at the time as Baxter
23 trauma and admission history and physical is the medical
24 record calling a specific format of ours assessment of the
25 patient, his other medical issues, his injuries, and plan

1 of care.

2 Q. After having reviewed that, is that a fair and
3 accurate copy of that report?

4 A. Yes, this is correct.

5 SOLICITOR EPTING: Your Honor, at this time the
6 State would seek to enter State's Exhibit Nine into
7 evidence.

8 MS. INZERILLO: Your Honor, subject to the bench
9 conference.

10 THE COURT: Subject to the subject of the bench
11 conference it would be admitted as State's Nine.

12 (WHEREUPON, STATE'S EXHIBIT NUMBER NINE, IDENTIFIED
13 AND MARKED, RECEIVED INTO EVIDENCE.)

14 BY SOLICITOR EPTING:

15 Q. Now that you have the benefit of your report, Doctor,
16 could you please describe the injuries that you observed on
17 - if any on Mr. Trader the night that he came in for
18 treatment.

19 A. Certainly. Mr. Trader arrived with several gunshot
20 wounds. According to our assessment in the emergency
21 department we counted nine total injuries. All that means
22 is that there were nine injuries. It doesn't mean that
23 there were nine shots fired and just had nine injuries. We
24 found several around his left hip and left buttock.

25 And there was a gunshot wound to the abdomen that we

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1 were especially concerned about that would potentially
2 raise the possibility of needing an operation to address
3 the gunshot wound to the abdomen. So I identified nine
4 injuries, at least one of which was a concern for needing
5 further surgical treatment.

6 Q. Over the course and career of your career being a
7 trauma surgeon, have you had occasion to see gunshot
8 wounds?

9 A. Several times yes, sir.

10 Q. Several times. And so you determine where their shot
11 and how many times their shot; is that correct?

12 A. We determine where they're shot and how many injuries
13 are present.

14 Q. Gotcha. Cause that's gonna form your treatment later
15 on?

16 A. Correct.

17 Q. Looking at your report on the back and spine, did you
18 notice any gunshot wounds on his back?

19 A. There were three buttock wounds to the left buttock.
20 And there was a lateral injury which means a side on injury
21 to the left hip.

22 Q. What about the back and spine?

23 A. He in addition had another two gunshot wounds over
24 the left shoulder blade.

25 Q. Shoulder blade? Is that the scapula?

1 A. The scapula is the medical term.

2 Q. That's the shoulder blade. So he had two gunshot
3 wounds in his back?

4 A. Yes.

5 Q. Multiple in his thigh and his gluteus?

6 A. Three in the gluteus and one in the left hip yes,
7 sir.

8 Q. Did you - So you assessed him and you determined
9 what his wounds were; is that correct?

10 A. That's correct.

11 Q. And what course of action did you decide needed to be
12 taken?

13 A. We - There is a possibility despite someone being
14 shot in the abdomen that in what appears to be the abdomen
15 that they don't actually have a trans-abdominal injury and
16 so we wanted to access Mr. Trader for the exact extent of
17 his injuries and also evaluate for possible bone injuries
18 especially given all the gunshot wounds that we noted
19 around his left hip and buttock, so we took him for a CAT
20 Scan.

21 Q. Okay. Is it common for somebody to be airlifted to
22 your facility?

23 A. Yes. Mr. Trader's injuries met criteria for air-
24 lifting and for trauma code one, yes.

25 Q. So trauma code one?

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1 A. Yes.

2 Q. Are there codes below that?

3 A. Yes.

4 Q. What is a trauma code one considered?

5 A. Trauma code one is a patient who presents with either
6 unstable vital signs or a pattern of injury that would
7 suggest a potentially life threatening problem. Trauma
8 code two is someone who is badly injured maybe not life
9 threatening and then lower codes below.

10 Q. Are you familiar with PMC, Piedmont Medical Center?

11 A. Yes.

12 Q. Do you know what level trauma center that is?

13 A. I believe it's a level three trauma center.

14 Q. So you're trauma center is level one?

15 A. Correct.

16 Q. That's level three?

17 A. Yes.

18 Q. Serious injuries go to level one?

19 A. Correct.

20 Q. So to a reasonable degree of medical certainty and
21 based upon the cases that you treated, is a wound - a
22 gunshot wound to the abdomen, again to a reasonable degree
23 of medical certainty, potentially life threatening?

24 A. Yes, sir.

25 Q. Is a wound to the thigh particularly a gunshot wound

1 to a thigh to a reasonable degree of medical certainty also
2 life threatening?

3 A. Yes, sir.

4 Q. Is a - Could - To a reasonable degree of medical
5 certainty would injuries to a hip cause for track and
6 impairment or loss of use of that hip?

7 A. Its possible yes, sir.

8 Q. And in your experience as a trauma surgeon with
9 general anesthesia be required to repair them?

10 A. Yes, sir.

11 Q. Why would a thigh be - a gunshot wound to the thigh
12 be potentially life threatening to a reasonable degree of
13 medical certainty?

14 A. It depends on the proximity to the major artery and
15 vein in the thigh that supply the rest of the leg with
16 blood. So you could have a superficially fairly innocuous
17 looking wound that actually penetrates and injures one of
18 the deeper vascular structures. The patient could
19 potentially bleed out from something like that.

20 Q. And what about the abdomen, why is that to a
21 reasonable degree of medical - to a reasonable medical
22 degree life threatening in your opinion?

23 A. Again, the proximity and potential for injury to
24 major vascular structures. And then if left unaddressed
25 there's always the potential for injury to the intestines

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1 which will need to be prepared to prevent the patient
2 becoming septic.

3 SOLICITOR EPTING: I beg the Court's indulgence.

4 Doctor Weilbach, that's all the questions I have for
5 you at this time. Please answer any questions Ms.
6 Inzerillo may have for you.

7 MS. INZERILLO: May it please the Court, Your Honor.

8 CROSS-EXAMINATION

9 DOCTOR HEIDI WEILBACK BY MS. INZERILLO:

10 Q. Doctor Weilbach, you do not perform surgery on Mr.
11 Trader that evening?

12 A. We did not.

13 Q. Okay. And you indicated that he arrived at the
14 trauma center under trauma one which means the potential
15 there that is life threatening; is that correct?

16 A. Correct. Subject to specific criteria on transport
17 yes, ma'am.

18 Q. And essentially that's where you come in because
19 your job in trauma medicine is to follow the criteria and
20 access the situation and determine what to do next?

21 A. Correct.

22 Q. Okay. And as part of your report you do a review
23 of symptoms; is that right?

24 A. A review of symptoms yes, ma'am.

25 Q. Okay. And under the review of symptoms under general

1 it says negative; is that right?

2 A. Correct.

3 Q. Okay. Under EENT which I guess ear, eye, nose and
4 throat?

5 A. Correct.

6 Q. That's also negative?

7 A. Correct.

8 Q. Cardiovascular is negative?

9 A. Correct.

10 Q. Pulmonary is negative?

11 A. Correct.

12 Q. Gastrointestinal is just positive for lateral pain?

13 A. Correct.

14 Q. Okay. Genitourinary urinary is negative?

15 A. Correct.

16 Q. Under muscular - I'm gonna butcher these words and I
17 apologize - muscularskeletal positive for left lower
18 extremity pain left of upper extremity pain.

19 A. Correct.

20 Q. Is that correct? Okay. Skin negative?

21 A. Yes.

22 Q. And now I guess a psych review is done and that's also
23 negative?

24 A. Correct.

25 Q. All right. So when the solicitor was asking you about

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1 the possibility of things being life threatening part of
2 your job is to evaluate that possibility?

3 A. Correct.

4 Q. And in that review of symptoms that's essentially
5 what you're doing?

6 A. No.

7 Q. Okay. When someone gets shot in the thigh ---

8 A. Uh-huh.

9 Q. --- and the possibility is there from your
10 perspective as a trauma surgeon.

11 A. Uh-huh.

12 Q. That could be life threatening?

13 A. Yes.

14 Q. Okay. So as a doctor when you look at it if its
15 life threatening you put them into surgery?

16 A. That's really over simplifying things but for
17 argument sake sure.

18 Q. Okay. Bear with me, I'm a lawyer.

19 A. That's okay.

20 Q. I have - simplify it. He did not go into surgery?

21 A. He did not go into general surgery that night.

22 Q. That night?

23 A. Yes.

24 Q. Okay. With you?

25 A. Correct.

1 Q. Go into surgery with you. Okay. You were ask about
2 if a shot to - I believe the abdomen could be potentially
3 life threatening?

4 A. Yes.

5 Q. Okay. And he - You did not have to do surgery on his
6 abdomen that evening?

7 A. After the CT Scan showed us that he did not have an
8 inter-abdominal injury we did not operate.

9 Q. Okay. So a test is - -

10 A. Yes.

11 Q. Okay. And on the front page of your report it
12 indicates you note no C-spine mobilization.

13 A. Yes.

14 Q. And I'm gonna over simplify this as well. Is that
15 the flat back board that sometimes patients come in when
16 they can't lift their back and their head and their neck?

17 A. It's - The backboard is part of it but also the
18 cervical collar so the high stiff collar that keeps your
19 neck upright like this. He wasn't in one when he came in.

20 Q. Okay. And that's used for people that have to be
21 mobilized?

22 A. Correct.

23 Q. Okay. In your evaluation as medical professional
24 when you're indicating nine - let me make sure I say this
25 correctly - nine injuries ---

DOCTOR HEIDI WEILBACK: CROSS BY MS. INZERILLO

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1 A. Correct.

2 Q. --- that's not nine gunshot wounds?

3 A. Correct.

4 Q. Okay. That is just what you're noting as injuries ---

5 A. Correct.

6 Q. --- on the person? So if a bullet goes through my
7 arm and out the other side ---

8 A. Uh-huh.

9 Q. --- that's one bullet but is that two injuries for
10 you?

11 A. That's two injuries.

12 Q. Okay. And you indicated that CMC Main in Charlotte
13 is a trauma one center?

14 A. It's a level one trauma center yes, ma'am.

15 MS. INZERILLO: I have no further questions, Judge.

16 THE COURT: Any redirect limited to what she went
17 into?

18 SOLICITOR EPTING: Nothing from the State, Your
19 Honor.

20 THE COURT: Thank you, ma'am, you may step down.

21 Any reason why the witness cannot be excused?

22 SOLICITOR EPTING: No, Your Honor. We would ask that
23 she is excused.

24 MS. INZERILLO: No, Your Honor.

25 THE COURT: Thank you, ma'am, you may be excused.

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1 (WITNESS LEAVING WITNESS STAND.)

2 THE COURT: Is the State ready to call their next
3 witness?

4 SOLICITOR GROVE: Yes, Your Honor, the State calls
5 Doctor Alex Espinal.

6 THE COURT: Come right here, sir. Let the Clerk swear
7 you in. You are the witness. Right?

8 A. Yes.

9 MADAM CLERK: Please raise your right hand, place your
10 left on the Bible.

11 (WHEREUPON, ALEX ESPINAL, BEING
12 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 MADAM CLERK: Thank you. You may have a seat.

14 THE COURT: Please have a seat in that witness stand.

15 DIRECT EXAMINATION

16 DOCTOR ALEX ESPINAL BY SOLICITOR GROVE:

17 Q. Good afternoon. May you please state your name for
18 the record.

19 A. Alex Espinal.

20 Q. Okay. And, Doctor Espinal, what's your occupation?

21 A. I'm a general surgeon.

22 Q. How long have you been a general surgeon?

23 A. Fourteen years. Fifteen years.

24 Q. And where do you work?

25 A. At Piedmont Medical Center in Rock Hill.

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CROSS BY MS. INZERILLO

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1 Q. And what sort of training and education did you have
2 to have to become a general surgeon?

3 A. College degree followed by four years of medical
4 school and five years of residency.

5 Q. And do you have any specialized training or education
6 in trauma?

7 A. As part of the general surgery training that's one
8 of the fundamental segments that you're trained on is
9 trauma care. General surgeons are the trauma physicians at
10 the hospitals.

11 Q. Okay. And do you have any surgical training
12 expertise?

13 A. Yes.

14 Q. And were you employed as such in December of 2013?

15 A. Yes.

16 SOLICITOR GROVE: Your Honor, the State seeks that the
17 doctor be qualified as an expert in the area of trauma
18 medicine. Or, excuse me, trauma surgery.

19 THE COURT: Any objections?

20 MS. INZERILLO: Your Honor, permission to voir dire
21 the witness?

22 THE COURT: All right.

23 CROSS-EXAMINATION

24 DOCTOR ALEX ESPINAL BY MS. INZERILLO:

25 Q. Doctor Espinal, what is your definition of trauma

1 surgery, trauma medicine?

2 A. Say that question again, please.

3 Q. What is your definition of or the accepted definition
4 of trauma medicine, trauma surgery?

5 A. Trauma in general is any process that occurs as a
6 result of force. It can be blunt force, penetrating force,
7 not necessarily surgical. Surgeons take care of this
8 because they're trained in all facets of a medical and a
9 surgical component so that if there is for example a car
10 accident a general surgeon still admits the patient even
11 though they don't need surgery.

12 Q. So can you describe what your job is at PMC, Piedmont
13 Medical Center?

14 A. Yes. Being a general surgeon I operate elective
15 surgeries which means on a day to day basis things like
16 gallbladders, colon surgery, appendectomies, things of that
17 nature. And as part of our broader responsibilities we
18 also cover trauma cases in the emergency room so when a
19 person comes in that is deemed by the EMS as requiring a
20 trauma surgeon that's when we are called, evaluate the
21 patient and take care of the patients.

22 Q. When you are in your roll as a trauma surgeon is your
23 job is to assess whether treatment is needed at the time
24 and then if treatment is needed - not needed, you
25 essentially pass that person along to the next specialist

DOCTOR ALEX ESPINOL: CROSS BY MS. INZERILLO

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1 or another set of doctors?

2 A. Not necessarily. No. Actually when we see the
3 patient if they don't need any treatment and they are fit
4 to go home then of course yeah we release them. But even
5 if they don't need surgical intervention from our
6 standpoint, for example, a broken leg is operated on by an
7 orthopedic or a bone doctor I'm still the admitting
8 physician as an over all person's who's trained in all
9 facets of trauma.

10 Q. Okay.

11 MS. INZERILLO: Your Honor, I have no objection to
12 Doctor Espinal as qualified per his explanation to his job
13 in relation to this.

14 THE COURT: All right. Ladies and gentlemen, once
15 again normally a person cannot give opinion testimony.
16 Normally when a person testifies they must testify as to
17 what either they saw, heard, or sensed by smell or
18 something of that nature. However there is an exception
19 when someone is qualified because of education or
20 experience. They are permitted to give their opinion in
21 certain areas if the court qualifies them that way.

22 This witness will be qualified in the area of trauma
23 surgery to give opinion testimony in that area. Now that
24 does not mean that you must accept the opinion but it is
25 evidence for you to use in any way that you see fit and

DOCTOR ALEX ESPINOL: DIRECT BY SOLICITOR GROVE

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1 give the weight and credibility you believe is appropriate.

2 Yes, ma'am.

3 SOLICITOR GROVE: Thank you, Your Honor.

4 DIRECT EXAMINATION - CONTINUES.

5 DOCTOR ALEX ESPINAL BY SOLICITOR GROVE:

6 Q. Doctor Espinal, were you working at Piedmont during
7 the night of December 13th and early morning hours of
8 December 14th, 2013?

9 A. Yes.

10 Q. And did you treat a patient named Zachary Cleveland?

11 A. Yes.

12 Q. Can you describe how he came to be treated by you?

13 A. I can't recall specific events seeing that we see
14 obviously a large amount of patients in various situations
15 but the scenario was that he arrived at the hospital and
16 knowing that there was a gunshot wound involved that
17 automatically qualifies an individual as needing an
18 evaluation by a trauma surgeon so I was called in that case
19 and came in saw Mr. Cleveland and evaluated him.

20 Q. And you accessed his injuries?

21 A. Yes.

22 Q. And what were his injuries?

23 A. He had a bullet wound to his left foot. I think the
24 third and fourth toes were fractured as a secondary to the
25 gunshot wound. And then he had a what we call a through

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1 and through bullet wound to his right thigh where the
2 bullet went in and came out.

3 Q. And you say these were multiple gunshot wounds. Have
4 you seen gunshot wounds before?

5 A. Yes.

6 Q. And in this - in this - Mr. Cleveland's case were
7 any vital organs hit?

8 A. Vital? Can you explain what you mean by vital?

9 I can't think of anywhere on the body I would want to
10 get shot that's not dangerous.

11 Q. I understand. What was the course of treatment that
12 you gave to Mr. Cleveland?

13 A. Well at the moment he was stable from a vital sign
14 standpoint. His heart was stable and he hadn't lost an
15 inordinate amount of blood so what I did was after
16 evaluating him he also had a special x-ray done of the legs
17 to evaluate the blood supply to the leg. There is a major
18 artery that goes through our legs to keep our legs intact
19 and once that was seen to be okay I admit him to the
20 hospital over night. He remained stable throughout the
21 hospitalization and was fit to be discharged the following
22 day. He was seen by an orthopedic surgeon in regards to
23 the broken toes but nothing was done surgically for that.

24 Q. To a reasonable degree of medical certainty would the
25 type of injury sustained by Zachary Cleveland put him in

1 danger of losing his leg?

2 A. Yes.

3 Q. Is it dangerous and potentially life threatening to
4 a degree of medical certainty to get shot in the thigh?

5 A. Yes.

6 Q. Can you just briefly explain to the jury what that
7 might be?

8 A. Well the thigh bone that goes right down the middle
9 of the thigh and of course we all is muscles around the
10 thigh. When that particular bullet entered was beside of
11 the lateral portion of the thigh. The angle that the
12 bullet entered and exited did not cross as I mentioned
13 before the main artery that goes to the leg. That is the
14 type of artery that if you can cut into it it will shoot
15 across the room four feet and then you'll angulate or bleed
16 to death if you don't get a tourniquet on that leg within a
17 minute.

18 Q. Based on your experience would a wound in his - where
19 Mr. Cleveland had the wounds on his leg or on his foot
20 cause protracted impairment for the use of his leg or foot
21 to a reasonable degree of medical certainty?

22 A. Yes.

23 Q. Can you just briefly explain how that might be?

24 A. Well I remember his toes were pretty - the fractures
25 were basically the bones had pretty much pulverized. It's

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1 not something you could - a fresh nice break that you could
2 put something back together so in any injury like that it's
3 possibilities of nerve damage which would lead to chronic
4 pain, a limp. And the same with a thigh even though it
5 just only went through muscle and didn't hit any nerves
6 that could lead to nerve problems long term.

7 Q. Did Zachary Cleveland's injuries require surgery?

8 A. No.

9 Q. And so at that point was there anything further that
10 PMC could do for him?

11 A. Well I admitted him over night because what happens
12 to a muscle within the body of course all of our muscles
13 are contained with the cerotic tissue so when there's
14 trauma the muscles, swell as if you were, to hit somebody,
15 the arm would swell and it can swell to a dangerous level
16 where you can potentially cause further damage to the body,
17 to that limb, and you could loose a limb so we watch them
18 over night to make sure the blood supply is intact, to make
19 sure there was no excess swelling that could lead to more
20 problems, and then when that did not happen over night he
21 was able to be discharged the following day.

22 SOLICITOR GROVE: I have no further questions for you,
23 Doctor Espinal. Please answer any questions the defense
24 may have.

25 MS. INZERILLO: May it please the Court, Your Honor.

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1 THE COURT: Yes, ma'am.

2 CROSS-EXAMINATION

3 DOCTOR ALEX ESPINAL BY MS. INZERILLO:

4 Q. Doctor Espinal, as a qualified surgeon had Zachary
5 Cleveland needed immediate surgery and you could have done
6 it?

7 A. Yes.

8 Q. Okay. So had the injury to his thigh required any
9 immediate response surgery wise or anything like that you
10 would have been qualified there to handle that?

11 A. Yes.

12 Q. And you did not see any need for surgery?

13 A. No I did not.

14 Q. Okay. And you indicated that in general and to a
15 degree of medical certainty a gunshot wound to the thigh
16 can possibly be life threatening. But in Mr. Cleveland's
17 case the gunshot wound did not hit the major artery and
18 stuff?

19 A. Correct.

20 Q. Okay. And so because you didn't see that there was
21 no followup in terms of major surgery, no amputation,
22 nothing like that was necessary?

23 A. No.

24 Q. That was the same for the foot. Is that as well,
25 you didn't need to amputate his foot or anything like that?

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1 A. Correct.

2 Q. You also testified that no vital organs were hit as
3 well?

4 A. Correct.

5 Q. That when he came to Piedmont he was stable?

6 A. Yes.

7 Q. And he hadn't lost a lot of blood?

8 A. I don't know how much he lost.

9 Q. Okay. You also checked the - Because he was shot in
10 the leg, you also checked to make sure the blood flow was
11 okay?

12 A. Yes.

13 Q. Okay. And that turned out okay?

14 A. Yes.

15 Q. Now, one of the reasons that you held him over night
16 was also that he was intoxicated. Is that true as well?

17 A. Correct.

18 Q. Okay. And you found no evidence of back swelling
19 or any problem compatible with any compartments in the
20 vertebrae or anything like that?

21 A. Correct.

22 Q. And that's essentially what you're looking for in the
23 first little bit was any injury with this?

24 A. Yes.

25 Q. Did you find any evidence of any third degree burns

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1 on his hands?

2 A. I do not recall.

3 Q. Would you have referred him to a burn unit had you
4 found them?

5 A. Sure.

6 Q. Would it refresh your memory to look at your report
7 in this case?

8 A. Sure.

9 MS. INZERILLO: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. INZERILLO:

13 Q. And it's in reference to my question about any
14 burns on his hands.

15 A. I see no indication if there were burns on the hands.

16 Q. Okay.

17 MS. INZERILLO: I have no further questions, Your
18 Honor.

19 THE COURT: Any redirect limited to what she went
20 into?

21 SOLICITOR GROVE: Nothing, Your Honor.

22 THE COURT: Thank you, sir, you may step down.

23 Any reason why the witness cannot be excused?

24 SOLICITOR GROVE: No, Your Honor, he can be excused.

25 THE COURT: How about from the defense?

RICHARD LESTER: DIRECT BY SOLICITOR GROVE
CROSS BY MS. INZERILLO

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1 MS. INZERILLO: No, Your Honor.

2 THE COURT: Thank you, sir, you may be excused as
3 well.

4 (WITNESS LEAVING WITNESS STAND.)

5 THE COURT: The State ready to call their next
6 witness?

7 SOLICITOR GROVE: Yes, Your Honor. Richard Lester.

8 THE COURT: Sir, come down front, let the Clerk swear
9 you in.

10 MADAM CLERK: Please raise your right hand, place
11 your left on the Bible.

12 (WHEREUPON, RICHARD LESTER,
13 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 MADAM CLERK: Thank you. You may have a seat.

15 THE COURT: Just have a seat in the witness stand,
16 sir.

17 DIRECT EXAMINATION

18 RICHARD LESTER BY SOLICITOR GROVE:

19 Q. Good afternoon. Could you please state your name for
20 the record?

21 A. Richard Lester.

22 Q. Mr. Lester, what do you do for a living?

23 A. I own Palmetto Sports Bar in Rock Hill.

24 Q. Okay. And where are you from?

25 A. Rock Hill.

RICHARD LESTER: DIRECT BY SOLICITOR GROVE
CROSS BY MS. INZERILLO

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1 Q. About how long have you owned the Sports Bar?

2 A. Approximately eight years.

3 Q. And what's the name of the bar that you own?

4 A. Palmetto Sports Bar.

5 Q. And, Mr. Lester, the night of December 13th the
6 morning of December 14th was that a pretty normal night?

7 A. Yes..

8 Q. Were you there that night?

9 A. Yes.

10 Q. You often work at the bar during the night?

11 A. I do.

12 Q. And what time does your bar close?

13 A. 2:00 a.m..

14 Q. And what time were you closing the night of December
15 13th early morning December 14th?

16 A. It's 2:00 a.m..

17 Q. And, Mr. Lester, at closing time did something happen
18 at your bar?

19 A. Yes there was - Somebody come and got me said there
20 was an altercation at the front door so I go out to the
21 front area and we get it resolved and I send two gentlemen
22 on their way. They take and get in their truck and get
23 ready to back up, they leave - They're likely leaving so I
24 walk back around front go back inside and proceed the
25 closing duties. And then somebody comes back in and gets

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1 me again and tells me that I need to come out there there's
2 been a problem. So I walk out, turn left beside the front
3 of the building. As soon as I turn left I walk about twenty
4 feet and there was gunshots so I told everybody to get
5 inside and I went back around to the front and I came back
6 out and one of my employees was out there said she had been
7 shot in the leg. Of course I looked and she hadn't been,
8 it was just gravel. I guess it flew up and hit her off the
9 ground. But that's basically what I seen, the jest.

10 Q. Okay. And just to back up.

11 A. Uh-huh.

12 Q. Just to go over a few things in more detail. You said
13 there was an altercation.

14 A. Uh-huh.

15 Q. Let's start - that happened that you told two people
16 to leave.

17 A. Uh-huh.

18 Q. Did you see the altercation?

19 A. Not that I can - Not that I'm aware of no.

20 Q. okay.

21 THE COURT: Sir, if you would, the lady beside you
22 is making a recording of everything that happens. But when
23 you give shakes and nods of your head, or huh-hum and uh-
24 huh, she can't take those down. Give answers yes or no.

25 A. Okay.

RICHARD LESTER: DIRECT BY SOLICITOR GROVE
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1 THE COURT: Thank you.

2 BY SOLICITOR GROVE:

3 Q. So there was an altercation and you said two people -
4 Did you know the people you ask to leave?

5 A. Yes.

6 Q. Who were those people you ask to leave?

7 A. Zach and Logan.

8 Q. Okay. And did you know them from before this night?

9 A. Yes.

10 Q. And when you say there was somebody involved in an
11 altercation, who was the person that was involved in the
12 altercation that you ask to leave?

13 A. It was Logan had got into an altercation with another
14 gentleman that I'm not aware of his name.

15 Q. But Logan is the one who was in the altercation?

16 A. Yes.

17 Q. And what did Zach have to do with Logan?

18 A. Well they were riding together so I just ask both of
19 'em to leave for the night so.

20 Q. Okay. Did you go out to Zach's truck?

21 A. Yes. I walked out to the rear parking lot and, you
22 know, there was some people talking back and forth and
23 using curse words but I don't remember exactly what words
24 they were saying but it was profanity so just kept on
25 telling the gentleman to go ahead and get in the truck and

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1 go ahead and leave for the night. They said okay, okay, so
2 they got in the truck put the truck in reverse backed up
3 and I started walking back towards the inside of the
4 building.

5 Q. And when you say people were yelling profanities, was
6 Logan involved in that?

7 A. There was a lot of people, I'm not sure who directly
8 was involved but it was a lot of people hollering so.

9 Q. You heard a lot of people yelling at each other ---

10 A. Uh-huh.

11 Q. --- tensions were running high?

12 A. Yes. Yes.

13 Q. Were there any specific threats being made?

14 A. Not that I'm aware of.

15 Q. Was there any mention of a gun?

16 A. Not that I'm aware of, no.

17 Q. So Zach and Logan, you presumed were leaving?

18 A. Uh-huh.

19 Q. And ---

20 A. Correct.

21 Q. --- you walked away and thought they had left?

22 A. That's correct.

23 Q. Did you have a gun that night?

24 A. No, ma'am.

25 Q. So when you went out into the parking lot, did you

RICHARD LESTER: DIRECT BY SOLICITOR GROVE
CROSS BY MS. INZERILLO

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1 know what had happened when you went back out into the
2 parking lot?

3 A. When I went back out into the parking lot I just heard
4 gun fire then my employee said that she'd been shot in the
5 leg, then she said that Bobby and Zach had been shot.

6 MS. INZERILLO: Objection to the hearsay.

7 THE COURT: I sustain the objection.

8 The jury will disregard that last statement by the
9 witness.

10 BY SOLICITOR GROVE:

11 Q. When you say you spoke to your employee you're
12 referencing Jennifer Shelly?

13 A. Yes, ma'am.

14 Q. Okay. And does Jennifer Shelly work for you?

15 A. Yes, ma'am.

16 Q. When you went back out into the parking lot, did you
17 see Justin Faile?

18 A. Uh - Yes. When I seen him - When I seen him though
19 I think that he had already been disarmed if I'm correct
20 about that, yes.

21 Q. Mr. Lester, does your bar have security footage?

22 A. Yes, ma'am.

23 Q. And where are there security cameras in parking lot?

24 A. On all four corners of the building outside. And
25 there is four cameras on the inside.

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CROSS BY MS. INZERILLO

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1 Q. Okay. Do the cameras that face the back parking lot?

2 A. Yes.

3 Q. Mr. Lester, --

4 SOLICITOR GROVE: May I approach, Your Honor?

5 Q. I'm gonna hand you State's Exhibit Two.

6 Do you recognize this?

7 A. Yes.

8 Q. And how do you recognize that?

9 A. My initials and date.

10 Q. And what is this?

11 A. A video clip from my security system.

12 Q. And how do you know that?

13 A. Cause I've seen it.

14 Q. So did you put your initials and date on here
15 after you watched it?

16 A. Yes, ma'am.

17 Q. From the video you watched that night was it a fair
18 and accurate depiction of what happened?

19 A. Yes.

20 Q. Mr. Lester, did you give the officers that night a
21 copy of the video?

22 A. I did.

23 Q. And you - What did you tell the officers when they
24 arrived on scene?

25 A. Basically there was so many people talking to the

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1 officers as soon as they arrived on the scene they was
2 looking for the gun and they started handcuffing. I know I
3 seen 'em handcuff Justin Faile and then they were looking
4 for me for the video footage and stuff of that nature so I
5 went back, and I didn't know how to get the video out of
6 the DVR but they did, and so they downloaded the video from
7 the DVR.

8 Q. Okay.

9 SOLICITOR GROVE: Mr. Lester, I don't need any further
10 questions. Please answer any questions the defense may
11 have.

12 A. Okay.

13 MS. INZERILLO: May it please the Court, Your Honor?

14 THE COURT: Yes, ma'am.

15 CROSS-EXAMINATION

16 RICHARD LESTER BY MS. INZERILLO:

17 Q. Mr. Lester, on this particular night there was a
18 party at Palmetto Bar, a twenty-first birthday party?

19 A. Yes, ma'am.

20 Q. And it had actually started earlier in the evening?

21 A. Yes.

22 Q. And to your knowledge there were no issues throughout
23 the evening?

24 A. No, ma'am.

25 Q. Until you were made aware of the altercation outside

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1 that prompted you to ask Zach and Logan to leave?

2 A. That's correct.

3 Q. Okay. And those were the only two gentlemen you ask
4 to leave at that time?

5 A. Yes. At that time I was trying to defuse the
6 situation yes, ma'am.

7 Q. Okay. And then when you thought they were getting
8 into the truck and then you went back inside the bar; is
9 that right?

10 A. That's correct.

11 Q. Okay. And then the next time you go outside you hear
12 gunshots?

13 A. Correct. As soon as I turned left around the corner
14 of the building, the left side of the building, which is
15 the right side if you're facing the building.

16 Q. Uh-huh.

17 A. Yeah I walked about twenty feet and then I heard
18 the gun go off again so I told everybody to get back inside
19 and turned and went back around to the front of the
20 building.

21 Q. Okay. So you didn't see anything that happened from
22 the time that you walk back into the bar to the time that
23 you walk back out again?

24 A. No.

25 Q. Okay. The gentleman that you gave - Well let me

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1 back up. When you walked back outside and there was sort
2 of - Was it very chaotic when you went back outside?

3 A. Yes.

4 Q. And you describe for the jury that an officer is
5 getting on scene and what you saw him doing?

6 A. Yes. EMS had arrived at that point.

7 Q. Do you recall Mr. Faile being on the ground?

8 A. Yes.

9 Q. Okay. And you recall officers handcuffing him?

10 A. Yes.

11 Q. Do you recall him moving?

12 A. Moving him?

13 Q. Do you recall him moving?

14 A. No, ma'am, not at this point.

15 Q. The gentleman that you gave the video to is that
16 Detective Neely here? Do you recall?

17 A. Yes.

18 Q. Definitely it was him?

19 A. Pretty sure it was, yes, uh-huh.

20 MS. INZERILLO: I have no further questions, Your
21 Honor.

22 THE COURT: Any redirect limited to what she went
23 into?

24 SOLICITOR GROVE: No, Your Honor.

25 THE COURT: Thank you, sir, you may step down.

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1 Any reason why the witness cannot be excused?

2 SOLICITOR GROVE: No, Your Honor.

3 MS. INZERILLO: No, Your Honor.

4 THE COURT: Thank you, sir, you may also be excused.
5 Thank you.

6 MR. LESTER: Thank you.

7 (WITNESS LEAVING WITNESS STAND.)

8 THE COURT: All right, ladies and gentlemen, I need
9 you to at this time we're going to conclude the
10 presentation of the evidence for the day. I need to remind
11 you that you cannot have any type of discussions among
12 yourselves or with anyone else involving the case. Also do
13 not do any type of independent research or investigation in
14 anything involving the case or any court personnel, any
15 witnesses who may have testified. But I do appreciate your
16 service today.

17 I will ask that you be back in the jury deliberation
18 room tomorrow by nine thirty. I will do my best if you
19 will forgive me for today to start at nine thirty but there
20 always seems to be something I have to take up with the
21 lawyers. We will try to start as soon after nine thirty as
22 possible but you may go with the bailiff. Thank you very
23 much.

24 (JURY EXITS COURTROOM AT 04:47 P.M.:.)

25 THE COURT: All right, if you would start filtering

1 any special request to charge you might have so that I can
2 start trying to craft those. As the day goes on tomorrow.

3 Anything else that we need to put on the record before
4 we step down?

5 SOLICITOR EPTING: Nothing from the State, Your Honor.

6 MS. INZERILLO: No, Your Honor.

7 THE COURT: The lawyers will approach a moment.

8 Let's go back to the chambers. I left my witness list
9 back there. I'll step down. That young man back there
10 needs to come back to my chambers as well.

11 We're down. Nine-thirty.

12 (COURT IN RECESS AT 04:50 P.M..)

13 (COURT BACK IN SESSION WEDNESDAY, FEBRUARY 11, 2015.)

14 (DEFENDANT, JUSTIN FAILE, REENTERS COURTROOM AT 09:32
15 A.M..)

16 (COURT BACK IN SESSION AT 09:36 A.M..)

17 THE COURT: Keep your seats. I'm sorry, keep your
18 seats. I'm told all the jury is present.

19 Anything from the State and the Defense before we
20 bring the jury in?

21 SOLICITOR EPTING: Just one minor thing, Your Honor.

22 Earlier in the week, Your Honor, I did not have a copy
23 of Mr. Faile's NCIC record. You ask me to provide a copy
24 to the Court and to the Defense. I have provided that copy
25 to the Defense and I can provide a copy to the Court at

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1 this time if the Court wishes.

2 THE COURT: Okay.

3 (DOCUMENTS RECEIVED UP BY THE COURT.)

4 THE COURT: All right, let's bring the jury in.

5 (JURY REENTERS COURTROOM AT 09:39 A.M..)

6 THE COURT: Is the State ready to call their next
7 witness?

8 SOLICITOR EPTING: We are, Your Honor. The State
9 calls Sam Fitcher to the stand.

10 THE COURT: Come right up here, sir, let the Clerk
11 of Court swear you in, please.

12 MADAM CLERK: Please raise your right hand, place
13 your left on the Bible.

14 (WHEREUPON, SAMUEL FITCHER,
15 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16 MADAM CLERK: Thank you, you may have a seat.

17 THE COURT: Just have a seat right up there, sir.

18 DIRECT EXAMINATION

19 SAMUEL FITCHER BY SOLICITOR EPTING:

20 Q. Good morning.

21 A. Good morning.

22 Q. Could you please state your name for the record?

23 A. I'm Samuel Fitcher.

24 Q. And, Mr. Fitcher, what do you do for a living?

25 A. I work for Allen Fitcher Construction.

1 Q. And are you local?

2 A. I live in Columbia.

3 Q. You live in Columbia and work all around the state?

4 A. Yes, sir.

5 Q. I want to ask you about an incident that occurred at
6 the Palmetto Club in the early morning hours, late night
7 hours of 12/13/2013 and 12/13/2013. Were you present at
8 the club that night?

9 A. Yes, sir.

10 Q. Please tell the jury what brought you there?

11 A. I was actually up there just for my cousin's friend
12 had a birthday party so I was up there shootin pool and
13 just enjoying a Friday night.

14 Q. Okay. Shootin pool?

15 A. Yes, sir.

16 Q. Having some drinks?

17 A. Yes, sir.

18 Q. And who all was up there with you?

19 A. I arrived with myself and met my cousin up there.

20 Q. And what's your cousin's name?

21 A. Ashley Hargett.

22 Q. What if any relation are you to Justin Faile?

23 A. He used to date my cousin a couple of years ago
24 and that's about it.

25 Q. Is this the same cousin that was with you that night

SAMUEL FITCHER: DIRECT BY SOLICITOR EPTING

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1 Ashley?

2 A. Yes, sir.

3 Q. So if I hear your testimony correctly throughout the
4 night you're shootin pool and hanging out and everything's
5 cool?

6 A. Yes, sir.

7 Q. No hard feelings, no aggressiveness prior to that?

8 A. That's it.

9 MS. INZERILLO: Your Honor, I would object to the
10 leading.

11 THE COURT: You want to rephrase the question?

12 SOLICITOR EPTING: I will, Your Honor.

13 Q. What time did you leave?

14 A. It was - That night it was close to one'ish when we
15 were about to leave.

16 Q. Did anything - Did anything significant happen prior
17 to you leaving or around the time you were leaving?

18 A. Yes, sir, there was an altercation at the front door
19 and there was some fellows fighting and there was another
20 fellow that had got pretty much knocked unconscious.

21 Q. Okay. Was that fight ended?

22 A. Yes.

23 Q. The fellow who was in the fight did he stick around
24 at the bar?

25 A. No, they left.

1 Q. And did that fellow leave alone or did someone leave
2 with him?

3 A. I believe he left with someone else.

4 Q. Okay. Tell the jury about that.

5 A. Like I said the fellow was pretty much knocked
6 unconscious and they were still messin with him so we -
7 They told them they just needed to go on about their
8 business and, you know, enjoy the rest of their night. Got
9 the fellow up off the ground and as we went around to the
10 back of the parking lot the fellows were in a truck and
11 that's when we got into kind of an arguing match and got
12 into an altercation and me and the passenger got into an
13 altercation.

14 Q. Well let's slow it down a little bit. You said you
15 were following them to the parking lot. How many people
16 were you following?

17 A. As we were leaving I think it was just two.

18 Q. And did you know either of these people prior to this
19 night?

20 A. No, sir.

21 Q. So you were following two people to the parking lot.

22 A. Well that's just the way that we had to leave to get
23 to our vehicle.

24 Q. Okay. And what - Were they going to a vehicle or
25 were they just meandering about?

SAMUEL FITCHER: DIRECT BY SOLICITOR EPTING

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1 A. For sure they were getting in their vehicle also.

2 Q. Do you remember what kind of vehicle it was?

3 A. I believe it was a smaller truck. I want to say a
4 Ford Ranger maybe.

5 Q. Okay. And do they get in the vehicle and stay
6 there or does something else happen?

7 A. They get in the vehicle and as they're pulling out
8 like I said we kind of had the exchange of words and they
9 was telling them, you know, it's time for them to leave,
10 just leave the fellow alone. And that's when me and the
11 passenger, you know, exchanged more words and then we got
12 into an altercation.

13 Q. Was anyone else - So they're leaving. If I hear
14 your testimony correctly, they're leaving, you're having
15 words with the passenger, and at some point that leads to
16 an altercation?

17 A. Yes, sir.

18 Q. Is anyone standing with you at this time that you're
19 aware of?

20 A. No, sir.

21 Q. Not that you're aware of?

22 A. Not that I'm aware of no, sir.

23 Q. You get into an altercation with the passenger?

24 A. Yes, sir.

25 Q. Could you describe that in more detail?

1 A. Yes. We were like I said kind of had a arguing
2 shouting match and then that's when I struck him in the
3 face.

4 Q. You struck him in the face?

5 A. Yes, sir.

6 Q. Did that end it? Did you back away at that point
7 or did it continue?

8 A. At that point that's when the passenger - the driver
9 side - driver got out and come around the other side and
10 that's when Justin appeared at that moment.

11 Q. Okay. And tell me - Justin appeared at that moment.
12 What if anything did Justin have in his hands?

13 A. He had a pistol.

14 Q. What was your reaction to that?

15 A. I was scared as hell. I mean I got - Excuse my
16 french, but I have two kids and a wife so at that moment I
17 was trying to remove myself from that situation.

18 Q. So if I hear your testimony correctly, summarizing,
19 you're fighting with Logan or you're fighting with the
20 passenger. Justin Faile appears with a pistol.

21 MS. INZERILLO: Your Honor, I'm gonna object to the
22 summarizing. I believe the --

23 THE COURT: I'll sustain the objection.

24 BY SOLICITOR EPTING:

25 Q. Justin Faile - You testified Justin Faile appears with

SAMUEL FITCHER: DIRECT BY SOLICITOR EPTING

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1 a pistol?

2 A. Yes, sir.

3 Q. And your actions again?

4 A. I was scared.

5 Q. What if anything did you do?

6 A. I started backing away from the crowd of folks.

7 Q. And when you are backing away, from whom were you
8 backing away from?

9 A. Justin and the gun and the other guys.

10 Q. And what if anything did you do after that?

11 A. I proceeded to turn and get away from the situation.

12 Q. As you were turning and getting away from the
13 situation where do you go?

14 A. I headed back toward the front of the Palmetto to
15 get away.

16 Q. Does anything significant happen as you're walking
17 away?

18 A. That's when my - the last time I had glanced back
19 I had seen a scuffle start and that's when the shots
20 started being fired.

21 Q. So there was a scuffle and shots were fired?

22 A. Yes. And then as I turned around to finish running
23 back to the front of the building I was struck myself in
24 the arm.

25 Q. When you say struck yourself in the arm, can you be

1 more specific?

2 A. Just was struck right here in the forearm with a
3 bullet.

4 Q. A bullet struck you in the forearm?

5 A. Uh-huh.

6 Q. Where did you go after that?

7 A. I went to Piedmont.

8 Q. Did you go at the scene? Did you stay in the parking
9 lot?

10 A. I ran inside and, you know, pretty much dressed up
11 my wound and got it above my head and tried to stop the
12 bleeding.

13 Q. Did you leave the building after that ---

14 A. The only --

15 Q. --- to go to --

16 A. To get to the ambulance that was it.

17 Q. Okay. And they treated you at Piedmont?

18 A. Yes, sir.

19 Q. And have you been convicted of a crime that carries
20 over one year?

21 A. I have.

22 SOLICITOR EPTING: I beg the Court's indulgence.

23 That's all the questions I have for you now, Mr.

24 Fitcher. Please answer any questions Ms. Inzerillo may
25 have.

SAMUEL FITCHER: CROSS BY MS. INZERILLO

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1 MS. INZERILLO: May it please the Court, Your Honor.

2 THE COURT: Yes, ma'am.

3 CROSS-EXAMINATION

4 SAMUEL FITCHER BY MS. INZERILLO:

5 Q. Mr. Fitcher, you were at this party this night
6 essentially hanging out with everybody?

7 A. Yes, ma'am.

8 Q. And you were made aware of an altercation where
9 someone got essentially sucker punched?

10 A. Yes, ma'am.

11 SOLICITOR EPTING: Your Honor, I'm gonna object to
12 her characterization.

13 THE COURT: All right. She's on cross examination,
14 she's got a little bit more leeway than on direct. I'll
15 allow it.

16 Q. You agree with that that he had got sucker punched?

17 A. Yes, ma'am.

18 Q. And that night you didn't like that?

19 A. No, ma'am.

20 Q. And you didn't like it to the extent that you hung
21 around for the guy that sucker punched the other guy?

22 A. Yes, ma'am, so he would leave the fellow alone.

23 Q. Okay. You weren't involved in that first fight?

24 A. No, ma'am.

25 Q. Okay. He didn't sucker punch you?

1 A. No, ma'am.

2 Q. And did you know the guy who sucker punched the other
3 guy?

4 A. No, ma'am.

5 Q. Okay. So he's not a friend of your's either?

6 A. No, ma'am.

7 Q. So people are trying to get that guy to lease the
8 parking lot and you're hanging around wanting him to go?

9 That's a yes?

10 A. Yes, ma'am.

11 Q. Okay. And you're yelling at him, screaming at him
12 telling him to go?

13 A. Yes, ma'am.

14 Q. Telling him that you didn't like that he had
15 sucker punched the other guy?

16 A. That it wasn't right.

17 Q. Okay. And not only were you telling him you didn't
18 like and that it wasn't right, you also followed him and
19 walked after him; is that right?

20 A. Yes, ma'am.

21 Q. And you continued having words with him even after
22 he got into the car; is that right?

23 A. Yes, ma'am.

24 Q. Okay. And when - He got into the passenger side of
25 the truck, is that right? And

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1 THE COURT: Sir, if you would you need to respond
2 verbally. That lady right beside you's making a recording
3 of everything and she can't record shakes of your head.

4 A. Yes, sir.

5 THE COURT: Okay.

6 MS. INZERILLO: My apologies, Your Honor.

7 Q. And so he's in the passenger side of the truck; ---

8 A. Yes, ma'am.

9 Q. --- is that right? And someone else is driving the
10 truck?

11 A. Yes, ma'am.

12 Q. And the truck is in motion; is that right?

13 A. Yes.

14 Q. It's essentially driving out?

15 A. Yeah, it's driving out until before it stops.

16 Q. Okay. So you walk up to a moving truck still jawing
17 at the guy?

18 A. No, ma'am, it was parked at the moment.

19 Q. Okay. So it stops for you?

20 A. Yes, ma'am.

21 Q. Okay. Do you know them, those guys know you?

22 A. No, ma'am.

23 Q. Okay. So a truck full of guys that you don't know
24 and they don't know you stop for you and you walk up to
25 the truck?

1 A. Yes, ma'am.

2 Q. All right. How much had you had to drink that night?

3 A. I had a couple a beers, two or three beers.

4 Q. Two or three beers? So you walk up to the guy and
5 still madder the guy sucker punching somebody.

6 A. Yes, ma'am.

7 Q. Right? And continue to jaw with the guy in the car?

8 A. Yes, ma'am.

9 Q. In the truck. Get to the point that you punch the
10 guy you don't know over a fight between two people you
11 don't know?

12 A. Yes, ma'am.

13 Q. Okay. And you claim today that you had no idea of
14 Mr. Faile was standing near you when that happened?

15 A. I knew he was in the parking lot but I didn't know
16 how close he proximity was to me.

17 Q. Okay. And when you punch the guy in the passenger
18 seat what was his reaction?

19 A. He was ready to fight.

20 Q. Okay. And you saw that?

21 A. Yes, ma'am.

22 Q. And did he sort of come at you?

23 A. Yes, ma'am. And that's when the driver exited also.

24 Q. Okay. So from your perspective standing at the
25 passenger side he's ready to come at you and you see the

SAMUEL FITCHER: CROSS BY MS. INZERILLO

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1 driver side - the driver coming around. Okay.

2 A. Yes, ma'am.

3 Q. I apologize.

4 A. I'm sorry.

5 Q. That's a yes. Right?

6 A. Yes, ma'am.

7 Q. And then the next thing you recall is Justin stepping
8 around with a pistol; ---

9 A. Yes, ma'am.

10 Q. --- is that correct? Now, prior to you seeing that,
11 you didn't see Justin walk up while you're jawing with the
12 guys holding the pistol out?

13 A. No, ma'am.

14 Q. Okay. You didn't see Justin walking up firing it up
15 into the air?

16 A. No, ma'am.

17 Q. You didn't see Justin point the pistol in the truck
18 at the guy that you punched?

19 A. No, ma'am.

20 Q. Okay. Now, you indicated today that when you saw
21 this and you ran because you were terrified?

22 A. Yes, ma'am.

23 Q. Okay. And in the course of running away - Let me
24 make sure I get this right, in the course of running away
25 you understand there is a scuffle going on somewhere?

SAMUEL FITCHER: CROSS BY MS. INZERILLO

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1 A. Yes, ma'am.

2 Q. Okay. And then somewhere in the running away you
3 get shot?

4 A. Yes, ma'am.

5 Q. All right. So you're not looking back to see
6 exactly what's going on?

7 A. No, ma'am, I'm not.

8 Q. When you were on scene that night you talked to Rock
9 Hill police officers; is that right?

10 A. Yes, ma'am.

11 Q. And before you got into the ambulance?

12 A. Yes, ma'am.

13 Q. And then after that you talked to - Let's see - county
14 detective; is that right?

15 A. Yes, ma'am.

16 Q. And when you spoke to those officers you were clear
17 with them - Let me make sure I get your -

18 When you spoke with the detective that morning you
19 were clear that Justin was at the bottom of the pile of
20 people, the fighting began and that's when the gunshots
21 began; is that right?

22 A. Yes, ma'am.

23 Q. So that part you do remember?

24 A. Yes, ma'am.

25 Q. And you gave that statement probably about three

SAMUEL FITCHER: CROSS BY MS. INZERILLO

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1 hours after that?

2 A. Yes, ma'am.

3 Q. And then it was after that that you felt the pain
4 in your arm and the blood continued?

5 A. Yes, ma'am.

6 Q. Earlier in your statement because I think you give
7 - am I correct that you give multiple pages to your
8 statement?

9 A. Yes.

10 Q. To your recollection. Earlier in your statement that
11 you're clear that the fighting had begun and then the
12 gunshots went off; is that correct?

13 A. Yes, ma'am.

14 Q. And then it was as you run - as you were running
15 away that you got hit; is that correct?

16 A. Yes, ma'am.

17 Q. So you didn't - You knew there was a malay; is that
18 right?

19 A. Yes, ma'am.

20 Q. And you didn't turn around and tried to pull any of
21 the guys off of Justin?

22 A. No, ma'am, I didn't cause I knew there was a gun
23 present.

24 Q. Okay. And when he pulled the gun you immediately
25 turned around so you could see what happened after that?

SAMUEL FITCHER: CROSS BY MS. INZERILLO

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1 A. No, ma'am.

2 Q. Okay. But you knew - had enough of awareness of the
3 situation to know he was jumped on and then you heard the
4 gunshots?

5 A. Yes, ma'am.

6 MS. INZERILLO: I have no further questions, Your
7 Honor.

8 THE COURT: Any redirect limited to what she went
9 into?

10 SOLICITOR EPTING: Nothing from the State, Your Honor.

11 THE COURT: Thank you, sir, you may step down.

12 Any reason why the witness cannot be excused?

13 SOLICITOR EPTING: No, Your Honor, we would ask that
14 he be excused.

15 MS. INZERILLO: No objection, Your Honor.

16 THE COURT: Thank you, sir, you may be excused.

17 (WITNESS LEAVING WITNESS STAND.)

18 THE COURT: Is the State ready to call their next
19 witness?

20 SOLICITOR EPTING: We are, Your Honor, thank you.

21 The State would call Investigator Kevin Sullivan
22 to the stand.

23 THE COURT: Just come right up here, sir.

24 MADAM CLERK: Please raise your right hand, place
25 your left on the Bible.

INVESTIGATOR KEVIN SULLIVAN: DIRECT BY SOLICITOR EPTING

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1 ((WHEREUPON, KEVIN SULLIVAN,
2 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 MADAM CLERK: Thank you.

4 THE COURT: Please have a seat right up here, sir.

5 DIRECT EXAMINATION

6 INVESTIGATOR KEVIN SULLIVAN BY SOLICITOR EPTING:

7 Q. Good morning.

8 A. Morning.

9 Q. Would you please state your name for the record?

10 A. Kevin Sullivan.

11 Q. And what is your occupation?

12 A. I'm a crime scene investigator for the York County
13 Multi-jurisdictional Forensic Services Unit.

14 Q. Could you very briefly describe the duties of people
15 in the Multi-jurisdictional Forensic Services Unit?

16 A. We respond to various crimes throughout the -
17 throughout the county responding to and processing
18 everything from a burglary to a homicide.

19 Q. And what types of things do you do at those scenes?

20 A. Generally when we get to a crime scene what we do is
21 we will survey the scene. We'll go out and do a walk
22 through just to see what we have out there. A lot of times
23 when we get to a crime scene items that - items of evidence
24 already marked I patrol. So what we'll do is survey the
25 scene then we'll start taking pictures. Once we're done

1 taking pictures we'll put number cones down by items of
2 evidence photograph the scene with the number cones. If
3 the case warrants a sketch sketches will be completed.
4 After the sketch the evidence is picked up and dropped into
5 evidence.

6 Q. Were you involved in the investigation of the Palmetto
7 Club in December of 2013?

8 A. I was.

9 Q. Could you please tell the jury your role in that
10 investigation?

11 A. I was called out to the Palmetto Sports Bar in order
12 to process a scene of a shooting.

13 Q. What if anything did you see when you went out there?

14 A. When I arrived at the scene there - the scene was
15 rather chaotic. There was several patrol cars on the
16 Porter Road side of the bar. The sheriff's office detained
17 and it had an individual detained. I was briefed by the
18 officer on scene as to the circumstances of the case and
19 proceeded to go about processing the scene.

20 Q. You mentioned earlier processing involves laying
21 down numbered placards.

22 A. That's correct.

23 Q. Did you do that in this case?

24 A. I did.

25 Q. Do you - Other than laying down the placards do you

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1 do any other type of documentation as far as where things
2 are when you arrive?

3 A. Generally especially with a serious case like that a
4 crime scene sketch is completed.

5 Q. Okay. And do you photograph?

6 A. I did.

7 Q. And after things are photographed, after the numbered
8 placards are laid down, what happens to the evidence at the
9 scene?

10 A. The evidence is collected up in numerical order and
11 times are noted as to their collection time and then the
12 stuff is transported and put into evidence.

13 Q. Okay. If you say find the cup that you want to take
14 into evidence how was that packaged?

15 A. Generally a cup was probably packaged in a paper bag,
16 like a small grocery bag, sealed up with evidence tape, the
17 evidence tape is initialed and dated and then it is dropped
18 into evidence.

19 Q. And when you say dropped into evidence, could you be
20 more descriptive, more specific?

21 A. All the items in this case were transported from Moss
22 Justice Center. They were packaged up and placed into the
23 Sheriff's Department Evidence Control.

24 SOLICITOR EPTING: I beg the Court's indulgence.

25 (PAUSE.)

1 SOLICITOR EPTING: Your Honor, may I approach?

2 THE COURT: Yes, sir.

3 SOLICITOR EPTING: For the record I'm handing
4 Investigator Sullivan what has been marked as State's
5 Exhibit 3, A through R; State's Exhibit 4 and State's
6 Exhibit 10.

7 Q. Do you recognize State's Exhibit 3 A through R?

8 A. I do.

9 Q. What do they appear?

10 A. They appear to be copies of photographs I took at the
11 scene.

12 Q. Are they fair and accurate depictions?

13 A. Yes they are.

14 Q. Do you recognize State's Exhibit Four I believe?

15 A. Yes. This is a crime scene sketch I completed or a
16 copy of a crime scene sketch that I completed.

17 Q. And is that a fair and accurate depiction?

18 A. It is. It should be noted that its shown not to
19 scale.

20 Q. And I believe State's Exhibit Ten, what is that?

21 A. This is a photo disc of photos which I viewed and
22 initialed.

23 Q. Okay. So have you reviewed a copy of that photo disc?

24 A. I have.

25 Q. Are the photos that are on that disc taken by you?

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1 A. They are.

2 Q. Are they fair and accurate?

3 A. Yes they are.

4 SOLICITOR EPTING: Your Honor, at this time the State
5 would ask to move State's Exhibit Three A through R and
6 State's Exhibit Four and State's Exhibit Ten into evidence.

7 MS. INZERILLO: Your Honor, may we approach?

8 THE COURT: Uh-huh.

9 (BENCH CONFERENCE OFF THE RECORD OUR OF THE HEARING OF
10 THE JURY AT 10:03 A.M..)

11 Q. One more question, Investigator. What is on State's
12 Exhibit Ten?

13 A. I viewed the disc, the photos on this disc and they
14 are the photos I took at the scene.

15 Q. And they are fair and accurate?

16 A. Yes they are.

17 SOLICITOR EPTING: Your Honor, at this time we would
18 reiterate our request.

19 MS. INZERILLO: I have no objection.

20 THE COURT: Without objection be admitted as
21 requested.

22 (WHEREUPON, STATE'S EXHIBIT NUMBERS THREE A THROUGH R,
23 STATE'S FOUR, TEN, IDENTIFIED AND MARKED, RECEIVED INTO
24 EVIDENCE.)

25 SOLICITOR EPTING: Thank you, Your Honor.

1 At this time the State would seek to publish the
2 disc, State's Exhibit Ten.

3 THE COURT: Yes, sir.

4 SOLICITOR EPTING: And, Your Honor, for the record I'm
5 putting State's Exhibit Ten into the computer.

6 Q. Investigator, I believe you testified State's Exhibit
7 Ten contained a number of photos that you took; is that
8 correct?

9 A. That's correct.

10 Q. Could you walk the jury once I get them up through
11 each photo.

12 A. Yes, sir, certainly.

13 (STATE'S EXHIBIT NUMBER TEN, PUBLISHED TO THE JURY AT
14 10:06 A.M..)

15 A. This photo is basically establishing the location of
16 the incident which is the corner of Firetower and Porter
17 Road. If you all don't know Fire Tower and Porter Road
18 basically fork off. The business where this occurred is
19 actually in the middle of that fork right there.

20 This is the front of the bar and panning to the right
21 the - the far right front of the bar, and this is the
22 parking - one of the entrances to the parking lot on the
23 right hand side coming from Porter Road. This is going
24 around to the back of the bar to the right.

25 Q. At some point did someone from Forensic Services

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1 obtain a security copy of -

2 A. Yes they did.

3 Q. And does that appear to be a surveillance camera on
4 the left?

5 A. It does. And this is photographs of the back parking
6 lot where the incident occurred.

7 This is just panning around taking photographs of the
8 parking lot from various angles and various positions.

9 Some of the photos are dark. The flash might not have
10 gone off. It was rather dark out there that night and
11 there's not a lot of light in the back of this parking lot.

12 This is - Again this is just taking shots of the
13 parking lot just to establish what the back of the business
14 looked like.

15 Now we're starting to get into the location where the
16 incident occurred where evidence is starting to - starting
17 to show up. And what I do at crimes scene is you take
18 distance photos and close-up photos of everything that you
19 collect which is what I'm - The white pieces of paper you
20 see there, as I stated from the beginning a lot of times
21 when we - prior to us responding to a crime scene the
22 sheriff's department or patrol officers will put down in
23 this case they are little white pieces of notebook paper
24 down by evidence to protect it. That way if somebody for
25 some reason is near the items of evidence it doesn't

1 disturb it and it's easy to be located and that was done at
2 this scene.

3 Q. What are we looking at here?

4 A. That is a piece of paper that's marking a cartridge
5 casing.

6 Q. Did you recover - Did you recover cartridge casings
7 from the scene?

8 A. There were twelve cartridge casings recovered from
9 the scene.

10 Q. And what caliber?

11 A. They were forty caliber cartridge casings marked
12 .40 Smith and Wesson.

13 Q. And to jump ahead a little bit, how if it does
14 correlate, how does it correlate to State's Exhibit Four
15 these items reviewed in the pictures?

16 State's Exhibit Four being the diagram.

17 A. The diagram? After the photographs these photographs
18 were taken then the number cones will be placed. That's
19 how the diagrams completed. It will be measured from two
20 set spots in that parking lot and they will come out and
21 measure to that location.

22 There's a large pool of blood that was found in the
23 parking lot.

24 MS. INZERILLO: Objection, Your Honor, as to the
25 description of the blood.

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1 SOLICITOR EPTING: Your Honor, I believe pursuant to a
2 pretrial ruling he's able to identify without matching to
3 it.

4 THE COURT: All right. I'll allow that.

5 BY SOLICITOR EPTING:

6 Q. What do we have here?

7 A. That is a handgun.

8 Q. Was that handgun left at the scene?

9 A. Yes it was.

10 Q. And prior to you leaving the scene was it left there?
11 Did you recover the handgun?

12 A. I re - That was recovered by myself, yes.

13 Q. What kind of handgun was that?

14 A. It was a Glock Model 23 .40 caliber.

15 Q. Is that consistent with the shells that were found
16 on scene?

17 A. Their the same cartridge, same caliber.

18 Q. Was that gun loaded with you came upon it?

19 A. When I came upon it the slide was locked back
20 indicating that the weapon had been fired empty.

21 Q. And could you explain for those that are not familiar
22 with firearms what fired empty means?

23 A. In this case it's a semi-automatic handgun. It has a
24 thirteen round - This particular model Glock has a thirteen
25 round magazine which means you load thirteen bullets into

1 the magazine of the gun which is also then inserted
2 underneath the handle. In this particular case the trigger
3 was pulled until the gun slide lock back indicating that it
4 was empty.

5 Q. At this point what are we seeing now?

6 A. At this point a number of cones have been placed
7 by all this - all the items of evidence in the parking lot
8 that were gonna be collected. And this is what you're
9 seeing is the collection of numbered cones in the parking
10 lot.

11 Q. Do the numbers on the cones correspond with the
12 numbers on the legend of your - of State's Exhibit Four
13 diagram?

14 A. They do. These are just pictures of the cars that
15 were in the parking lot. Typically I would take pictures
16 of any cars that were left in the parking lot in case they
17 belonged to people who were involved, the photographs of
18 the vehicle and tag numbers. The vehicles were also
19 checked to see if they had been struck by gunfire.

20 Q. And approximately how many shells were found in the
21 parking lot?

22 A. There were twelve cartridge casings recovered from
23 the parking lot.

24 Q. And again what are we looking at here?

25 A. That is a large pool of blood that was found in the

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1 parking lot.

2 MS. INZERILLO: Same objection, Your Honor.

3 THE COURT: All right. Subject to cross examination
4 I'll allow it.

5 BY SOLICITOR EPTING:

6 Q. Back to the beginning now are we not?

7 A. Yes, sir.

8 Q. You found approximately how many shells in the parking
9 lot?

10 A. There were twelve cartridge cases recovered.

11 Q. Were they all the same caliber?

12 A. They were all the same caliber.

13 Q. Did you recover those shell casings?

14 A. Yes I did.

15 Q. And did you use the process you described earlier as
16 far as bagging them up and putting them in law enforcement
17 control?

18 A. Yes I did.

19 Q. Did you recover the gun that we saw in the - -

20 A. Yes I did.

21 Q. Did you record any information about that gun when
22 you recovered it?

23 A. Just the make model and serial number.

24 Q. Does every gun have a unique make and model and
25 serial number or a unique serial number?

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1 A. Every gun like a motor vehicle has it's own serial
2 number, yes.

3 SOLICITOR EPTING: I beg the Court's indulgence.

4 Your Honor, may we approach briefly?

5 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
6 OF THE JURY AT 10:16 A.M..)

7 SOLICITOR EPTING: Your Honor, I beg the Court's
8 indulgence.

9 Your Honor, one more brief conference, I apologize,
10 Your Honor.

11 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
12 THE JURY AT 10:18 A.M..)

13 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTEEN, PREMARKED
14 FOR IDENTIFICATION.)

15 BY SOLICITOR EPTING:

16 Q. Investigator, I'm handing you what's been marked as
17 State's Exhibit Thirteen. Would you please take a look
18 at that.

19 (WITNESS COMPLIES.)

20 A. This is the handgun that was recovered from the
21 scene that night.

22 Q. Is it in the same or substantially the same condition
23 it was when you put this into evidence or put this into law
24 enforcement control?

25 A. Yes it is.

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1 Q. If you could explain for the jury very briefly,
2 there is some zip ties on that. Would you explain?

3 A. The jury can see this is typically - -

4 MS. INZERILLO: Your Honor, I would ask not to
5 disclose

6 to the jury until it's entered into evidence.

7 SOLICITOR EPTING: I apologize, Your Honor, that is
8 true. Your Honor, at this time I see to publish State's
9 Exhibit Thirteen.

10 THE COURT: You gonna admit it?

11 SOLICITOR EPTING: Yes, Your Honor.

12 THE COURT: All right. He's admitting it.

13 MS. INZERILLO: Your Honor, I believe he has to -
14 needs to continue to lay a foundation.

15 SOLICITOR EPTING: He's recognized it and he says - -

16 THE COURT: He has.

17 MS. INZERILLO: He has?

18 THE COURT: Yes.

19 MS. INZERILLO: All right. Then I have no objections.

20 THE COURT: All right, I'll allow it into evidence.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTEEN,

22 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

23 You want to publish it?

24 SOLICITOR EPTING: Yes, Your Honor. I apologize.

25 Q. Could you publish that for the jury please. And can

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CROSS BY MS. INZERILLO

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1 you explain to them the purpose of the zip ties.

2 Q. Typically when we collect firearms they're packaged
3 in boxes and typically what they done - what we do is we'll
4 lock the slide back and what we'll do is slide a zip tie
5 through the chamber out the barrel showing that the gun is
6 clear and safe. And what we'll do is zip tie the gun to
7 the bottom of the box so it won't move around and get
8 damaged or anything like that.

9 Q. Thank you. Could you - I'll put it up for you.

10 SOLICITOR EPTING: I beg the Court's indulgence.

11 Q. And, Investigator, was that - The diagram, the
12 photographs, the collection of those evidence, was that the
13 extent of your involvement in this case?

14 A. It was.

15 SOLICITOR EPTING: That's all the questions I have
16 for you right now. Please answer any questions Ms.
17 Inzerillo may have.

18 MS. INZERILLO: May it please the Court, Your Honor.

19 THE COURT: Yes, ma'am.

20 CROSS-EXAMINATION

21 INVESTIGATOR KEVIN SULLIVAN BY MS. INZERILLO:

22 Q. Investigator Sullivan, your role in this case begins
23 when you're called out to the scene; is that correct?

24 A. Yes, ma'am.

25 Q. So you didn't witness the shooting?

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1 A. No, ma'am.

2 Q. You didn't witness the beating?

3 A. No, ma'am.

4 Q. You didn't witness anything prior to you getting on
5 the scene?

6 A. That's correct.

7 Q. But your understanding of the events of this evening
8 is that it was a fairly chaotic scene?

9 A. Yes.

10 Q. And I believe your on scene kind of early on maybe
11 taking some photographs while there's other officers on the
12 scene?

13 A. Yes, ma'am.

14 Q. Now when you got on scene was there already other
15 crime tape up?

16 A. I don't recall whether they taped it off prior to me
17 just getting there. I'm pretty sure I was there not long
18 after I was dispatched because I don't live that far away.

19 Q. Okay. So you understand that from the events of this
20 evening that there were people running through this scene?

21 A. Yes, ma'am.

22 Q. Okay. And you understand that EMS was called to the
23 scene and there were people walking through?

24 A. Correct.

25 Q. So when you get to the scene and the pictures that

1 you'd taken, that's the scene as you see it once it can be
2 cleared and you can start investigating?

3 A. That's correct.

4 Q. All right. So when we looked at these pictures as
5 you took them, that is when we see the gun on the ground
6 that's the gun that where it was when you came up and you
7 took that picture?

8 A. That's correct.

9 Q. Okay. So you don't know how that gun got there?

10 A. That's correct.

11 Q. You just know that when you came upon that gun at
12 whatever time, two, whatever in the morning, that's where
13 it was?

14 A. That's correct.

15 Q. All right. And when you get upon that gun that's the
16 condition that it was in?

17 A. Yes, ma'am, that's correct.

18 Q. All right. And along this same line when you came
19 across any shell casings on the ground and you took a
20 picture of it, you just knew that's where they were on the
21 ground when you took a picture of it?

22 A. Yes, ma'am, that's correct.

23 Q. And when marked, either came across a white little
24 piece of paper or marked it with your number you were
25 marking where they were in that instant?

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1 A. Yes, ma'am.

2 Q. So you can't verify where the gun moved to prior to
3 it got to that point?

4 A. That's correct.

5 Q. You can't verify where a cartridge if it was kicked
6 into that position?

7 A. That's right.

8 Q. And you can't verify whether a cartridge was - Well
9 let me back up. You've viewed all the cartridges in this
10 case?

11 A. Yes, ma'am.

12 Q. You recall that some of the cartridges appear to have
13 been stepped on?

14 A. Yes. They appeared to be in rough shape, yes.

15 Q. Okay. And you recall from the ground at this place
16 that the parking lot is like a soft gravel?

17 A. Yeah. It's kind of a soft gravel uneven gravel
18 slash dirt parking lot and it was wet, it had rained.

19 Q. Okay. And you recall that some of the cartridges that
20 you viewed had that soft gravel dirt in it?

21 A. Yes, ma'am, that's correct.

22 Q. Okay. Because a cartridge - And I'm gonna over
23 simplify this - is essentially like an open cylinder.

24 It's open on one end and closed on the other?

25 A. A fired cartridge, yes, ma'am.

1 Q. Okay. And so it gets ground into the dirt. You pull
2 it out and it might still hold some of the dirt that got
3 ground into it?

4 A. That's correct.

5 Q. All right. And when you took these items into
6 evidence you don't change them in any way so there's - if
7 it's a scrunched down cartridge you don't make it whole
8 again. You take it as you find it and you put it into
9 evidence?

10 A. Right. It's collected as is.

11 Q. Okay. And so you noticed at the scene that some of
12 them were scrunched and some of them weren't?

13 A. That's correct.

14 Q. And some of them were stepped on and some of them
15 weren't?

16 A. That's correct.

17 Q. Some of them were dirty and had the dirt in it and
18 some of them weren't?

19 A. That's correct.

20 Q. And you recall that it was raining that night;
21 is that correct?

22 A. It had rained prior to me getting there. When I
23 arrived on the scene it had stopped raining I believe.

24 Q. Okay. Do you recall that some of the cartridges were
25 of the same and I'm probably gonna butcher this language,

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1 of the same caliber but of different makes?

2 A. They were all - They were all .40 caliber Smith and
3 Wesson marked on the head stamp.

4 Q. Okay. Now, you identified some things in some of the
5 pictures as blood; is that correct?

6 A. Yes, ma'am.

7 Q. Do you recall doing an evidence sheet in this case?

8 A. I do.

9 Q. And do you recall taking several items into evidence
10 including swabs and other items that you listed as red
11 stain?

12 A. Yes, ma'am.

13 Q. And is it fairly common for forensic investigators
14 to label things as red stains?

15 A. That's correct, yes.

16 Q. And that is common because when it's taken into
17 evidence things need to be tested?

18 A. That's right.

19 Q. And until something is tested as an item that is
20 reported to be it cannot be called that; is that correct?

21 A. Yes, ma'am.

22 Q. So for example until a red stain is tested to be
23 blood, it cannot be called blood?

24 A. That's correct.

25 Q. Okay. It might look like blood, you might think it's

1 blood, it might by it's surroundings might assume it's
2 blood but from a forensic perspective it needs to be tested
3 to be blood?

4 A. Yes, ma'am.

5 Q. Is that correct?

6 A. That's correct.

7 Q. And that night you went the extra mile and you took
8 several swabs into evidence as red stain; is that correct?

9 A. Yes, ma'am.

10 Q. So those pictures that we saw you actually took swabs
11 of that so that it could be tested to be identified as
12 blood?

13 A. Yes, ma'am.

14 Q. Are you aware if they ever were tested?

15 A. I'm not aware of that, no.

16 Q. Okay. You also took several or at least a few items
17 of paper towels and stuff that noticed the same red stain
18 on; is that correct?

19 A. Yes, ma'am.

20 Q. And you went the extra mile taking those into
21 evidence so those of course as well could be tested; is
22 that correct?

23 A. Yes, ma'am.

24 Q. And are you aware if those were ever tested?

25 A. I'm not aware if they were.

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1 Q. Okay. So from a lay person's perspective I may look
2 at something and make the assumption that it's blood or
3 spit or something, but from your forensic eye you don't
4 necessarily make that leap; is that correct?

5 A. That's correct.

6 Q. Okay. Now you noted that night or you noted on
7 direct that the scene that night didn't appear to be well
8 lit?

9 A. The back parking lot yes, ma'am.

10 Q. Okay. And so when some of your pictures where it
11 looks kind of bright is that the flash?

12 A. Yes, ma'am.

13 Q. Okay. So that - That is sort of a distinguishing
14 thing that is coming through in your pictures but that's
15 not what you recall about the evening?

16 A. Correct, yes.

17 Q. If you were just standing out there looking around
18 describing the scene you would describe it as dark?

19 A. Yes, ma'am.

20 Q. Okay. The - You also noted that your diagram is not
21 drawn to scale; is that correct?

22 A. That's correct.

23 Q. And it would appear from the pictures that you took
24 that the parking lot is smallish; is that fair?

25 A. It cut - - -

1 Q. About - -

2 A. Well it kind of like once you get in the middle of it
3 it kind of opens up a little bit. There's a open field in
4 the back there so it kind of makes it look large.

5 Q. Uh-huh.

6 A. But the gravel parking lot itself is no bigger than
7 maybe the back of the business.

8 Q. Okay. So maybe about fifty feet?

9 A. Maybe a little bit but if you're going from the
10 business to the extreme back it may be a little bit more
11 than that.

12 Q. You didn't measure that?

13 A. I didn't measure that, no.

14 Q. Okay. So on your diagram here were things look very
15 spread apart, that's where the not being drawn to scale
16 comes in?

17 A. Correct.

18 Q. Because - Let me show you the copy of this one.

19 Here where things are kind of spread around that's
20 where the not being drawn to scale may come in because it
21 may look like these two items are very far apart but
22 actually on scene they may be very close together?

23 A. Correct.

24 Q. You were just drawing them that far apart because
25 you're trying to delineate where things were ---

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1 A. Correct.

2 Q. --- for purposes of your diagram?

3 A. Yes.

4 Q. Okay. And really this is just a description to show
5 where you found a shell casing here and a shell casing
6 there?

7 A. That's correct.

8 Q. When you got on the scene?

9 A. Yes, ma'am.

10 Q. Okay. Now, this gun that is in this box. This is not
11 exactly right now the condition that you found it.

12 Correct?

13 A. No.

14 Q. When you found it the slide was slid back?

15 A. The slide was slid back, was locked back and the
16 magazine was still seated in the gun.

17 Q. Okay. So that tells you the gun had been fired and
18 emptied?

19 A. Yes, ma'am.

20 Q. Okay. And can you see on here that there's dirt on
21 the gun?

22 A. Yes, ma'am.

23 Q. Okay. So that kind of goes back to what we were
24 talking about with you find the items as you found them?

25 A. Yes, ma'am.

1 Q. You didn't clean off this gun?

2 A. No, ma'am.

3 Q. Okay. This type of gun fires with the slide on the
4 top that moves back and discharges the bullet; is that
5 correct?

6 A. Right.

7 Q. Okay. So if I'm holding the top of this slide, it
8 won't fire, it'll fire the first bullet that's in the
9 chamber and then that's it?

10 A. Correct, yes.

11 Q. Okay. But then after that the next bullet in the
12 magazine won't go up to the slide?

13 A. What will happen as you're holding the top of the
14 slide when the gun is fired at it will cycle back and
15 typically it won't eject the spent shell casing and it
16 won't feed a live cartridge into the chamber.

17 Q. Okay. So in order for this gun to fire it has to be
18 held here?

19 A. By the grip, yes.

20 Q. By the grip and held?

21 A. Yes, ma'am.

22 Q. Okay.

23 MS. INZERILLO: Your Honor, I have no further
24 questions.

25 THE COURT: Any redirect limited to what she went

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1 into?

2 SOLICITOR EPTING: Very briefly, Your Honor.

3 REDIRECT EXAMINATION

4 INVESTIGATOR KEVIN SULLIVAN BY SOLICITOR EPTING:

5 Q. Investigator, Ms. Inzerillo was asking you about the
6 mechanism of a cartridge being fired, the slide coming back
7 and ejecting the round and inserting a new round.

8 A. Yes.

9 Q. Is that a violent action?

10 A. It's very. It's an explosive action. When a trigger
11 on a gun is fired either hammer or fired and in this case
12 it's a striker - striker pin will come forward and strike
13 the primer on a cartridge causing a - an explosion and a
14 sudden jerking back, that the bullet is flown out the
15 barrel, the slide is thrown back with some force which also
16 causes the shell to eject and a new cartridge go in so yes
17 it's a very violent action.

18 Q. As guns are fired do they heat up?

19 A. Yeah they do.

20 Q. Over the course of your career - How many years have
21 you been doing this?

22 A. Been a police officer for eighteen, I've been in the
23 Unit for just over six.

24 Q. Over the totality of your law enforcement career, have
25 you had the opportunity to see blood?

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1 A. I have.

2 Q. How many?

3 A. More than I can count.

4 SOLICITOR EPTING: That's all my questions, Your
5 Honor.

6 THE COURT: Thank you, sir, you may step down.

7 Any reason why the witness cannot be excused?

8 SOLICITOR EPTING: No, Your Honor. We'd ask that he
9 be excused.

10 MS. INZERILLO: No objection.

11 THE COURT: Thank you, sir, you may be excused.

12 (WITNESS LEAVING WITNESS STAND.)

13 THE COURT: Will the lawyers approach just a moment?

14 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
15 THE JURY AT 10:34 A.M..)

16 THE COURT: All right, ladies and gentlemen, I'm gonna
17 let you take a short break now if you would but you're not
18 to be discussing among yourselves about anything involving
19 the case. I'll let you retire back to the jury
20 deliberation room and we'll get you back just shortly.

21 (JURY EXITS COURTROOM AT 10:35 A.M..)

22 THE COURT: I will step down for a few minutes.

23 SOLICITOR EPTING: Thank you, Your Honor.

24 (COURT IN RECESS AT 10:36 A.M..)

25 (COURT BACK IN SESSION AT 11:01 A.M..)

1 THE COURT: You may be seated.

2 Do we need to address the issue we talked about in
3 back now or later?

4 SOLICITOR EPTING: As far as the pictures, Your Honor?

5 I believe we should probably address those now.

6 Your Honor, just to put the issue on the record, I'm
7 intending to introduce a number of photos taken at two
8 different times of the victim Bobby Trader. We believe the
9 approbative value in this is that it exhibits for the jury
10 the area of the injuries. To some degree it implicates the
11 severity of it. So far after the fact we've had a doctor
12 testify that they were gun shot wounds here but we believe
13 that it would have great approbative value for the jury to
14 see it and that that approbative value would not be
15 substantially outweighed by the prejudicial effect.

16 I've provided a copy of both the photo pictures to the
17 defense and I've allowed them to review CDs of pictures and
18 other items that I'm intending to introduce through this
19 witness. Your Honor, I have copies of those pictures
20 marked for Your Honor's review. I don't know if Ms.
21 Inzerillo wishes to be heard prior to.

22 MS. INZERILLO: If Your Honor wishes to see the video
23 - I mean the pictures so you'll know the subject for this
24 discussion I don't mind you seeing them.

25 THE COURT: I think that would be helpful.

1 (EXHIBITS RECEIVED UP BY THE COURT.)

2 THE COURT: All right, I've got based on what we
3 talked about back yesterday that we've got Logan Brooks to
4 testify and Detective Carson Neely to testify and Bobby
5 Trader to testify, so there's not another physician?

6 SOLICITOR EPTING: No, Your Honor.

7 THE COURT: But Mr. Trader he will testify as to his
8 injuries; is that correct?

9 SOLICITOR EPTING: I believe he will, Your Honor.

10 THE COURT: You all want to approach?

11 (BENCH CONFERENCE OFF THE RECORD AT 11:04 A.M..)

12 THE COURT: All right. I have reviewed the seven
13 photographs. I've advised the attorneys that I do believe
14 four of them are more prejudicial than approbative but
15 three of the photographs which the Court Reporter will mark
16 will be allowed in. These are the three photographs that
17 show what I'm told are Mr. Trader's injuries but without
18 the more inflaming non-information. So I will give these
19 to the Clerk to be marked - Or will it be marked as State's
20 Seven

21 SOLICITOR EPTING: That will be State's Twelve I
22 believe. I'm sorry, it's not State's Twelve.

23 It's State's Five?

24 MADAM COURT REPORTER: Five. State's Five is A
25 through G photos.

1 SOLICITOR EPTING: Can we do Five A through would that
2 be D?

3 MADAM COURT REPORTER: Can I do them State Five E, F,
4 G. That's what they are. You want these redacted or put
5 in?

6 THE COURT: Those will be admitted.

7 MADAM COURT REPORTER: Yes, sir. Five, E, F, G.
8 Okay?

9 THE COURT: All right.

10 SOLICITOR EPTING: Thank you.

11 MS. INZERILLO: And, Your Honor, if I may just for
12 the record, we would just state for the record our
13 objection to those. My understanding is that a family
14 member took those photographs of Mr. Trader after I believe
15 the surgery took place which was some time after this and
16 so we would object to that as well. And I believe that
17 person has taken his hand the person who photographed and
18 due to the time delay on that. And so we would just note
19 that objection for the record. I - We certainly understand
20 the Court's ruling but we would just note that.

21 THE COURT: Well, let me be - There still has to be a
22 foundation for the photographs and I made the assumption
23 that those are what they report what I believe to be the
24 victim it would still need to be a foundation laid for
25 them.

1 SOLICITOR EPTING: Yes, Your Honor.

2 Your Honor, if I can have five minutes to put the ones
3 that are allowed to come in onto a new CD.

4 THE COURT: Sure. Yeah, I'll come back.

5 SOLICITOR EPTING: Thank you, Your Honor.

6 (WHEREUPON, STATE'S EXHIBIT FIVE, E, F, G, PREMARKED
7 FOR IDENTIFICATION.)

8 (COURT AT EASE AT 11:09 A.M..)

9 (COURT BACK IN SESSION/ON THE RECORD AT 11:16 A.M..)

10 THE COURT: You may be seated. Anything else before
11 we bring the jury back?

12 SOLICITOR EPTING: Nothing from the State, Your Honor.

13 MS. INZERILLO: No, Your Honor.

14 THE COURT: All right. Let's bring the jury in.

15 (JURY REENTERS COURTROOM AT 11:18 A.M..)

16 THE COURT: Is the State ready to call their next
17 witness?

18 SOLICITOR EPTING: We are ready, Your Honor.

19 The State calls Bobby Trader to the stand.

20 THE COURT: Come on around. Come right up here and
21 let the Clerk of Court swear you in, sir.

22 MADAM CLERK: Please raise your right hand.

23 ((WHEREUPON, BOBBY TRADER,
24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:))

25 MADAM CLERK: Thank you. You may have as seat.

BOBBY TRADER: DIRECT BY SOLICITOR EPTING

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DIRECT EXAMINATION

BOBBY TRADER BY SOLICITOR EPTING:

Q. Good morning. The afternoon now.

A. Good morning.

Q. Please state your name for the record.

A. Bobby Trader.

Q. Mr. Trader, what do you do for a living?

A. I'm a handyman of sorts. I tile floors, sheet rock walls, stuff like that.

Q. Are you in school?

A. Yes.

Q. What are you studying?

A. Welding.

Q. And where do you and your family stay?

A. Rock Hill, South Carolina.

Q. Life long?

A. Most of my life. I've lived other places such as Charlotte and Summerville.

Q. I want to talk with you about what occurred the late night hours of December 13th early morning hours of December 14th, 2013. Do you remember that night, Bobby?

A. Very well.

Q. What brought you - Where were you that night?

A. I was at Palmetto Sports Bar.

Q. And what brought you there?

1 A. Becky Shelly's birthday party.

2 Q. What was she turning?

3 A. Twenty-one I believe.

4 Q. Are you familiar with the Palmetto Sports Bar?

5 A. Very familiar with it.

6 Q. How so?

7 A. I'm a member there. I go there very frequently.

8 Q. Do other people from your family also go there?

9 A. Yes, sir.

10 Q. Would you recognize a picture of it if you saw it?

11 A. Yes, sir.

12 SOLICITOR EPTING: Your Honor, may I approach the
13 witness?

14 THE COURT: Yes, sir.

15 Q. Mr. Trader, I'm gonna hand you what's been marked as
16 State's Exhibit Eleven. Do you recognize State's Exhibit
17 Eleven?

18 A. Yes, sir.

19 Q. What is it?

20 A. It's a disc with the photo of the aerial photo of
21 Palmetto on it.

22 Q. Have you reviewed a copy of that disc?

23 A. Yes, sir.

24 Q. Is that a fair and accurate depiction?

25 A. Yes, sir.

BOBBY TRADER: DIRECT BY SOLICITOR EPTING

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1 SOLICITOR EPTING: Your Honor, at this time the State
2 would seek to enter State's Eleven into evidence.

3 MS. INZERILLO: No objection.

4 THE COURT: Without objection be State's Eleven.

5 (WHEREUPON, STATE'S EXHIBIT NUMBER ELEVEN, IDENTIFIED
6 AND MARKED, RECEIVED INTO EVIDENCE.)

7 BY SOLICITOR EPTING:

8 Q. Bobby, if you could please put that over to the side
9 You were there for a birthday party; is that correct?

10 A. Yes, sir.

11 Q. Was it the usual crowd there that night?

12 A. A little more than usual. Her party was published
13 like over Face book so a lot more than usual seeing that it
14 was gonna happen so more people come than usual.

15 Q. Did you go to the party stag, with or without a date?

16 A. I went with a lady.

17 Q. And were you drinking that night?

18 A. No, sir, I had to drive.

19 Q. How long - When did you arrive there?

20 A. I usually arrive about nine so it probably been about
21 that time that night.

22 Q. At some point did you have to take your date home?

23 A. Yes, sir. Right before closing time I took my date
24 home then when I got back that's when I seen Logan and like
25 they were getting into the truck.

BOBBY TRADER: DIRECT BY SOLICITOR EPTING

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1 Q. So you arrived. Logan and them were getting in the
2 truck?

3 A. Logan and Zach.

4 Q. How far away are you?

5 A. I'm gonna say roughly thirty yards.

6 Q. Thirty yards? And you saw them leaving; is that
7 correct?

8 You have to answer yes or no.

9 A. Yes, sir.

10 Q. Was anyone else around them?

11 A. Not at that point. There was a few people walking
12 up to them and I was talking to Becca because she was
13 explaining to me the situation that they had been into an
14 altercation and they were being told to leave and at that
15 point is when I seen Samuel Fitcher and Justin they were
16 walking towards the truck.

17 Q. Did you know Justin Fitcher before this night?

18 A. No, sir.

19 Q. Did you see him in some bar earlier that night?

20 A. Yes, sir.

21 Q. Had you yakked with him at all, drinks with him?

22 A. I think I met them. I believe I met them and I played
23 pool with Sam if I'm not mistaken.

24 Q. Did you know Sam Fitcher's name that night?

25 A. No.

BOBBY TRADER: DIRECT BY SOLICITOR EPTING

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1 Q. Could you describe how he appeared for the jury?

2 A. Huh? Slender man about mid heights with a good beard,
3 size beard on him.

4 Q. Bushy beard? You said Sam Fitcher -

5 THE COURT: Sir, if you would, I need to remind you
6 that lady's taking down everything that's said so be sure
7 you answer yes or no.

8 A. Yes, sir.

9 Q. You said if I'm correct that you saw people
10 approaching the truck?

11 A. Yes, sir.

12 Q. What happened then?

13 A. At that point Justin Faile stopped the truck and
14 that's when I seen Samuel Fitcher strike Logan. I wasn't
15 aware of any like verbal altercations going on at the point
16 in time. I wasn't paying attention to them, that aspect.

17 Q. Let me ask you this. Prior to Logan getting struck
18 was the truck stationary?

19 A. I believe it had just been set into drive. Not in
20 park or anything. It was going from reverse into drive to
21 leave.

22 Q. To leave. And then, say again, then what happened
23 after they went to leave?

24 A. I seen Justin Faile step in front of the truck,
25 waving them to stop and then I seen Samuel Fitcher hit my

1 cousin Logan through the passenger side window. And since
2 Samuel Fitcher wasn't stopping to like allow Logan out of
3 the truck Zach got out and started to head around. As soon
4 as Zach got out I seen Justin start snatching at his jacket
5 and pull a gun and put it in my brother's face.

6 Q. You saw that. How did you - What were you thinking?

7 A. Get the gun out of my brother's face.

8 Q. What did you do?

9 A. I got the gun out of my brother's face.

10 Q. Are you standing away or do you walk away?

11 A. I - No when I saw the altercation start before the
12 pistol I started walking towards it. When I seen the gun I
13 got out of Justin Faile's peripheral vision and headed
14 towards him.

15 Q. At a slow pace?

16 A. At my fastest sprint I could.

17 Q. What if anything is happening as you're running
18 towards them?

19 A. My brother froze. It's really too much to tell but
20 I was tunnel visioned on getting the gun out of my
21 brother's face.

22 Q. Did you get to Justin Faile?

23 A. Yes, sir.

24 Q. What happened then?

25 A. I struck him in the face and he turned and I'm not

BOBBY TRADER: DIRECT BY SOLICITOR EPTING

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1 real sure if the gun went off right then and there cause I
2 wasn't - I didn't care if the gun was going off, I was
3 trying to save my brother. And after I hit him the first
4 time I grabbed his wrist which had the gun and held it down
5 and tried to avoid him bringing it up to my chest and
6 stuff. And I thought I had it away from my hip but I was -
7 I had it pointed directly towards my hip.

8 Q. So at this point are you on the ground?

9 A. Yes, sir.

10 Q. You said you punched Justin Faile. Is he on the
11 ground?

12 A. Yes, sir.

13 Q. Does he appear to be conscious at this point?

14 A. Yes, sir, very much so.

15 Q. You mentioned to your right hand. Is he attempting -
16 What is he doing with the hand that has the gun in it?

17 A. He's shooting and as he's trying to push up against
18 my pushing down and keeping the gun away from me and at the
19 whole time he's shooting pow, pow, pow, pow.

20 Q. How far away from your body was --

21 A. He's point blank.

22 Q. Point blank? Where were you hit?

23 A. Mostly right here in my left hip. Once on my right
24 side and twice extremely close to my lung and heart.

25 Q. You have your hand on this gun, are you doing anything

1 to try to avoid?

2 A. I at that point in time I just closed my eyes and
3 prayed.

4 Q. At any point did somebody come over to help you?

5 A. Zach snatched him off me first.

6 Q. And --

7 A. Cause as I went to - As he stood up I went to stand
8 up behind him. I had not realized I had been shot at this
9 point.

10 Q. Could you stand up?

11 A. Uh-huh. I could not. I passed out when I tried to
12 get back up. The last thing I remember before I hit him
13 before me passing out was Zach grabbing him by his
14 shoulders.

15 Q. That's the last thing you remember before passing out
16 is Zach grabbing him. As Justin Faile is being hit by you
17 or as he's shooting you is he saying anything?

18 A. Not that I can recall.

19 Q. Is anybody else saying anything?

20 A. More than likely.

21 Q. You pass out at some point you come to?

22 A. Yes, sir.

23 Q. What happens when you come to?

24 A. Well when I come to Amanda Charles had come pick
25 me up like they were still fighting and trying to get the

BOBBY TRADER: DIRECT BY SOLICITOR EPTING

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1 gun off of Justin and she come pick me up basically just
2 standing.

3 Q. And this was who?

4 A. Amanda Charles.

5 Q. Is she doing anything other than standing next to you?

6 A. No she's pretty much cradling me.

7 Q. And you said at this time they're trying to get the
8 gun away from Justin Faile?

9 A. Yes.

10 Q. Did you hear any more shots after that?

11 A. Plenty. I couldn't tell you how many but . . .

12 Q. Were they in front of you, behind you?

13 A. I was laying down. A little bit front and to the
14 left of me.

15 Q. Where did you come to rest after he shot - you were
16 shot multiple times?

17 A. About ten foot away from the truck and then I think
18 Logan got in the truck and moved it a little bit. Then the
19 next thing I know is Zach come crawling over to me cause he
20 had been shot too.

21 Q. To you knowledge is anybody calling 911 or the
22 police at this time?

23 A. Amanda Charles was.

24 Q. And you testified she was the one sitting next to
25 you; is this correct?

1 A. Yes, sir.

2 Q. At some point is the defendant disarmed?

3 A. I believe so. Yeah, because remember telling Logan
4 to put the gun down cause I didn't want them believing it
5 was him because his fingerprints was on the gun.

6 Q. You saw Logan with the gun. What's he doing with it?

7 A. Well he picked it up and said I got the gun from him
8 and set it back down after I screamed at him and told him
9 to set it down.

10 Q. And what's he doing with the gun when he gets it?

11 A. Say what?

12 Q. What does he do - What is Logan doing with the gun?

13 A. He's just stating that he got the gun from him and
14 then he set it down cause like I said I told him to set it
15 down. I didn't want 'em thinking that he shot me or
16 nothing like that.

17 Q. Did you see people trying to get the gun away from
18 Justin Faile?

19 A. Many people.

20 Q. Were they punching him?

21 A. More than likely.

22 Q. Kicking?

23 A. Probably.

24 Q. Reaching for the gun as well?

25 A. I'm not in a coherent state at this point in time to

BOBBY TRADER: DIRECT BY SOLICITOR EPTING

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1 really pay attention to any of that.

2 Q. After you - You say you tried to get up and that's
3 when you realized you had been shot; is that correct?

4 A. Yes, sir..

5 Q. At that point could you feel where you had been
6 shot?

7 A. Say - rephrase --

8 Q. At that point in trying to get up, you said you
9 realized you had been shot?

10 A. Yeah, I realized - Well I realized I was shot when
11 I woke back up because I passed right out. It was not like
12 a - Its not like it was something I knew was gonna happen
13 or something.

14 Q. Okay. At some point you said Logan gets the gun so
15 Justin Faile is disarmed. Do you get medical treatment?

16 A. Not till the ambulance got there.

17 Q. Tell the jury about that?

18 A. I got there and they made everybody get away from me.
19 Amanda was still there for a second holding me until the
20 EMS got me. They took me to the ambulance and then they
21 took me over to Bellevue were they put me in a body bag and
22 put me in a helicopter.

23 Q. So you - To a helicopter?

24 A. And flew me to CMC.

25 Q. At that point did you receive further medical

1 treatment?

2 A. When I got to CMC yes they immediately took me in.
3 They pumped my intestines full of fluids to check to see if
4 my intestines had been hit and then they ran me through a
5 CAT scan.

6 Q. And continue. What other medical treatment did you
7 receive?

8 A. When they started pumping me through with fluids I
9 passed out once again from pain and I remember waking up
10 having to speak to the officer and that was - From that
11 point I was able to - I remember waking up talking to - -

12 Q. So law enforcement came and talked to you about the
13 case?

14 A. Yes.

15 Q. At some point in your hospital stay did you become
16 aware of the extent of your injuries?

17 A. Yes, sir.

18 Q. How many times were you shot and where?

19 A. I have nine total holes. I have six bullets still
20 left in me and they weren't able to speculate whether I had
21 been shot nine times or if it was some injuries were
22 through and through. They weren't able to speculate on the
23 specifics.

24 A. But you didn't know this in the ambulance ---

25 A. No, sir.

BOBBY TRADER: DIRECT BY SOLICITOR EPTING

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1 Q. --- you found this out later?

2 A. Yes, sir.

3 Q. They load you up and take you to a helicopter?

4 A. Yes, sir.

5 Q. Did you see anybody there as you were leaving the
6 scene?

7 A. Well when they put me in the ambulance I seen my
8 father like when they closed the doors I seen my dad walk
9 up and then that's about it until they put me into the
10 body bag and put me into a little - then put me in a
11 helicopter. After that they flew me and then I seen my
12 father once again right before that CAT scan.

13 Q. You said how many bullets were in your body?

14 A. There's six bullets.

15 Q. Still in?

16 A. Still in.

17 Q. Where? If you can stand for the jury. Are you
18 comfortable standing?

19 A. Yeah.

20 Q. Stand for the jury.

21 SOLICITOR EPTING: With the Court's permission of
22 course.

23 THE COURT: Yes, sir.

24 Q. Indicate where you're injuries were?

25 A. They was bullets down here.

BOBBY TRADER: DIRECT BY SOLICITOR EPTING

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1 Q. Turn so they can see your body.

2 A. I got hit all like over here and about six bullets
3 holes right here. There's one right here. And there's two
4 like staggering right here.

5 Q. And you said - A minute ago you said two staggering
6 right there.

7 A. Yes, sir.

8 Q. Did you require any type of treatment to repair - -

9 A. I had to have a full left hip replacement. One of
10 the bullets had went through the ball joint of my hip and
11 my sciatic nerve so therefore that basically it caused for
12 the doctors to have to replace my hip and then on top of
13 that treat me for neuropathy.

14 Q. Have you had any long term effects to your leg or
15 your body from these injuries?

16 A. The neuropathy and probably a couple of psychological
17 effects.

18 Q. And to your hip? Is your hip the same as it was prior
19 to?

20 A. No, sir. My left leg's about a inch and a half longer
21 than my right leg. And the left leg is the one that had to
22 be operated on.

23 SOLICITOR EPTING: Permission to approach, Your Honor.

24 Q. Mr. Trader, I'm gonna hand you what's been marked as
25 State's Five, E, F, and G and State's Exhibit Twelve.

BOBBY TRADER: DIRECT BY SOLICITOR EPTING

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1 If you would, please take a look at those.

2 (WITNESS COMPLIES.)

3 Q. Are you familiar - Well what is State's Five, E, F,
4 and G?

5 A. They're pictures of my wounds after I had - after
6 they took all the dressings off of my wounds because they
7 had water proof like dressings on that I couldn't take off
8 for a month so once they took them off I took pictures.

9 Q. So those were taken sometime after this incident?

10 A. Yes, sir.

11 Q. Are they fair and accurate depictions?

12 A. Yes, sir.

13 Q. What about the other, the other State's Exhibit?
14 Which State's Exhibit is that?

15 A. I believe this is the disc of all these pictures.

16 Q. Have you reviewed a copy of that disc?

17 A. Yes, sir.

18 Q. And how do you know that's the disc that you reviewed?

19 A. I initialed and dated.

20 Q. And the images on the disc, are they also fair and
21 accurate depictions?

22 A. Yes, sir.

23 SOLICITOR EPTING: Your Honor, the State would seek
24 to introduce Exhibits State's Five E, F, and G and State's
25 Exhibit Twelve.

BOBBY TRADER: DIRECT BY SOLICITOR EPTING

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1 MS. INZERILLO: Your Honor, the Defense would renew
2 it's previous objection in light of the testimony that the
3 photographs were not taken until a month after the
4 incident.

5 THE COURT: I will allow them in.

6 (WHEREUPON, STATE'S EXHIBIT FIVE E, F, G, AND STATE'S
7 EXHIBIT TWELVE, IDENTIFIED AND MARKED, RECEIVED INTO
8 EVIDENCE.)

9 SOLICITOR EPTING: Your Honor, I would ask with the
10 Court's permission to publish State's Twelve.

11 THE COURT: All right. You may publish.

12 SOLICITOR EPTING: Your Honor, State's Twelve is gonna
13 be broadcast onto the projector screen. I mean State's
14 Exhibit - Yeah, State's Exhibit Twelve.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER TWELVE PUBLISHED
16 TO THE JURY AT 11:37 A.M..)

17 BY SOLICITOR EPTING:

18 Q. Bobby, what are we looking at here?

19 A. My two back bullet wounds. I believe the one on the
20 right is close to a half inch away from my lung. And the
21 one on the left is like three quarters of an inch away from
22 my heart.

23 Q. What are we looking at here?

24 A. That's part of my hip replacement and a couple of the
25 bullet wounds that I sustained during that event.

BOBBY TRADER: DIRECT BY SOLICITOR EPTING
CROSS BY MS. INZERILLO

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1 Q. How many bullet wounds do you see on this picture?

2 A. Four that I can tell. If I'm not mistaken one of
3 'em's over the scar too.

4 Q. And just so we're clear, was this scar that I'm
5 outlining here directly caused by the injury or was that a
6 surgery scar?

7 A. That - The scar was caused by the surgery that was
8 caused by the injury.

9 Q. And that was - And the scar was related to what?

10 A. My hip replacement.

11 Q. And old are you?

12 A. I'm twenty-three. I was twenty-three at the time. I'm
13 twenty-four now.

14 Q. Mr. Trader, what are we looking at here?

15 A. Just back wounds. It's just the dressings. Its kind
16 of just pictures of my wounds is how I know to explain it.

17 SOLICITOR EPTING: I beg the Court's indulgence.

18 (PAUSE.)

19 SOLICITOR EPTING: Bobby, I have no further questions
20 for you at this time. Please answer any questions Mr.
21 Inzerillo may have for you.

22 A. Yes, sir.

23 MS. INZERILLO: May it please the Court, Your Honor.

24 THE COURT: Yes, ma'am.

25

CROSS-EXAMINATION

BOBBY TRADER: CROSS BY MS. INZERILLO

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1 BOBBY TRADER BY MS. INZERILLO:

2 Q. Mr. Trader, you testified that you were - had left
3 the party that night but had come back?

4 A. Yes, ma'am.

5 Q. And you were talking to Becky Shelly about the
6 incident between Logan and the other guy ---

7 A. Yes, ma'am..

8 Q. --- that had happened? And while you were sort of
9 conversing with her you were kind of aware there was
10 something going on on the other side of the parking lot?

11 A. Yes, ma'am.

12 Q. And what you were kind of aware of is that Sam
13 Fitcher had walked across the parking lot and had
14 confronted Logan in the truck?

15 A. Sam Fitcher and Justin.

16 Q. Okay. And you're recollection, your testimony today
17 was that it was Justin Faile that had walked up and stopped
18 the truck?

19 A. Yes, ma'am.

20 Q. And that - Let me make sure I get this right - that
21 he stopped the truck and the truck had just been set into
22 drive like from reverse into drive; is that right?

23 A. Yes, ma'am.

24 Q. Is that your recollection of it?

25 A. It's what it appeared to be, yeah.

BOBBY TRADER: CROSS BY MS. INZERILLO

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1 Q. Okay. And you testified you hadn't been drinking this
2 night?

3 A. No, ma'am.

4 Q. That you were pretty clear headed?

5 A. Yes, ma'am.

6 Q. And that it was Justin Faile that you saw waving to
7 stop?

8 A. Yes, ma'am.

9 Q. Now, did you know Justin that night?

10 A. I believe I had met him earlier that night.

11 Q. Okay. So you weren't best friends with him or
12 anything like that?

13 A. No, ma'am.

14 Q. You could distinguish between Justin Faile and Sam
15 Fitcher by seeing one with a beard?

16 A. And height.

17 Q. And height. Okay. Cause Justin is pretty short?

18 A. Uh - depending on how you look it I assume, yeah.

19 Q. Shorter than Sam?

20 A. Yes, ma'am.

21 Q. Okay. Shorter than you?

22 A. Very.

23 Q. Okay. And you're six, four?

24 A. Six, five.

25 Q. Okay. How much do you weigh?

1 A. At the time I weighed a hundred and ninety pounds and
2 now I weigh two hundred and forty-five.

3 Q. Okay. And how much shorter than you do you think
4 Justin is?

5 A. Maybe a foot.

6 Q. Okay. And so its your recollection that Justin was
7 the one even though you didn't know closely but you would
8 recognize him as the one that stopped the truck?

9 A. I know the face.

10 Q. You know the face.

11 A. I'm very good, I have a photographic memory.

12 Q. Okay. So with your photographic memory you remember
13 that he was the one that stopped?

14 A. Yes, ma'am.

15 Q. All right. And you recall that it was Sam that
16 punched Logan?

17 A. Yes, ma'am, through the truck window.

18 Q. Through the truck window. And that Zach got out of
19 the driver's side and came around?

20 A. Yes, ma'am.

21 Q. Okay. So with your photographic memory at this point
22 you don't recall Justin firing the gun at this point?

23 A. Not at that point but as soon as Zach stepped out of
24 the truck he started snatching at his coat to pull out the
25 gun.

BOBBY TRADER: CROSS BY MS. INZERILLO

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1 Q. Okay. And you are still standing about thirty yards
2 away?

3 A. At this time probably about fifteen.

4 Q. Okay.

5 A. As soon as I seen Sam Fitcher hit Logan through the
6 truck I started walking in that direction.

7 Q. Okay. And so you start moving closer when you see
8 the punch?

9 A. Uh-huh. Yeah, when I see the punch and then I start
10 running when I see the gun.

11 Q. Okay. And with your photographic memory do you recall
12 Justin pulling out the gun and stepping backwards as he's
13 pulling out the gun?

14 A. Not one bit.

15 Q. Okay. So you don't remember that?

16 A. I don't remember him stepping back.

17 Q. Okay. Do you remember Zach continuing to walk
18 towards him?

19 A. I remember Zach froze.

20 Q. So Zach in your memory had froze?

21 A. He had a pistol to his face.

22 Q. Okay. Now, when you started running you weren't
23 involved in any of the sort of scuffling going on around
24 the truck?

25 A. Not at that point.

1 Q. Not at that point. And you were involved in the
2 whatever fight that Becky Shelly was talking about?

3 A. I was gone taking my date at the time home.

4 Q. Okay. And when you took off I guess in your
5 recollection walking at first and then sort of running and
6 kind of speed across the parking lot, at that point you
7 have seen Justin Faile with a gun?

8 A. Yes, ma'am.

9 Q. And that's what prompted you to high tail it across
10 the parking lot?

11 A. Yes, ma'am.

12 Q. So you made the decision at that point so we're clear
13 headed to run towards the guy with the gun?

14 A. Uh-huh. And in order to protect my brother.

15 Q. Okay. You didn't make the decision in protecting your
16 brother to run towards your brother and tackle him in case
17 the gun discharged?

18 A. He's not the problem.

19 Q. Okay. So you tackled the problem?

20 Okay. And in your -

21 THE COURT: Sir, if you would, again, please give
22 verbal answers. Okay?

23 A. Okay.

24 THE COURT: And loud enough so that we can hear you.

25 Okay?

BOBBY TRADER: CROSS BY MS. INZERILLO

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1 A. Yes, sir.

2 THE COURT: Thank you.

3 MS. INZERILLO: My apologies, Your Honor.

4 Q. And in your view the problem was Justin Faile cause
5 he had the gun?

6 A. Yes, ma'am.

7 Q. Okay. So your intent in doing the fifteen yard
8 dash across the parking lot that evening was to take care
9 of the problem?

10 A. Yes, ma'am. I was raised to take care of my brother.

11 Q. Okay. And so when you run and you tackle Justin you
12 tackle him. Right?

13 A. No I punched him.

14 Q. All right.

15 A. I should have tackled him.

16 Q. Okay. You're a foot taller than he is?

17 A. Uh-huh.

18 Q. You punch him.

19 THE COURT: Sir, again, verbal answers.

20 A. Do I need to talk into the mic?

21 THE COURT: Talk into the mic yes, sir, but you're
22 nodding your head and you're not - -

23 MADAM COURT REPORTER: The chair won't move, sir.

24 A. All right.

25 MADAM COURT REPORTER: The chair won't move. Sorry.

BOBBY TRADER: CROSS BY MS. INZERILLO

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1 A. Yes, ma'am.

2 Q. Okay. So you run up to him and you punch him.

3 A. Yes, ma'am.

4 Q. Okay. And jump on him at that point?

5 A. I believe I fell on him more or less. As we fell
6 down to the ground either by me not being able to stand or
7 - cause this whole time during the first initial I was not
8 paying attention to the gunshots. I felt what I thought
9 were punches until I went to stood up and I passed back out
10 and woke up and realized they were gun shots.

11 Q. Could it also be that you were running full speed
12 across the parking lot and you punched somebody and hit
13 that person and that stopped you? You didn't stop --

14 A. No. I have a pretty sturdy sense of balance.

15 Q. Okay. So you are sort of in this tussle and somewhere
16 in this you get hit and you get a little fuzzy when you go
17 to stand back up again. Is that your testimony?

18 A. I never was hit. I was only shot.

19 Q. Okay. When you were shot you go to stand up again
20 and you go fuzzy and pass out?

21 A. I pass out.

22 Q. Okay. And I believe you testified under direct that
23 you pass out but you come to and you're a little bit fuzzy
24 sometimes about what's going on?

25 A. Yes, ma'am.

BOBBY TRADER: CROSS BY MS. INZERILLO

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1 Q. Okay. But you are clear on the fact that despite
2 being a little fuzzy about what's going on around you,
3 you're sure that all of the kicking and the punching that
4 was going on with Justin Faile was to get the gun away from
5 him, you're sure about that?

6 A. Yes, ma'am.

7 Q. Okay. Now, when you were shot at the time you
8 described, that was the only time in the evening you were
9 shot?

10 A. Yes, ma'am. Well as far as I know.

11 Q. You weren't trying to act that?

12 A. As far as I know as far as when I was passed out I
13 could not tell you.

14 Q. Okay. So there's a possibility someone came back
15 while you were passed out and shot you?

16 A. Or being drug away and shot at me while they was
17 being drug away.

18 Q. Okay. You never mentioned that before?

19 A. No but it's circumstantial.

20 Q. Okay. It's circumstantial so it could happen that
21 somewhere ---

22 A. I was passed out.

23 Q. --- some other time someone could have shot you
24 while you were passed out?

25 A. Yes very possible.

1 Q. Okay. So wounds that you have that are describing
2 that came close to your heart and your lungs, you weren't -
3 you didn't have to have surgery on your heart did you?

4 A. ... The bullets are too close. It's too dangerous to
5 search to remove those bullets.

6 Q. Okay. The doctor didn't have to do anything to your
7 heart?

8 A. No, ma'am.

9 Q. Okay. The doctor didn't have to do anything to your
10 lungs?

11 A. No, ma'am.

12 Q. Okay. The only surgery you had to have was on your
13 hip; is that correct?

14 A. Yes, ma'am.

15 Q. Okay. Now, with your hip replacement you are able to
16 still do construction work?

17 A. To a limited degree. I'm not allowed to pick up
18 anything over a hundred pounds of what I weigh.

19 Q. Okay.

20 A. I walk with a constant limp. It took me six months
21 to relearn how to walk.

22 Q. Are you able to sit cross legged on the floor?

23 A. For the most part yes, ma'am.

24 Q. Okay. You said one of your legs is shorter than the
25 other?

BOBBY TRADER: CROSS BY MS. INZERILLO

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1 A. Yes, ma'am.

2 Q. Do you realize when you walked up to the stand today
3 you weren't limping?

4 A. Well I'm getting better.

5 SOLICITOR EPTING: Your Honor, I'm going to object.
6 That's her testifying.

7 THE COURT: She's on cross examination, she's got more
8 leeway than on direct.

9 A. The doctor said within years I would be close to
10 par, not I would never be par.

11 Q. Did you hear my question?

12 A. Yeah. I was not walking with a limp. Yeah.

13 Q. Did you realize --

14 A. I am walking with a limp. It may not be noticeable
15 to you but I feel it.

16 Q. You said one of your legs is one and a half inches
17 shorter than the other?

18 A. Yes, ma'am.

19 Q. That causes you to walk with a limp?

20 A. Yes, ma'am. You can see my knees this one is out
21 further than this one.

22 Q. You clearly remember that night telling Logan Brooks
23 to drop the gun; is that right?

24 A. Yes, ma'am.

25 Q. Because you did not want his prints on the gun?

BOBBY TRADER: CROSS BY MS. INZERILLO

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1 A. Yes, ma'am. I did not want him - Well anybody
2 thinking that Logan was the one that was the shooter.

3 Q. Okay. And you remember yelling that out?

4 A. Yes, ma'am.

5 Q. Okay. You're clear about that even though you're
6 not in a coherent state after you pass out from standing
7 up?

8 A. Yes, ma'am.

9 Q. When you were transported to the hospital you were
10 able to give your name; is that correct?

11 A. Yes, ma'am.

12 Q. Prior to it you were able to give your name to the
13 officers?

14 A. That and my address. Well where I lived for the
15 rest of my life.

16 Q. And your age?

17 A. Yes, ma'am.

18 Q. And you were - When they put you on the Gurney you
19 were sitting more in an upright position?

20 A. No, ma'am, I was laying down.

21 Q. Okay. When you were put into the ambulance do you
22 recall moving your head back and forth?

23 A. Yes, ma'am. I remember looking to the left while
24 they treated Sam Fitcher in the same ambulance.

25 Q. Okay. So you recall being able to talk as you were

CALVIN HENSON: DIRECT BY SOLICITOR EPTING

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1 being placed in the ambulance?

2 A. Yes, ma'am.

3 MS. INZERILLO: Your Honor, I have no further
4 questions.

5 THE COURT: Any redirect limited to what she went
6 into?

7 SOLICITOR EPTING: Nothing from the State, Your Honor.

8 THE COURT: Thank you, sir, you may step down.

9 (WITNESS LEAVING WITNESS STAND.)

10 THE COURT: Is the State ready to call their next
11 witness?

12 SOLICITOR EPTING: If we could have just one moment?
13 I beg the Court's indulgence.

14 (PAUSE AT 11:53 A.M..)

15 SOLICITOR EPTING: Your Honor, the State calls
16 Calvin Hinson also known as Lil Rick.

17 THE COURT: Sir, if you will just come right up here
18 and -

19 MADAM CLERK: Please raise your right hand, place your
20 left hand on the Bible.

21 ((WHEREUPON, CALVIN HENSON, BEING
22 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:))

23 MADAM CLERK: Thank you. You may have a seat.

24 THE COURT: Just have a seat right up here, sir.

25 DIRECT EXAMINATION

CALVIN HENSON: DIRECT BY SOLICITOR EPTING

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1 CALVIN HENSON BY SOLICITOR EPTING:

2 Q. Good afternoon.

3 A. How you doing?

4 Q. Could you please state your name for the record?

5 A. Calvin Ricky Hinson.

6 Q. And do you go by - How are you more commonly - most
7 commonly known?

8 A. Rick or Lil Rick.

9 Q. Is there a Big Rick?

10 A. Yeah, my dad.

11 Q. What do you do for a occupation?

12 A. I'm a plumber.

13 Q. A plumber?

14 A. Uh-huh.

15 Q. And are you from around here?

16 A. Yes, sir.

17 Q. Mr. Henson, I want to talk with you about an incident
18 that occurred the late night hours of December 13th and
19 early morning hours of December 14th. Do you remember that
20 night?

21 A. Yes, sir.

22 Q. Where were you that night?

23 A. At the Palmetto Bar and Grill.

24 Q. Are you familiar with that place?

25 A. Yes, sir.

CALVIN HENSON: DIRECT BY SOLICITOR EPTING

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1 Q. Do you commonly go there?

2 A. Yes, sir, it's a frequent hangout of mine.

3 Q. Okay. What time did you get there that night?

4 A. I'd say around nine, nine thirty. I had actually
5 worked a little late and was at home and a friend of mine,
6 a bartender there, Becky Shelly called me and said you
7 better come down here for my birthday party and I had
8 forgot it was her birthday so it was a little later when I
9 got out there.

10 Q. Okay. So she didn't want you to miss her birthday so
11 you get out there?

12 A. Yeah.

13 Q. About what time was that?

14 A. Nine, nine thirty, somewhere around there.

15 Q. And what do you do while you at the Palmetto?

16 A. Shoot pool, hang out with friends, what you normally
17 do at a bar, drink.

18 Q. Having drinks?

19 A. Yes, sir.

20 Q. Playing pool. Did you see Bobby Trader there that
21 night?

22 A. Yes, sir.

23 Q. Do you know Bobby?

24 A. Yes, sir.

25 Q. Related to him in any way?

1 A. No, huh-huh.

2 Q. Did you see Logan Brooks there that night?

3 A. Yes, sir.

4 Q. Zach Cleveland?

5 A. Yes, sir.

6 Q. Did you see Justin Faile there that night?

7 A. Yes, sir.

8 Q. Do you know Justin?

9 A. That was the first time I had ever met him was that
10 night.

11 Q. Do you know Justin's family?

12 A. Some of 'em.

13 Q. Did you hang out with any of the people I just
14 mentioned?

15 A. Yes, sir.

16 Q. Which ones?

17 A. All of 'em. We was all shootin pool together and
18 hanging out that night drinking and taking shots.

19 Q. Any animosity or aggression?

20 A. No, sir, not that I seen that I was aware of.

21 Q. Do you see Justin Faile in the courtroom here today?

22 A. Yes, sir.

23 Q. Could you point him out?

24 A. Right there.

25 SOLICITOR EPTING: Your Honor, I would ask that the

CALVIN HENSON: DIRECT BY SOLICITOR EPTING

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1 record reflect that the witness pointed to Justin Faile
2 seated at the defense counsel table.

3 (WITNESS INDICATED TO DEFENDANT.)

4 Q. At some point do you go to leave?

5 A. Sir?

6 Q. At some point does the bar close? Let me ask it
7 that way.

8 A. Yeah they called last call like one thirty and around
9 five minutes to two or so they start clearing the bar out
10 telling everybody to leave.

11 Q. Do you leave immediately?

12 A. Well I kind of hung back a little bit to help 'em
13 clean the place up. I got out of there probably around
14 five or six minutes after two, you know, when everybody
15 else had already got out I was helping 'em straighten up.

16 Q. Do you get a ride and leave the scene at that point
17 or do you stick around?

18 A. Well I was standing there talking to two girls
19 Amanda Charles and Trish Bigham I believe her name is.
20 That's when I heard the first sound of gun shots we was
21 standing there talking.

22 Q. Tell the jury about that.

23 A. Me and the two girls was standing there talking I
24 heard some gun shots so I looked up and I saw Bobby fall
25 and I seen the guy keep shootin a couple more times after

1 that. Everything happened real fast. I'm pretty sure Zach
2 came running towards, you know, when all that started I'm
3 pretty sure Zach come running over there. He shot at Zach
4 too. Some point in time I just made a choice to tackle the
5 guy, run towards him and tackle him and commence trying to
6 wrestle the gun away from him.

7 Q. Are other people assisting you in this?

8 A. Well I didn't particularly know, you know, if they
9 were or not but there were a bunch of people, you know,
10 standing around while it was going on.

11 Q. Where was your focus diverted?

12 A. On the guy with the gun.

13 Q. Is he saying anything while this is going on?

14 A. No. I didn't hear him say anything. I just kept
15 hearing gun shots.

16 Q. So you said you saw him shoot Bobby?

17 A. Yeah.

18 Q. Are they close to a vehicle, close to the road?

19 A. We're at the back part of the parking lot towards
20 the right end of the - If you're looking at the bar we're
21 in the back part on the right side of the bar, several
22 vehicles around there.

23 Q. And you say you see Justin Faile shoot Bobby several
24 times?

25 A. Yes, sir.

CALVIN HENSON: DIRECT BY SOLICITOR EPTING

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1 Q. And then Zach jumps on Justin Faile?

2 A. He ran towards him. I don't think he ever quite
3 made it to Justin before he got shot.

4 Q. Do you run up there at some point?

5 A. Yes, sir.

6 Q. Describe to the jury how - in more detail how you
7 came up to - What did you do, what did you see?

8 A. From what I remember I just took off towards him
9 tackled him.

10 Q. And when you say took off towards him, who are you
11 talking about?

12 A. Justin Faile.

13 Q. Okay.

14 A. I tackled him to the ground and of course I started
15 hitting him and try to wrestle the gun away from him and at
16 one point the gun finally came out of his hand and I kind
17 of kicked the gun away from him. At that point I didn't
18 hit him any more or nothing like that.

19 Q. Are other people hitting him and getting at the gun?

20 A. Yeah there was some other punches throwed after the
21 gun was taken away from him.

22 Q. What about before?

23 A. I really can't tell you. I was on the ground, you
24 know, wrestling a guy with a gun, you know, some other
25 people were hitting him or whatever. I don't know. I

CALVIN HENSON: DIRECT BY SOLICITOR EPTING
CROSS BY MS. INZERILLO

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1 wasn't looking at that. I was just concentrating on
2 getting the gun away from him.

3 Q. And this entire time he's not saying anything?

4 A. No, I never heard him say a word.

5 Q. Continuing to shoot?

6 A. Yes. He fired at least four or more times after I
7 tackled him. He kind of had the gun up under him while I
8 was trying to roll him over and was firing from up under
9 him with the gun up under him.

10 Q. And you said people continued to hit and kick him
11 after the gun was taken away; is that correct?

12 A. Yes, sir.

13 Q. And one last question. Mr. Henson, have you been
14 convicted of a crime that carries up to the possible
15 penalty of over one year in prison?

16 A. Have I ever been convicted?

17 Q. Ever?

18 A. Yeah.

19 SOLICITOR EPTING: That's all the questions I have for
20 you.

21 MS. INZERILLO: May it please the Court Your Honor.

22 THE COURT: Yes, ma'am.

23 CROSS-EXAMINATION

24 CALVIN HENSON BY MS. INZERILLO:

25 Q. Mr. Henson, your testimony here today is that you

CALVIN HENSON: CROSS BY MS. INZERILLO

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1 are outside talking to a couple of girls when you hear some
2 gun shots and you see Bobby Trader fall; is that correct?

3 A. Yeah. After he fell he got shot a couple of more
4 times.

5 Q. Okay. And you see the guy keep shooting and after
6 that and Zachary Cleveland keeps running, comes running?

7 A. Well he was running towards where the shooting was
8 going on, yeah.

9 Q. Okay. So that's your recollection of how it happened
10 that night?

11 A. Yes, ma'am.

12 Q. Okay. And then your recollection is that the shooter
13 shoots at Zachary too and then that's when you run towards
14 the guy tackling him and take the gun?

15 A. Yeah as far as I can remember that's the way it
16 happened.

17 Q. Okay. And that somewhere in that you're kind of get
18 into it to jump on and try to take the gun away from Mr.
19 Faile?

20 A. That was my whole point of trying to tackle him to
21 get the gun away from him.

22 Q. Okay. And then at some point on this you kick the
23 gun away from him?

24 A. Yeah. The way it came out of his hand and then I
25 kicked it away from where me and him were on the ground

1 there.

2 Q. Okay. So at what point did he fire off twice by
3 your head?

4 A. When I tackled him.

5 Q. Okay.

6 A. I could hear the gun going off. Like I said we were
7 - When we first landed I was on top of him and he was on
8 his belly and he fired a couple of more times, you know,
9 from up under him.

10 Q. Okay. And at what point did you beat his ass?

11 A. Beat his ass? I'm not understanding the question.

12 Q. Okay. Do you remember saying after this happened
13 that you beat his ass?

14 A. No.

15 Q. Okay. Are you familiar with Facebook?

16 A. Yeah.

17 MS. INZERILLO: May I approach the witness, Your
18 Honor?

19 THE COURT: Yes, ma'am.

20 Q. Do you recognize that?

21 A. Yeah. I mean it was just put the night that it
22 happened.

23 Q. Do you recognize that posting?

24 A. Yes, ma'am.

25 Q. That's your posting ---

CALVIN HENSON: CROSS BY MS. INZERILLO

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1 A. Yes, ma'am.

2 Q. --- and in that posting does it not say I beat his
3 ass?

4 A. Yeah. Yes, ma'am.

5 Q. And then after that it says ---

6 And pardon my language, Your Honor.

7 --- "Nigger ain't got no teeth left in his face."

8 A. Yes, ma'am.

9 Q. Is that right?

10 A. Uh-huh.

11 MS. INZERILLO: And I apologize again, Your Honor,
12 for this question.

13 Q. Is the Nigger in this case Mr. Faile?

14 SOLICITOR EPTING: Your Honor, I'm gonna object.

15 She's needs to allow him a chance to admit or deny
16 making those statements.

17 THE COURT: I gonna allow her to answer it - ask it.

18 A. What was the question, ma'am?

19 MS. INZERILLO: Again my apologies to the Court, Your
20 Honor.

21 Q. Is the person who ain't got not teeth left in his
22 face Mr. Faile?

23 A. Yeah, I assume that's who we're talking about.

24 Q. Okay. That's who you intended?

25 A. Yes, ma'am.

CALVIN HENSON: CROSS BY MS. INZERILLO

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1 Q. Also that evening almost immediately after it happened
2 you gave a statement to detectives; is that right?

3 A. It was - It was still at the bar early that morning,
4 yeah.

5 Q. Okay. In fact it was about two twenty-eight in the
6 morning; is that right?

7 A. I'd say yeah something like that.

8 Q. Okay. And then about I think later on that evening
9 Detective Neely here ask you a couple of followup
10 questions about that statement. Do you recall that?

11 A. I don't remember the detectives or whatever. I was
12 pretty drunk. But I remember talking to a officer and
13 giving my statement.

14 Q. Okay.

15 A. I think I actually gave two to two different officers.

16 Q. Would it help you to review those statements?

17 A. Ma'am?

18 Q. Would it help you to review those statements?

19 A. Sure.

20 MS. INZERILLO: May I approach the witness, Your
21 Honor?

22 THE COURT: Yes, ma'am.

23 A. Uh-huh, that's my statement. Wasn't this like a
24 questionnaire? One of 'em was asking me questions. Okay.

25 Q. Was that your understanding of what he was writing

CALVIN HENSON: CROSS BY MS. INZERILLO

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1 down?

2 A. Yes, ma'am.

3 Q. Okay. No where in either one of these statements do
4 you mention kicking the gun away from Mr. Faile do you?

5 A. No, ma'am.

6 Q. And no where in any of these statements do you
7 mention him firing off a gun by your head do you?

8 A. I didn't see it in there. It said that he fired two
9 or three more times after I tackled him that's what I said.

10 Q. Right. But nothing about it going past your head or
11 anything like that?

12 THE COURT: Sir, if you would give a verbal response.

13 A. No, ma'am.

14 Sorry.

15 Q. And you had indicated that you had been drinking that
16 night?

17 A. Yeah, we were all drinking pretty heavily.

18 Q. Okay.

19 A. Taking shots.

20 Q. You include yourself in that that you were drinking
21 pretty heavily?

22 A. Yes, ma'am, I was drunk.

23 MS. INZERILLO: No further questions, Your Honor.

24 THE COURT: Any redirect limited to what she went
25 into?

CALVIN HENSON: REDIRECT BY SOLICITOR EPTING

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1 SOLICITOR EPTING: Just briefly.

2 REDIRECT EXAMINATION

3 CALVIN HENSON BY SOLICITOR EPTING:

4 Q. After the gun was taken away, where - Did you stay
5 with Justin Faile?

6 A. I stayed sitting on him until the police actually
7 pulled up and come over and subdued him, yeah.

8 Q. And approximately how long was that?

9 A. I can't give an exact. It wasn't long after probably
10 a couple of minutes maybe.

11 Q. So you were pinning him until the police get there?

12 A. Yes. I mean I was just sitting on his back. He
13 wasn't moving or anything.

14 SOLICITOR EPTING: No further questions, Your Honor.

15 THE COURT: Thank you, sir, you may step down.

16 Any reason why the witness cannot be excused?

17 SOLICITOR EPTING: No, Your Honor, and we would ask
18 that he be excused.

19 MS. INZERILLO: No objection.

20 THE COURT: All right. Thank you, sir, you may be
21 excused.

22 (WITNESS LEAVING WITNESS STAND.)

23 THE COURT: The state ready to call their next
24 witness?

25 SOLICITOR EPTING: Your Honor, I think if the Court's

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1 in agreement perhaps now might be a good time to take -

2 THE COURT: You want to approach?

3 SOLICITOR EPTING: Yes, Your Honor.

4 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
5 OF THE JURY AT 12:06 P.M..)

6 THE COURT: Ladies and gentlemen, in discussing with
7 the lawyers, we're gonna take a lunch break at this time.
8 I'm gonna ask if you would not to have any discussions
9 among yourselves about anything involving the case. In
10 looking at the clock I'm gonna ask if you would to please
11 return let's say a quarter till two and be back in the jury
12 deliberation room and we'll resume the testimony in this
13 case. Thank you.

14 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:08 P.M..)

15 THE COURT: This Court has just been advised by
16 counsel of new witnesses that will be called at the trial
17 of this case. Now these are not new witnesses that are not
18 listed on the list of potential witnesses but these are new
19 witnesses that this court was informed of just now at bench
20 conference would be called in the trial of this case.

21 This Court takes very seriously the fact that this
22 court and the justice system in this county and in this
23 state calls upon those twelve people as well as the two
24 alternate to sacrifice their lives, alter their lives, to
25 make sacrifices from their jobs and from their families and

1 from their careers in order to come and perform their duty
2 to serve as jurors.

3 This Court takes very seriously the scheduling that
4 this court tries to do and to be sure that those people
5 that are called upon from our community to serve as jurors
6 have some feeling that the court system is managing that
7 sacrifice that they make in an appropriate manner.

8 This court ask the lawyers to tell the court who would
9 be called as witnesses in this case and this court made
10 notes as to which witnesses would be called. This court
11 has now been surprised because additional witnesses have
12 been called that were not named yesterday to this court as
13 well as witnesses that were named to this court would be
14 called in this case the court is now informed is not going
15 to be called.

16 I have never faced that situation where an officer of
17 the court would make such material alterations in the list
18 of witnesses that it would represent to the court that it
19 would all of a sudden call then not call. This court is
20 shocked by that.

21 I need for the State and the Defense to get together
22 during this lunch break, make me a list of witnesses that
23 will be called in this case. The Defense gives me the list
24 with the caution that the defense still has not made the
25 decision whether or not they will call witnesses but this

1 court needs to know what's gonna happen so that I can make
2 the appropriate plans because I don't want to unnecessarily
3 burden the people that sit in that jury box and I want to
4 be able to have some control over the trial of this case.

5 But when this court is ambushed, misrepresented to, as
6 to which witnesses will be called, this court almost views
7 that that is contempt to this court. Now we're gonna take
8 a lunch break and we're gonna come back and I'm want that
9 information before we resume the trial of this case.

10 SOLICITOR EPTING: Yes, Your Honor.

11 (COURT IN LUNCH RECESS AT 12:12 P.M..)

12 (COURT BACK IN SESSION AT 01:57 P.M..)

13 THE COURT: Thank you. You may be seated.

14 Is the State ready for us to bring the jury in?

15 SOLICITOR EPTING: We're ready, Your Honor.

16 THE COURT: The Defense ready?

17 MS. INZERILLO: Yes, Your Honor.

18 THE COURT: All right. Let's bring the jury in.

19 (JURY REENTERS COURTROOM AT 01:58 P.M..)

20 THE COURT: Is the State ready to call their next
21 witness?

22 SOLICITOR EPTING: We are, Your Honor. The State
23 calls Jennifer Shelly to the stand.

24 THE COURT: If you would just come right up here and
25 let the Clerk of Court swear you in.

JENNIFER SHELLEY: DIRECT BY SOLICITOR EPTING

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1 MADAM CLERK: Please raise your right hand, place
2 your left on the Bible.

3 ((WHEREUPON, JENNIFER SHELLEY,
4 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:))

5 MADAM CLERK: Thank you. You may have a seat.

6 DIRECT EXAMINATION

7 JENNIFER SHELLEY BY SOLICITOR EPTING:

8 Q. Good afternoon.

9 A. Hello.

10 Q. Would you please state your name for the record?

11 A. Jennifer Shelly.

12 Q. And, Ms. Shelly, how are you employed?

13 A. I'm a bartender at Palmetto Sports Bar.

14 Q. How long have you worked at Palmetto Sports Bar?

15 A. Going on eight years.

16 Q. Were you working in December of 2013?

17 A. I was.

18 Q. Were you working the late night hours of December 13
19 and the early morning hours of December 14?

20 A. Yes, sir, my shift generally runs from 6:00 p.m. until
21 closing.

22 Q. Okay. Tell the jury what you were doing that night.

23 A. I was bartending. It was a birthday party on a
24 Friday night for Rebecca and we were packed so I was
25 extremely busy all night.

JENNIFER SHELLY: DIRECT BY SOLICITOR EPTING

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1 Q. You handle the drinks?

2 A. Yes, sir.

3 Q. Take orders?

4 A. I do.

5 Q. So you kind of a one woman show?

6 A. Yes.

7 Q. You said packed. Is it busier than usual?

8 A. Much.

9 Q. And when you said Rebecca's birthday party, could
10 you tell who Rebecca is?

11 A. Rebecca is my daughter.

12 Q. Okay. So she had a birthday party there?

13 A. Her twenty-first, yes.

14 Q. How did it go?

15 A. It was exceptional. Everybody had a blast. We had
16 a full house all night. Everybody was having a good time.
17 I mean we were packed right up until last call and at last
18 call they all started clearing out.

19 Q. Okay. And about what time is last call?

20 A. Last call is always at 1:45.

21 Q. Always 1:45?

22 A. Yes, sir.

23 Q. And at 1:45 last call what are your duties at last
24 call?

25 A. Closing out existing tabs, collecting cash from

1 everybody that still has something on the book, making sure
2 that anybody who needs a ride home has one, calling cabs.
3 Basically just getting everything ready for everybody to be
4 out of the building so that I could start my cleanup and
5 restock and count my till.

6 Q. At some point during - around closing time was your
7 attention drawn outside?

8 A. Yes. Somebody came in and told me that there was a
9 fight outside. I called for Richard and he came out from
10 the kitchen where he was working and went outside to handle
11 that.

12 Q. Who is Richard?

13 A. Richard is the owner.

14 Q. Okay. Richard the owner came outside and handled it?

15 A. Yes.

16 Q. Did he come back in?

17 A. Yeah. I didn't see him, I was busy doing other
18 things but I assumed that he did because at some point he
19 came back out. I just didn't see that.

20 Q. Did anything else later on call you outside?

21 A. Somebody came in and told me that my daughter was
22 outside, apparently there was still some things going on in
23 the parking lot and at that point I left my till and went
24 outside to get her and bring her back inside. There were a
25 lot of people still in the parking lot and I was telling

JENNIFER SHELLY: DIRECT BY SOLICITOR EPTING

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1 them that if they were waiting on a ride they needed to
2 come back inside the building and wait otherwise they
3 needed to go on ahead and get in their car and go home.

4 Q. At some point was your attention draw to something
5 unusual happening?

6 A. I heard several pops and I recognized them as gun
7 fire.

8 Q. In which direction was that coming?

9 A. It was coming from around the side of the building,
10 the right hand side towards the back parking lot.

11 Q. Okay. You heard pops that you recognized as gun
12 shots?

13 A. Yes, sir.

14 Q. Did you see anything?

15 A. No not at that time.

16 Q. Did you do anything?

17 A. Yes. I started corralling everybody that I could
18 within arms reach and shoving them inside the door, get
19 inside the building. And somebody was at the door and I
20 remember telling them everybody inside don't let anybody
21 back outside the door and I took off running to the side of
22 the building.

23 Q. Towards the pops?

24 A. Yes.

25 Q. What if anything did you see?

1 A. I saw Bobby on the ground yelling that he was shot.
2 I saw a fight over here close to the side of the building.

3 Q. When you say a fight, can you describe it in any more
4 detail?

5 A There were three boys on one boy and they were hitting
6 him and kicking him. And I didn't know what the situation
7 was, I did not see anything that transpired before that.
8 There was a girl next to Bobby and I told her that she
9 needed to call 911 and I went and I started trying to
10 help the boy that they were fighting.

11 Q. And did you?

12 A. I was shoving them off of him.

13 Q. Did you recognize who you were shoving off of the boy?

14 A. Yes.

15 Q. Who?

16 A. Logan Brooks and Zachary Cleveland, Rick Henson was
17 laying on top of him.

18 Q. Did Rick appear to be hitting him?

19 A. Rick was hitting him with his fist.

20 Q. Okay. You were reaching like?

21 A. He was - I never saw the boy's face who was on the
22 ground, he had a hoody on.

23 Q. A hoody on?

24 A. So I could not see his face. Rick was on top of him
25 and he was hitting him this way from the side. And I was

JENNIFER SHELLY: DIRECT BY SOLICITOR EPTING

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1 shoving Zach and Logan off of him and at some point I was
2 thrown to the ground. I was beside a truck, I don't know
3 whose truck it was.

4 Q. As you're pushing them off were they yelling anything
5 back at you?

6 A. They were yelling that he shot Bobby.

7 Q. And you said you did push some of them off ---

8 A. Yes.

9 Q. --- and got them off?

10 A. I managed to push them away from him and during that
11 I got shoved to the ground. When I got back up I came back
12 around he was here and I landed here and I came back around
13 this side trying to break up what I thought was a fight and
14 at that point I heard more pops and realized that the boy
15 who was on the ground was still shooting.

16 Q. The boy on the ground was still shooting?

17 A. Yes.

18 Q. Could you tell from where he was shooting?

19 A. It had to be from underneath him from the way that
20 he was laying. I thought I had been shot in the leg.

21 Q. And this is a stupid question, but why did you think
22 you had been shot?

23 A. Something hit me in the leg when I came back around
24 in front of him and when I heard the gun fire that's what
25 registered to me and I thought that I had been shot in the

1 leg and I was afraid to look.

2 Q. Did somebody look for you?

3 A. No not at that time. I didn't look until after. I
4 was afraid to look and see cause I didn't want my daughter
5 to think that I had been shot on her birthday.

6 Q. After Justin - After the person on the ground
7 continues to shoot, what happens then?

8 A. At that point I realized that it wasn't just that they
9 were attacking him, it wasn't just a fight, that they were
10 trying to get a gun from him and I put my foot on his back
11 to hold him to the ground because I realized that he had
12 the gun up underneath him and that if I held him down he
13 couldn't shoot it. And at some point I don't know how that
14 happened but I saw Logan with the gun. He was over to the
15 left of me behind me and I saw him stand and have the gun
16 in his hand holding it up in the air saying I got the gun.

17 Q. Okay. So Logan gets the gun and holds it up in the
18 air?

19 A. Yes.

20 Q. While this is going on do you hear the person on the
21 ground saying anything?

22 A. No.

23 Q. Calling for help?

24 A. No.

25 Q. Asking to call the police?

JENNIFER SHELLY: DIRECT BY SOLICITOR EPTING

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1 A. No.

2 Q. Saying nothing?

3 A. No.

4 Q. Logan gets the gun and then what happens?

5 A. He held the gun up in the air and said that he had
6 the gun and I remember seeing him try to hand it out and I
7 guess Richard had come back out cause it was Richard that
8 he was trying to give it to and Richard was telling other
9 people to get back away and get inside and Logan laid the
10 gun on the ground.

11 Q. Okay. After the person - Did you know who the person
12 was on the ground at either time?

13 A. No.

14 Q. After the person on the ground was disarmed, did
15 people continue to --

16 A. No I don't think so.

17 Q. Did you stay there the entire time?

18 A. I stayed until I heard the sirens.

19 Q. Okay.

20 A. And at that point I left and started taking people
21 back inside the building with me.

22 A. So you're starting to corral people inside the
23 building?

24 A. Yes, sir.

25 Q. Do you go check on anyone else nearby?

JENNIFER SHELLY: DIRECT BY SOLICITOR EPTING
CROSS BY MS. INZERILLO

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1 A. I kind of had my hands full with the hysterical
2 people that were coming inside the door.

3 Q. Was Becca one of those hysterical people?

4 A. Yes.

5 Q. Did you talk to Bobby or Zach that night after that
6 incident?

7 A. I don't remember.

8 Q. And you said the police arrived?

9 A. Yes.

10 Q. Did you speak with the police?

11 A. Yes I did.

12 Q. Did you give them a statement of what you had seen
13 and heard?

14 A. I did not give an official statement that night. I
15 answered questions they had for me but I went to the
16 station later for an official statement.

17 SOLICITOR EPTING: I beg the Court's indulgence.

18 Ms. Shelly, that's all the questions I have for you.

19 Please answer any questions Ms. Inzerillo may have.

20 MS. INZERILLO: May it please the Court?

21 THE COURT: Yes, ma'am.

22 CROSS-EXAMINATION

23 JENNIFER SHELLY BY MS. INZERILLO:

24 Q. So, Ms. Shelly, you come upon these events after
25 Bobby Trader's been shot. Correct?

JENNIFER SHELLY: CROSS BY MS. INZERILLO

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1 A. That's correct.

2 Q. Okay. And that's because you're in and out trying
3 to get your job done that evening?

4 A. I came out when they told me that my daughter was
5 outside to get her specifically. I didn't intend to stay
6 out but when I heard the gunshots I went around the side of
7 the building.

8 Q. Okay. So you weren't there as a patron visiting, all
9 you were there ---

10 A. No, ma'am.

11 Q. --- you were there working that night?

12 A. Yes, ma'am.

13 Q. Okay. So you weren't there at the - when all this
14 started?

15 A. I was --

16 Q. Not outside when --

17 A. I was not outside when it started, no.

18 Q. Okay. But when you do go outside what you see are
19 three people hitting and kicking one person on the ground?

20 A. Yes.

21 Q. Okay. And the person that's on the ground is - You
22 don't see their face?

23 A. No, ma'am.

24 Q. And you don't see their face cause they have a hoody
25 on?

JENNIFER SHELLY: CROSS BY MS. INZERILLO

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1 A. I think that's why I didn't but he was face down so.

2 Q. Okay. Laying on the ground?

3 A. Yes.

4 Q. Okay. And you never saw this person turn and face
5 you?

6 A. No.

7 Q. You never saw this person get up on all fours?

8 A. No.

9 Q. You never saw this person stand up?

10 A. No.

11 Q. You jump into the fight initially not really
12 knowing what's happening before?

13 A. Right.

14 Q. Okay. And you jump into the fight initially because
15 you're afraid the three people are gonna kill him?

16 A. I was trying to stop them from hurting him, yes

17 Q. Okay. But you're - When you gave that statement a few
18 days later you told the detective you were afraid they were
19 gonna kill him; is that right?

20 A. I told them that they needed to stop before they
21 killed him, yes.

22 Q. Okay. And so you jumped in and got Logan Brooks,
23 Zach - Zachary Cleveland and Rick Henson, those were the
24 three people?

25 A. Yes, ma'am.

JENNIFER SHELLY: CROSS BY MS. INZERILLO

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1 Q. Okay. So you jump in and you're pushing them off of
2 the guy that's on the ground; is that correct?

3 A. That's correct.

4 Q. Just you?

5 A. I don't know if it was just me.

6 Q. Okay. But you're pushing them off of him?

7 A. Yes.

8 Q. Okay. And it's at that point that there's sort of
9 more gun fire; is that right?

10 A. I was knocked to the ground and when I got back up
11 that was when the gun fire took place.

12 Q. Okay. So when you were knocked to the ground and
13 you're kind of pushing these three cause it's happening
14 really fast; ---

15 A. Yes.

16 Q. --- is that fair? So when you're pushing them off
17 there is no time for you to walk over to the guy that's on
18 the ground and say hey, I'm here to help you, is everything
19 okay?

20 A. Huh-huh.

21 Q. Okay. And you haven't had a --

22 THE COURT: Ma'am, if you would, the lady right
23 beside you is making a recording of everything that
24 happens, give verbal responses. Okay?

25 A. Yes, Your Honor.

JENNIFER SHELLY: CROSS BY MS. INZERILLO

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1 THE COURT: Thank you.

2 BY MS. INZERILLO:

3 Q. And you haven't had a chance to walk over and say I'm
4 not here to hurt you to the guy that's on the ground?

5 A. I don't recall that, no.

6 Q. okay. And so you in sort of the quickness and the
7 violence of this act you also get knocked down?

8 A. Yes.

9 Q. And you in all of this you get hit with something
10 that you think is a gun shot?

11 A. Yes, ma'am.

12 Q. And it turns out once you get sort of the presence of
13 mind back you gotten hit with some gravel?

14 A. That's correct.

15 Q. Okay. And when you get back up and you realize that
16 the person there has a gun, and it's the gun that's going
17 off again?

18 A. Yes.

19 Q. Is that right? Cause you said you recognized the
20 sound as gun fire?

21 A. Yes, ma'am.

22 Q. And it's at that point that you - you walk over and
23 you put your foot on the person that's on the ground?

24 A. Yes.

25 Q. Is that right? And that last set of gun fire that

JENNIFER SHELLY: CROSS BY MS. INZERILLO

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1 you heard that's the last set of gun fire ---

2 A. Yes, ma'am.

3 Q. --- that you heard. Right?

4 A. Yes, ma'am.

5 Q. So you didn't hear any shots after that?

6 A. I don't think so.

7 Q. Okay. And so when you walk up to the person that's
8 on the ground you put your foot on the ground.

9 A. Yes, ma'am.

10 Q. Right? You don't throw your whole body on him?

11 A. Huh-huh.

12 Q. And --

13 MADAM COURT REPORTER: Melissa, I need a verbal.

14 MS. INZERILLO: I apologize, Ms. Wanda.

15 A. I'm sorry.

16 Q. You said no you didn't put your body on him?

17 A. No. I just put my foot on his back.

18 Q. On his back.

19 A. To hold him to the ground.

20 Q. Okay. And that's all you did, put your foot on his
21 back?

22 A. Yes, ma'am.

23 Q. Okay. And it is at that point in all of this going
24 on in the evening that you see Logan Brooks pull the gun
25 out and hold it --

JENNIFER SHELLY: CROSS BY MS. INZERILLO

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- 1 A. No. I didn't see Logan pull the gun from him.
- 2 Q. Okay.
- 3 A. I saw Logan over to one side behind me holding the
- 4 gun in the air.
- 5 Q. Okay.
- 6 A. The actual who got the gun how and when I did not see
- 7 that.
- 8 Q. And about how much time from the time you put your
- 9 foot on his back to the time you know the gun --
- 10 A. I honestly cannot answer that.
- 11 Q. Okay.
- 12 A. I don't know.
- 13 Q. A few seconds or a few minutes?
- 14 A. I don't know.
- 15 Q. Not too long?
- 16 A. I don't know. Time really was kind of irrelevant at
- 17 that point.
- 18 Q. Okay. At any time that you had your foot on the
- 19 person on the ground, did he hit you?
- 20 A. No, ma'am.
- 21 Q. Did he ever grab your foot and jerk you down?
- 22 A. No, ma'am.
- 23 Q. Did he ever curse at you or yell at you?
- 24 A. I don't recall hearing him say anything.
- 25 Q. Okay. He move at all?

JENNIFER SHELLY: CROSS BY MS. INZERILLO

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1 A. I know he was struggling. I don't.

2 Q. All right. Now, that evening was a party for your
3 daughter; is that right?

4 A. That's correct.

5 Q. At the time your daughter was dating Bobby Trader;
6 is that right?

7 A. No, ma'am.

8 Q. No they were not together at that time?

9 A. No.

10 Q. You ask for someone to call 911; is that right?

11 A. That's correct.

12 Q. Okay. And your involvement of this and everything
13 that you saw in this case is just what you described; ---

14 A. Yes, ma'am.

15 Q. --- is that right?

16 MS. INZERILLO: Your Honor, I have no further
17 questions.

18 THE COURT: Any redirect limited to what she went
19 into?

20 SOLICITOR EPTING: No, Your Honor.

21 THE COURT: Thank you, ma'am, you may step down.

22 Any reason why the witness cannot be excused?

23 SOLICITOR EPTING: None from the State, Your Honor.

24 MS. INZERILLO: No, Your Honor.

25 THE COURT: Thank you, ma'am, you may be excused as

KENNETH SMALL: DIRECT BY SOLICITOR GROVE

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1 well. Thank you for coming.

2 (WITNESS LEAVING WITNESS STAND.)

3 THE COURT: The State ready to call their next
4 witness?

5 SOLICITOR GROVE: Yes, Your Honor. The State calls
6 Kenneth Small.

7 THE COURT: Sir, just come right up here and let the
8 Clerk of Court swear you in.

9 MADAM CLERK: Please raise your right hand, place your
10 left on the Bible.

11 ((WHEREUPON, KENNETH SMALL,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:))

13 MADAM CLERK: Thank you.

14 THE COURT: Sir, just come right up here and have a
15 seat if you would. Do your best to speak into the
16 microphone.

17 MR. SMALL: Okay.

18 THE COURT: Thank you.

19 SOLICITOR GROVE: Thank you.

20 DIRECT EXAMINATION

21 KENNETH SMALL BY SOLICITOR GROVE:

22 Q. Good afternoon. Can you please state
23 your name for the record?

24 A. Kenneth Everett Small.

25 Q. And, Mr. Small, do you ever go by any other name?

KENNETH SMALL: DIRECT BY SOLICITOR GROVE.

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1 A. Bobo.

2 Q. Mr. Small, where are you from?

3 A. Catawba.

4 Q. And are you married?

5 A. Yeah.

6 Q. Mr. Small, who are you married to?

7 A. Jennifer.

8 Q. And when you say Jennifer do you mean Jennifer Shelly?

9 A. Uh-huh.

10 Q. I want to talk to you about an event on December 13
11 and December 14th, 2013. Were you at the Palmetto that
12 night?

13 A. Yes I was.

14 Q. Had you been at the Palmetto before?

15 A. Yes.

16 Q. And why were you at the Palmetto that night?

17 A. Step-daughter's birthday party.

18 Q. And who is your step-daughter, Mr. Small?

19 A. Becca, Rebecca.

20 Q. And was your wife working there that night?

21 A. Uh-huh.

22 Q. Can you please answer yes or no?

23 THE COURT: Sir, if you would, the lady beside you is
24 making a recording of everything that happens here and she
25 needs to get verbal answers. Grunts and nods of heads she

1 can't take down.

2 A. Okay.

3 THE COURT: Thank you.

4 A. Yes, sir.

5 SOLICITOR GROVE: Thank you, Mr. Small.

6 Q. Was Jennifer Shelly working that night?

7 A. Yes, ma'am.

8 Q. And was it a pretty normal night?

9 A. Yeah.

10 Q. Were there a lot of people there that night?

11 A. Yes.

12 Q. And was the night fairly uneventful?

13 A. Yes.

14 Q. Mr. Small, about what time did the bar close that
15 night?

16 A. Two o'clock.

17 Q. And what happened around closing time that night?

18 A. Uh - There was a fight outside in the front parking
19 lot. It was broken up and everybody was told to leave and
20 about five or ten minutes after that somebody said there
21 was a shootin going on in the back parking lot.

22 Q. Did you see the fight in the front parking lot?

23 A. No.

24 Q. Did you see the shooting in the back parking lot?

25 A. No, ma'am.

KENNETH SMALL: DIRECT BY SOLICITOR GROVE

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1 Q. At what point did you realize something was happening
2 in the back parking lot?

3 A. Uh - When my wife went outside I followed her and as
4 we got to the side of the building there was some shots
5 going off then.

6 Q. And what did you do when you heard the shots going
7 off?

8 A. Uh - I was just standing there at the time and my
9 wife said she thought she had been shot and when she said
10 that I took off toward where they had the guy on the
11 ground.

12 Q. So when your wife told - What did your wife tell you?

13 A. She said I think I been shot.

14 Q. So you thought your wife had been shot ---

15 A. Uh-huh.

16 Q. --- at that point?

17 A. Yes, ma'am.

18 Q. And what did you do then?

19 A. I took off towards where they had the guy on the
20 ground.

21 Q. And what did you do once you got there?

22 A. I tried to help 'em get the gun from him.

23 Q. And did other people - Were other people involved in
24 trying to get the gun from him?

25 A. Yes, ma'am.

1 Q. At that point when you went over there did he still
2 have the gun?

3 A. Yes he did.

4 Q. And at what point did you realize your wife had not
5 been shot?

6 A. Uh - I didn't at the time.

7 Q. Did you find that out later?

8 A. Uh-huh. Yes, ma'am.

9 Q. Thank you.

10 A. I'm sorry.

11 Q. Once you were over there did Mr. - Did the person
12 on the ground continue to shoot?

13 A. Yes, ma'am.

14 Q. Did you know who the person on the ground was?

15 A. No, ma'am.

16 Q. Did you know the other people involved in the
17 incident in the back parking lot?

18 A. Uh -

19 Q. Did you ---

20 A. --- somewhat.

21 Q. --- know Bobby Trader?

22 A. Yes.

23 Q. Did you know Zach Cleveland?

24 A. No.

25 Q. Did you know Logan Brooks?

KENNETH SMALL: DIRECT BY SOLICITOR GROVE
CROSS BY MS. INZERILLO

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1 A. No.

2 Q. And about how long before the police came then?

3 A. Uh - I was back inside before the police even got
4 there so.

5 Q. Did you speak to the police?

6 A. No, ma'am.

7 SOLICITOR GROVE: I have no other questions for you,
8 Mr. Small. Please answer any questions that the Defense
9 may have.

10 MS. INZERILLO: May it please the court, Your Honor.

11 THE COURT: Yes, ma'am.

12 CROSS-EXAMINATION

13 KENNETH SMALL BY MS. INZERILLO:

14 Q. So, Mr. Small, you didn't see any of the events that
15 occurred in the parking lot before you walked outside with
16 your wife; is that right?

17 A. No, ma'am.

18 Q. Okay. And when you walked outside with your wife,
19 you were standing there before you heard the gun fire;
20 is that right?

21 A. Yes, ma'am.

22 Q. Okay. While you were standing there was she trying
23 to get the other boys off of the guy on the ground?

24 A. At some point she tried to do that, yes.

25 Q. Okay. And that's why you were standing out in the

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1 parking lot?

2 A. Yes, ma'am.

3 Q. All right. And the - At that point is when you
4 heard gun fire again?

5 A. Excuse me?

6 Q. And it was at that point that you heard gun fire
7 again?

8 A. I heard about maybe three or four more pops, yeah.

9 Q. Okay. And you weren't hit at that point; is that
10 right?

11 A. No, ma'am.

12 Q. Okay. And at that point you thought your wife was
13 hurt?

14 A. Yes, ma'am.

15 Q. Hit at that point. Okay. You saw her walk back over
16 to the person on the ground?

17 A. Yes, ma'am.

18 Q. Okay. And you walk back over to the person on the
19 ground; is that right?

20 A. Uh - I think so. I'm not sure.

21 Q. Okay. You testified that at some point you walk
22 back over cause y'all were trying to get the gun away from
23 him; is that right?

24 A. Yes.

25 Q. Okay. Did you hear any more gun shots after that?

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1 A. No.

2 Q. All right. Were you aware at that point that someone
3 took the gun away from the person on the ground?

4 A. While I heard when somebody said we got the gun and I
5 did hear that.

6 Q. Okay. And that's when you were standing out there?

7 A. Uh-huh.

8 Q. Okay.

9 THE COURT: Sir.

10 A. Yes, ma'am.

11 Q. After you heard that is that when you walked up to
12 him again and kicked him while he was on the ground?

13 A. I don't recall.

14 Q. You don't recall doing that?

15 A. No.

16 Q. Do you recall walking up to him and hitting while he
17 was on the ground?

18 A. I - At one point I probably did.

19 Q. Okay. And you're aware he didn't have the gun at
20 that point?

21 A. Excuse me?

22 Q. You're aware he didn't have the gun at that point?

23 A. No I wasn't.

24 Q. All right. You just testified that you were standing
25 there when someone said they took the gun away from him.

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1 A. Yes.

2 Q. You didn't know - You knew Bobby; is that right?

3 A. Yes, ma'am.

4 Q. But you don't know Zach Cleveland or Logan Brooks?

5 A. Somewhat.

6 Q. You know them somewhat or you don't know them
7 somewhat?

8 A. Not really, no.

9 Q. Okay. How tall are you? How tall are you?

10 A. Five, ten.

11 Q. How much do you weigh?

12 A. One eighty.

13 MS. INZERILLO: I have no further questions.

14 THE COURT: Any redirect limited to what she went
15 into?

16 SOLICITOR GROVE: No, Your Honor.

17 THE COURT: Thank you, sir, you may step down.

18 Any reason why the witness cannot be excused?

19 SOLICITOR GROVE: No, Your Honor.

20 THE COURT: Any from -

21 MS. INZERILLO: No, Your Honor.

22 THE COURT: Thank you, sir, you may be excused as
23 well. Thank you for coming.

24 MR. SMALL: Thank you, sir.

25 (WITNESS LEAVING WITNESS STAND.)

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1 THE COURT: Is the State ready to call their next
2 witness?

3 SOLICITOR EPTING: We are, Your Honor, but I believe
4 we may be appropriate for us to approach you.

5 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
6 THE JURY AT 02:26 P.M..)

7 THE COURT: Ladies and gentlemen, we have to have a
8 matter of law discussion so I'm gonna need you to retire
9 back to the jury deliberation room. Please do not have any
10 discussion among yourselves about anything about the case.
11 We'll get you back just shortly.

12 (JURY EXITS COURTROOM AT 02:27 P.M..)

13 THE COURT: Yes, ma'am.

14 MS. INZERILLO: Your Honor, it's my understanding that
15 the State wishes to introduce the 911 call through it's
16 next witness. We would object to - I believe we would have
17 to object to the entirety of the 911 call coming in on two
18 reasons. One, is the 911 call coming in through this
19 witness and not through our emergency management system.
20 If it was a care taker of this phone call and the business
21 records are in the custody and control of this 911 call.

22 Secondly, Your Honor, while this person is on - I
23 guess allegedly whatever her testimony would be, on the
24 phone with 911 there is a lot of sounds and activity in the
25 background we would believe that would be I think unable to

1 be redacted out without redacting out whatever the
2 substance of the call is. There is also some medical
3 advice I think being given, things like that that might be
4 considered irrelevant and both of those things would be
5 prejudicial. I believe at this point this kind of is in
6 the same vein as a lot of previous objections. There is a
7 lot of voices in the background. I know we've had
8 testimony by three or four people I believe on the scene,
9 but I'm not exactly sure all of the voices on this tape
10 have been accounted for in terms of other testimony. And
11 so I would make an objection to the entry of this tape
12 through this witness for all of those reasons.

13 SOLICITOR EPTING: Your Honor, this witness is the one
14 who is actually making the call to 911. After her review
15 of the tape she says that she believes that's a fair and
16 accurate recording of her conversation with 911 as well as
17 her conversation with Bobby Trader who is sitting next to
18 her.

19 Your Honor, the background you do hear several shots
20 that I believe are the actual only live audio recordings of
21 the shots that have been discussed at length at multiple
22 times during this case. We believe that it's extremely
23 highly approbative and we would ask that you allow us to
24 introduce this through this witness.

25 THE COURT: Does the State intend to have the witness

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1 then go through everything of the evening and then also
2 then play the tape?

3 SOLICITOR EPTING: Your Honor, my - I would walk her
4 up to the shooting and then ask her if she called 911,
5 authenticate the tape and then play the tape, Your Honor,
6 that would be my intentions.

7 THE COURT: I've listened to the tape and I do agree
8 with the Defense that it does seem unusual to present the
9 actual 911 tape without having the 911 dispatcher or
10 somebody that can talk about how it's made, what they do to
11 give - to lay I think a proper foundation for the entrance
12 of the 911 tape.

13 That is the State and the Defense has not suggested
14 otherwise, the voice that I hear on the 911 tape I guess is
15 this witness so it would be the best evidence of what she
16 actually said during the 911 call. There is in the
17 background a considerable amount of noise that I think it
18 would be inappropriate to have somebody sit here and
19 explain what that noise is if that person who is testifying
20 is not the noise maker. I think that would deprive the
21 defense of their right of confrontation.

22 As long as - I do feel like it would be inappropriate
23 for me to allow the 911 tape in and then also to have the
24 witness to come in and testify. It would be duplicative of
25 what's on the 911 tape or the 911 tape would be duplicative

1 of what the witness is gonna testify to. We would need one
2 or the other. I don't think it would be appropriate for me
3 to allow both of them to come in given the fact that we
4 don't have the actual 911 operator.

5 So as long as the State doesn't overlap with what's
6 on the tape with what the witness will testify to I will
7 allow that.

8 SOLICITOR EPTING: Yes, Your Honor. Thank you, Your
9 Honor.

10 THE COURT: Anything else before we bring the jury in?

11 SOLICITOR EPTING: Nothing from the State.

12 THE COURT: Let's bring the jury in.

13 MS. INZERILLO: Before we do that, Your Honor, I want
14 to make sure I'm clear on Your Honor's rulings and the tape
15 as reported will be allowed in but the background noise?

16 SOLICITOR EPTING: We're just not going to ask her to
17 rehash anything that's on the tape.

18 THE COURT: Nobody is going to explain what that
19 background noise is. She's not gonna - Because she's not
20 the one who makes the background noise and I think it would
21 be - would deny the defense - unless the defense wants to -
22 would deny the defense the opportunity to be able to cross
23 examine what those background noises is - are.

24 MS. INZERILLO: Thank you, Your Honor.

25 SOLICITOR EPTING: Thank you, Your Honor.

AMANDA CHARLES: DIRECT BY SOLICITOR EPTING

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1 THE COURT: Let's bring 'em in.

2 (JURY REENTERS COURTROOM AT 02:33 P.M..)

3 THE COURT: Is the State ready to call their next
4 witness?

5 SOLICITOR EPTING: We are, Your Honor, thank you.

6 May it please the Court. We call Amanda Charles to
7 the stand.

8 THE COURT: Ma'am, just come right up here and let
9 the Clerk of Court swear you in.

10 MADAM CLERK: Please raise your right hand, place your
11 left on the Bible.

12 ((WHEREUPON, AMANDA CHARLES, BEING
13 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:))

14 MADAM CLERK: Thank you. You may have a seat.

15 THE COURT: Have a seat in the chair, ma'am, if you
16 would and please pull the chair up to the microphone and
17 speak into the microphone so everyone will hear you.

18 MADAM COURT REPORTER: Judge, that chair won't move.
19 It's stationary.

20 THE COURT: It won't?

21 MADAM COURT REPORTER: It's stationary.

22 THE COURT: Then lean into the microphone as best you
23 can.

24 DIRECT EXAMINATION

25 AMANDA CHARLES BY SOLICITOR EPTING:

AMANDA CHARLES: DIRECT BY SOLICITOR EPTING

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1 Q. Good afternoon. Would you please state your name
2 for the record?

3 A. Amanda Charles.

4 Q. Ms. Charles, were you present at the Palmetto Club
5 the late night hours or late night hours early morning
6 hours of December 13th and December 14th ---

7 A. Yes.

8 Q. --- 2013?

9 A. Yes.

10 Q. While there did you become aware that Bobby Trader
11 incurred an injury at that club?

12 A. Yes.

13 Q. Did you go to him?

14 A. Yes.

15 Q. And in part of going to him did you make a phone call?

16 A. Yes.

17 Q. Who was that to?

18 A. 911.

19 SOLICITOR EPTING: Your Honor, may I approach?

20 Q. Ms. Charles, I'm handing you what's been marked for
21 identification as State's Exhibit Six.

22 Do you recognize State's Exhibit Six?

23 A. Yes.

24 Q. And what is State's Exhibit Six?

25 A. 911 call.

AMANDA CHARLES: DIRECT BY SOLICITOR EPTING

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1 Q. And have you reviewed a copy of that?

2 A. Uh-huh.

3 Q. How do you know --

4 THE COURT: Ma'am, if you would I need you to give
5 verbal responses.

6 A. Yes.

7 THE COURT: And please lean into that microphone.
8 You're speaking very lightly. Okay?

9 A. All right.

10 THE COURT: Thank you.

11 BY SOLICITOR EPTING:

12 Q. Did you review a copy of State's Exhibit Six?

13 A. Yes.

14 Q. And is that the copy you reviewed?

15 A. Yes.

16 Q. How do you know it's the same copy?

17 A. I initialed it.

18 Q. Is it a fair and accurate depiction of your
19 conversation with 911 on that night?

20 A. Yes.

21 SOLICITOR EPTING: Your Honor, at this time the State
22 would seek to enter State's Exhibit Six into evidence.

23 THE COURT: Subject to the objection this Court will
24 allow it.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER SIX, IDENTIFIED AND

AMANDA CHARLES: CROSS BY MS. INZERILLO

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1 MARKED, RECEIVED INTO EVIDENCE.)

2 SOLICITOR EPTING: Thank you, Your Honor.

3 Permission to publish?

4 THE COURT: Yes, sir. Is it an audio tape?

5 SOLICITOR EPTING: That is correct, Your Honor.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER SIX PUBLISHED TO

7 THE JURY AT 02:36 P.M..)

8 SOLICITOR EPTING: Ms. Charles, I have no further
9 questions for you.

10 A. Okay.

11 THE COURT: If you will, she needs to ask you
12 questions, please.

13 MS. INZERILLO: May it please the Court, Your Honor.

14 THE COURT: Yes, ma'am.

15 CROSS-EXAMINATION

16 AMANDA CHARLES BY MS. INZERILLO:

17 Q. Ms. Charles, you called 911 that night. That was
18 just the call we heard?

19 A. Yes.

20 Q. And you told 911 you didn't really know how all this
21 had happened?

22 A. Yes.

23 Q. All you knew was that your friend Mr. Trader had been
24 shot?

25 A. Yes.

AMANDA CHARLES: CROSS BY MS. INZERILLO

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1 Q. But you had been out in the parking lot that
2 evening?

3 A. Yes.

4 Q. So you didn't see any of the events happen before Mr.
5 Trader got shot?

6 A. Uh - All I remember seeing is everybody fighting like
7 a group.

8 Q. Okay. You didn't tell 911 that?

9 A. No.

10 Q. That's all you remember seeing?

11 A. That and then Bobby when he was shot and going over
12 there and helping him.

13 THE COURT: Ma'am, I'm sorry, I can't hear your
14 responses.

15 A. I said when Bobby was shot and I went over to help
16 him.

17 MS. INZERILLO: I have no further questions, Your
18 Honor.

19 THE COURT: Any redirect limited to what she went
20 into?

21 SOLICITOR EPTING: No, Your Honor.

22 THE COURT: Thank you, ma'am. You may step down.
23 Any reason why the witness cannot be excused?

24 SOLICITOR EPTING: No, Your Honor.

25 MS. INZERILLO: No, Your Honor.

1 THE COURT: Thank you, ma'am, you may be excused as
2 well. Thank you for coming.

3 (WITNESS LEAVING WITNESS STAND.)

4 SOLICITOR EPTING: Your Honor, at this time the State
5 rest.

6 THE COURT: All right. Ladies and gentlemen, this is
7 one of those times where I have to take up a couple of
8 matters of law with the attorneys. If you would please
9 retire back to the jury deliberation room but please do not
10 have any discussions among yourselves about anything
11 involving the case. We will get you back just shortly.

12 (JURY EXITS COURTROOM AT 02:46 P.M..)

13 THE COURT: Yes, ma'am.

14 MS. INZERILLO: May it please the Court, Your Honor.

15 Your Honor, at this time the Defense would renew all
16 previous objections and motions. At this time we would
17 also move for a finding - Sorry, a directed verdict on the
18 charges as presented. I understand the State is going
19 forward I believe on - or it is the State's intention to go
20 forward on AGHAN as a result in regards to Mr. Cleveland
21 and attempted murder as a result in regards to Mr. Trader.

22 I would move for a directed verdict on those charges
23 or I guess in the alternative to preserve our pretrial
24 motion on the stated indictment attempted murder as well on
25 Mr. Cleveland as that is conducted against Mr. Faile.

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1 But we would move for a directed verdict in this case,
2 Your Honor.

3 THE COURT: All right. Based upon the standards that
4 this court has to apply at this juncture and in viewing the
5 evidence in the light most favorable to the non-moving
6 party, that would be the State, and considering the
7 evidence that has been presented drawing all reasonable
8 inferences from the evidence I have to deny the motion as
9 well as continue to deny all previously - all previous
10 motions denied by the Court.

11 All right, is the Defense ready to proceed?

12 MS. INZERILLO: We are, Your Honor. I have spoken
13 with Mr. Faile about his right to testify and I would ask
14 the Court to do the same.

15 THE COURT: All right. Mr. Faile, if you would please
16 stand and raise your right hand and let the Clerk of Court
17 swear you in. You can just stand.

18 MADAM CLERK: Just stand.

19 ((WHEREUPON, JUSTIN FAILE,
20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:))

21 THE COURT: All right, Mr. Faile, at this time I'm
22 going to explain to you certain of your rights and if you
23 do not understand anything that is say, please let me know.
24 If you want me to explain anything in more detail please
25 let me know that as well. Do you understand that?

1 MR. FAILE: Yes, sir.

2 THE COURT: Okay. We have now reached the stage of
3 the trial where you may present your defense. You have the
4 right to claim the protections given to you by the *Fifth*
5 *Amendment of the Constitution of the United States.*

6 Now this amendment provides in part no person shall be
7 compelled in any criminal case to be a witness against
8 himself. This means that you cannot be required to testify
9 in this case. You have the right to testify on your own
10 behalf. However, no one can make you testify. This is a
11 personal right and no one can waive this right except you.

12 If you decide to testify you will be subject to the
13 same rules that govern other witnesses and you may be
14 examined and cross examined on any relevant issue in this
15 case. In addition if you have any convictions involving
16 dishonesty or false statement, or for crimes punishable by
17 imprisonment for more than one year and the Court
18 determines that the approbative value of admitting this
19 evidence outweighs its prejudicial effect to you, the
20 Solicitor will be able to introduce your record to attack
21 your credibility.

22 If you decide to testify this decision on your part
23 must be freely and voluntarily and intellectually made with
24 knowledge of the protections given to you by the *Fifth*
25 *Amendment* and the consequences of your decision to testify.

1 If you decide not to testify I will instruct the
2 jurors that they cannot give the fact that you did not
3 testify any consideration whatsoever and that there is to
4 be absolutely no prejudice to you because you did not
5 testify. It is left entirely up to you whether or not you
6 testify. You may talk with your attorney, your family and
7 your friends, and anyone else.

8 The final decision will be left entirely up to you.

9 Do you understand what I have just explained to you?

10 MR. FAILE: Yes, sir, I understand.

11 THE COURT: Do you have any questions about what I
12 have just explained to you?

13 MR. FAILE: No, sir.

14 THE COURT: Have you discussed with your lawyer
15 whether you should or should not testify?

16 MR. FAILE: Yes, sir.

17 THE COURT: Do you wish to speak with your lawyer any
18 more about the decision of whether to testify or not?

19 MR. FAILE: No, sir.

20 THE COURT: All right. And, sir, have you made the
21 decision whether you will or will not testify?

22 MR. FAILE: I will, sir.

23 THE COURT: You will testify in this case?

24 MR. FAILE: Yes, sir.

25 THE COURT: Sir, has anybody come to you and

1 threatened you in any way or promised you anything in order
2 to get you to make the decision to testify?

3 MR. FAILE: No, sir, it's freely.

4 THE COURT: I am correct to conclude that it is a free
5 and voluntary decision on your part?

6 MR. FAILE: Yes, sir.

7 THE COURT: And you're satisfied with the work of your
8 lawyer so far?

9 MR. FAILE: Yes, sir.

10 THE COURT: All right, sir, if ever you change your
11 mind just let your lawyer know and she will advise the
12 Court.

13 MR. FAILE: Yes, sir.

14 THE COURT: Thank you, sir, you may be seated.

15 MR. FAILE: Thank you, sir.

16 THE COURT: So the Defense is ready to call it's first
17 witness?

18 MS. INZERILLO: Yes, Your Honor.

19 THE COURT: Is the first witness the defendant?

20 MS. INZERILLO: Yes, Your Honor.

21 THE COURT: All right. I'll tell you what, let's take
22 a short break and we'll come right back.

23 (COURT IN RECESS AT 02:52 P.M..)

24 (COURT BACK IN SESSION AT 02:58 P.M..)

25 THE COURT: Be seated.

JUSTIN FAILE: DIRECT BY MS. INZERILLO

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1 All right, bring the jury in.

2 (JURY REENTERS COURTROOM AT 03:00 P.M..)

3 THE COURT: Is the Defense ready to call their first
4 witness?

5 MS. INZERILLO: Yes, Your Honor, may it please the
6 court. Your Honor, the Defense calls Justin Faile to the
7 stand.

8 THE COURT: Sir, if you will come right up here and
9 let the Clerk of Court swear you in.

10 MADAM CLERK: Please raise your right hand.

11 ((WHEREUPON, JUSTIN FAILE,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:))

13 MADAM CLERK: You may have a seat.

14 DIRECT EXAMINATION

15 JUSTIN FAILE BY MS. INZERILLO

16 Q. Good afternoon, Justin.

17 A. Good afternoon.

18 Q. Will you tell the jury your name?

19 A. Justin Faile.

20 Q. And, Justin, how old are you?

21 A. I'm twenty-four years old.

22 Q. How old were you in 2013?

23 A. Twenty-four. My birthday's in May. No, actually I
24 was twenty-three. Yeah. Sorry.

25 Q. What were you doing the night of December 13th in

1 the morning of December 14th?

2 A. I was attending a birthday party at the Palmetto
3 Sports Bar.

4 Q. Okay. And why were you at the Palmetto Sports Bar
5 that night?

6 A. It was for a birthday for a friend of a friend. My
7 ex-girlfriend it was actually a friend of hers. She got in
8 touch with me said hey she invited us out to come celebrate
9 with her and her friends.

10 Q. And what time did you get there?

11 A. I'd say around ninish, nine, nine thirty maybe.

12 Q. Okay. And what did you do that evening?

13 A. We hung out and a lot of people I knew. Like I'm
14 saying I came with my girlfriend and my ex-girlfriend and
15 we had - so it was a lot of - me and my girlfriends we knew
16 some guys up there I knew so we hung out, played pool, and
17 everybody had a real good time.

18 Q. Okay. Were you - When you say hang out, kind of
19 describe for the jury what you mean hang out.

20 A. We were inside the bar playing pool and the girls were
21 hanging out. They were either dancing and hanging out
22 beside us beside the pool table. I think it was me, I know
23 it was me and Zach and a few others were playing pool and
24 that sort of thing.

25 Q. Okay. Zach who?

JUSTIN FAILE: DIRECT BY MS. INZERILLO

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1 A. Zach, Zachary Cleveland.

2 Q. Okay. You played pool with him that evening?

3 A. Yes, ma'am.

4 Q. And were you drinking any that evening?

5 A. Yes, ma'am.

6 Q. Were you drunk that evening?

7 A. I was drinking but I wouldn't say I was drunk no,
8 ma'am.

9 Q. Okay. How long do you remember being at Palmetto
10 Sports Bar that evening?

11 A. I would say at the time I showed up until obviously
12 when I left for the hospital so from nine till whenever
13 that happened. Not until after two.

14 Q. Okay. I'm going to fast forward a little bit to the
15 tail end of the evening. Do you recall anything happening
16 around one maybe about forty or forty-five that morning?

17 A. Yes, ma'am. We were like I said hanging out playing
18 pool. It was a commotion near the door and at first I
19 didn't realize what was going on. A lot of people
20 starting funneling out the door getting pretty excited so I
21 finally figured out there was a fight. So I step out there
22 and I see Benjamin Sturgis laid out on the ground and so,
23 yes, ma'am.

24 Q. Okay. Did you see that fight?

25 A. No, ma'am.

1 Q. Do you know Ben Sturgis?

2 A. Yes, ma'am. We've been around the scene before.

3 Q. Okay. What did you do upon hearing about that fight?

4 A. Well when I walked out and I seen him on the ground I
5 ask the surrounding people around us I said hey is anybody
6 here with me, did they do this, is anybody here involved
7 with me involved in this and they said no. Just saying
8 nobody in our crowd did this so I said okay. And at that
9 time I turned around and I spoke to my girlfriend at the
10 time and told her okay kind of settle up the tab and let's
11 get ready to go.

12 Q. Okay. And then do you recall seeing Sam Fitcher
13 that night?

14 A. Yes, ma'am.

15 Q. Okay. How do you know Sam?

16 A. I dated his cousin Ashley Hargett. We dated for
17 maybe five or six years so it was a long relationship and
18 he was - He's from out of town, originally I think he stays
19 in Columbia but when he would come down to Ashley's house
20 that was where he would stay, him and his mom and his wife,
21 kids and I would be over there with 'em so we would hang
22 out, you know what I'm saying, and go out together, things
23 like that.

24 Q. So you knew him for a long time before this?

25 A. Yes, ma'am.

JUSTIN FAILE: DIRECT BY MS. INZERILLO

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1 Q. Was Sam at the Palmetto Sports Bar this night?

2 A. Yes, ma'am.

3 Q. And after the altercation that you just described
4 with Ben Sturgis, did you see Sam Fitcher in the parking
5 lot that evening?

6 A. Yes, ma'am.

7 Q. Okay. And what did you see Sam doing in the parking
8 lot that evening?

9 A. Well I seen him out there and I knew he was out there.

10 Right after the Ben Sturgis thing as I was asking is
11 anybody involved in this with me, I was trying to locate
12 everybody there that was with me and keep them calm. There
13 was like a crowd here, then you had like Rick Henson and
14 they were on the - Zachary Cleveland and Logan were on the
15 other side of the parking lot getting into their vehicle
16 and everybody was kind of standing back, you know what I'm
17 saying, I was watching them keeping everybody calm, saying
18 hey chill out, you know what I'm saying, let 'em leave.

19 I see Sam out there but I didn't realize he was behind
20 me. I didn't know he was kind of closer to the truck at
21 the time. I was kind of worried about everybody else. And
22 you know what I'm saying I pretty much forgot about him. I
23 knew he was out there I just didn't know the exact
24 location.

25 Q. So when you're trying to account for all of the

1 people that you considered with you ---

2 A. Yes, ma'am.

3 Q. --- did you consider Sam with you?

4 A. Yes, ma'am.

5 Q. Okay. And what's the next thing you see Sam do? Or
6 do you hear him say anything or do you see him do anything?

7 A. I don't remember hearing Sam and Logan get into it.

8 I guess being - being focused on the other, you know
9 what I'm saying, the crowd near the side of the building I
10 didn't hear them engaging in any argument or anything. But
11 soon after that's when they go to pull off and Sam he's
12 still in the parking lot and that's when he approaches. We
13 kind of approach at the same time but there was no
14 conversation before then, you know what I'm saying, I
15 didn't know his intentions and he didn't know my
16 intentions. It's not like we met up to approach the
17 vehicle at the same time, it just happened that way.

18 Q. Okay. And then what's the next thing you see Sam do?

19 A. Well when I'm walking to the vehicle I know Logan and
20 like I say I know Ben Sturgis, so I walk to the vehicle
21 kind of confront Logan and say what's this about, saying
22 what happened with you and Ben, that sort of thing.

23 Well when I'm walking to the vehicle I don't get to
24 say anything. Sam he's freakin out. Before then like I
25 say I didn't notice, I didn't hear anything he said to

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1 Logan. Logan was already in the truck so they quit arguing
2 or whatever. So I'm walking to the truck to talk to Logan,
3 Sam freaks out. He's F this, F that, and that was wrong or
4 whatever and he reaches in the truck and hits him.

5 Q. Okay. Now when you said your intentions was to kind
6 of mention something to Logan, ---

7 A. Yes, ma'am.

8 Q. --- explain that a little bit.

9 A. Like I said I know him. You know what I'm saying I
10 just didn't understand why the fight happened. You know
11 what I'm saying hey what's up. I don't really get to see
12 Logan that often so I just wanted to talk to him. Hey,
13 man, what happened? You know what I'm saying, what's - At
14 that time I didn't know what had caused the fight so I was
15 gonna talk to him. Hey, you know what I'm saying, what's
16 up? I mean what's on your mind. I mean that sort of
17 thing.

18 Q. What was your take on Sam Fitcher's reaction to Logan?

19 A. Caught me totally off guard. When he did that I
20 froze. I mean like I said I was gonna go talk to Logan. I
21 know Logan. So I was gonna go talk to him and when - I was
22 right upon the vehicle and that's when Sam exploded and F
23 this, F that, throwing his hands up like kind of screaming
24 at Logan. And I just kind of froze. I didn't get to say
25 anything. I was like, you know what I'm saying, what are

1 you doing, that sort of thing.

2 Q. What's the next thing you see?

3 A. I see Sam punch Logan.

4 Q. Okay. And describe that punch.

5 A. Well as he's yelling and screaming he's approaching
6 the vehicle, he leans in and he puts his arms on the like
7 the door and reaches in and punches him.

8 Q. Did you know Sam was gonna do that?

9 A. I had no idea.

10 Q. Would you have walked up to the car if you had
11 known Sam was gonna do that?

12 A. No, ma'am.

13 Q. Did you have a gun on you when you walked up to the
14 car?

15 A. Yes, ma'am.

16 Q. Had you pulled the gun at this point?

17 A. No, ma'am.

18 Q. Did you have any intention of pulling the gun at
19 this point?

20 A. No, ma'am.

21 Q. Did you walk up to the car with the intention of
22 pulling the gun?

23 A. No, ma'am.

24 Q. What happened when Sam punched Logan?

25 A. As soon as he punched him, like I said it caught me

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1 off guard, I froze. I wasn't expecting that. He punched
2 him. I had a lot of things going through my head at the
3 same time cause I knew this was about to escalate cause
4 they just stopped fightin. Get 'em in the truck to leave
5 he does this. I know it's gonna start more things so I got
6 all these thing going through the back of my mind. He
7 punches him I see Zach he's upset, he slams it in park he
8 jumps out and runs toward us.

9 Q. Okay. What do you see Logan do?

10 A. At that time I'm focusing on Zach. You know what I'm
11 saying cause I see he's coming pretty quickly around the
12 truck so I focus on him. I step back and see him coming.
13 Logan I think he was in the process of gettin out of the
14 truck. Like I said I was more focused on Zach. I seen
15 Logan out of the corner of my eye like my peripheral but I
16 was focusing on Zach.

17 Q. Why did you focus on Zach?

18 A. Just his mannerisms. You know what I'm saying, after
19 - After Logan got punched just the way he was acting and
20 the way he - the speed of it, you know what I'm saying, how
21 quick it happened. He slammed it in park and he came
22 running around the back of the truck so that kind of set
23 off a red flag to me.

24 Q. Is Zach taller or shorter than you?

25 A. Zach is taller.

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1 Q. Does he weigh more than you do or less than you?

2 A. I would say he weighs more.

3 Q. How tall are you?

4 A. Five, five.

5 Q. How much did you weigh then?

6 A. Maybe one seventyish. One seventy.

7 Q. What did you see when you saw Zach come around the
8 back of the truck?

9 A. When he came around that's when I pulled the pistol
10 out.

11 Q. Why did you pull the pistol out instead of just
12 punching Zach?

13 A. I had - I didn't know Sam was gonna punch Logan.

14 I approached the truck to talk to Logan. I had no
15 intention of fighting. I didn't want to fight.

16 Q. Okay. And so what did - Describe what happened next
17 when you pulled the gun.

18 A. I pulled the gun after I seen everything happen the
19 way it was and I was thinking I knew how many people were
20 in the parking lot, I knew we had been drinking, I knew
21 that the crowd he was in, I knew he was there with a crowd
22 of guys, I did not want this to escalate to a fight so I
23 pulled the gun. When he ran around I pulled it to defuse
24 the situation. In my mind I think if I pull a pistol and
25 you see that I would think okay he's serious I'm gonna

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1 leave him alone I don't want to bother him. So when I
2 pulled that I'm thinking okay hopefully this is gonna
3 control the situation, hey, you know what I'm saying, just
4 calm down. Well instead of him stopping he continues to
5 approach me.

6 Q. Okay. And at that point you noticed that he
7 continued to approach you.

8 A. Yes, ma'am.

9 Q. Did - Were you aware that you were stepping backwards?

10 A. Yes, ma'am.

11 Q. Okay. And what happened - Describe for the jury
12 what happened at that point.

13 A. After I pulled the gun and I noticed that it has no
14 effect on him, he stills pointing and coming towards me, I
15 stepped back, hey I don't want any problems, I didn't know
16 Sam was gonna punch him, I just want to leave, I don't want
17 any problems. That's all I remember.

18 Q. Okay.

19 A. At that time.

20 Q. Let me ask you a question. What were your injuries
21 as a result of what happened?

22 A. I had facial trauma, swelling of my head and I have a
23 concussion. I had a few places in my back busted up pretty
24 bad, broken. I don't know the medical terminology but a
25 few places in my back were really messed up. I had to be

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1 in a wheelchair for a while. I believe my ribs and my body
2 were injured as well. My neck - I was battered throughout.
3 You know what I'm saying. There was a lot of injuries but
4 to my face and eyes my eyes were swollen shut and I
5 couldn't really see. There was a lot of damage to my face
6 as well.

7 Q. So when you just indicated that you can't remember,
8 is that because of the concussion?

9 SOLICITOR EPTING: Your Honor, I object. That's
10 speculation.

11 THE COURT: All right. I'll sustain the objection.

12 BY MS. INZERILLO:

13 Q. Can you explain to the jury - Do you remember parts
14 of what happened after you backed up?

15 A. Yes, ma'am.

16 Q. Do you remember all of what happened?

17 A. No, ma'am.

18 Q. Can you explain to the jury what you remember about
19 the next set of events that happened?

20 A. Okay. After I pulled the pistol and he approached
21 me, that's all I remember. You know what I'm saying? I'm
22 backing up and I go out. You know what I'm saying? I
23 don't remember. Right after that I don't remember it. I
24 remember - I do remember after that being on the ground. I
25 was laying face down. It's kind of fuzzy cause I was in

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1 consciousness and out because in an out. I remember being
2 conscious and being beat, hit, and kicked and then I would
3 go out and then I would come back and it was the same
4 thing. I was beat and hit and kicked over and over so
5 pretty much in and out from there. So I don't remember
6 everything but for the most part, you know what I'm saying,
7 when I was conscious I was still being attacked.

8 Q. Do you remember getting kicked in the head?

9 A. Yes, ma'am.

10 Q. Do you remember getting kicked in the body?

11 A. Yes, ma'am.

12 Q. Do you remember getting punched in the head?

13 A. Yes, ma'am. There was - When I was conscious there
14 was times when I was still kind of fuzzy but I do remember
15 my head being jerked around pretty violently.

16 Q. Do you remember that the time that you had the gun up
17 at Zachary Cleveland, do you remember Bobby Trader running
18 at you?

19 A. Never seen him coming.

20 Q. Okay. Do you recall him hitting you?

21 A. No, ma'am.

22 Q. Do you recall him tackling you?

23 A. No, ma'am.

24 Q. Did you intentionally shoot?

25 A. No, ma'am. I didn't have the intent to shot anybody.

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1 Q. Do you recall or have any memory of firing the gun
2 that night?

3 A. No, ma'am. I do remember firing when I was laying
4 on it going in and out of consciousness. I remember firing
5 the rest of the bullets into the ground cause I was fading
6 in and out and I didn't want them - I didn't want to go
7 unconscious and them use the gun against me; they get it
8 from me and use it against me. And I say I don't remember
9 shooting anybody, but at that time I'm pretty sure that I
10 know from the yelling and screaming that somebody had been
11 shot and in my mind when I pulled the gun I had no
12 intention of shooting. You know what I'm saying? You see
13 me walking back. I didn't want to shoot anybody. So when
14 it went that far and shots had been fired and people had
15 been hit and hurt that, you know what I'm saying, I had a
16 lot of things on my mind and that's one of 'em. I'm
17 getting beat and kicked but somebody's laying over there,
18 somebody can be dying in the parking lot so that's on my
19 mind too. I mean it was a bad situation.

20 So when they came back and started jumping on me
21 again, I was done. I didn't want to shoot anybody else and
22 I didn't want to be shot. You know what I'm saying? I
23 didn't thin of screaming or yelling or asking for help. I
24 was trying to cover up the best I could. I mean I expected
25 - I expected help cause there were people there with me

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1 that could have intervened and help me but I never seen
2 anybody. I never heard anything so like I said with the
3 firing of the pistol after it was fired and I knew then
4 that people had been shot, I was done.

5 Q. In any of the times that you came into consciousness
6 were you aware of anybody trying to help you?

7 A. No, ma'am.

8 Q. Had you been made aware of it any time since then of
9 anybody trying to help you?

10 A. No, ma'am.

11 MS. INZERILLO: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, ma'am.

14 BY MS. INZERILLO:

15 Q. Justin, I'm gonna show you what's been marked as
16 State's Exhibit Thirteen.

17 Is that the gun you used?

18 A. Yes, ma'am, that's the same one.

19 Q. Okay. The gun that you used that night do you
20 recall whether you fired all of the weapon - the bullets
21 out of the chamber?

22 A. Yes, ma'am, I did.

23 Q. Okay. And explain to the jury again, and you can't
24 take it out of the box. Explain to the jury again how you
25 remember holding it and discharging the weapon.

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1 A. Holding the handle, you know what I'm saying, and
2 I guess the common most obvious way you would hold a
3 handgun and holding it by the grip.

4 Q. And the way this gun works the slide pulls back when
5 it fires a bullet?

6 A. Yes, ma'am. It's a semi-auto. It's a recoil
7 operated so when it fires the slide will rack back and
8 disengage the spent shell and push in the next round.

9 Q. And that evening were you aware that the gun was
10 empty?

11 A. Yes, ma'am. After I fired all the shots yes, ma'am.

12 Q. And what did you do when you realized the gun was
13 empty?

14 A. Once I fired it and I ended all the rounds out of the
15 pistol, I let it go and just kind of curled up.

16 Q. Why did you curl up?

17 A. I shot - Like I said earlier I didn't want to fire it
18 anymore. I didn't want to shoot anybody or hurt anybody
19 else and I was done. I didn't want to shoot anybody. I
20 didn't want to be shot. I fired the rounds, I let it go, I
21 covered up and just hoping that some - something or
22 somebody could intervene and help me out. No police,
23 paramedics, somebody - anybody, you know what I'm saying,
24 could help me out.

25 Q. When you pulled the gun that evening and you pointed

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1 it at Zachary Cleveland, could you have pulled the trigger?

2 A. Yes, ma'am, that was my intentions.

3 Q. Could you have pointed it at the ground and shot at
4 the ground?

5 A. Yes, ma'am.

6 Q. Did you do either of those things?

7 A. No, ma'am.

8 Q. Did you point it up in the air and shoot it into the
9 air?

10 A. No, ma'am, I didn't.

11 Q. Are you aware that Sam Fitcher was shot?

12 A. Yes, ma'am.

13 Q. Would you have intentionally or knowingly shot Sam
14 Fitcher?

15 A. No -

16 SOLICITOR EPTING: Objection to the leading, Your
17 Honor.

18 THE COURT: You want to rephrase?

19 MS. INZERILLO: Thank you, Your Honor.

20 Q. Is it - Did you intentionally shoot Sam Fitcher?

21 A. No, ma'am.

22 Q. Did you knowingly shoot Sam Fitcher?

23 A. No, ma'am, not at the time I didn't. I didn't find
24 out until afterwards he had been shot. But no I did not
25 intentionally shoot Sam Fitcher.

1 Q. Did you intentionally shoot Zachary Cleveland?

2 A. At the time maybe but not that - not to what I
3 remember no, ma'am.

4 Q. Okay. You mean you don't remember intentionally
5 doing it or you did not intentionally do it?

6 A. I did not intentionally do it.

7 Q. Okay. What is the next thing you remember from that
8 evening?

9 A. After that evening I remember waking up in a hospital
10 bed. I was strapped down to the bed, I was - I think the
11 term is the incubation tube, the breathing tube, I was had
12 tubes in me. I had a catheter and I was wired up in a
13 hospital bed.

14 Q. Do you know how you got there?

15 A. No, ma'am.

16 Q. Was anybody in the room with you?

17 A. Yes, ma'am. I couldn't - I knew nurses were in there.
18 I could tell by the voices but I couldn't really make 'em
19 out. I couldn't see 'em. I mean I could see a little but
20 I couldn't make out who was in the room with me.

21 Q. And did you continuously stay conscious at that
22 point?

23 A. No, ma'am. I do remember kind of hearing her talk
24 about breathing as I woke up. You know just encouraging my
25 breathing. And that's when I realized I had the tube in my

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1 throat and I freaked out and I pulled my hand out of the
2 strap from the hospital bed. I pull that out and pulled
3 that out of my mouth, out of my throat. I pulled the tube
4 out and then I went back out.

5 Q. And then what's the next thing you remember?

6 A. Waking up in another room in another bed.

7 Q. Were you made aware of the - or are you aware of the
8 injuries that you had?

9 A. Say it again.

10 Q. At that point were you aware of the injuries that
11 you had?

12 A. Yes, ma'am, but not to what extent. I knew I was
13 battered pretty bad but I didn't know how bad it was.

14 Q. Okay. Earlier you described that you had facial
15 trauma. Can you explain that in a little more detail?

16 A. Yes, ma'am. After I woke up they help me move around
17 a little bit. I was able to see myself and I - To be
18 honest with you I didn't recognize myself. I had - My head
19 was swollen and I had - I was scraped up all over my face.
20 My eyes were swollen shut. The inside of my eyes were
21 completely blood shot, you know what I'm saying, full of
22 blood. They were completely red. That's all I seen of my
23 face was just swelling and scrapes and bruises and things
24 of that sort and my eyes being swollen shut.

25 Q. You had indicated earlier that your back had some

1 broken things in it or something like that. Can you
2 explain that?

3 A. Yes, ma'am. Like I said I don't know the medical
4 thing for it but there were certain places on my back that
5 were busted and fractured off like pieces broken off in my
6 lower back and that was the most painful.

7 Q. In your lower back a injury your spinal column or
8 in --

9 A. Yes, ma'am. It was my spine. Pieces in my back
10 broken and fractured off.

11 Q. And what was the result of that? Could you walk?

12 A. Not at first I couldn't. I took a while and then I
13 got to the point where I could get around. Even with the
14 pain meds it was - I couldn't take too many steps. I mean
15 it was ways I couldn't move in my bed and it was a lot of
16 things I just couldn't do without a lot of pain.

17 Q. Were you in a wheel chair?

18 A. Yes, ma'am, I was.

19 Q. What were other wounds that you had? I believe you
20 mentioned something about your ribs.

21 A. Yes, ma'am. I was - You know what I'm saying, I was
22 really sore on my sides. I know I had bruising on my sides
23 and scrapes and stuff on my body like - I just remember
24 being - Like I said, just bruised and battered just all
25 throughout my body. You know what I'm saying, there was

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1 bruising at a lot of places.

2 Q. And you had a concussion?

3 A. Yes, ma'am.

4 MS. INZERILLO: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes, ma'am.

7 Q. Justin, I'm gonna show you what's been marked as
8 Defendant's Exhibit One.

9 Do you recognize Defendant's Exhibit One?

10 A. Yes, ma'am, I do.

11 Q. Is that a picture?

12 A. Yes, ma'am, it is a picture of me after the accident.

13 It's actually my booking picture from Moss and it
14 shows the injuries to my face.

15 Q. And does it also show in a wheelchair as you
16 described?

17 A. Yes, ma'am. The right picture is a profile picture,
18 a side picture of me and you can see the wheelchair in the
19 picture. And you can actually see my hospital gown under
20 the orange shirt they gave me.

21 Q. Does it fairly and accurately depict the injuries
22 that - as you have just described to the jury?

23 A. Yes, ma'am.

24 MS. INZERILLO: Your Honor, at this time we would
25 move Defendant's One into evidence.

1 SOLICITOR EPTING: No, objection, Your Honor.

2 THE COURT: Without objection be Defense One.

3 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER ONE, IDENTIFIED
4 AND MARKED, RECEIVED INTO EVIDENCE.)

5 BY MS. INZERILLO:

6 Q. I'm gonna ask you to hold that for me.

7 In this picture do you still have the bloody eyes
8 that you described?

9 A. Yes, ma'am. That was one of the things that were
10 lasting. It did take a while for all that to go away. I
11 mean it took - I was actually in here for a while before
12 that went away. It was weeks.

13 Q. And you were arrested as a result of the shooting.
14 Right?

15 A. Yes, ma'am.

16 Q. Okay. Which is why you're in this picture?

17 A. Yes, ma'am.

18 Q. And when you came here you were still in the wheel-
19 chair?

20 A. Yes, ma'am.

21 Q. Why were you still in the wheelchair?

22 A. I couldn't really walk. I - Movement was pretty
23 hard for me at the time.

24 MS. INZERILLO: Your Honor, permission to publish to
25 the jury.

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1 THE COURT: Yes, ma'am.

2 (DEFENDANT'S EXHIBIT NUMBER ONE PUBLISHED TO THE
3 JURY AT 03:31 P.M..)

4 Q. The - And why were you having trouble walking?

5 A. The fractures in the places in my back they were
6 broken.

7 Q. You indicated underneath the orange is the hospital
8 gown?

9 A. Yes, ma'am.

10 Q. And this was at least several days after you were
11 released from the hospital?

12 A. Yes, ma'am.

13 Q. In this picture is your face still puffy as you
14 described?

15 A. Yes, ma'am.

16 Q. Justin, have you seen the video in this case?

17 A. Yes, ma'am, I have.

18 Q. Is anything you've testified to been on the basis
19 of you in that video?

20 A. No, ma'am, just from what I remember.

21 Q. So you haven't supplemented any of your testimony
22 based on what you've seen?

23 A. No, ma'am.

24 Q. Are you aware from watching the video that it
25 captured some of the events that you've described?

1 A. Yes, ma'am.

2 MS. INZERILLO: Your Honor, permission to publish the
3 incident clip to the jury.

4 THE COURT: Yes, ma'am.

5 MS. INZERILLO: State's Exhibit Two.

6 (STATE'S EXHIBIT NUMBER TWO PUBLISHED TO THE JURY
7 AT 03:31 P.M..)

8 Q. At some point after watching the video were you aware
9 that you are captured on video in the parking lot?

10 A. Yes, ma'am.

11 Q. Okay. Can you say when you come into the picture?

12 A. Yes, ma'am. That's me in the bottom right with the
13 - with the maybe dark khaki hoody on in the bottom right
14 hand corner.

15 Q. Here?

16 A. Yes, ma'am.

17 Q. Okay. Let the record reflect he's the person
18 furthest to the right and the tape shows one minute,
19 six seconds.

20 (WHEREUPON, DEFENDANT IDENTIFIED ON VIDEO AS PERSON
21 FURTHEST TO THE RIGHT AT ONE MINUTE, SIX SECOND TIME STAMP
22 ON VIDEO.)

23 Q. Can you describe what is going on here?

24 A. Logan - Logan and Zachary Cleveland are leaving and
25 there's a lot of people who are excited about the first

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1 fight or whatever and there's words being said and things
2 being screamed across the parking lot.

3 Q. And what are you doing?

4 A. I'm trying to kind of keep everybody back and keep
5 my side calm, try to figure out - I still to this point
6 don't know what caused the first fight so I'm kind of
7 asking around, hey, you know what I'm saying, what
8 happened? What caused all this? And you know everybody
9 stay calm, you know what I'm saying, just their leaving
10 don't worry about it.

11 Q. Where are you now?

12 A. I believe I'm in the middle towards - Right there yes,
13 ma'am.

14 Q. Is this you?

15 A. Yes, ma'am.

16 Q. And now what are you doing?

17 A. I can't remember who that is but he was having a
18 - he was having words and he was trying to keep everybody
19 calm and I was trying to make sure he had everything. I
20 forgot who he was holding back but I was making sure hey,
21 you know what I'm saying, everything's cool here they're
22 leaving. You know what I'm saying, don't worry about it.

23 Q. So in everything that we've just watched, are you
24 fighting anyone?

25 A. No, ma'am.

1 Q. Is it in your mind set to fight anyone?

2 A. No, ma'am.

3 Q. From your recollection of the evening?

4 A. No, ma'am.

5 Q. Do you recall if you had your gun out at any time
6 during this part?

7 A. At that part, no, I did not.

8 Q. So that part of the evening you're defusing the
9 situation?

10 SOLICITOR EPTING: Objection to the leading, Your
11 Honor.

12 THE COURT: I sustain. You want to rephrase?

13 BY MS. INZERILLO:

14 Q. What are you trying to accomplish with everything
15 you've just described?

16 A. Trying to keep my crowd back. Keep everybody, you
17 know what I'm saying, stay calm for the most part. Hey, I
18 don't know what happened, I don't know what caused the
19 first fight but it's okay their leaving no big deal.

20 Q. What are you doing here?

21 A. Appear to be walking back up to - I'm watching them
22 leave. I put my hood on.

23 Q. Was it raining that night?

24 A. No, ma'am. It had been raining. It was just kind of
25 cool that night. I mean that's pretty much it.

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1 Q. What month was this?

2 A. This was in December.

3 Q. And what are you wearing?

4 A. A hoody.

5 Q. A jacket?

6 A. Yes, ma'am, a jacket, a zip up.

7 Q. Okay. But no heavy coat?

8 A. No. No, ma'am.

9 Q. Just the hoody?

10 A. Yes, ma'am.

11 Q. At this point are you aware that Bobby Trader is
12 running towards you?

13 A. No, ma'am.

14 Q. At any point did you turn and point the gun at him
15 that you're aware of?

16 A. No I didn't. I never seen him coming.

17 Q. Justin, you have previously been found guilty of
18 lying to police; is that right?

19 A. Yes, ma'am.

20 Q. And you also have a conviction on your record for a
21 crime that carries more than a year?

22 A. Yes, ma'am.

23 Q. Did you intentionally shoot anybody that night?

24 A. No, ma'am, I did not.

25 Q. Did you feel that you were in imminent danger that

JUSTIN FAILE: DIRECT BY MS. INZERILLO
CROSS BY SOLICITOR EPTING

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1 night?

2 A. After seeing Bobby and his mannerism yes, ma'am, I
3 felt like - I had it in my mind he wasn't coming to talk.
4 I felt like I was about to be attacked and like I said I
5 knew he was with a crowd and I didn't - I was trying to
6 keep things from escalating and then when I see him yes,
7 ma'am, I believed there was a fight coming to me.

8 Q. You said Bobby. Do you mean Bobby or Zach?

9 A. Well Zach. Zach approaching. I didn't know Bobby
10 was running towards me at the time. That's what I was
11 trying to defuse. I didn't want it to get to that point
12 and because I knew I was standing beside Sam it looked like
13 it was like a two on two fight maybe and that's what it
14 looked like when Sam attacked Logan. And then at that
15 point it kind of looks like hey, we're attacking them
16 keeping them from leaving we're attacking them so anybody
17 in the parking lot who was with 'em could take that as a
18 threat and they could a came in and it just would a been
19 big brawl. That's what I was trying to defuse.

20 Q. Okay.

21 MS. INZERILLO: Your Honor, I have no further
22 questions.

23 SOLICITOR EPTING: May it please the Court.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

JUSTIN FAILE: CROSS BY SOLICITOR EPTING

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1 JUSTIN FAILE BY SOLICITOR EPTING:

2 Q. Mr. Faile, your testimony today is that you were
3 acting in the role of a peace keeper; is that correct?

4 A. Yes, sir.

5 Q. You were there to stop things from escalating, stop
6 people from fighting; is that right?

7 A. Yes, sir.

8 Q. So in your role as a peace keeper you approach a
9 vehicle that's leaving; is that correct?

10 A. Yes, sir.

11 Q. A truck that is about to drive away?

12 A. Yes, sir.

13 Q. With the person who stops 'em, is that not true?

14 A. I was with the person who stopped em?

15 Q. Uh-huh.

16 A. Yes, sir.

17 Q. Did you not wave to them yourself on the video you
18 just stopped?

19 A. Yes, sir. I got their attention as I'm walking up.

20 You know what I'm saying, I kind of waved you know
21 hey, you know what I'm saying as I'm trying to go talk to
22 Logan I do wave at the truck yes, sir.

23 Q. You thought it a good idea as a peace keeper to
24 approach Logan Brooks. Right?

25 A. Yes, sir.

1 Q. Who had just gotten into a fight. Right?

2 A. Yes, sir.

3 Q. And was leaving the parking lot?

4 A. Yes, sir.

5 Q. You thought that would keep the peace?

6 A. Well the fight was over with and like I said I knew
7 Logan so I was - being that the fight was over ---

8 Q. Uh-huh.

9 A. --- I was wanting to talk to him. You know what
10 I'm saying, hey, what caused it, what's on your mind.

11 Q. Would it not have been a better idea to let them
12 leave and talk to them the next day?

13 A. Well I don't see Logan on a regular basis like that.

14 We don't talk like that. I just know, you know
15 what I'm saying, I been around him a couple of times but
16 yes, sir.

17 Q. So you decided to approach him that night right after
18 the fight and talk to him?

19 A. Yes, sir.

20 Q Your testimony is you just wanted to talk to him.
21 Right?

22 A. Yes, sir.

23 Q. And you stopped them as their leaving?

24 A. Yes, sir.

25 Q. Peace keeper?

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1 A. Yes, sir.

2 Q. And then your friend Sam Fitcher who testified here
3 earlier today punches Logan Brooks; is that correct?

4 A. Yes he does.

5 Q. And what do you do?

6 A. I freeze up then.

7 Q. You freeze up?

8 A. Yes, sir.

9 Q. And when do you unfreeze?

10 A. When I see Zach approaching from the back of the
11 truck.

12 Q. What do you do?

13 A. I pull out a pistol.

14 Q. And you said you pulled out the pistol to defuse
15 the situation?

16 A. Yes, sir.

17 Q. You thought the pistol would defuse that situation?

18 A. Yes, sir.

19 Q. You pointed it in his face?

20 A. Yes, sir. Why I can't say I pointed it at his face.

21 I pointed it at him but I don't remember where at I
22 pointed it, the actual where I actually pointed it at him.

23 Q. Instead of pulling the gun would it not have been
24 better to get between them?

25 A. There's other things I could have done yes, sir, but

1 at the time seeing the way he was coming around that's why
2 I pulled the pistol. There were other people in the
3 parking lot; I didn't want to get involved. I figured -
4 When I pulled the pistol I figured he would a seen it,
5 okay, well he's serious I don't want anything to do with it
6 and I would have been left alone.

7 Q. And you got your people in the parking lot; is that
8 right?

9 A. Yes, sir.

10 Q. They got their people?

11 A. Yes, sir.

12 Q. And you had this gun all night?

13 A. Yes, sir.

14 Q. You brought a gun to a bar?

15 A. Yes, sir.

16 Q. And you drank at the bar with that gun?

17 A. Yes, sir.

18 Q. Was there any time that night that you did not have
19 the gun on your person?

20 A. No, sir. I brought it to the bar.

21 Q. And you said you had some drinks?

22 A. Yes, sir.

23 Q. You don't think you were drunk?

24 A. No, sir.

25 Q. Are you aware that when they took you to the hospital

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1 they took materials from you?

2 A. Yes, sir.

3 Q. Blood, urine.

4 A. Blood alcohol level yes, sir, I'm aware of that.

5 Q. What is your understanding what your blood alcohol
6 level was?

7 A. I don't know exactly but I know it was over the legal
8 limit.

9 Q. Over the legal limit?

10 A. Yes, sir.

11 Q. But you weren't drunk?

12 A. No, sir.

13 Q. And you had a gun?

14 A. Yes, sir.

15 Q. You have a concealed weapon's permit?

16 A. No I don't.

17 Q. You've been convicted of a crime that carries over
18 a year?

19 A. Yes, sir.

20 Q. Should you have had the gun in the first place?

21 MS. INZERILLO: Objection, Your Honor.

22 THE COURT: I'll sustain the objection.

23 BY SOLICITOR EPTING:

24 Q. No concealed carry permit?

25 A. No, sir.

1 Q. Guns on you all night?

2 A. Yes, sir.

3 Q. Drinking?

4 A. Yes, sir.

5 Q. Over the legal limit?

6 A. Yes, sir.

7 Q. At a bar?

8 A. Yes, sir.

9 Q. There were a lot of things you could have done that
10 night couldn't you have?

11 A. Yes, sir.

12 Q. Called for someone to call the police?

13 A. Yes, sir. At the time I believe the police had been
14 called and I didn't believe the police were needed. They
15 were leaving, the situation was broken up, they had got the
16 guy up getting him ready to leave so I didn't think that
17 was necessary.

18 Q. You could not have approached the car.

19 A. Yes, sir.

20 Q. But instead you did?

21 A. Yes, sir, I did.

22 Q. And up until you inserting yourself in this incident
23 this fight didn't involve you did it?

24 A. No, sir, it did not.

25 Q. It was between Sam and Logan?

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1 A. Yes, sir.

2 Q. Zach got out of the car?

3 A. Yes, sir.

4 Q. And ran around?

5 A. Uh-huh.

6 Q. Zach didn't ---

7 A. Excuse me, yes. Yes, sir.

8 Q. --- have - Don't want to cut you off. Zach
9 didn't have a gun or a weapon in his hand did he?

10 A. No, sir, he did not.

11 Q. Logan so far as you know didn't have a gun or weapon
12 in his hand?

13 A. No, I was unsure but no I did not know for sure.

14 Q. And you were the only person with a gun?

15 A. At the time yes, sir.

16 Q. And as a result of that multiple people got shot that
17 night did they not?

18 A. Yes, sir, they did.

19 Q. Prior to that night things were friendly?

20 A. Very friendly.

21 Q. You shot pool with Zach?

22 A. Yes, sir, I did.

23 Q. You know Bobby, no beef with Bobby?

24 A. No. No altercations with anybody in the past. Nobody
25 from that crowd at all.

1 Q. Your testimony is that after Bobby ran up on you and
2 you know that because of the tape. Right?

3 A. Yes, sir.

4 Q. You don't know that in any other way?

5 A. No I did not know that.

6 Q. That something happens, he hits you or you all go
7 down?

8 A. Yes, sir.

9 Q. And you don't remember anything else?

10 A. Vaguely. In and out.

11 Q. Tell me what you remember as to Bobby.

12 A. I don't remember anything. I remember when I pulled
13 the gun backing up and that's it. And then it goes to the
14 point where I'm on the ground and I'm in and out of
15 consciousness. I didn't know who hit me when I got hit.
16 When that happened I had no recollection.

17 Q. Fully loaded magazine?

18 A. No, sir. I was missing one.

19 Q. One round?

20 A. Yes, sir.

21 Q. Twelve rounds in the clip?

22 A. Twelve plus one. I loaded twelve and loaded one and
23 kept - kept the magazine missing one.

24 Q. Okay. There's one in the barrel?

25 A. Yes, sir.

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1 Q. So you go to a bar get drunk and have a .40 caliber
2 pistol that has a bullet in the chamber?

3 A. Yes, sir, a Glock. It's a safe action pistol. It's
4 a pretty much no nonsense weapon. It's load it and its
5 ready. A self-defense weapon is why I got it.

6 Q. And again you don't have a license to carry?

7 A. No, sir, I do not.

8 Q. You testified that Samuel Fitcher leaned in the
9 window to fight Logan?

10 A. He reached in and punched him, yes he did.

11 Q. And they're tussling are they not?

12 A. I don't remember 'em tussling. He reached in and
13 punched him like he had his arms on the door reaches in and
14 hits him and then that's when Zach jumps out and Sam kind
15 of walk - kind of steps back from the truck, like when Zach
16 runs around he kind of steps up, and that's when I pulled
17 the pistol and we kind of meet kind of in the middle of his
18 truck.

19 Q. And you said prior to this you and Zach were real
20 cool. Right?

21 A. Yes, sir. We were playing pool and everybody was
22 having a good time.

23 Q. You could have just stepped in front of Zach and say
24 hey, back up; step between 'em, hold your arms out and
25 defuse the situation, be the peace keeper.

1 A. At the time the way he was approaching and it had
2 already been a fight I had no idea Sam was gonna do that
3 and the way that Zach was approaching it didn't look like
4 he wanted to talk at all so that was my first reaction.

5 Q. And he didn't have a gun?

6 A. No, sir.

7 Q. You have a number of injuries to your person; is that
8 right?

9 A. Yes, sir.

10 Q. And that photo that was published to the jury was
11 taken some days after you had been treated; is that
12 correct?

13 A. Yes, sir, it was.

14 Q. And initially you were treated by Doctor Weilback;
15 is that correct?

16 A. Honest, I don't know. I don't know who I was treated
17 by.

18 Q. Okay. You don't know your treating physician?

19 A. No, sir.

20 Q. Is it your testimony that after you were loaded up
21 by EMS that you never gained consciousness, never said
22 anything?

23 A. Not - No. No, sir. Not to my recollection. I
24 remember being in and out of consciousness firing the
25 rounds and then I went completely out and I don't remember

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1 coming to the hospital, seeing anybody at the hospital. I
2 just remember waking up in the bed.

3 Q. Did you ever come to and have the capacity to remember
4 your name and address to the paramedics?

5 A. No, sir, not to my recollection. I don't remember.

6 Q. You don't remember?

7 A. Well no, sir, I - I didn't do it. I know I didn't
8 do it.

9 Q. You know you didn't do it but you can't remember?

10 A. I did not do it. I was unconscious the entire time
11 until I woke up in the bed.

12 Q. Did you tell the paramedics that you didn't hurt
13 anybody that night?

14 A. Not to my recollection.

15 Q. No you definitely didn't do it or not to your
16 recollection?

17 A. I don't remember telling anybody that.

18 Q. Those wounds that you incurred, ---

19 A. Yes, sir.

20 Q. --- they were treated at CMC. Your back, some
21 injuries to your face; is that correct?

22 A. Yes, sir.

23 Q. Can you tell this jury when those occurred? Was it
24 before you were disarmed of the gun or after?

25 A. I can't tell you that. Not for sure. I do not know.

1 Q. And your testimony was you come to at some point and
2 empty the gun into the ground?

3 A. Yes, sir.

4 Q. Cause you've heard someone's been shot. Correct?
5 Wasn't that your testimony?

6 A. Yes, sir, that was my testimony.

7 Q. And you knew it was you that shot 'em?

8 A. I knew I had shot. At the time - I don't remember now
9 shooting anybody but at the time with everything going on I
10 can imagine me knowing that I shot somebody I mean cause
11 there's a crowd of people, I'm being attacked, the chances
12 are most likely I shot somebody. In the back of my head
13 I'm thinking okay somebody's shot somebody can be dying in
14 the parking lot. I immediately assumed the worst in that
15 situation and I did not want to fire at anybody else.

16 Q. And you're not yelling for help at this point?

17 A. Didn't think to. I was just covering up as best as
18 I could.

19 Q. At no point do you yell for help?

20 A. I didn't think I had to. It was obvious I needed
21 help.

22 Q. Despite having friends around you?

23 A. It was obvious I needed help but nobody helped me.

24 Q. Never yelled for somebody to call the police?

25 A. No, sir.

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1 Q. So my - You walked up to a truck --

2 A. Yes, sir.

3 Q. A gun with one racked in the chamber that you had on
4 your person all night?

5 A. Yes, sir.

6 Q. You say your not drunk but you admit that your BA
7 level taken at the hospital was over the legal limit?

8 A. Over the legal limit? Some people can manage their
9 alcohol consumption better than others. Some people can -

10 Q. Let me ask you this. What number do you think it was?

11 A. I know - -

12 MS. INZERILLO: Objection to the speculation, Your
13 Honor.

14 THE COURT: Ask him. Either he knows or he doesn't.

15 BY SOLICITOR EPTING:

16 Q. Do you know what your number was?

17 A. No, sir.

18 Q. Would it surprise you to hear it's point - -

19 MS. INZERILLO: Objection, Your Honor.

20 THE COURT: I'll allow it. He's on cross examination.

21 BY SOLICITOR EPTING:

22 Q. Would it surprise you to hear it was point one seven?

23 A. Honestly I don't know what that means as far as my
24 - I wasn't hindered. I knew what was going on around me
25 and I can control myself. I knew what was going on and I

1 was alert to what was going on so I wasn't staggering and I
2 wasn't belligerent cause I was pretty content. I knew what
3 was going on around me.

4 Q. Could it not be that you were so hindered that you
5 didn't know how hindered you were?

6 A. It happened so fast. Like the victims when they got
7 shot I mean he says he didn't know when he got shot. When
8 it happens there's so much adrenaline rushing and flowing
9 like I said it happened so fast and there was so much going
10 on. No, sir, I did not know the extent of my injuries.

11 Q. So you approach the gun, one racked in the chamber;
12 is that correct?

13 A. Yes, sir.

14 Q. And you say your not drunk. Blood alcohol level
15 point one seven.

16 A. Yes, sir.

17 Q. Pull out that gun?

18 A. Yes, sir.

19 Q. And as a result of that multiple people that night
20 got shot did they not?

21 A. I was attacked and yes, sir, people did get shot.

22 Q. By you?

23 A. Yes, sir.

24 SOLICITOR EPTING: No further questions.

25 THE COURT: Any redirect limited to what he went into?

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1 MS. INZERILLO: No, Your Honor.

2 THE COURT: Thank you, sir, you may step down.

3 MR. FAILE: Thank you, sir.

4 (WITNESS LEAVING WITNESS STAND.)

5 THE COURT: Defense ready to call their next witness?

6 MS. INZERILLO: Yes, Your Honor. At this time the
7 Defense calls Deputy Chad Davis to the stand.

8 THE COURT: Just come on up here and let the Clerk of
9 Court swear you in, please.

10 MADAM CLERK: Please raise your right hand, place
11 your left on the Bible.

12 (WHEREUPON, CHAD DAVIS, BEING
13 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 MADAM CLERK: Thank you. You may have a seat.

15 THE COURT: Just have a seat there, sir.

16 DIRECT EXAMINATION

17 DEPUTY CHAD DAVIS BY MS. INZERILLO:

18 Q. Good afternoon, Deputy Davis.

19 A. Hello.

20 Q. Can you state your name for the jury, please?

21 A. Chad Davis.

22 Q. And what do you do for a living?

23 A. I'm a road deputy for the York County Sheriff's
24 Office.

25 Q. And what does a road deputy do?

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1 A. I respond for calls of service, work traffic, do this
2 the area of Rock Hill, the county areas surrounding the
3 city.

4 Q. Are you the sheriff's deputies we see driving around
5 in the marked cars?

6 A. Yes I am.

7 Q. Okay. And how long have you been with the sheriff's
8 office?

9 A. I've been here approximately right at coming up on
10 eight years.

11 Q. And did you have that job in December of 2013?

12 A. Yes I did.

13 Q. Did you have that job December - the evening of
14 December 13th over to the 14th?

15 A. Yes I did.

16 Q. Were you on duty that evening?

17 A. Yes I was.

18 Q. And when you were on duty that evening did you respond
19 to a call to Palmetto Sports Bar?

20 A. Yes I did.

21 Q. And what was the nature of that call?

22 A. It was in reference to someone being shot.

23 Q. Did you respond to that call?

24 A. Yes I did.

25 Q. And did you respond in the normal course of your

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1 duties?

2 A. I'm sorry, repeat that.

3 Q. As part of your job is to respond?

4 A. Yes. Correct.

5 Q. So you weren't off duty in responding, you were
6 actually on duty?

7 A. Yes, that is correct.

8 Q. Okay. And when you responded were you in uniform as
9 you are right now?

10 A. Yes I was.

11 Q. And were you in your marked police car?

12 A. Yes I was.

13 Q. And how did you respond? Did you respond with the
14 blue lights and the sirens going?

15 A. I responded Code 3 which is lights and siren.

16 Q. Okay. When you got to the scene were you - You were
17 the first people there?

18 A. I believe I was probably the third person, the
19 third or fourth person there.

20 Q. Okay. And what are some of the things you have to do
21 as a road deputy when you're one of the third or fourth
22 person there?

23 A. Well basically when you respond to a scene like that
24 the main thing is to secure it, make sure that number one
25 the officers that are already on scene are safe. But yes,

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1 start securing the scene, the crime scene, making sure that
2 if somebody is hurt that they are getting the aid, that
3 type of thing that they need.

4 Q. And when you say securing the crime scene, does that
5 mean taping it off like with the crime scene tape?

6 A. That is something that happens but generally when you
7 initially get there securing it is to take care of any
8 dangers that are being imposed. Securing it by putting
9 tape up is a part of it but that generally comes towards
10 the end once you've established that there is no more
11 threat or anything like that and especially in a shooting
12 situation.

13 Q. So the first thing - When you get on a scene like
14 that what was the first thing you that saw?

15 A. A lot of people. There were police cars, a couple of
16 police cars like I said were already there. Crowds of
17 people out in the parking lot. I observed several people
18 down on the ground that appeared to be injured.

19 Q. Okay. And so when you come across a scene like that
20 what is the first thing that you need to do as a responder?

21 A. Okay. The first thing I'm gonna do is get out and
22 start checking on the people, you know, make sure that
23 we've located everything that needs to be located.

24 Q. Okay. And when you say make sure everything can be
25 located, does that mean if there's a suspect you need to

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1 make sure you've located the suspect?

2 A. Correct. Looking for suspect, injured people, that
3 type of thing. Making sure that, you know, we've
4 identified everything that needs our immediate attention.

5 Q. And so when you identified that you have a injured
6 person that your followup duty might be to call EMS for
7 example?

8 A. Correct.

9 Q. If you determine that there is a suspect on scene
10 your followup duty might be to make sure that suspect is
11 cuffed and watched on scene?

12 A. That is correct.

13 Q. And when you were on scene that night did you perform
14 those type of duties?

15 A. Yes I did.

16 Q. Okay. And when you got to the scene that evening did
17 you interact with a person that you now know as Mr. Faile?

18 A. Yes I did.

19 Q. Okay. And in what capacity did you interact with Mr.
20 Faile?

21 A. Mr. Faile was lying on the ground and appeared to be
22 unconscious and at that point I stood by with him.

23 Q. Okay. And why did you stand by with him?

24 A. He appeared to have been beaten up. I observed that
25 he had what appeared to be swelling and blood on his face.

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1 And like I said was not responding to anything that was
2 going on around him at that time.

3 Q. Okay. Did you stay with Mr. Faile throughout the
4 course of the evening?

5 A. I did.

6 Q. And did you remain on scene for the duration of the
7 evening?

8 A. I was there until the ambulance left with Mr. Faile
9 which time I accompanied him to Charlotte to CMC Main.

10 Q. And did you remain with Mr. Faile while he was at
11 CMC Main?

12 A. I did.

13 Q. How long were you with Mr. Faile while he was at
14 CMC Main?

15 A. It was around - I'm wanting to say five, five
16 something in the morning. It was the end of my shift when
17 I was relieved.

18 Q. Did Mr. Faile ever speak to you during that time?

19 A. No he did not.

20 Q. Well let me be more specific. Did he ever speak with
21 you on the ride up to CMC Main?

22 A. Not that I recall.

23 Q. Okay. Did he ever speak with you in the hospital
24 room?

25 A. No he did not.

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1 Q. To your knowledge did he ever - Did he ever regain
2 consciousness?

3 A. No.

4 Q. Deputy Davis, is your marked car equipped with an
5 in-car recording system?

6 A. Yes it is.

7 Q. That recording system is that equipped with a video
8 camera inside your car?

9 A. Yes it is.

10 Q. Is your recording system also have a microphone that
11 you can link up to your uniform?

12 A. Yes it does.

13 Q. Okay. And were both of those working that evening?

14 A. Yes they were.

15 Q. Did they both capture the scene as you saw that
16 evening?

17 A. Yes, ma'am.

18 Q. Did your video system record - make a recording of
19 the evening?

20 A. Yes it did.

21 MS. INZERILLO: May I approach the witness, Your
22 Honor?

23 THE COURT: Yes, ma'am.

24 Q. Deputy Davis, I'm gonna show you what's been marked
25 as Defendant's Exhibit Two. Do you recognize that?

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1 A. Yes I do.

2 Q. And how do you recognize that?

3 A. It is a video that - of the scene that night that I
4 was shown earlier that's been initialed and dated by me.

5 Q. And is it a fair and accurate recording of the scene
6 from that night from the video system that's on your car
7 that you've described?

8 A. Yes, with sound bytes that were entered.

9 Q. All right.

10 MS. INZERILLO: Your Honor, at this time we would
11 move to introduce Defendant's Exhibit Two.

12 SOLICITOR EPTING: No, objection, Your Honor.

13 THE COURT: Without objection

14 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER TWO, IDENTIFIED
15 AND MARKED, RECEIVED INTO EVIDENCE.)

16 MS. INZERILLO: Permission to publish to the jury,
17 Your Honor.

18 THE COURT: All right.

19 (DEFENDANT'S EXHIBIT NUMBER TWO PUBLISHED TO THE
20 JURY AT 04:02 P.M..)

21 Q. Okay. Deputy Davis, is this you arriving at the
22 scene?

23 A. Yes it is.

24 Q. Okay. And then what we're looking at is the view
25 from your in-car camera; is that correct?

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1 A. That is correct.

2 Q. All right. And what is that we just heard?

3 A. Just advising the dispatcher that - what I just
4 observed, that we had three subjects.

5 Q. Because - And just to sort of educate the jury a
6 little bit, when you're on scene as an officer, is it
7 routine practice for you to have to radio back to the
8 county to let them know what's going on in case you need
9 back up or help or anything like that?

10 A. Yes absolutely especially if you have people that
11 appear to be injured and that type of thing. Even though
12 you may not know the extent of their injuries at that point
13 you know that you're gonna need more than one ambulance to
14 be coming that way.

15 Q. Okay. So is it fair to say when ever we hear county
16 that means you're talking to dispatch or you're radioing
17 back information?

18 A. That is correct.

19 (DEFENDANT'S EXHIBIT NUMBER TWO CONTINUES TO BE
20 PUBLISHED.)

21 Q. Now is this you? Can you tell?

22 A. As far as I can tell, yes.

23 Q. And do you recognize what this is that I'm circling
24 the mouse?

25 A. I'm having a hard time seeing it from where I'm

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1 located at but I believe that's where Mr. Faile was laying
2 on the ground.

3 MS. INZERILLO: Your Honor, would the witness have
4 permission to stand down if he needs to get a better view?

5 THE COURT: Yes, ma'am.

6 Sir, you can step down. If you need to speak be sure
7 you speak up loud enough so that both the court reporter
8 and the jury and I can hear you.

9 A. Absolutely.

10 THE COURT: Thank you.

11 (WITNESS LEAVING WITNESS STAND.)

12 A. Yes, ma'am.

13 MS. INZERILLO: Let me set this here in case you -
14 With the Court's permission.

15 THE COURT: All right.

16 Q. Okay. So once again just to make sure you're
17 clear, Deputy. What I'm circling here can you clearly see
18 what that is?

19 A. Yes, ma'am.

20 Q. And what is that?

21 A. That is the - Mr. Faile the gentleman laying - Mr.
22 Faile laying on the ground.

23 Q. Okay.

24 (DEFENDANT'S EXHIBIT TWO CONTINUES TO BE PUBLISHED.)

25 Q. And what are you doing at this point?

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1 A. At that point I'm checking to make sure that there
2 are no weapons on his person.

3 Q. Is he moving at this point?

4 A. No, ma'am.

5 Q. Is he . . .

6 MADAM COURT REPORTER: I'm sorry.

7 Q. Is he handcuffed at this point?

8 A. Yes, ma'am, he is.

9 Q. Is it at this point that you are standing beside
10 Mr. Faile because he's a suspect?

11 A. Yes, ma'am.

12 Q. And is this what you described earlier as sort of
13 maintaining the scene or trying to control the scene?

14 A. That is correct. This - At this point what I'm doing
15 is basically securing him making sure that number one that
16 he doesn't get up and go anywhere at all, sort of check to
17 make sure that, you know, it's obvious to me at this point
18 that he is unconscious, so I'm basically just watching him
19 to make sure he's breathing at this point and making sure
20 that no one else approaches him or messes with him.

21 Q. Who are you referring to when you say he's breathing?

22 A. Mr. Faile.

23 Q. Okay.

24 MS. INZERILLO: And for the record, Your Honor, that's
25 at four minutes and fifty-nine seconds into the video.

1 Q. And it is at that point that you realize Mr. Faile
2 is breathing?

3 A. No, ma'am. I realized he was breathing when I first
4 came in contact. You know generally when you come up on
5 something like that the first thing you're looking for is
6 the rise and fall of - you know are they breathing.

7 Q. So you're just noting - -

8 A. I am basically note - I think someone might have ask
9 at that point in time.

10 Q. Okay. But because he was - Did you note that because
11 he was motionless? Did someone ask you that because he was
12 motionless?

13 A. I think so. Probably something along those lines. I
14 don't recall exactly but I believe I would was responding
15 to someone else at that point.

16 Q. Okay.

17 (DEFENDANT'S EXHIBIT TWO CONTINUES TO BE PUBLISHED.)

18 Q. And again you see where my curser is, are you at this
19 point interacting with Mr. Faile again?

20 A. Yes. Where he was laying at when I looked at him
21 again I noticed like part of his face was in water and I
22 wanted to move him to where he wasn't in water there.

23 Q. Was that to make sure he didn't drown?

24 A. Well partially. I mean I didn't see if he was
25 blowing bubbles or anything like that. I just didn't want

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1 his face in a mud puddle basically.

2 (DEFENDANT'S EXHIBIT TWO CONTINUES TO BE PUBLISHED.)

3 Q. Is one of the jobs of first responders, officers at
4 the scene, to secure the scene for EMS?

5 A. Yes it is.

6 Q. And is that to ensure that EMS can properly and
7 efficiently treat any injured at the scene?

8 A. That is correct.

9 Q. And so as an officer who responds, one of the many
10 things you have to do is clear everyone away so that all
11 the injured can be tended to by any medical personnel; is
12 that correct?

13 A. One of 'em, yes.

14 Q. Okay. And is that what you're attempting to do here
15 is to clear everyone away?

16 A. That is correct. Keep people away from him and the
17 crime scene itself.

18 (DEFENDANT'S EXHIBIT TWO CONTINUES TO BE PUBLISHED.)

19 Q. What's a 59?

20 A. It's a gun.

21 Q. And so what are you telling people when you say
22 watch out for the gun.

23 A. I'm making sure nobody steps on it.

24 Q. Okay. Who are you referring to when you say he's been
25 beaten?

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1 A. Mr. Faile.

2 (DEFENDANT'S EXHIBIT TWO CONTINUES TO BE PUBLISHED.)

3 Q. What are you doing there?

4 A. At that point they were checking to see if he was
5 awake. You know it's not uncommon sometimes for people
6 pretend like they are unconscious when --

7 Q. And did he respond ---

8 A. No.

9 Q. --- to that call?

10 A. No he didn't.

11 (DEFENDANT'S EXHIBIT TWO CONTINUES TO BE PUBLISHED.)

12 Q. And here are you interacting with Mr. Faile?

13 A. I'm basically at that point was standing over him to
14 make sure nobody . . .

15 Q. So you were standing there with EMS while they're
16 attending to Mr. Faile; is that right?

17 A. That is correct.

18 Q. So you're watching people what they're doing?

19 A. That is correct.

20 Q. Here? Okay. And at that point an EMS worker had
21 gone to get what's called the board. Right? So they can
22 immobilize him and get him in the ambulance?

23 A. I do not recall exactly if that would be standard but
24 I do not recall.

25 Q. Would this be the board?

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1 A. Yes that would be the board.

2 Q. And that board is commonly, in your experience, used
3 to immobilize?

4 A. Correct.

5 Q. Okay. In this at this point have they just rolled
6 Mr. Faile over onto the board?

7 A. As far as I can tell yes, ma'am.

8 Q. Okay. At this point - At any point on this has he
9 moved, sat up of his own volition or anything like that?

10 A. Nothing like that no, ma'am.

11 (DEFENDANT'S EXHIBIT TWO CONTINUES TO BE PUBLISHED.)

12 Q. And here just to finish up EMS is getting ready to
13 lift Mr. Faile onto the Gurney. Is that what they're doing
14 here?

15 A. That is correct.

16 Q. And you're standing here watching them because he's
17 I guess in custody at this point; is that correct?

18 A. At that point he is still a suspect and I was told to
19 stand by.

20 Q. Okay. And then at this point they're taking him via
21 ambulance to Charlotte and so the decision is made for you
22 also to go to Charlotte?

23 A. That is correct.

24 Q. Okay. And he hasn't made any statements to you while
25 you're on the scene?

DEPUTY CHAD DAVIS: CROSS BY SOLICITOR EPTING

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1 A. No, ma'am.

2 Q. Okay.

3 MS. INZERILLO: Your Honor, I have no further
4 questions.

5 (WITNESS RETURNS TO WITNESS STAND.)

6 SOLICITOR EPTING: Your Honor, if I may very briefly.

7 CROSS-EXAMINATION

8 DEPUTY CHAD DAVIS BY SOLICITOR EPTING:

9 Q. Ms. Inzerillo has questioned you, Deputy, about a
10 - about the defendant's gauge of consciousness, his level
11 of consciousness, whether he talked to others . . .

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. Yes. Yes, yes.

15 Q. Are you a medical doctor?

16 A. No I am not.

17 Q. Did you follow him to the hospital?

18 A. Did I follow him to the hospital?

19 Q. Did you ride with him to the hospital?

20 A. Yes I did.

21 Q. And to the best of your knowledge was he treated
22 by medically trained doctors at the hospital?

23 A. Yes he was.

24 SOLICITOR EPTING: That's all I have, Your Honor.

25 THE COURT: Any redirect on what he went into?

1 MS. INZERILLO: No, Your Honor .

2 THE COURT: Thank you, sir, you may step down.

3 Any reason why the witness cannot be excused?

4 MS. INZERILLO: No, Your Honor, and we'd ask that he
5 be released.

6 THE COURT: Any from the State? Can he be excused?

7 SOLICITOR EPTING: No objections, Your Honor.

8 THE COURT: Thank you, sir, you may be excused. Thank
9 you for coming.

10 (WITNESS LEAVING WITNESS STAND.)

11 MS. INZERILLO: At this time, Your Honor, the Defense
12 rest.

13 THE COURT: The lawyers want to approach one moment?

14 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
15 OF THE JURY AT 04:31 P.M..)

16 THE COURT: All right, ladies and gentlemen, you have
17 now received all of the testimony and evidence that you
18 will receive as part of this case. What is left to be done
19 is for the lawyers to present the arguments, their closing
20 arguments to you as well as for you to receive the
21 instructions on the law that I will give you prior to
22 beginning your deliberations.

23 I have not heard any of you violated any of my
24 instructions so far but I want to stress to you at this
25 juncture it is very important that you not perform any type

1 of independent research or investigation into the case.

2 If there is still you think - there - a word has been
3 used or something has been said that you just don't quite
4 understand, again, do not even go to the point of pulling
5 the Webster's off the shelf to look up a word. Allow the
6 lawyers and I to be able to educate you as to what you will
7 need when you go back to begin your deliberations. Don't
8 do any kind of independent research or investigation.

9 Also, at this juncture it is very important for you
10 not to begin your deliberations. I want to stress to you
11 do not have any discussions among yourselves nor with
12 anyone else about anything that involves this case. Again
13 you will only have to begin your discussions about what's
14 involved in this case when you actually begin your
15 deliberations tomorrow after the lawyers argue their
16 closing arguments to you and I have instructed you on the
17 law.

18 There are matters of law that I still have to take up
19 with the attorneys, so I'm gonna ask if you would please be
20 back in the jury deliberation room by ten thirty tomorrow
21 morning and then you will receive the closing arguments and
22 instructions on the law. I do want to thank you for your
23 service yesterday and today but you may go with the bailiff
24 and have a good evening.

25 (JURY EXITS COURTROOM AT 04:34 P.M..)

1 MS. INZERILLO: Your Honor, at this time, again, we
2 would renew all previous motions and objections including
3 a motion for a directed verdict.

4 THE COURT: All right. And I have not - I am not
5 inclined to change any of my prior rulings in regards to
6 those made on any additional information that I heard.

7 All right, does the State have any motions at this
8 time?

9 SOLICITOR EPTING: No, Your Honor. We did pass up
10 the case as far as self defense that we believe would have
11 - We would argue would preclude a self-defense charge in
12 this case, particularly given what was testified to by the
13 defendant on cross examination. That is *State v. Slader*
14 373 S.C. 66. We feel that the facts of that case rely
15 pretty strongly on par for this case. I don't know if Your
16 Honor wants me to get into the argument on that now or save
17 that for a later time.

18 THE COURT: You ready to do it now because I was
19 preparing the charges and if I granted the State's motion
20 that would definitely reduce the charges I would have to
21 prepare.

22 SOLICITOR EPTING: I'm ready for the argument now,
23 Your Honor. I don't know if Ms. Inzerillo has had time to
24 review the case or not.

25 MS. INZERILLO: Your Honor, I have had a quick moment

1 to review the case, so I would be prepared to begin
2 argument and if the Court had any other concerns if I could
3 have leave to address any other case law or any concerns
4 but I would be willing to begin on this.

5 THE COURT: Okay. Now my understanding based on the
6 reviewing of *State versus Slader* is that I have to charge
7 self defense and I have to view the evidence and after
8 determining if there is any evidence in the record which
9 would reasonably support the position of self defense and I
10 have to actually view the evidence in the light most
11 favorably to the defense in making a determination whether
12 or not to charge - I'm not gonna agree with the weight of
13 the evidence but I believe that that's the standard that I
14 have to apply.

15 Is that your understanding?

16 SOLICITOR EPTING: I believe that is the standard as
17 well, Your Honor.

18 THE COURT: Okay.

19 SOLICITOR EPTING: We believe that our facts lay on
20 top of this in *Slader* the defendant in that case walked
21 upon an armed robbery, they say he had a loaded weapon
22 which he was unlawfully in possession of; at that point he
23 has plead armed robbery into a shooting. As the defendant
24 fled he fired behind him and ballistics later show he
25 killed the victim of the armed robbery and what I can only

1 imagine is a botched attempt to save him.

2 The Court in that case stated that it was error for
3 the State - the *Court of Appeals* to reverse the trial court
4 and refuse to give a charge of self defense stating that he
5 failed to meet the first burden of self defense,
6 specifically he was not without fault in brining on the
7 difficulty. They go on to say in the incident case the
8 record clearly reflects that *Slader* approached an
9 altercation that was already underway with a loaded weapon
10 by his side, such activity could be reasonably calculated
11 to bring the difficulty that arose in this case. They
12 found at a particular note that he acted in violation of
13 the law by carrying a weapon. While that in and of itself
14 is not enough to do away with the self- defense charge,
15 they did find that in particular and particularly given all
16 of the other factors in the case.

17 They went on to state that here, *Slater's* unlawful
18 possession of the weapon was the proximate cause of the
19 homicide. He was not merely in unlawful possession of a
20 weapon; he carried a cocked weapon, in open view, into an
21 already violent attack in which he had no involvement or no
22 prior involvement. His actions, including the unlawful
23 possession of the weapon, proximately caused the exchange
24 of gunfire, and ultimately the death of the victim.
25 Consequently it fails to meet the requirement that he be

1 without fault in bringing on the difficulty and may not
2 avail himself of the charge of self-defense.

3 We believe that according to the testimony presented
4 by both the state as well as the defense in this case that
5 Mr. Faile approached a fight, again, that did not involve
6 him. He was in unlawful possession of a firearm. I
7 believe that the testimony from Mr. Faile is that a round
8 was chambered so I think that's tantamount to the gun being
9 cocked. And I believe testimony got out that had he not
10 pulled out the weapon at that time that no one would have
11 been shot that night. There is no other evidence that
12 there were guns involved and even by Mr. Faile's own
13 admission of Zach, Zachary Cleveland approached him running
14 and did not have a weapon and he did not know or think that
15 Logan Brooks himself had a weapon, therefore, I would argue
16 he's in violation of the law by having the gun, he's in
17 violation of the law by pointing the gun in someone's face,
18 and that he escalated what was a fist fight that did not
19 involve him into a shooting wherein both - more than three
20 people were unlawfully shot, two of them before the Court
21 here today.

22 MS. INZERILLO: Your Honor, I believe *Slader* can be
23 distinguished from the facts of Mr. Faile's case and I
24 would ask the Court to still charge the jury self defense.

25 Mr. Faile testified that he - while he walked up to

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1 the car with the gun the gun was not out, was not exposed
2 in any way, he had no intention of using the gun. Mr.
3 Epting did question Mr. Faile about his having the gun on
4 his person throughout the evening but there's been no
5 testimony he pulled it out, he pointed or presented it in
6 any way up until the point that Mr. Faile indicated that
7 when Mr. Cleveland came around the car and he felt that at
8 that point he needed to defend himself, that that is the
9 only point of which he pulled out the gun.

10 That was the testimony from Mr. Faile. He was very
11 clear on the stand that that was what percipitted him
12 pulling out the gun was Mr. Cleveland's demeanor, the way
13 in which he came around the car, that it was only at that
14 point that he decided to pull out the gun.

15 That fact I believe distinguishes us from *Slader*. Mr.
16 Faile did testify from the stand that he was not sure if
17 Mr. Brooks had a weapon on him because everything happened
18 so fast. He was not aware that Mr. Fitcher was going to
19 punch Mr. Brooks. He does have a connection to the people
20 in this fight. In *Slader* at least from the way the facts
21 seem to read, Mr. Slader comes upon something that does not
22 - only strangers getting involved in something.

23 Mr. Faile indicated that he knew Mr. Fitcher, he's
24 known him for years. They came to this party, he was in
25 part of his crowd, he was looking out for him and that they

1 did approach the car together and so there is some
2 connection there. What ever weight the jury wants to give
3 that will be up to the jury but there is some connection
4 there between these two people so it's distinguishable from
5 Slader in that Mr. Faile came upon a fight already in
6 progress and jumped in in the same manner that Mr. Slader
7 did.

8 I believe that if the jury wishes to consider the
9 facts from Mr. Faile's perspective that he only pulled the
10 gun when he felt threatened by Mr. Cleveland and there has
11 been testimony as to Mr. Cleveland's height and weight and
12 Mr. Faile's height and weight. Mr. Cleveland's demeanor
13 when he came around the truck, Mr. Faile's demeanor leading
14 up to the altercation then I believe that the jury can, you
15 know, access whether self-defense would start then or
16 whether he was justified in pulling out the gun.

17 Certainly a height weight determination, Mr. Faile's
18 assessment whether this could be a two on one situation, a
19 two on two situation, for which he considered himself a
20 part of, that also could go into a jury's finding that it
21 could be self defense. I believe there's evidence in the
22 record to support a self-defense charge. Certainly
23 sufficient enough to distinguish it from Slader.

24 Regarding Mr. Faile's unlawful possession of a pistol,
25 in reviewing *State v. Burris* which is cited by the Court in

1 Slader, the court in *State v. Burris* does state that that
2 is something that can be taken into consideration but does
3 not preclude the giving by the Court of the charge of self-
4 defense. So I think the Court is clear in *Burris* that
5 self-defense can be charged. The jury can take that into
6 consideration and then perhaps depending on the trial
7 Court's determination as to how it wishes to handle any
8 allegation of Mr. Faile's possession of a weapon which in
9 candor to the Court was a separate argument of a defense;
10 that that does not on its face preclude a charge by the
11 trial court to the jury.

12 So, Your Honor, the defense feels that it has placed
13 enough evidence on the record for the jury to consider
14 self-defense. They have heard almost at nauseam several
15 witnesses come in and indicate that no gun shots started
16 itself. He was under people, that he was being attacked.
17 Even if the jury does not think that the pulling of the gun
18 suffices itself self defense, if they wish to start self
19 defense at the time the gun was fired.

20 Certainly there is enough evidence that that the jury
21 would like to start their invocation of self defense that
22 they think he shouldn't have pulled out the gun but he
23 certainly had every right to use it once he was being
24 attacked then certainly I think that's well within the
25 jury's purview for all the evidence that's been placed on

1 the record.

2 And I would ask the court to give them the latitude to
3 make that decision by charging self defense.

4 SOLICITOR EPTING: Your Honor, I think the crux of the
5 case *Slader* is that this person involved himself in a fight
6 that did not involve him in any way shape or form.

7 We do have testimony that the defendant was friends
8 with the individual that was fighting Logan Brooks in the
9 window but he stated himself that fight did not involve him
10 until he stepped between the two parties and pulled out the
11 gun. I think that's the crux of *Slader*.

12 We agree that unlawful possession of a weapon alone is
13 insufficient to negate a self-defense charge but as the
14 Court says it's a fact to be taken into consideration to
15 decide whether and when it's appropriate.

16 We have the defendant involving himself in a fight
17 that has nothing to do with him directly despite him
18 knowing the people and he does so with a loaded firearm.

19 Your Honor, under the facts of *Slader* the individuals
20 that the - that Mr. *Slader* intends to defend himself from
21 are firing firearms are him so they are actually armed as
22 opposed to here wheere there's been no testimony that Zach
23 Cleveland was armed much less Logan Brooks.

24 We think it lies directly on top of *Slader*, Your
25 Honor.

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1 MS. INZERILLO: Your Honor, not to belabor the point,
2 I'm not sure from reading the factual allegations of *Slader*
3 how many parallels or nonparallel we can draw between the
4 facts of *Slader* and this case. But certainly you can see
5 from the State's argument and my argument that there is
6 enough I think for the jury to pull from in terms of who
7 they would believe about whose friends with who, what
8 involvement, what the perception of the involvement.

9 From the view of self-defense the important thing is
10 how Mr. Faile viewed the situation. Did he believe he was
11 in imminent danger? Was he at fault in bringing on the
12 difficulty? In this case as a proposes what's explained in
13 *Slader* the - it's clear from what - how the court at least
14 explains the facts that *Slader* knew neither the victim nor
15 his attackers when he comes upon a robbery unfolding where
16 the victim was on the ground being assaulted by five men.

17 Mr. Faile was clear on the stand he knew of Logan
18 Brooks. He approached Logan Brooks that evening because he
19 knows him but he wouldn't see him any more after this and
20 so he has familiarity with someone involved in this case.
21 He has an adaptive familiarity with Sam Fitcher, what
22 started off of what was just gonna be an exchange of
23 conversation or words or however you want to describe it
24 escalated from there and it was a situation that grew.
25 This is completely distinguishable from *Slader* because it

1 isn't a stranger on a stranger situation.

2 Mr. Faile had a familiarity with people. And from Mr.
3 Faile's perspective something that escalated that he
4 responded to with his own response to that escalation the
5 jury can certainly take into consideration whether that was
6 a proper response taking into account how they view
7 credibility, how they view the height and the weight of
8 people involved, the levels of intoxication.

9 Certainly in this case we have it on video so how
10 people acted. You can certainly see Mr. Cleveland racing
11 around the back of that truck coming at Mr. Faile. You
12 certainly see Mr. Faile whereas he pulls the gun is also
13 walking backwards. All of these things I think the jury
14 can take into consideration to determine as to whether that
15 gun, you know, perhaps was used as a threatening way or
16 something to almost in a protective way. They jury may
17 interpret it that way depending on what they see on the
18 video and then heard what testimony was.

19 And so I think our case is very distinguishable from
20 *Slader*. It is not an arms length stranger on stranger
21 situation that *Slader* is. There is a familiarity between
22 all the parties. The gun is not immediately used and you
23 can see from the testimony from the video of Mr. Faile's
24 actions with the gun belie any threatening use of it in
25 terms of any escalation of the - of the act. He's not

1 using it in a threatening manner. He doesn't go forward
2 with it. He doesn't shoot at anybody at that point. He
3 doesn't go over anybody's head.

4 I think the jury after hearing all the facts and the
5 evidence in this case can just as likely assume he has
6 pulled it to protect himself to try to defuse the situation
7 as he testified to. Or that the gun was shot in self-
8 defense once he got attacked and was attacked by multiple
9 people that are all taller than he is and weigh more
10 heavily than he does. So I think we have placed a lot of
11 evidence on the record for self-defense in this case.

12 THE COURT: All right. The lawyers approach a moment.

13 (BENCH CONFERENCE OFF THE RECORD AT 04:51 P.M..)

14 THE COURT: Okay. What we're going to do is - I'm not
15 gonna hold the audience hostage and hold the staff hostage,
16 there is a lot of work left. I and the lawyers still have
17 to do in order to get ready to have this case be presented
18 to the jury so we're going to conclude the actual court
19 session at this time.

20 I would like to discuss with the lawyers off the
21 record. I think its more productive the charges that we're
22 going to present so the lawyers would not leave for home
23 yet. Bear with me and give me a little bit more time. And
24 I'm gonna review the case one more time and will make a
25 ruling on the State's present motion as soon as I can but

1 that would be before we actually did the arguments and
2 charge.

3 Thank everybody for their work. We're gonna step down
4 at this time and go off the record.

5 (COURT IN RECESS AT 05:00 P.M..)

6 (DEFENDANT, JUSTIN FAILE, REENTERS COURTROOM AT 10:24
7 A.M..)

8 (COURT BACK IN SESSION THURSDAY, FEBRUARY 12, 2015 AT
9 10:36 A.M..)

10 THE COURT: You may be seated. All right, in ruling
11 on the motion made by the State yesterday I cannot based
12 upon the standard that I have to apply at this juncture in
13 viewing the facts in the light most favorable to the
14 defense I could not grant the State's motion to exclude the
15 charge and arguments of self-defense.

16 Also earlier in this case the defense had raised an
17 issue concerning the assault and battery of a high and
18 aggravated nature going forward. I do believe that the
19 state has presented evidence sufficient to that if the jury
20 believed it would constitute assault and battery of a high
21 and aggravated nature so I will be charging that to the
22 jury.

23 Anything else before we bring the jury in to receive
24 the closing arguments and the charge on the law?

25 SOLICITOR EPTING: Nothing from the State, Your Honor.

1 MS. INZERILLO: Nothing from the Defense, Your Honor.

2 THE COURT: Lawyers approach one moment.

3 (BENCH CONFERENCE OFF THE RECORD AT 10:37 A.M..)

4 THE COURT: I'm gonna step down just for a second.

5 (COURT LEFT THE BENCH MOMENTARILY AT 10:38 A.M..)

6 THE COURT: You may be seated.

7 All right, I've also received a note from the jury -
8 from a juror this morning. I'm not going to read the note.
9 I'm gonna make it a Court's Exhibit that is not going to be
10 disclosed to the lawyers.

11 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO, IDENTIFIED AND
12 MARKED, RECEIVED INTO THE RECORD.)

13 THE COURT: Anything else before we bring the jury in?

14 SOLICITOR EPTING: Nothing from the State, Your Honor.

15 MS. INZERILLO: No, Your Honor.

16 THE COURT: All right. You may bring the jury in.

17 (JURY REENTERS COURTROOM AT 10:44 A.M..)

18 THE COURT: All right, Mr. Foreman, ladies and
19 gentlemen, thank you for your patience while we concluded
20 all matters of law that needed to be addressed.

21 Ladies and gentlemen, the parties have now presented
22 their evidence in the case to you and it is now time for
23 the attorneys to present to you what is called closing
24 arguments. The arguments of the attorneys are not evidence
25 in this case. They're statements and arguments are meant

CLOSING ARGUMENT: BY MS. INZERILLO

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1 to help you understand the evidence and apply the law to
2 the evidence. You should disregard any remark, statement,
3 or argument which is not supported by the evidence
4 presented during the trial, or, the law that I will explain
5 to you after their arguments.

6 But at this time we will receive the closing arguments
7 of counsel.

8 MS. INZERILLO: May it please the Court, Your Honor.

9 Mr. Solicitor, please.

10 I don't know how many times in life we say I don't
11 know what he was thinking, I'm not inside his head. And so
12 it occurred to me during the course of this case that
13 that's what you're ask to do. You're ask to get inside
14 Justin Faile's head. You're ask to get inside Justin
15 Faile's heart.

16 As lawyers and from the judge you're gonna hear it
17 called malice. And you're gonna hear it called intent.
18 Malice is simply what was in heart on December 13th and
19 14th 2013. Intent is simply what was in his head on that
20 night.

21 As I told you at the beginning of this case this isn't
22 a case about what. On December 13th and 14th 2013 there was
23 a shooting. This isn't a case about where. On that night
24 there was a shooting at Palmetto Sport's Bar. This isn't a
25 case about who. Justin Faile was the shooter.

CLOSING ARGUMENT: BY MS. INZERILLO

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1 Like I told you at the beginning of this case it's a
2 case about why and how. Now at this point you've heard all
3 of the evidence in the case. You've heard the testimony.
4 You've seen everything that's been put before you. You saw
5 Justin Faile take the stand and you heard from his
6 perspective what happened that night.

7 You heard him tell you he didn't have any intention of
8 hurting anybody that night. He didn't have any intention
9 of shooting anybody. You saw his demeanor on the stand.
10 And as I was listening to the case I thought what is the
11 one thing that capsulates what was going through his head
12 that night.

13 This moment. Sometimes in life it comes down to one
14 moment. And what is this moment? It's kind of hard to
15 see with the grainy footage. It is the moment Justin Faile
16 raised the gun and pointed it at Zach Cleveland. And why,
17 ladies and gentlemen, is this a critical moment because
18 what do we know? Prior to this no one had any problems
19 with Justin Faile. Justin Faile didn't have any problems
20 with anybody else, this was a peaceful evening.

21 Justin testified there was some issues going on in the
22 parking lot and he was calming them down. He was trying to
23 get his people ready to leave. No one took the stand and
24 indicated that Justin had any issues; they didn't have any
25 issues with him. No one testified that prior to this

CLOSING ARGUMENT: BY MS. INZERILLO

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1 moment Justin Faile pulled a gun.

2 But what do we know about this moment? We know Justin
3 Faile pulled the gun when Zach Cleveland came around the
4 back of the truck. Justin told you that from the stand.
5 The only reason I pulled the gun was because he raced
6 around the back of the truck at me.

7 Zach Cleveland testified he's about five, ten; five,
8 eleven. Now he's about two hundred and five pounds.
9 Justin told you he's about five, five and about one
10 seventy.

11 Sometimes when we look at guns we assume the worst.
12 We assume it's a deadly weapon. Sometimes through the eyes
13 of someone who is five, five who is staring at someone
14 that's five ten or five eleven the gun can be an equalizer.
15 It can be something that might make someone whose five
16 inches or six inches taller than you and almost maybe forty
17 pounds heavier than you stop. Maybe that's the one thing
18 that makes them stop rushing at you.

19 Justin told you from the stand I pulled it because I
20 thought he would stop. And what do we know from this one
21 moment? He doesn't shoot the gun. There's no testimony he
22 shot up in the air, he shot to the ground or that he shot
23 Zach Cleveland. If you want to know what's in Justin
24 Faile's mind this is the moment. If he wanted to intent to
25 assault or hurt he would have shot right then.

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1 Because, ladies and gentlemen, when Zach Cleveland at
2 five ten and a hundred and seventy is coming around at
3 Justin Faile he has a right to defend himself. At this
4 moment he has the right to defend himself. And what does
5 Justin Faile at five five do? He doesn't shoot.

6 What is the next thing that he does? One, two, three.
7 He backs up. He holds the gun and he backs up. And I'll
8 show you that again.

9 (VIDEO PUBLISHED TO THE JURY.)

10 MS. INZERILLO: One, two, three. He backs up with the
11 gun. Zach Cleveland is coming towards him.

12 You also see here Bobby Trader is coming towards him.
13 And the same time it takes Justin Faile to do three or four
14 steps backwards, excuse me, Bobby Trader has cleared by his
15 own testimony fifteen yards. According to Justin Faile's
16 testimony this is the last thing he remembers. This moment
17 being blind sided by Bobby Trader who by his own testimony
18 is over a foot taller than Justin Faile. And by his own
19 testimony was a hundred and ninety pounds at the time.

20 Now Bobby took the stand and he tried to tell you that
21 he ran and he thought he punched him. Some other people
22 took the stand and there was some testimony about Justin
23 turning and pointing the gun and perhaps shooting at Bobby.
24 Watch Bobby's run.

25 Bobby runs and doesn't stop. Nothing breaks his

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1 stride. It was a shot. There's been no evidence, no
2 testimony of any bullet holes in the front. There's a lot
3 of testimony about where they were, in the back, in the
4 side and the hip. Nothing in front. Nothing in the face.
5 Nothing in the chest. No intent and no malice.

6 What do we see? Zach Cleveland comes around and Bobby
7 Trader at full stride, he doesn't walk at first to access
8 the situation and then run. He is at full stride running.
9 And what was his testimony? I took care of the problem,
10 bam, right there. Justin Faile was the problem.

11 There was a lot of testimony about I needed to protect
12 my brother, I just wanted to protect my brother. If you're
13 protecting your brother from someone who has got a gun in
14 his face you tackle your brother. That would be logical.
15 Bobby also said I took care of the problem.

16 Now, at this point it goes off screen. What do we
17 know about this? Bobby testified about his injuries.
18 Bobby at six five tackled someone who's five five. You can
19 see that on the video. He jumps tackles him and his bullet
20 wounds range from here to a hip in his rear end. Nothing
21 on his chest. There is no testimony Justin Faile ever
22 stood up and shot over him.

23 Isn't it likely that Justin Faile got hit on top? And
24 you can see in the video that he's got his gun in the right
25 hand and where he gets tackled the gun goes off. He is

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1 tackled by a guy a foot taller than him. That gun is not
2 fired until he is attacked by Bobby Trader. The injuries
3 are consistent with that. No intent no malice.

4 Now, what's the next thing we hear? At this point
5 they're trying to get the gun away from him. That's the
6 constant testimony we've heard. All we were trying to do
7 is get the gun away from him. At what point? Here with
8 this kicking? With the punching and standing up? How many
9 guys are on top of Justin Trader for the ninety seconds to
10 two minutes for the duration of this fight? How is it that
11 standing over someone with your fist raised like this and
12 punching down gets the gun out of someone's hand?

13 How is it that raising your leg and kicking gets the
14 gun out of someone's hand? Not one person could take the
15 stand and could say this is how I could get the gun out of
16 his hand by doing that. Not one person took the stand and
17 said look the plan was he was gonna hold him and I was
18 gonna grab it.

19 But you heard Justin testify from his recollection. I
20 remember getting beaten repeatedly kicked in the head
21 punched in the head all in the torso. That's what I
22 remember. What's the other thing he remembers? No one
23 was coming to help me. He said that. No one was coming to
24 help me. On this video there are a lot of people in the
25 parking lot. Some of them are repeatedly beating and

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1 kicking Justin Faile. A lot of those people want you to
2 think the purpose of that was to get the gun out of his
3 hand. Some of those people as you see on the tape are
4 watching, they're talking on cell phones, they're walking
5 past, they're standing around. None of them walk up and
6 help Justin Faile. The only person that called 911 in this
7 case called for Bobby Trader. No one called for Justin
8 Faile. Until Jennifer Shelly came out and pushed three
9 guys off him because by her statement she thought they were
10 going to kill him no one helped.

11 He testified that from his bit of consciousness all he
12 knew was he was getting repeatedly kicked and hit, that's
13 all he knew. He had the gun underneath him. Ms. Shelly
14 testified I never told him son, I'm here to help you it's
15 okay. He was face down. Even by her testimony the hoody
16 was over him. She didn't ever see his face. She didn't
17 know or he didn't know she was above pushing people off of
18 him. The gun shots she hears are the last three he does
19 when he testified I shot the gun and emptied the clip I
20 didn't want anybody to use it against me.

21 Because what is going on from his perspective? People
22 are kicking him, they are hitting him, they're beating him
23 and on one is helping him.

24 Now all of those people that are beating him and
25 hitting him and kicking him they want you to think that for

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1 that ninety seconds to two minutes that that's what they're
2 doing, they're trying to get that gun away from him.

3 But what does Ms. Shelly testify to? And you saw Ms.
4 Shelly, she says all I did was I put my foot on his back.
5 That's all I did. And after that the gun's out. I didn't
6 hear any testimony about that being a magic foot or a lead
7 laden foot or anything like that. But how is it that Ms.
8 Shelly puts her foot on his back and the gun is divested.
9 And all of these men who are beating him and kicking him
10 can't get the gun away from him. Its because, ladies and
11 gentlemen, they're not beating him or kicking him or
12 punching him to get the gun away from him. They're just
13 beating and kicking and punching him, that's the extent of
14 it.

15 You can see on the video that people are running in
16 and out. You will see people stop walk up mill around and
17 you see them run out again. You can see on the video they
18 estimate when the shots are fired. Shots are only fired
19 when he is hit tackled beaten or kicked. That is self-
20 defense. He had a gun because someone taller raced around,
21 he was in a situation where there were multiple guys facing
22 him one of which was getting kicked out of the party for
23 getting into a fight. A party full of drunk people so you
24 can imagine this person's actions had to be such an extent
25 he had to be kicked out.

1 This is what Justin Faile saw. This was the danger he
2 believed he was in. Even when the gun comes out of his
3 hand the beating doesn't stop. He's kicked, he's stepped
4 on. You heard Mr. Small testify yes I think I kicked him
5 afterwards. In all of the testimony that you hear about
6 Justin Faile is that he doesn't move. You never see him
7 get back up. He's not a threat. No one testified that he
8 had to be held down because he was still fighting. The
9 officers - both officers that testified, one for the state
10 and one for the defense, both testified that when they got
11 on the stand - and you can see on the video, first on the
12 surveillance video here.

13 The officer comes on the scene and shines a light on
14 him. You see he's not moving. You can see the officers
15 trying to cuff him and drags him like dead weight.

16 Deputy Davis' video here shows the same thing. As he
17 pulls up to the scene you see Deputy Davis running in. You
18 see Justin on the ground curled up. Like he said I was
19 just curled up because they were beating and kicking me.
20 That's all he was doing. He was just curling up because no
21 one was coming to help. And then he's moved, he's dragged
22 by the officer.

23 The officer's testified he doesn't move. He's out.
24 At one point the officer has to move his face out of a mud
25 puddle. When they interact with him you see they have to

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1 physically lift up his arms. You heard Justin testify
2 about the extent of his injuries, broken bones in his back,
3 concussion, facial trauma I think they call it. His eyes
4 are still so bloody that when he's booked in here at the
5 Moss Justice Center you can still see it in his photo.

6 Blood on his eyes where he was repeatedly kicked and
7 beaten. The officers at the scene repeatedly say yes he's
8 been beaten, yes he's been beaten. They're asking where is
9 the EMS, we need EMS, yes he's been beaten. They note at
10 the scene look at the bruises on his rib cage, he's out,
11 he's unconscious.

12 Now, it's easy sometimes in life and in cases like
13 this to surmise about what could have happened. And we
14 heard some testimony about to a degree of medical certainty
15 what could happen in a case. It could have gone in his
16 thigh and it could have nicked an artery. It could have
17 gone in somewhere else and it could have made something
18 much worse. You may hear argument today about he had a gun
19 in a crowded lot that could have been real bad.

20 Ladies and gentlemen, both sides could stand in front
21 of you for days and could speculate about all of the things
22 that could happen. I could tell you that of all the people
23 kicking and beating on Justin Faile one of those kicks
24 could have paralyzed him, could have killed him. We could
25 spend all day long speculating about what could have

1 happened.

2 The important thing is what did happen. What do we
3 know. What do we know about the injuries. You heard
4 testimony a lot of it lay testimony about the extent of the
5 injuries. The judge will tell you that you are allowed to
6 judge the credibility of the witnesses. Just by virtue of
7 the fact that you are before us in your role as jurors does
8 not mean that you leave your common sense at the door. You
9 can access what someone says on the stand versus how they
10 act.

11 In this case, ladies and gentlemen, Justin Faile acted
12 in self-defense. He was not at fault in brining on the
13 difficulty. He didn't pull out that gun at any time before
14 that night until he was threatened. He believed he was in
15 danger and before he fired he was in danger. He was armed
16 and when he fired that gun there was no other way for him
17 to get out of that. He doesn't have to retreat. He has a
18 right to defend himself.

19 Self-defense is a complete defense. Self-defense
20 means he is not guilty. Thank you.

21 THE COURT: Yes, sir.

22 SOLICITOR EPTING: Thank you, Your Honor, may it
23 please

24 the Court. Ms. Inzerillo.

25 I beg the Court's indulgence.

CLOSING ARGUMENT: BY SOLICITOR EPTING

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1 Madam Clerk, could you dim the lights please.

2 (COURTROOM LIGHTS DIMMED.)

3 SOLICITOR EPTING: Ladies and gentlemen, I get the
4 honor of going last. And I also get the honor of telling
5 you it's almost over. The case is almost in your hands.
6 All the testimony has been heard. Ms. Inzerillo's had her
7 say and now I get to have my say.

8 You will be instructed it's been correctly stated that
9 we must prove our case to you as to both charges beyond a
10 reasonable doubt. The judge is going to instruct you prior
11 to you getting the evidence and deliberating on what beyond
12 a reasonable doubt is. He will give you several different
13 definitions.

14 Lawyers being lawyers like to define things in
15 different ways. One definition of beyond a reasonable
16 doubt is a reasonable doubt is one that causes you to
17 hesitate act in making your decision. I ask you not to
18 dwell too littlely on those terms because obviously you're
19 supposed to hesitate to some degree to discuss the case, to
20 share concerns, to discuss the evidence that's been
21 presented to you over the course of this week.

22 You will notice when you go back to the jury room that
23 there are chairs in the jury room. You're expected to
24 utilize those chairs. Of course you hesitate cause this is
25 an important decision not just for Mr. Faile and not just

1 for the state but also for the victim's in this case.

2 Another definition is that if you are firmly convinced
3 then you are convinced beyond a reasonable doubt. The
4 judge will instruct you on both. I'd like to tell you what
5 it's not.

6 Beyond a reasonable doubt is not beyond any doubt
7 because there are very few things in life that we can know
8 with no doubt and that is not the burden that we're held
9 to. And I would submit to you in argument that there are
10 very few people around the world who have been convicted
11 numerical without some doubt in the jury's minds.

12 A reasonable doubt is what's required.

13 But I'd also like to talk to you about your role as
14 jurors. You took an oath at the beginning of this case to
15 hear the evidence, weigh it fairly, and to apply the law as
16 the judge instructs you. You're to consider the facts and
17 the evidence from that stand, the physical items that have
18 been presented to you, and determine the truth of the
19 matter.

20 There are some things that are outside the purview,
21 your purview. The judge has instructed you about him being
22 the master of the law. That means as to issues of law the
23 judge is king. As to issues of fact you are king. One of
24 the older attorneys in our office use to analogize jurors
25 to umpires in a baseball game. A person who slides in safe

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1 it's a close call. Slides into first it's a close call.
2 They're not thinking about how this is going to impact that
3 player's career or whether they're having any trouble at
4 home. Nothing but is he safe or is he out.

5 Is the defendant based upon the facts that you've
6 heard on this stand, guilty or not guilty? And if you
7 decide he is guilty then what happens after that is out of
8 your hands. It's not for your consideration. That's the
9 judge's job.

10 With that said what are we here to determine? Is he
11 guilty of attempted murder and assault and battery of a
12 high and aggravated nature? As to Bobby Trader attempted
13 murder simply stated is an attempt to kill someone with
14 malice in their heart. Malice is a term of our - its
15 defined several different ways and we'll get into more of
16 that later.

17 Zach Cleveland is a little bit more cut and dry
18 according to the statute. He's charged with assault and
19 battery of a high and aggravated nature as to Mr.
20 Cleveland. That charge requires an injury. And I think
21 there's no dispute he was injured. And then one of two
22 possibilities that the means - that the injury was incurred
23 or caused by means likely to produce death or great bodily
24 injury.

25 Ms. Inzerillo talked to you about speculation. The

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1 law requires you to speculate to some degree on that. Were
2 the means that caused Mr. Cleveland's injuries likely to
3 produce great bodily injury or death. What did his doctor
4 testify to? He's got an artery running right through his
5 thigh. A gunshot wound to your thigh in that area is
6 likely to cause death or at least great bodily injury.

7 The second option under that did great bodily injury
8 actually occur? Yes it did I would submit to you based
9 upon the facts. He can't run any more. He limps.
10 Protracted loss or impairment of a limb, his leg, his foot.
11 What did the testimony show? What did Bobby Trader say?

12 He arrives at the bar he sees a man pull a gun in his
13 face. You've seen that video probably more times than you
14 want to. Obviously that happened. Unbeknownst to him
15 according to the defendant's testimony that gun is
16 chambered. There's a round in the chamber. All the
17 defendant has to do at that point is pull the trigger.

18 He sees that gun in his brother's face and as Ms.
19 Inzerillo said it's a snap decision. No he didn't slow
20 down. No he didn't stop to see that he was backing up
21 three feet cause that gun was raised the entire time. Of
22 course he hit him. Of course he tried to take the gun
23 away. Snap decisions go both ways. We know how that went.
24 He hit Justin Faile in protecting his brother and Justin
25 Faile responded by shooting him multiple times.

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1 Some in the hip. Some in the buttocks. One in the
2 small of his back and two in his back. We have a self-
3 defense claim where the defendant concedely shot the victim
4 in the back multiple times. Was it as Ms. Inzerillo says
5 where they're wrapped up and he's shoots him one time
6 involuntarily as they're falling down five times, six
7 times? Does that make sense to you?

8 Malice. That's an issue we'll come to later. What
9 did the defendant say? It becomes important later
10 particularly when considering elements of self-defense. He
11 had the gun on him it was loaded and chambered all night.
12 He has no permit for that gun. He's drinking heavily. He
13 himself does not believe that he's drunk but the hospital
14 records show that he has a blood alcohol level of point one
15 seven. He says over the legal limit.

16 Ask yourself why he's brining that gun to this bar
17 cause he amongst friends. Right? Why he's carrying a gun
18 a .40 caliber pistol chambered with a round all night long
19 on his hip and in a place where friends are meeting.

20 He flags down the car. He admitted that. Remember
21 why he said he was flagging him down. Logan, this man who
22 was so rough that he knocked someone out who was leaving
23 who was almost to the road. Mr. Faile approaches along
24 with Sam Fitcher and he flags him down he tells them to
25 stop. Why did he say that? What did he want to do? He

1 wanted to ask him a question. Sir, why did you hit my
2 friend at the door? I just wanted to inquire of your
3 reason as to that because I might not see you for a few
4 days. Does that make sense to you?

5 You saw the video. The defendant said it wasn't
6 raining that night and he pulls his hoody up sumpter's up
7 to the car right next to Sam Fitcher. What does the
8 defendant tell us? What does Sam Fitcher tell us? What
9 did Richard Lester tell us? There are unfriendly words
10 being exchanged. How did the defendant not have known that
11 something was going to happen given the nature of what had
12 happened and the words that are being exchanged?

13 Nonetheless he flags him down. He pulls out a gun and
14 his memory becomes selective. He knows he shot Bobby
15 Trader but he doesn't remember exactly doing it. I submit
16 to you that's a convenient memory, that's a selective
17 memory.

18 Another thing, we heard over and over again that
19 Justin Faile did not pull out the gun until Zachary
20 Cleveland got out of the car and rushed at Justin Faile.
21 Was that the testimony? Was that the testimony that you
22 all heard from that stand? I would submit to you that's
23 not what I heard.

24 Zachary Cleveland got out of the car to go to Sam
25 Fitcher to get him off his cousin, to get him away from his

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1 car. And it wasn't until Justin Faile pulled out that gun
2 and stepped between them that he became involved in any way
3 shape or form. Sam Fitcher didn't even know he was there
4 until he saw Justin Faile have that gun. Remember Sam
5 Fitcher's testimony. What did he say he thought when he
6 saw it? I'm gonna use his words but he was scared. And he
7 testified that when he was backing away he wasn't backing
8 away from Zach Cleveland, who apparently Mr. Faile feels is
9 such a threat he has to pull a loaded gun in his face that
10 he was backing away from Justin Faile.

11 Zachary Cleveland's testimony he was rushing around to
12 help Sam Fitcher - to help Logan with Sam Fitcher. He
13 sees a gun in his face, he sees a gun on the trigger.
14 Bobby comes up to try to save his brother and he gets
15 rewarded for his efforts by being shot multiple times
16 having bullets left in his body. He testified one near his
17 heart such that it can't be operated on. Wounds that he
18 will carry with him for the rest of his life.

19 Zach Cleveland steps in to try to save his brother by
20 pulling on Justin Faile and he gets rewarded by being shot
21 in the thigh. Sam Fitcher he testified, Justin Faile's
22 friend. He said he came to the car because he was not
23 happy with Logan just like Justin Faile wasn't happy with
24 Logan. And what did he do? Punched him in the face.

25 Then again what does he do when Justin Faile comes up

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1 behind him with a gun? Sam Fitcher obviously didn't feel
2 so threatened that he needed to run from Zach or from
3 Logan. He's running from Justin Faile.

4 Who does the person a reasonable person really fear in
5 that situation? Zach? Logan or Justin? You heard Lil
6 Rick. Interesting fellow with the glasses in his pocket
7 testified that he saw with his own eyes Justin Faile shoot
8 Bobby multiple times. Much was talked about Jennifer
9 Shelly how she came out and tried to help Justin Faile as
10 he was being hit in part according to the testimony to get
11 the gun away. Did you not see the horror on her face when
12 she realized that they weren't just beating him up? That
13 they weren't just beating him mercilessly to kill him but
14 that she realized that they were doing it because he had a
15 gun. And as she pulls people off, as she pulls people off
16 and gets him away from her that gun fires again.

17 Here's the surveillance video. Let's play it again.

18 Again, not raining but Justin Faile feels the need to
19 pull his hood up.

20 (VIDEO PUBLISHED TO JURY.)

21 SOLICITOR EPTING: What's he doing there? I would
22 submit to you he's hailing the car. Where are they going?
23 A road to leave. He walks up right next to Sam Fitcher,
24 Sam Fitcher punches Logan. Zach comes out and wouldn't you
25 know as soon as Zach gets out of there he pulls that gun

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1 from his hip. Points it, backs up but as he's backing up
2 he's holding the gun. What's Bobby done? He didn't put
3 the gun down, he didn't tuck it away. It's still being
4 pointed at his brother despite the fact that he backed up a
5 couple of feet.

6 Much a do has been made about Justin's injuries in
7 this case and we haven't tried to hide from the jury that
8 his injuries were bad. I wish we could stand in front of
9 you and say that after the gun was taken away that they
10 would have stopped hitting him but unfortunately they did
11 not. You heard testimony the people who continued to hit
12 Justin Faile were charged for their actions. That's for
13 another day. They were charged.

14 Again, there was punching and kicking. Justin Faile
15 was not relinquishing the gun. No one was helping him.
16 Why might that be? Why might no - none of his friends
17 would be helping him in this crowd of people cause he's
18 shooting people. He's shooting people and he's shooting
19 the gun. But Justin Faile testifies that he's unconscious
20 the entire time. Right? But he blacks out after he gets
21 hit by Bobby. Doesn't deny that he shot him multiple times
22 but just doesn't remember.

23 He's in and out after that. Every person who
24 testified who tried to take that gun from him said he was
25 actively struggling with them. Actively struggling with

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1 him not to give that gun. Is it any wonder they would hit
2 him particularly when that gun continues to fire? They're
3 struggling, they're going after the gun and bang bang bang.
4 I submit a reasonable person would do anything they could
5 at that point to incapacitate him, to stop him, to get that
6 gun away by any means necessary.

7 Of course no one was coming to help. The gun was -
8 Lil Rick testified that after they were - after he was
9 beaten for some degree that the gun became loose. Logan
10 picked it up holds it up in the air, and you see that on
11 the video, and then he puts it down. It didn't just slip
12 out when Jennifer Shelly put her foot on his back.

13 It's conceded that he shot Bobby, conceded that he
14 shot Zach. He's relying on the defense of self-defense.
15 There are several elements all of them must be present.
16 One fails, the self defense fails. One is that the
17 defendant must not be at fault in bringing on the
18 difficulty.

19 The second is that he must believe that he himself was
20 in a reasonable fear of imminent serious bodily injury or
21 death and the defendant must have had no other probable
22 means of saving himself to avoid that serious bodily
23 injury.

24 Let's look at them one by one. Was he not at fault in
25 bringing on the difficulty? What did the testimony show?

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1 Again, he was in possession of a concealed weapon without a
2 permit. Went to a bar he's drinking alcohol point one
3 seven alcohol according to his medical records. He again
4 approached Logan and Zach. He approached Logan Brooks and
5 Zachary Cleveland as they were being flagged down.

6 You witnessed the fist fight between two people and he
7 interjected himself in that fist fight by pulling out a
8 gun. A lock - Now that we know that he's testified locked
9 and loaded stepped right into the mix. There has been no
10 other testimony that anybody other than Justin Faile in
11 that parking lot was armed with a deadly weapon. He was
12 the only one with a gun. He escalated a fist fight into a
13 gun fight. And as a result one person had to be airlifted
14 to CMC and the other walks with a limp for the rest of his
15 life.

16 The defendant approaches - You've already seen that -
17 pulls out a gun and points it at Zach Cleveland. He was
18 absolutely at fault for all the reasons I mentioned. Gun,
19 bar, drinking, approaches people as they're leaving.
20 Injects into an incident that does not directly involve him
21 and escalates the incident and then he gets up on the stand
22 and says that really he's being the peace keeper in the
23 situation.

24 Common sense: What peace keeper brings a gun to a
25 fist fight that doesn't even involve 'em? There's

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1 testimony that some arguments were made that he was shot
2 only when he was dog piled. Pay attention to the video and
3 with the crowd's reaction. I submit to you that's when the
4 first shot was fired.

5 Look at the fellow on the bottom with the baseball
6 cap. See everybody go down? Let's watch it again.

7 Pay attention to the location of the parties at the
8 top of the screen what that happens. Who is standing where
9 when the first gunshot goes off? Let's look at it in a
10 little bit more detail. We had testimony that this was
11 Bobby; that this was Zach Cleveland holding out his hands
12 as he testified he did. This is Logan coming out of the
13 car. This is Justin Faile. You can see arm extended
14 pointing this .40 caliber pistol. This is Sam Fitcher
15 backing away we know according to his testimony from Justin
16 Faile. Another close up.

17 Zach, Logan. Another close up. Defendant, Sam. He
18 hits him. Gun shot. Where are they standing when that
19 gunshot comes off? Right in front of the car. Unless they
20 have fifteen feet arms, they couldn't have reached him. If
21 they were looking down certainly they're about to jump in
22 as they testified because they're seeing that Bobby has
23 been shot. But they weren't on him when he fired that
24 first shot. They were close but not armed.

25 You saw the in-car Ms. Inzerillo had just played. How

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1 far away from - How close to the road was Bobby laying when
2 the police arrived? I would submit a good deal away's off
3 of that. They are about to get into it but they haven't
4 yet. The only two people there when that first shot was
5 fired then subsequently Bobby and the defendant.

6 And again, Bobby is running up because he sees a gun
7 pointed at his brother's face. A gun that is not lower.

8 Obviously he's at fault. That fails. If one fails
9 self defense fails but for sake of argument we'll continue.
10 He must reasonably believe that he is in danger of serious
11 bodily or death. And I like he in that situation because
12 it has to be him. What did all the testimony show about
13 who Zach was after running around the truck. You've seen
14 the video at nauseam at this point. Who was he running
15 after? Justin Faile? I submit not. He is running at Sam
16 Fitcher. Sam Fitcher is the one who's punching his cousin
17 and who is leaning in his car window.

18 Justin had nothing to do with it. No one else was
19 armed. Obviously the defendant is the one who shot all
20 these rounds. The only rounds they find in the parking lot
21 are .40 caliber. The weapon he uses is a .40 caliber
22 pistol. When is he at risk of harm? Let me ask you that.

23 I submit to you he is not at risk of harm in any way
24 shape or form until he inserts himself into the situation.
25 And once he does that he loose's any claim of self-defense

1 he may have otherwise had. He must have no other probable
2 means. So if he's failed on two of the elements let's go
3 to one of the others.

4 He must have had no other probable means of saving
5 himself from serious bodily injury or death. What could he
6 have done? He could have stayed back. He could have let
7 them drive away. Does anybody here doubt that having let
8 them drive away that no one would have gotten shot? He
9 could have stayed back and let Sam take care of himself.
10 He could have pulled Fitcher back away from the situation.
11 Remember what he said echoing one of Ms. Inzerillo's
12 arguments. They were all friends here. Right? Why does
13 he believe that Zach would have come at him if he would
14 have pulled Sam and started to bring Sam away from the
15 truck if he's friends with all of these people?

16 He could have stepped between them without a gun. He
17 could have called the police. Other people did. He did
18 not. What did he do? He approached the truck signaled it
19 to stop put a chamber in a loaded gun and inserted himself
20 right into that fight. He pointed the gun at Zach's face
21 never called for help never called the police never did
22 anything to try to enlist - He seemed upset about that when
23 he testified. And again, why is no one coming to his aide?
24 Because he's shooting people.

25 He had multiple other avenues to avoid injury instead

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1 he chose to involve himself and chose to involve a gun and
2 as a result of that two people were severely injured. What
3 about to the injuries? Why did he get beaten up that
4 night? Because he pulled out a gun and he would not give
5 it up.

6 This fight turns into a gun fight. Again a fist fight
7 that does not involve Justin Faile and as a result of
8 involving that gun somebody gets rushed, flown to North
9 Carolina. If Justin Faile does not pull out the gun then
10 what happens? We get bruises, hurt pride, everyone goes
11 home. Self-defense doesn't work. And I wont' belabor the
12 point. He was obviously at fault in bringing on the
13 difficulty inserts a deadly weapon into what was otherwise
14 a fist fight. He injected himself into a situation that
15 had nothing to do with him. He should not have had the gun
16 that night and should not have been drinking while he had
17 the gun.

18 He had many other means to avoid this difficulty.
19 Staying back, calling the police, separating the people,
20 getting between them with out a gun and he was not in
21 reasonable fear of serious bodily harm until he involves
22 himself. For all those reasons self-defense does not stand
23 in this case, ladies and gentlemen, he cannot avail himself
24 of it.

25 That leads us back to the elements. Undoubtedly this

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1 occurs in York County; undoubtedly he shot two people that
2 night. Attempted murder on Bobby Trader. Did he attempt
3 to kill Bobby Trader, was he acting with malice? Ms.
4 Inzerillo was correct. Cases where you have to delve into
5 somebody's mind are always the most difficult but
6 technology is not to a point where we could appear inside
7 somebody's head and do telepathy. We don't have psychics
8 that can tell what somebody's thinking. The way that we
9 tell what somebody is thinking is by the things they did.
10 Ask yourself on this case as to Bobby Trader one at a time,
11 how was he shot, where was he shot, how many times was he
12 shot, and with what kind of weapon?

13 He was shot multiple times. He was shot with a .40
14 caliber, large caliber bullet. He shot him in the back, in
15 the hip, in the thigh which we have had medical testimony
16 are all extremely dangerous areas to be shot. Not just for
17 danger of having your organs punctured but hitting an
18 artery. He continued to shoot until he was pulled away
19 from other people. Bobby alone was shot multiple times.

20 Testimony was that he shot him point blank. He is
21 right up close and personal and that goes to malice. That
22 goes to what was in his heart when he was firing that
23 weapon. And what Bobby testified to he's gonna have to
24 live with bullets in his body for the rest of his life

25 With what provocation? With what provocation somebody

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1 running around the truck at a friend of yours with no
2 weapon in their hand. Two gun shot wounds to the back a
3 self-defense case. Another gunshot wound in the back yet
4 the defendant was defending himself. Hip surgery. He's a
5 young man and he has an artificial hip. Multiple gunshot
6 wounds. All these things speak to malice, ladies and
7 gentlemen. And remember this is pursuant to a .40 caliber
8 pistol.

9 The judge is going to instruct you on what's called
10 lesser included offenses and you can consider those in
11 deciding what the defendant may or may not be guilty of.
12 We'll get to that too because Zach Cleveland, the second
13 one, I think this charge also applies to Bobby if you find
14 that the defendant did not have the sufficient malice.

15 Again, was he injured? Was it caused by means that
16 could have produced death or great bodily injury? Yes. He
17 shot him with a pistol in the torso and also in the hip.
18 Did it cause great bodily injury? Yes it did. A
19 substantial risk of death, permanent disfigurement,
20 protracted loss or impairment of a body member. And his
21 legs, he says his legs are of two different lengths, he
22 can't move like he used to. He has a hip injury. Again
23 that goes to protracted loss or impairment of a limb.
24 Wounds inflicted in a manner likely to cause death. Large
25 scars.

CLOSING ARGUMENT: BY SOLICITOR EPTING

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1 As to Zachary Cleveland ABHAN. Was he injured? Yes.
2 Was it done by means that could have caused great bodily
3 injury? Yes. According to medical testimony dangerous
4 area on his side. Did it cause great bodily injury? Yes.

5 He has a disfigured foot, his impaired movement for a
6 long time after the injury and to this day he is still
7 impaired.

8 Ladies and gentlemen, we are here this week because
9 Justin Faile made a very foolish decision. He inserted
10 himself in a fight that did not involve him. He brought a
11 gun into a situation where no one else had a deadly weapon
12 anyway shape or form. He provoked Bobby Trader to try to
13 save his brother who he sees with a gun pointed in his
14 face. And everything that followed from that from them
15 trying to disarm him was because of his actions pulling the
16 gun out that night.

17 That was why Bobby Trader was shot and that was why
18 Zach Cleveland is gonna limp for the rest of his life
19 trying to save his brother trying to return the favor.
20 Consequently that is why Justin Faile received the injuries
21 he received because he wouldn't give up the gun and he
22 continued shooting.

23 Ladies and gentlemen, I ask that you not water down
24 the justice in this case for Bobby and Zach. I ask that
25 you find the defendant guilty of what I submit he is guilty

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1 of and that is attempted murder as to Bobby Trader and
2 assault of a high and aggravated nature as to Zachary
3 Cleveland. I thank you for your time and attention. I
4 know this has been a sacrifice. We equally await your
5 verdict. Thank you.

6 THE COURT: All right, ladies and gentlemen, I remind
7 you that during this trial you and I have certain duties to
8 perform. As the trial judge it is my responsibility to
9 preside over the trial of this case. And I also have the
10 duty and I also have the duty to rule on the admissibility
11 of evidence offered during this trial.

12 You are to consider only the competent evidence that
13 is before you. If there was any testimony ordered stricken
14 from the record in this case you must disregard that
15 testimony. You are to consider only the testimony which
16 has been presented from the witness stand and any exhibits
17 which have been made a part of the record of this case.

18 Now I have the additional duty to charge you the law
19 applicable to this case. As the presiding judge I am the
20 sole judge of the law of this case and it is your duty as
21 jurors to accept and apply the law as I now state it to
22 you.

23 If you already have any ideas as to what the law is or
24 what the law ought to be and it does not agree with what I
25 now tell you the law is, you must abandon this idea because

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1 you are sworn to accept the law and apply the law exactly
2 as I state it to you.

3 In every case tried in this court before a jury the
4 jury becomes the sole and exclusive judge of the facts in a
5 case. The trial judge cannot innimate, state, comment on
6 or make any statement to a trial jury about the facts in a
7 case. Since you, the jury, are the sole judge of the facts
8 in this case you are not to infer from what I have said
9 during the progress of this trial in ruling on the
10 admissibility of the evidence or otherwise or anything that
11 I say now during the course of this instruction that I have
12 any opinion about the facts in this case. The law does not
13 allow me to have an opinion about the facts in this case.
14 This is a matter solely for you the jury to determine.

15 As jurors it is your duty to determine the effect, the
16 value, the weight, and truth the evidence that has been
17 presented during this trial.

18 Ladies and gentlemen, the indictments in this case
19 charge the defendant with attempted murder and assault and
20 battery of a high and aggravated nature. Now I remind you
21 that the fact that the defendant is arrested, charged and
22 indicted in this case is not evidence in this case and
23 cannot be considered by you as evidence of guilt in this
24 case. Nor does it create any presumption or inference of
25 guilt. These documents are simply the formal written

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1 instruments which contain the charges made against the
2 defendant. They are the formal documents by which this
3 case is brought to the court.

4 The defendant has pled not guilty to these
5 indictments. Now that plea puts the burden on the State to
6 prove the Defendant guilty. A person charged with
7 committing a criminal offense in South Carolina is never
8 required to prove himself innocent. I charge you that it
9 is an important rule of law that the defendant in a
10 criminal trial no matter what the seriousness of the charge
11 may be will always be presumed innocent of the crime for
12 which the indictments were issued unless guilt has been
13 proven by evidence satisfying you of that guilt beyond a
14 reasonable doubt.

15 Now this presumption of innocence does not end when
16 you begin your deliberation. It accompanies the defendant
17 throughout the trial until you reach a verdict of guilt
18 based on evidence satisfying you of that guilt beyond a
19 reasonable doubt.

20 The presumption of innocence is like a robe of
21 righteousness placed about the shoulders of the defendant
22 which remains with the defendant until it has been stripped
23 from the defendant by evidence satisfying you of the
24 defendant's guilt beyond a reasonable doubt. This
25 presumption of innocence is not mere legal theory. It is

1 not just a legal phrase, it is a substantial right to which
2 every defendant is entitled unless you the jury are
3 satisfied from the evidence of the defendant's guilt beyond
4 a reasonable doubt.

5 What is a reasonable doubt in the law? A reasonable
6 doubt is the kind of doubt that would cause a reasonable
7 person to hesitate to act. The State has the burden of
8 proving the defendant guilty beyond a reasonable doubt and
9 some of you may have served as jurors in civil cases where
10 you were told that it is only necessary to prove that a
11 fact is more likely true than not true such as by the
12 greater weight or the preponderance of the evidence.

13 In criminal cases the State's proof must be more
14 powerful than that. It must be beyond a reasonable doubt.
15 Proof beyond a reasonable doubt is proof that leaves you
16 firmly convinced of the defendant's guilt. There are very
17 few things in this world that we know with absolute
18 certainty and in criminal cases the law does not require
19 proof that over comes every possible doubt.

20 If based on your consideration of the evidence you are
21 firmly convinced that the defendant is guilty of the crime
22 charged, you must find the defendant guilty. If on the
23 other hand you think there is a real possibility that the
24 defendant is not guilty you must give the defendant the
25 benefit of the doubt and find him not guilty.

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1 Now, ladies and gentlemen, there are typically two
2 types of evidence which are presented during a trial. That
3 is direct evidence and circumstantial evidence. Direct
4 evidence is testimony of a person who claims to have actual
5 knowledge of a fact such as an eye witness. It is evidence
6 which immediately establishes the main fact to be proved.

7 Circumstantial evidence is proof of a chain of facts
8 and circumstances indicating the existence of a fact. It
9 is evidence which immediately establishes collateral facts
10 from which the main fact may be inferred.

11 Now circumstantial evidence is based on inference and
12 not on personal knowledge or observation. The law makes
13 absolutely no distinction between the weight or value to be
14 given either to direct or circumstantial evidence. Nor is
15 a greater degree of certainty required of circumstantial
16 evidence than of direct. You should weigh all of the
17 evidence in this case. After weighing all of the evidence
18 if you are not convinced of the guilt of the defendant
19 beyond a reasonable doubt you must find the defendant not
20 guilty.

21 And necessarily, ladies and gentlemen, you must
22 determine the credibility of the witnesses who have
23 testified in this case. Credibility, it simply means
24 believability. It becomes your duty as jurors to analyze
25 and to evaluate the evidence and determine which evidence

1 convinces you of it's truth.

2 In determining the believability of witnesses who have
3 testified you may believe one witness over several
4 witnesses, or several witnesses over one witness. You may
5 be the part of the testimony of a witness and reject the
6 remaining part of the testimony of that same witness. You
7 may believe the testimony of a witness in it's entirety or
8 reject the testimony of a witness in it's entirety. You
9 may also consider whether any witness had exhibited to you
10 any interest, bias, prejudice, or other motive in this
11 case. You may also consider the appearance and the manner
12 of the witness while on the witness stand.

13 Now, ladies and gentlemen, the rules of evidence
14 ordinarily do not permit witnesses to testify to opinions
15 or conclusions. An exception to this rule exist for
16 witnesses that we call expert witnesses. A witness who by
17 education and experience has become expert in some art,
18 science profession or calling may state an opinion as to
19 the relevant and material matters in which the witness
20 claims to be an expert and may also state the reason for
21 that opinion.

22 You should consider any expert opinion received in
23 evidence in this case and like other evidence, give it the
24 weight that you think it deserves. If you decide that the
25 opinion of an expert witness is not based on sufficient

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1 education and experience, or, if you conclude that the
2 reason is given in support of that opinion are not sound,
3 or, if the opinion is outweighed by other evidence you may
4 disregard that opinion.

5 An expert's testimony is to be given no greater
6 weight than that of other witnesses simply because the
7 witness is an expert. Further, you are not required to
8 accept an expert's opinion even though it is not
9 contradicted.

10 Ladies and gentlemen, a person who has a past criminal
11 record is confident to testify during a trial. A past
12 record does not effect the ability of that witness to
13 testify. The past record may only be considered by you at
14 all in determining the witnesses believability. Remember,
15 you are the sole judge of the facts in the case and of the
16 believability of any and all witnesses.

17 You have heard evidence that the defendant was
18 convicted of a crime other than the one for which the
19 defendant is now on trial. The evidence may be considered
20 by you. If you conclude it is true only in deciding
21 whether the defendant's testimony is believable and not for
22 any other purpose. You must not consider the defendant's
23 prior record as evidence of the defendant's guilt of the
24 charge we are trying today.

25 Ladies and gentlemen, one of the charges that you will

1 consider is that of attempted murder. In order to prove
2 this crime the State must prove the defendant attempted to
3 kill another person with malice aforethought either
4 expressed or implied.

5 Now malice is hatred, ill-will, or hostility towards
6 another person. It is the intentional doing of a wrongful
7 act without just cause or excuse and with the intention to
8 inflict an injury, or, under circumstances that the law
9 will infer an evil intent.

10 Malice aforethought does not require that malice exist
11 for any particular time before the act is committed but
12 malice may exist in the mind of the defendant just before
13 and at the time of the act is committed. Therefore there
14 must be a combination of a previous evil intent and the
15 act. Malice aforethought may be expressed or inferred.
16 These terms expressed and inferred do not mean different
17 kinds of malice but merely the manner in which the malice
18 may be shown to exist.

19 That is either by direct or by inference from the
20 facts and circumstances which are proved. Expressed malice
21 is shown by a person or when a person speaks words which
22 express hatred or ill-will for another. When the person
23 prepared before hand to do the act which was later
24 accomplished for example lying in wait for a person or any
25 other act or preparation going to show that the deed was

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1 within the defendant's mind would be expressed malice.

2 Malice may be inferred from conduct showing a total
3 disregard for human life. Inferred malice may be inferred
4 in the manner - from the manner in which the deed was done.
5 If facts are proved beyond a reasonable doubt sufficient to
6 raise an inference of malice to your satisfaction this
7 inference would be simply an evidentiary fact to be
8 considered by you the jury along with other evidence in the
9 case and you may give it the weight that you decide that it
10 should receive.

11 A specific intent to kill is not an element of
12 attempted murder but there must be a general intent to
13 commit serious bodily injury. Intent means intending the
14 result of serious bodily injury.

15 Another charge you are to consider is that of assault
16 and battery of a high and aggravated nature. A person
17 commits the offense of assault and battery of a high and
18 aggravated nature if the State proves beyond a reasonable
19 doubt that the person unlawfully injures another person.

20 And, A, great bodily injury to another person results
21 or, B, the act is accomplished by means likely to produce
22 death or great bodily injury. Great bodily injury which
23 causes a substantial risk of death, or, which causes
24 serious permanent disfigurement or protracted loss or
25 impairment of function of a bodily member or organ.

1 Another charge that you will consider today is that of
2 assault and battery in the first degree. A person commits
3 the offense of assault and battery in the first degree if
4 the State has proven beyond a reasonable doubt that the
5 person unlawfully offers or attempts to injure another
6 person with the present ability to do so and the act is
7 accomplished by means likely to produce death or great
8 bodily injury.

9 Again, great bodily injury which causes a substantial
10 risk of death which causes serious permanent disfigurement
11 or protracted loss or impairment of function of a body
12 member or organ.

13 You will also consider the charge or the offense of
14 assault and battery in the second degree. A person commits
15 the offense of assault and battery in the second degree if
16 the State has proved beyond a reasonable doubt that the
17 person unlawfully injures another person, or offers, or
18 attempts to injure another person with the present ability
19 to do so and either moderate bodily injury to another
20 person results, or moderate bodily injury to another person
21 could have resulted.

22 Moderate bodily injury means physical injury requiring
23 treatment to an organ system of the body other than skin,
24 muscle, and connected tissue of a body except when there is
25 penetration of the skin, muscle, and connective tissue that

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1 requires surgical repair of a complex nature or when the
2 treatment of the injuries require the use of reasonable or
3 general anesthesia.

4 You will also consider the offense of assault and
5 battery in the third degree. A person commits the offense
6 of assault and battery in the third degree if the State has
7 proven beyond a reasonable doubt that the person unlawfully
8 injures another person, or, offers, or attempts to injure
9 another person with the present ability to do so.

10 Now, ladies and gentlemen, the defense has raised the
11 issue of self-defense. Self-defense is a complete defense
12 and if it is established you must find the defendant not
13 guilty. To establish self-defense four elements must be
14 present. One: The defendant must be without fault in
15 bringing on the difficulty.

16 Two: The defendant must have been in actual imminent
17 danger of losing his life or sustain serious bodily injury,
18 or, he must have actually believed he was in imminent
19 danger of losing his life, or sustain serious bodily
20 injury.

21 Three: If his defense is based upon his belief of
22 imminent danger, the defendant must show that a reasonable
23 prudent person of ordinary firmness and courage would have
24 entertained a belief that he was actually in imminent
25 danger and the circumstances were such as would warrant a

1 person of ordinary prudence firmness and courage to strike
2 the fatal blow in order to save himself from serious bodily
3 harm or the loss of life.

4 And Fourth: The defendant had no other probable means
5 to avoiding the danger.

6 Ladies and gentlemen, with the issue of self-defense
7 the state has the burden of disproving self-defense by
8 proof beyond a reasonable doubt. If you have a reasonable
9 doubt of the defendant's guilt after considering all of the
10 evidence including the evidence of self-defense then you
11 must find the defendant not guilty.

12 On the other hand if you have no reasonable doubt of
13 the defendant's guilt after considering all of the evidence
14 including the evidence of self-defense, then you must find
15 the defendant guilty.

16 Now, ladies and gentlemen, Mr. Foreman, ladies and
17 gentlemen, I have prepared verdict forms for your use in
18 the jury room. The verdict forms there are two of them
19 because we are actually dealing with two separate cases.
20 One in regards to the allegations involving Zachary
21 Cleveland. His name is indicated on this verdict form.
22 And the other case is involving the allegations involving
23 Bobby Trader.

24 Ladies and gentlemen, Mr. Foreman, I have prepared the
25 verdict form with a list of possible findings that may be

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1 made by the jury. Mr. Foreman, I need to let you know that
2 any finding that is made by the jury in this case needs to
3 be announced. All twelve members of the jury must agree.
4 The jury's verdict cannot be based on passion. It cannot
5 be capricious but must be based on the evidence and the law
6 that has been presented to you as part of this case.

7 Just to review the verdict forms, I have prepared
8 them. That first the issue of not guilty can be unanimous
9 finding him not guilty. Or you could consider in regards
10 to Bobby Trader you can find the defendant guilty of
11 attempted murder. Or you could go to one of the lesser
12 included offenses of guilty of assault and battery of a
13 high and aggravated nature. Guilty of assault and battery
14 in the first degree, or, guilty of assault and battery in
15 the second degree, or guilty of assault and battery in the
16 third degree.

17 In regards to the allegations involving Zachary
18 Cleveland, you could find the defendant not guilty or you
19 could find the defendant guilty of assault and battery of a
20 high and aggravated nature. Or guilty of assault and
21 battery in the first degree, or guilty of assault and
22 battery in the second degree, or guilty of assault and
23 battery in the third degree.

24 Mr. Foreman, once the jury has reached their decision,
25 you need to sign on the appropriate verdict form, complete

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1 the form, date it. And one other thing, you need to knock
2 on the door and let us know once you have concluded your
3 work. I actually had a jury one time just spend hours in
4 the back we kept wondering what they were doing and finally
5 we sent somebody back there and they said well you didn't
6 tell us to knock on the door. You know when you finish up,
7 please knock on the door once the jury has concluded their
8 work.

9 Mr. Foreman, I'm gonna ask you if you would to retire
10 back to the jury assembly room but one more thing.

11 Mr. Foreman, when the jury begins their deliberations
12 the deliberations need to be accomplished when all twelve
13 members are present. If ever there is a member that has to
14 leave to make a phone call or emergency arises, you need to
15 cease that deliberation. You only resume the deliberation
16 once all twelve members are present.

17 At this time I'm gonna ask if you would to please
18 retire to the deliberation room but do not begin your
19 deliberations until we've brought you the evidence and the
20 bailiff has instructed you to begin. But you may retire
21 back to the jury room.

22 THE BAILIFF: What about your alternates? Judge, your
23 alternates?

24 THE COURT: You can take them to the back please.

25 (JURY EXITS COURTROOM AT 11:56 A.M..)

1 THE COURT: Any exceptions to the charges from the
2 State or the Defense?

3 SOLICITOR EPTING: None from the State, Your Honor.

4 THE COURT: No, Your Honor.

5 THE COURT: All right. Take a look at the evidence.

6 Be sure that the proper evidence goes back with them so
7 that nothing that we've marked as for identification or
8 otherwise does not go back. Be sure that that's proper.

9 SOLICITOR EPTING: Your Honor, we do have a firearm in
10 there. My usual preference is that that not go back but
11 obviously we'll defer to the court.

12 MS. INZERILLO: I would have no objection to that
13 remaining in the courtroom.

14 THE COURT: Okay. Let's keep the firearm out here.

15 MS. INZERILLO: And, Your Honor, - -

16 THE COURT: Also, how about the alternates? Now
17 usually I give you the option, we can put the alternates
18 somewhere else so that if somebody has to leave we can
19 substitute one of them. If I send them away then I would
20 want an agreement that we go with less than twelve in the
21 event that somebody - -

22 MS. INZERILLO: Your Honor, we would ask that they
23 remain.

24 THE COURT: Okay. We'll put the alternates somewhere
25 else then.

1 MS. INZERILLO: And, Your Honor, is it the court's
2 wish that the digital evidence remain in the courtroom in
3 case the jury wishes to see it?

4 THE COURT: I don't like them having a machine to
5 watch it but I think it might be good if they actually had
6 the CD or whatever it is back there then if they want to
7 see it they can come and ask for it.

8 SOLICITOR EPTING: That could prompt them to ask for
9 it.

10 THE COURT: Yeah.

11 SOLICITOR EPTING: Or ask for something to put it.

12 MS. INZERILLO: Your Honor, I did wish to show if we
13 may approach.

14 (BENCH CONFERENCE OFF THE RECORD AT 11:59 A.M..)

15 THE COURT: Mr. Bailiff, if you will tell them to
16 begin their deliberations. Does he know where to move the
17 other juror?

18 MADAM CLERK: We're gonna put them in the other jury
19 room.

20 THE COURT: Okay.

21 MADAM CLERK: We're gonna have one of us guys stand
22 with the door.

23 THE COURT: Okay. All right, tell them to begin and
24 take the alternates down there the other way.

25 All right. You all want to state what did not go

1 back?

2 MS. INZERILLO: Yes, Your Honor.

3 Madam Court Reporter, just for the record, all items
4 went back that was entered into evidence by both sides for
5 the jury's consideration with the exception of State Eight
6 A which is the right tennis shoe. State's Eight B which is
7 the sweat pants. And State's 13 which is the handgun.

8 THE COURT: Okay. We'll stand at ease.

9 (COURT AT EASE AT 12:05 P.M..)

10 (QUESTION FROM THE JURY AT 12:22 P.M..)

11 (COURT BACK IN SESSION AT 12:25 P.M..)

12 THE COURT: All right, let's bring the Foreman back.

13 THE BAILIFF: Just the Foreman?

14 THE COURT: Just the Foreman. He can stand right
15 there.

16 (JURY FOREMAN REENTERS COURTROOM.)

17 THE COURT: Mr. Foreman, I've received your note.

18 As far as the first question, "Can we by ballot
19 determine where a person stands"? However you want to
20 conduct the jury process in the back, that is left up to
21 you whether you want to do ballots or whatever.

22 If you need any paper or pencils or things like that
23 we can get 'em for you.

24 MR. FOREMAN: That's why my reason for the question is
25 it feels that if we could not do that based upon having one

1 pad and one pen.

2 THE COURT: Okay. Can we get them some paper and
3 pencil?

4 MADAM CLERK: I'll get some.

5 THE BAILIFF: We got the pads and pens in there in the
6 drawer.

7 MADAM CLERK: You got some?

8 THE BAILIFF: I got twelve in there.

9 THE COURT: We'll get some for you.

10 MR. FOREMAN: Thank you.

11 THE COURT: Now, as far as the second one, the self-
12 defense, can we get the four points to determine self-
13 defense? And then number four the definition of the three
14 degrees of assault? If you or the jury would like to
15 receive the charge on the law again what I will do is I
16 will bring you all back out here and I will read those
17 sections of the law again to you.

18 MR. FOREMAN: Okay. We I think would like to be able
19 to do that.

20 THE COURT: Okay. Just - After you and I have had
21 this discussion just ask them just to be sure. And on
22 Number Three, how do we view the disc? If there's
23 anything on the disc that you all would like to view again,
24 what we have to do is bring you all out here as a jury and
25 play it again. So if you all identify the particular disc

1 or what it is you want to see we'll be more than happy to
2 replay it for you.

3 MR. FOREMAN: Well what was behind that was we --

4 THE COURT: Okay. Now, let me caution you. We don't
5 want to know and we should not know what's going on back
6 there. But if you want to make a specific request to us
7 about things we're more than happy to assist you but it
8 really would not be proper for you to say well you know we
9 got some people that feel X and we got some people that
10 feel Y and sometimes I get that from Foreperson. But we're
11 more than happy to assist you with things like this.

12 MR. FOREMAN: Okay. Very good.

13 THE COURT: Okay.

14 MR. FOREMAN: Thank you.

15 THE COURT: Thank you. So just --

16 MR. FOREMAN: Was - Do go forward on --

17 THE COURT: Yes, sir. On Number One they're gonna get
18 you the paper and pencils. Number Two and Number Four, on
19 the self-defense and the definition of assault, I can bring
20 you back here and just let me know which part you want me
21 to recharge you. And on the disc, just let us know which
22 parts you want to view if any and we'll replay it for you.

23 MR. FOREMAN: Okay. Then the final question. That
24 would just be - can we - Will we only be able to see the
25 view that was presented as evidence?

1 THE COURT: Yes, sir.

2 MR. FOREMAN: Very good.

3 THE COURT: Yeah.

4 MR. FOREMAN: Thank you, sir. That's all.

5 THE COURT: Thank you. And you can return back there
6 and just let me know.

7 MR. FOREMAN: All right.

8 (JURY FOREMAN EXITS COURTROOM.)

9 THE COURT: This will become the next Court's Exhibit
10 Three. We will stand down.

11 (WHEREUPON, COURT'S EXHIBIT NUMBER THREE, IDENTIFIED
12 AND MARKED, RECEIVED INTO EVIDENCE.)

13 (COURT IN RECESS AT 12:36 P.M..)

14 (WHEREUPON, COURT'S EXHIBIT NUMBER FOUR, IDENTIFIED
15 AND MARKED, RECEIVED INTO THE RECORD)

16 (DEFENDANT REENTERS COURTROOM AT 01:00 P.M..)

17 (COURT BACK IN SESSION AT 01:02 P.M..)

18 THE COURT: Will the lawyers approach?

19 (BENCH CONFERENCE OFF THE RECORD.)

20 THE COURT: Okay, lets' bring the foreman in.

21 (JURY FOREMAN REENTERS COURTROOM.)

22 THE COURT: All right, Mr. Foreman, thank you for your
23 note. I just want to ask you a point of clarity. Your
24 question is the general question of "Can we have the
25 charges and degrees reread to us again?"

1 Question. I can read you the entire charge again or I
2 can read you a particular sections. Before you all had ask
3 about the assault charges. Now are you wanting me to read
4 the whole charges or what? It doesn't matter, I can do
5 anything.

6 MR. FOREMAN: Yeah. I was trying to explain that in
7 there. The jury needs to hear - I'm trying to say this
8 properly.

9 THE COURT: Sure.

10 MR. FOREMAN: The jury needs to hear the charge -
11 charges and the levels as were read to us in court.

12 THE COURT: Okay.

13 MR. FOREMAN: So which would include the definitions
14 of each.

15 THE COURT: Okay. So when I did the charges I went to
16 the assault. Okay we have substantive charges of attempted
17 murder, assault and battery of a high and aggravated
18 nature, assault and battery in the third degree, assault
19 and battery in the second degree and assault and battery in
20 the third degree. Assault and battery first, second and
21 third.

22 MR. FOREMAN: Yes, sir.

23 THE COURT: Assault and battery of a high and
24 aggravated nature and attempted murder. Do you want me to
25 do all of that or do you want me to do part of that?

RECHARGE ON THE LAW:

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1 MR. FOREMAN: All.

2 THE COURT: Okay. And we can do that. All right,
3 if you'll go back to the jury assembly room I'll get my
4 papers together.

5 MR. FOREMAN: Thank you.

6 (JURY FOREMAN LEAVES COURTROOM.)

7 THE COURT: All right, Mr. Bailiff, if you will bring
8 the ladies and gentlemen of jury.

9 MS. INZERILLO: Your Honor, the alternates are gonna
10 be substituted in the event of a juror getting sick, they
11 also be --

12 THE COURT: They have to start their deliberations
13 over again if we bring somebody else in.

14 MS. INZERILLO: Okay.

15 (JURY REENTERS COURTROOM AT 01:06 P.M..)

16 THE COURT: All right, ladies and gentlemen, I've been
17 ask to recharge you on the law of attempted murder, assault
18 and battery of a high and aggravated nature and assault and
19 battery in the first degree, second degree and third
20 degree.

21 One of the charges you are to consider is that of
22 attempted murder. In order to prove this crime the State
23 must prove the defendant attempted to kill another person
24 with malice aforethought either expressed or implied.

25 Malice is hatred, ill-will, or hostility towards

RECHARGE ON THE LAW:

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1 another person. It is the intentional doing of a wrongful
2 act without just cause or excuse and with an intent to
3 inflict an injury, or, under circumstances that the law
4 will infer an evil intent.

5 Malice aforethought does not require that malice exist
6 for any particular time before the act is committed but
7 malice must exist in the mind of the defendant just before
8 and at the moment of the act is committed. Therefore there
9 must be a combination of the previous evil intent and the
10 act. Malice aforethought may be expressed or inferred.
11 These terms expressed and inferred do not mean different
12 kinds of malice but merely the manner in which malice may
13 be shown to exist.

14 That is either by direct evidence or by inference from
15 the facts and circumstances which are proved. Expressed
16 malice is shown when a person speaks words which express
17 hatred or ill-will for another or when the person prepared
18 beforehand to do the act which was later accomplished, for
19 example, lying in wait for a person or any other acts of
20 preparation go to show that the deed was within the
21 defendant's mind would be expressed malice.

22 Malice may be inferred from conduct showing a total
23 disregard for human life. Inferred malice may be inferred
24 in the manner in which the deed was done. If facts are
25 proved beyond a reasonable doubt sufficient to raise an

1 inference of malice to your satisfaction this inference
2 would simply be an evidentiary fact to be considered by you
3 the jury along with other evidence in the case and you may
4 give it the weight that you decide it should receive.

5 A specific intent to kill is not an element of
6 attempted murder but there must be a general intent to
7 commit serious bodily injury. Intent means intending a
8 serious bodily injury.

9 Another charge you are to consider is that of assault
10 and battery of a high and aggravated nature. A person
11 commits the offense of assault and battery of a high and
12 aggravated nature if the State proves beyond a reasonable
13 doubt that the person unlawfully injures another person.

14 And, A, great bodily injury to another person results
15 or, B, the act is accomplished by means likely to produce
16 death or great bodily injury. Great bodily injury means
17 which causes a substantial risk of death, or, which causes
18 serious permanent disfigurement or protracted loss or
19 impairment of the function of a bodily member or organ.

20 Another charge that you will consider is that of
21 assault and battery in the first degree. A person commits
22 the offense of assault and battery in the first degree if
23 the State has proven beyond a reasonable doubt that the
24 person unlawfully offers, or attempts to injure another
25 person with the present ability to do so, and the act is

RECHARGE ON THE LAW:

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1 accomplished by means likely to produce death or great
2 bodily injury.

3 Great bodily injury means bodily injury which causes a
4 substantial risk of death, or, which causes serious
5 permanent disfigurement or protracted loss or impairment of
6 the function of a body member or organ.

7 You will also consider the offense of assault and
8 battery in the second degree. A person commits the offense
9 of assault and battery in the second degree if the State
10 has proven beyond a reasonable doubt that the person
11 unlawfully injures another person, or offers, or attempts
12 to injure another person with the present ability to do so,
13 and either moderate bodily injury to another person
14 results, or moderate bodily injury to another person could
15 have resulted.

16 Moderate bodily injury means physical injury requiring
17 treatment to an organ system of the body other than the
18 skin, muscle, and connected tissue of a body except when
19 there is penetration of the skin, muscle, and connective
20 tissue that requires surgical repair of a complex nature or
21 when the treatment of the injuries requires the use of
22 reasonable or general anesthesia.

23 You will also consider the charge of assault and
24 battery in the third degree. A person commits the offense
25 of assault and battery in the third degree if the State has

1 proven beyond a reasonable doubt that the person unlawfully
2 injures another person, or, offers, or attempts to injure
3 another person with the present ability to do so.

4 All right, Mr. Foreman, ladies and gentlemen, you may
5 return back to the jury deliberation room and resume your
6 deliberations.

7 (JURY EXITS COURTROOM AT 01:12 P.M..)

8 THE COURT: All right, we will now make this note the
9 next court exhibit to the proceeding and we will stand
10 down.

11 (WHEREUPON, COURT'S EXHIBIT NUMBER FIVE IDENTIFIED AND
12 MARKED, RECEIVED INTO EVIDENCE.)

13 (COURT IN RECESS AT 01:12 P.M..)

14 (COURT IN SESSION AT 02:10 P.M., IN THE MATTER OF
15 STATE V. EDGAR VILLA VICENCIO SENTENCING WITH SOLICITOR
16 HANNAH GROVE AND SUSAN MCGILL.)

17 (COURT AT EASE AT 02:15 P.M..)

18 (COURT BACK IN SESSION IN THE MATTER OF STATE V.
19 JUSTIN FAILE AT 02:36 P.M..)

20 THE COURT: You may be seated.

21 So that - I received a note from the Foreman that
22 they have received a verdict. Anything else before we
23 bring the jury in?

24 SOLICITOR EPTING: Nothing from the State, Your Honor.

25 If I could ask the Court's indulgence very briefly to

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1 make sure . . .

2 (WHEREUPON, COURT'S EXHIBIT NUMBER SIX, IDENTIFIED AND
3 MARKED, RECEIVED INTO EVIDENCE.)

4 THE COURT: All right, let's bring the jury in.

5 Ladies and gentlemen, everybody in the courtroom, I
6 remind you we're not going to have any outburst regardless
7 of what the verdict is.

8 (JURY REENTERS COURTROOM AT 02:38 P.M..)

9 THE COURT: Mr. Foreman, I'm informed that the jury
10 has reached a verdict. Is that correct?

11 MR. FOREMAN: Yes, sir, it is.

12 THE COURT: Give the verdict form to the bailiff.

13 (VERDICT RECEIVED UP BY THE COURT.)

14 THE COURT: Madam Clerk, if you will please publish
15 the verdict.

16 MADAM CLERK: In the State of South Carolina versus
17 Justin Dru Faile with Indictment 2014-GS-36-2-0-4-1 in the
18 regards to the allegation related to Bobby Trader we the
19 jury unanimously find the defendant Justin Dru Faile guilty
20 of assault and battery high and aggravated.

21 Signed by the Foreperson this date.

22 2014-GS-46-2-0-3-9 in regards to the allegation
23 related to Zachary Cleveland we the jury unanimously find
24 the defendant Justin Dru Faile guilty of assault and
25 battery high and aggravated. Signed the Foreperson this

VERDICT:

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1 day.

2 If this so be your verdict so say you all by raising
3 your right hands?

4 Let the record show all affirmed.

5 (WHEREUPON, ALL JURORS AFFIRMED UNANIMOUS VERDICT.)

6 THE COURT: Thank you very much. Anything from the
7 State and the Defense before we release the jury?

8 SOLICITOR EPTING: Nothing from the State, Your Honor.

9 MS. INZERILLO: No, Your Honor.

10 THE COURT: Ladies and gentlemen, I want to thank you
11 for your service as part of this jury. When we started
12 this trial I told you that this trial is not for
13 entertainment. And I also told you that this justice
14 system has bene called the greatest justice system ever
15 created and I thanked you for your contribution then and I
16 thank you for your contribution now.

17 Frequently it is said that the most difficult service
18 that a citizen does for their country outside of service in
19 the military at the time of war is service as a juror as
20 you have just done because your service was jurors was
21 contemplated by founding father's as a way to protect every
22 right that we have as citizens in this great country that
23 we have so I want to thank you for your service.

24 Your service is now precluded. We don't have any more
25 trials for you this week so you do not have to come back

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1 after today. You're at liberty to talk with as many people
2 as you wish to about your verdict. But if you also still
3 wish to not talk to anyone about your verdict you have that
4 right as well. In the event that anyone approaches you and
5 you feel like that someone is beginning to harass you or
6 bother you in regards to your jury service, please contact
7 the Sheriff's Office or the Clerk's Office and we will see
8 to it that that type of harassment to you ceases.

9 But again thank you very much for your service. Mr.
10 Foreman, I need you to retire back to the jury deliberation
11 room, we have something for you to sign, but everyone else,
12 you all may go with the bailiff and be excused. Thank you
13 very much.

14 (JURY DISMISSED AT 02:42 P.M..)

15 THE COURT: Anything from the Defense?

16 MS. INZERILLO: Yes, Your Honor. At this time we
17 would move for a new trial and we would renew all previous
18 motions and objections.

19 THE COURT: All right. I would deny those motions. I
20 have not heard - received any additional information that
21 would change my decision as well as I believe that the
22 jury's verdict is supported by evidence that's been
23 presented as part of this case. Any reason why we should
24 not proceed with the sentencing?

25 MS. INZERILLO: No, Your Honor. May I have just a

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1 moment?

2 THE COURT: Do you need a moment?

3 MS. INZERILLO: Yes, Your Honor.

4 THE COURT: Okay. I'm gonna step down for just a few
5 minutes. We'll stand at ease.

6 (COURT AT EASE AT 02:43 P.M..)

7 (COURT BACK IN SESSION AT 02:48 P.M..)

8 THE COURT: All right. Mr. Faile, if you would like
9 to stand please.

10 (DEFENDANT STANDS BEFORE THE COURT.)

11 THE COURT: Mr. Faile, I need to remind you that you
12 remain under oath. Do you understand that?

13 MR. FAILE: Yes, sir.

14 THE COURT: Okay. How old are you, sir?

15 MR. FAILE: Twenty-four.

16 THE COURT: How far did you go in school?

17 MR. FAILE: Twelfth grade.

18 THE COURT: Did you get a diploma?

19 MR. FAILE: No, sir.

20 THE COURT: Did you ever obtain a GED?

21 MR. FAILE: No, sir.

22 THE COURT: Are you married, single, divorced or
23 widowed?

24 MR. FAILE: Single.

25 THE COURT: Do you have children?

SENTENCE:

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1 MR. FAILE: No, sir.

2 THE COURT: Prior to your arrest on these charges did
3 you have a job outside the home?

4 MR. FAILE: Yes, sir.

5 THE COURT: What were you doing?

6 MR. FAILE: Landscaping and contracting.

7 THE COURT: Ever serve in the military?

8 MR. FAILE: No, sir.

9 THE COURT: And on these charges how long have you
10 been in jail?

11 MS. INZERILLO: Four hundred and twenty-five days,
12 Your Honor.

13 THE COURT: All right, Mr. Solicitor, is there any
14 prior record?

15 SOLICITOR EPTING: Yes, Your Honor. He has
16 convictions we listed in 2000 - I believe 2011 breaking and
17 entering into an automobile as well as criminal conspiracy.
18 As well as a 2009 conviction for false information to
19 police.

20 He was placed on probation for the breaking and
21 entering into an automobile.

22 THE COURT: Is there anything from the victims that
23 they would like to add?

24 SOLICITOR EPTING: I do believe that one of the
25 victims wishes to address the Court at the appropriate

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1 time.

2 THE COURT: All right. Be more than happy to hear
3 from them.

4 Yes, sir, if you would when you start just start
5 giving us your full name again and speak up loud enough so
6 that both the court reporter and I can hear you.

7 ZACHARY CLEVELAND: My name is Zachary William
8 Cleveland. I would just like to say that it's been a lot
9 of turmoil for both families and I forgive Justin Faile for
10 what happened that night. And I hope he knows that and I
11 don't even want to hold a grudge against anybody. I'm not
12 really a man of religion or nothing but everything happens
13 for a reason and I do forgive him and I just - I'm sorry
14 that everything happened the way it did. I wish it could a
15 happened differently but it didn't. And that I just hope
16 that everybody can move on and hopefully to just proceed
17 with a better life. And that's all I got to say.

18 THE COURT: Thank you, sir.

19 SOLICITOR EPTING: Your Honor, I believe that's all
20 from the victims.

21 THE COURT: Yes, ma'am.

22 MS. INZERILLO: Thank you, Your Honor, may it please
23 the Court. Your Honor, I would start out by relaying to
24 the court the wishes of the family. They are present here
25 in the courtroom and have been present throughout the

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1 trial. They did wish me to convey to the Court and to the
2 victims their sincere appreciation to the professionalism
3 in which the court and the way this trial has been run.

4 And they sincerely regret and extend their apologies
5 to the victims in this case of the injuries that were
6 sustained in this case. They did wish the court to know
7 that there were no winners in this across the board and
8 this is a sad situation for all families and all the people
9 involved.

10 I have met with Justin and his mother and his
11 stepfather and his father and his grandmother and his aunt
12 and I think a lot of the people they all wish everyone here
13 to know that. In all of my discussions with Mr. Faile he
14 has also conveyed that to me as well. He - I know the
15 court has heard from Mr. Faile through his testimony,
16 certainly through the limitations of that Mr. Faile was
17 unable to convey at that time his sincere regret over the
18 injuries that occurred not only to Mr. Trader and to Mr.
19 Cleveland but to Mr. Fitcher who is not standing before
20 Your Honor in the technical status as a victim here today
21 but was nonetheless hit by a bullet that evening.

22 I represented Mr. Faile through the pendency of this
23 case and the entirety of it and Mr. Faile has never wavered
24 his regret of the injuries of people getting hit. He has
25 never wavered in his - how discussions with me about his

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1 regret in making the decisions that he made that evening.
2 Certainly in looking back even a man of his young age I'm
3 sure he's laid in bed a lot over these last four hundred
4 and twenty-four days and rerun these as much as he can
5 remember all the decisions he made by pulling the gun and
6 having the gun that evening and the appropriate questions
7 that that caused and also he has regretted that. And I did
8 wish the Court to know that he was unable to state that to
9 the court or anything earlier but that he has conveyed that
10 to me that was first and foremost always on his mind.

11 As he did indicate in his testimony he did know some
12 of the folks, the victims as well as some of their friends
13 that were involved in this case. And I think that has an
14 additional burden on him that he did know some of the
15 people that were injured.

16 And he did know some of - a lot of the boys who - the
17 faces that you heard that was just voices to the faces of
18 people that knew and he's known for years that had to call
19 911 or that were seeing what was going on around them and
20 he while the pendency of this case and in all of my viewing
21 with him and showing him these videos he's watched and
22 relived this not only from his perspective but knowing that
23 a lot of his friends that he knew saw this happen as well.
24 So we wish the court to know that he has extreme remorse
25 for what happened.

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1 The family and Mr. Faile does ask the Court for some
2 mercy and leniency in this case. The Court has heard Mr.
3 Faile's testimony as well as the facts in this case and we
4 would ask for concurrent sentences and as much mercy and
5 leniency as the Court can provide.

6 THE COURT: Mr. Faile, do you agree with what your
7 lawyer just stated?

8 MR. FAILE: Yes, sir.

9 THE COURT: Sir, is there anything else that you would
10 like to say or want me to know or consider?

11 MR. FAILE: Yes, sir. I agree with what Zach said. I
12 forgive everybody.

13 (DEFENDANT CRYING AND CRYING COMING FROM THE
14 COURTROOM.)

15 MR. FAILE: Before this happened there was no
16 altercation between any one of us. We had a good time the
17 whole night. I just - I made a mistake by approaching
18 them. My intentions were good. I just made a bad
19 decision. Everybody got hurt and I'm sorry. And I forgive
20 them just them saying they forgive me that means a lot too
21 cause I'm truly sorry. I didn't want to hurt anybody that
22 night. And I apologize to them and their family and their
23 extended family. Anybody who had a wife, children, anybody
24 that came in contact with I'm sorry. I want to thank my
25 family for all the support they've given me. I hate it

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1 everybody got hurt. That's pretty much it, Your Honor.
2 I'm just sorry, for everybody I'm sorry. I don't know what
3 else to say, sir.

4 THE COURT: Thank you, sir.

5 The lawyers approach a moment.

6 (BENCH CONFERENCE OFF THE RECORD AT 02:58 P.M..)

7 THE COURT: All right, this is what we're gonna do,
8 Mr. Faile. The victim's statements have greatly affected
9 the sentence that I am about to impose. He has - the
10 victim's words I take it wants me to give you mercy and he
11 forgives you for what you've done and you need to in your
12 prayers thank him for his ability to be able to forgive
13 what happened. I'm always amazed when victims stand in
14 front of me and they can speak as articulately as he can
15 and as clearly as he can his wishes.

16 But the jury has found you guilty of these two crimes
17 so I must sentence you. On these cases these are to be
18 concurrent sentences or like sentences under each. It will
19 be a twenty year sentence at the Department of Corrections.
20 That will be suspended upon the service of nine years and
21 the service of five years of supervision. Give you credit
22 for four hundred and twenty-five days.

23 Good luck to you, sir.

24 SOLICITOR EPTING: Thank you, Your Honor.

25 MS. INZERILLO: Thank you, Your Honor.

1

THE COURT: Stand down.

2

(COURT IN RECESS AT 03:02 P.M..)

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(END OF TRANSCRIPT OF RECORD.)

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 9th, 10th, 11th and 12th days of February 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson
Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: May 18 - 1 2015

WITNESSES

YCSD/Schettler

In

ARREST WARRANT NUMBER

2013A4610202003

ACTION OF GRAND JURY

TRUE BILL

Robert W. Neaves
Foreperson of Grand Jury

Date: 7/24/14

VERDICT

ABHAN

Foreperson of Petit Jury

Date: 2/12/2015

DOCKET NO. 2014-GS-46-62039

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

July 24, Term 2014

THE STATE

vs.

JUSTIN DRU FAILE

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-3-29
CDR Code: 3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECEIVED

FEB 19 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on July 24, 2014, the Grand Jurors of York County present upon their oath:

ATTEMPTED MURDER

The Defendant, Justin Dru Faile, did in York County, South Carolina on or about December 14, 2013, with malice aforethought, either express or implied, attempt to the kill the victim, Zachary Cleveland, to Wit: the defendant did shoot Zachary Cleveland in the leg or foot with a firearm, with the intent to kill said victim. All in violation of Section 16-03-29 of the Code of Laws of South Carolina, (1976, 2010 as amended).

RECEIVED

FEB 19 2015

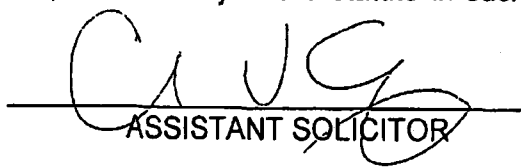
SC Court of Appeals

RECEIVED
 CLERK & G.S.
 YORK COUNTY, SC

2015 FEB 13 PM 2:58

FILED-RECEIVED

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

WITNESSES

YCSD/Schettler

In

ARREST WARRANT NUMBER

2013A4610202005

ACTION OF GRAND JURY

TRUE BILL

Rebecca M. Meares
Foreperson of Grand Jury
Date: *7/24/14*

VERDICT

ABHAN

[Signature]
Foreperson of Petit Jury
Date: *2/12/2015*

DOCKET NO. 2014-GS-46-02041

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

July 24, Term 2014

THE STATE
vs.
JUSTIN DRU FAILE

RECEIVED
FEB 19 2015
SC Court of Appeals

**Indictment for
ATTEMPTED MURDER**

SC Code: 16-3-29
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STATE OF SOUTH CAROLINA)
)
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The Defendant, Justin Dru Faile, did in York County, South Carolina on or about December 14, 2013, with malice aforethought, either express or implied, attempt to the kill the victim, Bobby Trader to wit: the defendant did shoot the with a handgun, with the intent to kill said victim. All in violation of Section 16-03-29 of the Code of Laws of South Carolina, (1976, 2010 as amended).

RECEIVED

FEB 19 2015

SC Court of Appeals

DAVID B. HAMILTON
 C.C.P.E. & G.S.
 YORK COUNTY, SC

2015 FEB 13 PM 2:58

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SC COURT OF APPEALS

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

COUNTY OF YORK
STATE VS.

JUSTIN DRU FAILE

AKA: _____
Race: White Sex: M Age: 24
DOB: _____ SS#: _____
Address: _____
City, State, Zip: SC _____
DL# _____ SID# _____

INDICTMENT/CASE#: 2014GS4602039
A/W: 2013A4610202003
Date of Offense: 12/14/2013
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault and Battery High and Aggravated Nature

In violation of §16-3-100B of the S.C. Code of Laws, bearing CDR Code #3411

☒ CONVICTED OF or ☐ PLEADS

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Christopher W. Epling 76321
Christopher W. Epling, Assistant Solicitor SC Bar #

Justin Dru Faile
Defendant

Michael J. ... 69416
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 9 days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 9
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. 425 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing
Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%)		\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u> -
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500</u> -
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u> -
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5</u> -
3% to County (if paid in installments)	\$	\$ _____
TOTAL		\$ <u>1630</u> -

Clerk of Court/Deputy Clerk: David Hamilton
Court Reporter: Wanda Nelson
SCCA/217 (03/2011)

☐ Ordered PTUP _____
_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

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☒ Appointed PD or appointed other counsel
§47.12 requires \$500 be paid to Clerk SC Court of Appeals
during probation

Presiding Judge: _____
Judge Bar ID: _____ Judge Code: 2132
Sentence Date: 2-13-15

COUNTY OF YORK

STATE VS.

JUSTIN DRU FAILE

AKA:

Race: White Sex: M Age: 24

DOB: _____ SS#: _____

Address: _____

City, State, Zip: SC

DL# _____ SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2014GS4602041A/W: 2013A4610202005Date of Offense: 12/14/2013S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

In violation of § 16-3-60 of the S.C. Code of Laws, bearing CDR Code # 3411 ☒ CONVICTED OF or ☐ PLEADSTO: Assault & Battery High and Aggravated NatureIn violation of § 16-3-60 of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Christopher W. Epting 76321
Assistant Solicitor SC Bar #DefendantMelanie 69416
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 9 days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
 are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 425 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100-

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25-

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5-

3% to County (if paid in installments) \$ \$ _____

TOTAL \$ 130-☐ Ordered PTUP _____ days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender

Other: _____

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SC Court of Appeals

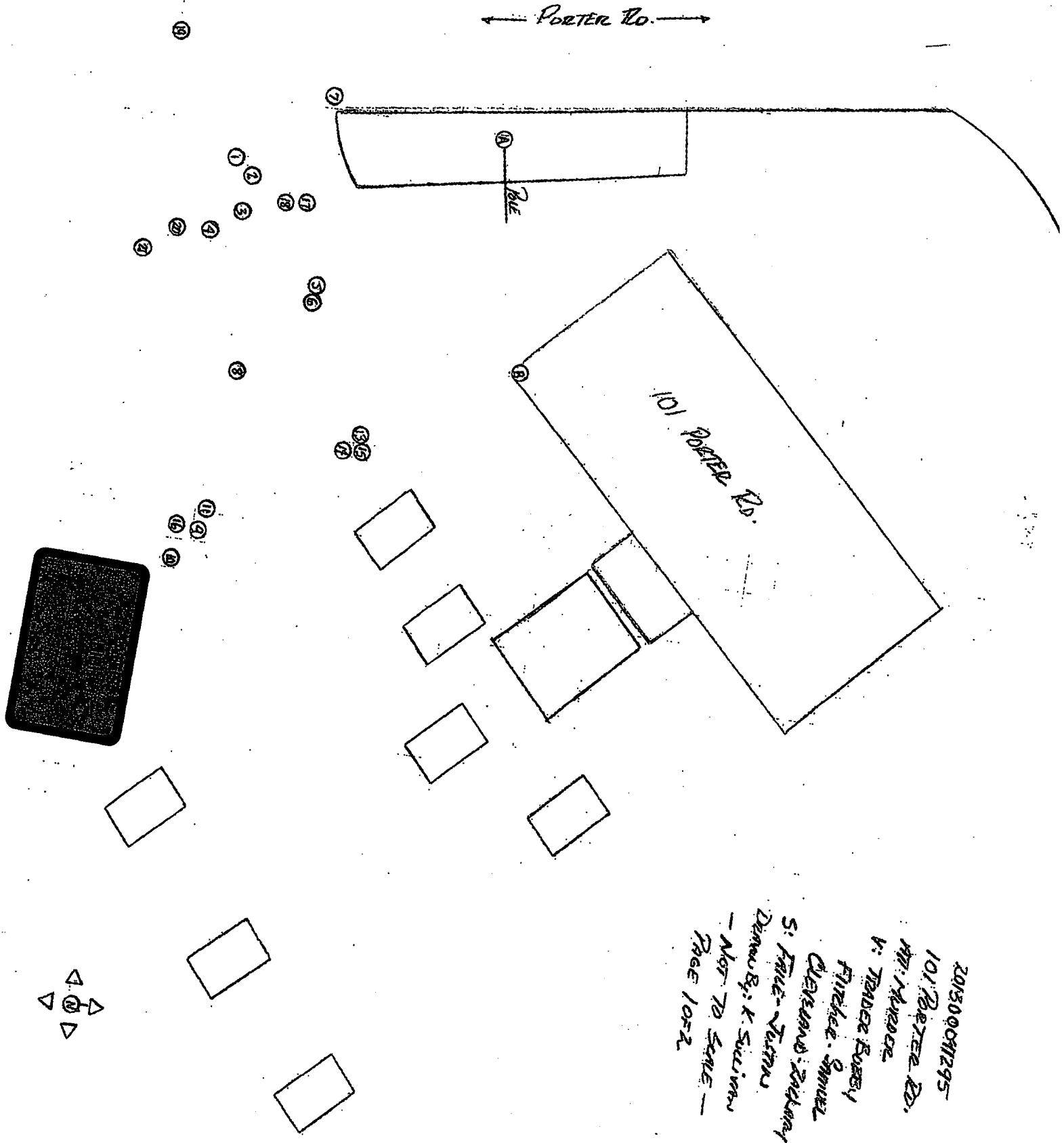
☐ Appointed PD or appointed other counsel,
 §47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge: _____

Judge Bar ID: _____

Sentence Date: 2-13-15Judge Code: 2132Clerk of Court/Deputy Clerk: David HamiltonCourt Reporter: Wanda Patton

SCCA/217 (03/2011)



	(A)	(B)
(1) BOOTS	17' 8"	72' 6"
(2) CARTRIDGE CASING	17' 8"	72' 6"
(3) CARTRIDGE CASING	71' 6"	70' 4"
(4) CARTRIDGE CASING	77'	74'
(5) CARTRIDGE CASING	68' 4"	64' 4"
(6) CHEWING GUM PACKAGE	68' 4"	64' 4"
(7) CARTRIDGE CASING	57' 7"	62' 3"
(8) CARTRIDGE CASING	68' 8"	~~68' 8"~~
(9) CARTRIDGE CASING	74' 7"	65' 4"
(10) BLACK BASEBALL CAP	78'	68' 9"
(11) BLUE BIC LIGHTER	73'	64' 4"
(12) CLOCK 23.40	64' 4"	53' 8"
(13) CARTRIDGE CASING	62'	46'
(14) CARTRIDGE CASING	16'	46'
(15) CARTRIDGE CASING	62' 9"	45' 10"
(16) PLASTIC CLIP	75' 5"	66' 4"
(17) RED STAIN	64' 10"	63' 7"
(18) RED STAIN	62' 2"	66"
(19) BROWN PAPER TOWEL w/ RED STAIN	87'	91' 6"
(20) CARTRIDGE CASING	82' 9"	90' 1"
(21) CARTRIDGE CASING	90' 6"	87' 11"

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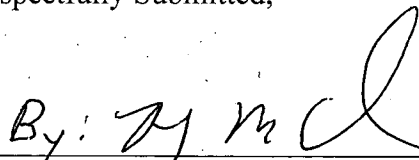
SC Court of Appeals

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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."

Respectfully Submitted,

By: 

TARA M. EDWARDS-VITOLLO

Co-Counsel

Vitollo Law Firm

PO Box 42282

North Charleston, SC 29423

ROBERT M. DUDEK

Chief Appellate Defender

S.C. Commission on Indigent Defense

Division of Appellate Defense

Post Office Box 11589

Columbia, SC 29211

ATTORNEYS FOR APPELLANT

This 12th day of December, 2016.