

ORIGINAL

VOLUME II OF III

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SG Court of Appeals

Appeal from Berkeley County
Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVEN DWAYNE MOSES,

APPELLANT

APPELLATE CASE NO. 2016-000627

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 1 (DVD OF SECURITY FOOTAGE AT NOWHERE BAR)

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 A. [Witness complies]

2 Q. Is this moment of video before or after the
3 altercation inside the bar?

4 A. After.

5 Q. What are you doing at the door?

6 A. I was making sure that they weren't in the parking
7 lot so I could let the other guys go out.

8 Q. Had the defendants left the parking lot?

9 A. Yes, sir.

10 MR. MCNEELY: Take that down. Thank you.

11 Q. [Mr. McNeely] What happened after that?

12 A. After that, it took us a few minutes to get
13 everybody out.

14 Me and Aleshia started just picking up all our
15 things and cleaning around the bar.

16 As far as my knowledge they were gone, because
17 that's what I took them out for. One went down one way, and I
18 checked the other way just to make sure that it was okay for
19 them to go out and nothing would happen in the parking lot.

20 Q. About how much time passed between the defendants
21 leaving the bar and the other patrons leaving the bar?

22 A. Like before I let them go outside?

23 Q. Yes, ma'am.

24 A. It was probably, like I say, give or take -- I
25 wasn't really counting -- five, ten minutes that I waited to

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 check the parking lot to make sure they were gone so they
2 could leave.

3 Q. After the other patrons at the bar exited the bar,
4 what did you do?

5 A. I went back in and started cleaning.

6 Q. What happened after that?

7 A. I was in the process of wiping down tables, Aleshia
8 was behind the bar, and one of our customers come running in
9 and said she had been shot.

10 And then shortly after that, Jay came in. And he
11 had been shot and I started screaming for some towels.

12 Q. You referenced the first customer running in the
13 door?

14 A. Stacy.

15 Q. Stacy Bohannon?

16 A. Yes, sir.

17 Q. And I think you referenced Jay after that?

18 A. Yes, sir.

19 Q. Who is Jay?

20 A. James Bryant.

21 Q. Did you hear gunshots?

22 A. It didn't really sound like a gunshot. It was just
23 more like a -- to me, it reminded of somebody like hitting
24 against plexiglass, maybe.

25 Q. When Stacy and James came inside, did you observe

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 them to be injured?

2 A. Stacy ran so fast, she ran straight to the bar,
3 that I didn't run up there.

4 I was headed back towards the door whenever I heard
5 the next one. And that was when James was entering the bar
6 and blood was just pouring out of his arm.

7 Q. Did you observe his injury?

8 A. I did.

9 Q. Can you describe it for the jury?

10 A. At the beginning it didn't look as bad like going
11 through the front, until I stuck my hand to the back.

12 Q. You stuck your hand through his arm?

13 A. Yes.

14 Q. What did you do after that?

15 A. Sorry.

16 Q. That's all right. Take your time.

17 A. I called for one of our customers -- that was in
18 the reserves -- to come help me lay him down because he kept
19 going in and out like he was going to pass out.

20 Q. Did you get him laid down?

21 A. I did.

22 Q. What did you do after that?

23 A. I started screaming for some more towels from
24 another guy that was -- he was a nurse, and he was pretty big,
25 too. James is a big guy. So my next reaction was I needed a

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 belt, I had to stop his bleeding. At the time I wasn't really
2 thinking. I had one, but I was just looking who was around
3 who I could get a belt from.

4 Q. Did you get a belt?

5 A. I did get a belt.

6 Q. What did you do with it?

7 A. I tied it around James' arm.

8 Q. As a tourniquet?

9 A. I did.

10 Q. What happened after that?

11 A. He's kind of big compared to me, so I couldn't get
12 it to stop. He kept jerking and screaming so I double-wrapped
13 it and I told him, sorry, it was going to hurt, and I put my
14 foot against his shoulder and I pulled as tight as I could.

15 Q. Do you have any medical training?

16 A. No.

17 Q. Just doing the best you could at the time?

18 A. Yes.

19 MR. DAVIS: I'm going to object to the leading,
20 putting words in her mouth, did the best that I could,
21 Your Honor.

22 THE COURT: Overruled.

23 Watch your leading questions, Mr. McNeely.

24 MR. MCNEELY: Thank you, Your Honor.

25 Q. [Mr. McNeely] At some point after that, did

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 emergency personnel arrive?

2 A. To me it felt like a lifetime. But shortly.

3 I'm assuming. I'm not really sure how long it took
4 them to get there, but they did get there.

5 Q. Who arrived first, BCSO or EMS?

6 A. Berkeley County.

7 Q. What happened from there?

8 A. While I was still working with James, it wasn't --
9 David came in, while I was in the process of working on James,
10 before anybody had even got there. I did look back at him,
11 but I kind of froze up. But I could only help one person at a
12 time, so I stayed with James and some other customers went to
13 David.

14 Q. Did you observe David's injury?

15 A. I did.

16 Q. Can you describe it for the jury?

17 A. It looked like ground beef.

18 Like I don't know if anybody really watches walking
19 dead, but it looked like it had been bit by a zombie.

20 Q. Where was he injured?

21 A. On his right arm.

22 Q. What happened after that?

23 A. When the EMS finally got there, they went straight
24 to Stacy because she had head injuries. And once they checked
25 her out, got it going, then they came to get James.

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 Q. Did all of the victims leave with emergency
2 personnel that night?

3 A. Yes, sir.

4 Q. What did you do after that?

5 A. I stayed in the bar until I wrote my statement.

6 Q. Was the bar equipped with video surveillance that
7 night?

8 A. Yes, sir.

9 Q. Were the cameras working?

10 A. Yes, sir.

11 Q. Did you view the surveillance footage that night?

12 A. Only whenever the officers got there, to show them
13 how to play it back so we could get it recorded for them.

14 Q. Did the video surveillance capture the incident?

15 A. Yes, sir.

16 Q. Both inside and out?

17 A. Yes, sir.

18 Q. Did you recognize the people on the video?

19 A. Yes, sir.

20 Q. Who did you see on the video?

21 A. Steven and Jason.

22 Q. Did you meet with detectives in the following days?

23 A. Yes, sir.

24 Q. Do you recall what day it was?

25 A. July 30th.

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 Q. Why did you meet with them?

2 A. To pick them out in a line-up.

3 Q. When did you meet with them? What time?

4 A. Around 9:15, 9:20-ish, that night.

5 Q. Where did you meet with them?

6 A. Nowhere Bar and Grill.

7 Q. Who was present with you met deputy --

8 A. Just me and the officer.

9 Q. What, if anything, did they tell you before
10 presenting you with photo line-ups?

11 A. I went over a whole sheet of instructions of how we
12 would have picked who we picked in the line-up.

13 Q. They went over an instruction sheet with you?

14 A. Yes, sir.

15 MR. MCNEELY: Permission to approach, Your Honor?

16 THE COURT: You may.

17 Q. [Mr. McNeely] Show you what's been previously
18 marked as State's Exhibits 33 and 35. Could you look at these
19 for me, please.

20 [Whereupon, the witness reviews documents]

21 Q. [Mr. McNeely] Do you recognize those documents?

22 A. Yes, sir.

23 Q. What are they?

24 A. They're the instruction sheets that we went over
25 before I picked them out in the line-up.

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 Q. How do you know they were the ones presented to
2 you?

3 A. Because I signed them.

4 Q. Did the deputy go over each and every one of the
5 instructions with you before presenting you with a line-up?

6 A. Yes, sir.

7 Q. Did they show you any photos of anyone prior to
8 presenting you with the line-up?

9 A. No, sir.

10 Q. Were you presented with one, or more than one,
11 line-up?

12 A. For each person it was just one sheet with
13 different photos on it.

14 Q. Is that two, total?

15 A. Yes, sir.

16 Q. Did they show you the line-ups together or
17 separately?

18 A. Separate.

19 Q. Can you describe the line-up?

20 A. Like what the paper looked like with the pictures?

21 Q. Yes, ma'am.

22 A. Three at the top and three at the bottom.

23 Q. Six, total?

24 A. Yes, sir.

25 Q. Were those photos color or black and white?

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 A. Black and white like -- I'm assuming. I don't
2 really remember if I had color.

3 MR. MCNEELY: Permission to approach, Your Honor?

4 THE COURT: You may.

5 Q. [Mr. McNeely] Show you what's been marked as
6 State's Exhibit 34 and 36. Can you look at those..

7 [Whereupon, the witness reviews documents]

8 Q. [Mr. McNeely] Do you recognize those?

9 A. Yes, sir.

10 Q. Are those the line-ups that were presented to you
11 on the evening of July 30th, 2013?

12 A. Yes, sir.

13 Q. Does that refresh your memory as to the photos?

14 A. Yes, sir.

15 Q. Were they color or black and white?

16 A. Colored.

17 Q. How do you know those were the ones presented to
18 you?

19 A. I initialed the back and put the date on it.

20 Q. I want you to look at State's Exhibit 35, if you
21 will, please.

22 [Whereupon, the witness reviews documents]

23 Q. [Mr. McNeely] Is that the first line-up that was
24 presented to you?

25 A. Yes, sir.

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 Q. Did you select a photo from that line-up?

2 A. Yes, sir.

3 Q. How long did it take you to select a photo from
4 that line-up?

5 A. Just a few seconds.

6 Q. Did you ever select more than one photo from that
7 line-up?

8 A. No, sir.

9 Q. How did you indicate the photo you selected?

10 A. I picked the number and circled it on the back.

11 Q. Which photo did you select out of the line-up?

12 A. Three.

13 Q. Did you select number three as an individual who
14 was at the bar on July 30 -- or July 28th, 2013, that was
15 involved in the incident?

16 A. Yes, sir.

17 Q. Did you indicate your selection on the instruction
18 sheet?

19 A. Yes, sir.

20 Q. Did you sign the instruction sheet?

21 A. Yes, sir.

22 Q. Are you still confident that your selection was an
23 individual involved in the incident of the bar on July 28th,
24 2013?

25 A. Yes, sir.

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 Q. Do you see the person you selected from the line-up
2 in the courtroom today?

3 A. Yes, sir.

4 Q. Will you please point him out for the jury and
5 describe what he's wearing?

6 A. Khaki suit and a white shirt. Khaki-ish with some
7 designs on his tie.

8 MR. MCNEELY: Let the record reflect that the
9 witness has identified Jason Gourdine.

10 THE COURT: It will.

11 Q. [Mr. McNeely] Do you notice any changes in his
12 appearance today from the time of the incident?

13 A. No, sir.

14 Q. Are you still confident that he was the individual
15 involved in the incident on July 28th, 2013, at the Nowhere
16 Bar?

17 A. Yes, sir.

18 Q. Were you presented with a second photo line-up on
19 July 30th, 2013?

20 A. Yes, sir.

21 Q. Was it presented to you in the same manner as the
22 first?

23 A. Yes, sir.

24 Q. Did the deputy go over an instruction sheet with
25 you again before presenting you with the line-up?

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 A. Yes, sir.

2 Q. Did he go over each and every instruction on the
3 sheet?

4 A. Yes, sir.

5 Q. Did they show you any photos of anyone prior to
6 presenting you with the line-up?

7 A. No, sir.

8 Q. Did they indicate to you, in any manner, which
9 photo to select out of the line-up?

10 A. No, sir.

11 Q. Was the second line-up also six photos?

12 A. Yes, sir.

13 Q. Did anyone direct you towards any particular photo
14 or suggest which one to select?

15 A. No, sir.

16 Q. Did you select a photo out of the second line-up?

17 A. Yes, sir.

18 Q. Which photo did you select out of the second line-
19 up?

20 A. Number three.

21 Q. Did you ever select anyone else out of the second
22 line-up?

23 A. No, sir.

24 Q. Did you select the number three as an individual
25 involved in the incident on July 28th, 2013, at the Nowhere

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 Bar?

2 A. Yes, sir.

3 Q. Did you indicate your selection on the line-up
4 itself?

5 A. Yes, sir.

6 Q. How so?

7 A. The number on the back. And I initialed it.

8 Q. Did you also indicate your selection on the
9 instruction sheet?

10 A. Yes, sir.

11 Q. And did you sign off on that?

12 A. Yes, sir.

13 Q. Do you see that person in the courtroom today?

14 A. Yes, sir.

15 Q. Would you please point him out for the jury and
16 describe what he's wearing?

17 A. Black suit, gray-and-white tie.

18 MR. MCNEELY: Let the record reflect that this
19 witness has identified Defendant Steven Moses.

20 THE COURT: There are two individuals with a --
21 that match the description.

22 Should be a little more clear.

23 Q. [Mr. McNeely] Could you please identify where he
24 is sitting at the table?

25 A. The far end. My left, y'all's right.

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 THE COURT: Thank you.

2 Q. [Mr. McNeely] Do you notice any changes in his
3 appearance today from the time of the incident?

4 A. Yes, sir.

5 Q. What is that?

6 A. His hair's a little longer, and it's gray.

7 MR. MCNEELY: Your Honor, at this time I would move
8 to admit State's Exhibits 33, 34, 35 and 36 into
9 evidence.

10 THE COURT: Any objection?

11 MR. KEARSE: I have an objection --

12 THE COURT: Hold on one second. We've got to go --
13 Mr. Davis?

14 MR. DAVIS: I join his objection, Your Honor.

15 MR. KEARSE: I have an objection, Your Honor.

16 THE COURT: All right. Pursuant to our previous
17 hearing?

18 MR. KEARSE: That one, also, and an additional
19 objection.

20 THE COURT: All right.

21 MR. KEARSE: May I approach with the exhibit, Your
22 Honor?

23 THE COURT: You may.

24 MR. KEARSE: Thank you so much.

25 [Whereupon, an off-the-record bench conference is

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 held]

2 MR. MCNEELY: It's admitted, otherwise?

3 THE COURT: Yes. We'll address 33 outside the
4 presence of the jury. But what were the other numbers,
5 counsel

6 MR. MCNEELY: 33, 34, 35 and 36.

7 THE COURT: 34, 35 and 36, noting your previous
8 objections, Mr. Davis and Mr. Kearse.

9 33 we'll take up outside the presence of the
10 jury.

11 [Whereupon, State's Exhibit Numbers 34, 35 and 36
12 are admitted into evidence by the Court]

13 MR. KEARSE: Thank you, Your Honor.

14 Q. [Mr. McNeely] Following the line-ups, did you do
15 anything else with the deputy that evening?

16 A. No, sir.

17 Q. Did you provide a written statement?

18 A. The written statement that I have and did is the
19 one that I did the night that it happened.

20 MR. MCNEELY: Permission to approach, Your Honor?

21 THE COURT: You may.

22 Q. [Mr. McNeely] Please look at that document.

23 [Whereupon, the witness reviews documents]

24 Q. [Mr. McNeely] Do you recognize that document?

25 A. Yes, sir.

Julia Taylor
Direct Examination by Mr. McNeely
March 16, 2016

1 Q. What is that document?

2 A. My statement.

3 Q. Does that refresh your memory as to the date you
4 provided it?

5 A. Yes, sir.

6 Q. What date did you provide it?

7 A. July 30th.

8 Q. Was this a traumatic event?

9 A. Yes, sir.

10 MR. DAVIS: I'm going to object to leading again,
11 Your Honor, traumatic event.

12 THE COURT: Overruled.

13 MR. MCNEELY: No further questions from the State,
14 Your Honor.

15 MR. DAVIS: May it please the Court, Your Honor.

16 THE COURT: Hold on. Hold on.. I like -- I don't
17 -- I like him to sit down.

18 All right. Now, Mr. Davis.

19 MR. DAVIS: All right. He's all right. He's all
20 right, Your Honor.

21 Good morning, Ms. Taylor. How are you doing?

22 THE WITNESS: I'm all right. Fine.

23 - - -

24 - - -

25 - - -

Vicky Taylor
Cross-Examination by Mr. Davis
March 16, 2016

CROSS-EXAMINATION

BY MR. DAVIS:

Q. You're not in the bartending business anymore?

A. It's been about a month since I stopped. I worked it for a while, while I was still working at MUSC.

Q. Okay. And unequivocally it's your testimony you do not and cannot testify as to what happened outside?

A. No, sir.

Q. And also under that same vein, you cannot unequivocally testify as to your being in control as to others not going outside after this incident occurred?

A. Can you repeat that again?

Q. I'll put it again.

We have reviewed the tape, the jury has reviewed the tape, and there are instances where individuals apparently are going back and forth outside, after this incident happened, before the shooting took place?

A. Before the shooting took place?

Q. Yes.

A. Yeah. Well, I mean, I can't keep them in there. They're --

Q. That's my --

A. -- free to go.

Q. Thank you.

In fact, if it's fair, control of a traumatic or

Vicky Taylor
Cross-Examination by Mr. Davis
March 16, 2016

1 very -- was an issue that night? Wasn't control an issue, to
2 some extent? Or shall --

3 A. Not really.

4 Q. -- I say a lack of control?

5 A. A lack of control?

6 Q. Yes, ma'am.

7 A. Not really.

8 Q. Well, do you believe that you controlled James
9 Bryant, that big guy, that night? Did you control him?

10 MR. MCNEELY: I'm going to object.

11 THE COURT: What is the basis?

12 MR. DAVIS: Thank you.

13 MR. MCNEELY: It's speculation.

14 THE COURT: Overruled.

15 MR. DAVIS: Thank you.

16 Q. [Mr. Davis] Ma'am?

17 A. Did I control him?

18 Q. We kept him in the bar. He didn't go out of the
19 bar.

20 Q. And that's the equivalent of control that you --
21 that would equal to control?

22 A. No, it's not.

23 You don't control people. We just simply asked
24 them to stay in the bar.

25 Q. Tonight -- strike that.

Vicky Taylor
Cross-Examination by Mr. Davis
March 16, 2016

1 Today I'm asking about your attempts to control
2 James Bryant on July the 28th, 2013. Did you control him?

3 A. No.

4 Q. Okay. Did you control Rick Enriquez, the Puerto
5 Rican guy that has been described in this court?

6 A. No.

7 Q. Okay. Did you control Miss Laurie -- the manager
8 that night, who have testified earlier?

9 A. She wasn't managing that night. But, no, I did not
10 control her.

11 Q. The owner, part owner, did you control her?

12 A. No.

13 Q. In fact, ma'am, did you control yourself that night
14 in reference to why we are here today?

15 A. Yes.

16 Q. Well, explain to me why you would use the term get
17 the fuck out of here.

18 A. Because I told him to get the fuck out. It's --

19 Q. And do you believe that is not chilling words that
20 escalates a matter to a point of confrontation?

21 A. No, because it was already escalated.

22 Q. Yes, ma'am.

23 And, in fact, it escalated to the point that your
24 lack of control for James Bryant came into question. Isn't
25 that true?

Vicky Taylor
Cross-Examination by Mr. Davis
March 16, 2016

1 A. No.

2 Q. Ma'am?

3 A. No.

4 Q. Your lack of control for Rick Enriquez, Puerto
5 Rican, didn't that reflect your lack of control, also?

6 A. No.

7 Q. Well, explain to me, ma'am, Ms. Taylor, why is it
8 that James Bryant was able to assault another patron in the
9 bar?

10 A. I don't believe he assaulted him. He just kind of
11 gently put him out the door. He is --

12 Q. Hit --

13 A. -- he is a big guy, but he didn't force, hit,
14 sling, pick them up, or anything. He just put them out the
15 door. They didn't fight back. We shut the door. And they
16 stood out there for a minute --

17 Q. Now, thank --

18 A. -- and left.

19 Q. Thank you. I'm not cutting you off. You have
20 answered my question, in a since.

21 You did not require any control on this young man,
22 Mr. Jason Gourdine that night, because you just stated that
23 they did not fight back; isn't that true?

24 A. They didn't fight back inside --

25 Q. So there was no necessity to control these

Vicky Taylor
Cross-Examination by Mr. Davis
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1 individuals; isn't that true?

2 A. They started it.

3 Q. Oh, my God. They started it.

4 And therefore, since they started it, the
5 equivalent of anything that occurred that night inside the bar
6 was justified; isn't that true?

7 A. What do you mean by that?

8 Q. Well, justified because they started it and you
9 didn't have control that if Mr. Biggie wanted to assault
10 someone it was okay, if Rick wanted to assault someone it was
11 okay, because that was a justification; isn't that true?

12 A. No, sir.

13 Q. Well, explain it to us.

14 A. Well, what do you want me to explain?

15 Q. I want you to explain how your lack of control
16 contributed to why we are here today.

17 A. We're humans. We don't control nobody but
18 ourselves.

19 Q. And in that same vein, ma'am, when humans are
20 subjected to alcohol and/or drugs and ego, we do have a bad
21 combination. Don't you agree with that?

22 A. Yes, sir.

23 Q. And instead, if we look at what occurred that night
24 and the lack of control, it's understandable, to some extent,
25 why we're here today?

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1 A. No, sir.

2 Q. Well, I'll ask this question in another manner.

3 Did Rick Enriquez receive any injuries?

4 A. Not that I know of.

5 Q. The solicitor takes the position that he was
6 ambushed. Did he receive any injuries?

7 A. He didn't come back afterwards. He left.

8 Q. That's correct. He did not reenter that bar, did
9 he?

10 A. No.

11 Q. And you've never heard him been classified during
12 this whole process as a victim, have you?

13 A. No, sir.

14 Q. Sound like an ambush to you? Ma'am?

15 A. Depends on who you're talking about ambushed here.

16 Q. Oh. So --

17 A. To go from Rick to ambush, I'm kind of --

18 Q. No. Rick was involved, was he not?

19 A. He was involved. He was hit.

20 Q. Rick was the guy that struck someone, was he not?

21 A. Yes.

22 Q. Rick was the guy that shoved these guys and Biggie
23 out of the bar, was he not?

24 A. No.

25 Q. Well, who shoved them out of the door?

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1 A. James Bryant. That's his name. Not Biggie.

2 Q. Oh. James Bryant's name is Biggie?

3 A. No. It's Big. That's what -- his nickname we call
4 him. Not Biggie.

5 Q. I'm sorry. I'm sorry. I'm sorry.

6 He shoved him out the door?

7 A. He put them out the door. I wouldn't say shoved.

8 Q. And you gave him authority to do it?

9 A. No.

10 Q. You did not?

11 A. No.

12 Q. But you were the manager?

13 A. I was bartending that night.

14 Q. Well, when you testified on direct testimony, you
15 said, I'm the bar -- I'm the bartender, and I was the manager
16 that night. That was your direct testimony --

17 A. I said bartender/manager.

18 Q. Well, that's the same thing; right?

19 A. When I'm bartending, then I'm the bartender.

20 Q. So you didn't wear both hats that night?

21 A. No.

22 Q. Okay.

23 A. I'm the manager when I'm doing the paperwork and
24 everything, but when I'm working by the bar --

25 Q. Okay. Ms. Taylor, I got --

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1 A. -- I'm a bartender.

2 Q. That explains why there was no control that night?

3 A. No.

4 Q. Well, you were just the bartender. You weren't the
5 manager until you do paperwork. So no control.

6 A. There's always just bartenders there. There's
7 never a manager that has to sit with them.

8 Q. Okay. Sit with them?

9 A. Yeah.

10 Q. Okay. Sit with them --

11 A. Yeah. Exactly. So they don't have to have to sit
12 with them.

13 Q. They drink until --

14 A. They're bartenders. That's their job --

15 Q. -- to the extent you have to sit with them?

16 A. I'm sorry?

17 Q. They get so impaired, you've got to sit with them?

18 A. Our bartenders don't drink when we work.

19 Q. I'm talking about your patrons, your regulars.

20 Q. You were just talking about being a manager, having
21 to sit with them. That's --

22 Q. I used the --

23 A. -- where we're at.

24 Q. -- words -- I used the words you used.

25 You say you going to have to sit with them. Let's

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1 use your words.

2 A. The managers don't have to sit with the bartenders.

3 Q. Okay. But you were both that night; true?

4 A. No.

5 I was the bartender that night, with Aleshia,
6 Cupcake.

7 Q. Who was the manager?

8 A. We don't always have a manager that sits there.
9 That's what I'm trying to tell you.

10 Q. Okay. I understand. Thank you.

11 So I'll go back to this question again. Was Rick
12 ambushed?

13 A. No.

14 Q. Was James Bryant ambushed?

15 A. Not inside the bar.

16 Q. Well, you weren't outside, so I'll ask that
17 question again. Was he ambushed outside the bar?

18 A. I don't know outside. But not inside.

19 Q. Was David Bohannon ambushed outside the bar?

20 A. I don't know.

21 Q. Okay. Why don't you know?

22 A. Because I didn't go outside.

23 Q. Thank you.

24 Now, in reference to what happened inside the bar,
25 okay, do you bear any responsibility?

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1 A. For their actions?

2 Q. Yeah.

3 A. No.

4 Q. So you think it was perfectly okay to assault
5 another individual?

6 A. No. I never said that.

7 Q. Well, you used the term that he gently or kindly
8 inviolate [phonetic] someone.

9 A. No.

10 What I mean by that, it's not like he beat him out
11 the door.

12 Q. So you only classify it as a beat-down?

13 A. No.

14 I'm just saying he didn't manhandle him, choke him
15 out the door --

16 Q. Manhandle --

17 A. -- not saying anything --

18 Q. -- choking. That's the level it has to be to?

19 A. Well, that's the way you're making it and that's --

20 Q. No. I'm using your words.

21 A. No, because I haven't said that. Everything's
22 ambushed, he shoved them out the door roughly, he did this.
23 It wasn't like that.

24 Q. You said you've watched the tape, have you not?

25 A. I was inside when that happened.

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1 Q. My question is you said you watched that video, did
2 you not?

3 A. Just whenever they -- the cops got there to do it.
4 I didn't -- I couldn't be in two places at once, watching --

5 Q. My question is --

6 A. -- the video and --

7 Q. -- you have watched the video --

8 A. -- yeah. Now I --

9 Q. -- have you not?

10 A. -- have, yeah..

11 Q. You have watched it more than once, haven't you?

12 A. Now.

13 Q. So you had an opportunity to formulate an opinion
14 as to what transpired on that tape, have you not?

15 A. No.

16 Because the first time I seen it was whenever I got
17 subpoenaed to come here and watch the whole thing. I've never
18 sat down and been able to watch the whole thing.

19 Q. It wasn't a big deal. You just -- that was just
20 something in the past that moved on?

21 A. No.

22 It is a big deal. Three people could have died
23 that night.

24 Q. Where did you get that from: that could have died?

25 A. Could have died?

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1 Q. Yeah. Do you know what a coma score is?

2 A. A what?

3 Q. Coma. C-O-M-A.

4 A. What I think could have died?

5 When I'm sitting there trying to get somebody to
6 stop bleeding, that's -- they could have died, in my opinion.

7 When my whole hand goes through someone's back arm
8 and nothing but blood is coming out, they could have died.

9 Q. That's your opinion?

10 A. Well, yeah. I was --

11 Q. I'm going to ask --

12 A. -- sitting right there.

13 Q. -- I'm going to ask you this question. When the
14 doctors come and testify after you, if the doctors have a
15 different opinion --

16 MR. MCNEELY: Your Honor --

17 Q. [Mr. Davis] -- which one do you want this jury to
18 adopt?

19 MR. MCNEELY: -- I object to this.

20 A. I'm not a doctor.

21 Q. [Mr. Davis] That's my point.

22 THE COURT: Hold on. Sustained. Thank you.

23 Q. [Mr. Davis] You are not a doctor.

24 THE COURT: Ladies and gentlemen, please disregard
25 that last response. I have determined that was an

Vicky Taylor
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1 improper question.

2 You may continue.

3 Q. [Mr. Davis] Lack of control, lessening the degree
4 of the parties' involvement, inciting was the choice word that
5 you used. Would you do anything differently now, ma'am, if
6 you still were in the bartending business, in relationship to
7 what you did on July the 28th, 2013?

8 A. No, sir.

9 MR. DAVIS: Thank you.

10 THE COURT: Mr. Kearse?

11 MR. KEARSE: May it please this Court, Your Honor.

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Vicky Taylor
Cross-Examination by Mr. Kearse
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CROSS-EXAMINATION

BY MR. KEARSE:

Q. Ms. Taylor?

A. Yes, sir.

Q. You weren't involved in any kind of disagreement between Mr. Moses and Ms. Nava initially; is that correct?

A. No, sir.

Q. All right. And when Mr. Moses was speaking, he was pretty much directing his comments to Ms. Nava; is that correct?

A. Yes, sir.

Q. And, at most, he said he didn't feel like he was being served because he was black and he felt it might be a racist bar; is that correct?

A. Yes, sir.

Q. All right. And then Ms. Nava starts yelling at him about how she has mixed children and that was not possible; correct?

A. Yes, sir.

Q. All right. And Ms. Nava also said how he was messing with the wrong M.F. and all that stuff; is that correct?

A. Yes, sir.

Q. And Mr. Moses didn't say anything threatening to her, didn't curse at her. He just started clapping and

Vicky Taylor
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1 saying, say it again, I'll give you an applause; correct?

2 A. Yes, sir.

3 Q. All right. And so you said in your previous
4 testimony talking to Mr. Davis that when you're the bartender,
5 you're not the manager. Do you recall saying that to him?

6 A. Yes, sir.

7 Q. But you took it upon yourself at that time to
8 interject and say -- yelled at them to get the F out?

9 A. Yes, sir.

10 Q. All right. And so you're saying under those
11 circumstances, Mr. Moses and Mr. Gourdine started it; right?
12 When you say they started it, that's what you mean? They
13 started it?

14 A. They caused a scene, yes, sir.

15 Q. All right. They caused a scene, not --

16 A. Well, Steven caused a scene.

17 Q. All right. You don't think that Ms. Nava raising
18 her voice, using profanity, interjecting her personal life
19 into an issue, had nothing to do with that, started a scene?

20 A. No. It's a bar, not a church.

21 Q. You don't think your screaming get the F out
22 started or even helped to escalate a scene?

23 A. No.

24 Q. Okay. Now, again, we agree neither one of those
25 two gentlemen used any profanity towards anybody?

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Cross-Examination by Mr. Kearse
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1 A. They said it to anything [phonetic]. Right.

2 Q. And Mr. Moses, Steven Moses, did not use any
3 profanity or any threatening words to you or Ms. Nava?

4 A. No, sir.

5 Q. In fact, he didn't use anything to anyone in that
6 bar that you heard; correct?

7 A. Correct.

8 Q. All right. And so they started moving towards the
9 door. Even though you weren't the manager and you told them
10 to get the F out, they moved towards the door; right?

11 A. That's right.

12 Q. And it was Rick Enrique who took it upon himself to
13 approach Mr. Moses?

14 A. Correct.

15 Q. All right. As he was going towards the door;
16 correct?

17 A. Correct.

18 Q. And neither you nor Ms. Nava nor Ms. Chenoweth
19 stopped him as he was going towards Mr. Moses?

20 A. I was behind the bar, still.

21 Q. All right. But you didn't come from behind the bar
22 and try to stop the man as he was approaching Mr. Moses;
23 correct?

24 A. No, sir.

25 Q. All right. And so you feel, when you said that if

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1 you had it all over again, you still would do the same thing,
2 you still wouldn't stop it; correct?

3 A. That's not how he said it.

4 Q. All right.

5 A. How he asked it is would I change anything. I said
6 no.

7 Q. Now, you knew that night clearly Mr. Maron didn't
8 work for the bar. He wasn't your coworker; right?

9 A. No.

10 Q. All right. And so you know, as a bartender in a
11 bar -- I'm sure you're familiar there are skirmishes that
12 occurs in bars; right?

13 A. Yes.

14 Q. And after all, you said it's a bar, it's not a
15 church; right?

16 A. You're exactly right.

17 Q. All right. And you know that it is not proper
18 protocol in the bar for the staff to allow patrols to assault
19 one another; correct?

20 A. Yes.

21 Q. All right. And you also know that the bar can
22 possibly incur liability if that stuff happens; right?

23 A. Yes.

24 Q. All right. And you knew that when Mr. Bryant, as
25 y'all call him Big Jay, went over there to push those guys

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March 16, 2016

1 out, that he didn't have the authority to do that?

2 A. Correct.

3 Q. All right. And you knew the bar could incur
4 liability for that; right?

5 A. Correct.

6 Q. All right. And so you knew at that time, on July
7 28th, 2013, that was improper behavior occurring in the bar
8 amongst your patrons; correct?

9 A. Right.

10 Q. All right. And I want to hand you what's been
11 marked as -- entered into evidence as State's Exhibit 35. If
12 you'll take a look at that for me, please.

13 [Whereupon, the witness reviews documents]

14 Q. [Mr. Kearse] You referenced the regulars in that
15 statement; correct?

16 A. Yes, sir.

17 Q. And the regulars would be Enrique Maron, also known
18 as Rick, Mr. Bryant, the Bohannans, Mr. Coffey, and I guess
19 all the other people besides Mr. Gourdine and Mr. Moses; is
20 that correct?

21 A. Correct.

22 Q. And so at that point, the regulars were on your
23 side, were they not?

24 A. Not really on our side. It's just --

25 Q. I mean -- I'm sorry.

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Cross-Examination by Mr. Kearse
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1 A. -- members of a bar. It's like a family.
2 Everybody knows everybody. Everybody stays together.

3 Q. Like a family. Everybody stays together.

4 So when you and Ms. Nava decided that it was you
5 against Mr. Moses and Mr. Gourdine, they jumped in like a
6 family --

7 A. No.

8 Q. -- to the rescue? Okay. But that's what happened,
9 isn't it?

10 A. Yes. But we didn't ask for them to do that.

11 Q. Y'all didn't stop them; right?

12 A. But we -- nor asked them, either.

13 Q. In addition, after this thing was over you yourself
14 admit, as you've just admitted, that there were people going
15 in and out of the door to the parking lot?

16 A. Not after the altercation.

17 He stated it as throughout the night that people
18 kept coming up.

19 Q. So it's your testimony that Mr. Bohannon, no other
20 gentlemen, walked out of that door into that parking lot after
21 this incident?

22 A. Not until I went out to make sure they weren't in
23 the parking lot.

24 Q. All right. That's your testimony.

25 And when you went out to the door -- you said, I

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1 went to the parking lot -- you went to the front door; right?

2 A. Uh-huh.

3 Q. All right. And you stared out in front of the
4 building?

5 A. I stood and held the door, and then they looked
6 that way and checked.

7 Q. Now, you say they, which means that's not you;
8 correct?

9 A. No.

10 Q. All right. And so you stood at the door; correct?

11 A. Yes.

12 Which you can see the whole parking lot in front of
13 the bar.

14 Q. All right. I know you want to give us a good
15 answer, Ms. Taylor.

16 But you stood at the front door? Yes or no.

17 A. Yes.

18 Q. And at the front door you can see what's in front
19 of the building, can you not?

20 A. I can see the whole parking lot.

21 Q. Well, the parking lot that you described is in
22 front of the building, is it not?

23 A. Yes.

24 Q. And from where you were situated, you cannot see
25 the back side or the side of the building from that door?

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1 A. It's fenced in.

2 Q. The back side of the building where the road is,
3 you cannot see to the back side of the building from the door;
4 correct?

5 A. What -- you're confusing me, because the road's on
6 the front side of the bar.

7 Q. On the side of the building -- there's a side of
8 the building not by the door; correct?

9 A. The bar side or the warehouse side?

10 Q. The side, whether it's the warehouse side, the bar
11 side --

12 A. The bar side I could see where I was standing at on
13 the door.

14 Q. All right.

15 A. The warehouse side, no, because it's not part of
16 the bar.

17 Q. But there is a side of that building --

18 A. Of the --

19 Q. -- right --

20 A. -- warehouse, yes.

21 Q. -- that a car can actually be situated at?

22 A. On the warehouse side. Yes.

23 Q. Right.

24 And that is a side you could not see from the door;
25 correct?

Vicky Taylor
Cross-Examination by Mr. Kearse
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1 A. Correct.

2 MR. KEARSE: Beg the Court's indulgence.

3 THE COURT: Take your time.

4 [Whereupon, Mr. Kearse reviews documents]

5 Q. [Mr. Kearse] Not once did you ever see Mr. Moses
6 hit anybody?

7 A. No, sir.

8 Q. Now once did you ever hear him threaten anybody?

9 A. No, sir.

10 MR. KEARSE: Your Honor, I don't have anything
11 further.

12 MR. MCNEELY: Nothing further from the State,
13 Judge.

14 THE COURT: You may step down. You are free to go,
15 but feel free to stay with us. Thank you.

16 [Whereupon, Ms. Taylor is excused and exits the
17 witness stand]

18 THE COURT: Call your next witness.

19 MR. ALFARO: The State calls James Bryant.

20 [Whereupon, Mr. Bryant comes forward]

21 THE CLERK OF COURT: Put your left hand on the
22 Bible and raise your right.

23 [Whereupon, Mr. Bryant is duly sworn by the clerk
24 of court as follows: do you solemnly swear or affirm
25 the testimony you shall give in this case shall be the

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1 truth, the whole truth, and nothing but the truth, so
2 help you God]

3 THE WITNESS: I do.

4 THE CLERK OF COURT: If you'll have a seat.

5 [Whereupon, Mr. Bryant takes the witness stand]

6 THE CLERK OF COURT: State your full name for the
7 record and spell your last name.

8 THE WITNESS: James Bryant. The last name,
9 B-R-Y-A-N-T.

10 MR. ALFARO: Good morning, Mr. Bryant.

11 THE WITNESS: Good morning.
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James Bryant
Direct Examination by Mr. Alfaro
March 16, 2016

JAMES BRYANT,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. ALFARO:

Q. Can you tell the jury how old you are?

A. Thirty-five years old.

Q. And where did you go to high school?

A. Cross High.

Q. And after you got out of high school, what did you
do for a living?

A. Apprentice bricklayer, Lincoln Industrial Fabric.
Got into a lot of industrial jobs, and then became a diesel
mechanic.

Q. And how long were you a diesel mechanic?

A. Eight years.

Q. And is that what you were doing on July 28th, 2013?

A. I was actually a machine operator for a bricklaying
company.

Q. And how long did you have that job?

A. Six, seven months.

Q. So six or seven months before this --

A. That -- yes.

Q. And can you tell us a little bit about what your
job was at that time?

MIA PERRON, CVR-CM-M

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James Bryant
Direct Examination by Mr. Alfaro
March 16, 2016

1 A. You know, supplying material to, you know, other
2 coworkers while they're on scaffold. Stuff like that, you
3 know.

4 Q. And where were your normal job sites? Where did
5 y'all normally work?

6 A. Mount Pleasant. A lot of jobs local.

7 It was just random. We did the college dorm on
8 Meeting Street down there, that new one. Did a lot of school-
9 type jobs. We did Trident Tech, the back of that, the new
10 end.

11 Q. All right. Would you consider that a good job?

12 A. Yeah.

13 It was a great job. It was a -- you know, I got to
14 sit down, and make great money, and, you know, just on top of
15 my taxes. And it was a great job.

16 Q. Do you still have that job?

17 A. No.

18 Q. When did you lose that job?

19 A. As soon as I got shot, I was done. I'm currently
20 on disability because of my injuries.

21 Q. So you're not working anywhere now --

22 A. I can't.

23 Q. -- not able to?

24 And let's talk specifically about the night of the
25 shooting, July 28th, 2013. Where did that take place?

James Bryant
Direct Examination by Mr. Alfaro
March 16, 2016

- 1 A. Nowhere Bar and Grill.
- 2 Q. And had you ever been to that bar before?
- 3 A. First time in my life.
- 4 Q. Whose idea was it to go there?
- 5 A. Rick.
- 6 Q. And how do you know Rick?
- 7 A. I know Rick through Tyrone Taylor. They were
- 8 friends. Rick used to have UFC fights at his house. That's
- 9 how I met him.
- 10 Q. And is Rick -- is his real name Enrique?
- 11 A. Yes.
- 12 Q. And how do you know Tyrone?
- 13 A. Friend of family. His family's from Cross and, you
- 14 know, we kind of met, you know.
- 15 Q. And how did you get to the bar that night?
- 16 A. I rode with Tyrone.
- 17 Q. Who all went with you?
- 18 A. Me, Tyrone, Rick, and Adam Marquetts.
- 19 Q. And are you still friends with those people?
- 20 A. No. Just Adam Marquetts.
- 21 Q. When's the last time you talked to Enrique?
- 22 A. A couple of years ago.
- 23 Q. Do you know where he is now? Where he's living?
- 24 A. Well, I heard he's in Connecticut, he had some home
- 25 issues and was in Connecticut.

James Bryant
Direct Examination by Mr. Alfaro
March 16, 2016

1 Q. So that night when y'all go to the bar, what -- who
2 did you say drove down there?

3 A. Tyrone.

4 Q. And do you remember what he was driving?

5 A. A white Chrysler-type, minivan type.

6 Q. And do you recall about what time y'all got there?

7 A. I can't recall. It's been so long.

8 Q. And tell us what you were doing when you got there.

9 A. We was just, you know, having a good time. You
10 know, working men out after hours just having a good time.
11 You know, wasn't really looking for no -- you know, we was
12 just having a good time.

13 And, you know, Rick brought up, hey, let's stop by
14 Nowhere. I'm, Nowhere? Haven't been to that place ever. You
15 know, I thought that was some kind of, you know -- but he said
16 it was a nice place. We went in there. The bartenders was
17 nice. We had a good time.

18 Q. So you were drinking?

19 A. Yeah.

20 Q. Have any problem getting served that night?

21 A. Not a problem at all.

22 Q. Did you have any problems with the bartenders?

23 A. Not at all.

24 Q. Did you have any problems with anyone in that bar
25 before the defendants came in?

James Bryant
Direct Examination by Mr. Alfaro
March 16, 2016

1 A. No.

2 Q. And when the defendants came in, did you see or
3 hear them at the bar?

4 A. Really, I really didn't know what was going on
5 until things got louder.

6 Q. All right. Did you hear the defendants exchanging
7 words with anybody inside?

8 A. Yes. With the bartender.

9 Q. And I'm going to show you the video.

10 MR. ALFARO: Camera 6-A. We're going to start
11 camera angle 6-A at 1:56:23.

12 [Whereupon, video is played for the jury]

13 [Whereupon, the video is not transcribed by the
14 court reporter]

15 MR. ALFARO: I'm going to pause at 1:58:11.

16 That red button on top is a laser pointer. I'm
17 going to actually point to something first.

18 Q. [Mr. Alfaro] The person in the white tank-top, who
19 is that?

20 A. That's Rick.

21 Q. And obviously that's you right there?

22 A. That's me.

23 Q. Now, on that video we just watched, Enrique throws
24 a punch at one of the defendants; correct?

25 A. That's correct.

James Bryant
Direct Examination by Mr. Alfaro
March 16, 2016

1 Q. And then you intervene?

2 A. Yeah.

3 Q. What were you doing or thinking when you did that?

4 A. I'm pretty much thinking, well, you know, what's
5 going on, is this going to, you know what I mean, pretty
6 much --

7 To be totally honest with you, I can't say what I
8 was thinking right then.

9 But seeing it, I'm like -- I was like, well, you
10 know, trying to see what's going on, get the -- in the aid of
11 a friend that I came with, seeing if it was going to escalate
12 or see how far it was going to go. But it didn't go far. But
13 it was over.

14 Q. So when you approached where both defendants were
15 and where Ricky was --

16 A. Uh-huh.

17 Q. -- you were trying to aid Ricky?

18 A. Yeah, because that's who I came with. We were all
19 together.

20 Q. And we paused the video at the time where the
21 defendants leave the bar. Did you or any of your friends
22 chase them out into the parking lot?

23 A. No.

24 We was like everything's good; you know, we
25 together; don't worry about that. We just went back to doing

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1 what we were doing. It was over with.

2 Q. So on that video, when we paused it, when you had
3 your arm around Ricky y'all weren't plotting a way to --

4 A. No.

5 I'm like, chill out, man, everything's good, we're
6 together. And I'm sure you could have heard me say that.

7 Q. So in your mind, was that problem over?

8 A. It was over with. I mean, it was over with.

9 Q. And y'all stayed in the bar for about ten minutes?

10 A. Stayed. Hugged everybody. Was having a good time,
11 still, at that point.

12 MR. ALFARO: Pull up video 2-B. We're going to
13 start camera 2-B at 2:08 and zero seconds.

14 [Whereupon, video is played for the jury]

15 [Whereupon, the video is not transcribed by the
16 court reporter]

17 MR. ALFARO: We paused it at 2:08:45.

18 Q. [Mr. Alfaro] That vehicle right there, is that the
19 van that y'all came down there in?

20 A. That is correct.

21 Q. And can you tell the jury who those people are that
22 you're hugging up on over there?

23 A. That's Mr. Bohannon and Ms. Bohannon. And that's
24 Rick I'm talking to. And that's Tyrone in the driver's seat.

25 Q. Had you ever met the Bohannans before that night?

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1 A. Never in my life.

2 Q. And when y'all are hugging up there, are y'all
3 talking about the defendants or what happened earlier?

4 A. No.

5 We was having a good time. They were trying to
6 help me to the car. But, you know, it was time to go and I
7 didn't really want to -- you know, we was having a good time.
8 I didn't really -- you know.

9 MR. ALFARO: We'll resume the tape.

10 [Whereupon, video is played for the jury]

11 [Whereupon, the video is not transcribed by the
12 court reporter]

13 MR. ALFARO: We stopped that at 2:10 and 12
14 seconds.

15 Do you need a minute?

16 [No response]

17 Q. [Mr. Alfaro] When Steven Moses walks around the
18 van to where y'all were standing, how did you perceive that?

19 A. I felt threatened about it.

20 Q. And as part of that, did you see when the car
21 parks -- parks the car behind the van? Is that part of the
22 reason why you take that as a threat?

23 A. Absolutely, because I figured they --

24 MR. DAVIS: I object.

25 MR. KEARSE: Your Honor, I object.

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1 THE COURT: Hold on one second.

2 All right. What's your objection? What's the
3 basis?

4 MR. DAVIS: It's leading.

5 THE COURT: What's your objection?

6 MR. KEARSE: The same, Your Honor.

7 THE COURT: Overruled. You may answer.

8 A. I'm thinking they came to aggress us, because it
9 was over with.

10 So I'm like, what, you coming back -- so the first
11 thing I'm thinking, they coming to aggress us, period, because
12 we was not thinking about them at all.

13 Q. [Mr. Alfaro] And in watching that video, does
14 Mr. Moses back up first or do you go at Mr. Moses first?

15 A. When he backs up.

16 Q. Are you following after him?

17 A. Yes.

18 Because I'm like what's up; you know, ain't -- you
19 know, nobody wasn't even thinking about y'all.

20 Q. And after you got shot, do you remember about what
21 you saw as far as what your injuries were or where you were
22 hit?

23 A. Soon as I got close enough, he was already in the
24 door. He just fired. And that's when I turned around and
25 tried to get out of there.

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1 Q. And can you tell us where you were shot?

2 A. I was shot in my left elbow.

3 Q. And do you recall looking down at your arm and
4 seeing your injury?

5 A. Yes.

6 Q. Can you describe what it looked like when you saw
7 it?

8 A. Like ground meat. A stream of blood was shooting
9 out.

10 Q. And do you remember any of the treatment that you
11 received from the other people inside the bar before EMS got
12 to you?

13 A. I remember them putting a belt on my arm, and it
14 was killing me, and I don't remember nothing that was after
15 that.

16 Q. At any point that night, did you have any weapon on
17 you?

18 A. No.

19 Q. Any point that night prior -- either inside the bar
20 or prior to being shot outside, did you have -- threaten the
21 use of any weapon against anyone?

22 A. Never.

23 MR. ALFARO: Thank you, Mr. Bryant. Please answer
24 any questions the defense has for you.

25 MR. KEARSE: Your Honor, can we have a break?

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1 MR. DAVIS: Yeah, I --

2 THE COURT: All right. Ladies and gentlemen, we'll
3 take our midmorning break.

4 Do not begin your deliberations. Do not discuss
5 this case amongst yourselves.

6 You may leave your notepads right where they are or
7 take them with you.

8 Please rise for the jury.

9 [Whereupon, the jury exits the courtroom at
10 10:45 a.m.]

11 THE COURT: Thank you. Be seated.

12 We need to put some things on the record. Do you
13 wish to take your break right now and then we'll do it?

14 MR. KEARSE: We can do that real quick, Your Honor,
15 and then I can --

16 THE COURT: Well, let's go ahead and take -- we'll
17 take ten minutes.

18 You may step down. Do not discuss your testimony
19 with anyone. Thank you.

20 [Whereupon, Mr. Bryant exits the witness stand]

21 THE COURT: Ten minutes.

22 [Whereupon, a recess is taken from 10:46 a.m. to
23 11:03 a.m.]

24 THE COURT: Please be seated.

25 All right. We received a note during the break

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1 from Juror 138. It will be marked as Court's 3. The
2 alternate, Mr. Ravenel, indicated that he went to Cross
3 High School and because that was some testimony that was
4 elicited by Mr. Bryant, the alternate wished to share
5 that with the Court.

6 I inquired if he -- that would affect his ability
7 to be fair and impartial. He did not.

8 I brought the attorneys back in chambers, and I'll
9 just allow you to place any objection on the record.

10 MR. ALFARO: Your Honor, the State has no
11 objection.

12 The State asks that the alternate remain. He came
13 forward with this. He's indicated that he did not have
14 any personal relationship with Mr. Bryant, that they
15 just happened to have gone to the same school. I
16 believe it was twelve years apart, was my understanding.

17 He's indicated under your inquiry that he could
18 remain fair and impartial and that this fact that they
19 had managed to go -- or happened to go to the same high
20 school would not affect his ability to be fair and
21 impartial. We would ask that he remain.

22 THE COURT: And that is correct. Mr. Ravenel, he
23 indicated he graduated in 1987, making him 46 years old.

24 Mr. Davis?

25 MR. DAVIS: Your Honor, you know, my decision is

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1 always to make-sure the integrity of the jury is not
2 influenced. I commend the young man for coming forward
3 having learned that, in fact, he graduated from Cross
4 High School and his representation that he knows --

5 THE COURT: Is everything okay?

6 MR. KEARSE: Just trying to get to the outlet, Your
7 Honor. That's all.

8 MR. DAVIS: -- that he has no knowledge of Mr.
9 James Bryant. He's not familiar with the family.

10 I just caution that at this point I just want to
11 defer to your decision, Your Honor. I may get more
12 anxious if actually he's put in a position to become one
13 of those twelve people that deliberate, but at this
14 point I'll just defer to the solemn wisdom of you, Your
15 Honor.

16 THE COURT: Thank you.

17 Mr. Kearse, are you in a position to address the
18 Court?

19 MR. KEARSE: I have no objection at this time.

20 THE COURT: Thank you.

21 Based upon what Mr. Ravenel indicated to the Court,
22 I am not going to remove him. He did indicate that he
23 could be fair and impartial and he did not know Mr.
24 Bryant in any way. Thank you.

25 [Whereupon, Court's Exhibit Number 3 is marked by

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1 the court reporter]

2 THE COURT: Mr. Bryant, please resume your position
3 in the witness stand.

4 [Whereupon, Mr. Bryant retakes the witness stand]

5 THE COURT: Anything before we bring in the jury?
6 From the State?

7 MR. ALFARO: No, Your Honor.

8 THE COURT: Mr. Davis?

9 MR. DAVIS: Nothing.

10 THE COURT: And Mr. Kearse?

11 MR. KEARSE: Nothing from Mr. Moses.

12 THE COURT: Thank you.

13 Mr. Bryant, I remind you, first of all, that you
14 are still under oath.

15 And did you discuss your testimony with anyone
16 during the break?

17 THE WITNESS: No, I didn't.

18 THE COURT: Thank you.

19 [Whereupon, the jury enters the courtroom at
20 11:06 a.m.]

21 THE COURT: Thank you. Please be seated.

22 Mr. Davis, your witness.

23 MR. DAVIS: May it please the Court, Your Honor.

24 Hey, Mr. Bryant. How are you doing this morning?

25 THE WITNESS: Not so good, but I'm here.

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CROSS-EXAMINATION

BY MR. DAVIS:

Q. You have sat through all the testimony so far, haven't you, sir?

A. That is correct.

Q. And, in fact, you were here from the inception of the opening arguments by the prosecutor and by my self? Sir?

A. Yes.

Q. You can speak, can't you?

A. Yes.

Q. Now, I want to get to one point, and then you and I will go through this together. Okay? I promise to respect you and you promise to respect me. That's fair enough?

A. Yes, sir.

Q. I promise to allow you an opportunity to respond without cutting you off. Sir?

A. Yes, sir.

Q. And you promise to answer verbally when you can?

A. Yes, sir.

Q. You plan to speak loud enough for the jury to hear?

A. Yes, sir.

Q. You grew up in Cross; right?

A. Say it again?

Q. You grew up in Cross?

A. Originally from Jamaica Queens. But I ended up in

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1 Cross, correct.

2 Q. So Jamaica Queens?

3 A. Yes, sir.

4 Q. New York?

5 A. Yes, sir.

6 Q. How long were you in New York?

7 A. Born.

8 Came down here when I was six years old, seven
9 years old, something like that.

10 Q. Oh. So --

11 A. My mother's from Beaufort and my dad's from Cross.

12 Q. Okay. But you would say the bulk of your childhood
13 is in Cross?

14 A. Yes.

15 Q. Okay. Now, let's deal with one issue first. On
16 your direct testimony you said -- this is your words -- that
17 you came to the aid of Rick Enriquez. Sir? Isn't that what
18 you testified?

19 A. Yes.

20 Q. Why did you see the need to come to his aid?

21 A. Because it was two people versus -- whether he was
22 starting it or not, it was two people there so I went to, you
23 know, stand with my friend, so to speak.

24 Q. You went to stand with your friend. And it did not
25 matter who started it or who provoked it?

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1 A. I went to stand with my friend.

2 Q. I mean, I'm using your words.

3 You said it did not matter, you went to stand with
4 your friend. True?

5 A. True.

6 Q. Now, let's just flip that quickly outside where the
7 shooting took place. You have seen that video how many times,
8 sir?

9 A. More than I would like to. I can't remember how
10 many times, but --

11 Q. And it never changes, does it?

12 A. No. It's terrible every time.

13 Q. That's right.

14 Now, and that depiction of what's happening, you
15 would agree with me that apparently Mr. Moses was about to
16 discuss or say something to your friend Rick; isn't that true?

17 A. He came in aggressive, period, because we thought
18 they were gone, period.

19 Q. We?

20 A. Yeah.

21 Because we was minding our business, as you could
22 see on the tape.

23 Q. Yeah. Well, we'll get to that in a minute.

24 A. Okay.

25 Q. I just want to nail down this point.

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1 You've been able to look at your movements that
2 night; have you not?

3 A. Yes.

4 Q. And your movements -- at first you pull your slacks
5 up?

6 A. Because I felt aggressed. Because --

7 Q. And then you are on the go? Sir?

8 A. Yeah.

9 Because they came towards us, I was going towards
10 them.

11 Q. Ain't no they. Ain't --

12 A. Well, he --

13 Q. -- no they.

14 A. Well, mister --

15 Q. No they.

16 A. What's his name? Mister -- my memory is bad. The
17 other gentleman.

18 Q. The other gentleman.

19 A. He approached us.

20 Q. Yeah.

21 Not us. You pulled your britches up and went
22 toward Mr. Steven Moses, did you not?

23 A. I did.

24 Q. Not only did you move in that direction, but the
25 Bohannans did both likewise?

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1 A. I can only speak for myself, because --

2 Q. -- but you've seen --

3 A. -- seeing the tape --

4 Q. -- the tape --

5 A. -- everybody moved in that direction. Yes.

6 Q. That's right.

7 A. Yes.

8 Q. And Rick Enriquez run in that direction, also;
9 right?

10 A. Yes.

11 Q. I want to understand this. If you can come to the
12 aid of your friend Rick, why couldn't Jason Gourdine come to
13 the aid of Moses -- I mean, to Steven Moses?

14 A. Nobody had no guns. Nobody --

15 Q. -- that's not my question --

16 A. -- had --

17 Q. My question is what -- why shouldn't he be able to
18 come to the aid of Steven Moses?

19 A. In the proper setting I think he should, yeah. Why
20 not..

21 Q. Well, let's review the proper setting.

22 A. Yeah.

23 Q. Let's go back to your situation about the proper
24 setting.

25 A. Uh-huh.

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1 Q. What was proper about a setting that it doesn't
2 even matter to you whether Rick provoked the incident inside
3 the bar or not? You still came to his aid; right?

4 A. Yes.

5 Q. Not only did you come to his aid, but you actually
6 got engaged and attempted or did assault someone, did you not?

7 A. Yeah.

8 Q. Okay. Yeah.

9 Was that right, Mr. Bryant?

10 A. Everything that night wasn't right, so --

11 Q. Thank you. Thank you.

12 A. -- what can I say?

13 Q. Thank you. Wasn't right.

14 A. Everything.

15 Q. And you understand, son, that sometimes when things
16 appear to be over, it's not necessarily over; isn't that true?

17 A. It's sad but, yeah, that's --

18 Q. That's the truth.

19 A. -- that's the truth.

20 Q. Because each actor or individual have their own
21 specific state of mind; isn't that true?

22 A. That is true.

23 Q. And you heard me in opening statement talking about
24 people having hearts of war --

25 MR. ALFARO: Objection. Opening statement is not

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1 evidence.

2 THE COURT: Sustained.

3 MR. DAVIS: Okay.

4 Q. [Mr. Davis] You heard my opening statement,
5 though, didn't you?

6 A. I can't -- my memory is totally off. So I was
7 here. But if you want me to word-for-word, I could not --

8 Q. That's okay. Let's go back to the night this
9 happened --

10 A. Uh-huh.

11 Q. -- see if we can help -- I want to give you -- can
12 I -- you gave a statement, did you not?

13 A. Yeah.

14 Q. I just want this marked. Okay.

15 You said that you had been to a house near Sonoco
16 at Red -- in Red Bank. That's true?

17 A. That's where Rick Enriquez lives.

18 Q. And that y'all picked up some beer?

19 A. Uh-huh.

20 Q. Did you consume the beer?

21 A. We drunk a few out of it.

22 Q. And what time was this?

23 A. I can't recall. Three years ago.

24 Q. Well, we know that, in fact, it was before you
25 actually went to the Nowhere Bar; isn't that true?

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1 A. That is correct.

2 Q. So you had some beer. Did you have any other
3 things?

4 A. No.

5 Q. Did Rick have anything?

6 A. No.

7 Q. No illegal drugs or nothing?

8 A. No.

9 Q. Okay. So y'all drank some beer. And then y'all go
10 to the Nowhere Bar?

11 A. That is correct.

12 Q. And have some more drinks?

13 A. Yes, sir.

14 Q. What time is it?

15 A. I can't recall the sequence of events. We ended up
16 there and we started drinking.

17 Q. Drinking some more?

18 A. Uh-huh.

19 Q. Sir?

20 A. Yes, sir.

21 Q. And you stayed there until it was near closing or
22 closing?

23 A. Yeah. We're sitting there fellow-shipping. Yeah.

24 Q. And at some point you saw the need to come to the
25 aid of Rick?

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1 A. Yes.

2 Q. To the extent that you assaulted [phonetic] some
3 guys that did not provoke or did not even engage with you?

4 A. I wouldn't call it insult. But --

5 Q. Well, what do you call swinging at someone?

6 A. If you don't hit them, how is that assault? I'm
7 just asking.

8 Q. Well, so you think you actually have to connect?

9 A. Well, that's the only way it could be classified as
10 what you found -- you know, I mean --

11 Q. So you believe it's okay?

12 A. I didn't say nothing was okay that night, period.

13 Q. Nothing was okay that night?

14 A. Yeah.

15 Think about it. My life is ruined. Nothing was
16 okay that night.

17 Q. We'll get to your ruined life in just a minute.

18 A. Okay.

19 Q. Do you remember on that tape or video going outside
20 and bragging about what y'all had just accomplished?

21 A. No, no, no, no.

22 Q. Well, tell me, what is Ms. Stacy Bohannon
23 referencing --

24 MR. ALFARO: Objection.

25 THE COURT: Sustained.

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1 Q. [Mr. Davis] Do you recall the term Ali that night?

2 A. No, I don't recall.

3 Q. Do you recall Rick getting in a posture like this
4 [indicates]?

5 A. Rick -- anybody who knows Rick, he does that all
6 the time.

7 Q. He's always in that posture?

8 A. You know, Rick is just that type of guy. You know,
9 he's, you know, energetic, trash-talker. You know, he's --
10 you know.

11 Q. And he's your friend?

12 A. Used to be my friend.

13 Q. He was your friend on July 28th, 2013?

14 A. That is correct.

15 Q. He's your friend that you came to the aid of?

16 A. Yes.

17 Q. He's your friend that caused you to assault and
18 push and shove these innocent gentleman out of the bar that
19 night; isn't that true?

20 A. Yes.

21 Q. Okay. Now, you leave the bar at some time and go
22 back to Rick's house a second time; isn't that true?

23 A. Yeah, I think we did, if I'm not mistaken.

24 Q. Yeah.

25 A. I can't remember.

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1 Q. Drank some more again?

2 A. We was drinking that evening, so it was not like we
3 was drinking --

4 Q. All day?

5 A. Not all day, because we have jobs. So, you know,
6 when we got together that night, we -- you know, we started
7 drinking.

8 Q. And y'all drink going up to two o'clock that
9 morning?

10 A. Yeah.

11 Q. And, in fact, when you presented yourself to the
12 hospital, the doctor described your behavior as abnormal?

13 A. If you check my arm, and you think you're about to
14 die, my -- I was -- every time I became coherent, I was either
15 in a tunnel somewhere, people trying to strap me down. It was
16 chaos. Then I'd black out. Then I would wake back up and
17 something else is going on. So of course I'm sure it was
18 abnormal.

19 Q. You don't believe your aggressive behavior and
20 mannerism had anything to do with that?

21 A. With the hospital?

22 Q. With everything.

23 A. No, because well enough was done. The night was
24 over with --

25 Q. Well, not --

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1 A. -- we was about to go home.

2 I'm arguing with my buddy, get out my front seat,
3 that's my spot, I'm the biggest guy, I get in the front seat.
4 We're laughing and joking about that.

5 Q. I am the biggest guy.

6 A. Yeah.

7 In my -- in the little group I was in, every time I
8 drive -- I ride with a friend of mine, I always ride in the
9 front seat. That's just like a no-brainer.

10 Q. And you always an enforcer, too, apparently of --

11 A. That's never the case.

12 Q. You the guy --

13 A. -- I'm going to tell you fair. Everybody loves me.
14 You know, you're trying to paint a bad picture, but I'm not a
15 bad guy.

16 Q. I ain't painting anything.

17 I think that the video tells you who you are.
18 That's you on that video; right?

19 A. It sure is.

20 Q. That's you striking at someone, isn't it?

21 A. Yes.

22 Q. That's you shoving someone out of the bar, out of
23 the door, isn't that, sir?

24 A. That is.

25 Q. That's you in an aggressive step towards Moses?

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1 A. Once I was engaged.

2 Q. My point is that's you.

3 A. Yes.

4 Q. Okay. I'm not painting you. The depiction
5 yourself is being painting for your actions on July the 28th,
6 2013. I'm not painting that. Who was in the video?

7 A. The guy who got shot.

8 Q. And who is that?

9 A. James Bryant.

10 Q. Thank you.

11 Did the bartender ask you to get involved in this
12 matter?

13 A. No, sir.

14 Q. Why did you?

15 A. I just told you I went to the aid of a friend.

16 Q. I'm talking about much earlier when the bartender
17 -- I'm understanding when Rick -- when you were engaged before
18 that point.

19 A. When she mentioned, I was serving Big all night, I
20 just raised my hand up, confirming that she was serving a
21 black customer all night.

22 Q. And what else as a result of your big hand and --

23 A. I never moved until things started moving towards
24 the door. I stayed in my spot.

25 Q. The video speaks for itself.

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1 A. Yeah.

2 Q. There's no question that neither -- that this --
3 did Jason Gourdine say anything confrontation to you,
4 Mr. James Bryant?

5 A. No.

6 Q. Did he at any time enter into your space, violate
7 you?

8 A. No.

9 Q. Why, then, did you shove, I mean, forcefully under
10 his neck in that bar?

11 A. [No response]

12 Q. Sir?

13 A. Heat of the moment. Trying to kill a situation.
14 It was --

15 Q. Heat of the moment. Kill the situation. Heat of
16 the moment. Kill the situation.

17 Aggressive. Plain, old-fashioned aggressive is
18 what you were performing; isn't that true?

19 A. That's what you call it.

20 Q. You said you are a teddy bear. That's what you
21 said.

22 A. That's everybody who knows me.

23 Q. You know, I don't.

24 Jason Gourdine would not consider you a teddy bear,
25 sir.

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1 A. First time I ever met him in my -- well, first of
2 all, hadn't never met him, never seen him. Never, ever.

3 Q. And that's my point. Why would you, the teddy
4 bear, shove your elbow, that same elbow, in front of his neck?

5 A. This wasn't an elbow.

6 But, anyway, if you were out with your friends --
7 say you and your other co-counsel go out to a bar and somebody
8 has a problem with him, you're going to inject yourself into
9 it whether you say you are or not. And that's just human
10 nature. We come together. Sometimes we end up in the same
11 situations together.

12 Q. And, sir, I beg to differ with you, sir. Not to
13 say that I would not find myself in a bar, sir. I wouldn't
14 say that. But I beg to differ with you in reference to
15 judgments and cooler heads. You failed that night, didn't
16 you, sir?

17 A. Your opinion?

18 Q. I just asked you a question.

19 A. I don't think I -- no.

20 Q. You do not believe you failed?

21 A. No. It was cool.

22 Q. You're prone to do this again?

23 A. No, sir.

24 Q. Well, I'll ask you again.

25 A. My record can show you that. I'm not that guy.

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1 Q. I'm not asking you about your record. I'm asking
2 you a question. Would you carry out the same acts that you
3 did on July 28th, 2013, if confronted with it tonight?

4 A. No, because my whole life is different.

5 I don't go nowhere, I don't trust nobody, I don't
6 do nothing. So that will not happen, because it can't because
7 I'm confined to my own space.

8 Q. Well, now you appreciate other people confinement
9 of space. That's wonderful news. Don't you, sir? You
10 appreciate other people confinement of space; isn't that true?

11 A. Do what, now?

12 Q. I believe you was confinement of space --

13 A. Yeah. I was just explaining my situation.

14 Q. Well -- well --

15 A. I can't speak for nobody else.

16 Q. Well, today, sir, I represent Jason Gourdine, who's
17 on trial. Okay?

18 A. Yeah. The guy who shot me.

19 Q. I'm explaining his situation, his space that you
20 violated on July the 28th, 2013, did you not?

21 A. He violated my space by blocking us in and -- and
22 his friend coming over to engage us. We were minding our
23 business.

24 Q. We'll get to that. But let's go back in the bar.
25 Sir?

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1 A. Okay.

2 Q. Did you violate his space within the bar?

3 A. In the aid of my friend, if you want to call it
4 that, I'll take that.

5 Q. You'll take that?

6 A. Yeah, I'll take that.

7 If I'm guilty for that in the bar, I'll take that.
8 But outside the door when we were minding our business, when
9 all the dust is settled, and then hellfire comes back, that's
10 not right.

11 Q. Dust has settled.

12 All of this, sir, took place in a span of I still
13 say 720 seconds.

14 A. That's how long it took for my life to be ruined.

15 Q. Yeah. I understand that.

16 A. I don't think you do, to be honest with you.

17 Q. You want to talk of ruining? You want to talk of
18 ruining? Are you sitting in this [indicates] chair, sir?

19 MR. ALFARO: Objection.

20 THE COURT: Sustained.

21 A. I'm not. But my kids are suffering.

22 THE COURT: You do not have to answer that, sir.

23 THE WITNESS: Oh.

24 THE COURT: Thank you.

25 Q. [Mr. Davis] Well, were you charged with assault in

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1 this case, sir?

2 A. No.

3 Q. Huh?

4 A. No, sir.

5 Q. Do you think you should have?

6 A. No.

7 Q. Okay. That's right. Uh-huh.

8 You don't believe that words can communicate
9 fights? Do you believe that words can communicate fights?

10 A. Yeah. Fight is fight. Killing is something else.

11 Q. We'll deal with your killing aspect, trust me.

12 You're not a doctor. You'll agree with that?

13 A. I'm a victim. I have personal things that I can
14 speak of that no one else in this world can attest to.

15 Q. And you're on disability because of that?

16 A. Yes. A small check every month.

17 MR. ALFARO: Objection.

18 THE COURT: Sustained.

19 Q. [Mr. Davis] You get a relationship to what you put
20 into the system, isn't that true?

21 A. Yes.

22 Q. All right. Do you expect more than you put in?

23 MR. ALFARO: Objection.

24 A. Well, it's small to me because --

25 THE COURT: Mr. Bryant, if there is an objection, I

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1 need you to stop speaking so I can rule on it.

2 THE WITNESS: Okay.

3 THE COURT: All right?

4 THE WITNESS: Sorry about that.

5 THE COURT: Sustained.

6 MR. DAVIS: What's the basis?

7 THE COURT: Sustained.

8 Q. [Mr. Davis] Sir?

9 A. The check is small. It --

10 THE COURT: Mr. Bryant, I sustained it --

11 THE WITNESS: Oh.

12 THE COURT: -- so you do not answer that question.

13 THE WITNESS: Okay. Okay.

14 THE COURT: Thank you.

15 Q. [Mr. Davis] You will never accept responsibility
16 for your actions, sir, will you?

17 A. I accept them.

18 Q. You do?

19 A. Yeah.

20 For anything that I've done, yeah, because I --
21 nobody's looking for me. Everybody knows where I am.

22 Q. And so in that relationship and in that vein, you
23 understand, then, my client coming to the aid of Mr. Steven
24 Moses?

25 A. No, because they left, came back. I

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1 can see if we had guns in the bar or we aggressed
2 them with guns or -- they left, came back, came to seek
3 someone --

4 Q. Mr. Bryant --

5 A. -- violating our space --

6 Q. Mr. Bryant, when you go to war --

7 MR. ALFARO: Objection, Your Honor.

8 A. I was in war. I was in war.

9 THE COURT: Hold on one second. Hold on -- Mr.
10 Bryant, one more time.

11 THE WITNESS: I'm sorry.

12 THE COURT: Mr. Alfaro is a little soft-spoken and
13 it's hard, but when he stands up I need you to stop
14 talking so I can rule on his objection.

15 THE WITNESS: Okay.

16 THE COURT: What is the basis of your objection?

17 MR. ALFARO: The witness should be allowed to
18 answer -- finish answering the question. Mr. Davis
19 keeps cutting him off.

20 THE COURT: Mr. Davis, please let him finish --

21 MR. DAVIS: We made that --

22 THE COURT: -- you made that promise to him.

23 MR. DAVIS: We made that promise.

24 THE COURT: All right.

25 MR. DAVIS: I think I've kept it.

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1 THE COURT: Were you finished with your previous
2 question? He's already gone on to another one.

3 A. Just that flash. I forgot what I was talking
4 about. What was I --

5 THE COURT: Mr. Davis, please, in the future, allow
6 him to finish his question.

7 MR. DAVIS: I think I have.

8 THE COURT: All right. Thank you.

9 Q. [Mr. Davis] Sir, when you made the decision to
10 come to the aid of your friend --

11 Which you did; isn't that true?

12 A. In the bar. Correct.

13 Q. -- you had no way of really controlling what was
14 going to transpire after that, sir, would you?

15 A. No.

16 Q. Okay. So if these gentlemens had not been
17 gentlemens and had retaliated with a knife, brass knuckles,
18 that would have just been the subtotal of the fight, wouldn't
19 it have been?

20 A. Well, they did retaliate. They went and got --

21 Q. I'm talking about in the bar did they retaliate.

22 A. No. They promised --

23 Q. Did they --

24 A. They made threats of retaliation.

25 And nobody even paid that no attention. It's right

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1 there on the --

2 Q. Who did that assault in the bar, sir?

3 A. Say that again.

4 Q. Who assaulted who inside the bar?

5 A. It was Rick attempting to assault.

6 And I guess you could say I assaulted, but you
7 really -- I'm not sure if I made contact or not.

8 Q. Did you have any justification to touch these
9 gentlemen?

10 A. No.

11 MR. DAVIS: Okay. No further questions.

12 THE COURT: Mr. Kearse?

13 MR. KEARSE: If it please this Court.

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CROSS-EXAMINATION

BY MR. KEARSE:

Q. Mr. Bryant, how tall are you?

A. Six four.

Q. How much do you weigh?

A. Down to 308.

I got fatty liver, so I had to lose weight.

Q. And at the time of this incident July 28th, 2013, I
imagine you were still six four; correct?

A. I was.

Q. And you were still around 300-and-so pounds?

A. I was.

Q. How much? Do you remember exactly how much you
weighed?

A. Not exactly.

Q. Would you say it was more than what you weigh now?

A. Yes. Give or take ten pounds.

Q. And you would agree that's substantially bigger
than Mr. Gourdine or Mr. Moses?

A. Yes.

Q. All right. Would you not agree that when Mr. Moses
and Mr. Gourdine walked into this bar, they did not address
you in any way?

A. I didn't even notice them coming into the bar.

Q. Would you also agree with me that while they were

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1 in the bar trying to get a drink, they did not address you in
2 any way?

3 A. No.

4 Q. While they were trying to get a drink, did they
5 address you?

6 A. No.

7 Q. All right. And would you also agree that at the
8 time they were walking out of the door or towards the door,
9 they did not address you?

10 A. No.

11 Q. Would you also agree with me that at the time your
12 friend Enrique Rick Maron, Jr., walked towards Mr. Moses,
13 Mr. Moses did not address you?

14 A. No.

15 Q. All right. Would you also agree that at the time
16 Mr. Maron threw a punch at Mr. Moses, Mr. Moses did not
17 address you in any way?

18 A. That is correct.

19 Q. All right. Would you not also agree that at the
20 time you took it upon yourself to walk over behind Mr. Maron
21 and to push on either Mr. Moses or Mr. Gourdine, Mr. Moses and
22 Mr. Gourdine did not address you?

23 A. That's correct.

24 Q. All right. And so that -- at least at no time in
25 the bar did either one of these gentlemen, most specifically

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1 Mr. Moses, ever address you?

2 A. That is correct.

3 Q. And that would include ever say any threatening
4 words towards you; correct?

5 A. And I didn't threaten them, either. That's
6 correct.

7 Q. Well, that's not my question.

8 A. Okay.

9 Q. My question is they never said any threatening
10 words towards you?

11 A. That is correct.

12 Q. Specifically Mr. Moses? Mr. Moses never made any
13 attempt to touch you, correct --

14 A. Correct.

15 Q. -- while inside that bar?

16 A. Correct.

17 Q. All right. And you would agree that you didn't go
18 over there by yourself in the bar when you had a crowd of
19 people who also converged on Mr. Moses and Mr. Gourdine;
20 correct?

21 A. Correct.

22 Q. All right. Now, in your testimony with Mr. Davis,
23 you just said it didn't matter whether Mr. Maron was right or
24 wrong, he was your friend?

25 A. Went to the aid of my friend, to be honest.

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1 Q. So even if Mr. Maron took it upon himself to go and
2 without provocation assault someone in a bar because he was
3 your friend, you had his back?

4 A. Well, let's see. Let's think about life. You
5 learn who people are. And before this happened, he was a good
6 friend until I saw that his actions could, you know -- you
7 know, affect other people. That's the kind of people you
8 don't need to be around.

9 Q. His actions --

10 A. Far too late for that. But at the end of the day,
11 that's what it was when it happened.

12 Q. But at that time when you took it upon yourself --

13 A. Took it upon myself.

14 Q. -- even though your friend --

15 A. That's right.

16 Q. -- you went over there as he's on his own, pushing
17 people, you decided you were going to go over there and get
18 his back; correct?

19 A. Because it was two guys, so of course I was going
20 to walk over there.

21 Q. All right. Well, they didn't throw a punch at him;
22 correct?

23 A. Well, at the heat of the moment, we didn't know who
24 was going to do what.

25 And then it was over with, and then everybody

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1 commenced to doing what they were doing.

2 Q. When you saw your friend throw a punch at Mr. Moses
3 and no punch was thrown back, you still proceeded to start
4 pushing on these gentlemen; correct?

5 A. Well, that's when the trash-talking started. So,
6 you know, hey, everybody was talking. They were saying stuff
7 back too, correct?

8 Q. All right. So your answer is yes?

9 A. Yes.

10 Q. Okay. I'm going to --

11 MR. KEARSE: If I can approach, Your Honor?

12 THE COURT: You may.

13 Q. [Mr. Kearse] I'm going to hand you Defendant's
14 Number 2, first of all. Exhibit Number 2. Can you look at
15 that picture?

16 A. Uh-huh.

17 Q. All right. Now, that's a photograph of Mr. Maron
18 in front of you, is it not?

19 A. That is correct.

20 Q. And so that's him approaching Mr. Moses and Mr.
21 Gourdine in the bar, is it not?

22 A. That's correct.

23 Q. You would agree?

24 All right. And in the midst of that I think is
25 Ms. Chenoweth; is that right?

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1 A. Yes.

2 Q. All right. I'm going to hand you Defendants'
3 Number 3. Take a look at that.

4 [Whereupon, the witness reviews documents]

5 Q. [Mr. Kearse] That's you moving past Mr. Maron; is
6 it not?

7 A. That is correct.

8 Q. And, again, neither one of these gentleman, more
9 specifically Mr. Moses, ever said anything to you in that bar;
10 correct?

11 A. That is correct.

12 Q. All right. And so you --

13 A. You see him touching me right there? Because my
14 hand's not extended on him, but his is on mine. But you
15 forgot to bring that up.

16 Q. Again, I'm asking you did they say anything to you.

17 A. No.

18 Q. All right. And you would agree you went over there
19 on your own --

20 THE COURT: Mr. Kearse, that's not -- first of all,
21 you need to ask for you to approach a jury.

22 MR. KEARSE: Your Honor's permission to --

23 THE COURT: So if you want to publish those, then
24 you need to stop talking until all fourteen jurors have
25 viewed the documents.

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1 MR. KEARSE: Yes, ma'am.

2 THE COURT: Thank you.

3 [Whereupon, the jury reviews documents]

4 THE COURT: You need to give it back to her, then.

5 MR. KEARSE: Your Honor, I would like to publish
6 Defendant's Exhibit Number 2, which is already into
7 evidence at this time.

8 THE COURT: If you'll hand it to the bailiff, she
9 will hand it to the jury. Thank you.

10 [Whereupon, the witness reviews documents]

11 MR. KEARSE: Your Honor, at this time, I would like

12 --

13 THE COURT: Hold on one second. We have one more
14 juror.

15 MR. KEARSE: I'm sorry. I didn't see that. I
16 apologize.

17 THE COURT: Mr. Kearse, if you want to ask about
18 two photos and then hand them to the jury, that would
19 be --

20 MR. KEARSE: Yes, ma'am.

21 THE COURT: -- acceptable, as well.

22 Q. [Mr. Kearse] Okay. Publish this as Defendant's
23 Exhibit Number 4. Also into evidence, Mr. Bryant. Is that
24 you over there looking at your friend?

25 A. That is Rick.

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1 Q. All right. And this is after your friend throws a
2 punch at Mr. Moses; correct?

3 A. That's correct.

4 Q. And so you see that and you decide it's time for
5 you to get on it?

6 A. Yeah, because his other friend is moving into the
7 picture, as you can see.

8 Q. And that makes it your business?

9 A. Well, that makes it his business?

10 Q. No. That's not what I'm saying.

11 A. Oh.

12 Q. My question, Mr. Bryant -- not to cut you off.

13 A. Okay.

14 Q. -- but that makes it your business?

15 A. Friends helping friends. Right?

16 Q. Friends helping friends.

17 MR. KEARSE: At this time, Your Honor, I would like
18 to publish Defendant's Exhibit Number 3 and Defendant's
19 Exhibit Number 4 to the jury.

20 THE COURT: Please hand it to the bailiff. Thank
21 you.

22 Madam Foreperson, the pictures don't necessarily
23 have to stay together, since we're going to be taking a
24 break. And the reason I do that is because I want each
25 of you to take the time necessary to view each of the

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1 exhibits so you won't miss anything that is happening on
2 the witness stand.

3 [Whereupon, the jury reviews documents]

4 Q. [Mr. Kearse] I hand you what's marked as
5 Defendant's Exhibit Number 5, Mr. Bryant. That's you in that
6 photograph?

7 A. That is correct.

8 Q. All right. And isn't that a picture of you and
9 your friends pushing these two gentlemen out of that bar?

10 A. Well, you see no contact of no kind, but you see us
11 at the door and see them in the door.

12 Q. And that's after -- let's say that's after y'all
13 pushed them out of the bar?

14 A. That's -- well, I can't say anything. That's what
15 the picture says. The picture says we're standing here and
16 they're standing there.

17 Q. Well, other than the picture, you do admit y'all
18 pushed them out of the bar; right?

19 A. I'm not sure if my hands actually touched him.
20 Now, that I can't really say. Even on a tape that's not clear
21 if I actually touched him.

22 Q. Okay. But you was trying to push him out the bar?
23 You admit that much; right?

24 A. Yeah, I was trying.

25 Q. All right.

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1 A. And it was over with.

2 Q. And I'm marked [sic] to you as Defendant's Exhibit
3 Number 6.

4 A. Uh-huh.

5 Q. That's also you?

6 A. In the doorway. Correct.

7 Q. Right. You're trying to push these gentlemen out
8 the bar; correct?

9 A. It's blurry, no connection, but, yes, that's me in
10 the door.

11 Q. All right. Along with your friends?

12 A. Well, Rick is my friend. These -- everybody else I
13 just met. You know, they're nice people. I consider them
14 friends now, but, you know --

15 Q. Y'all started drinking and had a good time and they
16 became your friends July 28th, 2013?

17 A. No.

18 They -- I could see the care, after I almost died,
19 from these people. That's why we're friends, not because we
20 were drinking that night.

21 Q. And you admit you did not work for the bar?

22 A. No.

23 Q. And you are not a police officer?

24 A. No.

25 Q. You wasn't that night?

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1 A. No, sir.

2 Q. And you have no law enforcement authority
3 whatsoever?

4 A. None at all.

5 Q. All right. But it was okay for you to go and put
6 your hands on these two -- or try to put your hands on these
7 two gentlemen that night?

8 A. I went to the aid of my friend, just like Mr.
9 Gourdine went to the aid of his friend.

10 Q. I hand you Defendant's Exhibit Number 7.

11 A. Yes.

12 Q. Do you recognize that photograph?

13 A. Yeah.

14 Q. That's you and your buddies all giving each other a
15 Kumbaya hug after the incident, isn't it?

16 A. No, it wasn't.

17 That was me telling them chill out, everything's
18 good, let's go back to drinking. You could hear it saying it.

19 MR. KEARSE: Your Honor, at this time I would like
20 to publish Defendant's Exhibit Number 5, Number 6, and
21 Number 7 to the jury.

22 THE COURT: You may.

23 [Whereupon, the jury reviews documents]

24 Q. [Mr. Kearse] Mr. Bryant, after this incident, did
25 you stay in the bar until -- how long did you stay in the bar?

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1 A. I stayed in there until they pretty much, oh, come
2 on, let's get out of here, we're closing, come on.

3 I really didn't -- you know, I was having a good
4 time with the new people I met, you know. I don't know how
5 long we been there. But I -- I stayed inside the bar minding
6 our own business, joyful tone, getting along with everybody as
7 we were before the incident even roused up.

8 Q. Okay. And you did not walk out of the bar until
9 you went towards the van; correct?

10 A. Until I was escorted out because they were about to
11 lock the door. So they were, come on. They walked me to the
12 car. We laughing and joking.

13 Q. So you cannot say whether Mr. Moses or Mr. Gourdine
14 left the premises prior to walking towards the van; right?

15 A. I didn't know they left the premises until I saw
16 the tape because --

17 Q. All right. Well, again, let me back up. All
18 right? You cannot say that they left the premises, because
19 you were in the bar; correct?

20 A. That is correct.

21 Q. All right. And so whatever you say in response to
22 that question from the State is based on your interpretation
23 of the video you saw; correct?

24 A. Correct, because being the trauma I been through,
25 ninety percent of this stuff I can't remember. I can't

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1 remember if I locked my front door.

2 Q. Okay. Now I want to hand you Defendant's Exhibit
3 Number 8. That gentleman in the long white tee-shirt with the
4 long khaki shorts, is that you?

5 A. That is correct.

6 Q. All right. And the person who is exiting the van,
7 is that your friend Rick?

8 A. That is correct.

9 Q. And you're standing next to Ms. Bohannan and
10 Mr. Bohannan?

11 A. That is correct.

12 Q. All right. And in that picture, you are rushing
13 towards Mr. Moses, are you not?

14 A. That is correct. Because he came over there
15 engaging us.

16 MR. KEARSE: Your Honor, at this time I would like
17 to publish Defendant's Exhibit Number 8.

18 THE COURT: You may.

19 Q. [Mr. Kearse] And that would be Mr. Moses in that
20 white tee-shirt --

21 A. That is correct.

22 Q. -- would it not?

23 Okay. And he is running away from you, is he not?

24 THE COURT: You can't -- it's one or the other. So
25 either the jury gets --

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Cross-Examination by Mr. Kearse
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1 MR. KEARSE: Oh. I'm sorry.

2 THE COURT: -- the copy of --

3 MR. KEARSE: I'm sorry. I --

4 [Whereupon, the jury reviews documents]

5 A. Yeah, they --

6 Q. [Mr. Kearse] They started running away from you,
7 didn't they?

8 A. That's him baiting me for the gun. That's what
9 he's doing.

10 Q. Mr. Bryant --

11 A. It's on the tape.

12 Q. Mr. Bryant, you call it bait. Let's say --

13 A. Well, what did he -- why did they go home?

14 Q. Can I ask my question, sir?

15 A. Yes, sir.

16 Q. Okay. He ran from you, did he not?

17 A. He came over there. He could have --

18 Evidently, him and his partner already had a plan
19 to ambush the whole scenario. Because if they didn't, why did
20 they go home? Nobody was looking for them. They came looking
21 for us.

22 Q. Are you ready to answer my question?

23 A. Your question is?

24 Q. He ran from you, did he not?

25 A. That fellow? Yes, sir.

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1 Q. All right. And you ran after him?

2 A. Yes, because they -- why on earth would these
3 people come back to look for trouble?

4 Q. Okay. Well, let's --

5 A. Since I'm so big and intimidating, why in the world
6 would they come back if all of a sudden I've horns on my head?
7 Why did they come back? Because they had something to do.

8 Q. All right. Let me ask you this. When Mr. Moses
9 walked up to the van --

10 He walked up to the van; right?

11 A. Yes.

12 Q. Okay. And when he walked up to the van, you didn't
13 see him with any gun; correct?

14 A. I didn't have one, either. Correct.

15 Q. Well, we're talking about Mr. Moses today.

16 A. Okay.

17 Q. All right? And that would be a yes?

18 A. Yes.

19 Q. You didn't see him with any knife?

20 A. No.

21 Q. You didn't see him with a bat?

22 A. No.

23 Q. All right. When he got to the van, he asked about
24 Mr. Maron, did he not?

25 A. He said, where's old boy from earlier, if I'm not

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1 mistaken.

2 Q. All right. And that was a Mr. Maron, was it not?

3 A. That is correct.

4 Q. All right. And when he got to the van, he didn't
5 throw a punch at you, did he?

6 A. No, he didn't.

7 Q. He didn't throw a punch at Mr. Bohannon?

8 A. No.

9 Q. All right.

10 A. All the people --

11 Q. Let me finish and ask my question, sir.

12 A. Okay.

13 Q. Okay? He did not even throw a punch at Mr. Maron,
14 did he?

15 A. No.

16 Q. And that's because you immediately started charging
17 after him, didn't you?

18 A. Yeah.

19 Because they threatened our space, period. Because
20 nobody was looking for them, worrying about them, or even
21 thinking about them.

22 Q. I'm going to hand you what's marked as Defendant's
23 Exhibit Number 10.

24 A. Okay.

25 [Whereupon, the witness reviews documents]

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1 Q. [Mr. Kearse] That gentleman in the white tee-shirt
2 at the corner end of that van, is that you?

3 A. At the -- facing at the rear left?

4 A. Correct. Passenger --

5 A. Yes.

6 Q. -- side.

7 A. Yes.

8 Q. All right. And someone is holding on to you, are
9 they not?

10 A. I can't tell from this picture. But she looks like
11 she's standing behind me. I don't know if that's holding.

12 Q. And when who -- you say she, who is the she who was
13 out in the parking lot?

14 A. Ms. Bohannon.

15 MR. KEARSE: Your Honor, at this time I would like
16 to publish Defendant's Exhibit Number 10 to the jury,
17 Your Honor.

18 [Whereupon, Mr. Kearse and Mr. McNeely confer]

19 THE COURT: All right. Are you going to put it on
20 the overhead?

21 MR. KEARSE: Yes, ma'am.

22 Q. [Mr. Kearse] So, again, that gentleman at the
23 back-rear passenger side of that van, that's you?

24 A. Correct.

25 Q. All right. And there was only one female in the

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1 parking lot at the time; correct?

2 A. Yeah. Correct.

3 Q. And that would be Ms. Bohannan?

4 A. Correct.

5 Q. (And she's hugging onto you. Would you not agree?

6 A. I don't know if that's hugging or standing behind.

7 If you play the video and then if I see it, then I
8 can really make a better --

9 Q. All right.

10 A. -- determination of it.

11 Q. You admit there was only one female out there?

12 A. Yeah.

13 Q. And you admit that that person is a female?

14 A. Yes.

15 Q. And that would be Mr. Moses all the way back to the
16 rear of the van; correct?

17 A. Clear of the gunshots. Correct.

18 Q. I thank you for the extra commentary. But that
19 would be Mr. Moses --

20 A. Well, it's the truth. Yes. He got out of the way
21 of the gunfire.

22 Q. All right. You said you and your friends, y'all
23 like to get together and watch UFC; is that correct?

24 A. That's the only sport I watch. I don't watch
25 football, basketball, nothing.

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1 Q. And for those who may not know what UFC is, that's
2 fighting in a cage, is it not?

3 A. Ultimate fighting.

4 Q. All right. And when y'all watch UFC, I imagine
5 y'all like to drink while you're watching it; right?

6 A. Yeah.

7 Q. All right. And so you get your testosterone going
8 seeing guys in a cage fighting each other?

9 A. No.

10 It's just a sport, the only sport, that I like.
11 So -- my son likes it, too. He can't play sports because of
12 his asthma, so we have something in common.

13 Q. Were you watching the UFC July 27th, 2013, before
14 you went to this bar?

15 A. No.

16 Q. Now, you admit that on this particular night, the
17 27th, is the night that proceeded the morning of the 28th, you
18 had gone to Sonoco to buy beer; right?

19 A. That was earlier because we -- yeah. We can buy
20 beer.

21 Q. So you had already drank at least, what, a six-pack
22 of beer before you went --

23 A. No. No, no, no.

24 Don't try to over-exaggerate the situation. You
25 know, we go get beer. We get like a six pack or something.

James Bryant
Cross-Examination by Mr. Kearse
March 16, 2016

1 You know what I mean? And then that's what make you go back
2 to the store, because you already drunk the six pack. Ain't
3 -- nobody's heavy drinkers like that.

4 When we got to the bar, then we kind of let -- you
5 know, the bartender was friendly, blah, blah, blah. We was
6 all together. That's when we started having -- you know, we
7 started drinking more than normally, I would say, because we
8 don't normally drink like that. We're working family men. We
9 don't have time for that. I actually had to be to work the
10 next day, but I missed that, in my old job.

11 Q. And you actually went to the bar twice that night,
12 did you not?

13 A. Yes, sir. No crime against that.

14 Q. And on both of those occasions, you were drinking
15 at the bar; correct?

16 A. I think I had one the first time, and then the
17 second time we settled in and just hung out.

18 Q. All right. And in between that, or around that
19 time, too, you also had some beer from Sonoco?

20 A. Yeah. But that -- yeah.

21 Q. Now, you got shot in the arm; correct?

22 A. Yes. Every pellet is still in there.

23 Q. One time?

24 A. One time. Cap and all. Finished me.

25 Q. And you admit that when you got shot, it was at the

James Bryant
Cross-Examination by Mr. Kearse
March 16, 2016

1 rear of that van?

2 A. Say it again.

3 Q. The rear of the van. That's the -- that's where
4 you got shot?

5 A. When he ran away from the kill zone -- once he was
6 clear, he opened fire. It was just that quick.

7 So as he was clear, he pulled the trigger and I
8 spent around to try to get -- run for cover, basically,
9 because I didn't know how far it was going to go after that.
10 I didn't know if he was going to come finish the job. I
11 didn't know what it was. And then my blood was pouring out of
12 my arm.

13 You're laughing. This is very personal to me.
14 This is not funny --

15 Q. I'm not laughing, Mr. Bryant. I'm trying --

16 A. -- I don't think any of this is funny.

17 Q. I'm not laughing --

18 A. So the situation that I was in, I don't wish it on
19 anyone.

20 Q. Mr. Bryant, let me ask the question again. Yes or
21 no. You admit you got shot at the rear of the van?

22 A. I got shot, yes.

23 Q. Right?

24 You admit you ran from where you were, when Mr.
25 Moses came --

James Bryant
Cross-Examination by Mr. Kearse
March 16, 2016

1 A. Approached us.

2 Q. -- up to the van, to where you got shot?

3 A. Yes, sir.

4 Q. You ran to that point?

5 A. Yes, sir.

6 Q. All right. You admit, once again, Mr. Moses did
7 not address you by name and ask where is the guy from earlier?

8 A. Yes.

9 Q. You admit when he asked you that, he did not hit
10 you in any manner?

11 A. He didn't ask me directly anything.

12 He came over there asking in general, with the
13 malice and -- you could tell it wasn't right. Why would he --
14 why did he come back?

15 Q. You admit you didn't wait to find out why he came
16 back; right?

17 A. Yeah.

18 Q. You admit you didn't wait to see if he dropped
19 money; correct?

20 A. [No response]

21 Q. Is that a yes?

22 A. What was that question again? It was something
23 funny.

24 Q. You admit you didn't wait until he could -- he
25 dropped -- he could have -- you didn't wait to see if he was

James Bryant
Cross-Examination by Mr. Kearse
March 16, 2016

1 asking whether he dropped his money or keys or driver's
2 license or wallet or anything; correct?

3 A. I know he didn't come there for that. And that, I
4 would have to assume because of the altercation. And if they
5 would have say -- stayed away, all our lives would be
6 different, every one of ours. But they chose to come back.
7 They had a point to prove --

8 Q. They had a point to prove --

9 A. Evidently so.

10 Q. -- so you rushed him?

11 A. Hey, I was in my space. He came and violated my
12 space.

13 Q. So that is a yes?

14 A. Yes.

15 Q. And when you rushed them, Mr. Bohannon and Mr.
16 Maron was right behind you?

17 A. Yeah.

18 Q. And I imagine you weren't rushing him to go give
19 him a hug, were you?

20 A. I was rushing to see, okay, evidentially they came
21 back to fight us. Why else would they have come back? But
22 come to find out, they came back to kill us.

23 They didn't come back to fight, they came back to
24 kill. Because if they came to fight, they would have come and
25 just fought right there. But that wasn't the case. They came

James Bryant
Cross-Examination by Mr. Kearse
March 16, 2016

1 back to kill, because they felt they couldn't beat the
2 situation, so they went and got a gun. I mean, it's plain as
3 day.

4 Q. Thank you, Mr. Bryant. My question is about you.

5 A. Okay.

6 Q. You rushed them because you --

7 A. I was threatened.

8 Q. -- were going --

9 A. Yes.

10 Because they came back into our personal space
11 after the altercation was over with.

12 Q. Let me finish, sir.

13 A. Okay.

14 Q. Let me finish my question.

15 You rushed them because you were going to fight
16 Mr. Moses; correct?

17 A. I was -- if it came to -- well, yeah. Basically,
18 yeah.

19 Why would you come back aggressing us? You should
20 have left us alone. It was over with. You know what I mean?
21 Everybody could have went to work the next day, everybody
22 could have tended to their families, and it would have been
23 done. But, no, they came back with guns. With a gun. Let me
24 correct that.

25 Q. Again, let me re-ask this question. When you saw

James Bryant
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1 Mr. Moses walking to the van --

2 A. I felt threatened and I went in that direction.

3 Q. Mr. Bryant --

4 THE COURT: Mr. Bryant, please let --

5 THE WITNESS: Okay.

6 THE COURT: -- Mr. Kearse finish his question. All
7 right? He will not attempt to interrupt you.

8 THE WITNESS: Okay.

9 THE COURT: But please let him finish his question,
10 and then --

11 THE WITNESS: Sorry about that.

12 THE COURT: -- and then once he is done, you may
13 answer.

14 Mr. Kearse?

15 MR. KEARSE: Thank you, Your Honor.

16 Q. [Mr. Kearse] When Mr. Moses walked up to that van,
17 you did not see any gun; right?

18 A. No.

19 Q. All right. You rushed him without seeing any gun,
20 going to fight him in the parking lot on July 28th, 2013, at
21 2:09 in the morning; correct?

22 A. Correct.

23 MR. KEARSE: I don't have anything further, Your
24 Honor.

25 MR. ALFARO: I just have one question, Your Honor.

James Bryant
Redirect Examination by Mr. Alfaro
March 16, 2016

REDIRECT EXAMINATION

BY MR. ALFARO:

Q. Mr. Bryant, when Mr. Moses comes up to y'all
outside the bar by the van, and I asked I believe it was he
said where's little man or where's he at --

A. Old boy, or something like that.

Q. -- did he ask if anybody had seen his keys?

A. No.

Q. Did he ask if anybody had seen his wallet?

A. No.

MR. ALFARO: Thank you.

MR. DAVIS: Just one question.

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James Bryant
Recross-Examination by Mr. Davis
March 16, 2016

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Tyrone Taylor, he remained in that vehicle, did he not? In the white van.

A. Yeah.

Q. He never moved?

A. Okay.

Q. His life has not been changed; isn't that true?

A. I don't know. I haven't seen him.

Q. He's not here today?

A. That is correct.

Q. He did not get out of that van; isn't that true?

A. Yeah.

Q. Did he get out of that van when these two gentlemen

--

A. No, no, no, no, no. No, no.

Q. Rick got out of that van. Sir?

MR. ALFARO: Objection, Your Honor.

THE COURT: Overruled.

A. Yeah. Because --

Q. [Mr. Davis] You moved toward that young man, didn't you?

A. Yeah, because I never got in the van.

Q. And you wanted to put your hands on him, didn't you, sir?

James Bryant
Recross-Examination by Mr. Davis
March 16, 2016

1 A. I wanted to see why they came back.

2 Q. You wanted to put your hands on him, sir.

3 A. If that's what you want to call it, that's what
4 you're calling it. I --

5 Q. What do you call it?

6 A. I call it seeing why they come back to aggress us
7 when things are over with.

8 Q. And so you wanted to put your hands on him?

9 A. I'm not going to say that. But if it came to that,
10 I would have.

11 MR. DAVIS: Thank you.

12 THE COURT: Mr. Kearse?

13 MR. KEARSE: Your Honor, just one follow-up.

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James Bryant
Recross-Examination by Mr. Kearse
March 16, 2016

RECROSS-EXAMINATION

BY MR. KEARSE:

Q. There was another young man in the van, also;
right?

A. Adam Marquetts.

Q. All right. And he didn't get shot, either, did he?

A. No.

MR. KEARSE: I don't have anything further, Your
Honor.

THE COURT: You may step down, Mr. Bryant. Thank
you.

[Whereupon, Mr. Bryant is excused and exits the
witness stand]

THE COURT: Call your next witness.

MR. MCNEELY: The State calls David Bohannan.

[Whereupon, Mr. Bohannan comes forward]

THE CLERK OF COURT: Put your left hand on the
Bible and raise your right.

[Whereupon, Mr. Bohannan is duly sworn by the clerk
of court as follows: do you solemnly swear or affirm
the testimony you shall give in this case shall be the
truth, the whole truth, and nothing but the truth, so
help you God]

THE WITNESS: Yes.

THE CLERK OF COURT: If you'll have a seat.

James Bryant
Recross-Examination by Mr. Kearse
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[Whereupon, Mr. Bohannon takes the witness stand]

THE CLERK OF COURT: State your full name for the
record and spell your last name.

THE WITNESS: My name is David Bohannon.

B-O-H-A-N-N-A-N.

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- - -
- - -

David Bohannon
Direct Examination by Mr. McNeely
March 16, 2016

DAVID BOHANNAN,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCNEELY:

Q. How old are you, Mr. Bohannon?

A. Thirty-seven.

Q. Are you married?

A. Yes.

Q. What's your wife's name?

A. Stacy.

Q. Do you have any children?

A. Three.

Q. What are their ages?

A. My oldest one will be seventeen. I've got one
fixing to turn fifteen and one fixing to turn fourteen.

THE COURT: Mr. Bohannon, I am going to need you to
speak loudly. Thank you.

Q. [Mr. McNeely] Where did you go to high school?

A. I attended high school in Asbury, California, and
also at Stahl High School and at Goose Creek High School.

Q. What do you do for a living?

A. Same thing I'm doing here. Sitting.

Q. What did you do for a living in July of 2013?

A. Before all this happened, I was a finish carpenter

David Bohannon
Direct Examination by Mr. McNeely
March 16, 2016

1 on the tug boats.

2 Q. Have you worked since July 28th, 2013?

3 A. No, sir.

4 Q. Let's talk about the night of July 27th, early
5 morning of July 28th, 2013. Where were you at that evening?

6 A. Nowhere Bar and Grill.

7 Q. Where is the Nowhere Bar?

8 A. It's right there by the naval bases off to -- off
9 of North Rhett, Red Bank.

10 Q. Had you been there before that night?

11 A. I used to be a frequent person there growing up.

12 Q. Who did you go there with that night?

13 A. I was there with my wife.

14 A friend of mine and his girlfriend were there. We
15 were shooting pool. They had some issues with one of their
16 kids, I believe, and then they took off.

17 Q. What were you doing at the bar that night?

18 A. Shooting pool, listening to music. My wife's big
19 on the karaoke thing. We just was, there hanging out.

20 Q. Did they have karaoke that night?

21 A. Honestly, I don't recall.

22 Q. Were you there around closing time?

23 A. Yes.

24 Q. When's closing time at the bar?

25 A. Two o'clock.

David Bohannon
Direct Examination by Mr. McNeely
March 16, 2016

1 Q. Is it always two o'clock?

2 A. As far as I know, yeah.

3 Q. Did the bartenders make a last call for drinks that
4 night?

5 A. I believe there was something said about -- it was
6 at least a quarter til, just after 1:30, when they called for
7 last call.

8 Q. Had there been any problems at the bar that night
9 prior to last call?

10 A. Not while we were there, no.

11 Q. At some point after last call, did you see the
12 defendants enter the bar?

13 A. Yes.

14 Q. What did they do when they entered?

15 A. They walked in, went to the bar and sat down.

16 Q. Did you hear them say anything?

17 A. Not at first I didn't. I mean, they were not usual
18 people I've seen in there so I, you know, watched them come
19 in. They went over, sat down. There was no issues.

20 I don't know, three or four minutes later, I hear a
21 commotion over there. I was standing up. I leaned towards
22 them and just asked them to just leave, we don't need no
23 problems, this is, you know, calm, cool, and collected here.

24 Q. Before you just testified you said leave, we don't
25 need any problems, did you hear them say anything?

David Bohannon
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1 A. There was I guess an altercation, a discussion,
2 something about somebody being black and they're not -- that's
3 why they weren't getting served.

4 The one lady behind the bar, Cupcake, she said
5 something about her babies were mixed so it wasn't an issue.
6 And then I heard something with Jay. Said something about he
7 was black and he was obviously intoxicated.

8 Q. And he had been served that night?

9 A. He was there I believe the whole time I was there.

10 Q. No problems with race service at the bar?

11 A. Not at all.

12 Q. What happened after the verbal altercation between
13 the defendants and the bartender?

14 A. They started to approach the door, leaving,
15 mumbling or whatnot. The short Mexican fellow, Ricky or
16 Ricky, or whatever his name is, he had walked up to them.
17 They got together. They had some words. Looked like they
18 were trying to lean into one another. The shorter guy,
19 Mexican guy, Puerto Rican, whatever, he leaned into him with a
20 punch. I don't know if it was a punch or a push or what. But
21 all the same, he put his hands on him and that's when
22 everybody else got involved and, take it outside, take it out
23 of the bar, we don't need no issues. And that's when they
24 locked the door and said everything was cooling down or
25 whatever.

David Bohannon
Direct Examination by Mr. McNeely
March 16, 2016

1 Q. Prior to that altercation, were the defendants
2 asked to leave the bar?

3 A. They were asked to leave when they started the
4 commotion at the bar, yes.

5 Q. Who asked them to leave?

6 A. I believe Cupcake was the first one to tell them to
7 get out. And they carried on a conversation and making
8 comments or whatever, and so that's when Vicky jumped up and
9 that's when everybody else was, I mean, just the whole getting
10 loud over in the corner at the bar with the bartender.

11 Q. When Rick and Moses squared off, where were you?

12 A. I want to say, I don't know, five, ten foot away
13 from them. I think there was one of the round tables between
14 us.

15 Q. What did you do after the altercation started?

16 A. I went to the door to help get everybody out of the
17 bar.

18 Q. What were you doing, exactly?

19 A. As far as what did I do?

20 Q. Yes.

21 A. I was making sure everybody was getting out of the
22 bar, nobody was fighting and carrying on, destroying stuff.

23 I believe -- if you notice in the video, I stood
24 the little stand-up that had the posterboard on it by the
25 front --

David Bohannon
Direct Examination by Mr. McNeely
March 16, 2016

1 Q. Were you --

2 A. -- door.

3 Q. Sorry. I didn't mean to interrupt.

4 A. It was chaotic. I was trying to keep everything
5 calm and get from the nonsense.

6 Q. Were you trying to diffuse the situation?

7 A. Yes.

8 Q. After the altercation, did the defendants leave?

9 A. They left the bar and said something about, I got
10 your face, and as far as I know they left, yeah.

11 Q. You mentioned a statement about I got your face.
12 Who said that?

13 A. Mr. Moses was the one that leaned into the door and
14 said that.

15 Q. You heard him say that?

16 A. Yes.

17 Q. Do you know he -- who he was talking to when he
18 said that?

19 A. I would assume that --

20 MR. KEARSE: Objection --

21 A. Ricky.

22 MR. KEARSE: -- Your Honor. Speculation.

23 THE COURT: Mr. Bohannon, when there's an
24 objection, if you would stop speaking.

25 What is the -- what's the basis?

David Bohannon
Direct Examination by Mr. McNeely
March 16, 2016

1 MR. KEARSE: He was getting ready to speculate. He
2 said, I assume.

3 THE COURT: Sustained.

4 Q. [Mr. McNeely] Did the defendants leave at that
5 point?

6 A. Yeah.

7 They -- when they left out of the bar and he made
8 his comment, yeah, as far as I know, they left.

9 Q. Did anyone follow them outside?

10 A. No. The door was locked at that point.

11 Q. Why was the door locked?

12 A. So they couldn't get back in.

13 Q. Who locked the door?

14 A. If I'm not mistaken, it was Miss Gloria.

15 Q. What did you do after that?

16 A. I believe we went back and finished our beer and
17 went back over to the round tables where we were sitting at.

18 Q. Did you think there was still a problem at that
19 time?

20 A. I didn't think that there was still a problem. But
21 just the whole, I got your face, I felt like, you know, they
22 were probably hanging around outside, just being that it was
23 close to closing time, they knew everybody was fixing to get
24 booted out of the bar. Just being cautious, I guess.

25 Q. So thinking that, what did you do?

David Bohannon
Direct Examination by Mr. McNeely
March 16, 2016

1 A. I don't understand the question.

2 Q. Did you stay in the bar for some time after they
3 left?

4 A. I think we were in the bar maybe ten minutes before
5 they left.

6 Q. At some point you leave; is that correct?

7 A. Tried to, yes.

8 Q. Tell the jury what was happening when you left the
9 bar.

10 A. When we attempted to leave the bar, there was an
11 issue with Jay not wanting to get up because he was drunk.
12 And my wife had to go over and assist him, so I went and
13 helped them.

14 We walked to the car. And as we were trying to get
15 him situated, that's when Moses come trotting behind the car
16 and jumped in the middle of everybody standing there trying to
17 get Jay in the car. And he said, that's that boy right there.
18 And that's when he backed up and everybody, of course, went
19 with him figuring what's the deal. And unfortunately, that's
20 when everything went down.

21 Q. When you walked outside the bar, did you think the
22 defendants were in the parking lot?

23 A. They were nowhere to be seen. No.

24 Q. I believe you mentioned Mr. Moses walking into the
25 group.

David Bohannon
Direct Examination by Mr. McNeely
March 16, 2016

1 A. Uh-huh.

2 Q. Did you see any car -- I mean, a car at that time?

3 A. As he come around the back side of the car, it was
4 a car -- or back side of the van, there was a car following
5 him, yes.

6 Q. Where did the car stop?

7 A. Directly behind the van that we were putting Jay
8 in.

9 Q. Was the van blocked in?

10 A. Yes.

11 Q. Tell the jury what you heard Mr. Moses say.

12 A. When he come around the car -- or come around the
13 van he said something to the effect of, there he is right
14 there, there's that guy, or whatever.

15 Q. Did he point at anybody?

16 A. He pointed at the Puerto Rican in the front seat.

17 Q. What did he do after that?

18 A. He ducked down, and started running away, and
19 stopped at the end of the back side of the car that they had
20 pulled up in.

21 Q. How did you perceive his actions?

22 A. Well, I mean, it was threatening as far as him
23 running up in the circle to start with.

24 It wasn't -- it didn't appear to be the same person
25 because he was in different clothing. He run up in the circle

David Bohannon
Direct Examination by Mr. McNeely
March 16, 2016

1 and then, there he is, and got down and run away.

2 Q. What happened next?

3 A. The three of us -- four of us followed up, trying
4 to figure out what was going on. As we come around the back
5 side of the car, that's when Mr. Gourdine jumped out of the
6 car and started letting shots fire.

7 Q. Did you see him as the shots were fired?

8 A. I can't say that it was -- I mean, it -- yes, I saw
9 him fire the gun.

10 Immediate action was I was already headed towards
11 him. The only thing I could do was try to use the door to my
12 advantage.

13 Q. So what did you do?

14 A. I attempted to make him drop the gun. He had
15 already let off two rounds, and by then the gun spun around on
16 me.

17 The only reason I'm here is because, I mean, my arm
18 got it. If he had gotten any more swing on it, my arm
19 wouldn't have caught it. Something else would have.

20 MR. MCNEELY: Investigator, can you pull up camera
21 2-A -- or 2-B. Approximately 2:08:45.

22 Q. [Mr. McNeely] You may have already --

23 MR. MCNEELY: Permission to approach, Your Honor?

24 THE COURT: You may.

25 MR. MCNEELY: You may have already seen the laser

David Bohannon.
Direct Examination by Mr. McNeely
March 16, 2016

1 pointer. It's just this red button at the top.

2 Q. [Mr. McNeely] Turn around and look at this,
3 please.

4 MR. MCNEELY: Let the record reflect this is camera
5 2-B at 2:08 a.m. and 43 seconds.

6 Q. [Mr. McNeely] Are you in the pictures right there,
7 Mr. Bohannon?

8 A. Yes.

9 Q. Can you point --

10 A. Yes.

11 Q. -- can you point yourself out with the laser
12 pointer, please?

13 A. [Witness complies]

14 Q. Who's that to your left?

15 A. To my left? I believe that's the Puerto Rican guy,
16 Rick.

17 Q. Who's the guy in the black tee-shirt?

18 A. That's Jay.

19 Q. Who's the lady with the number on the back of her
20 shirt?

21 A. That's my wife, Stacy.

22 Q. What were y'all doing right there?

23 A. If I'm not mistaken, we were hugging saying, hey,
24 we'll catch you on the next time you come up; you know, I
25 mean, it was good hanging out with you; nice to meet you.

David Bohannan
Direct Examination by Mr. McNeely
March 16, 2016

1 Trying to get him situated and secured in the
2 car.

3 Q. Were you thinking about having a fight?

4 A. No.

5 [Whereupon, video is played for the jury]

6 [Whereupon, the video is not transcribed by the
7 court reporter]

8 Q. [Mr. McNeely] Point yourself out, Mr. Bohannan.

9 A. [Witness complies]

10 MR. MCNEELY: Let the record reflect the video is
11 paused at 2:09 a.m. and 14 seconds.

12 Q. [Mr. McNeely] What are you doing right there,
13 Mr. Bohannan?

14 A. Trying to figure out what's going on. I hear
15 gunshots, and my wife just ran around the car.

16 [Whereupon, video is played for the jury]

17 [Whereupon, the video is not transcribed by the
18 court reporter]

19 Q. [Mr. McNeely] Can you point yourself out,
20 Mr. Bohannan?

21 A. [Witness complies]

22 MR. MCNEELY: Let the record reflect the video is
23 paused at 2:09 and 17 seconds.

24 Q. [Mr. McNeely] What are you doing now?

25 A. That's when I'm trying to use the door and getting

David Bohannon
Direct Examination by Mr. McNeely
March 16, 2016

1 him to drop the gun.

2 [Whereupon, video is played for the jury]

3 [Whereupon, the video is not transcribed by the
4 court reporter]

5 MR. MCNEELY: Let the record reflect the video is
6 stopped at 2:09 a.m. and 35 seconds.

7 Turn around Mr. Bohannon.

8 Q. [Mr. McNeely] Did you get shot that night, Mr.
9 Bohannon?

10 A. Yeah.

11 Q. Who shot you?

12 A. Jason Gourdine.

13 Q. What happened after you got shot?

14 A. I was on the ground. I had got up, trying to,
15 collect my thoughts. All I could see was a hole in my arm, my
16 tattoo was gone.

17 Q. Did you make it back inside the bar?

18 A. Not immediately.

19 Q. Did you eventually?

20 MR. MCNEELY: I'm sorry. Take a minute, if you
21 need to.

22 A. Yeah, I made it back to the bar.

23 Q. [Mr. McNeely] What happened once you got back
24 inside the bar?

25 A. I believe shortly afterwards, I don't know, a

David Bohannon
Direct Examination by Mr. McNeely
March 16, 2016

1 couple of seconds after I entered the bar, EMS and Berkeley
2 County and all that got there.

3 I believe Coach Tee was the one that was the driver
4 of the white van. He was in the bar and was hollering for
5 towels or whatever from the back. And I told him I had a belt
6 on, so he took my belt off and wrapped my arm up and the
7 ambulance got there and they loaded us up.

8 Q. Where did the ambulance take you?

9 A. To MUSC.

10 Q. Were you conscious during this time?

11 A. I remember parts of the ride.

12 Q. At what point did you realize your wife got shot?

13 A. I was told at one point, while I was laying on the
14 floor, that she was sprayed in the back of the head.

15 Q. Do you remember arriving at MUSC?

16 A. No.

17 Q. Do you recall anything that happened after you were
18 at MUSC?

19 A. I know I had a couple of surgeries. I know I had a
20 skin graft done. They had some tendon transfers. All kind of
21 medical stuff they did to it.

22 Q. How many surgeries have you had since July 28th,
23 2013?

24 A. You'll have to ask my wife. I don't know.

25 Q. Was it more than ten?

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1 A. Yeah.

2 Q. Are all those surgeries to treat your injury as a
3 result of that gunshot?

4 A. Yes, sir, in some shape, form, or fashion.

5 Q. Are you still experiencing problems with your arm?

6 A. Yeah.

7 Q. Can you tell the jury about it?

8 A. Where do you want me to start?

9 Q. Are you able to use your arm?

10 A. No.

11 I've got three boys that I don't get to play ball
12 with.

13 Q. Are you right- or left-handed?

14 A. Right-handed.

15 Q. Can you lift your right hand over your shoulder?

16 A. [Witness indicates]

17 Q. Are you able to work?

18 A. No.

19 Limited to a lot of things. Try being a fat boy
20 and can't cut your own steak.

21 Q. Why did you try to shut the car door at the bar
22 that night?

23 A. Because there was some stupid nonsense. Somebody
24 brought a gun.

25 Q. Did anybody else have a gun?

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1 A. Not that I'm aware of.

2 MR. MCNEELY: No further questions from the State
3 at this time.

4 THE COURT: Ladies and gentlemen, we're going to go
5 ahead and take our lunch break. Do not begin your
6 deliberations. Do not discuss this case amongst
7 yourselves.

8 If you will take your notepads out with you, then
9 we will lock them up over the lunch hour.

10 This is the clock that we use, so please
11 synchronize your timepiece with that clock. Please
12 return back, report downstairs, at 2:00 p.m. 2:00 p.m.

13 Please rise for the jury. Mr. Bohannon, stay
14 seated.

15 [Whereupon, the jury exits the courtroom at
16 12:25 p.m.]

17 THE COURT: Thank you. Be seated.

18 Mr. Bohannon, you may step down. I remind you you
19 may not discuss your testimony with anyone over the
20 lunch break. Thank you.

21 [Whereupon, Mr. Bohannon exits the witness stand]

22 THE COURT: All right. We need to address the
23 matters on State's 33. Let's do that before we break
24 for lunch.

25 MR. ALFARO: Yes, Your Honor.

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1 MR. DAVIS: We just need to redact it, was my
2 understanding.

3 THE COURT: I understand. Where's Mr. Kearse?

4 MR. KEARSE: Right here, Your Honor.

5 THE COURT: Okay.

6 MR. KEARSE: I'm sorry. I'm being the
7 videographer.

8 THE COURT: Thank you.

9 MR. MCNEELY: Your Honor, we can do it as the Court
10 sees fit.

11 I'll just advise you that is the original and it
12 was marked during the Biggers hearing.

13 I believe what the defense is asking to be
14 redacted, and what we believe, should be three words:
15 and the shooter.

16 THE COURT: Is that correct, Mr. Kearse? Do you
17 need to see the exhibit again?

18 MR. KEARSE: I would like to see it, Your Honor.

19 [Whereupon, Mr. Kearse reviews documents]

20 MR. KEARSE: [Reading] I recognize him from in the
21 bar on the night of the sooting, and the shooter.

22 MR. DAVIS: Yeah --

23 MR. KEARSE: That's the --

24 MR. DAVIS: -- the shooter.

25 THE COURT: All right. So what we will do, just

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1 for purposes of the record --

2 Madam Court Reporter, if this is not correct,
3 please let me know.

4 But we will keep 33 in the original but you will
5 make a redacted copy that will be 33-A and that will go
6 back to the jury.

7 Is that acceptable from the State?

8 MR. MCNEELY: Yes.

9 MR. DAVIS: Yes, Your Honor.

10 MR. KEARSE: For Mr. Moses, yes.

11 THE COURT: All right. Thank you.

12 MR. MCNEELY: I'll have it redacted, Your Honor.

13 THE COURT: We'll be at ease. You'll take care of
14 that over the lunch hour?

15 Anything? Any other housekeeping matters that we
16 need to address over the lunch hour?

17 MR. ALFARO: No, Your Honor.

18 THE COURT: The jury will be back at 2:00. We'll
19 begin promptly once they all return.

20 [Whereupon, a recess is taken from 12:30 p.m. to
21 2:11 p.m.]

22 THE COURT: Mr. Bohannon, please take a seat.

23 [Whereupon, Mr. Bohannon retakes the witness stand]

24 MR. MCNEELY: At lunch I created Exhibit 33-A.
25 I've shown it to defense counsel. I believe they're

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1 fine with it --

2 THE COURT: Any objection, Mr. Davis?

3 MR. DAVIS: None, Your Honor.

4 THE COURT: Mr. Kearse?

5 MR. KEARSE: None from Defendant Moses.

6 THE COURT: Thank you.

7 Anything before we bring in the jury? From the
8 State?

9 MR. MCNEELY: Nothing, Your Honor.

10 THE COURT: Mr. Davis?

11 MR. DAVIS: None, Your Honor.

12 THE COURT: Mr. Kearse?

13 MR. KEARSE: Nothing from Mr. Moses, Your Honor.

14 THE COURT: Mr. Bohannon, I remind you that you are
15 still under oath. Did you comply with my instructions
16 over the lunch hour?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: All right. Thank you.

19 Mr. Bohannon, I'm going to need you to speak loudly
20 when the jury gets back in. Can you do that for me?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Thank you.

23 [Whereupon, the jury enters the courtroom at
24 2:14 p.m.]

25 THE COURT: Thank you. Be seated.

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1 Ladies and gentlemen, if you did not comply with
2 the Court's instructions over the evening -- or over the
3 lunch hour, please stand.

4 [Whereupon, there is no response]

5 THE COURT: Thank you. All fourteen jurors have
6 indicated they complied with the Court's instructions
7 over the lunch hour.

8 Mr. Davis --

9 MR. DAVIS: Thank you, Your Honor.

10 THE COURT: -- your witness.

11 MR. DAVIS: Thank you very much.

12 Hey, Mr. Bohannon. How are you doing this
13 afternoon?

14 THE WITNESS: Good, sir.

15 MR. DAVIS: Sir?

16 THE WITNESS: All right.

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CROSS-EXAMINATION

BY MR. DAVIS:

Q. You don't want to be here, sir?

A. Got to be here.

Q. Do you have any independent recollection of what occurred that night, separate and apart from what you saw in the video?

A. I've got my memory, what I can recollect as far as the events that happened that night, yeah.

Q. You've seen the video multiple times, have you not?

A. Yes, sir.

Q. You and I have never had any discussion, other than some prior court appearance; isn't that true?

A. Yes, sir.

Q. And you understand my role in this capacity?

A. What do you mean?

Q. You understand what my job is?

A. As a defense attorney?

Q. Yes.

A. [No response]

Q. You understand the prosecutor's job, also?

A. I do.

Q. And you understand the role of the jury?

A. I do.

Q. Now, in that vein, how long had you been at the bar

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1 that night?

2 A. I don't know. Two hours or so, three hours.

3 Q. Where had you been before you arrived at the bar?

4 A. I believe the friends that I had went to the bar
5 with, we had gone to dinner that evening.

6 Q. And did y'all consume alcohol at dinner, also?

7 A. No, I don't believe so.

8 Q. So the only alcohol that you consumed was once you
9 got to the bar?

10 A. What little I had consumed, yes.

11 Q. And any reference to you being intoxicated, in
12 medical records, would be misplaced?

13 A. I don't understand your question.

14 Q. You said what a little alcohol you had, to suggest
15 that you didn't have a large quantity of alcohol that
16 afternoon.

17 A. I did not consume a lot of alcohol.

18 Q. My question is any reference in your medical record
19 that you were intoxicated would be misplaced?

20 A. I was intoxicated, yes.

21 Q. And, also, you were on Percocet; isn't that true?

22 A. I believe earlier that afternoon I had had a pain
23 pill, yes.

24 Q. Percocet?

25 A. Pain medication, yes. Percocet, OxyCotin, whatever

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1 it happened to be. Yes, it was a -- pain medicine.

2 Q. But I didn't give it to you, is what my point is.

3 A. I didn't know you.

4 Q. Okay. So you have a prescription for it?

5 A. I've had several prescriptions for them.

6 Q. And you had consumed Percocet that afternoon before
7 all this transpired?

8 A. I believe early that afternoon, when we got through
9 doing the work that we were doing, I had taken one, yes.

10 Q. Now, let's go to the bar. Okay? Did you assault
11 anyone inside the bar?

12 A. Not that I'm aware of.

13 Q. Do you recall going outside the bar with your wife,
14 Stacy, and having some discussion about what had transpired
15 inside the bar?

16 A. I would say there was some discussion over the
17 nonsense that occurred, yes.

18 Q. Okay. Thank you.

19 And you were standing on the outside just before
20 the shooting took place; isn't that true?

21 A. Yeah.

22 Q. And, in fact, if you recall, you, your wife and Mr.
23 James Bryant was kind of huddled together; isn't that true?

24 A. Yeah.

25 We were I guess hugging, saying good night and good

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1 evening and whatever else.

2 Q. And at any point when you were on the outside, did
3 Jason Gourdine engage in any conversation with you?

4 A. I don't recall Gourdine ever saying anything.

5 Q. Okay. In fact, following that same train of
6 thought, he never engaged in any conversation with you inside
7 the bar?

8 A. Like I said, I don't recall him ever speaking, so
9 to speak.

10 Q. So the answer is, yes, he did not have any
11 conversation with you inside the bar?

12 A. Okay.

13 Q. Okay yes or okay no? I don't understand.

14 A. He didn't talk. No, we did not have any
15 discussions.

16 Q. And, in fact, if we go back outside -- two o'clock
17 and eight minutes and some forty-three seconds -- when Mr.
18 Moses comes up, what did you do immediately?

19 A. Where? Outside the bar, you mean?

20 Q. Yes.

21 A. Right before the gunshots rang out?

22 Q. Yes.

23 A. Let's see. I was standing there in a huddle, with
24 my wife and James, talking to the Puerto Rican fellow. We
25 were trying to coax him into the car.

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1 The same individual that was inside the bar earlier
2 that evening, causing an issue, appeared to be like he had
3 taken his over-shirt off and was ready to bamm, and run up in
4 the circle and then started pointing people out.

5 Q. So it's your testimony that the same people what
6 caused issue inside the bar --

7 A. Came back to --

8 Q. -- people on the outside --

9 A. -- resolve all the issues outside the bar. Yeah.

10 Q. Okay. Now, what issue had they created to suggest
11 that they wanted to fight anybody?

12 A. Solely the fact that I got your face says that they
13 wanted to throw down, whatever you want to call it.

14 Q. So that was directed towards you, sir?

15 A. That was directed towards the people that we were
16 standing around when they came back after the fact.

17 Q. But my question is, though, inside the bar, did
18 anybody make any issue -- using the word issue -- or
19 confrontation with you? Did anybody make any issues of
20 confrontation with you?

21 A. Two individuals came in the bar, started an issue
22 with the bartender -- or the man at the bar, or whoever, as a
23 patron, or whatever you want to call it -- of the bar. I was
24 simply asking the fellows to leave.

25 Q. So you got involved. Now we're where we want to

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1 be. You injected yourself into this process? Sir? Did you?

2 A. I injected myself into it? What -- I mean --

3 Q. Well, you said you had conversation with these
4 individuals after you heard what they said, did you not?

5 A. After there was an issue at the bar I simply said,
6 hey, dudes, there's the door, can you leave --

7 Q. And under what authority were you granted to tell
8 them to leave? Do you have ownership to the bar?

9 A. The very same privilege they have of being in the
10 bar and acting out the way they did.

11 Q. Granted you the obligation and the basis, then, to
12 engage in this melee? Sir?

13 A. I don't understand the question.

14 Q. Well, my point is you were not an employee of the
15 Nowhere Bar, were you?

16 A. No, sir, I was not.

17 Q. You were not a bouncer or an enforcer for the
18 Nowhere Bar, were you?

19 A. No, sir, I was not.

20 Q. You were not instructed by the bartender/manager to
21 get involved in this matter, were you?

22 A. No. It was a choice I made all on my own.

23 Q. Thank you. The choice you made all on your own.

24 A. That's right.

25 Q. And it is the same choice you made on the outside

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1 when you followed the aggressive manner or mannerism of
2 Mr. James Bryant; isn't that true?

3 A. Of your defendants, yes. That's true.

4 Q. So when James Bryant made those movements to pull
5 up his pants and went, you moved in the same direction, did
6 you not?

7 A. What does Mr. Bryant have to do with pulling up his
8 pants and -- I don't follow you.

9 Q. Well, most people pull up their britches just
10 before they start to fight to make sure it's --

11 A. The same as a lot of people take their over-shirt
12 off so that they can be in their wife-beater or whatever.

13 Q. There's no question that Mr. Rick Enriquez was
14 already in a wife-beater, because he was in a wife-beater
15 inside the bar, was he not?

16 A. From the get-go, yes.

17 Q. And he was acting in that manner, was he not?

18 A. Probably got something to do with his affiliation
19 with UFC fighting.

20 Q. Oh. UFC fighting. The same affiliation that
21 Mr. James Bryant said is his number one sport; right? Cage
22 fighting? Sir?

23 A. It's a good sport.

24 Q. Yeah.

25 And you say it had to be something of that

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1 engagement, it's cage fighting.

2 A. UFC. It's fighting.

3 Q. Okay. Okay. I understand.

4 A. Cage fighting, in the ring, octagon, whatever. You
5 know, a boxing match. I mean --

6 Q. That's my point.

7 So when this starts -- follower-of-cage-fighting
8 made his aggressive movement towards Steven Moses, your wife
9 was attempting to stop her -- stop him, was she not?

10 A. I don't know why she would stop him.

11 Q. You proceeded to follow in the same aggressive
12 manner, did you not?

13 A. I don't see how it was an aggressive manner.

14 Q. You moved, did you not?

15 A. Did a car not pull up and a guy run up in the mix
16 of everything and point somebody out like -- I mean, it's
17 pretty evident what happened and how it happened.

18 Q. Well, since it's pretty evident: there was a
19 Tyrone Taylor. If I accept your adoption of the facts, he was
20 behind the steering wheel; isn't that correct?

21 A. Yeah. I believe so.

22 Q. Did he get out at any time, in an aggressive
23 manner, and say remove that car, get from behind there, I'm
24 ready to move? Did he say anything?

25 A. Where did he have a chance to?

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1 Q. Because you, James Bryant, your wife, y'all were in
2 movement and pursuit of Steven Moses.

3 A. So in a three-second, four-second, not 270-seconds
4 ordeal, what? he was supposed to jump out of the car and do
5 jumping jacks? I don't understand that.

6 Q. My point is you said people made choices. That's
7 your word; right?

8 A. Right.

9 Q. You made a choice to move yourself from parallel to
10 the door entrance to that vehicle and move yourself to the
11 back of the SUV in pursuit of Steven Moses, did you not?

12 A. [No response]

13 Q. That's a choice you made? Sir?

14 A. Correct.

15 Q. And another choice you made, that after my client
16 -- I'm going to beg the words of Mr. Big, James Bryant, on
17 this matter. He said after my client, Jason Gourdine, came to
18 the aid of his friend, some shots were discharged and then you
19 found yourself in a position where you attempted to slam the
20 car door or to retrieve the weapon that was in Mr. Gourdine's
21 hand; isn't that correct?

22 A. As it was said before, they came back after the
23 fact. They chose to bring a gun. They chose to open fire.

24 Q. And you chose to --

25 A. It's pretty evident what happened and how it

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1 happened.

2 Q. You chose to pursue Mr. Moses, did you not?

3 A. He run up in the circle.

4 Q. Did he assault you in any way, sir?

5 A. That's him. And run. What am I supposed to do,
6 stand there? I mean --

7 Q. What did Tyrone Taylor do? What did the passenger
8 in the back seat of that SUV do?

9 A. In the --

10 Q. They stayed still, did they not, sir?

11 A. In the two seconds that it took for everything to
12 take place, I mean, like I said, he wouldn't even have been
13 able to put the car in gear to move anywhere. So how he would
14 have done -- jumped out and everything else?

15 Q. You were close friends with Rick Enriquez --

16 A. Never met --

17 Q. -- Enrique, also?

18 A. -- the fellow.

19 Q. Sir?

20 A. Never met the fellow.

21 Q. Well, how you so knowledgeable about him knowing
22 about cage fighting?

23 A. Because that's what they were talking about, was
24 the fights.

25 Q. Now, unfortunately, you were shot and you presented

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1 yourself to MUSC hospital; isn't that correct?

2 A. That's right. Yes.

3 Q. And as part of being treated, there's no question
4 that you concur and agree that as a patient you was
5 intoxicated? You agree with that?

6 A. I was.

7 Q. You also agree that you said that you had been
8 shot, apparently they decided, with some bird-shot pellets;
9 isn't that true?

10 A. Whatever he was shooting out of the gun, yeah.
11 Bird-shot --

12 Q. Bird-shot --

13 A. -- pellet shot, whatever.

14 Q. Yeah.

15 And that they wash out the wound, did they
16 not?

17 A. They put a vac on my arm. Yes.

18 Q. And that your total Glasgow coma score was a
19 fifteen. Okay?

20 A. Whatever that means. I don't --

21 Q. I'll tell you what that means. It means that you
22 were alert and in pretty good condition. Okay?

23 A. Okay.

24 Q. All right. And you also at that time told them
25 that you drink six can of beer every day; isn't that true?

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1 A. I do consume -- or I did consume quite a bit of
2 alcohol.

3 Q. Okay. And you also, on this night in question, had
4 added Percocet to that matter?

5 A. I had one earlier that afternoon before I had
6 drank, yes.

7 Q. Now, would you say in any way -- that being
8 intoxicated, being on Percocet, in any way influenced the
9 choices that you made that night? Sir?

10 A. I would have to say it had nothing to do with any
11 of it.

12 Q. Nothing to do with it.

13 You're interjecting yourself in something that was
14 of no concern to you, was not influenced by your drinking or
15 consumption of prescription drugs?

16 A. While some of us have a fight or flight. I'm not a
17 flighter. If there's an issue, I'm going to stand there and
18 try to resolve it. I'm not going to be the one to run to the
19 back of the room. That's not me.

20 Q. Fight or flight. I'm going to use your own words,
21 fight and flight. If we, which the jury has seen often time,
22 review the camera, who that night initially were in flight?

23 A. [No response]

24 Q. Let me ask this question, since you know the
25 difference between fight and flight. Tell me who were the

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1 flight participants that night.

2 A. As soon as the gun went off, everybody was running.

3 Q. I'm talking about in the bar. Who was the flight
4 participant?

5 A. Who was the flight --

6 Q. Yeah. You said everything to you is fight or
7 flight.

8 A. Well, everybody else had nothing to do with it.
9 And the Enrique guy decided to get involved and --

10 Q. But my question is what did these two guys do? Did
11 they fight or did they use flight?

12 A. Well, considering they didn't run out of the bar, I
13 guess they were standing there in a half-stance. I don't
14 know.

15 Q. But do you know the difference between fight and
16 flight?

17 A. Why don't you explain the difference to me.

18 Q. Well, you shared it. These are your words. You
19 said that when confronted with a situation, you either fight
20 or flight. You're a fight guy, you're telling me. Okay? So
21 I was asking you did you observe any fighting on behalf of
22 these two gentlemen that night inside the bar.

23 A. To get, as you call it, aggressive behind the bar
24 towards the bartender, yeah, that would be a fighting stance
25 verses a flighting stance. That's what you want to hear?

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1 Q. No. I just want the truth.

2 A. Okay.

3 Q. Remember I told you we all have respective jobs
4 here. I tell you what the solicitor's job, I told you my job,
5 I told you the jury's job. We are trying to get to the truth.
6 And so all I want to know is the truth.

7 In relationship to the truth that night, I'm asking
8 you did either one of these individuals display any fight
9 inside the bar.

10 A. Yeah.

11 When the whole racial comment was made, and the
12 biracial babies, and the say it again, I'll clap my hands for
13 you.

14 Q. You consider that a fight?

15 A. I consider that being bourne [phonetic] onto the
16 bartender, yeah. I mean, why did he sit there and continue on
17 if she said you can't get served. All he had to do was leave.
18 I mean, that would have been the proper thing.

19 Q. And your choice, with your heart of fight, was to
20 tell them and help suggest that they get on out of there.
21 True?

22 A. We don't need any problems in the bar, no.

23 Q. And in your make-up, it didn't suggest to you at
24 all that your terminology would further escalate a matter?

25 A. I don't see where there's anything I did that

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1 escalated anything.

2 Q. So you share no responsibility for why you can't raise
3 your arm today?

4 A. I didn't do this. He did it.

5 Q. Yes.

6 But, remember, you are the fight and flight
7 individual, are you not?

8 A. Yeah.

9 And because I'm the flight individual, that made me
10 the ignorant one that had to get in the mix. And I took a
11 bullet for it.

12 MR. DAVIS: No further questions.

13 THE COURT: Mr. Kearse?

14 MR. KEARSE: May it please this Court? Counsel?

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CROSS-EXAMINATION

BY MR. KEARSE:

Q. Mr. Bohannon, that night you were wearing a dark-colored tee-shirt?

A. Tank top. Yes, sir.

Q. Tank top. All right.

Similar in style to what Enrique Maron had on; correct?

A. The build of the shirt I guess is the same design, yeah.

Q. And I think you had a baseball hat or some kind of cap on; is that correct?

A. I don't recall. Probably did.

Q. Now, you said you did most of your drinking at the bar?

A. What drinking I did was at the bar, yeah.

Q. All right. And you said you were at the bar for about two hours?

A. I don't recall exactly how long. But, yeah, we were there several hours.

Q. All right. And so in the span of several hours, you were consistently drinking while you were there; correct?

A. What's consistently drinking?

A. I mean, you order a drink, you order another one, you order a drink, you order another one?

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1 A. Well, I mean, that's normally how it goes. You
2 order it, you drink it, you get another one --

3 Q. Okay. And your words --

4 A. -- was I getting them excessively, like every two
5 minutes behind another beer? No.

6 Q. But in your words, your words you said you were
7 intoxicated?

8 A. If I'm not mistaken, what is it, two beers or eight
9 ounces of beer, is the legal limit? If you get behind the
10 wheel, you're intoxicated.

11 Q. Well, we know you had more than two beers; right?

12 A. That makes me intoxicated.

13 Q. Well, my answer --

14 A. Okay. Well, I mean --

15 Q. -- is yes or no. Yes or no, Mr. Bohannon. I
16 understand your posture --

17 A. Your question?

18 Q. The question is you had more than two beers;
19 correct?

20 A. Yes, sir.

21 Q. All right. And, in fact, you had at least six
22 beers; correct? Five or six beers?

23 A. Probably be safe to say yeah.

24 Q. And as you testified earlier, on top of that you
25 had taken at least one pain pill before you started drinking;

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1 correct?

2 A. Yeah.

3 I mean, you're talking about a twenty-four hour
4 period, way before I started drinking.

5 Q. Okay.

6 A. Way early in the afternoon.

7 Q. All right. Now, when you went in the bar, you were
8 at a round table standing next to your wife?

9 A. Yes, sir.

10 Q. All right. And when Mr. Moses and Mr. Gourdine
11 came walking into the bar, they said nothing to you; correct?

12 A. No, sir.

13 Q. All right. And when they sat at the bar, they said
14 nothing to you?

15 A. No, sir.

16 Q. All right. And subsequently, when a disagreement
17 ensued, they said nothing to you; correct?

18 A. No.

19 Q. And you said that you would consider their dispute
20 with the bartender as fight or a fighting stance or something
21 like that?

22 A. If you watch the video, when he --

23 Q. Well, I'm asking you. I'm not watching --

24 A. -- when he was asked to leave --

25 Q. -- the video.

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1 A. -- and he did not, that's when I stepped away from
2 the table and said, hey, there's the door, she asked you to
3 leave. That's when he, ha, ha, ha, and walked back over to
4 Gourdine right before they started leaving the building.

5 Q. Are you finished?

6 A. [No response]

7 Q. My question is you said that you considered, when
8 Mr. Moses was having a dispute with the bartender, as some
9 sort of fighting stance; correct?

10 A. Okay.

11 Q. Is that a yes?

12 A. [Indicates affirmatively]

13 Q. Now, do you recall, as these two gentlemen started
14 to walk out the door, your making attempts to engage them?

15 A. As they passed by me, I recall asking them to
16 leave.

17 Q. And, again, you weren't an employee of the bar;
18 right?

19 A. No.

20 Q. All right. Do you recall having to be restrained
21 by your wife while they were trying to exit the bar?

22 A. I remember me and my wife having a discussion,
23 yeah.

24 Q. And she was trying to restrain you; correct?

25 A. I don't see how she was trying to restrain me --

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1. Q. Okay. What --

2. A. -- she was trying to get me to come back in the bar
3 and talk to her.

4 MR. KEARSE: Well, let's go to camera 6-A. The
5 time is 1:26 -- 1:56:21. I'm sorry.

6 [Whereupon, video is played for the jury]

7 [Whereupon, the video is not transcribed by the
8 court reporter]

9 MR. KEARSE: Okay. We can stop. You can stop that
10 for me.

11 All right. Let the record reflect that camera 6-A
12 was stopped at 1:57:26.

13 Q. [Mr. Kearse] That fellow in the cap in the dark
14 tank-top, that's you, isn't it?

15 A. Yeah.

16 Q. Okay. And while this thing was going on, it had
17 nothing to do with you; right?

18 A. [No response]

19 Q. Right? That it had nothing to do with you; right?

20 A. It had nothing to do with me directly, no.

21 Q. Okay. And --

22 A. Did it have to do with the fact that my wife was
23 with me and somebody was creating an issue? Yeah, I'm going
24 to get defensive.

25 Q. Well, let's ask that question, then. It had

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1 nothing to do with your wife at the time; correct?

2 A. They were starting something in the bar. I was
3 just standing my ground, trying to protect my wife, what was
4 mine.

5 Q. Your wife was right there next to you; right?

6 A. Yep.

7 Q. Holding your arm; right?

8 A. Well, actually, she's standing there beside me
9 right there at the time, yeah.

10 Q. Holding your arm; right?

11 A. When I'm asking them to leave.

12 Q. Okay. And they -- that had nothing to do with you
13 or your wife; correct?

14 A. That's correct.

15 Q. All right. And you started -- you, like Mr. Davis
16 said, injected yourself and started moving towards these
17 gentlemen; right?

18 A. I don't believe I left that area.

19 Q. That's because your wife grabbed your arm, did she
20 not?

21 A. My wife's not going to hold me from going some
22 place that I need to go.

23 Q. But she grabbed your arm, did she not?

24 A. We were in the midst of a conversation.

25 Q. Well, her hand is on your arm, is it not,

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1 Mr. Bohannon?

2 A. Her hand is on my arm all the time. Which I said,
3 that doesn't mean that she's holding me down.

4 Q. The answer is going to be the same, Mr. Bohannon.
5 Your wife grabbed your arm, did she not?

6 A. My wife is holding my arm, yes.

7 Q. Okay. And so, again, these gentlemen are walking
8 past you; right?

9 A. Okay.

10 Q. I assume that's a yes?

11 A. They are walking past me, yes.

12 Q. All right. Headed out the door; right?

13 A. They were supposed to be leaving, yes.

14 Q. All right. Now --

15 MR. KEARSE: You can take that down.

16 Q. [Mr. Kearse] Again, you're not the owner of the
17 bar; right?

18 A. No.

19 But when he said something about a trunk, it kind
20 of alerted me so, I mean --

21 Q. All right. You aren't the owner of the bar; right?

22 A. No.

23 Q. All right. And so it was not your concern whether
24 they left or not, was it?

25 A. As long as I was there, yeah, that was my position

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1 to take care of mine.

2 Q. Okay. So you made it your business?

3 A. Yeah, I guess --

4 Q. You can say yes. It ain't going to hurt --

5 A. I guess I stuck my nose where it didn't belong,
6 like I said.

7 Q. Stuck your nose where it didn't belong. Mr. Moses
8 never touched you, did he?

9 A. No.

10 Q. All right. And when he walked up to that van, he
11 didn't direct any statements towards you other than asking
12 about somebody else, did he?

13 A. Like I said, he came in the circle.

14 Being he had done changed clothes, it kind of
15 worried everybody. We were just trying to be defensive, I
16 guess.

17 Q. That's not my question, Mr. Bohannon. He's never
18 -- my question is he never directed any statement towards you
19 than to ask about somebody else; right?

20 A. He didn't I guess direct anything towards me at
21 all, no.

22 Q. Okay. And in that vein, he didn't take a swing at
23 you?

24 A. No.

25 Q. In fact, he didn't take a swing at anybody?

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1 A. No, I don't guess.

2 Q. Okay. And immediately you said, your words, it was
3 about two or three seconds, that incident; right?

4 A. Time is quick when something like that is going on.

5 Q. So two or three seconds would be accurate?

6 A. As you said, it was 207 seconds, or whatever, the
7 whole incident. It's all in how you break it down.

8 Q. Now, where was your car?

9 A. I don't recall exactly where my car was.

10 Q. All right. Were you riding in the van?

11 A. No, sir. I had my own vehicle.

12 Q. Okay. And you didn't --

13 A. Something else I lost.

14 Q. When you saw this man, you didn't walk towards your
15 car?

16 A. When he come around the car?

17 Q. Right.

18 A. Didn't have a chance to do anything.

19 Q. Well, you admit of your own volition you decided to
20 go after him; correct?

21 A. He run into the circle and pretty much announced
22 himself as something was going on.

23 They had come back after the issue was already done
24 resolved. What else was everybody supposed to think?

25 Q. Okay. That ain't my question --

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1 A. I just answered --

2 Q. -- Mr. Bohannon --

3 A. -- that.

4 Q. My question is that you decided of your own
5 volition to chase after this man; correct?

6 A. No.

7 Q. You didn't decide of your own volition?

8 A. No. Instant reaction is what happened.

9 Q. Instant reaction. All right.

10 But your instant reaction was not to run or walk
11 towards your car; correct?

12 A. No.

13 Q. Your instant reaction was not to walk in a
14 different direction, in that parking lot, away from him;
15 correct?

16 A. I don't guess.

17 Q. Right.

18 And your instant reaction wasn't to walk to -- to
19 go back in the bar, was it?

20 A. Nobody was allowed back in the bar.

21 Q. Okay. Where did you go after the shooting?

22 A. [No response]

23 Q. You went in the bar; right?

24 A. Didn't have much choice, did we --

25 Q. Again, your instant --

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1 A. -- I believe that's against the law right there.

2 Q. Okay. Your instant reaction was not to walk into
3 the bar; right?

4 A.. Not when I had the door right there beside me that
5 was opening.

6 Like I said, it was an instant reaction to the run
7 with everybody else.

8 Q. Run with everybody else.

9 And it wasn't your instant reaction to try to get
10 in the van that was parked there, either; right?

11 A. My wife was on the back side of the car.

12 Q. Okay. Well, we're talking about you right now.
13 We're not talking about your wife.

14 A. We're talking about me getting shot.

15 Q. All right. Again, my question is it wasn't your
16 instant reaction to try to get in the van, either, was it?

17 A. My instant reaction was to protect mine.

18 Q. All right. And protecting yours meant running
19 towards Mr. Moses?

20 A. Protecting mine means going after my wife to make
21 sure that the craziness isn't on my wife.

22 Q. Well, let's talk about Mr. Moses. He didn't have a
23 gun; right?

24 A. He didn't need a gun. He initiated the whole thing
25 to start with.

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1 Q. That ain't my question, Mr. Bohannon. My question
2 is did you see him with a gun.

3 A. I didn't see anybody but Mr. Gourdine with a gun.

4 Q. Did you see him with a knife?

5 A. Didn't see anybody but Mr. Gourdine with a weapon.

6 Q. Did you see him with a club?

7 A. That would be a weapon.

8 Q. And let's talk about what he didn't say. He didn't
9 come up there and say he was going to kick anybody's behinds
10 or he was going to hit somebody. He didn't say anything like
11 that, did he?

12 A. He run up in the circle and said, where's the old
13 boy from earlier.

14 Q. Right.

15 A. Indicating that he wanted to reinitiate the ordeal
16 at hand.

17 Q. I don't know if you've ever heard this phrase, but
18 I'm going to use it. Isn't that your thought talk?

19 A. My thought talk?

20 Q. Thought talk. Right. You said he ran up in the
21 circle and he said where's old boy, indicating that -- when
22 you get to the word indicating, isn't that what you, yourself
23 were thinking, not what he said?

24 A. His body action --

25 Q. I didn't ask you that, Mr. Bohannon. My question

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1 is isn't that what you were thinking? your subjective
2 thinking?

3 A. I don't understand my -- what do you mean, my
4 thinking?

5 Q. Again, Mr. Moses says where is the guy who swung at
6 me; right?

7 A. Right.

8 Q. That's it. Everything after that is what you said
9 inside your head; correct?

10 A. Well, we've got the video that says what --

11 Q. I'm not talking about the video, Mr. Bohannon.

12 I said everything you're saying after -- when you
13 say indicating, that is what you're saying inside your head to
14 yourself; correct?

15 A. No.

16 Q. All right. And so you, using those words not
17 directed at you, took off towards this man?

18 A. I felt threatened.

19 Q. All right. And you got shot where? in the arm?

20 A. Yes.

21 Q. Okay. And like you said, even though nobody
22 directed any words towards you, nobody took a swing at you,
23 nobody did anything to you, when Mr. Moses walked up, you felt
24 threatened?

25 A. I was starting to -- the way everything went down,

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1 yeah.

2 Q. Okay. Which would mean your answer is yes?

3 A. Which would mean --

4 Q. To my question.

5 A. Yeah. He run up in the circle and threatened
6 everybody.

7 Q. No, that's not my question. My question was you
8 felt threatened?

9 A. Yes, I felt threatened.

10 Q. All right. And when you say ran up in the circle,
11 you will admit Mr. Moses walked up to the van; right?

12 A. He aggressively walked from the other side of the
13 van around the back of the car, yes.

14 Q. And so when you aggressively ran towards him, do
15 you believe that could possibly cause a person to feel
16 threatened?

17 A. I don't see where there's any threat there when it
18 was all planned out. I mean, it's --

19 Q. I'm not --

20 A. -- obvious --

21 Q. Mr. Bohannon, you're not Mr. Moses; right?

22 A. Thank God, no.

23 Q. Correct?

24 A. No.

25 Q. Okay. So let's talk about you. You said you felt

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1 threatened when you saw him walk up to the car.

2 A. Right.

3 Q. Right?

4 All right. If someone chases you, would you feel
5 threatened?

6 A. Okay.

7 Q. Is that a yes?

8 A. Yeah.

9 Q. Which is what you did. You chased him. Not for
10 long, but you chased him; right?

11 A. I don't see how I chased him, when he ran.

12 I mean, he was running regardless if anybody came
13 after him or not. He was getting out of the way of gunfire.
14 He --

15 Q. Mr. Bohannon --

16 A. -- knew what was going on.

17 Q. Are you done? I don't want --

18 A. Yes, sir, I'm done.

19 Q. -- the court reporter -- okay.

20 If he runs and you run after him, would you not
21 describe that as a chase?

22 A. Okay.

23 Q. All right. You got shot where? I'm sorry. In
24 your arm?

25 A. Yes.

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1 Q. Okay. And I believe you said you may have
2 testified when you got shot trying to pin Mr. Gourdine up
3 against the door and grabbed the gun; is that right?

4 A. Tried to keep the door in front of me.

5 Q. Okay. And quite clearly, Mr. Moses did not shoot
6 you?

7 A. No. I don't believe that was ever said.

8 Q. Well, I'm just asking.

9 Okay. And so at the time you got shot, you were in
10 a direct confrontation with Mr. Gourdine; correct?

11 A. From the way it looked, Gourdine was backing away
12 from his vehicle as he was --

13 Q. Mr. Bohannon, my question is you were in a direct
14 confrontation with Mr. Gourdine; right?

15 A. I was --

16 Q. You ran at Mr. Gourdine?

17 A. -- trying to get him to drop the gun, yes.

18 Q. Right. And that is who you grabbed?

19 A. I don't believe I ever put my hands on him.

20 Q. Well, if you grabbed at the gun, you grabbed the
21 gun or the firearm, the long gun, whatever it was -- whether
22 you put your hands on him or not -- that's what you grabbed;
23 right?

24 A. I don't recall grabbing the gun, but, okay.

25 Q. And at the time you were either trying to or you

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1 did it, Mr. Gourdine was holding that weapon; right?

2 A. The whole time.

3 Q. All right. Mr. Moses never put his hands on you;
4 correct?

5 A. I don't recall him ever putting his hands on me,
6 no.

7 Q. Now, even at the time you grabbed that gun --

8 MR. MCNEELY: Your Honor, I'm going to object to
9 that question.

10 MR. KEARSE: Well, I haven't finished the question.
11 If he would let me finish, maybe --

12 THE COURT: I thought we already established day
13 two of the trial -- counsel approach -- we do not have
14 speaking objections.

15 [Whereupon, an off-the-record bench conference is
16 held]

17 THE COURT: Sustained.

18 Rephrase your question, Mr. Kearse.

19 Q. [Mr. Kearse] Mr. Bohannon, at the time you
20 confronted Mr. Gourdine, that was in the midst of this whole
21 melee; correct?

22 A. I don't know. Just when --

23 Q. I mean, everything was going on when you went and
24 ran up toward Mr. Gourdine; right?

25 A. Yeah.

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1 When everybody was in motion, that's when the door
2 opened up, I heard the gunshot. The instant reaction was to
3 charge the door.

4 Q. Okay. And so this was after Mr. Bryant had given
5 chase after Mr. Moses?

6 A. It was after the first gunfire went off, yeah, I
7 charged his car.

8 Q. Okay. I'm going to hand you what's marked as
9 Defendants' 8. Do you recognize the people in that picture?

10 A. Yes, sir.

11 Q. Tell us who's in that picture.

12 A. It looks like James, Stacy, me, the Enrique guy,
13 Moses, Gourdine, and Tee.

14 MR. KEARSE: Your Honor, at this time I would like
15 to once again republish Defendants' Number 8 --

16 THE COURT: All right.

17 MR. KEARSE: -- for the jury.

18 Okay. If you could swing around, Mr. Bohannon.

19 Q. [Mr. Kearse] And that is you say James, large
20 fellow with the bald head and the khaki shorts?

21 A. Uh-huh.

22 Q. Is that a yes?

23 A. Yeah.

24 Q. Okay. And then that is Enrique in the white tee-
25 shirt; right?

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1 A. In the open door. Yeah.

2 Q. Right.

3 And he had actually jumped out of the van, did he
4 not?

5 A. Watching the video, yeah, I believe he did.

6 Q. Okay. And then that's you standing next to your
7 wife?

8 A. Yes, sir.

9 MR. KEARSE: All right. You can take that down for
10 me, please.

11 Q. [Mr. Kearse] I'm going to hand you what's marked
12 as Defendants' Exhibit Number 10. Do you recognize the people
13 in that picture?

14 A. Looks like me.

15 Can't really make out who's in the -- Gourdine's
16 car. Looks like that might be Jay standing back there.

17 THE COURT: Mr. Bohannon, I'm going to need you to
18 pull that microphone closer.

19 A. Looks like Jay standing at the back of the car,
20 Moses is on the other side, and Tee is sitting in the van.

21 Q. [Mr. Kearse] Okay. And who is that with -- looks
22 like right up on the back of Mr. Bryant?

23 A. It looks like my wife.

24 Q. Do you recall your wife trying to hold on to
25 Mr. Bryant?

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1 A. I remember her screaming no and stop.

2 MR. KEARSE: Your Honor, at this time I would like
3 to republish Defendants' 10 for the jury.

4 MR. KEARSE: Okay. If you can, Mr. Bohannon, you
5 can swing that chair around for me.

6 Q. [Mr. Kearse] That's you in the dark tee-shirt with
7 the cap on; correct?

8 A. Yes.

9 Q. And that is what appears to be Mr. James Bryant at
10 the end of passenger-side rear of that van; correct?

11 A. Looks like it.

12 Q. And then that would be your wife next to or
13 basically right on top of Mr. Bryant?

14 A. It looks like it.

15 Q. All right. And you recall hearing her say no,
16 stop?

17 A. I remember her screaming for everybody to stop.

18 Q. Okay. And there's a fellow sitting in the van; is
19 that correct?

20 A. Yes.

21 Q. Okay. That's Mr. Taylor; is that correct?

22 A. I guess that's what his name is.

23 Q. But you know Mr. Taylor; right?

24 A. I know him as Coach Tee, yes.

25 Q. Coach Tee. That's Coach Tee.

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1 A. [Indicates affirmatively]

2 Q. Is that yes?

3 A. That's what -- yeah.

4 Q. Okay. And then there's a guy behind Coach Tee.

5 Did you know that guy?

6 A. I didn't know there was anybody else in the car.

7 Q. Well, clearly Coach Tee didn't get shot; correct?

8 A. No.

9 MR. KEARSE: You can take that down for me.

10 Q. [Mr. Kearse] Okay. Now, you said that you really
11 didn't know Mr. Bryant --

12 A. Correct.

13 Q. -- right?

14 Or Mr. Maron. You didn't -- really didn't know
15 Rick?

16 A. No, sir, I did not.

17 Q. All right. You kind of met him that night?

18 A. Briefly. On the Ali factor, when he was talking
19 trash with my wife or whatever.

20 Q. He was talking trash about fighting and the fights?

21 A. She I believe was dogging him for trying to be a
22 tough guy and getting in the mix of it.

23 Q. Was that before this incident?

24 A. It was right before they pulled back up and shot
25 everybody, yeah.

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1 Q. Obviously they didn't shoot everybody; correct?

2 A. They ruined enough lives.

3 Q. That would be a yes?

4 A. Yes.

5 Q. All right. And so when was it y'all decided -- you
6 heard them talking about UFC fighting and all that stuff?

7 A. I didn't hear them say anything about UFC fighting.
8 From what I understand from talking or whatnot, that's what he
9 was into.

10 Q. And that would be Mr. Maron?

11 A. Yeah.

12 Q. And so you didn't have any real relationship with
13 him?

14 A. I didn't -- like I said, other than the few words
15 we shared outside, that was it. I've never met him.

16 Q. And what about Mr. Bryant? What kind of
17 relationship did you have with him?

18 A. Other than when the two dudes had got shot at
19 Nowhere, that's the only relationship we got.

20 Q. Okay. So you really didn't have any relationship
21 with Mr. Bryant, you --

22 A. I did not know him.

23 Q. All right. So it wasn't necessary for you to feel
24 like you needed to protect them or come to their assistance?

25 A. I wasn't -- other than, like I said, self-

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1 protection and protecting my wife was all I was concerned with
2 at the time.

3 Q. Well, here's my question, Mr. Bohannon. You said
4 Mr. Moses walked up, ran up, into the circle; right?

5 A. Into the group, yeah.

6 Q. Or the group.

7 And the group, the circle, would be you, Mr.
8 Bryant, Mr. Maron, and your wife; right?

9 A. Yes, sir.

10 Q. And you said that by him coming into your space,
11 your circle, your group, you felt you, along with others, I
12 imagine, were threatened; right?

13 A. The aggressive nature of what he was doing. Yes.

14 Q. All right. But you at that time would not have any
15 relationship or motivation to protect Mr. Bryant or Mr. Maron,
16 correct, because you barely knew them?

17 A. Guess not.

18 Probably why I didn't jump up and start running
19 around.

20 Q. Yeah.

21 But you said in your instant -- you said your
22 instant response was to chase after --

23 A. Was to see -- yeah.

24 MR. KEARSE: I don't have anything further, Your
25 Honor.

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1 THE COURT: Redirect?

2 MR. MCNEELY: Nothing further from the State, Your
3 Honor.

4 THE COURT: You may step down.

5 [Whereupon, Mr. Bohannon is excused and exits the
6 witness stand]

7 THE COURT: Ladies and gentlemen, would you wish to
8 have a break now?

9 All right. You may leave your notepads right where
10 they are or take them with you.

11 Please rise for the jury.

12 [Whereupon, the jury exits the courtroom at
13 3:04 p.m.]

14 THE COURT: Thank you. Be seated.

15 Anything before we take our comfort break?

16 MR. ALFARO: Nothing from the State.

17 MR. DAVIS: Nothing, Your Honor.

18 MR. KEARSE: Nothing from Mr. Moses.

19 THE COURT: All right. About ten minutes.

20 [Whereupon, a recess is taken from 3:05 p.m. to
21 3:20 p.m.]

22 [Whereupon, State's Exhibit Number 37 is marked by
23 the court reporter]

24 THE COURT: Anything before we bring in the jury?
25 From the State?

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1 MR. ALFARO: No, Your Honor.

2 MR. DAVIS: No, Your Honor.

3 THE COURT: Mr. Kearse?

4 MR. KEARSE: Nothing from Mr. Moses.

5 [Whereupon, the jury enters the courtroom at
6 3:21 p.m.]

7 THE COURT: Thank you. Be seated.

8 Call your next witness.

9 MR. ALFARO: The State calls Dr. Benjamin Crookes.

10 THE COURT: Sir, please come forward and be sworn.

11 [Whereupon, Dr. Crookes comes forward]

12 THE CLERK OF COURT: Put your left hand on the
13 Bible, please.

14 [Whereupon, Dr. Crookes is duly sworn by the clerk
15 of court as follows: do you solemnly swear or affirm
16 the testimony you shall give in this case shall be the
17 truth, the whole truth, and nothing but the truth, so
18 help you God]

19 THE WITNESS: I do.

20 THE CLERK OF COURT: If you'll have a seat.

21 [Whereupon, Dr. Crookes takes the witness stand]

22 THE CLERK OF COURT: State your full name for the
23 record and spell your last name.

24 THE WITNESS: Sure. So I'm Dr. Bruce Crookes.

25 C-R-O-O-K-E-S.

Bruce Crookes, M.D.
Direct Examination by Mr. Alfaro
March 16, 2016

BRUCE CROOKES, M.D.,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. ALFARO:

Q. Dr. Crookes, can you tell the jury where you work?

A. I work at the Medical University of South Carolina.

Q. And how long have you been at MUSC?

A. Seven years.

Q. And what exactly do you do?

A. I am an associate professor of surgery. I'm one of the trauma surgeons and one of the general surgeons.

Q. And can you tell us a little bit about your education and training background?

A. So I did my undergraduate degree at the University of Michigan. I went to medical school at the Mount Sinai College of Medicine in New York City. I did my residence in general surgery at Abington Memorial Hospital in Philadelphia. And then I did a trauma and critical care fellowship at the University of Miami at the Ryder Trauma Center.

Q. And did you have the opportunity to treat a James Bryant on July 28th of 2013?

A. I did.

I was the trauma attending -- the tending surgeon who was on call that evening.

Bruce Crookes, M.D.
Direct Examination by Mr. Alfaro
March 16, 2016

1 Q. And did you have the opportunity to review the
2 medical records of Mr. Bryant before coming to court today?

3 A. Yes, I did.

4 Q. And in the normal course of -- ordinary course of
5 treatment and providing medical care, are medical notes and
6 records prepared for each patient that you treat?

7 A. Yes, sir.

8 Q. And in the course of that, sometimes a patient's
9 treatment can be ongoing; is that correct?

10 A. Yes, sir.

11 Q. And as part of a patient's treatment, is it common
12 for doctors to review their notes, as well, as well as other
13 doctors' notes?

14 A. Yes, sir.

15 Q. And do you recall anything specifically about the
16 injuries that Mr. Bryant had suffered or what you did for him
17 that night?

18 A. Yeah.

19 So he was transferred to us from an outside
20 hospital and he came in as what we call a Level A order, which
21 is an alert level that we reserve for the most severely
22 injured patients, which mandates a response from our group,
23 which mandates it including the fact that I have to be in the
24 trauma bay when the patient arrives.

25 So he came in. Was transported by helicopter into

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1 us. His vital signs were okay at that time for us. What he
2 had was a large wound in the left upper part of his biceps
3 here, which was an apparent blast injury.

4 We had a very thready pulse in his hand at that
5 time, so we couldn't really feel that he had good blood-flow
6 to his hand and we elected to do what's called an angiogram to
7 his arm. So we injected dye into his blood vessels to make
8 sure he had blood flow to his hand, which was what we call
9 equivocal. It wasn't really clear for us.

10 So looking at the size of his wound and the fact
11 that there wasn't a lot of blood flow, we elected to take him
12 to the operating room, which we did, and we did that as what
13 we call an emergent case. We brought him up within an hour of
14 his arrival. We put him to sleep and we explored his wound.

15 I cleaned up some of the stuff in his wound and
16 took out a shotgun wadding from his wound, as well as several
17 pellets. And what we found at that time, as we began to clean
18 up the wound and we took a bunch of the blood and the clot
19 that was in there, was that the artery which ran to his hand
20 had been what we call thrombosed. So it didn't have any flow
21 to his hand. And in that situation, if you don't do anything
22 for that, if you don't reroute the blood in some way, shape,
23 or form, then the person would lose their limb or lose that
24 arm.

25 Q. And at the beginning of that, you said he was

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1 categorized as something that you would save for the most
2 severely-injured patients. Did you say that was Alert
3 Level A?

4 A. Yes. This is called an A. We call it a Level-A
5 Alert.

6 Q. A Level-A Alert?

7 A. Uh-huh.

8 Q. And you mentioned that you removed some wadding,
9 shotgun wadding, from the wound. Is it normal to preserve
10 that to turn it over to law enforcement?

11 A. Yes.

12 So we're pretty meticulous about developing what we
13 call a chain of evidence or a chain of custody for anything we
14 remove from a wound, particularly with a gunshot wound.

15 So what we do is I will physically take it out.
16 I'll pass it off to a nurse in the operating room, who then
17 passes it to usually someone we call the charge nurse, who
18 then calls the police or security and establishes that they
19 get it passed off to that.

20 And the charge nurse typically helps to establish
21 that chain so he says, this came from Dr. Crookes, went to so-
22 and-so, went to this person, and this person, and then
23 releases it into police -- as evidence for the police so that
24 we're able to definitely say this came out of this patient at
25 this point in time.

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1 Q. And as part of the treatment that Mr. Bryant
2 received, did he -- was he subject to any x-rays or CT scans
3 of any type?

4 A. Yes, sir.

5 Q. And what's the purpose of that?

6 A. So in his -- in the care of this patient, what we
7 really wanted to establish was the fact was whether or not he
8 had any blood flow to his hand so that I would have some idea
9 of whether or not I needed to get a vascular surgeon involved,
10 someone that would do the bypass -- around the segment of the
11 vessel that was destroyed -- for us.

12 In that -- in this circumstance, the scan was
13 equivocal. So I could read it one way or the other. So I
14 wasn't particularly sold on the results of the scan, and that
15 was part of the reason I was kind of mandated to explore his
16 arm.

17 The other imaging that we got, we got plane x-rays
18 of his arm to see whether or not he had any broken bones. And
19 he had broken the bones up around his elbow. This bone
20 [indicates].

21 Q. I'm going to show you what's been marked for
22 identification as State's Exhibit 23.

23 A. Thank you.

24 Q. Can you take a look at that and tell us if you --
25 and tell us what that is?

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1 A. Yes.

2 This is what we call scout film. It's a plane film
3 that is part of the sequence of the CAT scan, and what it
4 shows is a large number of pellets. If you look on the film,
5 there's a bunch of bright pieces here. Those are all shotgun
6 pellets within the wound.

7 MR. ALFARO: Your Honor, at this time the State
8 would like to admit State's Exhibit 23 into evidence.

9 THE COURT: Any objection?

10 MR. DAVIS: None, Your Honor.

11 THE COURT: Any objection?

12 MR. KEARSE: None from Mr. Moses.

13 MR. ALFARO: Can we publish, Your Honor?

14 THE COURT: State's 23 into evidence without
15 objection.

16 [Whereupon, State's Exhibit Number 23 is admitted
17 into evidence by the Court]

18 THE COURT: You may publish.

19 MR. ALFARO: Can you take that down, please.

20 Q. [Mr. Alfaro] I'm going to also show you what's
21 been previously marked for identification as State's Exhibit
22 24.

23 A. Yeah.

24 Q. [Mr. Alfaro] Can you tell if that's the same --

25 A. Yes. This is a closeup of the same image.

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1 MR. ALFARO: Your Honor, at this time the State
2 would ask that State's Exhibit 24 be admitted in
3 evidence.

4 MR. DAVIS: It would be commutative, Your Honor.
5 But if he has to have it, no objection.

6 MR. KEARSE: None from Defendant Moses, Your Honor.

7 THE COURT: 24 into evidence, nothing Mr.
8 Gourdine's objection and no objection from Mr. Moses.

9 [Whereupon, State's Exhibit Number 24 is admitted
10 into evidence by the Court]

11 THE COURT: You may publish.

12 MR. ALFARO: Thank you, Your Honor.

13 Q. [Mr. Alfaro] If you'll look behind you, we're
14 going to put State's Exhibit 24 on the overhead. I believe
15 you testified this is a closer version, closeup version, of
16 what State's Exhibit 23 is?

17 A. Yes, sir.

18 Q. And on 24 are you able to -- is it easier for
19 people to see what you were referring to around the elbow?

20 A. Yeah.

21 So this is his spine, for example. This is his
22 pelvis. These are his ribs. This is the upper portion of his
23 arm. And what you see here are all these bright little dots.
24 That's all shotgun pellets that are sitting in kind of the
25 crux of his elbow we call the antehuma posta there. And then

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1 you can also see that the bone outline here kind of gets
2 grayed out. That's because this area has been destroyed by
3 the shotgun.

4 MR. ALFARO: Thank you, Doctor. Please answer any
5 questions that the defense may have.

6 THE COURT: Mr. Davis?

7 MR. DAVIS: Hey, Dr. Crookes. How are you doing?

8 THE WITNESS: I'm well. How are you?
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Bruce Crookes, M.D.
Cross-Examination by Mr. Davis
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CROSS-EXAMINATION

BY MR. DAVIS:

Q. You spent some time in Philadelphia, did you not?

A. I did. Yes, sir.

Q. And would it be fair to say that a lot of these injuries come from -- the type of injuries James Bryant received, unfortunately you see quite often in an emergency room in reference to a bullet wound, did you not?

A. So penetrating trauma covers about twelve percent of our admissions per year, roughly, and that includes gunshot wounds, stab wounds. So if you break it down to about eighty-percent of our total trauma volume for a year --

Q. But I'm talking about this specific injury, though. The majority of times it's caused by blunt trauma and the majority of time it involves some type of pellet?

A. What type of trauma are you speaking to?

Q. The nerve damage that he -- the brachial artery that he received the injury in this case. That's what your note says.

A. That injury pattern can be common -- we can see it in multiple types of injuries.

We see it with blunt trauma. So someone who falls back on their arm this way, a trampoline accident, for example. We see it with gunshot wounds. And then we see it with gunshot wounds in terms of what we call blast injury.

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1 So, yes, sir.

2 Q. And your major concern with these type of injuries
3 is loss of limb; isn't that true?

4 A. Well, it can be -- your first obligation is loss of
5 life, right, because you've severed one of the major arteries
6 in your body. So the blood loss that you're going to
7 accumulate that -- from that can be significant. And we
8 certainly see patients die from those injuries, no question.

9 Once you get over the loss of life, then you have
10 to start worrying about the loss of limb.

11 Q. Well, you initially said on direct that his vital
12 signs were fine, did you not?

13 A. Yes, sir, I did.

14 Q. And a Glasgow -- I may be saying it wrong -- coma
15 score of fifteen, what does that suggest?

16 A. That essentially says that the patient's
17 neurological status on three axes, that in terms of the
18 score for their eyes, for their verbal response, and for their
19 motor response, is normal.

20 Q. Well, how does that assess to the overall health of
21 the patient?

22 A. What it delineates is that the patient -- a
23 penetrating trauma is a delay in the patient's conscience and
24 responsive to. It's used mostly for neurologic injuries,
25 particularly traumatic brain injuries.

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1 Q. My point is, the -- it is of importance, is it not?

2 A. It is important in terms of how you're assessing
3 what can be a poly-trauma patient.. It's used mostly for
4 traumatic brain injury, however.

5 Q. And the lower the score, the more dramatic the
6 injury; isn't that correct?

7 A. Not necessarily.

8 It falls within ranges. So a Glasgow coma score of
9 three to eight is considered to be a severe traumatic brain
10 injury.

11 That's correct.

12 Q. Your eight --

13 A. That's correct.

14 Q. -- is a severe traumatic brain injury?

15 A. That's correct.

16 Q. Yeah.

17 But you would admit eight is a far cry from
18 fifteen, is it not?

19 A. It depends on how you're looking at, the score and
20 what you're using it to measure, and the patient population
21 using it to measure. So for example the lowest score that you
22 get is a three, and that's for no eye-opening, no motor
23 movement, no verbal response.

24 The reality is if you hold up a pen, that has a
25 Glasgow coma score of three. So the score is nonsense to go

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1 on some circumstances. It's helpful if you're trying to
2 delineate whether the patient has a traumatic brain injury,
3 though.

4 Q. It's utilized, though, at every trauma hospital, is
5 it not?

6 A. As a screen for traumatic head injury, yes. It's
7 predictive of the outcome for that circumstance.

8 Q. Yeah.

9 So it's very important, then, you would admit?

10 A. It's important when you're initially screening a
11 poly-trauma patient, or screening any trauma patient, to
12 delineate the possibility that they have traumatic brain
13 injury.

14 Q. Well, let me ask this question of you. What is the
15 specific injury that James Bryant received?

16 A. So he had a blast injury to his left hand to the
17 cuble fossel.

18 Q. In medical terms?

19 A. He suffered a shotgun wound to his left elbow.

20 Q. And which one of his arteries was affected?

21 A. His brachial artery.

22 Q. That's my point. Brachial artery injury. And if
23 that injury is blocked or clogged, just as you testified, it
24 just creates a situation where there's lack of blood to the
25 extremity of the hand, is it not?

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1 A. [No response]

2 Q. And, therefore, if there's a lack of blood to the
3 extremity of the hand for some period of time, that person can
4 get gangrene; isn't that true?

5 A. Well, gangrene -- you're correct. However,
6 gangrene wouldn't set in for several days.

7 Q. I mean, I know it's not immediately, you know.

8 Q. You asked the question, sir.

9 Q. Yeah.

10 And you have the bulk of the expertise, so I just
11 need your assistance --

12 A. Sure.

13 Q. -- with your being responsive.

14 A. Yes, sir.

15 Q. So I would say again, then, that in relationship to
16 your notes that was derived from James Bryant, the major
17 concern was a loss of limb?

18 A. That is correct.

19 Q. Not a loss of life?

20 A. There certainly could be a loss of life, however.

21 Q. Well, that, in most situations, could -- should --

22 A. Trauma patients have two periods of time in which
23 they're in jeopardy from losing their lives. One is within
24 the first twelve hours after their injury. During that time
25 it's due to blood loss. The second time is five days later,

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1 at which point sepsis sets in. So even if you get them
2 through the first twelve hours, there's still a risk of losing
3 someone's life on day five to day seven.

4 So, yes, my concern is always their loss of life.

5 Q. But in relationship to what your medical record
6 suggests, it highlights that your major concern was loss of
7 limb.

8 A. During the immediate twelve hours after the injury.
9 Yes.

10 Q. And, also, your -- you described that he was -- his
11 behavior was abnormal? These are your notes..

12 A. Yes, sir.

13 Q. What does that suggest, if anything?

14 A. It suggests that his behavior was somewhat abnormal
15 at that time.

16 Q. Yes. That's true.

17 Was alcohol or being under the influence of alcohol
18 or drugs factored in in reference to the abnormal behavior?

19 A. No, sir.

20 Q. You wouldn't consider being drunk and agitated part
21 of your process?

22 A. It is part of my process. However, it's not really
23 my concern at that point in time.

24 Q. Okay. But you put it in your notes, though?

25 A. Yes, sir.

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1 Q. Okay. And when he was discharged from the
2 hospital, quite interestingly, there were no restrictions
3 placed on him?

4 A. From my perspective, if I remember correctly --

5 Q. If you know.

6 A. Now, realize that you also had two other consulting
7 surgeons on his care. One was a vascular surgeon and one was
8 one of the orthopaedic surgeons, and they would certainly have
9 restrictions of their own that they would imply or --

10 Q. You did this surgical procedure on him July the
11 28th. You did the exploration, okay, of the left arm and the
12 forearm. Okay?

13 A. Yes, sir.

14 Q. Dr. Hotsoc did the left -- addressed the left elbow
15 wound?

16 A. At that point in time, yes.

17 Q. Yeah.

18 Level of activity at discharge: do not drive or
19 operate machinery when taking narcotics, weight-bearing
20 status, left arm, non weight-bearing, no other restrictions.

21 A. Yes, sir.

22 Q. Would you expect him to fully recuperate from his
23 injury?

24 A. I can't answer that. I'm not -- neither an
25 orthopaedic surgeon nor a vascular surgeon.

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1 Q. That's beyond your realm?

2 A. That's correct.

3 Q. You said that the patient was unable to cooperate
4 for CT. Do you have any recollection of that?

5 A. I don't.

6 If I put it in my note, though, I usually -- I put
7 that in there -- I don't -- if it is in my note, I would have
8 to attest to its voracity.

9 Q. Okay. Thank you.

10 A. Sure.

11 Q. And you have no knowledge, personal knowledge, that
12 is, of how the mechanism that brought about this injury to
13 Mr. Bryant?

14 A. No, sir, I do not..

15 Q. Do you see this type of injury more in men or
16 women?

17 A. If you're talking about just trauma in general?

18 Q. No, no. This specific injury.

19 A. Gunshot wounds to the left elbow?

20 Q. [No response]

21 A. Shotgun wounds to the left elbow?

22 Q. Yes, sir.

23 A. I can't tell you that, sir.

24 Q. How long were you in Philadelphia?

25 A. I was in Philadelphia for my training, which was

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Cross-Examination by Mr. Davis
March 16, 2016

1 five years. But even worse, I was in Miami for three.

2 Q. Yeah.

3 A. I can tell you Miami was about ten times worse than
4 Philly.

5 MR. DAVIS: Okay. Thank you.

6 THE WITNESS: You're welcome.

7 MR. DAVIS: I've got family in Philly. You don't
8 need -- really need to know that.

9 THE WITNESS: No. I'm fine.

10 THE COURT: Mr. Kearse?

11 MR. KEARSE: May it please the Court.

12 Dr. Crookes, how are you doing?

13 THE WITNESS: I'm well. Thank you. How are you?

14 MR. KEARSE: Good. I'm fine. I thank you for
15 asking.

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Bruce Crookes, M.D.
Cross-Examination by Mr. Kearse
March 16, 2016

CROSS-EXAMINATION

BY MR. KEARSE:

Q. Mr. Bryant's primary injury was to his left elbow; correct?

A. Yes, sir.

Q. All right. And when you talk about -- loss of life and loss of limb primarily are medical protocols; right? I mean, I know I know the specific medical lingo. When you start at the most extreme and you work your way down as you treat the patient; is that correct?

A. Yes, sir.

Q. And as you're treating the patient, you can downgrade them as you see he's not at loss of life, loss of limb, and you determine whether he's stable?

A. Yes. I would agree with that, in general.

Q. Okay. And so you do that -- I think your testimony is pretty much with everyone -- especially if they come in at the level that he was brought in; correct?

A. Uh-huh.

Q. All right. So that was just a protocol thing you went through when you treated with Mr. Bryant; correct?

A. Yes, sir.

Q. Determined whether he was going to lose his life, determined whether he's going to lose his limb, neither one of which happened; is that right?

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1 A. That is correct, yes.

2 MR. KEARSE: And beg the Court's indulgence.

3 THE COURT: Take your time.

4 [Whereupon, Mr. Kearse reviews documents]

5 MR. KEARSE: Let me have this marked.

6 THE COURT REPORTER: Defendant Moses 12.

7 [Whereupon, Defendant Exhibit Moses Number 12 is
8 marked by the court reporter]

9 Q. [Mr. Kearse] Mister -- Doctor -- I'm sorry.
10 Dr. Crookes --

11 A. That's okay.

12 MR. KEARSE: If I can approach, Your Honor?

13 THE COURT: You may.

14 Q. [Mr. Kearse] I'm going to hand you a one-page
15 document. Can you try to identify that document for me?

16 [Whereupon, the witness reviews documents]

17 A. So this is a radiologist's interpretation of a left
18 elbow x-ray or plane film that was performed on July 28 at it
19 looks at 3:57 in the morning.

20 Q. [Mr. Kearse] Okay. And that would be of Mr. James
21 Bryant; correct?

22 A. Unfortunately, you don't have the patient's name
23 nor medical record number on this. I'm assuming it is. You
24 would have to cross-reference that with the exception number
25 that's on here.

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1 Oh, I'm sorry, it is. On the bottom. Yes, you're
2 correct.

3 Q. All right. And the findings on that radiologist's
4 report reveals that Mr. Bryant was actually shot with bird
5 pellets; is that correct?

6 A. It says-with multiple bird -- the dictation by the
7 radiologist says, with multiple bird-shot fragments and
8 occiput fragments seen throughout the soft tissues of the
9 elbow.

10 Q. And those are part of the medical records that were
11 generated during the course of treatment of Mr. James Bryant,
12 Jr., back in 2013, July 28th; correct?

13 A. That is correct.

14 I would caution you with over-interpreting an
15 radiologist's interpretation of an x-ray, however, in terms of
16 their determination of what was found in the wound.

17 Q. All right. But normally when an x-ray is done, it
18 is the radiologist who does the interpretation; right?

19 A. That's right.

20 Q. Correct.

21 A. Yes and no.

22 So the radiologist for the official reading of the
23 x-ray, the film is always over-read or looked at by the trauma
24 surgeon.

25 Q. Now, whether an injury to somebody's bronchial

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1 [phonetic] artery or an extremity such as an arm could cause
2 loss of life, generally is something -- knowledge you
3 accumulate when you go to medical school, is it not?

4 A. Yes.

5 Q. Okay. So the average ordinary person would not
6 know -- the average lay person probably wouldn't know that you
7 might be able to injure an artery in an arm and particularly
8 cause someone a loss of life?

9 A. I would conjecture on that one.

10 Q. Okay. Well, if you find that to be conjectural,
11 that's fine.

12 But it's quite clear, once again, Mr. Bryant's
13 injury was to his left arm, primarily the elbow area?

14 A. Yes, sir.

15 MR. KEARSE: I don't have anything further, Your
16 Honor.

17 MR. ALFARO: No questions, Your Honor.

18 THE COURT: Dr. Crookes, you are free to go but
19 you're also free to stay with us, if you would like to.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you.

22 THE WITNESS: I appreciate it.

23 [Whereupon, Dr. Crookes is excused and exits the
24 witness stand]

25 THE COURT: Call your next witness.

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1 MR. ALFARO: The State calls Dr. Joseph Sakran.

2 THE COURT: Sir, please come forward and be sworn.

3 [Whereupon, Dr. Sakran comes forward]

4 THE CLERK OF COURT: Put your left hand on the
5 Bible and raise your right.

6 [Whereupon, Dr. Sakran is duly sworn by the clerk
7 of court as follows: do you solemnly swear or affirm
8 the testimony you shall give in this case shall be the
9 truth, the whole truth, and nothing but the truth, so
10 help you God]

11 THE WITNESS: I do.

12 THE CLERK OF COURT: If you'll have a seat.

13 [Whereupon, Dr. Sakran takes the witness stand]

14 THE CLERK OF COURT: State your full name for the
15 record. Spell your first and last name, please

16 THE WITNESS: My name is Joseph Sakran, J-O-
17 S-E-P-H. Last name is S-A-K-R-A-N.

18 MR. MCNEELY: Good afternoon, Dr. Sakran.

19 THE WITNESS: Good afternoon.
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JOSEPH SAKRAN, M.D.,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCNEELY:

Q. Where are you employed?

A. At the Medical University of South Carolina.

Q. In what capacity are you employed there?

A. I am one of the trauma critical care surgeons.

Q. Can you tell the jury a little bit about your
educational background?

A. Sure. I spent four years at Fort Mason University
getting a bachelor's in science, as well as a minor in
chemistry. I was in -- spent four years doing a medical
program that was a combination between Ben Gray and Columbia
University. I spent a year doing my masters in public health
in Johns Hopkins University. And I spent a year at the Harvey
Kenning school obtaining a public policy degree.

Q. What about medical school?

A. Yeah. That was the Ben Gray in Columbia
University.

Q. Understood. Are you board certified?

A. Yes, sir.

Q. In trauma surgery?

A. I'm board certified in general surgery and in

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1 surgical critical care. There is no board certification
2 specifically in trauma.

3 Q. Were you working at MUSC on July 28th, 2013?

4 A. Yes, sir.

5 Q. Did you have occasion on that date to treat a
6 patient named Stacy Bohannon?

7 A. Yes, sir.

8 Q. How did Ms. Bohannon present to you?

9 A. Ms. Bohannon presented to me to the trauma bay on
10 that date and had a wound, a gunshot wound, to the back of the
11 scalp and had multiple different pellets that were embedded
12 within the scalp. And so we worked her up for, you know,
13 potentially life-threatening injuries.

14 We were able to stabilize her using advanced trauma
15 life support protocol and then evaluated her, figured out
16 where her individual were [phonetic], washed them out, and
17 then she was discharged from the trauma bay.

18 Q. Were films or scans taken of her injuries?

19 A. Yes, sir.

20 MR. MCNEELY: Permission to approach, Your Honor?

21 THE COURT: You may.

22 Q. [Mr. McNeely] I want to show you what's been
23 previously marked for identification as State's Exhibits 25
24 and 26. Please look at those.

25 [Whereupon, the witness reviews documents]

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1 Q. [Mr. McNeely] Do you recognize those?

2 A. Yes, sir.

3 So these are two images, one a lateral image, so
4 coming from the side, and one coming from the front,
5 demonstrating Ms. Bohannan's injury, that shows multiple
6 pellets throughout the upper back and scalp.

7 Q. Are they a fair and accurate representation of her
8 injuries on July 28th, 2013?

9 A. Yes, sir.

10 MR. MCNEELY: Your Honor, at this time the State
11 would move to admit State's Exhibits 25 and 26.

12 THE COURT: Any objection?

13 MR. DAVIS: None, Your Honor.

14 MR. KEARSE: None from Defendant Moses.

15 THE COURT: State's 25 and 26 into evidence without
16 objection.

17 [Whereupon, State's Exhibit Numbers 25 and 26 are
18 admitted into evidence by the Court]

19 THE COURT: You may publish.

20 MR. MCNEELY: Thank you, Your Honor.

21 State's 25, please.

22 Dr. Sakran, there is a laser pointer in front of
23 you. The top red button -- and comes up on the screen.
24 Will you turn around and please look at that photo.

25 Q. [Mr. McNeely] Can you please tell the jury what

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1 they're looking at?

2 A. Okay. So what you guys see here are -- this is a
3 frontal view of the patient, Ms. Bohannan. And what you can
4 see here is -- all of these little bright things or white
5 things you can see are actual pellets from the gunshot wound.

6 And you can see that it extends all the way from
7 the upper back up to the top of the head. And so this is
8 quite numerous and life-threatening.

9 Q. Please tell the jury what they're looking at now.

10 A. Right.

11 So now you're looking at a side view of Ms.
12 Bohannan. And what you can see here is that this tells you
13 that all of these pellets are in the back of the scalp,
14 running up towards the top of the head, and coming down. So
15 you can see that there's numerous pellets all the way through,
16 and then some that appear to even be penetrating the actual
17 skull into the brain.

18 Q. Were any of those pellets able to be removed from
19 Ms. Bohannan's body?

20 A. Some of them were removed through just washout and
21 simple debridement.

22 Q. Are some of them still there?

23 A. Yes.

24 MR. MCNEELY: You can take that down now.

25 Q. [Mr. McNeely] On that same night, July 28th -- I'm

Bruce Crookes, M.D.
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1 sorry. Let me ask one more follow-up on this one.

2 A. Yeah.

3 Q. Following July 28, 2013, did you provide any
4 further treatment to Ms. Bohannan?

5 A. Not that I recall.

6 Q. On that same night, did you have occasion to come
7 in contact with David Bohannan?

8 A. Yes, sir.

9 Q. How did Mr. Bohannan presented to you?

10 A. Mr. Bohannan presented, around the same time, with
11 a gunshot wound to the elbow and had quite a large open wound
12 that required immediate operative exploration.

13 Q. Did you do that operative exploration?

14 A. Yes, sir.

15 Q. Prior to the operative exploration, were any photos
16 or scans taken of Mr. Bohannan's arm?

17 A. Yes, sir, there was.

18 MR. MCNEELY: Permission to approach, Your Honor?

19 THE COURT: You may.

20 Q. [Mr. McNeely] I show you what's been marked as
21 State's Exhibit 27. Please look at that.

22 [Whereupon, the witness reviews documents]

23 A. Okay.

24 Q. [Mr. McNeely] Do you recognize that photo?

25 A. Yes, sir.

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1 Q. What is that photo?

2 A. So this is a photo of Mr. Bohannon's arm, and it
3 demonstrates a significant soft-tissue injury, as well as
4 multiple pellets that are surrounding the elbow and upper arm.

5 Q. Is it a fair and accurate representation of
6 Mr. Bohannon's injury on July 28th, 2013?

7 A. Yes, sir.

8 MR. MCNEELY: Your Honor, at this time I would move
9 to admit State's Exhibit 27.

10 MR. DAVIS: No objection, Your Honor.

11 MR. KEARSE: None from Mr. Moses, Your Honor.

12 THE COURT: State's 27 into evidence without
13 objection.

14 [Whereupon, State's Exhibit Number 27 is admitted
15 into evidence by the Court]

16 MR. MCNEELY: Permission to publish?

17 THE COURT: You may.

18 Q. [Mr. McNeely] Please turn around and tell the jury
19 what you're seeing.

20 A. So this is a frontal picture of the arm. And you
21 can see here around the elbow, as well as the upper arm,
22 there's multiple pellets that are surrounding this area. You
23 can also see that there is a significant soft-tissue defect
24 that's outlined here in this area. So significant injury of
25 the elbow and upper arm.

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1 Q. When you say soft-tissue defect, what do you mean
2 by that?

3 A. So that means part of the skin and muscle has been
4 violated or avulsed.

5 Q. Torn off?

6 A. Yes, sir.

7 Q. You mentioned you did an operative exploration of
8 his injury?

9 A. Yes, sir.

10 Q. Why did you do that?

11 A. So any time someone has that type of injury, you
12 have to be able to control bleeding, to be able to debried the
13 dead tissue, to get control of the situation, and then provide
14 wound care.

15 Q. What did you find during the operative exploration?

16 A. So during the operative exploration there was a
17 significant amount of skin, muscle, that was essentially gone,
18 so had quite a large avulsion area. I don't recall the exact
19 dimensions. There was also exposed bone, as well as tendon.

20 Q. Were photos taken during the operative exploration?

21 A. I believe there was a photo that was taken.

22 MR. DAVIS: I'm going to object to this, Your
23 Honor.

24 MR. KEARSE: Same.

25 THE COURT: You also object?

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1 MR. KEARSE: Yes.

2 THE COURT: You may approach.

3 [Whereupon, an off-the-record bench conference is
4 held]

5 THE COURT: State's 28 into evidence, noting your
6 objection. We'll take up that matter outside the
7 presence of the jury.

8 [Whereupon, State's Exhibit Number 28 is admitted
9 into evidence by the Court]

10 THE COURT: You may continue, Mr. McNeely.

11 MR. MCNEELY: Thank you, Your Honor. Permission to
12 approach the witness?

13 THE COURT: You may.

14 Q. [Mr. McNeely] Show you what's been marked as
15 State's Exhibit 28. If you would please look at that photo.

16 [Whereupon, the witness reviews documents]

17 A. Okay.

18 Q. [Mr. McNeely] What's in the photo?

19 A. So in this photo you see a significant avulsion
20 injury to the upper arm with soft tissue, some muscle, skin,
21 that's gone, as well as exposed, and you can see tendon and
22 bone.

23 Q. Is that David Bohannon's arm?

24 A. Yes, sir.

25 MR. MCNEELY: At this time we would move to admit,

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1 Your Honor, State's Exhibit --

2 THE COURT: It's been admitted.

3 MR. MCNEELY: Permission to publish?

4 THE COURT: You may.

5 MR. MCNEELY: And if you would just turn around and
6 tell the jury what they're looking at.

7 A. So what you're looking at down here, this is the --
8 this is the hand that's draped out on the operating table.
9 This is all covered up because it's been prepped out and
10 sterile. So this is the actual hand.

11 And this is as you come up the upper hand. And you
12 can see a significant piece of skin, muscle, tissue, that is
13 gone and avulsed, as well as tendons and bone there.

14 Q. [Mr. McNeely] During this operative exploration,
15 did you conduct any nerve study or any conductivity study?

16 A. So during this initial operation, we didn't conduct
17 any nerve study but what we did do was make sure that the
18 vascular studies were intact. So, in other words, that the
19 patient had pulses in the hand. Because with this type of
20 injury, you have potential risk of injuring some of the
21 vessels that could limit the blood flow to the hand.

22 So at that point, our goal was to ensure that
23 there was blood flow down to the hand and to, you know,
24 control any of the bleeding within the wound, to get the
25 patient stabilized.

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March 16, 2016

1 Q. Following that operative exploration, did you
2 provide additional treatment to Mr. Bohannon?

3 A. During the hospital, yes, he was on our service.

4 Q. Could you describe some of that?

5 A. Yeah.

6 So he was admitted to our service. The wound was
7 evaluated. We also got -- because of the significant soft-
8 tissue defect that he had, as well as concern for potential
9 other injuries, we had our plastic surgeons evaluate the
10 patient in the hospital, as well.

11 Q. What was the purpose of the plastics evaluation?

12 A. The plastics evaluation, if I recall correctly, was
13 because there was some limited function of the hand and so we
14 wanted them to evaluate the patient to make sure that there
15 wasn't any nerve injury.

16 Q. Did you do any additional surgeries yourself?

17 A. I don't believe I did any additional surgeries.

18 MR. MCNEELY: No further questions from the State
19 at this time, Your Honor.

20 THE COURT: Mr. Davis?

21 MR. DAVIS: Thank you, Your Honor.

22 Hey, Doctor. How are you doing?

23 THE WITNESS: Hey. Good. How's it going?

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Joseph Sakran, M.D.
Cross-Examination by Mr. Davis
March 16, 2016

CROSS-EXAMINATION

BY MR. DAVIS:

Q. This is the first time we are discussing this matter.

A. Okay.

Q. That's true?

A. Yes.

Q. You have discussed it with the solicitor's office? Your testimony.

A. Have I discussed my testimony?

Q. Yeah.

A. No, sir.

Q. With the solicitor's office you have not?

A. No, sir.

We met outside. I've not discussed this testimony.

Q. Okay. Now, tell me what -- if there's no signs of respiratory distress, what does that mean?

A. Respiratory distress means the fact that the patient is able to breath without requiring other interventions like breathing tubes, et cetera.

Q. No life-support system, in addition?

A. Well, specifically, breathing tube.

Q. Okay. And what's the significance of the -- and if I'm saying it wrong, please correct me -- Glasgow coma score of fifteen?

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1 A. So that's a way to evaluate the mental status of
2 the patient. So a Glasgow coma score of fifteen would be a
3 normal mental status, something that you and I currently have.

4 Q. Okay. Normally it says that there's no potential
5 for shock, for a person to go into shock?

6 A. No, it's actually not an evaluation of shock. It's
7 simply an evaluation of mental status that people are
8 currently functioning at.

9 So patients --

10 Q. I didn't mean to cut you off.

11 A. Yeah.

12 So you and I have a Glasgow coma score of fifteen.
13 Correct.

14 Q. And someone with a Glasgow coma score of three to
15 eight, what does that suggest?

16 A. That would suggest a depressed mental status. And
17 so this would be, you know, concerning for a variety of
18 different causes that might lead to --

19 Q. And Ms. Stacy Bohannon was discharged the same
20 night, was she not?

21 A. I believe so, yes, sir.

22 Q. Matter of fact, her wounds were washed out. And
23 the term birshots were used in the medical records, but for
24 some reason they -- doctors don't want to use that word bird-
25 shot. But would you agree that those pellets are birdshots?

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March 16, 2016

1 A. I mean, those pellets are pellets. Can you clarify
2 the question?

3 Q. My point is in the medical record is inundated with
4 the phrase bird-shots. You've read the medical records?

5 A. Yes, sir.

6 Q. Have you seen the term bird-shots in them?

7 A. I don't recall. If you can show them to me, I'm
8 happy to review them.

9 Q. I'll let Mr. Kearse review them.

10 But there's no question that the wounds were washed
11 out and she was discharged home?

12 A. Yes. That's correct.

13 Q. And there's no question she presented as a Level A.
14 But after protocol had been addressed, there was no issue of
15 loss of life, potentially, for her?

16 A. Well, there's definitely a potential for loss of
17 life. She had a gunshot wound to the head.

18 As we've demonstrated, there was pellets or bird-
19 shots, whatever you would like to call them, that were
20 actually past the skull into the inter-cranial cavity. So
21 they were, you know, right onto the brain.

22 So by definition, any time you have an injury like
23 that, that is significant and there is a potential loss of
24 life.

25 Q. You discharged her home, did you not?

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March 16, 2016

1 A. Yes, sir, after --

2 Q. Would you have discharge someone home who had life-
3 threatening injuries?

4 A. After they were stabilized and that I ensured that
5 their injuries were not life-threatening any more, that's why
6 we discharged her.

7 Q. So my question is, then, that when you discharged
8 her, there were not any life-threatening aspects to her
9 injuries?

10 A. After she was discharged? No, sir.

11 Q. In fact, when she presented herself, the notes
12 suggest that her respiratory was normal, her heart rate was
13 normal, her rhythm were normal. What do all those suggest to
14 you as a doctor?

15 A. Well, that suggests to me that she was very lucky
16 because, you know, she came in presenting with a gunshot wound
17 to the head.

18 If you look at most people that present with a
19 gunshot wound to the head, it's actually quite a lethal
20 injury. So that's why all of these patients are made full
21 trauma-team activations or, as you alluded to -- traumas.

22 Q. So where in your records -- anywhere in here do you
23 have the term very lucky?

24 A. No, sir. I don't believe so.

25 Q. All right. So that's not even a medical term, very

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1 lucky, is it?

2 A. I don't believe so, sir.

3 Q. All right. The bottom line is her heart rate was
4 normal, her rhythm was normal, her respiratory was not in
5 distress. There were no possibility, based on the vital signs
6 were normal, that her life was at risk at that time?

7 A. Her injury ended up, you know, being one that we
8 were able to take care of, in the trauma bay, and discharge.

9 Q. That's right. Her injuries were such that it was
10 not life threatening. Can you say that?

11 A. No, I can't, because, again, the pellets invaded
12 the skull bone and were next to the brain.

13 So we've seen patients like that that actually --
14 they are life-threatening. So the type of injury she has is
15 potentially life-threatening.

16 Q. A lot of things are potentially life-threatening;
17 isn't that true? Injuries?

18 A. I would agree with that, yes.

19 Q. Yeah.

20 But in this instance we know that you discharged
21 her the same night, did you not?

22 A. Yes, sir.

23 Q. All right. And you would not discharge a patient
24 that you believe that her injury was such that it was life-
25 threatening?

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March 16, 2016

1 A. That's correct.

2 MR. DAVIS: Thank you.

3 THE WITNESS: You're welcome.

4 THE COURT: Mr. Kearse?

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Joseph Sakran, M.D.
Cross-Examination by Mr. Kearse
March 16, 2016

CROSS-EXAMINATION

BY MR. KEARSE:

Q. Medical protocol, once again, calls for you guys to start at loss of life, loss of limb, things of that nature, when you're in the trauma unit; correct?

A. Based on the type of injury they have? Is that what you're asking me?

Q. Right.

A. Yes, sir.

Q. And so you begin at worst-case scenario and you work your case -- you work the situation down from there; correct? Assess, I should say.

A. Yeah. Well, actually, that's not exactly correct.

So there's different levels of trauma team activation, so there's partial and full trauma team activation.

So patients like Ms. Bohannon, who present with a potential life-threatening injury, they're at the highest level which is a Level-A trauma or full trauma team activation.

Q. Right.

And that's where they start? That's where they all start; correct?

A. Yeah, depending upon the injury. For them, that was the case, correct.

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1 Q. All right. And then -- because you say patients
2 like Ms. Bohannan. But as you assess the situation, you then
3 make a determination of where she falls in the spectrum of her
4 injury or her trauma; correct?

5 A. After the evaluation. Yes.

6 Q. Yes.

7 And so that evaluation includes taking her vitals,
8 which is something generally the nurse does; right?

9 A. Well, we have a full trauma team that's present
10 during presentation, so there's what we call horizontal
11 resuscitation. So there's multiple different key members that
12 are participating in order to ensure that we provide the
13 highest quality of care to these patients.

14 Q. And as has been testified earlier, just for
15 clarity, Ms. Bohannan's vitals were normal when she arrived?

16 A. To the best that I can recall, yes.

17 Q. All right. But even so, you still have to treat
18 the scenario as if it's -- could quite possibly be life-
19 threatening; correct?

20 A. Well, yeah.

21 Again, you know, she had a gunshot wound to the
22 head. So by definition, that's a life-threatening scenario.

23 Q. Right. By definition; right?

24 A. Yes.

25 Q. And so but as the day goes on, she was assessed,

Joseph Sakran, M.D.
Cross-Examination by Mr. Kearse
March 16, 2016

1 she was evaluated, she was treated, she was released at the
2 end of the day; right?

3 A. Yes, sir.

4 Q. All right. Which means her injuries turned out,
5 and the trauma turned out, not to be life-threatening?

6 A. Correct.

7 Q. All right. You said Mr. Bohannon's injuries were
8 to his arm; right? A traumatic injury to the arm?

9 A. Yes, sir.

10 Q. All right. And that was his primary and main
11 injury; was it not?

12 A. Yes, sir.

13 Q. All right. And that turned out to be what is
14 coined soft-tissue injury --

15 A. Yes. Yeah, that's the term I referred to.

16 Q. Now, that's not necessarily -- that has become a
17 medical term over the course of the years? Soft-tissue
18 injury?

19 A. Yes, sir.

20 Q. Right?

21 And so soft tissue primarily is a muscle injury, is
22 it not?

23 A. Well, it's potentially a skin, muscle, nerve,
24 artery injury, yes. It can include a variety of things.

25 Q. All right. Well, once again, you know, even with

Joseph Sakran, M.D.
Cross-Examination by Mr. Kearse
March 16, 2016

1 you looking at the soft-tissue injury, you make an assessment
2 starting at the life-threatening; correct?

3 A. Yes.

4 The goal here is to control bleeding and to get the
5 wound under control and prevent --

6 Q. Right.

7 A. -- any loss of life or loss of limb.

8 Q. Right.

9 And bleeding out with the person could possibly be
10 a cause of slowness of treatment, in terms of time lapse
11 between the injury and possible treatment to the injury; is
12 that correct?

13 A. Are you asking if there was a delay in treatment?

14 A. Right.

15 I mean, a person bleeding out -- you say bleeding
16 out could be potentially life-threatening; right?

17 A. It could.

18 Q. All right. And that could be caused by a delay in
19 treatment?

20 A. It could, sure.

21 Q. All right. And so but that didn't happen with
22 Mr. Bohannon; right?

23 A. No, sir.

24 Q. Okay. And, once again, he was assessed and treated
25 by your staff at the hospital; right?

Joseph Sakran, M.D.
Cross-Examination by Mr. Kearse
March 16, 2016

1 A. Yes.

2 Q. All right. And it was determined, after the
3 assessment, the evaluation, assessment, and treatment, his
4 injuries, through traumatic, were not life-threatening?

5 A. That's correct. After he was stable.

6 MR. KEARSE: I don't have anything further, Your
7 Honor.

8 MR. MCNEELY: Nothing further from the State, Your
9 Honor.

10 THE COURT: You may step down. You are free to go,
11 but feel free to stay with us.

12 [Whereupon, Dr. Sakran is excused and exits the
13 witness stand]

14 THE COURT: Call your next witness.

15 MR. ALFARO: The State calls Matthew Marous.

16 THE COURT: Sir, please come forward and be sworn.

17 [Whereupon, Mr. Marous comes forward]

18 THE CLERK OF COURT: Place your left hand on the
19 Bible and raise your right.

20 [Whereupon, Mr. Marous is duly sworn by the clerk
21 of court as follows: do you solemnly swear or affirm
22 the testimony you shall give in this case shall be the
23 truth, the whole truth, and nothing but the truth, so
24 help you God]

25 THE WITNESS: Yes, ma'am.

Joseph Sakran, M.D.
Cross-Examination by Mr. Kearse
March 16, 2016

1 THE CLERK OF COURT: If you'll have a seat.

2 [Whereupon, Mr. Marous takes the witness stand]

3 THE CLERK OF COURT: State your full name for the
4 record and spell your last name.

5 THE WITNESS: Sure. My name is Matthew Frank
6 Marous. Last name, M-A-R-O-U-S.

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MIA PERRON, CVR-CM-M

-471-

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

MATTHEW MAROUS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. ALFARO:

Q. Could you tell the jury where you work?

A. I work for the City of Goose Creek Fire Department.

Q. And how long have you been with them?

A. Since 2010.

Q. And prior to joining them, did you have any prior work experience as an EMT or a first responder?

A. Yes, sir.

Q. And what was that?

A. I was a firefighter in Ohio for a few years. And then before that, I've actually been an EMT and paramedic since 1998.

Q. And could you briefly describe for the jury a little bit about your training and your education in the field of emergency medical treatment?

A. I'm a certified national registry paramedic. I'm also a certified intensive care paramedic. I'm an EMT instructor for local colleges here. I'm a training officer for a private ambulance company. And a firefighter locally.

Q. And were you working for the City of Goose Creek Fire and EMS on July 28, 2013?

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 A. Yes, sir.

2 Q. And in that capacity, did you have the opportunity
3 to respond to the Nowhere Bar and Grill in Goose Creek?

4 A. Yes, sir.

5 Q. And do you recall what you found when you got to
6 that scene?

7 A. When we were allowed to come in, once it was
8 cleared by the police officers, we found a lot of people
9 rummaging around. Two victims were on the floor, initially,
10 when we came in the front door, an African-American male and a
11 white male. And they also directed us to an injured female in
12 the back of the bar.

13 Q. And what did you do when you arrived?

14 A. Since we were the first arriving EMS unit, our job
15 was to set up triage and start triaging the victims.

16 I took the two gentlemen in the front door. My
17 partner went to the female in the back of the establishment.

18 Q. And can you tell the jury what triage means and
19 what the process is when you do that?

20 A. What we do is we start initializing finding out who
21 needs the most urgent of care and who needs lesser care and
22 start putting them in order of priority as to who needs to be
23 taken care of first and then start coordinating, when the
24 other EMS units show up, as to who goes out the door first,
25 followed by the lesser victims.

Matthew Marous
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March 16, 2016

1 Q. And which one of the victims did you personally
2 treat?

3 A. I treated the two gentlemen on the floor.

4 Q. And do you recall what you observed regarding their
5 injuries when you got there?

6 A. Yes.

7 The Caucasian male had a small amount of injury to
8 his arm.

9 The African-American male had a large injury to his
10 arm. And in my estimation, I mean, it would be pretty much
11 similar to, you know, putting his arm through a grinder. It
12 had chewed up his flesh immensely.

13 Q. And of those two individuals, which one did you --

14 A. I originally focused on the Caucasian male first,
15 because his was a simple treat. Bleeding was controlled by a
16 tourniquet, that was placed by a female prior to our arrival,
17 and I got him triaged and taken care of first.

18 And then I focused on the African-American male
19 second, because his injuries were more extensive and would
20 take more time.

21 Q. And was there a tourniquet on his arm when you got
22 to him?

23 A. There was --

24 Q. And --

25 A. A belt-type tourniquet. Someone's personal belt

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 was used.

2 Q. And was the tourniquet -- did you leave that in
3 place, or did you remove it?

4 A. Left it in place.

5 Our policy is to -- once a tourniquet is in place,
6 we leave it in place until ordered by a physician to remove
7 it, as long as bleeding is controlled.

8 Q. And in the course of -- or as part of your duty
9 when you treat patients, do you prepare a medical or an EMS
10 report describing what you did?

11 A. Yes, sir.

12 We do an electronic patient care report at the
13 end.

14 Q. And in your report, you indicated that the male
15 patient that you treated was delirious and combative; is that
16 correct?

17 A. Extremely, yes.

18 Q. And would you consider that, in your experience, to
19 be a normal or an abnormal response, given the injury that you
20 observed?

21 A. It's indicative of the injury.

22 He was, you know, out of sorts, so to speak.

23 Combative. He was, you know, repeating himself over and over,
24 indicative of a sense of shock.

25 Q. And you say that's normal based off the injury you

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1. observed?

2. A. Yes, sir.

3. Q. And I believe you also indicated, and I'm probably
4. going to butcher the pronunciation of this, but diaphoresis?

5. A. Diaphoresis.

6. Q. Diaphoresis. Can you describe what that is?

7. A. That is the medical term for sweaty.

8. Q. Big word for sweaty.

9. A. Right.

10. Q. What other symptoms would you have normally
11. observed in somebody in that condition?

12. A. Skin temperature was a little bit cool because of
13. blood loss. His body was going through a state of what they
14. call hypoprofusion which is, again, the medical term for shock
15. -- due to a lack of blood flow to the extremity -- as well as
16. his body was trying to compensate for the blood loss and the
17. injury. So everything was falling into line with the status
18. of shock.

19. Q. Based on his condition and the injuries you
20. observed, did you actually attempt any treatment on him at the
21. scene?

22. A. I did.

23. I attempted to get large IVS going for fluid
24. replacement. I had one established, but due to his
25. combativeness, it got pulled out.

Matthew Marous
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1 Q. And how was he transported from the scene?

2 A. We were finally able to have enough hands to get
3 him loaded onto our stretcher, and then we transported from
4 the scene to the awaiting helicopter that I had called for.

5 Q. So you made the determination that he was to be I
6 guess medivac'd by helicopter to MUSC?

7 A. Correct.

8 We needed to get him to the trauma center the
9 quickest.

10 Q. And could you briefly describe what went into that
11 determination and that decision?

12 A. On the way there, it was unclear as to how many
13 medic units we had coming to the scene. And being that there
14 was an unknown number of victims at the scene, we immediately
15 called for the helicopter to come and stand by at the scene in
16 case we needed it. And we still were not sure of a third
17 ambulance and if there were any tertiary or extra victims that
18 would come up as time went on, so we had the helicopter stay.
19 And then we sent him, since the helicopter was already there
20 waiting, and being that he had the most injuries and the worse
21 injuries initially, that we decided to send him via
22 helicopter.

23 MR. ALFARO: Thank you. Please answer any
24 questions the defense has for you.

25 THE WITNESS: Sure.

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 THE COURT: Mr. Davis?

2 MR. DAVIS: How do you pronounce your name again,
3 sir?

4 THE WITNESS: Marous.

5 MR. DAVIS: Marous.
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Matthew Marous
Cross-Examination by Mr. Davis
March 16, 2016

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Mr. Marous, do you remember whether alcohol was involved at all with these patients that you were addressing?

A. There wasn't enough time to ask if they had taken any alcohol.

Q. Well, could you smell -- you've seen people under the influence before, had you not?

A. Yes, sir.

Q. Well, do you have any recollection, independent recollection?

A. Not individually on each person, being that it was an establishment that serves alcohol that odor was in the air, yes.

Q. And you said that Mr. Bryant was very combative?

A. I don't have names. I apologize.

Q. The African-American --

A. Yes. Yes.

Q. -- was very combative?

A. Yes, sir.

Q. Yeah.

And you said that the white causation was more in rank in reference to what you assess as the critical assess of the injuries?

A. Yes, sir.

Matthew Marous
Cross-Examination by Mr. Davis
March 16, 2016

1 Q. Were anybody at any time had to administer CPR to
2 any individuals?

3 A. No, no CPR was in progress.

4 Q. In route to the hospital at all?

5 A. That, I couldn't tell. I wasn't involved with
6 those transports.

7 Q. And a Glasgow coma score of fifteen, what is the
8 significance of that?

9 A. A Glasgow coma score of fifteen is a perfect coma
10 scale. That's no impairment.

11 Q. No impairment?

12 A. Yes, sir.

13 Q. Suggesting that the person is in pretty good
14 condition mentally, oriented, and so forth?

15 A. Well, it's based on three things. It's the ability
16 to follow commands; eye movement; and verbal response.

17 Q. So if a person is able to follow commands, then
18 they're consciously with us?

19 A. Yes, sir.

20 Q. All three of these individuals were consciously
21 with us at all times?

22 A. I wasn't involved with the third, the female.

23 Q. If they had a score of fifteen, that would suggest
24 to you that they were consciously with us; isn't that true?

25 A. If I was reading a report. Yes, sir.

Matthew Marous
Cross-Examination by Mr. Davis
March 16, 2016

1 Q. Are you a hunter yourself, son?

2 A. Used to be.

3 Q. Okay. Do you know the difference between bird-
4 shots and buck shot and stuff?

5 A. Not as to diameter, no. I mean, I know what they
6 are but --

7 Q. Bird-shot is bunches of pellets; right?

8 A. Yeah, the tiny pellets. Yes.

9 Q. Yeah. Tiny pellets.

10 I'm going to hand you something and ask you can
11 you -- just do the best you can. This is Exhibit 24. Does
12 that suggest to being those tiny pellets of being bird-shots
13 to you?

14 A. Relatively, yes.

15 Q. Yeah.

16 You like quail hunting or dove hunting? Which
17 one?

18 MR. DAVIS: May I approach, Your Honor?

19 THE COURT: You may.

20 A. Neither, sir.

21 Q. [Mr. Davis] Neither.

22 When you used to hunt with -- did you hunt?

23 A. Yes. I had a farm back in Ohio.

24 Q. So you used to hunt quail?

25 A. No. Deer.

Matthew Marous
Cross-Examination by Mr. Davis
March 16, 2016

1 Q. Deer?

2 A. Just deer.

3 Q. Just deer.

4 You don't use no bird-shot for no deer, though, do
5 you?

6 A. No, sir.

7 Q. These are primarily for fowls of the air; isn't
8 that correct?

9 A. Yes, sir. Small game.

10 MR. DAVIS: Yeah. Thank you. No further
11 questions.

12 THE COURT: Mr. Kearse?

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Matthew Marous
Cross-Examination by Mr. Kearse
March 16, 2016

CROSS-EXAMINATION

BY MR. KEARSE:

Q. Mr. Marous?

A. Yes, sir.

Q. Okay. An improperly placed tourniquet could cause loss of a limb, could it not?

A. It could, yes, sir.

Q. All right. And you said that you guys called for the helicopter prior to getting to the scene; is that right?

A. Yes, sir.

MR. KEARSE: Your Honor, I don't have anything further.

THE COURT: Redirect?

MR. ALFARO: No, Your Honor.

THE COURT: You may step down. Thank you.

[Whereupon, Mr. Marous is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. ALFARO: The State calls Samuel Willis.

THE COURT: Madam Foreperson, if at any time y'all need a break, just let me know.

[Whereupon, Mr. Willis comes forward]

THE CLERK OF COURT: Place your left hand on the Bible and raise your right.

[Whereupon, Mr. Willis is duly sworn by the clerk]

Matthew Marous
Cross-Examination by Mr. Kearse
March 16, 2016

1 of court as follows: do you solemnly swear or affirm
2 the testimony you shall give in this case shall be the
3 truth, the whole truth, and nothing but the truth, so
4 help you God]

5 THE WITNESS: Yes, ma'am.

6 THE CLERK OF COURT: If you'll have a seat.

7 [Whereupon, Mr. Willis takes the witness stand]

8 THE CLERK OF COURT: State your full name for the
9 record and spell your last name.

10 MR. DAVIS: May we approach, Your Honor?

11 THE COURT: You may.

12 [Whereupon, an off-the-record bench conference is
13 held]

14 THE COURT: Note your exception.

15 You can go ahead and spell your name.

16 THE WITNESS: My name is Samuel Matthew Willis.
17 W-I-L-L-I-S.

18 THE COURT: You may continue, Mr. Alfaro

19 MR. ALFARO: Thank you, Your Honor.

20 THE COURT: What was that exhibit number?

21 MR. ALFARO: It's been pre-marked as State's
22 Exhibit 37.

23 THE COURT: Thank you.

24 MR. ALFARO: Good afternoon, Mr. Willis.

25 THE WITNESS: Good afternoon.

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

SAMUEL WILLIS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. ALFARO:

Q. Could you tell the jury where you currently work?

A. I work at the V.A. Medical Center, downtown
Charleston.

Q. How long have you been there?

A. I have been there, give or take, a -- I believe I
started in October of 2015. So about six months, five months.

Q. And what do you currently do there?

A. I am an operating room R.N.

Q. And did you previously work at the Medical
University of South Carolina?

A. I did.

Q. And what was your -- in what capacity did you work
there?

A. I was also an operating room R.N.

And I believe what you've called me here for was
when I was in charge, which would be the 7:00 p.m. to 7:00
a.m. Friday night, Saturday night, Sunday night O.R. charge
nurse.

Q. And you were -- were you working in that capacity
on July 28th, 2013?

MIA PERRON, CVR-CM-M

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Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 A. Yes, I was.

2 Q. And as part of your responsibilities that date, did
3 you have the opportunity to come into contact with any
4 evidence that was removed from the victim -- one of the
5 victims in this case, James Bryant?

6 Q. Yes.

7 Q. Do you recall specifically what you came into
8 possession of?

9 A. I -- let me try -- I recall documenting it, and
10 vaguely about the case. High-level trauma situation. And
11 typically I was in charge of the people that handled such
12 items. But I always made sure that they handed it, whatever
13 item it might be -- they would hand it to me before I handed
14 it to any police officers or --

15 Q. So your responsibility is to turn that item, once
16 it's removed through surgery, over to law enforcement?

17 A. That is correct.

18 MR. DAVIS: I'm going to object to leading as to
19 what he -- he said initially --

20 THE COURT: Overruled. I got it as leading. No
21 speaking objections. Overruled. Thank you.

22 Q. [Mr. Alfaro] Can you repeat your answer, please?

23 A. Yes.

24 My answer is that the circulating R.N., their role
25 in the operating room would -- I always made sure that they

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 handed -- per instructions, they handed me an item before I
2 handed it over to law enforcement, and made sure that the
3 particular circulating R.N. in the room documented it
4 properly, per instruction from the people -- my predecessors
5 and who trained me.

6 Q. I'm going to show you what's been pre-marked for
7 identification as State's Exhibit Number 37. Do you recognize
8 this item?

9 A. It would be not what's in here, but here?

10 Q. Yes, sir.

11 A. I've probably seen three of those, so I can't -- I
12 have -- it's one of three that I've laid hands on in my
13 professional and nursing career.

14 MR. DAVIS: He say he cannot -- he said --

15 THE COURT: Mr. Davis, no speaking objection.

16 [Whereupon, Mr. Alfaro and Mr. Davis confer]

17 MR. DAVIS: I'm just going to see where he's
18 headed, Judge. I'm concerned right now with the chain.

19 Q. [Mr. Alfaro] I'm going to show you what was with
20 State's Exhibit 37, ask you to take a look at that document.
21 Do you see your name or signature on that document?

22 MR. DAVIS: Your Honor, I object. I think the
23 better course is rephrase the question.

24 THE COURT: Ladies and gentlemen, there is a matter
25 of law that I must take up outside of your presence.

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 Do not begin your deliberations. Do not discuss
2 this case amongst yourselves.

3 Feel free to leave your notepads right in your
4 chair.

5 Please rise for the jury.

6 [Whereupon, the jury exits the courtroom at
7 4:31 p.m.]

8 THE COURT: Thank you. Be seated.

9 You may step down for just a few moments. Do not
10 leave the floor. You may step outside. Thank you.

11 [Whereupon, Mr. Willis exits the witness stand]

12 THE COURT: All right. Mr. Davis, I have --

13 MR. DAVIS: Well, Your Honor --

14 THE COURT: No, no, no, no, no.

15 I have explained to you for the last two days that
16 I do not allow speaking objections. This is not your
17 first trial with me. And I don't know how else to
18 explain it you, other than to tell you no speaking
19 objections. What is it going to take for you to follow
20 the Court's instructions?

21 MR. DAVIS: I thought I had.

22 THE COURT: Mr. Davis, the reason I do not -- not
23 that I need to explain it to you, but the reason that I
24 don't allow speaking objections is to protect your
25 client's rights and Mr. Kearse's client's rights and the

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 State's rights so that anything you say or do during an
2 objection does not persuade or taint the jury.

3 This is your last warning about speaking
4 objections. The next time, I'm going to hold you in
5 contempt. Any questions?

6 MR. DAVIS: No, Your Honor.

7 THE COURT: Thank you.

8 Now, as to -- while we're here, let's go ahead and
9 address the photograph. And so you have the color
10 photograph, Mr. McNeely?

11 MR. MCNEELY: I do, Your Honor.

12 THE COURT: Let's mark that one. We'll mark that
13 as a Court's Exhibit. Is that 4, Ms. Perron?

14 THE COURT REPORTER: Yes, ma'am.

15 THE COURT: We'll go ahead and mark the color
16 photograph Court's Exhibit 4 just for appellate
17 purposes, should it become necessary.

18 And that corresponds with which exhibit?

19 MR. MCNEELY: I believe it's thirty -- State's --

20 THE COURT: 27?

21 MR. MCNEELY: 28.

22 THE COURT: 28.

23 [Whereupon, Court's Exhibit Number 4 is marked by
24 the court reporter]

25 THE COURT: Mr. Davis, let me hear you on the

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 admission of State's 28. You objected to the admission.
2 I did not allow you to articulate that on the record.

3 MR. DAVIS: I told you that I believe that it's
4 highly prejudicial and that the total value is not
5 outweighed in reference to its prejudicial value. For
6 that reason, I think the only purpose of it being
7 submitted is to inflame the jury.

8 There's been ample testimony from the doctors,
9 ample testimony between physicians, as to the extent of
10 the injuries and the type of injury. And the only
11 reason to interject this photograph is to further try to
12 create an inflamed jury dealing with sympathy, which
13 should not be injected into this deliberation, Your
14 Honor.

15 THE COURT: Mr. Kearse, you had joined in with the
16 objection?

17 MR. KEARSE: That is correct, Your Honor.

18 I thought the probative value was outweighed by the
19 prejudicial effect.

20 THE COURT: And the offered photograph, in my
21 opinion, serves to corroborate the testimony that has
22 been presented. And merely because a photograph is
23 gruesome does not render it inadmissible.

24 I have weighed the probative value of admitting the
25 photograph over any unfair prejudice to Mr. Gourdine or

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 to Mr. Moses and admitted the black-and-white color --
2 or black-and-white photo over your objection. It is
3 noted and reserved for the record.

4 THE COURT: As to now the issue with the wadding,
5 which is State's 37. You have an objection?

6 MR. DAVIS: My position was in reference to the
7 procedure in which it was done.

8 I think the position if people are going to hand
9 the potential witness the item that actually can they
10 identify and then proceed from there. But in an effort
11 -- that's not what the prosecutor was doing. He was
12 outlining and pointing and telling the witness where to
13 testify off the document.

14 I think the proper course is for -- you hand the
15 document to the witness and ask can they identify it
16 first, and then we go from that standpoint.

17 And that's what I stood up for in reference to
18 that, because I don't think that's the proper --

19 THE COURT: And so at that point --

20 MR. DAVIS: -- proper procedure.

21 THE COURT: At that point you should have just
22 stated an objection instead of speaking it. Correct?
23 You just state objection, and then either I ask -- will
24 ask, if I need further clarification, or I'll make my
25 ruling.

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 Mr. Alfaro?

2 MR. ALFARO: Well, Your Honor, are we dealing with
3 the last part of that or the whole general admissibility
4 of it?

5 THE COURT: Well, the last statement that was made
6 was that you were not doing it correctly, and so that's
7 why I removed the jury.

8 State's 37, where we are procedurally, is, as I
9 understand it, your witness cannot necessarily identify
10 that particular item and you had pulled out a piece of
11 paper, shown it to Mr. Davis and to Mr. Kearse, and were
12 -- I was assuming you were attempting to refresh his
13 memory. Was that what you were doing?

14 MR. ALFARO: That's correct, Your Honor.

15 The document that I produced was from the --
16 attached to the exhibit. It's the evidence sheet from
17 Berkeley County Sheriff's Office chain of custody form.
18 It has Mr. Willis's name, organization, signature.

19 I believe the part of Mr. Davis' objection is me
20 directing -- basically directing him to look for his
21 name, see if his name or signature appeared on that
22 document.

23 THE COURT: But you were attempting to refresh his
24 recollection or see if he could identify --

25 MR. ALFARO: That's correct.

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 THE COURT: -- that document?

2 All right. Mr. Davis, anything further?

3 MR. DAVIS: This young man testified that he
4 apparently come into connection with three of these
5 similar type items. And he was dumbfounded and didn't
6 know what the solicitor was talking about, wanted to
7 know why he was presenting this to him.

8 And I saw it afterwards, so this one did not
9 proceed in a manner that I thought was consistent with
10 protocol and how it should be done, especially where he
11 said he may not recall anything about it.

12 THE COURT: Mr. Kearse, I skipped you in all of
13 those --

14 MR. KEARSE: Your Honor --

15 THE COURT: -- this. Anything --

16 MR. KEARSE: -- I was waiting patiently for a turn.

17 THE COURT: Thank you.

18 MR. KEARSE: My first objection as to --

19 Is that 37?

20 MR. ALFARO: Yes.

21 THE COURT: Yes.

22 MR. KEARSE: -- was just to put it on the record,
23 because we had a bar conference about it, was that I
24 told -- once again, the probative value of it was
25 outweighed by its prejudicial effect. So I want to put

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 that on the record as to 37.

2 I understand that the Court has ruled on that
3 particular --

4 THE COURT: Well, he hasn't ask to admit it yet so
5 I haven't --

6 MR. KEARSE: Right. Okay.

7 THE COURT: There's a couple of issues with --

8 MR. KEARSE: Right.

9 THE COURT: -- with this exhibit.

10 MR. KEARSE: Right.

11 My second objection would be that counsel was
12 leading his witness. I understand he's trying to
13 possibly refresh recollection, but his question was
14 leading.

15 THE COURT: Remind me what that document is,
16 Mr. Alfaro. Is it something that Mr. Willis created?

17 MR. ALFARO: No, Your Honor.

18 It's a chain of custody form from the sheriff's
19 office. He turns the items over to Detective Wilson
20 from the sheriff's office. His name is placed on the
21 form, his organization is written on the form, and his
22 signature appears underneath that.

23 THE COURT: All right. And so perhaps a better
24 question would have been do you recognize this document.
25 And so I think that's where we are. It's just the mere

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 phraseology.

2 MR. ALFARO: That's fine, Your Honor.

3 THE COURT: All right. We're going to take our
4 ten-minute break.

5 [Off the record momentarily]

6 THE OFFICER: The fire alarm, Your Honor.

7 [Whereupon, a recess is taken from 4:39 p.m. to
8 4:53 p.m.]

9 THE COURT: Mr. Willis?

10 THE WITNESS: Am I swearing, again?

11 THE COURT: No. You're still under oath. Thank
12 you for asking.

13 THE WITNESS: Yes, ma'am.

14 [Whereupon, Mr. Willis retakes the witness stand]

15 THE COURT: Mr. Alfaro, anything before we bring in
16 the jury?

17 MR. ALFARO: No, Your Honor.

18 THE COURT: Mr. Davis?

19 MR. DAVIS: Nothing, Your Honor.

20 THE COURT: Mr. Kearse?

21 MR. KEARSE: Nothing from Mr. Moses, Your Honor.

22 THE COURT: Do you need just a moment, Mr. Kearse?

23 MR. KEARSE: Ma'am?

24 THE COURT: Do you need a moment?

25 MR. KEARSE: Yes.

Matthew Marous
Direct Examination by Mr. Alfaro
March 16, 2016

1 [Off the record momentarily]

2 THE COURT: Everybody ready?

3 [Whereupon, the jury enters the courtroom at
4 4:31 p.m.]

5 THE COURT: Thank you. Please be seated.

6 Did every member of the jury comply with the
7 Court's instructions during our last break? If you did
8 not, please stand.

9 [Whereupon, there is no response]

10 THE COURT: Thank you.

11 All fourteen jurors complied with the Court's
12 instructions during our last break.

13 Mr. Alfaro, you may continue.

14 MR. ALFARO: Thank you, Your Honor.

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Samuel Willis
Continued Direct Examination by Mr. Alfaro
March 16, 2016

CONTINUED CROSS-EXAMINATION

BY MR. ALFARO:

Q. Mr. Willis, I'm going to hand you a document and ask you to take a look at it, and then I'm going to ask you some questions after that.

[Whereupon, the witness reviews documents]

A. I've read it.

Q. [Mr. Alfaro] Have you had an opportunity to review that document?

A. I have.

Q. Can you tell the jury what the title of that document is?

A. Berkeley County Sheriff's Office chain of custody sheet.

Q. And after reviewing that document, does that document refresh your recollection as to whether you handled that item and when you did so?

A. It does.

Q. And can you tell us when that was?

A. It was on July 28th, 2013.

Q. And do you recall who you gave that item to?

A. According to the sheet, Detective Ann Wilson. And I have met Detective Wilson before, so I definitely recall that.

MR. ALFARO: Thank you. No further questions.

Samuel Willis
Continued Direct Examination by Mr. Alfaro
March 16, 2016

THE COURT: Mr. Davis.

MR. DAVIS: I just have one question.

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Samuel Willis
Cross-Examination by Mr. Davis
March 16, 2016

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Do you recall who you received it from?

A. It was one of three people, just based on -- based on who my staff was. We're always running on a skeleton crew so --

Q. You cannot tell this Court which one of those three individuals?

A. I could if I could see the nurse's chart on the patient from that date. But I can't tell you right off --

Q. Don't have that, though.

MR. DAVIS: Thank you.

THE COURT: Mr. Kearse?

MR. KEARSE: May it please this Court.

THE COURT: Yes, sir.

MR. KEARSE: Briefly.

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Samuel Willis
Cross-Examination by Mr. Kearse
March 16, 2016

CROSS-EXAMINATION

BY MR. KEARSE:?

Q. Again, to follow up with Mr. Davis, you were in charge; right? You said you were actually in charge?

A. Me?

Q. Yes.

A. Oh, yeah. Yes, I was.

Q. All right. And so there were nurses who circulated?

A. That's correct.

Q. All right. And they would have been the ones who possibly retrieved an item similar to what was shown to you?

A. Correct.

Q. All right. And that would have been the person who would have originally obtained possession of that at the time of removal, surgery, or whatever?

A. Typically -- it typically goes from surgeon, to circulating nurse, to me, to the law enforcement officer, who it may be. In this case, Mr. Wilson.

Q. All right. Which you were not the circulating nurse?

A. Correct.

I was between the circulating nurse and Detective -- or Mr. Wilson.

MR. KEARSE: Beg the Court's indulgence, Your

Samuel Willis
Cross-Examination by Mr. Kearse
March 16, 2016

1 Honor.

2 THE COURT: Take your time.

3 [Whereupon, Mr. Kearse reviews documents]

4 MR. KEARSE: May I approach, Your Honor?

5 THE COURT: You may.

6 MR. KEARSE: Thank you.

7 Q. [Mr. Kearse] I hand you the two-page document that
8 was handed to you by the prosecution in this case, Mr. Willis.
9 Do you acknowledge that?

10 A. That is correct.

11 Q. And that's the same document you used to refresh
12 your recollection; correct?

13 A. Yes, sir.

14 Q. Do you remember the names of the persons who were
15 circulating nurses at that time?

16 A. I can give you two out of three people. But I
17 honestly just couldn't tell you which two of the three it was.

18 Q. Would you agree that none of those three persons,
19 from the two that you remember their names, don't appear on
20 that document?

21 A. That's correct.

22 MR. KEARSE: I don't have anything further, Your
23 Honor.

24 THE COURT: Redirect?

25 MR. ALFARO: No, Your Honor.

Samuel Willis
Cross-Examination by Mr. Kearse
March 16, 2016

1 THE COURT: You may step down. Thank you.

2 THE WITNESS: Thank you.

3 [Whereupon, Mr. Willis is excused and exits the
4 witness stand]

5 THE COURT: Call your next witness.

6 MR. MCNEELY: The State calls Brian Martin.

7 [Whereupon, Mr. Martin comes forward]

8 THE CLERK OF COURT: Place your left hand on the
9 Bible and raise your right.

10 [Whereupon, Mr. Martin is duly sworn by the clerk
11 of court as follows: do you solemnly swear or affirm
12 the testimony you shall give in this case shall be the
13 truth, the whole truth, and nothing but the truth, so
14 help you God]

15 THE WITNESS: Yes, ma'am.

16 THE CLERK OF COURT: If you'll have a seat.

17 [Whereupon, Mr. Martin takes the witness stand]

18 THE CLERK OF COURT: State your full name for the
19 record and spell your last name.

20 THE WITNESS: My name is Brian Martin.

21 M-A-R-T-I-N.

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Brian Martin
Direct Examination by Mr. McNeely
March 16, 2016

BRIAN MARTIN,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. ALFARO:

Q. Mr. Martin, where do you work?

A. City of Goose Creek Fire Department.

Q. What do you do at the fire department at Goose
Creek?

A. I'm a firefighter and EMT.

Q. How long have you been with them?

A. Three years?

Q. What did you do prior to that?

A. Prior to that I worked for the University of
Medicine and Dentistry in Camden, New Jersey, and also in
Newark, New Jersey.

I was an EMT and I was also the special operations.
Taught mass casualty and responded out to large-scale
incidents.

Q. Did you say you taught?

A. Yes.

Q. You instructed other EMTs?

A. Yes, sir.

Q. How long have you been an EMT, in total?

A. In total, about twelve years.

Brian Martin
Direct Examination by Mr. McNeely
March 16, 2016

1 Q. Were you employed with Goose Creek on July 28th,
2 2013?

3 A. Yes.

4 Q. Did you have an opportunity to respond to an
5 incident at the Nowhere Bar and Grill in Goose Creek?

6 A. Yes, sir.

7 Q. Where is that located?

8 A. On Henry Brown Boulevard in Goose Creek.

9 Q. Is that in Berkeley County?

10 A. Yes, sir.

11 Q. When you arrived at the scene, what did you do?

12 A. Usually -- when we got on the scene -- we saw three
13 patients, two of them that looked a lot worse than one other.
14 My partner, Matt, went to start on those two patients and
15 directed me to go to -- towards the back of the bar, where
16 there was a female, also.

17 Q. Did you do that?

18 A. Yes.

19 Q. What did you see when you arrived at the female?

20 A. I saw a female that looked like she had superficial
21 wounds to her head.

22 She was very upset, from what I can remember. Just
23 proceeded to -- saw that and start a basic triage.

24 Q. What does triage mean?

25 A. Triage is just evaluating the person's injuries and

Brian Martin
Direct Examination by Mr. McNeely
March 16, 2016

1 seeing where they're determined on that scale, if it's life-
2 threatening or not.

3 Q. Was the female victim bleeding?

4 A. Yeah, but very minor.

5 Q. Can you describe her emotional condition?

6 A. Very upset.

7 Q. Did she tell you what had happened?

8 A. No, not that I can recall.

9 Q. What did you observe her injuries to be?

10 A. Just superficial. Looked like puncture wounds to
11 her head, from the best I can see.

12 Q. Was it a gunshot wound?

13 A. It looked like to be.

14 Q. What did you do from there?

15 A. From there I did just a quick assessment. She was
16 in stable condition at that point. She was upset.

17 By the time I was finished my triage, the next
18 medic unit, medic eleven from Hanahan, came up to me. I gave
19 them a verbal report, then stepped out at that point to take
20 over, -- reestablish a command, because the fire department was
21 lacking in the command structure.

22 Q. So correct me if I understood you wrong. Hanahan
23 took over treatment of the female?

24 A. Yeah.

25 I gave them -- I turned -- I essentially turned

Brian Martin
Direct Examination by Mr. McNeely
March 16, 2016

1 over care to medic eleven.

2 Q. What did you do then?

3 A. Then I went back out front. I spoke with Matt
4 first, told him that I was going to reestablish command, find
5 out where the helicopter is, and see if there's anymore
6 additional resources that he needs that I can help get him.

7 Q. What did you do after that?

8 A. By that point, Goose Creek rural fire department
9 was helping Matt loading the one victim onto our stretcher to
10 put into our ambulance.

11 At that point, I went to go assist Matt with that
12 treatment. By that time, the other two victims were already
13 being transported or in the process of being transported.

14 Q. Do you recall who was put in the ambulance?

15 A. The older African-American gentleman.

16 Q. Where did y'all take him?

17 A. We took him to the helicopter landing zone, which
18 was Goose Creek High School's front parking lot.

19 Q. And what did you do at Goose Creek High School?

20 A. Essentially, we turned over care to the helicopter
21 team at that point.

22 Q. Was the patient loaded into a medivac --

23 A. Yeah. Uh-huh.

24 Q. -- or helicopter to MUSC?

25 A. Yes, sir.

Brian Martin
Direct Examination by Mr. McNeely
March 16, 2016

1 MR. MCNEELY: Nothing further at this time.

2 MR. DAVIS: Hey, Brian. How are you doing?

3 THE WITNESS: Good.

4 MR. DAVIS: Just three quick questions.

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Brian Martin
Cross-Examination by Mr. Davis
March 16, 2016

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Was your assessment that you did it quite fast in
reference to the female

A. Yes, sir.

Q. The wound appeared to be superficial wounds?

A. Yes, sir.

Q. She appeared to be very upset?

A. Yes, sir.

Q. And she was stable?

A. Yes, sir.

Q. Not life-threatening?

A. Not life-threatening, from what we could see in the
field.

MR. DAVIS: Thank you.

MR. KEARSE: May it please the Court, Your Honor?

THE COURT: Yes.

MR. KEARSE: Counsel.

Brian Martin
Cross-Examination by Mr. Kearse
March 16, 2016

CROSS-EXAMINATION

BY MR. KEARSE:

Q. Mr. Martin --

A. Yes, sir.

Q. -- could you define the term superficial as you deduce it in your profession?

A. Superficial means minor or appear to be minor.

MR. KEARSE: I don't have anything further, Your Honor.

MR. MCNEELY: No further questions from the State.

THE COURT: You may step down. Thank you.

[Whereupon, Mr. Martin is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. MCNEELY: The State calls Kevin Binnall.

[Whereupon, Mr. Binnall comes forward]

THE CLERK OF COURT: Place your left hand on the Bible and raise your right.

[Whereupon, Mr. Binnall is duly sworn by the clerk of court as follows: do you solemnly swear or affirm the testimony you shall give in this case shall be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: Yes, ma'am.

THE CLERK OF COURT: If you'll have a seat.

Brian Martin
Cross-Examination by Mr. Kearse
March 16, 2016

[Whereupon, Mr. Binnall takes the witness stand]

THE CLERK OF COURT: State your full name for the
record and spell your last name.

THE WITNESS: My name is Kevin Binnall. B, as in
Boston, I-N-N-A-L-L.

Kevin Binnall
Direct Examination by Mr. Alfaro
March 16, 2016

KEVIN BINNALL,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. ALFARO:

Q. Mr. Binnall, can you tell the jury where you work?

A. Currently, City of Goose Creek Fire Department.

Q. And how long have you been with them?

A. Approximately -- it will be two years next month.

Q. And do you have any prior EMS or fire experience?

A. Yes, sir.

Back before, I worked for the City of Hanahan fire department.

Q. And how long were you with them?

A. About a year.

Q. And could you briefly describe your training and education related to your position?

A. I received my basic EMT certification in 1989, went to paramedic school in 1998, been a paramedic since 2000, fire fighter since 2001.

Q. And were you working for Hanahan on July 28, 2013?

A. Yes, sir.

Q. And in that capacity, did you have the opportunity to respond to the Nowhere Bar and Grill in Goose Creek on that date?

Kevin Binnall
Direct Examination by Mr. Alfaro
March 16, 2016

1 A. Yes, sir.

2 Q. Do you recall where you responded from?

3 A. Hanahan Station One, located on Campbell Drive.

4 Q. And did the -- was it unusual for you to respond to
5 another jurisdiction from Hanahan?

6 A. Not typically.

7 It depends on the size of the call, if they have
8 available units.

9 Q. Do you recall where you responded from?

10 A. The fire station.

11 Q. And do you recall what you observed when you got to
12 the scene?

13 A. When we got to the scene, there were multiple
14 police -- sheriff's department's units there, a fire engine,
15 another ambulance, in the parking lot.

16 Q. And do you recall if you came into contact with any
17 of the victims in this case?

18 A. Yes, sir, I did.

19 Upon arrival, we went to the front door. We were
20 informed by command to go to the back of the bar where a
21 patient was waiting for us.

22 Q. Could you describe what the injuries to that
23 patient were?

24 A. The several small gunshot wounds to the upper back,
25 and also to the back of her head.

Kevin Binnall
Direct Examination by Mr. Alfaro
March 16, 2016

1 Q. Female patient?

2 A. Yes, sir. That's where they directed us.

3 Q. And do you recall what treatment, if any, you
4 provided her that night?

5 A. Yes, sir.

6 Initially, we -- I did a quick examination to
7 determine if she had an airway, a patent airway. She was
8 breathing. She had a good pulse rate. She was talking to us.
9 She could recall the incident.

10 Put on a C-collar, rolled her around to her back,
11 exposed her back, put some bandages on her back and her neck
12 and her head. Rolled her onto a backboard, secured her to a
13 backboard. That's per our protocols. Put her on the
14 stretcher. And we tried to -- we put her in the ambulance,
15 and then I continued treatment to a trauma center.

16 Q. And when you say C-collar, is that a --

17 A. That's a -- yes, sir. A cervical collar.

18 Q. And where was she taken to?

19 A. Medical University.

20 MR. ALFARO: Thank you. Please answer any
21 questions the defense may have.

22 MR. DAVIS: Just a few questions, Kevin.

23 THE WITNESS: Yes, sir.

24 MR. DAVIS: Quick examination.

25 THE WITNESS: Yes, sir.

Kevin Binnall
Cross-Examination by Mr. Davis
March 16, 2016

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Bandage to the back?

A. Yes, sir.

Q. Wounds appear to be minor and superficial?

A. I call them -- but they were multiple. I mean --

Q. And that's the end of your involvement?

A. Besides transporting her, yes, sir.

MR. DAVIS: Thank you.

THE COURT: Mr. Kearse.

MR. KEARSE: May it please this Court, Your Honor.
Counsel.

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Kevin Binnall
Cross-Examination by Mr. Kearse
March 16, 2016

CROSS-EXAMINATION

BY MR. KEARSE:

Q. When you use the word victim, that's just a term of art; right?

A. I'm sorry?

Q. The word victim, you classified -- you referred to these folks as victims. And that was just a term of art you used?

A. Victims. Patients.

MR. KEARSE: All right. Nothing further, Your Honor.

MR. ALFARO: No further questions, Your Honor.

THE COURT: You may step down. Thank you.

[Whereupon, Mr. Binnall is excused and exits the witness stand]

MR. ALFARO: May we approach?

THE COURT: You may.

[Whereupon, an off-the-record bench conference is held]

THE COURT: Ladies and gentlemen, we are done with witnesses for today.

Please remember all of my admonitions. Do not begin discussing your testimony with anyone. Do not begin deciding any issue in this case.

Please be back in -- report back at 9:30 in the

Kevin Binnall
Cross-Examination by Mr. Kearse
March 16, 2016

1 morning and once all fourteen of you are here, we'll
2 begin to start the trial of the case again.

3 Please take your notepads with you. We'll lock
4 them up over the evening hour.

5 Please stand.

6 [Whereupon, the jury exits the courtroom at
7 5:10 p.m.]

8 THE COURT: Thank you. Be seated.

9 Anything before we -- anything we need to place on
10 the record? Mr. Alfaro?

11 MR. ALFARO: No, Your Honor.

12 THE COURT: Mr. Davis?

13 MR. DAVIS: Nothing, Your Honor.

14 THE COURT: Mr. Kearse?

15 MR. KEARSE: Nothing from Mr. Moses at this time.

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State vs. Moses and Gourdine
Defendants' Rights
March 16, 2016

DEFENDANTS' RIGHTS

THE COURT: I'm going to go ahead and advise your clients of their rights to testify. I do not want a decision today, but this will give you over the evening hour to speak with your clients.

MR. DAVIS: You'll do it now?

THE COURT: Right now.

MR. DAVIS: Okay.

THE CLERK OF COURT: Raise your right hand.

MR. KEARSE: Do you want to do them simultaneously, Your Honor?

THE COURT: Yes.

THE CLERK OF COURT: If you will both please raise your right hand.

[Whereupon, Mr. Moses and Mr. Gourdine are duly sworn by the clerk of court as follows: do you solemnly swear or affirm the testimony you shall give in this case shall be the truth, the whole truth, and nothing but the truth, so help you God]

MR. MOSES: I do.

MR. GOURDINE: I do.

THE COURT: All right. Thank you.

We are breaking for the evening, but I anticipate the State is going to rest close to lunch time tomorrow.

Is that correct, Mr. Alfaro?

State vs. Moses and Gourdine
Defendants' Rights
March 16, 2016

1 MR. ALFARO: That would be what I expect.

2 THE COURT: So I want to advise you of your rights
3 so that over the evening hour you can speak to whomever,
4 discuss with your attorneys. But this will give you an
5 opportunity to understand your constitutional rights.

6 If you do not understand anything I say, please let
7 me know. If you need for me to explain anything in
8 further detail, please let me know.

9 Do you understand?

10 MR. GOURDINE: Yes, ma'am.

11 MR. MOSES: Yes, ma'am.

12 THE COURT: Thank you.

13 No person shall be compelled in any criminal case
14 to be a witness against himself. That is a protection
15 given to you by the fifth amendment of the constitution
16 of our United States. This means that you cannot be
17 required to testify. You do have the right to testify
18 on your own behalf, however, no one can make you
19 testify. This is a personal right and no one can waive
20 this right except for you.

21 Do you understand?

22 MR. GOURDINE: Yes, Your Honor.

23 MR. MOSES: Yes, ma'am.

24 THE COURT: If you decide to testify, you will be
25 subject to the same rules that govern other witnesses

State vs. Moses and Gourdine
Defendants' Rights
March 16, 2016

1 and you may be examined and cross-examined on any
2 relevant issue in this case. In addition, if you have
3 any convictions involving dishonesty or false statements
4 or for crimes punishable by imprisonment for more than
5 one year and I determine that the probative value
6 outweighs its prejudice to you, the solicitor will be
7 allowed to introduce those to attack your credibility.

8 Do you understand that?

9 MR. GOURDINE: Yes, Your Honor.

10 MR. MOSES: Yes, ma'am.

11 THE COURT: Mr. Alfaro, just a yes or no. Does
12 Mr. Gourdine have convictions with which you would use
13 to impeach?

14 MR. DAVIS: It has to be, because I'm on LWOP.

15 MR. ALFARO: Mr. Gourdine does, Your Honor.

16 THE COURT: And Mr. Moses?

17 MR. ALFARO: He does not have any.

18 THE COURT: Mr. Gourdine, you understand that you
19 have some prior convictions --

20 MR. GOURDINE: Yes, Your Honor.

21 THE COURT: -- and the State would be allowed to
22 use those potentially to attack your credibility?

23 MR. GOURDINE: Yes, Your Honor.

24 THE COURT: Mr. Moses, I understand you do not have
25 any prior convictions?

State vs. Moses and Gourdine
Defendants' Rights
March 16, 2016

1 MR. MOSES: Yes, ma'am.

2 THE COURT: If you decide to testify, this decision
3 on your part must be freely, voluntarily, knowingly, and
4 intelligently made, with the understanding and knowledge
5 of the protections given to you by the fifth amendment
6 of the constitution of our United States.

7 If you decide not to testify, I will instruct the
8 jurors that they cannot give the fact that you did not
9 testify any consideration whatsoever and there's to be
10 absolutely no prejudice to you because you did not
11 testify.

12 Do you understand what I have explained to you?

13 MR. GOURDINE: Yes, Your Honor, I do.

14 MR. MOSES: Yes, I do.

15 THE COURT: Do you need for me to explain anything
16 in further detail?

17 MR. GOURDINE: No, Your Honor.

18 MR. MOSES: No, Your Honor.

19 THE COURT: And so tomorrow, at the appropriate
20 time I will ask you if you have made your decision
21 whether or not you will testify.

22 All right. Good evening. Anything further?

23 MR. DAVIS: Thank you, Your Honor.

24 [JURY TRIAL ADJOURNS AT 5:15 P.M.]

25 - - -

State vs. Moses and Gourdine

C E R T I F I C A T E

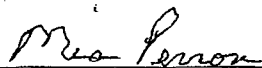
STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Wednesday, March 16, 2016.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 18th day of June, 2016.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-521-

STATE OF SOUTH CAROLINA
VS.
STEVEN MOSES
and
JASON GOURDINE,
DEFENDANTS.

VOLUME 3 OF 3

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State vs. Moses and Gourdine
Proceedings
March 17, 2016

PROCEEDINGS

1
2 THE COURT: Anything before we bring in the jury?
3 From the State?

4 MR. KEARSE: Your Honor, I would like to start --
5 well, not just start, but as to close --

6 THE COURT: From the State?

7 MR. ALFARO: Nothing.

8 MR. DAVIS: Nothing, Your Honor.

9 THE COURT: Mr. Kearse, anything further?

10 MR. KEARSE: Other than that, no, Your Honor.

11 THE COURT: All right. Thank you.

12 [Off the record momentarily]

13 THE BAILIFF: Please rise. Jury coming in.

14 [Whereupon, the jury enters the courtroom at
15 9:58 a.m.]

16 THE COURT: Thank you. Please be seated.

17 Good morning, ladies and gentlemen. My first
18 question to you this morning is did you comply with my
19 instructions over the evening hour. If you did, please
20 raise your right hand.

21 [Whereupon, there is no response]

22 THE COURT: Thank you.

23 All fourteen jurors have followed the Court's
24 instructions.

25 Mr. Alfaro, call your next witness.

State vs. Moses and Gourdine
Proceedings
March 17, 2016

1 MR. ALFARO: Thank you, Your Honor. The State
2 calls Dean Kokinda.

3 [Whereupon, Mr. Kokinda comes forward]

4 THE CLERK OF COURT: Put your left hand on the
5 Bible and raise your right.

6 [Whereupon, Mr. Kokinda is duly sworn by the clerk
7 of court as follows: do you solemnly swear or affirm
8 the testimony you shall give in this case shall be the
9 truth, the whole truth, and nothing but the truth, so
10 help you God]

11 THE WITNESS: I do.

12 THE CLERK OF COURT: If you'll have a seat.

13 [Whereupon, Mr. Kokinda takes the witness stand]

14 THE CLERK OF COURT: State your full name for the
15 record and spell your last name.

16 THE WITNESS: Dean Robert Kokinda. Spelling of the
17 last name, K-O-K-I-N-D-A.

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Dean Kokinda
Direct Examination by Mr. Alfaro
March 17, 2016

DEAN KOKINDA,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. ALFARO:

Q. Could you tell the jury where you work?

A. I work with the Berkeley County Sheriff's Office.

Q. And how long have you been with the sheriff's
office?

A. Going on twenty-seven years.

Q. What is your current duty assignment?

A. Currently, I'm assigned as a lieutenant over the
criminal investigations division. It has changed. For about
twenty-five years prior to that, I was over the forensics
services unit.

Q. And so you were working in forensics on July 28,
2013?

A. Yes, sir.

Q. And on that date, did you have the opportunity to
respond to the Nowhere Bar and Grill in Goose Creek?

A. Yes, I did.

Q. And what county is that in?

A. That's in Berkeley County.

Q. And you went there in your capacity as a forensics
officer?

Dean Kokinda
Direct Examination by Mr. Alfaro
March 17, 2016

1 A. Yes, sir.

2 Q. And can you tell the jury: when you arrived at the
3 scene, were you briefed as to what had happened?

4 A. Excuse me?

5 Q. Were you briefed as to what had happened when you
6 arrived at the scene?

7 A. Yes, sir.

8 There was a brief summary of what happened. I was
9 told that there was an altercation inside --

10 MR. DAVIS: I object, Your Honor. That's hearsay.
11 Hearsay.

12 THE COURT: Is there an exception?

13 MR. ALFARO: There will be if I can lay one more
14 question for foundation, Your Honor.

15 THE COURT: Do not testify to what someone told
16 you. Thank you.

17 Q. [Mr. Alfaro] In your role as a forensics officer,
18 do -- when you're briefed as to what allegedly happened, does
19 that help you determine how to process the crime scene or
20 conduct your investigation?

21 A. Yes, it does.

22 Q. And at that time, did you process the scene for
23 items related to the shooting?

24 A. Yes, I did.

25 Q. And as part of that crime scene processing, did you

Dean Kokinda
Direct Examination by Mr. Alfaro
March 17, 2016

1 take photographs of the scene?

2 A. Yes, sir.

3 Q. [Mr. Alfaro] I'm going to show you what has
4 been marked for identification as State's Exhibit Numbers 3
5 through 22.

6 MR. ALFARO: And I have shown them to defense
7 counsel.

8 [Whereupon, the witness reviews documents]

9 Q. [Mr. Alfaro] If you can take a look through those
10 exhibits and then once you've had a chance to look through
11 those, I'll ask you a couple of questions.

12 [Whereupon, the witness reviews documents]

13 A. Yes, sir.

14 Q. [Mr. Alfaro] Have you had an opportunity to review
15 each of those photographs?

16 A. Yes, sir.

17 Q. Do those photographs, each of those photographs,
18 fairly and accurately depict the scene as you saw it that
19 morning at the Nowhere Bar and Grill?

20 A. Yes, sir, it does.

21 MR. ALFARO: Your Honor, at this time the State
22 would ask to admit Exhibits 3 through 22 into evidence.

23 THE COURT: Any objection?

24 MR. DAVIS: None, Your Honor.

25 MR. KEARSE: None from Mr. Moses, Your Honor.

Dean Kokinda
Direct Examination by Mr. Alfaro
March 17, 2016

1 THE COURT: State's 3 through 22 into evidence
2 without objection.

3 [Whereupon, State's Exhibit Numbers 3 through 22
4 are admitted into evidence by the Court]

5 THE COURT: You may publish, as necessary.

6 MR. ALFARO: Thank you, Your Honor.

7 Q. [Mr. Alfaro] I'm going to show you, on the screen
8 behind you, these pictures and ask you to kind of walk the
9 jury through what's in the pictures and give a better idea as
10 to what you saw and processed at the scene that night.

11 MR. ALFARO: That top button is the pointer.

12 Q. [Mr. Alfaro] Starting with State's Exhibit Number
13 3, can you tell us what that is?

14 A. That's usually -- that's the first shot of the
15 scene -- series of photographs from the scene. It's just
16 identifying where it's at and who the photographer is. I was
17 the photographer at this particular scene.

18 Q. And State's Exhibit 4?

19 A. That's a view of the front of the business, from
20 the parking lot, and it's kind of a general overall photograph
21 of the scene.

22 Q. And can you tell us what that yellow thing is
23 across the bottom?

24 A. That's barrier tape, and that's generally used to
25 secure an area of a scene to keep people from going across it.

Dean Kokinda
Direct Examination by Mr. Alfaro
March 17, 2016

1 Q. And State's Exhibit 5?

2 A. That's an item of evidence. It's listed as item
3 one. It's a plastic shot cup, which is a component of a
4 shotgun shell.

5 Q. And I believe State's Exhibit 6 is a closer version
6 of that?

7 A. Closer in.

8 You can actually see the shot cup from this view.
9 It kind of blended in with the pavement in the last
10 photograph.

11 Q. Can you point to what the shotgun -- or the shot
12 cup that you were talking about?

13 A. Yeah.

14 It's in this area. It looks like it's a part of
15 that.

16 Q. And for anyone that doesn't know how a shotgun
17 shell is constructed, can you tell us what that is?

18 A. Yeah.

19 The shot cup is -- it holds the actual pellets of
20 the shotgun shell.

21 Q. And at what point does that expel from the shotgun?

22 A. That's located inside the outer shell. Once the
23 shotgun shell is fired, that is expelled from the barrel of
24 the shotgun and then at some point it loses velocity and drops
25 out and the pellets continue on.

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1 Q. And State's Exhibit 8?

2 A. That's a fired shotgun shell. It's listed as item
3 two.

4 Q. And State's Exhibit 10?

5 A. That's an overall view of the scene area, parking
6 lot, looking towards the front of the business.

7 Q. And State's Exhibit Number 11?

8 A. That's a closer view of the scene. And that's
9 showing item three, which is another fired shotgun shell.
10 It's the red item located next to number-three placard.

11 Q. And State's Exhibit 13?

12 A. That's an overall view of the scene again.

13 Q. And which part of the parking lot or business is
14 that?

15 A. That's looking from left -- from right to the left.

16 Q. Is that the front parking lot?

17 A. Yeah. Yeah.

18 It's actually the -- this would be like the end of
19 the lines, coming away from the business, of the parking spot
20 itself.

21 Q. And State's Exhibit 18?

22 A. And that's another overall photograph and that's
23 showing item three, which is a fired shotgun shell located in
24 the lower right-hand corner; item five, which is a cocoa
25 butter bottle; item two -- I can't see the other -- what the

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1 other two items are.

2 Q. And State's Exhibit 19?

3 A. That's a closer view of item five, which is a cocoa
4 butter bottle.

5 Q. And what's the red stuff around that?

6 A. That's what presumptively tested as blood.

7 Q. And I'm going to take you back to State's Exhibit
8 13. Again, what's the red stuff in the parking lot there?

9 MR. KEARSE: Your Honor, I'm going to object. I
10 don't think he would be qualified to make that
11 testimony.

12 THE COURT: Rephrase your question, Mr. Alfaro.

13 Q. [Mr. Alfaro] The last exhibit you were shown, you
14 said it tested presumptively for blood?

15 A. Yes, sir.

16 Q. Did you conduct any tests on this to see what it
17 was?

18 A. A couple of different areas were presumptively
19 tested. Generally, in this particular case, it -- most of the
20 stuff -- everything that I tested presumptively was blood.

21 MR. KEARSE: Same objection, Your Honor, just for
22 the record.

23 THE COURT: Overruled. Thank you.

24 Q. [Mr. Alfaro] And on State's Exhibit 20?

25 A. That's a view of the -- if you're looking at the

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1 front of the business to the left side, and it's an area where
2 I marked with measuring tape showing where the shotgun damage
3 had been.

4 Q. And State's Exhibit 20 -- or I'm sorry -- 21?

5 A. That's a little bit closer view of the damage.
6 It's kind of basically centered for the photograph. It would
7 be slightly up and to the left.

8 Q. And just to get a better idea on the front of
9 the business, I'm going to take you back to State's Exhibit
10 Number 4. Can you point out on the picture which one of those
11 windows is the window that we just saw damage?

12 A. Where the laser pointer is.

13 MR. ALFARO: The Court's indulgence. I'll have
14 these items marked.

15 [Whereupon, State's Exhibit Numbers 38, 39 and 40
16 are marked by the court reporter]

17 Q. [Mr. Alfaro] I'm going to show you what we've had
18 marked for identification as State's Exhibit Numbers 38, 39
19 and 40.

20 I'll start with Number 38. If you can take a look
21 at that and tell us if you recognize that.

22 [Whereupon, the witness reviews documents]

23 A. Yes, sir.

24 Q. [Mr. Alfaro] And --

25 MR. DAVIS: May it please the Court. I have no

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1 objection to --

2 MR. ALFARO: Your Honor --

3 Q. [Mr. Alfaro] Can you tell us what that exhibit is,
4 State's Exhibit 38?

5 A. State's Exhibit 38 is the plastic shot cup that was
6 depicted in the scene photographs.

7 Q. And, specifically, is that the items that was
8 depicted in -- I'm going to show you what is State's Exhibit
9 Number 6.

10 A. Yes, sir. That's item one. That's also listed as
11 item one, on the box, in my writing.

12 Q. And you collected that that evening?

13 A. Yes, sir.

14 Q. And moving on to State's Exhibit Number 39. Do you
15 recognize that?

16 A. Yes, sir, I do.

17 Q. And what is that?

18 A. That's a fired shotgun shell, 12-gauge.

19 Q. And is that what was depicted in State's Exhibit
20 Number 8 that I'm showing you?

21 A. Yes, sir.

22 That's item number two in the scene photographs.
23 Also listed as item number 2, on the box, in my writing.

24 Q. And moving on to State's Exhibit Number 40.

25 A. Yes, sir.

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1 Q. And what is that item?

2 A. That's another fired 12-gauge shotgun shell.

3 Q. And is that's what's depicted in State's Exhibit
4 12?

5 A. Yes, sir.

6 It's item number three from the scene photographs.
7 Also item number three, on the box, my handwriting.

8 Q. And all three of those items were collected by you
9 that night?

10 A. Yes, sir.

11 MR. ALFARO: Your Honor, at this time the State
12 would ask to admit Exhibits 38, 39 and 40.

13 THE COURT: Without objection?

14 MR. DAVIS: Yeah. I've already stated my position.

15 THE COURT: In evidence.

16 [Whereupon, State's Exhibit Numbers 38, 39 and 40
17 are admitted into evidence by the Court]

18 THE COURT: You may publish, as needed.

19 Q. [Mr. Alfaro] I forgot to ask you one question
20 about State's Exhibit 21.

21 MR. ALFARO: Could you put that back up on the
22 screen?

23 Q. [Mr. Alfaro] Can you tell the jury, based off your
24 experience and what you observed at the scene that night, what
25 caused that damage?

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1 A. Yes, sir.

2 Based on my experience and training, that damage
3 was caused from a shotgun shell, the pellets from a shotgun
4 shell.

5 Q. Now, in the course of processing the scene, did you
6 locate any other shell casings or any other weapons?

7 A. No, sir, I did not.

8 Q. And was the shotgun itself recovered at the scene?

9 A. Not at the scene, no, sir.

10 MR. ALFARO: Thank you. Please answer any
11 questions the defense has for you.

12 MR. DAVIS: May it please the Court?

13 THE COURT: Mr. Davis.

14 MR. DAVIS: Good morning, Dean. How are you doing?

15 THE WITNESS: Good morning.

16 MR. DAVIS: Is it alright if I call you Dean?

17 THE WITNESS: That's fine.

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Dean Kokinda
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CROSS-EXAMINATION

BY MR. DAVIS:

Q. The only thing you can testify to being as that you processed the scene?

A. Yes, sir. That's correct.

Q. You weren't present during any of this melee, as it's been described?

A. No, sir.

Q. And it's your responsibility to, as best as possible, try to preserve the integrity of the scene?

A. Well, it's to collect the evidence.

The integrity of the scene should be preserved prior to me getting there.

Q. Oh. Was it preserved in this instance?

A. Well, it's an outdoor scene. They're difficult to keep pristine.

Q. So a lot of things have changed position in relationship before you got there?

A. I don't know.

Q. Okay. Do you hunt --

A. I --

Q. Do you hunt, yourself?

A. No, sir.

Q. No, sir.

But you're very familiar with each rating -- would

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1 you agree or disagree that more shells sometimes have numbers
2 assigned to it on the shell?

3 A. Yes, sir.

4 Q. Can you tell what those numbers are associated
5 with?

6 A. The numbers on the side of the shotgun shell are
7 associated with the size of the pellets and the number of
8 pellets that are contained within.

9 Q. Yeah.

10 And they run from double zero, zero, to I would say
11 eight is a high?

12 A. Yeah.

13 I think I've even seen nine and a half.

14 Q. Nine and a half.

15 And in those instances, eventually the higher the
16 number we classify them a lot of times as bird shells; isn't
17 that true?

18 A. Your high numbers generally are used for hunting
19 birds, small animals.

20 Q. That's right.

21 Did the -- when you had your discussion with the
22 solicitor, were there ever any discussion about whether these
23 were bird shells or not?

24 A. As far as when he questioned me?

25 A. Yeah.

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1 Q. I don't believe he asked anything about that, no,
2 sir.

3 MR. DAVIS: May I approach, Your Honor?

4 THE COURT: You may.

5 Q. [Mr. Davis] What's the high-end number on there?

6 A. That's a seven and a half.

7 Q. Okay. And you and I disagree a little bit. You
8 said it could go to nine and I say it could go as high as
9 eight; isn't that true?

10 A. Yes, sir.

11 [Off the record momentarily]

12 MR. DAVIS: May I approach again, Your Honor?

13 THE COURT: You may.

14 Q. [Mr. Davis] This is into evidence. I'm going to
15 ask you -- I've got on my glasses to see what's the number on
16 that.

17 A. Well, it's kind of faded, and my eyes aren't real
18 good up close right now, so I cannot see what number that is.

19 Q. You can't tell what it is?

20 A. Not in this lighting, no, sir.

21 MR. DAVIS: Well, you need -- you want to try my
22 glasses? The more the merrier.

23 THE WITNESS: Mine are number twos.

24 MR. DAVIS: Well, these are 2.50. See if it helps.

25 A. I can't --

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1 Q. [Mr. Alfaro] You can't read --

2 A. I can't read if it's a --

3 Q. That's okay.

4 It's an eight. Okay? I think it's an eight.

5 Well, the jury will have it. But I'm certain that it's an
6 eight.

7 And not that that's the degree of it. But, in
8 fact, there are a lot of the small pellets; isn't that true?

9 A. Yes, sir.

10 And the higher the number, the smaller the
11 pellets.

12 Q. Now, I don't mean this in a derogatory sense, but
13 this is not the kind of weapon that you would use, or bullets
14 you would use, to hunt big game or deer and other animals in
15 that sense?

16 A. No.

17 Generally, I've seen that the higher numbers are
18 used against small animals and birds.

19 MR. DAVIS: Okay. No further questions.

20 THE COURT: Mr. Kearse, any questions?

21 MR. KEARSE: May it please the Court, Your Honor?

22 THE COURT: Yes, sir.

23 MR. KEARSE: Counsel.

24 Detective Kokinda, how are you doing this morning?

25 The WITNESS: Good.

Dean Kokinda
Cross-Examination by Mr. Kearse
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CROSS-EXAMINATION

BY MR. KEARSE:

Q. Were you ever told during your investigation that it was prior existing damage to that window at the bar?

A. No, sir.

Q. You were never informed that there was a prior shooting out there at the bar?

A. No, sir. I wasn't aware of it.

Q. Okay. Did you ask anyone?

A. No, sir.

Q. So it's quite possible that damage could have been done prior to the night of this particular offense?

A. All I can say is that that damage was done from a shotgun shell.

Q. All right. So the answer to the question would be, yes, that's quite possible?

A. Yeah.

MR. KEARSE: I don't have anything further, Your Honor.

THE COURT: Any redirect?

MR. ALFARO: No, Your Honor.

THE COURT: You may step down. Feel free to stay with us, but you're also free to go. Thank you. Nice to see you.

[Whereupon, Mr. Kokinda is excused and exits the

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witness stand]

THE COURT: Call your next witness.

MR. ALFARO: The State calls Daniel Wilson.

[Whereupon, Mr. Wilson comes forward]

[Whereupon, Mr. Wilson is duly sworn by the clerk
of court as follows: do you solemnly swear or affirm
the testimony you shall give in this case shall be the
truth, the whole truth, and nothing but the truth, so
help you God]

THE WITNESS: I do.

THE CLERK OF COURT: If you'll have a seat.

[Whereupon, Mr. Wilson takes the witness stand]

THE CLERK OF COURT: If you'll state your full name
for the record and spell your last name.

THE WITNESS: Daniel Kendrick Wilson. W-I-L-
S-O-N.

MR. ALFARO: Good morning.

THE WITNESS: Good morning.

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DANIEL WILSON,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. ALFARO:

Q. Tell us where you work.

A. Berkeley County Sheriff's Office.

Q. And how long have you been with the sheriff's
office?

A. Approximately seven years.

Q. What's your current assignment and role at the
sheriff's office?

A. For the last four years, I've been assigned to the
criminal investigations division.

Q. And were you working in that capacity on July 28,
2013, approximately 2:00 a.m.?

A. I was.

Q. And in that capacity, did you have the opportunity
to respond to the Nowhere Bar and Grill in Goose Creek?

A. I did.

Q. And why did you respond?

A. Approximately a little bit after 2:00 a.m. in the
morning, our dispatchers, they contacted me stating that they
had just dispatched multiple units to the Nowhere Bar and
Grill located in Goose Creek, Berkeley County, off of Henry

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1 Brown Boulevard, in reference to multiple gunshot victims.

2 And I responded at that time.

3 Q. And when you arrived, were the victims still at the
4 scene?

5 A. They were.

6 Q. Were they all three there?

7 A. They were.

8 Q. And did you observe any of their injuries?

9 A. Pretty much they were being treated by EMS by the
10 time I got there. I did observe that one of the individuals
11 they were bandaging was the -- one of the arms on the victim.

12 I did not -- I pretty much stayed out of the way
13 because it was a crime scene. We tried to limit access and
14 allow them to do their thing. But I saw one of the victims
15 being treated for his arm.

16 Q. And while they were being treated, you didn't make
17 any attempts to talk to them at the scene?

18 A. No.

19 I didn't want to interfere with their medical
20 treatment.

21 Q. And did you speak with any of the people that were
22 at the scene, other than the victims?

23 A. I did.

24 I spoke to some of the bar employees about what had
25 happened, and they informed me that --

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1 MR. KEARSE: Objection. Hearsay.

2 MR. DAVIS: Object to hearsay.

3 THE COURT: Any exception?

4 MR. ALFARO: No, Your Honor.

5 A. Okay. I did -- I did speak to people at the bar.

6 Q. [Mr. Alfaro] And without saying the substance of
7 what they told you, did you take statements from them that
8 night?

9 A. I did.

10 Q. They were -- were they cooperative?

11 A. They were.

12 Q. And did you have the opportunity to follow up on
13 the victims' conditions at the Medical University?

14 A. I did.

15 Q. And when you got to the Medical University, at that
16 time were you able to speak with the victims?

17 A. Not right away. All three victims were being
18 medically treated.

19 Eventually, after waiting a little while, I was
20 able to speak to Mr. and Mrs. Bohannan. I was unable to speak
21 to Mr. Bryant, however.

22 Q. And, again, without talking about the substance of
23 what they told you --

24 A. Right.

25 Q. -- did you take written statements from David and

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1 Stacy Bohannon?

2 A. I did.

3 MR. ALFARO: Your Honor, can we approach?

4 THE COURT: You may.

5 [Whereupon, an off-the-record bench conference is
6 held]

7 THE COURT: Thank you, Mr. Alfaro.

8 Q. [Mr. Alfaro] Detective Wilson, when you were at
9 the Medical University, did you come into possession of any
10 evidence from Mr. Bryant related to this incident?

11 A. I did.

12 Q. And do you recall what that was?

13 A. Yes. I was presented shotgun wadding.

14 Q. And do you recall who you got that from?

15 A. One of the -- I was approached by one of the
16 medical nurses and stated that --

17 MR. KEARSE: Objection, Your Honor.

18 THE COURT: Is there an exception?

19 MR. ALFARO: No, Your Honor.

20 Q. [Mr. Alfaro] You were -- all right. Let me
21 redirect the question.

22 A. Okay.

23 Q. You said you received it from one of the nurses?

24 A. That is correct.

25 Q. And when you were given that item, did you alter it

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1 in any way while you had it?

2 A. I did not.

3 Q. And as part of your process of collecting that
4 evidence, did you prepare any chain of custody reports?

5 A. I did.

6 Q. And at this time, do you recall the name of the
7 person that gave you the shotgun wadding?

8 A. I do not.

9 Q. Would it refresh your recollection if I showed you
10 one of the evidence chain of custody sheets?

11 A. It would.

12 Q. If you can take a look at that document and see if
13 it refreshes your recollection, after you've had a chance to
14 review it. If it refreshes, just put it down and look at me
15 and I'll ask you some questions.

16 [Whereupon, the witness reviews documents]

17 A. It does.

18 Q. [Mr. Alfaro] And after reviewing that document, is
19 your recollection refreshed as to who you received the item
20 from?

21 A. Yes.

22 Q. And who was that?

23 A. Mr. Willis.

24 Q. And where did this Mr. Willis work?

25 A. In Medical University at the -- I believe, at the

Daniel Wilson
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1 time, at the emergency room.

2 Q. And as part of your -- well, let me ask you this.
3 Were you designated the case agent in this case?

4 A. I was.

5 Q. And as part of your investigation, did you receive
6 any information about any possible suspect vehicles?

7 A. I did.

8 Q. And did that information lead you to another step
9 in your investigation?

10 A. It did.

11 Q. And what information did you receive regarding the
12 vehicle description?

13 A. We received information -- or I was contacted by
14 our dispatchers and provided information that a subject wanted
15 to meet with detectives at the Goose Creek Police Department
16 in reference to he had observed a press release on the
17 incident earlier in the day, and that he stated that about the
18 time --

19 MR. KEARSE: Objection, Your Honor.

20 MR. DAVIS: Object to hearsay.

21 THE COURT: Any --

22 MR. ALFARO: Your Honor, it's not hearsay. It's
23 not going to the truth of the matter asserted. It's --

24 THE COURT: I'll allow it.

25 Note your objection. Thank you.

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1 A. Based upon the information that was provided, we
2 proceeded to the residence on , which is located off
3 of -- I'm sorry --

4 Q. [Mr. Alfaro] And where is that address in
5 proximity to the Nowhere Bar and Grill?

6 A. Approximately maybe two miles.

7 Q. And whose residence did you go to?

8 A. Jason Gourdine's.

9 Q. And as the case agent, are you aware if the weapon
10 used in this was ever recovered?

11 A. I'm not aware that it was recovered.

12 MR. ALFARO: Thank you. Please answer any
13 questions that --

14 MR. DAVIS: May it please the Court, Your Honor?

15 THE COURT: Yes, sir.

16 MR. DAVIS: Good morning, Mr. Wilson. How are you
17 doing?

18 THE WITNESS: Good morning, sir. I'm well. Thank
19 you.

20 MR. DAVIS: Good.

21 - - -

22 - - -

23 - - -

Daniel Wilson
Cross-Examination by Mr. Davis
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CROSS-EXAMINATION

BY MR. DAVIS:

Q. Have you and I ever discussed this case?

A. We have not.

Q. And this case is about three years removed, is it not?

A. That is correct, sir.

Q. Now, you weren't present that night; correct?

A. I was not.

Q. And did you ever make contact or arrest anyone other than my client and Mr. Steven Moses?

A. No, sir.

Q. You never issued anything for Mr. Bryant? James Bryant.

A. No, sir.

Q. We never -- you talking about like an arrest warrant?

Q. Yeah.

A. No, sir.

Q. What about Mr. Enriquez?

A. No, sir.

Q. Did you ever have any contact with Mr. Enriquez that same night on July the 28th, 2013?

A. I did.

Q. Under what circumstances did you come in contact

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1 with him?

2 A. He was identified as possibly being at the bar
3 during the incident. And one of our patrol deputies had
4 apparently stopped him in the subdivision that's located
5 adjacent to the Nowhere Bar and Grill. And I made contact
6 with him at that point.

7 Q. In fact, you held him until other authorities came?
8 You detained him?

9 A. I did not detain him. I questioned him.

10 Q. Okay. And he lived within close proximity of the
11 Nowhere Grill --

12 A. He did --

13 Q. -- also?

14 A. He did.

15 Q. And when you approached him, was he at home or was
16 he in his vehicle? Tell us about that.

17 A. I believe they -- the patrolman had actually
18 stopped him, so he wasn't at his residence.

19 They had actually did a traffic stop, based upon
20 the description that had been provided. So my first contact
21 with him was not at his residence.

22 Q. And on information, since you were the head agent,
23 head officer involved --

24 A. Yes, sir.

25 Q. -- did he responded and stop according to police

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1 procedure when asked to do so?

2 A. I believe so. I was not advised anything else.

3 Q. Okay. Was he charged with driving under the
4 influence of any particular manner?

5 A. I'm not aware of that. I didn't --

6 Q. I mean, you came in contact with him.

7 A. I did, but I didn't do the stop on him.

8 Q. Yeah, but you were there.

9 A. I was.

10 Q. And you made contact with him?

11 A. I did.

12 Q. Did you charge him and infer at any point that he
13 was under the influence having --

14 A. When I came in contact with him, he wasn't behind
15 the wheel. He was standing outside his vehicle.

16 Q. But he was not home, though?

17 A. No, sir.

18 Q. Well, was anybody else in the vehicle that reflect
19 that he had driven the car to that particular location?

20 A. Not to my knowledge, sir.

21 Q. Well, you seem to suggest that if you're not behind
22 the wheel, then you can't charge someone with driving under
23 the influence.

24 A. I can't charge him.

25 I didn't -- if -- that would be up to the patrol

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1 officer, whoever saw him behind the wheel, if that was -- if
2 it was --

3 Q. If you see someone driving in Berkeley County,
4 because you are a detective you will not stop them for DUI?

5 A. Personally?

6 Q. Yes.

7 A. Yes, sir.

8 Q. Okay. So that's not the issue. The issue I asked
9 you is you came in contact with --

10 I mean, right --

11 A. I did, after he had --

12 Q. -- now, having coming in contact with him, if you
13 could tell the jury what kind of -- what do you come -- what
14 do you recall about that contact?

15 A. Mainly I was questioning him on the facts or
16 questioning him about the incident that had happened at the
17 bar.

18 Q. Well, he told you he was there?

19 A. Correct.

20 MR. ALFARO: Objection.

21 Q. [Mr. Davis] Right?

22 THE COURT: Hold on one second. There was an
23 objection.

24 MR. DAVIS: I'm sorry.

25 THE COURT: Basis?

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1 MR. ALFARO: Hearsay.

2 THE COURT: Is there an exception?

3 MR. DAVIS: Well, it's not for the truth of the
4 matter asserted. It's just that whether he was there or
5 not.

6 THE COURT: Rephrase your question.

7 MR. DAVIS: Okay.

8 THE COURT: Thank you.

9 Q. [Mr. Davis] Based on the information you gathered
10 from him --

11 A. Uh-huh.

12 Q. -- you resolved that he was at the Nowhere?

13 A. I did.

14 Q. Okay. He resolved -- did he share with you what
15 had happened inside?

16 MR. ALFARO: Objection.

17 THE COURT: Basis?

18 MR. ALFARO: The question is calling for the answer
19 to be --

20 THE COURT: It could be a yes or no answer, so he
21 may answer yes or no.

22 THE WITNESS: Can you repeat the question, sir?

23 MR. DAVIS: I don't --

24 Q. [Mr. Davis] Did he share with you that he was
25 involved in incidents pertaining or relating to the Nowhere

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1 Grill and Bar?

2 A. He did.

3 Q. Did he share with you whether he had assaulted
4 anyone?

5 A. He said he had an altercation --

6 Q. Altercation?

7 A. Yeah.

8 Q. All right. And --

9 THE COURT: Counsel, just approach for a minute.

10 [Whereupon, an off-the-record bench conference is
11 held]

12 THE COURT: Thank you, counsel.

13 MR. DAVIS: Thank you. Thank you both. I'm
14 finished up.

15 THE COURT: Mr. Kearse, do you have any questions
16 for this witness?

17 MR. KEARSE: Nothing from Mr. Moses, Your Honor. I
18 do have one question. I'm sorry.

19 THE COURT: Take your time, Mr. Kearse.
20
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25

Daniel Wilson
Cross-Examination by Mr. Kearse
March 17, 2016

CROSS-EXAMINATION

BY MR. KEARSE:

Q. Mr. Maron was not arrested; correct?

A. He was not.

Q. He was not arrested for a DUI, nor was he arrested
for assault?

A. We had no complaint on an assault at the time.

THE COURT: Nothing further, Your Honor.

THE COURT: Mr. Alfaro, redirect?

MR. ALFARO: Can we approach, briefly, Your Honor?

[Whereupon, an off-the-record bench conference is
held]

THE COURT: Anything further, Mr. Alfaro?

MR. ALFARO: No, Your Honor.

THE COURT: May this witness step down?

MR. ALFARO: Yes, Your Honor.

THE COURT: You may step down. You're going to
stay with us, I believe.

Call your next witness.

MR. MCNEELY: The State calls Stacy Bohannan.

[Whereupon, Ms. Bohannan comes forward]

THE CLERK OF COURT: Put your left hand on the
Bible and raise your right.

[Whereupon, Ms. Bohannan is duly sworn by the clerk
of court as follows: do you solemnly swear or affirm

Daniel Wilson
Cross-Examination by Mr. Kearse
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1 the testimony you shall give in this case shall be the
2 truth, the whole truth, and nothing but the truth, so
3 help you God]

4 THE WITNESS: I do.

5 THE CLERK OF COURT: If you'll have a seat.

6 [Whereupon, Ms. Bohannan takes the witness stand]

7 THE CLERK OF COURT: State your full name for the
8 record and spell your last name.

9 THE WITNESS: Stacy Bohannan. Last name, B-O-H-
10 A-N-N-A-N

11 MR. MCNEELY: Good morning, Ms. Bohannan.

12 THE WITNESS: Good morning.

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STACY BOHANNAN,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCNEELY:

Q. How old are you?

A. Thirty-five.

Q. Where are you currently employed?

A. I work for Berkeley County school district. I'm
Goose Creek primarily, and I'm in the cafeteria.

Q. Are you married?

A. I am.

Q. What's your husband's name?

A. David Bohannon.

Q. Do you have any children?

A. We do.

Q. What are their ages?

A. We have three boys. They are sixteen, fourteen,
and thirteen.

Q. Where did you go to high school?

A. Goose Creek High.

Q. Were you working on -- during July of 2013?

A. No, I was not.

Q. Let's talk about the night of July 27th and early-
morning hours of July 28, 2013. What were you doing that

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1 evening?

2 A. We were out with some friends that -- we had dinner
3 and went to the Nowhere Bar and Grill. My husband likes to
4 shoot pool. I like to sing karaoke.

5 Q. Where is the Nowhere Bar?

6 A. It's on North Rhet, Henry J. Brown Boulevard, in
7 Goose Creek.

8 Q. Is that in Berkeley County?

9 A. It is.

10 Q. Had you been to that bar before that night?

11 A. Yes, sir.

12 Q. Would you consider yourself a regular at the bar?

13 A. Before we -- when we lived here before, yes, sir.

14 We lived in Mississippi for seven years. We had
15 just come back, and we had been back two weeks.

16 But I've been here before, yeah.

17 Q. What time did you arrive at the bar on July 27th,
18 2013?

19 A. I'm not -- it was approximate times. It's been a
20 while. We were there for a few hours. Three, four.

21 Q. Who did you go with?

22 A. I went with my husband and another couple.

23 They had to leave because they had some issues with
24 I think it was a child.

25 Q. What were you and David doing at the bar that

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1 night?

2 A. We were hanging out and drinking. They were having
3 a good time.

4 Q. Were you at the bar around closing time?

5 A. Yes, we were.

6 Q. What time is closing time?

7 A. 2:00 a.m.

8 Q. Is closing time always 2:00 a.m.?

9 A. Yes.

10 Q. What time was the last call for drinks?

11 MR. KEARSE: Objection, Your Honor. Outside the
12 scope of her knowledge.

13 THE COURT: If she knows. She can testify as to
14 what she knows.

15 A. Usually between 1:30, 1:45.

16 Q. [Mr. McNeely] Did they make a last call for drinks
17 that night?

18 A. They did.

19 Q. What time did they make that last call?

20 A. I was -- it was probably around 1:45.

21 Q. Had there been any problems in the bar that night
22 prior to last call?

23 A. No.

24 Q. At some point during the night, did you see these
25 defendants enter the bar?

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1 A. Yes.

2 Q. Was that before or after last call had been made?

3 A. After last call.

4 Q. What did they do when they entered?

5 A. They just walked in and walked to the back side of
6 the bar and sat down.

7 Q. Did you hear them say anything?

8 A. Not right away. I was talking to some friends of
9 mine.

10 Q. At some point, did you hear them say anything?

11 A. Yes.

12 Q. What did you hear them say?

13 A. I believe I heard, he won't serve me because I'm
14 black.

15 Q. Was there a response?

16 A. Cupcake got rather angry, the bartender. She got
17 rather angry and she said, you've got the wrong one, my
18 children are mixed.

19 Q. What happened after that?

20 A. Mr. Moses stood up and started clapping his hands,
21 making a scene, getting rather loud.

22 He was asked to leave, and then he was asked to
23 leave again. And I told my husband, you know, just keep an
24 eye on it; you know, just stay here but just pay attention.

25 At that time of night, you know, when things get

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1 loud in a bar, you pay attention to things like that because
2 it's late and it rises. It just makes you think about things.

3 Q. Who asked them to leave?

4 A. The bartenders.

5 Q. Do you know their names?

6 A. Aleshia or Cupcake -- that's who I refer to as
7 Cupcake -- and Vicky Taylor.

8 Q. What happened after that?

9 A. They started walking to the door. And the Puerto
10 Rican guy, Enrique, he went over and approached them. And I
11 guess they had a few words and he swung, he made a punch. And
12 then other people like kind of helped them their way out the
13 door, you know, just leave.

14 Q. When you say them, who do you mean?

15 A. The defendants.

16 Q. Who did Rick -- or Enrique swing at?

17 A. Mr. Moses.

18 Q. Following the swings, was there a brief scuffle in
19 the bar?

20 A. I don't know if it was a scuffle, because they were
21 just try -- everybody was in a big group trying to get them to
22 leave.

23 Q. Were you involved in that group?

24 A. No, I was not.

25 Q. Did the defendants leave?

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1 A. Yes, they did.

2 Q. Did anyone follow them out the door?

3 A. No, they did not. They were told to stay in the
4 bar.

5 Q. Did anybody lock the door after they left?

6 A. I believe Miss Lori locked the door.

7 Q. After the defendants were outside, did you hear
8 either of them say anything?

9 A. I did not.

10 Q. What did you do after they left the bar?

11 A. I went back to the round table, where we finished
12 our drinks and hung out for a few more minutes, and then we
13 were getting ready to leave.

14 I introduced myself to Mr. Bryant and told him
15 that, you know, to come back to Nowhere, you have a good time.

16 And we proceeded to just have a good time.

17 Q. At some point, did you leave the bar?

18 A. We did.

19 Q. About how much time passes before the defendants
20 leaving the bar and you leaving the bar?

21 A. Probably about ten minutes.

22 Q. Who did you walk outside the bar with?

23 A. I walked outside the bar with my husband, the
24 Puerto Rican, Enrique -- I refer to him as Coach Tee. He
25 coached my son's basketball, so I refer to him as Coach Tee --

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1 which is Tyrone, I believe his name is -- and James.

2 Q. When you went outside, why were you going outside?

3 A. We were helping James to the car.

4 He needed to be coaxed out of the bar. He was
5 having a pretty good time and he wasn't ready to leave, and it
6 was one of those come on and follow me, you know, it's time to
7 come, come on, let's go.

8 Q. When you went outside, did you think the defendants
9 were outside?

10 A. No.

11 Q. What happened next?

12 A. We were trying to get -- we were trying to get Rick
13 out of the front seat. You know, he had taken the front seat.
14 And Jay was like, no, that's my seat, you know, you've got to
15 get up.

16 So right before Rick got up is when Mr. Moses came
17 around and -- around the side of the van. I wasn't sure it
18 was him at first, because he had changed his shirt. He was in
19 a different shirt. He had I guess taken it off and come back
20 in a white tank-top type shirt. So I wasn't sure it was him.

21 And when I did realize it was him, I automatically
22 got scared. I got frightened, thinking why are they back,
23 what do they want.

24 Q. What made you realize it was him?

25 A. His face. When I saw his face.

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1 Q. Did he say anything?

2 A. He said, where's -- from earlier -- where's that
3 guy from earlier. And then he said, that's him. And then he
4 started backing, like he was backing out of the way.

5 Q. Who did you perceive him to be talking about?

6 A. He was talking about the Puerto Rican guy.

7 Q. Did he make any actions with his arms?

8 A. He threw his arms up, you know, like where's our
9 boy from earlier, there he is. And then he started backing
10 the other way.

11 Q. What happened next?

12 A. Everybody started to go towards him. And I
13 remember screaming, y'all, no, stop, just stop. And the next
14 thing I know I heard bang.

15 And I when I heard bang, I put my hand over my head
16 and I ducked my head and I ran back into the bar. And when I
17 put my hands down from my head, there was blood all over my
18 hands. That's when I had realized I had been shot and I ran
19 into the bar screaming, I'm shot, I'm shot.

20 Q. When Mr. Moses approached the group, did you
21 realize that there was a car behind the van?

22 A. Yes, sir.

23 Q. Do you know who was in the car?

24 A. No. I'm sorry. No, I did not know who was in the
25 car.

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1 Q. Was the car's proximity to the van close enough
2 that it would prevent the van from --

3 MR. KEARSE: Objection, Your Honor.

4 THE COURT: What's the basis?

5 MR. KEARSE: It's speculative.

6 THE COURT: Overruled.

7 THE WITNESS: So may I answer? Okay.

8 A. It was behind it, like it was blocked in. The van
9 could not have moved.

10 Q. [Mr. McNeely] Did you see who shot you?

11 A. I did not see who shot me.

12 Q. What happened after you ran back into the bar?

13 A. When I ran back into the bar, I told them I was
14 shot. They took me behind the bar and they put towels around
15 my head.

16 There was a lot of screaming for towels, screaming
17 people had been shot. There were a lot of people running
18 around ducking for cover. Nobody knew what was going to
19 happen, were they going to come inside, were they done.
20 Nobody knew.

21 Q. Did you lay down?

22 A. I did. Behind the bar.

23 Q. Did people help you?

24 A. Yes, they did.

25 Q. What did they do?

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1 A. They put towels around my head, they had put --
2 were holding pressure to my head, and they were telling me it
3 was going to be okay. And all I kept asking was where's my
4 husband, somebody tell me where my husband is.

5 Q. At that point, did you realize David had been shot,
6 as well?

7 A. No, I did not know.

8 Q. When did you realize that?

9 A. After finally -- somebody finally told me that when
10 the ambulance got there, that somebody was working on my
11 husband and he had been shot, as well.

12 I didn't know whether how bad or -- I didn't know
13 how bad it was, or anything, at that point. I just knew that
14 he had been shot, too.

15 Q. Did EMS provide treatment to you?

16 A. Yes, they did.

17 Q. Were you loaded into an ambulance?

18 A. Yes, I was.

19 Q. Were you laying on your back or were you laying
20 face down?

21 A. I was laying -- I don't remember. I don't
22 remember.

23 Q. Do you remember the ambulance arrived?

24 A. Absolutely.

25 Q. How did you feel at that time?

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1 A. I was scared. I was very scared. I could feel my
2 heart was racing. I was just very, very scared.

3 Q. Did you know David's condition at the time?

4 A. No, I didn't.

5 Q. Do you remember arriving at MUSC?

6 A. Vaguely.

7 Q. Do you remember receiving medical treatment that
8 night?

9 A. Parts of it, yeah.

10 Q. What did they do?

11 A. When I first got there, they started an IV. They
12 were looking through my hair making sure that everything was
13 super -- you know, everything was -- nothing was -- they were
14 looking for spinal fluid and that sort of thing and making
15 sure that I could move my neck, I could move my -- the parts
16 of my body.

17 Q. Were you released from the hospital that night?

18 A. I was kept.

19 I don't know if it would have -- I don't know what
20 you're considering that night, because I did have a hospital
21 room and did sleep at the hospital one night. So I don't know
22 if you're considering the night we went in there, or the 28th.

23 Q. Have you received medical treatment that -- since
24 that time?

25 A. Yes, sir.

Stacy Bohannon
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1 Q. What medical treatment have you received?

2 A. I've had two surgeries to remove pellets from my
3 head and my neck area.

4 Q. Have all the pellets been removed from your body?

5 A. No, sir.

6 Q. Are you still experiencing any effects from your
7 injuries?

8 A. Yes, sir.

9 I get migraines and headaches. And the pellets
10 cause swelling in the muscles and the tendons, and there are
11 times where the headaches are so bad that I can't get out of
12 bed.

13 Q. Has your husband worked since that night?

14 A. No.

15 Q. Have you become the sole provider for your family?

16 A. Yes, sir.

17 Q. I want to go back to the scene of the incident.
18 Did you have a weapon on you that night?

19 A. No, sir.

20 Q. Did you see James with a weapon that night?

21 A. No, sir.

22 Q. Did your husband have a weapon that night?

23 A. No, sir.

24 Q. Did anybody, other than Jason Gourdine, have a
25 weapon that night?

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1 A. No, sir.

2 MR. MCNEELY: No further questions from the State.

3 MR. DAVIS: May it please the Court, Your Honor?

4 THE COURT: Yes. Hold on one second.

5 Madam Foreperson, it's a perfect time for a break.

6 Do y'all need a break?

7 [No response]

8 MR. DAVIS: Good morning, Ms. Bohannon. How are
9 you doing?

10 MS. BOHANNAN: Good morning, Mr. Davis. How are
11 you?

12 MR. DAVIS: Good.

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Stacy Bohannon
Cross-Examination by Mr. Davis
March 17, 2016

CROSS-EXAMINATION

BY MR. DAVIS:

Q. You understand my job?

A. Yes, sir.

Q. And I've asked this question repeatedly of some people who have sat in that same chair that you have sat in. I'm going to ask you at the beginning. There's been more than three years since this incident. Anything you would do different now than you did on July the 20th [sic], 2013?

A. You know what? Yeah. I wouldn't go.

Q. Because on that night, on July 20th [sic], 2013, as you reviewed what transpired, things got out of hand; isn't that true?

A. Yes, sir.

Q. Things got out of hand with James, Mr. Big, Mr. Brown -- Mr. Bryant, and involved himself with something that really should have been just a bar matter with the bar manager and the bartender; isn't that true?

A. I don't -- I really don't know.

Q. Well, do you believe it was all right for James Bryant to get engaged with these two gentlemen?

A. I believe at that time of the night, and there's no security in a bar, that people look out for themselves.

Q. Okay. So you believe that the bar owner should have had some security; right?

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March 17, 2016

1 A. Yes.

2 Q. Okay. And if security was there, maybe we wouldn't
3 be here today?

4 A. Yes.

5 Q. Okay. And since there was no security in place,
6 James Bryant and your husband injected themselves as security
7 officers?

8 A. My husband was looking out for the benefit of me,
9 just like any other husband would for their wife.

10 Q. All right. And so when we reviewed the tape and
11 you go outside and you reference Ali, what are you
12 referencing?

13 A. Actually, that was a joke to Mr. Rick. He liked --
14 I had overheard them talking about UFC fighting. That's what
15 he liked to do.

16 And if you also listen to me in the tape, when I
17 say Lava Ali, I also look at him and say, that's her name,
18 right?

19 Q. Well, what I'm concerned about in that reference is
20 is this whole disposition, though, about glorifying an
21 incidence that had happened two minutes earlier when the same
22 Puerto Rican you described, Enrique, had flung and actually
23 assaulted someone inside the bar.

24 A. We weren't speaking about that. We were speaking
25 about a fight that had happened that he had watched on

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1 television. We weren't even talking about that incident.

2 Q. Okay. And as we proceed outside, you had went out
3 before the actual shooting took place? That's when you were
4 talking about the Ali and the UFO fighting and all that?

5 A. After Miss Gloria unlocked the door and told us we
6 could leave, yes.

7 Q. Yeah. Yeah.

8 And then so you were outside for a period of
9 time?

10 A. Probably, what, five seconds, ten seconds.

11 Q. Yeah.

12 And when Steven Moses returned, why is it that you
13 grabbed Mr. James Bryant?

14 A. I walked after them and I do believe I said, no,
15 stop.

16 And I was talking to everyone. I wasn't talking to
17 Mr. Bryant. I was talking to everyone to stop the whole
18 situation. I was trying to stop everything that I felt was
19 fixing to happen, everything, to everybody. No, stop, don't.

20 Q. Your husband was behind you, was he not?

21 A. Yes, he was.

22 Q. But you were clutched on to Mr. James Bryant,
23 Mr. Big; isn't that true?

24 A. I was telling them, no, stop, everybody just stop.

25 Q. Stop doing what?

Stacy Bohannon
Cross-Examination by Mr. Davis
March 17, 2016

1 A. Stop with the -- what's the word I'm looking for --
2 the tension, the aggravation, the fight that was -- that was
3 about to happen, the aggression.

4 Q. Thank you. Thank you very much.

5 A. Everybody. Not one person, everybody.

6 Q. You've been here throughout this whole trial, have
7 you not?

8 A. I have.

9 Q. Now, the aggression -- and you got shot?

10 A. Yes.

11 Q. And when you got shot, how close would you say you
12 were in proximity to Mr. James Bryant, Mr. Big?

13 A. I was standing right behind him.

14 Q. That's right. The guy you were clutching on to --

15 A. I was standing --

16 Q. -- isn't that true?

17 A. -- behind Mr. Bryant. I don't remember clutching
18 on to him.

19 Q. Well, the tape will speak for itself.

20 A. Okay.

21 Q. But you were right up on him; isn't that true?

22 A. You're right.

23 Q. And Mr. James Bryant was about to grab or impact
24 himself with either Steven Moses --

25 MR. MCNEELY: Objection, Your Honor. Calls for

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1 speculation.

2 THE COURT: Overruled.

3 MR. DAVIS: Thank you.

4 Q. [Mr. Davis] He had moved from the side of that SUV
5 to the extreme back of that van; isn't that true?

6 A. He had followed Mr. Moses, who was backing out of
7 the way.

8 Q. Now, Coach Tee --

9 A. Yes.

10 Q. -- he stayed in that van, did he not?

11 A. Probably because he didn't --

12 Q. I'm just asking yes or no. He stayed in the van?

13 A. Yes.

14 Q. He didn't honk his horn, he didn't put his car in
15 reverse. He stayed right in that van, did he not?

16 A. I wouldn't be sure whether it's 720 seconds.

17 Q. Thank you. Thank you. Thank you, Ms. Bohannon.
18 720 seconds. All this happened in 720 seconds. Thank you.

19 And there was a passenger that was sitting behind
20 Coach Tee; right?

21 A. I don't know if there was anybody else in that van,
22 sir.

23 Q. But this is what we do know, is that your husband,
24 James Bryant, and yourself -- you, yourself, really, trying to
25 hold back Mr. Big --

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1 A. I was trying to diffuse the whole situation. I
2 wanted it all to stop so I could go home.

3 Q. And you had tried to diffuse the situation earlier
4 when you had clutched your husband's arm, did you not?

5 A. When I told my husband to stay here, baby.

6 Q. Yeah. That's right. You were trying to do that.

7 But after that, you didn't go home immediately, did
8 you?

9 A. Absolutely not.

10 Q. Thank you. And --

11 A. Actually, we went to the hospital.

12 And, actually, if you want to know the truth about
13 it, I didn't go home for seventeen days because I stayed at
14 the hospital with my husband, who had multiple surgeries for
15 seventeen days.

16 Q. I understand that.

17 You were discharged that same night, though, were
18 you not?

19 A. Like I said, I don't remember if I was discharged
20 the night you're talking about. Because I spent a night in a
21 hospital room. I had a hospital room; he had a hospital room.

22 Q. And they draw your blood and your blood was .24,
23 very --

24 A. I was -- I was --

25 Q. -- you were very intoxicated.

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1 A. I was drinking.

2 Q. That's correct.

3 And so you don't believe that the intoxication
4 impaired a lot of your decisions that night?

5 A. Sir, I was diffusing a situation. I don't see as
6 to where I did anything wrong.

7 Q. But do you believe you were equipped to diffuse it,
8 though, if you were impaired?

9 A. I would have done the same thing if I had been
10 sober. That's what I do. I try to stop things from
11 happening.

12 MR. DAVIS: No further questions. Thank you.

13 THE COURT: Mr. Kearse.

14 MR. KEARSE: May it please this Court, Your Honor.

15 The WITNESS: I just need just a second, please.

16 [Off the record momentarily]

17 THE COURT: Mr. Kearse.

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Stacy Bohannon
Cross-Examination by Mr. Kearse
March 17, 2016

CROSS-EXAMINATION

BY MR. KEARSE:

Q. Ms. Bohannon?

A. Yes, sir.

Q. Your blood alcohol level was .24; correct?

A. That is -- yeah, I guess. I don't know what it was.

Q. Okay. And you and your husband had been at the bar for about two hours?

A. We had been there for probably between two and four hours.

I'm not going to swear to the time. It's been a while.

Q. You would agree that you had at least seven alcoholic drinks?

A. Probably.

Q. At least seven --

A. Yes, sir.

Q. -- while you were at --

A. I wasn't driving so, yes, sir, probably.

Q. All right. You also agree that when Mr. Moses and Mr. Gourdine walked into the bar, they did not say anything to you; correct?

A. They did not say a word to me.

Q. All right. And they proceeded and sat down at the

Stacy Bohannon
Cross-Examination by Mr. Kearse
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1 bar; is that correct?

2 A. They did.

3 Q. Had, in fact, sat down in front of some video poker
4 machines located in the bar. Do you recall that?

5 A. Yes.

6 The machines are on the back wall. They sat on
7 that side on that side of the bar. That is correct.

8 Q. Okay. And when they got into a dispute with
9 someone, Mr. Moses, it was not you or your husband; correct?

10 A. No, sir.

11 But it did cause attention. And at that time of
12 the morning, like I just said, when it gets loud and there's a
13 chaotic situation, you learn to -- you start to pay attention
14 to your surroundings, just to make sure that nothing is going
15 to happen.

16 When it's late, you're at a bar, things get loud,
17 you start to pay a little more attention.

18 Q. My question is Mr. Moses did not direct any
19 statement towards you; correct?

20 A. No, sir.

21 Q. Nor did he direct any statement towards your
22 husband; correct?

23 A. No, sir.

24 Q. And, in fact, it was Ms. Nava, who you guys call
25 Cupcake, who got loud and started cursing; correct?

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Cross-Examination by Mr. Kearse
March 17, 2016

1 A. Actually, Mr. Moses got loud first when he said,
2 you won't serve me because I'm black.

3 Q. Okay. And then Ms. Nava started yelling and
4 cursing; correct?

5 A. She did get loud back with him. Yes, she did.

6 Q. All right. And even at that time, Mr. Moses did
7 not direct any statement towards you; correct?

8 A. Correct.

9 Q. All right. Or your husband?

10 A. You're right.

11 Q. And so he, Mr. Moses and Mr. Gourdine started
12 walking towards the door after Mr. Taylor -- Ms. Taylor, I'm
13 sorry, cursed at them and said get the F out; right?

14 A. Yes, she did, because they had already been told
15 once to leave.

16 Q. Again, my question is the two gentlemen --

17 A. Yes, she did. She did. And they were, yes.

18 Q. And that did not involve you at all, did it?

19 THE WITNESS: Yes or no is what I'm supposed to
20 answer?

21 THE COURT: Yes. Answer the question.

22 A. No.

23 Q. [Mr. Kearse] All right. And as they walked
24 towards the door, you had to restrain your husband from
25 walking towards them?

Stacy Bohannon
Cross-Examination by Mr. Kearse
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1 A. I did not restrain my husband.

2 I put my hand on my husband a lot and tell him,
3 Honey, just stay right here.

4 Q. Okay. And you would not call that restraining?

5 A. No. That was me touching him. No; stay right
6 here.

7 Q. But you kept him from walking towards Mr. Moses and
8 Mr. Gourdine because you thought he was going to do it; right?

9 A. I thought my husband was going to protect me in a
10 situation that was getting out of hand.

11 Q. Well, why would your husband need to protect you if
12 no one is making any statement towards you?

13 A. Well, considering we weren't in church and we were
14 in a bar, things happen pretty quickly.

15 Q. So the minute you walk in a bar, your husband needs
16 to protect you?

17 A. The minute it gets late in a bar, my husband
18 becomes protective, yes, sir.

19 Q. Okay. Whether somebody is directing a statement
20 towards you or not?

21 A. It doesn't have to be directed towards a person for
22 them to feel threatened, especially that time of night when
23 you're in a situation like that.

24 Q. So the two of you are in the habit of making things
25 your business that may not be your business?

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1 A. My mother-in-law will tell you I'm a nosey person.

2 Q. Okay. A nosey person.

3 All right. And as you are touching your husband in
4 the bar, these two gentlemen are headed towards the door;
5 correct?

6 A. Yes, they were.

7 Q. And the only reason they didn't get to the door is
8 because Rick Enrique Maron, Jr., walked over to them, did he
9 not?

10 A. Yes, he did.

11 Q. Now, at no time did you have to restrain or grab
12 Mr. Moses or Mr. Gourdine; correct?

13 A. I didn't know them. I didn't know who they are.

14 Q. You didn't restrain them, did you?

15 A. No.

16 Q. You didn't see anybody else restrain them, did you?

17 A. No.

18 Q. Okay. And you actually saw Mr. Maron throw a
19 punch?

20 A. He swung.

21 Q. Right.

22 Okay. And you knew Mr. Maron, prior to that time,
23 as being a, quote, UFC fighter --

24 A. No, sir. I had just met him that night.

25 I had known him -- I had known him for maybe thirty

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1 minutes.

2 Q. Right.

3 Well, when did you find out he was a UFC fighter --

4 A. When I went to go get a drink at the bar and they
5 were conversating about a UFC fight.

6 Q. Okay. And at the time Mr. Maron or Rick threw this
7 punch at Mr. Moses, that still wasn't your business; correct?

8 A. No, it wasn't.

9 Q. And then you saw everybody -- just about everybody
10 in the bar join in and push these gentlemen out the bar?

11 A. Yeah.

12 Q. Now, they hadn't made any threats towards you or
13 your husband; correct?

14 A. No, sir.

15 Q. All right. But yet you believe that was okay? It
16 was okay for everybody to join in and push them out of the
17 bar?

18 A. They were asked to leave. They were causing a
19 scene and asked to leave.

20 Q. Okay.

21 A. All they had to do was just walk out and leave, not
22 come back. All they had to do was leave.

23 Q. Okay. First question, Ms. Bohannon: they were
24 walking out, were they not?

25 A. They were.

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1 Q. All right. And so while they were walking out,
2 Rick still took it upon himself to go approach them; correct?

3 A. But I wasn't Rick, and yet Rick wasn't shot. I
4 was. I didn't throw a punch at him.

5 Q. My question --

6 A. I just -- go ahead, Mr. Kearse.

7 Q. Thank you so much.

8 My question is they were walking out when this
9 man --

10 A. Please don't laugh like --

11 Q. -- man took it upon --

12 A. -- that. There's nothing about this --

13 Q. I am not laughing --

14 A. Please don't laugh.

15 Q. Ms. Bohannon, I'm not laughing. I'm trying to ask
16 you a question, if I may, please.

17 A. Go ahead.

18 Q. Okay. My question to you is that these gentlemen
19 were walking out?

20 A. I have answered that question for you five times.
21 Yes, they were.

22 Q. Okay. And even though they were walking out when
23 someone approached them and threw a punch at them, you believe
24 they were the ones who caused --

25 A. They started the scene --

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1 Q. -- the commotion?

2 A. -- at the bar.

3 Q. Do you not believe that cursing someone out, even
4 though you're the bartender, starts a scene at the bar?

5 A. Do you not believe that calling someone a racist,
6 who has biracial children, wouldn't be offensive?

7 A. My question to you, Mr. Bohannon, is do you not
8 believe that cursing someone out, even though you are a
9 bartender, is causing a scene?

10 A. Yes.

11 Q. All right. Do you not believe that walking towards
12 someone and throwing a punch at them is causing a scene?

13 A. Yeah.

14 Q. Do you not believe that pushing on someone to the
15 point where you push them out of the door in a bar is causing
16 a scene?

17 A. I believe the scene was already started at that
18 point.

19 Q. All right. Is part of causing a scene?

20 A. Yes.

21 Q. Okay. Now, you said that you guys -- the door was
22 locked, you believe. You're not certain, but you believe?

23 A. I do believe the story about the door. She told
24 everybody to stay inside to make sure that they left.

25 Q. But she had to unlock and reopen the door for

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1 people to leave; right?

2 A. I would assume so.

3 Q. Because y'all walked out, after the incident, to
4 the parking lot?

5 A. I believe we walked out after Vicki checked the
6 parking lot.

7 Q. Again, my question is you say Miss Lori -- which is
8 Ms. Lori Chenoweth; correct?

9 A. That's correct.

10 Q. You said that you believe she locked the door. You
11 believe she locked the door after these gentlemen left;
12 correct?

13 A. I do.

14 Q. All right. And you stayed inside the whole time?

15 A. I stayed inside until Vicky went out and checked
16 the parking lot.

17 Q. Well, my question is this --

18 A. Yes, I stayed inside the whole time.

19 Q. And then the door had to be unlocked, if it was
20 locked, for you guys to go out into --

21 A. That's correct.

22 Q. -- the parking lot?

23 All right. Which is also the same door you used to
24 go back through after the shooting; is that correct?

25 A. That is correct.

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1 Q. Okay. Now, Mr. Moses walked up to the van, did he
2 not?

3 A. Mr. Moses had changed his shirt --

4 Q. I didn't ask you that --

5 A. Yes, he walked up to the van.

6 Q. Thank you.

7 All right. And when Mr. Moses walked up, he did
8 not hit your husband, did he?

9 A. No. He threw his hands up.

10 Q. Again, my question is he did not hit your husband?

11 A. No, he didn't.

12 Q. All right. He did not hit Mr. Bryant, did he?

13 A. No, he didn't.

14 Q. He did not hit you, did he?

15 A. No, he didn't.

16 Q. All right. In fact, your words what he said was,
17 where is old boy from earlier?

18 A. That's what I remember him saying.

19 Q. All right. And immediately Mr. Bryant took off
20 after him, did he not?

21 A. 720 seconds. You tell me.

22 Q. My question is, Ms. Bohannon --

23 A. I don't know if it was immediate. There were a lot
24 of things going on right then.

25 Q. Well, Mr. Bryant started running after him, did he

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1 not?

2 A. Mr. Moses started to back out of the way. And,
3 yes, I do believe he went --

4 Q. And you started running after Mr. Moses --

5 A. I run over into them to tell them to stop. I
6 wanted everything and everybody to stop. I didn't want the
7 situation to go any further.

8 Q. You started running behind Mr. Bryant?

9 A. I did.

10 I tried to tell everybody to stop, that's enough,
11 y'all just stop.

12 Q. And in running behind Mr. Bryant, you were running
13 behind Mr. Moses, were you not?

14 A. I don't --

15 Q. Y'all ran in the direction of Mr. Moses, did you
16 not?

17 A. Yeah.

18 Q. All right. And your husband also ran in that
19 direction, did he not?

20 A. I believe he was coming after me.

21 Q. Well, in spite of what you believe, I'm just asking
22 you: your husband ran behind you and Mr. Bryant, did he not?

23 A. Yeah.

24 Q. All right. And, in fact, Enrique Maron jumped out
25 of that van and also ran in that direction, did he not?

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1 A. I don't know what he did.

2 Q. Okay. I'm going to hand you what's marked as
3 Defendant's Exhibit Number 8. Do you see yourself in that
4 photograph?

5 A. I do.

6 MR. KEARSE: Your Honor, at this time I would like
7 to republish Defendant's Exhibit 8 for the jury.

8 THE COURT: You may.

9 MR. KEARSE: If you could spin around for me,
10 Ms. Bohannon.

11 Q. [Mr. Kearse] Okay. That's you in that jersey; is
12 it not?

13 A. It is.

14 Q. And standing right next to you is Mr. Bryant, is it
15 not?

16 A. It is.

17 Q. All right. And standing on you right-side rear is
18 your husband, is it not?

19 A. It is.

20 Q. And the person who is coming out of that van, is
21 that Rick?

22 A. It is.

23 Q. All right. Would you not say Mr. Bryant is chasing
24 after Mr. Moses?

25 A. He is moving in that direction, yes.

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1 Q. All right. And you were also moving in that
2 direction?

3 A. He -- I guess you want yes or no, don't you? Yes.

4 Q. All right. And your husband moved in that
5 direction?

6 A. Yes.

7 Q. All right. I want to hand you what's marked as
8 Defendant's Exhibit Number 10. Can you take a look at that
9 photo for me, please?

10 [Whereupon, the witness reviews documents]

11 A. Yes, sir

12 Q. [Mr. Kearse] Okay. Do you see yourself in that
13 picture?

14 A. I do.

15 MR. KEARSE: Your Honor, at this time, I would like
16 to republish Defendant's 10 for the jury.

17 THE COURT: You may.

18 Q. [Mr. Kearse] Where are you, Ms. Bohannon?

19 A. It looks like I'm standing behind Mr. Bryant, like
20 he's stopped immediately. I'm right behind him.

21 Q. Would you not agree that your arms are wrapped
22 around this man's torso?

23 A. Not really. I can't see it because it's not -- I
24 can't see.

25 Q. Okay. Didn't you try to hold on to Mr. Bryant?

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1 A. I don't remember holding on to Mr. Bryant.

2 Q. And you don't remember not being able to hold on to
3 Mr. Bryant and being dragged to the rear of that car by him?

4 A. I don't remember holding on to Mr. Bryant.

5 Q. All right. And it's true you didn't try to go back
6 in the bar before running behind Mr. Bryant?

7 A. I just wanted everybody to stop.

8 Q. And my question is --

9 A. No, I didn't.

10 Q. And isn't it true you didn't go someplace other
11 than towards the rear of that van?

12 A. It's true.

13 Q. All right. And isn't it also true you didn't even
14 try to go towards your own car?

15 A. That's true, too.

16 Q. At that point when you're right up on Mr. Bryant,
17 you're right up on Mr. Bryant because you realize he's getting
18 ready to try to fight somebody?

19 A. I realized there was a bad situation happening, and
20 I was trying to stop it. I was telling everybody, just stop,
21 no, just stop.

22 Q. Okay. And, again, so you realized Mr. Bryant was
23 getting ready to try to fight someone?

24 A. I realized something was fixing to happen. I don't
25 know what he was going to do.

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1 Q. Well, when you restrained your husband in the bar,
2 you realized he probably was going to go over there and maybe
3 get in a bar fight; right?

4 A. No. My husband doesn't fight.

5 Q. Okay. Your husband of seventeen years?

6 A. My husband of seventeen years, as of March 27th --

7 Q. All right. All right. And --

8 A. -- I've never seen that man in a fight the whole
9 time we've been married.

10 Q. And do you recognize your husband's philosophy of
11 himself, having been married to him over the past seventeen
12 years?

13 A. Yes.

14 Q. And so do you recognize your husband considers
15 himself not a flighter but a fighter?

16 A. You know what? I think everybody in that instance,
17 either you try to diffuse the situation, which is the fight in
18 you, or your run. Me, I heard the bang, I ducked, I ran. He
19 tried to stop that man from shooting everybody else in that
20 parking lot.

21 Q. Okay. My question, again, you -- are you familiar
22 with your husband's philosophy --

23 A. I think you're taking --

24 Q. -- as him being a flighter --

25 A. -- his philosophy --

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Cross-Examination by Mr. Kearse
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1 Q. -- and not a fighter?

2 Is the answer yes, Ms. Bohannon?

3 A. I think you're taking it out of context.

4 Q. Is the answer yes, Ms. Bohannon? Your husband of
5 seventeen years?

6 A. Yes.

7 Q. All right. And that, is why you grabbed his arm in
8 that bar, is it not?

9 A. No, that is not why I grabbed his arm in the bar.

10 How many times do you want me to tell you I grabbed
11 his arm to tell him to stay right there beside me?

12 Q. Because you know he's a fighter?

13 A. He's not a fighter. My husband is not a fighter,
14 and I'm not going to let you sit here and say that.

15 I have lived with that man for nineteen years, all
16 together, and he has never, ever, been in a fight.

17 Q. Did you know James Bryant was a fighter?

18 A. I didn't know James until that night.

19 Q. All right. So did you talk to him about UFC fights
20 and what --

21 A. No. I would say, no, I did not.

22 Q. -- he thinks of sports --

23 Q. You recognize he's much larger than Mr. Moses;
24 correct?

25 A. Yeah.

Stacy Bohannon
Cross-Examination by Mr. Kearse
March 17, 2016

1 Q. You recognize that -- you recognize that Mr. Moses
2 had not directed any statement towards Mr. Bryant; correct?

3 A. Right.

4 Q. And it's your testimony -- you said Mr. Moses
5 [phonetic], who threw the punch in the bar, did not get shot;
6 correct?

7 A. You're right.. I did say that.

8 Q. Prior to your running back towards that van, the
9 back of that van, Mr. Moses had not made any fighting words,
10 threats --

11 A. He came into --

12 Q. -- towards you --

13 A. -- he came into that circle in a fighting stance.
14 He changed his clothes. He came back in what is
15 considered a wife-beater. The only time somebody takes off
16 their shirt is when they are getting ready to fight.

17 Q. Your husband had the same type of tee-shirt on --

18 A. But my husband didn't change his clothes.

19 Q. Would you consider your husband's apparel to be
20 fighting clothes?

21 A. No.

22 That's a tank-top. The other one is a wife-beater
23 that you wear under a shirt.

24 Q. Okay. Now, let me get back to my question. My
25 question was prior to going to the rear of that van, no one

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1 made any threat towards you; right?

2 A. You're correct.

3 MR. KEARSE: All right. I don't think I have
4 anything further.

5 MR. ALFARO: Just one question, Judge.

6 Investigator, would you pull up Defendant Moses'
7 Exhibit 8 for me, please?

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Ms. Bohannon
Redirect Examination by Mr. McNeely
March 17, 2016

REDIRECT EXAMINATION

BY MR. MCNEELY:

Q. Ms. Bohannon, I'm going to put it up here on the screen; all right?

A. Yes, sir.

Q. Who is that that my red laser is pointing at?

A. That's me.

Q. Who's that beside you?

A. That's my husband.

Q. Who is -- who is that?

A. That's James.

Q. About how far, right there, are you standing from that black car in the photo? This vehicle right here.

A. Eight -- six to eight feet.

Q. Who is that?

A. That is Mr. Moses.

Q. I want you to look at that black car. Do you see it?

A. Yes, sir.

Q. Is the driver's side door of that car open or closed?

A. It is open.

MR. ALFARO: No further questions, Judge.

MR. DAVIS: Just one question.

- - -

Stacy Bohannon
Cross-Examination by Mr. Davis
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CROSS-EXAMINATION

BY MR. DAVIS:

Q. Ms. Bohannon -- ma'am?

A. Yes, sir.

Q. You can plainly see or -- or suggest that a door is open, but you cannot admit that you had your hand wrapped around your husband?

A. You can see the door open. The picture of --

Q. My question --

A. -- me is blurry.

Q. My question: can you see your hand wrapped around Mr. James Bryant?

A. In that picture?

Q. Yes.

A. When you pull that up in that one, yes. We were still huddled together, yes. We were still arms around each other in that picture.

MR. DAVIS: No further questions.

MR. KEARSE: I don't have any questions, Your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you.

[Whereupon, Ms. Bohannon is excused and exits the witness stand]

THE COURT: Call your next witness.

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1 MR. ALFARO: Your Honor, the State has no further
2 witnesses.

3 THE COURT: Ladies and gentlemen, that indicates to
4 the Court there is a matter of law that I must take up
5 outside of your presence.

6 Do not begin your deliberations.. Do not discuss
7 the case amongst yourselves.

8 Feel free to take your note pads or leave them
9 right where they are.

10 We will receive you back in the courtroom in a few
11 moments.

12 Please rise for the jury.

13 [Whereupon, the jury exits the courtroom at
14 11:23 a.m.]

15 THE COURT: Thank you. Be seated.

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Motion for a Directed Verdict
By Mr. Davis
March 17, 2016

MOTION FOR A DIRECTED VERDICT

THE COURT: Any motions or matters from Defendant Gourdine?

MR. DAVIS: Your Honor, we move for a dismissal of the attempted murder.

There has been no showing, by the facts, of malice aforethought as is alleged to attempted murder or an intent to kill. I think there is insufficient evidence to submit to this jury for the jury to conclude that a fact -- my client is guilty of attempted murder. And since the State has failed to carry that burden, Your Honor, I would ask that there be a directed verdict granted in that specific instance.

Now, there may appear to be some lesser included offenses that have given some documentary from an evidence standpoint. But as it relates to malice aforethought and what I understand, malicious weight, plan, that, in fact, the facts leaving the witness stand is devoid of the sufficient elements to support attempted murder.

I believe that as a matter of law that you should rule that a directed verdict in that instance, Your Honor.

And since I'm also on that vein, I would also move for a directed verdict in reference to conspiracy. The

Motion for a Directed Verdict
By Mr. Davis
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1 State has made a decision early on to constrict their
2 conspiracy, which was initially tying three -- three
3 counts of conspiracy, and now they want to present one
4 to the jury. And I think one point of conspiracy derive
5 that there must be some joint enterprise, some showing,
6 some tacit agreement. There is nothing in the record,
7 nothing from the facts, to suggest that Moses and
8 Gourdine had entered into some type of an agreement
9 whereinto to commit a crime.

10 Also, I want to piggyback that in relationship to
11 my directed verdict. It is for all three counts, Your
12 Honor, in reference to attempted murder, not -- I don't
13 want you to think as if it's in one. Directed verdict
14 in reference to all of the instances pertaining to the
15 attempted murder.

16 I think if you hear the testimony from the EMT, the
17 injuries were superficial, short examination. It would
18 be our position that her injury arrived out of a
19 situation where our client -- my client was in defense
20 of others and in the context of self defense should
21 be -- from any responsibility. But I couldn't say that
22 for any jury issue as to the lesser included offenses.

23 It is my position, Your Honor, that the State has
24 failed to carry its burden in reference to the elements
25 necessary to attempted murder, three counts, Your Honor.

Motion for a Directed Verdict
By Mr. Kearse
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MOTION FOR A DIRECTED VERDICT

THE COURT: Mr. Kearse, do you join in?

MR. KEARSE: I do, Your Honor.

And I would just -- for the purpose of the record, as Mr. Davis just said, there's nothing to demonstrate that there was --

First of all, to deal with the conspiracy, since I've been -- to me, that's an easier call -- that there was some joint agreement, preexisting agreement, prior to the actual shooting that occurred between -- that occurred on July 28, 2013. Again, we know there absolutely is no direct evidence of any express agreement.

So then we go to whether or not it was implied. I don't think that any evidence has reached the level where you could say that it was implied that these two gentlemen had an agreement prior to the actual event. Because it has to be before the event. You can't say the event happens and then they agree. I mean, that's -- it has to be, at some point, a preexisting agreement to go out there and to commit murder, which is what the conspiracy charge is, that they conspired with each other by way of a preexisting agreement to attempt to kill David Bohannon, who grabbed at the gun, Stacy Bohannon, who grabbed at Mr. Bryant or who followed

Motion for a Directed Verdict
By Mr. Kearse
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1 Mr. Bryant. And those two things are established in
2 evidence.

3 Then we get to Mr. James Bryant. And of course I
4 would also still submit that there is not any direct
5 evidence that rises to the level to substantiate a
6 charge that these two gentlemen conspired to go and
7 attempt to kill Mr. Bryant.

8 So we have three individuals. I know there's one
9 charge. But, again, not enough to say they conspired
10 to kill Mr. Bohannon. The evidence and all the
11 testimony was the man didn't even say anything to
12 Mr. Bohannon in terms of directed any threats or
13 anything, nor Ms. Bohannon. That testimony is clear.

14 So then we get down to Mr. Bryant and, again,
15 overall, I would say there is no evidence that they
16 conspired prior to the event to act in concert to
17 attempt to kill Mr. Bryant. Because the underlying
18 charge that we're talking about is the agreement to go
19 out there and kill somebody.

20 Secondly, as to the attempt to kill: the injuries
21 itself to the arms and superficial lacerations to the
22 head.

23 Now, to speak to Ms. Bohannon's injuries, if you
24 combine that with the facts that we received, she
25 clearly -- our heart goes out to this woman for having

Motion for a Directed Verdict
By Mr. Kearse
March 17, 2016

1 been injured. But we are talking about a criminal
2 charge against Mr. Moses that Mr. Moses made an attempt
3 to kill her by having Mr. Gourdine go and shoot her
4 while she grabs Mr. Bryant. I don't -- I understand
5 we're talking about hand of one and hand of all. We
6 know how gray that rule is. But I just don't see that
7 being -- that charge being able to hold up against
8 Mr. Moses.

9 Again, as to Mr. Moses, there is no evidence
10 that he made any threat or attempted to make any
11 violent or an aggressive action towards Mr. Bohannon or
12 Ms. Bohannon, more or less, even trying to kill them.

13 In addition, there is no evidence to substantiate,
14 once again, Mr. Moses made any threat or any violent and
15 aggressive action towards Mr. Bryant and made an attempt
16 to kill him.

17 And so that being the case, Your Honor, on behalf
18 of Mr. Moses, who had no gun, who made no threat, who
19 actually retreated. Even though we've got argumentative
20 testimony of -- which is arguments, not factual
21 statements, by the witnesses as to what they believe
22 happened, there is no direct evidence that that is what
23 actually happened.

24 I would ask that this case, both charges, all
25 charges, that a verdict be directed in favor of

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1 Mr. Moses.

2 MR. ALFARO: Your Honor, regarding the directed
3 verdict motion, as the Court is aware, evidence is taken
4 in the light most favorable to the State. The issue at
5 this point is whether there exists any evidence, whether
6 it be direct or circumstantial, to justify the charges.
7 The State has presented more than enough evidence for
8 all of the charges -- or for both charges.

9 Regarding specifically the conspiracy argument, all
10 that's required for a conspiracy is that two or more
11 people have a plan or an agreement. There's no
12 requirement that it exists for any certain amount of
13 time. The evidence that's presented on the video, as
14 well as the testimony from the witnesses, it would be
15 very easy for the State to -- or for the jury to find
16 that there was a conspiracy in the way that that attack
17 was choreographed, as far as them leaving together,
18 being gone for ten minutes together, coming back
19 together, and then this action happening in a
20 choreographed move where one defendant walks around the
21 car at the same time that the other defendant is
22 blocking in the victims' car.

23 So the State believes that in the light most
24 favorable to the State, that a jury could find, and
25 rightfully so, that a conspiracy had taken place.

Motion for a Directed Verdict
By Mr. Kearse
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1 Regarding the elements of attempted murder, the
2 State has to prove that a person would -- the
3 defendants, with intent to kill, attempted to kill
4 another person with malice aforethought either express
5 or implied.

6 Your Honor, the evidence that's been presented, the
7 medical testimony as well as the eyewitness testimony,
8 as well as the direct evidence of the video itself, it's
9 clear that a jury can find, and rightfully so, that
10 these defendants attempted to kill all three of the
11 victims in this case.

12 The malice that is required can either be express
13 or implied. And there's ample evidence, again, through
14 the medical testimony, as well as the video itself, the
15 type of weapon used, the proximity to the victims, and
16 the time that the shots were fired, as long as -- as
17 well as in addition to the ten to twelve minutes that
18 pass as they leave, come back, lie in wait, and then
19 carry out the plan.

20 So and to directly address Mr. Kearse's discussion
21 about Stacy Bohannon -- I believe Mr. Davis referenced
22 her injuries, as well -- the doctor that testified said
23 that Stacy had a potential for loss of life because
24 gunshot wounds to the head that had penetrated the skull
25 were right on her brain. He also said that gunshot

Motion for a Directed Verdict
By Mr. Kearse
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1 wounds to the head are, by definition, a life-
2 threatening injury.

3 So the State believes that we have presented ample
4 evidence to justify the case going past the directed
5 verdict to be presented to the jury on all four
6 indictments for each defendant.

7 MR. KEARSE: I'm going to respond --

8 THE COURT: Hold on. We've got to go in order.

9 MR. KEARSE: Okay.

10 THE COURT: Mr. Davis?

11 MR. DAVIS: I was hoping I didn't need to respond,
12 Your Honor, because the solicitor's rendition of the
13 facts cannot be supported by his representation.

14 What the doctors talked about is a level of
15 protocol. And there was never any aspect of any
16 credible testimony that these injuries were life-
17 threatening. It may have been some issue a limb could
18 have been at danger, but nothing suggested life-
19 threatening.

20 Your Honor, there's no question -- and I would
21 support that for Your Honor -- the video support just
22 what it is, no intent to commit murder in reference to
23 anyone. What may have happened is some individual with
24 their aggressive behavior got tied up in cross-fire of
25 someone trying to come to the aid or defense or Mr.

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1 Steven Moses. But no rendition of facts to support
2 attempted murder, Your Honor. None.

3 MR. KEARSE: For the record, Your Honor, just so I
4 can make sure I make my record, these doctors did not
5 testify to reasonable degree of medical certainty that
6 the injuries that were obtained by any of the State's
7 alleged victims in this case were life-threatening. And
8 I want to be very clear, because that language is to a
9 reasonable degree of medical certainty. And then we're
10 talking about the specific language he used, when you
11 questioned the expert about that, using that standard,
12 and that being the direct cause of that injury -- I'm
13 sorry -- that state, that life-threatening state. So
14 they didn't say two things. And it's clear. And I
15 didn't hear it.

16 And so, again, I want to put that on the record.
17 In fact, they didn't even qualify them to testify that.
18 And I don't recall hearing them ask the Court to qualify
19 either of these gentlemen to give that kind of an
20 opinion. And certainly to me, and I will submit to this
21 Court, that, then, disqualifies their testimony as being
22 expert testimony on the issue of whether or not the
23 injuries that were sustained in accordance to what
24 allegedly happened in that parking lot were life-
25 threatening such to a point it could be deemed it was an

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1 intent to kill out in that parking lot July 28th of
2 2013. And I just wanted to make sure I put that on the
3 record. I -- just be very clear.

4 Secondly, again, there is no direct evidence from
5 anyone who says that they can definitively say these
6 defendants left the parking lot, stayed away for ten
7 minutes, and came back, such that it can be implied
8 there was some conspiracy. I think at this point the
9 conspiracy charge calls for a lot of speculation on
10 behalf of a jury and because of that, that this Court
11 should, along with -- there's no -- there is no, again
12 -- it is no proof that there was an agreement.

13 I want to put on the record if you have an
14 agreement, obviously it has to exist. Even if it's for
15 one second before the event, it has to exist before the
16 event. You can't have an event and then say, okay,
17 there was an agreement. That just doesn't make sense.
18 It's a preceded to -- you have to have the agreement
19 prior to you establishing something as a conspiracy.
20 And the State doesn't have that, Your Honor.

21 MR. DAVIS: And, Judge -- and may it please the
22 Court.

23 I just want to add on to what Mr. Kearse has said
24 in reference to the qualification. You and I tried a
25 case with a young lady charged with petechia. And in

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1 that instance, the State was required to prove -- first
2 of all, she was expert that said that the choking aspect
3 was to the degree and to the level with her -- her
4 degree of expertise as an -- she was qualified by an
5 expert in this Court, as you being the judge, within a
6 reasonable degree of medical certainty that the choking
7 mechanism was such that the petechia, the bloodshot in
8 her eye, would actually be a term for attempted murder.

9 Here we are today, no qualification, no reasonable
10 degree of medical certainty. That was the same basis
11 that existed in a prior attempted murder case that was
12 brought by the same State, in the same courtroom, with
13 you being the same Honor. And one of the criteria issue
14 in that case was qualification as an expert and whether
15 or not the choking mechanism was at such a degree and a
16 state that it would rise to the level of intent to kill.

17 And that expert was qualified and it went to the
18 jury. The jury came back, as you and I are well-aware
19 now, with a verdict of assault and battery third degree,
20 a thirty-day offense.

21 MR. ALFARO: Your Honor --

22 THE COURT: In ruling on a motion for a directed
23 verdict under Rule 19 of the Rules of Criminal
24 Procedure, the Court is concerned only with the
25 existence or nonexistence of the evidence, not as to the

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1 weight. If there's any evidence reasonably tending to
2 show the guilt, the case must be presented to the jury
3 for their consideration.

4 Both Defendant Moses and Defendant Gourdine are
5 charged with three counts of attempted murder with
6 respect to the three individuals that were shot that
7 evening. In order to prove this crime, the State must
8 prove that the defendant, each defendant, attempted to
9 kill another person with malice aforethought, either
10 express or implied. Malice is hatred, ill will, or
11 hostility towards another person. It is the intentional
12 doing of a wrongful act without just cause or excuse or
13 with -- and with an intent to inflict injury or under
14 circumstances that the law will infer an evil intent.
15 It doesn't require that malice exists for any particular
16 time, but malice must exist in the mind of the defendant
17 before and at the time the act is committed. There has
18 to be a combination of the evil intent and the act.

19 Malice aforethought can be express or inferred and
20 the terms are not different types of malice but merely
21 the way in which it may show to be exist -- exist,
22 direct evidence or from the facts and circumstances
23 which are proved. Express malice is when a person
24 speaks words which express hatred or ill will, or when
25 the person prepared beforehand to do the act which was

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1 later accomplished. For example, the lying in wait or
2 other preparation going to show that the deed was within
3 the defendant's mind before the act occurred. It can be
4 inferred from a conduct showing total disregard for a
5 human life, and it may also arise when the deed is done
6 with a deadly weapon. As we all know, the shotgun is
7 considered, under our statutes, as a deadly weapon.

8 The specific intent to kill is not an element of
9 attempted murder, but there must be a general intent to
10 commit serious bodily injury. Intent does mean
11 intending the result which actually occurs, and that can
12 be shown by acts and conduct of the defendant and the
13 other circumstances.

14 The State has proved to the Court's satisfaction,
15 has met the burden under Rule 19. The medical
16 professionals that testified were not qualified as an
17 expert. They indicated that based upon their need to
18 treat and their experience in treating someone with
19 gunshot wounds, that there certainly could have been a
20 loss of life and that these injuries were potentially
21 life-threatening.

22 As to -- I deny your motion as to Defendant Moses
23 and to Defendant Gourdine as to the three counts of
24 attempted murder. Those will go to the jury.

25 Each defendant is also charged with one count of

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1 conspiracy. The State must prove beyond a reasonable
2 doubt that the defendant combined with one or more
3 persons for the purpose of committing an unlawful act or
4 committing a lawful act by unlawful means. As we have
5 discussed before, there must be a mutual understanding,
6 agreement, or a common intention or plan. Mere passing
7 knowledge or just a consent does not make a person a
8 conspirator.

9 There does not have to be a formal agreement. It
10 does not have to be in writing. Or there does not have
11 to had a meeting or any -- that either defendant
12 expressed the state of the terms. No overt act needs to
13 be shown and may be shown by circumstantial evidence and
14 the conduct of the parties. The State must prove that
15 the defendant knew of the unlawful conduct and that he
16 agreed to combine with the other person for the purpose
17 of accomplishing the unlawful conduct.

18 Based upon the video that has been displayed, and
19 the conducts of the defendant, I deny your motion for a
20 directed verdict as to Defendant Moses' request for a
21 directed verdict as to the conspiracy charge and to
22 Defendant Gourdine's motion for a directed verdict as to
23 the conspiracy charge.

24 Note your exception to my ruling, Mr. Davis and
25 Mr. Kearse.

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1 MR. KEARSE: Thank you, Your Honor.

2 THE COURT: Any other motions or matters?

3 MR. DAVIS: Can't think of none at this time,
4 Judge.

5 MR. KEARSE: Not at this time, Your Honor.
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Defendants' Rights
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DEFENDANTS' RIGHTS

1
2 THE COURT: All right. Let's place both defendants
3 under oath.

4 THE CLERK OF COURT: If you will both raise your,
5 right hands.

6 [Whereupon, Mr. Moses and Mr. Gourdine are duly
7 sworn by the clerk of court as follows: do you solemnly
8 swear or affirm the testimony you shall give in this
9 case be the truth, the whole truth, and nothing but the
10 truth, so help you God]

11 MR. MOSES: I do.

12 MR. GOURDINE: Yes.

13 THE CLERK OF COURT: Thank you.

14 THE COURT: You may place your hands down.

15 Mr. Gourdine, have you -- do you recall me, before
16 we broke last evening, advising you of your
17 constitutional right to testify or your choice not to
18 testify?

19 MR. GOURDINE: Yes, Your Honor.

20 THE COURT: Have you had enough time to think about
21 that matter and discuss that with your attorney?

22 MR. GOURDINE: Yes, Your Honor.

23 THE COURT: Do you need any additional time to meet
24 with him?

25 MR. GOURDINE: No, Your Honor.

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1 THE COURT: Do you have any questions for the
2 Court?

3 MR. GOURDINE: No, Your Honor.

4 THE COURT: Have you made a decision whether or not
5 you will testify?

6 MR. GOURDINE: Your Honor, I'm not going to
7 testify.

8 THE COURT: Mr. Davis, you had enough time to go
9 over that decision with your client?

10 MR. DAVIS: Yes, Your Honor.

11 THE COURT: All right. Thank you.

12 Mr. Moses, same questions to you. Do you remember
13 the discussion we had before we broke last evening?

14 MR. MOSES: Yes, ma'am.

15 THE COURT: Do you have any questions for the Court
16 or for your attorney regarding your right to testify or
17 not testify?

18 MR. MOSES: Not testify.

19 THE COURT: And do you need any more time to meet
20 with Mr. Kearse?

21 MR. MOSES: No.

22 THE COURT: Any additional questions for the Court
23 about --

24 MR. MOSES: No, ma'am.

25 THE COURT: -- about that?

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1 You have made a decision not to testify; is that
2 correct?

3 MR. MOSES: Yes, ma'am.

4 THE COURT: Mr. Kearse, you've had sufficient time
5 to speak with him. I think you spoke with him before
6 we --

7 MR. KEARSE: I have, Your Honor. I spoke --

8 THE COURT: -- left yesterday?

9 MR. KEARSE: -- to him over -- since he hired me.

10 THE COURT: All right.

11 Mr. Davis, any additional witnesses that you will
12 be presenting?

13 MR. DAVIS: None.

14 THE COURT: Mr. Kearse, any additional --

15 MR. KEARSE: None from --

16 THE COURT: -- witnesses that you will be
17 presenting

18 MR. KEARSE: -- Mr. Moses, Your Honor.

19 THE COURT: Thank you. Y'all may have a seat.
20 Thank you.

21 Any other matters? My inclination is to let the
22 jury go until 2:00 and then argue and charge at that
23 time. We'll have a brief charge conference, go over the
24 verdict forms.

25 MR. ALFARO: That's fine with the State.

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1 MR. DAVIS: That's fine, Your Honor.

2 THE COURT: Mr. Kearse?

3 MR. KEARSE: That's fine with Mr. Moses.

4 THE COURT: Thank you. Let's bring in the jury.

5 MR. ALFARO: Your Honor, before they come in, do
6 you want to formally rest in front of them?

7 MR. DAVIS: He did.

8 MR. ALFARO: We said we had no more witnesses. We
9 didn't say we rest.

10 MR. DAVIS: But you did.

11 THE COURT: And I will allow both Mr. Davis and
12 Mr. Kearse the same.

13 MR. DAVIS: That means the same thing.

14 THE BAILIFF: Jurors coming in.

15 [Whereupon, the jury enters the courtroom at
16 11:47 a.m.]

17 THE COURT: Thank you. Please be seated.

18 Mr. Alfaro, did you have an -- have an
19 announcement?

20 MR. ALFARO: Your Honor, the State formally rests
21 at this time.

22 THE COURT: Mr. Davis?

23 MR. DAVIS: Your Honor, my client will not present
24 any case in congruent with his constitutional rights.

25 THE COURT: And so you rest at this time, as well,

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1 Mr. Davis?

2 MR. DAVIS: Rest. That's right, Your Honor.

3 THE COURT: Mr. Kearse?

4 MR. KEARSE: Defendant Moses rests, Your Honor.

5 THE COURT: Thank you, Mr. Kearse.

6 Ladies and gentlemen, that indicates to the Court
7 that you have heard all the evidence and heard all the
8 testimony that will be presented in this case, so what
9 that leaves us now is closing arguments on behalf of
10 counsel and my instruction to you on the law applicable
11 to this case.

12 It's almost lunch time so we're going to go ahead
13 and take our lunch break. When you return, you will
14 hear closing arguments on behalf of counsel and receive
15 the instruction of the law.

16 Please do not begin your deliberations. Do not
17 discuss this case amongst yourselves. You have not
18 heard closing arguments and you have not been instructed
19 on the law applicable to this case.

20 Please return and be in your jury rooms at 2:00
21 p.m. Please utilize that time piece on the wall, and we
22 will begin the -- resume the trial of this case at 2:00
23 p.m. Thank you. Have a wonderful lunch.

24 Please rise for the jury.

25 [Whereupon, the jury exits the courtroom at

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1 11:49 a.m.]

2 THE COURT: Thank you. Be seated. Let's go ahead
3 and take our comfort break, and I'll see counsel in
4 chambers, and then we'll have our charge conference if
5 we need to place anything on the record. So let me see
6 you in chambers in about five minutes.

7 MR. DAVIS: Thank you.

8 [Whereupon, a recess is taken from 11:50 a.m. to
9 12:28 p.m.]

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CHARGE CONFERENCE

1
2 THE COURT: Apparently there was some
3 miscommunication with what I said about the charge
4 conference. I don't know where your client is, and your
5 client is in custody. Can we continue what's on the
6 record without them? Otherwise, we're going to have to
7 wait.

8 MR. DAVIS: He's fine. He's gone. I waive my
9 client's presence.

10 THE COURT: Thank you.

11 So we had a charge conference and the first issue
12 that needs to be addressed is whether -- what the lesser
13 includeds will be --

14 [Off the record momentarily]

15 THE COURT: -- whether or not there would be any
16 lesser included. And reviewing the facts, the State --
17 or the State has no objection to assault and battery of
18 a high and aggravated nature; is that correct --

19 MR. ALFARO: That's correct.

20 THE COURT: -- as a lesser included?

21 MR. ALFARO: Yes, Your Honor.

22 THE COURT: And both defendants have requested
23 that, as well; is that correct?

24 MR. KEARSE: That's correct. And I think it was
25 second and third --

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1 THE COURT: Hold on. I'm trying to do this in
2 order.

3 MR. KEARSE: Yes, ma'am. J

4 THE COURT: Just sit tight.

5 So that's where the disagreement about what should
6 be charged as a lesser included continues.

7 Based upon my review of the statute, assault and
8 battery in the first degree is not appropriate under the
9 facts.

10 And you agree with that, Mr. Alfaro?

11 MR. ALFARO: Yes, Your Honor.

12 THE COURT: Mr. Davis?

13 MR. DAVIS: I do, Your Honor, based on your
14 rendition of the law.

15 THE COURT: Mr. Kearse?

16 MR. KEARSE: I do.

17 THE COURT: Based upon my reading of assault and
18 battery in the second degree, I will be charging also
19 assault and battery in the second degree.

20 Any comment, Mr. Alfaro?

21 MR. ALFARO: Your Honor, we believe that the lowest
22 lesser included would be ABHAN, but we're not objecting
23 to the second charge.

24 THE COURT: And so based upon the testimony -- I
25 believe it was the first EMT that testified -- assault

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1 and battery in the second degree concerns moderate
2 bodily injury to another person. And so based upon the
3 testimony that the wound was superficial and not -- that
4 a jury could reasonably infer that assault and battery
5 second degree would be an appropriate charge.

6 Any objection to including assault and battery in
7 the second degree?

8 MR. DAVIS: None, Your Honor.

9 THE COURT: Mr. Kearse?

10 MR. KEARSE: None from Mr. Moses.

11 THE COURT: And then as to assault and battery in
12 the third degree, Mr. Alfaro, you object?

13 MR. ALFARO: Yes, Your Honor, the State does object
14 to assault and battery in the third.

15 We don't believe that there has been any evidence
16 submitted that would justify that charge being submitted
17 to the jury.

18 THE COURT: A person commits the offense of assault
19 and battery in the third degree if a person unlawfully
20 injures another person or offers or attempts to injure
21 another person with the present ability to do so.

22 Based upon the testimony that has been presented,
23 specifically with respect to Defendant Moses, the Court
24 will be charging assault and battery in the third
25 degree.

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1 And so as to the charge -- the offenses that will
2 be charged will be attempted murder, assault and battery
3 of a high and aggravated nature.

4 I'm sorry, Mr. Davis. You are requesting assault
5 and battery in the third degree?

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

7 MR. KEARSE: I am, Your Honor.

8 THE COURT: The State will be -- the Court will be
9 charging attempted murder, assault and battery of a high
10 and aggravated nature, assault and battery second
11 degree, and assault and battery third degree, as well as
12 one count of conspiracy as to each defendant.

13 Is that -- I know you don't agree with some of the
14 lesser includeds that the Court is including, but is
15 that your --

16 MR. KEARSE: Yes.

17 THE COURT: -- understanding, Mr. Davis?

18 MR. DAVIS: Yes, Your Honor.

19 THE COURT: And Mr. Kearse?

20 MR. KEARSE: Yes, ma'am.

21 THE COURT: The State is also requesting that I
22 charge hand of one, hand of all. I think, based upon
23 the facts, that is an appropriate charge.

24 Mr. Davis?

25 MR. DAVIS: I disagree with the hand of one, the

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1 hand of one -- I mean, the hand of one is the hand of
2 all. It's a conclusory statement of law that is applied
3 indiscriminately in every criminal case where one or two
4 parties are involved, even lacking of any facts or
5 agreement or statements tying the two parties together,
6 Your Honor.

7 THE COURT: Mr. Kearse?

8 MR. KEARSE: I join in that, also, Your Honor.

9 And I also, again, point out to the fact that these
10 guys returned, Mr. Moses was on foot. He walked up and
11 talked to the other parties in the case.

12 THE COURT: Based upon -- I will be charging hand
13 of one, hand of all.

14 Note your exception, Mr. Davis and Mr. Kearse.

15 MR. DAVIS: Thank you, Your Honor.

16 THE COURT: The State has also requested to
17 include, in the intent charge, transferred intent. I
18 will be utilizing that transferred intent.

19 Mr. Davis, you indicated no objection?

20 MR. DAVIS: I'm going to object, Your Honor,
21 because I don't believe the element of it even satisfies
22 for attempted murder.

23 I think there's not been any intent or malicious
24 harm or intent to -- with malice aforethought. So it's
25 transfer. I don't think there's anything to transfer.

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1 THE COURT: Mr. Kearse?

2 MR. KEARSE: Your Honor, I join in that objection.

3 I understand you say that the Court has found that
4 attempted murder is not specific intent crimes, but
5 there is -- clearly there was no intent to bring harm to
6 Ms. Bohannan. And I would simply say that the doctrine
7 of transferred intent is not applicable under these
8 circumstances. Again, it leaves the jury to speculate
9 from conjecture and reach a conclusionary [phonetic]
10 verdict.

11 THE COURT: I will be utilizing the language of
12 transferred intent that I indicated to you in our
13 chambers conference.

14 There was also testimony about intoxication of
15 Mr. Gourdine. Are you requesting a voluntary
16 intoxication?

17 MR. ALFARO: We were not.

18 MR. MCNEELY: The jury -- I don't believe there was
19 any testimony about voir diring as to intoxication.

20 MR. DAVIS: Huh-uh. There's no evidence whatsoever
21 that any of these guys were infulence [phonetic].

22 THE COURT: All right. So --

23 MR. ALFARO: We're not requesting --

24 MR. DAVIS: But you can put intoxication in
25 reference to the victims because --

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1 THE COURT: That only comes in if I'm charging
2 self-defense. All right? That is a factor they may
3 consider.

4 Are there any other charges? That leaves us the
5 remaining issue of self-defense. Any other charges that
6 you are requesting --

7 MR. KEARSE: Your Honor, I --

8 THE COURT: Hold on one second. I'm just trying to
9 do it in order, Mr. Kearse.

10 MR. ALFARO: There's no other charge from the
11 State.

12 I don't know if it's what Mr. Kearse is
13 referencing, but at some point earlier there was a
14 discussion of him requesting a mere presence.

15 MR. KEARSE: He's exactly right.

16 THE COURT: What is the State's position as to mere
17 presence?

18 MR. ALFARO: We understand why Mr. Kearse is
19 requesting, for either offer a factual basis --

20 THE COURT REPORTER: I can't hear you.

21 MR. ALFARO: I'm sorry.

22 We're not contesting the charge of mere presence as
23 to Mr. Moses, Judge.

24 THE COURT: Mr. Davis?

25 MR. DAVIS: I don't have a position. Ain't no

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1 question my client was there.

2 THE COURT: Based upon your request, I will include
3 mere presence, Mr. Kearse.

4 MR. KEARSE: Thank you, Your Honor.

5 THE COURT: Any other charges, Mr. Alfaro, that you
6 think need to be included that perhaps are --

7 MR.. ALFARO: No, Your Honor.

8 I think we've agreed on the other direct and
9 circumstantial identification in chambers.

10 I think the only unresolved issue is the self-
11 defense charge.

12 THE COURT: Do you -- and I'm not addressing --
13 Anything else that you're requesting?

14 MR. DAVIS: You know, there's been some quasi
15 expert testimony, even though nobody was qualified as an
16 expert. The jury can assume that just because they were
17 doctors, they were request -- they were experts. But --

18 THE COURT: That's not what our law states, so I'm
19 not including an expert testimony. That would fall
20 under credibility, and you can argue that to the jury.
21 I'm not going to give the expert-testimony charge, which
22 is just really explaining what an expert is and about
23 opinion in life. All right?

24 Anything else, Mr. Davis?

25 MR. KEARSE: For the record, I understood that if

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1 they were trying to charge expert, I would object to
2 that. But since you aren't --

3 THE COURT: They're not. And it's not included. I
4 am not --

5 MR. KEARSE: -- right.

6 MR. DAVIS: No.

7 THE COURT: -- I am not including expert. No one
8 was qualified as an expert.

9 MR. KEARSE: Okay.

10 MR. DAVIS: Thank you.

11 THE COURT: Any additional charges, Mr. Kearse?

12 MR. KEARSE: Other than --

13 MR. DAVIS: Got two others.

14 MR. KEARSE: In self-defense, no.

15 THE COURT: o you are requesting defense of others?

16 MR. KEARSE: Yes. Self-defense and self-defense --

17 THE COURT: Are you requesting --

18 MR. DAVIS: Yes -- Your Honor --

19 THE COURT: Do you join in?

20 MR. DAVIS: -- Your Honor.

21 THE COURT: Mr. Alfaro, let me hear from you on
22 defense of others.

23 MR. ALFARO: Your Honor, the State's position on
24 defense of others is the same as the State's position on
25 self-defense.

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1 We don't believe that there has been any evidence
2 presented that would put -- shift the burden to the
3 State to disprove self-defense.

4 Our understanding is that in order for a charge of
5 self-defense to be submitted to a jury, there has to be
6 any evidence on the record that would essentially
7 establish all four elements for self-defense, at which
8 point then the burden shifts to the defendant -- to the
9 State to disprove that.

10 The defendants have elected not to testify. I
11 don't believe that there is any evidence on the record
12 that would satisfy any elements of self-defense. The
13 evidence that's in place would show that the first
14 element would not apply. And regarding the second and
15 third elements: regarding imminent danger, in order for
16 the defense to rely on the reasonable belief of imminent
17 danger, there has to be some evidence that their state
18 of mind as to their belief that they were, in fact, in
19 danger and acting as such.

20 MR. DAVIS: Judge, I just want to be heard briefly.

21 I was reading a case for in the state of South
22 Carolina before -- a guy was riding a bicycle and the
23 other guy was claiming -- the defendant claiming self-
24 defense, and the only issue was whether or not the guy
25 could actually engage from riding on the bike and

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1 engaging himself in that manner.

2 The point of the matter, Your Honor, is the
3 appearance. The appearance is what gives rise in this
4 instance for the charge of self-defense --

5 THE COURT: All right. So --

6 MR. DAVIS: -- and aggressive movements and
7 mannerisms in whole 727 seconds.

8 THE COURT: Anything else I need to know --

9 MR. DAVIS: No, Your Honor.

10 THE COURT: -- as to whether or not --

11 MR. DAVIS: No.

12 THE COURT: -- to charge defense of others or self-
13 defense? Nothing?

14 MR. DAVIS: That's good, Your Honor.

15 THE COURT: Mr. Kearse?

16 MR. KEARSE: May it please this Court, Your Honor.

17 The testimony is riddled with admissions by the
18 victims in this case as to their aggressive actions in
19 this case and the aggressive actions of their friend --
20 although he did not testify, and because he was not shot
21 as a victim, he certainly was a confederate of them.
22 And that's Enrique Maron, Jr. And they have admitted to
23 all of that. They have been embolden by their violent
24 tendencies or aggressive tendencies, if I want to be
25 more politically correct, in their testimony.

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1 In addition to that, Mr. Davis asked Mr. Bryant,
2 concerning why he got involved on behalf of Mr. Maron,
3 Jr., and he said, right or wrong, he believes that a
4 person, more specifically himself, has the absolute
5 right to come to the defense of his friend. That
6 testimony was not objected to and went into the record.

7 In addition, he continued on and carried out
8 that same -- through that same line of questioning, not
9 just from what happened in the bar, but to what
10 happened out in the parking lot, as to why he himself,
11 when Mr. Moses walked up to the group, decided he would
12 run at Mr. Moses. Which he admitted, when questioned,
13 which was not objected to, that his intent when he
14 started to move, run, converge, whatever word you want
15 to use, upon Mr. Moses, as we went over Defendant's
16 Exhibit Number 8 and 9, was he was going to fight
17 Mr. Moses when he got there. And Mr. Bohannon backed
18 that up and stuck his chest out on the stand and said,
19 it's flight or fight and he is not a flighter but a
20 fighter. None of that testimony was objected to. All
21 of it is in the record.

22 Having said all of that, a jury can glean from that
23 testimony that, most importantly, number one, Mr.
24 Gourdine, who, again -- from the testimony was admitted
25 by every prosecution fact witness they put up as to what

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1 happened on July 28th, 2013 -- admitted that he said
2 nothing to nobody at no time, in or outside the bar..

3 Again, they admitted that when Mr. Gourdine stood
4 up out of the car and started shooting, it was at the
5 time that Mr. Moses commits to retreat back -- he said
6 run back -- towards the car, and only at that time
7 Mr. Moses started to run back towards the car with each
8 and every person who got shot running towards Mr. Moses.

9 In addition to that, let me make my record clear on
10 this issue. They all admit, each and every one of them,
11 that although Mr. Moses walked up to them with what they
12 considered a wife-beater on, different clothes, however
13 you want to look at it, when he got there to the car he
14 did not utter any threats. He did not take a swing at
15 anybody. He did not do anything, brandish a gun,
16 brandish a knife, nothing, other than say where is old
17 boy. That is not bringing on the difficulty. And if it
18 is, that, at this point, is clearly an issue of fact for
19 a jury to decide.

20 That being the case, there are several elements, as
21 this Court well knows, you can consider because it's
22 been said how no gun, no knife, no nothing else, was
23 brandished by any of the victims in this case. However,
24 you can consider hostile acts, prior difficulty,
25 relative sizes, ages and weights, reputation of people,

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1 prior incidents of violence by the assailant, any
2 threats, the number of assailants. All of those things
3 go into consideration when we start talking about
4 whether something appears and qualifies for a charge of
5 self-defense.

6 All of that is precedent in this case through the
7 direct case-in-chief of the prosecution. I have never
8 -- I can't say never, because twenty-six years. But I
9 can say I have rarely seen people more willing to admit
10 they have more propensity for violence than the people
11 who have walked up on this stand in this case, in the
12 form of Mr. Bohannon and Mr. Bryant and the witness who
13 testified through video but not through verbal
14 testimony, Mr. Maron, who was throwing punches in
15 pictures and video in and out of the bar, who actually
16 jumps out of the van and runs towards Mr. Moses, who
17 then retreats.

18 It is an issue of fact to determine by the jury
19 whether this was an ambush or not, because that is the
20 whole case upon which the prosecution has based their
21 case. They didn't even admit -- I mean, they've already
22 admitted that their victims ran towards these two men.
23 They're just saying they ran at them because there was
24 an ambush. Their words, not mine.

25 Mr. Bryant could not stop making a closing argument

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1 while he was on the stand talking about how he got
2 tricked into running towards that car because he had no
3 choice, because he felt threatened, because he needed to
4 fight, and he ran himself into the kill zone. I
5 remember the testimony very well.

6 All that being in the record, all of that being in
7 the record, the jury can easily use that to make an
8 assessment on what the state of mind was of Mr. Moses
9 and Mr. Gourdine out there in that parking lot. Nobody
10 here can predict what they are going to do. But these
11 two gentlemen are entitled to it.

12 And to bring my colloquy to a close, I say to this
13 Court that if this Court is going to charge the hand of
14 one and conspiracy, then these two defendants -- because
15 everything that happens to Mr. Gourdine, if the hand of
16 one is found to apply, is going to happen to Mr. Moses
17 who doesn't have a gun. And that being the case, Mr.
18 Moses needs, and the fact pattern necessitates, defense
19 of others.

20 Because if you're going to say he's guilty because
21 Mr. Gourdine had the intent to kill people, and only
22 because that -- because clearly Mr. Moses took no shots
23 in this case, then you can, of course, say under this
24 fact pattern that Mr. Moses is not guilty because Mr.
25 Gourdine, all five four, five six, 145 pounds of him,

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1 took those shots because three people were running his
2 friend back towards the rear of the van where his car
3 just so happened to be in this case.

4 And, again, I point out Mr. Moses walked up to
5 these people. Didn't jump out of the car, didn't --
6 there is no circling of his hands saying, come on,
7 nothing like that. The jury can determine this case as
8 they see fit, Your Honor. And I understand the wisdom,
9 the knowledge, and appreciate the intelligence of this
10 Court. And I'm sure at the end of my argument, when I
11 take my seat, this Court will have been convinced that
12 at the very minimum these two gentlemen are entitled to
13 a self-defense charge. And it fits the others. Thank
14 you, Your Honor.

15 THE COURT: Well --

16 MR. DAVIS: Judge, I was going to say to transfer
17 intent --

18 THE COURT: Okay. We're on stuff that --

19 MR. DAVIS: My point is that --

20 THE COURT: -- I've already ruled on that one --

21 MR. DAVIS: -- self-defense: if he's entitled to
22 self-defense, Mr. Gourdine is entitled, as a reasonable
23 person, to defend him in that instance. Do you know
24 what I'm saying?

25 MR. KEARSE: It is -- they are tied to each other a

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1 little. To make it easy, the Court very well knows that
2 if you're charging defense of others, it is well-rounded
3 in self-defense. And vice versa.

4 This case was not set up for primarily just a self-
5 defense charge, but on and growing out of Mr. Moses'
6 conduct only because Mr. Moses did not take any shots
7 and did not, I don't think, touch any of these
8 particular victims. But his self-defense is grounded in
9 the actions of Mr. Gourdine, whom -- he is the only
10 reason he is here in court today is because Mr. Gourdine
11 jumped out of that car and he started shooting people.

12 THE COURT: Anything further, Mr. Alfaro?

13 MR. ALFARO: Your Honor, I would -- regarding what
14 Mr. Kearse said, they are tied together. And the
15 State's position is that neither of them have the right
16 to a charge of self-defense or defense of others.

17 What Mr. Kearse is referencing as far as testimony
18 regarding James Bryant, David Bohannon, Stacy Bohannon,
19 all of that is testimony as to the victims' state of
20 mind. The victims' state of mind is not the issue as to
21 whether the defendants are entitled to a charge of self-
22 defense. If we were trying to decide whether the
23 victims were entitled to a charge of self-defense, it's
24 completely relevant. But in this case, when the issue
25 is whether the defendants themselves are entitled to

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1 self-defense, there has been no evidence presented that
2 entitles them to that charge because they have not
3 presented any -- no evidence of any of the element being
4 met.

5 And regarding their failure to testify, as we
6 mentioned earlier, that has to be a way for them to get
7 to the reasonable, prudent person for their belief of
8 imminent danger. Without knowing that, what Mr. Bryant
9 thinks about what he did or did not do, what Mr.
10 Bohannon thinks about what he did or did not do, has
11 nothing to do with the defendants' right to a self-
12 defense charge.

13 MR. KEARSE: If I can --

14 THE COURT: Hold on, Mr. Kearse.

15 Do the defendants have the right to act on
16 appearances?

17 MR. DAVIS: Thank you, Judge.

18 MR. ALFARO: They have the right to act on
19 appearances regarding one of the prongs, but that
20 doesn't satisfy the other three.

21 MR. KEARSE: Which is a --

22 THE COURT: Hold on. Hold on.

23 MR. KEARSE: Sorry, Your Honor. I know I'm
24 chomping at the bit -- --

25 THE COURT: I know.

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1 MR. KEARSE: -- almost like Mr. Bohannan.

2 THE COURT: Anything further, Mr. Alfaro?

3 MR. ALFARO: No, Your Honor.

4 THE COURT: So the Court, in charging the law, is
5 required to look at the facts and craft a charge that
6 fits the facts. There has been significant discussion
7 about whether or not the prongs were met as to the
8 elements of self-defense and, thereby, defense of
9 others.

10 Based upon the arguments, and my review of several
11 cases, a jury -- I find that a jury could infer that
12 Mr. Moses was not at fault for the fight because there
13 was no evidence that he's indicated that violation of
14 the law or reasonably calculated to produce the occasion
15 until he became embroiled in the fight. As such, I will
16 be charging self-defense and defense of others, based
17 upon the testimony that has been presented.

18 Because I am charging self-defense, I must take out
19 the inference of malice, under Belcher, under the
20 attempted murder charge.

21 In the self-defense charge, I will be charging that
22 the defendant must be without fault, self-defense is not
23 available to a person who uses language which is so
24 contemptuous that a reasonable person would be expected
25 to bring on a physical encounter.

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1 I will be charging mutual combat.

2 MR. DAVIS: Thank you, Your Honor.

3 THE COURT: I will be charging imminent danger, the
4 right to act on appearances, words accompanied by
5 hostile acts, evidence of prior difficulties between the
6 defendant and the victim, the size and ages, the
7 intoxication of the victim, there's no other way to
8 avoid the danger, the duty to retreat, and degree of
9 force.

10 Any other further elements of self-defense?

11 MR. ALFARO: No.

12 MR. DAVIS: Well, Your Honor, there's one that says
13 if you start shooting, you shoot until the danger has
14 been quelled.

15 This is multiple shoots. He's got a duty to keep
16 shooting until the danger cease to exist. That's case
17 law.

18 THE COURT: Mr. Alfaro, that is the current case
19 law, and law, in South Carolina.

20 MR. ALFARO: That's fine, Your Honor.

21 MR. DAVIS: Thank you.

22 THE COURT: Y'all can have until 2:20.

23 MR. KEARSE: Thank you.

24 MR. DAVIS: Thank you, Your Honor.

25 MR. ALFARO: Thank you, Your Honor.

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1 [Whereupon, an off-the-record bench conference is
2 held]

3 THE COURT: Mr. Alfaro, just real quickly, hold on
4 one second. I just need to put this on the record real
5 quick while I remember.

6 Your 37, you did not attempt to admit it. Do we
7 need to place anything about that further on the record?

8 MR. ALFARO: No, ma'am.

9 THE COURT: All right. Thank you.

10 [Off the record momentarily]

11 THE COURT: Was 33 admitted? No --

12 THE COURT REPORTER: 33, --

13 THE COURT: -- 33 was not admitted. 33-A is.

14 [Whereupon, a recess is taken from 12:51 a.m. to
15 2:27 p.m.]

16 THE COURT: Counsel, if you will come look at the
17 verdict forms.

18 [Whereupon, counsel review documents]

19 THE COURT: From the State, no objection to the
20 verdict forms?

21 MR. ALFARO: No, Your Honor.

22 THE COURT: From Mr. Davis?

23 MR. DAVIS: No, ma'am.

24 THE COURT: From Defendant Moses?

25 MR. KEARSE: None, Your Honor.

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1 THE COURT: And then as to the order of closing,
2 Mr. Alfaro, you will open. Mr. Davis, you will give
3 your close on behalf of your client. Mr. Kearse, on,
4 behalf of his client. And because there was evidence
5 entered on behalf of the defendant Moses, then the State
6 has the right for a rebuttal argument.

7 Anything further as to that issue?

8 MR. ALFARO: None from the State, Your Honor.

9 THE COURT: Mr. Davis?

10 MR. DAVIS: [No response]

11 THE COURT: Mr. Davis?

12 MR. DAVIS: Nothing further.

13 MR. KEARSE: Not as to that issue, Your Honor.

14 Just if I can put on the record -- and I think I
15 did this as to Mr. Moses and also joined into an
16 objection to the charge of hand of one, hand of all.

17 THE COURT: It's already been --

18 MR. KEARSE: Okay.

19 THE COURT: We went over all that.

20 MR. KEARSE: I wasn't certain if I verbally placed

21 --

22 THE COURT: You did. You were standing right up
23 there by the water pitcher.

24 MR. KEARSE: Thank you, Your Honor.

25 THE COURT: All right. Anything else?

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1 MR. ALFARO: No, Your Honor.

2 THE COURT: Mr. Davis?

3 MR. DAVIS: Nothing, Your Honor.

4 THE COURT: Mr. Kearse?

5 MR. KEARSE: Nothing at the time, Your Honor.

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

7 [Off the record momentarily]

8 THE BAILIFF: Jury coming in.

9 [Whereupon, the jury enters the courtroom at

10 2:35 p.m.]

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THE COURT: Thank you. Please be seated.

Ladies and gentlemen, did you comply with my instructions over your lunch hour? If you did not follow my instructions, please stand.

[Whereupon, there is no response]

THE COURT: Thank you.

All fourteen jurors have indicated that they complied with the Court's instructions over the lunch hour.

Ladies and gentlemen, we have reached the stage of the trial where you will hear closing arguments on behalf of counsel. Please give your attention. Mr. Alfaro will give the closing argument on behalf of the State. Mr. Davis will give his closing argument on behalf of his client, Mr. Gourdine. Mr. Kearse will then have an opportunity for his closing argument, and then Mr. Alfaro, on behalf of the State, will present a rebuttal argument. After that, I will instruct you on the law applicable to this case. Ladies and gentlemen, please remember what is contained in closing arguments is merely their contention of the attorneys as to what the evidence has shown you. As I indicated to you, it is not evidence in this case. I will instruct you on the law applicable to this case. Please give your

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1 strict attention.

2 Mr. Alfaro?

3 MR. ALFARO: Thank you, Your Honor. May it please
4 the Court.

5 THE COURT: Yes, sir.
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CLOSING STATEMENT

MR. ALFARO: Good afternoon, ladies and gentlemen.

At the beginning of this trial I told you that Jason Gourdine and Steven Moses were both guilty of attempted murder and criminal conspiracy. This is my opportunity now to talk to you briefly about what the law is going to be in this case.

The Judge, as she told you, is going to charge you on the law after we're done talking and given our version of everything and if there's anything that I say that differs with her slightly, as to the law, you're to rely on what the Court tells you is the law.

And what I'm going to do now is kind of go through the law that applies in this case, just so you have an idea of what you're looking out for and what you're going to consider when you go back in that jury room to render your verdict in this case after the conclusion of these arguments.

Now, you may have heard the phrase reasonable doubt. It may have been brought up in opening statements, and you're going to hear it during the course of these closing arguments. Reasonable doubt in the state of South Carolina, the State, meaning the prosecution, has the burden of proof in any criminal case. It is upon -- the burden is on us to prove to

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1 each of you beyond a reasonable doubt that the
2 defendants are guilty of each of the elements that they
3 are charged with.

4 Now, what is reasonable doubt? It sounds like it
5 should be a pretty simple word, simple phrase, but it
6 can be kind of confusing and can get murky when
7 different people give their views on it.

8 Reasonable doubt is simply doubt that would cause a
9 reasonable person to hesitate to act. Now, what's
10 important in this is it's not beyond all doubt. It's
11 not beyond -- it's not -- it doesn't require us to prove
12 these elements to the point of absolute certainty. If
13 the evidence leaves you firmly convinced that the
14 defendant is guilty, you as jurors must find him guilty
15 of the offenses that he's charged with.

16 Again, it's not any doubt, and it's not to an
17 absolute certainty, because there are very few things in
18 this world, if any, that I could stand here and prove to
19 you beyond any and all doubt. What matters in this is
20 whether there's some reasonable doubt and whether at the
21 end of hearing all the evidence and considering all the
22 evidence in your jury room, if you're firmly convinced
23 that these two men are guilty of attempted murder and
24 conspiracy, then they're guilty.

25 What is attempted murder? Attempted murder is when

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1 someone with the attempt to kill attempts to kill
2 another person with malice aforethought. And that
3 malice can be either express or implied.

4 Now, let's talk about malice first. Malice is just
5 hatred, ill will, a wicked heart. Basically, just evil.
6 If you feel that after what you're heard in this trial
7 and what you've seen in this trial, that what you
8 witnessed these two defendants did on July 28th, 2013,
9 at the Nowhere Bar and Grill when they attacked the
10 victims in this case, James Bryant, Stacy Bohannon and
11 David Bohannon -- if you believe that what they did and
12 how they did it and the injuries that those people
13 suffered rise to an evil and wicked heart, that's
14 malice. And that's one of the elements for attempted
15 murder.

16 Now, that malice can be either express or inferred.
17 Express malice would be if someone were to say something
18 while they're doing the act, something evil, something
19 wicked. But it can also be when someone prepares
20 beforehand to do the act, when someone lies in wait or
21 goes through other acts or preparation that show the
22 deed was within their mind. In this case, ten to twelve
23 minutes passed between the time the defendants first
24 leave until the time they come back and the shootings
25 happen.

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1 You saw the video. And when I get to come back up
2 later on, we'll talk about exactly how you can see on
3 that video how they laid in waiting, how they did steps
4 to show they prepared to do what they did when they came
5 back to that bar after leaving.

6 You can also infer malice from conduct showing the
7 total disregard for human life. You're allowed to infer
8 that malice, based off shooting someone at point-blank
9 range with a 12-gauge shotgun. You're allowed to infer
10 that malice by shooting someone at point-blank range,
11 leaving them in a parking lot to die.

12 Malice aforethought does not require that the
13 malice exists for any particular time before the act is
14 committed. It just has to exist before and at the time
15 it's committed. And what that means is you don't have
16 to prove that these two men went to that bar with the
17 idea that they were going to kill somebody. We don't
18 have to prove that as they were walking out of that bar
19 or leaving that bar the first time, that they were
20 planning right then to kill somebody. The malice just
21 has to be proved that at the time that they came back
22 and they pulled up and they walked up and they blocked
23 them in and they started their plan, that they had
24 malice in their heart. That's what we have to prove,
25 and that's what the evidence is showing you.

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1 Now, they're also charged with criminal conspiracy.
2 Criminal conspiracy is simply when two or more people
3 combine to perform an unlawful act, mutual
4 understanding, agreement, or common intention of plan.
5 And what you're going to hear with that is we don't have
6 to have -- we don't have to prove that there is a
7 written agreement. These two men didn't have to go
8 write out a contract and agree: you agree to do this,
9 and I agree to do that, and we're going to get these
10 people killed. No. They just have to agree, they have
11 to go through that plan together, and they have to act
12 together. And, again, that video that you saw will show
13 you beyond a reasonable doubt how they are acting in
14 concert, how they are moving together, and how what they
15 planned came to happen.

16 Now, the judge is going to charge you what is
17 called lesser included offenses. Lesser included
18 offense is less than -- we're dealing with attempted
19 murder. As I said, they're charged with attempted
20 murder. If you don't believe that the State has proven
21 the elements of attempted murder beyond a reasonable
22 doubt, then at that point you are allowed to consider
23 lesser included offenses.

24 The lesser included offenses that you're going to
25 hear in this case are assault and battery of a high and

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1 aggravated nature, assault and battery second degree,
2 and assault and battery third degree. And as that says,
3 these are only to be considered if you believe that we
4 have not proven beyond a reasonable doubt that what
5 these men did was attempted murder.

6 Assault and battery of a high and aggravated nature
7 is when you injure another person and great bodily
8 injury to another results, or the act is accomplished by
9 means likely to produce death or great bodily injury.
10 Essentially, there's no malice. Same injury, same acts,
11 but you believe that what they did was not malicious.
12 If you can get to that, then you can consider assault
13 and battery of a high and aggravated nature.

14 What is great bodily injury? It's injury that
15 creates a substantial risk of death, serious permanent
16 disfigurement, or protracted loss, or impairment. To
17 get to this, again, you have to believe that they didn't
18 intend to kill those three people, that they didn't do
19 what they did with malice in their heart. You have to
20 find that neither of those are there, and then you're
21 down to assault and battery of a high and aggravated
22 nature.

23 Assault and battery second is moderate bodily
24 injury, not serious bodily injury. When you consider
25 the testimony and you consider the evidence that you

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1 heard, you would have to make a large drop down to that.

2 Now, the judge is also going to charge you that you
3 are allowed to consider self-defense in this case, that
4 you are allowed to consider that what you saw and what
5 you heard from the witness stand was all done while
6 these people were defending themselves or defending each
7 other. That's what you're going to be charged that you
8 can consider.

9 Now, in order for that to be the case and for you
10 to find self-defense -- and if you find self-defense,
11 you find all four of these elements that I'm about to go
12 through are present. If you find that self-defense
13 exists, then that's an affirmative -- that's a complete
14 defense, they're not guilty. They weren't guilty of
15 doing anything wrong if they were acting in defense of
16 themselves or defense of others when they blasted those
17 three people with a 12-gauge shotgun at point-blank
18 range for no reason at all.

19 Now, the first element is the defendant must be at
20 fault in brining on the difficulty -- must not be at
21 fault in bringing on the difficulty. That's the first
22 element. You notice, due to that, that and there, that
23 means that they have to do that, and then you have to
24 find the second, and then you have to find the third,
25 and then you have to find the fourth.

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1 First is not -- they must not be at fault in
2 bringing on the difficulty. They left. They were gone
3 for ten, twelve minutes, then they came back. And when
4 they came back, meaning them [indicates], the victims
5 were getting ready to leave. They weren't looking for
6 them, they weren't waiting on them, they were just out
7 in the parking lot getting ready to go when those two
8 came back to do what they did.

9 And if you find that they weren't at fault in
10 bringing on the difficulty -- not only -- let me go back
11 to that first -- not only did they come back, but the
12 victims didn't go to them. When you watch that video,
13 and we'll watch it again, Steven Moses walks up to where
14 the victims are standing. Jason Gourdine pulls his car
15 up and blocked their van in where they are. Clearly the
16 defendants are at fault in bringing on the difficulty.

17 So then you get to the second part, if for some
18 reason you think that they weren't at fault. And then
19 they have to actually believe that they are in imminent
20 danger of losing their life or suffering serious bodily
21 injury or were in actual imminent danger of losing life
22 or serious bodily injury.

23 They had to believe that they were in danger. They
24 were so in danger that they left, and they came back.
25 And they were so in danger that one of them walks right

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1 up to where the victims are standing and want to base
2 that on James Bryant being such a big guy. You remember
3 the video. James Bryant was standing right there when
4 Steven Moses walked right back up. He didn't run away.
5 He walked right up to where the victims were. And then
6 he back-peddled and stood right at the back of that car
7 and waited for his partner to do the second part of the
8 plan. There's no danger of imminent bodily injury.
9 Nobody else had a weapon. There's no testimony about
10 anybody else having a weapon. Nobody else pulled a
11 weapon on Jason Gourdine or Steven Moses when they came
12 back and started all of this.

13 Now, if you find the first, if you disagree and you
14 find the first and you disagree and you find the second,
15 then you have to establish the third. If based on -- if
16 it's just based on beliefs: they're not in imminent
17 danger but they believe they're in imminent danger.
18 Again, would a reasonably prudent man of ordinary
19 purpose and courage would have had the same belief would
20 warrant a reasonable prudent person of ordinary firmness
21 to strike the fatal blow to save himself. They're not
22 in actual danger, which they weren't, then they get to
23 that.

24 And, again, so scared and such belief that they
25 were in danger, they came back; such belief in danger

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1 that they walked right up to where the victims were
2 standing; such belief of danger that when they drove off
3 in that car they didn't stay gone, they drove back and
4 they did what they did to these three people.

5 Now, the fourth -- again, all four have to exist.
6 The defendant had no other probable means of avoiding
7 the danger of losing his own life or sustaining serious
8 bodily injury.

9 That one's real simple. Stay gone. They were
10 gone. They got in their car, unaccosted, and they drove
11 off together unaccosted. Nobody chased them. Nobody
12 followed them. Nobody was looking for them. Nobody
13 hunted them down. They left ten minutes, did whatever
14 they did, and they changed clothes and came back with a
15 gun.

16 They had a very easy way to avoid all of this
17 supposed danger. Stay gone. And because of that, they
18 don't have any of the elements of self-defense, much
19 less all of them. And they have to have all four for
20 the burden to shift to us to disprove self-defense. All
21 four are not there.

22 Now, they're also -- the judge is going to instruct
23 you on what the hand of one is. The hand of one is when
24 a crime is committed by two or more people acting
25 together, the hand of one is the hand of all.

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1 What that means, there is only one gun out there.
2 The evidence tells you that, the video shows you that,
3 the witnesses tell you that. Nobody disputes that
4 there's only one gun. But when these two men decided to
5 act together to commit the crime of attempted murder,
6 when they go back there together and one man had that
7 gun and the one man pulls that trigger, it's as if both
8 of them, in the law -- eyes of the law, it's as if both
9 of them were holding that gun and it's as if both of
10 them pulled that trigger.

11 You can have one gun, one bullet, two people, you
12 fire one shot, both of you fired that shot. That's the
13 law. Because they're acting together, that's why
14 they're guilty under this theory.

15 Now, part of that attempted murder charge is
16 intent. We have to prove an intent to kill. There's a
17 thing that the judge is going to instruct you on called
18 transferred intent. And what that means, and this is
19 the long lingo version of it, is if defendants with
20 malice aforethought attempt to kill another but by
21 mistake injure a different person, he still had the
22 intent to kill. The intent to kill is merely
23 transferred from the original person they attempted to
24 kill to the person actually injured. Guilty of
25 attempted murder, just as if the attempt had resulted in

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1 the death or injury of the person they attempted to
2 kill.

3 And what that means is they went there -- if you
4 believe they went there with the idea that they were
5 going to kill Ricky Enrique and in the process of
6 carrying out that act they shoot James Bryant, they
7 shoot David Bohannon, and they shoot Stacy Bohannon --
8 or Stacy Bohannon, the intent they had to shoot Enrique
9 transfers from that. Basically, they mean to shoot one,
10 and you shoot somebody else by mistake, it's just like
11 you meant to shoot the first person. Or if they came
12 back to shoot -- if you believe they came back to shoot
13 James Bryant, and Stacy just got in the way, it's the
14 same thing. They mean to kill one person and they hurt
15 or injure -- severely injure the other two, it's the
16 same thing. You don't get the benefit of shooting the
17 wrong person by accident.

18 Now, again, what is reasonable doubt? If at the
19 end of all of this, all of the testimony you've heard,
20 after watching the video, after looking at pictures,
21 after considering the testimony that you've heard, when
22 you go back in that jury room you're firmly convinced
23 that these two men carried out the acts that resulted in
24 the injury and the near death of these three people,
25 they're guilty.

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1 Thank you.

2 THE COURT: Mr. Davis.

3 MR. DAVIS: Please the Court.
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CLOSING ARGUMENT

1
2 MR. DAVIS: Foreman and other members of the jury,
3 I want to thank you for your attentiveness. I make no
4 apology for what I do. I'm guided by some principles
5 that really kind of tell us the substance of who I am.
6 I'm a father, granddad. I share with you that I'm a
7 husband, that I was a prosecutor for over ten years.

8 I don't take the role as a prosecutor lightly. At
9 the end of the day, it is their responsibility not to
10 pick sides. I want you to understand. It is not to
11 pick sides. The prosecutor's job is not to pick sides.
12 The prosecutor's job is to find and seek justice.

13 You know, sometimes when we go on a journey to seek
14 justice, sometimes the truth is hard and painful. Just
15 painful. It don't fit to where we would want it to fit.
16 When the solicitor started this process, he stood before
17 you and he talked about someone being ambushed, back in
18 opening. He didn't talk to you about assault and
19 battery second degree, third degree. He didn't share
20 anything with you about self-defense, defense of others.
21 He didn't share anything with you about transferred of
22 anything.

23 When I stood before you the first time, I told you
24 fortunately some facts, or the facts, needed to be
25 decided from this chair in reference to what the

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1 evidence is. I told you at the onset that to me, to
2 some extent this is a situation where cooler heads
3 should have prevailed, could have prevailed, but did not
4 prevail because of the impairment of some situation.

5 That's what makes the facts so hard in this
6 instance, because there's no question that intoxication
7 was involved, there's no question that drugs were
8 involved, and there's no question that egos were
9 involved. No question about that. But when the facts
10 are hard, we can't change it. We can't make it what we
11 want it to be.

12 I said to you from the onset that this case is not
13 any attempted murder. Attempted murder relies on the
14 basis that says, you know what, Jason Gourdine had a
15 malicious and wicked and deprived heart intent in
16 killing someone. Planned. Deliberately. Let's look at
17 the acts. Let's look at the potential for -- let's see
18 how the storyline falls into place.

19 Mr. Solicitor was not there, I was not there, you
20 were not there. You have been brought forward to judge
21 what happened that night. Let's see what happened. And
22 this has nothing to do in the context of race. This
23 whole case centers on justice and what is the truth.
24 And hard facts sometimes is very difficult.

25 We're in a bar early in the morning. People have

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1 drank and are inebriated in alcohol. You have the owner
2 not taking responsibility for his club. You have
3 patrons, who consider themselves regulars, who
4 apparently have special privileges and that privilege
5 involves invading the space or assaulting others.

6 I told you at the onset that our hearts sometimes
7 dictate who we are. If we have this heart of war where
8 other people are just objects, where we're in a context
9 that it gives me justification to do what I want to do
10 with my fellow man because I deserve better, I should be
11 treated better, and, therefore, whatever I do to you is
12 justified. Which mean it is justification if I assault
13 you. It is justification. If I shove you and assault
14 you out of the door, it's justification. I can do what
15 I want to do to you because you're not -- you don't feel
16 like I feel, apparently. So when you have this heart
17 that's bent on individuals whose philosophy in life is
18 fight or flight but I prefer to fight, this is the onset
19 of the difficult facts that you heard from this chair.

20 I don't have no pleasure in knowing that Mr.
21 Bohannon and Ms. Bohannon's lives were affected by
22 these. I have no pleasure in that. I said to you I was
23 a prosecutor for ten years. And my job and role was to
24 seek justice. Sometimes there were some very difficult
25 facts that we just couldn't change. You had to deal

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1 with what it is -- and what it is.

2 If you view the participants further, James Bryant
3 says, you know, I'm a teddy bear. I'm a teddy bear.
4 Well, I'm telling you, he's the most aggressive teddy
5 bear I ever encountered because his movements works
6 havoc in reference to his intention. I don't want you
7 to be mislead. James Bryant says it doesn't matter if
8 Enrique, the Puerto Rican, was right or wrong, he was
9 coming to his aid, he didn't care, none of that, and he
10 injected himself and came, with wicked-heart intentions,
11 to inflict injury on someone.

12 Think about this. He doesn't follow basketball, he
13 doesn't football, he doesn't follow any baseball. He
14 follows the UFC I think. Cage fighting. And so here
15 July the 28th, 2013, is an opportunity to put in play
16 some of the things he's been watching on the UFC all
17 these years, apparently. I don't watch the stuff
18 because my heart is not subjected to blood and gore.
19 That's not who I am. Infliction of pain on someone else
20 is not who I am. And so in that regard, I can
21 understand Mr. James Bryant, six foot eight, when he
22 assaults someone in the bar, shoves them out, swing at,
23 hit them, violate space, regardless of who is
24 responsible.

25 Some difficult choices were made that night. Hard

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1 facts, hard facts, bring some strong truth. Some people
2 made some choices that night. They made some choices
3 that they're going to have to live with. They made some
4 choices that they're going to have to live with. Yes,
5 this whole colloquy, as far as I'm concerned, reflection
6 of time, 720 seconds, life-altering minutes and seconds.
7 We go on the outside and James Bryant, Mr. Big, says it
8 didn't matter to him, he wanted to get his hand on
9 whomever he could put his hand on.

10 And I asked him this question pointedly at --
11 Mr. Bryant, you said that you would come to the aid of
12 Mr. Enrique, the Puerto Rican, regardless of whether he
13 was right or wrong, whether he provoked it, whether
14 he -- it didn't matter. So I asked him how do you fit
15 into context when Steven Moses was running away from
16 your aggressive behavior and then Jason Gourdine steps
17 out and fires these shots and coming to the aid of
18 Steven Moses is any different.

19 The law says under self-defense, you must not have
20 brought on any provocation. The solicitor has it all
21 wrong. These folks had already been in imminent danger
22 earlier while they were in the club, while they were in
23 the bar. Do you know one constant thing that has come
24 to this whole process, too? No one from this witness
25 chair was able to get up here and testify under oath

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1 that Jason Gourdine said a mumbling word inside that
2 club, that he reacted, that he retaliated, that he did
3 anything to any individual in this matter. The only
4 time Jason Gourdine found himself in a position was when
5 Steven Moses was retreating and running from Mr. Big,
6 James Bryant, and, in the process, unfortunately for Ms.
7 Stacy Bohannon, who was holding on for dear life trying
8 to stop, in her words, him from engaging with Steven
9 Moses.

10 But you know what is also quite interesting? Let's
11 contrast all of these actors and movers with people who
12 the State did not call. They did not call Coach Tee.
13 Why? Coach Tee is the driver of the white van, who
14 would have the immediate urgency if he was being blocked
15 in. Tyrone Taylor sat in that SUV, mind his own
16 business, was not nosey, mind his own business, did not
17 inject himself. And the passenger behind Tyrone did
18 likewise. Hard facts and difficult decisions were made.

19 Now, you know, I told you when this case started
20 that if you're not prepared -- if you weren't prepared
21 to follow the judges' instruction and adhere to the law
22 as the judge gives it to you, then you should have
23 raised your hand and said, you know, I don't want to be
24 involved with this one because, you know what, this is a
25 difficult one. Well, the truth is always difficult.

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1 The truth is always difficult.

2 But this is what we know about the truth in this
3 instance. There's no question whatsoever that this is
4 not an attempted murder, that no one had intention to
5 kill anyone. This young man that I represent, with his
6 three-year-old daughter and two sons, needs to be home.
7 And the only reason we're here today is because the
8 State has made this decision to say this is an attempted
9 murder. It is not. Some choices were made -- although
10 hard it may be, were made that night. Those choices
11 have caused us to be here today.

12 Now, unfortunately for Ms. Stacy Bohannon, I think
13 she got caught kind of in somewhat of a cross-fire
14 because I think Jason, in his effort to defend his
15 friend and defend himself, Ms. Stacy Bohannon got caught
16 up into that. But to say that Jason Gourdine had an
17 intention and wicked heart to kill someone? No.

18 You know, it's very interesting that in reference
19 to you learn about the bird-shots not through the State,
20 but through the witness that I elicited it from.
21 Because that's what cross-examine is, the bird-shots.
22 It's unfortunate. That don't lessen it. But, you know,
23 somebody that has an intention to want to kill people
24 don't leave their common sense at home. They come back
25 and shoot up the whole place indiscriminate. They don't

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1 care. Pow, pow, pow.

2 That's not what you have. You have a set of
3 unfolding events that were put in place by people who
4 utilized the wrong choices, in all the decisions they
5 made, influenced by alcohol and/or drugs. Now, you may
6 not like what happened. I don't like what happened. I
7 don't think it reflected Jason Gourdine and Steven Moses
8 likes what happened.

9 But the fact is what it is and the truth is what it
10 is. Nobody had any intention to kill or murder anyone.
11 The law affords you an opportunity -- if you believe
12 that you are going to be threatened, you can shoot and
13 you can continue shooting until it is resolved. And the
14 judge will instruct you on the law on that.

15 Now, don't take my word for it. You take the
16 judge's instruction on it because you took an oath that
17 you can listen to the law, due in view of the facts, and
18 come to a decision.

19 I've been carrying this burden for three years.
20 Three years I've been carrying this burden, because
21 that's how long ago this event happened. But this day,
22 hopefully this week, we're going to get some resolution
23 of this matter.

24 And remember I asked you in opening, I said do you
25 have any friends to reward, any enemies to punish, raise

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1 your hand and disqualify yourself before you go in back
2 there and deliberate because you're going to be -- have
3 to adhere to the law as the judge has given it to you.

4 You know, as a little boy, we watched a lot of
5 cowboy shows and good guys and bad guys. And sometimes
6 in instances -- you can tell my age right now -- when
7 the law enforcement guys, everyone hid behind the bad
8 guys. Because, you know, the bad guys would run to a
9 rock and hide out and wait until the good guys overcome.
10 But not with the solicitor. But one thing in this
11 instance is different. You've got to have justification
12 to pursue someone.

13 Now, aggressive movement is pursuit. You cannot
14 change this depiction of what happened. It is no
15 question that these people made aggressive manner
16 towards these two young men. It was a continuation of
17 what actually had happened in the bar. Now they want to
18 come in and say, well, you know, ladies and gentlemen of
19 the jury, we thought it was over, the dust had cleared.

20 You know, the judge is going to instruct you on
21 something called mutual combat. The prosecutor didn't
22 share that to you, neither, mutual combat. Mutual
23 combat says, you know what, if you make a decision to
24 engage in combat, that's just what it is. It's not
25 something pretty. But you know what? You have made

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1 that choice to enter into mutual combat. Just like the
2 UFC show that Mr. Big watch. These people make an
3 intentional decision to get in that cage and then they
4 get whatever punishment they can mete out or give each
5 other. Mutual combat is what the judge is going to
6 instruct you.

7 You have a wealth of things to decide. But this is
8 what I unequivocally believe just occur in this case.
9 Number one, there is no facts that you have heard that
10 supports attempted murder. EMT personnel swiftly and
11 quickly alluded that the wounds injury were superficial,
12 examine in ten or fifteen minutes, two of the
13 individuals, and the young man, David Bohannon, in
14 reference to plastic surgery and the shot to the elbow.
15 James Bryant, even despite the fact that he's disabled,
16 the only threat he envisioned that night was a loss of
17 his arm. But you know what? Sometimes that's the price
18 when you engage in mutual combat when you have this
19 aggressive nature, when you have this heart of war that,
20 I'm prepared to fight, I want to fight and then when you
21 get in the midst of the war or in the midst of the
22 fight, then, oh, a gun is presented, let's turn around.
23 There are some cooler heads could have and should have
24 prevailed that night, and it did not.

25 You do not have sufficient facts in this case to

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1 find neither of these young men guilty of attempted
2 murder. You have sufficient facts in this case as to
3 what the law the judge is going to give you, hard facts,
4 that say self-defense. At what point? At what point?
5 At what point? At what point?

6 Each one of you will now take on the role of
7 judges. We've been instructed to stand every time you
8 come into this very esteemed courtroom. I've been
9 practicing law now for thirty-four years. I enjoy what
10 I do. Is it always pleasant? Not necessarily. Not
11 necessarily. But I'll tell you what it is. I'll tell
12 you what it does for me. Nothing moves me more than an
13 injustice. See, because I learned quite some time ago
14 is that we all must have somewhat clean hands when we
15 come into a situation asking people to side with me.

16 Look at the participants. I don't condone. I
17 don't judge. But I'm telling you what, in this instance
18 what we see: the facts support that the only aggressors
19 that night were the people who found themselves injured,
20 where just simple choices could have been made.

21 Coach Tee stayed in that van and didn't move.
22 Referencing of Ali and shovel fighting and Mr. Enrique,
23 the Puerto Rican and all. The State has the power, the
24 State has the power, to bring before you anybody they
25 want to. If someone is in Russia, they can go get them.

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1 Mr. Putin will give them the okay. I definitely assure
2 you that anyone in the United States of America, the
3 state of South Carolina, this State has the power to go
4 pursue that individual.

5 Tyrone Taylor did not come in this courtroom at any
6 point and said, I felt threatened. At any point come in
7 this courtroom and said, I was blocked and could not
8 move my vehicle. Before this young man could finish his
9 sentence, Mr. Big, who tells you that he is a teddy
10 bear, who tells us that it don't matter, regardless of
11 whether he has a friend that is engaged in combat,
12 mutual combat, with someone innocently his friend
13 assault, it really don't matter, he will cover his back.
14 And so on July the 28th of 2013, in 702 seconds, his
15 mind was bent to go and grab and destroy and do whatever
16 it took to resolve the matter, unbeknowing to him that
17 Jason Gourdine came to the aid of Steven before Mr. Big,
18 Mr. Bryant, had a chance, all six foot six, 320 pounds
19 of him. Very imposing teddy bear.

20 Your verdict must speak the truth. Your verdict
21 must speak the truth. The solicitor makes the decision
22 on the charges that come before you. The judge has
23 included some other charges, what they call lesser
24 included offense, assault and battery of a high and
25 aggravated nature, assault and battery third degree.

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1 And I'll tell you why she has. She's obligated to do
2 it. She's obligated to move away from attempted murder.
3 She's obligated, because the facts support it. She has
4 to move in that direction.

5 When this case commence at the beginning, you did
6 not hear any depiction of assault and battery, high and
7 aggravated nature. You did not hear any depiction of
8 assault and battery in the third degree. But you know
9 what? The facts have dictated it, so she must charge
10 you with it. Another instruction you must take in the
11 back and make a decision based on. You. When this case
12 started, the solicitor told you attempted murder. She
13 didn't tell -- he didn't tell you nothing else. Nothing
14 else.

15 I am going to take my seat. I thank each one of
16 you individually and collectively. But I want to share
17 one little last note before I go: why this system is so
18 important. This system is so important that everybody
19 who comes into this system is presumed innocent. Now,
20 you may have some mere suspicion. You may have
21 conjecture with what happened. But you know what? The
22 judge is going to instruct you that all of that must be
23 given in favor of these young men who have come into
24 this courtroom innocent. Innocent. That is what makes
25 our whole system work.

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1 I, too -- I have three sons. My youngest son, he
2 serves in the armed services. When he puts on that
3 uniform, I'm very proud of him. I'm proud of my other
4 two sons who don't have a uniform on. But I know one
5 thing. It makes me feel swelled in my heart to know
6 that he's prepared to put his life on the line for a
7 system that says that under our system a person is
8 presumed innocent until proven guilty beyond a
9 reasonable doubt and that under our system, you can't
10 even discuss the fact that my client did not even take
11 the witness stand. That's not even an equation.

12 If anyone in the back starts to accuse them, well,
13 you know what, they just -- they didn't say something.
14 Well, our system does not dictate that an individual say
15 anything. He is presumed innocent and the burden is on
16 the State of South Carolina to give you what you need to
17 find them guilty beyond a reasonable doubt. And I am
18 quick to tell you that in this situation, the State have
19 failed in every instances and that you can find them not
20 guilty based on self-defense and defense of others and,
21 unequivocally, no attempted murder. Thank you.

22 THE COURT: Mr. Kearse.

23 MR. KEARSE: May it please this Court, Your Honor.

24 - - -

25 - - -

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CLOSING ARGUMENT

MR. KEARSE: You know, you can mix rum with Coke, you can mix gin with juice, but you can't mix egos, alcohol, violence, and a lack of responsibility and then expect people to swallow it. It's not going to work.

July 28th, 2013, changed the lives of five people in here. July 28th, 2013. Essentially, like I said in opening statement, the material facts of this case came down to three seconds, three seconds in that parking lot that changed forever the lives of James Bryant, Stacy Bohannon, David Bohannon, and also Jason Gourdine and Steven Moses.

Now, what happened in that bar prior to that also has some consequence because it demonstrates some things about ego, a propensity for violence. You did not hear anyone say that Mr. Moses walked into that bar on July 28th, 2013, and make a threat to anyone. You have not heard him characterized as anything other than a patron, a patron, on the same level as James Bryant, David Bohannon, and Stacy Bohannon. He had just as much right to be there as they did.

You have not heard anyone say he threatened anyone in that bar on July 28th, 2013. You have not heard anyone say he hit anyone in that bar on July 28, 2013. In fact, the testimony clearly is that he was struck in

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1 the bar. And if they only admit he was struck,
2 everybody, everybody, and missed, that a person who was
3 the friend of James Bryant, Jr., who was the friend of
4 or became the friend of David Bohannon and Stacy
5 Bohannon that night, of Lori Chenoweth, of Julie Taylor,
6 of Ms. Nava, took it upon himself, with the tacit
7 consent of Ms. Nava, Ms. Chenoweth, who is the co-owner
8 of the bar, and Ms. Taylor, who was a bartender.

9 Now, let me repeat that, with a tacit consent,
10 because they didn't try to stop him. They didn't
11 chastise him. They cheered him on. Why? Because he
12 was protecting their honor. And this is where things
13 start to fall apart. This man walked over to two people
14 who had come to patronize the bar. While they were
15 walking out -- not that he had a right to do it if they
16 weren't walking out -- but while they were walking out
17 of the bar. It doesn't matter what was said. It
18 doesn't matter if Mr. Moses said he believed the bar
19 wasn't serving him because he was black. It doesn't
20 matter. It doesn't matter what he said.

21 This man walks over and takes a swing at Mr. Moses.
22 I submit to you he hit him. And upon hitting him, how
23 many of the State witnesses who were in that bar
24 mentioned how wrong that was? You can just walk up to
25 somebody and hit them because you don't like what they

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1 say not even to you, but to somebody else?

2 And as if that wasn't enough, James Bryant goes up
3 right behind him and he decides he's going to put his
4 hands on two people he does not know. He has no right
5 to do that at all, because not because somebody said
6 something to him that he didn't like -- not that that
7 would make it right -- but because he is empowered
8 because he feels like he is a part of the circle and so
9 they can attack these two men as they are walking out of
10 the bar.

11 And while they are walking out of the bar, we know
12 that Mr. Bohannon is sitting there chomping at the bit
13 to go over and participate, such that his wife has to
14 restrain him, hold his arm, even though he says, which I
15 will get back to, that if he wants to do something, his
16 wife ain't going to be able to stop him. So remember
17 that. If he really wants to do something, his wife is
18 not going to be able to stop him. Nothing was said to
19 him, nothing was said to Mr. Maron, nothing was said to
20 Mr. Bryant, nothing was said to Ms. Bohannon in that
21 bar, but they took it upon themselves to go and assault
22 other people as they are already leaving.

23 Now, once that is done, there's the -- as you will
24 see, and get a chance to look at, Defendant's Exhibit
25 Number 2, the celebratory -- I'm sorry -- Mr. Bryant was

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1 running behind Mr. Maron, making sure he gets some part
2 of it. Defendant's 2. Defendant's 6, you'll see
3 everybody. And I do mean everybody. Everybody, just
4 about, in that bar, joining in to push these people out.
5 What right do you have to put your hands on people, to
6 assault people, to fight people? Because what? Because
7 that's just what you do: I watch the UFC. So that
8 makes it all right? This is not a cage. This is not a
9 fight. These are people. These are your fellow
10 citizens in this community. You don't have the right to
11 attack them.

12 And then when they finish, as Defendant's 7 shows
13 you, when you look at it -- and this is also the video.
14 Please understand that. This is also the video. Don't
15 think that because they're still shots of the video, you
16 should ignore that. No, you should not. Because
17 sometimes it is a picture that's worth a thousand words,
18 not the video.

19 Group hug time. What kind of an adult has that
20 mind set? One that drinks seven alcoholic drinks in a
21 two-hour span? Somebody who goes and gets a six-pack of
22 beer, goes to the bar, goes back and gets a six-pack of
23 beer, goes back to the bar? Or another person who pops
24 pain pills and then goes out drinking?

25 Now, you couple that, you couple that, you couple

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1 those drinks, you couple those drugs, with the kind of
2 egos we heard coming from that stand. I'm not a
3 flighter, I'm a fighter. Who says that? What rational
4 person thinks like that? Because what happens when you
5 think like that? You make trouble. You look for it.
6 You create it. You can't wait to get involved into it.
7 Whether that's in the bar or in the parking lot, it
8 doesn't matter.

9 As we all know, every action has consequences to
10 it. You can control your actions. Oftentimes, you
11 can't control the consequence. So you say, as the State
12 says, there are two separate incidents. It's ten
13 minutes. Ten minutes. Ten minutes. From the time they
14 start to attack these guys until the time this incident
15 happens is about ten minutes. Maybe eleven, maybe
16 twelve. A shorter time period it took for the State to
17 stand up and make a statement. That's how long this
18 entire thing was. Twelve whole minutes. That's a very
19 short period of time. A very short --

20 Why is that important? Because the mind set of the
21 people in that bar did not change. And how do we know
22 it did not change? Because they said when they saw
23 Mr. Moses it was like, oh, what do you want, I feel
24 threatened. Well, if it's over, what you feel
25 threatened about? What you feel threatened about if

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1 it's over? And you say, well, we had a prior event with
2 him, that you caused when you put your hands on him that
3 he did not even take a swing back. And we all know
4 this: he walked up there.

5 So they're saying there's this conspiracy to commit
6 this murder and this man is going with this intent to
7 kill people. He didn't have a gun. He didn't have a
8 knife. Mr. Moses didn't have anything in his hands when
9 he walked up to the car from the side of the building
10 that you can't see on the video. And when he got there,
11 we all know he did not hit anyone. Not one person.

12 Now, I ask you to use your common sense. If this
13 man was intending to go to these people and kill them,
14 where was his gun? Where was his gun? If this man had
15 plotted to come up there and shoot people, why would he
16 walk? Why would he walk up there? Why would he not, if
17 these are criminals, want to go back and kill people,
18 defendants attacking victims, why would he walk?
19 Wouldn't they just -- you see it on TV all the time --
20 drive up there, shoot from the car, drive up there, jump
21 out of the car together. Or if he chose to walk
22 himself, wouldn't he walk up there with his own gun and
23 started shooting? Because I ask you, when he walked up
24 there, did he know whether or not they had guns? Did he
25 even know who was up there when he got there?

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1 So they think this is the plan: I'm going to walk
2 up there and what I'm going to do is I'm going to trap
3 these people, even though I don't necessarily know who's
4 even up there. And the statement I'm going to use to
5 trap them and cause them to come chase me and where's
6 the guy who punched me? What sense does that make?

7 Now, let me tell you something about what the
8 solicitor did not tell you about self-defense and why
9 this ambush thing is so important, why this whole ambush
10 story is so important, why it's been pushed on you,
11 almost shoved down your throat, by the testimony of
12 Mr. James Bryant, Jr. Let me share a little secret with
13 you about the law. When you are not at home and you're
14 not a guest in somebody's house, guess what? Guess what
15 the law requires? Take a real good guess. You ain't
16 going to have to guess long because I'm going to tell
17 you. You've got a duty to retreat. You have the duty
18 to retreat. Think about that, which is what this man
19 did. He retreated.

20 When they started running after him, James Bryant,
21 all six four, 300-plus pounds -- because he testified he
22 was bigger than what he is today back then. He said
23 that, I'm bigger. And he's a big guy now. And you're
24 the only one running after Steven Moses. He had two
25 other guys right on his heels following him.

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1 As shown in Defendant's Exhibit Number 8, if I can
2 publish that to the jury for you again -- you'll have a
3 chance to look at it. And, again, this is the video,
4 make no mistake. That man took off running. He ran,
5 retreated from them. Now, if he did not retreat, he
6 wouldn't have met the law. I'm sure he wasn't thinking
7 about the law when he backed up. That's why this ambush
8 thing is so important, because now the story has to be,
9 well, see, what he did was he set us up. And let me
10 tell you, to listen to some grown folks sit up here and
11 tell you that somebody caused them to chase them is
12 absolutely ridiculous. That's childish. Which is what
13 I told you when I stood up the first day of trial. He
14 made me chase him. What? I was so scared of him that I
15 had to chase after him.

16 The same guy you were scared of inside the bar that
17 you pushed around? The same guy you -- as your wife had
18 grabbed ahold of you? That's the guy you're scared of?
19 The same guy you group-hugged after you ran him out the
20 bar? And so they're going to say to you, well, as the
21 prosecutor said, under the law you must not be at fault
22 for bringing on the difficulty. You must not be at
23 fault. Well, he went back.

24 You find the facts. You decide whether they left
25 and came back. You decide that. Or did he just drive

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1 around the parking lot? You decide the facts. Everyone
2 who hit that stand, who actually eventually told the
3 truth, eventually: I looked, I looked out the door, and
4 they left, they were gone, you know, they weren't in the
5 parking lot.

6 Well, what about on the side of the building? Oh,
7 what side you talking about? Inevitably we got to, oh,
8 the warehouse side, yeah. Yeah. The side of the
9 building that he came walking from around. How about
10 that side? Or the side of the building where the
11 Bohannon's car is? You'll see the picture. Is it in
12 that picture? Didn't Mr. Bohannon say that wasn't our
13 van, we drove our own car? Your common sense. Use your
14 common sense. How about that?

15 He wasn't at fault. He goes us there and says, not
16 swinging at anybody, not threatening anybody, not doing
17 anything to anybody. Where's the guy who hit him? They
18 don't know. They didn't give him a chance to find out.
19 He couldn't complete his sentence because he was such an
20 imposing figure, we had to converge on him. He trapped
21 us.

22 Did you go back in the bar? No. The same bar you
23 ran into that was open after the shooting? You could
24 have just gone in the bar if you thought this guy wanted
25 to fight. Did you get back? Did you get in the van?

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1 No. Did you even try to get in the van and pull off or
2 get in the van and wait to see if Mr. Taylor, as Mr.
3 Davis said, who did not get shot, and the passenger who
4 was behind him who sat in the van and minded his own
5 business and did not converge on Mr. Moses, who did not
6 get shot, did? Did you do that? No. But you're a
7 victim.

8 Yeah, you're a victim. You're a victim of your own
9 ego, and over consumption of alcohol, and propensity to
10 fight people because you don't believe in fights -- in
11 flights. Yes, that victimized you. And your lack of
12 taking responsibility for your own actions. It's common
13 sense.

14 And so we say how's it self-defense? It wasn't
15 their fault. The man didn't go up there, swing at
16 nobody, didn't have a gun, didn't utter fighter words,
17 didn't do nothing. You know, just asked for the guy who
18 hit him. You know, it ain't no pretty -- what happened
19 in that parking lot. But that's what happened.

20 Then they say, well, he wasn't in imminent domain
21 -- imminent danger, I'm sorry, because Mr. Bryant,
22 nobody else had a gun. Did Jason -- did Steven Moses
23 know that? Did Jason Gourdine know that? Even more so,
24 imminent danger: if somebody six four, 300 pounds,
25 starts running after you in the form of Mr. Bryant --

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1 and he ain't like six-four, sloppy fat. Solid guy --
2 with two people behind him? He's twice the size of both
3 them guys. Do you not think that's not imminent danger?

4 And the law doesn't require that he has the ability
5 to kill you. Who knows? I mean, he watched enough UFC.
6 Who knows what he does. Because that's the only sport.
7 And he sat up there and bragged about it. What a mind
8 set.

9 But he doesn't have to cause you death, but you
10 don't have to believe he's going to kill you. You've
11 just got to perceive and believe and have to be
12 reasonable that he's going to cause you some serious
13 injury. Some serious injury. And in this case, it
14 doesn't even have to be simply Mr. Moses, because if
15 Mr. Gourdine perceives that, then he has a right to act.
16 And, again, you will get the law that you was not told
17 by the solicitor. A person is entitled to use force,
18 even deadly force, if they believe it's necessary to
19 protect another person because --

20 Let's talk about this case. Steven Moses is being
21 charged with attempted murder. Everybody knows he
22 didn't have a gun. He still -- he hasn't shot one
23 person in this case. He has never touched any one of
24 these three individuals. But the State would say, well,
25 since Mr. Gourdine shot somebody and the two of them

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1 were together, then the hand of one is the hand of all.
2 But you've got to have a common scheme. You have to
3 have a common scheme. It's not just, he's going to
4 shoot somebody, I know him, I'm there, I'm guilty. And
5 what happens has to be a natural consequence of that
6 common scheme, a probable consequence of that common
7 scheme. It's not just I'm there, you're there, we're
8 there together, bam, I'm guilty if you do something.

9 But likewise, if I'm there and you're there, we
10 have a relationship with one another and you perceive,
11 I'm in imminent danger, then you can protect me. And as
12 Mr. Davis said, as horrible as it may sound, you can
13 protect until the threat has been deemed extinguished.

14 And let's talk about extinguished. And I'm not
15 going to be much longer, but this is very important
16 because we're talking about grown people not taking
17 responsibility for their actions to a point something
18 tragic happened in that parking lot.

19 Three shots. Three shots. Three shots. Three
20 shots, and that's it. Not that that's a good thing.
21 But that's all that took place. They didn't stand over
22 people unloading a gun on people. And one of those
23 shots, the very last one, occurred because Mr. Bohannon
24 took it upon himself to run up on a man with a gun. And
25 I can understand he's protecting his wife, in his mind

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1 set, under that circumstance. But does Jason Gourdine
2 know that under the circumstances?

3 See, it works both ways. When he's coming at him,
4 and he's up on him, grabbing at him -- he got shot,
5 what, one time. Where? In his arm. If someone, a
6 layperson, shoots another person in the arm -- use your
7 commonsense judgment. It's a perception there that he
8 intended to kill that person. And why is that important
9 for Mr. Moses? Because they have tied them to the hip
10 in this thing in saying they planned on doing this
11 although Mr. Moses, once again, walked up to these
12 people. Walked.

13 This is not about sympathy, who you like, who you
14 can identify with, what lawyer you like, anything like
15 that. This is about understanding that you must apply
16 the facts to the law that is going to be given to you.

17 Lastly, but not the least of things, as far as
18 these two gentlemen, either Mr. Moses defending himself,
19 who shot nobody, or Mr. Gourdine defending Mr. Moses, is
20 the belief, the belief, of imminent danger. The belief.
21 Just the belief of imminent danger in that parking lot.

22 But let me tell you what we do know about what came
23 from that stand. I want you to really think about what
24 you heard and what these people said, especially Mr.
25 Bryant. That when he, as depicted on Defendant's 8,

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1 moved towards Mr. Moses, his intent essentially was to
2 fire. That was his intent. He wasn't going to give him
3 a hug. He wasn't going to talk to him. He wasn't going
4 to do anything other than put his hands on this man in a
5 harmful fashion. And, again, we're talking about three
6 seconds. So if you're Mr. Gourdine sitting in that car
7 and you see these guys running at Mr. Moses, you've got
8 to make a decision. In three seconds -- now, the whole
9 thing was three seconds, so you're making a split-second
10 decision about what you're going to do.

11 Now, they're accusing and charged Mr. Moses with a
12 crime of being prudent about going back to talk to
13 people who have already shown you they're willing to try
14 to swing on you. They're accusing this man of trying to
15 kill somebody. Trying to kill someone. Now, I know the
16 State's going to roll out that video and let you see
17 that and not let you understand what come from these
18 pictures, when you look at that video, as to where Mr.
19 Moses ends up when this thing is over because, as they
20 say, he trapped them. But let me once again go back to
21 what I said about the law. He's got to retreat. He's
22 got to retreat. He has to retreat. It was a duty to
23 retreat. So if he stood there, did not move at all,
24 then what would the State's case be now when he didn't
25 retreat?

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1 As Mr. Davis said, everyone in this court comes
2 into this courtroom with a cloak of innocence. It is
3 the State's obligation to prove each and every element
4 of each and every offense that will be charged: that is
5 attempted murder, that is ABHAN, that is assault second
6 degree, that is assault third degree. Each and every
7 element.

8 In addition to that, you can determine the
9 credibility -- you determine the credibility of each and
10 every witness who testified in this case, including the
11 doctors because some of what the doctors insinuated in
12 their testimony conflicts with the EMT who got to the
13 scene who said some very important things. One, Ms.
14 Bohannan's injuries were superficial. Our hearts go out
15 to her, but her injuries were superficial, minor. He
16 said that, I didn't.

17 In addition, it was important that the EMT also
18 said -- because there was a lot of emphasis -- you had
19 to medivac Mr. Bryant to the hospital, he had to get in
20 a helicopter and they had to take him to the helicopter.
21 Well, the EMT said, I called the helicopter before I
22 even got to the scene because of traffic. The injuries
23 concerned them. But he called the helicopter before he
24 even got to the scene. It wasn't like he got there and,
25 oh, Mr. Bryant is super critical, call the helicopter.

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1 No. He called it, before he even got there, as a
2 medical protocol.

3 You decide these facts. And I'm pretty confident
4 that what I'm telling you are the facts in this case,
5 because they are the facts. They are the facts. And
6 why is that important? That, again, goes to show what
7 the injuries were and what the actual intent was,
8 because they're saying they intended to conspire to kill
9 them.

10 In addition, you heard the doctor begrudgingly read
11 the radiologist's report and admit from the report, you
12 know, he said sometimes you can't follow these
13 radiologist's reports on these x-rays. But the report
14 said it was bird-shot that was used. Those are the
15 facts in this case. Those are the facts in this case.
16 I ask you to consider those facts, think about them, not
17 let passion be your guide, not let anything other than
18 the law and these facts be your guide in this case.

19 Understand just because you were told that these
20 guys did something and it sounds good because it sounds
21 good -- and the prosecution is going to stand up -- it
22 sounds good, and they're going to talk after the video.
23 But it all comes back to there's that video and then
24 there's what was said on that stand. And what was said
25 on that stand was, we had every intention when we took

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1 off after this man to fight him, and we took off after
2 him. They converged on him. They admitted that.
3 That's not demonstrated verbally on the video. But they
4 have already admitted that and stuck their chest out
5 when they did it. And you wonder why this man
6 retreated?

7 Again, egos, alcohol, irresponsibility, and
8 violence, never a good mix. And I submit to you, just
9 like on July 28, 2013, whether or not Mr. Moses was not
10 being served because he was black, whether or not what
11 he said offended the sensibilities of Ms. Nava, whether
12 or not the same folks whose got video poker machines are
13 so law-abiding that they can't serve alcohol after 2:00
14 or right before 2:00, is of really no major consequence
15 in this case.

16 But what is of a major consequence of this case is
17 that these people started a fight. And the thing about
18 starting a fight, especially when you are six four, 300
19 pounds of a human being, is that especially when the
20 people you are fighting are so much smaller than you.
21 The thing about that, the reason, if nothing else, you
22 should never do it.

23 Besides being respectful to your fellow citizens,
24 which everybody deserves, the primary reason for
25 yourself as an individual is you never know, once you

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1 start that fight, how it's going to end. And when it
2 ends badly for you after you started it, after you
3 thumped your chest, after you ran after somebody, after
4 you tried to get your hands on them, after you were
5 getting ready to do whatever it is you were getting
6 ready to do and you found out in the midst of that
7 somebody brought a gun to the party and using it to
8 defend themselves, you started it but you sure didn't
9 end it.

10 And, unfortunately, on that day what was started,
11 unfortunately for Mr. Bryant and for Mr. Bohannan -- and
12 it is so very unfortunate for Ms. Bohannan, because I
13 truly believe, as Mr. Davis said, she was just in the
14 line of fire trying to hold on to a man that she was
15 never going to stop that day. But she made that
16 decision to do it. She made that decision to do it.
17 And that is so unfortunate.

18 But when that fight started, they lost total
19 control of how it was going to be ended. Because,
20 again, people have the right to defend themselves. And
21 you will hear the judge talk about that and talk about
22 how numbers, weight, size, age, all that stuff, factors
23 into self-defense and when you are defending another
24 person.

25 Don't forget it. And I'm getting ready to sit

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1 down. This is not about Mr. Moses shooting one person
2 on July 28th, 2013. This is about Mr. Gourdine shooting
3 people in that parking lot and Mr. Moses being out there
4 -- being -- ran to where Mr. Gourdine was when he
5 started shooting. Thank you.

6 THE COURT: Mr. Alfaro.

7 MR. ALFARO: Thank you, Your Honor.

8 [Off the record momentarily]
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CLOSING ARGUMENT

1
2 MR. ALFARO: Lucky to be alive. That's what Dr.
3 Sakran said about Stacy Bohannan. Lucky to be alive.
4 Lucky to be alive, despite the fact that these two men
5 caused her to be shot in the back of the head at point-
6 blank range with a 12-gauge shotgun. Now, I know it's
7 just bird-shot but that just bird-shot penetrated the
8 back of her head and, to use the words of Dr. Sakran,
9 invaded her skull and rested against her brain, causing
10 a significant potential loss of life. Lucky to be
11 alive. Not superficial.

12 You watched the video during the course of this
13 trial and you know that not only is Stacy Bohannan lucky
14 to be alive, her husband David Bohannan is lucky to be
15 alive. Lucky to be alive, despite the fact that these
16 two men decided that he needed to be shot at point-blank
17 range with that same 12-gauge shotgun, again, with just
18 bird-shot, as he was just trying simply to shut the car
19 door on the person and the people that were trying to
20 kill them. And as he tries to shut the door,
21 unsuccessfully, and falls to the ground, Jason Gourdine
22 stands over him and fires that shot into his arm.

23 Now, I get that it's just his arm, according to
24 them. But his arm, because of that 12-gauge shotgun,
25 looked like raw hamburger meat, blood pouring out. One

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1 of the waitresses said it looked like a zombie bite.
2 Just bird-shot. Lucky to be alive.

3 And James Bryant, who at various points in this
4 trial has been taken to six eight, six six, over 300
5 pounds -- if we had gone any longer, he might be seven
6 feet tall. James Bryant is lucky to be alive. James
7 Bryant is lucky to be alive, despite the fact that these
8 two men caused him to be shot at point-blank range with
9 that same 12-gauge shotgun, just bird-shot. To use the
10 words of the doctor who testified, his elbow was
11 destroyed. One of the other witnesses said it looked
12 like his arm had been put through a meat grinder. Lucky
13 to be alive.

14 Now let me play the video.

15 [Whereupon, video is played to the jury, with
16 comments from Mr. Alfaro]

17 [Whereupon, the video is not transcribed by the
18 court reporter]

19 MR. ALFARO: That's the defendants leaving the bar.
20 The first part of this the door is shut, the victims are
21 still inside.

22 [Whereupon, the video is played to the jury]

23 [Whereupon, the video is not transcribed by the
24 court reporter]

25 MR. ALFARO: And that's them leaving the parking

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1 lot. At that point --

2 [Whereupon video is paused]

3 MR. ALFARO: Cut the lights back on.

4 -- it's over. This incident inside the bar that
5 they want to keep talking about with Enrique and the
6 defendant, it's over. They're gone. The victims are
7 still inside the bar.

8 You watched the video and you heard the testimony.
9 They're not plotting on chasing anybody. These cowboy-
10 and-indian things Mr. Kearse talked about, they didn't
11 round up a posse and jump in a car and chase them down.
12 They stayed inside and kept hanging out with each other
13 and talking, forgetting about what happened to them. It
14 was over. These two [indicates], it wasn't. Because as
15 I said before, they didn't stay gone. They could have
16 easily stayed gone.

17 Let's look at the pictures that Mr. Kearse was
18 referencing. He showed you a picture, State's -- or
19 Defendant's Exhibit 10. Shows the outside after one of
20 the shootings. Mr. Moses: where did he run to when
21 James came towards him? Did he run to the side of the
22 bar that he -- Mr. Kearse talks about? No. Did he keep
23 running? No. He ran right to the end of that car,
24 because he knew what was coming.

25 Mr. Kearse said Mr. Gourdine only had three seconds

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1 to make a decision. We know that's not true from the
2 video. They had twelve minutes to make that decision.
3 When you watch that video, before James even starts
4 moving, that car door is open. Gourdine has got that
5 car door open with that shotgun at the ready. He knows.
6 He made a decision. His decision was made when they
7 came back. Mr. Kearse, they want to talk about -- and
8 Mr. Davis, they want to talk about a split-second
9 decision.

10 They want to talk about how this is their fault,
11 this is the victims' faults. It's not the victims'
12 fault. The victims, when they went out in that parking
13 lot, they were just getting ready to leave. They
14 weren't looking for another fight. They weren't looking
15 for anybody. They were looking to get in the car and
16 go.

17 Ladies and gentlemen, as I told you, they're
18 charged -- both charged with attempted murder.
19 Attempted murder is when you act with the intent to
20 kill, you try to kill another person with malice
21 aforethought, like I told you.

22 There's a reason why I didn't spend a lot of time
23 talking to you about assault and battery of a high and
24 aggravated nature or assault and battery second or
25 assault and battery third. Because that's not what this

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1 is. This is what this is. This is attempted murder.
2 Intent to kill. I know it's just bird-shot, but you
3 don't point a shotgun at somebody and pull the trigger
4 at point-blank range unless you're intending to kill
5 them. It doesn't matter if you point that shotgun at
6 them and you hit them in the middle of the chest, you
7 hit them in the middle of the face, or you just hit them
8 in the arm. You don't point a shotgun at somebody
9 unless you're intending to kill them. And by that same
10 token, you don't point a shotgun at somebody and pull
11 that trigger unless there is evil and malice in your
12 heart. And that's what this is.

13 Now, one other thing about attempted murder that I
14 forgot to tell you at the beginning -- and they didn't
15 tell you -- you don't even have to hit them with the
16 shotgun. If you point a gun at somebody with the intent
17 to kill them and you pull the trigger and something
18 happens, either you sneeze in the middle of it and you
19 miss or that gun jams, that's attempted murder. You
20 pointed a gun at them with the attempt to kill them and
21 you tried to kill them. Just because you missed, or in
22 this case you hit them and they didn't die, doesn't mean
23 that's not attempted murder. That's what this is.

24 Again, this is why this is attempted murder and not
25 any of the lessers. They left and they came back. Like

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1 I said, stay gone. That's all it would have taken. Not
2 only did they leave and come back, but they laid in
3 wait. And you'll have the video back there and you'll
4 be able to watch the video. In the video you see the
5 defendants pull into the parking lot, headlights pointed
6 at the building, and then pull back off to the side.
7 And then at that point, the victims come outside. And
8 that's when you see Steven Moses walking around the van
9 at the same time that Jason Gourdine is pulling up
10 behind the van. They laid in wait. He's absolutely
11 right. This is an ambush. Point-blank range. None of
12 this had to happen.

13 And that's why this is attempted murder and not
14 self-defense, because there is no doubt that the
15 defendants in this case were clearly at fault in
16 bringing on the difficulty. You heard the video, I got
17 your face, on the way out. The victims didn't chase
18 after him. They leave and come back. And then Steven
19 Moses walks up. Big deal was made about the fact that
20 Steven Moses walked up. Why would he just walk up? The
21 reason he just walked up is because he knew that his
22 partner had a shotgun and he knew what was coming next.
23 Where the little man at. That's him right there.
24 Wonders why people perceive that as a threat.

25 You want to talk about the earlier altercation

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1 that's separated by ten or twelve minutes? If they were
2 so scared, if they were in such fear of imminent peril
3 and imminent danger, why did they come back? Not only
4 why do you come back, again, why do you walk right up to
5 this six four, six six, six eight, whatever he is,
6 monster that they painted him, as if you're so scared of
7 him and you're so fearful of imminent danger? Because
8 they weren't. There's no actual danger of them
9 suffering any injury. They're the only ones with a gun.
10 The only people who were in danger of dying that night
11 were those three people [indicates], not those two
12 [indicates].

13 And, again, it's not imminent danger and then they
14 an rely on -- try to rely on the belief that they would
15 be in danger. But, again, it's the same thing. If
16 you're so scared, why do you come back and go right back
17 up there?

18 And the last prong: like I said, there's an easy
19 way to avoid this. Don't come back. They had already
20 retreated, to use Mr. Kearse's words. They were gone.

21 And, again, the State has to -- it's our burden to
22 disprove self-defense. And if you find that any one of
23 those elements are not met, that the evidence proves
24 that one of those things do not exist, then we've met
25 our burden. And in this case none of those elements

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1 apply to what the defendants did that night in this
2 case.

3 Mr. Davis kept talking about cooler heads. You
4 heard a lot about cooler heads. If cooler heads would
5 have prevailed, only the victims, obviously -- if the
6 victims would have had cooler heads, none of this would
7 have happened. No regard for anybody else's cooler
8 heads, just them because this is their thing because
9 they were at a bar.

10 Let's talk about cooler heads. Let's talk about
11 the victims. They're the only ones that showed cooler
12 heads that night. They didn't chase after the
13 defendants when they left the bar. They weren't talking
14 about getting the defendants. Again, to them, the
15 inside part was done. They were talked down. And
16 nobody is saying that they were instantly calm as soon
17 as they walked out.

18 Mr. Coffey calms down, Ms. Nava calming down, Ms.
19 Taylor calming down. But they calmed down and they
20 stayed inside. And you remember watching that video.
21 They're laughing, they're joking, they're hugging up on
22 each other. They're not angry. They're not yelling.
23 They're not screaming. They're not talking about going
24 to get them.

25 Now, what about the defendants' cool heads? A

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1 picture was painted earlier that Steven Moses, after he
2 was refused service, just calmly started walking out of
3 the bar and was going to leave. Big bad Ricky stopped
4 him. Remember that video. Steven Moses walks around
5 and when he sees Ricky ten, twelve feet away from him,
6 did he keep walking and turn around and go? No. He
7 stopped. He took the same stance, he took the same
8 pose, and they went back and forth with each other.
9 Again, Enrique threw a punch at him. But, again, that
10 punch was ten minutes before the shooting time.

11 The defendants, with their cooler heads, tried to
12 murder three people with a shotgun because they didn't
13 get a drink and because the bartender cussed at them.
14 That's what they tell you, that the actions of the
15 bartenders were so offensive because they told them to
16 get out of the bar, and dropped an F bomb on them. So
17 because the bartender cussed at them, somebody had to
18 get shot, apparently. That's not cooler heads. That's
19 a bruised ego resulting in three people almost dying.

20 Now, again, you heard medical testimony. And I
21 want to stress what I said earlier about the attempted
22 murder. You don't have to have any injury at all. Now,
23 on this case there are massive significant injuries to
24 all three people. But what did Dr. Sakran say about
25 Stacy? He said a gunshot wound to the head, by

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1 definition, is a life-threatening injury, A-level alert
2 trauma, lucky to be alive. That's the x-ray. That's
3 her x-ray. All those white dots, shotgun pellets.
4 Again, just bird-shot. Shotgun pellets. Another x-ray.
5 Same thing. All of that, shotgun pellets, because of
6 those two men.

7 This is actually Dr. Crookes, not Dr. Sakran,
8 talking about David: significant soft-tissue injury.
9 And that was mentioned during the testimony. Oh, it's
10 just soft-tissue injury; that's all it is, just soft-
11 tissue injury, not a big injury, not significant.
12 Nerves, muscles, skin, artery. Not significant. That's
13 a picture of the gaping hole left in his arm because of
14 these two men. Again, it's just bird-shot. It's just
15 soft-tissue injury. Those are pellets in the elbow, as
16 well.

17 Talking about James: again, last -- injury to his
18 elbow, his elbow was destroyed. Again, A-level alert
19 trauma patient. Not just flown in because the
20 helicopter was already there. That gray area that the
21 doctor pointed out in the elbow, that's where the elbow
22 is destroyed. Those are the pellets in his arm.

23 And you watched all three of them on the witness
24 stand. And part of your role in this case is to judge
25 the credibility of the witnesses, and part of that is

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1 watching what you observed on the stand. And in this
2 case part of what you saw on the stand shows you how
3 significant those injuries are.

4 And, again, it don't matter for attempted murder,
5 but it sure matters to malice. This is evil. This is
6 wicked. This is senseless, unnecessary, violent. Had
7 no reason at all. Could have killed three people that
8 are lucky to be alive.

9 Now, again, there were a lot of causes that were
10 argued about why this happened: the bartender was mean
11 and cussed at them; Lori Chenoweth pushed one of them,
12 trying to separate them. The only -- according to the
13 defense, the only conspiracy in this case is all the bar
14 regulars ganging up on the --

15 And this one, I want to talk about this one. This
16 happened because James Bryant, Ricky Moran, and David
17 Bohannon watched the UFC. Millions of people watch the
18 UFC. Millions more watch boxing. Millions more watch
19 wrestling. Because they watch those things, do they
20 deserve to be shot like animals in a parking lot of a
21 bar because somebody gets in an argument? It's
22 ridiculous. Almost as ridiculous as, he wasn't coming
23 back to cause problems, he wasn't brining on any
24 difficulties, he was just looking for his keys in the
25 bar.

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1 These two men are the actual cause of what happened
2 to those three victims that night: Jason Gourdine and
3 Steven Moses. Them leaving with their plan, their 12-
4 gauge shotgun, changing clothes, carrying this out,
5 pointing out their target as he backs up, stopping at
6 the back of the car, not running all the way out of the
7 picture, stopping at the back of the car and waiting for
8 those three people to get shot.

9 And what else is important about that, what you saw
10 on the video and what's in these pictures Mr. Kearse
11 showed you? You'll see it on the video. When those
12 shots rang out, Mr. Moses doesn't do this. He doesn't
13 stop and look around and see where the gunshots are
14 coming from, because he knows because his partner,
15 Gourdine, already had the door open, already had the
16 shotgun out, fired the first shot, racked the second
17 shot, fired the second shot, racked again, fired the
18 third time.

19 Part of that malice, as well: not only did he
20 shoot these people, but he shot directly into the wall,
21 in the window, of that bar. How many other people were
22 still in that bar? How evil is that, just fire, not
23 mattering who you hit?

24 They're both guilty of attempted murder, the
25 attempted murder of James Bryant, attempted murder of

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1 David Bohannon, attempted murder of Stacy Bohannon.
2 They're guilty of that, and they're guilty of criminal
3 conspiracy. Because on July 28th, 2013, they decided
4 they were going to put their plan into action and get
5 back at these people for something that happened ten
6 minutes earlier, that was over, that had ended when the
7 door was closed and they left and the victims stayed
8 where they were. They did this. Not the UFC, the
9 bartenders, the owner of the bar. These two men. Thank
10 you.

11 THE COURT: Ladies and gentlemen, we're going to
12 take a short comfort break before I instruct you on the
13 law applicable to this case.

14 Please remember all my admonitions. Leave your
15 notepads right where they are.

16 Please rise for the jury.

17 [Whereupon, the jury exits the courtroom at
18 4:25 p.m.]

19 THE COURT: Thank you. Be seated.

20 We'll take just a short five minutes.

21 [Off the record momentarily]

22 MR. KEARSE: Judge?

23 THE COURT: Yes?

24 MR. KEARSE: Could we take up a matter with Your
25 Honor?

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1 THE COURT: I'm sorry?

2 MR. KEARSE: Could we approach?

3 THE COURT: Sure.

4 [Whereupon, an off-the-record bench conference is
5 held]

6 THE COURT: Thank you. A few minutes.

7 [Whereupon, a recess is taken from 4:28 p.m. to
8 4:35 p.m.]

9 THE COURT: Mr. Davis, anything before we bring in
10 the jury?

11 MR. DAVIS: Nothing. Nothing, Your Honor.

12 THE COURT: Let's bring in the jury.

13 [Off the record momentarily]

14 THE COURT: All right. Let's go.

15 [Off the record momentarily]

16 THE BAILIFF: All rise for the jury.

17 [Whereupon, the jury enters the courtroom at
18 4:35 p.m.]

19 THE COURT: Thank you. Be seated.

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CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, we have reached the stage of the trial where I will instruct you on the law applicable to this case.

Ladies and gentlemen, I normally do not send back a copy of my charges, so please listen very carefully.

Ms. Washington, as the foreperson, you are responsible for completing the verdict. There are four verdict forms for each defendant, for a total of eight separate verdict forms.

I remind you that during this trial you and I have had certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case and I have the duty to rule on the admissibility of the evidence offered during this trial. You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record, you must disregard that testimony. You are to consider only the testimony that has been presented from the witness stand, as well as any exhibits that have been admitted in this case.

I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law of this case. It is your duty as jurors to accept the law and apply the law exactly as I state it to you now. If you already have any idea as to what the law is

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1 or what the law ought to be and it does not agree with what
2 I'm about to tell you, you must abandon your own ideas because
3 you are sworn to accept the law and apply the law exactly as I
4 state it to you now.

5 In every case tried in this Court before a jury,
6 the jury becomes the sole and exclusive judges of the facts.
7 A trial judge may never make any comment regarding the facts
8 in this case. You, the jury, are the sole judge of the facts
9 in this case. You are not to infer from anything that I have
10 said or done throughout the progress of this trial, or during
11 my charge on the law to you, that I have any opinion about the
12 facts in this case. The law does not allow me to have an
13 opinion about the facts in this case. This is solely for you
14 to determine. As jurors, it is your duty to determine the
15 effect, value, and weight of the evidence as it has been
16 presented during this trial.

17 The indictments charge each defendant with three
18 counts of attempted murder and one count of conspiracy. I
19 remind you the fact that a defendant is arrested, charged, and
20 indicted in this case is not evidence in this case and cannot
21 be considered by you as evidence of guilt in this case, nor
22 does it create any presumption or inference of guilt. The
23 indictment is simply the formal written instrument which
24 brings this case into court.

25 The indictments in this case allege different

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1 offenses against the defendants. The charges against Mr.
2 Moses are 2014-GS-08-1713, attempted murder; 2014-GS-08-1714,
3 attempted murder, 2014-GS-08-1715, attempted murder; 2014-GS-
4 08-1716, criminal conspiracy. The charges against Mr.
5 Gourdine are 2014-GS-08-1719, attempted murder; 2014-GS-08-
6 1720, attempted murder, 2014-GS-08-1721, attempted murder;
7 2014-GS-08-1722, criminal conspiracy.

8 Each indictment charges a separate and distinct
9 offense. You must decide each indictment separately on the
10 evidence and the law applicable to it, uninfluenced by your
11 decision as to any other indictment. The defendant may be
12 convicted or acquitted on any or all of the offenses charged.
13 You will be asked to write a separate verdict form for each
14 offense for each defendant.

15 I charge you there are two defendants in this case,
16 each of whom is charged with three counts of attempted murder
17 and one count of criminal conspiracy. The case of each
18 defendant, and the evidence and the law concerning that
19 defendant, should be considered separate and individually.
20 Your verdict does not have to be the same for each defendant.
21 The fact that you may find one defendant guilty or not guilty
22 should not control your verdict as to the other defendant.

23 Where more than one person is charged with a crime,
24 if the evidence warrants it you may convict one and acquit the
25 other, or you may acquit both, or you may convict both. It

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1 will depend on your view of the testimony and the evidence.
2 You must take each defendant and consider the evidence as to
3 that defendant and my instructions to you on the law. You
4 will then write a separate verdict of guilty or not guilty for
5 each individual defendant on each individual charge.

6 The defendant has pled not guilty to each
7 indictment. A person committing a criminal -- charged with
8 committing a criminal offense in South Carolina is never
9 required to prove himself innocent. I charge you, it is an
10 important rule of law that the defendant in a criminal trial,
11 no matter what the seriousness of the charge may be, will
12 always be presumed to be innocent of the crime for which the
13 indictment was issued unless guilt has been proven by evidence
14 satisfying you of that guilt beyond a reasonable doubt. The
15 presumption of innocence does not end when you begin your
16 deliberations, but it accompanies the defendant throughout the
17 trial until you reach a verdict of guilt based upon evidence
18 satisfying you of that guilt beyond a reasonable doubt. The
19 presumption of innocence is not just a mere legal theory. It
20 is not just a legal phrase. It is a substantial right to
21 which every defendant is entitled unless you, the jury, are
22 satisfied from the evidence of the defendant's guilt beyond a
23 reasonable doubt.

24 The State has a burden of proving the defendant
25 guilty beyond a reasonable doubt. Some of you may have served

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1 as jurors before in civil cases where you were told it was
2 only necessary to prove that a fact is more likely true than
3 not true, such as by a greater weight or preponderance of the
4 evidence. In criminal cases, the State's proof must be more
5 powerful than that. It must be beyond a reasonable doubt.
6 Proof beyond a reasonable doubt is proof that leaves you
7 firmly convinced of the defendant's guilt. There are very few
8 things in this world that we do know with absolute certainty,
9 and in criminal cases the law does not require proof that
10 overcomes every possible doubt. If based upon your
11 consideration of the evidence you are firmly convinced that
12 the defendant is guilty of the crime charged, you must find
13 the defendant guilty. If, on the other hand, you think
14 there's a real possibility that the defendant is not guilty,
15 you must give the defendant the benefit of the doubt and find
16 him not guilty.

17 There are two types of evidence that are generally
18 presented throughout a trial: direct evidence and
19 circumstantial evidence. Direct evidence directly proves the
20 existence of a fact and does not require a deduction.
21 Circumstantial evidence is proof of a chain of facts and
22 circumstances indicating the existence of a fact. Crimes may
23 be proven using circumstantial evidence or direct evidence.
24 The law makes absolutely no distinction between the weight or
25 value to be given either direct or circumstantial evidence.

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1 However, to the extent the State relies on circumstantial
2 evidence, all of the circumstances must be consistent with
3 each other and, when taken together, point conclusively to the
4 guilt of the accused beyond a reasonable doubt. If the
5 circumstances merely portray the defendant's behavior as
6 suspicious, the proof has failed. The State has the burden of
7 proving the defendant guilty beyond a reasonable doubt. This
8 burden rests with the State regardless of whether the State
9 relies on direct evidence, circumstantial evidence, or some
10 combination of the two.

11 Necessarily, you must determine the credibility of
12 the witnesses who have testified in this case. Credibility
13 simply means believability. It becomes your duty as jurors to
14 analyze the facts and determine which evidence convinces you
15 of its truth. In determining the believability of the
16 witnesses who have testified in this case, you may believe one
17 witness over several witnesses, or several witnesses over one
18 witness. You may believe a part of the testimony of a witness
19 and reject the remaining part of the testimony of that same
20 witness. You may believe the testimony of a witness in its
21 entirety or reject the testimony of a witness in its entirety.
22 You may consider whether any witness has exhibited to you any
23 interest, bias, prejudice, or other motive in this case and
24 you may also consider the appearance and manner of a witness
25 while that witness was on the witness stand.

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1 In order to establish criminal liability, criminal
2 intent is required. For example, the mental state required to
3 be proven by the State for a particular crime might be
4 purpose, intent, knowledge, recklessness, or criminal
5 negligence. Criminal intent must be proven by the State
6 beyond a reasonable doubt. Criminal intent is always a matter
7 that must be determined by the jury from the circumstances
8 surrounding the situation. There is no way to prove intent to
9 a mathematical certainty. The law says that criminal intent
10 may be inferred from the circumstances shown to have existed.
11 This is how you make a determination of whether or not the
12 element of -- whether or not the element requiring intent was
13 present. It is not necessary to establish intent by direct
14 and positive evidence, but intent may be established by
15 inference in the same way as any other facts: by taking into
16 consideration the acts of the parties and all the facts and
17 circumstances of the case.

18 Criminal intent is a mental state. It is a
19 conscious wrongdoing. It is up to you to determine what the
20 defendant intended to do, based upon the circumstances shown
21 to have existed. Criminal intent can arise from action or a
22 failure to act. It may arise from negligence, recklessness,
23 or an indifference to duty, or to consequences that is
24 considered by the law to be the equivalent of criminal intent.

25 If the defendant, with malice aforethought,

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1 attempts to kill another person but by mistake injures a
2 different person, the defendant still has the intent to kill.
3 The intent to kill is merely transferred from the original
4 person the defendant attempted to kill to the actual person or
5 the injured. The defendant would be guilty of assault and
6 battery with intent to kill just as if the attempt had
7 resulted in the death or injury of the person the defendant
8 attempted to kill.

9 If a crime is committed by two or more people who
10 are acting together in committing a crime, the act of one is
11 the act of all. A person who joins with another to commit an
12 unlawful act is criminally responsible for everything done by
13 the other person which happens as a natural or probable
14 consequence of the acts done in carrying out the common plan
15 and purpose. If two or more people are together, acting
16 together, assisting each other in committing the offense, the
17 act of one is the act of all or, as it is sometimes said, the
18 hand of one is the hand of all.

19 Prior knowledge that a crime is going to be
20 committed, without more, is not sufficient to make a person
21 guilty of that crime. Mere knowledge that another person is
22 going to commit a crime, even if the defendant is present when
23 the crime is committed, is not sufficient to convict the
24 defendant as a principal. Guilt as a principal is shown by
25 actual or constructive presence at the scene as the result of

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1 a prior arrangement. Therefore, a finding of a prior arranged
2 plan or common scheme is necessary for the finding of guilt as
3 a principal. The State must prove beyond a reasonable doubt,
4 by competent evidence, the theory of the hand of one is the
5 hand of all. A principal in a crime is one who either
6 actually commits the crime or who is present aiding, abetting,
7 or assisting in committing the crime. When a person does the
8 act in the presence of and with the assistance of another, the
9 act is done by both. Where two or more acting with a common
10 plan or intent are present at the commission of a crime, it
11 does not matter who actually commits the crime. All are
12 guilty. The hand of one is the hand of all.

13 Present at the commission of a crime means to be
14 sufficiently near to aid, abet, and assist in the commission
15 of a crime. However, mere presence at the scene of a crime is
16 not sufficient to convict one as a principal on the theory of
17 aiding and abetting. Intent is also a necessary element, for
18 there must have been a common design or intent to commit the
19 crime and the crime must have been committed pursuant thereto
20 with the person aiding and abetting by some overt act.

21 Intent means intending the result which actually
22 occurs, not accidentally or involuntarily. Intent may be
23 shown by acts and conduct of the defendant and other
24 circumstances from which you may naturally and reasonably
25 infer intent. The State must prove these elements beyond a

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1 reasonable doubt.

2 Defendant Moses and Defendant Gourdine are charged
3 with the crime of attempted murder. In order to prove this
4 crime, the State must prove the defendant attempted to kill
5 another person with malice aforethought, either express or
6 implied. Malice is hatred, ill will, or hostility towards
7 another person. It is the intentional doing of a wrongful act
8 without just cause or excuse and with an intent to inflict an
9 injury or under circumstances that the law will infer an evil
10 intent. Malice aforethought does not require that malice
11 exists for any particular time before the act is committed,
12 but malice must exist in the mind of the defendant just before
13 and at the time the act is committed. Therefore, there must
14 be a combination of the previous evil intent and the act.

15 Malice aforethought may be express or inferred.
16 These terms express or inferred do not mean different types of
17 malice but merely the manner in which malice may be shown.
18 That is either by direct evidence or by inference from the
19 facts and circumstances which are proved. Express malice is
20 shown when a person speaks words which express hatred or ill
21 will for another or when the person prepares beforehand to do
22 the act which was later accomplished. Malice may be inferred
23 from conduct showing a total disregard for human life. A
24 specific intent to kill is not an element of attempted murder
25 but there must be a general intent to commit serious bodily

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1 injury. Intent means intending the result which actually
2 occurs, not accidentally or involuntarily. Intent may be
3 shown by acts and conduct of the defendants and other
4 circumstances from which you may naturally and reasonably
5 infer intent. Evidence of the character of the act, the
6 character of the instrument used, the manner in which it was
7 used, should be considered when determining the intent. They
8 also -- be inferred when it's demonstrated the defendant
9 voluntarily and willfully attempted to commit an act, the
10 natural tendency which is to destroy another's life.

11 If you find that the State has not proven that the
12 defendant is guilty of attempted murder, you may then
13 determine whether the State has proved that the defendant is
14 guilty of assault and battery of a high and aggravated nature.
15 Assault and battery of a high and aggravated nature is an
16 unlawful act of violent injury to the person of another,
17 accompanied by the circumstances of aggravation. An assault
18 occurs when a person unlawfully attempts or offers to commit a
19 violent injury upon another person and had the present ability
20 to complete the attempted injury. An assault is the
21 intentional creation of a reasonable fear of immediate bodily
22 harm. It is not necessary that the attempted injury or harm
23 actually take place. For example, if I walk up to you and
24 when we are within arm's reach I draw back to hit you, that is
25 an assault. A battery is the unlawful touching of another

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1 person by a person who has committed the assault. An unlawful
2 touching can be caused by a part of the accused's body or any
3 object that the accused puts in motion. A battery is the
4 completion of the assault by using or applying force to
5 another person, however slight, in a rude and angry manner,
6 without legal justification for doing so. Using my earlier
7 example, if I carry through the assault by hitting you, then
8 that is a battery.

9 The State must also prove the circumstances --
10 circumstance of aggravation. Circumstances of aggravation
11 include the use of a deadly weapon, the intent to commit a
12 felony, the infliction of serious bodily injury, a great
13 disparity between the ages or physical conditions, or the
14 difference in the genders of the parties. These are only
15 examples of circumstances of aggravation.

16 If you find that the State has not proven that the
17 defendant is guilty of assault and battery of a high and
18 aggravated nature, you may then determine whether the State
19 has proved that the defendant is guilty of assault and battery
20 second degree. A person commits the offense of assault and
21 battery in the second degree if the person unlawfully injures
22 another person, or offers or attempts to injure another
23 person, with the present ability to do so and either moderate
24 bodily injury to another person results or moderate bodily
25 injury to another person could have resulted.

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1 Moderate bodily injury means physical injury
2 requiring treatment to an organ system of the body other than
3 the skin, muscles, and connective tissues of the body, except
4 when there is penetration of the skin, muscles, and connective
5 tissues that require surgical repair of a complex nature or
6 when treatment of the injuries require the use of regional or
7 general anesthesia.

8 If you find that the State has not proven that the
9 defendant is guilty of assault and battery second degree, you
10 may then determine whether the State has proved that the
11 defendant is guilty of assault and battery third degree. A
12 person commits the offense of assault and battery in the third
13 degree if the person unlawfully injures another person or
14 offers or attempts to injure another person with the present
15 ability to do so.

16 Each defendant is charged with one count of
17 conspiracy. The State must prove beyond a reasonable doubt
18 that the defendant combined with one or more persons for the
19 purpose of committing an unlawful act or of committing a
20 lawful act by unlawful means. There must be a mutual
21 understanding, agreement, or common intention, and plan. Mere
22 passing knowledge of, or consent to the criminal conduct of
23 another, is not enough to make a person a conspirator. There
24 must be guilty knowledge and participation.

25 Similarly, the mere fact that the defendant may

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1 have associated with another person or met with another person
2 and discussed common plan and interest does not necessarily
3 establish proof of the existence of conspiracy or that the
4 defendant was involved in a conspiracy. On the other hand, it
5 is not necessary that the agreement be a formal one, that it
6 be in writing, that the persons hold a meeting and expressly
7 state the terms of the plan or that the agreement be stated in
8 words between them. The agreement of a criminal conspiracy
9 may come into being through an implied mutual understanding.
10 The words -- the willful intentional knowing adoption by two
11 or more persons of a common plan is sufficient. No overt acts
12 need to be shown to establish a conspiracy.

13 A conspiracy may be shown by circumstantial
14 evidence and the conduct of the parties. In order to convict
15 the defendant of a conspiracy, the State must prove beyond a
16 reasonable doubt not only that the defendant knew of the
17 unlawful conduct but that the defendant agreed to combine with
18 the other person for the purpose of accomplishing the lawful
19 conduct.

20 Each defendant has raised the defense of self-
21 defense. Self-defense is a complete defense and if it is
22 established, you must find the defendant not guilty. The
23 State has the burden of disproving self-defense by proof
24 beyond a reasonable doubt. If you have a reasonable doubt of
25 the defendant's guilt after considering all of the evidence,

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1 including the evidence of self-defense, then you must find the
2 defendant not guilty. On the other hand, if you have no
3 reasonable doubt of the defendant's guilt after considering
4 all of the evidence, including the evidence of self-defense,
5 then you must find the defendant guilty.

6 The following elements are required to establish
7 self-defense. First, the defendant must be without fault in
8 bringing on the difficulty. If the defendant's conduct was
9 the type which was reasonably calculated to and did provoke a
10 deadly assault, the defendant would be at fault in bringing on
11 the difficulty and would not be entitled to an acquittal based
12 on self-defense. Self-defense is not available to a person
13 who uses language which is so contemptuous that a reasonable
14 person would expect it to bring on a physical encounter and
15 which did actually contribute to the physical encounter.

16 If the defendant voluntarily participated in mutual
17 combat for purposes other than protection, the injuries of the
18 victim would not be self-defense. This is true even if during
19 the combat the defendant feared death or serious bodily
20 injury. However, if before the injury is committed the
21 defendant withdraws and tried in good faith to avoid further
22 conflict in either by word or act makes that fact known to the
23 victim, he would be without fault in bringing on the
24 difficulty. For mutual conduct -- combat, there must be a
25 mutual intent and a willingness to fight. This intent may be

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1 shown by the acts and conduct of the parties and the
2 circumstances surrounding the conduct. In addition, it must
3 be shown that both parties were armed with a deadly weapon.

4 The second element of self-defense is that the
5 defendant was actually in imminent danger of death or serious
6 bodily injury or that the defendant actually believed he was
7 in imminent danger of death or serious bodily injury. If the
8 defendant was actually in imminent danger, it must be shown
9 that the circumstances would have warranted a person of
10 ordinary firmness and courage strikes a fatal blow to prevent
11 death or serious bodily injury. If the defendant believed he
12 was in imminent danger of death or serious bodily injury, it
13 must be shown that a reasonably prudent person of ordinary
14 firmness and courage would have had that same belief. In
15 deciding whether the defendant actually was or believed he was
16 in imminent danger of death or serious bodily injury, you
17 should consider all the facts and circumstances surrounding
18 the crime, including the physical conditions and
19 characteristics of the defendant and the victim. The
20 defendant does not have to show that he was actually in
21 danger. It is enough if the defendant believed he was in
22 imminent danger and a reasonably prudent person of ordinary
23 firmness and courage would have had the same belief. The
24 defendant has the right to act on appearances even though the
25 defendant's belief may have been mistaken. It is up to you,

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1 the jury, to decide whether the defendant's fear of immediate
2 danger or death or serious bodily injury was reasonable and
3 would have been felt by an ordinary person in the same
4 situation.

5 Evidence of prior difficulties between the
6 defendant and the victim may be considered in deciding whether
7 a threat existed, whether the defendant had a reason to
8 believe a threat existed, and how serious that threat was.
9 The relative sizes, ages and weights of the defendant and the
10 victim may be considered in deciding the apparent and actual
11 need for force in self-defense and the amount of force needed.
12 Threats made by the victim may be considered in determining
13 whether the defendant actually was or believed he was in
14 imminent danger. The intoxication of the victim may be
15 considered in deciding whether the defendant's fear of death
16 or bodily harm was reasonable.

17 The final element of self-defense is that the
18 defendant had no other probable way to avoid the danger of
19 death or serious bodily injury than to act as the defendant
20 did in this particular instance. The defendant has no duty to
21 retreat if by doing so the danger of being killed or suffering
22 serious bodily injury would increase. A person cannot be
23 required to make an exact calculation as to the degree or
24 amount of force which may be needed to avoid death or serious
25 bodily harm. Therefore, in self-defense the defendant has the

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1 right to use the force needed to avoid death or serious bodily
2 harm. The force used in self-defense does not have to be
3 limited to degree or amount of force used by the victim. The
4 defendant has the right to use so much force as appeared to be
5 necessary for complete self-protection in which a person of
6 ordinary reason and firmness would have believed to have been
7 needed to prevent death or serious bodily harm. If the
8 defendant is justified in defending himself or others, and in
9 firing the first shot, then the defendant is also justified
10 and continues to shoot until it is apparent that the danger of
11 death or serious bodily injury has completely ended. Under
12 the law of self-defense, the defendant may take another's life
13 or injure that individual in the defense of others. The right
14 to intervene to protect another person is subject to the same
15 rights and limitations as the right of self-defense. The
16 defendant may injure another person who assaults a friend,
17 relative, or bystander if that friend, relative, or bystander
18 would have had the right of self-defense. To show that the
19 person being defended had the right of self-defense, it first
20 must be shown that the person being defended and the defendant
21 were both without fault in bringing on the difficulty. If the
22 conduct of the person defended or the defendant was the type
23 that was reasonably calculated and did provoke a deadly
24 assault, the person would be at fault in bringing on the
25 difficulty and would not have had the right of self-defense.

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1 Therefore, the defendant would not have the right to use
2 deadly force in defending that person. The defense of another
3 person is excusable if the defendant has reasonable grounds to
4 believe, and in good faith did believe, that the person being
5 defended was in imminent danger of death or serious bodily
6 harm from the victim. In deciding whether the person defended
7 actually was or that the defendant actually believed that the
8 person was in imminent danger of death or serious bodily
9 injury, you should consider all the facts and circumstances
10 surrounding the crime, including the physical conditions and
11 characteristics of the party.

12 I instruct you and emphasize the fact that
13 Defendant Moses and Defendant Gourdine did not testify is not
14 a factor to be considered by you in any way in your
15 deliberation and in your consideration on the guilt or the
16 innocence of the defendant. It must not be considered by you
17 in any manner whatsoever. A defendant has a constitutional
18 right to remain silent and the assertion of this right must
19 not be considered by you in your deliberations. I repeat,
20 under your oath you are to draw no conclusion whatsoever from
21 the fact that the defendant in this case did not testify. The
22 fact that the defendant did not testify should not even be
23 discussed in the jury room. The burden of proof is on the
24 State. Each defendant is not -- a defendant is never required
25 to prove his innocence. The burden of proof remains on the

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1 State to prove guilt beyond a reasonable doubt.

2 Ladies and gentlemen, I'm now going to go over the
3 verdict forms with you. Please understand that there is
4 absolutely no significance in the way that I read these
5 verdict forms. It's simply something has to go on the paper
6 first. I put these verdict forms on the screen.

7 And thank you for putting them up there.

8 So this is the verdict form, each -- as I indicated
9 to you, no significance in the way that we're going to go over
10 the verdict form. Simply I have to put something on the paper
11 first.

12 In the Court of General Sessions for the Ninth
13 Judicial Circuit, case number 2014-GS-08-1713, State of South
14 Carolina versus Steven Dwayne Moses, we the jury find the
15 Defendant Steven Dwayne Moses not guilty, or, we the jury find
16 the Defendant Steven Dwayne Moses guilty, of attempted murder
17 of James Bryant, or, we the jury find the Defendant Steven
18 Dwayne Moses guilty of assault and battery of a high and
19 aggravated nature of James Bryant. We the jury find the
20 Defendant Steven Dwayne Moses guilty of assault and battery
21 second degree of James Bryant, or, we the jury find the
22 Defendant Steven Dwayne Moses guilty of assault and battery
23 third degree of James Bryant.

24 Madam Foreperson, once your jury, all twelve of
25 you, have reached a unanimous verdict, meaning all twelve of

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1 you agree on this verdict form, you will sign this verdict
2 form and date it.

3 In the Court of General Sessions for the Ninth
4 Judicial Circuit, case number 2014-GS-08-1714, State of South
5 Carolina versus Steven Dwayne Moses, we the jury find the
6 Defendant Steven Dwayne Moses not guilty, or, we the jury find
7 the Defendant Steven Dwayne Moses guilty of attempted murder
8 of Stacy Bohannon, or, we the jury find the Defendant Steven
9 Dwayne Moses guilty of assault and battery of a high and
10 aggravated nature of Stacy Bohannon, or, we the jury find the
11 Defendant Steven Dwayne Moses guilty of assault and battery
12 second degree of Stacy Bohannon, or, we the jury find the
13 Defendant Steven Dwayne Moses guilty of assault and battery
14 third degree of Stacy Bohannon.

15 Once again, once you have reached a unanimous
16 decision, meaning all twelve of you agree on this verdict
17 form, you will sign the verdict form and date it, indicating
18 that you have reached a unanimous decision.

19 In the Court of General Sessions, case number 2014-
20 GS-08-1715, State of South Carolina versus Steven Dwayne
21 Moses, we the jury find the Defendant Steven Dwayne Moses not
22 guilty, or, we the jury find the Defendant Steven Dwayne Moses
23 guilty of attempted murder of David Bohannon, or, we the jury
24 find the Defendant Steven Dwayne Moses guilty of assault and
25 battery of a high and aggravated nature of David Bohannon, or,

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1 we the jury find the Defendant Steven Dwayne Moses guilty of
2 assault and battery second degree of David Bohannan, or, we
3 the jury find the Defendant Steven Dwayne Moses guilty of
4 assault and battery third degree of David Bohannan.

5 Once again, once you have reached a unanimous
6 decision on this verdict form, you will sign the verdict form
7 and date it.

8 In the Court of General Sessions, case number 2014-
9 GS-08-1716, State of South Carolina versus Steven Dwayne
10 Moses, we the jury find the Defendant Steven Dwayne Moses not
11 guilty, or, we the jury find the Defendant Steven Dwayne Moses
12 guilty of criminal conspiracy.

13 Once again, once you have reached a unanimous
14 decision on this verdict form, you will sign it and date it.

15 Ladies and gentlemen, case number 2014-GS-08-1719,
16 State of South Carolina versus Jason Morris Gourdine, we the
17 jury find the Defendant Jason Morris Gourdine not guilty, or,
18 we the jury find the Defendant Jason Morris Gourdine guilty of
19 attempted murder of James Bryant, or, we the jury find the
20 Defendant Jason Morris Gourdine guilty of assault and battery
21 of a high and aggravated nature of James Bryant, or, we the
22 jury find the Defendant Jason Morris Gourdine guilty of
23 assault and battery second degree of James Bryant, or, we the
24 jury find the Defendant Jason Morris Gourdine guilty of
25 assault and battery third degree of James Bryant.

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1 Once you have reached a unanimous decision on this
2 verdict form, you will sign it and date it.

3 In the Court of General Sessions, case number 2014-
4 GS-08-1720, we the jury find the Defendant Jason Morris
5 Gourdine not guilty, or, we the jury find the Defendant Jason
6 Morris Gourdine guilty of attempted murder of Stacy Bohannan,
7 or, we the jury find the Defendant Jason Morris Gourdine
8 guilty of assault and battery of a high and aggravated nature
9 of Stacy Bohannan, or, we the jury find the Defendant Jason
10 Morris Gourdine guilty of assault and battery of a high and --
11 excuse me -- assault and battery second degree of Stacy
12 Bohannan, or, we the jury find the Defendant Jason Morris
13 Gourdine guilty of assault and battery third degree of Stacy
14 Bohannan.

15 Once you have reached a unanimous decision on this
16 verdict form, you will sign it and date it.

17 In the Court of General Sessions for the Ninth
18 Judicial Circuit, case number 2014-GS-08-1721, State of South
19 Carolina versus Jason Morris Gourdine, we the jury find the
20 Defendant Jason Morris Gourdine not guilty, or, we the jury
21 find the Defendant Jason Morris Gourdine guilty of attempted
22 murder of David Bohannan, or, we the jury find the Defendant
23 Jason Morris Gourdine guilty of assault and battery of a high
24 and aggravated nature of David Bohannan, or, we the jury find
25 the Defendant Jason Morris Gourdine guilty of assault and

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1 battery of a high and aggravated -- excuse me -- second degree
2 of David Bohannon, or, we the jury find the Defendant Jason
3 Morris Gourdine guilty of assault and battery third degree of
4 David Bohannon.

5 Once you have reached a unanimous decision on this
6 verdict form, you will sign this verdict form and date it.

7 In the Court of General Sessions, case number 2014-
8 GS-08-1722, State of South Carolina versus Jason Morris
9 Gourdine, we the jury find the Defendant Jason Morris Gourdine
10 not guilty, or, we the jury find the Defendant Jason Morris
11 Gourdine guilty of criminal conspiracy.

12 Once you have reached a unanimous decision on that
13 verdict, you will sign that verdict form and date it,
14 indicating you have reached a unanimous decision.

15 Ladies and gentlemen, once again, each decision on
16 each indictment must be unanimous, meaning all twelve of you
17 must agree to that decision.

18 Ladies and gentlemen, this is the last time that
19 I'm going to say this to you. Do not begin your
20 deliberations. Do not discuss this case amongst yourselves.

21 We'll be gathering the verdict form and the
22 exhibits to go back to you and once you may begin your
23 deliberations, the bailiff will alert you that you may do so.

24 To my two alternates, you have completed your
25 service to this case at this time, but I'm going to keep you

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1 in a separate room until the first twelve have indicated that
2 they are able to continue their deliberations once they are
3 given the verdict forms and the exhibits. And so, again, you
4 must follow my admonitions.

5 Please rise for the jury.

6 [Whereupon, the jury exits the courtroom at
7 5:18 p.m.]

8 THE COURT: Thank you. Be seated.

9 Any objection, correction, addition to the charge
10 as read? From the State?

11 MR. ALFARO: Your Honor, the only thing that I
12 noticed: on the transferred intent charge, there was a
13 mention of assault and battery with intent to kill. I
14 don't have a copy of the charge in front of me so I
15 didn't have anything -- I heard that reference. I don't
16 know if it's supposed to say that or if it's supposed to
17 say attempted murder.

18 THE COURT: All right. So what do you want me to
19 do?

20 MR. ALFARO: First of all, I don't know if it's
21 actually supposed to be attempted murder or --

22 THE COURT: It says -- I read it attempted to kill.

23 MR. ALFARO: I thought I heard at one point that it
24 was assault and battery. If it wasn't murder, it would
25 be assault and battery with intent to kill or something

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1 to that effect.

2 THE COURT: In the death or an injury of the person
3 the defendant attempted to kill.

4 MR. ALFARO: Well, I must have misheard that. I
5 apologize.

6 THE COURT: Any other corrections?

7 MR. ALFARO: No, Your Honor.

8 MR. DAVIS: No exceptions, Your Honor.

9 MR. KEARSE: I have two, Your Honor.

10 THE COURT: All right.

11 MR. KEARSE: When the self-defense -- both of them
12 deal with the self-defense charge. On the self-defense
13 charge, I did not hear the Court state that generally a
14 person has a duty to retreat, he has the right to use
15 deadly force in self-defense only if he has no other
16 probable means of avoiding the danger of losing his own
17 life or sustaining serious bodily injury than to act as
18 he did in the particular instance. I heard the Court
19 say he -- a person does not have a duty to retreat if it
20 was not actually or apparently possible to retreat
21 without danger of being killed or suffering serious
22 bodily injury.

23 I would just ask that the Court include the
24 statement generally a person has a duty to retreat,
25 specifically if he's not on his own premises or a guest.

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1 on the premises of another with whom he has permission
2 to be on.

3 And then, secondly, I thought I heard the Court in
4 the self-defense charge say that the victim must be
5 armed with a deadly weapon.

6 THE COURT: In mutual combat? In the mutual --

7 MR. KEARSE: I don't -- I don't know if it was
8 specifically in your mutual combat. I thought it --

9 THE COURT: That's specifically where it is, and
10 that's the law in the state of South Carolina in order
11 to claim mutual combat.

12 MR. KEARSE: Okay. All right.

13 But then if that's the case, if that's how the
14 Court read it, I accept that.

15 But as to the statement about retreat, I would ask
16 that the Court include that.

17 THE COURT: I included it in the way that the law
18 requires me to include it.

19 But it's noted for the record.

20 MR. KEARSE: Your Honor, I would -- just for
21 purposes of the record, especially since the Defendant
22 Moses' closing included specific recitation of the law
23 that one of the explanations about the prosecution
24 theory on ambush is that they have to allege ambush
25 because the defendant does -- which he does have a duty

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1 to retreat. I would just ask that the Court provide
2 that small, slight statement, generally that is the
3 rule, a person has a duty to retreat if he's not on his
4 own premises or just on someone else -- or even if he's
5 just not on his own premises, to this particular charge.

6 THE COURT: I charged the law as I read it.

7 Again, it's noted, all right, for any purposes
8 other than today.

9 MR. DAVIS: Thank you, Your Honor.

10 THE COURT: Thank you.

11 Thank you for your assistance, Mr. McNeely, getting
12 those verdict forms.

13 Please make sure that the exhibits are ready.

14 [Whereupon, exhibits go out to the jury at
15 5:18 p.m.]

16 [Whereupon, a recess is taken from 5:18 p.m. to
17 5:51 p.m.]

18 [Whereupon, Court's Exhibit Number 5 is marked by
19 the court reporter]

20 [Whereupon, Court's Exhibit Number 6 is marked by
21 the court reporter]

22 THE COURT: I received two notes during the last
23 period that we've been off the bench. The first note,
24 which will be Court's 5, indicated whether or not they
25 should complete their verdict form in ink, and so I

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1 responded appropriately to that.

2 And then the next, which will be Court's 6: can we
3 see the video again, and they would like to see the
4 entire exhibit.

5 Are you prepared?

6 MR. MCNEELY: We can, Your Honor. I would advise
7 you that there is an hour and forty minutes of video.
8 There are five different angles separated into two
9 sections.

10 THE COURT: Then I will inquire of the foreperson
11 that they indicated they want to see the entire exhibit.
12 All right? And so we'll just go from there. All right.
13 Thank you.

14 [Whereupon, the jury enters the courtroom at
15 5:52 p.m.]

16 THE COURT: Thank you. Please be seated.

17 Madam Foreperson, you had indicated that the jury
18 wishes to see the video --

19 THE FOREPERSON: Yes.

20 THE COURT: -- and the entire video.

21 THE FOREPERSON: Yes.

22 THE COURT: The entire video as an exhibit is an
23 hour and forty minutes long, so I need to know more
24 specifically. We're happy to play that, but I would
25 like to know if that's what you want.

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1 So if y'all can just talk, or if you need your
2 notepads back and you can --

3 [Off the record momentarily]

4 THE COURT: Why don't we do this. Why don't y'all
5 go back and indicate if there's something specific that
6 you need and we'll try to accomplish that, since y'all
7 didn't bring your notepads.

8 Please rise for the jury.

9 [Whereupon, the jury exits the courtroom at
10 5:53 p.m.]

11 THE COURT: Thank you. Please be seated. We'll
12 just be at ease.

13 Mr. Davis, is there something you need to address
14 with the Court?

15 MR. DAVIS: No. I think you took care of it, in
16 essence, when you asked them to remove themselves. I
17 was very conscientious about them trying to make a
18 decision where you didn't have open participation here
19 in court, when deliberation is supposed to be private.

20 THE COURT: All right. Thank you.

21 And at this time, Mr. Gourdine will also be held in
22 custody awaiting the verdict.

23 Mr. Gourdine, this is in no way any comment or
24 reflection on your behavior. You have been most
25 appropriate throughout the presentation. It's just my

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1 policy we have reached the stage of the trial where I
2 will take you into custody awaiting the verdict. Thank
3 you.

4 [Whereupon, a recess is taken from 5:54 to
5 6:00 p.m.]

6 THE COURT: I have date and time and camera. 7-A,
7 1:51 through 1:59, the inside corner. 6-A, 1:54 to
8 2:04, inside. 2-B, 2:03 to 2:11, outside. 6-B, 2:08 to
9 2:11, outside. And the volume up, please.

10 MR. MCNEELY: 6-B is not outside.

11 MR. KEARSE: -- 6-B?

12 MR. MCNEELY: 6-B is inside.

13 MR. DAVIS: Give them what they ask for.

14 THE COURT: Okay.

15 MR. MCNEELY: That's fine. 2-B is outside.
16 They've got the whole outside on there. Or the whole
17 second half of the outside on there.

18 THE COURT: So I'm going to hand -- this will be
19 Court's Exhibit 7.

20 [Whereupon, Court's Exhibit Number 7 is marked by
21 the court reporter]

22 THE COURT: I'm going to hand this to you to play.

23 MR. MCNEELY: Okay.

24 THE COURT: All right?

25 MR. MCNEELY: In this order?

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1 THE COURT: In whatever order is --

2 [Off the record momentarily]

3 THE COURT: Are we ready? Ready?

4 MR. MCNEELY: We're ready.

5 THE BAILIFF: Jury coming in.

6 [Whereupon, the jury enters the courtroom at
7 6:05 p.m.]

8 THE COURT: Thank you. Please be seated.

9 Ladies and gentlemen, we received your note. We
10 will play the video as listed on your note.

11 Mr. McNeely, if you could tell us as it's played
12 what you are playing, the start time and the stop time,
13 as you did.

14 MR. MCNEELY: As requested, this is camera angle
15 7-A, beginning at 1:51 a.m.

16 [Whereupon, video is played for the jury]

17 [Whereupon, video is not transcribed by the court
18 reporter]

19 MR. MCNEELY: Your Honor, as requested, camera 7-A
20 has been stopped at 1:59 a.m.

21 We will switch to camera angle 6-A at 1:54 a.m. and
22 let it play through approximately 2:04. It ends at
23 2:03:58.

24 THE COURT: Thank you.

25 MR. MCNEELY: It's 1:53:57. Start here, Your

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1 Honor.

2 [Whereupon, video is played for the jury]

3 [Whereupon, video is not transcribed by the court
4 reporter]

5 MR. MCNEELY: That's the conclusion of camera angle
6 6-A at 2:03:58 a.m.

7 As requested, we will switch to camera angle 2-B.
8 It will play in its entirety from 2:03:58 a.m. to
9 2:10:59 a.m.

10 [Whereupon, video is played for the jury]

11 [Whereupon, video is not transcribed by the court
12 reporter]

13 MR. MCNEELY: That's the conclusion of 2-B at
14 2:10:59 a.m.

15 As requested, we will now switch to camera angle
16 6-B at 2:08 a.m. playing until 2:10:59 a.m. Starting at
17 2:08 on the nose.

18 [Whereupon, video is played for the jury]

19 [Whereupon, video is not transcribed by the court
20 reporter]

21 MR. MCNEELY: That's the end of camera angle 6-B at
22 2:10:59 a.m.

23 That concludes the request to listen from the
24 jury.

25 THE COURT: Ladies and gentlemen, that concludes

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1 your requested on the note that you sent.

2 If there is anything additional you need to see, or
3 any other evidence, please let us know via note.

4 Please go back and continue your deliberations.

5 Please rise for the jury.

6 [Whereupon, the jury exits the courtroom at
7 6:36 p.m.]

8 THE COURT: Thank you. Be seated.

9 Anything before we break?

10 MR. ALFARO: Nothing from the State.

11 MR. DAVIS: Nothing.

12 MR. KEARSE: Nothing from --

13 THE COURT: Thank you.

14 [Whereupon, a recess is taken from 6:37 p.m. to
15 7:21 p.m.]

16 THE COURT: Thank you. Be seated.

17 We have a verdict. Anything before we bring in the
18 jury? From the State?

19 MR. ALFARO: No, Your Honor.

20 MR. DAVIS: Nothing from Mr. Gourdine, Your Honor.

21 MR. KEARSE: Nothing from Mr. Moses at this time.

22 THE COURT: Ladies and gentlemen of the audience, I
23 do not know what the verdict is, but I expect you to
24 maintain your decorum. This is a courtroom and I expect
25 you to conduct yourself. My deputies are instructed

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1 that they are to remove anyone who cannot conduct
2 themselves with any outbursts and I will find you in
3 contempt and we'll hold that hearing tomorrow and you
4 will be held in custody over the evening hour.

5 If you do not feel that you can maintain yourself,
6 please make sure that you remove yourself before the
7 verdict is read.

8 THE BAILIFF: Jury is coming in.

9 THE COURT: Please rise for the jury.

10 [Whereupon, the jury enters the courtroom at
11 7:22 p.m.]

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Verdict
Steven Dwayne Moses
March 17, 2016

VERDICT

STEVEN DWAYNE MOSES

THE COURT: Thank you. Please be seated.

Madam Bailiff, if you will fold the verdict forms in half. Madam Bailiff, if you will just fold all -- in one big packet. Just fold them all. Not each individual. Just one big packet. Thank you.

[Whereupon, the bailiff proffers documents to the Court]

[Whereupon, the Court proffers documents to the clerk of court]

THE COURT: Mr. Moses, please stand.

THE CLERK OF COURT: The State of South Carolina versus Steven Dwayne Moses, case number 2014-GS-08-1715, we the jury find the Defendant Steven Dwayne Moses guilty of attempted murder of David Bohannan.

Case number 2014-GS-08-1714, we the jury find the Defendant Steven Dwayne Moses guilty of attempted murder of Stacy Bohannan.

2014-GS-08-1713, we the jury find the defendant Steven Dwayne Moses guilty of attempted murder of James Bryant.

Case number 2014-GS-08-1716, we the jury find the Defendant Steven Dwayne Moses guilty of criminal conspiracy.

Verdict
Steven Dwayne Moses
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1 Ladies and gentlemen of the jury, if this is your
2 verdict, please raise your right hand.

3 Thank you.

4 THE COURT: Let the record reflect that all twelve
5 jurors indicated by raising their right hand.

6 Mr. Kearse, anything required of the jury on behalf
7 of your client?

8 MR. KEARSE: I would just ask you poll. I know
9 they raised their hands, Your Honor. I would ask you to
10 poll the jury.

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Polling of the Jury
On Behalf of Mr. Moses
March 17, 2016

POLLING OF THE JURY

ON BEHALF OF STEVEN DWAYNE MOSES

THE COURT: Please poll the jury, using their jury numbers.

Ladies and gentlemen, this is a common practice, and we will be using your jury numbers. Please listen to the questions.

THE CLERK OF COURT: Juror Number 172, is this your verdict?

JUROR NUMBER 172: Yes.

THE CLERK OF COURT: Is it still your verdict?

JUROR NUMBER 172: Yes.

THE CLERK OF COURT: Juror Number 181, is this your verdict?

JUROR NUMBER 181: Yes, ma'am.

THE CLERK OF COURT: Is it still your verdict?

JUROR NUMBER 181: Yes, ma'am.

THE CLERK OF COURT: Juror Number 32, is this your verdict?

JUROR NUMBER 32: Yes, ma'am.

THE CLERK OF COURT: Is it still your verdict?

JUROR NUMBER 32: Yes, ma'am.

THE CLERK OF COURT: Juror Number 72, is this your verdict?

JUROR NUMBER 72: Yes, ma'am.

Polling of the Jury
On Behalf of Mr. Moses
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1 THE CLERK OF COURT: Is it still your verdict?

2 JUROR NUMBER 72: Yes, ma'am.

3 THE CLERK OF COURT: Juror Number 13, is this your
4 verdict?

5 JUROR NUMBER 13: Yes, ma'am.

6 THE CLERK OF COURT: Is it still your verdict?

7 JUROR NUMBER 13: Yes, ma'am.

8 THE CLERK OF COURT: Juror Number 29, is this your
9 verdict?

10 JUROR NUMBER 29: Yes, ma'am.

11 THE CLERK OF COURT: Is it still your verdict?

12 JUROR NUMBER 29: Yes, ma'am.

13 THE CLERK OF COURT: Juror Number 45, is this your
14 verdict?

15 JUROR NUMBER 45: Yes, ma'am.

16 THE CLERK OF COURT: Is it still your verdict?

17 JUROR NUMBER 45: Yes, ma'am.

18 THE CLERK OF COURT: Juror Number 98, is this your
19 verdict?

20 JUROR NUMBER 98: Yes, ma'am.

21 THE CLERK OF COURT: Is it still your verdict?

22 JUROR NUMBER 98: Yes, ma'am.

23 THE CLERK OF COURT: Juror Number 124, is this your
24 verdict?

25 JUROR NUMBER 124: Yes, ma'am.

Polling of the Jury
On Behalf of Mr. Moses
March 17, 2016

1 THE CLERK OF COURT: Is it still your verdict?

2 JUROR NUMBER 124: Yes, ma'am.

3 THE CLERK OF COURT: Juror Number 16, is this your
4 verdict?

5 JUROR NUMBER 16: Yes, ma'am.

6 THE CLERK OF COURT: Is it still your verdict?

7 JUROR NUMBER 16: Yes, ma'am.

8 THE CLERK OF COURT: Juror Number 58, is this your
9 verdict?

10 JUROR NUMBER 58: Yes, ma'am.

11 THE CLERK OF COURT: Is it still your verdict?

12 JUROR NUMBER 58: Yes, ma'am.

13 THE CLERK OF COURT: And Juror Number 136, is this
14 your verdict?

15 JUROR NUMBER 136: Yes, ma'am.

16 THE CLERK OF COURT: Is it still your verdict?

17 JUROR NUMBER 136: Yes, ma'am.

18 THE CLERK OF COURT: Thank you.

19 THE COURT: Thank you.

20 THE CLERK OF COURT: They've been polled and the
21 verdict stands.

22 MR. KEARSE: Thank you, Your Honor.

23 THE COURT: Anything further, Mr. Kearse?

24 MR. KEARSE: Not at this time, Your Honor.

25 THE COURT: Thank you. Please be seated.

Verdict
Jason Morris Gourdine
March 17, 2016

VERDICT

JASON MORRIS GOURDINE

THE COURT: Mr. Gourdine, please stand.

THE CLERK OF COURT: General Sessions Court versus
Jason Morris Gourdine, case number 2014-GS-08-1721, we
the jury find the Defendant Jason Morris Gourdine guilty
of attempted murder of David Bohannon.

Case number 1720, we the jury find the Defendant
Jason Morris Gourdine guilty of attempted murder of
Stacy Bohannon.

Case number 2014-GS-08-1719, we the jury find the
Defendant Jason Morris Gourdine guilty of attempted
murder of Jason -- I'm sorry -- James Bryant.

Case number 2014-GS-08-1722, we the jury find the
Defendant Jason Morris Gourdine guilty of criminal
conspiracy.

Ladies and gentlemen, if this is your verdict,
please raise your right hand.

Thank you.

THE COURT: Anything further, Mr. Davis?

MR. DAVIS: I ask that they be polled, Your Honor.

THE COURT: All right. Same procedure.

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Polling of the Jury
On Behalf of Jason Morris Gourdine
March 17, 2016

POLLING OF THE JURY

JASON MORRIS GOURDINE

THE COURT: The same procedure, ladies and gentlemen.

THE CLERK OF COURT: Juror Number 172, is this your verdict?

JUROR NUMBER 172: Yes.

THE CLERK OF COURT: Is it still your verdict?

JUROR NUMBER 172: Yes.

THE CLERK OF COURT: Juror Number 181, is this your verdict?

JUROR NUMBER 181: Yes, ma'am.

THE CLERK OF COURT: Still your verdict?

JUROR NUMBER 181: Yes, ma'am.

THE CLERK OF COURT: Juror Number 32, is this your verdict?

JUROR NUMBER 32: Yes, ma'am.

THE CLERK OF COURT: Is it still your verdict?

JUROR NUMBER 32: Yes, ma'am.

THE CLERK OF COURT: Juror Number 13, is this your verdict?

JUROR NUMBER 13: Yes.

THE CLERK OF COURT: Is it still your verdict?

JUROR NUMBER 13: Yes, ma'am.

THE CLERK OF COURT: Juror Number 72, is this your

Polling of the Jury
On Behalf of Jason Morris Gourdine
March 17, 2016

1 verdict?

2 JUROR NUMBER 72: Yes, ma'am.

3 THE CLERK OF COURT: Still your verdict?

4 JUROR NUMBER 72: Yes, ma'am.

5 THE CLERK OF COURT: Juror Number 29, is this your
6 verdict?

7 JUROR NUMBER 29: Yes, ma'am.

8 THE CLERK OF COURT: Is it still your verdict?

9 JUROR NUMBER 29: Yes, ma'am.

10 THE CLERK OF COURT: Juror Number 45, is this your
11 verdict?

12 JUROR NUMBER 45: Yes, ma'am.

13 THE CLERK OF COURT: Is it still your verdict?

14 JUROR NUMBER 45: Yes, ma'am.

15 THE CLERK OF COURT: Juror Number 98, is this your
16 verdict?

17 JUROR NUMBER 98: Yes, ma'am.

18 THE CLERK OF COURT: Is it still your verdict?

19 JUROR NUMBER 98: Yes, ma'am.

20 THE CLERK OF COURT: Juror Number 124, is this your
21 verdict?

22 JUROR NUMBER 124: Yes, ma'am.

23 THE CLERK OF COURT: Is it still your verdict?

24 JUROR NUMBER 124: Yes, ma'am.

25 THE CLERK OF COURT: Juror Number 16, is this your

Polling of the Jury
On Behalf of Jason Morris Gourdine
March 17, 2016

1 verdict?

2 JUROR NUMBER 16: Yes, ma'am.

3 THE CLERK OF COURT: Is it still your verdict?

4 JUROR NUMBER 16: Yes, ma'am.

5 THE CLERK OF COURT: Juror Number 58, is this your
6 verdict?

7 JUROR NUMBER 58: Yes, ma'am.

8 THE CLERK OF COURT: Is it still your verdict?

9 JUROR NUMBER 58: Yes, ma'am.

10 THE CLERK OF COURT: And Juror Number 136, is this
11 your verdict?

12 JUROR NUMBER 136: Yes, ma'am.

13 THE CLERK OF COURT: Is it still your verdict?

14 JUROR NUMBER 136: Yes, ma'am.

15 THE CLERK OF COURT: They've been polled and the
16 verdict stands.

17 THE COURT: Thank you.

18 Anything further, Mr. Davis?

19 MR. DAVIS: Nothing further at this time.

20 THE COURT: Thank you. You may be seated.

21 THE COURT: Is the State ready for sentencing?

22 MR. ALFARO: Yes, Your Honor. We have to get the
23 paperwork ready.

24 THE COURT: All right. If you'll get the
25 paperwork.

Polling of the Jury
On Behalf of Jason Morris Gourdine
March 17, 2016

1 Ladies and gentlemen, this completes your service
2 to this case. If you will please go to your jury room,
3 I will be there in just a few moments.

4 Please rise for the jury.

5 [Whereupon, the jury exits the courtroom at
6 7:29 p.m.]

7 THE COURT: Thank you. Please be seated.

8 Let me release the jury and I'll be back for
9 sentencing. Thank you.

10 [Whereupon, a recess is held from 7:29 p.m. to
11 7:39 p.m.]

12 THE COURT: Thank you. Please be seated.

13 Do you have your sentencing sheets? Mr. Alfaro,
14 we'll begin with Mr. Moses.

15 MR. ALFARO: Yes, ma'am.

16 THE COURT: Actually, I'm sorry. Do you have a
17 preference on --
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19
20
21
22
23
24
25

State vs. Moses and Gourdine
Post-Trial Motions
March 17, 2016

POST-TRIAL MOTIONS

MR. DAVIS: Judge, are we going to have pretrial --

THE COURT: Post trial?

MR. DAVIS: -- post-trial motions?

THE COURT: Happy to hear from you.

MR. DAVIS: I mean, I think we're entitled to it,
are we not?

THE COURT: You are.

MR. DAVIS: Okay.

THE COURT: Happy to hear from you.

MR. DAVIS: Well, we at this time move for a
judgment notwithstanding the verdict. We ask for a new
trial, Your Honor.

We believe that this jury has been swayed by more
passion and sympathy in relationship to coming back with
a verdict of attempted murder when, in fact, there was
no qualified testimony in the record to suggest that any
of the injuries were life-threatening. Therefore, the
only conclusion that I can reach is that the jury
reached its conclusion based on sympathy and passion,
other things other than the evidence that was really
before them when they deliberated, Your Honor.

THE COURT: And do you join in that motion,
Mr. Kearse, or do you have a --

MR. KEARSE: I do, Your Honor.

State vs. Moses and Gourdine
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1 I ask this Court to set aside the verdict in a
2 judgment in favor of Mr. Moses for the very same reason
3 that Mr. Davis has articulated.

4 I would add for the record that Defendant Moses is
5 convinced that the facts that were presented to the jury
6 did not substantiate the argument, once again, of
7 criminal conspiracy and that that was a joint enterprise
8 by these two men to go to the Nowhere Bar and to attempt
9 to murder or to murder anyone there, more specifically
10 Mr. and Ms. Bohannon and Mr. Bryant.

11 In addition to that, I think the facts indicate
12 that any statement that was made out in the parking lot
13 at the time of this offense was made and directed
14 towards a person who was not named a victim in this
15 case, that being Enrique Maron, Jr, who did not testify
16 and that because he did not testify and that there was
17 no evidence that he was in jeopardy of losing his life,
18 the doctrine of transferred intent would not apply and
19 that there's no indication that there was an intent to
20 kill Mr. Maron such that it would transfer to Mr. Bryant
21 and Mr. and Ms. Bohannon.

22 All those things being placed in the record, along
23 with any and all previous arguments I have made to the
24 Court, I would submit substantiate setting the verdict
25 aside.

State vs. Moses and Gourdine
Post-Trial Motions
March 17, 2016

1 THE COURT: Mr. Alfaro, your response?

2 MR. ALFARO: Your Honor, the State's position is
3 that there was ample evidence presented to the jury to
4 render the verdicts that they did on all charges for
5 both defendants.

6 Regarding specifically Mr. Davis' argument that
7 there was no life-threatening injuries for the attempted
8 murder charge, there's no injury actually at all
9 required for attempted murder so I don't think that has
10 any merit as to the jury's decision.

11 The State would ask the Court to honor the verdict
12 that was rendered by the jury.

13 THE COURT: Based upon the testimony presented
14 throughout the trial and your arguments here today, I am
15 denying Defendant Gourdine's motion for a new trial,
16 motion to set aside the judgment and denying Mr. Moses'
17 motion for a new trial, motion to set aside the verdict.

18 Any other post-trial motions, Mr. Davis?

19 MR. DAVIS: None, Your Honor.

20 THE COURT: Mr. Kearse?

21 MR. KEARSE: Not at this time, Your Honor.

22 MR. DAVIS: Other than the fact, Your Honor, I join
23 in with the transfer intent that Mr. Kearse alluded to.

24 I, too, believe that there's nothing in the record
25 that reflects that, Your Honor. Mr. Enrique's life was

State vs. Moses and Gourdine
Post-Trial Motions
March 17, 2016

1 in jeopardy. In fact, he was not injured at all, so
2 that was inapplicable to the charge pertaining to
3 transfer of intent, Your Honor.

4 THE COURT: And so, Mr. Kearse, you indicated not
5 at this time. This is the time for all post-trial
6 motions. Are there any additional post-trial motions or
7 not?

8 MR. KEARSE: Your Honor, what I understand, there
9 is a time period between now and the time for Mr. Moses'
10 to quite possibly file an appeal, that being the case,
11 or maybe the -- I have no motions to make further at
12 this time, Your Honor. And I understand what the
13 Court's legal position is in that regard.

14 THE COURT: All right. Thank you.

15 Mr. Kearse, you may have a seat.

16 We will go forward on the sentencing for -- who are
17 you prepared for at this time?

18 MR. ALFARO: Either order, Your Honor. We can
19 start with Mr. Moses.

20 THE COURT: All right.

21 - - -

22 - - -

23 - - -

Sentencing
Steven Dwayne Moses
March 17, 2016

SENTENCING OF

STEVEN DWAYNE MOSES

1 THE COURT: Mr. Alfaro, is there any additional --
2 I sat through the testimony. I see the victims are
3 still here. Do they wish to address the Court in any
4 fashion?
5

6 MR. ALFARO: Your Honor, one of the victims, Stacy
7 Bohannan, does wish to address Your Honor at the
8 appropriate time.
9

10 THE COURT: Now would be the appropriate time.
11 Ms. Bohannan, will you come forward.

12 MS. BOHANNAN: Thank you, Your Honor.

13 THE COURT: Yes, ma'am.

14 MS. BOHANNAN: This has been a long three years.
15 My husband was the sole provider for our family. I
16 hadn't worked in fifteen years when this incident took
17 place. Before this incident took place, he was a master
18 finish carpenter. His injury was to his right arm. He
19 can no longer be a finish carpenter. I work in a school
20 cafeteria. I love my job, but the past three years have
21 been very hard watching my husband heal, and his
22 surgeries, his time at the hospital, the time away from
23 our children. We are still living with my mother and
24 father-in-law. We don't even have our own home at this
25 point.

Sentencing
Steven Dwayne Moses
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1 It's very hard to watch my husband watch our
2 children out in the yard playing. They're teenage boys.
3 They like to play football and basketball and baseball.
4 My husband can't throw a football. He can't throw a
5 basketball. He will never be able to do those things
6 again. Those are things, in my opinion, that a teenage
7 boy needs.

8 I would also like to tell Your Honor that I forgive
9 them for what happened. It's taken me a long time to
10 get to this point, but I need to forgive them in order
11 for me to move on and put my family back together.

12 I just wanted you to know that I appreciate you
13 hearing this, and taking the time to listen to me, and
14 just how important my husband is, that I'm still glad
15 that he's here and I'm glad I'm here and he's able to do
16 what he can with our children. Just to see that he
17 can't -- and he won't ever be able to do with them.

18 I think the hardest part of this for me is the fact
19 that it's the quality -- not the quantity of time, but
20 the sportsmanship part of it. He was such a big part of
21 that with my children and our children, and he can't do
22 that anymore. And that takes a big chunk out of a
23 teenage boy's life.

24 And I really don't know what else to say, other
25 than it's been so hard and it's been a long, long time.

Sentencing
Steven Dwayne Moses
March 17, 2016

1 And I just wanted to voice that. And my mother and
2 father have all been so great. They've taken three
3 teenage boys into their home. And I just wanted to
4 verbalize that.

5 And I also feel for their families. I know this is
6 very hard for them and I don't want anybody to think
7 that I don't, because I do. And I just wanted you to
8 know that I do feel for everybody evolved. Not just for
9 me, but everybody.

10 THE COURT: Thank you.

11 MS. BOHANNAN: Thank you.

12 MR. ALFARO: Your Honor, that's the only victim
13 that wishes to address Your Honor.

14 As far as the State's position on sentencing,
15 you've seen the entirety of the trial. The video speaks
16 for itself. The injuries that were described of these
17 victims speak for themselves.

18 While Mr. Moses' only conviction is 2003 simple
19 possession of marijuana, the State feels that based off
20 actions of him that night, along with Mr. Gourdine, and
21 the jury has rendered their verdict on that, the State
22 would ask for the maximum sentence for Mr. Moses.

23 THE COURT: Mr. Kearse, did you explain to your
24 client his right to appeal?

25 MR. KEARSE: I have, Your Honor.

Sentencing
Steven Dwayne Moses
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1 THE COURT: Did you also explain to your client
2 that this is classified as a violent and a most-serious
3 offense, the three attempted murders?

4 MR. KEARSE: I have to a certain extent, Your
5 Honor.

6 THE COURT: I'm happy to hear from you, anyone,
7 regarding sentencing. I understand you probably have
8 told Mr. Moses, pending appeal, that he should not
9 address the Court and I will not take the fact that he
10 does not address the Court into consideration in
11 sentencing.

12 MR. KEARSE: In the midst of all that I advised
13 him, I did tell him that but I would like the
14 opportunity to repeat that to him.

15 [Whereupon, Mr. Kearse and Mr. Moses confer]

16 MR. KEARSE: I have so advised him, Your Honor. He
17 indicates he understands.

18 THE COURT: All right.

19 MR. KEARSE: May it please this Court?

20 THE COURT: Yes.

21 MR. KEARSE: I'll try not to be long, Your Honor,
22 but --

23 THE COURT: Take all the time you need.

24 MR. KEARSE: -- understanding that my client just
25 got convicted of three counts of attempted murder, I'm