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VOLUME I OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Berkeley County

JAN 27 2017

Kristi Lea Harrington, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

STEVEN DWAYNE MOSES,

APPELLANT

APPELLATE CASE NO. 2016-000627

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT

COUNTY OF BERKELEY) CASE NO.: 2014-GS-08-1713, -14, -15,
) -16, -17, -18 (MOSES)
) 2014-GS-08-1719, -20, -21,
) -22, -23, -24 (GOURDINE)

STATE OF SOUTH CAROLINA,)
)
)
) v.)
)
 STEVEN MOSES)
)
 and)
)
 JASON GOURDINE)
)
)
 DEFENDANTS.)
)

TRANSCRIPT OF RECORD

TUESDAY, JANUARY 26th, 2016
COMMENCING AT
BERKELEY COUNTY COURTHOUSE
MONCK'S CORNER, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

ASST. SOL. BRYAN ALFARO, ESQUIRE
ASST. SOL. WILLTON MCNEELY, ESQUIRE
Attorneys for the State of South Carolina

MR. KEVIN KEARSE, ESQUIRE
Attorney for the Defendant Steven Moses

MR. STEVE DAVIS, ESQUIRE
Attorney for the Defendant Jason Gourdine

Rebecca H. Hill
Official Court Reporter

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1 THE COURT: I'm going to ask you to call the case for
2 the record.

3 ASST. SOL. ALFARO: Your Honor, we're here on the case
4 of State v. Steven Moses and Jason Gourdine; regarding
5 defendant Jason Gourdine, he is going to be tried on
6 Indictment Number 2014-GS-08-1719, attempted murder, 1720,
7 attempted murder, 1721, charged with attempted murder; 1722
8 charged with criminal conspiracy; 1723, criminal conspiracy,
9 and 1724, criminal conspiracy.

10 His co-defendant, Steven Moses, is going to be tried on
11 Indictments 2014-GS-08-1713, attempted murder, 1714,
12 attempted murder, 1715, attempted murder, 1716, criminal
13 conspiracy, 1717, criminal conspiracy, and 1718, criminal
14 conspiracy.

15 We're before you today on defense's motion for a stand
16 your ground hearing under statute 11-440. Just for purposes
17 of the record, Your Honor, we have scheduling purposes for
18 this case. The trial itself has been continued for this
19 week. Both parties have agreed to proceed today with a
20 stand your ground hearing with the understanding that this
21 Court will not maintain any jurisdiction that the eventual
22 trial judge will ---

23 THE COURT: In other words, any judge who is properly
24 assigned to Berkeley County can conduct the actual trial of
25 the case, but everyone agrees that that judge will be bound

1 by the ruling that I make today.

2 ASST. SOL. ALFARO: That's my understanding, Your
3 Honor.

4 THE COURT: Now, Mr. Alfaro, you and I have known each
5 other for quite a while, but I've got my resident court
6 reporter here and she doesn't know everybody. I'm going to
7 ask you to identify yourself and everybody at your table,
8 and then I'm going to ask counsel for each defendant to do
9 so as well, so Becky has a record of who is appearing for
10 purposes of this hearing.

11 ASST. SOL. ALFARO: Yes, Your Honor, I am Bryan Alfaro,
12 Deputy Solicitor for Berkeley County. This is Wilton
13 McNeely, Assistant Solicitor, and David Young, Investigator
14 for our office. Those are the people with our office.

15 THE COURT: All right. Counsel for the defendant; is
16 it Steven Moses or Jason Gourdine?

17 MR. DAVIS: Jason Gourdine, Your Honor.

18 THE COURT: Gourdine.

19 MR. DAVIS: Yes, Gourdine, and then Mr. Kearse is
20 representing Mr. Steven Moses.

21 MR. KEARSE: Kevin Kearse, Your Honor, defense counsel
22 for Steven Moses, Your Honor.

23 THE COURT: All right. Let the record reflect, that
24 both your clients are present; is that correct?

25 MR. DAVIS: That's correct, Your Honor.

1 MR. KEARSE: Yes, Your Honor.

2 THE COURT: Very well. Let the record reflect, I have
3 reviewed the indictments, and Mr. Alfaro, it's my
4 understanding they are identical charges as to each of the
5 defendants, as far as the substantive charges.

6 ASST. SOL. ALFARO: Yes, sir, Your Honor.

7 THE COURT: I've reviewed the indictments against both
8 of the defendants. Everyone recognizes that this is -- Mr.
9 Alfaro calls it a stand your ground hearing. I call it a
10 Castle Doctrine hearing, but regardless it's pursuant to 16-
11 11-440 of the Code of Laws of South Carolina, as amended.

12 I think we can all agree for purposes of this hearing
13 that each defendant has the burden under the statute of
14 convincing the Court whether or not they're entitled to
15 immunity from prosecution by preponderance of the evidence.
16 Does the State so agree that is the standard for purposes of
17 this hearing?

18 MR. ALFARO: Yes, Your Honor.

19 THE COURT: How about it counsel?

20 MR. DAVIS: That's correct, Your Honor.

21 THE COURT: How about it counsel?

22 MR. KEARSE: Yes, Your Honor.

23 THE COURT: All right. Now, I have a small couple
24 ground rules. One lawyer stands in my courtroom. One
25 lawyer speaks in my courtroom at a time. Becky can't take

1 down two people. I use this all the time teaching my law
2 clerk. The rudest thing you can do in Court, and I
3 understand you wouldn't be here if you agreed, that's the
4 reason you have me and a jury; but just because you disagree
5 with something your opponent says, doesn't give you the
6 right to stand up like you think you can interrupt.

7 I'm not going to let him interrupt either one of y'all,
8 and you're not going to interrupt him. It's common courtesy
9 and it's the rudest thing you can do in a courtroom.

10 Don't think juries don't look at you when that's going
11 on. That isn't advocacy, that's just being discourteous. I
12 will expect you to follow those rules during this hearing.

13 For those who haven't met my excellent law clerk -- we
14 all know law clerks do all the work for the judges. His
15 name is Durham Hill. He does a great job for me. Our court
16 reporter is Becky Hill.

17 I'm happy now to hear from you. And it does not matter
18 to me, unless you have agreed on a predetermined order,
19 since we have two defendants, who wishes to present evidence
20 first between the defendants, since you have the burden of
21 proof by the preponderance of the evidence.

22 MR. KEARSE: May it please the Court, Your Honor? I am
23 Kevin Kearse for Mr. Steve Moses. It's my understanding
24 that you have already gotten the memorandums.

25 THE COURT: I have and I've read them. And unlike most

1 judge, I have read them; not just my law clerk. So you can
2 assume I know what's in your memorandum and you don't have
3 to just read it.

4 MR. KEARSE: Yes, sir. With that being said, Defendant
5 Moses would like to present a video in this matter.

6 THE COURT: Has it been pre-marked?

7 MR. KEARSE: I don't think it has.

8 MR. ALFARO: It has not, Your Honor.

9 THE COURT: Then, come up here and let's do so, because
10 I'm assuming there's no objection, because it's going into
11 the record.

12 MR. KEARSE: For purposes of this hearing, we stipulate
13 to the video without objections.

14 THE COURT: Well, we're only doing this for the hearing
15 today. This is not the trial.

16 MR. KEARSE: I understand, Your Honor.

17 THE COURT: This will be Defendant Moses' exhibit; is
18 that right?

19 MR. KEARSE: Yes, Your Honor.

20 MR. DAVIS: No objection from Defendant Gourdine.

21 ASST. SOL. ALFARO: No objection, Your Honor.

22 THE STATE: Without objection, Defendant Moses' Number
23 One.

24 (DEFENDANT MOSES' EXHIBIT NUMBER ONE, DVD, IS MARKED
25 AND RECEIVED INTO EVIDENCE.)

1 MR. KEARSE: May it please the Court, Your Honor. As a
2 part of Defendant Moses' exhibit, and this is marked as One,
3 this is camera 6A. And I will present each camera angle,
4 Your Honor.

5 THE COURT: Okay. We're using camera 6a for purposes
6 of this hearing, Moses' Exhibit One; is that correct?

7 MR. KEARSE: Correct, Your Honor

8 MR. DAVIS: Yes, Your Honor.

9 ASST. SOL. ALFARO: Yes, Your Honor.

10 (2:09 p.m. DVD begins playing. 2:22 p.m., DVD is
11 stopped.)

12 MR. KEARSE: Your Honor, at this time, defendant Moses
13 would like to publish camera angle 2a.

14 THE COURT: Any objection, Solicitor?

15 ASST. SOL. ALFARO: None from the State, Your Honor.

16 THE COURT: Steve?

17 MR. DAVIS: None, Your Honor, I concur.

18 THE COURT: As part of Defendant's Exhibit Number One,
19 we will now view camera angle 2A.

20 (2:24 p.m., DVD begins playing camera angle 2A.)

21 THE COURT: Let the record reflect, without objection,
22 Mr. Davis and Mr. Kearse and Mr. Alfaro, that we all agree
23 we can fast forward camera 2A, part of exhibit one, to the
24 point of where someone exits this building; is that
25 agreeable, counsel?

1 ASST. SOL. ALFARO: Yes, Your Honor.

2 MR. DAVIS: It is, Your Honor.

3 MR. MCNEELY: Let the record reflect that we paused the
4 video at 1:54:57. We're going to fast forward to
5 approximately 1:57:20.

6 THE COURT: Any objection, Mr. Kearse?

7 MR. KEARSE: No objection from Defendant Moses.

8 THE COURT: Any objection, Mr. Davis:

9 MR. DAVIS: None, Your Honor.

10 THE COURT: Mr. Alfaro?

11 ASST. SOL. ALFARO: None, Your Honor.

12 THE COURT: Proceed.

13 (2:28 DVD begins playing; 2:37 p.m., DVD is paused.)

14 MR. MCNEELY: Let the record reflect the video is
15 paused at 1:58:42.

16 MR. KEARSE: No objection from Defendant Moses.

17 MR. DAVIS: None, Your Honor.

18 THE COURT: Mr. Alfaro, any objection?

19 ASST. SOL. ALFARO: No, Your Honor.

20 MR. KEARSE: May it please the Court, Your Honor?

21 Defendant Moses will now publish camera angle 2B.

22 THE COURT: Any objection?

23 MR. DAVIS: None, Your Honor.

24 ASST. SOL. ALFARO: None, Your Honor.

25 THE COURT: Camera angle 2B.

1 ASST. SOL. MCNEELY: For the record, Your Honor, we're
2 going to skip to the time of Camera 2B starts back at
3 2:03:08.

4 THE COURT: Congratulations, Mr. McNeely, you've
5 learned that we don't need to look at a still shot for 10
6 minutes.

7 (2:40 p.m., DVD begins playing; 2:48 p.m., DVD ends.)

8 THE COURT: Have I now seen the entire exhibit?

9 MR. KEARSE: From Defendant Moses, yes, Your Honor.

10 THE COURT: Very well. Who's going to call their
11 witness first, by agreement, or I'll assign an order?

12 MR. DAVIS: I'll call first by agreement, Your Honor.

13 THE COURT: Mr. Davis will call first on behalf of Mr.
14 Gourdine.

15 MR. DAVIS: Yes, sir, Your Honor.

16 THE COURT: Call your first witness.

17 MR. DAVIS: James Bryant, Your Honor.

18 THE COURT: Mr. Bryant, come around and be sworn,
19 please, by my excellent clerk staff.

20 (Whereupon, Mr. James Bryant is duly sworn by the
21 clerk.)

22 MADAME CLERK: Please be seated. State your first name
23 and spell your last name for the record.

24 MR. BRYANT: My name is James Bryant. Last name is B-
25 R-Y-A-N-T.

1 THE COURT: Very good. Speak up. Mr. Davis, direct
2 examination.

3 MR. DAVIS: Your Honor, I'm asking for permission to be
4 allowed to use some leading questions in regard to this
5 particular hearing.

6 THE COURT: Since we don't know what they are, Mr.
7 Davis, it's a little hard for Mr. Alfaro and Mr. McNeely to
8 agree to an open-ended request. However, for preliminary
9 matters, Mr. Davis, I will allow you to do so. Counsel, do
10 not hesitate to object. This is direct examination.

11 MR. DAVIS: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q Mr. Bryant, have you and I ever discussed this case?

15 A No.

16 Q Okay. Mr. Bryant, you just witnessed that video, did
17 you not?

18 A Yes.

19 Q You were in the courtroom?

20 A Yes.

21 Q You sat there and watched it with us?

22 A (NODS HEAD.)

23 THE COURT: Just a moment. You can't do that. You've
24 got to say yes or no for the court reporter.

25 A Yes, I've seen the video just now with everybody else.

1 Q You hadn't seen it prior to today, though; had you not?

2 A Yes.

3 Q Multiple times, would you say?

4 A Yes, I have a copy.

5 Q Okay. Thank you. So you have seen the video? You are
6 very familiar with it, sir?

7 A Yes.

8 Q Did you struck anybody that night while you were in the
9 club?

10 A No.

11 Q You did not?

12 A I couldn't get to him, so ---

13 Q If you had gotten to him, you would have struck him?

14 ASST. SOL. ALFARO: Objection.

15 A I don't know.

16 THE COURT: Hold on a second. Yes, sir, what's the
17 grounds?

18 ASST. SOL. ALFARO: Calls for speculation.

19 THE COURT: It does. Sustained. Rephrase the
20 question.

21 Q It is your testimony that you didn't struck anybody?

22 A Yes.

23 Q Did you witness anybody else being assaulted inside the
24 club that night?

25 A My friend got into an altercation.

1 Q I don't know which friend you're talking about. I'm
2 talking about in reference what you saw in that video. Did
3 you witness anybody else being assaulted or a battery taking
4 place inside the Nowhere Grill that night?

5 A I don't understand what you're saying.

6 Q Did you see anybody get struck? Anybody get hit?

7 A I seen one punch was thrown.

8 Q Okay. Who threw the punch?

9 A Rick.

10 Q And who did the throw attempt to hit?

11 A That guy (pointing to defendant's table.)

12 Q Mr. Moses?

13 A Yeah.

14 Q Okay. Now, did any of these guys have any conversation
15 with you that night?

16 THE COURT: Turn around, Mr. Davis. Don't walk with
17 Your back to the court reporter and ask a question.

18 Q Did you have any words with any of these guys that
19 night?

20 A Not that I recall. I've been through a lot.

21 Q Oh, you've been through a lot?

22 A Yes.

23 Q Let's deal with being through a lot. That night, you
24 had been drinking, what time had you arrived at the bar?

25 A I can't recall.

1 Q You cannot recall. Can you recall how many beer or
2 alcohol or whatever substance you had utilized that night?

3 A I've been through a lot. I can't recall.

4 Q All right. You can't recall. Okay, well, you've seen
5 the tape, the video; does that refresh your memory in
6 reference to bringing back some scenes in your mind in
7 reference to what you had consumed in alcohol that night?

8 A No, just the horrific event of the scenario; that's all
9 it reminds me of.

10 Q That's all it reminds you of?

11 A Yes.

12 Q Okay.

13 MR. DAVIS: I'd like to have this marked for
14 identification purposes, please.

15 ASST. SOL. ALFARO: No objection.

16 THE COURT: Take it to the court reporter, first. Is
17 it strictly for identification or for purposes of admitting
18 in this hearing?

19 MR. DAVIS: Just for this hearing, Your Honor.

20 THE COURT: Mr. Alfaro, he said for identification
21 only, but he's changed his mind and wants to admit them for
22 purposes of this hearing only; any objection?

23 ASST. SOL. ALFARO: No, Your Honor.

24 THE COURT: He only showed you one, but Mr. Davis has
25 three in his hands. Do you want to see the others?

1 ASST. SOL. ALFARO: That would be nice, Your Honor.

2 THE COURT: Take them to him, Steve.

3 MR. DAVIS: Judge, I have given them to him.

4 THE COURT: I understand that, but you're not going to
5 admit something in my courtroom without showing it to him.

6 MR. DAVIS: Judge, I had already given them ---

7 THE COURT: I know you have. That's fine, Steve. I'm
8 not accusing you of anything, but in my courtroom, you're
9 going to show it to opposing counsel.

10 (Defense counsel Davis shows exhibits to Mr. Alfaro.)

11 ASST. SOL. ALFARO: No objection to the exhibits,
12 defendant's exhibits one through seven.

13 THE COURT: Very well.

14 (Defendant Gourdine's Exhibit Numbers One through
15 Seven, photos, are marked and received into evidence.)

16 Q Sir, I hand you what's been marked as Defendant's One
17 through Seven. Can you identify what's in that photograph?

18 A That looks me pushing somebody back; it's blurry.

19 Q Okay. Well, is there any one of these two young men
20 that are in this courtroom?

21 A I'm thinking it's Gourdine.

22 Q Okay. Thank you. Now, I'm going to give you a series

23 ---

24 MR. DAVIS: I had pre-marked them, Your Honor.

25 THE COURT: Give them to Becky and let her mark them.

1 They're for purposes of this hearing now. The Solicitor
2 says he has no objection to your, Mr. Gourdine's exhibits
3 One through Seven, without objection. Mr. Pearce, I'm
4 assuming you have no objection?

5 MR. KEARSE: I have none, Your Honor.

6 THE COURT: They're all going to be in evidence for
7 purposes of this hearing only, without objection.

8 MR. DAVIS: That's correct, Your Honor.

9 Q And sir, you said you witness the video that was played
10 earlier. I want to hand you these exhibits, two through
11 seven, and ask if you can identify them please.

12 A This one, I can't tell what's going on in this.

13 THE COURT: When you say what's going on, on that --
14 use the exhibit number. Refer to the number when you say,
15 "I can't tell what's on this."

16 A Exhibit Three, I can't identify what's going on in this
17 picture. Exhibit Four, this is the one where he came up and
18 invited -- well, pretty much pointed out Rick where he was
19 located and this is Exhibit Four. And Exhibit Five was me
20 telling Rick to chill out, blah, blah, blah. Nobody's gonna
21 mess with you. Exhibit Six is the altercation at the door
22 where you can clearly see I was not touching them at that
23 point. You can't even see me. Exhibit Seven is when Rick
24 threw the initial punch at that guy -- what's his name?

25 THE COURT: When you say "that guy" who are you

1 pointing to?

2 A What's his name?

3 Q Mr. Moses.

4 THE COURT: Everybody agrees he is referring to the
5 defendant Moses?

6 A Yeah, that's Moses.

7 MR. KEARSE: I would imagine so, Your Honor, yes.

8 THE COURT: Mr. Alfaro?

9 ASST. SOL. ALFARO: Yes, sir.

10 THE COURT: All right.

11 A And Exhibit Seven is me walking up to Rick behind him.

12 MR. DAVIS: Could I approach, Your Honor?

13 THE COURT: You may approach.

14 Q In all of these exhibits, one thing that you and I --
15 can we agree that all of these are extracts from the video
16 that you observed earlier?

17 A I didn't see that in the video.

18 THE COURT: Refer to the exhibit number.

19 A Exhibit One, I did not see in the video.

20 Q Okay. That's the exhibit where you actually have your
21 elbow beneath the neck of Mr. Gourdine?

22 A My elbow is here; that's my hand.

23 Q Okay. Where is it?

24 A Shoulder.

25 Q Of who?

1 A Gourdine.

2 Q Did he give you permission to do that?

3 A It was an argument going on.

4 Q My question is did he give you permission to touch his
5 person?

6 A No.

7 Q Sir?

8 A No, sir.

9 Q Okay. Why did you touch him?

10 A There was an altercation going on and I was trying to
11 break it up pretty much.

12 Q I want to hand you also what is Defendant Exhibit
13 Number Three and is that you in Exhibit Number Four?

14 A That is correct.

15 Q And your movement is towards who, sir?

16 A You can't see. How do you mean, towards who?

17 Q You are moving?

18 A I'm moving in the direction of the car that blocked us
19 in and the guy who came and invited Rick; there he is.

20 Q Okay. You were not in your vehicle parked, trying to
21 exit, were you not? You were reversed to get out?

22 A I was trying to get Rick out of my spot, because I was
23 in the front seat.

24 Q My question is anywhere in the video does it see you
25 actually coming out of a car? The camera that the State

1 gave us?

2 A No.

3 Q At any point, were you getting out of the vehicle?

4 A No.

5 Q So you were never getting out of the vehicle to discuss
6 anything with anybody about blocking your exit or your
7 vehicle's exit; isn't that true?

8 A No, why would I?

9 Q But you said you had approached this individual in that
10 manner because someone was blocking ---

11 A And he came over looking for Rick.

12 Q Okay. Now, my question is, in Exhibit Number Three,
13 would it be a fair and accurate description that that looked
14 like a very aggressive pose on your part?

15 A I say a defensive pose.

16 Q Oh, a defensive, aggressive-defensive; is that fair
17 enough?

18 A I'd say defensive, because everything was cool.

19 Q Okay. And it is movement, you would agree? For
20 whatever reason you would surmise it was, it was movement in
21 the direction; isn't that true?

22 A That is true.

23 Q Okay. And is it fair to say when you were making that
24 same exact movement, Mr. Steven Moses was retreating?

25 A (NO REPLY.)

1 Q Well, let's change the question, if we look at the
2 video again, the video will give us a pretty good depiction,
3 right?

4 A Yeah.

5 Q You have no reason to argue with the video because the
6 only issue you have is you just can't recall because you
7 went through a lot since that day.

8 A Yes, I have.

9 Q But let's surmise that we can agree that this young
10 man, Mr. Moses, was retreating when you were coming forward,
11 sir, in a defensive manner?

12 A (NO REPLY.)

13 Q Where were you going?

14 MR. BRYANT: Can I ask a question or?

15 THE COURT: You can answer the question.

16 MR. BRYANT: I said ask one.

17 THE COURT: No, sir, you don't ask questions; you just
18 answer them.

19 A Okay. Say that one more time.

20 Q Where were you going, sir?

21 A To see what was the problem and why they stalking us
22 because it was no problems. We was about to leave.

23 Q And so you with your movement in Defendant's number
24 three is moving towards Mr. Moses; isn't that true?

25 A I was moving toward the problem that we just

1 encountered.

2 Q Mr. Moses was the problem -- let's agree and say Mr.
3 Moses was the problem; how is that?

4 A We didn't ask nobody to block us in and come and invite
5 ---

6 Q --- my question is ---

7 THE COURT: Hold on. Let him finish his answer before
8 you cut him off with another question. Proceed.

9 A I didn't invite anybody to come block us in and look
10 for Rick. We were about to go home. I had to go to work.
11 I didn't ask for none of this. It was over with. They left
12 and came back. It's clear as day. Thank God for the video.

13 Q Thank God for the video because apparently you cannot
14 recall anything; isn't that true?

15 ASST. SOL. ALFARO: Objection, Your Honor.

16 THE COURT: Sustained. Rephrase the question.

17 Q If the video wasn't available, could you recall
18 anything, sir?

19 A I could recall, yes. I can recall spots; not the whole
20 entire event, but I can recall that we didn't ask to get
21 shot. I can recall that the problem was over with. I can
22 recall that after we decided to leave and then I can recall
23 that there was a problem after that.

24 Q How did you recall that Jason Gourdine was in his
25 vehicle during this process? Whatever the problem was, he

1 was sitting in his vehicle; isn't that true?

2 A I don't understand what you're saying.

3 Q You understand the question. Jason Gourdine, when you
4 were going toward the problem, which is Mr. Steven Moses, he
5 was actually sitting in his vehicle; isn't that true?

6 A Yeah.

7 Q Okay. Now, we've got that locked up. He was sitting
8 in his vehicle? He was occupied in his vehicle?

9 THE COURT: Counsel, one question at a time. This is
10 direct examination and if the State's not going to stop you,
11 I will. Ask direct questions and proceed. Get off your
12 hands, Mr. McNeely. Proceed.

13 Q Now, Mr. Bryant, at what point were you shot?

14 A At what point?

15 Q Yeah. In this whole problem you perceive, colloquy of
16 facts. At what point do you recall being shot?

17 A You threw me off when you said whatever you just said.
18 What?

19 Q We're talking about a process, okay?

20 A Okay.

21 Q You've seen the video, okay? We have played facts to
22 the extent that this young man, Mr. Gourdine, was sitting in
23 his vehicle occupied; isn't that true? Sir?

24 A Yeah, he blocked us in with his vehicle; that is true.

25 Q He was sitting in his car; isn't that true?

1 A Not in the parking spot. He pulled behind us and
2 blocked us in.

3 Q You did not exit any vehicle on this tape, did you not?

4 THE COURT: Just a moment. Yes, sir?

5 ASST. SOL. ALFARO: Asked and answered.

6 THE COURT: I'll allow him to answer that one more
7 time.

8 A We were walking out. I didn't even get to the vehicle.

9 THE COURT: Move on, counsel.

10 Q Thank you. Now, sir, not only were you moving in that
11 direction, but two other individuals were moving in the
12 direction that you perceive as the problem. You were moving
13 in that direction and Mr. Bohannon was moving in that
14 direction?

15 ASST. SOL. ALFARO: Objection.

16 THE COURT: Sustained. Mr. Davis, I know you want to
17 give the jury argument. The jury's not here; I'm here. You
18 haven't even bothered to show me your exhibits and I'm the
19 one who was to decide to the matter. Isn't that amazing?
20 You forgot that the judge is going to rule on this. So let
21 me tell you this right now, you are not going to make an
22 argument with every question. This is direct examination.
23 Ask direct questions and let's proceed. The objection is
24 sustained. Move along.

25 Q Who else was outside there with you, son?

1 A Rick.

2 Q Who is Rick?

3 A I can't remember his last name.

4 Q Bohannan?

5 A Say again?

6 Q Bohannan?

7 A Rick, I can't remember his last name. Adam Marquez,
8 Tyrell ---

9 Q Well, let's go back to the video that you watched with
10 us. Who are the three individuals that proceed in the
11 direction of Mr. Moses?

12 A I can't remember the video just offhand. My memory is
13 shot. If we were walking through it with the video playing
14 it, I could just point people out, but I can't. My memory
15 is ---

16 Q If we were to see it again, it would refresh your
17 memory?

18 A If you wanted me to point people out and say who they
19 are, then I could do it.

20 MR. STEVE DAVIS: Judge, I would just like to show that
21 part of the video, specifically with the individual that's
22 headed toward Mr. Moses.

23 THE COURT: Inside or outside?

24 MR. DAVIS: Outside, Your Honor. Scene Two, I call it.

25 THE COURT: Mr. McNeely, can you find it?

1 MR. MCNEELY: We can. The State would start the camera
2 at 2B at 2:08 a.m.

3 THE COURT: How about that. Take a look at it on the
4 screen, Mr. Davis. Mr. Kearse, you want to come around and
5 look at it on the computer screen?

6 MR. KEARSE: Yes, Your Honor.

7 THE COURT: Stop. Let Mr. Kearse get over there. He
8 is a part of this hearing, even though y'all are trying to
9 exclude him. Are y'all satisfied to begin it here?
10 Everybody happy with that beginning?

11 ASST. SOL. ALFARO: We are, Your Honor.

12 THE COURT: Mr. Kearse?

13 MR. KEARSE: I am, Your Honor.

14 THE COURT: Mr. Davis?

15 MR. DAVIS: Yes, sir.

16 THE COURT: No more speeches. Proceed.

17 (VIDEO BEGINS AT 2:08 A.M. mark.)

18 A This is us minding our business, too, by the way.
19 That's him pulling up.

20 THE COURT: Stop it right there, please. Go ahead, Mr.
21 Bryant, and use the microphone.

22 A Why are they stalking us?

23 Q I ask the questions.

24 A Oh, okay.

25 Q I want you to identify the three people. Who is the

1 individual sitting in the car that is about to get out?

2 A Okay. Rick, this is the guy ---

3 THE COURT: Whoa. Whoa. Whoa. Only one of you is
4 going to talk at a time. You asked him a question, let him
5 answer it. Last warning. You can answer his question.

6 A The guy that's about to get out the passenger seat?

7 Q Yes, sir.

8 A That's Rick. That's the guy who had the initial
9 problem with these guys.

10 Q Now, who is the guy with the black tag shirt on?

11 A That is Mr. -- Mr. Bohannan.

12 Q And the young lady in between you and Mr. Bohannan?

13 A That is his wife.

14 Q Okay. Do you know her name?

15 A Oh, y'all gonna beat me up. I'm sorry, my memory is
16 bad and I talk to them all the time.

17 Q All right.

18 THE COURT: Proceed.

19 Q And no question that the guy, you are in the photograph
20 yourself in the video?

21 A Yes.

22 Q Okay.

23 A Along with Mr. -- I can't remember his name. What was
24 it -- Mr. Moses.

25 Q All right. Now, I want you to restart the camera,

1 please.

2 (VIDEO BEGINS.)

3 Q Okay. Stop right there. Does that refresh your
4 memory, the relationship of the movement of three
5 individuals toward Mr. Moses, right?

6 A Yeah, the one who had the gun in his hand. Yeah, that
7 guy.

8 Q Give us the name of the three individuals who were
9 moving towards -- yourself included -- Mr. Moses.

10 A Me and the Bohannan's.

11 Q And why were you headed toward Mr. Moses?

12 A To see why they blocked us in and they stalking the
13 driver. He called the driver out, so I'm like, what's going
14 on here?

15 Q Was your vehicle parked, sir?

16 A The vehicle I was being transported in was being
17 blocked, obviously.

18 Q Okay. So it's your statement that you were going to
19 ride in that same vehicle?

20 A The one I came in?

21 Q I don't know which car you came in.

22 A Yeah, the one I came in.

23 THE COURT: Stop. Stop that. One at a time. We're
24 not going to have an argument during this hearing. Ask a
25 question, counsel, and stop.

1 Q What type of vehicle were you about to depart in, sir?

2 A I can't remember the name of the vehicle.

3 Q Who had you came with, sir?

4 A Tee, the owner of the vehicle. I don't know his name.

5 Q Well, did Tee approach anybody about being blocked out,
6 blocked?

7 A I don't know

8 Q Tee was the driver, right?

9 A Yes. Me standing outside, me and the Bohannan's, they
10 were escorting me into the car, until -- until Moses came
11 around and looking for Rick, that's what brought all of our
12 attention to the rear and then that's when everything went
13 haywire, as you can see.

14 Q My question was quite simple, at any point, did Mr. Tee
15 requested anybody remove their car from blocking them from
16 exit?

17 A Tee wasn't aware of what was going on at that split
18 second, because it happened just like that, the whole thing.

19 Q And in reference to just like that, do you have any
20 reason to dispute that this whole event took place in about
21 720 seconds?

22 A I have no idea.

23 Q You wouldn't dispute that?

24 THE COURT: I'm sorry, what was your question?

25 Q That this whole event took place in about 720 seconds?

1 A I have no idea.

2 Q And you have no recollection of alcohol or drug use
3 that night?

4 A I was drinking, yeah.

5 Q Drugs?

6 A No.

7 Q Marijuana?

8 A No.

9 Q No prescription drugs?

10 A No.

11 Q How long had you been at the club?

12 A I can't recall. You know, it's been two and a half
13 years ago. You know what I mean? This is my aggravation
14 every day, so my focus is off.

15 Q How many times were you shot?

16 A Once in the elbow.

17 Q At any time, was it life threatening to you?

18 A Yes, I died three times.

19 Q Died three times. How were you transported?

20 A EMS to helicopter.

21 Q So the medical report will reflect that you died three
22 times?

23 A I had to be resuscitated three times, so that means
24 they had to rehook.

25 Q And the EMS report will ---

1 A Well, I have the whole doctor's report. We had to turn
2 that in to disability and all that other stuff.

3 Q Okay. Have you had any previous run-ins with Mr. Jason
4 Gourdine or Mr. Moses?

5 A Never saw those guys in my life.

6 Q Are you familiar with the Castle Doctrine?

7 ASST. SOL. ALFARO: Objection.

8 THE COURT: Sustained. There's no evidence that this
9 witness is qualified to give an opinion on the law.
10 Proceed, Mr. Davis.

11 Q Do you believe an individual has a right to protect
12 himself from being injured?

13 A Say that again.

14 Q Do you believe an individual has a right to protect
15 himself from being injured?

16 ASST. SOL. ALFARO: Objection, Your Honor.

17 THE COURT: I think he can answer that question,
18 Solicitor.

19 A Yes, if it permits. If somebody is going to knife,
20 bottle, anything that's going to cause -- yeah.

21 Q So it would be your testimony that if someone
22 approaches someone in an aggressive manner, they would have
23 to have a gun, a knife, or some foreign object in their hand
24 that you believe they could actually defend themselves?

25 A In the eyes of the law -- from what I understand, in

1 the eyes of the law, that's how it's supposed to be handled.

2 Q Okay. I don't have any further questions.

3 THE COURT: Cross-examination, Mr. Kearse.

4 MR. KEARSE: May it please the Court, Your Honor?

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. KEARSE:

8 Q Mr. Bryant, how tall are you?

9 A About six, four.

10 Q And how much do you weigh?

11 A Three hundred.

12 Q Okay. And I would imagine that at the time of this
13 event, back in 2013, you weighed about 300 pounds then?

14 A Yeah, I stay in that area.

15 Q Okay. And that was that same area, as you put it, in
16 2013, correct?

17 A Yeah.

18 Q And you were not working for the Nowhere Bar at that
19 time; is that correct?

20 A Say again?

21 Q You weren't working that night?

22 A No, I don't -- no.

23 Q Okay. And you were a patron of the bar?

24 A Yes.

25 Q All right. And you gave a statement in this case, do

1 you recall?

2 A I can't recall.

3 Q All right. Do you recall talking to the officers and
4 telling them what you had done that night?

5 THE COURT: Just a moment. Is there an objection?

6 MR. DAVIS: No, Your Honor.

7 THE COURT: Sit down. You can find your file without
8 standing up. Go ahead, Mr. Kearse.

9 MR. KEARSE: Thank you, Your Honor. May it please the
10 Court, Your Honor?

11 THE COURT: You want to approach?

12 MR. KEARSE: Yes, Your Honor. I would like this
13 document marked for identification purposes.

14 THE COURT: Any objection, Mr. Alfaro?

15 ASST. SOL. ALFARO: No, Your Honor.

16 (DEFENDANT MOSES' EXHIBIT TWO, STATEMENT OF JAMES
17 BRYANT, MARKED FOR IDENTIFICATION PURPOSES.)

18 MR. KEARSE: I have what's marked as Defendant Moses
19 Exhibit Two.

20 THE COURT: This is Defendant Moses Exhibit Two,
21 without objection. You may proceed.

22 Q Do you recall giving that statement, Mr. -- first of
23 all, have you had a chance to review what I've just handed
24 you?

25 A No.

1 Q Take your time and review it.

2 A Okay. I've reviewed it.

3 Q Okay. Is that your signature at the bottom of that
4 document?

5 A Yes, it is.

6 Q And does that appear to be the statement you gave the
7 investigators in this matter?

8 A Well, I'm going to tell you, honestly ---

9 Q Is that a yes or no, Mr. Bryant? Is that the statement
10 you gave?

11 A I want to say apparently, yeah, but it's not like it's
12 far off, but you know, I'm medicated, going through the
13 motions, but it's pretty -- pretty much the scenario.

14 Q All right. And that statement is dated August 2nd,
15 2013, is it not?

16 A Yes.

17 Q So that's fairly close in proximity of time to the
18 event we're talking about; is that correct?

19 A That is correct.

20 Q And that would have been, I imagine, your recollection
21 of that event would have been fresher at that time; is that
22 correct?

23 A I -- I wouldn't say yeah, because of what I was going
24 through and what happened, but I guess.

25 Q Let's get to the meat of the matter. In the statement,

1 you stated that you had gone and you had gotten some beer
2 from the gas station first, is that correct, before going to
3 the Nowhere Bar?

4 A Yeah.

5 Q All right. Then you went -- you and your friend, you
6 went by the bar and had some drinks; is that correct?

7 A Yeah. We had one drink and then we had to go pick up a
8 friend.

9 Q Okay. And then y'all left and you actually came back
10 to the bar and you had more drinks?

11 A Yeah. It seemed like a nice place. The first time
12 I've ever been there in my life. We came back.

13 Q So you had been drinking pretty heavily?

14 A Well, yeah, well, we were all drinking. You know, I
15 can't say if it was heavy or light; it wasn't light, but it
16 was, you know.

17 Q Do you recall what you were wearing that night?

18 A A white shirt and grey pants. The only reason I
19 remember is because I don't have that anymore.

20 Q Okay. I want to hand you ---

21 MR. KEARSE: May I approach, Your Honor?

22 THE COURT: Mark it with the court reporter.

23 MR. KEARSE: We're marking this as Three, Your Honor.

24 THE COURT: Moses' Three. Without objection, Mr.

25 Alfaro?

1 ASST. SOL. ALFARO: No objection, Your Honor.

2 THE COURT: Mr. Davis?

3 MR. DAVIS: None, Your Honor.

4 (DEFENDANT MOSES' EXHIBIT NUMBER THREE, PHOTO, IS
5 MARKED AND RECEIVED INTO EVIDENCE.)

6 Q That's a picture, is it not, Mr. Bryant?

7 A Yeah.

8 Q All right. And that's a picture of you, is it not?

9 A It is.

10 Q All right. And it's a white t-shirt and looks like
11 khaki shorts or something of that nature?

12 A Yeah, it's grey shorts, yeah.

13 Q And in that picture, you are -- you will not deny that
14 you are putting your hands on somebody? Whether you're
15 punching them, pushing them, or whatever, you're putting
16 your hands on someone; is that correct?

17 A Yeah.

18 Would you not agree that that picture depicts you
19 putting your hands on Mr. Gourdine?

20 A It's fuzzy, but I'll go with that.

21 Q All right. Now, again, you were not working for the
22 club, correct?

23 A That's correct.

24 Q All right. And at the time you put your hands -- and
25 this is the night in question, is it not?

1 A Yes.

2 Q And that picture is a fair and accurate reflection of
3 the Nowhere Bar at the time of this event, is it not?

4 A Uh-huh (affirmative).

5 Q And when you put your hands on Mr. Gourdine, he was
6 walking out the door, was he not?

7 A I can't recall that.

8 Q You don't recall that?

9 A I don't recall this picture. I cannot recall that.

10 Q All right. Now, somebody took a swing prior to that?

11 A Wasn't me.

12 Q Was it Rick?

13 A That is true.

14 Q All right. And it wasn't you?

15 A Yeah.

16 Q And you have mentioned that person being questioned by
17 Mr. Davis?

18 A Uh-huh (affirmative).

19 Q A fellow by the name of Rick?

20 A Uh-huh (affirmative).

21 Q All right. And Rick's real name is Enrique Moran, is
22 it not?

23 A I never knew his real name. I always knew him as Rick.

24 Q All right. And you've gone through this whole trial
25 since 2013, you've reviewed with the Solicitors; have you

1 not?

2 A Yeah.

3 Q And y'all have met and discussed testimony and the
4 witnesses?

5 A If they brought up his name, I probably forgot it.

6 Q All right.

7 A My doctor can tell you.

8 Q But if I told you his name was Enrique, that wouldn't
9 surprise you, would it not?

10 A Well, he's Spanish, so that sounds about right.

11 Q All right. Now, Enrique had gone over to Mr. Moses and
12 Mr. Gourdine, did he not? That night as they was going out
13 the door?

14 A Yeah.

15 Q Okay. And Enrique was not an employee of the bar; is
16 that correct?

17 A That is correct.

18 Q All right. And so, at that time, this was none of your
19 business, correct?

20 A When Rick went over there?

21 Q Right.

22 A Well, we came together, so make sure we all leave
23 together.

24 Q Okay. So the two of you were together?

25 A All four of us were together. There was four of us in

1 the car.

2 Q All right. And when you say "all four of us," who are
3 those four people?

4 A Adam Marquez, Rick, and -- me, Rick, Adam, and who am I
5 missing? Tee -- Tyrell or Tyrone, yeah.

6 Q All right. So you and Enrique -- and Enrique took a
7 swing at Mr. Moses, did he not?

8 A Yeah.

9 Q As he was walking out of the bar, correct?

10 A He was standing there, and they was facing, like,
11 heading up, as you can see. Yeah, he was not walking
12 anywhere.

13 Q All right. They were headed towards the door, were
14 they not?

15 A Yeah, I guess, yeah.

16 Q Okay. And so you guys took it upon yourself to head
17 towards them, did you not?

18 A I headed towards the commotion which was Rick and -- my
19 ultimate goal was to make sure Rick's good and bring him
20 back on in.

21 Q All right. But you would agree that you didn't go over
22 there and break up a fight? You became a part of it that
23 night, did you not?

24 A I wouldn't say that.

25 Q Okay. Well, you went over there and you put your hands

1 on Mr. Gourdine, did you not?

2 A Apparently.

3 Q Right. And you would admit that he did not hit you
4 back?

5 A No.

6 Q And you would admit that they headed on out the door,
7 did they not?

8 A Yeah, and it was over. Right?

9 MR. KEARSE: Beg the Court's indulgence, Your Honor.

10 THE COURT: This is your four and five, Mr. Kearse?

11 MR. KEARSE: It is, Your Honor.

12 THE COURT: All right. Have Becky mark Four and Five
13 and please show it to opposing counsel.

14 MR. KEARSE: I will, Your Honor.

15 THE COURT: Any objection?

16 ASST. SOL. ALFARO: No, Your Honor.

17 THE COURT: Mr. Davis?

18 MR. DAVIS: None, Your Honor.

19 THE COURT: Proceed, Mr. Kearse.

20 (WHEREUPON, DEFENDANT MOSES EXHIBITS FOUR AND FIVE,
21 PHOTOS, ARE MARKED AND RECEIVED INTO EVIDENCE.)

22 Q Mr. Bryant, you would admit you are appreciably larger
23 than Mr. Moses and Mr. Gourdine, are you not?

24 A Yeah.

25 Q All right. You're a pretty physically imposing guy,

1 would you not agree?

2 A I wouldn't say that ---

3 Q --- Well, you said that ---

4 A --- I'm the nicest guy in the world.

5 Q You're 6' 4"?

6 A Yeah.

7 Q All right. I'm going to hand you what's marked as
8 Defendant Moses Exhibit Four.

9 A Uh-huh (affirmative).

10 Q Is that a picture of you?

11 A That is.

12 Q All right. And that's a picture of you pushing these
13 guys out of the club, right?

14 A Actually, I didn't even -- if you see, it appears that
15 way, but if you look from the right angle, I didn't even
16 touch anybody because they were already gone.

17 Q Well, you're trying to push them out, you just couldn't
18 get to them; would you not agree that's a fair assessment on
19 what you were doing?

20 A Yeah, I agree.

21 Q All right. And at the time, you and your friends
22 Enrique, and Mr. Bohannon, and the other guys who were
23 around, were using some fighting words; would you not agree?

24 A Both parties was using fighting words.

25 Q Well, we're talking about you right now.

1 A Well, yeah. Everybody was aggressing each other and
2 that's when we thought it was over, but it wasn't.

3 Q I'm going to hand you what's marked as Defendant Moses'
4 Number Five.

5 A Uh-huh (affirmative).

6 Q That's you in that picture, is it not?

7 A Yep, that's right after Moses came over in our space.

8 Q All right.

9 A Where we were minding our business at.

10 Q Okay. Well, would you not agree that that picture
11 shows you headed towards something or somebody?

12 A Yeah.

13 Q All right.

14 THE COURT: For the record, it's my understanding there
15 is no objection to admitting Defendant Moses' Exhibits Four
16 and Five; is that correct, Mr. Davis?

17 MR. DAVIS: That's correct, Your Honor.

18 THE COURT: Correct, Mr. Alfaro?

19 ASST. SOL. ALFARO: Yes, Your Honor.

20 THE COURT: Proceed, Mr. Kearse. They are now in
21 evidence for purposes of this hearing.

22 MR. KEARSE: Beg the court's indulgence.

23 Q Now, when Mr. Moses walked up outside, it was about
24 2:03 or something; do you recall that?

25 A I have no idea what time it was.

1 A No.

2 Q He did not ask for you, correct?

3 A No.

4 Q All right. And you immediately started heading towards
5 him, correct?

6 A Correct.

7 Q And you headed towards him because you were going to
8 put something on him, weren't you?

9 A What? I had no weapons. What are you talking about?

10 Q Well, you were getting ready to fight him, weren't you?

11 A Well -- you want me to answer this? Okay, they came
12 and aggressed us; we were minding our business. So

13 automatically, I'm in defense mode, so why y'all -- it's

14 plain as day. We didn't ask y'all to go and leave and come

15 back and wait for us to come out. We didn't ask for that.

16 Q Okay. But he didn't say anything of that nature to you
17 or anything else, did he?

18 A What's that?

19 Q Mr. Moses. He didn't say, "I came to fight." He
20 didn't say, "I came to do anything." He asked, "Where's the
21 guy who struck me?" Correct?

22 A "And there he is right there," and he pointed him out
23 for Mr. Gourdine.

24 Q And you immediately -- you immediately went into battle
25 mode, did you not?

1 Q All right. But you guys were standing around the van
2 when he walked up; is that correct?

3 A They were escorting us out, making sure we got to our
4 ride safely. That's basically what they were doing.

5 Q All right. And when Mr. Moses walked up, he walked up
6 and asked, "Where's the guy who took a swing at me,
7 correct?"

8 A That is correct.

9 Q All right. He did not hit anyone, correct?

10 A No.

11 Q Okay. And you immediately start heading towards him,
12 did you not?

13 A Yeah, well, yeah.

14 Q All right. And he did not ask for you, correct?

15 A No, he did not ask for me.

16 Q All right. And he did not touch you or strike you,
17 correct?

18 A Well, he shot me, if that means anything.

19 Q Did Mr. Moses shoot you?

20 A Oh, no, not that guy, no.

21 Q Let's back up.

22 A Okay. Okay. I forgot what we was talking about.
23 Sorry about that.

24 Q Okay. Mr. Moses, the young man at the far end of the
25 table, he did not touch you?

1 A I felt like I was being aggressed.

2 Q Right. And you headed towards him, correct?

3 A Correct.

4 Q All right. And you ran him back towards Mr. Gourdine's
5 car, did you not?

6 A That's what -- yeah.

7 Q All right. And you had two gentlemen behind you,
8 headed behind you in Mr. Moses' direction, did you not?

9 A It was Mr. Bohannan and his wife.

10 Q Okay. But there was another guy and that is the guy
11 you call "Rick," Enrique, correct?

12 A Uh-huh (affirmative).

13 Q And Enrique had on a t-shirt and was sitting in the car
14 at that time; is that correct?

15 A Yeah, in the front seat.

16 Q All right. And all of you guys immediately headed
17 towards Mr. Moses?

18 A We headed toward the problem that aggressed us.

19 Q Right.

20 A We was minding our own business. These people pull up
21 and then they looking for a certain person, so they
22 aggressing us. We minding our own business. So when they
23 engage us, that's when we went into defense mode.

24 Q And you say his engaging you, in your mind, is him
25 asking where is the person who struck -- him engaging you?

1 A Say that one more time.

2 Q You are saying he immediately engaged you, correct?

3 A No, I'm just saying the whole scenario, the argument or
4 whatever was over with, life goes on. You know, people have
5 arguments all the time. We thought it was over. We come
6 outside, they pull up. He's walking around looking for
7 Rick. So who's looking for trouble here? They come, he
8 points him out, so we automatically think, okay, they want
9 to fight us or something. So why would you be looking?

10 Q But again, Mr. Moses didn't say anything of that
11 nature, did he?

12 A He said, "Where's the guy who took the swing? Oh,
13 there he is." And he looked back at his partner and that's
14 when everything moved in that direction. And that's when he
15 came out with the gun and started blasting.

16 Q Okay. Well, we're going to slow this down for a
17 second.

18 MR. KEARSE: Beg the Court's indulgence. I think I'm
19 at Six. This will be Six through Fourteen.

20 THE COURT: Counsel approach.

21 (Whereupon, a bench conference is held off the record
22 and out of the hearing of the jury.)

23 THE COURT: As to Defendant Moses' Six through
24 Fourteen, Mr. Davis, any objection?

25 MR. DAVIS: No, Your Honor.

1 THE COURT: Mr. Alfaro, any objection?

2 ASST. SOL. ALFARO: No, Your Honor.

3 (WHEREUPON, DEFENDANT MOSES'S EXHIBITS SIX THROUGH
4 FOURTEEN, PICTURES, ARE MARKED AND RECEIVED INTO EVIDENCE.)

5 THE COURT: Proceed, Mr. Kearse.

6 Q I'm handing you what's marked as Defendant's Seven.
7 That's a picture of you in that photograph, Mr. Bohannan,
8 and I believe Ms. Bohannan at the end of that van; is that
9 correct?

10 A Yeah.

11 Q Okay. And does that appear to be a fair and accurate
12 reflection of the scene at the time of this event?

13 A Oh, yeah. That looks perfectly right because you can
14 see the gun in his hand. So he had it in the front seat
15 waiting, because there's no way you can jump back and just -

16 --

17 Q Well, before you get into that analysis ---

18 A Okay. Okay.

19 Q --- Ms. Bohannan is actually trying to restrain you, is
20 she not?

21 A I can't tell.

22 Q Okay. That's her with her arms wrapped around you, Mr.
23 Bryant?

24 A I can't really tell in this picture here. It looks
25 like she's touching me, but I can't tell if she's pushing me

1 or pulling. You can't tell. So I don't know what that is.

2 Q You don't remember her trying to pull you because
3 you're running after Mr. Moses?

4 A I can't recall.

5 MR. KEARSE: Your Honor, I believe these were admitted
6 without objection.

7 THE COURT: They were.

8 Q Mr. Bryant, you would agree that you and Mr. Moran,
9 Enrique Moran, who you call "Rick" and Mr. Bohannan were
10 actually having a confrontation with Mr. Moses and Mr.
11 Gourdine earlier that evening?

12 A It was a confrontation earlier in the bar, yes.

13 Q All right.

14 A Which I thought was over, by the way.

15 Q But you would agree that you did not get into the van
16 when Mr. Moses came up, correct?

17 A I didn't even get a chance to.

18 Q And that's because you headed in the direction ---

19 A No -- wait a minute. I didn't get a chance to get in
20 the vehicle, because Rick got in the front seat and while
21 we're back and forth joking about that, that's when he came
22 around looking for Rick.

23 Q My question is you voluntarily headed towards Mr.
24 Moses, did you not?

25 A I felt threatened from the giddy up.

1 Q Right. And so you headed towards him because you were
2 going to do something to extinguish what you felt was a
3 threat, correct?

4 A Extinguish? I didn't say anything about extinguishing
5 anything.

6 Q You were going to fight the man?

7 THE COURT: Whoa. One question, counsel.

8 MR. KEARSE: I'm sorry, Your Honor.

9 THE COURT: Are you finished with your answer, Mr.
10 Bryant?

11 A If they came to fight us, yes, I was going to fight
12 them because they -- why were they there? Why?

13 Q And you made that assumption when you saw them, that
14 they came to fight?

15 A Why else would they come back?

16 Q Right. So --- I'm sorry. So you headed towards him to
17 fight?

18 A I headed in that direction because I felt like they
19 were baiting Rick, right? We're all together. So they're
20 baiting Rick. They're bringing trouble into our circle
21 where we are. We're not bothering anybody.

22 Q So you, Mr. Bohannan, Mr. Moran headed in this man's
23 direction and ran him back towards the car because the three
24 of you were ready to fight, correct?

25 A We were going to see what's up. What was the problem,

1 pretty much. And when the gun came out, he told us exactly
2 what the problem was.

3 MR. KEARSE: Your Honor, I have no further questions.

4 THE COURT: Cross-examination, Mr. Alfaro?

5 ASST. SOL. ALFARO: Yes, Your Honor.

6 CROSS-EXAMINATION

7 BY ASST. SOL. ALFARO:

8 Q Mr. Bryant, I'm going to start with what happened
9 inside the bar. You were asked on cross by Mr. Kearse if
10 defendant Moses was leaving the bar when him and Enrique, or
11 Ricky, got into their face-to-face confrontation.

12 A Uh-huh (affirmative).

13 Q I'm going to show you on the screen behind you.

14 THE COURT: Mr. Moses' Exhibit One. Where are we, Mr.
15 McNeely?

16 MR. MCNEELY: Your Honor, we're at Camera 6A and we're
17 beginning at 1:57:07.

18 THE COURT: Very well. Proceed. It's in evidence.

19 (VIDEO BEGINS PLAY FOR 21 SECONDS AND THEN STOPS.)

20 Q Is that the face-to-face confrontation you were
21 describing in the cross-examination?

22 A Yes.

23 Q We're at 1:57:28. So at that point, is that when
24 they're both exchanging what you call "words with each
25 other"?

1 A Exactly.

2 Q And on that video, Rick is not holding him there, is
3 he?

4 A No.

5 Q He's not making any attempt -- Mr. Moses is not making
6 any attempt to leave at that time either, is he?

7 A No, he isn't.

8 MR. KEARSE: Objection. Speculation, Your Honor.

9 THE COURT: Sustained. I don't think he can testify to
10 what someone else thought.

11 Q So at that point, people go over to try to break up
12 that confrontation, correct?

13 A That's right.

14 Q You saw Rick take a swing at Mr. Moses?

15 A That is correct.

16 Q Did you see Rick produce any type of weapon towards Mr.
17 Moses?

18 A No, not at all.

19 Q Anybody else inside that bar that was with you produce
20 any kind of weapons at that point?

21 A Not at all.

22 Q So no one showed Mr. Moses or Mr. Gourdine anything
23 that looked like a weapon ---

24 A Nobody has weapons.

25 Q During this initial ---

1 A No.

2 Q So after everybody separated and the defendants leave
3 the bar, you would agree that it was about 10 minutes or so
4 before y'all left?

5 A Give or take. I can't recall the exact time, but I
6 know it was a break in between.

7 Q And at that point after, I think your words -- your
8 testimony was that at that point, you thought the problem
9 was over?

10 A Yes. I thought it was over with.

11 Q At that point, the defendants are gone?

12 A Yes.

13 Q You and Ricky did not run out after them?

14 A No. No. We stayed inside. Continued, finished up
15 what we were doing, you know, laughing and joking and that
16 was that.

17 Q So when you finally on the video that we watched, when
18 you finally walk outside, are y'all walking out to leave?

19 A Yes, because it was over with. The bar was shutting
20 down. They was escorting us out nicely. We was having a
21 good time.

22 Q So you were going outside to leave, not to go hunt down
23 these two?

24 A No. No.

25 Q And so when you get outside and you're standing by the

1 car, and you testified about the part where Ricky is in your
2 seat and you're joking back and forth with him about that,
3 do you see Mr. Moses before you see Mr. Gourdine block your
4 car in?

5 A It was like a same time type of deal.

6 Q And I believe you said you don't recall exactly what
7 Mr. Moses said to you?

8 A Yeah. Yeah.

9 Q I believe you said that after watching the video, you
10 believe he said, "Where's little man?" or "Where's the guy
11 who took a swing at me?"

12 A Yes, sir.

13 Q And based on what he said and the fact that they had
14 come back, at that point, 10 minutes had passed, how did you
15 perceive him? What did you take it as when he came back?

16 A A threat. Absolutely a threat, because if something is
17 over, it's over with. You know, I could see if he's
18 standing on the other side of the room and we all left at
19 the same time, but they were escorted out, whatever the case
20 may be. They were gone. We wasn't looking through no
21 windows. We was, you know, just minding our own business.

22 Q So at the point where he comes back and you perceive
23 Mr. Moses as a threat, in response to that threat, you
24 didn't produce any weapon, did you?

25 A No. No. Didn't have any weapon at all.

1 Q And I believe you said you were going to try to protect
2 Ricky?

3 A Pretty much. Because you know, he's a piece of work,
4 but you got to try to keep him out of trouble, you know.

5 Q And Mr. Kearse asked you some questions about how big
6 you are and whether you're appreciably bigger than Mr. Moses
7 and Mr. Gourdine, correct?

8 A Yeah.

9 Q And is it fair to say that Ricky is appreciably smaller
10 than you?

11 A Oh, yeah.

12 Q Is it fair to say that he's appreciably shorter than
13 either of the defendants?

14 A That is correct.

15 Q And is it also equally fair to say that there were two
16 defendants?

17 A On one.

18 Q So at that point, I believe you said, "Come together,
19 leave together"?

20 A Exactly.

21 Q And that's why you went towards where the car was
22 blocking you in?

23 A Exactly.

24 Q Okay. Now, Mr. Moses' reaction when you approached
25 him, did he run away from the car or did he walk toward --

1 back up towards the car?

2 A He -- it was almost like he was leading us into
3 whatever was ---

4 MR. KEARSE: Objection, Your Honor. That's
5 speculation.

6 THE COURT: Sustained. I understand you're trying to
7 describe what you recall, but what somebody else was
8 thinking or doing is not within your purview. To that
9 extent, the objection is sustained.

10 MR. BRYANT: Okay.

11 THE COURT: Rephrase your question and let him answer
12 it without speculating as to what someone else might have
13 thought.

14 ASST. SOL. ALFARO: Yes, Your Honor.

15 Q Specifically limiting yourself to the direction of
16 travel, which direction did Mr. Moses move upon you
17 recognizing him coming at you and walking towards you?

18 A Just that fast. I can't recall.

19 Q And at what point did you see Mr. Gourdine armed with
20 the shotgun?

21 A It was -- I wasn't even, you know, it was like as soon
22 as I came around, he just got out with it. So it was like -
23 - it wasn't like I could have touched him, because I wasn't
24 that close to him to touch him, but as soon as I came
25 around, he was ready.

1 Q So when you say he was ready, he was already out of the
2 car?

3 A No, it was like -- I almost want to say as soon as
4 everything got in motion and people started moving, I want
5 to say his left foot was probably out the car, because as
6 soon as we came around, he came out with it.

7 Q And you weren't close enough to get to the car door?

8 A Yeah.

9 Q You were not close enough? That's a bad question.

10 A Well, not the car door. I couldn't get in the car
11 door, because of the way it was -- you understand what I'm
12 saying? It's not like I could have went and just run and
13 grabbed him out of there, no.

14 Q So were you trying to get in the car when you got shot?

15 A No. No.

16 Q Did you at any point touch the car that Gourdine had
17 gotten out of to shoot you?

18 A Unh-unh.

19 ASST. SOL. ALFARO: No further questions, Your Honor.

20 THE COURT: Redirect, Mr. Davis?

21 MR. DAVIS: Just one, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. DAVIS:

24 Q Can you share with us what your nickname is, sir?

25 A Nickname?

1 Q Don't they call you "Biggie"?

2 A No, you got the wrong guy.

3 Q Okay.

4 A Sorry.

5 Q So you're not the "Biggie" they're describing?

6 A No, I've never went by that name in my life.

7 Q "Big," neither?

8 A Who?

9 Q Big.

10 A Big?

11 Q Yeah.

12 A No, nobody calls me "Big". Maybe people say that
13 jokingly, but ---

14 Q Well, you said nobody calls you that. Do they call you
15 Big, sir?

16 A No.

17 Q Okay.

18 THE COURT: Mr. Kearse?

19 MR. KEARSE: Just follow up, and I don't want to
20 belabor it, Your Honor.

21 Q Mr. Bryant, admittedly, when you ran towards Mr. Moses,
22 was it in an aggressive manner, correct?

23 A I was being agressed.

24 THE COURT: Just a moment. Yes, sir?

25 ASST. SOL. ALFARO: Objection. It's asked and

1 answered.

2 THE COURT: I agree that it has been asked and
3 answered. Let's move on. That objection is sustained.

4 Q All right. But your attempt was to get to Mr. Moses,
5 was it not?

6 A My attempt was to defend us, period, because we didn't
7 ask for nobody to bother us, period.

8 Q And when you say "defend," that is to get to Mr. Moses?

9 A No, that was to whatever comes our way, we were going
10 to defend ourselves, basically. Because we figured they
11 came to fight. We didn't think they came to shoot us.
12 Think about it.

13 Q Not to belabor, Your Honor, but to be clear for the
14 record, Mr. Moses did not say anything toward you, correct?

15 A He was looking for Rick.

16 Q Okay. And Mr. Moses did not hit you or touch you,
17 correct?

18 A No.

19 Q All right. And in fact, Mr. Moses did not hit or touch
20 anyone out there in a fighting manner in that parking lot
21 that night, correct?

22 A No.

23 Q All right. And you said that when you saw him, you
24 immediately thought he was ---

25 A --- trouble.

1 Q --- being aggressive and you needed to defend yourself?

2 A I automatically thought trouble, because it was over
3 with. They came out of nowhere.

4 Q All right. Conversely, Mr. Bryant, isn't it reasonable
5 that when Mr. Moses saw you running towards him it was that
6 he thought you guys were getting ready to ---

7 ASST. SOL. ALFARO: Objection.

8 THE COURT: Sustained. No, sir, you're not going to
9 allow him to testify to what someone else thought, just as
10 you objected to it, Mr. Kearse. That objection is
11 sustained. Anything further?

12 MR. KEARSE: Nothing else, Your Honor.

13 THE COURT: Recross, Mr. Alfaro?

14 ASST. SOL. ALFARO: No further questions, Your Honor.

15 THE COURT: Very well. As to this witness, Mr. Davis,
16 may Mr. Bryant be excused?

17 MR. DAVIS: As far as I'm concerned, Your Honor.

18 THE COURT: Mr. Kearse?

19 MR. KEARSE: Yes, sir.

20 THE COURT: Mr. Alfaro, do you want him to remain for
21 any reason?

22 ASST. SOL. ALFARO: If he chooses to, Your Honor.

23 THE COURT: Obviously, Mr. Bryant, if you want to, you
24 can stay. You may step down from the witness stand and you
25 are excused from this hearing. Call your next witness, Mr.

1 Davis.

2 MR. DAVIS: Stacy Bohannan.

3 THE COURT: Please come around and be sworn by the
4 Clerk.

5 (Whereupon, Mrs. Stacy Bohannan is duly sworn.)

6 THE COURT: Have a seat on the witness stand. State
7 your full name and spell your last name for the court
8 reporter.

9 MS. BOHANNAN: My name is Stacy Bohannan. Last name,
10 B-O-H-A-N-N-A-N.

11 THE COURT: Speak up for me, Ms. Bohannan. The
12 microphone will amplify your voice. If you can't hear, you
13 let me know.

14 THE COURT: Mr. Davis, this is your witness and it is
15 direct examination.

16 DIRECT EXAMINATION

17 BY MR. DAVIS:

18 Q Good afternoon, Ms. Bohannan, how are you doing?

19 A I'm fine.

20 Q Have you and I ever discussed this case?

21 A I'm sorry?

22 Q Have you and I ever discussed this case?

23 A No, sir.

24 Q Have you discussed this case with the prosecutors? The
25 Solicitors?

1 A Yes.

2 Q Multiple times?

3 A Yes.

4 Q Have you had the opportunity to review any statements
5 that you made that night?

6 A I don't recall whether I've reviewed them or not.

7 Q Do you have an independent recollection of what
8 happened that night or does the video give you help and
9 enhance your memory?

10 A The video brings back some things.

11 Q Okay. Now, in that regard, had you been drinking that
12 night, ma'am?

13 A Yes, sir.

14 Q How would you qualify? Excessive, minimum, light? How
15 would you qualify that?

16 A We were hanging out having a good time. We had had a
17 few drinks.

18 Q Excessive?

19 A No.

20 Q What do you call a few drinks?

21 A A few drinks.

22 Q I don't know. One, two, three, four, five?

23 A Five or six, seven.

24 Q Five, six, or seven? And what type of drinks?

25 A I was drinking -- I don't recall what I was drinking

1 that night.

2 Q Well, what do you normally drink?

3 A Normally, I drink Malibu and Coke.

4 Q Malibu and Coke. So it would be fair to say you had
5 seven Malibu with Coke that night?

6 A Yeah.

7 Q Okay. And how long were you at the Nowhere Grill that
8 night as you best recall?

9 A We were there a few hours.

10 Q A few hours. And do you recall the specific time that
11 you actually got there?

12 A No, I do not.

13 Q And who were you there with, specifically? Had you
14 come alone?

15 A No, I was there with my husband.

16 Q So you and your husband had been there for about three
17 hours?

18 A About that.

19 Q Okay. And I noticed on the video that you take your
20 husband off to the side and can you share with us what are
21 your concerns at that particular point?

22 A At that particular point in time I just wanted to make
23 sure that my husband stayed out of whatever was going on and
24 that we were going to mind our own business, because we
25 didn't to get involved.

1 Q Because he was not employed by the Nowhere Grill
2 establishment, was he? Your husband?

3 A No.

4 Q He wasn't working there?

5 A No.

6 Q He wasn't a bouncer there, was he?

7 A No.

8 Q He wasn't there for security reasons, was he not?

9 A No.

10 Q So why were you so concerned about him minding his own
11 business?

12 A Because ---

13 MS. BOHANNAN: Do I need to answer that?

14 THE COURT: Yes, ma'am.

15 A Because my husband is the type of person that if he
16 feels somebody is threatened or if there is something going
17 on, he is going to try to diffuse the situation or try to
18 make sure nothing bad happens.

19 Q So in that regard, when we review this, are you
20 similarly that type of person I would say?

21 A I would try to diffuse the situation, yes, sir.

22 Q Okay. How long have you been married to Mr. Bohannon?

23 A I have been married to my husband, it will be 17 years
24 in March.

25 Q Thank you. And so you believe you have acquired some

1 of his attributes in that regard to try to diffuse stuff?

2 A No. I don't know. I mean ---

3 Q Well, it's no tricky question. On the night involved,
4 there were instances where I saw that you attempted to
5 intervene, specifically with Mr. James Bryant who just
6 testified. Did you?

7 A I was trying to diffuse the situation.

8 Q Yes, and that is what you were telling me your husband
9 do in similar situations; isn't that true?

10 A Yes, sir.

11 Q Getting into other people's business?

12 A (NO RESPONSE.)

13 Q Ma'am?

14 A I guess.

15 Q Yes. Now, in that regard, do you recall anybody ---

16 MR. DAVIS: And I'm walking away, Judge, and I'm not
17 going to speak until I get here.

18 THE COURT: You like to do that, Mr. Davis, but you
19 like to talk while you walk. Face the witness.

20 MR. DAVIS: Yes, bad habit, Judge.

21 Q Ma'am?

22 THE COURT: Can you hear him, ma'am?

23 MS. BOHANNAN: (NO RESPONSE. WITNESS GETS EMOTIONAL.)

24 THE COURT: Get her some water, please. Take your
25 time, now.

1 MS. BOHANNAN: I'm sorry.

2 THE COURT: That's all right. When you're ready to
3 proceed, you let me know.

4 MS. BOHANNAN: Yes, sir.

5 THE COURT: Mr. Davis, speak up.

6 Q Ms. Bohannan, at any time, can you identify this person
7 I'm standing behind?

8 A Yes, sir.

9 Q At any time during that club that night, did he
10 assaulted ---

11 THE COURT: Identify for the record who you're pointing
12 to, Mr. Davis, and don't say "he".

13 Q Mr. Jason Gourdine.

14 THE COURT: Ask a question.

15 Q Ms. Bohannan?

16 A Yes, sir.

17 Q Did Jason Gourdine at any time strike or touch anybody
18 in the Nogrill (sic) Bar?

19 A I don't know. I don't recall that.

20 Q Did you watch the video a minute ago, did you not?

21 A No, sir, he didn't.

22 Q I don't know.

23 A No, sir, he did not.

24 Q Okay. Did you observe Mr. Steven Moses struck anybody
25 that night inside the Nogrill (sic) Bar?

1 A No, sir.

2 Q Okay. Now, who did you -- who do you recall actually
3 striking someone that night inside the Nogrill (sic) Bar?

4 A The only person I know was Rick.

5 Q Rick. Enrique, isn't that correct?

6 A Rick, I just know him as Rick. I've never met them
7 before that night. I don't know who he is.

8 Q What did you observe Mr. James Bryant do that night
9 inside the Nogrill (sic) Bar?

10 A He was trying to move Rick back.

11 Q Okay. At any point, did he assaulted or touch Mr.
12 Jason Gourdine, who you have already identified?

13 A Not that I saw. Not that I saw that night.

14 Q Okay.

15 A Not that -- he didn't touch him.

16 Q Okay. Now, let's go outside, okay? Do you have any
17 reason to dispute that all of this took about 720 seconds?

18 A I know it was very quick.

19 Q Thank you. It was very quick, that's correct. And in
20 that same quickness, there's no question that apparently you
21 were outside, were you not?

22 A I was outside.

23 Q Identify who was outside with you at the moment you
24 were outside.

25 A I was outside with my husband, myself, Mr. Bryant, and

1 I believe Rick and Tee.

2 Q Do you recall when Mr. Steven Moses came around the car
3 and made an inquiry about an individual, did you not?

4 A Yes, I do.

5 Q Tell the Court at any time, did either one of these
6 individuals touch anyone?

7 THE COURT: Refer to who you're talking about.

8 Q Mr. Steven Moses, did he touch anyone when he came
9 around that car?

10 A No.

11 Q Okay. In fact, at that particular point, the other
12 individual, Jason Gourdine, was sitting in the vehicle;
13 isn't that true?

14 A Yes.

15 Q And at that point, Mr. James Bryant made movements, did
16 he not?

17 A Because we felt threatened.

18 Q Well, that's okay. He made movements, ma'am?

19 A Yes.

20 Q And in what direction did he make the movements?

21 A Towards -- he moved towards what we were threatened --
22 he moved towards the threat.

23 Q Well, was anything threatening in Mr. Steven Moses's
24 hand when he came around the corner?

25 A The way he walked up, and his posture was very

1 threatening.

2 Q Okay. Did he say anything?

3 A He said something, "Where's old boy from earlier?"

4 Q Okay. And in fact, someone was actually sitting inside
5 the vehicle; isn't that true?

6 A That is correct.

7 Q Who got out of that vehicle? Can you identify him?

8 A I believe it would have had to be Rick.

9 Q And what did he do when he got out of that vehicle?

10 A I don't know what Rick did when he got out of that
11 vehicle.

12 Q Well, what did you do when Mr. Steven Moses came around
13 the car?

14 A I tried to get in between Mr. Bryant and Mr. Moses.

15 Q Why did you try to get in between Mr. Bryant?

16 A Because I was scared there was going to be a fight.

17 Q You were afraid that Mr. Bryant was going to do what?
18 Attack Mr. Steven Moses?

19 A No, that is not what I was afraid of. I was afraid
20 there was going to be a fight between the two of them. He
21 came around with a very threatening posture. It was a very
22 threatening situation.

23 Q Did he say anything to Mr. James Bryant?

24 A He asked the group where this person was.

25 Q The group?

1 A He addressed the people that were ---

2 THE COURT: Ms. Bohannon, did you say he asked the
3 group?

4 A He addressed the group, "Where's old boy from earlier?"

5 THE COURT: I just wanted to make sure I heard you.

6 A Yes, sir.

7 THE COURT: Go ahead.

8 Q You watched the tape, did you not?

9 A Yes, sir.

10 THE COURT: Speak up, Mr. Davis.

11 Q You watched the tape, did you not?

12 A Yes, sir.

13 Q And it goes without question that he spoke directly to
14 a fellow who was sitting inside the car; isn't that correct?

15 A He asked the group, "Where is old boy from earlier?"
16 Then, he saw Rick and he said, "There he is."

17 Q And what movement was made after that?

18 A He started backing up towards Road.

19 Q He started retreating; isn't that true?

20 A Out of -- back towards away.

21 Q Who? Who started doing that? Who was retreating?

22 A Steven Moses was getting out of the way.

23 Q Getting out of the way. And who was trying to get in
24 the way in pursuit of Steven Moses?

25 A (NO RESPONSE.)

1 Q Who was pursuing him?

2 A James.

3 Q James Bryant. And all of a sudden, did you see when,
4 in fact, Gourdine stepped out of the car in an effort to
5 protect or defend?

6 A No, sir. I did not see him ---

7 ASST. SOL. ALFARO: Objection, Your Honor.

8 THE COURT: Just a moment. What grounds?

9 ASST. SOL. ALFARO: That answer calls for legal
10 speculation.

11 THE COURT: Sustained.

12 Q What did you see, ma'am?

13 A My back was turned. I didn't see a whole lot. The
14 next thing I remember is hearing "pow" and feeling a shot to
15 the back of my head.

16 Q Okay. Did you ---

17 A (WITNESS BECOMES EMOTIONAL.) I'm sorry.

18 THE COURT: Take a moment. Tell me when you're ready.

19 Take some water.

20 A Yes, sir.

21 Q Did Steven Moses come around that corner with any
22 weapons or any item in his hand?

23 A No, sir.

24 Q Who is "Biggie"?

25 A I'm sorry?

1 Q Who is "Biggie"?

2 A I don't know who Biggie is.

3 Q Okay. Had your husband been drinking also?

4 A Yes, sir.

5 Q Yeah. As much or less than you?

6 A Less than me.

7 MR. DAVIS: I want this marked, Your Honor.

8 THE COURT: Show it to counsel.

9 MR. DAVIS: I think this would be Exhibit Eight,
10 please.

11 THE COURT: This would be your number Eight. Becky,
12 Gourdine Number Eight. Any objection, Mr. Alfaro?

13 ASST. SOL. ALFARO: None, Your Honor.

14 THE COURT: Any objection, Mr. Kearse?

15 MR. KEARSE: None, Your Honor.

16 (WHEREUPON, DEFENDANT GOURDINE'S EXHIBIT NUMBER EIGHT
17 IS MARKED AND RECEIVED INTO EVIDENCE.)

18 THE COURT: Gourdine Number Eight, without objection.
19 Proceed, Mr. Davis.

20 Q Ms. Bohannon, I'm going to hand you what's been marked
21 as Defendant's Exhibit Number Eight.

22 MR. STEVE DAVIS: May I approach, Your Honor?

23 THE COURT: You may. You're already there, Mr. Davis.
24 That's shutting the barn door after the horse is out.

25 MR. STEVE DAVIS: I do own a horse, too, Your Honor.

1 THE COURT: Well, you may own a horse, but you ask for
2 permission or you ask for forgiveness, and in this case, you
3 asked for forgiveness, Mr. Davis. Proceed.

4 Q Can you identify that, ma'am?

5 A Yes, sir.

6 Q What is it?

7 A This is the statement that I gave the detective in the
8 hospital.

9 Q And when was that statement given?

10 A July 28th, 2013.

11 Q Would it be fair and accurate to say that that
12 statement probably was more fresh in your memory at the time
13 that you gave it?

14 A Yes.

15 Q Who wrote that statement, ma'am?

16 A Detective Wilson wrote the statement.

17 Q Who provided the information to be placed in that
18 statement?

19 A I did.

20 Q Were you given an opportunity to review that statement
21 before you signed your name to it, ma'am?

22 A Yes, sir.

23 Q I want you to review that statement and tell me in
24 reference is there ever the word used "Big" in that
25 statement?

Direct examination of Stacy Bohannon by Mr. Davis

1 A There is.

2 Q And having heard the word "Big" who are you referring
3 to?

4 A James.

5 MR. DAVIS: Judge, I'd move to have this statement
6 introduced for the purposes of this hearing.

7 THE COURT: There is no objection. Number Eight is in
8 evidence. You might want to give it to the judge, now, Mr.
9 Davis, since you don't seem to have an understanding of who
10 is going to decide this hearing.

11 MR. DAVIS: I do, Judge, I do. I do. No further
12 questions, Your Honor.

13 THE COURT: Mr. Kearse, cross-examination.

14 MR. KEARSE: Yes, Your Honor. May it please the Court,
15 Your Honor?

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. KEARSE:

19 Q Ms. Bohannon, how are you doing?

20 A I'm all right.

21 Q That night, you were at the bar with your husband, I
22 believe; is that correct?

23 A That is correct.

24 Q All right. When these gentlemen walked in, you were, I
25 believe situated with your husband and you guys were having

1 a drink; is that correct?

2 A That is correct.

3 Q All right. Now, while these two gentlemen, Mr. Moses
4 and Mr. Gourdine was in the bar, there was this exchange
5 between them and the bartender; is that right?

6 A That is correct.

7 Q All right. And then they started exiting the bar, is
8 that correct?

9 A Yes, sir.

10 Q All right. Do you recall having a conversation with
11 your husband, making sure he did not become a part of that?

12 A Yes, I did.

13 Q All right. And you, in a sense, kind of restrained
14 him, held him by his arm; is that correct?

15 A Yes, I did.

16 Q All right. And you witnessed Enrique, or Rick, go over
17 and throw a punch at one of the two men; is that correct?

18 A Yes.

19 Q Do you recall which gentleman he swung at or hit?

20 A I -- I don't.

21 Q If you don't, that's all right. Was it Mr. Moses?

22 A I believe so.

23 Q All right. And even at that time, you were restraining
24 your husband making sure he wasn't becoming a part of it?

25 A I told my husband to stay put, yes.

1 Q All right. And as you said, you also made an attempt
2 to restrain Mr. Bryant at some point; is that correct?

3 A Yes, sir. I tried to stop the altercation.

4 Q All right. And inside the bar, Mr. Bryant followed
5 over there and became a part of the altercation; is that
6 correct?

7 A I wouldn't call him a part of the altercation, no.

8 Q All right. What would you call it?

9 A I would call it trying to stop the altercation.

10 Q Okay. Now, outside later on at the van, it was you,
11 your husband; is that correct?

12 A That's correct.

13 Q And your husband is in the dark t-shirt?

14 A In a tank top, yes, sir.

15 Q In a tank top type t-shirt.

16 A Yes, sir.

17 Q And Mr. Bryant was in the white t-shirt with sleeves
18 and Enrique, or Rick, is in the van; is that correct?

19 A Yes.

20 Q And he has a white t-shirt on; is that correct? Tank
21 top?

22 A Yes.

23 Q And then there are two other gentlemen who also are
24 sitting in the van; is that right?

25 A I believe so.

1 Q And your husband and Mr. Bryant are outside of the van;
2 is that right?

3 A We're all three outside of the van.

4 Q Right, well, all three of you are standing outside the
5 van, correct?

6 A Yeah, we're escorting him, helping him to the van.

7 Q All right. And when Mr. Moses walked up, Mr. Bryant at
8 no time tried to get in the van?

9 A He didn't have a chance to help him in the van because
10 Rick was in the front seat. We were trying to move Rick
11 from the front seat to the back seat to get Mr. Bryant to
12 the front seat where he belonged.

13 Q Well, my question is whether he tried to get in the
14 front or get in the back at the time Mr. Moses walked up,
15 Mr. Bryant never even tried to get in the van; is that
16 correct?

17 A Yes, sir.

18 Q All right. And isn't it also true that they neither
19 tried to go back in the bar; is that correct?

20 A The bar was closed.

21 Q All right. But they didn't try to go back in the bar?

22 A No.

23 Q All right. Is it also true that they did not try to
24 walk off in another direction when Mr. Moses came up,
25 correct?

1 A We were putting him in the car. He was getting ready
2 to get in the car.

3 Q Well, at the time Mr. Moses walked up, you guys did not
4 walk away from Mr. Moses nor did you walk away from the car
5 in the parking lot, correct?

6 A No, sir.

7 MR. KEARSE: Beg the Court's indulgence if I can, Your
8 Honor.

9 THE COURT: What do you need?

10 MR. KEARSE: Exhibit Seven.

11 THE COURT: Make sure you give it back to the court
12 reporter.

13 MR. KEARSE: Yes, sir, I will. May I approach, Your
14 Honor?

15 THE COURT: That's called permission, Mr. Davis.
16 Proceed.

17 Q I want to hand you what's been marked as Defendant
18 Moses' number eight and number seven. I want you to review
19 those and when you've had a chance to look at them just say
20 okay.

21 A Yes, sir.

22 Q All right. That's a picture of the van that was out
23 there that night, correct?

24 A That is correct.

25 Q And in those two pictures -- well, there are two

1 pictures, correct?

2 A Yes, sir.

3 THE COURT: Look on the back and give the numbers.

4 A Oh, I'm sorry, yes. I guess I'm supposed to say
5 Exhibit Eight and Exhibit Seven.

6 THE COURT: And those exhibits, for the record, Becky,
7 are exhibits that were entered into the record by Mr. Moses;
8 is that correct?

9 MR. KEARSE: That's correct, Your Honor.

10 Q All right. And you are in those pictures, are you not?

11 A Yes, I am.

12 Q All right. And that's you with your arms wrapped
13 around Mr. Bryant, is it not?

14 A Yes, it is.

15 Q And he was actually heading towards Mr. Moses at that
16 time, was he not?

17 A Yes, he was.

18 Q And you were trying to hold him back, correct?

19 A Yes.

20 Q Again, and I'm going to be very quick, Your Honor. Mr.
21 Moses didn't make any fighting words when he came around
22 him, did he not?

23 A There were no words, but his posture, he came across as
24 a threat.

25 Q Okay. And you didn't see Mr. Moses at any time with

1 any firearm or any weapons; is that correct?

2 A Not Mr. Moses, no.

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

4 THE COURT: Very well. Cross-examination. Mr.

5 McNeely, welcome.

6 MR. MCNEELY: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MCNEELY:

9 Q Stacy, I just have a few questions for you, okay?

10 A Okay.

11 Q There was an altercation in the bar at approximately
12 1:57:30 in the evening; is that correct?

13 A That's correct.

14 Q After the altercation in the bar, what did the
15 defendants do?

16 A They left the bar.

17 Q And when I refer to the defendants, I mean Jason
18 Gourdine and Steven Moses.

19 A Yes, sir, they left the bar.

20 Q At that time, did you remain inside the bar?

21 A I did.

22 Q Approximately how long did you remain inside the bar
23 before you exited the bar?

24 A It was 10 to 15 minutes.

25 Q And at some point, you exit the bar?

- 1 A That's right.
- 2 Q Why did you exit the bar?
- 3 A It was time to go home. We were leaving and helping
4 James to his car.
- 5 Q Was the bar closing?
- 6 A The bar was closing.
- 7 Q And at some point, you're standing beside the white van
8 in front of the front door; is that correct?
- 9 A That's correct.
- 10 Q And you're attempting to help James into the vehicle;
11 is that correct?
- 12 A Yes, sir.
- 13 Q And then you see Mr. Moses come around the back of the
14 van; is that correct?
- 15 A Yes.
- 16 Q When you saw Mr. Moses, did you also see another
17 vehicle at that time or did you just see Mr. Moses?
- 18 A I just saw Moses.
- 19 Q And what did Mr. Moses do when you saw him?
- 20 A He came around the vehicle with his hand out, "Where's
21 old boy from earlier?"
- 22 Q Who did he say "Where's old boy from earlier" to?
- 23 A Like to just -- it was the three of us standing there.
- 24 Q How did you perceive that statement at the time?
- 25 A It was very threatening. My heart was -- I remember my

1 heart started to race. I felt like something bad was fixing
2 to happen.

3 Q Who did you think he was talking about?

4 A I wasn't sure. Rick, I guess. I wasn't sure who he
5 was talking about.

6 Q Did you assume it was Rick?

7 A I did, but I didn't, you know.

8 THE COURT: I'm sorry. I didn't understand your
9 response.

10 A I assumed it was Rick.

11 THE COURT: Very well. Proceed.

12 ASST. SOL. MCNEELY: Thank you, Judge.

13 Q Did he make any gestures with his hand at this time?

14 A No, "Where's old boy from earlier?"

15 Q At some point, did you perceive that he found Rick?

16 A Yes, and he pointed him out.

17 Q And where was Rick at that time?

18 A Rick was standing by the van.

19 Q At that point, what did you see happen?

20 A At that point, James went towards -- or Moses started
21 to back up and he started to back up back behind the van;
22 not towards the car that he was in, but behind the van.

23 Q When you saw Mr. Moses start to back up, what did you
24 perceive those actions as?

25 A That he was getting out of the way. Like he was trying

1 ---

2 MR. KEARSE: Objection, Your Honor. Speculation.

3 THE COURT: Sustained. She can't testify to what
4 somebody else though. She can testify to what she observed,
5 but not what was in another person's mind as to what their
6 state of mind was. The objection is sustained. Ask a
7 question, Solicitor. Cross-examination.

8 ASST. SOL. MCNEELY: I asked Ms. Bohannon how she
9 perceived Mr. Moses' actions.

10 THE COURT: I understand you did and she can answer it
11 from her own personal observations without qualifying what
12 was in the mind of another person. Ask a question,
13 Solicitor. I've ruled on that, move.

14 Q Did you have a weapon on you at the bar that night?

15 A No, sir.

16 Q Did you have a weapon on you in the parking lot that
17 night?

18 A No, sir.

19 Q Did you ever see your husband, David, with a weapon at
20 the bar that night?

21 A No, sir.

22 Q Did you ever see him with a weapon in the parking lot
23 that night?

24 A No, sir.

25 Q Did you ever see James Bryant with a weapon that night?

1 A No, sir.

2 Q Did you ever see James Bryant with a weapon in the
3 parking lot that night?

4 A No, sir.

5 Q Did you get shot that night?

6 A Yes, sir.

7 Q Where did you get shot, Ms. Bohannon?

8 A I got hit in the back of my head, neck and shoulders.

9 Q What were you doing when you got shot?

10 A I had my back turned and was trying to diffuse the
11 situation from something bad happening.

12 Q Were you running back into the bar?

13 A I was running back into the bar.

14 ASST. SOL. MCNEELY: No further questions from the
15 State.

16 MR. DAVIS: Nothing on redirect, Your Honor.

17 MR. KEARSE: Just a couple, Your Honor. Very briefly.

18 RECROSS-EXAMINATION

19 BY MR. KEARSE:

20 Q Ms. Bohannon, Mr. Moses did not ask or make any
21 statement about you, Mr. Bryant or your husband, Mr.
22 Bohannon; is that correct?

23 A That is correct.

24 Q All right. And at the time Mr. Moses walked up, do you
25 not recall that Enrique Moran, you guys call him "Rick," was

1 actually seated in the van?

2 A He was in the van.

3 Q All right.

4 MR. KEARSE: Nothing further, Your Honor.

5 ASST. SOL. MCNEELY: Nothing further, Judge.

6 THE COURT: As to this witness, Mr. Davis? May she be
7 excused?

8 MR. DAVIS: Yes, Your Honor.

9 THE COURT: Mr. Kearse?

10 MR. KEARSE: Yes, sir.

11 THE COURT: Solicitor?

12 ASST. SOL. ALFARO: Absolutely, Judge.

13 THE COURT: Ms. Bohannon, you can step down from the
14 witness stand. You're excused from this hearing. We would
15 love for you to remain with us if you'd like to, but you are
16 excused.

17 (MS. BOHANNAN EXITS THE WITNESS STAND.)

18 THE COURT: Counsel approach.

19 (Whereupon, a bench conference is held off the record
20 and out of the hearing of the courtroom.)

21 THE COURT: Ladies and gentlemen, we're going to take
22 our one and only five minute break at this time for the
23 afternoon so you can stretch your legs, use the restroom.
24 We're going to take a five minute recess at this time.

25 (Whereupon, court is adjourned briefly.)

1 THE COURT: Call your next witness.

2 MR. DAVIS: David Bohannan.

3 THE COURT: Please come around and be sworn by the
4 Clerk.

5 (Whereupon, Mr. David Bohannan is duly sworn by the
6 Clerk of Court.)

7 MADAME CLERK: Please be seated. State your full name
8 and spell your last name for the record.

9 THE COURT: Make yourself comfortable. Pull that chair
10 up and adjust that microphone to your height. The
11 microphone is going to amplify your voice. State your full
12 name and spell your last for the court reporter, please.

13 MR. BOHANNAN: David Bohannan, B-O-H-A-N-N-A-N.

14 THE COURT: Speak up for me if you would, Mr. Bohannan,
15 so everyone can hear you. Mr. Davis, your witness. Direct
16 examination.

17 MR. DAVIS: Thank you, Your Honor. May it please the
18 Court?

19 DIRECT EXAMINATION

20 BY MR. DAVIS:

21 Q Mr. David Bohannan, how are you doing?

22 A I'm here.

23 Q Have you and I ever discussed this case, sir?

24 A No, sir.

25 MR. DAVIS: Judge, I would like to have this marked as

1 Defendant Gourdine's Nine.

2 THE COURT: Show it to counsel.

3 MR. DAVIS: I have, Your Honor.

4 THE COURT: Have you seen it Mr. McNeely?

5 ASST. SOL. MCNEELY: We have, Your Honor.

6 THE COURT: All right. Any objection, Mr. Kearse?

7 MR. KEARSE: None from Mr. Moses.

8 THE COURT: Gourdine Nine, without objection. You may
9 now approach the witness, Mr. Davis.

10 (Whereupon, Defendant Gourdine's Exhibit Nine,
11 Statement of David Bohannan, is marked and received into
12 evidence.)

13 MR. DAVIS: Thank you, Your Honor.

14 Q I'm handing you what's marked as Defendant's Exhibit
15 Number Nine, Mr. Bohannan. Ask if you can please identify
16 that, sir.

17 A Looks like a voluntary statement.

18 Q And whose statement is it, sir?

19 A Being is says "I," it looks like David Bohannan, which
20 would be me.

21 Q And what date was it constructed?

22 A Looks like the 28th of July.

23 Q That's the day when everything happened that causes us
24 to be here today, sir?

25 A Yep.

1 Q It would be fair and accurate to say that that
2 statement kind of reflects some earlier on recollection of
3 what took place, sir?

4 A It's somewhat of an issue of what happened that night,
5 yeah.

6 Q Okay. Well, you were there that night, were you not?

7 A I was.

8 Q And there's no question that you were inside the bar
9 that night?

10 A Yeah.

11 Q And there's no question that you at some point came on
12 the outside of the bar; isn't that true?

13 A That's how I got shot, yeah.

14 Q Thank you. And there's no question that you witnessed
15 -- tell us what you witnessed James Bryant doing just before
16 you were shot.

17 A Just before I was shot. James Bryant, let's see, we
18 walked out the bar, helped him to the car. That's when Rick
19 jumped in the front seat for whatever reason; I guess trying
20 to hurry up to leave. James hollered at him to get out of
21 his seat. When he snatched ahold of the door, that's when
22 Moses come running around the back side of the car. As I
23 noticed he was running towards us, I saw the car pull in
24 behind him, and that's when he ran into the mix of the
25 group, the deal we were in or whatever, the few people. He

1 ran in and said, "That's the boy right there." And then
2 backed out, as if that's the guy, shoot him. And then bam,
3 that's when everything happened.

4 Q I asked you a question.

5 A I answered your question.

6 Q What did Mr. James Bryant do when Moses came around the
7 car?

8 A Let's see, again, Moses walked into the circle. As he
9 said, "There he is," he backed out. Whoa, what's he backing
10 out for? Everybody else backs out with him and goes towards
11 where he's hauling butt to. It just so happened that we
12 passed the car that Gourdine jumps out and starts blasting
13 everybody.

14 Q And when you passed the car, you would have passed or
15 headed in the direction from which Moses was retreating,
16 backing up; isn't that true?

17 A Yeah, the car he jumped out of ---

18 Q --- yes ---

19 A --- he got there and ---

20 THE COURT: Whoa. Whoa. Whoa. One person is going to
21 speak. You're not going to talk over him, Mr. Bohannon, and
22 you're not going to talk over the witness. Ask a question.
23 Proceed.

24 Q Sir, there's no question that Moses retreated, sir?

25 A As everybody else, yes.

1 Q Okay. In what direction did James Bryant, yourself,
2 and Rick proceed in?

3 A The same direction everybody else was going.

4 Q Well, who is everybody else?

5 A The man runs -- the man runs into the mix of everybody
6 and he turns around and backs out and starts running.
7 Everybody else starts running towards the same direction
8 he's going.

9 Q Okay.

10 A What's the deal? What did you do come in and drop a
11 bomb? I mean, it was very -- it was very intense and for
12 everything to have happened as quick as it did, I don't know
13 how accurate the statement that you're trying to draw me up
14 on, but it is what it is.

15 Q I wasn't present, sir.

16 THE COURT: Mr. Davis, ask a question. Don't make a
17 statement.

18 Q Thank you, Judge. When you passed the car, isn't it
19 the truth that Jason was occupied in the car, the vehicle?

20 A If we want to replay the video, if I'm not mistaken, by
21 the time I come by the car, he's already out.

22 Q That's correct.

23 A Correct.

24 Q And what is he doing when he's outside the car?

25 A Shooting.

1 Q Who is he shooting?

2 A He ain't got no direction of shooting. He shot my wife
3 in the back of the head and then busted James in the arm,
4 and then caught me only because I was trying to get him to
5 drop the gun.

6 Q At what point were you trying to get him to drop the
7 gun, sir?

8 A After he shot my wife.

9 Q Okay. And also, after James Bryant and Enriquez was in
10 pursuit of Mr. Moses; isn't that true?

11 A Well, if you want to get technical on the whole ordeal,
12 what if Moses came to the bar to start the issue and then
13 come back in a tank top? He changed attire and then he's
14 getting issue or what?

15 ASST. SOL. KEARSE: Your Honor, I'm going to object.

16 THE COURT: Just a moment. Yes, sir, Mr. Kearse,
17 what's the objection?

18 MR. KEARSE: Non-responsive.

19 THE COURT: Mr. Kearse, I'm afraid you're going to live
20 with the answers. Take a seat. Proceed.

21 Q Sir, would you refresh your memory with your statement,
22 please?

23 A (WITNESS READS STATEMENT SILENTLY, GOURDINE EXHIBIT
24 NUMBER NINE.)

25 Q In your statement, sir ---

1 A Can I finish reading it?

2 Q Oh, I'm sorry.

3 A Thank you.

4 (Brief pause.)

5 A Okay.

6 Q In your statement, what do you describe as the actions,
7 or that acts, of Mr. James Bryant?

8 A The Spanish guy went and swung on him and the big black
9 guy came and put his arm around the Spanish guy and walked
10 him over to the door and got him settled down. The other
11 two black guys took off.

12 Q "Let's go outside," do you have that in your statement
13 in reference to ---

14 A --- I said ---

15 Q --- what action James Bryant ---

16 A --- were you ---

17 Q --- took ---

18 THE COURT: Whoa. Whoa. Whoa. One at a time. Ask a
19 question, Mr. Davis.

20 Q What actions did you write that Mr. James Bryant took
21 outside of the club?

22 A It says, "I was still walking to my vehicle. Then the
23 big guy went toward the black guy and I heard pops."

24 Q Now, when you say "big guy," who are we speaking about,
25 James Bryant?

1 A That's what you referred to him as the entire time
2 we've been in here, "the big guy." He's bigger than
3 everybody else.

4 Q Thank you. And the little guy would have been Mr.
5 Moses?

6 A It probably would have been Rick, the little guy. A
7 short Mexican guy, Puerto Rican, Hispanic, whatever.

8 Q This was outside, this is what you're saying in your
9 statement.

10 A You said the little guy.

11 Q I'm saying what you said.

12 A No, I said the black guy.

13 Q Oh, the black guy. The black guy is Mr. Moses?

14 A The two fellows that came in -- the two black gentlemen
15 that came in and did the whole ordeal, yeah.

16 Q Now, when you were shot, weren't you grabbing or
17 reaching toward Mr. Gourdine?

18 A No, I wasn't reaching or grabbing for him.

19 Q What were you doing?

20 A What was I doing?

21 Q Yeah.

22 A I was trying to knock the gun out of his hand by
23 slamming the door in his face.

24 Q Oh, okay. Because he was occupied in the vehicle?

25 A Because he was -- really? Come on, he was standing

1 outside the vehicle, right there in the doorway, holding the
2 gun.

3 Q And sir, what had you drank that afternoon, sir?

4 A If I'm not mistaken, I got there and had three or four
5 Dr. Peppers, then I think I switched to Bud Light bottles,
6 and I imagine I probably five, six, something like that.

7 Q Five or six what?

8 A Aren't we talking about how many drinks I had?

9 Q Well, you talked about soda earlier, and that's a
10 drink.

11 A Okay. That's a drink, and then I had several Bud
12 Lights in a bottle.

13 Q How many alcoholic beverages did you have, sir?

14 A Six bottled Bud Lights.

15 Q Did you have any percocet?

16 A Did I have any percocet?

17 Q Yes.

18 A Not that I'm aware of.

19 Q Had you taken any percocets?

20 A Not that I'm aware of, but it's possible I had taken a
21 pain pill earlier before everything had gone on, yes, sir.

22 MR. DAVIS: Judge, if I could have this marked, please.

23 THE COURT: Gourdine Ten. Without objection, Mr.

24 McNeely?

25 MR. MCNEELY: No, Your Honor.

1 THE COURT: How about it, Mr. Kearse?

2 MR. KEARSE: None from Defendant Moses.

3 THE COURT: Ten without objection. You may proceed, Mr.
4 Davis.

5 (WHEREUPON, DEFENDANT GOURDINE'S EXHIBIT TEN, EMS
6 REPORT, IS MARKED AND RECEIVED INTO EVIDENCE.)

7 Q Mr. Bohannon, you were treated by Berkeley County EMS
8 that night, were you not?

9 A Yes, sir.

10 Q And in that process, they got some history or narrative
11 from you as to what took place, were you not?

12 A I'm sure they asked several questions.

13 Q And you would agree that the information you provided
14 to them then would be much more fresher than anything you
15 say today?

16 A In a sense, I guess you could say that, but on the same
17 hand, come on now, a big event just went down, just took
18 place.

19 Q I concur with that.

20 A Well, I mean.

21 Q Isn't it true that you referenced taking Percocet and
22 six beer that afternoon before this incident occurred?

23 A I don't recall taking any medication that afternoon,
24 no. Now, beers, yeah, I had a couple of them at the bar,
25 but any medication, unh-unh, I can't say as I took any that

1 particular day.

2 Q I'm going to hand you what's been marked as Defendant
3 Gourdine's Number Ten.

4 MR. DAVIS: May I approach the witness, Your Honor?

5 THE COURT: You may approach, Mr. Davis. That was a
6 half and half this time.

7 Q Reviewing that narrative, do that refresh your memory?

8 A I mean, if they wrote it down, apparently I said it.

9 Q What did you said apparently?

10 A It states here, let me find the line that it's on,
11 "About six beers and had a percocet."

12 Q Did any of these individuals at any time that night
13 present any weapons in a manner toward you or anybody
14 present that night?

15 A Yeah.

16 Q What weapon was presented?

17 A There was, if I'm not mistaken, it was a 12-gauge
18 shotgun and it was pulled out of his car with him behind it;
19 the one that he was sitting in.

20 Q He was sitting in that car?

21 A Yeah, that one.

22 Q That same car that was approached by Mr. James Bryant,
23 going toward the black dude; isn't that true?

24 A I don't understand the question.

25 Q Well, you say he was sitting in the car; is that true?

1 A Yeah, when he pulled up behind us, he was sitting in
2 his car.

3 Q And James Bryant was headed toward the black dude;
4 isn't that true?

5 A Okay. You're referring to Mr. Gourdine as the black
6 dude; he's sitting in the car. Yet, you're telling me that
7 Mr. Moses is the one that Mr. Bryant was chasing. Who are
8 you talking about?

9 Q Well, who were y'all chasing?

10 A Well, you tell me. You're the one that's trying to
11 turn it around on me, buddy.

12 Q I wasn't there, sir.

13 A I understand that.

14 Q You were there, right?

15 A Right.

16 Q Who did you pursue, along with Mr. James Bryant?

17 A We were following Mr. Moses.

18 Q That's correct. No further questions.

19 THE COURT: Mr. Kearse, cross-examination.

20 CROSS-EXAMINATION

21 BY MR. KEARSE:

22 Q Mr. Bohannon, Mr. Moses never made any threat toward
23 you, did he?

24 A Ever made a threat towards me? No, sir, he didn't make
25 any threats towards me.

1 Q All right. And you never saw Mr. Moses with any
2 firearm or gun; is that correct?

3 A No.

4 Q All right. And so, he was, in fact, for clarity
5 purposes, the guy you guys started chasing when he came
6 questioning about "Who is it?" "Where's the guy who hit
7 him?"

8 A He was the gentleman who came in the mix of the circle
9 and said, "That's the guy right there," and then backed out.
10 Yeah, of course, everybody else followed him, yes.

11 Q All right. And y'all followed him towards and in the
12 direction of Mr. Gourdine's vehicle?

13 A Whichever way he happened to be going, that's where we
14 were headed, yes, sir.

15 Q Okay. And you referenced your statement, but in the
16 statement you gave to law enforcement, admittedly, you ran
17 up to Mr. Gourdine, you say it was?

18 A When I heard the first pop, I had no option other than
19 seeing my wife take off running, screaming. Gunshot, pow.
20 What are you supposed to do? My wife just got hit.

21 Q Okay.

22 A In defense mode, I was protecting mine.

23 Q So your answer is yes? You ran towards Mr. Gourdine?

24 A Mr. Gourdine wasn't exposed at the moment, so no, I
25 wasn't running towards him because I didn't even know he

1 was in the car.

2 Q Well, to knock the gun down, you would have to get
3 close enough to, as you say, knock it out his hand, right?

4 A When -- when -- when Moses and everybody ran behind the
5 car, and the first gunshot went off as he stepped out of the
6 car, that's when I was coming up behind him and I hit the
7 door and started kicking the door, trying to get him to drop
8 the gun.

9 Q And when you say "him," you're referring to Mr.
10 Gourdine?

11 A Mr. Gourdine, the one that shot me.

12 Q Okay.

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

14 THE COURT: Mr. McNeely, cross-examination.

15 MR. MCNEELY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. MCNEELY:

18 Q Mr. Bohannon, you were in the Nowhere Bar earlier in
19 the evening at approximately 1:57 when an altercation took
20 place; is that correct?

21 A Yes, sir.

22 Q Okay. Were you actually involved in that altercation?

23 A I wouldn't say that I was involved in the altercation.
24 The altercation, I guess, more or less started beforehand at
25 the bar when they were arguing and complaining because they

1 couldn't get served. That's when you saw my wife put her
2 arm around me and I stood there, "Dude, they asked you to
3 leave. Come on, we don't need no problems." That's all I
4 said and that's when Rick, Alonzo (sic), or whatever his
5 name is, came up and popped him and he tried to punch him.

6 Q And after that swing takes place, they get ushered out
7 the front door; is that correct?

8 A Yes, sir.

9 Q Does anybody other than the defendants at that time
10 exit the front door?

11 A No, sir. The bar owner locked the door.

12 Q Where were you when they exited the front door?

13 A When they exited the front door, I believe I was
14 standing at the little stand up round tables just the other
15 side of the jukebox.

16 Q Were you close to the front door?

17 A Maybe 10 or 15 feet, yeah, I guess pretty close.

18 Q After the defendants exited, did you hear either of
19 them make a statement back towards the door?

20 A Yes, sir.

21 Q Which one of the defendants did you hear make a
22 statement?

23 A I believe it was Moses, "I saw your face" or "I got
24 your face" or something to that nature, yeah.

25 Q Just to clarify, what was the statement you believe you

1 heard?

2 A I got your face.

3 Q Do you know who he was directing that towards?

4 A I would assume ---

5 MR. KEARSE: Objection, Your Honor. Speculation.

6 THE COURT: Sustained. You can't testify to that.

7 Proceed, counsel.

8 Q At some point, you exit the bar; is that correct?

9 A Yes, sir.

10 Q How much time passes between when the defendants exit
11 the bar and you pass the bar, roughly?

12 A From when they're escorted out or whatever, told to
13 leave and then we left?

14 Q Correct.

15 A I want to say it was -- I want to say I remember Lori
16 saying something about 15 minutes she was gonna wait.

17 MR. KEARSE: Objection, Your Honor. He's referencing
18 what someone else said.

19 THE COURT: Don't refer -- we have a rule against
20 hearsay, Mr. Bohannon.

21 MR. BOHANNAN: I understand.

22 THE COURT: We try to follow the rules of evidence in
23 these hearings. Don't refer to what someone else said.

24 Counsel, please rephrase your question and don't use terms
25 such as "someone else told me so-and-so."

1 Q Would it be a fair estimate to say that it was about 10
2 minutes past ---

3 MR. KEARSE: Objection, Your Honor.

4 THE COURT: This is cross-examination, Mr. Kearse. He
5 can

6 MR. KEARSE: You are exactly right. I apologize. You
7 are right.

8 THE COURT: Have a seat. Ask a question, Mr. McNeely.

9 A Yes, sir, 10 minutes.

10 Q When you went outside, why did you go outside?

11 A Originally, because we were told that it was closing
12 time and everybody needed to leave.

13 Q So you were heading home?

14 A We were safe to go outside; they were gone. We were
15 going home.

16 Q You left to head home because the bar was closing?

17 A Yes, sir.

18 Q And your wife went with you?

19 A She was right there ready to leave the bar as well as I
20 was.

21 Q And she was helping walk James Bryant out the bar?

22 A She was the only reason why James got up and got out
23 the bar.

24 Q And y'all were trying to put him into the van; is that
25 correct?

1 A Yes, sir.

2 Q And at some point, you see a black car come in behind
3 the white van; is that correct?

4 A Yes, sir.

5 Q And then you see Mr. Moses come up behind the white
6 van?

7 A Yes, sir.

8 Q Do you hear a statement from Mr. Moses at that time?

9 A Yes, sir.

10 Q What was that statement?

11 A "That's the guy right there."

12 Q What did Mr. Moses do after that?

13 A He backed out of the circle and took off running.

14 Q Where were you at that time?

15 A I was standing right there in the mix of my wife and
16 Mr. Bryant.

17 Q Did you ever see anybody touch the vehicle that Mr.
18 Gourdine was in, prior to you doing so?

19 A I don't think anybody at any time was close enough to
20 his car to touch it.

21 Q At some point, you touched the vehicle, correct?

22 A I guess, yeah, I was kicking the door side.

23 Q Did you touch the vehicle before or after a shot was
24 fired?

25 A Oh no, sir, it was after the first shot was fired.

1 That's when I charged at the vehicle because of that.

2 Q Why did you touch the door?

3 A He was standing in the door. I saw the gun hanging out
4 and my wife ran inside and I heard the second round go off,
5 that's when I started stomping at the door, slam onto him.
6 That's when he spun around and caught me in my arm.

7 Q Were you trying to disarm Mr. Gourdine?

8 A Yes.

9 Q Did you have a weapon on you outside the bar that
10 night?

11 A No, sir.

12 Q Did your wife have a weapon on her?

13 A No, sir.

14 Q Did you see Mr. Bryant with a weapon?

15 A No, sir.

16 Q Did anybody other than Mr. Gourdine have a weapon that
17 you saw?

18 A Not that I'm aware of.

19 Q No further questions, sir.

20 THE COURT: Mr. Davis?

21 MR. DAVIS: Nothing on redirect, Your Honor.

22 THE COURT: Mr. Kearse?

23 MR. KEARSE: Nothing from Defendant Moses, Your Honor.

24 THE COURT: As to this witness, Mr. Davis?

25 MR. DAVIS: He can be excused, Your Honor.

1 THE COURT: Mr. Kearse?

2 MR. KEARSE: Yes, sir.

3 THE COURT: Mr. McNeely, any objection to this witness
4 being excused?

5 ASST. SOL. MCNEELY: None, Your Honor.

6 THE COURT: Mr. Bohannon, you may step down from the
7 witness stand and you are excused from the hearing. You may
8 remain with us or you may leave as you desire. Mr. Davis,
9 your next witness.

10 MR. DAVIS: Your Honor, we have no more witnesses. We
11 believe that we have adequately provided enough information,
12 evidence, for you to make a ruling, Your Honor.

13 THE COURT: Mr. Kearse, do you wish to put up any
14 additional evidence that has not already been presented by
15 counsel for Mr. Gourdine?

16 MR. KEARSE: No, sir, Your Honor. That's Defendant
17 Moses' presentation.

18 THE COURT: I'm going to listen to argument after I
19 hear. I understand the State wishes to put up some
20 evidence. Is that correct, Mr. McNeely?

21 MR. MCNEELY: That's correct, Your Honor.

22 THE COURT: Call your witness.

23 ASST. SOL. ALFARO: The State calls Julia Victoria
24 Taylor.

25 THE COURT: If you will come in. Please be sworn

1 by my clerk. She is waiting on you with the Bible.

2 MADAME CLERK: Please raise your right hand. Place
3 your left hand on the Bible.

4 (Whereupon, Ms. Julia Victoria Taylor is duly sworn.)

5 MADAME CLERK: Please be seated. State your full name
6 and spell your last name for the record.

7 THE COURT: Make yourself comfortable. Pull your chair
8 up. Adjust that microphone to your height. It's going to
9 amplify your voice and I need you to use it. State your
10 full name and spell your last for the court reporter.

11 MS. TAYLOR: Julia Victoria Taylor, T-A-Y-L-O-R.

12 THE COURT: Your witness, Mr. McNeely, direct
13 examination.

14 ASST. SOL. MCNEELY: Thank you, Judge.

15 DIRECT EXAMINATION

16 BY ASST. SOL. MCNEELY:

17 Q Good afternoon, Ms. Taylor. Do you by Vicky?

18 A Yes, sir.

19 Q Is it okay if I call you Vicky?

20 A Yes, sir.

21 Q Vicky, where were you employed on July 27th, 2013?

22 A Nowhere Bar and Grill.

23 Q What was your position at the Nowhere Bar and Grill?

24 A Bar Manager.

25 Q Where you working on the evening of July 27th, early

1 morning of July 28th, 2013?

2 A Yes, sir.

3 Q What time does the bar close?

4 A At 2:00 everybody has to be out.

5 Q That's 2:00 a.m.?

6 A Yes, sir.

7 Q What time is last call for alcoholic beverages at the
8 bar?

9 A Last call is 1:30, gives them about 15 minutes to 1:45
10 before everybody has to start closing their tabs to be out.

11 Q So after 1:45 a.m., are any drinks served?

12 A No, sir.

13 Q On the morning of July 28th, 2013, did these
14 defendants, Jason Gourdine and Steven Moses enter the
15 Nowhere Bar?

16 A Yes, sir.

17 Q What time did they enter the bar, roughly?

18 A Around about 1:50-ish, after last call was done called.

19 Q Did they request to be served beverages?

20 A Yes, sir.

21 Q What was their response to that request?

22 A That we weren't serving them because they were black.

23 Q Did a verbal altercation begin between the defendant,
24 Mr. Moses, and a bartender?

25 A Yes, sir.

Direct examination of Julia Victoria Taylor by Mr. McNeely
Cross-examination of Julia Victoria Taylor by Mr. Davis

1 Q Did you ask Mr. Moses and Mr. Gourdine to leave the bar
2 that night?

3 A Yes, sir.

4 Q Do you recall what you said exactly?

5 A Yes, sir.

6 Q Tell the Court what you said, please.

7 A To get the f*** out, that it wasn't going to happen in
8 here. They had to go.

9 Q Was that your way of kicking them out of the bar?

10 A Yes, sir.

11 Q After you said that, were they free to stay on the
12 premises?

13 A No, sir.

14 ASST. SOL. MCNEELY: No further questions from the
15 State, Your Honor.

16 THE COURT: Cross-examination, Mr. Davis, on behalf of
17 Mr. Gourdine.

18 MR. STEVE DAVIS: Yes, Your Honor. May it please the
19 Court?

20 CROSS-EXAMINATION

21 BY MR. DAVIS:

22 Q Ms. Julia, how are you doing?

23 A Doing fine.

24 Q Do you still do bartending work?

25 A I'm not there anymore. I work at MUSC now.

1 Q Okay. And have you and I discussed this case?

2 A No, sir.

3 Q You've discussed it with the Solicitors?

4 A Yes, sir.

5 Q And you gave a statement that night, did you not?

6 A Yes, sir.

7 MR. DAVIS: I'd like to have this marked, Your Honor.

8 THE COURT: Show it to counsel.

9 MR. DAVIS: Shows document to counsel.

10 THE COURT: Mr. Kearse, any objection?

11 MR. KEARSE: I don't have any objection, Your Honor.

12 THE COURT: Mr. McNeely?

13 ASST. SOL. MCNEELY: None from the State, Judge.

14 THE COURT: Mr. Davis, I believe this will be your
15 number Eleven; is that correct?

16 MR. DAVIS: That's correct, Your Honor.

17 (Whereupon, Defendant Gourdine's Exhibit Number Eleven,
18 Statement of Ms. Taylor, is marked and received into
19 evidence.)

20 THE COURT: Without objection.

21 MR. DAVIS: And do I have permission to ---

22 THE COURT: Yes, Mr. Davis, you do have permission to
23 approach the witness. Mr. Davis, let me explain to you why
24 we do that. Do you know why? No, you don't. Because you
25 like to stand between the -- the jury's not here, but when

1 you're talking like that, I have problems with the people
2 out there hearing and you block the jury's view when you
3 stand there, and that's the reason we don't allow it,
4 because we want the jurors -- and I know you do, Mr. Davis,
5 to be able to observe the witnesses. Now, you may approach
6 and step back.

7 MR. DAVIS: Thank you very much.

8 Q I want you to look at that and tell me if you can
9 identify it.

10 A Yes.

11 Q What is it?

12 A A statement.

13 Q And when did you give it?

14 A The early morning of July 28th, 2013.

15 Q Wouldn't you say it's pretty fresh in relationship to
16 what you put on it at that particular time; is it true?

17 A Yes.

18 Q Okay. Now, there are some parts that you didn't go
19 over when you talked to the Solicitor's Office, okay? Isn't
20 it true that Big J interjected himself into this discussion
21 about the last call for alcohol?

22 A No, sir.

23 Q Well, what did Big J do?

24 A Can you repeat that?

25 Q What did Big J do, if anything, on July 28th, when this

1 occurred?

2 A When the altercation occurred, he did nothing until the
3 other bartender called him out by name and said that Big is
4 black and has been served all night with no problems, so
5 it's not a black-white issue.

6 Q Okay. You recall that?

7 A Uh-huh (affirmative).

8 Q What else did Big do that night as you recall? Did he
9 touch anyone?

10 A He did.

11 Q What did he do?

12 A He pushed them towards the door when I told them to get
13 out.

14 Q Was he working for y'all that night?

15 A No, sir.

16 Q Did he have authority to push anybody?

17 A No, sir.

18 Q Did he strike anybody?

19 A No, sir.

20 Q Well, what do you consider a push?

21 A No, sir.

22 Q You used the words, "Get the F*** out," did you not?

23 A I sure did.

24 Q And then he pushed him, did he not?

25 A Yes, sir.

1 Q All right. At any time, did any of these two gentlemen
2 strike or touch anyone?

3 A No.

4 Q Who is "cupcake"?

5 A Cupcake is another bartender.

6 Q And what did cupcake had to contribute to this matter
7 that night?

8 A The altercation?

9 Q I don't know.

10 A But she didn't contribute ---

11 Q Read your statement.

12 A (Witness reads over statement, briefly.) Exactly what
13 I said. She said that she wasn't going to serve them
14 because we were closing out tabs and he said, "Why? Because
15 I'm black?" and she said, "I'm the wrong one. I have black
16 children."

17 Q Okay. Now, did you witness when they pushed him out of
18 the club?

19 A I wasn't up there with them, but I was right behind
20 them on the way to the door.

21 Q Had you been serving alcohol to these people all night?

22 A Yes, sir.

23 Q How many drinks would you have said that Ms. Stacy
24 Bohannon had consumed that night before all this happened?

25 A I don't know; five, six.

1 Q Had you served her?

2 A Yes, sir.

3 Q What was the nature of the drink that you served her?

4 A Usually Bud Light is what they drink.

5 Q What about Malibu and Coke or something?

6 A Maybe.

7 Q Maybe or you don't recall?

8 A I don't recall.

9 Q How many drinks would you say she had?

10 A Drink wise, if she drinks five or six, but ---

11 Q --- okay. And how ---

12 A --- in the ---

13 THE COURT: Whoa. Let her finish, Mr. Davis. Don't
14 cut her off.

15 MR. DAVIS: I'm sorry.

16 A In the continuous of being in the bar with people, they
17 do take shots and have other things.

18 Q So they had taken shots, too?

19 A Maybe. It's just -- it's been three years ago. I'm
20 doing the best I can to remember how many drinks they had.

21 Q That's all we want. Okay. You weren't on the outside,
22 right?

23 A No, sir.

24 Q You don't know what happened on the outside?

25 A No, sir.

Cross-examination of Julia Victoria Taylor by Mr. Davis

1 Q But you can attest to the fact that everything
2 apparently happened within 720 seconds?

3 A From?

4 Q From start to finish?

5 A Yes.

6 Q That would be inclusive enough for your five minutes
7 that you reference in your statement; isn't that true?

8 A Yes.

9 Q Okay. Were either of these gentlemen aggressive in any
10 manner that you observed that night inside the club other
11 than asking for a drink and felt like they had been shunned
12 because of race?

13 A Yes.

14 Q What did they do?

15 A Made a big scene; Steven Moses did.

16 THE COURT: I'm sorry. I couldn't hear you.

17 A A big scene.

18 Q Okay. Well, you said, "Get the f*** out," right?

19 A I did.

20 Q Tell me what did they do that created any threatening
21 manner inside the bar?

22 A He was refusing to go because he was trying to make it
23 as we wouldn't serve them because he was black.

24 Q I understand that part.

25 A Which is not true. So he stood up and started clapping

1 his hands. He said, "Tell me again and I'll give you a
2 round of applause." Bringing all of the attention to him,
3 so that everybody would focus that way. So I stood in and
4 said, "It's not happening here. Get the f*** out."

5 Q And that's when Big J, James Bryant, came to the
6 forefront; isn't that true?

7 A Wrong.

8 Q Well, who came forward?

9 A Nobody came forward at that time.

10 Q Well, who struck and pushed him out?

11 A At the door, yes. But at the time of the altercation
12 when they were going towards the door, nobody approached
13 them.

14 Q So nobody attempted to strike or assault somebody with
15 a punch that night that you witnessed?

16 A That's not what I said. I said when they got to the
17 front door. They were at the bar when the altercation was
18 happening, when I told them to "Get the f*** out."

19 Q Well, when you call an altercation, were anybody
20 physically engaged ---

21 A --- a verbal ---

22 Q --- with anybody?

23 THE COURT: Hold on, now. You can't start talking when
24 he's asking a question, and you can't talk over her. I've
25 had to stop every witness today because some reason my

1 lawyers think they can talk over you, but you can't talk
2 over him. She can't take but one person down; do you
3 understand that?

4 MS. TAYLOR: Yes, sir.

5 THE COURT: Ask a question.

6 Q Were there any physical involvement in the altercation
7 at the bar?

8 A Not at the bar.

9 Q When was the first time you saw physical altercation?

10 A At the front door.

11 Q And what did you witness there?

12 A Puerto Rican Rick swung on Steven.

13 Q Okay. What did Big J, Big J Bryant do?

14 A He grabbed them by the arm and pushed them towards the
15 door.

16 Q Did anyone of these gentlemen at any time strike back
17 in any kind of manner, ma'am?

18 A No.

19 MR. DAVIS: No further questions.

20 THE COURT: Cross-examination, Mr. Kearse.

21 MR. KEARSE: May it please the Court? Counsel?

22 CROSS-EXAMINATION

23 BY MR. KEARSE:

24 Q Ms. Taylor, you say you are a bartender, right?

25 A Yes, sir.

1 Q All right. You were bartending that night?

2 A Yes, sir.

3 Q You're not the manager of the Nowhere Bar, correct?

4 A Not no more.

5 Q All right. And you're not the owner of the Nowhere

6 Bar, correct?

7 A No, sir.

8 Q All right. And you said you told them, "Get the F

9 out"?

10 A Yes, sir.

11 Q And they left the building?

12 A Yes, sir.

13 Q All right. It was not conveyed to them anything about

14 the parking lot or anything of that nature?

15 A Not the parking lot, but it's our property, so.

16 Q Right. But the second half of your statement, that is

17 something -- that's your thought talking, saying, "Leave,

18 don't come back," all of that? You didn't convey that to

19 them?

20 A You mean like when I told them to leave?

21 Q Right. You told them to get out the building; they got

22 out the building, correct?

23 A Yes, sir.

24 Q And the owner never said that to them nor the manager

25 that night, correct?

1 A I was the manager.

2 Q All right. Did you tell them you were the manager?

3 A I don't have to publicize that I'm the manager, but no
4 sir.

5 Q I only asked for a yes or no answer, ma'am, that's all.

6 A Yes, sir.

7 Q And again, nothing was said out to those guys in the
8 parking lot?

9 A No, sir.

10 Q All right.

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

12 THE COURT: Redirect?

13 MR. MCNEELY: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. MCNEELY:

16 Q Just a couple of questions, Ms. Taylor.

17 A Yes, sir.

18 Q You said you were working as the bar manager that
19 night?

20 A Yes, sir.

21 Q As the bar manager, did you have authority to kick
22 people out of the bar?

23 A Yes, sir.

24 Q Just a couple of questions to clarify the timeline. Do
25 you recall what time the altercation inside the bar took

1 place?

2 A It was probably about 1:55-ish, maybe, at that time.

3 Q And shortly thereafter the defendants left; is that
4 correct?

5 A Yes, sir.

6 Q And at some point thereafter, the other people, James
7 Bryant, David and Stacy Bohannon left; is that correct?

8 A Yes, sir.

9 Q Do you know about how much time passed between the
10 defendants leaving and the other folks exiting the bar?

11 A It was probably, give or take, about five, ten minutes.

12 Q And then, thereafter, at some point, shots were fired;
13 is that correct?

14 A Yes, sir.

15 Q You didn't see the shots, correct?

16 A No, sir.

17 Q You remained inside?

18 A Yes, sir.

19 ASST. SOL. ALFARO: Nothing further, Your Honor.

20 THE COURT: Recross?

21 MR. DAVIS: Nothing on recross, Your Honor.

22 THE COURT: Mr. Kearse?

23 MR. KEARSE: None, Your Honor.

24 THE COURT: Very well. As to this witness, Solicitor?

25 ASST. SOL. ALFARO: No objection to her being

1 dismissed, Your Honor.

2 THE COURT: Mr. Davis, any objection?

3 MR. DAVIS: None, Your Honor.

4 THE COURT: Mr. Kearse?

5 MR. KEARSE: None, Your Honor.

6 THE COURT: Very well. Ms. Taylor, you may step down
7 and you are excused from this hearing. You may remain or
8 you may leave the courtroom, as you desire.

9 MS. TAYLOR: Thank you.

10 THE COURT: Call your next witness.

11 ASST. SOL. ALFARO: That will be all from the State,
12 Judge.

13 THE COURT: All right. Becky, I show the following: I
14 have from Mr. Moses, Exhibits One through Fourteen; is that
15 correct?

16 COURT REPORTER: Yes, sir.

17 THE COURT: For Mr. Gourdine, I have Exhibits One
18 through Eleven; is that correct?

19 MADAME CLERK: Yes, sir.

20 THE COURT: Is that everything that you have?

21 MADAME CLERK: It is.

22 THE COURT: I have now read all of the exhibits and
23 reviewed them and my law clerk will hand the exhibits back
24 to you. Mr. Davis, as you know, the defendants, you and Mr.
25 Kearse, have the burden of proof for purposes of immunity by

1 which we agreed the preponderance of the evidence. I will
2 hear you now briefly in argument now that we've heard all of
3 the evidence. It is my understanding that you do not wish
4 to call anybody in reply; is that correct?

5 MR. DAVIS: That is correct, Your Honor.

6 THE COURT: Is that also correct on behalf of your
7 client, Mr. Kearse?

8 MR. KEARSE: It is, Your Honor.

9 THE COURT: Very well. Mr. Davis, you now have the
10 floor. Please come to the microphone.

11 MR. DAVIS: Your Honor, may it please the Court?

12 THE COURT: Yes, sir.

13 MR. DAVIS: Judge, I take the position that the motion
14 and memorandum that I submitted to the Court and the facts
15 outlined is very consistent with the facts that were drawn
16 from the witness stand in relationship to help you render a
17 decision in this matter that Mr. Jason Gourdine is entitled
18 to immunity in this matter. It's a situation where our
19 legislators took the Castle Doctrine, put it in place in
20 reference to automobiles and businesses. Let's look at that
21 closely, Your Honor. These young men went to a place that
22 was a place of business. They had a right to be there; no
23 question about that. And in having a right to be there, if
24 you looked at the video in relationship to what transpired,
25 there's no question and there's overwhelming evidence in

1 relationship to three guys chasing Mr. Moses, for whatever
2 reason, their testimony from this witness chair creates what
3 I would call aggressors.

4 Being aggressors, we were very pointed in reference to
5 make sure that Mr. Gourdine was actually occupied within his
6 vehicle, which brings into play the Castle Doctrine, because
7 he was in his vehicle. It's not like he was on the outside
8 walking around, standing around, waiting to inflict harm.
9 He was actually sitting in his vehicle. There is ample
10 enough testimony from the chair to support that position
11 that he was occupied in his vehicle. I think the witnesses
12 testified to that regard. And as Mr. Moses, who was
13 retreating, being threatened, being pursued by a guy who is
14 six foot four, three hundred pounds, Mr. Biggie, in an
15 aggressive manner. We have laid out enough descriptive
16 evidence from the video, with snapshots showing his posture.
17 He says it's a defensive posture. One with aggression, one
18 with movement toward Mr. Steven Moses. Therefore, Mr. Jason
19 Gourdine intercedes and defends not only himself, but in
20 defense of Steven Moses.

21 I think it's a clear depiction of what the Castle
22 Doctrine comes into play. They didn't have no duty to
23 retreat, especially when you got a fellow six foot four,
24 three hundred pounds, nicknamed Big J or whatever, coming
25 forward in a defensive, aggressive manner. You have two

1 other individuals. Everybody is pursuing Mr. Steven Moses.
2 Whereupon, Jason Gourdine came to the aid, and specifically,
3 as you deal with Mr. David Buchanan (sic), he was shot in an
4 effort to trying to remove the individual from near the
5 occupied vehicle when he was actually shot.

6 Judge, it is our position in lieu of the standard
7 review in this matter -- the General Assembly didn't say it
8 had to be clear and convincing evidence.

9 THE COURT: I'm aware of the standard.

10 MR. DAVIS: That's correct, Your Honor. In that
11 regard, Your Honor, I believe as a preponderance of the
12 evidence that it's more likely than not that we have put up
13 sufficient testimony in relationship to satisfy the mandate
14 of the statute that our client did not have to wait to be
15 pounced upon, did not have to wait until all three of these
16 guys were upon the person of Mr. Steven Moses before he
17 could defend himself. It would be our position, Your Honor,
18 that civil immunity comes into play and the State of South
19 Carolina through the Solicitor's Office should be barred
20 from pursuing criminal charges against my client.

21 THE COURT: Thank you very much, Mr. Davis. Mr.
22 Kearse, let me hear from you on behalf of Mr. Moses.

23 MR. KEARSE: Yes, sir. May it please the Court?

24 THE COURT: Yes, sir.

25 MR. KEARSE: Your Honor, this is a very interesting

1 case for Mr. Moses in the sense that he wasn't the shooter.

2 THE COURT: Yes, Mr. Kearse, I believe that Mr. Alfaro
3 will stipulate that Mr. Moses was not the person holding the
4 gun. However, Mr. Alfaro would probably remind you, and I'm
5 not trying to put words in his mouth, that there's a
6 doctrine called the hand of one is the hand of all.

7 MR. KEARSE: Right.

8 THE COURT: And I'm afraid that whether or not he's
9 holding the gun is not dispositive of this matter, Mr.
10 Kearse, but go ahead, I'm aware of that.

11 MR. KEARSE: Well, that is correct, Your Honor, which
12 is why we joined in and filed this motion.

13 THE COURT: Yes, sir, I understand that. You're doing
14 everything, as is Mr. Davis, to protect the interest of your
15 clients, and that's exactly what you should be doing.

16 MR. KEARSE: That's correct, Your Honor. Besides the
17 hand of one, they have charged and indicted him for
18 conspiracy, so I think that gives us some standing to bring
19 this motion.

20 THE COURT: Well, the Solicitor's Office has never been
21 accused of failing to issue enough indictments in a case,
22 have they, Mr. Kearse?

23 MR. KEARSE: I would absolutely agree with that
24 statement, Your Honor.

25 THE COURT: I thought you would; go ahead.

1 MR. KEARSE: Your Honor, on behalf, we would just ask
2 the Court to deliberate carefully, and I know the Court
3 will. And those exhibits that we placed into evidence, and
4 I know the Court saw the video, we specifically provided the
5 defendant's exhibit for thereabout two to three seconds,
6 Your Honor, in what's in our Six through Fourteen.

7 And they are important to Mr. Moses because they show
8 that, in fact, Mr. Moses, we would submit to the Court, was
9 actually retreating. And I know there has been some back
10 and forth in the testimony in some artful statements and
11 questions.

12 THE COURT: It's amazing to me how many lawyers in this
13 hearing wish to characterize what I would call -- in
14 fairness to my attorneys, defensive and offensive gestures.
15 Beauty is in the eyes of the beholder, Mr. Kearse.

16 MR. KEARSE: Yes, it is, Your Honor. We hope the Court
17 beholds things the way we behold them, Your Honor. That
18 he's retreating towards the car. That these gentlemen are
19 chasing him, as actually was testified to him by Mr.
20 Bohannan. That there are three individuals, and that those
21 things can also be considered when a person is considering
22 whether or not he's under the threat of serious bodily
23 injury and/or death. Death may not be an element of this
24 defense ---

25 THE COURT: No, it's not. But serious bodily injury is

1 an element. It doesn't have to be death, and clearly, Mr.
2 Kearse, although Mr. McNeely also wrote a memorandum in
3 opposition to yours and Mr. Davis's motion in which Mr.
4 McNeely took the position that this Court shouldn't even
5 give you a hearing on this matter, to which I completely and
6 totally disagree, Mr. Kearse. Although, Mr. McNeely thought
7 it was a matter of law for the Court, I don't. I believe
8 you have to hear the evidence in the hearing in order to
9 make a determination by a preponderance of the evidence. So
10 you've already passed the first hurdle, because if it was
11 left to your opponent, we wouldn't have spent the last three
12 hours putting up evidence.

13 MR. KEARSE: I understand that, Your Honor. I will
14 just submit that the fact that there are three men, who
15 previously two of which have assaulted the two men who stand
16 at the defense table, along with a third guy getting out of
17 the car, suggests that it's a reasonable person could see
18 those two individuals as being under the serious threat of
19 harm, especially when one of those guys is six foot four,
20 three hundred pounds. And there is no understanding the
21 night at that time, whether or not they had weapons or not.
22 Having said all of that, Your Honor, I would just like to
23 address the element of the right to be there, understanding
24 the testimony of Taylor whether that was said, most likely
25 than not, probably be on or off that video, but that at that

1 time, she did not tell them they had to leave the parking
2 lot. There was no sentiment. She just said, "Get the F
3 out," and in fact, I heard the way she put it would put her
4 in the midst of the whole argument itself, also. But I
5 understand that is a hurdle for the defense, Your Honor.

6 THE COURT: Yes, sir, and you have the burden, Mr.
7 Kearse.

8 MR. KEARSE: I do. But I would just ask that this
9 Court, and I'm not going to belabor the point ---

10 THE COURT: I think I'm familiar with the evidence, Mr.
11 Kearse.

12 MR. KEARSE: I understand that, Your Honor, and ask you
13 to consider the evidence very carefully, and I'm sure you
14 will deliberate, which I'm sure you will. We would hope
15 that this Court will see this the way we have presented it.
16 That, of course, again, Mr. Gourdine, owner of the car, was
17 the operator of the car, we can argue technically that he
18 falls under this is why such a unique situation to me. The
19 provision where he is the owner and occupier of the vehicle.
20 Of course, Mr. Moses, would not have that same protection as
21 Mr. Gourdine, but if the hand of one is the hand of all,
22 certainly, Mr. Gourdine is immune. I would submit to this
23 Court that Mr. Moses would also be immune. Thank you, Your
24 Honor.

25 THE COURT: Thank you, Mr. Kearse. And Thank you, Mr.

1 Davis, for both being zealous advocates on behalf of your
2 clients and being prepared. All right, who is going to
3 argue for the State.

4 ASST. SOL. MCNEELY: It would be me, Judge.

5 THE COURT: Mr. McNeely, who is the author of the
6 memorandum in opposition.

7 MR. MCNEELY: I will be brief, Judge.

8 THE COURT: Mr. McNeely, you can take as much time as
9 you feel you need for justice.

10 MR. MCNEELY: Thank you, Your Honor. The State's
11 position would be pretty simple in that the Court had
12 sufficient evidence to rule on this matter at the time the
13 video was played. As to the specific sections of the Act,
14 the State would contend that the defense had failed to
15 establish any element under the Act by a preponderance of
16 the evidence, let alone all of the elements required for
17 immunity. As to subsection A of the statute, specifically,
18 there has been no evidence presented that anyone at any time
19 attempted to unlawfully or forcefully enter Mr. Gourdine's
20 occupied vehicle, nor did Mr. Gourdine have any reason to
21 believe that such an entry was occurring. I believe the
22 testimony in the video shows that no one attempted to enter
23 or touch the vehicle until Mr. Bohannon touched the vehicle
24 in an attempt to disarm Mr. Gourdine. Therefore, the
25 defendant's claims under subsection A, if any, fail, and

1 they're not entitled to immunity.

2 As to the catch-all provision under subsection C, which
3 essentially codifies self defense argument, the State would
4 contend likewise that the defendants failed to establish any
5 element under that section by a preponderance of the
6 evidence, let alone all of the elements required.
7 Specifically, as to them not being engaged in an unlawful
8 activity and being in a place they have the right to be in,
9 the State would contend that they had been kicked out of the
10 bar, left the premises, and were not entitled to return that
11 evening. At the time they returned at 2:07, some ten
12 minutes later after they initially left the property, they
13 were committing a trespass. Therefore, they were
14 participating in unlawful activity and their argument under
15 subsection C fails on that ground alone.

16 It also fails under the section where it requires they
17 have a reasonable belief that death or great bodily injury
18 is occurring. The evidence presented clearly shows that no
19 one had a weapon other than Mr. Gourdine, and frankly,
20 Judge, I think the tape itself shows, as well as the
21 testimony from the witness stand, shows that these
22 defendants quite simply initiated an altercation in the bar,
23 left for ten minutes, and returned at 2:07, reinitiated a
24 confrontation. They brought the trouble, and the State's
25 interpretation of the video is quite frankly that Mr. Moses

1 looked for Rick who swung on him in the bar previously,
2 baited him into an area where Mr. Gourdine had already
3 opened the vehicle door, and basically lured him into a trap
4 shoot wherein the three victims, James Bryant, Stacy
5 Bohannon and David Bohannon were shot. The State's
6 contention, Your Honor, is that the State and the Court
7 agree that the defense has not established any element by a
8 preponderance of the evidence and are not entitled to
9 immunity. If they wish to argue self defense at the trial
10 of this matter when it is called, that's a matter for a
11 different day and they are probably entitled to do so, but
12 immunity should be denied under the Act. Thank you, Your
13 Honor.

14 THE COURT: Thank you, Mr. McNeely. Mr. Davis, any
15 reply?

16 MR. DAVIS: Just a reply, Your Honor. This aspect
17 about time is the reason I have specifically addressed
18 everything ---

19 THE COURT: Come on up to the microphone, Mr. Davis.

20 MR. DAVIS: There's a reason I address -- the State
21 wants to hone in and ask their business. Clearly, it
22 delineated demarcation point for time. Ms. Taylor testified
23 five minutes at most she adhered; you're talking about 600
24 seconds. This is all one continuation. All the witnesses
25 contend that this was quick. This was not no break. This

1 was not no scene one and scene two.

2 These guys still had a right to be where they were at
3 this particular point. I think that we have supplied
4 sufficient evidentiary points in evidence, Your Honor, to
5 grant under a standard of preponderance of the evidence
6 civil immunity in this matter. It may be a harsh and hard
7 result, but this is what our legislators intended. This is
8 what they intended.

9 When they passed and upgraded from self defense to
10 stand your ground, you create a situation that individual be
11 aware. You cannot have this heart of war, pursuing other
12 people who apparently at that point may have had a heart of
13 peace. When you have a heart of war, viewing people as an
14 object and then you pursue that individual, and then in the
15 art of war you get injured, it all becomes Mr. Bryant laid
16 out very explicitly, he was in a heart of war manner. He was
17 pursuing. He was pursuing, and unfortunately, he got shot.
18 Unfortunately, some other people got shot, but the matter is
19 when you project yourself in this heart of war, then
20 casualties occur in a heart of war. But there's no question
21 in the time span that we put together, it is sufficient for
22 the people to be occupied in this car, and this guy came and
23 defended himself because this six foot four guy, three
24 hundred pounds defensive, aggressive guy is about to inflict
25 great bodily injury. Thank you, Your Honor.

1 THE COURT: Thank you. Mr. Kearse, any reply?

2 MR. KEARSE: Your Honor, just two things. One I would
3 submit to this Court, it is -- for this Court to consider,
4 and I'm sure it will, whether the statement by Ms. Taylor,
5 in and of itself, was enough to say that Mr. Gourdine and
6 Mr. Moses were actually trespassing, such to the point where
7 they were engaged in unlawful activity that night, such that
8 they would not be able to avail themselves under the
9 protection of the statute. And I think that even that has
10 to be put to a standard by a preponderance of the evidence.

11 THE COURT: Thank you, sir. All right, it is my plan,
12 I've got to drive back home where I'm going to begin my work
13 day in my office when I get back. A lot of you think
14 Judge's have great hours. The truth of the matter is, and I
15 can promise you, that my desk is probably at least about a
16 foot high because I'm Chief Administrative Judge of three
17 counties. My law clerk can certainly attest to that because
18 he's found out that law clerks work at night and on the
19 weekends.

20 I'll rule on this in the morning. I'll put my ruling
21 on the record. I expect every one of you to be in this
22 courtroom at 10:00 a.m. I know, Mr. Davis, you've got to go
23 to Columbia, but there's absolutely no reason you can't let
24 me go ahead and put my ruling on the record, because the
25 hearing is now closed.

1 You've put up all the evidence for your client. Your
2 client can come with Mr. Kearse, and I will rule on it.
3 Because you asked to be excused tomorrow, Mr. Davis, due to
4 the hearing involving your brother, which is going to be in
5 the Family Court in Columbia. That did not mean, however,
6 that we're not going to get the Castle Doctrine Hearing
7 completed. It is now complete. The only thing left will be
8 to put up my decision.

9 THE COURT: Do you have any objection to my doing so?
10 I'll be glad to call you on my cell phone to advise you of
11 my ruling, if you so desire, Mr. Davis.

12 MR. DAVIS: Judge, I have the fullest confidence.

13 THE COURT: I knew you had confidence in Mr. Kearse.
14 10:00 a.m. Thank you very much. This hearing is concluded.

15 (WHEREUPON, THE HEARING IN THIS CASE IS CONCLUDED AND
16 COURT IS ADJOURNED FOR THE EVENING. THE NEXT MORNING,
17 WEDNESDAY, JANUARY 27TH, AT 10:00 A.M., THE FOLLOWING IS HELD
18 ON THE RECORD IN CONNECTION WITH THE HEARING IN THIS CASE.)

19 THE COURT: All right. Let the record reflect that
20 it's about 10 minutes after 10:00 and that the attorneys for
21 the State of South Carolina are present, and Mr. Kearse is
22 present, and both defendants, Gourdine and Moses are
23 present. I have excused Mr. Davis this morning. The
24 Supreme Court, for those of you who don't know this, my
25 lawyers are finding this out, the Supreme Court changed,

1 effective immediately, within the past 30 days, Rule 601,
2 Which now gives priority to Family Court for matters
3 involving child custody over General Sessions. That has
4 been a -- I'll say throughout my career, a longtime issue,
5 of which Court should have priority and, as you know, the
6 Appellate Court rules deal with that.

7 In any event, Mr. McNeely is going to give us a lecture
8 later on about what Rule 601 says involving Federal and
9 State Court, and that is the reason that Mr. Davis is not
10 with us this morning is because of the change in the rule.
11 He was subpoenaed to Family Court in a custody matter
12 involving his brother in Richland County.

13 He agreed that we could proceed in his absence. His
14 client is present. He waives his appearance. Let me say
15 that during the recess overnight, I reviewed once again all
16 of the exhibits. Becky has them, my court reporter. I
17 listened to the testimony of the witnesses and I've had the
18 opportunity to observe the witnesses and to judge the
19 credibility of the witnesses who have appeared before me,
20 and I find that the defendants, Gourdine and Moses, have
21 failed to meet their burden of proof by a preponderance of
22 the evidence entitling them to immunity under South Carolina
23 Code Section 16-11-410.

24 I would point out that the parties have agreed before
25 we began this hearing that the trial judge, whoever that

1 will be, with appropriate jurisdiction, shall be bound by my
2 ruling on immunity. But I place on the record that this
3 Court, meaning myself, offers no opinion on what matters
4 should be submitted to the jury at the trial of this case in
5 the future as this will be a matter for the trial judge to
6 consider after hearing the evidence presented during the
7 trial of this case determining what to charge on the law.

8 Having ruled on that matter before me now, this Court
9 now stands adjourned. Mr. Kearse, I will ask you since you
10 have Mr. Davis's cell phone if you will call him and tell
11 him I've ruled on the matter. This concludes the Castle
12 Doctrine Hearing. I want to thank my lawyers for being well
13 prepared and working diligently on behalf of their
14 respective clients. Thank you very much.

15 MR. KEARSE: Your Honor, If I can just ask the Court,
16 are we going to have or is the Court going to have an Order
17 prepared in this matter?

18 THE COURT: Mr. Kearse, because we have a court
19 reporter present, I'm not sure there is a necessity for a
20 written Order in this matter. I think the record speaks for
21 itself, unless y'all can convince me there's some reason to
22 do so, I think it's very clear from the record you presented
23 yesterday, as well as the record presented by the State of
24 South Carolina and I think my ruling was clear this morning.
25 I don't think there's a need for a written Order unless the

1. parties find some necessity for one. Mr. Alfaro?

2 ASST. SOL. ALFARO: I can't think of one now; it that
3 changes, we will consult and get back with you.

4 THE COURT: Mr. Kearse?

5 MR. KEARSE: Yes, sir. I defer to the Court's judgment
6 in this matter.

7 THE COURT: Very well.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the Castle Doctrine Hearing of the captioned case, in the Court of General Sessions for Berkeley County, South Carolina, on the 26th day of January 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 10, 2016

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

State of South Carolina) In the Court of General Sessions
) Ninth Judicial Circuit
 County of Berkeley)

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) 2014-GS-08-1719
) 2014-GS-08-1720
) 2014-GS-08-1721
 Jason Morris Gourdine,) 2014-GS-08-1722
) 2014-GS-08-1723
 Defendant.) 2014-GS-08-1724
)
)

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) 2014-GS-08-1713
) 2014-GS-08-1714
) 2014-GS-08-1715
 Steven Dwayne Moses,) 2014-GS-08-1716
) 2014-GS-08-1717
 Defendant.) 2014-GS-08-1718
)
)

Transcript of Record

March 14, 2016
 Moncks Corner, South Carolina

B E F O R E:

The Honorable Kristi Lee Harrington, Judge

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

Bryan A. Alfaro, Esquire, Assistant Solicitor
 Wilton H. McNeely, Esquire
 Attorneys for the State

Steve C. Davis, Esquire
 Attorney for Defendant Gourdine

Kevin D. Kearse, Esquire
 Attorney for Defendant Moses

Elizabeth B. Harris, CVR-M-CM
 Circuit Court Reporter

I N D E X

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Witness/Description Page No.

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Aleshia Nava

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17	C-2	Proposed <i>Voir Dire</i> - Moses	-	94

1 THE COURT: Everybody present?

2 MR. DAVIS: Judge, Your Honor, I don't know if you
3 care in this case. You have another issue, but you know I
4 got a motion separate and apart from him we could address
5 until his presence comes forth.

6 THE COURT: What motion do you have?

7 MR. DAVIS: Mine was a motion to suppress any
8 statements that officers may want to refer to in their
9 presentation of their case. My argument would be that my
10 client was not Mirandized and that those statements would
11 be a violation of his constitutional rights, Your Honor.

12 THE COURT: All right. We'll wait until Mr. Kearse is
13 present.

14 MR. DAVIS: Okay.

15 THE COURT: Do we know where Mr. Kearse?

16 MR. DAVIS: He stepped out. No, no, ma'am.

17 THE COURT: Well, can we make some effort to find out
18 where he is?

19 (A PAUSE.)

20 THE COURT: Counsel, I know all this may seem obvious
21 to you, but this is the first time that I have touched this
22 case, so thank you.

23 We're here to begin the *State vs. Steven Dwayne Moses*.

24 Mr. Kearse, that is your client?

25 MR. KEARSE: He is, Your Honor.

1 THE COURT: 2014-GS-08-1713, 1714, 1715, 1716, 1717,
2 and 1718. Is that correct, Mr. Alfaro?

3 MR. ALFARO: Yes, Your Honor.

4 THE COURT: Mr. Davis, you represent Mr. Gourdine?

5 MR. DAVIS: Yes.

6 THE COURT: 14-GS-08-1719, 1720, 1721, 1722, 1723, and
7 1724. Is that correct?

8 MR. ALFARO: Yes, Your Honor?

9 MR. DAVIS: That's correct, Your Honor.

10 THE COURT: I have signed and given to the clerk your
11 motion that the bonds person is going to stay on your
12 client's bond.

13 MR. DAVIS: Thank you.

14 THE COURT: Was there any objection?

15 MR. ALFARO: No, Your Honor.

16 THE COURT: All right, and, Mr. Kearse, you also have
17 a similar motion?

18 MR. KEARSE: I do, Your Honor, and the bondman is
19 actually out in the lobby.

20 THE COURT: All right. If he'll complete that
21 paperwork.

22 MR. KEARSE: I'll need a minute because I don't ---

23 THE COURT: All right. Well, that is the least of my
24 concerns right now, so until I have that, your client will
25 remain in custody when we go on a break, Mr. Kearse. I'm

1 trying to get -- we started at 2.

2 Right, Mr. Alfaro, what motions are currently pending?

3 MR. ALFARO: Your Honor, Mr. Gourdine, Mr. Davis has
4 filed a motion. One was the defendant's request to charge
5 a jury. The state's position on that is it's too early for
6 that determination. That would be best heard upon the
7 conclusion of the evidence.

8 THE COURT: Correct. All right.

9 MR. ALFARO: He's also ---

10 THE COURT: Let's wait. Mr. Kearse has stepped out
11 again. I thought I made it clear that we were not
12 addressing anything -- please go get Mr. Kearse.

13 (A PAUSE.)

14 THE COURT: All right, Mr. Alfaro, are there any other
15 -- there's a state's motion *in limine* to exclude stand your
16 ground. Is that correct?

17 MR. ALFARO: Yes, Your Honor.

18 THE COURT: Mr. Kearse, your motion to sever, I think,
19 takes precedence.

20 MR. KEARSE: Yes, ma'am.

21 THE COURT: All right, happy to hear from you.

22 MR. KEARSE: May it please the court, Your Honor?

23 THE COURT: Yes.

24 MR. KEARSE: On behalf of Steven Moses, this case
25 essentially is, it's an attempted murder case. My client

1 is being charged under the same fact and occurrences, I
2 would imagine, as Mr. Gourdine, but I think it's stipulated
3 by all parties that Mr. Moses did not have a weapon, that
4 -- I believe it's -- also would be stipulated by fact that
5 these two young men did not get out the car together, and
6 that there is no independent, direct evidence that would
7 demonstrate that they were acting in concert with one
8 another, or that their -- had gone to the Nowhere Bar as
9 anything other than patrons.

10 I know that the state has asked for a charge of hand
11 one is the hand of all, and I have consistently argued that
12 oftentimes that charge is applicable if there is some joint
13 criminal venture being engaged in by both defendants in
14 that if they went to commit a robbery or a burglary or
15 something of that nature, and then one of the two
16 individuals involved in that joint criminal venture
17 happened to commit some other violent offense against
18 somebody's person like a murder or an ABHAN -- and this
19 case is nothing of the sort. This is a case where two men
20 went to a bar. A disagreement occurred in a bar. That
21 disagreement spilled out into the parking lot, and that at
22 some point, as the -- which is all recorded on a videotape,
23 the state's alleged victims were shot while in the parking
24 lot not by Steven Moses. And so -- and again there is no
25 fact scenario where these two men got out of the car

1 together, that Steven Moses had -- at the time of the
2 shooting, I want to say, Your Honor, and that means
3 together at that specific time of the shooting.

4 There is no independent evidence that there was any
5 tacit agreement or joint agreement. And when I say
6 independent, direct evidence of any joint agreement, there
7 is no evidence that -- just that this was anything other
8 than a dispute in a parking lot, and that the state is not
9 going to present anyone to suggest that, or who's going to
10 say that these guys got together, entered into an agreement
11 to kill anybody, Your Honor.

12 And so that being the case, I think when you try Mr.
13 Moses together with Mr. Gourdine -- and given the
14 implication, and I know that we haven't even got to the
15 point where we're talking about what the court will charge,
16 but the implication is that because Mr. Moses was with Mr.
17 Gourdine, that they are codefendants acting in concert.
18 And I think that if the state intends to proceed under the
19 doctrine of hand of one is the hand of all, neither one of
20 these gentlemen -- but especially since I'm speaking on
21 behalf of Mr. Moses -- should be required to try his case
22 with the other simply because it will allow the state to
23 lump their actions together and say this is some diabolical
24 plot, which they have no direct evidence of at all. And if
25 the state's case is what they say it is, then they should

1 be able to prove that independent of a joint trial.

2 I think my client's going to be substantially
3 prejudiced in this case if he is required to go forward as
4 a codefendant. And I would just ask that this court allow
5 Mr. Moses the opportunity to have his case independently
6 tried either this term or another term in the future, Your
7 Honor.

8 THE COURT: All right, Mr. Davis, do you join in the
9 motion?

10 MR. DAVIS: I join to the extent, Your Honor, that
11 aspects of joint defendants and rights of cross-examination
12 in reference to the Sixth Amendment in reference to their
13 rights somewhat being chilled in some aspect because if
14 either one of these young men take the witness stand, they
15 are confronted with a situation of incriminating
16 themselves. So, in essence here they are put in a position
17 that if they wanted to produce or state statements that
18 would aid or assist either one of them, they are couched in
19 unison together based on the state's decision and desire to
20 proceed with these trials mutually instead of exclusively.
21 That's my concern when you got joint defendants who in and
22 of themselves can create incriminating statements separate
23 and apart from benefitting the individual who is actually
24 on trial if they are tried separately, Your Honor. That's
25 my concern.

1 THE COURT: All right, Mr. Alfaro.

2 MR. ALFARO: Your Honor, the state ---

3 THE COURT: Could you briefly tell me the facts in a
4 non-argumentative way? And I understand that Mr. Kearse
5 and Mr. Davis are going to disagree probably with the
6 summary of the facts, but just to give me an understanding
7 of what you intend to prove.

8 MR. ALFARO: Your Honor, on -- the state's version of
9 the facts is that on July 28, 2013, the victims in this
10 case, James Bryant, Stacy Bohannon, and David Bohannon,
11 were all at the Nowhere Bar and Grill in Goose Creek here
12 in Berkeley County. They had -- the Bohannans had come
13 there together, and Mr. Bryant had come to that bar with
14 some other people. During the course of the evening, they
15 began talking and became -- were hanging out together
16 essentially at the bar.

17 Later that evening, around -- close to 2, between 1:30
18 and 2:00 in the morning, the defendants came into the bar.
19 Last call had already been called by the bartending staff.
20 The defendants approached the bar. Asked for drinks. Were
21 told that they couldn't be served because last call had
22 already been done. There was an argument or some words
23 exchanged between the defendants and the bartenders. At
24 that point, one of the friends of Mr. Bryant, Enrique
25 Moran, comes up and essentially, you know, gets into a

1 verbal confrontation with Mr. Moses about the way he was
2 talking to the bartender. There are some words exchanged,
3 and Mr. Moran takes a swing at Mr. Moses. They are
4 separated.

5 The defendants leave the bar. The victims remained
6 inside the bar for over ten minutes before going outside.
7 While they're outside in the parking lot talking by their
8 vehicle, a few minutes pass and then on the video you see
9 Mr. Gourdine drive up into the video, park his car behind
10 the victim's vehicle. Mr. Moses is walking up
11 simultaneously alongside Mr. Gourdine's vehicle. Mr. Moses
12 walks around the side of the car, points out to Enrique
13 Moran. Mr. Bryant intervenes at that point. Mr. Moses is
14 backpedaling towards Mr. Gourdine's car.

15 As they get -- as Mr. Bryant gets near Mr. Gourdine's
16 vehicle, Gourdine takes a shotgun and fires it point-blank
17 range at Mr. Bryant, striking him. He fires another shot
18 towards Stacy Bohannon, who is running towards the bar; she
19 is struck in the back of her head and neck with pellets
20 from the shotgun. The bar itself is also struck during
21 that -- in that shot. David Bohannon attempts to push the
22 car door shut onto Mr. Gourdine, at which time he falls
23 down. As he falls, Mr. Gourdine shoots again at Mr.
24 Bohannon, again a point-blank range.

25 This video -- or this incident is recorded on video.

1 The bar had audio and video surveillance both inside and
2 outside the bar. So, there is video that shows the
3 incident inside as well as the shooting outside. That will
4 be the state -- the evidence that will be presented at
5 trial.

6 Your Honor, the state's intention would be to call the
7 case -- cases together and try them together. The reasons
8 for that is, you know, well-settled reasons or acceptable
9 reasons for joining a case would be judicial economy. Same
10 evidence is going to be used against both defendants, which
11 also results in a decreased burden on the victims and the
12 witnesses in this case. Those are the reasons why the
13 state would want to call the case.

14 The reasons that given by Mr. Kearse, specifically the
15 argument that his defendant is less culpable than the
16 codefendant or that only the codefendant is guilty because
17 he's the one that had the gun, that is -- case law has
18 shown that that's an insufficient grounds for severance.

19 As to Mr. Davis's reason for joining in, that there
20 may be the possibility of antagonistic defenses or
21 antagonistic testimony if either of the defendants were to
22 decide to testify on their own behalf, is also a reason
23 that the case law has stated is not a sufficient ground for
24 severance of a case.

25 In this case there is no -- there are no *Bruton* issues

1 that would require any redaction or any type of change to
2 any statements. The primary evidence in this case is the
3 eyewitness testimony. It is the video itself, and there
4 was a photographic lineup procedure that was done for each
5 defendant. So, we have the same evidence essentially for
6 both cases. So, to make the state try essentially the same
7 case twice would be unfair to the state as well as to the
8 victims in this case, Your Honor.

9 THE COURT: Mr. Kearse, you may respond.

10 MR. KEARSE: May it please the court?

11 THE COURT: Yes, sir, and if there are any facts --
12 and again, I'm not trying this case, but if there are any
13 facts that would be different from what you believe the
14 state would show that would change the analysis, I'll be
15 happy to hear ---

16 MR. KEARSE: Yes.

17 THE COURT: --- from those, but as far as -- I don't
18 want get into, well, that's not what the defense will be.

19 MR. KEARSE: Right. Well, again, as far as the facts
20 as stated by Mr. Alfaro, the tape does not show Mr. Moses
21 walking next to Mr. Gourdine's car. Mr. Moses walks up to
22 the group of friends, including those who have been named
23 as victims in this case. Mr. Gourdine is driving his own
24 car in the parking lot around the back side of the van.
25 Again, this is not where Mr. -- and I don't think -- I

1 mean, based on what I heard, but this is not where a car
2 pulls up and then these two men jumped out of the car
3 together.

4 Mr. Gour -- Mr. Moses walks up, has a conversation.
5 Mr. Gourdine is in his car. Mr. Gourdine -- Mr. Moses
6 talks to these group of individuals, including those listed
7 as alleged victims. He backpedals because he's being now
8 approached by those alleged victims, and by the time they
9 get to the back of a van where Mr. Gourdine's car is
10 situated, Mr. Gourdine gets out of his car and from that a
11 shooting occurs.

12 Now, again as Mr. Davis has mentioned, at some point
13 the defendant -- there's a high likelihood the defendants'
14 cases may become antagonistic to one another, but again
15 there is no evidence that there was any joint, criminal
16 venture. These were guys who went to a bar, and again
17 there's been nothing by the state that they went to rob the
18 bar or commit a burglary, even rob anybody in the parking
19 lot. Then nobody is going to say, and they can't say now,
20 that there is any direct evidence that there was some
21 discussion between Mr. Moses and Mr. Gourdine to go out
22 there and shoot people. There's no direct evidence. All
23 of this stuff is going to be circumstantial or implied, or
24 basically you have to fill in the gaps to go with what the
25 state is saying and how, somehow this was some joint

1 venture.

2 And again I don't see where it's going to be that much
3 of a cost to the state such that these two gentlemen's
4 rights should be prejudiced by having to go forward in this
5 case as codefendants. I understand judicial economy, but
6 that's every situation we have you can argue judicial
7 economy. So, I would submit to this court that this case
8 should be severed, and these two gentlemen should be given
9 a fair trial separate and apart from each other.

10 THE COURT: Mr. Kearse, do you have a preference as to
11 whose would be tried first?

12 MR. KEARSE: I absolutely do not, Your Honor.

13 THE COURT: All right, and you would still be ready to
14 go if I grant your motion?

15 MR. KEARSE: I will be.

16 THE COURT: All right, and, Mr. Davis, you would be as
17 well?

18 MR. DAVIS: I'll be ready, Your Honor.

19 THE COURT: All right. Anything you would like to add
20 to Mr. Kearse's arguments?

21 MR. DAVIS: Judge, just to piggyback to some extent.
22 You know, the tape will reflect that his client got out.
23 My client didn't know what his intentions may have been,
24 and all of a sudden, he finds himself in a threatening
25 manner, I mean, about to be assaulted, and my client being

1 a good friend jumped in in defense of him. There's no
2 discussion about him having prior knowledge of what Mr.
3 Kearse's client was going to do. He approached them, and
4 all of a sudden these guys bum rushed him, and my client
5 did whatever any good patron or friend would do: came to
6 his rescue. That don't mean necessarily their cases need
7 to be tried together. I just, I just share that with the
8 court, Your Honor.

9 THE COURT: Criminal defendants who are jointly tried
10 are not entitled to separate trials to please a matter of
11 right. Motion for severance, as you know, is addressed to
12 the sound discretion of the trial court. There is no
13 clearly defined rule in our laws for determining when a
14 defendant is entitled to a separate trial because, as I
15 indicated to you, the court has the exercise of discretion,
16 which mean I must make just and proper consideration on the
17 particular circumstances that have been presented to the
18 court in each case. I should grant severance only when
19 there is a serious risk that a joint trial would compromise
20 the specific trial right of a codefendant, or prevent the
21 jury from making a reliable judgment about the defendant's
22 guilt.

23 Joint trial, simply allowing a joint trial is not
24 impugned because the codefendants may present evidence
25 accusing each other of a crime. Allowing joint trials

1 applies with the same consideration when a defendant's
2 severance motion is based upon the likelihood that the
3 defendant and codefendant will present mutually
4 antagonistic defenses.

5 Based on the information that has been presented in
6 arguments today, based upon my review of Mr. Kearse's
7 written motion, as well as Mr. Davis's joining in the
8 motion for severance, I deny the motion for severance as to
9 Mr. Moses and as to Mr. Gourdine. Note your exception to
10 my rulings.

11 MR. KEARSE: Thank you, Your Honor.

12 THE COURT: Thank you. Mr. Kearse, you also had a
13 motion to dismiss. Is that correct?

14 MR. KEARSE: That is correct, Your Honor.

15 THE COURT: I should have heard that one first. That
16 might have been dispositive, but we'll hear you as to ---

17 MR. KEARSE: Well, I mean, it arises again out of some
18 of the same argument, but still there's no direct evidence,
19 and when I say direct, there's no testimony. There's no
20 recording. There's no confession. There's nothing to
21 suggest that there was a conspiracy or a pre-existing
22 agreement between these two gentlemen to go to Nowhere Bar
23 and make an attempt to kill any of the, the victims.

24 THE COURT: Mr. Alfaro, there's three counts of
25 criminal conspiracy as to each defendant. Is the

1 conspiracy as to each victim?

2 MR. ALFARO: Yes, Your Honor.

3 THE COURT: All right.

4 MR. KEARSE: Right, and there's just no evidence
5 whatsoever, Your Honor, that these two men with intent went
6 out and made an agreement to try to kill either James
7 Bryant, Stacy Bohannon, or David Bohannon, which is what
8 would be required to sustain those particular offenses.
9 And again to say under the facts that because they went to
10 the bar together and that they are friends, that would
11 suggest that they had some prior-existing agreement, which
12 is what the conspiracy requires, to go out and even fight,
13 more or less make an attempt to kill these people is
14 speculative, and it would cause any jury to have to go back
15 there in a jury room and to make the facts up based upon
16 what they think happened and necessarily what happened. It
17 would be different, Your Honor, if there was something or
18 some witness who would come before this court and say I
19 heard the two of them agree, or that you had ---

20 THE COURT: Is that what the ---

21 MR. KEARSE: --- one of the two of them say they
22 agree.

23 THE COURT: It that what the statute requires?

24 MR. KEARSE: I think to a certain extent it starts
25 there, Your Honor. It doesn't, it doesn't say that because

1 two people are together, obviously there is a conspiracy.

2 THE COURT: But then ---

3 MR. KEARSE: You have to have some evidence of an
4 agreement. I mean, things can happen sporadically. Does
5 that -- a fight happens sporadically. Does that make it a
6 conspiracy?

7 THE COURT: Well, in the indictment the state is
8 alleging that they did combine, conspire, confederate,
9 agree, or have a tacit understanding with one another, and
10 tacit means without being stated. So, I think that that
11 was the point of that question to you.

12 MR. KEARSE: Right. I understand that, Your Honor,
13 but you still got to have facts to show they had a tacit
14 understanding. I mean, how are they -- I mean, a tacit
15 understanding based upon what, you know? And, and again,
16 in the indictment itself ---

17 THE COURT: I'm assuming that, based on the facts,
18 that having a weapon and being next to the car, is that
19 what, is that what you're -- is that what the state intends
20 to show for the ---

21 MR. ALFARO: Your Honor, it's not ---

22 THE COURT: --- conspiracy?

23 MR. ALFARO: It's not just that they're friends and
24 they happen to be in the same place. The video and the
25 testimony that we have is that they came into the bar

1 together. The particular incident inside the bar happened.
2 They leave together. They're seen coming back on the video
3 together. They're not in the same car, but they're walking
4 up. They arrive simultaneously at the same location.
5 Based on Mr. Gourdine parking the vehicle behind the
6 victim's van as Mr. Moses is seen walking up to the
7 victims, the state believes that that evidence is going to
8 be more than enough for a jury to infer or be enough
9 circumstantial evidence of the agreement to commit the act
10 that followed shortly thereafter on the video.

11 Your Honor moved towards asking a question about what
12 the statute requires. There's no requirement that, that
13 the agreement happen for any set time before the act takes
14 place. It can be spontaneous, as Mr. Kearse said, or it
15 can be implied or inferred based -- by the jury based on
16 what they witnessed on the video.

17 Circumstantial evidence is just as admissible at trial
18 as direct evidence. If we had direct evidence of a verbal,
19 written agreement -- and also I believe of the conspiracy
20 as well. There's no requirement that the agreement itself
21 be written or formalized. It can be tacitly understood, it
22 can be implied, or it can be inferred by actions observed,
23 and that's what the state believes we have on the video in
24 this case.

25 Directly related to Mr. Kearse's motion itself, the

1 state feels that it's more of a directed verdict motion, or
2 it can be heard at the time of directed verdicts as opposed
3 to a pretrial motion, but state believes that we would then
4 get by either of those there.

5 MR. KEARSE: And in response to that, Your Honor, I
6 would submit to this court this. There's no such thing as
7 a spontaneous, pre-existing agreement to commit a crime,
8 and he's saying it can be spontaneous. If it's
9 spontaneous, obviously there wasn't an agreement between
10 the two people to commit it if something is out of
11 spontaneity.

12 THE COURT: My ---

13 MR. KEARSE: And so ---

14 THE COURT: What I understand is that the law does not
15 require that it exist for any predetermined amount of time.
16 There's no defined timeline as in the statute. It doesn't
17 have to exist for five, ten minutes before or an hour
18 before. It can exist. It just must exist before the act.

19 MR. KEARSE: Right, it has to exist, and that's not
20 spontaneity. That's not spontaneity, Your Honor. There
21 has to be some agreement in the -- if you're saying the
22 agreement can be demonstrated by the conduct of the
23 defendants, but there still has to be an agreement. And
24 again to -- under this fact scenario, you have what is no
25 more than a fight in a parking lot, and that's all it is.

1 They haven't said it was anything else other than that.
2 One guy walks up to the car. An argument again ensues.
3 The guy backpedals, which is my client, and as a result,
4 the guy gets out and takes a shot. That is not a
5 conspiracy to murder people, and based upon what the state
6 can show, their charge, their indictment for criminal
7 conspiracy fails.

8 Again, there has to be an agreement. You have to
9 demonstrate there was actually an agreement. There's no
10 fact scenario where these two gentlemen get out of the car
11 together at the same time, whether both with guns or one
12 with a gun.

13 THE COURT: All right, Mr. Davis, I'm going to allow
14 you just a brief ---

15 MR. DAVIS: Just, Judge, I would make the point that
16 mere conjecture in an effort to try to secure the basis for
17 this conspiracy is, is really -- unfortunately I would just
18 use this analogy. Apparently everybody at the Trump rally
19 should be charged with conspiracy. I mean, just as plain
20 as day, everybody that was there. Their mere presence
21 should be charged with conspiracy to commit some act if you
22 take the state's position as to what the conspiracy
23 entails. I mean, everybody who was there, they committed a
24 conspiracy because unlawful act occurred, they were
25 together, and we can concur that apparently that gave rise

1 to conspiracy.

2 I don't think that's the law. There's got to be some
3 mutual understanding between the parties that this is the
4 act we intend to carry out. This is our objective, and our
5 objective was achieved. You do not have this. I believe,
6 Your Honor, as a matter of law that the conspiracy should
7 be dismissed, Your Honor.

8 THE COURT: And based upon what I've heard and my
9 understanding in ruling on a motion to dismiss at this
10 stage, I'm denying your motion to dismiss. The state has
11 put forward the -- what it intends to show to meet the
12 elements. This does not prevent you from the motion at the
13 close of the state's case, the motion for directed verdict,
14 which may really be the most appropriate vehicle ---

15 MR. KEARSE: I, I ---

16 THE COURT: --- for your argument, but I understand
17 that you have preserved this more for ---

18 MR. KEARSE: Yes, yes, Your Honor.

19 THE COURT: --- for dismissal.

20 MR. KEARSE: And I, I appreciate that, and again --
21 and I know the state's not trying to concede. I don't know
22 about the Trump rally. I, I kind of ---

23 THE COURT: I don't need to hear about the Trump word.

24 MR. KEARSE: But I ---

25 THE COURT: Deny the motion.

1 MR. KEARSE: But to try to suggest that somehow these
2 two men conspired to go back and to make an attempt to kill
3 Stacy Bohannon, whom was -- who was not even an individual
4 involved in the argument ---

5 THE COURT: I have ruled on the motion ---

6 MR. KEARSE: Yes, ma'am.

7 THE COURT: --- to dismiss, so state that argument at
8 the appropriate time. That's all I show for your pretrial
9 motions on behalf of your client, Mr. Kearse.

10 MR. KEARSE: Yes, ma'am.

11 THE COURT: Okay.

12 MR. KEARSE: No. We have, we have a *Biggers* motion.

13 THE COURT: That's for both of you, correct?

14 MR. KEARSE: That's from both, Your Honor.

15 THE COURT: All right, and so I thought we would do
16 that at the same time. Is that correct?

17 MR. ALFARO: That's -- we have the witnesses here.

18 THE COURT: Okay, and then there was some motion for a
19 witness list. Is that still ---

20 MR. KEARSE: That's been satisfied.

21 THE COURT: Okay. We do not ---

22 MR. KEARSE: We withdraw.

23 THE COURT: --- need to do that, and do we also need a
24 *Denno* hearing?

25 MR. DAVIS: Yes, Your Honor.

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25

1 THE COURT: Okay. So, we'll do the *Biggers* hearing,
2 the *Denno* hearing, and then what else is remaining?

3 MR. KEARSE: That would be all from my client.

4 MR. McNEELY: The *voir dire*, Your Honor. There were
5 -- the state had two objections to the *voir dire* of the
6 defendant.

7 THE COURT: Okay. All right, I'll need to address
8 that. Anything else other than those two hearings?

9 MR. DAVIS: That's it, Your Honor.

10 THE COURT: All right, Mr. Alfaro.

11 MR. McNEELY: *Biggers* first, Your Honor?

12 THE COURT: Yes.

13 MR. McNEELY: State calls Deputy Brian Fenton.

14 BRIAN FENTON, BEING DULY SWORN,

15 TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: If you'll state your full name for
17 the record and spell your last name.

18 WITNESS: My name is Brian Fenton, F as in Frank
19 E-N-T-O-N.

20 MR. McNEELY: Thank you, Judge.

21 DIRECT EXAMINATION BY MR. McNEELY:

22 Q. Good afternoon, Lieutenant Fenton. How are you?

23 A. Pretty good.

24 Q. Where are you currently employed?

25 A. I am employed with the Berkeley County Sheriff's

1 Office.

2 Q. What's your position there, and how long have you been
3 employed?

4 A. I'm a lieutenant, and I've been at the sheriff's
5 office for about ten years.

6 Q. So, you were employed there during July and August
7 2013?

8 A. I was.

9 Q. What was your position at that time?

10 A. At that time I was a detective in Criminal
11 Investigation Division.

12 Q. Did you have an occasion to become involved in the
13 investigation of the shooting incident that occurred at
14 Nowhere Bar and Grill in Goose Creek July of 2013?

15 A. I did.

16 Q. What was the nature of your involvement?

17 A. Detective Wilson had requested that I present a couple
18 of photo lineups to a couple of witnesses.

19 Q. Were photo lineups generated of suspects in this
20 incident?

21 A. They were.

22 Q. Do you know how those photo lineups were generated?

23 A. I believe we got them from State Law Enforcement
24 Division.

25 Q. Were the lineups generated separately for each of the

B. FENTON - DIRECT EXAMINATION BY MR. McNEELY

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1 defendants or were they together?

2 A. They were separate, two separate lineups.

3 Q. How many photos were displayed in each of the photo
4 lineups?

5 A. Six, an array of six photos in each lineup.

6 Q. So, six photos on one page?

7 A. Correct.

8 Q. Were they head shots or full shots?

9 A. Head shots, I guess.

10 Q. Were the photos presented in black and white or in
11 color?

12 A. In color.

13 Q. Did you meet with witnesses to present these photo
14 lineups?

15 A. I did.

16 Q. Do you recall their names?

17 Q. One's name was Aleshia Nava, and the other's name was
18 Julia Taylor.

19 Q. Did you understand them to be employees of the bar?

20 A. Yes, sir.

21 Q. When did you meet with them?

22 A. I met with them on July 30, 2013.

23 Q. Where did you meet with them?

24 A. At the Nowhere Bar and Grill, 7128 Henry Brown
25 Boulevard, Goose Creek.

1 Q. Is that Berkeley County?

2 A. It is.

3 Q. Did you present, present photo lineups to the
4 witnesses that evening?

5 A. I did.

6 Q. Did you do it together or separately?

7 A. Separately.

8 Q. Who was the first, first witness you presented a photo
9 lineup to?

10 A. Ms. Aleshia Nava.

11 Q. Did you go over a procedure sheet with Ms. Nava before
12 presenting the lineup?

13 A. I did.

14 MR. McNEELY: Your Honor, at this time I'm going to
15 show the witness what's been premarked as State's Exhibits
16 29, 30, 31, and 32.

17 (A PAUSE.)

18 THE COURT: Did you mark these?

19 MR. McNEELY: I did, Your Honor.

20 MR. ALFARO: Your Honor, just to clarify, they've been
21 premarked for trial purposes. We're going to have to have
22 them marked for purposes of this hearing.

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

24 THE COURT: You may. Let me see your stickers.

25 (A PAUSE.)

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1 THE COURT: We're just discussing -- we will have a
2 different court reporter tomorrow, so I just want to make
3 sure however we are marking them today is not going to
4 disrupt tomorrow. Thank you.

5 (A PAUSE.)

6 (PHOTO LINEUP INSTRUCTION SHEET MARKED AS STATE'S
7 EXHIBIT NUMBER 29 FOR IDENTIFICATION.)

8 (PHOTO LINEUP MARKED AS STATE'S EXHIBIT NUMBER 30 FOR
9 IDENTIFICATION.)

10 (PHOTO LINEUP INSTRUCTION SHEET MARKED AS STATE'S
11 EXHIBIT NUMBER 31 FOR IDENTIFICATION.)

12 (PHOTO LINEUP MARKED AS STATE'S EXHIBIT NUMBER 32 FOR
13 IDENTIFICATION.)

14 BY MR. McNEELY:

15 Q. If you would, please look over those.

16 (A PAUSE.)

17 Q. Prior to presenting Ms. Nava with photo lineups, did
18 you present her or did you go over an instruction sheet
19 with her?

20 A. I did.

21 Q. I would like you to look at State's 29 and 31, please.
22 Do those appear to be the instruction sheets that you went
23 over with her?

24 A. They are.

25 Q. Did you do those instruction sheets with Ms. Nava

1 together or separately?

2 A. I explained the instructions at the same time and then
3 presented the photo lineups separately.

4 Q. So, you explained the instruction sheet for two
5 separate photo lineups together, and then you introduced
6 the photo lineups separately. Is that correct?

7 A. Correct.

8 Q. Okay. Did you or anyone else present Ms. Nava with
9 any photos prior to the lineup being presented to her?

10 A. No, sir.

11 Q. Did you go over the instruction sheet with her in
12 full?

13 A. I did.

14 Q. Did you intro -- excuse me. Did you present her with
15 photo lineups marked State's Exhibit 30 first or second?

16 A. 30 was first.

17 Q. How do you know that?

18 A. I wrote a 1 and put my initials next to the 1 on both
19 the instruction/statement form and also on the back of the
20 actual set of photographs.

21 Q. Did Ms. Nava select a photo from that lineup?

22 A. She did.

23 Q. How did she indicate which photo she selected?

24 A. She indicated it was number 3, and also wrote that she
25 selected number 3 and also wrote on the back of the photo

B. FENTON - DIRECT EXAMINATION BY MR. McNEELY

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1 lineup number 3.

2 Q. Did she put her initials and date on that as well?

3 A. She did.

4 Q. Did she write anything on the accompanying instruction
5 sheet marked as the State's Exhibit Number 29?

6 A. She gave a brief statement saying that she recognized
7 number 3.

8 Q. Who did she select as number 3 out of that photo
9 lineup?

10 A. Number 3 was Steven Moses, I believe. On the first
11 one, she identified Steven Moses.

12 Q. And she identified him as an individual involved in
13 the incident at the bar on July 28, 2013?

14 A. She did.

15 Q. Following that second lineup, did you present Ms. Nava
16 with the second lineup?

17 A. I did.

18 Q. Did that have an accompanying instruction sheet?

19 A. It did.

20 Q. Did you go over that instruction sheet with Ms. Nava?

21 A. I did.

22 Q. I believe that's marked State's Exhibit 31. Is that
23 correct?

24 A. Correct.

25 Q. Did you present her with the second photo lineup?

1 A. I did.

2 Q. Is that marked State's 32?

3 A. It is.

4 Q. Prior to presenting her with that photo lineup, did
5 you show her any photos?

6 A. Just the other photo lineup.

7 Q. Did she select a photo out of that lineup?

8 A. She did.

9 Q. Did you or anyone else present direct her which photo
10 to select?

11 A. I didn't, no.

12 Q. Which photo did she select?

13 A. Number 3.

14 Q. How did she indicate her selection of that photo?

15 A. She wrote that she recognized number 3, and also she
16 wrote number 3 and initialed the back of this, the photo.

17 Q. Did she also indicate on the instruction sheet marked
18 State's 31 that she selected number 3?

19 A. She did.

20 Q. Who did she select from that?

21 A. She selected Jason Gourdine.

22 Q. And she indicated that he was one of the individuals
23 involved in the incident at the bar that evening?

24 A. She did.

25 Q. Did that conclude your meeting with Ms. Nava that

B. FENTON - DIRECT EXAMINATION BY MR. McNEELY

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1 evening?

2 A. It did.

3 Q. Following your meeting with Ms. Nava, did you meet
4 with a lady named Julia Taylor?

5 A. I did.

6 MR. McNEELY: Your Honor, I have premarked State's 33,
7 34, 35, and 36. May I approach the court reporter?

8 THE COURT: You may.

9 MR. DAVIS: Can we see those?

10 MR. McNEELY: My apologies.

11 (A PAUSE.)

12 MR. DAVIS: No problem.

13 THE COURT: Thank you, Mr. Davis.

14 (PHOTO LINEUP INSTRUCTION SHEET MARKED AS STATE'S
15 EXHIBIT NUMBER 33 FOR IDENTIFICATION.)

16 (PHOTO LINEUP MARKED AS STATE'S EXHIBIT NUMBER 34 FOR
17 IDENTIFICATION.)

18 (PHOTO LINEUP INSTRUCTION SHEET MARKED AS STATE'S
19 EXHIBIT NUMBER 35 FOR IDENTIFICATION.)

20 (PHOTO LINEUP MARKED AS STATE'S EXHIBIT NUMBER 36 FOR
21 IDENTIFICATION.)

22 BY MR. McNEELY:

23 Q. Prior to doing that, Deputy, a couple of follow-up
24 questions regarding your -- the identification procedures
25 for Ms. Nava.

1 A. Okay.

2 Q. As far as State's 29 and 30, the identification lineup
3 for Mr. Moses, how long did it take Ms. Nava approximately
4 to select a photo from that lineup?

5 A. Right away. She didn't, didn't really hesitate at
6 all.

7 Q. Did she ever select another photo from the lineup?

8 A. She didn't.

9 Q. All right, would you please look at what's been marked
10 as State's 33, 34, 35, and 36 for identification?

11 (A PAUSE.)

12 Q. Do you recognize those documents?

13 A. I do.

14 Q. What are those documents?

15 A. They're photo lineups that I presented to Ms. Taylor.

16 Q. Focusing on State's 33 and 35, what are those
17 documents specifically?

18 A. That's the photo lineup form that we present.

19 Q. The instruction sheet?

20 A. Yeah, the instruction sheet, yes.

21 Q. Did you go over those with Ms. Taylor prior to doing
22 any lineups?

23 A. I did.

24 Q. She indicate that she understood the procedure?

25 A. She did.

B. FENTON - DIRECT EXAMINATION BY MR. McNEELY

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1 Q. Did you ever show her any photos prior to presenting
2 the lineups?

3 A. I did not.

4 Q. Please look at State's Number 34.

5 A. Okay.

6 Q. Is that the first lineup you presented to Ms. Taylor?

7 A. It is.

8 Q. Did she select a photo from that lineup?

9 A. She did.

10 Q. Which photo did she select from that lineup?

11 A. She chose number 3.

12 Q. How do you know which photo she selected?

13 A. She wrote that she chose number 3 on the photo lineup
14 form and also put a number 3 on the back of the actual
15 photo lineup.

16 Q. Did she initial and date that selection?

17 A. She did.

18 Q. Did she identify that person as a person involved in
19 the incident at that Nowhere Bar on July 28, 2013?

20 A. She did.

21 Q. How long did it take her to select the photo?

22 A. Pretty much right away.

23 Q. Did she ever select any other photos from the lineup?

24 A. She did not.

25 Q. Please look at State's Exhibit 36.

1 A. Yes, sir.

2 Q. Is that the second photo lineup you presented to Ms.
3 Taylor?

4 A. It is.

5 Q. Did you show her any photos prior to presenting that
6 lineup?

7 A. No, sir.

8 Q. Did you indicate to her which photo to select out of
9 the lineup?

10 A. I did not.

11 Q. Did she select a photo out of the lineup?

12 A. She did.

13 Q. Which photo did she select?

14 A. Number 3.

15 Q. She identify the individual in photo number 3?

16 A. She did.

17 Q. Who did she identify the individual as?

18 A. I believe it was Mr. Moses.

19 Q. Did she indicated that he was one of individuals
20 involved in the incident at the Nowhere Bar on July 28,
21 2013?

22 A. She did.

23 Q. How long did it take her to make that selection?

24 A. Right away.

25 Q. Did she ever select another photo?

B. FENTON - DIRECT EXAMINATION BY MR. McNEELY

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1 A. She did not.

2 Q. Did she hesitate in any manner?

3 A. She didn't. She didn't.

4 Q. After presenting the photo lineups to Ms. Nava and Ms.
5 Taylor that evening, did you have any further involvement
6 in this investigation?

7 A. I believe I got a statement from Ms. Taylor.

8 Q. A written statement?

9 A. Correct.

10 MR. McNEELY: Your Honor, at this time I would move to
11 admit State's 29 through 36 for purposes of this hearing.

12 THE COURT: Objection?

13 MR. KEARSE: I mean, I don't object to it being
14 admitted for purposes of the hearing. Of course, we still
15 object to whether or not it's constitutionally permissible.

16 THE COURT: All right, for purposes of this hearing,
17 29 through 36 are admitted. Thank you.

18 (PHOTO LINEUP INSTRUCTION SHEET MARKED INTO EVIDENCE
19 AS STATE'S EXHIBIT NUMBER 29.)

20 (PHOTO LINEUP MARKED INTO EVIDENCE AS STATE'S EXHIBIT
21 NUMBER 30.)

22 (PHOTO LINEUP INSTRUCTION SHEET MARKED INTO EVIDENCE
23 AS STATE'S EXHIBIT NUMBER 31.)

24 (PHOTO LINEUP MARKED INTO EVIDENCE AS STATE'S EXHIBIT
25 NUMBER 32.)

1 (PHOTO LINEUP INSTRUCTION SHEET MARKED INTO EVIDENCE
2 AS STATE'S EXHIBIT NUMBER 33.)

3 (PHOTO LINEUP MARKED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 34.)

5 (PHOTO LINEUP INSTRUCTION SHEET MARKED INTO EVIDENCE
6 AS STATE'S EXHIBIT NUMBER 35.)

7 (PHOTO LINEUP MARKED INTO EVIDENCE AS STATE'S EXHIBIT
8 NUMBER 36.)

9 MR. McNEELY: Your Honor, I don't have anything
10 further for Lieutenant Fenton at this time, Your Honor.

11 THE COURT: Mr. Kearse.

12 MR. KEARSE: If I could approach, Your Honor?

13 THE COURT: Yes.

14 CROSS-EXAMINATION BY MR. KEARSE:

15 Q. Detective Fenton, I hand you what's marked as Exhibit
16 34. Well, let me see. 33.

17 MR. KEARSE: I think we are using -- we are referring
18 to those numbers, correct, the State's?

19 THE COURT: Are there other numbers?

20 MR. KEARSE: I'm, I'm not -- is that the number for
21 purposes of the hearing that you ---

22 THE COURT: The number on the document should be the
23 number that I just admitted. So, if there are other
24 numbers floating around, we need ---

25 MR. McNEELY: That's the only numbers, 29 through 36.

B. FENTON - CROSS-EXAMINATION BY MR. KEARSE

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1 THE COURT: All right. Thank you.

2 MR. KEARSE: All right.

3 BY MR. KEARSE:

4 Q. Can you take a look at that for me?

5 A. Yes.

6 Q. For a second? On the, on the form there's a check
7 box.

8 A. There is.

9 Q. There are check, check boxes, correct?

10 A. Yes.

11 Q. And those check boxes are there to demonstrate that
12 each and every one of those lineups, which is pretty much
13 necessary to establish the permissibility of the -- or to
14 inform the identifier so that the identification is
15 constitutionally permissible has been reviewed, correct?

16 A. There check marks on there, yeah.

17 Q. All right. All right. Now, again we're looking at 1
18 through 7 on State's Exhibit Number 33.

19 A. Yes.

20 Q. Okay. All right. You would agree that next to each
21 box or each paragraph 1 through 7, there is no initial or
22 no check made or anything of that nature, correct?

23 A. Correct.

24 Q. All right, and in addition I hand you, too, State's
25 Exhibit Number 35, and this is the identification that was

1 allegedly made by Ms. Taylor?

2 A. Correct.

3 Q. All right, and again there is no initial or check box
4 there to show that each and every one of those lineups have
5 been reviewed to Ms. Taylor?

6 A. Correct.

7 Q. You said correct, right?

8 A. Yes.

9 Q. Okay. All right, and just to highlight that point, in
10 State's Exhibit 33 -- I'm sorry, in State's Exhibit 31,
11 when you reviewed that with Ms. Nava, you actually had her
12 initial those boxes, correct?

13 A. I did.

14 Q. All right, and that's important because that shows
15 that there was an actual record when you reviewed those
16 matters with that particular witness at that time, right?

17 A. Correct.

18 Q. All right, and of course we know these things are done
19 years ago, and in this particular case this was done some
20 three years ago. Is that correct?

21 A. Yes.

22 Q. And so ---

23 A. In 2013.

24 Q. I'm sorry. I'm sorry.

25 A. Yes, in 2013.

B. FENTON - CROSS-EXAMINATION BY MR. KEARSE

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1 Q. I was talking, and so those boxes are very important
2 because they demonstrate a record, and they refresh your
3 recollection of what actually took place. Is that correct?

4 A. I mean, they would indicate the person, it was
5 reviewed.

6 Q. Right. Now, you said that, you said that you got the
7 photographs from SLED. Is that correct?

8 A. Correct.

9 Q. All right. Procedurally, how do y'all, without just
10 saying we got the photographs from SLED, how do you assure
11 that these photographs, these photographs are not
12 prejudicial in that they are suggestive? What's the
13 procedure to make sure they're not suggestive? That one
14 doesn't stand apart from the others such that ---

15 A. I mean, normally if we were to create the photo
16 lineup, we would select people that have similar
17 hairstyles, look similar, not exactly the same but similar.

18 Q. Okay.

19 A. As far as the way SLED does it, I don't know. We
20 submitted a name, and they produce a photo lineup and give
21 it to us.

22 Q. All right. So, I mean, as to how they came about
23 selecting the photographs, you can't testify to that?

24 A. I, I can't.

25 Q. All right, and so you can't say where did they get

1 those photographs from, whether they were DMV photographs
2 or jail records or anything. You don't have any ---

3 A. From my experience, they're normally DMV records, but
4 I ---

5 Q. But you're ---

6 A. --- I, I didn't ---

7 Q. --- falling back on your experience?

8 A. Yes.

9 Q. And you're not saying specifically that would apply to
10 this particular ---

11 A. Correct.

12 Q. --- case. Is that correct? All right. Now, you
13 talked to Ms. Nava first, right?

14 A. Correct.

15 Q. And you did that at the bar?

16 A. Yes.

17 Q. All right, and I imagine Ms. Taylor was there at the
18 bar at the same time?

19 A. I'm not sure if she was there or not.

20 Q. All right, and where did you talk to -- do you
21 remember ---

22 A. Yeah.

23 Q. --- recall where you talked to Ms. Nava?

24 A. I believe they were both out at the bar.

25 Q. All right, and did you do it in the bar room itself?

B. FENTON - CROSS-EXAMINATION BY MR. KEARSE

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1 A. No. It was in the parking lot.

2 Q. All right, in the parking lot?

3 A. I believe so.

4 Q. And were they both located in the parking lot?

5 A. I believe Ms. Nava was there, and Ms. Taylor might
6 have showed up afterwards.

7 Q. Okay, but you can't say that they weren't actually
8 there together?

9 A. I don't believe they were there; I don't remember them
10 being there together.

11 Q. I mean, you have -- you started with Ms. Taylor, or at
12 least she -- at 8:46, and then at 9:19 you -- I mean, Ms.
13 Nava, and then at 9:19 you went over to Ms. Taylor. At
14 least that's what you recorded. Does that sound ---

15 A. Yeah.

16 Q. --- about right?

17 A. About twenty minutes apart.

18 Q. And they both were in the parking lot at the time?

19 A. Right.

20 Q. Did the two of them have any time, that you remember,
21 to talk to one another?

22 A. I don't believe so.

23 Q. All right. At the time you put -- but you can't say
24 they didn't?

25 A. Normally I wouldn't -- I'd instruct the person not to

1 discuss the form with anybody else or, or their selection
2 process.

3 Q. Okay. Now, you're saying you don't believe so, but
4 can you specifically -- because, I mean, that is important,
5 right, that they not confer with each other after ---

6 A. Right.

7 Q. --- one has seen ---

8 A. Right.

9 Q. --- the lineup, right? All right, but you can't say
10 that they did not have that opportunity or that they
11 didn't?

12 A. I can't.

13 Q. Okay, and I see that in each one of these lineups,
14 both individuals are number 3. Was there any reason to
15 that?

16 A. That's the way SLED gave us the photo lineup.

17 Q. You just -- the way they presented it is the way you
18 just took it out there and ---

19 A. Correct.

20 Q. Okay.

21 MR. KEARSE: Your Honor, I don't have anything
22 further.

23 MR. DAVIS: Nothing, Your Honor.

24 MR. McNEELY: Just a couple, Your Honor.

25 REDIRECT EXAMINATION BY MR. McNEELY:

B. FENTON - REDIRECT EXAMINATION BY MR. McNEELY

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1 Q. Did you go over the instruction sheets with Ms. Taylor
2 prior to presenting her the lineups?

3 A. I did.

4 Q. Did you go over them line by line?

5 A. I did.

6 Q. Is it standard procedure for you to have them initial
7 by that?

8 A. It is.

9 Q. Does it occasionally occur you don't have them
10 initial?

11 A. Right.

12 Q. That doesn't mean you didn't go over the sheet with
13 them, correct?

14 A. Correct.

15 Q. Okay. I want to show you State's 33 and 35. Did Ms.
16 Taylor sign those sheets?

17 A. She did.

18 Q. Did you sign those sheets?

19 A. I did.

20 Q. Does your signature indicate that you went over those
21 sheets with Ms. Taylor prior to presenting the lineups?

22 A. It does.

23 MR. McNEELY: Nothing further, Judge.

24 THE COURT: Mr. Kearse.

25 MR. KEARSE: Your Honor, I just have some follow up.

1 RE-CROSS-EXAMINATION BY MR. KEARSE:

2 Q. As to reliability, Detective Fenton, Ms. Taylor did
3 not see the actual shooting, correct?

4 A. I, I don't -- I would have to review her statement.

5 Q. Okay.

6 MR. KEARSE: Beg the court's indulgence.

7 Q. Actually, but she -- on -- and let me hand it to you.

8 A. Okay.

9 Q. This was a while back. Okay, I hand you what's marked
10 as State's Exhibit 34, State's Exhibit 33. She writes down
11 there she recognized him from the night of the shooting as
12 the shooter?

13 A. Correct.

14 Q. All right, and so if she did not see the shooting
15 itself, that wouldn't be reliable, correct?

16 A. I, I don't know if she saw the shooting or not.

17 Q. All right.

18 MR. KEARSE: Beg the court's indulgence, Your Honor.

19 (A PAUSE.)

20 MR. KEARSE: If I can approach?

21 THE COURT: You may.

22 BY MR. KEARSE:

23 Q. Does that appear to be the kind of form you guys use
24 when you take statements at Berkeley County department?

25 A. Yes.

B. FENTON - RE-CROSS-EXAMINATION BY MR. KEARSE

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1 Q. Sheriff's department?

2 A. A voluntary statement form.

3 Q. All, and those three pages that I just hand you, does
4 that appear to be a fair and accurate photostatic copy of
5 the statement you took of Ms. Taylor?

6 A. It looks like a statement that I took.

7 Q. Okay, and the name at the top of that form is?

8 A. Julia Victoria Taylor.

9 Q. Okay.

10 MR. KEARSE: Your Honor, if I could have this marked
11 Defendant Moses's 1 for purpose of this hearing?

12 (STATEMENT MARKED AS DEFENDANT MOSES'S EXHIBIT NUMBER
13 1 FOR IDENTIFICATION.)

14 BY MR. KEARSE:

15 Q. I'd like to hand you this again, Deputy Fenton. If
16 you can review that for me and when you finish, just
17 acknowledge, please, saying you're ready.

18 (A PAUSE.)

19 A. Okay.

20 Q. Okay, and in that statement, she doesn't indicate that
21 she saw the shooting ---

22 A. She didn't.

23 Q. --- itself, correct?

24 A. She did not.

25 Q. All right, she did not actually see it?

1 A. According to that statement.

2 Q. Right, and so the foundation she gives as the
3 identification of the defendant in what you were previously
4 asked about -- I think that was offered.

5 MR. KEARSE: Beg the court's indulgence, Your Honor.

6 I want to make sure I get the record right.

7 BY MR. KEARSE:

8 Q. I think it was in 33 and 34 would have been
9 nonexistent.

10 A. What was your question?

11 Q. Her foundation that she uses to identify.

12 A. That, that's what she wrote.

13 Q. Okay. Is that a yes?

14 A. I don't know what her foundation was. That's what she
15 wrote on the form.

16 Q. All right.

17 MR. KEARSE: Your Honor, I don't have anything
18 further.

19 THE COURT: All right, you may step down. Thank you.
20 I'm sorry. Mr. Davis?

21 MR. DAVIS: Nothing, Your Honor.

22 THE COURT: All right. Thank you.

23 WITNESS: Thank you, Your Honor.

24 (THE WITNESS EXITS THE STAND.)

25 THE COURT: Call your next witness.

A. NAVA - DIRECT EXAMINATION BY MR. McNEELY

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1 MR. McNEELY: State calls Aleshia Nava.

2 ALESHIA NAVA, BEING DULY SWORN,

3 TESTIFIES AS FOLLOWS:

4 CLERK OF COURT: State your full name and spell your
5 last name.

6 WITNESS: My name is Aleshia Nava, N-A-V-A.

7 DIRECT EXAMINATION BY MR. McNEELY:

8 Q. Good afternoon, Ms. Nava. How are you?

9 A. Good. How are you?

10 Q. Good. Where are you currently employed?

11 A. At MUSC, College of Dental Medicine.

12 Q. What do you do there?

13 A. I'm a sterilization tech.

14 Q. Where were you employed on July 27th and 28th of 2013?

15 A. Nowhere Bar and Grill.

16 Q. What was your position there?

17 A. A bartender.

18 Q. Did you work there full time?

19 A. Part time.

20 Q. Were you working as a bartender on the evening in July
21 27, 28, 2013?

22 A. Yes, sir.

23 Q. Where is the Nowhere bar located?

24 A. 7128 North Road Extension in Goose Creek.

25 Q. Is that in Berkeley County?

1 A. Yes, sir.

2 Q. Do you recall an incident occurring at the bar the
3 night of July 27, 28, 2013?

4 A. Yes, sir.

5 Q. Please tell us what happened that evening at the bar,
6 starting with what happened inside the bar.

7 A. We called last call like usual between 1:31, 1:45. We
8 usually say about 1:30, give people fifteen minutes to wrap
9 it all up, and everybody has to be out of the door between
10 1:45 and 1:50. We were closing tabs, getting everybody out
11 the register, running credit cards.

12 Two men came in. I was in the middle of closing tabs,
13 getting credit card receipts signed because they have to be
14 signed, and once I was able to speak to them, I told them
15 it was too late to serve them. We had called last call
16 already. Then I heard one of them say that I wouldn't
17 serve him because he was black, and I told him no, that
18 wasn't the case. You know, there was people there that I
19 had served all night long, and I pointed to one of the
20 customers that was there, and I was, like, I served him all
21 night. That's not the issue, and then I turn around and
22 went about my business.

23 And Vicky told the two men to get to F out of the bar
24 because they had raised the verbal, you know, confrontation
25 with me. And then as they went to go leave, my back was

A. NAVA - DIRECT EXAMINATION BY MR. McNEELY

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1 turned, so I didn't see anything happen. All I heard was
2 screaming and people going out the front door.

3 Q. Okay. You referenced two men coming to the bar ---

4 A. Yes, sir.

5 Q. --- and trying to order drinks after last call?

6 A. Yes, sir.

7 Q. Okay. How far away for you -- how far away from those
8 individuals were you when they tried to order drinks?

9 A. Closer than you and I.

10 Q. Okay. Did you get a clear look at their faces?

11 A. Yes, sir.

12 Q. Did you know them before that evening?

13 A. No, sir.

14 Q. Okay. Then I think you said the defendants left --
15 or, excuse me. Then I think you said those two individuals
16 left the bar that evening. Is that correct?

17 A. They went to walk out the door, yes, sir.

18 Q. Okay. At some point that evening following that, was
19 there another incident?

20 A. Yes.

21 Q. What happened?

22 A. I was cleaning. It was after 2, so that's when we do
23 cleanup. So, I was cleaning and I heard a loud pop. Just
24 sound like a bang. Didn't sound like a gunshot, so I
25 wasn't alarmed. Just sounded like a big bang.

1 And then somebody ran in the bar. Stacy ran in the
2 bar and said I've been shot and grabbed the back of her
3 head. So, I went to go run and hide as my instinct tells
4 me, and then I look at her and I call 911. And then I see
5 James walk in -- and he had been shot -- as I'm on the
6 phone with 911, and then I guess a few seconds later David
7 comes staggering into the bar, and I told 911 that there
8 was a third person shot, and that I seen cops outside
9 already.

10 Q. Okay. Just so the court's clear, at the time of the
11 shooting, were you inside or outside?

12 A. I was inside.

13 Q. So, you didn't see the actual shooting?

14 A. No, sir.

15 Q. Okay. Was the bar equipped with video surveillance
16 equipment?

17 A. Yes, sir.

18 Q. Were the cameras operational that night?

19 A. Yes, sir.

20 Q. As an employee of the bar, did you have access to the
21 cameras?

22 A. Yes, sir.

23 Q. Did you view the video surveillance of the incident
24 from that evening?

25 A. Afterwards, yes, sir.

A. NAVA - DIRECT EXAMINATION BY MR. McNEELY

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1 Q. Did you view it that evening following the incident?

2 A. Yes, to play it back in the office for the police
3 officers.

4 Q. Did you view video surveillance of both the inside
5 incident and the outside incident?

6 A. Yes, sir.

7 Q. Did you see any media release following the incident
8 of the video footage from the bar that evening?

9 A. Yes, sir.

10 Q. Did you meet with detectives in the days following the
11 incident to ---

12 A. Yes.

13 Q. --- discuss this incident?

14 A. Yes, sir.

15 Q. At some point, did they ask you to view photo lineups
16 of individuals they had identified as the suspects in the
17 incident at the Nowhere Bar on July 27, 28, 2013?

18 A. Yes, sir. /

19 Q. Do you recall what date you met those individuals?

20 A. July 30th.

21 Q. So, that's two days following the shooting incident?

22 A. Yes, sir.

23 Q. Where did you meet with an officer to go over the
24 lineups?

25 A. At Nowhere Bar and Grill.

1 Q. Did you meet them inside the bar or outside the bar?

2 A. Outside.

3 Q. Who was present when you met with the officer?

4 A. The bar was -- there was people inside the bar.

5 Q. You said you were outside the bar?

6 A. I came outside. I believe I was -- I'm not sure if I
7 was working that night. I believe I was working and that's
8 why he came there.

9 Q. Okay. During your meeting with the officer, was
10 anyone else present?

11 A. With us? No, sir.

12 Q. It was just you and the officer presenting the lineup?

13 A. Yes, sir.

14 Q. What, if everything, did he tell you before presenting
15 the photo lineups to you?

16 A. I do not recall.

17 Q. Do you recall going over procedure instruction sheets?

18 A. For the line -- yes, sir.

19 Q. Okay. I'd like you to ---

20 MR. McNEELY: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MR. McNEELY:

23 Q. I'd like you to look at what's been marked as State's
24 29 and 31.

25 (A PAUSE.)

A. NAVA - DIRECT EXAMINATION BY MR. McNEELY

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1 Q. Do those sheets look familiar?

2 A. Yes, sir.

3 Q. Are those the instruction sheets that you went over
4 that evening with the deputy before being presented the
5 lineups that evening?

6 A. Yes, sir.

7 Q. Prior to presenting you the photo lineups, did they
8 show you any other photos?

9 A. No, sir.

10 A. There are two instruction sheets in your hand
11 indicating you did two lineups. Is that correct?

12 A. Yes, sir.

13 Q. Did you do those lineups simultaneously, or did you do
14 one before the other?

15 A. I do not recall.

16 Q. Let me ask it this way. When you were presented with
17 the ---

18 MR. KEARSE: Objection, Your Honor. Asked and
19 answered.

20 THE COURT: Yeah, I haven't heard a question.

21 MR. KEARSE: Okay.

22 BY MR. McNEELY:

23 Q. Were you presented with two sheets of photos at the
24 same time, or were you presented with one sheet of photos
25 and then a second sheet?

- 1 A. Just, I believe, just one at a time.
- 2 Q. Okay. So, you were presented with one lineup, and
3 then you were presented with a second lineup?
- 4 A. Yes, sir.
- 5 Q. In reference to the first lineup, did anyone indicate
6 to you any photos to select prior to presenting you with
7 the lineup?
- 8 A. No, sir.
- 9 Q. You recall how many photos where in the lineup?
- 10 A. Six.
- 11 Q. Were all those photos on one page?
- 12 A. Yes, sir.
- 13 Q. Were they full body shoots, or were they head shots?
- 14 A. Head shots.
- 15 Q. Did you select a photo out of the first lineup
16 presented?
- 17 A. Yes, sir.
- 18 Q. How long did it take you to select a photo?
- 19 A. Within second -- within a few seconds.
- 20 Q. How did you indicate the photo that you selected?
- 21 A. I circled and then I wrote a number and my initials on
22 the back of the page.
- 23 Q. I want to show you first what's been marked as State's
24 Exhibit 30. Please look at that.
- 25 (A PAUSE.)

A. NAVA - DIRECT EXAMINATION BY MR. McNEELY

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1 Q. Does that appear to be one of the lineups you were
2 presented with that evening?

3 A. Yes, sir.

4 Q. Did you select a photo out of that lineup?

5 A. Yes, sir.

6 Q. Which photo did you select?

7 A. Number 3.

8 Q. How do you know that number 3 is the photo you
9 selected?

10 A. It's my initials on the back with the number 3.

11 Q. You know the name of the investigator you selected on
12 it?

13 A. Now? Yes, sir. Then? No.

14 Q. Okay. Did you recognize that individual as a person
15 involved in the incident at the Nowhere Bar on July 27, 28,
16 2013?

17 A. Inside? Yes, sir.

18 Q. Okay. Did you recognize him as a person involved in
19 the incident outside from having viewed the surveillance
20 footage?

21 A. From the videotape? Yes sir.

22 Q. And was that based on your experience with him inside
23 the bar as well?

24 A. Yes, sir.

25 Q. Did you ever select anyone out of the lineup other

1 than number 3?

2 A. No, sir.

3 Q. Are you still confident that the person selected as
4 number 3 was an individual involved in the incident at the
5 Nowhere Bar on July 28, 2013?

6 A. Yes, sir.

7 Q. Do you see that individual in the courtroom today?

8 A. Yes, sir.

9 Q. Could you point him out for the court and describe him
10 by clothing?

11 A. A black suit and a maroon tie.

12 Q. Okay.

13 A. And a gray shirt.

14 Q. Thank you.

15 MR. McNEELY: Your Honor, let the record reflect for
16 purposes of this hearing that the witness selected Steven
17 Moses.

18 THE COURT: Very well.

19 BY MR. McNEELY:

20 Q. Has his appearance changed in any way from the night
21 of the incident to today?

22 A. Yes, sir.

23 Q. How so?

24 A. He's a little bit gray now. I don't recall gray hair
25 when that happened.

A. NAVA - DIRECT EXAMINATION BY MR. McNEELY

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1 Q. Okay. Were you presented with a second photo lineup
2 that evening?

3 A. Yes, sir.

4 Q. Was it presented to you in the same manner as the
5 first?

6 A. Yes, sir.

7 Q. Did you go over an instruction sheet with the deputy
8 again prior to ---

9 A. Yes, sir.

10 Q. Did anyone direct you towards any particular photo or
11 suggest which photo to select from the lineup?

12 A. No, sir.

13 A. Did you select a photo out of the second lineup?

14 A. Yes, sir.

15 Q. How long did it take you to select a photo?

16 A. Within seconds.

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

18 A. I wrote my initials on the back with a number.

19 MR. McNEELY: Permission to approach, Your Honor?

20 THE COURT: You may.

21 BY MR. McNEELY:

22 Q. Showing what -- you what's been previously admitted
23 for purposes of this hearing as State's 32. Is that the
24 photo lineup that was presented to you as number two?

25 A. Yes, sir.

1 Q. And you selected a photo from that lineup?

2 A. Yes, sir.

3 Q. Which photo did you select from that lineup?

4 A. Number 3.

5 Q. Did you know his name at the time?

6 A. No, sir.

7 Q. Did you know him as a person involved in the incident
8 on July 28, 2013, at the Nowhere Bar?

9 A. Yes, sir.

10 Q. Did you know him from your interaction with him inside
11 the bar?

12 A. Well, I didn't interact with him. He was -- he didn't
13 speak to me at all inside the bar. He was just with
14 Steven.

15 Q. Did you recognize him as an individual in the bar
16 involved in the incident that evening?

17 A. Yes, sir.

18 Q. And did you recognize him from the surveillance video
19 footage that you viewed at the bar?

20 A. Yes, sir.

21 Q. Do you see him in court today?

22 A. Yes, sir.

23 Q. Can you please describe him for the court?

24 A. He has a grayish-color suit and a blue shirt.

25 MR. McNEELY: Let the record reflect the witness

A. NAVA - DIRECT EXAMINATION BY MR. McNEELY

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1 identified the defendant Gourdine.

2 THE COURT: Very well.

3 BY MR. McNEELY:

4 Q. Has his appearance changed in any way?

5 A. No, sir.

6 Q. I want you to look once more, if you will, please, at
7 State's 29 and 30, the instruction sheets. Did you
8 indicate on those sheets who you selected from the
9 respective lineups?

10 A. Yes, sir.

11 Q. Did you write anything on those sheets?

12 A. Yes, sir.

13 Q. Focusing on State's 29, please. The numbers are on
14 the back. Is that the instruction sheet associated with
15 the first lineup you did?

16 A. Yes, sir.

17 Q. Did you sign the instruction sheet?

18 A. Yes, sir.

19 Q. And you indicated that you selected number 3 as a
20 person involved?

21 A. Yes, sir.

22 Q. Okay. Now looking at State's 31. Would you would
23 please look State's 31? Is that the instruction sheet that
24 was presented to you at the second photo lineup?

25 A. Yes, sir.

1 Q. Did you sign that sheet?

2 A. Yes, sir.

3 Q. Did you indicate that you selected photo number 3 out
4 of the lineup?

5 A. Yes, sir.

6 Q. Are you still confident in those lineup selections?

7 A. Yes, sir.

8 MR. McNEELY: No further questions from the state at
9 this time, Your Honor.

10 THE COURT: Mr. Kearse.

11 MR. KEARSE: May it please the court? Counsel.

12 CROSS-EXAMINATION BY MR. KEARSE:

13 Q. Ms. Nava, how many times you looked at that videotape
14 before you looked at those pictures?

15 A. Twice maybe.

16 Q. Okay, and it isn't it true that the foundation or the
17 basis of which you selected those photographs and those
18 pictures were the actual videotape?

19 A. No, sir.

20 Q. Isn't it also true that you viewed that videotape
21 right before you selected those photographs?

22 A. Not that night, no, sir.

23 Q. But your, your ability -- because these, these
24 gentlemen came into the bar and they stayed no more than
25 about ten minutes, correct?

A. NAVA - CROSS-EXAMINATION BY MR. KEARSE

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1 A. Yes, sir.

2 Q. And I imagine you had been in that bar -- what time
3 you got to work?

4 A. Our hours are from 6 to 2 for the night shift, but we
5 usually get out about 3 because of cleanup.

6 Q. Okay.

7 A. And such.

8 Q. And so -- and this was the -- not the average night
9 because of what happened, correct?

10 A. Yes, sir.

11 Q. All right, and so I imagine you didn't leave the work
12 place until about what? 3 or 4 in the morning?

13 A. At least.

14 Q. All right, and even when those guys -- and I know at
15 the time that they happened to come in the bar, there still
16 were other people at the bar?

17 A. Yes, sir.

18 Q. All right, and it wasn't like these were the only
19 people who you focused your attention on that night,
20 correct?

21 A. Correct.

22 Q. All right, and you knew neither one of them before
23 this, right?

24 A. Do not know them.

25 Q. Now having said all of those things, you -- and you

1 admit you viewed that videotape prior to seeing those
2 photographs, correct?

3 A. The night of the incident, yes, sir.

4 Q. All right. Twice the night of the incident?

5 A. Yes, sir.

6 Q. All right. So, it's your testimony that prior to
7 Deputy Fenton coming down to the Nowhere Bar, you did not
8 actually go over that videotape before picking out those
9 photographs. Is that what you're telling this court today
10 under oath?

11 A. On that day? No, sir.

12 Q. What about the day before?

13 A. No, sir.

14 Q. Okay. Now, let me ask you this because it was 8:46
15 when you picked these photographs out.

16 A. Yes, sir.

17 Q. Correct? All right, and even in the summertime, it's
18 getting dark. It was dusk and dark. Is that correct?

19 A. Yes, sir.

20 Q. All right, and you're in a parking lot?

21 A. Yes, sir.

22 Q. All right, and you're saying you clearly saw these
23 photographs while in a dark parking lot at 8:46?

24 A. Yes. The hood of the car was under the light.

25 Q. Okay.

A. NAVA - REDIRECT EXAMINATION / RECROSS-EXAMINATION

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1 MR. KEARSE: I don't have anything further, Your
2 Honor.

3 MR. DAVIS: Nothing, Your Honor.

4 MR. McNEELY: Just a couple, Judge.

5 REDIRECT EXAMINATION BY MR. McNEELY:

6 Q. You had direct interaction with these individuals in
7 the bar that evening, correct?

8 A. Yes, sir.

9 Q. And the distance, if I'm correct, was from you inside
10 the bar to them on the other side of the bar?

11 A. Yes, sir.

12 Q. Okay, and you got a good look at their faces at that
13 time?

14 A. Yes, sir.

15 MR. McNEELY: Nothing further.

16 MR. DAVIS: One question.

17 THE COURT: Hold on. Hold on. Mr. Kearse gets to go
18 first.

19 MR. KEARSE: I don't have any in response to that,
20 Your Honor.

21 MR. DAVIS: Just one question.

22 THE COURT: Mr. Davis.

23 RECROSS-EXAMINATION BY MR. DAVIS:

24 Q. As a bartender, do you consume alcohol yourself?

25 A. Do I consume alcohol or while ---

1 Q. When you're ---

2 A. --- I'm working?

3 Q. When you're working?

4 A. No, sir, not at all.

5 MR. DAVIS: Okay. Thank you.

6 THE COURT: Thank you. You may step down, Ms. Nava.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: Call your next witness.

9 MR. McNEELY: State calls Julia Victoria Taylor.

10 JULIA VICTORIA TAYLOR, BEING DULY
11 SWORN, TESTIFIES AS FOLLOWS:

12 CLERK OF COURT: State your full name, and spell your
13 last name.

14 WITNESS: Julia Taylor, T-A-Y-L-O-R.

15 DIRECT EXAMINATION BY MR. McNEELY:

16 Q. Good afternoon, Ms. Taylor. You go by Vicky?

17 A. Yes.

18 Q. Okay if I call you Vicky?

19 A. Yes, sir.

20 Q. All right. Where are you currently employed?

21 A. MUSC.

22 Q. What do you do there?

23 A. I work in sterilization at the dental clinic.

24 Q. Where were you employed on July 27, 28, 2013?

25 A. Nowhere Bar and Grill.

J. TAYLOR - DIRECT EXAMINATION BY MR. McNEELY

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1 Q. What was your position at the Nowhere Bar?

2 A. Bartender manager.

3 Q. Where is the Nowhere Bar located?

4 A. 7128 North Road, Goose Creek.

5 Q. Is that in Berkeley County South Carolina?

6 A. Yes, it is.

7 Q. Were you working as the bar manager on the evening of
8 July 27, 28, 2013?

9 A. Just the bartender, but I could do anything that the
10 manager could do. I had access to do all that, so yes.

11 Q. Do you recall an incident occurring that night at the
12 bar?

13 A. Yes, sir.

14 Q. Approximately what time did an incident occur?

15 A. It happened after we had already did last call. The
16 bar was already closed.

17 Q. Approximately 1:52 ring a bell?

18 A. Yeah.

19 Q. And that's in the morning, correct?

20 A. A.m., yes.

21 Q. Please tell us what happened inside the bar that
22 night.

23 A. That night two gentlemen came in the bar. We had
24 already called last call; we were closing out tabs.

25 Everybody had to be out by 2. They asked Aleshia, which we

1 all call Cupcake at the bar, for a drink. She told them
2 that we had already did last call, and one of them got
3 upset and started hollering with her about he wasn't
4 getting served because he was black. So, I intervened and
5 I told him -- you want me to just tell them how I told him
6 to get out of the bar?

7 Q. Do you ask them to leave the bar?

8 A. Yes.

9 Q. Did they leave the bar?

10 A. In the process, they were getting up, but they
11 exchanged some words, made a scene pretty much. Everybody
12 focused on them.

13 Q. Did a scuffle ensue inside the bar?

14 A. At the door.

15 Q. And did those two individuals eventually exit?

16 A. Yes, sir.

17 Q. Did anyone exit with them?

18 A. No, sir.

19 A. Okay. When those individuals were inside the bar, did
20 you get a clear look at their faces?

21 A. Yes, sir.

22 Q. All right. Had you ever see them before?

23 A. No, sir.

24 A. About how far were you from them when you saw them?

25 A. Probably from me to you. It was -- they were on the

J. TAYLOR - DIRECT EXAMINATION BY MR. McNEELY

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1 other side of the bar. It was on the back side of the bar.

2 Q. How was the lighting in the bar?

3 A. It's dim but around the bar there's bright, brighter
4 lights that we can adjust ourselves. So, it's lighter
5 around the bar but darker further away.

6 Q. Given that it was after last call at approximately
7 1:50 a.m., had you all turned the lights on inside?

8 A. Not at that moment yet.

9 Q. Okay, but you could see their faces clearly?

10 A. Yes, sir.

11 Q. Okay. Did you ever go outside that evening?

12 A. I went out after they had already left.

13 Q. And they came back in?

14 A. Yes, sir.

15 Q. Did another incident occur that evening?

16 A. The shooting. We had three customers get shot.

17 Q. Were you outside at the time of the shooting?

18 A. No, sir.

19 Q. What did you do at the time of the shooting?

20 A. At the time of the shooting, I was in the process of
21 cleaning when one of the customers came running in and said
22 she was shot in the head. And that's when Aleshia,
23 Cupcake, called 911, and I was up by the jukebox, and
24 another customer had come in, and I hollered for some
25 towels, and then shortly after that the third one came in.

1 Q. Was the bar equipped with video surveillance
2 equipment?

3 A. Yes.

4 Q. Was the video surveillance equipment operational that
5 night?

6 A. Yes.

7 Q. Okay. Did that video surveillance equipment capture
8 both the inside and outside incidents of the bar that
9 evening?

10 A. Yes.

11 Q. As an employee of the bar, did you have access to the
12 video surveillance equipment?

13 A. Yes.

14 Q. Did you view the video surveillance equipment that
15 night?

16 A. Only when it was time to play back to the officers
17 after everybody was gone.

18 Q. Okay, but that was the same day as the incident?

19 A. Yes.

20 Q. Was that video surveillance footage turned over to the
21 officers?

22 A. Yes, sir.

23 Q. Okay. Are you aware that the video surveillance
24 footage was released to the media in this case?

25 A. I'm aware, but I didn't see it.

J. TAYLOR - DIRECT EXAMINATION BY MR. McNEELY

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1 Q. Just so the court's clear, you watched the video
2 surveillance footage at the bar. Is that correct?

3 A. Yes.

4 Q. Okay, but you didn't see it on the news?

5 A. No.

6 Q. Okay. Following the day of the incident, did you meet
7 with the detective in the following days for the purposes
8 of doing a photo lineup?

9 A. Yes, sir.

10 Q. What day did you meet with the deputy?

11 A. July 30th.

12 Q. Do you recall where you met with the, with the deputy?

13 A. Nowhere Bar and Grill.

14 Q. Did you meet with him inside or outside?

15 A. Outside.

16 Q. When you met with the deputy to do the photo lineups,
17 was anyone else directly present?

18 A. No, sir. It was just the officer and I.

19 Q. Okay. Where was Aleshia at this time?

20 A. Inside the bar.

21 Q. Okay. What, if anything, did he tell you before
22 presenting the photo lineups to you?

23 A. That they would all be different, and all I had to do
24 was pick who it was, write on the back, circle it, and
25 initial it.

1 Q. Okay. Did he go over procedure or instruction sheet
2 with you?

3 A. Yes.

4 MR. McNEELY: May I approach, Your Honor?

5 THE COURT: You may.

6 BY MR. McNEELY:

7 Q. I'll show you what's been marked as State's Exhibits
8 33 and 35 for purposes of this hearing. Please look at
9 those numbers, and the numbers are on the back.

10 (A PAUSE.)

11 Q. Do you recognize those documents?

12 A. Uh-huh. Yes, sir.

13 Q. Are those the procedure or instruction sheets that
14 the deputy went over prior to presenting you the photo
15 lineups?

16 A. Yes, sir.

17 Q. When he presented you the photo lineups, did he do two
18 at the same time, or was it one and you made a selection,
19 and then the second and you made a selection?

20 A. One at a time.

21 Q. Okay. Prior to introducing the photo lineups to you,
22 did he tell you any photos to select?

23 A. No, sir.

24 Q. Did he show you any other photos prior to the lineup
25 photos?

J. TAYLOR - DIRECT EXAMINATION BY MR. McNEELY

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1 A. No, sir, just the ones that was on the sheet with
2 them.

3 Q. Did he tell you the names of anyone that would be
4 visible in the lineups?

5 A. No, sir.

6 Q. Did you select a photo out of the first lineup
7 presented?

8 A. Yes, sir.

9 Q. How long did it take you to select a photo?

10 A. Less than two seconds.

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

12 A. What do you mean by that? Like...

13 Q. Did you make any marks on the lineup?

14 A. Oh, on the back of it. I put the number and I circled
15 it.

16 Q. I show you what's been marked as State's Exhibit 34.

17 Would you please look at this document?

18 (A PAUSE.)

19 Q. Do you recognize that document?

20 A. Yes, sir.

21 Q. Is that the first lineup that was presented to you
22 that evening?

23 A. Yes, sir.

24 Q. Did you select an individual out of that lineup?

25 A. Yes, sir.

1 Q. Which number individual did you select?

2 A. 3.

3 Q. Did you ever select anyone else out of the lineup
4 other than number 3?

5 A. No, sir.

6 Q. Did you know the individual's name at the time you
7 selected?

8 A. Yes, sir.

9 Q. Who did you select out of the lineup?

10 A. Jason Gourdine.

11 Q. Did you recognize him as an individual involved in the
12 incident at the bar that evening?

13 A. Yes, sir.

14 Q. Was your recognition based on your interaction with
15 him inside the bar that evening?

16 A. Yes, sir.

17 Q. Was your, was your identification of him also based on
18 your having viewed the surveillance footage following the
19 incident?

20 A. Yes, sir.

21 Q. Are you still confident that the person selected was
22 an individual involved in the incident at the bar on July
23 28, 2013?

24 A. Yes, sir.

25 Q. Is that individual in the courtroom today?

J. TAYLOR - DIRECT EXAMINATION BY MR. McNEELY

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1 A. Yes, sir.

2 Q. Will you please point him out and describe what he's
3 wearing for the court?

4 A. Gray suit, blue shirt, gray striped tie, brown shoes.

5 MR. McNEELY: Let the record reflect the witness
6 selected Jason Gourdine, Your Honor.

7 THE COURT: It will.

8 BY MR. McNEELY:

9 Q. Has his appearance changed in any way since the
10 incident?

11 A. No, sir.

12 Q. Were you presented with a second photo lineup that
13 night?

14 A. Yes, sir.

15 Q. Was it presented to you in the same manner as the
16 first one?

17 A. Yes, sir.

18 Q. Did anyone indicate any photos to select prior to
19 presenting you the lineup?

20 A. No, sir.

21 Q. Did they show you any photos separate from the lineup?

22 A. No, sir.

23 Q. Did they go over the instruction sheet with you again?

24 A. Yes, sir.

25 Q. Did you select a photo out of the second lineup?

1 A. Yes, sir.

2 Q. How long did it take you to select a photo?

3 A. Same time, about a few seconds.

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

5 A. I picked a number and circled it and initialed it on
6 the back.

7 Q. Did you ever select another photo out of the lineup?

8 A. No, sir.

9 A. I show you what's been marked as State's Exhibit 36.
10 Please look at that.

11 (A PAUSE.)

12 Q. Is that the second lineup that you were presented with
13 that evening?

14 A. Yes, sir.

15 Q. Which photo did you select out of the lineup?

16 A. 3.

17 Q. Did you know that individual -- or, excuse me, did you
18 know that individual's name at the time of selecting the
19 photo?

20 A. Yes, sir.

21 Q. What was the individual's name you selected?

22 A. Steven Moses.

23 Q. Did you ever select anyone out of the lineup other
24 than Mr. Moses?

25 A. No, sir.

J. TAYLOR - DIRECT EXAMINATION BY MR. McNEELY

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1 A. You selected Mr. Moses as a person involved in the
2 incident at the Nowhere Bar on July 28, 2013?

3 A. Yes, sir.

4 Q. Is Mr. Moses in court today?

5 A. Yes, sir.

6 Q. Could you point him out and describe him for the
7 court, please?

8 A. Right there. Black suit, brown shoes, grayish-blue
9 shirt, polka dots on his purple tie.

10 MR. McNEELY: Let the record reflect the witness
11 selected Mr. Moses, Your Honor.

12 THE COURT: It will.

13 BY MR. McNEELY:

14 Q. Has his appearance changed in any way?

15 A. Yes, sir.

16 Q. How so?

17 A. His hair's longer and it's gray.

18 Q. Are you still holding State's Numbers 33 and 35?

19 A. Yes, sir.

20 Q. Did you indicate on those instruction sheets who you
21 selected from the respective lineups?

22 A. Yes, sir.

23 Q. And did you sign your name to those selections?

24 A. Yes, sir.

25 MR. McNEELY: No further questions at this time, Your

1 Honor.

2 MR. KEARSE: May it please this court?

3 THE COURT: Yes.

4 MR. KEARSE: Counsel.

5 CROSS-EXAMINATION BY MR. KEARSE:

6 Q. Ms. Taylor, how many times did you view that videotape
7 prior to looking at those photographs?

8 A. The videotape?

9 Q. Yes.

10 A. Just with the officers.

11 Q. All right, and you went over that videotape with the
12 officers, did you not?

13 A. Yes, sir.

14 Q. And y'all zeroed in on the people you thought were
15 involved in this particular incident when you went over
16 that tape, right?

17 A. Yes, sir.

18 Q. And so isn't it true that basically that videotape
19 that you viewed prior to you going over the state's
20 exhibits in this case was the foundation by which you used
21 to identify Mr. Moses and Mr. Gourdine on the date of July
22 30, 2013?

23 A. That's one of them but not completely. I remember
24 everything they had on.

25 Q. After you watched the tape, right?

1 A. No, sir.

2 MR. KEARSE: Nothing further, Your Honor.

3 THE COURT: Mr. Davis?

4 MR. DAVIS: Nothing, Your Honor.

5 MR. McNEELY: Nothing further from the state.

6 THE COURT: You may step down. Thank you.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: Call your next witness.

9 MR. McNEELY: That's the conclusion of our *Biggers*
10 witnesses, Your Honor.

11 THE COURT: All right. Do you have any witnesses, Mr.
12 Kearse?

13 MR. KEARSE: I have none, Your Honor.

14 MR. DAVIS: None, Your Honor.

15 THE COURT: Mr. Davis? All right, any argument?

16 MR. KEARSE: I do, Your Honor. I would, on behalf of
17 Mr. Moses, I would present to the court that the
18 photographic lineups and the accompanying identification
19 testimony in this case should be suppressed primarily
20 because the state has failed to show that the lineups were
21 constitutionally permissible in that there is no
22 foundation. There's no evidence as to where those
23 photographs were -- came from during the selection of the
24 lineups. The officer could not testify, and no state
25 witness has been presented to this court to show that they

1 came from any source other than a county jail. At best,
2 Deputy Fenton said that they may have come from the DMV,
3 but he could not provide that information because he was
4 totally dependent upon SLED.

5 In addition, the -- those identifications made by Ms.
6 Taylor, the form clearly indicates that there is no record
7 that she was apprised of the factors that are necessary to
8 make sure that this is a fair and accurate process to the
9 defendant in that she did not initial any of that.. That
10 also goes to the basis as to whether or not these
11 identifications are permissible in conjunction whether they
12 are overly suggestive because of the photographs.

13 And finally, Your Honor, both witnesses clearly
14 testified that they had an opportunity prior to these
15 photographic lineups being presented to go over the video.
16 And not only did they go over the video, Ms. Taylor
17 admitted in her testimony they did so with law enforcement
18 prior to the identification. Therefore, I would suggest it
19 was not independent of a prior existing identification
20 process linked to and independent of their encounter with
21 the defendants. Therefore, the process was tainted, Your
22 Honor, and should not be allowed.

23 MR. DAVIS: Your Honor, my, my, my argument's brief.
24 You can't take something tainted and then make it clean,
25 you know? The inception is all messed up. The inception

1 of the procedure wasn't followed, then you got to throw it
2 all out. And the state can't argue any prejudice in that
3 regard because these girls say they still -- young ladies
4 say they still can identify them from the video. Matter of
5 fact, that's what they did. They went and watched a movie
6 and then after they watched a movie, then state got
7 fancified and said, well, let's put a suggestive photo
8 lineup together. Don't matter if we don't follow the
9 procedure. Don't matter if we don't know where the
10 photograph -- we just said SLED put it together as if the
11 state and SLED and Berkeley County Sheriff's Department are
12 separate and apart. They're all the state.

13 And so my, my context is that if it's tainted at any
14 process, it need to be disallowed if it's tainted and you
15 can't ensure the integrity of the process wherein these
16 guys sat down with law enforcement and then they reviewed
17 the tape. It's oh, yeah, that's him right there, and they
18 just went to a pretext, really, a pretext, and they didn't
19 even do a fine job with the pretext because they didn't
20 follow the procedure in the pretext. Judge, it should be
21 suppressed. Thank you.

22 MR. McNEELY: Thank you, Judge. The state's position
23 is that the lineups are proper, not unconstitutionally
24 suggestive, and should be admitted in the trial of this
25 matter.

1 Detective -- or, excuse me, Deputy Fenton indicated
2 that proper procedure was followed. That the lineups were
3 SLED generated. That he presented them in an appropriate
4 manner to the witnesses separately without suggestion of
5 who to pick. The witnesses both testified that they were
6 present at the bar that evening; they personally witnessed
7 the subjects in the bar. As part of their employment,
8 viewed the video surveillance footage and ID'd those
9 individuals as the people that were the bar prior to the
10 incident that evening, as well as the ones involved in the
11 shooting. There was never a suggestion made of who to
12 select. They both selected them without hesitation or
13 reference to other individuals, and their identifications
14 of the individuals involved -- and as the individuals
15 involved in the incident are appropriate, and there is
16 nothing suggestive to taint or make them inadmissible, Your
17 Honor. So, we would ask that they be admitted for trial.

18 THE COURT: Mr. Kearse.

19 MR. KEARSE: In response, again I fall back. The
20 videotape taints the identification. In addition to that,
21 neither one of these young ladies can say who was involved
22 in the shooting. They did not see the shooting itself.
23 The out-of-court identification, allowing them to sit there
24 and point out our clients and say yeah, that was him. He
25 was in the bar. They still can't say he was the shooter.

1 He was outside. He got in a fight. That, I think, would
2 be highly prejudicial to our clients, suggestive that they
3 are somehow criminals and that they needed to be identified
4 when they don't.

5 If the jury sees the videotape and believes it's the
6 defendants, so be it. If other witnesses say this is the
7 guy I got in a fight with, so be it, but this particular
8 testimony is not relevant enough to be admissible. It's
9 prejudicial. I don't think it's necessary, but even if it
10 is necessary to the state's case, the fact that it was
11 tainted by them looking at a videotape -- as Mr. Davis has
12 said, they watched the videotape. Then right after the
13 videotape where it reinforces or it tells them these are
14 the guys, they go and say, well, independently I picked
15 this guy out, which they did not, and so I think it should
16 be suppressed. That testimony should not be allowed, and
17 that's my argument to this court, Your Honor.

18 THE COURT: Mr. Davis.

19 MR. DAVIS: I just join in with that argument, Your
20 Honor.

21 THE COURT: All right. So when requested, I must hold
22 an *in-camera* hearing when the state is planning to offer a
23 witness whose testimony identifies the defendant, or in
24 this case the defendants, as the person who committed a
25 crime. The purpose is to determine whether the in-court

1 identification is of an independent origin or was the
2 tainted product of the circumstances surrounding a prior
3 out-of-court identification.

4 There's a two-pronged inquiry that I must go through
5 to determine the admissibility of the out-of-court
6 identification. I must ascertain whether or not the
7 identification was unduly suggestive, and then must decide
8 whether the out-of-court identification was, nevertheless,
9 so reliable that no substantial likelihood of
10 misidentification existed. I look at the totality of the
11 circumstances to determine whether there was a substantial
12 likelihood of irreparable misidentification. I need to
13 look at the witness's opportunity to view the perpetrator
14 at the time of the crime, the degree of attention, the
15 accuracy of the witness's prior description of the
16 perpetrator, the level of certainty demonstrated by the
17 witness at confrontation, and the length of the time
18 between the crime and the confrontation.

19 Based upon the testimony of Ms. Nava and Ms. Taylor,
20 Ms. Nava specifically stated that she based her selection
21 on seeing Defendant Moses in the bar, and then she did
22 indicate that she viewed the videotape. As to the
23 testimony of Ms. Nava and Ms. Taylor, both of them
24 indicated that they had the opportunity to view the
25 perpetrator at the time of the crime. They indicated how

1 far or close they were.

2 Is it Detective or Deputy Fenton?

3 MR. McNEELY: It's Lieutenant now, Your Honor.

4 THE COURT: Okay.

5 MR. McNEELY: He was an investigator at the time.

6 THE COURT: I had written detective when you corrected
7 and said deputy. So, Lieutenant Fenton indicated that both
8 witnesses were absolutely certain and were able to identify
9 with a level of certainty during the identification
10 request.

11 Your request to suppress the out-of-court ID is
12 denied, and again I will give instruction to the jury that
13 that is an element that the state must prove beyond a
14 reasonable doubt when I charge on the law.

15 All right, so now we have a *Denno* hearing, is that
16 correct, as to your client only?

17 MR. DAVIS: If they intend to put any statements in.
18 I don't know if they intend to. If they're not, we
19 wouldn't need it.

20 THE COURT: All right. Well, let's take our comfort
21 break. Be back at 4. Be back at 4.

22 And, Mr. Kearse, during that time please get the bond
23 form for me.

24 MR. KEARSE: Yes, ma'am.

25 THE COURT: Thank you.

1 (OFF THE RECORD.)

2 THE COURT: All right, Mr. Davis.

3 MR. DAVIS: Your Honor, it's my motion, but it only
4 becomes prevalent, Your Honor, if they intend to use any
5 statements that my client made, and, and I think they have
6 shared with me that's tentative.

7 MR. ALFARO: Your Honor, we don't have any intention
8 to use any statements in our case in chief. If his client
9 were to take the stand and testify a certain way, we may
10 use those statements to prove presence, but that would be
11 just a voluntariness issue.

12 MR. DAVIS: That's correct.

13 MR. ALFARO: There's -- he's not in custody. There's
14 no Miranda given. We concede there's no Miranda, but he is
15 not in custody at the time.

16 We have Detective Wilson here. We can do the hearing
17 very briefly if Mr. Davis wants to go that route.

18 THE COURT: All right.

19 MR. DAVIS: I think it would be premature, Judge. I'm
20 going to ---

21 THE COURT: Well, we have the time.

22 MR. DAVIS: I agree.

23 THE COURT: And so the question becomes -- I mean,
24 if you think your client is not going to testify.

25 MR. DAVIS: I'm certain my client is not going to

1 testify.

2 THE COURT: All right and, Mr. Alfaro, based upon
3 your preparation of the case, if he does not testify,
4 there would be no way that you would utilize those
5 statements?

6 MR. ALFARO: No, Your Honor.

7 THE COURT: All right.

8 MR. DAVIS: Okay. Thank you, Judge.

9 THE COURT: There we go.

10 MR. DAVIS: That's the way to end a motion.

11 THE COURT: But if it does become relevant, and that
12 does not preclude if your client changes his mind ---

13 MR. DAVIS: Okay, Judge. Thank you.

14 THE COURT: --- I will ---

15 MR. DAVIS: It wouldn't take that long.

16 THE COURT: Okay.

17 Mr. Alfaro, you has some issues, concerns about the
18 requested *voir dire*. If you could focus back on to those?

19 MR. KEARSE: Your Honor, I don't know if you have a
20 copy of my *voir dire*.

21 MR. DAVIS: This is my copy of what he's complaining
22 about, Judge, right there. It's 9, 9 and 11.

23 MR. ALFARO: When Mr. Gourdine -- Your Honor, as to
24 both proposed *voir dire*, the state feels that the court's
25 standard *voir dire* encompasses the substance of what's

1 being asked in these proposed questions.

2 As to specific objections regarding Mr. Gourdine's,
3 the state is opposed to number 9, which is a question
4 regarding ---

5 THE COURT: I don't ask that question. I don't. Just
6 like I wouldn't ask if anybody is going to give a victim
7 more weight. I just don't ask that question.

8 MR. DAVIS: Well, there's really not a lot of bearing
9 here anyway because if no officer's getting up there
10 testifying, you know, *Jackson vs. Denno* type of situation,
11 well, it really becomes irrelevant.

12 THE COURT: These are the *voir dire*?

13 MR. DAVIS: Yes.

14 THE COURT: These are the *voir dire* questions?

15 MR. DAVIS: Yes.

16 THE COURT: I don't ask 9.

17 MR. DAVIS: Okay.

18 MR. ALFARO: And regarding number 11, specifically the
19 last sentence in number 11, the state feels that ---

20 THE COURT: I ask that question. I call it my
21 catch-all question: Is there any reason you can't be a fair
22 and impartial juror. Sometimes I give political, moral, or
23 religious ---

24 MR. DAVIS: Thank you.

25 THE COURT: --- beliefs, but I don't ever say your

1 frame of mind because that would not be ---

2 MR. DAVIS: Use your words, Your Honor.

3 THE COURT: Thank you.

4 All right, I'm going to mark that as Court's 1, Madame
5 Court Reporter, and that will be your -- just so they're
6 marked for appellate purposes, Mr. Davis. Then we'll move
7 to Mr. Moses.

8 (PROPOSED *VOIR DIRE* OF DEFENDANT GOURDINE MARKED INTO
9 EVIDENCE AS COURT'S EXHIBIT NUMBER 1.)

10 MR. ALFARO: Your Honor, regarding Mr. Moses's, the
11 state objects to questions 11, 12 ---

12 THE COURT: Hold on. Let's address them one at a
13 time. 11.

14 MR. ALFARO: Actually, the state's objection to all
15 three is the same grounds.

16 THE COURT: Okay.

17 MR. ALFARO: 11, 12, and 13. The state feels that
18 this would be an improper sort of staking out of the jury.
19 The purpose of *voir dire* is to impanel an impartial jury,
20 not to allow the defense to indoctrinate a, a defense or
21 the defense's position on a case, especially in the matter
22 of the gun possession and the self-defense issues that
23 they're using as a defense.

24 THE COURT: Mr. Kearse.

25 MR. KEARSE: Your Honor, if someone's an anti-firearm

1 person, which is a very -- becoming a very popular stance
2 these days, I think that the defendant has the right to
3 know in that this is a firearm case. And I think that one
4 would cover both 11 and 12. I'm not looking to ---

5 THE COURT: Well, having ---

6 MR. KEARSE: --- stake out the jury.

7 THE COURT: Having strong feelings about a firearm is
8 different from whether or not I'm going to inquire as to
9 whether or not a person has the right to possess or own a
10 firearm. That's different.

11 MR. KEARSE: We can recouch the question, Your Honor,
12 to anyone who has -- who is anti-firearm, anti-gun. I
13 mean, we don't -- I don't have to use the word possession.

14 THE COURT: I may typically ask a question along the
15 lines of is there anyone who, based upon my reading of the
16 allegations contained in the indictment, has any strong
17 feelings concerning firearms and then have them approach as
18 to that, and that typically would ---

19 MR. KEARSE: That, that ---

20 THE COURT: --- encompass everything.

21 MR. KEARSE: And that would suffice in that regard,
22 Your Honor.

23 THE COURT: So, that should ---

24 MR. KEARSE: If I read 13, I would just like the court
25 -- I mean, it's a self-defense case, Your Honor. I would

1 like the court to -- I would like to know whether or not
2 there's a person who doesn't -- who believes that there is
3 no circumstances that exist that a person can exercise
4 self-defense.

5 THE COURT: What I typically ask: Is there any person
6 who has a problem following the law as given by this court
7 even though you may disagree with it. I don't call out any
8 particular -- any other defenses or elements of any other
9 crime when I'm *voir diring*. So, why would I do that?

10 MR. KEARSE: Because again, Your Honor, this is a case
11 -- if a person has, has some, some, some, some, some deep
12 belief that there's no set of circumstances under which a
13 person can -- has a right to defend himself, my client
14 would like to know. I mean, that is really the affirmative
15 defense in this case. And there may be somebody in that
16 audience who doesn't think you have the right to -- a
17 pacifist.

18 Thank you for that word, Steve.

19 And I don't see where it prejudices any of the
20 parties. We're not trying to fetter out people or instill
21 in them a defense. We're just trying to find out whether
22 they're going to be actually fair and impartial to both
23 sides in this matter, Your Honor, particularly Mr. Moses.
24 I mean, if there's a way I can couch that to, to make it
25 less of a concern for the court, I would be more than happy

1 to do so by me just saying you have a right, you have an
2 obligation to follow the law.

3 THE COURT: Mr. Alfaro.

4 MR. ALFARO: Your Honor, I believe the defense's
5 argument is specifically that they want to determine if the
6 jury is -- a juror is going to be receptive to their
7 defense of self-defense.

8 I think the court's proposal of -- if, if the evidence
9 shows that self-defense is a warranted charge, the court
10 will charge self-defense, and they will be asked to comply
11 with the law as given to them by the court. So, I think
12 the court's version of that is much ---

13 THE COURT: Do you have an objection in phrasing it
14 similarly to what you just phrased, Mr. Alfaro?

15 MR. ALFARO: I believe that if you're going into
16 defenses in *voir dire*, that is pre-indoctrinating or
17 pre-educating the jury to one side's defense or one side's
18 position or the other, and I don't believe that's the
19 purpose of *voir dire*. I believe that's something that
20 would be better discussed in a charging conference, not in
21 a pre-jury selection matter.

22 THE COURT: Anything further, Mr. Kearse?

23 MR. KEARSE: I disagree, Your Honor, but, you know, if
24 the court is going to go back and charge again what we've
25 asked about firearm, whether somebody's anti-firearm in a

1 more vanilla form, I think I feel pretty -- I'm okay with
2 that.

3 THE COURT: All right.

4 MR. DAVIS: And I haven't been asked, but let's take a
5 simple DUI case. We try to inquire people belief as to
6 whether a person have a right to even consume alcohol. We
7 see that in a DUI trial. You mean we have someone on trial
8 in a case for attempted murder that we cannot inquire of a
9 jury panel their beliefs in whether you have a fundamental
10 right to protect yourself when we have a whole statute that
11 is enumerated specifically for that purpose?

12 MR. KEARSE: And if we could use those words, anybody
13 in the jury panel who, who believes that a person does not
14 have a right to protect themselves. We don't have to use
15 the word self-defense, Your Honor.

16 THE COURT: All right. Anything further?

17 MR. KEARSE: Nothing further.

18 THE COURT: Were there any other objections to that
19 one or to the proposed *voir dire*?

20 MR. ALFARO: No further objections.

21 THE COURT: And we'll mark that as Court's 2, your
22 request. I'm going to do a little research over the
23 evening hour. We're going to mark that as Court's 2.

24 MR. KEARSE: Oh. I'm sorry, Your Honor.

25 THE COURT: For the record in case it's needed.

1 (PROPOSED VOIR DIRE OF DEFENDANT MOSES MARKED INTO
2 EVIDENCE AS COURT'S EXHIBIT NUMBER 2.)

3 THE COURT: All right, take that matter. I'll let
4 you know in the morning. What -- anything else? Any other
5 pretrial motions?

6 MR. McNEELY: We have our motion *in limine* regarding
7 stand-your-ground argument, Your Honor.

8 THE COURT: All right. Do we even need to address
9 this? I thought this was heard in front of Judge Buckner.

10 MR. McNEELY: Well, the gist, the gist we're getting
11 at, Honor -- Your Honor, is that they cannot argue the
12 statute itself, the language of the statute itself as it
13 has been settled by Judge Buckner by agreement of the
14 parties in January. And they cannot allude to not having a
15 duty to retreat, specifically in their self-defense defense
16 that they have indicated they intend to present, as there
17 is a element of self-defense required is that you avoid the
18 danger if it's probable to do so. That is dispensed with
19 under the stand-your-ground statute in subsection C.

20 They had their day on that argument, and they were
21 denied immunity under the stand-your-ground statute. So,
22 they should be prohibited from arguing that they are either
23 entitled to immunity under the statute, or that they had no
24 duty to retreat because that has been put to rest.

25 MR. DAVIS: I'm going to sternly object to that. I

1 have a right and, matter of fact, the state has the burden
2 to prove that I missed -- or we don't -- we failed in one
3 of the instances of self-defense.

4 Now, we may have failed in front of Judge Buckner in
5 reference to having immunity which give us a shield from
6 having even being present this afternoon. But under no
7 circumstances are we precure -- precured...

8 MR. ALFARO: Prevented.

9 MR. DAVIS: Prevented from arguing -- thank you, my
10 friend; I get a little excited sometimes -- prevented from
11 saying that my client had a right to retreat.

12 There are three aspects of how the castle doctrine
13 come into play. Home. They ---

14 THE COURT: Okay, we're not arguing it again.

15 MR. DAVIS: My point is ---

16 THE COURT: It's already been litigated.

17 MR. DAVIS: My point is ---

18 THE COURT: It's already been decided.

19 MR. DAVIS: My client was in his car.

20 THE COURT: We do not discuss ---

21 MR. DAVIS: He, he ---

22 THE COURT: --- stand your ground.

23 MR. DAVIS: --- had no duty to retreat from ---

24 THE COURT: All right, your motion's ---

25 MR. DAVIS: I'm not ---

1 THE COURT: --- granted.

2 MR. DAVIS: --- conceding that point.

3 THE COURT: Thank you.

4 MR. McNEELY: Thank you, judge.

5 MR. KEARSE: Your Honor, are you saying the motion's
6 granted as to stand your ground?

7 THE COURT: As to the motion *in limine*, there is no --
8 there is to be no discussion or relitigating the stand your
9 ground. Judge Buckner has already indicated that you do
10 not have immunity, which is why you're here.

11 MR. KEARSE: Right, but the element of, of what he's
12 talking about duty to retreat ---

13 MR. DAVIS: That's right.

14 MR. KEARSE: I mean, you're not saying that if that
15 is -- we -- if that becomes a part of the law in
16 self-defense ---

17 THE COURT: If it becomes a part of the law, we'll
18 address the law as it ---

19 MR. KEARSE: Right, right, right.

20 THE COURT: --- becomes necessary.

21 MR. KEARSE: Exactly.

22 THE COURT: Right.

23 MR. KEARSE: I mean -- because I may have
24 misunderstood how far he was trying ---

25 MR. DAVIS: Thank you.

1 MR. KEARSE: --- take his argument. But certainly, I
2 mean, if he's saying that we don't have -- or we have a
3 duty to retreat and they do that, then that becomes a law
4 argument on self-defense.

5 MR. McNEELY: That's exactly what I'm saying, Your
6 Honor. The law of self-defense includes a duty to retreat
7 by the defendant if probable to do so. The stand-your-
8 ground statute dispenses with that final element of
9 self-defense if they are entitled to immunity under the
10 statute. They have been found not to be immune from
11 prosecution under the statute, and self-defense in this
12 case now requires them to prove that they -- or requires
13 them to retreat if it was probable to do so.

14 MR. KEARSE: And that is his interpretation, Your
15 Honor ---

16 MR. DAVIS: Of the law.

17 MR. KEARSE: --- to be -- right, and we certainly can
18 address that at charging conference.

19 THE COURT: All right, but be very careful about what
20 you're going to argue in openings.

21 MR. KEARSE: Oh, yes.

22 THE COURT: All right. Thank you.

23 Did Judge Buckner do an order?

24 MR. McNEELY: He did not do a written order, Your
25 Honor. He specifically said that his verbal order was

1 sufficient. We have a transcript of the hearing if you
2 would like it.

3 THE COURT: All right, anything else?

4 MR. KEARSE: Nothing further from Mr. Moses.

5 MR. DAVIS: Nothing further, Your Honor.

6 MR. McNEELY: Nothing further from the state, Your
7 Honor.

8 THE COURT: All right, Mr. Moses, Mr. Gourdine, if
9 you'll please stand next to your attorney? I will place
10 you both under oath. Please swear, and this is the way we
11 start it. So, the trial will proceed. Mr. Moses, you will
12 go first and, Mr. Gourdine, you will go second.

13 All right, I just need to -- I need you to come so I
14 can see you, all right?

15 Please swear Mr. Moses.

16 CLERK: Raise your right hand.

17 (WHEREUPON, STEVEN DWAYNE MOSES IS DULY SWORN.)

18 THE COURT: And please swear Mr. Gourdine.

19 CLERK: Please raise your right hand.

20 (WHEREUPON, JASON MORRIS GOURDINE IS DULY SWORN.)

21 THE COURT: Mr. Gourdine and Mr. Moses, I am allowing
22 you to remain on your bond, and the state has no objection
23 at this time. Do you understand what that means, Mr.
24 Moses?

25 DEFENDANT MOSES: Yes, ma'am.

1 DEFENDANT GOURDINE: Yes, I understand.

2 THE COURT: All right. If you do not show up for
3 court in the morning, do you know what will happen to you,
4 Mr. Moses?

5 DEFENDANT MOSES: Yes, ma'am.

6 THE COURT: What will happen to you?

7 DEFENDANT MOSES: Y'all will come and get me.

8 THE COURT: And what else will happen?

9 DEFENDANT MOSES: I don't know. Can you tell me?

10 THE COURT: I'm going to tell you.

11 DEFENDANT MOSES: Okay.

12 THE COURT: And listen carefully because it applies to
13 you as well, Mr. Gourdine.

14 We will continue with your trial in your absence, and
15 Mr. Kearse will just be sitting at that table without you.

16 DEFENDANT MOSES: Yes, ma'am.

17 THE COURT: Do you understand that? Sometimes what
18 happens is defendants think if they don't show up, the
19 trial will stop. I assure you we are ready to go forward.
20 Do you understand?

21 DEFENDANT MOSES: Yes, ma'am.

22 THE COURT: What time do you need to be here in the
23 morning?

24 DEFENDANT MOSES: 9:00.

25 THE COURT: I'll see you at 9:00. If you do not show

1 up, a bench warrant will issue. Do you understand that as
2 well?

3 DEFENDANT MOSES: Yes, ma'am.

4 THE COURT: And I will likely hold you in contempt of
5 court separate and distinct from any sentence that the jury
6 may impose upon you. Do you understand?

7 DEFENDANT MOSES: Yes, ma'am.

8 THE COURT: Mr. Gourdine, do you understand what I
9 just explained to Mr. Moses?

10 DEFENDANT GOURDINE: Yes, Your Honor.

11 THE COURT: What will happen to you if you do not
12 appear in the morning?

13 DEFENDANT GOURDINE: A bench warrant and they will
14 proceed without me.

15 THE COURT: All right, and that right now is the most
16 important thing that I want you to understand, right, that
17 the trial will go on even if you choose not to show up.
18 Even if Mr. Moses shows up and you do not, we're still
19 going to go forward. Do you understand?

20 DEFENDANT GOURDINE: Yes, ma'am.

21 THE COURT: And Mr. Davis will simply be sitting in
22 that chair by himself. Do you understand?

23 DEFENDANT GOURDINE: Yes, Your Honor.

24 THE COURT: All right, any questions? What time are
25 you going to be here in the morning?

1 DEFENDANT GOURDINE: 9 a.m.

2 THE COURT: All right. Please be here at 9 a.m.

3 We'll have the jury back at 9:30.

4 Counsel let me just see you briefly in chambers.

5 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR BERKELEY COUNTY, SOUTH CAROLINA, ON THE 14TH DAY OF MARCH, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 26TH, 2016

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF BERKELEY) CASE NUMBERS:
 [Moses] 2014-GS-08-01713
 2014-GS-08-01714
 2014-GS-08-01715
 2014-GS-08-01716
 [Gourdine] 2014-GS-08-01719
 2014-GS-08-01720
 2014-GS-08-01721
 2014-GS-08-01722

STATE OF SOUTH CAROLINA)
)
)
 VS.)
)
)
 STEVEN MOSES)
)
)
 and)
)
 JASON GOURDINE,)
)
)
 DEFENDANTS.)
)

JURY TRIAL

VOLUME 1 OF 3

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Berkeley County Courthouse
 Moncks Corner, South Carolina
 on March 15, 2016, Commencing at 9:58 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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PROCEEDINGS

1
2 THE COURT: Anything before we bring in the jury?
3 From the State?

4 MR. ALFARO: Your Honor, just for purposes of the
5 record, the State will be going forward on three counts
6 of attempted murder and one count of conspiracy for each
7 defendant.

8 And I've got to change what the witness list we
9 provided yesterday has.

10 THE COURT: And so we're going forward on 1716 on
11 Mr. Moses?

12 MR. ALFARO: Yes, Your Honor.

13 THE COURT: And 1722 on Mr. Gourdine?

14 MR. ALFARO: Correct.

15 THE COURT: And the other two will be dismissed
16 after the trial or --

17 MR. ALFARO: They'll be dismissed, Your Honor.

18 THE COURT: Thank you. Anything else from the
19 State?

20 MR. ALFARO: No, Your Honor.

21 THE COURT: Mr. Davis?

22 MR. DAVIS: Nothing, Your Honor.

23 THE COURT: Mr. Kearse?

24 MR. KEARSE: Nothing from Mr. Moses, Your Honor.

25 THE COURT: All right. And so that's the way you

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1 have chosen to sit. Mr. Davis, you will go first and
2 then Mr. Kearse, you will go second. Any objection?
3 MR. DAVIS: None, Your Honor.
4 THE COURT: Mr. Kearse, any objection?
5 MR. KEARSE: No, Your Honor.
6 THE COURT: All right. Let's bring in the jury.
7 Do you waive formal arraignment?
8 MR. DAVIS: We do, Your Honor.
9 THE COURT: Mr. Kearse?
10 MR. KEARSE: Same.
11 THE COURT: All right. Thank you.
12 Strikes are what, ten and twenty?
13 MR. ALFARO: Ten and ten.
14 MR. DAVIS: Ten and --
15 MR. ALFARO: This is not a ten-strike enumerated
16 offense. If it was a single trial, it would be five and
17 five.
18 THE COURT: And do you agree, Mr. Davis?
19 MR. DAVIS: I disagree. I've got ten strikes. May
20 I approach, Your Honor?,
21 THE COURT: You may.
22 [Whereupon, an off-the-record bench conference is
23 held]
24 - - -
25 - - -

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JURY VOIR DIRE

[Whereupon, the jury panel enters the courtroom at 10:06 a.m.]

THE COURT: Good morning, ladies and gentlemen. I am Judge Kristi Harrington. I am your resident judge for Berkeley County. I have the pleasure today of calling the case of The State versus Jason Gourdine and Steven Moses.

Ladies and gentlemen, I am going to ask you a series of questions to determine your qualifications and responses to these questions. I will give you an opportunity to come forward and speak with me in private, after I have asked all of my questions, in case there is something you don't want to stand up and share during some of these questions.

Ladies and gentlemen, the State alleges in an indictment -- and the indictment is simply the piece of paper that brings us here today to court. The State alleges in indictment 2014-GS-08-1719 that Jason Morris Gourdine did, in Berkeley County, South Carolina, on or about July 28th, 2013, while at the Nowhere Bar and Grill located at 7128 Henry E. Brown Boulevard in Goose Creek, South Carolina, willfully, knowingly, unlawfully, feloniously, and with malice aforethought, while acting in concert with a codefendant, discharge a firearm at

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1 the victim James Bryant with the intent to kill said
2 James Bryant. This action is in violation of Section
3 16-03-0029 of the South Carolina Code of Laws as
4 amended. Mr. Gourdine has pled not guilty to that
5 indictment.

6 The State further alleges in indictment 2014-GS-08-
7 1720 that in Berkeley County, South Carolina, on or
8 about July 28, 2013, the defendant, Jason Morris
9 Gourdine, while at the Nowhere Bar and Grill located at
10 7128 Henry E. Brown Boulevard, Goose Creek, South
11 Carolina, willfully, knowingly, unlawfully, feloniously,
12 and with malice aforethought, while acting in concert
13 with a codefendant, discharge a firearm at the victim
14 Stacy Bohannan with the intent to kill said Stacy
15 Bohannan. This action is in violation of Section 16-03-
16 0029, South Carolina Code of Laws 1976 as amended.
17 Mr. Gourdine has pled not guilty to that indictment.

18 The State further alleges in indictment 2014-GS-08-
19 1721 that in Berkeley County, South Carolina, on or
20 about July 28, 2013, the defendant, Jason Morris
21 Gourdine, while at the Nowhere Bar and Grill located at
22 7128 Henry E. Brown Boulevard, Goose Creek, South
23 Carolina, willfully, knowingly, unlawfully, feloniously,
24 and with malice aforethought, while acting in concert
25 with a codefendant, discharge a firearm at the victim

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1 David Bohannan with the intent to kill said David
2 Bohannan. This action is in violation of Section 16-03-
3 0029, South Carolina Code of Laws 1976 as amended.
4 Mr. Gourdine has pled not guilty to that indictment.

5 The State further alleges in 2014-GS-08-1722 that
6 in Berkeley County, South Carolina, on or about July 28,
7 2013, the defendant, Jason Morris Gourdine, did combine,
8 conspire, confederate, agree, or have a tacit
9 understanding with another for the purpose of committing
10 a crime, to wit, attempted murder. This action is in
11 violation of Section 16-17-0410, Code of Laws of South
12 Carolina 1976 as amended.

13 Ladies and gentlemen, the State alleges against the
14 defendant, Steven Moses, in 2014-GS-08-1713, that in
15 Berkeley County, South Carolina, on or about July 28th
16 of 2013, the defendant, Steven Dwayne Moses, while at
17 the Nowhere Bar and Grill located at 7128 Henry E. Brown
18 Boulevard, Goose Creek, South Carolina, willfully,
19 knowingly, unlawfully, feloniously, and with malice
20 aforethought, while acting in concert with a
21 codefendant, discharged a firearm at the victim James
22 Bryant with the intent to kill said James Bryant. This
23 action is in violation of Section 16-03-0029 of the
24 South Carolina Code of Laws 1976 as amended. Mr. Moses
25 has pled not guilty to that indictment.

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1 The State further alleges in indictment 2014-GS-08-
2 1714, that in Berkeley County, South Carolina, on or
3 about July 28th of 2013, the defendant, Steven Dwayne
4 Moses, while at the Nowhere Bar and Grill located at
5 7128 Henry E. Brown Boulevard, Goose Creek, South
6 Carolina, willfully, knowingly, unlawfully, feloniously,
7 and with malice aforethought, while acting in concert
8 with a codefendant, discharged a firearm at the victim
9 Stacy Bohannan with the intent to kill said Stacy
10 Bohannan. This action is in violation of Section 16-03-
11 0029, South Carolina Code of Laws 1976 as amended.
12 Mr. Moses has pled not guilty to that indictment.

13 The State further alleges in indictment 2014-GS-08-
14 1716, that in Berkeley County, South Carolina, on or
15 about July 28th of 2013, the defendant, Steven Dwayne
16 Moses, did conspire, combine, confederate, agree, or
17 have tacit understanding with another for the purpose of
18 committing a crime, to wit, attempted murder. This
19 action is in violation of Section 16-17-0410, Code of
20 Laws of South Carolina 1976 as amended. Mr. Moses has
21 pled not guilty to that indictment.

22 Ladies and gentlemen, please understand there was
23 no significance in the way that I read the indictments.
24 It's simply I have to read one indictment first.

25 Ladies and gentlemen, is there any member of the

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1 jury panel that knows anything about this case, other
2 than what I have just read to you in the indictments?
3 If so, please stand.

4 [Whereupon, there is no response]

5 THE COURT: Thank you. There are none.

6 Mr. Davis, if you would please stand, introduce
7 your client, and tell us a little bit about yourself.

8 MR. DAVIS: Good morning. My name is Steve Davis.
9 I practice law here in Berkeley County tri-county
10 area. I have the pleasure this morning of representing
11 Mr. Jason Gourdine.

12 THE COURT: Thank you.

13 Is there any member of the jury panel related by
14 blood, marriage, close personal friend, know Mr.
15 Gourdine in any way? If so, please stand.

16 Yes? Your jury number and name?

17 MS. FORDHAM: Cynthia Fordham, number 52.

18 THE COURT: Yes, Ms. Fordham. And do you know
19 Mr. Gourdine?

20 MS. FORDHAM: Yes, I do.

21 THE COURT: And is it a personal or a professional
22 relationship?

23 MS. FORDHAM: It's a personal.

24 THE COURT: And when is the last time you have seen
25 Mr. Gourdine? If you remember.

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1 MS. FORDHAM: Maybe ten years ago.

2 THE COURT: Do you know anything about this case?

3 MS. FORDHAM: No, I don't.

4 THE COURT: Is there anything about your
5 relationship with Mr. Gourdine that would affect your
6 ability to be fair and impartial in this case?

7 MS. FORDHAM: No, it wouldn't.

8 THE COURT: Thank you, Ms. Fordham. And your jury
9 number?

10 MS. FORDHAM: 52.

11 THE COURT: 52. Thank you so much.

12 Is there anyone else?

13 [Whereupon, there is no response]

14 THE COURT: Thank you. There are none.

15 Is there any member of the jury panel related by
16 blood, marriage, close personal friend, ever have any
17 business, personal, professional dealings, or ever had
18 any matters handled by Mr. Davis? If so, please stand.

19 Yes, ma'am. Your jury number and name?

20 MS. LESSINGTON: Leaser Lessington, 197.

21 THE COURT: All right. Ms. Lessington, you know
22 Mr. Davis?

23 MS. LESSINGTON: Yes.

24 THE COURT: And how do you know him? Personal or
25 professional?

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1 MS. LESSINGTON: Professional.

2 THE COURT: Is there anything about your
3 relationship with Mr. Davis that would affect your
4 ability to be fair and impartial in this case?

5 MS. LESSINGTON: No, ma'am.

6 THE COURT: Ms. Lessington, your jury number?

7 MS. LESSINGTON: 197.

8 THE COURT: 197. Thank you.

9 Yes, ma'am?

10 MS. PRIDE: 131 is my number.

11 THE COURT: And what is your name?

12 MS. PRIDE: Karen Pride.

13 THE COURT: And how do you know Mr. Davis?

14 MS. PRIDE: Professionally.

15 THE COURT: Is there anything about your
16 relationship with Mr. Davis that would affect your
17 ability to be fair and impartial in this case?

18 MS. PRIDE: No, ma'am.

19 THE COURT: And your jury number?

20 MS. PRIDE: 131.

21 THE COURT: 131. Thank you.

22 Is there anyone else?

23 [Whereupon, there is no response]

24 THE COURT: Thank you. There are none.

25 Mr. Kearse, if you would please stand, introduce

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1 yourself --

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

3 THE COURT: -- your client. And tell us a little
4 bit about yourself, as well.

5 MR. KEARSE: My name is Kevin Kearse. I also
6 practice law in the tri-county area for the last twenty-
7 six years or so. I have the pleasure this morning of
8 representing Steven Moses. He's a resident of Berkeley
9 County, South Carolina, himself.

10 THE COURT: Thank you.

11 Is there any member of the jury panel related by
12 blood, marriage, close personal friend, ever have any
13 business, personal, professional dealings with Mr.
14 Moses? If so, please stand.

15 [Whereupon, there is no response]

16 THE COURT: Thank you. There are none.

17 Any member of the jury panel related by blood,
18 marriage, close personal friend, ever have any business,
19 personal, professional dealings, ever had any matters
20 handled by Mr. Kearse? If so, please stand.

21 [Whereupon, there is no response]

22 THE COURT: Thank you. There are none.

23 Mr. Alfaro --

24 MR. KEARSE: Your Honor, may we approach?

25 THE COURT: You may.

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1 [Whereupon, an off-the-record bench conference is
2 held]

3 THE COURT: Mr. Alfaro, would you please stand,
4 introduce yourself a little, and any persons who will be
5 assisting you throughout this trial, and a little bit
6 about your office.

7 MR. ALFARO: Thank you.

8 My name is Bryan Alfaro. I'm deputy solicitor for
9 Berkeley County, and I work under the elected solicitor,
10 Scarlett Wilson. Her office is in Charleston County.
11 Seated with me, and he'll be helping me on the trial, is
12 assistant solicitor Wilton McNeely. Investigator Dave
13 Young, with our office --

14 THE COURT: Thank you.

15 Is there any member of the jury panel related by
16 blood, marriage, close personal friend, ever have any
17 business, personal, professional dealings, or ever have
18 any matters handled by Mr. Alfaro or Mr. McNeely,
19 assistant solicitors in the Berkeley office? If so,
20 please stand.

21 [Whereupon, there is no response]

22 THE COURT: Thank you. There are none.

23 Any members of the jury panel related by blood,
24 marriage, close personal friend, or have any
25 relationship with anyone employed by the ninth circuit

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1 solicitor's office in any capacity or ever had any
2 matters handled by the ninth circuit solicitor's office?
3 And, again, that is Berkeley and Charleston. If so,
4 please stand.

5 [Whereupon, there is no response]

6 THE COURT: Thank you. There are none.

7 Ladies and gentlemen, I am going to call a list of
8 potential witnesses who may be called to testify in this
9 case. If you are related by blood, marriage, close
10 personal friend, know these individuals in any capacity,
11 please stand as I call their names. James Bryant; David
12 Bohannon, Stacy Bohannon; Julia Victoria Taylor; Aleshia
13 Nava; Lori Chenoweth; Bill Coffey; Denise Coffey;
14 Enrique Gordon, Jr.; Tammy Taylor; Matthew Marous, with
15 the City of Goose Creek Fire; Brian Martin, City of
16 Goose Creek Fire Emergency Medical Service; Kevin
17 Binnal, City of Hanahan Fire, Emergency Medical Service;
18 Edward Greene, with the Berkeley County Sheriff's
19 Office; Daniel Morton, Berkeley County Sheriff's Office;
20 Brandon Wade, with the Berkeley County Sheriff's Office
21 --

22 Yes, ma'am?

23 MS. WROBLEWSKI: Well, I used to work with Berkeley
24 County Sheriff's Office, so I know some of the officers.

25 THE COURT: All right. I have a whole list of

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1 witnesses, also, to call. What did you do with Berkeley
2 County?

3 MS. WROBLEWSKI: I was a duty officer for eighteen
4 months.

5 THE COURT: All right. And tell me your jury
6 number and name.

7 MS. WROBLEWSKI: It's 187. Hope Wroblewski.

8 THE COURT: And when was the last time you were
9 employed with Berkeley County?

10 MS. WROBLEWSKI: I left there February of 2014.

11 THE COURT: Do you know anything about this case?

12 MS. WROBLEWSKI: Barely. I remember it happened,
13 and that's about it.

14 THE COURT: All right. And what was your
15 assignment at that time?

16 MS. WROBLEWSKI: When was it? 2013?

17 THE COURT: Yes, ma'am.

18 MS. WROBLEWSKI: I was duty officer.

19 THE COURT: All right. Juror 187 is going to be
20 excused from this case.

21 Ma'am, you are excused for the day. You can see
22 the gentleman in the back. Give him your tag. Please
23 call tonight after 6:00 p.m. Call tonight after 6:00
24 p.m.

25 Juror 187 is excused.

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1 I'm going to continue with the list of witnesses.
2 Again, please stand if you are related by blood,
3 marriage, close personal friend, know these individuals
4 in any capacity.

5 Dan Wilson, with the Berkeley County Sheriff's
6 Office; Kevin Murphy, with the Berkeley County Sheriff's
7 Office.

8 Yes, sir?

9 MR. DENNISTON: 196. Steve Denniston.

10 I work with Berkeley County Communications and I
11 work with the officers on a daily basis.

12 THE COURT: And tell me what you do. You work in
13 what capacity?

14 MR. DENNISTON: The 911 center with communications
15 with the officers.

16 THE COURT: All right. And how long have you been
17 there?

18 MR. DENNISTON: Sixteen years.

19 THE COURT: And were you so employed in July of
20 2013?

21 MR. DENNISTON: Yes, ma'am.

22 THE COURT: Do you know anything about this case?

23 MR. DENNISTON: Yes, ma'am.

24 THE COURT: All right. And so tell me your jury
25 number.

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1 MR. DENNISTON: 196.

2 THE COURT: 196 is excused from the trial of this
3 case.

4 You are excused. Please return your badge back,
5 and call back after 6:00 p.m. All right? Thank you.

6 THE COURT: Ladies and gentlemen, I know I'm going
7 to ask you a series of questions, and this is exactly a
8 good opportunity for me sometimes to go back and ask
9 questions in a different way.

10 Ladies and gentlemen, if you think you need to
11 answer a question and you're not quite sure what I'm
12 asking, if you would please stand. It's more important
13 for us to have more information than not enough.

14 So once again, is there any member of the jury
15 panel that knows anything about this case, in any
16 capacity, other than what I have just read to you? If
17 you worked in some capacity around this bar, or
18 something of that nature, please stand and tell us at
19 this time.

20 [Whereupon, there is no response]

21 THE COURT: All right. Thank you.

22 And once again, this is Mr. Davis and Mr. Kearse.
23 If you have had any contact with either one of those
24 individuals, please stand. Know those individuals in
25 any capacity, either personally or professionally, and

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1 you have not already shared that, please stand.

2 Yes, sir. Your jury number and name?

3 MR. MONTMARQUETTE: 107. Marc Montmarquette.

4 THE COURT: Yes?

5 MR. MONTMARQUETTE: Professionally, both of them.

6 THE COURT: And is there anything about that that
7 would affect your ability to be fair and impartial in
8 this case?

9 MR. MONTMARQUETTE: No.

10 THE COURT: And you also know, I'm assuming, Mr.
11 Alfaro and Mr. McNeely with the solicitor's office?

12 MR. MONTMARQUETTE: Professionally.

13 THE COURT: All right. Thank you.

14 Is there anyone else?

15 [Whereupon, there is no response]

16 THE COURT: Thank you. There are none.

17 Continuing with the list of witnesses: Kevin
18 Murphy, with the Berkeley County Sheriff's Office; Dean
19 Kokinda, with the Berkeley County Sheriff's Office;
20 Brian Fenton, with the Berkeley County Sheriff's Office;
21 Kimberly Milks, with the Berkeley County Sheriff's
22 Office; Crystal Spence, Berkeley County Sheriff's
23 Office; Augustus "Mac" Flood, with the Berkeley County
24 Sheriff's Office; Joseph Sakran, who is a doctor at the
25 Medical University of South Carolina; Benjamin Crooks,

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1 also a doctor at the Medical University of South
2 Carolina; Lance Tavana, a doctor with the Medical
3 University of South Carolina; Kristin Shumard, Medical
4 University of South Carolina; Samuel Willis, registered
5 nurse formerly employed by the Medical University of
6 South Carolina; and Brad Ware.

7 Any member of the jury panel know these individuals
8 in any capacity, please stand.

9 [Whereupon, there is no response]

10 THE COURT: Thank you. There are none.

11 Any member of the jury panel live near, work near,
12 or ever been to the Nowhere Bar and Grill in Goose
13 Creek? If so, please stand.

14 Yes? Your jury number and name?

15 MR. DOOLEY: James Dooley. My jury number is 49.

16 It's probably been about ten years since I've been
17 there, but I used to frequent the establishment.

18 THE COURT: And is there anything about that, sir,
19 that would affect your ability to be fair and impartial
20 in this case?

21 MR. DOOLEY: No, ma'am.

22 THE COURT: And your jury number, sir?

23 MR. DOOLEY: 49.

24 THE COURT: 49. Thank you.

25 Yes, ma'am?

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1 MS. GOODMAN: 57. Debora Goodman.

2 I live near the Nowhere Bar and Grill.

3 THE COURT: All right. And were you -- did you
4 know anything about this incident --

5 MS. GOODMAN: No, ma'am.

6 THE COURT: -- what's contained in the indictment?

7 MS. GOODMAN: No, ma'am.

8 THE COURT: Is there anything about your residence
9 being close to this location that would affect your
10 ability to be fair and impartial?

11 MS. GOODMAN: No, ma'am.

12 THE COURT: Will you have to drive by this location
13 if you are selected by the -- to be on the jury?

14 MS. GOODMAN: [No response]

15 THE COURT: Can you get home without going past it?

16 MS. GOODMAN: Yes, ma'am.

17 THE COURT: All right. And tell me your jury
18 number.

19 MS. GOODMAN: 57.

20 THE COURT: 57. Thank you.

21 Is there anyone else?

22 [Whereupon, there is no response]

23 THE COURT: Thank you. There are none.

24 Any member of the jury panel employed by, formerly
25 employed by, or a member of your immediate family or a

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1 close friend is employed by, the Berkeley County
2 Sheriff's Office? If so, please stand.

3 [Whereupon, there is no response]

4 THE COURT: Thank you. There are none.

5 Any member of the jury panel currently law
6 enforcement, previously law enforcement, or a member of
7 your immediate family or a close personal friend is a
8 current or former law enforcement officer of any
9 capacity? If so, please stand.

10 Yes? Your jury number and name?

11 MR. LLOYD: Jeremy Lloyd. 195.

12 I'm a military policeman with the air national
13 guard.

14 THE COURT: All right. Anything about that
15 occupation, sir, that would affect your ability to be
16 fair and impartial in this case?

17 MR. LLOYD: No, ma'am.

18 THE COURT: And your jury number, sir?

19 MR. LLOYD: 195.

20 THE COURT: 195. Thank you.

21 Yes, ma'am, again?

22 MS. GOODMAN: 57. Debora Goodman.

23 My husband is a federal correctional counselor.

24 THE COURT: And where is his office? Where is --
25 where does he --

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1 MS. GOODMAN: SPI Williamsburg in Moultrie, South
2 Carolina.

3 THE COURT: And tell me, is there anything about
4 that that would affect your ability to be fair and
5 impartial in this case?

6 MS. GOODMAN: No, ma'am.

7 THE COURT: And juror 57; is that correct?

8 MS. GOODMAN: Yes, ma'am.

9 THE COURT: All right. Thank you.

10 Yes, ma'am?

11 MS. AUCLAIR: Tracey Auclair.

12 My husband is a detective at Moncks Corner Police
13 Department.

14 THE COURT: And what is his name?

15 MS. AUCLAIR: Michael Auclair.

16 THE COURT: And is there anything about your
17 husband's occupation that would affect your ability to
18 be fair and impartial in this case?

19 MS. AUCLAIR: No, ma'am.

20 THE COURT: And do you know any of the officers
21 that I read their names from the witness list?

22 MS. AUCLAIR: No, ma'am.

23 THE COURT: Would you be able to listen to the
24 facts from the witness stand, apply the law as I give it
25 to you, and render a verdict based only upon those

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1 things?

2 MS. AUCLAIR: Yes, ma'am.

3 THE COURT: And your jury number?

4 MS. AUCLAIR: 4.

5 THE COURT: Thank you.

6 MS. BONAR: Lisa Bonar. Juror number 17.

7 My husband is a federal agent.

8 THE COURT: Here in South Carolina?

9 MS. BONAR: [Indicates affirmatively]

10 THE COURT: And what is his title?

11 MS. BONAR: Immigration --

12 THE COURT: And is there anything about your
13 husband's occupation that would affect your ability to
14 be fair and impartial in this case?

15 MS. BONAR: No.

16 THE COURT: All right. And your juror number?

17 MS. BONAR: 17.

18 THE COURT: 17. Thank you.

19 Yes?

20 MR. BISTROMOWITZ: Number 14. Keith Bistromowitz.

21 I have a brother, retired lieutenant, up in New
22 Jersey. He's from up there.

23 And my son was also -- he's medically retired from
24 Dorchester County. He was with them as a sheriff's
25 deputy for about eleven years.

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1 THE COURT: How long has he been, retired?

2 MR. BISTROMOWITZ: Medically retired, probably
3 about a year.

4 THE COURT: And do you happen to know any of those
5 individuals that I had called their name on the witness
6 list?

7 MR. BISTROMOWITZ: No, Your Honor.

8 THE COURT: All right. And your jury number, sir?

9 MR. BISTROMOWITZ: I'm sorry?

10 THE COURT: Your jury number.

11 MR. BISTROMOWITZ: Number 14.

12 THE COURT: Thank you sir.

13 Yes, sir?

14 MR. RICHARDSON: Jury number 198.

15 Abraham Richardson. Just retired from Berkeley
16 County Sheriff's Department.

17 THE COURT: All right. Do you know any of those
18 individuals?

19 MR. RICHARDSON: No, I don't.

20 THE COURT: You do not know any of those
21 individuals? Remind me what your assignment was while
22 you were with Berkeley County.

23 MR. RICHARDSON: No. Abraham Richardson was my
24 uncle.

25 THE COURT: I'm sorry.

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1 MR. RICHARDSON: I'm Tony Richardson.

2 THE COURT: And he just retired. I was like, how
3 do you not know these people?

4 So it's been a long morning already. The pollen is
5 getting to me.

6 MR. RICHARDSON: Okay.

7 THE COURT: Is there anything about your -- and
8 it's your uncle?

9 MR. RICHARDSON: Yes.

10 THE COURT: -- his previous occupation that would
11 affect your ability to be fair and impartial in this
12 case?

13 MR. RICHARDSON: No, ma'am.

14 THE COURT: And tell me your jury number.

15 MR. RICHARDSON: 198.

16 THE COURT: 198. Thank you.

17 Yes, ma'am?

18 MS. GARDNER: Mary Gardner. Number 53.

19 THE COURT: Yes, ma'am.

20 MS. GARDNER: I have a brother who's a retired
21 lieutenant with SLED. And he's currently the director
22 of safety at Carolina --

23 THE COURT: What is his name?

24 MS. GARDNER: David Roper.

25 THE COURT: All right. Anything about that that

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1 would affect your ability to be fair and impartial in
2 this case?..

3 MS. GARDNER: No, ma'am.

4 THE COURT: And your jury number?

5 MS. GARDNER: 53.

6 THE COURT: Thank you, Ms. Gardman.

7 Yes, sir?

8 MR. VOORHEES: Juror 170.

9 I work with former law enforcement people in the
10 different counties.

11 THE COURT: All right. Remind me what you do.

12 MR. VOORHEES: I'm an officer at Flood Field
13 [phonetic].

14 THE COURT: And do you know any of these
15 individuals that were on the witness list?

16 MR. VOORHEES: No, ma'am.

17 THE COURT: Is there anything about your occupation
18 that would affect your ability to be fair and impartial
19 in this case?

20 MR. VOORHEES: No, ma'am.

21 THE COURT: And juror 170; is that correct?

22 MR. VOORHEES: Yes.

23 THE COURT: Thank you, Mr. Voorhees.

24 Is there anyone else?

25 [Whereupon, there is no response]

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1 THE COURT: Thank you. There are none.

2 Ladies and gentlemen, I called a few names that
3 were employed by the City of Goose Creek with the Fire
4 and Emergency Medical Services. Is there any member of
5 the jury panel that has a member -- that you, currently
6 or formerly, were employed by the City of Goose Creek in
7 any capacity, or a member of your family or close
8 personal friend? If so, please stand.

9 Yes. Your jury number and name, sir?

10 MR. GOODWIN: Number 59. Steve Goodwin.

11 I know a bunch of those Goose Creek fireman, but
12 none of the names --

13 THE COURT: And tell me -- I notice you have a
14 uniform on. Tell me what you do.

15 MR. GOODWIN: I'm a deputy chief of Cainhoj Fire
16 Department, and I'm also in charge of fire rescue
17 operations at Unicorp Steel.

18 THE COURT: Will you be able to listen to the facts
19 from the witness stand, apply the law as I give it to
20 you, and render a verdict based only upon those things?

21 MR. GOODWIN: Yes.

22 THE COURT: And tell me your jury number, sir.

23 MR. GOODWIN: 59.

24 THE COURT: Thank you.

25 Is there anyone else?

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1 [Whereupon, there is no response]

2 THE COURT: Thank you. There are none.

3 Is there any member of the jury panel that has any
4 specialized training in fire or emergency medical
5 services?

6 Juror 59, you do not have to answer. Is there
7 anyone else?

8 Yes. Your jury number and name, sir.

9 MR. SLADE: 156. Josh Slade. Former EMT
10 firefighter in South Florida.

11 THE COURT: And how long have you been here and out
12 of that business?

13 MR. SLADE: Been here for five years, out of the
14 business for seven years.

15 THE COURT: Is there anything about your occupation
16 -- you've heard the witness list and what the
17 allegations are contained in the indictment. Is there
18 anything about your former occupation that would affect
19 your ability to be fair and impartial in this case?

20 MR. SLADE: No, ma'am.

21 THE COURT: Tell me your jury number, sir.

22 MR. SLADE: 156.

23 THE COURT: Thank you.

24 Yes?

25 MR. WOOD: Juror number 182. Craig Wood.

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1 I was a recovery technician for the air force for a
2 couple of years, about seven -- about ten years ago.

3 THE COURT: And same question to you. Is there
4 anything about that that would affect your ability to be
5 fair and impartial in this case?

6 MR. WOOD: No, ma'am.

7 THE COURT: And juror 182?

8 MR. WOOD: Yes, ma'am.

9 THE COURT: All right. Thank you.

10 All right. Yes, sir?

11 MR. SMITH: 158. Firefighter in the past.

12 THE COURT: Same question to you. Is there
13 anything about that occupation that would affect your
14 ability to be fair and impartial in this case?

15 MR. SMITH: No, ma'am.

16 THE COURT: And tell me your juror number before
17 you sit down.

18 MR. SMITH: Ma'am?

19 THE COURT: Your jury number?

20 MR. SMITH: 158.

21 THE COURT: 158. Thank you.

22 Ladies and gentlemen of the jury, the attorneys
23 involved in this case are taking down notes as to your
24 responses. Some of you will be better served as jurors
25 on certain types of cases, and so they're just taking

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1 down your responses, so that's why I ask you to use your
2 jury number before you begin speaking and then right
3 before you sit down, so that the attorneys have an
4 opportunity to know who you are.

5 Yes, ma'am?

6 MS. HUGHES: Number 73. Emily Hughes.

7 I was a volunteer firefighter in Spring Valley,
8 Wisconsin, a couple of years ago.

9 THE COURT: Okay. How long have you been in South
10 Carolina?

11 MS. HUGHES: About a year and a half.

12 THE COURT: Is there anything about your
13 specialized training that would affect your ability to
14 be fair and impartial in this case?

15 MS. HUGHES: No, Your Honor.

16 THE COURT: And tell me your jury number.

17 MS. HUGHES: 73.

18 THE COURT: All right. Thank you.

19 Ladies and gentlemen, I have a series of questions
20 to ask you that I have determined I would like for you
21 to come forward and answer in private. And as maybe --
22 and may have been explained to you yesterday by Judge
23 Hayes, we are a court of record. This is my court
24 reporter, Ms. Perron. She is writing down everything
25 that I say, as well as everything that you say. So when

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1 I have you come and address me in private, it really
2 means that it's going to be in front of my court
3 reporter. And the attorneys will be present, as well.
4 But this will give you an opportunity not to have to
5 stand up and answer these questions in front of your
6 seventy new best friends.

7 Ladies and gentlemen, is there any member of the
8 jury panel that has ever been the victim of a crime of
9 violence of any nature? If you need to address that,
10 please come forward at the appropriate time.

11 Is there any member of the jury panel that has
12 strong feelings about firearms that would prevent you
13 from being a fair and impartial jury -- juror on this
14 case? Again, I have read what is contained in the
15 indictment, which is what the State alleges. If there's
16 any member of the jury panel who has a strong feeling
17 about firearms that would prevent you from being a fair
18 and impartial juror, I'll need you to come forward at
19 the appropriate time, as well.

20 Ladies and gentlemen, if there's any member of the
21 jury panel that, based upon any of my previous
22 questions, or what was contained in the indictments that
23 I read against -- the allegations against Mr. Gourdine
24 and against Mr. Moses, if you feel that you would be
25 unable to listen to the facts that come from the witness

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1 stand, apply the law as I give it to you, and render a
2 verdict based only upon those things, free from any
3 outside political, moral, religious beliefs that you may
4 hold, if for whatever reason you feel this is not the
5 case for you, please come forward. The bailiffs will
6 assist you. Move to the center aisles. Thank you.

7 MR. DAVIS: May we approach, Your Honor?

8 THE COURT: I'm coming down.

9 MR. DAVIS: Okay.

10 THE COURT: We'll just address it at that time.

11 MR. DAVIS: Okay.

12 [Whereupon, an off-the-record bench conference is
13 held]

14 THE BAILIFF: Juror 163.

15 THE COURT: Juror 163. Mr. Alfaro, do you have any
16 additional --

17 Just right around here.

18 [Whereupon, juror number 163 comes forward]

19 [Whereupon, the Court, juror number 163, and
20 counsel confer]

21 THE COURT: Juror 163 is excused. Good luck to
22 you.

23 THE BAILIFF: Juror 198.

24 [Whereupon, juror 198 comes forward]

25 [Whereupon, the Court, juror 198, and counsel

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1 confer]

2 THE COURT: 198 is excused from the trial of this
3 case.

4 THE BAILIFF: Juror 144.

5 [Whereupon, juror 144 comes forward]

6 [Whereupon, the Court, juror 144, and counsel
7 confer]

8 THE COURT: I'm going to protect you from the trial
9 of this case. As I indicated, some jurors are much more
10 suited to other types of cases. I'm going to excuse you
11 from the trial of this case. You're excused for today.
12 Please call after 6:00 p.m. to get your instructions for
13 the remainder of the week. Good luck to you. Thank
14 you.

15 THE BAILIFF: Juror 140.

16 [Whereupon, juror 140 comes forward]

17 [Whereupon, the Court, juror 140, and counsel
18 confer]

19 THE COURT: 140 is protected from this case.

20 THE BAILIFF: Juror 56.

21 THE COURT: Juror 56.

22 [Whereupon, juror 56 comes forward]

23 [Whereupon, the Court, juror 56, and counsel
24 confer]

25 THE COURT: Juror 56 will remain. Thank you.

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1 THE BAILIFF: Juror 179.

2 THE COURT: I'll need to see juror 22. Juror 22.

3 [Whereupon, juror 179 comes forward]

4 [Whereupon, the Court, juror 179, and counsel
5 confer]

6 THE COURT: Juror 179 -- let me see y'all about
7 that one.

8 Are you juror 22?

9 JUROR 22: Juror 22.

10 [Whereupon, juror 22 comes forward]

11 [Whereupon, the Court, juror 22, and counsel
12 confer]

13 THE COURT: Is there anything about me bringing you
14 up special that would affect your ability to be fair and
15 impartial in this case?

16 JUROR 22: No.

17 THE COURT: Any additional questions? Any
18 challenges for cause? 179 I think -- those challenges
19 for causes.

20 MR. KEARSE: He said he could be fair.

21 THE COURT: Based upon his -- 179 is excused for
22 cause.

23 [Whereupon, an off-the-record bench conference is
24 held]

25 THE COURT: Any additional questions?

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MR. KEARSE: No. But I've got 56 --

THE COURT: I'm going to -- 56 is excused for cause.

[Off the record momentarily]

THE COURT: Strikes are ten and ten. Five and five. You each get five.

MR. DAVIS: Do you want me to put that on the record?

THE COURT: We're on the record.

MR. DAVIS: I believe that that is improper because I believe that the attempted murder statute or law was enacted much later in time reference to when the enumerated list was made.

Attempted murder is a new creature, by statute. It has equivalent of punishment that equates to manslaughter and equates to criminal sexual conduct, and the statute enumerate -- I can think of no reason but oversight on the part of the legislature, the governing body, the lawmaking body, that they failed to provide a directive to the judicial body wherein we are entitled to ten strikes on attempted murder. And I think it's prejudicial to my client's case to receive a fair trial.

THE COURT: Thank you, Mr. Davis.

MR. KEARSE: I join in, Judge.

THE COURT: The plain reading in the statute, in

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1 the Court's opinion, is very clear, enumerated -- that
2 would entitle the defendant to more than five strikes.
3 The statute is also very clear if the two defendants are
4 joined together, the State is entitled to ten. Based
5 upon my reading, the State is entitled to ten because of
6 the two defendants and because of the charge. It's five
7 for each defendant. So that's -- so it's ten. Five and
8 five.

9 Note your exception. It's preserved for the
10 record.

11 MR. DAVIS: The State gets ten?

12 THE COURT: Pursuant to the statute. Thank you.

13 Ladies and gentlemen, one more time, because this
14 happens a lot more than you would think it would happen.
15 Is there any member of the jury panel, for whatever
16 reason -- perhaps you were just sitting there thinking
17 about what was contained in the indictment, or you feel
18 that you would be unable to follow the law as the Court
19 gives it -- for whatever reason, or you feel perhaps you
20 forgot that you had a big meeting or something that's
21 coming up in this week that you would be unable to
22 listen to the witnesses from the witness stand and then
23 apply the law as I give it to you -- if for whatever
24 reason, based upon that, any of my previous questions,
25 or the fact that you just feel you would be unable to be

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1 a fair and impartial juror and follow the law as the
2 Court gives it to you, please come see me.

3 Yes? You may come forward.

4 THE BAILIFF: Juror 171.

5 [Whereupon, juror 171 comes forward]

6 [Whereupon, the Court, juror 171, and counsel
7 confer]

8 THE COURT: 171 is protected for tomorrow.

9 [Off the record momentarily]

10 THE BAILIFF: Juror 27.

11 [Whereupon, juror 27 comes forward]

12 [Whereupon, the Court, juror 27, and counsel
13 confer]

14 THE COURT: Juror 27 is protected.

15 So you're free to go. Please call back after 6:00.

16 Okay?

17 THE COURT: Anyone else? Anyone else?

18 [Whereupon, there is no response]

19 THE COURT: Thank you. There are none.

20 [Off the record momentarily]

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STRIKING OF THE JURY

THE COURT: Ladies and gentlemen, the clerk of court is doing a random selection of your names. Back way before computers, when we were less efficient, we would just have your names and we would draw them from the hat. And now we have this fancy computer system that is supposed to be way more efficient, as you can see, promptly printing out the sheets. So that's what we're doing. And once we have these sheets printed out -- it is in no way a reflection upon my staff. It is the computer system. So, ladies and gentlemen, once we have that printed, then we will begin the jury selection.

[Off the record momentarily]

THE COURT: Mr. Alfaro, are you ready?

MR. ALFARO: Yes, Your Honor.

THE COURT: Mr. Davis, on behalf of Mr. Gourdine, are you ready?

MR. DAVIS: We are ready, Your Honor.

THE COURT: Mr. Kearse, on behalf of Mr. Moses, are you ready?

MR. KEARSE: We're ready, Your Honor.

THE COURT: Madam Clerk?

THE CLERK OF COURT: Ladies and gentlemen of the jury, as I call your name, please come forth and bring

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1 your personal belongings with you.

2 If I say seat the juror, please have a seat in the
3 jury box. If I say excuse the juror, please return to
4 your original seating.

5 And just follow the instructions of the bailiffs
6 standing right here.

7 Juror Number 4, Tracy Auclair.

8 [Whereupon, juror number 4 comes forward]

9 THE CLERK OF COURT: What says the State?

10 MR. ALFARO: Please seat the juror.

11 THE CLERK OF COURT: What says Defendant Gourdine?

12 MR. DAVIS: Please excuse Ms. Auclair.

13 THE CLERK OF COURT: Excuse the juror.

14 [Whereupon, juror number 4 returns to the audience]

15 THE CLERK OF COURT: Juror 181, Rebecca Wiseman.

16 [Whereupon, juror 181 comes forward]

17 THE CLERK OF COURT: What says the State?

18 MR. ALFARO: Please seat the juror.

19 THE CLERK OF COURT: What says the --

20 MR. DAVIS: Please seat Ms. Wiseman.

21 THE COURT: Hold on. Hold on. We've got two
22 defendants, please remember.

23 THE CLERK OF COURT: What says Defendant Moses?

24 MR. KEARSE: Please seat the juror.

25 THE CLERK OF COURT: Seat the juror.

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1 [Whereupon, juror number 181 is seated in the jury
2 box as a juror]

3 [Off the record momentarily]

4 THE COURT: Thank you. Thank you, Ms. Wiseman.

5 THE CLERK OF COURT: Juror 32, Nichole Chapman.

6 [Whereupon, juror number 32 comes forward]

7 THE CLERK OF COURT: What says the State?

8 MR. ALFARO: Please seat the juror.

9 THE CLERK OF COURT: What says --

10 MR. DAVIS: Seat Ms. Chapman.

11 THE CLERK OF COURT: What says Defendant Moses?

12 MR. KEARSE: Seat the juror, please.

13 THE CLERK OF COURT: Seat the juror.

14 [Whereupon, juror number 32 is seated in the jury
15 box as a juror]

16 THE CLERK OF COURT: Juror 17, Lisa Bonar.

17 [Whereupon, juror number 17 comes forward]

18 THE CLERK OF COURT: What says the State?

19 MR. ALFARO: Please seat the juror.

20 THE CLERK OF COURT: What says Defendant Gourdine?

21 MR. DAVIS: Please excuse Ms. Bonar from this
22 trial. Thank you.

23 THE CLERK OF COURT: Excuse the juror.

24 [Whereupon, juror number 17 returns to the
25 audience]

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1 THE CLERK OF COURT: Juror 53, Mary Gardner.

2 [Whereupon, juror number 53 comes forward]

3 THE CLERK OF COURT: What says the State?

4 MR. ALFARO: Please seat the juror.

5 THE CLERK OF COURT: What says Defendant Gourdine?

6 MR. DAVIS: Please seat the juror.

7 THE CLERK OF COURT: What says Defendant Moses?

8 MR. KEARSE: Please strike this juror from this
9 case. Excuse -- I'm sorry. Please excuse this juror.

10 THE CLERK OF COURT: Excuse the juror.

11 [Whereupon, juror number 53 returns to the
12 audience]

13 THE CLERK OF COURT: Juror 13, Heather Bishop.

14 [Whereupon, juror number 13 comes forward]

15 THE CLERK OF COURT: What says the State?

16 MR. ALFARO: Please seat the juror.

17 THE CLERK OF COURT: What says Defendant Gourdine?

18 MR. DAVIS: Please seat Ms. Bishop.

19 THE CLERK OF COURT: What says Defendant Moses?

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

21 THE COURT: Take your time.

22 MR. KEARSE: Please seat this juror.

23 THE CLERK OF COURT: Seat the juror.

24 [Whereupon, juror number 13 is seated in the jury
25 box as a juror]

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1 THE CLERK OF COURT: Juror 72, Dean Hook.

2 [Whereupon, juror number 72 comes forward]

3 THE CLERK OF COURT: What says the State?

4 MR. ALFARO: Please seat the juror.

5 THE CLERK OF COURT: What says Defendant Gourdine?

6 MR. DAVIS: Beg the Court's indulgence.

7 [Whereupon, Mr. Davis reviews documents]

8 MR. DAVIS: Seat Mr. Hook.

9 THE CLERK OF COURT: What says Defendant Moses?

10 MR. KEARSE: Please seat this juror.

11 THE CLERK OF COURT: Seat the juror.

12 [Whereupon, juror number 72 is seated in the jury
13 box as a juror]

14 THE CLERK OF COURT: Juror 182, Craig Wood.

15 [Whereupon, juror number 182 comes forward]

16 THE CLERK OF COURT: What says the State?

17 MR. ALFARO: Please seat the juror.

18 THE CLERK OF COURT: What says Defendant Gourdine?

19 MR. DAVIS: Please seat -- seat Mr. Wood.

20 THE CLERK OF COURT: What says Defendant Moses?

21 MR. DAVIS: Please excuse this juror.

22 THE CLERK OF COURT: Excuse the juror.

23 [Whereupon, juror number 182 returns to the
24 audience]

25 THE CLERK OF COURT: Juror 14, Keith Bistromowitz.

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1 [Whereupon, juror number 14 comes forward]

2 THE CLERK OF COURT: What says the State?

3 MR. ALFARO: Please seat the juror.

4 THE CLERK OF COURT: What says Defendant Gourdine?

5 MR. DAVIS: Please excuse Mr. Bistromowitz. I had
6 to try that. Okay? Please excuse Mr. Bistromowitz.

7 THE CLERK OF COURT: Excuse the juror.

8 [Whereupon, juror number 14 returns to the
9 audience]

10 THE CLERK OF COURT: Juror 131, Karen Pride.

11 [Whereupon, juror number 131 comes forward]

12 THE CLERK OF COURT: What says the State?

13 MR. ALFARO: Please excuse this juror.

14 THE CLERK OF COURT: Excuse the juror.

15 [Whereupon, juror number 131 returns to the
16 audience]

17 THE CLERK OF COURT: Juror 29, Sha'Quon Campbell.

18 [Whereupon, juror number 29 comes forward]

19 THE CLERK OF COURT: What says the State?

20 MR. ALFARO: Please seat the juror.

21 THE CLERK OF COURT: What says Defendant Gourdine?

22 MR. DAVIS: Seat this juror.

23 THE CLERK OF COURT: What says Defendant Moses?

24 MR. KEARSE: Please seat the juror.

25 THE CLERK OF COURT: Seat the juror.

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1 [Whereupon, juror number 29 is seated in the jury
2 box as a juror]

3 THE CLERK OF COURT: Juror 154, Zachary Simons.

4 [Whereupon, juror number 154 comes forward]

5 THE CLERK OF COURT: What says the State?

6 MR. ALFARO: Number of the juror?

7 THE CLERK OF COURT: 29.

8 MR. DAVIS: 154.

9 THE CLERK OF COURT: I'm sorry. 154.

10 MR. ALFARO: Please seat the juror.

11 THE CLERK OF COURT: What says Defendant Gourdine?

12 MR. DAVIS: Seat the juror.

13 THE CLERK OF COURT: What says Defendant Moses?

14 MR. KEARSE: Please excuse this juror.

15 THE CLERK OF COURT: Excuse the juror.

16 [Whereupon, juror number 154 returns to the
17 audience]

18 THE CLERK OF COURT: Juror 59, Stephen Goodwin.

19 [Whereupon, juror number 59 comes forward]

20 THE CLERK OF COURT: What says the State?

21 MR. ALFARO: Please seat the juror.

22 THE CLERK OF COURT: What says Defendant Gourdine?

23 MR. DAVIS: Please excuse this juror, please.

24 THE CLERK OF COURT: Excuse the juror.

25 [Whereupon, juror number 59 returns to the

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1 audience]

2 THE CLERK OF COURT: Defendant Gourdine has four
3 strikes.

4 Juror 45, Austin Dalicandro.

5 [Whereupon, juror 45 comes forward]

6 THE CLERK OF COURT: What says the State?

7 MR. ALFARO: Please seat the juror.

8 THE CLERK OF COURT: What says Defendant Gourdine?

9 MR. DAVIS: Seat the juror.

10 THE CLERK OF COURT: What says Defendant Moses?

11 MR. KEARSE: Can I ask the juror's number, please?

12 THE COURT: 45.

13 MR. KEARSE: Please seat the juror.

14 THE CLERK OF COURT: Seat the juror.

15 [Whereupon, juror number 45 is seated in the jury
16 box as a juror]

17 THE CLERK OF COURT: Juror 172, Lynn Washington.

18 [Whereupon, juror number 172 comes forward]

19 THE CLERK OF COURT: What says the State?

20 MR. ALFARO: Please seat the juror.

21 THE CLERK OF COURT: What says Defendant Gourdine?

22 MR. DAVIS: Seat Ms. Washington.

23 THE CLERK OF COURT: What says Defendant Moses?

24 MR. KEARSE: Please seat the juror.

25 THE CLERK OF COURT: Seat the juror.

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1 [Whereupon, juror number 172 is seated in the jury
2 box as a juror]

3 THE CLERK OF COURT: Juror 107, Marc Montmarquette.
4 Marc Marquette.

5 JUROR NUMBER 107: Marc Marquette.

6 THE CLERK OF COURT: Thank you.

7 [Whereupon, juror number 107 comes forward]

8 THE CLERK OF COURT: What says the State?

9 MR. ALFARO: Please seat the juror.

10 THE CLERK OF COURT: What says Defendant Gourdine?

11 MR. DAVIS: Seat Mr. Marquette.

12 THE CLERK OF COURT: What says Defendant Moses?

13 MR. KEARSE: Your Honor, I'm going to move to
14 strike for cause. I know he said he could be --

15 THE COURT: All right. So counsel, I need you to
16 approach.

17 Mr. Marquette, if you'll just have a seat back, or
18 you can stand right there, whatever you're most
19 comfortable. We're going to be talking about you. I'm
20 sorry.

21 [Whereupon, an off-the-record bench conference is
22 held]

23 THE COURT: Mr. Marquette, we would love to have
24 you remain with us, but not on the jury panel today. So
25 if you'll just have a seat. Everybody knows you. And I

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1 remember when I was downstairs you're very friendly, and
2 so we just want you to stay in the jury pool with us.

3 [Whereupon, juror number 107 returns to the
4 audience]

5 THE COURT: Juror 107 is removed for cause.

6 THE CLERK OF COURT: Juror 98, Bert Madison.

7 [Whereupon, juror number 98 comes forward]

8 THE CLERK OF COURT: What says the State?

9 MR. ALFARO: Please seat the juror.

10 THE CLERK OF COURT: What says Defendant Gourdine?

11 MR. DAVIS: Seat Mr. Madison.

12 THE CLERK OF COURT: What says Defendant Moses?

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

14 THE COURT: Take your time.

15 MR. KEARSE: Please seat the juror.

16 THE CLERK OF COURT: Seat the juror.

17 [Whereupon, juror number 98 is seated in the jury
18 box as a juror]

19 THE CLERK OF COURT: Juror 122, Dylan Pettry.

20 [Whereupon, juror number 122 comes forward]

21 THE CLERK OF COURT: What says the State?

22 MR. ALFARO: Please strike the juror.

23 THE CLERK OF COURT: Excuse the juror.

24 [Whereupon, juror number 122 returns to the
25 audience]

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1 THE CLERK OF COURT: Juror 124, Leroy Porchia.
2 [Whereupon, juror number 124 comes forward]
3 THE CLERK OF COURT: What says the State?
4 MR. ALFARO: Please seat the juror.
5 THE CLERK OF COURT: What says Defendant Gourdine?
6 MR. DAVIS: Seat Mr. Porchia.
7 THE CLERK OF COURT: What says Defendant Moses?
8 MR. KEARSE: Please seat the juror.
9 THE CLERK OF COURT: Seat the juror.
10 [Whereupon, juror number 124 is seated in the jury
11 box as a juror]
12 THE CLERK OF COURT: Juror 16, Danielle Blume.
13 [Whereupon, juror number 16 comes forward]
14 THE CLERK OF COURT: What says the State?
15 MR. ALFARO: Please seat the juror.
16 THE CLERK OF COURT: What says Defendant --
17 MR. DAVIS: Seat Ms. Blume.
18 THE CLERK OF COURT: What says --
19 THE COURT: Hold on. Hold on.
20 THE CLERK OF COURT: What says Defendant Moses?
21 MR. KEARSE: Please seat the juror.
22 THE COURT: Thank you, Ms. Blume.
23 [Whereupon, juror number 16 is seated in the jury
24 box as a juror]
25 THE CLERK OF COURT: Juror 58, Moses Goodwin, Jr.

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1 [Whereupon, juror number 58 comes forward]

2 THE CLERK OF COURT: What says the State?

3 MR. ALFARO: Please seat the juror.

4 THE CLERK OF COURT: What says Defendant Gourdine?

5 MR. DAVIS: Seat Mr. Goodwin.

6 THE CLERK OF COURT: What says Defendant Moses?

7 MR. KEARSE: Please seat the juror.

8 THE CLERK OF COURT: Seat the juror.

9 [Whereupon, juror number 58 is seated in the jury
10 box as a juror]

11 THE CLERK OF COURT: Juror 136, Claudette Rahymes.

12 JUROR NUMBER 136: Rahymes.

13 THE CLERK OF COURT: Rahymes.

14 [Whereupon, juror number 136 comes forward]

15 THE CLERK OF COURT: What says the State?

16 MR. ALFARO: Please seat the juror.

17 THE CLERK OF COURT: What says Defendant Gourdine?

18 MR. DAVIS: Seat Ms. Rahymes.

19 JUROR NUMBER 136: Rahymes.

20 MR. DAVIS: Rahymes. I'm sorry. Seat Ms. Rahymes.

21 THE CLERK OF COURT: What says Defendant Moses?

22 MR. KEARSE: Please seat the juror.

23 THE COURT: All right. Thank you.

24 THE CLERK OF COURT: Seat the juror.

25 [Whereupon, juror number 136 is seated in the jury

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1 box as a juror]

2 THE CLERK OF COURT: First alternate?

3 THE COURT: Yes.

4 We'll be selecting for the first alternate.

5 Strikes will be two, one, and one.

6 MR. DAVIS: Thank you, Your Honor.

7 THE CLERK OF COURT: Juror 145, William Roten.

8 [Whereupon, juror number 145 comes forward]

9 THE CLERK OF COURT: What says the State?

10 MR. ALFARO: Please seat the juror.

11 THE CLERK OF COURT: What says Defendant Gourdine?

12 MR. DAVIS: Please excuse Mr. Roten.

13 THE CLERK OF COURT: Excuse the juror.

14 [Whereupon, juror number 145 returns to the
15 audience]

16 THE CLERK OF COURT: Juror 138, Todd Ravenell.

17 [Whereupon, juror number 138 comes forward]

18 THE CLERK OF COURT: What says the State?

19 MR. ALFARO: Please seat the juror.

20 THE CLERK OF COURT: Any challenge for cause from
21 Defendant --

22 MR. DAVIS: None, Your Honor.

23 THE CLERK OF COURT: What says Defendant Moses?

24 MR. KEARSE: Please seat the juror.

25 THE CLERK OF COURT: Seat the juror.

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1 [Whereupon, juror number 138 is seated in the jury
2 box as an alternate juror]

3 THE CLERK OF COURT: Second alternate. Juror 125,
4 Pamela Poston.

5 [Whereupon, juror number 125 comes forward]

6 THE CLERK OF COURT: What says the State?

7 MR. ALFARO: Please seat the juror.

8 THE CLERK OF COURT: What says Defendant Gourdine?

9 MR. DAVIS: No challenges.

10 THE CLERK OF COURT: We're on a different --

11 THE COURT: All right. We're on a --

12 MR. DAVIS: All over again?

13 THE COURT: Yes. For each alternate, two, one, and
14 one.

15 MR. DAVIS: Beg the Court's indulgence. I thought
16 I was finished.

17 I'm going to seat -- seat Ms. Poston.

18 THE CLERK OF COURT: What says Defendant Moses?

19 MR. KEARSE: Please excuse the juror.

20 THE CLERK OF COURT: Excuse the juror.

21 [Whereupon, juror number 125 returns to the
22 audience]

23 THE CLERK OF COURT: Juror 141, Carmela Renfro.

24 [Whereupon, juror number 141 comes forward]

25 THE CLERK OF COURT: What says the State?

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1 MR. ALFARO: Please seat the juror.

2 THE CLERK OF COURT: What says --

3 MR. DAVIS: Please excuse Ms. Renfro.

4 THE CLERK OF COURT: Excuse the juror.

5 [Whereupon, juror number 141 returns to the
6 audience]

7 THE CLERK OF COURT: Juror 52, Cynthia Fordham.

8 [Whereupon, juror number 52 comes forward]

9 THE CLERK OF COURT: What says the State?

10 MR. ALFARO: Please excuse the juror.

11 THE CLERK OF COURT: Excuse the juror.

12 [Whereupon, juror number 52 returns to the
13 audience]

14 THE CLERK OF COURT: Juror 73, Emily Hughes.

15 [Whereupon, juror number 73 comes forward]

16 THE CLERK OF COURT: What says the State?

17 MR. ALFARO: Please seat the juror.

18 THE CLERK OF COURT: Any challenge of cause from --

19 MR. DAVIS: None, Your Honor.

20 THE CLERK OF COURT: Any challenge from --

21 MR. KEARSE: None from Mr. Moses.

22 THE CLERK OF COURT: Seat the juror.

23 [Whereupon, juror number 73 is seated in the jury
24 box as an alternate juror]

25 THE COURT: Any motions or matters pertaining to

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1 the jury as selected? From the State?

2 MR. ALFARO: No, Your Honor.

3 MR. DAVIS: Can we approach, Your Honor?

4 THE COURT: You may.

5 [Whereupon, an off-the-record bench conference is
6 held]

7 THE COURT: Any motions or matters pertaining to
8 the jury as selected? From the State?

9 MR. ALFARO: No, Your Honor.

10 THE COURT: From Defendant Gourdine?

11 MR. DAVIS: None, Your Honor.

12 THE COURT: Defendant Moses?

13 MR. KEARSE: None from Mr. Moses, Your Honor.

14 THE COURT: Ladies and gentlemen, you have been
15 selected as the jury to try this case. Please be
16 escorted to your jury room. We'll receive you back in
17 just a few moments.

18 Please stay seated for the jury. Mr. Davis? Mr.
19 Davis, please stay seated for the jury at this time.

20 [Whereupon, the jury exits the courtroom at
21 11:16 a.m.]

22 THE COURT: Mr. Alfaro, just for scheduling for the
23 jury panel?

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

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1 THE COURT: Outside the presence of the jury, any
2 motions or matters pertaining to the selection process?

3 MR. ALFARO: None from the State.

4 THE COURT: Mr. Davis?

5 MR. DAVIS: None, Your Honor.

6 THE COURT: Mr. Kearse?

7 MR. KEARSE: None from Mr. Moses, Your Honor.

8 THE COURT: And I understand that this will be the
9 last trial that we will select a jury for; is that
10 correct? From the State?

11 MR. ALFARO: Yes.

12 THE COURT: All right. Thank you.

13 Ladies and gentlemen, you were not selected to try
14 this case, to be the jurors, but you have completed your
15 service for the week.

16 Ladies and gentlemen, we have completed all of the
17 matters that we will have time to select a jury for for
18 this week, so you have earned your exemption for the
19 next three years.

20 Ladies and gentlemen, thank you for your service to
21 Berkeley County and for your contribution to our justice
22 system. You are free to go. Have a wonderful
23 afternoon.

24 [Whereupon, the jury panel exits the courtroom at
25 11:18 a.m.]

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THE COURT: Counsel, let me see you just for scheduling.

Mr. Davis? Mr. Davis? I just need y'all for scheduling.

[Whereupon, an off-the-record bench conference is held]

THE COURT: Ms. Washington has been selected as the foreperson. They have been given notepads. Let's bring in the jury.

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MOTION FOR SEQUESTRATION

1
2 MR. ALFARO: Your Honor --

3 THE COURT: Yes?

4 MR. ALFARO: -- before the jury comes in, the
5 defense had a motion for sequestration. The State is
6 agreeable to that, with the exception of --

7 THE COURT: Hold on one second.

8 MR. ALFARO: Agreeable, with the exception of the
9 victims. We believe we're entitled by statute under the
10 victims' rights --

11 THE COURT: No objection to the victims, Mr. Davis?

12 MR. DAVIS: The victims about enumerated rights,
13 Your Honor. I will concede in that capacity, Your Honor,
14 --

15 THE COURT: Mr. Kearse?

16 MR. DAVIS: -- with the two parties in the State of
17 South Carolina verses Jason Gourdine.

18 MR. KEARSE: Your Honor, I would object. But as
19 the law says, it overrides my objection and certainly --
20 I think that the victims are the material witness -- the
21 alleged victims are material witnesses in this case.

22 As you know, I would not want a substantial
23 prejudice to occur to my client by them being allowed
24 here to listen to other people testify and to then use
25 what they have heard to bring their testimony in line

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1 with what they heard from the stand.

2 I think everyone's testimony should be independent
3 from everyone else, to fetter out the truth in this
4 case, which is important.

5 THE COURT: Under Rule 615 of the Rules of
6 Evidence, I'm going to allow the sequestration of
7 witnesses with the exception of the victims and the case
8 agent which is allowed by case law and the constitution
9 -- and the victims have the right to be here.

10 Note your exception, Mr. Kearse.

11 MR. KEARSE: Thank you, Your Honor.

12 [Off the record momentarily]

13 THE BAILIFF: The jury is coming in.

14 THE COURT: Please rise for the jury.

15 [Whereupon, the jury enters the courtroom at
16 11:42 a.m.]

17 THE COURT: If my jurors will remain standing.
18 Everyone else may have a seat.

19 Madam Clerk?

20 THE CLERK OF COURT: Ladies and gentlemen of the
21 jury, please raise your right hand to be sworn.

22 [Whereupon, the jury is duly sworn by the clerk of
23 court]

24 THE CLERK OF COURT: Thank you. You may be seated.

25 THE COURT: Thank you.

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1 Was there any juror who could not take that oath?
2 If so, please stand.

3 [Whereupon, there is no response]

4 THE COURT: Thank you.

5 All fourteen jurors have indicated they were able
6 to take the oath.

7 Ms. Washington, you have been selected as the
8 foreperson in this case, which simply means that you're
9 the jury spokesperson here in court.

10 So if any of you need any additional breaks or have
11 any questions or concerns, please alert your foreperson.
12 There will always be a bailiff for you to indicate that
13 you are having some issues. They will attempt to handle
14 the matter as quickly as they can and, if my assistance
15 is needed, they will alert me.

16 As such, that is your assigned seat throughout this
17 case. You will also be responsible for writing the
18 verdict, but I will give you instructions when I
19 instruct you on the law applicable to this case at the
20 close of the trial and after you have heard closing
21 arguments.

22 To my two alternates, those are your assigned
23 seats. You can alternate the alternate seats, but the
24 two of you need to remain in those seats.

25 The rest of you, there are no other assigned seats,

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1 with the exception of the three that I just pointed out,
2 so come in and take your seats.

3 You may have noticed when you came in this time
4 that the attorneys involved and the parties involved and
5 the members of the audience were standing. This is out
6 of respect for your new position as judges of the facts.
7 So please come in, take your seats, because everyone
8 will remain standing until all fourteen of you are
9 seated.

10 I have also provided you notepads, which means that
11 you may take notes throughout the progress of this
12 trial. I caution jurors some of us are much better note
13 takers than others. One juror's notes are no more
14 correct or accurate than another juror's notes. Those
15 are for your own personal use. We will lock them up
16 during our lunch break and at the close of business for
17 the day and give those back to you at the appropriate
18 time. We will not be reading those.

19 There will be no access to those notes until you
20 are given those notepads back. You will have those in
21 your jury deliberation room when you retire to consider
22 your verdict.

23 Ladies and gentlemen, if you need to hear any
24 testimony played back during your deliberations, we will
25 be able to play that back via audio recording, so don't

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1 think that you need to take down word-for-word what's
2 happening.

3 The exhibits that are entered into evidence in this
4 case will go back with you during your deliberations so
5 if there's a piece of evidence, an exhibit that you
6 cannot see or did not get enough time to look at, that
7 will go back with you.

8 So with all those caveats, those warnings, you will
9 be allowed to take notes.

10 Ladies and gentlemen, the case that we are about to
11 try is the case of the State versus Jason Gourdine and
12 Steven Moses, defendants. As you heard during the jury-
13 selection process, there are two defendants in this
14 case, and they are each charged in separate indictments.
15 You will be asked to consider each charge separately and
16 you must decide whether each defendant is guilty or not
17 guilty of each charge alleged by each indictment.

18 It is your duty to give such consideration to each
19 individual defendant on each separate charge alleged in
20 the indictment. You must consider separately the
21 evidence and the law for each defendant for each charge.

22 And, again, Madam Foreperson, you will be asked to
23 write a separate verdict on each indictment for each
24 defendant.

25 Before we begin this trial, I would like to take

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1 the opportunity to explain to you what is happening
2 before you. Most people don't have the opportunity to
3 come to court as you are doing now and most people get
4 their idea of what happens in a courtroom from watching
5 television or movies or reading books, and those cases
6 tend to be full of intense excitement and riveting drama
7 and very fast-paced, the opposite of what you will find
8 in this courtroom.

9 Please remember, this trial is not for your
10 entertainment. It is a fundamental part of our
11 democracy. It is a search for the truth in an effort to
12 make sure that justice is done between the parties
13 before the Court. Searching for the truth and making
14 sure that justice is done, is often slow, repetitive,
15 and deliberate, the opposite of what you may have seen
16 on television or in movies or read in books.

17 This courtroom is a place of honor. It is
18 dedicated to the protection and preservation of
19 citizens' rights through what many have called the
20 greatest justice system ever created. The attorneys
21 appearing before you are advocates for the parties they
22 represent but first and foremost, they are officers of
23 this Court. They are sworn to uphold the integrity and
24 fairness of our judicial system. You should expect them
25 to be professional, competent, and ethical in the

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1 representations of their clients' interests.

2 Remember, you just took an oath, and you are also
3 expected to be professional, reasonable, and ethical.
4 Thank you again for accepting this most important
5 responsibility of jury service and for your contribution
6 today to our justice system.

7 Each defendant is charged with an indictment filed
8 in this court with the crime of attempted murder, three
9 counts, and conspiracy. I will explain the elements of
10 each of those indictments to you at a later time. As I
11 indicated to you, the indictment is simply the charge by
12 which this case is brought into court. It is not in any
13 sense evidence of the allegations it contains. Each
14 defendant has pled not guilty to each indictment. The
15 State has the burden of proving each of the elements of
16 each indictment beyond a reasonable doubt. It is your
17 duty, ladies and gentlemen, to determine whether the
18 State has met its burden.

19 Your purpose as jurors is to find and determine the
20 facts. You are the sole judges of the facts in this
21 case. If at any time I make any comment regarding the
22 facts, you must disregard it. It is important that you
23 perform your duty of determining the facts diligently
24 and conscientiously because ordinarily there is no way
25 to correct an erroneous determination of the facts by a

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1 jury.

2 On the other hand, and with equal emphasis, the
3 same law that makes you the judges of the facts makes me
4 the judge of the law. The law as given by this Court is
5 the only law that you may consider. You must accept it
6 and follow it, even though you may disagree with it. I
7 cannot tell you what I think the facts are and you
8 cannot disagree with me about what the law is or what
9 the law ought to be. Your job is to take the law as I
10 give it to you, apply the facts as you find them from
11 the testimony you hear from the witness stand, as well
12 as any exhibits that will be admitted into evidence, and
13 after doing that you will render your verdict, a true
14 and just verdict, under the solemn oath that you just
15 took.

16 Until I advise you to begin your deliberations, you
17 must not discuss this case with anyone. That includes
18 your fellow jurors but it also includes your friends,
19 your family members, or anyone else. Most importantly,
20 not only does it include face-to-face discussions but it
21 also includes any postings on any facebook or any other
22 social internet media sites, any emailing, blogging,
23 texting, instagraming, anything of that nature. Simply
24 put, you may not discuss this with anyone, in any
25 format, until I tell you otherwise.

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1 You may not do any independent investigation
2 regarding this case, and you may not go near the scene
3 where the alleged events are alleged to have taken
4 place.

5 You may not read, watch, listen to any news
6 accounts regarding this case should there be any.

7 You must decide this case based solely on the
8 evidence presented here in this courtroom. That means
9 that during the trial, again, you may not conduct any
10 research or watch any news accounts regarding this
11 matter, or discuss this case with anyone.

12 If you become aware of another juror's violations,
13 you must report that to me immediately. It is important
14 that you keep an open mind and not decide any issue in
15 this case until all of the evidence has been presented,
16 the parties have made their closing arguments, and I
17 have instructed you on the law applicable to this case.
18 It is your solemn responsibility to determine the guilt
19 or innocence of the defendants and your verdict must be
20 based solely upon the evidence presented here and on the
21 law as I instruct you during and at the close of the
22 trial.

23 In just a moment, the solicitor is going to make
24 what is called an opening statement in which the
25 solicitor will explain to you the issues in this case,

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1 or at least what the solicitor believes the issues will
2 be. The attorneys for each defendant may also make an
3 opening statement at this time, although he is not
4 required to do so at that time.

5 The evidence in this case will be presented to you
6 by the testimony of sworn witnesses from the witness
7 stand, as well as the exhibits that may be introduced
8 into evidence. What the attorneys tell you in opening
9 statements, as well as in the closing arguments, is not
10 evidence in this case. It is going to be their
11 contention as to what the evidence will show you.

12 From time to time, an attorney may state an
13 objection or ask to approach the bench, or I might find
14 it necessary to excuse you from the courtroom for a
15 short while. If I do have the attorneys approach the
16 bench, please do not try to read our lips or overhear
17 us. Please do not think I'm trying to hide anything
18 from you.

19 The reason I do this is, because as I indicated to
20 you, the law does not permit me to have an opinion about
21 the facts in this case. But sometimes it is necessary
22 for me to state a comment or make a comment about the
23 facts in this case in order to issue a ruling on the
24 law. So I may excuse you so that in no way anything
25 that I say or do during that time, or throughout the

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1 progress of this trial, that I influence you as to what
2 the facts are.

3 Ladies and gentlemen, in determining what the true
4 facts are in this case, you must decide whether or not
5 the testimony you hear is believable. It is my
6 responsibility to rule as a matter of law whether
7 certain testimony is admitted. But once the testimony
8 is admitted, whether or not you believe it is solely for
9 you to determine.

10 In deciding whether to believe a witness, you do
11 have the right to consider the interest of a witness,
12 the bias of the witness, the prejudice of a witness, the
13 opportunity for that witness to have seen the matters
14 about which the witness testified, as well as the way
15 the witness acts on the witness stand. You have a right
16 to consider anything in the record that will help you
17 evaluate the testimony of the witnesses. That means
18 it's your duty to pay close attention.

19 Please do not let your thoughts wander so at the
20 end of the testimony, after you have heard closing
21 arguments on behalf of counsel and I have instructed you
22 on the law applicable to this case, you will be in a
23 position to apply the facts to that -- to this case, to
24 the law that I give it, and render your true and just
25 verdict.

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1 Ladies and gentlemen, please give your strict
2 attention.

3 Mr. Alfaro?

4 MR. ALFARO: Thank you, Your Honor.

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Opening Statement by Mr. Alfaro
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1 problems with the bartenders, accusing the bartenders of
2 not serving them for reasons other than last call had
3 already been called. And they didn't just leave after
4 they started talking to the bartender and making all
5 those accusations.

6 As they're going out of the bar, Enrique, James'
7 friend, confronts them on what they said and how they
8 were acting. And at that point, Enrique and Moses
9 exchange words, they're posturing back and forth,
10 Enrique takes a swing and misses, they're separated, and
11 the defendants were told to get out of the bar and they
12 leave.

13 Now, what's important, what you'll hear in the
14 testimony, is after the defendants leave the bar the
15 first time, the victims didn't run out after them. They
16 didn't chase them down. They didn't continue that
17 earlier problem. They stayed inside and they kept
18 hanging out and they kept drinking. They kept talking
19 to each other, because they had become friends that
20 night.

21 Ten minutes after the defendants leave the victims
22 walk outside, because it's closing time, and they're
23 standing outside. They're talking. They're still
24 having a good time. They had forgotten about what
25 happened inside with Enrique and the defendants.

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1 They're just talking, getting ready to leave.

2 And then the defendants, they come back. Gourdine
3 comes around in the car. The victims' car is parked in
4 the parking lot facing the bar. Gourdine comes around,
5 parks his car behind the victims' car, blocking them in.
6 And at the same time, you see Moses coming around,
7 walking around the van, confronting the victims. Not
8 just talking. Looks for Enrique, sees him, points him
9 out for Gourdine, and backs away to the car.

10 What he did, working together, they lured him back
11 to where Gourdine's car was, into the ambush zone, into
12 the kill zone. Because at that time, Gourdine gets out
13 of the car with a shotgun, a .12 gauge shotgun, and
14 starts blasting.

15 You're going to hear from James how he got hit in
16 his arm and injuries he suffered that night and how he
17 still suffers from that.

18 You're going to hear from Stacy, who's going to
19 tell you how she was running back into the bar to get
20 away from the ambush and she got shot in the back of the
21 head with a .12 gauge shotgun. And you're going to hear
22 from her and her doctors as to how she still has pellets
23 from that shooting in the back of her head, what these
24 two did to her that night.

25 And you're going to hear from David Bohannan, her

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1 husband, and he's going to tell you, and you're going to
2 hear, how after the first two people were shot, he tried
3 to slam the car door shut on Gourdine to stop the
4 shooting and at point-blank range, as he fell down,
5 Gourdine took the gun and shot him. You're going to
6 hear the injuries he suffered and the injuries he still
7 suffers today.

8 And you're going to hear that through testimony
9 from the witnesses and testimony from the victims. But
10 you're also going to get to see it and you're going to
11 get to hear it, because the Nowhere Bar and Grill had
12 audio and video surveillance inside and out.

13 And there's a saying that pictures are worth a
14 thousand words. Well, in this case, that video is worth
15 a million because you can take pictures out, and little
16 bits and pieces of the video, and tell whatever story
17 you want to tell but when you watch the whole thing,
18 it's clear these two leave together -- those two came
19 together, those two got kicked out of the bar together,
20 those two left together.

21 Ten minutes later on the video you see them -- you
22 see them leave and then you see them come back, park
23 along the side, and then you see the victims walk
24 outside and you see the victims hanging around, and then
25 you see what -- Gourdine and Moses coming back,

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1 together, to carry out their plan to get back at
2 Enrique. Not because anybody got hurt. There were
3 no -- there were no injuries.

4 Egos might have got bruised. Might have been a
5 little bit angry that they got embarrassed in front of
6 other people. But they came back with a shotgun and
7 started blasting three people at point-blank range.
8 That's what happened. That's what the video shows.

9 At the end of this case, the judge is going to
10 instruct you on what attempted murder is and the judge
11 is going to instruct you on what conspiracy is. It's
12 very simple. This is attempted murder. This is not
13 anything else. When you leave, wait, come back, wait,
14 and then shoot people with a .12 gauge shotgun because
15 you got your feelings hurt? You don't shoot people with
16 a shotgun unless you're trying to kill them.

17 This is not warning shots. This is not scaring
18 people. This is trying to kill people. They tried to
19 kill three people that night. And you're going to hear
20 the testimony and you're going to watch that video and
21 at the end of this trial, you are going to be firmly
22 convinced beyond any reasonable doubt that they are
23 guilty of attempted murder and conspiring together to
24 commit those attempted murders.

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

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THE COURT: Hold on one second.

[Off the record momentarily]

THE COURT: Mr. Davis?

MR. DAVIS: Thank you, Your Honor.

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OPENING STATEMENT

MR. DAVIS: Madam Forelady and other members of the jury, thank God that we have a system in place where an individual is presumed innocent until they come before you, the trier of the facts.

I have been practicing law now for about thirty-four years. In fact, I sat at that same table that Mr. Alfaro is sitting at. I did that for ten years. I was a prosecutor for ten years. As prosecutors, we can't make the facts what we want it to be. We can speak boldly about what we think the facts are and what it suggests, but at the end of the day the facts in this case is going to be determined from the witness chair, from this fact-finding chair, I like to enumerate.

Sometimes in life it's very difficult to make sense of events and things that occur. Sometimes in life we try to put a handle on things that have happened and what has occurred. I want to leave a thought in your mind I want you to keep through this whole process in this case.

I represent a young man this morning named Jason Gourdine. About three years ago, he and a classmate were in the climax of a special event. They had ventured back to their twenty-year class reunion from Goose Creek High School. A very, very special night,

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1 July 28th, 2013. Now we are some three years removed
2 from that.

3 But July 28th, 2013; let's set the scene. We set
4 the scene of events that takes place about quarter to
5 2:00 or maybe two o'clock in the morning a.m. And the
6 solicitor told you correct. People were drinking and
7 having a good time, apparently.

8 I represent a young man who had enjoyed the
9 afternoon with his classmate and friends and are on the
10 way home. Saw the bright lights of the Nowhere Bar and
11 decided they would stop there. Did not realize at that
12 point that they would be violated inside that Nowhere
13 Bar by individuals who I would like to think that, if
14 cooler heads were being displayed that night -- we
15 should not and could not and probably wouldn't be here
16 if cooler heads would have prevailed. But drinking
17 alcohol or drugs and ego were in play.

18 So when this young man, Jason Gourdine, who I
19 represent --

20 Stand up, Jason.

21 [Whereupon, Mr. Gourdine complies]

22 MR. DAVIS: He's a father. He has a three-year-old
23 little daughter named R. Got two sons, fifteen and
24 fourteen respectively. They are junior scholars, go to
25 Stratford High School. Jason's mother, father in the

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1 courtroom.

2 You can sit down, Jason.

3 [Whereupon, Mr. Gourdine complies]

4 MR. DAVIS: All of these people are impacted in a
5 relationship that what transpired that night on July the
6 28th, 2013. There's no question that the Bohannans and
7 Mr. Bryant himself were injured that night. But the
8 facts will reveal that July the 28th, the actions and
9 the acts of all of the participants were void of cooler
10 heads, in a sense.

11 I like to think of it this way. I've been doing
12 this somewhat of a period of time. I've come to the
13 conclusion that sometimes in life we are subjected to
14 our hearts. There are two type of hearts that seem to
15 be floating around in society most of the time: people
16 with hearts of war and peace. People with hearts of
17 peace. Heart of war is just about me; everybody else is
18 just viewed as an object and I deserve better and if you
19 act a certain way, then I'm justified in whatever I do
20 to you, in a sense. That's a heart of war. It's a
21 heart of war of aggression.

22 And I, too, want to join with the solicitor that
23 when you view the evidence from this fact-finding chair,
24 you, too, will be convinced that on July the 20th, 2013,
25 there were some heart of war that was in display.

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1 You will hear reference to a young lady by the name
2 of Ali. I think isn't that Mohammed Ali's daughter?
3 You will see reference of people flexing their muscle.
4 You will see people who are being very adamant about
5 having this disposition of this warring aspect in this
6 nature, which cause and bring about why you are here
7 today.

8 This is no question a very, very serious day for
9 Mr. Jason Gourdine. He's forty-one years of age. But I
10 want to share with you that when you have reviewed the
11 evidence in this case, unequivocally you will come to
12 the conclusion that there is no, and there were no,
13 intention of murder whatsoever on July the 28, 2013. To
14 the contrary. You will come to the conclusion that
15 there were no malice, nor forethought, nor wicked heart.

16 There's been a heart of war in reference to all the
17 participants that agree that they didn't appreciate
18 having a heart of peace where they would have realized
19 that their action or inaction affected the other person,
20 wherein that if you insult me for no reason, violate my
21 person for no reason, having no consideration for your
22 action as it impacts me.

23 I will tell you that we dispute this being some
24 separation of events. This video will depict to you
25 that everything that happened in this matter, from what

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1 I standpoint, is 720 seconds. Wow. Seven minutes.
2 Seven minutes. In seven minutes we find ourselves
3 confronted with being charged with the very serious
4 offense of attempted murder.

5 This is not attempted murder. The judge will share
6 with you that in our system, you have a right to defend
7 yourself. If someone violates you, if someone comes
8 towards you in an aggressive manner not once, not twice,
9 but more than three times, that more than one
10 individual, two individuals, three individuals come
11 toward you in an aggressive manner and all -- have
12 already displayed this heart of war and followed that
13 fact, then you, the individual, the law will say that
14 you do not have to wait until that person gets the jump
15 on you any further. You have a right to defend yourself
16 and you have a right to defend others.

17 So my friends, ladies and gentlemen of the jury, I
18 thank each one of you for being judges during the course
19 of this trial. I've carried this burden for some period
20 of time. I would be relieved to present you with the
21 facts where you can render a decision in this matter.

22 But I am firmly of the belief that this case is no
23 indicia of attempted murder. The solicitor may want to
24 venture there, but I share with you that I trust this
25 seat. This seat is working pretty good for over thirty-

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1 four years in my existence. Pretty good. From here,
2 you will have an opportunity, under our system, where
3 cross-examination will be presented.

4 The solicitor have never even used the word bird-
5 shots to you. I'm going to use it for you because they
6 failed to say anything about bird-shots. Instead,
7 they're talking about a vicious shotgun in a manner as
8 to kill someone. I promise you when the evidence is
9 revealed in this matter, you will learn that the
10 individuals involved had what I call a Glasgow coma
11 score. For people who are in the medical field, a score
12 of fifteen means you're pretty good. You come in and
13 you go right back home. Both of the victims in these
14 case had a coma score of fifteen. When you're in
15 trouble is when you've got a coma score of about three,
16 or below eight. That's when they take you in the
17 intensive care unit.

18 Nobody in this situation was in that predicament at
19 all. We're talking about some bird-shot to keep some
20 people off you from causing very serious injury to you.
21 But I don't want you to just take my word. This is
22 where it's going to come from.

23 The system is set up in such a way that the State
24 goes first. The State goes first, and we just get an
25 opportunity to cross-examine from what the State puts

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1 up.

2 All Mr. Jason Gourdine is asking in this matter is
3 that you be true to your oath, which is, my friend, you
4 have no friends to reward, no enemies to punish.

5 And if you believe that you cannot hear all the
6 evidence, direct and cross-examination, this is your
7 time to raise your hand. We have two alternates that
8 can replace you. If you believe that this case now,
9 based on what you've heard in opening statement, is one
10 that you have already formed an opinion, then this is
11 your time to remove yourself from this case.

12 Because I'm convinced that when all the evidence is
13 in, you will not conclude that this is a case that give
14 rise to attempted murder. Far from the truth. You will
15 be confronted with a situation where when events and
16 acts, where people were bent with hearts of war, and
17 things have happened afterwards, you will meet James
18 Bryant, all six foot eight, 340 pounds of him. You will
19 meet these other individuals. When you meet them, you
20 will formulate your own opinion as to what the truth is
21 in this matter.

22 But I am convinced that at the conclusion of the
23 evidence, my friend, you will determine that this case
24 is not attempted murder. The solicitor may want it to
25 be, but it will not be. Thank you very much.

State vs. Moses and Gourdine
Opening Statement by Mr. Davis
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THE COURT: Mr. Kearsse?

MR. KEARSE: May it please the Court.

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State vs. Moses and Gourdine
Opening Statement by Mr. Kearse
March 15, 2016

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OPENING STATEMENT

MR. KEARSE: One thousand and one, one thousand and two, one thousand and three was the time that it took to walk from that podium over, here is the time it took for the material facts of this case, the very material facts that go to the heart of the charges against these two young men, to take place July 28th, 2013. That's not a lot of time. Not a lot of time indeed, but it's a very important time, a very important three seconds, as you will come to find out.

There are three lawyers involved, four lawyers involved, in this case so you're going -- may hear a lot of lawyers talking. I ask that you be patient with us. You may hear some of the same things from us. You may not want to hear some of the same things, but we all have a job to do. So please be patient. We're going to get you to the end as fast as possible. But most importantly, we all have an important job, this is an important case, and see everybody involved.

Steven Moses, again, was with his friend Mr. Gourdine on July 28th, as you've heard, and they were stopping at a place in Goose Creek you may or may not know about called the Nowhere Bar in Goose Creek. And it was about 1:45 or so on the morning of July 28th when they arrived there, more or less. And they went there

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1 to buy what people go to a bar to buy, and that is a
2 drink.

3 And so they go in to buy a drink. No problem.
4 They're potential patrons. And as they're in there,
5 they come in contact with two women who are working at
6 the bar at that time -- and you're going to hear them, I
7 presume, testify, Ms. Taylor and Ms. Nava, and they are
8 bartenders at the Nowhere Bar -- and asked to be served
9 a drink. And a conversation takes place. And at some
10 point they're told they cannot be served.

11 That was mentioned by the prosecutor in this case.
12 Well, the facts kind of veer between what Mr. Moses is
13 going to present to you as to what happened and what you
14 were told by the prosecution as to what happened.

15 Well, they were told they couldn't be served. And
16 they weren't happy about it. And so it comes out that
17 maybe y'all aren't serving us because we're black --
18 that's the dispute -- and it causes a problem at the
19 bar. And there is a verbal dispute at the bar. Verbal.
20 There is no violence on behalf of Mr. Moses. There are
21 no threats on behalf of Mr. Moses. During that
22 discussion, he is told to leave and he commences to
23 walk out of the bar, the building. And as he's walking
24 out of the building, and as you will hear in his
25 testimony -- and these facts are not going to change --

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1 he is being, again, engaged verbally by the bar staff
2 while he's going, in an argument, in a fashion, and he's
3 leaving along with Mr. Gourdine.

4 And at some point the regulars of the bar, as you
5 will come to find out when these facts come to you,
6 become involved in this verbal exchange. And so one of
7 the regulars, Enrique Maron, Jr., who, as the prosecutor
8 mentioned, is a friend of Mr. Bryant -- and you will
9 come to find out that Mr. Bryant, James Bryant, Jr., was
10 at that bar. Mr. Maron takes it upon himself -- he is
11 no employee of the Nowhere Bar. He is not the bouncer
12 of the bar. He is just some guy who knows the staff and
13 Mr. Bryant and the other customers who are not Mr.
14 Gourdine and Mr. Moses. He takes it upon himself to
15 become an enforcer.

16 And so he proceeds to follow Mr. Moses out of the
17 bar with the implied consent, and almost with the
18 authority given and empowered to him by the bar staff.
19 And he goes and he confronts Mr. Moses. He goes. And
20 when I say he, Enrique Maron goes and confronts Mr.
21 Moses right there in the bar. And those are the facts.
22 And in confronting Mr. Moses, he decides, and the bar
23 does not attempt to stop him in any way, that he is
24 going to assault Mr. Moses in the bar again, as if he is
25 the staff and as if he is the staff with a right to do

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1 so. And so he throws a punch. And of course the
2 regulars and the staff are all thrilled and empowered
3 that this is taking place.

4 And as the facts will show, Mr. Bryant, all six
5 four, 300 pounds of him, decides he also is going to
6 inject himself into this situation. So he immediately,
7 and almost to the point where it's simultaneous, follows
8 Mr. Maron to confront Mr. Moses and Mr. Gourdine as they
9 are leaving the bar and as they are pretty close to the
10 door. They might be six feet, at the most, from the
11 door.

12 And he takes it upon himself to assault Mr.
13 Gourdine and Mr. Moses, who are substantially smaller in
14 statute than he is, as the facts will show you. And as
15 the facts will show you, all of the regulars converge on
16 Mr. Moses and Mr. Gourdine with the authority, complicit
17 authority, by the staff who's there. They do nothing to
18 stop these people. And, in fact, they embrace that
19 these folks have rallied to their defense because
20 there's no way they're not going to serve somebody
21 because they're black.

22 Now, that's not the issue in this case, whether
23 they serve somebody that are black. This is not a case
24 about race, as you will find out. This is a case about
25 folks minding their own business and assaulting people

State vs. Moses and Gourdine
Opening Statement by Mr. Kearse
March 15, 2016

1 to the point where these people feel the need to have to
2 defend themselves.

3 Well, this thing spills over into the parking lot.
4 Okay? Now, as you will hear in the testimony, see from
5 the stand, learn from the evidence, Mr. Moses again
6 confronts. And when I say confront, that does not mean
7 in a violent fashion, as the facts will show you. He
8 confronts to inquire as to Mr. Maron in the parking lot
9 and during this confrontation, one thousand one, one
10 thousand two, one thousand three, this situation occurs.

11 The facts will show you that Mr. Bryant, Mr. Maron,
12 Mr. Bohannon, once they saw Mr. Moses, proceeded to
13 converge on him. You will hear their testimony and
14 their testimony will show that they see absolutely no
15 responsibility at all in this event, how they could have
16 created it, how they could have contributed to it, what
17 they contributed to it, how they put themselves in this
18 situation, created a mind set, as Mr. Davis says, a
19 warring heart.

20 Mr. Moses, because of this incident, sits at a
21 table where he is today being called a defendant. That
22 means nothing. That's just the posture he holds in this
23 case. It doesn't mean he's a bad guy. It doesn't mean
24 he's guilty. It just is the posture, just like calling
25 someone a prosecutor. It's just a posture. That's his

State vs. Moses and Gourdine
Opening Statement by Mr. Kearse
March 15, 2016

1 position that he holds.

2 You have heard Mr. Bryant, Mr. Bohannon, Ms.
3 Bohannon, referred to as victims in this case. It
4 doesn't mean they are actual victims. It's just the
5 posture that they hold in this case, that in this case
6 the State has brought this case on their behalf and
7 considers them as the injured parties. Doesn't mean
8 that they are. That's just how we refer it to in this
9 case.

10 So do not take these particular names and presume
11 what they mean or that they have created what are the
12 facts. As Mr. Davis says, the facts will come from this
13 witness chair. You, today, are the determiners of the
14 facts. And you will hear that. You're the judge of the
15 facts. You determine what happens in this case. You
16 determine.

17 And I told you to what was said. It's been
18 admitted Mr. Maron is friends with Mr. Bryant. It's
19 been admitted Mr. Maron took a swing at Mr. Moses as he
20 was leaving the bar. The prosecutor said that. I
21 didn't. I'm just repeating it. And the word that was
22 used was ambushed, they were ambushed, trapped.

23 Well, you will find out there was no ambush. They
24 were drunk. They were out there flexing their beer
25 muscles. They were grown folks, as the evidence will

State vs. Moses and Gourdine
Opening Statement by Mr. Kearse
March 15, 2016

1 show, acting like children in that parking lot July
2 28th, 2013, and in that bar for seven minutes prior to
3 what happened in the parking lot.

4 I appreciate your service, like Mr. Davis. We
5 thank you. We understand this is not a very easy job
6 for people who sit and volunteer to do. I know that you
7 will be attentive in this case and I appreciate that,
8 also.

9 And I, too, join in and believe that at the
10 conclusion of this case, you will see that these two
11 gentlemen are not guilty, beyond a reasonable doubt, of
12 conspiring to attempt to murder anyone at the Nowhere
13 Bar on July 28th, 2013.

14 It was a bar fight. It was a bar fight. There was
15 no conspiracy. They did not know these people at all
16 and had no reason, when they went to that bar on that
17 early morning, to do anything other than get themselves
18 a drink. Thank you.

19 THE COURT: Call your first witness.

20 MR. ALFARO: The State calls Scott Greene.

21 [Whereupon, Mr. Greene comes forward]

22 THE CLERK OF COURT: Place your left hand on the
23 Bible. Raise your right.

24 [Whereupon, Mr. Greene is duly sworn by the clerk
25 of court as follows: do you solemnly swear or affirm

State vs. Moses and Gourdine
Opening Statement by Mr. Kearse
March 15, 2016

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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: Thank you. If you'll have a seat.

[Whereupon, Mr. Greene 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 Edward Scott Greene. The last name is spelled G-R-E-E-N-E.

THE COURT: Mr. Alfaro, your witness.

MR. ALFARO: Thank you, Your Honor.

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Scott Greene
Direct Examination by Mr. Alfaro
March 15, 2016

1 SCOTT GREENE,

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

4 DIRECT EXAMINATION

5 BY MR. ALFARO:

6 Q. Mr. Greene, could you tell the jury where you work?

7 A. I work for Summerville Police Department now.

8 Q. And how long have you been with Summerville?

9 A. Since September.

10 Q. And did you previously work for the Berkeley County
11 Sheriff's Office?

12 A. Yes, sir, I did.

13 Q. How long were you with them?

14 A. I was there approximately, between my reserve time
15 and -- it was approximately ten years.

16 Q. And were you -- what capacity did you work for the
17 sheriff's office? What was your job?

18 A. I was a patrol deputy.

19 Q. And were you working in that capacity on the
20 morning of July 28th, 2013?

21 A. I was.

22 Q. And that morning did you have the opportunity to
23 respond to the Nowhere Bar and Grill, on Henry E. Brown
24 Boulevard in Goose Creek, at approximately 2:00 a.m.?

25 A. Yes, sir.

Scott Greene
Direct Examination by Mr. Alfaro
March 15, 2016

1 Q. And what county is that located in?

2 A. That's located in Berkeley County.

3 Q. And can you describe for the jury what type of call
4 you were dispatched to?

5 A. I was dispatched to a call that was -- I believe it
6 was listed as a shooting had occurred.

7 Q. And when you arrived at the scene, were the victims
8 still at the scene?

9 A. Yes.

10 Q. And did you see -- did you observe them or their
11 injuries?

12 A. Yes.

13 Q. And do you recall what you saw when you got there?

14 A. When I walked -- when I come in the bar, I believe
15 there were -- they had some victims laying on the ground.

16 And until EMS got there, I guess patrons of the bar
17 were trying to help tend to them.

18 Q. And was that inside the bar or outside?

19 A. Inside the bar.

20 Q. And if you recall, did you actually see any of the
21 injuries? Any visible injuries?

22 A. Yes.

23 I saw -- I believe I saw the injury to the
24 gentleman who was shot through the arm.

25 Q. Was he a black male, a white male?

Scott Greene
Direct Examination by Mr. Alfaro
March 15, 2016

1 A. Black male.

2 Q. And was he receiving any treatment when you were
3 there?

4 A. Someone had a tourniquet on his arm, had a belt
5 around his arm.

6 Q. Did you observe any injuries to the other victims?

7 A. I think -- yes.

8 I seen I think the white female. I believe she had
9 shots I think to the back of her head, I believe it was.

10 Q. Had EMS gotten there when you arrived?

11 A. No, sir. It took them -- they arrived after.

12 Q. Did you personally perform any first aid to any of
13 the victims?

14 A. No, sir.

15 Q. And what did you do at the crime scene?

16 A. Pretty much made sure everything was clear.
17 Cleared the scene for EMS to come in, and then we roped it off
18 with crime scene tape.

19 Q. And were you still at the scene when EMS arrived?

20 A. Yes, sir.

21 MR. ALFARO: Thank you. Please answer any
22 questions the defense has.

23 THE WITNESS: Thank you.

24 THE COURT: Mr. Davis?

25 MR. DAVIS: Just briefly, Your Honor.

Scott Greene
Cross-Examination by Mr. Davis
March 15, 2016

CROSS-EXAMINATION

1
2 BY MR. DAVIS:

3 Q. Officer Greene, you're no longer with the Berkeley
4 County Sheriff's Department?

5 A. Yes -- no, sir, I'm not.

6 Q. And how long had you been with the Berkeley County
7 Sheriff's Department at this time?

8 A. Approximately ten years --

9 Q. At that time --

10 A. -- counting my reserve time. Yes. About ten
11 years.

12 Q. And so when you arrived, you don't know what
13 happened?

14 A. Other than that the call come out that someone was
15 shot.

16 Q. But you didn't observe anything?

17 A. No, I didn't observe -- I didn't observe anything
18 happening.

19 Q. Yeah.

20 Was anybody being provided CPR when you got
21 there?

22 A. No, sir.

23 Q. Okay.

24 A. Not that -- no, sir, I don't think so.

25 Q. You didn't observe any CPR --

Scott Greene
Cross-Examination by Mr. Davis
March 15, 2016

1 A. No.

2 Q. -- being done?

3 Okay. Did you determine whether there were some
4 bird-shots that had been shot with? Or do you know anything
5 about that?

6 A. No, sir.

7 Q. Okay.

8 A. I just knew that someone had been shot.

9 Q. Yeah. But that's about it, what you know about it?

10 A. Pretty much.

11 Q. Could you look at these victims and tell -- or
12 determine whether they had been drinking or highly intoxicated
13 or not?

14 A. No, sir.

15 Q. You didn't get close enough to them?

16 A. Well, I asked a few basic questions, who they were,
17 if they could tell me what happened.

18 But when you're in a bar, it smells like cigarettes
19 and you could smell -- you know, obviously beer had been
20 spilled, whatnot. I didn't --

21 Q. -- couldn't tell with these people?

22 A. No, I couldn't tell.

23 MR. DAVIS: No further questions.

24 THE COURT: Mr. Kearse?

25 MR. KEARSE: May it please this Court.

Scott Greene
Cross-Examination by Mr. Kearse
March 15, 2016

CROSS-EXAMINATION

1
2 BY MR. KEARSE:

3 Q. Mr. Greene, you said you got there before EMS?

4 A. Yes, sir.

5 Q. All right. And while there, you didn't offer any
6 first aid; correct?

7 A. No, sir. I -- no, sir.

8 Q. All right. And so you didn't feel compelled where
9 you had to initiate first aid, on anyone who had gotten shot,
10 yourself?

11 A. No, sir.

12 There was already people. I made sure they were
13 okay and -- made sure they were okay. There were people
14 tending to them.

15 And I was just clearing the bar to make sure no one
16 else was there with any kind of weapons.

17 Q. Okay. And when you say they were okay, you're
18 talking about the persons --

19 A. That I --

20 Q. -- you answered to --

21 A. That I asked. Yes. That I had ascertained as the
22 victims.

23 MR. KEARSE: For purposes of the record, I don't
24 want to talk simultaneously.

25 Q. [Mr. Kearse] So my question is those are -- the

Scott Greene
Cross-Examination by Mr. Kearse
March 15, 2016

1 people you ascertained had gotten shot, those are the people
2 you are referring to as they; is that correct?

3 A. Yes, sir.

4 MR. KEARSE: Nothing further, Your Honor.

5 THE COURT: Redirect?

6 MR. ALFARO: No, Your Honor.

7 THE COURT: You may step down. You are free to go.
8 Feel free to stay with us.

9 [Whereupon, Mr. Greene is excused and exits the
10 witness stand]

11 THE COURT: Call your next witness.

12 MR. ALFARO: May we approach, Your Honor?

13 THE COURT: You may.

14 [Whereupon, an off-the-record bench conference is
15 held]

16 MR. MCNEELY: The State calls Lori Chenoweth.

17 [Whereupon, Ms. Chenoweth comes forward]

18 THE CLERK OF COURT: Place your left hand on the
19 Bible. Raise your right.

20 [Whereupon, Ms. Chenoweth is duly sworn by the
21 clerk of court as follows: do you solemnly swear or
22 affirm the testimony you shall give in this case shall
23 be the truth, the whole truth, and nothing but the
24 truth, so help you God]

25 THE WITNESS: Yes.

Scott Greene
Cross-Examination by Mr. Kearse
March 15, 2016

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

[Whereupon, Ms. Chenoweth 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 Bonnie Lori Chenoweth.

C-H-E-N-O-W-E-T-H.

MR. MCNEELY: Ms. Chenoweth, do you go by Lori?

THE WITNESS: Yes.

MR. MCNEELY: Is it okay if I call you that?

THE WITNESS: Yes.

MR. MCNEELY: Thank you.

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Lori Chenoweth
Direct Examination by Mr. McNeely
March 15, 2016

LORI CHENOWETH,

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

DIRECT EXAMINATION

BY MR. MCNEELY:

Q. Where are you currently employed?

A. I'm not.

Q. Are you part owner of a bar?

A. Yes.

Q. What bar is that?

A. Nowhere Bar and Grill.

Q. Where is the Nowhere Bar and Grill located?

A. It's 7128 Henry E. Brown, Jr., Boulevard in Goose
Creek, which is Berkeley County.

Q. How long have you owned the bar?

A. We've been there since September of 1997.

Q. When you say we, do you mean you and your husband?

A. Yes.

Q. What do you do at the bar?

A. I help my husband run it.

Q. Are you there regularly?

A. Yes.

Q. Were you at the bar on the evening of July 27th and
28th of 2013?

A. Yes, I was.

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1 Q. What time is closing time at the bar?

2 A. Closing time is 2:00 a.m.

3 Q. Was closing time at 2:00 a.m. on July 28th, 2013?

4 A. Yes.

5 Q. Has it always been at 2:00 a.m.?

6 A. Yes. Well, no. I take that back. No. At one
7 point, we could stay open twenty-four hours. They changed the
8 law.

9 Q. Do you remember when that changed?

10 A. No.

11 Q. Was it before two -- July 28th, 2013?

12 A. Yes.

13 Q. So on that date, closing time was 2:00 a.m.?

14 A. Yes.

15 Q. What time is last call for drinks made at the bar?

16 A. Around 2:15. I'm sorry. At 1:45.

17 THE WITNESS: I'm a little nervous. Sorry.

18 Q. [Mr. McNeely] Are any drinks served after 1:45
19 a.m.?

20 A. I don't know.

21 Q. You don't tend bar?

22 A. No. I used to.

23 Q. So last call is always made at 1:45?

24 A. Not always. Sometimes at 1:30, depending on how
25 large of a crowd we have.

Lori Chenoweth
Direct Examination by Mr. McNeely
March 15, 2016

1 Q. Do you recall what time last call was made that
2 evening?

3 A. No.

4 Q. Prior to approximately 1:45 that evening, had there
5 been any altercations or incidents in the bar?

6 A. Just minor scuffles, but nothing of this nature.

7 Q. Had there been any bar fights that night?

8 A. No.

9 Q. Do you recall an incident occurring at the bar that
10 night after last call?

11 A. Yes.

12 Q. Can you describe the incident that occurred inside
13 the bar?

14 A. Two gentlemen came in, asked for a drink. They
15 were refused service because last call had already been
16 called. They evidently made a statement regarding the
17 bartender being racist, which upset her because she has
18 children that are mixed.

19 She said, you know, that's not the case. So words
20 were exchanged back and forth, and people were trying to get
21 them to leave.

22 Q. Did they leave?

23 A. What's that?

24 Q. Did they leave?

25 A. Yes. But, I mean, there was a rather wordy exit.

Lori Chenoweth
Direct Examination by Mr. McNeely
March 15, 2016

1 Q. But they did leave the bar?

2 A. Yes.

3 Q. When they left the bar, did anyone follow them
4 outside?

5 A. No.

6 Q. Was there a second incident that night?

7 A. Yes.

8 Q. Was it inside or outside?

9 A. Outside.

10 Q. About how much time passed between the first
11 incident and the second incident?

12 A. About ten, fifteen minutes.

13 Q. When the second incident occurred outside, were you
14 inside or outside the bar?

15 A. I was inside.

16 Q. Did you hear something inside the bar?

17 A. Yes.

18 Q. What did you hear?

19 A. I heard three shots.

20 Q. Were those shots outside of the bar or inside the
21 bar?

22 A. Outside.

23 Q. What did you see next?

24 A. Stacy came running into the bar and she said she
25 had been shot. James came in, and he was clearly shot in the

Lori Chenoweth
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1 arm.

2 Everybody was kind of screaming. We didn't know if
3 they were coming in to shoot us. We all just kind of ran,
4 like scattered. But we were just trying to help them after we
5 initially realized that they had left the parking lot.

6 Q. Did somebody call 911?

7 A. Yes.

8 Q. Did emergency personnel respond to the scene?

9 A. Yes.

10 Q. Is the bar equipped with video surveillance
11 cameras?

12 A. Yes, it is.

13 Q. Was it equipped with video surveillance cameras on
14 July 27th and 28th, 2013?

15 A. Yes.

16 Q. Was there one camera, or did you have multiple
17 cameras?

18 A. We had multiple cameras.

19 Q. Were the cameras both inside and outside of the
20 bar?

21 A. Yes.

22 Q. Did they have audio and video recording?

23 A. Yes, they do.

24 Q. On the night of the incident, July 27th and 28th,
25 2013, were the cameras operational?

Lori Chenoweth
Direct Examination by Mr. McNeely
March 15, 2016

1 A. Yes.

2 Q. Did they capture the incidents at issue in this
3 case?

4 A. Yes, they did.

5 Q. On that night, did you review the cameras to see if
6 they captured the footage of the incident?

7 A. Well, that morning, yes.

8 Q. I apologize.

9 A. Sorry.

10 Q. Early morning of July 28th --

11 A. Yes.

12 Q. -- did you review the cameras?

13 A. Yes.

14 Q. And confirm that they had captured the incidents?

15 A. Yes.

16 Q. Did you inform law enforcement officers of that
17 fact?

18 A. Yes.

19 Q. Did you turn a copy of the footage over to law
20 enforcement?

21 A. Yes, I did.

22 MR. MCNEELY: Your Honor, permission to approach?

23 THE COURT: You may.

24 Q. [Mr. McNeely] Ms. Chenoweth, I'm going to show you
25 what's been previously marked for identification as State's

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1 Exhibit 1. Will you please look at that?

2 [Whereupon, the witness reviews disk]

3 Q. [Mr. McNeely] Have you reviewed the contents of
4 that disk?

5 A. Yes, I have.

6 Q. How do you know you reviewed the contents of that
7 disk?

8 A. I have it initialed.

9 Q. You initialed the disk itself?

10 A. Yes.

11 Q. And you --

12 A. After I watched it.

13 Q. Did you date it, as well?

14 A. Yes, I did.

15 Q. What is contained on that disk?

16 A. The footage, the video footage, from that night and
17 that morning -- that morning.

18 Q. Did you review the disk in its entirety?

19 A. Yes, I did.

20 Q. To the best of your knowledge, is it a complete and
21 accurate copy of the video footage of the events that
22 transpired at the Nowhere Bar during the early-morning hours
23 of July 28th, 2013?

24 A. Yes, it is.

25 Q. Has it been changed or altered in any way, to your

Lori Chenoweth
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March 15, 2016

1 knowledge?

2 A. No.

3 Q. And it's a copy of the video footage you turned
4 over to law enforcement in this case?

5 A. Yes, it is.

6 MR. MCNEELY: Your Honor, at this time I would move
7 to admit State's Exhibit 1 into evidence.

8 THE COURT: Any objection?

9 MR. DAVIS: Object, Your Honor. Chain of custody
10 relationship --

11 THE COURT: All right. Thank you.

12 MR. DAVIS: I don't know that the proper foundation
13 been laid.

14 MR. KEARSE: Same objection, Your Honor.

15 THE COURT: State's 1 into evidence, noting
16 Defendant Gourdine and Moses' objection.

17 [Whereupon, State's Exhibit Number 1 is admitted
18 into evidence by the Court]

19 THE COURT: You may publish as needed.

20 MR. MCNEELY: Thank you, Your Honor.

21 MR. KEARSE: Your Honor, I would like to make an
22 offer of proof on that, if I can.

23 THE COURT: Outside the presence of the jury.

24 MR. KEARSE: Yes, ma'am.

25 THE COURT: Thank you.

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1 MR. MCNEELY: Your Honor, at this point we would be
2 seeking to publish a significant portion of the video.
3 Would you like for us to proceed?

4 THE COURT: Yes.

5 Ladies and gentlemen, your pizza has arrived so
6 we'll go ahead and take a break.

7 Please stay seated.

8 Ladies and gentlemen, please go to your jury room.
9 Please take your notepads with you. We'll receive you
10 back in the courtroom. We'll probably take about thirty
11 minutes for lunch.

12 Please rise for the jury.

13 [Whereupon, the jury exits the courtroom at
14 12:49 p.m.]

15 THE COURT: Thank you. Be seated.

16 Ms. Chenoweth, we are going to break for lunch so
17 please be back here at 1:15. 1:15. And do not discuss
18 your testimony with anyone. Thank you.

19 [Off the record momentarily]

20 THE COURT: All right. Thank you. You may step
21 down.

22 [Whereupon, Ms. Chenoweth exits the witness stand]

23 THE COURT: You want to place something on the
24 record?

25 MR. KEARSE: Yes, ma'am.

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1 THE COURT: Okay.

2 MR. KEARSE: May it please the Court.

3 I don't think any query from Mr. McNeely to the
4 witness that it was established, as we said, that, one,
5 that is the very same disk that the witness actually
6 says she burned a copy of.

7 And if she did establish that, she certainly hasn't
8 set forth to whom she gave a copy of that disk that she
9 burned, if that is the exact copy she burned, on the
10 date she burned it.

11 They have not -- they have not said when she gave
12 it to them. We have not heard any testimony as to the
13 person that she gave that disk to, where they placed it,
14 where they kept it, when they took it into evidence.

15 And so we don't know whether that's the original or
16 not. And if it is her original copy of what she had on
17 her video-recording device, we don't know when it was
18 placed into evidence and we don't know who has
19 maintained it into evidence such that today on March --
20 I believe it's March 15th or March 16th of 2016, some
21 three years later, almost, that it's the very same
22 unedited copy of what she, in fact, burned on the date
23 that she burned it. Which I'm still not certain that
24 she said she did it on July the 28th, that same night,
25 or July 30th, in the query from the prosecution. I

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1 don't think at this time it's admissible.

2 MR. DAVIS: Excuse me, Judge. I just want to chime
3 in.

4 Especially when the State is telling you that they
5 intend to use a substantial portion of it. It may be a
6 movie that they made. I don't know. But as it stands
7 right now, the integrity of it is in the question in
8 relationship of how it's been kept and preserved to be
9 presented to this jury.

10 It would have been no different, you know, than
11 that's a gun I had and I gave the -- a complete -- I
12 don't want to use that illustration.

13 But, Judge, this tape, this video, at this
14 particular point has not met the criteria to be admitted
15 into evidence.

16 They're going to show a substantial portion of it.
17 Wow.

18 THE COURT: Mr. McNeely --

19 MR. MCNEELY: Thank you, Your Honor.

20 THE COURT: -- anything further?

21 MR. MCNEELY: To address the arguments presented to
22 you, this is not physical evidence. It is video
23 evidence.

24 Ms. Chenoweth testified that she is the owner of
25 the bar, she pulled the video surveillance for law

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1 enforcement, she provided it to them, she reviewed it,
2 she reviewed the disk that I provided her indicating her
3 initials and dating the disk.

4 She authenticated it as a complete and accurate
5 copy of what she provided to law enforcement and a
6 complete and accurate copy of the footage captured at
7 the Nowhere Bar that night.

8 It has been sufficiently authenticated by
9 Ms. Chenoweth, who has firsthand knowledge of the video
10 footage.

11 As to Mr. Davis' point, I am admitting the video
12 in its entirety. I did not admit a portion of it. As
13 to what is published during my direct examination of
14 Ms. Chenoweth is not for the defense to say. They can
15 publish any portion they want. The entire video is
16 being admitted.

17 THE COURT: State's 1 is into evidence, still
18 noting both of your objections.

19 And you will be allowed -- it's admitted in its
20 entirety, so you can play the portions you wish to play.

21 THE COURT: All right. 1:20. 1:20. Thank you.

22 [Whereupon, a recess is taken from 12:51 p.m. to
23 1:27 p.m.]

24 THE COURT: Anything before we bring in the jury?
25 From the State?

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March 15, 2016

1 MR. ALFARO: Nothing, Your Honor.

2 MR. DAVIS: Nothing, Your Honor.

3 THE COURT: Is the video ready? Is it cued up?

4 MR. MCNEELY: We've cued it up.

5 I'll go ahead and warn the Court that when we
6 change camera angles, it takes a second to cue up --

7 [Off the record momentarily]

8 THE COURT: Where is Ms. Chenoweth?

9 MS. CHENOWETH: Right here.

10 [Whereupon, Ms. Chenoweth retakes the witness
11 stand]

12 THE COURT: Ms. Chenoweth, I remind you that you
13 are still under oath.

14 Did you comply with the Court's instructions over
15 our lunch break?

16 THE WITNESS: Yes.

17 THE COURT: All right. Thank you.

18 All right. Go ahead and cue up the video.

19 [Off the record momentarily]

20 THE COURT: And so, Mr. McNeely, when we are
21 changing video angles, what's going to happen?

22 MR. MCNEELY: It's just going to take a second to
23 load. It's a high-capacity file.

24 [Off the record momentarily]

25 MR. MCNEELY: This one is ready, Judge.

Lori Chenoweth
Direct Examination by Mr. McNeely
March 15, 2016

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THE COURT: All right. Ms. Teresa?

[Off the record momentarily]

THE BAILIFF: The jury is coming in. Please rise.

[Whereupon, the jury enters the courtroom at
1:32 p.m.]

THE COURT: Y'all may be seated. Thank you.
Please be seated.

Mr. McNeely?

MR. MCNEELY: Thank you, Your Honor.

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Lori Chenoweth
Continued Direct Examination
March 15, 2016

CONTINUED DIRECT EXAMINATION

1
2 THE COURT: You are now going to publish State's 1;
3 is that correct?

4 MR. MCNEELY: That's correct.

5 THE COURT: All right.

6 MR. MCNEELY: State's 1.

7 THE COURT: Thank you.

8 MR. MCNEELY: May we please dim the lights.

9 Let the record reflect we are publishing camera
10 angle 2-A, starting at time stamp 1:50 a.m. and 34
11 seconds.

12 [Whereupon, State's Exhibit Number 1 is played for
13 the jury]

14 [Whereupon, State's Exhibit Number 1 is not
15 transcribed by the court reporter]

16 MR. MCNEELY: Let the record reflect we stopped the
17 camera angle 2-A at 1:51 and 35 seconds.

18 And I'll move to camera angle 7-A. Let the record
19 reflect we're starting camera 7-A at 1:51 a.m. and 32
20 seconds.

21 [Whereupon, State's Exhibit Number 1 is played for
22 the jury]

23 [Whereupon, State's Exhibit Number 1 is not
24 transcribed by the court reporter]

25 MR. MCNEELY: Let the record reflect we stopped

Lori Chenoweth
Continued Direct Examination
March 15, 2016

1 camera angle 7-A at 1:58 a.m. and zero seconds.

2 We'll switch to camera angle 6-A. Let the record
3 reflect we're starting camera angle 6-A at 1:54 a.m. and
4 51 seconds.

5 [Whereupon, State's Exhibit Number 1 is played for
6 the jury]

7 [Whereupon, State's Exhibit Number 1 is not
8 transcribed by the court reporter]

9 MR. MCNEELY: Let the record reflect we paused the
10 video at 1:57 and 27 seconds.

11 Permission to approach the witness?

12 THE COURT: You may.

13 MR. MCNEELY: Ms. Chenoweth, I'm going to hand you
14 a laser pointer. There's a red button at the top.

15 THE WITNESS: Okay.

16 MR. MCNEELY: Will you point it up at the screen
17 and identify yourself if you're on camera, please.

18 A. [Witness indicates]

19 Q. [Mr. McNeely] You're pointing at yourself?

20 A. Yes.

21 Q. Okay. See the white-headed gentleman on the bottom
22 of the screen?

23 A. Yes.

24 Q. Do you know who he is?

25 A. Yes, I do.

Lori Chenoweth
Continued Direct Examination
March 15, 2016

- 1 Q. What is his name?
- 2 A. Bill Coffey.
- 3 Q. Do you see the lady in the middle of the screen
- 4 with the writing on her tee-shirt?
- 5 A. Yes, I do.
- 6 Q. Do you know her name?
- 7 A. Yes, I do.
- 8 Q. What's her name?
- 9 A. Stacy Bohannan.
- 10 Q. Do you see the gentleman in the tank-top to the
- 11 right of her?
- 12 A. Yes.
- 13 Q. Do you know his name?
- 14 A. David Bohannan.
- 15 Q. Do you see the tall lady in the middle of the
- 16 screen?
- 17 A. Yes.
- 18 Q. Do you know her name?
- 19 A. Denise Coffey.
- 20 Q. Do you see the gentleman at the top of the screen
- 21 in the tank-top?
- 22 A. Yes.
- 23 Q. Do you know his name?
- 24 A. Rick.
- 25 Q. Do you see the gentleman in the stripped tee-shirt?

Lori Chenoweth
Continued Direct Examination
March 15, 2016

1 A. Yes.

2 Q. Do you know his name?

3 A. I know his last name.

4 Q. Did you know it that evening?

5 A. I had seen him before and I knew him as a member.

6 Q. What was his name?

7 A. I don't know his first name.

8 THE WITNESS: I'm nervous --

9 Q. [Mr. McNeely] Is the gentleman in the stripped
10 shirt one of the individuals you described as being involved
11 in the incident at the bar that evening?

12 A. Yes.

13 MR. MCNEELY: Record reflect we're resuming the
14 video at 1:57 and 27.

15 [Whereupon, State's Exhibit Number 1 is played for
16 the jury]

17 [Whereupon, State's Exhibit Number 1 is not
18 transcribed by the court reporter]

19 MR. MCNEELY: Let the record reflect that camera
20 angle 6-A is stopped at 2:03 a.m. and 58 seconds.

21 We will pick up the camera at 6-B. Camera 6-B will
22 resume at 2:03 a.m. and 58 seconds.

23 [Whereupon, State's Exhibit Number 1 is played for
24 the jury]

25 [Whereupon, State's Exhibit Number 1 is not

Lori Chenoweth
Continued Direct Examination
March 15, 2016

1 transcribed by the court reporter]

2 MR. MCNEELY: Let the record reflect we stopped
3 camera angle 6-B at 2:08 a.m. and 58 seconds.

4 We'll pick back up with camera angle 2-A. Let the
5 record reflect we're starting camera angle 2-A at 1:56
6 a.m. and 47 seconds.

7 [Whereupon, State's Exhibit Number 1 is played for
8 the jury]

9 [Whereupon, State's Exhibit Number 1 is not
10 transcribed by the court reporter]

11 MR. MCNEELY: Let the record reflect camera angle
12 2-A is stopped at 2:03 a.m. and 58 seconds.

13 We'll move to camera 2-B. Camera 2-B will resume
14 at 2:03:58.

15 [Whereupon, State's Exhibit Number 1 is played for
16 the jury]

17 [Whereupon, State's Exhibit Number 1 is not
18 transcribed by the court reporter]

19 MR. MCNEELY: Let the record reflect camera angle
20 2-B stops at 2:10:59.

21 We'll pick back up with camera angle 6-B. Starting
22 back at 2:08 a.m. and 43 seconds.

23 [Whereupon, State's Exhibit Number 1 is played for
24 the jury]

25 [Whereupon, State's Exhibit Number 1 is not

Lori Chenoweth
Continued Direct Examination
March 15, 2016

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transcribed by the court reporter]

MR. MCNEELY: Let the record reflect camera angle
6-B stopped at 2:10:59 a.m.

The State has no further questions from this
witness at this time.

THE COURT: Mr. Davis?

MR. DAVIS: Thank you, Your Honor.

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Lori Chenoweth
Cross-Examination by Mr. Davis
March 15, 2016

CROSS-EXAMINATION

1
2 BY MR. DAVIS:

3 Q. You would readily admit that there is a replaying
4 of the time in certain aspect of that video?

5 A. I don't understand the question.

6 Q. Well, when you change cameras, don't you go over
7 the same time allocation sometimes?

8 A. [No response]

9 Q. I mean, this is not one continuous camera playing,
10 is it?

11 A. It's four.

12 Q. I know.

13 So my point is at one point this whole process, as
14 I alluded to, is about 720 seconds from when these people were
15 inside the bar until when the shots actually were fired?

16 A. [No response]

17 Q. Seven minutes?

18 A. Okay.

19 Q. Do you agree with that?

20 A. Do I agree with seven minutes?

21 Q. Yes, ma'am.

22 A. I didn't count them.

23 Q. Well, I understand that.

24 But you did have on direct testimony the allocation
25 and breakdown of the time sequence, though?

Lori Chenoweth
Cross-Examination by Mr. Davis
March 15, 2016

1 A. [No response]

2 Q. I mean, every time the solicitor played the tape,
3 he gave a time sequence. You did participate and observe
4 that, did you not?

5 A. I watched where he stopped and put the next --

6 Q. And he always --

7 A. -- clip on.

8 Q. -- alluded to a time allocation, did he not?

9 A. I don't want to get tripped up here, because I'm
10 not really sure what you're asking me.

11 Q. We're not trying to trip up. What we're trying to
12 do is find the truth. Okay?

13 A. Okay.

14 Q. And so in the process of the truth, it shouldn't be
15 a matter of trying to trip you.

16 You and I have never discussed this matter, have we
17 not? Have we discussed this matter?

18 A. No. I just want to make sure I answer it
19 correctly.

20 Q. And you have discussed your testimony multiple
21 times with the solicitor's office, have you not?

22 A. Not at their office.

23 Q. I mean, regardless. They came out to your Nowhere
24 Bar and went over the tape with you?

25 A. They sat there and watched it with me.

Lori Chenoweth
Cross-Examination by Mr. Davis
March 15, 2016

1 Q. And they showed you what aspect that they thought
2 is important and need to be shown; right?

3 A. No. I just watched the whole thing.

4 Q. You just watched it? No input from you whatsoever?

5 A. What's there to input?

6 Q. Well, there's input in reference to time sequence.

7 My point is time is of essence. You would agree?

8 A. [No response].

9 Q. Well, you may not agree because you said
10 subconsciously that y'all's last call is what, 2:15 in the
11 morning --

12 A. I told you I was nervous.

13 Q. Okay. So you do know that time is important; isn't
14 that correct?

15 A. Yes, it is.

16 Q. All right. So let's get back on sequence with time
17 sequence. Okay?

18 Now, the big guy, James -- I noticed in the video
19 that -- did you shove anyone yourself?

20 A. I did not shove anyone that I know of.

21 Q. You didn't touch anyone that night?

22 A. I touched a lot of people.

23 Q. I'm talking about in an aggressive manner.

24 A. Not in an aggressive manner, no.

25 Q. You didn't touch my client at all that night?

Lori Chenoweth
Cross-Examination by Mr. Davis
March 15, 2016

1 Didn't shove him in any way?

2 A. I don't recall.

3 Q. Oh.

4 If you look at the tape, would that refresh your
5 memory? I mean, you've seen the tape multiple times, have you
6 not?

7 A. We can look at it again --

8 Q. Would that --

9 A. -- but I don't recall.

10 Q. Would that help refresh your memory?

11 A. Sure.

12 MR. DAVIS: Mr. Solicitor, we promise to agree on
13 that part. I want to go over specifically that part,
14 please.

15 MR. MCNEELY: I'm unclear what that part is, Your
16 Honor.

17 MR. DAVIS: The part where she shoved this young
18 man.

19 THE COURT: Counsel, remember there's no speaking
20 objections, so if you have a specific camera angle --

21 MR. DAVIS: He said he don't recall what part.

22 THE COURT: Do you have a camera angle and time?

23 MR. DAVIS: Yes, ma'am.

24 THE COURT: All right. Then please give it to the
25 camera operator.

Lori Chenoweth
Cross-Examination by Mr. Davis
March 15, 2016

1 MR. DAVIS: 6-A.

2 MR. MCNEELY: At what time? 6-A at 1:57 a.m., Your
3 Honor.

4 MR. DAVIS: Thank you. 1:57:27, to be exact.

5 [Whereupon, State's Exhibit Number 1 is played for
6 the jury]

7 [Whereupon, State's Exhibit Number 1 is not
8 transcribed by the court reporter]

9 A. It doesn't appear --

10 MR. MCNEELY: Stopped at 1:57:49.

11 THE COURT: Thank you.

12 Q. [Mr. Davis] Does that refresh your memory in any
13 regard?

14 A. It doesn't appear that I shoved him, no.

15 Q. Did you observe any other person being assaulted in
16 your presence?

17 A. I observed us heading towards the door and them
18 backing out.

19 Q. You don't observe the swing toward my client or
20 Steven Moses?

21 A. Yes, I did observe that.

22 Q. You observe it now?

23 A. You said I pushed him.

24 Q. No, no. I asked you a question did you observe
25 that.

Lori Chenoweth
Cross-Examination by Mr. Davis
March 15, 2016.

1 A. Yes.

2 Q. Now, was Mr. James Bryant working primarily for you
3 that night?

4 A. Working for me? No.

5 Q. Yes.

6 Why was his assistance necessary to remove these
7 individuals?

8 A. It wasn't.

9 Q. Okay. Ma'am?

10 A. It wasn't.

11 Q. But you noticed that your involvement with
12 Mr. Bryant was --

13 A. I saw him push me out of the way.

14 Q. Who pushed you out of the way?

15 A. James did.

16 Q. Okay. And did -- you consented to that?

17 A. He's quite a bit bigger than me.

18 Q. And to that same point, he's quite bigger than my
19 client, Jason Gourdine, is he not?

20 A. In size reference, yes.

21 Q. Any other reference?

22 A. As to what?

23 Q. Well, you seemed to suggest that there may be some
24 other references where the size would equate something
25 different. I'm saying in reference to size comparison, you

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1 would say that James Bryant is significantly larger than my
2 client, Mr. Gourdine?

3 A. I would say he's significantly larger than
4 everybody that was in there.

5 Q. Well, I don't know about everybody.

6 But can we agree that he was significantly larger
7 than Jason Gourdine? Can you limit it --

8 MR. MCNEELY: Your Honor, I object.

9 THE COURT: What's the basis?

10 MR. MCNEELY: The question has been asked and
11 answered.

12 THE COURT: Sustained.

13 Q. [Mr. Davis] And the other guy in there, Rick, was
14 he under your employ also?

15 A. No.

16 Q. I noticed you had some active involvement with him.

17 A. Other than trying to calming him down?

18 Q. Okay. And did you witness or observe him strike or
19 assault anyone that night?

20 A. I saw him swing at your client.

21 Q. Okay.

22 A. I didn't see where he made good contact, but I did
23 see him swing at him.

24 Q. In your impression, you would have to make good
25 contact. What would you suggest is good contact?

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1 A. I would say he grazed him.

2 Q. Grazed him? Okay. Okay. Grazed him. Okay. And
3 do you know what an assault is, ma'am?

4 A. Yes.

5 MR. MCNEELY: Objection, Your Honor.

6 MR. DAVIS: She said --

7 MR. MCNEELY: It calls for a legal conclusion.

8 MR. DAVIS: She said she knows.

9 THE COURT: Overruled. She has answered.

10 Q. [Mr. Davis] You know what an assault is; right?

11 A. [No response]

12 Q. Do you know what a battery is?

13 MR. MCNEELY: Same objection, Your Honor.

14 THE COURT: If she knows, she may answer.

15 MR. DAVIS: Thank you.

16 A. I don't know the legal difference between both.

17 But yes.

18 Q. [Mr. Davis] Well, I'll give you an illustration.

19 A. Okay.

20 Q. This is a battery, touching someone. Okay?

21 MR. MCNEELY: Your Honor, I'm going to object to
22 that.

23 THE COURT: Let's approach.

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

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1 Q. [Mr. Davis] Ms. Chenoweth, do you believe a person
2 have another -- a right to assault someone else?

3 A. No.

4 Q. Do you believe a person has a right to violate
5 someone else without justification?

6 A. No.

7 Q. Okay. Do you believe a person have a right to
8 defend themselves if they've been aggressively approached?

9 MR. MCNEELY: Your Honor, I object to this.

10 THE COURT: Sustained.

11 A. Ask the question again.

12 THE COURT: You don't have to answer it.

13 THE WITNESS: Okay.

14 THE COURT: I sustained it. Thank you.

15 Q. [Mr. Davis] Why were you restraining James Bryant?

16 A. I wasn't restraining him. He came up behind me.

17 Q. So you didn't try to hold him back at the door?

18 A. I don't recall. I don't think so.

19 Q. You don't recall.

20 This is your tape that's not -- that was made at
21 your establishment --

22 A. Yeah.

23 Q. -- was it not? Do you think --

24 THE WITNESS: Sorry.

25 MR. DAVIS: I'm sorry. Do you need some --

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1 [Off the record momentarily]

2 THE COURT: Madam Foreperson, do y'all need a
3 break? If you need a break, just let me know.

4 [Off the record momentarily]

5 THE COURT: Mr. Davis.

6 MR. DAVIS: Do you feel better, ma'am?

7 THE WITNESS: Yes.

8 Q. [Mr. Davis] Now, you stated that you were the
9 owner of this establishment, or part owner. Ma'am?

10 A. Yes. My husband owns it, and I help him.

11 Q. And do you believe as a bar owner that you have a
12 responsibility to protect patrons who come into your place?

13 THE WITNESS: Hold on.

14 A. As does a grocery store or any other place like
15 that.

16 Q. [Mr. Davis] I don't understand. A grocery store
17 or any place like that --

18 A. Every business should protect its patrons.

19 Q. In other words, your answer is yes?

20 A. Yes.

21 Q. You also believe that you have an obligation or
22 responsibility to treat people with some respect and decency,
23 even if it's a bar, in reference to patrons that come into
24 your place?

25 A. Yes.

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1 Q. Therefore, do you find -- would you find it
2 offensive that your bartender would be using the words you've
3 got the wrong mother-fucking person tonight?

4 A. What is the question?

5 Q. The question is do you think it's appropriate for a
6 bartender to use that type of language with someone who comes
7 in to patronize your business when you're engaged in the
8 business of alcohol sales?

9 A. I think he was refused service and offended her
10 first.

11 Q. And so you believe since she was offended, that one
12 offense lead to another offense, that it was appropriate for
13 your bartender to use the term you've got the wrong mother-
14 fucking person?

15 A. I believe that -- I'm not going to -- I believe
16 that she told him that several times, and he proceeded to be
17 irritating and destructive and accused her of doing something
18 very offensive, and then she came back because she had enough.

19 Q. And so it's your testimony that -- that two
20 offensive natures then makes it right?

21 A. No. I'm saying I believe that's what happened to
22 her.

23 Q. It's your testimony in that the aggressiveness of
24 everybody involved makes it right for whatever took place that
25 night also?

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1 A. False.

2 Q. Well, so you're saying that maybe better judgment
3 should have been exercised that night? Better restraints?

4 A. For?

5 Q. Well, matter of fact, your regulars, your regulars
6 at your bar, should have handled this manner in a different
7 process?

8 A. Okay. Up until that night? I don't know how many
9 times Mr. Bryant or anybody had been in there, other than the
10 normal regulars that I pointed out.

11 Q. So it's your testimony that but for Mr. Bryant, all
12 your other regulars acted appropriately in your opinion?

13 A. I believe.

14 Q. Okay.

15 A. It was two o'clock, or whatever time it was, that
16 this all happened. What was it? Whatever time stamp is on
17 there at the time. I believe everybody was ready to go home,
18 they got excited about something that happened, a little bit
19 of commotion in there, okay, and everybody wants to be part of
20 it in trying to resolve it.

21 Q. And everybody had been drinking?

22 A. Not everybody.

23 Q. Well, so you were one of the cooler heads in there
24 because you hadn't been drinking?

25 A. No, I drank.

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1 Q. Okay. You drank also. Do your bartenders drink,
2 also?

3 A. No. Only when they're not working.

4 Q. The one that was using that profound language, do
5 you think she had been drinking also?

6 A. No.

7 Q. She wasn't drinking?

8 A. No.

9 Q. But you would admit and agree that all of this took
10 place in a relatively short period of time? Ma'am?

11 A. What do you consider a short period of time?

12 Q. Well, you said you heard shots in ten or fifteen
13 minutes after this whole incident ensued; right?

14 A. [No response]

15 Q. I mean, those were your words, ten or fifteen
16 minutes?

17 A. I said about.

18 Q. Okay. Let's say --

19 A. I'm not going to hold me to it unless I sit here
20 and count and you can wait while I count.

21 Q. Looking back, do you see anything that could have
22 been done differently that night, now since you've seen the
23 tape?

24 A. Looking back? No, because they could -- they
25 should have never come back and did that, period.

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1 Q. And so you think it was okay for your regulars to
2 assault these people, swing at them? Even if they didn't hit
3 on point, that's okay? You think that's okay?

4 A. I don't think it's okay that he stood up and
5 confronted somebody in the bar. No, I don't.

6 Q. Do you think that it's okay that your bartender can
7 tell a patron who comes in the bar for alcohol, even if it's
8 after hours, some -- you got the wrong mother-fucking person?
9 You think that's okay? You wouldn't change that language?
10 You think that's okay? Ma'am?

11 A. Is there a law against it?

12 Q. No.

13 There is a law, though, ma'am, against assaulting
14 someone. Do you agree with that?

15 A. [No response]

16 Q. It don't matter?

17 A. [No response]

18 MR. DAVIS: No further questions.

19 THE COURT: Mr. Kearse?

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

21 Is it Chenoweth?

22 THE WITNESS: Yes.

23 MR. DAVIS: That's how you pronounce it?

24 THE WITNESS: [No response]

25 - - -

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CROSS-EXAMINATION

1
2 BY MR. KEARSE:

3 Q. You say your husband owns the bar?

4 A. Yes.

5 Q. Right? And you assist him?

6 A. Yes.

7 Q. All right. You are a co-owner or co-manager, or
8 how --

9 A. I mean, it's not on paper but, yes, I help him run
10 the bar.

11 Q. So you pretty much -- by way of your legal
12 relationship with your husband, you pretty much are a co-owner
13 of the bar; is that correct?

14 A. I assist him in his daily duties.

15 Q. All right. So that's a yes?

16 A. I'm not legally employed him, no.

17 Q. Okay. But you do assume a supervisory role when
18 you're there and you're deciding to work the bar?

19 A. Yes.

20 Q. All right. And you were there on the night of July
21 the 28th --

22 A. It was my birthday. I was not --

23 Q. -- or the morning -- I'm sorry.

24 A. -- assuming a supervisory role there.

25 Q. Let me finish my question, Ms. Chenoweth.

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1 A. Okay.

2 Q. Okay? You were there on the morning of July 28th,
3 2013; correct?

4 A. Correct.

5 Q. All right. Now I will ask: were you there
6 working?

7 A. No.

8 Q. All right. So you were just there relaxing,
9 enjoying yourself?

10 A. Yes.

11 Q. And as you said, you were drinking that night?

12 A. Yes.

13 Q. All right. And how many drinks did you have?

14 A. I don't recall. It's been a couple of years ago.

15 Q. All right. But we shall presume, since you don't
16 recall, it was more than one; correct?

17 A. Possibly.

18 Q. All right. How long had you been at the bar?

19 A. Around 9:00. Around the time karaoke starts.

20 Q. And did you start drinking when the karaoke --

21 A. Sometime during the evening, yes.

22 Q. Okay. So about nine o'clock you started drinking?

23 A. No. I didn't say nine o'clock. Sometime during
24 the evening.

25 Q. Okay. What time would you say you started

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1 drinking, Ms. Chenoweth?

2 A. It's been a few years ago. I have no idea.

3 Q. All right. But at some point -- karaoke started at
4 what time?

5 A. At 9:00.

6 Q. Okay. And when karaoke started, you started
7 drinking, or sometime thereafter?

8 A. Karaoke goes from 9:00 to 1:00. So somewhere in
9 between 9:00 and 1:00, I started drinking.

10 Q. Okay. And at the time these two men walked in the
11 bar, were you drinking then?

12 A. I had a bottle of beer.

13 Q. All right. So you were still drinking when they
14 came in the bar?

15 A. I was finishing my beer.

16 Q. Okay. And it appears from the video that you were
17 dressed in a dark-colored shirt and some shorts; is that
18 correct?

19 A. Correct.

20 Q. All right. And you had your hair pulled back on
21 that night?

22 A. Yes.

23 Q. And so and you identified yourself on the video;
24 right?

25 A. Correct.

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

2 [Off the record momentarily]

3 MR. KEARSE: Your Honor, I am going to again play
4 the video of -- this is camera angle 6-A, and I would
5 have it start at 1:57, more or less.

6 [Off the record momentarily]

7 MR. KEARSE: And that would be 1:56:59 where we're
8 commencing the video.

9 If you could play that --

10 [Whereupon, State's Exhibit Number 1 is played for
11 the jury]

12 [Whereupon, State's Exhibit Number 1 is not
13 transcribed by the court reporter]

14 MR. KEARSE: If you could stop.

15 [Whereupon, State's Exhibit Number 1 is paused]

16 Q. [Mr. Kearse] Is that you, Ms. Chenoweth, standing
17 in the midst of Mr. Maron?

18 A. That's me right there.

19 Q. Okay. Well, do you deny that you put your hands on
20 Mr. Moses?

21 A. Mr. Moses?

22 Q. Correct.

23 A. Rewind it a couple of seconds.

24 MR. KEARSE: Your Honor -- may it please the Court,
25 Your Honor.

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1 You can start from there. We are recommencing the
2 video at 1:57:24.

3 [Whereupon, State's Exhibit Number 1 is played for
4 the jury]

5 [Whereupon, State's Exhibit Number 1 is not
6 transcribed by the court reporter]

7 A. Yeah, I --

8 MR. KEARSE: Okay. If we could stop. You can turn
9 that down. Turn the lights back on for me.

10 And that would be stopped at 1:57:38.

11 Q. [Mr. Kearse] Mr. Maron doesn't work for you, does
12 he not?

13 A. Who is that?

14 Q. Enrique Maron. Y'all call him Rick.

15 A. No.

16 Q. All right. Would you call him a regular?

17 A. No.

18 Q. Did you know him?

19 A. Yes. I had met him.

20 Q. Okay. Did you observe as he swung and hit Mr.
21 Moses?

22 A. I observed him swing and pretty much miss him but
23 grazed him barely.

24 Q. All right. And by the fact that he grazed him
25 barely, you see no problem with that behavior?

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1 A. Do I see a problem with it? I tried to stop it.

2 Q. All right. You were there and you knew Mr. Bryant
3 that night, did you not?

4 A. I met him that night, yes.

5 Q. You met him that night. He hadn't been there
6 before?

7 A. I don't know. I met him that night.

8 Q. Okay. Did you observe and did you see him put his
9 hands on Mr. Moses?

10 A. I did not see him put his hands on Mr. Moses, no.

11 Q. You would agree you were standing right there;
12 correct?

13 A. I was.

14 Q. All right. Now, let's talk about what happened
15 prior to that. These two gentlemen walked in the bar seeking
16 something to drink; correct?

17 A. Yes.

18 Q. And that's all they came for was something to drink
19 when they got there; correct?

20 A. I'm assuming so.

21 Q. And so -- well, that's all they asked for, as far
22 as you could hear, before an argument ensued; correct?

23 A. Correct.

24 Q. All right. And --

25 A. As far as I know, now. I wasn't over there. I

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1 didn't hear what they talked about. It appeared they knew the
2 one guy on the corner, but I don't know what was said.

3 Q. But, I mean, they weren't throwing any blows or
4 they weren't fighting anybody or they weren't making any
5 threats when they walked in; correct?

6 A. Far as I know.

7 Q. All right. And when they sat down, they weren't
8 hitting anyone, making any threats, or fighting anybody;
9 correct?

10 A. It didn't look like it.

11 Q. You didn't see them. That's after -- you didn't
12 see them do any of that; correct?

13 A. Right.

14 Q. All right. And when the argument ensued between
15 your employer -- I mean, employee -- which was is that --
16 Ms. Nava or Ms. Taylor?

17 A. Ms. Nava.

18 Q. Ms. Nava.

19 They didn't threaten her and they didn't try to hit
20 her; correct?

21 A. I do not know what they said to --

22 Q. You didn't see --

23 A. -- her because I can only hear certain parts of it.

24 Q. Let me back up. You did not see them make any
25 attempt to strike this woman; correct?

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A. Not across the bar, no.

Q. And they didn't direct any words towards you;
correct?

A. No.

Q. All right. And when they were told to leave or
exit the building, they commenced to exit the building;
correct?

A. Reluctantly, but yeah.

Q. Whether it was reluctantly or not -- which is your
interpretation; right?

A. Yes, it's my interpretation.

Q. Okay. They exit the building, did they not?

A. [No response]

Q. They were on their way out, were they not?

A. I don't know, because he stopped there at the table
and waited for Rick to approach him.

Q. All right. Well, whether he stopped there and
before he stopped, as you interpret, there at the table, he
was walking towards the door with Mr. Moses, was he not?

A. Yeah, he was.

Q. All right. And Mr. Maron does not work for you;
correct?

A. Right.

Q. We've already established that.

A. Correct.

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1 Q. And Mr. Bryant does not work for you; correct?

2 A. Correct.

3 Q. And so that would be two patrons attacking another
4 patron, would it not?

5 A. Attacking? No.

6 Q. It wouldn't be attacking another patron?

7 A. No.

8 Q. All right. Did they have the legal authority and
9 your consent -- did you give them any authority or consent to
10 go and put their hands on another patron?

11 A. Did I give them my consent?

12 Q. On the night of July 28th, did you empower them,
13 give them your consent, to act as an agent on your behalf --

14 A. No.

15 Q. -- or the bar?

16 All right. And so as a co-owner of the bar, or a
17 manager, or a supervisor, or the wife of the owner, you are
18 familiar that you have the ability to give people authority,
19 if you so desire, to act as your agent, don't you?

20 A. I don't do that.

21 Q. And you didn't do it that night?

22 A. No.

23 Q. And so they went over there and they attacked
24 Mr. Moses and Mr. Gourdine, did they not?

25 A. They? No. It never -- no, it didn't happen like

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1 that.

2 Q. Well, if you take a swing at somebody, wouldn't
3 you -- isn't that attacking somebody?

4 A. That would be Rick. That's not Mr. Bryant.

5 Q. And Rick took a swing at Mr. Moses. We agreed to
6 that; right?

7 A. Took a swing.

8 Q. All right. So he attacked him?

9 A. Mr. Moses was bowed up to him --

10 Q. My question --

11 A. -- pushed him with his elbow before he even swung
12 at him so --

13 Q. That's a nice -- that's a nice answer, Ms.
14 Chenoweth, but my question is yes or no, did he attack him.

15 A. Did he attack him? He swung about him. What about
16 his elbow in Rick's chest?

17 Q. So that's a yes; correct?

18 A. A yes to?

19 Q. He attacked him?

20 A. [No response]

21 Q. It ain't that hard to answer, Ms. Chenoweth.

22 A. Yeah, it is, because you're making that he attacked
23 him. He didn't -- they faced off. Rick -- or not Rick --
24 Moses pushed him with his elbow and then he swung. So, let's
25 see. One's battery and one's assault; right?

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1 Q. I ask the questions.

2 A. I'm asking, too.

3 Q. Okay. From -- now, what was -- Mr. Bryant, wasn't
4 he dressed in a tee-shirt and some khaki shorts?

5 A. Something like that.

6 Q. All right. And Mr. Maron, he was dressed in what's
7 commonly called -- well, let's say -- let's call it a white
8 tank-top tee-shirt, almost like an undershirt, I mean, yeah,
9 and some shorts?

10 A. That's what it appears to be.

11 Q. All right. And do you recall what Ms. Bohannan had
12 on?

13 A. Some like caprice, or something like that, and a
14 tee-shirt.

15 Q. Okay. Now, I'm going to ask you to identify
16 something for me in a second.

17 [Whereupon, Mr. Kearse reviews documents]

18 MR. KEARSE: May I approach, Your Honor?

19 THE COURT: You may.

20 Q. [Mr. Kearse] I'm going to show you a photograph.
21 There's a gentleman, African-American male, in that photograph
22 with a white tee-shirt on and some khaki -- long khaki shorts
23 on. Do you recognize that gentleman?

24 A. This one?

25 Q. Yes, ma'am.

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1 A. Yes.

2 Q. All right. And that's Defendant Moses Exhibit 3.
3 Who is that person --

4 A. That's James Bryant.

5 Q. Okay. And who is the gentleman standing next to
6 him in the white tank-top type tee-shirt and shorts?

7 MR. MCNEELY: Your Honor, I object.

8 THE COURT: What's the basis?

9 MR. MCNEELY: Permission to approach? A still shot
10 in the video with no --

11 THE COURT: I think he's just asking --

12 MR. MCNEELY: May we approach?

13 THE COURT: You can, but he's just asking her to
14 identify someone in the photo.

15 [Whereupon, an off-the-record bench conference is
16 held]

17 MR. KEARSE: Your Honor, if I can approach the
18 witness?

19 THE COURT: You may.

20 MR. KEARSE: All right.

21 Q. [Mr. Kearse] I'm going to hand you what's marked,
22 along with what I have handed you previous to this,
23 defendants' 3, 4, 5, 6, 7. And these are marked and pre-
24 marked as Defendant Moses' 3 through 7. Do you recognize
25 those as pictures of your bar that your husband owns?

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1 A. It's really grainy now, more grainy than the actual
2 video.

3 Q. But you do recognize them, even if grainy in
4 quality, photographs of the bar; correct?

5 A. It appears to be.

6 Q. And that would resemble photographs from the video
7 of the night of July 28, 2013, would it not?

8 A. They resemble it.

9 MR. KEARSE: At this time, Your Honor, I move to
10 have them admitted into evidence as Defendants' 3
11 through 7.

12 And I know I'm skipping ahead, but they have been
13 pre-marked, Your Honor.

14 THE COURT: Mr. McNeely, do you object?

15 MR. MCNEELY: No objection, Your Honor.

16 THE COURT: Mr. Davis?

17 MR. DAVIS: None, Your Honor.

18 THE COURT: Defendant Moses' 3 through 7 into
19 evidence without objection.

20 [Whereupon, Defendant Moses Exhibit Numbers 3
21 through 7 are admitted into evidence by the Court]

22 Q. [Mr. Kearse] And so if we can continue.

23 As I refer to Defendant Moses Exhibit Number 3,
24 this person with the jersey on, who is that, Ms. Chenoweth?

25 A. This guy?

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1 Q. Let me say the woman with the jersey on.

2 A. Oh. That's Stacy Bohannan.

3 Q. Okay. And who is the gentleman standing next to
4 her?

5 A. Over here?

6 Q. Right.

7 A. That's David Bohannan.

8 Q. Okay. And all of those people are, as demonstrated
9 on the video -- and they're that night actually walking
10 towards Mr. Moses and Mr. Gourdine as they exit the bar?

11 A. There were words. And, yes, when there's words in
12 a bar, everybody --

13 Q. Let me --

14 A. -- as far as the commotion.

15 Q. Right.

16 Let me simplify my question for you. It's yes or
17 no. They're walking towards those two gentlemen; correct?

18 A. Yes.

19 Q. And those two gentlemen were walking towards the
20 door; correct?

21 A. No. Not at that time they weren't.

22 Q. Okay. But it's close to the door where they are
23 and where that picture shows them to be located, is it not?

24 A. In front of the door, yes.

25 Q. Now I'm going to hand you what's in evidence as

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1 Defendant Moses Exhibit Number 4. Do you recognize that
2 gentleman throwing that punch?

3 A. That's Rick.

4 Q. All right. And Rick is Enrique Maron; correct?

5 A. Far as I know.

6 Q. All right. And so on that night, July 28th, 2013,
7 Mr. Maron is taking a swing at Mr. Moses; is that correct?

8 A. Yes.

9 Q. All right. And that is in proximity of the door,
10 is it not?

11 A. It's close to it.

12 Q. All right. And you would agree that you had not
13 sanctioned him as an agent, to act in your behalf, to get
14 these guys out of the bar?

15 A. No.

16 Q. All right. I want to hand you what's marked as
17 Defendant Moses Exhibit Number 5, that's entered into
18 evidence. Do you recognize that tall African-American man
19 that's close to the door?

20 A. Yes. This is really grainy, though.

21 Q. All right. Grainy in quality or not, who do you
22 recognize that person to be, Ms. Chenoweth?

23 A. [No response]

24 Q. That's James Bryant, isn't it?

25 A. I'm going to say it's James Bryant.

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1 However, I saw the video. That's the only reason I
2 know that's him.

3 Q. Okay. And we agree that James Bryant was not your
4 agent that night; correct?

5 A. Correct.

6 Q. All right. And he was, in fact, pushing on the two
7 defendants, was he not?

8 A. Pushing on the two defendants?

9 Q. Right. Doesn't that picture demonstrate him
10 pushing on the defendants, whether he's pushing them toward
11 the door or not?

12 A. No.

13 Q. Okay. You don't think it does?

14 A. No.

15 Q. Not that picture. He's at the door, and I don't
16 even see the two defendants.

17 Q. Well, you saw the video.

18 A. Yes, I did.

19 Q. Did you not see him push on the defendants in the
20 video --

21 A. I seen him try to reach them, yes.

22 Q. All right. He tried to reach them?

23 A. Yes.

24 Q. All right. And I'm going to show you what's marked
25 as Defendant's Number 7 that's into evidence. Can you take a

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1 look at that for me, please?

2 A. Okay.

3 Q. You would agree that's a picture that was made from
4 your video on the night of July 28th, 2013, in the Nowhere
5 Bar; correct?

6 A. It appears to be.

7 Q. So those are the group of the individuals who were
8 there at the bar at that time?

9 A. It appears to be.

10 Q. All right. And this shows the status after these
11 two men were pushed out of the bar, placed out of the bar, ran
12 out of the bar, however you want to interpret it?

13 A. After they exited?

14 Q. Right.

15 A. I think so. I can't remember.

16 Q. But you can see everybody is giving a nice big
17 group hug congratulating one another in the picture, aren't
18 they?

19 A. No.

20 I think they were more or less trying to calm each
21 other down.

22 Q. All right. This is Defendant's Exhibit Number 7,
23 the Defendant Steven Moses. Okay?

24 MR. KEARSE: For the record, Your Honor, I just
25 want to put in Defendant's Exhibit Number 2. My

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1 understanding is it's without objection.

2 MR. MCNEELY: Without objection, Your Honor.

3 THE COURT: Any objection, Mr. Davis?

4 MR. DAVIS: None, Your Honor.

5 THE COURT: Defendant's 2 into evidence without
6 objection.

7 [Whereupon, Defendant Moses Exhibit Number 2 is
8 admitted into evidence by the Court]

9 Q. [Mr. Kearse] I want you to take a look, as grainy
10 as it may be in quality, at Defendant Moses Exhibit Number 2.

11 [Whereupon, the witness reviews documents]

12 Q. [Mr. Kearse] Do you recognize those two gentlemen
13 as Mr. Bryant and Mr. Maron?

14 A. I think so.

15 Q. All right. And they all appear in that photograph
16 to be walking rather swiftly towards Mr. Moses, are they not?

17 A. [No response]

18 Q. A simple yes will do. Is that correct?

19 A. Rather swiftly towards them? No. They were facing
20 off, all of them were, right there.

21 Q. And tell me: who is that person who happened to be
22 standing next to Mr. Moses at the time these two gentlemen are
23 coming over there.

24 A. What?

25 Q. Isn't that you in the photograph --

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1 A. Oh. Yes --

2 Q. -- Ms. Chenoweth?

3 A. Yes, that's me.

4 Q. All right. Wouldn't it have been more prudent of
5 you to take the role of trying to keep these two gentlemen
6 from putting their hands on Mr. Moses and Mr. Gourdine?

7 A. Sir, that's what I was trying to do.

8 Q. Okay. Now, you were not outside during this
9 incident; correct?

10 A. During the shooting?

11 Q. Correct.

12 A. Yes, I was not out there.

13 Q. All right. And so after the video, you, yourself,
14 cannot attest to anything that took place, absent the video;
15 correct?

16 A. Correct.

17 Q. All right.

18 A. Other than inside.

19 Q. But you would recognize your parking lot; right?

20 A. Yes.

21 Q. Okay. And you would recognize the time stamp
22 that's placed on the video, of a still photo of your video
23 footage, of your parking lot that night; correct?

24 A. Yes.

25 Q. Okay.

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1 MR. KEARSE: Any objection?

2 MR. MCNEELY: No objection, Judge.

3 MR. KEARSE: Your Honor, at this time I would like
4 to move into evidence Defendant's Exhibit Number 8, and
5 this is for Defendant Moses, Number 9, and Number 10.

6 THE COURT: No objection from the State?

7 MR. MCNEELY: Not from the State.

8 THE COURT: Mr. Davis?

9 MR. DAVIS: No, Your Honor.

10 THE COURT: Defendant Moses 8, 9 and 10 into
11 evidence without objection.

12 [Whereupon, Defendant Moses Exhibit Numbers 8, 9
13 and 10 are admitted into evidence by the Court]

14 MR. KEARSE: Thank you, Your Honor.

15 Q. [Mr. Kearse] I'm going to hand you three
16 photographs that have been admitted into evidence as Defendant
17 Moses' 8, 9 and 10. Okay?

18 [Whereupon, the witness reviews documents]

19 Q. [Mr. Kearse] As you observe those, let me know
20 when you've had a chance to take a look at them. All you've
21 got to do is say I'm ready.

22 [Whereupon, the witness reviews documents]

23 A. These are better quality. Can't tell what's
24 happening. Oh. Okay. All right.

25 Q. [Mr. Kearse] All right. You do recognize that as

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1 part of your parking lot at the Nowhere Bar; correct?

2 A. Correct.

3 Q. And the time stamps on those photographs are
4 7/28/2013, somewhere around 2:09 or so; is that correct?

5 A. To the best of my knowledge.

6 Q. All right. Is that what appears on the
7 photographs, Ms. Chenoweth?

8 A. Yes.

9 Q. And that would be a fair and accurate reflection of
10 some still shots from your video camera from your camera angle
11 -- and I think that was 6-B, I believe.

12 MR. DAVIS: Yeah. 6-B.

13 MR. MCNEELY: Without testifying, Your Honor,
14 that's camera angle 2-B.

15 MR. KEARSE: 2-B. I'm sorry.

16 MR. MCNEELY: What's the time stamp?

17 MR. KEARSE: 2:09.

18 MR. MCNEELY: 2-B.

19 Q. [Mr. Kearse] 2-B; correct?

20 A. I don't know the number.

21 Q. You don't know the number.

22 But you do recognize video footage that you
23 downloaded in this case; correct?

24 A. Yes. It looks like -- appears like stuff that came
25 off the video.

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1 Q. All right. And the individuals in those that you
2 can identify would appear to be -- Mr. Bryant and Mr. Maron
3 are at least two of the individuals out there; correct?

4 A. Correct.

5 Q. All right. And, Ms. Chenoweth, you would agree
6 that -- I hope you would agree that using profane language
7 towards -- let me ask this question first. You agree, or do
8 you not agree, Mr. Moses and Mr. Gourdine were patrons when
9 they walked into your bar?

10 A. I believe Mr. Moses had been there before. I don't
11 know about Mr. Gourdine.

12 Q. Well, when I say were patrons, they were -- they
13 came there as customers to the bar July 28th, 2013, did they
14 not?

15 A. They did. They didn't get served, but they did,
16 yes.

17 Q. All right. And it was an employee of your
18 husband's who actually started using profanity and yelling
19 pretty loud?

20 A. Don't know what was said prior to that.

21 Q. Well, I'm not talking about what was said prior to
22 that. I'm talking about what --

23 A. She did curse.

24 Q. -- Ms. Nava said.

25 A. Yes.

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1 Q. Right. She started cursing and hollering at them;
2 correct?

3 A. That's what appears on the video.

4 Q. All right. And she even elicited the attention of
5 Mr. Bryant by calling his name out, Biggie over there, I've
6 been serving him all night?

7 A. She was trying to prove a point.

8 Q. Well, which caused him cause to get his attention,
9 did she not?

10 A. I don't know if that's what got his attention.
11 But, yes.

12 MR. KEARSE: Okay. I don't have anything further,
13 Your Honor.

14 THE COURT: Mr. McNeely?

15 MR. MCNEELY: No further questions from the State.

16 THE COURT: Ms. Chenoweth, you may step down. Feel
17 free to stay with us, but you are also free to leave.
18 Thank you.

19 THE WITNESS: Thank you.

20 [Whereupon, Ms. Chenoweth is excused and exits the
21 witness stand]

22 THE COURT: Ladies and gentlemen, it's an
23 appropriate time for us to take our mid-afternoon break.
24 You can leave your notepads right where they are or take
25 them with you. Please remember all my admonitions. Do

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1 not begin discussing this case amongst yourselves.

2 Please rise for the jury.

3 [Whereupon, the jury exits the courtroom at
4 3:05 p.m.]

5 THE COURT: Please be seated. Anything from the
6 State?

7 MR. ALFARO: No, Your Honor.

8 THE COURT: Anything --

9 MR. DAVIS: Nothing, Your Honor.

10 THE COURT: -- from Mr. Davis?

11 MR. KEARSE: Nothing from Defendant Moses.

12 THE COURT: All right. We are going to take a ten-
13 minute, twelve-minute break.

14 Who's your next witness?

15 MR. MCNEELY: Lisa Nava.

16 THE COURT: Remember we're going to stop as close
17 to 5:00 as possible. Thank you.

18 [Whereupon, a recess is taken from 3:06 p.m. to
19 3:30 p.m.]

20 THE COURT: Anything before we bring in the jury?
21 From the State?

22 MR. MCNEELY: Your Honor, just a slight change of
23 order. Your Honor, we would call Brian Fenton.

24 THE COURT: Okay. Where is Mr. Kearse?

25 MR. KEARSE: Right here.

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1 [Off the record momentarily]

2 THE BAILIFF: Please rise for the jury.

3 [Whereupon, the jury enters the courtroom at
4 3:32 p.m.]

5 THE COURT: Thank you. Please be seated.

6 Call your next witness.

7 MR. MCNEELY: The State calls Lieutenant Brian
8 Fenton.

9 [Whereupon, Mr. Fenton comes forward]

10 THE CLERK OF COURT: Place your left hand on the
11 Bible. Raise your right.

12 [Whereupon, Mr. Fenton is duly sworn by the clerk
13 of court as follows: do you solemnly swear or affirm
14 the testimony you shall give in this case shall be the
15 truth, the whole truth, and nothing but the truth, so
16 help you God]

17 THE WITNESS: I do.

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

19 [Whereupon, Mr. Fenton takes the witness stand]

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

22 THE WITNESS: My name is Brian Fenton. F, as in
23 Frank, E-N-T-O-N.

24 MR. MCNEELY: Good afternoon, Lieutenant Fenton.

25 THE WITNESS: Hey.

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1 Carolina, on July 28th, 2013?

2 A. I did.

3 Q. How so?

4 A. Detective Wilson requested that I assist him with
5 presenting him photo line-ups to a couple of witnesses.

6 Q. Were photo line-ups generated of suspects in this
7 case?

8 A. They were.

9 Q. How were those generated?

10 A. The suspects' names were submitted to the State Law
11 Enforcement Division and they generated the photo line-ups for
12 us.

13 Q. Were separate line-ups generated for each suspect?

14 A. They were.

15 Q. Just so we're clear for the jury: more than one
16 suspect was not included in the same line-up; is that correct?

17 A. Correct.

18 One set of photo line-ups was for one suspect,
19 another set for a second suspect.

20 Q. How many photos were displayed in each of the photo
21 lineups?

22 A. Each photo line-up had an array of six photographs.

23 Q. Is that commonly referred to as a six-pack line-up?

24 A. Correct.

25 Q. Were the photos black-and-white or color photos?

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1 A. They were in color.

2 Q. Were they full-body shots or head shots?

3 A. Just the head.

4 Q. Were they all of similar size, or were they
5 different sizes?

6 A. All the people in the photographs appear to be
7 about the same.

8 Q. Following the generation of suspect line-ups for
9 this case, did you meet with witnesses to present them with
10 line-ups?

11 A. I did.

12 Q. What date did you meet with witnesses?

13 A. On July 30th, 2013.

14 Q. Do you remember the names of the witnesses you met
15 with?

16 A. One witness' name was Aleshia Nava and the other
17 one's name was Julia Taylor.

18 Q. Where did you meet with them?

19 A. I met with them at the Nowhere Bar and Grill, which
20 is at 7128 Henry Brown Boulevard in the Goose Creek area of
21 Berkeley County.

22 Q. Did you present line-ups to them that evening?

23 A. I did.

24 Q. Did you present line-ups to them together, or were
25 they presented when they were separated?

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1 A. Each witness was separate from the other.

2 Q. What, if anything, did you tell the witnesses
3 before presenting them with photo line-ups?

4 A. We went over the photo line-up form, which has got
5 a couple of different lines that you would read to the
6 witness. And then that's about it. And then you ask them to
7 identify the person.

8 Q. Who's the first witness that evening you presented
9 a photo line-up to?

10 A. Aleshia Nava.

11 Q. I believe you mentioned a procedure sheet or an
12 instruction sheet. Did you go over a procedure sheet with
13 Ms. Nava?

14 A. I did.

15 MR. MCNEELY: Permission to approach?

16 THE COURT: You may.

17 Q. [Mr. McNeely] I show you what's been marked as
18 State's Exhibits 29 through 31. Please take a look at those.

19 [Whereupon, the witness reviews documents]

20 Q. [Mr. McNeely] Did you go through -- are those the
21 instruction sheets you went through with Ms. Nava that
22 evening?

23 A. They are.

24 Q. I believe there are several items, approximately
25 seven, listed on the sheet; is that correct?

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1 A. Correct.

2 Q. Did you go over each of those with Ms. Nava that
3 evening?

4 A. I did.

5 Q. Did you do that prior to presenting her with a
6 line-up?

7 A. Correct.

8 Q. Did you or anyone else show Ms. Nava any photos of
9 suspects prior to going over this instruction sheet and
10 subsequently presenting a line-up?

11 A. I didn't, and I don't have any knowledge that
12 anyone else did.

13 Q. How did you present the photo line-ups to Ms. Nava?
14 Were they together, or were they done separately --

15 A. Separately.

16 Q. -- the other?

17 A. Separately.

18 I asked her to look at one set, asked her if she
19 recognized anybody in the photo line-up, and then presented
20 the second set.

21 Q. Did you or anyone else present suggest to Ms. Nava
22 any photos to select?

23 A. No.

24 Q. Was anyone else present, other than you and
25 Ms. Nava, for her photo line-up?

Brian Fenton
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1 A. I don't believe so.

2 Q. Did Ms. Nava select a photo out of the first line-
3 up presented here?

4 A. She did.

5 Q. Did she indicate which photo she selected?

6 A. She did.

7 Q. How did she indicate that?

8 A. She wrote it on the photo line-up form. And, also,
9 on the actual photo line-up she wrote the number on the back,
10 along with her initials and the date, I think.

11 MR. MCNEELY: Permission to approach the witness?

12 THE COURT: You may.

13 Q. [Mr. McNeely] Show you what's been pre-marked as
14 State's Exhibit 30. Please look at that.

15 [Whereupon, the witness reviews documents]

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

17 A. I do.

18 Q. What is that document?

19 A. It's the photo line-up.

20 Q. Is that the first line-up you presented to Ms.
21 Nava?

22 A. It is.

23 Q. How do you know that?

24 A. I wrote a one on the back, with my initials.

25 Q. Did Ms. Nava select a photo out of that line-up?

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1 A. She did.

2 Q. Which photo did she select?

3 A. She selected number three.

4 Q. Who was photo number three on that line-up?

5 A. Photo numberthree3 was Mr. Steven Moses.

6 Q. Did she indicate that that person selected was
7 involved in the incident at the Nowhere Bar on July 28th,
8 2013?

9 A. She did.

10 Q. How long did it take her to select a photo from the
11 lineup?

12 A. Pretty much right away.

13 Q. Did she have any hesitation?

14 A. I don't believe so.

15 Q. Did she ever select any other photos out of the
16 line-up?

17 A. She did not.

18 Q. How certain was she about the identification of
19 Steven Moses?

20 A. She indicated she was pretty -- fairly certain.

21 Q. Was she presented with a second line-up that
22 evening?

23 A. She was.

24 Q. Let's step back to the first line-up. Did she
25 indicate, on the document you have in front of you, which

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1 photo she selected out of the first line-up?

2 A. She did.

3 Q. How so?

4 A. She wrote that she recognized the person on the
5 photo line-up form, and she wrote a number and her initials
6 and the date on the back of the actual photo line-up.

7 Q. What number did she write?

8 A. Three.

9 Q. Now, moving on. Did you present her with a second
10 photo line-up?

11 A. I did.

12 Q. Did you go over the procedure sheet with her again?

13 A. I did.

14 Q. You went through the list, one through seven, on
15 the procedure sheet --

16 A. I did.

17 Q. -- prior to presenting the line-up?

18 A. Yes, sir.

19 Q. Was it presented to her in the same manner as the
20 first?

21 A. Yes, sir.

22 Q. Did she select a photo out of the second line-up?

23 A. She did.

24 Q. Prior to her selection of the photo, did you or
25 anyone else indicate to her which photo to select out of the

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1 lineup?

2 A. No, sir.

3 MR. MCNEELY: Permission to approach, Judge?

4 THE COURT: You may.

5 Q. [Mr. McNeely] Show you what's been pre-marked as
6 State's Exhibit 32. Do you recognize that document?

7 A. I do. It's the photo line-up.

8 Q. Is that the second photo line-up you presented to
9 Ms. Nava that evening?

10 A. It is.

11 Q. And I believe you said she picked a photo out of
12 it?

13 A. Say it again.

14 Q. Did she select a photo out of it?

15 A. She did.

16 Q. Did she indicate that the person selected was a
17 person involved with the incident at the Nowhere Bar on July
18 28th, 2013?

19 A. She did.

20 Q. How long did it take her to select a photo?

21 A. She selected it right away.

22 Q. Whose photo did she select?

23 A. She selected Jason Gourdine's.

24 Q. Did she indicate that on the instruction sheet?

25 A. She did. She said she recognized number three.

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1 Q. Did she indicate that on the line-up itself?

2 A. She did. She wrote a number three and her initials
3 and the date.

4 Q. Did she hesitate in her selection in any way?

5 A. She did not.

6 Q. Approximately what time did you present these line-
7 ups to her?

8 A. About 8:46 p.m.

9 Q. Following your presentation of line-ups to
10 Ms. Nava, did you present line-ups to Ms. Julia Victoria
11 Taylor that evening?

12 A. I did.

13 Q. Was it presented to her in the same manner as the
14 line-ups presented to Ms. Nava?

15 A. It was.

16 Q. Was anyone else present, when you presented line-
17 ups to Ms. Taylor, other than you and Ms. Taylor?

18 A. No, sir.

19 Q. Ms. Nava was not --

20 A. She was --

21 Q. -- not present there?

22 A. -- was not. She was not in the immediate vicinity.

23 Q. Did you go over instruction sheets with Ms. Taylor?

24 A. I did.

25 MR. MCNEELY: Permission to approach, Judge.

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1 THE COURT: You may.

2 Q. [Mr. McNeely] Show you what's been pre-marked as
3 State's Exhibit 33 and 35. Please look at those.

4 [Whereupon, the witness reviews documents]

5 Q. [Mr. McNeely] Are those the instruction sheets you
6 went over with Ms. Taylor that evening?

7 A. They are.

8 Q. Did you go over them with her line-by-line, the
9 individual instructions?

10 A. I did.

11 Q. Did you do that before presenting her with a line-
12 up?

13 A. I did.

14 Q. She indicated that she understood the instructions?

15 A. She did.

16 Q. At some point, did you present a photo line-up to
17 Ms. Taylor?

18 A. I did.

19 Q. Did she select a photo out of the first line-up
20 presented to her?

21 A. She did.

22 Q. Did she hesitate in making that selection?

23 A. She didn't hesitate, no, sir.

24 Q. Approximately how long did it take her to select a
25 photo?

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1 A. Pretty much right away.

2 MR. MCNEELY: Permission to approach, Judge?

3 THE COURT: You may.

4 Q. [Mr. McNeely] Showing you what's been pre-marked
5 as State's Exhibit 34. Do you recognize that document?

6 A. Yes.

7 Q. Tell the jury what that document is.

8 A. It's a photo line-up.

9 Q. Is that the first line-up you presented to
10 Ms. Taylor?

11 A. It is.

12 Q. How do you know that?

13 A. I wrote a one and my initials on the back.

14 Q. And I believe you indicated she selected a photo
15 out of the line-up?

16 A. She did.

17 Q. Which photo did she select out of the line-up?

18 A. She picked number three.

19 Q. Who was number three?

20 A. Number three was Mr. Gourdine.

21 Q. Did she select that photo without hesitation?

22 A. She did.

23 Q. Did she indicate that Mr. Gourdine was an
24 individual involved in the incident at Nowhere Bar on July
25 28th, 2013?

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1 A. She did.

2 Q. Did she ever select another photo out of that line-
3 up?

4 A. She did not.

5 Q. Did she sign the sheet indicating her selection of
6 the photo number three?

7 A. Yes, she did.

8 Q. Did you present her with a second line-up?

9 A. I did.

10 Q. Was it presented to her separately from the first?

11 A. It was.

12 Q. Did she select a photo out of the second line-up?

13 A. She did.

14 Q. Prior to selecting a photo, did you go over the
15 instruction sheet with her again?

16 A. I believe I went over it one time before the first
17 one. The instructions are the same.

18 Q. But you went over it line by line with her --

19 A. I did.

20 Q. -- in advance?

21 Did she select a photo out of the second line-up?

22 A. She did.

23 MR. MCNEELY: Permission to approach?

24 THE COURT: You may.

25 Q. [Mr. McNeely] Showing you what's been pre-marked

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1 as State's Exhibit 36. Do you recognize that document?

2 A. I do.

3 Q. How do you recognize that document?

4 A. It's a photo line-up. It's got my initials on it.

5 Q. Is that the second line-up you presented to

6 Ms. Taylor?

7 A. It is.

8 Q. Which photo did she select out of that line-up?

9 A. She chose number three.

10 Q. Did she ever select another photo?

11 A. She did not.

12 Q. Did she hesitate in any way in making her

13 selection?

14 A. She did not.

15 Q. Whose photo did she select out of that line-up?

16 A. Steven Moses.

17 Q. Did she indicate that he was a person involved at

18 the incident at Nowhere Bar on July 28th, 2013?

19 A. She did.

20 Q. Did she ever select another photo out of the line-
21 up?

22 A. She did not.

23 Q. After presenting the line-ups to the two witnesses

24 in this case, did you have any further involvement in the

25 investigation?

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A. I collected a written statement from Ms. Taylor.

Q. On that same day, July 30th?

A. Correct.

Q. Is that the extent of your involvement?

A. It is.

MR. MCNEELY: No further questions from the State.

THE COURT: Mr. Davis?

MR. DAVIS: Judge, just one question.

- - -
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- - -

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Brian Fenton
Cross-Examination by Mr. Davis
March 15, 2016

CROSS-EXAMINATION

1
2 BY MR. DAVIS:

3 Q. You're not in detective work anymore?

4 A. I supervise our school resource officers.

5 Q. And that was the extent of your investigation;
6 isn't that right?

7 A. As far as this investigation.

8 Q. Can you tell the jury why the number three was so
9 prevalent every time?

10 A. I don't know.

11 That's the -- the line-up is generated by SLED, and
12 that's how they gave it to us.

13 Q. Everything is just number three?

14 A. That's the way they presented -- they gave it to
15 us.

16 Q. Is it always presented that way where one number is
17 the prevailing number through all --

18 A. I don't have any knowledge of that.

19 Q. I mean, how long have you been a detective?

20 A. For about six years.

21 Q. Well, share with us. This wasn't your first photo
22 line-up, was it?

23 A. No.

24 But I don't remember specifically if number three's
25 always the one SLED gives us.

Brian Fenton
Cross-Examination by Mr. Davis
March 15, 2016

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Q. You don't think that's highly speculative? I mean, as far as why number three is so important in this incident?

A. I don't know why.

MR. DAVIS: All right.

THE COURT: Mr. Kearse?

MR. KEARSE: May it please the Court.

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Brian Fenton
Cross-Examination by Mr. Kearse
March 15, 2016

CROSS-EXAMINATION

1
2 BY MR. KEARSE:

3 Q. Lieutenant Fenton --

4 A. Yes, sir.

5 Q. -- when you use the word suspect, that's just a
6 term of art that a person's been -- may have committed and
7 been accused of --

8 A. Yes.

9 Q. -- accused; correct?

10 A. Correct.

11 Q. It's not definitive and it doesn't mean they
12 actually did it; right?

13 A. Yeah, the term suspect means it's a person of
14 interest.

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

16 [Whereupon, Mr. Kearse reviews documents]

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

18 THE COURT: Take your time.

19 [Mr. Kearse and Mr. Davis confer]

20 Q. [Mr. Kearse] When you said you -- you took
21 Ms. Taylor's statement; is that correct?

22 A. Yes, sir.

23 Q. And that was the only other act that you performed
24 in this case?

25 A. Correct.

Brian Fenton
Cross-Examination by Mr. Kearse
March 15, 2016

1 MR. KEARSE: May I approach, Your Honor?

2 THE COURT: You may.

3 Q. [Mr. Kearse] All right. I hand you a three-page
4 document. Is that -- can you tell this Court and this jury
5 what that is?

6 A. It's a voluntary statement that was collected from
7 Julia Taylor.

8 Q. Okay. And that form you used is a form that
9 Berkeley County Sheriff's Office uses to collect statements
10 from potential witnesses or witnesses?

11 A. Yes, sir.

12 Q. All right. And does that three-page form -- as you
13 identified a statement. That appears to be the statement you
14 took from Julia Taylor?

15 A. Yes.

16 Q. Julia Taylor.

17 MR. KEARSE: At this time, Your Honor, I would just
18 like to mark this for identification purposes as
19 Defendant's Exhibit Number 1.

20 [Whereupon, Defendant Moses Exhibit Number 1 is
21 marked by the court reporter]

22 MR. KEARSE: Your Honor, I don't have anything
23 further.

24 MR. MCNEELY: Nothing further from the State,
25 Judge.

Brian Fenton
Cross-Examination by Mr. Kearse
March 15, 2016

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THE COURT: You may step down. Feel free to stay with us, but you're also free to leave. Thank you.

THE WITNESS: Thank you, Your Honor.

[Whereupon, Mr. Fenton is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. ALFARO: The State calls Bill Coffey.

[Whereupon, Mr. Coffey comes forward]

THE CLERK OF COURT: Place your left hand on the Bible. Raise your right.

[Whereupon, Mr. Coffey 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.

[Whereupon, Mr. Coffey takes the witness stand]

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

THE WITNESS: Yes, ma'am. Billy W. Coffey. C-O-F-F-E-Y. Actually, my middle name is Wayne.

MR. ALFARO: Good afternoon, Mr. Coffey.

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- - -

Billy W. Coffey
Direct Examination by Mr. Alfaro
March 15, 2016

BILLY W. COFFEY

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 or if you currently work?

A. I do not work.

I'm retired from the navy, and the VA has me disabled.

Q. What did you do in the navy?

A. I was a chief master of arms at time of retirement.

Q. How long were you in the navy?

A. Twenty.

Q. And are you familiar with the Nowhere Bar and Grill in Goose Creek?

A. Yes, sir.

Q. Would you consider yourself -- or you or your wife a frequent customer there?

A. We used to be. We haven't been in there much recently.

Q. And were you -- do you recall being -- if you were there on July 28th, 2013?

A. Yes, sir, I was.

Q. And do you have any recollection as to what time,

Billy W. Coffey
Direct Examination by Mr. Alfaro
March 15, 2016

1 approximately, you got there that night?

2 A. I've been trying to remember back and forth. I
3 think we got there sometime around 11:30, but I'm not a
4 hundred percent sure.

5 Q. And who did you go there with?

6 A. With my wife.

7 Q. We played the video earlier. Did you have the same
8 white hair, that you have now, back then?

9 A. Oh. Yes, sir, except I have the pony tail up now.

10 Q. All right. Are you familiar with the victims in
11 this case, Stacy Bohannon and David Bohannon? Two of the
12 victims, Stacy Bohannon and David Bohannon?

13 A. I've seen them. I've met them. Yes, sir.

14 Q. And do you know them from the bar?

15 A. Yes, sir.

16 Q. What about James Bryant?

17 A. I have met him there.

18 I don't recall if it was that night, or maybe a
19 previous evening somewhere along, but about the same time
20 frame.

21 Q. And do you recall seeing those three in the bar
22 that night?

23 A. Yes, sir.

24 Q. And do you recall seeing the two defendants enter
25 the bar that night?

Billy W. Coffey
Direct Examination by Mr. Alfaro
March 15, 2016

1 A. Yes, sir.

2 Q. And approximately what time do you recall the
3 defendants coming in?

4 A. Just before closing.

5 I'm guessing. It was right after they had done the
6 last call, and I think that probably was about 1:50. But I
7 can't swear to that.

8 Q. It was after last call?

9 A. Yes, sir.

10 Q. And did they go to the part of the bar that you
11 were in with your wife?

12 A. Actually, a little bit back behind me back in this
13 direction. Probably about ten or fifteen feet from where I
14 was sitting.

15 Q. Do you recall what happened after they entered the
16 bar?

17 A. From what I heard was the -- I guess they attempted
18 to order a drink. The bartender told them they had done last
19 call --

20 MR. KEARSE: Object, Your Honor, as to what he
21 heard. He can testify as to what he saw and observed
22 himself.

23 THE COURT: Please rephrase your question.

24 Rephrase your question. Thank you.

25 Q. [Mr. Alfaro] What did you observe in the bar that

Billy W. Coffey
Direct Examination by Mr. Alfaro
March 15, 2016

1 night?

2 A. What did I observe? I heard -- one of the
3 defendants apparently was upset because apparently they would
4 not serve them because it was after last call.

5 I heard one of the defendants make a comment
6 similar to the effect, what, is this a racist bar. And
7 shortly after that, the two defendants started to depart the
8 bar.

9 Q. And what do you recall happened after that?

10 A. Up at the bar there was a confrontation with the
11 two defendants, or at least one of them, and a group of other
12 individuals.

13 Q. And did you see anybody throw a punch during that
14 time?

15 A. I seen one individual, I don't recall his name. He
16 was a short I believe Puerto Rican male, but I don't recall
17 his name.

18 Q. And he's the only one you recall seeing throw a
19 punch?

20 A. That's the only one I seen, sir.

21 Q. And what happened after that?

22 A. Shortly after that, the two defendants departed the
23 bar. I went up toward the door to try to keep the individuals
24 that were in there back, keep them from going outside, to try
25 to stop any further confrontation.

Billy W. Coffey
Direct Examination by Mr. Alfaro
March 15, 2016

1 Q. So you were trying to intervene to --

2 A. I was trying to stop anything that might happen.

3 Q. And were you able to keep the people, inside the
4 bar, inside the bar?

5 A. At that particular time, yes, sir.

6 Q. Did -- to your recollection, did James Bryant
7 remain in the bar?

8 A. I think so. I'm pretty sure.

9 Q. But did you see Mr. Bryant follow after the
10 defendants?

11 A. It was probably -- I wouldn't say followed after.
12 I'm not sure what you're asking me exactly there.
13 It was about ten minutes after all that when he left and went
14 outside.

15 Q. That's my fault. That's an unclear question.
16 When the defendants leave the bar, did you see
17 James Bryant immediately go out after them?

18 A. No, sir, I did not.

19 Q. Did you see Stacy or David Bohannan immediately go
20 after them?

21 A. No, sir. It was at least I would say approximately
22 ten minutes.

23 Q. And were you inside the bar when the shooting took
24 place?

25 A. Yes, sir, I was.

Billy W. Coffey
Direct Examination by Mr. Alfaro
March 15, 2016

1 Q. So you didn't witness the shooting?

2 A. I did not witness the shooting, no, sir.

3 Q. Were you still inside the bar for the aftermath of
4 the shooting?

5 A. Yes, sir, I was.

6 Q. Okay. And what do you recall happening when you --
7 after you heard the gunshots outside?

8 A. What I recall hearing was Stacy came inside and
9 said that she had been shot. And it was about the same
10 time -- I told my wife and some of the other individuals there
11 to get down behind the bar. I believe I told Stacy to get
12 down behind the bar, also.

13 At that time, shortly after that the two male
14 suspects -- or victims came in. They laid down up near the
15 front of the door. I actually went over and locked the door.

16 And at some point I got on the line with 911 and
17 was communicating with them. They had a hard time hearing me.
18 I went back into the restroom, where it was a little bit
19 quieter, to finish my communications. Came back out.

20 When I seen the blue lights outside, I went up and
21 unlocked the door at that time.

22 MR. ALFARO: Thank you, Mr. Coffey. Please answer
23 any questions the defense may have.

24 THE WITNESS: Yes, sir.

25 THE COURT: Mr. Davis?

Billy W. Coffey
Direct Examination by Mr. Alfaro
March 15, 2016

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MR. DAVIS: How you doing, Mr. Coffey? How you doing?

THE WITNESS: I'm fine, sir. How are you?

MR. DAVIS: Is it all right if I call you Wayne?

THE WITNESS: My name is actually Bill -- or Billy.

MR. DAVIS: I thought you said Wayne.

THE WITNESS: No. Wayne is my middle name.

MR. DAVIS: That's why I asked you if it's okay if I call you that. But that's okay. I'll call you Mr. Coffey.

THE WITNESS: Call me Bill.

MR. DAVIS: I'm sorry, Mr. Coffey.

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Billy W. Coffey
Cross-Examination by Mr. Davis
March 15, 2016

CROSS-EXAMINATION

1
2 BY MR. DAVIS:

3 Q. You were in the military, you shared?

4 A. Yes, sir, I was.

5 Q. And the navy, you said?

6 A. Yes, sir.

7 Q. You've been in many a bars in your lifetime if
8 you've been in the navy, have you not?

9 A. Not necessarily. I wasn't that big a bar-goer.

10 Q. You wasn't? But more navy guys have fun in the
11 bars, you would say?

12 A. There are a few, sir.

13 Q. That's right. And Nowhere -- it's a bar?

14 A. Yes, sir, it is.

15 Q. People drinking and having a good time.

16 A. Yes, sir.

17 Q. And were you there when the -- free liquor was
18 being distributed?

19 A. I don't know anything about any free liquor.

20 Q. You don't know if free liquor was given out? The
21 owner was -- it was her birthday and she still wasn't giving
22 out no free liquor?

23 A. No, sir. Not to me.

24 Q. Okay. But it was a lot of drinking going on?

25 A. There usually is in a bar.

Billy W. Coffey
Cross-Examination by Mr. Davis
March 15, 2016

1 Q. That's correct.

2 People drinking, people's egos, and judgments are
3 impaired with drinking; isn't that true?

4 A. They can be, yes, sir.

5 Q. Yeah.

6 Well, ain't no question that night what you saw is
7 that two young men came into a bar. The owner called them
8 gentlemens. Do you have any reason to dispute calling them
9 gentlemens?

10 A. I have no problem with that.

11 Q. All right. And that they were leaving and that as
12 they approached the door, some fellow, Enrique -- were you
13 familiar with him?

14 A. Excuse me, sir?

15 Q. Short little --

16 A. Yeah. I -- yes, sir. I know who you're talking
17 about.

18 Q. You're familiar with --

19 A. I don't remember his name, but I know who you're
20 talking about.

21 Q. Do you know what happened to him after all this
22 happened? I saw him jump in a car. Do you know where he
23 went?

24 A. I have no clue.

25 Q. No clue.

Billy W. Coffey
Cross-Examination by Mr. Davis
March 15, 2016

1 A. I wasn't outside.

2 Q. I know you weren't. I know.

3 And there weren't any shots fired in the direction
4 of the club? You don't remember no pellets coming toward the
5 shot -- the club or anything?

6 A. There were three shots fired, that I heard. It
7 wasn't at that time, but it was a later time I had observed
8 where the pellets had penetrated one of the windows.

9 Q. I mean when you were telling people duck behind the
10 bar.

11 A. Well, I did, because I didn't know what was going
12 to happen.

13 Q. Well, when you told the folks to duck behind the
14 bar, the shooting was over, wasn't it?

15 A. Excuse me?

16 Q. The shooting was over when you were telling people
17 to --

18 A. I never told anybody the shooting was over because
19 I didn't know.

20 Q. No. I didn't say you told anybody.

21 Were there any other shooting happened when Stacy
22 Bohannon came into the shop, into the --

23 A. No, sir.

24 Q. All right.

25 A. It was just those three.

Billy W. Coffey
Cross-Examination by Mr. Davis
March 15, 2016

1 Q. That's correct. And you weren't outside --

2 A. No, sir, I wasn't.

3 Q. And this depictment [phonetic] -- you talk about
4 time reference. It all happened pretty fast, did it not?

5 A. Yes, sir, it did.

6 Q. And you heard profanity that night, also?

7 A. There usually is in a bar, yes, sir.

8 Q. Well, did you hear it from the bartender? That's
9 more concerned -- was the bartender cursing folks? That's
10 what I want to know.

11 A. Yes.

12 Q. You heard that; right?

13 A. Yeah.

14 Q. Yeah.

15 And you also saw the owner that night; right?

16 A. Yes, sir.

17 Q. She said she wasn't working that night. But she
18 was having a good time?

19 A. Right.

20 Q. Okay. You saw her get in the midst of this, also,
21 did you not?

22 A. I believe she went up toward the door at one point
23 when the confrontation was started. I believe so.

24 Q. But did you see these two young men at any time
25 move toward any other individuals in the bar in an aggressive

Billy W. Coffey
Cross-Examination by Mr. Davis
March 15, 2016

- 1 manner?
- 2 A. I cannot say that I did, no.
- 3 Q. They did --
- 4 A. Not in the bar, no, sir.
- 5 Q. Did not. That's right.
- 6 A. I cannot say that.
- 7 Q. Now, Mr. James Bryant: did you know him? The big
- 8 guy. I would say he's six foot eight. He corrected me and
- 9 tell me he's six four or six six or something. He's a big
- 10 guy, is he not?
- 11 A. Yes, sir.
- 12 Q. And you saw him in the bar?
- 13 A. Yes, sir.
- 14 Q. And he felt good. He had consumed a good bit of
- 15 alcohol, I would say; wouldn't you say?
- 16 A. I don't know how much he had consumed.
- 17 Q. But he looked intoxicated?
- 18 A. I can't say, sir.
- 19 Q. Oh. He didn't look intoxicated?
- 20 A. I cannot say.
- 21 Q. Did he appear to you to --
- 22 A. I do not know.
- 23 Q. You do not know.
- 24 Okay. But you watched and observed him drinking?
- 25 A. I really wasn't paying any attention to him, sir.

Billy W. Coffey
Cross-Examination by Mr. Davis
March 15, 2016

1 Q. All right. At what point did you pay some
2 attention to him?

3 A. When I heard the confrontation starting back behind
4 me at the bar --

5 Q. Yeah.

6 A. -- and after the front door.

7 Q. Well, did he stay back to the bar and -- was he
8 working? Do you know whether he was working --

9 A. Not that I know of. I don't think he works there,
10 no, sir.

11 Q. I don't think so, neither. He don't work there,
12 does he?

13 A. Excuse me?

14 Q. He don't work there; right?

15 A. No, sir.

16 Q. But all of a sudden he's in the picture, though;
17 right?

18 A. Yes, sir.

19 Q. Tell the jury what you saw him doing.

20 A. The only thing that I seen was him and the three
21 individuals that were at the front door as these two
22 individuals were leaving -- and on -- four, I should say. The
23 Puerto Rican guy is the one that threw the punch.

24 Q. Okay. So four guys on --

25 A. Well, --

Billy W. Coffey
Cross-Examination by Mr. Davis
March 15, 2016

1 Q. I mean --

2 A. Four individuals.

3 Q. Okay. Four individuals. Okay. Four individuals
4 on the two gentlemen?

5 A. Well, they -- I don't say they were on anybody. I
6 wouldn't say that they were on them, either.

7 There was a confrontation, yes, sir.

8 Q. Well, a confrontation.

9 You been in the military. You understand there's
10 some rules of engagement; isn't that true?

11 A. Yes, sir.

12 Q. Wayne, isn't that true?

13 A. Yes, sir.

14 Q. Rules of engagement. And rules of engagement is
15 when you come into other people's spare area; isn't that true?

16 A. Yes, sir.

17 Q. Yeah.

18 And there's no question that these two young men
19 were at the door?

20 A. Correct, sir.

21 Q. And four individuals, give or take, were in close
22 proximity --

23 A. Close proximity.

24 Q. And you did witness --

25 A. One individual. Yeah. Yes, sir.

Billy W. Coffey
Cross-Examination by Mr. Davis
March 15, 2016

1 Q. -- throw a punch?

2 A. Yes, sir.

3 Q. Okay. Did it land or not?

4 A. I don't know for sure.

5 I'm not one hundred percent. I think so, but I'm
6 not sure.

7 Q. You think so. Thank you, Bill.

8 Have they ever had security at this bar?

9 A. No, sir. Not that I know of.

10 Q. No security. Okay. And you weren't on the
11 outside?

12 A. I did not go outside, no, sir.

13 Q. And you said in all, give or take, this happened
14 quite fast?

15 A. Yes, sir.

16 MR. DAVIS: No further questions.

17 THE COURT: Mr. Kearse?

18 MR. KEARSE: May it please this Court? Counsel.

19 Mr. Coffey, how are you doing this afternoon?

20 THE WITNESS: I'm fine, sir. How are you?

21 MR. KEARSE: Doing quite well. Thank you.

22

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Billy W. Coffey
Cross-Examination by Mr. Kearse
March 15, 2016

CROSS-EXAMINATION

1
2 BY MR. KEARSE:

3 Q. You said you saw individuals move towards
4 Mr. Gourdine and Mr. Moses; is that correct?

5 A. At the door. Yes, sir.

6 Q. All right. And that's as they were exiting the
7 bar?

8 A. In my --

9 Q. They were --

10 A. In my opinion, they were already going towards the
11 door, yes, sir.

12 Q. And since this night, if you do not know -- you did
13 not know those individuals on that night, you have come to
14 know those individuals moving towards where Mr. Moses and
15 Mr. Gourdine were?

16 A. I don't think I've seen James in there but maybe
17 once since then.

18 The other individuals I seen -- I just don't go in
19 there much at all.

20 Q. One of those individuals moving towards Mr. Moses
21 and Mr. Gourdine would be James Bryant, who you have come to
22 know as James Bryant now; is that correct?

23 A. Yes.

24 Q. All right. And then there's another individual.
25 You called him a Puerto Rican --

Billy W. Coffey
Cross-Examination by Mr. Kearse
March 15, 2016

1 A. He --

2 Q. -- guy or something --

3 A. I don't know his name. But, yes, sir.

4 Q. Okay. And he was, along with Mr. Bryant, moving
5 towards these two gentlemen as they walked towards the door;
6 is that correct?

7 A. I -- they were all in the same general area, yes,
8 sir.

9 Q. All right. And then there was another gentleman
10 wearing I believe a black tank-top or so, of who we know --
11 now know as Mr. Bohannan. Was he one of those individuals --

12 A. I'm --

13 Q. -- also?

14 A. I'm not sure.

15 Q. But there were at least two other people also
16 moving towards Mr. Gourdine and Mr. Moses?

17 A. Moving towards the door. Yes, sir.

18 Q. All right. And you said you got up to try to stop
19 those individuals from --

20 A. Once the little individual threw the punch as the
21 two defendants were going out the door, that's when I went up
22 there to prevent the rest of the individuals from going out
23 the door also.

24 Q. Right.

25 Because they appeared to be following them out the

Billy W. Coffey
Cross-Examination by Mr. Kearse
March 15, 2016

1 door; is that right?

2 A. I don't know. I don't know what was in their mind.
3 I have no clue.

4 I just didn't want to see anything else elevate any
5 further than it already had.

6 Q. Okay. But your present sense of impression at the
7 time, which pretty much as testified to, that you got up to
8 make sure they didn't follow them out the door?

9 A. I guess you could say that, yes.

10 Q. Okay. Now, at no time while in that bar on July
11 28th, 2013, did you see Mr. Moses hit anybody; correct?

12 A. No, sir, I didn't.

13 Q. All right. And of course you say you did not see
14 anything that took place outside?

15 A. No, sir, I did not.

16 Q. Okay. I'm going to hand you what's in evidence as
17 Defendant Moses' Exhibit Number 8. Okay?

18 A. Yes, sir.

19 Q. You would agree that's a photograph?

20 A. Yes, sir.

21 Q. All right. In that picture do you recognize, from
22 previous encounters --

23 MR. KEARSE: Your Honor, I'm sorry. Can I approach
24 the witness? I apologize.

25 THE COURT: You may.

Billy W. Coffey
Cross-Examination by Mr. Kearse
March 15, 2016

1 Q. [Mr. Kearse] -- on the night of July 28th, 2013?
2 Any of those individuals in that picture?

3 A. Well, they appear to be the two suspects here, one
4 in the car and one here.

5 This is the black male victim, the white female
6 victim, the white male victim.

7 And I believe this may be the little Puerto Rican
8 guy.

9 Q. All right. You used the words suspects. Those are
10 not words you normally use to call people; right?

11 A. In some circumstances, yes, sir.

12 Q. All right. So on your everyday terminology, when
13 you see somebody walking in the mall would you call them a
14 suspect?

15 A. No, sir, I would not.

16 Q. Okay. So the two gentlemen sitting at the defense
17 table are situated in the picture; is that correct?

18 A. Yes, sir.

19 Q. Okay. And then the -- in your everyday language
20 you don't normally call people by victims, do you?

21 A. In some circumstances, yes, sir.

22 Q. Well, I mean, on the way to the courthouse, when
23 you got out of the car this morning, you're walking towards
24 the courthouse --

25 A. No, sir.

Billy W. Coffey
Cross-Examination by Mr. Kearse
March 15, 2016

1 Q. All right. So the four -- there are four
2 individuals: one in a long tee-shirt and long kind of khaki
3 pants.

4 A. Uh-huh.

5 Q. Would you describe that as Mr. Bryant?

6 A. It appears to be, yes, sir.

7 Q. All right. And then there is a young lady in a
8 jersey, what appears to be a jersey -- you would agree with
9 that -- in the picture?

10 A. Yes, sir.

11 Q. Have you come to know that as Ms. Bohannan?

12 A. I believe so, yes, sir.

13 Q. All right. And there's a gentleman standing next
14 to her in a dark --

15 A. Would be her husband.

16 Q. All right. And that's Mr. Bohannan, David --

17 A. Yes, sir.

18 Q. -- Bohannan; correct?

19 A. Yes, sir.

20 Q. And then the fellow who's in the white tank-top
21 tee-shirt getting out of the van, that appears to be the short
22 Puerto Rican guy?

23 A. That appears to me, yes, sir.

24 Q. Okay. And you don't know his name but --

25 A. No, sir, I don't.

Billy W. Coffey
Cross-Examination by Mr. Kearse
March 15, 2016

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Q. -- you will recall that that's the gentleman who
threw the punch; correct?

A. Yes, sir.

Q. And that's all those folks in Defendant's Exhibit
Number 8; correct?

A. Yes, sir.

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

MR. ALFARO: Briefly, Your Honor.

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Billy W. Coffey
Redirect Examination by Mr. Alfaro
March 15, 2016

REDIRECT EXAMINATION

1
2 BY MR. ALFARO:

3 Q. Mr. Coffey, just to clarify a point that Mr. Kearse
4 just made: you were asked if you call people victims in their
5 -- in your everyday vernacular?

6 A. Yes, sir.

7 Q. If you know someone who had gotten shot, would you
8 consider that person a victim?

9 A. Yes, sir, I would.

10 Q. Okay. Now, specifically, I want to ask you about
11 James and David and Stacy. Did you see James throw any
12 punches inside the bar?

13 A. I did not.

14 Q. And did you see James have any weapon inside the
15 bar?

16 A. No, sir.

17 Q. Did you see David throw any punches in the bar?

18 A. No, sir.

19 Q. Did you see David Bohannon with any weapon?

20 A. No, sir, I did not.

21 Q. Did you see Stacy Bohannon throw any punches?

22 A. No, sir.

23 Q. Did you see Stacy Bohannon with any weapon?

24 A. No, sir.

25 Q. And you heard no gunshots inside the bar? They

Billy W. Coffey
Redirect Examination by Mr. Alfaro
March 15, 2016

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were all --

A. They were all outside. There was none inside.

MR. ALFARO: Thank you.

THE WITNESS: Yes, sir.

THE COURT: Mr. Davis?

MR. DAVIS: Nothing from this cross -- nothing from

--

THE COURT: Mr. Kearse?

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Billy W. Coffey
Recross-Examination by Mr. Kearse
March 15, 2016

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RECCROSS-EXAMINATION

BY MR. KEARSE:

Q. Mr. Coffey --

A. Yes, sir.

Q. -- hypothetically, if an individual is running at
you and appears --

MR. ALFARO: Objection.

MR. KEARSE: I said hypothetically.

MR. ALFARO: Which clearly calls for speculation.

MR. KEARSE: Well, you asked him approaching the
door.THE COURT: Counsel, this way, not that way.
Please approach.[Whereupon, an off-the-record bench conference is
held]

THE COURT: Sustained.

Q. [Mr. Kearse] Mr. Coffey, if somebody got shot
because they were attacking somebody, would you call them a
victim?

A. I don't know the full circumstances behind there.

Q. But generally, would you call them a victim?

A. Anytime somebody gets shot, I would say, yes, they
were a victim.

Q. Even if they were attacking somebody else?

A. It's kind of difficult to say, isn't it?

Billy W. Coffey
Recross-Examination by Mr. Kearse
March 15, 2016

1 Q. All right. I'll take that as a no.

2 MR. KEARSE: Thank you, Your Honor.

3 THE COURT: You may step down, Mr. Coffey. Feel
4 free to stay with us.

5 [Whereupon, Mr. Coffey is excused and exits the
6 witness stand]

7 THE WITNESS: Thank you, Your Honor. Do you need
8 me anymore today?

9 THE COURT: I don't need you, but you're free to
10 stay with us.

11 THE WITNESS: I had rather not.

12 THE COURT: All right. Thank you. You're free to
13 go.

14 THE WITNESS: I've got things to do. Thank you,
15 ma'am.

16 THE COURT: Thank you.

17 MR. MCNEELY: The State calls Aleshia Nava.

18 [Whereupon, Ms. Nava comes forward]

19 THE CLERK OF COURT: Place your left hand on the
20 Bible. Raise your right.

21 [Whereupon, Ms. Nava is duly sworn by the clerk of
22 court as follows: do you solemnly swear or affirm the
23 testimony you shall give in this case shall be the
24 truth, the whole truth, and nothing but the truth, so
25 help you God]

Billy W. Coffey
Recross-Examination by Mr. Kearse
March 15, 2016

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THE WITNESS: Yes.

THE CLERK OF COURT: Please have a seat.

[Whereupon, Ms. Nava 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 Aleshia Nava. N-A-V-A.

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Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

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ALESHIA NAVA,

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

DIRECT EXAMINATION

BY MR. MCNEELY:

Q. Ms. Nava, where are you employed?

A. At MUSC.

Q. What do you do at MUSC?

A. I work in the College of Dental Medicine as
sterilization.

Q. Where were you employed on July 27th and 28th of
2013?

A. At Nowhere Bar and Grill.

Q. What was your position at the Nowhere Bar and
Grill?

A. Bartender.

Q. Where is the Nowhere Bar and Grill located?

A. 7128 Henry Brown Boulevard in Goose Creek.

Q. Is that in Berkeley County, South Carolina?

A. Yes, sir.

Q. Were you working at the Nowhere Bar on July 27th
and 28th of 2013?

A. Yes, sir.

Q. Were you working as a bartender that evening?

A. Yes, sir.

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 Q. What time is closing time at the bar?

2 A. It closes at 2:00 a.m.

3 Q. Does it always close at 2:00 a.m.?

4 A. Yes, sir.

5 Q. Did it close at 2:00 a.m. on July 27th, 28th, 2013?

6 A. [No response]

7 Q. Let me rephrase that.

8 Was closing time, on July 27th and 28th of 2013,

9 2:00 a.m.?

10 A. As in no more serving? Or doors closed?

11 Q. What time was closing time that night?

12 A. Two o'clock.

13 Q. What time was the last call for drinks that night?

14 A. Between 1:30 and 1:45.

15 Q. Are drinks served after last call?

16 A. After last call, yes. After 1:45 point, no, sir.

17 Q. Well, explain that for the jury, if you don't mind.

18 A. We call last call at 1:30. We give all the
19 customers about fifteen minutes to get their last drink, close
20 their tabs, such as that.

21 So after 1:45, the fifteen-minute period is over
22 and there's no more drinks served.

23 Q. So you make a last call to give everybody an
24 opportunity to get a last one; is that correct?

25 A. Yes, sir, especially if --

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 MR. DAVIS: I'm going to object to leading, Your
2 Honor.

3 A. -- there's a lot of people.

4 THE COURT: Overruled. They're just clarifying.
5 Thank you.

6 Q. [Mr. McNeely] And then shortly before closing, you
7 quit serving drinks completely; is that correct?

8 A. Yes, sir.

9 Q. Prior to last call on July 28th of 2013, had there
10 been any incidents or altercations in the bar that night?

11 A. Prior to last call? No, sir.

12 Q. Do you recall an incident occurring that night
13 after last call?

14 A. Yes, sir.

15 Q. You may have already said this, but what time was
16 last call that night?

17 A. Between 1:30 and 1:45.

18 Q. Did you see the defendants enter the bar at some
19 point that evening?

20 A. Yes, sir.

21 Q. What time did they enter the bar, approximately?

22 A. 1:50, maybe?

23 A. Was it after last call?

24 A. Yes, sir.

25 Q. Did you know either of the defendants who entered

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 the bar that night?

2 A. No, sir.

3 Q. Where did they go when they entered the bar?

4 A. To the corner of the bar.

5 Q. Where were you at that time?

6 A. Behind the bar.

7 Q. What happened next?

8 A. I was doing credit cards and closing out tabs, so I
9 didn't approach them initially. I was in the middle of
10 things. When I -- once I approached them, I asked -- I'm
11 referring to the taller gentleman -- I let him know it was
12 last call. He asked me if he could get a drink and I told
13 him, no, I can't, it's past last-call time, Berkeley County
14 makes the rules, not I, I just follow them.

15 And then after that, he said something to his
16 friend. And then he said something along the lines that I
17 wouldn't serve him because he was black. And I took that very
18 -- I was very offended because I have two biracial children.
19 And I let him know that we are not like that in that
20 establishment, I have two biracial children. And I pointed to
21 James and I said, I've served him all night long, he's black,
22 so it's not even like that in here.

23 And then he gave me a round of applause and asked
24 me to repeat it all over again.

25 Q. How far were you from him when that interaction

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 took place?

2 A. Closer than you and I.

3 Q. Just across the bar length?

4 A. Yes, just a bar length.

5 Q. What happened after that conversation between you
6 and the defendant?

7 A. The other bartender -- because we work two
8 bartenders on the weekends, the other bartender overheard the
9 clapping and the commotion and she told the two guys to get
10 the F out of the bar, it's not even like that there.

11 Q. What was her name?

12 A. Vicky.

13 Q. What happened after that?

14 A. I seen them going towards the door. I turn around.
15 And I was still trying to close people out, because
16 it kind of happened in the middle of things. We were still
17 trying to get people out of the bar.

18 And then I heard a commotion and I seen Rick
19 approaching the gentleman. And I said something along the
20 lines like, nobody has time for that F stuff.

21 And that's all I seen after that, after everybody
22 had gone towards the door.

23 Q. What did you mean by nobody has time for this?

24 A. Routiness, and arguments, and things along that
25 line. Because I just heard the motions in the background.

Aleshia Nava
Direct Examination by Mr. McNeely
> March 15, 2016

1 Q. Were you trying to discourage fighting in the bar?

2 MR. DAVIS: I'm going to object to leading again,

3 Your Honor.

4 THE COURT: Overruled.

5 A. Sir?

6 Q. [Mr. McNeely] Were you trying to discourage
7 fighting in the bar?

8 A. I said it to another customer at the bar, nobody
9 has time for this just because you just don't do that there.
10 It's not the time or the place.

11 Q. Was there a physical altercation?

12 A. I did not see one.

13 Q. Did you see anybody throw a punch?

14 A. Yes.

15 Q. Who did you see throw a punch?

16 A. Rick.

17 Q. Who did he throw a punch at?

18 A. Steven.

19 Q. What happened after that?

20 A. I didn't see contact being made. I just seen a
21 crowd of people go over and I -- they were walking towards the
22 door and I turned around.

23 Q. Did the defendants leave at that time?

24 A. I assumed.

25 Q. You didn't see the door?

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 A. No, sir.

2 Q. Did the other people in the bar leave at that time?

3 A. No, sir.

4 We try not to put -- if there is an altercation in
5 the bar, we try not to put both parties in the parking lot at
6 the same time, because things can escalate that way.

7 Q. Did Rick stay in the bar?

8 A. I do not recall.

9 Q. Did James Bryant stay in the bar?

10 A. At that time? Yes, sir.

11 Q. Did Stacy Bohannon stay in the bar at that time?

12 A. I believe -- I believe everybody from that party
13 stayed in the bar. I'm not a hundred percent sure.

14 Q. What happened next?

15 A. I went to do a clean-up. Because after two
16 o'clock, things don't end when drinks are stopped. We have a
17 whole bar to clean.

18 So I started cleaning. And I was talking to the
19 customers on and off. And then I heard a loud bang, which I
20 didn't know what it was initially, and then I heard another
21 bang.

22 And Stacy ran in the bar screaming she had been
23 shot. So I went to go run to the bathroom because my first
24 instinct was hide.

25 And then when I seen James come into the bar, he

Aleshia Nava
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March 15, 2016

1 was bleeding very bad and I ran to call 911. And I was on the
2 phone with 911 until police got there.

3 Q. I want to back you up a little bit and walk you
4 through it, if that's okay.

5 A. Uh-huh.

6 Q. At some point, the defendants left the bar; is that
7 correct?

8 A. Yes, sir.

9 Q. From that point on, how much time passed before the
10 other people left the bar?

11 A. Maybe five to ten minutes.

12 Q. And then at some point the other folks leave the
13 bar; is that correct?

14 A. Yes, sir.

15 Q. When did the shooting occur?

16 A. Within a few minutes of them being outside, I
17 assume.

18 I didn't really pay attention at the time. I
19 didn't know anything was going to happen.

20 Q. Did you ever go outside?

21 A. No, sir.

22 Q. I believe you said you heard pops; is that correct?

23 A. Yes. Loud bangs.

24 Q. What did you think that was?

25 A. I initially thought it was an accident, a car

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 accident, because it sounded nothing like a gunshot to me. It
2 just sounded like a bang, maybe a car door, plexiglass, kind
3 of. I just didn't know if it was a gunshot.

4 Q. And then what did you see next?

5 A. Stacy ran in the bar, grabbing her head.

6 Q. Did you hear Stacy say anything?

7 A. I've been shot.

8 Q. What did you do at that time?

9 A. Ran. Well, was going -- stepping on to the
10 bathroom.

11 Q. How did you feel at that time?

12 A. Scared.

13 Q. What did you do in the bathroom?

14 A. I didn't make it to the bathroom.

15 I turned around and ran back to the office because
16 I knew I had to call 911 at that point.

17 Q. Did you call 911?

18 A. I did.

19 Q. Did you talk to the dispatcher?

20 A. I did.

21 MR. MCNEELY: Your Honor, permission to approach
22 the witness?

23 THE COURT: You may.

24 Q. [Mr. McNeely] Ms. Nava, I'm going to show you
25 what's been previously marked as State's Exhibit 2. Would you

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 please look at that?

2 [Whereupon, the witness reviews documents]

3 Q. [Mr. McNeely] Do you recognize that?

4 A. Yes, sir.

5 Q. How do you recognize it?

6 A. It is a copy of my 911 call.

7 Q. Have you listened to it?

8 A. Yes, sir.

9 Q. Is it your voice making the call?

10 A. Yes, sir.

11 Q. Does it contain a complete copy of the 911 call you
12 made to authorities on July 28th, 2013?

13 MR. KEARSE: I'm going to object, Your Honor. I
14 don't think she can --

15 THE COURT: What's your objection?

16 MR. KEARSE: -- testify to this.

17 THE COURT: What's the objection?

18 MR. KEARSE: She's not the 911 dispatcher.

19 THE COURT: Counsel approach.

20 [Whereupon, an off-the-record bench conference is
21 held]

22 THE COURT: Overruled as to authentication.

23 And Mr. Davis made an objection, and Mr. Kearse
24 joined in as to cumulative.

25 Deny -- overrule your objection.

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 You may answer.

2 Mr. McNeely, at this time you may need to rephrase
3 your question --

4 MR. MCNEELY: Yeah. Thank you, Your Honor.

5 THE COURT: -- or ask it again.

6 Q. [Mr. McNeely] Have you reviewed the contents of
7 that disk?

8 A. Yes, sir.

9 Q. Is it a complete recording of the 911 call you made
10 to authorities on July 28th, 2013?

11 A. Yes, sir.

12 Q. When you reviewed it, did it appear to have been
13 changed or altered in any way?

14 A. No, sir.

15 Q. And it is your voice making the call?

16 A. Yes, sir.

17 MR. MCNEELY: Your Honor, at this time I would move
18 to admit State's Exhibit 2.

19 MR. KEARSE: Same objection, Your Honor.

20 MR. DAVIS: I would object, Your Honor, on the
21 basis that it's cumulative, that it's unnecessary, and
22 that it's just to bolster their testimony, and that she
23 can testify as to what she recalls saying on that 911
24 tape.

25 THE COURT: State's 2 into evidence, noting both

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 defendants' objections.

2 MR. DAVIS: Thank you.

3 [Whereupon, State's Exhibit Number 2 is admitted
4 into evidence by the Court]

5 THE COURT: You may publish.

6 MR. MCNEELY: Thank you, Your Honor.

7 For clarification for the Court, there are four
8 tracks on State's Exhibit 2. We are only seeking to
9 admit and publish track one.

10 THE COURT: All right. Just remember that for
11 deliberation purposes. Thank you.

12 MR. MCNEELY: Permission to publish track one?

13 THE COURT: Track one. Thank you.

14 [Whereupon, State's Exhibit Number 2 is played to
15 the jury]

16 [Whereupon, State's Exhibit Number 2 is not
17 transcribed by the court reporter]

18 Q. [Mr. McNeely] Ms. Nava, is that a complete 911
19 call you made on that evening?

20 A. Yes, sir.

21 Q. After you hung up the phone with 911, what did you
22 do?

23 A. I do not recall.

24 Q. Did you see the victims inside the bar?

25 A. Oh. Yes, sir.

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 Q. Can you describe the injuries to James Bryant?

2 A. His arm -- they had a belt wrapped around his arm.
3 I could not see exactly what was on James' arm. I just know
4 they had a belt and towels, trying to apply pressure.

5 Q. Can you describe the injuries to Stacy Bohannan?

6 A. Just blood from the back of her head.

7 Q. What about David Bohannan?

8 A. It looked like raw hamburger meat hanging from his
9 arm, is how it looked.

10 Q. After you called 911, did emergency personnel
11 arrive?

12 A. After -- yes, sir.

13 Q. Do you recall who arrived first?

14 A. I do not.

15 Q. Once emergency personnel arrived, what did they do?

16 A. At first, they -- EMS? Nothing, at first. They
17 told everybody to hold their positions, because two people
18 were working on James' arm and they just told him to hold on
19 for a minute I guess so they could look and see. I wasn't
20 quite sure.

21 Q. At some point, did deputies from Berkeley County
22 arrive?

23 A. Yes, sir.

24 Q. Did you talk to the deputies on scene that night?

25 A. Yes, sir.

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 Q. Did you provide a written statement?

2 A. Yes, sir.

3 Q. Was the bar equipped with video surveillance
4 cameras?

5 A. Yes, sir.

6 Q. Was it equipped with video surveillance cameras on
7 July 28th of 2013?

8 A. Yes, sir.

9 Q. Were they operational that evening?

10 A. Yes, sir.

11 Q. Did you view those video surveillance footage at
12 the bar that evening?

13 A. Yes, sir.

14 Q. Did you have access to it, based on your employment
15 at the bar?

16 A. That night? Yes, sir.

17 Q. Did you see the defendants on the video footage
18 outside?

19 A. Yes, sir.

20 Q. Did you recognize them as the individuals that had
21 been in the bar earlier that evening?

22 A. Yes, sir.

23 Q. Did you see the video footage that was released to
24 the media in this case?

25 A. Yes, sir.

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 Q. In the following days, did you meet with any
2 deputies or detectives with follow-up investigation?

3 A. For the line-up? Is that what you're asking?

4 Q. Yes, ma'am.

5 A. Yes, sir.

6 Q. Do you recall what date that was?

7 A. July 30th, 2013.

8 Q. And I believe you already said, but why did you
9 meet with the deputy?

10 A. To do a photo line-up.

11 Q. Do you recall where you met with him?

12 A. At Nowhere Bar and Grill.

13 Q. Do you recall what time it was?

14 A. Around 8:00, 8:30, 8:40-ish.

15 Q. In the evening?

16 A. Yes, sir.

17 Q. Did you meet with him inside the bar or outside the
18 bar?

19 A. Initially we met inside, and we stepped outside.

20 Q. Was it you and one deputy, or were there other
21 people present?

22 A. It was just me and him.

23 Q. What, if anything, did he tell you before
24 presenting a photo line-up?

25 A. He just explained the instructions to the line-up,

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 told me to take my time to look at it.

2 Q. Did he go over a procedure or an instruction sheet
3 with you?

4 A. Yes, sir.

5 MR. MCNEELY: Permission to approach, Judge?

6 THE COURT: You may.

7 Q. [Mr. McNeely] I want you to look at what's been
8 previously marked as State's Exhibit 29 and 31.

9 [Whereupon, the witness reviews documents]

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

11 A. Yes, sir.

12 Q. What are those documents?

13 A. Where I signed that I recognized the two defendants
14 from the photo line-up.

15 Q. Are those the instruction sheets that the deputy
16 went over with you on July 30th prior to doing the line-ups?

17 A. Yes, sir.

18 Q. And you know that because your name's on them?

19 A. Yes, sir.

20 Q. It's your name on it and your handwriting?

21 A. Yes, sir.

22 Q. Did he go over those instruction sheets prior to
23 presenting you any line-up?

24 A. Yes, sir.

25 Q. Did he show you any photos of anyone prior to

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 presenting you with the photo line-up?

2 A. No, sir.

3 Q. Did he go over each and every instruction on those
4 instruction sheets with you prior to presenting the line-ups?

5 A. Yes, sir.

6 Q. Did you do one line-up or two?

7 A. One each, but two total.

8 Q. Did you do them together or separately?

9 A. Separately.

10 Q. So he presented you with one and then presented you
11 with another?

12 A. Yes, sir.

13 Q. Do you remember the line-up? Can you describe it
14 for the jury?

15 A. Yes, sir.

16 It was -- it went longways, and there was six
17 photographs, three stacked on top of three, and they were
18 numbered 1 through 6.

19 Q. Were the photographs color or black and white?

20 A. Color.

21 Q. Were they full-body shots or were they head shots?

22 A. Just head shots.

23 Q. Did anyone direct you towards any photo prior to
24 you making a selection?

25 A. No, sir.

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 Q. Did you, in fact, select a photo out of the first
2 line-up presented to you?

3 A. Yes, sir.

4 Q. How long did it take you to select a photo?

5 A. Within seconds.

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

7 A. I initialed it on the back and I wrote the number.

8 MR. MCNEELY: Permission to approach?

9 THE COURT: You may.

10 Q. [Mr. McNeely] If you'll look, please, at State's
11 Exhibit 30. Do you recognize that document?

12 A. Yes, sir.

13 Q. What's that document?

14 A. The photo line-up. The first one.

15 Q. And I believe you said you made a selection; is
16 that correct?

17 A. Yes, sir.

18 Q. Whose photo did you select out of that lineup?

19 A. Number 3. Steven Moses.

20 Q. How did you indicate that?

21 A. I wrote my initials and the number on the back with
22 the date.

23 Q. Did you also note your selection on the instruction
24 sheet?

25 A. Yes, sir.

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 Q. And you signed off on that; is that correct?

2 A. Yes, sir.

3 Q. Did you identify that individual as a person
4 involved with the incident at the Nowhere Bar on July 28th,
5 2013?

6 A. Yes, sir.

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

8 A. Yes, sir.

9 Q. Will you please point him out and describe him to
10 the jury?

11 A. He has a black suit jacket on and a dark-colored
12 shirt.

13 MR. MCNEELY: Let the record reflect this witness
14 identified Defendant Steven Moses.

15 THE COURT: It will.

16 Q. [Mr. McNeely] Do you notice any changes in his
17 appearance today from the time he appeared at the time of the
18 incident?

19 A. He has gray hair.

20 Q. Were you presented a second photo line-up in this
21 matter?

22 A. Yes, sir.

23 Q. Was it presented to you in the same manner as the
24 first?

25 A. Yes, sir.

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 Q. Did the presenting officer go over an instruction
2 sheet with you prior to presenting the line-up?

3 A. Yes, sir.

4 Q. Did he go over each and every instruction on the
5 sheet with you before presenting the line-up?

6 A. Yes, sir.

7 Q. I believe you have it in front of you. Would you
8 please look at State's Exhibit 31.

9 [Whereupon, the witness reviews documents]

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

11 A. Yes, sir.

12 Q. Is that the instruction sheet presented to you
13 prior to the second lineup?

14 A. Yes, sir.

15 Q. How do you know that?

16 A. My name is printed and signed on the bottom.

17 Q. Did the officer show you any photos prior to
18 presenting you the line-up?

19 A. No, sir.

20 Q. Did anyone indicate which photos -- or excuse me.
21 Did anyone indicate to you any photo to select, or suggest
22 that you select any photo, from the line-up?

23 A. No, sir.

24 Q. Was the line-up presented to you in the same manner
25 containing six color photos of head shots?

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 A. Yes, sir.

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

3 A. I did.

4 Q. Which photo did you select?

5 A. Number three.

6 Q. Did you recognize number three as a person involved
7 in the incident at the Nowhere Bar on July 28th, 2013?

8 A. Yes, sir.

9 Q. Who did you select as number three?

10 A. Jason Gourdine.

11 Q. Did you indicate your selection on the line-up
12 itself?

13 A. Yes, sir.

14 Q. How so?

15 A. I initialed, and wrote the number on the back of
16 it, along with the date.

17 Q. Are you still confident that your selection was an
18 individual involved in the incident at the Nowhere Bar?

19 A. Yes, sir.

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

21 A. Yes, sir.

22 Q. Would you please point him out and describe him for
23 the jury.

24 A. He has a light-colored suit on and a white shirt.

25 MR. MCNEELY: Your Honor, let the record reflect

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

1 that the witness has identified Defendant Jason Gourdine
2 as an individual involved in the incident.

3 THE COURT: It will.

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

6 A. No, sir.

7 MR. MCNEELY: Your Honor, at this time the State
8 would move to admit State's 29 through 32.

9 MR. DAVIS: Your Honor, you know, we had an in-
10 camera --

11 THE COURT: All right. Pursuant to your previous
12 objection --

13 MR. DAVIS: That's correct, Your Honor.

14 THE COURT: Mr. Kearse?

15 MR. KEARSE: The same, Your Honor.

16 THE COURT: State's 29 through 32, noting your
17 objection, will be admitted.

18 MR. MCNEELY: Thank you, Your Honor.

19 [Whereupon, State's Exhibit Numbers 29, 30, 31 and
20 32 are admitted into evidence by the Court]

21 Q. [Mr. McNeely] Following your meeting with the
22 deputies to do line-ups, did you have any further involvement
23 in the investigation of this case?

24 A. Afterwards?

25 Q. Yes, ma'am.

Aleshia Nava
Direct Examination by Mr. McNeely
March 15, 2016

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A. Not until the subpoenas started last year.

Q. You didn't do anything else with officers in this case?

A. No, sir.

MR. MCNEELY: No further questions from the State at this time.

MR. DAVIS: Hey, Ms. Nava. How are you doing?

THE WITNESS: I'm good. How are you?

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Aleshia Nava
Cross-Examination by Mr. Davis
March 15, 2016

CROSS-EXAMINATION

1

2

BY MR. DAVIS:

3

Q. This is the first time you and I have ever
discussed this matter?

4

5

A. Discussed it?

6

Q. Yeah.

7

A. Publically?

8

Q. Have you privately?

9

A. With the other bartender and -- yes, sir.

10

Q. At what point?

11

A. That night, and then days following, because I
couldn't sleep at night thinking about it.

12

13

Q. I mean, you and I have never discussed this before?

14

A. I've never met you.

15

Q. That's right. That's my point. You and I have
never discussed this matter.

16

17

A. Not with anybody I don't know. No, sir.

18

Q. Yeah.

19

You have discussed it with the solicitor's office,
though?

20

21

A. Yes.

22

Q. How many times you would say?

23

A. Just one -- the amount -- to get the subpoena. And
then in January, when was our first time here, we spoke with
them.

24

25

Aleshia Nava
Cross-Examination by Mr. Davis
March 15, 2016

1 Q. But you and I have never discussed this before?

2 A. No, sir.

3 Q. And looking back now in relationship to what
4 occurred that night, have you learned anything?

5 A. Have I learned anything?

6 Q. Yeah.

7 A. No, sir.

8 Q. How long had you worked in a bar setting?

9 A. Prior to that?

10 Q. Yeah.

11 A. I had started at Nowhere in 2007.

12 Q. So this is the only bar you had ever worked at?

13 A. Yes, sir.

14 Q. Okay. As a bartender, had you been trained in
15 conflict resolution or arguments pursuing potentially for
16 conflict?

17 A. To like deflate a situation --

18 Q. Yes.

19 A. -- that's occurring?

20 Q. Yeah.

21 A. We are told not to interfere.

22 Q. That's the gist of the owner training in that kind
23 of setting?

24 A. Yes.

25 Q. Okay. Looking back -- I'll repeat the question.

Aleshia Nava
Cross-Examination by Mr. Davis
March 15, 2016

1 Back on July 28th, 2013, when these gentlemen came in and you
2 said they tried to make it a racial issue and it was not,
3 there was a round of applause, you think you had anything to
4 contribute to that or --

5 A. To why he did it?

6 Q. Yeah.

7 A. Oh. I believe because I yelled at him, so he was
8 being sarcastic and giving me a round of applause.

9 Q. Okay. And then after you pointed to this big guy,
10 James Bryant, Biggie -- right?

11 A. That's what we referred to him that night. Yes,
12 sir.

13 Q. And, in essence, then Biggie became part of
14 something that should have remained between just you and the
15 patron. Do you agree with that?

16 A. I was just setting an example.

17 Q. I know.

18 But when you did, though, when you pointed out
19 James, you brought in a third party, did you not?

20 A. No, sir.

21 Q. You don't think so?

22 A. No, sir.

23 Q. Let me ask you this, then. What do you think James
24 did after you called his name? Did James do anything?

25 A. He waved. He said hello.

Aleshia Nava
Cross-Examination by Mr. Davis
March 15, 2016

1 Q. He did more than waved. He did more than waved.
2 Because if he had just waved, ma'am, we wouldn't be here. So
3 what else did James do that night, other than just wave to
4 you?

5 A. At that point when I had pointed to him and said,
6 this is my home boy, Big, I've served him all night and he's
7 black, he waved. There was -- he had no idea of any
8 confrontation at that point. He thought I just said, hey.

9 Q. Home Boy Big is called into this conflict, or
10 whatever, between you and a patron? That's true?

11 A. No, sir. I did not call him in for it.

12 Q. Okay. Now, my question is does Home Boy Big stays
13 where he's at or does he make movements and come into the
14 circumference or the area that my client, Jason Gourdine, and
15 Mr. Moses has occupied?

16 A. At that point, no, sir.

17 Q. Well, at what point did Mr. Big do this, then?

18 A. I seen Big approaching the situation after Rick --
19 I heard Rick approaching them.

20 Q. Okay. So Rick approached first --

21 A. Yes, sir.

22 Q. -- correct?

23 And Rick is a regular at the bar, is he not?

24 A. Yes, sir.

25 Q. Okay. So you've got Mr. Big for Home Boy. Do you

Aleshia Nava
Cross-Examination by Mr. Davis
March 15, 2016

1 have any special name for Rick?

2 A. Rick.

3 Q. Just Rick?

4 A. Short Rick, because there's --

5 Q. Short Rick?

6 A. -- there's a couple of Ricks, so he's short Rick.

7 Q. So what does Rick commences to do?

8 A. I heard him speak saying, this is no black, no
9 white. And then I told somebody at the bar, nobody has time
10 for this shit.

11 And then I heard a commotion, and then I seen his
12 swing go. And then I seen people gather and then --

13 Q. Let's not -- these people --

14 A. -- go towards the door.

15 Q. These people. We know these people, don't we?

16 People? We know these people? These people is Mr. Big, Home
17 Boy Big; isn't that true?

18 A. Yes, sir.

19 Q. And we know it is Rick; right?

20 A. Yes, sir.

21 Q. And we also know it is the owner, Miss Laura.

22 She's engaging towards the door as likewise, isn't it

23 [phonetic]?

24 A. Yes, sir.

25 Q. Why is all this necessary, Ms. Nava?

Aleshia Nava
Cross-Examination by Mr. Davis
March 15, 2016

1 A. They were trying to defuse the situation.

2 Q. Diffuse the situation by injecting themselves into
3 something that could have quietly went through the night with
4 no problem? Ma'am?

5 A. At that point, I -- it was no longer quiet.

6 Q. Your feelings had been hurt. Your space had been
7 violated --

8 A. Yes --

9 Q. -- isn't that true?

10 A. Yes, sir.

11 Q. And so Mr. Big, Mr. Rick, the owner, and everybody
12 else, was coming to your rescue?

13 A. No, sir.

14 Q. You had been offended.

15 A. But I -- they had nothing to do with me. I was
16 behind the bar, minding my business.

17 Q. And so your personal life is always separate from
18 your business entity at that time, was it not?

19 A. Yes, sir.

20 Q. But don't you believe you interjected that aspect,
21 when you made reference to your biracial children, and they
22 came to your defense?

23 A. No. I don't feel like --

24 Q. Well, why --

25 A. -- that's why they came to my defense.

Aleshia Nava
Cross-Examination by Mr. Davis
March 15, 2016

1 Q. Can you explain to me why Rick and Mr. Big would
2 engage themselves with these gentlemen, who all they wanted
3 was a drink and did not have any indication of provocation
4 toward anyone?

5 A. I do not know why Rick approached them.

6 Q. Okay. Do you believe it was right?

7 A. No, sir.

8 Q. Do you believe it was right to assault or attempt
9 to assault someone and actuate a battery upon them?

10 A. No, sir.

11 Q. Isn't it true, ma'am, that if some cooler heads had
12 prevailed, without alcohol, drugs, or ego, we probably
13 wouldn't be here?

14 A. I cannot say that.

15 Q. You don't believe that cooler heads would have
16 maybe created a different situation?

17 A. [No response]

18 Q. Is it hard for you to admit that because you did
19 not exhibit cooler judgment that night yourself?

20 A. I did at first and --

21 Q. At first.

22 A. -- and then I had been offended.

23 Q. That's correct.

24 And after you got offended and the barn door was
25 opened, everybody got offended and everybody then got

Aleshia Nava
Cross-Examination by Mr. Davis
March 15, 2016

1 engaging; isn't that true?

2 A. No, sir.

3 Q. Well, tell us what happened.

4 A. Not everybody in the bar was engaged --

5 Q. Well, not everybody. But Mr. Coffey did not and
6 Ms. Denise Coffey did not. I know they did not. The tape
7 depicted -- did not.

8 But there was a sufficient number of the regulars
9 that got engaged that cause us to be here this afternoon;
10 isn't that true?

11 A. I do not know.

12 Q. Well, why do you believe we are here?

13 A. Because there was a shooting outside the bar.

14 Q. That's correct.

15 But the shooting outside the bar commenced from
16 inside the bar; isn't that true?

17 A. I do not know why they came back.

18 Q. Well, you weren't outside to know whether they left
19 or not; isn't that true?

20 A. Correct.

21 Q. All right. But what we do know, there was some
22 references to Ali and pumping of muscles. You've seen the
23 video, have you not?

24 A. That night. Yes, sir.

25 Q. Glad-handing; isn't that true?

Aleshia Nava
Cross-Examination by Mr. Davis
March 15, 2016

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A. I do not recall, sir.

Q. Okay. So I'll ask that question before I sit down again. Is there anything that we have learned from that night, Ms. Nava?

A. No, sir.

MR. DAVIS: Okay. No further questions.

THE COURT: Mr. Kearse?

MR. KEARSE: May it please the Court.

THE COURT: Yes, sir.

- - -
- - -
- - -

Aleshia Nava
Cross-Examination by Mr. Kearse
March 15, 2016

CROSS-EXAMINATION

1
2 BY MR. KEARSE:

3 Q. Ms. Nava, to reiterate, you didn't see anything
4 that happened outside; correct?

5 A. At the time? No, sir.

6 Q. And at the time, and of your own personal
7 knowledge, independent of anyone else's statements or what you
8 might of heard or you might think or you might speculate, you
9 don't know -- when you say and use the word left the bar, you
10 are referring to exited the building; correct?

11 A. Exiting the property.

12 Q. The building; correct?

13 A. No, sir.

14 Q. All right. When you say -- and you have said it
15 previously -- you don't know whether they left the parking lot
16 or not. And we're talking about Mr. Moses or Mr. Gourdine.
17 Correct?

18 A. I assume they left the parking lot.

19 Q. Well, that's an assumption, which is speculation;
20 correct?

21 A. Yes, sir.

22 Q. All right. And so, again, to come back to the
23 facts, you -- when you say left the bar, you are talking about
24 exiting the building; correct?

25 A. Yes, sir.

Aleshia Nava
Cross-Examination by Mr. Kearse
March 15, 2016

1 Q. All right. Because you also say that your friends
2 left the bar. That would be Mr. Bryant, the Bohannans, and
3 Enrique Maron -- Enrique Maron, I'm sorry. All of them left
4 the bar, also, upon closing time; right?

5 A. Yes, sir.

6 Q. And when you say left the bar, you are saying
7 exited the building; correct?

8 A. Yes, sir.

9 Q. All right. Do you recall giving a statement in
10 this case back in July of 2013?

11 A. Yes, sir.

12 Q. I'm going to hand you a one-page document. Does
13 that appear to be a copy, photostatic copy, of the statement
14 you gave in this case?

15 [Whereupon, the witness reviews documents]

16 A. [No response]

17 Q. [Mr. Kearse] Is that yes?

18 A. Oh. Sir?

19 Q. Is that a yes?

20 A. I was reading it. I didn't hear the question.

21 Q. Okay. That is a photostatic copy of the statement
22 you gave in this case?

23 A. Yes, sir.

24 MR. KEARSE: Your Honor, at this time I would like
25 to have this marked as Defendant's --

Aleshia Nava
Cross-Examination by Mr. Kearse
March 15, 2016

1 What number am I on?

2 THE COURT REPORTER: 11.

3 MR. KEARSE: -- 11 for identification purposes
4 only, Your Honor.

5 MR. MCNEELY: No objection, Your Honor.

6 [Whereupon, Defendant Moses Exhibit Number 11 is
7 marked by the court reporter]

8 MR. KEARSE: May I approach again, Your Honor?

9 THE COURT: You may.

10 Q. [Mr. Kearse] Now, Ms. Nava, we've already
11 established that Enrique was the one who walked over to
12 Mr. Moses and Mr. Gourdine, primarily Mr. Moses; is that
13 correct?

14 A. Yes, sir.

15 Q. And that was as Mr. Moses was walking towards the
16 door, was it not?

17 A. I assume.

18 Q. All right. Well, he was at the door?

19 A. When I -- the last time I saw both of Jason and
20 Steven, they were walking towards the door.

21 Q. Okay. And when Enrique Maron, or y'all called him
22 Rick, threw a punch at Mr. Moses, that was close by to the
23 door, was it not?

24 A. Yes, sir.

25 Q. Now, in addition to that, Mr. James Bryant went

Aleshia Nava
Cross-Examination by Mr. Kearse
March 15, 2016

1 right behind Mr. Maron, Rick; correct?

2 A. I did not see when he first went up. When I looked
3 back again, he was in the middle.

4 Q. All right. Well, Mr. Bryant also ended up hitting
5 either Mr. Moses or Mr. Gourdine; is that correct?

6 A. I do not know, sir.

7 Q. All right. Now, I want you to refer to your
8 statement. This is a statement you gave on -- in 2013, July
9 28, 2013; correct?

10 A. Yes, sir.

11 Q. And that is when this incident was fresh, was it
12 not?

13 A. Yes, sir.

14 Q. All right. Now, I want you to read where it says
15 Jay. Can you read that, please.

16 A. Jay saw the argument and tried to end it and ended
17 up hitting the bald guy.

18 Q. Okay. And so Jay would be Mr. James Bryant; is
19 that correct?

20 A. Yes, sir.

21 Q. So on their way out the door, Mr. Bryant ended up
22 also hitting somebody; correct?

23 A. Yes, sir.

24 Q. And isn't it fair to say that Mr. Bryant and
25 Mr. Maron, who you guys called as Rick, were the aggressors at

Aleshia Nava
Cross-Examination by Mr. Kearse
March 15, 2016

1 this particular time?

2 A. Rick, yes. I --

3 Q. Well, Mr. Bryant hit somebody. Wouldn't you say
4 that's being aggressive?

5 A. No, sir, not at that situation.

6 Q. At no time while inside that bar did you see
7 Mr. Moses hit anybody?

8 A. No, sir.

9 Q. All right. And even when Mr. Maron, who you guys
10 call Rick, swung, may have hit him, may have not, he still
11 didn't punch back; correct?

12 A. I did not see, no, sir.

13 Q. All right. And they walked outside of the
14 building; correct?

15 A. I believe they were pushed out --

16 Q. Well, what you --

17 A. -- yes, sir.

18 Q. Well, pushed out.

19 A. Yes, sir.

20 Q. Not exactly. They got pushed out of the building
21 by a crowd of people, including Mr. Bryant and Mr. Maron and
22 Mr. Bohannon and Ms. Bohannon and Ms. Chenoweth; correct?

23 A. Yes, sir.

24 Q. Now, even while in the bar, in the midst of this
25 argument, Mr. Moses started walking to the door; correct?

Aleshia Nava
Cross-Examination by Mr. Kearse
March 15, 2016

1 A. Yes, sir.

2 Q. And he paused, turned back, and went and got his
3 friend Mr. Gourdine and started directing him to come on and
4 exit the building; is that right?

5 A. Yes, sir.

6 MR. KEARSE: I don't have anything further, Your
7 Honor.

8 THE COURT: Redirect?

9 MR. MCNEELY: Nothing from the State, Judge.

10 MR. DAVIS: Judge --

11 THE COURT: I'm sorry.

12 MR. DAVIS: -- just one more, Judge.

13 THE COURT: That's it. No redirect.

14 You may step down. Feel free to stay with us.

15 [Whereupon, Ms. Nava is excused and exits the
16 witness stand]

17 THE COURT: Ladies and gentlemen, I indicated to
18 you we would stop pretty close to 5:00 and so we're
19 pretty close to 5:00.

20 Ladies and gentlemen, please remember all my
21 admonitions over the evening hour. It's been pretty
22 easy. You've been in court. You haven't had anybody
23 else to talk to and nobody has asked you any questions
24 about this case so when you go home, you simply need to
25 tell whomever is at home, whoever that may be, that you

Aleshia Nava
Cross-Examination by Mr. Kearse
March 15, 2016

1 cannot talk about this case face-to-face. You may not
2 make any entry about this case on facebook or anything
3 of that nature. Please do not do any independent
4 investigation of any kind. Don't go near the scene
5 where the events of the subject of this case are alleged
6 to have taken place.

7 Please take your notepads with you. We will lock
8 them up over the evening hour.

9 Please report back at 9:30 in the morning. 9:30 in
10 the morning.

11 Please rise.

12 [Whereupon, the jury exits the courtroom at
13 4:51 p.m.]

14 THE COURT: Thank you. Be seated.

15 Any motions or matters before we break for the
16 evening hour? Mr. Alfaro?

17 MR. ALFARO: No, Your Honor.

18 THE COURT: Mr. Davis?

19 MR. DAVIS: None, Your Honor.

20 THE COURT: Mr. Kearse?

21 MR. KEARSE: May it please the Court.

22 For purposes of the record, Your Honor, I know that
23 my client's bondsman has not submitted a copy of the
24 order. I do not know whether or not he's committed to
25 doing that or not. I would ask this Court, for the

Aleshia Nava
Cross-Examination by Mr. Kearse
March 15, 2016

1 record, for Mr. Moses to remain on his own recognizance
2 until this trial is over.

3 THE COURT: Mr. Moses' bonds person has satisfied
4 his obligation to the bond and so unless he agrees to
5 stay on the bond -- and I do not have a form filled out
6 -- Mr. Moses will remain in custody.

7 MR. KEARSE: Thank you.

8 THE COURT: So we'll start promptly at 9:30. We'll
9 break about 12:30 or 12:45 for lunch. So we'll take
10 from 12:45 until about 2:00 tomorrow for lunch. All
11 right? And then we'll go until we need to go.

12 How many more witnesses? Do you think we'll
13 complete tomorrow?

14 MR. ALFARO: I think that would be pushing it, Your
15 Honor.

16 THE COURT: Are we going to anticipate arguing and
17 charging Thursday?

18 MR. ALFARO: We'll be -- we'll be able to argue and
19 charge Thursday. We have four witnesses that I think
20 will be substantial in length, maybe five. But after
21 that --

22 THE COURT: Mr. Davis, not that I hold you to it.
23 Do you plan to call any witnesses?

24 MR. DAVIS: I don't think so, Your Honor, at this
25 point, unless some things change. It's based on what

Aleshia Nava
Cross-Examination by Mr. Kearse
March 15, 2016

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the solicitor will do.

THE COURT: And you had indicated your client likely wouldn't testify.

Mr. Kearse, do you plan to call any witnesses?

MR. KEARSE: Your Honor, I have not listed any witnesses. I would only have my client. We'll cross that bridge when we get there, of course, but I don't anticipate he will testify.

THE COURT: Counsel, over the evening hour I'm crafting charges, so if there's any unusual charges or anything, please let me know. Thank you.

[JURY TRIAL ADJOURNS AT 4:51 P.M.]

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State vs. Moses and Gourdine

C E R T I F I C A T E

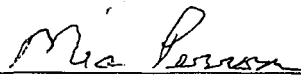
STATE OF SOUTH CAROLINA

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 Tuesday, May 15, 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

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF BERKELEY) CASE NUMBERS:
 [Moses] 2014-GS-08-01713
 2014-GS-08-01714
 2014-GS-08-01715
 2014-GS-08-01716
 [Gourdine] 2014-GS-08-01719
 2014-GS-08-01720
 2014-GS-08-01721
 2014-GS-08-01722

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 STEVEN MOSES)
)
 and)
)
 JASON GOURDINE,)
)
 DEFENDANTS.)
 _____)

JURY TRIAL

VOLUME 2 OF 3

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Berkeley County Courthouse
 Moncks Corner, South Carolina
 on March 16, 2016, Commencing at 9:39 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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Proceedings
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1

PROCEEDINGS

2

THE COURT: Anything from the State?

3

MR. ALFARO: No, Your Honor.

4

THE COURT: Mr. Davis?

5

MR. DAVIS: No, Your Honor.

6

THE COURT: Mr. Kearse?

7

MR. KEARSE: Nothing from Mr. Moses, Your Honor.

8

[Off the record momentarily]

9

THE COURT: Who is your next witness?

10

MR. MCNEELY: Vicky Taylor.

11

THE COURT: And where is Ms. Taylor?

12

MR. MCNEELY: She's outside.

13

THE COURT: Let's go ahead and just have her closer
in the courtroom.

15

[Off the record momentarily]

16

THE COURT: Please rise for the jury.

17

[Whereupon, the jury enters the courtroom at
9:41 a.m.]

19

THE COURT: Thank you. Please be seated.

20

Good morning, ladies and gentlemen. My question to
you is if you complied, if you followed, the Court's
instructions over the evening hour, please raise your
right hand.

24

[Whereupon, jurors comply]

25

THE COURT: Thank you.

State vs. Moses and Gourdine
Proceedings
March 16, 2016

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All fourteen jurors have indicated that they complied with the Court's instructions over the evening hour.

Call your next witness.

MR. MCNEELY: Thank you, Your Honor. The State calls Julia Victory Taylor.

[Whereupon, Ms. Taylor comes forward]

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

[Whereupon, Ms. Taylor 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.

[Whereupon, Ms. Taylor takes the witness stand]

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

THE WITNESS: Julia Taylor. T-A-Y-L-O-R.

MR. MCNEELY: Good morning, Ms. Taylor.

THE WITNESS: Good morning.

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

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JULIA TAYLOR,

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

DIRECT EXAMINATION

BY MR. MCNEELY:

Q. Do you go by Vicky?

A. Yes.

Q. Is it okay if I call you that?

A. Yes, sir.

Q. Where are you currently employed?

A. MUSC.

Q. What do you do at MUSC?

A. I work at the dental clinic.

Q. Where were you employed on July 27th and 28th of
2013?

A. Nowhere Bar and Grill.

Q. What was your position at the Nowhere Bar and
Grill?

A. Bartender/manager.

Q. Where is the Nowhere Bar located?

A. 7128 North Road Extension, or Henry Brown, Goose
Creek, South Carolina, 29445, in Berkeley County.

Q. Is that right off of Red Bank Road?

A. Yes, sir.

Q. Were you working at the Nowhere Bar and Grill July

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

1 27th and 28th of 2013?

2 A. Yes, sir.

3 Q. What time was closing time for the bar that night?

4 A. Two o'clock.

5 Q. Is that the same time as always?

6 A. Yes.

7 Q. What time was last call made for drinks that night?

8 A. 1:45.

9 Q. Are any drinks served after last call?

10 A. No.

11 Q. Prior to last call that evening, had there been any
12 altercations or incidents inside the bar?

13 A. Could you repeat that?

14 Q. Prior to last call that night, had there been any
15 altercations or incidents or fights inside the bar?

16 A. No, sir.

17 Q. Do you recall an incident occurring that night
18 after last call?

19 A. Yes, sir.

20 Q. At some point, did you see these defendants enter
21 the bar that evening?

22 A. Yes, sir.

23 Q. Was that before or after last call?

24 A. After last call.

25 Q. Do you remember approximately what time it was?

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

1 A. Approximately about 1:50-ish.

2 Q. What did they do when they entered?

3 A. Just came to the corner of the bar and sat down.

4 Q. Had you ever seen them before?

5 A. No, sir.

6 Q. Where were you at that time?

7 A. Behind the bar.

8 Q. What happened next?

9 A. They asked for a drink, to the other bartender,
10 Aleshia, and she told them that she couldn't serve them
11 because we had already did last call and we were closing out
12 the tabs from everybody else that was in there.

13 Q. What happened after that?

14 A. One of the defendants got a little I guess angry,
15 aggressive, tried to make it like she wasn't going to serve
16 him because he was black.

17 Q. Which one was that?

18 A. Steven.

19 Q. What happened next?

20 A. He stood up, made a big scene, caused everybody to
21 look at him. Asked her if -- she got angry and said that he
22 was speaking to the wrong one because she had two biracial
23 children and he stood up and he said, well, tell me again,
24 I'll give you a round of applause.

25 Q. What happened after that?

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

1 A. I intervened and asked them to leave the bar.

2 Q. How far were you from them when you asked them to
3 leave the bar?

4 A. Probably a little bit closer than us. I was behind
5 the bar and just the bar divided us.

6 Q. And in your position as an employee of the bar, do
7 you have authority to ask people to leave the bar?

8 A. Yes, sir.

9 Q. Did you get a clear look at their faces when you
10 asked them to leave the bar?

11 A. Yes, sir.

12 Q. What happened after that?

13 A. They proceeded to go towards the door. Being
14 behind the bar I couldn't really hear what they were mumbling
15 when they were walking by the tables and when they got closer
16 to the door, one of the other customers approached them.

17 Q. Who was that?

18 A. Rick.

19 Q. What happened next?

20 A. Rick tried to swing at Steven, and that's when my
21 boss' wife kind of put her hands up to separate them and then
22 Jay kind of pushed her out of the way and put them out the
23 door.

24 Q. Did Rick's swing land on Steven?

25 A. I don't believe it hit him in the face or maybe

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

1 like this area. Rick's a lot shorter than what Steven is.

2 Q. What happened after that?

3 A. They went outside. They left.

4 Q. When you say they, do you mean the defendants?

5 A. Yes, sir.

6 Q. Did anyone go out the door after them?

7 A. No, sir.

8 Q. So everybody else stayed inside?

9 A. Yes, sir.

10 Q. Where were you at that time?

11 A. I was up by the door making sure that nobody went
12 outside.

13 Q. After the defendants exited the door, did you hear
14 either of them say anything?

15 A. I got your -- I remember your face, I got your
16 face, something like that.

17 Q. Who was that?

18 A. Steven.

19 Q. What happened next?

20 A. We kept everybody else inside the bar for about, I
21 don't know, like ten minutes or so, give or take -- I really
22 wasn't counting down the clock -- just to make sure that we
23 didn't put them all in the parking lot at the same time.

24 MR. MCNEELY: Investigator, could you cue up the
25 video? Camera angle 6-A at approximately 2:00 a.m.

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

1 Permission to approach the witness, Your Honor?

2 THE COURT: You may.

3 MR. MCNEELY: I'm going to hand you this laser
4 pointer. Push the red button on the top.

5 Will you turn around and look at the video, please.

6 [Whereupon, video plays from 9:49 a.m. to 9:51
7 a.m., with questions from Mr. McNeely]

8 [Whereupon, the video is not transcribed by the
9 court reporter]

10 Q. [Mr. McNeely] Are you in the picture at this time?

11 A. No, sir.

12 MR. MCNEELY: Please start the video at 2:33 and --

13 [Whereupon, the video is paused]

14 Q. [Mr. McNeely] At this point, are you in the video?

15 A. Yes, sir.

16 Q. Will you please point yourself out for the jury?

17 A. [Witness complies]

18 [Whereupon, video plays from 9:49 a.m. to 9:51
19 a.m., with questions from Mr. McNeely]

20 [Whereupon, the video is not transcribed by the
21 court reporter]

22 MR. MCNEELY: Let the record reflect the video is
23 paused at 2:01 a.m. and 33 seconds.

24 Q. [Mr. McNeely] Vicky, will you please point
25 yourself out on the video?