

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable R. Markley Dennis, Circuit Court Judge

RECEIVED
NOV 14 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DERRICK LAMAR PORTER,

APPELLANT

APPELLATE CASE NO. 2018-000770

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	
TRIAL TRANSCRIPT (APRIL 11 – 12, 2018)	1
OPENING STATEMENT BY MR. SIMPSON	57
OPENING STATEMENT BY MR. SMALLDONE	64
TESTIMONY	
TIFFANY ADAMS	69
PIERRA MARTIN	85
DAVID PALAWASTA	105
PATRICK NORWOOD	126
SEAN REITER	140
RYAN TERRELL	146
MICHAEL COOK	156
JERRY JELLICO	164
THOMAS WALTERS	207
ALEJANDRO SPIOTTA	219
THE STATE RESTS	247
MOTION FOR DIRECTED VERDICT	247
RULING BY THE COURT	249
THE DEFENSE RESTS	254
MOTION FOR DIRECTED VERDICT RENEWED	254
RULING BY THE COURT	255

CLOSING ARGUMENT BY MR. SIMPSON	268
CLOSING ARGUMENT BY MR. SMALLDONE	287
CHARGE ON THE LAW	301
VERDICT	327
MOTION FOR A NEW TRIAL AND RENEWAL OF ALL PREVIOUS MOTIONS	329
RULING BY THE COURT.....	329
SENTENCING	338
INDICTMENTS	340
CERTIFICATE OF COUNSEL	344

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT #16 (VIDEO – BEAUTY SHOP),
STATE’S EXHIBIT #17 (CD – QUICK MART), AND
DEFENDANT’S EXHIBIT #1 (CD – INTERVIEW).**

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
State of South Carolina,	)	CASE NO. 2016-GS-10-06124
	)	2016-GS-10-06125
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
Derrick Lamar Porter,	)	
	)	
DEFENDANT.	)	

April 11, 2018 to April 12, 2018

Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis and a Jury.

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

Benjamin Chad Simpson, Assistant Solicitor
For the State

Daniel Cooper, Assistant Solicitor
For the State

Grant Smalldone, Esquire
For the Defense

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

Jury Voir Dire	--	13
Jury Selection	--	28
Opening Statement by Benjamin Chad Simpson	--	57
Opening Statement by Grant Smallldone	--	64

WITNESSES

(SW) Tiffany Adams, NCPD Crime Scene:

Direct Examination by Mr. Cooper	--	69

(SW) Pierra Martin:

Direct Examination by Mr. Simpson	--	85
Cross-Examination by Mr. Smallldone	--	98
Direct Examination by Mr. Simpson	--	99

(SW) David Palawasta, EMS:

Direct Examination by Mr. Simpson	--	105
Cross-Examination by Mr. Smallldone	--	122
Redirect Examination by Mr. Simpson	--	123
Re-cross-Examination by Mr. Smallldone	--	125

(SW) Officer Patrick Norwood, NCPD:

Direct Examination by Mr. Simpson	--	126

(SW) Sgt. Sean Reiter, NCPD:

Direct Examination by Mr. Cooper	--	140

(SW) Sgt. Ryan Terrell, NCPD:

Direct Examination by Mr. Simpson	--	146

(SW) Michael Cook, CST, NCPD:

Direct Examination by Mr. Cooper	--	156

Cross-Examination by Mr. Smalldone	--	163

(SW) Detective Jerry Jellico, NCPD:

Direct Examination by Mr. Simpson	--	164

Cross-Examination by Mr. Smalldone	--	186

Redirect Examination by Mr. Simpson	--	198

Cross-Examination by Mr. Smalldone	--	204

(SW) Thomas Walters:

Direct Examination by Mr. Simpson	--	207

Cross-Examination by Mr. Smalldone	--	212

Redirect Examination by Mr. Simpson	--	214

(SW) Alejandro Spiotta, MD, MUSC:

Direct Examination by Mr. Simpson	--	219

Motions following the State resting	--	247
Closing by Mr. Simpson	--	268
Closing by Mr. Smalldone	--	287
Closing Rebuttal by Mr. Simpson	--	298
Jury Charge	--	301
Verdict	--	327
Motions Following Verdict	--	328
Sentencing	--	330

<u>CERTIFICATION OF TRANSCRIPT</u>	--	339

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

P L A I N T I F F E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Map Photo	8	74
2	-----	--	--
3	Photo	8	74
4	Photo	8	74
5	Photo	8	74
6	Photo	8	74
7	Photo	8	74
8	Photo	8	74
9	Photo	8	--
10	Photo	8	--
11	Photo	8	74
12	Photo	8	74
13	Photo	8	82
14	Photo	8	82
15	Photo	9	82
16	Video - Beauty Shop	9	80
17	CD - Quick Mart	9	145
18	CD - Interview (Admitted as Def. No. 1) See Page 189, 190, 218 for detail.	9	---
19	Photo	9	158
20	Photo	9	158

<u>P L A I N T I F F E X H I B I T S</u>			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
21	Photo	9	158
22	Photo	9	158
23	Photo	9	158
24	Photo	9	159
25	Photo	9	159
26	Photo	9	159
27	Shell Casing	10	78
28	911 Call	10	93
29	CD Body Cam	10	136
30	Photo	10	138
31	Photo - CAT Scan	10	227
32	Photo - CAT Scan	10	227
33	Photo - Post-Op CAT	10	240
34	Photo - Post-Op CAT	10	240
35	Article - Post and Courier	10	---
36	Photo	10	153
37	Police Report	167	---
38	Advice of Rights	169	---

DEFENDANT EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	CD - Interview	218	218

COURT EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>
1	Juror Note	101
2	Jury Note	325

1 (WHEREUPON, State's Exhibit Number 1, map photo, marked
2 for identification.)
3 (WHEREUPON, State's Exhibit Number 3, photo, marked for
4 identification.)
5 (WHEREUPON, State's Exhibit Number 4, photo, marked for
6 identification.)
7 (WHEREUPON, State's Exhibit Number 5, photo, marked for
8 identification.)
9 (WHEREUPON, State's Exhibit Number 6, photo, marked for
10 identification.)
11 (WHEREUPON, State's Exhibit Number 7, photo, marked for
12 identification.)
13 (WHEREUPON, State's Exhibit Number 8, photo, marked for
14 identification.)
15 (WHEREUPON, State's Exhibit Number 9, photo, marked for
16 identification.)
17 (WHEREUPON, State's Exhibit Number 10, photo, marked for
18 identification.)
19 (WHEREUPON, State's Exhibit Number 11, photo, marked for
20 identification.)
21 (WHEREUPON, State's Exhibit Number 12, photo, marked for
22 identification.)
23 (WHEREUPON, State's Exhibit Number 13, photo, marked for
24 identification.)
25 (WHEREUPON, State's Exhibit Number 14, photo, marked for

1 identification.)
2 (WHEREUPON, State's Exhibit Number 15, photo, marked for
3 identification.)
4 (WHEREUPON, State's Exhibit Number 16, video - beauty
5 shop, marked for identification.)
6 (WHEREUPON, State's Exhibit Number 17, CD - Quick Mart,
7 marked for identification.)
8 (WHEREUPON, State's Exhibit Number 18, CD - Interview,
9 marked for identification.)
10 (WHEREUPON, State's Exhibit Number 19, photo, marked for
11 identification.)
12 (WHEREUPON, State's Exhibit Number 20, photo, marked for
13 identification.)
14 (WHEREUPON, State's Exhibit Number 21, photo, marked for
15 identification.)
16 (WHEREUPON, State's Exhibit Number 22, photo, marked for
17 identification.)
18 (WHEREUPON, State's Exhibit Number 23, photo, marked for
19 identification.)
20 (WHEREUPON, State's Exhibit Number 24, photo, marked for
21 identification.)
22 (WHEREUPON, State's Exhibit Number 25, photo, marked for
23 identification.)
24 (WHEREUPON, State's Exhibit Number 26, photo, marked for
25 identification.)

1 (WHEREUPON, State's Exhibit Number 27, Shell Casing,
2 marked for identification.)
3 (WHEREUPON, State's Exhibit Number 28, 911 Call, marked
4 for identification.)
5 (WHEREUPON, State's Exhibit Number 29, CD Body Cam,
6 marked for identification.)
7 (WHEREUPON, State's Exhibit Number 30, photo, marked for
8 identification.)
9 (WHEREUPON, State's Exhibit Number 31, photo, marked for
10 identification.)
11 (WHEREUPON, State's Exhibit Number 32, photo, marked for
12 identification.)
13 (WHEREUPON, State's Exhibit Number 33, photo, marked for
14 identification.)
15 (WHEREUPON, State's Exhibit Number 34, photo, marked for
16 identification.)
17 (WHEREUPON, State's Exhibit Number 35, Article - Post and
18 Courier photo, marked for identification.)
19 (WHEREUPON, State's Exhibit Number 36, photo, marked for
20 identification.)
21 THE COURT: Let the record -- you are Mr. Porter;
22 you are Derrick Porter?
23 MR. SMALLDONE: Yes.
24 THE COURT: Good morning, sir.
25 MR. SMALLDONE: Good morning.

1 THE COURT: Are there any matters, Ms. Smalldone?

2 MR. SMALLDONE: None at this time, Your Honor.

3 THE COURT: Okay. Good. Thank you, sir.

4 Strikes are five and ten?

5 MR. SIMPSON: Judge, I believe they are five and
6 five.

7 THE COURT: Are they, on attempted? I haven't
8 looked at the statute. That is why I said it more as a
9 question.

10 MR. SIMPSON: By my reading, yeah, I think it is
11 five and five.

12 THE COURT: All right.

13 MR. SIMPSON: Here is a copy. It doesn't ---

14 THE COURT: It doesn't ---

15 MR. SIMPSON: It is a very intuitive -- attempted
16 murder is not on the -- it is ---

17 THE COURT: Murder is, but not attempted murder?

18 MR. SIMPSON: Right. Correct.

19 THE COURT: Let me look at that. It is an obscure
20 statute. Perjury is. Forgery is. How about that.

21 I agree with you. I think it is five and five.

22 Thank you, Solicitor.

23 You agree, Mr. Smalldone?

24 MR. SMALLDONE: Unfortunately I do.

25 THE COURT: Well, I mean there has been some talk

1 about changing this over the years. And thus far we
2 haven't done.

3 And this is really for the benefit of Mr. Porter.
4 We have very restricted use of. And what would be nice
5 is if we get uniform as we have in a civil matter.

6 But we typically have five and five except in these
7 specific crimes that are enumerated in 14-7-1110. And
8 they spell them out specifically. And you really can't
9 expand the statute by adding something. So that is --
10 that is what -- and your lawyer can explain that to you
11 if necessary.

12 (WHEREUPON, Mr. Smallldone confers with client.)

13 (WHEREUPON, pause awaiting jury panel.)

14 (WHEREUPON, bench conference has had, requested by
15 courtroom deputy.)

16 THE COURT: We have a juror, Robert Weldon, who is
17 trying to record -- every device. He wanted to wear a
18 body camera. He wants -- plans to use his cell phone.
19 He has been making statements about you can't deny him
20 that because of -- on constitutional rights.

21 I think he ought to be -- personally, ought to be
22 excused from the proceeding. Any --

23 What is your position, Mr. Smallldone?

24 MR. SMALLDONE: Your Honor, that sounds like a lot
25 of trouble. I don't have an objection to excusing him

1 from whatever he wants to be excused from.

2 MR. SIMPSON: No objection.

3 THE COURT: Let's excuse the man.

4 THE DEPUTY: Yes, sir. I will take care of that.

5 THE COURT: Tell me he -- if he has -- he can go and
6 take that up somewhere else.

7 THE DEPUTY: Yes, sir.

8 THE COURT: Tell him he can file his action in
9 court.

10 THE DEPUTY: Thank you, sir.

11 THE COURT: Okay. The best way to resolve that. We
12 don't need that for either side.

13 (WHEREUPON, deputy exits to excuse juror, April 11, 2018,
14 9:41 a.m.)

15 (WHEREUPON, awaiting jury panel until April 11, 2018,
16 9:50 a.m.)

17 VOIR DIRE:

18 THE COURT: Good morning. First let me apologize
19 for any inconvenience, the situation yesterday to call at
20 11:30 to check. We were hoping to finish that case at a
21 time where we could go ahead and bring you in yesterday
22 and maybe conclude your services, but as it turned that
23 case we went into -- I think we finished it at about six
24 o'clock last night. But that -- that -- but that
25 included the jury's deliberation. So but anyway thank

1 you for your patients with us regarding that.

2 The case we have today is the next case. And I
3 believe that this will be the last case that we will
4 probably try this week. So for those of you that aren't
5 selected you will complete your services today. So you
6 won't have to come back and call again.

7 And let me tell you in advance thank you again for
8 your participation in the process and for your assistant
9 in helping us resolve these cases this week.

10 The case that we have I am going to tell you the
11 parties involved. This is a criminal dispute, so one of
12 the parties of course is the State of South Carolina who
13 makes the claim.

14 And the claim in this matter is being made against
15 Derrick L. Porter. Mr. Porter is seated at the table to
16 my left.

17 Mr. Porter, good morning. If you would please stand
18 and face the jury panel for me, please.

19 (WHEREUPON, Mr. Porter complied.)

20 THE COURT: Thank you, sir. You may be seated.

21 Are there any members of the jury panel related by
22 blood or marriage, have any business dealings with,
23 socially or casually acquainted with, have any connection
24 with Mr. Porter; if so, please stand.

25 (WHEREUPON, no jury panel member standing.)

1 THE COURT: Thank you. There appear to be none.

2 Mr. Porter is represented by Mr. Smalldone. If you
3 will identify yourself and your law firm, please.

4 MR. SIMPSON: Good morning. My name is Grant
5 Smalldone. I work here in Charleston, South Carolina. I
6 am a sole practitioner with the Law Office of Grant
7 Smalldone. I represent Mr. Porter.

8 THE COURT: Thank you, sir.

9 Are there any members of the jury panel related by
10 blood or marriage, have any business dealings with,
11 socially or casually acquainted with, ever been
12 represented by Mr. Smalldone or have any connection with
13 anyone employed with him; if so, please stand.
14 (WHEREUPON, no jury panel member standing.)

15 THE COURT: Thank you. There appear to be none.

16 The State of South Carolina throughout the state is
17 represented by the circuit solicitor, and the circuit
18 solicitor for the Ninth Circuit is Scarlett Wilson.

19 Are there any members of the jury panel related by
20 blood or marriage, have any business dealings with,
21 socially or casually acquainted with, ever been
22 represented by Ms. Wilson; if so, please stand.
23 (WHEREUPON, no jury panel member standing.)

24 THE COURT: Thank you. There appear to be none.

25 Ms. Wilson has a number of assistant solicitor and

1 deputy solicitor that help her present the cases. We
2 have one here. Mr. Simpson, if you will identify
3 yourself and anyone who will be here assisting you, sir.

4 MR. SIMPSON: Thank you, Your Honor.

5 Good morning. My name is Benjamin Chad Simpson. I
6 have the honor of representing the State of South
7 Carolina for the Office of the Ninth Circuit Solicitor,
8 Scarlett Wilson. Assisting me in this case is Assistant
9 Solicitor Daniel Cooper. You may also see Investigator
10 Tommy Walters coming in and out of the courtroom
11 throughout trial. He is assisting us as well.

12 THE COURT: Tommy -- what is his last name?

13 MR. SIMPSON: Walters.

14 THE COURT: Walters. Thank you, sir.

15 Are there any members of the jury panel related by
16 blood or marriage, have any business dealings with,
17 socially or casually acquainted with, Mr. Simpson, Mr.
18 Cooper, or Mr. Walters; ever been represented by Mr.
19 Simpson or Mr. Cooper; if so, please stand.

20 (WHEREUPON, no jury panel member standing.)

21 THE COURT: Thank you. There appear to be none.

22 Are there any members of the jury panel related by
23 blood or marriage, have any close personal friends or
24 have any business dealings with anyone employed with the
25 solicitor, whether they are assistant solicitors or just

1 other -- otherwise employed; if so, please stand.

2 (WHEREUPON, jury panel member standing.)

3 THE COURT: Okay. Yes, ma'am?

4 THE JURY PANEL MEMBER: I work with Stanley Flood
5 who is married to Sandra Flood. And I believe she in the
6 office.

7 THE COURT: Would that influence or affect you,
8 ma'am?

9 THE JURY PANEL MEMBER: No.

10 THE COURT: And your number, please?

11 THE JURY PANEL MEMBER: Eleven.

12 THE COURT: Thank you. You may be seated.

13 (WHEREUPON, jury panel member standing.)

14 THE COURT: Yes?

15 THE JURY PANEL MEMBER: Number 154, Charlene
16 Hubenthal. Casual acquaintance a long time ago with Mark
17 Bourdine.

18 THE COURT: Would that influence or affect you,
19 ma'am?

20 THE JURY PANEL MEMBER: None.

21 THE COURT: And -- thank you. You may be seated.

22 (WHEREUPON, jury panel member standing.)

23 THE COURT: Yes?

24 THE JURY PANEL MEMBER: Number 113. Training
25 partners with Chris -- Chris Leitzo.

1 THE COURT: Okay. Would that influence or affect
2 you, sir?

3 THE JURY PANEL MEMBER: No.

4 THE COURT: Thank you, sir. You may be seated.
5 Are there any others?

6 (WHEREUPON, no jury panel member standing.)

7 THE COURT: Thank you. There appear to be none.

8 I am going to identify a number of persons, ladies
9 and gentlemen. And if you are related by blood or
10 marriage to any of these individuals, have any business
11 dealings with them, are socially or casually acquainted
12 with any of them, you need to stand and share that
13 information.

14 The following persons are employed or work for the
15 North Charleston Police Department: Jerome Desheers,
16 Detective Rebecca Bailey, Detective Jellico, Tiffany
17 Adams, Jackie -- is it Ong?

18 MR. SIMPSON: Yes, Your Honor.

19 THE COURT: Ong. Lisa Kubicsko?

20 MR. SIMPSON: Yes, Your Honor.

21 THE COURT: John Reynolds, Patrick Norwood, Jamel
22 Foster, Jerriid Riley, Ryan Terrell or Terrell, Michael
23 Cook, Sean -- is it Reiter or Reiter?

24 MR. SIMPSON: Reiter.

25 THE COURT: Reiter. Also Officer -- I didn't say

1 Mr. -- Officer Joe Niemic or Niemic -- Niemic.

2 MR. SIMPSON: Niemic.

3 THE COURT: Fitzgerald -- the following individuals:
4 Fitzgerald Byas, Shiela Brooks, Jacqueline Harrison, Joel
5 Barton who is Dr. Barton with MUSC, Dr. Alejandro
6 Spiotto.

7 MR. SIMPSON: Spiotto.

8 THE COURT: Spiotto at MUSC, Kristen Hood-Watson or
9 Dr. Hood-Watson with MUSC, David Palawasky -- ... wasta
10 with Charleston EMS, Samia Abunie (ph) -- Abuni (ph)?

11 MR. SIMPSON: Abuhani.

12 THE COURT: Abuhani, Rami Abuhani, Pierra Martin,
13 Investigator Thomas Walters which we have already
14 identified.

15 Any of those persons?

16 (WHEREUPON, jury panel member standing.)

17 THE COURT: Yes?

18 THE JURY PANEL MEMBER: 154 again, Charlene
19 Hubenthal. I am a former North Charleston police officer
20 and I know several on that list.

21 THE COURT: Would that affect or influence you in
22 this case?

23 THE JURY PANEL MEMBER: It has been since 2001 that
24 I was a cop. So no.

25 THE COURT: Will you base your decision on the

1 evidence and the law and will that decision be fair to
2 both sides?

3 THE JURY PANEL MEMBER: Yes, sir.

4 THE COURT: And you would not be influenced by your
5 prior employment?

6 THE JURY PANEL MEMBER: Not at all.

7 THE COURT: You would apply your experience there
8 fairly and impartially though?

9 THE JURY PANEL MEMBER: Yes, sir.

10 THE COURT: Very well. Thank you. You may be
11 seated.

12 Any others?

13 (WHEREUPON, no jury panel member standing.)

14 THE COURT: Thank you. There appear to be none.

15 The dispute that brings us here is framed in these
16 two documents that I am holding in my hand now. They are
17 what they appear to you to be -- and some of you have
18 already heard this. Is they are called indictments.

19 An indictment is simply a name used to identify the
20 formal charge. It is an allegation and nothing more. It
21 is not evidence.

22 But I need to share with you what is alleged so I
23 can ask you certain questions about it. But it is
24 alleged that Mr. Porter did in Charleston County on or
25 about April 16th, 2016, with the intent to kill and

1 malice aforethought attempt to kill Fitzgerald Bias which
2 allegedly violates the statute dealing with attempted
3 murder. And that is the charge that has been placed
4 against him by that indictment.

5 It is further alleged that at that time on April 16,
6 2016, in Charleston County Mr. Porter possessed a firearm
7 and did visibly display what appeared to be a firearm or
8 did visible display a knife during the commission or
9 attempted commission of a violent crime which they have
10 set forth as attempted murder. And attempted murder is a
11 violent crime as defined by our law.

12 I share that with you, ladies and gentlemen, to find
13 out if any member of the jury panel has heard anything,
14 read anything, you have any prior knowledge of this
15 dispute. If so, please stand.

16 (WHEREUPON, no jury panel members standing.)

17 THE COURT: Thank you. There appears to be none.

18 Is there anything about your life experiences, your
19 person philosophies, your strong feelings, your beliefs
20 that would in any way affect your ability to fairly and
21 impartially apply your common sense, your sense of logic
22 and reason, at the appropriate time when directed by the
23 court to analyze the evidence which consists of testimony
24 of witnesses and exhibits that might be introduced
25 through their testimony, deciding for yourself what you

1 believe to be the true facts and then once deciding that
2 taking the law as I give it to you, not like as you think
3 you -- it should be or what you wish it was or what you
4 believe it to be, but rather take it as I give it to you
5 and apply it fairly and impartially to those facts. If
6 you feel you could not do that, please stand.

7 (WHEREUPON, no jury panel members standing.)

8 THE COURT: Thank you. There appears to be none.

9 Are there any members of the jury panel that -- or
10 member of your immediate family that have ever involved
11 in a dispute of a criminal nature where someone has been
12 accused of attempted murder or assault or something of
13 that nature, taking some action with a firearm or other
14 weapon, and you have either been involved by being
15 accused, being a witness for, being the person who was
16 the alleged victim, any of those -- any of those
17 situations; if so, please stand.

18 (WHEREUPON, jury panel member standing.)

19 THE COURT: All right. I am going to ask for them
20 to come forward, please. The attorneys may approach as
21 well.

22 (WHEREUPON, bench conference was had as follows:)

23 THE COURT: Good morning.

24 THE JURY PANEL MEMBER: Good morning.

25 THE COURT: Your name and number, please.

1 THE JURY PANEL MEMBER: Amy Johnson, 167.

2 THE COURT: Yes, ma'am. I need you to turn and face
3 this way.

4 THE JURY PANEL MEMBER: Okay. So this was a while
5 back, but my husband was assaulted when he was in
6 college. But we were dating at the time.

7 THE COURT: Okay.

8 THE JURY PANEL MEMBER: And I served as a witness.

9 THE COURT: All right. Would that affect you in any
10 way?

11 THE JURY PANEL MEMBER: No.

12 THE COURT: Will you judge this case based on his
13 situation and not anything about that?

14 THE JURY PANEL MEMBER: Yes.

15 THE COURT: And you can be fair to both sides?

16 THE JURY PANEL MEMBER: Sure.

17 THE COURT: Your number again?

18 THE JURY PANEL MEMBER: One, six, seven.

19 THE COURT: One sixty-seven will remain. Thank you.

20 (WHEREUPON, end of bench conference.)

21 THE COURT: Are there any others?

22 (WHEREUPON, jury panel member standing.)

23 THE COURT: Yes, ma'am?

24 THE JURY PANEL MEMBER: Oh, no, I was just making
25 room for her. I'm sorry.

1 THE COURT: That's all right. No problem. Stay
2 there in case we have some others that need to respond.

3 I am going to name a number of organizations. And
4 if you are a member or participate in any of these
5 organizations I will need for you to stand. The National
6 Rifle Association, Gun Owners of America, the Second
7 Amendment Foundation, Armed Females of America, Brady
8 Center to Prevent Gun Violence, Mayors Against Illegal
9 Guns, the Coalition to Stop Gun Violence, or March For
10 Our Lives, Mothers Against Drunk Driving, South Carolina
11 Law Enforcement Association, ALENON, Partnerships With
12 Drug-Free America, Sister Care, The State Office of
13 Victim's Assistance, or any neighborhood watch group. If
14 so, stand.

15 (WHEREUPON, jury panel member standing.)

16 THE COURT: Yes, sir.

17 THE JURY PANEL MEMBER: Juror 291, David
18 Steigerwald. Did you say NRA?

19 THE COURT: Yes.

20 THE JURY PANEL MEMBER: Yes, I am.

21 THE COURT: Thank you, sir. Your Number again?

22 THE JURY PANEL MEMBER: 291.

23 THE COURT: Okay. Thank you, sir.

24 (WHEREUPON, jury panel member standing.)

25 THE COURT: Yes?

1 THE JURY PANEL MEMBER: Number 11, Jean Anderson. I
2 am a member of the NRA.

3 THE COURT: Okay. Thank you, ma'am.
4 (WHEREUPON, jury panel members standing.)

5 THE COURT: Yes?

6 THE JURY PANEL MEMBER: Juror Number 3, Karissa
7 Adams. I am psychologist so I work a lot with the
8 associations for domestic violence, Women Against Rape
9 and so forth.

10 THE COURT: Would that influence or affect you in
11 this dispute?

12 THE JURY PANEL MEMBER: Um, no.

13 THE COURT: Well, I appreciate ---

14 THE JURY PANEL MEMBER: Maybe ---

15 THE COURT: Let me -- let the record reflect there
16 was a movement. And I understand that. And for 24 years
17 it has been my observation and that is why I love -- I
18 tell people all the time it is important to watch people
19 too because their body language sometimes speaks louder
20 than their voice.

21 And that shows to me there may have been some
22 hesitation in responding to that.

23 THE JURY PANEL MEMBER: Sure.

24 THE COURT: And I appreciate that. And that is a
25 fair response. The question I guess, would you -- would

1 it affect how you viewed the evidence in any way?

2 THE JURY PANEL MEMBER: No.

3 THE COURT: All right. And would you -- you would
4 view it fairly and would you apply your experiences and
5 your knowledge fairly and impartially in analyzing the
6 evidence and then once deciding what you believe to be
7 the true facts take the law and apply it fairly and
8 impartially?

9 THE JURY PANEL MEMBER: Yes, sir.

10 THE COURT: Thank you. Your number again?

11 THE JURY PANEL MEMBER: Three.

12 THE COURT: Thank you. You may be seated.

13 (WHEREUPON, jury panel members standing.)

14 THE COURT: Yes, ma'am?

15 THE JURY PANEL MEMBER: Elizabeth Ilderton, 159.

16 THE COURT: Yes.

17 THE JURY PANEL MEMBER: I am a member of the Brady
18 Center.

19 THE COURT: All right. And that would not influence
20 or affect you one way or the other in this dispute?

21 THE JURY PANEL MEMBER: No.

22 THE COURT: Thank you, ma'am.

23 Are there any others?

24 (WHEREUPON, no jury panel members standing.)

25 THE COURT: Thank you. There appear to be none.

1 And let me just reiterate there may be testimony
2 concerning the use of a weapon in this case. And none of
3 you have any strong feeling or philosophies that would
4 deal one way or the other with that; in other words, you
5 could apply your feelings and philosophies fairly and
6 impartially in analyzing the evidence in deciding what
7 you believe to be the true facts; it wouldn't be
8 motivated in either direction initially because of what
9 you believe; is that -- if that be the case -- not be the
10 case if any of you would please stand.

11 (WHEREUPON, no jury panel members standing.)

12 THE COURT: Thank you. There appear to be none.

13 Any additional questions from the State?

14 MR. SIMPSON: No, Your Honor.

15 THE COURT: Any additional questions from the
16 defendant?

17 MR. SMALLDONE: No, Your Honor.

18 THE COURT: As I told you when I qualified you, the
19 last question, and it really it -- summarizes what we are
20 about and what you will be asked to do and what you will
21 commit to do. And that is at the appropriate time you
22 will apply your common sense, your sense of logic and
23 reason fairly and impartially in analyzing that evidence
24 and then once you decide those true facts take the law
25 and apply it fairly. And you will take an oath to do

1 that.

2 Is there anything that you have heard about this
3 dispute that would give you any hesitancy of making that
4 commitment to the State, to the defendant, and to the
5 court; if so, please stand.

6 (WHEREUPON, no jury panel members standing.)

7 THE COURT: Thank you very much.

8 JURY SELECTION:

9 THE COURT: Some of you already -- have already
10 participated in this process.

11 I am going to back this up just a tad.

12 (WHEREUPON, podium moved.)

13 THE COURT: And when your name is called you will
14 come forward and stand and face your fellow jurors and
15 face the parties. And each side in this case can excuse
16 five jurors.

17 Some of you have been through this before. And if
18 they use it and they say excuse the juror, then don't be
19 offended by that. No harm. That is not telling you
20 anything, not whether you are bad or good or anything
21 else.

22 If they say seat the juror then it will be passed to
23 Mr. Porter and he will have the same opportunity. And if
24 they both say seat then you take your seat over there.

25 And we will go through this process until we get our

1 twelve jurors and two alternates. And thank you very
2 much for your patience.

3 And I will turn it over to the clerk now and he will
4 perform that task. Or she will. Which one? She. Good.

5 One and two for the alternates. Five for the -- for
6 each.

7 THE CLERK: Yes, sir.

8 THE COURT: All right. Your turn.

9 THE CLERK: When I call your name and number please
10 come stand in front. Number 1, Onufer -- I'm sorry. I'm
11 sorry; 224, John Onufer.

12 THE JURY PANEL MEMBER: Onufer.

13 THE CLERK: Onufer.

14 (WHEREUPON, jury panel member, a white male, comes
15 forward.)

16 THE CLERK: Stand in front and face the attorneys.

17 THE COURT: You can come stand -- if you will come
18 stand -- put your back to that podium, please, sir.

19 There we go. Thank you so much.

20 THE CLERK: What say you for the State?

21 MR. SIMPSON: Please seat Mr. Onufer.

22 THE COURT: What say you for the defendant?

23 MR. SMALLDONE: Please seat the juror.

24 THE CLERK: You have been selected for this trial.
25 Please go have a seat in the jury box.

1 Juror Number 176, Alison Kennedy.
2 (WHEREUPON, jury panel member, a white female, comes
3 forward.)
4 THE CLERK: What say you for the State?
5 MR. SIMPSON: Please seat Ms. Kennedy.
6 THE COURT: What say you for the defendant?
7 MR. SMALLDONE: Please seat the juror.
8 (WHEREUPON, juror is seated in jury box.)
9 THE CLERK: Number 249, Sandy Roach.
10 (WHEREUPON, jury panel member, a black female, comes
11 forward.)
12 THE CLERK: What say you for the State?
13 MR. SIMPSON: Please seat Ms. Roach.
14 THE COURT: What say you for the defendant?
15 MR. SMALLDONE: Please seat the juror.
16 THE CLERK: You have been selected for service.
17 Please have a a seat in the jury box.
18 Number 281, Margretta Smith.
19 (WHEREUPON, jury panel member, a black female, comes
20 forward.)
21 THE CLERK: What say you for the State?
22 MR. SIMPSON: Please seat Ms. Smith.
23 THE COURT: What say you for the defendant?
24 MR. SMALLDONE: Please seat the juror.
25 THE CLERK: You have been selected for service.

1 Please have a seat in the jury box.

2 Number 299, Robert Sutton.

3 (WHEREUPON, jury panel member, a white male, comes
4 forward.)

5 THE CLERK: What say you for the State?

6 MR. SIMPSON: Court's indulgence. Please seat Mr.
7 Sutton.

8 THE COURT: What say you for the defendant?

9 MR. SMALLDONE: Please excuse the juror.

10 THE CLERK: You have been excused from service.

11 Please have a seat in audience.

12 Number 66, Amanda Conn.

13 (WHEREUPON, jury panel member, a white female, comes
14 forward.)

15 THE CLERK: What say you for the State?

16 MR. SIMPSON: Please seat Ms. Conn.

17 THE COURT: What say you for the defendant?

18 MR. SMALLDONE: Madam Clerk, may I inquire the juror
19 number again.

20 THE CLERK: Sixty-six.

21 MR. SMALLDONE: Court's indulgence

22 THE COURT: Take your time.

23 MR. SMALLDONE: Please seat the juror.

24 THE CLERK: Please have a seat in the jury box. You
25 have been selected for service.

1 Number 174, Kevin Keenan.

2 (WHEREUPON, jury panel member, a white male, comes
3 forward.)

4 THE CLERK: What say you for the State?

5 MR. SIMPSON: Please seat Mr. Keenan.

6 THE COURT: What say you for the defendant?

7 MR. SMALLDONE: Please seat the juror.

8 THE CLERK: You have been selected for service.
9 Please have a seat in the jury box.

10 Fifty-one, Scott Carnley.

11 (WHEREUPON, jury panel member, a white male, comes
12 forward.)

13 THE CLERK: What say you for the State?

14 MR. SIMPSON: Please seat Mr. Carnley.

15 THE COURT: What say you for the defendant?

16 MR. SMALLDONE: Please seat the juror.

17 THE CLERK: You have been selected for service.
18 Please have a seat in the jury box.

19 Number 39, Brandon Brown.

20 (WHEREUPON, jury panel member, a white male, comes
21 forward.)

22 THE CLERK: What say you for the State?

23 MR. SIMPSON: Please seat Mr. Brown.

24 THE COURT: What say you for the defendant?

25 MR. SMALLDONE: Please seat the juror.

1 THE CLERK: You have been selected for jury service.
2 Please have a seat in the jury box.

3 Two eighty-two, Martin Smith.
4 (WHEREUPON, jury panel member, a white male, comes
5 forward.)

6 THE CLERK: What say you for the State?

7 MR. SIMPSON: Please seat Dr. Smith.

8 THE COURT: And what say you for the defendant?

9 MR. SMALLDONE: Court's indulgence.

10 THE COURT: Yes, sir.

11 MR. SMALLDONE: Please excuse the juror.

12 THE CLERK: You have been excused from service.
13 Please have a seat in the audience.

14 Two sixty-three, Eugene Samuel.
15 (WHEREUPON, jury panel member, a black male, comes
16 forward.)

17 THE CLERK: What say you for the State?

18 MR. SIMPSON: Please seat Mr. Samuel.

19 THE COURT: What say you for the defendant?

20 MR. SMALLDONE: Please seat the juror.

21 THE CLERK: You have been selected for service.
22 Please have a seat in the jury box.

23 Number 1, Rory Adair.
24 (WHEREUPON, jury panel member, a white male, comes
25 forward.)

1 THE CLERK: What say you for the State?
2 MR. SIMPSON: Please seat Mr. Adair.
3 THE COURT: What say you for the defendant?
4 MR. SMALLDONE: Please seat the juror.
5 THE CLERK: You have been selected for the trial.
6 Please have a seat in the jury box.
7 Number 243, Paula Reihl.
8 (WHEREUPON, jury panel member, a white female, comes
9 forward.)
10 THE CLERK: What say you for the State?
11 MR. SIMPSON: Please seat Ms. Reihl.
12 THE COURT: What say you for the defendant?
13 MR. SMALLDONE: Please seat the juror.
14 THE CLERK: You have been selected for this trial.
15 Please have a seat in the jury box.
16 Number 222, Mitchell Newell.
17 (WHEREUPON, jury panel member, a white male, comes
18 forward.)
19 THE CLERK: What say you for the State?
20 MR. SIMPSON: Please seat Mr. Newell.
21 THE COURT: What say you for the defendant?
22 MR. SMALLDONE: Please seat the juror.
23 THE CLERK: You have been selected for this trial.
24 Please have a seat in the jury box.
25 No selecting our alternates. Strikes will be one

1 and two.

2 THE COURT: Correct.

3 THE CLERK: 121, Elizabeth Gurlay.

4 (WHEREUPON, jury panel member, a white female, comes
5 forward.)

6 THE CLERK: What say you for the State?

7 MR. SIMPSON: Please seat Ms. Gurlay.

8 THE COURT: What say you for the defendant?

9 MR. SMALLDONE: Please seat the juror.

10 THE CLERK: You have been selected for this trial.
11 Please have a seat in the jury box.

12 154, Charlene Hubenthal.

13 (WHEREUPON, jury panel member, a white female, comes
14 forward.)

15 THE CLERK: What say you for the State?

16 MR. SIMPSON: Please seat Ms. Hubenthal.

17 THE COURT: What say you for the defendant?

18 MR. SMALLDONE: Please excuse the alternate.

19 THE CLERK: You have been excused from this trial.
20 Please have a seat in -- or in the audience.

21 320, Matthew Wain.

22 (WHEREUPON, jury panel member, a white male, comes
23 forward.)

24 THE CLERK: What say you for the State?

25 MR. SIMPSON: Please seat Mr. Wain.

1 THE COURT: What say you for the defendant?

2 MR. SMALLDONE: Please seat the alternate.

3 THE CLERK: You have been selected for service.

4 Please have a seat in the jury box.

5 Your Honor, we have our jury.

6 THE COURT: Thank you very much. Are there any
7 motions from the State regarding the selection process?

8 MR. SIMPSON: None from the State.

9 THE COURT: Any motions from the defendant?

10 MR. SMALLDONE: No motions, Your Honor.

11 THE COURT: Thank you very much. Ladies and
12 gentlemen, those of you that were not selected, this is
13 the last case and you are now free to leave.

14 Thank you so much for your participation. And I
15 wish you well. And I appreciate your service to your
16 state and to your county. Have a great day. Thank you.
17 (WHEREUPON, jury panel exits courtroom.)

18 THE COURT: Ladies and gentlemen, thank you for your
19 service too. And this is your last case that you will be
20 participating in.

21 In so far as the seating is concerned the two -- the
22 last two, Ms. Gourlay and Mr. Wain. Mr. Wain looks
23 familiar.

24 (WHEREUPON, note that Mr. Wain served on jury panel
25 earlier in the week.)

1 THE JURY PANEL MEMBER: Yes, Your Honor.

2 THE COURT: You now have an assigned seat. And Ms.
3 Gourlay, you have an assigned seat. You are alternates,
4 and but that really doesn't mean anything.

5 In fact we had -- we used an alternate in the jury
6 we tried yesterday. So you never know when that becomes
7 necessary. But while you are an alternate if will both
8 occupy those two seats we would appreciate it.

9 The rest of you are free to occupy any other seat
10 that is there. There is only one other assigned seat,
11 and that will be occupied by the person that you will
12 select.

13 The statute allows me to select the foreperson - or
14 I call them presiding jurors - or let you select it. And
15 I have done that in my career. I have found that to be
16 the best approach to it.

17 It doesn't have to be done right away. At some
18 point if you will select from the first 12 of you. All
19 of you are eligible to serve other -- the only two that
20 are not right now are our two alternates.

21 But someone has to be responsible for signing the
22 verdict form at the conclusion of this trial, for
23 receiving any exhibits that might be introduced during
24 the trial, and then once the jury has completed its
25 deliberations returning those exhibits to the court.

1 And there may be occasions for that the jury needs
2 to have some written communication with the court. It
3 would be your responsibility to draft that on behalf of
4 your fellow jurors. Other than that that is the only
5 additional responsibilities.

6 As I say, all of you are qualified. It has been my
7 observation over the years that a presiding juror really
8 serves as a facilitator. And some persons are better
9 facilitators than others. And that is why I let the jury
10 pick the person they want to lead that process.

11 So at some point if you will do that I would
12 appreciate it. Please, again, until you do that you
13 won't have to worry about the seating arrangement. But
14 once you have done it -- Mr. Carnley is occupying that
15 seat at this moment. But and he is free to occupy it
16 until -- unless he is selected and then he will occupy it
17 continuously. But once -- anybody can occupy it until
18 that person is selected.

19 So thank you very much. I would ask the clerk now
20 to administer your oath.

21 Thank you, Ms. Mason.

22 THE CLERK: You are welcome.

23 (WHEREUPON, the jury was duly sworn.)

24 THE COURT: Thank you.

25 And thank you ladies and gentlemen. You now have

1 become a judge with me, and you and I will now work to
2 resolve this dispute. It is a wonderful process. And it
3 works exceedingly well.

4 And as I said when I qualified you, I give you the
5 credit for that and for that opinion. Because you -- and
6 there were reactions I think that said I don't really
7 want to do this. And I get that and understand that
8 perfectly well. And that really is why it is good,
9 because it is not something you really want to do but you
10 accept your responsibility as a citizen in this community
11 and you will perform this task.

12 And rest comfortable, as I told you when I qualified
13 you, you are more than -- you are amply qualified. There
14 is no one in the world more qualified unless you can
15 convince me somebody can apply your common sense, your
16 sense of logic and reason better than you can. And I
17 don't believe that person exists.

18 And that is all you are going to do. And you heard
19 me ask the questions over and over about whether you will
20 use that fairly and impartially. And that is the essence
21 of what we are -- you are about and I am about. Because
22 we both have to make that commitment to use our knowledge
23 and our logic and our reasoning fairly and impartially.

24 And I made that commitment. I am going to do the
25 best I can. And I just ask that you do the same thing.

1 And when we do that we will combine our efforts at the
2 end and a result will be obtained and that result will be
3 fair and impartial to both sides and be a result based on
4 the law and the evidence.

5 Now you and you alone will be the sole judges of
6 that of what the true facts are in this case. And you
7 will make that decision only after the court directs you
8 to begin your deliberations.

9 Until that instruction is given -- and, folks, I
10 will tell you now it is the last thing that you will hear
11 before you leave this courtroom as to when you may start
12 the process of deciding this case.

13 So until that point occurs, you each have made a
14 commitment either by your statements or not -- not saying
15 anything and really with the last question that you
16 brought something and you sat down with it; and that is
17 an open mind. You haven't decided anything. And, as I
18 said, there is nothing about this case that would give
19 you any concern about at the appropriate time applying
20 that sense of logic and reason that serves you so well in
21 your life.

22 So keep that open mind and don't change it. And I
23 will confess something I have to do. Because I am
24 human -- we all are human. You know, you hear something
25 and you want to -- you tend to jump to a conclusion. You

1 tend to say, well, wait a minute; I know where this is
2 going.

3 Don't -- resist that temptation. You may be right
4 with your gut feeling. That may be true. But don't --
5 but don't -- don't go there until you are instructed to
6 begin your deliberation.

7 And it is very important to the entire process.
8 Because there are four distinct parts of this process.
9 Each of them is uniquely important to your decision.

10 You will hear from the attorneys twice. Once before
11 you hear the evidence and then once after you have heard
12 the evidence.

13 The obvious difference, you have heard the evidence
14 the second time. But it is proper for them to speak to
15 you in what we call opening statements. They will tell
16 you a little bit about the dispute. They may discuss
17 some of the evidence they expect you will hear. And also
18 maybe discuss some of the law that you will be asked to
19 apply to that -- to those facts that you ultimately will
20 determine.

21 Then we will hear the evidence. And as you know --
22 as we told you when we were qualifying, and some of you
23 have had experience with this, the four parts are the
24 same, whether it is a civil dispute or a criminal
25 dispute. But in this case there are two really major

1 differences between a civil dispute and a criminal
2 dispute.

3 The first deals with what I am about to say. The
4 only party, the only party, that has any burden of proof
5 in this entire process is the State of South Carolina.

6 Mr. Porter has nothing to prove, disprove. He
7 doesn't have to say anything. He doesn't have to present
8 any evidence. He has no responsibility whatsoever.
9 Because the law says the State makes the accusation and
10 they alone have to prove it.

11 And your verdict will be really addressing whether
12 or not the State has met that burden of proof. And I
13 will explain that in just a moment.

14 So because the State has the burden of proof, they
15 go first. And you will hear the evidence. And they will
16 have to present evidence that will convince you to a
17 standard that is also the second difference.

18 In a civil dispute typically the standard of the
19 burden of proof, the term we use, is the preponderance or
20 greater weight of the evidence. That is the legal name
21 and a legal term that says the probability standard, it
22 is more likely so than not.

23 Well, in a criminal case it is much greater than
24 that. It is more than just a probability of being
25 guilty. It is proof beyond a reasonable doubt.

1 I will tell you now, and I will define it in my
2 charge; but reasonable doubt is a doubt that would make
3 an honest, conscientious, sincere juror who is searching
4 for the truth in a case to hesitate to act or take some
5 action.

6 And that is the standard that you will be asked to
7 apply when you begin your deliberations. And I know that
8 you will do that. And you are very competently and
9 capable of doing that.

10 And when I say apply, what do I mean? I will also
11 define for you the various elements of the two crimes
12 that are charged. And I will list them for you. Then
13 when you retire you will be analyzing that evidence to
14 decide whether the State has met each one of those
15 elements.

16 If the State satisfies you individually and
17 collectively - well, obviously it has to be
18 collectively - beyond a reasonable doubt as to each
19 element then they have met their burden of proof and you
20 must return a verdict of guilty.

21 Why? Because the law says the State has the burden
22 of proving each of the element and you are duty bound to
23 return that verdict if they have convinced you to that
24 standard.

25 On the other hand, if as to any element you are not

1 firmly convinced beyond -- that terms beyond a reasonable
2 doubt, as to that element, that stops it. You must
3 return a verdict of not guilty. Because the State has to
4 prove every element to that requisite standard. And that
5 is what you will be about.

6 And so the State will present evidence that will --
7 that you will have to analyze and decide what you believe
8 to be the true facts.

9 And that is the process that we all do every day of
10 our lives. Or I can't tell you how many times this
11 morning I am just watching the news. I have to make a
12 decision for it, I believe this or not, and how strongly
13 do I do it. You will do the same thing. And we do
14 that -- sometimes we do that really spontaneously.
15 Sometimes we ponder it.

16 I would ask you to do something. Don't make any
17 spontaneous judgments. Now just like the lady that stood
18 and I mentioned about body language and my reaction to
19 when she was hesitant about doing it, that was an instant
20 reaction I had. That is -- that is okay to have it. How
21 I would distinguish that and what you have to do is it is
22 okay to think what I just thought but don't make the
23 conclusion.

24 And as whereas we went through the process, I
25 concluded that it did not apply. Because she sat with

1 the jury. But my initial reaction was, ah, she has some
2 reluctance to think she can be fair and impartial.

3 Don't get -- don't go to that. Because if you do,
4 you have decided something. Keep that thought in your
5 mind, and when you begin your deliberations then you can
6 talk about it. And maybe some of your other jurors will
7 be able to justify or explain that to you so that it
8 allays your concern about the truthfulness or the
9 untruthfulness of that particular thing.

10 So make those mental notes. Just don't go to the
11 ultimate conclusion until you begin -- until you are
12 instructed to begin your deliberations.

13 Now the State has the burden of proof. You hear
14 their evidence. There is a very logical reason why you
15 want to keep that open mind.

16 Because while the defendant in this case has
17 absolutely nothing to prove or disprove and no
18 responsibility whatsoever to present any evidence, but he
19 still has the right to do so if he chooses to. But that
20 won't come until you have heard all of the evidence from
21 the State. So another reason you need to keep that open
22 mind, because you have to hear all of the evidence
23 obviously.

24 But more importantly and equally importantly, there
25 are two remaining parts. But at the conclusion of the

1 evidence the attorneys will have their second opportunity
2 to speak to you.

3 And unlike the first, now it is proper for them to
4 discuss the evidence with you, suggest reasonable
5 inferences that you may draw from that evidence. And you
6 will find those remarks will be extremely helpful to you
7 when you begin the process of deciding this case.

8 But I will tell you now and I will remind you in my
9 charge, while their remarks as officers of this court are
10 very important, please remember their remarks just as my
11 remarks, should never be considered evidence.

12 Because the evidence will come through the testimony
13 of a witness that you will hear. And you will have an
14 opportunity to reflect on that when you begin your
15 deliberations.

16 The last stage will be when I give you the law which
17 you will take and apply fairly and impartially to those
18 facts and perform the function and task that you just
19 accepted when you became a judge with me.

20 It is an honor and a privilege to try this case with
21 each one of you. And I thank you for your attention to
22 my remarks. And I ask you to please give that same
23 attention now to the attorneys as they give their opening
24 statements.

25 Solicitor.

1 MR. SIMPSON: Thank you, Your Honor.

2 THE COURT: You may proceed.

3 THE JURY PANEL MEMBER: Excuse me. Before you
4 start, I am not sure how she (pointing) is related to
5 this case, but when you said the name earlier I wasn't
6 sure it was her.

7 THE COURT: All right, ma'am, hold on a second.

8 I am going to ask the jury to go to your jury room.

9 Ask you to remain, please, ma'am, okay.

10 (WHEREUPON, remainder of jury panel in process of exiting
11 courtroom.)

12 THE COURT: Sir, you had a question too?

13 THE JURY PANEL MEMBER: Yes.

14 THE COURT: Another one. Yes, sir. All right.

15 Just -- both of you remain then, please.

16 (WHEREUPON, remainder of jury exits the courtroom.)

17 THE COURT: All right. Ma'am, your name and number,
18 please.

19 THE JURY PANEL MEMBER: Sandy Roach, 249.

20 THE COURT: All right. Yes, ma'am?

21 THE JURY PANEL MEMBER: I am not sure how she
22 (pointing to audience member) is related to the case.

23 And I am related to her through marriage with Byas. And
24 when you said the name earlier I wasn't sure if it was
25 her until she came into court.

1 THE COURT: Okay.

2 MR. SIMPSON: The individual we have confirmed that
3 that is correct from our -- this is the mother of the
4 victim.

5 THE COURT: All right. Okay. And would that
6 influence or affect you in any way in this dispute?

7 THE JURY PANEL MEMBER: I believe it would, yes.

8 THE COURT: Very well. Then I am going to excuse
9 this juror. Your number again

10 THE JURY PANEL MEMBER: Two forty-nine.

11 THE COURT: Two forty-nine is excused. Thank you.
12 Sir?

13 THE JURY PANEL MEMBER: Two sixty-three, ---

14 THE COURT: Yes, sir.

15 THE JURY PANEL MEMBER: --- Eugene Samuel. I am not
16 an acquaintance to her, but I know her from in passing at
17 work. And to be truthful with you I think it would
18 influence me with my job.

19 THE COURT: Very well. Then I will excuse you from
20 participation in this dispute as well. Thank you, sir.

21 In the future if you have any questions and you are
22 asked that question, please stand up then. Okay.

23 Thank you, ma'am. You are free to leave.

24 (WHEREUPON, ex-jurors exit the courtroom.)

25 THE COURT: All right. Any exceptions or objections

1 to the court's actions from the State?

2 MR. SIMPSON: Not after their comments, Your Honor.

3 THE COURT: Any from the defendant?

4 MR. SMALLDONE: None from the defendant.

5 THE COURT: Thank you very much. We will move the
6 two alternates on then. Are you ready to make your
7 opening statement?

8 MR. SIMPSON: Yes, Your Honor.

9 THE COURT: Or do you need a moment to regroup?

10 MR. SIMPSON: No, sir.

11 THE COURT: All right.

12 Thank y'all very much. I appreciate it.

13 Boy, this job it never ceases to amaze me what can
14 come up.

15 (WHEREUPON, break was had awaiting jury.)

16 (WHEREUPON, jury enters courtroom.)

17 THE COURT: Our alternates, you are now on the jury.
18 It didn't take long.

19 THE BAILIFF: May I approach, Your Honor?

20 THE COURT: Yes, sir. Certainly.

21 (WHEREUPON, bench conference was had with bailiff.)

22 THE COURT: Number 281, yes, ma'am -- do you want
23 to -- why don't -- why doesn't the jury retire except for
24 281, please.

25 (WHEREUPON, jury exits courtroom with the exception of

1 Juror 281.)

2 THE COURT: You indicated to the bailiff you have
3 some problems. What is that?

4 THE JURY PANEL MEMBER: That I was waiting on but
5 you didn't ever ask the question concerning a relative
6 that you have some ill feelings about as far as his
7 murder trial that he was unjustly caught. And so I was
8 waiting for some sort of a question as far as that. But
9 you didn't. So I didn't know when to answer it.

10 THE COURT: Well, ma'am, why -- what did you think
11 when I asked you the last thing and I said is there
12 anything about this case that would give you any concern
13 about taking the oath that you took and you didn't stand
14 up; why did you -- why didn't you stand up then?

15 THE JURY PANEL MEMBER: I don't remember exact
16 actual question but ...

17 THE COURT: I'm sorry, I don't ---

18 THE JURY PANEL MEMBER: I didn't remember that
19 actual question.

20 THE COURT: You didn't remember that?

21 THE JURY PANEL MEMBER: Didn't hear that actual
22 question.

23 THE COURT: You didn't hear that, ma'am? That was
24 the last thing I said to you. And I talked about it when
25 I qualified you. So it is the second time you have heard

1 it. Why didn't you stand up then?

2 THE JURY PANEL MEMBER: I just thought I needed to
3 give forth the information.

4 THE COURT: Well, I understand that. So you are
5 telling what, that would affect and influence you in this
6 case?

7 THE JURY PANEL MEMBER: What I am saying is I don't
8 think it will have any affect because I don't know
9 anything ---

10 THE COURT: No, no, I didn't ask you whether you
11 thought it was. I said will it affect you?

12 THE JURY PANEL MEMBER: No.

13 THE COURT: All right.

14 THE JURY PANEL MEMBER: I just wanted to give the
15 information.

16 THE COURT: Well, I appreciate that. That is very
17 helpful to me. And the information that you have is
18 what -- I didn't understand what -- you had some prior
19 involvement with?

20 THE JURY PANEL MEMBER: My brother.

21 THE COURT: With your brother. And what was the
22 involvement?

23 THE JURY PANEL MEMBER: It's a murder case.

24 THE COURT: It's a murder case, and he was accused
25 or -- or ---

1 THE JURY PANEL MEMBER: He is serving time.

2 THE COURT: He is serving time. But it would not
3 affect you in any way?

4 THE JURY PANEL MEMBER: No.

5 THE COURT: Okay. And you would be able to set that
6 aside and apply your sense of logic and reason fairly and
7 impartially in analyzing that evidence?

8 THE JURY PANEL MEMBER: Yes. I just wanted to give
9 the information.

10 THE COURT: And I appreciate that. You are doing
11 exactly -- you are doing the right thing. I don't want
12 you to think that I am chastising you for telling me.
13 That is precisely what you should do.

14 But you should have done it before we excused the
15 jury panel. That is the problem. So I am going to ask
16 you to step out. Do not rejoin the jury at this point,
17 okay.

18 You haven't -- have you talked with any of the
19 jurors about that?

20 THE JURY PANEL MEMBER: No.

21 THE COURT: Okay. Thank you, ma'am. If you will
22 just step out with Mr. Pryor and we will be with you very
23 quickly.

24 (WHEREUPON, juror exits the courtroom.)

25 THE COURT: All right. I would assume the defendant

1 doesn't have any problem going forward. But what is the
2 State's position?

3 MR. SIMPSON: Well, Your Honor, I mean just to speak
4 frankly, I probably would have exercised a preemptory
5 strike.

6 THE COURT: I am confident you would have.

7 MR. SIMPSON: Having said that, I embrace the
8 challenge of convincing the juror ---

9 THE COURT: So you are willing to go forward?

10 MR. SIMPSON: --- where we can go forward. Yes,
11 Your Honor.

12 THE COURT: Do you have an objection?

13 MR. SMALLDONE: Well, no, Your Honor, I -- I
14 couldn't
15 understand ---

16 THE COURT: Well, I will tell -- her brother is
17 serving time for murder.

18 MR. SMALLDONE: Okay. And it is not related to this
19 case?

20 THE COURT: No.

21 MR. SIMPSON: I didn't understand ---

22 MR. SMALLDONE: Oh, okay. It is just a relative --
23 I think it was just a relative ---

24 MR. SIMPSON: My understanding was that she feels
25 like her brother was wrongly convicted of a violent

1 crime.

2 THE COURT: Yeah, that is what it sounded like to
3 me.

4 MR. SMALLDONE: No objection here.

5 THE COURT: Well, that is why I said what I said.

6 MR. SMALLDONE: I just want to -- there is a little
7 bit of a back story in this case. I wanted to make sure
8 it doesn't involve the back story.

9 THE COURT: I can't go into the back story in this
10 case about that with her. I don't think there is a need.
11 She just told me that it would not influence her.

12 And frankly, I defer to the State and I -- Mr.
13 Simpson, I appreciate your position. Because I really
14 think that the State would have exercised a challenge,
15 not the defendant.

16 MR. SIMPSON: I would have. But, Your Honor, if I
17 may ask just to have a couple of moments to confer with
18 my victim's family kind of ---

19 THE COURT: Absolutely. You take as much time as
20 you need, Mr. Simpson.

21 MR. SIMPSON: I appreciate it. And we will just be
22 a few moments.

23 THE COURT: No, sir. Please. And I respect their
24 position as well.

25 (WHEREUPON, break was had.)

1 MR. SIMPSON: Your Honor, we are ready to go.

2 THE COURT: Thank you.

3 MR. SIMPSON: No objection to her remaining.

4 THE COURT: All right. If you will ask her to come
5 back in, please.

6 (WHEREUPON, Juror 282, Margretta Smith, return to
7 courtroom.)

8 THE COURT: Ms. Smith, I appreciate that that you
9 have done. As I told the others that said it would
10 affect them, and we have excused them, if you ever
11 have -- if you are ever in that situation again and you
12 have an inkling that, well, maybe I need -- it is better
13 to err on the side of caution than not.

14 But you did exactly what you are supposed to do,
15 ma'am. And I thank you for that.

16 THE JURY PANEL MEMBER: I apologize.

17 THE COURT: Well, you don't -- and I appreciate you.
18 But I want to make sure that you understand you have done
19 nothing wrong in the sense of disclosing what you did.
20 In fact you did exactly what we should -- what needs to
21 be done.

22 I have discussed this with the parties and they are
23 comfortable with your commitment that you will be fair
24 and impartial in performing the task that you have
25 undertaken. So you are still on our jury. Thank you so

1 much, ma'am. I appreciate it.

2 (WHEREUPON, juror exits the courtroom.)

3 THE COURT: Any exceptions or additions from the
4 State regarding the instruction to the juror?

5 MR. SIMPSON: No, Your Honor.

6 THE COURT: From the defendant?

7 MR. SMALLDONE: No, Your Honor.

8 THE COURT: Let's take about five minutes.

9 (WHEREUPON, break was had.)

10 THE COURT: Mr. Pryor, bring in our jury please.

11 (WHEREUPON, jury enters 4/11/2018, 10:54 a.m.)

12 THE COURT: Thank you, ladies and gentlemen. And
13 during the break it appears that you have selected as
14 your presiding jury Mr. Wain; is that correct?

15 Thank you very much. And that will be your seat for
16 the balance of the trial.

17 MR. WAIN: Yes, sir.

18 THE COURT: Thank you very much, ladies and
19 gentlemen. We are now down to 12. And that is fine, and
20 that is okay. And we understand that is the reason we
21 have alternates.

22 The fact that I have excused two jurors should not
23 be considered by you at all. I just urge you all to stay
24 healthy. And thank you very much. We are ready to
25 continue.

1 Mr. Simpson, you may proceed.

2 MR. SIMPSON: Thank you. Anybody?

3 **OPENING BY MR. SIMPSON:**

4 Ladies and gentlemen, good morning. My name -- we
5 met briefly before. My name is Mr. Simpson. It is my
6 honor to represent the State of South Carolina in the
7 case against -- South Carolina versus Derrick Porter.

8 I want to start -- start every opening - and you
9 will hear this from a lot of people this week - with a
10 sincere thank you. Thank you for your time. Thank you
11 for this disruption to your lives.

12 I know, you know, Ms. Smith got a little grief this
13 morning for her reaction. That is a perfectly normal
14 reaction to have. It is usually someone's reaction when
15 they get put on a jury.

16 But almost every time I have talked to jurors after
17 this experience they have expressed what a meaningful
18 experience it was and how important it is.

19 Because as we have also talked this morning,
20 everybody brings different experiences to the table and
21 valuable insights that they can provide in that room.
22 And we thank you all so much for your time this week.

23 While I am on that subject let me go ahead and start
24 on a bad note. Just as your lives have been disrupted so
25 have all of the witnesses' lives this week.

1 I say that because our first witness is going to go
2 a little out of order than we would normally do. And
3 that is because she had some conflicts through this week
4 as a crime scene tech. So you are going to hear about a
5 crime scene before you hear about a crime.

6 I apologize for that, and I just ask you to pay
7 attention to her, our first witness, even though it may
8 seem a little bit out of context.

9 Derrick Porter is charged with attempted murder.
10 Attempted murder is one of those crimes that is legally
11 defined. You will hear a fancier definition later. But
12 it is legally defined exactly as I am sure you assume it
13 is. And that is when a person's actions, their physical
14 actions, and when a person's intent and purpose is to
15 take the life of another. And our evidence in this trial
16 is going to show that Derrick Porter did intend to take
17 the life of another.

18 It is a murder case where because of some fact the
19 person is still on this earth, is still with us and is
20 still alive, but other than for the person surviving it
21 is a murder. It is when a person intends to kill
22 another. To take the life of another human being,
23 murdered, intentionally.

24 That phrase sort of comes to me a lot when I think
25 about this trial. Because it in many ways although

1 legally it is an attempted murder, sadly for the victim's
2 family it is a murder when you define murder in taking
3 the life of another.

4 Fritzgerald Byas was 29 years old on April 16th of
5 2016. And the Fritzgerald Byas that existed, sadly, on
6 that day, is in many very meaningful ways is no longer
7 with us due to the damage done to his person, to his
8 brain, to who he was on this day.

9 That damage was done because another person intended
10 to harm him and did harm him. And that is going to be
11 part one of your challenge this week, which is always
12 hard, and that is to determine what Derrick Porter's
13 intent was, what his purpose was. And that is always
14 difficult to go inside another person's head and
15 determine what they meant to do, what they intended to
16 do.

17 Always difficult, but not very difficult in this
18 case that I present to you. Because in this case you are
19 going to see with your own eyes what Mr. Porter did. And
20 you are going to be able through your own perception -
21 and that is a rare thing in a trial - through your own
22 perception to determine what he intended to do.

23 And for such horrifying tragic results to
24 Fritzgerald Byas, the actual actions of what happened are
25 pretty simple and pretty easy to understand. And, like I

1 said, you are going to see that.

2 Mr. Porter by what the best we can tell was just
3 complete chance saw someone he didn't care for on
4 April 16, 2016. And they walked by by horribly tragic
5 circumstances past each other at the Quick Mart in North
6 Charleston.

7 And what you are going to see is they pass, sort of
8 acknowledge one another, and Mr. Byas goes into the Quick
9 Mart. Goes into the store to conduct his business for
10 that day.

11 But Mr. Porter, the gentleman here (pointing),
12 waits. And waits outside for nearly two whole minutes.
13 Two minutes doesn't sound like a lot. But you are going
14 to see it. And you are going to see it going real-time,
15 and you are going to be able to perceive just how long
16 two minutes is, just how many opportunities a person in
17 two minutes has to leave.

18 Mr. Porter didn't. He paces. And he waits. And he
19 is waiting for one thing, for Mr. Byas to come out of
20 that store. When he does they approach one another. And
21 they start by talking. And they start by talking in a
22 way that seems kind of friendly.

23 But you know that is not Mr. Porter's purpose
24 because very quickly you are going to see that it
25 escalates into a confrontation. Into an argument.

1 You are going to see from body language and you are
2 going to see -- it is not crystal clear, but you are
3 going to hear that this is not a friendly conversation,
4 that Mr. Porter had a problem with Mr. Byas. And Mr.
5 Byas quickly you are going to see has a problem with Mr.
6 Porter.

7 And then Mr. Byas does something that is going to be
8 very important to your perception and your analysis of
9 this case. Mr. Byas does what society asks people to do,
10 and demand certainly of you and I that we do when things
11 are getting heated. He tries to leave. And the only
12 thing that stops Mr. Byas from leaving is the man seated
13 here, Mr. Porter, who follows him to his car, who
14 positions himself within the open door of the driver's
15 side and continues this argument.

16 As far as I am away from some of you right now and
17 even closer, standing in the doorway of a passenger seat.

18 The emotions escalate. The language escalates.
19 Until in a moment it is going to blow your mind. The man
20 seated right here pulls out a gun, puts it inches from
21 the head of Mr. Byas, and pulls the trigger. And walks
22 off as coolly and as casually as he can and leaves the
23 scene.

24 Why is Mr. Byas still alive today? Is it because of
25 the actions and the intent of Mr. Porter? No.

1 It is because of heroic efforts that you are going
2 to hear about from the neurosurgeons at MUSC. Heroic
3 efforts that survived a version of Mr. Byas that is very
4 different than the version of Mr. Byas that existed
5 before April 16th of 2016.

6 It is never probably a good idea in opening
7 statements to anticipate what the defense it going to be.
8 But we have -- we think we know at least in this case.
9 And we anticipate you are going to hear a little bit
10 about self defense and you are going to hear an assertion
11 that perhaps Mr. Porter was acting in fear for his own
12 life.

13 Rather than discuss what all that means right now
14 and go through all of the elements and all of the reasons
15 we don't think that is true, I want to wait and talk
16 about that when you have heard things with your own ears,
17 when you have seen things with your own eyes, when you
18 have heard things from the people who were there that day
19 and when you have had time to see the evidence.

20 Because I am confident once you have had time to see
21 and perceive all of that, you are not going to have a
22 problem finding that self-defense does not apply in this
23 case.

24 But I will go ahead and do what I guess the younger
25 people would call it a spoiler alert, that self-defense

1 claim arises because Mr. Byas did have a gun that day.
2 But you are going to hear where that gun was and what was
3 happening with that gun. Nothing. Out of sight when
4 this shooting occurred.

5 And I am confident that once you have had time to
6 look at the evidence and perceive all of what happened
7 that day with your own eyes and ears that you are going
8 to find that self-defense did not play a part in the
9 actions that day.

10 You are going to find -- you are going to conclude
11 that the gun although present in the car was not
12 perceived by Mr. Porter and played no appreciable role in
13 his decision and his actions of this day.

14 And you are going to conclude that Mr. Porter is
15 guilty of what he is charged with, which is attempted
16 murder and possessing a firearm during the commission of
17 a violent crime, and that violent crime being attempted
18 murder.

19 Again I thank you so much for your time and
20 attention this week. We are going to do the best we can
21 to present this in an efficient way to you to make the
22 most of your time. And we appreciate your consideration.
23 Thank you.

24 THE COURT: Thank you, Solicitor.

25 Mr. Smalldone.

1 MR. SMALLDONE: Thank you, Your Honor. May it
2 please the court.

3 THE COURT: Yes, sir.

4 MR. SMALLDONE: Counsel.

5 **OPENING BY MR. SMALLDONE:**

6 Ladies and gentlemen of the jury, good morning.
7 April 16, 2016. That was about almost exactly two years
8 ago. You are going to hear a lot about that day. You
9 are going to hear a lot about -- you are going to hear
10 for maybe two days what happened in five minutes.

11 Isn't that crazy. You are going to analyze
12 something that happened for five minutes for maybe a day,
13 maybe two days, maybe three days. And I don't want to
14 anticipate how long it is going to go.

15 And it is so easy to look back on five minutes for
16 that long. And it is so easy to try to analyze things,
17 to put your mind inside Mr. Porter's.

18 So I want to give you a little bit more than the
19 five minutes. I want to give you a little bit of a back
20 story as to what happened that day and what happened
21 during then, what happened before then, and a little bit
22 about what happened after. So let's start with what I
23 said, April 16th, 2016. Mr. Porter is at the gas
24 station, North Charleston. Minding his own business.
25 Who did he see? Someone you heard about. Mr. Byas.

1 See, the back story is important here. Mr. Porter
2 knew Mr. Byas. Obviously you have heard that. Mr.
3 Porter, my client, Derrick, Derrick thought -- for
4 whether true or not, that is not what we are here for,
5 Derrick thought that Mr. Byas was involved in the killing
6 of his cousin years ago.

7 And we are not here to try that. I am not here to
8 put Mr. Byas on trial. That is not fair. That is not my
9 job. But that is what Derrick thought. It is important
10 to get in the mind of Derrick.

11 So Derrick sees Mr. Byas at the store. What does he
12 do? Does he hit him; does he punch him; does he yell at
13 him?

14 Derrick tries to be responsible. Right. Derrick
15 acknowledges him. Tries to break the tension. Talks to
16 him briefly.

17 And you have already heard this. What does he do?
18 He waits for him. He talks to him in his car. He talks
19 to him for a while.

20 And picture -- we have to picture -- how much
21 tension there had to be there. How much tension to talk
22 to and try to analyze and try to resolve really a
23 conflict that involved the death of someone else. At
24 least in Derrick's mind. You will hear more about that,
25 obviously. You will hear more about this.

1 So he is talking to Mr. Byas. And you will see it
2 all. Again, does he hit him; does he do anything? No,
3 he waits I count about -- it is between three and four
4 minutes that they are talking at the car. And, yeah, you
5 will hear it. They talk. Yeah, they argue. What do
6 they do? They argue.

7 A split second. Derrick thinks that Mr. Byas is
8 going for a gun. And you will hear more about that. You
9 have already heard that. What you heard, Mr. Byas did
10 have a gun. Derrick thinks that Mr. Byas is going for
11 his gun.

12 So what does Derrick do? In a second -- you can
13 barely see it. In a second Derrick reaches for his. And
14 that is why we are here.

15 Derrick -- you will see the video. Derrick is in
16 shock. You never know what it is like until you see it.
17 We always want to put -- again, we want to put our mind
18 in someone else's.

19 It is easy to say -- how many times have you talked
20 with your friends; well, if I was there I would have done
21 this. If I was there I would have yelled or I wouldn't
22 have done anything. Right? You always want to have
23 hindsight. You want to say what you would do in a
24 shocking situation.

25 You know, I think our president said about a school

1 shooting if I was there I would have gone in. You know,
2 and not to -- not to get political, but it is easy to say
3 stuff like that.

4 And it is easy to say if I was there I would have
5 resolved it or if I was there I would have ran away
6 screaming.

7 Well, you will see the video. We don't know what is
8 in his mind. We can try to put it in there, but we
9 can't.

10 Derrick walks away in shock. Calm, cool, and
11 collected. He can't believe what he did. You will see
12 it.

13 And that is why we are here. And what does Derrick
14 do weeks later? You will find out he turns himself in.
15 He volunteers. He goes and turns himself in and gives a
16 statement, which you will hear, to law-enforcement.

17 Derrick thought that his life was in danger by a guy
18 that he thought was dangerous. By a guy that he thought
19 had a gun. And what do you see? As sure as I am
20 standing in front of you right now he did have a gun. He
21 thought he had a gun, and he did. That is why Derrick
22 had to do what he had to do. You will see Derrick shoots
23 him one time.

24 Derrick probably saved his own life that day. No
25 one is happy for what happened. I can assure you

1 everyone here wishes Derrick never ran into him at that
2 gas station. This wasn't planned. This was spontaneous..
3 This was a split-second decision from fear.

4 So that is what this is about today. That is what
5 this is about. This is about defending yourself against
6 a threat. And at the end of this case when you see all
7 of the evidence or when the judge charges you on the law,
8 he will give you specifics about what is attempted
9 murder, what is self-defense, all the law. You will hear
10 it. What is reasonable doubt, all of that. You will
11 hear it. And you will see clearly Derrick did the only
12 thing that he could do in that situation.

13 And if the State hasn't proved beyond a reasonable
14 doubt that he didn't, that it is not self-defense, then
15 it is. And that is why at the end of this and at the end
16 of all of this I am going to ask you to return a verdict
17 of not guilty. Because he is not. He did what he had to
18 do.

19 No one is glad to be here. No one is happy. Maybe
20 including y'all. No one is happy. But this is the
21 result of a bad situation.

22 Thank you.

23 THE COURT: Thank you, sir.

24 Call your first witness, please.

25 MR. COOPER: The State calls Tiffany Adams.

1 (WHEREUPON, the witness was duly sworn.)

2 THE CLERK: Please have a seat. State your full

3 name and spell your last name.

4 MR. COOPER: Tiffany Adams. A-D-A-M-S.

5 THE COURT: Proceed.

6 **DIRECT EXAMINATION BY MR. COOPER OF TIFFANY ADAMS:**

7 Q Good morning, Ms. Adams.

8 A Good morning.

9 Q How are you?

10 A Good.

11 Q Can you please tell the jury where you are currently

12 employed.

13 A North Charleston Police Department.

14 Q And what do you do at the North Charleston Police

15 Department?

16 A I am a crime scene investigator.

17 Q How long have you been a crime scene investigator?

18 A Five years.

19 Q Will you tell the jury a little bit about what a

20 crime scene investigator does.

21 A We go out. Anything that is deemed a crime such as

22 breaking and entering of a business, home, vehicles, we

23 go out, process the scene. Sexual assaults, homicides,

24 attempted murders; anything that falls under assaults.

25 Q And when you are processing the scene can you

1 describe for the jury what kind of things you are looking
2 for, what you are keeping an eye out for.

3 A We do dusting for fingerprints, DNA, blood. Any
4 evidentiary evidence that will be helpful for the
5 detectives in the investigation.

6 Q Do you also photograph the crime scene?

7 A Yes.

8 Q Focusing your attention back to April of 2016, how
9 did you become involved in this case?

10 A I was the responding crime scene investigator. I
11 got called out for a shooting at 2000 McMillan Avenue.

12 Q And what was your task when you -- once you arrived
13 on the scene?

14 A And so what happens is we arrive on the scene. We
15 speak with the responding officer. Kind of get a
16 debriefing of what is going on.

17 So we were advised that there was a shooting. The
18 victim was transported to the ER via EMS. Start doing
19 your photographs of the whole thing and then start
20 processing the scene.

21 Q And can you describe the scene for the jury.

22 A So it is like a parking lot with like -- like a
23 little mall strip. And it is called the Quick Mac Stop.
24 And it is just like a little -- like a little store. And
25 the victim's vehicle was parked in front of the Mac's

1 Quick Stop.

2 Q Where was the victim shot?

3 A In the head.

4 Q Where was he when he was shot?

5 A Sitting in his vehicle in the driver's seat.

6 Q And can you explain for the jury what things you
7 noticed when you began to process the scene.

8 A I was advised that on the driver's seat where the
9 victim was sitting his firearm was on the front seat
10 along with a hat. And there was a card placed for the
11 marking of a spent shell casing that was at the right
12 front tire.

13 Q And you mentioned that you did take pictures of the
14 scene that day?

15 A Yes.

16 Q Would you recognize those pictures if I showed them
17 to you?

18 A Yes.

19 MR. COOPER: Beg the court's indulgence.

20 THE COURT: Certainly.

21 MR. COOPER: Your Honor, May I approach the witness?

22 THE COURT: You may.

23 Q Ms. Adams, I am going to show you what has been
24 marked for ID purposes only as State's Exhibit 1 and then
25 State's Exhibit 3 through 12. If you will take a moment

1 and review those for me, please.

2 (WHEREUPON, pause for review of documents by the
3 witness.)

4 Q Do you recognize those photos?

5 A Yes.

6 Q What are they?

7 A Photographs at the scene of that day and of the
8 incident.

9 Q And do they appear in the same or similar conditions
10 as they were when you took them?

11 A Yes.

12 MR. COOPER: Your Honor, at this time the State
13 would offer Exhibits 1 and then 3 through 12 that have
14 been previously marked for ID only into evidence.

15 THE COURT: Any objection?

16 MR. SMALLDONE: Your Honor, I do object to
17 Exhibits 9 and 10.

18 THE COURT: Let me see 9 and 10. What is the basis
19 of your objection?

20 MR. SMALLDONE: 403 objection.

21 THE COURT: Okay.

22 MR. COOPER: Your Honor, May I approach?

23 THE COURT: You may.

24 MR. COOPER: Your Honor, these are pictures where
25 the victim was shot in the vehicle.

1 THE COURT: Let's don't ---

2 MR. COOPER: Okay.

3 THE COURT: You don't need to say a word.

4 At this point she can talk about them. I am not
5 going to admit them at this point. Subject to further
6 testimony. I will have to wait and see. And we will
7 have -- we will discuss it at the first break so I can
8 analyze and do the 403 analysis. Thank you.

9 MR. COOPER: Thank you.

10 THE COURT: I will have to excuse the jury to do
11 that. Let's move on. That is not critical at this
12 point. But if he chooses to admit this through other
13 witnesses -- because the witness as I understand has a
14 conflict. You are not -- it has already been
15 authenticated and the only challenge is a 403, correct?

16 MR. SMALLDONE: That is correct. I won't raise that
17 issue.

18 THE COURT: This witness won't have to be here if he
19 chooses to introduce it after their arguments.

20 MR. COOPER: Yes, Your Honor.

21 THE COURT: Thank you.

22 MR. COOPER: Thank you.

23 Q All right, Ms. Adams, I am going to -- with
24 Exhibit 1, and then 3 through 12, except 9 and 10, are
25 into evidence?

1 THE COURT: That is correct. Without objection.
2 (WHEREUPON, State's Exhibit Number 1 was admitted into
3 evidence.)
4 (WHEREUPON, State's Exhibit Number 3 was admitted into
5 evidence.)
6 (WHEREUPON, State's Exhibit Number 4 was admitted into
7 evidence.)
8 (WHEREUPON, State's Exhibit Number 5 was admitted into
9 evidence.)
10 (WHEREUPON, State's Exhibit Number 6 was admitted into
11 evidence.)
12 (WHEREUPON, State's Exhibit Number 7 was admitted into
13 evidence.)
14 (WHEREUPON, State's Exhibit Number 8 was admitted into
15 evidence.)
16 (WHEREUPON, State's Exhibit Number 11 was admitted into
17 evidence.)
18 (WHEREUPON, State's Exhibit Number 12 was admitted into
19 evidence.)
20 Q Ms. Adams, I am going to put these items on the
21 screen where they will also appear on the monitor right
22 in front of you. Ms. Adams, can you please tell the jury
23 what this picture shows us.
24 A All right. This is Google Maps. This is the Quick
25 Stop where the incident took place.

- 1 Q Okay.
- 2 A And
- 3 Q Please continue.
- 4 A And then this address is where I had to go -- sorry
- 5 about the circling. Where I had to go. This is where
- 6 the suspect's vehicle was located.
- 7 Q And it is a little hard to read. What is the title
- 8 above where the incident occurred, the words?
- 9 A [REDACTED] Pine Ridge Circle. And then the Quick -- Quick
- 10 Stop.
- 11 Q And [REDACTED] Pine Ridge Circle is where you found the
- 12 vehicle ---
- 13 A Where ---
- 14 Q --- that we will discuss in a few minutes?
- 15 A Where I was dispatched over, because they located
- 16 the suspect's vehicle.
- 17 MR. COOPER: Beg the court's indulgence.
- 18 THE COURT: All right.
- 19 Q I am showing you State's Exhibit 2. Would you
- 20 please tell the jury what this shows us.
- 21 A Okay. As I stated earlier, the -- this is the Mac's
- 22 Quick Stop. The victim's vehicle that is parked in front
- 23 of the Mac's Quick Stop.
- 24 Q You said that was the victim's vehicle, correct?
- 25 A Yes.

1 (WHEREUPON, pause to clear ELMO monitor.)

2 Q I am showing you State's Exhibit 4. What is this a
3 picture of?

4 A This is just a closer up of the vehicle. It is a
5 Chrysler 200.

6 Q Okay. I am showing you State's Exhibit 5.

7 A Just doing overalls. This is the passenger side of
8 the inside of the vehicle.

9 Q And as we mentioned earlier, your job when you are
10 on the scene is to photograph the entire scene?

11 A Yes.

12 Q I am showing you State's Exhibit 6.

13 A This is the driver's side. I am showing the inside
14 and the driver's seat.

15 Q And the victim was shot as he was sitting in the
16 driver's seat?

17 A Yes.

18 Q And then that was the weapon -- his weapon that was
19 in the driver's seat once he was taken away?

20 A Yes.

21 Q Okay. I am showing you State's Exhibit 7.

22 A A closer up of the driver's seat with the firearm
23 and the hat.

24 Q And what appears to be on the center console?

25 A A can of Mike's Hard Lemonade.

1 Q I am showing you State's Exhibit 8. What is that
2 picture?

3 A A closer up of the Mike's Hard lemonade.

4 Q I am showing you State's Exhibit 11. What does that
5 picture show us?

6 A Showing the right passenger, the right front tire,
7 and Marking Number 1 with the spent shell casing.

8 Q And I am showing you State's Exhibit 12.

9 A Closer up of the spent shell casing near the right
10 front tire.

11 Q And so is this also part of your responsibility when
12 you are on the scene, not just to photograph but to try
13 to find any evidence that may be related to the crime?

14 A Yes.

15 Q Was this the only shell casing that you found?

16 A Yes.

17 Q Did you collect that shell casing?

18 A Yes, I did.

19 Q Would you recognize that if I were to show you that?

20 A Yes.

21 MR. COOPER: Your Honor, may I approach the witness?

22 THE COURT: You may.

23 Q Ms. Adams, I want to show you at this time what has
24 been marked for ID purposes only as State's Exhibit 27.

25 Do you recognize that?

1 A Yes.

2 Q And what is that?

3 A This is the spent shell casing near the right front
4 tire marked number one.

5 Q And how do you know that?

6 A That is my name on the label and my signature and
7 date on the back of the sealing.

8 Q Okay.

9 MR. COOPER: Your Honor, at this time the State
10 would like to offer State's Exhibit 27 for ID purposes
11 only into evidence.

12 THE COURT: Any objection?

13 MR. SMALLDONE: No objection.

14 THE COURT: Without objection State's 27 is
15 admitted.

16 MR. COOPER: Thank you, Judge.

17 (WHEREUPON, State's Exhibit 27 was admitted into
18 evidence.)

19 Q And now Ms. Adams, while you were on the scene and
20 processing the scene did you have the occasion to view
21 any surveillance video?

22 A Yes.

23 Q Where did you view interview the surveillance video?

24 A I was advised that at the beauty shop, which is
25 right next to the -- it is my picture. That they had

1 surveillance of the incident that took place.

2 Q I am showing you again State's Exhibit 3. Could you
3 indicate where for us on the picture the beauty shop is
4 located.

5 A The Unique Beauty Store and then where the incident
6 is.

7 Q And video surveillance was obtained from both
8 locations, correct?

9 A I obtained it from the Unique Beauty, yes.

10 Q Okay. And would that video has been put on a disk?

11 A Yes.

12 Q Would you recognize that if I were to show you that?

13 A Yes.

14 MR. COOPER: Your Honor, may I approach the witness?

15 THE COURT: Yes, you may.

16 Q I am going to show you, Ms. Adams, what has been
17 marked for ID purposes only as State's Exhibit 16. Do
18 you recognize that?

19 A Yes, I do.

20 Q And what is that?

21 A This is the video from the beauty shop.

22 Q And how do you know that?

23 A It has my initials on it and the date.

24 Q Okay.

25 MR. COOPER: Your Honor, at this time the State

1 would offer what has been marked for ID purposes only as
2 State's Exhibit 16 into evidence.

3 THE COURT: Any objection?

4 MR. SMALLDONE: No objection.

5 THE COURT: Without objection State's Exhibit 16 is
6 admitted.

7 (WHEREUPON, State's Exhibit 16 was admitted into
8 evidence.)

9 Q And now, Ms. Adams, I believe you touched on this
10 just a few minutes ago, but other than being on the scene
11 were you asked to process anything else related to the
12 crime that day?

13 A I went inside where the clerk stated that the
14 suspect went and purchased a can of the Mike Hard -- Mike
15 Hard's Lemonade. So when I entered into the store they
16 had that cooler blocked so no one could go there for
17 processing purposes.

18 Q And that was the Quick Stop that was directly in
19 front of the vehicle ---

20 A Yes.

21 Q --- in the picture?

22 A Yes.

23 Q And once you finished there did you happen to go
24 anywhere else to process something related to this crime?

25 A At that time I was advised when I finished

1 processing at the Quick Stop to go to Pine Ridge because
2 the suspect's vehicle was located over there.

3 Q I am going to show you again State's Exhibit 1.
4 Indicate again for us where [REDACTED] Pine Ridge Circle is.

5 A (Marked on ELMO).

6 Q This is just a few streets over from the Quick Stop?

7 A Yes.

8 Q And, again, what were you asked to do at [REDACTED] Pine
9 Ridge Circle?

10 A To photograph the vehicle.

11 Q If I were to show you pictures of the vehicle would
12 you recognize those?

13 A Yes.

14 MR. COOPER: Your Honor, may I approach the witness?

15 THE COURT: Yes, you may.

16 MR. COOPER: Thank you, Judge.

17 Q I am going to show you, Ms. Adams, what has been
18 marked for ID purposes only as State's Exhibits 13, 14,
19 and 15. Do you recognize those?

20 A Yes, I do.

21 Q And what are they?

22 A Photographs of the vehicle. It is a Ford Taurus.

23 Q Okay. And then are they in the same or similar
24 conditions as they were when you took the photos?

25 A Yes.

1 MR. COOPER: Your Honor, at this time the State
2 would offer State's Exhibit 13, 14, and 15 into evidence.

3 THE COURT: Any objection?

4 MR. SMALLDONE: No objection.

5 THE COURT: Without objection State's 13 through 15
6 are admitted.

7 MR. COOPER: Thank you, Judge.

8 (WHEREUPON, State's Exhibit 13 was admitted into
9 evidence.)

10 (WHEREUPON, State's Exhibit 14 was admitted into
11 evidence.)

12 (WHEREUPON, State's Exhibit 15 was admitted into
13 evidence.)

14 Q I am going to show these to you on the screen. I am
15 going to show you State's Exhibit 13. What is that?

16 A It is showing the positioning of the vehicle where
17 it was parked.

18 Q State's Exhibit 14.

19 A A closer shot of the license plate.

20 Q And then State's Exhibit 15.

21 A When we take pictures of the vehicles we take an
22 all-around view.

23 Q And then would you just indicate on the spot for the
24 vehicle where those marking happened to be, if you can
25 just draw those on the screen for the jury.

1 A (Witness complied).

2 Q And obviously you didn't put those on there?

3 A No.

4 MR. COOPER: If I could just beg the court's
5 indulgence JUST one second.

6 THE COURT: Certainly.

7 Q Ms. Adams, a few more questions for you. Were you
8 on the scene when the victim was removed from the
9 vehicle?

10 A I was not.

11 Q And that gun that was in the driver's seat when you
12 arrived, do you have any idea how it came to be there?

13 A I was advised that as they were moving him ---

14 MR. SMALLDONE: Objection.

15 A --- from the vehicle ---

16 THE COURT: Sustained.

17 MR. COOPER: I will rephrase the question, Judge.

18 Q Based on what you saw once you arrived on the scene,
19 just what you saw, do you have any knowledge of how that
20 gun came to be there?

21 A Only from what the -- what I was advised on the
22 scene.

23 Q Okay. And then so again your job was to take
24 pictures of what you saw once you arrived on the scene?

25 A Yes. Everything is -- when I come on the scene

1 everything is as is.

2 Q Okay. And then that video that was obtained from
3 the beauty shop, how did you obtain it?

4 A The owner at the time was not on the scene so they
5 didn't know how to retrieve it to put it on a USB or on a
6 flash drive. So I had to record it from my camera.

7 Q So the recording on the CD is a recording of you
8 video recording the video as it is playing?

9 A Yes.

10 Q As it is playing at the beauty shop?

11 A From their laptop.

12 Q Okay.

13 MR. COOPER: Beg the court's indulgence for one
14 second.

15 THE COURT: Yes, sir.

16 Q Ms. Adams, Thank you for your time. I have no
17 further questions for you. If you would answer anything
18 the defense may have for you.

19 THE COURT: Cross-examination, Mr. Smallldone.

20 MR. SMALLDONE: No questions for this particular
21 witness.

22 THE COURT: Thank you.

23 Do you wish the witness to be excused?

24 MR. COOPER: Yes, sir. Please, Judge.

25 THE COURT: Any objection?

1 MR. SMALLDONE: No objection.

2 THE COURT: Ms. Adams, thank you. You may step down
3 and you are free to leave.

4 THE WITNESS: Thank you.

5 THE COURT: Yes, ma'am.

6 You may call your next witness, please.

7 MR. SIMPSON: Thank you, Your Honor. The State
8 calls Pierra Martin.

9 Your Honor, may I approach the exhibits too?

10 THE COURT: Yes, sir. You surely may.

11 THE CLERK: State your full name and spell your last
12 name.

13 THE WITNESS: Pierra Martin. M-A-R-T-I-N.

14 **DIRECT EXAMINATION BY MR. SIMPSON OF PIERRA MARTIN:**

15 Q Ms. Martin, good morning.

16 A Good morning.

17 Q My name is Chad Simpson. I work for the State of
18 South Carolina. How are you today?

19 A Good.

20 Q Are you a little nervous to be here?

21 A Kind of.

22 Q A little bit? Okay. Well, let's introduce you a
23 little bit to the jury. Where are you from?

24 A Charleston.

25 Q Have you lived here your whole life?

1 A Uh-huh.

2 Q Where do you live; whereabouts in Charleston?

3 A I live in North Charleston right now.

4 Q Okay. Have you lived in North Charleston for a
5 while?

6 A Uh-huh.

7 THE COURT: Excuse me, Ms. Martin. What you are
8 doing, we all do. But we need you to say yes or no ---

9 THE WITNESS: Oh.

10 THE COURT: --- so the court reporter and I can be
11 sure and the jury be sure of your responses. Okay.

12 THE WITNESS: Okay.

13 THE COURT: Thank you.

14 Q Ms. Martin, where are you currently employed?

15 A At Exxon on Rivers and McMillan.

16 Q Okay. And do you know -- you are aware of the
17 incident that brings you here today; is that correct?

18 A Yes.

19 Q Where were you employed back in April of 2016?

20 A Unique Beauty Supply on McMillan Avenue.

21 Q And what did you do at Unique's back then?

22 A Just help sell, just help customers, and stock and
23 everything.

24 Q Okay.

25 MR. SIMPSON: Your Honor, may I approach the

1 witness?

2 THE COURT: Yes.

3 Q Where is Unique's?

4 A On McMillan Avenue in Charleston.

5 Q Okay. And McMillan is that close to Rivers?

6 A Yes. It is connected.

7 Q You are going to see this on the screen in front of
8 you and on the screen behind you. I am showing you what
9 has been marked and admitted as State's 3.

10 Do you recognize this area here that we see in that
11 picture?

12 A Yes.

13 Q And where is that?

14 A In front of Unique's on McMillan.

15 Q And that is where you worked back in April of 2016?

16 A Yes.

17 Q Okay. And if you could I am just going to let you
18 in your own words explain to the jury what occurred on
19 April 16th of 2016, from your point of view what you
20 perceived that day.

21 A We were in the store and then I heard a shot, what
22 sounded like a gunshot. And I went outside and I just
23 saw, you know, the man in the car. And I called 911.

24 Q Okay. What -- when you walk out -- and, you know,
25 we can see the area here. When you walk out of Unique's

1 that day what was -- what is the first thing that you
2 noticed?

3 A I saw the door's open. And like I walked towards --
4 you know, towards him. And then I saw all the blood.
5 And like -- and like I kind of panicked and I called 911.

6 Q Okay. And, you know, we are in the courtroom here
7 today which is kind of a sterile environment. Was it --
8 was this -- what was your demeanor like once you saw
9 that? You said you kind of panicked. Could you explain
10 that.

11 A Yeah, I -- because I experienced something like that
12 before. My friend actually shot himself in the head in
13 front of it. So it was just like, you know, I kind of
14 had like flashbacks.

15 Q So this was a traumatic thing for you?

16 A Yeah.

17 Q How close did you get -- where was this -- you saw a
18 person, right?

19 A Uh-huh.

20 Q And you said you saw blood?

21 A Uh-huh.

22 Q Was the ---

23 THE COURT: Was that yes?

24 THE WITNESS: Yes. Sorry.

25 Q Describe what -- was the person moving, talking?

1 A No, he wasn't moving. I couldn't really tell if he
2 was breathing. The door was open. He was kind of like
3 leaned over a little bit. And I could tell because I
4 could see like the blood coming from his head.

5 So that is why I just figured like, you know, he got
6 shot.

7 Q How close to the driver's side of the vehicle did
8 you get; did you get a good look at him?

9 A I stood right in -- inside of the door.

10 Q Okay. That screen in front of you, you can mark on
11 it. Can you maybe show the jury where you were when you
12 approached the car.

13 A I was like in -- you know, in this area (pointing).
14 I came around in the door and I was standing next to him.

15 Q Okay. And did you actually lean into the car?

16 A A little bit when I was on the phone. Because I was
17 trying to ask the dispatcher if I could do anything to
18 help stop -- you know, I didn't touch him or anything.
19 But, you know, just -- I -- and then I was trying to make
20 sure to see if he was breathing. And then he was
21 breathing.

22 Q Okay. Did you see -- so I don't want to put words
23 into your mouth. When you leave you went straight to the
24 car?

25 A Uh-huh.

1 Q Was anybody else at the driver's side of that car
2 when you got there; or were you by your perception the
3 first one to get right to ---

4 A I was one of the first ones that were out there.
5 Other people came, but they were just standing.

6 Q Okay.

7 A They were looking.

8 Q Okay. From your close view did you see at any point
9 in time when you were standing next to that car you just
10 described, did you see a gun?

11 A No. I don't -- no.

12 Q Okay. Did you have a view of the individual in the
13 car; did you have a view of both of his hands?

14 A Yes.

15 Q Okay.

16 A He had a drink in one of his hands. And then I
17 believe like he didn't have anything in his other hand.
18 And so. I know it was a drink and the drink was like
19 open.

20 Q Okay.

21 A It was an alcoholic drink.

22 Q Your perception going right to the car was that he
23 had a drink in one hand ---

24 A Uh-huh.

25 Q --- and nothing in the other hand?

1 A Uh-huh.

2 THE COURT: Was that a yes, ma'am?

3 THE WITNESS: Yes. Sorry, sir. I'm sorry.

4 Q At any point in time did you see a gun in that
5 individual's hands when you were standing there?

6 A No.

7 Q Did you see a gun on the seat when you were standing
8 there?

9 A No.

10 Q Did you see a gun on the front of the dashboard when
11 you were standing there?

12 A No.

13 Q Did you see a gun on the floorboard?

14 A No.

15 Q Did you see a gun anywhere whatsoever in the -- in
16 the compartment of that car?

17 A No. I was just really looking at him trying to make
18 sure

19 Q Okay. You mentioned that you were on the phone part
20 of this time?

21 A Yes, I -- when I called 911.

22 Q Okay. And you recall calling 911?

23 A Uh-huh.

24 Q Do you think had you ever perceived or seen a gun
25 during that phone call you would have mentioned that to

1 911?

2 A Yes.

3 Q Did you ever mention that to 911?

4 A No.

5 Q Okay.

6 MR. SIMPSON: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes, you may.

9 Q I am showing you what has been marked for ID only as
10 State's 28. Can you take a minute to review that.

11 A Yes.

12 Q Do you recognize that?

13 A Yes.

14 Q And how do you recognize it?

15 A It was played back to me. That was my 911 call from
16 that day.

17 Q Okay.

18 A And I put my signature -- my initials on it.

19 Q Okay.

20 A And the date that I listened to it.

21 Q And you said you were given an opportunity to review
22 the contents of this CD?

23 A Uh-huh.

24 THE COURT: Is that a yes?

25 THE WITNESS: Yes.

1 MR. SIMPSON: I'm sorry, Your Honor.

2 THE COURT: That's all right.

3 THE WITNESS: I'm sorry.

4 THE COURT: It is normal. It's what -- but you are
5 in a situation where the person seated next to you is
6 taking down what you are saying. It helps her know
7 exactly what you are saying, please.

8 Q And does this contain a fair and accurate recording
9 of your 911 call that day?

10 A Yes.

11 Q Any hesitancy recognizing your own voice on this
12 recording?

13 A No.

14 Q Okay.

15 MR. SIMPSON: Your Honor, at this time the State
16 would seek to admit State's 28.

17 THE COURT: Any objection?

18 MR. SMALLDONE: No objection.

19 THE COURT: Without objection State's 28 is
20 admitted.

21 (WHEREUPON, State's Exhibit Number 28 was admitted into
22 evidence.)

23 MR. SIMPSON: Thank you, Your Honor. Permission to
24 publish?

25 THE COURT: You may.

1 (WHEREUPON, State's Exhibit Number 28 published.)

2 Q Ms. Martin, so is that when your call concluded what
3 happened?

4 A Yes.

5 Q It was when police arrived that your call concluded?

6 A Yes.

7 Q Now you were obviously emotional.

8 A Uh-huh.

9 Q Okay. But by your recollection did you still
10 nevertheless get a good view of the individual seated in
11 that car?

12 A Not really. I can't really remember how he looked.

13 THE COURT: Ma'am, you need to take your hands down
14 so we can hear you. Thank you.

15 Q Did you ever -- I think we heard in the call there
16 was a time where -- I'm sorry. If you need a second.

17 (WHEREUPON, witness regains composure.)

18 A I am all right.

19 Q Okay. Was there a time that you perceived that the
20 individual seated in that car was in fact still
21 breathing?

22 A Yes, because he -- he like made like a sound.

23 Q Okay. So you were close enough to him at that time
24 to hear a sound?

25 A Uh-huh.

1 Q And to perceive a continued breathing?

2 A Uh-huh.

3 THE COURT: Was that ---

4 A Yes.

5 Q Okay. And at any time being that close to him did
6 you again see a gun?

7 A No.

8 Q Okay. I think you answered this in your 911 call
9 for us, but did you know the person in the car?

10 A No.

11 Q Did you ever see or know the person that could have
12 done this to him?

13 A No.

14 Q Okay. So and are you here today trying to help
15 anybody out?

16 A No.

17 Q Are you here today trying to hurt anybody?

18 A No.

19 Q Okay. But you -- were you there that day to help in
20 any way you could?

21 A Yes.

22 Q And, again, did you perceive at any time a firearm
23 in that vehicle?

24 A No.

25 Q How long did you work for the beauty shop?

1 A I worked there for about -- about a year off and on.
2 I have known them for awhile, so I go in there all the
3 time. So sometimes I still help out if they need me.

4 Q Okay. Did you work there long enough to know if the
5 beauty shop had any sort of like video surveillance
6 equipment?

7 A Yes.

8 Q Okay. Did you in fact watch any of that on that day
9 after the police got there?

10 A Yes.

11 Q I am showing what has been entered into evidence as
12 State's 16.

13 MR. SIMPSON: May I approach, Your Honor?

14 THE COURT: You may.

15 Q Do you recognize that exhibit?

16 A Yes.

17 Q And, again, how do you recognize that?

18 A It was played back to me.

19 Q Okay. Does this -- is that a fair and accurate
20 representation of the surveillance video that you watched
21 that -- later that day?

22 A Yes.

23 Q And how did you indicate that on the exhibit?

24 A I signed it. I mean put my initials on it and the
25 date.

1 MR. SIMPSON: Your Honor, at this point the State
2 would seek to publish State's 16 already in evidence.

3 THE COURT: Very well. Any objection?

4 MR. SMALLDONE: No objection.

5 THE COURT: You may publish it.

6 (WHEREUPON, begin publications of State's 16.)

7 (WHEREUPON, State's 16 publication paused.)

8 Q Ms. Martin, the audio we hear is just people talking
9 in the beauty shop; is that correct?

10 A Yes.

11 Q Okay. Not from -- you can't hear -- on this video
12 you can't hear what is going on outside?

13 A No. The video has no sound.

14 (WHEREUPON, resume publication of State's 16.)

15 Q Ms. Martin, the red car we saw in that video, was
16 that the same car that you approached that day?

17 A Yes.

18 Q Okay. Is that the car containing the person that
19 you initially thought of as deceased?

20 A Yes.

21 Q Again, you discontinued your 911 call when police
22 got to the scene?

23 A Yes.

24 Q Did EMS also later arrive?

25 A Yes.

1 Q Did you -- or are you aware that -- did you -- did
2 you inform police that there was some video that captured
3 the incident?

4 A No.

5 Q Okay. Did you ever see them come in and get copies
6 of that?

7 A Yes, they were there.

8 Q Okay.

9 MR. SIMPSON: Court's indulgence.

10 THE COURT: Yes, sir.

11 MR. SIMPSON: Ms. Martin, thank you for your time.
12 Thank you for being here. Please answer any questions
13 that the defense has for you.

14 THE COURT: Cross-examine.

15 **CROSS-EXAMINATION BY MR. SMALLDONE OF PIERRA MARTIN:**

16 Q Good morning, Ms. Martin.

17 A Good morning.

18 Q I just have a few questions for you. And like we
19 talked and like the judge said, just make sure to say yes
20 or no.

21 A Okay.

22 Q Because all of the uh-huh's and uh-hum they look a
23 lot alike when they are typed out.

24 A Yes.

25 Q Do you understand? Thank you. I just want to

1 clarify. You didn't see -- you didn't see this man
2 there, correct?

3 A No, I didn't see.

4 Q And I -- and I just want to clarify. You didn't see
5 what happened before you heard the shot, right?

6 A No.

7 Q All right. You didn't see any cars out there?

8 A No.

9 Q Okay. So you -- you only saw what happened
10 afterwards; isn't that right?

11 A Yes.

12 Q Okay. And that is all I have for you. Thank you.

13 THE COURT: Redirect.

14 **REDIRECT EXAMINATION BY MR. SIMPSON OF PIERRA MARTIN:**

15 Q In the time after, that Mr. Smalldone was referring
16 to, did you ever see a firearm in the car? A gun?

17 A In the gray car?

18 Q Yes.

19 A No.

20 MR. SIMPSON: Nothing further, Your Honor.

21 THE COURT: Recross.

22 MR. SMALLDONE: No recross, Your Honor.

23 THE COURT: All right. Thank you. You may come
24 down.

25 All right, ladies and gentlemen, given the time it
26

1 would be a good point -- you can step down, Ms. Martin.

2 Do you wish the witness to be excused? Your wishes?

3 MR. SIMPSON: Yes, Your Honor.

4 THE COURT: Any objection?

5 MR. SMALLDONE: No objection.

6 THE COURT: You are also free to leave if you want.

7 At this point, ladies and gentlemen, we will let you
8 go to lunch. Please remember that you are not at liberty
9 to talk about this case among yourselves. And while you
10 are out do not let anybody talk to you about it or don't
11 talk to anyone else.

12 Don't do any independent research or evaluations..
13 And I ask you to be back in your jury room, please, by
14 1:30. We will resume the trial at that time. Have a
15 good lunch. Thank you.

16 (WHEREUPON, jury exits courtroom 4/11/18, 12:00 p.m.)

17 THE COURT: All right. Anything from the State
18 before we take our recess?

19 MR. SIMPSON: No, Your Honor. I would just briefly
20 note the State is withdrawing its attempt to admit nine
21 and ten. So we don't have to discuss that.

22 THE COURT: That is fine. Well, let's leave it up
23 because they were identified.

24 MR. SIMPSON: Oh, I'm sorry. Yes. Thank you, Your
25 Honor.

1 THE COURT: Okay. Just leave them -- just leave
2 them there. But they won't go back to the jury. Thank
3 you.

4 MR. SIMPSON: Thank you, Your Honor.

5 THE COURT: Anything from the defendant?

6 MR. SMALLDONE: No, Your Honor.

7 THE COURT: Okay. Is the defendant on bond?

8 MR. SMALLDONE: He is not.

9 THE COURT: Okay. All right. Thank you. All
10 right. We will be at ease until 1:30, please. Thank
11 you.

12 (WHEREUPON, recess for lunch 4/11/18, 12:00 p.m.)

13 (WHEREUPON, resume trial 4/11/18, 1:26 p.m.)

14 (WHEREUPON, Court's Exhibit 1, juror note, was marked for
15 identification.)

16 (WHEREUPON, Juror Number 320 appears before the court.)

17 THE COURT: We have marked your note as Court's
18 Exhibit Number 1. And I appreciate your note and
19 appreciate you doing that. I have shared it with the
20 attorney.

21 And as I read this, you know him just to say hello
22 but don't know him that well; is that fair?

23 THE JURY PANEL MEMBER: That is fair. Yes.

24 THE COURT: And my question -- you have shared that.
25 Having done it I would ask you would you be able to

1 consider his testimony the same as any other witness?

2 THE JURY PANEL MEMBER: Yes, Your Honor.

3 THE COURT: And you would determine what you find to
4 be credible and believable and determine the true facts
5 and then apply the law fairly to it?

6 THE JURY PANEL MEMBER: Yes, Your Honor.

7 THE COURT: And the fact that you have some
8 knowledge of him would not influence one way or the
9 other?

10 THE JURY PANEL MEMBER: No, Your Honor, it would
11 not.

12 THE COURT: Thank you so much. If you will just
13 step out for just for a moment. I want to share that
14 with the attorneys. Thank you so very much.

15 (WHEREUPON, jury exits courtroom.)

16 THE COURT: What is the State's position?

17 MR. SIMPSON: We would like the juror to remain.

18 THE COURT: What is the defendant position?

19 MR. SMALLDONE: Your Honor, I don't have an
20 objection to him remaining. I will just preserve the
21 record a bit. Not preserve but cover my own record, Your
22 Honor, just to say that I believe the surgeon is a -- not
23 an eyewitness, not a -- he is just a surgeon who treated
24 the complaining witness. So because of that I can't
25 form ---

1 THE COURT: Well, and I ---

2 MR. SMALLDONE: --- a good faith basis to object.

3 THE COURT: --- don't know what -- I am only
4 reacting -- thank you. And I interrupted you. I
5 apologize for that.

6 But based on your opening statement it is my
7 understanding that this is not a question of whether your
8 client shot this man or not. That is almost a given. He
9 shot him but his claim is to defend himself. So the
10 consequence of all of that is what these persons are
11 going to testify to. So it is what it is I would think
12 so.

13 MR. SMALLDONE: That is my position.

14 THE COURT: Very well.

15 Ask him to come back in, please.

16 (WHEREUPON, juror enters courtroom 1:28 p.m.)

17 THE COURT: Mr. Wain, thank you very much. And
18 thank you again for this. And that is -- again, I
19 commend you and the other jurors that have come forward
20 and stated that. Based on your responses, based on the
21 note, we will ask you to remain, please, with the jury
22 panel.

23 THE JURY PANEL MEMBER: Thank you, Your Honor.

24 THE COURT: Thank you very much, sir.

25 (WHEREUPON, juror exits the courtroom.)

1 THE COURT: Any exceptions or additions from the
2 State?

3 MR. SIMPSON: No, Your Honor.

4 THE COURT: Any exceptions or additions from Mr.
5 Porter?

6 MR. SMALLDONE: No, Your Honor.

7 THE COURT: Thank you. Okay.

8 THE BAILIFF: We still have a couple coming.

9 THE COURT: Okay. That is good.

10 (WHEREUPON, break was had 1:36 p.m. for the Court to
11 handle matters unrelated to trial.)

12 (WHEREUPON, trial resumed 4/11/18, 1:48 p.m.)

13 THE COURT: The State is ready? Mr. Simpson?

14 MR. SIMPSON: Yes, sir.

15 THE COURT: The defendant is ready, Mr. Smalldone?

16 MR. SMALLDONE: Yes, Your Honor.

17 THE COURT: Very well. Okay. Let's bring in our
18 jury.

19 THE CLERK: All jurors are present, Your Honor.

20 (WHEREUPON, jury enters 4/11/18, 1:49 p.m.)

21 THE COURT: Thank you very much, ladies and
22 gentlemen. Appreciate it. Hope you have a good lunch,
23 and we are ready to continue.

24 And I noticed something and I appreciate what one of
25 the jurors is doing. And it is one of the reasons -- a

1 lot of judges have the lawyers stand when the jury comes
2 in. And I understand why. You are the judge and that is
3 what they are supposed to do. But me I try to sneak in
4 so they don't sometimes. But I know I am not always
5 successful.

6 What happens when they do that is what happened
7 there; do I sit down, do I sit down, what is the
8 protocol. And so it is better if we all sit and then it
9 makes you feel a little more comfortable.

10 And that is the whole purpose. It is in no way
11 disrespectful to your role of being a judge, I can assure
12 you. So thank you very much.

13 Solicitor, you may call your next witness.

14 MR. SIMPSON: Thank you, Your Honor. The State
15 calls David T. Palawasta.

16 (WHEREUPON, the witness was duly sworn.)

17 THE CLERK: Please have a seat and state your full
18 name spelling your last name.

19 THE WITNESS: Sure. My name is David T. Palawasta.
20 P-A-L-A-W-A-S-T-A.

21 **DIRECT EXAMINATION BY MR. SIMPSON OF DAVID PALAWASTA:**

22 Q Mr. Palawasta, Chief ---

23 A Yes.

24 Q Good afternoon. How are you?

25 A Good. How are you, sir?

1 Q I am doing well. If you could -- we see the
2 uniform, but if you could explain to the jury your
3 current occupation and rank and role and your
4 organization.

5 A I am a paramedic for Charleston County EMS. I am a
6 division chief. So I am a supervisor. I work the
7 evening shift right now. Currently responsible for 30
8 employees during the night shift. I have been working
9 for Charleston County for 18 years. Been a paramedic for
10 29 years now.

11 Q Well, let's expand on that a little bit and just
12 kind of introduce you to the jury. You have kind of an
13 interesting background. If you could just explain to the
14 jury where you are from and a little bit about your
15 professional training and experience.

16 A Sure. I have been in public service for 29 years
17 now. I was born and raised in New York City. I started
18 my career with New York City EMS, one of the best
19 training places in the world because you see over a
20 million call a year with New York City EMS.

21 After working there for several years I decided to
22 move out of there. I have done fire work as well. I was
23 a firefighter paramedic and so forth.

24 Worked both World Trade Center bombings,
25 unfortunately, in '94 and then again in 2001. That is

1 when I decided to move down here to Charleston to kind of
2 get away from things.

3 But I still enjoyed what I did, so that is why I am
4 still here with Charleston County.

5 Q Chief Palawaska, thank you for your service. You
6 certainly have had an opportunity to have an interesting
7 background. We appreciate that.

8 What all does it take to be an EMT, a member of
9 EMS?

10 A As a paramedic first you have to go through what is
11 considered emergency medical training. And that takes
12 250 hours. Once you complete that you can go on to
13 advance into a paramedic. I went up to a paramedic
14 position. That takes an additional 1,800 hours of
15 training in order to treat people using what is
16 considered advanced life-support skills.

17 Every single year we are tested on our competency.
18 And we have to recert every three years for state, every
19 four years for our national certification, to show
20 provision that we are proficient in our skills and our
21 knowledge.

22 Q It probably goes without saying; you mentioned
23 obviously some historical incidence of this, but are you
24 used to in your experience being involved in situations
25 that can be defined as chaotic ---

1 A Yes.

2 Q --- or high stress situations?

3 A Yes, sir.

4 Q And can you talk a little bit about your training
5 and how you personally deal with that.

6 A It is something that you learn to deal with through
7 the years. I have treated several people that I have
8 known very personally and never realized until I got to
9 the hospital after I started doing my paperwork.

10 Because when I treat a patient I am not so looking
11 at whether or not I recognize a person. I am looking at
12 are they breathing, do they have a pulse. And I am
13 trying to compartmentalize what it was going on with a
14 patient. I don't want to, you know, build a rapport with
15 a patient. I want to be able to do the best thing that
16 is possible.

17 The same thing with dealing with kids. I have
18 little kids myself. So if I am dealing with a little kid
19 I want to look and say that is my son or something. I
20 want to be able to do the best job as possible.

21 So I always, you know, treat whoever they are to the
22 best of my ability and move on from there.

23 Q And do you have any experience and/or training
24 regarding coming into contact with dangerous instruments,
25 weapons and the like?

1 A Yes. For Charleston County EMS we do a lot of
2 training with the Sheriff's Office and SWAT. We are
3 trained -- first off, that we are not allowed to go into
4 a scene until the police department deem that the scene
5 is secure.

6 They want to make sure that there is no shooter
7 still there. They also want to make sure -- they are
8 trying to preserve any kind of evidence. So if there is
9 a gun laying on the ground they usually would designate a
10 police officer to stand over the gun to make sure that
11 EMS or Fire doesn't kick it accidentally, move or disturb
12 the scene or so forth.

13 Being as a supervisor, and as I said being in this
14 29 years, I have learned, you know, what their role is,
15 what our responsibility is. So my job as a supervisor
16 usually is to stand back and make sure that every safety
17 precaution is taken care of. That way none of our
18 employees or anybody is injured while they are trying to
19 render aid to somebody.

20 Q So as a supervisor in the protocol as it applies to
21 you in your unit, if it is expected that there is a
22 weapon on the scene you aren't even allowed in?

23 A That is correct.

24 Q Okay. Were you still employed in this line of work
25 in April of 2016?

1 A Yes, I was.

2 Q Specifically April 16th of 2016?

3 A Yes.

4 Q And you know the incident that brings us here today,
5 correct?

6 A Correct.

7 Q If you could, explain to the jury from your point of
8 view what occurred -- what you experienced on that day.

9 A Sure. I am just reviewing back to my notes upon
10 that day. On April the 16th at approximately 15:41 hours
11 or 3:41 p.m. we were dispatched to 2000 McMillan Avenue
12 in reference to a shooting.

13 We went in route to the call. Dispatch advised us
14 immediately that we needed to stage. Meaning we had to
15 wait for the police to get there first to make sure the
16 scene was secure. They advised that the scene was
17 secure. About three minutes later ---

18 Q Okay, I may interrupt you from time to time ---

19 A Yes, sir.

20 Q --- if that is okay. So you say you were told the
21 scene isn't secure, like you can't go in?

22 A That is correct, sir.

23 Q And then about three minutes later you were told
24 what, again?

25 A That the scene was secure, that we were allowed to

1 enter the property.

2 Q Okay. I am showing you what has already been
3 entered into evidence. This will show up on the screen
4 in front of you. As State's 3. I am going to leave this
5 up. The screen in front of you is a touch screen.

6 A Okay.

7 Q It allows you to make markings on the screen. We
8 can clear it if it gets cluttered at any time if you want
9 me to. If you think it will help your testimony from
10 here on out I am going to have that in front of you.

11 A Sure. No problem. Thank you.

12 Q So you are allowed into the scene. What happens
13 then?

14 A Once I arrive on the scene I pulled in with another
15 supervisor who happened to be in the area and the Fire
16 Department. The medic unit was not there yet.

17 As soon as I got out of my vehicle I went to the
18 rear of my vehicle to grab my equipment, and I came and
19 approached on the driver's side door where I was met by a
20 police officer advising the patient was still breathing
21 and still had a pulse.

22 Q Okay. Were you informed at that time -- was
23 anything mentioned at that time to you about a weapon or
24 a firearm?

25 A No.

1 Q Okay.

2 A They just said, you know, that the patient, again,
3 was conscious, was breathing. So immediately I came up
4 on the driver's side door. I reached in to feel for a
5 carotid pulse in his neck. Felt that he had a pulse.
6 Reached down to his wrist and felt that he did have
7 radial pulses; however, they were extremely weak.

8 Tried to arouse him. And got no response from him
9 whatsoever. We do a basically anybody that is injured we
10 do a test which is called a Glasgow coma score which
11 basically is done on people that have traumatic brain
12 injuries to see what their mental capacity is. We
13 try ---

14 Q We discussed it there too ---

15 A Yes.

16 Q You may have mentioned this. But were any obvious
17 traumatic injuries readily apparent to you?

18 A You could see a gunshot wound to his head. And you
19 could see some blood that was on his shirt and his
20 shoulder.

21 Q Okay. Go on.

22 A So I tried to arouse him. I tried to rub him
23 sternum to see if I can get any -- illicit any kind of a
24 response. He didn't respond to me whatsoever.

25 So at that point EMS places somebody in terms of

1 category in terms of is this life-threatening, is this
2 something that is a routine transport. At that time I
3 decided that this was an immediate transport.

4 And at that time the medic unit was pulling up. As
5 they pulled up I instructed them to get the stretcher.
6 Rather than taking him out and laying him on the ground I
7 wanted to him right on the stretcher. That way we could
8 get him in the ambulance and going down to the hospital
9 as quick as we could.

10 Q In your training are there any inherent risks in
11 moving someone at all with that trauma?

12 A With head trauma there are -- there are some risks
13 that we have to worry about especially in a case that
14 involves a cervical spine. But when somebody who is as
15 critical as this gentleman was we have to make that
16 decision. And if we sit there and wait too long he might
17 perish and die in the vehicle. So we decided that it was
18 best to move him quickly out of the vehicle.

19 Q So is it a risk reward sort of analysis ---

20 A Yes.

21 Q --- that you have to do?

22 A Yes. That is correct, sir.

23 Q Okay. And you made what call in this ---

24 A We made the -- that he was a high risk patient and
25 that it was better to save his life and get him out of

1 the vehicle immediately rather than to put him in a
2 collar or do any other kind of interventions that might
3 take us longer to try to get him out of the vehicle and
4 put him in more danger or if not dying in the vehicle.

5 Q Is that kind of high-stakes medical decision best
6 left in the hands of a medical professional such as you
7 as opposed to a patrol officer or ---

8 A Yes. They rather leave that up to us for the simple
9 fact is most will tell you they don't have the medical
10 training so they would rather leave it up to EMS to make
11 that decision on whether something is life-critical or
12 not.

13 Q Okay. Once that decision is made what do you do at
14 that point?

15 A At that point we make sure we all talk to each
16 other. Come up with a plan of figuring out how we are
17 going to get the patient, such as this patient, from the
18 driver's seat out of the vehicle onto the stretcher in a
19 timely manner and also work together to make sure nobody
20 gets hurt in the process, picking him up and moving him
21 or doing anything that is going to be harmful to the
22 patient or to us.

23 Q Okay. Well, that is a good segue into my next
24 question. At this point during the process has anyone
25 mentioned the possibility or presence of a firearm?

1 A No, sir.

2 Q Okay. And so what do you personally do at that
3 point ---

4 A At that point the medic unit is bringing over the
5 stretcher. As you can see outside of the vehicle here
6 there is kind of a curb there which kind of hinders our
7 ability to get the structure right next to where the
8 vehicle was.

9 I had some firefighters and police officers who were
10 at the driver's side door while I was trying to direct
11 the crew what to do. And they were trying to pull the
12 patient out as we pulled the stretcher up. And they
13 weren't able to get a good grip on him.

14 Q Okay. Let me stop you there. And I probably should
15 have asked you this earlier. Had you already been to the
16 driver's side door?

17 A I had already been there. I had already evaluated
18 the patient. And I stepped away from the door to
19 talk ---

20 Q We all probably know this. But you mentioned
21 earlier checking a pulse.

22 A Yes.

23 Q How do you physically check for a pulse?

24 A I get in the vehicle. I stuck my head in the
25 vehicle and I actually put in up on his throat to feel

1 for a carotid pulse. So you feel for the Adam's apple
2 and you pull over to the side. So you feel for a pulse.

3 Q So at point you have leaned in the vehicle; is that
4 correct?

5 A That is correct.

6 Q And enough to put your -- did you observe a firearm?

7 A No, I did not.

8 Q Okay. And that is leaning in the vehicle and
9 checking on the pulse?

10 A That is correct.

11 Q Okay. So sorry. I kind of backtracked you a little
12 bit.

13 A No problem.

14 Q You determined then -- you testified you were having
15 some problems?

16 A The fire -- the fire and the police officers were
17 having some problems getting the patient out. Somebody
18 who is, for lack of better words, dead weight, they are
19 not able to assist us at all, so we are responsible for
20 picking up all of that weight and manipulating somebody.
21 They were having problems getting out.

22 Due to my experience I have found that a lot of
23 times if you go around to the other side of the vehicle
24 you can grab onto somebody's belt and as they pull I can
25 lift up and then we can get them basically out of the v-

1 shape of the seat to move them out of the vehicle.

2 And when I saw them having problems that is what I
3 decided to go was to go around to the side of the vehicle
4 to enter there to try and assist them to get him out of
5 the vehicle at that point.

6 Q Okay. So did you enter through the passenger's
7 side?

8 A No, I came through the passenger's side at that
9 point; yes, sir.

10 Q Okay. When you entered through the passenger's side
11 did you notice a firearm on the passenger seat?

12 A No.

13 Q On the dashboard?

14 A Nowhere -- nowhere in plain view when I got in the
15 vehicle. Q Okay.

16 A I just climbed in the vehicle. Put both knees on
17 the passenger seat and went to move over to the patient
18 to try and assist as I could.

19 Q Floorboard? Firearm on the floorboard?

20 A No, sir.

21 Q Center console?

22 A Nowhere in visible plain view, no, sir.

23 Q Okay. So did you proceed in the manner that you
24 described to the jury with the waistband?

25 A Yes. So I entered into the vehicle. And the

1 vehicle has I am going to say a high console but a
2 medium-height console. I talked to the firemen and the
3 police officer there and I told them that on the count of
4 three I am going to grab the belt, I will lift up, and at
5 the same time you are going to pull him out of the
6 vehicle.

7 I said let me get a hold of the belt for a second.
8 As I went down to reach for the belt I noticed there was
9 some hard object there.

10 At that point I told everybody to stop. When I felt
11 it more, you could obviously tell that it was a gun; so I
12 advised the Police Department that I had a gun in my
13 possession.

14 I asked them if they wanted me to get out of the
15 vehicle or stay in the vehicle. They said are you
16 comfortable securing it. I say, yes, I will take it off
17 of the patient.

18 I needed to lift up -- he basically had two shirts
19 on. A button-down shirt that was on top. So I had to
20 pull that out of his pants. Then he had a T-shirt on. I
21 had to lift that up out of his pants. And that is when I
22 was able to see the butt of the handle and the trigger
23 guard aspect of the firearm.

24 Q So in order to get that visualization of the gun in
25 the waistband you had to pull up two items of clothing?

1 A That is correct, out of being tucked into his pants.

2 Q Okay. And what part of the waistband was the gun?

3 A It was in the backside of the posterior aspect of
4 his hip or his waist area. So it wasn't directly on his
5 side where most people keep a cell phone. It is kind of
6 sitting in the back -- back side almost on his rear-end a
7 little bit.

8 Q If I could ask you --

9 MR. SIMPSON: May I ask the witness to stand up,
10 Your Honor?

11 THE COURT: You may.

12 Q If I could get you to stand up and sort of show us
13 so that the jury can visualize where ---

14 A So where I have my phone here (pointing) it is more
15 tucked into the back section here (pointing).

16 Q Okay.

17 A Is where the gun -- where the gun was located. So
18 even as when I came in here (pointing) I felt basically
19 the barrel of it, not the back side of it, as I went to
20 grab the belt on his side.

21 Q Okay. Was it easy to remove the gun?

22 A It was not easy. The first time I went to grab
23 it -- I am right-handed, so I reached over with my right
24 hand just to try and pull it straight up. And I was not
25 able to remove it out of his pants. Tried twice doing it

1 that way.

2 Finally what I ended up having to do is take my left
3 hand, pull the belt and his pants away from his hip and
4 his body, to be able to pull the gun out. And then I was
5 able to pull the gun out.

6 Once I had the gun freed then I was able to use my
7 left hand to help kind of pick the patient up and slide
8 him over as we picked him out the rest of the way.

9 Q So you had to remove two layers -- move two layers
10 of clothing to first see the gun; is that correct?

11 A That is correct.

12 Q Okay. And then take a whole nother hand to pull the
13 belt out to remove the gun?

14 A That is correct.

15 Q Okay. Once you had done all of this to remove the
16 gun what -- what were you told to do with the gun?

17 A Once we had the patient out of the vehicle I turned
18 to the officer and he asked me what he wanted me to do
19 with the firearm. He said just go ahead and place that
20 back in the driver's seat exactly where the position was
21 and leave it for the evidence technician when they
22 arrived on the scene.

23 Q Is securing evidence in a case is that your job at
24 all?

25 A No, that is not my job; no.

1 Q Okay. You were told by the police to put it in the
2 driver's seat?

3 A That is correct.

4 Q I am showing you what has been entered as State's 7.
5 Do you recognize this exhibit at all?

6 A Yes, that is exactly where I would have -- where I
7 placed down the firearm after I had taken it off -- off
8 the patient.

9 Q So if someone is here today, myself, saying --
10 asking how that gun got to be in that seat out like that,
11 the answer is you put it there?

12 A I put it there, yes.

13 Q Okay. After removing it from the victim's
14 waistband?

15 A That is correct.

16 Q And indicate again, if you don't mind, where in the
17 waistband that was.

18 A It was towards his backside on the right-hand side.
19 So if you are actually looking at this picture basically
20 the gun would be sitting back here (pointing).

21 So you would have the seatbelt here (pointing), and
22 the patient would be sitting here (pointing). So I have
23 to kind of reach in behind him to get to him. And that
24 is where I was talking about that console having to reach
25 down in there to get to it.

1 Q And visually it was hidden from view by what?

2 A By two layers of clothes, his T-shirt and his outer
3 layering of -- his shirt that he has on.

4 MR. SIMPSON: Court's indulgence.

5 THE COURT: Certainly.

6 MR. SIMPSON: Chief Palawasta, thanks so much for
7 your time. I am going to ask you to answer any questions
8 that the defense has.

9 THE WITNESS: Sure. Thank you, sir.

10 THE COURT: Cross-examine.

11 **CROSS-EXAMINATION BY MR. SMALLDONE OF DAVID PALAWASTA:**

12 Q Good afternoon.

13 A Good afternoon, sir.

14 Q I just want to clarify a few things. Obviously as
15 an EMT person you got there after the incident, right?

16 A That is correct.

17 Q All right. So you -- you never saw where the gun
18 was before the incident, correct?

19 A Correct.

20 Q All right. And -- so you wouldn't have known if it
21 was out earlier, right?

22 A I would not know that, no, sir.

23 Q You wouldn't have known if it had shifted after he
24 had been hit, right?

25 A I would not know that, no, sir.

1 Q Okay. Your testimony today -- just to make sure we
2 are all on the same page. Your testimony is where the
3 gun was once you got there?

4 A Correct.

5 Q All right. Thank you. That is all. Thank you.
6 Have a good afternoon.

7 THE WITNESS: Thank you.

8 THE COURT: Redirect.

9 MR. SIMPSON: Just briefly, Your Honor.

10 **REDIRECT EXAMINATION BY MR. SIMPSON OF DAVID PALAWASTA:**

11 Q You did -- you do have medical training in your job,
12 correct?

13 A Correct.

14 Q In the status as you found it was the victim mobile?

15 A No.

16 Q Moving?

17 A Not at all. As I said, when I did the Glasgow comma
18 score he had a rating of three. So he had no purposeful
19 movement. In terms of movement or eye movement and so
20 forth, he wasn't responding to us at all.

21 Q Okay. When -- you know, particularly that moment
22 when you are leaning into the car and checking the pulse
23 could you visualize his hands?

24 A They were on his lap.

25 Q Did you witness any movement of the hands while you

1 were there in the presence?

2 A No, he did not move anything at all when I was on
3 the scene. And that is why I put him in a critical
4 state, because there was no movement whatsoever.

5 Q And your job is to give him that rating, you
6 said ---

7 A Correct.

8 Q And explain a little bit more about what means.

9 A Sure. The rating is -- we rate somebody for their
10 eye movement, for personal -- purposeful movement in
11 terms of we ask you to squeeze our hands, move your
12 hands. We pinch you to see if you pull back or retract.
13 And we also ask you to obey certain commands.

14 The highest rating you can get is a 15. The lowest
15 score you can get is a three. And he received a three
16 because he had no movement. When I pinched him, tried to
17 elicit any kind of a response, he had no movement
18 whatsoever at that time.

19 Q And you say this is a range that allows you
20 professionally to give someone a whole spectrum of a
21 three to a fifteen?

22 A That is correct.

23 Q And you gave him what, again?

24 A The three. The lowest score that is possible.

25 Q Does that indicate the less amount of response to

1 stimuli as you can rate a person?

2 A Yes. So ---

3 Q And how many years of experience do you have, again,
4 as an EMT?

5 A Twenty-nine years.

6 MR. SIMPSON: No further questions, Your Honor.

7 THE COURT: Re-cross.

8 MR. SMALLDONE: Briefly.

9 **RECROSS-EXAMINATION BY MR. SMALLDONE OF DAVID PALAWASKA:**

10 Q And using your medical training and common sense,
11 after someone is hit by a gunshot it is pretty common and
12 normal for them to move or slump; right? Not move
13 around. But it is common for them to move, slumped,
14 react to the gunshot?

15 A It is depending on their positioning. Somebody who
16 is in the driver's seat with a high console as it showed
17 on the other, there is not really move -- any place to
18 move in that kind of position.

19 Somebody who is standing, yes, will fall down. But
20 somebody who is sitting won't move very much.

21 Q Sure. But it is normal -- it would be normal for
22 them to -- at least shift their weight around, right?

23 A Yes.

24 Q Okay. That's all. Thank you.

25 THE COURT: All right. Thank you. You may come

1 down. Do you wish this witness to be excused, Solicitor?

2 MR. SIMPSON: Yes, Your Honor.

3 THE COURT: Any objection?

4 MR. SMALLDONE: No objection, Your Honor.

5 THE COURT: You are also free to leave, sir. Thank
6 you.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Call your next witness.

9 MR. SIMPSON: Thank you, Your Honor. The State
10 calls Officer Patrick Norwood of the North Charleston
11 Police Department.

12 THE COURT: Okay.

13 (WHEREUPON, the witness was duly sworn.)

14 THE CLERK: Please have a seat and state your full
15 name spelling your last name.

16 THE WITNESS: Full name is Patrick William Lawrence
17 Norwood. Spelling my last is N-O-R-W-O-O-D.

18 MR. SIMPSON: May I proceed, Your Honor?

19 THE COURT: You may.

20 MR. SIMPSON: Thank you.

21 **DIRECT EXAMINATION MR. SIMPSON OF OFFICER PATRICK**

22 **NORWOOD:**

23 Q Officer Norwood, where are you currently employed?

24 A North Charleston Police Department.

25 Q And if you could, let's just introduce you a little

1 bit to the jury. Explain to them a little bit about your
2 educational and professional background.

3 A Okay. I have got a college degree from the Citadel.
4 I have been working for North Charleston Police for about
5 ten years now. I am currently assigned to the patrol
6 division. I work in the South Bureau Area.

7 Q And does the South Bureau there cover the area of
8 2000 McMillan Avenue?

9 A Yes, sir, it does.

10 Q And is the entirety of your jurisdiction -- you say
11 you have been with North Charleston for ten years?

12 A Ten years, yes, sir.

13 Q Is the entirety of your jurisdiction within
14 Charleston County?

15 A It is.

16 Q Okay. You mentioned earlier that you are currently
17 employed with the patrol division. What does that mean?
18 What are some of your duties?

19 A We generally handle emergency calls for service.
20 And that can vary from a simple alarm call to a shop
21 lifting, even up to a homicide or attempted homicide.

22 Q Okay. And what is your current rank in the North
23 Charleston Police Department?

24 A Patrolman first class.

25 Q Okay. You know the incident that brings you here

1 today, correct?

2 A Yes, sir.

3 Q Were you employed in that manner on April 16th of
4 2016?

5 A I was, yes, sir.

6 Q Did you have occasion on that date to respond to the
7 area of 2000 McMillan?

8 A I did.

9 Q If you could can you describe a little bit about the
10 location to the jury.

11 A Yeah, it is a little shopping strip mall area. They
12 have got a pawn shop over there and also a Quick Mart
13 Shop and a beauty -- a beauty shop over there.

14 Q And what did you observe on that scene when you
15 arrived at the location?

16 A Initially pulled in. The victim was in the front
17 driver's-side seat. Once I had come around to him on the
18 front -- front driver's-side I saw him suffering from a
19 gunshot wound to the head.

20 Q Okay. Is it fair to say that you were one of the
21 first uniformed law enforcement officers on the scene?

22 A That is correct.

23 Q Okay. Did you get there approximately the same time
24 as some others?

25 A I pulled in right at the same time as Officer Riley

1 did.

2 Q Okay.

3 A Another officer. We were at the scene at the same
4 time.

5 Q Okay. But you were one of the first, right?

6 A I was.

7 Q Okay.

8 A I was.

9 Q And what did -- what again do you observe, a vehicle
10 when you pull up?

11 A I did.

12 Q Okay. And what did you do then?

13 A Came up to the driver's side. And then initially
14 noticed, again, the victim suffering from a gunshot
15 wound. He was breathing but making groaning sounds. Not
16 really speaking at all. At that time we just secured the
17 scene.

18 Q Okay. Now as part of being a law-enforcement
19 officer do you receive some -- some general first aid
20 training?

21 A I have.

22 Q Okay. Training to a level that you feel you can
23 deal with a gunshot wound to the head?

24 A Not at that point. Particularly where the victim
25 was sitting in his state we -- it wasn't trained that we

1 could actually render the type of aid that he needed at
2 the time. So we immediately cleared the scene and had
3 EMS respond to him which was there shortly after.

4 Q Okay.

5 A Within minutes.

6 Q So you arrived before EMS?

7 A I did.

8 Q Okay. And if I understand your testimony,
9 determined that it was best to wait for them to get there
10 before ---

11 A Correct.

12 Q So I believe you testified you secured the scene?

13 A Yes.

14 Q Okay. What does that mean?

15 A Securing the scene particularly on a shooting we are
16 trying to make sure that it is safe, particularly for EMS
17 and also just making sure there's no weapons present.
18 And also making sure that, you know, we can secure the
19 crime scene the best we can.

20 Q Okay.

21 A And also just giving as much information as we can
22 to dispatch about the victim's condition.

23 Q Okay. You noted earlier the victim's condition.

24 Were you going to move the victim at all before EMS got
25 there?

1 A Not due to the state he was in. From where he was
2 sitting due to the gunshot being to the head it would
3 have -- it could have been dangerous for him to move him
4 due to possibly having a neck injury or something else.

5 So typically we due to EMS being so close we have
6 them come in, assess him, before even deciding to even
7 move or anything.

8 Q Okay. So you want to leave that decision to people
9 better trained in that area?

10 A Correct.

11 Q Okay. But you did secure the scene?

12 A Correct.

13 Q Okay. And securing the scene mainly means looking
14 for what?

15 A With something like a gunshot wound we are looking
16 for weapons ---

17 Q Okay.

18 A --- and of that nature.

19 Q And did you on the scene at this point visually scan
20 the interior of that car for weapons?

21 A I did. I looked over the car thoroughly from where
22 I was at. And the back seat in that area as well.

23 Q Okay. And did you -- did that securing of the scene
24 reveal any weapons in the car?

25 A Nothing.

1 Q If you had, would you have alerted someone to the
2 presence of a weapon?

3 A I would have, yeah.

4 Q Now you said EMS did arrive a few minutes later?

5 A Yeah, within minutes they were there. Very quickly.

6 Q Okay. And what happened once EMS arrived?

7 A Once EMS arrived they assessed the victim's
8 condition. And then they were determined on -- that he
9 needed to go to the hospital quickly due to his
10 condition. And at that point they were deciding the best
11 way to move him to get him up on the stretcher from where
12 he was seated.

13 Q And did you assist in any way with that action?

14 A I did. I assisted with removing him from the seat.

15 Q Okay. Were there more EMS -- more than one EMS
16 technician at that point?

17 A Yes, sir, there were.

18 Q Okay. And do you remember anything of particular
19 interest happening during the movement of that person?

20 A Once we began to move him out of the driver's seat
21 onto the stretcher once he was lifted up one of the EMS
22 techs yelled out that he has a gun, there is a gun in his
23 lower waistband.

24 Q Okay. And ---

25 A And he yelled out gun very quickly. So we knew we

1 had to address that at the time.

2 Q Okay. Now you had previously secured the inside of
3 that vehicle?

4 A Yes.

5 Q You had previously -- previously looked in the
6 vehicle for a gun and not seen one?

7 A That is correct.

8 Q And so was this the first time that anyone became
9 aware to -- or you became aware to your knowledge that
10 there was a gun present?

11 A That is correct, the first time.

12 Q How did everyone respond to this EMS tech saying
13 that there is a gun?

14 A Once he yelled out that there was a gun there is him
15 saying that he was going to secure it. And at that point
16 we knew -- we immediately told him to leave it on the
17 seat, the driver's seat, just to leave it there and not
18 touch it, for crime scene to come.

19 Q Okay. And so you -- you know, obviously it had been
20 moved?

21 A Sure.

22 Q You were aware -- you were aware the gun had been
23 moved?

24 A Correct.

25 Q Okay. But told him to wait until who came?

1 A For crime scene to come and process the scene with
2 it.

3 Q And he was instructed to leave it where?

4 A On the driver's seat.

5 Q Okay. Forgive me for backtracking a little bit.

6 But when you say you secured the scene were you able to
7 see visibly see both of the victim's hands at that time?

8 A I did.

9 Q And, again, you did not see a firearm?

10 A I did not.

11 Q Okay. Are you equipped when you are on the job as a
12 patrol officer at least back in 2016 are you equipped
13 with what are called body cams?

14 A Yes, sir.

15 Q Is that a relatively recent development?

16 A It is. So the past couple of years we have had
17 them.

18 Q So in your experience can you explain a little bit
19 to the jury about what we are talking about when we talk
20 about body cams.

21 A So the body camera is just a camera that clips onto
22 your front uniform. And any time you come into contact
23 or take any type of police action or responding to any
24 scene, any contact with the public, there is a switch on
25 it that we turn and it immediately starts recording video

1 and audio of the scene.

2 Q It starts recording when you tell it to?

3 A Once I ---

4 Q Once you tell it to -- once you ---

5 A Yeah, pretty -- yeah, once I activate it, turn the
6 switch, it will start recording right there.

7 Q So how do you decide when you are going to activate
8 your body cam?

9 A Generally before we are about to come on the scene
10 we will turn it on as a practice. So, yeah. And then,
11 you know, immediately definitely when you get into
12 contact with a victim or anybody during that police
13 encounter you are going to have that body camera turned
14 on.

15 Q Okay.

16 A Right before.

17 Q Officer, I am handing you what has been marked at
18 this time for ID only as State's Exhibit 29. Do you
19 recognize that?

20 A Yes, sir.

21 Q And what is that?

22 A That is the body camera footage of the incident.

23 Q Okay. And how do you know that this CD contains
24 that body cam footage?

25 A It has got my initial on it.

1 Q Okay. So you have reviewed the contents of the CD?

2 A I have.

3 Q Is that a fair and accurate depiction of what was
4 captured, what you viewed through your body cam on that
5 day in that response to the scene?

6 A Yes, sir.

7 MR. SIMPSON: Your Honor, at this time the State
8 would seek to admit State's 29.

9 THE COURT: Is there any objection?

10 MR. SMALLDONE: It is without objection.

11 THE COURT: State's 29 is admitted. Thank you.

12 (WHEREUPON, State's Exhibit Number 29 was admitted into
13 evidence.)

14 MR. SIMPSON: And we would seek to ---

15 THE COURT: Without objection.

16 MR. SIMPSON: --- publish a portion ---

17 THE COURT: You may.

18 MR. SIMPSON: --- of State's 29.

19 THE COURT: Publish a portion by agreement; is
20 that ---

21 MR. SIMPSON: Yes. For 403 reasons we will be
22 muting the sound ---

23 THE COURT: Oh, I understand.

24 MR. SIMPSON: --- until EMS arrives.

25 THE COURT: That is no problem.

1 And ladies and gentlemen, that is pursuant -- that
2 is very proper. There is nothing that is being kept from
3 you improperly. It is part of our procedure and part of
4 the rules, the rules of evidence. Okay. Thank you.

5 (WHEREUPON, published State's Exhibit Number 29.)

6 Q So Mr. Polawasta -- I'm sorry, Officer. What we
7 just heard there, was that the first moment anyone
8 indicated that there was a gun on the scene?

9 A Yes, sir.

10 Q Okay. At any time previous to that to the best of
11 your knowledge, being there on the scene, did anyone
12 indicate that there could possibly be a gun in the car?

13 A No.

14 Q And had you scanned that passenger compartment and
15 the victim for a firearm?

16 A I did.

17 Q I am going to show you what has been marked for ID
18 only as State's 30. Take a moment to review that
19 exhibit. Do you recognize that exhibit?

20 A I do.

21 Q And what is that?

22 A That is the frame from my body camera.

23 Q Is that a still from the videos that we just
24 watched?

25 A That is correct.

1 Q Does that fairly and accurately reflect what you saw
2 when you looked into the lap of that victim ---

3 A Yes, sir.

4 Q --- that day?

5 MR. SIMPSON: Your Honor, at this point the State
6 would seek to admit State's 30.

7 THE COURT: Any objection?

8 MR. SMALLDONE: No objection.

9 THE COURT: Without objection State's 30 is
10 admitted. You may publish it.

11 (WHEREUPON, State's Exhibit Number 30 was admitted into
12 evidence.)

13 MR. SIMPSON: Thank you, Your Honor. Permission to
14 publish?

15 THE COURT: You may.

16 Q Officer, did you see a firearm in the hand of the
17 victim they day?

18 A I did not.

19 THE COURT: Ladies and gentlemen, let me also -- you
20 are probably aware of this, but any -- any exhibit that
21 is introduced into evidence it will accompany you to your
22 jury room. So you have an opportunity to study it in
23 closer detail and more thoroughly when you begin your
24 deliberations.

25 Q And, again, we saw it in live time on the video from

1 the initiation -- is that the initiation of your body cam
2 up until when the gun was located?

3 A Actually, well, I had it running initially
4 approaching up to the vehicle.

5 Q Okay. Approximately it was at the -- we can --
6 okay, at any time -- at any time prior to what we just
7 saw in the minutes intervening did anyone see a gun?

8 A No, sir.

9 Q Until the body was moved?

10 A Correct.

11 MR. SIMPSON: Court's indulgence.

12 THE COURT: Yes, sir.

13 MR. SIMPSON: Thank you, Officer. Please answer any
14 questions Mr. Smallldone has for you.

15 THE COURT: Cross-examine.

16 MR. SMALLDONE: No questions for this witness.

17 THE COURT: Thank you. You may come down, sir.

18 Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: Do you wish him to be excused?

21 MR. SIMPSON: Yes, Your Honor. I would just like to
22 for record purposes say we stopped the video at four
23 minutes and six seconds.

24 THE COURT: That is fine. Okay. And that is by
25 agreement. And you don't wish any additional portions to

1 be published at this point?

2 MR. SMALLDONE: No, Your Honor. I will just add
3 that the audio that was not published ---

4 THE COURT: Was by agreement?

5 MR. SMALLDONE: --- would never be published.

6 THE COURT: That is correct. Okay.

7 Thank you. You are free to leave.

8 THE WITNESS: Thank you.

9 THE COURT: Thank you, sir.

10 Call your next witness, please.

11 MR. SIMPSON: The State calls Sean Reiter.

12 (WHEREUPON, the witness was duly sworn.)

13 THE CLERK: Please have a seat and state your first
14 and last name and spell your last name for the record.

15 THE WITNESS: Sean Reiter. R-E-I-T-E-R.

16 **DIRECT EXAMINATION BY MR. COOPER OF SEAN REITER:**

17 Q Good afternoon, Mr. Reiter.

18 A Good afternoon, sir.

19 Q Will you please tell the jury where you currently
20 reside.

21 A Hamilton, New Jersey.

22 Q And what do you do in Hamilton, New Jersey?

23 A I am a claims investigator for CSX Transportation.

24 Q How long have you been working for CSX?

25 A June 2016.

1 Q Where did you work prior to that?

2 A At the North Charleston Police Department.

3 Q And how long had you been working with North
4 Charleston Police Department?

5 A About seven years.

6 Q Can you explain to the jury what your roles were at
7 the North Charleston Police Department?

8 A Certainly. I started in the patrol division. I was
9 then assigned to the detective division where I worked
10 property crime for about a year-and-a half. And then I
11 worked person's crime.

12 From there I transferred into the neighborhood
13 resource officer unit where I was assigned to two
14 specific neighborhoods. Basically I embedded myself in
15 the neighborhood. Got to know the people. Part of the
16 role you were basically a street-level detective. So any
17 cases of burglary, car break-ins, I would handle the
18 investigations for those all the way through charging a
19 suspect if one was identified. And for violent crimes
20 help the detective division identify possible suspects,
21 any witness information, and pass that along to them.

22 And then in March of 2016 I was promoted to
23 sergeant, and I was assigned to our South Districts, the
24 evening shift.

25 Q And what did your duties include as sergeant over

1 the South District evening patrol?

2 A Every day I would go through e-mails, find pertinent
3 information that I needed to pass on to the officers
4 working for me. Make sure their equipment was all up to
5 standards. Deal with any issues if they had any. A
6 daily roll call. Assign them to their specific patrol
7 zones and then send them out.

8 And generally every day I would meet with the two
9 other sergeants. I work with my lieutenant. Get
10 together. We would deal with any issues we had.

11 At the scene of major events I would respond. Make
12 sure that the -- if it were a crime scene that it was
13 secure, a crime scene log was being maintained. And
14 generally make sure that everybody got home safely at the
15 end of the night.

16 Q Focusing your attention to April 16th of 2016, in
17 this case specifically, why did -- how did you become
18 involved in this case?

19 A I was -- this incident happened in the South
20 District. So my officers were dispatched along with some
21 dayshift officers. And I responded to manage the crime
22 scene until a ranking officer or detectives showed up.

23 Q What did you do while you were on the scene?

24 A As soon as I arrived my officers had already secured
25 the area with crime scene tape. Someone was already

1 maintaining a crime scene law.

2 Made sure everyone had what they needed, that the
3 scene was safe. And then went into Max's Quick Stop and
4 inquired about the video footage if they had any.

5 Q Why did you begin looking for video footage?

6 A I -- from past experience I know that that store has
7 video cameras. And the victim's vehicle was parked
8 directly in front of the store. So I wanted to make sure
9 that the video system was working at the time.

10 Q Did they actually have video footage from this
11 incident?

12 A They did. I was able to view it. After I made sure
13 that customers had left the store I was able to view the
14 video on the TV screen that it sits opposite the cash
15 register. And through watching that I was able to relay
16 pertinent information to the units that were patrolling
17 the area looking for the suspect and the suspect's
18 vehicle.

19 Q Were you able to download that video footage?

20 A I was. I used a USB thumb drive. I downloaded the
21 video and turned it over to detectives so that they could
22 then transfer it to a CD and place it into evidence.

23 Q Mr. Reiter, I want to show you a CD, what's been
24 marked as State's Exhibit 17 for ID purposes only. Do
25 you recognize that?

1 A I do, sir. This is a CD of the video from the
2 store.

3 Q And how do you recognize that?

4 A My initials are right here circled.

5 Q And so you viewed the video on this disk?

6 A I did, sir.

7 Q And that happens to be the same video footage you
8 viewed at the Quick Stop?

9 A It is.

10 Q Does it appear to be a fair and accurate
11 representation of the video footage as you saw it on
12 April 16th?

13 A Yes, sir, it.

14 Q Your Honor, at this time the State would offer what
15 has been marked as State's Exhibit 17 for ID purposes
16 only into evidence.

17 THE COURT: Any objection?

18 MR. SMALLDONE: I do object under authentication,
19 Your Honor.

20 THE COURT: Authentication? Subject to the
21 objection of authentication. The witness has identified
22 it. He has viewed it. It has been authenticated, so I
23 overrule your objection.

24 THE COURT: Thank you.

25 MR. SIMPSON: Thank you, Your Honor. May we publish

1 to the jury?

2 THE COURT: You may.

3 MR. SIMPSON: Thank you, Your Honor.

4 (WHEREUPON, State's Exhibit Number 17 was admitted into
5 evidence.)

6 (WHEREUPON, State's Exhibit Number 17 was published.)

7 MR. SIMPSON: And, Your Honor, for the record, we
8 stopped the video at 15:43:12.

9 THE COURT: Okay.

10 Q Mr. Reiter, thank you for your time. No further
11 questions for you. Please answer anything else the
12 defense may have for you.

13 THE WITNESS: Yes, sir. Thank you.

14 MR. SMALLDONE: No questions for this witness, Your
15 Honor.

16 THE COURT: Very well. You may come down, sir.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Do you wish the witness to be excused,
19 Solicitor?

20 MR. SIMPSON: Yes, Your Honor, please.

21 THE COURT: Any objection?

22 MR. SMALLDONE: No objection.

23 THE COURT: You are also free to leave, Mr. Reiter.
24 Thank you.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: All right. Call your next witness.

2 MR. SIMPSON: Thank you, Your Honor. The State
3 calls Sergeant Ryan Terrell.

4 (WHEREUPON, the witness was duly sworn.)

5 THE CLERK: Please have a seat. State your full
6 name, spelling your last name.

7 THE WITNESS: Sergeant Ryan Terrell. Last name
8 T-E-R-R-E-L-L.

9 **DIRECT EXAMINATION BY MR. SIMPSON OF SERGEANT RYAN**

10 **TERRELL:**

11 Q Sergeant Terrell, good afternoon.

12 A Good morning -- afternoon.

13 MR. SIMPSON: May I proceed, Your Honor?

14 THE COURT: You may.

15 MR. SIMPSON: Thank you.

16 Q Sergeant, I can see the uniform; but where do you
17 work currently?

18 A Yes, sir, I am sergeant over the neighborhood
19 resource officer unit, ---

20 Q With ---

21 A --- City of North Charleston.

22 Q With what department?

23 A City of North Charleston.

24 Q Okay. And if you could just, kind of introduce
25 yourself to the jury. Tell us a little bit about where

1 you are from, your educational background, and your law
2 enforcement experience.

3 A Good afternoon. I am from the Charleston area.
4 West Ashley to be exact. I hold multiple college
5 degrees. Went to school West Ashley. Joined the
6 military. Got out. Went to school. Been in North
7 Charleston for almost 11 years now.

8 Q And how many of those 11 years have been with the
9 North Charleston Police Department?

10 A Ten.

11 Q Ten. Okay. And what -- you know, for those of us
12 who aren't familiar with law enforcement what is a
13 sergeant and what does a sergeant do?

14 A A sergeant is a supervisor over multiple officers.
15 In my case my officers have individual neighborhoods they
16 are assigned to and they are the liaison between the
17 community and the Police Department.

18 Q Okay. How are you employed in -- or what rank and
19 role did you have in April of 2016?

20 A In 2016 I was a patrol supervisor. So I had six
21 officers that worked underneath me in a patrol capacity.

22 Q Okay. And you know what incident brings you here
23 today, correct?

24 A Yes, sir.

25 Q Did you have occasion on April 16th, 2016, to

1 respond to the area of 2000 McMillan?

2 A Yes, sir.

3 Q And tell us a little bit about that area.

4 A We got a call for a shooting. And officers -- I
5 responded to assist Sergeant Reiter to determine if he
6 needed anything on the scene at the shooting.

7 Q Okay. Were you briefed when you arrived on the
8 scene as to what officers believed had occurred thus far?

9 A Yes, sir.

10 Q And what sort of task did you set out to accomplish
11 when you arrived?

12 A When I arrived I went to the hair store next store,
13 the beauty store, to view the video. Our job at that
14 point was to try to determine the suspect and search the
15 area.

16 Q Okay. And were you able to view a certain vehicle
17 on that video?

18 A Yes, sir. It was clear video.

19 Q Okay. And any observations that you made about the
20 video -- about the vehicle from that video?

21 A Yes, sir. It was a tan in color Ford Taurus with a
22 sunroof that was open. And there was some body damage.

23 Q Okay. And so fair to say that was sort of the first
24 lead to find that video -- I mean that vehicle?

25 A Correct.

- 1 Q And was the vehicle located?
- 2 A Yes, it was.
- 3 Q Okay. And where was it located?
- 4 A In Pinecrest Apartments.
- 5 Q Okay. Is that nearby?
- 6 A It is right next-door.
- 7 Q Okay. I am showing you what has been admitted into
8 evidence as State's Exhibit 1. Does this area look
9 familiar to you?
- 10 A Yes, sir.
- 11 Q And is this part of your jurisdiction?
- 12 A Yes, sir.
- 13 Q The jurisdiction you have worked in for ten years?
- 14 A Yes, sir.
- 15 Q Okay. Can we see the location of the crime in this
16 case on this?
- 17 A Yes, sir.
- 18 Q And where is that?
- 19 A It is the first parking spot right here. I
20 (Marking on ELMO). Oh, I'm sorry; I didn't know I
21 was going to
- 22 Q No, no, it marks. That is great. Go ahead. Mark
23 it up.
- 24 A It is right -- right here (drawing).
- 25 Q And you mentioned an area where you initially

1 believed that you found this vehicle depicted in the
2 video. Where is that?

3 A Yes, sir. It is parked in a spot right here
4 (drawing).

5 Q Okay. Now you said you were looking for a Taurus --
6 Ford Taurus with a sunroof, correct?

7 A Yes, sir.

8 Q Is there anything that led you to believe that this
9 particular Ford Taurus was the Ford Taurus that you saw
10 in the video ---

11 A Well, when we searched the area we found a Ford
12 Taurus ---

13 Q Okay.

14 A --- that matched the same color.

15 Q Okay.

16 A And when we got out the vehicle was still warm to
17 the touch.

18 Q Okay.

19 A The sunroof was still open like it was in the video
20 from the wig store.

21 Q Okay.

22 A And there was also some damage on the front right
23 side.

24 Q Okay. I am showing what has been admitted into
25 evidence, State's -- beginning with State's 13. Do you

1 recognize the vehicle depicted in this exhibit?

2 A Yes, sir.

3 Q Okay. Is that the Taurus that you are testifying
4 about?

5 A Yes, sir.

6 Q State's 14.

7 (WHEREUPON, showing exhibit on ELMO.)

8 A Yes.

9 Q Okay. Now I want to show you a State's 15. Is
10 there anything in particular you could point out? Feel
11 free to ---

12 A Yes, sir.

13 Q --- point it in front of you about the vehicle in
14 this.

15 A When you are looking at the vehicle from the wig
16 store you could actually see some damage on the vehicle.
17 It is actually right around here (pointing).

18 Q Okay.

19 A It is clear. I also pointed out that the sunroof
20 was still ajar ---

21 Q Okay.

22 A --- up here at the top (pointing). Which was
23 consistent with the video from the store as well.

24 Q Now you keep saying damage. Are you talking about
25 the damage or markings?

1 A The damage.

2 Q Do you mean ---

3 A It is like an indentation up here by the light. It
4 is kind of hard to see from this angle.

5 Q Okay.

6 A But it is right here (pointing).

7 Q I am handing you what has been marked for ID only at
8 this point as State's 36. Do you recognize this exhibit?

9 A Yes, sir.

10 Q Okay.

11 A The damage that I was talking to you about is right
12 here (pointing).

13 Q Okay.

14 A It is right here in the right headlight area
15 (pointing).

16 Q Okay. Where does this image come from; do you know?

17 A That is the wig store.

18 Q Okay. Do you mean the ---

19 A The hair store, beauty store. They sell a lot of
20 wigs there, so I call it the wig store.

21 Q Okay. You mentioned earlier viewing some video from
22 the beauty salon.

23 A Yes, sir.

24 Q Okay. Do you recognize this as State's 36 as part
25 of that video?

1 A That is it.

2 Q All right. The video that you viewed that day?

3 A Yes, sir.

4 MR. SIMPSON: Your Honor, the State would seek to
5 admit State's 36.

6 THE COURT: Is there any objection?

7 MR. SMALLDONE: No objection.

8 THE COURT: State's 36 is admitted without
9 objection.

10 (WHEREUPON, State's Exhibit Number 36 was admitted into
11 evidence.)

12 Q Okay. And if you could indicate to the jury, you
13 said you saw some consistent damage?

14 A Yes, sir. Here is the damage here on the hood
15 (pointing).

16 Q Okay.

17 A As well as the open sunroof here (pointing).

18 Q And you said you felt the hood of the car. And what
19 did that lead you to believe -- to conclude?

20 A It was warm to the touch, what led me to believe it
21 has just been driven.

22 Q Okay. How did you -- compiling all of these
23 observations how did you proceed to there? Was the
24 investigation continued in regard to this video -- this
25 vehicle?

1 A Yes, sir, actually it did. If you have the one of
2 the rear of the vehicle.

3 Q State's 14?

4 A Yes, sir. I ran this tag here. And when I ran that
5 tag it came back to a female individual.

6 Q Okay.

7 A From there I ran it through our management system
8 and found out ---

9 Q Okay, let me stop you there. Did -- did you search
10 the vehicle?

11 A No, sir.

12 Q Okay. Was your department tasked with searching the
13 vehicle?

14 A Searching that vehicle, no, sir, not at this time.

15 Q Oh, not at this time; but ---

16 A Because we were more concerned with looking for a
17 suspect at this time.

18 Q Okay. In the future, to the best of your knowledge.
19 did your department ever conduct a search of this
20 vehicle?

21 A Not to my knowledge that I was on the team for, no,
22 sir.

23 Q Okay.

24 MR. SIMPSON: Court's indulgence.

25 THE COURT: Certainly.

DIRECT EXAMINATION BY MR. SIMPSON OF SERGEANT RYAN
TERRELL

155

1 MR. SIMPSON: Sergeant Terrell, I have no further
2 questions for you. Answer any questions Mr. Smalldone
3 has.

4 THE COURT: Any questions?

5 MR. SMALLDONE: No questions, Your Honor.

6 THE COURT: Thank you. You may come down, Sergeant.

7 All right, at this point, ladies and gentlemen,
8 let's take a break. About ten minutes. Do not begin
9 your deliberations. Don't discuss the case. You may
10 retire to your jury room.

11 (WHEREUPON, jury exits courtroom 4/11/18 2:54 p.m.)

12 THE COURT: Okay. Anything from the State before
13 recess?

14 MR. SIMPSON: No, Your Honor.

15 THE COURT: Anything from the defendant?

16 MR. SMALLDONE: No, Your Honor.

17 THE COURT: Thank you. We will be at ease for about
18 ten minutes.

19 (WHEREUPON, break was had 4/11/18, 2:54 p.m.)

20 (WHEREUPON, resumed trial 4/11/18, 3:14 p.m., after
21 hearing other matters unrelated to this trial.)

22 THE COURT: Let the record reflect Mr. Brown is
23 present.

24 Are you ready, Mr. Smalldone?

25 MR. SMALLDONE: I am ready.

1 THE COURT: Bring the jury, please.

2 (WHEREUPON, jury enters 4/11/18, 3:15 p.m.)

3 THE COURT: Thank you, ladies and gentlemen. We are
4 ready to continue. You may call your next witness,
5 Solicitor.

6 MR. COOPER: Thank you, Your Honor. The State calls
7 Officer Michael Cook.

8 (WHEREUPON, the witness was duly sworn.)

9 THE CLERK: Please have a seat. State your full and
10 spell your last.

11 THE WITNESS: Michael Cook. C-O-O-K.

12 **DIRECT EXAMINATION BY MR. COOPER OF MICHAEL COOK:**

13 Q Good afternoon, Officer Cook.

14 A Good afternoon.

15 Q Would you please tell the jury where you are
16 currently employed.

17 A I work for the City of North Charleston Police
18 Department.

19 Q And what do you do for the North Charleston Police
20 Department?

21 A I am assigned to the crime scene unit.

22 Q How long have you been in crime scene?

23 A Almost five years.

24 Q And then can you explain what that position entails
25 for the jury.

1 A Our main goal is to photograph, video graph, collect
2 and preserve evidence.

3 Q Focusing your attention to April of 2016, how did
4 you get involved in this case?

5 A I photographed a vehicle that was in our warehouse
6 for a search warrant.

7 Q And then were you assisting detectives who were
8 actively searching the vehicle pursuant to that search
9 warrant?

10 A Yes, sir.

11 Q And then when you photograph a vehicle what all do
12 you take pictures of?

13 A I take 360 photographs of the vehicle starting at
14 the front and work my way all the way around back to the
15 front of the vehicle. And then I photograph the
16 interior.

17 Q Do you also photograph things they the detectives
18 flag and ask you to photograph?

19 A Yes.

20 Q Would you recognize some of the pictures that you
21 took that day if I showed them to you?

22 A Yes, sir.

23 Q I want to show you what has been marked for ID
24 purposes only as State's Exhibits 19 through 26. Would
25 you take a look at those for a moment, please.

1 (WHEREUPON, witness reviewed photographs.)

2 A These are my photographs.

3 Q And you recognize those photos?

4 A Yes, sir.

5 Q Are those the ones that you took back in April 2016?

6 A Yes, sir.

7 Q Are they in the same or similar conditions as the
8 last time you saw these photos?

9 A Yes, sir.

10 MR. COOPER: Your Honor, at this time the State
11 would seek to admit State's Exhibit 19 through 26.

12 THE COURT: Any objection?

13 MR. SMALLDONE: No objection.

14 THE COURT: State's 19 through 26, each being a
15 photograph, admitted without objection.

16 (WHEREUPON, State's Exhibit Number 19 was admitted into
17 evidence.)

18 (WHEREUPON, State's Exhibit Number 20 was admitted into
19 evidence.)

20 (WHEREUPON, State's Exhibit Number 21 was admitted into
21 evidence.)

22 (WHEREUPON, State's Exhibit Number 22 was admitted into
23 evidence.)

24 (WHEREUPON, State's Exhibit Number 23 was admitted into
25 evidence.)

1 (WHEREUPON, State's Exhibit Number 24 was admitted into
2 evidence.)

3 (WHEREUPON, State's Exhibit Number 25 was admitted into
4 evidence.)

5 (WHEREUPON, State's Exhibit Number 26 was admitted into
6 evidence.)

7 MR. COOPER: Thank you, Judge. If we may publish to
8 the jury.

9 THE COURT: You may.

10 Q Officer Cook, I am going to show you each of these
11 photos. If it becomes necessary you can mark on the
12 screen. If you will just help me. If you need to mark
13 and clear them, just hit that (pointing) ---

14 A Okay.

15 Q --- and clear. All right?

16 A Yes, sir.

17 Q Showing you State's Exhibit 19. Will you indicate
18 to the jury what this is.

19 A This is the rear of the vehicle. It basically gives
20 the make of the vehicle and the tag number.

21 Q And what kind of vehicle is that?

22 A It is a Ford Taurus.

23 Q I am showing you State's Exhibit 20. What is this
24 picture?

25 A This is a picture of the glove box.

1 Q I am showing you State's Exhibit 21. What does this
2 picture show us?

3 A That is a pay stub with Derrick Porter's name on it.

4 Q Is that a pay stub or is that a bill?

5 A Oh, I am sorry; it is a bill from a hotel.

6 Q And where is it from?

7 A From inside the vehicle.

8 Q Where is the business in which the bill is from?

9 I'm sorry.

10 A Oh, I'm sorry. Creekside Land Inn -- Lands Inn off
11 of Savannah Highway.

12 Q And then who does it list of the bill, the name of
13 the person?

14 A Derrick Porter, guest.

15 Q And then the address?

16 A [REDACTED], [REDACTED], North
17 Charleston South Carolina 29405.

18 Q And then you said this was found in the glove box?

19 A It was found in the vehicle.

20 Q In the vehicle. Okay. I am showing you State's
21 Exhibit 22. Can you tell us what this is?

22 A That is the vehicle registration for the Ford
23 Taurus.

24 Q For that specific Ford Taurus?

25 A Yes, sir.

1 Q And what is the name -- I believe it is the
2 bottom -- on that. Let's see if I can move it up for
3 you.

4 (WHEREUPON, adjust ELMO display.)

5 A Jacqueline Mary Harrison.

6 Q And what is the address listed?

7 A [REDACTED], [REDACTED], North
8 Charleston, South Carolina.

9 Q I am showing you State's Exhibit 23. What is this
10 picture?

11 A That is a payroll stub.

12 Q Okay. I am showing you State's Exhibit 24. Is that
13 the same payroll stub?

14 A Yes, sir.

15 Q Just a close-up version?

16 A Yes, sir.

17 Q What is the name listed on that payroll stub?

18 A Derrick L. Porter.

19 Q I am showing you State's Exhibit 25. What does this
20 appear to be?

21 A This is our Police Department tow sheet.

22 Q And what is the date listed on that tow sheet? I
23 know it is a little hard to read.

24 A I believe it is 2/17/2016.

25 Q And what is the name listed?

1 A Derrick Lamar Porter.

2 Q And then the address? The street address is fine.

3 A [REDACTED] Pine Ridge Court.

4 Q And then showing you State's Exhibit 26. What does
5 that appear to be?

6 A That is a Boeing badge with Derrick Porter's name on
7 it.

8 Q Okay. And then in all of these items that we just
9 went through, the tow receipt, the bill from the hotel,
10 the pay stub, and the Boeing ID, those were all found
11 inside the vehicle?

12 A Yes, sir.

13 Q I want to ask you one more thing. I am showing you
14 State's Exhibit 23 again, that pay stub. Can you tell on
15 the top right corner what the date of the check is?

16 A 4/1/16.

17 MR. COOPER: Beg the court's indulgence just one
18 second.

19 THE COURT: Yes, sir.

20 MR. COOPER: Officer Cook, I have no further
21 questions for you. Thank you for your time. Please
22 answer any the defense may have for you.

23 THE COURT: Cross-examine.

24 MR. SMALLDONE: Briefly.

25 THE COURT: Okay.

1 **CROSS-EXAMINATION BY MR. SMALLDONE OF MICHAEL COOK:**

2 Q Good afternoon.

3 A Good afternoon, sir.

4 Q I have just got a couple -- one or two quick things
5 for you. To your knowledge -- do you know where the
6 incident took place?

7 A Do I know where it took place?

8 Q Do you know where it took place throughout the
9 course of your investigation?

10 A On McMillan.

11 Q Okay. And that is about a quarter of a mile away
12 from where the car was found?

13 A I don't know where the car was found.

14 Q Okay.

15 A I just executed the search warrant.

16 Q All right. And is that about a quarter of a mile
17 away from the address listed on the registration? Maybe
18 half?

19 A Approximately.

20 Q Okay. Thank you.

21 THE COURT: Redirect.

22 MR. COOPER: Nothing from the State, Your Honor.

23 THE COURT: Thank you. You may come down.

24 MR. COOPER: We would ask this witness be excused.

25 THE COURT: Any objection?

1 MR. SMALLDONE: No objection.

2 THE COURT: You are free to leave, sir.

3 Call your next witness.

4 MR. SIMPSON: Thank you, Your Honor. The State
5 calls Detective Jerry Jellico, North Charleston Police
6 Department.

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: Please take a seat. State your full
9 name and spell your last name for the record. Thank
10 you.

11 THE WITNESS: Jerry Jellico. J-E-L-L-I-C-O.

12 MR. SIMPSON: Court's indulgence.

13 THE COURT: Certainly.

14 **DIRECT EXAMINATION BY MR. SIMPSON OF DETECTIVE JERRY**
15 **JELICO:**

16 Q Detective Jellico, where do you work and in what
17 capacity?

18 A I am with the North Charleston Police Department,
19 and I am an investigator.

20 Q Okay. How long have you been with the North
21 Charleston Police Department?

22 A Altogether I have been in law-enforcement 30 years.

23 Q Okay. Tell the jury a little bit about that 30
24 years of experience. Just kind of summarize that for
25 them.

DIRECT EXAMINATION BY MR. SIMPSON OF DETECTIVE JERRY JELICO 165

1 A I worked -- I started my career 30 years ago with
2 the Charleston County Police Department that later became
3 the Charleston County Sheriff's Office.

4 And during -- after that I stayed a while with the
5 Charleston County Sheriff's Office. Then I made a
6 lateral move and came to the North Charleston Police
7 Department.

8 I was an investigator in basically homicide and sex
9 crimes in Charleston County. And I do the same thing in
10 North Charleston.

11 Q Okay. And so what does an investigator do? What is
12 the general -- generally ---

13 A It depends on where you are assigned. I mainly
14 handle violent crime and sex crimes. So you respond to
15 any kind of incident involving that.

16 Q Does part of the job of investigator ever involve
17 conducting interviews of witnesses and suspects?

18 A All the time.

19 Q Okay. And over the course of that rather lengthy
20 career, if you even can, approximately how many times you
21 have had to conduct an interview of a suspect, a person
22 suspected of a crime?

23 A It would be in the thousands I am sure.

24 Q Okay. Speaking over the timeframe of April 2016 is
25 it the policy of the North Charleston Police Department

1 when practical to record interviews of suspects?

2 A Yes.

3 Q Okay. You know of the incident that you are here
4 today on, right?

5 A That is correct.

6 Q Okay. Did you work at all the day of the incident;
7 did you respond to this incident?

8 A No. I don't -- I didn't respond to the actual crime
9 scene, no.

10 Q Okay. What was your role in this particular case?

11 A I was familiar with it. We always brief after a
12 major incident. So I was familiar with it.

13 Q Okay.

14 A And later on when the defendant was captured in
15 that -- because I had knowledge of the case I was asked
16 to do the interview.

17 Q Okay. Had you viewed any of the video evidence at
18 that point in time?

19 A Yes, I had reviewed the video from the scene after
20 the incident; and then prior to the interview I reviewed
21 it.

22 Q Okay. And you mentioned the suspect being captured.
23 Were you involved in any way with the apprehension of the
24 suspect?

25 A No, sir.

1 Q Okay. Would it -- are you certain that it involved
2 a capture, or could it have been a more voluntary ---

3 A He could have turned himself in. He was
4 apprehended, taken into custody.

5 Q Okay. If just -- you know, I understand you deal
6 with a lot of incidents. But if I could, do you mind
7 taking a look at your supplemental report in this case.

8 A Sure.

9 (WHEREUPON, State's Exhibit Number 37, report, was marked
10 for identification.)

11 THE COURT REPORTER: State's Exhibit Number 37
12 marked for identification.

13 THE COURT: Thirty-seven for ID only.

14 Q I am showing you what has been was marked for ID
15 only. Do you recognize that document?

16 A Yes, I do.

17 Q And what document is that?

18 A This is a police supplemental report which details
19 my involvement in the case.

20 Q Okay. And it is a pretty limited involvement,
21 correct?

22 A That is correct.

23 Q But if you could -- would that refresh your
24 recollection if you took a minute to review this?

25 A Yes.

1 Q Okay. And regarding -- you know, again, you weren't
2 personally involved; but regarding the means in which the
3 suspect came into custody what was that?

4 A No, I was not.

5 Q Okay.

6 A I just happened to be in the detective office and
7 they told me that he had been -- was ---

8 Q Okay. But does your report refresh your
9 recollection at all as to how he came into that custody?

10 A I just was told that he had turned himself in to
11 police.

12 Q Okay. And what date was that?

13 A This was -- I wrote this on May the 9th.

14 Q May the 9th.

15 A 2016.

16 Q Okay. Thank you. You say you have conducted a lot
17 of suspect interviews over your career?

18 A That is correct.

19 Q You know, we have all seen Law and Order, but
20 what -- how does an interview with a suspect typically
21 begin?

22 A Well, the first thing we do is we placed them into
23 an interview room which is audio and visually captured.
24 So we turn it on before we bring them in. We bring them
25 in. And then we get basic information like who are you.

1 And get the basic information. And then we usually
2 advise them of their rights.

3 Q Okay. And what might we commonly hear those rights
4 referred to as?

5 A A Miranda warning.

6 Q Okay. Again, you have given Miranda warnings
7 before, I presume?

8 A Yes.

9 Q Does your department typically use any sort of a
10 form sheet or documentation of Miranda warnings?

11 A Yes, we have got a standard form that has the
12 advisement of rights on it.

13 (WHEREUPON, State's Exhibit Number 38, advisement of
14 rights, marked for ID.)

15 Q Okay. I am handing you what has been marked for ID
16 only as State's 38. Do you recognize that exhibit?

17 A Yes, sir. This is the standard form that we use at
18 the North Charleston Police Department for their advise
19 of constitutional rights.

20 Q Okay. Does that exhibit contain any sort of
21 signature or initialing by the defendant Derrick Porter?

22 A Yes, it has the defendant's initials next to each
23 right after it read to him and his signature in two
24 separate places. One that he understands his right. And
25 the second portion is a waiver of his rights and he

1 wished to answer questions.

2 Q Okay. And if we could, just for no other reason
3 than just a basic civics' lesson, can we review what
4 those rights are and what you explained to Derrick Porter
5 his rights were in this case?

6 A Sure. The first thing I did was I filled out the
7 top portion of the form which is just basic
8 identification about who I am talking to do.

9 And it says, I, Derrick Porter, have been advised by
10 Jerry Jellico of the North Charleston Police Department
11 that. And the first right I had Mr. Porter read out
12 loud to me. But it says, I have the absolute right to
13 remain silent and do not have to answer any questions or
14 give a statement and this fact cannot be used against me.

15 After that he -- I would ask him if he understood.
16 He said, yes. And he placed his initials later on after
17 he was finished on all of these lines.

18 If I do answer questions or give a statement,
19 anything I say can and will be used against me in a court
20 of law. That is the second right.

21 The third right is I have the right to consult with
22 the lawyer of my choice before I answer questions and
23 give a statement and also have them present while I am
24 being questioned. The next right is if I wish to talk
25 to a lawyer or him present or her present but I am unable

1 to hire a lawyer one will be appointed to represent me
2 free of charge.

3 The last right is if I decide to answer questions or
4 give a statement without having a lawyer present
5 representing me I have the absolute right during this
6 interview to stop answering questions and to remain
7 silent.

8 Q Did Mr. Porter in the interview and questioning
9 indicate that he understand those rights?

10 A Yes, he did.

11 Q Did he initial each right indicating that?

12 A Yes, he did. And then he placed his signature under
13 a statement that says I fully understand each of these
14 rights which has been explained to me.

15 Q Okay. Thousands of suspect interviews ---

16 A Yes, sir.

17 Q --- during your career, correct? Is it fair to say
18 that interviews sometimes take on different sort of
19 tones?

20 A Yes.

21 Q They can? Can be aggressive. You have got serious
22 stakes in your job. Can it be aggressive sometimes?

23 A Yes, it can.

24 Q Can it be confrontational at times?

25 A Yes, it can.

1 Q And, you know, can it involve some pretty direct - I
2 don't want to say in your face - but some pretty direct
3 questions?

4 A Yes.

5 Q Difficult questions?

6 A Yes.

7 Q Was -- did this interview contain any of that?

8 A No.

9 Q Okay. What was the general tone -- how would you
10 describe how this interview went down?

11 A Well, basically I have to advise him a right and
12 waive him his rights. I basically said you tell me your
13 side of the story of what happened out there at the
14 scene.

15 Q Okay. So at any point in time previous to Miranda
16 warnings, during, after, or at any time, did you ever
17 scream at the defendant?

18 A No.

19 Q Did you ever threaten the defendant?

20 A Never.

21 Q Did you ever promise the defendant benefits if he
22 were to cooperate?

23 A No.

24 Q Did the defendant appear to you to understand all of
25 the questions you were asking?

1 A Yes, he did.

2 Q Did he appear to understand the English language?

3 A Yes, he did.

4 Q Did he communicate with you in a manner that led you
5 to believe that he understood what was happening?

6 A Yes, he did.

7 Q Did the defendant show any signs whatsoever in this
8 interview of intoxication, being under the influence of
9 alcohol or drugs?

10 A No, sir.

11 Q Have you had occasion in your career to come in
12 contact with people under the influence of alcohol or
13 narcotics?

14 A Numerous times.

15 Q Okay. At any times in this case?

16 A No, sir.

17 Q Any indication of -- that you viewed visually or
18 that was given to you verbally that the defendant was in
19 any sort of pain when he gave this?

20 A No, sir. He was fine.

21 Q Okay. Any sort of threats, again, made to the
22 defendant to get him to cooperate?

23 A No, sir.

24 Q Okay.

25 MR. SIMPSON: Your Honor, at a point convenient to

1 the court I would like to raise a matter of law. I can
2 do that now or later.

3 THE COURT: All right, ladies and gentlemen -- do
4 you mean on the record?

5 MR. SIMPSON: Yes, Your Honor.

6 THE COURT: Ladies and gentlemen, there is a matter
7 I have to place on the record. So you have seen us have
8 bench conferences. But occasionally we have to have you
9 excused so we can hear the matter.

10 I am going to ask you to go to your jury room. Do
11 not begin your deliberations.

12 And it is perfectly proper that this is being done
13 this way. Thank you.

14 (WHEREUPON, jury exits courtroom 4/11/18, 3:33 p.m.)

15 THE COURT: Yes, sir.

16 MR. SIMPSON: Thank you, Your Honor. I appreciate
17 the court's indulgence and apologize for the interruption
18 at this time.

19 THE COURT: That's okay.

20 MR. SIMPSON: Mr. Smalldone previous to trial
21 indicated he did not find any issues with the
22 voluntariness of the statement. We appreciate that. And
23 as a fellow lawyer and member of the Bar nor do I.
24 Nevertheless, you know, when admitting a statement I
25 think it is always a good idea ---

1 THE COURT: Well, that is fine.

2 MR. SIMPSON: --- to preserve this issue for the
3 record. We think we have met our burden in the previous
4 testimony showing that the statement was freely and
5 voluntarily given.

6 THE COURT: I agree with you. And that is fine.
7 But in fact -- you are not challenging the statement
8 because -- well, I judged from your opening statement
9 that you are kind of relying on some things there
10 possibly. May or may not be.

11 But the first case I had I had the charge -- I had
12 the typical charge about statement, there is no
13 challenge.

14 As I read the law, you are correct. And I
15 appreciate you doing that. But it is not required to
16 have a Jackson v. Denno hearing.

17 So but there is no challenge to the State?

18 MR. SMALLDONE: There is -- there is no challenge to
19 the voluntariness or Miranda portions ---

20 THE COURT: All of the necessary factors are in
21 present. But even if they aren't, you are not raising an
22 issue and you are not asking to suppress it or prevent it
23 from being introduced?

24 MR. SMALLDONE: Correct. I think they are, and I am
25 also not ---

1 THE COURT: Excuse me?

2 MR. SMALLDONE: They -- all of the factors are
3 present.

4 THE COURT: Okay. That is fine.

5 MR. SIMPSON: And, again, I hope you don't think it
6 a waste of time or ---

7 THE COURT: I don't think it is a waste of time. I
8 think it is just being ---

9 MR. SIMPSON: --- to put that on the record.

10 THE COURT: I would rather be safe than sorry.

11 MR. SIMPSON: Likewise.

12 THE COURT: But for the record this is your
13 opportunity to challenge him. And we are going to
14 publish it and publish it with the consent of the
15 defendant?

16 MR. SMALLDONE: That is correct. Although for
17 expediency sake ---

18 MR. SIMPSON: Oh, yes.

19 MR. SMALLDONE: --- the second issue ---

20 MR. SIMPSON: Sure.

21 MR. SMALLDONE: --- that we briefly discussed
22 earlier it is my position that I would ask the State to
23 introduce the -- state the relevant -- not relevant. Let
24 me backtrack.

25 I would introduce -- ask them to introduce the

1 entirety of the statement except for a few seconds that
2 needs to be redacted because of 404(b) issues as well as
3 portions where my client is just sitting there and the
4 detective has walked out.

5 I ask this pursuant to Rule 106, the document of
6 completeness.

7 THE COURT: I understand Rule 106. Okay.

8 MR. SMALLDONE: And that it is my position that I am
9 not admitting it; I am asking the State to admit their
10 evidence in a manner that presents it fairly to the
11 defendant.

12 THE COURT: Okay.

13 MR. SIMPSON: But the State's position is that it is
14 as the party carrying the burden our role, privilege, and
15 burden to present a case in whatever manner we see fit.

16 I understand the rule of completeness, and I have no
17 objection to that. I believe that is a rule that allows
18 the defense to when they so choose, counter the State's
19 presentation with a more complete version of that
20 picture.

21 Even though I do have, arguably, some hearsay
22 objection - I know we have done that before and made the
23 argument as a prosecutor that we could put in whatever we
24 want, if he wants to counter he can take the stand, I am
25 not doing that. I am waiving any sort of objection to

1 that.

2 I agree that if Mr. Smalldone wants this in under
3 the rule of completion that I would not object to that.
4 But I do think that that constitutes entering
5 evidence ---

6 THE COURT: Well, let me just ask -- inquire as to
7 this. From the standpoint of the completeness are we
8 interrupting some statement that he has given in the
9 midpoint or contextually is necessary to -- for a jury to
10 consider the context of the statement? That is my
11 concern.

12 106 I think is a rule that require it to be done at
13 the time. And that has been my typical -- if it is for
14 completeness for a jury's comprehension.

15 I don't disagree with you that if there are parts
16 where he comes in and start talking -- voluntarily saying
17 things that you didn't -- that you are not -- you don't
18 find it is necessary -- it may be good for him, but it is
19 not necessary for yours, then that may be a different --
20 that may be something that 106 would say to you, you --
21 at your point you say I would like to have these portions
22 published. So it is kind of like a deposition I think,
23 from my way of thinking.

24 So I can't rule -- it is hard for me ---

25 MR. SIMPSON: Sure.

1 THE COURT: --- to rule that on a 106 at the time
2 you publish it. I don't ---

3 MR. SIMPSON: Well, to answer your question and it
4 is more a style than anything. I like to just get right
5 to the -- to the -- I mean I might -- what I was going to
6 seek to admit was maybe 20 seconds ---

7 THE COURT: That is fine.

8 MR. SIMPSON: --- of the interview portions. So are
9 some of those pulled out of the complete picture? Of
10 course.

11 THE COURT: Well, but for instance -- let me -- give
12 you an example. I shot him ---

13 MR. SIMPSON: That is the kind of think I am putting
14 in.

15 THE COURT: --- but it was -- it was -- I was in
16 fear of my life. If you are going to publish I shot him
17 and not publish but it was in fear of my life, then I
18 would agree with Mr. Smallldone.

19 MR. SIMPSON: Well, and to answer that I would say I
20 never cut off a sentence to take something out of
21 context.

22 THE COURT: Well, it may be the next sentence.

23 MR. SIMPSON: But I do not include -- he includes,
24 yeah, how many times -- the question is on one of the
25 clips, how many times did you shoot him. I shot once.

1 THE COURT: Okay.

2 MR. SIMPSON: What kind of gun did you use? A nine
3 millimeter.

4 And then the conversation continues. And I am not
5 going to hide with this. I am going to illicit this. I
6 shot because he was going for a gun.

7 THE COURT: All right, and you ---

8 MR. SIMPSON: That -- so I do remove that part. I
9 am not going to -- I am going to illicit that testimony,
10 but I do remove that part from my clips. So I just have
11 maybe 20 seconds of clips I was going to show. So ---

12 THE COURT: Well, if -- you are going to have --
13 you are going to have this witness testify to what he is
14 going to say?

15 MR. SIMPSON: Oh, yeah, I am going to try to present
16 as full of a picture ---

17 THE COURT: Then I -- then I would say it needs to
18 be published consistently with what he is saying.
19 Because that is the purpose of showing it to verify and
20 corroborate everything that he is saying.

21 MR. SIMPSON: Well, considering, Your Honor, that it
22 was just little clips I was going to show, I may just not
23 show anything.

24 THE COURT: That is fine.

25 MR. SIMPSON: But I have no objection to Mr.

1 Smalldone showing whatever ---

2 THE COURT: Oh, I understand that. That's -- you
3 can ask him anything you want, because there is not any
4 challenge to the statement.

5 MR. SIMPSON: Okay.

6 MR. SMALLDONE: And then I -- I would then
7 probably ---

8 THE COURT: Let me just throw this out. We had a
9 statement published -- the last one. I think it would
10 have been probably a little bit stronger had the person
11 taken the stand. He didn't have to. And I would say
12 that. And I have said that in this case.

13 But self-defense is a different ballgame. I mean it
14 is -- you know, especially when you have got a picture of
15 it.

16 But you do what you want from a strategy standpoint.
17 You will just have to balance that when you get to it.
18 That's fine. All right. Thank you.

19 MR. SIMPSON: I am not -- I would not seek to admit
20 any ---

21 THE COURT: You don't have to -- you certainly don't
22 have any obligation to have this witness testify to
23 negative things. I mean that is ---

24 MR. SIMPSON: Right.

25 THE COURT: That -- according to some trial strategy

1 you want to deal with your problems before they do on
2 cross-examination. But this is not a problem I don't
3 think from what I would envision.

4 MR. SIMPSON: Okay.

5 THE COURT: So that would be up -- that would be up
6 to Mr. Smalldone. So you don't play the statement to
7 support or corroborate his, then the statement is there
8 available for anybody to play.

9 MR. SIMPSON: Thank you, Your Honor.

10 THE COURT: Thank you. All right. Thank you. So
11 we have identified -- we have identified the disk?

12 MR. SIMPSON: I can do that.

13 THE COURT: Yeah, let's get it so that it is there.

14 MR. SIMPSON: I will lay the foundation for it.

15 THE COURT: Lay the foundation for it so if Mr.
16 Smalldone wants to have it played then he can introduce
17 it.

18 MR. SIMPSON: Yes. I don't mind doing that at all.

19 THE COURT: All right. Thank you. Okay. Thank
20 you for -- no, and I appreciate -- you didn't -- you
21 didn't -- neither one of you did anything wrong.

22 That is precisely what -- I was sitting here
23 thinking I know I didn't hear the Jackson v. Denno, so
24 I -- okay.

25 MR. SMALLDONE: And my concern now is AV, audio

1 video issues. I would ---

2 THE COURT: Well, they will play it.

3 MR. SMALLDONE: Do you have -- okay.

4 MR. SIMPSON: Yeah. We are fine.

5 THE COURT: Oh, they will play it.

6 MR. SIMPSON: I just don't know where you want --
7 you have got to stop it where you want to stop.

8 MR. SMALLDONE: Stop when I -- and I will -- and
9 just from my end I will add I am redacting one portion
10 and the only part I am omitting is parts where the
11 detective walks out and my client is sitting there.

12 THE COURT: Well, that is fine. Well, of course --
13 whatever he rejects -- unless there is -- unless there is
14 an evidence issue you can publish on redirect then
15 because it will be his exhibit.

16 MR. SIMPSON: Right.

17 THE COURT: Yeah.

18 MR. SIMPSON: I don't think it will.

19 MR. SMALLDONE: I think -- it is a 404(b) evidence.

20 THE COURT: That's fine. I understand. No problem.

21 MR. SMALLDONE: Okay.

22 THE COURT: I am not going to make you do it. That
23 is for sure.

24 Okay, let's bring in the jury.

25 (WHEREUPON, jury enters 4/11/18, 3:42 p.m.)

1 THE COURT: Thank you very much, ladies and
2
3 gentlemen.

4 You may continue your examination.

5 MR. SIMPSON: Thank you, Your Honor.

6 Q Detective Jellico, again, to take you back to I
7 believe May 9th of 2016. You conducted an interview with
8 the defendant Derrick .Porter?

9 A Yes.

10 Q After the Miranda rights that we have privileged
11 discussed did he agree to speak with you?

12 A Yes, he did.

13 Q Again, did you at any time have to -- were you
14 aggressive with him at any time during the course of this
15 interview?

16 A Our interview was more like two people just talking.

17 Q Okay. And the entirety of this interview was
18 recorded on audio ---

19 A Audio and visual.

20 Q I am handing you what has been marked as State's
21 Exhibit 18 for ID only. Do you recognize that exhibit?

22 A Yes. This is my initials on this. It is the
23 interview.

24 Q Okay. And does that exhibit contain the entirety of
25 your interview with the defendant Derrick Porter?

1 A It contains my interview, yes, sir.

2 Q Okay. Getting to the substance of that interview
3 would you -- did Derrick Porter acknowledge -- did you
4 share with Derrick Porter that you had watched the video
5 in this case?

6 A Yes.

7 Q Did he through the back and forth contacts
8 acknowledge that that was him on the video?

9 A Yes. Well, he never denied that, being at the scene
10 or anything.

11 Q Okay. Did he indicate that he had shot a person ---

12 A Yes, he did.

13 Q --- on April the 16th? Did he indicate what type of
14 weapon he used to shoot the person?

15 A A nine. A nine millimeter.

16 Q Okay. Did he indicate to you during the course of
17 that interview how many times he shot?

18 A Yes, he did. He said he fired one time.

19 Q Okay. After making those admissions did he offer to
20 you some excuse or justification for that firing?

21 A Yes, he did.

22 Q And what was that?

23 A He said that the victim in this case had a gun and
24 he had saw a gun on the victim on his side.

25 Q Okay. And did he indicate -- was it his position

1 that he had fired at this victim in some kind of
2 self-defense?

3 A Yes, he did.

4 Q But he acknowledged that -- as we watched this video
5 that that was in fact him on the video?

6 A Yes.

7 Q And that, again, he acknowledged that he shot the
8 person?

9 A Yes, he did.

10 Q And this was captured on ---

11 A The video ---

12 Q This interview was videotaped?

13 A Yes, sir.

14 MR. SIMPSON: Court's indulgence.

15 THE COURT: Certainly.

16 Q Now do you recall if he said he just saw the gun or
17 that a gun was pulled on him?

18 A He just saw a gun.

19 Q Okay.

20 A Saw the handle of the gun.

21 MR. SIMPSON: Nothing further, Your Honor.

22 THE COURT: All right. Cross-examine.

23 **CROSS-EXAMINATION BY MR. SMALLDONE OF DETECTIVE JERRY**
24 **JELLICO:**

25 Q Good afternoon.

1 A Yeah.

2 Q You conducted this interview of Mr. Porter?

3 A Yes, I did.

4 Q And this was about -- this was May in 2016?

5 A That is correct.

6 Q All right. So you -- Mr. Porter turned himself in,

7 correct?

8 A Yes.

9 Q And you were not a responding officer; is that

10 right?

11 A That's correct.

12 Q How did you get this case?

13 A I didn't.

14 Q Okay. Well, you talked to Mr. Porter?

15 A That is correct.

16 Q Were you just on duty and you wanted to talk to

17 somebody?

18 A What happens is, like I said, after a major incident

19 we all have a brief and we know about it.

20 Q Okay.

21 A And then when this incident when he was picked up or

22 turned himself in I was available. And I do a lot of the

23 interviews. So they said, you are up again. And I went

24 and watched the video. Kind of made myself basic. And

25 he was brought up. Put him in a room and talked to him.

1 Q Well, you had been briefed a little bit about the
2 facts of the case and the background of the case; is that
3 correct?

4 A Yes. Yes.

5 Q All right. And you knew that -- you know, again, we
6 are not on trial for this; but you knew there was a
7 little bit of a history between Derrick and the
8 complaining witness, correct?

9 A Yes. And he actually told me about it too.

10 Q Okay. And you knew that beforehand though, right?

11 A I can't say I knew that beforehand.

12 Q All right. You were familiar with who Rush was?

13 A No.

14 Q All right. Would it refresh your memory to watch a
15 video?

16 A Yes, I would have to watch the video.

17 Q Okay. You haven't watched the video ever?

18 A Yes, I have watched it.

19 Q Oh, okay.

20 A I also watched it just recently.

21 Q Oh, okay. All right.

22 A Yes.

23 Q When was the last time you watched it?

24 A About two hours ago.

25 Q Oh, goodness. All right. And let me check --

CROSS-EXAMINATION BY MR. SMALLDONE OF DETECTIVE JERRY 189
JELICO

1 MR. SMALLDONE: Court's indulgence.

2 THE COURT: Certainly.

3 Q Okay. And just to make sure we are good, this is --
4 is this the video ((pointing))?

5 A That is it.

6 Q All right. Are those your initials on it?

7 A That is it.

8 Q Okay. And you were present?

9 A Yes.

10 Q All right. You watched this about two hours ago?

11 A I watched a video of the interview at the office.

12 Q Okay.

13 A Not that particular disk.

14 Q Just ---

15 A Right.

16 Q But you know what this disk contains?

17 A Yes.

18 Q All right.

19 A It is the interview.

20 Q And I think we already laid the foundation. But
21 just to be sure.

22 And at this time the defense -- the defense would
23 move what has been previously marked State's Exhibit 18,
24 but I suppose we will change that ---

25 THE COURT: You don't have to. It is State's

1 Exhibit 18. It is introduced by -- any objection to them
2 introducing it?

3 MR. SIMPSON: No.

4 THE COURT: Very well. State's Exhibit 18 is
5 admitted.

6 MR. SMALLDONE: All right.

7 (WHEREUPON, State's Exhibit Number 18 was originally
8 admitted into evidence by the Defendant; however, for
9 clarity of the record since it was a defense exhibit was
10 subsequently labeled Defendant's Exhibit Number 1.)

11 MR. SMALLDONE: All right. And just bear with me
12 one second. I used to think I was good at computers
13 until I tried to do a website. Now, you know, I

14 (WHEREUPON, pause for video setup.)

15 (WHEREUPON, begin publication of video, courtroom date of
16 4/11/18 at 3:49 p.m.)

17 (WHEREUPON, resume questioning while video is playing.)

18 Q And just to kill some dead air; this is the
19 interview room, correct?

20 A Yes.

21 Q All right. And this is the interview room that you
22 talked to Mr. Porter in?

23 A Yes.

24 Q All right.

25 (WHEREUPON, pause in questioning while video continues to

CROSS-EXAMINATION BY MR. SMALLDONE OF DETECTIVE JERRY JELICO

1 play.)

2 (WHEREUPON, resume questioning while video continues to

3 play.)

4 Q And that is you, correct, coming in ---

5 A Yes, I walked in there.

6 Q And that is Mr. Porter?

7 A I can't ...?

8 Q And that is Mr. Porter?

9 A Yes, that is Mr. Porter.

10 (WHEREUPON, continue publication of State's Exhibit

11 Number 18.)

12 THE COURT: Can you turn it down just a little bit.

13 Just a tab. It is echoing.

14 (WHEREUPON, Mr. Smalldone complied.)

15 (WHEREUPON, continue to play video.)

16 (WHEREUPON, pause video.)

17 Q All right. Just to break up the monotony a bit.

18 You were there and you heard on this video and at the

19 time that he was -- you heard my client say that Mr. Byas

20 was reaching for a gun?

21 A Yes.

22 Q Okay. And you said that he -- it looked -- it

23 looked like a nine?

24 A Yes. Yes.

25 Q All right. He said -- I think he said he saw the

1 handle ---

2 A Yes.

3 Q -- or something of that nature? All right. And he
4 said he was trying to pretend like he was playing with a
5 cell phone or something like that?

6 A Right.

7 Q All right. And you also heard a little bit about
8 the back story; Mr. Porter believes that he was somehow
9 or another involved in his cousin's death, right?

10 A That is correct.

11 Q Okay. And let me just check my times. All right.
12 And just to confirm; he said he shot once, right?

13 A Yes, Mr. Porter said he shot once.

14 Q Right. And you are aware that he lives pretty close
15 by the scene?

16 A Yes.

17 Q All right. And it is everyone's understanding that
18 he was not targeting Mr. Byas that day, he didn't go
19 there with the intent ---

20 MR. SIMPSON: Objection, Judge. Speculative.

21 THE COURT: I will -- rephrase your question.
22 Because you said everyone understands.

23 MR. SMALLDONE: Okay. I would rephrase.

24 Q Is it your understanding -- is it your belief that
25 he went there to try to find Mr. Byas; did you learn that

1 in the course of your investigation?

2 A No, I did not.

3 Q All right. And in the course of your investigation
4 you learned that he got -- I believe he got there first,
5 right?

6 A Yes.

7 Q Okay. All right. Let me just check my times.
8 Court's indulgence.

9 THE COURT: Certainly.

10 (WHEREUPON, resume publication of video.)

11 (WHEREUPON, pause publication of video.)

12 Q All right. So just to clear up a few things. I
13 know the audio wasn't great on that. But you heard what
14 you said, right?

15 A Some of it.

16 Q Yeah. And you heard some of what my client said
17 both now and at the time of the interview, right?

18 A I don't know what your question is. I heard some
19 stuff, but ---

20 Q You were there at the interview, right?

21 A Yes.

22 Q And you heard the audio from this?

23 A Yes.

24 Q Is it fair to say the audio in Charleston isn't H --
25 THX quality?

1 A This is before we put the acoustic tiles in, yes.

2 Q Okay. All right. But you heard him say that he
3 thought that the other guy was grabbing for a gun, right?

4 A Right.

5 Q You heard him say -- we already talked about there
6 was a back story there; you heard that, right?

7 A Right. Which I already knew from prior it was
8 inconsistent.

9 Q Okay. You heard it thought, right?

10 A Yes. But I knew it wasn't consistent with the video
11 which I reviewed.

12 Q Right. Right. The video that you said was grainy,
13 right?

14 A Right. But it is clear when you watch. It points
15 into it.

16 Q All right.

17 A Moments before the shooting -- seconds before the
18 shooting ---

19 Q Hold on ---

20 A But I mean you want to know the truth. He put his
21 hand on the steering wheel ---

22 Q Motion to strike an unresponsive, Your Honor.

23 THE COURT: No, sir, he is responding to your
24 question.

25 MR. SMALLDONE: Okay.

CROSS-EXAMINATION BY MR. SMALLDONE OF DETECTIVE JERRY JELICO 195

1 THE COURT: You asked him ---

2 MR. SMALLDONE: Okay.

3 THE COURT: --- about the video whether it was
4 grainy.

5 MR. SMALLDONE: Okay.

6 THE COURT: He is explaining what -- what you could
7 see.

8 Q Okay. You said the video was grainy, right?

9 A If you would zoom in, try to zoom in. But what
10 I saw and you are looking at, seconds before the
11 shooting -- I knew the victim was right-handed. That is
12 one of the things I was looking in the file. He puts his
13 hand -- the victim puts his hand on the steering wheel,
14 which you clearly see he can't be grabbing a gun. And
15 then he is shot.

16 Q Right. And but you don't know -- you weren't there,
17 though, right?

18 A No, I am watching a video. It kind of puts me there
19 in a way.

20 Q And you can't hear the audio though, can you?

21 A No, you can't -- the audio is choppy.

22 Q And you heard in the interview, both then and now,
23 that my client was talking about the other guy
24 threatening to kill him?

25 A Yes.

1 Q All right. And you couldn't hear that on the video,
2 slash, ---

3 A You can't ---

4 Q --- audio; correct?

5 A I can't testify to anything on that other video.

6 Q All right.

7 A I can't make heads or tail of it.

8 Q Okay. And you -- to your knowledge my client never
9 saw that video before, right?

10 A To my -- no, I don't believe he -- no.

11 Q Did you show him the video?

12 A No, I did not show it to him; no.

13 Q Okay. To your knowledge did anyone in law
14 enforcement or anyone show him that video?

15 A Are you talking about the store video?

16 Q The store video, yeah.

17 A No.

18 Q To your knowledge did he see either video?

19 A I couldn't hear you.

20 Q I'm sorry. To your knowledge did Derrick see either
21 video?

22 A No. No. He wouldn't have seen the videos. We
23 wouldn't have shown it to him.

24 Q Right. And to your knowledge they weren't published
25 in the media or anything of that nature?

CROSS-EXAMINATION BY MR. SMALLDONE OF DETECTIVE JERRY JELICO 197

1 A No.

2 Q All right. Okay.

3 MR. SMALLDONE: Court's indulgence.

4 THE COURT: Okay.

5 Q All right. And just to clear up things. And you

6 are aware that a gun was found at the scene, right?

7 A I was told a gun was found there jammed between his

8 pants, and the seatbelt was covering it and everything at

9 the time.

10 Q A gun?

11 A On the -- yes, on the victim.

12 Q Right. A firearm?

13 A Yes.

14 Q Okay. And Mr. Porter said that a gun was found --

15 or Mr. Porter said that a gun was there, didn't he?

16 A Yes, he did.

17 Q All right.

18 A Which he could have got from other information

19 though.

20 Q All right. But he said that at the interview,

21 right?

22 A Yes.

23 Q Okay. And that is what was there, wasn't it? And

24 that is what was ---

25 A There was a gun at the scene, yes.

1 Q Okay. And you confirmed through both your knowledge
2 and general law enforcement knowledge that that wasn't
3 the gun that he used, right?

4 A I never got that information back.

5 Q Okay. All right. I don't have any further
6 questions for you at this time.

7 THE COURT: Redirect.

8 MR. SIMPSON: Yes, Your Honor. Thank you.

9 THE COURT: Sure.

10 **REDIRECT EXAMINATION BY MR. SIMPSON OF DETECTIVE JERRY**
11 **JELICO:**

12 Q Detective Jellico, I want to take a few moments and
13 I want to just talk sort of about interviews and
14 interview styles in general. We referenced earlier
15 instances in your career where you have gotten aggressive
16 with somebody.

17 A Yes.

18 Q That is not always the best tactic is it?

19 A No.

20 Q Is being nice also often a great way to get somebody
21 to open up and talk to you?

22 A Being nice, being dumb like you don't really know
23 anything. And you can let the defendant talk. And if
24 they are talking why get aggressive when it probably will
25 shut them down.

1 Q And so do you try to establish a rapport with
2 someone?

3 A Yes.

4 Q Do you try to make them feel comfortable?

5 A Yes. There are a lot of times I will minimize the
6 actual event so it doesn't seem as serious as it really
7 is.

8 Q Which leads me to my next question. Is making them
9 feel like maybe there is an explanation to something that
10 might get them out of it, is that ---

11 (WHEREUPON, Mr. Smalldone standing.)

12 THE COURT: Hold on a second. What is the
13 objection?

14 MR. SMALLDONE: I will object, Your Honor. This
15 is -- this is actually redirect, so I would say it is
16 beyond the scope.

17 THE COURT: No, it is not beyond the scope. I
18 overrule that.

19 MR. SMALLDONE: Okay.

20 THE COURT: Thank you.

21 Q Is -- you sort of hinted to that. I want you to
22 expand on that a little bit. Is making somebody feel
23 like there might be a justification is that an interview
24 tactic that you use?

25 A Yes, if somebody is in an interview and I am

1 speaking to them and they are speaking to me freely, I
2 will bounce around -- like I knew about the seconds
3 before the shot the victim's hand is on the steering
4 wheel and I knew he was right-handed and so I knew he
5 couldn't be reaching for anything ---

6 Q But you didn't share that with him in the interview?

7 A No.

8 Q Okay.

9 A I did not share it because I want to gauge his
10 truthfulness to tell me what he was doing.

11 Q Okay. And part of having a person open up is it --
12 well, let me ask you. Is it to make them feel like you
13 are on their side?

14 A Yes.

15 Q And is that just how you are trained -- a tactic
16 that you use in interviews?

17 A It works a lot better than telling them you are
18 going to prison if you tell me everything.

19 Q Okay. Yes, it is more successful, right?

20 We heard some phrases that you used in that
21 interview. And I want you to tell the jury -- I mean are
22 you saying that is an interview tactic when you say like,
23 oh, I know everything you have told me was the truth?

24 A That is correct. I am just -- that is a tactic.

25 Q Okay.

REDIRECT EXAMINATION BY MR. SIMPSON OF DETECTIVE JERRY 201
JELICO

1 A I knew ---

2 Q To make the person more comfortable?

3 A Yes. I knew he was being deceptive, but he was
4 still talking.

5 Q Okay.

6 A And I knew what the video said, so I knew that would
7 be based -- it would be compared against his statement.

8 Q Okay. The other evidence, the evidence that we
9 present in this courtroom and watch on that video?

10 A That is correct.

11 Q Okay. Now he did tell you some things; is that
12 correct?

13 A Yes.

14 Q Right off the bat, you know, what was the problem
15 with you guys -- how long ago did that -- did he tell
16 you -- the first time he is asked, how long ago did this
17 arise that he ---

18 A 2011 he said that there was some kind of what I call
19 a beef.

20 Q Okay. Mentioned something that happened to his
21 cousin?

22 A That is correct.

23 Q Now was it alleged that it was something that
24 happened to his cousin at the hands of Derrick Porter or
25 at the hands of ---

1 A It wasn't Derrick Porter; it was a relative.

2 Q I mean Fitzgerald Byas.

3 A Right.

4 Q Excuse me.

5 A It was a family member of him. Because he later on
6 says in the video that he didn't have any knowledge that
7 the alleged victim in this case was even involved in that
8 incident.

9 Q Okay. So we are talking about this happening,
10 according to Derrick Porter, because of something that
11 happened to Derrick Porter's cousin in 2011 from a
12 relative of Fitzgerald Byas?

13 A That is correct.

14 Q Okay. And that is from the mouth of Derrick Porter?

15 A Yes, it is.

16 Q Once he gets comfortable does he acknowledge that is
17 him on the video?

18 A Yes.

19 Q Does he acknowledge that that is him shooting
20 Fitzgerald Byas?

21 A Yes, he never denies any of that.

22 Q Okay. I want to ask you a question. He says he saw
23 a gun in that car, correct?

24 A That is correct.

25 Q And he tells you -- does he tell you what caliber he

REDIRECT EXAMINATION BY MR. SIMPSON OF DETECTIVE JERRY 203
JELICO

1 thought that gun was?

2 A Yes, he did.

3 Q Does he also tell you what brand he thought that gun
4 was?

5 A Yes, which was highly -- yes, he did.

6 Q Okay. And he correctly identifies the brand of the
7 gun?

8 A That is correct.

9 Q Okay. Is it -- oh, do most nine millimeters look
10 sort of simulator -- similar ---

11 A Yes.

12 Q --- even brand to brand?

13 A I can't tell them apart.

14 Q Okay. How long have you had experience in firearms
15 being in law enforcement?

16 A Thirty years.

17 Q Okay. And you are saying in 30 years of experience
18 is nine millimeter a caliber firearm you come into a lot
19 of contact with?

20 A That is correct. Oh, yes.

21 Q And you say you can't -- like if I was holding a
22 nine millimeter back here you can't tell ---

23 A If I just see the butt, like he was saying, it's --
24 there is no way.

25 Q Okay.

1 A I can't tell from the handle.

2 Q Okay. But he correctly identified the brand of that
3 nine millimeter?

4 A Yes, as a Hi-Point.

5 Q Okay. As a Hi-Point?

6 A Yes, sir.

7 Q Okay. Detective Jellico, no further questions from
8 the State.

9 THE COURT: Re-cross, Mr. Smalldone.

10 MR. SMALLDONE: Briefly on re-cross.

11 **RECROSS-EXAMINATION BY MR. SMALLDONE OF DETECTIVE JERRY**

12 **JELICO:**

13 Q Are you familiar with firearms? You ---

14 A Yes. Yes.

15 Q --- are familiar with firearms, right?

16 A Yes.

17 Q You have shot them?

18 A Several times.

19 Q Fair to say in law enforcement firearms are a pretty
20 big part of that community?

21 A Do you mean in North Charleston?

22 Q I'm sorry, in the law enforcement community -- I
23 will back that up. In all law enforcement most offices
24 carry guns?

25 A Yes, we all carry guns.

REDIRECT EXAMINATION BY MR. SIMPSON OF DETECTIVE JERRY 205
JELICO

1 Q Fair to say a lot of -- a lot of cops like guns and
2 they are into guns in their personal lives as a hobby?

3 A Some are, and some aren't.

4 Q Right.

5 A I am not.

6 Q You are not. Okay. Fair to say that you have seen
7 different brands of guns?

8 A Oh, yes.

9 Q All right. Fair to say that Glocks are a big
10 popular brand, right?

11 A Among law enforcement, yes.

12 Q Among law enforcement. And amongst the general
13 community a Glock is pretty popular, right?

14 A Yes. Oh, yeah, yeah.

15 Q To your knowledge?

16 A Yes.

17 Q Because you are out that and you see stuff. Fair to
18 say though that Hi-Point is a little bit different, isn't
19 it?

20 A Oh, yes; a cheap gun.

21 Q It is a cheap gun. Is it fair to say that it looks
22 different too, doesn't it?

23 A Not -- well, if you put them side by side and you
24 can see the whole weapon. But if you are just looking at
25 the handle of it, no, I can't tell the difference.

1 Q Is it fair to say that a Hi-Point at any -- from any
2 view looks a lot blockier than a Glock, doesn't it?

3 A That could be your prospective, yes.

4 Q Is that a yes or a no?

5 A Not really, no. Not to me. I can't tell the
6 difference in them. I mean it just looks like a handle
7 of a gun that I know probably is from a semi-automatic.

8 Q Okay. I am talking about the whole gun. Let's not
9 talk about specific parts. The whole -- the whole gun, a
10 Hi-Point looks different than probably every other brand;
11 does it not?

12 A Yes, but in this particular incidence he was
13 describing he could see that brand from just seeing the
14 handle of it. Which I knew that is next to impossible.

15 Q I am just talking about the gun. A Hi-Point looks
16 different than a Glock?

17 A Yes.

18 Q All right. No further questions.

19 THE COURT: All right, sir. You may come down.

20 Thank you, sir.

21 Do you wish the witness to be excused?

22 MR. SIMPSON: Yes. Yes, Your Honor.

23 THE COURT: Any objection?

24 MR. SMALLDONE: No objection.

25 THE COURT: You are also free to leave, sir. Thank

1 you.

2 Next witness.

3 MR. SIMPSON: Thank you, Your Honor. I would like
4 to call Tommy Walters as investigator for the Ninth
5 Circuit.

6 THE COURT: Okay.

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: Please have a seat and state your full
9 name spelling your last name.

10 THE WITNESS: Thomas Walters. W-A-L-T-E-R-S.

11 MR. SIMPSON: Your Honor, may I proceed?

12 THE COURT: You may.

13 **DIRECT EXAMINATION BY MR. SIMPSON OF INVESTIGATOR THOMAS**
14 **WALTERS:**

15 Q Investigator Walters, good afternoon.

16 A Good afternoon.

17 Q And where do you work?

18 A I am an investigator for the Ninth Circuit
19 Solicitor's Office.

20 Q Okay. So you work in the same office as Daniel and
21 I?

22 A Yes, sir.

23 Q Okay. How long have you been with that office?

24 A Since 2000.

25 Q And explain a little bit to the jury what an

1 investigator for the Solicitor's Office does.

2 A I work as a liaison between law enforcement and the
3 Solicitor's Office maintaining the relationship. We --
4 our office picks up cases post-arrest and goes until the
5 disposition of a case.

6 During that time when we receive a file I will be --
7 it is my job to keep up with that file and make sure it
8 says complete and make sure we have everything for
9 disposition.

10 Like a drug case might include a chain of custody, a
11 drug report, a lab report. In more violent crimes I will
12 follow it to make sure that we have incident reports,
13 supplemental reports from detective's crime scene, SLED
14 reports of any testing that would that would be done to
15 make sure that we have fingerprints or we have DNA.
16 Whatever needs to be done and make sure the file is
17 complete. Body-worn video, surveillance video,
18 interviews. I keep that until we -- maintain those
19 records.

20 Q It is a lot of different roles; is that fair to say?

21 A It is a lot of roles. That is the main -- the main
22 thing.

23 Q Generally speaking managing, monitoring, being
24 familiar with the evidence as it develops from being a
25 file in our office up to trial?

1 A Yes, sir.

2 Q Okay. Might that sometimes include monitoring of
3 press accounts covering trials that are pending in our
4 office?

5 A Yes, sir.

6 Q Being familiar with that?

7 A Yes, sir.

8 Q Being familiar with that as it relates to what we
9 would call public -- publicly available information that
10 might color a witness's statement?

11 A Yes, sir.

12 MR. SIMPSON: Your Honor, may I approach the
13 witness?

14 THE COURT: You may.

15 Q Investigator Walters, I am handing you what has been
16 marked for ID only as State's 35.

17 A Yes, sir.

18 Q Do you recognize that exhibit?

19 A Yes, sir.

20 MR. SIMPSON: Your Honor, at this point I am going
21 to seek to question the witness pursuant to Rule 902-6.
22 Which we can approach if ---

23 THE COURT: What is ---

24 MR. SMALLDONE: I also will approach on that.

25 THE COURT: Sir?

1 (WHEREUPON, bench conference was had, 4/11/18, 4:38 p.m.)

2 THE COURT: You may proceed.

3 MR. SIMPSON: Thank you, Your Honor.

4 Q Investigator Walters, you had mentioned that before
5 you broke of the many duties that you might have one
6 might be familiarizing yourself with press accounts?

7 A Yes, sir.

8 Q Involving cases that we have pending in our office.
9 And what again have you identified that has been marked
10 for ID only as State's 35?

11 A It is an article from the Post and Courier dated
12 April 17th, 2016.

13 Q Okay. And are you familiar with the incident date
14 of this incident?

15 A This incident was April 16th, 2016.

16 Q And I am going to ask you at this time to read
17 the -- so this article was published the day after this
18 incident?

19 A Yes, sir.

20 Q And I am going to ask you if you would to read the
21 headline of that article for the jury. And wait one ---

22 MR. SMALLDONE: Yes, at this time I would enter my
23 objection to relevance and foundation.

24 THE COURT: Okay. Relevance is an article -- it was
25 published in a newspaper. Which you have acknowledge at

1 the bench and the sidebar that it is -- it is what it
2 purports to be, a printed -- a copy or a printed article
3 from the Post and Courier; is that what is the publishing
4 agency?

5 MR. SIMPSON: Correct, Your Honor.

6 MR. SIMPSON: And under Rule 902-6 it is self --
7 self-authenticating. You do not argue that it is not the
8 article that he purports it to be. So your objection is
9 overruled for that reason. Okay.

10 MR. SIMPSON: Thank you, Your Honor.

11 Q Investigator Walters, if you could share for the
12 jury what the headline of that article is from the Post
13 and Courier the day after this incident?

14 A North Charleston Police Shooting Victim Had Gun,
15 Cash, in Car.

16 Q So in the big headline it reports that the victim
17 had a -- was in possession of a gun?

18 A Yes, sir.

19 Q And anywhere in the body of that article does it
20 identify the gun, the caliber, and/or brand of the gun
21 that the victim is found in the car?

22 A In the article it states a black Hi-Point nine
23 millimeter handgun

24 Q Okay. Does the article also contain the defendant
25 Derrick Porter's name anywhere?

1 A Yes, sir.

2 MR. SMALLDONE: Court's indulgence.

3 THE COURT: Yes.

4 Q Again, the date of that publication of that article?

5 A April 17th, 2016.

6 Q Thank you, Investigator Walters. Please answer any
7 questions Mr. Smalldone may have.

8 THE COURT: You may cross-examination.

9 **CROSS-EXAMINATION BY MR. SMALLDONE OF INVESTIGATOR THOMAS**
10 **WALTERS:**

11 Q Good afternoon.

12 A Good afternoon.

13 Q You are an investigator for the Solicitor's Office?

14 A Yes, sir.

15 Q All right. And throughout your investigation did
16 you -- do you know whether Derrick subscribes to the Post
17 and Courier?

18 A No, sir.

19 Q All right. Did you check the records to see who
20 subscribes?

21 A No, sir.

22 Q All right. Did you ask Derrick if he subscribes to
23 the Post and Courier?

24 MR. SIMPSON: Objection, Your Honor.

25 A No, sir.

1 THE COURT: Sustained. That would be an improper
2 question because the person wouldn't -- you understand
3 that.

4 The jury disregard that question.

5 Q Do you have any information -- do you have any
6 knowledge of whether or not Derrick reads any newspaper?

7 A No, sir.

8 Q All right. And you have no knowledge that he reads
9 the Post and Courier?

10 A No, sir.

11 Q You have no knowledge that he knows anyone that
12 reads the Post and Courier?

13 A No, sir.

14 Q You have no knowledge of if the Post and Courier has
15 delivered to his neighborhood ---

16 THE COURT: Mr. Smallldone, you have covered that.
17 So you don't need to ask anymore. He doesn't have any
18 knowledge of what he -- what he -- what who knows what
19 about it so.

20 MR. SMALLDONE: Okay.

21 Q So just -- just to be clear, your testimony is that
22 this article was published?

23 A Yes, sir.

24 Q Okay.

25 A Post -- Post and Courier April 17th, 2016.

1 Q On that day, correct?

2 A Yes, sir.

3 Q Okay. Thank you.

4 THE COURT: Thank you. Redirect.

5 MR. SIMPSON: Just briefly.

6 **REDIRECT EXAMINATION BY MR. SIMPSON OF INVESTIGATOR**

7 **THOMAS WALTERS:**

8 Q Do you have knowledge that the Post and Courier is
9 available in more than paper format; is it also available
10 on the internet?

11 A Yes, sir.

12 THE COURT: Re-cross?

13 MR. SIMPSON: No re-cross.

14 THE COURT: Thank you. You may come down. All
15 right. Any additional witnesses from the State?

16 MR. SIMPSON: Your Honor, we have one additional
17 witness that we have got scheduled for tomorrow.

18 THE COURT: Okay. That is fine.

19 MR. SIMPSON: If that is suitable to you.

20 THE COURT: That is perfectly fine. This is a good
21 stopping point for the jury. I appreciate it.

22 (WHEREUPON, court reporter retrieves exhibit.)

23 THE COURT: Let me explain something, ladies and
24 gentlemen, too that -- because I have had this question
25 come up over the years. I have told you the exhibits

1 will accompany you to your jury room. And you heard
2 that one was marked as Plaintiff Exhibit for identifi- --
3 or excuse me, State's exhibit for identification only.

4 If it is for identification only you will consider
5 the testimony regarding that exhibit, but if it is not
6 introduced it does not accompany you to your jury room.

7 So don't think, oh, well, there was something about
8 an article, where is it. It is right there on that
9 table. It is where it has to be unless and until it is
10 introduced into evidence.

11 Perfectly normal. Nothing unusual about that.
12 You -- testimony. You just don't have an opportunity to
13 physically review the exhibit. So please understand
14 that.

15 We are going to take our recess. And you are
16 certainly not at a point where you can begin your
17 deliberations or change that status that you maintain
18 when we started, that is that open mind that we talked
19 about. Please do everything in your power to maintain
20 that tonight.

21 I am going to ask that you be back in your jury
22 room --

23 (WHEREUPON, the court confers with law clerk for
24 scheduling.)

25 How about 9:45? There is a matter not related to

1 this that I have to take up tomorrow. And we should be
2 finished by 9:45, I am comfortable.

3 And so be back in your jury room, please, by 9:45.
4 Do not discuss this case with anyone or among yourselves.
5 And especially tonight. Mr. Wain has already heard, when
6 you go home tonight I am sure if there is somebody there
7 they are going to ask you a question, what are you doing.
8 And you will -- the temptation is there to talk about it.

9 If you start talking about it you will have
10 commenced your deliberations. You will finish this case
11 probably by tomorrow, and then if you want to talk about
12 it you will be free to. Talk about something else.

13 I don't think there will be any news coverage of
14 this. But if there is, if it should come on television,
15 turn it off or walk out.

16 Because that is -- again, not that it would misstate
17 anything. I am not suggesting that. It is just you are
18 going to make -- your commitment is to decide this case
19 based on what occurs in this courtroom. And that is the
20 key. And what you are considering is what is presented
21 into evidence and what is admitted. So that is the
22 rationale for that. So don't -- if there are any
23 newspaper accounts don't read any of that either tomorrow
24 morning before you come.

25 Have a good evening and a restful evening. And I

1 thank you for your patience today. Thank you.

2 (WHEREUPON, jury exits 4/11/18, 4:45 p.m.)

3 THE COURT: All right. Anything from the State
4 before we recess?

5 MR. SIMPSON: No, Your Honor.

6 THE COURT: Anything from the defendant before we
7 recess?

8 MR. SMALLDONE: Nothing from the defense, Your
9 Honor.

10 THE COURT: All right.

11 (WHEREUPON, recess for the evening, 4/11/18, 4:49 p.m.)

12 (WHEREUPON, resume trial 4/12/18, 9:57 a.m.)

13 THE COURT: Is the State ready to proceed?

14 MR. COOPER: Yes, Your Honor.

15 THE COURT: Is the defense ready to proceed?

16 MR. SMALLDONE: Yes, Your Honor.

17 THE COURT: All right. Let the record reflect Mr.
18 Porter is present.

19 After we adjourned last night I had further
20 conversation with my court reporter. And she is my
21 expert in this department and she suggested something and
22 I think she is correct so the record will be clear if
23 this matter has to be reviewed. We are going to mark
24 State's -- I think it is 18 ---

25 THE COURT REPORTER: Eighteen.

1 THE COURT: We are going to mark State's 18 and have
2 a dual marking. Because that way for purposes of a
3 review it won't conflict with the for identification
4 only. It was the testimony was State's Exhibit 18 we
5 will just make the record clear that when you introduced
6 it it became Defendant Exhibit 1. It is just -- and then
7 it will have -- it will keep both markings for the review
8 court.

9 So I think that is a better approach to it from the
10 standpoint of just going forward. So we will make that
11 change. But other than we will proceed, okay.

12 And I understand -- but it is clearly your desire to
13 put it in, and that is why we need to put that in there
14 so that it is clearly -- that is clearly confirmed by the
15 record as well.

16 (WHEREUPON, Defendant's Exhibit Number 1, CD - Interview,
17 was marked for identification and admitted into
18 evidence.)

19 Okay. Are you are ready to call your next witness?

20 MR. COOPER: Yes, Your Honor.

21 THE COURT: All right. Let's bring in our jury,
22 please.

23 (WHEREUPON, jury enters 4/12/18, 10:00 a.m.)

24 (WHEREUPON, the witness was duly sworn.)

25 THE CLERK: Please have a seat. State your name and

1 spell your last name, please.

2 THE WITNESS: Alejandro Spiotta. S-P-I-O-T-T-A.

3 THE COURT: You may proceed.

4 MR. COOPER: Thank you.

5 **DIRECT EXAMINATION BY MR. COOPER OF DR. ALEJANDO SPIOTTA:**

6 Q Good morning, Dr. Spiotta.

7 A Good morning.

8 Q Would you please tell the jury where you are
9 currently employed.

10 A At the Medical University of South Carolina.

11 Q And what position do you hold at the Medical
12 University?

13 A I am a professor of neurosurgery and a professor of
14 neuroendovascular surgery.

15 Q Can you please explain for the jury what your
16 position entails.

17 A So it is the highest ranking academic position. It
18 entails not just doing the clinical aspects of taking
19 care of patients but also doing research and also
20 teaching the next generation of physicians on all aspects
21 of neurosurgery.

22 Q Can you please elaborate for the jury on your
23 educational and professional background.

24 A Sure. So I obtained my bachelor's degree from the
25 University of Pennsylvania in 2001. My medical degree

1 also from the University of Pennsylvania in 2005. Then I
2 did my neurosurgery training with the Cleveland Clinic
3 between 2005 and 2012. And then I did a two-year
4 neuroendovascular fellowship, the first year in Cleveland
5 and my second year here at the Medical University of
6 South Carolina.

7 Q Can you please explain what license or
8 certifications that you also hold.

9 A So I am board certified in neurosurgery by the
10 American Board of Neurological Surgery. And I have
11 licensure here in the State of South Carolina.

12 Q And if you can just ballpark for us about how
13 many -- approximately how many surgeries do you think you
14 have performed or have been involved with?

15 A Roughly between three and six hundred every year for
16 about fifteen or sixteen years.

17 Q And have you ever testified before?

18 A I have.

19 Q Approximately how many times have you testified?

20 A Once that I can recall about a few years ago.

21 Q And were you qualified as expert?

22 A Yes, I was.

23 Q In what areas?

24 A Neurosurgery and traumatic brain injury.

25 MR. COOPER: Your Honor, at this time the State

1 would offer Dr. Spiotta as an expert in both general
2 trauma surgery and neurosurgery.

3 THE COURT: And how about traumatic brain injuries
4 as well? Just -- just those two areas?

5 MR. COOPER: I think that encompasses that.

6 THE COURT: Okay.

7 MR. COOPER: Yes, sir.

8 THE COURT: Very well. That is fine.

9 Do you care to examine him as to his qualifications?

10 MR. SMALLDONE: I do not. I will not object to his
11 admission as an expert.

12 THE COURT: He will be permitted to render opinions
13 in those areas. Thank you.

14 MR. COOPER: Thank you, Your Honor.

15 Q Dr. Spiotta, can you please explain for the jury
16 just briefly what is all involved when a patient arrives
17 at the ER.

18 A So it depends on the status of patient. But, for
19 example, for the case we are going to discuss today with
20 a gunshot wound to the head, that is something that the
21 trauma team would have been notified before arrival. So
22 it is not something they want to be surprised about.

23 And with that information they would have had
24 information on quickly about how the patient is doing as
25 far as the status of are they breathing on their own, is

1 their blood pressure stable or not, how much have they
2 bled. And the trauma team would take that first call and
3 prepare, you know, accordingly.

4 And then in a case like this with a gunshot wound to
5 the head they would have notified my team even before
6 arrival. So we would have been expecting a patient like
7 this. And we probably would have a team member of mine
8 actually waiting in the ER to greet the patient as they
9 came in along with the trauma team.

10 Q And at what point do you get involved when a patient
11 much like this one comes into the ER?

12 A Something like this, I would be involved
13 immediately. So we have a team. You know, I am one of
14 the neurosurgeons and teach the physicians that are
15 trained to be neurosurgeons. So we have a team of about
16 10 to 12 residents at any given time that are training in
17 neurosurgery. And they are kind of out and about like
18 our soldiers in the field.

19 So a mid level, a third or fourth year physician in
20 training to be a neurosurgeon, would have been in the ER
21 to greet that patient and would have done the first
22 assessment with the trauma team. I would have been aware
23 that they are here, and I would have been immediately
24 available, you know, just down the hall by phone.

25 A patient like that with a gunshot wound would have

1 been, like I said, alerted to the fact that they were
2 coming. Would have been meeting them in the ER. And the
3 trauma team would have done their assessment which
4 involves, you know, their breathing, are they going to --
5 are they going to die within minutes, is there another
6 injury, obviously the head injury, and we will look at it
7 as the obvious kind of injury.

8 But they have to look at is there any chest wounds,
9 any abdominal wounds, anything else that we are maybe
10 missing so we don't lose sight about what we are dealing
11 with the head injury. So that would have been done
12 within the first several minutes of arrival. Blood labs,
13 etc., x-rays, whatever would be required to stabilize the
14 patient.

15 And then we would have been ready and our team would
16 have been assessing the neurological exam of the patient
17 and getting a CAT scan ready to get pictures.

18 I would have been alerted by phone, and basically as
19 the CAT scan is being done I would basically be able to
20 pull them up as they are being imaged. And then at that
21 instant we make a decision whether to do surgery or not.

22 But that would depend on not just what the CAT scan
23 shows but also the status of the patient.

24 Q So to focus your attention to the case at hand, did
25 you have the opportunity in April of 2016 to treat a

1 Fritzgerald Byas?

2 A I did.

3 Q Can you explain to the jury what his condition was
4 when he arrived at MUSC that day.

5 A So his condition was critical to grave. He arrived
6 with a gunshot wound in the right forehead. It was
7 evident it was bleeding from the forehead.

8 My team members noted in the emergency department
9 that there was actually what appeared to be some oozing
10 brain matter out of the wound. Which is obviously a very
11 poor -- poor sign and poor prognosis.

12 So we already obtained a CAT scan after we did a
13 neurological exam to determine if we should do surgery or
14 not. And that is based on again the status when he came
15 in.

16 We look at things, for example, the pupil response,
17 if his pupils are equal. So he didn't have a herniation
18 syndrome. And that is one positive sign.

19 But he was -- you know, had a breathing tube in
20 place to help him support his breathing. He was
21 essentially in a coma when he arrived. His left side was
22 not moving at all. His right side to painful
23 stimulation, so we pinch people to see what those arms
24 do. The most -- the most reassuring signs we pinch
25 somebody and they open their eyes and yell and grab your

1 hand. He was not doing any of that. He was not opening
2 eyes, and his arms were just doing some reflexive
3 posturing. So he is essentially in a pretty more than
4 comma.

5 With that information we went to CAT scan. Like I
6 mentioned, I was looking at the CAT scan as it was being
7 obtained. And given his young age I determined to go for
8 surgery to give him a chance for survival.

9 Q So I want to ask you about that. So you mentioned
10 that based on his young age that you decided to go to
11 surgery. What would have happened in a situation like
12 this with injuries if the person was older?

13 A So if the patient had been 65, 75, certainly 80,
14 with an injury pattern that he had, it would not have
15 been advisable to perform a surgery.

16 Q And why would that be?

17 A Because the chance of a good outcome especially in
18 that age group, frankly, any age group with the injury
19 that he had, was very small. We know that patients that
20 are younger rebound better. They rehab better. Their
21 brain responds better. So given a young age we gave him
22 the benefit of the doubt and I proceeded with the
23 surgery.

24 But I will emphasize that when he came in he was on
25 the brink of death. I mean, you know, he arrived. We

1 took him to surgery within 15 minutes of arrival. That
2 is the fastest possible response that we could do.

3 And ---

4 Q Does MUSC assign trauma levels to patients upon
5 their arrival at the ER?

6 A Yes. We are a level-one trauma center. So we have
7 different activation alerts. So this was a Level 1A.
8 There is a level 1A, B, and then 2 and 3. And the 1A is
9 the most immediate response.

10 And that entails when I am looking at the CAT scan I
11 make -- I make the decision to go to surgery. I
12 basically call the OR and say we have a level 1A gunshot
13 to the head. They know what that means. They will set
14 up everything. I don't have to say anything else. And
15 they are -- within minutes they are ready for us.

16 Q So you mentioned that a CT scan was ordered on --
17 for this Mr. Byas. Did you have a chance at that time to
18 review those images?

19 A Yes.

20 Q If I were to show you those images would you
21 recognize them?

22 A Yes.

23 Q Dr. Spiotta, I want to hand you what has been marked
24 for ID purposes only. It is State's Exhibit 31 and 32.

25 Do you recognize those images?

1 A Yes, I do.

2 Q And what are they?

3 A It is a non-contrasted CAT scan of the brain of Mr.
4 Byas on the date of arrival.

5 Q And are they in the same or similar conditions as
6 they were when you viewed them originally?

7 A Yes, they are.

8 MR. COOPER: Your Honor, at this time the State
9 would offer State's 31 and 32 into evidence.

10 THE COURT: Any objection?

11 MR. SMALLDONE: No objection.

12 THE COURT: Without objection State's 31 and 32 are
13 admitted.

14 (WHEREUPON, State's Exhibit Number 31 was admitted into
15 evidence.)

16 (WHEREUPON, State's Exhibit Number 32 was admitted into
17 evidence.)

18 MR. COOPER: And may I publish to the jury?

19 THE COURT: Yes, you may.

20 MR. COOPER: Thank you, Judge.

21 Q Dr. Spiotta, those are going to appear on the screen
22 both in front of you and behind you.

23 A Okay.

24 Q And if you want to mark on the screen to help
25 indicate anything, feel free to do that. You can -- it

1 will show up on the screen.

2 I am showing you State's Exhibit 31. Dr. Spiotta,
3 will you please explain to the jury what we are looking
4 at in this case.

5 A Sure. So you are looking at a non-contrasted head
6 CAT scan. It is an x-ray based modality that we use very
7 frequently. It is very quick and readily accessible.
8 Within minutes we can image the brain. It doesn't have
9 the resolution of an MRI, but for something like this it
10 gives us the immediate information that we need.

11 So that oval shaped is the head cut into cross-
12 section. The patients are laying on their -- the back of
13 their head. So you are looking up, from their feet up.

14 So all that bright things I am going to describe
15 what they are. On your left side is actually the right
16 side of patient because they are laying like this
17 (motioning). You are looking up.

18 And that oval -- the bright white outline, that is
19 the skull. So what shows up very bright on the CAT scan
20 are things like skull, things that are very dense with a
21 CAT scan. Also things like bullet, metal, also shows
22 very bright.

23 The grayer areas are the brain. So if I mark here
24 can you see?

25 (WHEREUPON, witness marks on screen.)

1 A Am I able to erase that?

2 (WHEREUPON, instruction given to witness to operate
3 display.)

4 A Okay. So here is the skull outline. And you can
5 see there is a break over here (pointing). Although the
6 left and the right sides of the brain, the middle is
7 right where this line is drawn here (pointing).

8 Also the left and right sides of the brain have a
9 whole different function. On the CAT scan they should
10 appear equal and symmetric. You can clearly see there is
11 a very gross asymmetry.

12 And things should be balanced so that things on the
13 left side appear to be the same as on the right side.
14 And that is the midpoint that point is marked you can see
15 here the radiologist has marked (pointing). It is about
16 a centimeter shift. So you get the sense things are
17 shifted over from this side to that side (pointing).
18 These little hockey stick.

19 Fluidal spaces that I am circling, those should be
20 space in the middle. And they are pushed over about a
21 centimeter from right to left. And that is from the
22 pressure and the swelling from the right side of the
23 brain pushing over to the left side. So literally there
24 is herniation and there is movement of the brain across
25 the midline.

1 There are some midline structures here (pointing)
2 and here (pointing) which are pretty tough and they
3 should hold things in place. But the pressure is such
4 that it is actually shifting. It is over about a
5 centimeter which is about a third of an inch.

6 Here you can see there are some bone fragments. So
7 you see there is an abnormal contour of the skull. There
8 is jagged bone fragments. You see a lot of these bright
9 things. These all here (pointing) are bullet fragments
10 in this are here (pointing) as well as over here
11 (pointing).

12 So what you see is there was an entry wound which
13 happened right here (pointing).

14 I am just learning how to use this here (drawing).

15 Notice the swelling here in the scalp compared to
16 the other side (pointing). That is all from the swelling
17 and bruising from the entry wound. Which the bullet
18 entered this way (pointing). And the trajectory it took
19 was roughly this one (pointing).

20 You can see all of the fragments of metal artifact
21 that shows white, these streaks. It shows like it is
22 almost like a brilliant sparks flying from them. That is
23 just the artifact from the CAT scan being x-ray modality.

24 So bullet entered here (pointing). Fractured these
25 (pointing). And more bullet fractures as it went it --

1 because of the energy some pieces of bone fractured and
2 raised. And some pieces the bullet fractured. Some of
3 that came over here (pointing).

4 And then as you cross the middle to the other side
5 of the brain these are all fragments of skull as well as
6 bone (pointing).

7 And ultimately here (pointing) where it landed and
8 hit the inside of the skull you can see scattering of the
9 bullet fragments here (pointing).

10 In addition, you can see this is what normal
11 appearing brain should be over here (pointing). Which is
12 sort of a median intensity gray (pointing). Over here in
13 this area (pointing) you can see it is a lot darker.

14 And in this area too (pointing) I think the other
15 CAT scan shows is better, but that degree of darkest,
16 that is swelling and pressure in the brain. And that
17 results in further compression and mass effect and
18 pressure in the brain.

19 Q I want to show you State's Exhibit 32. Is this also
20 a scan of Mr. Byas' head prior to the operation?

21 A That is correct. This a CAT scan prior to surgery.

22 Q Will you explain what we see in this picture.

23 A Sure. So this again is another slice of the same --
24 the patient is laying back. You are looking from the
25 feet up. So on the left side of your screen is the right

1 side of the patient's head. This is a cut. Think of it
2 slicing like Wonder Bread. We are looking at the slices
3 now with laying them on the table to look at them.

4 This is a cut slightly higher up. You can see here
5 this is clearly where the bullet had come in. And,
6 again, that trajectory was this way (pointing). It is
7 about 10 or 15 degrees to the side.

8 Had it been any trajectory the same degree towards
9 the inside I believe the patient would have died on the
10 scene. And you have your bullet fragments here that I am
11 circling. Again, more bullet fragments here (pointing).

12 And we see in this whole area it is very dark. So
13 there is a lot of swelling, and the brain is very much --
14 has a lot of bleeding within it, a lot of contusions, a
15 lot of bruising and swelling. And, again, this is a dire
16 situation.

17 The skull is essentially fixed compartments. When
18 you have swelling and bleeding in the brain and energy
19 transfer, the pressure goes up very dramatically because
20 there is no outlet. The only outlet is at the basis of
21 the skull where the spine comes in. But that is very
22 much a filament.

23 So if you have any small amount of volume it
24 increases the pressure dramatically. And that is direct
25 injury on the brain as well as indirect injury on

1 surrounding parts of the brain. And then globally if the
2 pressure exceeds the arterial pressure your heart
3 literally can't pump blood into the brain and it can
4 reduce the blood flow to the brain and cause a global
5 injury that way.

6 In this case there is a lot of energy, a lot of
7 energy transferred from the bullet. So that the injury
8 would have been not just the trajectory of the bullet
9 itself but also a more broad path where those bullets
10 fragmented and sprayed and fanned out.

11 That would have been immediate energy as the energy
12 was transferred even in surrounding parts of the brain
13 that would have caused further injury. And that would
14 have been propagated to surrounding parts of the brain
15 that would cause bleeding and bruising.

16 And that is a process that we expect to actually
17 worsen. So it would have happened immediately, and then
18 there would have been a pattern of injury that happened
19 at that moment; and then it would have worsened over the
20 next several hours.

21 And this is somebody who is as sick as you can
22 possibly be. Like I mentioned, we took him to surgery
23 immediately. And it is hard to say, but I think another
24 20 minutes to another hour and he probably would not have
25 survived.

1 Q Can you indicate for the jury on your own and where
2 approximately the entry wound would have been for the
3 victim in this case?

4 A The entry wound would have been here (pointing).

5 Q Now where about -- if you would indicate with your
6 hand just so we can get an idea of where would that be
7 and would that have been on the left side or the right
8 side?

9 A Right side.

10 Q Okay. Now you talked about -- you touched on it a
11 little bit in a few of your prior answers, but once you
12 get somebody like this to the operating room what are
13 some of your main concerns with an injury like this?

14 A So the main concern is, you know, just looking at
15 this picture is immediate death. So is the patient even
16 alive at that point.

17 And he did have enough of a neurological exam that
18 it was worth giving him the best chance and doing the
19 surgery. But I worry about bleeding. I worry about
20 further injury to the brain. I worry about, again, that
21 energy transfer that is a really high-impact, the
22 shattering the bone, the bullets flying that cause a lot
23 of energy. And, like I say, when the pressure builds up
24 in the brain it can cause severe injury.

25 So the goals of the surgery in this case, like I

1 mentioned, I offered it for him because he was young. I
2 thought he had although a low chance, a chance of
3 survival. Not zero, but a low chance of survival.

4 The goals of surgery were to address the problems,
5 you know, inherited in this which is the pressure
6 increase in the brain. So to remove parts of the skull.
7 Some of them have already been lifted up. Like imagine
8 like a jiggly puzzle that is on the table and you kind of
9 push it together and the pieces kind of crumple up.

10 And so that the bullet and energy had already done
11 some of that. But removed a larger portion of the bone.
12 And actually that closed compartment, enlarge that
13 compartment and open it so that swelling of the brain
14 from energy transfer from the bleeding and from the
15 bullet can expand outward rather than inward.

16 When it -- when the brain expands and is in an
17 enclosed skull it can't go outward. It compresses on
18 itself. And that is where people die frequently.

19 So the goal of surgery would have been to stop any
20 bleeding. There's evidence of bleeding from all those --
21 bullet -- bullet fragments. The brain has a very rich
22 blood supply. There is a tangle of blood vessels that
23 supply the brain because the brain requires a lot of
24 blood supply function. So we expect a lot of blood loss.
25 So we have to do a control of blood loss. But, again,

1 the goal is to remove part of the skull, allow that
2 pressure to go outward rather than inward.

3 Q Can you discuss for the jury about the operation
4 itself what you were able to accomplish?

5 A And one more thing about the surgery, the goal is to
6 prevent further injury. Surgery like this, you are not
7 being able to undo the damage that was being done
8 initially before they arrived to you. It is to prevent
9 further injury.

10 So surgery like this we went straight to the
11 operating room. Shaved broadly on the right side of the
12 head and made a very large incision. And typically
13 either a big question mark or a big t-incision. But a
14 very large incision.

15 And the goal is to try to make the bone opening as
16 large as we can. Usually about 15 centimeters or so. It
17 is about a third of the size of the whole side of the
18 skull.

19 In this case, like I mentioned, from the bullet
20 energy there were some fragments. The skull already
21 floating on top of the brain. Some of them were jagged
22 and they were going to cut the surface of the brain.
23 There was a lot of bleeding.

24 So from the -- from the immediate incision, which we
25 extended the scalp laceration of the wound to where the

1 bullet had gone, there was a tremendous amount of
2 bleeding from both the scalp and the bone and the
3 covering of the brain, the dura, and the brain itself.

4 So once we opened up, there was a ton of bleeding
5 that we had to deal with. And we removed those bone
6 fragments. And then which was just lifting them off.
7 And then we expanded with the drill much larger bone
8 window again so that the brain could expand out.

9 Even when we did that because of all of the energy
10 and the pressure and that compression of the brain there
11 was a lot -- the brain was mushrooming out quite a bit.
12 So and we can see.

13 And there was a lot of bleeding. So it took a
14 while, quite a while to actually control some of the
15 bleeding. And then part of that brain where the bullet
16 had, first gone in was beyond repair. It was really just
17 swelling and bleeding. So I actually opted to remove a
18 big portion of that part of the brain.

19 So I removed a portion of the brain about the size
20 of an apricot or a nectarine just to be able to allow for
21 more room for the brain swelling in that case. And we
22 also closed the scalp over it.

23 Q So with injuries like this and then with what you
24 had to remove as part of the surgery what is the
25 prognosis for somebody that if they survive that surgery?

1 A So the prognosis is very poor. Like I mentioned,
2 had he been older I think it would have been the right
3 thing to do to not to take him, if he was 65, 75, for
4 example. Because of his age we opted to take him.

5 But involving the right side you can expect a lot of
6 weakness than the left side. Perhaps paralysis, to
7 never -- to never return. Injury of that frontal lobe
8 here in the front and as -- post ops CAT scans will show
9 there was also injury from the bullet fragments and there
10 was some pressure on the other frontal lobe.

11 So injury to both frontal lobes. That is where
12 the -- a lot of the executive function is. So, for
13 example, organizing, preparing and executing a game plan.

14 To hold a job there are five tasks you have to do
15 with organize them and arrange them. We have injury to
16 both of those. You just cannot do that.

17 Language is on the left side. So it is on the
18 uninvolved side. So I would expect that some language
19 functions would be preserved, like understanding and
20 speaking. In simple ways.

21 But, again, with injury to this area here (pointing)
22 a lot of the functions that we take for granted just in
23 our everyday going to the grocery store, picking up kids,
24 going to work, is that executive function of multitasking
25 that that involves.

1 Q And so having conversations, asking and answering
2 questions, that would also be very difficult for somebody
3 with these kinds of injuries?

4 A Yes. Again, the language itself not affected on
5 this side (pointing). But the ability to -- for complex
6 thinking and thinking things through. So simple --
7 simple conversation. Very plain, hello, how are you
8 doing. But anything beyond that would be difficult.

9 Q And you mentioned about the just minute ago the post
10 operation CT scan. Did you take images after the
11 surgery?

12 A We did.

13 Q Did you view those images that day?

14 A Yes, I did.

15 Q If I were to show you those images would you
16 recognize them?

17 A Yes, I would.

18 Q Dr. Spiotta, I want to show you what has been marked
19 for ID purposes only as State's Exhibit 33 and 34. Do
20 you recognize those?

21 A Yes, I do.

22 Q And what are they?

23 A They are post-operative CAT scans of Mr. Byas.

24 Q And are they in the same or similar condition as you
25 viewed those back in 2016?

1 A Yes, they are.

2 MR. COOPER: Your Honor, at this time the State
3 would offer State's Exhibit 33 and 34 into evidence.

4 THE COURT: Any objection?

5 MR. SMALLDONE: No objection.

6 THE COURT: Without objections. Thirty-three and
7 thirty-four.

8 MR. COOPER: And may I publish?

9 THE COURT: You may. They are admitted without
10 objection.

11 MR. COOPER: Thank you, Judge.

12 (WHEREUPON, State's Exhibit 33 was admitted into
13 evidence.)

14 (WHEREUPON, State's Exhibit 34 was admitted into
15 evidence.)

16 Q Dr. Spiotta, I want to show you State's Exhibit 33.
17 Will you describe for the jury what we are looking at in
18 this picture.

19 A So this is a CAT scan similar to what the other one
20 was. This is a post-operative one. But it is still in
21 the same position. The patient is laying on their back.
22 We looking from the feet up. So on the left side of the
23 screen is the right side of the head.

24 And here (pointing), here is the normal contour of
25 the skull. And you see there is a big break here

1 (pointing). So that is what we did in surgery. This
2 part of the skull (pointing) is what I removed.

3 And you can see here -- and I am circling here this
4 area. There is bullet fragments. They are really really
5 bright artifacts with the shinning lights away from that.
6 Some of the bullet fragments.

7 The white patchier areas, for example here and here
8 (pointing), that is actually bleeding and bruising. We
9 notice now with that big decompression of the bone that
10 we did here (pointing). So this is a large piece of bone
11 about this size (motioning) that was removed to go along
12 with the bone fragments that were already broken up by
13 the bullet itself.

14 You can see the bruising along here along the brain
15 (pointing). You can see how it is a lot darker than this
16 side (pointing). And darker here (pointing) than the
17 other side.

18 And now things are in that middle line that we had
19 before there was that pressure. Now things are more in
20 the middle. So that pressure now is being relieved
21 because the brain is able to push outward on the scalp.

22 So here (pointing) although we removed a big portion
23 of the skull you wouldn't be able to tell by looking at
24 the patient because the scalp would be tense with the
25 brain pushing it out.

1 So the outline of the head, a visual appearance,
2 would be normal. And that is because the brain is
3 occupying that space that we removed the skull. And that
4 is what the goal of the operation was.

5 And here you are seeing a lot of bleeding
6 (pointing). Crossing over to the other side of the brain
7 that is bleeding and bruising that is more visible now
8 than in the first CAT scan because now some of the
9 pressure has been relieved.

10 Before it was sort of squished in, and now it -- now
11 it is being able to blossom and manifest. But he has
12 injury not just on the side of the brain where he was
13 shot but also on the other side.

14 Q I am going to show you State's Exhibit 34. Will you
15 also explain that to the jury, please, Doctor.

16 A So that is a -- like another slice. Those slices
17 that we take like slicing of the Wonder Bread. And then
18 we lay that slice open to look at it. That is another --
19 that is sliced slightly lower. With the same brain of
20 the same patient after the -- after the surgery as well.

21 Just for reference, here is that part of the bone
22 was removed (pointing). You can see how it is missing
23 there. And here are those bullet fragments (pointing).
24 So they entered, you know, higher up but in this plane.
25 And hit here (pointing) and shattered and scattered.

1 And you are seeing all of this compared to the brain
2 on this side, that should be gray with some dark areas,
3 slightly darker areas of gray. Here you can see it is
4 much more gray. And that is a little swelling. There's
5 lots of bleeding and bruising. And essentially you
6 have -- and here again injury on the other side of the
7 brain (pointing).

8 So we have achieved the goals of surgery which was
9 stopping the bleeding, expanding the cranial vault to
10 allow the pressure to expand outward rather than inward.

11 But the surgery, again, cannot address the injury
12 that has already occurred at the time of the shooting and
13 the time of the shooting to get the ride to the hospital.
14 And the surgery the goal was to prevent any further
15 injury.

16 Q So in other words you can't revert what has been
17 done but you can stop further damage from being done?

18 A Right, we can try to stop further damage from being
19 done I should say.

20 Q Now with some of the things you mentioned that you
21 were able to do in surgery, taking out parts of the brain
22 and things like that, was the focus quality of life or
23 was the focus just sheer survival?

24 A At that point given his condition and what -- and
25 the appearance of the brain and the CAT scan, as well as

1 the pressure and the bleeding that we encountered,
2 surgery was strictly a survival benefit to see if he
3 could survive that.

4 Q Now after an operation like this, after recovery,
5 what kind of quality of life, if you will, would a
6 patient like this expect -- or what would you expect for
7 them?

8 A Again, it can be very variable from patient to
9 patient. But generally speaking I would have informed
10 the family that, number one, the surgery has been a
11 success but there was no -- there's no assurance that the
12 patient would even survive the night.

13 And we have to watch very closely. If they did
14 survive then I would expect long-term weakness or even
15 paralysis on the left side. And, like I mentioned, the
16 damage to the bilateral both sides of the frontal lobe
17 and things like the executive function. So being able to
18 hold more than just a simple menial job would be very
19 difficult. And also very high chance of needing
20 assistance with being fed, etcetera, not being able to
21 take care of himself. And, again, it can be very
22 variable. And patients can respond very differently.

23 But just the most likely scenario given this and how
24 the course of not just when he arrived but how things
25 looked at surgery, etcetera, that is the picture I would

1 have painted.

2 Q And then is that a prognosis that you would expect
3 to improve after a while, or is that pretty much the
4 condition throughout the rest of their natural life?

5 A Again, patients, every patient they can vary quite a
6 bit. We do hope to see improvement. And generally when
7 you see improvement you see it in the first three to six
8 months. It is unusual for someone to stay plateaued for
9 three years and then have drastic improvement three years
10 later.

11 Usually if you are going to see improvement you see
12 it early on. And that is a good indicator of further
13 improvement.

14 Again, every patient recovers slightly differently.
15 Again, because he was young he had a higher chance than
16 someone who is older. And that just goes to emphasize if
17 they had been 65, 75, I probably would have just told the
18 family that it was a nonsurvivable injury and that doing
19 surgery would not have helped and that it should not have
20 been done.

21 But given his age we gave him the benefit of the
22 doubt and we gave him the best shot we could.

23 Q Did you meet with Mr. Byas after the surgery to
24 evaluate his condition in the months afterwards?

25 A Yes. So he was in the hospital for some time. And

1 then I have seen him in follow-up I believe -- I don't
2 know remember the exact date. I believe it was late
3 summer of 2016 I saw him last.

4 Q And then at that time at least was he still needing
5 the care that you described and suffering from a lot of
6 the difficulties that you described?

7 A He did require care. He actually had improved more
8 than we would have expected. So that the left side of
9 his body was moving stronger than I would have expected.
10 So that was a great surprise for us. He was able to
11 speak very simply. Again, I haven't seen him in almost
12 two years. I can't speak to his condition now. But he
13 did recover and improve more than we had hoped for.
14 Which is great to see, obviously.

15 MR. COOPER: Beg the court's indulgence for just one
16 second

17 THE COURT: Certainly.

18 MR. COOPER: Dr. Spiotta, I appreciate your time. I
19 have no further questions for you. If you would answer
20 anything the defense may have for you. Thank you, sir.

21 THE COURT: You may cross-examine.

22 MR. SMALLDONE: I don't have any questions for this
23 witness, Your Honor.

24 THE COURT: Thank you, very much. Thank you, sir.

25 Do you wish the witness to be excused?

1 MR. COOPER: Yes, sir, we do.

2 THE COURT: Any objection?

3 MR. SMALLDONE: No, sir.

4 THE COURT: You are free to leave, sir. Thank you.
5 Have a good day.

6 THE WITNESS: Thank you.

7 THE COURT: You may call your next witness.

8 MR. SIMPSON: Your Honor, at this time the State
9 rests.

10 THE COURT: Very well.

11 Ladies and gentlemen, there are some matters of law
12 that I need to take up now out of your presence. I am
13 going to ask you to retire to your jury room. Please do
14 not begin your deliberations. We will be with you as
15 quickly as we can. Thank you.

16 (WHEREUPON, jury exits 4/12/18, 10:29 a.m.)

17 THE COURT: All right. Anything from the State at
18 this point?

19 MR. SIMPSON: No, Your Honor.

20 THE COURT: Anything from the defendant at this
21 point; any motions?

22 MR. SMALLDONE: Your Honor, at this point the
23 defense moves for a directed verdict.

24 THE COURT: Okay. Based on I assume that there is
25 only one reasonable inference and that is that he acted

1 in self-defense?

2 MR. SMALLDONE: Your Honor, both that he acted in
3 self-defense as well as the lack of expressed malice for
4 the attempted murder charge.

5 THE COURT: Well, expressed malice there is no
6 question they have to prove a specific intent. And there
7 is a decision. And the court skirted on that. I don't
8 recall that they actually decided and accepted that.

9 They -- they said that clearly the specific intent
10 had to be established to kill. And there is no question
11 about that. But of course when you talk about that you
12 could consider the nature of everything about it to
13 determine the specific intent, obviously. But it has to
14 be intent to kill.

15 I think implied malice, as I read the decision, I
16 don't think they modified that aspect of it. It may be
17 expressed or implied.

18 So clearly the intentional doing of a wrong --
19 wrong -- wrong act or an act likely to cause severe
20 injury or bodily harm to somebody is clearly sufficient
21 to establish for the jury to infer malice from that.

22 There is -- since we didn't hear -- I couldn't hear
23 what was being said. There was obviously an argument. I
24 don't know what was said, so I can't -- I agree with you,
25 I can't say specific.

1 But express malice would be -- could be that he was
2 sitting around waiting on him too. So I mean that could
3 be inferred from that as well.

4 So and again all of those would be inferences. I am
5 not -- I can't pass on that. I am just merely responding
6 in the light most favorable to the State in response to
7 your motion.

8 So clearly I think there is sufficient evidence to
9 support all of the elements of the crime of attempted
10 murder. I further would find that there is specific
11 evidence that shows the reasonable inference to be drawn
12 which would defeat and disprove, which the State is
13 required to do, self-defense; and that is who brought on
14 the harm -- or who brought about the altercation.

15 Clearly we would note that there was an argument.
16 But clearly the victim left. And it was in a matter
17 of -- and we know there is -- they are not on somebody --
18 they are not on -- he is not on his own property, so
19 there is a duty to leave if you can do so safely.

20 There was no threat of anything at that particular
21 point. All he had to do was turn around and walk back to
22 his car. So those two elements are clearly established
23 as to who brought on the altercation and therefore would
24 defeat self-defense. And so for those reasons I would
25 deny your motion.

1 Okay. Now we have been talking about it. Have you
2 had a conversation with your client concerning his desire
3 to testify or not testify?

4 MR. SMALLDONE: I have had several conversations
5 regarding that, Your Honor.

6 THE COURT: And he -- has he indicated to you his
7 intention?

8 MR. SMALLDONE: I have informed him that he is free
9 to make up his mind at any moment. But my understanding
10 is that he does not wish to testify.

11 THE COURT: All right, Mr. Porter, you have had an
12 opportunity -- he can remain seated ---

13 MR. SMALLDONE: Okay.

14 THE COURT: --- if he wants to. Whatever -- if you
15 want to stand, that is fine. But you can remain seated
16 as well.

17 You have talked with your lawyer about your right to
18 testify or not testify, sir?

19 MR. PORTER: Yes, sir.

20 THE COURT: And have you had sufficient time to ask
21 him questions and discuss strategies, discuss your
22 theories about how to proceed in this case?

23 MR. PORTER: Yes.

24 THE COURT: And have you made a decision as to
25 whether you want to testify or not to testify?

1 MR. PORTER: Yes, sir.

2 THE COURT: And what is that?

3 MR. PORTER: Not to testify.

4 THE COURT: Very well. And of course you have heard
5 me tell the jury at the onset that they are not to look
6 to you to prove or disprove anything. You have no
7 obligation to say anything or present any evidence. But
8 it is your right, you understand, to testify if you
9 choose to or present any -- are there any other witnesses
10 that you intend to present?

11 MR. SMALLDONE: No, Your Honor.

12 THE COURT: Okay.

13 It would be your right to present testimony
14 obviously for the jury's consideration. But -- and I
15 will charge the jury again in my charge that they cannot
16 infer anything from your decision not to testify. They
17 can't even discuss it in the jury room.

18 But that having been said, you still have the
19 absolute right to take the stand. Do you understand
20 that, sir?

21 MR. PORTER: Yes.

22 THE COURT: But it is your decision today not to
23 take the stand, correct?

24 MR. PORTER: Yes, sir.

25 THE COURT: Are you under the influence of any

1 medication, any alcohol, any type of drugs?

2 MR. PORTER: I am currently under a medication.

3 THE COURT: What kind of medication?

4 MR. PORTER: Remeron.

5 THE COURT: I'm sorry?

6 MR. PORTER: Remeron.

7 THE COURT: What is that taken -- what do you take
8 that for?

9 MR. PORTER: Stress.

10 THE COURT: It helps you with stress?

11 MR. PORTER: Yes. I had -- I had the little
12 altercation that happened in the jail when I turned
13 myself in with -- with a little bit -- my injuries.

14 THE COURT: Okay.

15 MR. PORTER: Things like that.

16 THE COURT: So you are taking it; a doctor has
17 prescribed that for you?

18 MR. PORTER: Yes, my jail.

19 THE COURT: All right.. And you have taken it as
20 prescribed?

21 MR. PORTER: Yes.

22 THE COURT: You haven't taken any -- you haven't
23 taken less or more than the dosage that you are --
24 supposed to take; is that correct?

25 MR. PORTER: No, I only get like -- like once. Once

1 a day.

2 THE COURT: And you have taken yours today?

3 MR. PORTER: Yes.

4 THE COURT: Does it in any way impair or affect your
5 ability to think or reason other than it probably helps
6 you, I would think and that is why you take it I would
7 assume.

8 MR. PORTER: Yeah.

9 THE COURT: So it really enhances your ability to
10 think and reason?

11 MR. PORTER: Yeah.

12 THE COURT: Okay. And you have had sufficient time
13 to think about it, and this is your decision; correct?

14 MR. PORTER: Yes. That's right.

15 THE COURT: Are you satisfied in the manner in which
16 your attorney has advised you concerning your rights in
17 this matter?

18 MR. PORTER: Yes, sir.

19 THE COURT: Okay. All right. I find that Mr.
20 Porter has had the benefit of competent counsel with whom
21 he has indicated he is totally satisfied. And I find he
22 has made a decision for himself that I find to be freely,
23 voluntarily, knowingly and intelligently made; and he has
24 elected to continue to exercise his right to remain
25 silent.

1 Mr. Porter, you have the right to change that at any
2 time. Until -- I am going to bring this jury back in
3 very shortly. And I am going to turn -- first I am going
4 to tell them -- remind them what I said, that you have no
5 burden to prove anything but you still have the right to
6 present any additional testimony for their consideration.

7 And then I am going to turn to your lawyer and ask
8 whether he wishes to present any additional witnesses for
9 the jury's consideration. And I assume consistent with
10 our discussion he is going to say, no, the defense rests.

11 When that occurs you have lost the right to testify.
12 Do you understand that, sir?

13 MR. PORTER: Yes.

14 THE COURT: If you change your mind before that
15 occurs just let your lawyer know and I will excuse the
16 jury and we will resume this conversations, okay?

17 MR. PORTER: Okay.

18 THE COURT: If I don't hear from you I am going to
19 assume that you stand by your decision, okay?

20 MR. PORTER: Yes

21 THE COURT: Is that fair?

22 MR. PORTER: Yes.

23 THE COURT: Okay. All right. Let's also let's
24 assume that you are resting. And if that goes through I
25 assume you renew your motion for a directed verdict, Mr.

1 Smallldone?

2 MR. SMALLDONE: I do, Your Honor; and I would.

3 THE COURT: And my reasons stated for denial of your
4 direct -- motion for directed verdict at the close of the
5 State's case will continue and will be my continued
6 respond to that..

7 Now just for the sake of the record, does the State
8 have any objection to letting that suffice rather than to
9 excuse the jury again and go back through this process.
10 Or ---

11 MR. SIMPSON: No, Your Honor ---

12 THE COURT: --- is that sufficient?

13 MR. SIMPSON: I think that is sufficient.

14 THE COURT: You stand by that; and just for clarity
15 the record is preserved for purposes of review should
16 that become necessary?

17 MR. SIMPSON: Agreed.

18 THE COURT: All right. Any -- other than charging
19 specific intent which I will charge, any other request to
20 charge?

21 MR. SIMPSON: Yeah, -- yes, Your Honor. And I am
22 sorry, this just occurred to me during the ---

23 THE COURT: No, no problem.

24 MR. SIMPSON: --- colloquy we had earlier. I hope I
25 am not making a mistake here, but I do think that State

1 versus King although it doesn't expressly hold this, the
2 automatic inference of malice by use of a deadly weapon I
3 am going to ask that you not charge that.

4 THE COURT: Oh, I am not going to charge that.

5 MR. SIMPSON: Okay. Thank you, Your Honor.

6 THE COURT: State versus King. But there is also
7 another decision that takes that out. Because whenever
8 self-defense is present you can't use that.

9 MR. SIMPSON: Okay.

10 THE COURT: And so I am not -- I am not -- I am not
11 charging that.

12 MR. SIMPSON: Thank you, Your Honor.

13 THE COURT: You bet. No, I agree totally with you.
14 The State doesn't take -- and it was an interesting --
15 and it was interesting. I think it was a Nevada case
16 that they were referencing that talked about the express
17 malice, which is really an interesting connection. I had
18 never really thought about tie it in with specific
19 intent. And they seemed to say, yeah, we agree with
20 that.

21 But that doesn't -- but they didn't say that that is
22 required. They just simply modified -- as I read it,
23 they modified the Court of Appeals saying that specific
24 intent had to be charged, but otherwise his charge was
25 proper. And I think he charged -- malice may be by

1 expressed or implied.

2 So but those reasons. But the State doesn't take a
3 different position on that I would assume.

4 MR. SIMPSON: No. No, Your Honor.

5 THE COURT: Okay.

6 MR. SIMPSON: Just I didn't know ---

7 THE COURT: No, no. That is fine.

8 MR. SIMPSON: I didn't want that in there
9 because ---

10 THE COURT: I understand. And I am not going to put
11 that in there.

12 Any other charge other than self-defense, Mr.
13 Smalldone, that you want me to have?

14 MR. SMALLDONE: I would ask for self-defense, prior
15 difficulties between the parties. I believe there was
16 some evidence about that in the interview.

17 THE COURT: I don't recall between these parties.
18 There was difficulties with somebody -- family members.
19 But prior difficulties -- I don't -- maybe you can
20 correct me. I don't recall specifically with the victim.

21 MR. SMALLDONE: And, again, Your Honor, as we all
22 know, the audio is a bit difficult.

23 THE COURT: Well, I understand. But that is what I
24 am saying. I don't -- what is the State's position on
25 prior difficulties?

1 MR. SIMPSON: I, like Your Honor, I don't recall any
2 evidence to be presented of prior difficulties. Now,
3 prior difficulties between the victim and some people
4 that he might know, maybe. But nothing specific between
5 the two parties.

6 THE COURT: Not the two parties. I mean I never saw
7 that. In fact, to be honest with you, the first -- the
8 first meeting they grasped hands when he is coming in.

9 So I mean that just -- that is not consistent
10 with -- to me it is not consistent. No question there
11 was an argument. But I don't know that there is any
12 prior difficulty situation.

13 MR. SIMPSON: And I think now that I am thinking of
14 it there is a section of the interview where he says he
15 has run into Byas a couple of times maybe in clubs over
16 the years. But that nothing -- in fact said that there
17 was no problems ---

18 THE COURT: No problem.

19 MR. SIMPSON: --- with him prior.

20 THE COURT: I mean he -- he doesn't -- I mean he had
21 an opportunity obviously to say I was concerned because
22 we had had some prior difficulties and I had -- I was --
23 that is why I thought he might have a gun. But he --
24 none of that came out. So I decline to charge that,
25 okay. Other -- anything else?

1 MR. SMALLDONE: I would ask for ABHAN.

2 THE COURT: I am going to charge -- I am going to
3 charge ABHAN. And am going to charge -- probably charge
4 A&B 1st. Because that is -- although I don't really
5 think it is there. But the statute seems to think it is
6 there as a lesser included to ABHAN. So I will charge
7 that.

8 But I am not going to go below that because -- and
9 that is only because it seems to say -- ABHAN obviously
10 talks about serious injury. And there is no question we
11 have a serious injury. I guess what brings in A&B 1st is
12 if you do something that could cause a serious injury, as
13 I read that.

14 Of course it primarily dealt with -- and we should
15 clarify it. I think that was intended for the CSC
16 conduct that generally is covered by the A&B 1st. But
17 that catchall at the end gives me some concern not to
18 charge it especially when they say it is a lesser
19 included offense.

20 So I will charge that. But I am not going to go
21 below that, okay.

22 MR. SIMPSON: No objection to those lesser included.

23 THE COURT: Thank you very much. I appreciate it.

24 All right. Do you we want to take a few minutes, or
25 are y'all ready to go?

1 (WHEREUPON, break was had 4/12/18, 10:42 a.m.)

2 (WHEREUPON, resumed trial 4/12/18, 10:52 p.m., following
3 the court hearing matters unrelated to this trial.)

4 THE COURT: You know, I have looked at this thing.
5 And there is no distinction if you construe it the way I
6 have in my -- in telling you what I was -- thought was a
7 lesser included offense. I really don't think A & B
8 first is.

9 Because it -- there is a component there -- it seems
10 to me that -- it says if it injures a person and offers,
11 which it means they tried to do that or had the ability,
12 it didn't have to necessarily to carry through, if they
13 threatened with a gun, that could be A&B 1st because --
14 and it injured the person, it bruised them or something
15 else. But there has got to be a distinction between -- I
16 mean there would be no reason to have two separate
17 charges.

18 But I will -- if you want me to charge it, I will
19 charge it. I just don't know you explain the distinction
20 between that.

21 MR. SIMPSON: I was planning on arguing that, that
22 if there is no -- you know, they can only find anything
23 first if there is no injury. And obviously we have
24 injury here so you can't find ---

25 THE COURT: But there is injury.

1 MR. SIMPSON: Correct.

2 THE COURT: I mean so there is no reason to charge
3 that. There is no question there is injury. And it is
4 serious. I mean -- I am not going to charge it. Do you
5 want me to charge A&B 1st?

6 MR. SMALLDONE: I would ask that you charge A&B 1st
7 because I think the injury is a matter for the jury to
8 decide the degree of.

9 THE COURT: Well, but they define serious bodily
10 injury. We know that. And clearly we have -- is there
11 any question in this -- see, the problem I have with that
12 is you charge something as a lesser included if there is
13 some evidence to support it. What evidence is there to
14 support that it was just an injury?

15 MR. SMALLDONE: Well, it obviously was an injury.
16 The degree is I believe up to the jury.

17 THE COURT: I think that is where the judge has got
18 to come in. I'm sorry. But I don't want to create a
19 problem for the State on appeal. I just think that they
20 need to frame that issue. That doesn't make any sense to
21 me.

22 MR. SIMPSON: I agree, Your Honor. And I think, you
23 know, ---

24 THE COURT: And why ---

25 MR. SIMPSON: --- to the degree that they do have

1 that determination on the ABHAN versus a little bit, you
2 know ---

3 THE COURT: No question about it. Because it says
4 serious injury.

5 MR. SIMPSON: Sure. And I think as I read A&B 1st,
6 you know, taking away "A" because "A" doesn't apply here,
7 you go to "B" and that is like had he missed.

8 THE COURT: Exactly. Precisely.

9 MR. SIMPSON: Had he missed, and the guy not been
10 hurt at all ---

11 THE COURT: Then ---

12 MR. SIMPSON: --- A&B 1st ---

13 THE COURT: --- and there is an injury in the sense
14 of being scared, but it is just -- it is just -- to me
15 it is, as I say, it is the offer to do something. And I
16 agree with you.

17 MR. SIMPSON: Correct.

18 THE COURT: No, I am not going to charge it. Thank
19 you. Because it will allow me to explain -- while
20 this -- I need to look at this. The distinction
21 typically was -- well, that is all right. I will put
22 that in my charge. That is no problem.

23 I am going to charge -- I will charge ABHAN and
24 attempted murder. Those are the two. Okay.

25 (WHEREUPON, court confers with law clerk.)

1 THE COURT: Thank you very much.

2 All right. The State is ready?

3 MR. SIMPSON: Yes, Your Honor.

4 MR. SMALLDONE: And, Your Honor, I believe as of
5 about 30 seconds ago my client is now considering
6 possibly testifying. So I don't know if we need to go
7 over any ---

8 THE COURT: All right.

9 MR. SMALLDONE: --- further colloquy with him
10 or

11 THE COURT: I do. Because we are not going to -- at
12 some point we have to make that call.

13 Do you plan to testify?

14 THE JURY PANEL MEMBER: Yeah, I want to just tell
15 y'all a little bit of, you know, what I can remember.

16 THE COURT: Mr. Porter, you are free to tell
17 whatever -- of course whatever the Rules of Evidence
18 permit, obviously, and answer questions from your lawyer.
19 That is fine.

20 But understand something. So that we are clear on
21 this, just as you have observed, there is a format for
22 testimony. When you testify your lawyer will call you
23 and you will testify. He will ask you questions and you
24 will answer those questions. You will have a chance to
25 answer fully those questions.

1 MR. PORTER: Yeah.

2 THE COURT: And when he is finished the solicitor
3 will have a chance to ask you questions. Do you
4 understand that?

5 MR. PORTER: Yes. But I only can go as far as my
6 mind let me remember.

7 THE COURT: Sir, you can answer the question any way
8 you want to. I can't tell you how to answer the
9 question. I just want to tell you that you will be
10 subject to cross-examination.

11 MR. PORTER: And I am just saying like, you know, a
12 lot of things I remember and a lot of things I don't
13 remember and so.

14 THE COURT: Listen, I practiced law for 21 years.
15 You either know the answer or you don't know the answer.
16 And that was clearly what I would tell the clients I
17 represented, when you are testifying don't speculate.
18 The law says you can't -- the rules of evidence say you
19 can't speculate. But if you know the answer you have to
20 give the answer.

21 And of course you take an oath, as everyone has
22 said, to the truth. And that is what you will be doing.

23 So but if you don't know the answer you can't
24 obviously answer it. And that's fine. But if you
25 stand -- if you take the stand the State has the right to

1 cross-examine you. Do you understand that?

2 MR. PORTER: Yes.

3 THE COURT: Okay.

4 MR. PORTER: But my -- I am not going to testify
5 then because my mind is not ---

6 THE COURT: No, sir ---

7 MR. PORTER: --- where it is supposed to be.

8 THE COURT: Well, this is something you have to
9 decide. You have to tell me, look, I have given thought
10 to it, I really don't think it is a good idea.

11 MR. PORTER: Yeah, I don't think it is good idea.

12 THE COURT: So you have chosen now not to testify?

13 MR. PORTER: Yes, because that is why I am really on
14 medication to like help me out on ---

15 THE COURT: Sir, I appreciate all of that. You have
16 just told me your medication helps you, it doesn't hurt
17 you; so ---

18 MR. PORTER: Yeah, I mean just like -- like
19 concentrate more and things like that it will ---

20 THE COURT: Do you understand what you are telling
21 me now? Do you understand what you are telling me now?

22 MR. PORTER: No, because I am just saying the
23 medicine just helps me like concentrate more and things
24 like that. That is what I am saying.

25 THE COURT: I am asking you do you understand what

1 you are telling me now when you say, well, I think I want
2 to testify; and then after you said -- I think I
3 understood to say after thinking about it I don't think
4 it is probably a good idea.

5 MR. PORTER: Yes, I am basically just backing out.
6 Backing out of it.

7 THE COURT: That's fine. You don't have to testify.
8 But you have the right to, okay? If you have second
9 thoughts, again, you can tell your lawyer and I will tell
10 the jury to go out and we will confirm it.

11 But -- but I will tell you what we are going to do.
12 If he -- if he -- if he -- when we bring the jury in if
13 he tells you I think I do want to testify, I will take
14 that as your decision. Okay, Mr. Porter?

15 MR. PORTER: Yes.

16 THE COURT: And if your lawyer says we don't offer
17 any witnesses, then you have decided to stay with not
18 testifying; okay?

19 MR. PORTER: Yes.

20 THE COURT: Do you agree with that?

21 MR. PORTER: Yes.

22 THE COURT: But if you tell him you want to testify
23 and he calls you, you have made your decision; okay?

24 MR. PORTER: Yes.

25 THE COURT: Okay. Thank you.

1 Let's bring in our jury.

2 (WHEREUPON, jury enters courtroom 4/12/18, 11:00 a.m.)

3 THE COURT: Thank you very much, ladies and
4 gentlemen. We are ready to continue that matter.

5 And we reached the point where the State rested.
6 And as you recall, I mentioned to you that again that Mr.
7 Porter absolutely had nothing to prove or disprove. He
8 didn't have to present any evidence for your
9 consideration, but he would have the right to do so when
10 the State has completed its case.

11 So Mr. Smalldone, we are at that point. Does Mr.
12 Porter wish to present any additional testimony for the
13 jury's consideration?

14 MR. SMALLDONE: The defense rests at this time, Your
15 Honor.

16 THE COURT: Very well.

17 Thank you, ladies and gentlemen. That being said,
18 that concludes the evidentiary portion. The motions that
19 we have made have already been made and ruled upon.

20 We are now moving into the final two phases of this
21 process. It now will be -- the lawyers have their second
22 opportunity to speak to you. And unlike the opening
23 statements you have now heard the evidence and the
24 exhibits have been introduced. You have had a chance to
25 review those as well.

1 But it is proper for them to discuss this evidence
2 and suggest reasonable inferences that you may draw from
3 that evidence. And I think you will find those remarks
4 helpful when you do begin this process.

5 So please give them your attention. But please
6 remember the remarks, while extremely helpful, should
7 never be considered evidence by you in any fashion.

8 Following that I will give you instruction on the
9 law and then you will very shortly decide this case.
10 Thank you for your attention. Give your attention now to
11 the State.

12 And you may open fully. And reply, sir. Thank you.

13 MR. SIMPSON: Thank you, Your Honor.

14 THE COURT: You may proceed.

15 **CLOSING BY MR. SIMPSON:**

16 Ladies and gentlemen, good morning. I will begin as
17 I began opening statements by thanking you for your time.
18 I realize, you know, it wasn't a long trial. But we
19 agree with the defense in one thing, for such horrific
20 and tragic results the actual events and facts were quite
21 brief. And you now know that better than anyone. You
22 have lived them. You have seen them and you have heard
23 them.

24 So please don't infer from the brevity of the trial
25 that any sort of a lack of importance. It is a crucially

1 important case, and we appreciate your time and your
2 deliberation. Thank you.

3 I have prepared further presentation first to start
4 with you. Again, having lived these events yourself I am
5 going to talk a little bit first about the law that
6 applies.

7 You are going to hear a charge on the law from the
8 judge. And obviously he is the authority on that. But I
9 get an opportunity to explain a little bit about what
10 I -- some things about the law and the charge you are
11 going to hear that I think are important for you to come
12 to a just and fair verdict in this case.

13 Derrick Porter sits before you today charged, as you
14 have heard, with attempted murder and another charge of
15 possession of a weapon during the commission of a violent
16 crime.

17 Attempted murder is, like we talked about in
18 openings, it is what you think it is. It is an intent to
19 kill, a specific intent to kill another person that
20 doesn't for whatever reason carry forward to the death of
21 that person.

22 I will probably come back to this point. But one of
23 the many questions I want you to ask yourselves in your
24 jury room is why didn't this lead in the death of
25 Fritzgerald Byas.

1 And I think you know now with 100 percent confidence
2 he didn't survive because of any decision Derrick Porter
3 made. He survived due to the heroic efforts of Dr.
4 Spiotta and his team. And you heard about that this
5 morning in some detail.

6 Sort of an element of murder and thus an element of
7 attempted murder is this legal term you are going to hear
8 about called malice. And we also hear that with another
9 term together as malice aforethought.

10 So let's talk a little bit about what that means.
11 It is one of those legal terms that there are hundreds of
12 definitions under the law. You can get confused. But it
13 is a pretty simple concept when you really boil it down.

14 The idea of malice is an idea of ill will, of
15 intention, of doing something on purpose, an intending to
16 harm somebody. And the harm that attempted murder
17 requires is not just that generalized ill will but a
18 specific intent. And that is an intent to kill as an
19 attempted murder.

20 Aforethought - and I think this is an important
21 concept for this case particularly. Pay attention to
22 this part. The whole charge. But this is an important
23 part of the charge.

24 And that is that this idea, this intent to kill
25 another person, sometimes people get confused when they

1 hear aforethought and they confuse that with a lengthy
2 premeditation like a plan that someone has for a day or
3 an hour. And that is not the law. Aforethought just
4 means that that intention, that intent to do harm, exists
5 at the time the harm was done.

6 There is no -- you are going to hear the charge. It
7 does not require that it exists for any certain amount of
8 time, five minutes, an hour, a day, a plan; it is just
9 that a person acts with purpose.

10 So that leads to the question that can be in some
11 cases difficult. I submit to you it is not that
12 difficult in the case at hand, you having heard all the
13 evidence. And that is how do you determine what a person
14 intends to do in their mind. You know, we can't
15 magically look into a person's mind. How do we -- how
16 can we tell what a person intends to do.

17 And that is what they do and how they do it. And
18 you have a pretty interesting scenario here where you got
19 to watch it and listen to it.

20 And I submit to you something that almost sounds
21 silly saying it out loud it is so obvious, but when a
22 person pulls a gun and puts it inches away from another
23 human being's head and pulls the trigger it is not hard
24 to determine what that person is intending to do. There
25 is nothing accidental about those motions. There is

1 nothing unintended about the natural consequences of
2 putting a bullet in another human being's skull.

3 That leads -- you heard about the prognosis from Dr.
4 Spiotta. That leads to in most circumstances one result,
5 and that result being death. So much so that they had to
6 actually spend some time to consider whether even to
7 operate on Mr. Byas that day.

8 The other charge you are going to consider is
9 possession of a weapon during a violent crime. Attempted
10 murder is a violent crime.

11 If you find the defendant guilty of attempted murder
12 I think the evidence proves to you that he obviously
13 possessed a weapon during that violent crime so you
14 should find him also guilty of possessing a weapon during
15 a violent crime.

16 You are going to have consideration of when we talk
17 about intent of what is called a lesser included. That
18 is an option in the jury room if you so choose to find
19 Mr. Porter guilty not as charged of what the State
20 certainly submits he is guilty of, attempted murder, but
21 also assault and battery of a high and aggravated nature.

22 And that -- if you find -- and, again, I not being
23 light about it when I say it. I just find this point to
24 be obvious. If you find that putting a gun to another
25 person's forehead and pulling the trigger is not intended

1 a death, if you find instead that it was just merely
2 intending an injury, you could find him guilty of assault
3 and battery of a high and aggravated nature, which is
4 also a violent crime under our law and would also trigger
5 possession of a weapon during a violent crime.

6 And so now having reviewed a little bit about what
7 these crimes he is charged with mean and what my version
8 convince you of he did, let's talk really about the heart
9 of the case here, and that is that what he did was
10 justified.

11 That is that when you go -- the argument the defense
12 makes, that when you go into that jury room and you live
13 this horrible event - again, and as you heard from the
14 judge all of this evidence will be available for your
15 review again should you need it - do you find the
16 actions, as we sit and watch live, the actions of Derrick
17 Porter that day, to be justified.

18 And in order to justify an event this horrific the
19 law is going to put some requirements on that. You know,
20 it is not just a gut feeling.

21 It is my burden of disproving self-defense. It is
22 not his burden to prove it. I have to disprove it. But
23 as we are going to review now, we have done that in this
24 case.

25 And here is an important concept. There's going to

1 be several elements to self-defense. I have to disprove
2 to you one of them and self-defense doesn't apply.

3 I had a friend give me a great analogy on this
4 point. Think of a chair, right. If I can -- it is held
5 up by several different legs. If I can knock over one
6 leg that chair doesn't stand. And that is how self-
7 defense works. I have to disprove just one element.

8 So what are these elements. First, the defendant
9 must be, Derrick Porter on that day during those events
10 you must watched, must be without fault in bringing on
11 this difficulty. He must be blameless.

12 Second, he must have at the time that he shot
13 Fritzgerald Byas in the head he must have been in
14 imminent danger of death or serious bodily injury. Or if
15 he just believed that he was in imminent danger of death
16 that could apply, but that belief has to be reasonable.
17 And who determines reasonableness? Twelve people that we
18 select from the community.

19 Finally, you have to -- and, again, you have to find
20 all of these. If you don't think one of these applies in
21 this situation self-defense is off of the table.

22 You have to find that the defendant had no other
23 probable way to avoid this danger than to carry himself
24 in the manner that you got to watch him carry himself.
25 No other way.

1 So let's break this down and let's start with the
2 first element of self-defense. Derrick Porter without
3 fault in bringing on the difficulty?

4 When Derrick Porter sees Fitzgerald Byas goes in --
5 go into that store and they pass on the video at the
6 entrance way what does he do? Without fault? He waits
7 armed with a firearm for nearly two minutes.

8 And as we talked about in opening, two minutes
9 doesn't sound like a long time; but count it out live. I
10 don't think I can sit here quietly for two minutes it
11 would seem so long in this courtroom. He is on the
12 phone. He is talking about it. He is waiting.

13 Without fault in bringing on the difficult? They
14 have a brief conversation there in the breezeway. It
15 looks like something is said. And what if Fitzgerald
16 Byas doesn't like it? But what does Fitzgerald Byas do
17 when in this confrontation?

18 Watch him. He doesn't have to think about it. He
19 does what society asks him to do and walks away.

20 And what does Mr. Porter do? Pursues. Pursues him.
21 Without fault in bringing on the difficult? Don't wait
22 for him. Don't pursue him to the car with a gun in your
23 pocket.

24 Byas tries to leave. Who stops him? Who brought on
25 this difficulty? Fitzgerald Byas or Derrick Porter?

1 Without fault?

2 If you were sitting in the jury box right now and
3 you are thinking in your mind having heard the evidence
4 that Derrick Porter was at fault in bringing on this
5 difficult or shared in the fault of bringing on this
6 difficult the defense of self-defense is off the table.

7 Like I said, if that leg of the chair gets knocked
8 over, we are done. We don't have to go any farther;
9 self-defense legally does not apply.

10 But let's continue. Imminent danger. I want to
11 talk about Fritzgerald Byas' hands. And I know I keep
12 walking over here. Because I like to see what you guys
13 see. And do not make a decision, especially on this
14 point, if you are too far away to see. Whatever you need
15 to do to review this evidence, don't hesitate to ask.
16 Send out a note. If you want to rewatch stuff in here
17 you can rewatch it in here. We are going to let you
18 watch -- see all of the evidence.

19 But when you watch it, especially not in a still
20 shot but live, you see Fritzgerald Byas' right hand for
21 most of the conversation. But most importantly right
22 before he is shot in the forehead, on the steering wheel
23 of his car his right hand is on the steering wheel of his
24 car.

25 From another angle, an even better look. His right

1 hand -- his body turned toward the defendant, his right
2 hand on the steering wheel of the car. It is not going
3 for anything. It is not messing with anything. It is
4 not reaching under a seat. It is not reaching to a
5 waistband or a pocket. It is sitting on the steering
6 wheel of the car.

7 Where is his left hand? Holding his Mike's Hard
8 Lemonade. From the body camera of Officer Norwood.
9 Derrick Porter was not in imminent danger when he shot
10 Fritzgerald Byas in the head.

11 Derrick Porter's alleged belief that he was in
12 imminent danger was not reasonable when he had a clear-
13 as-day view of both of the victim's hands. Not reaching.
14 Not moving. One holding a beer and one on the steering
15 wheel of the car. Watch the video if you have got any
16 doubts about where his hands are.

17 If you conclude that the defendant was not in
18 imminent danger at the time he shot Fritzgerald Byas in
19 the head or if you conclude that even if you believe it
20 and said that wasn't reasonable considering what
21 Fitzgerald Byas was doing at the time, our analysis is
22 again, ends here; it is over. We have now kicked over
23 two legs of the chair. I don't have to. I just have to
24 kick over one. But we have now taken care of both.

25 But let's go on. And this is the one that really

1 stands out. No other probable way to avoid this
2 situation? Derrick Porter had no other way than to wait
3 for two minutes? Leave. Leave. That is another way.
4 That is a great way to avoid this. Don't wait for him
5 for two minutes.

6 Second important time. When Fritzgerald leaves that
7 conversation in the breezeway and goes to the car, leave.
8 Just do as he did after the gunshot. Just walk away to
9 your car and leave. That option was there. The entire
10 exchange that option was open to Derrick Porter. He had
11 a very simple probable way of avoiding this difficulty,
12 and it was on the table this entire time.

13 And so if you sit here in this jury box today
14 thinking to yourself, man, Derrick Porter really could
15 have avoided this, again, your analysis is over; self-
16 defense does not apply.

17 And so I submit to you that now we don't have to --
18 we kick over one leg and self-defense is off the table.
19 We kicked over every leg of the chair. Self-defense does
20 not apply to this case. No. No. No. No.

21 But while we are on this point and now that we know
22 a little bit about self-defense as it legally applies I
23 want to offer you up this. We know from the evidence
24 that the gun was hidden. We know from the evidence that
25 gun was wedged tightly in the waistband on the rear of

1 Fritzgerald Byas.

2 But let me offer this to you as just an alternative
3 speculation. Who did have the right to self-defense that
4 day? Who didn't bring on the difficulty? You know, who
5 did have a reason being pursued to his own car that he
6 might be in imminent danger? Who did have no other way
7 to get away from that situation other than knocking
8 someone over with their car door had he just slammed on
9 the gas and backed up?

10 I submit to you that there is one person who had a
11 legal right to self-defense that day. And it was
12 Fritzgerald Byas; not Derrick Porter.

13 So now let's get down to the defendant's story and
14 let's talk about that a little bit. Because you heard --
15 it was difficult to hear, but Detective Jellico I thought
16 was helpful sort of expanding on what Fritzgerald Byas
17 had to say weeks, weeks after the incident, when he
18 turned himself in knowing he was wanted for a serious
19 offense.

20 I don't say this to insult Mr. Porter. But I am a
21 father of two young girls. And I want to submit to you
22 this phenomenon that any parents know about, and that is
23 the story that is a little too good.

24 I have seen it many, many times as a parent, the
25 story that just you know they are trying to explain

1 something away, something that got broken or anything and
2 their details are just a little too good and are so good.
3 to be a little bit fishy. Because I think that is sort
4 of the phenomenon that we are dealing with here.

5 Let me explain to you what I am talking about. The
6 defendant comes in and he says, oh, you know, I had to;
7 he was going for a gun.

8 And then Detective Jellico, oh, what kind of gun did
9 he have. Man, a good answer right there would have been,
10 I don't know, it was just such a tense moment, I just saw
11 it, you know, he was reaching for it.

12 But, no, he says, no, he had a nine millimeter.
13 Well, okay, anybody that knows guns knows nine
14 millimeters can be a recognizable shape of a gun, you
15 know.

16 That is not all he says. What did he say? He said,
17 oh, he had a Hi-Point nine millimeter. Now initially
18 when I stressed that fact some people are like why are
19 you stressing that fact; that sounds like pretty good.

20 No, it is too good of a story. Because what do we
21 know now sitting where you are sitting? We know that the
22 day after this incident the Post and Courier ran a news
23 article about Derrick Porter with Derrick Porter's name
24 in it.

25 Now the defense makes a good point, we never say

1 Derrick Porter reading the Post and Courier. But come
2 on. Imagine your name appears in a major publication.
3 You don't think somebody is going to call you and say,
4 hey, man, you might want to go pick up the paper.

5 And this is -- you know, we are 2018. You don't
6 think somebody texts you that link and says, hey, is this
7 you; look at this.

8 And what did that article say, as you heard from
9 Thomas Walters when he took the stand? That article said
10 not that he had a gun -- well, of course that was the
11 headline, the victim had gun. That article fed Mr.
12 Porter a defense.

13 Because it didn't talk about video. He didn't know
14 there was video. It fed him the defense. It said there
15 was a -- it said the brand name. And when we say Hi-
16 Point -- that came out during the testimony of Detective
17 Jellico. When we say Hi-Point nine millimeter, that is a
18 brand name. That is like you knowing what brand this
19 suit is right now, only we are talking about an even
20 smaller object.

21 He knew about the gun right down to the brand name,
22 the manufacturer of the gun, because it was in the
23 newspaper the next day.

24 Now am I just speculating there? No, I am not
25 speculating. I am doing what you guys are sworn to do.

1 I am taking the type of evidence that you guys are told
2 specifically to consider when you make your decisions in
3 this case. And that is the evidence that you get to see
4 and hear, on the screen, the hands, where his hands were.
5 Not reaching for anything. On the steering wheel there.
6 That is powerful stuff. That is you. That is your
7 perception. And the evidence you here on -- heard from
8 the stand. So let's talked about that real quick.

9 Pierra Martin, employee of the beauty shop, one of
10 the first ones on the scene to the car., you heard from
11 her. She doesn't know Derrick Porter. She doesn't know
12 Fritzgerald Byas. She doesn't work for the police
13 department. She is not a detective. She doesn't work
14 for my office. She doesn't work for the defense office.

15 She is just an employee at a beauty shop. And she
16 is one of the first people to get a look inside of that
17 car. She does not see a gun. She said she is right
18 there. She is looking at the body of the person. Yes,
19 it is emotional. Yes, she is freaked out. You heard it
20 on the 911 call. But the first person with no
21 connection, nobody to hurt, nobody to help, that there is
22 no gun in that car. Couldn't see it.

23 Officer Norwood and the other officers that you see
24 on the video, they are patrol officers. They don't know
25 what has happened. They respond. They are just trying

1 to clear -- clear a scene. You heard that. Secure a
2 scene. You heard that phrase. What does secure a scene
3 mean? It means make sure there is no gun.

4 Officer Norwood and the other officers in there, you
5 heard about that. Their job is to look from a gun. And
6 they do. They look through that whole passenger
7 compartment from both the driver's side and the
8 passenger's side and see no gun.

9 Now of course they don't see a gun. Because the one
10 thing they don't do, because their main job is to
11 preserve life, is they don't move that body. So they
12 don't see the gun.

13 But they sit there. And you can count on the video.
14 They are there I think for four minutes securing the
15 scene, with one job, to find weapons. And they don't see
16 a gun.

17 EMS tech Chief Palawasta he reinforces this point.
18 He says they were actually on the scene but they were
19 held back for about three minutes to give the police an
20 opportunity to find the gun. Which they don't. And the
21 police call him in.

22 And he testifies to you exactly where the gun is.
23 And he stood up and showed you. Under clothing, wedged
24 so far on the rear of the victim that a man of his size
25 and experience could not even -- once taken out of the

1 clothing couldn't even get it out of the waistband. Had
2 to take his other hand to pull it out. And it is
3 chaotic. And it is crazy. But if you have any doubts
4 about his testimony, it is on -- it is on the body cam
5 that we saw. We heard when he finds that gun and alerts
6 the whole rest of the team. Gun. Gun.

7 A gun that we know now when we do what you have to
8 do, weigh the evidence that does apply, the videos and
9 the credible evidence, unbiased evidence we have heard
10 from the stand, when we do that we can -- you can
11 conclude beyond a reasonable doubt that that gun did not
12 play -- the gun on Fritzgerald Byas did not play a role
13 in these actions.

14 And I submit to you that much of the defendant's
15 statement he gave to the police he got from the Post and
16 Courier. But nevertheless in a long conversation there
17 are always some nuggets of truth that seep through.

18 And so what do we hear? We hear bits of what I
19 submit to you is the real story, which is that Derrick
20 Porter saw Fritzgerald Byas and immediately made the
21 connection that is the guy that has got a connection to
22 one of my people getting hurt.

23 And we hear a couple of different iterations of it.
24 But the first one out of his mouth is, back in 2011 - I
25 mean how silly is this - back in 2011 something bad

1 happened to his cousin and he sees a guy that he thinks -
2 and this is his words, not mine - may or may not be
3 responsible, but something happened to his people then
4 something is going to happen back to their people. And
5 it is that cycle of violence that is often so tragic.

6 And so he waits. I want to take -- I wrote -- I
7 jotted down a couple of comments from the defense during
8 their opening. I would image you will hear something
9 similar to this in the closing, things like Derrick
10 Porter tried to be responsible; he did what he had to do;
11 he did the only thing he could have done that day,
12 Derrick Porter did.

13 And so that is the distinction that you have to
14 solve -- that you are asked to solve. Was Derrick Porter
15 that day a man who wanted to confront another person,
16 potentially settle a score; or was Derrick Porter, as the
17 defense have you believe, a man of afraid, a man scared
18 of Fritzgerald Byas who was acting out of fear for his
19 own life? That is the distinction.

20 So walk through it. It is on video. And ask that
21 question every step of the way. Does that look like a
22 good man who is afraid of Fritzgerald Byas? When he
23 waits for nearly two minutes for Fritzgerald Byas to
24 leave a store is that a man who is afraid of Fritzgerald
25 Byas or a man who wants to confront Fitzgerald Byas?

1 You bring your common sense to this. That is why we
2 picked 12 people from the community, common sense.

3 Does a man who waits outside of the store instead of
4 leave want a confrontation, or is he afraid?

5 When Fritzgerald leaves the conversation in the
6 breezeway and tries to leave, is the Derrick Porter who
7 walks up to the car and stands in the driver's -- in the
8 open driver's side door a man who is afraid of
9 Fritzgerald Byas or a man who wants to continue this
10 confrontation with Fritzgerald Byas?

11 When the victim sits there, one hand with a beer
12 can, the other on -- turned towards in the other on the
13 steering wheel, is Derrick Porter reasonably afraid of
14 Fritzgerald Byas, or is he a man who wants to confront
15 Fritzgerald Byas?

16 When you try to resolve that dichotomy it is easy
17 and it is common sense. At every single step of this
18 brief intersection between these two men Derrick Porter
19 is a man who wants the confrontation to initiate, wants
20 the confrontation to continue, and brings this
21 conversation by his own act and his own acts alone to its
22 tragic and horrific end.

23 We are here today under the proper and legal charge
24 of attempted murder. But as I told you in the opening,
25 when you define a murder as the intentional taking of a

1 human life tragically and sadly for Fritzgerald Byas and
2 his family that is what we are talking about.

3 Because as you heard from Dr. Spiotta today, the
4 Fritzgerald Byas that existed on April 16th, the whole
5 person, is not with us today. And why is he not with us?
6 Because of the unjustified, inexcusable actions of
7 Derrick Porter who was seeking to settle a score from
8 years before.

9 I ask you again to consider the evidence. If you
10 need to review something, look at it a little closer, let
11 us know. That can happen.

12 Take your role seriously. It is a serious job. But
13 after you sit, we are not here to harm somebody or to
14 reward or hurt anyone. It is very human to feel a little
15 bit of empathy for where Derrick Porter sits today. I
16 want you to feel that. That means you are a person.

17 But when you look at the evidence there is one
18 conclusion, and that is that the defendant is guilty as
19 charged. And I ask you to do what you promised to do and
20 find him guilty.

21 Thank you.

22 THE COURT: Thank you, Mr. Simpson.

23 Mr. Smallldone.

24 MR. SMALLDONE: Thank you. May it please the court.

25 THE COURT: Yes, sir.

1 CLOSING BY MR. SMALLDONE:

2 Ladies and gentlemen of the jury, good morning.

3 At the beginning of this case we talked about
4 hindsight. We talked about how much we can talk about
5 what happens in a split second. We have all had the
6 benefit to sit here for about two days. Some of us
7 consider it a benefit; some of us don't.

8 We have sat here for about two days now, a day-and-
9 a-half, talking about what happened in a split second.
10 We all get that benefit.

11 Derrick didn't get that benefit. April 16th of 2016
12 Derrick had a split second to make up his mind. He had a
13 split second to make a choice. Derrick saw a gun.

14 The State would have you believe that Derrick is an
15 avid reader who reads the Post and Courier who got his
16 story from a newspaper article and that is how he found
17 out about it, right? That is what they want you to
18 think.

19 Does that make sense? Here is why it doesn't make
20 sense. Here is why it doesn't make sense. When Derrick
21 turned himself in -- you have heard -- the audio wasn't
22 good. You have heard a little bit of the audio. And you
23 have heard mainly of Jellico talking.

24 Derrick didn't have an opportunity to review the
25 surveillance tape, right? Either one. He didn't know --

1 he didn't review those things. He just knows that he
2 needed to turn himself in.

3 What does Derrick say, and what do they talk about?
4 He was going for a gun, right? Fitzgerald was going for
5 a gun. Is that the perfect story that the State wants
6 you to consider? He doesn't know anything about the
7 surveillance, right? He doesn't give the perfect story.
8 He doesn't say that he had the gun, waived it around. He
9 doesn't say that he was shot at.

10 If I thought of the perfect story, I am getting shot
11 at; I am getting a gun waived in my face. He has no way
12 to know that they know that.

13 That's what happened. What happened was what he
14 said happened. What happened was that he saw Fitzgerald
15 at the store.

16 Let's back up to that day. He saw Fitzgerald at
17 the store. They had prior difficulties. No question
18 about that. They had a beef, as they call it. As
19 Jellico called it. They had a beef. They had problems.
20 He thought that Fitzgerald -- and, again, whether or not
21 it happened, that is not what we are here for. He
22 thought that Fitzgerald was involved in the death of a
23 loved one.

24 What is the first thing they do? What is the first
25 thing they do on the video? Watch it. They go up to

1 each other. They kind of shake hands, right? Man-to-
2 man.

3 And we can't hear what they said. But you could see
4 their body language. They shake hands. Right away. And
5 they talk a little bit. I think briefly.

6 You can't see what happened in the store. But you
7 see that they were in the store at the same time. You
8 heard testimony they kind of acknowledge each other
9 again.

10 So much has been made that Derrick waited outside.
11 They had a lot to talk about. They had a lot to discuss,
12 right? Is that a crime? Is that a crime to talk about
13 something with somebody?

14 Derrick wasn't aggressing when he was waiting,
15 before he was waiting; even at the car, I submit to you,
16 until he needed to be.

17 Derrick didn't try to punch him. They didn't push
18 each other. He was waiting to talk. They had a lot to
19 talk about. And tensions were high. They had some
20 dealings that they tried to work out.

21 And Derrick waits. It is not a crime. He is
22 waiting to talk to him. And what does he do when he gets
23 back? He talks to him. He talks to him. He talks to
24 him for about a little -- I believe a little over two
25 minutes.

1 He is talking. You don't see Fritzgerald trying to
2 close the door to the car. You don't see anything. They
3 are just talking. The door is open. Gerald is sitting
4 down waving his arms around. You can't see one of the
5 arms. You can see the other. They are just talking.

6 Split second, the gunshot. There is no aggressive
7 action. You hear some audio. There are some words.
8 They are probably, you know, arguing; yeah.

9 There is no aggressive action by Derrick. There is
10 nothing. There is no looking around.

11 Remember, if you watch the video, if you watch -- if
12 you paid close attention to the video I think on both
13 angles - and Jellico even mentioned it - remember when
14 Jellico, the detective, said did you see the Mexican.
15 And they kind of laughed about it. It was right in front
16 of a guy exiting the store.

17 This was a split-second decision. This was not
18 planned. This was not premeditated. This wasn't what he
19 wanted. That is when he went for his gun. And that is
20 when Derrick had to go for his.

21 So this notion that Derrick is not without fault in
22 bringing on the difficulty I submit to you that the
23 difficulty is the shooting, the self-defense, the going
24 for the gun, that is when the real conflict started.

25 The difficulty isn't two guys talking trying to

1 resolve their differences from years ago. That's not the
2 difficulty that the State wants you to think. That is
3 just people talking.

4 The difficulty is when the violence started. And
5 the violence started when Derrick had reason to believe
6 this guy was going for a gun.

7 And what happens? They find him a gun.

8 Does Derrick say that the gun was in the car? No.
9 All the witnesses say no. So what it has been made that
10 they couldn't see the gun, yeah, it wasn't in the car;
11 exactly like Derrick said.

12 Does he say that he had the gun out? That would be
13 easy to disprove. You wouldn't have much to deliberate
14 if he said the other gun was out, because it clearly
15 wasn't.

16 But Derrick doesn't say that. There is no mention
17 about the Post and Courier article saying that it wasn't
18 out. Derrick told his story which was the truth. He had
19 no other way to get it other than seeing that gun that
20 day.

21 He knew the brand of the gun. Guns look different.
22 I submit to you that you can use your common sense and
23 say guns look different. Maybe you know that. And maybe
24 you don't.

25 He knew the brand of the gun. And even the State

1 concedes most -- a lot of guns out there are nine
2 millimeters, they have a distinct look. He knew that.
3 That is all he knew. And that is exactly what he said.
4 He said the truth.

5 And we are here. We have been here for two days
6 analyzing what happened in that two-minute span. Just in
7 a matter of two minutes, two days, in two minutes.

8 Derrick was there. And he told the detective what
9 happened. And what happened was -- what happens?
10 Exactly what he said, and not disproved.

11 You cannot see the other hand. Watch the video.
12 You can see one hand. I submit to you and I agree that
13 hand is on the steering wheel. And I believe the State
14 will make a lot of the other hand ended up at some point
15 holding on a Mike's Hard Lemonade can.

16 Ask yourself do you see him drinking the Mike's Hard
17 Lemonade. Do you see the Mike's Hard Lemonade in his
18 hand at all during the video? I submit to you that you
19 won't.

20 Because Derrick thought that he had a gun. You know
21 what? He did. Derrick did what he had to do. I said in
22 the opening - a lot has been made that I said it- he did
23 what he had to do.

24 Derrick wouldn't have walked away as he did. Sad.
25 I am not happy to be here. No one in this courtroom is

1 happy to be here. It is a bad situation. But we are
2 here. We are here because Fritzgerald had a gun and
3 Derrick did too.

4 So, ladies and gentlemen of the jury, in a few
5 minutes the judge will charge you the law. He will
6 charge you with what the law means, what attempted murder
7 means, what assault and battery of a high and aggravated
8 nature means.

9 But he will charge you on self-defense. He will
10 charge you the State has the burden to disprove one
11 element of self-defense, any element they want. One
12 element.

13 Derrick was without fault in bringing on the
14 difficulty. Derrick was in imminent danger. Derrick,
15 you heard, told Detective Jellico they say he was going
16 to kill him.. And you can't hear the audio on that tape,
17 but Derrick did.

18 Again, so much in two days we try to analyze what
19 happened in thirty seconds. Derrick was threatened by a
20 guy with a gun. And Derrick had a gun too.

21 Can't outrun a bullet. Derrick couldn't run away to
22 avoid it. Derrick couldn't do anything. He didn't know
23 that he was confronting this guy with a gun, I submit to
24 you. It just happened in a matter of a split second. No
25 planning. No nothing. A reaction to save his life. And

1 he very well may have.

2 So, ladies and gentlemen, when he charges -- when
3 Judge Dennis charges you on the law in a few minutes you
4 will heard self-defense. And you will hear that if they
5 haven't disproved self-defense Derrick is not guilty.

6 That is because he is not. Derrick is not guilty of
7 this crime, because they haven't disproved self-defense.

8 And the reason they haven't disproved it is because
9 it is self-defense. It is self-defense. He did that
10 because he had no other thing you could do in that
11 situation.

12 Yeah, there was an argument. Yeah, there was a
13 conflict. Yeah, they probably don't like each other that
14 much. That is fine. That is life. That is human
15 nature.

16 Going for a gun isn't. And that is what Derrick
17 reacted to. They talked for two or three minutes.
18 Derrick didn't shoot him right away. Derrick didn't
19 shoot him when he is away -- walking away from him.
20 Derrick didn't shoot him right when he saw him. Derrick
21 shot him in -- very clearly in response to something.

22 So what was it? It was exactly what Derrick told
23 the detective. Which matches up exactly with what the
24 evidence is. And the reason the Post and Courier wrote
25 an article on it is because that is exactly what

1 happened.

2 You can't hold that against Derrick that the Post
3 and Courier wrote an article about what happened, because
4 that is literally what happened.

5 Does that make sense? You can't hold it against
6 Derrick that the Post and Courier writes the news and
7 then say, oh, he must have know. Even though there is no
8 evidence that he heard about it or didn't. I submit to
9 you that even if he did they are just publishing what
10 happened or what they found. It doesn't really going to
11 change anything. Sure, he knew about it he knew about
12 it because he was there.

13 If he heard about the article he probably said,
14 yeah, I know, I was there, I know he had a gun, I saw it.

15 Like I said, it is very clearly a reaction in
16 response to something. Talking for two minutes and then
17 out of the blue a shot doesn't make sense. Doesn't make
18 sense.

19 A tense situation with a guy you don't like, a guy
20 you think is going for his gun, makes a little bit of
21 sense. What would make it make more sense? How about
22 finding a gun on him. That makes perfect sense. His
23 story is exactly lined up with the facts a hundred
24 percent. A hundred percent.

25 You can see one hand. One hand you don't see. It

1 ended up on a can. And Derrick told the detective
2 exactly what happened.

3 So, ladies and gentlemen, when you go back there and
4 you deliberate and discuss the facts of this case and you
5 discuss the law in this case and how it applies to the
6 facts, I submit to you that when you consider self-
7 defense and when you consider the versions of a story,
8 all true, when you consider that, you have to deliver the
9 only verdict that makes any sense in this case. And that
10 is not guilty of attempted murder. That is not guilty of
11 possession of a weapon during a violent crime. And that
12 is not guilty of the lesser included offense which is
13 assault and battery of a high and aggravated nature.

14 Because self-defense is a complete defense. It
15 means if he meets it he is not guilty. He is not guilty.

16 Ladies and gentlemen, because of that that is why I
17 am asking you to return the only verdict that makes any
18 sense. And that is a verdict that lines up with what
19 happens. That is a verdict that lines up with what
20 Derrick said, which is what happens. And that verdict is
21 not guilty.

22 Derrick Porter is not guilty of any of these
23 offenses. This wasn't planned. He is not happy to be
24 here. But he did the only thing that he could do in that
25 split second.

1 Thank you.

2 THE COURT: Thank you, Mr. Smalldone.

3 MR. SIMPSON: Thank you, Your Honor.

4 THE COURT: Solicitor.

5 **CLOSING REBUTTAL BY MR. SIMPSON:**

6 Ladies and gentlemen, the law allows me a brief
7 opportunity to do what is called rebuttal which is to
8 address some things that Mr. Smalldone brought up in his
9 closing argument.

10 I know as lawyers we tend to talk too much. I am
11 going to try to be very -- very brief. I ask you only
12 when you hear and consider -- and please do consider it,
13 but the position that Mr. Smalldone presents to you.

14 I ask you only to do what you have promised to do
15 which is to calmly and deliberatively review the evidence
16 that we have put into evidence and presented to you in
17 the last couple of days and ask yourselves the difficult
18 but I think obvious questions, and that is to which side
19 of the story comports with what you have seen and with
20 what you have heard.

21 Ask yourselves if what you see on that video, as Mr.
22 Smalldone says, no aggressive action on the part of
23 Derrick Porter.

24 Ask yourselves if you believe living and seeing and
25 hearing what happened that day if you believe Derrick

1 Porter had no other way to avoid this situation.

2 Ask yourselves if you see, to quote Mr. Smalldone,
3 to a person who is just trying to resolve some issues
4 with another person ask yourself if you think the way he
5 went about resolving those issues was reasonable.

6 Ask yourself when you see -- and I mean watch it.
7 Watch it more than once. It is not easy. But watch it.
8 When you see him pull that gun and shoot and then walk
9 away calm and cold from that scene if you think that
10 looks to you to be a person harming someone or a person
11 acting in response to something. Ask that question. Mr.
12 Smalldone posed it. Ask it.

13 And I submit to you that when you do what you have
14 promised to do and without emotion review this evidence,
15 the answer to those questions -- to that -- to those
16 questions will be clear that Derrick Porter was acting
17 with purpose that day.

18 Mr. Smalldone raised a couple of points in his
19 closing that this didn't appear to be a very well thought
20 out plan. As I explained to you in my closing, that is
21 not what the law requires for malice aforethought.

22 Malice is only -- and you will hear this from the
23 judge. And he is the authority on this. But that malice
24 only has to exist for an instant. So the lack of a plan
25 does not absolve Mr. Porter in this case.

1 And then finally as it comes to this gun and to this
2 hand I ask you to consider this question: Mr. Smalldone
3 I believe the phrase he uses, okay, so his other hand
4 ended up on a can. And he says Mr. Porter saw that gun,
5 that is how he knew about that gun.

6 So I want to bring up just a few medical terms real
7 quick that I want you to consider in the jury room.
8 First from EMT Chief Palawasta whose one of his jobs was
9 to rate the condition of Frtzgerald Byas when he arrived
10 there with a spectrum of 13. Two being the worst. Two
11 being the worst condition a person can be in.

12 David Palawasta when he sees Fritzgerald Byas has no
13 hesitation in saying he was -- he was -- or maybe it was
14 a three. That he was the worst. Why they would start a
15 range like that at three, I have no idea.

16 But he was very clear to you all the condition of
17 Mr. Byas when he got there on the scene was the worst of
18 a wide scale. Unresponsive.

19 And what the defense wants you to believe is that in
20 that sort of condition with chunks of metal as we have
21 seen in his brain and that kind of damage, that that left
22 hand ended up on a can as we have seen in the
23 photographs. It was on the can because that is where it
24 was when he was shot in the head.

25 Secondly, he wants you to think that a person who,

1 going to another scale by a trained expert neurosurgeon,
2 gave him a 1A. Let's consider another scale. A 1A, the
3 worst condition you can have. That a person in the worst
4 possible living condition that can be somehow recovered
5 that gun and re-concealed that gun so well in that
6 condition that officers who have one job; to look for a
7 weapon, couldn't see it. That Pierra Martin first on the
8 scene didn't see it. And that it wasn't until the body
9 was lifted and moved was the gun found lodged into the
10 belt so hard that it took two hands to remove.

11 In conclusion, I ask you only to do what you
12 promised everyone here that you would do this week.
13 Consider the evidence. Consider what you see and hear on
14 that video, what you see and heard from that -- from this
15 witness stand, and ask yourself which version of the
16 events comports with that evidence.

17 And when you do that -- it is never an easy thing to
18 do, to judge another human being. But when you do that,
19 the just, true, and correct answer is that Mr. Porter is
20 guilty as charged.

21 Thank you for your time this week.

22 THE COURT: Thank you, Solicitor.

23 **JURY CHARGE:**

24 THE COURT: All right. Ladies and gentlemen, if I
25 could have your attention. Now it becomes my

1 responsibility as the trial judge to give you the law
2 which you of course have promised to accept and apply
3 fairly and impartially to the facts that you will
4 determine very shortly when you being your deliberations.

5 And both the State and Mr. Porter expect that you
6 will when instructed conscientiously evaluate the
7 evidence, decide what you believe to be the true facts,
8 and then once you decide those facts take this law and
9 apply it fairly to those facts.

10 And when you have done that you will honor the
11 commitment that you made when we started and both the
12 State and Mr. Porter will have received and obtained a
13 fair and impartial determination for which they are
14 entitled under our law.

15 During this instruction I may from time to time use
16 the term defendant. And that term is simply a term of
17 art that we use to designate a party. It is just another
18 way of referring to Mr. Porter.

19 It means nothing other than a means of
20 identification. You are not to infer anything from that.
21 It simply means the person against whom a claim is made.
22 And that is obviously the situation here.

23 Because the claims have been made, as I told you
24 when we started, by these documents that will not
25 accompany you to your jury room. They are called

1 indictments. And they set forth basically very briefly
2 the alleged charges that he is facing. One is attempted
3 murder. And the other possession of a weapon during the
4 commission on a violent crime.

5 To these indictments Mr. Porter has rendered a plea
6 of not guilty which places upon the State the burden of
7 proving his guilt beyond a reasonable doubt.

8 And that is not only true in this state but every
9 state in the United States that persons who are accused
10 of committing criminal offenses are never required to
11 prove or disprove anything.

12 The law says in this state and every state persons
13 so accused are to be presumed innocent. And that is
14 not -- those aren't just words.

15 That is an active presumption that each of you has
16 to maintain at all times and have maintained throughout.
17 And I would instruct you have to continue to be
18 maintained until you have evaluated the evidence. And at
19 that point, the point that you have determined that the
20 State has met its burden of proof and established each
21 element of one or more of the crimes, and only then may
22 you remove that presumption of innocence.

23 The State obviously has the sole burden, as I have
24 told you. And because of that obviously the law further
25 states that persons who are accused of criminal offenses

1 such as Mr. Porter are not required to present any
2 evidence. They are not required to present anything.
3 They are not required to testify.

4 And I would instruct you that the exercise -- when a
5 person exercises his or her right to not testify in a
6 criminal case a jury is not allowed to consider that in
7 any state.

8 And so I would instruct you the fact that Mr. Porter
9 did not testify in this case cannot be considered by you
10 at all. It can't even be discussed. If you discuss it
11 in the jury room you will have violated the oath that you
12 have taken. And you won't do that, I am confident.

13 No, because the sole -- the only party having the
14 burden of proof is the State of South Carolina. And they
15 must establish each of the elements beyond a reasonable
16 doubt.

17 What is a reasonable doubt? As I told you, a
18 reasonable doubt is a doubt that would make an honest,
19 sincere, conscientious jury who is searching for the
20 truth in a case to hesitate to act or take some action.
21 Prove beyond a reasonable doubt is proof that leaves you
22 firmly convinced of Mr. Porter's guilt.

23 Now I will tell you that there are very few things
24 in this life and this world that we know with absolute
25 certainty. And our law does not require the State to

1 prove everything beyond every -- or to overcome every
2 possible doubt.

3 If based on your consideration of the evidence you
4 are firmly convinced that the defendant is guilty of one
5 or more of these charges then you must return a verdict
6 of guilty.

7 If on the other hand you think -- you believe there
8 is a real possibility that he is not guilty then you must
9 give him the benefit of that doubt and return a verdict
10 of not guilty.

11 I would instruct you that reasonable doubt may arise
12 from the absence -- or from the evidence or the absence
13 of evidence or the lack of evidence in a case, and it is
14 up to you to determine whether or not a reasonable doubt
15 exists after considering all of the evidence in this
16 case.

17 And I charge you that he is entitled to every
18 reasonable doubt arising in the whole case. And what I
19 mean by that is simply this. If upon any issue of fact
20 which would be essential for your returning a verdict of
21 guilty you should have a reasonable doubt as to how that
22 should be resolved I would instruct you that you must
23 resolve it in Mr. Porter's favor.

24 And when you consider the evidence there are two
25 types of evidence that used in presenting cases.

1 Sometimes one or other -- one or the other or most of the
2 time both. And they are called direct and indirect
3 evidence. Indirect is more popular. The name is
4 circumstantial evidence.

5 Direct evidence as the name would imply generally
6 deals with a sensory perception. I saw something. I
7 felt something. I heard something or the like.

8 And if you are firmly convinced as to that
9 particular fact or circumstances to which a person has
10 testified then it would establish that.

11 Circumstantial evidence is when a person testifies
12 to a number of facts and you are firmly convinced as to
13 each of those facts. And when you link them either
14 through inductive or deductive reasoning they lead you to
15 a very logical conclusion which -- of which you are
16 firmly convinced then it would establish that particular
17 fact through the use of circumstantial evidence.

18 And I can tell you that the law makes absolutely no
19 distinction between the weight or the value to be given
20 to either direct or circumstantial evidence, nor is any
21 greater degree of certainty required of circumstantial
22 evidence than direct evidence.

23 The law says simply this: The party may rely on any
24 of -- either circumstantial or direct but if they are
25 relying on circumstantial evidence to prove a particular

1 fact or circumstance it has to meet a certain test.

2 First, the State as to each one of those events or
3 circumstances upon which they are relying has to prove
4 that beyond a reasonable doubt. That means you have to
5 be firmly convinced of that particular fact or
6 circumstance.

7 Furthermore, the facts must point conclusively to
8 the guilt of Mr. Porter and must be wholly perfectly
9 consistent with each other in every particular respect.

10 I further instruct you in that regard that the mere
11 fact that circumstances pointed out in a case are
12 strongly suspicious of guilt or that circumstances are
13 such that the defendant's guilt is probable that that
14 would not be enough to sustain a conviction.

15 Why? Because, as I told you throughout, your
16 conclusion must be that the State has satisfied you
17 beyond a reasonable doubt.

18 Now the evidence which you are to consider, as we
19 have stated throughout, consists of the testimony of the
20 witnesses and exhibits that were offered and introduced
21 through their testimony. And it is only that that you
22 will analyze.

23 During this trial you have heard the attorneys speak
24 to you, very properly and very professionally with regard
25 to as officers of this court. And you certainly are

1 expected to listen to what they have said. And I am sure
2 you will find their remarks helpful as well.

3 But if they should -- if they have commented or said
4 something that a witness said or didn't say and that
5 differs from your independent recollection of what the
6 witness said, then you are instructed to disregard their
7 remark in its authority.

8 Why? Because you are the sole judge of the facts in
9 this case and it is your job to determine that.

10 Also, please, if they have said something that
11 differs from the law as I have given it to you then you
12 are instructed to disregard their remark in that regard
13 because my -- for the purposes of this proceeding today I
14 am the sole judge of the law and you have to take the law
15 as I give it to you.

16 But I would hasten to add that the fact that I am
17 giving you an instruction or the fact that I may have
18 ruled on a matter during the trial, that likewise should
19 not be considered by you as a suggestion of how you are
20 to resolve a factual issue because that is your sole job.

21 There is probably the best example and illustration
22 of how we work together, you have heard from time to time
23 there were objections made and sometimes I sustained the
24 objection. Sometimes I overruled the object. If I
25 sustained it then obviously you didn't hear the answer to

1 the question and you are not to consider that in any
2 fashion because, again, that was for my determination.

3 But if I overruled it I would urge you you are
4 not -- while I allowed it and it is proper under our
5 rules of evidence it doesn't mean that you have to accept
6 it.

7 Quite frankly, that is how we work together. I said
8 as a matter of law I would permit the question and
9 answer. Now it shifts to you. You decide whether you
10 believe it or not and if so how strongly you believe it.
11 And that is how we work to resolve this case working
12 together.

13 Now how do you decide the facts of a case? As I
14 said when we started, you are imminently qualified to do
15 this. Because we have been doing it -- we do it every
16 day of our life. We decide what we believe to be
17 credible and believable. And you will do the same thing
18 when you analyze this evidence in this case.

19 And there are a number of factors that we may
20 consider from time to time to assist us in making those
21 determinations. I am going to discuss some of them with
22 you now. But if I don't mention a method or factor that
23 you have used in your life and you have found it to be
24 reliable, please use it when you begin your
25 deliberations.

1 But some of the factors that you may want to
2 consider would be: The appearance of the witness. How
3 did they appear to you, straightforward or hesitant in
4 answering questions. Was the testimony of the witness
5 consistent or inconsistent. Was it strengthened or
6 weakened by other evidence in the case. How did that
7 particular witness know the facts or circumstances that
8 he or she testified too and what was the ability of that
9 witness to know those particular facts or circumstance.
10 Is there a reason for a witness to give testimony which
11 may be detrimental to one side or may be beneficial to
12 one side; in other words, a witness biased or prejudiced
13 in any fashion.

14 In making the determinations of credibility and
15 believability of witnesses you are given very broad
16 discretions. You have the right to believe many
17 witnesses against one, one witness against many. You
18 have a right to believe all of a witness's testimony,
19 part of a witness's testimony, or none of a witness's
20 testimony.

21 Now you don't make those decisions arbitrarily. But
22 if there is a reason in the record, that is the evidence
23 of this case, for taking that position, you have that
24 prerogative because your objective after taking the oath
25 has been to determine the truth of the evidence or truth

1 of this case based on your assessment of the facts. And
2 it does not matter the source of evidence. You have to
3 determine what you believe to be the true facts of this
4 dispute.

5 Now while you are given very broad discretion and
6 wide latitude in determining the facts, you do not enjoy
7 the same when it comes to the law.

8 And that is important, because, again, that is that
9 separation that we have to observe. I have nothing to do
10 with suggesting how you are to resolve the facts; and you
11 must take the law as I give it to you.

12 And I respect as we talked about when we were
13 qualifying you earlier when we started this case, we live
14 in a country where we can have laws change. And that is
15 a wonderful part of what we as citizens can do. And you
16 have every right to do that in a proper fashion.

17 But what you have promised both the State, Mr.
18 Porter, and this court is that you will accept the law as
19 I give it to you and set aside any feelings you have
20 about that law or feelings you had on what you thought
21 the law was or should be and take the law as I give it to
22 you.

23 Because if you don't then of course you have now,
24 again, stepped into my area of responsibility. And that
25 is, again, we have to keep that -- the two of us working

1 in conjunction. Our responsibilities do not overlap.

2 The fact that I give you an instruction on a certain
3 issue is not to be, again, considered by you as a
4 factual -- factual suggestion or determination of a fact.
5 That is your job.

6 The order of my instruction means nothing. I had to
7 put it in some order and ask you to consider the charge
8 as a whole when you apply it.

9 Let's look now at the charges the State has made
10 against Mr. Porter. The first one is attempted murder.
11 And that is one of those charges -- and these are --
12 there re are several in our law. The attempted murder
13 has also included what we call a lesser included offense
14 of assault and battery of a high and aggravated nature.

15 And I am going to define both of those for you and
16 explain the differences between him. But they accuse him
17 of the crime of attempted murder.

18 In order to obtain a verdict of guilty for attempted
19 murder the State must prove beyond a reasonable doubt
20 that Mr. Porter attempted to kill another person with
21 malice aforethought, either expressed or implied.

22 Malice, ladies and gentlemen, is hatred, ill will or
23 hostility towards another person. It is the intentional
24 doing of a wrongful act without just cause or excuse and
25 with the intent to inflict an injury or under

1 circumstances that the law would infer an evil intent.

2 Malice indicates a formed purpose and a design to do
3 a wrongful act under circumstances that exclude any legal
4 right to do it.

5 Further, there must be malice aforethought; which
6 means that the malice must have been conceived in the
7 mind of the defendant prior to the act producing the
8 injury or serious result.

9 The words aforethought are usually understood to
10 refer to the time when the evil is conceived. The law
11 does not require however that malice must exist for any
12 appreciable length of time before the commission of the
13 act. It may be conceived at the very moment the action
14 is taken which results in an injury to another.

15 Malice aforethought may be expressed or inferred.
16 Now these terms express and inferred do not mean
17 different kinds of malice but merely the manner in which
18 the malice may be shown to exist. That is either by
19 direct evidence or by inference from facts and
20 circumstances which may be established and proved.

21 Express malice is shown when a person speaks words
22 which express hatred or ill will for another or when a
23 person prepares beforehand to do the act which was later
24 accomplished.

25 Malice may be inferred from conduct showing a total

1 disregard for a human's life. If facts are proved beyond
2 a reasonable doubt sufficient to raise an inference of
3 malice to your satisfaction this inference may be --
4 would be simply an evidentiary fact to be taken into
5 consideration by you along with other evidence in the
6 case and you may give it such weight as you find it
7 should receive. You as jurors are free to accept or
8 reject the permissive inference depending on your view of
9 the facts.

10 The State must also prove a specific intent to kill.
11 Now, intent may be shown by acts and conduct of the
12 defendant and other circumstances from which you may
13 naturally and reasonably infer intent.

14 Evidence of the character of the act, the character
15 of the instrument used, the manner which it is used, the
16 purpose to be accomplished, and the resulting wound or
17 injuries may be considered in determining the intent with
18 which an act was committed.

19 Intent also may be inferred when it is demonstrated
20 that the defendant voluntarily and willfully commits an
21 act that naturally the tendency of which would be to
22 destroy another's life.

23 Now, if you find the State has not met its burden of
24 proof and establish any of the elements that I just
25 outlined for you for attempted murder, you made then

1 consider whether or not the State has met the burden of
2 proof as to the lesser included offense known as assault
3 and battery of a high and aggravated nature.

4 And in that, the State has to prove the defendant
5 unlawfully injured another person and prove that there
6 was great bodily injury to the person resulting from the
7 actions, and the action was accomplished -- or the act
8 was accomplished by means likely to produce death or
9 great bodily injury.

10 If they prove all of those elements -- and, again,
11 you would consider this only if you have determined the
12 State has failed to meet the burden of proof as to the
13 attempted murder charge. But, again, the State would
14 have to prove each of those elements beyond a reasonable
15 doubt.

16 Great bodily injury means bodily injury which causes
17 a substantial risk of death or which causes serious
18 permanent disfigurement or protracted loss of impairment
19 of function of a bodily member or organ.

20 The State has also made the charge -- charged Mr.
21 Porter with the possession of a weapon during the
22 commission of a violent crime.

23 The State must prove in order to obtain a verdict in
24 that particular situation prove that the defendant was in
25 the possession of a firearm or visibly displayed what

1 appeared to be a firearm during the commission of a
2 violent crime.

3 A firearm means any revolver, pistol, or any weapon
4 which is designed to or may be readily converted to expel
5 a projectile.

6 In order to find the defendant guilty of the
7 possession of a weapon during the commission of a violent
8 crime you must also find that the defendant was guilty of
9 committing a violent crime. And in that regard I would
10 instruct you that attempted murder and assault and
11 battery of a high and aggravated nature are both violent
12 crimes.

13 Now as you understand, with attempted murder there
14 has to be a specific intent to kill. But as to the
15 assault and battery with -- of a high and aggravated
16 nature and the possession of a violent crime the State
17 still must prove criminal intent which is also a
18 necessary element. And they have to prove that beyond a
19 reasonable doubt.

20 As I have discussed previously, you determine intent
21 from considering the circumstances which -- that have,
22 been shown to exist. And they may be -- it may be those
23 consequences which represent the very purpose for which
24 an act is done or known to be substantially certain to
25 result regardless of one's desire.

1 Criminal intent is a mental state of a conscious
2 wrong doing. And it is up to you to determine whether or
3 not the defendant -- whether or not the State has
4 established that this defendant had a criminal intent at
5 the time he committed either of those offenses. Assume
6 of course that you are dealing with and considering the
7 assault and battery with intent to kill and the
8 possession of a firearm by a person who in the commission
9 of a violent crime.

10 The defendant in this case, ladies and gentlemen,
11 has raised the defense of self-defense. And I would
12 instruct you that self-defense is a complete defense and
13 if it is established you must find the defendant not
14 guilty.

15 The State has the burden of disproving self-defense
16 beyond a reasonable doubt. If you have a reasonable
17 doubt of the defendant's guilt after considering all of
18 evidence, including the evidence of self-defense, then
19 you must return a verdict of not guilty.

20 On the other hand, if you have no reasonable doubt
21 of the defendant's guilt after considering all of the
22 evidence, including the evidence of self-defense, you
23 must return a verdict of guilty.

24 Now these are the elements required to establish
25 self-defense:

1 First, the defendant must be without fault in
2 bringing on the difficulty. If the defendant's conduct
3 was the type which was reasonably calculated to and did
4 provoke a deadly assault the defendant would be at fault
5 in bringing on the difficulty. It would not be entitled
6 to an acquittal based on self-defense.

7 Also, the second element, the -- of self-defense is
8 that the defendant was actually in imminent danger or
9 death or serious bodily injury or the defendant actually
10 believed he was in imminent danger of death or serious
11 injury.

12 If the defendant was actually in imminent danger
13 it must be shown that the circumstances which have
14 warrant -- would have warranted a person of reasonable
15 and ordinary firmness and courage to take the actions
16 taken by the defendant in this case to prevent the death
17 or serious bodily injury.

18 In deciding whether the defendant actually was or
19 believed he to be was in imminent danger or death or
20 serious bodily injury you should consider all of the
21 facts and circumstances surrounding the crime including
22 the physical condition and characteristics of the
23 defendant and the victim.

24 The defendant does not have to show that he was
25 actually in danger. It is enough if the defendant

1 believed he was in imminent danger and a reasonably
2 prudent person of ordinary firmness and courage would
3 have had the same belief.

4 The defendant has the right to act on appearances
5 even though the defendant's belief may be -- may have
6 been mistaken. It is for you to decide whether or not
7 the defendant's fear of imminent danger or death or
8 serious bodily injury was reasonable and would have been
9 felt by an ordinary person in the same situation.

10 Another element is there -- no other way to avoid
11 the danger. The defendant -- and that means simple this.
12 The defendant had no other probable way to avoid the
13 danger or death or serious bodily injury than to act as
14 he did in this particular instance.

15 And I would instruct you, ladies and gentlemen, if
16 you find the State has not -- has disproved -- has not
17 disproved one or more of those elements then you must
18 return a verdict of not guilty because the State would
19 have failed to meet its burden of proof of disproving it.

20 However, if the State has disproved any one of those
21 elements then you -- then you must not consider self-
22 defense. You would then consider whether or not the
23 State has met the burden of proof as to the charge or
24 charges which you have considered.

25 Throughout this matter, ladies and gentlemen, you

1 have been selected to be a judge with me. And we as
2 judges do not have any friends to reward nor do we have
3 any enemies to punish.

4 We aren't partisans or advocates for either side.
5 We are expected to be fair and impartial in performing a
6 task of being a judge.

7 And in order to do that we have to acknowledge our
8 humanity. Because we all have feeling. We all have
9 concern for each other in varying degrees.

10 But one thing about it, there is no place in this
11 proceeding for any sympathy. There is no place for any
12 anger. There is no place for any aspect of it.

13 You have to set aside all human emotion and perform
14 this task that you have accepted methodically,
15 deliberately, and very cautiously and carefully.

16 Analyze the evidence which you find which you will
17 consider very shortly. Decide what you believe to be the
18 true facts. And once decided take the law as I have
19 given it to you. Apply it fairly and impartially to
20 those facts and report that decision, whatever it may be.

21 And when you have done that you will have fulfilled
22 and honored in every respect the oath that you have
23 taken.

24 To assist you, Mr. Presiding Juror, in reporting the
25 verdict I have prepared two verdict forms which I will be

1 sending back with you.

2 You will note that they both are captioned. That --
3 don't -- that doesn't mean anything. That is just to
4 facilitate the filing of the document.

5 And they are similar in some respects. One of them
6 has three options. The other has two. The first one
7 that I will discuss with you is the one for attempted
8 murder..

9 And the order in which they are placed means
10 absolutely nothing. I had to put them in some order.

11 The first says guilty. The second, guilty of the
12 lesser included offense of assault and battery of a high
13 and aggravated nature. And third, not guilty.

14 What will you be saying -- well, first before we get
15 to that, it says we the jury by unanimous consent. And
16 that is the thing on the other one.

17 What is unanimous consent? It means all 12 of you.
18 All of you have to agree. Because if one doesn't, then
19 it is not unanimous consent.

20 Find the defendant, Derrick Lamar Porter, on the
21 charge of attempted murder. The first choice, guilty.
22 What will you be saying? You will have said that you had
23 analyzed the evidence, you have considered the elements
24 of attempted murder which I have given to you and you
25 find the State has met its burden of proof as to each of

1 those elements and therefore as instructed you are
2 returning a verdict of guilty.

3 Guilty of the lesser included offense of assault and
4 battery of a high and aggravated nature, what would you
5 be saying there? Well, first you would be saying that
6 you have analyzed the evidence and you are not convinced
7 beyond a reasonable doubt the State has met its burden of
8 proof as to one or more elements of attempted murder but
9 you as instructed you are considering the lesser included
10 offense.

11 If it is guilty of that then you state, I have
12 analyzed it; while he is not guilty of attempted murder
13 then -- but he is guilty and the State has met its burden
14 of proof as to guilty of the offense of assault and
15 battery of a high and aggravated nature; and, therefore,
16 that would be your verdict.

17 Not guilty, what will you be saying? One of two.
18 You would be saying that, well, you have met your burden
19 of proof as to one of those crimes but the State failed
20 to disprove self-defense and therefore you are returning
21 a verdict of not guilty or the State failed to meet its
22 burden of proof as to one or more of the offenses of each
23 of those crimes and that would be a not guilty verdict
24 also. So there are two options that that would be
25 saying.

1 The next verdict -- and whichever one it is, if you
2 will check it and circle it and sign it. We will know
3 that is your verdict.

4 The next one is possession of a weapon during the
5 commission of a violent crime. And your options are
6 guilty or not guilty. Guilty would be that you found him
7 guilty of one or more -- one of the crimes, either
8 assault and battery of a high and aggravated nature or
9 attempted murder. And then if that be the case then you
10 have to consider whether he was in possession of a
11 firearm during the commission of that crime. And if you
12 find that he was then you return a verdict of guilty.

13 Not guilty would mean that you found him not guilty
14 on one or more of those crimes; and, therefore, you have
15 to return a verdict of not guilty, because he has to be
16 guilty of a violent crime. Or you could find him not
17 guilty if you found that he was not in possession of a
18 firearm. That would be another basis for a not guilty
19 verdict, whichever -- whatever your view of the evidence.

20 And whatever your verdict, again, it has to be
21 unanimous. Ask you to check the box, circle it, and sign
22 it.

23 I know you are anxious to get started. And you are
24 almost there. I need to discuss my charge with the
25 lawyers. And in order to do that I have to excuse you.

1 And it might be necessary to return you to the courtroom
2 to give you some additional instruction.

3 But if there aren't any additions or corrections
4 that need to be given then we will -- we will gather the
5 exhibits and the verdict form and deliver them to you.
6 When you receive your exhibits then you may commence your
7 deliberations.

8 The only restriction that I place on the
9 deliberations - Mr. Presiding Juror, you have heard this
10 before - is that when you -- once deliberations commence
11 you -- if any juror has to leave the table for any
12 reason, you have to stop deliberating until all 12 of you
13 are together. Other than that, folks, you proceed as you
14 deem see fit and proper.

15 Thank you very much for your attention. I know you
16 are anxious to get started. You may retire to your jury
17 room. But do not begin your deliberations until the
18 exhibits are delivered to you.

19 Oh, one other thing before you leave. The videos
20 that you have, you have every right rehear and replay any
21 of those. That will have to be accomplished in this
22 courtroom. So if you need to hear any of that just write
23 me a note and tell me what it is you need to do. We will
24 cue it up and have it ready for you.

25 Unless we hear from you we will assume that you

1 don't need those played for you. Thank you so much. You
2 may retire.

3 (WHEREUPON, jury exits courtroom 4/12/18, 12:20 p.m.)

4 THE COURT: Exceptions or additions from the State?

5 MR. SIMPSON: None from the State, Your Honor.

6 THE COURT: Exceptions or additions from Mr. Porter?

7 MR. SMALLDONE: None from the defense.

8 THE COURT: Thank you all. I appreciate that. We
9 will be at ease. And if you leave, just give us how we
10 can get in touch with you, please.

11 (WHEREUPON, sent to jury 4/12/18 at 12:25 p.m.)

12 (WHEREUPON, Court's Exhibit 2, juror note, marked for
13 identification.)

14 (WHEREUPON, jury enters courtroom 4/12/18, 12:55 p.m.)

15 (WHEREUPON, State's Exhibit 17 replayed for jury.)

16 THE COURT: All right, Mr. Presiding -- I will ask
17 you to return to your jury room. Or we can -- or does
18 anybody need that replayed?

19 (WHEREUPON, presiding juror conferred with jury.)

20 PRESIDING JUROR: Thank you, Your Honor.

21 THE COURT: If you need something further just let
22 us know, Mr. Wain. We will be right here for you. Thank
23 you.

24 (WHEREUPON, jury exits courtroom 4/12/18, 1:04 p.m.)

25 THE COURT: Exceptions or additions from the State?

1 MR. SIMPSON: No, Your Honor.

2 THE COURT: Exceptions or additions from the
3 defendant?

4 MR. SMALLDONE: No, Your Honor.

5 THE COURT: Thank you. We will be at ease again.

6 (WHEREUPON, recess 4/12/18, 1:04 p.m.)

7 (WHEREUPON, resumed trial 4/4/18, 1:20 p.m.)

8 THE COURT: I understand the jury has reached a
9 verdict. But let me -- to all the persons in the
10 audience I thank you for your attendance and certainly
11 appreciate you being here. I am sorry you have to be
12 here under all of these circumstances. They are not
13 pleasant for any side.

14 And I appreciate your being as courteous and
15 observing the decorum, proper decorum in this courtroom
16 throughout this process. I know at times it has to be --
17 it had to be tough. And I understand that.

18 But I am going to ask that we continue to observe
19 that. When the jury's verdict is published I don't want
20 any outbursts or any reaction to it.

21 These persons have been selected to do something
22 that they didn't choose to do, and we respect them and
23 respect their efforts.

24 So thank you very much again. And I appreciate you
25 observing that. And if you can't, I appreciate that and

1 I would ask you to leave. Because if there is any
2 outburst then I will have to deal with that as direct
3 contempt of court.

4 Okay. Let's bring in our jury, please.

5 (WHEREUPON, jury enters 4/12/18, 1:21 p.m.)

6 THE BAILIFF: The jurors are all present, Your
7 Honor.

8 VERDICT:

9 THE COURT: Thank you very much, ladies and
10 gentlemen. Thank you very much. Mr. Wain, as I
11 understand it the jury has reached a verdict, sir.

12 PRESIDING JUROR: Yes, sir.

13 THE COURT: If you would pass the verdict form,
14 please, to the bailiff, please.

15 (WHEREUPON, presiding juror complied.)

16 THE COURT: Thank you, sir.

17 The verdict forms have been properly completed. You
18 may publish the verdict. I would ask the defendant to
19 please rise.

20 (WHEREUPON, defendant complied.)

21 THE CLERK: Case Number 2016-GS-10-06124, State of
22 South Carolina versus Derrick Lamar Porter. Indictment
23 for attempted murder, signed Matthew Wain, foreperson of
24 the jury, dated April 12th, 2018.

25 THE COURT: The verdict is what?

1 THE CLERK: We the jury by unanimous consent find
2 the defendant Derrick Lamar Porter on the attempted -- or
3 the charge of attempted murder, guilty.

4 Case Number 2016-GS-10-06125, State of South
5 Carolina versus Derrick Lamar Porter, we the jury by
6 unanimous consent find the defendant Derrick Lamar Porter
7 on the charge of possession of a weapon during the
8 commission of a violent crime, guilty. Signed by Matthew
9 Wain. Dated April 12th, 2018.

10 THE COURT: Thank you very much.

11 Ladies and gentlemen, if the clerk has accurately
12 published your verdict in both cases please indicate by
13 raising your right hand.

14 (WHEREUPON, all jurors complied.)

15 THE COURT: Thank you. You may put them down.
16 Thank you very much, ladies and gentlemen. Be seated. I
17 am going to let you go back to your jury room for just a
18 few moments. I will be in there in just a moment. Thank
19 you. You may retire to your jury room.

20 (WHEREUPON, jury exits courtroom 4/12/18, 1:25 p.m.)

21 THE COURT: Are there any motions from the State
22 regarding the verdict?

23 MR. SIMPSON: No, Your Honor.

24 THE COURT: Any motions from the defendant?

25 MR. SMALLDONE: No, Your Honor.

1 THE COURT: You renew your motion I think don't you?

2 MR. SMALLDONE: I do -- I do renew motions for ---

3 THE COURT: And you are asking for a motion for a
4 new trial?

5 MR. SMALLDONE: I do ask for a motion for a new
6 trial.

7 THE COURT: Okay.

8 MR. SMALLDONE: Renew all objections, motions, and
9 motions for directed verdict.

10 THE COURT: Thank you, sir. Based -- I think I
11 articulated. But there is certainly a sufficient basis
12 to support both decisions. The evidence considered, as I
13 am required to do at this stage, clearly supported the
14 verdict.

15 There is no evidence of any caprice or anger or
16 anything, or motion, passion that has entered into that.
17 It rather reflects really a fair and -- fair
18 determination and consistent with the law and the
19 evidence. And I deny your motions.

20 Thank you.

21 We will be -- I assume you want a sentence now?

22 MR. SMALLDONE: Yes, Your Honor.

23 THE COURT: All right. I will be back in just a
24 moment. I want to dismiss the jury. Thank you. We will
25 be at ease until I can come back.

1 (WHEREUPON, break was had 4/12/18 1:26 p.m.)

2 (WHEREUPON, resumed 4/12/18, 1:36 p.m.)

3 SENTENCING:

4 THE COURT: Do you have a sentencing sheet?

5 MR. SIMPSON: We do, Your Honor.

6 THE COURT: All right. I will be happy to hear from
7 your further, Mr. Simpson. Is there anything else you
8 want to add?

9 MR. SIMPSON: Just briefly, Your Honor.

10 THE COURT: Does he have a record?

11 MR. SIMPSON: He does.

12 THE COURT: I note that he had a charge that was
13 dismissed for attempted murder because the witness was
14 not reachable or I assume just didn't show up or
15 whatever.

16 MR. SIMPSON: That is what my notes reflect. I did
17 not have any personal involvement in that case. So I
18 can't really attest to that.

19 THE COURT: I understand.

20 MR. SIMPSON: Convictions, previous convictions, we
21 have a 2007 possession of marijuana, 2009 possession of
22 crack cocaine, 2010 disorderly conduct, 2010 domestic
23 violence first offense, and a 2013 assault and battery in
24 the third degree.

25 THE COURT: Okay. All right.

1 Mr. Smallldone, I will be happy to hear from you now,
2 sir.

3 MR. SIMPSON: Your Honor, I apologize. At the
4 appropriate time the victim's mother would like to speak.

5 THE COURT: Oh, excuse me. I beg your pardon.

6 MR. SIMPSON: That is my fault.

7 THE COURT: I will be delighted to hear from her.
8 And thank her for being here. And thank you for what you
9 have been through.

10 And I just told that jury that the miracle that we
11 all have witnessed and we all -- I asked them and I
12 solicited their prayers for your son and for some
13 continued miracle of recovery.

14 But I just wanted you to know they also feel the
15 same way about that. But anyway, I will be happy to hear
16 from you, ma'am.

17 MOTHER OF VICTIM: Of course I am the mother of
18 Curtis Fitzgerald Byas. And I am really happy about the
19 decision that was made today.

20 We all have sons and daughters and hope that they
21 make the right decision in life. We are not with them
22 always. But behind actions there are consequences that
23 we have to face in life. And I am just asking that when
24 you make your decision that the decision that you make
25 today is to the full extent of his punishment that can be

1 given today.

2 THE COURT: Thank you, ma'am.

3 MOTHER OF VICTIM: And I appreciate everything that
4 was done today.

5 THE COURT: Thank you very much.

6 All right. Anything else, Solicitor?

7 MR. SIMPSON: No, Your Honor.

8 THE COURT: I will be happy to hear from you now,
9 Mr. Smalldone.

10 MR. SMALLDONE: Thank you, Your Honor. Your Honor,
11 I respect the jury's verdict and thank you for their -- I
12 thank them for their service even though they are not
13 here.

14 THE COURT: Right.

15 MR. SMALLDONE: But, Your Honor, we -- you know,
16 this is obviously a terrible tragic situation. No
17 getting around that. Even, you know, no matter what side
18 of events you view.

19 I think it is pretty clear that no one intended for
20 any harm -- at the beginning of that day no one intended
21 for any harm to happen. And we hate that this happened,
22 Your Honor.

23 I have spoken with my client many times, and he
24 agrees -- although he has a clearly different version of
25 the facts he agrees that he hates that it happened. And

1 he hates that what happened that day and wish --
2 obviously wishes this situation never would have
3 presented itself and would have made a different choice.

4 Your Honor, just a little bit of background.
5 Earlier in the trial during the colloquy Your Honor heard
6 a little bit about -- Mr. Porter referenced something
7 about his brain condition.

8 THE COURT: Right.

9 MR. SMALLDONE: Just a little bit about that, Your
10 Honor. Mr. Porter turned himself in May of 2016. That
11 night he was placed in general population.

12 Unfortunately, there was someone in general
13 population affiliated with the individual who was shot.
14 And, Your Honor, Mr. Porter was attacked at the jail.

15 And I originally got this case to navigate through
16 some kind of legal waters because the issue was he was
17 attacked before he was booked so we couldn't get a bond
18 on him because he wasn't -- he wasn't booked even though
19 he was in jail. So I navigated that.

20 He was attacked. He was a vegetable for a while.
21 They didn't know if he would live or die. They didn't
22 know if he would have any brain function. And he
23 recovered a lot faster than they thought. I have already
24 showed counsel this.. This is kind of a synopsis of --
25 may I approach?

1 THE COURT: Sure.

2 MR. SMALLDONE: Okay. This is a synopsis from some
3 caregivers about the condition that Mr. Porter was in
4 afterwards. And I say that because it is difficult -- it
5 has been a little difficult -- I will let Your Honor read
6 it.

7 THE COURT: I understand.

8 MR. SMALLDONE: Okay. Well, Your Honor, it has been
9 a little difficult representing Mr. Porter because his
10 memory is skewed and his memory it not what it used to
11 be. He has trouble remembering things.

12 He has always been pleasant to deal with, but he has
13 not given me sometimes what I need. And now I did file a
14 motion for a mental evaluation. Just for the record. I
15 filed it. He was evaluated. And he was competent. But
16 competent doesn't mean easy.

17 So, Your Honor, he will live with this -- with this
18 injury for the rest of his life.

19 THE COURT: Okay.

20 MR. SMALLDONE: And I certainly say that with full
21 awareness that someone else was involved in this case
22 too, Your Honor.

23 So, Your Honor, he -- you have heard his record. He
24 has never been to prison before. All of those charges
25 were magistrate level or I believe the one General

1 Sessions was the drug possession.

2 So we ask Your Honor for as much leniency as Your
3 Honor wants -- as Your Honor is inclined to provide. And
4 we just ask the court for some level of mercy. And I
5 know Mr. Porter has expressed his sympathies to me in the
6 past.

7 THE COURT: Sure. I appreciate that. All right.
8 Thank you.

9 Is there anything that Mr. Porter wishes to say?
10 Anything you want to say, sir?

11 MR. PORTER: Honestly, I am guilty and to the Byas
12 family I am very sorry for what I did. But I felt like I
13 had to protect myself, you know.

14 But whatever was going on with, you know, my family
15 and him or whatever that happened. You know what I am
16 saying. But I mean things just happened. So I don't
17 have no choice but to accept my consequences.

18 THE COURT: Okay.

19 MR. PORTER: But it is all over and done with now,
20 you know.

21 THE COURT: Absolutely, you are correct. And I just
22 shared this with the jury, because one of the things that
23 we see in sometimes in fashioning sentences when we do
24 guilty pleas you don't see the whole case and you don't
25 see all aspects of it. In this case I am glad I got to

1 see all of that. And I am glad that you exercised your
2 right to have a jury consider what your version was. And
3 the jury confirmed what if I had been sitting on that
4 jury would have been my version.

5 Because I appreciate your statement you are sorry,
6 but you had the golden opportunity on that day to do what
7 we all are supposed to do if we have a beef with
8 somebody? You went to your car. He was in the store.
9 You just get in your car and you go where you are going.

10 But you stood. And you stayed. And because of --
11 and it wasn't a matter or just happenstance getting --
12 having to confront him again. You approached him as he
13 came out, which showed again there was something going
14 on.

15 My observations -- I don't know who the phone call
16 was with. But, again, body language speaks. You were
17 agitated about something. In that phone call you could
18 tell by your motions, your gestures. You couldn't hear
19 anything.

20 But then the second part is when you follow him to
21 his car. There is just no reason for that other than you
22 had -- you had something you wanted to do.

23 And it is hard for me to imagine that somebody
24 wanted to shoot somebody in the head. I just can't
25 understand a thought that that even crosses your mind.

1 But it is obvious to me from looking at that video that
2 that is precisely what you intended to do. Why, I will
3 never know.

4 And I will tell you what confirms that. If you had
5 just shot somebody in self-defensive, you are on the
6 ground screaming and hollering get some help, call the
7 police, I had to do something I don't -- didn't want to
8 do.

9 But that is not what you did. You looked at him and
10 then just sort of nonchalantly turned, walked away, stuck
11 the gun in your pants, got in your car. And didn't speed
12 off. Just drove off. Like no big deal.

13 I as a judge have to guard society from that type of
14 callousness. And I wish I could think that where you are
15 going is going to correct that. It won't.

16 So my options are to protect it as long as it can --
17 that I can. And that is what I am going to attempt to do
18 with this sentence.

19 The sentence of the court -- and this will be the
20 first one, the controlling one. Because it is a
21 day-for-day sentence. And I want to throw that to the
22 Department of Probation and Parole because I don't know
23 how you effect a consecutive sentence if you are getting
24 any credit on the second one until you finish the
25 day-for-day sentence because you have got to serve five

1 years.

2 So the sentence of the court on the possession of a
3 weapon during the commission of a violent crime is five
4 years. The sentence of the court on 2016-6124, that is
5 the attempted murder, is 30 years. It is consecutive. I
6 give you credit for time serviced since May 2016.

7 Good luck to you, sir. And God bless you.

8 THE COURT: Anything further?

9 MR. SIMPSON: Nothing from the State, Your Honor.

10 THE COURT: Thank you.

11 MR. SMALLDONE: Thank you.

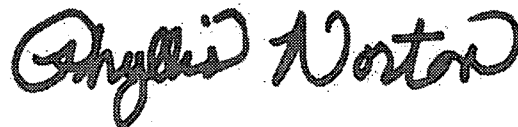
12 (WHEREUPON, concluded trial 4/12/18, 1:46 p.m.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth 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 proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on April 11, 2018 to April 12, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

A handwritten signature in dark ink, reading "Phyllis Norton". The signature is cursive and stylized, with the first name "Phyllis" written in a more flowing script and the last name "Norton" in a slightly more upright but still cursive style.

PHYLLIS NORTON, CVR

Date: May 22, 2018

Certified Transcript Provided For: SCCID
Certification Reference #2018-0522

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

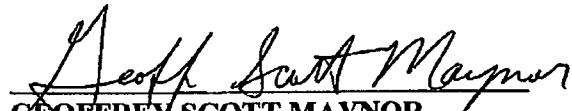
INDICTMENT

At a Court of General Sessions, convened November 2016, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about April 16, 2016, the Defendant, Derrick Lamar Porter, did, with intent to kill and malice aforethought, attempt to kill Fritzgerald Byas. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


GEOFFREY SCOTT MAYNOR
ASSISTANT SOLICITOR

SM/0318756
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2016-011303

ARREST WARRANT NUMBER

2016A1010201705

DATE OF ARREST

05/09/2016

ACTION OF GRAND JURY

TRUE BILL

NOV 15 2015

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-06124

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2016

THE STATE

VS.

DERRICK LAMAR PORTER

B/M DOB: [REDACTED]

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR Code: 3410

FILED

11/22/2016 5:06:04 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

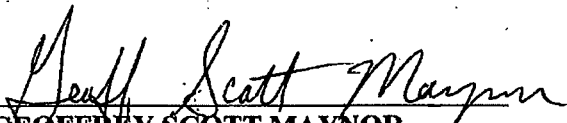
INDICTMENT

At a Court of General Sessions, convened November 2016, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about April 16, 2016, the Defendant, Derrick Lamar Porter, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: attempted murder; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


GEOFFREY SCOTT MAYNOR
ASSISTANT SOLICITOR

SM/0318756
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2016-011303

ARREST WARRANT NUMBER
2016A1010201706

DATE OF ARREST

05/09/2016

ACTION OF GRAND JURY

TRUE BILL

NOV 15 2016

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-06125

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
NOVEMBER TERM 2016

THE STATE

VS.

DERRICK LAMAR PORTER
B/M DOB: [REDACTED]

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490
CDR Code: 0549

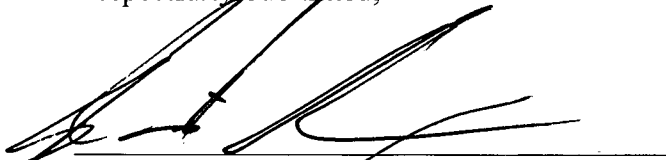
FILED

11/22/2016 5:06:04 PM
JULIE J. ARMSTRONG
CLERK OF COURT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 14th day of November, 2018.

RECEIVED
NOV 14 2018
SC Court of Appeals