

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable J. Mark Hayes, II, Circuit Court Judge
Appellate Case No. 2018-000136

RECEIVED

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SC Court of Appeals
Appellant,

THE STATE,

vs.

ADAM KEITH LUNSFORD,

Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

)

IN THE GENERAL SESSIONS COURT

COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA,)

Plaintiff,)

ORDER GRANTING CRIMINAL AND
CIVIL IMMUNITY

vs.)

2016GS4205238 / 2016GS4205239

ADAM KEITH LUNSFORD,)

Defendant.)

This matter comes before the Court on the Defendant's Motion to Dismiss and/or for Immunity under the Protection of Persons and Property Act, S.C. Code § 16-11-410, et. seq. (Supp. 2010) and State v. Duncan, 703 S.E.2d 662 (2011). The Defendant is charged with Attempted Murder and Assault and Battery of a High and Aggravated Nature. A hearing was held on the Defendant's motion on July 19, 2017 at 2:00 p.m., and the Defendant was present with his attorneys, Christopher D. Kennedy and N. Douglas Brannon, and the State was present represented by Derrick Balsa, Deputy Solicitor for the Seventh Judicial Circuit.

The Court has carefully reviewed the transcript and considered the demeanor and credibility of the witnesses who testified at the hearing. The Court has also reviewed the few appellate cases applying the Protection of Persons and Property Act and scrutinizing the provisions of the Protection of Persons and Property Act.

It is undisputed through testimony of the parties that the Defendant was not engaged in an unlawful activity, driving on the road with a valid driver's license at the time this incident began. It is also undisputed that Defendant was in a place that he had a right to be, specifically that is, in his own vehicle on a public roadway in his neighborhood. Therefore, the court must grant immunity under the act if it decides that the Defendant reasonably believed it was necessary to

use deadly force to prevent death or great bodily injury to himself and that he was actually under attack.

Here, the facts indicate that the Defendant reasonably believed it was necessary to use deadly force. The Defendant points to the fact that he had been continuously harassed by the Victim on the road starting when the Victim got behind the Defendant on Union Street in Spartanburg County, South Carolina. Due to the flashing of lights, erratic driving, passing on a double yellow and sudden stop made by the Victim, the Defendant was under the impression that the Victim intended to do the Defendant harm. The Defendant showed Victim the firearm in his possession, and the Court notes that the Defendant has a valid Concealed Weapons Permit issued by the State of South Carolina. Further, the Defendant argues that because the Victim knew Defendant had a gun and still exited his vehicle and advanced towards the Defendant, it was reasonable for the Defendant to believe the use of deadly force was necessary to prevent an attack on himself. Each of these acts by the Victim, taken together, indicate that the Defendant acted reasonably under the belief that the use of deadly force was necessary to prevent any further attack on himself.

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23 PM
28

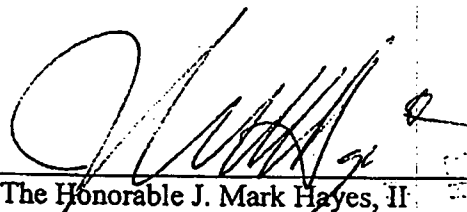
Further, the Defendant was under attack at the time he defended himself. Even if one believes the Victim's testimony that the Victim did not make multiple passing attempts and had not been harassing Defendant until the final pass occurred, it is clear that the Defendant was under attack. The Victim abruptly stopping his vehicle and advancing towards Defendant is a sign of an attack especially considering that from the Victim's driver's side door to the Defendant's driver's side door, the parties were at their furthest point only seventeen (17) feet from each other. Moreover, the Victim admits that his intent was to engage in a physical altercation with the Defendant. Further, it is undisputed that Victim was aware of Defendant

2

being in possession of a firearm. This Court finds that there is no fathomable reason for a person who knows another driver has a firearm to block the firearm carrier's vehicle other than to engage in an altercation with the firearm carrier. This Court further finds that a person in possession of the firearm could only presume that the person stopping him wants to cause him harm by confrontation. Therefore, the Defendant was under attack at the time he used deadly force to defend himself, and under the law, the legislature intended that he was not required to retreat before using deadly force.

Based upon the foregoing, this Court finds that the Defendant, Adam Keith Lunsford, acted lawfully, and **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Defendant is granted immunity from criminal prosecution and civil liability under the Protection of Persons and Property Act.

IT IS SO ORDERED.


The Honorable J. Mark Hayes, II
Circuit Court Judge
Seventh Judicial Circuit

September 28, 2017

SEP 28 PM 2:28

STATE OF SOUTH CAROLINA	)	
	)	IN THE GENERAL SESSIONS COURT
COUNTY OF SPARTANBURG	)	
STATE OF SOUTH CAROLINA,	)	
	)	ORDER DENYING THE STATE'S
Plaintiff,	)	MOTION FOR RECONSIDERATION
	)	
vs.	)	
	)	2016-GS-42-5238 / 2016-GS-42-5239
ADAM KEITH LUNSFORD,	)	
	)	
Defendant.	)	

This matter came before the Court on the State's Motion to Reconsider an Order Granting Immunity pursuant to Protection of Persons and Property Act, S.C. Code § 16-11-410, et. seq. (Supp. 2010) and State v. Duncan, 703 S.E.2d 662 (2011), and the Defendant's Motion to Dismiss and/or for Criminal and Civil Immunity in Case No. 2017-GS-42-03432.

After receiving the oral arguments and reviewing the transcript of the prior hearing, this Court will not alter or amend the Order Granting Criminal and Civil Immunity in the above captioned cases. Additionally, given the factual background of how the firearm was presented in the present case, logically it seems reasonable to view the pointing and presenting of the firearm as part of the sequence of events that led to the Victim being shot by the Defendant. The Defendant lawful was in possession of the firearm. The firearm was not hidden from the Victim but rather shown to the Victim as a warning and in an effort to avoid further escalation of the confrontation. Regrettably, the Victim did not heed the warning, he continued to engage and pursue the Defendant, pulled in front of the Defendant's car, and left his own vehicle for with the admitted purpose of fighting the Defendant. Therefore, logically the pointing and presenting should be included as part of the Court's granting of immunity to the Defendant.

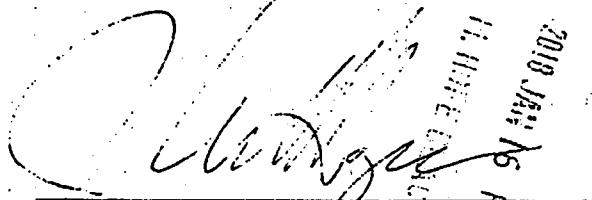


This Court continues to believe that the Defendant meets his burden of proof of being entitled to a grant of immunity within the confines of the statute creating immunity from prosecution as intended by the legislature. While the State argues, and this court agrees, the independent eyewitness' testimony creates an issue of factual dispute as to what she observed. But for S.C. Code § 16-11-410, et. seq. (Supp. 2010), this Court would not be placed in a position to be a fact finder. However, because of S.C. Code § 16-11-410, et. seq. (Supp. 2010), the duty of being a finder of fact is placed with this Court. With that duty comes the obligation to view and weigh the evidence, and to listen and observe the witnesses as to their credibility. In doing so, this Court must decide if the Defendant has met his burden of proof. Creating a mere issue of fact is not sufficient to deny a motion for immunity made pursuant to S.C. Code § 16-11-410 once the burden of proof has been met, and this Court found and continues to find that the Defendant met his burden of proof pursuant to S.C. Code § 16-11-410, et. seq.¹

An Order addressing the Defendant's Motion to Dismiss and/or for Criminal and Civil Immunity in Case No. 2017-GS-42-03432 shall be addressed by separate order of the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED the State's Motion to Reconsider is denied.

IT IS SO ORDERED.


 The Honorable J. Mark Hayes, II
 Circuit Court Judge
 Seventh Judicial Circuit

2018 JAN 16 PM 2:11

January 16, 2018

¹ After receiving the proposed formal order, this Court has, again, reviewed the present motion, the transcript, and other items of evidence. This Court continues to find Mr. Lunsford's presentation and testimony credible. Even though the State argues the presentation of the gun was the precipitating event that lead to Mr. Lunsford becoming angry, a review of the full transcript does not support that conclusion. While the testimony of the eye-witness, who was approximately 100 yards away from the incident location, causes this court to pause, her testimony does not prevent the conclusion that Lunsford has met his burden of proof.

STATE OF SOUTH CAROLINA	)	
	)	IN THE GENERAL SESSIONS COURT
COUNTY OF SPARTANBURG	)	
STATE OF SOUTH CAROLINA,	)	
	)	ORDER GRANTING CRIMINAL AND
Plaintiff,	)	CIVIL IMMUNITY
	)	
vs.	)	
	)	2017-GS-42-03432
ADAM KEITH LUNSFORD,	)	
	)	
Defendant.	)	

This matter comes before the Court on the Defendant's Motion to Dismiss and/or for Immunity under the Protection of Persons and Property Act, S.C. Code § 16-11-410, et. seq. (Supp. 2010) and State v. Duncan, 703 S.E.2d 662 (2011). The Defendant is charged with Pointing and Presenting a Firearm. A hearing was held on the Defendant's motion on July 19, 2017 at 2:00 p.m., and the Defendant was present with his attorneys, Christopher D. Kennedy and N. Douglas Brannon, and the State was present represented by Derrick Balsa, Deputy Solicitor for the Seventh Judicial Circuit.

The Court has carefully reviewed the transcript and considered the demeanor and credibility of the witnesses who testified at the hearing. The Court has also reviewed the few appellate cases applying the Protection of Persons and Property Act and scrutinizing the provisions of the Protection of Persons and Property Act.

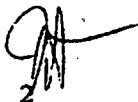
It is undisputed through testimony of the parties that the Defendant was not engaged in an unlawful activity, driving on the road with a valid driver's license at the time this incident began. It is also undisputed that Defendant was in a place that he had a right to be, specifically that is, in his own vehicle on a public roadway in his neighborhood. Therefore, the court must grant immunity under the act if it decides that the Defendant reasonably believed it was necessary to

9A

use deadly force to prevent death or great bodily injury to himself and that he was actually under attack.

Here, the facts indicate that the Defendant reasonably believed it was necessary to use deadly force. The Defendant points to the fact that he had been continuously harassed by the Victim on the road starting when the Victim got behind the Defendant on Union Street in Spartanburg County, South Carolina. Due to the flashing of lights, erratic driving, passing on a double yellow and sudden stop made by the Victim, the Defendant was under the impression that the Victim intended to do the Defendant harm. The Defendant showed Victim the firearm in his possession, and the Court notes that the Defendant has a valid Concealed Weapons Permit issued by the State of South Carolina. Further, the Defendant argues that because the Victim knew Defendant had a gun and still exited his vehicle and advanced towards the Defendant, it was reasonable for the Defendant to believe the use of deadly force was necessary to prevent an attack on himself. Each of these acts by the Victim, taken together, indicate that the Defendant acted reasonably under the belief that the use of deadly force was necessary to prevent any further attack on himself.

Further, the Defendant was under attack at the time he defended himself. Even if one believes the Victim's testimony that the Victim did not make multiple passing attempts and had not been harassing Defendant until the final pass occurred, it is clear that the Defendant was under attack. The Victim abruptly stopping his vehicle and advancing towards Defendant is a sign of an attack especially considering that from the Victim's driver's side door to the Defendant's driver's side door, the parties were at their furthest point only seventeen (17) feet from each other. Moreover, the Victim admits that his intent was to engage in a physical altercation with the Defendant. Further, it is undisputed that Victim was aware of Defendant



being in possession of a firearm. This Court finds that there is no fathomable reason for a person who knows another driver has a firearm to block the firearm carrier's vehicle other than to engage in an altercation with the firearm carrier. This Court further finds that a person in possession of the firearm could only presume that the person stopping him wants to cause him harm by confrontation. Therefore, the Defendant was under attack at the time he used deadly force to defend himself, and under the law, the legislature intended that he was not required to retreat before using deadly force.

Based upon the foregoing, this Court finds that the Defendant, Adam Keith Lunsford, acted lawfully, and **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Defendant is granted immunity from criminal prosecution and civil liability under the Protection of Persons and Property Act.

IT IS SO ORDERED.

January 16, 2018



The Honorable J. Mark Hayes, II
Circuit Court Judge
Seventh Judicial Circuit

2018 JAN 16 PM 2:11
H. HOFFE GLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

State of South Carolina,)

-vs-)

Adam Lunsford,)

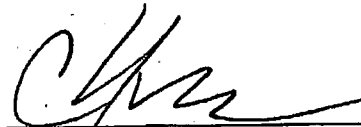
Defendant.)

NOTICE OF MOTION AND MOTION TO
 DISMISS AND/OR FOR IMMUNITY
 PURSUANT TO §16-11-420 (SUPP. 2010)
 AND STATE V. DUNCAN, 703 S.E.2d 662 (2011)

Case(s) # 2016GS4205238, 2016GS4205239

TO: Derrick Balsa, Deputy Solicitor

YOU WILL PLEASE TAKE NOTICE that as soon as this matter can be heard, the Defendant will move before this Honorable Court, for an Order dismissing the cases listed above and/or find that the Defendant is immune from prosecution pursuant to S.C. Ann. §16-11-420 (Supp. 2010) and State v. Duncan, 703 S.E.2d 662 (2011).


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 864-707-2020 telephone
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Spartanburg, SC

May 8, 2017

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2017 MAY -8 PM 12:19
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
 FOR THE SEVENTH JUDICIAL CIRCUIT

STATE,)

v.)

State Response to Defense Motion
 for Immunity

Adam Lunsford,)

Defendant.)

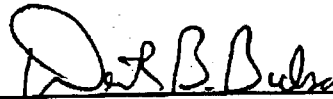
2016-GS-42-5238-39

The Defense asks for a hearing for an order to dismiss the above case pursuant to 16-11-420, Code of Laws for South Carolina, 1976, as amended, yet they do not set out any grounds for such a hearing. The State objects to a hearing being heard due to failure of the defense to provide specific grounds for a hearing. State v. Patton, 322 S.C. 408, 472 S.E.2d 245 (S.C., 1995) (The trial court shall, in the exercise of its discretion, grant a hearing if the defendant's grounds are sufficiently definite, specific, detailed, and non-conjectural to enable the court to conclude that contested issues of fact are in question.).

Furthermore, the defense cites 16-11-420, but does not cite any subsection or language of 16-11-440 to enable the State to prepare for the argument. The State presumes the defense is relying on 16-11-440(A)(1) & (C). The defense sets out no grounds for reliance on this statute and can point to no "attack" by the victim in this incident. State v. Scott, S.C. Appellate Case, Opinion No. 5483 (May 3, 2017) (The State correctly maintains the statute's plain language excuses a defendant's obligation to retreat *only if he is attacked*.).

Therefore, the State asks the Court to direct this case to trial as no grounds for immunity exist, and no grounds for a hearing exist. The proper course is to send this case to a jury to determine if a claim of self-defense has been established.

Respectfully submitted,



Derrick B. Balsa
 Deputy Solicitor

May 9, 2017

FILED
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 SPARTANBURG COUNTY
 2017 MAY -9 AM 11:33
 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

STATE,

v.

Adam Lunsford,

Defendant.

Notice of Motion and
Motion to Reconsider Order
Granting Immunity

2016-GS-42-5238-39

TO: The Defendant through his attorneys, Douglas Brannon and Christopher Kennedy

PLEASE TAKE NOTICE that the State is seeking a hearing to ask the Court to reconsider the order issued on September 26, 2017 granting the defendant criminal and civil immunity pursuant to the South Carolina Protection of Persons and Property Act, 16-11-410 et seq., Code of Laws of South Carolina, 1976, as amended. The State argues that the defense burden of proof by the preponderance of the evidence was not met and that he is not entitled as a matter of law to immunity. The facts of this case should be decided by a jury.

Parties' Actions in the Roadway

The State contends that the facts of this case should not qualify for consideration under the Protection of Persons and Property Act (herein referred to as Act). Daniel Hull, the victim of the shooting, had just as much right to be on the roadway as the defendant. 16-11-440(B)(1).

This case is about a dispute between citizens over driving habits. Daniel Hull did not intrude upon Mr. Lunsford. Daniel Hull did not attack Mr. Lunsford. Daniel Hull is not a criminal – he was on his way home from work. He was driving in his neighborhood and got frustrated with the actions and driving of the defendant.

The Court comments on the driving of Mr. Hull, but does not reference the driving of Mr. Lunsford. Mr. Hull's recollection is understandably clouded by the trauma he suffered of 4 gunshot wounds that left him paralyzed. The driving actions of both men that day should be considered. Daniel Hull felt the defendant was texting and driving. He felt the defendant posed a danger to other drivers and was trying to get him to stop his actions.

The court in its order comments on the testimony of the parties. The defendant testified that Mr. Hull passed him twice before the actual incident. This means that the defendant passed Mr. Hull twice himself. The defendant did not like how Mr. Hull was driving near him – he even acknowledged shooting the victim a "bird" on one of the occasions when he was passed before pulling his pistol on another occasion. The State disputes that the defendant was acting lawfully while driving his vehicle. The defendant

added to this incident with his participation of the back and forth passing nature of the driving.

The defendant then aggravated the situation by pulling and pointing a firearm at the victim. The defendant possessed a concealed weapons permit and should have known that his action of pulling his pistol was wrong. He was not in any danger as he was driving his vehicle. His actions show he acted out of anger and pulled his pistol in a show of intimidation. This angered the victim. The victim acknowledges he made a bad decision, however he was not armed and was no position to cause death or great bodily harm upon the defendant. He merely wanted to confront the defendant about pulling a pistol on him. He knew he could not defeat a pistol. He never expected the defendant to shoot him. The victim was not in the process of unlawfully or forcefully entering the vehicle of the defendant as is required to be shown under 16-11-440(A) for a claim of immunity to be made.

Credibility of Independent Witness

There is clear unbiased testimony that the pistol was fired by the defendant while he was outside his vehicle. Jennifer Sevik testified she saw two men outside their vehicles and heard 4 shots. She testified one man had his back to her with his hands in the air. When she heard the shots, she saw a man fall – the victim, whose back was to her and whose arms were raised in the air. The court cites the credibility of the parties, yet does not reference Ms. Sevik. Her testimony is important, because she has no interest in the case. Her testimony directly contradicts the defendant. Ms. Sevik's testimony dashes the defendant's credibility. Her testimony also shows that the defendant removed himself from the sanctity of his vehicle and therefore any protection of the Act. Ms. Sevik's testimony outweighs the defendant's testimony and clearly establishes that the burden of proof was not met.

Failed Application of the Act

The defendant can only claim protection under the Act if he is attacked. The victim made no aggressive movement towards the defendant's vehicle. He stopped his vehicle several feet away, never trying to strike the defendant's vehicle. He did not run up to the defendant's vehicle. He merely walked towards the vehicle and was trying to get the defendant to step out of his vehicle. He never laid a hand on the vehicle. The victim was clearly unarmed.

The State submits that walking toward a vehicle unarmed is not an attack as envisioned by this Act. The Act references meeting force with force, 16-11-440(C). The victim exhibited no use of force. He was angry, yes, as any person would be angry if a pistol was pulled on him.

The Protection of Persons and Property Act merely excuses a person's duty to retreat if he is properly in one of the locations protected by the Act. In other words, he is entitled to stand his ground while claiming self-defense. State v. Jones, 416 S.C. 283,

786 S.E.2d 132 (2016); State v. Scott, 420 S.C. 108, 800 S.E.2d 793 (2017). The law of self-defense is based upon the necessity to strike in order to save one's self from serious bodily harm or losing his own life. State v. Burnett, 42 S.E.2d 710 (S.C. 1947); State v. Osborne, 25 S.E.2d 561 (S.C. 1943); State v. Boyd, 152 S.E. 677 (S.C. 1930); and State v. Spears, 79 S.E. 315 (S.C. 1913).

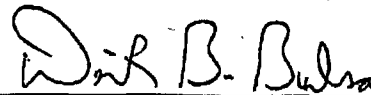
To claim self-defense and protection under the act, the defendant must (1) be without fault in bringing on the difficulty, (2) actually believe he was in imminent danger of losing his life or sustaining serious bodily injury, or that he was actually in imminent danger, or (3) if his defense is based upon a belief of imminent danger, then his belief must be reasonable, and that a reasonably prudent person of ordinary firmness and courage would have entertained the same belief.

The defendant in this case clearly was not without fault. His own testimony describing his driving and passing of the victim repeatedly shows he was participating in the baiting going on in the roadway. He pulled his pistol and aggravated the situation – he, in essence, dared the victim. If he did not pull his pistol, then the victim would have just driven home.

Furthermore, the defendant cannot claim he was in imminent danger or believe he was in imminent danger. He had protection. He held the upper hand. He was in control of the situation. He was emboldened by the knowledge he had a pistol. He possessed a concealed weapons permit, and made a conscious decision to fire his pistol when he was not in any danger. The victim had no weapon. The victim's hands were clearly visible to the defendant – raised in the air.

How can the defendant then be protected by the Act? The facts of this case clearly need to be decided by a jury. The State asks the Court to revise its Order and deny the defense request for immunity and allow this case to proceed to a jury trial.

Respectfully requested,



Derrick B. Balsa
Deputy Solicitor

October 6, 2017

M. HOPE BLANCHLEY

2017 OCT -6 PM 2:30

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

ADAM KEITH LUNSFORD,

Defendant.

IN THE GENERAL SESSIONS COURT

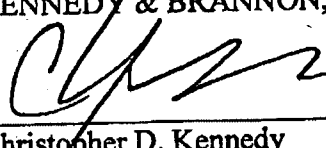
NOTICE OF MOTION AND MOTION
TO DISMISS AND/OR FOR
CRIMINAL AND CIVIL
IMMUNITY

2017-GS-42-03432

TO: Deputy Solicitor Derrick Balsa, 7th Circuit Solicitor's Office

YOU WILL PLEASE TAKE NOTICE that on Friday, October 13, 2017, at _____m.
or as soon thereafter as this matter can be heard, the Defendant, by and through his undersigned
attorney, will move before the Presiding Judge for an order dismissing the above captioned case
and/or granting the Defendant civil and criminal immunity under the Protection of Persons and
Property Act, S.C. Code § 16-11-410, et. seq. (Supp. 2010) and State v. Duncan, 703 S.E.2d 662
(2011)

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Spartanburg, SC

 M. HOPE BLACKLEY
 2017 OCT -9 PM 3:04

 SPARTANBURG COUNTY
 CLERK OF COURT

1 STATE OF SOUTH CAROLINA } COURT OF GENERAL SESSIONS
 2 COUNTY OF SPARTANBURG }

3
 4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
 5 PLAINTIFF,) OF
 6 VS.) RECORD
 7 ADAM KEITH LUNSFORD,) 2016-GS-42-5239
 8 DEFENDANT.)

9
 10 July 19th, 2017
 11 Spartanburg, South Carolina
 12

13 B E F O R E:

14 THE HONORABLE J. MARK HAYES, II, Judge.

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

16 DERRICK BULSA
 17 ASSISTANT SOLICITOR
 18 Attorney for the State

19 DOUGLAS BRANNON and CHRIS KENNEDY
 20 ESQ.
 Attorneys for the Defendant

21
 22
 23 PAMELA E. GREEN
 24 Circuit Court Reporter
 Seventh Judicial Circuit
 25

P R O C E E D I N G S

1
2
3 THE COURT: Lawyers in State versus Lunsford approach a
4 moment.

5 (WHEREUPON, a bench conference was held at this time.)

6 THE COURT: All right. We'll go on the record on the
7 matter of State versus Adam Lunsford.

8 I've got that this is a -- we're here on notice of
9 motion and motion to dismiss and/or for immunity pursuant to
10 16-11-420 and State versus Duncan.

11 Yes, sir, Mr. Brannon.

12 MR. BRANNON: Thank you, Your Honor.

13 The Court's correctly noted. This is the -- this is a
14 matter actually brought on the Protection of Persons and
15 Properties Act of 2006.

16 Your Honor, the defendant is present in the courtroom
17 and we're prepared to proceed.

18 THE COURT: Yes, sir. You want to call your first
19 witness?

20 MR. BRANNON: We call Daniel Hull to the witness stand.

21 THE COURT: Sir, just come right up here and let the
22 Clerk of Court swear you in.

23 DANIEL HULL, being first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BRANNON:

2 Q Are you comfortable, sir?

3 A Yeah.

4 MR. BRANNON: Okay. May it please the Court?
5 (WHEREUPON, the Court nods affirmatively.)

6 Q Sir, you're Mr. Hull?

7 A I am.

8 Q Are you a resident of Spartanburg County, South
9 Carolina?

10 A I am.

11 Q Sir, are you now or have you ever been a law
12 enforcement officer?

13 A No, sir.

14 Q Do you -- have you ever possessed a law enforcement
15 badge of any kind?

16 A No, sir.

17 Q All right. Do you have children?

18 A No, sir.

19 Q All right. My client, on the night of December 22nd
20 excuse me, September 22nd, 2016, was driving a Toyota
21 4Runner.

22 Do you recall that vehicle?

23 A Vaguely.

24 Q All right. Do you -- prior to that incident or that
25 night, had you ever met Adam Lunsford?

1 A Not that I know of.

2 Q Have you ever owned a Toyota 4Runner vehicle before?

3 A No, sir.

4 Q So, there's no possible way that your name could be
5 anyway affiliated with the title to this Toyota 4Runner
6 then, could it?

7 A No, sir.

8 Q All right. Are you now married?

9 A No, sir.

10 Q Have you ever been married?

11 A No, sir.

12 Q Thank you.

13 All right. On September -- September the 22nd of
14 2016, did you encounter my client's vehicle while traveling
15 on Union Street in Spartanburg County?

16 A Yes, sir.

17 Q Please tell the Court what you saw when you encountered
18 his vehicle.

19 A I was on my way home from work. I don't remember
20 encountering him until the stoplight on Forest Avenue I
21 believe. He started messing with something in his passenger
22 seat. We are close to where I was turning right onto
23 Lucerne. So, I figured I'd stay behind him. Hopefully he'd
24 go straight. I wouldn't have to bother with it.

25 He turned right on Lucerne. He was still fooling

1 around down here. I thought he was texting on his phone.

2 So, I figured I would pass him. I passed him. When I

3 passed him, he flashed his gun at me and was cussing me out

4 and -- do I continue or --?

5 Q Sure. Yeah.

6 A When I saw the gun, I, I got irritated. So, I pulled

7 over. I exited my vehicle, was trying to ask him to put his

8 gun down and come out and join me in the road.

9 Q To do what?

10 A To fight.

11 Q To fight?

12 A Yeah.

13 Q Okay. So, you, you -- when did you become angry?

14 A When I saw him waving his gun at me.

15 Q Okay. All right. Did you get angry because he pointed

16 a gun at you or did you get angry because he was driving

17 slowly?

18 what, what angered you?

19 A I was just passing him cause I, I find it very, very

20 unsafe to drive and text. So, I didn't want to be behind

21 him in the neighborhood driving and texting. So, I passed

22 him.

23 Q Okay.

24 A I wasn't angry at that time at all.

25 Q Right.

1 Now, now, you mentioned to the police that you believed
2 that he was texting or, or, or---

3 A He was fooling around down here, yeah.

4 Q ---doing something?

5 Right.

6 And, and you understand that the police confiscated his
7 telephone, correct?

8 A I don't know.

9 Q Okay. All right. So, your testimony today is that you
10 didn't become angry until you tried to pass him on Lucerne
11 and he flashed his gun at you.

12 Is that correct?

13 A Right.

14 Q All right. How many times did you try to pass him on
15 Lucerne before you actually did?

16 A Just the once I think.

17 Q Just the once.

18 Okay. What was the first thing that you said to him
19 when you got out of your car?

20 A That sentence I was trying to get out of my mouth -- do
21 you want it word-for-word?

22 Q Yeah.

23 A I don't know if it will offend people.

24 Q Yeah. Word-for-word.

25 A I said do you want to fucking shoot me over passing you

1 but I only got to do you want to F (the witness makes the
2 sound for the letter F) and then he started firing.

3 Q Okay. Now, is your recollection of these events better
4 today or would it have been on September the 23rd when you
5 were talking to law enforcement or maybe on September the
6 27th?

7 A I honestly couldn't -- I mean I guess today is the best
8 I can tell you. I don't know.

9 Q Okay. Because, on September the 23rd, with those two
10 police officers in your, in your hospital bed, you told them
11 that what you said when you got out of your car was what the
12 fuck.

13 A Is that not what I just said?

14 Q Well, no, you said -- all you stopped was -- did you
15 say to him what the fuck?

16 A I did, yeah.

17 Q Okay. Do you remember telling law enforcement that you
18 thought people still fought around here?

19 A I was on a lot of medication in that hospital.

20 Q Okay. Would you deny that you said I---

21 A That I said what?

22 Q I thought people still fought around here.

23 A To him?

24 Q Yeah.

25 A That's not what I said.

1 Q No, forgive me. To the -- to law enforcement.

2 A Yeah, probably.

3 Q Okay.

4 A Yeah. I don't know.

5 Q Okay. So, so, you stopped knowing that a man in a car
6 ahead of you, well, at that point, behind you, had a gun and
7 you thought that you were gonna invite him out of his car to
8 fight?

9 A I figured it was better then letting him follow me to
10 my house and getting out of his car with a gun and following
11 me to my house, yes.

12 Q Okay. But, remember, you passed him. If you didn't---

13 A I was passing him while he was holding a gun.

14 Q Well, let's talk---

15 A I pulled over.

16 Q Okay. Let's talk about that.

17 Lucerne is a two lane road, correct?

18 A It is.

19 Q And it is a double yellow line, isn't it?

20 A It's very dangerous for me to pass him, yes.

21 Q Right.

22 And there's speed bumps on Lucerne, correct?

23 A Correct.

24 Q In fact, you stopped just after the third speed bump.
25 Isn't that true?

1 A I don't know.

2 Q Okay. All right. Have you ever suffered road rage
3 like this before?

4 A No.

5 Q Never.

6 And just a man who you believed to be using his
7 telephone was enough to set you off?

8 A It was enough to pass him, yes. I think it's very
9 dangerous to text and drive.

10 Q More so than passing on a double yellow line in a two
11 lane road in a suburban neighborhood?

12 A I think what I did was more safe than him texting and
13 driving.

14 Q Okay.

15 A Yes.

16 Q All right. But you have no evidence that he was
17 actually texting?

18 A No. No, I don't.

19 Q None at all, correct?

20 A No.

21 Q All right. Do you recall telling law enforcement that
22 my client was going really slow on Union Street?

23 A Vaguely.

24 Q Okay. Did his speed bother you?

25 A No, like I said, I was close enough to turning right

- 1 that I was hoping he'd just go straight and --.
- 2 Q Okay. Well, let's, let's talk about turning right.
- 3 Do you recall telling law enforcement that you were
- 4 traveling in the left-hand lane on Union Street?
- 5 A No.
- 6 Q Okay. Well, your recollection today is were you in the
- 7 left-hand lane or the right-hand lane?
- 8 A When I, when I drive, usually I'm in the left-hand lane
- 9 till I get closer to the house and then I get in the
- 10 right-hand lane just because of the way the, the, the roads
- 11 are paved.
- 12 Q Okay. But you were getting close to Lucerne and---
- 13 A Most---
- 14 Q Is there any reason why you didn't get over into the
- 15 right-hand lane so that you could make that turn at that
- 16 point?
- 17 A I was in, I was in the right-hand lane on Forest Avenue
- 18 at that stoplight.
- 19 Q Okay. All right. You said just a minute ago that you
- 20 got out of your car to invite him out of his to join you in
- 21 the road for a fight.
- 22 Is that correct?
- 23 A (Witness nods affirmatively.)
- 24 Yes, sir.
- 25 Q Okay. And you wanted to fight him why?

1 A why should he able to wave a gun?

2 I, I know Concealed Weapons Permits and that is a very,
3 very wrong move. I mean you can't brandish your weapon from
4 a car and---

5 Q Okay. So---

6 A And if I -- if we'd, if we'd of done what I wanted,
7 we'd of both walked home and been happy after that. I mean
8 nobody would of been shot or nothing. So, I mean, yes, put
9 your gun down and come fight me in the road.

10 Q Okay. How did you park your car in the road?

11 A I couldn't tell you.

12 Q Okay. Well, what were you driving that night?

13 A Jeep Liberty.

14 Q Okay. What color?

15 A Gold.

16 MR. BRANNON: Approach the witness, Your Honor?

17 THE COURT: Yes, sir.

18 Q Show you a photograph.

19 Does that appear to be your Jeep Liberty there?

20 A Yes, sir.

21 Q Okay. And does that appear to be a Toyota, Toyota
22 4Runner?

23 A Yes, sir.

24 Q All right. Do you see that speed bump right there
25 between the vehicles?

- 1 A Yes, sir.
- 2 Q All right. Your car is on one side of the speed bump,
3 correct?
- 4 A Yeah.
- 5 Q Toyota 4Runner is on the other side of the speed bump
6 right?
- 7 A Yes, sir.
- 8 Q Now, is, is your, is your car going straight?
- 9 A It appears. I don't know.
- 10 Q well, wouldn't you agree with me that it's parked on a
11 bit of an angle?
- 12 A Possibly.
- 13 Q All right. And when you, when you passed my client,
14 you immediately stopped, correct?
- 15 A I couldn't tell you. I'm sure I did, yeah.
- 16 Q Okay. And when you got out of your car, what, what --
17 specifically, what did you do when you got out of your car?
- 18 A I had my hands completely open and I said, like I said,
19 I was in the middle of a sentence.
- 20 Q Uh-huh. (Affirmative).
- 21 A And I didn't, I didn't make it any further than the end
22 of my car. I wasn't trying to get any further past the end
23 of my car.
- 24 Q Okay.
- 25 A Because I mean, as dumb as it sounds, I was standing

1 there with a man with a gun. I wasn't trying to get any
2 closer than I was.

3 Q Okay. All right. Now, did you turn your car off?

4 A I couldn't tell you.

5 Q Okay. Well, would you be surprised to know that you
6 did not turn your car off?

7 A I don't know.

8 Q All right.

9 A I don't.

10 Q So, if you didn't turn your car off and if you stopped
11 immediately after you passed my client, how long did it take
12 you to get to the end of your car?

13 A A couple steps.

14 Q A couple -- I'm not -- steps.

15 Time, can you give me time?

16 A I couldn't tell you.

17 Q Okay. A second?

18 A Longer than that.

19 Q Okay. All right. So, your suggestion then is that you
20 didn't get mad until he pointed a gun at you.

21 Is that correct?

22 A Correct.

23 Q All right. Why then -- do you remember calling 9-1-1?

24 A Vaguely.

25 Q Okay. Do you know that at -- I'm -- forgive me.

1 Retract that question.

2 What have you done prior to today coming to Court to
3 prepare for this Court hearing?

4 A Nothing.

5 Q Have you reviewed any of your statements?

6 A Yeah. Maybe.

7 Q Okay. Have you listened to any of your recorded, your
8 recorded statements?

9 A We listened to the recordings, yeah.

10 Q Okay. Did you happen to listen to your 9-1-1 call?

11 A Yes.

12 Q Okay. Do you realize that, at two minutes and 15
13 seconds into your 9-1-1 call, even with three gunshot wounds
14 in your body, you said I'm gonna kick the shit out of that
15 dude?

16 Do you remember that?

17 A No, sir.

18 Q Okay. Would you like me to play it so you can hear it?

19 A I'm -- not really, no, sir.

20 Q Okay. You don't doubt that you said it, did you?

21 A No.

22 Q Okay. So, even after being shot, you were still angry
23 enough and wanted to beat him up.

24 Is that correct?

25 A Most likely.

1 Q Okay.

2 A I think getting shot is a reason to be angry.

3 Q When my client, when my client pulled the trigger the
4 first time, he was in his car, wasn't he?

5 A His door was opened and he was still halfway in the
6 car, yes.

7 Q Okay. All right. Do you remember telling the two
8 police officers I can understand him being angry but four
9 gunshots?

10 Do you---

11 A (Witness nods negatively.)

12 Q Don't remember telling them that?

13 A No, sir.

14 Q Okay. You do remember telling the cop though you
15 thought people still fought around here, right?

16 A I say that now, yeah. I mean --.

17 Q Okay.

18 A I think it takes a lot to be able to shoot somebody.

19 Q Do you remember telling law enforcement, on September
20 the 27th, 2016, that you wouldn't even have been mad about
21 the first shot?

22 A No, I don't. Like I said, I don't, I don't -- there's
23 a lot of medication going on.

24 Q All right. Do you remember telling the officer in the
25 ambulance on the way to the hospital that this was a road

1 rage incident?

2 A No, but it is a road rage.

3 Q Right.

4 And do you remember telling them that it was a road
5 rage incident, incident on both parts, on yours and his?

6 A No, sir, but I, I don't argue that.

7 Q Okay. You admit that you were angry?

8 A Right.

9 Q You admit that, using your own words, you intended to
10 invite him out of his car for a fight?

11 A Right.

12 Q And you admit that, when you got out of your car after
13 stopping abruptly in front of him, you went what the fuck?

14 A Right.

15 Is that not a good question for somebody waving a gun
16 at you?

17 Q At some point you told law enforcement that my client
18 was driving his car, pointing a pistol at you, and flipping
19 you off at the same time.

20 How did he do that?

21 A I don't know.

22 Q I think---

23 A He was halfway out his window cussing me out. I
24 didn't, I didn't understand why he was so angry at just me
25 passing him.

1 Q Okay.

2 A But he was out of his window with a gun. So, you tell
3 me. I, I don't know.

4 Q He had his gun out his window?

5 A He was out of his window doing this cussing me out,
6 yeah.

7 Q Okay. All right. Did my client ever stop his car
8 before you blocked him in?

9 A I'm not sure but he had plenty of room to go around me.

10 Q Well, okay. We'll, we'll, we'll talk about that.

11 A Okay.

12 Q Let's, let's use that same picture.

13 SOLICITOR BULSA: Your Honor, I think we need to get
14 that marked so it will be entered into the record.

15 MR. BRANNON: I would move to introduce this photo as
16 Defendant's 1.

17 SOLICITOR BULSA: We have no objection.

18 THE COURT: No objection. Let her mark it if you
19 would.

20 (WHEREUPON, the photograph was marked as Defendant's
21 Exhibit No. 1 and received into evidence at this time.)

22 Q Again, this is the same photo that I showed you before?

23 A Right.

24 Q You remember that?

25 A Right.

1 Q Okay. All right. And I don't mean to offend you by
2 getting close to you.

3 A You're good.

4 Q Okay. That's your car there --

5 A Yes, sir.

6 Q -- correct?

7 And would you agree that we've got the two that the --
8 that's the double yellow line here --

9 A Yes, sir.

10 Q -- correct?

11 And you see those white towels there?

12 A Yes, sir.

13 Q Okay. Those were the, those were the rags or towels
14 that bystanders brought for your aid after the incident was
15 over.

16 A Uh-huh. (Affirmative).

17 Q Do you agree with me that those are in the left-hand
18 lane?

19 A Right, but I also tell you that I moved myself. I
20 tried to get myself all the way back into my car before
21 anybody ever got to me and stopped me from moving. So,
22 there was plenty of movement. That's not, that's not where
23 I landed.

24 Q That's not where -- well, where did you land?

25 A I guess right where I was standing at the end of my

1 car.

2 Q So, you think you landed---

3 A I actually was trying to get back into my car. So, I
4 was really close to the driver's door. I actually grabbed
5 the driver door trying to pull myself in when the first lady
6 showed up and told me to stop moving.

7 Q Okay. But the driver's door not open, is it?

8 A I don't know. I can't see.

9 Q Okay. All right. But do you agree that those towels
10 and, and that---

11 A Right.

12 Q ---are in the left-hand lane?

13 A Yes, sir.

14 Q Okay. All right. And, and your car is -- I'm gonna
15 show you another photograph. Maybe a little clearer
16 photograph.

17 Do you see how your car is, is slightly diagonal in
18 that right-hand lane?

19 A I do. I also see about 8-feet in-between those cars.

20 Q Well, actually, actually we know the, the dimension of
21 that. There's approximately, approximately 17-feet between
22 that door and that door.

23 Okay. So -- but do you see the -- the question I'm
24 asking you is do you see -- do you agree with me that your
25 car is diagonally in that---

1 A Yes, sir.

2 Q It is?

3 A Yes, sir.

4 Q Okay. And you agree with me this is even clearer that
5 the towels and so forth that are in the road, correct?

6 A Right.

7 MR. BRANNON: I'd move to admit this as Defense 2.

8 SOLICITOR BULSA: No objection.

9 THE COURT: Without objection.

10 (WHEREUPON, the photograph was marked as Defendant's
11 Exhibit No. 2 and received into evidence at this time.)

12 Q So, Mr. Hull, you were inviting my client out of his
13 car to, to join you in a fight?

14 A Without a gun, yes.

15 Q To, to join you in a fight?

16 A Yes, sir.

17 Q Okay. What would you have done if he said no, thanks,
18 I'm not gonna get out of the car?

19 A I'd probably called him a few names and let him go on
20 his way.

21 Q All right. You probably would of approached his
22 vehicle, wouldn't you?

23 A No, I wouldn't. He had a gun.

24 Q Yeah.

25 Okay. All right. Do you have any reason to believe

1 that Adam Lunsford did not have a valid driver's license on
2 September the 22nd, 2016?

3 A No, sir.

4 Q Okay. Do you now know for fact that he was the
5 possessor of a Concealed Weapons Permit?

6 A I know that, yes, sir.

7 Q Okay. All right. Where were you coming from that
8 night?

9 A I was going home to work -- from work.

10 Q Okay. From where?

11 A Upstate University.

12 Q Okay. And what do you do at Upstate or did you do at
13 Upstate?

14 A Cook.

15 Q Okay. All right. And what road do you live on?

16 A Park Hill.

17 Q Okay.

18 A Park Hill Drive.

19 Q Park Hill Drive is, is off of Lucerne.

20 Is that correct?

21 A Correct.

22 Q And do you now know that Adam Lunsford, Lunsford lives
23 basically in the same neighbor that you lived in?

24 A Correct.

25 Q And, and that he was going home too?

1 A Yes, sir.

2 Q Do you now know that you were both probably within a
3 hundred yards or a quarter of a mile from your own homes?

4 A Yes, sir.

5 Q Okay.

6 A That's why I didn't want to continue to my house cause
7 he had a gun.

8 MR. BRANNON: One second, Your Honor.

9 (Pause.)

10 Q All right. I want to ask you.

11 Do you, do you have any real recollection of the
12 conversations that you had with the two officers on either
13 the 23rd of September or the 27th of September in the
14 hospital?

15 A I remember talking to them. I don't remember which
16 conversations were what.

17 Q Okay. But you, you did then listen to those -- and I,
18 and I don't care if you know if it's the 23rd or the
19 27th.

20 But you did listen to those recordings, correct?

21 A Right.

22 Q Do you remember saying, and I asked you a similar
23 question, do you remember saying that I wouldn't even have
24 been mad about the first shot?

25 Do you remember that?

1 A Yeah.

2 Q Do you, do you remember hearing it?

3 A Yeah.

4 Q Okay. Do you remember that you said I can understand
5 the first shot?

6 A Vaguely, yeah.

7 Q Thank you.

8 Your Honor, I don't have anything else at this point.

9 CROSS-EXAMINATION

10 BY SOLICITOR BULSA:

11 Q Daniel, you're in a wheelchair.

12 Is that a result of this incident?

13 A Yes, sir.

14 Q How many wounds did you receive?

15 A I recall four shots but they told me I was shot three
16 times.

17 Q Okay. Describe for the judge where you got shot.

18 A One went straight through my arm here. One grazed me
19 on my side here. One hit me somewhere in the middle. They
20 pulled it out down here at my liver, wherever this is, and
21 then I still have one in my spine from where I turned around
22 and tried to get back in my car.

23 Q You actually had one gunshot wound to your back, did
24 you not?

25 A Yes, it went in my back, in my spine.

1 Q Okay. And as a result of that, you're paralyzed from
2 the waist down?

3 A Yes, sir, T10 - T12 is where the bullet lays.

4 Q Okay. I mean you're not denying that you pulled in
5 front of this guy's car --

6 A No, sir.

7 Q -- with the intention of cutting him off?

8 A No, sir.

9 Q Okay. What you told the defense attorney and you're
10 telling the judge is you did that because he pointed a gun
11 at you as you were driving by?

12 A Yes, sir.

13 Q All right. And that made you angry?

14 A Absolutely.

15 Q Now, when you pulled over and stopped your car, how far
16 did you move towards his vehicle?

17 A I never -- like I said, I got to the back of my car.
18 I'm not sure how many feet that is on a Jeep but I never
19 made it further than the back of my car, and it's, like I
20 said, as dumb as it sounds, I wasn't trying to get any
21 closer to the guy with a gun. I asked him to put it down
22 and---

23 Q Okay.

24 A Maybe, maybe 3-feet.

25 Q You demonstrated, when Mr. Brannon was asking you

- 1 questions, that you had your arms out to this---
- 2 A Completely.
- 3 Q Okay.
- 4 A Absolutely. So, as soon as I seen my---
- 5 Q So, did you have anything in your hands?
- 6 A No, sir, as soon as I got out of my car, my hands were
- 7 up.
- 8 Q And what time of day was this?
- 9 A It was -- the sun was still out. It's afternoon. It's
- 10 when I got off. So, I'm not entirely sure. So --.
- 11 Q Okay. Was it a clear day?
- 12 A Yes, sir.
- 13 Q Okay. Nothing blocking your two vehicles?
- 14 A Absolutely not.
- 15 Q You could clearly see him and he could clearly see you?
- 16 A Yes, sir.
- 17 Q All right. So, you never made it to his car.
- 18 Did you intend to go to his car and grab his door and
- 19 try to yank him out?
- 20 A I never intended to get further than the end of my car,
- 21 no, sir.
- 22 Q Okay. And do recall if his window was opened?
- 23 A It was down.
- 24 Q His driver's window was down?
- 25 A It was.

- 1 Q Okay. And you were yelling at him from a distance?
- 2 A Yes, sir. Further than me and you are now.
- 3 Q Was he responding?
- 4 A Oh, yeah.
- 5 Q What was he saying?
- 6 A I'm not sure. It was a bunch of cussing on both parts.
- 7 So --.
- 8 Q Okay. So, you never actually laid any hands on him?
- 9 A Absolutely not.
- 10 Q And you were not gonna lay hands on him until you knew
- 11 he put the gun down and was coming -- was gonna come out the
- 12 road and join you?
- 13 A Yes, sir.
- 14 Q Okay. And you're, you're not disputing now that was
- 15 probably not a good idea?
- 16 A No.
- 17 Q Okay. But you, in no way, attacked him, did you?
- 18 A No, sir.
- 19 Q You, in no way, tried to get into his car?
- 20 A No, sir.
- 21 Q You said -- I think you recalled you believed he was
- 22 half way in and half way out of the car when the first
- 23 shot---
- 24 A The first shot, yes, sir.
- 25 Q ---was fired.

1 Do you know where he was when the other shots were
2 fired?

3 A He was in the road. He was walking towards me in the
4 road.

5 Q Okay. And you were hit and dropped and tried to crawl
6 back to your car?

7 A Honestly, the first two shots, I was shocked and
8 confused. I was feeling myself cause I, I still didn't know
9 what was going on, and the third shot's when I saw blood.
10 So, that's when I turned around and tried to get back in my
11 car and that's when he shot me in the back, and that's the
12 one -- I felt that bullet enter my back. I felt a tingle go
13 from that bullet all the way up to the top of my head, the
14 tips of my toes. And as soon as it went -- as soon as it
15 got to both is when I was paralyzed and I dropped. I mean
16 I, I felt that instant moment.

17 Q Okay. I want to back it up to Union Street.

18 How close is Forest Drive to Lucerne?

19 A A quarter mile. Maybe a half a mile.

20 Q How many lights before Lucerne is Forest Drive?

21 A None.

22 Q It's the very next---

23 A Next right.

24 Q ---right?

25 Okay. So -- and which lane were you driving in?

- 1 A The right lane.
- 2 Q The right lane.
- 3 which lane was he in?
- 4 A The right lane I believe.
- 5 Q So, you were right behind him?
- 6 A I was behind him.
- 7 Q Okay. And you live off Lucerne. So, you knew you had
- 8 to take the next right.
- 9 A Correct.
- 10 Q So, you just stayed behind him?
- 11 A Yes, sir.
- 12 Q Did you do anything with your vehicle?
- 13 A I, I didn't, I didn't bother with him on Lucerne at
- 14 all. Like I said, I was hoping he was going straight. I
- 15 thought he was texting and there's no proof of that or
- 16 whatever. That's fine. But he was fumbling. So, I was
- 17 just hoping he'd go straight and we wouldn't have a problem.
- 18 He turned. I turned. I really don't like texting and
- 19 driving. So, I, I made a wrong choice in passing him but
- 20 that's---
- 21 Q well, what's wrong with passing him?
- 22 A It was a double lane or double yellow line.
- 23 Q All right. Well, was any cars coming?
- 24 A No, sir.
- 25 Q All right. But he was going slow?

1 A He was very, very slow.

2 Q And this is -- it's a residential street with speed
3 bumps?

4 A Yes, sir.

5 Q So, what is the speed limit there?

6 A Fifteen I think.

7 Q Fifteen.

8 Okay. All right. So, you should of just kept on
9 behind him but you got irritated and wanted to pass him?

10 A Correct.

11 Q How many times did you pass him?

12 A I think just the one or I'm not, I'm not sure. But I
13 mean I couldn't even -- both of my passenger side windows
14 don't even work. So, I mean I wasn't even yelling at him
15 because there'd be no point. I mean I couldn't even -- I
16 just turned and looked and see what he was doing and that's
17 when he was waving his gun at me. I think I passed him
18 once. I'm not sure. He may of passed me. I'm, I'm -- I
19 can't really recall.

20 Q Okay. Did you ride his bumper?

21 A I don't think so, no. Maybe -- in the, the
22 neighborhood probably for the first speed bump maybe. I
23 think I stayed behind him on the first speed bump I believe.

24 Q Okay. And you testified this happened at the third
25 speed bump?

- 1 A I think so.
- 2 Q Okay.
- 3 A Yeah.
- 4 Q And I think it actually happened close to Parkdale --
- 5 intersection of Parkdale and Lucerne, right?
- 6 A Right.
- 7 Q In fact, Parkdale is the very next turn?
- 8 A Right.
- 9 Q All right. And instead of driving home, you decided to
- 10 stop?
- 11 A Yeah, I mean we were very -- he could see my house from
- 12 there I believe, and I, I didn't want to take a risk with
- 13 her being there and having a guy with a gun follow me home.
- 14 So, I'd much rather ask him to put his gun down and be a man
- 15 in the road.
- 16 Q Do you own a weapon?
- 17 A I don't, no. My only question is I mean where, where
- 18 does his right to shoot somebody supersede my right to get
- 19 out---
- 20 Q That's, that's why we're here.
- 21 okay?
- 22 A Okay. Okay. I'm sorry.
- 23 Q Okay. Now, Daniel, so, you got out unarmed?
- 24 A Yes, sir.
- 25 Q Had no weapon in your car?

- 1 A No, sir.
- 2 Q And didn't get but more than a couple of steps, right?
- 3 A I got half a sentence out before he started firing.
- 4 Q Okay. All right. Did you see any other cars in the
5 road?
- 6 A No, sir.
- 7 Q Did some of the neighbors come out -- come to your aid?
- 8 A Yes, sir.
- 9 Q And then you were taken to the hospital in an
10 ambulance?
- 11 A Yes, sir.
- 12 Q Okay. And then you met with the police and told
13 them -- I know you have trouble recollecting but you did
14 listen to everything, right---
- 15 A I did, yeah.
- 16 Q ---in preparation?
- 17 Now, so, you're not disputing that you made a bad
18 error?
- 19 A (Witness nods negatively.)
- 20 Q You, in no way, attacked Mr.---
- 21 A Absolutely not.
- 22 Q ---Lunsford, did you?
- 23 A No. None of what I did was a good idea obviously but
24 no, he was never attacked. He was never given an option
25 that this was the end of it. I mean he, he -- no, he wasn't

1 ever attacked.

2 Q Okay. Thank you. That's all I have right now.

3 THE COURT: Any redirect limited---

4 MR. BRANNON: Yeah.

5 THE COURT: ---to what he went into?

6 MR. BRANNON: Yeah. Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. BRANNON:

9 Q I, I want to go back to that. Mr. Bulsa cut you off
10 but your question was where does his right -- how does his
11 right---

12 SOLICITOR BULSA: Objection, Your Honor. That's the
13 legal issue---

14 MR. BRANNON: I want him to finish his statement.

15 SOLICITOR BULSA: ---to decide.

16 THE COURT: All right. He doesn't -- go ahead.
17 There's not a jury here.

18 Q Where does his right supersede your right to do what?

19 A No.

20 Where does his right to shoot somebody supersede my
21 right to get out of the car angry? That's all. That's all
22 I did was get out of the car---

23 Q To get out of the, the car angry and invite him out of
24 the car to fight?

25 A All I did was get out of the car angry.

1 Q Okay. All right. Now, I'm, I'm confused because you
2 told me, on direct, that you stopped abruptly, got out of
3 the car, and before you could even finish a complete
4 sentence you had been shot.

5 A Correct.

6 Q But you told Mr. Bulsa that you said put your gun down.
7 Now---

8 A No, I invited -- that was going to be my sentence.

9 Q Okay. All right. Now, you said that you didn't want
10 my client to follow you home because he's a guy with a gun,
11 right?

12 A (Witness nods affirmatively.)

13 Q And then you told Mr. Bulsa that you never attacked
14 Mr. Lunsford, that you never had any intention of attacking
15 Mr. Lunsford, right?

16 A Correct.

17 Q But when you stopped your car abruptly, you were angry,
18 weren't you?

19 A Correct.

20 Q And when you stopped your car abruptly, you got out of
21 the car without shutting it off, didn't you?

22 A I don't know.

23 Q Okay. But you got out of the car quickly, correct?

24 A Correct.

25 Q And you knew he had a gun, correct?

1 A Correct.

2 Q Now, how does Mr. Lunsford know what your intent is?

3 SOLICITOR BULSA: Objection, Your Honor. That calls
4 for speculation.

5 MR. BRANNON: I'm sorry. You opened the door.

6 THE COURT: Well, there's not a jury here. I do agree
7 it requires some speculation on his part.

8 Go ahead.

9 Q How does Mr. Lunsford know what your intent is?

10 A He could of waited for my sentence.

11 Q Okay. He knows that you know he's got a gun and you're
12 coming for him out of your car.

13 A I never made it close enough to him to be nervous.

14 Q I understand that's your testimony.

15 My client could not have known what your intent was,
16 could he?

17 A I don't know.

18 MR. BRANNON: Thank you, Your Honor.

19 THE COURT: All right. Thank you, sir. Thank you,
20 sir.

21 Ready to call your next witness?

22 MR. BRANNON: Okay. Ready.

23 THE COURT: Sir, just come right up here and let the
24 Clerk of Court swear you in.

25 CHRIS TAYLOR, being first duly

1 sworn, testified as follows:

2 THE COURT: All right, sir. Just step up and have a
3 seat in the red chair and pull the red chair close to the
4 microphone.

5 THE WITNESS: Yes, sir.

6 DIRECT EXAMINATION

7 BY MR. BRANNON:

8 Q Officer Taylor, you're employed with the City of
9 Spartanburg.

10 Is that correct?

11 A Yes, sir.

12 Q How long you been there?

13 A Twenty-one years.

14 Q Okay. And what do you -- what is your job title now?

15 A Investigator.

16 Q Okay. And, and are you assigned to any specific type
17 of cases?

18 A Major crimes.

19 Q All right. Did you get assigned to this Hull/Lunsford
20 situation?

21 A No, sir, that would be Investigator Nelson. I just
22 assisted him on the case.

23 Q All right. well, did you go to the Spartanburg
24 Regional Hospital on September the 23rd, 2016, to interview
25 Mr. Hull?

1 A Yes, sir.

2 Q And did you record that, that conversation?

3 A It was recorded. Investigator Nelson recorded it.

4 Q Okay. Do you recall that recorded conversation?

5 A Yes, sir.

6 Q All right. Do you recall Mr. Hull stating I thought
7 people still fought around here?

8 A Oh, yes, sir.

9 Q Do you recall that he said I stopped, Mr. Lunsford
10 stopped. In fact, the way it goes is Mr. Hull says I
11 stopped, he stopped, I got out, and said fuck you.

12 Do you remember that?

13 A Not that exact wording, no, sir.

14 Q Okay. Do you doubt that I've transcribed it
15 appropriately?

16 A I hope you will.

17 Q Okay. All right. Do you remember asking Mr. Hull if
18 my client showed him the gun?

19 A One was asking him, sure.

20 Q Okay. And do you recall that he said yes?

21 A Yes, sir.

22 Q So, when Mr. Hull -- there's no hesitation, no, no
23 doubt in your mind that when Mr. Hull got out of his car
24 angrily, like he just testified, that he knew my client had
25 a gun?

1 A Yes, sir.

2 Q And he continued to approach the vehicle until he was
3 shot.

4 Is that correct?

5 A Yes, sir.

6 Q Okay. All right. Now, did you go back on September
7 the 27th, 2016, to interview Mr. Hull again?

8 A Yes, sir.

9 Q Okay. And now, in truth, the first interview on the
10 23rd was really short, right?

11 He was, he was heavily medicated at that time, correct?

12 A Yes, sir.

13 Q All right. So, on the 27th, you went back and, and I
14 want, I want to know why was it important for you to talk to
15 Mr. Hull about the fact that Mr. Lunsford lawyered up the
16 night of this incident?

17 A Why was it important?

18 Q Yeah.

19 A Just passed along the information to him.

20 Q Well, but, but there was a comment about the fact that
21 Mr. Lunsford asked for his lawyer helped you do your job.
22 What, what -- I don't understand that.

23 What did that mean?

24 A Well, for me, it meant the fact that he actually talked
25 to a lawyer first. So, he had his facts about what he was

1 gonna say.

2 Q Okay. All right. Now, there's, there's one really
3 important statement made on the 27th by Mr. Hull, and
4 it -- he says, and I want to ask you if you recall this, I
5 stopped my car. I didn't want to be any more illegal.

6 Do you remember him saying that?

7 A No, sir.

8 Q Okay. Again, do you doubt that he said that on the
9 recorded conversation?

10 A Obviously you transcribed it.

11 Q Okay. All right. So, he admitted to you that he had
12 passed my client on -- does Lucerne have a double yellow
13 line?

14 A Yes, sir.

15 Q What's the speed limit on Lucerne?

16 A Probably no more than 15 to 20 miles per hour.

17 Q Okay. And there are, there are, there are multiple
18 speed bumps on Lucerne.

19 Is that correct?

20 A Yes, sir.

21 Q This incident took place with one car on one side and
22 my client's car on the other side of the third speed bump on
23 Lucerne, correct?

24 A Yes, sir.

25 Q Right before Mr. Hull would of turned to go to his home

1 on Bellview or whatever the name of the road is, correct?

2 A It was pretty close, yes, sir.

3 Q Okay. All right. What did you think when Mr. Hull
4 said, you know, I, I would of been okay with the first shot?
5 What did you think about that?

6 SOLICITOR BULSA: Objection, Your Honor.

7 THE COURT: I'll sustain the objection.

8 MR. BRANNON: Okay. Withdraw the question.

9 Do you remember Mr. Hull telling you that seeing the
10 gun pissed me off?

11 A Yes, sir, he was upset about that.

12 Q Okay. Initially, Mr. Hull told you that my client was
13 out of his vehicle when all of the shots were fired,
14 correct?

15 A Actually I think so. I remember that.

16 Q And then later he corrected himself and said that he
17 was in the car when the first shot was fired, correct?

18 A Well, yes, sir.

19 Q Okay. Now, you don't have any evidence to prove or
20 disprove whether Mr. Lunsford was in the car for the first
21 shot or the third shot, right?

22 A No, sir.

23 Q All right. And you only found three casings.
24 Isn't that correct?

25 A Yes, sir.

1 Q There were eight bullets in the, in the sleeve,
2 correct, in the---

3 A Magazine.

4 Q Magazine, correct?

5 A Yes, sir.

6 Q And there was one in the chamber, right?

7 A Yes, sir.

8 Q How many guns -- how many bullets did the gun hold?

9 A The magazine actually suppose to hold ten. If you have
10 a round that's in the, as far as in the gun, that would be
11 11. But in the case of that magazine, it holds 12 rounds.

12 Q It holds 12 rounds?

13 A Yes, sir.

14 Q You found three casings, correct?

15 A Yes, sir.

16 Q And there were how many bullets left in the gun?

17 A Eight in the magazine and one in the gun. That would
18 be nine.

19 Q And you put the three casings together, that's 12,
20 right?

21 A Yes, sir.

22 Q And that's the maximum capacity of that gun, isn't it,
23 with that magazine, correct?

24 A No, sir.

25 Q well, how, how many more could it hold?

1 A It would be -- you would have 12 in the magazine and
2 one round as far as in the weapon. So, it'd be 13.

3 Q Okay. So, max would of been 13 but you found three?

4 A Yes, sir.

5 Q And there were nine in the gun, correct?

6 A Total of eight in the magazine and one in the gun.

7 Q You can only prove three shots, can't you?

8 A Yes, sir.

9 Q Okay. Sometimes bullets go in and come out, don't
10 they?

11 A Yes, sir.

12 Q Thank you.

13 Your Honor, I don't have any more questions of this
14 witness.

15 CROSS-EXAMINATION

16 BY SOLICITOR BULSA:

17 Q Sometimes shell casings don't get found, right?

18 A Yes, sir.

19 Q And this was a roadway and cars were passing by, right?

20 A Constantly.

21 SOLICITOR BULSA: Okay. Let me get this marked.

22 MR. BRANNON: Those will be without objection, Your
23 Honor?

24 THE COURT: Thank you, sir.

25 (WHEREUPON, two photographs were marked as State's

1 Exhibit Nos. 1 and 2 and received into evidence at this
2 time.)

3 Q Investigator Taylor, did you go to the scene of the
4 shooting?

5 A Yes, sir.

6 Q About what time did you arrive?

7 Do you recall?

8 A I went the next day. I didn't go that same night---

9 Q This was---

10 A ---cause I was---

11 Q You didn't actually see the positioning of the cars?

12 A No, sir.

13 Q Okay.

14 MR. BRANNON: I stipulate to the admissibility of that,
15 of that drawing.

16 Q Okay. Well, I'll just call Mr. Nelson about it.

17 Did you -- were you aware that they marked the tires of
18 the cars so that you could later go back and position where
19 they were?

20 A Yes, sir, that's standard procedure.

21 Q Okay. And State's No. 1, does that show the markings?

22 A Yes, sir.

23 Q Okay. And one car was clearly behind the speed bump
24 and one car was clearly in front of it?

25 A Yes, sir.

1 Q Okay. All right. Now, you said Investigator Taylor
2 actually was the lead officer in this case?

3 A I am Taylor. That's Nelson.

4 Q I mean Investigator Nelson was the lead officer?

5 A Yes, sir.

6 Q And you assisted him?

7 A Yes, sir.

8 Q So, you didn't actually do a report, did you?

9 A No.

10 Q But he wrote the report?

11 A Yes, sir.

12 Q So, he documented everything?

13 A Yes, sir.

14 Q Okay. All right. Well, I have no other questions for
15 you then.

16 THE COURT: Any---

17 Q Thank you.

18 THE COURT: Any redirect limited to what he went into?

19 MR. BRANNON: No, Your Honor.

20 THE COURT: Thank you, sir. You may step down.

21 THE WITNESS: Thank you.

22 THE COURT: Watch your step.

23 SOLICITOR BULSA: Call Nelson to the witness stand.

24 OFFICER NELSON, being first duly
25 sworn, testified as follows:

1 THE COURT: Have a seat in the red chair and pull the
2 red chair up to the mic.

3 DIRECT EXAMINATION

4 BY MR. BRANNON:

5 Q Officer Nelson, you work for Spartanburg City.

6 Is that correct?

7 A Yes, sir.

8 Q What is your job title?

9 A Investigator.

10 Q Okay. And, and you were assigned to the Lunsford/Hull
11 matter.

12 Is that correct?

13 A That's correct.

14 Q All right. And, and you recorded certain conversations
15 with Mr. Hull.

16 Is that correct?

17 A Yes, sir, that's correct.

18 Q All right. And were you, in fact, the lead
19 investigator on this matter?

20 A Yes, sir.

21 Q Now, I -- so, I want to, I want to get just a couple of
22 dimensions in for the Court's information.

23 If I showed you this report, would it refresh your,
24 your memory to some of those dimensions or, or distances?

25 You listed---

1 A Yes, sir.

2 Q ---them down at the bottom.

3 A Yes, sir.

4 Q And then if you look over here.

5 Do you see some more distances there?

6 A Yes, sir.

7 Q I want to ask you, can you find in there where it says
8 that there was 17-feet between the driver's side door of the
9 front car and, and the driver's side, the driver's door in
10 the back car?

11 I'm not stating that right. It's on the second page.
12 It's right in---

13 SOLICITOR BULSA: Your Honor, I will agree that that's
14 the correct measurement.

15 Q Okay. It's 17-feet.

16 All right?

17 A Yes, sir.

18 Q Okay. All right. Now, I want to ask you, sir, was
19 Adam Lunsford legally driving an automobile that night?

20 A Yes, sir.

21 Q He had a valid driver's license.

22 Is that correct?

23 A Yes, sir.

24 Q He had a concealed -- a valid South Carolina Concealed
25 Weapons Permit.

1 Is that correct?

2 A That's correct.

3 Q Did you cite him for any moving violation at all?

4 A No, sir.

5 Q Okay. So, he was legally on the roadway in South
6 Carolina.

7 Is that correct?

8 A Yes, sir, that's correct.

9 Q And when Mr. Hull pulled in front of him and stopped
10 his vehicle, my client was legally in his automobile, wasn't
11 he?

12 A Well, I, I wasn't there to witness it, but according to
13 the statements that, that we gathered, that's, that's the
14 information that I received.

15 Q Right.

16 But I'm -- I think, I think you're reading too much
17 into my question.

18 A Yes, sir.

19 Q When, when the two cars -- the instant that the two
20 cars stopped, my client was legally in his motor vehicle,
21 wasn't he?

22 A Yes, sir, that's correct.

23 Q Okay. All right. So, up to that point, my client had
24 committed no crime.

25 Is that correct?

- 1 A That's correct.
- 2 Q Now, the night of this incident, you seized his cell
3 phone, didn't you?
- 4 A I believe we did, yes, sir.
- 5 Q That, that may be the wrong word.
- 6 It was confiscated and taken into evidence, correct?
- 7 A Yes, sir.
- 8 Q That's what the report said, right?
- 9 A Yes, sir.
- 10 Q And you've, you've heard Mr. Hull talk about his belief
11 that my client was texting or using his cell phone, correct?
- 12 A Yes, sir.
- 13 Q I'm assuming that you looked into his cell phone
14 records, didn't you?
- 15 A We looked at a portion of them but we didn't -- it was
16 nothing that, that we really expounded on.
- 17 Q Right.
- 18 You couldn't find any evidence that he was using or
19 texting or anything on his cell phone, could you?
- 20 A Nothing, nothing that I saw.
- 21 Q Right.
- 22 Because if you'd of found that, I'd of had those
23 records, right?
- 24 A More than likely I'm sure you would have.
- 25 Q Okay.

1 All right. I don't have any more questions.

2 CROSS-EXAMINATION

3 BY SOLICITOR BULSA:

4 Q Do you specifically remember actually looking at the
5 phone for text messages?

6 A No, sir. No, sir, I didn't look --

7 Q Okay.

8 A -- look at the---

9 Q Cause you didn't talk to Mr. Hull until four days
10 later, right?

11 The first time you went and talked to him he was under,
12 he was under medication. You didn't talk to him much then.
13 You didn't get his full statement until four days later.

14 A That's correct.

15 Q Right?

16 A That's correct.

17 Q And---

18 A It was four days after.

19 Q And you'd already given Mr. Lunsford his phone back,
20 hadn't you?

21 A I'm not, I'm not sure of the exact date when we gave
22 him the phone back but --.

23 Q Okay. Now, I know you didn't do this, prepare this
24 diagram, but this is State's Exhibit No. 2.

25 Is that something that officers with the City put

1 together?

2 A Yes, sir, this is a -- basically this is done by a
3 traffic division, the MAIT Team. They go out and
4 reconstruct accident scenes, and, on certain occasions, when
5 we have, have the need, we'll ask them to go out and
6 reconstruct the crime scene.

7 Q Okay. So, they basically took the measurements that
8 were recorded and plugged it into a program and it just
9 spits out this positioning of the vehicles?

10 A That's correct.

11 Q Okay. Since the pictures are kind of dark, it's kind
12 of hard to tell, and this helps State, the Defense's 1 and
13 2, I guess you can see somewhat, but State's No. 2, and it
14 gives you an overall of, of or an aerial view of where the
15 cars would of been?

16 A That's correct.

17 Q Okay. Thank you.

18 But based on your review of the pictures and the
19 diagram, did it appear that Mr. Lunsford could of easily
20 driven his car around Mr. Hull's car?

21 A Yes, sir, it appeared to be enough distance between the
22 two vehicles.

23 Q Okay. So, while we know that Mr. Lunsford pulled in
24 front and stopped his vehicle, Mr. -- I mean Mr. Hull pulled
25 in front and stopped his vehicle, Mr. Lunsford also stopped

1 his vehicle --

2 A That's correct.

3 Q -- instead of continuing on around?

4 A That is correct, yes, sir.

5 Q Okay. Do you remember speaking to the witnesses in
6 this case?

7 There were some, some neighbors that came out and spoke
8 to the police?

9 A Yes, sir, at different times.

10 Q Do you remember speaking to a Jennifer Sevick?

11 A Yes, sir.

12 Q Okay. She actually is one of the 9-1-1 callers, right?

13 A Yes, sir, she was.

14 Q All right. And she came to City Hall and gave you a
15 statement?

16 A Yes, sir, she came and she provided a statement, and
17 just to make sure her statement was accurate, we went out,
18 back out to Lucerne where the incident occurred, and I had
19 her kind of walk me through, and point, point out where she
20 was, from her vantage point, what she saw and she explained
21 to me in detail.

22 Q Okay. So, you wanted to kind of see, from her
23 prospective, what she could of been seeing.

24 Is that right?

25 A Yes, sir.

- 1 Q Okay.
- 2 MR. BRANNON: No objection.
- 3 THE COURT: State's 3.
- 4 (WHEREUPON, a photograph was marked as State's Exhibit
- 5 No. 3 and received into evidence at this time.)
- 6 Q Okay. Now, when you went and met with her, did you
- 7 have a -- someone from your agency make some photographs?
- 8 A Yes, sir, I believe it was our forensic tech, Sean
- 9 Klorin --
- 10 Q Okay.
- 11 A -- or Mr. Norris (phonetic). I can't remember exactly
- 12 which one it was.
- 13 Q Let me show you State's No. 3.
- 14 Does this accurately show the -- what view, vantage
- 15 point, she would of had down Lucerne?
- 16 A Yes, sir.
- 17 Q Okay. Can you see the speed bumps in the distance?
- 18 A Well, it's easier for me cause I know where they are.
- 19 So, yes, sir, I can see them.
- 20 Q But they're marked by signs, right?
- 21 A Yes, sir.
- 22 Q So, you can see the yellow sign?
- 23 A On the right and just beyond on the left.
- 24 Q Okay. And did you document your conversation with Ms.
- 25 Sevvick?

- 1 A Yes, sir.
- 2 Q How many shots did she recall hearing?
- 3 A I think she said she recalled -- she thought she heard
4 three shots. I can confirm that for you.
- 5 Q It's the paragraph that starts at 13:00 hours. The
6 middle of that paragraph.
- 7 A Yes, sir, she said that she thought she heard four
8 pops, a single pop, and then a brief pause, and three more
9 pops in rapid succession or maybe three pops and a brief
10 pause.
- 11 Q Okay. And we heard Investigator Taylor testify about
12 how many rounds that Mr. Lunsford's pistol holds.
- 13 A Yes, sir.
- 14 Q Okay. We actually tried to load that firearm, didn't
15 we?
- 16 A Yes, sir, we did.
- 17 Q And how many rounds does the clip hold?
- 18 A The magazine holds 11 rounds. I think it was 11.
- 19 Q Okay. Do you remember us putting them in there?
- 20 A No, it was 12.
- 21 Q Twelve---
- 22 A Twelve.
- 23 Q ---because it has an extender, right?
- 24 A Because it -- yes, it has the extension.
- 25 Q Okay.

1 A And they're double stacked.

2 Q All right. And then one more in the gun?

3 A One more in the chamber makes---

4 Q Thirteen?

5 A ---13.

6 Q Okay. All right. Okay. Thank you.

7 That's all I have.

8 MR. BRANNON: Just briefly on those.

9 REDIRECT EXAMINATION

10 BY MR. BRANNON:

11 Q Can you tell me, on this exhibit here, this photograph,
12 how far from where the cars were parked would Ms. Sevic
13 have been?

14 A I would say maybe 10-feet.

15 Q No.

16 From where she was standing---

17 A Oh, from this point---

18 Q Yes. Yes.

19 A ---to where the car's---

20 Q Yes. Yes.

21 A Seventy-five to maybe --.

22 Q A hundred, a hundred feet, something like that?

23 A I would, I would say maybe 75 to maybe 80, 85.

24 Q All right. And do you have any idea---

25 A That's just an estimation.

1 Q That's fine. I appreciate that.

2 Do you have any idea what time of day this photograph
3 was taken?

4 A That photograph would of been taken sometime maybe the
5 area of 3:00 or 4:00PM in the afternoon.

6 Q Okay. All right. Three or 4:00PM in the afternoon is
7 what time military time?

8 A Fifteen or 16:00.

9 Q All right. And the incident took place at 19:20,
10 right?

11 A Yes, sir.

12 Q Okay. So, it's -- this photo was taken three hours
13 earlier, right?

14 A That was taken on the total -- yes, sir.

15 Q It was taken---

16 A Yes, sir.

17 Q ---three hours earlier than the incident, right?

18 A That's correct.

19 Q Okay. So, the prospective would of been slightly
20 different then, correct?

21 A Yes, sir.

22 Q All right. Now, you were asked by Mr. Bulsa did you
23 talk to or did you hear other witnesses speak, and what I'm
24 talking about is the 9-1-1 calls.

25 Did you listen to them 9-1-1 calls?

1 A I listened to, listened to some of them. I can't
2 remember any of the specific details about them.

3 Q Okay. Do you remember, do you remember listening to
4 Ms. Nelson?

5 Really short call.

6 A Yes, sir, briefly. I do remember that.

7 Q Okay. Yeah, she's a blind lady.

8 Remember?

9 A Yes.

10 Q Yeah, the officer -- the, the, the---

11 A well, I didn't know she was blind but I, I remember how
12 short the call was.

13 Q Yeah.

14 She said three shots, right?

15 A I, I just, I just can't remember.

16 Q There's, there's one really important witness though.

17 would you agree that there was an off-duty law
18 enforcement officer visiting a friend on that night in that
19 neighborhood?

20 A Jerry Jones.

21 Q That's right.

22 And, and Officer Jones went and, when he heard, when he
23 heard the shots, he went and retrieved his service revolver
24 and actually went out and confronted my client, didn't he?

25 A Yes, sir.

1 Q That officer said three shots, didn't he?

2 A I believe that's correct.

3 Q And Ms., Ms. Sevick says four shots and then says three
4 shots?

5 Pop, pop, pop, right?

6 A Yes, sir, that's what she said.

7 Q Thank you. Nothing further.

8 One second, Your Honor. One second.

9 (Pause.)

10 Right.

11 Okay. Yeah.

12 You were asked could my client have driven around Mr.
13 Hull's car, right?

14 A Yes, sir.

15 Q Are you familiar with the statute or the Code Section
16 that we've based this motion on today?

17 A Vaguely, yes, sir.

18 Q Does my client have an obligation to drive around?

19 SOLICITOR BULSA: Objection, Your Honor. That calls
20 for a legal conclusion.

21 THE COURT: I would agree but there's no jury here.

22 SOLICITOR BULSA: Okay. Okay.

23 Q Did my client have an obligation?

24 A I'm -- if you asked me based on my knowledge of the
25 law, I, I wouldn't be able to intelligently answer that.

1 Q That's fine. I, I appreciate that. Thank you.

2 Nothing further.

3 SOLICITOR BULSA: Just one brief question.

4 RECROSS EXAMINATION

5 BY SOLICITOR BULSA:

6 Q Ms. Sevick said one shot, pause, and then three shots?

7 A Yes, sir.

8 Q Okay. Thank you.

9 THE COURT: Thank you, sir. You may step down.

10 Let's take a short little recess.

11 MR. BRANNON: Sure. Okay. At, at -- can I ask him
12 one?

13 (The Court nods affirmatively.)

14 REDIRECT EXAMINATION

15 BY MR. BRANNON:

16 Q You said 75 to 85 -- did you say feet or yards?

17 A Yards.

18 Q Thank you. That's all. Thank you.

19 THE COURT: All right. We'll take a short recess.

20 SOLICITOR BULSA: Yes, sir.

21 (Whereupon, a short recess was taken at this time.)

22 THE COURT: Are you ready to call your next witness?

23 MR. BRANNON: Call Alan Stegall to the witness stand,
24 Your Honor.

25 SOLICITOR BULSA: Your Honor, we object to this

1 testimony.

2 THE COURT: Come right up here.

3 Who is this?

4 MR. BRANNON: You want us to approach?

5 THE COURT: Sure.

6 (WHEREUPON, a bench conference was held at this time.)

7 MR. BRANNON: Your Honor, call Adam Lunsford to the
8 witness stand.

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

11 ADAM LUNSFORD, being first duly
12 sworn, testified as follows:

13 THE COURT: Sir, just have a seat in the red chair and
14 pull the red chair up to the microphone.

15 MR. BRANNON: May it please the Court.

16 DIRECT EXAMINATION

17 BY MR. BRANNON:

18 Q Sir, you're Adam Lunsford.

19 Is that correct?

20 A Yes, sir.

21 Q All right. What do you do for a living?

22 A I'm a self-employed contractor.

23 Q All right. Do you live in Spartanburg County?

24 A Yes, sir, I do.

25 Q Where do you live today?

1 A 125 Neely Avenue.

2 Q Okay. And, and tell me where Neely Avenue is in
3 reference to Lucerne Drive.

4 A After turning onto Lucerne, I'd say it's no more than a
5 mile on the left-hand side, maybe three-quarters of a mile.

6 Q All right. And so, on the night of September the
7 22nd, were you going home when you were traveling on
8 Lucerne?

9 A Correct.

10 Q All right.

11 A Yes, sir.

12 Q Now, I'm gonna ask some, some back-up questions here.
13 How old are you?

14 A I'm 28 years old.

15 Q All right. Tell me about your educational background.

16 A Varied. I did two years at Coastal Carolina University
17 and two years at USC-Upstate. I pursued my builder's
18 license after that and got licensed to do contract work
19 here, and then I was -- I returned back to school here
20 recently to try to finish up my, my business management
21 degree. That's -- I was -- that's what I was doing that
22 night. I was returning from class.

23 Q Right.

24 On the night of September 22nd, 2016, you were on your
25 way home from where?

- 1 A From the George. I just finished up an exam.
- 2 Q Okay. All right. And so, you had completed a class
- 3 that night, correct?
- 4 A Correct, yes, sir.
- 5 Q What time did the class get over?
- 6 A The, the -- exiting or leaving the classroom was
- 7 contingent on just finishing the exam. So, I had been there
- 8 for maybe an hour, an hour 15. I want to say it was around
- 9 7:00 maybe when I got out.
- 10 Q Okay. All right. Sir, do you have a South -- a valid
- 11 South Carolina driver's license?
- 12 A Yes, sir, I do.
- 13 Q Has never been suspended?
- 14 A No, sir, it hasn't.
- 15 Q Do you have a criminal record?
- 16 A No, sir, I do not.
- 17 Q Have you ever, before this incident, been arrested?
- 18 A No, sir.
- 19 Q All right. Are you right-handed or left-handed?
- 20 A I'm right-handed.
- 21 Q Okay. Do you do -- are, are you -- is your right-hand
- 22 dominant?
- 23 I mean can you do anything with your left-hand?
- 24 A Yeah, I use my left-hand obviously at work. I have to
- 25 use both but yeah, I'm primarily -- I'm dominantly

1 right-handed.

2 Q Okay. And when you fire a handgun, you use your
3 right-hand as the dominant hand.

4 Is that correct?

5 A Correct, yes, sir.

6 Q Which eye is dominant?

7 A I'm left eye dominant but I shoot right-handed.

8 Q Okay.

9 A Yes, sir.

10 Q All right. Are you married?

11 A Yes, sir.

12 Q When did you get married?

13 A June 4th was -- is our anniversary date. We been
14 married for about six years now.

15 Q Okay. All right. On -- do you have any babies?

16 A We do, yes, sir. We just had our first child.

17 Q Okay. And, and when was the child born?

18 A She was -- she's five months old now but January
19 28th I think. You get me in trouble, Doug.

20 Q Okay. So, on September 22nd of 2016, your wife was
21 pregnant?

22 A Yes, sir, correct.

23 Q Okay. All right. Prior to that incident or your time
24 in Court, had you ever met Daniel Hull?

25 A No, sir, I had not.

1 Q All right. Tell me a little more information.

2 Tell me about your dad's adult or professional career.

3 A My dad's a---

4 SOLICITOR BULSA: Objection, Your Honor. It's
5 irrelevant about his father.

6 MR. BRANNON: It's gonna go to his training with
7 handguns and, and weaponry, Your Honor.

8 SOLICITOR BULSA: Just ask him that.

9 THE COURT: Yeah, just ask him what that is.

10 MR. BRANNON: All right. Withdraw the question then.

11 Tell me about the training that you have with firearms.

12 A I'm a licensed CWP holder. I've trained extensively in
13 the legal use of a handgun and the safe operation of a
14 handgun and I -- again, it's hard to answer that question
15 without relating it back to my father's career. I mean---

16 Q Is it true that your dad was in the military?

17 A Correct. Yes.

18 Q Okay. And did you gain some training and knowledge
19 through your father just by being his son?

20 A Correct. Yes, sir.

21 Q All right. Now, I want to talk to you back -- I want
22 to go back to September the 22nd, 2016. You leave the
23 George at approximately 7:00PM is your recollection.

24 Is that correct?

25 A Yes, sir.

1 Q On that night, between the George and when this
2 incident occurred, were you on your telephone?

3 A No, sir.

4 Q Okay. When did you first notice that Mr. Hull was
5 behind you, near you, or anywhere around you in an
6 automobile?

7 A I believe it was the stoplight before turning right
8 onto Lucerne.

9 Q Okay. And so, what road would you be on there?

10 A Union Street.

11 Q On Union Street.

12 All right. Now, have you ever had a speeding ticket?

13 A I've had one.

14 Q Okay. What is your typical or standard driving pace?

15 A I drive slowly. I'm a very conscientious driver. I,
16 I -- it's irritating to some people, I get that, but I drive
17 slowly---

18 Q Okay.

19 A ---yes.

20 Q You kind of drive like a grandmother, don't you?

21 A That's an ongoing joke, yeah.

22 Q Okay. All right. On that night, were you driving in
23 your standard, your standard speeds?

24 A Yes, sir.

25 Q Okay. So -- but the first time you noticed Mr. Hull

1 would of been at a traffic light on Union Street.

2 Is that correct?

3 A Yes, sir, I believe it was two lights before we had
4 made the right-hand turn.

5 Q Okay. And, and what drew him to your attention at that
6 point?

7 A I was going slowly and he was on my bumper. I was -- I
8 had no idea, at that point, where he lived or why he was
9 following me. I knew he was irritated because I was going a
10 little lower than the speed limit. He was right up against
11 the back of my vehicle.

12 Q Okay. How did you know he was irritated?

13 A Because the way he was driving. He also flashed his
14 lights as he was approaching the back of my car.

15 Q Okay. As a result of him flashing his lights or, or,
16 or tailgating you, if you will, what did you do?

17 A I got into the right-hand lane, which would be the slow
18 lane I guess.

19 Q Okay. And what did he do?

20 A Also got into the right-hand lane.

21 Q Okay. All right. Did his level of anger or, or,
22 anyways, his actions, did they accelerate or get exaggerated
23 as you traveled?

24 A Yes, after I turned on to Lucerne and I was still in
25 front, he was visibly irritated at that point, yes.

1 Q What was he doing?

2 A He was motioning. That's when I first noticed him
3 coming up. He accelerated to within a foot of the back of
4 my car and swerved over across the double yellow line and I
5 and could -- he was accelerating past the driver's side of
6 my vehicle at that point.

7 Q All right. How many times did Mr. Hull pass you or
8 attempt to pass you on Lucerne?

9 A He stopped me on the third speed bump. He had
10 attempted twice before that to stop my vehicle, to pass me
11 on the double yellow line, and swerve in front of my car,
12 and make me stop my car.

13 Q All right. Tell me what happened differently the third
14 time then the first two times.

15 A The third time I was very strongly under the impression
16 that he intended to do me harm at that point. He had tried
17 to stop my car twice up to that. As he came up again in my
18 rearview mirror and swerved into the left-hand lane, I drew
19 my gun. I opened the console of my car and drew my gun. I
20 showed him that I had a firearm at that time. He
21 responded -- he did not respond to that at all.

22 There was -- he was deliberate in accelerating again
23 and turning in front of my vehicle and coming to a complete
24 stop. He stopped my car before I went over the speed bump.
25 I would of hit him if I had not slammed on brakes.

1 Q All right. I want to stop you there and go back to
2 your training. In his statements, he says that, while you
3 were in the car, that you pointed your gun at him.

4 Is that true?

5 A It is, yes, sir.

6 Q Did you have your finger on the trigger?

7 A I did not, no, sir.

8 Q Okay. Tell the Court why you know for a fact your
9 finger wasn't on the trigger.

10 A Well, when -- I shoot, I shoot frequently. I spend a
11 lot of time on the range with a gun. My finger does not go
12 on the trigger of my weapon until I know -- I'm deliberate
13 in the action of pulling the trigger.

14 Q All right.

15 A Daniel was advancing towards me and I made a deliberate
16 action to have to stop him with my handgun.

17 Q All right. But I want to talk to you about -- I'm
18 talking before, before he gets out of the car.

19 when you're driving down the road and you showed him,
20 you presented the weapon---

21 A Right.

22 Q ---was your finger on the trigger?

23 A I was not even pointing the weapon at him when he came
24 up beside my vehicle. I was---

25 Q Okay.

1 A I was brandishing or showing him that I had a weapon in
2 the vehicle with me at that time.

3 Q All right. Now, I want to, I want to take you back
4 because I asked you did you point the gun at him.

5 You did as he was approaching---

6 A Correct. After he exited---

7 Q But while you were both in your automobiles, did you
8 ever point the gun at him?

9 A No, sir, I did not.

10 Q Why did you show him the gun in the automobile?

11 A After attempting to run me off the road twice, I could
12 tell he was intent on assaulting me or harming me. My
13 thought was, by showing him a weapon, he would continue on
14 his way. I would of immediately pulled the car over and
15 called 9-1-1 but my idea was that, if I -- if he knew I had
16 a gun, he would stop doing what he was doing.

17 Q Okay. Now, is there any doubt in your mind, especially
18 now having heard his testimony, that he knew you had a
19 handgun?

20 A No, sir.

21 Q All right. Have you seen -- in my office, you saw some
22 photographs.

23 Is that correct?

24 A Yes, sir.

25 Q I'm gonna show you now what is marked as Defense 2 and

1 Defense 3.

2 Do those photographs accurately represent the position
3 of the vehicles after this incident occurred?

4 A Yes, sir, they do.

5 Q Did anybody move your car?

6 A No, sir.

7 Q Did anybody move his car?

8 A No, sir, it doesn't appear so.

9 Q All right. So, that's where he stopped.

10 Is that correct?

11 A Yes, sir.

12 Q That's where you stopped because of his stopping his
13 car.

14 Is that correct?

15 A Correct.

16 Q All right. Now, you're right-handed?

17 A Yes, sir.

18 Q When you fired your handgun at Mr. Hull, were you in
19 your car or out of your car?

20 A I was inside my vehicle.

21 Q Was your door opened or closed?

22 A The door was closed.

23 Q Was the window down or up?

24 A The window was down.

25 Q Okay. Now, he says that the minute he got out of his

- 1 car he put his hands up and you shot.
- 2 A Yes, sir.
- 3 Q Did -- is that true?
- 4 A No, sir, that's not.
- 5 Q Okay. And how do we know it's not true?
- 6 Let me ask you this.
- 7 when you shot your gun, did you shoot through the
- 8 windshield of your car?
- 9 A No, sir.
- 10 Q Okay. His car is not in a straight-line, is it?
- 11 A No, sir, it's not.
- 12 Q when he got out of his car, could you even see his
- 13 body?
- 14 A No, sir, I saw the door open but I couldn't -- he was
- 15 obscured by his vehicle because of the angle I was in.
- 16 Q All right. And you're sitting in your car.
- 17 His vehicle is slightly like this in front of you,
- 18 correct?
- 19 A Yes, sir.
- 20 Q You're in your car and the door is closed?
- 21 A Yes, sir.
- 22 Q You're right-handed, correct?
- 23 A Yes.
- 24 Q When you shot your gun that night, did you shoot it
- 25 with your right-hand or your left-hand?

1 A My right-hand.

2 Q You had to be doing this, correct?

3 A Correct.

4 Q His statement was that he got out of his car and was
5 standing near the back of his car when you shot him.

6 A Correct.

7 Q It's not physically possible, is it?

8 A No, sir.

9 Q Okay. He walked beyond his vehicle, didn't he?

10 A Yes, sir, he was obscured by the vehicle and I did not
11 fire until after he stepped beyond the edge of his vehicle.
12 Again, at that point, I had no idea if he had a weapon or
13 anything else. He was advancing towards me.

14 Q All right. When you shot the first time, where was he?

15 A About a pace away from my car.

16 Q What is a pace?

17 A I would say no more than five to 6-feet.

18 Q All right. Were you in the car for each shot?

19 A Yes, sir, I was.

20 Q How many shots did you fire?

21 A I fired three consecutive shots in rapid succession.

22 Q One of the witnesses said pop, pop, pop.

23 Is that an accurate description?

24 A Yes, sir, that's accurate.

25 Q When you are trained, as you are with a handgun, where

- 1 do you aim?
- 2 A Central to the target. Your center mass.
- 3 Q Center mass?
- 4 A Yes, sir.
- 5 Q And you shoot until what?
- 6 A Until the threat's stopped. Until the target falls,
- 7 yes, sir.
- 8 Q Until the target falls.
- 9 Okay. Did you believe that your life was in danger?
- 10 A Absolutely.
- 11 Q That night, were you speeding?
- 12 A No, sir.
- 13 Q You were in possession of a legal South Carolina
- 14 driver's license?
- 15 A Yes, sir.
- 16 Q Possession of a South -- a legal South Carolina
- 17 Concealed Weapons Permit, correct?
- 18 A Yes, sir.
- 19 Q Had you committed any other crime that night?
- 20 A No, sir.
- 21 Q Did you own the vehicle?
- 22 A Yes, sir.
- 23 Q Mr. Hull's name is not on the title to that car in any
- 24 way, shape, or form, is it?
- 25 A No, sir, it's not.

1 Q He is not a law enforcement officer, is he?

2 A No, sir, he is not.

3 Q He didn't tell you he was a law enforcement officer,
4 did he?

5 A No, sir.

6 Q If you hadn't shot, do you believe he would of pulled
7 you from the vehicle?

8 A There's no doubt in my mind.

9 Q Mr. Hull's own testimony is that he got out of his car
10 and said something along the lines of fuck you.

11 Did you hear him say anything?

12 A I heard him yell when he first opened the door I
13 believe. His hands were not up and he was advancing. There
14 was no, there was no lull or verbal altercation. He was
15 coming towards me from the time that door opened and those
16 brake lights went on.

17 Q Let me ask you this.

18 From the time his vehicle stopped until the third shot,
19 give me a time reference.

20 A I would say no more than two seconds.

21 Q Okay. Did you shoot to protect yourself?

22 A Yes, sir.

23 Q Did you believe you were in serious and immanent, and
24 immanent danger of serious injury?

25 A Yes, sir, I do.

1 Q why would an unarmed man, knowing that the other person
2 has a gun---

3 SOLICITOR BULSA: Objection, Your Honor. That calls
4 for speculation.

5 MR. BRANNON: I'll, I'll withdraw the question and
6 rephrase.

7 THE COURT: Okay.

8 SOLICITOR BULSA: Yeah.

9 Q Did you believe he had a weapon?

10 A Yes, sir, I did.

11 Q And why did you believe that?

12 A He was obscured by his vehicle. He knew that I had a
13 gun and he was intent on advancing in my direction.

14 Q And he was coming towards you.

15 Isn't that correct?

16 A Yes, sir.

17 Q Now, how many bullets were in your gun?

18 A Eleven I believe. Maybe 12.

19 Q Okay. How many shots did you fire?

20 A I fired three shots.

21 Q No hesitation?

22 You fired three shots?

23 A There was no pause between shots and he was facing me
24 and advancing towards me as all three shots were fired.

25 Q You didn't shoot him in the back, did you?

1 A No, sir.

2 Q When you left the George, what were your plans for that
3 night?

4 A Go home and watch Netflix with the Missus cause I was
5 tired. It'd been a long day.

6 Q All right. Did he scare you?

7 A Yes, sir.

8 Q Did you shoot in your own self-defense?

9 A Yes, sir.

10 Q Thank you.

11 I don't have anything further.

12 CROSS-EXAMINATION

13 BY SOLICITOR BULSA:

14 Q When did you get your Concealed Weapons Permit?

15 A I've had it, I believe, for four years.

16 Q They teach you to shoot people?

17 A They teach you to use your weapon with discretion.

18 Q As in use of your weapon, shouldn't that be a, as a
19 last resort?

20 A The law does not specifically state that.

21 Q What do they teach you?

22 A The law states that, if you're in fear of your life,
23 that you have no duty to retreat, that you can utilize your
24 weapon to defend yourself if your life is on jeopardy and
25 you're in a space you can legally occupy.

- 1 Q Is that what they teach you?
- 2 A Yes, sir.
- 3 Q That's what they teach you?
- 4 A Yes, sir.
- 5 Q They tell you -- okay. And if your life's in jeopardy,
6 what do they say?
- 7 How do they define that?
- 8 A That you're in fear of immanent bodily injury or death,
9 that a reasonable person, in that position, would also be in
10 fear of immanent bodily injury or death.
- 11 Q Okay. What kind of weapon did Mr. Hull have?
- 12 A He did not have a weapon.
- 13 Q Okay. So, you didn't see a weapon when he was
14 advancing towards you?
- 15 A I didn't see many parts of his body or his person until
16 he was within danger of being able to access my vehicle.
- 17 Q It's still daylight?
- 18 A It was dusk.
- 19 Q You -- did you have a problem seeing him?
- 20 A I don't understand.
- 21 Q Did you have a problem seeing him?
- 22 A Given the lighting?
- 23 Q Yes, sir.
- 24 A No, sir.
- 25 Q Okay. Did you see his hands?

1 A I saw his hands as he came free of the vehicle.

2 Q Free of the vehicle?

3 A Correct. As he was not obscured by his vehicle any
4 longer.

5 Q Did he have anything in his hands?

6 A At that point I had literally a nanosecond to decide
7 what I was going to do with my firearm. He was still
8 actively advancing towards me. It did not register whether
9 or not he was carrying something.

10 Q Is that what they teach you?

11 A I think the textbook, in this particular situation, is,
12 is hard to refer to when you're put in a circumstance where
13 you have to make a decision that could possibly save your
14 life.

15 Q Well, what -- were you afraid?

16 A I had had someone actively try to stop my vehicle and
17 run me off the road twice. He was obviously intent on doing
18 me harm. He exited his vehicle and advanced towards me
19 clearly concerned with more than just having a conversation.

20 Q Did he ever touch your car?

21 A He did not touch my vehicle.

22 Q He didn't ram your car with his car?

23 A No, sir.

24 Q Okay. He didn't even get to your car?

25 He didn't put his hands on your car or try to open your

1 door?

2 A No, sir, but he had, up to that point, swerved towards
3 the front of my vehicle twice.

4 Q Right.

5 But he didn't hit you?

6 A No, sir.

7 Q He pulled in front---

8 A He did not make contact.

9 Q He pulled in front of you and stopped?

10 A He didn't pin me cause I was able to evade and maneuver
11 around his vehicle the first two times. The third time he
12 stopped was close enough to where I had to stop my car
13 fully.

14 Q Really?

15 why didn't you just keep driving?

16 A I would of been in someone's yard and because I had to
17 brake to a complete stop and the amount of time that elapsed
18 between the time his brake lights went off and that door
19 opened was negligible. I had a split second to decide
20 whether or not I was gonna try to flee my vehicle, whether
21 or not I was gonna try to put it in reverse, or whether or
22 not I could access my gun and present it in an attempt to
23 try to stop him from coming towards me.

24 Q So, you say you fired all three of the -- you say three
25 shots and you say you were in the vehicle for all three?

1 A Correct.

2 Q Where did the shell casings go?

3 A I believe they found three shell casings.

4 Q On the outside of the vehicle?

5 A Correct.

6 Q Correct?

7 A Correct.

8 Q Was your hand outside the car when you were shooting
9 it?

10 A It was. I was leaning outside my window to be able to
11 gain a better view of him.

12 Q Leaning outside your window?

13 A Correct.

14 Q Show us.

15 A If this is the edge of the window, I'd used my leg to
16 kind of push myself up on the vehicle and I was leaning to
17 gain a view of him as he came around the vehicle.

18 Q So, you weren't waiting till he got to your car.

19 You were leaning out the window pointing the gun in his
20 direction as he was walking towards you?

21 A Yes, sir.

22 Q Why didn't you just roll up the window?

23 A The time it would of taken to roll the window could of
24 jeopardized my life and also understand that, at that point,
25 he knew I had a firearm. There was no doubt in my mind,

1 when that door opened, that he was gonna exit the vehicle
2 with a gun. And even sitting in my driver's seat, I was
3 going to be in jeopardy. This is all hindsight that we know
4 he didn't have anything. I didn't have that knowledge at
5 that time. What I knew is that he knew I had a firearm and
6 he was still intent on attacking me. That would tell any
7 rational person he's gonna exit the vehicle with a weapon,
8 that you need to be ready to protect yourself.

9 Q What kind of car do you have?

10 A I have a 2000 Toyota 4Runner.

11 Q Electric windows?

12 A Yes, sir, they're power windows.

13 Q Okay. And you couldn't just push the button?

14 A I suppose I could push the button.

15 MR. BRANNON: Objection, Your Honor. I mean the
16 statute doesn't require or doesn't say you got to roll your
17 window up.

18 THE COURT: All right. He's on cross-examination.
19 He's got some leeway.

20 Q So, instead of pushing your window and locking your
21 door, you lean out with the gun?

22 A Can I ask you if he had, if he had presented a
23 firearm---

24 Q No, you don't get to ask me---

25 A ---from outside of his door, how much good would it

1 have done for me to roll the window---

2 Q You're the one testifying, sir.

3 A Yes, sir.

4 Q Okay.

5 A I understand.

6 Q So, you -- you are denying that he wanted you to get
7 out of the car and fight, fist fight?

8 A I don't know his -- what, what he wanted me to do, I
9 can't obviously testify towards. I don't --.

10 Q So, he wasn't trying to get you out of the car?

11 A He was advancing towards me.

12 Q Was he saying something?

13 A He was -- he yelled when he first got out of the car.
14 I was yelling at him. I yelled at least two, maybe three
15 times, for him to get back in the vehicle. He continued to
16 advance.

17 Q Okay. So, he's walking towards you and you're telling
18 him to get back in the car while you're leaning out the
19 window pointing the gun at him?

20 A Yes, sir.

21 Q And your testimony is he kept walking.
22 So, you pulled the trigger?

23 A Yes, sir.

24 Q He never laid a hand on you?

25 A No, sir, he did not.

- 1 Q He never attacked you?
- 2 A He never laid a hand on me.
- 3 Q Yeah.
- 4 A I would not say that he didn't attack me.
- 5 Q Never tried to get in your car?
- 6 A No, sir.
- 7 Q Never tried to pull you out the window?
- 8 A No, sir, he did not try to---
- 9 Q Never tried to open your door?
- 10 A He did put a hand on my car.
- 11 Q And you told the police, that while he was -- while
- 12 y'all were on the road, you actually flipped him off?
- 13 A Yes, sir.
- 14 Q What does that mean?
- 15 A As we turned onto Lucerne, he tried to pass me on the
- 16 double yellow as I was going over the first speed bump. I
- 17 gave him the middle finger. That was the only altercation
- 18 we had until the point where he tried to run me off the road
- 19 at that point.
- 20 Q You're saying he tried to pass you two other times.
- 21 How in the world -- if you're driving so slow, could he
- 22 not -- how did he not succeed in passing you those other two
- 23 times?
- 24 Did you speed up to try to keep him from passing you?
- 25 A The first two times I was -- he stopped at a farther

1 enough distance in front of me where I was able to get
2 around his car.

3 Q So, wait a minute.

4 You're now telling us that he did pull in front of you
5 two other times and you drove around him on those two other
6 times?

7 A Correct.

8 Q But, on this third occasion, you didn't drive around
9 him?

10 A On the third occasion, he maneuvered over the speed
11 bump and got in front of me quickly enough to where I had to
12 come to a complete stop to avoid hitting him.

13 Q Isn't it true you got mad?

14 A No, sir.

15 Q And when he got out, you decided to take matters into
16 your hands and use your gun?

17 A I would describe my emotions another more than in fear
18 from the time this initiated.

19 Q Oh.

20 All right. But you had 12 rounds in your gun, right?

21 A Yes, sir.

22 Q Do you always keep it fully loaded?

23 A Yes, sir, for the most part.

24 Q All right. Thank you.

25 MR. BRANNON: I don't have anything else.

1 THE COURT: Thank you, sir. You may step down.

2 MR. BRANNON: Your Honor, that's my presentation.

3 SOLICITOR BULSA: State calls Jennifer Sevick.

4 Jennifer.

5 THE COURT: Ma'am, just come right up here and let the
6 Clerk of Court swear you in.

7 JENNIFER SEVICK, being first duly
8 sworn, testified as follows:

9 THE COURT: Ma'am, just have a seat in the red chair
10 and pull the red chair up to the microphone if you would.

11 (Witness complies.)

12 THE COURT: All right.

13 DIRECT EXAMINATION

14 BY SOLICITOR BULSA:

15 Q All right. Ms. Sevick, am I saying that right?

16 A Yes.

17 Q I always wonder if I'm saying your name right.
18 where do you live?

19 A [REDACTED].

20 Q Is that road off of Lucerne?

21 well, it's not off Lucerne but it is in the
22 neighborhood?

23 A It is in the neighborhood.

24 Q Do you take Lucerne to get to your, to your road?

25 A Frequently.

1 Q So, you can actually get to your road on a different
2 route?

3 A Correct.

4 Q Okay. Now, on the date in question, you were actually
5 driving down Lucerne, right?

6 A Yes.

7 Q Which direction were you headed?

8 A Headed towards Union Street.

9 Q Okay. And would you tell the Court what, if anything,
10 drew your attention to something happening in front of you?

11 A There were two vehicles parked off to the side that I
12 saw, and there were two men outside of those vehicles and
13 the one man had his hands in the air, which I thought was
14 strange, and then I heard a pop and then another pop, pop,
15 pop.

16 Q All right. Were you close enough to hear anything
17 being said?

18 A No, I was not.

19 Q About, about how far away would you estimate you were?

20 A I'm very bad at estimating feet and yards but an
21 officer at the scene that night estimated that probably it
22 was between 75 and a hundred yards.

23 Q Okay. Were you near the intersection of Lucerne and
24 Parkdale?

25 A I'm not sure the side street going off to the left.

- 1 Q Okay. But it was a side street?
- 2 A There was a side street.
- 3 Q Okay.
- 4 A Yes.
- 5 Q And then, between you and where this happened, there
- 6 were no other streets?
- 7 A Not to my knowledge.
- 8 Q Okay. All right. So, what kind of -- this was around
- 9 what time of the day?
- 10 A Somewhere between 7:15 and 7:30.
- 11 Q And where were you on your way to?
- 12 A My son, he had a soccer game.
- 13 Q Was he in the car?
- 14 A No, he was not.
- 15 Q Okay. Okay. Were there any vehicles or anything
- 16 between you and what you witnessed?
- 17 A No, there were not.
- 18 Q Okay. So, you had a clear view of what was happening?
- 19 A I did.
- 20 Q Okay. And in your -- from your vantage point, both men
- 21 were clearly outside the vehicle when the shots were fired?
- 22 A I saw two individuals outside of the car in the street.
- 23 Q How -- did you ever go up to that area after the shots?
- 24 A No, not at all.
- 25 Q And what, what did you do?

1 A I froze. I saw a man drop to the ground and I work in
2 Hospice. So, I've seen people literally drop over not
3 alive, and it appeared to me as if he were dead. From the
4 angle that he fell, it looked like he was contorted. And
5 so, I stopped, saw another man standing and looking around,
6 and then looking towards me, and I was afraid for my life
7 and for my safety. And so, I couldn't go backwards at that
8 time because there were cars behind me. And I sure as heck
9 wasn't going forward towards the gunman. So, unfortunately,
10 I froze.

11 Q Did you call 9-1-1?

12 A Eventually. Yes, there was a gentleman who pulled up
13 beside, and asked me if I had car trouble. I said no. I
14 said I think there was a man that was -- I was in shock.
15 There was a man that just was shot. He's like oh, no, he
16 just got run over by the vehicle and I said no, I think, I
17 think he got shot.

18 Q Did you see cars driving past the two vehicles while
19 you were waiting for the police?

20 A I did, yes. I can't say how many but there were.

21 Q All right. And you actually spoke to the police, gave
22 them a statement, and then later went out to the scene and
23 did a walk through with them?

24 A I did.

25 Q All right. I show you what's marked State's No. 3.

1 Is that, is that an accurate view of what you would of
2 had?

3 A That is.

4 Q Okay. Thank you. Thank you, ma'am. That's all I
5 have. Answer any questions either attorney may have.

6 CROSS-EXAMINATION

7 BY MR. BRANNON:

8 Q Ms. Sevick, I've, I've only got a couple of questions.
9 You were on Lucerne and you were driving towards the
10 two cars that were involved in this incident, correct?

11 A Correct.

12 Q And, and were you in what would of been your right-hand
13 lane?

14 A Yes.

15 Q Okay. All right. So, if, if the second car had passed
16 the first car that you were watching, he would of been
17 coming towards you in your lane, wouldn't he?

18 A No, there was plenty of time if somebody from the
19 distance that he wanted to move over.

20 Q Well, I -- he would of been coming towards you in your
21 lane, correct?

22 A Yes.

23 Q Okay.

24 A Safely.

25 Q Okay. All right. And so, a police officer told you

1 that you were between 85 to a hundred yards from the
2 incident location?

3 A About 75 to a hundred yards, yes.

4 Q Okay. So, so, you were 280 to 300 feet from where this
5 occurred, occurred, right?

6 A I will take your word for it cause I don't do math very
7 well.

8 Q Okay. Now, are you aware that, that there was another
9 man on the scene who was a police officer?

10 He was an off-duty police officer.

11 Did you know he was there?

12 A Not at the time, no.

13 Q But do you know that now?

14 A I realized that when I was told that later, yes.

15 Q Okay. All right. And do you understand that he told
16 my client to drop his gun and get on the ground?

17 A If you say so.

18 Q Okay. You didn't, you didn't know that?

19 A No.

20 Q Okay. All right. Did you see the Jeep pull in front
21 of the Toyota 4Runner on Lucerne?

22 A No.

23 Q Okay. So, you didn't, you didn't see the little Jeep
24 stop the 4Runner then, did you?

25 A No.

1 Q Okay. Thank you.

2 Nothing further.

3 REDIRECT EXAMINATION

4 BY SOLICITOR BULSA:

5 Q The vehicles were already stopped when you---

6 A Correct.

7 Q ---noticed them in the roadway?

8 A Yes, they were already stopped.

9 Q Okay. And you saw the vehicles stopped and you saw the
10 two men outside.

11 Could you tell, from your prospective, how close the
12 men were?

13 A No, I could not.

14 Q Okay. But there was no doubt that they were both out
15 of the car?

16 A Oh, yes, cause there was one with his back to me and
17 there was another one in front of him.

18 Q Okay. All right. Thank you, ma'am.

19 MR. BRANNON: Nothing further.

20 THE COURT: Thank you, ma'am. You may step down.

21 SOLICITOR BULSA: Your Honor, that's the State's
22 showing as to this matter.

23 THE COURT: Anything in reply?

24 MR. BRANNON: No, Your Honor.

25 THE COURT: All right.

1 SOLICITOR BULSA: Your Honor, we ask that Ms. Sevic be
2 excused from this hearing?

3 MR. BRANNON: No objection.

4 THE COURT: Thank you, ma'am. You may be excused.
5 Okay. I'll let you know. Thank you.

6 MR. KENNEDY: Thank you.
7
8

9 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

ADAM LUNSFORD,

DEFENDANT.

2016-GS-42-05238 - 05239

2017-GS-42-03432

TRANSCRIPT OF RECORD

NOVEMBER 9, 2017
SPARTANBURG, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. MARK HAYES, II

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

DEREK B. BULSA, DEPUTY SOLICITOR

ATTORNEYS FOR DEFENDANT:

N. DOUGLAS BRANNON, ESQ.
CHRISTOPHER D. KENNEDY, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

1 **THE COURT:** All right. I've got that this is a -- the
2 State's motion for reconsideration. So I'll be more than
3 happy to hear from the State.

4 **MR. BULSA:** Thank you, Your Honor. As Your Honor
5 knows, I filed a written motion to reconsider. I'll be
6 addressing portions of that as well as adding to it with
7 some new case law and some other cases. I'll also be going
8 through the order that the Court wrote, actually signed
9 pertaining to this case.

10 Your Honor, first off I'd like to briefly touch on the
11 Protection of Persons and Property Act. That's 16-11-410
12 through 450. The Court's order does not reference which
13 section that it is making its ruling under. But, however,
14 in the reading through the order the State is presuming that
15 the Court used 16-11-440 subsection (c). So most of my
16 argument will be directed at that subsection.

17 Subsection (1) under 440 deals with -- (A)(1) deals
18 with whether somebody was being forcibly removed or tried to
19 be forcibly removed from his vehicle. We don't believe
20 that, of course, was occurring. And I'm assuming that the
21 Court felt the same way because it did not address that
22 language in its order.

23 The Court addressed the testimony of the parties
24 referencing the Defendant and how the Defendant described
25 the incident occurred. The State argues that the Court did

1 not give enough weight to the victim's own testimony, nor
2 the eyewitness testimony. Therefore, the Court's ruling
3 should be reconsidered weighing the complete set of
4 circumstances in this case.

5 Your Honor, there was a new case that came out. It was
6 actually apparently in the works as we were presenting this
7 case to Your Honor back in July, State v. Oates, 421 S.C. 1,
8 803 S.E.2d 911. That was filed July the 26th of 2017 in the
9 Court of Appeals.

10 I actually ran across that case this morning as I was
11 finalizing my preparations. It's the only case that seemed
12 that actually discusses or has facts pertaining to someone
13 being in a vehicle and attempting to use the immunity under
14 16-11-440. Immunity was denied in that case.

15 And one of the points I want to make out is that the
16 court said the standard for evaluating whether the accused
17 had a reasonable belief that deadly force was necessary to
18 prevent great bodily harm to himself is objective rather
19 than subjective. Based on the State's reading of Your
20 Honor's opinion, it appears that Your Honor used a
21 subjective reasoning versus an objective reasoning.

22 The court used language that must grant immunity if it
23 decides the defendant reasonably believed it was necessary.
24 We would argue that it should be an objective point of view.

25 Factually, Your Honor, the Court heard from both sides

1 and they heard about -- the Court heard about the driving on
2 the roadway. It began on Union Street. By the Defendant's
3 own testimony it began two lights down from Lucerne where he
4 made his right hand turn into his neighborhood.

5 He wants the Court to believe that the victim was
6 merely mad at him for driving slow. If that was a fact, the
7 victim could have just passed him easily and went on his
8 way. There's slow drivers every day on the roadways.
9 People merely pass them and drive on their way. It's not
10 reasonable to believe that he was just driving slow.

11 The victim thought he was texting. The victim
12 testified to that. In his testimony he was -- started on
13 page -- he found -- he said he finds it unsafe to drive and
14 text and that he began to potentially try to get the
15 Defendant to stop texting while he was driving.

16 Your Honor, it's clear that if you want to call it
17 erratic driving, bad driving, or whatever, aggressive
18 driving, it goes both ways. The Defendant, himself,
19 testified on direct examination of the victim attempting to
20 pass him and cut him off, yet on cross examination he
21 acknowledges that or he says that the victim actually passed
22 him and stopped in front of him. This is on page 84 of the
23 testimony, the transcript.

24 The first two times I was -- he stopped at a far enough
25 distance in front of me where I was able to get around his

1 car. So instead of just stopping to let the victim continue
2 driving, he passed around him, himself. We know he shot a
3 bird at the victim on one occasion. Then on the second
4 occasion he pulled a gun. The State's contention is that he
5 pointed that gun at the victim and, therefore, he was not
6 acting in a lawful manner.

7 The Court's order references that it's undisputed
8 through testimony of the parties that the Defendant was not
9 engaged in an unlawful activity. The State contends that he
10 was acting unlawfully, and he did not have the right to
11 point or present that weapon, and he clearly admitted he
12 did.

13 He was not in danger at that time. The victim in no
14 way tried to ram his car, did not try to side-swipe his car,
15 did not try to rush him off the road. He merely drove in
16 front of him and pulled off to the side of the road. And
17 that was only after the third passing attempt if you use the
18 Defendant's testimony and only after he flashed the pistol
19 at him.

20 The Court references that there's no fathomable reason
21 why a person would stop and do what the victim did and act
22 in that fashion. Your Honor, I submit to you it's just as
23 logical to believe that this guy's got a gun, he might try
24 to follow me. I just passed him, he might try to follow me
25 home. So it's -- while some people might not feel it's

1 reasonable, some other people might.

2 And the victim testified that, also on page 8, he
3 flashed his gun and was cussing at me. I saw the gun, I got
4 irritated, I exited my vehicle. I was trying to ask him to
5 put his gun down and come out and join me in the road. That
6 was the victim's intentions, to address the matter without
7 weapons.

8 If the victim had a weapon, knowing the other man had a
9 weapon, certainly he would have drawn that weapon when he
10 was approaching an armed man. He never in the world thought
11 he was going to be shot. Thought the Defendant would get
12 out of the vehicle and address the matter.

13 Additionally, Your Honor, the Court does not consider
14 the independent eyewitness testimony. And in the Oates
15 case, Your Honor, when the -- that case was denied, there
16 were three witnesses to the incident, an independent, the
17 victim and the accused. Those witnesses were brother,
18 sister and sister-in-law of the victim. And the Court
19 weighed their testimony well in extent over the accused
20 version of what happened.

21 The accused was trying to remove a car from a
22 residential neighborhood where it's not legal to park on the
23 roadway. He had gone to that scene on Christmas Eve and put
24 a boot on the car. And when they came back to tow it a
25 neighbor alerted the victim in that case that that was going

1 on.

2 The victim and his brother go out to confront the tow
3 driver. The tow driver actually goes back and gets in his
4 tow truck and closes the door, rolls up the window to
5 protect himself from these men coming at him. Then they
6 have a conversation between the door. And the victim in
7 that case actually had a weapon, pulled the weapon and
8 cocked the weapon, racked it, I believe is the word they
9 used. So that victim clearly had an understanding that he
10 could be in danger.

11 However, when he presented his case to the judge, the
12 judge felt there was enough discrepancy between the two
13 testimonies or the two sides of the testimony and the
14 complete circumstances with that case, he felt it was more
15 appropriate for a jury to decide. And that's what we're
16 asking the Court to do here.

17 We have a clear discrepancy between Mr. Lunsford and
18 Mr. Hull about how the shooting happened. And we have an
19 eyewitness who clearly refutes the Defendant's version that
20 he was in the car when he fired the shots.

21 It's clear that she has no dog in this fight. She's
22 completely independent and unbiased. She saw two men
23 outside the vehicle, one man with his hands in the air, that
24 would have been the victim, and clearly unarmed. So she is
25 discrediting the victim -- or the Defendant.

1 The victim has a different version as to the incident
2 on the roadway. And, therefore, there should be -- that's a
3 factual dispute that we should allow -- argue that the jury
4 should be allowed to hear.

5 **THE COURT:** I read that in your papers. So if there's
6 a factual dispute the same way that there's a factual
7 dispute with a summary judgment motion, the Court should not
8 apply this immunity statute.

9 **MR. BULSA:** I don't believe so, Your Honor. And can I
10 expound on my reasoning for the factual dispute? It goes to
11 the use of this statute.

12 This statute is meant to allow people to use the self
13 defense argument and not retreat in certain circumstances.
14 It's the State's position that the Court should look to see
15 whether the Defense established all the elements of self
16 defense except the duty to retreat.

17 In this instance the credibility is important because
18 the State is arguing that the Defendant is not without
19 fault. He did not satisfy the first prong of self defense.
20 He's arguing he remained in his vehicle and was completely
21 without fault, he was being attacked. We're saying he's not
22 credible because we have a clear witness directly
23 controverting what he says he did.

24 And, in his mind he thinks he's got to remain in the
25 car. He's a concealed weapon's owner. He knows about the

1 Stand Your Ground law. And he feels that if I'm in my -- if
2 I'm in my vehicle, I'm protected. I can shoot from inside
3 of my vehicle. In this case he didn't. That's how I'm
4 applying the credibility issue, Your Honor.

5 **THE COURT:** Well, I guess my question goes more to
6 you're arguing in your papers that there's a discrepancy of
7 facts, if I understand your position correctly. Therefore,
8 with there being a discrepancy of facts, then the Court
9 should not even apply the statute and allow the jury to make
10 the factual determinations in this case.

11 **MR. BULSA:** Yes, sir.

12 **THE COURT:** And my concern is that then why would the
13 General Assembly even adopt such a statute that vests with
14 the courts the ability to apply a preponderance of the
15 evidence standard?

16 **MR. BULSA:** State v. Curry, Your Honor, 406 S.C. 364,
17 752 S.E.2d 263, 2013 case. In a case where immunity is
18 claimed under this Act, a valid claim of self defense must
19 exist.

20 Also under that same statute, the Court should consider
21 all witnesses' testimony. In that case the testimony of the
22 defendant and eyewitness were in direct conflict and the
23 defendant should not be entitled to immunity. I think in
24 this specific case law that's come out in these cases, yes,
25 the courts have said there's a factual dispute, it should go

1 to a jury.

2 **THE COURT:** So the court should not -- so a court
3 should not sit and weigh the evidence and decide where the
4 preponderance of the evidence has been -- the burden of
5 proof has been met by a preponderance of the evidence, but
6 should merely look to see whether there is a discrepancy of
7 evidence?

8 **MR. BULSA:** I understand the Court's question. And,
9 yes, the court has a role in deciding the facts as it sees
10 it in applying this statute, but because there's a
11 discrepancy and because we have an unbiased witness, the
12 State is arguing that the finding of the Court, it appears
13 in your order, Your Honor, that you don't address the
14 independent witness.

15 **THE COURT:** Okay.

16 **MR. BULSA:** Additionally, Your Honor, based on -- even
17 if the Court finds that the Defendant's version is the most
18 credible version in weighing the facts, the State feels that
19 he clearly doesn't meet the reasonableness standard in the
20 second and third prong of self defense.

21 Your Honor, that reasonableness should be based on an
22 objective viewpoint versus a subjective viewpoint. The
23 Defendant himself is the one that was armed. He was in his
24 own vehicle. He could have easily rolled up the window. He
25 could have locked the door. He could have driven around the

1 victim as he's approaching him. Instead, he chose to fire
2 his weapon. And we don't feel that that's reasonable.

3 It's clear the victim was not armed. He did not even
4 get to the car. He didn't put hands on the car, didn't try
5 to open the door, didn't try to slug the victim or the
6 Defendant through the window. He merely was trying to get
7 him to come out and deal with the situation out in the
8 roadway.

9 If you look at that as an attack, which it sounds like
10 when reading your opinion that's how you are viewing the
11 victim's actions as an attack, the State, of course,
12 disagrees with that. We don't think that kind of attack is
13 what is meant to be protected under this section.

14 But if you do feel it is an attack under subsection (c)
15 -- 440(c), a person has a right to stand his ground and meet
16 force with force, including deadly force. In this instance,
17 he didn't need to use deadly force. He didn't need to fire
18 a weapon. He was well -- he went well above any
19 reasonableness in the amount of force he used. He could,
20 have merely gotten out and discussed the matter with the
21 victim. He was never in any danger of great bodily injury
22 or death.

23 It might have been different if the victim had actually
24 ran the car off the road and tried to pin him in. But the
25 Defendant says the victim pulled in front of him twice.

1 before. And even on the third occasion after showing him a
2 gun the victim didn't try to ram him off the road. It
3 merely made him upset and aggravated him more.

4 Your Honor, I know everybody has different
5 dispositions. The victim acknowledged he was wrong and
6 acknowledged he was a hot-head, acknowledged he shouldn't
7 have got out of his car, but he was upset with the way the
8 Defendant was driving.

9 He thought he was texting. He was trying to get him to
10 stop to protect other people on the roadway, thought it was
11 unsafe. Then the man throws him a bird, angers him even
12 more. Then the man pulls a pistol and points it at him,
13 angers him further. And he just lost his temper and got out
14 and is suffering the consequences now.

15 The bottom line basically is this. The State does not
16 feel that the victim attacked the Defendant. We don't
17 believe that merely asking him to get out of his truck is an
18 attack.

19 We believe that even if the Court feels he was
20 attacked, he was provoked by the Defendant. The Defendant
21 participated in this erratic driving. And he could have
22 just let the victim pass him and go on, but, no, he passed
23 the victim back on two other occasions. He's not without
24 fault.

25 The case law, Your Honor, requires the Defendant to

1 establish all the elements. We don't believe he established
2 the without fault. We think he was -- with an objective
3 view of the reasonableness of fear of death or great bodily
4 injury, we don't feel that an objective view of that has
5 been met.

6 If you look at the complete set of circumstances,
7 including Ms. Sevik's testimony, you'll see that the facts
8 are more supportive of the State's version of what happened
9 versus the Defendant's version. We don't believe the
10 Defendant was credible. And in our opinion he was cocky and
11 arrogant and thought he could use his concealed weapons
12 permit to hide behind and shoot an unarmed man. Thank you,
13 Your Honor.

14 **MR. KENNEDY:** Please the Court? Your Honor, just for
15 the record, I also had filed. And it was my understanding
16 it would be heard today, although I don't think there needs
17 to be any testimony on it. I noticed the motion, a motion
18 to dismiss and/or for criminal and civil immunity on the
19 direct indictment, which was case number 2017-GS-42-3432.

20 I believe when we met, Your Honor, with Mr. Bulsa as
21 well and Mr. Brannon that we agreed that the testimony would
22 come in, as it relates to that charge, would be in the
23 transcript, which I believe that the Court has a copy of.
24 And so I don't intend to call any witnesses as it relates to
25 that because all of the circumstances, I believe, and all of

1 the purported facts and testimony are, obviously, in that
2 transcript.

3 As it relates to the notice of motion and motion to
4 reconsider order granting immunity filed by Mr. Bulsa -- and
5 I'll try not to be long-winded. I don't think I will be.
6 I'm going to go through primarily his motion because I know
7 he talked about a lot of the testimony that went through and
8 what the facts were. And I'm just going to go through it as
9 it's written, Your Honor.

10 You know, Mr. Bulsa said repeatedly that he did not
11 think that Mr. Hull attacked Mr. Lunsford, but I am
12 confident and I know that Mr. Hull said on numerous
13 occasions that he got out to fight my client. And if he
14 gets out and is approaching the car, I don't know at which
15 point someone determines that, all right, they're grabbing
16 me, all right, they're tapping on my window, all right,
17 they're at my car, at what point it becomes too late because
18 if he actually -- for all my client knows, and he testified
19 to, he doesn't know if that individual has a gun. He isn't
20 going to go out there and fight him and then he could have
21 gotten beaten up, or severely injured or killed. You know,
22 we live in a time where, unfortunately, those things are
23 happening more often and more often.

24 And his testimony was that he pulled around him twice
25 trying to get away from him. So the argument that he was

1 just going to go home, but he didn't because he saw the gun
2 seems illogical to me. He had two opportunities to keep on
3 going home after he passed him the first time, and he
4 didn't. He pulled in front of him three times.

5 I don't know at which point my client's supposed to
6 decide, okay, this is going to keep happening, this is going
7 to keep happening, what do I do? He said he was in fear.
8 And he, Mr. Hull, got out of his car by his own admission to
9 fight him.

10 The last time I checked, even though it may not have
11 been wise in this situation, flipping a bird is not a reason
12 -- is not a crime. Again, it may have been unwise
13 considering the situation, but it's not a crime.

14 And he lawfully had his CWP. He thought that showing
15 him the weapon would make him go away. It didn't. When he
16 got out of the car my client, as he testified to, stated
17 that he thought he had a firearm, told him to get back in
18 his car numerous times. He continued to approach and the
19 shots were fired. And it, ultimately, resulted in a
20 terrible situation. I mean, nobody here -- everybody here
21 agrees that it was a terrible situation.

22 But, nonetheless, Your Honor, he tried to avoid the
23 situation twice. And on the second time, or excuse me,
24 third time showed the pistol thinking that would end the
25 situation. It didn't. Somebody got out of their car, and

1 we are where we are here today.

2 Your Honor, the -- so the argument to me that he was
3 the -- he, my client, was not lawfully where he was allowed
4 to be, I thought all of the testimony supported that he was
5 lawfully allowed to be where he was. And, again, flicking
6 the bird is not unlawful. I've never seen any criminal
7 charges result from that that had any weight. And I think
8 there's actually been some cases out there that say if any
9 charges result from that, that those cases are ultimately
10 dismissed.

11 For page 2 of Mr. Bulsa's memo or motion, rather, he
12 writes, the Defendant possesses a concealed weapons permit
13 and should have known the action of pulling his pistol was
14 wrong. Again, Your Honor, my client stated he was in fear,
15 we have repetitive action over and over, and he's trying to
16 get the gentleman, Mr. Hull, to leave him alone and go away.

17 And then he writes later, there was no position to
18 cause great bodily harm upon the Defendant. Your Honor, he
19 gets him out -- he gets out to fight. And I don't think
20 that they were going to stand there and hug, Your Honor. I
21 think he got out with the purpose to fight my client.

22 And usually in a fight somebody's trying to injure
23 somebody else. He didn't say he wanted to get out and argue
24 with him or talk to him. He said he got out with the
25 intention of fighting. My client didn't know that. He

1 admitted it on the stand, Mr. Hull did. So my client has no
2 idea what his intentions were, but we heard his intentions
3 when he testified.

4 And, Your Honor, it would seem to me that the attack is
5 not one single instance, it's a process. So we're getting
6 blocked in, we're going around, we're getting blocked in,
7 we're going around, we're getting blocked in, then we can't
8 go around. So somebody's getting out of the car, as, again,
9 I said to fight, and he's approaching my client's vehicle.
10 I don't even think that was disputed.

11 So, Your Honor, again, as it seems to me, the attack is
12 ongoing especially when he gets out of the car, but not
13 necessarily right when he gets out of the car. I don't
14 think you have to wait for something to happen to you for
15 this Act to apply.

16 As it relates -- and I know the Court had some
17 questions for Mr. Bulsa about the credibility issues. Your
18 Honor, you heard all the testimony from my client, Mr. Hull,
19 the police officers, Ms. Sevik, and you made a decision
20 based upon your determination of the facts. And I think in
21 a situation such as this, when we have this motion, you're
22 the person that determines the credibility of the witnesses
23 and makes a call.

24 Just because there's a discrepancy in facts doesn't
25 mean it should go to a jury. There's -- I practice in a lot

1 of different areas. And I'm fairly certain almost every
2 single case I have has a discrepancy in fact. And that
3 would mean every case would go to a jury no matter what.

4 In this situation it's a discrepancy, yes, but there
5 are -- you heard testimony from numerous amounts of people
6 and you made the decision that you made, which we believe is
7 correct. And we believe the Court applied the appropriate
8 standard.

9 Your Honor, again, in the bottom of that page under the
10 failed application of the Act it says that the victim made
11 no aggressive movement toward the Defendant's vehicle. He
12 said he got out to fight. My client sees the gentleman
13 coming and is yelling at him to get back in the car, and he
14 doesn't get back in the car.

15 To me, again, under a reasonableness standard, it seems
16 reasonable to suspect, especially when somebody's gotten a
17 gun, and as the Court stated, that it was unfathomable to
18 believe that somebody would see a gun and get out of the
19 car. I think it's completely reasonable to expect that
20 somebody's either getting out of their car to fight as was
21 admitted to by Mr. Hull or is getting out of the car with a
22 firearm. My client testified that he thought he had a
23 firearm.

24 Now, Your Honor, there is also on this last page, it
25 says the Defendant cannot claim he was in imminent danger or

1 believe he was in imminent danger because he had protection.
2 Having protection doesn't mean you're not in danger. There
3 are plenty of people that have firearms that can still be in
4 danger with the firearm on them. Or, I know this is a
5 different case, but in your house, there's plenty of people
6 that have firearms and people come into their house and hurt
7 people even with the firearms in there.

8 So just because you have a lawful CWP here, this wasn't
9 a glove compartment issue, he lawfully had the firearm. He
10 went through the training to get it and he was licensed to
11 carry it. I don't think saying that because you have a
12 firearm fully protects you from anyone. He could have
13 gotten out, now, again, I know this is different, he could
14 have gotten out with a semiautomatic rifle, it didn't happen
15 that way, but that doesn't mean that you're not in danger.

16 Your Honor, just briefly one other thing. And I know
17 Mr. Bulsa keeps talking about Ms. Sevik. One thing that I
18 believe she testified to was that she didn't see the officer
19 who was off duty in plain clothes holding my client with his
20 arms up in the air with a gun drawn on him. That's two more
21 individuals standing down there with a gun with my client --
22 has his hands in the air until the officer tells my client
23 to get on the ground, in which he complied. She doesn't --
24 she doesn't identify anybody. She didn't even see the
25 officer that was there.

1 So, again, as a credibility issue, I know the Court
2 heard all of those things and made the decision that it
3 made. For -- and, again, Your Honor, just to me it seems
4 unreasonable to have to go to the lengths to try to avoid a
5 situation as my client did.

6 He's getting passed on the double yellow, somebody's
7 pulling in front of him and stopping. He goes around. It
8 happens again, goes around. I don't think that continues,
9 and continues, and continues and continues. At some point
10 he stopped when he doesn't think he can go around anymore.
11 I don't even know that he had to go around, technically.

12 But even if he had an obligation to, which, again, I
13 don't think he did, somebody gets out of the car to fight.
14 And it's admitted to.

15 So is it unfortunate what happened? Yes. Is it
16 terrible? Yes. But in the situation such as this,
17 objectively, because I think you did look at it objectively
18 based on your unfathomable statement in the order, it seems
19 to me that the Court took all of the circumstances and
20 evaluated what a reasonable person would do in the situation
21 and applied the facts based on the testimony of the
22 witnesses.

23 And, Your Honor, we believe that the Act clearly
24 applies to my client and unfortunately it resulted in what
25 it did. But he had under the General Assembly's applied

1 Act, he had the right to do that and to defend himself.

2 And there's been talk about who's out of the car,
3 whether they're in the car or not. My client's testimony
4 was he was in the car. Mr. Hull's testimony says at least
5 the first shot came from inside the car. I think all of
6 this, you know, we're in a very tight window in terms of a
7 timeline.

8 But, again, Your Honor, I think he acted reasonably
9 considering the circumstances of the case, and I think the
10 Act should apply, and I think the Court has the discretion
11 to determine the credibility of the witnesses and determine
12 the facts to apply the Act. I don't think because there's a
13 discrepancy it has to go to a jury. Thank you.

14 **THE COURT:** Tell me about your argument on your motion.

15 **MR. KENNEDY:** Your Honor, my motion was the same motion
16 that I filed based upon the two original charges, which were
17 ABHAN and attempted murder. This was an unlawful carrying,
18 I believe, of a pistol. Mr. Bulsa can correct me. I know
19 he directly indicted that, Your Honor.

20 I think it's something with the paperwork or whatever.
21 I think it was indicted, but it hadn't been filed yet when
22 we had the first hearing. But all the facts would be the
23 same, I believe. I think Mr. Bulsa agrees with me that we
24 didn't need to bring everybody back for the same testimony
25 again.

1 And so what I would submit to the Court is that the
2 testimony presented at the first hearing regarding the
3 granting of civil and criminal immunity, that the transcript
4 from that should be what the Court uses to determine the
5 applicability of the statute as it relates to the unlawful
6 carrying.

7 THE COURT: Yes, sir.

8 MR. BULSA: Your Honor, I'll address the pointing a
9 firearm indictment first. The facts relating to that go to
10 the Defendant driving down the road and pulling a gun as
11 someone was passing them and pointing through the window at
12 him. That is not protected under this Immunity Act because
13 the victim was not attacking him at that point. He was
14 merely driving by him. So that indictment should stand on
15 its own.

16 Defense talks about the Defendant thought the victim
17 had a firearm. That is why the credibility of these
18 witnesses is important. And that is why Ms. Sevik is
19 important.

20 She testified what she saw was before the shots. She
21 clearly saw a man with his hands in the air, heard shots and
22 saw that man fall. It's clear he did not have a gun. That
23 is what the Defendant was observing when he fired the gun at
24 the victim. And he was clearly out of the car and not in
25 the car.

1 So, Your Honor, I think it's a scary position to say
2 that someone can shoot somebody merely because they're
3 approaching their car. That's a scary position for this
4 society to be in.

5 We just think he acted inappropriately, he didn't have
6 a reasonable belief of great bodily injury or death, and he
7 should be held accountable for that and stand trial.

8 **MR. KENNEDY:** Your Honor, again, you heard me mention
9 the process of attack. And, again, he states -- Mr. Hull
10 stated that he was mad, that he wanted to fight, that there
11 were some curse words going everywhere, that he's passed him
12 twice, that he blocked him in, that he gets out of his car
13 to fight.

14 My client testified, which I think he's allowed to do,
15 he has a concealed weapons permit, he's in fear, he
16 testified to it, he shows him the gun thinking that's going
17 to end it, okay, he'll be gone, I won't have to do anything
18 else to protect myself. Unfortunately, he did.

19 Again, I don't know -- I don't think it's reasonable to
20 determine or I don't think it's reasonable for somebody to
21 have to wait and go through all of these events and then
22 ultimately wait for somebody to get to your car window
23 before you decide to do something and ultimately put hands
24 on you before you decide to do something.

25 The testimony from my client was that he was in fear,

1 that he had already tried to avoid the situation twice to
2 somebody that sat up there and said that he got out to fight
3 and that he wanted to fight because he thought people still
4 fought with their fists. And he's approaching his vehicle
5 to do it. If that wasn't the case, maybe this is different,
6 but he testified to that.

7 So, Your Honor, we believe it was reasonable to act the
8 way he did under the circumstances. We believe the Act
9 should apply.

10 And, again, just to go back to my motion as it relates
11 to the pointing and presenting, I think it was pointing and
12 presenting, not unlawful carrying, he had the firearm, this
13 is a whole process that's going on, he brandished the
14 firearm in fear trying to end this situation, it didn't end
15 it, unfortunately. If it would have, we wouldn't be here.
16 But, nonetheless, it didn't. And we believe the Act should
17 apply to that charge as well.

18 **THE COURT:** All right. Thank you very much. I will

19 ---

20 **MR. KENNEDY:** Thank you, Judge.

21 **THE COURT:** --- take a look at it and let you know.

22 (Hearing Ended at 11:43 am)

23 (End of Requested Transcript of Record)

WITNESSES

DOCKET NO.

16-GS-42-5238

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 03 2016

TERM

THE STATE

vs.

Adam Keith Lunsford

Indictment for

**ASSAULT AND BATTERY OF A
HIGH AND AGGRAVATED NATURE**

SC Code: 17-25-30

CDR Code: 0013

Class MIS/UNC

CLERK OF COURT
SPARTANBURG, SC
2016 OCT -5 AM 9:30
M. HOPE BLACKMON

R. 129
Spartanburg Public Safety Dept.

WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

SEP 30 2016

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

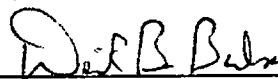
At a Court of General Sessions, convened on SEP 30 2016 the

Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY OF HIGH AND AGGRAVATED NATURE

That Adam Keith Lunsford did in Spartanburg County on or about September 22, 2016, unlawfully injure Daniel Hull, and either great bodily injury to Daniel Hull resulted, or the act was accomplished by means likely to produce death or great bodily injury, in that he fired a handgun at Daniel Hull multiple times while in the roadway on Lucerne Drive, Spartanburg, in violation of §16-3-600(B)(1), of the 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.


DEPUTY SOLICITOR

WITNESSES

DOCKET NO.

16-GS-42- 5239

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 03 2016

TERM

ARREST WARRANT NUMBER

VS.

ACTION OF GRAND JURY

SEP 30 2016

True Bill

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

Adam Keith Lunsford

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-0029

CDR Code: 3410

Class FEL-A

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 30 2016

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That Adam Keith Lunsford did in Spartanburg County on or about September 22, 2016, with malice aforethought attempt to kill Daniel Hull, by shooting him, with the intent to kill the said victim, in violation of §16-03-0029, of *THE 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.


DEPUTY SOLICITOR

WITNESSES

City of Spartanburg

R. 13
Anthony & Menos

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

RE
True Bill

Foreperson of Grand Jury
Date:

JUL 21 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

17-GS-42-3432

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUL 24 2017

TERM

THE STATE

vs.

Adam Keith Lunsford

Indictment for

WEAPONS/POINTING AND/OR PRESENTING
FIREARMS AT PERSONS

SC Code: 16-23-410

CDR Code: 122

Class FEL-F

FILED
COURT
CLERK

2017 JUL 26 AM 9:45

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JUL 21 2017

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

WEAPONS/POINTING AND/OR PRESENTING FIREARMS AT PERSON

That Adam Keith Lunsford did in Spartanburg County on or about September 22, 2016 point or present a firearm at Daniel Hull while driving on Lucerne Drive, in violation of 16-23-410, 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.



DEPUTY SOLICITOR

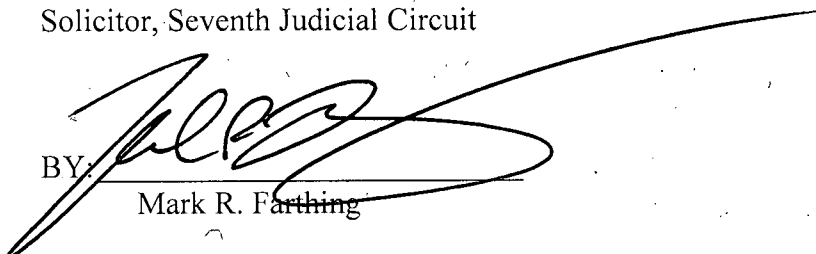
CERTIFICATE OF COUNSEL

Counsel for Appellant certifies this Record on Appeal contains all material proposed to be included by 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."

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ATTORNEYS FOR APPELLANT

November 8, 2018

RECEIVED

NOV 08 2018

SC Court of Appeals