

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Calhoun County
Honorable Maite Murphy, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

UNTONYO FERJEARL JOHNSON,

APPELLANT

APPELLATE CASE NO 2017-001673

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT'S ARE ON FILE WITH THIS COURT:

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1 STATE OF SOUTH CAROLINA)
)
 2 COUNTY OF CALHOUN) Court of General Sessiona
)
) No. 2016 GS 09 0022

3
 4 STATE OF SOUTH CAROLINA)
)
 5)
)
 6 versus) TRANSCRIPT OF RECORD
)
 7)
)
 8 UNTONYO FERJEARL JOHNSON)
)
 9 Defendant)

10 St. Matthews, South Carolina
 11 July 25, 26, 2017
 12

13 B E F O R E :

14 HONORABLE MAITE MURPHY, Judge Presiding and a Jury
 15

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

17 For the State: T. LUPTON, Esq.
 Assistant Solicitor

18 For the Defendant: B. SELLERS, Esq.
 19 C. STROM, Esq.
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20 Reporter Present: HEATHER LANDRY
 21

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1 (The within matter came before the Court for hearing
2 on July 25, 2017)

3 THE COURT: Good morning. Please be seated.

4 Good morning, ladies and gentlemen of the jury panel. My
5 name is Maite Murphy, and I am a Circuit Court Judge for Dor-
6 chester County and it is a pleasure to be here with you this
7 week here in Calhoun County.

8 You have been summoned here to serve on the jury panel
9 for the Court of General Sessions during this week. We hope
10 this will be a worthwhile educational experience for you.

11 Your jury service will end this Friday, and this being
12 Tuesday you are already a day ahead so you are lucky in that
13 regard.

14 Ladies and gentlemen, we certainly understand the incon-
15 venience of jury service and we are sorry for that. You
16 were here on yesterday for the roll call and the general qual-
17 ification process. Our Clerk of Court does an excellent job
18 of coordinating all of that for us. We are thankful to him
19 for keeping everything running efficiently.

20 We also have present some members of the Bar who may have
21 cases before you or other matters to be taken up this week.

22 Ladies and gentlemen of the jury, I have certain ques-
23 tions to ask you to determine your general qualifications to
24 serve as jurors in this Court. These questions can determine
25 your general ability to serve and, quite frankly, some of the

1 questions are a little bit personal. If you don't want to
2 stand up before the entire panel and disclose that informa-
3 tion, that's fine. However, it is essential that we have that
4 information so at the end of the process I will give you an
5 opportunity to come forward and speak with me privately.

6 Please make a mental note if the question does apply to
7 you to please come forward at the appropriate time so we can
8 have that complete and accurate information.

9 Ladies and gentlemen, here are the questions concerning
10 your qualification to serve as jurors.

11 Is there any member of the panel who is not a citizen of
12 the United States? If so, please stand.

13 (No response)

14 There is noone standing.

15 Is there any member of the jury panel who is not a resi-
16 dent and citizen of Calhoun County? If so, please stand.

17 (No response)

18 Noone is standing.

19 Is there any member of the jury panel who is unable to
20 read, write, speak or understand the English language? If so,
21 please stand.

22 (No response)

23 Does any member of the jury panel have less than a
24 sixth grade education or the equivalent? If so, please stand.

25 (No response)

1 (No response)

2 All right, there is no one standing.

3 Ladies and gentlemen, I am now going to read the Indict-
4 ments to you, and these are merely the allegations of the case
5 we're here on today. They are not evidence in any way, shape
6 or form but I must read them to you so that if any of those
7 facts or any of the circumstances of the case sound familiar
8 to you we can take that up at the appropriate time.

9 The first Indictment is Number 2016-09-0022, the State
10 versus Ontonyo Johnson, and is an Indictment for attempted
11 murder.

12 It states that the Defendant Ontonyo Johnson did in Cal-
13 houn County on or about October the first of 2015 with the
14 intent to kill attempted to kill Mark Edmonds by shooting the
15 victim in violation of South Carolina Code of Laws as amended.

16 The next Indictment, Indictment Number 2016-09-0024. The
17 State versus Ontonyo Johnson, and this is for possession of a
18 firearm by a person convicted of a crime.

19 The Indictment says in Calhoun County on or about Octo-
20 ber first of 2015 the Defendant, Ontonyo Johnson, did un-
21 lawfully possess a firearm after having been previously con-
22 victed of a crime in violation of the South Carolina Code of
23 Laws.

24 The next Indictment, ladies and gentlemen, is Indictment
25 Number 2016-09-0025, the State versus Ontonyo Johnson, and is

1 an Indictment for possession of a firearm in the commission
2 of a violent crime, and this Indictment states that in Calhoun
3 County on or about October first of 2015 the Defendant,
4 Ontonyo Johnson, did visibly display or have in his possession
5 a handgun during the commission of a violent crime, again in
6 violation of the Code of Laws of South Carolina, as amended.

7 Again, ladies and gentlemen, I merely read those allega-
8 tions to you in case you have information about this case, so
9 that you can let me know that

10 Ladies and gentlemen, I'm going to read to you a list of
11 the potential witnesses in this case. If you are present in
12 the Courtroom would you please stand so that the jury can see
13 you.

14 After I read the list of witnesses, ladies and gentlemen,
15 I will ask you the same question, whether you are related by
16 blood or marriage or have a close personal or social relation-
17 ship with any of the following people.

18 Miranda Dukes, Matthew Mark Edmonds, Captain Stanley
19 Graham, Catain Pat Regalis, Investigator Jimmy Wausaw, Deputy
20 Darrell Williams, Harry Monroe, Mr. Untonyo Johnson, Jonathon
21 Thompson, Shenique Smith.

22 Anyone related by blood or marriage or who has a close
23 personal or social relationship to any one of the potential wit-
24 nesses, please stand.

25 (Juror standing)

1 THE COURT: Please come forward.

2 (Jurors coming to the bench individually along with coun-
3 sel for colloquy off the record)

4 THE COURT: Ladies and gentlemen of the jury panel, is
5 there any member of the jury panel who is a member of or a
6 contributor to any group which has as its primary concern a
7 promotion of law enforcement or victims' rights?

8 These groups would include but certainly are not limited
9 to MADD, SADD, Citizens against Violent Crime, or anything of
10 that nature related to law enforcement. If so, please stand.

11 (No response)

12 There is noone standing.

13 Ladies and gentlemen of the jury panel, I have read to
14 you the allegations in this case. Has any member of the jury
15 panel heard anything about this case, read anything about this
16 case either before today or today? If so, please stand.

17 (No response)

18 There is noone standing.

19 Is there any member of the jury who has formed or who has
20 expressed an opinion about any issue or matter involved in the
21 case? If so, please stand.

22 (No response)

23 There is noone standing.

24 Is there any member of the jury panel that was or is a
25 member of the Grand Jury which issued the Indictments in this

1 from the Courtroom).

2 THE COURT: Ladies and gentlemen of the jury who were se-
3 lected for the trial of this case, we have some matters we must
4 do before we actually begin the trial of the case. I will ask
5 you now to follow the bailiff to the jury room so he can show
6 you where to report this afternoon.

7 I would ask that you be back at one twenty or so, so we
8 can start the case at one thirty.

9 Please do not discuss the case with anyone or allow any-
10 one to discuss the case with you. You must make a determina-
11 tion in this case based on the evidence that you hear in this
12 Courtroom.

13 Again, please be back in the jury room around one twenty
14 or so. Thank you.

15 (Jurors excused from Courtroom)

16 THE COURT: All right, counsel, I understand that we have
17 some pretrial matters to hear before we swear the jury, is
18 that correct?

19 SOLICITOR: Yes, maam.

20 THE COURT: First, I understand you wish to place on the
21 record that an offer was made in this case that was rejected
22 by the Defendant. Is that correct?

23 MR. SELLERS: Yes, Your Honor.

24 THE COURT: All right, Solicitor. Please state what the
25 offer was that was made?

1 SOLICITOR: Your Honor, an offer was made I believe in
2 January. It was certainly some time ago. It was an offer to
3 allow him to plead in this case to assault and battery of a
4 high and aggravated nature, statutory ABHAN.

5 The recommendation was for a cap of ten years.

6 THE COURT: Is that correct?

7 MR. SELLERS: It is, Your Honor. The State was gracious
8 enough to go back and forth with us and the Solicitor finally
9 told me he would make that offer, and Mr. Johnson rejected
10 all offers. We informed our client of the State's offer and
11 my client told me he rejected that offer and would reject
12 any and all offers.

13 THE COURT: All right. I would have that placed on the
14 record in addition.

15 (Whereupon, the Defendant was sworn by the Clerk for pur-
16 poses of the Court's questions of him regarding the plea offer
17 that was made.)

18 THE COURT: Mr. Johnson, I would ask you the same ques-
19 tion. You have heard the State tell me the offer that they
20 made to you and your attorney told me that you have rejected
21 that offer. Is that correct?

22 DEFENDANT: Yes.

23 THE COURT: Do you have any question about what the offer
24 was or anything? Is there any confusion about that?

25 DEFENDANT: No.

1 THE COURT: That was a correct recitation of the offer that
2 was made, is that correct?

3 DEFENDANT: Yes, maam.

4 THE COURT: Any further questions?

5 SOLICITOR: No, maam.

6 MR. SELLERS: No, maam.

7 SOLICITOR: Your Honor, before we go any further I think
8 we should settle the Ware issue. I handed up -- you should
9 have at the Bench I believe a competency evaluation.

10 I think I have handed a copy to the Clerk already to be
11 marked. We would ask to have it marked as a Court's Exhibit.

12 In my discussions with counsel there appear to be some
13 issues.

14 THE COURT: Is that correct?

15 MR. SELLERS: Yes, Your Honor. Yes, maam, Your Honor.

16 THE COURT: All right, so there is an evaluation of Mr.
17 Johnson.

18 (Competency evaluation marked as Court's Exhibit 1)

19 THE COURT: That has been marked as a Court's Exhibit,
20 and the findings in the evaluation were that Mr. Johnson is
21 competent to stand trial.

22 Is there an issue with the competency evaluation or those
23 findings?

24 MR. SELLERS: No, maam. The decision reached was that
25 he is competent to stand trial.

1 SOLICITOR: There is no issue that he is able to under-
2 stand what is going on.

3 MR. SELLERS: I would agree, Your Honor.

4 THE COURT: All right.

5 MR. SELLERS: He understands what is going on with his
6 trial.

7 THE COURT: All right, what is the next issue?

8 SOLICITOR: Your Honor, if we could, we have agreed off
9 the record -- the parties have stipulated that the Court recite
10 to the jury that the Defendant was convicted of or accused of a
11 crime not being a crime of violence, but the class of the crime
12 prohibits possession of a firearm.

13 The Defendant stipulates that he has such a prior convic-
14 tion. In that case, there is a conviction for assault and
15 battery with intent to kill as well as a conviction for burg-
16 lary in the second degree, and I think as a part of that we
17 will agree that no witness for the State will go into those
18 prior convictions provided the Defense doesn't go into it.

19 THE COURT: Solicitor?

20 SOLICITOR: Your Honor, the reason that we're before you
21 today quite simply is that this case is a little bit different
22 from other cases in which there is any previous crime or vio-
23 lent offenses.

24 The previous crime is the exact crime he's charged with
25 here, and so we would ask to stipulate that Your Honor would

1 ask the State to make sure all their witnesses are aware of it.
2 So we would just leave that to you to recite that to them at
3 the appropriate time.

4 We would caution all the State's witnesses because of the
5 highly prejudicial nature of any mention of Mr. Johnson's re-
6 cord for a previous crime.

7 One more thing is that the crimes were in 1984 so I do
8 not know if that is a factor or not in Your Honor's mind, but
9 it is twenty-three years old.

10 THE COURT: No doubt it would be prejudicial to describe
11 the exact crimes. No witness can go into any previous crime
12 by this Defendant in their testimony.

13 The stipulation stated to the jury will be a sufficient
14 way to handle it.

15 SOLICITOR: Just for the record, Your Honor, I would show
16 you State's Exhibit 18 which will be marked for identification
17 purposes only, not for the jury. That is just so that it is
18 -- that just is the prior conviction.

19 MR. SELLERS: We would object, Your Honor. There is no
20 need for this to even be a part of the record if we are going
21 to stipulate to that fact to make it part of the record. So
22 there is no need for us to put this in ...

23 SOLICITOR: It's not for the jury but just for the record
24 for any review needed. It will be marked for identification
25 only.

1 MR. SELLERS: The jury could not have access to . .

2 THE COURT: Let's make it a Court's Exhibit so that will
3 take care of it.

4 SOLICITOR: That's fine.

5 MR. SELLERS: Very good.

6 SOLICITOR: Court's Exhibit 2.

7 (Record of prior conviction of Defendantm marked Court's
8 Exhibit 2, previously marked as State's Exhibit 18)

9 (Brief pause)

10 THE COURT: Anything further?

11 SOLICITORS: We filed a Motion for Jackson v Deno because
12 of some of the involuntary statements that were made by their
13 client.

14 MR. SELLERS: There were two different circumstances,
15 and we would ask the Court to show that those statements were
16 freely and voluntarily given.

17 THE COURT: Call your witness.

18 SOLICITOR: We would call Investigator Wausaw.

19 JIMMY WAUSAW, being duly sworn,
20 testified as follows out of the jury's presence?

21 CLERK: Please be seated and state your name for
22 the record.

23 WITNESS: Jimmy Wausaw.

24 DIRECT EXAMINATION

25 BY SOLICITOR:

J. WAUSAW IN CAMERA

- 1 Q. Were are you employed?
- 2 A. Calhoun County Sheriff's Office.
- 3 Q. Is that a sworn law enforcement position?
- 4 A. Yes, sir.
- 5 Q. And how long have you been in law enforcement?
- 6 A. Around eight and a half years.
- 7 Q. And what is your role there at the Calhoun County Sher-
- 8 iff's Department?
- 9 A. Investigations.
- 10 Q. And in that capacity -- let me step back. Were you work-
- 11 ing in that capacity back in October of 2015?
- 12 A. Yes, sir.
- 13 Q. And in that capacity did you have an opportunity to inter-
- 14 view the Defendant in this case, Mr. Ontonyo Johnson?
- 15 A. Yes, sir.
- 16 Q. And is that the gentleman sitting at counsel table?
- 17 A. Yes, sir.
- 18 Q. And in the course of that interview -- let me go back to
- 19 starting before the interview.
- 20 Was he -- how was he in your office at that time?
- 21 A. He was brought in the conference room. He had contacted
- 22 the Sheriff's Office and we had the opportunity to talk to him.
- 23 Q. So this happened in October?
- 24 A. Yes, sir.
- 25 Q. Of 2015, and you say that the Defendant contacted you?

J. WAUSAU IN CAMERA

1 A. He contacted the Calhoun County Sheriff's Department.

2 Q. All right.

3 A. And in the course of that, did you all make contact then
4 with him?

5 A. Yes, sir.

6 Q. And then did he volunteer to come to see you all at the
7 Calhoun County Sheriff's Department?

8 A. Yes, sir.

9 Q. Was he under arrest when he walked in the door?

10 A. Yes, sir.

11 Q. Was he handcuffed?

12 A. Yes, sir.

13 Q. Was he told that he was not free to leave?

14 A. Yes, sir.

15 Q. All right. Did you all go to pick him up?

16 A. Yes, sir.

17 Q. Where did you interview him?

18 A. In our conference room at the Sheriff's Office there in
19 Calhoun County.

20 Q. Who was present in that conference room?

21 A. Just me and Deputy Green and then Deputy Jones walked in.

22 Q. But in the beginning it was just you and the Defendant?

23 A. Yes, sir.

24 Q. All right, so just the two of you were in there alone?

25 A. Yes, sir.

26

J. WAUSAW IN CAMERA

1 Q. Did you advise him of his rights?

2 A. Yes, sir. Verbally and on the rights form.

3 Q. All right. I will show you what's marked for identifica-
4 tion as State's Exhibit 21. What is that?

5 A. . .

6 Q. Do you recognize what that is?

7 A. Yes, sir. A Miranda Rights form.

8 Q. All right, a Miranda Rights form?

9 A. Yes, sir.

10 Q. And is it related to this case?

11 A. Yes, sir.

12 Q. And did you go over this with the Defendant?

13 A. Yes, sir.

14 Q. All right, and as a part of that there are initials after
15 each of the rights on the form?

16 A. Yes, sir. That's where he would sign.

17 Q. All right.

18 A. He put his initials.

19 Q. So those are his initials after you advised him of each
20 of those rights?

21 A. Yes.

22 Q. And then there is a signature on the form. Do you see
23 that?

24 A. Yes. That's where he signed.

25 Q. And there is also a signature below that. Waiver of

27

J. WAUSAW IN CAMERA.

1 rights?

2 A. Yes, sir.

3 Q. All right, and is there a signature on that waiver of
4 rights?

5 A. Yes, sir.

6 Q. And whose signature is that?

7 A. Mine.

8 Q. And there is a date and time on it?

9 A. Yes.

10 Q. Is that when you advised the Defendant of his rights?

11 A. Yes, sir.

12 Q. All right, did he appear in any way to not understand
13 what he was doing so far as his rights?

14 A. No, sir.

15 Q. Did he indicate to you that he was waiving his rights and
16 would speak to you?

17 A. Yes, sir.

18 Q. Did he then speak with you?

19 A. Yes, he did.

20 Q. And you said that when you were talking to him initially
21 that you were the only person in the room with him?

22 A. Yes.

23 Q. And did you ask him what happened, what he did?

24 A. Yes, sir.

25 Q. What did he tell you?

28

J. WAUSAW IN CAMERA

1 A. He started out saying -- he admitted he was at the store
2 and then he said he thought he was disrespected by a friend
3 and they exchanged words. He had to go.

4 He also stated that he needed to go back to the store
5 and I asked him if he went to . .

6 THE COURT: Slow it down.

7 WITNESS: Okay.

8 A. I asked him if he went to meet his friend, and I asked
9 him if it was necessary and he said, yes, it was, and he said
10 he saw a girl, a girl he wasn't seeing at the time.

11 I told him what he was charged with.

12 Q. All right. So breaking that down he advised you he was
13 at the store, and when you talk about the store . . .

14 A. The old gas station there.

15 Q. So the gas station is the store? Shell station?

16 A. Yes, sir.

17 Q. And is that significant to the investigation?

18 A. Because the victim said he had been there and . .

19 Q. He admitted being at the store?

20 A. Yes, sir.

21 Q. He admitted he had an argument with somebody?

22 A. Yes.

23 Q. And he admitted he left the store?

24 A. Yes, sir.

25 Q. And he admitted he came back to the store?

J. WAUSAW IN CAMERA

1 A. Yes.

2 Q. And is there any reason to believe or anything you saw in
3 demeanor, his behavior or his conduct that led you to in any
4 way question whether or not he was understanding what was
5 going on, understanding his rights, or that he was giving the
6 statement voluntarily?

7 A. No, sir. He was calm the whole time. He never changed
8 his demeanor.

9 SOLICITOR: Nothing further, Your Honor.

10 THE COURT: Cross examination.

11 MR. SELLERS: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. SELLERS:

14 Q. Deputy Wausaw -- did I get that right?

15 A. Yes, sir.

16 Q. Investigator or Deputy -- which do you prefer?

17 A. Investigator.

18 Q. Investigator Wausaw, just briefly, where was this inter-
19 view conducted?

20 A. In the conference room at the Sheriff's Office here in
21 Calhoun County.

22 Q. You keep saying in the conference room but it was act-
23 ually at the Sheriff's Station?

24 A. Yes.

25 Q. I know my client walked in -- I know Mr. Johnson walked

J. WAUSAW IN CAMERA

1 in the Sheriff's Station but wasn't there a phone call made to
2 Mr. Johnson?

3 A. He actually contacted Williamsburg County through Crimestopper:
4 and informed -- not Williamsburg County but . .

5 Q. What did you say in that conversation? I didn't hear that
6 part.

7 A. I believe he spoke to Captain Regales.

8 Q. Captain Regales spoke to him?

9 A. Yes, sir.

10 Q. And did he inform him he needed to come in?

11 A. Yes.

12 Q. You're not sure what the conversation said and it could
13 have gone in many different directions. I know he's in the
14 Courtroom, but he did inform Mr. Johnson he needed to come
15 down to the Sheriff's Station?

16 A. Yes.

17 Q. In your report it says you began this conversation at
18 three thirty, I believe.

19 A. About that time. Maybe closer to three.

20 Q. At what point did Mr. Regales come in? Captain Regales
21 come in?

22 A. Toward the end.

23 Q. And you said at no point did you advise him he wasn't
24 free to leave?

25 A. . .

31

J. WAUSAW IN CAMERA

1 Q. At no point did you say to him he was not under arrest,
2 that he could leave?

3 A. Right.

4 Q. And didn't you tell him he was about to be charged with
5 attempted murder?

6 A. Yes.

7 Q. The interview appears not to last too long. How long
8 did the interview last?

9 A. Eight--eight minutes non-stop.

10 Q. So you had an eight minute conversation with someone and
11 in that conversation the main thing that came out of it was
12 your -- he's sitting in the Sheriff's Department at the re-
13 quest of the Sheriff or the Sheriff's Deputy, and than you're
14 telling him he's about to be arrested so he's not free to
15 leave, is he?

16 A. Well, he was not under arrest at that point until a war-
17 rant was presented to him.

18 Q. This was after eight minutes?

19 A. . .

20 Q. After eight minutes . .

21 A. It all happened quickly.

22 Q. Okay, and so you still maintain that was freely and vol-
23 untarily given?

24 A. Yes, sir.

25 Q. Okay. Thank you. No further questions.

1 THE COURT: Any Redirect?

2 SOLICITOR: Nothing, Your Honor.

3 THE COURT: You may step down.

4 (Witness excused from stand)

5 THE COURT: You may call your next witness.

6 SOLICITOR: Captain Regales.

7 JOHN REGALES, being duly sworn,
8 testified as follows out of the jury's presence:

9 CLERK: State your full name for the record.

10 WITNESS: John Regales.

11 DIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. And where is it you work?

14 A. Calhoun County Sheriff's Department.

15 Q. And you are a sworn law enforcement officer?

16 A. Yes, sir, I am.

17 Q. And how long have you been in law enforcement?

18 A. Since 1995.

19 Q. So doing the math, about eighteen years?

20 A. Yes.

21 Q. All right, and how long have you been employed with the
22 Calhoun County Sheriff's Department?

23 A. Since 2001, so sixteen years.

24 Q. And were you working -- what is your role right now?

25 A. I'm Captain of the Department, investigations mostly.

J. REGALES IN CAMERA

1 Q. And were you working in investigations back in October of
2 2015?

3 A. Yes.

4 Q. And in that capacity, did you have contact with the Defen-
5 dant in this case?

6 A. Yes, I believe so.

7 Q. All right, and do you recall making a phone call to
8 him?

9 A. I made a phone call.

10 Q. And would you have done anything based on your standard
11 practice that would have indicated that he was under arrest?

12 A. No.

13 Q. What would you have -- what would your standard practice
14 be for asking somebody to come in to interview?

15 A. I call someone and once they are on the phone I say I
16 need to discuss something with you but I don't want to discuss
17 it over the phone, so come in and talk with me.

18 Q. All right, and was this your -- were you the lead inves-
19 tigator?

20 A. No, I wasn't.

21 Q. So it wasn't your case as far as investigating?

22 A. . .

23 Q. Is that why you don't remember as well as . . .

24 A. Yes. I wasn't the lead investigator but I just made the
25 phone call and told them to have him make contact with us and

J. REGALES IN CAMERA

1 that was about it.

2 Q. All right, and just to clarify there is no way you can
3 arrest somebody over the phone, is there?

4 A. No.

5 Q. All right. Nothing further.

6 CROSS EXAMINATION

7 BY MR. SELLERS:

8 Q. There is no way you can arrest somebody over the phone,
9 but you can entice that person to come in or coerce that person
10 to come in?

11 A. . .

12 Q. You don't remember that conversation, do you?

13 A. Not entirely.

14 Q. Do you believe that you may have said we have warrants
15 for you?

16 A. Not over the phone, no.

17 Q. But you don't remember the phone call, correct?

18 A. But I know not to say something like that. I've been doing
19 doing my business for many years and I would never tell some-
20 body I had a warrant for them.

21 Q. So you have a suspect for attempted murder and you didn't
22 take any notes?

23 A. No.

24 Q. YOU had a conversation with this person on the phone but
25 you didn't have any contemporaneous record?

J. REGALES IN CAMERA

1 A. No.

2 Q. So that is protocol, that you speak to a suspect for at-
3 tempted murder and you don't have any documents or record the
4 phone call?

5 A. No.

6 Q. In a case where the State has to prove by a preponderance
7 of the evidence that you did not coerce him you have nothing
8 but that?

9 A. Just what I said.

10 Q. No further questions.

11 THE COURT: Redirect?

12 SOLICITOR: No, Your Honor.

13 THE COURT: You may step down.

14 (Witness excused from stand)

15 THE COURT: Do you have further witnesses?

16 SOLICITOR: For this issue, Your Honor, that's all I have.

17 THE COURT: Any witnesses? Anything else?

18 MR. SELLERS: No, Your Honor.

19 THE COURT: All right.

20 SOLICITOR: Your Honor, the statement was freely and vol-
21 untarily given. Your Honor, there is no indication that it
22 was anything but free and voluntary.

23 There is no evidence that he was coerced. There is evi-
24 dence that he appeared calm; that he appeared to understand
25 what was going on.

1 He claimed that he understood what was going on and
2 that he understood his rights and he waived his rights. I
3 believe we've shown that by the preponderance of the evidence.

4 I have nothing further.

5 MR. SELLERS: You know, the State just can't simply say
6 there was no coercion or there was no pressure. They have
7 to present evidence to prove that and the burden is by the
8 preponderance of the evidence.

9 What we have is an officer who has been on the job twenty-
10 two years and there is absolutely no evidence of what their
11 conversation entailed.

12 We would actually assert that my client had no other
13 choice but to either run or bring himself in there. There
14 were two uniform officers in conversation with him so he was
15 not free to leave.

16 As the Officer said, you are under arrest; you're under
17 arrest for attempted murder. I may not be in law enforcement
18 but I find it hard to believe that suspects for attempted mur-
19 der or any of the charges that carry twenty-five years -- you
20 make contact with the suspect and there is no contemporaneous
21 record at all.

22 They may have been trying to meet their burden but they
23 simply did not.

24 THE COURT: Thank you, gentlemen. Based upon the evi-
25 dence that has been presented, I find by the greater weight or

1 preponderance of the evidence that the statement was freely
2 and voluntarily given.

3 The testimony thus far was that the Defendant came to
4 the Station on his own and the conversation with the officer
5 was not shown to have been coerced.

6 It does sound as if he was given his Miranda Rights and
7 from State's Exhibit Number 22 he signed that he understood
8 his Miranda Rights and signed the waiver of rights.

9 So the Motion to admit the statement into evidence is
10 granted.

11 SOLICITOR: Thank you, Your Honor.

12 THE COURT: The next Motion is asking the Court to sup-
13 press the in-Court identification.

14 Do you wish to call a witness?

15 SOLICITOR: Yes, Your Honor. We would call Matthew
16 Mark Edmonds.

17 MATTHEW MARK EDMONDS, being duly
18 sworn, testified as follows, out of the jury's presence:

19 CLERK: Please be seated and state your name for the
20 record.

21 WITNESS: My name is Mark Edmonds.

22 DIRECT EXAMINATION

23 BY SOLICITOR:

24 Q. Good morning, Mr. Edmonds. I think it's still morning.

25 A. Good morning.

MR. EDMONDS IN CAMERA

1 Q. I want to take you back to the day you were shot. Do
2 you recall what you were doing that morning?

3 A. Yes, sir. I went over there . .

4 Q. Back up. You said you went over there.

5 A. To the store.

6 Q. It's a Shell-Bojangles together at 110 Chestnut Street
7 over in Orangeburg?

8 A. Yes.

9 Q. All right, and about what time of the morning was this?

10 A. I got there at five thirty or close to six.

11 Q. And about six o'clock that morning do you recall anything
12 happening?

13 A. Yes, sir. He came in and I hadn't seen him there before?

14 Q. Who are you talking about came in?

15 A. The Defendant. He was being disrespectful.

16 SOLICITOR: Your Honor, I'd ask that the record reflect
17 that he did point to the Defendant, Untonyo Johnson.

18 THE COURT: All right.

19 BY SOLICITOR:

20 Q. So you say you had never seen the Defendant before that
21 time?

22 A. No, sir. Never seen him before.

23 Q. All right, and you say he was being disrespectful to you?

24 A. To my girlfriend.

25 Q. To your girlfriend?

MR. EDMONDS IN CAMERA

1 A. Uh huh. Yes, sir.

2 Q. All right, and did you all have an exchange or words or
3 argue?

4 A. Yes, sir.

5 Q. And how long did this last?

6 A. About ten or fifteen minutes and he walked off.

7 Q. It lasted some minutes?

8 A. Yeah.

9 Q. And that was video recorded?

10 A. On the camera in the store.

11 Q. All right, and you've seen that video?

12 A. Yes.

13 Q. And it fairly and accurately shows what happened?

14 A. Yes.

15 Q. So it would also reflect the time frame of how long you
16 all were in proximity?

17 A. Yes, sir.

18 Q. But it was more than just a minute or two? It was a couple
19 of minutes at least?

20 A. Yes. I seen him during that time.

21 Q. The time you and him were in close proximity?

22 A. Yes.

23 Q. All right, and as far as proximity, how close were you?

24 A. We were like two foot apart.

25 Q. All right. So you all were very close?

MR. EDMONDS IN CAMERA

1 A. Yes.

2 Q. And as far as the store goes, this is a well lit gas sta-
3 tion and convenience store?

4 A. Yes, sir.

5 Q. So was there any reason why you weren't able to see him?

6 A. I seen him.

7 Q. Was there anything to interfere with your ability to see
8 him, like poor lighting or anything of that nature?

9 A. No, sir. He was right there and I could see him.

10 Q. I'm talking about during the time you were having that
11 argument?

12 A. Yes, sir. I seen him both times.

13 Q. Were you able to clearly see him?

14 A. Yes, sir.

15 Q. All right, and because of your argument and because he
16 was being disrespectful to your girlfriend, did you pay atten-
17 tion to him?

18 A. Yes, sir.

19 Q. Okay. The Defendant left, correct, after a couple of min-
20 utes?

21 A. Yes.

22 Q. And then at some point after that you left the store,
23 correct?

24 A. Yes.

25 Q. And went toward your mother's house?

MR. EDMONDS IN CAMERA

1 A. Yes.

2 Q. And you drove toward your mother's house?

3 A. Yes.

4 Q. All right, and during that drive to your mother's house
5 did another event happen?

6 A. Yes, it did. I got shot.

7 Q. About how long was that after you had left from the
8 store?

9 A. I would say four or five minutes but I wasn't paying any
10 attention to the time.

11 Q. All right, so -- and then once you got shot did you go
12 on to your mother's house?

13 A. Yes.

14 Q. Were the police immediately called?

15 A. Yes.

16 Q. So they were called within a couple of minutes from the
17 time you were shot?

18 A. Yes.

19 Q. From the time you had the argument you talked about to
20 the time you got shot, was that about an hour and ten or fif-
21 teen minutes?

22 A. At the time I was on the way to my mom's house. I went
23 on down Chestnut Highway and 601 and I stop at another store
24 right there and when I come back to my car is when . .

25 Q. But as far as the time between the argument to when you

M. EDMONDS ON DIRECT

1 saw the person and got shot, how long was that?

2 A. I'd say about an hour and ten minutes.

3 Q. All right, and when you were shot did you see the person
4 who shot you?

5 A. Yes, sir. I saw him reach inside his car and . .

6 Q. He was in his vehicle?

7 A. He meet us.

8 Q. You all were side by side?

9 A. Yes.

10 Q. Okay, and then -- so you were very close?

11 A. Yes, sir.

12 Q. Was there any reason -- was there anything blocking your
13 ability to see him?

14 A. No, sir.

15 Q. Was there any -- was it light enough for you to see him?

16 A. Yes, sir.

17 Q. Were you able to see him?

18 A. Yes, sir.

19 Q. Did you look at him?

20 A. Yes, sir. I look right at him.

21 Q. All right, and the fact that you were looking at somebody
22 who shot you, did that draw your attention?

23 A. Yes, sir.

24 Q. It's the kind of thing you'd remember?

25 A. Oh, I remember it and it was after I just seen him at

M. EDMONDS IN CAMERA

1 the store and we had words.

2 Q. And were you able to tell who it was that shot you?

3 A. Yes, sir.

4 Q. Who was it?

5 A. That gentleman right there.

6 Q. Did you know his name?

7 A. No, sir.

8 Q. But no question it's the same person?

9 A. No question it's the same person.

10 Q. Were you able to see his clothes?

11 A. The shirt he had on.

12 Q. Were you able to see whether it was the same shirt?

13 A. Yes, sir.

14 Q. And was it?

15 A. Yes, sir.

16 Q. And after you got shot you said you went to your mother's
17 house and the police were called?

18 A. Yes.

19 Q. And when the police got there to the house, did you tell
20 them who it was that shot you?

21 A. I told him it was the one I had just seen in that store
22 and had the argument with?

23 A. You told them it was the one you had had the argument
24 with at the store?

25 A. Yes.

M. EDMONDS

1 Q. All right, and then did you -- is there any question in
2 your mind that the person who shot you is the same person you
3 had an argument with the store?

4 A. No, sir, it was the same person.

5 Q. No question in your mind it's the same person?

6 A. No question. I know it's the same person.

7 Q. And then you told that to the police?

8 A. Yes.

9 Q. And you told them -- did you tell them about the shotgun?

10 A. Not at the time.

11 Q. Did you tell them about the shotgun a little bit later?

12 A. I don't recall when it was.

13 Q. The police -- did they show you a picture shortly after
14 you got shot?

15 A. Yes.

16 Q. While you were in the hospital?

17 A. Yes, sir.

18 Q. And it was just one picture?

19 A. One picture.

20 Q. Did that -- did the fact that you only saw one picture
21 influence in any way who you picked out for the shooter?

22 A. No, sir, it didn't.

23 Q. I show you what's marked as State's Exhibit 22. Do you
24 recognize what that is?

25 A. Yes, sir.

M. EDMONDS IN CAMERA

1 Q. Is that one of the pictures that were shown to you?

2 A. Yes.

3 Q. And basically is that from the video, a shot from the
4 video at the store?

5 A. . .

6 Q. Correct?

7 A. Yes, sir.

8 Q. All right, and you said there is absolutely no question
9 that you knew who shot you as soon as you were shot?

10 A. Yes, sir.

11 Q. No doubt in your mind who it was at that point, before
12 anybody showed you anything? You had no doubt in your mind
13 it was this Defendant who shot you?

14 A. Yes, sir.

15 SOLICITOR: Nothing further, Your Honor.

16 THE COURT: Cross examination.

17 CROSS EXAMINATION

18 BY MS. STROM:

19 Q. When you were shown the pictures that were shown to you
20 a moment ago, those were the only pictures you were shown?

21 A. Yes.

22 Q. And those pictures were from the gas station?

23 A. Yes, maam.

24 Q. They were pictures of the individual from what appeared
25 to be the gas station surveillance?

M. EDMONDS IN CAMERA

1 A. Yes.

2 Q. The gas station surveillance footage?

3 A. Yes, maam.

4 Q. And when the shooting took place you were operating your
5 vehicle at the time?

6 A. I was at a stop sign.

7 Q. You were at the stop sign?

8 A. Yes, maam.

9 Q. Did you previously tell the investigators or the officers
10 that you were approaching the intersection when it happened?

11 A. I did tell them that and was at the stop sign when he
12 came up beside me.

13 Q. Okay. You were stopped at the stop sign ready to drive on?

14 A. That's right.

15 Q. And how long were you stopped at the stop sign for?

16 A. I don't know exactly but he came up beside me, beside
17 my car, you know. He come up beside my car and shot me and
18 then he took off in his car.

19 Q. So he took off immediately after that happened?

20 A. Yes, maam.

21 Q. Okay. Initially when you were questioned you only then
22 described the shooter as a black male, isn't that correct?

23 A. No, maam. I told them what I saw and what happened.

24 Q. Yes, sir. That was a poorly-worded question. You told
25 them what happened at the gas station but as to the individual's

M. EDMONDS IN CAMERA

1 visible characteristics you only mentioned that he was a black
2 male?

3 A. No, maam. I didn't mention it. He showed me a picture
4 and I said that was him.

5 Q. But did you tell them anything about this person, what
6 he looked like?

7 A. Yes. I remember that. I mis-spoke.

8 Q. Okay, and when the investigators came to visit you at
9 the hospital that was several hours after the incident had
10 taken place. Correct?

11 A. Yes, maam.

12 Q. All right, and that was the first time you had seen the
13 photos from the gas station?

14 A. I saw -- which one?

15 Q. The photo . . .

16 A. The photo from the gas station they showed me and I said
17 that's who shot me.

18 Q. Okay, and you testified a moment ago that you weren't in-
19 fluenced one way or the other by the fact that these photos
20 were from the gas station, but you weren't actually shown
21 any other pictures to compare them to and you were certain
22 this was the person that shot you and that was the only picture
23 you were shown. Correct?

24 A. Yes, maam. I know who shot me though.

25 Q. Thank you. No further questions.

M. EDMONDS IN CAMERA

1 THE COURT: Any Redirect?

2 SOLICITOR: No, Your Honor.

3 THE COURT: Thank you. You may step down.

4 (Witness excused from stand)

5 THE COURT: Anything else? Any further witnesses?

6 SOLICITOR: Your Honor, I'd call now Investigator Monroe.

7 HARRY JAMES MONROE, being duly sworn,

8 testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR:

11 Q. I show you State's Exhibits 1 and 2. Do you recall which of
12 these two pictures were shown to him?

13 A. Yes, this is the picture here.

14 Q. You picked out State's Exhibit 2. All right, and where
15 did you get that picture?

16 A. From Investigator Wausaw.

17 Q. You didn't show him the print of the pictures? You just
18 showed him a photo from that picture on the screen?

19 A. Correct.

20 Q. So let's go into the details of that. Before you met
21 with the victim or when you met with the victim, did you show
22 him the picture immediately or did you talk to him first? How
23 did that work?

24 A. I'm sorry.

25 Q. When you first got there did you talk to him?

HARRY MONROE IN CAMERA

1 A. Yes.

2 Q. Did he tell you who shot him?

3 A. Yes.

4 Q. Who did he tell you shot him?

5 A. He told me he had an argument at the gas station.

6 Q. All right, and did you show him that picture after he
7 identified who had shot him?

8 A. I did.

9 Q. So it was after he told you who shot him that you showed
10 him the picture?

11 A. Correct.

12 Q. All right. So did you in any way indicate that you
13 thought this was the person or anything of that nature?

14 A. I did not.

15 Q. All right, and did you review the video from the store?

16 A. Yeah, I seen it one time.

17 Q. All right, and did he have an argument with anybody else
18 at that store?

19 A. I saw no indication of any argument with anybody else.

20 Q. So this was the only person he had an argument with?

21 A. On the video, yes.

22 Q. All right. Nothing further.

23 THE COURT: Cross examination.

24 MR. SELLERS: No questions as far as this issue.

25 THE COURT: You may step down.

1 SOLICITOR: Your Honor, with regards to the identifica-
2 tion, this is certainly -- certainly there was one photo shown
3 to him. However, this is more than I believe was cited by the
4 Defense in Liverman in their memo.

5 Liverman discusses -- I can hand up a copy to the Court
6 -- thank you.

7 Your Honor, in Liverman the Court of Appeals eventually
8 got reversed by the Supreme Court as far as whether or not
9 where a person knows the attacker or knows the subject in the
10 photo -- whether or not there needs to be a hearing.

11 So we certainly agree he was entitled to this full hear-
12 ing but Liverman discusses some situations in which the identi-
13 fication is merely confirmatory versus an attempt to identify
14 another subject.

15 In Liverman the Defendant was known by a nickname. Here
16 the victim did not know the identity or the name of the person
17 but he knew who it was. He knew that it was the person he
18 got into an argument with at the gas station.

19 The Defendant has admitted he was the person who the vic-
20 tim got into an argument with at the gas station. The victim
21 clearly and with certainty said it was that same person who
22 shot him and he was merely confirming with the picture that it
23 was who it was he had seen shooting him.

24 With regards to the factor of the witness' opportunity to
25 view at the time, he had two separate opportunities to view.

1 One lasted a matter of some minutes. The other lasted only
2 seconds, but in both of them he had a clear opportunity to
3 see him in close proximity.

4 With regards to number two, I draw your attention to it
5 where he was in an argument with somebody in close proximity.
6 The -- and then he was being shot at which further would tend
7 to stick in a witness' mind.

8 The level of accuracy of the witness' prior description
9 -- there was testimony regarding that he did know the shirt
10 and describe the shirt, but also he described that very speci-
11 fically it was the person on the video.

12 So this was not some general I saw some black male and
13 then they go and search for him -- this might be the guy --
14 but this was a person he had identified with great accuracy.
15 It was this person.

16 The level of certainty is demonstrated from the begin-
17 ning, and he was absolutely certain. There was no question
18 in his mind that the person in the store and the person who
19 shot him were one and the same person.

20 The length of time between the crime -- looking at the
21 photograph, it was a matter of hours, a short period of time.
22 Additionally, he made identification immediately afterwards,
23 while he was still being treated for his wounds.

24 He said that initially from the start, that it was the
25 same person he had been in an argument with at the gas

1 station, so the identification was made almost instantaneous
2 with the events.

3 Your Honor, each of the five factors weighed in favor
4 initially. Additionally, the Liverman confirmatory identifica-
5 tion is more credible than any situation where you've got what
6 I could consider a cold identification. This isn't a situa-
7 tion where you don't know the person and the police come up
8 with a suspect and show a photo lineup to see if this is who
9 it is or that they have the right person.

10 He identified from the get-go who it was that shot him
11 and was merely confirming that, yes, that is the picture of
12 who it was that shot me, and he then identifies the person by
13 name from an investigation that took place after.

14 Ms. STROM: Your Honor, I would not agree with his pos-
15 ition on the way in which the photo was presented to Mr.
16 Edmonds. It was unduly suggestive. It was a photo of the
17 person from the gas station surveillance. Your Honor, Mr.
18 Edmonds had no knowledge of Mr. Johnson's name. He had no idea
19 of his name, had no idea of who he was prior to this incident.
20 He had no way to report to police who he was.

21 While he does say there was an altercation at the gas
22 station, I would tend to disagree with his characterization of
23 the fact that he would remember him from the altercation and
24 being shot thereafter.

25 There was really no reason for him to pay close attention

1 to the man in the gas station other than the fact that words
2 were exchanged between them.

3 At the time of the crime he was certainly in no position
4 to know more than just a general description of the man with
5 the gun. In the store the words that they had would not be
6 relevant to the time of the shooting. I mean, I don't know
7 how much attention someone would pay to someone while he was
8 being shot, but for the fact that the words that he had had
9 with someone was close in time to the shooting.

10 As to the accuracy of the description, Your Honor, he had
11 been in a prior altercation and he had had time to note the
12 person's description, physical characteristics, of the person he
13 had words with.

14 He would have been able to give a description of the per-
15 son's hair, eye color, skin tone, all of that, but there was
16 no such description given by Mr. Edmonds to the police.

17 As to the length of time, Your Honor, it was a couple of
18 hours after he was in the hospital when he was going through
19 medical treatment, and whether that may have affected any-
20 thing he described to the investigator is something we can't
21 know at this time.

22 When he was shown a photograph from the gas station where
23 the confrontation took place he made the identification at the
24 time of Mr. Johnson. So that presents a question as to the
25 accuracy of the identification.

1 We would ask the Court to consider all of the circum-
2 stances of the identification that have been discussed. Mr.
3 Edmonds identified the person in the photograph from the
4 gas station who was the man he had had the altercation with.
5 That is clear, but it is not as clear that that was the same
6 person who shot him.

7 He identified him as a black male and that he had been
8 involved in an altercation in the gas station, but he made no
9 representation of other physical characteristics.

10 He said that he was sure the person at the gas station
11 and the person who shot him were the same person but he had
12 only described him as a black male.

13 He saw the person at the gas station for a longer period
14 of time as they were side by side. We think that is important
15 to consider. He said he had not seen him before.

16 The identification of the photograph at the hospital was
17 several hours after the confrontation had taken place, and we
18 question the accuracy of that identification.

19 THE COURT: Well, the identification by Mr. Edmonds was
20 made with absolute certainty on his part as he said.

21 As both of you know, I must take the show of facts pre-
22 sented in this type of show-up procedure in the light most
23 favorable to the non-moving party and consider them carefully
24 due to the suggestive nature.

25 I have listened carefully to the testimony from witnesses

1 presented. The shooting took place about an hour after the
2 confrontation in the store. The victim stated that he saw
3 the Defendant at the gas station and he saw the person who
4 shot him.

5 He said he was face to face with the person and he did
6 recognize the person's shirt as being the same shirt the per-
7 son had on at the gas station during the confrontation.

8 At the gas station he said they were side by side, so
9 he saw the person clearly there. He said they were the same
10 person. He testified with certainty on that.

11 As far as the actual shooting the testimony was that it
12 was about an hour after the initial confrontation and I'm
13 not sure he testified that he recognized the same shirt as
14 far as at the gas station as well as at the location where he
15 was shot.

16 As far as his degree of attention, he testified that he
17 paid close attention and that they were side by side.

18 As to the accuracy of the description I think that is
19 certainly very important because the accuracy of that is ob-
20 viously not just that he was a black man but he was the per-
21 son I got in the confrontation with at the store.

22 That was important because he did not know him person-
23 ally. So his saying the person at the gas station was the
24 same person who shot him is certainly important here and it
25 was made with certainty.

1 He was sure that was the person that he saw at the gas
2 station, the person who shot him. He indicated he was stopped
3 at a stop sign when the other person in his car came right
4 up to him. He was certain on that.

5 So after he was shot he went to the hospital and it was
6 several hours after that on the same day that he identified
7 his picture as being the same person at the gas station and
8 the person who shot him.

9 So, therefore, the Court finds from the evidence that
10 the identification is reliable, and the Court will allow the
11 identification of the Defendant.

12 SOLICITOR: Thank you, Your Honor.

13 MR. SELLERS: Your Honor, we do have a few issues left
14 that we would take up as we get to them with the witnesses.

15 We have an issue as to there being a confidential in-
16 formant and we would ask the State to stay clear of informa-
17 tion that led to that identification and the confidential in-
18 formant that is alleged which led to an identification.

19 THE COURT: Yes, sir.

20 SOLICITOR: Your Honor, I think that what he's referring
21 was that there was a confidential source that gave a state-
22 ment saying that it was Untonyo Johnson but refused to par-
23 ticipate by name or anything of that nature for fear of the
24 Defendant.

25 I agree it would be improper for there to be any mention

1 of that informant.

2 All of the witnesses are here, Your Honor, and I will
3 take care of that.

4 THE COURT: Thank you, and please make sure the witnes-
5 ses are informed.

6 SOLICITOR: Yes, Your Honor. I would say that we had
7 the picture and went out and sought a name for Untonyo Johnson.
8 As a result of that, we spoke with Untonyo Johnson and he ad-
9 mitted he was the same person.

10 THE COURT: All right.

11 MR. SELLERS: The last thing, Your Honor, is that we would
12 ask -- we want to stipulate -- there is a piece of information
13 we just received concerning a gunshot report which came back
14 negative.

15 We would stipulate to the fact that there was no gunshot
16 residue on the victim.

17 SOLICITOR: Your Honor, they have had that information
18 for about six months since it is dated in January. The report
19 changes nothing. It is just a report, and if they want to
20 put that in I will certainly stipulate to that. I would stip-
21 ulate to that.

22 THE COURT: All right.

23 (Whereupon, the Court stood in recess until the matter re-
24 sumed)

25 THE COURT: Is the State ready to proceed?

1 SOLICITOR: State's ready, Your Honor.

2 MR. SELLERS: The Defense is ready.

3 THE COURT: Bring in the jury.

4 (Jury returned to the Courtroom).

5 THE COURT: Mr. Clerk, would you please swear our jury?

6 CLERK: Yes, maam.

7 (Whereupon, the jury was sworn by the Clerk of Court for
8 the purpose of the trial)

9 CLERK: Thank you. You may be seated.

10 THE COURT: Welcome back, ladies and gentlemen of the
11 jury. Thank you for accepting this important responsibility
12 of jury service for the trial of this case in the Court of
13 General Sessions.

14 What I am about to say to you is simply to serve as an
15 introduction into the trial of this case. These remarks are
16 not the law of the case but I will instruct you on the law
17 applicable to this case at the end of the trial before you
18 retire to consider your verdict.

19 These remarks merely an explanation of the procedure we
20 will follow so that you may better understand what is going
21 on here in the trial of the case.

22 You may not take notes during the trial of this case.

23 As you heard during the jury selection process, the De-
24 fendant is charged with several Indictments by this Court.

25 One is the charge of attempted murder and one is possession

1 All of this will be explained to you.

2 Anything regarding my remarks to the jury from the
3 State?

4 SOLICITOR: Nothing from the State, Your Honor.

5 THE COURT: From the Defense?

6 MR. SELLERS: Nothing from the State, Your Honor.

7 THE COURT: All right, Solicitor.

8 SOLICITOR: Thank you, Your Honor. May it please the
9 Court?

10 THE COURT: Yes, sir.

11 SOLICITOR: Ladies and gentlemen of the jury, during the
12 course of this trial we will prove to you beyond a reasonable
13 doubt that the Defendant, Untonyo Johnson, is guilty of at-
14 tempted murder, guilty of possession of a firearm during the
15 commission of a violent crime, and guilty of possessing a fire-
16 arm by a person with a conviction.

17 Let's look at those charges. Attempted murder -- an at-
18 tempted murder is exactly what it says. Somebody tried to
19 commit a murder who had the capacity to commit a murder.

20 Murder is to do an act that if it had succeeded ~~would~~ have
21 been a murder, the intent to kill with malice aforethought.
22 Malice aforethought means that the act was with intent to kill
23 or sometimes described as lack of social conscience, fatally
24 bent on mischief. The bottom line is he tried to kill some-
25 one.

1 Possession of a weapon during a violent crime again means
2 exactly what it says. He had a firearm when he was trying to
3 kill, and, of course, murder is a violent crime.

4 The possession of a firearm by a person with a conviction
5 means that once you have that you can no longer possess any
6 weapon. You are not permitted to possess a weapon. He has a
7 conviction for such offense.

8 Those are the three charges so you're going to have to
9 listen carefully to witnesses. The witnesses are going to
10 tell you what happened.

11 This happened here in Calhoun County on October first of
12 2015. You will hear from the victim how he was going over
13 to see his girlfriend. They had had some trouble and he was
14 trying to smooth things over.

15 So he goes to her work to try to talk to her. He's over
16 there and there is an individual standing there who is being
17 disrespectful to her. You will hear him tell you, and I apol-
18 ogize for the language, but he is fussing at this lady and he
19 calls her a bitch.

20 The victim then does what any citizen should do. He
21 tells him he should not be disrespectful to this person, and,
22 of course, she was his girlfriend which made him have a lit-
23 tle more incentive to stop that.

24 You will hear that after he stopped it the Defendant
25 turned on Mark and started arguing with him. The victim, Mark,

1 will explain to you that the Defendant asked him to step out-
2 side to settle it outside, and Mark said I ain't got time for
3 that. Not interested in that.

4 This was a gas station and it was not something that they
5 wanted to be going on there, something like that. They didn't
6 want to see this altercation.

7 There is a video of this, and you will see the store and
8 you will see the shirt that the Defendant was wearing at the
9 time. You will see a video of that from the surveillance cam-
10 eras outside the store showing the Defendant's car there. The
11 victim's car was not far away. They both go outside, outside
12 the Shell Station there on Chestnut.

13 The Defendant leaves and goes down Chestnut Street in his
14 car. Then some time later Mark leaves and goes toward his
15 mother's house, down Chestnut to 601, Haynes Crossroad, and
16 once he got on that street he gets to the stop sign there and
17 the Defendant came up to try to cut him off.

18 The Defendant saw him and he pointed a gun and said some-
19 thing to him you will hear about, something about the bitch or
20 something like that. Then he start shooting at him. Mark
21 looked at him and saw him do this.

22 Fortunately, he did not kill him. He had somebody rid-
23 in the car with him who got the seat back a little bit and
24 saved his life.

25 He made it down the road to his mother's house and the

1 police were called. The police showed up and tried to save
2 his life.

3 They asked him who did this and he knew it was that man
4 right there. But he didn't know the Defendant's name at the
5 time. He said he had had words with the man at the store, the
6 same guy, and the same guy who called him outside to fight
7 with him at the store. Same shirt, same person, the Defendant
8 there.

9 You will hear all of it from testimony, and it will ulti-
10 mately come down to what you find happened. What happened was
11 he saw that man, that man, point a gun at him and shoot him.
12 It was him, and there is no doubt in his mind.

13 That, ladies and gentlemen, is the case. Mark saw who
14 shot him. That man, the Defendant.

15 Thank you.

16 MR. SELLERS: Good morning, or afternoon now that we've
17 all had lunch. I know we had some brief introductions prior
18 to you all receiving your oath, but I want to re-introduce my
19 table to you.

20 Sitting over here is Caroline Strom from our office, and
21 we have Mr. Untonyo Johnson who is from Orangeburg.

22 My name is Bicardi Sellers. I'm from the big city of
23 Denmark, South Carolina, where we have three whole stop lights.
24 So it is a pleasure to be here with you this morning, and
25 growing up in Denmark I always tell the story about my mom

1 and dad -- they always taught me the two most important words
2 in the English Language were the words thank you which are not
3 nearly said enough.

4 In beginning I simply want to start by saying thank you
5 to all of you all for taking time out of your schedules to
6 show up here and do what is one of the cornerstones of our
7 democracy. This is what it means to be American. It means
8 you are judged by a jury of your peers

9 I mean, here you are so I simply wanted to say thank you
10 for your service.

11 I'm going to talk about three important principles just
12 briefly in my opening statement, and they are presumption of
13 innocence, the burden of proof and what it means for beyond
14 a reasonable doubt.

15 The burden of proof and presumption of innocence and what
16 it means for beyond a reasonable doubt.

17 I want to start with presumption of innocence because
18 right now you saw Mr. Lupton point at my client, Untonyo
19 Johnson, and when you see him I want you to understand that
20 he right now is presumed to be innocent. He is clothed in
21 this veil of innocence. You have to think about this through-
22 out the entire trial. Right now Untonyo Johnson is clothed in
23 a veil of innocence.

24 Now, many of you watch televison and you've read the news-
25 paper and you see these stories come up and you say -- say it's

1 a bank robbery and there were three people who did it and they
2 put their shots up on the screen and you roll over and maybe
3 talk to your girlfriend or your husband or your wife, whoever
4 it may be, and you say, man, I hope they catch those people
5 who did it; I think those three did that crime.

6 Well, you want to think differently here today as you're
7 at an eighty degree difference. Just because you are accused
8 of a crime and just because the Judge reads the warrants out
9 or just because you're accused of something and the attorney
10 points at you in his opening statement does not mean that you're
11 guilty.

12 In fact, when you look at Untonyo right now he's clothed
13 in a veil of innocence that is afforded to him by the same
14 Constitution which I'm so thankful that you are here to serve
15 under today.

16 That's one of them, and number two is what I get a little
17 bit excited about. It's the burden of proof. It's the bar
18 that the State has to reach.

19 Untonyo doesn't have to prove anything to you. He doesn't
20 have to prove to you anything because, as I mentioned before,
21 he is provided this veil of innocence through our Constitution.

22 Mr. Lupton and the State and the Calhoun County Sheriff's
23 Department -- it is their burden in this case. Untonyo does
24 not even have to testify. He doesn't have to testify, and
25 the reason being is because he sits there innocent and he has

1 absolutely nothing to prove, nothing to prove to you all, to
2 you members of the jury.

3 He has a fundamental right to remain silent and he has
4 that right from now and throughout the pendency of this trial.
5 So we've covered presumption of innocence. We've covered the
6 burden of proof.

7 The last thing is beyond a reasonable doubt. We'll get to
8 that point. Many people want to know what is reasonable doubt
9 and what does that mean?

10 First and foremost I would tell you the a reasonable doubt
11 is what the State has to prove and prove beyond to show that
12 Untonyo is guilty.

13 But it is the highest legal standard we have in these United
14 States of America, so you may go back there and think to your-
15 self, I really don't know if he's guilty. Or you may say I think
16 he may be guilty or you say I think he might have done it.

17 Or you might even say I think he is probably guilty but
18 none of that rises to the standard of beyond a reasonable doubt,
19 and if you have any doubt, any strand of doubt, at the conclus-
20 ion of this trial then you must find Untonyo not guilty.

21 Let me repeat that. If you think he may have or probably
22 did it or might have done it then the State has not done their
23 job of proving that he's guilty beyond a reasonable doubt.

24 Each one of you as you are sitting in that chair have the
25 same responsibility to come back then with a verdict of not

1 guilty.

2 So, lastly, in closing I would ask you all -- I know it
3 is kind of strange for a defense attorney to talk to you and
4 ask for favors, but I do need a favor from each and every one
5 of you folks.

6 Regardless of the charges and the warrants the Judge may
7 read or regardless of the inflection of the State and what
8 they may prove or point out, I would ask that you all keep an
9 open mind throughout this entire trial.

10 I need you to let go of all your preconceived notions,
11 all your prejudices. I need you to let all of that go, and the
12 reason I need you to let that go is because this is that impor-
13 tant.

14 This is about someone else's life, this is about preserv-
15 ing the dignity of our democracy and upholding every single
16 word of our Constitution.

17 I'm just a country boy from Denmark, not too far away,
18 and I will end where I began with what my parents always told
19 me -- I'll end with that. Which is simply to say thank you.
20 Thank you to each and every one of you all for doing your job,
21 showing up, and at the end of this trial I'll come back and
22 ask you again to find Untonyo Johnson not guilty.

23 ~~not~~ Thank you.

24 THE COURT: You may call your first witness.

25 SOLICITOR: Thank you and may it please the Court.

1 The State calls the victim, Mark Edmonds.

2 MATTHEW MARK EDMONDS, being duly

3 sworn, testified as follows:

4 CLERK: Please state your full name for the record.

5 WITNESS: Matthew Mark Edmonds.

6 THE COURT: Your witness.

7 SOLICITOR: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Mark, look at the jury and tell them who you are.

11 A. Matthew Mark Edmonds.

12 Q. Do you go by Mark?

13 A. Mark.

14 Q. Where are you from?

15 A. (Inaudible) Calhoun County.

16 Q. How long have you lived here?

17 A. All my life.

18 Q. So you lived here back in October of 2015, is that right?

19 A. That's right.

20 Q. And at that point I want to direct your attention to Oc-
21 tober first of 2015. Do you remember that day?

22 A. Yes, sir.

23 Q. Do you remember what you did that morning?

24 A. Yes, sir. I got up and went to the Shell Station in
25 Orangeburg to see my girlfriend.

M. EDMONDS ON DIRECT

1 Q. Is that the one there on Chestnut Street?

A. Yes, sir.

2 Q. All right, and why did you meet her there?

3 A. She was at work.

4 Q. She worked there at that station?

5 A. Yes, sir.

6 Q. All right, and do you remember about what time you were
7 there?

8 A. I got over there at five thirty or six that morning.

9 Q. All right. So close to six?

10 A. Right. Yes, sir.

11 Q. All right, and what did she do there?

12 A. She was a cashier.

13 Q. And was there -- while you were there, did somebody talk
14 to her in a way that bothered you?

15 A. Yes, sir.

16 Q. And tell the jury about that, please.

17 A. I was there to talk to her and a guy came in and got some
18 cigars or something and he didn't have enough money and he
19 start calling her bitch and things like that.

20 Q. All right, and what did you do in response to him calling
21 her that?

22 A. I told him to stop that.

23 Q. Was it just the one word or was he being . .

24 A. No, he was being rude to her.

25 Q. So you asked him to what?

M. EDMONDS ON DIRECT

1 A. Not to call her that. Not call her a bitch.

2 Q. And before we go into how he reacted to that, let me
3 just back up a second. You said at the time Miranda Dukes was
4 your girlfriend and you all were engaged?

5 A. Yes, sir.

6 Q. Are you all still engaged?

7 A. No, sir.

8 Q. What is your current status with her?

9 A. I haven't seen her in a year and a half.

10 Q. Do you know where she lives now?

11 A. North Carolina, I think.

12 Q. Do you know where?

13 A. (Inaudible)

14 Q. Do you have her current phone number?

15 A. I had it but she don't have one now.

16 Q. So suffice it to say you all have gone your separate
17 ways?

18 A. Yes, sir.

19 Q. But at that point, October first, you all were together.
20 Correct?

21 A. Yes, sir.

22 Q. And when you asked the person she was arguing with to
23 stop being rude to her or stop calling her a bitch, . . .

24 A. Yes, sir.

25 Q. . . what was that person's response?

M. EDMONDS ON DIRECT

1 A. Then he turned around on me and he wanted to take it out-
2 side. I told him I didn't have time for that.

3 Q. When you say he wanted to take it outside, what do you
4 mean by that?

5 A. He said take it outside and I told him I didn't have
6 time for that.

7 Q. What did you understand that to mean?

8 A. He wanted to go outside and fight.

9 Q. All right, and was -- you said you didn't have time for
10 that?

11 A. That's right. Yes, sir.

12 Q. Then what did he do?

13 A. He said we have a problem, and I said you don't need to
14 talk to her like that. He was running his mouth at me for a
15 while.

16 Q. He ran his mouth at you for a while?

17 A. After what I had told him, and I saw him go off in the
18 woods.

19 Q. You saw him in the woods?

20 A. Yes, sir.

21 Q. That was after he called you out for a fight?

22 A. Yes, sir.

23 Q. So you were paying attention to the one who was doing
24 all of this?

25 A. Yes, sir.

M. EDMONDS ON DIRECT

1 Q. And this is a well lit store?

2 A. Yes, sir.

3 Q. All right, and was the person who told you that, was he
4 wearing anything distinctive?

5 A. He had like a white shirt on with clouds that were . .

6 Q. A distinctive shirt?

7 A. Yes.

8 Q. And were you able to remember who that person was?

9 A. Yes, sir.

10 Q. Who was that person?

11 A. Mr. Johnson, sitting over there at the table.

12 SOLICITOR: Your Honor, I would ask the record to reflect
13 he identified the Defendant.

14 BY SOLICITOR:

15 Q. All right. So at that point you had adequate opportunity
16 and you recognized who he was in the photo?

17 A. Yes, sir.

18 Q. All right. So you said he left after a couple of min-
19 utes?

20 A. Yes.

21 Q. And you stayed there for a while?

22 A. Another half hour or so.

23 Q. And did you ultimately leave yourself?

24 A. Yes, sir.

25 Q. And when you left where did you go?

M. EDMONDS ON DIRECT

1 A. Back out Chestnut, 601, and hit 117 to go back toward my
2 mother's house.

3 Q. All right, and I want to show you some pictures. First I
4 would show you what's marked as State's Exhibit 3.

5 Do you recognize this?

6 A. Yes, sir.

7 Q. What is that?

8 A. The Shell Station right there.

9 Q. And this is Chestnut here?

10 A. Yes, sir.

11 Q. That's the Shell sign?

12 A. Yes.

13 Q. Is this the area where you were at?

14 A. Yes, sir.

15 SOLICITOR: Your Honor, at this time we would move State's
16 Exhibit 3 into evidence.

17 THE COURT: Any objection?

18 MR. SELLERS: No objection.

19 THE COURT: Admitted.

20 (Photograph admitted in evidence without objection as
21 State's Exhibit 3)

22 BY SOLICITOR:

23 Q. I'll set this up here. Would you step down? Were you
24 parked over here?

25 A. Yes, sir.

M. EDMONDS ON DIRECT

1 Q. And this is Chestnut right here?

2 A. Yes, sir.

3 Q. So you came up this way?

4 A. Yes, sir.

5 THE COURT: The jury needs to see and hear you.

6 BY SOLICITOR:

7 Q. Show the jury where you were?

8 A. Right here on the side where the sign is.

9 Q. Okay.

10 A. He was parked over there and he left out this way.

11 Q. This way?

12 A. Yes, sir.

13 Q. All right, and then right there -- I show you State's Ex-
14 hibit 4. Do you recognize that?

15 A. Yes, sir.

16 Q. Is that the route you took?

17 A. Yes, sir.

18 SOLICITOR: Your Honor, at this point we would move to ad-
19 mit State's Exhibit 4.

20 THE COURT: Any objection?

21 MR. SELLERS: No objection, Your Honor.

22 THE COURT: Admitted.

23 (Photograph admitted without objection as State's
24 Exhibit 4 in evidence)

25 Q. All right. So you left that gas station there and you on

M. EDMONDS ON DIRECT

1 Chestnut, this road right here, and then you went . .

2 A. On 601, on South Carolina 176, on down . .

3 Q. So basically this blue line is the route you took?

4 A. Yes, sir. . . That's a crossroad about two miles up. I got
5 to the stop sign at the crossroads and that's when it happened.

6 Q. All right, and this next one -- do you recognize this?

7 A. Yes. This is 176 and that's up to the crossroad and that
8 is where I stopped at the stop sign.

9 Q. Showing you State's Exhibit 5 . .

10 MR. SELLERS: No objection, Your Honor.

11 A. That's the crossroad and where all this happened, right
12 there.

13 Q. All right, and showing you State's Exhibit 6. Do you re-
14 cognize that picture?

15 A. Yes, sir.

16 Q. Or that photo?

17 A. Yes, sir. There's where it happened at.

18 SOLICITOR: Move to admit State's 5 and 6.

19 THE COURT: Objection?

20 MR. SELLERS: No objection.

21 THE COURT: Admitted.

22 (Photos admitted without objection in evidence as
23 State's Exhibits 5 and 6)

24 BY SOLICITOR:

25 Q. Would you point to where the shooting happened, and

M. EDMONDS ON DIRECT

1 step over here to where this happened on this side so the jury
2 can see.

3 A. It happened right there at the stop sign, right here.

4 Q. This picture kind of cuts it off but . . .

5 A. Yes, sir. I was going to turn to my right, make a right
6 turn.

7 Q. All right. I'll let you get back up on the stand.

8 A. Yes, sir.

9 Q. And so after you left, you took that route that is on
10 there marked in blue?

11 A. Yes, sir.

12 Q. So let me talk to you about that route. Before we get to
13 that let me back up.

14 Okay, you said you had an argument with the Defendant at
15 the store that morning?

16 A. Yes, sir.

17 Q. And did you see law enforcement or anyone else in that
18 store?

19 A. No, sir.

20 Q. Were any officers around anywhere at that time?

21 A. No, sir.

22 Q. So you said the argument was with the person in the
23 store; was the only person in the store you referred to the
24 Defendant?

25 A. Mr. Johnson.

M. EDMONDS ON DIRECT

1 SOLICITOR: Let the record reflect he identified the Defen-
2 dant, Your Honor.

3 BY SOLICITOR:

4 Q. All right. So after your altercation with him in the store
5 you leave and follow that route in blue. Correct?

6 A. Yes, sir.

7 Q. All right. Now I want to talk about the traffic along
8 that route. At that time of the morning -- was this a school
9 day? October first.

10 A. Yes, sir.

11 Q. Was there traffic along Chestnut Street?

12 A. Yes, sir.

13 Q. What about 601?

14 A. Yes, sir. It had traffic going to the school.

15 Q. What about 176?

16 A. Yes, sir, traffic there going to St. Stevens.

17 Q. That time of day traffic was busy on both roads?

18 A. Yes, sir.

19 Q. What about at the crossroads?

20 A. No, sir.

21 Q. Is that just a back road with no traffic?

22 A. No traffic.

23 Q. All right, so you get to the back road with no traffic
24 and then what happened on that back road?

25 A. That's when I stopped there for the stop sign.

M. EDMONDS ON DIRECT

1 Q. All right, and did you see anything prior to getting
2 shot?

3 A. Yes, sir. I saw him come up in his car and stop by my
4 car.

5 Q. Tell the jury about what you saw exactly.

6 A. Well, he came up and stop by my door and he pull out a
7 gun and start shooting. He shot twice at first and then three
8 more times. He shot five times and three went in my car. Two
9 of them hit me.

10 Q. All right. The condition when this happened -- was it --
11 was there enough light to see?

12 A. Yes, sir. Daylight.

13 Q. Daylight already?

14 A. Yes, sir.

15 Q. And how far away were you? How far away was he?

16 A. Right together -- his car was right up beside me.

17 Q. Right up beside you?

18 A. Yes, sir.

19 Q. So was that the kind of thing that got your attention?

20 A. Yes, sir.

21 Q. All right. Getting shot, is that something that sticks
22 in your mind?

23 A. Yes, sir. Especially with someone you don't know.

24 Q. I'll talk about that in a minute but it was definitely
25 something to stick in your mind?

M. EDMONDS ON DIRECT

1 A. Yes, sir.

2 Q. But no question you were paying attention to who it was
3 that was shooting at you?

4 A. That's right. I saw who shot at me.

5 Q. And who was it that shot you?

6 A. Mr. Johnson.

7 Q. All right, and did you know his name at the time?

8 A. No, sir.

9 Q. But at that point when you were shot, are you certain it
10 was the same man in the store

11 A. Yes, sir.

12 Q. All right, and how can you be certain?

13 A. Well, I saw him in the store and saw him leave in his
14 car, and then I saw him come beside . .

15 Q. I'm just saying, at that point how could you be sure?

16 A. Well, I looked at him and recognized him from the store.

17 Q. You recognized him from the store?

18 A. Yes, sir.

19 Q. Was he wearing anything distinctive?

20 A. . .

21 MR. SELLERS: I hate to do this but he's done this a few
22 times. He's leading, Your Honor.

23 THE COURT: He can answer.

24 Q. Was he wearing anything distinctive?

25 A. Yes, sir. The same shirt.

M. EDMONDS ON DIRECT

1 Q. Okay, The same shirt?

2 A. Yes.

3 Q. So you got shot, and where did you get shot?

4 A. Right in the arm and shoulder.

5 Q. Could you just step down and show the jury where it is
6 you got shot?

7 A. In the arm and right here.

8 Q. Step over here and maybe they can see better.

9 A. . .

10 Q. Did he say anything that would relate back to the inci-
11 dent at the store?

12 A. He finish what we start.

13 Q. All right. Now, what did you do once you got shot?

14 A. Went on to my mom's house and my sister call the law.

15 Q. All right, and did that take very long?

16 A. . .

17 Q. After you got shot to get to their house?

18 A. No, sir.

19 Q. So it was a short time after?

20 A. A short time after.

21 Q. And once you got to the house you said that the police
22 came there?

23 A. Yes, sir.

24 Q. And do you recognize this detective?

25 A. Yes, sir.

M. EDMONDS ON DIRECT

1 Q. In the white shirt?

2 A. Yes, sir.

3 Q. Was he the first policeman that showed up?

4 A. Yes, sir.

5 Q. Did you tell him about the shooting?

6 A. Yes, sir.

7 Q. Who did you tell him did it?

8 A. The same one in the store and he said . . .

9 Q. We can't talk about what he said.

10 A. Okay.

11 Q. You told him it was the guy from the store?

12 A. Yes, sir, and he put it on radio.

13 Q. All right, and we won't talk any more about that.

14 A. Sorry.

15 Q. All right, did you tell another person, Captain Regalis
16 over there?

17 A. Yes, sir.

18 Q. You told him?

19 A. Yes.

20 Q. I show you State's Exhibit 22. Do you recognize this?

21 A. Yes, sir.

22 Q. When you were shown this, did you recognize who that was?

23 A. Yes, the same gentlemen that shot me.

24 SOLICITOR: Your Honor, we would move to admit 22.

25 MR. SELLERS: No objection.

M. EDMONDS ON DIRECT

1 THE COURT: Admitted.

2 (Photo admitted in evidence as State's Exhibit 22 with-
3 out objection)

4 BY SOLICITOR:

5 Q. Is this the shirt you described?

6 A. Yes, sir.

7 Q. Now, I show you what's marked as State's Exhibit 7. Do
8 you recognize that?

9 A. Yes, sir. That's him at the store.

10 Q. And did something happen after that?

11 A. We went outside.

12 SOLICITOR: Your Honor, we would move to admit State's
13 7 in evidence.

14 THE COURT: Objection?

15 MR. SELLERS: No objection, Your Honor.

16 THE COURT: Admitted.

17 (Photograph admitted in evidence without objection as
18 State's Exhibit 7)

19 BY SOLICITOR:

20 Q. All right. Now, I'd like to show you some pictures of
21 your car. These will be State's Exhibit 8, 9, 10, 11, 12, 13,
22 14, 15. Do you recognize what's in that picture?

23 A. Yes, sir. That's my Chevrolet.

24 Q. All right.

25 SOLICITOR: We would move these in evidence.

M. EDMONDS ON DIRECT

1 THE COURT: What are they?

2 Q. Are these all pictures of your vehicle?

3 A. Yes, sir.

4 Q. Thank you.

5 SOLICITOR: We would move those in evidence.

6 THE COURT: Objection?

7 MR. SELLERS: No objection.

8 THE COURT: All right.

9 (Photos of vehicle admitted without objection in evidence
10 as State's Exhibits 8 through 15)

11 BY SOLICITOR:

12 Q. Now, those pictures -- was that the condition of your car
13 prior to your being shot?

14 A. Yes, sir.

15 Q. Before you were shot? Those holes in the vehicle?
16 Prior to your being shot?

17 A. Not those holes but there were -- I had some holes from
18 copper tubings.

19 Q. So the holes that are shown in these pictures, what are
20 those from?

21 A. Bullet holes.

22 Q. And in State's Exhibit 15, what is that from?

23 A. Being shot.

24 Q. And 14, the bullet fragments, were those in there prior?

25 A. No, sir.

M. EDMONDS ON DIRECT

1 Q. Now, you talked about coming home and you talked about
2 the crossroad where you were shot. Do you know what County
3 that's in?

4 A. Calhoun County.

5 Q. And the argument in the store, you talked about that
6 being on video?

7 A. Yes.

8 Q. Correct?

9 A. Yes, sir.

10 Q. And have you seen that video?

11 A. I have. I've seen one.

12 Q. Do you recall looking at that video of the argument today?

13 A. No, sir.

14 Q. You haven't?

15 A. No, sir.

16 Q. All right, and the video that you saw was that accurate?
17 Did that fairly and accurately show what happened during the
18 argument?

19 A. Yes, sir.

20 SOLICITOR: Your Honor, I would move to admit the portions
21 of State's Exhibit 19 that show the video and the argument.

22 THE COURT: Any objection?

23 MR. SELLERS: No objection.

24 SOLICITOR: And I would move to publish. I apologize but
25 it is going to take a minute to set it up.

M. EDMONDS ON DIRECT

1 THE COURT: It is admitted.

2 (Video from inside of store admitted in evidence without
3 objection as State's Exhibit 19)

4 THE COURT: All right.

5 (Brief pause)

6 BY SOLICITOR:

7 Q. Would you point out where one of them shows the Defendant
8 and the altercation?

9 (Video being played)

10 A. That's him standing right there.

11 Q. So this view right here?

12 A. Yes.

13 Q. And this is a full shot?

14 A. . .

15 Q. I'll pause it here. Who is this person right here?

16 A. That's my fiance.

17 Q. And who is the other person?

18 A. Mr. Johnson is standing at the counter.

19 Q. All right. Who is that person?

20 A. That's me walking . .

21 Q. He's still in the store at this point?

22 A. Yes, sir.

23 (Video still being shown)

24 Q. What is he doing there?

25 A. Standing there cussing.

M. EDMONDS ON DIRECT

1 Q. Is he still in the store at that point?

2 A. Yes, sir.

3 Q. Now he leaves the store?

4 A. Yes, sir.

5 Q. Is that correct?

6 A. Yes.

7 Q. Thank you. You can go back and have a seat.

8 A. Yes, sir.

9 Q. Does it show what happened?

10 A. Yes, sir.

11 Q. All right. Mark, who shot you back on October first of
12 2015?

13 A. Mr. Johnson.

14 Q. Is there any question in your mind about who shot you?

15 A. No, sir. No question in my mind.

16 Q. Thank you.

17 SOLICITOR: Nothing further, Your Honor.

18 THE COURT: Cross examine.

19 CROSS EXAMINATION

20 BY MR. SELLERS:

21 Q. I want to thank you for coming today as well. We just
22 looked at this video that the State presented, and I won't
23 drag this back out. It took a little bit of time.

24 But you exchanged words with Mr. Johnson. Correct?

25 A. Yes, sir.

1 Q. But this encounter on this point the State belabored, it
2 never became physical, did it?

3 A. No, sir.

4 Q. And you never went outside?

5 A. No, sir.

6 Q. Did you see a weapon on Mr. Johnson?

7 A. Not at that point in time.

8 Q. Did he brandish a weapon at all?

9 A. Not at the store.

10 Q. So he didn't show you a weapon inside the store at all?

11 A. No.

12 Q. In fact, there was no mention of a weapon at all?

13 A. No, sir.

14 Q. This ruckess was so big but you didn't call nine one one,
15 did you?

16 A. No. Why would I call nine one one?

17 Q. You didn't file a report?

18 A. Not from what happened in the store, no.

19 Q. Noone in the store called nine one one?

20 A. No.

21 Q. And in your own words, it wasn't anything at all?

22 A. It wasn't.

23 Q. Okay, and because it was just a simple exchange of words.
24 Isn't that right?

25 A. Yes, sir.

M. EDMONDS ON CROSS

1 Q. Mr. Johnson left the store and you stayed there for another
2 forty minutes going on with your girlfriend?

3 A. Thirty or a little longer.

4 Q. Okay, and from the store you say you headed to your house
5 or your mom's house in St. Matthews, and I want you to grab
6 State's Exhibit Number 4, I believe. I believe this is State
7 Exhibit 4, if I'm not mistaken.

8 I'm going to hold this up. You said it took a little longer
9 that day because of traffic. Right?

10 A. Yes.

11 Q. So you went twenty point five miles. Correct?

12 A. Correct.

13 Q. And one of the things you did say on Direct Examination
14 is -- didn't you make a stop?

15 A. That's right. Yes, sir. I took somebody over to a
16 store on 601 but I stayed in the vehicle.

17 Q. But you made a stop?

18 A. Yes.

19 Q. Okay, and I've read all your statements. I saw the state-
20 ment that you gave to Captain Graham. I saw the statement
21 that you gave to Captain Regalis, but at no point -- at ab-
22 solutely no point during this entire time -- isn't it true you
23 don't mention to anyone that you were followed or that you saw
24 anyone follow you?

25 A. There was traffic on the roads that I saw.

M. EDMONDS ON CROSS

1 Q. But you didn't see anybody following you through stop
2 signs for twenty point one miles? You saw nobody behind you.
3 Isn't that correct?

4 A. There weren't stop signs before but we had stop lights,
5 but I didn't see nobody.

6 Q. I'll give you one better. When you were -- when you
7 stopped at that other gas station, did you see anybody at
8 the station behind you or did you look at the video from that
9 gas station to see if anybody was behind you?

10 A. I didn't tell nobody about stopping.

11 Q. So today is the first time you told that part of the
12 story. Okay.

13 Let's go to another part of the story that you have just
14 brought up today now. I want to talk about this distinctive
15 shirt.

16 Now, isn't it true that you gave a statement to Captain
17 Graham that your wife -- I believe it was your wife at the time
18 who wrote out your statement at the hospital?

19 A. Not my wife. We were divorced then.

20 Q. You were divorced from the woman who wrote your statement
21 out at the hospital?

22 A. I did a statement after I got out of the hospital.

23 Q. Someone wrote your statement though. Correct?

24 A. Yes.

25 Q. And at no point in that statement or your conversations

M. EDMONDS ON CROSS

1 with Mr. Regalis or your conversations with Mr. Graham did
2 you mention this distinctive shirt?

3 Isn't it true the first time you mentioned this shirt is
4 today in this Courthouse?

5 A. I did mention that shirt.

6 Q. This shirt is so distinctive and so integral to the
7 State's case and you say you mentioned it. Now you are say-
8 ing . . .

9 A. It is somewhere in the reports.

10 Q. Wait a minute. You say you mentioned it, but are you
11 saying they filed a false statement and didn't write it or
12 -- what are you saying?

13 A. I told Regalis at the time he talked to me.

14 Q. But you didn't put it in the statement?

15 A. I didn't really read the statement.

16 Q. Why not?

17 A. . . .

18 Q. You said it was distinctive. You just sat there and
19 testified that it was so distinctive but you didn't find it
20 necessary to put it in there, so first time that anybody in
21 law enforcement or anyone else hears about this shirt is today
22 which is two years after this incident?

23 A. No, the shirt is on the pictures.

24 Q. I understand that but we're talking about the facts
25 that led to it. So this is the first time you mentioned that

M. EDMONDS ON CROSS

1 distinctive shirt. Isn't that correct?

2 A. Yes, sir.

3 Q. Okay, and noone pulled up on you or you saw noone pull up
4 beside until you got close to your mom's house which was only
5 twenty miles away or a thirty minute drive and after forty
6 minutes you stayed in the store that much longer. Correct?

7 A. Yes.

8 Q. I want to be clear. Prior to that encounter in the Shell
9 gas station in Orangeburg you never met Mr. Johnson?

10 A. No.

11 Q. You didn't know who Mr. Johnson was?

12 A. No, sir.

13 Q. Mr. Johnson didn't know you, did he?

14 A. No, sir.

15 Q. Didn't know where you lived?

16 A. No.

17 Q. He didn't ^{know} where your mother lived or where her house was
18 either?

19 A. . .

20 Q. Did he?

21 A. I don't believe he did.

22 Q. You never told him -- with the words exchanged, you never
23 told Mr. Johnson your address or where you were headed that
24 morning, did you?

25 A. No.

M. EDMONDS ON CROSS

1 Q. And you stated it was dark at that time?

2 A. What time?

3 Q. You just stated a minute ago it was dark so you couldn't
4 see anybody . . .

5 A. I said it was daylight.

6 Q. Was it --- wait a minute. Let me just be clear. It was
7 daylight when you got to the crossroad but you said it was
8 dark the entire time so you didn't see anybody following you?

9 A. It was daylight when I left the store.

10 Q. So let's back up a little bit.

11 A. At the store it was daylight when I left.

12 Q. When you left the store it was daylight? I'm going to
13 ask again. Did you see anyone follow you from the store?

14 A. I didn't look behind me for that.

15 Q. So you didn't see anyone follow you?

16 A. No.

17 Q. For twenty miles you saw noone follow you?

18 A. There was traffic following me.

19 Q. And you were driving down the road when you say you saw
20 the other vehicle pull up beside you?

21 A. No, I was at a stop sign.

22 Q. Okay, you were at a stop sign, and you were able to look
23 over and see the vehicle?

24 A. I see a dark colored Ford. I know my cars.

25 Q. You know your cars?

M. EDMONDS ON CROSS

1 A. I do.

2 MR. SELLERS: I would beg the Court's indulgence for one
3 quick second.

4 THE COURT: Yes, sir.

5 BY MR. SELLERS:

6 Q. Because I want to go to a conversation you had with Cap-
7 tain Graham after you were shot.

8 Would it surprise you to know that in that conversation
9 with Captain Graham you told him the vehicle was green?

10 A. I said that.

11 Q. But you know cars. Right?

12 A. Yes.

13 Q. In fact, if you don't mind -- you said it was enough
14 light to see and you were close enough to reach out and to
15 touch his car?

16 Those are quotes, and . . .

17 A. Yes, sir.

18 Q. . . you said the car was green to him?

19 A. I don't remember what I said. He got me in pain after I
20 was shot, and it was two years ago.

21 Q. But you also stated to Captain Graham -- didn't you say
22 it was green?

23 A. I don't know. I don't know what I told him.

24 Q. So you want the Court to believe everything you say and
25 still you called it green because it was two years ago -- you

M. EDMONDS ON CROSS

1 can remember everything about that day and you know cars
2 well and you were there close to the vehicle and you called
3 it green but you don't want the Court to believe that today?
4 A. If I call it green . . .

5 Q. Let me just caution you because we've walked down this
6 path and I -- you understand what it means to be under oath?

7 A. . .

8 SOLICITOR: Objection, Your Honor.

9 MR. SELLERS: I didn't have a question.

10 SOLICITOR: I object to the threat and cautioning him.

11 MR. SELLERS: Okay, I withdraw it.

12 BY MR. SELLERS:

13 Q. You do know what it means to be under oath?

14 A. Yes, sir.

15 Q. I ask because when we're talking about telling the truth
16 you've been convicted in the past for what we would character-
17 ize as crimes of dishonesty, haven't you?

18 A. That ain't got nothing to do with me getting shot.

19 Q. Haven't you been convicted in the past of crimes of dis-
20 honesty?

21 A. Yes, sir.

22 Q. Two counts of burglary and one count of grand larceny in
23 2011. Isn't that correct?

24 A. Yes, sir.

25 Q. A drug charge, possession of cocaine, second offense. Is

M. EDMONDS ON CROSS

1 that correct?

2 A. Yes.

3 Q. So you have been involved in the drug trade and crimes of
4 dishonesty?

5 A. I didn't shoot anybody.

6 Q. But you were convicted of those offenses?

7 A. Yes.

8 Q. There may be parts of this question that are long, but I
9 want the jury to understand fully what is going on here.

10 So you left the gas station before sunrise. You drove
11 over twenty miles into another County while a man you had a
12 very mild encounter with and who left forty minutes prior to
13 the time that you left the gas station, who had previously
14 -- who you had not previously met and had no idea where you
15 lived, where you were going or what time you'd arrive, fol-
16 lowed you completely unnoticed for over twenty miles and then
17 shot at your vehicle while you were driving, and you were
18 able to look over at him long enough while you were being shot
19 to point him out as the man that you had never previously met,
20 from the gas station forty-plus minutes earlier in Orange-
21 burg County?

22 A. I can tell you what I've told before, that I was at the
23 stop sign and I was not driving. I was stopped at the stop
24 sign.

25 Q. And you can -- and this occurred twenty miles away and a
100

M. EDMONDS ON CROSS

1 man you had never met before, pulls up beside you and at
2 this point didn't know where you were going, and you didn't
3 even notice him following you, and this is the person who
4 shot you?

5 A. Yes.

6 Q. And you can tell us all this but you can't even recall
7 the color of the car although you can testify the car of the
8 person who shot you was green. Isn't that correct?

9 A. I didn't testify the car was green.

10 Q. You gave statements that you signed, being under oath,
11 that the car was green? Correct?

12 A. Correct.

13 Q. Thank you.

14 MR. SELLERS: Beg the Court's indulgence for a brief min-
15 ute.

16 (Brief pause)

17 MR. SELLERS: No further questions. Thank you.

18 THE COURT: Redirect.

19 SOLICITOR: Thank you, Your Honor.

20 REDIRECT EXAMINATION

21 BY SOLICITOR:

22 Q. Now, he says that you gave a written statement -- Defense
23 Attorney says you gave a written statement saying that it was a
24 green . . .

25 MR. SELLERS: Objection, Your Honor.

M. EDMONDS ON REDIRECT

1 MR. SELLERS: A matter of law, Your Honor.

2 THE COURT: Approach.

3 (Conference at the bench between counsel and the Court
4 off the record)

5 THE COURT: Ladies and gentlemen, please step into your
6 jury room. Do not discuss the case.

7 (Jury excused from Courtroom)

8 SOLICITOR: I don't think I've got an extra copy of it,
9 Your Honor.

10 THE COURT: I'll look at it.

11 (Brief pause)

12 MR. SELLERS: Your Honor, while the jury is out please
13 excuse the witness.

14 THE COURT: What is the nature of your objection?

15 MR. SELLERS: Your Honor, the statement was written by Mr.
16 Edmonds and actually was signed. The statement contains direct
17 evidence that you can see, the statement.

18 I don't want to be disrespectful in any manner to anyone
19 in Court, but the Statement clearly says the vehicle was green,
20 Your Honor, and it's been scratched out and put in a dark
21 color.

22 So the fact is that the State wants to enter that and
23 if they do they need to have the person here who made the cor-
24 rection, Your Honor.

25 THE COURT: I'll hear you, Solicitor.

M. EDMONDS ON REDIRECT

1 SOLICITOR: Your Honor, by him asking isn't it true you
2 gave a written statement saying it was green -- in the written
3 statement green is crossed out and dark color is written in.

4 The statement says dark color. Now, he may have also
5 said green at some point and they are certainly entitled to
6 cross examine on that.

7 But I am entitled to point out that the statement says
8 dark color. It was signed by the Defendant and it was cross
9 examined as the Defendant's statement.

10 And so it's proper for me to be able to ask him questions
11 about the statement and specifically about the color.

12 MR. SELLERS: Your Honor, it is extremely clear that he
13 said to Mr. Graham that it was green, Your
14 Honor. He stated that in his original statement to Mr.
15 Graham that it was green.

16 After they did an investigation, Your Honor, they found
17 out that the car is not green, and six or seven days later
18 green is scratched out to say dark color.

19 THE COURT: We're getting the cart before the horse a little
20 bit. You say there is evidence of that and I think he said
21 he could have said that. I'm not saying the whole statement
22 can come in and I suppose you can clarify it, but the question
23 really is was this an amendment to the statement or was it
24 given at the same time. You may ask him to clarify that.

25 SOLICITOR: Your Honor, it was presented on Cross

M. EDMONDS ON REDIRECT

1 Examination as his written statement. It was explained that
2 his ex-wife wrote it but then he signed it as his statement,
3 that it was his statement, and at the time he signed it green
4 was crossed out.

5 He can certainly go into whether or not it was crossed
6 out because of something he said or something that was discov-
7 ered afterwards, but I think I'm entitled to go in the fact it
8 says dark color in the statement.

9 THE COURT: That was Cross Examination though. He can
10 cross examine him on the statement and if he admits to having
11 said that he certainly can go into it.

12 MR. SELLERS: Actually, Your Honor, to be clear, I asked
13 him about his conversations with Deputy or Captain Graham and
14 that's when he stated -- I specifically stated when you were
15 speaking to Captain Graham did you state that it was green.

16 Your Honor, I went to the statement to further go into
17 but at no time, Your Honor, was the door issue opened.

18 THE COURT: In your questioning, he testified he gave a
19 statement and signed a statement.

20 MR. SELLERS: Yes, Your Honor.

21 THE COURT: So based on that, if that is his statement,
22 you can go into the circumstances of it and the circumstances
23 of the redaction.

24 SOLICITOR: Thank you, Your Honor.

25 MR. SELLERS: Thank you.

M. EDMONDS ON REDIRECT

1 SOLICITOR: Do you want to keep that?

2 THE COURT: You can have it back.

3 (Brief pause)

4 (Jury returned to the Courtroom)

5 THE COURT: You may continue.

6 SOLICITOR: Thank you.

7 REDIRECT EXAM. CONTINUED

8 BY SOLICITOR:

9 Q. Let's back up. You were asked questions about your writ-
10 ten statement. Correct?

11 A. Yes, sir.

12 Q. Do you recall giving a written statement?

13 A. Yes, sir.

14 Q. All right, and am I correct in understanding that you were
15 not the one who wrote the statement out?

16 A. No, sir. My ex-wife wrote it out for me but I told her
17 what to write out.

18 Q. All right, and I'll show you that statement, specifically
19 the bottom of page two of that statement.

20 There is a scratch out and correct . .

21 A. No, sir. I told her at that time it was a dark color.

22 Q. All right.

23 A. That was after I got out of the hospital and all.

24 Q. All right, so there is -- it says in the statement that
25 you signed it and when you signed it it said dark color?

M. EDMONDS ON REDIRECT

1 A. Yes, sir.

2 Q. But you do agree that at some point somebody wrote green?

3 A. I told her green and I told my ex-wife at that time it
4 was a dark color.

5 Q. Were you at the time sure whether it was a dark color?

6 A. Yes, sir.

7 Q. Were you sure whether it was green or blue?

8 A. No, not the actual color but I told her a dark color. I
9 was on medication at that point.

10 Q. But as between whether or not it was green or whether it
11 was a dark green or a dark blue, were you certain as to that
12 distinction or were you certain only that it was a dark color
13 that . . .

14 MR. SELLERS: Objection, Your Honor, to leading the wit-
15 ness.

16 THE COURT: Sustained.

17 BY SOLICITOR:

18 Q. What was your certainty -- what were you certain about on
19 the color?

20 A. That it was a dark color only.

21 Q. All right, and you talked about it was a Ford?

22 A. A Ford Explorer, yes, sir.

23 Q. And I think you said something about that. How do you
24 know it was a Ford Explorer?

25 A. I know my cars and I recognize an Explorer.

M. EDMONDS ON REDIRECT

1 Q. All right, and you were asked questions about -- you were
2 asked questions about whether or not you had noticed somebody
3 following you. Correct?

4 A. Yes, sir.

5 Q. All right. What is it that you do?

6 A. Right now I'm (inaudible).

7 Q. What did you do back then?

8 A. (Inaudible)

9 Q. Have you ever been a spy?

10 A. No, sir.

11 Q. So have you ever been trained to check your rear for a
12 tail?

13 A. No.

14 Q. Do you make a habit of checking your rear to see if you
15 are being tailed? Like in spy movies?

16 A. No, sir.

17 Q. Do you know whether or not somebody was following you?

18 A. No.

19 Q. Everyday when you drive down the road do you know whether
20 or not somebody is following you?

21 A. No, sir.

22 Q. There were some questions about the incident inside the
23 store. Now, you testified or you agreed there was not a phy-
24 sical fight at the store?

25 A. Yes.

M. EDMONDS ON REDIRECT

1 Q. Did the Defendant challenge you to a physical fight?

2 A. He told me to step outside but I didn't do that.

3 Q. And what was your understanding of why you were supposed
4 to step outside with him?

5 A. I thought it was to fight him but I told him I didn't
6 have time.

7 Q. Okay, and then did the Ford Explorer, whatever color it
8 was, did that shoot you?

9 A. Not the car but it was the driver of that car.

10 Q. Did you pay attention -- what did you pay attention to
11 mostly?

12 A. The driver of the car.

13 Q. And is there any question as to who that driver was who
14 shot you?

15 A. No, sir.

16 Q. And who was it?

17 A. Mr. Johnson.

18 SOLICITOR: Beg the Court's indulgence.

19 THE COURT: Okay.

20 (Brief pause)

21 SOLICITOR: No further questions.

22 THE COURT: You may step down.

23 (Witness excused from stand)

24 THE COURT: Call your next witness.

25 SOLICITOR: Harry Monroe. A brief foundation witness.

1 HARRY JAMES MONROE, being duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR:

5 CLERK: Please state your name.

6 WITNESS: Harry James Monroe.

7 Q. If I could get you to look over at the jury and speak
8 up. Tell the jury who you are, sir.

9 A. My name is Harry James Monroe, and I am employed in main-
10 tenance of security cameras. Maintaining them that are under
11 lease for Calhoun Oil.

12 Q. Okay, so you work for a company that owns what?

13 A. A number of gas stations and other businesses.

14 Q. And specifically does that company own the Shell and
15 Bojangles establishment at 110 Chestnut Street over in
16 Orangeburg?

17 A. Yes.

18 Q. And when you talk about being in charge of security
19 maintenance does that particular Shell Station have security
20 cameras?

21 A. Yes.

22 Q. And were you working for them back in October of 2015
23 in that same capacity?

24 A. Yes.

25 Q. And in that capacity, are you aware of whether or not

H. MONROE ON DIRECT

1 those security cameras were in place and functioning?

2 A. They were in place and functioning.

3 Q. And did they have time stamps to indicate the date and
4 time the videos displayed were being taken?

5 A. Yes.

6 Q. Were you at some point with regards to your employment
7 asked to retrieve videos of what took place at that particular
8 Shell Station on October first of 2015?

9 A. Yes.

10 Q. And did you take video from a couple of different cam-
11 eras?

12 A. Yes.

13 Q. And when you did that did you make any alterations or
14 modifications; did you change or doctor those videos in any
15 way?

16 A. No.

17 Q. So the videos that you handed or that you provided are
18 fair and accurate of what occurred at that time?

19 A. Yes.

20 Q. All right.

21 SOLICITOR: Your Honor, at this time based on that founda-
22 tion we would move to admit the security videos portion of State
23 Exhibit 19.

24 MR. SELLERS: No objection.

25 THE COURT: Admitted.

H. MONROE ON DIRECT

1 (Portion of videos admitted in evidence without objection
2 as State's Exhibit 19)

3 SOLICITOR: Nothing further.

4 THE COURT: Anything . . .

5 MR. SELLERS: No question.

6 THE COURT: You may step down.

7 SOLICITOR: We would ask that he be excused to go bck to
8 his employment.

9 THE COURT: Any objection?

10 MR. SELLERS: I don't have any objection.

11 THE COURT: You're excused.

12 (Witness excused)

13 SOLICITOR: Your Honor, the State would call Captain
14 Graham.

15 STANLEY GRAHAM, being duly
16 sworn, testified as follows:

17 CLERK: Please state your name.

18 WITNESS: Stanley Graham.

19 Q. Would you tell the jury who it is you are and where it
20 is you work?

21 A. My name is Stanley F. Graham, and I work for the
22 Calhoun Sheriff's Department.

23 Q. And is that a sworn law enforcement position?

24 A. Yes, it is.

25 Q. And I notice the railroad tracks on your collar. What

S. GRAHAM ON DIRECT

1 is your title and responsibility over there?

2 A. I am the Captain over the patrol unit of the Sheriff's
3 Department.

4 Q. All right, the patrol division are the people who ride
5 the roads and respond to calls?

6 A. Yes, sir.

7 Q. Now, were you working back on October first of 2015?

8 A. Yes, sir.

9 Q. And before I get into that, how long have you been a
10 police officer?

11 A. Since 2000, so sixteen years.

12 Q. And back on October first of 2015, you were working for
13 the Calhoun County Sheriff's Department, is that correct?

14 A. Yes, sir.

15 Q. Can you tell the jury, did you come in contact with the
16 victim, Mark Edmonds, that day?

17 A. Yes, sir.

18 Q. What was the circumstance of that call?

19 A. The Calhoun County Sheriff's Office had received a report
20 of a gunshot victim at six thirty -- I believe six thirty-seven
21 Caldwell Road was it, when we responded to that incident.

22 Q. So [REDACTED] Caldwell Road was the address?

23 A. Yes, sir.

24 Q. All right, so you got a report somebody was shot?

25 A. Yes, sir.

S. GRAHAM ON DIRECT

1 Q. He was at that location?

2 A. Yes, sir.

3 Q. Do you know about what time that was?

4 A. I don't have the exact time.

5 Q. And . . .

6 SOLICITOR: Beg the Court's indulgence.

7 THE COURT: All right.

8 BY SOLICITOR:

9 Q. Were you the lead investigator and you responded that morn-
10 ing to a gunshot call?

11 A. Yes, sir.

12 Q. And who was it that was shot when you got there?

13 A. Mr. Mark -- the one there, the victim.

14 Q. Back here?

15 A. Yes, sir.

16 Q. And what did you see when you got there?

17 A. I saw a lot of the victim's family members outside the
18 residence. I was actually one of the first officers inside
19 the residence, and when I went inside Mr. Edmonds was sit-
20 ting in a straight chair with towels on his arm applying pres-
21 sure to his injuries.

22 Q. All right, and so did you assist in efforts to save him
23 at that point?

24 A. At that point I did start applying direct pressure to
25 the injuries.

S. GRAHAM ON DIRECT

1 Q. Where was he shot?

2 A. His arm -- multiple injuries to it all the way up his arm
3 to his shoulder. I couldn't tell exactly where it was so we
4 just applied direct pressure to the wounds.

5 Q. All right, and did you talk to him?

6 A. Yes.

7 Q. Was that for the purpose of trying to investigate what
8 happened?

9 A. Yes, sir. Trying to figure out exactly what happened to
10 him and where.

11 Q. All right, and did he indicate who shot him?

12 A. He told me it was a guy from the store he had seen earlier
13 that morning.

14 Q. All right, and as a result of that was effort made to
15 identify that person?

16 A. Yes, sir.

17 Q. And so you passed that along so that efforts could be
18 made?

19 A. Yes, sir.

20 Q. All right. Now, when he told you that, first of all,
21 did he know the name of the victim -- the name of the Defendant?

22 A. No, he did not.

23 Q. Did he indicate to you with any kind of specifisity who
24 it was that shot him?

25 A. Yes, sir.

S. GRAHAM ON DIRECT

1 Q. Okay.

2 A. He said it was the guy at the store that he got into it
3 with that morning, while he was there visiting with his girl-
4 friend.

5 Q. All right, and what was his level of certainty in that
6 identification? at that point?

7 A. At that point he seemed pretty certain.

8 Q. And the incident location where you responded was in what
9 County?

10 A. That was in Calhoun County.

11 SOLICITOR: Nothing further, Your Honor.

12 THE COURT: Cross examination.

13 MR. SELLERS: Thank you.

14 CROSS EXAMINATION

15 BY MR. SELLERS:

16 Q. Just briefly, Captain Graham. The first thing you saw
17 -- first I want to say thank you for what you do, and I know
18 that your job is very dangerous.

19 When you arrived on the scene, Mr. Edmonds was speaking
20 clearly so that you knew what he was saying?

21 Although he was in pain, he still was very clear?

22 A. He was pretty certain about what he was telling me. He
23 was not in the state where he was losing consciousness or any-
24 thing like that at that time.

25 Q. Isn't it true that Mr. Edmonds told you the man who shot

S. GRAHAM ON CROSS

1 him was driving a green vehicle? Isn't that correct?

2 A. Yes, sir.

3 Q. Thank you. No further questions.

4 THE COURT: Redirect.

5 SOLICITOR: No, Your Honor.

6 THE COURT: You may step down.

7 (Witness excused from stand)

8 THE COURT: You may call your next witness.

9 SOLICITOR: Your Honor, may I request -- the next witness
10 is going to be a little bit long. I don't know if you want to
11 start or take a break here -- if you want to take a break be-
12 fore we start.

13 THE COURT: If you need to take a break, please raise your
14 hands.

15 (No response)

16 Call your witness.

17 SOLICITOR: The State calls Investigator James Wausaw.

18 JAMES WAUSAW, being duly sworn,
19 testified as follows:

20 CLERK: Take the stand and state your name.

21 WITNESS: Jimmy Wausaw.

22 THE COURT: Your witness.

23 DIRECT EXAMINATION

24 BY SOLICITOR:

25 Q. Could you tell the jury, please, who it is you are?

J. WAUSAW ON DIRECT

1 A. Jimmy Wausaw.

2 Q. Where do you work?

3 A. I'm employed with the Calhoun County Sheriff's Office.

4 Q. And what is your function there?

5 A. I work in investigations.

6 Q. And is that a sworn law enforcement job?

7 A. Yes, sir.

8 Q. So you are a sworn police officer?

9 A. Yes, sir.

10 Q. And how long have you been a police officer?

11 A. Eight years, a little over that.

12 Q. A little over eight years?

13 A. Yes.

14 Q. All right, and back in October of 2015, what was -- what
15 is it you did for the Sheriffs Department?

16 A. I was notified . . .

17 Q. No, no. Just generally.

18 A. Oh, I responded to calls that came in to the Sheriff's
19 Department visavis Miranda.

20 Q. Were you on patrol or . . .

21 A. No, sir. Investigations.

22 Q. Investigations, all right. And in that capacity as an
23 investigator did you come in contact with this case?

24 A. Yes, sir.

25 Q. And how was it that you came in contact with this case?

J. WAUSAW ON DIRET

1 A. I was contacted that morning about seven twenty or seven
2 thirty that morning to respond to [REDACTED] Caldwell Road in re-
3 sponse to a shooting.

4 Q. And what did you do at that point?

5 A. I was responding to that address and was informed while
6 in route -- it was about forty-five minutes before I got there
7 and I was informed while in route that the victim had told . .

8 Q. Without going into anything anyone else said, . . .

9 A. It was on Miranda that I was responding to the scene.

10 MR. SELLERS: Objection, Your Honor.

11 Q. Not going into anything anybody else told you.

12 You say you interviewed Miranda?

13 A. Yes, sir.

14 MR. SELLERS: Objection, Your Honor. He's on the same
15 path.

16 THE COURT: You can ask him what he did, not what anyone
17 said.

18 MR. SELLERS: Thank you.

19 BY SOLICITOR:

20 Q. At the conclusion of your interview, did you go and look
21 at anything?

22 A. I went to the Shell Station and spoke with her there.

23 Q. What did you look at at the Shell Station.

24 A. The video that was in the station that morning.

25 Q. All right, so you looked at security videos from the

J. WAUSAW ON DIRECT

1 store?

2 A. Yes, I did.

3 Q. All right, I show you what's marked as State's Exhibit
4 1, State's Exhibit 2. Do you recognize those?

5 A. Yes, sir.

6 Q. All right, and did you pull these off of that security
7 video?

8 A. Yes, sir. I took photos.

9 Q. While the videos were playing you took the photos?

10 A. Yes, sir.

11 Q. All right, and then did you also take pictures of the
12 car at the intersection?

13 A. I took pictures of the victim's car at a later time.

14 Q. Eventually?

15 A. Yes, after Mr. Johnson was able to assist.

16 Q. But it was you who took the pictures?

17 A. Yes.

18 Q. All right, did you also -- I show you what's marked as
19 State's Exhibit 16. Did you also take this picture?

20 A. Yes.

21 Q. Of Mr. Johnson's vehicle?

22 A. Yes, sir.

23 SOLICITOR: Your Honor, at this time we would move State's
24 Exhibit 16 in evidence.

25 THE COURT: Any objection?

J. WAUSAW ON DIRECT

1 MR. SELLERS: We object, Your Honor. That is no time
2 stamp. We don't know or can't see . . .

3 THE COURT: Would you approach?

4 (Conference at the bench between counsel and the Court
5 off the record)

6 BY SOLICITOR:

7 Q. Now, there have been admitted into evidence two security
8 videos from the Shell Station. Have you watched those two
9 videos?

10 A. Yes, sir.

11 Q. All right. On those videos is there a vehicle that you be-
12 lieve to be the Defendant's vehicle?

13 A. Yes.

14 Q. And did you take a screen shot of that vehicle?

15 A. Yes.

16 Q. In the same manner you took the other shots, with your
17 cellphone camera?

18 A. Yes.

19 Q. I show you State's Exhibit 16. Do you recognize that?

20 A. Yes, sir.

21 Q. What is that?

22 A. That is the vehicle that the Defendant drove.

23 MR. SELLERS: Objection. I would renew my objection as
24 to the lack of time stamp or anything else. It is just a ge-
25 neric vehicle that we're looking at. We can't tell anything

J. WAUSAW ON DIRECT

1 from. There is no license plate and we are just guessing
2 at . . .

3 THE COURT: That would go to the weight of the evidence
4 but not admissibility. He's established who took the picture
5 and that is the actual picture he took.

6 BY SOLICITOR:

7 Q. Is this -- you said you took this yourself?

8 A. Yes.

9 Q. Was this taken from the security video?

10 A. Yes.

11 Q. And at what point in the video was this taken?

12 A. That would have been as he was going to pull away from
13 there in that photo right there.

14 Q. Is that the vehicle you saw him get into?

15 A. Yes, sir.

16 SOLICITOR: Your Honor, at this point we would move to
17 admit this as State's Exhibit 16.

18 THE COURT: Subject to objection?

19 MR. SELLERS: No objection.

20 (Photo admitted in evidence without objection as State's
21 Exhibit 16)

22 BY SOLICITOR:

23 Q. All right, so you went and looked at the video and you
24 took some screen shots?

25 A. Yes, sir.

J. WAUSAW ON DIRECT

1 Q. All right. Did you do anything as far as the State's wit-
2 nesses?

3 A. Yes.

4 Q. Did you make efforts to find out who it was that did this?

5 A. Yes.

6 Q. All right, and without going into anything that anybody
7 else told you, did you ultimately associate a name with that
8 picture?

9 A. We did find out a name for the person in the picture.

10 Q. And who was it that was in that picture?

11 A. Mr. Untonyo Johnson.

12 Q. And you have said already that eventually you took the
13 videos from the security?

14 A. Yes, sir.

15 Q. You looked at them that day, is that correct?

16 A. Yes, sir, and then we got copies.

17 Q. So you got your own copies, later?

18 A. Yes, sir.

19 Q. And once you knew who the person in that picture was,
20 did you make any effort to find out whether or not he owned
21 a particular car?

22 A. Yes, sir.

23 Q. And based on your investigation did he own a car?

24 A. He purchased it, a 1999 Ford Explorer.

25 Q. And you found that out how?

J. WAUSAW ON DIRECT

1 A. From motor vehicles.

2 Q. State records that list cars?

3 A. Yes, sir.

4 Q. Is color subject to change?

5 A. Yes, sir.

6 Q. And cars are painted?

7 A. Yes, sir.

8 Q. All right. So is there on the records what color it is?

9 A. No.

10 Q. So at that point you didn't have anything from DMV as to
11 what color?

12 A. No, sir.

13 Q. Now, I want to . .

14 SOLICITOR: Your Honor, at this point I would like to
15 publish those videos. I move to publish.

16 THE COURT: Are there videos remaining?

17 SOLICITOR: Yes, the remaining two videos on that disc.

18 (Brief pause)

19 BY SOLICITOR:

20 Q. All right, if I can get you to step down, please.

21 A. Yes, sir.

22 (Videos shown to the jury)

23 Q. Now, can you explain to us what it is we're looking at
24 right now?

25 A. Right now is when he left and his car is parked right

J. WAUSAW ON DIRECT

1 there. The Ford Explorer in question is parked right there.

2 Q. All right.

3 (Video playing)

4 BY SOLICITOR:

5 Q. Who is that going to the driver's side?

6 A. That's Mr. Johnson going to the driver's side of the ve-
7 hicle.

8 Q. All right, going back to this, what is on the left side
9 of the screen?

10 A. The left side of the screen?

11 Q. Where is here? On that part of the screen?

12 A. . .

13 Q. That would be the platform?

14 A. Yes, sir.

15 Q. Who is that?

16 A. Untonyo Johnson.

17 (Video playing)

18 Q. And, again, this is . .

19 A. On the right side of the parking lot Mr. Edmonds' car
20 was still parked out there.

21 Q. This is later on that same video?

22 A. Later.

23 Q. That same morning?

24 A. Yes, sir.

25 Q. Does that indicate what time?

J. WAUSAW ON DIRECT

1 A. At six forty-five.

2 Q. Show me that -- let's see.

3 State's Exhibit Number 3 here. That's Chestnut there.

4 So he came this way?

5 A. Yes, sir.

6 Q. And the time stamp on this is what we were watching on
7 other video?

8 A. Yes, sir.

9 Q. Now, that white car parked over here, where is it coming
10 from?

11 A. The left -- the car is taking a left turn.

12 Q. The left hand turn lane?

13 A. Yes, sir.

14 Q. And where is the Exploror?

15 A. On the right.

16 (Video continuing)

17 Q. Which way does the Explorer go?

18 A. Turns right on Chestnut.

19 Q. Go ahead and have a seat.

20 So -- I guess I told you to step up there prematurely.

21 Come back down, please.

22 He's going out that way and down Chestnut?

23 A. Yes, sir.

24 MR. SELLERS: He's leading, Your Honor,

25 THE COURT: Don't lead.

J. WAUSAW ON DIRECT

1 BY SOLICITOR:

2 Q. Based on what you saw on the video, which way did he go?

3 A. He got in his vehicle about right here and takes a right
4 on Chestnut.

5 Q. And the dark in color Explorer seen on the video, . . .

6 A. He comes this way and takes a right hand turn onto Chest-
7 nut.

8 Q. On Chestnut?

9 A. Yes, sir.

10 Q. Then from the video when that Explorer came back to the
11 parking lot, did anybody get of it?

12 A. No.

13 Q. Did anybody go over to it?

14 A. No.

15 Q. Did it follow any of those light cars?

16 A. Yes, sir.

17 Q. Which vehicle did it follow?

18 A. . .

19 MR. SELLERS: Objection, Your Honor. Again he's leading.

20 THE COURT: Sustained.

21 Q. Did it follow any vehicle?

22 A. Yes, it took a right hand turn on Chestnut going in the
23 same direction.

24 Q. Now, you said that was a part of your investigation?

25 A. Yes.

J. WAUSAW ON DIRECT

1 Q. And you said you ultimately learned the identity of the
2 person in the video. Correct?

3 A. Yes.

4 Q. All right. At some point did you talk to the person in
5 that video? The Defendant, Mr. Johnson?

6 A. Yes, sir.

7 Q. Can you tell the jury about how it was that the Defendant
8 contacted -- well, first of all, who called him?

9 A. Mr. Johnson actually contacted the Orangeburg County unit
10 -- the Sheriff's office in Orangeburg County. We were still
11 looking for him and the investigators had called a number of
12 times looking for information on him.

13 At that point, Captain Regalis spoke to him when he called
14 the Sheriff's Office.

15 Q. And did he come to the Calhoun County Sheriff's Depart-
16 ment?

17 A. Yes, sir.

18 Q. And where is that located?

19 A. Right there at the County building.

20 Q. Over there by the Center?

21 A. Yes, sir.

22 Q. So he came to you all?

23 A. Correct.

24 Q. All right. Did he come to you on his own?

25 A. Yes, sir.

J. WAUSAW ON DIRECT

1 Q. All right. You all didn't go and pick him up?

2 A. Yes, sir.

3 Q. Was he in handcuffs when he came in?

4 A. Yes, sir.

5 Q. Did you do anything to indicate to him that he wasn't
6 free to leave?

7 A. Yes, sir.

8 Q. Did you talk to him?

9 A. Yes, sir.

10 Q. Why did you want to talk to him?

11 A. Because of the investigation he was a suspect in.

12 Q. Did he know about that?

13 A. No, he was not aware of that at that time.

14 Q. And did you give him the opportunity to tell his side of
15 the story?

16 A. Yes, sir.

17 Q. All right, and who were -- when you first talked to him
18 did you advise him of his rights?

19 A. Yes, sir, I did. I did the Miranda form, the Miranda
20 Rights form.

21 Q. Okay, I show you what's marked as State's Exhibit 21.
22 Do you recognize that?

23 A. Yes, sir.

24 Q. Is that the form you read to him?

25 A. Yes, sir.

J. WAUSAW ON DIRECT

1 Q. I'll let you hold onto that. Let's talk about that for
2 a second. First of all, there is writing at the top of it, the
3 Defendant's name, telephone number, address, date of birth,
4 and we should probably redact that social security number.
5 Before we send it back we'll white that out.

6 Who filled that stuff out?

7 A. Mr. Untonyo.

8 Q. All right, and did he indicate how much education he had?

9 A. Yes, sir.

10 Q. And how much was that?

11 A. Twelve years.

12 Q. All right, and did he circle indicating whether he could
13 or could not read and write?

14 A. Yes, sir, he circled he could.

15 Q. He indicated he could read and write. There's five sets of
16 rights underneath that. Could you read to the end of that fifth
17 right?

18 A. Yes, sir. One says that I have the right to remain silent,
19 and he initialed. Anything I say can be used in Court against
20 me, and he initialed that. You have the right to have an at-
21 torney present at the time of questioning, and he initialed. At
22 that time I pointed out if he wanted an attorney we would make
23 some calls, and he initialed it. Number five, if I decide to
24 talk to an office without an attorney present I may stop at any
25 time and request an attorney be present for further questioning.

J. WAUSAW ON DIRECT

1 He initialed that one also.

2 Q. Did you go over those five rights with him?

3 A. Yes, sir.

4 Q. Did he indicate to you that he understood those?

5 A. Yes, sir.

6 Q. And is there a part below that where he did something to
7 indicate?

8 A. Yes, sir. I waive my rights.

9 Q. Well, before -- above the . .

10 A. He signed he understood?

11 Q. He signed indicating that he understood?

12 A. Yes, sir.

13 Q. All right, and then there's a section marked waiver of rights?

14 A. Yes, sir.

15 Q. What does it say?

16 A. I hereby waive my rights to remain silent and my right to
17 have a lawyer present during any statement or questioning. I
18 have the right to terminate any interview and stop answering
19 questions at any time. I can request to have a lawyer present
20 before continuing to answer any more questions.

21 Q. All right.

22 A. No promises or threats have been made to me or pressure
23 exerted of any kind.

24 Q. All right.

25 A. He signed his name.

J. WAUSAW ON DIRECT

1 Q. Did he agree to waive his rights?

2 A. Yes, sir.

3 Q. How did he indicate that?

4 A. Well, he signed the firm.

5 Q. And in talking to him, did he also indicate that to you
6 in any way?

7 A. Yes, sir.

8 Q. How was that?

9 A. He started talking and saying he was at the store.

10 Q. Now, I want to go into what it is that he told you. Can
11 you tell the jury what is it that he told you about the date
12 of the incident?

13 A. He advised he was at the store and admitted to exchanging
14 words with a dude who said he disrespected his girlfriend.
15 When I asked him he said he had never seen the female and went
16 into some details about the female at the time that were not
17 necessary.

18 Q. All right. Now, I want to break that down. First off,
19 did he admit going to that store?

20 A. Yes, sir.

21 Q. And were you all -- was it clear that he understood or did
22 he understand or give any indication of understanding what
23 store you were talking about?

24 A. Yes, sir, he did. I made that clear as well?

25 Q. So you all made that clear?

J. WAUSAW ON DIRECT

1 A. Yes, sir.

2 Q. And so he admitted he was there?

3 A. Correct.

4 Q. Did he indicate anything about the verbal altercation
5 with Mr. Edmonds? With Mark?

6 A. Yeah, he said they had words because he said he had dis-
7 respected his girlfriend.

8 Q. All right. He admitted the altercation?

9 A. Correct.

10 Q. And then what did he say about whether or not he came
11 back to the store?

12 A. He said he came back to meet someone.

13 Q. He admitted he came back?

14 A. Yes, sir.

15 Q. And did he give you some explanation of what he said was
16 the reason he came back?

17 A. Yes, sir.

18 Q. Did he say to meet somebody in a vehicle?

19 A. He said in a white car. White vehicle or car.

20 Q. You may look at your notes to refresh your recollection.

21 A. . .

22 Q. Does that refresh your recollection?

23 A. Yeah. A white Maxima.

24 Q. Now, there is indeed a white vehicle of some sort, a second
25 car, during the time of the video we watched. Is that correct?

J. WAUSAW ON DIRECT

1 A. Yes, sir.

2 Q. Did he ever get out of his car and go towards that . .

3 A. No, sir.

4 Q. Did anybody in that car go towards him?

5 A. No.

6 Q. So at some point after that interview or at the end of
7 that interview, what did you all do?

8 A. When we were getting to the end we notified him we had
9 to charge him with attempted murder.

10 Q. All right, and at that point the interview terminated?

11 A. Yes, sir.

12 Q. And without going into anything he said after the inter-
13 view terminated, at that point did you all get a search warrant?

14 A. Yes, sir, we did.

15 Q. All right, and did you execute that search warrant?

16 A. Yes.

17 Q. What were you all looking for in that search warrant?

18 A. Looking for a weapon.

19 Q. And did Captain Regalis-- was he the one in charge of
20 that part of the investigation and getting through the inves-
21 tigation?

22 A. Yes.

23 Q. So we'll talk to him about that process, but I just want
24 to show you what's marked as State's Exhibit 17 and ask you
25 if you recognize that?

J. WAUSAW ON DIRECT

1 A. Yes, sir.

2 Q. What is that?

3 A. The return to the search warrant.

4 Q. That is Mr. Regalis' report?

5 A. Yes, it is.

6 SOLICITOR: Your Honor, I would move to admit State's 17.

7 THE COURT: Any objection?

8 MR. SELLERS: No, maam, no objection whatsoever.

9 THE COURT: All right.

10 (Search warrant return admitted without objection as State

11 Exhibit 17)

12 BY SOLICITOR:

13 Q. And the incident location or place where the victim told
14 you he was shot, just to confirm. What county ws that in?

15 A. Orangeburg County -- Calhoun County.

16 Q. The convenience store or gas station is in Orangeburg
17 County. Correct?

18 A. Yes, sir.

19 Q. But the shooting itself . .

20 A. Calhoun County, yes.

21 Q. Nothing further.

22 THE COURT: Cross examination.

23 CROSS EXAMINATION

24 BY MR. SELLERS:

25 Q. We look at those videos and let me first start by saying

J. WAUSAW ON CROSS

1 thank you for the work that you do.

2 We first saw this video and what we saw was an Explorer
3 that came out in a different direction from Mr. Edmonds' vehicle.
4 Correct?

5 A. Say that again?

6 Q. Did he come out a different side of the store than Mr.
7 Edmonds' vehicle?

8 A. Yes.

9 Q. And I'm going to hold up Exhibit 4. I believe that you
10 stated that both vehicles -- the Explorer came out and made
11 a right onto Chestnut Street?

12 A. Yes.

13 Q. And you were saying that Mr. Edmonds' car came out on State
14 Road and made a right onto Chestnut Street?

15 A. Yes, sir.

16 Q. Isn't it possible that this Explorer actually made a left
17 onto State Road, because in the video you really couldn't see
18 where that vehicle went? Correct?

19 A. I want to say the vehicle -- you are right that it couldn't
20 be seen clearly. It is possible.

21 Q. So it's possible the vehicle could have made a left? In
22 fact, on that video you can't see the Ford Explorer following
23 Mr. Edmonds' vehicle at all, can you?

24 A. No, sir.

25 Q. Can you please tell the jury and the Court about the video

J. WAUSAW ON CROSS

1 that was taken from the Cricket where Mr. Edmonds stopped?

2 A. No video was ever obtained.

3 Q. So throughout your investigation -- if you want to see
4 someone follow somebody some twenty point five miles you didn't
5 pull the video from the Cricket Shop to see if there was an
6 Explorer that followed Mr. Edmonds to that point?

7 A. No, sir.

8 Q. Was there ever any statement from Mr. Edmonds stating that
9 he saw an Explorer park there

10 A. I was never made aware of him seeing it there.

11 Q. So throughout the pendency of your investigations this
12 is the first time you've heard about that. Correct?

13 A. Yes.

14 Q. Isn't it true that your colleagues obtained a search warrant
15 for a green Explorer?

16 A. Yes, I believe so.

17 Q. Would it surprise you that it says that the description
18 of the property was a green Explorer?

19 A. Yes.

20 Q. You were originally told a green Explorer, isn't that
21 correct?

22 A. . .

23 Q. You saw Mr. Johnson's vehicle, didn't you?

24 A. Yes.

25 Q. And I know this is Defense Exhibit 14 if I'm not mistaken.

J. WAUSAW ON CROSS

1 State's Exhibit 14

2 A. . .

3 SOLICITOR: It's 17

4 THE COURT: State's 17.

5 BY MR. SELLERS:

6 Q. State's Exhibit 17. This is Mr. Johnson's vehicle that was
7 searched?

8 A. Yes.

9 Q. What color is Mr. Johnson's vehicle?

10 A. Dark blue.

11 Q. Mr. Johnson's vehicle is not green?

12 A. No.

13 Q. And from your understanding of the victim, he had made it
14 known that the person who shot him was in a green vehicle. Cor-
15 rect?

16 A. Yes.

17 Q. And what color is Mr. Johnson's vehicle again?

18 A. Dark blue.

19 Q. Blue. While we're talking about Mr. Johnson's vehicle,
20 you were in charge of collecting -- excuse me, Mr. Edmonds' ve-
21 hicle -- you were in charge of collecting bullet fragments from
22 Mr. Edmonds' vehicle? The victim's vehicle? Correct?

23 A. Yes.

24 Q. And you have no weapon to match those fragments to, do you?

25 A. No.

J. WAUSAW ON CROSS

1 Q. No weapon was ever found. Right?

2 A. Yes, sir.

3 Q. When you went in and you searched Mr. Johnson, his home,
4 his vehicle, you didn't find a gun on Mr. Johnson, did you?

5 A. No, sir.

6 Q. You didn't find a gun in Mr. Johnson's vehicle on which
7 you obtained and executed a search warrant, did you?

8 A. No, sir.

9 Q. You didn't find a gun in Mr. Johnson's home, did you?

10 A. No, sir.

11 Q. You never found a gun at all, did you?

12 A. No.

13 Q. Did you see a gun on any of these videos that the State
14 has shown us, coming in or out of the store?

15 A. No.

16 Q. Did you ever at any point see Mr. Johnson brandish any
17 weapon?

18 A. No, sir.

19 Q. During the pendency of your investigation, because this is
20 your investigation, do you have any physical evidence whatso-
21 ever that Mr. Johnson had a weapon?

22 A. We didn't find any.

23 Q. And you have no idea what type of gun was used to even
24 injure Mr. Edmonds, do you?

25 A. No, sir.

J. WAUSAW ON CROSS

1 Q. In fact, you have no physical or forensic evidence that
2 places my client, Mr. Johnson, at the scene of the shooting or
3 in possession of any weapon. Isn't that correct?

4 A. No.

5 MR. SELLERS: Beg Your Honor's indulgence once again.

6 THE COURT: All right.

7 (Brief pause)

8 MR. SELLERS: No further questions. Thank you so much.

9 THE COURT: Redirect?

10 SOLICITOR: Thank you, Your Honor

11 REDIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. In your law enforcement experience is it common or uncommon
14 or how would you characterize victims getting slight details
15 wrong?

16 A. . .

17 Q. Like dark in color versus green, dark green, dark blue
18 -- is that something that is common or uncommon?

19 A. It's very common.

20 Q. A common mistake -- it was a dark colored vehicle. Cor-
21 rect?

22 A. Yes, sir.

23 Q. And in lower lights would it appear -- let me rephrase it.
24 I'll withdraw that.

25 The bullet fragments -- you said you never recovered a

J. WAUSAW ON CROSS

1 firearm?

2 A. Yes, sir.

3 Q. Did the Defendant know that he was being sought for ques-
4 tioning about the shooting?

5 A. . .

6 Q. Prior to coming into your police station?

7 A. Yes, sir.

8 Q. So he had warning that he was being looked at at this
9 time?

10 A. He was at the store during the altercation and what occurred
11 was known about.

12 Q. So did he have time to hide or get rid of a firearm?

13 A. . .

14 MR. SELLERS: Objection, Your Honor, Leading.

15 THE COURT: Rephrase.

16 BY SOLICITOR:

17 Q. How long from the time the Crimestoppers' information had
18 gone out until you spoke with the Defendant?

19 A. He came to the office on the seventh.

20 Q. So he came in on the seventh and it was the third or the
21 fourth when the information went out?

22 A. Yes, sir.

23 Q. And how long was it from the time you set up him
24 coming until the time he actually showed up?

25 A. I want to say sometime around the third when we let it be

J. WAUSAW ON REDIRECT

1 known we wanted to talk to him.

2 Q. So a few hours at least?

3 A. Yes, sir.

4 Q. How far of a drive is it from Orangeburg to here?

5 A. It's not a long drive. Probably . .

6 Q. So there was a substantial amount of time left over?

7 A. Yes, sir.

8 Q. And did you ever go into his house?

9 A. No, sir.

10 Q. So you have no idea whether there was a firearm in his house
11 or not?

12 A. No.

13 Q. Now, as far as physical evidence of a gun or a firearm,
14 would you not consider bullet fragments and bullet holes and a
15 bullet still lodged in the victim as evidence of a firearm?

16 A. Yes, sir.

17 Q. Since we've talked about the time, do you know about
18 what time the call on this came in?

19 A. Sometime around seven seventeen to seven twenty that mor-
20 ning.

21 Q. So sometime between seven seventeen and seven twenty?

22 A. Yes, sir.

23 Q. All right, and do you know what time sunrise was that day?

24 A. Around seven fifteen.

25 Q. So around about the same time?

J. WAUSAW ON REDIRECT

1 A. Yes, sir.

2 Q. All right. As far as lighting conditions in the half hour
3 prior to sunrise, how would you characterize that?

4 A. There was a little bit of light so that you could see.

5 Q. Generally speaking in the half hour it's starting to get
6 light?

7 A. Yes, sir.

8 Q. All right, and did the victim -- did you ever ask him if
9 he had stopped any place prior to the shooting?

10 A. No, sir, but he may have told me.

11 Q. All right, so -- but he did tell you he went from the
12 incident at the gas station where the altercation happened to
13 Old Millville Road?

14 A. Yes.

15 Q. As far as you know, that's correct?

16 A. Yes, sir.

17 Q. Whether he stopped somewhere for a couple of minutes or
18 not, he went from one place to the other?

19 A. Correct.

20 SOLICITOR: Nothing further.

21 THE COURT Ladies and gentlemen, if you would go to your,
22 jury room we'll be back in a few minutes with you.

23 We'll let you take a break so you can refresh yourselves.

24 (Jury excused from Courtroom)

25 (Witness excused from stand)

1 (Whereupon, the Court took a brief recess, after which the
2 case was resumed).

3 THE COURT: Thank you. Please be seated.

4 Is there anything further from the State?

5 SOLICITOR: Your Honor, it has come to my attention that I
6 neglected to say the magic words to move State's 21 into evi-
7 dence, so once the jury is back in I would like to clean up my
8 mistake before calling the next witness.

9 Additionally, during the next witness the Defense is going
10 to put into evidence the GSR results is my understanding, and
11 I am willing to stipulate to that coming in, and in that way

12 . . .
13 MR. SELLERS: That is a State's Exhibit. Correct?

14 SOLICITOR: It is not put in as a State's Exhibit.

15 THE COURT: So do you wish to publish the results?

16 MR. SELLERS: We are willing to stipulate to the results,
17 if the State is not going to put it in.

18 SOLICITOR: I thought he was going to do that. If he --
19 I will be magnanimous and put it into evidence as my Exhibit.

20 MR. SELLERS: Thank you.

21 THE COURT: Are you ready to bring the jury in?

22 (Brief pause. Solicitor going over Exhibits with Court
23 Reporter.)

24 SOLICITOR: That would be talked then as State's 18.

25 THE COURT: Since State's Exhibit 21 needs to be redacted,

1 let's put in a copy.

2 MR. SELLERS: No objection to your redacting the social
3 security number.

4 SOLICITOR: That's fine.

5 THE COURT: Anything else?

6 SOLICITOR: No, Your Honor.

7 THE COURT: Bring in the jury.

8 (Jury returned to Courtroom)

9 THE COURT: All right, Solicitor, you may proceed.

10 SOLICITOR: Thank you, Your Honor. Before calling the next
11 witness, the State's Exhibit 21, the advice of rights or Miranda
12 Rights form was discussed and a foundation laid but it was not
13 formally introduced into evidence.

14 I would ask that State's 21 be formally entered.

15 SOLICITOR: No objection.

16 THE COURT: All right, it is admitted.

17 (Miranda Rights Form admitted without objection as State
18 Exhibit 21 in evidence)

19 SOLICITOR: And then additionally we have a stipulation
20 as to the admission of State's 20.

21 MR. SELLERS: No objection.

22 THE COURT: Admitted into evidence.

23 (Stipulation admitted as State's Exhibit 20 without objec-
24 tion in evidence)

25 SOLICITOR: At this time the State would call Captain Pat

1 Regalis.

2 PAT RIGALES, being duly sworn, tes-
3 tified as follows:

4 CLERK: Please state your full name for the record, sir.

5 WITNESS: John Patrick Regalis.

6 DIRECT EXAMINATION

7 BY SOLICITOR:

8 Q. Captain, would you tell the jury who it is that you are?

9 A. I'm the Captain over investigations for the Sheriff's Of-
10 fice here in Calhoun County.

11 Q. All right, and is that a sworn law enforcement position?

12 A. Yes, it is.

13 Q. So you're a sworn police officer?

14 A. Yes.

15 Q. How long have you been a police officer?

16 A. Since 1995.

17 Q. So that's about twenty-two years?

18 A. Yes.

19 Q. And how long have you worked for the Calhoun County Sher-
20 iff's Department.

21 A. About sixteen years.

22 Q. In that capacity, did you have any involvement in the
23 case against the Defendant?

24 A. I did.

25 Q. And specifically did you participate in serving a search

P. REGALIS ON DIRECT

1 warrant?

2 A. I did.

3 Q. What was that search warrant for?

4 A. For trace evidence that we would characterize as shoot-
5 ing evidence inside the vehicle?

6 Q. The GSR kit?

7 A. Right.

8 Q. Could you explain to the jury what is GSR?

9 A. A GSR kit is a kit that we normally do whenever there is
10 a shooting. When a weapon is shot you have gases come out when
11 the trigger is pulled and there is a slide action in a semi-
12 automatic gun or revolver. The gases come out and there are
13 very, very minute particles that come out that you can't really
14 see with the eye.

15 Q. So microscopic stuff?

16 A. Right.

17 Q. All right, and the GSR kit -- did you try to test for GSR
18 or perform a GSR kit on the vehicle?

19 A. I did.

20 Q. Whose vehicle?

21 A. Mr. Johnson, the Defendant's.

22 Q. The Defendant's vehicle?

23 A. Yes.

24 Q. And when did you do that?

25 A. I can't remember the exact date but days afterward. Five

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1 or six days.

2 Q. If you look at the search warrant, would that refresh your
3 recollection?

4 A. On October 7, 2015.

5 Q. That's when you obtained the search warrant?

6 A. Yes.

7 Q. And the search warrant was then served when?

8 A. October 7.

9 Q. Same day?

10 A. Yes.

11 Q. So was this before or after the Defendant came in to the
12 Sheriff's Department?

13 A. After.

14 Q. All right, so you go and do a GSR test?

15 A. Yes.

16 Q. Where does it go from there?

17 A. It leaves from there back to our office where it is under
18 lock and key and I have the key. It is locked in a desk and the
19 day it went for testing.

20 Q. Does it normally go to a location outside of Calhoun Of-
21 fice?

22 A. The Sheriff's Department sends it to SLED to be tested.

23 Q. All right, and SLED is . .

24 A. State Law Enforcement Division.

25 Q. And they have people who test GSR kits up there?

J. REGALIS ON DIRECT

1 A. Yes.

2 Q. And was a test ultimately performed sometime later?

3 A. It was.

4 Q. All right, and I'll show you State's Exhibit 20 in evi-
5 dence. When was the test done?

6 A. September 9th of 2016.

7 Q. All right, so that test was done and what was the result
8 of that test?

9 A. It was negative.

10 Q. This sheet was returned on what day?

11 A. October first.

12 Q. October first, 2016.

13 Q. So the test was done basically a year later?

14 A. Yes.

15 Q. And why -- what caused a vehicle not to have GSR in it af-
16 ter a shooting?

17 A. It could be anything from being cleaned or riding with the
18 windows down. Anything from the weather to a person's arm brush-
19 ing against it.

20 Q. All right. Now, there was talk about -- I believe you
21 were the one that made contact with the Defendant prior to his
22 coming to the Calhoun County Sheriff's Department. Is that
23 correct?

24 A. It was me.

25 Q. And do you recall approximately when that was in relation

J. REGALIS ON DIRECT

1 to his coming over to the Sheriff's Department?

2 A. I can't recall.

3 Q. Was it minutes or hours?

4 A. It was probably hours

5 Q. All right, and the time to get from the Defendant's loca-
6 tion to the Sheriff's Department at Calhoun County was about
7 how long?

8 A. I'd guess twenty to thirty minutes

9 Q. All right, so was there a block of time between when he
10 agreed to come and talk to you and the actual -- him actually
11 showing up?

12 A. I can't recall. It was a telephone call and I'm sure he
13 took his time but it was probably three to four hours tops.

14 Q. All right. Now, the report itself, I'd like you to read
15 from the results?

16 A. Gunprimer gunshot residue findings were absent of gun-
17 shot residue on the item consistent with it not having been
18 in the vicinity of a firearm discharge. (Reading from report)

19 Q. All right. That was a report from the actual test?

20 A. Correct.

21 Q. From the SLED expert?

22 A. Yes.

23 Q. Now, based on your law enforcement training and experience
24 and your time in investigation, when you did the GSR kit did
25 you expect to find anything?

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1 A. No, I didn't.

2 Q. Then why did you do it?

3 A. Because if I didn't do it, I would be derelict in my duty.
4 I have a job I have to do.

5 I took an oath to do my job to the best of my ability and
6 this is taking a chance, not running a simple test.

7 Q. Okay. Did you or did you not expect to find GSR on the
8 vehicle?

9 A. I did not expect to.

10 Q. No further questions.

11 THE COURT: Cross examine.

12 CROSS EXAMINATION

13 BY MS. STROM:

14 Q. Captain Regalis, you mentioned just a few moments ago
15 that you did not expect to find any GSR on Mr. Johnson's ve-
16 hicle?

17 A. That's right.

18 Q. So is it fair to say that you would have that same ex-
19 pectation any time there is a gap between an incident involving
20 a firearm and the date that you test for GSR?

21 A. It depends on the circumstances but in a case like this
22 it will probably not be there.

23 Q. Okay, so a search warrant was obtained for Mr. Johnson's
24 vehicle?

25 A. Yes, maam.

J. REGALIS ON CROSS

1 Q. And that was executed and that is when the GSR kit was
2 performed?

3 A. Yes, maam.

4 Q. And it was in fact negative for the presence of gunshot
5 residue?

6 A. It was negative.

7 Q. And you didn't make any notations in your reporting-- I
8 don't think I heard you say the vehicle had recently been washed
9 or detailed?

10 A. No, maam.

11 Q. And the vehicle that you performed this kit on was what
12 color?

13 A. I'm guessing green. No, it was blue -- blue in color.

14 Q. All right, and you met with Mr. Edmonds, the victim in
15 this case, at the hospital?

16 A. Yes, maam.

17 Q. And you took his statement?

18 A. Yes.

19 Q. And in that statement Mr. Edmonds did not give any spe-
20 cific details necessarily about the physical characteristics
21 of the man that shot him?

22 A. No.

23 Q. Not physical characteristics. No.

24 Q. And I'll ask you, Captain Regalis, is there any question
25 about the question that Mr. Sellers asked of Investigator

J. REGALIS ON CROSS

1 Wausaw a few moments ago -- you have no physical or forensic
2 evidence that ties Mr. Johnson to the incident location or to a
3 firearm. Isn't that correct?

4 A. That's correct.

5 Q. Thank you. I have no further questions.

6 THE COURT: Redirect?

7 SOLICITOR: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Two points. First, you were asked about whether or not
11 there was some notation in your report about the car having
12 been recently detailed, and there is not. Correct?

13 A. Yes, sir. Correct.

14 Q. Was the car clean? Do you recall?

15 A. I don't recall.

16 SOLICITOR: Beg the Court's indulgence.

17 (Brief pause)

18 Q. I show you State's Exhibit 17, a picture of the Defendant's
19 car. The gentleman standing there looking at it, who is that?

20 A. That's ...

21 Q. The lost witness?

22 A. Yes.

23 Q. Looking at the picture does it refresh your recollection?

24 A. Yes.

25 Q. Was the car clean?

J. REGALIS ON REDIRECT

1 A. . .

2 MR. SELLERS: Objection, Your Honor That was asked and
3 answered.

4 THE COURT: You can answer.

5 A. It might have been.

6 BY SOLICITOR:

7 Q. I'm not asking whether or not it had been cleaned. I'm
8 saying did it appear clean.

9 A. Oh, yes, it did.

10 Q. All right. Now, to get rid of GSR does it require it be
11 a full detailed cleaning?

12 A. . .

13 A. You walked earlier about just wiping. Is that all that
14 is required?

15 A. Not more than wiping. You could just get in and touch
16 the door. Just any involvement, you know, and it will skim
17 off or fall off.

18 It can fall off even if it's on clothing. It can be any
19 number of things to cause it to fall off.

20 Q. All right. Then there were questions about when you had
21 talked with the victim in the hospital shortly after the shoot-
22 ing and you were asked about a physical description.

23 Did he give you a explicit statement about who shot him?

24 A. He did.

25 Q. Who did he say shot him?

J. REGALIS ON REDIRECT

1 A. The guy he got in an argument with.

2 Q. And did you have a video and a picture of that person?

3 A. I did.

4 Q. And is that fairly explicit in your estimation?

5 A. It is.

6 Q. Nothing further.

7 THE COURT: You may step down.

8 (Witness excused from stand)

9 THE COURT: You may call your next witness

10 SOLICITOR: Your Honor, at this time the State rests.

11 THE COURT: Ladies and gentlemen of the jury, the State
12 has rested its case and at this time it is almost four thirty.
13 So it is probably a good time for us to recess for the day
14 or the afternoon.

15 Please be back in your jury room so we can get started
16 on time at nine thirty tomorrow.

17 Please do not discuss this case with anyone or allow any-
18 one to discuss it with you. Also, do not watch any news
19 coverage if there is any about the case or read anything about
20 it. I don't believe there will be anything but it is necessary
21 that you be instructed as to that.

22 You may be excused at this time.

23 (Jurors excused for the evening)

24 THE COURT: All right, I will be happy to entertain any
25 Motions at this time.

1 MR. SELLERS: Your Honor, at this time the Defense would
2 like to make a Motion for directed verdict.

3 We also would like to clarify and restate all of our ob-
4 jections for the record, but we believe the State has brought
5 a case which for all practical purposes lacks any evidence.

6 There is no physical evidence, there is no forensic evi-
7 dence. In fact, there is nothing that places my client at the
8 scene of the incident.

9 There is no weapon and there is a wide gap in time, Your
10 Honor, We're talking forty to forty-five minutes, fifty minutes,
11 and twenty point six miles, where the State has no accountabil-
12 ity for the victim's whereabouts or anything in the case or of my
13 client as well.

14 We believe that the State simply did not prove the elements
15 of possession of a weapon, possession of a weapon by someone
16 with specific events, as well as there is no weapon, Your Honor.

17 We also would venture to say that it is very hard to prove
18 attempted murder using bullets when there is no weapon, Your
19 Honor.

20 So we make a motion for directed verdict.

21 THE COURT: Solicitor?

22 SOLICITOR: Your Honor, the position of the State is that
23 it is a jury issue. The elements of the offenses in the light
24 most favorable to the State make it a question for the jury to
25 decide.

1 THE COURT: Based upon the evidence presented thus far,
2 at this juncture I am not persuaded to your position as there
3 is some evidence for the jury to consider as to whether the
4 State has reached its burden to establish the Defendant's
5 guilt.

6 So your Motion is respectfully denied.

7 MR. SELLERS: Thank you, Your Honor.

8 THE COURT: Yes, sir. Counsel, have you discussed with
9 your client whether he wishes to testify?

10 MR. SELLERS: Your Honor, we have had those discussions.
11 We took that time to be efficient before the Court, and we
12 had that discussion outside.

13 When the State is ready, we can proceed with closing ar-
14 guments in the morning.

15 THE COURT: Okay, there are some questions I need to ask
16 of your client concerning his right to remain silent.

17 MR. SELLERS: He is very, very much aware of that.

18 SOLICITOR: Your Honor, he has a burglary in the second
19 degree and I just want to state for purposes of the record that
20 that potentially could include as violent an assault and bat-
21 tery with intent to kill, PWID cocaine, multiple counts of
22 theft as well as possession of a stolen vehicle.

23 Your Honor, I'm not saying I would get into all of
24 that but just stating things on his record.

25 THE COURT: Mr. Sellers, anything further on that?

1 MR. SELLERS: I would just say that some of those are
2 from 1994 so we've gone through a period of time on it.
3 But we are ready to move forward and he will not testify
4 in his case.

5 THE COURT: Mr. Johnson, would you please stand? You are
6 still under oath. Okay?

7 DEFENDANT: Yes, maam.

8 THE COURT: Mr. Johnson, I'm going to explain to you cer-
9 tain of your rights. If you do not understand anything that
10 I say, just let me know so that I can explain anything in de-
11 tail if you need me to. I want to be sure that you understand.

12 DEFENDANT: Yes, maam.

13 THE COURT: Sir, you have a right to claim the protection
14 given to you by the Constitution of the United States. This
15 states in part that no person shall be forced to be a witness
16 in a case against himself.

17 This means you cannot be required to testify in this case.
18 You have a right to testify in your own behalf. However, nobody
19 can make you testify.

20 This is a decision that noone can make except for you.
21 If you decided to testify you would be subject to the same
22 rules that govern other witnesses, and you could be questioned
23 on any relevant issue in this case, be examined and cross examined
24 on any relevant issue in this case.

25 In addition, if you have convictions involving dishonesty

1 or false statement, or crimes that are punishable by imprisonment for more than a year, then if I should decide the admissibility outweighs the prejudicial effect that could be considered by the jury as a factor in determining if you are guilty.

2 If you decide not to testify I would instruct the jury they could not give the fact that you did not testify any consideration whatsoever, and that that creates no prejudice to you that you do not testify.

3 It is left entirely up to you whether or not you testify. You may talk to your attorneys and family and friends, but ultimately it is solely your decision to make.

4 Do you understand all that I have said?

5 DEFENDANT: Yes, maam.

6 THE COURT: Do you need to discuss anything with your lawyer at this time?

7 DEFENDANT: No, maam.

8 THE COURT: Is it still your decision that you do not wish to testify? Is that correct?

9 DEFENDANT: Yes.

10 THE COURT: All right. Anything further you wish me to discuss with him?

11 MR. SELLERS: No, maam.

12 THE COURT: All right. So we will take our evening recess at this time and begin with arguments in the morning.

1 MR. SELLERS: Thank you, Your Honor.

2 THE COURT: If you will come back we will discuss jury
3 instructions.

4 (Whereupon, the Court stood in recess until the morning
5 of July 26, 2017)

6 THE COURT: Before we bring the jury out, have you had
7 an opportunity to look at the verdict form and the jury instruc-
8 tions we have discussed.

9 I understand there are no objections.

10 SOLICITOR: No, objection.

11 MR. SELLERS: No objection, Your Honor.

12 THE COURT: All right. Anything before we bring the jury
13 out?

14 SOLICITOR: No, Your Honor, not from the State.

15 MR. SELLERS: No, Your Honor.

16 THE COURT: Then bring in the jury, please.

17 (Jury returned to the Courtroom)

18 THE COURT: Good morning, ladies and gentlemen of the
19 jury. Welcome back.

20 Before we get started I would say for the record that
21 the State has rested.

22 All right, Mr. Sellers.

23 MR. SELLERS: Your Honor, the Defense rests as well.

24 THE COURT: Thank you, sir.

25 Since the Defense has now rested it is time for closing

1 arguments, but first I want to say that Jennifer Wallbilling is
2 appointed as Jury Foreperson. You will, as I said, be the jury
3 spokesperson and will write the verdict after the jury has
4 reached a decision.

5 Now please pay close attention to the closing arguments.
6 Solicitor, we will hear from you.

7 SOLICITOR: Thank you, Your Honor. May it please the
8 Court.

9 Ladies and gentlemen, when I came before you yesterday I
10 told you that we were going to prove beyond a reasonable doubt
11 that the Defendant is guilty of all three of the charges, be-
12 yond a reasonable doubt. Beyond a reasonable doubt.

13 That phrase or those words, beyond a reasonable doubt,
14 is a legal standard that the law often struggles to define and
15 sometimes has fallen short over the years although it has
16 changed a little over time.

17 It was once said to be described by what is called the
18 Bannon Charge which says a reasonable doubt is the kind of
19 doubt that causes a reasonable person to hesitate to act, and
20 that is the language Courts sometimes use.

21 Courts have recently used other charges, and the most
22 recent of them by our State Supreme Court is to say there are
23 very few things in life that we know beyond all doubt, and the
24 law does not require absolute certainty.

25 It says that if you are firmly convinced of the Defendant's
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1 guilt you must find the Defendant guilty.

2 I hope that we have convinced you, and when you go back
3 to that jury room you will believe that we have; that we have
4 met our burden of proving the Defendant guilty beyond a reason-
5 able doubt.

6 Ladies and gentlemen, he is guilty. He is guilty of all
7 three of the charges, the attempted murder -- the Judge will
8 give you a legal definition, but it is exactly what it sounds
9 like. There was an attempt to commit a murder.

10 There was a malice aforethought, and malice aforethought
11 may be express or implied. It has been shown in this case
12 that after an exchange of words in a store the Defendant then
13 followed the victim and in fact shot him.

14 That was the use of a deadly weapon by firing at him in
15 the car. That was shooting several shots. That was an at-
16 tempted murder.

17 I don't think that anybody can question that it was an at-
18 tempt to murder him. No question that it would have been a
19 murder. He didn't die so it is an attempt at murder.

20 Then you've got the gun charges. He shot him with a
21 gun, a firearm.

22 Possession of a pistol by a person convicted of a crime,
23 a prior crime in a certain category. The Judge will instruct
24 you on that. It is a situation where the Defendant has a
25 conviction for a crime so that he was prohibited from having

1 that pistol in his possession. He had it. He had a deadly
2 weapon in his possession.

3 So that brings us to what is the evidence in this case.
4 Let's look at the evidence.

5 How do we know it was him? Well, to start with the evi-
6 dence shows went to Chestnut Street to the Shell station to
7 see his girlfriend at the time. While he was talking to her
8 the Defendant was being rude to her, calling her a bitch; he
9 was cussing at her. So the victim stepped in and said don't
10 do that and he was challenged to a fight.

11 We all know what it means to be challenged to fight, and
12 he was challenged to go outside and fight with the Defendant.
13 You saw both of them on the video.

14 When the Defendant walked out of the store he turned and
15 was cussing at the victim as he was walking out. You heard
16 the victim talk about that. You saw it and you heard it, and
17 the victim talked about the incident.

18 You heard that the Defendant left the station and then
19 he came back. He parked and waited until he saw the victim
20 leave the station. You heard from the officers who talked
21 about it and you saw the video that is in evidence.

22 The video is in two parts. One shows the Defendant in
23 there and then it shows him out in the parking lot. Then he
24 comes back after leaving at first. Both are in evidence and
25 you can see it again, if you want to see all two and a half

1 hours of the video. You can see it again and see if you see
2 the Defendant's car and see the Defendant back there again.

3 I submit to you that he did, and you can see on the video
4 that he comes back.. You can see what he does.

5 Now, remember, he admits that he came back and that is
6 the place where he came back. You see a white car and you
7 don't see anybody get out of his car or walk away from his
8 car. Sure, there was a white car there but he never got out
9 of his car.

10 He was waiting in his car for a matter of minutes and so
11 then when Mark leaves he leaves. Now, certainly the white car
12 leaves at about the same time or the three vehicles leave to-
13 gether.

14 You saw the video and he followed that white car. He
15 goes up to the white car which is in that right turning lane.
16 He goes right past it and makes a turn, and he comes down Chest-
17 nut.

18 When he got to this right here he comes down and turns
19 down Chestnut and follows the victim. Now, they say he was
20 going this way maybe, but you don't see that.

21 Well, maybe he goes this way or goes straight here. And
22 Why would somebody turn right to go back to where they were?
23 It makes no sense. He would not turn right to go straight
24 this way -- wouldn't do it.

25 Ladies and gentlemen, that car was following the victim.

1 Now, we know he was there because he said so, and when
2 you look at the videos, if you look at them again -- look and
3 see the cars as they stay parked, the same cars, and the same
4 car follows after the victim leaves. If you watch the second
5 part of the video the same car went out and followed him.

6 Now, that's the same car that was later tested for GSR,
7 the same car.

8 Now, we see him leave and we see him follow Mark, and
9 then we get to the biggest piece of evidence in this case.
10 This isn't a who-dun-it. The victim, Mark, saw who did it.
11 Mark saw who shot him. He was as close as we are to him, and
12 he saw the man point that gun at him as he shot.

13 He saw the man who he had had an argument with at the
14 station and who challenged him to fight right before that, and
15 he told you, sitting right here. You heard him say that it was
16 the same man from the station and he had this shirt on.

17 You will have the pictures in evidence and they will be
18 back there with you. Look at that shirt which is a very dis-
19 tinctive shirt. It is a kind of shirt that is easy to spot,
20 and he saw it and he said he saw it.

21 There is no question that he told the police about it,
22 about what happened. He told them who shot him. This Defen-
23 dant.

24 So not only did he see his face, not only did he see his
25 shirt, but he had seen him just before that, referencing

1 that argument over those words to his girlfriend at the store.

2 There are just so many coincidences for this not to be
3 the same guy. They are trying to say it was mistaken identity
4 and let's talk about that.

5 He identified the man so that brings in the question of
6 identification. You know, in talking about identification it
7 brings in some factors. The opportunity to view, the degree
8 of attention of the victim, accuracy and the relative cer-
9 tainty, the length of time of the identification.

10 Those are factors in the law concerning identification,
11 and let's look at them. The opportunity to view. He had am-
12 ple opportunity. The argument in the store lasted a couple of
13 minutes, as you saw on the video.

14 He got right in his face at one point and then at the
15 shooting. He said the car was stopped next to him when he was
16 stopped at the stop sign. He looked over to see the guy try-
17 ing to cut him off and pulling out this gun and pointing it
18 at him. There were no obstructions, and his degree of atten-
19 tion -- I'd submit if somebody is up in your face trying to
20 fight you that you are paying attention to him. When somebody
21 is pulling a gun on you, you are paying attention to him. He
22 told you he was paying attention.

23 The accuracy of his prior description -- now, they are
24 going to try to say that the prior acts and the prior descrip-
25 tion was what made him describe the Defendant.

1 I want you to think about to what he said. He said this
2 was the guy from the store. That is pretty accurate. If I
3 say to you someone is sitting on the stand next to the Judge
4 on the Bench, I describe who is sitting there. I don't have
5 to tell you how calm he is. I don't have to tell you what
6 color his hair is. I don't have to tell you whether it is
7 curly or straight, or what kind of clothes he's wearing.

8 There is enough evidence that he said it was the guy. He
9 told them exactly who he is. Now he's told you he saw him, he
10 knew exactly who it was and where he saw him before.

11 That wasn't a vague prior description. It was a very
12 specific description. His level of certainty was one hundred
13 percent. He told you that. He had told that to everyone he's
14 talked to. One hundred percent he shot me, and the length of
15 time -- he told the first officer within minutes, and he has
16 told the same thing consistently since that time.

17 He said that here and he was very clear. I don't think
18 there is any question about it. The bit about the Defendant
19 following him and the Defendant coming back to the store --
20 why would he know that.

21 They want you to believe it was some other random person.
22 If it was some other random person and he was just trying to
23 cover up that it was who it was there is no reason he would
24 say it was someone else. If that were true he could just have
25 said he didn't see him before.

1 He's telling the truth, so then that gets to the question
2 of the argument at the station. Let's look at that for a min-
3 ute.

4 What do you have to believe if you think he was mistaken?
5 You would have to believe that somebody wants to take his life
6 other than the Defendant.

7 After seeing the same shirt on the Defendant, you'd have
8 to believe or infer that the virtually someone in the same Ford
9 Explorer as the Defendant happened to just randomly pick this
10 victim to shoot an hour after an argument with the Defendant;
11 that there were comments that related back to the argument
12 with the Defendant.

13 If you believe all of those coincidences, it's just not
14 realistic. This was not mistaken identity.

15 Now, the only thing he didn't say was the color of the
16 car. They are going to jump all over that. He got the car
17 wrong so he can't be trusted. That's just ridiculous.

18 You all have plenty of common sense experience, and you
19 are allowed to use that when you go back to your jury room.
20 This was a blue car, not green, but it was not sky blue or a
21 light or patriot blue, something obviously blue. This was a
22 dark color and that's what he said, a dark color.

23 At the point he had a gun in his face he wasn't focusing
24 on that car. He was focused on the Defendant. The fact that
25 he said a dark colored car and was unsure of blue or green, it

1 was close to that. It's a reasonable mistake.

2 You don't find someone not guilty of attempted murder be-
3 cause a victim was a little unsettled on what color car it was
4 the Defendant was in. It is an understandable discrepancy by
5 him, by Mark, and it just doesn't seem right to me.

6 Another thing they're going to jump all over is that GSR
7 kit. Now, the GSR kit -- you heard Captain Regalis talk about
8 it. He said, you know, it's little particles that you can find
9 in certain situations where a gun was fired. They can be wiped
10 off just with your hand to get rid of them. They can fall in
11 any number of situations without the vehicle being cleaned;
12 that if he had an opportunity to just wipe down the car
13 or even if he didn't wipe down the car and try to get rid of
14 that evidence it can still easily be gone by just opening and
15 shutting the door.

16 He said there are a number of ways for that to be gone
17 from a surface, a number of things get rid of that. It's gone.

18 Not only did he tell you that but the report is in evi-
19 dence from the GSR kit, and that SLED expert put on there
20 things that can cause that GSR not to remain on there, to not
21 be on there.

22 It is one of those things that has significance but if
23 it is not on there there's a lot of reasons why it could not
24 be there, and that simply does not mean it had not been there.

25 So that the GSR is not there is simply not that important.

1 It does not change what Mark saw. Mark saw who shot him.

2 So let's talk about the incident itself. Nobody saw the
3 Defendant get out and they may try to say, well, someone else
4 was there. But who else would do this? Mark told you that he
5 almost got in a fight with the Defendant, so who else would
6 try to kill him?

7 I don't know why it is that he got so riled up in the
8 first place over what happened. He's the only one who can
9 know that.

10 There was a person in a white vehicle that we still don't
11 know who it is. There is no evidence on that video that shows
12 him getting out or attempting to meet anybody.

13 We know he sits there and waits and he follows Mark, and
14 we know he was there. He told the police he was there at that
15 same time. That is the one time, and he was there.

16 Too many coincidences, too many coincidences. It's all
17 about Mark knowing it was him, that he saw the man who shot
18 him. He knew who that was The Defendant. He looked at him,
19 looked in his eyes.

20 That is the man who shot him. He saw who shot him and
21 told us that. We are putting this case in your hands, and
22 we thank you.

23 THE COURT: Mr. Sellers.

24 MR. SELLERS: Thank you, Your Honor.

25 Good morning.

1 (Jurors responding good morning)

2 MR. SELLERS: I beg the Court's indulgence for a moment,
3 please.

4 (Brief response)

5 I was going to show you again a half hour video but I've
6 decided against that.

7 Good morning. I introduced myself to you yesterday and
8 we had an eventful, full day yesterday, but again my name is
9 Bicardi Sellers.

10 In my remarks yesterday I talked about three legal prin-
11 ciples which I hope that you remembered throughout the pendency
12 of this trial.

13 The first was the presumption of innocence, and I want
14 you to know that my client as he sits before you right here,
15 Untonyo Johnson, he is an innocent man.

16 In a minute Judge Murphy will tell you that Untonyo is
17 wearing a robe of righteousness that remains with him until
18 it has been stripped away from him by evidence that satisfies
19 you of his guilt beyond a reasonable doubt.

20 Yesterday I told you about burden of proof, and I went
21 into that conversation because what we know is that Untonyo
22 doesn't have to prove anything. In fact, it is the State's
23 job. Mr. Lupton has to prove each and every element of the of-
24 fenses with which Mr. Johnson has been charged.

25 And then we talked about beyond a reasonable doubt. It

1 is a burden that is upon the State of South Carolina to prove
2 Mr. Johnson guilty beyond a reasonable doubt, and we talked
3 about what reasonable doubt means, and in a few moments Judge
4 Murphy will instruct you on what the law says that reasonable
5 doubt means.

6 She is going to tell you that a reasonable doubt is the
7 kind of doubt that causes a person to hesitate to act, which is
8 probably the highest standard in the land.

9 So when you go back there in the back and say maybe he
10 did do it, that's not enough for guilt beyond a reasonable
11 doubt.

12 Nor is that he's probably guilty or it is highly likely
13 that he did it. None of those are beyond a reasonable doubt.

14 So this morning I want to talk to you about what it is
15 the State wants you to believe, and then we'll walk through
16 the testimony you heard today and we'll look at the evidence
17 that you saw.

18 So the State wants you to believe that after having an
19 altercation with Mr. Johnson that Mr. Johnson left and Mr.
20 Edmonds remained in the store for forty minutes with his fiancée,
21 and then Mr. Johnson came back to the store and very shortly
22 after Mr. Johnson arrived the second time that Mr. Edmonds
23 walks to his vehicle, got in his car, turns out of the park-
24 ing lot and went to State Road and proceeded onto Chestnut
25 Street.

1 That Mr. Johnson follows Mr. Edmonds and drove twenty
2 point six miles. Twenty point six miles, thirty or forty min-
3 utes, crossed over into another County, before he pulled be-
4 side Mr. Edmonds at the intersection of Old Mill and came Haynes
5 Crossroads.

6 And, finally, that the victim was able to recognize the
7 shooter as the stranger from the gas station.

8 That is the State's story. That is what they want you
9 to believe. So let's talk about that story.

10 We all sat here when you saw the surveillance footage and
11 we know that the interaction the State describes as an alter-
12 cation was little more than an unfriendly conversation. No
13 one was harmed. It wasn't physical. There were no fight, no
14 one charged anyone else.

15 In fact, as they appear on the video they appeared not to
16 speak to each other much at all. They never even got close
17 to one another. There was no noise, in fact.

18 None of the other patrons in the gas station attempted
19 to intervene. There was no altercation to break up. There
20 wasn't an altercation at all. It wasn't even serious enough
21 to prompt a nine one one call or even a police report.

22 It didn't even disrupt the business of the day, and then
23 we see Mr. Johnson leave the store, head to his vehicle and
24 exit the parking lot. From this big bad
25 altercation do you know what Mr. Edmonds decides to do? He
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1 remained in the store and hung out with his fiance for the
2 next forty minutes.

3 Now, you know there is one person who could corroborate
4 that this was an all out battle, that he called her a bitch,
5 that he yelled out and was flailing his hands up and down.

6 You heard that word all throughout the trial, that Mr.
7 Johnson called this woman a bitch. You know one person who
8 could testify to that?

9 Think about the testimony we heard yesterday. His fiance
10 is the only person who could corroborate the victim's story
11 that this was an altercation, but the State presented the en-
12 tire case and didn't call her. Think about that.

13 This altercation that allegedly led to an attempted mur-
14 der they didn't even call the only person who could corrobor-
15 ate that story. Do you know why? Because there wasn't an
16 altercation at all.

17 Approximately forty minutes after Mr. Johnson leaves a
18 second SUV pulls up in the parking lot. Now, we cannot see
19 the license plate or the driver. No one gets out of the ve-
20 hicle and we have no idea who is inside of the vehicle. No
21 words are exchanged.

22 This Defendant leaves the store, walks across the park-
23 ing lot to his vehicle and exits on State Road, headed toward
24 Chestnut Street. The second SUV that we see leaves at the same
25 time, pulls out onto the street and then the State contends

1 that it turns onto Chestnut Street and let's say that it does.
2 It turns onto Chestnut Street.

3 But is all the State has shown you. The State has only
4 shown you this maybe point one mile. Where is the
5 other twenty and a half miles?

6 The State contends that it was Mr. Johnson in the second
7 SUV and that he followed Mr. Edmonds, but there is no testi-
8 mony, there is no video footage, and there is no other witness
9 to testify about this other twenty and a half miles.

10 We've all been down Chestnut Street and there are many
11 lefts, too many to remember, but let's say he did make a left
12 onto State Road he could have gone left or right or continued
13 all the way out into the country.

14 The State wants you to believe this although we have no
15 evidence and although we have no video footage and although we
16 also have no testimony. They want you to imagine that twenty
17 point five miles.

18 But we do know something. We do know that Mr. Edmonds
19 claimed he stopped along his route home from the Shell station
20 on Chestnut Street. He said he stopped at the Cricket Gas
21 Station.

22 He said that yesterday. Did you see any testimony or
23 any other video footage, let alone an Explorer following him
24 to that point? Think about it.

25 Did you see any video footage from the Cricket Gas Station?

1 Did you see any other footage at all other than one tenth of
2 a mile showing a vehicle following Mr. Edmonds? You did
3 not. Think about this.

4 He said for you to use your common sense and I'm going
5 to use that as well. If someone was following Mr. Edmonds
6 no matter where he was headed, the person following him would
7 have to follow him to the stop at the little Cricket in order
8 to not lose him along the route.

9 I would explain to Mr. Lupton and the State that you
10 don't have to be a spy or a covert operative or a James Bond
11 or anyone else to recognize someone aggressively pursuing
12 you and following you for twenty point six miles, and the
13 person in the SUV was truly tailing Mr. Edmonds with intent to
14 kill him because of the gas station interaction -- why would
15 he not want to avoid detection?

16 After twenty point five miles at a stop sign -- the
17 State claims that a man, Mr. Edmonds, says that a man he had
18 never seen pulled up and fired shots.

19 Let's talk about evidence you did hear. The State's en-
20 tire case, the entire case, rests on the word of one man, Mr.
21 Edmonds.

22 On Cross Examination when I was able to talk with Mr.
23 Edmonds about that interaction he had at the gas station, the
24 supposed altercation, he said he paid it no mind. It wasn't
25 much of anything after all.

1 You know, he stayed at the store afterward, socializing
2 with his girlfriend. Now Mr. Edmonds when he got on the
3 stand gave a new twist to the story, a twist he had not pre-
4 viously reported and law enforcement had not known in the two
5 years they spend in the investigation preparing for this trial.
6 Yesterday was the first time that anyone at law enforcement
7 stated that they had even heard of these new details. A stop
8 at the Little Cricket gas station. You saw no surveillance
9 footage from the Cricket showing an SUV following Mr. Edmonds.

10 Nowhere in the testimony did you hear that an SUV fol-
11 lowed Mr. Edmonds to the Little Cricket. That was a twist
12 you heard about yesterday.

13 The second new twist -- and this is the one that is so
14 unique. Mr. Edmonds claims to recognize the Defendant's shirt,
15 the shirt Mr. Johnson was wearing.

16 But you know what? He never mentioned any details about
17 the shirt to law enforcement immediately following the shoot-
18 ing or at any point in any statements during the weeks that
19 followed the shooting.

20 He never once mentioned the shirt. Mr. Edmonds did not
21 recognize the shirt at the time he was shot but he recognized
22 the shirt from the suggestive picture he was shown of Untonyo
23 Johnson from the gas station.

24 That is why he didn't mention it until yesterday. Look at
25 all of the statements and his testimony. The first time he

1 mentions that shirt is when the State -- excuse me -- when
2 Mr. Lupton tried to use the example of my new friend, the Law
3 Clerk, sitting beside the Judge, and that is like a memory
4 that he has red hair. You are going to give a description and
5 not say he has red hair? That's red hair.

6 You are not going to say he has red hair when it is so
7 distinctive that you just remember it. One detail the State
8 wants you to believe is that Mr. Edmonds dis-remembered -- re-
9 member that he knows cars -- was the color of the vehicle.

10 He originally reported that the car that the shooter was
11 driving was green. He told Captain Graham and Captain Rigales
12 that the vehicle was green, and these investigators used
13 that information to obtain a search warrant for a green ve-
14 hicle.

15 After the search warrant was executed is when the inves-
16 tigators realized that Mr. Johnson's vehicle was blue. You
17 know what happened? Then and only then was the vehicle referred
18 to as dark in color.

19 The State would argue that the reason for this discrep-
20 ancy was that it was a common mistake. They have a lot of
21 common mistakes in trying to convict somebody of attempted
22 murder.

23 But Mr. Edmonds was mistaken. Well, let me ask you this.
24 Ladies and gentlemen, isn't the more logical explanation
25 that someone in green vehicle shot Mr. Edmonds?

1 The State wants you to believe everything else except
2 that the car was green. The reason is that it doesn't fit
3 the State's theories because law enforcement has to meet
4 their theories and it doesn't fit their theories.

5 You heard from Captain Graham who is the first person Mr.
6 Edmonds spoke to after being shot, and he testified that the
7 Defendant in the vehicle that shot Mr. Edmonds -- it was green.

8 That it was green.

9 The next witness was Investigator Wausaw, the lead in-
10 vestigator, who goes through the surveillance video and ad-
11 mits that what the video doesn't show you is that the Explorer
12 is evidently following the victim.

13 Investigator Wausaw admitted it but yet they don't have
14 anything showing it. They want you to just believe it. They
15 don't have anything showing any Explorer or any other car
16 following the victim.

17 The two vehicles went out separate exits and both did
18 turn onto Chestnut Street but that's it.

19 Law enforcement completed the investigation and didn't
20 even bother to get footage from the Cricket which would show
21 someone following the victim. He didn't even bother to get
22 footage from Little Cricket to establish their case.

23 But what did they do? It was brought out in Wausaw and
24 in Rigales too. They did obtain a search warrant for a green
25 Explorer because according to his testimony the vehicle driven

1 by the shooter was originally described to them as green.

2 Now, for the record, what color is my client's vehicle?

3 I would say the same car that is shown on the video is a blue
4 vehicle. This is a dark blue vehicle or a royal blue vehicle,
5 but one thing it is not. It is not green, and when you pull
6 this up there's no doubt that it's green.

7 It is unmistakably, undeniably blue, and then they col-
8 lected bullet fragments from the victim's vehicle. They admit
9 they had no weapon to match those fragments. Why did they have
10 no weapon? That is a good question. Why did they have no
11 weapon? Because no gun was ever found. No gun was found on
12 Mr. Johnson, no gun was found in Mr. Johnson's vehicle. No
13 gun was found, period, and when you go back into that room I
14 want you to ask yourselves a very simple question. Where is
15 the gun?

16 We know where it wasn't. It wasn't on or around Mr.
17 Johnson. The State has no gun.

18 Speaking of the absence of a gun and while we are talk-
19 ing about no evidence let's talk about the gunshot residue.

20 Captain Rigales testified that a GSR kit was performed
21 on Mr. Johnson's vehicle. The results of the test were nega-
22 tive for the presence of GSR.

23 He said to read the report, and he said to read all of
24 this below it, but I want to read this line to you that is
25 also on the report. The absence of gunshot residue on this
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1 item is consistent with it not having been in the vicinity of
2 a firearm when it was discharged. They want you to read every-
3 thing else but that line. Read what it tells you.

4 We asked why they went for the GSR kit. They wanted evi-
5 dence to connect Mr. Johnson to the shooting of Mr. Edmonds,
6 and all of a sudden now there is nothing to connect him with
7 anything.

8 They just want you to discount that. They want you to
9 believe that the wind did away with the GSR on Mr. Johnson's
10 vehicle. The wind blew away the GSR or it was brushed off;
11 that someone was able to clean the entire vehicle, seats,
12 windows, the armrests, exterior, the dash, the rear view mir-
13 ror and side mirrors. Every inch of that vehicle was cleaned
14 enough to remove the, quote/unquote, microscopic particles of
15 GSR because that is how GSR was described as microscopic.

16 But isn't there some further explanation for why there
17 was no GSR on Mr. Johnson's vehicle? Isn't the most logi-
18 cal explanation that no GSR was found was because no gun was
19 fired from that vehicle? Because Mr. Johnson never fired a
20 weapon out of that vehicle.

21 Now, I want you to think about this. Think about the
22 fact that the State has not presented it and want you to con-
23 vict the man of attempted murder when they have not presented
24 a single shred of physical or forensic evidence placing my
25 client, Untonyo Johnson, at the scene of this crime.

1 The State has not presented a single shred of physical
2 or forensic evidence placing a gun in the possession of Mr.
3 Johnson.

4 The State's entire case rests on the word of one man,
5 and in the absence of any physical or forensic evidence to cor-
6 roborate his testimony the State is asking you to rely solely
7 on the word of a man who has not one, not two, not three,
8 but four recent criminal convictions, three of which are crimes
9 of dishonesty.

10 That is all the State brought to the table. They have
11 brought the word of one man but they didn't bring any evidence.

12 Let's go through this. When you go to the back and you
13 realize that Mr. Johnson's vehicle, my client's vehicle, was
14 negative for the presence of GSR, that creates a reasonable
15 doubt.

16 Mr. Edmonds originally described the shooter's vehicle
17 as green when the incident was absolutely the freshest in
18 his mind. He said it was green.

19 Law enforcement secured a search warrant for a green ve-
20 hicle as they all believed the vehicle to be green. My
21 client does not own a green vehicle. That, my friends, is a
22 reasonable doubt.

23 There is not a single shred or physical or forensic evi-
24 dence. If you go back and go through all the evidence you
25 have, none of it is physical or forensic, and that, my

1 friends, is reasonable doubt.

2 You know there was no testimony given about what type of
3 gun was used in the shooting. Think about that. No type of
4 testimony about what kind of gun it was that did the shooting,
5 and that is something when you go to the back -- ladies and
6 gentlemen, where is the gun?

7 Then think about this last thing. They failed to prove
8 that my client ever had a gun; and without a gun there is no
9 attempted murder.

10 Without a gun there is no possession of a weapon.

11 Without a gun there is no possession of a weapon during
12 the commission of a violent crime.

13 Without a gun there is no crime, and without a gun there
14 is reasonable doubt.

15 Now, ladies and gentlemen of the jury, I will submit to
16 you that this isn't the first time and it won't be the last
17 time that the State puts forth a case with no physical evi-
18 dence and no forensic evidence, and we can describe it as weak
19 at best.

20 And I'll tell you this. You know, Mr. Johnson is not
21 the only man to sit at the table like this, and men and women
22 like Mr. Johnson are all the time swept up in this injustice.
23 When I opened yesterday I told you that your service was a
24 cornerstone of our democracy. This is what gives rise to
25 our Constitution.

1 I think back to what we do know, and that is that any
2 injustice anywhere is a threat to justice everywhere. In-
3 justice anywhere is a threat to justice everywhere.

4 We know the State has failed to prove its case beyond a
5 reasonable doubt. At the beginning of the case, Mr. Lupton
6 stood up and told you that he would prove beyond a reasonable
7 doubt that Mr. Johnson is guilty of all charges. He simply
8 has not done that.

9 Even more importantly, Mr. Lupton has broken his promise
10 to all of you and the State has fallen woefully short. It
11 has failed to meet its burden.

12 So when you go to the back and consider reasonable doubt
13 the only verdict you can come back with is Untonyo Johnson is
14 not guilty.

15 I'll end where I began yesterday which is simply to say
16 thank you all for your service.

17 THE COURT: Thank you, gentlemen.

18 Ladies and gentlemen of the jury, I will now instruct
19 you on the law of this case.

20 The Indictments against the Defendant are for attempted
21 murder, possession of a firearm in the commission of a violent
22 crime and possession of a firearm by a person -- possession by
23 a person convicted of a violent crime.

24 I remind you of the fact that the Defendant was arrested,
25 charged and indicted in this case is not evidence in this

1 case and cannot be considered by you as evidence in the case,
2 nor can it create any presumption or inference in the case
3 for or against the Defendant.

4 Each Indictment is a separate and distinct offense and
5 you must decide each Indictment separately on the evidence and
6 the law applicable to that offense and without regard to any
7 decision as to any other offenses charged.

8 You will be asked to write a separate verdict, guilty or
9 not guilty, on each Indictment.

10 The Defendant has pled not guilty to these Indictments
11 and that plea places the burden on the State to prove the De-
12 fendant guilty.

13 A person charged with a criminal offense in South
14 Carolina is never required to prove himself innocent. That
15 is an important rule of the law, that the Defendant in a crim-
16 inal trial, no matter what the seriousness of the crime, he
17 will always be presumed innocent of the charge for which he
18 was indicted unless guilt of the Defendant has been proven
19 by evidence satisfying you of that guilt beyond a reasonable
20 doubt.

21 This presumption of innocence does not end when you be-
22 gin your deliberations but it remains with the Defendant
23 throughout the trial until you reach a verdict of guilt that
24 is based on the evidence satisfying you of that guilt beyond
25 a reasonable doubt.

1 The presumption of innocence is like a robe of righteous-
2 ness that is placed about the shoulders of the Defendant and it
3 remains with the Defendant until it has been stripped from him
4 by evidence satisfying you of the Defendant's guilt beyond a
5 reasonable doubt.

6 The presumption of innocence is not just some legal theory
7 and not just a legal phrase. It is the substantial right to
8 which every Defendant is entitled unless you, the jury, are
9 satisfied from the evidence presented that he is guilty be-
10 yond a reasonable doubt.

11 What is a reasonable doubt in the law? A reasonable doubt
12 is the type of doubt that would cause a reasonable person to
13 hesitate to act. The State has the burden of proving a Defen-
14 dant guilty beyond a reasonable doubt.

15 Some of you may have served as jurors in civil cases where
16 you were told that it was only necessary to prove a fact is
17 more likely true than not true by the greater weight or the
18 preponderance of the evidence.

19 In criminal cases the statement must be more powerful
20 than that and must be beyond a reasonable doubt.

21 Proof beyond a reasonable doubt is the kind of proof that
22 leaves you firmly convinced of the Defendant's guilt. There
23 are very few things in this world that we know with absolute
24 certainty, and in criminal cases the law does not require proof
25 beyond every possible doubt.

1 If based upon your deliberation of the evidence you are
2 firmly convinced the Defendant is guilty of the crimes charged
3 you must find the Defendant guilty.

4 If, on the other hand, you think there is a real possi-
5 bility that the Defendant is not guilty, you must give the De-
6 fendant the benefit of the doubt and find him not guilty.

7 During this trial you and I have had certain duties to
8 perform. As the Trial Judge, it was my responsibility to pre-
9 side over the trial of this case, and I also had the responsi-
10 bility to rule on the admissibility or inadmissibility of evi-
11 dence offered during this trial.

12 You are to consider only the competent evidence before
13 you. Any testimony ordered to be stricken from the record dur-
14 ing this trial you will disregard that testimony.

15 You are to consider only the testimony that has been pre-
16 sented from the witness stand and any exhibits which have been
17 made a part of the record of this case, and any stipulations
18 that have been agreed upon by counsel.

19 I have the additional duty to charge you the law appli-
20 cable to this case. In that regard I am the sole Judge of the
21 law and you must accept and apply the law as I now state it
22 to you.

23 If you already have an opinion as to what the law is or
24 what you think the law ought to be, you must disregard that
25 and abandon that opinion because you are sworn to

1 accept the law and apply the law as I state it to you.

2 In every case tried in this Courtroom before a jury, the
3 jury must determine the facts in the case. The Trial Judge is
4 not allowed to make any statements during the trial to the
5 Trial Jury about the facts in a case.

6 Since you, the jury, are the sole judges of the facts you
7 must not infer from anything I have had to say during the pro-
8 cess of this trial concerning the evidence or otherwise or dur-
9 this instruction to you that I have any opinion as to the facts
10 of the case. The law does not allow me to have an opinion as
11 to the facts of the case.

12 The facts of the case are solely for you, the jury, to
13 determine. Therefore, it is your duty to determine the effect,
14 the value and weight of the evidence presented during this
15 trial.

16 There are two types of evidence generally presented during
17 a trial, direct evidence and circumstantial evidence.

18 Direct evidence is the testimony of a person who claims to
19 have actual knowledge of the facts such as an eye-witness.

20 Circumstantial evidence is a chain of evidence or cir-
21 cumstances indicating the existence of facts.

22 The law makes absolutely no distinction between direct or
23 circumstantial evidence, nor is a greater degree of certainty
24 required of circumstantial evidence and direct evidence.

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1 You should weigh all of the evidence in the case, and
2 after weighing all of the evidence if you are not convinced of
3 the guilt of the Defendant beyond a reasonable doubt you must
4 find the Defendant not guilty.

5 Necessarily you must determine the credibilty of witnesses
6 who have testified in the case. Credibility simply means be-
7 lievability.

8 It is your duty to determine what evidence is believable,
9 and in determining the believability of witnesses who have tes-
10 tified in this case you may believe one witness as against sev-
11 eral witnesses or several witnesses as against one witness.

12 You may believe a part of the testimony of one witness and
13 reject the remaining part of the testimony. You may believe
14 the testimony of a witness in its entirety or reject the tes-
15 timony of a witness in its entirety.

16 You may consider whether the witness has any interest or
17 bias or prejudice in the case. You may also consider the ap-
18 pearance or manner of a witness while on the witness stand.

19 I instruct you again that the fact that the Defendant did
20 not testify is not a fact that can be considered by you in any
21 way during deliberations on the question of guilt or of
22 innocence.

23 It must not be considered by you in any manner whatsoever
24 as the Defendant has the constitutional right to remain silent
25 and the assertion of this right is not to be considered by you

1 as to his guilt or innocence. Under your oath you are not
2 to have any discussion whatsoever over the fact that the Defen-
3 dant in this case did not testify.

4 The burden, as I have stated to you, is upon the State.
5 A Defendant is not required to prove his innocence, and the
6 burden of proof remains on the State to prove guilt beyond a
7 reasonable doubt.

8 An issue in the case has been the identification of the
9 Defendant as the person who committed the crimes charged. The
10 State has the burden of proving guilt beyond a reasonable
11 doubt as well as the identification made by witnesses.

12 You must be satisfied beyond a reasonable doubt of the
13 accuracy of any identification of the Defendant by a witness.
14 Identification testimony is the expression of belief or impres-
15 sion by a witness, and you must determine the accuracy of any
16 identification of the Defendant.

17 You must consider the believability of each of the identi-
18 fication witnesses, the same way as any other witness. You
19 must consider whether the witness had an adequate opportunity
20 to observe the Defendant at the time of the offense to make a
21 reliable identification later.

22 This could be affected by such things as how long or short
23 a time was for the witness to observe the offender or how close
24 or how far from the offense the witness was, as well as what
25 was the ability of the witness to see the person or whether he

1 knew him in the past, the lighting conditions at the time. You
2 may take into account the strength of the identification and
3 the circumstances under which the identification was made. You
4 may also consider the length of time that has elapsed between
5 the occurrence of the crime and the next opportunity of the
6 witness to see the Defendant.

7 You may consider whether the identification made by the
8 witness subsequent to the offense was the product of his own
9 recollection.

10 Finally, you should consider the credibility of the wit-
11 ness and each of the identification witnesses the same as any
12 other witness. Consider whether he was truthful and consider
13 whether he had the capacity and opportunity to make a relia-
14 ble identification in the manner covered by the testimony.

15 Once again, I instruct you that the burden of proof is on
16 the State and that extends to every element of the crime that
17 has been charged.

18 The State has the burden of proving the identity of the
19 Defendant as the person who committed the crime.

20 If, after examining the testimony, you have a reasonable
21 doubt as to the accuracy of the identification you must find
22 the Defendant not guilty.

23 A statement is alleged to have been made by the Defendant
24 and the statement has been admitted into evidence in this case
25 as the Court has found it to be admissible.

1 I instruct you that you must make the ultimate decision
2 as to whether the Defendant made the statement. If the state-
3 ment was made by the Defendant you must determine whether or
4 not the statement was made by the Defendant voluntarily and
5 of his own free will.

6 This means that the statement was not caused by pressure,
7 force, fear, threats or any form of coercion or intimidation
8 or by any hope or promise of leniency or reward
9 of any kind.

10 In determining whether the statement was voluntary, you
11 should consider the characteristics of the Defendant and the
12 details of questioning. Some of the factors you -- some things
13 you should consider are the age of the Defendant, the Defen-
14 dant's education or lack of education, the Defendant's mental
15 ability or capacity, the Defendant's IQ or intelligence, the
16 Defendant's background and environment, the length and place
17 of detention, nature of the questioning and the advice or lack
18 thereof of his constitutional rights, including but not lim-
19 ited to the right to remain silent, that any statement could
20 be used against him in a Court of Law, the right to have a
21 lawyer present and if he could not afford a lawyer that a law-
22 yer would be appointed to represent him without any cost, and
23 that he could stop making the statement at any time.

24 You must carefully consider all of those rights, includ-
25 ing his right not to make a statement, before you can give any

1 weight to the Defendant's statement.

2 The State has the burden of proving that any alleged state-
3 ment was voluntary. If you determine that it was, you may give
4 the statement such weight as you deem proper. You must deter-
5 mine what weight, if any, should be given to the alleged state-
6 ment.

7 If you determine that the alleged statement was not a free
8 and voluntary statement of the Defendant you should not consider
9 the statement at all.

10 In order to establish criminal liability, criminal intent
11 is required. For example, the mental state required to be
12 proven by the State requires purpose, intent, knowledge, reck-
13 lessness or criminal negligence.

14 Criminal intent must be proven by the State beyond a rea-
15 sonable doubt, Criminal intent is always a matter that must
16 be determined by the jury from circumstances surrounding the
17 situation.

18 There is no way that intent can be proven to a mathemath-
19 ical certainty. There is no way that medical science can
20 dissect a person's brain to determine what a person had in
21 mind. So the law says that criminal intent may be inferred
22 from circumstances shown to have existed.

23 This is how you make a determination of whether or not
24 the element requiring intent was present. It is not necessary
25 to establish criminal intent beyond all possibility, but

1 intent may be established by inference in the same way as any
2 other fact, by taking into consideration the acts of the part -
3 ies in the case.

4 Criminal intent is a mental state, a conscious wrongdoing.
5 It is up to you to determine what the Defendant may have in-
6 tended to do based on all the circumstances shown to have
7 existed.

8 Criminal intent may arise from action or a failure to act.
9 It may arise from negligence, recklessness or indifference to
10 duty or the consequences. Those may be considered in the law
11 with regard to criminal intent.

12 The Defendant is charged with attempted murder. In order
13 to prove this crime the State must prove beyond a reasonable
14 doubt that the Defendant attempted to kill another person with
15 malice aforethought, express or implied.

16 Malice is hatred, ill will or hostility toward another
17 person. It is the intentional infliction of wrongdoing or a
18 wrongful act without just cause or excuse, and with an intent
19 to inflict an injury under circumstances from which the law
20 could infer an evil intent.

21 Now, the law does not require that malice exist for any
22 particular time before the act is committed but malice must
23 exist in the mind of the Defendant just before and at the time
24 that the act was committed.

25 Therefore, there must be a combination of a previous evil

1 intent and the act.

2 Malice aforethought may be express or inferred. These
3 terms, express or inferred, do not mean different types of
4 malice but merely the manner in which malice may be shown to
5 exist.

6 That is either by direct evidence or by inference from
7 the facts and circumstances which are proved.

8 Express malice is shown when a person speaks words which
9 express hatred or ill will for another, or where the person
10 prepared beforehand to do the act which was later accomplished.

11 Malice may be inferred from conduct showing total disre-
12 gard for human life. Malice/may also arise when the deed was
13 done with the use of a deadly weapon.

14 A deadly weapon is any article, instrument or substance
15 which is likely to cause death or great bodily harm. Whether
16 an instrument has been used as a deadly weapon depends on the
17 facts and circumstances of each case.

18 Some examples of instruments which may be used as deadly
19 weapons may include a pistol, shotgun, a rifle, dirk, dagger,
20 knife, a slingshot, metal knuckles, firebomb, a Molotov cock-
21 tail, lighter fluid, a razor. A gun may be a deadly weapon
22 even if it is not operating.

23 If facts are proven beyond a reasonable doubt sufficient
24 to raise an inference of malice to your satisfaction, the in-
25 ference would be simply an evidentiary fact to be considered
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1 by you, the jury, along with the other evidence in the case,
2 and you may give it the weight you decide it should receive.

3 Specific intent to kill is an element of attempted mur-
4 der. Intent means intending the result which actually occurred
5 not accidentally or involuntarily.

6 Intent may be shown by acts in conflict with the Defen-
7 dant and other circumstances from which you may naturally and
8 reasonably infer intent.

9 Evidence of the character of the act, the character of
10 the instrument used, the manner in which it was used, the pur-
11 pose to be accomplished and the resulting wounds or injuries
12 may be considered in determining the intent with which the act
13 was committed.

14 Intent may also be inferred when it was demonstrated that
15 the Defendant voluntarily and wilfully committed an act, the
16 natural tendency of which is to destroy another's life.

17 Wilfully means intentionally with the specific intent to
18 do something which the law prohibits.

19 The Defendant is charged with the possession of a firearm
20 during the commission or the intent to commit a violent crime.
21 The State must prove beyond a reasonable doubt the Defendant did
22 possess a firearm or a knife or visibly displayed what did
23 appear to be a firearm or a knife during the commission of a
24 violent crime.

25 A firearm means any machine gun, automatic rifle, revolver,

1 pistol, or any weapon which will, is designed to, or may be
2 converted to expel a projectile.

3 In order to find the Defendant guilty of possession of
4 a firearm during the commission of a violent crime you must
5 first find the Defendant guilty of committing a violent
6 crime or attempting to commit a violent crime. Attempted
7 murder is a violent crime.

8 The State must prove the Defendant has a prior convic-
9 tion for a felony classified as violent by South Carolina
10 Law, but in this case the State has stipulated to the fact
11 that he has a prior violent felony conviction.

12 A stipulation is an agreement, admission or concession
13 made in judicial proceedings by parties thereto or their at-
14 torneys.

15 Stipulations are binding upon the party or parties mak-
16 ing the stipulation or admission. A stipulation is an agree-
17 ment of understanding and the Court and jury must accept
18 stipulations as binding upon the parties.

19 If counsel for the parties have stipulated to any fact
20 or facts as having been admitted by counsel, it is required
21 that be conclusive proof by the parties of the stipulation
22 or admission.

23 Ladies and gentlemen of the jury, there are several
24 possible verdicts that you may come to, and you will have
25 the verdict form in the jury room. The form is self-explanatory

1 and it states, as to the charge of attempted murder we, the
2 jury, unanimously find that the Defendant, and you circle
3 the appropriate verdict.

4 When you finish that verdict you go to the second charge
5 and then the third charge and circle the appropriate ver-
6 dict.

7 Your verdict must be a unanimous verdict. All twelve
8 of you must agree on what the verdict is.

9 I'm going to ask you to go to your jury room one last
10 time. Please don't begin your deliberations until you re-
11 ceive the exhibits and the verdict form in the jury room.
12 Then you may begin your deliberations.

13 When you have your verdicts please knock on the door to
14 let us know and we will receive your verdict back here.

15 Thank you.

16 (Jury excused from Courtroom)

17 THE COURT: Any exceptions or objections to the charge from
18 the State and the Defense?

19 SOLICITOR: None from the State.

20 MR. SELLERS: None from the Defense, Your Honor.

21 THE COURT: All right, if you will check to make sure we
22 have all the exhibits, and here is the verdict form.

23 (Jury instructed to commence deliberations)

24 (The Court stood in recess until the matter was resumed
25 in the Courtroom)

1 THE COURT: All right, for the record everyone is pre-
2 sent.

3 Prior to our receiving the verdict, the jury did have
4 a question for the Court and submitted a written question
5 to the Court. The Court submitted a written response viewed
6 by both parties. There was no objection to that response
7 to the jury's questions.

8 We will make this a Court's Exhibit when it comes back
9 out.

10 Any objection to that process?

11 SOLICITOR: None from the State.

12 MR. SELLERS: No, Your Honor. None from the Defense.

13 THE COURT: All right, let's have our jury, please.

14 (Jury returned to the Courtroom)

15 THE COURT: Have you reached a verdict?

16 FORELADY: We have.

17 THE COURT: Mr. Clerk, would publish the verdict?

18 CLERK: In the matter of 2016 GS 09 0022, 0024, 0025,
19 as to the charge of attempted murder we, the jury, unani-
20 mously find the Defendant guilty.

21 As to the charge of possession of a firearm during the
22 commission of a violent crime we, the jury, unanimously find
23 the Defendant guilty.

24 As to the charge of possession of a firearm by a per-
25 son convicted of a violent crime we, the jury, unanimously

1 find the Defendant guilty.

2 Madam Presiding Juror, ladies and gentlemen of the jury,
3 if that be your verdict so say you all. Please indicate by
4 raising your right hands.

5 All responding.

6 THE COURT: Thank you, Mr. Clerk.

7 Ladies and gentlemen, we thank you for your service. If
8 you will please return to your jury room for just a minute?

9 (Jury excused to jury room)

10 THE COURT: Anything further from either party before I
11 excuse the jury?

12 SOLICITOR: No, Your Honor. Nothing from the State.

13 MR. SELLERS: No, Your Honor.

14 (Jurors excused by the Court)

15 THE COURT: Solicitor, anything you wish to place on the
16 record?

17 SOLICITOR: Your Honor, I have not asked Mr. Edmonds whe-
18 ther or not he wants to address the Court.

19 As far as prior record, as you are aware, he has the
20 1994 conviction for burglary, second degree, violent, the
21 assault and battery with intent to kill, as well as a distribu-
22 tion of crack cocaine.

23 After that time in 2007 he was convicted of another
24 PWID cocaine. In 2012 he has another conviction for PWID
25 crack cocaine. In 2015 possession of a stolen vehicle in

1 Berkeley or Charleston County. He was convicted of that af-
2 ter this occurred. I think it was Berkeley County.

3 He has other primarily driving offenses, possession of
4 a stolen vehicle.

5 Your Honor, the victim in the case does not wish to
6 speak, and that is all we'd have. You have seen everything
7 and heard the evidence so you are in as good a position to
8 judge as anybody could be.

9 THE COURT: All right.

10 (Brief pause)

11 THE COURT: Anything you want to place on the record
12 at this time?

13 MR. SELLERS: Your Honor, I do not know if Mr. Johnson
14 wishes to address the Court.

15 Untonyo is before you. He is forty years old. He is near
16 his forty-first birthday. He is married to his wife who is
17 in the Courtroom. He has five children.

18 Untonyo is a product of a system that has failed him as
19 well as many others like him. He only has a tenth grade ed-
20 ucation and has never received the support he has needed in
21 his life.

22 I have had the opportunity to get to know him over the
23 past two or three years during the pendency of this and to
24 his trial. He's a good man.

25 He's a handy-man, an auto repair man, and done carpentry.

1 All in all we are disappointed in the verdict but we respect
2 it as Untonyo respects it, and we will take the necessary
3 steps out of this.

4 We ask Your Honor's mercy today. We know what he is
5 looking at and we would ask for a sentence of ten to fifteen
6 years, Your Honor.

7 THE COURT: All right. Mr. Johnson, I regret having to sentence
8 someone who has a family such as you have but you need to
9 serve some time for this, especially in light of the past
10 offenses you have committed.

11 Those are certainly something the Court is concerned
12 about due to the serious nature of them and for the safety
13 of the community.

14 On Indictment 2016 GS 09 24, possession of a firearm
15 by a person convicted of a violent crime, you are hereby
16 committed to the State Department of Corrections for a term
17 of five years.

18 As to Indictment 2016 GS 09 25, possession of a firearm
19 during the commission of a violent crime, you are hereby
20 committed to the State Department of Corrections likewise
21 for a period of five years.

22 As to Indictment 2016 GS 09 22, attempted murder, you are
23 hereby committed to the State Department of Corrections for
24 a term of twenty-five years

25 These are concurrent sentences.

1 SOLICITOR: Thank you, Your Honor.

2 THE COURT: The jury note and the Court's answer has
3 been made Court's Exhibit 2.

4 SOLICITOR: No objection.

5 MR. SELLERS: No objection.

6 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CALHOUN COUNTY SHERIFF'S OFFICE
*** MIRANDA RIGHTS FORM ***

My name is Vontonya Johnson Phone Number [REDACTED]

My address is: [REDACTED] Jamison, Orangeburg SC 29115

DOB: [REDACTED] SSN: [REDACTED]

I have completed 12 years of education.

Circle the line that best applies to you. (I can) I cannot read and write.

Please carefully read each of your rights and initial after reading each line.

1. That I have the right to remain silent. Initial: VJ
2. Anything I say, can be used against me in court. Initial: VJ
3. That I have the right to have an attorney present at any time during questioning. Initial: VJ
4. That if I cannot afford an attorney, I can apply to the court to have one appointed for me, at no cost to me. Initial: VJ
5. That if I decide to talk to an officer without an attorney present, I may stop at any time, and request an attorney be present for further questioning. Initial: VJ

I have read and initialed each line of my rights listed above, and I understand what my rights are.

Date: 10-7-15 Time: 3:35pm

Signed: Vontonya Johnson

WAIVER OF RIGHTS

I am willing to make a statement and answer questions. I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make statements and answer questions. I have the right to terminate any interview, and stop answering questions at any time hereafter. I can request to have a lawyer present with me before I continue answering any more questions or making any more statements, if I choose to do so. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed: Vontonya Johnson

Witness: [Signature]

Witness: _____

Time 3:36pm



STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

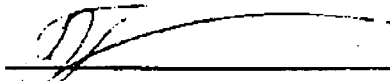
INDICTMENT
2016GS09-0022

As a Court of General Sessions, convened on January 19, 2016 the Grand Jurors of CALHOUN County present upon their oath:

ATTEMPTED MURDER

In that the defendant, Untonyo Ferjeal Johnson, did in Calhoun County, on or about October 1, 2015 did with the intent to kill, attempt to kill one Mark Edmonds with malice aforethought by shooting the victim. This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Ted Lupton, Solicitor

WITNESSES

Jimmy Orso

Calhoun County Sheriff

ARREST WARRANT NUMBER

2015A0910100224

Arrested: October 8, 2015

ACTION OF GRAND JURY
TRUE BILL

Natalie Hodge

Foreperson of Grand Jury
Date: January 19, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS09-0022

**The State of South Carolina
County of CALHOUN**

COURT OF GENERAL SESSIONS

January 19, 2016 TERM

THE STATE
vs.

Untonyo Ferjearl Johnson

Indictment for
Attempted Murder

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECEIVED
CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

2016 JAN 19 PM 1:33

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

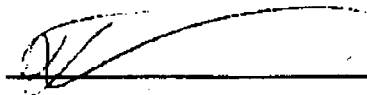
INDICTMENT
2016GS09-0024

As a Court of General Sessions, convened on January 19, 2016 the Grand Jurors of CALHOUN County present upon their oath:

POSSESSION OF FIREARM BY PERSON CONVICTED OF A VIOLENT CRIME

That in Calhoun on or about October 1, 2015, the defendant, Untonyo Ferjeal Johnson, did unlawfully possess a firearm or ammunition after having been convicted of a violent crime, as defined by Section 16-1-60, Code of Laws of South Carolina, 1976, as amended, to wit: Assault and Battery With Intent to Kill, thereby violating Section 16-23-500, Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Ted Lupton, Solicitor

WITNESSES

Jimmy Orso

Calhoun County Sheriff

ARREST WARRANT NUMBER

2015A0910100225

Arrested: October 8, 2015

ACTION OF GRAND JURY

TRUE BILL

Natalie Hodge
Foreperson of Grand Jury
Date: **JAN 18 2016**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS09-0024

**The State of South Carolina
County of CALHOUN**

COURT OF GENERAL SESSIONS

January 19, 2016 TERM

THE STATE

vs.

Untonyo Ferjean Johnson

Indictment for

Possession of Firearm by person
convicted of a Violent Crime

SC Code: 16-23-0500

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

KENNETH HASLEY
CLERK OF COURT
CALHOUN COUNTY
CRIMINAL DIVISION

2016 JAN 19 P 1:33

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

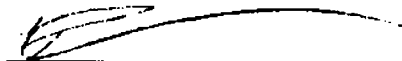
INDICTMENT
2016GS09-0025

As a Court of General Sessions, convened on January 19, 2016 the Grand Jurors of CALHOUN County present upon their oath:

**POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A
VIOLENT CRIME**

That in Calhoun on or about October 1, 2015, the defendant, Untonyo Ferjearl Johnson, did visibly display or have in his possession a handgun during the commission of a violent crime as defined by Section 16-1-60, Code of Laws of South Carolina, 1976, as amended, to wit: Attempted Murder, thereby violating Section 16-23-490, Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Ted Lupton, Solicitor

WITNESSES

Jimmy Orso

Calhoun County Sheriff

ARREST WARRANT NUMBER

2015A0910100226

Arrested: October 8, 2015

ACTION OF GRAND JURY
TRUE BILL

Natalie Hodge

Foreperson of Grand Jury
Date: January 19, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS09-0025

**The State of South Carolina
County of CALHOUN**

COURT OF GENERAL SESSIONS

January 19, 2016 TERM

THE STATE

vs.

Untonyo Ferjearl Johnson

Indictment for

Possession of a Firearm or Knife During
the Commission of a Violent Crime

SC Code: 16-23-490

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

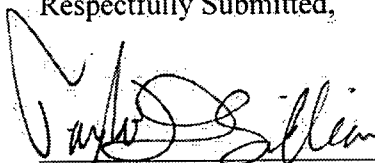
C.C.C. PLS. AND G.S.

FILED
2016 JAN 19 P 1:33
KAREN THOMASTY
CLERK OF COURT
CALHOUN COUNTY

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Taylor D. Gilliam", is written over a horizontal line.

Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

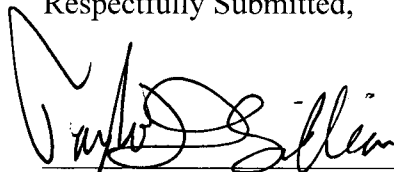
ATTORNEY FOR APPELLANT

This 10th day of December, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 10th day of December, 2018.

RECEIVED
DEC 10 2018
SC Court of Appeals