

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

V.

KENNETH LAMONT ROBINSON, JR.,

APPELLANT.

**Motion to Hold Appeal in Abeyance and to
Remand to the Court of General Sessions for a Hearing on a
Motion for Resentencing Based on After-Discovered Evidence**

I. Introduction

Appellant Kenneth Lamont Robinson, Jr. respectfully requests that this Court hold his appeal in abeyance and remand the case to the circuit court for a hearing on a motion for resentencing based on after-discovered evidence pursuant to Rule 29(b), SCRCrimP.¹ The after-discovered evidence in this case involves the sentences of co-indictees Richard Simmons and Keon Anderson, which were

¹ To support his motion, Appellant includes the following documents as exhibits: Exhibit #1 (Appellant's indictments); Exhibit #2 (cover page for Appellant's trial); Exhibit #3 (transcript of state's opening statement); Exhibit #4 (partial transcript of Smalls' testimony); Exhibit #5 (transcript of Simmons' testimony at Appellant's trial); Exhibit #6 (transcript of Anderson's testimony at Appellant's trial); Exhibit #7 (transcript of defense counsel's closing argument); Exhibit #8 (transcript of verdict); Exhibit #9 (excerpts from Appellant's sentencing hearing transcript); Exhibit #10 (Appellant's Motion for Reconsideration of Sentence); Exhibit #11 (Order Denying Motion for Reconsideration); Exhibit #12 (transcript of Simmons' sentencing proceeding); and Exhibit #13 (transcript of Anderson's guilty plea and sentencing).

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imposed after Robinson was sentenced. Both Simmons and Anderson were charged for the same murder (and attempted murders) as Robinson. Simmons, the actual shooter, pled guilty to murder and four counts of attempted murder. Exhibit #12 (p. 2, ll. 3-15). He was subsequently sentenced to 30 years. Exhibit #12 (p. 2, ll. 23-24; p. 8, ll. 9-13). Anderson, who was a passenger in the car with Simmons and Robinson when Simmons shot the victim, entered an Alford plea to voluntary manslaughter and assault and battery in the first degree. Exhibit #13 (p. 2, l. 5 – p. 3, l. 3). He was sentenced to a 15-year term of imprisonment. Exhibit #13 (p. 14, ll. 11-15). Following a trial, Robinson, who was only fifteen years old at the time of the offense, was sentenced to 50 years' imprisonment, although he was not the shooter, just like Anderson. Exhibit #9 (p. 358. 11-14).

II. Procedural History and Relevant Facts

A. Procedural History

Robinson was indicted for four counts of attempted murder and one count of murder. Exhibit #1. Before Robinson's trial, the State offered to allow him to plead guilty to voluntary manslaughter in exchange for a sentence of 23 years. Exhibit #10 (p. 8). However, Robinson chose to exercise his Sixth Amendment right to a jury trial. Robinson proceeded to trial before the Honorable Kristi Lea Harrington and a jury on February 13, 2018. Exhibit #2. Robinson was represented at trial by Megan Ehrlich and Michael Loignon, and the State was represented by Culver Kidd and Bruce Durant. Exhibit #2. Simmons, who testified for the prosecution, admitted at trial that he shot and killed the victim in this case.² Exhibit #5 (p. 739, l. 21 – p. 740, l. 20). Anderson, who also testified for the prosecution, acknowledged both that Simmons fired the fatal shots and that Robinson expressly told

² Simmons initially and repeatedly lied to law enforcement by telling them that Robinson was the trigger-person. This mistaken impression of Robinson's culpability influenced the Family Court's waiver decision. Exhibit #5 (p. 747, l. 8 – p. 749, l. 24; p. 794, l. 5 – p. 795, l. 2; p. 811, ll. 8-11; p. 817, ll. 7-15; p. 823, ll. 2-25; p. 825, ll. 16-20; p. 827, ll. 3-23; p. 829, l. 7 – p. 831, l. 23; p. 843, ll. 2-7).

Simmons not to shoot because the victim was not the person who had tried to kill them earlier the same evening. Exhibit #6 (p. 975, l. 6 – p. 976, l. 17). The jury found Robinson guilty of four counts of assault and battery of the first degree and murder under a “Hand of One, Hand of All” theory of accomplice liability. Exhibit #8 (p. 1644, l. 7 - p. 1645, l. 9). After Robinson was convicted, the State offered him a 30-year sentence if he waived his Fourteenth Amendment right to appeal his convictions. Exhibit #10 (p. 8). Robinson also declined this offer.

At his sentencing hearing on June 6, 2018, the State offered Robinson a sentence cap of 50 years. Exhibit #9 (p. 7, ll. 8-9). Robinson accepted the cap out of concern that he could face life in prison, after the court emphasized that the punishment for murder is 30 years to life. Exhibit #9 (p. 10, ll. 1-24; p. 12, l. 8-18). Robinson presented a wealth of mitigating evidence from a psychologist about his decreased culpability arising from his family history and the characteristics of youth as well as from employees at the Department of Juvenile Justice to testify about his (very) successful rehabilitation efforts. See generally Exhibit #10 (pp.6-7). After Robinson’s presentation of evidence, the State recommended a sentence of 50 years. Exhibit #9 (p. 328, ll. 2-3). On June 7, 2018, the trial court subsequently sentenced Robinson to 50 years, saying “you made a choice to get in the car” with the individual who shot the victim. Exhibit #9 (p. 356, ll. 23-24, p. 358, ll. 11-13). Robinson filed a motion for reconsideration alleging, *inter alia*, that he was being “taxed” for exercising his constitutional rights to trial and direct appeal. Exhibit #10 (pp. 8-10). The trial judge denied the motion. Exhibit #11. As noted above, Simmons and Anderson were subsequently sentenced to 30 and 15 years, respectively. All three sentences were identical to the State’s recommended sentences, and in each instance the recommendation came from the same Assistant Solicitor, Culver Kidd.

B. Relevant Facts

On May 10, 2015 around midnight, shots were fired outside of Kenneth Robinson's North Charleston residence. Exhibit #5 (p. 695, ll. 4-18). At the time, Robinson was only fifteen years old. Exhibit #10 (p. 3). A dark grey Acura shot at Richard Simmons' car, which was parked in front of Robinson's house. Exhibit #5 (p. 702, ll. 9-19; p. 798, l. 24 – p. 799, l. 4). The police initially responded, and after gathering a few shell casings left. Exhibit #5 (p. 705, ll. 11-23).

Fifteen to twenty minutes later, more shots were fired near Robinson's house. Exhibit #5 (p. 721, ll. 16-24); Exhibit #6 (p. 884, l. 1 – p. 885, l. 3). In response, Richard Simmons, Keon Anderson, and Robinson got into a Honda CRV. Exhibit #5 (p. 723, ll. 7-11). Two other groups of men, who had gathered outside of Robinson's house, jumped into a Ford Focus and a Dodge Charger. Exhibit #5 (p. 722, l. 25 – p. 723, l. 1). Simmons was in the driver's seat of the CRV, while Robinson was in the passenger seat with Anderson seated directly behind him. Exhibit #5 (p. 723, ll. 13-23); Exhibit #6 (p. 887, ll. 3-10). The passengers in the CRV followed the Charger. Exhibit #5 (p. 726, ll. 6-20); Exhibit #6 (p. 896, ll. 8-13). Simmons then spotted a Chrysler 300, and someone in the Charger started shooting at the 300. Exhibit #5 (p. 727, l. 11 – p. 728, l. 14; p. 731, ll. 11-12). Anderson testified that when all of the cars got onto Dorchester Road, someone in the 300 started shooting at the CRV, so he shot back. Exhibit #6 (p. 898, ll. 2-11; p. 972, ll. 3-7). Passengers in both the Charger and the CRV were shooting at the 300. Exhibit #5 (p. 731, l. 25 – p. 732, l. 4). The Charger eventually pulled out of the chase, but the individuals in the Focus and the CRV continued shooting at the 300. Exhibit #5 (p. 733, l. 8 – p. 734, l. 7).

Andrew Smalls, Corey Watkins, Donald Jackson, and Jawan Nicks were inside of the Chrysler 300. Exhibit #3 (p. 267, ll. 15-19). Smalls, the driver, testified that he eventually "lost them" after he got onto Ashley Phosphate Road. Exhibit #4 (p. 406, l. 23 – p. 407, l. 2). The final gun shots

were fired when their car was on Cross County Road. Exhibit #7 (p. 1591, ll. 8-9). This incident formed the basis of Robinson's convictions for assault and battery of the first degree.

After Simmons turned his car onto Cross County Road, he lost sight of the 300. Exhibit #5 (p. 736, ll. 6-18); Exhibit #6 (p. 904, ll. 6-7). He then thought he spotted the 300, so he kept speeding and turned onto Ashley Phosphate Road. Exhibit #5 (p. 737, l. 13 – p. 738, l. 20). Near the intersection of Ashley Phosphate Road and I-26, Simmons pulled up next to a Chrysler 300, the same 300 that he thought he had previously chased. Exhibit #5 (p. 738, ll. 21-25). This was not the same Chrysler 300, but another similar 300 driven by Ms. Kedena Brown. Exhibit #3 (p. 266 l. 17 – p. 267 l. 7); Exhibit #5 (p. 738, ll. 18-20). Simmons then grabbed his gun from Robinson. Exhibit #5 (p. 739, l. 1 – p. 740, l. 20). Robinson and Anderson told him that he was shooting at the wrong car. Exhibit #5 (p. 827, ll. 15-25); Exhibit #6 (p. 907, ll. 1-9). Simmons pushed Robinson out of the way and shot through the window anyway. Exhibit #5 (p. 739, l. 21 – p. 740, l. 16); Exhibit #6 (p. 975, l. 13 – p. 976, l. 13). Simmons testified this was an instance of “mistaken identity” and that he “sh[ot] the wrong car.” Exhibit #5 (p. 739, l. 19 – p. 740, l. 20).

Brown was hit twice and fatally injured; her Chrysler 300 eventually collided with a wall between a nearby Exxon gas station and a Denny's restaurant. Exhibit #3 (p. 267, ll. 4-7). She died at the hospital later that morning, and her homicide forms the basis of Robinson's murder conviction.

C. After-Discovered Evidence

On November 6, 2018, Richard Simmons pled guilty to murder and four counts of attempted murder. Exhibit #12 (p. 2, ll. 10-15). He was subsequently sentenced to 30 years in prison. Exhibit #12 (p. 2, ll. 21-24; p. 8, ll. 9-13). Two days later, Keon Anderson, accepted an Alford plea to voluntary manslaughter and assault and battery in the first degree. Exhibit #13 (p. 2, l. 5 – p. 3, l. 7;

p. 14, ll. 11-15). He was sentenced to 15 years in prison. Exhibit #13 (p. 14, ll. 11-15). The State was represented at all relevant proceedings in all three cases by Assistant Solicitor Kidd.

III. Argument

Pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure, “[a] motion for [resentencing] based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence . . . [and] may not be made while the case is on appeal unless the appellate court, upon motion, has suspended the appeal and granted leave to make the motion. . . .” See State v. South, 310 S.C. 504, 508-509, 427 S.E.2d 666, 669–70 (1993) (applying the elements for a motion for a new trial based on after-discovered evidence to a resentencing proceeding). Additionally, to prevail on a resentencing motion, the defendant must show the after-discovered evidence: (1) is such that it would probably change the result if a new sentencing hearing were granted; (2) has been discovered since the sentencing; (3) could not in the exercise of due diligence have been discovered prior to the sentencing; (4) is material to the sentencing; and (5) is not merely cumulative or impeaching. See State v. Spann, 334 S.C. 618, 619-620, 513 S.E.2d 98, 99 (1999) (citation omitted); South, 310 S.C. at 508, 427 S.E.2d at 669–70.

A. Would Probably Change the Result of Robinson’s Sentencing

Here, the after-discovered evidence involves the sentences of Richard Simmons and Keon Anderson, who were similarly convicted for offenses related to the same incident. Both were sentenced after Robinson. Simmons, who was nineteen years of age and thus legally an adult at the time of the incident, was the trigger-man but was only sentenced to 30 years in prison, compared to Robinson’s 50-year sentence. Exhibit #12 (p. 2, ll. 21-24; p. 8, ll. 9-13); Exhibit #5 (p. 806, ll. 5-11);

Exhibit #9 (p. 328, ll. 2-3) Anderson, a non-shooter like Robinson, was sentenced to 15 years. Exhibit #13 (p. 14, ll. 11-15). This after-discovered evidence would (and should) change the result of Robinson's sentencing because the sentences imposed on his codefendants are significantly shorter.

This evidence is particularly probative, given that Simmons was the individual behind the wheel that pursued and shot at the Chrysler 300, even after Robinson (and Anderson) told him it was the wrong car. Exhibit #5 (p. 827, ll. 15-25); Exhibit #6 (p. 907, ll. 1-9). He even pushed Robinson out of the way to do so. Exhibit #5 (p. 739, l. 19 – p. 740, l. 16); Exhibit #6 (p. 975, l. 13 – p. 976, l. 13). Yet Simmons, who was legally an adult at the time of the offense, received a sentence twenty years lighter than Robinson's despite his admitted greater culpability in Kendra Brown's homicide. Exhibit #5 (p. 739, l. 19 – p. 740, l. 16); Exhibit #6 (p. 975, l. 13 – p. 976, l. 13). In contrast, Robinson was a fifteen-year old juvenile with diminished culpability charged and convicted under a "Hand of One, Hand of All" theory. Exhibit #10 (p. 3). Anderson, who similarly warned Simmons not to shoot at the car, was sentenced to 35 years less than Robinson, although he was also legally an adult at time. Exhibit #6 (p. 960 ll. 7-8). The result of Robinson's sentencing would probably be different, considering that a codefendant with a similar role to Robinson's role in the incident and the codefendant responsible for the shooting received much shorter sentences than Robinson. Accordingly, the disparate sentences indicate that Robinson's sentence is disproportionate to his role in the offense, and that he was "taxed" for rebuffing the State's plea and appeal waiver offers and electing to go to trial and appeal to this court.

Indeed, the trial court never had the opportunity to consider Robinson's codefendants' sentences at his sentencing. See State v. Brewington, 276 S.C. 97, 103, 226 S.E.2d 249, 251 (1976) ("The sentence imposed upon a codefendant for the same offense and upon others for similar offenses are among a wide variety of factors which may be properly considered in determining a proper

punishment.”). If the court had been presented with evidence that the shooter in the incident and a fellow non-shooter received sentences shorter than 50 years, it probably would have taken those sentences into account in its determination of Robinson’s sentence. Preventing Robinson from presenting this evidence in sentencing thus deprives him of the opportunity to present evidence of a salient factor in the sentencing determination. See State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) (“A judge . . . must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.”).

Further, Robinson’s current sentence implicates his right to a jury trial under the Sixth Amendment to the U.S. Constitution and Article 1, Section 14 of the South Carolina Constitution and his right to due process under the Fourteenth Amendment to the U.S. Constitution and Article I, Section 3 of the South Carolina Constitution. See U.S. Const. amend. VI; U.S. Const. amend. XIV § 1; S.C. Const. art. I, § 14; S.C. Const. art. I, § 3. Before trial, the State offered Robinson a plea for a 23-year sentence in exchange for a voluntary manslaughter conviction, but Robinson chose to exercise his constitutional right to a jury trial. Exhibit #10 (p. 8). Following his conviction, the State offered him a 30-year sentence, an offer seven years longer than its original offer. Exhibit #10 (p. 8). The offer was contingent on Robinson waiving his right to appeal his conviction. Exhibit #10 (p. 8). After he declined and instead exercised his right to appeal, the State then recommended a 50-year sentence for Robinson, a sentence more than double its first offer and 20 years longer than its second. Exhibit #9 (p. 328, ll. 2-3). Only after Robinson exercised his right to a jury trial and his right to appeal did the State seek enhanced sentencing recommendations. Because the State continuously increased the length of its sentencing recommendations after Robinson declined its offers, the State’s behavior indicates that it was punishing Robinson for exercising his constitutional rights. The State’s

recommendation of a 50-year sentence only after Robinson did not accept its request to waive his constitutional right to appeal directly demonstrates its retaliation. This is particularly apparent, as the State thought 30 years was a sufficient sentence for Simmons, who was not a juvenile, had a prior record, and fired the fatal shots after being expressly told by Robinson (and Anderson) that it was the wrong car. Exhibit #12 (p. 2, ll. 21-24; p. 8, ll. 9-13). By punishing Robinson for exercising his statutory and constitutional rights to a jury trial and to appeal, the State therefore also violated his due process rights under the Fourteenth Amendment to the U.S. Constitution and Article I, Section 3 of the South Carolina Constitution. U.S. Const. amend. XIV § 1; S.C. Const. art. I, § 3; see United States v. Goodwin, 457 U.S. 368, 372 (1982); State v. Fletcher, 322 S.C. 256, 260-261, 471 S.E.2d 702, 704 (1996).

The trial court similarly created due process concerns when it imposed a 50-year sentence on Robinson, which was based on the State's escalating sentencing recommendations for Robinson. A trial court should not base its sentencing determinations upon vindictiveness, as doing so violates due process. See Alabama v. Smith, 490 U.S. 794, 799 (1989). A presumption of vindictiveness arises when "there is a reasonable likelihood . . . that the increase of sentence is the product of actual vindictiveness on the part of the sentencing authority." Id. at 799; State v. Higgenbottom, 344 S.C. 11, 14-15, 542 S.E.2d 718, 720-21 (2001). A presumption of vindictiveness arises here because the State's increased sentencing recommendations and the trial court's imposition of them indicate that Robinson's 50-year sentence was a product of the trial court's actual vindictiveness. The after-discovered evidence of his codefendants' sentences demonstrate actual vindictiveness because of the vast discrepancy between their sentences and Robinson's. Cf. United States v. Mazzaferro, 865 F.2d 450, 458 (1st Cir. 1989) (explaining that the trial court acted unconstitutionally, in part, because it imposed a sentence on the defendant that was twice as long as that of his codefendant, even though

the defendant played a more minor role in the crime). Moreover, in imposing this 50-year sentence on Robinson, the court merely explained that “[he] made a choice to get in the car” without providing further justification. Exhibit #9 (p. 356, ll. 23-24; p. 358, ll. 11-13). This minimal explanation indicates that the court may have impermissibly considered Robinson’s decision to exercise his right to a jury trial and to an appeal when making its sentencing decision and sentenced him in retaliation to his exercise of these rights. See Mazzaferro, 865 F.2d at 458 (finding that because of the trial court’s silence when sentencing the defendant, it “[could not] rule out the possibility that the sentence was imposed in retaliation” to the defendant exercising his right to a jury trial); cf. Izaguirre v. Lee, 856 F.Supp.2d 551, 556 (E.D.N.Y. 2012) (finding that the court’s “extremely brief reference to the young age of the victim” as the explanation for the defendant’s sentence was not enough to overcome a presumption of vindictiveness). Therefore, the after-discovered evidence would probably change the result of Robinson’s sentencing and allow him to challenge the violation of his rights to a jury trial and due process.

B. Discovered Since Robinson’s Sentencing

The after-discovered evidence of Simmons’ and Anderson’s sentences was not discovered until after Robinson’s sentencing concluded. Robinson’s sentencing hearing ended on June 7, 2018. Exhibit #9 (p. 358, ll. 11-13). However, Simmons was not sentenced until November 6, 2018, and Anderson was not sentenced until November 8, 2018. Exhibit #12 (p. 1); Exhibit #13 (p. 1). Therefore, the after-discovered evidence was not available to Robinson at the time of his sentencing because his codefendants’ sentences were imposed five months after his own sentencing.

C. Could Not in the Exercise of Due Diligence Have Been Discovered Prior to Sentencing

Further, the after-discovered evidence could not, in the exercise of due diligence, have been discovered prior to Robinson’s sentencing because Simmons’ and Anderson’s sentences were not yet

imposed. No due diligence from Robinson's defense counsel would have lead to the discovery of this evidence since it was unknown at the time of Robinson's sentencing.

D. Material to Robinson's Case

The evidence is material to Robinson's case, as it directly relates to whether the sentence that the trial court imposed on him was appropriate, in light of his age and role in the crime, or rather, the product of retaliation for Robinson's choice to exercise his rights to a jury trial and to appeal. Robinson, who was fifteen years old when the incident occurred, was a non-shooter, but he received a 50-year sentence. Exhibit #9 (p. 358, ll. 11-13); Exhibit #10 (p. 3). But Simmons, the adult shooter, received 30 years after accepting a plea bargain, while Anderson, a fellow non-shooter, only received 15 years after similarly accepting an Alford plea. Exhibit #12 (p. 8, ll. 9-13); Exhibit #13 (p. 14, ll. 11-15). Accordingly, this after-discovered evidence is highly probative to whether Robinson's sentence was appropriate and whether his constitutional rights were violated.

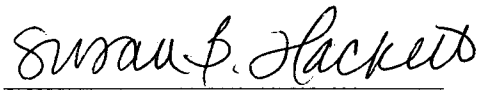
E. Not Merely Cumulative or Impeaching Evidence

The after-discovered evidence is not cumulative to any evidence that the State or Robinson offered at his sentencing because no evidence of his codefendants' sentences was presented, due to its unavailability. Further, the purpose of the after-discovered evidence is not to impeach the State's witnesses, but instead, to challenge the sentence that Robinson received in comparison to Simmons and Anderson as violative of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution.

IV. Conclusion

WHEREFORE, counsel for Appellant Kenneth Robinson respectfully requests that this Court hold his appeal in abeyance and remand this case to the Charleston County Court of General Sessions for a hearing on a motion for resentencing based on this after-discovered evidence.

Respectfully submitted,



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ATTORNEYS FOR APPELLANT

February 19, 2019

Exhibit #1

ECK/0320649
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-014727

ARREST WARRANT NUMBER

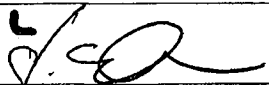
2016A1010203761

DATE OF ARREST

08/16/2016

ACTION OF GRAND JURY

TRUE BILL


Foreperson of Grand Jury

JUL 12 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-10-04878

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JULY TERM 2017

THE STATE

VS.

KENNETH LAMONT ROBINSON,
JR.

B/M DOB: 05-14-1999

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR Code: 3410

FILED

7/24/2017 4:39:01 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened July 2017, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about May 10, 2015, the Defendant, Kenneth Lamont Robinson Jr., while acting in concert with others did, with intent to kill and malice aforethought, attempt to kill Corey Jermaine Z'ion Watkins. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CULVER KIDD

ASSISTANT SOLICITOR

ECK/0320649
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-014727

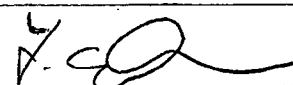
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2016A1010203763

DATE OF ARREST

08/16/2016

ACTION OF GRAND JURY

TRUE BILL


Foreperson of Grand Jury JUL 12 2017 Date:

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2017-GS-10-04879

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
JULY TERM 2017

THE STATE

VS.

KENNETH LAMONT ROBINSON,
JR.
B/M DOB: 05-14-1999

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029
CDR Code: 3410

FILED

7/24/2017 4:39:01 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened July 2017, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about May 10, 2015, the Defendant, Kenneth Lamont Robinson Jr., while acting in concert with others did, with intent to kill and malice aforethought, attempt to kill Donald Lamont Jackson Jr. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CULVER KIDD
ASSISTANT SOLICITOR

ECK/0320649
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-014727

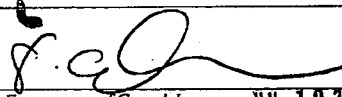
ARREST WARRANT NUMBER
2016A1010203764

DATE OF ARREST

08/16/2016

ACTION OF GRAND JURY

TRUE BILL


Foreperson of Grand Jury JUL 12 2016 Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-10-04880

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
JULY TERM 2017

THE STATE

VS.

KENNETH LAMONT ROBINSON,
JR.
B/M DOB: 05-14-1999

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029
CDR Code: 3410

FILED

7/24/2017 4:39:01 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened July 2017, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about May 10, 2015, the Defendant, Kenneth Lamont Robinson Jr., while acting in concert with others did, with intent to kill and malice aforethought, attempt to kill Jawan Tyrese Nicks. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CULVER KIDD
ASSISTANT SOLICITOR

ECK/0320649
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-014727

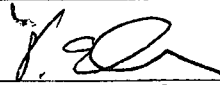
ARREST WARRANT NUMBER
2016A1010203765

DATE OF ARREST

08/16/2016

ACTION OF GRAND JURY

TRUE BILL


Foreperson of Grand Jury JUL 12 2017 Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-10-04881

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
JULY TERM 2017

THE STATE

VS.

KENNETH LAMONT ROBINSON,
JR.
B/M DOB: 05-14-1999

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029
CDR Code: 3410

FILED

7/24/2017 4:39:01 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

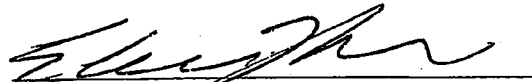
INDICTMENT

At a Court of General Sessions, convened July 2017, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about May 10, 2015, the Defendant, Kenneth Lamont Robinson Jr., while acting in concert with others did, with intent to kill and malice aforethought, attempt to kill Andrew Xavier Smalls. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CULVER KIDD
ASSISTANT SOLICITOR

ECK/0320649
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-014727

ARREST WARRANT NUMBER
2016A1010203767

DATE OF ARREST

08/16/2016

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

JUL 12 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-10-04882

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
JULY TERM 2017

THE STATE

VS.

KENNETH LAMONT ROBINSON,
JR.
B/M DOB: 05-14-1999

Indictment for

MURDER

SC Code: § 16-03-0010
CDR Code: 0116

FILED

7/24/2017 4:39:02 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

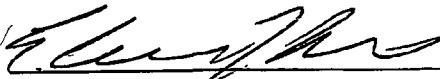
INDICTMENT

At a Court of General Sessions, convened July 2017, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County, South Carolina on or about May 10, 2015, the defendant, Kenneth Lamont Robinson Jr., feloniously, willfully, with malice aforethought, and while acting in concert with others did kill and murder Kedena Petetra Brown by means of shooting her with a handgun, and Kedena Petetra Brown did die in Charleston County as a proximate result thereof on or about May 10, 2015; in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



CULVER KIDD
ASSISTANT SOLICITOR

Exhibit #2

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE OF SOUTH)
CAROLINA)

5) TRANSCRIPT OF RECORD

6 -vs-) 2017-GS-10-04878

7) 2017-GS-10-04879

8 KENNETH LAMONT) 2017-GS-10-04880

9 ROBINSON, JR.,) 2017-GS-10-04881

10) 2017-GS-10-04882

11 DEFENDANT.)

12) FEBRUARY 12, 2018

13) CHARLESTON; SOUTH CAROLINA

14 (VOLUME I)

15 B E F O R E:

16 THE HONORABLE KRISTI HARRINGTON, JUDGE. ; And a Jury.

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

18 D. BRUCE DURANT, CHIEF DEPUTY SOLICITOR
19 ATTORNEY FOR THE STATE

20 E. CULVER KIDD, IV, ASSISTANT SOLICITOR
21 ATTORNEY FOR THE STATE

22 MEGAN EHRLICH, ASSISTANT PUBLIC DEFENDER
23 ATTORNEY FOR THE DEFENDANT

24 MICHAEL R. LOIGNON, ASSISTANT PUBLIC DEFENDER
25 ATTORNEY FOR THE DEFENDANT

TAMARA J. COPPINGER, ATTORNEY AT LAW
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

Exhibit #3

1 THE COURT: Yes, sir.

2 MR. KIDD: Ms. Ehrlich.

3 Good morning, ladies and gentlemen.

4 You are about to be exposed to a side of
5 Charleston that I hope you didn't know existed. Over the
6 course of this week you are going to get a glimpse into an
7 ongoing gang war in North Charleston between two gangs, the
8 Young Gunnas and the Loud Pack. And just like all wars,
9 there is collateral damage. There is cars, homes riddled
10 with bullets. There is good people who are afraid to walk
11 outside their homes. Their neighborhood is permeated with
12 fear, but in this war we also have a civilian casualty. We
13 have Kedena Brown. She's more than just a statistic. She's
14 a thirty-six year old -- thirty-six years young mother of
15 three. Completely innocent. Nothing to do with what's
16 going on.

17 The story that's like a Shakespearian tragedy,
18 whether it's fate, simple bad luck, or coincidence, that put
19 her in a Chrysler 300 driving home early in the morning on
20 May the 10th of 2015.

21 It just so happened to be at the same time, four
22 other people in a eerily similar Chrysler 300, outrunning an
23 ongoing gun battle down Dorchester Road, down Cross County
24 Road to Ashley Phosphate. The other Chrysler 300 that
25 looked just like Ms. Brown's gets away. In a car full of

1 three Young Gunnas - Richard Simmons, Kenneth Robinson, and
2 Keon Anderson - come across Ms. Brown's car stopped at a red
3 light on Ashley Phosphate and Northwoods Boulevard. They
4 pull up beside it and they open fire. They strike Kedena
5 Brown once in the head and once in the neck killing her. On
6 that fateful night a case of mistaken identity that Kedena
7 Brown lost her life.

8 Now, maybe we look to our religion and we ask why.
9 You know, why on Mother's Day no less, that a spark like
10 Kedena Brown has to be extinguished, but in this room
11 between these walls we don't get to ask that question. In
12 this room we get to look in the face of those responsible -
13 Kenneth Robinson - and we get to hold them accountable.
14 That's what we do here.

15 Now, this defendant is charged with one count of
16 murder for the death of Kedena Brown and four counts of
17 attempted murder for the shooting at the other Chrysler 300
18 that was occupied by four individuals - Andrew Smalls, Jawan
19 Nicks, Corey Watkins, and Donald Jackson.

20 Now, as I rattle through these names you are going
21 to be hit with a lot of information over this week. You are
22 going to get a lot of names, and we are going to do our best
23 to keep it organized and present it to you in a way that you
24 can track it, but it's going to be difficult, so I beg you
25 to pay attention as best you can, because there is a lot of

1 information. Sometimes it's easy for us who have lived with
2 this case for a few years, but for y'all you are going to be
3 digesting a lot of information very quickly, but he's
4 charged with one count of murder and four counts of
5 attempted murder; attempted murder for shooting at the four
6 people in the other Chrysler 300 and the murder for Kedena
7 Brown for the mistaken identity Chrysler 300.

8 Now, you are going to hear from a lot of witnesses
9 in this case with various degrees of responsibility, but
10 most importantly you are going to hear from the other two
11 people that were in the car with Kenneth Robinson. You are
12 going to hear from Richard Simmons. You are going to hear
13 from Keon Anderson in that car.

14 And I want to be perfectly clear about something
15 else is that it was not a bullet from Kenneth Robinson's gun
16 that killed Kedena Brown. It was not, but we have to
17 understand the law in South Carolina, the law of accomplice
18 liability, the hand of one is the hand of all. And when you
19 engage in a running gun battle through major thoroughfares
20 in Charleston, South Carolina - Dorchester Road, Ashley
21 Phosphate - in excess of a hundred miles an hour, shooting
22 the whole way, you are responsible for every single bullet
23 that comes out of that car, whether it's yours or your
24 co-defendants.

25 Now, don't get me wrong. Kenneth Robinson was

1 shooting. Now, it was not his bullet that killed Kedena
2 Brown, but every single person in that car is guilty of
3 murder and attempted murder. They own every bullet.

4 And this is Kenneth Robinson's day in court. This
5 isn't everyone else's day in court involved in this case.
6 This is Kenneth Robinson's day.

7 Richard Simmons is going to have his day. He pled
8 guilty as charged and he will be sentenced at the right
9 time.

10 Everyone else will either plead guilty or they
11 will sit where he is in front of twelve other unbiased
12 jurors and they will have their day in court as well, but
13 this is Kenneth Robinson's day. This is about him today,
14 this week.

15 And what I ask of you, ladies and gentlemen, is to
16 see him for who he is. Hold him accountable for what he's
17 done. Hold him accountable for the choices that he has
18 made. And to do so requires that you look at the facts.
19 You look at the evidence. You follow the law of South
20 Carolina as charged. And when you do so, when you see the
21 evidence that we present, there will be only one true
22 verdict, and that will be to find Kenneth Robinson guilty of
23 murder and four counts of attempted murder. Thank you.

24 THE COURT: Ms. Ehrlich.

25 MS. EHRLICH: On May 10th of 2015, shortly after

Exhibit

#4

1 microphone spell your first and last name.

2 THE WITNESS: Andrew Smalls.

3 DIRECT EXAMINATION BY MR. DURANT:

4 Q. Good afternoon Mr. Smalls.

5 Could you tell our jury how old you are, sir?

6 A. Twenty-five.

7 Q. And how far did you go in school?

8 A. Eleventh.

9 Q. And when you were in school where did you go to school?

10 A. North Charleston and Greer Annapolis.

11 Q. And you dropped out in the eleventh grade, is that
12 correct?

13 A. No, I got locked up on a charge before graduation.

14 Q. Okay. So you never did go back to finish?

15 A. No.

16 Q. Did you ever get a GED or anything like that?

17 A. No.

18 Q. Okay. Are you married?

19 A. No.

20 Q. Do you have any children?

21 A. Yes, I have a four-year old son.

22 Q. Okay. And I believe you told us his name was Prince
23 Harrison, is that correct?

24 A. Yes, sir.

25 Q. Where are you -- and I know that you -- obviously you

1 are locked up now, but where were you employed before you
2 were locked up?

3 A. Staff Zone.

4 Q. And what is Staff Zone?

5 A. A staffing company that helps you get what -- certain
6 assistance. I was doing demolition work.

7 Q. And what kind of demolition were you doing?

8 A. Inside.

9 Q. Like, you know, in construction demolition?

10 A. Yes.

11 Q. Is that what you are talking about? You had to go in
12 like and tear out drywall and stuff --

13 A. Yes.

14 Q. -- like that?

15 A. Yeah.

16 Q. That's kind of what you do?

17 A. Yes, sir.

18 Q. Okay. Where were you born?

19 A. Charleston, South Carolina.

20 Q. Were you born in Charleston, or North Charleston?

21 A. North Charleston.

22 Q. And were you raised in North Charleston too?

23 A. Yes, sir.

24 Q. Did you ever live in Waylyn?

25 A. Yes, sir..

1 Q. And Waylyn is a subdivision off of Dorchester Road, is
2 that correct?

3 A. Yes, sir.

4 Q. It's called The Five now?

5 A. Yes, sir.

6 Q. And across the street is called The Four, right?

7 A. Yes, sir.

8 Q. How long had you lived in Waylyn?

9 A. Until I was like sixteen, seventeen.

10 Q. Okay. So you were in high school then?

11 A. Yes, sir.

12 Q. And where did you live when you were sixteen or
13 seventeen?

14 A. Downtown.

15 Q. And why did you move downtown?

16 A. When I got out of jail from my charge that I got locked
17 up on I just moved.

18 Q. Okay. And did your momma's family live down that way,
19 or --

20 A. Yes, sir.

21 Q. Okay. Where did your momma's family live?

22 A. On Hanover Street.

23 Q. Okay. And that's where you lived after you moved out
24 of The Waylyn?

25 A. Yes, sir.

1 Q. And you recently got locked up maybe a week to two
2 weeks ago, is that right --

3 A. Yes.

4 Q. -- for habitual traffic offender and possession of a
5 stolen car, is that correct?

6 A. Yes, sir.

7 Q. And you have been in jail ever since you got locked up?

8 A. Yes, sir.

9 Q. And obviously that wasn't your prior involvement with
10 the law, is that correct?

11 A. Yes, sir.

12 Q. You -- I believe you had a 2014 conviction for unlawful
13 carrying of pistol and some sort of drug charge, is that
14 correct?

15 A. Yes, sir.

16 Q. And then a 2016 conviction for an unlawful carrying of
17 a pistol?

18 A. Yes, sir.

19 Q. Correct?

20 A. Yes.

21 Q. And then you have the pending charges right now, is
22 that correct?

23 A. Yes, sir.

24 Q. And have you been promised anything for your testimony
25 here today? /

1 A. No, sir.

2 Q. In fact, you were told we don't even want to talk to
3 you about what you are charged with, didn't we?

4 A. Yes, sir.

5 Q. Now, I want to ask you who some people are.

6 Who is Donald Jackson, Jr.?

7 A. My cousin.

8 Q. And when you say cousin, he is your uncle's son, aunt's
9 son?

10 A. My aunt's son.

11 Q. Okay. And do you know what people call him?

12 A. Yes, sir.

13 Q. And what is that?

14 A. "Little 5".

15 Q. Okay. He also goes -- some people also call him "DJ"
16 too, right?

17 A. Yes, sir.

18 Q. "DJ" and "Little 5", those are kind of his two street
19 names?

20 A. Yes, sir.

21 Q. And who is Corey Watkins?

22 A. My nephew.

23 Q. And what is that -- describe that relationship to me.

24 He is --

25 A. That's my older sister's son.

1 Q. Okay. And do you know -- does Corey Watkins go by any
2 kind of nickname, or does he just go by Corey?

3 A. He just go by Corey.

4 Q. Have you ever heard anybody call him "CJ"?

5 A. Close friends.

6 Q. Okay. But you don't call him that because he's family
7 to you, right?

8 A. Yes, sir.

9 Q. All right. Did you know a fellow named Jawan Nicks,
10 who goes by "Bright Eyes"?

11 A. Yes, sir.

12 Q. How do you know him?

13 A. Throughout the neighborhood.

14 Q. Okay. When you say throughout the neighborhood, what
15 neighborhood are you talking about?

16 A. The Waylyn.

17 Q. And since you moved out of The Waylyn when you were
18 sixteen, seventeen, do you ever go back there to hang out
19 still?

20 A. No.

21 Q. And are you related to "Bright Eyes", or Jawan Nicks?

22 A. No.

23 Q. So there is no family relationship there?

24 A. No.

25 Q. Are these guys the same age as you, or younger than

1 you, or --

2 A. Younger. Way younger than me.

3 Q. Okay. You are twenty-one and they were all like in
4 their teens -- or you are twenty-three now, and they are --

5 A. Twenty-five.

6 Q. Twenty-five.

7 And they were all like in their teens back in May of
8 2010 (sic) when the shooting went off, is that correct?

9 A. Yes, sir.

10 Q. So let's talk about May 10th of 2015, the day that your
11 car, the car you were driving, got shot at. You remember
12 that, don't you?

13 A. Yes, sir.

14 Q. Do you recall what you had been doing earlier that
15 evening?

16 A. I was on a date.

17 Q. Okay. And do you know where you had been on your date?

18 A. At a restaurant.

19 Q. And where was that restaurant?

20 A. Somewhere up Rivers. I can't remember the specific
21 place.

22 Q. And were you living downtown then?

23 A. Yes, sir.

24 Q. And was your date, was she a downtown girl too?

25 A. Yes, sir.

1 Q. Okay. And so after your date did you take her home?

2 A. Yes, sir.

3 Q. And where did she live downtown?

4 A. Harris Street.

5 Q. Okay. And when you were taking her back home downtown,
6 did you get a call from anybody?

7 A. Yes, from my nephew.

8 Q. And that would be Corey?

9 A. Yes, sir.

10 Q. Corey Watkins.

11 And what did Corey want?

12 A. A ride home.

13 Q. And when he says he wants a ride home, where does he
14 want a ride to?

15 A. On Easton Street. That's in Accabee.

16 Q. In the Accabee area?

17 A. Yes, sir.

18 Q. And that's kind of between The Five, or Waylyn, and
19 downtown, kind of in the middle of somewhere?

20 A. Sort of.

21 Q. Okay. Where was he when he called you?

22 A. On the corner of Lawrence and Ranger.

23 Q. And where is the corner of Lawrence and Ranger, I mean
24 what neighborhood?

25 A. The Waylyn.

- 1 Q. So it's in The Waylyn?
- 2 A. Yeah.
- 3 Q. Okay. Did you agree to give him a ride?
- 4 A. Yes, sir.
- 5 Q. And where were you going to pick him up at?
- 6 A. Right there on the corner of Lawrence and Ranger.
- 7 Q. Okay. You didn't -- he didn't live at that area, did
- 8 he?
- 9 A. No.
- 10 Q. And he didn't live in The Waylyn, did he?
- 11 A. No.
- 12 Q. Do you know why he was hanging out in The Five?
- 13 A. No.
- 14 Q. Did you know at the time that he was with anyone?
- 15 A. No.
- 16 Q. So what did you do after you dropped off your
- 17 girlfriend? I think you said ex-girlfriend?
- 18 A. Yeah. My ex, yeah.
- 19 Q. And you dropped off your ex-girlfriend downtown and
- 20 what did you do?
- 21 A. I head up the road to pick my nephew up.
- 22 Q. Okay. And what did you do when you got to the
- 23 intersection of Lawrence and Ranger in The Waylyn?
- 24 A. My nephew jumped in, "DJ".
- 25 Q. How did you know -- how do he know that you were there?

1 A. He called -- well, I called his phone --

2 Q. Okay.

3 A. -- and tell him I was outside.

4 Q. Okay. You called his phone?

5 A. (Shaking head no).

6 Q. And told him you were where?

7 A. Outside.

8 Q. Okay. And did he come?

9 A. Yeah.

10 Q. And who was with him when he came to your car?

11 A. "DJ" and "Bright Eyes".

12 Q. Okay. And where did they come from? Were they just
13 waiting on the corner when you got there, or did they come
14 from some house?

15 A. They came from a house. I can't really tell you which
16 house.

17 Q. Okay. What were you driving that night?

18 A. A Chrysler 300.

19 Q. Okay. And who does that car belong to?

20 A. It belonged to my girlfriend.

21 Q. And just to make sure we are talking about the same
22 car, I would like you to look at these photographs.

23 If you would, this is 15, 16, 17, 18, and 19.

24 A. That's it.

25 Q. That's the car that you were driving that night,

1 correct?

2 A. Yes, sir.

3 Q. Okay. When they all came out to your car -- and you
4 were driving, of course, who got in front seat with you?

5 A. My nephew.

6 Q. And that would be Corey Watkins?

7 A. Yes, sir.

8 Q. Okay. And who got in the seat behind you?

9 A. "DJ".

10 Q. That's Donald Jackson, or "Little 5", right?

11 A. Yeah.

12 Q. And your cousin, correct?

13 A. Yeah.

14 Q. And then seat behind Corey was I'm assuming Jawan or
15 "Bright Eyes"?

16 A. Yeah.

17 Q. Now, I know where you were going to take Corey, because
18 he wanted to go home. Where was Donald Jackson going?

19 A. He was going with Corey.

20 Q. Okay. So he was going to go home with Corey?

21 A. Yeah.

22 Q. How about "Bright Eyes" or Jawan Nicks, where was
23 going?

24 A. He lives around the corner from where I picked them up
25 from.

1 Q. Okay. So he lived in The Waylyn?

2 A. Yeah.

3 Q. And you were going to drop him off where?

4 A. To his home.

5 Q. And do you recall which street that he lived on in The
6 Waylyn?

7 A. Gary.

8 Q. Was it Gary Drive?

9 A. Yeah.

10 Q. And Gary -- and you know The Waylyn, because you grew
11 up there, and Gary Drive goes and kind of splits and goes in
12 a circle?

13 A. Yeah.

14 Q. You were going to drop him off in the circle part,
15 correct?

16 A. Right.

17 Q. Okay. So from -- to get "Bright Eyes" to his home from
18 where you were at Lawrence and Ranger, which way did you go?

19 A. I made a U-turn going back up towards Lawrence, towards
20 the front.

21 Q. You were on Lawrence pointed toward Ranger and you made
22 a U and started going back down Lawrence, correct?

23 A. Yes.

24 Q. And Lawrence intersects with what?

25 A. Gary.

1 Q. And when you got to Gary, which way did you turn?

2 A. I made a right.

3 Q. And when you make that right --

4 A. Made another right.

5 Q. Pardon me?

6 A. Made another right.

7 Q. Okay. And when you made that other right, you are
8 talking about that's where Gary splits and goes into that
9 circle, right?

10 A. Yes, sir.

11 Q. If you would, tell us what happened when you came down
12 Lawrence and made that right onto Gary Drive.

13 A. Well, I made the right -- right before "Bright Eyes"
14 could get out the car I heard gunshots.

15 Q. Okay. Was anybody behind you?

16 A. A headlight, but, you know --

17 Q. Okay. Was anybody following you on Gary Drive?

18 A. No.

19 Q. Okay. So how come you didn't drop "Bright Eyes" off?

20 A. Like I said, right before he got out the car, that's
21 when the headlights shoot out, boom.

22 Q. And what do you mean, came up behind you?

23 A. Yeah.

24 Q. Okay. Well, just tell us what happened. We are just
25 trying to figure out what happened here. You were there.

1 We weren't, okay?

2 So you turn right on Gary?

3 A. (Shaking head yes).

4 Q. And you turned right at the fork on Gary and you were
5 going to drop "Bright Eyes" off?

6 A. Yeah.

7 Q. So tell me what happened.

8 A. Like I said, right before he got out the car the
9 gunshots happened. I took off.

10 Q. And the gunshots came from where?

11 A. From behind.

12 Q. Okay. And what was behind you in your rearview mirror?

13 A. A headlight.

14 Q. Okay. And when you were getting to where you were
15 going to drop "Bright Eyes" off, was there any cars coming
16 from the other direction on Gary Circle?

17 A. Another headlight.

18 Q. Okay. So you had a car behind you and a car coming
19 around the other way, correct?

20 A. Yes, sir.

21 Q. And what did you do?

22 A. I did -- well, what I supposed to do? I drove off.

23 Q. Okay.

24 A. I speed off.

25 Q. You didn't stop where "Bright Eyes" --

1 A. No.

2 Q. Okay. Where did you turn to get off Gary?

3 A. I made a right on Rusty. I made a left on Ranger
4 heading back out The Waylyn.

5 Q. Okay. Now, when you make that right on Rusty and
6 heading to Ranger were people continuing to shoot at you?

7 A. Yes, sir.

8 Q. And they were shooting at who?

9 A. At my car.

10 Q. Okay. And no question about that?

11 A. (Shaking head no).

12 Q. And you have to say no or yes, because he's got to take
13 down what you say.

14 So there is no question that somebody was shooting at
15 your car?

16 A. Yeah, no question.

17 Q. And you, of course, I would assume, were kind of upset
18 about that?

19 A. Yeah.

20 Q. And kind of scared I would imagine?

21 A. Yeah.

22 Q. So what did you do?

23 A. I kept on driving. I made the right on Dorchester Road
24 and did the dash.

25 Q. Okay. And before we get much further on --

1 MR. DURANT: Your Honor, at this time we would
2 offer State's Exhibit No. 147, I believe without objection.

3 THE COURT: Is that correct, Ms. Ehrlich?

4 MS. EHRLICH: No objection.

5 THE COURT: State's 147 into evidence without
6 objection.

7 (Whereupon, State's Exhibit No. 147 was entered
8 into the record as evidence)

9 BY MR. DURANT:

10 Q. Can you see that okay, Mr. Smalls?

11 A. Uh-huh.

12 Q. Okay.

13 THE COURT: Is that a yes?

14 A. Yes, sir.

15 THE COURT: Thank you.

16 BY MR. DURANT:

17 Q. I'm just going to ask you a few questions here.

18 Do you recognize what this neighborhood is?

19 A. That's The Waylyn.

20 Q. Okay. And this road down at the bottom going all the
21 way across, what road is that?

22 A. Dorchester Road.

23 Q. And so The Waylyn is on the north side of Dorchester
24 Road right by Interstate 26, is that correct?

25 A. Yes, sir.

1 Q. Okay. And when you say you picked these guys up at
2 Lawrence and Ranger, we are talking about this intersection
3 right here?

4 A. Yes, sir.

5 Q. Okay. And you said that you were parked on Lawrence
6 facing I guess towards I-26, is that correct?

7 A. Yes, sir.

8 Q. When they got in your car, correct?

9 A. Yes, sir.

10 Q. And then you hung a U-turn?

11 A. Yes, sir.

12 Q. Coming down Lawrence Street this way?

13 A. Yes, sir.

14 Q. Is that correct?

15 A. Yes, sir.

16 Q. Then it kind of merges with Constitution and then hits
17 Gary Drive right here, is that correct?

18 A. Yes, sir.

19 Q. Okay. And which way did you turn when you got to that
20 intersection?

21 A. I made the right.

22 Q. Okay. So you are starting to go down this way?

23 A. Yes, sir.

24 Q. And you said you took another right and you take it
25 back this right, talking about this right here?

1 A. Yes, sir.

2 Q. And this is all Gary Drive, right?

3 A. Uh-huh.

4 Q. It kind of goes in a circle?

5 A. Yes, sir.

6 Q. Okay. And so could you show us on this map where you
7 were supposed to drop off "Bright Eyes"? You could touch it
8 and it will leave a mark.

9 A. I can't really lift my hand.

10 Q. Oh. Let me ask you this.

11 A. Right there -- right there. Right there is a little
12 curve right there.

13 Q. Right here at this curve is the upper part of it right
14 here?

15 A. Yeah, right there.

16 Q. Okay. Now, before you got there what did you notice
17 behind you?

18 A. A set of headlights.

19 Q. Okay. And was this a set of headlights that just
20 happened to be strolling, or did they come up on you fast?

21 A. It came up on me fast.

22 Q. Okay. When they came up on you fast what were you
23 thinking?

24 A. Like what was going on.

25 Q. Okay. Is that why you didn't stop?

1 A. Yes, sir.

2 Q. Okay. So you went on around the corner here and you
3 said that you saw somebody coming from this way as well?

4 A. Yes, sir.

5 Q. And so you turned where?

6 A. I made the right on Rusty.

7 Q. This way right here?

8 A. Yeah.

9 Q. Okay. And you are heading over this way?

10 A. Yes, sir.

11 Q. Were you being chased at this time?

12 A. Yes, sir.

13 Q. And were you being shot at at this time?

14 A. Yes, sir.

15 Q. And which way did you turn when you got to Ranger
16 Drive?

17 A. I made a left.

18 Q. Okay. And then you went on down to Dorchester Road,
19 which is the main road, is that correct?

20 A. Yes, sir.

21 Q. And which way did you turn when you got there?

22 A. I made a right.

23 Q. This way.

24 So you would have been going north off of Dorchester
25 Road, correct?

1 A. Yes, sir.

2 Q. Now, after you got on Dorchester Road could you tell
3 how many cars were chasing?

4 A. Two.

5 Q. And how did you figure that out?

6 A. I had looked in both my rearview mirrors.

7 Q. Okay. So you had a mirror on the right and a mirror on
8 the left?

9 A. (Shaking head yes).

10 Q. You had cars on both sides?

11 A. Yes, sir.

12 Q. Could it have been more than two?

13 A. It could have, I don't know.

14 Q. You saw at least two, correct?

15 A. Yes, sir.

16 Q. Okay. So what did you do at that point?

17 A. Kept my eyes on the road and made sure we got away
18 safe.

19 Q. And put your foot to the floorboard on that
20 accelerator, correct?

21 A. Yes, sir.

22 Q. Now, did these cars behind you continue to shoot at
23 y'all on Dorchester Road?

24 A. Yes, sir.

25 Q. At some point -- you were driving a Chrysler 300, is

1 that correct?

2 A. Yes, sir.

3 Q. Does that have pretty good horsepower?

4 A. Uh-huh.

5 Q. It goes pretty fast?

6 A. Yeah.

7 Q. Okay. And were you able to eventually put some
8 distance between you and those folks?

9 A. Yes, sir.

10 Q. Did you know who was in the car behind you, these cars
11 behind you?

12 A. No, sir.

13 Q. Do you know why they were shooting at you?

14 A. No, sir.

15 Q. Do you know how fast you were driving up Dorchester
16 Road?

17 A. I be doing like 160, 170.

18 Q. A 160 miles an hour?

19 A. Yeah.

20 Q. That's pretty fast?

21 A. Yeah. Yeah.

22 Q. Now, do you recall how long -- how far up Dorchester it
23 was before these people stopped shooting at you, or you
24 couldn't --

25 A. When I had made the right on Cross County.

1 Q. Okay. So you hung a right on Cross County?

2 A. (Shaking head yes).

3 Q. And did you continue to drive fast?

4 A. Yeah.

5 Q. Okay. Do you know whether any of these cars continued
6 to chase you after you got on Cross County?

7 A. Once I got on Cross County I looked in my rearview I
8 saw a set of headlights. I wasn't too sure.

9 Q. So maybe or maybe not, you still saw lights behind
10 you --

11 A. Yeah.

12 Q. Is that correct?

13 A. Yeah.

14 Q. So you didn't slow down, right?

15 A. No.

16 Q. Okay. And what did you do when you got to Ashley
17 Phosphate Road?

18 A. I made a right on Ashley Phosphate going back toward
19 the I.

20 Q. Okay. And you still, of course, driving fast at that
21 point, right?

22 A. Yes, sir.

23 Q. Okay. Tell us what happened after you got on Ashley
24 Phosphate Road heading back towards the I.

25 Did you ever see these folks chasing you that had been

- 1 shooting at you earlier?
- 2 A. No, I done lost them.
- 3 Q. Okay. But you didn't slow down, right?
- 4 A. No.
- 5 Q. But you are going pretty fast down Ashley Phosphate
- 6 Road too?
- 7 A. Yeah.
- 8 Q. Which drew whose attention?
- 9 A. The police.
- 10 Q. Okay. And when did the police get behind you?
- 11 A. When I had made the right to get back on the I.
- 12 Q. Okay. So you were going down Ashley Phosphate Road,
- 13 your intention was to turn on the I and go where?
- 14 A. To my sister's house.
- 15 Q. Okay. Back downtown?
- 16 A. Accabee.
- 17 Q. In Accabee?
- 18 A. Yeah.
- 19 Q. To leave off "DJ" and Corey, right?
- 20 A. Yeah.
- 21 Q. And so you made that right onto the onramp at I-26, is
- 22 that correct?
- 23 A. Yes, sir.
- 24 Q. What happened to your tire when you made that turn?
- 25 A. It bust. It started spiking.

1 Q. Okay. And you knew that you were being chased by the
2 cops then, right?

3 A. Yeah, you know how they throw the blue lights on you.

4 Q. Okay. Did you stop immediately?

5 A. Yeah.

6 Q. Okay. You didn't stop on the ramp, though?

7 A. No, not on the ramp.

8 Q. You stopped on I-26?

9 A. Yeah.

10 Q. Now, what happened after you pulled over?

11 A. They pulled us out the car. They searched us, searched
12 the car, locked us up and took us to city hall.

13 Q. Okay. And basically y'all -- asked y'all what happened
14 and y'all told them what happened, is that correct?

15 A. Yes, sir.

16 Q. Was anybody in your car armed?

17 A. No, sir.

18 Q. Did you or anyone else in that car have a gun?

19 A. No, sir.

20 Q. Was anyone, you, or anyone in your car, shooting at
21 these people that were chasing you?

22 A. No, sir.

23 Q. In fact, do you know who was chasing you at the time?

24 A. No, sir.

25 Q. Did you find out later who was chasing you?

1 A. No, sir.

2 Q. And let me just ask you some names. Do you know a guy
3 name "Fur"?

4 A. No.

5 Q. Do you know a guy named "Black"?

6 A. No.

7 Q. Do you know a guy named Kelley?

8 A. No.

9 Q. Do you know a guy name Keon?

10 A. No.

11 Q. Do you know him?

12 A. No.

13 Q. Do you know a guy name "D", or Derrontae Holmes?

14 A. No.

15 Q. Do you have any reason to -- do you know of any reason
16 why any of these people would want to kill you?

17 A. No, sir.

18 Q. And you didn't have a gun?

19 A. No, sir.

20 Q. And you didn't shoot at anybody in that car?

21 A. No, sir.

22 Q. And the jury is going to want to know why you later had
23 a positive gunshot residue test when your sample was taken
24 at North Charleston city hall. Can you explain that?

25 A. Um, there is no way they could have found -- they could

1 have found no positive gunpowder on me. There is no way.

2 Q. Could you have handled a gun earlier that day?

3 A. No, sir.

4 Q. I mean, we know you are not a stranger to guns. You
5 have been convicted of having guns twice. True?

6 A. True.

7 Q. True enough.

8 But you didn't have one that night?

9 A. No.

10 Q. And you didn't have a reason for any of those guys to
11 chase you?

12 A. No, sir.

13 Q. Or to shoot at any of them?

14 A. No, sir.

15 Q. Thank you, sir.

16 Could you please answer any questions that Ms. Ehrlich
17 may have for you?

18 THE COURT: Ms. Ehrlich.

19 CROSS EXAMINATION BY MS. EHRLICH:

20 Q. Good afternoon Mr. Smalls.

21 A. How are you doing?

22 Q. All right.

23 On May 10th they took you down to city hall after
24 police stopped the car, correct?

25 A. Yes, ma'am.

Exhibit #5

1 (PROCEEDINGS, FEBRUARY 15, 2018).

2 (Whereupon, Mr. Richard Simmons resumed the
3 witness stand)

4 THE COURT: How are you this morning?

5 THE WITNESS: All right.

6 THE COURT: I will remind you that you are still
7 under the oath that you took yesterday.

8 Did you follow my instructions? Did you talk
9 about this case with anyone?

10 THE WITNESS: No, ma'am.

11 THE COURT: All right. Thank you very much.
12 Anything before we bring in the jury, from the
13 State?

14 MR. KIDD: No, ma'am.

15 THE COURT: From the defense?

16 MS. EHRLICH: No, ma'am.

17 THE COURT: All right. Let's bring in the jury.

18 (The following takes place in the presence of the
19 jury panel)

20 THE BAILIFF: All the jurors are present, Your
21 Honor.

22 THE COURT: Thank you.

23 Please be seated.

24 Ladies and gentlemen, if you followed my
25 instructions over the evening hours, please raise your left

1 hands. Make sure you are paying attention.

2 All fifteen jurors have indicated that they have
3 complied with the court's instructions. Thank you so much.

4 And Ms. Ehrlich, your witness.

5 MS. EHRLICH: Thank you, Your Honor.

6 CROSS EXAMINATION BY MS. EHRLICH:

7 Q. Good morning, Mr. Simmons.

8 A. Good morning.

9 Q. You got arrested in the middle of May?

10 A. Yes, ma'am.

11 Q. That was in 2015, right?

12 A. Yes, ma'am.

13 Q. Okay. And then in November of 2015 you met with Mr.
14 Kidd and people from his office, correct?

15 A. Yes, ma'am.

16 Q. And that's when you signed what's called a proffer
17 agreement?

18 A. Yes, ma'am.

19 Q. And a proffer agreement is where you agreed to come in
20 and talk to them about the case, right?

21 A. Yes, ma'am.

22 Q. They don't make any promises to you --

23 A. No.

24 Q. -- but they do say that they won't use what you tell
25 them against you in court, right?

1 A. Yes, ma'am.

2 Q. Okay. And so when you sign up for proffer, you have to
3 make them promises, don't you?

4 A. Yes, ma'am.

5 Q. You have to promise to testify, right?

6 A. Yes, ma'am.

7 Q. You have to promise to tell the truth?

8 A. Yes, ma'am.

9 Q. And you have to promise to cooperate with them to the
10 best of your ability?

11 A. Yes, ma'am.

12 Q. And while they don't make any promises to you in the
13 agreement, your hope is that they will help you out as a
14 result of you coming to proffer, correct?

15 A. Yes, ma'am.

16 Q. Now, let's talk a little bit about --

17 Your decision to proffer was because you knew that you
18 were in a bunch of trouble, right?

19 A. Yes, ma'am.

20 Q. It wasn't just I'm going to do the right thing? It was
21 I got to get out -- get myself in the best possible
22 position, right?

23 A. Yes, ma'am.

24 Q. Okay. Now, let's talk a little bit about May 9th. You
25 had gone to your girlfriend's house on Alabama, right?

1 A. Yes, ma'am.

2 Q. And then you had been working all day and wanted to go
3 home to wash off?

4 A. Yes, ma'am.

5 Q. And so when you met with the solicitor in November of
6 2015, you told him that on the way you could see "BJ's"
7 momma outside?

8 A. Yes, ma'am.

9 Q. And that you were going to stop by and check on her?

10 A. Yes, ma'am.

11 Q. Okay. And that you were doing that because you knew
12 his father had been killed?

13 A. Yes, ma'am.

14 Q. That you were probably looking out for her?

15 A. Yes, ma'am.

16 Q. All right. Can we agree that telling the police that
17 Kenneth was the shooter is not really looking out for his
18 momma?

19 A. Yes, ma'am.

20 Q. Can we agree that telling the solicitor for years that
21 Kenneth was the shooter is not you looking out for his
22 momma?

23 A. Yes, ma'am.

24 Q. Can we agree that knowing the State was going to pursue
25 charging Kenneth as an adult and continuing to say he was

1 the shooter is not looking out for his momma?

2 A. Yes, ma'am.

3 Q. Now, when you first got to the house, and this is

4 "BJ" -- do you call him "BJ" or Kenneth?

5 A. "BJ".

6 Q. Okay. So when you got to his house, his mom and sister

7 were coming outside the door?

8 A. His little sister.

9 Q. His little sister?

10 A. Yes.

11 Q. And she was, what, eight years old, seven? Tiny?

12 A. Yeah.

13 Q. I mean, we are not talking about a teenager?

14 A. No.

15 Q. And you said that "Trell" was out there too?

16 A. Yes, ma'am.

17 Q. "Trell" is Latrell Hamilton?

18 A. Yeah.

19 Q. And you said that "BJ" was out there?

20 A. Yes, ma'am.

21 Q. Now, when you met with Mr. Kidd in January of this

22 year, you admitted to him that you weren't really going to

23 the house to check on "BJ's" momma, that you were going

24 there to go pick up "Trell" for a party, right?

25 A. Yes, ma'am.

1 Q. Okay. So it had nothing to do with checking on anybody
2 to make sure they're okay?

3 A. No.

4 Q. All right.

5 Now, you have given multiple statements in this case,
6 right?

7 A. Yes, ma'am.

8 Q. So when you went to the police station in May you spoke
9 with the detective in an interrogation room, right?

10 A. Yes, ma'am.

11 Q. And you know that that was recorded, don't you?

12 A. Yeah. Yes, ma'am.

13 Q. Okay. So everything that you said in that room was
14 recorded, to your knowledge?

15 A. Yeah.

16 Q. Okay. And then you met with the solicitors in November
17 of 2015 and they recorded that conversation, didn't they?

18 A. Yeah. Yes.

19 Q. Okay. And then yesterday we learned that you met with
20 the solicitor, not once, but twice in July, right, of 2017?

21 A. Uh-uh.

22 Q. You can't even remember?

23 A. No, I ain't been keeping up with it.

24 Q. Okay. So many times that you can't keep up?

25 A. I ain't saying that, but --

1 Q. Okay. Well, did you go see them in July?

2 A. Yeah.

3 Q. And do you know if that was recorded?

4 A. I believe so.

5 Q. Okay. And then you met with a law enforcement
6 representative in August of 2017. Do you remember that, at
7 the Charleston Police Department?

8 A. In October?

9 Q. I don't know where you were, but didn't you meet with
10 somebody from law enforcement in August of 2017? And I'm
11 not asking you what you did during that meeting, but did you
12 meet with them?

13 A. I can't remember.

14 Q. Well, August is when you finally admitted that you were
15 the shooter, right?

16 A. Yeah.

17 Q. Okay. And it was as a result of that meeting, right?

18 A. Oh, I don't know if she had worked for the police
19 department.

20 Q. I'm sorry?

21 A. I didn't know she had worked for the police department.

22 Q. Okay. Well, the lady -- you met with the lady in
23 August?

24 A. Yeah.

25 Q. Of 2017?

1 A. Yeah.

2 Q. Okay. The lady that you met with, as a result of that
3 conversation you finally admitted that you had been the one
4 who shot Kedena Brown, right?

5 A. Yes.

6 Q. Okay. And, to your knowledge, that was recorded?

7 A. Yes.

8 Q. Okay. And then you recently met with the solicitor's
9 office on January 25th of this year to prepare for
10 testifying, correct?

11 A. Yeah.

12 Q. And they didn't record that interview, to your
13 knowledge, did they?

14 A. I don't think so.

15 Q. Now, your story about what happened on May 9th and May
16 10th has changed a lot over time, right?

17 A. Yeah.

18 Q. Because when you first went there you told them that
19 you had an alibi and that didn't work out at all, right?

20 A. No.

21 Q. And that's because they looked at your phone, or
22 something?

23 A. Yeah.

24 Q. Well, let's talk about the first time you were shot on
25 May 10th, okay? This was in front of Kenneth's house. That

1 happened, what, right around midnight, right?

2 A. Yeah.

3 Q. Okay. And your car was actually hit?

4 A. Yes.

5 Q. And the police came?

6 A. Yes.

7 Q. And you told the police that you called 911?

8 A. No, someone else did.

9 Q. Okay. So you admit you didn't call 911?

10 A. I was getting ready to, but they already were coming.

11 Q. Okay. Were you getting ready to call them before or
12 after you chased after somebody with a gun?

13 A. After.

14 Q. Okay. Now, the police got there pretty fast, didn't
15 they, like within a minute or something?

16 A. Yeah.

17 Q. And after they left you started making phone calls to
18 other people, didn't you?

19 A. Yes.

20 Q. You called "Fats" multiple times, didn't you?

21 A. I believe so.

22 Q. And that's your girlfriend's brother?

23 A. Yeah.

24 Q. You called Derrontae Holmes multiple times?

25 A. Yeah.

1 Q. You called Kelley Green multiple times?

2 A. I believe.

3 Q. And you called "Big D"?

4 A. Yeah.

5 Q. When you were in the car driving on Dorchester Road,
6 you were making calls then too, right?

7 A. Not that I remember.

8 Q. You don't remember calling "Trell" and Kelley back and
9 forth?

10 A. I had been driving the car. Not that I remember.

11 Q. Okay. What time do you think that that car chase
12 started? 1:30?

13 A. It happened quick. I didn't pay attention to the time.

14 Q. Okay. So you wouldn't -- you wouldn't know what time
15 the shooting happened, what time y'all left, or anything
16 like that?

17 A. No.

18 Q. I'm sorry?

19 A. No.

20 Q. Okay. You would agree with me that the shooting
21 happened well before three o'clock in the morning, though,
22 right?

23 A. Yeah.

24 Q. Okay. And after between three o'clock and 4:30 that
25 morning there were a lot of back and forth calls between you

1 and Derrontae?

2 A. No.

3 Q. Right?

4 A. I guess. I mean, I --

5 Q. You don't know?

6 A. (Shaking head no).

7 Q. Would looking at your phone records help refresh your
8 memory?

9 A. Probably.

10 Q. Okay.

11 MS. EHRLICH: Court's indulgence.

12 THE COURT: Take your time.

13 (Off the record).

14 (Back on the record)

15 MS. EHRLICH: May I approach the witness, Your
16 Honor?

17 THE COURT: You may.

18 BY MS. EHRLICH:

19 Q. Mr. Simmons, you know that police did like phone dumps
20 on your phone to get information about who you were calling
21 and who you were texting, right?

22 A. Yes.

23 Q. I'm going to show you two pages, just two pages from
24 that, and take a look at it and let me know if that
25 refreshes your memory about who you were calling on May

1 10th, okay?

2 I'll show you the first page first.

3 A. (Witness reviewing document).

4 Q. Does that refresh your memory?

5 A. Somewhat.

6 Q. So you were making a lot of calls that night to "D",
7 and "D" is Derrontae Holmes, right?

8 A. Yeah.

9 Q. You are real tight with him?

10 A. Yes.

11 Q. And I assume that you remember calling him throughout
12 the day and into the evening, right?

13 A. Yes.

14 Q. Lots of calls.

15 And that was just -- he was your best friend?

16 A. Yeah.

17 Q. Okay. Now, back to the shooting at Lawrence Street.

18 When you talked to the solicitor in November, you told
19 him that you didn't see who shot at you, right?

20 A. Yes.

21 Q. You still don't know who shot at you?

22 A. No.

23 Q. But you told them that you thought it was either a
24 Honda Accord or an Acura?

25 A. Yes.

1 Q. And you told them that "BJ" ducked when the shots were
2 fired, right?

3 A. Yes.

4 Q. That all of you ducked, right?

5 A. Yes.

6 Q. And that's true, right?

7 A. Yes.

8 Q. But then after you ducked is when you grabbed the gun
9 and ran after the car?

10 A. After I get out of my car.

11 Q. So you hopped out of your car -- so you ducked inside
12 the car?

13 A. Yes.

14 Q. Popped out.

15 Was "Trell" inside or outside the car?

16 A. He was getting ready to get in.

17 Q. Okay. You grabbed his gun and chased after them?

18 A. Tried.

19 Q. And that was you doing the chasing with the gun, not
20 "Trell", right?

21 A. Yeah.

22 Q. It was "Trell" or --

23 A. No, you said me.

24 Q. Okay. And it wasn't "BJ"?

25 A. No.

1 Q. Now, after that happened "BJ's" mom was really upset,
2 right?

3 A. Yes.

4 Q. She was screaming?

5 A. Yeah, and crying.

6 Q. And crying.

7 Worried about everyone's safety?

8 A. Yes.

9 Q. She was so upset that she didn't even want to leave to
10 go pick up "BJ's" older sister from work, right?

11 A. Yes.

12 Q. And part of the reason was she was still grieving his
13 father's death, right?

14 A. Yes.

15 Q. He had just died, what, four months before?

16 A. (No response).

17 Q. You don't know the exact date?

18 A. I don't remember the exact date.

19 Q. But it hadn't been that long, had it?

20 A. Yeah.

21 Q. And when police came you hid the gun, "Trell's" gun?

22 A. Yes.

23 Q. Because you didn't want to get in trouble?

24 A. Yes.

25 Q. And you never told police that you chased after a car,

1 right?

2 A. No.

3 Q. And you didn't fire any shots?

4 A. No.

5 Q. When you met with Mr. Kidd in November of 2016, you
6 told him that after the shooting people started making phone
7 calls to get people to come over, right?

8 A. Yeah.

9 Q. To come over for protection is what you told him?

10 A. I believe so.

11 Q. Okay. That somebody had just shot at either you or --
12 nobody knew if the shots were intended for "BJ", right?

13 A. Nobody knew.

14 Q. Okay. And that's when Keon came over?

15 A. Yes.

16 Q. And that's when uncles came over?

17 A. Yes.

18 Q. And that's when you made all those calls to Sidney and
19 Kelley and all those folks, right?

20 A. Kelley already been there.

21 Q. Kelley was already there. Kelley was in the car with
22 you?

23 A. When the shooting took place.

24 Q. Okay. He didn't shoot a gun after the shooting?

25 A. On Lawrence?

1 Q. Yeah.

2 A. No.

3 Q. So you were the only one who ran after with a gun?

4 A. Yeah.

5 Q. All right. So all those people that came over were all
6 older than "BJ", right?

7 A. Yes.

8 Q. He was fifteen at the time?

9 A. Yes.

10 Q. And you were nineteen?

11 A. Yeah.

12 Q. And then the uncles were -- the uncle was in his
13 thirties, maybe?

14 A. Yeah.

15 Q. And somebody named Leroy Manigault, "Stocky", he's
16 older?

17 A. Yeah.

18 Q. Keon is older? He wasn't fifteen --

19 A. Yeah.

20 Q. -- was he?

21 A. No.

22 Q. Okay. Kenneth was definitely the youngest person
23 there?

24 A. Yeah.

25 Q. Besides his little sister, is that right?

1 A. Yeah.

2 Q. And when the police first questioned you about the car
3 chase, you told them initially that there was only one car
4 involved and that was the car that you were driving, right?

5 A. Yeah.

6 Q. And you denied that a Charger had been involved in this
7 whole event, right?

8 A. Yeah.

9 Q. Then the police kept questioning you and said that oh,
10 well maybe "Trell" and "D" could have been in the other car,
11 right?

12 A. Yeah.

13 Q. Okay. You didn't tell police anything about Keon,
14 though, right? His name? You didn't tell them about Keon
15 Anderson being in your car -- or in the car that you were
16 driving?

17 A. No.

18 Q. You didn't tell them anything about Leroy Manigault,
19 did you?

20 A. In May?

21 Q. In May.

22 A. No.

23 Q. And you didn't tell them anything about Fred Lance or
24 "Fur" in May?

25 A. No.

1 Q. But when you met with the solicitor in November of
2 2016, you did tell them that there was three cars involved,
3 right?

4 A. Yes.

5 Q. Well, that's when you started telling them who was in
6 what car, right?

7 A. Yes.

8 Q. Is that yes or I guess?

9 A. Yes.

10 Q. Just making sure I heard you right.

11 And at that meeting you told them that all of you were
12 getting in cars around one o'clock to leave the area, right?
13 That's what you told them. I'm not saying that that's what
14 happened.

15 A. That's what I told them.

16 Q. Okay. And that that's when y'all saw a car not too
17 close, not too far, and you thought it was shooting towards
18 you?

19 A. Yes.

20 Q. And that y'all thought it was the same car from the
21 earlier drive-by?

22 A. Yes.

23 Q. And that people started giving chase, right?

24 A. Yeah.

25 Q. So in that version you told everybody that y'all were

1 already getting ready to leave when the shots were fired,
2 right?

3 A. Yes.

4 Q. And in that version, after the shots were fired with
5 another car, you said that it was the Charger that started
6 giving chase first and shooting at that unknown car,
7 correct?

8 A. Yes.

9 Q. I mean, understandably after you got shot at and your
10 car got shot up, you were not happy, were you?

11 A. No.

12 Q. And you were upset about the whole thing?

13 A. Yes.

14 Q. Somebody messed up your car, right?

15 A. I had more than just that reason.

16 Q. Well, you told the police also that it was the second
17 time that you had also gotten shot, right?

18 A. Yes. Shot at, not shot.

19 Q. Almost gotten shot?

20 A. Yeah.

21 Q. Okay. And after this whole thing was over you went
22 back to normal life?

23 A. Not really.

24 Q. Well, after May 10th did you start -- did you try to go
25 back to work, try to fix your car? Talk to girls?

1 A. Tried to fix my car.

2 Q. Huh?

3 A. Tried to fix my car.

4 Q. Talking to girls, all that stuff, right?

5 A. Kind of.

6 Q. I mean, your phone messages, your phone logs says that
7 you were texting a bunch of girls.

8 A. I got kids, so --

9 Q. Right. You got?

10 A. Five.

11 Q. Five children?

12 A. Yeah.

13 Q. Five children you will leave for the rest of your life,
14 right?

15 A. No.

16 Q. And so -- I don't know who those mothers of your
17 children are, but you were texting a bunch of people about
18 how your car got shot up, right?

19 A. Yes.

20 Q. And that you were going to have to get a new tire and
21 that your window was busted, all that, right?

22 A. Yes.

23 Q. All these different stories that you told Mr. Simmons,
24 you have always been consistent in saying that "BJ" was in
25 the car with you, right?

1 A. Yes.

2 Q. That's never changed?

3 A. No.

4 Q. The only difference in who was in that car is later you
5 told them that Keon actually was in the car?

6 A. Yes.

7 Q. Right.

8 When you met with the solicitor in November he asked
9 you questions about who was armed that night and you told
10 him "BJ" was armed, right?

11 A. Yes.

12 Q. And Keon?

13 A. Yes.

14 Q. And "Trell"?

15 A. Yes.

16 Q. And the uncle?

17 A. Yeah.

18 Q. And you uncle is "Fur"?

19 A. Yeah.

20 Q. Okay. And you told them that you did not have a gun at
21 that time?

22 A. Yes.

23 Q. And you said "I didn't even touch a gun," right?

24 A. Yes.

25 Q. Okay. And in November of 2016, when you met with the

1 solicitor, he asked you questions about who was shooting
2 guns on Dorchester Road. Do you remember that?

3 A. Yes.

4 Q. And you told him Keon was wild firing on Dorchester
5 Road?

6 A. Yes.

7 Q. And that Keon was shooting a Smith & Wesson
8 9-millimeter?

9 A. Yes.

10 Q. You also said that "BJ" wasn't even shooting on
11 Dorchester Road, back when you met with him in November,
12 correct?,

13 A. I don't remember.

14 Q. You don't remember?

15 MS. EHRLICH: Court's indulgence?

16 THE COURT: Take your time.

17 (Off the record).

18 (Back on the record).

19 BY MS. EHRLICH:

20 Q. Mr. Simmons, would listening to that portion of your
21 recorded interview refresh your memory about whether or not
22 you said whether or not "BJ" was shooting on Dorchester
23 Road?

24 A. Yes.

25 MS. EHRLICH: May we approach, Your Honor?

1 THE COURT: You may.

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion).

4 THE COURT: Ladies and gentlemen of the jury,
5 there is a matter of law I must take up outside of your
6 presence. Do not begin your deliberations.

7 Please rise for the jury.

8 (The following takes place outside the presence of
9 the jury panel)

10 MS. EHRLICH: Your Honor, I'm going to -- I can
11 pull it up on my laptop and fast forward to that portion of
12 the interview.

13 THE COURT: All right.

14 MS. EHRLICH: And then show it to him, if that's
15 okay?

16 The time stamp is 1:35:18. And that's my time
17 stamp.

18 (Off the record).

19 (Back on the record).

20 MS. EHRLICH: Your Honor, given the context I'm
21 just going to move on, I think.

22 THE COURT: Okay.

23 MS. EHRLICH: I can look at all the questions.

24 MR. KIDD: I'll try to clarify it on redirect.

25 THE COURT: What do we need to do when the jury

1 comes back in, because it's going to be --

2 MS. EHRLICH: I'll just withdraw that question.

3 THE COURT: All right.

4 Let's go ahead and take our quick comfort break
5 and then we will get back started. Thank you.

6 MR. DURANT: Thank you.

7 (Whereupon, proceedings were recessed)

8 (Whereupon, proceedings were reconvened)

9 THE COURT: Did you have enough time to speak with
10 your attorney?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: All right.

13 And anything before we bring in the jury, from the
14 State?

15 MR. KIDD: No, ma'am.

16 THE COURT: All right. Let's bring in the jury.

17 (The following takes place in the presence of the
18 jury panel)

19 THE COURT: Thank you.

20 Please be seated.

21 Ms. Ehrlich?

22 MS. EHRLICH: Your Honor, I will withdraw the last
23 question.

24 THE COURT: All right. Thank you. Your witness.

25 BY MS. EHRLICH:

1 Q. Mr. Simmons, back to November 16th when you met with
2 the solicitor you did tell them that Keon was armed,
3 correct?

4 A. Yeah.

5 Q. And you told them that "BJ" was armed, correct?

6 A. Yes.

7 Q. And you told them that he thought he had a black Taurus
8 .45 or a .40, right?

9 A. I don't recall that.

10 Q. You don't recall that.

11 In reality you were the one with the Taurus .40, right?

12 A. Yes.

13 Q. That you got from Sidney McDonald?

14 A. Yes.

15 Q. Okay. And you said something earlier about how you
16 didn't have a gun because you were driving?

17 A. Yes.

18 Q. That didn't stop you from shooting a gun into Kedena
19 Brown's car, did it?

20 A. No.

21 Q. In January of 2018 you met with the solicitor again,
22 correct?

23 A. Yes.

24 Q. And gave them a list of who had guns and what type of
25 gun they had, right?

- 1 A. Yes.
- 2 Q. Your testimony is that you had the Taurus .40?
- 3 A. Yes.
- 4 Q. That Kelley had either a purple or pink and black .380?
- 5 A. Yes.
- 6 Q. That "Fur" had a Glock?
- 7 A. Yes.
- 8 Q. That Keon had a Smith & Wesson .40?
- 9 A. Yes.
- 10 Q. That "Big D" didn't have a gun, right?
- 11 A. Yes.
- 12 Q. And that Kenneth you then said had a 9-millimeter?
- 13 A. Yes.
- 14 Q. Now, you have been waiting to go to court on this case
- 15 quite a long time, haven't you?
- 16 A. Yes.
- 17 Q. And as part of the process of going through the court
- 18 system you get what's called your vision of discovery, don't
- 19 you?
- 20 A. Yes.
- 21 Q. And that would be copies of police reports, right?
- 22 A. Yes.
- 23 Q. And any copies of ballistics reports and things like
- 24 that?
- 25 A. Yes.

1 Q. And you have been able to review all that with your
2 attorney, haven't you?

3 A. Not really.

4 Q. Not really?

5 Did he give it to you?

6 A. Yes.

7 Q. Okay. Now, just to be clear about who started shooting
8 at the Chrysler first, it wasn't "BJ" who shot at the
9 Chrysler first in The Waylyn, was it?

10 A. No.

11 Q. That was somebody from the Charger?

12 A. Yes.

13 Q. So when you told police that "BJ" started shooting at
14 the Chrysler first, that wasn't true?

15 A. No.

16 Q. And yesterday when you testified, you testified that
17 nobody from the Chrysler was shooting?

18 A. Yes.

19 Q. And did you -- I want to make sure that I heard you.
20 Did you say nobody was shooting, or you don't think anybody
21 was shooting?

22 A. I said nobody was.

23 Q. So you are clear that nobody was shooting from the
24 Chrysler?

25 A. From my understanding now.

1 Q. I'm not -- okay.

2 A. I didn't think nobody was shooting.

3 Q. All right. Let's -- let me -- let me let you explain
4 then.

5 The night of the shooting, the night that all this was
6 going down, did you believe the Chrysler to be shooting?

7 A. Yes.

8 Q. Okay. And do you believe that the entire chase that
9 the Chrysler had been shooting at you, right?

10 A. Yes.

11 Q. Okay. It's only now that things have been kind of
12 flushed out that you now believe it wasn't shooting?

13 A. Yes.

14 Q. But you did that night?

15 A. Yes.

16 Q. Okay. And the reason you did that night, is that
17 because there were shots fired from the Constitution area?

18 A. Yes.

19 Q. Okay. And then the chase started, I think you said
20 yesterday, because things just looked funny?

21 A. Yes.

22 Q. I think that's what you said?

23 A. I believe so.

24 Q. Okay. But that car was speeding up before y'all were
25 speeding up, right? The Chrysler, or you don't know?

1 A. I don't know.

2 Q. Okay. You didn't shoot at the Chrysler in The Waylyn,
3 did you?

4 A. No.

5 Q. Nobody from the Honda did in The Waylyn?

6 A. No.

7 Q. That shooting from your car didn't start until y'all
8 were on Dorchester Road?

9 A. Like coming -- like -- well --

10 Q. I'm sorry?

11 A. That's a store right on Remington and Dorchester Road.

12 Q. Okay. When did people start shooting from your car?
13 And when I say your car, the car that you were driving. I
14 know it's "Bid D's" car. Do you even know?

15 A. I mean, I wasn't paying attention to it. I was just
16 driving.

17 Q. Okay. So, I mean, if you say --

18 Are you sure at all when each person fired a gun?

19 A. Yeah, it happened on two different sides.

20 Q. Huh?

21 A. It was on two different sides.

22 Q. I know, but like are you sure on what portion of this
23 whole --

24 A. Before we got on the railroad track.

25 Q. Okay. And where is the railroad track?

1 A. Just before Starvin Marvin Seafood.

2 Q. Nobody was shooting on Cross County, though, right?

3 A. No.

4 Q. All right. And the time that people are shooting from
5 the Honda, at portions of that the Charger is the car in
6 front, right?

7 A. On the side.

8 Q. On the side?

9 A. Yeah.

10 Q. I thought you said yesterday that --

11 A. We were behind them.

12 Q. -- the Charger was leading the chase?

13 A. They were, but it was not directly behind. It was they
14 in the left lane and we are in the right lane.

15 Q. Okay. So if I'm you, I'm the Honda right here?

16 A. They are in the other lane.

17 Q. The Charger is up here?

18 A. Yes.

19 Q. Like this?

20 A. Yeah.

21 Q. The Focus also was shooting?

22 A. Not when they were behind us.

23 Q. Okay. When did the Focus shoot?

24 A. Just before we get across the -- I don't know what you
25 call it, but 526 by Harley Davidson.

1 Q. Well -- okay.

2 A. It's the overpass.

3 Q. Where were the cars? If I'm the Focus, where is the
4 Charger? Way back here when they start shooting?

5 A. He done slowed down some, so --

6 Q. Who slowed down, the Charger?

7 A. Yeah.

8 Q. So the Charger is back here when --

9 A. He ain't far behind, but he ain't --

10 Q. Okay. So if I'm in the Ford Focus --

11 A. He would be in front of me now, because they caught up
12 closer.

13 Q. Okay. What side of you behind you am I? If I'm the
14 Ford --

15 A. In the left --

16 Q. Okay.

17 A. -- on my driver's side.

18 Q. Y'all are back here?

19 A. Yeah.

20 Q. Okay.

21 A. No.

22 Q. Do you want me to get another attorney to stand up
23 here? Would it make it easier?

24 A. Yeah.

25 MS. EHRLICH: May Mr. Loignon come up, Your Honor?

1 THE COURT: He may.

2 MS. EHRLICH: Okay.

3 BY MS. EHRLICH:

4 Q. The Chrysler is way up there, right?

5 A. Yes.

6 Q. It's not that close because it's way faster?

7 A. Yes.

8 Q. I'm the Ford Focus.

9 A. Yes.

10 Q. And when the Focus is shooting, where is the Honda that
11 you are driving?

12 A. In the right lane.

13 Q. Okay. And then the Charger is behind?

14 A. Yeah.

15 Q. Okay. And you didn't fire a single shot that entire
16 way?

17 A. No.

18 Q. But you had a gun?

19 A. Yes.

20 Q. And that is the gun that you got from Sidney McDonald?

21 A. Yes.

22 Q. And you covered for him initially with the police and
23 lied and said you never got a gun from Sidney?

24 A. Yes.

25 Q. And is Sidney from downtown?

1 A. Not that I know of.

2 Q. You didn't want them to find the gun, did you?

3 A. Did I want them to find it?

4 Q. You didn't want them to find the gun you got from
5 Sidney, did you?

6 A. No.

7 Q. Okay. And that's because that was the gun that was
8 used to shot at Ms. Brown's car, right?

9 A. Yes.

10 Q. Okay. And then in November of 2016 you denied that
11 Sidney gave you a gun, correct?

12 A. (No response).

13 Q. You can't remember?

14 A. I can't remember.

15 Q. Okay. Are you having a hard time remembering because
16 you talked to them so many times?

17 A. No, it's just I didn't keep up with the dates and the
18 events.

19 Q. Okay. Well, how about the first time that you met with
20 the solicitor, you didn't tell them that you had a gun,
21 right?

22 A. No.

23 Q. Okay. Then the next time you did finally admit that
24 you got the gun from Sidney?

25 A. Yeah.

1 Q. Okay. That you needed a gun for protection, right?

2 A. Yes.

3 Q. Or if somebody came back, retaliation?

4 A. Yes.

5 Q. And the way that all went down is you and Sidney were
6 talking on the phone and then he came over to Lawrence
7 Street?

8 A. Yes.

9 Q. And he pulled up. He didn't get out of the car, did
10 he?

11 A. No.

12 Q. But you got in his car?

13 A. Half-way.

14 Q. Half-way, like lean in?

15 A. Yeah.

16 Q. And then he passed you the Taurus .40?

17 A. Yeah.

18 Q. After this whole shooting you did tell Sidney to get
19 rid of the gun, right?

20 A. Yes.

21 Q. Not right away, but maybe within a couple of days?

22 A. Once I had found out.

23 Q. Found out what?

24 A. What happened.

25 Q. What do you mean what happened?

1 A. Where that the lady was killed.

2 Q. Okay. So once you found out Ms. Brown had been killed
3 you told Sidney to get rid of the gun?

4 A. Yes.

5 Q. And there were a period of time where you told the
6 solicitor's office and investigators that the gun that you
7 got from Sidney you had passed to "BJ" for him to shoot Ms.
8 Brown?

9 A. Not to shoot her, but to shoot at the car we was
10 chasing.

11 Q. To shoot at the car chase -- to shoot at the car that
12 y'all thought that you were chasing?

13 A. Yeah.

14 Q. Okay. You said that you had handed it to him?

15 A. Yes.

16 Q. Okay. Now, back, you know, when you first met with the
17 solicitor to try to work out the proffer agreement, you told
18 them that you and "BJ" were arguing over it being the wrong
19 car, right?

20 A. Yes.

21 Q. And you also told them that people were bragging about
22 stuff?

23 A. Yeah.

24 Q. And you continued with that by saying every time that
25 you met with them that you didn't like the vibe that people

1 were bragging about what happened?

2 A. Yes.

3 Q. But yesterday you testified that you hung out with
4 those people after the shooting, right?

5 A. On the Lowell Drive.

6 Q. What?

7 A. On Lowell Drive.

8 Q. On Lowell Drive?

9 A. Yes.

10 Q. So you stayed there and hung out with them?

11 A. Not long.

12 Q. How long were you there?

13 A. No more than an hour.

14 Q. Okay. So you went to the gas station and then went
15 back and you were there about an hour?

16 A. Within that time frame, yeah.

17 Q. The whole time at Lowell and the gas station lasted an
18 hour?

19 A. Yeah.

20 Q. In January, though, you admitted that when you got to
21 Lowell "BJ" and Keon were telling you that you shot the
22 wrong car, right?

23 A. Yes.

24 Q. And you didn't believe them?

25 A. No.

1 Q. You didn't believe it until you saw it on the news?

2 A. Yeah.

3 Q. Now, you told police that when you got onto Ashley
4 Phosphate near the intersection where Ms. Brown was shot
5 that "BJ" was the one saying that was the car?

6 A. Yeah.

7 Q. Do you remember telling police that?

8 A. Yes.

9 Q. Okay. You told them stuff like he didn't care about
10 his life and he didn't care if it was the wrong car and then
11 shot, right?

12 A. Yes.

13 Q. That wasn't true?

14 A. No.

15 Q. Okay. You never thought it was the wrong car at all?

16 A. No.

17 Q. Keon told you it was the wrong car?

18 A. He said it.

19 Q. He said it, but you didn't believe it, right?

20 A. Yeah.

21 Q. And "BJ" said it was the wrong car, but you didn't
22 believe it, right?

23 A. Yes.

24 Q. Yes?

25 A. Yes.

1 Q. And you were the one that pushed "BJ" out of the way
2 and shot at the car?

3 A. Yes.

4 Q. Now, after this happened I assume that you were
5 freaking out when you found out?

6 A. Yes.

7 Q. And you changed your phone number a bunch of times,
8 right?

9 A. Yes.

10 Q. Who is Laquandria?

11 A. My baby's momma.

12 Q. You were -- you texted her on May 15th that "BJ" was
13 trying to frame you, right?

14 A. I don't remember.

15 Q. Okay. So looking at that phone records help refresh
16 your memory?

17 A. Yeah.

18 Q. Yes?

19 A. Yes.

20 Q. Give me a second.

21 (Off the record).

22 (Back on the record).

23 BY MS. EHRLICH:

24 Q. We will come back to that in a minute, okay?

25 Do you remember texting a Rae? Who is Rae?

1 A. My other baby's momma.

2 Q. On May 15th that you needed a lawyer because "BJ" said
3 I was with him when I wasn't?

4 A. I recall that.

5 Q. You do recall that one?

6 A. (Shaking head yes).

7 Q. Yesterday you testified that the whole reason that you
8 said "BJ" had shot Ms. Brown was because you were mad and
9 thought he snitched on you?

10 A. Well, I knew he did.

11 Q. Okay. So you knew he snitched on you?

12 A. Yeah.

13 Q. And you were really mad, so you decided to say he was
14 the shooter?

15 A. Yes.

16 Q. Did you tell other people he was a snitch?

17 A. No.

18 Q. No?

19 So you weren't sending people stuff posted on Facebook
20 calling him a snitch?

21 A. No. I didn't get my paperwork until twenty-eight
22 months later, so I couldn't do it.

23 Q. Okay. I'm just asking.

24 A. I thought you wanted to know.

25 Q. Okay. So after you got mad at him for snitching on

1 you, that's when you decided to tell everybody that he was
2 the shooter?

3 A. Yes.

4 Q. Okay. And you told that to the police, right?

5 A. Yes.

6 Q. And you told it to the solicitor's office the first
7 time that you met with them?

8 A. Yes.

9 Q. And they asked you -- I think they asked you "no
10 question in your mind "BJ" is the one that shot the lady?"
11 And you said "I watched him," and that was a lie, right?

12 A. Yes.

13 Q. And then in the July meeting you continued to say "BJ"
14 was the shooter?

15 A. (No response).

16 Q. Yes?

17 A. (No response).

18 Q. All the way up until August you met with the solicitor
19 multiple times, didn't you?

20 A. Yeah.

21 Q. You met with police officers on at least two occasions,
22 right?

23 A. Yeah.

24 Q. So you had, what, the time that you met with the
25 police, three or four times that you met with the

1 solicitor's office to tell them "I'm sorry I lied, "BJ" is
2 not the shooter," and you did not do it until the end of the
3 summer when they told you "we know you're lying," right?

4 A. Yeah.

5 Q. So for over two years you wanted the whole world to
6 believe he's the one who did this, right?

7 A. Yes.

8 Q. It made you feel better about him snitching on you?

9 A. No.

10 Q. No?

11 You thought that you would save yourself from going to
12 prison?

13 A. Yeah.

14 Q. You never told anybody in your family you were the
15 shooter?

16 A. No.

17 Q. You kept it all the way to yourself until, what, a few
18 months ago?

19 A. Yeah.

20 Q. You were willing to let everybody believe the fifteen
21 year old in your car shot the gun and killed an innocent
22 woman?

23 A. Yeah.

24 Q. The solicitor asked you some questions yesterday about
25 gang affiliation. Do you remember those questions?

1 A. Yeah.

2 Q. He was asking you a lot of questions about who maybe
3 was in Young Gunnas, or Gunnas, or whatever you call it? Is
4 it Gunnas, or Gunners, or Shooters?

5 A. Either.

6 Q. Okay. He asked you if "BJ" was in that gang and you
7 said "I don't think so" and I objected. Do you remember
8 that?

9 A. No.

10 Q. And then the solicitor asked you a question again and
11 you said "I don't think any more," or something along those
12 lines, or "he used to be?"

13 A. I think I said "he used to be."

14 Q. But yesterday when you testified you don't remember the
15 first thing "I don't think so"?

16 A. What?

17 Q. When he first asked you the question, you don't
18 remember saying "I don't think so?"

19 A. No.

20 Q. Okay. He was also asking you questions I think about
21 beefs between certain people, right?

22 A. Yeah.

23 Q. And you don't have any first knowledge of any of that,
24 do you?

25 A. No.

1 Q. I mean, you weren't part of this like beef or anything,
2 right?

3 A. No.

4 Q. "BJ" wasn't part of all that, right?

5 A. Not to my knowledge.

6 Q. The older guys there were the ones saying "it's the
7 Greens, it's the Greens," right?

8 A. Yeah.

9 Q. They put that in your head, right?

10 A. Yeah.

11 Q. Okay. The people at the beef are Stanley Green and
12 "Fur", right --

13 A. Not to me.

14 Q. -- to your knowledge?

15 I know you don't have any firsthand knowledge. This is
16 just what you hear, right?

17 A. Yeah.

18 Q. It's not between the younger ones, right?

19 A. No.

20 MS. EHRLICH: Court's indulgence.

21 THE COURT: Yes, ma'am.

22 (Off the record).

23 (Back on the record).

24 BY MS. EHRLICH:

25 Q. Mr. Simmons, I asked you a little while ago about a

1 text message for Laquandria saying that "BJ" was trying to
2 frame you and you didn't remember it, right?

3 A. Yeah.

4 Q. If I show you a printout from your phone dump, would
5 that help refresh your memory?

6 A. Yeah.

7 Q. Okay.

8 MS. EHRLICH: May I approach the witness, Your
9 Honor.

10 THE COURT: You may.

11 BY MS. EHRLICH:

12 Q. Mr. Simmons, I put a star by it so you can see it.
13 It's kind of small writing.

14 A. (Witness reviewing document).

15 Q. Did you tell her that "BJ" was trying to frame you?

16 A. Yeah.

17 Q. That wasn't true, right?

18 A. What?

19 Q. He wasn't trying to frame you?

20 A. No.

21 Q. Okay.

22 MS. EHRLICH: Court's indulgence.

23 (Off the record).

24 (Back on the record).

25 BY MS. EHRLICH:

1 Q. Mr. Simmons, when you got arrested for this, you were
2 out on bond for a gun charge?

3 A. Yes.

4 Q. And that charge is still pending? You haven't been to
5 court on that, have you?

6 A. No.

7 Q. And you also now have a pending possession of a weapon
8 during a violent crime charge?

9 A. Yes.

10 Q. And that's a felony, right?

11 A. I guess.

12 Q. Okay. You know you can go to prison for five years for
13 that?

14 A. I heard, but I --

15 Q. But you don't know?

16 A. Yeah.

17 Q. You never discussed that with your lawyer?

18 A. I mean, I know it's going with the charge, so I didn't
19 catch what I got.

20 Q. All right. You went to court in January -- on
21 January 7th of 2018, for the remaining charges, didn't you?

22 A. Yes.

23 Q. And on that date you pled guilty to four counts of
24 attempted murder?

25 A. Yes.

1 Q. And I'm sure the judge at the time told you that those
2 charges carry up to thirty years each, right?

3 A. I don't think he said each. I think he said twenty.

4 Q. Well, attempted murder -- you didn't know that
5 attempted murder carries thirty years?

6 A. No.

7 Q. Okay.

8 MS. EHRLICH: Court's indulgence.

9 (Off the record).

10 (Back on the record).

11 BY MS. EHRLICH:

12 Q. Mr. Simmons, would looking at the transcript from a
13 court reporter from your plea hearing refresh your memory
14 about whether or not the judge told you how much time you
15 could get --

16 A. Yes.

17 Q. -- on the attempted murder?

18 A. Yes.

19 MS. EHRLICH: May I approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 A. (Witness reviewing document).

23 BY MS. EHRLICH:

24 Q. Do you remember that now?

25 A. Yeah.

1 Q. So you can go to prison for thirty years on an
2 attempted murder charge, right?

3 A. Yeah.

4 Q. And you got three of them, so you can get a hundred and
5 twenty years on that?

6 A. Yeah.

7 Q. You also pled guilty to murder?

8 A. Yeah.

9 Q. As you know, you have to know this, that you could get
10 thirty to life on that?

11 A. Yeah.

12 Q. And that every day of that sentence has to be served?
13 You can't get out early or anything for good behavior on a
14 murder, right?

15 A. Yeah.

16 Q. And you understand that life means never getting out of
17 prison?

18 A. Yeah.

19 Q. There is no such thing as life with parole for you, if
20 you get life?

21 A. Yeah.

22 Q. I would imagine you don't want to go to prison, do you?

23 A. No.

24 Q. You can't do what you want when you are in prison, can
25 you?

1 A. No.

2 Q. You got to live by somebody else's rules, right?

3 A. Yeah.

4 Q. You can't drink?

5 A. I don't drink.

6 Q. You can't eat what you want?

7 A. No.

8 Q. You can't sleep when you want?

9 A. You can try.

10 Q. You can try? But if they tell you to get up, you got
11 to get up, right?

12 A. Yeah.

13 MR. KIDD: Objection, judge, relevance.

14 THE COURT: Overruled.

15 BY MS. EHRLICH:

16 Q. It's hard to have a girlfriend that you can see on a
17 regular basis in jail, right?

18 A. Yeah.

19 Q. And prison can be a dangerous place, can't it?

20 A. Yeah.

21 MR. KIDD: Objection, speculation.

22 THE COURT: You can answer.

23 BY MS. EHRLICH:

24 Q. You can't see your family every day in prison, can you?

25 A. Not unless they come.

1 Q. Well, if you get sent far away it would be hard for
2 them to come every day, right?

3 A. Yeah.

4 Q. And you really don't want to live that life for the
5 rest of your life, do you?

6 A. No.

7 Q. You pled guilty, but you haven't even been sentenced
8 yet, have you?

9 A. No.

10 Q. They are keeping the sentencing open for you to
11 testify, right?

12 A. Yes.

13 Q. And ultimately you want a judge to know that you
14 cooperated in the case and take that into consideration,
15 right?

16 A. Yeah..

17 Q. You want the solicitor to not push for a life sentence,
18 right?

19 A. Yes.

20 Q. You are hoping that these guys over here have your
21 back, as far as sentencing, right?

22 A. Yeah.

23 Q. Yeah.

24 I mean, you would love to get the minimum of thirty
25 years, wouldn't you? Thirty is better than life, isn't it?

1 A. Yes.

2 Q. I mean, I know that you want less than that, right?

3 A. Yeah.

4 Q. Yeah.

5 Even when you went to court to plead guilty, you didn't
6 tell the judge you were the one that pulled the trigger, did
7 you? They didn't get into all of that in front of the,
8 judge, did they?

9 A. No.

10 Q. When you shot Kedena Brown, you were mad about being
11 shot at before?

12 A. Yeah.

13 Q. Yeah?

14 A. (Shaking head yes).

15 Q. I mean, do you even know why you did it?

16 A. Frightened.

17 Q. You were frightened?

18 A. A little bit.

19 Q. Of the car?

20 A. Yeah, I thought that was the right car.

21 Q. But you chased the car to catch up to it, right?

22 A. I didn't know if they had a gun or not.

23 Q. You could have turned a different direction, couldn't
24 you?

25 A. I could have.

1 Q. All right. You were mad that you got shot at?

2 A. I had multiple reasons.

3 Q. Okay. You were mad you got shot at?

4 A. Yeah.

5 Q. And you wanted retaliation?

6 A. I didn't want retaliation, but --

7 Q. Well, you sure drove really fast in that direction to
8 try to get retaliation, didn't you?

9 A. I wanted to know.

10 Q. Huh?

11 A. I wanted to know.

12 Q. You wanted to know what, who tried to kill you?

13 A. Yeah.

14 Q. If you wanted to know who tried to kill you, wouldn't
15 you have looked in the car to see it was the wrong car
16 before you tried to kill the person?

17 A. I mean, you can't see through tinted windows.

18 Q. You can't see through tinted windows?

19 A. (Shaking head yes).

20 Q. Okay. So despite two people telling you it was the
21 wrong car, and you not being able to see through the tinted
22 windows --

23 A. They didn't say that until after.

24 Q. You didn't say -- that's not what you said a couple
25 minutes ago, Mr. Simmons.

1 MR. KIDD: Objection, judge. Mischaracterization
2 of evidence of earlier testimony.

3 THE COURT: Overruled.

4 BY MS. EHRLICH:

5 Q. You couldn't even see who was in the car because you
6 said the window was so tinted and you still shot into it?

7 A. Yes.

8 Q. Okay. Don't blame it about being who was in the car.
9 It was about getting back at somebody, right?

10 A. (No response).

11 Q. You couldn't -- you are telling us right now you
12 couldn't even see in the car and you still shot. Why did
13 you do that?

14 A. Looked to see them.

15 Q. You didn't bother to look to see who was in the car to
16 see who shot at you earlier. You just went ahead and shot,
17 right?

18 A. Yeah.

19 Q. Okay. And now you want the minimum sentence for the
20 actions that you took, right?

21 A. I owned up to it.

22 Q. Oh, I'm getting you owned up to it, and it took you how
23 long to do that?

24 A. (No response).

25 Q. How long did it take?

1 A. Awhile.

2 Q. A long time, right? So we agree that over two years is
3 a long time to own up to what you did?

4 A. Yeah.

5 Q. It's a long time to tell everybody who would have
6 listened that Kenneth Robinson was the one who killed her?

7 A. Yeah.

8 Q. Okay. You didn't want anything to do with this from
9 the very beginning the minute you walked into -- before you
10 even get to the police station, right?

11 A. Yes.

12 Q. You even tried to get out of going to jail that day,
13 didn't you?

14 A. Yeah.

15 Q. You told them "I can help you solve this case. People
16 feel comfortable around me because I'm like a people's
17 person." Do you remember saying that?

18 A. Yeah.

19 Q. And then do you remember -- you also said, didn't you,
20 you said "I can be on the outside and do my daily routine -
21 go to work, come home, be with my girlfriend. I can help
22 you out." You said that, didn't you?

23 A. Yeah.

24 Q. Because you didn't even want to spend one night in jail
25 for this, did you?

1 A. No.

2 MS. EHRLICH: Court's indulgence.

3 (Off the record).

4 (Back on the record).

5 MS. EHRLICH: No further questions, Your Honor.

6 THE COURT: Redirect?

7 MR. KIDD: Thank you, Your Honor.

8 REDIRECT EXAMINATION BY MR. KIDD:

9 Q. You owned up to it before today, though, didn't you?

10 A. Yeah.

11 Q. It didn't take you this long to own up to what you
12 did --

13 A. Yeah.

14 Q. -- right?

15 Do you recall the first thing I told you on that first
16 time that you met with me back in I guess it was November of
17 2016, before we ever started talking? Do you remember what
18 I told you before we sat down and entered into a proffer
19 agreement?

20 A. Yeah.

21 Q. What did I tell you about telling the truth?

22 A. Before the proffer?

23 Q. Before we ever started, I said -- didn't I tell you "if
24 you are not going to tell me the truth, you don't need to be
25 sitting in this room with me?"

1 A. Yes.

2 Q. Right?

3 A. Yes.

4 Q. "If you are holding just a little bit back," I said
5 "you don't want to be sitting in this room with me, do you?"

6 A. Yes.

7 Q. Because what we do, we take statements, we go through
8 every little thing that you said, right?

9 A. Yes.

10 Q. So we can verify. We go back and we go back and we go
11 back --

12 MS. EHRLICH: Objection, Your Honor. It's
13 leading.

14 THE COURT: Watch your leading questions, Mr.
15 Kidd.

16 BY MR. KIDD:

17 Q. We've gone over everything that you have told us,
18 right?

19 A. Yes.

20 Q. We have met and we have met other times?

21 A. Yes.

22 Q. And you have lied to me a number of times?

23 A. Yes.

24 Q. Right?

25 A. (Shaking head yes).

1 Q. And as a result of that we no longer have an agreement?

2 A. Yes.

3 MS. EHRLICH: Objection, Your Honor, leading.

4 THE COURT: Mr. Kidd, watch the leading questions.

5 MR. KIDD: Yes, ma'am.

6 BY MR. KIDD:

7 Q. Do we have an agreement anymore?

8 A. No, sir.

9 Q. What's the absolute best sentence that you could hope
10 for?

11 A. The minimum.

12 Q. Is what?

13 A. Thirty.

14 Q. And up to what?

15 A. Up to what?

16 Q. How much could you get?

17 A. Life.

18 Q. All right. In order to get any lenience out of me and
19 my office, what do you got to do?

20 A. Be honest.

21 Q. Now, Ms. Ehrlich was saying that Keon and Kenneth told
22 you it was the wrong car. Where did they tell you that?

23 A. After, at "Fur's" house.

24 Q. On Lowell Drive, at "Fur's" house.

25 Anyone tell you that inside the CRV?

1 A. No, we were quiet.

2 Q. Quiet at the time?

3 A. (Shaking head yes).

4 Q. Now, she also asked you about passing the gun back and
5 forth to "BJ". Did you ever give your gun to "BJ" during
6 that chase?

7 A. Yes.

8 Q. Why?

9 A. Because it was empty.

10 Q. His was empty?

11 A. Yeah.

12 Q. Why was his empty?

13 A. From shooting.

14 Q. From shooting.

15 He ran out of bullets?

16 A. Yes.

17 Q. Now, she also asked you if back in November of 2016 you
18 ever told me that "BJ" didn't shoot on Dorchester Road. Is
19 that accurate?

20 A. Yeah.

21 Q. You told me that "BJ" didn't shoot on Dorchester Road?

22 A. I didn't tell you that.

23 Q. Okay. And that was a recorded interview, right?

24 A. Yes.

25 Q. Now, during the chase was there a point on Dorchester

1 Road when the cars kind of all got closer together?

2 A. Which, like all three of us?

3 Q. Uh-huh.

4 With the 300 y'all were chasing.

5 A. The closest we ever got -- the Focus got the closest,
6 which was at 526 and that overpass.

7 Q. Right near the Harley Davidson and everything on
8 Dorchester Road?

9 A. Yeah.

10 Q. What happened to allow all the cars to get closer right
11 there?

12 A. I guess it was undecided if they wanted to get on the
13 interstate, so they -- you know --

14 Q. The 300?

15 A. Yeah. So like --

16 Q. Did they kind of almost crash or something?

17 A. They swerved in the wrong lane to get back over.

18 Q. All right. So they swerved and that kind of allowed
19 the Focus to catch up to it?

20 A. Yeah.

21 Q. Okay. Did it allow you to get closer as well?

22 A. Not as close as the Focus.

23 Q. Right, but to gain ground?

24 A. Yeah.

25 Q. Who was shooting out of your car on Dorchester Road?

1 A. Keon and Kenneth.

2 Q. Any question in your mind about that?

3 A. No.

4 Q. Do you know how many times each of them shot?

5 A. I didn't count.

6 Q. More than once?

7 A. Yeah.

8 Q. More than twice?

9 A. It was a couple.

10 Q. A couple each, or what?

11 A. A couple each.

12 Q. Now, I want to clarify something. You said that you
13 believed people in the Chrysler had been shooting at you at
14 the time?

15 A. At the time.

16 Q. Now, you are talking about during the chase, or before
17 the chase?

18 A. Both.

19 Q. Both?

20 A. Yeah.

21 Q. Did you ever see them shooting back at you --

22 A. No.

23 Q. -- during the chase?

24 A. No.

25 Q. Now, in reference to the Young Gunnas, was "BJ" a Young

1 Gunna in May of 2015?

2 A. It was -- that was like over with, so --

3 Q. What do you mean?

4 A. Like everybody had done grewed up, so -- it was a big
5 thing in like 2012, to like '13.

6 Q. And then what happened?

7 A. People started working and stuff.

8 Q. How old was "Mook" at the time?

9 A. Like twenty-one.

10 Q. Twenty-one at the time?

11 A. I think. I ain't sure.

12 Q. Maybe twenty, twenty-one? Early twenties?

13 A. I think he's a year older than me, sir.

14 Q. How old were you at the time? How old are you now?

15 A. Twenty-three.

16 Q. Okay. So you are about twenty at the time?

17 A. Yeah.

18 Q. Three years ago?

19 A. Yeah.

20 Q. So you are saying he was a Young Gunna before that?

21 A. Yeah.

22 Q. And the beef was with the Young Gunnas, right?

23 A. It was another group before that.

24 Q. Who was that?

25 A. Those people called their selves Young Goons.

1 Q. Goons.

2 Did they become the Gunnas?

3 A. The Young Goons?

4 Q. Or break away?

5 A. No, they ain't -- they was from like the eastside and
6 stuff.

7 Q. So they were shooting --

8 A. Yeah.

9 Q. -- with the Gunnas?

10 A. Yeah.

11 Q. Well, who was the Loud Pack usually?

12 A. I guess the older guys.

13 Q. The older guys?

14 A. Yeah.

15 Q. We talked about Terrence McNeil, right?

16 A. Yeah.

17 Q. And "Lul T"?

18 A. Yeah.

19 Q. Let's back up for a second.

20 Do you know who "Babe Lo" is?

21 A. I heard of him.

22 Q. Do you know his name?

23 A. No.

24 Q. Do you know who he was friends with?

25 A. No.

1 Q. Okay. Do you remember when he was killed?

2 A. No, I can't remember.

3 Q. Do you remember when "Lul T" was killed?

4 A. 4th of July.

5 Q. 4th of July of what year?

6 A. 2014.

7 Q. 2014.

8 July of 2014. So ten months before this?

9 A. Yeah.

10 Q. I believe we -- I believe you testified yesterday
11 afternoon to the police that "Mook" was responsible, right?

12 A. That's what the streets say.

13 Q. That's what the streets were saying.

14 And that "Lul T" was close with Green and them boys?

15 A. Yeah.

16 Q. That's what you testified to yesterday, right?

17 A. Yes.

18 Q. Right.

19 So Green and them buys were then mad at "Mook" on that
20 theory, right?

21 A. Yeah.

22 Q. Okay. And "Mook" was "BJ's" what?

23 A. Cousin.

24 Q. And what was "Mook" to the Young Gunnas?

25 A. The head honcho.

1 Q. The head honcho.

2 All right.

3 (Off the record).

4 (Back on the record).

5 BY MR. KIDD:

6 Q. And who is "Fats"?

7 A. My ex-girlfriend's little brother.

8 Q. Your ex-girlfriend's brother.

9 Was "Fats" there that night?

10 A. No.

11 Q. Ms. Ehrlich asked if you were upset about being shot
12 at. It seems reasonable. Were you upset?

13 A. Yeah.

14 Q. Why?

15 A. Because I almost got killed for something I'm not
16 involved in.

17 Q. You almost got shot, right?

18 A. Yeah.

19 Q. And you had a bullet -- one of the State's Exhibits,
20 36, it looks like it went into the seat that you were
21 sitting in?

22 A. Yeah.

23 Q. And where was "BJ" standing when that shot rang out?

24 A. On the passenger's side outside the car.

25 Q. He's pretty close too, though?

1 A. Yeah.

2 Q. How long had you had that Crown Vic at the time that
3 you got shot?

4 A. Two months.

5 Q. Two months?

6 A. Yes.

7 Q. So it was a pretty new car to you?

8 A. Yeah.

9 Q. Does everyone know that was your car in the
10 neighborhood?

11 A. Yeah.

12 Q. Do you believe those shots were meant for you?

13 A. No.

14 Q. Who do you think they were meant for?

15 A. Them.

16 Q. Did anybody force "BJ" to get into that car with you?

17 A. No.

18 Q. Did you tell "BJ" to shoot on Dorchester Road?

19 A. No.

20 MR. KIDD: No further questions, Your Honor.

21 MS. EHRLICH: Briefly, Your Honor.

22 THE COURT: Take your time.

23 RECROSS EXAMINATION BY MS. EHRLICH:

24 Q. If you believe those shots weren't meant for you, why
25 would you go back to the house that you thought they were

1 meant for?

2 A. Because his momma got sick.

3 Q. So you were there to comfort his mom?

4 A. I mean, that affected me too.

5 Q. It affected you too?

6 A. Yeah.

7 Q. Well, you were mad, right?

8 A. I mean, kind of. I mean, I was, but --

9 Q. You almost got killed, right?

10 A. Yeah.

11 Q. You weren't mad that you almost got killed? You were,
12 right?

13 A. Yeah.

14 Q. Why would you go back to the place where you almost got
15 killed?

16 A. They done had left.

17 Q. Okay. Why did you chase people that you thought were
18 shooting at the other people that were there? Why would you
19 participate in the chase?

20 A. (No response).

21 Q. You don't know?

22 A. (Shaking head no).

23 Q. I'm not trying to --

24 A. No.

25 Q. Is it you don't know?

1 A. I don't know.

2 Q. And Mr. Kidd asked you again about the proffer and how
3 he says that the only way they can help you is if you are
4 honest, right?

5 A. Yes.

6 Q. And everybody now knows you were the shooter, right?

7 A. Yeah.

8 Q. And you have already pled guilty to the murder, right?

9 A. Yeah.

10 Q. And you could go to prison for the rest of your life,
11 right?

12 A. Yeah.

13 Q. So you need Mr. Kidd now more than ever, right?

14 A. Yeah.

15 Q. Is that a yes?

16 A. Yeah.

17 MS. EHRLICH: No more questions.

18 THE COURT: You can step down. Thank you.

19 Mr. Kidd, call your next witness.

20 MR. KIDD: We would recall Sergeant Niemiec.

21 THE COURT: All right.

22 You are already under oath. You were sworn
23 previously, so I will remind you that you are still under
24 oath.

25 Have a seat.

1 RICHARD SIMMONS, having been first duly sworn,
2 testified as follows:

3 THE WITNESS: Yes.

4 THE CLERK: Thank you, sir.

5 Please take your seat, speaking directly into the
6 microphone, spell your first and last name for the record.

7 THE WITNESS: Richard Simmons.

8 THE COURT: Please spell your last name.

9 THE WITNESS: (No response).

10 THE COURT: Spell your last name.

11 THE WITNESS: Oh, S-I-M-M-O-N-S.

12 THE COURT: Thank you Mr. Simmons.

13 Mr. Kidd?

14 DIRECT EXAMINATION BY MR. KIDD:

15 Q. Good afternoon, Richard.

16 Richard, do you go by a nickname?

17 A. Yeah.

18 Q. What's your nickname?

19 A. "Black".

20 Q. How old are you, Richard?

21 A. Twenty-three now.

22 Q. Twenty-three now. Okay.

23 And where are you originally from?

24 A. Downtown.

25 Q. Originally from downtown.

1 So you were born downtown?

2 A. Yes.

3 Q. In Charleston.

4 Did you ever live in The Waylyn?

5 A. Yes.

6 Q. When did you move to the Waylyn?

7 A. 2013.

8 Q. 2013.

9 When you were living downtown, who were you living
10 with?

11 A. My momma.

12 Q. Living with your mother.

13 And when you moved in the Waylyn, who were you living
14 with?

15 A. My daddy.

16 Q. And where in The Waylyn were y'all living?

17 A. On Poplin Avenue.

18 Q. On Poplin?

19 A. Yeah.

20 Q. All right. So I want to talk about all the people
21 involved in this case, all right? Who everyone is and how
22 you know them, okay?

23 Let's start with Kenneth Robinson. Do you know -- how
24 do you know Kenneth Robinson?

25 A. Through his cousin.

1 Q. Through his cousin. Who is his cousin?

2 A. "Mook".

3 Q. Through "Mook"?

4 A. Yeah.

5 Q. Do you know "Mook's" real name?

6 A. Daquan.

7 Q. Daquan.

8 Do you know his last name?

9 A. Lance.

10 Q. All right. So you got to know Kenneth Robinson through
11 his cousin Daquan Lance, as you know as "Mook". All right.

12 And how long have you known Kenneth Robinson?

13 A. Like a little while after I moved up there.

14 Q. A little while after you moved into The Waylyn?

15 A. Yeah.

16 Q. So you moved into The Waylyn -- you said you moved into
17 The Waylyn in 2013 with your daddy, right?

18 A. Yeah.

19 Q. So you met Kenneth shortly after that?

20 A. Like later in '13.

21 Q. Later in 2013?

22 A. Yes.

23 Q. So I guess that would make it about -- when this
24 happened in May of 2015, you had known him for a year and a
25 half, or so?

1 A. Yeah.

2 Q. Okay. And correct me if I'm wrong, I don't want to say
3 something that's inaccurate, okay? So is that about right?

4 A. Probably like two years.

5 Q. About two years. Okay.

6 Describe your relationship with him. What were
7 y'all -- as friends? I mean, y'all close, just associates,
8 or what? What was y'all's relationship like?

9 A. He is younger than me so we was like associates.

10 Q. So did y'all -- did you hang out a lot, or every now
11 and then, or what?

12 A. Every now and then.

13 Q. Okay. Was it mainly through his cousin, or other
14 friends, or what?

15 A. Other friends.

16 Q. Other friends.

17 Like who?

18 A. Like Sidney --

19 Q. Sidney McDonald?

20 A. Yeah.

21 Q. Do you consider Sidney McDonald your friend or "BJ's"
22 friend?

23 A. In the middle.

24 Q. It was in the middle?

25 A. Yeah.

1 Q. What about Latrell Hamilton?

2 A. Same thing.

3 Q. Same thing.

4 Kind of in the middle? Not closer to either one of
5 y'all, just --

6 A. Closer to "Trell".

7 Q. Latrell?

8 A. Yeah.

9 Q. Okay. So Latrell was closer to "BJ".

10 A. Yeah.

11 Q. Were you close with Latrell?

12 A. No.

13 Q. How long had you known Latrell?

14 A. Like the end of 2012.

15 Q. So a little bit longer than "BJ"?

16 A. Yeah.

17 Q. So you had known him for about three years, I guess?

18 A. Yeah.

19 Q. How long have you known Sidney?

20 A. I met him in 2013 too.

21 Q. So about the same time that you met "BJ", you met
22 Sidney?

23 A. No, I met Sidney before him.

24 Q. Before? So about the same time that you met Latrell?

25 A. After "Trell".

1 Q. After Latrell. Okay.

2 So you have known him for two and a half years, or
3 something like that?

4 A. Yeah.

5 Q. Okay. All right.

6 You knew a Timothy McClendon then?

7 A. Yeah.

8 Q. How long have you know Timothy McClendon?

9 A. About the same time as "Trell".

10 Q. About the same team as "Trell".

11 Does he have a nickname?

12 A. "Gooch".

13 Q. "Gooch". Okay.

14 And does Latrell have a nickname?

15 A. "Trell".

16 Q. "Trell".

17 What about Sidney? Did he go --

18 A. Sidney.

19 Q. Just Sidney, okay.

20 Are you familiar with who the Young Gunnas are?

21 A. Yeah.

22 Q. Okay. Is "Mook" a Young Gunna?

23 A. He was.

24 Q. He was?

25 A. Yeah.

1 Q. Do you know where in "Mook" is now?

2 A. Incarcerated.

3 Q. Is "Trell" a Young Gunna?

4 A. He was.

5 Q. Was "BJ" a Young Gunna?

6 MS. EHRLICH: Objection.

7 A. I don't think so.

8 THE COURT: What's the basis?

9 MS. EHRLICH: I was just renewing my prior
10 objections.

11 THE COURT: All right. It's noted the record.

12 If he knows, he may answer.

13 BY MR. KIDD:

14 Q. What was your answer to that?

15 A. To what?

16 Q. Is "BJ" a Young Gunna?

17 A. He was.

18 Q. He was.

19 Before he got locked up?

20 A. Yeah.

21 Q. And what about Timothy McClendon, "Gooch"?

22 A. He was too.

23 Q. All right. And you -- you live in The Waylyn, right?

24 A. The Waylyn.

25 Q. On Poplin?

1 A. Yeah.

2 Q. What's The Waylyn referred to?

3 A. "Five Mile".

4 Q. "Five Mile"?

5 A. Yeah.

6 Q. And you got it in front of you there. Do you recognize
7 that?

8 A. Yeah.

9 Q. That's just The Waylyn, right?

10 So that's where y'all referred to as "The Five"?

11 A. Yeah.

12 Q. What is "The Four"?

13 A. Across the street.

14 Q. Across the street.

15 Across Dorchester Road, but not in this picture?

16 A. Uh-huh.

17 Q. All right. Does the back side of the Waylyn have a
18 name, like --

19 A. I think all that's together.

20 Q. It's all -- The Waylyn all of it is considered "The
21 Five"?

22 A. Yeah.

23 Q. Okay. Were you a Young Gunna?

24 A. No.

25 Q. Did people think that you were?

1 A. Yeah.

2 Q. Why?

3 A. Hanging with them.

4 Q. So you spent a lot of time with them?

5 A. Yeah.

6 Q. Back in 2015, who was considered to be kind of the head
7 of the Young Gunnas?

8 A. "Mook".

9 Q. "Mook".

10 Do you know if "Mook", Daquan Lance, had any
11 relationship with "BJ"?

12 A. They are related.

13 Q. They are related?

14 A. Yeah.

15 Q. Do you know how they are related?

16 A. Cousins.

17 Q. Cousins.

18 All right. Do you know Keon Anderson?

19 A. Yeah.

20 Q. How do you know Keon?

21 A. We are related.

22 Q. You are related to Keon?

23 A. Yeah.

24 Q. And how are you related to Keon?

25 A. I'm his uncle.

1 Q. You're his uncle?

2 A. Yeah.

3 Q. All right. And --

4 A. We call each other cousins.

5 Q. You call each other cousins.

6 Does Keon have a nickname?

7 A. "Bubba".

8 Q. "Bubba".

9 Are you tight with Keon?

10 A. Sort of.

11 Q. Sort off?

12 A. Yeah.

13 Q. Okay. Less so now?

14 A. Huh?

15 Q. Less so now?

16 A. He's just sort of.

17 COURT REPORTER: Speak into the microphone, sir.

18 I can't hear you.

19 A. I say sort of.

20 BY MR. KIDD:

21 Q. Sort of. Okay.

22 And so how long have you known Keon?

23 A. Since I was young.

24 Q. Since you were young?

25 A. Way young.

1 Q. Almost your whole life then?

2 A. Yeah.

3 Q. Is he a Young Gunna?

4 A. No.

5 Q. Does he hang out with those same guys?

6 A. Every now and then.

7 Q. Every now and then. Okay.

8 And what about Kelley Green, how do you know Kelley?

9 A. I meet him around the same time as "Trell".

10 Q. You met him also kind of between 2012 and 2013, around
11 that time?

12 A. Yeah.

13 THE COURT: Mr. Simmons, I need that you answer
14 out loud either yes or no. Can you do you that for me?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Thank you.

17 BY MR. KIDD:

18 Q. And does Kelley Green have a nickname?

19 A. No.

20 Q. He goes by Kelley?

21 A. Yeah.

22 THE COURT: That was a yes?

23 THE WITNESS: Yes. My bad.

24 BY MR. KIDD:

25 Q. The court reporter has got to take everything down and

1 sometimes if we don't pronounce, it gets him mixed up, all
2 right?

3 A. Yes.

4 Q. Okay. Thank you.

5 And I apologize. I might have already asked this. How
6 long have you known Kelley Green? Since what, 2012, 2013?

7 A. Yes.

8 Q. About the same time. Thank you.

9 And what was your relationship like with him?

10 A. Associates.

11 Q. Associates.

12 So not real tight?

13 A. No.

14 Q. All right. What about Derrontae Holmes?

15 A. We were tight.

16 Q. You are tight with Derrontae?

17 A. Yes.

18 Q. How long have you known him?

19 A. Since like 2010.

20 Q. So longer -- so about five years at the time this all
21 went down?

22 A. Before I move up the road.

23 Q. So you knew him back when you were downtown?

24 A. Yeah.

25 Q. Okay. And does he have a nickname?

1 A. "D".

2 Q. Some people call him "Big D"?

3 A. Yeah, some people.

4 Q. How did you meet Derrontae?

5 A. Through a girl.

6 Q. Through a girl.

7 All right. And Fred Lance, how do you know Fred Lance?

8 A. Through "Mook".

9 Q. Through "Mook".

10 Were you close -- do you know his nickname?

11 A. "Fur".

12 Q. "Fur".

13 Were you close with "Fur" at all?

14 A. No.

15 Q. Do you know if "Fur" had any relationship to "BJ",

16 Kenneth Robinson?

17 A. His uncle.

18 Q. Uncle.

19 So Daquan Lance and Fred Lance are I'm assuming

20 related, right?

21 A. Yes.

22 Q. So "Mook" and "Fur" are related and they also were both

23 related to "BJ"?

24 A. Yes.

25 Q. Is he a Young Gunna?

1 A. No.

2 Q. What about Sidney McDonald, is he?

3 A. No.

4 Q. All right. Let's talk about May the 9th of 2015, okay,
5 so the night leading up.

6 Do you recall when your car was shot?

7 A. Yes.

8 Q. Let's talk about the 9th leading up to that night,
9 okay? Or that night.

10 What were you doing that evening on the night that --
11 you know, in the hours before your car got shot?

12 A. Hanging out.

13 Q. Where?

14 A. Like right before my car got shot up?

15 Q. No, I mean -- about what time did your car get shot up?

16 A. I was at my ex-girlfriend's house.

17 Q. No, about what time did your car get shot up?

18 A. Around twelve.

19 Q. Right around midnight, or something.

20 So let's say where were you about nine o'clock that
21 night?

22 A. It's hard to remember.

23 COURT REPORTER: Sir?

24 A. I said it's hard to remember right now.

25 BY MR. KIDD:

1 Q. Okay. Do you remember what you did that day at all?

2 A. I went to work.

3 Q. You went to work.

4 Where were you working at the time?

5 A. A hotel.

6 Q. What hotel?

7 A. Hilton Garden Inn.

8 Q. All right. Do you remember what time that you get off
9 work?

10 A. Like four.

11 Q. About four p.m.?

12 A. Yeah.

13 Q. Do you have a girlfriend at the time?

14 A. Yeah.

15 Q. Who was your girlfriend?

16 A. Charmontae.

17 Q. Do you remember her last name?

18 A. McDonald.

19 Q. Charmontae McDonald.

20 Is she related to Sidney McDonald?

21 A. No.

22 Q. Okay. Where did Charmontae live?

23 A. On Alabama in the Waylyn.

24 Q. This right here? Is this Alabama right here?

25 A. Yes.

1 Q. So Charmontae lived on Alabama and you lived on Poplin,
2 which I believe is on the other side of the Waylyn?

3 A. Yes.

4 Q. Is that right?

5 A. Yes.

6 Q. By the other side, you mean on the other side of Gary
7 Circle? That's over on that side?

8 A. By Olympia.

9 Q. Were you at Charmontae's house that night?

10 A. Yes.

11 Q. Who was at Charmontae's house with you?

12 A. Her uncle.

13 Q. Who is her uncle?

14 A. A guy named David.

15 Q. A guy named what?

16 A. David.

17 Q. David.

18 All right. And at some point I'm assuming you left
19 Charmontae's house, is that correct?

20 A. Yes.

21 Q. Where did you go?

22 A. To pick up Kelley.

23 Q. To pick up Kelley.

24 And that's Kelley Green, right?

25 A. Yeah.

1 Q. And do you remember -- I'm not going to hold you to the
2 specific time, but do you remember approximately what time
3 that you went to pick up Kelley?

4 A. Before my car get shot up.

5 Q. All right. Where did you pick up Kelley from?

6 A. North Point.

7 Q. At North Point.

8 So you pick up Kelley from North Point. What are you
9 driving? Are you driving your car?

10 A. Yeah.

11 Q. And what car is that?

12 A. It's a Crown Victoria.

13 Q. Do you remember what color it was?

14 A. White.

15 Q. All right. So you are driving your white Crown Vic and
16 you pick up Kelley from North Point?

17 A. Yes.

18 Q. Where do y'all go?

19 A. Back to Charmontae's house.

20 Q. Back to Charmontae's house.

21 Are you there for a while?

22 A. Probably like thirty minutes.

23 Q. All right. And then where do y'all go?

24 A. I go to pick up "Trell" from "BJ's" house.

25 Q. All right. Why are you picking up "Trell" from "BJ's"

1 house?

2 A. Because they wanted to go to a party on Alabama -- I
3 mean not Alabama, Accabee.

4 Q. All right. So you wanted to go on and go to a party on
5 Accabee?

6 A. Yeah.

7 Q. All right. And so you and Kelley go to "BJ's" house?

8 A. Yeah.

9 Q. To pick up "Trell", is that correct?

10 A. Yes.

11 Q. Okay. And you have been to "BJ's" house before?

12 A. Yes.

13 Q. A lot, or every now and then, or what?

14 A. Plenty a lot.

15 Q. A lot.

16 What kind of house is "BJ's" house? I mean, was it a
17 place people would go often?

18 A. Not often, but stuff that happened so we would go
19 there.

20 Q. All right. Did you know "BJ's" family? Do you know
21 his momma?

22 A. Yes.

23 Q. Did you know his sister?

24 A. Yes.

25 Q. So you knew his family?

1 A. Yeah.

2 Q. And were you close to his family?

3 A. I wouldn't say -- I wouldn't say that. Associate.

4 Q. Okay. When you get to "BJ's" house and pick up
5 "Trell", who all was there?

6 A. "BJ", his momma, his little sister, and "Trell".

7 Q. All right. And do you drive up to his house?

8 A. Yes.

9 Q. I will show you what's been marked and admitted into
10 evidence as State's 149. Do you see BJ's house on that?

11 A. Yes.

12 Q. You do.

13 Which house is it?

14 A. The third one from the corner.

15 Q. The third one from the corner.

16 Is it -- this the corner that you are talking about
17 here?

18 A. Yeah.

19 Q. Talking about the third one up?

20 A. Yes.

21 Q. This house here, is that right?

22 A. Yeah.

23 Q. All right. That's "BJ's" house there. So that's where
24 you take Kelley to go pick up "Trell" and you drive there in
25 your Crown Vic, right?

1 Where do you park your Crown Vic when you get there?

2 A. In front of the door. Well, like on the street, but
3 straight in front of the house.

4 Q. Are you facing -- are you facing the house, or are you
5 facing parallel to it? Like facing -- going with the
6 street?

7 A. Yeah.

8 Q. All right. Are you facing down toward Dorchester, or
9 up to the back of The Waylyn?

10 A. Up toward the back.

11 Q. So kind of like this?

12 A. Yeah.

13 Q. Okay. And do you get there, what happens?

14 A. Me and Kelley was sitting in the car and "Trell" come
15 to the car and then "BJ" comes. He wanted to go and I
16 wouldn't let him go, and me and him was going back and forth
17 on why I wouldn't let him go.

18 Q. All right. So you are sitting in your car?

19 A. Yeah.

20 Q. And where is Kelley?

21 A. Sitting in the passenger's seat.

22 Q. In the front?

23 A. Yeah.

24 Q. And where is "Trell"?

25 A. Getting ready to get in the back.

1 Q. In the passenger side or the driver's side?

2 A. The passenger's side.

3 Q. So "Trell" is getting in the back passenger side.

4 Where is "BJ"?

5 A. Standing next to the passenger window.

6 Q. Standing at the passenger window.

7 So your car is kind of between him and the street?

8 A. Yeah.

9 Q. All right. What happens?

10 A. Somebody rolled past and started shooting.

11 Q. All right. What did you do?

12 A. Duck.

13 Q. Did you see who was shooting?

14 A. No.

15 Q. No.

16 Do you see what kind of car it was?

17 A. Yeah, it looked like an Acura or something.

18 Q. Do you remember what color?

19 A. It was dark, like a dark gray or something.

20 Q. All right. So a car drives by and shoots, and I

21 will -- I don't need to put these up.

22 I'm going to show you what's already been marked and
23 entered as evidence as State's Exhibit 32 through 43. I'm
24 just going to -- well, I guess you can't flip through those,
25 can you?

1 I'll show you first State's 32. Do you recognize that?

2 A. Yes.

3 Q. State's 33, is that your -- that's your Crown Vic that
4 we are talking about?

5 A. Yes.

6 Q. And that's, I guess, a bullet hole from the shooting
7 that we are talking about?

8 A. Yes.

9 Q. All right. And we got State's 35. Is that the --
10 State's 36. Bullet hole through your car?

11 All right. So after the car gets shot, you say you
12 ducked down. What did you y'all do next?

13 A. Well, I get out of the car after like they rode up the
14 street some.

15 Q. What did you do?

16 A. Grabbed the gun from "Trell".

17 Q. So you grabbed the gun from "Trell"?

18 A. Yeah.

19 Q. And what did you do?

20 A. Started chasing the car, but didn't get too far.

21 Q. You chased them on foot?

22 A. Yeah.

23 Q. Did you fire any shots?

24 A. No.

25 Q. Then what do you do?

1 A. Turned around.

2 Q. Come back to your car?

3 A. Yeah.

4 Q. All right. And did you call the police?

5 A. Somebody else did.

6 Q. All right. And where are "BJ", "Trell" and Kelley at
7 this point?

8 A. Still standing by my car.

9 Q. Still standing by your car.

10 Are the police there yet?

11 A. Not yet.

12 Q. All right. When do the police get there?

13 A. Probably like two or three minutes later.

14 Q. So pretty quick?

15 A. Yeah.

16 Q. And what do Kelley, "Trell" and "BJ" do when the police
17 get there?

18 A. Vanish.

19 Q. Vanish?

20 A. Well, run.

21 Q. What do you do with the gun?

22 A. Throw it by the abandoned house.

23 Q. Which house is the abandoned house?

24 A. The second one from the corner.

25 Q. The second one.

1 That house there?

2 A. Yeah.

3 Q. Okay. So you -- what do you do with the gun?

4 A. Throw it on the side and hide it.

5 Q. So when the police officers arrived, you don't have it?

6 A. Yeah.

7 Q. Okay. You move your car before the police officer gets
8 there?

9 A. No.

10 Q. No.

11 All right. So the police officer gets there and then
12 what?

13 A. Do a police report.

14 Q. Do a police report.

15 And is that your car, the Crown Vic?

16 A. Yeah, but it was in my brother's name.

17 Q. Who is your brother?

18 A. Rico.

19 Q. Last name?

20 A. Jordan.

21 Q. And so the police come, file a report, they collect
22 shell casings. Anything else out there that you noticed?

23 A. No.

24 Q. All right. You go anywhere after that?

25 A. Not right then and there.

1 Q. What did you do after the police officer left?

2 A. Standing for a little while and then try to move my
3 car.

4 Q. Where did you try to move your car to?

5 A. Home.

6 Q. Did you --

7 A. Make it?

8 Q. -- make it?

9 A. No.

10 Q. What happened?

11 A. The tire came off -- well, the tire came off the rim.
12 The tire was flat.

13 Q. All right. So what did you do?

14 A. Leave it on Gary Drive.

15 Q. You left your car on Gary?

16 Do you know about where on Gary?

17 A. (No response).

18 Q. So your dad lives on Poplin?

19 A. Yes.

20 Q. This is Poplin right here?

21 A. Yes.

22 Q. And is that where you were taking the car towards?

23 A. (Shaking head yes).

24 Q. And you said you left it on Gary?

25 A. Like between Gary and Olympia and Poplin.

1 Q. Gary and Olympia and Poplin, so kind of right around
2 here?

3 A. Close to the corner.

4 Q. Close to the corner.

5 Okay. Is that circle close? I mean, I don't need to
6 be exact, but that's a ballpark?

7 A. Like closer to the Poplin corner.

8 Q. Closer to the Poplin corner?

9 A. Yeah.

10 Q. Right there?

11 A. Yeah.

12 Q. So you leave your car there and then what?

13 A. Call my brother.

14 Q. You call Rico?

15 A. Yeah.

16 Q. And what does he do?

17 A. I informed him of what happened.

18 Q. You told him about what happened?

19 A. (Shaking head yes).

20 Q. What did he have to say about it?

21 A. He was mad.

22 Q. He was mad at you.

23 And what did he do?

24 A. He came.

25 Q. He came to where you were at with your car?

1 A. Yeah.

2 Q. And where did y'all go from there?

3 A. We were going back and forth and he asked me who did it

4 and I told him I didn't know.

5 Q. Okay. And where -- did he take it somewhere?

6 A. Back to "BJ's" house.

7 Q. So he dropped you back off at "BJ's" house?

8 A. Yeah.

9 Q. And back at "BJ's" house what are y'all doing?

10 A. Trying to figure out who was shooting at us.

11 Q. Who all was there?

12 A. Me, him, Kelley and "Trell".

13 Q. Slow down now. So we are back at "BJ's" house. You

14 say me, so it was obviously you, Richard Simmons. Him, you

15 mean "BJ"?

16 A. Yeah.

17 Q. Kelley and "Trell". Who else?

18 A. Ain't nobody else get there yet.

19 Q. Nobody else was there yet. All right.

20 Is his momma and baby sister there?

21 A. Yeah.

22 Q. All right. So what -- did you make a phone call?

23 A. Yeah.

24 Q. Who did you call?

25 A. Derrontae and Sidney.

1 Q. So you call "Bid D" and Sidney, right?

2 Do they come to "BJ's" house?

3 A. Yeah.

4 Q. That's yes?

5 A. Yes.

6 Q. Why did you call Sidney?

7 A. Because I knew he had a gun.

8 Q. Did he bring you a gun?

9 A. Yes.

10 Q. Do you remember what kind of gun he brought you?

11 A. A .40.

12 Q. Do you remember what make?

13 A. A Taurus.

14 Q. All right. Did Sidney stay or did he leave?

15 A. He left.

16 Q. What about Derrontae?

17 A. He came.

18 Q. What did he -- how did he get there?

19 A. His car.

20 Q. What kind of car does Derrontae drive?

21 A. A Honda truck.

22 Q. What kind of truck?

23 A. CRV.

24 Q. You call it a truck, but do you mean like an SUV?

25 A. Yeah.

1 Q. I show you what's been marked State's Exhibit 59. Do
2 you recognize that?

3 A. Yeah.

4 Q. Does that look like Derrontae's SUV?

5 A. Yeah.

6 Q. Anybody in the car with Derrontae when he gets there,
7 or does he come by himself?

8 A. He comes by himself.

9 Q. What is Derrontae's relationship like with "BJ" and his
10 family and everyone over there? Are they close?

11 A. I can't deny it.

12 Q. They friendly?

13 A. Yeah.

14 Q. All right. Are other people there making phone calls
15 as well?

16 A. Yeah.

17 Q. Like who?

18 A. "Trell".

19 Q. Anyone else?

20 A. "BJ".

21 Q. Okay. And do you know who they are calling?

22 A. I guess they are calling --

23 Q. Well, you don't have to guess. Either you know or you
24 don't know. It's okay if you don't know.

25 A. Yeah.

1 Q. You know who they called?

2 A. Yeah.

3 Q. Who did they call?

4 A. His uncle.

5 Q. Whose uncle?

6 A. "BJ's".

7 Q. Who is "BJ's" uncle?

8 A. "Fur".

9 Q. "Fur".

10 All right. And do you know who else they called?

11 Anybody else?

12 A. No.

13 Q. All right. Does Keon show up?

14 A. Yeah.

15 Q. Do you know who called Keon?

16 A. No.

17 Q. How does Keon get there?

18 A. A car.

19 Q. Do you now what kind of car?

20 A. A Focus.

21 Q. Focus.

22 So it was a Focus Ford?

23 A. Yeah.

24 Q. So Keon shows up in a Ford Focus.

25 Anybody with him or did he arrive by himself?

1 A. He was by himself.

2 Q. When "BJ's" uncle arrives, "Fur", he arrived by himself
3 or with someone else?

4 A. With two other people.

5 Q. He was riding with two other people.

6 Who does he ride with?

7 A. I don't know the driver, but I know the other guy.

8 Q. Who is the other guy?

9 A. I know him by "Stocky".

10 Q. "Stocky".

11 So "Fur" arrives with "Stocky" and someone you don't
12 know the name of?

13 A. Yeah.

14 Q. What kind of car do they arrive in?

15 A. A Dodge Charger.

16 Q. Do you remember what color?

17 A. Like smoke gray.

18 Q. All right. So we are at "BJ's" house, your car has
19 been shot up. My understanding now it is yourself, "BJ",
20 Keon, Derrontae, Kelley, "Fur", Fred Lance, "Stocky", and a
21 guy you don't know the name of?

22 A. Yes.

23 Q. And also "BJ's" momma and little sister?

24 A. Yes.

25 Q. Okay. Y'all inside the house, outside the house?

1 Where are y'all at?

2 A. Sand -- well, we went outside to sandpaper my car.

3 Q. So kind of in the front yard?

4 A. Yeah.

5 Q. Or I guess --

6 A. On the sidewalk.

7 Q. On the sidewalk between the road and the house.

8 All right. I know -- you testified that you got a .40
9 Taurus from Sidney. What happened to that .40 Glock or that
10 gun that you got from "Trell"?

11 A. I give it back to him when the police left.

12 Q. So you went and got it from wherever you tossed it?

13 A. Yeah, where I hid it.

14 Q. And you gave it back to "Trell".

15 Do you remember what kind of gun it was?

16 A. A Glock .40.

17 Q. Who else had firearms on them that night?

18 A. Kelley.

19 Q. And only tell me if you know, but do you know what kind
20 of gun Kelley had on him?

21 A. A .380.

22 Q. .380?

23 A. Yeah.

24 Q. Anything specific about it?

25 A. It was purple and black.

1 Q. It was purple?

2 A. Or pink and black.

3 Q. All right. Did "BJ" have a gun?

4 A. Yeah.

5 Q. Do you know what kind?

6 A. A .9.

7 Q. "BJ" had a 9-millimeter.

8 What about Keon?

9 A. A Smith & Wesson .40.

10 Q. Keon had a .40.

11 What about "Fur"?

12 A. He had a Glock.

13 Q. "Fur" had a Glock on him.

14 What about "Stocky"?

15 A. An AK.

16 Q. "Stocky" had a rifle?

17 A. Yeah.

18 Q. What about "Big D"?

19 A. He didn't have no gun.

20 Q. "Big D" was unarmed?

21 A. Yeah.

22 Q. What about the guy that you didn't know that was
23 driving the Charger? Did you see him with a firearm?

24 A. No.

25 Q. All right. So all of y'all are outside of "BJ's"

1 house. What are y'all talking about? What's being said?

2 A. Trying to figure out who would shoot at us.

3 Q. You got a theory?

4 A. They was just calling a bunch of names.

5 Q. Whose names they calling?

6 A. Some guys off the Waylyn.

7 Q. Who?

8 A. "Mike Mike" and them.

9 Q. "Mike Mike" and them.

10 Is that -- is "Mike Mike" a part of another gang?

11 A. I wouldn't say it's a gang, but --

12 Q. What would you say it is?

13 A. A group.

14 Q. A group? You know, a group is fine. I don't mean to
15 classify anyone, you know, but a group.

16 Did they have a name of that group?

17 A. I guess Loud Pack.

18 Q. Loud Pack.

19 And "Mike Mike", do you know "Mike Mike's" real name?

20 A. No.

21 Q. Who else do you know as part of Loud Pack? Do you know
22 Stanley Green?

23 A. Heard of him.

24 Q. Is he part of Loud Pack?

25 A. They said so, yeah.

1 Q. Do you know Antonio Miller?

2 A. No.

3 Q. Do you know "Little Tony"?

4 A. Yeah.

5 Q. Who is "Little Tony"?

6 A. That's what I knew him by. I think that's --

7 Q. Part of Loud Pack?

8 A. Most likely.

9 Q. Part of Loud Pack?

10 A. Yeah.

11 Q. Do you know where they mainly live and operate in The
12 Waylyn?

13 A. Somewhere in the back.

14 Q. In the back of the Waylyn.

15 So when we talk about the front of the Waylyn and the
16 back of The Waylyn, is it kind of separated right here?

17 A. Yeah.

18 Q. So the back of The Waylyn, you mean on the --

19 A. On the other side.

20 Q. On the other side of that line.

21 And on the low to the bottom part of The Waylyn is
22 where you live and where "BJ" was and all that, right?

23 A. Yeah.

24 Q. Do you know Marvin Pressley?

25 A. No.

1 Q. Now, I want to talk about the -- and I don't want to --
2 I don't want you to answer questions based on what you know
3 now, because it wouldn't surprise me it would cause you a
4 problem, but the four people in the Chrysler 300 that y'all
5 were chasing that night, do you know Donald Jackson?

6 A. Yeah.

7 Q. You knew him at the time?

8 A. Yeah.

9 Q. How do you know Donald Jackson?

10 A. He is related to "Trell".

11 Q. Related to "Trell".

12 Did he have a nickname?

13 A. "DJ".

14 Q. Have you ever hear him called "Little 5"?

15 A. Recently when I was arrested.

16 Q. But not at the time?

17 A. No.

18 Q. Okay. What about Corey Watkins?

19 A. Yeah.

20 Q. You knew him?

21 A. Yeah.

22 Q. How did you know him?

23 A. He used to come to the gym in The Waylyn.

24 COURT REPORTER: Speak into the microphone,
25 please, sir.

1 A. He came to the gym.

2 BY MR. KIDD:

3 Q. He came to the gym?

4 A. Yes.

5 Q. I know it's a little bit close to you. You can't get
6 much closer.

7 COURT REPORTER: Thank you.

8 BY MR. KIDD:

9 Q. So you knew Corey Watkins from the gym.
10 What about Jawan Nicks?

11 A. Not really.

12 Q. You didn't really know him?

13 A. No.

14 Q. Had you met him before?

15 A. I seen him walking around.

16 Q. Do you what his nickname was?

17 A. "Bright".

18 Q. "Bright".

19 And lastly Andrew Smalls. Did you know Andrew Smalls?

20 A. Yeah.

21 Q. How did you know Andrew Smalls?

22 A. Seen him at the gym too a couple of times.

23 Q. All right. Did he have a nickname?

24 A. "A".

25 Q. "A".

1 All right. Any of those guys associated with Loud
2 Pack?

3 A. I think -- I don't know.

4 Q. All right. You are not sure?

5 A. Yeah.

6 Q. Okay. Did you have any beef or problem with them?

7 A. No.

8 Q. Do you know about some ongoing problems, though,
9 between the Young Gunnas and Loud Pack?

10 A. That just started.

11 Q. Just started?

12 What had just started?

13 A. The problems they have.

14 Q. What were they?

15 A. Huh?

16 Q. What were they?

17 A. Like -- what was the problem?

18 Q. Uh-huh.

19 A. Somebody died. People getting killed, I guess. Nobody
20 knows for sure.

21 Q. But -- so you don't really know for sure what the
22 problem was, but you know there was a problem?

23 A. Yeah.

24 Q. Do you know who it was that got killed?

25 A. Terrence.

1 Q. Do you know what his nickname was?

2 A. "Lul T".

3 Q. All right. So back to "BJ's" house.

4 So we are all out in the front of "BJ's" house. We
5 have got --

6 (Off the record)..

7 (Back on the record).

8 BY MR. KIDD:

9 Q. All right. So let's talk a little bit more about "Lul
10 T". Terrence you said?

11 A. Yeah.

12 Q. Do you know the last name?

13 A. McNeil.

14 Q. McNeil.

15 And did you know who he was tight with?

16 A. Green and them.

17 Q. Green and them.

18 When you say Green and them, you mean Loud Pack?

19 A. Yeah.

20 Q. Because I think when you refer to Green, you are
21 talking about Stanley Green and not Kelley Green, right?

22 A. Yeah.

23 Q. Do you know who killed "Lul T"?

24 A. No.

25 Q. Do you know what the streets were saying about who

1 killed "Lul T"?

2 A. Yeah.

3 Q. Who?

4 A. "Mook".

5 Q. All right. So we are in front of "BJ's" house and I
6 believe there is eight of y'all, not including "BJ's" mom
7 and little sister?

8 A. Yeah.

9 Q. Okay. Based on -- I think what we just said, six of
10 y'all are armed.

11 Describe that situation for me. Y'all talked quietly,
12 is it loud? What kind of situation is going on out there?

13 A. We was talking about like as a group like how guys
14 normally hang out. Only like certain people allowed.

15 Q. Yeah. Okay.

16 And so while y'all are out there in front of "BJ's"
17 house what happens?

18 A. Another car came like --

19 Q. What happened?

20 A. Another car came and shot.

21 Q. There is another shooting?

22 A. Yeah, but it didn't shoot directly at us.

23 Q. Could you tell where the shots were coming from?

24 A. Off of Ranger.

25 Q. Off of Ranger.

1 Ranger is a pretty road in The Waylyn, kind of does a
2 full loop around in this, right?

3 A. Yeah.

4 Q. So where on Waylyn -- where on Ranger were the shots
5 coming from?

6 A. From Constitution, like --

7 Q. Constitution?

8 All right. So this is Constitution and Ranger right
9 here, right?

10 A. Yeah.

11 Q. Is that right?

12 And so the shots were coming down from that direction
13 and y'all are standing at "BJ's" house, which is I guess
14 roughly right here, is that right?

15 A. Yes.

16 Q. Can you see who is shooting --

17 A. No.

18 Q. -- at that point?

19 A. No.

20 Q. What do y'all do when the shots would get fired?

21 A. Jump in the cars.

22 Q. Jump in the cars.

23 Who jumps in what car?

24 A. Me, "BJ", and Keon jump in "Big D's" car.

25 And then Kelley, "Trell" and "Big D" jump in "Bubba's"

1 car, and the older guys get in the Charger.

2 Q. All right.

3 MR. KIDD: Court's indulgence for a minute.

4 (Off the record).

5 (Back on the record).

6 BY MR. KIDD:

7 Q. All right. So I believe you just said yourself, "BJ"
8 and Keon get into Derrontae's car?

9 A. Yes.

10 Q. So that would be this black CRV?

11 A. Yes.

12 Q. Okay. And who gets in --

13 Well, before that, so in the CRV who is driving?

14 A. Me.

15 Q. You're in the driver's seat?

16 A. Yeah.

17 Q. Where is "BJ"?

18 A. In the passenger seat.

19 Q. Front?

20 A. Yeah.

21 Q. Where is Keon?

22 A. Behind him.

23 Q. Behind "BJ"?

24 A. (Shaking head yes).

25 Q. So rear seat passenger's side?

1 A. Yeah.

2 Q. And Keon is "Bubba". Keon Anderson, right?

3 And then who jumps in the Focus?

4 A. Derrontae, Kelley, and "Trell".

5 Q. Do you know where they are seated? And if you don't,
6 that's fine.

7 A. No.

8 Q. You don't.

9 Do you know who is driving?

10 A. Derrontae.

11 Q. So Derrontae is driving Keon's Focus?

12 A. Yeah.

13 Q. You say Kelley and Latrell are in that car too, but you
14 just don't know who is in which seat?

15 A. Yeah.

16 Q. In then the Charger, who gets in that car?

17 A. "Fur" and "Stocky" and the other dude I don't know.

18 Q. All right. So "Fur" and "Stocky" and the unknown guy
19 get in the Charger.

20 (Interior Diagram of Car marked as State's Exhibit
21 No. 327 for identification)

22 BY MR. KIDD:

23 Q. All right. I'll show you what's been marked for ID as
24 State's Exhibit 327 and see if you -- does that fairly and
25 accurately depict what you just testified to as to the

1 location of everybody?

2 A. Yes.

3 MR. KIDD: Your Honor, at this time we would offer
4 State's 327 into evidence.

5 THE COURT: Any objection?

6 MS. EHRLICH: No, Your Honor.

7 THE COURT: State's 327 into evidence without
8 objection.

9 (Whereupon, State's Exhibit No. 327 was entered
10 into the record as evidence)

11 BY MR. KIDD:

12 Q. So that accurately depicts where each of y'all are
13 seated?

14 A. Yes.

15 Q. Nicknames and everything.

16 Okay. So we are loaded up in the cars. We had just
17 been shot at.

18 Do you see the car that shoots at you?

19 A. No. I get a glimpse of it, but I don't think it was
20 the right one. I get a glimpse of it, but I don't think it
21 was the right one.

22 Q. Okay. So what -- which direction do y'all go?

23 I need to switch back over.

24 Which direction do y'all go from -- which direction do
25 you go from "BJ's" house?

1 A. Down Gary Drive towards Saratoga.

2 Q. Gary towards Saratoga.

3 Okay. This way right here?

4 A. Yeah.

5 Q. Right?

6 And where do you go from there? Have you seen anything
7 or are you chasing something? What's happening?

8 A. I was following behind.

9 Q. You were following another car?

10 A. Yeah.

11 Q. So there is a car in front of you?

12 A. Yeah.

13 Q. What car was in front of you?

14 A. The Charger.

15 Q. The Charger is in front of you.

16 So when y'all leave "BJ's" house, the Charger pulls off
17 first in front of you?

18 A. Yeah.

19 Q. And you are behind the Charger?

20 A. Yeah.

21 Q. Where is the Focus?

22 A. Going down Constitution.

23 Q. Going up Constitution?

24 A. Towards Dorchester.

25 Q. Towards Dorchester.

1 So kind of going down Constitution where the shots were
2 fired?

3 A. Yeah.

4 Q. And y'all in the Charger go down Gary?

5 A. Yeah.

6 Q. Okay. So you are following the Charger down Gary
7 towards the circle?

8 A. Yeah.

9 Q. Correct?

10 A. Yeah.

11 Q. When is the first time that you see the Chrysler 300?

12 A. Around that circle.

13 Q. Do you remember you go around the top side or the
14 bottom side of that circle?

15 A. I don't remember.

16 Q. You don't remember.

17 Do you go the same way as the Charger, or the opposite
18 way?

19 A. Opposite.

20 Q. All right. So you go one way in the CRV and the
21 Charger goes the other?

22 A. Yeah.

23 Q. Okay. Have you seen another car at this point?

24 A. The 300?

25 Q. Uh-huh.

1 A. Yeah.

2 Q. You did?

3 A. Yeah.

4 Q. All right. So you see the 300. Do you recognize it at
5 all?

6 A. No, never seen it.

7 Q. Never seen it before.

8 All right. So what happens when y'all see the 300?

9 A. Like funny looking scene so they started shooting at
10 it.

11 Q. Anyone in your car start shooting at this point?

12 A. No.

13 Q. Okay. Who starts shooting at you?

14 A. The Charger.

15 Q. The Charger starts shooting.

16 And where are y'all headed? Which direction do y'all
17 go?

18 A. I can't remember.

19 Q. You can't remember.

20 Do you know if you take -- how do you get to Dorchester
21 Road, do you remember?

22 A. Come out on Ranger by A-1.

23 Q. So you come out of Ranger right here on Dorchester?

24 A. Yeah.

25 Q. So would you have taken Rusty to Ranger?

1 A. Either Rusty or Houston to Ranger.

2 Q. Either Rusty or Houston. Okay.

3 Are you -- where are you -- are you the lead car now,
4 or are you still behind the Charger? Where are you at?

5 A. The second car.

6 Q. You are still behind the Charger at this point?

7 A. Yeah.

8 Q. Anyone in your car shooting yet?

9 A. Not yet.

10 Q. Okay. Is the Charger still shooting?

11 A. Not yet.

12 Q. Not yet?

13 A. Yeah.

14 Q. I thought they were shooting back on --

15 A. On Rusty, but the car got on Dorchester Road before us.

16 Q. Okay. Okay. All right.

17 So the Charger was shooting in The Waylyn, but when
18 y'all got back on --

19 A. On Ranger the --

20 Q. On Ranger?

21 A. Yeah, we had to turn around and stuff.

22 Q. Okay. So you were behind the Charger until you get on
23 Dorchester?

24 A. Yeah.

25 Q. When do you see the Focus coming back in the picture?

1 A. Like by Checkers.

2 Q. Up by Checkers. Okay.

3 And when you get on Dorchester you are still behind the
4 Charger?

5 A. Like a little bit.

6 Q. A little bit?

7 A. Like --

8 Q. All right. Well, tell the jury how that happens as you
9 are going down Dorchester Road.

10 A. Like -- the gun battle? They wasn't shooting back,
11 though, so --

12 Q. So who is shooting at the 300?

13 A. Both cars now.

14 Q. Are you shooting?

15 A. No, I'm driving.

16 Q. You are driving.

17 So is "BJ" shooting?

18 A. Yes.

19 Q. Is Keon shooting?

20 A. Yes.

21 Q. Have you seen the Focus? Do you go past the Checkers
22 and the Focus comes in play, are they shooting?

23 A. Not yet.

24 Q. Not yet.

25 That's further down Dorchester?

1 A. Yeah.

2 Q. What about the 300, are they still shooting?

3 A. No, they ain't never been shooting, that I know of.

4 Q. On Dorchester Road?

5 A. Yeah.

6 Q. They were shooting back in The Waylyn?

7 A. No, they wasn't. You said the 300?

8 Q. No, the Charger.

9 A. Yeah.

10 Q. I'm sorry, maybe I mixed up my words.

11 Who was shooting at the 300 in the Waylyn?

12 A. The Charger.

13 Q. The Charger.

14 You get on Dorchester Road. I'm assuming the 300 is up
15 front?

16 A. Yeah.

17 Q. Running away from y'all, right?

18 A. Yeah.

19 Q. And what's the order of the cars behind the 300?

20 A. The Charger, me, and then the Focus.

21 Q. The Charger, you, and then the Focus behind you --

22 A. Yeah.

23 Q. -- initially on Dorchester Road?

24 A. Yeah.

25 Q. Initially on Dorchester Road who is shooting at the

1 300?

2 A. The first two cars.

3 Q. The first two cars. Y'all and the Charger?

4 A. Yeah.

5 Q. At some point you get ahead of the Charger?

6 A. Late.

7 Q. Late?

8 A. Later.

9 Q. How long down Dorchester Road before that order
10 switches up?

11 A. Right before East Montague.

12 Q. Right before East Montague.

13 I'll show you what's been marked and admitted into
14 evidence as State's Exhibit No. 148.

15 All right. So this -- do you recognize this? Can you
16 kind of tell where we are at?

17 A. Yeah.

18 Q. So this is -- this is sort of The Waylyn right here,
19 right?

20 A. Yeah.

21 Q. Can you tell that?

22 You go all the way down on Dorchester Road about right
23 here, right?

24 So when do you get ahead of the Charger? Is it by the
25 time you get to 526, or further up?

1 A. Like just before East Montague onto like the overpass,
2 likes 526.

3 Q. 526.

4 How did that happen?

5 A. They slowed down, the Charger.

6 Q. The Charger slows down?

7 A. Yeah.

8 Q. So the Charger kind of pulls out --

9 A. Yeah.

10 Q. -- of the chase, kind of?

11 A. Yes.

12 Q. And so you are now -- you are now the front car?

13 A. Yeah.

14 Q. Where is the Focus?

15 A. They get in front of me for like four seconds.

16 Q. Where are you when they get in front?

17 A. Under the overpass.

18 Q. So right there near 526?

19 A. Yeah.

20 Q. So right there near 526 the Focus catches up and kind
21 of takes the lead just briefly?

22 A. Yeah.

23 Q. And you are back in front?

24 A. Yeah.

25 Q. Okay. And is shooting going on?

1 A. Yeah.

2 Q. Who all is shooting?

3 A. The Focus now.

4 Q. The Focus is shooting too now?

5 A. Yeah.

6 Q. All right. Are you personally shooting yet?

7 A. No.

8 Q. So just "BJ" and Keon in your car?

9 A. (Shaking head yes).

10 Q. And do you know who in the Focus is shooting?

11 A. (No response).

12 Q. It's okay if you don't know.

13 A. It's dark right there, so --

14 Q. Right.

15 And then the Charger has backed down?

16 A. Yeah.

17 Q. All right. And what route do y'all go? How far down
18 Dorchester Road do you go?

19 A. To Cross County.

20 Q. All the way to Cross County.

21 And shooting the whole way, or is it sporadic? How is
22 it going?

23 A. Like -- well, after like -- you know, Glenn Terrace,
24 North Point?

25 Q. Uh-huh.

1 A. That car moving too fast, so --

2 Q. So they started getting some distance?

3 A. Yeah. After we come across East Montague they were
4 like -- couldn't catch them.

5 Q. Did you keep trying?

6 A. Yeah.

7 Q. Do you know how fast you were going?

8 A. Over a 100.

9 Q. Anything being said inside the car at this point?

10 A. A lot.

11 Q. A lot?

12 A. Yeah. Like a bunch of "go". Just a bunch of like
13 "keep going. Keep going."

14 Q. And anyone on the phone making phone calls?

15 A. Not that I remember.

16 Q. Were you on the phone?

17 A. No.

18 Q. What about back in The Waylyn before y'all hit
19 Dorchester Road?

20 A. Not that I remember.

21 Q. Okay. That's okay.

22 So y'all are racing down Dorchester Road. Have you
23 lost sight of the 300 yet?

24 A. Not really.

25 Q. So you can see -- what do you mean not really?

1 A. Taillights.

2 Q. So you can see the taillights.

3 You could still see the car, but they have got some
4 distance on you?

5 A. Yeah.

6 Q. You get to Cross County and -- do you see them make the
7 turn on Cross County?

8 A. No.

9 Q. You don't see the 300 turn on Cross County?
10 So you turn on Cross County?

11 A. Yeah.

12 Q. Right?

13 You still driving fast?

14 A. Yeah.

15 Q. Do you think they turned on Cross County, or --

16 A. Yeah.

17 Q. Okay. But you didn't see them?

18 A. (Shaking head no).

19 Q. Okay. And then also driving fast down Cross County?

20 A. Yeah.

21 Q. And you hit, what, Ashley Phosphate?

22 A. Yeah.

23 Q. So there is no shooting on Cross County?

24 A. No.

25 Q. Okay. And is the Focus still close by?

1 A. No, they done gave out.

2 Q. When did the Focus pull out?

3 A. Before -- like by the airport.

4 Q. By the airport?

5 A. They slowed down on Dorchester Road, but --

6 Q. Right near where it says like going to Base Charleston
7 right there?

8 A. Before that.

9 Q. Before that.

10 A. Yeah. Like I guess Michaman (sic).

11 Q. Michaux Parkway?

12 A. Yeah.

13 Q. All right. So you turn on Ashley Phosphate and what
14 happens there?

15 A. I thought I see the car so I kept going and I'm
16 speeding.

17 Q. So you are speeding on Ashley Phosphate too?

18 A. Oh, I thought you said Cross County.

19 Q. Oh --

20 A. You said Ashley Phosphate?

21 Q. Well, tell me about Cross County. So you turn on Cross
22 County and you think you see the car?

23 A. Yeah.

24 Q. And are you driving fast?

25 A. Yeah.

1 Q. Are you catching up to it?

2 A. No.

3 Q. So what does that make you think, that they are going
4 fast too?

5 A. Yeah.

6 Q. And do you see which way that car turns?

7 A. Right on Ashley Phosphate.

8 Q. Ashley Phosphate?

9 A. Yes.

10 Q. And then I'm assuming you turned right on Ashley
11 Phosphate as well?

12 A. Yeah.

13 Q. Okay. And we might have already talked about this, but
14 do you know who was in that 300 at this point in time?

15 A. No.

16 Q. All right. So you get on Ashley Phosphate and what
17 happens there?

18 A. Still chasing the same car, I thought.

19 Q. Still chasing the taillights?

20 A. Yeah.

21 Q. Okay. And when you -- when do you come up on them?

22 A. On the overpass, like you get on 526 to go back.

23 Q. So right near the intersection of Ashley Phosphate and
24 26?

25 A. Yeah.

1 Q. And what happens?

2 A. Start shooting.

3 Q. Yeah. Well, tell us how it happens.

4 A. Well, I thought that was --

5 Q. Where was it -- you saw another 300, or you saw a 300?

6 A. Yeah.

7 Q. What was it doing?

8 A. Right in the front of me.

9 Q. Right in front of you?

10 A. Yeah, but I was in the next lane, so --

11 Q. So you were to the left of it?

12 A. Off the driver's side, yeah.

13 Q. Off the driver's side of the other 300?

14 A. Yeah.

15 Q. Was it driving or was it stopped?

16 A. It was driving until it get to the light.

17 Q. And then it stopped at the light?

18 A. Yeah.

19 Q. What did you do?

20 A. Mistaken identity.

21 Q. I know, but what did you do?

22 A. Shoot the wrong car.

23 Q. I know, but how did it go down? We got to talk in baby
24 steps.

25 You pull up next to it?

- 1 A. Yeah.
- 2 Q. Windows already down, or are they up?
- 3 A. Already down.
- 4 Q. Where is the gun? Did you have the gun in your hand,
5 or someone else got it, or where is it in the car?
- 6 A. I grabbed it from "BJ".
- 7 Q. Why did "BJ" have your gun?
- 8 A. Because his gun already was empty.
- 9 Q. Okay. So he had run out of shells?
- 10 A. Yeah.
- 11 Q. And you grabbed it back from him?
- 12 A. Yeah.
- 13 Q. And what did you do?
- 14 A. Mistaked the wrong car.
- 15 Q. You shot?
- 16 A. Yeah.
- 17 Q. Do you know how many times that you shot at that car?
- 18 A. (No response).
- 19 Q. You are not sure?
- 20 A. I don't remember.
- 21 Q. Did you see who was in the car at that time that you
22 shot at it?
- 23 A. No.
- 24 Q. What did you do after you shot at the car?
- 25 A. Panicked.

1 Q. And did what?

2 A. Speed off again.

3 Q. Did you notice anyone behind you as you were speeding
4 off?

5 A. When I turned onto Rivers, yeah.

6 Q. Do you realize someone was chasing you?

7 A. Yeah.

8 Q. So you turned onto Rivers and still driving fast?

9 A. Yeah.

10 Q. And where did you go?

11 A. I was planning to go back to The Waylyn, but I ended up
12 going to "Fur's" house.

13 Q. You ended up going to "Fur's" house?

14 A. Yeah.

15 Q. Had you ever been to "Fur's" house before?

16 A. No. They called them.

17 Q. How did you know how to get there?

18 A. They called.

19 Q. Who is they?

20 A. "Trell" and them.

21 Q. "Trell" and them called either you, or "BJ", or Keon,
22 or what?

23 A. "BJ" and Keon.

24 Q. All right. So "BJ" and Keon talked to them on the
25 phone?

1 A. Yeah.

2 Q. And they tell you to go to "Fur's" house?

3 A. Yeah.

4 Q. Where is "Fur's" house?

5 A. After I took the road. Like I get them mixed up, so I
6 don't know if that's Pepper Road, or Peppertree.

7 Q. Peppertree.

8 At the time that you shot at that 300 was anyone
9 telling you not to shoot?

10 A. No.

11 Q. Obviously you realize that was a pretty tragic mistake
12 at this point, right?

13 A. Yes.

14 Q. All right. So you go back to "Fur's" house.

15 Who is at "Fur's" house when you get there?

16 A. The same group.

17 Q. Everyone that left "BJ's"?

18 A. Yeah.

19 Q. So all eight of you; yourself, "BJ", Keon, Kelley,
20 Derrontae, Latrell, the guy that you don't know, "Fur", and
21 "Stocky"?

22 A. Yeah.

23 Q. Y'all go inside "Fur's" house, or do you stay outside?

24 A. Stand outside.

25 Q. What's being said outside "Fur's" house?

1 A. People talking back and forth. Some people saying they
2 think I did the wrong car.

3 Q. So at that point people were thinking that you might
4 have shot at the wrong car?

5 A. Yeah.

6 Q. Did you believe them at that point?

7 A. No, I --

8 Q. So you still -- you still thought that was the same 300
9 at that point?

10 A. Yeah.

11 Q. All right. How long were y'all at "Fur's" house?

12 A. Probably like an hour.

13 Q. How long was "BJ" at "Fur's" house?

14 A. He wasn't there longer than me. He left.

15 Q. He left before you?

16 A. Yeah.

17 Q. How did "BJ" get home?

18 A. Somebody in a different car.

19 Q. Came and picked him up?

20 A. Yeah.

21 Q. Do you know what kind of car picked him up?

22 A. A white Suburban.

23 Q. Do you know Dartez Ferguson?

24 A. Yeah.

25 Q. What's his nickname?

1 A. "Tez".

2 Q. Do you know if Donald Jackson, "DJ", and Dartez
3 Ferguson, "Tez" are friends?

4 A. I think at one point in time they was.

5 Q. Back at this time were they friends?

6 A. Not like that.

7 Q. You don't know, or you're not sure, or --

8 A. I'm not sure.

9 Q. Okay.

10 All right. When you leave "Fur's" house, do you know
11 what street is on Lowell Drive, do you know?

12 A. Yeah.

13 Q. Okay. So when you leave Lowell Drive, where "Fur's"
14 house is, where do you go?

15 A. To the gas station.

16 Q. Who is with you?

17 A. "Trell".

18 Q. What car are y'all in?

19 A. "Big D's" truck.

20 Q. Just the two of y'all?

21 A. Yeah.

22 Q. Where do you go from the gas station?

23 A. Back to "Fur's" house.

24 Q. Back to "Fur's" house.

25 And then what time did you leave "Fur's" house for

1 good?

2 A. Probably like close to three, or two.

3 Q. And where do you go?

4 A. Wedgewood.

5 Q. Wedgewood?

6 A. Yes.

7 Q. Who goes with you?

8 A. Everybody except "BJ".

9 Q. Everyone except "BJ".

10 So "Fur", "Stocky", they all go to Wedgewood?

11 A. Yeah.

12 Q. What car do you go in to get there?

13 A. "Bid D's" truck.

14 Q. "Big D's" truck.

15 Who rides in it with you?

16 A. Me and -- it just was me and "D" in it at the time.

17 Q. Just you and "D"?

18 A. Yes.

19 Q. In his truck going to Wedgewood?

20 A. Yeah.

21 Q. All right. What's at Wedgewood? Who lives there?

22 A. "Bubba's" aunt.

23 Q. "Bubba's" aunt?

24 "Bubba" is Keon Anderson?

25 A. Yeah.

1 Q. So you go to Keon Anderson's aunt's house. Do you stay
2 there for awhile?

3 A. Yeah.

4 Q. How long?

5 A. Like twenty minutes.

6 Q. Okay. And then where do you go?

7 A. Back on Alabama Drive.

8 Q. To Charmontae's.

9 A. Yeah.

10 Q. How do you get there?

11 A. Derrontae.

12 Q. Derrontae takes you?

13 A. Yeah.

14 Q. All right. And you and I have spent a little bit of
15 time together, right?

16 A. Yes.

17 Q. I think we have met -- I guess we have met the first
18 time in November of 2016.

19 And I believe we met again in July of 2017, July 13th,
20 and July 19th of 2017? Does that sound right?

21 A. Yeah.

22 Q. Close.

23 And then I think you met with someone from the
24 Charleston Police Department at my direction in August of
25 2017.

1 And then you met with me one final time on January 25th
2 of this year. Does that sound about right?

3 A. Yeah.

4 Q. And each one of those meetings probably lasted a few
5 hours, maybe?

6 A. Yeah.

7 Q. We spent -- we have logged a few hours together.

8 And you weren't honest with me through a lot of those
9 meetings, is that fair to say?

10 A. Yes.

11 Q. And it took awhile before you would admit to being the
12 shooter in this case, is that right?

13 A. Yes.

14 Q. Was that a tough thing to finally admit it?

15 A. Yes.

16 Q. And you have since pled guilty, right?

17 A. Yes.

18 Q. What did you plead guilty to?

19 A. All my charges. Murder.

20 Q. All the charges; murder and four counts of attempted
21 murder?

22 And you are facing a lot of time, aren't you?

23 A. Yes.

24 Q. Have I promised you anything?

25 A. No.

1 Q. So, I mean, I could go in to your sentencing and ask
2 for a life sentence if I wanted to, right?

3 A. Yes.

4 Q. Obviously testifying here today you hope that's not the
5 case?

6 A. Yes.

7 Q. Have I ever asked you to do anything but be honest, to
8 be truthful?

9 A. No.

10 Q. In fact, that's the only thing that would keep me -- or
11 that's the only thing that would send me toward that life
12 sentence, right?

13 A. Yes.

14 Q. Your not being honest, not being truthful, is that fair
15 to say?

16 A. Yes.

17 Q. And we had originally entered into a proffer agreement?

18 A. Yes.

19 Q. And that was back when we first met in November of
20 2016. Do you recall that?

21 A. Yes.

22 Q. And we are no longer under that proffer agreement. Do
23 you understand that?

24 A. Yes.

25 Q. That's because you were dishonest with me, right?

1 A. Yes.

2 Q. And you also left a few other things out, other than
3 just you being the shooter, when we met the first time back
4 in November. You didn't mention that Kelley Green was
5 there, right?

6 A. No.

7 Q. You didn't mention that "Stocky" was there, did you?

8 A. No.

9 Q. You left out some information about Sidney, right?

10 A. Yes.

11 Q. And maybe most importantly, you said that "BJ" was the
12 one that shot the 300 an Ashley Phosphate?

13 A. Yes.

14 Q. Why did you tell me this?

15 A. Why did I tell you he did it?

16 Q. Well, first of all, why did you leave out "Stocky's"
17 name?

18 A. Protecting people.

19 Q. The same with Sidney?

20 A. With everybody.

21 Q. Everybody.

22 So you left out Kelley Green, "Stocky" and Sidney so
23 they wouldn't get in trouble?

24 A. Yeah.

25 Q. Why did you say "BJ" pulled the trigger?

1 A. Because he said I did it and he put me in the
2 situation.

3 Q. So he kind of ratted you out first?

4 A. Yeah.

5 Q. What's the only way you can get any sort of leniency
6 out of me?

7 A. Honest.

8 (Off the record).

9 (Back on the record)

10 BY MR. KIDD:

11 Q. Mr. Durant just saved me from ending this early, but
12 what did you do with the gun, that Taurus .40?

13 A. Give it back to Sidney.

14 Q. You give it back to Sidney.

15 When did you do that?

16 A. Following day.

17 Q. The following day.

18 That would be, what, the 11th, or was it the 10th?

19 Like that same day?

20 A. No, the next day.

21 Q. The next day.

22 Where did you give it back to him?

23 A. On Alabama Drive.

24 Q. On Alabama, at Charmontae's house?

25 A. Yeah.

1 Q. So he came there?

2 A. Yeah.

3 Q. And when did you realize that "BJ" was getting looked
4 into?

5 A. The same day it hit the news.

6 Q. The same day that this story hit the news?

7 A. Yeah. When he got arrested.

8 Q. When he got arrested.

9 And what did you do after you learned that "BJ" had
10 gotten arrested?

11 A. Panicked.

12 Q. Did what? Did you go talk to Sidney?

13 A. Yeah.

14 Q. What did you tell Sidney?

15 A. To get rid of the gun.

16 Q. In our meetings also I went over --

17 We have your cell phone, right?

18 I'll show you what's been marked State's Exhibit 188.

19 Do you recognize that phone?

20 A. Yeah.

21 Q. Is that your cell phone.

22 A. (No response).

23 Q. And we went through your contacts on that phone, you
24 and I, right?

25 A. Yes.

1 Q. All right. And confirmed a few phone numbers from it.
2 You had "D's" number in your phone in the contact listed
3 under just D?

4 A. "Big D".

5 Q. "Big D".

6 I believe it was 460-5030?

7 A. Yes.

8 Q. You had Sidney's number, 568-9827.

9 A. Yes.

10 Q. You got Kelley's number. That's Kelley Green?

11 A. Yes.

12 Q. 425-9983?

13 A. Yes.

14 Q. You had "Trell's" number, 804-1092, is that right?

15 A. Yes.

16 Q. They were all stored in your contacts under those
17 names, right?

18 A. Yes.

19 Q. Now, now that we know who all is inside that Chrysler
20 300, would they have any reason to be shooting at you?

21 A. No.

22 Q. Would you have any reason to be shooting at them?

23 A. No.

24 MR. KIDD: Court's indulgence one moment.

25 (Off the record).

1 (Back on the record).

2 MR. KIDD: I have no further questions.

3 THE COURT: Ladies and gentlemen, I told you that
4 we would end today at five and so I'm not going to begin
5 cross-examination at this time.

6 Ladies and gentlemen, please remember all of my
7 admonitions. Please 'do not be watching' or listening to any
8 news regarding this case. Please do not view any
9 independent investigation. Do not go by or do any research
10 from any of the places or locations discussed in this trial.

11 Please report back and we will begin promptly at
12 9:30 a.m.. 9:30 a.m..

13 Please rise for the jury.

14 Leave them in the chair. Thank you.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: Thank you. Please be seated.

18 We will see you in the morning.

19 Mr. Simmons, do not discuss your testimony with
20 anyone.

21 THE WITNESS: All right.

22 THE COURT: Thank you.

23 Do we have any matters before I recess?

24 MR. DURANT: Nothing from the State, Your Honor.

25 THE COURT: Ms. Ehrlich, do you have any motions

1 or matters?

2 MS. EHRLICH: No, Your Honor.

3 THE COURT: We will do what we did this morning.
4 Please be back at 9:15.

5 If anything transpires over the evening hour that
6 would require us to be here earlier, please let me know.

7 Have a wonderful evening.

8 (Whereupon, proceedings were recessed to February
9 15, 2018)

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Exhibit

#6

1 door now, is that correct?

2 THE CLERK: Yes, ma'am.

3 (Whereupon, proceedings were recessed)

4 (Whereupon, proceedings were reconvened)

5 THE COURT: Thank you. Please be seated.

6 Anything before we bring the jury, Mr. Kidd?

7 MR. KIDD: No, ma'am.

8 THE COURT: Ms. Ehrlich?

9 MS. EHRLICH: No, Your Honor.

10 THE COURT: All right.

11 Go ahead and have a seat and we will bring them
12 in.

13 (The following takes place in the presence of the
14 jury panel).

15 THE BAILIFF: The jury is all present, Your Honor.

16 THE COURT: Thank you.

17 Please be seated.

18 Your next witness, Mr. Kidd.

19 MR. KIDD: The State calls Keon Anderson.

20 THE COURT: Please swear Mr. Anderson.

21 THE CLERK: Mr. Anderson, please stand and raise
22 your right hand to the best of your ability and place your
23 left hand on the Bible.

24 KEON ANDERSON, having been first duly sworn,
25 testified as follows:

1 THE WITNESS: Yes, sir.

2 THE CLERK: Thank you, sir. Please take your seat
3 and speaking directly into the microphone spell your first
4 and last name.

5 THE WITNESS: K-E-O-N A-N-D-E-R-S-O-N.

6 MR. KIDD: Thank you, Your Honor.

7 DIRECT EXAMINATION BY MR. KIDD:

8 Q. Good morning, Mr. Anderson.

9 A. Good morning.

10 Q. You doing alright?

11 A. (No response).

12 COURT REPORTER: Speak up into the microphone.

13 A. Yes, sir.

14 THE COURT: Thank you.

15 BY MR. KIDD:

16 Q. I just want to be clear. Do you have a lawyer?

17 A. Yes, sir.

18 Q. Who's your lawyer?

19 A. Laura Williams.

20 Q. Is she in the courtroom right now?

21 A. Yes, sir.

22 Q. All right. And, in fact, I believe that you were
23 originally scheduled to be on trial this week, is that
24 right?

25 A. Yes, sir.

1 Q. With Mr. Robinson, is that correct?

2 A. Yes, sir.

3 Q. And did you enter a proffer agreement with me?

4 A. Yes, sir.

5 Q. When did that occur?

6 A. At the end of January.

7 Q. January 31st, is that correct, just a couple weeks ago.

8 So how many times have we met?

9 A. One.

10 Q. Just one time.

11 On that day, right, January 31st?

12 A. Yes, sir.

13 Q. And what have you been charged with?

14 A. Murder and four attempted murders.

15 Q. You are facing up to life in prison, right?

16 A. Yes, sir.

17 Q. And do you recall when you were picked up on these
18 charges?

19 A. November 21st of last year.

20 Q. November 21st of last year.

21 It was '16, right?

22 A. Yes, sir.

23 Q. Not November 21st of 2017. November 21st of 2016?

24 A. Yes, sir.

25 Q. All right. And then you decided that you wanted to

1 come talk to me just a few weeks ago, three weeks ago?

2 A. Yes, sir.

3 Q. What's your understanding of our proffer agreement?

4 A. Just to tell the truth, hoping that everything fill out
5 the right way.

6 Q. Do you know what happens if you don't tell the truth?

7 A. Yes, sir.

8 Q. What?

9 A. Prison.

10 Q. Well, that's probably going to happen either way,
11 right?

12 A. (Shaking head yes).

13 Q. But what can I use from the information that you have
14 given me if you lie to me? What can I do with it?

15 A. Use it against me?

16 Q. That's right.

17 But if you tell the truth, can I use it?

18 A. I guess so.

19 Q. Have I made you any promises as to what sort of
20 sentence that you are going to get?

21 A. No, sir.

22 Q. How old are you right now, Keon?

23 A. Twenty-two.

24 Q. Have you got a nickname?

25 A. "Bubba".

- 1 Q. Do you go by "Bubba Blue"?
- 2 A. Sometimes.
- 3 Q. Where are you from?
- 4 A. North Charleston area.
- 5 Q. Is that where you were born?
- 6 A. Downtown.
- 7 Q. You were born downtown?
- 8 A. Yes, sir.
- 9 Q. When did you move to North Charleston?
- 10 A. At an early age, like elementary school.
- 11 Q. Have you ever lived in The Waylyn?
- 12 A. Yes, sir.
- 13 Q. When did you move to The Waylyn?
- 14 A. It was young. It was like elementary.
- 15 Q. Okay. How long have you lived in The Waylyn?
- 16 A. A little bit of my life.
- 17 Q. Were you living in The Waylyn when you got locked up?
- 18 A. No, sir.
- 19 Q. When did you move out of The Waylyn?
- 20 A. Like high school.
- 21 Q. Where did you move to?
- 22 A. North Carolina.
- 23 Q. When did you come back from North Carolina?
- 24 A. Like right in the 10th grade, like.
- 25 Q. Do you remember about what year?

1 A. Not exactly.

2 Q. All right. How about in 2015? Where were you living
3 in May of 2015?

4 A. Ashley Phosphate.

5 Q. On Ashley Phosphate?

6 A. Yes, sir.

7 Q. Do you remember where on Ashley Phosphate.

8 A. In the Wescott subdivision.

9 Q. Wescott?

10 All right. Where did you go to high school?

11 A. Fort Dorchester.

12 Q. Did you graduate?

13 A. No, sir.

14 Q. How far did you make it?

15 A. 10th grade.

16 Q. 10th grade?

17 A. Yes, sir.

18 Q. What happened? Did you drop out or what?

19 A. Yes, sir, I dropped out.

20 Q. Do you work?

21 A. Yes, sir.

22 Q. Doing what?

23 A. Construction.

24 Q. Construction.

25 Did you do anything else to make money?

1 A. Before I started working I used to hustle, but other
2 than that I work now.

3 Q. What about in May of 2015, what did you do to make
4 money?

5 A. I been hustling then, but then I started working.

6 Q. What does hustling mean?

7 A. Selling drugs.

8 Q. What kind of drugs do you sell?

9 A. Just weed.

10 Q. No cocaine, no crack?

11 A. No, sir.

12 Q. Where did you sell drugs at?

13 A. In the Ashley Phosphate area.

14 Q. Did you ever sell in The Waylyn?

15 A. Uh-uh.

16 Q. Let's talk about how you know everybody.

17 How do you know -- do you know "BJ"?

18 A. Yeah, I know him.

19 Q. How long have you known "BJ"?

20 A. Since like middle school.

21 Q. Since middle school.

22 So as of May, May of '15, how long do you think that
23 you have known him when this all happened?

24 A. For a good bit.

25 Q. A good bit.

1 Do you know Latrell Hamilton?

2 A. Yes, sir.

3 Q. Before we move on to that, what was your relationship
4 like with "BJ"? Describe that to me. We y'all close or
5 what?

6 A. We close.

7 Q. Close?

8 Like real close?

9 A. (Shaking head yes).

10 Q. Was he one of your best friends?

11 A. No, we are good friends. Now like we good friends.

12 Q. All right. What about Latrell Hamilton?

13 A. We close friends too, but he be working a lot, so we
14 don't really populate like that.

15 Q. Were you tight with Latrell too?

16 A. (Shaking head yes).

17 THE COURT: I need you to answer out loud.

18 A. Yes, sir.

19 THE COURT: Thank you.

20 BY MR. KIDD:

21 Q. How long have you known "Trell"?

22 A. The same -- well, I know all of them the same time,
23 like right around middle school.

24 Q. Did you meet them while you were living in The Waylyn?

25 A. Yes, sir.

1 Q. All right. Do you know how long you lived in The
2 Waylyn?

3 A. Since like the 6th grade to like the 9th grade.

4 Q. That's what, three, four years?

5 A. (Shaking head yes).

6 Q. So you knew them for three or four years while you
7 lived in The Waylyn and then you moved to North Carolina?

8 A. Yes, sir.

9 Q. Then you came back?

10 A. Yes, sir.

11 Q. Reconnected with them, is that right?

12 A. Yes, sir.

13 Q. How long have you been back before this happened from
14 North Carolina?

15 A. Like three years, or something. Three years. I don't
16 know the exact time, but like three years.

17 Q. I'm not asking for an exact time. Just an
18 approximation.

19 So three or four years in The Waylyn. You moved to
20 North Carolina. You come back and reconnect with them and
21 you have been back for another three years, roughly?

22 A. Yes, sir.

23 Q. You hung out with them about six years?

24 A. I knew them for about six years.

25 Q. All right. Do you know "Mook"?

1 A. Yeah, I know "Mook".

2 Q. Do you know "Mook's" real name?

3 A. Yeah. Yes, sir.

4 Q. What is it?

5 A. Daquan.

6 Q. Last name?

7 A. Lance.

8 Q. What's his relationship with "BJ"?

9 A. That's his family member.

10 Q. Family. Brothers, cousins?

11 A. Cousin.

12 Q. Cousin.

13 "Mook" and "BJ" tight?

14 A. They are family members.

15 Q. You tight with "Mook"?

16 A. We close, but I'm more closer with "BJ".

17 Q. Did y'all go to school together?

18 A. Me and "Mook", but not "BJ".

19 Q. You and "Mook" went to school together?

20 A. Yes.

21 Q. Where did y'all go to school together?

22 A. Brentwood.

23 Q. You and "Mook" about the same age?

24 A. About.

25 Q. I guess y'all went to school together. Were y'all in

1 the same class?

2 A. No, not the same class.

3 Q. Is he older or younger than you?

4 A. Older.

5 Q. He's a little bit older?

6 A. Yes, sir.

7 Q. Okay. Did you know "BJ's" family pretty well?

8 A. Yes, sir.

9 Q. Do you know his momma?

10 A. Yes, sir.

11 Q. Do you know his sister?

12 A. Yes, sir.

13 Q. Do you know his baby sister?

14 A. Yes, sir.

15 Q. Did you know his father?

16 A. Yes, sir.

17 Q. Close to his family?

18 A. Yeah, they are good people.

19 Q. Do you know who the Young Gunnas are?

20 A. I heard of them when I been in school, but I don't too
21 much know of them like that.

22 Q. Do you remember meeting with me back in January, right?

23 A. Yeah.

24 Q. You were familiar with them then, weren't you?

25 A. Yeah. I tell you I have been in high school inside

1 North Carolina when all that has been going on, but that's
2 not like current or nothing. That's like not current.

3 Q. Not current as to what?

4 A. Like -- it's not still around. Like that's more like
5 teenager when they been younger.

6 Q. Do you know where "Mook" is now?

7 A. Yes, sir.

8 Q. Where is "Mook" now?

9 A. In prison.

10 Q. State or federal?

11 A. Feds.

12 Q. Do you know what "Mook's" relationship to the Young
13 Gunnas were?

14 A. I heard a lot of things street talking, nothing that I
15 know that for sure.

16 Q. You went to school with him. You were pretty close to
17 him, weren't you?

18 A. Yeah, that been in middle school. I wasn't around at
19 that time.

20 Q. Were you living in The Waylyn?

21 A. Yes, sir, then, but that wasn't a big thing at that
22 time. Like when I moved to North Carolina, that's when it
23 came about.

24 Q. How do you know Richard Simmons?

25 A. My granny married his father.

- 1 Q. Your grandmother is married to his father?
- 2 A. Yes, sir.
- 3 Q. What does that make y'all?
- 4 A. I guess you could say my uncle.
- 5 Q. How long have you known him?
- 6 A. Since like five or six or seven, something.
- 7 Q. So most of your life?
- 8 A. Yes, sir.
- 9 Q. Y'all tight?
- 10 A. We ain't tight like we don't hang around all the time,
- 11 but we got a pretty good relationship.
- 12 Q. So y'all spend a lot of time together, but y'all see
- 13 the family pretty much?
- 14 A. Yeah.
- 15 Q. Do you know his nickname?
- 16 A. "Black".
- 17 Q. When did you kind of lose touch with "Black"?
- 18 A. Like middle school time. Middle school.
- 19 Q. Why is that?
- 20 A. He moved back downtown.
- 21 Q. All right. Who is "Fur"?
- 22 A. That's "BJ" uncle.
- 23 Q. "BJ's" uncle?
- 24 A. Yes.
- 25 Q. Do you know his real name?

1 A. Fred.

2 Q. Do you know his last name?

3 A. Lance.

4 Q. Is he related to "Mook", I guess?

5 A. Yes, sir.

6 Q. Is he older or younger?

7 A. He's older.

8 Q. What's he like?

9 A. I really -- I really didn't meet him like after "BJ's"
10 father passed. Funeral and stuff like that, that's when I
11 started getting close to him and stuff.

12 Q. What's he like?

13 A. Just an older guy.

14 Q. Just an older guy?

15 A. Yeah.

16 Q. What was "BJ's" daddy like?

17 A. A good dude look out for you. Just older guy around
18 the neighborhood.

19 Q. Older guy around the neighborhood?

20 A. Yeah.

21 Q. I believe when we met you referred to them both as
22 respected "OG's"?

23 A. We call them "OG's". That "OG" is older guys.

24 Q. That's what you meant by that?

25 A. Yeah.

1 Q. Those weren't my words, were they?

2 A. That's like respectable guys. They were around the
3 neighborhood.

4 Q. That's what you meant, respectable guy?

5 A. Help you around the neighborhood if you needed help.

6 Q. All right, Keon.

7 Who is "Stocky"?

8 A. He used to date my auntie back when I was younger.

9 Q. He used to date your aunt?

10 A. Yes, sir.

11 Q. And "Stocky's" real name?

12 A. Leroy.

13 Q. Leroy.

14 Do you know his last name?

15 A. Manigault.

16 Q. Where does he live? Do you know where he lives at?

17 A. He used to live on The Waylyn.

18 Q. He used to live on The Waylyn?

19 A. Yeah.

20 Q. Do you know where he was living at in 2015?

21 A. Still on The Waylyn.

22 Q. Still on The Waylyn?

23 A. His momma.

24 Q. His mom was living on The Waylyn?

25 A. Yes, sir.

1 Q. Do you know where he was laying his head?

2 A. I figure right there at his momma's house.

3 Q. All right. What about Derrontae Holmes? Do you know
4 Derrontae Holmes?

5 A. Yeah, I know Derrontae. He acted the college kid every
6 time we get together the school and girls.

7 Q. Just a college boy, right?

8 A. Yeah.

9 Q. What's his nickname?

10 A. "Big D".

11 Q. How long have you known him?

12 A. Like -- since like '14. 2014, '15. Not as long as I
13 know the rest of them.

14 Q. This happened in 2015, so how long have you known him
15 when this happened?

16 A. Like two, three years, I would say.

17 Q. So maybe 2012, 2013?

18 A. Yeah, around that length of time.

19 Q. What was y'all's relationship like?

20 A. We get together like girls when he come from school,
21 but nothing too serious.

22 Q. Do you consider yourself friends with him?

23 A. Yes, sir.

24 Q. Do you know Kelley Green?

25 A. I used to go to elementary school with him, but I don't

1 know of him. I wouldn't consider him as a friend or
2 associate or nothing like that.

3 Q. So you just kind of know of him?

4 A. Yes, sir.

5 Q. Do you know if he's got a nickname?

6 A. Kelley.

7 Q. He just skips the last name?

8 A. Yes, sir.

9 Q. What about Sidney McDonald?

10 A. I have been around him a couple of times, but I don't
11 know him.

12 Q. Sort of the same as Kelley?

13 A. Yes, sir.

14 Q. You know him, know of him, something to hang out with
15 him?

16 A. Yes, sir.

17 Q. Who is "Bam"?

18 A. I don't know him like that. He used to been to the
19 church gym. We play basketball, but I don't know him like
20 that.

21 Q. Is he a Young Gunna?

22 A. Never heard of it. Never heard of him being one.

23 Q. Never heard of him being one, or never heard of the
24 Young Gunnas?

25 A. Never heard of him being a Young Gunna.

1 Q. Do you know him by Loud Pack?

2 A. Yeah, I heard about them.

3 Q. What was that?

4 A. Yeah, I heard about them.

5 Q. All right. Do you know about the beef they had with
6 the Young Guñnas?

7 A. I heard of it, but that's just street talk, nothing
8 that I know for sure.

9 Q. Do you know who "Babe Lo" was?

10 A. Yes.

11 Q. Who is "Babe Lo"?

12 A. He passed away. He died.

13 Q. How did he die?

14 A. A murder.

15 Q. He got shot?

16 A. Yes, sir.

17 Q. Who do the streets say who killed "Babe Lo"?

18 A. I heard he got set up was a lot of street talk, but
19 nothing that I know for sure that I can tell you.

20 Q. Do you know "Lul T"?

21 A. Yes, sir.

22 Q. Who is "Lul T"?

23 A. Terrence. I used to go to school with him. Grow up
24 with him.

25 Q. Terrence McNeil?

1 A. Yes, sir.

2 Q. What happened to Terrence?

3 A. He got killed.

4 Q. Do you know who killed Terrence?

5 A. I don't know who killed him, but I heard different
6 stories from the street talks and stuff.

7 Q. Did you hear "Mook" killed Terrence?

8 A. I heard that, but I also heard he was set up.

9 Q. Okay. Did you hear "Lul T" killed "Babe Lo"?

10 A. I heard that, but I don't believe that. Nothing that I
11 know for sure, like that's just things that I hear from the
12 streets.

13 Q. That's what people in the streets are saying?

14 A. Yeah.

15 Q. How old does someone have to be to be an "OG"?

16 A. I guess you could consider them twenty-six,
17 twenty-seven. Maybe at twenty-five.

18 Q. So that's all you got to be to be an older guy, because
19 as you would call it?

20 A. I said that you made it.

21 Q. Made it.

22 A. If nothing follow you.

23 Q. Did "Babe Lo" have a reputation?

24 A. I really don't think the type of guys like -- I don't
25 really know too much about them, just from being around that

1 neighborhood.

2 Q. That's what knew about them?

3 A. Yeah, I hear a little about him, but not too much,
4 like, robbery, killing, stuff like that.

5 Q. Do you know him as a stick-up kid?

6 A. Yeah.

7 Q. All right. Let's talk about the other four folks. Do
8 you know Andrew Smalls?

9 A. I know him from like being younger playing basketball.
10 He used to live a couple houses down from my granny.

11 Q. Did you ever have any problem with him?

12 A. No, sir.

13 Q. Any reason he would be shooting at you?

14 A. No, sir.

15 Q. Do you know Donald Jackson?

16 A. He is my Facebook friend, but I don't know him.

17 Q. Do you know his nickname?

18 A. "DJ". Also "Little 5".

19 Q. What's The Five?

20 A. The Waylyn.

21 Q. What's The Four?

22 A. Like east side, west side.

23 Q. Other side of Dorchester Road?

24 A. (Shaking head yes).

25 Q. Do you know where Loud Pack operates out of?

1 A. They be on The Waylyn.

2 Q. On the back part of The Waylyn?

3 A. (Shaking head yes).

4 Q. All right. Let's talk about May 10th, 2015.

5 Well, actually, I'm sorry, I got off track.

6 Do you know Jawan Nicks?

7 A. No.

8 Q. "Bright Eyes"?

9 A. No.

10 Q. Do you know Corey Watkins?

11 A. No, sir.

12 Q. All right.

13 Let's talk about May 10th, 2015. Do you remember that,
14 early that morning?

15 A. Yes, sir.

16 Q. (Mother's Day?

17 A. Yes, sir. \

18 Q. What brought you over to "BJ's" house that morning?

19 A. After I got that call from Nigeia she tell me the
20 shooting incident happened at her house, so I'm been going
21 over there to help her out because I know if I be in
22 trouble, she would help me out.

23 Q. So you are just being a standup guy, right?

24 A. Yes, sir.

25 Q. "Trell" didn't call you a bunch of times to get you to

1 come over there?

2 A. No, sir.

3 Q. He didn't? So if those phone records show calls
4 between you and "Trell", they are just lying, right?

5 A. They probably show, but he probably call me for
6 something else.

7 Q. Probably so.

8 All right. So you are being a standup guy going over
9 to "BJ's" house at midnight to do what?

10 A. Help his momma, whether she want' to come to my house,
11 whether she want to get a hotel just to make her feel okay,
12 because I know if I been in that situation, she would help
13 me out too.

14 Q. All right. And what happened when you get there? Or
15 who is there when you get to "BJ's" house?

16 A. "BJ", "Trell", Derrontae, Kelley, Simmons, "Stocky",
17 "Fur", and I know him, but I don't his name. They just call
18 him "Big Bra".

19 Q. You just don't know who that is, do you?

20 A. No.

21 Q. All right. What's going on when you get there?

22 A. Well, I go in -- when I pull up, the older guys like in
23 the street, they are talking. Younger guys in the yard.
24 Nigeia at the door and I'm walking up to talk to her.

25 As soon as I get out of the car, my car is still

1 running with the door open. Shots start firing. Everybody
2 hit the deck. Get back up. That's when cars start taking
3 off.

4 Q. How long have you been there before the shots start
5 firing?

6 A. Not a long time. The door is still open on my car,
7 so --

8 Q. Seconds? Minutes?

9 A. Like I'd say minutes. Not that much, though.

10 Q. Had you spoken to anyone else yet?

11 A. No, sir.

12 Q. So you hadn't said anything to --

13 A. Like briefly, like "what's up? What's up? What's up?"

14 Q. You didn't talk to them about what was going on?

15 A. No, sir.

16 Q. Just straight up to Nigeia?

17 A. Yeah.

18 Q. Do you see who was shooting at y'all?

19 A. No, sir.

20 Q. Did you believe they were shooting at y'all?

21 A. Everybody hit the ground, so at that point I didn't see
22 no car. I didn't see what angle they were shooting from.
23 You just get on the ground. We hear shots and they are
24 close enough.

25 Q. Where were you in the yard when the shots were fired?

1 A. By the front door.

2 Q. All the way up to the house?

3 A. Yes, sir.

4 Q. And so you hit the deck. Then what?

5 A. When I get up, that's when everybody starts scrambling
6 for cars. My car has been going, so I hopped in the one,
7 which was the Honda CRV?

8 Q. So everyone started running for cars?

9 A. Yes, sir.

10 Q. So you ran and jumped in the CRV?

11 A. Yes, sir.

12 Q. And that was just your only thing that you could do,
13 huh?

14 A. Yes, sir.

15 Q. You had a gun on you too, right?

16 A. Yes, sir.

17 Q. What kind of gun did you have on you?

18 A. A 9-millimeter, but I carry a gun over there because --
19 I carry a gun all the time because I hustle. I sell drugs,
20 so I got to protect myself out there.

21 Q. Sure you do.

22 MR. KIDD: Court's indulgence.

23 (Off the record).

24 (Back on the record).

25 BY MR. KIDD:

1 Q. What kind of car did you come over in?

2 A. In a Ford Focus.

3 Q. Do you remember what color it was?

4 A. Like a tan brown.

5 Q. Whose car was that?

6 A. That was a rental.

7 Q. A rental car?

8 A. Yes, sir.

9 Q. Who rented it?

10 A. Like I -- people who I sell drugs to rent cars off from
11 me all the time.

12 Q. Was it one of your sales --

13 A. Yeah.

14 Q. -- rents a car in exchange for drugs?

15 A. Yeah.

16 Q. Must be buying a lot of weed for a rental car, right?

17 A. Yes, sir.

18 Q. Yeah.

19 Do you remember your phone numbers back then?

20 A. Not really. You name it I probably would remember it,
21 but I don't remember it by heart.

22 Q. 224-6387?

23 A. Yes, sir.

24 Q. Does that sound right?

25 A. Yes, sir.

- 1 Q. 442-6822 sound right?
- 2 A. Yes, sir.
- 3 Q. All right. So you go to "BJ's" house as the good
- 4 samaritan with your 9-millimeter and you jump in the CRV.
- 5 Who is driving?
- 6 A. Simmons.
- 7 Q. Who else in the car with you?
- 8 A. Me and Robinson.
- 9 Q. Where are you sitting at?
- 10 A. On the back passenger's side.
- 11 Q. I'm going to show you State's 327. Does that
- 12 accurately depict where everyone was sitting?
- 13 A. Yes, sir.
- 14 Q. What other cars were there at "BJ's" house?
- 15 A. A Charger, my Focus, the Honda CRV, and "BJ's" car
- 16 backed up in the yard.
- 17 Q. The Charger, Focus, Honda CRV, and do you know what
- 18 kind of car "BJ" had?
- 19 A. A Jaguar at the time.
- 20 Q. Where was it at?
- 21 A. Parked in the yard.
- 22 Q. Parked in the yard.
- 23 Where were the other three cars at?
- 24 A. Like lined up on the outside of the street.
- 25 Q. On the street.

1 Do you remember what order they were in?

2 A. Charger, Focus, CRV.

3 Q. So you were parked in between them?

4 A. Yeah.

5 Q. So which car was closest to Gary Drive?

6 This is "BJ's" house here, right?

7 A. Yes, sir.

8 Q. Which car was closest to Gary Drive?

9 A. The Charger.

10 Q. The Charger, like right here?

11 A. Yes, sir.

12 Q. And then which car was next?

13 A. The Focus.

14 Q. The Focus right here?

15 A. Yes, sir.

16 Q. And then which car?

17 A. The Honda.

18 Q. The Honda CRV, like right here?

19 A. Yes, sir.

20 Q. Were they all facing the same direction or different
21 directions?

22 A. Same direction.

23 Q. Which direction was that?

24 A. Pointing toward like leaving out The Waylyn.

25 Q. Towards Gary?

1 So they are all facing down, or they all facing up on
2 the picture?

3 A. Like how you got it drawn out on the picture.

4 Q. They are all facing in that direction?

5 A. Yes, sir.

6 Q. What color was the Charger?

7 A. A silver Charger.

8 Q. Silver.

9 Do you know whose it was?

10 A. The dude, "Big Bra", but I don't know his name to
11 identify him or nothing.

12 Q. Who owned the CRV?

13 A. That's Holmes truck.

14 Q. "D"?

15 A. Yes, sir.

16 Q. State's Exhibit 59, does that look like it?

17 A. Yes, sir.

18 Q. Before y'all jump in the cars, how many shots do you
19 hear?

20 A. I would say like three to five.

21 Q. Do you know which direction they came from?

22 A. At that moment, no.

23 Q. Did you figure it out later?

24 A. When we start chasing -- when the chase pursued, then
25 we just started following all the other cars.

1 Q. You just -- but -- so you just assumed that they knew
2 where they were coming from?

3 A. Yeah.

4 Q. Who got in the -- who all was in your Focus?

5 A. "Big D", "Trell", and Kelley.

6 (Diagram marked as State's Exhibit No. 328 for
7 identification)

8 BY MR. KIDD:

9 Q. I'll show you what's been marked for ID as State's
10 Exhibit 328. Does that accurately depict where everyone was
11 at in the Focus?

12 A. At that -- I don't know how they dropped in the Focus
13 now.

14 Q. So you don't know where they are sitting, but that's
15 who was in the Focus?

16 A. I don't know what happened in my car. Just telling you
17 the truth, I don't know what happened in their car. I didn't
18 see.

19 Q. All right. But this is who was in the car?

20 A. Yes, sir.

21 Q. Okay. Do you know who was driving?

22 A. I know Holmes was driving, because when I picked my car
23 up he had been sitting in the driver's seat.

24 Q. Okay. But you just don't know where Latrell and Kelley
25 Green were sitting in the car?

1 A. Yes, sir.

2 Q. But you know they were in the car?

3 A. Yes, sir.

4 MR. KIDD: Your Honor, at this time we will offer
5 State's 328 into evidence.

6 THE COURT: Any objection?

7 MS. EHRLICH: Yes.

8 THE COURT: Do you want to approach?

9 MS. EHRLICH: Yes.

10 (Whereupon, the lawyers approached for an
11 off-the-record discussion)

12 THE COURT: Ladies and gentlemen, there is a
13 matter of law I must take up outside of your presence. Do
14 not begin your deliberations. Do not discuss this case.

15 Please rise for the jury.

16 (The following takes place outside the presence of
17 the jury panel)

18 THE COURT: Okay. You can be seated.

19 We will be at ease. We will be at ease probably
20 be about fifteen minutes, I would think.

21 MS. EHRLICH: Thank you.

22 (Whereupon, proceedings were recessed)

23 (Whereupon, proceedings were reconvened)

24 THE COURT: Anything before we bring in the jury?

25 MR. KIDD: Nothing from the State, judge.

1 THE COURT: Ms. Ehrlich?

2 MS. EHRLICH: No, Your Honor.

3 MR. KIDD: Well, I guess -- is there an objection
4 to that exhibit?

5 MS. EHRLICH: I don't -- I didn't hear him say
6 that he knew where people were sitting. I know that he said
7 that people were in the car.

8 THE COURT: What's that number?

9 MR. KIDD: 328.

10 He didn't say -- he said he knew who was driving,
11 but he didn't now who the other two passengers were at.

12 MS. EHRLICH: So the exhibit indicates that
13 Latrell Hamilton was in the front passenger and then Kelley
14 Green was in the back? So I guess my concern is is that
15 it's misleading to the jury that he didn't testify to that.
16 He just testified that he knew they were in the car and who
17 was driving.

18 THE COURT: You will need to -- do you have -- I'm
19 assuming it's this one.

20 MR. KIDD: Correct, the Ford Focus.

21 Just -- it's just a demonstrative. It's just to
22 help the jury learn everyone's names that's associated with
23 that..

24 THE COURT: Right. If you have people placed and
25 we haven't had testimony where everybody was placed.

1 MR. KIDD: I'll hold off on it.

2 THE COURT: Okay. Thank you, Your Honor.

3 I don't have any problem if they want to put one
4 in with whoever is the driver and then have the names out to
5 the side of the two people that were in that car, just as
6 long as they don't show placement, if they want to try to do
7 that.

8 MR. KIDD: What if I just hand write not sure if
9 it was going to be --

10 THE COURT: I'm sorry.

11 MR. KIDD: I just won't enter it.

12 THE COURT: Okay.

13 It's not a name. It's a placement.

14 MR. KIDD: I get it, judge. I can either -- I'm
15 fine not entering it right now. I think I'll get it in
16 there through another witness.

17 THE COURT: Okay.

18 Please rise for the jury.

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: Thank you. Please be seated.

22 Objection to the State's 328 is sustained.

23 Mr. Kidd?

24 MR. KIDD: Thank you, Your Honor.

25 BY MR. KIDD:

1 Q. All right. Mr. Anderson, so who --

2 Just this particular time where we left off, I believe
3 you said that yourself, Richard, and "BJ" are in the CRV?

4 A. Yes, sir.

5 Q. Who was in the Focus?

6 A. Derrontae Holmes, Kelley, and Latrell.

7 Q. "D", Kelley, and "Trell" are in the Focus?

8 A. Yes, sir.

9 Q. Who is in the Charger?

10 A. "Big Bra", the unknown dude. I don't know his real
11 name. "Fur" and "Stocky".

12 Q. "Big Bra", "Fur", and "Stocky" are in the Charger.

13 And y'all kind of take off at the same time, or how
14 does that happen?

15 A. The Charger took off first. Behind the Charger is the
16 Focus. And behind the Focus is the Honda, the car that I'm
17 in.

18 Q. All right. And does everyone go the same direction,
19 or do they split up, or what?

20 A. At this point the car I'm in, the Honda, is kind of
21 like we playing catch-up going around Gary, Rusty and
22 Ranger.

23 Q. So you --

24 A. They are in front of us.

25 Q. They were in front of you?

- 1 A. Yes.
- 2 Q. Both of the other cars were in front of y'all?
- 3 A. Yeah.
- 4 Q. So they both go the same direction?
- 5 A. Yes, sir.
- 6 Q. In the same direction?
- 7 A. Yes, sir.
- 8 Q. Which way?
- 9 A. Taking off from "BJ's" house going down Gary.
- 10 Q. All right. So we are clear, y'all are at "BJ's" house
- 11 about right here, I guess, right?
- 12 A. Yes, sir.
- 13 Q. And which way do y'all go?
- 14 A. Gary Drive.
- 15 Q. You go -- this is Gary Drive here?
- 16 A. Yes, sir.
- 17 Q. Go that way?
- 18 A. Yes, sir.
- 19 Q. And I believe you just testified the Focus and the
- 20 Charger are in front of y'all?
- 21 A. Yes, sir.
- 22 Q. Which way do you go on Gary Circle, do you know?
- 23 A. Like straight down Gary to Rusty and Ranger.
- 24 Q. You take the high side of the circle, or the low side?
- 25 A. Like within that circle down.

1 Q. Down?

2 A. Yes, sir.

3 Q. So this way?

4 A. No, the opposite way.

5 Q. Upwards. Okay.

6 You go down this way here?

7 A. Yes, sir.

8 Q. Okay. And where is the Charger and where is the Focus
9 at this point?

10 A. It's ahead of us.

11 Q. They're ahead of you.

12 How far ahead?

13 A. I can't tell you exact, but they are ahead of us.

14 Q. All right. Has anyone started shooting yet?

15 A. You can hear them but you can't see who is shooting.

16 Q. All right. So someone is shooting right now?

17 A. Yes, sir.

18 Q. When you are on Gary Drive?

19 A. Yes, sir.

20 Q. All right. But up in front of you?

21 A. Yes, sir.

22 Q. And who is in front, the Focus or the Charger? Who is
23 leading the chase?

24 A. The Charger.

25 Q. The Charger is up front.

1 Did you even see who y'all are chasing yet?

2 A. At this point not yet.

3 Q. So you haven't laid eyes on who you all were chasing
4 yet?

5 A. Not yet.

6 Q. Do you know how many shots that you hear at this point?

7 A. They are just going off, so I would say from the Ranger
8 five to seven, three to five. They are going off.

9 Q. So three to five, five to seven, while you are in The
10 Waylyn?

11 A. Just going off.

12 Q. All right. So which way -- what road do y'all get on
13 off Gary?

14 A. Rusty to Ranger.

15 Q. You take Rusty to Ranger and then Ranger to what?

16 A. Dorchester.

17 Q. All right. So just to be clear, you go Rusty to
18 Ranger, Dorchester Road. Which way do you go on Dorchester
19 Road?

20 A. Up Dorchester Road like where they say mall is at.

21 Q. Like that?

22 A. Yes, sir.

23 Q. When do people in your car start shooting?

24 A. Not until we pass Harley Davidson.

25 Q. What happens around Harley Davidson? Do y'all get

1 closer at that point or something?

2 A. Yeah, we get -- we see we are going on like -- we just
3 see the cars, see the Chrysler, and the Chrysler fires shots
4 at us, so we in turn fired, me firing the most shots.

5 Q. How do you know the Chrysler fired shots at you?

6 A. Because they coming out like -- you could see the
7 driver -- the back side of the driver's window.

8 Q. How would they shoot? Were they shooting backwards?

9 A. They had their hand out the window.

10 Q. And you were shooting -- you were shooting at them?

11 A. Yes, sir.

12 Q. Did anyone else shoot at them right there?

13 A. At that time I'm shooting the most, but Robinson only
14 fired like three to five times. That's it.

15 Q. Robinson fired three to five shots?

16 A. Yes, sir.

17 Q. How many did you fire?

18 A. Like seven to nine. I didn't have no ammunition after
19 I finished shooting.

20 Q. So you emptied your clip at them?

21 A. Yes, sir.

22 Q. Did "BJ" have any more bullets?

23 A. No, because he never shot any more at that time. His
24 gun was placed on the floor.

25 Q. So he dropped his gun after he was done shooting?

1 A. Yes, sir.

2 Q. Was Richard shooting at the time?

3 A. No, sir.

4 Q. Just driving?

5 A. Yes, sir.

6 Q. What were y'all shooting at?

7 A. The Chrysler.

8 Q. Trying to hit it?

9 A. Yes, sir.

10 Q. Did anybody tell "BJ" to shoot?

11 A. No, sir.

12 Q. Was the Charger shooting at the time?

13 A. I can't see the Charger or the Focus shooting. If the
14 car was going too fast, you can't.

15 Q. Did you ever see the Focus shooting?

16 A. No, sir.

17 Q. How close was your car, the car that you were in, to
18 the 300 that y'all were shooting at?

19 A. We are a lot closer to like the trunk side than the
20 driver's side.

21 Q. Like were you a couple car lengths back? Were you next
22 to it? How close?

23 A. Like --

24 Q. Like if I'm the 300 and you are the CRV, closer or
25 further away than we are right now?

1 A. We are like -- the lane -- like Dorchester is two
2 lanes, but we are like behind by the trunk area.

3 Q. All right. So you are over a lane to the side?

4 A. Yeah, they are closer to the rail. We are on the
5 opposite side by the median.

6 Q. All right. So -- now just disregard the fact this is
7 the map right here, all right?

8 So if we have lanes, right? All right?

9 A. This is only a two lane. Ain't that much lanes over
10 there.

11 Q. All right. Sorry. Let me do it again.

12 There we go. We have got two lanes. All right? Where
13 is the 300?

14 A. To that lane right there.

15 Q. In the lane on the right or the lane on the left?

16 A. On the left.

17 Q. In the left.

18 So we got the 300 right here?

19 A. Yes, sir.

20 Q. Where is -- who is closest to the 300?

21 A. I guess you could say us, because we was by the trunk.

22 Q. You were by the trunk?

23 A. Yes, sir.

24 Q. In the same lane or the other lane?

25 A. The opposite lane.

1 Q. So how far from the 300 is the front of the CRV? Right
2 to the back of it?

3 A. Yes, sir.

4 Q. So about right here?

5 A. No, farther. Go back some.

6 Q. Like right here?

7 A. Go back.

8 Q. Right here?

9 A. No, I mean back, like -- traffic going to Dorchester
10 now.

11 Q. What do you mean? Explain it to me.

12 A. Traffic -- after Dorchester we are like this. We are
13 behind them like this.

14 Q. So where in this diagram is the CRV?

15 A. If the 300 is the trunk, then we are like right behind
16 that. Where you got the 300, that's the trunk.

17 Q. So you got it heading in a different direction than I
18 have them. Okay.

19 Let me try this one more time. All right.

20 We just had a little difference in opinion right there,
21 okay?

22 All right. So I got the 300 right here, okay? And you
23 are saying they are heading in this direction?

24 A. Yes, sir.

25 Q. Okay. The trunk is on this side?

1 A. Yes, sir.

2 Q. All right. So where is the front of the CRV then?

3 A. His trunk would be over to the opposite side. We are
4 like that.

5 Q. Right here?

6 A. That's where the tip of the car is, the front of the
7 car.

8 Q. The front?

9 A. Yeah.

10 Q. So this is the CRV right here?

11 A. Yes, sir.

12 Q. Where is the Focus?

13 A. A little further in front.

14 Q. In front of you?

15 A. Yes, sir.

16 Q. Right there?

17 A. Probably a little more further up.

18 Q. A little further up?

19 A. Yes, sir.

20 Q. We are just going to go with that, okay? You say it's
21 a little further. That's the Focus. I'm not going to try
22 to write it.

23 All right. That's my kindergarten drawing, but does
24 fairly --

25 A. Yes, sir.

1 Q. -- come in approximate relation to the cars when y'all
2 are by that Dorchester Road?

3 A. Yes, sir.

4 Q. All right. And you are in which seat of the CRV?

5 A. The passenger. The back passenger.

6 Q. You are in the back passenger side.

7 That would put you -- you are right here?

8 A. Yes, sir.

9 Q. And where is "BJ", the front passenger, right?

10 A. Yes, sir.

11 Q. Right there?

12 A. Yes.

13 Q. All right. Where is the Charger?

14 A. Like a little ahead of it.

15 Q. So up in front?

16 A. Yes, sir.

17 Q. And you said this time that y'all were shooting?

18 A. Yes, sir.

19 Q. When did you see the 300 shooting back?

20 A. Right when we start coming to the Harley Davidson.

21 Like right there when we start getting close.

22 I have to remind you that the cars were moving at a
23 fast pace, so right -- right there at that point that's when
24 they start shooting and we returned fire.

25 Q. Y'all just returned fire?

1 A. Yes, sir.

2 Q. All right. When did y'all lose sight of the 300?

3 A. Not to be exact, but further up Dorchester we lose
4 sight of all three -- of all three of the rest of the cars;
5 the 300, and Focus, and the Charger.

6 Q. Who did you lose first?

7 A. I would say the 300.

8 Q. The 300.

9 Were they just faster than y'all, or what?

10 A. Yeah, everybody was driving fast.

11 Q. But, I mean, is that why they got away?

12 A. Yes, sir.

13 Q. They just drove faster than y'all could drive?

14 A. Yes, sir.

15 Q. All right. Where did y'all go off Dorchester Road?

16 A. Cross County.

17 Q. Cross County?

18 A. Trying to make it back to the Waylyn.

19 Q. How fast do y'all think that you are going down
20 Dorchester Road?

21 A. We are going the fast rate. We are speeding. We are
22 speeding up until we get to Ashley Phosphate and then we
23 calm down at a regular pace.

24 Q. Y'all are going fast down Dorchester Road and fast down
25 Cross County, but you slow down a little bit on AP?

1 A. Yes, sir.

2 Q. Why do y'all slow down on AP?

3 A. Because we have been --

4 Q. By AP, I mean Ashley Phosphate.

5 A. Police. You know that Ashley Phosphate keep a lot of
6 police.

7 Q. All right. Anyone talking on the phone during this --
8 up to this point?

9 A. Conversations going back, but not like no long phone
10 calls or like "yes, all right", stuff like that.

11 Q. Are you talking to anybody?

12 A. Not that I remember.

13 Q. "BJ"?

14 A. I don't think he was on the phone at this point.

15 Q. What was that?

16 A. I don't think he on the phone at this point.

17 Q. You don't think that he was on the phone when y'all
18 were coming back to The Waylyn at any point?

19 A. No, like further up Ashley Phosphate.

20 Q. Further up Ashley Phosphate he was making calls?

21 A. Yeah.

22 Q. On the phone.

23 What about Richard?

24 A. He was on the phone the whole time.

25 Q. Like not with just one long phone conversation?

1 A. Yeah, just like back and forth, back and forth, back --

2 Q. Back and forth?

3 A. Back and forth.

4 Q. A lot of activity.

5 Do you know who he was talking to?

6 A. No, sir.

7 Q. All right. What happened? You turned on Ashley
8 Phosphate. Are y'all chasing someone or what? What's
9 happening?

10 A. No, at this point we are just trying to get back to the
11 Waylyn, but we ain't driving back down Dorchester, knowing
12 that the police are going to be there, because shots already
13 done been fired.

14 Q. So it's your testimony to this jury that y'all weren't
15 chasing anyone when you turned on Ashley Phosphate?

16 A. No, sir.

17 Q. I mean, do you know whether or not Richard sees someone
18 up front, or thinks he's chasing someone?

19 A. No. No, sir.

20 Q. All right. What happens on Ashley Phosphate?

21 A. We are driving down Ashley Phosphate. First we come up
22 by the Waffle House. The police sitting right there. And
23 another police on Mazyck Avenue by the IHOP.

24 And then we start getting close to where the scene of
25 the crime and that and we see a Chrysler. Mr. Simmons

1 thought it was the Chrysler. Me and Robinson telling him
2 like "no, that's not the right Chrysler. That's a lady."

3 And you could tell it ain't the right Chrysler. Me and
4 Simmons -- I mean me and Robinson continued to tell like
5 "that ain't the car. That's the wrong car." He eventually
6 still ended up shooting.

7 Q. Okay. So y'all told him it was the wrong car and he
8 just shot it anyway, didn't he?

9 A. Yes, sir.

10 Q. Then what?

11 A. Then he speed off again.

12 Q. Do you remember getting chased by anyone?

13 A. No, sir.

14 Q. You don't remember a truck chasing you?

15 A. No, sir.

16 Q. How were y'all driving down Ashley Phosphate and down
17 Rivers?

18 A. At first we were going regular speed limit until the
19 shots gets fired and he speed up down Rivers and changes
20 speeds.

21 Q. All right. Where do y'all go?

22 A. To the Peppertree division.

23 Q. Who lives there?

24 A. "BJ's" uncle "Fur".

25 Q. So you go to "Fur's" house?

1 A. Yes, sir.

2 Q. Who is there?

3 A. Hamilton, "Fur", "Stocky", Holmes, Green, me, "BJ", and
4 Simmons.

5 Q. What about Kelley?

6 A. Green, Kelley Green.

7 Q. So all eight of y'all?

8 A. Yes, sir.

9 Q. When y'all got to Peppertree -- when y'all got to
10 "Fur's" house was everyone else already there?

11 A. Yes, sir.

12 Q. What's going on at Fur's" house?

13 A. Nothing really. They are just sitting outside. The
14 cars parked in the yard.

15 Me and Simmons and Robinson pull up. At this time we
16 are still fussing at him, like "you shoot the wrong car."

17 Everybody get in their car and leave. Robinson's
18 father's friend take him home. I take "Stocky" back on The
19 Waylyn.

20 Q. So how did "BJ" leave?

21 A. His daddy's friend "Frosty".

22 Q. Do you remember what kind of car?

23 A. A truck, like a Toyota or Suburban.

24 Q. Do you remember what color?

25 A. Like white or something.

1 Q. Is "BJ" the one who leaves first? Who leaves first?

2 A. I believe "BJ" leave first.

3 Q. All right. Then who leaves?

4 A. Me. Me and "Stocky".

5 Q. Just you and "Stocky" leave?

6 A. Yeah.

7 Q. How long have you known "Stocky"?

8 A. Since like eight, or something. Eight or nine.

9 Q. So you have known him for a long time.

10 Where did you take him?

11 A. Back to Niagara.

12 Q. Back to Niagara?

13 Where is Niagara?

14 A. On the Waylyn.

15 Q. On The Waylyn.

16 So you take "Stocky" back on The Waylyn. In what car?

17 A. The Focus.

18 Q. So you get the keys to the Focus from "D", or

19 something?

20 A. Yeah, he been sitting in the driver's seat when I pull

21 up to him.

22 Q. All right. So you take your Focus back and take

23 "Stocky" back to Niagara in The Waylyn. You leave everyone

24 else where, at "Fur's" house?

25 A. Yes, sir. At that time everybody was pulling out, it's

1 just that Robinson leave first. I leave after them. Pretty
2 sure everybody leaves too.

3 Q. When did you find out someone got hurt?

4 A. My grandmother. When I found out that the police was
5 at my grand momma's looking for Richard Simmons.

6 Q. That's when you first found out that someone got
7 killed?

8 A. Yes, sir.

9 Q. That was probably on the 15th?

10 A. Yes, sir.

11 Q. And you were on, what, probation at the time this
12 happened?

13 A. Yes, sir.

14 Q. For what?

15 A. A weapon, pistol.

16 Q. A gun charge?

17 A. Yes, sir.

18 Q. What was it, a stolen gun?

19 A. I don't think I have been on probation yet.

20 Q. So you got -- when did you --

21 A. I got picked up --

22 Q. 2014?

23 A. Yeah, I don't think I had been to court for that yet.

24 I think I was on probation after this.

25 Q. You are right. August of 2015 is when you --

1 Did you plead guilty to that charge?

2 A. Yes, sir.

3 Q. All right. So August of 2015 is when you pled guilty
4 to that charge. You are right. You weren't on probation at
5 this time. You got put on probation shortly after, because
6 you weren't arrested on this charge until November of '16?

7 A. Yes.

8 MR. KIDD: Court's indulgence.

9 THE COURT: Take your time.

10 (Off the record).

11 (Back on the record).

12 BY MR. KIDD:

13 Q. So were "BJ", "Trell", and "Mook" Young Gunnas?

14 A. Yes, sir, I heard of it.

15 Q. So Young Gunnas were beefing with the Loud Pack?

16 A. Yes, sir, I heard of that too.

17 Q. And what does "OG" mean?

18 A. "OG" is like original gangster.

19 MR. KIDD: I have no further questions, judge.

20 THE COURT: Ladies and gentlemen, I believe your
21 lunch is here, so we are going to go ahead and take our
22 break.

23 Please remember all my admonitions.

24 Please rise for the jury.

25 (The following takes place outside the presence of

1 THE WITNESS: Keon Anderson.

2 THE COURT: And Mr. Anderson, I'll remind you that
3 are still under oath.

4 THE WITNESS: Yes.

5 THE COURT: Did you discuss this case with anyone
6 over the weekend?

7 THE WITNESS: No, ma'am.

8 THE COURT: Let's bring in the jury.

9 (The following takes place in the presence of the
10 jury panel)

11 THE BAILIFF: All the jurors are here, Your Honor.

12 THE COURT: Thank you.

13 Please be seated.

14 Good morning, ladies and gentlemen. If you have
15 complied with my instructions over our break, please raise
16 your right hand.

17 Thank you.

18 All fifteen jurors have complied with the court's
19 instructions.

20 Ms. Ehrlich, your witness.

21 MS. EHRLICH: Thank you, Your Honor.

22 CROSS EXAMINATION BY MS. EHRLICH:

23 Q. Good morning, Mr. Anderson.

24 A. Good morning.

25 Q. You have got one prior conviction for a stolen firearm?

1 A. Yes, ma'am.

2 Q. And that's a charge that you had pending when this
3 whole incident happened, right?

4 A. Yes, ma'am.

5 Q. Okay. Now, when this incident, though, you didn't get
6 arrested right away, did you?

7 A. No, ma'am.

8 Q. They waited until November of 2016 to charge you?

9 A. Yes, ma'am.

10 Q. And it's not like you came forward voluntarily on this
11 case, did you?

12 A. Yes, ma'am.

13 Q. You did?

14 A. No, ma'am, I didn't.

15 Q. You didn't voluntarily turn yourself in --

16 A. No, ma'am.

17 Q. -- ahead of time. Okay.

18 And when they arrested you they brought you to the
19 police station, right?

20 A. Yes, ma'am.

21 Q. And the North Charleston police station, you go inside
22 an interrogation room, right?

23 A. Yes, ma'am.

24 Q. And they have a video camera, a TV camera -- or not --
25 like an audio camera in there recording everything that's

1 going on, right?

2 A. Yes, ma'am.

3 Q. And so you declined to give a statement in the case,
4 right?

5 A. Yes, ma'am.

6 Q. And wanted to speak with your attorney?

7 A. Yes, ma'am.

8 Q. And your attorney is Lauren Williams?

9 A. Yes, ma'am.

10 Q. But after they -- after you asked for an attorney, the
11 police, I think it was Detective Butler, came in and read
12 you your warrants, didn't she?

13 A. Yes, ma'am.

14 Q. And told you what you were charged with; that you were
15 charged with murder?

16 A. Yes, ma'am.

17 Q. And four counts of attempted murder?

18 A. Yes, ma'am.

19 Q. And possession of a weapon during a violent crime?

20 A. Yes, ma'am.

21 Q. And you acted like you had no idea what was going on,
22 right?

23 A. I would say I didn't act like I had no idea what was
24 going on. I just waited for my attorney to come so I could
25 talk to her before.

1 Q. Well, you kept saying -- and I'll -- you kept saying
2 "that's BS. That's BS," right?

3 A. Yes, ma'am. I just wanted to talk to my attorney
4 before I speak to them and figure out what was going on.

5 Q. Okay. So when you told them "I don't know what the F
6 you are talking about," that was just "I wanted to speak to
7 my lawyer," right?

8 A. Yes, ma'am.

9 Q. You did know what they were talking about?

10 A. Yes, ma'am.

11 Q. And now that you are charged with murder, you know that
12 you can go to prison for the rest of your life?

13 A. Yes, ma'am.

14 Q. And you have been around long enough to know that life
15 means life, right?

16 A. Yes, ma'am.

17 Q. You get life, you don't ever get out?

18 A. Yes, ma'am.

19 Q. And for the four counts of attempted murder, you know
20 you can get up to thirty years?

21 A. Yes, ma'am.

22 Q. And you know that that would have to be served at
23 eighty-five percent?

24 A. Yes, ma'am.

25 Q. And they could be run consecutively. You can get all

1 the way up to hundred and twenty just for the attempted
2 murders, right?

3 A. Yes, ma'am.

4 Q. On then on the gun charge you could get five years?

5 A. Yes, ma'am.

6 Q. All right. And I think it's fair to say that you
7 definitely don't want to go to prison?

8 A. Regardless, I still am going to have to end up going to
9 prison, but, yes, ma'am.

10 Q. Well, I mean, you said it on Thursday it would be nice
11 not to go to prison, right?

12 A. Yes, ma'am.

13 Q. Okay. Because prison life is not what life is on the
14 outside, is it?

15 A. Yes, ma'am.

16 Q. You can't eat what you want.

17 Have you been to prison?

18 A. No, ma'am.

19 Q. Okay. Have you heard about prison?

20 A. Yes, ma'am.

21 Q. Okay. And you have been in jail for quite awhile?

22 A. Yes, ma'am.

23 Q. You don't get to just do what you want to do?

24 A. You are right.

25 Q. Right?

1 A. (Shaking head yes).

2 Q. You don't get to see girls when you want to see girls?

3 A. Yes, ma'am.

4 Q. You can't be out there hustling?

5 A. Yes, ma'am.

6 Q. And so ultimately you want the State to cut you a deal
7 in this case to minimize any time that you have to spend
8 incarcerated?

9 A. Yes, ma'am.

10 Q. Okay. And before that you were ready to go to trial,
11 right?

12 A. Yes, ma'am.

13 Q. Okay. You were actually supposed to be going to trial
14 with us?

15 A. Yes, ma'am.

16 Q. You would have been sitting at a table maybe on the
17 side of us or behind us?

18 A. Yes, ma'am.

19 Q. Okay. And you were going to be going to trial on the
20 murder charge, right?

21 A. Yes, ma'am.

22 Q. Four counts of attempted murder?

23 A. (Shaking head yes).

24 Q. And the weapons charge?

25 A. Yes, ma'am.

1 Q. But at some point you decided that wasn't the best
2 thing for you?

3 A. Yes, ma'am.

4 Q. And I'm not asking you what your negotiations with the
5 solicitor were, but y'all were trying to work your case out,
6 but then you decided to proffer, correct?

7 A. I never did have a negotiation with the solicitor. I
8 still don't know how much time I'm going to get, so --

9 Q. Okay. And you hadn't pled guilty to any of the
10 charges --

11 A. Yes, ma'am.

12 Q. -- right?

13 A. No, ma'am.

14 Q. So in your mind you are hoping that the murder gets
15 reduced to a lower charge?

16 A. I just hope that things can work out the best for me,
17 however they work out.

18 Q. Okay. So you want the best deal you can get?

19 A. Yes, ma'am.

20 Q. For you and for your family?

21 A. Yes, ma'am.

22 Q. And so when you signed that proffer agreement, it's an
23 agreement between you and the solicitor, right?

24 A. Yes, ma'am.

25 Q. And they agreed to not use information against you if

1 they believe that you are telling the truth?

2 A. Yes, ma'am.

3 Q. Now, a lot of what could happen to you depends upon how
4 you testify today, right?

5 A. I just came here to tell the truth. That's it.

6 Q. Okay.

7 A. Yes, ma'am.

8 Q. You are here to tell the truth?

9 A. (Shaking head yes).

10 Q. True?

11 A. Yes, ma'am.

12 Q. How you testify, though, would impact what your
13 sentence is going to be, right?

14 A. Yes, ma'am.

15 Q. And you understand that given your situation now, they
16 could still prosecute you for murder and give you life?

17 A. That I know.

18 Q. Okay. Now, the solicitor asked you a lot of questions
19 about who you knew involved in this situation.

20 A. Yes, ma'am.

21 Q. And you told them all the different people that you
22 knew, how long you have known them, and from where, and I'm
23 not going to rehash all that.

24 A. Yes, ma'am.

25 Q. But is it fair to say that "BJ" was the youngest of all

1 those people?

2 A. Yes, ma'am.

3 Q. And "BJ" was, what, fifteen years old when all this
4 happened?

5 A. Yes, ma'am.

6 Q. Okay. And how old were you?

7 A. Twenty or twenty-one. That's '16, so twenty or
8 twenty-one -- twenty. I think twenty.

9 Q. And the oldest one was "Fur"?

10 A. Yes, ma'am.

11 Q. That's Fred Lance and that's the uncle, right?

12 A. Yes, ma'am.

13 Q. So all the way from somewhere in their thirties down to
14 age fifteen?

15 A. Yes, ma'am.

16 Q. Okay. And you became closer to "BJ's" family after his
17 father died?

18 A. Yes, ma'am.

19 Q. And his dad was murdered, right?

20 A. Yes, ma'am.

21 Q. And so you had a -- I don't know, tried to be a good
22 friend --

23 A. Yes, ma'am.

24 Q. -- to "BJ"?

25 A. Yes.

1 Q. And to his mom?

2 A. Yes, ma'am.

3 Q. Now, the solicitor asked you a bunch of questions last
4 week about gang involvement and, you know, who is involved
5 in what gangs. Was Young Gunnas even really active at this
6 time, 2015?

7 A. No, ma'am.

8 Q. Okay. And there was a lot of talk and there has been a
9 lot of talk about rumors. When there are all these rumors
10 in the street, does everybody just necessarily act on a
11 rumor, or are they talking about it?

12 A. When you say that, what do you mean by that?

13 Q. Well, like let's say you hear somebody do something to
14 somebody, do you automatically just go get your revenge?

15 A. No, ma'am.

16 Q. And weren't a lot of the rumors and beefs between the
17 older people?

18 A. I believe so, yes, ma'am.

19 Q. Okay. So people like "Fur", right, had issues with
20 Stanley Green, right?

21 A. Yes, ma'am.

22 Q. But not "BJ"?

23 A. No, ma'am.

24 Q. Because "BJ" is the young one, right?

25 A. Yes.

1 Q. And -- I mean, you are -- the nature of your friendship
2 with "BJ" is what? Just hanging out?

3 A. He's just a good friend. Him and his mom are cool
4 people, so, yeah, just hanging out during --

5 Q. Smoking weed?

6 A. Yes, ma'am.

7 Q. Okay. The people in the car, in the Chrysler, the
8 original Chrysler --

9 A. Yes, ma'am.

10 Q. -- you don't have a problem with a single person in the
11 Chrysler, do you?

12 A. No, ma'am.

13 Q. Okay. And you knew Andrew Smalls?

14 A. From playing basketball. He used to live like two
15 houses down from my granny when he was younger.

16 Q. But you had no problem with him, right?

17 A. No, ma'am.

18 Q. And, to your knowledge, "BJ" had no problems with him?

19 A. No, ma'am.

20 Q. And Donald Jackson, "Little 5"?

21 A. I don't really know him like that. He's just a
22 Facebook friend of mine.

23 Q. You don't have an issue with him, did you?

24 A. No, ma'am.

25 Q. And "BJ" didn't have an issue with him, that you know

1 of?

2 A. No.

3 Q. And then you didn't know the other two people in the
4 car, Corey or Jawan?

5 A. No, ma'am.

6 Q. Now, I want to kind of skip ahead to the end of the
7 night after Ms. Brown has been shot, okay?

8 A. (Shaking head yes).

9 Q. So that's May 10th. No question in your mind Richard
10 is the one who shot her?

11 A. Yes, ma'am.

12 Q. He was the shooter, correct?

13 A. Yes, ma'am.

14 Q. All right. And you knew at the time he had shot the
15 wrong car?

16 A. Yes, ma'am.

17 Q. Now, right after he shot the wrong car, isn't it true
18 that you were fussing at him for doing that?

19 A. That's before and after.

20 Q. I'm just talking -- we will get to the before. I
21 promise. I'm just talking about after.

22 A. Yes, ma'am.

23 Q. After Richard Simmons shot into the wrong car, you were
24 fussing at him for doing that, right?

25 A. Yes, ma'am.

1 Q. And you were not happy that he did that?

2 A. You're right.

3 Q. And "BJ" was fussing at him for shooting at the wrong
4 car?

5 A. Yes, ma'am.

6 Q. And he was not happy that Richard did that?

7 A. Yes, ma'am.

8 Q. Y'all weren't high-fiving each other and celebrating
9 it, were you?

10 A. No, ma'am.

11 Q. Okay. There was no bragging going on by you about
12 shooting up that car?

13 A. No, ma'am.

14 Q. And there was no bragging by "BJ" about shooting up
15 that car?

16 A. No, ma'am.

17 Q. Okay. And when you guys got to Pepperhill, or
18 Peppertree, you are at "Fur's" house, you were still fussing
19 at each other about Richard having shot at the wrong person,
20 right?

21 A. Yes, ma'am.

22 Q. Both of you were doing that, right?

23 A. Yes, ma'am.

24 Q. When you got in the car that night on Lawrence Drive,
25 you didn't sign up to go shooting at somebody like a

1 completely innocent person, did you?

2 A. No, ma'am.

3 Q. And, in fact, at the Lowell house address, at "Fur's"
4 house, there was all that fussing going on, right?

5 A. (Shaking head yes).

6 Q. "BJ" is the one who actually leaves first?

7 A. Yes, ma'am.

8 Q. Okay. Now, let's switch gears and let's go to before
9 the shooting, okay, when you first come over to the Lawrence
10 Street address where "BJ" lives.

11 And you said that you came over there because you found
12 out about the shooting, right?

13 A. Yes, ma'am.

14 Q. Okay. And "BJ's" mom was really upset?

15 A. Yes, ma'am.

16 Q. How do you know she was upset?

17 A. I talked to her.

18 Q. Was she crying? Was she screaming?

19 A. No, you could just tell that something what's going on,
20 you know. She ain't -- ain't nobody call like "come on over
21 here and let's go do something." You just wanted to get
22 from the situation, because you know that's a woman and she
23 got kids and the shooting just happened in front of her
24 house.

25 Q. Okay. So when you went over there what was your

1 intention?

2 A. To allow her to come to my house or go get a hotel
3 first, someplace that she feels save at.

4 Q. Okay. And the fact that "BJ's" dad was no longer
5 there, was that kind in play as far as safety concerns?

6 A. I mean, when you say that, what do you mean?

7 Q. Well, you knew "BJ's" dad had been murdered, right?

8 A. Yes, ma'am.

9 Q. And you knew he wasn't there?

10 A. Yes, ma'am.

11 Q. And he wasn't going to be there to protect anybody in
12 that house, right?

13 A. Yes, ma'am.

14 Q. And his mom wasn't remarried or anything, right?

15 A. Right.

16 Q. She was the only parent that "BJ" had at that point?

17 A. Yes, ma'am.

18 Q. At this point nobody even knew who the target of that
19 original shooting was, right?

20 A. I didn't know who was --

21 Q. You didn't know. Did you -- you didn't know?

22 A. Correct.

23 Q. So was there conversation about is it safe to stay at
24 the house; should we leave the house? Was that the type of
25 conversation going on?

1 A. Yes.

2 Q. Okay. Was there talk about whether or not "BJ" should
3 stay at the house or leave the house and which way people
4 would be safer?

5 A. It's just a conversation like something happened in
6 front of my house, come on, you know, help me out, because
7 she would have helped me out if I had been in the same
8 situation. Me and her are close like that.

9 If I call her and say "you know, Gia, I'm in trouble,"
10 she's going to come and help me. So when she called me like
11 something happened in front of her house, I automatically
12 already know. The shooting happened in front of my house,
13 "BJ" on house arrest, let's take you off someplace so you
14 can go chill out, feel safe until tomorrow.

15 Q. Your conversation with Nigeia, right?

16 A. Yes, ma'am.

17 Q. Not with "BJ" about any of that?

18 A. No, ma'am.

19 Q. And you were driving the Ford Focus that you had gotten
20 through a deal that night?

21 A. Yes, ma'am.

22 Q. And which -- you were parked on Lawrence facing
23 Dorchester Road?

24 A. Yes, ma'am.

25 Q. And you were parked between the two cars, right?

1 A. Yes, ma'am.

2 Q. Between the Honda' and between the Charger?

3 A. Yeah, it was the Honda being behind me and the Charger
4 being in front.

5 Q. Okay. So the Charger was in front of you and the Honda
6 was behind you?

7 A. Yes, ma'am.

8 Q. And when you got there did you see Lakayla Brown,
9 "BJ's" older sister?

10 A. No, ma'am.

11 Q. Did you see Nigeia?

12 A. Yes, ma'am.

13 Q. And did you see Nigeia's youngest daughter?

14 A. No, ma'am. I believe they were inside the house.

15 Q. Okay. And outside the house was "Fur", right?

16 A. Yes, ma'am.

17 Q. "Stocky"?

18 A. Yes, ma'am.

19 Q. Somebody named "Big Bra" that nobody knows who they
20 are?

21 A. Yes, ma'am.

22 Q. "Trell"?

23 A. Yes, ma'am.

24 Q. Kelley?

25 A. Yes, ma'am.

1 Q. "Black"?

2 A. Yes, ma'am.

3 Q. "Big D"?

4 A. Yes, ma'am.

5 Q. And then "BJ"?

6 A. Yes, ma'am.

7 Q. Okay. And so you testified Thursday that you were --
8 you kind of said that you were close to them and then went
9 to the door --

10 A. The front door.

11 Q. -- and that's when you heard shots and dropped down?

12 A. Yes, ma'am.

13 Q. And what was the reaction from Nigeia?

14 A. The same as mine.

15 Q. What was it?

16 A. Like take cover.

17 Q. She screaming?

18 A. Not really screaming.

19 Q. Crying?

20 A. Just scared, like shots fired. At this point we don't
21 know where the shots were coming from. We just know you
22 hear shots, you get down.

23 Q. Okay. Did you feel safe staying there?

24 A. At Nigeia's house?

25 Q. Yes.

1 A. No, ma'am.

2 Q. And so you left, right?

3 A. Yes, ma'am.

4 Q. And you testified that you were armed?

5 A. Yes, ma'am.

6 Q. And you ended up getting into the Honda?

7 A. Yes, ma'am.

8 Q. And the Honda was the last car kind of in the
9 progression leaving out of The Waylyn, right?

10 A. Yes, ma'am.

11 Q. So you could hear shots in The Waylyn? You don't --

12 A. As you -- go ahead, finish.

13 Q. Go ahead.

14 A. As we were driving going through Gary, Rusty Circle,
15 you hear shots going off at this point. We can't -- I can't
16 see who fired them. All I can see like where they are
17 coming from, but you can hear them.

18 Q. Okay. But the assumption was it was directed to you,
19 right?

20 A. At this moment, no, because I'm not really --

21 Q. Well, directed towards people in your group?

22 A. Yes, ma'am.

23 Q. Okay. Because the Charger is up front -- the Charger
24 is way up, right?

25 A. Yes, ma'am.

1 Q. So you didn't know who shot first?

2 A. No, ma'am.

3 Q. But it was your belief that the Chrysler was involved
4 in the shooting, right?

5 A. At this point I can't even see the Chrysler. I didn't
6 see the Chrysler until we come up further Dorchester by
7 Harley Davidson. So at this point I don't know who is
8 shooting. You can just hear them. That's what I testified.

9 Q. So on Thursday didn't you say that you thought the
10 Chrysler was shooting?

11 A. No, I know the Chrysler was shooting when we get on
12 Harley Davidson.

13 Q. Okay.

14 A. Through the Waylyn you don't know who is shooting
15 first, because when I tell you the shots start firing, we
16 don't -- we don't know who fired and what type of car firing
17 them. We don't even know until we get by the Harley
18 Davidson.

19 Q. And in The Waylyn do you fire a gun at all?

20 A. No, ma'am.

21 Q. Because you don't know what's going on, right?

22 A. Yes, ma'am.

23 Q. "BJ" doesn't fire a gun either, right?

24 A. No, ma'am.

25 Q. So y'all don't fire a gun until you are on Dorchester

- 1 Road?
- 2 A. Yes, ma'am.
- 3 Q. And that's because you think the Chrysler is shooting?
- 4 A. That's because I saw a hand come out the back of the
- 5 Chrysler and start shooting.
- 6 Q. So you saw the Chrysler shooting?
- 7 A. Yes, ma'am.
- 8 Q. All right. Now, once y'all are in that car, Richard is
- 9 the one driving, right?
- 10 A. Yes, ma'am.
- 11 Q. And he's driving at kind of like outrageous speeds,
- 12 right?
- 13 A. Yes, ma'am.
- 14 Q. Running lights?
- 15 A. Yes, ma'am.
- 16 Q. Probably going a 100 miles per hour?
- 17 A. (Shaking head yes).
- 18 Q. And like there was never an opportunity to get out of
- 19 the car, right?
- 20 A. No, ma'am.
- 21 Q. And Richard keeps heading towards the Chrysler, right?
- 22 A. Yes, ma'am.
- 23 Q. The Chrysler that you believe was shooting?
- 24 A. That I saw shooting.
- 25 Q. Okay. And you are telling Richard to slow down?

1 A. That's when we get to Ashley Phosphate.

2 You are on Dorchester Road, there wasn't too much
3 conversations going on in the car. Shots firing off. It's
4 a whole lot of speed driving.

5 Q. Chaos?

6 A. Yes, ma'am.

7 Q. Okay. When you did get -- when you did ask him to slow
8 down, did he slow down?

9 A. On Ashley Phosphate, yeah, but we were trying to tell
10 him since Cross County like "slow down, slow down, slow
11 down," because at that point the shootout over. We already
12 got shot at on Dorchester Road. Ain't no need to be
13 speeding on Cross County no more.

14 Q. Okay. So in your mind after the shooting on Dorchester
15 Road and the Chrysler has gone off, it's over?

16 A. Yes, ma'am.

17 Q. Okay. Right?

18 A. Yes, ma'am.

19 Q. But for Richard it wasn't over, because he kept
20 speeding and speeding and speeding, right?

21 A. I can't say what he said in his mind, but I just know
22 that he was speeding.

23 Q. Okay. Well, you asked him -- y'all asked him to
24 stop --

25 A. Stop speeding.

1 Q. -- and he wouldn't, right?

2 A. Yes, ma'am.

3 Q. And when you say we, you mean you and "BJ", right?

4 A. Yes, ma'am.

5 Q. Now, Richard's behavior in the car, he was on the phone
6 a lot?

7 A. Yeah, not a long time. Just phone calls going back and
8 forth, little small talk like "yeah, all right,"
9 conversation like that. Not holding no conversations.

10 Q. And he's driving fast?

11 A. Yes, ma'am.

12 Q. Running lights?

13 A. Yes, ma'am.

14 Q. Not listening to anything that y'all have to say, is
15 that right?

16 A. Yes, ma'am.

17 Q. Was he amped up?

18 A. Just chaos, hectic. Just a lot of stuff going on, so I
19 guess you could say amped up.

20 MS. EHRLICH: Court's indulgence.

21 (Off the record).

22 (Back on the record).

23 BY MS. EHRLICH:

24 Q. All right. So y'all can't get him to slow down on
25 Cross County, right?

1 A. Yes, ma'am.

2 Q. But he does slow down on Ashley Phosphate?

3 A. Yes, ma'am.

4 Q. Only because there might be cops there?

5 A. Yes, ma'am.

6 Q. And is he saying anything about "I see the taillights"
7 during this whole thing on Cross County?

8 A. No, ma'am.

9 Q. When y'all get on Ashley Phosphate and you see the
10 second Chrysler, Richard is the one who is saying that's the
11 same car, correct?

12 A. Yes, ma'am.

13 Q. And you told him --

14 A. He did say it at first, like that's the wrong car,
15 because, you know, he's in the front seat, so he could see
16 that that's the wrong car. I'm in the passenger back seat.
17 I turned -- turned like this right here, like, yeah, that is
18 the wrong car.

19 Q. How do you know it was the wrong car?

20 A. Because her car is like a little shinier than -- well,
21 you could see and you could tell that's a lady in it. The
22 tint on the car is dark, but it ain't that dark.

23 Q. And y'all were right up next to the car, right?

24 A. Not right up next, but seeing distance.

25 Q. Okay. So "BJ" says first "that's not the car"?

1 A. Yes, ma'am, and then I agree with him, like "yeah,
2 that's the wrong car."

3 Q. Okay. And that's when you told the solicitor that
4 Simmons said "fuck that. They just shot up my car"?

5 A. Yes, ma'am.

6 Q. And then he pushed "BJ" out of the way, right?

7 A. The shots.

8 Q. He pushes "BJ", right?

9 A. Yes, ma'am.

10 Q. And shoots through the window?

11 A. Yes, ma'am.

12 Q. And hits Kedena Brown, right?

13 A. Yes, ma'am.

14 Q. And that's when y'all were fussing at him, right?

15 A. Yes, ma'am.

16 Q. "BJ" is fussing at him?

17 A. Also me too.

18 Q. You are fussing at him.

19 That wasn't what y'all signed up for that night, right?

20 A. No, ma'am.

21 Q. At no point did you encourage Richard Simmons to shoot
22 at that car, did you?

23 A. No, ma'am.

24 Q. You didn't say "that's it, shoot," did you?

25 A. No, ma'am.

1 Q. Did "BJ" do anything like that?

2 A. No, ma'am.

3 Q. Y'all told him not to do it?

4 A. Yes, ma'am.

5 Q. And he wouldn't listen, right?

6 A. Yes, ma'am.

7 Q. He didn't care?

8 A. (Shaking head yes).

9 Q. And he pushed "BJ" out of the way?

10 A. And shot.

11 Q. And shot.

12 MS. EHRLICH: Thank you.

13 THE COURT: Mr. Kidd?

14 MR. KIDD: Thank you.

15 REDIRECT EXAMINATION BY MR. KIDD:

16 Q. Of the people there that night, you say that you were
17 closest with "BJ" out of all those there?

18 A. Yes, ma'am -- yes, sir, I apologize.

19 Q. All right. So "BJ" was the best of the friends that
20 you had there?

21 A. Yes, ma'am -- I mean, yes, sir.

22 Q. Okay. It's all right. I know it's hard switching back
23 and forth.

24 And you don't want him to get in trouble today any more
25 than you want yourself to get in trouble, right?

1 A. I came to tell the truth. That's it, sir.

2 Q. Right. But my question is do you want him to go to
3 prison?

4 A. We all are facing prison time.

5 Q. My question is do you want him to go to prison?

6 A. No, sir.

7 Q. And is it easy to come and strike a deal with the
8 solicitor and testify?

9 A. No, sir.

10 Q. What is being labeled a snitch mean to you?

11 A. That it's hard.

12 Q. It's hard?

13 A. Yeah.

14 Q. How so?

15 A. You just --

16 Q. What's life on the streets going to be like labeled a
17 snitch?

18 A. Just the same people ain't going to talk to you. You
19 just be separate out. That's it.

20 Q. Kind of get exiled sometimes if you are a snitch,
21 right?

22 A. Uh-huh.

23 Q. Is that right?

24 A. You say X out?

25 Q. Yeah, to be cut off other people that you are with,

1 right?

2 A. Yes, sir.

3 Q. Now, as to "BJ's" dad, a little while ago, back on
4 Thursday you described him as a respectable man, is that
5 right?

6 A. Yes, sir.

7 Q. So he was a drug dealer, right?

8 A. Yes, sir.

9 Q. He was?

10 A. Yes, sir.

11 Q. So when you say respectable, you don't mean like deacon
12 in the church?

13 A. No, sir.

14 Q. You mean he had respect on the streets?

15 A. Yes, sir.

16 Q. Now, I want to talk about you saying that the Young
17 Gunnas were no longer a thing in the middle of 2015. Why
18 don't you tell the jury why the Young Gunnas started
19 breaking up.

20 A. I don't know.

21 Q. You don't know?

22 A. I tell you when the Young Gunnas were going on, I was
23 living in North Carolina.

24 Q. All right. Do you know -- you know about The Four and
25 The Five, right?

1 A. Yes, sir.

2 Q. And The Four is on the other side of Dorchester Road?

3 A. Yes, sir.

4 Q. Back when the Young Gunnas were full throttle, they
5 incorporated both sides of Dorchester Road?

6 A. Yes.

7 Q. The Four and The Five?

8 A. Yes, sir.

9 Q. All right. And then you testified the other day you
10 know about "Babe Lo" and "Lul T" getting killed, right?

11 A. Yes, sir.

12 Q. And was that a big riff with any Young Gunnas when that
13 happened?

14 A. Yes, sir.

15 Q. And did that, along with "Mook" getting prosecuted by
16 the feds, start the decline of the Young Gunnas as we know
17 it?

18 A. Yes, sir.

19 Q. And that was all happening at the end of 2014, and the
20 beginning of 2015?

21 A. Yes, sir.

22 MS. EHRLICH: Objection, Your Honor.

23 THE COURT: What's your basis?

24 MS. EHRLICH: Leading, testifying.

25 THE COURT: Mr. Kidd, I'll sustain it as to

1 leading.

2 Rephrase your questions. Please watch the leading
3 questions. Thank you.

4 MR. KIDD: Yes, ma'am.

5 BY MR. KIDD:

6 Q. So those issues that we are talking about, what did
7 that do to the Young Gunnas?

8 A. I believe it split them up, but as I also told you when
9 I testified, this is stuff I heard, nothing that I know for
10 sure.

11 Q. Okay. And do you know Dartez Ferguson?

12 A. I know him, but not like that.

13 Q. Do you know his relationship with "Little 5"?

14 A. No, I don't know "Little 5" like that.

15 Q. Does Dartez Ferguson associate with The Five or The
16 Four?

17 A. He's from The Waylyn.

18 Q. He's from The Five, right?

19 A. (Shaking head yes).

20 Q. Where does "BJ" initially represent, The Five or The
21 Four.

22 A. Living over in the Waylyn, but he's from The Four.

23 Q. He's from The Four, though, right? So he originally
24 repped The Four, right? Is that right?

25 A. Yes, sir.

1 Q. And Dartez Ferguson is from The Five.

2 What about "DJ", "Little 5", where is he from?

3 A. From The Waylyn.

4 Q. What about "Bright Eyes" and all those other guys in
5 that Chrysler?

6 A. I don't know none of them guys like that.

7 Q. And I get it that you are here to tell the truth, but
8 you also want to put yourself in the best light as possible,
9 is that fair?

10 A. Yes, sir.

11 Q. To help minimize your prison sentence down the road,
12 right?

13 A. Yes, sir.

14 Q. Now, Ms. Ehrlich was talking to you about, you know,
15 whether Richard Simmons was all amped up. Is it safe to say
16 that everyone was pretty amped up at this time?

17 A. What time?

18 Q. During the chase down Dorchester Road and everything?

19 A. Yes, sir.

20 Q. I mean, it was pretty chaotic, right?

21 A. Yes, sir.

22 Q. And when you jumped in that CRV, you didn't grab Nigeia
23 and the kids?

24 A. You are right.

25 Q. You went out looking for the people who just shot at

1 y'all, right?

2 A. Yes, sir.

3 Q. I mean, that's what y'all were doing. Y'all went out
4 to find who had shot at you, right?

5 A. Yes, sir.

6 Q. And when you were shooting on Dorchester Road, that's
7 who you were shooting at?

8 A. Yes, sir.

9 Q. And that's who "BJ" was shooting at?

10 A. Yes, sir.

11 MR. KIDD: Court's indulgence.

12 (Off the record).

13 (Back on the record).

14 BY MR. KIDD:

15 Q. Now, Ms. Ehrlich was asking you about the age of
16 everyone and saying the feud was between the older guys, but
17 "Mook" was roughly your age, right?

18 A. Yes, sir.

19 Q. Give or take a year, is that fair?

20 A. Probably, yes.

21 Q. And what's his relationship to "BJ"?

22 A. That's his family member, his cousin.

23 Q. That's a family member, his cousin.

24 And what's "Fur's" relationship to "BJ"?

25 A. That's his uncle.

1 Q. That's his uncle.

2 And this started in front of "BJ's" house?

3 A. Yes, sir.

4 MR. KIDD: No further questions.

5 THE COURT: Recross?

6 RECROSS EXAMINATION BY MS. EHRLICH:

7 Q. Mr. Anderson, you shot on Dorchester Road because you
8 thought the Chrysler was shooting at you, right?

9 A. Yes, ma'am.

10 Q. And Mr. Kidd was asking you questions about how close
11 you are with "BJ"?

12 A. Yes.

13 Q. You are not here to lie to help "BJ", are you?

14 A. No, ma'am.

15 Q. You didn't make up some story about what happened
16 inside that car before Kedena Brown got shot, did you?

17 A. No, ma'am.

18 Q. Just to try to help him or help yourself?

19 A. No, ma'am.

20 Q. Why are you here?

21 A. To tell the truth.

22 Q. Okay. And is the truth that y'all tried to stop
23 Richard Simmons from shooting that car?

24 A. Yes, ma'am.

25 Q. Thank you.

Exhibit

#7

1 Revenge is vindictive. Justice is vindication. Vengeance
2 is a cycle. Justice is closure. Revenge is about a cycle.
3 Justice is about restoring the bounds.

4 Ladies and gentlemen, what we are asking you to do
5 here today is end the cycle of violence. We cannot allow
6 people to take the law in their own hands. We cannot allow
7 street justice to prevail.

8 Hold Kenneth Robinson accountable. Hold him
9 accountable for what he did. Bring justice to the family of
10 Kedena Brown. Find him guilty of murder and four counts of
11 attempted murder.

12 Thank you.

13 THE COURT: Ms. Ehrlich.

14 MS. EHRLICH: Kenneth Robinson was fifteen years
15 old on May the 10th, 2015. He's a child and three years
16 have passed and he's grown taller and grown older and he's
17 matured. And in those three years he's had to sit and
18 listen to people like Detective Bailey call him a monster.
19 He's had to hear Richard Simmons tell anyone who would
20 listen "BJ" is the shooter. He had to hear that Richard
21 played on the rumor of Kenneth's father by lying and
22 claiming when Kenneth shot Kedena Brown, that he said his
23 daddy was dead and he isn't here anymore and then he just
24 shot the lady. Richard said "I watched him do it."

25 And this fatherless teenager has now had to sit

1 through two weeks of court and listen to the older people
2 from the neighborhood, the ones who should have stepped in
3 to be positive role models for him and supported him in a
4 healthy way after his father died, come into the courtroom
5 and lie, to betray him and say he's responsible for our bad
6 behavior, he's responsible for our choices, grown men who
7 will sacrifice Kenneth Robinson to save themselves.

8 And nobody is saying that Kenneth Robinson is a
9 perfect person, or that he wasn't surrounded by some bad
10 people, but he's not responsible for the choices of those
11 bad people.

12 Now, going back to that night it's not disputed
13 that there was a shooting in front of Kenneth's house just
14 shortly after midnight, and nobody knows with certainty who
15 the actual target was. Was it Richard? Was it "BJ"? Was
16 it Kelley? Was it "Trell"? Nobody really knows.

17 And it's not disputed that the police came.
18 Richard didn't call them, because he was too busy chasing
19 after the car with the gun trying to shoot that gun. Now,
20 he hadn't fired a gun in retaliation. And then he tosses
21 the gun before police get there and talk to the police.

22 It's also not disputed that Richard's car was
23 shot, that a bullet lodged in one of the seats. There is
24 certainly little investigation done by the officer who
25 responded. He took a couple of pictures, collected a couple

1 of shell casings. He didn't call in a detective and he
2 didn't ask many questions and he didn't bring Richard
3 Simmons down to a police station out of the neighborhood to
4 talk about maybe what happened. And maybe if he had, we
5 wouldn't be here today. Maybe if they cared about what
6 happened when Richard Simmons got shot at, instead of
7 brushing it aside as just another shooting in The Waylyn.

8 Now, while all this was going on you got Jawan
9 Nicks, Donald Jackson and Corey Watkins hanging out in The
10 Waylyn neighborhood. They give some fuzzy timelines. There
11 is some talk about Donald and Jawan hanging out with girls
12 while Corey is just sitting on the porch. Not much is done
13 to confirm their whereabouts. You don't know if they were
14 really with these girls, or what they were actually doing.

15 But at the same time that this is apparently going
16 on, back at Lawrence Street people do start making phone
17 calls and you have the phone logs and you can look at them.
18 Not just Kenneth Robinson making calls. It's Richard
19 Simmons making calls. And it's other people calling them.
20 And what you didn't hear from is you don't hear from some of
21 those people on the other end of those phone calls. You
22 don't know what the conversations were with "Mook". You
23 don't know what the conversations were with Latrell
24 Hamilton. You don't know what the conversations were with
25 "Fur". And you don't know what the conversations were with

1 Sidney McDonald. You do know that people start coming over,
2 because that's what you do when something bad happens.
3 People start to gather.

4 And Keon, you know, gives his story that he's
5 coming there to make sure people are safe. You know, maybe
6 he is, maybe he isn't, but he comes, and he does recognize
7 that there is a risk involved for this family, knowing that
8 Kenneth's father had been killed months before.

9 Leroy Manigault says "I was just there because
10 "Fur" told me to bring me a gun. That's "Fur's" request,
11 not Kenneth's.

12 And we know from these witnesses that came forward
13 that there is some talk about what happened, who was the
14 shooter, what's going on. And that eventually leads into
15 people getting into cars, and Kenneth getting into a car
16 with Richard Simmons, because after that second shooting, of
17 which none of the people from that Chrysler ever heard that
18 second shooting, none of them testified that they heard
19 those shots. It's just a coincidence that they seemed to be
20 coming to the same area at the same times shots are being
21 fired on Constitution to Saratoga. At that same time that's
22 when people are starting to get more amped up. And you hear
23 that people are running, but you don't hear about Kenneth
24 running. All you hear about Kenneth is that he gets into
25 the Honda.

1 And so cars start moving and you have this kind of
2 suspicious car standoff where the Charger apparently thinks
3 the Chrysler looks wonky and the Chrysler thinks the Charger
4 looks wonky, and somehow shots start ringing out. We don't
5 even know who really shoots first. There is testimony from
6 some of the witnesses that "Fur" is the one shooting first,
7 but we don't know if anybody from the Chrysler is really
8 shooting. And that shooting continues on Dorchester Road
9 all the way to Cross County Road where the shooting stopped.

10 And Mr. Kidd could play all the 911 calls and we
11 hear those and we hear a caller saying there is two cars
12 shooting at each other. Two cars shooting at each other.
13 Not one car shooting at another one.

14 And we have Mr. Evans, who is working off duty at
15 the bowling alley, who hears on dispatch there is two cars
16 shooting at each other. He goes outside and at this point
17 there is no more shooting. He testified he didn't hear any
18 shots. He didn't see any shots, but he does see the
19 Chrysler and he does see the Honda. At this point the
20 shooting had stopped.

21 At the same time Sergeant Niemiec, after hearing
22 all these calls, sees the Chrysler and he puts his blue
23 lights on and starts to pursue and he does a felony traffic
24 stop, which was a big deal. And he testified the only
25 reason the car stopped was because the tire went flat, and

1 Andrew Smalls admitted that, yeah, I wasn't going to stop
2 for the police.

3 And the details of the stop are what's important.
4 If you are a victim of attempted murder and the police are
5 there to help you, you would stop the car.

6 You wouldn't stop if you had been shooting. You
7 wouldn't stop if you were trying to get rid of evidence.
8 You wouldn't stop if you were tossing some stuff out as you
9 were making that car turn onto the 26 ramp.

10 And the police, it's the biggest stop they have
11 had in a long time where an innocent woman gets killed and
12 people are shooting all the way down Dorchester Road and
13 they don't save one dash cam video? That video would have
14 shown everything that happened with the stop. It would have
15 shown that stuff got tossed out of the car. It would have
16 shown if they actually did sufficient patdown of those
17 occupants from the Chrysler. It would have shown if they
18 searched the car. It would have shown them putting them
19 into the car. It would have shown them handcuffing them.
20 It would have shown later if they searched the car to see if
21 a gun was found behind in those police cars. And we know
22 from Mr. Evans, who worked at the bowling alley, that
23 officers make mistakes, that there are times that guns get
24 missed. And we don't know what happened because they chose
25 not to preserve that footage, and they also chose not to

1 bring in one officer who searched any of those people, or
2 one officer who transported them down to the police station.

3 Now, those four occupants of the Chrysler, those
4 are the alleged victims of the attempted murder. They don't
5 act like victims. Not a single one had wanted to even come
6 into this courtroom.

7 Andrew Smalls gave all kinds of conflicting
8 information about the cars involved and he flat out told you
9 "I'm only here because I'm in jail." He admitted that he
10 had been completely uncooperative with the investigation.
11 And he was beyond disbelief that his hands could have had
12 gunshot residue on them. He wasn't firing the gun. And he
13 also said that he didn't have a problem with anybody and
14 certainly didn't have a problem with Kenneth Robinson and he
15 doesn't say Kenneth Robinson was shooting at him.

16 Jawan Nicks, he's the one who when the solicitor
17 asked "hey, do you remember when you got shot at on May
18 10th?" And he said "I know. That kind of happens a lot."
19 He's got shot at so often it's hard for him to keep them
20 straight, I guess. He also claims to not have a gun during
21 the incident, like the positive gunshot residue test on him,
22 but he also never identified Kenneth Robinson as somebody
23 who was shooting at them.

24 Donald Jackson took more of the I didn't see
25 anything approach. I just ducked down and then it was over,

1 but he also didn't say Kenneth Robinson was somebody
2 shooting at him.

3 And lastly you heard from Corey Watkins. The same
4 age as Kenneth Robinson, about how scared he was in the car
5 that was being driven at a high rate of speed while people
6 were shooting. And when Mr. Kidd asked "well, why were you
7 being shot at? It wasn't because anybody in the car was
8 shooting at them first," his response was "I wouldn't know."
9 He knows who they were shooting.

10 These guys weren't acting like real victims. Real
11 victims call the police. They stop for the police and they
12 don't have to be forced to come to court to testify.

13 Let's talk about the investigation done by the
14 North Charleston police. Apparently once Detective Bailey
15 made his three arrests of Kenneth Robinson, Derrontae Holmes
16 and Richard Simmons, whatever happened, that just didn't
17 matter. This guy was the lead detective for years and knew
18 nothing about Fred Lance, Leroy Manigault. He had no
19 concept of how interviewing Kelley Green might be important,
20 even though they have that name almost immediately. He
21 didn't bother to interview "Tez", the person that the State
22 thinks is the motive behind this. He doesn't go back and do
23 a single interview with anybody from the Chrysler to try to
24 collect their clothing, their phones, do DMV searches for
25 any of these people that might have been involved.

1 And we also didn't hear from the other lead
2 detective in the case, Detective Jourdan, who was
3 responsible for everything that happened that night. Why
4 didn't he come in and explain why they didn't search more
5 for discarded weapons? Why didn't he come in and explain
6 why they waited hours to do the GSR kits on the four people
7 from the Chrysler? Why didn't he explain why he didn't
8 collect their clothing for evidence to show that they were
9 searching for the shooters? Because if they are shooting,
10 they are committing a crime and that should matter.

11 He didn't come in and explain why he didn't
12 interview Kelley Green, or Fred Lance, or try to talk to
13 "Mook", or why he didn't make sure those officers were
14 preserving the dash cam videos. We have ten miles of tapes.
15 The only video they produced is the one video. Why didn't
16 they collect more?

17 And the State has put in a lot of work
18 investigation-wise. Much different from what the police
19 done, but their focus has been on the gangs, on The Four and
20 The Five, the Loud Pack, the Young Gunnas. And they want to
21 bring up that Richard Simmons was a Romney Street Killer,
22 and they want to bring to your attention all these issues
23 between the gangs and say that that influenced what was in
24 the mind of Kenneth Robinson.

25 Not one witness put words coming out Kenneth

1 Robinson's mouth about I think this person shot me, was
2 trying to shoot us, if that makes sense. None of those guys
3 got up there who testified to that. Nobody had Kenneth
4 Robinson out there talking about retaliation. Nobody had
5 Kenneth out there talking about let's go get guns, I'm going
6 to go kill somebody. That wasn't what their testimony was.

7 They didn't link that Kenneth Robinson was so
8 involved in the all this gang warfare that he's
9 concentrating all this retaliation and revenge and bringing
10 all those people over to do it.

11 Do not be distracted by the level of violence in
12 The Waylyn. There is no doubt there is some shootings going
13 on. More shootings tied to that .45 than anything else, and
14 there is lots of ballistic evidence tying in Leroy
15 Manigault.

16 And if you want to look at intent to kill, who had
17 intent to kill, you have got one car that's got no bullets
18 in it was the original Chrysler, and then you have got a
19 house full riddled with bullets done by Leroy Manigault.
20 He's the one who has intent to kill.

21 And when you look at the ballistic evidence, you
22 will find nothing tying anything to Kenneth Robinson. The
23 gun found in that car is not tied to any of the shootings.
24 None of them.

25 They made a big deal about all the stuff found in

1 his house, but they also made a big deal about how everybody
2 would come there. This isn't everybody coming out with "BJ"
3 and "BJ" is going to tell you all what to do. This is --
4 "BJ" is fifteen. Let's take advantage of having this spot
5 and we will do what we want there to his house while his mom
6 is vulnerable from the death of her husband.

7 The solicitor also made a big deal about these
8 Crestline and Suffolk shootings and how that shows "BJ" knew
9 what was going on. Well, maybe he did know what was going on
10 afterwards, but what matters to you in your decision is what
11 did he know on May 10th. Not May 12th. Not May 13th, which
12 brings us to that Catholic care purse that I talked about in
13 my opening statement. These people have all the motivation
14 in the world to tell them why. I know he said that they are
15 motivated to tell the truth, but whose truth is important?
16 Whose truth is important? Who determines who is telling the
17 truth?

18 Kelley Green went almost three years without being
19 charged. That's pretty good. Three years. His name is out
20 there within days and he doesn't get charged until the
21 Saturday before this trial, because he wouldn't cooperate
22 with the solicitor's office. I guess had he cooperated he
23 still wouldn't be charged. But if you paid attention to his
24 testimony, what did he really say about Kenneth Robinson?
25 He testified that pretty much everyone was armed, but he

1 never specifically said Kenneth Robinson was armed. Never.

2 He doesn't say that Kenneth Robinson is running
3 after people in The Waylyn shooting. He doesn't even say
4 Kenneth Robinson is shooting in The Waylyn.

5 The only thing he can give the State to try the
6 help the prosecution it's Kenneth Robinson is at the end he
7 throws out "yeah, we are at the "Fur's" house and they were
8 all kind of bragging about the shooting." And when I asked
9 for specifics of what did "BJ" say, he had nothing to add.
10 I'd call him a wash as far as that.

11 Then you have got "Stocky", Leroy Manigault. This
12 guy has got fourteen pending federal charges, facing
13 235 years in prison just for his federal stuff. He's a guy
14 that takes consequences for his only violent behavior. He
15 can shoot up houses when he wants, but you have already
16 charged him right now because these are federal offenses.
17 They have gotten him laced up and ready to kill and they
18 haven't charged him with anything. They will bring him in
19 here and try to convict a fifteen year old.

20 And "Stocky" doesn't say "BJ" called him for a
21 gun. He says "Fur" is the one who called him for a gun.
22 And then he gives multiple different statements to the State
23 about whether or not he gave a gun. First he says he gave
24 the gun to "BJ". Then he says no, I didn't, and then he
25 changes it back and says I did. And I think he testified he

1 did. He probably doesn't know what he does with what gun
2 each day. He talks, though, about how shots were fired from
3 Constitution and Saratoga and that people ran that way, but,
4 again, he does not put Kenneth running towards Saratoga. He
5 does not have Kenneth participating in that. And he puts
6 the Charger as the car that starts the shooting on Rusty,
7 Gary area, the Charger that did not have Kenneth Robinson in
8 it.

9 For all what "Stocky" says, he does come forward
10 and say that at "Fur's" house there was talk about Richard
11 Simmons had shot the wrong car.

12 The only thing he offered to you was that he gave
13 Kenneth the gun and that Kenneth was in the car. That's it,
14 coming from the guy that's facing two hundred plus years in
15 prison and a lifetime.

16 Let's talk about Richard. He has a hard time
17 keeping his story straight, even within thirty seconds. The
18 solicitor asked is "BJ" a Young Gunna. I objected. And
19 before the court could rule he said "I don't think so."
20 Then the State asked him again and he said "oh, well, he was
21 before, before he got locked up." So within a matter of
22 seconds this guy could change his answer.

23 And he admits, and I am not going to put through
24 the pain of going through all the different stories he told,
25 because we know there is a lot. We are not going to relive

1 every single inconsistency of Richard Simmons. You heard it
2 straight from the stand and if you want to re-listen to his
3 testimony, you can, but when he gets shot at, he is
4 consistent with everybody else, that he's the one who is
5 running after people with the gun and doesn't have Kenneth
6 doing anything.

7 And he talked about getting this Taurus .40 from
8 Sidney. And then he gave us all this elaborate details of
9 this person had this gun, this person had that gun, this
10 person had that gun, but only after he's met with the
11 solicitor's office about five times and he's figured out
12 what gun to say which person had.

13 And at this point in his life things have gotten
14 so bad, so bad for him, that if he's caught lying and he has
15 to admit he's the shooter, that the only thing he can do to
16 help himself avoid going to prison for a long, long time is
17 help the State. They say it's tell the truth, but for
18 Richard it's help the State. And how does he help the
19 State? He helps the State by putting the gun in Kenneth
20 Robinson's hand, and he helps the State by saying Kenneth
21 was part of the shooting on Dorchester Road. But he also
22 says that he thinks the Chrysler was shooting. Now he says
23 that he's had time to reflect he knows the Chrysler wasn't
24 shooting. So at the time he believed the Chrysler to be
25 shooting.

1 The shooting stopped, though. And we know the
2 shooting stops based on what Mr. Evans says. There is no
3 shooting going on on Cross County. That is over. The chase
4 and the shootout, this back and forth shooting at people is
5 over at that point.

6 Now, Richard may be driving fast, and it may not
7 be over in Richard's mind, but Kenneth and Keon are telling
8 him to slow down, slow down, but it's Richard, and Richard
9 alone, who is trying to speed up because he thinks he sees
10 the Chrysler.

11 And it's Richard, and Richard alone, that pulls up
12 to a Chrysler, takes a gun and kills Kedena Brown. And he
13 lied and says "oh, they didn't tell me it was the wrong car.
14 They didn't tell me it was the wrong car." When he talked
15 to the police the first time he says "well, I told "BJ" it
16 was the wrong car, but he shot." He is slip and slip.

17 And the solicitor and I have big different
18 interpretations of part of his testimony. During his
19 testimony I said "Keon told you it was the wrong car and
20 "BJ" said it was the wrong car, but you didn't believe it."

21 He said "yeah."

22 "You pushed "BJ" out of the way and shot out of
23 the car?

24 "Yes."

25 I take that to mean he's admitting now that Keon

1 and Kenneth told him it was the wrong car and that he shot
2 at it anyway.

3 Now, the solicitor got up and asked him more
4 questions and says "well, you know, you mean after y'all
5 have a discussion about whether it was the wrong car and you
6 didn't believe them then."

7 And, of course, Richard agreed with him and said
8 "oh, yeah, that's what I mean."

9 But here is what we know. Richard didn't care who
10 was in the car. Richard wanted -- Richard testified "I
11 wanted to know who had shot at me." That's why he didn't
12 sit there.

13 Then he testified "well, it was too dark for me to
14 see in."

15 So you shoot anyway? I mean, none of that makes
16 any sense.

17 And tinted windows or not, it's a well lit area.
18 The tint is not that dark. They could see in the car. He
19 knew it was the wrong person. He didn't care and he shot
20 anyway. And he wants a fifteen year old to go down for it.

21 Let's talk about what type person Richard Simmons
22 is. He's the type of person who lies and says that he's
23 going there to check on Kenneth's mother, and lies to the
24 police and the solicitor and investigators and the world for
25 two years, without looking out for his momma.

1 This guy was out for blood, no matter what, and
2 there is no way that anybody could predict that that day.

3 And under accomplice liability you got to be a
4 part of it. Kenneth Robinson wasn't a part of that. You
5 got it from "Stocky". He warned him. He said it was the
6 wrong car. And Richard pushes him out of the way.

7 Think about it. You must really want to kill
8 somebody if somebody is looking at you like this, it is the
9 wrong car, and you push them out of the way. And there is
10 no way that is a natural and probable consequence to expect
11 that somebody would purposefully shoot at the wrong car
12 after the rest of the incident has been over. It's over.
13 They have lost the cars. No one else is shooting. It is
14 over. And it's certainly not a foreseeable consequence for
15 somebody who is fifteen years old at the time.

16 For all they know they are going either back to
17 the Waylyn or they are going to "Fur's" house. This hunt
18 Richard Simmons was on, that's his hunt. Nobody else's
19 hunt. Richard Simmons is in complete control of that car
20 and acted alone when he murdered Kedena Brown.

21 This is a same guy who testified "BJ" said I did
22 it. He put me in this. That's why I said he did it.
23 That's what type person Richard Simmons is.

24 Now, Keon Anderson came in on the eve of trial.
25 He said I was fishing for a better offer. And he knows

1 Richard Simmons has already come clean about being the
2 shooter. The only way he can help them save the case is to
3 say yeah, Kenneth shot a couple of times on Dorchester Road.
4 That's all he says.

5 And he said that it happened when the Chrysler is
6 shooting at them. That can help the State to put the gun in
7 Kenneth's hands and put the shots being fired and that helps
8 Keon out.

9 But what Keon won't do, because Keon is a better
10 person than Richard Simmons, is he at least have the
11 goodness to tell the truth about what happened when Kedena
12 Brown got killed. He won't take it a step all the way down
13 the road that Richard does. He won't do that. He testified
14 "BJ" knew it was the wrong car first, because he was in the
15 front seat and he could see. "I told him it was the wrong
16 car too. You could see through the tint and we also knew
17 that the car was shinier." It's not just oh, we thought it
18 was the one. The cars were different. They looked
19 different and they knew it and they told him.

20 And Richard's response was not a probable
21 foreseeable one, because he says "fuck that" and shoots.
22 They tried to stop him. He wouldn't listen because somebody
23 had to pay for shooting up his car. It didn't matter who.

24 Now, the State's theory of this case is that it's
25 gang motivated. And maybe there is gang motivation in this

1 case, but they are saying that because Kenneth knew and
2 heard some of this stuff, that shows his motive and intent,
3 that he knew what he was doing, that he knew what he was
4 getting into.

5 You got somebody who is at his house being shot
6 at, essentially, calls for some help, his family members,
7 and then there was more shooting. And he makes the best
8 choice he can at the time to get out of there. His only
9 mistake was getting into the wrong car, but the State wants
10 you to hold him responsible for what all these older
11 co-defendants did, the choices they make under that theory
12 of accomplice liability.

13 How could Kenneth foresee that there was going to
14 be a ten mile chase down Charleston County? How would he
15 know that there was going to be a gun battle? Maybe he did.
16 Have they proven that to you? Have they proven that he was
17 part of the discussion about that?

18 How could he foresee that a cold-hearted killer,
19 like Richard Simmons, after the incident and chase is over,
20 would continue on his own driving at a high rate of speed
21 still get retaliation? How would you foresee that? And how
22 would a fifteen year old foresee that that was a natural and
23 probable consequence of getting in that car?

24 The State has really focused on these guys with
25 proffers and says well, they got to be honest. The honest

1 by his standards is what I keep telling myself. Richard
2 wasn't honest for years. They are still working with him,
3 though. Still hoping for that deal.

4 "Stocky" is caught in a lie. He lied to them and
5 said that "BJ" was at the Suffolk Street shooting, when we
6 know the GPS monitor says he wasn't, but that didn't bust
7 his proffer with them.

8 Kelley Green lied to them the first time he meets
9 with them and they are like okay, we'll give you a second
10 chance, and they give him a second proffer.

11 Unless it's an obvious lie, they are not going to
12 get caught lying. And they put a gun in Kenneth's hand and
13 that helps out the State, that helps them, and they need
14 help and there is no way to rebuttal that. There is no way
15 to prove that they are not telling the truth.

16 The court is also going to instruct you on the law
17 of what's called mere presence. To be guilty somebody has
18 to actually participate in the crime. So just being there
19 doesn't make you guilty. Just riding in a car with somebody
20 doesn't make you guilty. He doesn't know when somebody
21 might commit a crime, but you are not part of it, you are
22 not participating, you not aiding them, you are not guilty.
23 You have to be a part of it. You have to do something. You
24 have got to be acting in concert with these people. You
25 have got to show Kenneth Robinson is an active participant

1 in the crime, and there is certainly no evidence he was an
2 active participant in a homicide.

3 The judge is also going to charge you on the law
4 and what the charges are and what attempted murder means and
5 what the elements are. And you have to decide if not only
6 if Kenneth is guilty, did he have an intent to kill, but
7 should you be guilty because of what other people did? Or
8 was he only present when the others acted out.

9 And remember that there is no ballistic evidence
10 at all tying Kenneth Robinson to any of the shooting.

11 The judge is also going to instruct you on what's
12 a lesser included offense of attempted murder. That's
13 called assault and battery in the first degree. That's an
14 attempted assault that could have caused great bodily injury
15 or death. And so if you don't believe that the State has
16 proven him guilty of attempted murder, you then are allowed
17 to consider, well, he is guilty or not guilty of assault and
18 battery first degree.

19 Do you believe that he was part of this, or do you
20 believe he was merely present?

21 With regard to the murder charge, there are no
22 lesser includeds. He's either guilty of the murder or not.

23 Richard Simmons either acted alone after the
24 initial incident was over, shooting and killing Kedena
25 Brown, despite being told it was the wrong car, or Kenneth

1 is guilty because you think it's all part of same incident
2 and he ultimately, though, was just present in the car.

3 The testimony was so strong about that portion of
4 the incident that the shooting was over, that cars had
5 dropped off; that Richard was the one who kept looking for
6 those headlights; that Richard was the one who wouldn't
7 listen to when they said it's the wrong car; that Richard
8 was the one who pushed somebody out of the way to shoot.

9 The judge is also going to instruct you on what's
10 called reasonable doubt. And it is so important during
11 deliberations to not let your emotions take over. It's hard
12 in a case like this. You got a very sympathetic victim, a
13 very sympathetic date of her death, but you cannot let your
14 sadness for them and your heartache and even your sadness
15 for the Dorchester/Waylyn area to take over. You have to
16 listen to the facts and testimony that have been presented.
17 And if you believe that there is a real possibility that
18 Kenneth Robinson did not participate in these crimes, you
19 are obligated to find him not guilty.

20 And when you deliberate, you have got to talk to
21 each other and respect each other's opinions and respect
22 what each other has to say. It's not one person that just
23 gets to run the show. And you have got to treat this like
24 one of the most important decisions in your life.

25 You have an elderly parent and you were picking

1 out a nursing home. You want to be sure you are putting
2 them in the right place.

3 You have got a two year old going to daycare for
4 the first time. You don't want any doubt in your mind that
5 that two year old is going to be safe.

6 This decision has no take-back. Once you make
7 your decision, nobody comes back and says hey, are you
8 really comfortable with your decision and if you want to
9 change your mind. That doesn't happen. Any verdict that
10 you issue is final and I want you to keep that in mind when
11 you are discussing the case.

12 Now, Kenneth Robinson is eighteen now, but he was
13 fifteen then; trapped in this neighborhood that wasn't a
14 safe place; a home that other people took advantage of; a
15 father who had been murdered months before; and when he
16 turns to others for help, they didn't do the responsible
17 thing. He was the youngest person there and the older
18 people there had a responsibility to make him safe. Instead
19 they made it worse and worse and worse and drove him into
20 the heart of all this danger. Then he gets arrested and
21 starts telling the police what happened and he becomes an
22 even bigger target to those people, because how dare he give
23 them any names.

24 The State talks about people giving a lot of
25 stories and that you lie to protect himself, or you lie

1 because you did something wrong. You also lie out of fear.
2 Think about Kenneth's words on that tape. "We were all
3 scared, scared for our life. Like my dad just died in
4 January. My mom, she started crying. I tell you I don't
5 know nothing. I fear for my life. I ain't saying nothing
6 right now. I don't know nothing. I was terrified no matter
7 what. I didn't want to lose my life. If I tell y'all I
8 would tell you everything. I was scared. I was scared for
9 my life."

10 Detective Bailey at some point jumps in and says
11 "I don't give a shit if were scared," to a then sixteen year
12 old Kenneth. And Kenneth says "they may kill me. What
13 y'all going to do? Have them kill me?"

14 Then later he says "Richard is the shooter. I was
15 in the car, right, when the car shot us, but the whole thing
16 was they was trying to get me away from the house, because
17 they thought they was trying to kill me."

18 And the detective asked later "who were you afraid
19 of?"

20 "I'm afraid of my life they are going to want to
21 kill me."

22 The detective says "well, you got to start talking
23 to me now."

24 And Kenneth says "Richard did it."

25 "Why are you taking so long to talk to us?"

1 "Because I'm terrified." If they find out I tell
2 y'all all this, I'm going to die."

3 And then in talking to the detectives, who
4 basically yelled and screamed at him for hours, you see who
5 the real Kenneth Robinson is when he shows empathy for
6 Kedena Brown. "I know how it feels to lose for someone to
7 lose their mom because I lose my father. I know how it
8 feels. I know how it feels." Those are not the words of a
9 killer. Those aren't the words of an accomplice killer.

10 You have heard empathy and remorse from the
11 solicitor, and you have heard empathy and remorse from me,
12 and you have heard empathy and remorse from Kenneth, but you
13 haven't heard one word of empathy come out of the mouth of
14 any of their witnesses. It's all about them. They didn't
15 care about what happened to Kedena Brown. Kenneth Robinson
16 did. He tried to stop it. He felt for that woman, having
17 gone through it himself.

18 "I know how it feels. If they find out I tell
19 y'all this I'm going to die." Those are not the words of
20 someone trying to kill people. Those aren't the words that
21 a fifteen year old who saw Richard's actions as a probable
22 consequence to know what was going on.

23 And his words are the truth, because he should be
24 afraid. He should be afraid, because Richard came after him
25 by lying. He didn't say anything for years. And he is

1 sitting in court right now based on the false words of
2 others.

3 He was present and he was there, but he did not
4 nothing wrong, and I would ask you to find him not guilty.

5 THE COURT: Do you wish a short comfort break
6 before I instruct you on the law?

7 JURY FOREPERSON: Yes.

8 THE COURT: All right. Please remember all my
9 admonitions. You can leave your note pads right where they
10 are.

11 Please rise for the jury.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: Thank you. Please be seated.
15 Anything before we take a comfort break?

16 MR. KIDD: No, ma'am.

17 MS. EHRLICH: No, ma'am.

18 THE COURT: Thank you.

19 We'll be at ease for about seven minutes.

20 (Whereupon, proceedings were recessed)

21 (Whereupon, proceedings were reconvened)

22 THE COURT: Anything from the State? Mr. Kidd?

23 MR. KIDD: No, Your Honor.

24 THE COURT: Ms. Ehrlich?

25 MS. EHRLICH: No, Your Honor.

Exhibit

#8

1 THE BAILIFF: All the jurors are present, Your
2 Honor.

3 THE COURT: Thank you.

4 Please be seated.

5 I understand you have reached a verdict. Would
6 you please hand the verdict forms to the bailiff?

7 THE CLERK: In the State of South Carolina, County
8 of Charleston, for the Court of General Sessions, Ninth
9 Judicial Circuit, as to Indictment Number 2017-GS-10-4878,
10 State of South Carolina versus Kenneth Lamont Robinson, Jr.,
11 we, the jury, find the defendant, Kenneth Lamont Robinson,
12 Jr., guilty of assault and battery first degree of Corey
13 Jermaine Z'ion Watkins, signed this date February 22nd, by
14 Andrea Allen, foreperson of the jury.

15 As to Indictment Number 2017-GS-10-4879, for the
16 charge of assault and battery first degree, we, the jury,
17 unanimously find the defendant, Kenneth Lamont Robinson,
18 Jr., guilty of assault and battery first degree against
19 Donald Lamont Jackson, Jr.. Signed this day by Andrea
20 Allen, foreperson of the jury, February 22nd, 2018.

21 As to Indictment Number 2017-GS-10-4880, as to the
22 charge of assault and battery first degree of Jawan Tyrese
23 Nicks, we, the jury, unanimously find the defendant guilty.
24 Signed this day by Andrea Allen, foreperson of the jury,
25 February 22nd, 2018.

1 As to Indictment Number 2017-GS-10-4881, for the
2 charge of assault and battery first degree against Andrew
3 Xavier Smalls, we, the jury, unanimously find the defendant
4 guilty. Signed this date Andrea Allen, foreperson of the
5 jury, February 22nd, 2018.

6 As to Indictment Number 2017-GS-10-4882, we, the
7 jury, find the defendant, Kenneth Lamont Robinson, Jr.,
8 guilty of murder of Kedena Brown. Signed this day
9 February 22nd by the foreperson of the jury.

10 THE COURT: You may have a seat. Thank you.
11 Anything further required of the jury from the
12 State?

13 MR. KIDD: No, ma'am, nothing from the State.

14 THE COURT: From the defense?

15 MS. EHRLICH: Your Honor, I would request that the
16 jury be polled.

17 THE COURT: All right.

18 Ladies and gentlemen, the clerk is going to poll
19 you. This happens almost in every criminal case. Please do
20 not think that there is anything unusual about what's going
21 to happen.

22 Dallss is going to call your jury number and
23 please respond to his questions. He has two questions for
24 you.

25 THE CLERK: As Your Honor has instructed, when I

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1 think we can get through the other four within an hour
2 tomorrow.

3 THE COURT: Okay. Is it an acceptable schedule to
4 you Mr. Kidd or?

5 MR. KIDD: I would prefer them -- I don't have
6 much to present. I would like the victims to address the
7 court immediately prior to sentencing. I would hate for
8 them to give a five minute impact statement now and it to
9 be drowned out by two days worth of testimony. I would
10 prefer them to present their mitigation, the victims
11 address the court and argue about sentencing tomorrow
12 would be the way I think would be appropriate to proceed;
13 this is their hearing.

14 THE COURT: Ms. Ehrlich, we have a lot of what I
15 consider to be more procedural issues so I am going to
16 allow you to present your case and then we will proceed
17 today. And then I will allow Mr. Kidd to present the
18 victims statements and then allow you to respond
19 tomorrow, all right?

20 MS. EHRLICH: Yes, ma'am. And I also anticipated
21 dealing with the motions related to the constitutionality
22 of the statute as well as precluding life after we have
23 presented all our witnesses just so that we can get
24 witnesses taken care of and those motions deemed most
25 appropriate when we're talking about the sentence.

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1 MR. KIDD: If it helps we're not even asking for a
2 life sentence so I'm not sure we need to address that
3 motion.

4 THE COURT: I think it is appropriate because
5 unless you're going to negotiate no life I think that she
6 needs to place everything on the record. Are you in a
7 position to do that, Mr. Kidd?

8 MR. KIDD: I'm happy to negotiate a cap of 50 or
9 anything like that.

10 THE COURT: Do you want to take a moment?

11 MR. KIDD: I addressed that before we started the
12 trial to obviate the need for all this but...

13 MS. EHRLICH: Your Honor, I think this information
14 is relevant to the court's decision. There is a big
15 difference between 30 years and 50 years.

16 THE COURT: But there is also a difference if the
17 potential is no more than 50 and Mr. Kidd is willing to
18 enter into that agreement with you I don't know that we
19 need then to go through the analysis of life without
20 parole and the impact on your client.

21 MS. EHRLICH: Fifty is life in our opinion and ---

22 THE COURT: --- but it may be your opinion but as
23 you know that is not the law and so clearly there is a
24 difference between a 50 year sentence and a life sentence
25 or a life without the possibility of parole sentence.

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1 The impact on your client is different and I understand
2 that is what you're saying but the analysis we don't need
3 to do those constitutional arguments if he is not going
4 to be subjected to life.

5 MS. EHRLICH: I would agree with Your Honor that if
6 life is off the table that we don't need to argue the
7 motion to preclude life as punishment. But I would not
8 agree that we would stop everything and go into
9 sentencing now without us being able to present
10 mitigation. I think that's what he would like to do.

11 THE COURT: I think we're just trying to get to
12 where we truly need to be, which is Mr. Kidd is not
13 asking for life... If he is not asking for life then some
14 of your motions then truly become moot. And so I think
15 then mitigation is still we'll go forward and hear from
16 all the witnesses but I just don't need to hear all the
17 constitutional arguments.

18 MS. EHRLICH: Yes, ma'am. I agree with that.

19 THE COURT: So do you want to take just a few
20 moments just to articulate what the cap is and the
21 negotiation is?

22 MR. KIDD: I mean they have to agree to it for it
23 to be a negotiation. I'm happy to negotiate a cap for 50
24 years.

25 MS. EHRLICH: I mean I think if they just take life

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1 off the table that takes away the argument, the need for
2 the constitutional argument related to life.

3 MR. KIDD: Well I would ---

4 THE COURT: --- I think 50 would do that, correct?

5 MR. KIDD: Correct. I mean I don't know of any
6 other way to do it. While I don't agree that a 50 year
7 sentence is the equivalent of a life I think maybe there
8 is a number out there that is you know like if we -- a
9 cap of 100 I think 100 years is the life equivalent. So
10 I think 50 is a good number to you know where there would
11 be a light at the end of the tunnel. It's not a life
12 sentence and probably would be an appropriate number in
13 the State's opinion; right around that range. I would be
14 happy to negotiate 50 to help give him a benefit of
15 taking life off the table and help expedite this process.
16 And it makes some of the motions moot as well.

17 THE COURT: Are you able to enter into that
18 negotiation?

19 MS. EHRLICH: Your Honor, my concern is that 50 is
20 the equivalent of life for my client. And I understand
21 that the law has not addressed life equivalency but
22 saying okay a cap of 50 that's not a potential life
23 sentence. In our research agreeing to a cap of 50 is
24 like agreeing to life. I know that the court isn't -- I
25 know the court hasn't addressed life equivalency yet.

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1 THE COURT: Why don't you take just a few moments
2 because once we begin and if you haven't entered into
3 this negotiation then I want you to be very clear that
4 the punishment for murder is 30 to life.

5 MS. EHRLICH: Yes, ma'am.

6 THE COURT: And I am not bound -- the only thing at
7 this point that I am bound by is to follow the law. So
8 do you want to enter into this negotiation? Take a few
9 moments and explain to your client what that means. If
10 you enter into that negotiation what I do understand is
11 that your argument is that 50 to your client is the
12 equivalent of a life sentence. And that may be presented
13 in your mitigation. But at this point 50 years is not
14 the legal equivalent of life which I think is the
15 distinction that you need to explain to your client at
16 this point.

17 MS. EHRLICH: Yes, ma'am.

18 THE COURT: Let's take a few moments. Why don't
19 you go ahead and explain because that -- he is going to
20 have to -- a negotiation is I'm going to have to have a
21 conversation with him like I do a plea colloquy, okay.
22 So why don't you take him...

23 [Whereupon, court takes a brief recess for Ms.
24 Ehrlich to confer with her client]

25 MS. EHRLICH: Judge, may we approach?

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1 THE COURT: Sure.

2 [Whereupon, an off the record bench conference is
3 held]

4 THE COURT: We'll take a short recess.

5 [Whereupon, an in chambers conference is held with
6 counsel]

7 THE COURT: Thank you. All right Ms. Ehrlich?

8 MS. EHRLICH: Your Honor, can we go ahead and admit
9 all our exhibits? Number 1 is our sentencing memorandum
10 and exhibits. Number 2 is an amended exhibit list; I
11 found a typo. And I've added a couple more certificates
12 so that is going to be defense exhibit 3.

13 THE COURT: Okay.

14 MS. EHRLICH: And then I have number 4 the motion
15 to declare the mandatory minimum unconstitutional. I'd
16 like to move that in as well. I'll make our motion to
17 preclude life, exhibit 5, part of the record as well.

18 THE COURT: All right.

19 MS. EHRLICH: And then I have Vera Dolan's study
20 marked as defense exhibit 6. I think it's easier if I go
21 ahead and move these things in now. I don't ---

22 THE COURT: --- any objection to any of those Mr.
23 Kidd?

24 MR. KIDD: No, ma'am.

25 THE COURT: Okay.

1 [Whereupon, defendant's exhibit numbers 1 through 6
2 are entered into evidence by the court]

3 MS. EHRLICH: And Your Honor, I have for the court
4 a copy of our amended exhibit list and the two additional
5 exhibits if I could approach.

6 [Whereupon, Ms. Ehrlich provides documents to the
7 court]

8 THE COURT: And I understand that you and the State
9 now are going to enter into a negotiated cap of 50, is
10 that correct?

11 MS. EHRLICH: Yes, Your Honor.

12 THE COURT: And that is correct Mr. Kidd, a cap of
13 50?

14 MR. KIDD: Yes, ma'am.

15 THE COURT: So based upon the sentencing structure
16 and the statute your client is now facing 30 years to 50
17 years, is that your understanding Ms. Ehrlich?

18 MS. EHRLICH: Yes, ma'am.

19 THE COURT: And I understand potentially you may
20 argue for me to defer or deviate from that minimum
21 mandatory but you did explain to your client what the
22 potential sentence would be, is that correct?

23 MS. EHRLICH: I have. And I have explained to him
24 that we will not be arguing whether or not life without
25 parole and actual life without parole sentence would be

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1 unconstitutional since he's not facing that any longer.

2 THE COURT: And Mr. Kidd, that's you understanding?

3 MR. KIDD: Yes, ma'am.

4 THE COURT: Mike, would you please swear the
5 defendant?

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 THE COURT: Mr. Robinson, could you please remain
9 standing? I've got a few questions for you.

10 [Whereupon, the defendant remains standing]

11 THE COURT: So you understand when we entered into
12 the trial the potential sentence you were facing was a
13 minimum of 30 years, did you understand that?

14 MR. ROBINSON: Yes, ma'am.

15 THE COURT: And up to a potential for a life
16 sentence. And I'm sure your attorneys have explained to
17 you in South Carolina life does mean life.

18 MR. ROBINSON: Yes, ma'am.

19 THE COURT: At this point the State has offered and
20 you have indicated that you agree that for the cap of 50
21 years, do you understand that sir?

22 MR. ROBINSON: Yes, ma'am.

23 THE COURT: That the potential maximum sentence
24 that you would be receiving here today or tomorrow when I
25 sentence or whenever we get done with the sentencing

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1 hearing would be a maximum of 50 years, do you understand
2 that sir?

3 MR. ROBINSON: Yes, ma'am.

4 THE COURT: The minimum mandatory provided by the
5 statute is still 30 years, do you understand that?

6 MR. ROBINSON: Yes, ma'am.

7 THE COURT: Are you in agreement with entering into
8 this new negotiation of a cap of 50 years?

9 MR. ROBINSON: Yes, ma'am.

10 THE COURT: Any questions for the court or for your
11 attorney regarding that issue alone?

12 MR. ROBINSON: No, ma'am.

13 THE COURT: Thank you, Mr. Robinson. You may have
14 a seat.

15 [Whereupon, the defendant is seated]

16 THE COURT: Okay Ms. Ehrlich you want to call your
17 first witness or do you want to give me a brief opening
18 statement kind of outlining what you plan to call and who
19 these people are to Mr. Robinson; however you wish to do
20 that.

21 MS. EHRLICH: Judge, I'll just start by calling our
22 witnesses and I'll have them identify who they are during
23 their testimony.

24 THE COURT: Okay, great.

CLOSING ARGUMENT

BY MR. KIDD:

Thank you, Your Honor. May it please the court?

As I mentioned I'll be brief. I do know that a few of the members of the victim's family will want to address the court when I'm done here. One of the most important things I think that we need to make note of at least to me anyway is that after two days of presentation I don't think I've heard the name Kadena Brown come out anyone's mouth from the defense side.

It's easy to lose perspective of who the true victims are in a case like this when everyone seems to want to focus on the defendant. Kadena Brown was a mother of two. She was a daughter, a sister, and a wife gunned down on Mother's Day; completely innocent. And I know that Kenneth Robinson didn't pull the trigger that fired the fatal bullet but what happened that night is all about Kenneth Robinson.

He was part of the gang. He was a part of the events that took place leading up to that day in the weeks, months, and years beforehand. He was the motive and the reason. He set the course of events that happened that day into motion. He has not accepted any semblance of responsibility for his actions. I have reached out to him on a number of occasions to cooperate

1 pretrial, post-trial with zero interest to cooperate with
2 this investigation or any other investigations that are
3 taking place in that neighborhood. That means one thing
4 to me. It means he is more concerned about being labeled
5 a snitch and his street cred than he is about the prison
6 sentence. What that says to me is that everything people
7 said about reformation and wanting to change his life is
8 a lie. And that a life on the streets is what he knows
9 and what he wants.

10 And while I appreciate everyone at DJJ and what they
11 have said and what they do for a living, because I think
12 their service is invaluable and I don't mean to diminish
13 that. I believe the wool has been pulled over their eyes
14 in this case. I believe the Public Defender's office has
15 done an amazing job in characterizing this young man in a
16 way that is inconsistent with who he is inside. It is
17 inconsistent with the sentence that he deserves.

18 As I said before we started this that I would be
19 amenable to taking life off the table. That is based on
20 much of what they have presented. That's based on his
21 age. This is the first time I've ever convicted someone
22 on murder and not asked for life. It's based on the fact
23 that he was convicted under accomplice liability based on
24 the fact of his age. But I think that the negotiation of
25 capping it at 50 years is what is important. There is no

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1 amount of years that can bring Kadena Brown back. We
2 know that. The family knows that. Those wounds will
3 never heal. Mother's Day will never be the same for that
4 family, those children. Kadena Brown is the victim, not
5 Kenneth Robinson. He made his choices. I want to use
6 the overhead real quickly, Judge. A lot of these are
7 clearly photos before his incarceration but these were
8 not produced in trial.

9 [Whereupon, Facebook postings are shown]

10 MR. KIDD: I know it's hard to see in the image
11 there, the court's exhibit but this is Kenneth Robinson.
12 Madden black hat, chopper shirt. These are the people he
13 hangs out with. Gang signs; this is who Kenneth Robinson
14 is. You know a picture is often worth a thousand words.
15 But it's this lifestyle that he took on as his own that
16 took this soul away from us.

17 And I know the family will join me in asking you to
18 sentence him accordingly for what he has done. Sentence
19 him according to his history trafficking cocaine, gun
20 charges; both would be a strike -- well, the trafficking
21 wouldn't be a strike -- attempted armed robbery, ABHAN
22 would have been another strike, murder, four counts of A
23 & B first. You can't overlook the fact that he has --
24 was driving a 100 plus miles an hour down a major
25 thoroughfare in Charleston firing a weapon at four other

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1 individuals; the four assault and battery first degree
2 charges that he is also facing. Judge, I believe that
3 the 50 year sentence is appropriate. I know Ms. Wilson
4 would like to address the court and I believe Ms. Brown's
5 sister would like to address the court as well when they
6 are able to do so.

7 MS. COLEBROOKE: I'm Cathy Colebrooke. I am Kadena
8 Brown's older sister.

9 THE COURT: I need you to spell your last name for
10 the record.

11 MS. COLEBROOKE: C-O-L-E-B-R-O-O-K-E.

12 THE COURT: And it's Cathy?

13 MS. COLEBROOKE: Yes, with a C. Your Honor,
14 Kenneth has had some amazing accomplishments over the
15 last few years. My sister however has had none. He was
16 able -- he was in junior ROTC and ROTC and he looked
17 really nice in his uniform. My nephew is going to be
18 starting high school next year and he's going to be going
19 to ROTC. But my sister is never going to get to witness
20 him in his uniform. She is never going to get to see him
21 march, salute; anything.

22 I would also like to congratulate Kenneth on his A-B
23 honor roll because my niece joined him this year as she
24 graduated from eighth grade going to ninth grade. So now
25 she is a high school student and she got A-B honor roll

1 but my sister wasn't there to witness that either. She
2 wasn't there to watch her walk across that state. She
3 wasn't there when she walked up the stage and looked into
4 the crowd it was me, it was my mom, it was her dad. Her
5 mom wasn't there. And I'm about to be a grandma so that
6 means that my sister's oldest daughter is pregnant now so
7 my sister is about to be a grandma. But once again she's
8 not going to be here to witness here grandchild being
9 born.

10 . . . She is not going to be here to hold her grandchild,
11 kiss her grandchild, tell my niece what needs to be done
12 to take care of that child or to even direct her as far
13 as to what symptoms she can look forward to you know.
14 Just little simple things like that that my sister is
15 missing because of a choice that somebody else made.

16 Right now Kenneth is living his life to the best of
17 his ability. And he seems to be supposedly trying to
18 make good on some of the things that he has done so
19 wrong. But my sister again the mistakes that she may
20 have made before May 10th or May 9th she will never get
21 to re-do that. She doesn't get a chance to correct any
22 mistakes. She doesn't get a chance to do anything
23 different from when she got in the car from my mom's
24 house and decided that she was going to go home. She
25 doesn't get to rethink or re-do anything because somebody

1 else made another decision. Several people just said
2 that Kenneth is a good person. We're all entitled to our
3 opinions. I say that respectfully. But I was always
4 taught that the definition of a good person is in what
5 they do when nobody is watching. So when nobody was
6 watching what did Kenneth do? Him and his boys jumped in
7 the car, they shot up the neighborhood, they drove down a
8 main thoroughfare shooting.

9 We all heard the 911 calls that people were scared.
10 What if more people had died? There was no regard for
11 life. That's what he did when nobody was looking. To me
12 that doesn't make a good person you know. The decision
13 that he made it took a mother, it took a wife, it took a
14 daughter, it took a sister and an aunt and a friend.
15 Your Honor, he is not a good person. A good person don't
16 -- does not do that. I don't hate him and I don't hate
17 his family, okay. I don't okay, I really don't. But I
18 do feel he needs to pay for the choices that he's made
19 the same way I pay for the choices that I make on a daily
20 basis and so does everybody else in here.

21 We have capped his time at 50 years. We can't give
22 him any more than 50 years. I was going to stand up here
23 and I was going to ask for 50 years. I'm going to leave
24 that decision to you, Your Honor. But please keep in
25 mind that it is my sister that is the victim here, and it

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1 my nieces and my nephews who I have to explain every
2 Mother's Day why we're not celebrating Mother's Day.
3 Why we're standing over a grave instead of eating dinner.
4 So please take that into consideration. Thank you.

5 MR. KIDD: This is Ms. Brown's mother Marilyn
6 Wilson, W-I-L-S-O-N.

7 MS. WILSON: My name is Marilyn Wilson. I'm Kadena
8 Brown's mother. Thank you for allowing me to speak.
9 This is very hard. I sat here and I wrote something
10 down. I don't even know where it is anymore. But Your
11 Honor I've sat here for two days and I've listened to the
12 people from DJJ just singing Kenneth's praises. And it's
13 impressive. It's really impressive.

14 But what is more troubling to me about those faces
15 is that not one of them said a bad thing about him.
16 Nobody is perfect. I mean not one bad thing was said
17 about him and that is very troubling. I just do not see
18 where this young man could have made such a 360 degree
19 turn in that period of time. I mean I just don't.

20 That Kenneth Robinson that you saw on the -- with
21 his cute little blazer and his khaki pants and the ROTC
22 uniform that's not the Kenneth Robinson that chose to go
23 out on May 10th 2015 and chose to shoot out. That's not
24 him. That's not him. He made some choices. He made
25 some choices and he's going to have to pay for it. Like

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1 my daughter said I feel for his family. I have not one
2 day in three years and we have been in the courtroom
3 every time and not one of them has ever said to me I'm
4 sorry for your loss. I've not one day heard anybody call
5 Kadena Brown's name. Kenneth is not the victim here;
6 Kadena Brown is. Kierra [phonetic] and Kavonie
7 [phonetic] is, her twin brother is, her husband is, we
8 are. And like she said we have to go through every
9 Mothers Day, every Mother's Day we spend the day in the
10 cemetery at her grave.

11 Kenneth's parents -- Kenneth's mother will be able
12 to visit him wherever he is. So that is one thing that
13 she can that they can be proud of. I will pray for him
14 like I pray for my children every night I get on my knees
15 that maybe one day he will find redemption. Thank you.

16 MR. KIDD: Nothing further.

17 THE COURT: Do you have the sentencing sheets?

18 MR. KIDD: I thought the clerk had them.

19 CLERK OF COURT: We never got them.

20 MR. KIDD: May I have a moment?

21 THE COURT: Why don't we hear from Ms. Ehrlich and
22 then I'll take a break.

23

24

25

SENTENCING

THE COURT: Thank you. One of the -- and I don't like to say the worst part of my job but the most difficult part of my job is having to craft a sentence considering all of the issues before me. And we heard several times how tragic this case is. And again I am going to reiterate what I believe is the consistent theme of this case is DJJ's colossal failure and society's colossal failure.

But what I cannot allow is for us to forget why we're here today. We're here because Mr. Robinson was in a car from which a shot was fired killing Kedena Brown. No matter how many chairs we make or how many certificates we have we should not lose sight of why we're truly here. Mr. Robinson, I am sorry that you had a rough childhood. I think everyone in this room feels that way. I have not ever been in a sentencing or any other type of hearing where I've had as many people come in and say such nice things and truly mean them about anyone. For that you should be very proud because I do truly believe that you have utilized this time to do good things. And don't ever discount those things.

But Mr. Robinson you made a choice to get in the car. You were given services. You knew when you got in that car you should not have been in that car. Of all

1 the people sitting in this room you probably knew more
2 what the impact of losing a parent could be having
3 witnessed shootings in your own neighborhood and in your
4 own home you knew more. Mr. Robinson, please stand.

5 [Whereupon, the defendant stands]

6 THE COURT: I think there is not a person probably
7 in this room who would not allow you the opportunity to
8 go back and to change what happened that night. I know
9 just listening to Mom and sister talk about their
10 daughter, the sister that they have lost they would trade
11 anything to have her back.

12 And I know listening to all those wonderful things
13 there is probably not a person sitting behind you that
14 would not trade a moment or just about anything to allow
15 you to go back. And I can almost guarantee that there is
16 not a person at DJJ who wouldn't wish that they had done
17 something different. But the problem is we found
18 ourselves here today based upon decisions.

19 And I think that it's evident that you have the
20 capability and you did have the capability to understand
21 and make changes. Ms. Ehrlich, you have done an
22 exceptional job representing your client and for that you
23 and Mr. Robinson and Mr. Loignon should be very proud.

24 Mr. Robinson, I am about to sentence you and I want
25 you to understand that you know that you have the range

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Sentencing
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1 between 30 years and 50 years. I don't understand what
2 happened. I don't have all the answers. But I do know
3 that you are going to be spending time at the Department
4 of Corrections and so far you have utilized that time
5 well. I wish you the best of luck, Mr. Robinson.

6 It's the order of the court on 2017-GS-10-4878,
7 4879, 4880, 4881 that you be committed to the State
8 Department of Corrections for a term of 10 years. Those
9 will run concurrent. I will give you credit since May
10 14, 2015.

11 It's the order of the court on 2017-GS-10-4882 that
12 you be committed to the State Department of Corrections
13 for a term of 50 years. I will give you credit since May
14 15th of 2015. Mr. Robinson, good luck to you.

15 MR. KIDD: Thank you, Your Honor.

16 THE COURT: All right, we will be down until 10 in
17 the morning.

18 [Whereupon, Mr. Robinson is escorted from the
19 courtroom]

20 MS. EHRLICH: Your Honor, I have to make an
21 objection on the record.

22 THE COURT: Okay. Hold on, let's bring him back.

23 MS. EHRLICH: I can make it outside of his
24 presence, Your Honor.

25 THE COURT: Let's go ahead; I want the record to be

Exhibit #10

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

**IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT**

Indictment #: 2017GS1004878;
2017GS1004879; 2017GS1004880;
2017GS1004881; 2017GS1004882

Charges: Assault and Battery 1st Degree (4
counts); Murder

STATE OF SOUTH CAROLINA

vs.

KENNETH LAMONT ROBINSON, JR.

Defendant.

**DEFENSE MOTION FOR
RECONSIDERATION OF SENTENCE**

FILED
JUN 15 PM 2:58
CLERK OF COURT

TO: CULVER KIDD, ASSISTANT SOLICITOR, NINTH JUDICIAL CIRCUIT

PLEASE TAKE NOTICE that the above-captioned Defendant, by and through the undersigned attorney, moves this Honorable Court for reconsideration of the sentence imposed on the Defendant on June 7, 2018, by the Honorable Kristi Harrington, pursuant to the above-captioned charges. The Defendant, Kenneth Lamont Robinson, Jr. appeared before the Honorable Kristi Harrington on June 6, 2018, and June 7, 2018, for an individualized sentencing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014) and *Miller v. Alabama*, 567 U.S. 460 (2012). Following two days of testimony and fifteen defense witnesses, the court sentenced the Defendant to fifty (50) years on the charge of Murder and ten (10) years each on the Assault and Battery 1st Degree charges. All sentences were ordered to run concurrently.

This motion is made on the following grounds and any such further grounds as may be offered.

I. A Fifty Year Sentence is the Functional Equivalent of LWOP

The sentence imposed by the Court is the functional equivalent of a life without parole sentence and violates the Defendant's rights under the Eighth Amendment to the United States Constitution and Article I, Section 15 of the South Carolina Constitution. The Defense previously submitted and marked Vera F. Dolan's actuary study for the record as Defense Exhibit 6. According to the actuary study, which is based on data provided by the South Carolina Department of Corrections, the Defendant's life expectancy in a South Carolina correctional facility is 56.3 years. Thus any sentence of forty (40) years or more is the functional equivalent of a life sentence in violation of the Supreme Court of the United States and South Carolina holdings in *Miller v. Alabama* and *Aiken v. Byars*. At the sentencing hearing, in response to the Defense objection to this being a sentence functionally equivalent to life without the possibility of parole, the Court responded that the Defense argued that a 30 year sentence was the same as life. This is incorrect. The Defense argued that even if given the minimum sentence of 30 years, he would be expected on average to only live ten additional years once released from prison (*see* Defense Exhibits 1 and 6 from Sentencing Hearing).

II. Defendant's Twice Diminished Culpability as an Adolescent and Non-shooter

The Defendant was prosecuted for the Murder charge under accomplice liability.¹ The State argued that the action of Richard Simmons shooting into Kedena Brown's car was a foreseeable consequence of the earlier bad acts. The jury clearly struggled in its deliberations in considering whether or not the Defendant was guilty under accomplice liability or merely present

¹ The Defense objected to the "Hand of One, Hand of All"/Accomplice Liability instruction as applied to a juvenile.

when Mr. Simmons acted alone in killing Ms. Brown. The jury requested to be instructed again on "hand of one" and "mere presence." In one jury note (marked Court's Exhibit 11 at trial), the jury asked "If there are 3 people in a vehicle and 1 commits murder, can the other two possibly be convicted of Assault and Battery if their attentions were different from the one that actually committed the murder?" While none of us were inside jury deliberations, it is clear that even the jury that convicted the Defendant recognized his diminished culpability.

The trial record established that prior to the shooting of Kedena Brown, a shooting had taken place in front of the Defendant's house, with his mother and little sister outside. The State failed to prove that the Defendant was the intended target and not Richard Simmons, despite arguing at sentencing this was "all about Kenneth Robinson." Additional people, all significantly older than the Defendant, arrived at his house, and when the second shooting occurred, people jumped into different vehicles. The Defendant at no point was driving any of the cars and certainly was not the leader of the events that night. His significantly older uncle and uncharged codefendant and father figure, Fred Lance, escalated the situation by firing at the original Chrysler. Once the Defendant was inside a car with Richard Simmons, there was no getting out of the vehicle. Mr. Simmons was speeding and determined to get revenge for his car being shot up. Once Kedena Brown's vehicle was in his sight, both the Defendant and Keon Anderson warned him it was the wrong car and not to shoot. There was additional testimony that Mr. Simmons physically pushed the Defendant out of his way in order to kill Ms. Brown. As a fifteen year old, non-driver, non-shooter, and person who attempted to stop the killing, the Defendant's culpability is very much diminished.

The sentence of fifty (50) years, which is a de facto life sentence, as applied to the Defendant who was both a juvenile at the time of the incident and was not the shooter and did not

kill or intend to kill Kedena Brown, violates the Eighth Amendment to the United States Constitution and Article I, Section 15 of the South Carolina Constitution. The Defendant had twice diminished moral culpability in light of the fact that he was a juvenile (*see Roper v. Simmons*, 543 U.S. 551 (2005); *Miller v. Alabama*, 132 S. Ct. 2455 (2012); *Aiken v. Byars*, 410 S.C. 534 (2014)) and because he was not the shooter and did not kill or intend to kill the victim (*see Edmund v. Florida*, 458 U.S. 782 (1982); *State v. Peterson*, 287 S.C. 244 (1985)). He is not among the worst juvenile homicide offenders and should not be subject to the equivalent of a life sentence, the ultimate punishment.

III. Family Court Relinquished Jurisdiction Under the Pretense that Mitigating Evidence Would be Considered by this Court

Upon deciding to transfer jurisdiction from Family Court to General Sessions Court, the Honorable Jocelyn Cate stated that the “Juvenile’s youth and attendant circumstances surrounding his youth will be taken into consideration by the general sessions court should he be found guilty by plea or trial in the sentencing phase, as well as all of the other possible mitigating circumstances revealed at this hearing.” She cited *Miller v. Alabama* and *Aiken v. Byars*, and relied on the fact that the General Sessions Court would fully consider mitigating evidence. The order further indicated that sufficient and adequate protection would be afforded to the Defendant in General Sessions Court to fashion an appropriate punitive and rehabilitative sentence. The Family Court relinquished jurisdiction in this case under the pretense of these protections being provided to him after transfer. The current sentence is completely punitive and void of rehabilitative intent.

The State’s theory of the case at the time of the transfer hearing was that the Defendant was the person who fired the fatal shot into Kedena Brown’s car. After years of lying and only

after failing a polygraph examination, Richard Simmons admitted to being the shooter. His admission came too late for the Defendant as he had already been transferred to General Sessions Court. This significant change in the State's theory of the case was never presented to the Family Court judge. Prior to the start of trial, the Defense argued that this Court should remand the case to Family Court given the admission by Mr. Simmons that the Defendant was not the shooter. The Motion to Remand was denied. As South Carolina law provides no right to interlocutory appeal to the Defense of the ruling to transfer jurisdiction, the remand motion was the only remedy available to the Defense to protect the Defendant from the potential imminent harm in General Sessions Court. Of note, the State, however, does have the right to interlocutory appeal a family court denial of the petition for waiver. This is patently unfair, as the harm that juvenile stands to suffer by way of the adult sentencing scheme and loss of substantial liberty rights far outweighs any harm the State may suffer by the Family Court maintaining jurisdiction. This is especially true in this case, where new information regarding the decreased culpability of the Defendant paired with additional information regarding his continued amenability to rehabilitative efforts were never considered by the Family Court.

The promises made by the Family Court in its order relinquishing jurisdiction were not kept by the General Sessions Court. The fifty (50) year sentence was issued without meaningful consideration of the possibility of rehabilitation and without consideration of overwhelming mitigation presented at the sentencing hearing. The Defendant should have been offered a right to interlocutory appeal of the Family Court's order relinquishing jurisdiction, especially in light of the fact that he now stands to remain in prison until what will be his death. The failure of the Court to meaningfully consider the mitigating evidence, as was the intent of the Family Court judge when jurisdiction was transferred, violates the Defendant's rights under the Eighth Amendment to the

United States Constitution and Article I, Section 15 of the South Carolina Constitution, and *Aiken v. Byars*.

IV. Failure to Meaningfully Consider Mitigation

It is clear that the intentions of the United States Supreme Court, South Carolina Supreme Court, and the Family Court judge who relinquished jurisdiction in this case to General Sessions Court, were that this Court fully consider the five factors outlined in *Byars* before sentencing the Defendant. The Court, however, failed to meaningfully consider any of the mitigating evidence presented and instead sentenced the Defendant to a fifty (50) year sentence. After briefly highlighting testimony by Dr. Knight with regard to the factors, the Court indicated “we’re here today because Mr. Robinson was in a car from which a shot was fired killing Kedena Brown.” The justification given for the sentence was that he “made a choice” to get in the car, that he had been “given services” (despite testimony that he in fact had not received services from January 2014 through August 2015, with the exception of one mental health assessment and a male mentor who met with him a handful of times), and that he “knew more the impact of losing a parent could be having witnessed shootings in [his] own neighborhood” and “own home.”

The Court failed to meaningfully consider mitigating evidence of the Defendant’s home and community environment, exposure to violence and family criminality, lack of prosocial home environment, poor parental supervision, exposure to negative peer groups, exposure to neighborhood violence, his adolescence and the hallmark features of youth. The Court further failed to meaningfully consider the mitigating scientific evidence, research, and studies that were cited by both Dr. Susan Knight and Dr. Elizabeth Cauffman, as well as the expert opinions offered by both psychologists. The Court additionally failed to meaningfully consider the Defendant’s decreased culpability in the incident, including that he was not the shooter and that there were both

familial and peer pressures affecting him throughout his life and leading up to the incident. Overwhelming evidence was presented by the Defense of the Defendant's rehabilitation at the Department of Juvenile Justice, including testimony that he was a "cut above the rest," a "role model," a "great person," "the type of person I wish I could take home and exemplified everything I want my son to be," and that he had a "heart of gold" and realized at DJJ there was "more that life had to offer."

A sentencing memorandum and packet was also submitted to the Court for review in advance of the hearing and admitted as Defense Exhibit 1 and incorporated into the Defense's presentation.² The failure of the Court to meaningfully consider the mitigating evidence violates the Defendant's rights under the Eighth Amendment to the United States Constitution and Article I, Section 15 of the South Carolina Constitution, and *Aiken v. Byars*.

² A forensic psychological evaluation report by Dr. Susan Knight was provided to the Court on May 29, 2018. On June 1, 2018, a copy of the Defense Sentencing Memorandum and Packet was provided to the Court via email and a hard copy was hand delivered to the Court's mailbox inside the courthouse. The Defense Sentencing Memorandum and Packet included: Defense Sentencing Memorandum, Forensic Psychological Report and C.V. of Dr. Susan Knight, Affidavit and C.V. of Dr. Elizabeth Cauffman, early childhood certificates and photographs, High School Equivalency Diploma, GED Transcript, Commencement Program and Photographs, High School Transcript and Grade Reports, 5 certificates and awards for the Blazer Program, Copy of Defendant's Speech "Too Many Years," Forklift Certificate of Completion, Certificate of Appreciation for Upholstery Program, 2 Certificates of Appreciation for "Willingness to Tell Your Story," Phase 3 Certificate of Achievement, Insiders Award, Birchwood Bulldogs Certificates, Best Welding Student Certificate, Baptism Certificate, Award for Best Kept Room, Honor Roll Certificates, 4 Acts of Pride Certificates, Best Science Student Certificate, 2 certificates for Good/Outstanding Behavior in English class, Award for Most Improved English Student, 11 JROTC Citations and Awards, Photographs of the Defendant including of his upholstery projects, Don't Quit Poem, Obituary of Kenneth Robinson, Sr., Keepsake Blanket photograph, Cards sent to Defendant by DJJ employees, Affidavit and Materials for Vera Dolan actuary study, Sentencing sheet for Montre Brown, DVD containing news story on upholstery program and basketball video, and Transfer of Jurisdiction Order.

V. Vindictive Prosecution and Sentencing

The sentence imposed by this Court and requested by the State was vindictive and punishment for both exercising the right to go to trial and to appeal his convictions. Prior to trial, the State made a plea offer of 23 years in exchange for a plea to Voluntary Manslaughter. The Defendant declined to accept the plea offer and instead exercised his constitutional right to a jury trial. Following his conviction at trial for Murder, the State offered to negotiate a 30 year sentence but only if he waived his rights to appeal his conviction. When the Defendant further exercised his constitutional rights to an individualized sentencing hearing, the State retaliated by requesting a prison sentence twenty (20) years longer than if he had waived his right to appeal.

The Court at the start of the sentencing hearing had discussions with the parties about taking Life Without the Possibility of Parole off the table by negotiating a cap. The State at that time offered to negotiate a cap of 50 years. The Defense took the position that 50 years was still *de facto* life and the Court then warned the Defense to be "very clear that the punishment for murder is 30 to life" and the Defense took this as a warning that the Court was seriously considering a Life Without Parole sentence. As a result, the Defense felt there was no choice but to accept the cap, despite that the cap was unreasonable and failed to take into account his decreased culpability as a non-shooter and adolescent.

An in chambers meeting was also held during which the parties discussed their understanding of the impact of an agreement to a cap, during which time the Defense indicated an understanding that this would only impact arguing the Motion to Preclude Life Without Parole as a Punishment and that the hearing would still proceed in its entirety. The Court agreed that it would not impact holding a *Byars* hearing, but did comment about this possibly speeding up the process and that perhaps the Defense could streamline its presentation. The State also indicated a

desire to not spend the time it would take to conduct a full hearing on the matter. The Defense indicated that an intention to proceed with its full presentation.

Following the Defense's presentation, the State asked for a sentence more than twice what was originally offered prior to trial if the Defendant waived his right to trial and entered a guilty plea. The requested sentence was also 20 years more than had been offered if the Defendant would waive appellate rights after his conviction. Assistant Solicitor Kidd complained that the Defendant would not cooperate and had been afforded an opportunity after his conviction. His definition of "cooperation" is giving up all his rights. The State also ignored the fact that the Defendant provided cooperation to law enforcement by providing the name of the shooter at the time of his initial arrest. It is not his fault that the State chose not to believe him that Richard Simmons was the shooter.

The State in requesting 50 years was seeking the Court's assistance in punishing the Defendant for exercising his right to trial and not waiving his appeal. A criminal defendant has the right to trial by jury under the 6th Amendment of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution. In fact, this right is described as "inviolable" in South Carolina. Defendants must be able to exercise the right to trial without fear of injury or retaliation. Defendants also have the right to appeal their convictions and sentences without fear of vindictive sentencing. A trial court abuses its discretion in sentencing when it considers the fact that the defendant exercised his right to a jury trial. *State v. Hazel*, 317 S.C. 368, 370, 453 S.E.2d 879, 880 (1995).

It is a due process violation to punish a person for exercising a protected statutory or constitutional right. *United States v. Goodwin*, 457 U.S. 368, 372, (1982), citing *Bordenkircher v. Hayes*, 434 U.S. 357, 363, (1978). *State v. Fletcher*, 322 S.C. 256, 260 (1996). The State's

positions on sentencing hinged solely on the Defendant waiving his constitutional right to trial and to appeal his conviction. There is no justification for the stark difference in the State's position on what an appropriate sentence was, but to punish the Defendant for going to trial and not waiving his right to appeal. This is evidence of actual prosecutorial vindictiveness, as the State clearly wanted to punish him for exercising his rights. The Court further adopted the State's position on sentencing by giving the Defendant a fifty (50) years sentence, punishing the Defendant for exercising his constitutional right to trial and appeal his conviction and sentencing, in violation his Due Process rights as guaranteed by the 14th Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution.

VI. The Defendant's Prior Juvenile Record as Presented by the State was Inaccurate

During the State's brief presentation, Assistant Solicitor Kidd indicated that the Defendant had two prior juvenile adjudications from separate incidents that would be considered "strike" offenses under S.C. Code Section 17-25-45, if he had been an adult at the time of those incidents. Specifically, Assistant Solicitor Kidd argued that he had a trafficking offense on his record. This was an inaccurate statement about the Defendant's record. He has never been adjudicated delinquent of any drug related offenses, and any petitions related to allegations of violations of the drug laws of this state, including Trafficking, were dismissed by the 9th Circuit Solicitor's Office on August 18, 2015. The Defendant has one set of prior adjudications that included a plea of "no contest" to Assault and Battery of a High and Aggravated Nature and Attempted Armed Robbery. A review of the transcript from the adjudication hearing indicates the decision to enter a no contest plea was made after the 9th Circuit Solicitor's Office filed a Petition for Transfer seeking to have

jurisdiction transferred from Family Court to General Sessions Court, despite the Family Court Solicitor's acknowledgment of self-defense issues in the case.

At the time of sentencing in the above-captioned case, the Assistant Solicitor represented to this Court an inaccurate prior record and likened the current convictions to his third strike. He furthered offered no actual proof of the Defendant's prior record. Clearly, the Defendant is not eligible for a mandatory life without parole sentence under the recidivist statute, and arguing that prior adjudications of delinquency for offenses that would be strikes if he was an adult, flies in the face of what the United States Supreme Court has said about juvenile offenders – "children are constitutionally different from adults for purposes of sentencing." *Miller v. Alabama*, 567 U.S. 460, 471 (2012). The Court, however, sentenced the Defendant to a *de facto* life sentence, despite his being ineligible for a life sentence under the recidivist statute and following an inaccurate report by the State of the Defendant's record.

VII. Disproportionality of Sentence

This Court's sentence of fifty (50) years for the Defendant who was only fifteen years old at the time of the incident, African American, and was not the shooter is disproportionate compared to other sentences across this State. In the Defense sentencing memorandum, examples of other cases across the region were provided. However, the Defense has been able to obtain the following additional information about cases that should be considered by the Court and compared to this case.

Adolescent Defendant Comparison

- **Jennifer McSharry** (*white female*, age 17 at time of incident, Anderson County, Resentencing Judge-Sprouse): Ms. McSharry was 17 years old at the time of the incident. She accompanied four people, including her

mother to get money from the victim. One of her codefendants shot the victim while Ms. McSharry was waiting in the car. Originally, she received a sentence of LWOP. At her resentencing hearing, Judge Sprouse sentenced her to 30 years.

- In comparison, Kenneth is African American, was age 15 at the time of the incident, and is similarly situated as the non-shooter.
- **Rodney Parker** (black male, age 16 at time of incident, Colleton County, Resentencing Judge-Buckner): Mr. Parker was 16 years old at the time of the incident. He shot and killed a grocery store clerk during a robbery attempt with his codefendant. His original sentence was LWOP. At his resentencing hearing, the Judge Buckner sentenced him to 35 years.
 - In comparison, Kenneth was 15 years old and not the shooter. He received a sentence that was 15 years longer than Mr. Parker.
- **James Smith** (white male, age 17 at time of incident, Union County, Resentencing Judge-Hayes): Mr. Smith and another codefendant shot and killed two men after a drug deal went bad. They further burned the house after killing the victims. He was originally sentenced to LWOP. At his resentencing hearing, Judge Hayes sentenced him to 38 years.
 - In comparison, Kenneth is African American, was age 15, a non-shooter, and did not have two victims. He received a sentence that is 12 years longer than Mr. Smith.
- **Anthony Willis** (black male, age 17 at time of incident, Dorchester County, Resentencing Judge-Nettles): Mr. Willis killed an 18 year old after getting into a fight. While out on bail for the murder charge, he was arrested for robbery and carjacking. His original sentence was LWOP. At resentencing, he received 38 years.
 - In comparison, Kenneth was younger and a non-shooter.

- **Terrell Smith** (black male, age 17 at time of incident, Charleston County, Sentencing Judge-Harrington): Mr. Smith was convicted at trial of Murder and Attempted Murder. He was accused of stabbing the victim to death and then attacking the victim's father who walked in on the attack. This Court sentenced him to 35 years.
 - In comparison, Kenneth was younger, not the killer, and had significantly more mitigation and evidence of rehabilitation.
- **Matthew Fischer** (*white male*, age 16 at time of incident, Charleston County, Sentencing Judge-Dennis): Mr. Fischer was 16 years old when he stabbed to death a peer and was charged with Murder. The 9th Circuit Solicitor's Office reduced the charge to Voluntary Manslaughter and allowed him to plead without negotiated a sentence. Judge Dennis sentenced him to 18 years.
 - In comparison, Kenneth is African American and was younger than Mr. Fischer. Kenneth is also not the actual killer. The State would not reduce the charge to Voluntary Manslaughter unless the plea was to a negotiated 23 year sentence.

Adult Defendant Comparison

- **Jalann Williams** (black male, age 20 at time of incident, Charleston County, Sentencing Judge-McIntosh): Mr. Williams was 20 years old when he arrested and charged with Murder. He was accused of working in concert with a codefendant to rob the victim and shooting him twice. Following a conviction at trial, he was sentenced to 30 years.
 - In comparison, Kenneth was 5 years younger and did not fire into the car of Kedena Brown.
- **Dennis Elvin Cervantes Pavon** (Hispanic male, 33 years old, Charleston County, Sentencing Judge-Harrington): Mr. Pavon was

convicted for stabbing the victim to death in Mount Pleasant. He was sentenced to 30 years after his conviction for Murder at trial.

- In comparison, Kenneth was 18 years younger and was not the actual killer.
- **Deshawn Fordham** (black male, 20 years old at time of incident, Sentencing Judge-Dickson): He was sentenced to thirty years in prison for Murder and Attempted Murder after a plea. He, along with codefendants, opened fire on a van after seeing its driver cash a check. The passenger was killed.
 - In comparison, Kenneth was a non-shooter and 5 years younger.

In consideration of the sentences outlined above, 30 years was the only appropriate sentence in this case that was available to the Defendant while under the jurisdiction of General Sessions court. He was a juvenile at the time of the incident, with decreased culpability due to his age and the hallmarks of youth. Given that he was not the shooter and testimony supported that he tried to stop Richard Simmons from killing Ms. Brown, his level of culpability is decreased. His conduct is not as morally reprehensible as that of an adult, and the Courts have recognized that it is less supportable to conclude a heinous crime committed by a juvenile is evidence of irretrievably depraved character and that a greater possibility exists that a minor's character deficiencies will be reformed. *Roper v. Simmons*, 125 S. Ct. 1183, (2005).

VIII. Racial Disparity Issues

There has been growing concern in this nation over the racial disparities that exist in our judicial system. The Sentencing Project found that African Americans are incarcerated in state prisons at a rate of 5.1 times the imprisonment of whites. In twelve states, including South

Carolina, more than half the prison population is African American. Ashley Nellis, Ph.D., *The Color of Justice*, <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/#I> (June 14, 2016). The United States Sentencing Commission issued a report on Racial Disparity in Sentencing in November 2017. It was found that black male offenders continue to receive longer sentences than white male offenders – on average 19.1 percent longer. United States Sentencing Commission, *Demographic Differences in Sentencing: An Update to the 2012 Booker Report*, November 2017.

Studies show that black children are perceived as more responsible for their actions than white children of a similar age. This is linked to perceiving these juveniles as older than they actually are. Law enforcement officers have been shown to overestimate the ages of black juveniles by up to 4.5 years. One result of this misperception is the increased likelihood that black children are sentenced as adults. Black children are 18 times more likely than white children to be sentenced as adults, and represent 58% of children sentenced to adult facilities, where they are exposed to a greater risk of assault, sexual abuse, and suicide. Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY AND SOC. PSYCHOL. 526, 531 (2014). Assistant Solicitor Kidd attempted to argue with Dr. Knight during her testimony that perhaps because the Defendant appeared older and was tall for his age, perhaps his brain was more developed than others his age. This raises questions of whether or not the Assistant Solicitor himself viewed the Defendant as older and more mature than he truly was based on his physical appearance. This is very concerning. At the time of the trial, he was 18 years old and considerably older than his age at the time of the incident. Regardless, his physical appearance is irrelevant and should have no bearing on anything related to how the State prosecutes his case, the sentence requested by the State, nor the sentence imposed.

The Defense respectfully requests that this Court consider racial disparity issues and reconsider the Defendant's sentence. Of note, two of the defendants who have received re-sentencing hearings pursuant to *Byars* and have received sentences lower than the Defendant were white and older than him. In addition, the State allowed a 16 year old white defendant, Matthew Fischer, to plead to Voluntary Manslaughter (reduced from Murder) without negotiating the prison sentence and allowing the Defense to ask for any sentence within the sentencing range for Manslaughter. The Defendant could only receive a reduction to Voluntary Manslaughter if he agreed to a negotiated sentence of twenty-three years. Mr. Fischer received 18 years, while the Defendant was sentenced to *de facto* life in violation of the Equal Protection Clause and not offered a meaningful opportunity for release.

IX. The Court Sentenced the Defendant to a *De Facto* Life Sentence without Making a Finding of Irreparable Corruption

The Defense argued for the Court to sentence the Defendant to the mandatory minimum sentence of thirty (30) years, or to find the mandatory minimum sentence unconstitutional and sentence him as if he had been convicted of voluntary manslaughter. The Court instead sentenced the Defendant to fifty (50) years. The Court failed to place the burden of proving the Defendant irreparably corrupt beyond a reasonable doubt on the State and the Court did not find the Defendant was irreparably corrupt. Such a finding is necessary to sentence a juvenile to a *de facto* life sentence.

The *Miller* court in its opinion recognized "that children are constitutionally different from adults for purposes of sentencing," children "have diminished culpability and greater prospects for reform," and therefore, "they are less deserving of the most severe punishments." *Id.* at 471. "[T]he distinctive attributes of youth diminish penological justifications for imposing the harshest

sentences on juvenile offenders, even when they commit terrible crimes.” *Id.* at 473. The Court required that sentencing judges “take into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime of prison.” *Id.* at 480. The South Carolina Supreme Court in *Byars* held that the youth “must be afforded weight in sentencing.” *Id.* at 543.

In *Montgomery v. Louisiana*, the Supreme Court of the United States recognized that “the starting premise” is the “principle” “that children are constitutionally different from adults for purposes of resentencing” that “result from children’s diminished culpability and greater prospects for reform.” 136 S.Ct. 718, 732 (2016). The Court further noted that “in light of children’s diminished culpability and heightened capacity for change, *Miller* made it clear that appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. *Id.* at 733-734 (internal quotations omitted). As a result, *Miller* “established that penological justifications for life without parole collapse in light of the distinctive attributes of youth.” *Id.* at 734 (internal quotations omitted).

“Because *Miller* determined that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption, it rendered life without parole an unconstitutional penalty for a class of defendants because of their status – that is, juvenile offenders whose crimes reflect the transient immaturity of youth.” *Id.* (internal citations and quotations omitted). “Life without parole” is barred “for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.” *Id.* Juvenile offenders must be afforded a meaningful opportunity for release unless there has been a finding of irreparable corruption. The Eighth Amendment bans not only Life Without the Possibility Parole sentences, but also those that are the functional equivalent of Life Without the Possibility of Parole. In order

for a judge to sentence a juvenile to the functional equivalent, the judge must make a finding of irreparable corruption proven by the State beyond a reasonable doubt.

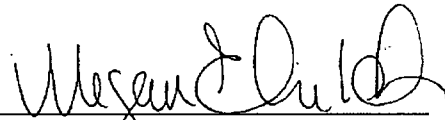
The Defense objects to this Court imposing a *de facto* life sentence without making adequate factual findings under the Eighth Amendment to the United States Constitution and Article I, Section 15 of the South Carolina Constitution, and *Miller v. Alabama*. The Defense presented adequate evidence that the Defendant's crime "reflects unfortunate yet transient immaturity" as opposed to "irreparable corruption." This Court has not adequately addressed the evidence as demonstrating the Defendant as irreparably corrupt, and thus, the Court cannot sentence to him to a *de facto* life sentence under *Miller*. Furthermore, any finding of irreparable corruption based on the evidence presented at the sentencing hearing would not be supported by the evidence.

This Court allowed its disgust with the killing of a completely innocent victim to dominate its sentencing analysis, as the Assistant Solicitor requested it do. In determining the Eighth Amendment prohibits the death penalty for juveniles, the United States Supreme Court noted that while it could not "deny or overlook the brutal crimes too many juvenile offenders have committed," "it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." *Roper*, 543 U.S. at 570-572. There was no proof beyond a reasonable doubt by the State or finding that exceptional circumstances demonstrated the Defendant was irreparably corrupt. Therefore, this Court should not have sentenced him to the functional equivalent of life, closing the door for any meaningful opportunity for release.

X. Conclusion

For the reasons outlined in this motion and any such further grounds as may be offered at a hearing in this matter, the Defendant respectfully requests that the Court reconsider his sentence and impose a thirty (30) year term of incarceration.

Respectfully Submitted,



Megan S. Ehrlich

Attorney for Kenneth L. Robinson, Jr.

Charleston, South Carolina

Dated: June 16, 2018

FILED
2018 JUN 15 PM 2:56
CLERK OF COURT
BY _____

Exhibit #11

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
STATE OF SOUTH CAROLINA)
v.)
KENNETH ROBINSON, JR.,)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT
Case No: 2017-GS-10-4878, 4879, 4880, 4881,
4882

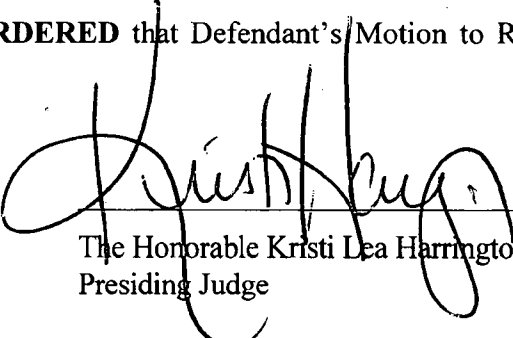
ORDER

FILED
2018 JUN 29 AM 9:31
CLERK OF COURT
J. H. ARMSTRONG

THIS MATTER IS BEFORE THE COURT on Defendant Kenneth Lamont Robinson, Jr.'s Motion to Reconsider Sentence. The Defendant proceeded to a jury trial on February 12, 2018. Culver Kidd and Bruce DuRant from the Ninth Circuit Solicitors Office appeared on behalf of the State, and Megan Ehrlich and Michael Loignon from the Charleston County Public Defender's Office appeared on behalf of the Defendant. On February 22, 2018, the Defendant was convicted by the jury of the following charges: 2017-GS-10-4878, 2017-GS-10-4879, 2017-GS-10-4880, and 2017-GS-10-4881, four counts of Assault and Battery, First Degree; and 2017-GS-10-4882, Murder. The Defendant request a deferred sentencing to prepare mitigation and to hold an individualized hearing pursuant to *Aiken v. Byars*, 410 S.C. 534 (2014) and *Miller v. Alabama*, 567 U.S. 460 (2012). The Court conducted the sentencing hearing on June 6 and June 7, 2018, and Defense counsel called multiple witnesses to provide testimony as to the hallmark features of youth and characteristics of the Defendant. Following the hearing and consideration of all testimony presented from both parties, this Court sentenced the Defendant to fifty years on the charge of Murder and ten years on each charge of Assault and Battery, First Degree. All sentences were imposed to run concurrently, and credit was given for time served since May 14, 2015.

The Defendant's Motion to Reconsider was timely filed on June 15, 2018. The State filed a response on June 25, 2018. Upon review of the Defendant's Motion and the State's Response, the Court does not find grounds sufficient to warrant reconsideration.

THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion to Reconsider Sentence is DENIED.


The Honorable Kristi Lea Harrington
Presiding Judge

June 25, 2018
Charleston, South Carolina

FILED
2018 JUN 29 AM 9:31
CLERK OF COURT
BY 

Exhibit #12

STATE OF SOUTH CAROLINA)
)
-vs-) TRANSCRIPT OF RECORD
)
RICHARD DARA SIMMONS, JR.,) November 6, 2018
)
Defendant.) Charleston, South Carolina

B E F O R E:

The Honorable Roger Young, Judge.

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

E. Culver Kidd, IV, Assistant Solicitor
Attorney for the State

Adam Mlynarczyk, Esquire
Attorney for the Defendant

Reported By:

Amanda Kelly Haffenden, RPR, CRR
Circuit Court Reporter for the
Ninth Judicial Circuit

1 (November 6, 2018.)

2 MR. KIDD: State calls Richard Simmons.

3 This is just a sentencing. He entered his
4 plea in front of Your Honor. The date escapes me.

5 THE COURT: Back in January?

6 MR. KIDD: Yes.

7 THE COURT: All right. You're Richard Dara
8 Simmons, Jr.?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Well, Mr. Simmons, it looks like
11 back in January you were before me to plead guilty to one
12 indictment of murder and four of attempted murder. I at
13 that time advised you of your rights. You indicated that
14 you understood your rights and that you wanted to give up
15 your rights and plead guilty.

16 Obviously, there was some agreement that I
17 guess you were going to cooperate with law enforcement
18 against some other folks, and we deferred sentencing
19 until a later time and today, it looks like, is that
20 later time.

21 So, Mr. Solicitor, you guys have worked out a
22 negotiated sentence; is that right?

23 MR. KIDD: Yes, Your Honor. We negotiated an
24 active 30 years.

25 THE COURT: Thirty years. Well, how about

1 refresh my memory on the facts of this.

2 MR. KIDD: Yes, sir. This occurred on
3 May 10, 2015. It was a bit of back and forth sort of
4 gang involvement between competing factions within the
5 Dorchester Waylyn neighborhood in the city of North
6 Charleston. Mr. Simmons was at co-defendant's Kenneth
7 Robinson's house in the Waylyn neighborhood when his car
8 was shot up earlier in the evening. He and a number of
9 codefendants then got involved in a car chase going down
10 Dorchester Road towards Ashley Phosphate, which they were
11 shooting at a Chrysler 300 occupied by four individuals.
12 That's the factual sort of background on the four
13 attempted murder charges.

14 They lost that Chrysler 300, were out
15 searching for it, came across a similar looking Chrysler
16 300 on Ashley Phosphate and I-26, right near that
17 intersection, pulled up alongside it. Mr. Simmons
18 discharged a firearm, killing Kedena Brown.

19 Thirty years is obviously a pretty
20 significant break for Mr. Simmons, but he did, as you
21 indicated, enter into a proffer agreement with us and
22 cooperated and really led to us having a much greater
23 understanding of not only what led up to this but to all
24 the parties involved in this case. Testified for me in
25 trial against the co-defendant in February and has been

1 very significant in the prosecution and the seeking of
2 justice against a lot of the parties in this case.

3 Kenneth Robinson received a 50-year sentence
4 after trial, and there are a number of other individuals
5 that I believe will plea in front of Your Honor this week
6 as a result of some of the information that Mr. Simmons
7 provided, so he is facing a stiff punishment, but also, I
8 think, a deserved break considering his cooperation.

9 THE COURT: All right. What would y'all like
10 to tell me?

11 MR. MLYNARCZYK: Thank you, Judge. May it
12 please the Court: Adam Mlynarczyk. I represent Richard
13 Simmons. His family is here today. His father and
14 family are in the back.

15 Part of the information in the beginning that
16 Mr. Simmons provided included parties that weren't even
17 in the cross hairs of the solicitor, including people he
18 was related to. So he went above and beyond, not just
19 giving them the information they requested, but also
20 everything he knew, everything, including people that
21 were related to him.

22 I think we had about four or five sessions
23 with the solicitors. It was a long road for Mr. Simmons.
24 His family was there, and he understands there's not a --
25 there's nothing he can do to, understand, take back

1 exactly what happened, which resulted in the loss of life
2 for the victim in this case. He understands that, and I
3 think part of that drove him to be as cooperative as he
4 possibly could and as honest as he could to get what they
5 needed to build stronger cases, or build cases they
6 didn't have in the first place.

7 His family has been an incredible support.
8 Both him and me and Mr. Simmons, his father, who is in
9 the back today, have talked, I think, twice a week for
10 probably three or four months in a row, at least, along
11 with my visits. Every time I go and visit Mr. Simmons,
12 we would talk. I would talk with the family, before the
13 plea, after the plea, everything that was happening.
14 There was a lot of support there.

15 I understand this is a horrible case, and he
16 understands that. I've heard him, and there's nothing --
17 the only thing he could do after that point is do what he
18 felt was the right thing to do, and he did that to the
19 best of his ability, and I think that affirmation from
20 the solicitor's office that you heard today, I would ask
21 Your Honor to accept the 30 years, and that's all I have.

22 MR. KIDD: And, Your Honor, the only thing I
23 failed to mention, and I apologize for speaking out of
24 turn, the victim's family is here. I know that they
25 would probably like to see Mr. Simmons sentenced to more

1 than he is, but I have met with them, explaining the fact
2 that it was a negotiated sentence, but they do have the
3 right to address the Court, if they would like to do so.
4 I don't know if you want to hear from them or not, or if
5 they care to speak.

6 THE COURT: Is there anyone from the family
7 that would like to say anything?

8 Yes, ma'am. What is your name?

9 THE WITNESS: My name is Cathy Colebrooke.

10 THE COURT: And what would you like to tell
11 me?

12 THE WITNESS: I'm one of the victim's -- her
13 oldest sister, and while I do understand what the
14 solicitor worked out for Mr. Richard Simmons, I
15 understand deals have to be made, I don't feel like
16 30 years is enough. My sister just had her first
17 grandchild. She'll never get to meet her grandchild.
18 You know, I understand, but this was a senseless,
19 senseless act, and I just feel like more should be done,
20 if it can be.

21 THE COURT: Well, I appreciate where you're
22 coming from. The difficulty is that at this point, we
23 have a pretty clear view of what happened. Prior to his
24 cooperation, they had no understanding of what happened,
25 and in order to put all the pieces together in the puzzle

1 so you can say, oh, that's what the deal is, that's what
2 happened that night, sometimes you have to make a deal
3 with devil, and you have to have somebody from the inside
4 come in and cooperate, you know?

5 Sometimes you get these things and it's a lot
6 harder pill to swallow because, you know, somebody,
7 depending on the facts, might not get nearly the sentence
8 that he's getting. He's getting a 30-year sentence, and
9 because one of them is murder, that's day-for-day
10 service. That's no time for good behavior. That's no
11 parole. He'll get credit for the time he set in jail
12 here, but without somebody coming forward, sometimes
13 there is absolutely no way to solve the crime.

14 So the other folks, it sounds like they were
15 more culpable. It seems every time I have held criminal
16 court I've taken a plea on this. Without somebody
17 cooperating, it doesn't come together. So I understand
18 why you feel like this particular guy might not be
19 getting enough, but it's just one of those things that
20 sometimes you have to go, well, if only because of his
21 cooperation do we understand what happened that night and
22 solve the crime.

23 So I appreciate that, and I know that you, in
24 an ideal world, would like to have more, but that's
25 sometimes where we find ourselves, and hopefully this

1 will do justice to your family member. Okay?

2 THE WITNESS: Okay.

3 THE COURT: All right. Do you want to say
4 anything, Mr. Simmons?

5 THE DEFENDANT: Yeah. I do want to apologize
6 to the family for mistaking their loved one and apologize
7 to my family for being ignorant and not doing better when
8 I had a lot going on for myself at the time.

9 THE COURT: All right. Well, I guess I would
10 commend you for cooperating and helping this situation
11 come to a resolution, and I will go along with the
12 negotiated plea, give you 30 years on each of the
13 charges.

14 They'll run concurrent. You'll get credit
15 for any time served. Good luck.

16 - - -

17 (Whereupon, the proceedings were concluded.)

18 - - -

19

20

21

22

23

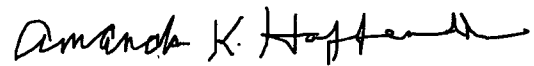
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25

I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 6th of November 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 3, 2019



Circuit Court Reporter

Exhibit #13

STATE OF SOUTH CAROLINA)
)
-vs-)
)
KEON MARQUELL CORTEZ)
ANDERSON,)
)
Defendant.)
)

TRANSCRIPT OF RECORD

November 8, 2018

Charleston, South Carolina

B E F O R E:

The Honorable Roger M. Young, Judge.

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

E. Culver Kidd, IV, Assistant Solicitor
Attorney for the State

Lauren E. Williams, Esquire
Attorney for the Defendant

Reported By:

Amanda Kelly Haffenden, RPR, CRR
Circuit Court Reporter for the
Ninth Judicial Circuit

1 (November 8, 2018.)

2 THE COURT: You are Keon Marquell Cortez
3 Anderson?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right, Mr. Anderson. Let's
6 see. They got you here for several charges. I'm told
7 you want to plea guilty to -- indictment 2017-GS-10-4890
8 was for murder which, is 30 years to life, and they're
9 letting you plead guilty to voluntary manslaughter, a
10 zero to 30-year offense.

11 You want to plead guilty to that?

12 THE DEFENDANT: Yes, sir.

13 THE DEFENSE ATTORNEY: Judge, if I may enter
14 by agreement with the State, we want to enter these pleas
15 under Alford v. North Carolina.

16 THE COURT: Is that acceptable to you?

17 THE ASSISTANT ATTORNEY: It is, Your Honor.

18 THE COURT: All right. Under Alford, you're
19 maintaining you're innocent, but because you have gone
20 over the evidence with your lawyer that the State has,
21 you figure you're likely to get convicted if you went to
22 trial. And the State has made you an offer that you want
23 to accept to not risk a much higher sentence if you go to
24 jail, or if you went to trial and got convicted.

25 Is that right?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. 2017-GS-10-04892 is
3 for attempted murder. Is this also an Alford plea?

4 THE DEFENSE ATTORNEY: Yes, sir. That would
5 be on all counts, Your Honor?

6 THE COURT: All of them?

7 THE DEFENSE ATTORNEY: Yes, sir.

8 THE COURT: Assault and battery first degree
9 is the plea. That's a zero to ten-year offense off an
10 attempted murder, zero to 30-year indictment. Is that
11 what you want to do, plead to assault and battery first
12 degree?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Looks like the same thing on
15 indictment 2017-GS-10-4893. That's attempted murder.
16 Zero to 30 is what the indictment was for. They're
17 letting you plead to assault and battery first degree,
18 zero to ten.

19 You want to enter an Alford plea to that
20 indictment?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: 2017-GS-10-4894, another
23 attempted murder indictment, and, again, another plea to
24 assault and battery first degree, zero to ten. Is that
25 what you want to do, enter an Alford plea to assault and

1 battery first degree?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And it looks like the final one,
4 2017-GS-10-4895, again, was for attempted murder, zero to
5 30. They're letting you plead to assault and battery
6 first degree, zero to ten-year offense. You want to
7 enter an Alford plea to the assault and battery
8 indictment?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. I've also been handed
11 some papers that tell me you were on probation at the
12 time you committed these offenses.

13 THE DEFENSE ATTORNEY: Judge, he actually was
14 not on probation at the time of these offenses. This
15 probation came after. He just has a probation violation
16 pending in this court, so we were hopeful to wrap it all
17 up together.

18 THE COURT: What's he violated for if not
19 these?

20 THE DEFENSE ATTORNEY: He was on probation,
21 Judge, for an unlawful carrying charge. This was all
22 after this particular incident we are here on today. He
23 was arrested in Dorchester County about a year into
24 probation on a possession with intent to distribute
25 marijuana and another gun charge which has remained

1 pending. They were just dismissed last week.

2 THE COURT: So he just wants to go ahead and
3 admit he violated?

4 THE DEFENSE ATTORNEY: Judge, I'm actually
5 asking for termination of his probation considering the
6 time he's about to get, the fact that the original case
7 was dismissed. He did report to probation. He just
8 didn't do it timely. There was some confusion as to
9 whether his lawyer, his previous lawyer, had notified
10 probation while he was actually in jail on the Dorchester
11 County offenses.

12 He had some issues with that lawyer. Once he
13 came to me, I said report. He went straight to probation
14 and reported. They filed the violation the next day.

15 THE COURT: If he's not admitting he
16 violated, then I don't deal with it. Just to terminate,
17 I don't know that I can just gratuitously terminate
18 somebody's violation. If they're charging him with
19 violating probation, I can deal with it, but if he hasn't
20 violated it and he won't admit he violated it, well, he's
21 still got it hanging out there.

22 THE DEFENSE ATTORNEY: Well, Judge, it is
23 definitely a technical violation. Probation was not
24 advised of the arrest immediately, as they should have
25 been, and if the Court would entertain running it

1 concurrent or terminating after the admission of the
2 violation, that's what we would be asking for.

3 THE COURT: He's admitting he violated.

4 THE DEFENSE ATTORNEY: He did violate.

5 THE COURT: Okay. So the balance on that --
6 well, that was a youthful offender act sentence?

7 THE DEFENSE ATTORNEY: Yes, sir.

8 THE COURT: All right. So, Mr. Anderson, you
9 have some rights that you give up when you enter this
10 plea, namely the right to a jury trial. If you want a
11 jury trial, you stop me. We'll arrange that for you.

12 The State then has to present enough evidence
13 to convince 12 jurors that you're guilty beyond a
14 reasonable doubt. All 12 have to agree that you're
15 guilty in order to convict you. If convicted, you have
16 the right to appeal. You can challenge the State's
17 evidence, put up evidence of your own, testify if you
18 want. If you don't want to testify, the judge will
19 instruct the jury not to hold that against you while
20 they're deliberating.

21 Do you understand those rights?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you want to give those rights
24 up and enter this Alford plea today?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Are you under the influence of
2 drugs or alcohol today?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you have any physical,
5 emotional, or mental conditions which keep you from
6 understanding what you're doing?

7 THE DEFENDANT: No, sir.

8 THE COURT: You're standing next to your
9 lawyer. Are you satisfied with her representation?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you need my more time with
12 her.

13 THE DEFENDANT: Say that again.

14 THE COURT: Do up need any more time with
15 her?

16 THE DEFENDANT: No, sir.

17 THE COURT: Now, you set down with her and
18 went over the evidence the State has?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: She explained to you what the law
21 is on murder, attempted murder, and assault and battery?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: After those discussions, you
24 decided that when you saw what evidence they had and you
25 saw that it was likely that you might get convicted if

1 you went to trial and you saw you had this offer, you
2 decided, well, you better take the offer even though you
3 maintain you didn't do it.

4 Is that what this boils down to?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You don't want to put up a
7 defense?

8 THE DEFENDANT: No, sir.

9 THE COURT: You don't want to have her try to
10 suppress evidence?

11 THE DEFENDANT: No, sir.

12 THE COURT: You don't want to have her
13 challenge witnesses' statements?

14 THE DEFENDANT: No, sir.

15 THE COURT: I don't know whether you
16 confessed or not, but if there was any kind of
17 confession, she could try to suppress that. All those
18 motions that typically go into pretrial criminal matters,
19 you're giving up all of them.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You don't want to get up and tell
23 the jury your side of the story?

24 THE DEFENDANT: No, sir.

25 THE COURT: It's your decision and your

1 decision alone?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Other than this offer, which I
4 understand to be a negotiated plea, if I accept it, I
5 sentence you to 15 years on the voluntary manslaughter
6 and ten years on each of the assault and battery. Other
7 than that, did anybody promise you anything or threaten
8 you to get you to plead?

9 THE DEFENDANT: No, sir.

10 THE COURT: How old are you?

11 THE DEFENDANT: Twenty-three.

12 THE COURT: How far did you get in school?

13 THE DEFENDANT: Tenth grade.

14 THE COURT: Did you work before you got
15 locked up?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: What did you do?

18 THE DEFENDANT: Sanders Brothers, sewer and
19 vacuum division.

20 THE COURT: Are you married?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you have children?

23 THE DEFENDANT: No, sir.

24 THE COURT: Does he understand what he's
25 doing?

1 THE DEFENSE ATTORNEY: He does, Your Honor.

2 THE COURT: Do you agree with his decision?

3 THE DEFENSE ATTORNEY: Yes, sir.

4 THE COURT: I find his plea is freely,
5 voluntarily, knowingly, and intelligently made. We'll
6 accept it if there's a substantial factual basis for it.

7 What would the State like to tell me?

8 MR. KIDD: Thank you, Your Honor. May it
9 please the Court: This is another co-defendant from the
10 plea that you heard on Tuesday. This occurred on May 10,
11 2015, what started out as a number of shootings between
12 rival factions within the Dorchester Waylyn neighborhood.

13 The co-defendant Richard Simmons' car got
14 shot up in front of a different co-defendant Kenneth
15 Robinson's house. Mr. Robinson then called this
16 defendant, Mr. Anderson, and a number of others to sort
17 of rally the troops. Ultimately, it ended into a car
18 chase with this defendant and two others chasing a
19 Chrysler 300 down Dorchester Road. That is the basis for
20 the four attempted murder charges that we're pleading to
21 assault and battery of the first degree.

22 That car that they were chasing and shooting
23 at was occupied by Corey Watkins, Andrew Smalls, Jawan
24 Nicks, and Donald Jackson. That car chase continued down
25 Dorchester Road with Mr. Anderson and Mr. Robinson firing

1 at that vehicle. That vehicle got away, and in sort of
2 the search for them, they came across another Chrysler
3 300 on Ashley Phosphate Road, similar looking vehicle,
4 pulled up beside it. Mr. Simmons shot out of the vehicle
5 at that point in time, killing Kedena Brown, the sole
6 occupant of that Chrysler 300.

7 What we tried to do here is Mr. Anderson
8 ultimately did cooperate with my office and testify
9 against his co-defendant in February of this year. What
10 we tried to do with him and Mr. Simmons is put some sort
11 of balance in their sentences based on not just their
12 level of culpability, but their acceptance of
13 responsibility, their prior records or lack thereof --
14 Mr. Anderson does not have much of a significant record
15 other than his unlawful possession of a firearm
16 conviction -- and try to put it in some sort of
17 perspective where the sentences make sense with one
18 another. In our opinion, the 15-year negotiated sentence
19 accounts for Mr. Anderson's culpability and his degree of
20 acceptance of responsibility, and I ask that you accept
21 it.

22 THE COURT: Well, earlier in the week there
23 was family members that were here and wanted to speak.
24 Are there any here?

25 MR. KIDD: They had told me they were going

1 to be here today. They knew it was at 2:00. They knew
2 it was a negotiated sentence.

3 Judge, I spent a lot of time with the
4 victim's family in this case, and they probably don't
5 agree with this one either, but they are not here today,
6 and I decided to just go forward. They know the plea is
7 taking place.

8 THE COURT: All right. There's a substantial
9 factual basis for the plea.

10 Ms. Williams, what would you like to say?

11 MS. WILLIAMS: Thank you, Your Honor. May it
12 please the Court: I will keep it brief because of this
13 case and the fact that Keon himself has been the subject
14 of a lot of conversations between myself and Mr. Kidd.
15 Mr. DuRant was often involved, and, of course, Keon and I
16 have spent a lot of time on this case.

17 He's extremely grateful for this offer, and,
18 as you know, it could be the rest of his life that is on
19 the line right now.

20 Mr. Kidd did mention he did help secure
21 convictions for other co-defendants. It's my belief that
22 as a result of a co-defendant's trial there were and will
23 be probably additional pleas in this case from other
24 co-defendants. His family is here, Judge, if you all
25 would just rise so the judge can see you.

1 He's 23 years old, Judge. It's tragic all
2 around. There are several members of his family that
3 knew the victim's family and didn't put it together until
4 they started coming to court, and it was just a very
5 emotional day for everyone involved. Ms. Brown's family
6 has been very gracious and wonderful, although I haven't
7 had much contact with them.

8 Like I said, Judge, he's extremely grateful.
9 He's just shy of two years credit, 712 days, and ask that
10 you accept this negotiated plea. It was thoughtfully
11 arrived at, taking into account the facts of the case in
12 general, as well as Mr. Anderson's particular role in the
13 offense and in helping the State.

14 THE COURT: How many days does he get credit
15 for?

16 MS. WILLIAMS: 712, Your Honor.

17 THE COURT: Mr. Anderson, do you want to say
18 anything?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right.

21 Well, Mr. Anderson, I've now taken -- I've
22 kind of lost count, three, maybe four of these on this
23 same case, and every time I'm just struck by how
24 senseless it was, and I know everybody is frustrated with
25 it, but if you've been doing this long enough, you

1 sometimes realize that it just makes sense to have to go
2 along with something in order to get an actual
3 conviction, and I know the State's not happy with this.

4 There's nobody really happy with it, but I
5 understand it, and I agree that under the circumstances,
6 it's a sentence that I will impose because it took your
7 cooperation and other people's cooperation to get an
8 actual conviction, and to have no conviction at all would
9 have been a much worse tragedy, and I guess that's really
10 about all I can say about this.

11 So I'm going to give you a negotiated
12 sentence that you asked for. It's 15 years for the
13 voluntary manslaughter, ten years on each of the assault
14 and battery first degrees. They'll run concurrent, and
15 you'll get credit for the 712 days.

16 Good luck to you.

17 THE PROBATION AGENT: As far as probation?

18 THE COURT: I will -- since it's a YOA
19 sentence, it wouldn't really make any sense to run it
20 concurrent, so we'll just terminate it.

21 MS. WILLIAMS: Thank you, Your Honor.

22 - - -

23 (Whereupon, the proceedings were concluded.)

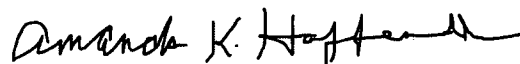
24 - - -

25

I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 8th of November 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 3, 2019



Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENNETH LAMONT ROBINSON, JR.,

APPELLANT.

CERTIFICATE OF SERVICE

I certify that a copy of the motion to hold appeal in abeyance and to remand to the Court of General Sessions for a hearing on a motion for resentencing based on after-discovered evidence in the above-referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of February, 2019.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of February, 2019.

Mary Allgire (L.S.)

Notary Public for South Carolina

My Commission Expires May 12, 2027.

RECEIVED

FEB 19 2019

SC Court of Appeals



SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 19, 2019

RECEIVED
FEB 19 2019
SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Kenneth Lamont Robinson Jr. – Appellate Case No. 2018-001269

Dear Ms. Kitchings:

Enclosed for filing in your office is the original plus six (6) copies of the motion to hold in abeyance and to remand to the Court of General Sessions for a hearing on a motion for resentencing based on after-discovered evidence in the above-referenced matter.

If you have any questions concerning this matter, please contact me.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/emm

Enclosures