

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM COLLETON COUNTY

Perry M. Buckner, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRIAN T. JENKINS,

APPELLANT

Appellate Case No. 2013-000633

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF COLLETON) CASE NO.: 2012-GS-15-673,674&675

THE STATE OF SOUTH CAROLINA,)
)
)
 v.) TRANSCRIPT OF RECORD
)
 BRIAN T. JENKINS,)
)
)
 DEFENDANT.)
)

MARCH 18TH - 20TH, 2013
 WALTERBORO, SOUTH CAROLINA
 BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

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1 THE COURT: Solicitor, call your case.

2 MS. HUDSON: May it please the Court?

3 THE COURT: Yes, ma'am.

4 MS. HUDSON: This is State v. Brian Jenkins. He is
5 charged in Indictment 2012-GS-15-673 with the charge of
6 attempted murder. Indictment 2012-GS-15-674 with possession
7 of a weapon during the commission of a violent crime.
8 Indictment 2012-GS-15-675, this is malicious injury to
9 animals and personal property, injury value more than
10 \$2,000, but less than \$10,000. May I approach?

11 THE COURT: You may.

12 (Asst. Sol. Hudson hands up paperwork to the Court.)

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, please give me your attention. I remind you that you
15 were previously this afternoon placed under oath. I will be
16 asking you questions to determine your impartiality to serve
17 as a juror in the trial of this case. The answers that you
18 will be providing to me pursuant to the questions that I'm
19 about to ask are under that oath you took earlier this
20 afternoon from the Clerk of Court.

21 The State has called for trial the case of The State of
22 South Carolina v. Brian Jenkins. Mr. Jenkins is the
23 defendant and he is seated at the table with his attorney
24 who I will introduce in just a moment. He is charged with
25 the offenses of attempted murder in one indictment, with

1 possession of a weapon during the commission of a violent
2 crime in the second indictment, and with malicious injury to
3 animals, personal property value more than \$2,000 but less
4 than \$10,000 in a third indictment.

5 To these indictments, the defendant has pled not
6 guilty. That places the burden on the State of South
7 Carolina to prove each of the essential elements in the
8 indictment beyond a reasonable doubt. And it will be your
9 duty, ladies and gentlemen, if you are selected as a juror
10 in the trial of this case to determine whether or not the
11 State has met that burden.

12 Now, ladies and gentlemen, as far as the elements of
13 these crimes, I will explain those to you in my charge to
14 you on the law at the conclusion of the case. I have not
15 heard any of the evidence in this case, just as you have not
16 heard any of the evidence. It is important you that you
17 keep an open mind and that I keep an open mind. You must
18 base any decision that you make if you are selected as a
19 juror in the trial of this case, only upon evidence
20 introduced during the trial of the case when both sides are
21 present with the right of cross-examination.

22 The indictments which I hold in my hand that have been
23 handed to me by the Solicitor are not evidence. The
24 indictments are simply the formal written instruments by
25 which the case is brought into this court, and as I have

1 told you, the defendant has pled not guilty to these
2 indictments.

3 Now, I would like for you to meet the lawyers that are
4 going to be trying this case, as well as anyone else who
5 will be seated at your counsel table. And in the case of
6 the defendant, Mr. Beach, I will expect you to introduce
7 your client as well as his hometown so the jury can see a
8 face as well as meet your client. Let's begin with counsel
9 for the State of South Carolina.

10 MS. HUDSON: Thank you, Your Honor. My name is Ashley
11 Hudson. I'm the Assistant Solicitor in the Fourteenth
12 Circuit Solicitor's Office. He is not here, Your Honor, but
13 seated with me for trial will be Dave Thomas, who is the
14 case officer in this case.

15 THE COURT: Very well. Counsel for the defendant.

16 MR. BEACH: Good afternoon, again, ladies and
17 gentlemen, I'm Harris Beach and I'm with the Colleton County
18 Public Defender's Office. I will be defending this case.
19 This is Mr. Leroy Jenkins.

20 THE COURT: Mr. Jenkins, stand up, please, and face my
21 jury panel. Where is he from, Mr. Beach?

22 MR. BEACH: He is from Smoaks, South Carolina. And
23 this is Ms. Caldwell, and she will be assisting me, and
24 also, C.T. Horton, our investigator, will be assisting me
25 with the trial of the case.

1 THE COURT: All right. Ladies and gentlemen, you have
2 now met the defendant in this case, Mr. Brian Jenkins. I
3 understand he is from Smoaks, South Carolina; is the right,
4 Mr. Beach?

5 MR. BEACH: Yes, sir.

6 THE COURT: Is any member of my jury panel related by
7 blood, connected by marriage, or a close personal friend of
8 Mr. Brian Jenkins who is the defendant in this case whom you
9 have just met from Smoaks, South Carolina? If so, please
10 stand at this time.

11 (JUROR STANDS.)

12 THE COURT: Name and number, please.

13 JUROR: My name is Joseph Fox, number 79.

14 THE COURT: Counsel, this is Joseph S. Fox, Juror
15 number 79. Yes or no, Mr. Fox, are you related by blood to
16 Mr. Jenkins?

17 JUROR: No, sir.

18 THE COURT: Are you connected by marriage to Mr.
19 Jenkins?

20 JUROR: No, sir.

21 THE COURT: Are you a close personal friend of Mr.
22 Jenkins?

23 JUROR: Yes, sir.

24 THE COURT: How long have you known Mr. Jenkins?

25 JUROR: Four years.

1 THE COURT: Mr. Fox, the fact that you've known Mr.
2 Jenkins for four years and you consider him to be a close
3 personal friend, would that in any way affect your ability
4 to give the State of South Carolina or the defendant in this
5 case a fair and an impartial trial?

6 JUROR: Yes, sir.

7 THE COURT: I will excuse you from service in this case
8 only. Please be seated. Anyone else related by blood,
9 connected by marriage, or a close personal friend of the
10 defendant, Brian Jenkins? If so, please stand.

11 (NO RESPONSE.)

12 THE COURT: Let the record reflect, no one else is
13 standing.

14 Now, you've also met the attorneys who are going to be
15 involved in this case, Ms. Ashley Hudson for the State of
16 South Carolina. She will have seated at the table with her
17 during the trial, Mr. Dave Thomas with the Colleton County
18 Sheriff's Office. He is not in the courtroom at this time.
19 You have also met the attorney for the defendant, Mr. Harris
20 Beach with the Colleton County Public Defender's Office. I
21 first ask as to Ms. Hudson, counsel for the State of South
22 Carolina. Is any member of my jury panel related by blood,
23 connected by marriage, or a close personal friend of Ms.
24 Ashley Hudson who you have met today? If so, please stand.

25 (NO RESPONSE.)

1 THE COURT: Let the record reflect, no one is standing.

2 Any member of my jury panel ever been represented in
3 the past or currently represented by counsel for the State
4 of South Carolina in this case, Ms. Ashley Hudson? If so,
5 please stand.

6 (NO RESPONSE.)

7 THE COURT: Let the record reflect, no one is standing.

8 You've also met counsel for the defendant, Mr. Harris
9 Beach with the Colleton County Public Defender's Office.

10 Any member of my jury panel related by blood, connected by
11 marriage or a close personal friend of Mr. Harris Beach?

12 (NO RESPONSE.)

13 THE COURT: Let the record reflect, no one is standing.

14 Any member of my jury panel ever been represented in the
15 past or currently represented by Mr. Harris Beach of the
16 Colleton County Public Defender's Office? If so, please
17 stand.

18 (NO RESPONSE.)

19 THE COURT: Let the record reflect, no one is standing.

20 I will tell you, ladies and gentlemen, that what is in the
21 indictments is not evidence. It contains allegations made
22 against the defendant. It is alleged in the indictment that
23 the offense of attempted murder allegedly occurred in
24 Colleton County on or about July 5th, 2012. It is alleged
25 that Brian Jenkins with malice aforethought did attempt to

1 kill and murder James Pye, P-Y-E, by means of shooting and
2 it was allegedly by shooting at the victim's truck while he
3 was inside of the truck, allegedly.

4 The offense of possession of a weapon is also alleged
5 to have occurred on or about July 5th, 2012, in Colleton
6 County, South Carolina. It is alleged that the defendant
7 possessed a handgun or visibly displayed what appeared to be
8 a handgun during the commission of a violent crime alleged
9 to be attempted murder. And finally, for the offense of
10 malicious injury to personal property, value more than
11 \$2,000, but less than \$10,000, it is alleged that this
12 occurred in Colleton County, South Carolina, on or about
13 July the 5th, 2012.

14 It is alleged that the defendant, Brian Jenkins,
15 willfully and maliciously did cut and mutilate the face, or
16 otherwise injure the tires, tailgate, and windows of a truck
17 owned by Elmore Chapman. It is alleged that the defendant
18 did cut a tire and shot at the vehicle causing damage, such
19 damage being more than \$2,000, but less than \$10,000.

20 Those are allegations, ladies and gentlemen. Now, I
21 tell you about those allegations, because I've already told
22 you that you must decide the case based on evidence in order
23 to ask you this. Any member of my jury panel read about,
24 heard about, or know anything whatsoever about the facts
25 which are alleged in these indictments? If so, please stand

1 at this time.

2 (NO RESPONSE.)

3 THE COURT: Let the record reflect, no one is standing.
4 I am advised, ladies and gentlemen, that the potential
5 witnesses in this case will be as follows. Brian Jenkins,
6 Smoaks, South Carolina. James Shannon Pye, Walterboro,
7 South Carolina. Detective Riddick David Thomas, Colleton
8 County Sheriff's Office. Edward Elmo Chapman, Walterboro,
9 South Carolina. Christi Greene, Walterboro, South
10 Carolina, formerly with the Colleton County Sheriff's
11 Office. Jose Rivas, Islandton, South Carolina. Harry Ross,
12 Walterboro, South Carolina. Jordan Pye, P-Y-E, Walterboro,
13 South Carolina. Jason Fernandez, Walterboro, South
14 Carolina, formerly with the Colleton County Sheriff's
15 Office. Jacky Lawson, Colleton County Sheriff's Office.
16 Terry Nance, N-A-N-C-E, Colleton County Sheriff's Office.
17 Shannon Thompson, Colleton County Sheriff's Office. Brandon
18 Allen, Colleton County Sheriff's Office. Paul Haase,
19 Colleton County Sheriff's Office. Cindel Lawson, Colleton
20 County Sheriff's Office 9-1-1 Dispatch. Joyce Crosby,
21 Colleton County Medical Center. Zach Blocker, Walterboro,
22 South Carolina. Marcus Williams, Smoaks, South Carolina.
23 Timothy Jenkins, Smoaks, South Carolina. Joseph Chisolm,
24 Smoaks, South Carolina. Marvin Brown, Jr., Branchville,
25 South Carolina. Dewayne Pedro Bennett, Walterboro, South

1 Carolina. Jayme Cromer, Walterboro, South Carolina. Jodi
2 Taylor, Colleton County Sheriff's Office. Benjamin Rice,
3 Colleton County Fire and Rescue. Jack Evans, Colleton
4 County Fire and Rescue. David Goins, G-O-I-N-S, Colleton
5 County Fire and Rescue. Dr. Jeffrey A. Holman, Colleton
6 County Medical Center. Laura Walker, registered nurse,
7 Colleton County Medical Center. David Mathews, Colleton
8 County Public Defender's Office. Any additional witnesses
9 from the State of South Carolina?

10 MS. HUDSON: No, Your Honor.

11 THE COURT: From the defendant?

12 MR. BEACH: None, Your Honor.

13 THE COURT: Is any member of my jury panel related by
14 blood, connected by marriage, or a close personal friend of
15 any of the potential witnesses in the trial of this case
16 whose names I have just called? If so, please stand at this
17 time.

18 (JURORS STAND.)

19 JUROR: Kimberly Bernardi, Juror 15.

20 THE COURT: Counsel, this is juror number 15, Kimberly
21 Bernardi. Ms. Bernardi, are you related by blood to any of
22 the potential witnesses?

23 JUROR: No, sir.

24 THE COURT: Are you connected by marriage to any of the
25 potential witnesses?

1 JUROR: No, sir.

2 THE COURT: Are you a close personal friend of any of
3 the potential witnesses?

4 JUROR: Yes, sir.

5 THE COURT: And who would that be?

6 JUROR: Shannon Pye, Jordan Pye and Zach Blocker.

7 THE COURT: Hold on a second, let me make sure I've go
8 them. Do you consider yourself to be a close personal friend
9 of each of those three potential witnesses?

10 JUROR: Yes, sir.

11 THE COURT: How long have you known these people?

12 JUROR: Three or four years.

13 THE COURT: The fact that you've known each of these
14 people three or four years, would that in any way affect
15 your ability to give the State of South Carolina or the
16 defendant in this case a fair and an impartial trial?

17 JUROR: Yes, sir.

18 THE COURT: I will excuse you from service in the trial
19 of this case only. Yes, ma'am, in the back. Your name and
20 juror number, please.

21 JUROR: Jennifer Adams, juror number one.

22 THE COURT: Counsel, this is juror number one, Jennifer
23 C. Adams. Ms. Adams, are you related by blood to any of
24 the potential witnesses?

25 JUROR: No, sir.

1 THE COURT: Are you connected by marriage to any of the
2 potential witnesses?

3 JUROR: No, sir.

4 THE COURT: Are you a close personal friend of any of
5 the potential witnesses?

6 JUROR: Yes, sir.

7 THE COURT: Which witness?

8 JUROR: David Goins, Colleton County Fire and Rescue.

9 THE COURT: All right. You tell me that you are a
10 close personal friend of David Goins; is that right?

11 JUROR: Yes, sir.

12 THE COURT: How long have you known Mr. Goins?

13 JUROR: Four-plus years.

14 THE COURT: The fact that you've known Mr. Goins for
15 four-plus years, would that in any way affect your ability
16 to give the State of South Carolina or the defendant in this
17 case a fair and an impartial trial?

18 JUROR: No, sir.

19 THE COURT: Thank you, ma'am. You may be seated. Let
20 the record reflect, no one else is standing in response to
21 my last question concerning the potential witnesses in the
22 trial of this case.

23 Any member of my jury panel formed any opinion
24 whatsoever about the facts which are alleged in this case?
25 If so, please stand at this time.

1 ((NO RESPONSE.))

2 THE COURT: Let the record reflect, no one is standing.
3 Any member of my jury panel ever been the victim of a
4 violent crime? If so, please stand at this time.

5 (NO RESPONSE.)

6 THE COURT: Let the record reflect, no one is standing.
7 Any member of my jury panel currently employed or
8 previously employed with a law enforcement agency? If so,
9 please stand at this time.

10 (SEVERAL JURORS STAND.)

11 JUROR: Colleton County Sheriff's Office.

12 THE COURT: Hold on. Give me your name and juror
13 number, please.

14 JUROR: I'm 118, Cathy Limehouse.

15 THE COURT: Counsel, this is juror 118, Cathy
16 Limehouse. Ms. Limehouse, you were previously employed with
17 the Colleton County Sheriff's Office?

18 JUROR: Right.

19 THE COURT: The fact that you were previously employed
20 with the Colleton County Sheriff's Office, would that in any
21 way affect your ability to give the State of South Carolina
22 and the defendant a fair and an impartial trial?

23 JUROR: No.

24 THE COURT: And how long has it been since you've been
25 there?

1 JUROR: Oh, like seven years maybe.

2 THE COURT: Thank you very much. You may be seated.
3 You are doing exactly what I asked you to do. Anyone else
4 currently or previously employed with a law enforcement
5 agency? If so, please stand.

6 (NO RESPONSE.)

7 THE COURT: Let the record reflect, no one else is
8 standing. Any member of my jury panel know of any bias or
9 prejudice they may have about the facts which are alleged i
10 this case? If so, please stand at this time.

11 (NO RESPONSE.)

12 THE COURT: Let the record reflect, no one else is
13 standing. Any member of my jury panel formerly a member of
14 the Colleton County Grand Jury which found the indictments
15 in this case? If so, please stand at this time.

16 (NO RESPONSE.)

17 THE COURT: Let the record reflect, no one else is
18 standing. Any member of my jury panel a member of or a
19 contributor to any group which has as its primary concern
20 the promotion of law enforcement or victims rights? These
21 groups would include, but certainly not be limited to, MADD,
22 SADD, CAVE or CADRE? If so, please stand at this time.

23 (NO RESPONSE.)

24 THE COURT: Let the record reflect, no one else is
25 standing. Any member of my jury panel know of any bias or

1 prejudice towards either the State of South Carolina or the
2 defendant in this case? If so, please stand at this time.

3 (NO RESPONSE.)

4 THE COURT: Let the record reflect, no one is standing.

5 Any member of my jury panel know of any bias or
6 prejudice with the officers involved in this case, the
7 Fourteenth Judicial Circuit Solicitor's Office or the Public
8 Defender's Office? If so, please stand at this time.

9 (NO RESPONSE.)

10 THE COURT: Let the record reflect, no one is standing.

11 Any member of my jury panel know of any reason whatsoever
12 why he or she should not serve as a juror in this case with
13 particular emphasis being placed on your ability to be fair
14 and impartial to both the State of South Carolina and the
15 defendant? If so, please stand at this time. Let the
16 record reflect, no one is standing. Any additional voir
17 dire from the State?

18 MS. HUDSON: No, Your Honor.

19 THE COURT: Any additional voir dire from the
20 defendant?

21 MR. BEACH: No, Your Honor.

22 THE COURT: Counsel approach.

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

25 THE COURT: My understanding is that the State agrees

1 that the strikes are five and five and that the State agrees
2 to waive an alternate juror and proceed with whatever number
3 necessary to complete the trial of the case.

4 MS. HUDSON: That is, correct, Your Honor.

5 THE COURT: My understanding, Mr. Beach, is that the
6 defendant agrees that the strikes are five and five for
7 these offenses and that the defendant agrees to waive an
8 alternate juror and proceed with whatever number necessary
9 to complete the trial of the case.

10 MR. BEACH: That's correct, Your Honor.

11 THE COURT: Madame Clerk, the strikes are five and
12 five, and they both agree to waive an alternate juror and
13 proceed with whatever number necessary to complete the trial
14 of the case. Would you give us a jury, please?

15 MADAME CLERK: Yes, sir.

16 THE COURT: Ladies and gentlemen, what the Clerk is
17 doing right now is having the computer select from the list
18 of those jurors that I found qualified to serve as a juror
19 in the trial of this case.

20 MADAME CLERK: We're ready when you are, Judge.

21 THE COURT: Madame Clerk, give us the jury, please.

22 MADAME CLERK: When I call your name, please come up
23 front, turn, and face the counsel table. Please bring all
24 of your belongings with you. Number 60, Whitney D. Davis.
25 What says the State?

1 MS. HUDSON: Please excuse this juror from the trial of
2 this case.

3 THE COURT: Please have a seat back with the panel.
4 Juror number 194, Ralph Watson. What says the State?

5 MS. HUDSON: Please present this juror.

6 MADAME CLERK: What says the defense?

7 MR. BEACH: Swear the juror.

8 MADAME CLERK: Please have a seat in the jury box to my
9 right where bailiff Polk is at. Juror number 83, Rochelle
10 W. Gibbes. What says the State?

11 MS. HUDSON: Please present this juror.

12 MADAME CLERK: What says the defense?

13 MR. BEACH: Please swear the juror.

14 MADAME CLERK: Have a seat in the jury box over to my
15 right. Juror 117, Jeanette W. Lawton. What says the State?

16 MS. HUDSON: Please present this juror.

17 MADAME CLERK: What says the defense?

18 MR. BEACH: Swear the juror.

19 MADAME CLERK: Please have a seat in the jury box.

20 MS. HUDSON: Number 77, Pamela

21 MADAME CLERK: What says the State?

22 MS. HUDSON: Please present this juror.

23 THE COURT: What says the defense?

24 MR. BEACH: Swear the juror.

25 MADAME CLERK: Please have a seat in the jury box to my

1 right. Number 75, Alice L. Fishburne. What says the
2 State?

3 MS. HUDSON: Please excuse this juror from the trial of
4 this case.

5 MADAME CLERK: Please have a seat back with the panel.
6 Number 16, Michael J. Den . What says the State?

7 MS. HUDSON: Please present this juror.

8 MADAME CLERK: What says the defense?

9 MR. BEACH: Swear the juror.

10 MADAME CLERK: Have a seat in the jury box. Number
11 111, Tiffany P. Kinard. What says the State?

12 MS. HUDSON: Please present this juror.

13 MADAME CLERK: What says the defense?

14 MR. BEACH: Please excuse the juror.

15 MADAME CLERK: Please have a seat back with the panel.
16 Number 38, Michelle C. Chisolm. What says the State?

17 MS. HUDSON: Please present this juror.

18 MADAME CLERK: What says the defense?

19 MR. BEACH: Please excuse the juror.

20 MADAME CLERK: Please have a seat back with the panel.
21 Number 198, Abigail S. Williams. What says the State?

22 MS. HUDSON: Please present this juror.

23 MADAME CLERK: What says the defense?

24 MR. BEACH: Swear the juror.

25 MADAME CLERK: Number 168, Hilda M. Shuler. What says

1 the State?

2 MS. HUDSON: Please present this juror.

3 MADAME CLERK: What says the defense?

4 MR. BEACH: Swear the juror.

5 MADAME CLERK: Please have a seat in the jury box.

6 Number 125, Dale C. Mann. What says the State?

7 MS. HUDSON: Please present this juror.

8 MADAME CLERK: What says the defense?

9 MR. BEACH: Excuse the juror.

10 MADAME CLERK: Please have a seat back with the panel.

11 Number 29, Robert L. Brown. What says the State?

12 MS. HUDSON: Please present this juror.

13 MADAME CLERK: What says the defense?

14 MR. BEACH: Swear the juror.

15 MADAME CLERK: Please have a seat in the jury box.

16 Number 131, Thomas G. McLeod, III. What says the State?

17 MS. HUDSON: Please present this juror.

18 MADAME CLERK: What says the defense?

19 MR. BEACH: Swear the juror.

20 MADAME CLERK: Please have a seat in the jury box.

21 Number 106, Daniel Jones. What says the State?

22 MS. HUDSON: Please present this juror.

23 MADAME CLERK: What says the defense?

24 MR. BEACH: Swear the juror.

25 MADAME CLERK: Please have a seat in the jury box.

1 Number 192, Kimberly L. Washington. What says the State?

2 MS. HUDSON: Please excuse the juror from the trial of
3 this case.

4 MADAME CLERK: Please have a seat back with the panel.
5 Number 96, Phyllis B. Hill. What says the State?

6 MS. HUDSON: Please present this juror.

7 MADAME CLERK: What says the defense?

8 MR. BEACH: Please excuse the juror.

9 MADAME CLERK: Please have a seat back with the panel.
10 Number 116, Deborah L. Lawrence.. What says the State?

11 MS. HUDSON: Please present this juror.

12 MADAME CLERK: What says the defense?

13 MR. BEACH: Swear the juror.

14 MADAME CLERK: Please have a seat in the jury box.

15 Number 32, Kristin H. Murray. What says the State?

16 MS. HUDSON: Please present this juror.

17 MADAME CLERK: What says the defense?

18 MR. BEACH: Swear the juror.

19 MADAME CLERK: Please have a seat in the jury box.

20 The jury has been drawn, judge.

21 THE COURT: Are there any matters of law pertaining to
22 the selection of the jury that need to be decided before the
23 jury is sworn, from the State of South Carolina?

24 MS. HUDSON: No, Your Honor.

25 THE COURT: From the defendant?

1 MR. BEACH: None, Your Honor.

2 THE COURT: Counsel approach.

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

5 THE COURT: Ladies and gentlemen of the jury, we're not
6 going to start the trial today; we're going to start in the
7 morning, but I need for you to know where you're jury room
8 is. Bill Polk and Mr. Grant are going to take excellent
9 care of you. I'm going to ask you to go to your jury room,
10 because when you come back tomorrow, you're going to report
11 to your jury room; not to the courtroom. They will tell you
12 how to get in and out.

13 When you are in the jury room, ladies and gentlemen,
14 please do not discuss the case. You have not heard any
15 evidence in the case and it would be improper. You must
16 decide this case only upon evidence introduced during the
17 trial of the case when both sides are present with the right
18 of cross-examination.

19 Now, let me tell you a little bit about what is going
20 to happen, ladies and gentlemen. When you are in the jury
21 room, Mr. Grant or Mr. Polk, one of the two, will give you a
22 pad and a pen. I want you to select a foreperson of the
23 jury; any of the 12 of you are eligible to be foreperson,
24 but here is the job of the foreperson. The foreperson will
25 write the jury's verdict, but I'm going to give you

1 instructions about how to do that in my charge to you on the
2 law at the conclusion of the case. I will prepare a verdict
3 form for you and the foreperson signs their name for the
4 jury.

5 The foreperson's job, just like the chairperson of a
6 committee, it's the foreperson's job to see that each and
7 every member of the jury has a full and a fair opportunity
8 to voice their opinions in the jury room once deliberations
9 begin. So the foreperson presides in the jury room to see
10 that each and every person gets a chance to voice their
11 opinions. Finally, should the need arise during the trial
12 of the case, the foreperson speaks out here in the courtroom
13 for the entire jury. So the foreperson is the spokesperson
14 in the courtroom for the entire jury.

15 So the foreperson presides in the jury room, the
16 foreperson writes and signs the verdict, and the foreperson
17 also speaks for the entire jury. Any of the 12 of you can
18 be foreperson. You decide on the foreperson, write the name
19 on a piece of paper, knock on your jury room door, let the
20 bailiff know you're ready, and we'll bring you back into the
21 courtroom. You can send the piece of paper out to me by the
22 bailiff and then I'm going to excuse you for the day and
23 we'll start back at 9:30 in the morning.

24 When you're in the jury room, you can talk about the
25 weather, because it looks like we're going to get rain.

1 Talk about the weather, talk about basketball, just don't
2 talk about this case, because you haven't heard any evidence
3 in this case and I'll be back with you after you select a
4 foreperson. Please retire to your jury room at this time.

5 (WHEREUPON THE JURY EXITS THE COURTROOM AND THE
6 FOLLOWING IS HELD ON THE RECORD.)

7 THE COURT: All right. Ladies and gentlemen that were
8 not selected as jurors in the trial of my first case, I see
9 that big smile on your face out there. Now, I told you I
10 would go over the procedure that we use for those jurors who
11 are not selected. Each of you should have in your
12 possession a card that looks just like this. (Holds up
13 juror information card.) If you don't have that card, raise
14 your hand for my bailiffs at this time. It has a telephone
15 number on it. The number is 549-1775. If you need that
16 card, it's coming to you.

17 I'm going to ask you to call the number on that card
18 after 6:00 tonight. I will have a taped message on that
19 number telling you when, if at all, I might need you to
20 return. There's one message for all jurors. So if it's
21 busy, just keep trying, you'll get through.

22 Do not call the number prior to 6:00, because I don't
23 put the message on until after 6:00, because we're going to
24 be working. So please, if you would, call the number after
25 6:00. It may tell you to call back tomorrow night. It

1 might tell you to report to the courtroom tomorrow morning.
2 I don't know yet. Whatever happens in the future, I'll put
3 on that tape so that you can keep up with what's going on in
4 court without having to sit here and wait.

5 Thank you for your patience during roll call and during
6 qualification and jury selection. You've now been here a
7 total of two hours and forty-five minutes and I want to
8 thank you very much for your patience. You are now excused
9 for the balance of the day. Have a nice day and thank you
10 very much.

11 (WHEREUPON, THE REMAINING JURY PANEL EXITS THE
12 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

13 THE COURT: (Bailiff hands the Court a jury note.) The
14 jury has chosen juror number 116, Deborah Lawrence as the
15 foreperson of the jury. I have the note from the jury. Any
16 objection from the State to making the jury's note a Court
17 exhibit?

18 MS. HUDSON: No, Your Honor.

19 THE COURT: From the defendant?

20 MR. BEACH: No, Your Honor.

21 THE COURT: All right. My understanding from the State
22 and the defendant is that they wish to proceed in the
23 morning and not start tonight; is that correct, from the
24 State?

25 MS. HUDSON: That's correct, Your Honor. And remember,

1 we have the Neil v. Biggers hearing to do as well.

2 THE COURT: My understanding is you told me you did not
3 want to do that because you didn't have a witness.

4 MS. HUDSON: Not today, but in the morning.

5 THE COURT: Yes, Ms. Hudson, I'm aware of that, but
6 that doesn't affect today. Anything further from the
7 defendant?

8 MR. BEACH: No, Your Honor.

9 THE COURT: All right. Mr. Grant, would you bring us
10 the jury? I assume there's no objection to the Court's
11 exhibit; is that right, Harris?

12 MR. BEACH: No objection.

13 THE COURT: Court's exhibit number one, without
14 objection.

15 (Whereupon, Court's Exhibit Number One, jury note
16 naming foreperson, is received into evidence.)

17 (WHEREUPON, THE JURY ENTERS THE COURTROOM AND THE
18 FOLLOWING IS HELD ON THE RECORD.)

19 THE COURT: Congratulations, Ms. Lawrence, on your
20 election as foreperson. All right. Ladies and gentlemen,
21 as far as seating is concerned, if you will come in six. We
22 try to put six on the front and six on the back so that you
23 will be in close proximity to the witness stand so that you
24 will see and hear at all times throughout the trial of the
25 case. You can sit anywhere you want to, just fill all the

1 way down so nobody has to crawl over you.

2 Now, I'm not going to swear you tonight, because we're
3 not going to start until in the morning. I'm going to ask
4 you to report to your jury room before 9:30 in the morning,
5 because I want to start at 9:30. They will have something
6 for you to drink and something for you to eat. Come early
7 and they will take good care of you. They will also take a
8 lunch order from you in the morning. So I need you to get
9 here, fill out a lunch order, so get here on time and report
10 to your jury room.

11 Now, over the overnight recess, I know people are
12 curious. You're going to go home and Gordon's wife is
13 going to ask him if he is on the jury, and certainly he will
14 tell her yes, but he doesn't know anything about this case
15 and y'all don't know anything about this case and I don't
16 want y'all to discuss it, now even with a member of your own
17 family.

18 Now every now and then, I have run into this problem
19 and have to deal with it. If somebody comes up to you and
20 wants to talk to you about this case and you tell them you
21 can't talk about it, which is what you're supposed to do as
22 a juror and they persist, you get their name and you give it
23 to me and I'll handle that problem for you. That person
24 will not bother you anymore.

25 Now, I ask that you not do any research on your own. I

1 know everybody has a computer now and a smart phone and
2 everybody thinks they can't live without it, but it's
3 improper for you to do any research about this case, about
4 any of the witnesses, the parties, or the attorneys. Even
5 if you thought it would help you in deciding the case, you
6 must decide this case solely upon evidence introduced in
7 this courtroom when both sides are present with the right of
8 cross examination.

9 Think about it. Why? Because both sides in this case
10 have the absolute right to know exactly what you are
11 deciding the case on and if you go try to do some research
12 on the computer, nobody else knows that but you, and that's
13 improper. You must decide this case solely upon evidence.
14 So please don't do any research on a cell phone or on a
15 computer. We don't allow electronic devices, as I told you,
16 in the courtroom, so I ask your cooperation on that.

17 I hope everybody has a pleasant evening; it's almost
18 5:00. I will expect you to be in your jury room to fill out
19 a lunch menu and get started before 9:30 in the morning.
20 Thank you and have a good evening. You may leave the
21 courtroom at this time.

22 (4:45 p.m., whereupon, the jury exits the courtroom and
23 the following is held on the record.)

24 THE COURT: All right. Now, tomorrow morning we have
25 opening statement. If somebody comes in that door, Mr.

1 Padgett or Mr. Beach, you don't get up and go to that door
2 and talk to them. During opening statement, closing
3 argument, or my charge, y'all are not to walk over to the
4 door and talk to anybody. They will just have to wait. I
5 know people try to get your attention and they want you to
6 come let them in, unless it's a bonafide emergency, because
7 when y'all stand up and talk at that door, every single
8 juror watches y'all. I want to make sure that's clear.
9 Everybody understand that?

10 All right. Anything further from the State before we
11 adjourn for today as to this case?

12 MS. HUDSON: No, Your Honor.

13 THE COURT: Anything further from the defendant as to
14 this case before we adjourn for the day?

15 MR. BEACH: No, Your Honor.

16 THE COURT: My understanding is the defendant is in
17 custody; is that correct, Mr. Beach?

18 MR. BEACH: Yes, it is.

19 THE COURT: All right. Let the record reflect that Ms.
20 Taylor's name was called out as a witness in the trial of
21 this case and Mr. Haase's name was called out as a witness.
22 They will not be participating with the jury during the
23 trial of this case in any way, shape or form, even though I
24 introduced them as additional security at the outset of
25 Court. I was not aware that these two individuals would be

1 witnesses in the trial of the first case and they have
2 assured me that they will have no involvement with the jury.
3 is the defendant so satisfied?

4 MR. BEACH: I am, Your Honor.

5 THE COURT: Very well. We will be in recess until 9:30
6 a.m. tomorrow morning. Thank you very much.

7 (Whereupon, Court is in recess in the trial of the case
8 for the evening. Thereafter, Court reconvenes in the trial
9 of the case and the following is held on the record.)

10 THE COURT: Let the record reflect that in my pretrial
11 conference with you and Mr. Beach that Mr. Beach has changed
12 his mind and is moving for sequestration. Bring me the
13 defendant.

14 (Brief pause in the courtroom while the defendant is
15 brought in.)

16 THE COURT: I understand from my pretrial conference
17 that Mr. Beach has changed his mind after telling me
18 yesterday that he did not want to sequester witnesses, that
19 he now wants to sequester witnesses; is that correct?

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

21 THE COURT: And there's no objection from the
22 Solicitor's Office?

23 MS. HUDSON: No, Your Honor.

24 THE COURT: All right. Mr. Beach, the sequestration
25 will be equal meaning all of your witnesses will be

1 sequestered as well as the State's witnesses. I understand
2 that Mr. Thomas is your case manager.

3 MS. HUDSON: Your Honor, also my victim, Shannon Pye.

4 THE COURT: Victims can be in the courtroom under the
5 victim's bill of rights, but now, I see that there are five
6 people back there. You're going to have to decide. I have
7 one victim listed in an indictment, and that is Mr. Pye.

8 MS. HUDSON: No, sir, they are not witnesses in this
9 case. They are friends or family.

10 THE COURT: That's fine if they're not witnesses. I
11 will be happy for them to stay. Both of you are responsible
12 for telling your own witnesses and explaining to them,
13 particularly, in your case, Solicitor, because of reply that
14 they cannot discuss their testimony with anybody,
15 particularly if you might call them in reply and you never
16 know what you might have to do in reply; so you need to be
17 careful.

18 Now, both of you need to have a room. Where are your
19 witnesses going to be, Mr. Beach, because you are going to
20 send them there right now. I know your case isn't starting
21 now. Where do you want them?

22 MR. BEACH: We would like to have them in the
23 defendant's waiting room downstairs.

24 THE COURT: Is the defendant's waiting room downstairs
25 available because he wants to sequester witnesses?

1 MADAME CLERK: Yes.

2 THE COURT: All right. Where is the State going to put
3 their witnesses?

4 MS. HUDSON: They will be in my office or the
5 conference room next to my office.

6 THE COURT: All right. I'm not going on an Easter egg
7 hunt while y'all look for witnesses because of
8 sequestration. You're responsible to have your witnesses
9 there and be ready to call them and move them into the
10 courtroom because I'm not going to have this jury wait while
11 you all look for witnesses. That applies to both the State
12 and the defendant; do you understand, Solicitor?

13 MS. HUDSON: Yes, sir.

14 THE COURT: Do you understand, Mr. Beach?

15 MR. BEACH: Yes, sir.

16 THE COURT: All right. Now, I understand that you put
17 this off yesterday, because y'all didn't want to do it
18 yesterday and I have a jury waiting now and I wanted to do
19 it earlier this morning. Let's deal now with this Neal v.
20 Biggers' hearing. I understand there is an identification
21 issue and I would like to get that done and bring the jury
22 in. Please proceed.

23 MS. HUDSON: Your Honor, the State calls Detective
24 David Thomas to the stand.

25 THE COURT: Detective Thomas, please come around and

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1 be sworn by the clerk.

2 (Whereupon, Det. David Thomas is duly sworn.)

3 MADAME CLERK: Please have a seat on the witness stand.

4 THE COURT: Have a seat and make yourself comfortable.

5 Please state your full name and spell your last name for the
6 court reporter.

7 DET. THOMAS: Riddick David Thomas, T-H-O-M-A-S.

8 THE COURT: Your witness, counsel.

9 MS. HUDSON: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 MS. HUDSON:

12 Q Det. Thomas, where are you employed?

13 A Colleton County Sheriff's Office.

14 Q And in what capacity?

15 A I'm a detective.

16 Q Where you a detective during the time of the incident
17 that occurred last 4th of July?

18 A Yes, ma'am, I was.

19 Q Was this case assigned to you?

20 A Yes, it was.

21 Q Can you tell me how you came to identify the defendant
22 as a suspect in this case?

23 A Yes, ma'am. I got a description from the victim of the
24 incident and I was asking at work from the location if
25 anyone knew anyone meeting that description, and if I

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1 remember correctly, Captain Johnson brought up Mr. Jenkins'
2 name as far as that location meeting the description that I
3 was given by the victim.

4 Q And did you pull up a photograph of the suspect who is
5 now the defendant?

6 A Yes. What I did, once I got his name, I got a DMV
7 photograph and I submitted it to SLED and requested a lineup
8 and I received the photo lineup from SLED.

9 Q And is that the normal procedure for requesting a
10 lineup?

11 A Yes, ma'am, it is.

12 Q When you request a lineup, what does SLED do?

13 A I don't know details, but from my knowledge, they will
14 take the DMV photograph and they will find other individuals
15 that look much like that individual.

16 Q And did you meet with the victim in this case?

17 A Yes, I did.

18 Q Where did you have the victim come and meet with you?

19 A At our office, the Annex.

20 Q Was it during normal office hours?

21 A If I remember correctly, it was at the end of the day
22 after -- slightly after normal office hours.

23 MS. HUDSON: Your Honor, may I approach?

24 THE COURT: You may.

25 MS. HUDSON: Your Honor, if I could mark this as a

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1 Court's Exhibit?

2 THE COURT: Any objection, Mr. Beach?

3 MR. BEACH: No objection, Your Honor.

4 THE COURT: Court's Exhibit Number Two without
5 objection.

6 (Whereupon, Court's Exhibit Number Two, photo lineup,
7 is received into evidence.)

8 Q Det. Thomas, I've just handed you Court's Exhibit
9 Number Two, can you identify that for me?

10 A Yes, ma'am. That's the photo lineup that I received
11 from SLED.

12 Q And is that the lineup that you showed the victim,
13 Shannon Pye?

14 A Yes, ma'am, it is.

15 Q Where exactly were you when you showed that lineup to
16 the victim?

17 A It was at the Sheriff's Office Annex; actually, I was
18 downstairs at the clerk's desk.

19 Q Was there any other law enforcement around?

20 A No other law enforcement.

21 Q Were any other photos shown to the victim, Shannon Pye,
22 besides that lineup?

23 A No, ma'am, just this one sheet.

24 Q When you showed him that lineup, did you make any
25 statements to him?

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1 A No, I did not, other than to be sure of his
2 identification.

3 Q And when he saw the lineup, did he make an
4 identification?

5 A Yes, ma'am, he did.

6 Q And who did he indicate on the lineup was the suspect?

7 A He identified photo number four, which is Mr. Jenkins.

8 Q Do you recall how much time it took him to make that
9 identification?

10 A Not -- I couldn't say exactly, but he did it rather
11 quickly.

12 Q And did he make any mark or reference to that photo
13 being the defendant?

14 A Yes, ma'am. I asked him if he could identify anyone on
15 the sheet to sign it, or initial it, and put the date on
16 there.

17 MS. HUDSON: Your Honor, may I approach?

18 THE COURT: You may.

19 MS. HUDSON: Your Honor, if I could mark this document
20 as well. It is a second lineup.

21 THE COURT: Mr. Beach, any objection?

22 MR. BEACH: No, Your Honor.

23 THE COURT: Court's Exhibit Number Three without
24 objection.

25 (Whereupon, Court's Exhibit Number Three, second photo

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1 lineup, is received into evidence.)

2 Q Actually, staying with Shannon Pye for a moment, did
3 you make any comments after he did identify the defendant in
4 the lineup that you gave him?

5 A No, ma'am, other than if he would to either initial or
6 sign it at the top.

7 Q And did he make any statements when he identified the
8 defendant?

9 A I don't remember in great detail, other than "This is
10 him" or "This is the one". I couldn't say exactly but he
11 indicated that he knew who it was.

12 Q I've handed you Court's Exhibit Three. Can you
13 identify that for the record?

14 A Yes, ma'am. It is another copy of the same photo
15 lineup from SLED.

16 Q Okay. And who did you show that lineup to?

17 A To Mr. Chapman.

18 THE COURT: Just a moment, Solicitor. In light of your
19 question, is this the exact same lineup that was shown in
20 Court's Exhibit Two?

21 MS. HUDSON: It is, Your Honor, but it was shown to a
22 different witness.

23 THE COURT: It was shown to a different individual; is
24 that correct?

25 MS. HUDSON: Yes, sir, that is correct, Your Honor.

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1 THE COURT: Proceed.

2 Q Is that the same lineup that you showed to the victim,
3 Shannon Pye?

4 A Yes, ma'am, it is.

5 Q The same lineup that you obtained from SLED containing
6 the defendant's photograph?

7 A Yes, ma'am, it is.

8 Q And who did you show that lineup to?

9 A I showed this to a Mr. Edward Chapman.

10 Q And who is Mr. Edward Chapman in this case?

11 A He was the owner of the pickup and he was at the scene.

12 Q Had he been shown any other photos?

13 A No, ma'am.

14 Q Where did you have him come to, to identify?

15 A To the Sheriff's Office Annex.

16 Q Was he there at the same time as the victim, Shannon
17 Pye?

18 A They were there at roughly the same time, Yes, ma'am.

19 Q Did they go in and make the identification at the same
20 time?

21 A No, ma'am. Each one was there at the same time, but
22 this was totally independent. Neither one saw what the
23 other was looking at.

24 Q Did you make any statements to Mr. Chapman when you
25 showed him the lineup?

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1 A No, ma'am, other than to be sure.

2 Q And did he make an identification from the lineup?

3 A Yes, ma'am, he did.

4 Q And what number did he choose on the lineup?

5 A He chose number four.

6 Q And who was that?

7 A That's Mr. Jenkins.

8 Q Did he make any statements while identifying the
9 defendant?

10 A Again, I don't recall anything in detail, other than he
11 knew that was the individual that was involved.

12 Q And did you make any statements to him after he made
13 the identification?

14 A No, ma'am, other than to either sign or initial it, his
15 choice, and to put the date on it.

16 Q And did he sign?

17 A Yes, ma'am, he did.

18 MS. HUDSON: Your Honor, no further questions at this
19 time.

20 THE COURT: Cross-examination.

21 MR. BEACH: May it please the Court.

22 CROSS-EXAMINATION

23 BY MR. BEACH:

24 Q Det. Thomas, who is Mr. Chapman again?

25 A He was the owner of the pickup that they were in that

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1 night. So he was -- they were traveling together.

2 THE COURT: Who is "they"?

3 A Oh, I'm sorry. Mr. Pye and Mr. Chapman were both in
4 the truck.

5 Q And was anybody else in the truck?

6 A Yes, a Mr. Ross.

7 Q And did you show the lineup to Mr. Ross?

8 A No, sir, not at that time.

9 Q Not at that time. Did you show it to him later?

10 A I did sometime later.

11 Q And did he make an identification also?

12 A No, he said he was unsure. He stated that it looked
13 like it could be a couple on there, but he was unsure.

14 Q He was in the truck also?

15 A Yes, sir, he was.

16 Q Now, Mr. Chapman, did he say that he saw the shooting?

17 A He did not say that he actually saw the round being
18 fired, no, sir.

19 Q But he said he saw this person there?

20 A Yes, sir.

21 Q Now, Mr. Pye, did he say that he saw the shooting?

22 A Yes, sir.

23 Q Did he say that this was the person who shot him?

24 A Yes, sir.

25 Q Now, earlier, you said you weren't exactly sure what

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1 he said; are you certain he said that?

2 A Not at the -- not when he was with the photo lineup.

3 Q So for the photo lineup, he did not identify the
4 defendant at the person who shot him?

5 A Sir, I honestly can't say what he said. I asked him as
6 far as the person at the scene that night if he could
7 identify the black male that was mentioned.

8 Q So he identified someone who was at the scene?

9 A Yes, sir.

10 Q No other questions. Thank you, sir.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MS. HUDSON:

14 Q Det. Thomas, when did you show the lineup to the victim
15 in this case, Shannon Pye?

16 A Did you say when?

17 Q When?

18 A The 10th of July.

19 Q And when did the incident take place?

20 A The 5th -- the early morning of the 5th of July.

21 Q When did you show the lineup to Harry Ross?

22 A A few weeks ago.

23 Q You spoke with the victim unrelated to identification
24 at the lineup, you spoke with the victim initially in this
25 case; is that correct?

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1 A Yes, ma'am.

2 Q Do you recall when you spoke with the victim?

3 A The victim of the shooting, I actually spoke with him
4 the night, or the morning I should say, of the shooting at
5 the emergency room for a few minutes.

6 Q Okay. And it was at that time that he made the
7 identification of the defendant stating that he was the
8 shooter?

9 A (NO RESPONSE.)

10 Q Did he tell you who shot that night?

11 A He described an individual, but he did not know who it
12 was.

13 Q And then on July 10th, he identified that individual at
14 the defendant; is that correct?

15 A Yes, ma'am.

16 Q And as far as Edward Chapman, when did he make the
17 identification?

18 A He described a person matching this description, but he
19 did not know who it was either. It was at the photo lineup
20 that he said that that was the person who was there that
21 night.

22 Q And did he also come on July 10th to make that
23 identification?

24 A Yes, he did.

25 MS. HUDSON: No further questions, Your Honor.

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Recross-Examination of Det. Dave Thomas by Mr. Beach
Direct Examination of Det. Dave Thomas by The Court

1 THE COURT: Recross, limited to redirect.

2 MR. BEACH: Thank you, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. BEACH:

5 Q Detective, you just said that he identified him as the
6 shooter. I believe you told me earlier that he didn't
7 identify him as the shooter. Which one is correct?

8 A Sir, I'm not sure I understand. He described an
9 individual that was there. The victim described an
10 individual that was there that shot. What I'm saying is
11 when he did the photo lineup, he just said, "This is the
12 person." When he did the photo lineup, he did not say,
13 "This is the person who shot me," in those words.

14 MR. BEACH: No other questions, Your Honor.

15 EXAMINATION BY THE COURT:

16 Q Det. Thomas, what was your understanding about how far
17 both of these people were from the persons alleged to have
18 done the shooting when the incident occurred?

19 A Probably twenty, twenty-five feet.

20 Q Was there anything obstructing their sight of the
21 individual, to your knowledge from what you learned?

22 A No, sir. It was in a roadway as I understand it. It
23 was clear; there were streetlights in that area, or yard
24 lights I should say, sir.

25 Q What type of description did you get from either

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1 Mr. Pye or Mr. Chapman? And tell me how that description
2 was given to you by each of them.

3 A That it was a large, black male. Well, that's how we
4 got it initially, that it was a large, black male, a
5 Hispanic, and another individual that they were unsure of.

6 Q And that was the same description that you got from
7 both people?

8 A Yes, sir, pretty much.

9 THE COURT: Any additional questions of this witness in
10 light of the Court's questions, from the State?

11 MS. HUDSON: No, Your Honor.

12 THE COURT: From the defendant?

13 MR. BEACH: Just a couple, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. BEACH:

16 Q Det. Thomas, did you go out there that night?

17 A Yes, I did.

18 Q And you said there were street lights?

19 A They were yard lights.

20 Q Where was the yard lights?

21 A There was one directly right beside the driveway where
22 this occurred. There was one to the house on the right, and
23 one to the house on the left.

24 Q And these lights were all operable?

25 A Yes, sir, to the best of my knowledge. It was all lit

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1 up, I'll say that.

2 Q You're sure of that?

3 A Yes, sir. I know there were lights there.

4 MR. BEACH: No other questions, Your Honor.

5 THE COURT: Very well. Call your next witness,
6 Solicitor. Det. Thomas, you may step down.

7 MS. HUDSON: Your Honor, there are no further witnesses
8 from the State.

9 THE COURT: Mr. Beach, you've raised the issue. Does
10 the defendant wish to present any testimony for purposes of
11 this hearing?

12 MR. BEACH: May I have just a moment to talk with my
13 client?

14 THE COURT: Yes, sir.

15 (Off the record, briefly.)

16 MR. BEACH: Nothing, Your Honor.

17 THE COURT: Very well. Mr. Beach, I'll hear from you.

18 MR. BEACH: Your Honor, I think that the identification
19 by one of the parties is that this is the person who was
20 there and we think that's an improper identification.

21 THE COURT: Why? What makes it unduly suggestive, Mr.
22 Beach? What is the nature of your objection?

23 MR. BEACH: Well, I think that the person -- I think
24 that the evidence is going to show, of course we don't have
25 that person here right now to testify as to what the

1 evidence is, but he did not see the shooting and that he is
2 testifying as to someone who was in the crowd at that time.

3 THE COURT: Mr. Beach, I listened carefully to your
4 questions of Mr. Thomas, and I think it's a play on words
5 when you say "see the shooting." Now, obviously, the jury
6 gets to determine the weight of it, but we're talking about
7 admissibility now. Whether or not you saw a shell expelled
8 from a weapon or whether or not you saw a person who was
9 there who you later identified goes to the weight of the
10 matter and not its admissibility, even though you used the
11 words "see the shooting" which was your words in your
12 question, which led you to ask additional questions of the
13 witness. Anything else on the nature of the admissibility
14 of this out of court identification?

15 MR. BEACH: No, Your Honor.

16 THE COURT: Thank you very much. Of course, as you
17 know, Mr. Beach, the burden of proof is on the State beyond
18 a reasonable doubt not only as to the elements of the crime
19 charged, but this includes the burden of proving the
20 identity of the defendant as the person who committed the
21 crime.

22 I find that your objection to the testimony that it's
23 unduly suggestive is respectfully overruled. I will charge
24 the jury about the burden of proof. I will charge
25 identification as an issue. The jury must be satisfied

1 beyond a reasonable doubt of the accuracy of the
2 identification before they can find the defendant guilty.
3 And I believe what has been raised here goes to the weight
4 of the identification and not its admissibility, and that is
5 the reason for my ruling.

6 With that, I think we are ready for the jury. Anything
7 further from the State before I bring the jury?

8 MS. HUDSON: No, Your Honor.

9 THE COURT: Anything further from the defendant?

10 MR. BEACH: No, Your Honor.

11 THE COURT: Bring us the jury, please.

12 (9:45 a.m., whereupon, the jury enters the courtroom
13 and the following is held on the record.)

14 THE COURT: Good morning, Madame Foreperson, and ladies
15 and gentlemen of the jury. Hope you all had a pleasant
16 evening. We've been out here working, so don't think
17 because it's 9:45 that we've forgotten about you; we
18 haven't. There were matters that I was asked to take up
19 this morning. I tried to start early enough to finish them
20 by 9:30, but sometimes we can't predict to the minute. I
21 appreciate your patience.

22 Madame Clerk, would you please swear the jury?

23 MADAME CLERK: Yes, I will. Ladies and gentlemen of
24 the jury, please stand and raise your right hand.

25 (Whereupon, the jury is duly sworn.)

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, first of all, yesterday I told you and I will
3 reemphasize it, while you're on the jury this week and
4 particularly when you're serving on the trial, please do not
5 discuss this case with others, as well as any other jurors,
6 until I authorize you to do it. It's real important that
7 you not engage in any premature deliberations because the
8 very last thing in this case might be the most important
9 thing for you. Therefore, I ask that you not discuss it
10 amongst yourselves until I ask you to do so.

11 Now, I don't know whether there will be anything in the
12 newspaper or on the radio or on television about this case.
13 I ask that you not read such, watch such, or listen to such.
14 I ask that you not use a computer or a cellular phone or any
15 other electronic device with communication capability while
16 you are on jury duty this week even though you may think it
17 would help you.

18 Why? Because the parties of this case have the absolute
19 right to know what you are basing your decision on. And
20 everything that is going to be presented is going to be made
21 a part of this record by the court reporter.

22 So please don't communicate with anyone on your cell
23 phone, through your e-mail, Blackberry, iPhone, text
24 messaging, twitter, blog or website, or any social
25 networking website, which would include Facebook, MySpace,

1 LinkedIn and YouTube. I ask you not to do that while you're
2 serving on the jury this week. We have had problems with
3 that in South Carolina, so I emphasize that to you.

4 Now, before we begin this trial, I want each of you to
5 know that this trial will probably be different from what
6 many of you might expect. You know, most people simply
7 don't have the time to attend an actual court session as
8 each of you are doing right now. And unfortunately, many
9 people believe, or think, from watching television, such
10 programs such as CSI, Cold Case, Law and Order, going to a
11 movie or reading a book, that trials are always full of high
12 drama, or intense action, and riveting and entertaining
13 circumstances. While all of those things may be true at
14 times, ladies and gentlemen, an actual trial is not for
15 entertainment like a television show, a movie, or even a
16 book.

17 An actual trial is a fundamental part of our democracy.
18 It is a search for the truth in an effort to make sure that
19 justice is done between the parties before the Court.

20 Searching for the truth and trying to make sure that
21 justice is done is often slow, it is often deliberate, it is
22 often repetitive. It is the exact opposite of what you may
23 have seen on television or read in a book or seen in a
24 movie. This courtroom, ladies and gentlemen, is 192 years
25 old and is a place of honor. It is dedicated to the

1 protection; it is dedicated to the preservation of citizen's
2 rights, through what many people have called the greatest
3 justice system in the entire world.

4 The attorneys who are going to be appearing before you
5 in this trial, they're advocates for the parties they
6 represent, the State of South Carolina and the defendant.
7 But first and foremost, ladies and gentlemen, the attorneys
8 and myself, are officers of this Court. And as officers of
9 this Court, they took an oath, just like I did. They took
10 an oath to uphold the integrity, they took an oath to uphold
11 the fairness of our judicial system, and they also are here
12 even though they are advocates, to help you in your search
13 for the truth, based on evidence introduced during the trial
14 of the case.

15 You should expect the attorneys to be professional.
16 You should expect the attorneys to be competent. You should
17 expect the attorneys to be courteous, to each other and to
18 you in the discharge of their duties. Remember, also, that
19 each of you now, just like the attorneys and myself, each of
20 you have now taken an oath from the Clerk of Court; and in
21 that oath, each of you said that you would try this case and
22 that you would, as a juror, reach a fair and a just verdict,
23 so you also are expected to be professional.

24 You, as a juror, are also expected to be reasonable and
25 you are also expected to be ethical, just like the attorneys

1 and the discharge of your duty as jurors. Before we even
2 start this trial, ladies and gentlemen, I want to thank you
3 for accepting this very important responsibility of jury
4 service. I want to thank you for your contribution today to
5 our justice system. Without you, ladies and gentlemen of
6 the jury, justice could not be accomplished in the
7 courtroom, and I thank you for that service.

8 Now, ladies and gentlemen, I hold in my hand three
9 indictments. I told you a little bit about the allegations
10 yesterday when I was asking you questions to determine your
11 impartiality to serve as a juror in the trial of this case.
12 Obviously, the case we are about to begin is the case of the
13 State of South Carolina v. Brian Jenkins, who is the
14 defendant. Mr. Jenkins is charged by these three pieces of
15 paper that I hold in my hand, which we call indictments, and
16 the indictments are filed in this Court. He's charged with
17 the offense of attempted murder; he's charged with the
18 offense of possession of a weapon during the commission of a
19 violent crime.

20 I'm going to ask that you not take written notes,
21 ladies and gentlemen, and I will tell you why; because I
22 have found that if the written note takers makes an error in
23 the written notes, the notes can be harmful rather than
24 helpful in your jury room once deliberations begin. The
25 time-tested system is for you to listen and listen

1 carefully.

2 Now, if you're worried about remembering, don't. Becky
3 is making an audio recording of every witness and we can
4 play an entire witness's testimony back for you. So I ask
5 that you listen and not take written notes.

6 Now, the defendant is not only charged with attempted
7 murder, but he's also charged with possession of a weapon
8 during the commission of a violent crime and malicious
9 injury to personal property greater than \$2,000, but less
10 than \$10,000.

11 Now, the elements of all three of those crimes that are
12 alleged in these three indictments will be explained to you
13 when I charge you the law on this case at the conclusion of
14 the trial, Why do we do it at the end? Because I haven't
15 heard the evidence in this case, just as you haven't. It's
16 important that we both keep an open mind. Once I hear the
17 evidence, I will explain to you the law that I feel like
18 applies to the evidence that's presented, at the conclusion
19 of the trial, including the elements of the offense for
20 which the defendant is charged.

21 You should understand for right now at the beginning
22 that the indictment is simply the charge by which the case
23 is brought into this Court, and that the indictment is not
24 in any sense evidence of any of the allegations contained in
25 the indictment.

1 Now, as I told you yesterday, the defendant has pled
2 not guilty to the indictment. That plea puts the burden on
3 the State of South Carolina because the State has the burden
4 of proving each of the essential elements of the indictment
5 beyond a reasonable doubt and it will be your duty, ladies
6 and gentlemen, to decide whether or not the State has met
7 that burden. It is your solemn responsibility of jurors to
8 determine the guilt or the innocence of the defendant, and
9 your verdict must be based solely and only on the evidence
10 as it is presented to you in this trial and on the law as I
11 instruct it to you to be during the trial and at the
12 conclusion of the trial in my charge to you on the law at
13 the conclusion of the trial.

14 Now, in just a minute, the Assistant Solicitor will
15 make what we call an opening statement in which she will
16 explain to you the issues in this case and while as an
17 advocate for the State of South Carolina, what she contends
18 to be the issues in this case, and then following that, the
19 attorney for the defendant will also make an opening
20 statement.

21 Now, what the attorneys tell you in opening statement,
22 what the attorneys suggest to you by their questions, what
23 the attorneys argue to you in their closing argument at the
24 conclusion of the trial is not evidence in this case. The
25 attorneys are advocates for the parties that they represent.

1 So when they stand in front of you in opening statement, or
2 they stand in front of you in closing argument, or they
3 suggest something by a question that they ask, it is only
4 their contention as to what an issue might be, because what
5 the attorneys say as an advocate for their respective
6 parties is not evidence in this case.

7 Now, I've told you that you must decide this case
8 solely upon evidence. What is evidence? Evidence in this
9 case will be presented to you by the testimony of sworn
10 witnesses who are going to take this witness stand. You
11 will notice it's located on the side of the courtroom in the
12 closest proximity to you, so you can observe the witnesses.
13 You can pay close attention to the witnesses. So evidence
14 may take the form of sworn testimony by a witness on the
15 witness stand.

16 Evidence may also be, and you will hear me say, it may
17 be an exhibit, such as a photograph, or a model, but as to
18 any exhibit, the lawyers know, because that's part of my
19 job, to rule on the admissibility of evidence. You will
20 hear me say, we will mark it with the court reporter so that
21 it has a number, like a photograph, and you will hear me
22 say, "Ladies and gentlemen of the jury, it is in evidence."
23 That means it will be with you in your jury room if it's an
24 exhibit, during your deliberations. So evidence can take
25 the form of an exhibit and evidence can even take the form

1 of what we call a stipulation, an agreement, an
2 understanding between the parties that a fact is true and
3 therefore not necessary to be proved. So evidence may be
4 sworn testimony, might be an exhibit, it can even be a
5 stipulation.

6 You should remember at all times while on the jury that
7 under the Constitution of the State of South Carolina you
8 and you twelve jurors alone are the sole judges of the facts
9 in this case and no one else but you will be permitted to
10 weigh the evidence, to consider the evidence. You're the
11 sole judges of the facts in this case and the same law that
12 makes you the judges of the facts in this case makes me the
13 sole judge of the law. I cannot invade your province and
14 tell you, or comment to you, or suggest to you what the
15 facts are; and you should not, as a juror, invade my
16 province and differ with me about what the law is.

17 Everything that I say during the course of this trial
18 is being taken down by my court reporter, Becky Hill, and if
19 I make a mistake as to the law to the detriment of either
20 party, they can appeal the case to an Appellate Court, and
21 if the Appellate Court agrees that I've made a mistake, they
22 can reverse the case and send it back for a new trial. So
23 don't any of you on this jury worry about whether or not
24 I've told you the law correctly, that is somebody else's
25 worry; that is not your concern.

1 Your job is to take the law as I give it to you and
2 apply it to the facts as you find them to be based on
3 evidence introduced during the trial of the case. And that
4 means testimony from the witness stand, any exhibits that
5 may be introduced into evidence, or any stipulation that may
6 occur during the trial. After doing that, you will, at the
7 end of the case render your verdict a true and a just
8 verdict under that solemn oath which each of you just took
9 from the Clerk of Court in which you swore as a juror that
10 you would accept the law and apply the law as I give it to
11 you and fairly try this case.

12 Now from time to time during the trial of this case,
13 you will probably witness -- you will hear one of the
14 lawyers say something like, "Your Honor, I believe we have a
15 matter of law," we had one this morning, Madame Foreperson.
16 Or you will hear them say, Your Honor, may we approach the
17 bench?" Or I, myself, might ask them to approach the bench,
18 and I might ask you to step to your jury room. Now, the
19 reason for this is not because we're hiding anything from
20 you. I had some jurors ask me this sometimes. The reason
21 for this is exactly what I've just told you. You're the
22 sole judges of the facts. I'm the sole judge of the law.

23 Sometimes when I'm ruling on a matter of law, by
24 necessity, I have to make a comment to the lawyers about the
25 facts in this case. Now I'm not supposed to make a comment

1 to you, a trial jury, about the facts in this case, so the
2 custom in this State when such discussions take place, to
3 excuse you from the courtroom or try to take it up out of
4 your earshot so that you won't be influenced by anything
5 that I might say or do in ruling on whether or not a
6 particular piece of law applies to this case or not.

7 And in that connection, let me tell you, again, that
8 you, ladies and gentlemen of the jury, are the sole judges
9 of the facts in this matter, based on evidence introduced
10 during the trial of the case. And if you should gather at
11 any time, from anything that I might say or that I might do
12 as a presiding judge during the course of this trial, that I
13 have any opinion whatsoever as to the facts of this case,
14 please erase that from your mind, because as I've said, you,
15 the jury, are the sole judges of the facts in this matter.

16 Now, I'm asked this a lot, how will I determine what
17 the true facts are as a juror? Well, in determining what
18 the true facts are, ladies and gentlemen, you will, of
19 necessity, you will have to pass upon the credibility, which
20 simply means the believability of the witnesses who are
21 going to take this witness stand.

22 It will be my responsibility as the presiding judge to
23 rule as a matter of law as to whether or not certain
24 testimony is admissible or not, but once I've allowed the
25 testimony to be admitted into evidence, whether or not you

1 as a jury believe the testimony is solely a matter for you,
2 the jury, to determine. It will be your job to pass upon
3 the credibility or the believability of the witnesses who
4 will testify during the trial of this case.

5 Now, ladies and gentlemen, in passing upon the
6 credibility or the believability of the witnesses, you have
7 the right as a jury to take into consideration the interest
8 of any witness, the bias of any witness, you can take into
9 consideration the opportunity that the witness may have had
10 to observe the matters about which he or she might testify.

11 You can take into consideration the prejudice if any of
12 any witness, you may take into consideration, ladies and
13 gentlemen, what we call the demeanor of the witness. The
14 appearance of the witness while the witness is on the
15 witness stand. Anything that is in evidence, ladies and
16 gentlemen of the jury, you as a jury have the right to
17 consider in passing upon the credibility or the
18 believability of the witnesses who will testify during the
19 trial of this case. And that means, Madame Foreperson, and
20 ladies and gentlemen of the jury, that it is your duty under
21 that sworn oath that each of you took to pay close attention
22 to the witnesses, to listen to the witnesses.

23 Don't let your thoughts wander, but give strict
24 attention to the testimony so that at the conclusion of all
25 the testimony and after the final arguments of the attorneys

1 and my charge to you on the law at the conclusion of the
2 case, you will have placed yourself as a juror by listening
3 in a position to determine what the true facts are and apply
4 the law as I charge it to you to be to the facts as you find
5 them to be based on evidence introduced during the trial of
6 the case.

7 Now, you must not consider anything that you may have
8 read or heard about this case outside of this courtroom,
9 whether before or during this trial, and until this case is
10 submitted to you, you must not discuss it with anyone, not
11 even a member of your own family or your fellow jurors. And
12 after I submit it to you, you must discuss it only in your
13 jury room with your fellow jurors.

14 As I told you at the outset, it's very important that
15 each of you keep an open mind and not decide the case until
16 the entire matter has been submitted to you under my
17 instructions at the conclusion of the case when I charge you
18 the law that applies to the case.

19 Now, as I told you, Madame Foreperson, it will be your
20 added duty to preside in the jury room and see that each and
21 every member of my jury has a full and fair opportunity to
22 voice their opinions once deliberations begin. It will also
23 be your job to be the jury spokesperson out here in the
24 courtroom and I will give you instructions about the verdict
25 form and how to fill it out on behalf of the jury. You will

1 sign for the entire jury and date the verdict form, and then
2 my law clerk, you will see that he has the indictment in his
3 hand, and he has chased some Foremen down on the grounds of
4 the courthouses in South Carolina, and he does not want to
5 have to chase after you, because he will want you to sign
6 the same thing on the indictment that you do on the verdict
7 form that I will prepare for you.

8 Now, a couple of housekeeping matters and we'll be
9 ready to start. I've shot a shotgun all my life and I'm
10 deaf in my right ear as a result of it. I wear a hearing
11 aid in this ear; you can hardly see it. It's amazing what
12 they do with computers now and actually adjust it. Because
13 I'm sensitive about hearing and I didn't take good enough
14 care of my own hearing, if at any time a member of my jury
15 cannot hear, I will be watching all twelve of you throughout
16 the trial, just raise your hand; that's all you have to do.
17 I can always turn the volume up.

18 And as you know, you're going to see, I don't allow the
19 lawyers or people in and out. They're not supposed to be
20 letting people in and out of the courtroom. We try not to
21 have any interference. Why? Because the moment someone
22 walks into this courtroom, what do y'all do? You look to
23 see who it is and you're not paying attention to what's
24 being said by the lawyers in court or the witness; that's
25 why we don't allow interference. They know I don't allow

1 but one lawyer to speak and one lawyer stands at a time. So
2 we've got to keep it quiet. Becky has to do her job and we
3 want you to be able to hear just like we want Becky to be
4 able to hear.

5 If an exhibit is introduce into evidence, and the
6 lawyers are famous for this, but they can't help themselves.
7 They will go up there and they know they've got to mark it
8 with the court reporter; it has to have a number, because we
9 keep a record. And they will turn around and they will
10 start talking, walking back to their desk, which the court
11 reporter, you see where she's sitting. We're very sensitive
12 about that. She's sitting where she can see my mouth and
13 she's sitting where she can turn and see the witness's
14 mouth. She's sitting where she can turn and see the
15 attorney's mouth. It helps her to see the person talking in
16 order to take down and make an accurate transcript. But the
17 attorneys inevitably in every trial will forget something.
18 They will go back and confer with somebody and they will ask
19 a question with their back turned.

20 If you can't hear the question, let me know. If I
21 can't hear it, they know they will hear from me. So if she
22 can't hear or if she can't see, she's going to let me know.
23 And if you can't see or if you can't hear, raise your hand
24 for me. I want my jurors to be able to hear and to see at
25 all times throughout the trial of the case.

1 Now, Madame Foreperson, we do not normally allow jurors
2 to ask questions out here in the courtroom. If at any time
3 a member of the jury has a question, here is the procedure
4 we have to follow. If you're not already in your jury room,
5 the entire jury, all twelve of you, must retire to the jury
6 room. You will write the question on a piece of paper,
7 knock on the jury door, give it to my bailiff. They will
8 bring it straight out to me. I will then have to rule as a
9 matter of law whether or not the question can or cannot be
10 answered, just as I would any question asked by either one
11 of the attorneys during the trial of the case.

12 Now, I've tried it both ways, ladies and gentlemen, I
13 ask that you do not take notes. Now, you see that I've got
14 a pen in my hand and I've got my notebook. You will see me
15 writing up here. But I ask that you do not. Why? Because
16 I've found that the written notetaker makes an error in the
17 notes, the notes can be harmful, rather than helpful. The
18 time-tested system is for each of you to listen, and listen
19 carefully, to the evidence that is going to be presented.

20 Now, I want you to listen to the attorneys, but what
21 the attorneys tell you is not evidence in this case.
22 They're advocates; they work hard to prepare for the case
23 and I want you to listen to them, but you must decide the
24 case solely upon evidence, either testimony, the exhibits,
25 or stipulations introduced during the trial of the case.

1 All right. Ladies and gentlemen, I've told you no cell
2 phones or beepers, because I'm required to confiscate them.
3 I'm going to instruct my bailiffs again that no one comes in
4 or out of this courtroom while opening statements are being
5 made, opening remarks by the judge, or closing arguments by
6 the attorneys, or my charge to you on the law.

7 All right. Ladies and gentlemen, I do not intend that
8 you or anyone else should construe what I've just said to
9 you as a charge on the law, because it hasn't been. We have
10 rules about all kinds of things we do. For instance, I've
11 told you that the state's attorney gives the first opening
12 statement; they have the burden of proof, they present the
13 evidence first. That's why they're going to give the
14 opening statement first. We have a rule for that.

15 I'm going to charge you the law that applies to this
16 case at the conclusion of the trial, after you and I have
17 heard the evidence. This has been merely an attempt on my
18 part to explain to you some of the procedure that we follow
19 in the courtroom in the trial of the case so that you may
20 have a better understanding as to what may be happening as a
21 juror from time to time.

22 Nevertheless, in order to protect everyone's rights,
23 I'll give the parties an opportunity to object to anything
24 I've said if they have any such objections or exceptions.

25 Any objections or exceptions to the Court's comments to

1 the jury, from the State?

2 ASST. SOL. HUDSON: No, sir.

3 THE COURT: From the defendant?

4 MR. BEACH: No, Your Honor.

5 THE COURT: Ladies and gentlemen of the jury, we will
6 now begin the trial of this case. Ms. Hudson.

7 ASST. SOL. HUDSON: May it please the Court, Your
8 Honor?

9 THE COURT: Yes, ma'am.

10 OPENING STATEMENT

11 ASST. SOL. HUDSON:

12 Good morning, ladies and gentlemen of the jury and
13 Madame Forelady. The defendant is charged with attempted
14 murder, possession of a weapon during the commission of a
15 violent crime, and malicious injury to personal property
16 valued more than \$2,000, but less than \$10,000.

17 The judge has stated that you will receive these
18 elements from His Honor at the end of this matter. So at
19 this time, I will not go into that. I just wanted to remind
20 you of what the defendant, Brian Jenkins, is charged with.
21 I will, however, and it's important to get some facts in
22 this case.

23 On the 4th of July of last year, the victim in this
24 case, Shannon Pye, was relaxing at a family barbecue. He
25 was at his sister's home and his brother-in-law's home. It

1 was a good day. Everyone has a good time on the 4th of July
2 and it stayed that way for a while until the evening or
3 until later that day when he found out his wife was having
4 an affair with a gentleman by the name of Jose Rivas; that's
5 what began this incident.

6 When he found that out, he knew this individual. He
7 knew of him and he had been around him. His brother-in-law
8 was very close friends with him. And because he was close
9 friends with him, he did contact him telling him not to come
10 to his house anymore, obviously, because the victim in this
11 matter, his sister, was married to his best friend.

12 Edward Chapman, who was his brother-in-law, contacted
13 Jose Rivas and said, "Do not come to my house." Mr. Rivas
14 wanted to discuss the matter and kept attempting to come and
15 speak with him, to get the victim, Shannon Pye, to come and
16 speak with him, and he did not want to go. Good decision;
17 bad decision; probably bad.

18 Finally, in the early morning of the 5th of July, he
19 did go. He loaded up in a pickup truck with his brother-in-
20 law, Edward Chapman, who again was close friends with Jose
21 Rivas, and his brother-in-law's cousin who you will hear
22 testify here as well, also got in the truck. And they drove
23 to Clatty Farm Road which is here in Colleton County to meet
24 with Mr. Rivas.

25 When they arrived there, Mr. Rivas was there with two

1 other individuals. One of those individuals was the
2 defendant, Brian Jenkins. While there, the victim in this
3 case, Shannon Pye, got into a verbal discussion, an
4 argument, with Mr. Rivas; nothing physical and no weapons
5 involved. Mr. Chapman, again, who is the victim's brother-
6 in-law was standing near the defendant and because of the
7 defendant's body language, he got very nervous, and he
8 lunged to hit -- I'm not sure if he hit the defendant, Brian
9 Jenkins, out of fear.

10 He then turned and ran towards his truck with the
11 victim, Shannon Pye, following him. Harry Ross, who again
12 was with them, was closer to the truck. Mr. Chapman jumped
13 into the driver's seat. Harry Ross jumped into the back
14 seat and the way he jumped in kept the victim, Shannon Pye,
15 from being able to actually get into the cab of the truck,
16 so he jumped into the bed of the truck. They were
17 attempting to get away. They did not want any trouble.

18 At that time, the defendant, then with a large knife,
19 came and began to beat on the windows of the truck. He then
20 slashed the left rear tire of the truck, leaving the truck
21 with only three good tires. Edward Chapman, who was driving
22 the truck, then began to pull away and stopped because he
23 was driving on three tires. It was at this time that the
24 defendant pulled a gun, a pistol, out and shot at the victim
25 who was in the bed of the truck. He hit the victim in the

1 left leg, knocking him off of his feet into the truck and
2 then the victim heard him shoot two more times, and then
3 they drove off again calling 9-1-1.

4 These are the facts of the case. Please, first, thank
5 you for your attention this morning, and please pay close
6 attention to the testimony you will hear. There will be
7 some additional evidence, but most importantly, please pay
8 close attention to the testimony you will hear from the
9 witnesses that the State calls. It is the State's position
10 that after hearing from these witnesses and after seeing any
11 evidence that is presented, you will find the defendant,
12 Brian Jenkins, guilty of all of these offenses. Thank you.

13 THE COURT: Mr. Beach.

14 MR. BEACH: May it please the Court?

15 OPENING STATEMENT

16 BY MR. BEACH:

17 Ladies and gentlemen, good morning. I represent Mr.
18 Jenkins and the Solicitor has given you a scenario that we
19 don't agree with. We don't think that's what happened. We
20 think that the testimony is going to show you that that's
21 not what happened. What happened on that road that night,
22 you know, we may never know exactly what happened, but we
23 disagree with what the State has told you, and all I'm going
24 to ask you at this time is to listen to the witnesses.

25 Listen carefully to what they have to say. Listen to

1 why they were there. What they were doing there. Who, if
2 anyone, had a motive or a reason to shoot Mr. Pye. And I
3 think you will see at the end of it that it certainly was
4 not the defendant. He had no reason whatsoever to fire a
5 shot or to have a gun or to do any of these things that the
6 State says that he did.

7 It was chaos on that road that night, because there was
8 a man out there confronting another man about running around
9 with his wife. There was a man striking at another man for
10 no apparent reason. There was a knife pulled. There was a
11 tire slashed. They were beating on the window; all this
12 stuff. And I think that you're going to find that there's
13 more than just those people who were out there, out there
14 that night, for whatever purpose they were there. So what
15 I'm asking you to do is listen very carefully because as the
16 judge told you, you have to judge the facts. You make the
17 decision as to whether or not this person is telling the
18 truth or that person is telling the truth, or part of the
19 truth, or whatever, and it's a very important part of this
20 case. I ask you to listen very carefully and I ask you to
21 come back with a verdict of not guilty. Thank you.

22 THE COURT: Call your first witness.

23 MS. HUDSON: The State calls Shannon Pye.

24 THE COURT: Please come around and be sworn by the
25 Clerk.

1 MADAME CLERK: Please come forward and place your left
2 hand on the Bible and raise your right.

3 (Whereupon, Mr. Shannon Pye is duly sworn.)

4 THE COURT: Have a seat for me. Make yourself
5 comfortable. Adjust that microphone. It's going to amplify
6 your voice. Speak up for me so everybody in the courtroom
7 can hear you. State your name and spell your last name for
8 the court reporter.

9 MR. PYE: James Shannon Pye, P-Y-E.

10 THE COURT: Your witness, counsel. Direct examination.

11 MS. HUDSON: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. HUDSON:

14 Q Mr. Pye, can I call you Shannon?

15 A Yes, ma'am.

16 Q Shannon, where do you live?

17 A I live at [REDACTED] in Walterboro, South
18 Carolina, in the Hyde Park Subdivision.

19 Q And who lives there with you?

20 A My wife and my daughter.

21 Q And who is your wife?

22 A Jordan Medlin Pye.

23 Q And what is your daughter's name?

24 A Skyler Elaine Pye. We call her "Sky-Pye."

25 Q Where do you work?

1 A I work at Springleaf Financial.

2 Q And what do you do there?

3 A I'm a financial representative.

4 Q How long have you worked there?

5 A I just recently started working there on December the
6 6th of 2012.

7 Q I'm going to go right to the incident, or actually,
8 right before the incident. What were you doing last 4th of
9 July?

10 A Well, every 4th of July, me and my family, we go to my
11 sister's house for a barbecue and a cookout. They have an
12 in ground swimming pool and we always go swimming and have a
13 cookout and things like that; just enjoy family's company.

14 Q Okay. Where does your sister live?

15 A She lives on Teakwood Drive in Silver Hill Subdivision.

16 Q Okay. And who does she live there with?

17 A With her husband, Edward Chapman, and her son, A.J.
18 Chapman and her daughter, Lindsey Chapman.

19 Q And were they there at the barbecue?

20 A Yes, ma'am.

21 Q Obviously because it was their house?

22 A Yes, ma'am.

23 Q And how many people do you recall were at the barbecue?

24 A It's the usual people that are there. It would be my
25 grandmother, my mother, my step-father, my aunt, uncle, my

1 Aunt Vicky, and Edward, we call him "Elmo". So Elmo's side
2 of the family, which would be his mother, Mr. Ross, and his
3 sisters, and I believe his brother and his family.

4 Q So the whole family on both sides?

5 A Basically, yes, ma'am.

6 Q And when you say Mr. Ross, are you referring to Harry
7 Ross?

8 A Yes, ma'am.

9 Q What time did you get to the barbecue?

10 A I would say usually 4:00 is when we do it, but I
11 believe we arrived a little earlier.

12 Q Okay.

13 A Not very much earlier, but just a little earlier than
14 4:00.

15 Q Is there alcohol served at this barbecue?

16 A Normally there is, yes.

17 Q Did you drink any alcohol?

18 A I did not.

19 Q Why wouldn't you drink alcohol on 4th of July?

20 A I normally do, but this year and the previous one, I
21 did not. I was the designated driver and I have my three-
22 year-old. I spent the majority of time with her in the pool
23 because she loves to swim, and also I helped my brother-in-
24 law cook, which I normally do help him cook every year.

25 Q All right. Did anything out of the ordinary happen at

1 the barbecue?

2 A Yes, ma'am. My wife, who normally sits at the table
3 with Julie, which is Harry's girlfriend, she usually sits at
4 the table with her for the past 4th of July's. She left her
5 cell phone sitting next to me on the cooler; I was sitting
6 on the cooler taking a break from cooking. And her cell
7 phone went off; it was a text message, and I picked up her
8 phone and it was a text message from a number that I -- that
9 looked very familiar, but it didn't have a name, so I
10 couldn't place who it was. It just said, "Call or text me
11 when you can." So I then told Jordan that you got a text
12 message from somebody who said "Call or text me when you
13 can." At that time, she grabbed her purse and cell phone
14 and said she had to go to the bathroom, and she was in there
15 for an extended period of time.

16 Q Okay. What happened next?

17 A She came out and said that she was not feeling good.
18 She had a headache and she was feeling a little nauseous.
19 That me and Skyler could stay, but she was going to go ahead
20 and go home. I told her no, we're a family. We came
21 together, so we're going to leave together.

22 Q So did you go home?

23 A Yes, ma'am.

24 Q About what time was that?

25 A It was after 4:00, a little before 5:00.

1 Q Okay. And what did you do once you were home?

2 A Well, I was out in the sun all day. Like I said, I
3 played in the pool with my daughter a lot, and plus I helped
4 with the grill. I was very tired, so I took a nap, and
5 Skyler, she also took a nap. So me and Skyler was taking a
6 nap. She was in her room and I was on the living room
7 couch.

8 Q Okay. And what happened?

9 A Shortly, I'd say probably not even an hour later I woke
10 up and I noticed my wife wasn't home, and that's not like
11 her, especially when she don't feel good. Usually when she
12 don't feel good, she will take a nap as well, and she
13 usually takes two to three hour naps at a time. I looked
14 for her and didn't see her and noticed that her car was
15 gone, so I tried calling her cell phone. Probably after
16 three or four missed calls, because I was worried, I noticed
17 there was a note on the ground. It said, "I went to Julie
18 and Harry's house. I'll be back later."

19 Q Okay.

20 A Well, it kind of made me suspicious because that didn't
21 sound right seeing as how if she didn't feel good and she
22 was hanging out with them at the barbecue, why all of a
23 sudden would you want to go there afterwards, especially
24 after you've been there for a few hours?

25 Q Did you get in touch with her?

1 A I finally did, later; but before I did, I called my
2 sister's house and I asked if Harry and Julie were still
3 there, and my sister informed me that they were. And so ---

4 Q So they were still at the barbecue?

5 A They were.

6 Q So what did you do next?

7 A I asked to speak to Julie and I asked why Jordan would
8 tell me -- leave me a note and tell me that she would be
9 over at her house when you're not even home, and she said
10 she didn't know. And so then after that, I tried calling
11 her again and I was very worried and confused at that time,
12 so I did call her phone, roughly, about ten more times and
13 she finally called me back and she stated that she was at
14 Wal-mart because she went to Julie's house and they weren't
15 there so she went to Wal-mart shopping, but she was going to
16 leave in a couple minutes. Of course, when she came home,
17 she didn't have anything, any merchandise or anything.

18 Q And approximately what time did she come home?

19 A That was a little after 6:00.

20 Q And what happened after she came home?

21 A Well, I asked her, I said, well, if you went to Wal-
22 mart, you know, how come you didn't buy anything? You can't
23 go to Wal-mart without buying anything. She stated that she
24 was in line and whenever she had to -- heard the phone call,
25 she came straight home. I asked her, "Why did I have to

1 call you so many times?" And she stated that she had her
2 phone on vibrate and in her pocketbook, so she didn't know
3 that it was ringing until the last time that I was calling
4 her.

5 Q Okay. Did you speak with anyone else that evening?

6 A I did. My mother actually ended up calling me later on
7 and she said that she had something that she needed to tell
8 me, but she wants me to come over there to fix her T.V. A
9 lot of times she and my step-father, they hit a button
10 mistakenly on their universal remote and they can't operate
11 the T.V., so I have to go over there -- I live five streets
12 down from them. I have to go there very often and fix their
13 T.V. for them.

14 Q Okay. I understand. Why was your mother calling for
15 you?

16 A Well, she was calling -- once I got there, I noticed
17 there was a gloomy feeling that my step-father was looking
18 down, and he's the type of person that will always look you
19 in the eye. My mother, she was basically doing the same
20 thing. She looked like she had been crying, and I asked
21 her, "What's wrong?" And they said, you know, "Sit down.
22 We have something we have to tell you." And then, from the
23 earlier events and from the look and expression on their
24 face, they didn't have to tell me. I just went ahead and
25 asked them. I said, "She's cheating on me, isn't she?" And

1 by "she", I mean my wife, Jordan.

2 And they shook their head yes.

3 Q So your mother called you to the house to tell you that
4 your wife, Jordan, was having an affair?

5 A Yes, ma'am.

6 Q Did they also tell you at that time who she was having
7 an affair with?

8 A They did not. They said that I needed to go over to my
9 sister's house and everything would be explained to me
10 there.

11 Q And did you go to your sister's house?

12 A Yes, they drove me there.

13 Q And about what time did you go to your sister's house?

14 A It was still between six and seven; it was still
15 daylight outside.

16 Q And what happened when you got to your sister's house?
17 What did you discover?

18 A I discovered that Julie McLaine, which is Harry Ross's
19 girlfriend, has been keeping a secret for roughly six months
20 prior to the 4th of July that she knew that my wife had been
21 cheating on me and she told me it was with Jose Rivas.

22 Q Do you know Jose Rivas?

23 A Yes, I actually do. Me and him were on the same dart
24 league together and we had gone fishing previously before.
25 I've known him for about eight years.

1 Q Would you consider him a close friend?

2 A He was more of an acquaintance to me. Like I said, the
3 only time we really hung out, which we would also watch UCF
4 fights. We used to go watch the UCF fights together also at
5 a mutual friends' house and I used to go with my brother-in-
6 law and he would be there. So we were never close friends.
7 We would never call and talk to each other on the phone or
8 anything like that, just whenever we were around each other
9 we communicated.

10 Q Okay. After you found out at your sister's house about
11 the affair, what did you do next?

12 A Next, I went home with -- I had my mother accompany me,
13 and I confronted my wife about it, and she denied it and
14 said that it's not true. That's when I told her that I know
15 that it's true and I know for a fact that it's true, and I
16 had several people telling me that it's true, and right
17 after I mentioned that, that's when she came clean and
18 admitted that she had been having an affair with Jose Rivas.

19 Q And how did that make you feel?

20 A Very hurt, disrespected. Very sad. Funny enough,
21 anger never came. I never felt angry. Just more
22 disappointed.

23 Q Did you contact Mr. Rivas?

24 A I did not. I don't even have his number. That's why I
25 said -- I used to have his number in my phone, but I've

1 never called it. I just remembered that I'd seen that text
2 message earlier and I knew I knew the number, but I just
3 couldn't remember where I knew the number from, and then
4 that's when I put the two together that it was his number.

5 Q Did you stay home after your wife admitted to the
6 affair?

7 A I didn't.

8 Q Was there anyone else with you besides your mother and
9 your wife and your child?

10 A Well, just my daughter.

11 Q At any time, did you leave the house?

12 A Not that night. It wasn't until early in the morning
13 of the 5th and basically, my wife -- after my mother left,
14 me and my wife had a long talk and she kept trying to tell
15 me how sorry she was and I guess the basic -- then my
16 brother-in-law contacted me and said that Mr. Rivas has been
17 sending him text messages that he wants to meet with me so
18 he can explain to me face to face his side of the story.

19 Q And how did you feel about that?

20 A At first, I was -- I was dead set against it. I told
21 them there is nothing that I have to say. I don't even want
22 to see him.

23 Q What time -- if you recall, what time was it that your
24 brother-in-law told you that Mr. Rivas wanted to meet with
25 you?

1 A The first time, it was nighttime at the time, so it
2 would have had to be between 8:00 and 9:00, because it
3 wasn't too long before it was just getting dark outside, and
4 this seemed like every hour on the hour I'd get another
5 phone call saying that, "He keeps texting me. He keeps
6 wanting to do this." Basically, he wasn't leaving him alone
7 and he wanted to know what did I want to do, and I kind
8 of -- it got to the point where I went from where I don't
9 want to go, to no, to I don't know, and then basically, they
10 kind of wore me down after that, and that's when I decided
11 that I was going to go out there. Just to hear his side of
12 the story, even though I knew it wasn't going to justify
13 anything.

14 Q And what time did you make that decision to go and meet
15 with him?

16 A At that time, it was close to midnight, maybe,
17 actually, it was midnight or a little after.

18 Q And did he tell you where to come and meet him?

19 A He did. And at the time, I did not know where he
20 stayed at. All I knew is he used to stay with his mother in
21 Lodge, and I did not know that he -- I thought we were going
22 to his house is what I thought. I thought we were going to
23 Jose Rivas's house, because I did not know where he stayed
24 at.

25 Q Where did he ask you to come meet him?

1 A Clatty Farm Road.

2 Q That's here in Walterboro?

3 A Yes.

4 Q Did you go by yourself?

5 A I did not. My brother-in-law actually picked me up and
6 we left from my house and went and picked up Harry.

7 Q Harry Ross?

8 A Harry Ross, yes, ma'am, from his house, and at that
9 time, I told my wife -- well, before, I told my wife, it
10 being in our family's best interest if she leaves, and she
11 asked me, you know, where can she go? And I told her at the
12 time, I don't know. I just need some time to think and be
13 alone. I need to process all of this. And she ended up
14 going to Julie's house where Harry Ross and Julie McLaine,
15 she stayed there.

16 Q Who is Harry Ross? Is he related to you or related to
17 ---

18 A He's not related to me by blood, no, ma'am. He is
19 related to my brother-in-law. That's his cousin.

20 Q Okay. So you left with Harry Ross and Edward, or Elmo,
21 Chapman?

22 A Yes, ma'am.

23 Q And Elmo came in his truck and picked you up?

24 A Yes, ma'am.

25 Q And again, where did you go?

1 A We went to Clatty Farm Road in Ruffin.

2 Q Tell me what happened once you got to Clatty Farm Road.

3 A Well, initially, we went there, because he didn't tell
4 us the exact address. He just said, "Meet me on Clatty Farm
5 Road." So when I went down there, Elmo was driving, I was in
6 the passenger's seat, and Harry was in the back seat.

7 Initially, we passed -- we passed the place that they were
8 at. So we got to the end of the road, turned around, and
9 came back.

10 Q Okay. I'm going to stop you right there. When you say
11 "the place where they were," where were they?

12 A They were on Clatty Farm Road; I don't know the exact
13 address.

14 Q Was there a house there?

15 A There was a trailer, Yes, ma'am.

16 Q Was anyone living in the trailer?

17 A It didn't look like it, but I do not know. It looked
18 like it was an abandoned trailer to me.

19 Q Were there lights on?

20 A There were no lights on in the trailer, but there was a
21 yard light. There was actually a few lights out there. It
22 was very, very bright where they were at and it was
23 literally so bright that it was almost like daylight, that's
24 how bright it was. It was very, very bright.

25 Q So what happened -- I'm sorry to interrupt, but what

1 happened next?

2 A Well, we pulled over to the side of the road. I got
3 out of the vehicle and Elmo got out after me and we walked
4 towards the driveway and that's when we saw three people.
5 Two people with Jose Rivas. I saw Jose Rivas first. Then I
6 saw a black male and I saw another Hispanic, and the closer
7 I got to them, which me and Jose, which we call him "Joe,"
8 me and Joe met at the other end across the street at the
9 grassy line, like the road line over near the ditch. That's
10 where we met up face to face and we started talking. Then
11 he kept telling me, "It's not what you think. It's not what
12 you think." And I told him, well, there's only one thing I
13 think, and he said, well, it's not like that. I said, well,
14 did you have an affair with my wife?

15 Q Okay. So you were having a -- would you consider it a
16 verbal argument with Mr. Rivas?

17 A I never raised my voice.

18 Q You just were asking questions or talking back and
19 forth about the affair?

20 A He wanted to talk. He wanted me to hear his side of
21 the story, so I wanted him to hurry up and finish so I could
22 leave.

23 Q You said there were three individuals out there.

24 A There was.

25 Q You said that there was another Hispanic male?

1 A Yes, ma'am.

2 Q Do you know him?

3 A He is -- his name is Sammy. I don't know his full name
4 or anything. That is Jose Rivas's younger brother, I
5 believe. It's his brother. I'm not sure if he's younger or
6 older, but.

7 Q Did you know at the time that that's who it was?

8 A Not at first; when I got there, I did not. But other
9 than him, there was a black male. I didn't realize it was
10 him until later on after things had transpired later on.

11 Q And did you know the other individual, the black male
12 that was out there?

13 A I had never seen him before in my life, no, ma'am.

14 Q Could you describe what this man looked like to you?

15 A He was -- well, I'm roughly six-two, and he was taller
16 than me. So I would say he would probably be between six-
17 three and six-five, somewhere in that area, kind of heavy-
18 set; a very big man.

19 Q Do you see him here in the courtroom today?

20 A Yes, I do.

21 Q Could you please point him out by describing what he
22 has on for me?

23 A He has on a tie and looks to be a black or brown shirt
24 -- I believe that's a black shirt.

25 Q Are you referring to the defendant seated at the

1 defense table?

2 A Yes, ma'am, I am.

3 Q And is that the gentleman that you saw out there at
4 Clatty Farm Road that night?

5 A Yes, ma'am.

6 Q Did you see anyone else at Clatty Farm that night?

7 A No, ma'am. Altogether, there were six people. There
8 was me, my brother-in-law, my brother-in-law's cousin Harry,
9 the person I know now as Brian Jenkins, Jose Rivas and
10 Sammy. That was it. It was just them three and us three;

11 that's all. And like I said earlier, it was a very well-lit
12 area. There is no confusion that anybody else was present.

13 Q And I apologize if I've already asked this, but out of
14 an abundance of caution, did you know the defendant when you
15 saw him? Had you ever met him before?

16 A No, I have not. I've never seen him before in my life
17 other than that night.

18 Q Did you have any conversation with him while you were
19 talking to Mr. Rivas?

20 A I did not.

21 Q Shannon, did you go out there with a weapon of any
22 kind?

23 A I did not. I don't own a gun.

24 Q Did you and Mr. Rivas get into a physical altercation?

25 A We did not. We never even touched each other.

1 Q Okay. I want to go back to you were talking with Mr.
2 Rivas. What happened next?

3 A Well, I kind of had Elmo, or Edward Chapman, my
4 brother-in-law, and the defendant, they were toe-to-toe, and
5 the defendant kept saying, "Oh, you're sizing me up. You're
6 sizing me up." And he kind of, you know, started hopping
7 around. And I didn't think anything else of it because Jose
8 was still talking to me, so I turned back and we were
9 talking. That's whenever I seen Jose kind of react and go
10 that way, and at that time, I turned and I noticed the
11 defendant, Brian Jenkins, was lying on the ground in the
12 process of getting up. Then, I told Elmo, I said, "Well,
13 let's just get out of here." Me and him went towards the
14 truck and at that time, we saw ---

15 Q Well, let me stop you for a moment. Why did you say,
16 "Let's just get out of here"?

17 A Because it was escalating. I'm not a violent person.
18 I don't believe in violence and it was escalating and I
19 could tell it was going out of control and I saw a big knife
20 that Brian, the defendant, was holding a big knife.

21 Q Okay. And I'm sorry that I interrupted you, but you
22 were running toward the truck? Where is Harry at this time?

23 A At this time, I never looked back. I looked straight
24 at the truck the whole time. At this time, I saw Harry in
25 the bed of the truck towards the end, like the -- I would

1 say the passenger side or rear tire, at that end of the
2 truck.

3 Q So when you say "in the bed," you don't mean actually
4 in the back of the truck?

5 A Not in the bed, beside the truck.

6 Q So he was standing closer to the truck than you or Elmo
7 Chapman were; is that correct?

8 A Yes, ma'am.

9 Q And what happened as you were running towards the
10 truck?

11 A I never looked back. I noticed that Elmo who was just
12 a step ahead of me kept looking back. I don't know if he
13 was checking to make sure if I was still behind him. Elmo
14 jumped into the truck and I told Harry, I said, "Let's get
15 in the truck. Let's go." And he turned around, dove into
16 the back of the truck, and closed the door behind him, and I
17 guess whenever Elmo heard the door close, he started to pull
18 off, so I hopped into the bed of the truck.

19 Then, the instant that I hopped in the bed of the
20 truck, he came to a complete stop and at that time, the
21 three individuals, Jose Rivas, the defendant, and -- that's
22 when I realized it was Sammy, because he was literally from
23 me to the judge, distance away, and they surrounded the bed
24 of the truck. That's when the defendant started beating the
25 glass, slashing the tires, and all of that.

1 Q And you saw the defendant, Brian Jenkins, beating the
2 truck?

3 A Yes, ma'am.

4 Q What was he beating the truck with?

5 A It was the knife, the big knife. He used the butt of
6 the knife to break out the window and hit the side of the
7 truck, and I assume he used the blade to slash the tire,
8 because all I heard was a big, you know, like the tire being
9 slashed. I heard the tire being slashed.

10 Q Well, which tire on the truck did he slash?

11 A It was the rear driver's side, basically right
12 underneath where I was standing, because I was in the bed of
13 the truck.

14 Q And you were in the bed of this truck this entire time?

15 A Yes.

16 Q Did he make any statements to you?

17 A He did not. He just kept looking at me.

18 Q Did you say anything to him?

19 A I did. I did. I just don't know if it was the heat of
20 the moment or what, but I did mention to him that "You're
21 the biggest person out here, why do you feel that you need a
22 knife?" And he just kind of looked at me, and it's like one
23 of those moments where once you say something you wish
24 immediately you can just take it back, that's kind of how I
25 felt at the time.

1 Q So at that point, after he slashed the tire, and you
2 made that statement, did you pull off again?

3 A Yes. Yes. That's when Elmo pulled off at that time.
4 And we couldn't go very fast and as we were pulling away,
5 that's when I noticed, because I was standing in the bed of
6 the truck and I never took my eyes off of the three
7 individuals, and as we were pulling away, I witnessed an
8 exchange, and what I witnessed was Brian handing Jose the
9 knife and Jose handing Brian a dark object, and from that
10 dark object, I seen him raise it up after Jose pointed at
11 the truck, and then from that dark object, there was a loud
12 bang and a flash, and I was struck in the leg, and at the
13 time, that's when I knew it was a gun. It took me completely
14 off of my feet and once I hit the bed of the truck, I heard
15 two consecutive bangs after that.

16 Q Now, you said "Brandon". Who is Brandon?

17 A Brian.

18 Q Brian? Is that who you meant?

19 A I mean Brian, I'm sorry. Like I said, I've never seen
20 him before.

21 Q And when you say Brian, are you referring to the
22 defendant, Brian Jenkins?

23 A Yes.

24 Q So you were standing in the bed of the truck. Standing
25 up in the bed of the truck?

1 A Yes. I was kind of holding on to the side in the back,
2 in the cab of the truck because he was pulling off.

3 Q And you saw the defendant get a pistol of some sort?

4 A Yes. I watched him raise it and I watched him pull the
5 trigger.

6 Q And was he aiming at you?

7 A Yes.

8 Q And he struck you where?

9 A Just below my left knee, left leg.

10 Q And at that point, what happened?

11 A I fell to the ground and I heard two more gun shots and
12 Elmo never stopped driving; we kept on going until we got to
13 Mt. Carmel Road. I did slap on the side of the truck and
14 say, "Drive faster. I've been shot." And then once we
15 went, got to the end of Clatty Farm Road and turned onto Mt.
16 Carmel Road, shortly after we got onto that road, we stopped
17 and that's when I got into the truck and we started driving
18 again.

19 Q Did you ever call for help?

20 A I called for 9-1--1 -- well, actually my brother-in-law
21 called 9-1-1. He was trying to drive the truck, keep it on
22 the road with just the three tires and it was very difficult
23 for him; so he gave me the phone and I continued to talk to
24 dispatch, 9-1-1.

25 Q So he called, but you also talked to 9-1-1?

1 A Yes.

2 Q Do you recall what happened? I'm assuming law
3 enforcement came to the scene?

4 A Well, before that, whenever we first arrived at the
5 scene, I noticed there was a red car, but I didn't pay very
6 much attention to what kind. I just noticed it was red. I
7 didn't look at it very much. I just -- once we passed it
8 and we were on the way back, I noticed it was a red car, but
9 I didn't ---

10 Q Now, you're talking about a red car that was at Clatty
11 Farm Road where you were?

12 A Yes, ma'am.

13 Q Okay.

14 A And like I said, I didn't pay close attention to what
15 kind of car it was. I just noticed it was a red car. And
16 when we were heading down Mt. Carmel Road and I was on the
17 phone, I noticed there was a car flying towards us and
18 whenever it got close enough, I noticed it was a red car as
19 well, because it actually attempted to pass us, but then it
20 slowed back down and got back behind us again. I thought it
21 was them coming to continue. I was scared for my life.

22 Q Did you go to the emergency room?

23 A I did.

24 Q You were transported?

25 A Ambulance, yes.

1 Q Were you -- do you know what your injuries or were you
2 -- did you have surgery?

3 A I had surgery, yes. Not the same night, but at a later
4 date.

5 Q Did the bullet go through your leg?

6 A From my understanding, whenever I saw the flash and I
7 did turn, because I've always heard you always want to make
8 a smaller target, and I guess from the trajectory, it went
9 in and it was almost embedded in the back of my shin. So it
10 never went completely through my leg. The bullet was in my
11 leg.

12 Q Okay. Did you talk to law enforcement while you were at
13 the emergency room?

14 A Yes, I did.

15 Q Do you recall speaking with Det. Dave Thomas with the
16 Sheriff's Office?

17 A Yes, I do.

18 Q Did he ask you questions about identifying the
19 individuals who shot you?

20 A Yes, he did.

21 Q Did he ask you to describe the individual who shot you?

22 A Yes, he did.

23 Q What did you tell him at that time?

24 A I told him it was a large, black male between six-three
25 and six-five, roughly two hundred -- I don't remember -- I

1 don't recall exactly the weight that I gave him. I believe
2 it was 220 to 250.

3 Q So a larger man?

4 A A larger man, yes.

5 Q Did you meet with him any other time?

6 A I did; at the Annex office.

7 MS. HUDSON: Your Honor, may I approach?

8 THE COURT: You may.

9 Q Shannon, I've just shown you what is marked as State's
10 Exhibit One. Do you recognize what that is?

11 A Yes, that is the lineup that Det. Thomas showed me at
12 the Annex office.

13 Q So this is when you met with him at the Annex, he
14 showed you this lineup?

15 A Yes.

16 Q So do you recall the day that you met with him?

17 A Yes, it was on the 10th of July.

18 Q Okay. Did he make any statements to you when he showed
19 you that lineup?

20 A Well, other than explaining to me what this was and to
21 basically just be sure, because this is very serious
22 whenever you're picking out somebody, just to be sure.

23 Q And did you identify anyone from the lineup?

24 A I did.

25 Q What number, if it's on there, did you identify?

1 A I identified number four, and again, at the time I had
2 no idea. I just knew that was the man. I still didn't know
3 his name.

4 Q And did he ask you to do anything to indicate that you
5 had chosen number four?

6 A Yes, he asked me either initial or sign and date it.

7 Q And do you recognize your signature on that lineup?

8 A Yes, that is definitely my signature.

9 MS. HUDSON: Your Honor, may I approach?

10 THE COURT: You may.

11 MS. HUDSON: Your Honor, no further questions at this
12 time.

13 THE COURT: Counsel approach.

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

16 THE COURT: Cross-examination, Mr. Beach?

17 MR. BEACH: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. BEACH:

20 Q Mr. Pye, you say you hadn't been drinking at the
21 barbecue; is that correct?

22 A No, sir, I did not.

23 Q What about later? When did you start drinking?

24 A I didn't drink at all.

25 Q You didn't drink any at all that night?

- 1 A No, sir.
- 2 Q You didn't tell some folks that you weren't much of a
3 drinker, but you had only had four beers?
- 4 A No, sir, I did not.
- 5 Q You did not tell anybody?
- 6 A No, sir.
- 7 Q Did you or did you not?
- 8 A No, sir, I did not.
- 9 Q Okay. Now, at the scene that night, y'all went out.
10 Did you talk to Mr. Rivas or did somebody else talk with
11 him?
- 12 A At the scene, at the time of the incident, I talked to
13 Jose Rivas.
- 14 Q Okay. Let's go back a little bit before you went out
15 there. Did you talk with Jose Rivas on the telephone?
- 16 A No, sir, I did not.
- 17 Q Who talked to him on the telephone?
- 18 A I don't think anybody talked to him on the telephone.
19 I think it was all through text; I'm not sure.
- 20 Q Okay. So the text messages were going back and forth,
21 but not with you?
- 22 A No, sir.
- 23 Q So you weren't texting Rivas?
- 24 A No, sir. I had no contact with him.
- 25 Q You had no contact with him. Okay. Who was the go-

1 between? Who was going between you and Rivas?

2 A Edward Chapman, my brother-in-law.

3 Q That's Elmo?

4 A Yes, sir.

5 Q And he's the one who set up the meeting?

6 A No, sir. Jose is the one who set up the meeting.

7 Q But he set it up with Elmo?

8 A Right. He kept -- he wouldn't leave him alone. He
9 kept on and kept on and on and on.

10 Q Okay. And this was during the night and into the early
11 morning?

12 A Correct.

13 Q And then Elmo called you and told you about where you
14 all were going to meet?

15 A Right, yes, sir.

16 Q And then y'all went and picked up who?

17 A Harry Ross.

18 Q Harry Ross.

19 A Yes, sir.

20 Q All right. How was Harry Ross involved in this?

21 A He was at the barbecue at the time and he is my
22 brother-in-law's cousin.

23 Q Was the barbecue still going on?

24 A Not at the time we went and picked up Harry. We
25 picked him up from his house.

Cross-Examination of Shannon Pye by Mr. Beach

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1 Q But now, did he know about this infidelity situation?

2 A He did, because it was his girlfriend who was keeping
3 it from the family.

4 Q And y'all went out to Clatty Farm Road to meet Mr.
5 Rivas?

6 A Yes, sir.

7 Q Now, when you got there, who all did you see?

8 A Other than the three of us that went?

9 Q Yes.

10 A Okay. I saw Jose Rivas. I saw the defendant, and I
11 saw Sammy, which was Jose Rivas's brother; I'm not sure if
12 it's his older brother or younger brother. And it was very,
13 very well-lit and there was absolutely no other people other
14 than the three there.

15 Q You didn't see anybody else?

16 A No, sir.

17 Q Did you see any cars there?

18 A I saw a red vehicle?

19 Q What kind of vehicle was it?

20 A It was red vehicle. I don't know. I didn't pay that
21 close attention.

22 Q Where was it located?

23 A It was located -- there was -- I didn't notice it the
24 first time we passed. On the way back, I could see it; it
25 was a red vehicle. The driveway was here and there was a

1 little small thin patch of trees, not enough to obstruct the
2 view, but it was parked on the other side of those trees.

3 Q Okay. You don't know whose vehicle it was?

4 A Not at the time, I did not.

5 Q Did you see anybody around the vehicle?

6 A Yes, sir. Well, I didn't see them around the vehicle;
7 I seen them all three coming in front of the vehicle. At
8 one point, they had to have been around the vehicle.

9 Q Now, you say the first time you went by, did you miss
10 them the first time?

11 A Yes, sir. We come by the first time and we missed them
12 and we turned around and come back.

13 Q And how were you parked when you came back? Were you
14 on the same side as the trailer and the car?

15 A Yes, sir.

16 Q And you were parked away from the trailer?

17 A Yes, sir. The trailer was kind of located from where
18 the driveway was in the back; if you're facing where the
19 trailer was, it's in the back right.

20 Q How far was the trailer?

21 A I have no idea. I didn't measure it.

22 Q Is there a house in front of the trailer?

23 A I'm not sure. I didn't pay very close attention to my
24 surroundings, no, sir. I mean, I didn't look around and
25 see and enjoy the scenery at the time, no, sir.

1 Q Okay. You stopped and were you driving the truck?

2 A No, sir, I was not. I was in the passenger's side.

3 Elmo, Edward Chapman, was driving the truck.

4 Q Whose truck was it?

5 A Elmo's.

6 Q Elmo's truck?

7 A Yes, sir.

8 Q And you were where in the truck?

9 A I was in the front passenger seat.

10 Q And you got out?

11 A Yes, sir.

12 Q Did Elmo get out?

13 A Yes, sir.

14 Q And did the other fellow get out?

15 A He did not at the time, but on our way back retreating
16 from when Mr. Brian pulled a knife out, I saw him. He did
17 get out at one point, but he never left the side of the
18 truck.

19 Q Where did y'all go?

20 A Clatty Farm Road.

21 Q No, I mean when you left the truck. When you walked
22 out of the truck, where did you walk to?

23 A We walked towards the other end of the street because
24 at that time the defendant and Jose were coming up, and
25 Jose's Sammy, he kind of stayed towards in the driveway. He

1 might have stepped foot in the road, but he never really got
2 close. So it was me and Jose at the complete opposite end
3 of the road and from where the driveway was, from where the
4 vehicle was, and it was Elmo and the defendant standing, you
5 know, not directly beside us, but to the left of us.

6 Q How far away?

7 A Just a couple of feet. I would say, maybe, five. It
8 definitely wasn't ten foot away, but a little bit more than
9 five foot.

10 Q They were out further toward the road?

11 A They were in the middle of the road. This maybe can
12 help you gauge the distance. They were in the middle of the
13 road and we were at the end of the road.

14 Q And you were talking to Jose?

15 A Yes, sir.

16 Q And y'all were discussing the situation?

17 A Yes, sir. He said the whole point of us coming out
18 there was for him to explain his side of the story, so I
19 wanted him to explain his side of the story so we could
20 leave.

21 Q Did he make an explanation?

22 A Yeah, he just kept telling me, "It's not what I think.
23 It's not what I think."

24 Q Did he threaten you?

25 A No. No. We never made any threatening remarks to each

1 other.

2 Q Did he pull out a knife or a gun or any weapon at all?

3 A Jose Rivas did not, but the defendant did.

4 Q Now, did you see a gun or a knife or anything on Jose
5 Rivas?

6 A On Jose Rivas, I did not.

7 Q This was on the 4th of July, so it probably wouldn't
8 have been ---

9 A It was the 5th of July, in the early morning.

10 Q Okay. Well, it was in the early July; what were they
11 wearing?

12 A Their clothes?

13 Q Yes.

14 A Jose, he was wearing some khaki's, I believe. Like a
15 Polo shirt, just, he -- actually, no, I think it was a t-
16 shirt. I mean, I didn't go there to pay attention to what
17 they were wearing.

18 Q A t-shirt and some khaki pants?

19 A Uh-huh (affirmative), yes, sir.

20 Q You did not see a gun on him?

21 A No, sir. Now, the whole time we were talking, he did
22 make a motion, but I don't know -- I did not frisk him or
23 search him or anything like that.

24 Q Did you see behind him? Could you see behind him?

25 A No, I did not. He kept making sure that his front was

1 facing me at all times.

2 Q In the well-lit place?

3 A Uh-huh (affirmative), Yes, sir.

4 Q Okay. And the defendant and Elmo started arguing off
5 to your left, I guess it would be?

6 A Yes, sir.

7 Q And did they start pushing each other?

8 A No, sir. The defendant kept saying, "Oh, you're sizing
9 me up. You're sizing me up." And he kind of started
10 hopping around kind of like boxers do, and then that's when
11 me and Jose were still talking and that's when Jose took off
12 that way and I turned and looked, and at that time, the
13 defendant was on the ground getting up with a knife in his
14 hand, and me and Elmo turned around and left.

15 Q Jose took off which way?

16 A Towards Brian.

17 Q Towards Brian?

18 A Uh-huh (affirmative). Towards Brian and Elmo. Like he
19 was going to break up the fight, kind of, going that way.

20 Q Okay. So obviously, there was a fight going on?

21 A Yes. Yes.

22 Q And the defendant was on the ground?

23 A Yes, after he pulled out a knife, Elmo struck him and
24 he hit the ground.

25 Q Did you see him pull out the knife?

1 A No, but I seen him with the knife in his hand; getting
2 up from the ground.

3 Q Okay. He was on the ground ---

4 A With a knife in his hand.

5 Q --- with a knife in his hand?

6 A Right.

7 Q Now, what happened next?

8 A He got up, and me and Elmo went back to the truck.

9 Q Did y'all run to the truck?

10 A Yes, sir.

11 Q All right. So you -- how far away was the truck?

12 A Just a few feet. It wasn't very far. From where the
13 driveway was and where we were, I'd say it would be
14 probably, roughly about, oh, fifteen feet, maybe.

15 Q Fifteen feet?

16 A Yes, sir.

17 Q That's from where y'all were to the back of the truck?

18 A Right. It's probably, I would say from here to maybe
19 just second row of the benches.

20 Q All right. And Elmo went around and got into the
21 driver's side?

22 A Yes, sir.

23 Q Did he close the door?

24 A He did.

25 Q He did close the door?

- 1 A He did.
- 2 Q Did he roll up the window?
- 3 A Yes, sir.
- 4 Q And you saw him do all of this?
- 5 A No, I noticed the windows were up whenever Brian
- 6 Jenkins was trying to bust the windows out.
- 7 Q Okay. Now, and you went around the other side, the
- 8 passenger side of the truck?
- 9 A Yes, sir. Harry was out -- like I said, when we were
- 10 running back, Harry was outside of the truck at that time.
- 11 Now, he didn't get out initially, and I don't know when he
- 12 ever did get out, but whenever we were running back to the
- 13 truck and that's when I told him to get in.
- 14 Q He got in and closed the door?
- 15 A He dove in and closed the door behind him, and I was
- 16 actually planning on jumping in behind him, but he closed
- 17 the door behind him and that's when Elmo initially went to
- 18 go take off, so I dove into the bed of the truck.
- 19 Q So you jumped into the truck?
- 20 A Yes, sir.
- 21 Q Okay. Into the bed of the truck?
- 22 A Yes, sir.
- 23 Q But this is a crew cab truck, isn't it?
- 24 A It's a four-door truck, yes, sir.
- 25 Q Four-door truck, okay. And of course, you've got the

- 1 bed and the tailgate. Was the tailgate up or down?
- 2 A Up.
- 3 Q The tailgate was up.
- 4 A Yes, sir.
- 5 Q Okay. How tall was the tailgate?
- 6 A Standard Ford F-150 Crew Cab tailgate.
- 7 Q Okay. So about close to two feet?
- 8 A I guess, yes, sir.
- 9 Q Okay. And you were in the back of the truck?
- 10 A Yes, sir.
- 11 Q What happened then?
- 12 A I watched an exchange. Well, after they surrounded the
- 13 truck and the defendant started beating the truck with the
- 14 knife, he busted out the rear driver's side window and he
- 15 started beating on the side of the truck and then he slashed
- 16 the tire.
- 17 Q What was Elmo doing?
- 18 A He was in the truck.
- 19 Q Why didn't Elmo take off?
- 20 A He initially did, but we stopped because he didn't know
- 21 where I was at. He thought I was in the truck, but
- 22 initially, he didn't know where I was at.
- 23 Q How far did he go?
- 24 A Just literally, go and stop.
- 25 Q And then what happened?

1 A That's whenever -- after he noticed I was in the bed of
2 the truck, I guess, I think I heard Harry screaming, you
3 know, "He's in the truck. Let's go." And that's whenever
4 we pulled off and whenever we pulled off, we couldn't go
5 very fast, so we were probably 25 feet -- anywhere between
6 20 and 25 feet from the three individuals who were in the
7 well-lit area and I saw Jose -- I saw Brian hand Jose the
8 knife and I saw Jose hand Brian a dark object. I couldn't
9 tell what the object was at the time until Jose pointed it
10 at the truck where I was at, and Brian lifted up the gun and
11 pulled the trigger. I saw the flash and heard the bang, was
12 struck in the leg, fell down, and then I heard two more
13 shots after that. So I saw him with my own eyes pull the
14 trigger.

15 Q So Jose pulled a gun out from somewhere and there was
16 an exchange?

17 A It was from his back. Like I said, the whole time he
18 kept reaching behind his back and he never would show his
19 back to me.

20 Q Were you moving at that time? Was the truck moving?

21 A Very, very slowly. We were trying to ---

22 Q How slow?

23 A I could have probably got out and walked up to them and
24 told Elmo to speed up; that's about how slowly we were
25 moving.

1 Q So you were pulling away from them and you were about
2 25 feet away from them?

3 A Uh-huh (affirmative). Whenever he pulled the trigger,
4 we were about 25 feet away.

5 Q And what about the other fellow? Where was he?

6 A I'm sorry?

7 Q Where was the other fellow?

8 A He was laid in the back of the truck. Laying down in
9 the back seat.

10 Q I mean the other fellow who was with the defendant and
11 Jose.

12 A Oh, he was -- like I said, all three of them were in a
13 well-lit place.

14 Q They were all standing together?

15 A Uh-huh (affirmative).

16 Q Okay. What time of night was this?

17 A It was early morning.

18 Q About 1:00? 1:30?

19 A I believe so, yes, sir.

20 Q Now, y'all went down the road limping on three tires?

21 A Yes, sir.

22 Q And how far is it from that area on Clatty Farm Road
23 back to Mt. Carmel Road?

24 A Clatty Farm Road runs into Mt. Carmel Road.

25 Q How far?

1 A I'm not exactly sure.

2 Q Was it a mile?

3 A I just know that once we got to the stop sign, that was
4 Mt. Carmel, we went to the left and kept on.

5 Q How long did it take?

6 A It took forever on three tires.

7 Q Was it ten minutes? Five minutes? Twenty minutes?

8 A I don't know sir. I had a bullet in my leg.

9 Q When did you call 9-1-1?

10 A Well, I didn't call 9-1-1, my brother-in-law called 9-
11 1-1, and he was having a hard time driving, so he handed the
12 phone to me and told me to explain to them.

13 Q And you explained to them?

14 A Yes, sir, that I had been shot.

15 Q Didn't you also ask the people in the truck who had
16 shot you?

17 A I said it was a large black male. They asked me who
18 was it, and I said I didn't know. I asked them if they knew
19 who that guy was.

20 Q Didn't you say, "Who shot me?" Didn't you ask that to
21 the people in the truck?

22 A Yeah. It was a large black male that I watched shoot
23 me and I asked them, "Who shot me? Do you know?" As in who
24 do they know. Do they know this guy, because I had no idea.
25 I had never seen him before in my life.

1 Q When did you first see this car that was following you?

2 A In the middle of the conversation. I think if you play
3 the tape back, you will hear about whenever I saw it.

4 Q And you said that you thought that was them coming for
5 you?

6 A Right, because it was a small, red car; just like I saw
7 their red, small car.

8 Q Now, after that ---

9 A --- I think it was a Cavalier. I think I believe I
10 said, because it was a small car.

11 Q After that, after you had talked with them and after
12 you had reported that, did law enforcement converge upon you
13 and the other car?

14 A Yes. Yes, they did.

15 Q And at that time, did you tell law enforcement that
16 yes, that's the people who shot me?

17 A Originally, yes, I did, and then they stepped out and I
18 noticed there was a female with them, and that's when I told
19 them --- I mean, you can hear it on tape as well, but I
20 said, "No, that's not them."

21 Q And then after that, didn't you tell them after you had
22 seen there was a woman, "Oh, yeah, that's them"? Didn't you
23 tell them that again?

24 A I kept saying, "Oh, yeah, that's them" until I noticed
25 it was a woman, and then I said, no, it's not them.

1 Q You didn't say that afterwards?

2 A No, sir.

3 Q Okay. You were taken to the hospital. Did you tell
4 them at the hospital who shot you?

5 A I told them -- well, whenever Det. Thomas came in, I
6 described that it was a large black male.

7 Q Did you tell the hospital personnel, specifically Joyce
8 Crosby, that your wife's lover shot you?

9 A I'm not sure. I was pretty heavily medicated at that
10 time. I remember seeing Ms. Joyce, but I don't remember
11 exactly what I said to her.

12 Q Did you talk with her?

13 A I did. Because she come up to me and asked me what
14 happened and I told her that I had been shot; I recall that.

15 Q You don't recall telling her that your wife's lover
16 shot you?

17 A I could have. Like I said, I was pretty loopy. But he
18 might as well have shot me. He handed him the gun, right?

19 Q So he had the gun?

20 A And he handed it to Brian Jenkins, yes, sir.

21 MR. BEACH: Your Honor, would you indulge me just one
22 moment.

23 THE COURT: Yes, sir.

24 Q Are you certain the window was broken in the truck?

25 A I'm pretty sure. I mean, I didn't get out and check;

1 not with them three out there surrounding me.

2 Q Well, you were in the back of the truck at that time
3 were you not?

4 A I was in the bed of the truck.

5 Q Didn't you later get into the truck?

6 A I did.

7 Q Okay.

8 A I was in the front.

9 Q Okay.

10 A So I never looked back and paid no attention. I just
11 kept hearing that and it sounded like it broke. I didn't
12 inspect it, no, sir.

13 Q Thank you, sir.

14 MR. BEACH: No other questions, Your Honor.

15 THE COURT: Redirect?

16 MS. HUDSON: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. HUDSON:

19 Q Shannon, Mr. Beach asked you about whether or not Jose
20 had a gun. Did you see a gun on him?

21 A I never saw a gun on Jose Rivas.

22 Q Did you ever see him with a gun in his hand?

23 A Only whenever -- well, I couldn't tell if it was a gun
24 at the time. All I knew was it was a dark object, which in
25 turn, I knew to be a gun. So the only time he would ever

1 have a gun in his hand that I saw was when they made the
2 exchange, because from the dark object that he handed Brian
3 Jenkins, from the time that Brian grabbed it and Jose
4 pointed, he did this right here (motion of pointing a gun.)
5 and pulled the trigger.

6 Q So as far as your answer to Mr. Beach, Jose never
7 pulled a gun on you, correct?

8 A No, ma'am. No, ma'am.

9 Q But you believe that he handed the gun to the
10 defendant, Mr. Jenkins?

11 A The dark object that he handed Brian Jenkins, I was
12 shot in the leg from that dark object, yes.

13 Q And who is the one who shot that gun?

14 A Brian Jenkins.

15 Q And you saw the flash?

16 A I saw the flash and heard the bang and I have the
17 bullet lodged in my leg.

18 Q You didn't know the defendant before that night; did
19 you?

20 A I have never met him before that night, no, ma'am.
21 Never, ever seen him, met him, nothing.

22 Q So when you were asking Elmo Chapman and Harry Ross
23 when you were in the truck, "Who shot me?" that was ---

24 A I was referring to did they know who that large black
25 man was who pulled the trigger?

1 Q Do you recall if you were given any medication when
2 fire rescue took you to the emergency room?

3 A Yes, I was. They gave me a little bit of morphine to
4 hold over the pain until I got over there, because I
5 remember the EMS even saying that they normally don't give
6 out pain medications.

7 Q One more question, and actually, I'm sorry, a little
8 out of order, is it possible that the window of the truck
9 was not broken?

10 A It could be possible. I mean, I just heard him banging
11 on it and it sounded like a shattering noise, like breaking
12 glass. I do know that sometimes glass can shatter without
13 breaking and make the same sound.

14 Q Did you examine the truck at any time?

15 A I did not. I was more worried about the blood flowing
16 from my leg.

17 MS. HUDSON: No further questions, Your Honor. I'd ask
18 that he be excused.

19 THE COURT: Counsel, we get recross-examination. Take
20 a seat.

21 MS. HUDSON: I apologize, Your Honor.

22 MR. BEACH: Nothing on recross, Your Honor.

23 THE COURT: Nothing on recross?

24 MR. BEACH: No, sir.

25 THE COURT: She wishes the witness to be excused. Any

1 objection, Mr. Beach?

2 MR. BEACH: None at all, Your Honor.

3 THE COURT: You may step down from the witness stand
4 and you are excused from the trial of this case.

5 MR. PYE: Thank you, Your Honor.

6 THE COURT: Thank you. Madame Foreperson, ladies and
7 gentlemen of the jury, I'm going to take my mid-morning
8 break at this point. If I have any smokers on the jury,
9 they will take you outside. Smoking isn't permitted inside
10 the courthouse. Please do not discuss the case amongst
11 yourselves or with anybody else. I'll be right back with
12 you after you've had a chance to stretch your legs, use the
13 restroom, and do I have a smoker?

14 (One juror raises hand.)

15 THE COURT: All right. I'll take care of you. You may
16 retire to your jury room. Everyone else remain seated while
17 the jury is leaving.

18 (11:20 A.M., WHEREUPON THE JURY EXITS THE COURTROOM AND
19 THE FOLLOWING IS HELD ON THE RECORD.)

20 THE COURT: All right. We will take our mid-morning
21 break at this time.

22 (Whereupon, the Court is in recess for a brief period.)

23 (12:00 P.M., the Court resumes the trial in this case.)

24 THE COURT: Is the State ready to proceed?

25 MS. HUDSON: Yes, Your Honor.

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1 THE COURT: Is the defendant ready to proceed?

2 MR. BEACH: We are, Your Honor.

3 THE COURT: Mr. Grant, I understand that everyone has
4 had their break. Bring us the jury, please.

5 (12:00 P.M., WHEREUPON THE JURY ENTERS THE COURTROOM
6 AND THE FOLLOWING IS HELD ON THE RECORD.)

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, we will now continue with the testimony in the trial
9 of this case. You may call your next witness.

10 MS. HUDSON: Your Honor, the State calls Edward
11 Chapman.

12 MADAME CLERK: Mr. Chapman, please come forward to be
13 sworn. Place your left hand on the Bible and raise your
14 right.

15 (Whereupon, Mr. Edward Chapman is duly sworn.)

16 THE COURT: Watch your step. Have a seat and make
17 yourself comfortable. Pull that microphone up. It's going
18 to amplify your voice. State your full name and spell your
19 last name for the court reporter.

20 MR. CHAPMAN: Edward "Elmo" Chapman, C-H-A-P-M-A-N.

21 THE COURT: Your witness, counsel.

22 MS. HUDSON: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. HUDSON:

25 Q Mr. Chapman, is your nickname Elmo?

- 1 A Yeah.
- 2 Q Do you mind if I call you that?
- 3 A That's fine.
- 4 Q Is that what everybody calls you?
- 5 A Yeah.
- 6 Q Elmo, where do you live?
- 7 A I live in Silver Hills on Wintergreen Road.
- 8 Q Here in Walterboro?
- 9 A I meant on Teakwood, off of Wintergreen.
- 10 Q Okay. Are you related to Shannon Pye?
- 11 A I am; that's my brother-in-law.
- 12 Q Are you married to his sister?
- 13 A I am.
- 14 Q And she lives at the residence with you?
- 15 A Yes, ma'am.
- 16 Q Does anyone else live there?
- 17 A My son and my daughter.
- 18 Q Elmo, what do you do for a living?
- 19 A I work at Dayco.
- 20 Q How long have you worked there?
- 21 A Six years.
- 22 Q What do you do there?
- 23 A I'm the coordinator over the drum room, building drums.
- 24 Q Okay. Probably no one else can do your job?
- 25 A No, ma'am.

1 Q Do you normally have a party at your house on the 4th
2 of July?

3 A I do, every year.

4 Q Okay. Did you have one this past year in 2012?

5 A I did, yes.

6 Q Who comes to those parties?

7 A My family and my friends; mostly my family.

8 Q Are there alcoholic beverages there?

9 A Yes.

10 Q Were you drinking this past 4th of July?

11 A No. When my mom's around, I don't drink; so I wasn't
12 drinking.

13 Q Do you recall whether or not Shannon Pye and his family
14 were at your party?

15 A They were, yes.

16 Q Was it Shannon, his wife, Jordan, and their three year
17 old daughter?

18 A Yes, ma'am.

19 Q Do you recall seeing Shannon drink anything?

20 A I'm sure, yes, ma'am.

21 Q Was he drinking alcohol?

22 A I'm not sure. That's been eight months ago, now, so.

23 Q So you don't recall?

24 A I don't recall. I was cooking and other stuff, so.

25 Q Did he help you cook at all?

1 A I can't remember. I'm not sure.

2 Q Do you recall anything unusual happening at the party
3 this past year?

4 A Yes, ma'am.

5 Q What do you recall happening?

6 A About -- I'd say about two to three hours after Shannon
7 had left, he had called and wanted to know if Harry and
8 Julie were still there because his wife, Jordan, said she
9 was going to their house, which they were still at my house,
10 so there's no way she could have been at their house.

11 Q Okay. Did he come to your house at that point?

12 A No, he called.

13 Q And you told him that Harry and Harry's girlfriend ---

14 A Julie, yeah, they were still there.

15 Q Okay. Do you know Jose Rivas?

16 A I do.

17 Q Did you receive information that day that Jose was
18 having an affair with Shannon's wife?

19 A I did.

20 Q Did anything happen regarding that?

21 A Later that night, I had called him.

22 Q You had called who?

23 A I had called Jose and asked him where he was at so we
24 could talk. He told me where he was at; he was on Cypress
25 Pond Road, so me and Shannon and Harry went and met with

1 him. I figured we were real good friends; we could talk.

2 But ---

3 Q So you know Jose?

4 A Yes, real well.

5 Q What is "real well"? What kind of friends are you?

6 A Like we go fishing together, play golf, and we played
7 softball together; so real well.

8 Q So why did you contact him?

9 A I figured he was my good friend, I could figure out
10 what was going on.

11 Q Did you know that he was having an affair?

12 A I did not, no.

13 Q Did you tell him not to come back to your house?

14 A I did, yes.

15 Q Why did you tell him that?

16 A Well, because Shannon is my family, so I would rather
17 stay with family than my friend, so.

18 Q Would you say you were upset at that time?

19 A Yes, ma'am.

20 Q So you contacted Jose?

21 A I did; by text message.

22 Q By text message?

23 A Yes.

24 Q So did you actually, physically, speak with him?

25 A I did earlier in the day when I told him not to ever

- 1 come back to my house again.
- 2 Q At that time, during that phone call, did you ask to
3 meet with him?
- 4 A No.
- 5 Q Why did you text him later?
- 6 A I wanted to talk to him to see why he was doing what he
7 was doing. I thought we was good enough friends we could
8 talk about it.
- 9 Q And did he respond to that text?
- 10 A He did.
- 11 Q What did he say?
- 12 A He told me he was on Cypress Pond -- on Cypress Pond
13 Road(sic).
- 14 Q Did he ask to meet?
- 15 A No, he didn't ask to meet.
- 16 Q He did not ask to meet?
- 17 A I asked to talk to him.
- 18 Q How -- what happened next after you received the text?
- 19 A After he told me where he was, I stopped by and picked
20 Shannon up and Harry, and we went to Cypress Pond Road
21 (sic).
- 22 Q Where did you go to pick Shannon up?
- 23 A I'm not sure what the name of that road is. It's not
24 Cypress Pond. It's ---
- 25 Q Where did you go to pick Shannon up?

- 1 A At his house.
- 2 Q Was Harry with you?
- 3 A No. I stopped by his house.
- 4 Q And picked him up as well.
- 5 A Yeah.
- 6 Q So you went to meet Jose at what you recall as Cypress
- 7 Pond ---
- 8 A It's not that -- it's Clatty Farm Road; that's what it
- 9 is. It's Clatty Farm Road.
- 10 Q Is that here in Walterboro?
- 11 A It's in Johnsville, I think.
- 12 Q And did you go to meet Jose there at his request? Did
- 13 he tell you that he wanted to meet ---
- 14 A He was there, yes.
- 15 Q What time did you decide -- did the three of you decide
- 16 to go to Clatty Farm Road?
- 17 A It must have been about 12:30 or 1:00 in the morning.
- 18 Q What did you observe when you got there?
- 19 A Well, first, when I passed by the house, I saw Jose's
- 20 car in the yard, so I turned around and stopped in the road
- 21 and called for Jose to come out so we could talk.
- 22 Q What kind of car does Jose have?
- 23 A It's a red Mustang.
- 24 Q Did you see any other car?
- 25 A There was one other car in the yard, but I can't recall

- 1 what it was.
- 2 Q Were there residences around?
- 3 A It was like an old trailer or something.
- 4 Q Do you know if anybody was living in the trailer?
- 5 A I don't.
- 6 Q Were there any lights on the street?
- 7 A Yeah, there were yard lights.
- 8 Q Was it a yard light at the house or a street light?
- 9 A It was at that trailer whatever it was.
- 10 Q Was it light enough that you could see outside?
- 11 A Yes, ma'am.
- 12 Q And you initially passed by it?
- 13 A I passed by it, yes.
- 14 Q So you turned around. Where did you park exactly?
- 15 A In the middle of the road.
- 16 Q Did you get out of the truck?
- 17 A I did.
- 18 Q Who else got out of the truck?
- 19 A Me and Shannon and Harry; all of us got out.
- 20 Q What did you go once you got out of the truck?
- 21 A I called for Jose to come to the road so I could talk
- 22 to him.
- 23 Q Did he?
- 24 A Yes, he did.
- 25 Q Who was there with Jose?

- 1 A Brian Jenkins and some other fellow; I'm not sure who
2 he was.
- 3 Q So there were three people out there?
- 4 A Yes, ma'am, three people.
- 5 Q Did you see anyone else?
- 6 A No, I did not.
- 7 Q And you knew Jose?
- 8 A Yes, ma'am.
- 9 Q Did you know the other two?
- 10 A No, ma'am. Hadn't never saw them.
- 11 Q Okay. Did you know the defendant, Brian Jenkins?
- 12 A No, ma'am.
- 13 Q Had you met him before?
- 14 A Never.
- 15 Q Was he the only black male out there?
- 16 A Yes.
- 17 Q Do you know now who the other individual was?
- 18 A No, ma'am.
- 19 Q So you had never met him either?
- 20 A No, ma'am.
- 21 Q What did you do once you -- did you approach Jose?
- 22 A He came running in the road, so.
- 23 Q Did he come running alone?
- 24 A No. The other two fellows came with him.
- 25 Q What happened once he was in the road?

- 1 A He started talking to Shannon, and the other fellow
2 came in the road and he was getting, like, real loud, real
3 loud in the road, hollering and stuff, and he had a knife in
4 his hand, so I took a swing at him, not sure if I hit him,
5 but he took off running in the yard and went into Jose's
6 glove compartment in his car. I'm not sure what he got,
7 but.
- 8 Q Did he run to the car before you took a swing at him?
- 9 A No.
- 10 Q This was after you ---
- 11 A Yeah.
- 12 Q --- took a swing at him?
- 13 A Yeah.
- 14 Q Why did you take a swing at him?
- 15 A I thought he had a -- it looked like a knife in his
16 hand. It was real shiny.
- 17 Q So were you afraid?
- 18 A Yes, ma'am.
- 19 Q When you took a swing at him, what did you do?
- 20 A After I did that, Harry said, "Well, let's just go."
21 So I got in the truck because I didn't want to get into no
22 trouble, so I just got in the truck and I was waiting for
23 Shannon to get in the truck, but he never got in the
24 vehicle.
- 25 Q Did you know where Shannon was?

- 1 A I didn't know.
- 2 Q Did Shannon and Jose ever get into an argument?
- 3 A Not that I'm aware of.
- 4 Q Did they get into any sort of physical altercation?
- 5 A I don't think so.
- 6 Q Did you ever see Jose pull a gun on Shannon?
- 7 A I did not.
- 8 Q Were they shouting at one another or gesturing?
- 9 A Yes, ma'am.
- 10 Q When you got back in the truck, what happened?
- 11 A That's when somebody started beating on the side of
- 12 truck. I don't know who it was. I couldn't see anything.
- 13 The truck windows were tinted.
- 14 Q So the windows were up?
- 15 A Yeah, up.
- 16 Q But you heard someone beating on the window?
- 17 A Yeah, somebody was beating on the side of the truck.
- 18 Q And what did you do once you heard that?
- 19 A I just sat in the truck waiting on Shannon to get in
- 20 the truck. That's when somebody stabbed the tire and the
- 21 tire went flat.
- 22 Q And how do you know that the tire went flat?
- 23 A I could hear the air coming out of it.
- 24 Q And how do you know that the tire was flat?
- 25 A I could just hear the air coming out of it.

- 1 Q Did you see who did it?
- 2 A I did not, no.
- 3 Q And what did you do at that point?
- 4 A I just sat in the truck. I was waiting on Shannon to
5 get in the vehicle so we could leave.
- 6 Q Did you attempt to leave?
- 7 A I did.
- 8 Q Did you attempt to leave after the tire was slashed?
- 9 A Yes, ma'am.
- 10 Q Did you leave entirely at that point?
- 11 A No.
- 12 Q Why not?
- 13 A I was still waiting on Shannon to get in the vehicle.
- 14 Q So you stopped the truck?
- 15 A Yes, ma'am.
- 16 Q Did you leave again at that point?
- 17 A I did. When Shannon jumped in the back of the truck,
18 that's when I left.
- 19 Q So Shannon was in the bed of the truck?
- 20 A Yes, ma'am.
- 21 Q Did you witness anything after that?
- 22 A No.
- 23 Q After Shannon was in the back of the truck, what did
24 you do?
- 25 A I went down the road about a quarter of a mile and I

1 stopped so he could get in the front, and that's when he
2 said he had been shot, so that's when I tried to get him to
3 the hospital.

4 Q So you didn't know that he had been shot?

5 A I did not, no.

6 Q You didn't hear a gun being fired?

7 A No, ma'am.

8 Q Why did you not hear a gun being fired?

9 A My truck was dueled out, so that's all I could hear was
10 the truck. I didn't hear a gun shot.

11 Q And you were driving on three tires?

12 A Yes, ma'am.

13 Q The fact that you were driving on three tires, was that
14 difficult?

15 A Could have been.

16 Q Was it loud riding on the rim?

17 A Yes, ma'am.

18 Q So you found out he was shot once he got back in the
19 truck. What did you do at that point?

20 A I told him to call 9-1-1 and then I tried to get to the
21 hospital. That's when the EMS met us on Mt. Carmel Highway.

22 Q So did you call 9-1-1?

23 A Shannon did.

24 Q Did you ever speak with the 9-1-1 operator?

25 A No, ma'am.

1 Q Let me ask you this, did you see a red car following
2 you?

3 A It was a vehicle. I'm not sure what color it was.

4 Q Were you concerned that it was the defendant?

5 A No, ma'am, I wasn't.

6 Q When EMS arrived, did they transport Shannon to
7 Colleton Medical Center?

8 A They did, yes.

9 Q Did you at that point get out and examine the truck?

10 A I did, yes.

11 Q What kind of damage was done to your truck?

12 A I mean, he slashed the tire and when I looked, the rim
13 was shooting sparks off, so it was worn down and there was a
14 bullet hole in the tailgate of the truck.

15 Q How much is your truck worth?

16 A Ten thousand dollars.

17 Q Did you get an estimate on the damage that was done?

18 A I did. It was \$5,000 worth of damage.

19 Q And that was the damage done to the tire, the window,
20 and the tailgate?

21 A Yes, ma'am.

22 Q Was the window shattered?

23 A No.

24 Q Was it damaged?

25 A It had, like, chip marks in it.

1 MS. HUDSON: Beg the court's indulgence for one moment.

2 Q I have no further questions at this time. Please answer
3 any questions that Mr. Beach may have.

4 THE COURT: Cross-examination?

5 MR. BEACH: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. BEACH:

8 Q Mr. Chapman, where did you first see the knife?

9 A When Brian Jenkins was standing in the road, he was
10 hollering; that's when he had the knife.

11 Q What was he hollering?

12 A He was hollering, "You're sizing me up. You're sizing
13 me up." I was just standing in the road.

14 Q And was the other fellow with him?

15 A Which other fellow?

16 Q Other than Mr. Rivas, you had Mr. Rivas, you had the
17 defendant, and you had the other fellow.

18 A There was some fellow, yes, sir. He was just standing
19 in the yard.

20 Q Did he come out and help in any way?

21 A Did not.

22 Q You say that Mr. Jenkins pulled out a knife?

23 A Yes, sir.

24 Q Where did he have the knife?

25 A It was in his left hand.

1 Q Did he pull it out of his shirt or ---
2 A I'm not sure. He had it evidently when he came into
3 the road.
4 Q Okay. And how big a knife was it?
5 A It was like maybe a six inch knife, a steak knife or
6 something; I'm not sure.
7 Q Sort of like a kitchen knife?
8 A Yeah, something like that.
9 Q And you swung at him?
10 A I sure did.
11 Q And you knocked him down?
12 A I'm not sure if I hit him, but he took off running,
13 yes, sir.
14 Q But he went down.
15 A Yeah.
16 Q All right. So he got up and he ran to Jose's car.
17 A Yes, sir.
18 Q How far away was that?
19 A Maybe 30 yards.
20 Q And did he -- you say he went in the glove compartment?
21 A He went in the passenger door in the glove box.
22 Q And the car was parked so that you could see that?
23 A Yes, sir.
24 Q Did you see him get something out of the glove box?
25 A I didn't see him get anything out of the car.

1 Q All right. Then, what did he do?

2 A Then he came back into the road. Well, he was walking
3 back to the road as I was getting back in my truck.

4 Q Where was Jose at this time?

5 A I'm not sure.

6 Q Did you see Jose run over to you and the defendant?

7 A No, sir. I got back in my vehicle. I was going to
8 leave.

9 Q And about how long did all of this take, from first
10 pulling the knife to you going to your vehicle?

11 A Maybe five minutes, seven minutes.

12 Q Okay. And did anybody say anything to you?

13 A No, sir.

14 Q Nobody was cursing you or threatening you?

15 A No, sir.

16 Q What about Mr. Rivas, did he say anything?

17 A No, sir.

18 Q And the defendant, did he say anything?

19 A He was just hollering in the road, "You're sizing me
20 up. You're sizing me up."

21 Q This was before you swung at him, though. Did he say
22 anything after you swung at him?

23 A No. He took off running in his yard. That's when I
24 got in my vehicle.

25 Q Okay. You got in the vehicle. You say the vehicle has

1 tinted windows?

2 A Yes, sir.

3 Q And you could not see who was out there?

4 A I could not see, no.

5 Q How well-lighted was that area?

6 A It had a yard light in the yard and that was it.

7 Q It was pretty dark by your truck, wasn't it?

8 A Yes, sir.

9 Q And so you could not see who was beating on your truck?

10 A I could not.

11 Q So you don't know whether it was ---

12 A I'm not sure who it was.

13 Q Did you see the defendant fire a weapon?

14 A I did not.

15 Q Did you see anyone fire a weapon?

16 A I did not.

17 Q In fact, did you know a weapon had been fired before

18 you were told?

19 A No, sir.

20 Q Okay. Now, the other gentleman who was with you jumped

21 in the back of the car.

22 A Jumped in the back of the truck, yes, sir.

23 Q Back of the truck I mean. And Shannon, you didn't know

24 where Shannon was?

25 A I wasn't sure where he was.

1 Q You say you moved the truck before you found out where
2 Shannon was?

3 A Well, I had it in gear and it rolled forward a little
4 bit, but I stopped because he wasn't in the truck. I was
5 waiting on Shannon to get in the truck.

6 Q When did you hear the tire being deflated?

7 A That was -- somebody beat on the window two or three
8 times and then I heard the air coming out of the tire.

9 Q Did anybody say anything to you about "I'm going to cut
10 your tire if you don't get out of here," or anything like
11 that?

12 A No.

13 Q And the only people you saw in the yard were ---

14 A Three people. Jose and the other two fellows. I
15 didn't know who they were.

16 Q Did you see any other cars around there other than the
17 two you mentioned?

18 A No.

19 MR. BEACH: Indulge me for just a moment, Your Honor.

20 THE COURT: Yes, sir.

21 MR. BEACH: Mr. Chapman, I have no further questions.

22 THE COURT: Redirect?

23 MS. HUDSON: No further questions, Your Honor.

24 THE COURT: As to this witness?

25 MS. HUDSON: Ask that he be excused, Your Honor.

1 THE COURT: Subject to my order?

2 MS. HUDSON: Yes, Your Honor.

3 THE COURT: Any objection, Mr. Beach?

4 MR. BEACH: None, Your Honor..

5 THE COURT: You may step down, Mr. Chapman. You're
6 excused from the trial of this case. Call your next
7 witness.

8 MS. HUDSON: Your Honor, the State calls Harry Ross.

9 MADAME CLERK: Please come forward and be sworn. Place
10 your left hand on the Bible and raise your right.

11 (Whereupon, Mr. Harry Ross is duly sworn.)

12 THE COURT: Have a seat for me. Adjust that chair and
13 that microphone. It's going to amplify your voice. State
14 your name and spell your last name for the court reporter.

15 MR. ROSS: Harry Franklin Ross, R-O-S-S.

16 THE COURT: Your witness, counsel.

17 MS. HUDSON: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. HUDSON:

20 Q Harry, can I call you Harry?

21 A Yes, ma'am.

22 Q Harry, where do you live?

23 A At [REDACTED]

24 Q Is that in Walterboro?

25 A Yes, ma'am.

- 1 Q Are you related to Elmo Chapman?
- 2 A Yes, ma'am, that's my cousin.
- 3 Q Were you at his house on 4th of July of last year?
- 4 A Yes, ma'am.
- 5 Q Is this a usual occurrence?
- 6 A Yes, ma'am. Every 4th we get together over there.
- 7 Q Is it a family event?
- 8 A Yes, ma'am.
- 9 Q Who were you there with?
- 10 A Me and my girlfriend and my kids.
- 11 Q And what is your girlfriend's name?
- 12 A Julie McLaine.
- 13 Q Do you know whether or not there was alcohol being
- 14 served at this barbecue?
- 15 A Yes, ma'am. I had a few drinks.
- 16 Q So you were drinking at the barbecue?
- 17 A Yes, ma'am.
- 18 Q Do you drink often?
- 19 A I drink maybe once or twice a week.
- 20 Q And I'm sorry, Harry, what do you do for a living?
- 21 A Heating and air conditioning.
- 22 Q Are you an independent contractor?
- 23 A Yes, ma'am.
- 24 Q Who was at the party?
- 25 A It was me, my girlfriend, Shannon, Jordan, Elmo and his

1 wife, and their kids; I believe that is all that was there.

2 Q Possible other family members?

3 A Yeah, I think Elmo's moma was there.

4 Q Do you recall anything unusual about anything that
5 occurred at the party?

6 A No, not really.

7 Q Do you recall anything unusual that occurred later in
8 the evening?

9 A No, ma'am.

10 Q Do you recall going with Shannon and Elmo to Clatty
11 Farm Road?

12 A Yes, ma'am.

13 Q Do you know why you were going to Clatty Farm Road?

14 A Well, I was told that they were just going out there to
15 talk.

16 Q Who were they going to go talk to?

17 A To Jose.

18 Q Do you know Jose?

19 A Yes, ma'am.

20 Q Who is Jose?

21 A Joe Rivas.

22 Q Okay. Is he a friend of yours?

23 A Well, he's a friend of Elmo's, and yeah, I reckon, a
24 friend of mine, too.

25 Q Have you ever been around him?

- 1 A We've been fishing and stuff before.
- 2 Q Would you consider him a close friend or an
- 3 acquaintance?
- 4 A An acquaintance.
- 5 Q Do you know Shannon Pye?
- 6 A Yes, ma'am.
- 7 Q Who is Shannon?
- 8 A That is Elmo's wife's brother.
- 9 Q Do you know him well?
- 10 A Fairly well.
- 11 Q So why were you going with Elmo and Shannon to Clatty
- 12 Farm Road?
- 13 A Well, we had all been together and stuff, and I was
- 14 just tagging along pretty much.
- 15 Q Did you know the reason you were going out there?
- 16 Besides talking, did you know why you were going to go talk?
- 17 A Yeah, because Jordan was having an affair with Jose,
- 18 and that's what they were going to talk about.
- 19 Q How did you feel about going out there?
- 20 A I was just going with whatever was happening at the
- 21 time.
- 22 Q Were you concerned?
- 23 A No, ma'am, not really.
- 24 Q What time did you go out to Clatty Farm Road?
- 25 A I'd say it was probably between 12 and 1:00.

1 Q And do you recall when you got there who was there?

2 A I'm not quite sure of the other two, but I know Jose
3 and two other people were there.

4 Q Can you describe to me the two other people who were
5 out there?

6 A Yes, ma'am. They was -- I thought there was two black
7 boys there, but they said, you know, that one might have
8 been Mexican.

9 Q Was one bigger than the other?

10 A Yes, ma'am.

11 Q Okay. How much bigger?

12 A A good bit bigger and a tall fellow, and then one was
13 kind of short.

14 Q Had you met either one of these individuals?

15 A No, ma'am.

16 Q Did you get out of the truck?

17 A Briefly.

18 Q Let me back up for a minute. When you got there, did
19 you pull into a driveway when you got there?

20 A No, we actually stopped in the road.

21 Q How did you stop in the road?

22 A Well, we went past the house, because we didn't quite
23 know where the location was and turned around and then came
24 back and kind of pulled right there in the road and stopped
25 in front of the house.

- 1 Q Were there residences around?
- 2 A Yes, ma'am.
- 3 Q How many residences would you say were around?
- 4 A I think it was just that one on the one side of the
- 5 road, their residence.
- 6 Q Would that have been on your right or your left?
- 7 A On the right hand side.
- 8 Q Was it a trailer?
- 9 A Yes, ma'am, it was a trailer.
- 10 Q Were there lights on?
- 11 A I believe so.
- 12 Q Do you recall if there was a street light?
- 13 A Yes, ma'am.
- 14 Q So could you see everything around you?
- 15 A I could see fairly decent.
- 16 Q When you got there, did you exit the truck?
- 17 A Yes, ma'am.
- 18 Q Did you walk with Shannon and Elmo?
- 19 A Yes, ma'am.
- 20 Q Did Jose and Shannon get into an argument?
- 21 A Yes, ma'am.
- 22 Q Was there a physical altercation between the two of
- 23 them?
- 24 A No, ma'am.
- 25 Q At any time did Jose pull a gun on Shannon?

- 1 A No.
- 2 Q Threaten to pull a gun on Shannon?
- 3 A I didn't hear him threaten him.
- 4 Q Did Shannon have a gun?
- 5 A No, ma'am.
- 6 Q What do you recall once you got out of the truck, what
7 do you recall happening?
- 8 A Well, Jose come out there and that's when they started
9 talking or whatever, and then the other fellow came out
10 there and then Elmo got into a altercation and I don't know,
11 I reckon Elmo hit him or something, and that's when I seen
12 him run back towards Jose's car. And that's when I started
13 running, me and Elmo started heading back towards our truck
14 and Shannon was on the way back towards the truck and that's
15 when the gun shots started.
- 16 Q You said that you saw who run to the car?
- 17 A The bigger black fellow. I assume it was Brian.
- 18 Q Do you see that individual in the courtroom here today?
- 19 A I'm not sure.
- 20 Q You can stand up if you need to.
- 21 A I'm not sure.
- 22 Q All right. He ran to the car?
- 23 A Yes, ma'am.
- 24 Q Was he getting anything out of the car?
- 25 A Well, I was kind of headed back towards my truck at the

1 same time he was headed towards the car, and then when he
2 approached back in the middle of the road, that's when the
3 gunshot started.

4 Q Do you recall anyone hitting the windows?

5 A Yes, ma'am.

6 Q Did you see who was hitting the windows?

7 A I believe the shorter fellow was doing -- beating on
8 the windows.

9 Q Do you recall the tire being slashed?

10 A Yes, ma'am.

11 Q Do you know who did that?

12 A I'm not sure.

13 Q Could you see out the windows?

14 A Well, I was kind of laying down in the back seat so I
15 wouldn't get shot.

16 Q Did you see who shot the gun?

17 A No, there was only three of us out there, and the other
18 two, Jose and the other boy was beside the truck. The
19 bigger boy was the only one behind the truck.

20 Q Did you see him with a gun in his hand?

21 A No, I was kind of ducking in the back of the truck, so.

22 Q Did you see any sort of flash from where he was
23 standing?

24 A I had seen some lights flash up from the gunfire.

25 Q Did you hear the gunshot?

1 A Yes, ma'am.

2 Q How many times did you hear a gunshot?

3 A I want to say three times.

4 Q Did you know that Shannon had been struck?

5 A Yes, ma'am, when he fell suddenly in the back of the
6 truck, I thought he had been shot.

7 Q When you were in the truck ducking down, how did you
8 see the flash if you were ducking down in the back of the
9 truck?

10 A Well, I kind of picked my head up right there to the
11 back window, like that, and then kind of pulled my head back
12 down. So as I was looking back, I could see the flash of
13 the gun.

14 Q Was it lit where he was standing? Could you see him?

15 A Yes, ma'am. There was a street light. It was still
16 dark, you know.

17 Q When Elmo got back in the truck, did he drive off?

18 A Yes, ma'am. Shannon wasn't quite in the truck yet, so
19 we kind of had to, you know, we were slowly easing off until
20 he jumped in the back of the truck and then we tried to get
21 on out of there.

22 Q When someone was beating on the windows and slashing
23 the tire, had you already started to pull off or had that
24 happened first?

25 A No, ma'am. We were easing off as they were beating on

- 1 the side of the truck and stabbed the tire.
- 2 Q And again, why didn't Elmo stop the truck?
- 3 A Because Shannon wasn't in the truck.
- 4 Q Did Shannon get in the truck at that time?
- 5 A He jumped in the back of the truck.
- 6 Q When did Shannon finally get in the truck ?
- 7 A I think after we kind of got to the end of the road
- 8 down there, he stopped and then jumped in the front of the
- 9 truck.
- 10 Q And at that time, did you realize that Shannon had been
- 11 shot?
- 12 A Yes, ma'am.
- 13 Q Did he say anything about being shot?
- 14 A Shannon?
- 15 Q Yes.
- 16 A Yes, ma'am. He was bleeding out of his leg and stuff.
- 17 Q Do you recall who called 9-1-1?
- 18 A I believe Shannon called 9-1-1.
- 19 Q Was there a call that was following y'all?
- 20 A Yes, ma'am. We thought we were being chased at the
- 21 time, but I don't think it was. We thought we were being
- 22 chased by the same people.
- 23 Q Why do you think you were being chased by the same
- 24 people?
- 25 A Well, we had just been shot at and Shannon had been

1 shot, so you know, I didn't know if they were trying to come
2 finish the job on out or what they was planning on doing.

3 MS. HUDSON: Your Honor, no further questions at this
4 time.

5 THE COURT: Cross-examination.

6 MR. BEACH: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. BEACH:

9 Q Mr. Ross, you didn't see the shooting, did you?

10 A No, sir.

11 Q Did you ever see the defendant, the gentleman sitting
12 over at the table, did you ever se him with a gun in his
13 hand?

14 A No, sir.

15 Q You say he left and went toward a car?

16 A Yes, sir.

17 Q He didn't stay there in the road?

18 A No, sir.

19 Q He came back in the road?

20 A Yes, sir.

21 Q Do you know if he was already back in the road when
22 y'all left?

23 A Yes, sir.

24 Q You saw him in the road?

25 A Yes, sir.

- 1 Q And so, he was where in the road? In the middle of the
2 road? On the side of the road? How would you characterize
3 it?
- 4 A In the middle; more in the middle of the road.
- 5 Q In the middle of the road?
- 6 A Yes, sir.
- 7 Q And y'all were parked in the middle of the road or were
8 you parked on the right side as traffic would be going?
- 9 A Yes, sir.
- 10 Q Okay. So he was further over, actually, to your left?
- 11 A Well, yes, in the middle of the road. Probably more in
12 the lane where the car was, the truck was.
- 13 Q You say you think the other fellow was the one banging
14 on the window?
- 15 A Yes, sir.
- 16 Q And this was -- did you ever see him with anything in
17 his hand?
- 18 A The shorter fellow, yes, sir. I seen him with a knife.
- 19 Q The shorter fellow had the knife?
- 20 A Yes, sir.
- 21 Q Okay. What about the other fellow; did you ever see
22 him with a knife?
- 23 A No, sir.
- 24 Q And the shot came from which direction?
- 25 A Behind the truck.

1 Q Directly behind the truck or behind the truck to the
2 right or to the left or how close would you say?

3 A Pretty much directly behind the truck.

4 Q And do you recall telling someone that this shot came
5 from over toward the yard?

6 A No, sir.

7 Q You didn't get a telephone call and make a statement to
8 Mr. Mathews that the shot had come not from the side but
9 from more toward the yard, rather than right in the road?

10 A No, sir. He was in the road.

11 Q But it's your interpretation that the shorter fellow
12 was the one beating on the window?

13 A Yes, sir.

14 Q And the shorter fellow was the one with the knife?

15 A Yes, sir.

16 Q And the shorter fellow was the one who shredded the
17 tire?

18 A Yes, sir.

19 MR. BEACH: Indulge me a moment, Your Honor?

20 THE COURT: Yes, sir.

21 (Brief pause in the courtroom.)

22 MR. BEACH: I don't think I have any other questions,
23 Your Honor. Thank you, Mr. Ross.

24 THE COURT: Redirect?

25 MS. HUDSON: Briefly, Your Honor.

Redirect Examination of Harry Ross by Ms. Hudson
Cross-Examination of Harry Ross by Mr. Beach

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REDIRECT EXAMINATION

BY MS. HUDSON:

Q Mr. Ross, is it possible that you weren't able to see everything from where you were in the backseat of the truck?

A Oh, yes, ma'am.

Q So are you positive that the other fellow had the knife and was doing the damage to the truck?

A I'm pretty positive on that.

Q Okay. But could you see from where you were who was doing the damage?

A From the time that I ducked and from the shots and stuff, you know, I tried to kind of hold my face down for a little bit, but yes, ma'am, I could hear him beating on the side of the window while I was laying in the backseat looking up out the window.

Q Okay. You are positive, however, that the larger black male is the one who shot the gun?

A Yes, ma'am.

MS. HUDSON: No further questions, Your Honor.

THE COURT: Recross, limited to redirect.

MR. BEACH: Thank you, Your Honor.

RE CROSS-EXAMINATION

BY MR. BEACH:

Q Is it your testimony that you could be wrong? That it could have been the larger fellow on the side of the

1 truck?

2 A No, sir.

3 Q You're absolutely sure of that?

4 A Yes, sir.

5 MR. BEACH: No other questions, Your Honor.

6 THE COURT: As to this witness, Solicitor?

7 MS. HUDSON: Ask that he be excused, Your Honor.

8 THE COURT: You may step down and you are excused from

9 the trial of this case. You may leave the courtroom.

10 MR. ROSS: All right. Thank you.

11 THE COURT: Counsel approach.

12 (Whereupon, a bench conference is held off the record

13 and out of the hearing of the jury.)

14 THE COURT: Let's proceed. Call your next witness.

15 MS. HUDSON: Your Honor, the State calls Deputy Jacky

16 Lawson.

17 MADAME CLERK: Please come forward to be sworn.

18 (Whereupon, Deputy Jacky Lawson is duly sworn.)

19 THE COURT: Mr. Lawson, have a seat. Make yourself

20 comfortable. Pull that chair up and adjust that microphone.

21 State your full name and spell your last name for the court

22 reporter.

23 DEP. LAWSON: Jacky Lynn Lawson, L-A-W-S-O-N.

24 THE COURT: Your witness, counsel.

25 MS. HUDSON: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY ASST. SOL. HUDSON:

3 Q Dep. Lawson, where are you employed?

4 A I am employed with the Colleton County Sheriff's

5 Office.

6 Q And what is your rank?

7 A Sergeant First Class, Shift Supervisor.

8 Q Are you on road patrol?

9 A I am Supervisor of Team Three Road Patrol, yes.

10 Q And how long have you done this?

11 A I've been a deputy since 2004.

12 Q And have you always been a road deputy?

13 A I served 25 years with the Highway Patrol. I've got a

14 little over 33 years' service right now.

15 Q Sgt. Lawson, do you recall an incident that occurred on

16 July 5th of last year?

17 A Yes, ma'am.

18 Q I believe for you it would have been a call out to Mt.

19 Carmel Road?

20 A Yes, ma'am.

21 Q And is that in Walterboro?

22 A Yes, it is.

23 Q Do you recall the reason you were dispatched to that

24 location?

25 A We received a communication by radio from Colleton

1 County 9-1-1 Dispatch that a victim had been shot and he
2 believed that the suspect was following him, so we
3 proceeded, my team and I, to Mt. Carmel Road to locate the
4 victim and stop the suspects, if that was the suspects.

5 Q And did you respond to that scene?

6 A Yes, I did.

7 Q And you had been told that the incident had taken place
8 at Clatty Farm Road?

9 A We determined that after we -- we stopped the car that
10 was behind the victim and that turned out not to be the
11 suspects. We released those two individuals and secured
12 medical -- we called medical to be on the way. The victim
13 did say at that time that it was on Clatty Farm Road where
14 he had been shot, but he was unsure of the exact location of
15 where on Clatty Farm Road.

16 Q Did he tell you why he had been at Clatty Farm Road?

17 A The victim believed that his wife was having an affair
18 with a gentleman by the name of Rivas and they were going to
19 go and talk with the individual that he believed that his
20 wife was having an affair with.

21 Q Did he tell you who shot him?

22 A He said it was a black male. He couldn't identify who
23 it was at that time.

24 Q Did he specify whether or not he was short or tall or?

25 A I believe he said it was a larger black male. The

1 gentleman he suspected of having an affair with his wife was
2 a Hispanic male. He was larger than the Hispanic.

3 Q Is Clatty Farm Road in Walterboro?

4 A Clatty Farm Road connects Mt. Carmel Highway and
5 Sunrise.

6 Q So that's in Colleton County?

7 A That's in Colleton County, in Smoaks.

8 Q While you were there, did you notice that the victim
9 was injured?

10 A The victim had a gunshot wound, I think it was two
11 inches below the knee of the left leg. If you don't mind,
12 I'll check just to be sure I have the right leg, the correct
13 side of the leg there. (Brief pause while Sgt. Lawson
14 checks his notes.) A single gunshot wound to the left leg
15 several inches below the knee.

16 Q And you called for medical for that reason?

17 A Yes.

18 Q Did you call for Fire Rescue?

19 A Yes, ma'am.

20 Q Did they arrive at the scene while you were there?

21 A Yes, ma'am.

22 Q What was the condition of the victim at that time?

23 A We calmed the victim down and elevated his leg. He
24 remained calm. He was very talkative. It appeared to be a
25 smaller caliber. I was never able to determine what size

1 projectile hit him though, and he answered questions as well
2 as he could under the circumstances, and then they
3 transported him to the hospital.

4 Q Did you notice the condition of the truck while you
5 were on scene at Mt. Carmel?

6 A Yes. The tailgate had a hole from a gunshot projectile
7 in the center top. The left rear tire had been cut and the
8 glass by the driver's side had scratching on it where a hard
9 object had been run across the glass.

10 Q Did you ever go to Clatty Farm Road?

11 A No, ma'am.

12 MS. HUDSON: Your Honor, no further questions at this
13 time. Please answer any questions that Mr. Beach may have.

14 THE COURT: Cross-examination?

15 MR. BEACH: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BEACH:

18 Q Sgt. Lawson, y'all intercepted another car that night,
19 did you not?

20 A Yes, we did.

21 Q It was a red car?

22 A I don't remember the color. It was called in by one of
23 the individuals on 9-1-1, speaking to the dispatcher, that
24 they thought the suspect was the people in the car behind
25 them. We conducted a felony stop and removed a male and a

1 female, I believe it was, out of the car at gunpoint,
2 detained them briefly, and the individuals in the victim's
3 car looked at them and said, no, that was not them. I,
4 being the supervisor, apologized, we cut them loose and
5 tried to explain why we detained them and they left.

6 Q Earlier than you cutting them loose, didn't they tell
7 you that yes, those were the suspects?

8 A Prior to them looking at the suspects out of the
9 vehicle, once we got them detained, they initially thought
10 those were the suspects still following them is why they
11 called in.

12 Q And after you got them out, didn't they immediately
13 say, no, that's a woman, and didn't they immediately say
14 after that, yes, that's them?

15 A I do not recall them saying that that was them. They
16 said that was not them.

17 Q And you let those folks go?

18 A We identified them and released them, yes.

19 Q Now, what kind of a truck was this; do you recall?
20 Roughly, not exact.

21 A Like I said, I can look at my notes here. I've been up
22 since yesterday on night shift.

23 Q I apologize for this. We will get you out of here as
24 quickly as we can.

25 A Not a problem sir. (Brief pause while Sgt. Lawson

1 reviews his notes.) I believe a Ford F-150.

2 Q A Ford F-150 is a full-size pickup, is it not?

3 A Yes, sir.

4 Q And is that a crew cab?

5 A I really don't recall whether it was a crew cab or not,
6 sir. I secured the scene and waited on the detective to
7 arrive.

8 Q Okay. Now, those are fairly good size pickups, are
9 they not?

10 A Yes, sir.

11 Q How far would you say would be from the top of the
12 tailgate to the ground?

13 A I could only guess at that, and it's probably three to
14 four feet off the ground, I would think. Then, again,
15 that's a guess. I don't know for sure.

16 Q And how tall is the tailgate? Do you have an opinion
17 as to that?

18 A No, sir. Like I said, I basically secured the scene
19 and waited on the investigator. That's my primary function.

20 Q Okay. Did he tell you anything about the incident?
21 Mr. Pye, did he tell you anything about what happened?

22 A That's the victim who was shot?

23 Q The victim that was shot.

24 A He briefly said that he thought his wife was cheating
25 with a Rivas subject. And he wanted to confront him

1 with -- he and his occupants went to Clatty Farm Road to
2 confront Mr. Rivas.

3 Q So his beef was with Mr. Rivas?

4 A That's my understanding, yes.

5 Q Did he tell you if he knew who this other fellow was?

6 A No.

7 MR. BEACH: No other questions, Your Honor.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION

10 BY MS. HUDSON:

11 Q Did he also tell you that Mr. Rivas did not shoot him?

12 A Yes, ma'am, that is correct.

13 Q Who did he say shot him?

14 A The unknown black male was the suspect who came after
15 one of the occupants with a knife, slashed the tire, they
16 jumped into the back of the pickup truck and shots were
17 fired.

18 Q And he said that this unidentified black male is the
19 individual who shot at him?

20 A Yes.

21 MS. HUDSON: No further questions, Your Honor.

22 THE COURT: Recross, limited to redirect?

23 MR. BEACH: Thank you, Your Honor.

24 RECROSS-EXAMINATION

25 BY MR. BEACH:

1 Q He told you that he thought it was the fellow who shot
2 him that was beating on the window?

3 A It was the unidentified black male. The male initially
4 was the one who cut the tire and everybody jumped into the
5 truck or jumped into the bed of the truck.

6 Q So the fellow who was doing this cutting and all this
7 other stuff is the same fellow who was the shooter?

8 A Yes.

9 MR. BEACH: No other questions, Your Honor.

10 THE COURT: As to this witness, Solicitor?

11 MS. HUDSON: I'd ask that he be excused.

12 THE COURT: Any objection, Mr. Beach?

13 MR. BEACH: None, Your Honor.

14 THE COURT: Mr. Lawson, you are excused from the trial
15 of this case and you may leave the courtroom.

16 Madame Foreperson, ladies and gentlemen of the jury,
17 we're going to stop at this point for our lunch break.

18 Lunch will be served for you in your jury room. Please do
19 not discuss the case. If I've got smokers during lunch, they
20 will take you outside after lunch. I hope everyone has a
21 pleasant lunch. As soon as I know you've had your lunch and
22 that I've had a chance to let the parties have lunch, we
23 will start back. I hope that won't be longer than
24 approximately one hour from now. Thank you very much. You
25 may retire to your jury room.

1 (WHEREUPON THE JURY EXITS THE COURTROOM AND THE
2 FOLLOWING IS HELD ON THE RECORD.)

3 THE COURT: All right. Counsel, we're going to take
4 our lunch break from now until 2:00. Trying to anticipate
5 the status of this matter, I would ask that if either one of
6 you have any requests to charge in this case, that you
7 submit them to my law clerk by 5:00 today. Thank you very
8 much. We are in recess until 2:00.

9 (Whereupon, the Court is in recess in the trial of this
10 case for lunch. Thereafter, at 2:00 p.m., the Court
11 reconvenes in the trial of this case.)

12 THE COURT: Is the State ready to proceed?

13 MS. HUDSON: We are, Your Honor.

14 THE COURT: Is the defendant ready to proceed?

15 MR. BEACH: Yes, Your Honor.

16 THE COURT: Mr. Grant, I understand the jury is ready.
17 Bring us the jury, please.

18 (2:00 P.M., WHEREUPON, THE JURY ENTERS THE COURTROOM
19 AND THE FOLLOWING IS HELD ON THE RECORD.)

20 THE COURT: Ladies and gentlemen of the jury, we will
21 now continue with the testimony in the trial of this case.
22 Call your next witness.

23 MS. HUDSON: Your Honor, the State calls Cindel Lawson
24 with the Colleton County Sheriff's Office.

25 MADAME CLERK: Please come forward to be sworn.

1 (Whereupon, the witness, Ms. Cindel Lawson, is duly
2 sworn.)

3 THE COURT: Watch your step. Have a seat. Pull that
4 chair up. Adjust the microphone. I want you to use it to
5 amplify your voice. Speak up so everybody can hear you.
6 State your full name and spell your last name for my court
7 reporter.

8 MS. LAWSON: Yes, sir. It's Cindel Lawson,
9 L-A-W-S-O-N.

10 DIRECT EXAMINATION

11 BY MS. HUDSON:

12 Q Ms. Lawson, where are you employed?

13 A The Colleton County Sheriff's Office in Dispatch.

14 Q How long have you been a dispatcher?

15 A Seven years.

16 Q Have you been a dispatcher for seven years only in
17 Colleton County?

18 A Yes, ma'am.

19 Q Were you working the night or the early morning hours
20 of July 5th, 2012?

21 A Yes, ma'am.

22 Q Do you recall getting a call regarding a gunshot wound?

23 A Yes, ma'am.

24 Q What do you recall from that, the call that you
25 received?

1 A That a male was somewhere on Clatty Farm Road; he
2 couldn't give me an exact address. He was on Mt. Carmel at
3 the time of the call. He said that he had been shot by an
4 unknown black male somewhere on Clatty Farm Road. They were
5 still moving by the time the officer got to them.

6 Q Okay. And what is the normal procedure when you
7 receive a call like that?

8 A When we receive a call like that, we put in a call for
9 an ambulance and police. We always drop tones on the police
10 radio, which are emergency tones only. You send them an
11 ambulance and police and you get the pertinent information
12 of where they are at, where they've been shot, where the
13 suspect is, you know, and so forth.

14 Q Are the calls recorded?

15 A Yes, ma'am.

16 MS. HUDSON: Your Honor, may I approach?

17 THE COURT: You may.

18 Q Is it Deputy Lawson; is that correct?

19 A It's telecommunications Lawson.

20 Q Okay. How about Cindel?

21 A Okay.

22 Q Do you recognize -- I've just handed you what's been
23 marked as State's Exhibit Number Two. Do you recognize
24 that?

25 A Yes, ma'am.

1 Q Tell me what that is.

2 A It's a 9-1-1 recording of the 9-1-1 call from that
3 evening.

4 Q And how do you know that that is what that item is?

5 A My initials are on it from where I listened to it.

6 Q Did you listen to it in my office at my request?

7 A Yes, ma'am.

8 Q And did you initial the CD at my request as well?

9 A Yes, ma'am.

10 Q And are those your initials on that CD?

11 A Yes, ma'am.

12 Q And that is the 9-1-1 call from the early morning hours
13 of July 5th, 2012?

14 A Yes, ma'am.

15 MS. HUDSON: Your Honor, at this time, the State would
16 move State's Exhibit Number Two into evidence.

17 THE COURT: As to State's Exhibit Two, Mr. Beach?

18 MR. BEACH: We have no objection, Your Honor. We have
19 a copy.

20 THE COURT: Very well. Ladies and gentlemen of the
21 jury, State's Exhibit Number Two will be admitted into
22 evidence in the trial of this case without objection.

23 (State's Exhibit Number Two, CD of 9-1-1 call, is
24 received into evidence.)

25 THE COURT: State's Two is now in evidence. You may

1 publish to the jury.

2 MS. HUDSON: Thank you, Your Honor. May I approach?

3 THE COURT: You may.

4 MS. HUDSON: Your Honor, if it pleases the Court, I'm
5 going to ask for assistance so that we can do this fairly
6 quickly.

7 THE COURT: Ms. Rizer, will you come forward, please?

8 MS. RIZER: Yes, sir.

9 (Ms. Rizer sets up the audio recording to play for
10 jury.)

11 2:05 p.m., State's Exhibit Number two, CD of 9-1-1 call
12 begins playing for the jury. At 2:19 p.m., the audio ends
13 and is stopped.)

14 Q I have no further questions for you, Cindel. Please
15 answer any questions that Mr. Beach might have.

16 THE COURT: Cross-examination?

17 MR. BEACH: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. BEACH:

20 Q Officer, is this the only communication you had with
21 the folks involved in that conversation that night?

22 A Yes, sir.

23 MR. BEACH: No other questions, Your Honor. Thank you,
24 ma'am.

25 THE COURT: Redirect?

1 MS. HUDSON: No, Your Honor.

2 THE COURT: As to this witness?

3 MS. HUDSON: Ask that she be excused.

4 THE COURT: Any objection, Mr. Beach?

5 MR. BEACH: None, Your Honor.

6 THE COURT: Ms. Lawson, you may step down from the
7 witness stand. You are excused from the trial of this case.
8 You may leave the courtroom.

9 Call your next witness.

10 MS. HUDSON: Your Honor, the State calls Benjamin Rice
11 with the Colleton County Fire and Rescue.

12 MADAME CLERK: Please come forward and be sworn.

13 (Whereupon, Mr. Benjamin Rice is duly sworn.)

14 THE COURT: Please have a seat. Pull that chair up a
15 little bit and adjust that microphone. It's going to
16 amplify your voice. Would you begin by stating your full
17 name and spelling your last name for my court reporter.

18 MR. RICE: My name is Benjamin Greg Rice. Last name is
19 R-I-C-E.

20 DIRECT EXAMINATION

21 BY MS. HUDSON:

22 Q What is your position with the Colleton County Fire and
23 Rescue?

24 A I am a firefighter/paramedic.

25 Q And do you have a rank?

1 A No, just standard firefighter/paramedic and a field
2 training officer.

3 Q How long have you been with Fire Rescue?

4 A I've been with them for three to three and a half years
5 with a six month break in between.

6 Q Where were you employed before you were with Colleton
7 County?

8 A I was a firefighter/paramedic for Midway Fire Rescue
9 and a Paramedic First Responder in Troy, Michigan.

10 Q Do you recall being dispatched to, I believe it would
11 have been Mt. Carmel Road on July 5th of last year?

12 A Yes, ma'am, I do.

13 Q So you were on duty at that time?

14 A Yes, ma'am, at Medic 26 on Mt. Carmel.

15 Q And explain what is Medic 26. What does that mean?

16 A Medic 26 is a medic unit that is out of Station 26
17 there.

18 Q And do you recall the reason you were dispatched to Mt.
19 Carmel Road?

20 A Yes, ma'am. We were dispatched for a shooting victim.

21 Q And what did you observe when you arrived on scene?

22 A Well, when we arrived on scene, we had a vehicle on the
23 side of the road that was facing towards Walterboro on Mt.
24 Carmel, and the patient was in the passenger seat. My
25 battalion chief was bandaging the patient's wound.

1 Q And what kind of wound did he have?

2 A The patient had what appeared to be a gunshot wound to
3 his left tibia about two inches distal or below the left
4 knee.

5 Q And did you assist with the victim in any way?

6 A Yes, ma'am. I got there right as the bandaging was
7 being performed and assessed that there was an exit wound on
8 the back side of the leg. I completed dressing the wound.
9 I walked the patient to the stretcher, which was right next
10 to him, and then loaded him to the back of the ambulance and
11 thereby treated him as the head paramedic.

12 Q What was his condition at that time?

13 A At that time, the patient's condition was what we would
14 call stable. He was in pain, but he was what we would call
15 stable.

16 Q Did you give him anything for pain?

17 A Yes, ma'am, I did. I gave him four milligrams of
18 morphine.

19 Q Is that enough morphine to knock someone out or what
20 kind of effects does that have?

21 A No, ma'am. When we give morphine it's just to do what
22 we call curb the pain; take the edge off. Four milligrams
23 is a fairly low dosage, but it was enough to take the
24 patient's pain and decrease it and make him relax.

25 Q Going back to the scene for a moment, when you were

1 there, did you -- you said you noticed the vehicle in front
2 of the road?

3 A Yes, ma'am.

4 Q Did you notice whether or not there had been any damage
5 to that vehicle?

6 A I had just checked as I walked up and around the back
7 of the vehicle, I noticed what appeared to be a couple of
8 holes in the back, but that's all I saw. I didn't pay too
9 much attention because I had a patient.

10 MS. HUDSON: Your Honor, no further questions. Mr.
11 Rice, please answer any questions that Mr. Beach may have.

12 THE COURT: Cross-examination?

13 MR. BEACH: No questions, Your Honor.

14 THE COURT: As to this witness, Solicitor?

15 MS. HUDSON: Ask that he be excused, Your Honor.

16 THE COURT: Any objection, Mr. Beach?

17 MR. BEACH: No, Your Honor.

18 THE COURT: Mr. Rice, you may step down from the
19 witness stand and you are excused from the trial of this
20 case. You may leave the courtroom.

21 MR. RICE: Thank you, sir.

22 THE COURT: Call your next witness.

23 MS. HUDSON: Your Honor, the State would call Jeffrey
24 A. Holman; Dr. Holman.

25 MADAME CLERK: Please come forward and be sworn.

1 (Whereupon, Dr. Jeffrey Holman is duly sworn.)

2 THE COURT: Dr. Holman, please have a seat. Make
3 yourself comfortable. That microphone is going to amplify
4 your voice. Adjust it to your height. State your full name
5 and spell your last name for my court reporter.

6 DR. HOLMAN: It's Jeffrey Andrew Holman, H-O-L-M-A-N.

7 THE COURT: Your witness, Counsel.

8 MS. HUDSON: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MS. HUDSON:

11 Q Dr. Holman, where are you employed?

12 A I work in Walterboro, South Carolina..

13 Q You have your own practice?

14 A I have a practice that's owned by Physicians Management
15 Group, and it's called Edisto Orthopedics.

16 Q Where did you go to medical school?

17 A I completed my medical school of training at the
18 University of Texas Health Science Center in Dallas, Texas.

19 Q And did you work there initially as well or do you have
20 any other experience practicing besides in Walterboro?

21 A Yes. I finished my medical school training in 1987,
22 and then from there went to Wake Forest School of Medicine
23 in Winston Salem. I complete a year in general surgery. I
24 completed four years in orthopedic surgery training, and
25 then I did an additional year of fellowship training in

1 orthopedic traumatology and orthopedic arthroscopy, and then
2 upon completing my fellowship, I was in California for two
3 and a half years in practice before coming to Walterboro.

4 Q Have you worked in an emergency room before?

5 A I have, yes.

6 Q Have you had any additional training other than what
7 you've stated?

8 A I did spend two months in Italy doing something called
9 technique, which is a specialized orthopedic procedure where
10 we use a thin wire of fixaters to help stabilize fractures
11 and sometimes transport bone. And then, of course, there's
12 experiential training that you get from your peers and
13 mentors as well, but that's it.

14 Q Have you ever testified before?

15 A I have.

16 Q Do you know how many times you've testified?

17 A In Court, this will be my third time. In deposition,
18 somewhere between one hundred and two hundred.

19 MS. HUDSON: Your Honor, at this time, the State would
20 move to have this witness be qualified as an expert witness
21 in the field of medicine, specifically in traumatic injury,
22 shooting.

23 THE COURT: Any objection as to qualifications?

24 MR. BEACH: I have no objection to this doctor's
25 qualifications, Your Honor.

1 THE COURT: Ladies and gentlemen of the jury, you are
2 about to hear the testimony of a witness who has special
3 knowledge, skill, training, education or experience in the
4 field of orthopedic medicine, as well as traumatic injury.
5 Normally, ladies and gentlemen of the jury, the law does not
6 permit witnesses to get on the witness stand and give
7 opinion testimony or conclusion testimony. An exception to
8 this rule is for those witnesses who have qualified, we call
9 expert witnesses. A witness who has special knowledge,
10 training, experience or education in a field.

11 In determining the weight you give such opinion, you
12 should consider the qualifications and the believability of
13 the expert and the reasons given for his opinion. You're
14 not bound by such expert opinion. You give it the weight,
15 if any, to which you deem it should be entitled. The
16 witness is qualified without objection. You may proceed.

17 MS. HUDSON: Thank you, Your Honor.

18 Q Dr. Holman, you saw the victim in this case, Shannon
19 Pye; is that correct?

20 A Yes.

21 Q And did you treat Mr. Pye?

22 A I took occasion to treat him, yes.

23 Q What were his injuries or what was his injury?

24 A The patient had sustained a gunshot wound to his left
25 leg right below the knee.

1 Q And what, if any, procedures did you do for him?

2 A He was taken to the operating room and at that time, he
3 had the bullet removed from his leg and we washed -- and
4 what we call a procedure that irritated the bone to minimize
5 the risk for infection. We also trimmed out some of the
6 skin around the entrance wound to minimize any sign of skin
7 necrosis. We then closed part of the wound and then left it
8 open to drain and to not trap any infection.

9 Q Doctor, was the victim in any danger with the wound
10 that he had?

11 A Explain to me what you mean by danger; I mean, yes.

12 Q What type of condition was he in?

13 A Okay. I guess to define danger medically, was he, at
14 the time of his evaluation, in a life-threatening situation?
15 No. Was during the time of this procedure he in danger of
16 causing infection to set in his leg? Absolutely, yes. Was
17 there a danger that he would have to limit his activities --
18 I'm not sure that's a danger, but for six weeks because of
19 the nature of the injury, that's also a yes. Was he in a
20 danger of losing his limb? I would say a small degree, but
21 yes, it's a possible danger.

22 Q Would this type of injury that he had, is it possible
23 that this type of injury could have been fatal?

24 A Without medical management, yes, most definitely.

25 Q Doctor, you said that you extracted the projectile from

1 his leg; is that correct?

2 A I did.

3 MS. HUDSON: Your Honor, may I approach?

4 THE COURT: You may.

5 Q Dr. Holman, I have given you what's been marked as
6 State's Exhibit Eleven. Do you recognize the item that I've
7 handed you?

8 A It looks like the bullet.

9 MS. HUDSON: Your Honor, we have a stipulation
10 regarding chain. May we approach?

11 THE COURT: Is that correct, Mr. Beach?

12 MR. BEACH: That is correct, Your Honor.

13 THE COURT: Very well.

14 MS. HUDSON: Your Honor, given that, at this time, the
15 State would like to move State's Exhibit Eleven into
16 evidence.

17 THE COURT: Mr. Beach, any objection to State's Eleven?

18 MR. BEACH: No, Your Honor.

19 THE COURT: Ladies and gentlemen of the jury, State's
20 Exhibit Number Eleven will be admitted into evidence in the
21 trial of this case without objection.

22 (Whereupon, State's Exhibit Number Eleven, bullet, is
23 received into evidence.)

24 THE COURT: State's Exhibit Number Eleven is now in
25 evidence. You may publish to the jury, Solicitor.

1 MS. HUDSON: Thank you, Your Honor. Your Honor, I have
2 no further questions for this witness.

3 THE COURT: Cross-examination?

4 MR. BEACH: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. BEACH:

7 Q Dr. Holman, did you keep notes of this particular
8 incident?

9 A There are hospital records at Colleton Medical Center,
10 yes.

11 Q Let me show you some documents and ask you if you can
12 identify them.

13 MR. BEACH: May I approach the witness, Your Honor?

14 THE COURT: You may.

15 (Mr. Beach hands documents to witness and there is a
16 brief pause in the courtroom while he reviews them.)

17 A Thank you.

18 Q Do those appear to be the medical records in this case?

19 A These do. They comprise both the hospital records as
20 well as some of the office notes.

21 Q And are they the official records of the hospital?

22 A They appear to be representations of that, yes.

23 Q Photocopies of them?

24 A I believe so.

25 Q All right. And are those the records that you usually

1 keep with regard to any incident that happens in the
2 hospital?

3 A That's correct.

4 Q And part of that record is your record, also?

5 A That is correct.

6 Q And you've made entries into that record?

7 A There are entries of mine that are in this record, yes.

8 MR. BEACH: Your Honor, we would offer this as an
9 exhibit into evidence at this time.

10 THE COURT: Any objection?

11 MS. HUDSON: Yes, Your Honor. We would object, because
12 all of the records are not of this witness.

13 THE COURT: Counsel approach.

14 (Whereupon, there is a bench conference held off the
15 record and out of the hearing of the jury.)

16 THE COURT: The objection is sustained in part and
17 overruled in part. Dr. Holman, if you don't mind, I'm going
18 to give these records to Mr. Beach so he can take a look and
19 decide if he wants to pursue their admission into evidence
20 after he reviews them.

21 MR. BEACH: Your Honor, we may have another witness who
22 could help us with this.

23 THE COURT: That's fine. For now, do you want to put
24 in the notes of Dr. Holman at this stage, or would you
25 rather wait?

1 MR. BEACH: I'd rather wait.

2 THE COURT: Very well. Cross-examination.

3 MR. BEACH: Thank you, Your Honor.

4 Q Dr. Holman, did you examine this patient on the night
5 of the injury?

6 A Not to my knowledge, no.

7 Q Okay. When did you first see him?

8 A I believe it was approximately four days after his
9 injury.

10 Q Okay. So you weren't the admitting physician?

11 A I don't believe he was admitted. I believe he was
12 discharged from the emergency room. He followed up with me
13 -- this is to the best of my knowledge three to four days
14 later in my office for examination of the leg.

15 Q So he was discharged that evening?

16 A I believe it was a morning; I'm not certain of that. I
17 wasn't in the emergency room that day, but I believe he was
18 discharged that day.

19 Q So he was not in immediate danger of dying or anything,
20 was he?

21 A In immediate danger of dying? I wasn't there that
22 particular day, but it's not my opinion that he was.

23 Q Okay. Thank you, Doctor.

24 MR. BEACH: No other questions, Your Honor.

25 THE COURT: Very well. Redirect examination?

1 MS. HUDSON: Nothing further, Your Honor

2 THE COURT: As to this witness, Solicitor?

3 MS. HUDSON: Ask that he be excused.

4 THE COURT: Mr. Beach, any objection?

5 MR. BEACH: None, Your Honor.

6 THE COURT: Dr. Holman, you are excused from the trial
7 of this case. You may leave the courtroom at this time.
8 Call your next witness.

9 MS. HUDSON: Your Honor, the State calls Det. Dave
10 Thomas.

11 THE COURT: Come around and be sworn by the Clerk of
12 Court, please.

13 (Whereupon, Det. Dave Thomas is duly sworn.)

14 THE COURT: You know what to do. State your full name
15 and spell your last name.

16 DET. THOMAS: Riddick David Thomas, T-H-O-M-A-S.

17 Q Is it Sgt. Thomas?

18 A Yes, it is.

19 Q Sgt. Thomas, where are you employed?

20 A Colleton County Sheriff's Office.

21 Q And how long have you been employed by the Colleton
22 County Sheriff's Office?

23 A I started as a reserve officer in 1997 and I've been
24 full time since 2006.

25 Q And were you always an investigator?

1 A Since I've been full time, yes.

2 Q And how long is that? How long have you been an
3 investigator with the Sheriff's Office?

4 A Going on seven years.

5 Q Do you recall the reason you were dispatched on July
6 5th of last year? Or how did you become involved in this
7 case?

8 A I was called in the wee hours of the morning on July
9 5th. There was a gunshot victim actually in the E.R. when I
10 was called.

11 Q And did you go to the emergency room?

12 A Yes, I did. I went first to the emergency room and
13 spoke briefly with the victim and from there I went to the
14 scene on Mt. Carmel.

15 Q While you were in the emergency room, were you able to
16 speak with the victim?

17 A Briefly.

18 Q Did he talk about what happened as far as the incident?

19 A A little bit; a vague description of where, and I don't
20 remember details, but that he had been shot by some
21 individual that he didn't know.

22 Q Did he tell you where this happened?

23 A He did. He didn't give me a street address, but he
24 said at the end of Clatty Farm, almost to Highway 217,
25 Sunrise.

1 Q Is that in Walterboro?

2 A It's in Colleton County. It's up close to Smoaks.

3 Q Did he -- when speaking with him, did he mention
4 anything about who had shot him?

5 A No. He described a person who, if I remember
6 correctly, did not have any idea who it was as far as a
7 name.

8 Q I understand. What was the description that he gave?

9 A Basically, a larger black male.

10 Q But he did not have a name at that time?

11 A No, he did not.

12 Q Do you recall if he told you whether or not he knew the
13 individual who shot him?

14 A Ma'am, I'm not absolutely sure, but in my mind, I was
15 thinking he said that he did not know him.

16 Q You went from the emergency room to the scene, to
17 Clatty Farm Road; is that correct?

18 A No, ma'am. I left there and went to Mt. Carmel where
19 the vehicle was. I was in the emergency room for only a few
20 minutes, and I went to where the vehicle was that they had
21 moved him from. The vehicle was still there, so I went there
22 initially, or after I left the emergency room.

23 Q Let me back up for a moment. When you were in the
24 emergency room, did you take any photographs of the victim?

25 A Yes, I did.

1 MS. HUDSON: Your Honor, may I approach?

2 THE COURT: You may.

3 Q Sgt. Thomas, I've handed you what's been marked as
4 State's Exhibit Number Three. Do you recognize that?

5 A Yes, ma'am, that appears to be a photograph from the
6 emergency room.

7 Q Did you take that photograph?

8 A Yes, ma'am.

9 Q And that's the way the victim appeared on the early
10 morning hours of July the 5th?

11 A Yes, ma'am, it is.

12 MS. HUDSON: Your Honor, at this time, the State would
13 move State's Exhibit Three into evidence.

14 THE COURT: As to State's Three, Mr. Beach; do you want
15 to see it?

16 MR. BEACH: Yes, sir.

17 (Looks briefly at State's Exhibit Number Three.)

18 MR. BEACH: No objection, Your Honor.

19 THE COURT: Ladies and gentlemen, State's Exhibit
20 Number Three will be admitted into evidence in the trial of
21 this case.

22 (Whereupon, State's Exhibit Number Three, photo, is
23 received into evidence.)

24 THE COURT: State's Three is now in evidence; you may
25 publish.

1 MS. HUDSON: Thank you, Your Honor.

2 Q Sgt. Thomas, you also -- you were testifying when I
3 interrupted, you went to Mt. Carmel Road?

4 A Yes, ma'am, I did.

5 Q And you saw the vehicle that was still at Mt. Carmel
6 Road?

7 A Yes, I did.

8 Q First of all, what was the vehicle that you saw?

9 A It was an F-150 extended cab, four-door pickup.

10 Q And what condition was that truck in?

11 A The left rear tire was gone. Basically, it was running
12 on the rim. There were some scratches on the driver side
13 rear window, and there was a hole in the tailgate that
14 appeared to be a bullet hole.

15 Q Did you also take pictures of the vehicle while you
16 were on Mt. Carmel Road?

17 A Yes, I did.

18 MS. HUDSON: Beg the Court's indulgence. Your Honor,
19 may I approach?

20 THE COURT: You may.

21 Q Sgt. Thomas, I've given you what has been marked as
22 State's Exhibits Four through Nine. Do you recognize what
23 I've handed you?

24 A Yes, ma'am. These appear to be the photographs that I
25 took that night.

1 Q Okay. Photographs of the?

2 A Of the pickup.

3 Q And are they -- does that show the condition of the
4 truck as you saw it on July 5th?

5 A Yes, ma'am, they do.

6 MS. HUDSON: Your Honor, at this time, the State would
7 move Exhibits Four, Five, Six, Seven, Eight and Nine into
8 evidence.

9 THE COURT: As to Four, Five, Six, Seven, Eight and
10 Nine, Mr. Beach?

11 MR. BEACH: No objection.

12 THE COURT: Ladies and gentlemen of the jury, State's
13 Exhibits Four, Five, Six, Seven, Eight and Nine will be
14 admitted into evidence in the trial of this case without
15 objection. You may publish.

16 (Whereupon, State's Exhibit Number Four, photo, is
17 received into evidence.)

18 (Whereupon, State's Exhibit Number Five, photo, is
19 received into evidence.)

20 (Whereupon, State's Exhibit Number Six, photo, is
21 received into evidence.)

22 (Whereupon, State's Exhibit Number Seven, photo, is
23 received into evidence.)

24 (Whereupon, State's Exhibit Number Eight, photo, is
25 received into evidence.)

1 (Whereupon, State's Exhibit Number Nine, photo, is
2 received into evidence.)

3 Q Did you notice anything else about the scene as far as
4 on Mt. Carmel Road?

5 A There was blood in the front passenger side of the
6 truck.

7 Q Did you notice anything about the roadway from where
8 the truck had been running?

9 A No, ma'am, I didn't.

10 Q Did you take any photographs of anything other than the
11 truck?

12 A Not at Mt. Carmel.

13 MS. HUDSON: Your Honor, may I approach?

14 THE COURT: You may.

15 Q Did you go to the actual scene out at Clatty Farm after
16 you left Mt. Carmel?

17 A Yes, I did.

18 Q And what did you observe when you got to Clatty Farm
19 Road?

20 A Actually, not too much of anything. I was looking for
21 shell casings and I didn't find any. I took photograph of
22 the roadway, but there was nothing there.

23 Q Was there anyone at the scene when you got there on
24 Clatty Farm Road?

25 A No, ma'am. There was no one there.

1 Q Based on the description that the victim had given you,
2 how did you follow up with your investigation?

3 A I talked to some people in investigations about the
4 area and the description of the gentleman in question, and
5 Captain Johnson knows some people in that area and ---

6 Q Who is Captain Johnson?

7 A He is our Captain who is with the Sheriff's Office, I'm
8 sorry.

9 Q And what did he tell you?

10 A He mentioned the possibility of it being Mr. Jenkins.

11 Q And based on his suggestion, what did you do?

12 A I obtained a photo lineup from SLED of Mr. Jenkins.

13 Q And what is the process for obtaining a photo lineup?

14 A To get a photo lineup, I'll get a DMV photograph of the
15 individual in question. I will submit it to SLED and SLED
16 will then take that photograph and match it with five others
17 which look very much similar, so we'll end up with six
18 photographs on a sheet of paper and end up with the photo
19 lineup.

20 Q And what is a photo lineup commonly used for?

21 A For identification.

22 Q Do you show it to witnesses or victims?

23 A Yes, ma'am.

24 Q Did you show the lineup to the victim, Shannon Pye?

25 A Yes, ma'am, I did.

1 MS. HUDSON: Your Honor, may I approach?

2 THE COURT: You may.

3 Q Sgt. Thomas, I've handed you State's Exhibit One. Do
4 you recognize that item?

5 A Yes, ma'am, I do.

6 Q Okay. What is that item?

7 A That is the photo lineup that was shown to Shannon Pye
8 of the suspect.

9 Q How did he identify the suspect by that lineup? Or how
10 did he indicate that he identified the suspect?

11 A I presented the sheet to him with the six photographs
12 and asked him if the person in question was on there and if
13 it was, to point to it or tell me. He indicated that number
14 four was the gentleman in question. I asked him at that
15 time if he would to sign and date it if he was sure that was
16 the person.

17 Q And number four on that photo lineup is that a
18 photograph of the defendant?

19 A It is.

20 MS. HUDSON: Your Honor, at this time, the State would
21 move State's Exhibit One into evidence.

22 THE COURT: As to State's One, Mr. Beach?

23 MR. BEACH: No objection, Your Honor.

24 THE COURT: Ladies and gentlemen of the jury, State's
25 One will be admitted into evidence in the trial of this case

1 without objection.

2 (Whereupon, State's Exhibit Number One, photo lineup
3 shown to Shannon Pye, is received into evidence.)

4 THE COURT: State's Exhibit Number One is now in
5 evidence. You may publish.

6 MS. HUDSON: Thank you, Your Honor.

7 Q Did you speak to anyone else in regards to this case?

8 A Yes, I did. I spoke with Mr. Edward Chapman.

9 Q And when you interviewed him, did he make an
10 identification of the defendant?

11 A Yes, he did.

12 Q Did he state anything else relevant to this case? Did
13 he tell you how many people were out at Clatty Farm Road?

14 A Yes, he did. He said there was three people there when
15 he arrived.

16 Q Did the victim give you information as far as what had
17 occurred as well?

18 THE COURT: If you would, because of the situation
19 here, don't say victim and identify who you are talking
20 about, so the witness will understand your question.

21 MS. HUDSON: I apologize, Your Honor.

22 Q When you met with Shannon Pye at the Annex to have him
23 identify the defendant, did you also interview him?

24 A I did.

25 Q And did Shannon Pye tell you what had occurred at

1 Clatty Farm Road?

2 MR. BEACH: Your Honor, we would object to this; this
3 is hearsay.

4 THE COURT: Counsel approach.

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

7 THE COURT: Objection sustained.

8 MS. HUDSON: No further questions, Your Honor. Please
9 answer any questions Mr. Beach may have.

10 THE COURT: Cross-examination.

11 MR. BEACH: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. BEACH:

14 Q Sgt. Thomas, you say you went out to Clatty Farm Road?

15 A I did.

16 Q I believe you said there was nobody there?

17 A When I was there, there was not.

18 Q Okay. And how long did after this shooting had
19 occurred was it that you went out there?

20 A I was at the emergency room about 2:25. I arrived at
21 Mt. Carmel a few minutes after three, so it was about 4:30
22 when I was at Clatty Farm.

23 Q And you did not talk to any witnesses at the scene?

24 A I talked to them at Mt. Carmel, briefly.

25 Q Not at Clatty Farm?

- 1 A No, I did not talk to anyone at Clatty Farm.
- 2 Q Okay. Did you find any blood splatter or anything, any
- 3 blood droppings at Clatty Farm?
- 4 A I did not.
- 5 Q Did you find any shell casings?
- 6 A I did not.
- 7 Q Did you find any spent rounds?
- 8 A I did not.
- 9 Q The truck that you saw, is this a full-size pickup?
- 10 A It is.
- 11 Q And when you saw it, was the tailgate up or down?
- 12 A It was up.
- 13 Q Up? Okay. And do you know how tall that tailgate is?
- 14 A No, sir, I don't. It was pretty much a standard
- 15 pickup. It was not lowered or high. I honestly don't know.
- 16 Q And a full-size pickup is how far off of the ground?
- 17 A Sir, I honestly don't know. I mean, I know, but I
- 18 couldn't give you a measurement.
- 19 Q I understand. Did you find any blood on the truck
- 20 itself? Outside of the truck; not inside the interior?
- 21 A No, sir, I did not. I can't say there wasn't any, but
- 22 in looking, I didn't notice any outside of the truck.
- 23 Q Was there any gunshot residue analysis done of the
- 24 outside of the truck?
- 25 A There was not.

1 Q And no blood splatter or anything that you found other
2 than what you testified to inside the truck?

3 A That's all I saw, yes, sir.

4 Q Did the defendant turn himself in?

5 A Yes, sir, that's my understanding.

6 MR. BEACH: No other questions, Your Honor. Thank you,
7 Detective.

8 THE COURT: Redirect?

9 MS. HUDSON: Nothing further, Your Honor.

10 THE COURT: You may step down. Call your next witness.

11 MS. HUDSON: Your Honor, the State rests.

12 THE COURT: Are there any matters of law that I need to
13 take up at this time, Mr. Beach?

14 MR. BEACH: Yes, Your Honor.

15 THE COURT: Ladies and gentlemen of the jury, I'm going
16 to ask you to retire to your jury room. Please do not
17 discuss the case. I need to take up a matter of law. I'll
18 be back with you in just a few moments.

19 (WHEREUPON, THE JURY EXITS THE COURTROOM AND THE
20 FOLLOWING IS HELD ON THE RECORD.)

21 THE COURT: Mr. Beach, I understand there is a matter
22 of law that you would like to take up at this time?

23 MR. BEACH: Yes, sir. Your Honor, we would make our
24 motion at this time at the close of the State's case for a
25 directed verdict. In no way has the State has proven a

1 prima fascia case for attempted murder in this situation.

2 First, with regard to the property damages, there's
3 been no evidence, other than a vague reference to some off-
4 the-wall figure as to what was the damages of the car and
5 what they were, and as to what the damages actually were.
6 Whether they exceeded the \$2,000 limit or whether they did
7 not exceed the \$2,000 limit.

8 We think it's incumbent upon the State to do that in
9 this situation; other than one reference we had with one
10 witness about an amount, that we don't even know was spent
11 or was actually lost.

12 THE COURT: Thank you, Mr. Beach. Solicitor?

13 MS. HUDSON: Your Honor, it's the State's position that
14 we have made a prima fascia case on all charges, and
15 certainly, through testimony, there is enough to establish
16 the element of attempted murder, as well as possession of a
17 weapon during the commission of a violent crime. As far as
18 malicious injury to personal property, it was the owner of
19 the truck who testified what the value of his truck was.

20 THE COURT: That would be Mr. Chapman.

21 MS. HUDSON: That's correct, Your Honor, as well as the
22 damage.

23 THE COURT: He testified that the truck was worth
24 \$10,000 and that his estimate to repair the truck was
25 \$5,000; if I recall correctly.

1 MS. HUDSON: That's correct, Your Honor.

2 THE COURT: Mr. Beach, your motion for directed verdict
3 is respectfully denied.

4 MR. BEACH: Thank you, Your Honor.

5 THE COURT: I need you and the Solicitor to approach,
6 however, on a matter of law.

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

9 THE COURT: All right. Ladies and gentlemen, we're
10 going to take about a ten-minute recess. I'm giving Mr.
11 Beach time to confer with his client before we proceed. So
12 I'm giving each of you a chance to stretch your legs. We
13 will take ten minutes.

14 (Whereupon, Court is in recess for a brief time.
15 Thereafter, Court is reconvened and the following is held on
16 the record.)

17 THE COURT: All right. Mr. Beach, have you had enough
18 time now?

19 MR. BEACH: I have, Your Honor.

20 THE COURT: Very well. Would you and your client come
21 around, please? Jodi, if you would please get the Bible for
22 me and hold it for me, please?

23 (TO THE DEFENDANT) Put your left hand on the Bible and
24 raise your right hand.

25 (Whereupon, the defendant, Mr. Brian Jenkins, is duly

1 sworn.)

2 THE COURT: Step up to the microphone. State your full
3 name for the record.

4 MR. JENKINS: Brian Terrance Jenkins.

5 THE COURT: Mr. Jenkins, at this time, I'm going to
6 explain to you certain of your rights. If you do not
7 understand anything that I say, please let me know. If you
8 want me to explain it in further detail, please let me know;
9 do you understand?

10 MR. JENKINS: Yes, sir.

11 THE COURT: We have now reached the state of the trial
12 where you may present your defense. You have the right to
13 testify in your own behalf, however, no one can make you
14 testify. In the event that you have a criminal record for
15 any conviction involving dishonesty or false statement or
16 for any crime punishable by imprisonment for more than one
17 year, and this Court determines as a matter of law that the
18 probative value of admitting this evidence outweighs its
19 prejudicial effect to you, the Solicitor would be able to
20 introduce your record for impeachment purposes to attack
21 your credibility or your believability.

22 If you elect not to take the witness stand, I will
23 charge the jury that they are not to give the fact that you
24 did not testify any consideration whatsoever, and there is
25 to be absolutely no prejudice to you because you did not

1 testify. You have the constitutional right to remain
2 silent. The burden of proof remains on the State of South
3 Carolina to prove guilt beyond a reasonable doubt.

4 The decision as to whether or not you testify will be
5 left entirely up to you. You may talk with your attorney,
6 but the ultimate decision as to whether or not you testify
7 in the trial of this case is your decision and no one
8 else's. Have you understood what I've just told you?

9 MR. JENKINS: Yes, sir.

10 THE COURT: Mr. Beach, would you like a moment with
11 your client?

12 MR. BEACH: Yes, sir, Your Honor.

13 (Brief pause.)

14 MR. BEACH: We're ready, Your Honor.

15 THE COURT: Mr. Jenkins, have you had enough time to
16 talk with your lawyer?

17 MR. JENKINS: Yes, sir.

18 THE COURT: Have you made a decision as to whether or
19 not -- and I understand from my meeting at the bench before
20 we took the break that you do have a prior criminal record
21 within the past 10 years. I believe Mr. Beach told me
22 assault and battery of a high and aggravated nature; is that
23 right?

24 MR. JENKINS: Yes, sir.

25 THE COURT: Is that right, Mr. Beach?

1 MR. BEACH: Yes, it is, Your Honor.

2 THE COURT: All right. Have you made a decision now,
3 Mr. Jenkins, as to whether or not you wish to testify in the
4 trial of this case?

5 MR. JENKINS: Yes, sir.

6 THE COURT: And what is your decision?

7 MR. JENKINS: I will not.

8 THE COURT: You've decided not to testify?

9 MR. JENKINS: That's right.

10 THE COURT: And that's your decision?

11 MR. JENKINS: Yes, sir.

12 THE COURT: And no one forced you into that decision?

13 MR. JENKINS: No, sir.

14 THE COURT: You made it of your own free will?

15 MR. JENKINS: Yes, sir.

16 THE COURT: And you understand what I've just advised
17 you about your right to testify?

18 MR. JENKINS: Yes, sir.

19 THE COURT: Very well. You may return to your seat.

20 All right. Mr. Beach, I understand that the defendant
21 is ready to proceed; is that correct?

22 MR. BEACH: That's correct, Your Honor.

23 THE COURT: Is the State ready to proceed?

24 MS. HUDSON: Yes, Your Honor.

25 THE COURT: Mr. Grant, would you bring us a jury,

1 please?

2 (3:25 p.m., whereupon, the jury enters the courtroom
3 and the following is held on the record.)

4 THE COURT: All right. Ladies and gentlemen of the
5 jury, you've heard from the State of South Carolina. We
6 will now hear from the defendant. Mr. Beach, you may now
7 call your first witness on behalf of the defendant.

8 MR. BEACH: Thank you, Your Honor. We call Timothy
9 Jenkins.

10 THE COURT: Timothy Jenkins. Please come forward and
11 be sworn.

12 MADAME CLERK: Place your left hand on the Bible and
13 raise your right.

14 (Whereupon, Mr. Timothy Jenkins is duly sworn.)

15 THE COURT: Watch your step right there. Pull that
16 chair up. Make yourself comfortable and adjust that
17 microphone. I want you to speak up so that everybody on the
18 jury can hear you. Please begin by stating your full name
19 and spelling your last name for the court reporter.

20 MR. JENKINS: Timothy Bernard Jenkins, JENKINS.

21 THE COURT: Your witness, counsel.

22 MR. BEACH: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. BEACH:

25 Q Mr. Jenkins, where do you live?

- 1 A [REDACTED] Clatty Farm Road.
- 2 Q And how old are you?
- 3 A Twenty three.
- 4 Q Do you recall the night of July -- or the early morning
5 of July the 5th last year?
- 6 A Yes, sir.
- 7 Q Where were you say about 1:30, somewhere around that
8 time period?
- 9 A Right next door to my house at [REDACTED] Clatty Farm Road.
- 10 Q And tell me where that's located? What part of the
11 county?
- 12 A On Clatty Farm Road near the end.
- 13 Q That's up near Smoaks?
- 14 A Yes, sir.
- 15 Q And do you live there?
- 16 A No, I live next door.
- 17 Q Okay. Tell me about that piece of property. Who owns
18 it?
- 19 A It was my grandma's property.
- 20 Q And you live in your grandmother's house?
- 21 A My great-grandmother's house.
- 22 Q Great grand-mother's house, okay. Now, where this
23 incident occurred, was that next door to that?
- 24 A Yes, sir.
- 25 Q Tell me what kind of property it is. Describe it to

1 me.

2 A A house used to be there; there's nothing there now,
3 but an old house. A trailer used to be there. Nobody lives
4 there, just a place where we meet up at.

5 Q The old house, is it still standing or has it been torn
6 down?

7 A It's still standing.

8 Q How about the trailer, is it still standing?

9 A No, the trailer isn't there.

10 Q Now, how far is the house from the road?

11 A About maybe 50 feet, or 30 feet, something like that.

12 Q And do y'all have any lights around there?

13 A No, sir.

14 Q Where is the nearest light?

15 A Probably 60 feet, next to somewhere around there.

16 Q What kind of light is that?

17 A A yard light next door.

18 Q And is there a yard light on the other side of the
19 property?

20 A At the house?

21 Q Yeah.

22 A It's the same distance next door.

23 Q Would you say that is a well-lit area?

24 A No.

25 Q You say that's where you meet up. What do y'all meet

- 1 up for?
- 2 A We were meeting there to have a street race.
- 3 Q A street race?
- 4 A Yeah.
- 5 Q Who was meeting?
- 6 A It was a bunch of different people. People from
- 7 Orangeburg, all around surrounding areas would just come.
- 8 Q Have y'all ever done that before?
- 9 A Yes, sir.
- 10 Q And about how many people were there?
- 11 A There was a good crowd of people there; there was
- 12 probably around 15 to 20 people up there.
- 13 Q How many cars were there?
- 14 A There was a couple of nice different cars.
- 15 Q How many cars were in the race?
- 16 A Just two.
- 17 Q The two Mustangs?
- 18 A Yes, sir.
- 19 Q And do y'all remember anybody coming up while y'all
- 20 were getting ready to race that night?
- 21 A Afterwards, yes, sir.
- 22 Q Who all -- you were there; was Jose Rivas there?
- 23 A Yes, sir.
- 24 Q Do you know Jose?
- 25 A Yes, sir.

- 1 Q Have you known him for a long time?
- 2 A Not that long. I knew him for a little while through
3 races and stuff, seeing him at the tracks, seeing him
4 around.
- 5 Q How about Mr. Brian Jenkins?
- 6 A Yes, sir, I know him.
- 7 Q Was he there?
- 8 A Yes, sir.
- 9 Q How long have you known Brian?
- 10 A All my life.
- 11 Q Does he live around there?
- 12 A Yes, sir.
- 13 Q Where does he live?
- 14 A Next door; the same yard.
- 15 Q Okay. Did you see him that night?
- 16 A Yes, sir.
- 17 Q Did three folks come up in a crew cab pickup?
- 18 A Yes, sir.
- 19 Q Tell me what happened.
- 20 A These folks come up something about Jose was sleeping
21 with his wife or something. I guess another dude with him,
22 he came up and had wanted to fight, or whatever, to try and
23 work it out.
- 24 Q Who was wanting to fight?
- 25 A I don't know him. He was a short, kind of stocky dude.

- 1 Q Was he the driver of the truck?
- 2 A Yes.
- 3 Q Okay. Where was the truck aimed? Was it aimed back
- 4 toward Mt. Carmel Road or the other way?
- 5 A Toward Mt. Carmel Road.
- 6 Q Okay. So was it dark out there?
- 7 A Yes, sir.
- 8 Q How dark?
- 9 A Pitch black.
- 10 Q Okay. What happened after the folks got out of the
- 11 pickup truck?
- 12 A They started arguing. Brian was like, man, let it go.
- 13 Whatever, it ain't worth it. The other dude was talking,
- 14 but the little short, stocky dude, he was going on and then
- 15 he hit Brian in the face, and he and the other dude jumped
- 16 back in the truck.
- 17 Q All right. Let's back up a little bit. Now, what was
- 18 he saying to Brian?
- 19 A After he hit him, he said something to him, the other
- 20 dude said, you got that heat or something.
- 21 Q Got that heat?
- 22 A Yes, sir.
- 23 Q Who was he saying that to?
- 24 A The other dude who was with him; I don't know.
- 25 Q What did you think he meant by "have you got heat?"

- 1 A Street term meaning gun.
- 2 Q What happened next?
- 3 A He jumped back into the truck. Brian was by the
- 4 window, hitting the window with, like, a knife or something.
- 5 Q Brian hit the window?
- 6 A Yes, sir.
- 7 Q All right. What happened after that?
- 8 A A shot went out from out the crowd.
- 9 Q Did you see the fellow who was shot?
- 10 A No, I didn't see him.
- 11 Q Mr. Pye?
- 12 A Yeah, he was out there. He was the one who Jose was
- 13 supposed to be sleeping with his wife, I guess, or whatever.
- 14 Q Where did you see him?
- 15 A He was on this side of the truck.
- 16 Q Inside the truck? Was he on the side of the truck when
- 17 the shot went off?
- 18 A I think so, yes, sir.
- 19 Q Had he gotten into the truck at all?
- 20 A No, not yet.
- 21 Q What happened after the shot rang out?
- 22 A The crowd went thin and everybody like spread out.
- 23 Q Could you tell from where the shot came from?
- 24 A It came from out the yard where everybody was standing
- 25 at.

- 1 Q Is that behind y'all, to the side of you, or what?
- 2 A It was, like, I was standing right here, like right
- 3 beside the road and this side of the yard was where
- 4 everybody was at.
- 5 Q Did you see a shot?
- 6 A I seen like a blare off of it, a light off it.
- 7 Q Did you see who shot?
- 8 A No, sir.
- 9 Q Was it Brian Jenkins?
- 10 A No, sir.
- 11 Q Where was Brian Jenkins when the shot ran out?
- 12 A On the driver's side of the truck.
- 13 Q You sure of that?
- 14 A Yes, sir.
- 15 Q Had you tried to separate Brian at any time from the
- 16 other fellow?
- 17 A Jose was trying to.
- 18 Q Jose was?
- 19 A Yes, sir.
- 20 Q And where were you?
- 21 A I was standing in the yard right by the road.
- 22 Q When they left, did anybody chase them?
- 23 A I didn't see anybody chasing them.
- 24 Q What happened to the crowd when they left?
- 25 A Everybody just went their separate ways.

1 Q Did you ever have the race that night?

2 A No, sir.

3 Q Okay. And you say you've done that before?

4 A Yes, sir.

5 Q Racing, I mean.

6 A I had seen it, but I never done it.

7 Q Okay. Answer any questions the State may have.

8 THE COURT: Cross-examination?

9 MS. HUDSON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. HUDSON:

12 Q Mr. Jenkins, you live next door to the defendant, Brian
13 Jenkins?

14 A Yes, ma'am.

15 Q And you've known him all your life?

16 A Yes, ma'am.

17 Q Your testimony is that it was pitch black out there; is
18 that correct?

19 A Yes, ma'am.

20 Q However, you were able to see everything that was going
21 on clearly around the truck?

22 A Yes, ma'am.

23 Q With it being pitch black?

24 A Yes, ma'am.

25 Q You saw Brian hit the window with the knife?

1 A Yeah, because I was standing by the road looking at
2 him.

3 Q Did you see him slash the tire?

4 A I didn't see him, but I kind of figured he did it,
5 because he had the knife the whole time:

6 Q Mr. Jenkins, have you ever been in trouble before?

7 A Yes, ma'am.

8 Q How have you been in trouble?

9 A Nothing major; just simple possession.

10 Q When were you charged with simple possession? Simple
11 possession of what?

12 A Simple possession of marijuana.

13 Q Have you ever gotten any other criminal charges?

14 A Disorderly conduct.

15 Q When was your simple possession of marijuana charge?

16 A December.

17 Q This past December?

18 A Yes, ma'am.

19 Q When did you get charged with disorderly conduct?

20 A December.

21 Q You didn't get charged with something about taking a
22 vehicle?

23 A Taking a vehicle? No, ma'am.

24 Q So you don't recall being charged and convicted on
25 taking a vehicle by force?

- 1 A Taking a vehicle by force? No, ma'am.
- 2 Q You don't race at Clatty Farm?
- 3 A Ma'am?
- 4 Q You don't race at Clatty Farm -- you've never raced at
- 5 Clatty Farm Road?
- 6 A No, no, ma'am.
- 7 Q Who were these 15 to 20 people who were out there?
- 8 A Oh, it was different people from all around.
- 9 Q And they were just standing around?
- 10 A Yes.
- 11 Q Did you go to law enforcement with this information?
- 12 A After I got arrested, I did.
- 13 Q When you got arrested for what?
- 14 A For simple possession.
- 15 Q Did you go to law enforcement regarding this incident
- 16 that occurred in July?
- 17 A Yes.
- 18 Q You did?
- 19 A Yes. When I got arrested, they came and why I was in
- 20 jail, because I had a warrant before that for disorderly
- 21 conduct.
- 22 Q Well, the incident happened in July; you were arrested
- 23 in December?
- 24 A Yes.
- 25 Q So you're telling me that law enforcement came and

1 talked to you about the incident, that happened on Clatty
2 Farm Road in December?

3 A Yes.

4 Q Who came to talk to you?

5 A Mr. -- Mr. -- Mr. Mathews, I think.

6 Q So the public defender came to see you?

7 A Yes.

8 Q Did law enforcement ever come to see you?

9 A No, ma'am.

10 Q Did you ever go to law enforcement to let them know
11 that you had this information regarding this incident?

12 A No, ma'am.

13 Q Why not?

14 A Because I didn't really need to go until they told me.

15 Q Don't you think it would have been important to go and
16 say that you've known Brian Jenkins his whole life, correct?

17 A Yes, ma'am.

18 Q Don't you think it would have been important to go to
19 law enforcement and let them know that he didn't shoot the
20 victim, Shannon Pye?

21 A Yes, ma'am.

22 Q But you didn't go?

23 A Yes.

24 Q Yes, you went or yes, you didn't go?

25 A I didn't go.

Redirect Examination of Timothy Jenkins by Mr. Beach
Recross-Examination of Timothy Jenkins by Ms. Hudson

1 MS. HUDSON: Nothing further, Your Honor..

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. BEACH:

5 Q Law enforcement never talked with you about this case?

6 A No, not until December.

7 Q Did they come out to your house?

8 A Not until December.

9 MR. BEACH: No other questions, Your Honor.

10 THE COURT: Recross?

11 MS. HUDSON: Yes, Your Honor.

12 RECROSS-EXAMINATION

13 BY MS. HUDSON:

14 Q Law enforcement didn't come see you in December,
15 though, did they?

16 A Mr. Mathews.

17 Q And Mr. Mathews is the public defender?

18 A Yes. He came and took my statement.

19 Q But you never gave a statement to law enforcement.

20 A That was one for the law enforcement.

21 Q I'm sorry?

22 A That was supposed to be for the law enforcement.

23 Q But you never gave a statement to law enforcement?

24 A No, ma'am.

25 THE COURT: As to this witness, Mr. Beach?

Direct Examination of Jose Rivas by Mr. Beach

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1 MR. BEACH: Ask that he be excused.

2 THE COURT: Any objection, Solicitor?

3 MS. HUDSON: No objection, Your Honor.

4 THE COURT: You may step down and you are excused from
5 the trial of this case. You may leave the courtroom. Call
6 your next witness.

7 MR. BEACH: Your Honor, we call Jose Rivas.

8 MADAME CLERK: Please come forward and be sworn. Place
9 your left hand on the Bible and raise your right.

10 (Whereupon, Mr. Jose Rivas is duly sworn.)

11 THE COURT: Have a seat. Pull your chair up. Adjust
12 the microphone to your height. It's going to amplify your
13 voice. State your full name and spell your last name for
14 the court reporter.

15 MR. RIVAS: Jose Louis Rivas, R-I-V-A-S.

16 THE COURT: Your witness, Mr. Beach; direct
17 examination.

18 DIRECT EXAMINATION

19 BY MR. BEACH:

20 Q Mr. Rivas, how old are you?

21 A Thirty-two years old.

22 Q And where do you live?

23 A [REDACTED]

24 Q And where is that?

25 A Walterboro, South Carolina.

- 1 Q Do you know the defendant in this case?
- 2 A Yes, sir, I do.
- 3 Q And do you know Mr. Shannon Pye?
- 4 A Yes, sir, I do.
- 5 Q How long have you known Mr. Pye?
- 6 A About 13 years.
- 7 Q Did you have an opportunity to see him on the early
8 morning of July the 5th, 2012?
- 9 A Yes, sir.
- 10 Q Prior to that, had anything happened between you and
11 Mr. Pye?
- 12 A Yes.
- 13 Q What had happened? What was going on?
- 14 A He had been -- he and Mr. Chapman had been calling me
15 about an affair with his wife.
- 16 Q This is Elmo Chapman?
- 17 A Yes.
- 18 Q Okay. And were they calling you or texting you?
- 19 A Texting and calling.
- 20 Q Who was calling?
- 21 A Elmo Chapman.
- 22 Q And were you answering the texts and the calls?
- 23 A Yes, at first.
- 24 Q And what was the nature of the calls?
- 25 A They was calling to say they wanted to meet with me and

- 1 talk with me; that Shannon wanted to talk with me.
- 2 Q Did you arrange a meeting?
- 3 A No, sir.
- 4 Q Did you tell them where you were going to be that
- 5 night?
- 6 A No, sir. I didn't tell them where I was going to be.
- 7 I was trying to avoid them. Then, I didn't hear anything
- 8 else from them until later that night and they continued to
- 9 call.
- 10 Q Did you eventually tell them where you were?
- 11 A Yes, sir.
- 12 Q And did they come out?
- 13 A Yes, sir, they did.
- 14 Q Tell me what time they got there.
- 15 A It was around 12 or 1:00 in the morning.
- 16 Q And where is "there"?
- 17 A There is Clatty Farm Road in Smoaks.
- 18 Q What was going on at Clatty Farm Road?
- 19 A We was trying to get a little street race going on.
- 20 Q Do you race often?
- 21 A Yes, sir.
- 22 Q What kind of car is it?
- 23 A It's a red Ford Mustang, LX.
- 24 Q And where did the other car come from?
- 25 A He's from Orangeburg.

- 1 Q What kind of car is it?
- 2 A It's a black Ford Mustang like mine.
- 3 Q Did the race come off?
- 4 A No, sir.
- 5 Q Tell me, were there any other people there other than
- 6 you and the other driver?
- 7 A Yes, sir.
- 8 Q Who all were there?
- 9 A I can't remember the number of them. I mean, it was
- 10 more than 13; about 30. They were leaving because we
- 11 couldn't come to an agreement.
- 12 Q What was the dispute?
- 13 A Transmissions. He had a better or upgraded racing
- 14 transmission and mine was an overdrive transmission, so we
- 15 couldn't come to an agreement.
- 16 Q What was the status of the race? Was it ongoing or was
- 17 it breaking up or what?
- 18 A Yes, we couldn't come to an agreement, so we was just -
- 19 - we decided not to do it.
- 20 Q And when in this process did Mr. Pye come up?
- 21 A He came up when everybody was dispersing. Some people
- 22 were hanging out still or trying to get in cars, but that's
- 23 when they came up.
- 24 Q How many people were still there?
- 25 A I couldn't really tell. I mean, it was dark. I know

1 at least 13 or more.

2 Q Tell me about this piece of property. Is there much
3 light there?

4 A No, sir.

5 Q And why did you pick a piece of property where there
6 wasn't much light?

7 A When you're racing, you're trying to be in the dark so
8 you know, no houses around; you can't make that much noise
9 so that nobody calls the cops.

10 Q Is that a very sparsely populated area?

11 A Not too much.

12 Q Okay. Now, what happened when they drove up? First
13 of all, what were they driving?

14 A They were driving Elmo's truck, which is a four-door
15 F-150; a four-door truck.

16 Q A full size pickup?

17 A Yes, sir.

18 Q Who all was in the truck?

19 A It was Elmo, Harry and Shannon.

20 Q Do you know Harry, also?

21 A Yes, sir.

22 Q All right. What happened next?

23 A They got out the truck. Elmo told me to come out, that
24 Shannon wanted to talk to me, and so I came out to the road
25 and Shannon really didn't say anything much, so Elmo started

1 telling him to fight me or whatever because I was with his
2 wife, so.

3 Q Were y'all in the road?

4 A I was in the driveway right there on the property.

5 Q Now, where was Elmo?

6 A When he was trying to get me to talk to Shannon, he was
7 -- we was all there talking in the driveway. Shannon was
8 like kind of behind. He was trying to get him to come talk
9 to me and I told him to come on or whatever he was trying to
10 do.

11 Q Were you trying to fight him?

12 A No, sir.

13 Q Did you have a gun on you?

14 A No, sir.

15 Q Did you have a gun at all?

16 A No, sir.

17 Q What happened next? When did -- well, let's go back.
18 When did Brian come up?

19 A We was all right there. I mean, after they seen what
20 was going on, everybody kind of got their attention right
21 there. I mean, nobody seen a race, so I guess everybody was
22 saying, well, we'll watch a fight.

23 Q And what happened?

24 A Elmo started trying to get Shannon to fight me. He was
25 telling him, you know, this guy has done been with your

1 wife, and I'm using nice words, but he's saying you need to
2 fight him or whatever. And Shannon didn't want to do it.
3 He just had his hands to his side. So I told him, well, if
4 you're not going to do anything, you need to go home and
5 work things out with your wife, and then that's when he
6 started saying, no, you done been with her. I don't want
7 nothing to do with her. So I said well, you need to get out
8 of here.

9 Q What did Elmo do?

10 A He went in the crowd and started punching people.

11 Q Who all did he hit?

12 A He hit Brian and I don't know, some other guy.

13 Q And what happened after he hit Brian?

14 A He went back to the tailgate of the truck. He seen
15 that Brian didn't move. He was telling Brian, you know, you
16 trying to size me up. Brian told him, you know, I ain't
17 moving. So he just kind of said, he looked over at Harry
18 who was over at the left side of the truck, this was at the
19 back of the truck, and he asked him and said, you got the
20 heat? That's when everybody started going. That's when
21 Elmo started getting in the truck, Harry went to the truck,
22 and then Brian -- everybody thought that they were going for
23 a gun or something, because he ---

24 Q He said that, what happened to the crowd?

25 A When he said that, the crowd just started dispersing,

1 some of them started coming a little closer, but they all
2 stayed behind the truck.

3 Q What did you think he meant by, "Have you got the
4 heat?"

5 A Well, of course a gun, heat.

6 Q Did you have a gun?

7 A No, sir.

8 Q Did Brian have a gun?

9 A No, sir, he didn't.

10 Q Did you see anybody there with a gun?

11 A No, sir, I didn't.

12 Q And what happened next?

13 A After that, Harry and Elmo jumped in the truck.
14 Shannon jumped in the back. Brian started coming. Elmo
15 started downing the window telling me he would see me later,
16 and Brian started going and beating on the window of the
17 truck trying to get to Elmo and I'm trying to keep them
18 separated.

19 Q What was Elmo saying to Brian?

20 A He was just telling him that he would come back and get
21 us or get me. He'd see us later.

22 Q And where was Brian?

23 A Brian was -- he was right there at the back of -- it's
24 a four door truck, so he was at the back window of the
25 truck.

- 1 Q Did you see him with a gun?
- 2 A No, sir.
- 3 Q Did you hear a shot?
- 4 A Yes, sir.
- 5 Q And when was that?
- 6 A That's when I was trying to get Brian away from the
7 truck.
- 8 Q So you had your hands on Brian when that happened?
- 9 A Yes, I was trying to keep Brian from getting to Elmo
10 because Elmo was saying he was going to get us and Brian was
11 already mad at him for punching him.
- 12 Q Did you see who shot?
- 13 A No, sir. I was too busy worried about this, you know,
14 keeping Brian away from Elmo.
- 15 Q Did you see how far away the shot was?
- 16 A No, I couldn't tell. All I heard was the pop; that's
17 it.
- 18 Q How many shots were fired?
- 19 A Just one that I know of.
- 20 Q What happened after that?
- 21 A After that, they just took off. I mean, everybody just
22 got in their cars and left.
- 23 Q Did y'all take off after these people?
- 24 A No, sir, we did not.
- 25 Q Did you see where Shannon Pye was when the shooting

1 was going on?

2 A No, sir, I couldn't be able to see. He was in the back
3 of the truck.

4 Q Was he standing up or laying down in the back of the
5 truck?

6 A He was just kind of standing up.

7 Q How long have you known Brian Jenkins?

8 A Since Third Grade -- well, he was a little bit lower
9 than me, but since Middle School, I guess you could say.
10 That's when we started a real friendship, but I've known him
11 since Elementary.

12 Q Do you know how tall he is?

13 A He's a big boy. I don't know exactly how tall he is.

14 Q Okay. Answer any questions the State might have.

15 A Okay.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MS. HUDSON:

19 Q Is it Mr. Rivas?

20 A Yes, ma'am.

21 Q Mr. Rivas, you're friends with the defendant, Brian
22 Jenkins, since Elementary School?

23 A Yes, ma'am.

24 Q And you were out at Clatty Farm racing?

25 A Trying to.

1 Q Is that legal?

2 A No.

3 Q Have you ever gotten in trouble with the law for racing
4 out there?

5 A No, ma'am.

6 Q You just haven't gotten caught yet?

7 THE COURT: You have to say yes or no.

8 A No.

9 Q Your testimony here today is that initially there were
10 13 to 30 people out there in this area; is that correct?

11 A Yes.

12 Q And I believe you stated that at least 13 or more
13 decided to stay after there was this dispute regarding a
14 transmission; is that correct?

15 A Yes.

16 Q Did you complete an affidavit with the public
17 defender's office?

18 A Yes.

19 Q Do you recall stating that there were seven to ten
20 people out there?

21 A Uh-huh (affirmative); probably so. I mean, I was just
22 naming people that I knew; there was 13 people in my mind.

23 Q Did you name anyone in the affidavit who was out there?

24 A I didn't know everybody there, that's why I didn't name
25 them.

1 Q So there were seven to ten when you completed the
2 affidavit and now you're saying there were thirteen to
3 thirty, and so now your testimony is changing today?

4 A Yes, ma'am. I mean, I wasn't counting everybody.

5 Q Okay. So thirty people are so close to seven or ten,
6 you just got confused with the numbers?

7 A Must be; it was dark.

8 Q It was dark, but you were able to see clearly
9 everything that happened near the truck?

10 A Yeah, I was right there.

11 Q Elmo hit Brian; is that your testimony?

12 A Yes, he hit him and someone else.

13 Q Who was the other person that he hit?

14 A I don't know.

15 Q So he was just randomly punching people in the crowd?

16 A Well, he came up there and he got aggravated and he
17 seen Shannon wasn't complying with his order to fight me, so
18 I guess he got aggravated.

19 Q So he just thought he would go and punch a bunch of
20 anonymous people in the crowd?

21 A I guess.

22 Q Did you ever go to law enforcement with this
23 information?

24 A No, law enforcement never questioned me.

25 Q You've known Brian since Elementary School, right?

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1 A That's right.

2 Q And you knew he was in jail?

3 A Yes.

4 Q You knew that he had been charged with these offenses?

5 A Yeah.

6 Q Weren't you concerned enough to go to law enforcement?

7 A No, I went to his public defender.

8 Q But you never went to law enforcement?

9 A No.

10 MS. HUDSON: Nothing further, Your Honor.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. BEACH:

14 Q You never went to law enforcement; is that correct?

15 A That's correct.

16 Q Law enforcement never came to you; isn't that correct?

17 A That's correct.

18 Q Even though they knew your name.

19 A That's correct.

20 Q Did anyone ever come and try to get your side of the

21 story?

22 A No, sir, they did not.

23 Q The only person who tried to get your side of the story

24 was the public defender's office?

25 A Yes, because I went to him after Brian got arrested

1 Q But law enforcement never came to see you?
2 A No, sir.
3 MR. BEACH: No other questions, Your Honor
4 THE COURT: Recross?
5 MS. HUDSON: Nothing further, Your Honor.
6 THE COURT: As to this witness, Mr. Beach?
7 MR. BEACH: We'd ask that he be excused.
8 THE COURT: Solicitor?
9 MS. HUDSON: No objection, Your Honor.
10 THE COURT: You may step down. You are excused from
11 the trial of this case and you may leave the courtroom.
12 Call your next witness.
13 MR. BEACH: Joyce Crosby, Your Honor.
14 MADAME CLERK: Please come forward to be sworn. Place
15 your left hand on the Bible and raise your right.
16 (Whereupon, Ms. Joyce Crosby is duly sworn.)
17 MADAME CLERK: Please have a seat on the witness stand
18 and state your name for the record.
19 THE COURT: Watch your step for me and have a seat.
20 Adjust that microphone.
21 MS. CROSBY: Joyce Crosby, C-R-O-S-B-Y.
22 THE COURT: Pull that chair up a little bit and adjust
23 that. It's going to amplify your voice. Mr. Beach, direct
24 examination.
25 MR. BEACH: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. BEACH:

3 Q Ms. Crosby, where are you employed?

4 A Colleton Medical Center.

5 Q What do you do there?

6 A I work in the E.R. now as a clerk, but at the time, I
7 worked in registration.

8 Q Okay. Are you a keeper of the record?

9 A No, sir. We just have to go and get the record signed
10 and then we send them on to medical records.

11 Q Okay. But do you collect the records and send them
12 off?

13 A Yes, sir.

14 Q And do you get them when somebody asks for them?

15 A Yes, sir.

16 Q So you're familiar with the record?

17 A Yes, sir.

18 Q And are these records kept by the hospital in the
19 normal course of business?

20 A They are scanned and sent to Trident Medical Center.

21 Q That's where they're kept?

22 A Yes, sir.

23 Q So if I wanted something, I would ask you and you would
24 get it?

25 A No, sir. You would have to go through medical records.

1 I just keep them on the night that I get them and then I
2 turn them over to medical records.

3 Q So you're not familiar with the records, in general?

4 A I don't know how to answer that, because we have to get
5 paperwork signed, like the consent form and the safety act,
6 and we keep all of those through the end of our shift, and
7 then we send those to medical records.

8 Q I'm going to show you some documents and ask if you can
9 identify it.

10 MR. BEACH: May I approach the witness, Your Honor?

11 THE COURT: You may.

12 (Mr. Beach hands witness a document.)

13 A Yes, sir, this is a consent form.

14 Q Would you look through those records and see if you can
15 identify all of them?

16 A No, sir. Only the one I have to deal with, the consent
17 form.

18 Q Okay. Did you have the opportunity to talk with Mr.
19 Pye the night that he was brought in?

20 A I got him to sign his paperwork.

21 Q Did you ask him what had happened?

22 A No, sir, we don't do that. We just go to sign the
23 paperwork.

24 Q Do you remember any statements he made?

25 A No, sir.

1 MR. BEACH: I don't have any further questions, Your
2 Honor. Thank you, Ms. Crosby.

3 THE COURT: Cross-examination?

4 MS. HUDSON: None, Your Honor.

5 THE COURT: As to this witness, Mr. Beach?

6 MR. BEACH: Ask that she be free to leave.

7 THE COURT: Any objection to this witness being
8 excused, Solicitor?

9 MS. HUDSON: None, Your Honor.

10 THE COURT: Ms. Crosby, you may step down from the
11 witness stand and you are excused from the trial of this
12 case. You may leave the courtroom. Call your next witness.

13 MR. BEACH: The defense rests, Your Honor.

14 THE COURT: Is there any reply testimony from the State
15 of South Carolina?

16 MS. HUDSON: No, Your Honor.

17 THE COURT: Very well. Counsel approach.

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

20 THE COURT: Madame Foreperson, ladies and gentlemen of
21 the jury, you've heard the testimony in this case. You have
22 not heard the arguments of the attorneys or my charge on the
23 law. Because it is 4:00 and because that would take
24 approximately an hour and a half, I don't believe in giving
25 a jury a case that late and then you get home late in the

1 evening. I try to be mindful of your time. We will
2 complete the trial in the morning promptly at 9:30 with
3 argument and charge.

4 Over the overnight recess, please do not discuss this
5 case. Please don't read anything, watch anything, listen to
6 any radio account. You must decide this case solely upon
7 evidence introduced in this courtroom when both sides are
8 present with the right of cross-examination. Hope everybody
9 has a pleasant evening. Please report to your jury room
10 prior to 9:30 in the morning, at which time we will promptly
11 complete the trial of this case. You are now excused for
12 the balance of today. Everyone else please remain seated
13 while the jury is leaving.

14 (4:05 p.m., Whereupon, the jury exits the courtroom and
15 the following is held on the record.)

16 THE COURT: Anything from the State as to this case
17 before we adjourn for the evening?

18 MS. HUDSON: No, Your Honor.

19 THE COURT: Does the State have any requests to charge?

20 MS. HUDSON: None, Your Honor.

21 THE COURT: Anything from the defendant on the record
22 outside the presence of the jury before we adjourn for the
23 evening?

24 MR. BEACH: No, Your Honor. We would renew our motion
25 that we made earlier.

1 THE COURT: And on the basis of what you made at the
2 close of the State's case, your motion at the close of all
3 the evidence is respectfully denied. Do you have any
4 requests to charge?

5 MR. BEACH: No, Your Honor.

6 THE COURT: I'm going to need to see you briefly about
7 the charge, but first, Mr. Beach, I noticed that you had
8 your co-counsel, Mr. Mathews on the witness list, even
9 though he was not called as a witness.

10 MR. BEACH: Yes, sir.

11 THE COURT: I want to see Mr. Mathews. Where is he?

12 MR. BEACH: Probably at the office, Your Honor. We
13 will get in touch with him.

14 THE COURT: Go get him and tell him I need to see him,
15 forthwith. Also, Solicitor, ask Mr. Knight to join us in
16 chambers.

17 MS. HUDSON: Yes, sir.

18 THE COURT: This Court is in recess until 9:30 in the
19 morning.

20 (Whereupon, the trial in this case is in recess for the
21 evening. Thereafter, at 9:45 a.m., on Wednesday, March 20,
22 2013, the Court is resumed in the trial of this case.)

23 THE COURT: All right. First of all, Becky, I want to
24 put on the record what occurred in chambers yesterday in the
25 trial of this case.

1 Number one, during the course of this trial, the State
2 called Dr. Jeffrey Holman as a witness in the trial of this
3 case.

4 During cross-examination of Dr. Holman, Mr. Beach
5 handed Dr. Holman a document consisting of -- and I'm going
6 to estimate, Mr. Beach, because I know you didn't count it,
7 but I'd say 20 to 30 pages.

8 MR. BEACH: Yes, sir.

9 THE COURT: Mr. Beach opined to the Court that the
10 document, or at least partial notes of Colleton Medical
11 Center, but that also contained the office notes of Dr.
12 Holman. Mr. Beach attempted to introduce this document of
13 partial notes and office notes as an exhibit to which the
14 State objected on the grounds of hearsay.

15 I held a sidebar conference outside the presence of the
16 jury and I overruled the Solicitor's objection as to Dr.
17 Holman's office notes and told Mr. Beach that they would be
18 admissible through Dr. Holman. I sustained the Solicitor's
19 objection as to the notes of Colleton Medical Center. I
20 opined to Mr. Beach that I would hand him the notes back,
21 which I retrieved from the witness and gave to Mr. Beach for
22 him to decide if he wanted to put in the notes of Dr.
23 Holman, which he had dictated.

24 Mr. Beach declined to do so because he told me he had
25 another witness who he had listed on the witness list, one

1 Joyce Crosby of Colleton Medical Center, and it was going to
2 be put in under the business records exception these notes
3 through Ms. Crosby.

4 Mr. Beach did, in fact, call Ms. Crosby. She was
5 unable to authenticate or substantiate that the records Mr.
6 Beach had were kept in the regular course of business by
7 Colleton Medical Center, and therefore, Mr. Beach decided
8 not to put the records into evidence.

9 I wanted there to be a record of why I said in the
10 presence of the jury that the objection of the State of
11 South Carolina was sustained in part and overruled in part.
12 Have I accurately stated what occurred at sidebar insofar as
13 counsel for the State is concerned?

14 MS. HUDSON: Yes, Your Honor.

15 THE COURT: Insofar as counsel for the defendant is
16 concerned?

17 MR. BEACH: Yes, you have, Your Honor.

18 THE COURT: This morning, I went over my entire charge
19 that I'm going to give later on with counsel for the State
20 and counsel for the defendant. In that charge, I gave them
21 every single thing I intended to charge and showed them the
22 verdict form. In fact, Mr. Beach asked that I amend the
23 verdict form, which I thought he was absolutely correct on,
24 and I have amended the verdict form in compliance with Mr.
25 Beach's request to reflect that the offense of malicious

1 injury to personal property, and the value has to be more
2 than \$2,000, but less than \$10,000.

3 I also went through all the topics. There were no
4 requests to charge. It is my belief in light of the
5 testimony I've heard, that the evidence requires me to
6 charge me the hand of one is the hand of all, as well as
7 mere presence at the scene of the crime. And I have advised
8 the attorneys of that fact. They are aware of my entire
9 charge, and Mr. Beach, I will listen to you at the
10 appropriate time on the charge after I give it, but you are
11 aware of exactly what I'm going to charge. Is that correct,
12 from the State?

13 MS. HUDSON: That is correct, Your Honor.

14 THE COURT: Is that correct from the defendant?

15 MR. BEACH: It is, Your Honor.

16 THE COURT: Now, we get to the point of argument.
17 Y'all can do it -- as you know, the rule which is in the
18 Rules of Civil Procedure, I believe. I don't think we have
19 a rule on argument in the Rules of Criminal Procedure, just
20 in the Rules of Civil Procedure, which we've discussed from
21 time to time. It is Rule 43 of the Rules of Civil
22 Procedure, and specifically, 43(i) and 43(j), the right to
23 open and close.

24 The rules state in the Rules of Civil procedure that
25 the moving party, upon a motion, shall have the right to

1 open and close argument. Of course, our rules are clear
2 that if the defendant does not put up any evidence, that the
3 defendant gets closing argument. Here, the defendant chose
4 to put up evidence even though the defendant chose not to
5 testify. I will charge the jury that the failure of the
6 defendant to testify is not to be considered by the jury in
7 any way whatsoever, and there is to be absolutely no
8 prejudice to Mr. Jenkins because he did not testify.

9 However, counsel has not informed the Court yet as to
10 the order of argument, so I'm inquiring before I bring the
11 jury out. We can do it one of two ways: Mr. Beach, you and
12 Ms. Hudson can agree that if Ms. Hudson would open, she has
13 to open in full and you will have an argument, and she has a
14 reply or you will have first argument and Ms. Hudson will
15 have final argument. Which way do you want to do it?

16 MR. BEACH: I would prefer the latter, Your Honor.

17 MS. HUDSON: Your Honor, I have no problem. I don't
18 plan to open; final argument is fine.

19 THE COURT: Very well. By agreement, Mr. Beach will
20 argue first and Ms. Hudson argue second. They've asked for
21 at least 15 minutes and I'm certainly willing to give them
22 more. I believe that covers everything that we've been over
23 in chambers this morning. Anything from the State before I
24 bring the jury in?

25 MS. HUDSON: Nothing, Your Honor.

1 THE COURT: From the defendant?

2 MR. BEACH: None, Your Honor.

3 THE COURT: Mr. Grant, I hope they're ready. Bring us
4 the jury.

5 (9:45 a.m., whereupon, the jury enters the courtroom
6 and the following is held on the record.)

7 THE COURT: Good morning, ladies and gentlemen of the
8 jury, a lot of things have happened this morning. I had to
9 go over the charge that I've written with the attorneys, we
10 had to go over the verdict form, we had to go over the order
11 of argument, I had to deal with the next cases that I have
12 for trial, and some matters came up that I had to deal with,
13 so I didn't want you to think we were out here smoking
14 cigarettes and drinking coffee. We've been working, ladies
15 and gentlemen. I appreciate your patience.

16 You've heard the evidence in this case. You will now
17 hear the closing arguments of each of the attorneys,
18 followed by my charge to you on the law in this case. I
19 want you to give the attorneys your careful consideration.
20 Mr. Beach?

21 MR. BEACH: May it please the Court?

22 THE COURT: Yes, sir.

23 CLOSING ARGUMENT

24 MR. BEACH:

25 Ladies and gentlemen, I thank you so much for your

1 attention to all of the evidence that we've presented here
2 today. I watched you and everybody seemed to be really
3 intently listening to what was going on and trying to figure
4 out exactly what to make of this mess that we've got before
5 us.

6 Now, you're the judges of the facts. You're the people
7 who will sit up here and say, "This is what we think
8 happened. This is what we think was the result of what
9 happened. Is this man guilty or is this man not guilty?"
10 You are the people who will decide that and you are the only
11 people who can decide it. It's your decision. Nobody can
12 criticize your decision in any way because you're the people
13 who have to do this. When people can't reach an
14 understanding, when they can't agree on something, then we
15 have a jury. That's the ancient system of bringing a jury
16 in to decide what happened. In this case, to decide guilt
17 or innocence.

18 The State of South Carolina has charged my client with
19 attempted murder. Now, the judge is going to give you the
20 legal definition of attempted murder. He's going to give
21 you the elements of attempted murder. But attempted murder
22 is just trying to kill somebody, intentionally trying to
23 kill somebody; in this case, Shannon Pye.

24 When you get the sheet for you to write your decision
25 on, it will say "attempted murder of Shannon Pye." Not

1 somebody else, not Elmo, not Mr. Lyons, or whatever his name
2 was, but Shannon Pye; attempted murder of him. That's what
3 they have the burden of proving.

4 Beyond a reasonable doubt. The judge will tell you
5 what beyond a reasonable doubt is. Basically, they have to
6 convince you that there aren't any other possibilities or
7 probabilities that this is what happened. They have to
8 convince you of their case. They have to go through one
9 point at a time and convince you that he did this, that he
10 did this, that he did this, and as a result, he's guilty of
11 this. If they can't, then he's not guilty. If there are
12 any ambiguities, then he's not guilty. That's the way the
13 system works. It is a wonderful system, because it is
14 strict, it is exact, and it gives everyone the chance to put
15 forward their position on what happened.

16 Now, he's charged with attempted murder. He's also
17 charged with malicious injury to personal property; that
18 injury being valued greater than \$2,000, but less than
19 \$10,000. Now, I want to talk to you about that first, and
20 the reason I want to talk to you about that is it's not the
21 big charge in this. It's not the 500-pound gorilla in the
22 room, but it's important because it's a criminal charge and
23 he's charged with this and the State wants you to find him
24 guilty.

25 Now, they say that he damaged the property. Well,

1 there's a whole lot of evidence in this case that says
2 differently. There's not one person who sat on that stand
3 who took an oath, swore an oath, who says, "I saw him stick
4 the tire." Nobody saw that. Nobody said that. Now, there
5 are some who said, "I think he did." One fellow said,
6 "Yeah, I think that was him that did it. Yeah, I think he
7 did it, because he had a knife." But that's not what we
8 convict people on. We convict people on evidence, evidence.

9 Now, the important thing is if you find that he is the
10 one who did the damage to the truck, was standing on the
11 driver's side and did the damage to the truck, then the
12 damages have to add up to more than \$2,000. Did they in
13 this case? What is the evidence? The only evidence that
14 you've got before you is the guy said that he thought there
15 was \$5,000 damage done to his truck, \$5,000. Well, you've
16 got pictures of the truck; you can look at it.

17 You've got a tire that obviously is irreplaceable.
18 You've got a rim which obviously, well, maybe not obviously,
19 but probably is very badly damaged and can't be used.
20 You've got a scratched up window, a side window, that you
21 roll up and down. And you've got one bullet hole in the
22 back of the truck in the tailgate. Is that \$2,000 worth of
23 damages? It's up to the State to prove it. They have to
24 prove that it's \$2,000. If it's not \$2,000 worth of
25 damages, then he is not guilty of that charge.

1 Now, they also didn't put in any information about the
2 truck. I had to elicit whatever information we had about
3 the truck. We don't know the year. We've got a picture of
4 it, so maybe you can figure that out. We know it's an F-150
5 Ford; we know that. We know that it's a crew cab, which is
6 big full size truck. That's all we know. We don't know
7 what kind of tires were on there. We don't know whether
8 they were special at Wal-mart or whether they were high
9 priced Pirelli. We don't know any of that. We don't
10 anything about those wheels. We don't know whether they're
11 stock wheels or whether they're not stock wheels or
12 whatever. We don't know anything about that.

13 The hole in the back, in the tailgate, you know, that's
14 a little bit of bondo and a little bit of paint. So I don't
15 think they've reached the \$2,000 threshold, because they
16 haven't shown the figures. They've had all this time to get
17 it together. They've had all this time to get some expert
18 up here and say yeah, we've fixed the truck, or the truck
19 couldn't be fixed, or this is what it's going to cost to
20 replace these items. If they don't, they haven't proven the
21 case. They want to slide this one under the wire. They
22 haven't proven it. He should be found not guilty of that.

23 Now, the other two charges are the attempted murder and
24 the possession of a firearm during the commission of a
25 violent crime. The judge will tell you that if you find him

1 not guilty of the attempted murder, you can't find him
2 guilty of the possession of a firearm during a violent crime
3 -- or deadly weapon during a violent crime, because they go
4 together on the verdict form.

5 But let's talk about attempted murder. Attempted
6 murder, that's trying to kill somebody. I ask you, ladies
7 and gentlemen, you've heard all the evidence. You've heard
8 all the witnesses. Why would Brian want to shoot Shannon?
9 Why? Shannon was the only one outside of the truck, so
10 whoever shot him either did it by accident or knew they were
11 shooting at Shannon. Was Brian mad at Shannon? No.
12 Shannon hadn't been talking to him about messing with his
13 wife. He didn't have anything to do with that. He got in a
14 fight with Elmo. Elmo was the one who wanted to fight
15 everybody. Elmo was the one who was swinging at everybody.
16 Elmo was the one who wanted to get these people to fight,
17 wanted Shannon to fight Jose over this. Elmo was the one
18 who wanted all this stuff and Shannon gets shot by Brian?
19 There is no connection whatsoever. It was over. They were
20 pulling off. Brian had no reason, no motive to do anything,
21 nothing.

22 Now, Shannon said that it was light. That he could see
23 everything. In fact, he made a point -- he was sitting up
24 here. I noticed from his testimony, every question I asked
25 him he started off, "It was real light. I could see

1 everything." That's from being a little over prepared as
2 you go along on something like this. He said you could see
3 everything. Well, that may not be the case. The fellow who
4 lived out there, the young Mr. Jenkins, said one yard light;
5 one yard light. This is Clatty Farm Road. Remember what
6 they told you? You go out to Mt. Carmel Road, then you turn
7 on Clatty Farm Road, and it's up near Smoaks. You're in the
8 country. You're not downtown. You're in the country.

9 What do they call a country road? A black top. What
10 is it on a black top? It's dark. Why do people go on a
11 black top? Either they want to get somewhere or they're
12 doing something that they probably shouldn't be doing.
13 These people were out there racing. They were out there
14 meeting some Orangeburg folks to race cars. It's illegal.
15 You don't do it in the light. You don't do it where
16 everybody can watch you. You do it in a dark place; that's
17 why they were out there.

18 Now, does it make sense? Of course, it does. Where is
19 Clatty Farm Road? You go out to Mt. Carmel road, that's the
20 way you go to Orangeburg. Then, you turn off onto Clatty
21 Farm Road. You come back from Orangeburg down that same
22 road and that's where the people from Orangeburg were
23 coming. That was a simple place for them to race. They had
24 two supped up Mustangs that they were going to race and they
25 were arguing about the carburetor and stuff like that when

1 all this occurred.

2 Where are all the lights out there? There aren't any
3 lights, maybe just a little bit so you could see how to line
4 up and go. But remember what Elmo said? Remember what Elmo
5 said? I couldn't see the person who was hitting on my
6 window. I couldn't see him. I asked him, "Why couldn't you
7 see him?" "Because I had tinted windows."

8 Then, remember what I asked him? I asked him, because
9 it was dark out there, what did Elmo say? He said, yeah, it
10 was dark. It was dark out there. How are all these people
11 going to see all this stuff?

12 Now, the Solicitor made the point of yeah, you could
13 see everything that was going on, but it was dark. That
14 doesn't make sense. Yeah, it does make sense. If you've
15 got a truck that's as big as this jury box and you're
16 sitting out there and you're standing around out there, you
17 can see pretty much what's going on, but if you get a few
18 feet away, you're not going to be able to see it anymore.

19 And remember the testimony; the testimony was the Elmo
20 pulled up a little bit and then took off. He's getting
21 further and further away. I think one of the testimony's
22 was 20 or 25 feet away from the people who supposedly had
23 the gun. In the dark. On Clatty Farm Road. On a black
24 top. He couldn't see who had that gun.

25 Now, they said there wasn't anybody else out there, yet

1 we have two witnesses here who say there were, but you can't
2 believe those witnesses because one of them smoked a little
3 reefer. You know, that's what the State wants you to
4 believe. Don't believe him. He had a disorderly conduct in
5 his past and he smoked a little reefer, so you can't believe
6 him. He's not a saint. Well, very few people who testify
7 are saints. A whole bunch -- well, not a whole bunch, but
8 several states have legalized marijuana, so maybe it's not
9 that bad anymore. But these people took an oath. He lives
10 out there. He saw that. He came into Court and admitted to
11 you that he was doing something illegal; he was out there
12 with a race.

13 'It's not like he's coming in here and trying to
14 whitewash everything that he'd done. He was out there to
15 race. He came in and told you exactly what happened. He
16 couldn't see what was going on out there. Maybe you could
17 see the truck, maybe you could see the back lights.
18 Remember the truck was parked away from where the shots came
19 from, so you're not going to have headlights flashing on
20 everybody and showing everybody what's going on, and
21 lighting it up so you've got a further problem with lighting
22 there.

23 Now, one of the things that bothered me when this thing
24 started was the injury to him. I think maybe it happened the
25 way he said it happened, and this is the reason. He said he

1 jumped into the back of the truck and was standing up and
2 that's when he was shot. You'll have a picture of the
3 bullet wound showing you that it's several inches below the
4 knee into his leg. Pictures don't lie. But remember what
5 the testimony was. He said he was standing up in the back
6 of the truck. First of all, why would you be standing up in
7 the back of the truck that is moving away, getting ready to
8 move away? That's a good way to end up on your head on the
9 concrete. He said he was standing up in the back and if he
10 was standing up in the back, remember what was between him
11 and the shooter? The tail gate. There's a hole in the
12 tailgate. How did the shooter shoot him that low on the leg
13 if the tailgate was up? Remember I asked "how tall was the
14 tailgate?" "Twenty-four inches" or something like that.
15 That's going to come up pretty high. That's going to cover.

16 Now, why didn't the State have a ballistics person in
17 here to say that this shot was fired at this angle based
18 upon the evidence? They didn't have it. But with common
19 sense we can see that it would be difficult to do. I'm not
20 saying that it's absolutely impossible. It looks pretty
21 difficult to do that type of thing in this situation in the
22 dark with everybody excited.

23 I think that he was jumping in the truck, not standing
24 up, but diving in the truck when he was struck. If that's
25 the case, then he's not looking back at who's shooting him.

1 This thing didn't happen like he said. This think didn't
2 happen one, two, three, four, like clockwork. This was a
3 malay out there. Somebody was saying, "Go get the heat."
4 That means to go get your gun. Can you imagine what that
5 did to the crowd, even if it was just seven people like we
6 heard about originally. Can you imagine what those people
7 were doing? Can you imagine how excited everybody was?

8 This is not a calm situation. This is not a gunfight on
9 Main Street. This is everybody running. Elmo was running
10 to get into the truck. Brian was running after Elmo. The
11 other fellow running to the truck, jumping in the truck and
12 closing the door, closing poor old Shannon outside. And
13 he's jumping in the back of the truck.

14 This is something where everybody is excited, everybody
15 is looking to try to get out of the way, because something
16 is going to happen; obviously, something is going to happen.
17 But the evidence is that Brian is on the driver's side of
18 the truck. The witnesses say that Mr. Rivas said he was
19 holding Brian back because he didn't want him, Brian, to get
20 to Elmo, because Elmo had slugged him. He didn't want --
21 and Elmo doesn't remember anything about what happened. He
22 couldn't see out the window. He didn't hear the shot. He
23 didn't know what happened, and yet, he caused most of it by
24 getting in a fight with somebody in the crowd. One of the
25 witnesses say he hit more than one person and when he did he

1 said, "Get the heat, let's go," or something to that effect,
2 and then all hell broke loose.

3 Now, it doesn't add up. You've got witnesses who say
4 that Brian, the defendant, was on the driver's side. If he
5 was, he could not have shot Shannon. You've got witnesses
6 who say, "No, it wasn't Brian on the side." So if it wasn't
7 Brian on the side, he couldn't have committed any of the
8 damage to the truck if it wasn't him on the side. But that
9 disagrees with what the other witnesses were saying.

10 Somebody shot a gun and it hit Shannon. I don't think
11 anybody attempted to murder him. I think it was a reaction.
12 I think it was something that happened on that road that
13 night. I think it was something that was totally
14 unforeseen, and it was something that did not directly
15 involve the defendant. He had a knife. Why did he need a
16 gun?

17 The State's own witnesses do not agree about how the
18 gun was retrieved. Remember that Elmo said that he missed
19 hitting Brian, but that Brian jumped up and ran across the
20 yard to get something out of a car and then came back.
21 Shannon didn't say that. Shannon said that Rivas handed him
22 the gun, exchanged it for the knife, and then shot him. If
23 Rivas is mad at Shannon, why didn't Rivas shoot at Shannon?
24 Why did Rivas have somebody else shoot at Shannon?

25 Nobody talked to Rivas. Law enforcement didn't go talk

1 to him. He did an affidavit, still they didn't go talk to
2 him. They talked to him on the stand yesterday for the
3 first time, and he told what happened. And another point,
4 he lives in town. If he wanted to talk to somebody and
5 wanted to just sit around and talk to them, why didn't he do
6 it in town? All of these other folks lived in town.

7 Elmo kept going back and forth, "We've got to meet.
8 We've got to meet. We've got to do this. You've got to
9 talk." Elmo got the people together, put them in the truck,
10 took them out to Clatty Farm. Elmo started the fight. Elmo
11 said you've got to fight this man. He was with your wife.
12 You've got to fight him. Shannon wouldn't do it. Elmo got
13 mad. Elmo slugged Brian. Why were they out there? They
14 were out there to race. That's where you go to race. You
15 don't race downtown; you better not. You go out to Clatty
16 Farm Road to race.

17 You've heard all of the evidence, ladies and gentlemen.
18 There are so many points in this thing that when I started
19 thinking about it this morning, I said to myself, I'm going
20 to overthink. But y'all have heard this. And all of it
21 adds up to one thing. There is no certainty at all that
22 Brian Jenkins did this act; none whatsoever. There was a
23 shot and it came from the crowd and the crowd dispersed.

24 I almost forgot one point. I said everybody was
25 excited and they didn't know who did that. Y'all heard the

1 9-1-1 tape and you can hear it again if you want to, and it
2 might not be a bad idea to listen to it again. They asked
3 Shannon who yesterday, clear as a bell, knew everything that
4 went on, "Who shot you?" What did he do? You heard it on
5 the tape. He turned to the other folks and said, "Who shot
6 me?" He didn't know who shot him. A car gets in behind
7 them and they start getting excited about a car and they
8 think it's the shooter coming to get them.

9 Law enforcement converges all around them like
10 something out of Afghanistan; you just get surrounded by law
11 enforcement at Can City, and they grab these folks out of
12 the car; this poor couple in the car, and they drag them
13 out. What are they saying on the tape, "That's them.
14 That's them. That's them. That's the ones who did it.
15 That's them." And then what did he say, "Well, wait a
16 minute, maybe that's not them. Maybe that's not. That's a
17 woman. That's them. That's them." It's on the tape. We
18 don't know who shot them because they couldn't see. They
19 didn't know what happened. They were assuming what was
20 going on.

21 Ladies and gentlemen, the State has not borne its
22 burden of proof. They have to bring it and set it down in
23 front of you to say "this is what happened. He did this."
24 If he's there, it doesn't make any difference. If he's
25 merely present, it doesn't make any difference. They didn't

1 do it. They didn't present it. They didn't talk to the
2 witnesses. They didn't do anything they were supposed to
3 do, and as a result, we're here today with this case. I ask
4 you, ladies and gentlemen, to find Mr. Jenkins not guilty.
5 Thank you very much.

6 THE COURT: Ms. Hudson?

7 MS. HUDSON: Thank you, Your Honor.

8 CLOSING ARGUMENT

9 BY MS. HUDSON:

10 Ladies and gentlemen, Madame Foreperson, we did make
11 our case. The defendant shot at Shannon Pye as he stood in
12 the back of the truck three times. The first time, he hit
13 him. Thankfully, because Shannon may not have been here
14 testifying today and it may have been a different charge.
15 It took him off his feet and he heard two more shots and
16 then hit the truck. I don't understand a clearer target if
17 he's standing in the back of a truck. There is intent. He
18 was intending to shoot him. And he saw him, he saw him with
19 the gun. He did testify. At that time, he was the only one
20 looking in that direction. Harry was in the backseat of the
21 truck, ducking, trying to make sure he didn't get hit, and
22 Elmo Chapman was driving, so he was not looking. Shannon
23 had the best vantage point, the best view, of who was
24 shooting at him while he stood in the back of the truck. He
25 saw Jose take the knife that Brian Jenkins had had earlier.

1 that he used to damage the truck, he took the knife from
2 him, handed him a gun, and he shot. He didn't have to kill
3 the victim, Shannon Pye, and thankfully, he didn't. That's
4 not necessary for attempted murder, but pointing a gun at
5 someone and pulling the trigger, whether hit or not.

6 The doctor was asked whether or not this could have
7 been a fatal injury. That's not necessary. That's just
8 something that was put on the record, but he doesn't even
9 have to be hit, but he was hit and that's evidence. That is
10 evidence that he was being shot at. Shot at by the
11 defendant, Brian Jenkins, who he identified that night by
12 giving a description to law enforcement, a large, black
13 male. The only black male out of the three people that were
14 there. There were not 13 or 30, or seven or ten, who knows
15 how many people, from Orangeburg out there racing. There
16 were three people out there, and Shannon Pye told law
17 enforcement what the individual looked like. The reason he
18 said on 9-1-1, "Who shot me?" He didn't know him. He
19 didn't know who it was. That didn't mean he couldn't
20 describe him. That just simply meant that he didn't know
21 his name. He only knew Jose. That was the only person he
22 knew out there. He knew enough to give a description, and
23 he knew so well that when he had a lineup put in front of
24 him by law enforcement, he picked him out. There was no
25 suggestion by law enforcement as to who it may be. Det.

1 Thomas gave a description to his Captain, and based on that
2 description, he got a DMV photo, put in a lineup for SLED,
3 and amazingly enough, Shannon Pye picked him out. He picked
4 him out because he did shoot at him, and shot him, and he is
5 charged with attempted murder because of this, and also
6 possession of a weapon during the commission of a violent
7 crime. The judge will give you those elements.

8 I would like to read to you what attempted murder is.
9 If I differ from anything that the judge tells you, he is
10 certainly -- make sure you listen to what he charges you.
11 But attempted murder is, "A person, who with the intent to
12 kill, attempts to kill another person with malice
13 aforethought, either expressed or implied." That is
14 attempted murder and he did this with a pistol, a weapon.
15 That's how he attempted to commit this crime.

16 Now, he is also charged with malicious injury to
17 personal property, value more than \$2,000 but less than
18 \$10,000. He is charged with this for damaging Elmo
19 Chapman's truck. There is testimony from Shannon Pye,
20 again, who had the best vantage point as he stood in the
21 back of the truck looking over everything he saw the
22 defendant, Brian Jenkins, have a knife in his hand, beat the
23 windows; Shannon did say break, but he could not see around
24 the truck and that's not exactly what he was focused on at
25 the moment. He simply heard him beating on the side of the

1 truck. Saw him slash the tire. Defense witnesses even said
2 that he was hitting the side of the truck and that he
3 slashed the tire. That came from the witnesses that the
4 defendant put up on his behalf. So they agree with that.
5 They could see that.

6 The value. An owner of a vehicle knows better than
7 anyone else what their vehicle is worth and what the damage
8 is. He got the estimate. He had to pay for it. He knows
9 what that truck is worth. He knows what the damage was,
10 \$5,000. We have met our burden for that charge.

11 Now, let's talk about testimony. There are differences
12 in testimony. But this didn't happen over a period of an
13 hour. This was an instantaneous event. A very stressful
14 event. Different people are going to be looking at
15 different things at different times. They are going to
16 assume different things at different times running to the
17 truck, not running to the truck, again, Shannon was seeing
18 basically what no one else was seeing at the end of
19 everything, because he was standing in the back of the truck
20 looking behind him while everyone else was in the truck.
21 Harry was raising his head a couple of times making sure he
22 didn't get hit.

23 Let's talk about testimony. Shannon said when he took
24 the stand that there were three people out there, three
25 people. He knew Jose. He did not know the other two

1 individuals. There was one large, black male. That is what
2 he testified to. He also testified to that he was in the
3 bed of the truck and he watched the defendant beat the
4 truck, the window, and slash the tire. Okay? He also said
5 that he saw the flash of the gun and he saw him, the
6 defendant, Brian Jenkins, shooting.

7 Elmo Chapman. He didn't see much, but what he did
8 testify to was the number of people out there. There were
9 three people out there. Jose, who everyone knew, but no one
10 knew the other two individuals; but did know that there was
11 a large, black male out there. He testified to that. He
12 admitted that he did not see him damage his truck, but he
13 did say that he saw him with a knife, a six-inch knife. And
14 that is what Shannon Pye testified to when he was beating
15 the window, and obviously, the knife had to be used to slash
16 the tire. He had it in his possession; Elmo knew that.

17 He also, again, testified the truck value that we've
18 already spoken about. He's the owner of the truck. Who
19 better to testify about that?

20 Harry Ross. Harry Ross also testified that there were
21 three people out there. Again, he knew Jose. He didn't
22 know the other two. He was in the back of the truck. He
23 was not as involved. He testified that he did not see and
24 admitted that he did not know or did not see the defendant
25 beating the truck. He said it was the other fellow, but he

1 did not see that. He actually said it's possible, but he
2 thought he did. But what he did testify to that he saw,
3 besides the fact that there were only three people out
4 there, what he did testify to is that he saw a large, black
5 male standing behind the truck in the road, not in the yard.
6 Not in the yard where this mysterious man who no one knows
7 the identity of, shot, from the yard with a 13 to 30, seven,
8 ten, people. So it was not in the yard. It was a man in
9 the road, which is what Shannon testified, and he saw the
10 flashes, and after the first flash, he ducked, because he
11 was afraid of getting hit. He then heard two more shots,
12 three shots. Shannon testified there were three shots.
13 Three people, three shots. They both testified to the same
14 thing.

15 Sgt. Lawson. One of the first to arrive on scene,
16 spoke with the victim, which is normal in this type of
17 situation, spoke with Shannon Pye. What did Shannon Pye
18 say? A large, black male shot at me. He didn't know who
19 it was. He didn't know. That's why on 9-1-1 he said, "Who
20 shot me?" Because he didn't know the guy.

21 Detective Thomas. Again, spoke with Shannon Pye. What
22 did Shannon Pye tell him? A large, black male. He was in
23 the emergency room. He had been given morphine. He still
24 knew that a large, black male was the one who did the
25 shooting. There were only three people out there. Elmo

1 said Jose, another individual who he believed was of Mexican
2 descent, Hispanic, who I think later he said he understood
3 it was Sammy; and a large, black male who he said he did not
4 know. He did not know.

5 Based on his description again, a lineup was done and
6 he identified; Elmo identified, as well. This man, the
7 defendant, Brian Jenkins, was identified as being that
8 large, black male who did the shooting. What makes sense?
9 They didn't know him. Why would they say that this man did
10 it and not Jose?

11 The public defender makes a very good point. If this
12 was not true, if Jose had done this shooting, why would they
13 pin it on someone who they don't even know? Now, the
14 defense put up Timothy Jenkins. Timothy Jenkins does have a
15 record. It is up to you as far as what that does with his
16 credibility, but he does have a record. He is also what I
17 would call best friends with the defendant. Known him "all
18 his life" is what he said. Lived next door. Consider that.

19 Also, he did testify that he caused the damage to the
20 truck. Defense is arguing that that wasn't even done when
21 their own witness said he did. He did do the damage to the
22 truck. It was so dark out there, but yes, he did do the
23 damage to the truck. Saw that. Didn't shoot. Mysterious
24 man over in the yard somewhere in all of this large group of
25 people is the one who did that, but he did say that he did

1 see him do the damage to the truck. Never contacted law
2 enforcement. Law enforcement never identified this
3 individual. If you know something like this concerning your
4 best friend and it's absolute truth, why wouldn't you go to
5 law enforcement? Why wouldn't you tell law enforcement that
6 you saw this? That your friend who is charged with this
7 offense and faces being convicted, why wouldn't you go to
8 law enforcement and say something? He didn't. He did not
9 talk to law enforcement.

10 Jose Rivas. Again, very good friends with the
11 defendant; known him since elementary school. He also never
12 went to law enforcement. He went to the public defender's
13 office, but never went to law enforcement, never contacted.
14 You heard me ask, he did an affidavit with the public
15 defender's office, and in that affidavit, he said there were
16 seven to ten people out there. On the stand, he said 13 to
17 30; big difference. Which is it? Doesn't make sense.

18 You heard me ask him about the fact that they were out
19 there racing. Racing is illegal. You heard me say, "You
20 just haven't gotten caught?" He said, "No." Credibility.
21 Something to think about with the type of individual who is
22 taking the stand. And again, he never went to law
23 enforcement. Two witnesses who never went to law
24 enforcement and consider the type of people that the defense
25 put up.

1 I'm not sure about the argument made about the
2 ballistics; why we didn't call an expert because of the
3 height of the tailgate and why Shannon was hit where he was
4 hit. It's not necessary. He was standing in the back of a
5 truck. A tailgate is not tall enough to completely shield
6 your body. There was evidence on the truck and you will
7 have those photographs in the jury room that the bullets
8 were hitting the top of the tailgate of the truck. If a
9 bullet can do that, then certainly it can hit someone in the
10 leg. Thankfully, it didn't hit him anywhere else. Not
11 necessary.

12 What makes sense? What makes sense in this case? All
13 of the testimony that you've heard, all of the evidence
14 points to, again, the defendant, Brian Jenkins, being the
15 individual who shot at a man, Shannon Pye, who was standing,
16 facing him, in the back of a truck. He was in the back of
17 the truck because they were rushing to get out of there
18 because they didn't want trouble. It doesn't matter the
19 differences in where the gun came from; different people
20 have different vantage points at different times. This was
21 chaotic. This was not a calm situation, as the defense said.
22 But it wasn't calm because these three men were trying to
23 get out of a bad situation that got worse.

24 When you go back to your jury room, please consider the
25 testimony clearly. Please look at the evidence. Thank you

1 for your service today. Thank you for your attention. You
2 were paying attention and that is much appreciated. It is
3 the State's position that when you look at all the evidence
4 and review everything, that you will come back with a
5 verdict of guilty on all charges. Thank you.

6 JURY CHARGE

7 Madame Foreperson, ladies and gentlemen of the jury, it
8 is now my duty to charge you on the law in this case. The
9 State has charged the defendant, Brian Jenkins, with
10 attempted murder, possession of a weapon during the
11 commission of a violent crime, and malicious injury to
12 personal property, greater than \$2,000, but less than
13 \$10,000, in these three indictments which I am holding in my
14 hand; Indictments 2012 at 673, 674, and 675.

15 I remind you that the fact that the defendant was
16 arrested, the fact that the defendant was charged and
17 indicted in this case is not evidence in this case, nor does
18 it create any presumption or inference of guilt.

19 These indictments are simply the formal written
20 instrument which contains the charge made against the
21 defendant. The indictment is the means by which the charge
22 is brought into this Court, the Court of General Sessions.
23 They contain the charges made against the defendant. They
24 are just the formal documents that allow the case to be
25 brought here in the Court of General Sessions.

1 Now to the indictments, the defendant has pled not
2 guilty. And that plea of not guilty puts the burden on the
3 State of South Carolina to prove the defendant guilty beyond
4 a reasonable doubt.

5 A person charged with committing a criminal offense is
6 never required to prove himself innocent. I charge you,
7 ladies and gentlemen, that it is an important rule of the
8 law in a criminal trial, no matter what the seriousness of
9 the charge may be, that the defendant will always be
10 presumed to be innocent of the crime for which the
11 indictment was issued, unless guilt has been proven by
12 evidence satisfying you of that guilt beyond a reasonable
13 doubt.

14 This presumption of innocence does not end when you
15 begin your deliberations, but it accompanies the defendant
16 throughout the trial until you, the jury, reach a verdict of
17 guilt, based on evidence satisfying you of that guilt beyond
18 a reasonable doubt.

19 The presumption of innocence is not a mere legal
20 theory. It's not just a legal phrase. It is a substantial
21 right to which every defendant is entitled, unless you, the
22 jury, are satisfied from the evidenced of the defendant's
23 guilt beyond a reasonable doubt.

24 What is a reasonable doubt in the law? A reasonable
25 doubt is the kind of doubt that would cause a reasonable

1 person to hesitate to act. The State has the burden of
2 proving the defendant guilty beyond a reasonable doubt.
3 Some of you may have, in the past, served as a juror in a
4 civil case where you were told in a civil case, that it was
5 only necessary to prove that a fact was more likely true
6 than not true. We call that burden of proof in a civil case
7 by the greater weight or the preponderance of the evidence.
8 In a criminal case, the State's proof must be more than
9 that. It must be beyond a reasonable doubt.

10 Proof beyond a reasonable doubt, ladies and gentlemen,
11 is proof that leaves you firmly convinced of the defendant's
12 guilt. Now, there are very few things in this entire world
13 that any of us know without absolute certainty, and in
14 criminal cases, the law does not require proof that
15 overcomes every possible doubt. If, based on your
16 consideration of the evidence, that's been presented during
17 the trial of this case, if you are firmly convinced that the
18 defendant is guilty of the crime charged, you must find the
19 defendant guilty. On the other hand, if you think there is
20 a real possibility that the defendant is not guilty, then
21 you must give the defendant the benefit of the doubt, and
22 find the defendant not guilty.

23 Now, I remind you, ladies and gentlemen, that during
24 this trial, you and I have had certain duties to perform.
25 As the trial judge, it has been my responsibility to preside

1 over the trial of the case and I also have the duty to rule
2 on the admissibility of evidence offered during the trial.

3 You, as jurors, are to consider when you deliberate
4 only the competent evidence before you. If there was any
5 testimony ordered stricken from the record in this case
6 during this trial, you must disregard that testimony. You
7 are to consider only the testimony which has been presented
8 from the witness stand, any exhibits which have introduced
9 into evidence, and any stipulations of counsel which
10 occurred during the course of the trial.

11 Now, as a presiding judge, I also have the additional
12 duty to charge you the law that applies to this case. As
13 the presiding judge, I'm the sole judge of the law in this
14 case, and as I told you at the outset, it is your duty as
15 jurors to accept and to apply the law as I now state it to
16 you.

17 If any of you already have any ideas as to what the law
18 is or what you think the law ought to be, and it does not
19 agree with what I now tell you the law is, you must abandon
20 any of your preconceived opinions or ideas, because each of
21 you took an oath in which you swore to accept and to apply
22 the law exactly as I state it to you.

23 In every case tried in this courtroom before a jury,
24 the jury becomes the sole and exclusive judge of the facts
25 in the case. A trial judge, such as myself, cannot

1 intimate, state, comment on, or make any kind of statement
2 to a trial jury, such as yourselves, about the facts in the
3 case.

4 Since you, the jury, are the sole judges of the facts
5 in this case, you are not to infer from what I have said
6 during the progress of this trial in ruling upon the
7 admissibility of evidence, or otherwise, or anything that I
8 say now in the course of this instruction to you that I have
9 any opinion whatsoever about the facts in this case. The
10 law does not allow me to have an opinion about the facts in
11 this case. This is a matter solely for you, the jury, to
12 determine.

13 As jurors, it becomes your duty, ladies and gentlemen,
14 to determine the effect, the value, the weight, and the
15 truth of the evidence that's been presented during the trial
16 of this case, but you must base your decision solely and
17 only on the evidence that's been presented during the trial
18 of the case.

19 Now, in a trial, like many things in the law, there are
20 two types of evidence which are generally presented during a
21 trial. And like other things, we have names for those two
22 general types of evidence. We call the two general types of
23 evidence direct evidence and circumstantial evidence.

24 Direct evidence is the testimony of a person who claims
25 to have actual knowledge of a fact, such as an eyewitness,

1 to an event. Direct evidence is evidence which immediately
2 establishes the main fact to be proved.

3 Circumstantial evidence, as contrasted with direct
4 evidence, is proof of a chain of facts and circumstances
5 indicating the existence of a fact. Circumstantial evidence
6 is evidence which establishes collateral facts, from which
7 the main fact may or may not be inferred. Circumstantial
8 evidence is based on inference and not on personal knowledge
9 or personal observation.

10 The law makes absolutely no distinction between a
11 weight or value to be given to either direct or
12 circumstantial evidence, nor is a greater degree of
13 certainty required of circumstantial evidence than of direct
14 evidence. You as a jury should weigh, consider, and
15 evaluate all -- all of the evidence in this case, both
16 direct and circumstantial. After weighing all of the
17 evidence, if you are not convinced of the guilt of the
18 defendant beyond a reasonable doubt, you must find the
19 defendant not guilty.

20 On the other hand, after weighing all of the evidence
21 in this case, both direct and circumstantial, if you are
22 convinced of the guilt of the defendant beyond a reasonable
23 doubt, you must find the defendant guilty.

24 Necessarily, as I told you at the outset of the trial,
25 you as a jury must determine the credibility of the

1 witnesses who have testified during this case. Credibility
2 simply means believability. It becomes your duty as jurors
3 to analyze, it becomes your duty to evaluate the evidence
4 and determine which evidence convinces you of its truth.

5 In determining the believability of the witnesses who
6 have testified in this case, you may believe one witness
7 over several witnesses or several witnesses over one. You
8 may believe a part of the testimony of a witness, and reject
9 the remaining part of the testimony of that same witness.
10 You may believe the testimony of a witness in its entirety
11 or you may reject the witness's testimony in its entirety.

12 You may consider whether any witness has exhibited to
13 you any interest, any bias or favoritism, any prejudice, or
14 other motives in this case. You may also consider as I told
15 you at the outset of the trial, the appearance, or the
16 manner, of the witness while on the witness stand. We call
17 that the demeanor of the witness while the witness is on the
18 witness stand in judging the credibility, or the
19 believability, of the witnesses who have testified during
20 the trial of this case.

21 Anything that is in evidence, you as a jury have the
22 right to consider in passing upon the credibility or the
23 believability of the witnesses who have testified during the
24 trial of this case.

25 I charge you, ladies and gentlemen, that a person who

1 has a past criminal record is competent to testify during a
2 trial. That does not exclude their testimony. A past
3 record does not affect the ability of a witness to testify.
4 A past criminal record may only be considered by you if at
5 all in determining the witness's believability or the
6 witness's credibility.

7 Remember, ladies and gentlemen of the jury, that you
8 are the sole judges of the facts and you are the sole judges
9 of the believability and the credibility of the witnesses
10 who have testified during the trial of this case.

11 I charge you, ladies and gentlemen, that there has been
12 evidence presented during the trial that witnesses have made
13 some prior statements out of Court which are not allegedly
14 consistent with the witness's present testimony. You may
15 use this evidence to decide whether to believe the witness.
16 You may also use evidence of the earlier contradictory
17 statement to determine the truth of those statements. It is
18 up to you, the jury, to decide whether to believe the
19 earlier statement or the testimony given at trial.

20 If a witness has shown to you by evidence to have
21 knowingly testified untruthfully concerning any matter, you
22 may consider this in determining whether to trust the
23 witness's testimony as to other matters. You may reject all
24 testimony of that witness or give all or a part of the
25 testimony the weight you think it deserves.

1 I told you during the trial that the rules of evidence
2 ordinarily do not permit a witness to get on the witness
3 stand, take the oath and say, "My opinion is that so-and-so
4 happened." The rules of evidence reject opinion testimony.
5 An exception to that rule exists for those witnesses whom we
6 call expert witnesses. A witness who by education,
7 training, or experience has become, or claims to have become
8 some expert, in some art, science, or profession may give an
9 opinion as to the subject in which the witness claims to be
10 an expert in and they give the reasons for his or her expert
11 opinion if qualified by the Court.

12 You should consider any expert opinion given by a
13 witness and just like any other witness in the trial of this
14 case, you give it the weight you think it deserves. If you
15 think an expert witness's opinion is not based on sufficient
16 education or experience, or if you decide that the reasons
17 given in support of the opinion are not sound, or if the
18 opinion is outweighed by other evidence, you may disregard
19 the opinion entirely. An expert witness's opinion is to be
20 given no greater weight than that of other witness's simply
21 because the witness is an expert.

22 I instruct you and charge you now and emphasize to you
23 that the fact that the defendant in this case, Brian
24 Jenkins, did not testify is not a factor to be considered by
25 you in any way in your deliberations and in your

1 consideration on the question of the guilt or innocence of
2 the defendant. It must not be considered by you in any
3 manner whatsoever in your jury room.

4 Every defendant has a constitutional right to remain
5 silent and the assertion of your constitutional right to
6 remain silent must not be considered by you during your
7 deliberations.

8 I repeat, under the oath which each of you took, you
9 are to draw no conclusion whatsoever from the fact that the
10 defendant in this case did not testify. The fact that the
11 defendant did not testify should not even be discussed in
12 your jury room. The burden of proof as I have stated to you
13 is on the State. The defendant is not required to prove his
14 innocence. The burden of proof is on the State to prove
15 guilt beyond a reasonable doubt.

16 Now, I charge you, ladies and gentlemen, that mere
17 presence at the scene of a crime is not sufficient to prove
18 someone guilty of a crime. A defendant's presence where a
19 crime is being committed or association with a person who
20 commits a crime does not make a defendant an accomplice or
21 an aider or abettor of the person committing the crime. The
22 burden is on the State to prove every element of the crime
23 charged. If you find after reviewing all of the evidence,
24 both direct and circumstantial, that the State has proved
25 that the defendant was only present at the scene of a crime

1 and they have not proved beyond a reasonable doubt any
2 participation in the crime, then you must find the defendant
3 not guilty. The law is that proof of mere presence at the
4 scene of the crime is not sufficient to find someone guilty.

5 I charge you, though, that if a crime is being
6 committed by two or more people who are acting together in
7 committing a crime, the act of one is the act of all. A
8 person who joins with another person to commit an unlawful
9 act is criminally responsible for everything done by the
10 other person, which happens as a probably or natural
11 consequence of the acts done in carrying out a common plan
12 or a common purpose.

13 For example, two people can be guilty of killing
14 another person when only one of the two had a gun, there was
15 only one bullet, and only one of the two fired a shot that
16 caused their death. If two or more people are together,
17 acting together, assisting one another in committing the
18 offense, the act of one is the act of all; or as it is
19 sometimes said, the hand of one is the hand of all.

20 Prior knowledge that a crime is going to be committed
21 without more is not sufficient to make a person guilty of
22 that crime. Mere knowledge that another person is going to
23 commit a crime, even if the defendant is present when the
24 crime is committed is not sufficient to convict a defendant
25 as a principle. Guilt as a principle is shown by actual or

1 constructive presence at the scene as a result of prior
2 arrangement.

3 Therefore, a finding of a prior arranged plan or a
4 common scheme is necessary for a finding of guilt as a
5 principle. The State must prove beyond a reasonable doubt by
6 competent evidence the theory of the hand of one is the hand
7 of all. A principle in a crime is one who either actually
8 commits the crime or who is present aiding, abetting, or
9 assisting in committing the crime.

10 When a person does an act in the presence of and with
11 the assistance of another, the act is done by both. Where
12 two or more acting with a common plan, a common intent, are
13 present at the commission of a crime, it does not matter who
14 actually commits the crime, all are guilty; the hand of one
15 is the hand of all.

16 Present at the commission of a crime means to be
17 sufficiently near to aid and abet and assist in the
18 commission of the crime. However, as I have charged you,
19 mere presence at the scene of the crime is not sufficient to
20 convict one as a principle on the theory of aiding or
21 abetting, or the hand of one is the hand of all.

22 Intent is also a necessary element for there must have
23 been a common design or intent to commit the crime, and the
24 crime must have been committed pursuant thereto with the
25 person aiding and abetting by some overt act.

1 Intent means intending the result which actually
2 occurs; not accidentally or involuntarily. Intent may be
3 shown by acts and circumstances. Intent may be shown by the
4 conduct of the defendant and any other circumstances based
5 on evidence introduced during the trial of the case in which
6 you may naturally and reasonably infer intent. The State,
7 of course, must prove these elements beyond a reasonable
8 doubt.

9 I charge you, ladies and gentlemen, that an issue in
10 this case is the identification of the defendant as a person
11 who committed the crime charged. The State has the burden
12 of proving identify beyond a reasonable doubt. You must be
13 satisfied as a jury beyond a reasonable doubt as to the
14 accuracy of the identification of the defendant before you
15 may convict the defendant.

16 Identification testimony is an expression of belief or
17 an impression of a witness. You must determine the accuracy
18 of the identification of the defendant as the jury, based on
19 the evidence introduced during the trial of the case. You
20 as a jury must consider the believability of any
21 identification witness in the same way as any other witness.
22 You may consider whether the witness had an adequate
23 opportunity to observe the offender at the time of the
24 offense. This will be affected by things such as how long
25 or short a time was available, how far or close the witness

1 was, the lighting conditions, and whether the witness had a
2 chance to see or know the person.

3 Once again, I instruct you that the burden of proof is
4 on the State, and it extends to every element of the crime
5 charged, and this specifically includes the burden of
6 proving beyond a reasonable doubt the identify of the
7 defendant as the person who committed the crime.

8 You heard the word "stipulation" during this trial. A
9 stipulation is an agreement, it is an admission, or a
10 concession that is usually made in a judicial proceeding by
11 the parties, thereto, or their attorneys. Stipulations, of
12 course, are binding upon those who make them.

13 A stipulation is an agreement, an understanding if you
14 will. The Court and the jury must accept stipulations of
15 fact as binding upon the parties. If counsel for the
16 parties have stipulated to any fact or any fact has been
17 admitted by the stipulation, you will regard that fact as
18 being conclusively proved as to the party or parties making
19 the stipulation or admission as a fact.

20 Now, ladies and gentlemen, in order to establish
21 criminal liability, criminal intent, is required. For
22 example, for any particular crime, just by example, purpose,
23 or intent, or malice, or recklessness, or even in some
24 cases, what we call criminal negligence. Those are examples
25 of criminal intent. Criminal intent must be proven by the

1 State beyond a reasonable doubt.

2 Criminal intent is always a matter that must be
3 determined by the jury from the circumstances surrounding
4 the situation, based on evidence introduced during the trial
5 of this case.

6 There is no way, ladies and gentlemen, to prove intent
7 to a mathematical certainty. There is no way medical
8 science can dissect a person's brain and determine what that
9 person had in mind. So the law says, ladies and gentlemen,
10 that criminal intent may be inferred from the circumstances
11 shown to have existed. This, ladies and gentlemen, is how
12 you as a jury make a determination of whether or not any
13 element in a crime requiring intent was present.

14 It is not necessary to establish intent by direct
15 evidence, but intent may be established by inference in the
16 same way as any other fact, by taking into consideration the
17 acts of the parties, and all the facts and circumstances of
18 the case based on evidence introduced during the trial of
19 the case.

20 Criminal intent is a mental state; it's a conscious
21 wrongdoing. It is up to you, as a jury, to determine what
22 the defendant intended to do, based on the circumstances
23 shown to have existed from evidence introduced during the
24 trial of the case.

25 Criminal intent can arise from action or a failure to

1 act. It may arise from negligence, recklessness, or
2 indifference to duty, or to consequences considered by the
3 law to be the equivalent of criminal intent.

4 Now, ladies and gentlemen, I charge you that in this
5 case the defendant is charged with three charges and I'm
6 going to define them for you. If you find the defendant
7 guilty of attempted murder, which happens to be the first
8 question on your verdict form, then you may also find the
9 defendant either guilty or not guilty of possession of a
10 weapon during the commission of a violent crime. That is so
11 because attempted murder is a violent crime and you have to
12 be guilty of a violent crime in order to be found guilty of
13 possession of a weapon during the commission of a violent
14 crime.

15 If you find the defendant not guilty of attempted
16 murder, then you may not find the defendant guilty of
17 possession of a weapon during the commission of a violent
18 crime. Regardless, however, whether you find the defendant
19 guilty or not guilty of attempted murder, in this analogy,
20 regardless of whether you find the defendant guilty of
21 attempted murder, or possession of a weapon during the
22 commission of a violent crime, you may still find the
23 defendant guilty or not guilty of malicious injury to
24 personal property.

25 You will be asked to write a separate verdict of guilty

1 or not guilty for each charge following the instructions
2 which I have written to you on your verdict form, based on
3 the evidence introduced during the trial of this case.

4 I will now define the offenses for you. First, the
5 word "attempt". An attempt is an effort to accomplish a
6 crime which does not succeed. An attempt includes a
7 specific intent to do a particular criminal act, along with
8 an act falling short of the act intended.

9 The State must show more than mere preparation and
10 intent. There must be some overt act committed in the
11 effort to commit the crime. Intent means intending the
12 result which actually occurs, not accidentally or
13 involuntarily. Intent may be shown as I've told you already
14 by acts and circumstances and conduct by the defendant and
15 any other circumstances from which you may naturally and
16 reasonably infer intent based on evidence introduced during
17 the trial of the case.

18 Now, attempted murder. A person, under code section
19 16-3-29 of the Code of Laws of South Carolina, a person who
20 with intent to kill attempts to kill another person with
21 malice aforethought, either expressed or implied, commits
22 the offense of attempted murder. Malice is hatred, ill-
23 will, or hostility toward another person. It is the
24 intentional doing of a wrongful act without just cause or
25 excuse and with an intent to inflict an injury, or under

1 circumstances the law will infer an evil intent.

2 Malice aforethought does not require that malice exist
3 for any particular time before the act is committed, but
4 malice must exist in the mind of the defendant just before
5 and at the time of the act being committed. There must be a
6 combination of the previous evil intent and the act itself.
7 Malice aforethought may be expressed or implied. These
8 terms express and inferred do not mean different kinds of
9 malice or different kinds of evil intent of hostility toward
10 another person, it is merely the manner when we say express
11 or inferred, the manner in which malice may have been shown
12 to exist. That is either by direct evidence or by inference
13 from the facts and circumstances which are proven beyond a
14 reasonable doubt.

15 Express malice is shown like when a person speaks words
16 which express hatred or ill-will towards another person, or
17 when a person prepares beforehand to do the act which is
18 later accomplished. For example, lying in wait for a
19 person. Any act or preparation going to show that the deed
20 was within the defendant's mind would be express malice.

21 Malice may be inferred from conduct showing a total
22 disregard for human life based on evidence introduced during
23 the trial of the case.

24 I charge you, ladies and gentlemen, that under S.C.
25 Code Section 16-23-490 in the Code of Laws of South

1 Carolina, the State must prove beyond a reasonable doubt
2 that a defendant was in possession of a firearm or visibly
3 displayed what appeared to be a firearm during the
4 commission of a violent crime in order to be guilty of
5 possession of a weapon during the commission of or attempt
6 to commit a violent crime.

7 A firearm means a machine gun, automatic rifle,
8 revolver, pistol or any other weapon which will or is
9 designed to or may be readily converted to expel a
10 projectile. In order to find a defendant guilty of
11 possession of a weapon during the commission of a violent
12 crime, you must first find the defendant guilty of either
13 committing a violent crime or attempting to commit a violent
14 crime.

15 I charge you that under the laws of the State of South
16 Carolina, the offense of attempted murder is a violent crime
17 under the laws of South Carolina.

18 Malicious injury to personal property, Section 16-11-
19 510 (b) (2), "a defendant is charged with malicious injury to
20 personal property valued at more than \$2,000, but less than
21 \$10,000 in this case." The State must prove for this beyond
22 a reasonable doubt that the defendant willfully and
23 maliciously cut, maimed, shot or otherwise injured or
24 destroyed any kind, class, article or description of
25 personal property or the goods or chattels of another

1 person.

2 Willfully, for this offense, means voluntarily and
3 intentionally with the specific intent to do something the
4 law forbids. Maliciously means involving malice. Malice as
5 I told you is hatred, ill-will, or hostility towards another
6 person. It is the intentional doing of a wrongful act
7 without just cause or excuse and with an intent to inflict
8 an injury.

9 Malice, as I told you, may be expressed or inferred,
10 and as I told you earlier, the terms expressed and inferred
11 do not mean different kinds of malice, but merely the way or
12 manner in which malice may be shown to exist. That is
13 either by direct evidence or by inference from the facts and
14 circumstances which are proved.

15 Malice may be inferred from conduct showing a total
16 disregard for human life based on evidence introduced during
17 the trial of the case. The State must also prove beyond a
18 reasonable doubt that the value of the property is more than
19 \$2,000, but less than \$10,000 for the offense of malicious
20 injury to personal property.

21 Now, Madame Foreperson, I told you that I would prepare
22 a verdict form for you. First of all, ladies and gentlemen,
23 pay absolutely no attention to the order in which I wrote
24 the forms of verdict. I, obviously, had to write one before
25 the other, so the order has no significance whatsoever.

1 I put the title of this case at the top of your verdict
2 form. It says at the top, State of South Carolina, County
3 of Colleton, Court of General Sessions, and has the
4 indictment numbers below it, 2012-GS-15-673, 674, and 675,
5 and then it says State of South Carolina v. Brian Jenkins,
6 defendant, and it has the word verdict.

7 You have three questions on your verdict form.
8 Question one is, we, the jury, by unanimous consent, find
9 the defendant, Brian Jenkins, in indictment-number 2012-GS-
10 15-673, and the first form of verdict under question one is
11 guilty of attempted murder of Shannon Pye. If that be your
12 form of verdict, you would place a checkmark on the line
13 beside that form of verdict.

14 Second form of verdict under Question One is not guilty
15 of attempted murder of Shannon Pye. If that be your form of
16 verdict, ladies and gentlemen of the jury, you would put a
17 checkmark on that line beside that form of verdict. You
18 must find one form of verdict or the other. You cannot find
19 both, ladies and gentlemen of the jury.

20 Question Two, we, the jury, by unanimous consent, find
21 the defendant, Brian Jenkins, in indictment number 2012-GS-
22 15-674, and the first form of verdict under question two is
23 guilty of possession of a weapon during the commission of a
24 violent crime. If that be your form of verdict, you would
25 place a checkmark on the line beside that form of verdict.

1 Second form of verdict under Question Two is not guilty
2 of possession of a weapon during the commission of a violent
3 crime. If that be your form of verdict, Madame Foreperson,
4 you would put a checkmark on that line beside that form of
5 verdict. You must find one form of verdict or the other.

6 Question Three, we, the jury, by unanimous consent,
7 find the defendant, Brian Jenkins, in indictment number
8 2012-GS-15-675, guilty of malicious injury to personal
9 property, the value of which is more than \$2,000, but less
10 than \$10,000. If that be your form of verdict, you would
11 check on the line beside that form of verdict.

12 Second form of verdict under Question Three is not
13 guilty of malicious injury to personal property, the value
14 of which is more than \$2,000, but less than \$10,000. If
15 that be your form of verdict, Madame Foreperson, you would
16 put a checkmark on that line beside that form of verdict.
17 Obviously, you must find one form of verdict or the other.
18 You cannot check both for each question.

19 Now, it's continued onto the next page because I wrote
20 you the note that I instructed you about. You may only find
21 the defendant guilty of possession of a weapon during the
22 commission of a violent crime if you have previously found
23 the defendant guilty of attempted murder. If you find the
24 defendant not guilty of attempted murder, you must find the
25 defendant not guilty of possession of a weapon during the

1 commission of a violent crime. When you have completed
2 filling out the verdict form for the jury, Madame
3 Foreperson, you will sign your name on the line where it
4 says Foreperson. Then, you will knock on your jury room
5 door, tell the bailiff that you've reached a verdict and
6 you've completed filling out the verdict form, and then we
7 will receive you back into the courtroom to publish your
8 verdict.

9 Now, ladies and gentlemen, your verdict must be
10 unanimous. That is, the verdict must be the verdict of each
11 and every one of you. All twelve of you must agree on a
12 verdict. Now, when you reach a verdict, Madame Foreperson,
13 you're going to see what I'm going to do with these
14 indictments. I told you that whatever you write on that
15 verdict form, I want your signature and the exact same words
16 under verdict on each of these three indictments. You see
17 that I'm handing them to my law clerk. He is going to want
18 your signature on that indictment and he's going to be
19 responsible to get that.

20 Now, Madame Foreperson, ladies and gentlemen of the
21 jury, I've now charged you on the law in order to help guide
22 you to a fair and just result in this case. I've told you
23 throughout this trial that you are the judges of the facts
24 and I'm the judge of the law. I've now charged you on the
25 law in order to help guide you to a fair and a just result

1 in this case. You have no friends to reward, you have no
2 enemies to punish. You are the judges of the facts in this
3 case based on the evidence introduced during the trial of
4 this case, and based on your determination of the facts in
5 this case and the law as I've now explained it to you, you
6 will soon go to your jury room to begin your deliberations.

7 Each of you have been selected as fair and impartial
8 jurors. You were sworn under that oath to fairly and
9 impartially try and determine the facts of this case and
10 when you comply with that oath to do so, no one can
11 criticize your verdict. You are to decide the case based
12 solely on the evidence that you've heard from the sworn
13 witnesses who have testified before you, along with the
14 exhibits that have been introduced into evidence, which you
15 will have with you in your jury room, and any stipulations
16 that have occurred during the trial of this case.

17 You must decide the issues in this case, ladies and
18 gentlemen, without emotion, without any bias, without any
19 prejudice towards either of the parties in this case. You
20 cannot allow yourself as a juror to be governed by prejudice
21 for or against any person or party. You cannot allow
22 yourself to be governed by public opinion or by any other
23 arbitrary factor that is not in evidence, such as emotion.

24 Both the defendant and the State of South Carolina have
25 the absolute right to expect that each of you on this jury

1 will carefully and impartially consider all of the evidence
2 in this case and that you will also follow the law as I have
3 instructed it to you to be in reaching your verdict in this
4 case.

5 All right. Ladies and gentlemen of the jury, I'm going
6 to ask you at this time if you will retire to your jury
7 room. Do not begin your deliberations yet. I might have to
8 bring you back for some brief additional instructions, so I
9 don't want you to begin your deliberations just yet. When
10 it is time for you to begin your deliberation, I will send
11 the verdict form in to you by the bailiff and tell the
12 bailiff to instruct you that you may now commence your
13 deliberations, along with the exhibits which have been
14 introduced into evidence during the trial of the case.
15 Please retire to your jury room.

16 (11:25 a.m., whereupon, the jury exits the courtroom
17 and the following is held on the record.)

18 THE COURT: Any exceptions or additions to the Court's
19 charge from the State?

20 ASST. SOL. HUDSON: No, sir.

21 THE COURT: Any exceptions or additions to the Court's
22 charge from the defendant?

23 MR. BEACH: Yes, Your Honor. As we spoke in chambers,
24 I'm concerned about the charge of the hand of one is the
25 hand of all. We would object to the introduction of that

1 charge to the jury based upon our assertion that there is no
2 common scheme or design. That it's either a guilty or not
3 guilty on what he did or did not do, and as a result we
4 would ask that that be withdrawn.

5 THE COURT: I understand your objection, Mr. Beach, and
6 it was my decision to do that; and if the jury decides that
7 there is no common scheme, then obviously, I've instructed
8 them to find your client not guilty.

9 MR. BEACH: Yes, sir.

10 THE COURT: So I don't see the prejudice in the charge
11 to you. I recognize that there's variance in the testimony
12 and the facts. In fact, you introduced evidence that
13 another person may have committed this crime, other than
14 your client. Although there is evidence that people were
15 there and apparently there was some association with some of
16 the people that were there of various degrees. Because of
17 that, I thought it was necessary to charge both mere
18 presence and the hand of one is the hand of all. Your
19 request is respectfully denied.

20 MR. BEACH: One other matter, Your Honor.

21 THE COURT: Yes, sir.

22 MR. BEACH: When you were giving the charge, I became
23 concerned about the charge on malicious injury. It appears
24 from the charge and what I gather from the charge was that
25 the injury was to property of a value of \$2,000 to \$10,000.

1 And I think the law is that the amount of injury to property
2 in the amount of \$2,000 to \$10,000, rather than of the
3 underlying property itself.

4 THE COURT: I think I said, and Becky can go back and
5 look, that the defendant is charged with malicious injury to
6 personal property valued at more than \$2,000, but less than
7 \$10,000. The State must prove beyond a reasonable doubt
8 that the defendant willfully and maliciously cut, shot,
9 maimed or otherwise injured or destroyed personal property.
10 Then I defined willfully, maliciously, I defined malice, and
11 then I said statements proved beyond a reasonable doubt that
12 the value of the property is more than \$2,000, but less than
13 \$10,000.

14 MR. BEACH: Yes, sir. I believe it's the value of the
15 injury and not the value of the property itself. We've got
16 what appears to be a \$10,000 truck with a certain amount of
17 value to it. I think from that that the jury can say that
18 the truck was valued at \$10,000; therefore, it meets the
19 threshold.

20 THE COURT: It does say in subsection (2), and of
21 course, I don't want to get into the penalty section, and
22 that is where it is.

23 MR. BEACH: Yes, sir.

24 THE COURT: "If the injury to the property or the
25 property loss is worth more than \$2,000, but less than

1 \$10,000." Would you like for me to bring the jury back and
2 instruct them on that wording since I didn't use those exact
3 words, but I think my charge covered it. Is that what
4 you're asking me to do?

5 MR. BEACH: That's what I'm asking, Your Honor.

6 THE COURT: I'll be happy to do that. Anything else?

7 MR. BEACH: That was my last concern.

8 THE COURT: I'd ask that counsel come forward and
9 certify on the record that you're satisfied the court
10 reporter has all the exhibits and that you have no objection
11 to my bailiff taking the verdict form and the exhibits into
12 the jury once I recharge them. Let's agree on the exhibits
13 that has to be heard that Mr. Beach invited the jury to
14 listen to; that's State Exhibit Number Two. I would agree
15 that would have to stay here and I will tell the jury that
16 when they come back, Mr. Beach, that if they want to listen
17 to it, they will have to come back here so we can play it
18 with the equipment here. Do you agree with that?

19 MR. BEACH: Yes, sir. Thank you, Your Honor.

20 THE COURT: Do you agree, Solicitor?

21 MS. HUDSON: Yes, sir.

22 THE COURT: Is the State so satisfied that the court
23 reporter has all the exhibits?

24 MS. HUDSON: Yes, sir.

25 THE COURT: Is the defendant so satisfied?

1 MR. BEACH: Yes, sir.

2 THE COURT: Any objection to the bailiff taking the
3 verdict form and the exhibits, at the appropriate time, in
4 and telling the jury and telling the jury that they may
5 commence their deliberations after I give the supplemental
6 charge that you have requested?

7 MR. BEACH: None whatsoever.

8 THE COURT: How about you, Solicitor?

9 MS. HUDSON: Judge, I am satisfied with the evidence,
10 and the exhibits going back. I've checked them and they are
11 all there. No objection to anything else.

12 THE COURT: All right. Thank you very much. You may
13 return to your seat. Bring me the jury, Mr. Beach.

14 (3:35 p.m., whereupon, the jury enters the courtroom
15 and the following is held on the record.)

16 THE COURT: All right. Ladies and gentlemen, when I
17 defined for you Section 16-11-510, which was the offense of
18 malicious injury to personal property, I'd like to make sure
19 that I've clearly defined that for you, which is the reason
20 why I asked you not to begin your deliberations.

21 The statute says it's unlawful for a person willfully
22 and maliciously cut, shoot, maim, wound, or otherwise injure
23 or destroy any horse, mule, cattle, hog, sheep, goat, or any
24 other kind, class, article, or description of personal
25 property, or the goods and chattels of another.

1 Now, if the injury to the property or the property loss
2 is worth more than \$2,000, but less than \$10,000, so I want
3 you to understand that we're talking about the injury to the
4 property or the property loss when we're referring to
5 greater than \$2,000, but less than \$10,000. Thank you. You
6 may retire to your jury room at this time. Do not begin
7 your deliberations until you are instructed to do so.

8 (11:26 a.m., whereupon the jury exits the courtroom and
9 the following is held on the record.)

10 THE COURT: Any exceptions or additions to the
11 supplemental charge, from the State?

12 MS. HUDSON: No, Your Honor.

13 THE COURT: From the defendant?

14 MR. BEACH: No, Your Honor.

15 THE COURT: Very well. Mr. Padgett, they have agreed
16 that you can take in the verdict form. Get all of the
17 exhibits and give them to Mr. Grant and let's get them in
18 the jury room and instruct the jury they may now commence
19 their deliberations -- wait a minute. I did not tell them
20 as to State's Two. I sure hate to have to bring them back
21 again, but bring them back one more time, Mr. Grant.

22 Y'all told me y'all were going to remind me of that.
23 Hand it to me, Becky.

24 (11:40 a.m., whereupon, the jury enters the courtroom
25 and the following is held on the record.)

1 THE COURT: Ladies and gentlemen, I neglected to
2 mention this, I told you that you would have all the
3 exhibits with you in your jury room, and that is true, with
4 the exception of State's Exhibit Number Two. I'm going to
5 keep that out here because the ability to play this can only
6 be done in the courtroom. If you want to listen to it, we
7 would be happy to provide that to you, but we just need to
8 bring you back in the courtroom. So I will have State's Two
9 out here if you need to hear it, if you decide you want to
10 hear it, happy to play it for you if you so desire, only
11 because the equipment is here and not back in your jury
12 room, because it wouldn't do you any good to have it back
13 there without the equipment.

14 With that exception, all the other exhibits will be
15 with you in the jury room. Thank you. You may now retire
16 to your jury room, but do not begin your deliberations until
17 I send in the verdict form and the exhibits.

18 (11:42 a.m., whereupon, the jury exits the courtroom
19 and the following is held on the record.)

20 THE COURT: Any exceptions or additions to the Court's
21 comments, from the State?

22 MS. HUDSON: No, Your Honor.

23 THE COURT: From the defendant?

24 MR. BEACH: No, Your Honor.

25 THE COURT: Very well. Mr. Padgett, you may now take

1 the verdict form and the remaining exhibits into the jury
2 and have the bailiff tell the jury they may now commence
3 their deliberations. We will turn to other non-jury matters
4 while we await the jury's verdict.

5 (11:43 a.m., whereupon, the verdict form and exhibits,
6 excluding State's Exhibit Number Two, are taken to the jury
7 room. The Court turns to non-jury matters while awaiting
8 the jury's verdict.)

9 THE COURT: The jury has been out deliberating for
10 three hours, and we now have a jury note, which we've marked
11 as Court's Exhibit Number Four. They say "We are very
12 divided and cannot agree on any of the charges." Any
13 objection, Solicitor?

14 MS. HUDSON: No, Your Honor.

15 THE COURT: Any objection, Mr. Beach?

16 MR. BEACH: No, Your Honor.

17 THE COURT: Next, while I was with -- parties both
18 agree that since there have been three hours of
19 deliberations, I would give the jury an Allen charge. When
20 I was getting ready to call the jury back, I received a
21 second note from the jury, "We would like to hear the
22 testimony of Shannon Pye and Harry Ross, which the court
23 reporter tells me is one hour and fifteen minutes, which is
24 now Court's Exhibit Number Five. Any objection, Solicitor?

25 MS. HUDSON: No, Your Honor.

1 THE COURT: Mr. Beach?

2 MR. BEACH: No, Your Honor.

3 THE COURT: The parties now agree that rather than give
4 an Allen charge since the jury is still working and wants to
5 hear testimony, that I will bring the jury back and let them
6 listen to testimony of Shannon Pye, first. It is now about
7 2:27 and the jury got the case about 11:30, and rather than
8 give an Allen charge at this time, both sides agree that we
9 will bring them back and they agree that I can let the
10 foreperson raise her hand when they've heard enough since
11 the testimony of Shannon Pye is one hour and the testimony
12 of Harry Ross is fifteen minutes. If they want to hear the
13 entire thing, that's fine. Have I accurately stated the
14 agreement insofar as the State is concerned?

15 MS. HUDSON: Yes, Your Honor.

16 THE COURT: Insofar as the defendant is concerned?

17 MR. BEACH: Yes, Your Honor.

18 THE COURT: All right. Mr. Grant, would you bring us
19 the jury, please.

20 (2:29 p.m., whereupon the jury enters the courtroom and
21 the following is held on the record.)

22 THE COURT: Madame Foreperson, I received your note
23 that the jury would like to hear the testimony of Shannon
24 Pye and Harry Ross. Madame Foreperson, we're going to play
25 the audio portion of it. If anybody can't hear, raise your

1 hand. I think it's going to be okay. We're going to play
2 Shannon Pye first, and then Harry Ross.

3 Madame Foreperson, Shannon Pye's testimony lasts an
4 hour; Harry Ross's testimony lasts fifteen minutes. When
5 you feel that the jury has heard all they need to hear, if
6 you want to stop it prior to the hour and fifteen minutes,
7 you raise your hand for me and indicate to me that you feel
8 the jury has heard enough; do you understand?

9 FOREPERSON: Yes, sir.

10 THE COURT: At this time, ladies and gentlemen, we will
11 play the audio testimony of Shannon Pye by the court
12 reporter.

13 (Whereupon, the audio testimony of Shannon Pye begins
14 playing for the jury at 2:30 p.m. Audio testimony is
15 stopped at 3:00 p.m.)

16 THE COURT: Stop. You've heard enough of that
17 testimony, Madame Foreperson?

18 JUROR: Of that one, yes, sir.

19 THE COURT: We will not go to the testimony of Harry
20 Ross.. Please let me know when you've heard all that you
21 need by raising your hand.

22 (Whereupon, the audio testimony of Harry Ross begins
23 playing for the jury at 3:02 p.m. The audio testimony is
24 stopped at 3:14 p.m.)

25 THE COURT: Please stop. The foreperson has indicated,

1 as she did earlier, that they've heard all they need to
2 hear. Madame Foreperson and ladies and gentlemen of the
3 jury, I'm going to ask you to return to your jury room and
4 continue your deliberations.

5 (3:15 p.m., whereupon the jury enters the courtroom and
6 the following is held on the record.)

7 THE COURT: Any exceptions or additions to the Court's
8 additional comments, from the State?

9 MS. HUDSON: No, Your Honor.

10 THE COURT: From the defendant?

11 MR. BEACH: No, Your Honor.

12 THE COURT: Very well. We'll be at ease awaiting the
13 jury's verdict. The defendant is in custody.

14 (The Court turns to other non-jury matters, guilty
15 pleas, while awaiting the jury's verdict.

16 At 4:05, the Court instructs the parties and the
17 following is put on the record.)

18 THE COURT: I've now calculated that the jury has had
19 this case for four hours and sixteen minutes. My
20 understanding, and you both agree, and I'll put it on the
21 record again when the defendant comes out, that you both
22 agree to an Allen charge; is that correct, from the State?

23 MS. HUDSON: Yes, Your Honor.

24 THE COURT: Correct from the defendant?

25 MR. BEACH: Yes, Your Honor.

1 (Defendant is brought into Court and takes seat at
2 defense table.)

3 THE COURT: All right. Let the record reflect that the
4 defendant is present. The jury has had the case now -- it's
5 after 4:00 in the afternoon and the jury began around 11:30,
6 but I had to bring them back twice for additional
7 instructions, so they've actually had the case since 11:45,
8 and it's now 4:05 in the afternoon, so they've actually been
9 deliberating in excess of four hours.

10 They first sent me a note, which is Court's Exhibit
11 Number four, saying they were unable to agree on a verdict.
12 We were getting ready to give an Allen charge when they gave
13 me a note saying that they wanted to hear additional
14 testimony. They heard that testimony and they've now been
15 deliberating close to an hour since they heard the
16 testimony. We still have not received word from the jury
17 that they've reached any verdict in light of that. Both the
18 State and the defendant have agreed that I would now give an
19 Allen charge to the jury. Is that correct from the State?

20 MS. HUDSON: Correct, Your Honor.

21 THE COURT: Is that correct from the defendant?

22 MR. BEACH: It is, Your Honor.

23 THE COURT: Very well. Would you bring us the jury,
24 please?

25 (4:08 p.m., whereupon the jury enters the courtroom and

1 the following is held on the record.)

2 THE COURT: Madame Foreperson, ladies and gentlemen of
3 the jury, you have stated to me in a note that you have been
4 unable to agree on a verdict in this case. As I instructed
5 you earlier, ladies and gentlemen, the verdict of the jury
6 must be unanimous. When a matter, any matter, is in
7 dispute, it isn't always easy for even two people to agree.
8 So when twelve people must agree, it becomes even more
9 difficult at times.

10 In most cases, absolute certainty cannot be reached.
11 Absolute certainty cannot be expected. However, each of you
12 have a duty to make every reasonable effort to reach a
13 unanimous verdict. In doing this, each of you should
14 consult with one another. You should express your own
15 views, but you should listen to the opinions of your fellow
16 jurors. Tell each other how you feel and why you feel that
17 way. Discuss your differences with an open mind. Although
18 the verdict of the jury must be unanimous, every one of you
19 has the right to your own opinion. The verdict you agree to
20 must be your own verdict. The result of your own
21 convictions and you should not give up your firmly held
22 beliefs merely to be in agreement with your fellow jurors.
23 The majority should listen very carefully to the minority's
24 position; and the minority should consider carefully the
25 majority's position. You should carefully consider and

1 respect the opinions of each other and reevaluate your
2 position that you are taking for reasonableness, for
3 correctness, and for impartiality. You must lay aside all
4 outside matters and reexamine the questions before you based
5 on the law and the evidence in this case.

6 If you do not agree on a verdict in this case, I, the
7 judge, must declare a mistrial. In that case, ladies and
8 gentlemen, it does not mean that anybody wins. It just
9 means that at some future time I will try this case again
10 with some other jury sitting where you now sit. The same
11 participants will come and the same lawyers will ask
12 basically the same questions and get basically the same
13 answers, and we will go through the whole process again.
14 You were selected in the same manner and from the same
15 source as any future jury. There is no reason for me to
16 suppose that the case will ever be submitted to twelve more
17 intelligent, or twelve more impartial, or twelve more
18 conscientious or competent jurors than you. Or that more or
19 clearer evidence will be produced on one side of this case
20 or the other.

21 I therefore ask you to return to your deliberations and
22 see if you can reach a verdict. Thank you.

23 (4:10 p.m., whereupon the jury exits the courtroom and
24 the following is held on the record.)

25 THE COURT: Any objections, exceptions or additions to

1 the Court's Allen charge to the jury, from the State?

2 MS. HUDSON: No, Your Honor.

3 THE COURT: From the defendant?

4 MR. BEACH: No, Your Honor.

5 THE COURT: All right. Defendant is in custody. Bring
6 the people up from downstairs and we will go back to non-
7 jury court.

8 (Whereupon, the Court turns to other non-jury matters.
9 Thereafter, at 4:50, the bailiff informs the Court that the
10 jury has reached a verdict in the trial of this case.)

11 THE COURT: All right. Now, let me tell those that are
12 in the courtroom, I will not tolerate any outburst or
13 comment when the verdict is published. If you cannot
14 control your emotions, leave this courtroom now, because I
15 will enforce that with the contempt powers of this Court.
16 There is to be nothing said when the verdict is published.
17 Does everyone out there understand that? Bring me the jury.

18 (4:55 p.m., whereupon, the jury enters the courtroom
19 and the following is held on the record.)

20 MADAME CLERK: Madame Foreperson, have you reached a
21 verdict?

22 FOREPERSON: We have.

23 (Clerk retrieves verdict form, shows to the Court.)

24 THE COURT: You may publish the verdict. Defendant and
25 counsel will please rise.

1 MADAME CLERK: Indictment number 2012-GS-15-673, 674,
2 and 675, the State of South Carolina versus Brian Jenkins.
3 We, the jury, by unanimous consent, find the defendant,
4 Brian Jenkins, in indictment number 2012-GS-15-673, not
5 guilty of attempted murder of Shannon Pye. We, the jury, by
6 unanimous consent, find the defendant, Brian Jenkins, in
7 indictment number 2012-GS-15-674, not guilty of a possession
8 of a weapon during the commission of a violent crime. We,
9 the jury, by unanimous consent, find the defendant, Brian
10 Jenkins, in indictment number 2012-GS-15-675, guilty of
11 malicious injury of personal property, value which is more
12 than \$2,000, but less than \$10,000. Signed by Foreperson,
13 Deborah L. Lawrence. If this is your verdict, please raise
14 your right hand.

15 THE COURT: Let the record reflect that all twelve
16 hands were raised in response to the Clerk's question.
17 Anything further from the jury, Mr. Beach, on behalf of the
18 defendant?

19 MR. BEACH: No, Your Honor.

20 THE COURT: Madame Foreperson, ladies and gentlemen of
21 the jury, on behalf of Colleton County, I want to thank you
22 for your time this week. This concludes your service for the
23 week and you're going to be exempt from jury service for
24 three years as a result of your service this week. All a
25 judge can ask a jury to do is listen. I watched each of you

1 and each of you did that in this case.

2 Now, sentencing is going to occur in this case right
3 now and I invite you to stay if you would like to for
4 sentencing. The Solicitor is filling out a sentence sheet
5 right now and the defendant is going to be brought in front
6 of me for sentencing, which is my province, not yours.

7 We're going to mail you your checks for jury service at
8 the address we sent you for your subpoenas to come. If any
9 of you need a work excuse for serving on the jury, when you
10 leave if you will go downstairs to General Sessions, it's
11 marked on the top of the door, we will be happy to provide
12 you with a work excuse to your employer for serving on the
13 jury.

14 I want to thank you for your service. As I told you,
15 without you, justice cannot be accomplished in a courtroom.
16 Of course, you don't have to stay for sentencing, but if you
17 would like to, I'd be happy for you to. I appreciate your
18 service very much and it's entirely up to you. You can stay
19 right in the jury box, you can have a seat in the courtroom,
20 and if anybody has any belongings in the jury room -- did
21 everybody get everything out of there?

22 (JUROR NODS.)

23 THE COURT: What is it?

24 MALE JUROR: My hat.

25 THE COURT: Bill will get it for you. We have a hat in

1 the jury room.

2 FEMALE JUROR: And my jacket.

3 THE COURT: And a jacket. A jacket and a hat. Go in
4 the jury room, Bill, and get it for me.

5 All right. Now, for those that want to leave, you may
6 do so. Those that want to stay, may remain with me.
7 Sentencing is going to occur in this case right now. So if
8 you'd like to leave, you can. Otherwise, you may stay right
9 where you are or have a seat in the courtroom. Thank you
10 very much.

11 (Brief pause in the courtroom.)

12 THE COURT: Mr. Beach, are there any post-verdict
13 motions?

14 MR. BEACH: None, Your Honor.

15 THE COURT: Very well. You and the defendant come
16 around. Solicitor, I need a sentence sheet. Mr. Beach, the
17 jury has spoken. I think there was ample evidence from
18 which the jury could reach a conclusion. They obviously
19 acquitted your client of attempted murder, they acquitted
20 your client -- which they had to once they acquitted him of
21 attempted murder, they acquitted him of possession of a
22 weapon during the commission of a violent crime and found
23 your client guilty of malicious injury to personal property,
24 greater than \$2,000, less than \$10,000.

25 It is obvious to me that this jury worked hard. I now

1 have all of my indictments signed by my foreperson. I'll be
2 happy to hear from you, and Solicitor, I want you to publish
3 for the jury now the defendant's prior record.

4 MS. HUDSON: Yes, sir, Your Honor. Your Honor, he has
5 a DUI, 1st, from 2001; assault and battery of a high and
6 aggravated nature from 2004; criminal domestic violence, 1st
7 offense from 2002; driving under suspension, not DUI
8 related; this was a second offense from 2011.

9 THE COURT: Very well. Mr. Beach, I'll be happy to
10 hear from you. The jury has spoken.

11 MR. BEACH: Thank you, Your Honor. I agree with you, I
12 think the jury worked very hard on this and longer than ---

13 THE COURT: This jury had this case since 11:45 today,
14 Mr. Beach; it's now after 5:00.

15 MR. BEACH: Yes, sir. Yes, sir. I applaud their
16 efforts. Your Honor, the defendant is 30 years old. He is
17 a life-long resident of Colleton County. He is not married,
18 but he has two young children that he provides support for.
19 He has been in jail for six months, and we would ask the
20 Court to allow him to have time served with some probation
21 in order to pay back the young man for the damage that was
22 done to his truck. He wants to do that. He said that from
23 the time we first started representing him. We would ask
24 that as a sentence if the Court would entertain that, Your
25 Honor.

1 THE COURT: Anything else, Mr. Beach?

2 MR. BEACH: No, Your Honor.

3 THE COURT: Mr. Jenkins, is there anything you wish to
4 tell the Court prior to sentencing?

5 JUROR: No, sir.

6 THE COURT: Solicitor, is there anything further from
7 the State?

8 MS. HUDSON: Your Honor, the State would simply ask,
9 and I've given defense counsel a copy of a restitution order
10 form. There is restitution owed as far as the damage that
11 was done to the truck and I've given him that order form for
12 him and his client to sign, if he wishes to sign. The State
13 would certainly ask that restitution be held in abeyance for
14 30 days so that we can have a hearing on this matter. But I
15 believe that he is going to sign.

16 THE COURT: Mr. Beach, are you in agreement with the
17 restitution?

18 MR. BEACH: I am, Your Honor.

19 THE COURT: Very well. All right. Now, for the sake
20 of my jury. Of course, I was aware of the defendant's prior
21 record. The reason you weren't made aware of it is because
22 we don't that to influence you in your deliberations. He
23 obviously had a conviction for assault and battery of a high
24 and aggravated nature and criminal domestic violence, and I,
25 of course, take that into consideration of my sentence. The

1 maximum possible sentence, ladies and gentlemen of the jury,
2 for malicious injury to personal property, \$2,000 to
3 \$10,000, is five years, and I believe the defendant deserves
4 every day of that. I also believe however, ladies and
5 gentlemen, that the victim in this case deserves
6 restitution. And you can't give the full sentence and hold
7 enough time over a person's head in order to get
8 restitution. That is the reason for my sentence so that you
9 will understand what I intend to do.

10 On indictment 2012-GS-15-00675, the State v. Brian
11 Jenkins, the sentence of this Court is defendant is
12 committed to the State Department of Corrections for a term
13 of five years. Provided that upon the service of four
14 years, the balance is suspended and you be placed on
15 probation for a period of five years. Special conditions of
16 probation, you make restitution in the amount of \$4,436.41
17 to Edward Chapman. I am signing a restitution order form,
18 which has been signed by the solicitor, Mr. Beach, the
19 defendant, and now myself.

20 I will give the defendant credit for time served in
21 jail pursuant to code section 24-13-40. That is to be
22 calculated and applied by the State Department of
23 Corrections. Good luck to you, sir.

24 Ladies and gentlemen of the jury, I want to thank you
25 very much for your service in this case. I realize as I

1 told you that all a jury can do is listen, and you did that.
2 And I want to emphasize to you again how important it is
3 when your time comes to serve on the jury, to give a little
4 bit of your time. If one of you had a case pending in Court
5 this week, I know you would want someone like yourself to
6 have given of their time to serve on the jury. We need
7 people to do that. Our forefathers knew what they were
8 doing when they gave us the right to trial by jury.

9 So on behalf of Colleton County and this Court, I thank
10 you for your service. The defendant has been sentenced.
11 This concludes this case. You are now excused for the
12 balance of the week and you're exempt from jury service for
13 three years. Your check is in the mail. Thank you very
14 much. You may leave at this time.

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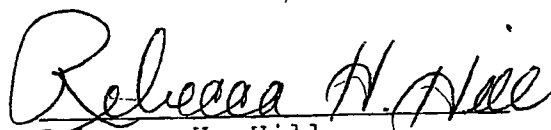
STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of General Sessions for Colleton County, South Carolina, on the 18th - 20th day of March 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 14, 2013


Rebecca H. Hill,
Official Court Reporter

Fourteenth Judicial Circuit Solicitor
Victim Services Division
 Isaac McDuffie Stone, III, Solicitor

Restitution Order Form

Defendant: Brian Jenkins Indictment #: 12-GS-15-675
 Co-defendants(s): _____ Indictment #: -GS-
 _____ Indictment #: -GS-

Victim: Edward Chapman

Victim's Address: _____

Phone #: 534-1042 Alt #: 909-0031

Restitution: \$ 4436.41

[Signature]
 Assistant Solicitor

3/20/13
 Date

[Signature]
 Defense Attorney

3/20/13
 Date

Brian Jenkins
 Defendant

3/20/13
 Date

[Signature]
 Presiding Judge, Fourteenth Judicial Court

3/20/13
 Date

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

Amended INDICTMENT

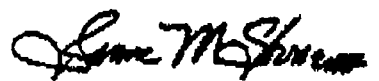
2012GS1500673

At a Court of General Sessions, convened on February 7, 2013, the Grand Jurors of Colleton County present upon their oath:

Attempted Murder

That in Colleton County on or about July 5, 2012, with malice aforethought, Brian Jenkins did attempt to kill and murder James Pye by means of shooting; to wit; by shooting at the victim's truck while he was inside ; in violation of Section 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.


Isaac M. Stone, III, Solicitor

FILED
2013 FEB 7 PM 5:05
CLERK OF COURT
COLLETON COUNTY
SOUTH CAROLINA

DOCKET NO. 2012GS1500673

WITNESSES

D Thomas, CCSO

J Taylor, CCSO

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

February Term 2013

ARREST WARRANT NUMBER

2012A1510100038

September 18, 2012

THE STATE

vs.

Brian Jenkins

ACTION OF GRAND JURY

TRUE BILL

Christopher West

Foreperson of Grand Jury

Date.

2/24/13

VERDICT

Not Guilty

COLLETON COUNTY
GENERAL SESSIONS COURT
PM 3:20

Donna L. Lauer

Foreperson of Grand Jury

Date.

3-20-2013

INDICT DOT

Amended Indictment for

Attempted Murder

SC Code: 16-03 0029

CDR Code: 3410

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

AMENDED INDICTMENT

2012GS1500674

At a Court of General Sessions, convened on February 7, 2013, the Grand Jurors of Colleton County present upon their oath:

Weapons / Poss. weapon during violent crime

That in Colleton County, South Carolina, on or about July 5, 2012, the Defendant, Brian Jenkins, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of attempted murder, a violent crime. This is in violation of 16-23-490 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.


Isaac M. Stone, III, Solicitor

5/15/13 11:11:33

FILED
JUN 11 2013
CLERK OF COURT

WITNESSES

D. Thomas, CCSO
J. Taylor, CCSO

ARREST WARRANT NUMBER

2012A1510100039

September 18, 2012

ACTION OF GRAND JURY

TRUE BILL

Christopher West

Foreperson of Grand Jury
Date: 2-27-13

VERDICT

GUILTY

Barlow

Foreperson of Petit Jury
Date: 3-20-2013

INDICT DOT

DOCKET NO. 2012GS1500674

The State of South Carolina
County of Colleton

COURT OF GENERAL SESSIONS

February Term 2013

THE STATE

vs.

Brian Jenkins

Amended Indictment for

Weapons / Poss. weapon during violent crime,
if not also sentenced to life without parole or
death

SC Code: 16-23-0490
CDR Code: 0549

STATE OF SOUTH CAROLINA)
)
 COUNTY OF COLLETON)

AMENDED INDICTMENT

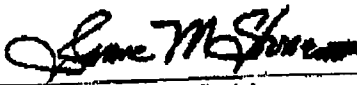
2012GS1500675

At a Court of General Sessions, convened on February 7, 2013, the Grand Jurors of Colleton County present upon their oath:

Malicious injury to personal property, value more than \$2,000 but less \$10,000

That in Colleton County, South Carolina, on or about July 5, 2012, the Defendant, Brian Jenkins, willfully and maliciously did cut, mutilate, deface, or otherwise injure the tires, tailgate and windows of the truck owned by James Pye, to wit, the Defendant did cut a tire and shot at vehicle, causing damage, such damage being more than \$2,000, all in violation of Section 16-11-510, Code of Laws of South Carolina, (1976, as amended)

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


 Isaac M. Stone, III, Solicitor

WITNESSES

D. Thomas, CCSO

J. Taylor, CCSO

ARREST WARRANT NUMBER

2012A1510100040

September 18, 2012

ACTION OF GRAND JURY

TRUE BILL

Christopher West

Foreperson of Grand Jury

Date 2/7/13

VERDICT

Guilty

Quilley County
General Sessions Court
2013 FEB - 7 PM 2:20
Foreperson of Grand Jury
Date 3-20-13
INDICT. DO

DOCKET NO. 2012GS1500675

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

February Term 2013

THE STATE

vs.

Brian Jenkins

Amended Indictment for

Malicious Injury to animals, personal property,
injury value more than \$2,000 but less than
\$10,000

SC Code: 16-11-0510(R)(2)
CDR Code: 3416

STATE OF SOUTH CAROLINA **0-5 yrs & 1 or time in disc**
IN THE COURT OF GENERAL SESSIONS

COUNTY OF Colleton
STATE VS.

Brian Jenkins

AKA: _____

Race AFRICAN AME Sex: M Age: 29

DOB 11-22-1982 SS# _____

Address _____

City, State, Zip _____

DL# _____ SID# SC0130040

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Malicious Injury to Personal Property, value more than \$2,000 but less than \$10,000

in violation of § 16-11-0510(A)

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST _____

Hudson, Ashley SC Bar# _____ Defendant

SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of 4 days/months/years and or payment

of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of

probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applic

by the State Department of Corrections

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ INSTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTL P _____

Total \$ _____ plus 20% fee: \$ _____

Payment Terms, see restitution order form

☐ Set by SCDPPPS _____

Recipient _____

*Fine:

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.4 (Public Def Prob) \$500 \$ 500.00

§ 14-1-212 (Law Enforcement Funding) \$75 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$153 \$ _____

§ 50-21-14 (DUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40 ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 18.90

TOTAL \$ 648.90

Clerk of Court/Deputy Clerk Petricia C. Grant

Court Reporter M. Rebecca Hill

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2012GS1500675

A/W#: 2012A1510100040

Date of Offense: 7/4/2012

S.C. Code §: 16-11-0510(A)

CDR Code #: 3416

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

\$2,000 but less than \$10,000

of the S.C. Code of Laws, bearing CDR Code # 3416

☐ Mandatory GPS (CSC

w/minor 1st or Lowd Act) § 17-25-45

(defendant's initials)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST _____

SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for 3

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SPECIAL CONDITIONS:

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Total \$ _____ plus 20% fee: \$ _____

Payment Terms, see restitution order form

☐ Set by SCDPPPS _____

Recipient _____

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TOTAL \$ 648.90

Clerk of Court/Deputy Clerk Petricia C. Grant

Court Reporter M. Rebecca Hill

SCCA/217 (03/2011)

Presiding Judge _____

Judge Code: 0122

Sentence Date 3/20/13

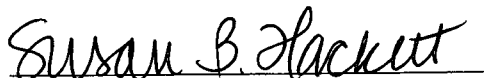
☒ Appointed PD or appointed other counsel

§ 47.12 requires \$500 be paid to Clerk during probation

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 21st, 2013



Susan B. Hackett

Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
Perry M. Buckner, Circuit Court Judge

ORIGINAL

RECEIVED

AUG 21 2013

SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

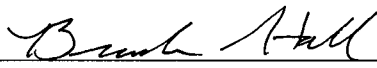
BRIAN T. JENKINS,

APPELLANT

Appellate Case No. 2013-000633

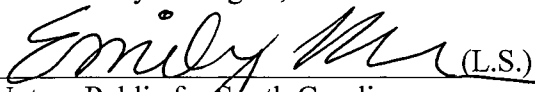
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Brian T. Jenkins, #354770, at Coastal Work Center, 2462 Leeds Avenue, Charleston, SC 29405, this 21st day of August, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 21st day of August, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: November 16, 2022.