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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

JOHN M. CURETON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-002020

APPENDIX

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS

2014-GS-23-02373

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STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

JOHN MARK CURETON, III,
DEFENDANT.

ORIGINAL

December 12, 2016
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE; and a jury.

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

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Assistant Solicitor

THOMAS J. QUINN, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

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(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

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THE COURT: All right. Are we ready to pick a jury?

MR. QUINN: The Defense is ready.

MS. MAJOR: Yes, Your Honor.

We have a couple of pre-trial motions. I would just ask that they not be sworn.

THE COURT: Well, what -- what are they?

MS. MAJOR: I believe Mr. Quinn has a stand your ground. And we can go ahead and do the Jackson v. Denno in anticipation of that stand-your-ground hearing.

THE COURT: As part of it?

MS. MAJOR: Your Honor, I would probably want to get into the Defendant's statement -- or may want to get that in in the stand-your-ground hearing. So if you want to go ahead and --

THE COURT: Well, let's go ahead and pick the jury. And then we'll get into those motions.

Do y'all have any voir dire? Any witness lists?

MS. MAJOR: I do have a witness list.

THE COURT: Any voir dire?

MR. QUINN: No, Your Honor. No voir dire.

MS. MAJOR: Nothing from the State.

THE COURT: Okay. Let's get them up here.

THE CLERK: How many do you -- did you already tell her how many?

1 THE COURT: Yes. She already knows.

2 THE CLERK: Okay.

3 (Pause.)

4 THE COURT: Two counts -- two indictments, three
5 counts; right?

6 MR. QUINN: Yes.

7 MS. MAJOR: Yes, Your Honor.

8 (Pause.)

9 THE COURT: The jury is on a break until 11:00, so:

10 (WHEREUPON, a break was taken.)

11 (WHEREUPON, the jury panel entered the courtroom.)

12 THE COURT: Ladies and gentlemen, welcome up to
13 courtroom four. I'm glad to see each and every one of you
14 up here.

15 What we're going to do now, as I told you downstairs,
16 is begin the qualification process to determine if you are
17 qualified to serve for this particular case. So in order
18 to do that, I'm going to introduce the case to you.

19 The first indictment is the State of South Carolina
20 v. John Mark Cureton. It is a two-count indictment. The
21 first count alleges that John Mark Cureton, III, did in
22 Greenville County on or about the 3rd day of February,
23 2014, unlawfully and with malice aforethought kill Javario
24 Brooks by means of shooting him, and that Javario Brooks
25 died as a proximate result thereof.

1 Count two alleges possession of a weapon during the
2 commission of a violent crime, that John Mark Cureton,
3 III, did in Greenville County on or about the 3rd day of
4 February, 2014, possess or visibly display a handgun
5 during the commission or attempted commission of a violent
6 crime. That is murder.

7 The next indictment alleges that John Mark Cureton,
8 III, did in Greenville County on or about the 3rd day of
9 February, 2014, unlawfully and with malice aforethought
10 and with the intent to kill attempted to kill Dominic
11 Sitton. All of these are in violation of the statutes and
12 laws of the State of South Carolina.

13 Now, ladies and gentlemen, to those indictments, John
14 Mark Cureton, III, has pled not guilty. And, as such,
15 certain rights attach which belong to each and every
16 person in this country who are -- is charged with a crime.
17 And that is that the Defendant is presumed to be innocent,
18 unless and until the charging body, in this case the State
19 of South Carolina, can prove to a jury beyond any
20 reasonable doubt each and every element of each offense
21 that that person is charged with. Please keep that in
22 mind throughout the course of these proceedings.

23 I, also, instruct you that these documents, which I
24 published to you or read to you, are nothing more than
25 they appear to be, just pieces of paper which contain the

1 allegations against the Defendant and allow this case to
2 wind its way through the court system to arrive here in
3 court for a resolution. And you should make no
4 presumption or take any inference from the fact that these
5 documents have issued with respect to the question of
6 guilt or innocence that is proven from evidence presented
7 here in this courtroom.

8 Okay. Now, ladies and gentlemen, before I go any
9 further, I'm going to ask the attorneys to stand, identify
10 themselves, their office, and their client.

11 MS. MAJOR: My name is Elizabeth Major. I am with
12 the Greenville County Solicitor's Office. And at the
13 table is my investigator, Renee Kelly.

14 THE COURT: Thank you.

15 MR. QUINN: Good morning.

16 I'm Tom Quinn. I'm in private practice here in
17 Greenville. I have the opportunity to represent
18 Mr. Cureton.

19 JURY QUALIFICATION

20 THE COURT: All right. Ladies and gentlemen, is
21 there any member of the jury panel related by blood or
22 marriage or who has a business, personal, or social
23 relationship with either of the attorneys involved in this
24 lawsuit, or any member of the Thirteenth Circuit
25 Solicitor's Office? If so, please, stand.

1 (WHEREUPON, there was no response.)

2 THE COURT: Is there any member of the jury panel
3 related by blood or marriage, or who has a business,
4 personal, or social relationship with either John Mark
5 Cureton, III, Javario Brooks, or Dominic Sitton? If so,
6 please, stand.

7 (WHEREUPON, there was no response.)

8 THE COURT: I'm going to read a list of potential
9 witnesses in this case. And I'll need to know the same
10 about these folks: James Armstrong, Greenville County
11 Department of Public Safety; Antonio Bailey, Greenville
12 County Sheriff's Office; Jameca Ballenger; Kara Bennick,
13 Greenville County Department of Public Safety; John
14 Cureton, Jr.; Justin Cureton; Emanuel Davis with the
15 sheriff's office; Michael Fortner with the sheriff's
16 office; Tavagio Garnett; Darryl Hunter; Dar Shaw with the
17 Greenville County Department of Public Safety;
18 Dominicus [sic] Sitton; Javonda Thompson; Dr. Michael Ward
19 with the Greenville County Medical Examiner's Office;
20 Melanie Watson with the Greenville County Department of
21 Public Safety; Nico Wheeler; Brandi Wilson; Paris
22 Middleton; Pierre Frazile with the sheriff's office;
23 Emanuel Davis with the sheriff's office.

24 All right. Is there any member of the jury panel
25 related by blood or marriage, or who has a business,

1 personal, or social relationship with any of those
2 potential witnesses whose names I have just read? If so,
3 please, stand.

4 (WHEREUPON, there was no response.)

5 THE COURT: Okay. Is there any member of the jury
6 panel who has any knowledge about the events that are
7 alleged in these indictments? If so, please, stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: Is there any juror member or a family --
10 juror or family member who has either been charged with or
11 a victim of any of these types of offense -- offenses? If
12 so, please, stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: Is there any member of the jury panel
15 who's aware of any bias or prejudice towards either the
16 State or the Defendant which would prevent you from
17 following your oath and the law in giving a fair and
18 impartial verdict in this case? If you can't do that,
19 please, let me know now.

20 (WHEREUPON, there was no response.)

21 THE COURT: Is there any juror or family member who
22 is employed with law enforcement? If so, please, stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: Is there any member of the jury panel a
25 member of or a contributor to a group whose primary

1 concern is the promotion of law enforcement or victim's
2 rights? Examples would be MADD, SADD, or CAVE? If so,
3 please, stand.

4 (WHEREUPON, there was no response.)

5 THE COURT: Is there any juror who knows of any
6 reason whatsoever why you should not serve on this case
7 with particular emphasis on your ability to be fair and
8 impartial to both the State and the Defense, and to judge
9 this case based solely on the evidence presented in this
10 courtroom, and the law presented in this courtroom? If
11 you can't do that, please, let us know now. So, please,
12 stand if you can't do it.

13 (WHEREUPON, there was no response.)

14 THE COURT: All right. Anything further from the
15 State?

16 MS. MAJOR: No, Your Honor.

17 THE COURT: From the Defense?

18 MR. QUINN: No, sir.

19 Thank you.

20 THE COURT: All right. Ladies and gentlemen, we're
21 going to strike the jury. So when your name is called,
22 please, just stand in place and await further
23 instructions.

24 THE CLERK: How many strikes?

25 THE COURT: 10 and five.

1 THE CLERK: Do you mean --

2 THE COURT: Five and 10.

3 THE CLERK: Okay. Just making sure. I didn't want
4 to do anything wrong.

5 JURY SELECTION

6 THE CLERK: Juror #120, Michael Michadick.

7 (WHEREUPON, Michael Michadick, a white male, stood.)

8 THE CLERK: What says the State?

9 MS. MAJOR: Please present the juror.

10 THE CLERK: What says the Defendant?

11 MR. QUINN: Please swear the juror.

12 THE CLERK: You may bring your things and have a seat
13 in the jury box.

14 Juror #73, Brian Mullins.

15 (WHEREUPON, Brian Mullins, a white male, stood.)

16 THE CLERK: What says the State?

17 MS. MAJOR: Please present the juror.

18 THE CLERK: What says the Defendant?

19 MR. QUINN: Please swear the juror.

20 THE CLERK: You may bring your things and have a seat
21 in the jury box.

22 Juror #18, Ronnie Catlett.

23 (WHEREUPON, Ronnie Catlett, a white male, stood.)

24 THE CLERK: What says the State?

25 MS. MAJOR: Please present the juror.

1 THE CLERK: What says the Defendant?

2 MR. QUINN: Please strike the juror from this trial,
3 please.

4 THE CLERK: You may take your seat.

5 Juror #35, Andrew Fisher.

6 (WHEREUPON, Andrew Fisher, a white-male, stood.)

7 THE CLERK: What says the State?

8 MS. MAJOR: Please present the juror.

9 THE CLERK: What says the Defendant?

10 MR. QUINN: Please swear the juror.

11 THE CLERK: You may bring your things and have a seat
12 in the jury box.

13 Juror #98, Elizabeth Shelley.

14 (WHEREUPON, Elizabeth Shelley, a white female,
15 stood.)

16 THE CLERK: What says the State?

17 MS. MAJOR: Please present the juror.

18 THE CLERK: What says the Defendant?

19 MR. QUINN: Please excuse the juror from this trial.

20 THE CLERK: You may take your seat.

21 Juror #94, Christopher Schornack.

22 (WHEREUPON, Christopher Schornack, a white male,
23 stood.)

24 THE CLERK: What says the State?

25 MS. MAJOR: Please present the juror.

1 THE CLERK: What says the Defendant?
2 MR. QUINN: Please excuse the juror from this trial.
3 THE CLERK: You may take your seat.
4 Juror #65, Kelly Manwaring.
5 (WHEREUPON, Kelly Manwaring, a white female, stood.)
6 THE CLERK: What says the State?
7 MS. MAJOR: Please present the juror.
8 THE CLERK: What says the Defendant?
9 MR. QUINN: Please swear the juror.
10 THE CLERK: You may bring your things and have a seat
11 in the jury box.
12 Juror #23, Katherine Collins.
13 (WHEREUPON, Katherine Collins, a black female,
14 stood.)
15 THE CLERK: What says the State?
16 MS. MAJOR: Please present the juror.
17 THE CLERK: What says the Defendant?
18 MR. QUINN: Please swear the juror.
19 THE CLERK: You may bring your things and have a seat
20 in the jury box.
21 Juror #115, Thomasina Wolfe.
22 (WHEREUPON, Thomasina Wolfe, a black female, stood.)
23 THE CLERK: What says the State?
24 MS. MAJOR: Please present the juror.
25 THE CLERK: What says the Defendant?

1 MR. QUINN: Please excuse the juror from this trial.

2 THE CLERK: You may take your seat.

3 Juror #10, Julia Blakeney.

4 (WHEREUPON, Julia Blakeney, a white female, stood.)

5 THE CLERK: What says the State?

6 MS. MAJOR: Please present the juror.

7 THE CLERK: What says the Defendant?

8 MR. QUINN: Please swear the juror.

9 THE CLERK: You may bring your things and have a seat
10 in the jury box.

11 Juror #121, Stefani Young.

12 (WHEREUPON, Stefani Young, a black female, stood.)

13 THE CLERK: What says the State?

14 MS. MAJOR: Please present the juror.

15 THE CLERK: What says the Defendant?

16 MR. QUINN: Please swear the juror.

17 THE CLERK: You may bring your things and have a seat
18 in the jury box.

19 Juror #87, Kara Queen.

20 (WHEREUPON, Kara Queen, a white female, stood.)

21 THE CLERK: What says the State?

22 MS. MAJOR: Please present the juror.

23 THE CLERK: What says the Defendant?

24 MR. QUINN: Please excuse the juror from this trial.

25 THE CLERK: You may take your seat.

1 Juror #77, Stefannie Painter.

2 (WHEREUPON, Stefannie Painter, a white female,
3 stood.)

4 THE CLERK: What says the State?

5 MS. MAJOR: Please present the juror.

6 THE CLERK: What says the Defendant?

7 MR. QUINN: Please swear the juror.

8 THE CLERK: You may bring your things and have a seat
9 in the jury box.

10 Juror #2, Christopher Abreu.

11 (WHEREUPON, Christopher Abreu, a Hispanic male,
12 stood.)

13 THE CLERK: What says the State?

14 MS. MAJOR: Please excuse the juror.

15 THE CLERK: You may take your seat.

16 Juror #116, Wesley Wooten.

17 (WHEREUPON, Wesley Wooten, a white male, stood.)

18 THE CLERK: What says the State?

19 MS. MAJOR: Please present the juror.

20 THE CLERK: What says the Defendant?

21 MR. QUINN: Please swear the juror.

22 THE CLERK: You may bring your things and have a seat
23 in the jury box.

24 Juror #31, Jessica Eskew.

25 (WHEREUPON, Jessica Eskew, a white female, stood.)

1 THE CLERK: What says the State?

2 MS. MAJOR: Please present the juror.

3 THE CLERK: What says the Defendant?

4 MR. QUINN: Please swear the juror.

5 THE CLERK: You may bring your things and have a seat
6 in the jury box.

7 Juror #119, Perisha Littlejohn.

8 (WHEREUPON, Perisha Littlejohn, a black female,
9 stood.)

10 THE CLERK: What says the State?

11 MS. MAJOR: Please present the juror.

12 THE CLERK: What says the Defendant?

13 MR. QUINN: Please swear the juror.

14 THE CLERK: You may bring your things and have a seat
15 in the jury box.

16 Juror #50, Todd Hermetz.

17 (WHEREUPON, Todd Hermetz, a white male, stood.)

18 THE CLERK: What says the State?

19 MS. MAJOR: Please present the juror.

20 THE CLERK: What says the Defendant?

21 MR. QUINN: Please excuse the juror from this trial.

22 THE CLERK: You may take your seat.

23 Juror #110, Todd Tucker.

24 (WHEREUPON, Todd Tucker, a white male, stood.)

25 THE CLERK: What says the State?

1 MS. MAJOR: Please present the juror.
2 THE CLERK: What says the Defendant?
3 MR. QUINN: Please excuse the juror from this trial.
4 THE CLERK: You may take your seat.
5 Juror #104, John Stanley.
6 (WHEREUPON, John Stanley, a white male, stood.)
7 THE CLERK: What says the State?
8 MS. MAJOR: Please present the juror.
9 THE CLERK: What says the Defendant?
10 MR. QUINN: Please excuse the juror from this trial.
11 THE CLERK: You may take your seat.
12 Juror #59, Melodee Leopard.
13 (WHEREUPON, Melodee Leopard, a white female, stood.)
14 THE CLERK: What says the State?
15 MS. MAJOR: Please present the juror.
16 THE CLERK: What says the Defendant?
17 MR. QUINN: Please excuse the juror from this trial.
18 THE CLERK: You may take your seat.
19 Juror #20, Kenneth Chatman.
20 (WHEREUPON, Kenneth Chatman, a white male, stood.)
21 THE CLERK: What says the State?
22 MS. MAJOR: Please excuse the juror.
23 THE CLERK: You may take your seat.
24 Juror #102, Anna Slack.
25 (WHEREUPON, Anna Slack, a white female, stood.)

1 THE CLERK: What says the State?

2 MS. MAJOR: Please present the juror.

3 THE CLERK: What says the Defendant?

4 MR. QUINN: Please swear the juror.

5 THE CLERK: You may bring your things and have a seat
6 in the jury box.

7 THE COURT: All right. We'll get two alternates.
8 One and two on each.

9 THE CLERK: Juror #78, Thomas Parry.

10 (WHEREUPON, Thomas Parry, a white male, stood.)

11 THE CLERK: What says the State?

12 MS. MAJOR: Please present the juror.

13 THE CLERK: What says the Defendant?

14 MR. QUINN: Please swear the juror.

15 THE CLERK: You may bring your things and have a seat
16 in the jury box.

17 Juror #100, Marina Shew -- Slew.

18 (WHEREUPON, Marina Shew, a white female, stood.)

19 THE CLERK: What says the State?

20 MS. MAJOR: Please present the juror.

21 THE CLERK: What says the Defendant?

22 MR. QUINN: Please swear the juror.

23 THE CLERK: You may bring your things and have a seat
24 in the jury box.

25 THE COURT: All right. Any exception or objection to

1 the jury as impaneled pursuant to Batson or Jebb from the
2 State?

3 MS. MAJOR: Nothing from the State.

4 THE COURT: From the Defense?

5 MR. QUINN: Nothing from the Defense.

6 THE COURT: Okay. Ladies and gentlemen, we have two
7 distinct groups in here. One group thinks they won the
8 lottery, one group thinks they lost the lottery. I think
9 the group that was selected won the lottery.

10 It's rare to get called up to the courthouse to serve
11 on jury duty, rarer still to be called up here to the
12 courtroom, and very rare to be selected to serve on a
13 jury. And it is a vital -- as I've told you, a vital
14 civic function. It's a privilege. And it's a great
15 responsibility. And this is where the rubber meets the
16 road.

17 And I -- while you all will not have an opportunity
18 today, I hope that either later in the week or sometime in
19 the future you will get that opportunity to serve.

20 But, right now, I'm going to excuse you all to go
21 back down to the jury assembly room where you'll get
22 further instructions.

23 Thank you.

24 And while they're exiting, if I could talk to the two
25 lawyers up here for a second, please.

1 (WHEREUPON, the remaining jury panel members exited
2 the courtroom.)

3 (WHEREUPON, a bench conference was held.)

4 INTRODUCTORY REMARKS

5 THE COURT: All right. Ladies and gentlemen, I'm
6 quite sincere about when I expressed that I thought you
7 all were the fortunate ones to get selected to serve on a
8 jury. It really is a great privilege, and honor, and a
9 responsibility to serve as a juror in any case.

10 So I want to thank you again for your sacrifices and
11 commitment to fulfill your duties as citizens of
12 Greenville County.

13 Thank you.

14 I want to tell you we have a dispute about the facts
15 in the case which can't be resolved in any fashion other
16 than to ask a jury to come up and listen to the evidence
17 presented in this courtroom and the law presented in this
18 courtroom, and at the conclusion of the trial, deliberate
19 and come to a decision which will resolve the dispute.
20 That is your job. And it's a big task.

21 I want to tell you and remind you that the fact that
22 the indictments that I published to you before -- during
23 the qualification questions are not evidence. And you
24 should take no inference or make a presumption from the
25 fact that those documents issued. They're just the formal

1 documents which allow this case to wind its way through
2 our justice system to arrive here in court for a
3 resolution.

4 I, also, remind you that part of the basic building
5 blocks of our justice system which ensure our freedoms are
6 that every person who is charged with a crime is presumed
7 to be innocent, unless and until the charging body can
8 prove to a jury beyond any reasonable doubt each and every
9 element of each offense that that person is charged with.
10 Please keep that in mind throughout the course of the
11 trial.

12 Now, I break a trial into five parts, so that you all
13 have a procedural road map as to where you are and what's
14 coming next. The first part of the trial will be -- we're
15 kind of engaged in it right now. But I term it the
16 opening statements to you by the attorneys. And those are
17 brief and non-argumentive statements about the case.

18 The second part of the trial will be the meat and
19 potatoes of this case and every case. And that is the
20 presentation of the evidence.

21 Now, the evidence will come to you, generally
22 speaking, in one of three ways. The first way and is
23 probably most commonly thought of is through the
24 presentation of oral testimony from this witness stand.
25 The second most common way is through the introduction of

1 tangible items or documents.

2 And the third most common way is when the parties
3 agree that some fact is so beyond dispute that you should
4 accept it as true. And that's what we call a stipulation
5 of the parties. I don't know the combination of how the
6 evidence will be presented to you. But it will,
7 generally, come to you in one of those three ways.

8 Now, the third part of the trial will be after all of
9 the evidence has been presented, and the attorneys get up
10 and make their closing arguments to you. There's a
11 difference. There's an opening statement and there is a
12 closing argument. And in their closing arguments, the
13 attorneys advocate their position to you and urge you to
14 resolve the dispute in their favor.

15 The fourth part of the trial will be when I charge
16 you the law, when I tell you what the law is as it applies
17 to this case. And then the fifth part of the trial will
18 be when you all retire to your jury room to deliberate
19 this case and to resolve this dispute.

20 The parts of the trial -- the five parts are not of
21 equal length. And, as you can imagine, the presentation
22 of the evidence is, generally, the longest. But if you
23 can remember that little road map, then you'll know where
24 you are and, generally, what's coming next.

25 Now, I'll ask you to do a number of things throughout

1 the course of the trial. But there are three very
2 important things which I ask you to do. And the first is
3 to keep an open mind. We go through all the qualification
4 process and questioning to ensure that we have a fair and
5 impartial jury which will judge this case and resolve this
6 dispute based solely on the evidence presented in this
7 courtroom and the law presented in this courtroom. So
8 that's the first thing I ask you to do.

9 The second thing I ask you to do is very simple, but
10 can, also, be difficult. And that is to pay attention
11 throughout the course of the trial.

12 If you are to let your mind wander off during the
13 trial during the proceedings, you might miss an important
14 answer to a question that a witness makes or the way a
15 witness -- the way a witness answers a question, which we
16 call a witnesses demeanor which might be important in your
17 deliberations at the close of the trial. And if you had
18 let your mind wander off, you would be at a disadvantage
19 when you're deliberating with your fellow jurors. So,
20 please, pay attention.

21 The final thing I ask you to do and instruct you and
22 tell you that this is vital is that you not discuss this
23 case with anyone until you are free to deliberate the case
24 at the close of the trial. That means you can't talk
25 about it with the bailiffs. You can't talk about it with

1 your fellow jurors. You can't talk about the facts of the
2 case. You can't talk about it.

3 We're going to break now because we have some other
4 matters to discuss. And I'm going to excuse you all and
5 you can go to lunch, or whatever you need to do, run
6 errands. You can't discuss it with anyone you see while
7 you're not in court. The reason is that we don't want --
8 even an innocent comment from someone who you like and
9 trust might impact your state of mind in this case. And
10 we don't care what someone outside of this courtroom
11 thinks about it. That person is not making the sacrifices
12 that you all are making.

13 So it would be unfair to your fellow jurors. It
14 would be unfair to the parties here and unfair, most
15 particularly, to yourself if you let someone who's not
16 making those sacrifices have any input into the outcome of
17 this trial. They're not in here. They're not listening
18 to the evidence and the law, and observing this trial.
19 And they should not have any input.

20 So don't discuss the case. And that includes don't
21 go visit some scene when you hear about, perhaps, some
22 location. Don't go on the Internet. Don't go on social
23 media. Just don't discuss it. Everything you're going to
24 need to know to decide this case and resolve this dispute
25 you'll hear in this courtroom. So enough of that

1 lecturing. But that is vital.

2 And I will tell you that you all are the sole judges
3 of the facts in the case. You're the ones who determine
4 what to believe, what not to believe, what is credible,
5 what is not credible. So -- and a trial judge, by law, is
6 not entitled to have an opinion or express an opinion
7 about the facts of a case. So don't think by anything I
8 might say or do throughout the course of the trial that I
9 have such an opinion. It is up to you all to decide what
10 the truth is.

11 That same law makes me the sole judge of the law in
12 this case. So if you have some idea as to what you think
13 the law is or what the law ought to be and it differs from
14 what I tell you the law is throughout the course of the
15 trial and at the conclusion of the trial -- you'll swear
16 an oath before we start the trial to apply the law
17 precisely as I state it to you.

18 Now, a couple other things. You might have seen me
19 ask the lawyers to come up and speak with me. We call
20 that a bench conference. That can happen throughout the
21 course of the trial, or I might send you back to your jury
22 room to discuss some issue. I will tell you right now
23 what I was talking about with the lawyers was logistics,
24 what we had to do before we start the actual testimony of
25 the trial.

1 I may send you all out of the courtroom to discuss a
2 piece of evidence, whether or not it's admissible. And so
3 if you -- you can understand that if we are discussing
4 some piece of evidence that is not admissible, you all
5 shouldn't hear it. So we may be trying to keep things
6 from you, but we are not trying to deceive you. And
7 that's what we're doing when you all are not privy to the
8 conversation of -- between me and the lawyers.

9 So I think that's about it. I am going to dismiss
10 you all for lunch, and ask you to be back at 2:15. That's
11 a pretty big break. We have a fair amount of work we have
12 to do before we start the trial.

13 So, at this time, I'll excuse you all -- oh, one last
14 thing. When you all come back at 2:15, I will ask that
15 you all, please, see if you can decide who you would like
16 your foreperson to be.

17 The Foreperson is the moderator of your discussions
18 at the conclusion of the trial and the juries spokesperson
19 here in the courtroom, should that become necessary. And
20 it can only be from the first 12. I apologize to the
21 alternates. But the Foreperson comes from the first 12.

22 So if you can decide that on your own, I'd appreciate
23 that. If not, I can make that decision for you.

24 With that, ladies and gentlemen, I'll ask you to go
25 with our bailiffs and they will show you how to come and

1 go from the courtroom from here on out.

2 Thank you.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 11:44 a.m.)

5 THE COURT: Okay. Crank it up. Let's go.

6 MS. MAJOR: Your Honor, if it's okay with you, I
7 guess we could start with the Jackson v. Denno hearing.

8 THE COURT: Okay. Let's go.

9 MS. MAJOR: I -- the interview is on video. I don't
10 think that there's too much of an issue here with
11 Mr. Quinn. But I can call Mr. Fortner or play it by
12 video.

13 THE COURT: Are you looking for an advisory opinion?

14 MS. MAJOR: Well, I would call Investigator Fortner
15 to the stand.

16 THE COURT: Okay.

17 MS. MAJOR: I didn't know if I wanted to bother you
18 with the --

19 THE COURT: Techno, yeah.

20 MS. MAJOR: -- video.

21 THE COURT: Okay.

22 WHEREUPON,

23 MICHAEL EUGENE FORTNER,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Please have a seat.

1 Greenville City was always gracious enough to allow us to
2 use theirs. So we interviewed him in one of their
3 interview rooms.

4 Q Okay. So the Defendant had been arrested?

5 A Yes, ma'am, he was.

6 Q Okay. Was he handcuffed during this interview?

7 A Yes, he was.

8 Q All right. Where were his hands?

9 A Well, initially, once when we brought -- when he was
10 brought over, behind his back. But once we got him in the
11 interview room, we put a waist belt on him and handcuffed
12 him up front.

13 Q Okay. Had the Defendant been deprived of any food or
14 water?

15 A No, ma'am.

16 Q Did you give him the opportunity to use the bathroom?

17 A I did, yes.

18 Q Did you advise him of his Miranda rights?

19 A Yes, ma'am, I did.

20 Q And how did you do that?

21 A We have a form, a piece of paper, it's got the rights
22 that are listed. And then at the bottom portion of it is
23 the actual waiver of rights.

24 Q Okay. And I'll show you what will be marked as
25 Court's [sic] Exhibit No. 1.

1 (WHEREUPON, State's Exhibit No. 1 was marked for
2 identification only.)

3 BY MS. MAJOR:

4 Q And what is that that I -- Court's Exhibit No. 1?

5 A It's the waiver of rights.

6 Q Okay.

7 A That I read to Mr. Cureton.

8 Q Did you have him initial that form?

9 A I did. When I first sit down with somebody that I'm
10 going to read their rights to, I get their general
11 information, their name, address, birth date, their
12 education level, that kind of thing. I fill out the date
13 and time.

14 And then I explain to them that I'm going to read
15 each one of the lines -- each one of their rights to them
16 individually. And after I read them to them, I ask them
17 to put their initials out to the side, which just
18 indicates that I did read it out loud to them.

19 Q Okay. What -- did the Defendant indicate that he
20 could read and write?

21 A He did, yes.

22 Q All right. What was his education?

23 A Eleventh grade, Carolina High School, as well as
24 Greer High School.

25 Q All right. Did the Defendant appear to be under the

1 influence of any sort of substance --

2 A No.

3 Q -- at the time.

4 A No, he did not.

5 Q Did the Defendant seem to understand what was going
6 on?

7 A Yes, ma'am, he did.

8 Q Did you threaten the Defendant in order to get him to
9 make this statement?

10 A No, ma'am.

11 Q Did you promise anything in exchange for this
12 statement?

13 A No, ma'am.

14 Q All right. If you could just read out the rights
15 that you -- or the waiver of rights.

16 A All right. It starts off with, Before we ask you any
17 questions, you must understand your rights. You have the
18 right to remain silent. Anything you say can be used
19 against you in court. You have the right to talk to a
20 lawyer for advice before we ask you any questions, and to
21 have him with you during questioning. If you have no
22 money to pay a lawyer's fee, the Court will appoint one to
23 represent you without cost, if you wish.

24 If you decide to answer questions now without a
25 lawyer present, you will still have the right to stop

1 answering at any time. You, also, have the right to stop
2 answering at any time until you talk to a lawyer.

3 Q Did he sign the statement that he understood those
4 rights?

5 A He did. Generally -- once I get to that point, I
6 will, actually, ask them to read a line out loud to me to
7 show to me that they can read. And after they read that
8 line out, as was in this case -- it was the fourth line
9 down. He read it out loud. I always have them sign their
10 name afterwards. And that just indicates to me that they
11 have read that line out loud to me.

12 Q Okay. Did he indicate that he understood the word
13 "coercion"?

14 A Yes, he did.

15 Q Did you explain that to him?

16 A I did, yes, ma'am.

17 Q All right. Was this video -- or was this interview
18 recorded?

19 A Yes, ma'am, it was.

20 Q And did the Defendant indicate that he was willing
21 and ready to talk to you without his lawyer present?

22 A Yes, ma'am, he did.

23 MS. MAJOR: Please answer any questions Mr. Quinn
24 has.

25 MR. QUINN: No questions.

1 THE COURT: All right.

2 MS. MAJOR: Your Honor, I would ask that you find
3 that this statement that he gave was voluntarily and
4 knowingly given.

5 THE COURT: Well, let's -- did you identify -- you
6 identified Miranda. Did you identify the statement?

7 MS. MAJOR: Your Honor --

8 THE COURT: I don't know what statement -- you know,
9 you need to --

10 MS. MAJOR: It's a video recording.

11 THE COURT: Just get that so we're not -- so there's
12 no question about which statement.

13 BY MS. MAJOR:

14 Q And the statement that we were just referring to --
15 I'll show you what's been marked as Court's Exhibit No. 2.

16 THE COURT REPORTER: Do you want it marked as a
17 Court's Exhibit or a State's Exhibit?

18 MS. MAJOR: Go ahead and do State's.

19 (WHEREUPON, State's Exhibit No. 2 was marked for
20 identification only.)

21 BY MS. MAJOR:

22 Q I'll show you what's marked as State's Exhibit No. 2.
23 Is that the recorded interview that we are referring to?

24 A Yes, ma'am, it is.

25 Q And was all of these -- all of this -- these rights

1 that you went over, was that recorded on that video as
2 well?

3 A Yes, ma'am, they were.

4 MS. MAJOR: Okay. Thank you.

5 THE COURT: Anything now?

6 MR. QUINN: A couple.

7 CROSS-EXAMINATION

8 BY MR. QUINN:

9 Q How are you able to tell that that is the video?

10 A Because I -- one, I've got on here, The interview of
11 John Mark Cureton. And it's my handwriting that's on
12 here.

13 Q And I see you pointing to the envelope. Is your
14 handwriting, also, on the video -- the CD itself?

15 A Well, it's, actually, on the CD, yes, sir. It's not
16 even on -- it's not on the envelope at all, just the CD.

17 Q And have you had the opportunity to review that to be
18 sure it is complete and accurate?

19 A I have, yes, sir.

20 Q And when was that?

21 A Either Thursday, Friday, maybe Saturday while I was
22 preparing at home watching it.

23 Q One day in the last several days? Thursday, Friday
24 of last week?

25 A Yes, sir.

1 Q Okay. And that's the same video you looked at to be
2 sure it was accurate and complete?

3 A Well, I -- I -- mine is, actually, a different copy.
4 But I made this copy from the copy that I watched.

5 MR. QUINN: Got you.

6 I don't have any other questions.

7 Thank you.

8 THE COURT: All right. Thank you. Thank you very
9 much.

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay. I'm going to find it's freely,
12 voluntarily, and intelligently made.

13 All right. Next?

14 MR. QUINN: Your Honor, I think the next motion would
15 be mine. It would be a stand-your-ground issue.

16 THE COURT: Okay.

17 MR. QUINN: Your Honor, I'd call John Cureton, III,
18 to the stand.

19 THE CLERK: If you'll put your left hand on the Bible
20 and raise your right.

21 WHEREUPON,

22 JOHN MARK CURETON, III,
23 after first having been duly sworn, testified as follows:

24 THE CLERK: Thanks.

25 Have a seat.

1 Will you state your full name for the record?

2 THE WITNESS: My full name is John Mark Cureton, III.

3 DIRECT EXAMINATION

4 BY MR. QUINN:

5 Q And may I refer to you as John?

6 A Sir?

7 Q May I call you John?

8 A Yeah. Yes, sir.

9 Q John, on February 3rd of 2014, were you involved in
10 an altercation here in Greenville County?

11 A Yes, sir.

12 Q And where did that occur?

13 A It occurred at Dixie -- Dixie Estates.

14 Q Dixie Estates?

15 A Yes, sir.

16 Q And what is Dixie Estates? Apartments, or trailers,
17 or condos, or...

18 A Trailers.

19 Q Okay. And at what trailer were you in at Dixie
20 Estates?

21 A I was on my own at my brother and my sister-in-law's
22 house.

23 Q And what's your brother's name?

24 A My brother is Justin Cureton.

25 Q And your sister-in-law's name is?

1 A Brandi Wilson.

2 Q And do you know the number of the trailer they lived
3 at in Dixie?

4 A I ain't accurate. But it was either lot [REDACTED]
5 [REDACTED] -- something, one of the two. I think it was [REDACTED]
6 [REDACTED].

7 Q Okay. But you don't remember the specific address of
8 the trailer?

9 A No, sir.

10 Q Were you living at that trailer, or visiting, or what
11 was -- what was your relationship with that location?

12 A At the time, I just had moved in with my family with
13 my brother and my sister-in-law. I was over there for
14 like -- it was like -- it was, like, a minute and a half,
15 like, 40 days.

16 Q You had been living at that location for about --

17 A Yes, sir.

18 Q -- 40 days is what you're saying?

19 A (Witness nodded.)

20 Q And who else lived there with you? And I know it's
21 Justin and Brandi. Did anyone else live there?

22 A My niece and my nephew, which is my brother's kids.

23 Q And about how old are your brother's kids?

24 A Right now, Bree [phonetic], she's eight. And my
25 nephew is like -- he's five turning -- turning six.

1 Q Okay. And were you at that trailer on February 3rd
2 of 2014?

3 A Yes, sir. Yes, I was.

4 Q And tell the jury -- the Judge what was going on on
5 February 3rd, 2014 at your neighbor's house?

6 A I mean, I don't know, man. I was -- I didn't know it
7 was a party going on. But, I mean, it was all kinds of
8 fights going on. Man, it was all kind of commotion going
9 on out there.

10 And around, like, 10:30 -- between 10:30 and 11:00
11 p.m. at night, it was a fight going on outside and --

12 Q Do you know who was involved in that fight that was
13 going on outside?

14 A Yes, sir. The deceased.

15 Q Mr. Brooks?

16 A Yes, sir.

17 Q And did you know Mr. Brooks?

18 A I had never seen him a day in my life.

19 Q Okay. And who -- when we're talking about the
20 neighbors, how far away was the neighbors that we're
21 talking about?

22 A Well, between -- I mean, I think -- between our
23 trailer and their trailers, I think the trailers were --
24 from, like, where I'm at to that door -- to the clock.

25 Q Okay. But in the trailer park, these are adjoining

1 trailers we're talking about?

2 A Yes, sir, right beside.

3 Q So one trailer's front yard is the other trailer's
4 back yard?

5 A Yes, sir.

6 Q Okay. And at the trailer next door, you said there
7 was a party going on?

8 A Yeah. But, at the time, I did not know that it was a
9 party going on until -- until the commotion had broke out.

10 Q And tell me what you mean by "the commotion."

11 A Like, I don't know, man. It was -- I heard some
12 fighting. And me and my family -- well, my brother,
13 Justin, we heard some fighting going on. So -- but I -- I
14 mean, our back door was cracked. So my brother asked was
15 everybody all right.

16 Q And where was the fighting going on?

17 A In our backyard.

18 Q Okay. And who was Justin talking to? Do you know
19 who he was speaking to?

20 A Yeah. Because I had -- well, he was talking to
21 Mr. Brooks and some -- well, really, he was just
22 speaking -- really, when he asked was everybody all right,
23 he wasn't talking to anybody specific.

24 Q Did he get an answer?

25 A Yeah. He got an answer from Mr. Brooks.

1 Q And do you know what that answer was? Could you
2 overhear it?

3 A He said, F you, you next.

4 Q Okay.

5 A And so my brother was like -- my brother was, like,
6 man, they've -- man, they've got to -- so he was, like, I
7 mean, F you, so.

8 And then Mr. Brooks came with his friends onto our
9 back porch. And we were trying to tell them to leave.
10 And they wouldn't leave.

11 Q Okay. Now, slow down for me now. Attached to your
12 brother's trailer, is there a porch?

13 A Yeah. It's a back porch.

14 Q Okay. And are there stairs that lead up to the
15 trailer?

16 A Yes, sir.

17 Q Okay. And who came up to the back porch?

18 A I mean, Mr. Brooks and his -- some of his -- and some
19 of his friends.

20 Q And how many of his friends?

21 A Man, I think it was about like -- I would say it was,
22 like, anywhere between eight, 10.

23 Q How many people were out in the backyard of your
24 brother's trailer?

25 A It was a party going on, so probably, like, 15, 20.

1 Q And was it all men, or men and women, or do you know
2 what the group was like?

3 A It was mostly men.

4 Q Okay. And when they came up on the steps -- how many
5 steps is there to get in the house?

6 A Like, three steps, three or four.

7 Q And describe that for me. Did they come in the
8 house, or stay on the porch, or what was that all about?

9 A Well, at first -- at first, when they came, they were
10 arguing. And then --

11 Q Who were they arguing with?

12 A They was arguing with my brother. And I told them,
13 Ain't nobody going to mess with my brother. Because we
14 had kids in the house. And they -- I mean, they wouldn't
15 comply. And they kept trying to get -- I mean, barge
16 their way past me, you know.

17 So while that was going on, my brother and my
18 sister-in-law moved the kids to the back room. And my
19 brother was putting on shoes. And, I mean, they -- I
20 mean -- I mean, the crowd -- I mean, they made their way
21 past me. So, therefore, I let off a warning shot when
22 they did that.

23 Q And where were you when you shot?

24 A When I shot the warning shot?

25 Q Yes.

1 A I was standing -- I was standing on the front porch.

2 Q On the front porch or the back porch?

3 A No. I mean, the back porch. The back porch, yeah.

4 Q Was there ever any trouble on two different porches,
5 or is it the same place we're talking about?

6 A No. It was the same -- the same back porch. I meant
7 to say the back porch.

8 Q All right. And where were you on the back porch?

9 A I was standing at the bottom on the step.

10 Q Okay. And when you fired the gun that time, where
11 did you fire it at?

12 A Well, the first time I fired the shot, I let a -- I
13 shot a shot straight in the air to get everybody from off
14 our -- off of our porch. And then, like I said, I didn't
15 let the warning shot go until -- until -- I mean, they
16 ran -- until they got past me.

17 Q And how many people had gotten past you?

18 A I would say probably about, like, six -- four or
19 five.

20 Q Were you able to tell -- did any of them get inside
21 of the house?

22 A Yeah. And that's the reason why I let the shot go.
23 Because they had went inside the house. And there was
24 still people out there, too, on the front -- the back
25 porch, too.

1 Q And do you know how many people went inside the
2 house?

3 A I'd say about like -- I'd say, like, four, five, six,
4 something like that.

5 Q And were you saying anything?

6 A Yeah. The whole time -- the whole time, I'm telling
7 them to go ahead -- I was, like, Go home, I mean, go.
8 They wouldn't never leave. I told them we had kids in the
9 home. I mean, he was fighting, and all that.

10 Q Okay. And what happened after you fired that shot?

11 A After I fired that shot, I went in the house and made
12 everybody get -- leave.

13 Q And did they?

14 A Yes. They left. But they said they was coming back
15 to retaliate. They said -- yes, sir.

16 Q When they left, could you tell where they went?

17 A No. Because I thought it was over with. So I just
18 went -- I went and sat down on the couch.

19 Q And the couch was inside the trailer, or outside?

20 A Inside. Because like -- like I -- like I stated
21 earlier, everybody had left. So I thought it was over.
22 But they said they were coming back. I mean, they said
23 they were coming back, so.

24 Q All right. And did they come back? Was there ever
25 any further difficulties?

1 A Like, three -- three minutes passed, they came back.

2 Q And who came back? Could you tell?

3 A Yeah. I mean, the deceased, Mr. Brooks, Mr. Sitton,
4 and some more people.

5 Q And Mr. Sitton, did you know him previously?

6 A No, sir.

7 Q Okay. And about how many people came back?

8 A I mean, when they came back, they came back with,
9 like, a little group, probably about, like, six -- six,
10 seven people. But when they came back this time, we came
11 outside to meet them at the back -- at the back porch to
12 make sure that they wouldn't -- they wouldn't come back in
13 a second time.

14 Q And who was inside the trailer besides you and your
15 brother?

16 A Well, my little niece, and my little nephew, and my
17 sister-in-law.

18 Q Okay. And where in the trailer were they? Do you
19 know?

20 A When they came back -- my sister-in-law, Brandi, she
21 was just taking a shower when they came back. Because she
22 thought it was over, too, when I let the warning shot go.
23 I did, too. I didn't know they were going to come back,
24 so.

25 Q All right. When they did come back, what happened?

1 A They came back and we met them. I mean -- I mean,
2 they -- I mean, they came back. So we went outside and
3 met them on the front porch. And when we came outside, my
4 brother came first. When he came out -- we stepped off
5 the front porch and everybody run up on him. And I let --
6 I let a single shot go. I didn't know nobody was shot.

7 Q And when you say you "let a single shot go," where
8 did you aim the gun at that time?

9 A I aimed -- I aimed -- I aimed the gun at the people
10 that -- that was around my brother that ran up on him
11 fighting. It was -- I mean, on the dude --

12 Q And where were you when you fired that shot?

13 A I was on the front -- I mean the back porch.

14 Q And how many shots did you fire?

15 A I shot one time.

16 Q Do you know if anyone else fired a gun?

17 A Not that I know of.

18 Q Did you see any other guns?

19 A I don't know. I seen -- I seen -- I don't know.
20 They said somebody had a gun. I ain't -- I ain't seen
21 nobody had a gun. But it looked like I seen somebody
22 starting to pull out a gun.

23 Q And who was that? Do you know?

24 A The deceased, Mr. Brooks.

25 Q And who said that they had a gun? Do you know?

1 A I don't know which one. It was one of the guys that
2 came -- that came in the trailer the first time. But I
3 don't know -- I don't know his name.

4 Q And the people that came back the second time, was
5 there any conversation going on between you, and your
6 brother, and them?

7 A When they came back the second time, there wasn't no
8 conversation going on. It's like -- it's like they were
9 talking -- I mean, they were talking about -- about
10 fighting us, and all that. It was 11:00 at night. I
11 couldn't see nothing. It was dark, too.

12 So, I mean, that's another thing, really, what made
13 me fear for my safety. Because with the lighting -- it
14 was a lot of people. Yes, sir.

15 Q When they came back the second time, were they trying
16 to get into the trailer?

17 A Yeah. They was trying -- yeah. They was trying to
18 get in the trailer again. So that's why we -- my
19 brother -- well, he had put his shoes on by then. So he
20 came outside and I came behind him. And as soon as he
21 came out on the front porch, they ran up on him. And I
22 shot one shot.

23 Q And were you engaged in any unlawful activity at the
24 trailer?

25 A No, sir. I never stepped foot across -- across --

1 next door to that party. I did not even know it was a
2 party going on at the time.

3 Q Now, I know you said your brother had some words with
4 these people. Did you have any --

5 A Yeah. I had -- yeah. I had some words with the
6 people. Because they -- I mean, I'm telling them to go
7 ahead. I mean, they acted like they didn't want to stop.
8 You know what I mean?

9 When they was inside the trailer, we told them, go
10 ahead, get up out of here. I mean, they -- I mean, they
11 didn't get off of our premises.

12 Q So were you trying to calm down the situation --

13 A Yes, sir.

14 Q -- to stop the trouble?

15 A Yes, sir. That's all I wanted to do.

16 Q Did -- did you have any fault in bringing this
17 trouble on?

18 A No. Neither or -- neither me or my brother.

19 Q And did you think you or your brother would sustain
20 serious injury?

21 A Yes, sir. I most definitely did. Because of the
22 fact it was nighttime, and it was a lot of people. And,
23 plus, they had already ran in our house. And I let them
24 go, and they came back.

25 I mean, I had to restore order because I had -- like

1 I said, I had my niece and my nephew there. And then they
2 were talking about guns.

3 Q And were you afraid your niece and nephew might get
4 hurt if they got in the trailer?

5 A Yeah, and myself.

6 Q And did you have any other way of stopping this
7 difficulty?

8 A There wasn't no other way to stop it. I tried
9 everything I could. I was pushing them -- pushing people
10 out of the house, I mean, me and my brother, man. It
11 wasn't going to stop. I felt like I had no other choice.
12 My back was against the wall.

13 MR. QUINN: All right. I don't have any other
14 questions. You're going to have to answer any questions
15 the Prosecutor might have.

16 THE WITNESS: All right.

17 CROSS-EXAMINATION

18 BY MS. MAJOR:

19 Q Okay. Mr. Cureton, you were arrested for this charge
20 at some point; right?

21 A Yes, ma'am.

22 Q And you were in the Greenville County Detention
23 Center?

24 A Yes. Yes, ma'am.

25 Q And how long -- do you know how long you were in

1 there?

2 A I think I was in there for, like, five months.

3 Q Okay. Let's see. Does you being released around
4 June 8th sound correct?

5 A Yes, ma'am.

6 Q Okay. And let me show you --

7 (WHEREUPON, State's Exhibit Nos. 3 and 4 were marked
8 for identification only.)

9 BY MS. MAJOR:

10 Q -- what's been marked as State's Exhibit Nos. 3 and
11 4. Is that an envelope?

12 A Yes, ma'am.

13 Q And what does that say right there at the top?

14 A It's my name, John Cureton.

15 Q Let me show you what's been marked as State's Exhibit
16 No. 4. Is this a letter that you wrote to Mr. Fortner?

17 A Yes.

18 Q Okay. From the jail?

19 A Yeah. From -- from Greenville County.

20 Q Okay. One more thing.

21 (WHEREUPON, State's Exhibit No. 5 was marked for
22 identification only.)

23 BY MS. MAJOR:

24 Q Let me show you what's been marked as State's Exhibit
25 No. 5. Is this a picture -- well...

1 MR. QUINN: I've already saw it.

2 BY MS. MAJOR:

3 Q Is this a picture of the -- Dixie Estates?

4 A Yes, ma'am.

5 Q All right. And these are the two trailers?

6 A I think so. I think so.

7 Q Okay. And where was your brother's trailer?

8 A Right here where the back porch is.

9 Q Okay. And you testified that your back yard was
10 their front yard?

11 A I ain't testified -- I don't -- I mean...

12 Q Let me ask it a different way. Are there any fences
13 around here?

14 A No.

15 Q Is there any property line, like, a demarcated
16 property line around here?

17 A I don't -- I don't know.

18 Q You don't remember -- do you remember seeing
19 anything?

20 A I don't know where the line is for the property.

21 Q Okay. But is there one out there?

22 A There probably is a line somewhere.

23 Q You think there's a line drawn out there?

24 A Between them and my back yard -- back porch, yeah.

25 Q All right. Mr. Cureton, didn't your brother know

1 these people? How long had he lived there?

2 A I think -- I think he said he was staying there,
3 like, for two years.

4 Q For two years?

5 A For, like, two -- over two years.

6 Q Okay. Didn't he -- isn't it true that he hung out
7 with these people, that he knew a couple of them?

8 A He said he did not know -- the only person he knew
9 was the -- the fellow that stayed at the trailer next
10 door. He knew him. He did not know any -- none of his --
11 he didn't know the people that was at his party.

12 Q Okay. He didn't know any of them?

13 A No, not that I -- not that I recall.

14 Q Hadn't these people been into that trailer before?

15 A Into -- into what trailer?

16 Q Hadn't -- some of these people who were out there
17 that night who lived right next door to your brother,
18 isn't it true that they knew your brother?

19 A I find -- I find a high reasonable doubt on that.
20 Because I -- I just stated he didn't know -- he know [sic]
21 the dude at the trailer, and this -- I think his brother
22 that stayed there. But it was two people that stayed at
23 the trailer next door. But that's all he knew.

24 Q Right. And they had been into the -- your brother's
25 trailer prior to this; right?

1 A Yes, sir [sic]. But the two people that stayed there
2 have -- but the other people -- the guests at the party,
3 we do not -- we do not have -- we don't have any knowledge
4 of knowing them.

5 Q Okay. Mr. Sitton had been in that -- in your
6 brother's trailer before; right?

7 A No.

8 Q I mean, he wanted to -- you said that --

9 A Mr. Sitton wasn't -- was not one of the two people
10 that lived at the trailer.

11 Q Okay. But he had been into your brother's trailer
12 before; right?

13 A Negative.

14 Q Okay. But your brother wanted to check on these
15 people. Didn't -- isn't that what you said, that he said,
16 Is everything okay?

17 A He said was everybody all right. Because they was
18 fighting in his backyard.

19 Q Right. And he was talking to his friends, checking
20 on his friends?

21 A Not his friends, anybody.

22 Q Okay. You described this fight as commotion; right?
23 Isn't that -- isn't that what you told the investigators?

24 A Yes, sir. I said there was a lot of fighting,
25 commotion going on. So we -- I mean, we at our back door.

1 It was cracked. It was barely cracked. So that -- I
2 mean, so we just -- I mean, my brother just asked was
3 everybody all right. And I felt like it should not have
4 escalated for somebody trying to look out for somebody.

5 Q Was anybody physically fighting out there?

6 A Yes.

7 Q No. Before -- right before your brother said, Is
8 everybody all right, was anybody throwing punches?

9 A Yes.

10 Q Who?

11 A He say --

12 Q No, not what did they say. What did you see?

13 A I mean, I seen -- earlier that day, I seen people
14 fighting.

15 Q You did?

16 A Yes, ma'am.

17 Q Who did you see fighting?

18 A The deceased.

19 Q You saw the deceased fighting out there. At what
20 time?

21 A I think it was around, like, lunchtime.

22 Q Okay. He was out there fighting at lunchtime?

23 A Yeah.

24 Q Okay. Who was he fighting with?

25 A I do not know. I do not know. I don't know the

1 deceased or -- I -- I only know two people. I knew the
2 person -- the two brothers that stayed there. And he was
3 cool with them.

4 Q Okay. So you saw the deceased physically fighting
5 with somebody at 12:00 that day?

6 A Yeah.

7 Q All right. But you don't know who that was?

8 A No.

9 Q Okay. When your brother said, Is everybody all
10 right, and he starts getting into a verbal dispute -- spat
11 with somebody, you think it's Mr. Brooks. Did he make
12 physical contact with Mr. Brooks that first time?

13 A The first time like -- well --

14 Q Did your brother hit Mr. Brooks that first time?

15 A No. No, ma'am.

16 Q Okay. Did Mr. Brooks make physical contact with your
17 brother?

18 A When he ran up on him.

19 Q Where did this first --

20 A Because that was the second time.

21 Q Okay. Well, this first time, where did that happen?
22 Where was your brother and Mr. Brooks arguing?

23 A We -- my brother never left up out of the trailer the
24 first time. Because the first time, I came outside and
25 tried to stop them from coming in. But Mr. Brooks -- I

1 let the warning shot go when he came in the house. I had
2 put -- me and my brother was tussling with them and
3 pushing them -- pushing them outside. Because you had --
4 ma'am, like, we was trying to stop the whole thing.

5 Q Okay. But you were outside and they were inside this
6 first time?

7 A Yeah. The guy passed me, the one in the door.
8 That's when I let the shot go. And I went back in the
9 house --

10 Q So you let the shot go outside and you've got
11 strangers in your house?

12 A That's why I let the shot go, because they ran past
13 me --

14 Q Okay.

15 A -- into the house. And they -- they -- they went
16 through the boundary into the door. And that's when I let
17 the shot go, because they went past me and went in the
18 house.

19 Q They're in the house with the kids; right?

20 A Well, there's people outside, too. Everybody ain't
21 made it in the house yet. That's why I let --

22 Q How many people made it in the house?

23 A Man, probably, like, six.

24 Q Six people made it in the house?

25 A Well, see, that's why I let the shot go because -- to

1 stop the rest of the people from coming in, too. Because
2 there was still people trying to come in.

3 MS. MAJOR: One moment, please.

4 (Pause.)

5 BY MS. MAJOR:

6 Q All right. You spoke with Investigator Fortner over
7 there, what, two days after it happened?

8 A Yes, ma'am.

9 Q Okay. And you never told him that anybody got in
10 your house; right?

11 A Yes, I did.

12 Q You did?

13 A If you play the tape on -- on video, you will see.

14 Q Telling him that six people made it in your house?

15 A Yeah. If you look at my statement where --

16 Q We will. I'm just -- I'm just asking --

17 A -- why you --

18 Q -- is this funny --

19 (WHEREUPON, the attorney and the witness were
20 talking over each other.)

21 THE COURT: Hold on. I need you to speak clearly and
22 not so fast --

23 THE WITNESS: Okay.

24 THE COURT: -- so we can record everything.

25 THE WITNESS: I'm sorry, Your Honor.

1 THE COURT: That's all right.

2 BY MS. MAJOR:

3 Q Okay. So you say that you did tell Investigator
4 Fortner that they were in your house?

5 A The first time.

6 Q And the kids are in there in the house, and they're
7 in your house, and you let off the warning shot; is that
8 right?

9 A Could you repeat that?

10 Q Is it your testimony that this first verbal
11 dispute -- six people make it in your house?

12 A Right. Something like that.

13 Q Okay. Where -- where is your brother at this time?

14 A He was in the house, too.

15 Q Okay.

16 A And I was outside trying to stop people from coming
17 through the back door.

18 Q How are you trying to stop people from coming through
19 the back door? You've got your gun?

20 A My gun --

21 Q Are you holding out your hands? How are you doing
22 it?

23 A My gun -- I never presented my gun until I shot it.

24 Q Okay. So you didn't pull out your gun when --

25 A No.

1 Q -- you see people going in the house?

2 A No. Whenever -- man, when I saw people coming in the
3 house -- when they made it past me and I couldn't keep the
4 crowd back, that's when I pulled it out and shot it. But
5 the whole time, nobody knew that I had a gun.

6 Q And where is your brother when you fired the warning
7 shot?

8 A He was inside the house.

9 Q All right. Where's Mr. Brooks?

10 A He was inside the house, too.

11 Q Mr. Brooks is inside the house?

12 A Yes, sir.

13 Q All right. And he runs --

14 A My brother was inside his own house --

15 Q Okay. And he runs out --

16 A -- in his home.

17 Q And he runs out after the warning shot?

18 A Yeah.

19 Q He runs out of the house?

20 A Yeah. The reason they ran out is because I -- I let
21 the warning shot go. The crowd, they was -- they was
22 trying to come in. They even went back that way. And I
23 went in to get -- to make sure -- to force them out.

24 Q Okay. So everybody runs out. And then you go back
25 in your house?

1 A I thought it was over.

2 Q All right. What did you do once you got back in
3 there?

4 A Then we got into an argument. I told them they got
5 to get on out of here. I pulled my gun. I had my gun --

6 Q No, sir. Excuse me. I'll be more -- I'll clarify.
7 When you fired the warning shot, you say everybody ran out
8 of the house?

9 A Not everybody. The people -- it was still people
10 trying to get in. Like, when people came -- when they got
11 past me and I saw people coming in the house, there was
12 still more people trying to keep going, too. That's --

13 Q I know --

14 A -- when I went outside. Because there was some more
15 people still trying to come inside the house.

16 Q But when you shot --

17 A I wasn't in the house --

18 Q -- after you shot --

19 A -- I wasn't in the house. I went in the house and
20 kicked everybody -- forced everybody else that was in
21 there to get out, too.

22 Q Okay. Did they get out?

23 A Yes. They didn't have no other choice. But -- but
24 we -- but at the same time, though, they still -- they
25 still talking garbage. We're still arguing. They're

1 saying they're coming back.

2 Q I thought you went to go sit down on the couch?

3 A I did.

4 Q Okay.

5 A After I went in there -- I said I went in there and
6 got everybody out, then I sat on the couch. But -- but
7 while -- while I was getting people out, there was still
8 commotion inside the house. They were saying they were
9 coming back.

10 Q All right. So at some point between the warning shot
11 and then the ultimate fatal shot, did you get everybody
12 out of the -- of your brother's house?

13 A (Witness nodded.)

14 Q So everybody's out. How long was everybody out?

15 A Man, they came back, like, between three minutes,
16 three, four minutes.

17 Q So you had three minutes. Did you lock the door?

18 A No. We didn't lock the door.

19 Q All right. Did you call 911?

20 A No.

21 Q Okay. Did you get the kids out of there?

22 A We had -- yeah. We had put -- took the kids in the
23 back room. Yeah. We took the kids to the back room while
24 they was in there. My niece and my nephew were crying.

25 Q All right. You say this crowd was mostly men. How

1 many females?

2 A Man, I ain't seen no women, really.

3 Q No women. Okay.

4 A At the party, it was mostly dudes. I'd say
5 90 percent.

6 Q It was mostly what? Excuse me?

7 A Mostly men.

8 THE COURT: He said "dudes."

9 MS. MAJOR: Dudes.

10 Thank you.

11 BY MS. MAJOR:

12 Q You told -- your testimony is that you saw Mr. Brooks
13 pull out a gun, or what you thought was a gun?

14 A My testimony -- it looked like he was reaching for a
15 gun.

16 Q Okay. When was this?

17 A When he came -- ma'am, when I -- this was the second
18 time. When they came back, we came outside. And as soon
19 as my brother walked off the front porch -- I mean the
20 back porch, everybody ran up on him. And he was reaching.
21 And I shot.

22 Q All right. But didn't you tell investigator-- so --
23 so where -- where was Mr. Brooks when you shot?

24 A He was in front of my brother. Everybody ran up on
25 us trying to swing -- trying to swing -- swing punches on

1 my brother.

2 Q All right. Point on this picture, where was

3 Mr. Brooks?

4 A See, our back porch is right here. He was right
5 here --

6 Q All right.

7 A -- right here on the side of the back -- our back
8 right here. He came up. See, I came out. And my brother
9 came down and he ran up him. And I --

10 THE COURT: Keep your voice up. We've got to hear
11 it.

12 THE WITNESS: All right. This is our back porch.
13 Mr. Brooks was right here in front of our back porch, I
14 want to say, in front of the back of our trailer right
15 there.

16 BY MS. MAJOR:

17 Q Right there. And where -- where's your brother?

18 A Right here, too.

19 Q All right. So they're both right there. And what
20 are they doing? Right before you shoot, what are they
21 doing?

22 A They already ran up on him like this. And --

23 Q What -- what do you mean by "ran up on him like
24 this"? Tell us exactly what they were doing.

25 A Man, they ran -- I mean, they ran up with their hands

1 up. And they -- and they had -- as soon -- as soon as
2 they surrounded him, that's when I shot.

3 Q As soon as who surrounded whom?

4 A Mr. Brooks, Mr. Sitton, and some more guys that I
5 don't even know.

6 Q Okay.

7 A Because I didn't even know them.

8 Q So did you mean to shoot Mr. Brooks?

9 A Yeah.

10 Q Did you mean to shoot Mr. Sitton?

11 A Because --

12 Q No, no --

13 A I feared -- I feared -- I feared for my safety and
14 the safety of my brother.

15 Q I know. Did you mean to shoot Mr. Sitton?

16 A I mean, I feel -- I feel -- I feel like my life was
17 in danger, so --

18 Q So is that, yes, you meant to shoot Mr. Sitton?

19 A I feel like they was trying to use deadly force. I
20 felt like that.

21 Q So yes? Yes or no?

22 A Yes. Because they -- they ran up on my brother.

23 They ran up on my brother. I mean, it happened so fast.

24 As soon as they ran up, then -- as soon as they got him --

25 they had him cornered, surrounded. That's when I shot.

1 Q Didn't you tell Investigator Fortner that Mr. Brooks
2 and Mr. Sitton -- excuse me, Mr. Brooks and your brother
3 were squared up ready to fight?

4 A Yeah. That's what I said. They ran up on him.

5 Q So your brother was ready to fight as well, wasn't
6 he?

7 A He was defending his house.

8 Q Right. Didn't -- after that second shot came --
9 excuse me. Between the warning shot and the fatal shot,
10 didn't your brother go inside to put his shoes on?

11 A Yes, ma'am.

12 Q Okay. Why was he going to put his shoes on --

13 A That's while the people was still trying to come in
14 the house to get at him.

15 Q Why was he trying to put his shoes on?

16 A Because he didn't have no shoes on. And you've got a
17 group of guys out there who start coming into your home.
18 Who going to go out there barefooted?

19 Q Right. So he had enough time to go put his shoes on?

20 A Yes, ma'am.

21 Q All right. Was he going to go fight them?

22 A He was going to defend himself --

23 Q Right.

24 A -- because he had a family and he was on his own
25 property.

1 Q But your brother was going down to fight --

2 A He was going -- he was going to defend himself. I
3 can't say fight. He was ready to defend himself.

4 Q Okay.

5 A I ain't going to say fight.

6 Q Didn't he run out of his house to go and try to
7 fight -- you can call it fight or defend himself.

8 Didn't --

9 A No.

10 Q -- he leave his residence?

11 A No. He didn't never leave his residence. See, when
12 he -- see, the second time, they came back, he walked
13 outside. And I came in -- I came out behind him.

14 So he came -- yeah. He was on his back porch. He
15 came on his back porch when they came back. And as
16 soon -- as soon as he came off the back porch, that's when
17 they all ran up on him again. And I'm like, this got to
18 stop. Because they ain't -- I mean...

19 Q Didn't you -- you never told Investigator Fortner
20 that you saw Mr. Brooks reaching for a gun; right?

21 A I never told investigator Brooks [sic] -- I mean --
22 repeat that.

23 Q Did you ever tell Investigator Fortner that you saw
24 Mr. Brooks reaching for a gun?

25 A Yeah. I said -- I said -- I said that somebody said

1 that they had a gun. And I said I didn't know who. He
2 asked me did I see. I said I didn't see. But I said I
3 felt like -- it looked like somebody was reaching -- like
4 Mr. Brooks was reaching for a gun to pull it out.

5 Q Right. But you never told Investigator Fortner that
6 it looked like Mr. Brooks was reaching for a gun, did you?

7 A I don't -- I don't recall.

8 Q Okay.

9 A Because it was a short -- it was a short statement.

10 Q You were in there for an hour; right?

11 A No. My statement didn't take an hour. My -- my
12 statement -- I don't know how long it took.

13 Q Excuse me?

14 A I don't -- I don't -- I don't know how long my
15 statement was.

16 Q Okay. Would you -- would about 50 minutes be about
17 right?

18 A I don't know. I'm not for sure.

19 Q All right. You sure seem to know a lot -- a lot
20 about Mr. Brooks today, don't you? You saw him fighting
21 at 12:00 earlier that day. And you saw him fighting the
22 first time with your brother.

23 A He ain't never -- I said -- he was fighting the first
24 time with my brother -- what do you mean "the first time"?
25 Can you explain that?

1 Q I mean right before the warning shot.

2 A Yeah. When they was in the house -- I mean, he was
3 trying to fight my brother inside his own house.

4 Q Mr. Brooks was?

5 A Yeah. And some of his friends. And I was like -- I
6 wasn't going for that. And I'm, like, well, I need to do
7 something to stop them --

8 Q Right. You were trying to stop, specifically,
9 Mr. Brooks that first time?

10 A I mean, I didn't know that -- I didn't know that it
11 was Mr. Brooks. He was just -- Mr. Brooks, I was trying
12 to stop him and the people that he was with, not just
13 Mr. Brooks.

14 Q Okay. But are you sure that that first time you were
15 trying to stop that your brother was getting into a verbal
16 altercation with Mr. Brooks?

17 A Mr. Brooks incited that instigation by himself by
18 saying, Fuck you, you're next. And that's when he came
19 and our --

20 Q Right. But didn't Mr. -- Investigator Fortner, when
21 you're talking about these two incidents, right before the
22 warning shot and right before the fatal shot, didn't he
23 say, Is this the same dude that came up the first time?

24 And you said, For me, that I can't say. It was dark.
25 It was so dark, man.

1 And Investigator Campbell asked you, And you don't
2 remember if the guy your brother was squared up with the
3 second time was the same guy as the first time?

4 You -- you said, That's what I can't remember
5 neither.

6 So you didn't know who he was fighting the first time
7 and who he was fighting the second time.

8 A He didn't never -- he didn't never get into a fight
9 the first time. The first time, I couldn't -- I -- this
10 is what I said I couldn't figure out. Because he was
11 arguing with -- he was arguing with -- it was a lot of
12 people trying to get at my brother.

13 So that's what I couldn't understand which one was --
14 man, it was more than one. So I couldn't -- I -- that's
15 why.

16 Q All right. And I'm going to read out portions of
17 your letter. And you tell me if this is what you wrote to
18 Investigator Fortner.

19 But I'm going to tell you -- replay what happened
20 that night. It was around 10:30 p.m. at night on February
21 3rd, 2014. Me and my brother, Justin Cureton, was cooking
22 for the kids waiting for his girlfriend baby momma to get
23 off work so we could pull the food out of the oven. She
24 got home around 10:30 p.m.

25 And when she got there about a few minutes later, we

1 heard all kinds of fighting, and yelling, and screaming in
2 our backyard. We had our back door slightly cracked open.
3 But the fighting was so loud, and was disturbing us, and
4 alarmed us.

5 So my brother, Justin, peeped his head out of the
6 back door and asked was everybody okay. And the dude who
7 I shot and killed yelled back to my brother, Fuck you, you
8 next. And him and his friends ran up on our back porch
9 trying to run into our house. My niece and nephew were
10 terrified, and panicked, and started crying.

11 So I stepped back onto the back porch in front of the
12 back door blocking the lynch mob from coming in the
13 house -- or excuse me, from coming in because my brother
14 was still in the house behind me while he -- while him and
15 his girlfriend rushed the kids into a back room.

16 While I was outside on the porch blocking the back
17 door, the crowd was pushing, shoving me, and threatening
18 to shoot our house up. All of the sudden, a couple of the
19 people in the lynch mob made it into the house. And I
20 couldn't hold it back any longer, so I pulled out a gun
21 and let off a warning shot. I fired only once in the air.

22 After I fired the warning shot, the angry mob
23 dispersed. The ones who made it in the house ran out when
24 they saw me coming with the gun. But as the crowd
25 dispersed, they were making threats about shooting us and

1 the house up, and they had guns, too. So I go sit down on
2 the couch thinking everything was over and checking to see
3 if my family was okay.

4 A couple minutes later, they came back to run into
5 our house again. So my brother went out the back door.
6 And this time, I was behind him. We had kids and a woman
7 inside, so we had to go inside to keep them from coming
8 further inside.

9 And, as I said, this time my brother went outside.
10 And I was behind him. And as we were backing people off
11 the porch, another crowd of men ran up on my brother
12 swinging punches. And that's when I shot one time and the
13 crowd ran back again into the party.

14 Is that what you said? Doesn't that story differ
15 vastly from what you told Investigator Fortner that night?

16 A No.

17 Q Okay. Brandi was in the bathtub when this happened,
18 wasn't she, or the shower?

19 A The second time. Because the second time --

20 Q Okay. So she had people in her house --

21 A -- and there might be --

22 Q -- and shots fired in the air, and she goes and takes
23 a shower?

24 A Yeah.

25 Q Okay. So she wasn't scaredg58?

1 A We thought it was over. How are you going to say she
2 wasn't scared? How can you say that?

3 Q She didn't call the police, did she? Her kids are in
4 there and she's got strangers barging into her house.

5 A Because I had -- on the situation, I went back and
6 patrolled [phonetic]. That's why. But you can't say that
7 nobody wasn't scared because they didn't call the police.

8 Q And then after this happened, did the neighbor come
9 back over and tell you somebody had been shot?

10 A No, not this first -- not that time. Now, you've got
11 the sequence of events wrong and --

12 Q Tell me --

13 A -- you've got no knowledge of the events.

14 Q Okay. Tell me. After the second shot, the fatal
15 shot, what did you do?

16 A I just told you. I went in the house --

17 Q Tell me again.

18 A I just went in the house. I went -- I went in the
19 house. And somebody came back and said somebody was shot.

20 Q Who came over and said somebody was shot?

21 A Man, the neighbor next door.

22 Q Okay. The -- the people who had been invading your
23 house?

24 A Man, I didn't never say that my neighbor invaded my
25 house. I said his company, his guests at his party did --

1 Q Okay.

2 A -- if you were listening.

3 Q All right. I'll -- I'll try to do a better job of
4 listening to you, Mr. Cureton.

5 So the neighbor, who was with all of these people
6 invading your house, is the one who came back over?

7 A Yes.

8 Q And told you that he -- that --

9 A After I -- after the second shot.

10 Q Okay. And you weren't scared of him at that point,
11 were you, this neighbor?

12 A Why would I -- did I ever say that I was scared of my
13 neighbor?

14 Q I'm asking you. No. That's why I'm asking you.
15 Were you scared of that neighbor who came over?

16 A I mean, I -- I was not scared of him because -- I
17 mean, but, at the same time, I wasn't trusting him because
18 that was his -- that was his guests.

19 Q Right.

20 A So, at the same time, I was kind of -- I -- yeah.

21 Q All right. So what did you do after that?

22 A After that, I left. I mean, I left.

23 Q Where did you go?

24 A To -- I called -- I called my father to meet me.

25 Q Okay.

1 A I called him to meet me, but he didn't know what had
2 happened.

3 Q Okay. You ran?

4 A And I told him to drop me off. The only reason I did
5 was because I was scared.

6 Q Okay. You leave. Where -- where -- where do you go?
7 What route do you take to get to your father?

8 A When I left, I went -- I went through the railroad
9 tracks right behind Dixie.

10 Q Did you still have the gun on you?

11 A Yeah.

12 Q Isn't it true that you told Investigator Fortner that
13 you were going to hide out?

14 A I don't know.

15 Q All right.

16 A I cannot say that. I do not remember. I cannot -- I
17 cannot say that.

18 Q Right after the shooting, didn't Justin, your
19 brother, tell you, Why'd you shoot him? I was just going
20 to fight him?

21 A I can't say that either. I don't remember that. I
22 don't even remember that.

23 Q All right. So you ran down the railroad tracks and
24 you called your dad?

25 A Yeah. And I told him to take me home.

1 Q All right. You didn't call 911?

2 A I told him to take me -- I told him to take me home.

3 Q Take you home where? I thought you lived with your
4 brother.

5 A Well, I was telling him to take me back where --
6 well, I got -- I got parents, too, other family members
7 that I could stay with, too. So, I mean, take me -- I was
8 staying with my brother at the time. But since -- when
9 that happened, I was just -- I was just trying to get away
10 from -- I mean, from what was going on.

11 Q Okay. So you -- after the shooting, you run down the
12 railroad tracks and call your dad. Did you call 911?

13 A No.

14 Q Okay. Where did your dad take you?

15 A He dropped me off in Duncan.

16 Q All right. Who's house?

17 A At one of my ex's.

18 Q What's her name?

19 A Jameca.

20 Q What's her last name?

21 A Ballenger.

22 Q All right. What'd you do when you got there?

23 A Once I got there, I mean, I left. I stayed for
24 about, like, 15 minutes and I left.

25 Q All right. Did she know you were coming, or was she

1 surprised to see you?

2 A Yeah. She was surprised to see me.

3 Q All right. What'd you do when you were inside there?

4 A I put the gun behind -- I hid the gun and left.

5 Q All right. Did you tell her you were hiding the gun
6 back there?

7 A No.

8 Q Why not?

9 A Because I didn't really want her to know what was
10 going on.

11 Q All right. Does she have kids?

12 A Yeah.

13 Q That were living there at that house?

14 A Yes, ma'am.

15 Q How old were her kids?

16 A 13, 10, and five.

17 Q All right. She's got three kids in her house and you
18 leave a loaded gun there?

19 A I hid it.

20 Q All right. But you didn't tell her you hid it, did
21 you?

22 A No.

23 Q All right. Did you call 911 then?

24 A No, ma'am.

25 Q All right.

1 A Because -- because what -- I had heard that somebody
2 was in the hospital, that I shot somebody and they ain't
3 going to...

4 Q So a lynch mob invades your house and you run and go
5 and hide out. Is that what happened?

6 A The only reason I did this is because I had -- I
7 had -- I had a warrant. I was not running from what I had
8 done -- or what I done. I feel like I was justified --

9 Q Okay. What was your warrant for?

10 A Because I had a CDV first, you know, that was --

11 Q Are you sure that's what you were running from? I
12 thought you told Investigator Fortner it was running from
13 a public disorderly conduct?

14 A Yeah. I had -- I had that, too.

15 Q All right. How much -- how much time does that
16 carry?

17 A 21 days.

18 Q 21 days. So you were afraid of a 21-day offense when
19 you had a lynch mob invading your house?

20 A But then -- then I had that CDV, too.

21 Q CDV first?

22 A (Witness nodded.)

23 Q Do you know how much time that carries?

24 A 21 days.

25 Q 21 days?

1 A [Inaudible] I think it carries the max.

2 Q Okay. So you were running and this lynch mob had
3 just invaded your house. And you're running from two
4 charges that carry 21 days?

5 A (Witness nodded.)

6 Q Did you ever call police that night?

7 A No, ma'am.

8 Q Okay.

9 A Nobody was not dead. But when I found out somebody
10 died, I -- I turned myself --

11 Q Well, what was the problem with somebody dying?

12 A Because that's -- because that's a whole other thing.

13 Q But you said you felt justified in using deadly
14 force. You didn't expect somebody to die? Wasn't it --

15 A Yeah. I knew -- I felt -- I felt like -- I felt like
16 that meant -- I was justified. But, at the same time, I
17 was scared. And I didn't know what to do. And I felt
18 like that'd be -- yeah. That's how I felt. I felt like I
19 didn't know what to do.

20 Q Okay. But you didn't think to call police?

21 A Nah. I didn't know what to do.

22 MS. MAJOR: All right. Your Honor, I don't have any
23 questions.

24 MR. QUINN: I don't have any further questions.

25 THE COURT: All right. Thanks.

1 You can step down.

2 MR. QUINN: That's the only testimony I'd offer.

3 THE COURT: Is the State going to put anything up?

4 MS. MAJOR: Your Honor, I -- yes, I can.

5 One moment, please.

6 (Pause.)

7 MS. MAJOR: Your Honor, the State calls Investigator
8 Fortner to the stand.

9 THE COURT: Okay.

10 WHEREUPON,

11 MICHAEL EUGENE FORTNER,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: Please have a seat.

14 And state your full name for the record.

15 THE WITNESS: Michael Eugene Fortner.

16 DIRECT EXAMINATION

17 BY MS. MAJOR:

18 Q Investigator Fortner, as we have discussed, you
19 interviewed the Defendant on February 5th after the
20 February 3rd shooting?

21 A Yes, ma'am.

22 Q All right. What did he tell you happened that night?

23 A He said him and his brother were inside his brother's
24 trailer. They heard fighting going on outside. He said
25 his brother, Justin -- they call him "Jut" -- went

1 outside, asked if everything was okay.

2 At that time, there were some words exchanged between
3 Mr. Brooks and Justin. Justin then went down the steps of
4 the porch -- back porch there to confront Mr. Brooks. The
5 two of them get -- are about to get ready to start
6 fighting. Justin realized he was barefoot. So he turned
7 around and went back inside the house.

8 About this time, the Defendant comes outside. He
9 fired off a round. He said the crowd dispersed at that
10 time. He then goes back inside the trailer where his
11 brother is at.

12 A few minutes later, they noticed a noise going on
13 back outside again. Justin goes back outside. Him and
14 Javario -- Mr. Brooks start exchanging words back and
15 forth again. At which time, Justin goes down the stairs,
16 confronts Javario.

17 He even demonstrated for us during the course of the
18 interview where they both had their fists up like they
19 were getting ready to fight. And, at that time, he said
20 he fired off a round in the direction of where they --
21 they were -- Mr. Brooks was at.

22 He said Mr. Brooks, actually, kind of jumped back and
23 then turned, ran off, as did everybody else, left. And
24 then he went back inside. Then a few minutes later, I
25 think it was Mr. Hunter, who lives next door, comes over

1 to their house and says, Hey, they're shot. And then him
2 and Justin run off.

3 Q Okay. Did he ever say that anybody went inside of
4 his house?

5 A I do not recall him ever during the course of that
6 interview saying anybody made entry into his residence,
7 no.

8 Q Did he ever say that anybody else -- did he
9 specifically -- did you, specifically, ask him, did you
10 see anybody else with a gun?

11 A I did -- we did, yes.

12 Q And what did he say?

13 A He said, No.

14 Q Did he ever say anything about Mr. Brooks acting like
15 he was going to pull out a gun?

16 A No. Like I said, actually, he was -- demonstrated to
17 us how he had his fists up like he was going to fight, his
18 brother.

19 Q Okay. Did he tell you -- why did his brother go and
20 run and get his shoes?

21 A Because he didn't have any shoes on, and he was going
22 to fight. And he wanted to have his shoes on.

23 Q Okay. And did he indicate where this took place in
24 between the two trailers?

25 A Yeah. It's in between the trailers. He was telling

1 us that Justin, his brother, would run down the steps of
2 the trailer. And from what he was describing to us,
3 Javario had pretty much come over and probably would be on
4 their property if there are any yards assigned to these
5 trailers. And they met, basically, down at the base of
6 the steps, I guess you could say.

7 Q Did Mr. Cureton -- did the Defendant tell you that
8 he -- what did he say about the two -- did he give an
9 indication that there were two distinct arguments between
10 his brother, one prior to the warning shot and one after
11 the warning shot?

12 A No. The way I understood it, it was just the one
13 argument. And then -- and when his brother goes back
14 inside to get his shoes, that's when he fires off a round.
15 And the crowd disperses the first time.

16 Q Okay. Did he tell you that he didn't know if the --
17 who he was arguing with the first time was the same person
18 as the second time?

19 A Yeah. It seemed to me he didn't recall. He said
20 because of the darkness and he wasn't sure who it was.

21 Q Okay. Did he ever indicate that anybody ever made
22 physical contact, whether it be Justin hitting the --
23 Mr. Brooks or Mr. Brooks hitting the -- his brother?

24 A No. He said they just, basically, squared off like
25 they were getting ready to fight. And that's when he

1 fired a round.

2 Q Okay. Did he say that his brother had a gun?

3 A He did not say his brother had a gun, no.

4 MS. MAJOR: Okay. No further questions.

5 CROSS-EXAMINATION

6 BY MR. QUINN:

7 Q So, Investigator, you agree that the difficulty most
8 likely took place on the property belonging to
9 Mr. Cureton; is that right?

10 A Basically, what Mr. Cureton was telling us that
11 night, yeah, most likely. It was, certainly, closer to
12 their porch, yes.

13 Q At the base of the porch, I think you just said.

14 A Right.

15 Q At the base of the steps; is that right?

16 A Right.

17 Q Okay. And you say after the warning shot, the crowd
18 dispersed. Did you ever determine how many people were in
19 the crowd?

20 A Mr. Cureton said anywhere from 25 to 30.

21 Q And you interviewed other people in the area?

22 A No, sir. Not that -- no.

23 Q Okay. And then did the crowd regroup after the
24 warning shot?

25 A A smaller group, yes, sir.

1 Q Okay. So when you say everybody else came back
2 toward the trailer, do you know how many people were in
3 that group?

4 A I want to say he said somewhere around 10.

5 Q So 30 people the first time come to or on
6 Mr. Cureton's property. Then 10 people come the second
7 time. Two were on Mr. Cureton's property; is that right?

8 A After his brother went outside and exchanged words
9 with him, yes, sir.

10 Q Right. And there were just the two Mr. Curetons,
11 Justin and John there; right?

12 A That's all they said there was, yes, sir.

13 Q And there were two children in the house. Did you
14 determine that?

15 A That's -- that's what we were told, yes, sir.

16 Q And Brandi Wilson was inside the house, the mother of
17 the children?

18 A Yes, sir.

19 MR. QUINN: I don't have any other questions.

20 Thank you.

21 MS. MAJOR: Just briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. MAJOR:

24 Q Did Mr. Cureton indicate where this other crowd of
25 people were? Did he say that they were on his brother's

1 property? Or did he indicate they were -- did he
2 specifically --

3 A Which other crowd are you talking about?

4 Q I'm sorry. This 20 -- when he said there were 25
5 people, did he say where these people were?

6 A Just outside.

7 MS. MAJOR: Okay. Thank you.

8 MR. QUINN: May I ask one more question?

9 THE COURT: Yes. Go ahead.

10 RE CROSS EXAMINATION

11 BY MR. QUINN:

12 Q The distance between these trailers is very small --

13 A Very small, yes sir.

14 MR. QUINN: Okay. Thank you.

15 THE COURT: Okay. Thanks.

16 You can step down.

17 THE WITNESS: Yes, sir.

18 THE COURT: Anything?

19 MS. MAJOR: Nothing from the State, Your Honor.

20 MR. QUINN: No further testimony from me, Judge.

21 THE COURT: All right. Anything you want to tell me?

22 MR. QUINN: I think that Investigator Fortner helps
23 my argument. What you've got, based on the testimony, is
24 a crowd of 30 people in a very small space between two
25 trailers, at least, some of which are on Mr. Brooks' [sic]

1 property, and to the extent they were so concerned that a
2 warning shot is fired, which disperses the crowd. And
3 then 10 of them regather and come back to the base of the
4 steps of the back porch of the trailer, face off against
5 the owner of the trailer and his brother.

6 At that point, it is pretty clear that they want them
7 to be gone from the warning shot. Whether the Court would
8 count that as ejection under the law, I leave up to the
9 Court. But, clearly, they are trespassers not on their
10 own property. They have, clearly, come with the intention
11 of causing violence.

12 Mr. Cureton has testified that he believed that he,
13 his brother, and the people inside were in danger of
14 serious bodily injury or death. It would appear from the
15 facts described by Investigator Fortner that that fear is
16 reasonable. And, therefore, he had the right to defend
17 himself and his family.

18 So I would ask the Court to find that stand your
19 ground is appropriate in this case and he has immunity
20 from prosecution.

21 THE COURT: Anything?

22 MS. MAJOR: Your Honor, I -- I just -- relying even
23 on the Defendant's own testimony, he has given
24 inconsistent statements that are nonsensical. He ran
25 after this mob of people allegedly came in his house. He

1 never told Investigator Fortner about this mob of people.

2 His brother runs down the stairs to go fight and
3 square off with Mr. Brooks. Mr. Cureton told Investigator
4 Fortner nobody else had a -- he did not see anybody else
5 with a gun. He never told him that Mr. Brooks indicated
6 that he was pulling out a gun in his first interview. And
7 in his first interview, he wasn't even sure if Mr. Brooks
8 was the same person who his brother was fighting with the
9 first and second time.

10 So Mr. -- to the extent that Mr. Cureton was
11 protecting his brother, his brother ran down engaging in
12 this fight. His brother was not scared if he is running
13 down engaging in this fight. His brother never called
14 police. He never called police. There's just no -- he
15 cannot meet the elements of self-defense, which is what he
16 would have to meet in this case to assert immunity.

17 Your Honor, any -- I believe the testimony can -- the
18 argument can be made that his brother wasn't even afraid,
19 that his brother ran down to engage, and then to reengage
20 in this fight. The Defendant was the only one with a gun.
21 And he even admitted, it appears, that he shot Mr. Sitton
22 intentionally, as well as Mr. Brooks, the one who passed
23 away.

24 So I do not think that this is a case of immunity,
25 and should absolutely go to the jury.

1 THE COURT: Okay. I would point out that
2 Investigator Fortner's testimony about the size of the
3 crowd is based on his interview with the Defendant.

4 I'm going to find that the Defendant has failed to
5 meet his burden of proof with respect to the invocation of
6 the act and require the case to go to trial.

7 Okay. Anything else before we start?

8 MS. MAJOR: Nothing from the State, Your Honor.

9 MR. QUINN: Nothing from the Defense.

10 THE COURT: Okay. Well, we've got an hour and -- at
11 2:15, we need y'all to be back.

12 And any issue with respect to bond?

13 MS. MAJOR: Your Honor, I guess I would leave that in
14 your discretion. I would ask that he be taken into
15 custody. I think that this is a case where that's
16 appropriate.

17 THE COURT: Okay.

18 MR. QUINN: He's been out without any difficulty on
19 bond since February 4th -- I'm sorry. That's not correct.
20 Since March something of 2014. But, anyway, two and a
21 half years.

22 He has appeared every time. He appeared this morning
23 in a timely fashion. I would ask the Court to leave him
24 out on bond. There's no reason to think he's not going to
25 return.

1 He understands. And he and I have talked about if he
2 was to flee, the case would continue in his absence, and a
3 verdict would be issued even without him here.

4 THE COURT: Well, I'm going to -- since the jury is
5 not sworn, at this point, I'm going to leave him out on
6 bond.

7 You make sure you come back. You've got an hour and
8 20 minutes.

9 DEFENDANT CURETON: Okay.

10 THE COURT: All right. We'll see you at 2:15.

11 (WHEREUPON, a lunch break was taken.)

12 (WHEREUPON, State's Exhibit Nos. 6, 7, 8, 9, 10, 11,
13 12, 13, 14, 15, 16, 17, and 18 were marked for
14 identification only.)

15 THE COURT: Are they ready?

16 THE BAILIFF: They are.

17 MS. MAJOR: Your Honor, if I could get a moment to --
18 I assume that the witnesses are going to be sequestered.

19 THE COURT: Well, I haven't heard a motion about
20 that.

21 Is there a motion to sequester?

22 MR. QUINN: Not from the Defense.

23 THE COURT: Okay. Brian Mullins is your Foreperson.

24 (WHEREUPON, Court's Exhibit No. 1 was marked for
25 identification and admitted into evidence.)

1 (WHEREUPON, the jury came into open court at
2 approximately 2:30 p.m.)

3 THE COURT: All right. Ladies and gentlemen, don't
4 get too comfortable. I'm going to ask y'all to stand.
5 And I'll ask the Clerk to place you under oath.

6 THE CLERK: If you will raise your right hand. And
7 the correct response to the oath is, "I will."

8 (WHEREUPON, the jury was sworn at approximately
9 2:31 p.m.)

10 THE CLERK: Thank you.
11 You may have a seat.

12 THE COURT: All right. Ladies and gentlemen, we're
13 ready to commence with the trial. I'll turn it over to
14 the attorneys for their opening statements.

15 OPENING STATEMENTS

16 MS. MAJOR: Thank you, Your Honor.

17 Good afternoon, ladies and gentlemen.

18 My name, as I said before, is Elizabeth Major. And
19 at the desk over there is my investigator, Renee Kelly.

20 As you know, we're here today for the case against
21 the Defendant, John Cureton. Ladies and gentlemen, he's
22 been charged with three crimes, murder, possession of a
23 weapon during the commission of a violent crime, and
24 attempted murder. And it's my job to prove to you beyond
25 a reasonable doubt that he is guilty of these crimes.

1 Ladies and gentlemen, this case is about the rule of
2 law. Now, every case is technically about the law. But
3 the rule of law is especially important in this case. The
4 law of our state applies to everybody in the state. It
5 doesn't matter whether you are rich or poor, male, female,
6 young, old. It applies to everybody. The law is not a
7 subjective thing. It is an objective thing. And you have
8 to -- you can't pick and choose what you want -- what laws
9 you want to apply. You can't conform the facts to what
10 you want them to be.

11 Ladies and gentlemen, the evidence is going to show
12 that on February 3rd, 2014, there was a party going on at
13 Dixie Estates. Dixie Estates is a trailer park. It is
14 several -- several trailers lined up one in a row and
15 across with each other as well. They're very close
16 together. You will hear it's right off of White Horse
17 Road right here in Greenville County.

18 You will hear that the Defendant's brother, Justin
19 Cureton -- and you'll, also, hear him referred to as
20 "Jut" -- lived in one of these trailers. You will hear
21 that some other guys lived right beside him. I think that
22 was Darryl Hunter, Nico Wheeler, and Carlos Mathis. You
23 will hear that Justin Cureton was friends with these guys.
24 They were his neighbors. They'd lived there for a while.

25 The testimony is going to be that there was a party

1 going on at the other guy's trailer, a birthday party for
2 one of their friends. Around 10:30 that night, there was
3 some commotion going on.

4 And you'll hear that the victim in this case,
5 Mr. Javario Brooks, was getting into a verbal dispute,
6 spat, with his good friend, Tavagio Garnett. You will
7 hear that Justin Cureton opened his back sliding glass
8 door and said, hey, is everything all right? You will
9 hear that Mr. Brooks, the victim, and Justin Cureton kind
10 of got into it, just trash talking each other.

11 That's when the Defendant came out of his brother's
12 trailer, stood on the porch, and opened fire. He fired a
13 shot in the air. Things calmed down for a minute. And
14 then after about three minutes or so, it kind of -- it
15 started back up, and just talking.

16 You will hear that the Defendant then came out of
17 that trailer again and opened fire. He shot Mr. Brooks in
18 the stomach. And he shot Mr. Sitton in the arm.
19 Mr. Brooks died from his injuries. And Mr. Sitton was
20 shot in the arm and he survived.

21 Ladies and gentlemen, the Defense is going to want
22 this case to be about self-defense. And the evidence is
23 going to show that it is not. I ask that you listen
24 carefully to all of the testimony and all of the evidence
25 that comes in.

1 You brought the best tool that you have with you, and
2 that's your common sense. I ask that you listen and let
3 your common sense decide what really happened in this
4 case. And, at the end, I'll ask you to find the Defendant
5 guilty.

6 THE COURT: Mr. Quinn.

7 MR. QUINN: Thank you, Your Honor.

8 Mr. Foreman, ladies and gentlemen of the jury, I'd
9 like to start where the Judge started. Because, at this
10 point, while the Solicitor tells you you're going to hear
11 this, you're going to hear that, you're going to hear all
12 these other things, and what I want the case to be about,
13 you haven't heard anything.

14 So, at this point, it's very difficult to talk to you
15 about what the facts are or to say where you should apply
16 your common sense to this, or to that, or to something
17 else because you don't have a framework for any of that.
18 What you have a framework for is the remarks that the
19 Judge has given you that I want to expand on just a bit.
20 And that is what the law is in this case.

21 And one of the first things the Judge told you about
22 is the presumption of innocence. And that in this state
23 and in every state in the union are not just words. It's
24 not just a phrase that we throw around. It means that as
25 he sits there, John Cureton is innocent, not just not

1 guilty, innocent as if he is cloaked with a robe of
2 innocence, not my favorite phrase, but that's the one we
3 use in the law. There is nothing, at this point, that
4 indicates he's guilty in any -- in any way.

5 As the Judge has told you, the indictments, those are
6 the charges. They're just the documents that bring us
7 here to court. Those carry no hint, no allegation of
8 guilt in any way. It's simply what you will consider at
9 the end when you determine whether the State has proven
10 each element of each offense beyond every reasonable
11 doubt.

12 The best way to describe presumption of innocence, I
13 believe, is that that should be your starting point. In
14 all your discussions, the starting point should be, well,
15 Mr. Cureton is presumed innocent in the law. That's where
16 you've got to start. More commonly, that's called in our
17 day-to-day lives the benefit of the doubt.

18 The Judge, I believe, is going to tell you in his
19 closing remarks that if there's a question about whether
20 the State gets the benefit of the doubt or Mr. Cureton
21 gets the benefit of that doubt, it always goes to
22 Mr. Cureton. Because you presume he's innocent. So he
23 gets the benefit of that doubt.

24 So in all your discussions, if there's a question
25 about whether it occurred in this fashion or this fashion,

1 whether the element was or was not proven, the presumption
2 of innocence is your starting point. It gives him the
3 benefit of that doubt.

4 Now, how do you move from that starting point? Well,
5 the State's going to have to provide you proof, evidence.
6 And the Judge has told you the means of those -- the
7 various means that the evidence can be presented that
8 convinces you firmly beyond any reasonable doubt, that is,
9 really without any question.

10 You may have been involved in civil juries. And some
11 of the jurors this week -- and I'm sorry I don't remember
12 if any of the 12 of you were -- had previously sat on
13 civil cases. And you may have been told in civil cases
14 that -- if this is zero proof -- that in a civil case, you
15 have to only barely get above 50 percent. We call that
16 the preponderance of the evidence. 51 percent, that's
17 enough in civil cases. Not in criminal cases.

18 A criminal case is considered to be the highest
19 standard of proof you can have, a hundred percent.
20 Because the Judge is going to tell you if there is a real
21 possibility -- that's the word he's going to use -- a real
22 possibility that Mr. Cureton is innocent, you give him the
23 benefit of that doubt and you find him not guilty of those
24 charges.

25 I'd ask you to listen to the evidence. This is a

1 mess, this case. It is just a mess. So, yeah, I'll ask
2 you to pay attention to the evidence. It's going to take
3 today and tomorrow probably. We'll finish sometime
4 tomorrow.

5 And if you need a break at any point, if you need
6 to -- to turn away, if you'll take a moment, take a deep
7 breath, and then focus again, I'd appreciate it. Because
8 we're going to end up talking at the end, as the Judge
9 said. Then I get to argue to you. I get to tell you what
10 I believe our points should be, and what you should
11 consider.

12 But whatever you think about my argument, remember
13 what the law is, the presumption of innocence or the
14 benefit of the doubt, who has to prove anything in this
15 case. The burden is on the State to prove by evidence
16 that convinces you beyond any reasonable doubt. I don't
17 believe that that's going to be true in this case. This
18 is not a murder case.

19 You listen to the evidence. We'll get an opportunity
20 again to speak at the end about the evidence that's been
21 presented, how you apply the law, the path that you're
22 going to have to travel, and what your verdict should be.

23 Thank you.

24 THE COURT: All right. Call your first witness.

25 MS. MAJOR: Thank you, Your Honor.

1 The State calls Javonda Thompson.

2 THE CLERK: Will you, please, come forward?

3 WHEREUPON,

4 JAVONDA ANTENEESIA THOMPSON,

5 after first having been duly sworn, testified as follows:

6 THE CLERK: Have a seat.

7 And will you state your full name for the record?

8 THE WITNESS: Javonda Anteneesia Thompson.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MS. MAJOR:

12 Q Ms. Thompson, where are you from?

13 A Greenville.

14 Q Is Javario Brooks your son?

15 A Yes.

16 Q And is he the one who passed away on February 3rd,
17 2014?

18 A Yes.

19 Q All right. Where did you raise Mr. Brooks?

20 MR. QUINN: Objection. I don't know how this is
21 relevant.

22 MS. MAJOR: Your Honor, I can move on. I'm just
23 laying some groundwork.

24 THE COURT: Yes. Just -- you can introduce him a
25 little bit. Do not dwell on it. Go ahead.

1 BY MS. MAJOR:

2 Q Where was -- where did Mr. Brooks grow up?

3 A [REDACTED] Road.

4 Q Okay. Where'd he go to high school?

5 A Carolina High School.

6 Q All right. Did he graduate?

7 A Yes, he did.

8 Q All right. Well, let's jump to February 3rd, 2014.

9 Do you remember that day?

10 A Yes.

11 Q Was Mr. Brooks with you?

12 A Yes. He was at home.

13 Q Did you have to go to work?

14 A Yes.

15 Q What time did you go to work?

16 A He dropped me off about 4:45.

17 Q Okay. Where were you working?

18 A Down in Donaldson Center.

19 Q Did he tell you his plans for the rest of the day?

20 A He said he was going to get with a friend -- it was
21 his birthday -- later on that day.

22 Q Had he been with you that day up until that time?

23 A Yes.

24 Q Did you speak to him after he dropped you off at
25 work?

1 A Yes, about 7:00 something.

2 Q All right. Did you speak to him after that?

3 A No.

4 Q The next thing -- what -- what happened later on that
5 night? Were you informed about the shooting?

6 A I got a call about 11:35, 11:40 that said that my son
7 had got shot.

8 MS. MAJOR: Thank you, Ms. Thompson.

9 CROSS-EXAMINATION

10 BY MR. QUINN:

11 Q Ms. Thompson, how old was Javarío?

12 A He was 22.

13 Q And what size was he? About how tall and about what
14 weight?

15 A He was about 5'9", 164 pounds, something like that.

16 Q And had he been an athlete in school?

17 A Yes.

18 Q Okay. A football player?

19 A Yes. Basketball, football, and track.

20 Q Okay. And when he was with you during the day up
21 until, I think, you said 4:45, had he been drinking any?

22 A No.

23 MR. QUINN: Thank you, ma'am.

24 THE COURT: Any redirect?

25 Ms. MAJOR: No, sir.

1 THE COURT: All right. Thank you, ma'am.

2 You may step down.

3 MS. MAJOR: Your Honor, the State calls Emanuel
4 Davis.

5 WHEREUPON,

6 EMANUEL TYRELL DAVIS,
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Please have a seat.

9 And will you state your full name for the record?

10 THE WITNESS: Emanuel Tyrell Davis.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MS. MAJOR:

14 Q Deputy Davis, where are you employed?

15 A The Greenville County Sheriff's Office, Judicial
16 Service Division.

17 Q How long have you been employed there?

18 A Going on six years now.

19 Q In February of 2014, in what capacity were you
20 employed?

21 A I was assigned to the uniform patrol division,
22 assigned to Bravo platoon.

23 Q Okay. What is uniform patrol?

24 A It's the -- pretty much the backbone of the sheriff's
25 office. They're responsible for answering the majority of

1 the calls for service that come into our communications
2 center.

3 Q Were you working on February 3rd, 2014?

4 A Yes, ma'am, I was.

5 Q And did you receive a call?

6 A I did.

7 Q What was it in regards to?

8 A I received a call from my communications center about
9 a shooting that just occurred on the southern part of the
10 county. The intersection was White Horse Road and Dixie
11 Circle.

12 Q Okay. Where had this shooting occurred?

13 A It occurred in a mobile home park. It's a lot of
14 mobile homes. If you head down Highway 25, White Horse
15 Road, and you make a right turn onto Dixie Circle, the
16 mobile home park is located directly on the left.

17 Q What's the name of that mobile home park?

18 A Dixie Estates.

19 Q Are you familiar with this area?

20 A Yes, ma'am.

21 Q Did you work that particular area when you were on
22 the road?

23 A I did.

24 Q All right. I'm going to show you what's been marked
25 as State's Exhibit Nos. 17 and 18. Have you had an

1 opportunity to review these?

2 A Yes.

3 Q All right. Do you recognize what these are?

4 A Yes. It's Dixie Estates Mobile Home Park.

5 Q Okay. Does it fairly and accurately represent Dixie
6 Estates and the surrounding area?

7 A Yes, ma'am, it does.

8 MS. MAJOR: Your Honor, at this time, the State would
9 move to admit State's Exhibit Nos. 17 and 18 into
10 evidence.

11 MR. QUINN: No objection.

12 THE COURT: Okay.

13 (WHEREUPON, State's Exhibit Nos. 17 and 18 were
14 admitted into evidence.)

15 BY MS. MAJOR:

16 Q Deputy Davis, if you could come down here and just
17 point out where the shooting occurred.

18 A Okay. It was between mobile home three and mobile
19 home five. The incident location was mobile home five.

20 Q What time did you respond?

21 A It was nighttime hours. It was a little -- I believe
22 it was a little bit after 11:00.

23 Q What did you see when you arrived?

24 A On my arrival, I exited my patrol car. And I noticed
25 a strong odor of marijuana. Through my field experience,

1 I know that odor. At that point, I could hear a lot of
2 people talking inside the mobile home.

3 So, at that point, I waited on additional units to
4 respond as a backup due to the nature of the call for
5 service. And so, at that point, once I had backup behind
6 me, we made entry into the residence.

7 Q All right. What did you see when you walked in?

8 A All right. As I walked into the mobile home, I
9 immediately went left. And to my left, there was a
10 kitchen. Pretty much in front of me, there were two
11 subjects on the kitchen floor. And another subject was,
12 actually, holding one of the victims.

13 Q What was the nature of the -- or the condition of the
14 two people?

15 A I believe victim number one, which was Sitton, he
16 was, actually, hollering. He was holding his elbow from a
17 gunshot wound to the elbow.

18 And the second victim, who was identified as
19 Mr. Brooks, he was on the kitchen floor on his back. And
20 he was being held, I believe, by Mr. Garnett. There was a
21 small amount of blood coming from his stomach area. So I
22 came to the conclusion he got shot in the lower abdomen.
23 He was not responsive.

24 So, at that point, other deputies secured the
25 residence as myself and, I believe, Deputy Frazile

1 pertained [sic] to the victims.

2 Q All right. Who all -- how many people were in the
3 house?

4 A Roughly about six.

5 Q Okay. Do you know their names?

6 A Last names.

7 Do -- do you want me to call them out?

8 Q Yes.

9 A The two victims, Mr. Sitton, Mr. Brooks; Mr. Wheeler;
10 Ms. Middleton; Mr. Mathis; Mr. Garnett; and Mr. Hunter.

11 Q What did you do to secure the scene when you walked
12 in?

13 A After we made entry into the residence -- we don't
14 know who is who, who's a victim from a suspect. So,
15 typically, we make sure we cover all the persons that are
16 inside. And once we have additional manpower, they do
17 what we call a protective sweep of the residence. Once a
18 protective sweep is secured, a secondary sweep is normally
19 done to make sure that there is no other person that's
20 hiding in a room, or under a bed, or anything like that.

21 At that point, we divided up, myself and Deputy
22 Hoise [phonetic]. We performed emergency techniques as
23 far as like a tourniquet on Mr. Sitton, and, also,
24 rendered aid to Mr. Brooks until the scene was secured for
25 EMS to enter.

1 Q Okay. Would you -- did you search these people who
2 were in the residence?

3 A Correct.

4 Q Were they allowed to leave your sight?

5 A No, ma'am.

6 Q What information did you have about this shooting?

7 A At that point, we had little information. Everybody
8 was pretty much hysterical. And, like I said earlier, it
9 was chaos inside the residence. At that point, we knew
10 that there was some type of a -- a verbal and a physical
11 altercation that had took place prior the sheriff's office
12 receiving a call for service.

13 Q Okay. Did you know who the shooter was?

14 A No, ma'am.

15 Q Did you know where the shooter was?

16 A No, ma'am.

17 Q Did you speak with the people there to get
18 information?

19 A Yes, I did.

20 Q Did you get much information?

21 A Not at first.

22 Q Was anybody allowed to leave your sight while you
23 were in that house and securing the scene?

24 A No, ma'am.

25 Q Okay. Did EMS, eventually, take the two victims --

1 shooting victims to the hospital?

2 A Yes, ma'am, they did.

3 Q Okay. How was Mr. Sitton acting, the one who had
4 been shot in the arm?

5 A He -- he was hysterical. I know I had to talk to him
6 a couple times. And once we were able to place a
7 tourniquet on his elbow, he pretty much -- that
8 deescalated the situation until he got transported.

9 Q How were other people in the house reacting?

10 A I know the one main subject that I remember who was
11 not compliant was Mr. Garnett.

12 Q All right. When you say "not compliant," how was he
13 acting?

14 A He -- he was hysterical. Because he was stating that
15 his friend just got shot. He was trying to -- I guess in
16 his mind frame trying to help. But, as a deputy, we're
17 trying to figure out what took place, trying to render
18 aid. And once we give lawful orders, when somebody
19 doesn't comply with those orders, it makes it hard and
20 difficult for our jobs.

21 Q Was Mr. Garnett making it hard?

22 A Correct.

23 Q What was he doing?

24 A He was, actually, interfering with EMS performing
25 medical attention to Mr. Brooks. So, at that point, we

1 placed him in investigative detention.

2 Q Okay. Was he arrested that night?

3 A He was.

4 Q All right. For what?

5 A Hindering.

6 Q Okay. Hindering -- just so we're all clear,
7 hindering --

8 A Hindering our investigation. He was --

9 Q Okay.

10 A -- given, like I said, plenty of verbal commands to
11 settle down, to stay back, and allow myself, other
12 deputies, and EMS personnel to do their job.

13 Q Okay. Was a search warrant obtained at the
14 residence?

15 A Yes, ma'am, it was.

16 Q All right. What was found?

17 A During a lawful search warrant that was granted by
18 Judge Garrison, the only thing we were able to find during
19 that lawful search was a BB gun and some marijuana.

20 Q Do you remember where the BB gun was located?

21 A It was located in a bedroom.

22 Q Okay. What other units responded?

23 A There were roughly maybe six other units. Like I
24 said before, Deputy Frazile, Deputy Hoise, Deputy Kevin
25 Bonaguro [phonetic], I think Lieutenant Ridgeway, Sergeant

1 De Bruin, also -- I can't remember which K9 officer
2 responded to the scene.

3 Q What's a K9 officer?

4 A That's when our K9 guys who normally operates one of
5 his service dogs -- police dogs, we normally have one
6 dispatched to a scene like that, whether it's for crowd
7 control or to help in an article search.

8 Q All right. Was forensics called out there?

9 A Yes.

10 Q All right. Did forensics find anything?

11 A Yes. I believe Investigator Outten at the time --

12 MR. QUINN: Objection. It's hearsay, unless he
13 witnessed it.

14 THE COURT: Well, he hasn't said what --

15 Yes. Don't get into what he was told. Get into what
16 he actually --

17 MS. MAJOR: Okay.

18 BY MS. MAJOR:

19 Q Was forensics called out there?

20 A Yes, ma'am.

21 Q All right. Was anyone allowed to go into that house?

22 A No, ma'am.

23 Q And, I mean, the trailer that you were investigating.
24 Once y'all got there, nobody was allowed to come in?

25 A No, ma'am.

1 Q Okay. I'm going to show you what's been marked as
2 State's Exhibit Nos. 6 and 7. Do you recognize those?

3 A Yes, ma'am.

4 Q And what are those?

5 A It's the scene where we secured with crime scene
6 tape.

7 Q Okay. Do they fairly and accurately represent the
8 scene that night?

9 A Yes, ma'am.

10 MS. MAJOR: Your Honor, at this time, we'd move
11 State's Exhibit Nos. 6 and 7 into evidence.

12 MR. QUINN: No objection.

13 THE COURT: Okay.

14 (WHEREUPON, State's Exhibit Nos. 6 and 7 were admitted
15 into evidence.)

16 BY MS. MAJOR:

17 Q Where did you go -- and, first, how long would you --
18 would you estimate that you were there at the house
19 securing the scene and collecting witnesses and
20 statements?

21 A It was a good amount of time. I think it was after
22 shift until I, actually, finished the incident report.

23 Q Okay. And what time would after shift have been?

24 A Past 0700, which would mean 7:00 a.m.

25 Q Okay. Where did you go after you left the house?

1 A I went straight to the hospital.

2 Q And who did you -- why did you go to the hospital?

3 A I went to the hospital to check on my two victims.

4 Q Did you speak with anyone at the hospital?

5 A Yes, I did. I spoke with Mr. Sitton.

6 Q Okay. And he was the one who was shot in the arm?

7 A Correct.

8 Q Okay. What happened after that?

9 A I believe I spoke to the surgeon about the condition
10 of Mr. Brooks.

11 Q Okay. Did you turn your case over after that?

12 A Correct. Once our supervisor was advised on all the
13 information that I had obtained for the incident report,
14 they, normally, notify the on-call CID investigators in
15 which my case was, indeed, turned over to Investigator
16 Fortner.

17 Q And when you say "CID," what does that mean?

18 A Criminal investigation division.

19 MS. MAJOR: Please answer any questions the Defense
20 has.

21 THE WITNESS: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MR. QUINN:

24 Q When you spoke with Mr. Sitton at the hospital --

25 A Yes, sir.

1 Q -- did he tell you that he was minding his own
2 business that afternoon when bullets began to fly?

3 MS. MAJOR: Objection, Your Honor. It's hearsay.

4 THE COURT: Yes.

5 When was it that he spoke to him -- well, come up
6 here. Let me talk to the lawyers for a second.

7 (WHEREUPON, a bench conference was held.)

8 BY MR. QUINN:

9 Q So, Officer Davis, you spoke with Mr. Sitton both at
10 the scene of the incident and at the hospital; is that
11 fair to say?

12 A Yes, sir, it is.

13 Q And you spoke with Mr. -- I'm sorry, Ms. Middleton at
14 the scene of the incident; is that correct?

15 A I believe so, yes, sir.

16 Q And you spoke with Nico Wheeler at the incident; is
17 that correct?

18 A Yes, sir.

19 Q And you spoke with Mr. Garnett, I believe you
20 testified, at the incident; is that correct?

21 A That's correct.

22 Q And what was Mr. Garnett's physical appearance when
23 you saw him?

24 A He was, like I said, hysterical. And he was grossly
25 intoxicated at that time.

1 Q And I believe your testimony is that when you
2 approached the trailer, you could smell marijuana; is that
3 correct?

4 A That's correct.

5 Q And you waited for backup before entering; is that
6 correct?

7 A Correct.

8 Q And you heard Mr. Garnett yelling, he was in a bad
9 state?

10 A Correct.

11 Q Because of his friend?

12 A Correct.

13 Q Okay. To the point, unfortunately, where Mr. Garnett
14 ends up getting arrested; is that correct, for hindering
15 with -- a law enforcement officer?

16 A Yes, sir.

17 Q Okay. And did you place him under arrest, or did
18 another deputy place him under arrest?

19 A Another deputy did.

20 Q And how many other deputies came to the -- into that
21 trailer? Do you know generally?

22 A I want to say about five or six.

23 Q Okay. And there were seven people in the trailer; is
24 that correct?

25 A I believe that's an accurate number, yes, sir.

1 Q And I believe you read their names before -- the last
2 names of each one?

3 A Yes, I did.

4 Q And do you, also, note every officer that came to the
5 scene?

6 A Yes, sir.

7 Q Okay. Did you determine if any of the people at the
8 scene were the owner or leaser of the trailer?

9 A I did.

10 Q And who was that?

11 A Mr. Wheeler was one. And I can't recall who the
12 other one was.

13 Q Okay. And did you attempt to obtain consent to
14 search the trailer before you obtained a search warrant?

15 A Correct, sir, I did.

16 Q And were you able to get consent to search the
17 trailer?

18 A No, sir.

19 Q And so you spoke with three of the five witnesses in
20 this case at the scene; isn't that correct?

21 A Yes, sir.

22 Q And, Officer, I have a copy of your report. If you
23 need it, I can show it to you. But did you determine that
24 no one was telling the truth about what occurred?

25 A That's correct.

1 Q And, in fact, you stopped taking statements at that
2 point; isn't that right?

3 A Correct, I did.

4 Q These trailers, can you give me an idea about how far
5 apart they are?

6 A Roughly, just a few feet from each other. They're
7 pretty much on top of each other.

8 Q Okay. Several steps from one trailer to the next?

9 A Correct.

10 Q Any way to define between the trailers what is one
11 trailers front yard and the other trailers backyard?

12 A No, sir. Not without some technical stuff to help
13 you with the property line.

14 Q But, I mean, nothing out there -- there's not a fence
15 with a --

16 A Oh, no, no, sir.

17 Q And what about lighting? What lighting is available?

18 A There's really none in that mobile home, other than
19 the streets.

20 Q Well, and where the street lights -- and I'm
21 referring to State's Exhibit No. 18. Why don't you step
22 down for me for a second, if you would, Officer.

23 A (Witness complied.)

24 Q Can you tell me where the street lights -- are they
25 visible on here?

1 A It's typically -- it's maybe -- maybe one that's on
2 one trailer. But most of the trailers, they don't have
3 lighting. It's pretty much hard to see.

4 Q Okay. Fairly dark in between the trailers?

5 A Correct.

6 Q Thank you.

7 And you said that the -- during the search of the
8 trailer, I believe, a BB gun was found; is that right?

9 A That's correct, sir.

10 Q Was it a pistol or a rifle?

11 A It was a pistol.

12 Q Okay. And did it appear -- look like to someone that
13 it might be a real gun?

14 A Yeah, it did. But after you look at it close, you
15 can tell it was a BB gun.

16 Q Okay. But if you were between trailers, particularly
17 if it was dark outside, might it be difficult to tell if
18 it was a real gun or not?

19 A Correct.

20 Q And I believe you said marijuana was found?

21 A Correct.

22 Q And do you remember that there were, also, pills
23 found, Alprazolam?

24 A I don't know. Because I didn't, actually, execute
25 the search warrant.

1 MR. QUINN: Your Honor, I'd ask that this witness
2 continue to be made available.

3 But I have no further questions at this time.

4 THE COURT: All right. Any redirect?

5 MS. MAJOR: Just briefly.

6 REDIRECT EXAMINATION

7 BY MS. MAJOR:

8 Q You said that you smelled marijuana when you arrived
9 in Dixie Estates. Could you tell where the marijuana was
10 coming from?

11 A Yes.

12 Q Where was it coming from?

13 A From the mobile home park number five where we
14 entered.

15 Q Okay. And you did not -- you waited for backup?

16 A Correct.

17 Q Is that standard?

18 A Typically, yes.

19 Q Okay. And why?

20 A Due to the nature of the call, like I said, you don't
21 know who's inside that residence. It's better to have
22 backup before making entry into an unknown situation.

23 MS. MAJOR: Okay. No further questions.

24 MR. QUINN: No recross.

25 THE COURT: Okay. Thanks.

1 You are not released from subpoena.

2 THE WITNESS: Yes, sir.

3 MS. MAJOR: Your Honor, the State calls Tavagio
4 Garnett.

5 THE CLERK: Will you put your left hand on the Bible
6 and raise your right?

7 WHEREUPON,

8 TAVAGIO SICA GARNETT,
9 after first having been duly sworn, testified as follows:

10 THE CLERK: Please have a seat.

11 Will you state your full name for the record?

12 THE WITNESS: Tavagio Sica Garnett.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MS. MAJOR:

16 Q Mr. Garnett, where are you from?

17 A Greenville.

18 Q Where'd you go to school?

19 A Mauldin High.

20 Q And where do you live now?

21 A Downtown.

22 Q Okay. Do you go by a nickname?

23 A Yes, ma'am.

24 Q What is that?

25 A Scoot.

1 Q Were you friends -- say that again. Scoot or Scoop?

2 A Scoot.

3 Q All right. Were you friends with Javario Brooks?

4 A Yes, ma'am.

5 Q How did y'all know each other?

6 A We've been knew [sic] each other. But we've known
7 each other through his sister. And then me and him became
8 very good friends over a period of time.

9 Q How long were y'all friends?

10 A I want to say going on about six, seven years.

11 Q Would you consider him a close friend?

12 A Yes, ma'am.

13 Q Do you remember February 3rd, 2014?

14 A Yes, ma'am.

15 Q All right. What day was that?

16 A Monday, I want to say.

17 Q All right. And does that day have other
18 significance?

19 A My birthday.

20 Q Where were you living at that time?

21 A At the same place, downtown where I'm living at now.

22 Q Okay. Did you go to Dixie Estates that day?

23 A Yes, ma'am.

24 Q Whose house did you go to?

25 A Darryl Hunter's and JJ Mathis.

1 Q All right. Did Nico Wheeler live there?

2 A Yes, ma'am. But he was rarely -- in and out.

3 Q All right. Do you remember -- can you point out
4 which trailer was his on this map? Do you remember what
5 number it was?

6 A Yes, ma'am.

7 Q What number?

8 MS. MAJOR: May he step down, Your Honor?

9 THE COURT: Yes. Sure.

10 (WHEREUPON, the witness indicated.)

11 BY MS. MAJOR:

12 Q Number five?

13 A (Witness nodded.)

14 Q What time did you go over there?

15 A I was over there all day from -- I, actually, woke up
16 over there. So I was over there all day. I spent the
17 night.

18 Q What did y'all do that day, February 3rd?

19 A We woke up. We went and got something to eat. We
20 went to the mall. And I'd say around midday a little bit,
21 we came back and we started drinking. And, you know,
22 people was in and out around the neighborhood coming to
23 see me, happy birthday, and whatnot.

24 Q Now, when you say "we," talking about what you did
25 earlier that day, who are you talking about? Who was with

1 you?

2 A Just the people that was there at the house, me,
3 Darryl, JJ, and Dominicus.

4 Q Okay. Darryl -- what's -- do you know his last name?

5 A Hunter.

6 Q All right. Dominicus?

7 A Sitton.

8 Q And JJ?

9 A Mathis.

10 Q All right. Were you with anybody else that day up
11 until, you know, during the daytime hours?

12 A No, ma'am.

13 Q How do you know Darryl Hunter?

14 A He's somewhat my God brother.

15 Q How do you know Dominicus Sitton?

16 A He's my cousin.

17 Q Does Darryl Hunter have a nickname?

18 A Yes, ma'am.

19 Q What is it?

20 A Snoop.

21 Q All right. And does Dominicus Sitton have a
22 nickname?

23 A Yes, ma'am.

24 Q What is it?

25 A Booty.

1 Q All right. You say people were coming over and were
2 in and out. Who was over there? Who came over?

3 A Like, people throughout the neighborhood. Justin
4 even told me happy birthday, or whatnot, you know.

5 Q Who's Justin?

6 A His brother.

7 Q All right. And where did Justin live?

8 A In trailer number [REDACTED].

9 Q All right. Did you know Justin?

10 A Yes, ma'am.

11 Q How did you know Justin?

12 A From the neighborhood and being over there prior to
13 this incident, you know. We was always over there playing
14 cards, or whatnot.

15 Q How many times have you been in Justin's trailer?

16 A I'd say maybe -- more than five times, not a lot,
17 though. More like five to 10 times.

18 Q How long -- up until this incident, how long have you
19 known Justin, if you had to estimate?

20 A I've known him for a pretty good bit. Because, you
21 know, they -- they stayed in another trailer, if I'm not
22 mistaken, at one point in time out there. And Mr. Hunter,
23 his grandma stayed out there. So I knew him throughout
24 the neighborhood.

25 Q Where did Mr. Hunter's grandmother live?

1 A Well, she did stay at the -- she stayed at -- right
2 here at number [REDACTED] --

3 Q If you can say that a little bit louder. She stayed
4 in what?

5 A Number -- no, I'm sorry. It's [REDACTED]. She stayed at
6 [REDACTED].

7 Q She stayed in [REDACTED]. Across from --

8 A Yes, ma'am.

9 Q -- Mr. -- Justin?

10 A But she had moved prior to that.

11 Q Okay. But she had lived over there?

12 A Yes, ma'am.

13 Q All right. When -- people were in and out all day,
14 you said, saying -- telling you happy birthday. Were
15 y'all inside or outside?

16 A Mainly, we was inside. But it wasn't a big crowd.
17 We might step outside. We had music playing, you know.
18 It wasn't too loud of a commotion. It wasn't no law
19 enforcement called at the time. It was -- we were just
20 outside. We might be out there for about five minutes and
21 we would go inside. That was it.

22 Q You said people were drinking?

23 A Yes, ma'am.

24 Q Were you drinking?

25 A Yes, ma'am.

- 1 Q Were people smoking marijuana?
- 2 A Yes, ma'am.
- 3 Q Were you smoking marijuana?
- 4 A No, ma'am.
- 5 Q Why weren't you smoking marijuana?
- 6 A I was on probation.
- 7 Q Okay. So you've been convicted of crimes carrying
- 8 over a year before?
- 9 A Yes, ma'am.
- 10 Q All right. At some point, did Mr. Brooks come over?
- 11 A Not until later on that night.
- 12 Q All right. Up until that time, had anybody been
- 13 in -- in a verbal altercation with anybody else?
- 14 A No, ma'am.
- 15 Q Had the police come over and told y'all to keep it
- 16 down?
- 17 A No, ma'am.
- 18 Q Did you have any sort of dispute with Justin up until
- 19 that time?
- 20 A No, ma'am.
- 21 Q All right. Do you remember seeing the Defendant that
- 22 day up -- prior to the nighttime, let's say?
- 23 A Yes, ma'am.
- 24 Q So he was over there as well?
- 25 A Yes, ma'am.

1 Q All right. Did you leave at some point that night?

2 A Yes, ma'am, we did.

3 Q Where did you go?

4 A If I'm not mistaken, we had just rode somewhere to go
5 see some females. But then we had came back. We wasn't
6 gone too much long.

7 Q All right. How long would you estimate you were
8 gone?

9 A Probably two hours, if that, maybe.

10 Q Who went with you to these girls house?

11 A It was me, Mr. Hunter -- I mean, excuse me. It was
12 me, Mr. Brooks, and Mr. Sitton.

13 Q Where -- where was Mr. Hunter? Was he there when you
14 left?

15 A He was at the -- at the house still.

16 Q Was he there when you got back?

17 A Yes, ma'am.

18 Q All right. Were you impaired at that time when y'all
19 got back? Were you drunk?

20 A Yes, ma'am.

21 Q All right. Were you and Mr. Brooks arguing?

22 A Yes, ma'am.

23 Q What were y'all arguing about?

24 A A minor incident dealing with alcohol.

25 Q All right. Was -- what kind of argument was this?

1 Were y'all yelling at each other?

2 A I mean, it was more like a family dispute argument, a
3 brotherly argument. He would get loud and say something.
4 I'd get loud and say something. It was more like we just
5 wanted to get our point across.

6 Q Okay. Do you even remember what the argument was
7 about?

8 A Not all the way, no, ma'am.

9 Q All right. Was it important looking back at it now?

10 A No, ma'am.

11 Q Did you ever -- were y'all being loud out there?

12 A I want to say we was -- we was being -- our voices
13 was loud. But we wasn't just making a big commotion where
14 it was the whole neighborhood or anything -- people coming
15 outside. Because, I mean, it was a normal thing for that
16 neighborhood, loud commotion and just arguments.

17 Q Is this the nicest area?

18 A No, ma'am.

19 Q What do you mean that this is normal?

20 A I mean, it's always people outside talking loud,
21 playing loud music, you know. It's always people outside
22 throughout the night.

23 Q Was the argument just between you and Mr. Brooks, or
24 did it involve anybody else?

25 A Just between me and him.

1 Q Was Mr. Hunter fighting with you or Mr. Brooks?

2 A No, ma'am.

3 Q All right. Was Mr. Sitton fighting?

4 A No, ma'am.

5 Q Did you and Mr. Brooks ever get into a physical
6 altercation?

7 A No, ma'am.

8 Q Did you ever hit him?

9 A No, ma'am.

10 Q Did he ever hit you?

11 A No, ma'am.

12 Q Were you frightened at all that night?

13 A No, ma'am.

14 Q All right. Do you remember seeing Justin Cureton
15 that night once y'all get -- got back?

16 A Yes, ma'am.

17 Q All right. Do you know him as "Jut"?

18 A Yes, ma'am.

19 Q Where were you -- did -- did Justin Cureton say
20 anything to you and Mr. Brooks?

21 A I just remember him saying, was everything -- was
22 y'all all right.

23 Q And where were you when that happened?

24 A We was, actually, like in the middle -- walking
25 towards the trailer coming from the street.

1 Q 'Okay. So y'all were outside when this was going on?

2 A Yes, ma'am.

3 Q And y'all were yelling?

4 MR. QUINN: I object to the leading nature of the
5 questions.

6 BY MS. MAJOR:

7 Q Were y'all outside when this was going on?

8 A Yes, ma'am.

9 Q Okay. And where did you say -- what happened?

10 A Which incident? What -- what do you mean?

11 Q Let me show you what's been marked as State's Exhibit
12 Nos. 5 and 9. Do you recognize that?

13 A Yes, ma'am.

14 Q And do you recognize that?

15 A Yes, ma'am.

16 Q And what is that?

17 A That's Jut's house and --

18 Q Can you speak into there?

19 A That's -- this is Mr. Hunter's trailer. And this is
20 Justin's trailer.

21 Q Okay. Does that fairly and accurately represent
22 their trailers?

23 A Yes, ma'am.

24 Q Okay. Tell us where you were --

25 THE COURT: Wait a minute.

1 Are they in evidence?

2 MS. MAJOR: Oh, I'm sorry, Your Honor.

3 At this time, I would move State's Exhibit Nos. 5 and
4 9 into evidence.

5 MR. QUINN: No objection.

6 THE COURT: Okay.

7 (WHEREUPON, State's Exhibit Nos. 5 and 9 were admitted
8 into evidence.)

9 MS. MAJOR: And I would request permission to publish
10 them.

11 BY MS. MAJOR:

12 Q Okay. Tell us what happened when y'all got back.

13 A Me and Mr. Brooks was walking across the street.
14 Because he was parked on the far side -- across the street
15 from the trailer. And we was walking back by the trash
16 cans.

17 And that's when Justin stuck his head out saying
18 something -- was we all right, or whatnot. And then
19 that's when the -- the verbal agreement -- I mean
20 disagreement between them two started.

21 Q Okay. And what happened with that verbal
22 disagreement?

23 A After that, they was just really just talking back
24 and forth while me and Mr. Hunter, we was the ones talking
25 to Jut telling him that it's all right. And then

1 Mr. Sitton was talking to Mr. Brooks telling him just calm
2 down, or whatnot.

3 Q And where was everybody when that was going on?

4 A We was all, like, outside by the -- actually, by,
5 like, the -- by that little tree.

6 Q Who all was out there at that time?

7 A Me, Mr. Hunter, Mr. Brooks, and Mr. Sitton.

8 Q Okay. Was --

9 A And Justin was out there.

10 Q All right. Do you remember seeing his brother?

11 A I remember seeing him come outside. But he was by
12 himself just standing there. He wasn't saying too much,
13 wasn't really nobody paying him no attention.

14 Q And what do you remember happening next?

15 A And then as they was still altercating and going on
16 and stuff, Jut ran back in the house and put on his shoes.
17 And we was still trying to calm the situation down. And I
18 remember hearing, also, Brandi saying something about a
19 pistol, go get a pistol, something like that.

20 And so that's when Mr. Sitton and Mr. Brooks -- they
21 was -- he was trying to hold him back. And then that's
22 when his brother, actually, came out of nowhere and just
23 started rapidly shooting.

24 Q Okay. What do you remember happening next?

25 A After that, they -- they ran. Me and Mr. Hunter was

1 still over there going at it with Jut. Because he didn't
2 know what had, actually, happened. By then, he was
3 yelling at his brother by then screaming at him, Why you
4 start shooting, and stuff. And that's when them two ran
5 in the house. Then I ran after them. And I seen what had
6 happened.

7 Q Okay. What do you remember after that?

8 A Just on the ground trying to hold Mr. Brooks and
9 trying to talk to him. And after that, then that's when
10 I -- I blacked out.

11 Q Okay. At what point did you black out?

12 A After the shooting.

13 Q Okay. At what point after the shooting?

14 A I want to say when the officers came.

15 Q All right. Do you remember talking to the officers?

16 A No, ma'am.

17 Q Do you remember saying anything? Do you remember
18 them asking you any questions?

19 A No, ma'am.

20 Q Do you remember interfering with them?

21 A Not as they say I was. But they say I was just in
22 the way holding -- holding Mr. Brooks and wouldn't move.
23 Like he said, I was -- I wasn't complying with what they
24 were saying and telling me to do. But other than that,
25 no, ma'am.

1 Q Do you remember getting arrested that night?

2 A No, ma'am.

3 Q What do you remember next when you --

4 A Well, I woke up, actually, in the jail cell.

5 Q Okay.

6 A And I went and seen an advisor. And then I -- I
7 bonded out.

8 Q Did you know what had happened?

9 A Yeah and then no. I remember the altercation going
10 on. And I remember the shooting. But I didn't know -- I
11 had forgotten that Mr. Brooks had got shot and Dominicus
12 had gotten shot. And that's when they told me they was in
13 the hospital, and Mr. Brooks had passed.

14 Q Did you ever go into Justin Cureton's house from the
15 time that you and Mr. Brooks were arguing until the time
16 that Mr. Brooks got shot? Did you ever go up into --

17 A No, ma'am.

18 Q You never went up into Justin --

19 A No, ma'am.

20 Q -- Cureton's house?

21 A No, ma'am. If anything, we was standing right there
22 at the sliding door. But we never stepped foot in there.

23 Q You never stepped foot. Were you on his porch?

24 A Yes, ma'am, we was.

25 Q Okay. Who was on Justin's porch?

1 A Me and Mr. Hunter. Because we had -- we knew Justin.
2 We knew Jut. So we was really trying to diffuse the
3 situation.

4 Q Okay. Did Justin ever indicate that he didn't want
5 you in -- on his porch?

6 A No, ma'am. He was talking back to us at the same
7 time still. Him and Mr. Brooks was still exchanging
8 words.

9 Q Okay. Was Mr. Brooks fighting with anybody else,
10 except for -- besides Justin?

11 A No, ma'am.

12 Q Was anybody else with your group fighting with
13 anyone, except for Justin?

14 A No, ma'am.

15 Q Okay. Was Mr. Sitton ever fighting with Justin?

16 A No, ma'am.

17 Q Did you have a gun that night?

18 A No, ma'am.

19 Q Did you see anybody else with a gun?

20 A No, ma'am.

21 Q Did you see Justin with a gun?

22 A No, ma'am.

23 MS. MAJOR: Thank you.

24 Please answer any questions the Defense has.

25 MR. QUINN: May we approach?

1 THE COURT: Yes.

2 (WHEREUPON, a bench conference was held.)

3 CROSS-EXAMINATION

4 BY MR. QUINN:

5 Q Mr. Garnett, as I understand your testimony, you
6 blacked out at some point that night?

7 A Yes, sir.

8 Q And you blacked out right after the shooting?

9 A Yes, sir.

10 Q Okay. And you don't remember anything after that
11 until you wake up in the jail cell?

12 A Yes, sir.

13 Q But just before you blacked out from being so
14 intoxicated, you clearly remember what happened?

15 A Yes, sir.

16 Q So you were clear headed, no problem knowing what was
17 going on, and then you blacked out?

18 A Yes, sir.

19 Q Okay. And your story is that there's always people
20 outside in this trailer park during the night causing
21 commotions; right?

22 A Yes, sir.

23 Q Well, who else was out there that night?

24 A No one.

25 Q I thought you just told me that there were always

1 people outside at that trailer park?

2 A Well, there -- there wasn't.

3 Q Okay. So that night, there wasn't any other people?

4 A No. No, sir.

5 Q And Mr. Brooks, as I understand your testimony, came
6 across the street to approach Justin Cureton; is that
7 right?

8 A We was walking toward -- walking into the -- our
9 trailer. And then that's when Mr. Cureton yelled.

10 Q And Mr. Brooks then walks towards Mr. Cureton --

11 A Well, he was trying to. And we was trying to stop
12 him, holding him back. He didn't get no farther than that
13 tree.

14 Q Okay. And so you're holding him back?

15 A Mr. Sitton was.

16 Q Mr. Sitton's holding him back?

17 A Yes, sir.

18 Q And is he doing it pretty much like I am, like
19 this --

20 A Yes, sir.

21 Q -- or holding him from behind, or do you remember
22 how?

23 A Holding him in the front.

24 Q Holding him in the front?

25 A Holding him in the front.

1 Q And what size is Mr. Brooks?

2 A About like his mother stated, about 5'9", about 160
3 something.

4 Q And what size is Mr. Sitton?

5 A He's about 5'10", maybe -- maybe, like, 150.

6 Q And about what age are the two of them?

7 A Mr. Sitton was 22 at the time, I want to say.

8 Q And you were 25 at the time; is that right?

9 A No, sir.

10 Q How old were you at the time? I'm sorry.

11 A 24.

12 Q 24. Okay. I'm sorry.

13 And is it fair to say that you are about 5'10, 160?

14 A A little bit smaller than that. But that's about my
15 right height.

16 Q Okay. But you weigh a little less than that, is that
17 what you're saying?

18 A Yes, sir.

19 Q And you admit, obviously, that you were drinking
20 alcohol that night because you blacked out; right?

21 A Yes, sir.

22 Q You weren't using any marijuana because that would
23 have been a violation of your probation; right?

24 A Yeah.

25 Q And you were on probation for possession with intent

1 to distribute drugs; isn't that correct?

2 A Marijuana.

3 Q Okay. But you weren't using any marijuana that
4 night?

5 A No.

6 Q You weren't using any of these pills that they found,
7 the Alprazolam, were you?

8 A No, sir.

9 Q And you had been drinking since mid-day; is that fair
10 to say?

11 A A little bit after that.

12 Q Okay. And what were the names of the females that
13 y'all went and saw for two hours?

14 A We actually -- we didn't get to see them. After we
15 tried to go see them, we rode around trying to find
16 something to do. And we came back.

17 Q And what were the names of the females you tried to
18 go see?

19 A There was Brittany Burnside.

20 Q Okay. And any others --

21 A And Daja [phonetic] Garner.

22 Q I'm sorry.

23 A Daja Garner.

24 Q Okay. And they weren't home or --

25 A No, sir.

1 Q Did you stop at that location?

2 A No, sir.

3 Q So y'all just rode on by?

4 A We tried to give them a call. No answer. So we was
5 going on about our business.

6 Q So you, and Mr. Brooks, and Mr. Sitton are just out
7 riding around for two hours?

8 A Yes, sir.

9 Q Drinking in the car?

10 A No, sir. We wasn't drinking. We was drinking at the
11 house.

12 Q So how long had you been back at the house before all
13 this starts?

14 A It started right when we got back.

15 Q So you went -- you were drinking --

16 A Yes, sir.

17 Q Let me make sure I've got the time right. At some
18 point mid-day, you're drinking; is that right?

19 A (Witness nodded.)

20 Q Then you do not drink for two hours while you're
21 riding around; is that correct?

22 A Yes, sir.

23 Q Then you come back and there's this altercation?

24 A (Witness nodded.)

25 Q As soon as y'all get back and park; right?

1 A Uh-huh.

2 Q And then you pass -- you black out. But you hadn't
3 been drinking for two hours?

4 A Yes, sir.

5 Q And so your story is that the three of you pull up
6 and there's some trouble between you and Mr. Brooks;
7 right?

8 A Yes, sir.

9 Q And is Mr. Brooks the kind of fellow that would argue
10 with you a bunch?

11 A No, sir.

12 Q Okay. Had you two ever had brotherly arguments
13 before?

14 A No, sir.

15 Q And so what was the argument about?

16 A I can't recall, something minor.

17 Q You're involved with an argument with a man who gets
18 killed shortly thereafter, and you don't remember what the
19 argument is about. Is that your testimony?

20 A Yes, sir.

21 Q Okay. But you testified to this jury that you were
22 clear-headed and remember everything else about the
23 incident; is that right?

24 A Yes, sir. By the time all this -- the chaos cleared
25 off, I definitely couldn't remember what the argument was

1 about. It was something that was so small.

2 Q But you remember that your voices were loud?

3 A Yes, sir.

4 Q Because I believe that was your description; right?

5 A If you want to call it loud.

6 Q Well, I'm sorry. I don't --

7 A It was not just a -- we was able to be heard, I'll
8 put it like that.

9 Q Well, didn't you put it -- when the Solicitor asked
10 you, didn't you say there was a brotherly argument, our
11 voices were loud, but we didn't cause a big commotion?

12 A Yes, sir.

13 Q And so I'm not trying to put words in your mouth. Do
14 you agree that you testified earlier that your voices were
15 loud?

16 A I mean, we're -- we're men, so our voices are going
17 to be loud, yes, sir.

18 Q And were there fights earlier in the day?

19 A No, sir.

20 Q Not between any of the people that you were with?

21 A No, sir.

22 Q There wasn't a physical altercation resulting in one
23 person getting a fat lip?

24 A No, sir.

25 Q So Justin Cureton -- and this fellow's name here is

1 John Cureton; is that right?

2 A I guess, yes, sir.

3 Q Okay. And Justin's his brother; isn't that right?

4 A I know his brother, yes, sir.

5 Q Okay. And so Justin leaves out of his trailer and
6 says, Is everything all right; is that right?

7 A Yes, sir.

8 Q And you say you've been in Justin's trailer several
9 times. Do you know if Justin has small children?

10 A Yes, sir.

11 Q And his girlfriend-wife lives with him?

12 A Yes, sir.

13 Q Okay. So did he come out of the house to try to
14 cause any trouble, Justin?

15 A I wouldn't say that, no, sir.

16 Q Okay. And this incenses or makes Mr. Brooks angry;
17 is that right, that Justin has said something?

18 A Yes, sir.

19 Q To the point where he wants to go approach Justin
20 Cureton; right?

21 A Yes, sir.

22 Q And has to be held back by Mr. Sitton, his friend; is
23 that right?

24 A Yes, sir.

25 Q So Mr. Cureton is in his own trailer. This is 10:30

- 1 at night, 11:00; is that right?
- 2 A Yes, sir.
- 3 Q Dark; is that right?
- 4 A I mean, yes.
- 5 Q Full night; right? I mean, this isn't as the sun is
6 going down. It's dark out there?
- 7 A It's dark, yes, sir.
- 8 Q And so Javario Brooks wants to go fight with him and
9 has to be held back by Mr. Sitton?
- 10 A Yes, sir.
- 11 Q And I believe you said by the tree out there. And I
12 know there's a tree in one of these pictures, State's
13 Exhibit No. 5. Let me show you.
- 14 Is this the tree you're talking, this little tree
15 between the trailers?
- 16 A Uh-huh.
- 17 Q All right. And I'm sorry. You have to answer "yes"
18 or "no."
- 19 A Yes, sir.
- 20 Q Okay. And whose trailer is the one facing this --
21 whose trailer is to the left?
- 22 A Justin's.
- 23 Q Okay. And then whose trailer is this?
- 24 A Mr. Hunter's.
- 25 Q Okay. And so this -- this little tree in between,

1 would you say it's two or three steps to the porch?

2 A It's, like, really in the middle between both of
3 them, you know. It's, like, less than 10 steps to get to
4 each trailer.

5 Q Less than 10 steps between the trailers; right?

6 A Yeah. Between the trailers, yeah.

7 Q Okay. So if this is in the middle, four or five
8 steps then to get to either -- either porch?

9 A Uh-huh.

10 Q Is that fair?

11 A Yes, sir.

12 Q Okay. Sitton's trying to calm Mr. Brooks down, but
13 he's unable to; right? Mr. Brooks doesn't calm down, does
14 he?

15 A He -- he's trying to. At the same time, Mr. Cureton
16 was all riled up as well.

17 Q Justin Cureton?

18 A Yes, sir. Justin. I'm sorry.

19 Q Justin goes back in the trailer; is that right?

20 A Uh-huh.

21 Q I'm sorry --

22 A Yes, sir.

23 Q Okay. Supposedly to put his shoes on; right?

24 A Yes, sir.

25 Q Because there's going -- there's going to be this

- 1 fight out there; is that right?
- 2 A Yes, sir.
- 3 Q And outside, at this point, are you, Mr. Brooks,
4 Mr. Sitton, and who else?
- 5 A Mr. Hunter.
- 6 Q And Mr. Hunter. So four men?
- 7 A Yes, sir.
- 8 Q Okay. And Justin Cureton and John Cureton?
- 9 A Yes, sir.
- 10 Q Okay. Were there any other people outside at that
11 time?
- 12 A No, sir.
- 13 Q And I believe you said John wasn't even involved in
14 this thing. He was standing over there quiet. Nobody was
15 paying any attention to him; is that right?
- 16 A Yes, sir.
- 17 Q Do you remember John firing a gun?
- 18 A No, sir.
- 19 Q Okay. So do you know, did he fire a warning shot?
- 20 A No, sir.
- 21 Q But, yet, you say Brandi says, Go get a pistol?
- 22 A Yes, sir.
- 23 Q And who did she say that to?
- 24 A I think she was talking to Justin.
- 25 Q And how did you hear her if she wasn't outside? You

1 just --

2 A She -- she was in the house. I heard her. I was
3 standing right there at the screen door.

4 Q So you had gotten all the way up on Mr. Cureton's
5 porch to his screen door?

6 A Trying to calm him down, yes, sir. Because he was
7 outside ready to fight.

8 Q Well, he couldn't have been very far outside if he's
9 at the screen door. Was he -- did he have the door to his
10 back?

11 A He was outside of it.

12 Q Okay.

13 A Trying to come down the steps.

14 Q And you were trying to keep him from coming down the
15 steps --

16 A Me and Mr. Hunter, yeah, was diffusing the situation.

17 Q And so where was John?

18 A Standing on the patio of their little back porch.

19 Q So he's, also, on this back porch?

20 A Yes, sir.

21 Q Are the back porches much bigger than this table that
22 I'm standing in front of?

23 A Well, it has a little -- not, like, a little --
24 what -- what do you mean bigger than that?

25 Q The place where you can stand on the porch. And I

- 1 understand it's got railing around it.
- 2 A Yeah. Yes, sir.
- 3 Q But the -- the floor of the porch is not much bigger
4 than this table; isn't that right?
- 5 A It's probably a little bit bigger than that table.
- 6 Q Okay. As far as I am now? Bigger?
- 7 A Yes, sir.
- 8 Q So another -- another couple of feet?
- 9 A Yes, sir.
- 10 Q And it's Justin Cureton, you. Where's Mr. Hunter?
- 11 A Standing right beside me. We were both standing
12 right there.
- 13 Q So Justin Cureton, you, Mr. Hunter, and John, all
14 four of you were standing on this porch?
- 15 A Yes, sir.
- 16 Q And your statement is -- your testimony to this jury
17 is that the brother came out of nowhere and started
18 rapidly shooting?
- 19 A Yes, sir.
- 20 Q Well, he didn't come out of nowhere, because now you
21 just testified he's standing on the porch with you; is
22 that right?
- 23 A I mean, he pulled a pistol out of nowhere.
- 24 Q Okay. So all the sudden, he pulls a pistol out and
25 starts rapidly shooting; is that right?

1 A Yes, sir.

2 Q But he doesn't hit you, or Mr. Hunter, or Justin
3 Cureton, all of whom are standing on the porch with you.
4 Is that your testimony?

5 A Yes, sir.

6 Q He doesn't hit the trailer, unless somebody testifies
7 there's holes in the trailer, as far as you know, does he?

8 A No, sir.

9 Q And when you say rapidly shooting, I assume it's more
10 than one bullet?

11 A I want to say he shot twice.

12 Q So he started rapidly shooting, but he shot only
13 twice and stopped. And then you blacked out?

14 A Yes, sir, after I seen the bodies.

15 Q But the bodies --

16 A I ran in the house.

17 Q Okay. So everybody runs in the house; right?

18 A Uh-huh.

19 Q Runs these several steps across past the tree and
20 goes into the trailer next door; is that right?

21 A Yes, sir.

22 Q Okay. And that's when you black out. You don't
23 remember anything from there forward?

24 A Yes, sir.

25 Q And how many people were there during the day?

1 A What do you mean? Like in and out, or just at that
2 one point in time?

3 Q Well, do it either way for me. Do it -- about how
4 many people came by that day? 10? 20? 120?

5 A No more than 15.

6 Q Okay. And, at any point during the day, what was the
7 most number of people that were there helping you
8 celebrate your --

9 A Probably about 10 to 12 people.

10 Q Okay. And how many of them were still there when all
11 this trouble goes on?

12 A The household people. So about six people.

13 Q Six people in addition to you and Mr. Hunter?

14 A No. Just -- well, including me -- well, including
15 myself, Mr. Hunter, Mr. Brooks, Mr. Sitton, and
16 Mr. Mathis.

17 MR. QUINN: I don't have any other questions.

18 (Pause.)

19 MR. QUINN: I beg the Court's indulgence. If I might
20 ask another question.

21 BY MR. QUINN:

22 Q Mr. Garnett, have you, also, been convicted of
23 possession of less than one gram of ice or crack cocaine
24 first offense in 2016?

25 A Yes, sir.

1 MR. QUINN: That's all the questions I have.

2 THE COURT: All right. Any redirect?

3 MS. MAJOR: No, Your Honor.

4 THE COURT: All right. Thank you.

5 You can step down.

6 MS. MAJOR: Your Honor, if I could have a brief

7 moment.

8 (Pause.)

9 MS. MAJOR: Your Honor, the State would call Darryl
10 Hunter.

11 THE COURT: Okay.

12 THE CLERK: If you'll come forward.

13 If you will raise your right hand.

14 WHEREUPON,

15 DARRYL LAMONT HUNTER,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Have a seat in the chair.

18 Will you state your full name for the record?

19 THE WITNESS: Darryl Lamont Hunter.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MS. MAJOR:

23 Q Mr. Hunter, do you have a nickname?

24 A Yes. Snoop.

25 Q Snoop?

1 A (Witness nodded.)

2 Q All right. Where are you from?

3 A Greenville, South Carolina.

4 Q All right. Did you grow up here?

5 A Yes, ma'am.

6 Q Where were you living in February of 2014?

7 A Dixie Estates.

8 Q Okay. And, I guess, now you are at the detention
9 center. Have you been convicted of a crime in 2008? Were
10 you convicted of strong armed robbery?

11 A Yes, ma'am.

12 Q And conspiracy?

13 A Yes, ma'am.

14 Q All right. February of 2014, where were you living?

15 A Dixie Estates.

16 Q All right. How long had you been living there?

17 A At the time, going on, like, a year.

18 Q Which residence did you live in? Do you remember the
19 name -- the lot number?

20 A [REDACTED] Lane.

21 Q All right. I'm going to show you this map. Do you
22 recognize this?

23 A (Witness nodded.)

24 Q All right. What residence were you living in at the
25 time? You said what?

- 1 A [REDACTED] Lane.
- 2 Q Say that again, please.
- 3 A [REDACTED] Lane.
- 4 Q Who did you live there with?
- 5 A My roommate, Carlos Mathis.
- 6 Q Anybody else?
- 7 A No, ma'am.
- 8 Q Did Nico Wheeler live there at all?
- 9 A He used to stay over, but he didn't stay with us.
- 10 Q Okay. Was Justin Cureton your neighbor at that time?
- 11 A Yes, ma'am.
- 12 Q And where did he live?
- 13 A Three -- [REDACTED] Lane.
- 14 Q What did you call him? What's his nickname?
- 15 A Jut.
- 16 Q Prior to this incident, how long had you known Justin
- 17 Cureton?
- 18 A Two months, not long.
- 19 Q Had you been over to his trailer before?
- 20 A Yes, ma'am.
- 21 Q Did y'all hang out?
- 22 A At his trailer, we did.
- 23 Q What would y'all do?
- 24 A Like, play cards.
- 25 Q Would you consider him a -- like, a friend?

- 1 A I just knew him. He was my next door neighbor.
- 2 Q All right. But he is somebody that you would hang
3 out with?
- 4 A Yeah. I would go over to his house and play cards.
- 5 Q Did you know the Defendant, John Cureton?
- 6 A No, ma'am.
- 7 Q You did not know him up until that day?
- 8 A I knew him -- like, the day before that, I knew that
9 he was Jut's brother.
- 10 Q All right. But you -- did you have a personal
11 relationship with him?
- 12 A No, ma'am.
- 13 Q Would you have recognized him?
- 14 A Like, now?
- 15 Q No. But back then.
- 16 A No, ma'am.
- 17 Q Did you know that he was Jut's brother?
- 18 A The day before, I found out that he was Jut's
19 brother.
- 20 Q All right. Did you have any bad blood with the
21 Defendant?
- 22 A No, ma'am.
- 23 Q Did you know his girlfriend?
- 24 A Jut's girlfriend?
- 25 Q Yes.

1 A Yes, ma'am.

2 Q What was her name?

3 A Brandi.

4 Q All right. Let's turn to the day of this incident,
5 February 3rd, 2014. Were y'all having a party?

6 A No, ma'am.

7 Q Okay. Were people over at your house?

8 A Yes, ma'am.

9 Q Why were y'all gathered at your house?

10 A It was my guy brother's birthday.

11 Q All right. So how would you describe everybody
12 coming together? It's not a party?

13 A No. It wasn't a party. We was just hanging out,
14 just a couple of us.

15 Q How long had y'all been hanging out?

16 A Prior before this -- before the incident?

17 Q Before the shooting, how long had y'all been over at
18 your house?

19 A Probably, like, two hours.

20 Q All right. Were people over there during the day?

21 A No, ma'am.

22 Q Nobody?

23 A No, ma'am. Besides my roommate and Tavagio.

24 Q Okay. And Tavagio is who? Your -- how's he related
25 to you?

1 A My guy brother.

2 Q I'm sorry?

3 A My guy brother.

4 Q All right. And do you know Dominicus Sitton?

5 A Yes, ma'am.

6 Q All right. At some point, did Mr. Brooks come over?

7 A Yes, ma'am.

8 Q What time did he come over?

9 A I don't know the exact time.

10 Q Can you give us an estimate?

11 A Later that night, like, around 8:00, 9:00.

12 Q Did he leave at some point?

13 A Yes, ma'am.

14 Q Who did he leave with?

15 A Tavagio and Dominicus Sitton.

16 Q Did you stay there the whole time?

17 A I stayed at the trailer.

18 Q Do you remember how long they were gone?

19 A Probably, like, an hour.

20 Q Were you there when they got back?

21 A Yes, ma'am.

22 Q Were you all drinking before they left?

23 A Yes, ma'am.

24 Q Were people smoking marijuana?

25 A Yes, ma'am.

1 Q Were you smoking marijuana?

2 A Yes, ma'am.

3 Q Were you drinking?

4 A A little.

5 Q What happened when -- you said it was Mr. Brooks,
6 Mr. Garnett, and Mr. Sitton. When they came back, what
7 happened?

8 A Well, whenever they was gone, I don't know exactly
9 what happened. But whatever happened when they was gone,
10 they came back and they were discussing, like, real loudly
11 when they came back.

12 Q Who was?

13 A Tavagio and Mr. Brooks.

14 Q Okay. Did you know Mr. Brooks?

15 A Yes, ma'am.

16 Q Who was Mr. Brooks' friends with from your crowd?
17 Who was his closest friend there?

18 A I'd say his closest friend was Tavagio.

19 Q All right. And I'm sorry. You said that when they
20 got back, you heard arguing -- or what'd you hear?

21 A They was -- like I said, whatever happened when they
22 was gone, they was discussing it when they came back. But
23 they was loud, like, you know, they had been drinking. So
24 they was, like, real loud.

25 Q And who was being loud?

1 A Tavagio and Mr. Brooks.

2 Q Tavagio -- I'm sorry?

3 A Tavagio and Mr. Brooks.

4 Q Okay. Could you tell what they were arguing about?

5 A No, ma'am.

6 Q Could you hear them -- where were you when they came?

7 A I was in the house.

8 Q All right. Could you hear them from in the house?

9 A No. Mr. Sitton came and got me out of the house.

10 Q And what did Mr. Sitton tell you?

11 A Like, basically, telling them to come in the house,
12 because they was making a lot of noise outside.

13 Q Mr. Sitton was telling you?

14 A To help him get them in the house, because they was
15 making a lot of noise outside.

16 Q And what did you do?

17 A We was trying to get them in the house. We were
18 telling them to come into the house.

19 Q And what were they doing?

20 A Just talking. Tavagio went in the house. But Brooks
21 was still outside talking.

22 Q Okay. Did you see any punches thrown between Tavagio
23 and Mr. Brooks?

24 A No, ma'am.

25 Q All right. What happened next?

- 1 A Jut came outside on his back porch and asked, like,
2 what was going on.
- 3 Q Okay. And did you tell Jut anything?
- 4 A Yeah. I was like, everything okay. They've been
5 drinking. Everything all right.
- 6 Q All right. And where were you at this point?
- 7 A Like, in my -- in my yard.
- 8 Q All right. What happened next?
- 9 A Like, Mr. Brooks was telling Jut, like, basically,
10 like, mind his business. He was like, mind your business.
- 11 Q And where is Mr. Brooks when he is telling Jut to
12 mind his business?
- 13 A In front of my house.
- 14 Q All right. What happened next?
- 15 A They -- they said some words. But we tell Jut, like,
16 he's been drinking. It's okay. He's been drinking.
17 Everything is all right. And, like, Jut laughed it off.
18 And it really didn't go no farther than that. But
19 Mr. Brooks was still, like, talking to Jut.
- 20 Q What's he saying?
- 21 A Like, same old thing, like, mind your business, don't
22 worry about what we're doing over here.
- 23 Q Okay. Was Jut laughing at Mr. Brooks? Did Jut --
24 how did Jut seem?
- 25 A Like, after we told him that he had been drinking, he

1 just, like, laughed it off. But he never felt threatened.

2 Q Okay. What happened next?

3 A Jut -- that's when Jut's brother come outside and
4 present -- with a weapon that he had the first time he
5 came outside.

6 Q Okay. And what did he do?

7 A And Jut told him, like, I know them. It's okay.
8 I've got this, like, don't worry about it. And they're
9 going to go back in the house.

10 Q Okay. And what happened next?

11 A Mr. Brooks still was, like, talking junk to Jut. And
12 Dominicus, and Tavagio, and I, we told him, like, go in
13 the house, like, don't pay him no attention, go in the
14 house.

15 Q And where is Jut -- where is Mr. Brooks at this
16 point?

17 A He's still in my yard, like, in between my yard from
18 Jut's back porch to my front porch, like, in between.

19 Q Okay. And where is Jut?

20 A On his back porch.

21 Q Okay. What happened next?

22 A We talked -- I'm talking to Jut. And Dominicus and
23 Tavagio are trying to get Mr. Brooks to come back in the
24 house. That's when Jut's brother come out and let off a
25 couple shots.

1 Q And where were you?

2 A Right there where Jut was on the back porch.

3 Q All right. Were you standing on the back porch?

4 A Yeah. I was standing on the back porch.

5 Q At what point did you go on the back porch?

6 A After the second time, like, when -- when his brother
7 came out the first time and Jut cursed him out and told
8 him to go back in the house with the gun, and everything.
9 That's when I was on the porch talking to Jut, like,
10 basically, telling him what we had been doing, that they
11 had been drinking. And he's just been drinking, don't pay
12 him no attention. And we was just talking.

13 Q And where was Jut? Did Jut talk back to Mr. Brooks?

14 A No, ma'am.

15 Q At any point, did Jut go back inside? Do you
16 remember -- at any point, do you remember Jut going back
17 inside?

18 A No, ma'am. I don't remember Jut going back inside.

19 Q Okay. Do you remember Jut wanting to fight
20 Mr. Brooks?

21 A No, ma'am. Like I said, I never thought Jut felt
22 threatened. He never acted like he was threatened.

23 Q Okay. What happened after the shots were fired?

24 A Everybody scattered.

25 Q Where did you go?

1 A I was right there with Jut. And I went behind Jut
2 into his house. Because Jut was cussing out his brother,
3 like, I just told you I had everything under control. Why
4 would you come out here and do that? And I'm doing the
5 same thing, basically, cursing him out.

6 Q Did you know anybody had been hit?

7 A Not at the time.

8 Q Did Mr. Brooks -- I'm sorry. Did Jut let you into
9 his house at that point?

10 A Yes, ma'am.

11 Q Were you and Jut in -- having any sort of exchange,
12 or was he trying to get you out of his house? Were y'all
13 fighting?

14 A No, ma'am.

15 Q Were you fighting with the Defendant?

16 A No, ma'am. But I was -- I was cursing him out.

17 Q Right. At some point, did you learn that -- well,
18 what happened next after -- after the shooting after you
19 were in his house?

20 A My roommate, Carlos, come back. And he comes through
21 Jut's back door. And he was like, He shot them. That's
22 what -- he told us he shot them, he shot them. That's
23 when I ran to my house.

24 Q And what did you see when you ran to your house?

25 A Mr. Brooks laying in the floor, and Sitton in the

1 floor of my kitchen.

2 Q Could you tell where Sitton had been shot?

3 A Not at the time, no, 'ma'am.

4 Q Could you tell where Mr. Brooks had been shot?

5 A Not until after we looked -- like, looked over his
6 body.

7 Q Okay. Do you remember how the Defendant came out and
8 fired that gun?

9 A Like, when he came out and shot the gun, like, he
10 didn't really -- he just -- he just waited and fired off a
11 couple of shots. Like, the way he shot it, I wouldn't --
12 I didn't think nobody would have got hit until my roommate
13 came and verified it, that they got shot.

14 Q And -- and why did you think that nobody had been
15 shot?

16 A Like I said, how he came out and he shot it, like, it
17 happened so fast.

18 Q Do you remember how many shots were fired?

19 A Not exactly, like, three. I know more than one.

20 Q Okay. Do you remember how many?

21 A Like, around three shots.

22 Q All right. How many people were out there at the
23 time of the shooting? Name the people, if that's --
24 that's easier.

25 A Jut, Tavagio, Carlos, Mr. Brooks, me, and Dominicus.

1 Q Was Carlos out there when the shooting happened?

2 A If I'm not mistaken, I think Carlos went back in the
3 house. But when they -- when they ran into the house
4 after the shooting, that's when he ran out of the house to
5 come get me from Jut's house.

6 Q Was anybody else, besides Mr. Brooks, having words
7 with Justin?

8 A No, ma'am.

9 Q Okay. Do you remember speaking -- well, okay. That
10 night, did somebody call police?

11 A Yes, ma'am.

12 Q And did the police come?

13 A Yes, ma'am.

14 Q And what do you remember about that?

15 A I just remember they came.

16 Q Did you tell them what happened?

17 A After. I didn't -- I didn't talk to the police about
18 exactly what happened until, like, the next day out there
19 when they came back out.

20 Q Did you tell the police who shot -- who was the
21 shooter that night?

22 A Yeah. We told them that it happened -- it came from
23 next door.

24 Q Okay. Do you remember -- did you speak with
25 Investigator Fortner the next day?

1 A Yes, ma'am.

2 Q All right. And did he present a photo lineup to you?

3 A Yes, ma'am.

4 Q All right. And did you pick somebody out of that
5 lineup?

6 A Yes, ma'am.

7 Q Do you see the person who fired that shot in the
8 courtroom today?

9 A Yes, ma'am.

10 Q Where is he?

11 A (Witness indicated.)

12 THE COURT: You have to speak.

13 BY MS. MAJOR:

14 Q Be specific.

15 A Over to my right.

16 Q Okay. Is he sitting at the Defense table?

17 A Yes, ma'am.

18 Q All right. And what is he wearing?

19 A Dreads.

20 MS. MAJOR: Okay. Please answer any questions the
21 Defense has.

22 CROSS-EXAMINATION

23 BY MR. QUINN:

24 Q Mr. Hunter, I -- I believe you've already answered a
25 lot of these questions. But let me go through it with

1 you, if I might. On February 3rd of 2014, you say there
2 wasn't really a party?

3 A No, sir.

4 Q Okay. So there weren't a lot of people coming by the
5 house?

6 A No, sir. I mean, people stopped by the house, like,
7 to bring -- like, to stop by and bring gifts. But nobody
8 just, like, stayed over to party.

9 Q Okay. Because, I believe, you testified it was a
10 couple of us just hanging out?

11 A Yes, sir.

12 Q So there was never 15 or 20 people at the house that
13 day?

14 A Like, people came by earlier, like, my mother and
15 them come by earlier to come see Tavagio on his birthday.
16 But they didn't stay long.

17 Q So there was never a group of 15 or 20 people there
18 at one time that day?

19 A Yes, sir.

20 Q There was?

21 A Yes, sir.

22 Q Okay. But you -- and you had been at the house a
23 couple of hours; is that fair?

24 A Yes, sir.

25 Q Now, I know you used everybody's first name. I hope

1 you'll forgive me. I'm going to try to use their last
2 names. Is Tavagio Mr. Garnett?

3 A Yes, sir.

4 Q Okay. And is that whose birthday it was?

5 A Yes, sir.

6 Q Okay. And how long had he been at the house?

7 A He had been there for a little -- for a while.

8 Q For a while?

9 A Yes, sir.

10 Q Okay. Do you remember about what time he got there?

11 A No, sir.

12 Q Okay. And Mr. Brooks came over, I think, you said at
13 8:00 or 9:00 that night?

14 A Yes, sir.

15 Q He and --

16 A If I'm not mistaken.

17 Q I'm sorry.

18 A I said, yes, sir, if I'm not mistaken.

19 Q Okay. You don't think he came earlier that day?

20 A No, sir.

21 Q And what about Mr. Sitton?

22 A He was there with us, too.

23 Q And he been there most of the day?

24 A Yes, sir.

25 Q Okay. And you say everybody was drinking; is that

1 right?

2 A Yes, sir.

3 Q And everybody was smoking marijuana?

4 A Yes, sir.

5 Q And that Mr. Brooks, Mr. Sitton, and Mr. Garnett
6 leave at one point; is that right?

7 A Yes, sir.

8 Q And I think you said they were gone about an hour?

9 A Yes, sir.

10 Q Do you know where they went?

11 A They went and dropped somebody off at home.

12 Q Okay. And do you know who they dropped off?

13 A I don't know his full name.

14 Q It was a fellow?

15 A Yes, sir.

16 Q Okay. And when they came back, there was some
17 difficulty between Mr. Sitton and Mr. Brooks; is that
18 right?

19 A No. Mr. Garnett and Mr. Brooks.

20 Q I'm sorry. I'm sorry. Mr. Garnett and Mr. Brooks.
21 And they were discussing -- I believe your words were they
22 were discussing it when they came back real loud?

23 A Yes, sir.

24 Q You don't know what the -- the problem was?

25 A No, sir.

1 Q Were the words nasty to each other?

2 A No, sir.

3 Q Fighting words?

4 A No. They was just, like, really loud. I can't
5 really recall exactly what they were saying. But it
6 wasn't too much like a fight.

7 Q Yet, Mr. Sitton then comes in the house and says,
8 They're making a lot of noise, we need to get them in the
9 house; is that right?

10 A Get them in the house, yeah.

11 Q So did you go outside and talk to Mr. Garnett and
12 Mr. Brooks?

13 A Yes, sir. I came -- I went outside and told them to
14 come in.

15 Q And did they?

16 A Mr. Garnett came in. But Mr. Brooks was still
17 talking.

18 Q Okay. So Mr. Garnett goes in your trailer?

19 A Yes, sir.

20 Q Okay. He doesn't go up on Mr. Cureton's property?

21 A No, sir.

22 Q Okay. And does he stay in the trailer during all
23 this time?

24 A He comes back out.

25 Q So how long was he in the trailer?

1 A Not too long.

2 Q Did he ever go up to Mr. Cureton's property?

3 A No, sir.

4 Q He never went up to his door, not fighting with Jut,
5 or John, or anything like that?

6 A No, sir.

7 Q Okay. And does Mr. Brooks ever go into your trailer?

8 A No, sir.

9 Q He stays out between the trailers; isn't that right?

10 A Yes, sir.

11 Q And you go out. Did Mr. Mathis, also, go out with
12 you?

13 A Yes, sir.

14 Q And did he have any luck calming Mr. Brooks down?

15 A No, sir.

16 Q Did you have any luck calming Mr. Brooks down?

17 A No, sir.

18 Q And so Mr. Mathis gives up and he goes back in your
19 trailer; right?

20 A Yes, sir.

21 Q Okay. And your belief is that Mr. Mathis was in the
22 trailer during the shooting?

23 A Yes, sir.

24 Q Okay. He was not outside?

25 A No, sir.

1 Q Where was Mr. Garnett when the shooting took place?

2 A He was outside.

3 Q But where outside?

4 A In between the trailers.

5 Q Well, was he close to Mr. Brooks, or close to your
6 porch, or the other porch, or where was he? Can you tell
7 me? Do you know?

8 A They was in -- they was in the middle of the
9 trailers. Like I say, I was on the back porch with
10 Mr. Cureton.

11 Q And so was Jut on the back porch of his house, too?

12 A Yes, sir.

13 Q And he doesn't -- "he" Jut doesn't go back into his
14 trailer and then come back out; right?

15 A No, sir.

16 Q Okay. And was John, also, on the back porch of that
17 trailer?

18 A No, sir. He was in the house.

19 Q And so does he ever come outside, or do the shots
20 come from out -- from the house?

21 A He comes outside.

22 Q And so, at some point, there's three of you on the
23 porch?

24 A Yes, sir.

25 Q Okay. You, John, and Jut, his brother; is that

1 right?

2 A Yes, sir.

3 Q Does anybody else come up on the porch?

4 A No, sir.

5 Q Up on the steps?

6 A No, sir.

7 Q All right. And where's Mr. Sitton during all this,
8 just out in between the trailers?

9 A Yeah, in between the trailers.

10 Q Okay. And is he holding Mr. Brooks, or fighting with
11 Mr. Brooks?

12 A Nah. He's, basically, telling him to go in the
13 house, like, trying to get him to go in the house.

14 Q But whatever the fight was between Mr. Garnett and
15 Mr. Brooks, now, Mr. Brooks is arguing with Mr. Cureton;
16 right?

17 A Yes, sir.

18 Q And Mr. Brooks just keeps saying -- and I'm not
19 trying to say these were his exact words. But he's saying
20 to Jut, look, just leave us alone, it's none of your
21 business, everything is fine, go in your house, things
22 like that?

23 A Yes, sir.

24 Q And Jut's saying what?

25 A At the time, after the first incident where -- after

1 we told him that he was drunk just, really, don't pay him
2 no attention, Jut really just brushed it off and didn't
3 pay him no attention.

4 Q Okay. And -- and I understand you say that
5 Mr. Cureton just brushed it off. And, in fact, I think
6 you say he was laughing about it because Mr. Brooks had
7 had so much to drink; right?

8 A Yes, sir.

9 Q Well, then what makes it suddenly that they're going
10 to fight?

11 A I guess it's how his brother felt, that they was
12 going to fight because of the commotion that Mr. Brooks
13 was making.

14 Q So your testimony is that Mr. -- that Jut Cureton and
15 Mr. Brooks were never going to fight?

16 A No, sir.

17 Q Okay. And John Cureton, according to your testimony,
18 comes out on the porch and lets a couple of shots go?

19 A Yes, sir.

20 Q Three shots, I believe, is your testimony?

21 A Yes, sir.

22 Q And you weren't hit by any of these shots, were you?

23 A No, sir.

24 Q Yet, you were the closest one to Jut, if he was
25 protecting his brother; isn't that right?

1 A Yes, sir.

2 Q And do you know, were any of these shots fired in
3 the air?

4 A No, sir. Like I said, it happened real fast.

5 Q And you go into Jut's house, in fact, to avoid the --
6 any further difficulties; right?

7 A Yes, sir.

8 Q And then, eventually, you come out and go back into
9 your own house after Carlos -- Mr. Mathis comes over; is
10 that right?

11 A Yes, sir.

12 Q And you say you spoke with the police about this the
13 next day; is that correct?

14 A Yes, sir.

15 Q And when you spoke with the police, was that at your
16 residence or at the sheriff's office?

17 A At the -- at the rent office.

18 Q At the rent office?

19 A Yes, sir.

20 Q And is the rent office at lot 88?

21 A Lot 88?

22 Q Yes, sir.

23 A No, sir. I think it's lot 1.

24 Q Okay. Do you know which one is lot 88?

25 A No, sir.

1 Q And when Mr. Cureton said to Mr. Brooks, or whoever
2 else was out there, is everything okay, did you think he
3 was being smart?

4 A No, sir.

5 Q And do you remember telling the police that
6 Mr. Brooks and Jut Cureton were about to fight?

7 A No, sir.

8 Q Do you remember telling the police that you managed
9 to get them calmed down, but then John Cureton then came
10 outside and fired a single shot straight up in the air?

11 A No, sir.

12 Q Now, are you -- did you say that and you don't
13 remember, or do you not remember the conversation? I'm
14 sorry.

15 A I don't remember.

16 Q Okay. And did you tell the police that shortly after
17 that, there was a second argument, they started arguing
18 again, Mr. Brooks and Mr. Cureton?

19 A Yes, sir.

20 Q Okay. So there was a break in this argument; isn't
21 that right, when the brother comes out -- John comes out
22 and shoots a shot in the air?

23 A When he comes out, I don't -- like I said, I don't
24 remember him shooting a shot -- shooting a shot in the
25 air. I remember him presenting a weapon the first time he

1 come out. But, like I said, Jut told him he had it under
2 control, that -- don't worry, like, basically, told him to
3 go back in the house.

4 Q And do you remember telling the police that John
5 Cureton fired two shots?

6 A Maybe. I just know it was more than one shot.

7 Q And I believe you told the police this was late in
8 the evening. It was about 10:00 at night, 10:30 at night,
9 something like that?

10 A Yeah, probably so.

11 Q And is it fair to say that it's dark in between those
12 trailers?

13 A Not too dark.

14 Q Okay. Are there any street lights right there at the
15 end of the trailers?

16 A There's street lights at the top. It's, like,
17 there's light right there.

18 Q All right. If you would step down for me, please, if
19 you would come down here.

20 A (Witness complied.)

21 THE COURT: Keep your voice level up.

22 BY MR. QUINN:

23 Q And the trailers we're talking about, are they number
24 ██████ and number ██████ on this map?

25 A Yes, sir.

1 Q Talk louder, please. The court reporter has got to
2 hear you.

3 A Yes, sir.

4 Q Okay. And can you tell me where the closest street
5 light is to that area?

6 A At the top of the street.

7 Q Okay. Is it fair to say it's over here?

8 A [Inaudible.]

9 Q Again, you've got to talk up a little.

10 A Yes, sir.

11 Q Okay. And so there's one street light here. And
12 that's the only street light; isn't that correct?

13 A Yes, sir.

14 Q Okay. Thank you.

15 You can have a seat back.

16 A (Witness complied.)

17 Q And did you ever tell the officer about going into
18 Jut's house?

19 A Yes, sir.

20 Q And, as far as you know, did the officer write down
21 everything you told him?

22 A Yes, sir. I'm pretty sure he did.

23 MR. QUINN: Thank you.

24 I don't have any other questions.

25 THE COURT: Any redirect?

1 MS. MAJOR: None, Your Honor.

2 THE COURT: All right. Thank you.

3 You can step down.

4 All right. Ladies and gentlemen, why don't we take a
5 short afternoon break. Don't discuss the case. And we'll
6 get back with you in a few minutes.

7 Everyone remain seated until the jury is out of the
8 courtroom.

9 Thank you.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 4:06 p.m.)

12 THE COURT: All right. We'll take about five or 10
13 minutes.

14 (WHEREUPON, a break was taken.)

15 THE COURT: Let's get the jury.

16 (WHEREUPON, the jury came into open court at
17 approximately 4:31 p.m.)

18 THE COURT: Ladies and gentlemen, I wish I had a
19 crystal ball. While you were out, we discussed timing,
20 and logistics, and all that kind of thing. And I think
21 that we're going to break for the day. It's a little bit
22 early. I'd like to keep going. But it's going to work
23 out that we need to stop for the day.

24 So I'll ask y'all to be back in the morning at 9:30.

25 And what was that third thing I told y'all to do?

1 Not talk about it. Okay. It's going to be very tempting.
2 And the more -- the deeper you get into the trial, the
3 more tempting it is.

4 If you're like I am, I can't decide what to eat for
5 dinner without discussing it with my management committee.
6 And I'm sure you all like to discuss things with the --
7 with your family and friends that you'll see tonight. But
8 you can't do it.

9 And if they want to talk about it, you just tell them
10 why. You're protecting not only the rights of the people
11 involved in this case, but the rights of everyone who has
12 a trial up here in this court.

13 So with that, I'll ask y'all to depart. And I'll see
14 y'all tomorrow.

15 Ms. Slack, if you would, hang on. I'll talk to you
16 in a second.

17 (WHEREUPON, the jury exited the courtroom with the
18 exception of Juror #102, Anna Slack.)

19 THE COURT: Hollie, we're going to put this on the
20 record.

21 THE COURT REPORTER: Yes, sir.

22 THE COURT: Hi, Ms. Slack. How are you? I
23 understand you're having a problem of some kind.

24 JUROR #102, ANNA SLACK: It's just the case itself.
25 It's bothersome to me --

1 THE COURT REPORTER: Judge, I can't hear --

2 JUROR #102, ANNA SLACK: I'm sorry. This case is
3 bothersome to me. And I'm afraid it would, you know,
4 affect my impartiality. But I was just wanting to be open
5 and honest. I just wanted to put it out there.

6 THE COURT: Okay. Well, how would it impact your
7 impartiality?

8 JUROR #102, ANNA SLACK: I just feel like -- I don't
9 even watch the news at night because this stuff bothers
10 me. And to be a part of a case like this...

11 THE COURT: Well, it's hard to explain. But you've
12 been selected to serve as a juror. And so it's -- I can't
13 just willy-nilly discard a juror --

14 JUROR #102, ANNA SLACK: I mean, I will do my best to
15 be impartial. But I just wanted to be completely honest
16 that I'm struggling with the case.

17 THE COURT: Okay. Well, I understand that. It's a
18 difficult case.

19 So you have a pleasant evening.

20 Remember, don't talk about it. You can't --

21 JUROR #102, ANNA SLACK: Okay.

22 THE COURT: I mean, I know you're going to want to
23 talk to your husband, but you just can't do it. Okay.

24 JUROR #102, ANNA SLACK: Okay.

25 THE COURT: All right. We'll see you in the morning.

1 JUROR #102, ANNA SLACK: Okay. Thank you.

2 (WHEREUPON, Juror #102, Anna Slack, exited the
3 courtroom.)

4 THE COURT: All right. We're going to break until
5 tomorrow morning.

6 I do not know why this case is going to trial. It
7 seems to me there'd be an accommodation that could be
8 reached that would displease everybody and please
9 everybody. And that's usually how cases are best
10 resolved.

11 So, Mr. Quinn, I'm going to ask you to speak with
12 your client. And we will reconvene in the morning at
13 9:30.

14 Do you want to check with your --

15 MS. MAJOR: Yes.

16 THE COURT: All right. I'm going to be here for a
17 while.

18 (WHEREUPON, a break was taken.)

19 PLEA

20 THE CLERK: Your Honor, this is 2014-GS-23-2374, John
21 Mark Cureton, III, indicted for murder and possession of a
22 weapon during the commission of a violent crime, pleading
23 to manslaughter voluntary. And it is a true bill.

24 2014-GS-23-2373, indicted for attempted murder,
25 pleading to assault and battery first. And it is a true

1 bill.

2 Will you raise your right hand?

3 WHEREUPON,

4 JOHN MARK CURETON, III,

5 after first having been duly sworn, testified as follows:

6 THE CLERK: Thank you.

7 THE COURT: All right. Mr. Cureton, in the last 24
8 hours, have you had any drugs, alcohol, or medication?

9 DEFENDANT CURETON: No, sir.

10 THE COURT: Okay. And you understand we -- you're up
11 here on these two indictments. Now, they've -- they've
12 reduced them. Okay.

13 The first one alleges --

14 Well, it's voluntary manslaughter. That's the same
15 indictment.

16 MS. MAJOR: He's pleading as a lesser.

17 THE COURT: You're tendering a plea to voluntary
18 manslaughter -- okay -- as opposed -- they're reducing
19 murder to voluntary manslaughter. And that is the
20 unlawful killing of another person in the heat of passion.

21 And that --

22 DEFENDANT CURETON: Yes, sir.

23 THE COURT: -- carries from two years up to 30 years
24 in prison.

25 Do you understand?

1 DEFENDANT CURETON: (Defendant Cureton nodded.)

2 THE COURT: You've got to speak.

3 DEFENDANT CURETON: Yes, sir.

4 THE COURT: And you -- how do you want to plead to
5 it?

6 DEFENDANT CURETON: Guilty.

7 THE COURT: Okay. And is that your free and
8 voluntary choice?

9 DEFENDANT CURETON: Yes, sir.

10 THE COURT: All right. The other one alleges --
11 they've reduced it from attempted murder to assault and
12 battery in the first degree. And this one carries --
13 well, the other thing I need to tell you about that
14 manslaughter is it's a violent crime, which impacts parole
15 eligibility. And it's most serious.

16 And so if you were to get two or more convictions for
17 most serious offenses, then you'd be eligible for life in
18 prison without parole.

19 Do you understand that?

20 DEFENDANT CURETON: Yes, sir. Yes, Your Honor.

21 THE COURT: Okay. And this assault and battery first
22 carries up to 10 years.

23 Do you understand that?

24 DEFENDANT CURETON: Yes, sir.

25 THE COURT: All right. And how do you want to plead

1 to that one?

2 DEFENDANT CURETON: (There was no response.)

3 THE COURT: They've reduced the -- where the
4 gentleman was shot in the arm. They've reduced it from
5 attempted murder down to assault and battery first.

6 How do you want to plead to it?

7 DEFENDANT CURETON: Guilty.

8 THE COURT: Okay. And is that your free and
9 voluntary choice?

10 DEFENDANT CURETON: Yes, sir.

11 THE COURT: All right. Now, you understand all your
12 rights at a trial by jury; right?

13 DEFENDANT CURETON: Yes, sir.

14 THE COURT: Since we're right in the middle of it.
15 And you're ready to give all those rights up to enter this
16 plea; is that right?

17 DEFENDANT CURETON: That's right.

18 THE COURT: Okay. And are you satisfied with your
19 lawyer?

20 DEFENDANT CURETON: Yes, sir.

21 THE COURT: Okay. And you know what the evidence is
22 the State has against you; right?

23 DEFENDANT CURETON: Yes, sir, I do.

24 THE COURT: Okay. And if we were to keep going in
25 the trial, they'd put up more witnesses. And you could

1 continue to cross-examine them.

2 And then, of course, you'd have a right to present
3 any defense on your own behalf. And you could testify or
4 not testify. And if you decided not to testify, that
5 couldn't be held against you.

6 Do you understand that?

7 DEFENDANT CURETON: Yes, sir.

8 THE COURT: Okay. And you know -- you understand
9 you're giving up all those rights to enter this plea to
10 these lesser included offenses; right?

11 DEFENDANT CURETON: Yes, sir.

12 THE COURT: All right. Are there any more facts I
13 need to hear?

14 MS. MAJOR: Your Honor, there's not.

15 And I do just want to say that this seemed to be a
16 total anomaly of this victim. He was -- these were his
17 friends. But he was not of their same shenanigans, I
18 guess.

19 And this was -- I know the victim's family does want
20 to speak at some time. But this was very -- a very --
21 very unfortunate, especially for the person who lost their
22 life because of this.

23 THE COURT: Okay. Well, I'll be happy to hear from
24 the victims, if they want -- anything they want to tell
25 me.

1 MS. MAJOR: I believe his mother would like to speak.
2 His father is over there and has been present the whole
3 time, but does not wish to speak.

4 THE COURT: Yes, ma'am. And I heard your testimony.
5 Yes, ma'am.

6 MS. JAVONDA THOMPSON: He took a good kid. He took a
7 son, a grandson, a nephew. My son was on the right path
8 getting ready to go to college. And, I mean, I just don't
9 understand it, I really don't. He took -- he took
10 something away from us. I can't sleep. I can't eat. I'm
11 an -- emotionally a wreck, physical and mental.

12 THE COURT: Okay.

13 MS. JAVONDA THOMPSON: And he didn't have to do that.
14 What -- they told him, don't do it. And he did it any
15 way. Just throw the book at him.

16 THE COURT: All right. Thank you, ma'am.

17 And I'm terribly sorry for your loss.

18 All right. Mr. Quinn, anything?

19 MR. QUINN: I'd like to say, Your Honor, you -- you
20 heard a couple of witnesses. Many of the witness from
21 there forward would have been very similar in their
22 description of what happened out there.

23 There was lots of mistakes made by lots of people,
24 including Mr. Cureton, who understands that he's going to
25 be going to jail.

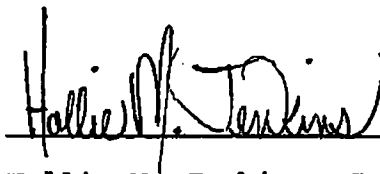
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit 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 and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 12th day of December, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 12, 2018



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

WITNESSES

Michael Fortner *[Signature]*

Greenville County Sheriffs Office

2/6/2014

ARREST WARRANT NUMBER
2014A2330200960

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-23-
JJA

002373

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2014 *2014*

THE STATE

vs.

JOHN MARK CURETON III

Indictment for

3410
3412

ATTEMPTED MURDER

VIOLATION § 16-03-0029

**ENTERED
ACCT.** *[Signature]*

FILED

MAR 21 2014

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on

AUG 23 2016

the Grand Jurors of Greenville

County present upon their oath:

That JOHN MARK CURETON III did in Greenville County, on or about the 3rd day of February 2014,
unlawfully, with malice aforethought, and with the intent to kill, attempt to kill DOMINIC SITTON.

This is in violation of § 16-03-0029 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.


SOLICITOR

WITNESSES

Michael Fortner

Greenville County Sheriffs Office

2/6/2014

ARREST WARRANT NUMBER

2014A2330200959, 2014a2330200961

Count I & II

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pate

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-

JJA

002374

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August

TERM 2014

THE STATE

vs.

JOHN MARK CURETON III

Indictment for

0116/0549

217

MURDER

AND POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

VIOLATION § 16-03-0010 and § 16-23-0490.

ENTERED
ACCT.

RP

FILED

MAR 21 2014

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER AND POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **AUG 23 2016** the Grand Jurors of Greenville
County present upon their oath:

COUNT I - MURDER

That JOHN MARK CURETON III did in Greenville County, on or about the 3rd day of February, 2014,
unlawfully and with malice aforethought kill JAVARIO BROOKS by means of shooting him and that JAVARIO
BROOKS died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws
(1976) as amended.

COUNT II - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That JOHN MARK CURETON III did in Greenville County on or about the 3rd day of February, 2014, possess
or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Murder.
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.



SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
 John Mark Cureton III)
 AKA:)
 Race: BLACK Sex: M Age: 32)
 DOB: [REDACTED]-1984 SS#: [REDACTED])
 Address: [REDACTED])
 City, State, Zip: Greer, SC 29651)
 DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2302373
 A/W#: 2014A2330200960
 Date of Offense: 2/3/2014
 S.C. Code §: 16-03-0029
 CDR Code #: 3410

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Assault & Battery 1st

CONVICTED OF or PLEADS

in violation of § 16-03-0029 (60) of the S.C. Code of Laws, bearing CDR Code # 3412
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 74805 [Signature] [Signature] [Signature]
 Major, Elizabeth SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 10 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 _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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 applied
 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 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 375

TOTAL \$128.75

Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Clerk of Court/Deputy Clerk [Signature]
 Court Reporter: [Signature]
 SCCA217 (07/2016)

Presiding Judge [Signature]
 Judge Code: 2130
 Sentence Date: 12/12/16

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
 John Mark Cureton III)
 AKA:)
 Race: BLACK Sex: M Age: 32)
 DOB: [REDACTED]-1984 SS#: [REDACTED])
 Address: [REDACTED])
 City, State, Zip: Greer, SC 29651)
 DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS2302374
 A/W#: 2014A2330200959
 Date of Offense: 2/3/2014
 S.C. Code § : 16-03-0010, 0020
 CDR Code #: 0116

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Manslaughter, Voluntary (gs)

CONVICTED OF or PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Elizabeth Major 74805 SC Bar# [REDACTED] Major, Elizabeth
 John Cureton Defendant
 Thomas J. Parris 4616 SC Bar# Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 15 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 _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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 applied
 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 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
 Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Paul B. Williams
 Court Reporter: [REDACTED]
 SCCA/217 (07/2016)

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge [Signature]
 Judge Code: 2130
 Sentence Date: 12/12/16

FORM 5

STATE OF SOUTH CAROLINA)
County of Greenville, SC)
John Mark Cureton III #312745)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

v.)
The)
State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2017-CP-23- 07117

FILED-CLERK
PAUL R. [unclear]
GOVERNOR
2017 NOV - 8 2 21 3

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber correctional institution
P.O. Box 205, Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence General Sessions
of Greenville, SC, 305 E. North Street, Greenville, S.C. 29601
3. Name(s) of co-defendant(s) (if any) NONE 864 467-8551
Fax 864 467-8540
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014GS2302374 Manslaughter, Voluntary (gs)
 - (b) 2014GS2302373 Assault & Battery 1st

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 12-12-16 15 years violent / 2014 GS 2302374
- (b) 12-12-16 10 years nonviolent / 2014 GS 2302373
- (c) concurrent sentences, convicted on Dec. 12th 2016
6. Check whether a finding of guilty was made:
- ^{2nd} (a) after a plea of guilty so now plea of guilty ^{after pleading not guilty at trial.}
- ^{1st} (b) after a plea of not guilty of contest they charged it to plea of guilty ^{before admit evidence.}
- (c) after a plea of nolo contendere WENT TO TRIAL BEFORE PLEADING ^{GUILTY!!}
7. Did you appeal from the judgment of conviction or the imposition of sentence? yes (unintelligent and through involuntary plea) ^{Talked into plea after going to trial 1}
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. ~~_____~~
- ii. SC Court of appeals P.O. Box 11629, Columbia, S.C. 29211
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied by SC court of appeals,
- ii. SC Court of Appeals denied direct appeal.
- iii. Attorney Thomas Quinn never showed reason why.
- (c) the date of each such result:
- i. March 2nd 2017 SC Appeal at e
- ii. Court or SC court of Appeals
- iii. Filed March 2, 2017
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. None known if any exists
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: I.A.C.
- (a) U.S. v. Chronic 104 S.Ct (1986) Deficiency of Plea Counsel, SD Extreme Prejudice showing is not required. (Ineffective Assistance of Counsel)
 - (b) Denied Immunity (under SC state statutes Protection of Persons and Property act and Castle Doctrine 16-11-410)
 - (c) BRADY Rule 5 Violations Render Plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) To be amended pur Rule 71.1(d)
 - (b) Defendant only acted to protect his family and castle. Defendant acted within guidelines of 16-11.
 - (c) P.C.R. Counsel to properly I.D. and amend cogent Factual Basis pur Rule 11
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? None
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? None
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? None
 - (d) any other petitions, motions or applications in this or any other Court? None
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO, Attorney Thomas QUINN was supposed to but never did bring up Castle Doctrine under Protection of Persons and Property Act

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16-11-410 of SC Code of Laws during trial on 12-12-1

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Attorney Thomas Quinn merely acted as Stand By Counsel
- (b) Attorney Thomas Quinn merely acted as Stand By Counsel
- (c) Attorney Thomas Quinn merely acted as Stand By Counsel

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No Arraignment Counsel / Stand By Counsel
- (b) your trial, if any? Stand By Plea Counsel
- (c) your sentencing? Stand By Plea Counsel
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Stand By Plea Counsel
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No Assistance at any stage / Stand By Counsel

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Thomas J. Quinn
 - ii. 109 Laurens Rd.
Building 4, Suite D
Greenville, SC 29607
 - iii. _____
- ← ^{paid} Attorney ^{But acted as Stand By Counsel}
was paid \$15,000.00 to represent applicant ...

(b) the proceedings at which each such attorney represented you:

- i. Thomas Quinn never represented applicant at any stage except bond hearing and open court plea as stand by counsel U.S. v. Cronie - Strickland v. Washington
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

Sentence/Conviction Reversed, vacated or other-wise corrected.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
County of Greenville)

VERIFICATION

I, John Mark Cureton III SDC# 312745, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

John Cureton III

SWORN to and subscribed before me this 25th day of October, 2017.

Luduan Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, John Mark Cureton III SDC # 312745, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- ✓(1) I am the applicant in this action and I believe I am entitled to redress.
- ✓(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

John Mark Cureton III SDC # 312745
Applicant

SWORN or affirmed to and subscribed before me this
25th day of October, 2017.

Richard Bryant
Notary Public

My Commission Expires: May 26, 2020

(Additional Pages Answering Question # 11)
Statement of Facts

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Ineffective Assistance of Counsel

That trial counsel was ineffective for failure to Investigate, or invoke or present " Protection of Persons and Property Act, Castle Doctrine 16-11-410 of the SC Code of Laws. when he acted merely as Stand By Counsel and performed no effort to provide competent Advice, as to weight of State Evidence. Also attorney Thomas Quinn admitted he was a lousy lawyer in front of applicant's mother Cheryl Cureton and father John Cureton II inside a court recess room on 12-12-16. You can contact applicant's mother and father by:

Cheryl Cureton
■ Flint Lane
Greer, SC 29651

John Cureton II
■ Maggie Street
Greenville, SC 29607

or
Cheryl Cureton
■ E. Church St.
Greer, SC 29651

or
John Cureton II
■ Cureton Road
Greenville, SC 29607

phone # ■■■-3196

phone # ■■■-2402

Also while applicant was incarcerated in Greenville County Detention Center; Attorney Thomas Quinn waived applicant's Preliminary Hearing against applicant's consent while applicant was inside a Greenville County Courthouse holding cell waiting to be brought to the courtroom for his Preliminary Hearing. Attorney Thomas Quinn went against applicant's demand and right to a P.

(pg 2)

Continued → And waived applicant's Preliminary Hearing against his consent.
 Also Attorney Thomas Quinn rejected applicant's requests of looking inside the law material applicant handed attorney Thomas Quinn. Attorney Quinn shoved the law material applicant John Mark Cureton III tried to give him away and never inquired or looked at the law material.

Involuntary Plea
 pur to Hill v. Lockhart (1984)

And Gibson v. State (1999)

The guilty Plea was involuntary and product of I.A.C. / Prosecutorial Misconduct in failure to disclose any evidence or favorable evidence Pur to BRADY.

Also Attorney Thomas Quinn told applicant and his mother Cheryl Cureton and father John Cureton II that he would admit in front of any court room that he was a lousy lawyer. He admitted this also to applicant's sister-in-law Brandy Wilson who was also in the room.

(b) Applicant denied Immunity under South Carolina's Code of Laws "Protection of Persons and Property Act, Castle Doctrine 16-11-410 of SC Code of Laws. Applicant acted within the guide lines of SC Code of Laws " Protection of Persons and Property Lawful Use of Deadly Force " 16-11-410, 16-11-420, 16-11-430, 16-11-440, 16-11-450 Spat: 1-1

3) Continued →

Saving Clause and Severability Clause of
Article 6 Protection of Persons and Property Act
Section 16-11-410

History: 2006 Act No. 379, Section 1, eff June 9, 2006

* S.C. Code of Laws Article 6, Title 16, Chapter 11
~~16-11-430~~

16-11-430 (1) Dwelling - Applicant was at his dwelling when incident occurred.

16-11-430 (3) Residence - Applicant was at his residence when shooting occurred.

S.C. Code of Laws

16-11-440 A, (1), (2) - Applicant acted in defense of his family and his brother Justin Cureton. The

2 victims had already made a successful forced entry inside applicant's home and forced applicant to let off a warning shot to make intruders leave.

Intruders/attackers came back a 2nd time to attempt 2nd forced entry.

Applicant was forced to meet force with force. South Carolina has **NO**

DUTY TO RETREAT 16-11-420 (E) of the SC Code of Laws. Applicant asserted

his constitutional right to protect his family at his residence, or his CASTLE under statutes of Castle Doctrine.

* **FACTS** *
Applicant acted in defense of himself and family within state guidelines of the Protection of Persons and Property Act, Castle Doctrine and Lawful Use of Deadly Force 16-11-410 ~~Section 16-11-410~~
~~Section 16-11-410~~ Sections 1-6 of Article 6 Protection of Persons and Property, Castle doctrine, and Lawful Use of Deadly Force...

* Also while at trial before applicant was tricked into involuntary plea, Investigator Michael Fortner of Greenville S.C. testified under oath that applicant John Mark Cureton III was on his lawful property when he shot the 2 victims who had trespassed and previously made a forced entry, minutes before...

* ALSO The State of South Carolina
V.S
Dustin Backman

↳ Dustin Backman was acquitted of murder in North Charleston from the "Protection of Persons and Property Act."

This case is in support of the "Protection of Persons and Property Act" 16-11-410 of the S.C. Code of Laws...

34/ continued →

Statement of Facts

Witness Statements show a severe conflict of interests with each other. But one witness statement by Mr. Hunter provides supporting evidence of applicant letting off a single warning shot. All other statement conflict. Applicant's brother Justin Cureton was going to testify on applicant's behalf and left a statement with investigators that applicant shot victim to protect him against attackers, intruders, which there were multiple attackers. You will find this in motion of discovery. Also applicant's sister-in-law was going to testify on applicant's behalf. ETC. Number of Factors.

(C) I. A. C. /BRADY/ RULE 5

John Mark Cureton III asserts his 6th and 14th Amerd. right to Effective Assistance of Counsel violated when counsel Thomas Quinn merely acted as stand by counsel to allow state ~~not~~ to not disclose any Rule 5 Brady material (Banks v. Dretke 504 U.S. 2005). And thus the Plea was unintelligent as he could not weigh state evidence vs. his right to trial. The entire process was a Sham Pretense to Coerce applicant to waive his constitutional rights and incriminate defendant. To be amended by Counsel Rule 71.1(d) SC RCT.

* Applicant was denied a fair-trial because applicant doesn't fit the charge of murder. Murder is premeditated and has -

Applicant had no motive to commit murder. Applicant was at home with his family. Also applicant was not the instigator. Applicants only motive was protecting himself and his family. Applicant and his brother had two young children inside their residence when forced entry occurred and incident, between the ages of 2 yrs. old and 6 yrs. old inside the home.

But applicant's charges were trumped and thus this denied him opportunity of a fair trial. And his counsel / attorney knew this and did not act. But acted as a stand by counsel.

Applicant never premeditated any thought of murder. Applicant never knew assailants were going to come after his brother Justin Cureton. Therefore he should of never been charged with murder. This is and was a direct result of I.A.C. by his counsel Thomas Quinn who waived applicants Preliminary Hearing minutes before he was about to be pulled from a court house holding cell to attend his Preliminary Hearing. Attorney Thomas Quinn ~~did~~ waived applicant's Preliminary Hearing minutes before he was to attend the Preliminary Hearing against applicants will and consent. This is a result of I.A.C. and Prosecutorial misconduct by Attorney Thomas Quinn.

Greenville County
 Clerk of Court
 305 N. Church Street
 Greenville, SC 29601

2014 GS 230 2374
 # 2014 GS 230 2373

State v. John Mark Cureton III
 State Grand Jury

(In case numbers above) Please fill PCR and please provide me with the Grand Jury Empanelment Documents, Petition, Supporting material (E.g. Evidence, Affidavits, video, etc.) Empanelment Judge Order pur. to Evans v. State SE 2d 2005. And Freedom of Information Act, and 30-4-10 S.C. Code of Law (1976). To include True Bill Indictment, state attorney, paid attorney and court reporter name.

Thank You

John Cureton III

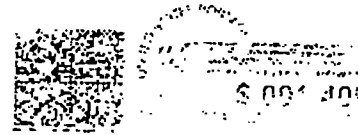
Please send me a copy
~~of the~~ for
~~the~~ additional
 litigation
 purposes ↓

↓
 for on-hand
 reference...

John Mark Cureton III
 SCDC # 312745
 Lieber Correctional Inst.
 P.O. Box 205
 Ridgeville, SC 29472

John Cureton SCDC # 312745
Lieber Correctional Inst.
P.O. Box 205
Ridgeville, SC 29472

TIME
SENSITIVE
MATERIAL



RECEIVED

NOV 02 2017

MAIL ROOM
LIEBER C.I.

2017-CP-23- 07117

" LEGAL
MAIL "

Paul B. Wickensimer
Greenville County Clerk of Court
305 East North Street
Greenville, South Carolina,

29601

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
)

John M. Cureton, 312745

)
)
) 2017-CP-23-7117
)

Applicant,

v.

)
)
) **RETURN**
)

State of South Carolina,

Respondent.
)
)
)
)
)
)
)

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on November 8, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In August of 2016, the Greenville County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2016-GS-23-2374) and attempted murder (2016-GS-23-2373). Thomas J. Quinn, Esquire, represented Applicant. Elizabeth C. Major, Esquire prosecuted the case. On December 12, 2016, Applicant proceeded to trial before the Honorable Edward W. Miller and a jury. After the trial started Applicant decided to plead guilty to voluntary manslaughter and assault and battery first degree. The possession of a weapon during the commission of a violent crime was dismissed. Judge Miller sentenced Applicant to ten years imprisonment for the assault and battery first degree charge and fifteen years for the voluntary manslaughter charge.

Applicant filed a timely notice of appeal on December 14, 2016. The South Carolina

Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by SCACR Rule 203(d)(1)(B)(iv) by order filed March 2, 2017. State v. Cureton, App. Case No. 2016-002548. The remittitur was returned on February 13, 2017.

Attached to this Return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections and plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel; U.S. v. Cronic 104 SCT (1986) Deficiency of Plea Counsel so extreme prejudice showing is not required.
 - a. To be amended per Rule 71.1(d) (Attached pages 1-7)
2. Denied Immunity under SC State Statutes Protection of Persons and Property Act and Castle Doctrine 16-11-410
 - a. Defendant only acted to protect his family and castle. Defendant acted within guidelines of 16-11-140 (Attached pages 1-7)
3. Brady Rule 5 Violations Render Plea
 - a. PCR Counsel to properly I.D. and amend cogent Factual Basis per Rule 11 (Attached pages 1-7)

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the proceeding "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668,

686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517,

520 (1993). Because Applicant could have raised this issue on appeal, the failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

Throughout his claims, Applicant alleges Brady¹ and Rule 5, SCRCP, violations. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

The requirements of Rule 5, as opposed to the constitutional dictates of Brady, are judicially created discovery mechanisms for use in criminal proceedings. State v. Gulledege, 326 S.C. 220, 487 S.E.2d 590 (1997). Rule 5(a)(1)(C) requires:

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

Id. The definition of "material" for purposes of Rule 5 is the same as the definition used in the Brady context. See Fradella v. Town of Mount Pleasant, 325 S.C. 469, 482 S.E.2d 53 (Ct. App. 1997) (per curiam). In order for Applicant to prevail on a Rule 5 claim, he must show not only

¹ Brady v. Maryland, 373 U.S. 83 (1963).

an actual violation, but also that he suffered prejudice as a result. State v. Wilkins, 310 S.C. 81, 425 S.E.2d 68 (Ct. App. 1992); State v. Trotter, 322 S.C. 537, 473 S.E.2d 452 (1996).

Respondent submits this ground for relief is without merit. However, the allegations concerning Brady and Rule 5 violations probably raise questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. *See* Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

VI.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, having made its Return, Respondent requests an evidentiary hearing be held on any claims so requiring one.

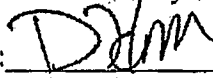
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 9 2018

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) JOHN MARK CURETON, III:
 Direct Examination by Mr. Ariail.....5
 Cross-Examination by Mr. Mitchell.....19

(RW) THOMAS QUINN:
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(AW) JUSTIN MAURICE CURETON:
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(AW) THOMAS QUINN:
 Direct Examination by Mr. Mitchell.....48

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E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1 THE COURT: Yes, sir, whenever you're ready.

2 MR. MITCHELL: May it please the Court, Your Honor.

3 This is 2017-CP-23-7117, John Cureton v. the State of
4 South Carolina. The Applicant is presently confined in
5 the South Carolina Department of Corrections pursuant to
6 orders of commitment of the Greenville County Clerk of
7 Court.
8

9 In August of 2016, the Greenville County Grand Jury
10 indicted the Applicant for murder, and possession of a
11 weapon during the commission of a violent crime, and
12 attempted murder. Mr. Thomas Quinn represented the
13 Applicant. Solicitor Elizabeth Major prosecuted the case.

14 On December 12th, 2016, the Applicant proceeded to
15 trial before the Honorable Edward W. Miller and a jury.
16 After the trial started, the Applicant decided to plead
17 guilty to voluntary manslaughter, and assault and battery
18 first degree. The possession of a weapon during the
19 commission of a violent crime was dismissed.

20 Judge Miller sentenced the Applicant to 10 years
21 imprisonment for the assault and battery first degree
22 charge, and 15 years for the voluntary manslaughter charge.

23 The Applicant filed a timely notice of appeal on
24 December 14th, 2016. The South Carolina Court of Appeals
25 dismissed the appeal for failure to provide a sufficient

1 explanation as required under their rules by an order
2 filed March 2nd, 2017.

3 The Applicant filed a PCR application on November
4 8th, 2017. He's present in the courtroom today and
5 represented by Mr. Ariail.

6 THE COURT: All right.

7 MR. ARIAIL: Thank you, Your Honor.

8 May it please the Court.

9 I represent Mr. Cureton in this matter. And we're
10 ready to proceed.

11 And I call him to the stand as our first witness.

12 THE COURT: All right. Mr. Cureton, would you come
13 forward, please, sir?

14 THE CLERK: Mr. Cureton, please, place your left hand
15 on the Bible and raise your right hand.

16 WHEREUPON,

17 JOHN MARK CURETON, III,
18 after first having been duly sworn, testified as follows:

19 THE CLERK: Thank you.

20 You may be seated.

21 And, please, state your full name for the record.

22 THE WITNESS: John Mark Cureton, III.

23 DIRECT EXAMINATION

24 BY MR. ARIAIL:

25 Q Thank you, Mr. Cureton.

1 And if you could do this for me, just so we're --
2 make sure we get everything on the record and the court
3 reporter can hear you, if you can speak slowly. And if
4 you can make sure she hears everything. And if she's not
5 hearing it, she's going to let you know. Okay. I just
6 want to make sure we have a clean record. Okay.

7 A Yes, sir.

8 Q Okay. And if you can speak into that microphone,
9 too, that'd be helpful.

10 Mr. Cureton, in this case, you were represented by
11 Mr. Quinn; is that correct?

12 A Yes, sir.

13 Q Okay. And he represented you on the murder,
14 possession of a weapon during the commission of a violent
15 crime, and an attempted murder charge; is that correct?

16 A Yes, sir.

17 Q Okay. And when you were arrested on these charges,
18 did you ever post bond or get out of jail?

19 A Yes, sir. I posted -- I posted -- I think it was a
20 \$100,000 bond. And I was on bail for, like, two -- two
21 and a half years.

22 Q Okay. And during that period of time, he represented
23 you; is that correct?

24 A Yes, sir.

25 Q Okay. Now, I want to make sure -- he was appointed

1 as your counsel; is that correct?

2 A Yes, sir.

3 Q Okay. I know you've got papers in your hand. I'm
4 trying to make sure -- have you got them all under control
5 now?

6 A Yes.

7 Q Okay. Good. I just -- I'm going to go through -- I
8 want to talk a little bit about the background of
9 Mr. Quinn representing you. He was appointed as your
10 counsel. Did y'all discuss your case?

11 A Yes, sir.

12 Q How many times do you think you met with him to
13 discuss your case?

14 A I met with him like -- I think I met, like, with him,
15 like, right before -- like, two weeks before -- before I
16 went -- before I went -- I think I met with him, like,
17 twice. I think he came to my house once. And then we
18 met, like, two weeks before the trial.

19 Q Okay. So you're saying you only met with him two
20 times?

21 A Yes, sir.

22 Q Okay. During those two times, did you discuss the
23 case and the evidence the State had against you?

24 A I really -- I really tried to. But we had
25 attorney-client -- I felt like I had, like, an

1 attorney-client conflict of interest, like, we wasn't
2 agreeing on certain stuff. I felt like he really
3 didn't -- I really -- I felt like he really didn't go over
4 my case. I really put more work in my case. I mean,
5 like, I put, like, 99 percent of the work in. And I had
6 to find out a lot of stuff by myself. I feel like he
7 represented my case wrong.

8 Q Okay.

9 A And then -- and then he went with the stand your
10 ground. And he really should have went with the
11 Protection of Persons and Property Act. But then he -- he
12 stated the law -- he misstated the law. There was -- he
13 really prejudiced my case. And we had attorney-client
14 conflict of interest, which violated my Sixth Amendment
15 right -- conflict -- to effective assistance of counsel.

16 Q Okay. So let's -- let me take them one step at a
17 time. Because I'm trying to break them down a little bit.

18 A All right.

19 Q First, the key piece in your case was -- and let me
20 just go back and kind of summarize some of the facts. And
21 you can correct me if I'm wrong.

22 A Yes, sir.

23 Q You were at a residence. I think it was your
24 brother's residence; is that correct?

25 A Yes, sir.

1 Q Okay. You were in there cooking dinner and doing
2 stuff in there. And, apparently, a fight broke out in the
3 backyard with a group of people you didn't know. There
4 was some -- I guess it escalated into where people came
5 into your -- or into your brother's residence; correct?

6 A That's correct.

7 Q They then left -- you got them out of there. There
8 was a -- you had a gun. They left. They then came back
9 in?

10 A Yes, sir.

11 Q At that point in time, to -- you're saying to protect
12 yourself, you shot -- I think they were attacking your
13 brother?

14 A Yes, sir.

15 Q You shot into the crowd and hit one of them. And he
16 died; is that correct?

17 A Yes, sir. Yes, sir. When it all started -- I mean,
18 it was -- a fight broke out outside. That's why I feel
19 like the indictment was wrong. Because there was no
20 malice on my part or premeditation for -- for me to be
21 charged with murder. And for -- for the indictment to be
22 valid, it got to meet every element of the -- you got to
23 meet every element of the crime.

24 Q Okay.

25 A And there was no malice. Because I was minding my

1 own business when they came. I ain't tried to hurt
2 nobody. I ain't -- or nothing. So -- and, man, it's
3 like --

4 Q But you -- let me make sure I understand this.

5 A Yes, sir. Yes, sir.

6 Q You -- you had a murder charge. And you pled to a
7 voluntary manslaughter charge; correct?

8 A I pled to -- yes, sir. I pled to --

9 Q So the malice on that shouldn't have mattered, I
10 mean, because you pled to a lesser charge; correct?

11 A Yes, sir. But it -- I still feel like it -- I
12 wasn't -- I wasn't afforded a fair trial for going in the
13 trial with the murder charge with the elements of that --
14 of that.

15 I feel like my lawyer had -- had -- he -- he should
16 have known off the top that that indictment was an error
17 because of the malice. Because there was no malice or
18 aforethought. Because I didn't provoke -- provoke the
19 situation or not. I was just protecting my family and
20 myself.

21 Q Okay. So let me go -- so, first of all, you think he
22 should have made a motion to, I guess, dismiss the
23 indictment. That's the first thing?

24 A Yes, sir.

25 Q Okay. And that was for that murder charge. The next

1 thing you say is during this, you're indicating that he
2 argued the wrong thing on the stand your ground?

3 A Yes, sir. When he should have been counsel -- he
4 should have been counsel -- the defense of habitation,
5 instead of stand your ground. Because I was in -- I was
6 in my habitation where I lived. It was defense -- it
7 should have been defense of dwelling under the Protection
8 of Persons and Property Act. Because it would give me my
9 Constitutional law on the state statute. 16-11-410,
10 16-11-420, 430, 450, it provides me with statutory
11 immunity.

12 Q Okay. And you're saying that he argued that the
13 wrong way --

14 A He cited no case law.

15 Q Okay. And as a result, that was denied?

16 A Yes. Because he cited no case law. And that was
17 denied. I feel like it prejudiced -- I feel like that
18 prejudiced my defense, too. Because he -- he did not
19 perfect my defense. He should have perfected the defense
20 and discussed it with me before we came in.

21 Because I didn't -- I didn't really get a chance to
22 speak with Mr. Quinn before I went in the courtroom. I
23 spoke with him and he said, We're getting ready to go to
24 trial. We went in and went straight ahead. We didn't
25 even consult before we went in.

1 Q Okay. So at -- at some point at the -- at the trial,
2 you lost the defense -- or the Judge told you I'm not
3 going to give you the defense of stand your own ground,
4 whatever you say it is.

5 A True.

6 Q And you decided at that time to plead guilty; is that
7 correct?

8 A No. I -- I -- after we lost the stand your ground --
9 the motion, after that was denied, we went straight to
10 trial. And I was -- they -- we started -- I went to
11 trial.

12 Q That's right.

13 A And I pled not guilty. And I pled guilty after --
14 after a recess of the trial. But the involuntary, it was
15 against -- it was against -- I mean, my -- my interest to
16 plead guilty. Because I feel like I wasn't afforded the
17 due process right. My due process was violated before
18 trial, like, I could take you back to when I was in
19 Greenville County Detention Center doing time before I
20 made bail. I -- I requested for a preliminary hearing.
21 And I want this on the record. Because this is a
22 Constitutional right that's been violated. I -- I -- I
23 asked Mr. Quinn -- I said, I want a preliminary hearing.
24 So I went from Greenville County Detention Center
25 to -- to the courthouse. And I'm the last person. I'm

1 like, why they ain't taking me out?

2 So the -- the court officer came back and told me
3 that Quinn told him he waived my preliminary hearing
4 against my consent. That right there afforded me due
5 process -- that was a due process violation of the most.
6 Because I could have argued before the Grand Jury about
7 this indictment. Because the indictment was already
8 wrong. And that's a due process violation. Because I --
9 I didn't even have a chance to fight my case.

10 I could have -- I could have brought witnesses in for
11 the Grand Jury. My brother -- my brother was in -- is in
12 the -- he was a witness. And they violated my -- I think
13 my other Sixth Amendment right for obtaining a witness in
14 my favor.

15 The State had instructed the trial -- when Ms. -- Ms.
16 Elizabeth Major was -- was the Solicitor in this case.
17 And she had instructed the witnesses -- I don't know if
18 they did a voir dire. We did no voir dire, I mean, on any
19 of the jurors. But I could have -- I could have -- we
20 would have impeached some -- we could have went in to
21 impeach some of the State's witnesses. But we didn't do
22 no voir dire, which we should have. But my Sixth
23 Amendment right was violated because the State witnesses
24 came first.

25 And my brother was in the Greenville detention --

1 County -- in the Greenville County Detention Center. And
2 he wasn't even brought over to the courthouse. And that
3 violated my Sixth Amendment right to have a witness in my
4 favor. And that prejudiced my case even more.

5 Q Okay. Now, I want to go through a little
6 bit because -- to make sure. The preliminary hearing, did
7 y'all discuss that you're -- you're not able to present
8 witnesses at the preliminary hearing? Did you know that?

9 A No. We didn't -- we didn't discuss that.

10 Q Okay. Do you know if the preliminary hearing was
11 held before Mr. Quinn was appointed as your counsel? Do
12 you know?

13 A Well, he was -- he was being represented -- well, he
14 was on my -- my litigation. He was over all my
15 litigation. Because he -- because Mr. Quinn -- yeah,
16 yeah. He was representing me at the time of my
17 preliminary hearing.

18 Q Okay.

19 A Yes, sir.

20 Q Okay. Now, did he speak with and talk to your
21 brother, Justin? Do you remember that?

22 A I -- up until -- for the preliminary hearing --

23 Q Not for the preliminary hearing. I'm just saying did
24 he -- during this case -- maybe -- I'm sorry. I should
25 have done it this way --

1 A Yes, yes. He told -- yes, sir. He talked -- he
2 talked with my brother. And my brother was being -- he --
3 my -- my brother had been told that he was willing to
4 testify. And I don't know if they sequestered the
5 witnesses while they was at the county. Because I don't
6 know if they had them sequestered or not. I don't know if
7 they were split up.

8 But they had -- but my brother didn't never come over
9 to the courthouse. And that prejudiced my case. Because
10 I couldn't even use my witness. It was like the burden of
11 proof was just -- was just all on me.

12 Q Okay.

13 A And it was -- I feel like that prejudiced my case
14 even worsen [sic].

15 Q Okay. Now, we've gone through a lot of stuff and --
16 and -- during our discussions that we've had in regards to
17 it. These are things that you've brought up. Are
18 these -- are there any other items you want to tell Judge
19 Kinlaw about before we close here? Because I know you
20 brought up here your -- your Fifth and Sixth Amendment
21 rights, and all that. And I know you're pulling that back
22 out right now. Are there other things you want to bring
23 up?

24 A Yes, sir. On the -- on the Protection of Persons and
25 Property Act, if you look, a dwelling -- a dwelling --

1 Q Is this it? That's the document you gave to me?

2 A Yes, sir. On the Protection of Persons and Property
3 Act, it says a person is presumed -- this is 16-11- --
4 11-440, presumption of reasonable fear for imminent peril
5 when using deadly force against another unlawfully
6 entering a residence. A person is presumed to have
7 reasonable fear or imminent peril, or death, or great
8 bodily injury to himself or another person [inaudible] --

9 THE COURT REPORTER: Judge, I can't understand him.
10 He's going too fast.

11 THE COURT: Slow -- slow it down. The court -- the
12 court reporter -- I apologize. She needs to take down
13 what you say. So slow it down.

14 Could you repeat that again for her?

15 Slow it down a little bit.

16 THE WITNESS: All right. This is for the Court on
17 South Carolina Code of Laws, Protection of Persons and
18 Property Act, state statute 16-11-440, presumption of
19 reasonable fear or imminent peril when using deadly force
20 against another unlawfully entering a residence, occupied
21 building, or place of business. A -- a person is presumed
22 to have reasonable fear of imminent peril, or death, or
23 great bodily injury to himself or another person when
24 using deadly force that is intended or likely to cause
25 great death or bodily injury to another person if the

1 person [inaudible] against the deadly force is used is in
2 the process of unlawfully entering --

3 BY MR. ARIAIL:

4 Q Mr. Cureton, we have the -- the Judge has the
5 statute, 16-11-440 --

6 THE COURT: Yes. I've got it.

7 BY MR. ARIAIL:

8 Q -- so we don't have to read it all into the record.

9 A Yes, sir.

10 Q He knows what you're arguing in regards to that.
11 What I want to ask is, we've talked about that. We've
12 talked about your Fifth and Sixth Amendments. Are there
13 other things that you want to bring up outside of these
14 that I haven't?

15 A I feel like -- I feel like my Fourteenth Amendment
16 right was violated on because of due process. And I --
17 and I should have been afforded equal protection of the
18 laws, which is -- was my Constitutional right to protect
19 my -- my property, and my family, and myself.

20 And amendment number nine, which it states the
21 enumeration in the Constitution or certain rights should
22 not be construed to deny or deprive [sic] others retained
23 by the people. So I -- there was another -- and -- and my
24 Fifth Amendment due process right was violated.

25 Q Okay.

1 A See, I really never had any due process with this
2 case. And...

3 Q Okay. And I think you've gotten all those down. And
4 that's mostly the things we've discussed in regards to it?

5 A Yes, sir. And my -- my brother is here in -- behind
6 you, sir. He can testify. He can testify to these facts,
7 too. And he came here. He's willing to testify. And, I
8 mean, behind -- after me. Because he was a witness in
9 this case.

10 Q Right --

11 A And if you look on my -- he -- he was a State witness
12 that they never brought. He's --

13 Q Right. The key thing with him is he did talk to
14 Mr. Quinn at some point during that time; correct?

15 A Yes, sir.

16 Q And provide his information to Mr. Quinn about what
17 he was willing to testify to; is that correct?

18 A Mr. Quinn -- yes, sir.

19 Q Okay.

20 A And I feel like Mr. Quinn should -- Mr. Quinn should
21 have perfected a defense for me, instead of -- I had to --
22 all this -- I had to -- I had to get all this information
23 myself. Mr. Quinn, he's a lawyer. I shouldn't have had
24 to go through all them law books to try to do this for
25 myself.

1 Q Okay.

2 A I should have had some type of -- I should have had
3 some type of assistance, more assistance. And we had a
4 conflict of interest. Instead of -- I mean, we had a
5 conflict of interest. My due process -- I really -- I
6 needed to be afforded due process. And I -- and I
7 think -- I'm here today on -- to get my -- to get my day,
8 hopefully.

9 MR. ARIAIL: Answer any questions that Mr. Mitchell
10 has for you. Okay.

11 THE WITNESS: Yes, sir.

12 THE COURT: Cross-examination, Mr. Mitchell.

13 CROSS-EXAMINATION

14 BY MR. MITCHELL:

15 Q Good afternoon, Mr. Cureton.

16 How are you?

17 A I'm doing -- I'm doing alive and well.

18 Q That's good to hear.

19 So you said that you only met with Mr. Quinn twice
20 during his representation?

21 A Yes, sir.

22 Q Okay. Now, during --

23 A And that was on bail. But I met with him in the
24 county probably -- when I was inside the county, we talked
25 probably, like, three -- three times.

1 Q So when you were in the jail, you talked three times.
2 And then when you got out of jail, you talked to him
3 again?

4 A Yes, sir.

5 Q So that'd be more than two times; right?

6 A Yes, sir.

7 Q Okay. Now, during the course of those meetings, did
8 you all discuss the evidence in the case?

9 A We were discussing -- we were discussing -- we were
10 discussing evidence. Quinn said -- he told me about
11 the -- about the castle law. But when it came -- when we
12 went to trial, he misstated the law. He -- he went with
13 stand your ground when -- when it should have been the
14 castle law. Really, everything was under the Protection
15 of Persons and Property Act, which has the castle law.

16 But he never told me any cite. He never told me any
17 case law. He just told me, this is what I'm going to do,
18 I'm going to try to go for the castle law. And when I
19 was -- my father and my mother can, also, testify -- well,
20 really, my father. Because me and my father went two
21 weeks -- to Mr. Quinn's office before the trial to -- to
22 meet.

23 I had all these laws. I had already done -- done my
24 work while I was on the streets while on bail. I was -- I
25 was getting in the law computers, and all this. I tried

1 to hand him the law. I said, Here's the law. He shoved
2 my law right back at me. And he said, I'm the lawyer. I
3 know the law. My daddy can testify to that. And he's
4 sitting back behind you, too, sir.

5 Q So it's -- so it's your -- your testimony is that
6 there's a difference between the Castle Doctrine and the
7 stand your ground? Is that your testimony?

8 A We -- it -- see --

9 Q That's a "yes" or "no" question.

10 A Is there a difference between --

11 Q Yes.

12 A There's a difference between stand your ground. See,
13 because stand your ground can -- can -- it can be applied
14 outside of habitation. And castle law only -- is only
15 applied to habitation. And the property -- where I was
16 at, I was on my habitation. But -- but -- but it can be
17 applied in the house, too. But -- but -- but the reason
18 he cited it wrong is because I was at my place where I
19 live. This was -- I -- I lived with my family.

20 So it -- it should have been castle -- castle law.

21 Q Okay.

22 A But I can stand my ground at my house on my property,
23 too. But he cited the wrong -- he said it was just --
24 it's all summed under -- under the Protection of Persons
25 and Property Act.

1 Q Got you. And I know you read it into -- you read it
2 to us, so the court reporter has that. Let me move on and
3 ask you some more questions.

4 A Yes, sir.

5 Q So you talked about the evidence in the case. Did
6 you guys talk about possible defenses prior to going to
7 trial?

8 A Prior to going to trial, I really -- man, when --
9 when Mr. Quinn shoved -- shoved -- when he shoved my law
10 work back at me and said he the lawyer, he know the law,
11 that -- it was no way for me to -- it was no way for me to
12 talk a defense to him. Because, I mean, that was my
13 defense.

14 I was trying to get -- I was trying to show him --
15 you know what I mean? -- that I know -- that I had studied
16 the law. And I was trying to reckon with him. And he
17 didn't -- I mean, I don't know -- I don't know -- that
18 prejudiced my case off -- in the -- in the uttermost when
19 he shoved my law work back at me and said, I'm the lawyer.
20 I know the law. That was a conflict of interest --
21 attorney-client interest right there.

22 And then -- see, plus, he never told me my rights. I
23 was never afforded due process. Because he didn't even
24 tell me how the trial process went. That's a due process
25 violation of the most. I didn't know the process at

1 trial. Because he was my lawyer.

2 And, plus, the lawyer -- he never gave me my
3 attorney-client rights. Because, you know, when you're --
4 when you're a paid lawyer -- usually, they say when you
5 get a paid lawyer, they say to -- to my notice, that the
6 lawyer supposed to give you a list of your rights. And
7 I -- he never gave me any -- any list of my client rights.
8 So I didn't even know my rights at all. So I was
9 really -- I was...

10 Q Let me ask you this. So this happened at your
11 brother's house. And I think you testified Mr. Quinn
12 talked to your brother; right?

13 A Yes, sir.

14 Q Okay. Did you guys have a discussion after he talked
15 to your brother about what he said?

16 A See, my brother -- see, Mr. Quinn know that my
17 brother was supposed to be testifying --

18 Q Mr. Cureton, if you'll just answer my question first.

19 A Okay.

20 Q If you want to elaborate, that's perfectly fine.

21 A Yes, sir.

22 Q But did you guys have a discussion after he talked to
23 your brother?

24 A Me and Quinn?

25 Q Yes.

1 A Yes, sir.

2 Q Okay. Now, if you want to talk about the substance
3 of it, what -- what did you guys discuss?

4 A See, my brother was already doing time at SCDC. So
5 when he came back to the Greenville County Detention
6 Center to testify on my case is -- because he was a
7 witness on -- somehow he -- they didn't never bring him
8 to -- to the courthouse.

9 So it was really the State's evidence against me.
10 And that -- and that put the burden of proof on me. And
11 that's what prejudiced my case even worsser. Because
12 now -- now, the State has interfered with my witness and
13 violated my Sixth Amendment. Because now my witness is
14 not here in my favor. And there was a witness.

15 And we was really the victims of a crime. Because
16 they trespassed and -- and, I mean, it's hard for -- for a
17 person -- for one man -- for one man to be -- have the
18 burden of proof when I had -- when I had a witness in my
19 favor.

20 So that violated another Constitutional right. And I
21 feel like that fall on the State. Because I don't know --
22 somehow, the State had -- had interfered with my witnesses
23 coming to the courthouse.

24 MR. MITCHELL: Thank you, Mr. Cureton.

25 That's all the questions I have for you.

1 MR. ARIAIL: No further questions, Your Honor.

2 THE COURT: All right. And I have no questions.

3 Thank you, sir.

4 THE WITNESS: Your Honor, can I put something else
5 for the record?

6 THE COURT: Yeah. Go ahead.

7 (Pause.)

8 THE COURT: Do you want to read something else into
9 the record?

10 THE WITNESS: I was trying to find out -- man, I
11 ain't really had -- had a chance to have no pencils, or
12 whatnot. I would have been more prepared. But when I was
13 in the county, they didn't give us no ink pens, or
14 anything, so.

15 Well, can I put on the record? The State of South
16 Carolina has no duty to retreat when attacked on one's own
17 premises. And this -- this is coming from the west South
18 Carolina digest second edition.

19 THE COURT: Okay.

20 THE WITNESS: Homicide [inaudible].

21 THE COURT: Okay.

22 THE WITNESS: Defense of total -- total habitation.
23 VI, excusable or justifiable homicide. And it says, a
24 man's home is his castle.

25 THE COURT: All right. Anything else?

1 THE WITNESS: The -- homicide [inaudible], duty to
2 retreat or avoid danger. And this is South Carolina.
3 This is 1909. So this ain't even been -- this is the law
4 that could be -- apply retroactive. This is before the
5 Protection of Persons and Property Act came out.

6 A man's dwelling is his castle. And he may repel
7 force by force in defense of his personal habitation and
8 property against one who manifests deeds by violence to
9 commit a felony on. And in such cases not bound to
10 retreat, but may pursue his adversary until he has secured
11 himself from all danger, even taking life, if necessary.

12 And the danger is imminent and immediate. Still, he
13 cannot take life if the danger has passed. But the danger
14 was imminent because it was -- it was right then and there
15 in front of me, my brother, my sister, and my nephew, and
16 my nieces. That house had -- had been took over and
17 invaded. And, I mean, in the night -- in the heat of the
18 night, it was, like, 11:00 when this happened, sir, in the
19 dark.

20 THE COURT: All right.

21 THE WITNESS: And they found -- if you go through my
22 motion of discovery, my Brady motion, and my transcript,
23 remember when I said -- when I testified to Investigator
24 Fortner it looked like he had a gun. They found a hand --
25 a handgun, BB gun in that -- in the house next door, I

1 mean, where the -- where the suspects and the victim --
2 the subjects and the victims were.

3 So that proves -- proves -- that proves -- that
4 proves my testimony that they did have -- have, like, a
5 gun.

6 THE COURT: All right.

7 THE WITNESS: Because they found a hand -- a BB gun.
8 But, like I said, I seen the dude. It looked like he was
9 pulling for a gun. So that had to be the BB gun that he
10 had. It was a pistol, like, BB gun. And Officer Emmanuel
11 Davis testified to that --

12 THE COURT: Do you understand we're not here to try
13 the case again? The case has already been tried.

14 THE WITNESS: Oh yes, sir. I didn't know.

15 THE COURT: I'm just -- I'm just going through the
16 allegations in your application.

17 THE WITNESS: Okay.

18 THE COURT: All right. Anything else?

19 THE WITNESS: Is it -- is it any -- is it any
20 possible way that -- that this Court can make a ruling
21 today, or do --

22 THE COURT: Well, I haven't heard everything. I have
23 to -- I've got to hear the other side.

24 THE WITNESS: Okay.

25 THE COURT: Okay. You can step down.

1 THE WITNESS: Thank you.

2 THE COURT: That's the Applicant's case; is that
3 right, Mr. Ariail?

4 MR. ARIAIL: Yes, sir.

5 Thank you.

6 THE COURT: Mr. Mitchell, do you want to call your
7 first witness?

8 MR. MITCHELL: I would call Mr. Quinn to the stand.

9 THE COURT: All right. Mr. Quinn, come forward.

10 THE CLERK: Mr. Quinn, please, place your left hand
11 on the Bible and raise your right hand.

12 WHEREUPON,

13 THOMAS QUINN,

14 after first having been duly sworn, testified as follows:

15 THE CLERK: Thank you.

16 You may be seated.

17 And, please, state your full name for the record.

18 THE WITNESS: Thomas Quinn.

19 DIRECT EXAMINATION

20 BY MR. MITCHELL:

21 Q Good afternoon, Mr. Quinn.

22 How are you?

23 A Good.

24 Thanks.

25 Q Good.

1 How long have you practiced law here in South
2 Carolina?

3 A In a few weeks, it'll be 40 years.

4 Q Okay. And how much of that time has been devoted to
5 criminal law?

6 A 35 years.

7 Q 35 years. Okay. And so in this particular case,
8 were you appointed or retained to represent the Applicant?

9 A Retained.

10 Q Retained. Okay. And just so there's -- so the
11 record's clear. If you would, give me a brief overview of
12 the facts and how the Applicant was charged with the
13 crime.

14 A The general facts were that John was living at his
15 brother Justin's house. The people in the house -- I
16 think they were trailers, but in the dwelling next door
17 were having some sort of party that turned into a drunken
18 party. There were words back and forth between the
19 residences about the noise. Because Justin had small
20 children. That escalated into words between Justin and
21 one other person from the party. The two of them squared
22 off to fight.

23 John had either before then or very close to that
24 time fired a warning shot into the air from the back of
25 Justin's trailer. And then the allegation was that Justin

1 fired a second -- I'm sorry, that John fired a second
2 shot, which struck one of the people from the other
3 trailer resulting in their death. John then fled the
4 scene and was arrested a few days later.

5 Q Okay. And during the course of your investigation --
6 or pardon me, during the course of your representation, do
7 you recall about how many times you may have met with
8 Mr. Cureton?

9 A I do not. And I'm sorry. I didn't prepare that in
10 my notes. I didn't know it'd be an issue. I believe it
11 was seven or eight times. But if he says it was five, I
12 would trust his memory better than mine.

13 Q Okay. And during these meetings, did you guys
14 discuss the charges that he was facing and the potential
15 punishments?

16 A We did.

17 Q Okay. What about the -- his Constitutional rights
18 and the State's burden?

19 A We did.

20 Q Okay. And during the course of these meetings, did
21 he ever seem not to understand anything you were saying to
22 him?

23 A Oh, no. John understood completely. John, as you
24 can see, is a writer, and -- and did bring me the law
25 several times.

1 Q Okay. So you got the case. Well, I guess I should
2 back up. Once you got the discovery in the case, did you
3 share it with him?

4 A I did. I provided him a copy.

5 Q Okay. So once you got the discovery in the case,
6 what type of investigation did you do?

7 A I spoke with the potential witnesses for our side,
8 who were Justin, his brother, and Brandy Wilson, I believe
9 is the woman's name. That was Justin's significant other.

10 Q Okay. And what did you find out after speaking with
11 them?

12 A They had both given statements to the police.
13 Justin's testimony probably would have been slightly
14 different from the statement reduced in the police report.
15 Brandy's would have been primarily the same, which was
16 that there was a disagreement between these two groups of
17 people. Neither Justin nor Brandy, though, ever mentioned
18 anybody encroaching into the house.

19 Q Okay. So the testimony, essentially, would have been
20 the opposite of what your client's testimony would have
21 been if he would have -- or statement that he gave to
22 police. Is that a fair question?

23 A Yes. It's a fair question. Justin would have said
24 that they came up on the porch the first time, and then
25 were approaching the back porch the second time. But that

1 he went -- Justin went off the porch and faced off with
2 this one fellow and stopped them.

3 John's testimony would have been that they came in
4 the trailer on two separate occasions. And Justin and
5 Brandy would not have testified -- well, I don't know what
6 they would have testified to. Their statements to the
7 police did not indicate that anybody had come in the
8 trailer.

9 Q Okay. And -- and so I guess the ultimate question
10 is, their statements would not have helped this case in
11 terms of a Castle Doctrine or stand your ground defense?

12 A They would not have.

13 Q Okay. And so there's no question -- the record
14 reflects it. You made a motion to have a stand your
15 ground hearing. The Judge, ultimately, denied that --
16 that request; correct?

17 A We had the hearing. And the Judge denied the request
18 for immunity.

19 Q Okay. And so you guys proceeded to trial.
20 Ultimately, the trial stops and Mr. Cureton accepts a
21 guilty plea?

22 A That's correct.

23 Q Could you talk about the discussion that was had?

24 A The Judge had heard some of the case. Because of the
25 immunity issue, he called both sides to the bench late in

1 the day. He knew both attorneys involved and said, you
2 know, if your client wants to resolve this case, this is
3 the sentence that I'm likely to give him. And he asked
4 the State whether they would be willing to reduce the
5 charge to manslaughter if he was willing to plead guilty.

6 And then I had the opportunity to speak with John,
7 Brandy Wilson, and his parents. And because John had been
8 on bond, the Judge let us step out and use the conference
9 room. And we spoke in the conference room. And he,
10 finally, decided to plead guilty.

11 Q Okay. And you've heard Mr. Cureton testify. Is
12 there any difference -- based on what he's saying that you
13 didn't argue, is there a difference in the -- is there a
14 different type of law that you should have argued based on
15 your review of the Castle Doctrine?

16 A No, not at that point. We, certainly, could have
17 argued self-defense at the end of the case. But at the
18 point we had reached in the trial, no, there was no
19 opportunity to argue a self-defense issue.

20 Q Okay.

21 A Neither the defense of others or defense of
22 habitation.

23 Q Okay. And let me ask you about -- he made an
24 allegation concerning a motion to dismiss an indictment.
25 Did you see any issues with the indictment?

1 A I did not. It's a factual issue. The State had
2 witnesses that would testify that it was cold blooded,
3 that he had gone in and gotten a gun, and come back out
4 because he was angry. So there was a basis for the
5 indictment.

6 Q Okay. And in terms of the preliminary hearing, did
7 he ever -- or did you know if he ever wanted one, or tried
8 to get one?

9 A I knew he had filed for one. And he's right. He was
10 brought to the courthouse. And I waived the preliminary
11 hearing after meeting with him and discussing it. The
12 victim's family was there, the News Channel 21 was there,
13 as was the newspaper.

14 And, in fact, John wrote me a letter on March 30th of
15 2014 that begins, Thanks for not letting me go in the
16 courtroom this week at the preliminary hearing. And then
17 he goes on to say, I didn't know that they were going to
18 slander me in front of the news channel.

19 So he and I had discussed it at the courthouse before
20 I waived the preliminary hearing.

21 Q Okay. And -- and after that, this case was directly
22 indicted by the Solicitor's Office; is that correct?

23 A It was.

24 MR. MITCHELL: Okay. I believe that's all the
25 questions I have for this witness, Judge.

1 THE COURT: Mr. Ariail.

2 MR. ARIAIL: Thank you, Your Honor.

3 May it please the Court.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. ARIAIL:

7 Q Mr. Quinn, I want to go through a little bit of
8 background in regards to this. One of the key things I
9 see is a -- your testimony is your conversation with
10 Justin Cureton, Mr. Cureton's brother. Do you remember
11 that conversation?

12 A I do not.

13 Q You -- you don't. Okay. Do you remember, I guess,
14 reviewing his statement and determining if he was going to
15 be helpful for you at trial?

16 A I do. But I don't independently remember meeting
17 with Justin. I'm sorry.

18 Q Okay. Justin and -- and this is where I'm trying --
19 my client wanted me to ask you in regards to this. You
20 say Justin did not help in regards to the stand your own
21 ground because he didn't say they were coming in the house
22 -- or coming in the trailer?

23 A Well, that was for the Judge to decide. But that was
24 a discrepancy in the testimony.

25 Q Okay. Did you -- during this period of time, did you

1 think about calling him or utilizing him to help you with
2 your stand your own ground argument?

3 A I did not. Because he would not have been helpful.

4 Q Okay. So you -- and maybe I can ask it this way.
5 You talked to him. You don't recollect the conversation.
6 But if there was something that had helped you with your
7 stand your own ground, would you have utilized him during
8 that hearing?

9 A I would have. And -- and he was in the detention
10 center. We didn't bring him over because we didn't expect
11 to use him until later in the trial.

12 Q So -- and Mr. Cureton -- you're saying John -- his
13 statement was they did come in the residence. But the
14 other statements you had didn't say they came into the
15 residence?

16 A That's right. Justin's came the closest, which said
17 they came up on the porch --

18 Q Okay.

19 A -- the first time. But that the second time, Justin
20 met them before they got on the porch. And that they
21 never, in fact, got on the porch the second time.

22 Q Okay. You discussed this -- I mean, do you remember
23 having a conversation with him about the discrepancies in
24 the statements, or any issues that could arise during
25 trial?

1 A I did. Because it was a very serious question. We
2 knew Justin was going to testify.

3 Q Right.

4 A But it was a serious question about whether we were
5 going to use Brandy at all. Because Brandy could have
6 hurt us as much as she helped us.

7 Q Okay. And Brandy, from my understanding, didn't even
8 say that they had gotten to the porch?

9 A Brandy says she went in and took a shower, but didn't
10 know anybody was out there. She just heard voices.

11 Q Okay. Voices. She didn't really see anything that
12 would have helped?

13 A Right.

14 Q Okay. And as -- do you feel that going through this
15 process and looking at it that he understood the evidence
16 that was against him and what could happen?

17 A He absolutely understood.

18 Q And at some point, I saw that Judge Miller -- he
19 indicates that y'all need to go out pretty much and go
20 work this out?

21 A Right. He did on several -- well, he was clear on if
22 we didn't -- were not able to work it out at that time
23 that the sentence might be different.

24 Q Okay.

25 A Well, because it was a murder case. It'd have to be.

1 Q Right. And you -- I mean, he understood, I guess,
2 going into this that if he was convicted, he was looking
3 at a 30 mandatory minimum or it could be day for -- I
4 mean, life?

5 A It could have been.

6 Q I mean, it could -- so based on that, do you think he
7 made an informed decision to plead guilty to voluntary
8 manslaughter?

9 A Oh, he did. His father had attended, at least, one
10 conference with us. And then, again, the whole family was
11 outside when we discussed it. So he had input from
12 everybody.

13 Q Okay. And the preliminary hearing, you said you had
14 a letter from him stating he was glad he waived it?

15 A Yes, sir.

16 Q Okay. Was there any other evidence that you're aware
17 of that could have helped during that stand your own
18 ground, or was it, basically, all -- I mean, I guess the
19 three witnesses statements?

20 A Right. That's what it was, essentially.

21 Q Was there -- were there any other individual
22 statements that you're aware of that could have hurt
23 during that, or any other witnesses that were part of the
24 other group? Do you remember that?

25 A Well, all the witnesses of the other group were going

1 to say they didn't come on the property at all, that they
2 were in this common area between.

3 Q Okay.

4 A So all of those would have hurt.

5 Q Okay. Was there any information that you had, other
6 than from Mr. John Cureton, that said anybody came into
7 the residence at any time?

8 A No.

9 MR. ARIAIL: Okay. I have no further questions, Your
10 Honor.

11 THE COURT: All right. Anything else, Mr. Mitchell?

12 MR. MITCHELL: No additional questions, Your Honor.

13 THE COURT: I have no questions, Mr. Quinn.

14 You can step down.

15 All right. Anything else from either side?

16 MR. MITCHELL: No additional witnesses, Your Honor.

17 (Pause.)

18 MR. ARIAIL: Your Honor, I'm -- if I can, my client
19 has asked me to call another witness on his behalf, even
20 though I hadn't done it in our case. If I can open the
21 record back up to call his brother to the stand to
22 testify, that would be --

23 MR. JOHN CURETON: Under my Sixth Amendment.

24 MR. ARIAIL: -- helpful, Your Honor.

25 THE COURT: What do you say, Mr. Mitchell? You --

1 you wouldn't -- you wouldn't oppose that, would you?

2 MR. MITCHELL: That's fine with me, Your Honor.

3 THE COURT: All right.

4 MR. ARIAIL: I would call Justin Cureton to the
5 stand.

6 THE COURT: Come on up, sir. Come on around.

7 THE CLERK: What's his last name?

8 MR. ARIAIL: Justin Cone -- or excuse me, Cureton.

9 THE CLERK: Cureton. Okay.

10 Please place your left hand on the Bible, sir, and
11 raise your right hand.

12 WHEREUPON,

13 JUSTIN MAURICE CURETON,

14 after first having been duly sworn, testified as follows:

15 THE CLERK: Thank you.

16 You may be seated.

17 And, please, state your full name for the record.

18 THE WITNESS: Justin -- Justin Maurice Cureton.

19 DIRECT EXAMINATION

20 BY MR. ARIAIL:

21 Q All right. Mr. Cureton, how are you doing today?

22 A All right.

23 Q You're John Cureton's brother; is that correct?

24 A Yes, sir.

25 Q And you were at -- I know your brother was charged

1 with murder for an incident that happened at your trailer;
2 is that correct?

3 A Correct.

4 Q Okay. And you gave a statement to police. And
5 you've talked with Mr. Quinn in regards to this case; is
6 that correct?

7 A Well, we really ain't talked about my brother's case.
8 I mean, I -- I asked -- I -- well, before he went to court
9 and all that, I asked about him. I asked about how my
10 brother's case was looking. And he -- you know, he said
11 it's looking -- looking pretty good. I mean, we really
12 didn't talk about -- talk about his case all the way in,
13 you know, full detail.

14 Q Okay. Well did you give a -- let me start over
15 again. Did you give a statement to police at any time
16 about an incident that happened with your brother at your
17 house?

18 A I don't -- I can't recall if I gave a statement.
19 It's been -- it's been a little minute ago. I do
20 recall -- I probably did give a written statement --

21 Q Okay.

22 A -- when it first occurred.

23 Q Do you remember what you put as part of that written
24 statement?

25 A Well, yeah. I -- I put down -- like I said, it was

1 around probably 11:00 at night. And the neighbors, they
2 was having a birthday party over there, you know, I've
3 been staying there for about three years. And I knew the
4 neighbors. I was hanging around with them earlier that
5 day.

6 And me, my brother, and my family, we was in the
7 house cooking and watching TV. I had my kids in there.
8 And I heard -- I heard a little loud racket going on. I
9 mean, I knew they had music and stuff going on. But
10 the -- the suspect, he was -- I -- I opened my slider.
11 Because my back porch, you can come in. It's a sliding
12 door.

13 So I just opened the -- I opened my sliding door.
14 And I walked on the porch. And I was just checking on the
15 neighbors. I was checking on the neighbors and seeing
16 what was going on.

17 And the guy, he -- he just started cussing me out and
18 going -- talking all crazy. And, like I say, it was --
19 man, it was, like, 15 to 20 other guys I'd never seen
20 before out there. So it was a crowd of guys.

21 And so we got to arguing back and forth. And, I
22 mean, they started getting closer to my house. They
23 started -- they started to approach my front porch.

24 Q Okay.

25 A And that's when my brother shot a warning shot in the

1 air.

2 Q Okay.

3 A And everybody scattered. They got -- everybody
4 scattered, whatever. So me and my brother go back in the
5 house. We figured, you know, everything was all right
6 after that happened. Because he shot a warning shot in
7 the air. And I told -- told them don't -- don't come back
8 on the property. Don't come in my yard.

9 So about -- about five minutes later, we hear some
10 people on the back porch.

11 Q Okay.

12 A So I ran outside. I ran outside before my brother
13 could get outside. And I put myself in a lot of danger by
14 doing that. It was the heat of the moment. And I was
15 protecting my household as well. I had -- I had kids. I
16 had small babies in the house and my wife.

17 So I heard a racket on the porch. So I ran out -- I
18 ran out on the porch before anybody got out there. So I
19 jeopardized -- so I was jeopardizing a lot. I -- it was a
20 heat of the moment thing. It just happened that quick.

21 So I go outside. And I'm right here -- I'm,
22 basically, right at the back of my porch at the end of the
23 steps and still in my backyard. I run out there. And I'm
24 about to fight. I'm about to fight these guys.

25 And that's when -- that's when my brother shot in the

1 air, like I said. He seen a guy reaching -- like I said,
2 it was, like, 15 to 20 other guys out there. He seen the
3 guy reaching. Like he said, he probably was reaching for
4 a gun. And -- and that's what happened. That's when the
5 shot happened. And everybody ran again. We didn't know
6 anybody was shot at that time.

7 Q Okay.

8 A And that's when he shot. Because he seen some guy
9 reaching, like, he was reaching for a gun.

10 Q Right.

11 A And like my brother -- like my brother stated, they
12 did find a hand -- a BB handgun that looks just like a
13 pistol. They did find that in the -- in the residence
14 next door.

15 And what else I was saying? And --

16 Q So you were -- let me just -- you were outside on the
17 porch; correct, when he shot?

18 A Well, I was in the back -- I was in the backyard.

19 Q Backyard.

20 A I ran -- I ran -- I ran them off the porch into the
21 backyard at the same time.

22 Q And you were in your backyard, not in your house?

23 A Yeah. Correct.

24 Q Okay. And did you tell Mr. Quinn about that?

25 A I believe I did when it first happened.

1 Q Okay. So at no time are you saying did anybody get
2 in your house?

3 A I mean, it seemed like they was -- they was trying to
4 get in my house. Because, like I said, they was on my --
5 they was on my back porch. They was on my back porch.

6 Q Right. But when he came outside, y'all were down in
7 the yard; is that correct?

8 A Correct.

9 MR. ARIAIL: Okay. I have no further questions, Your
10 Honor.

11 THE COURT: All right. Mr. Mitchell, do you have any
12 questions?

13 MR. MITCHELL: I do.

14 CROSS-EXAMINATION

15 BY MR. MITCHELL:

16 Q Mr. Cureton.

17 A Yes, sir.

18 Q So I just want to make sure the record's clear. You
19 met with Mr. Quinn; right?

20 A Correct.

21 Q Okay. And so the testimony that you're giving today,
22 did you tell him that then?

23 A Yes.

24 Q Okay. And so -- so I just want to make sure I have
25 the facts correct here. At any time, did anybody approach

1 your home or -- or try to come in?

2 A Yes. Like I -- like I said, that second time,
3 they -- they was on my back porch.

4 Q So they were on your back porch?

5 A That second time I came out, they was on my back
6 porch. That's correct.

7 Q On your back porch trying -- trying to come in?

8 A I believe -- like I said, I heard a lot of racket out
9 there. And it was, like, three guys on my back porch.
10 And there was like 10 to 15 other guys in my backyard at
11 the time.

12 Q Okay. And so they're on your back porch. What
13 happens after then? What happens next?

14 A While -- while they -- when they was on the back
15 porch?

16 Q Yeah.

17 A I ran outside. I was the first one -- I was the
18 first one outside.

19 Q So you ran outside to the back porch or through the
20 front door?

21 A Yeah. To the front porch -- to the back. I ran out
22 there where they was at.

23 Q Okay.

24 A And, like I said, I know -- I beat my brother out
25 there. And, like I said, I -- and that probably triggered

1 him because he was protecting me. That probably triggered
2 him. Like I said, it was, like, 15 other guys out there.

3 And I was about to fight the guy. I was about to
4 fight the guy that started the whole -- the whole thing,
5 the guy that started the whole thing. He even -- he even
6 was fighting the birthday guy. The next door neighbor, he
7 was -- he was even fighting him. And he was well
8 intoxicated and had all kinds of drugs in his system. The
9 autopsy discovered that, too.

10 And I -- I ran out there on the porch and ran them
11 off -- off the porch into my backyard. Well, I was about
12 to fight this guy. And, like I said, a couple other
13 guys -- I mean, like I said, there was 20 other guys out
14 there, about 15 to 20 other guys out there, which they was
15 probably going to jump me, you know, if we'd got to
16 fighting, which we was about to get to fighting. It was
17 about -- it was such a heat of -- I mean, it happened so
18 quick.

19 And, like I said, my brother said he seen the guy
20 reaching -- reaching like he was pulling out a gun.
21 That's when the shot occurred.

22 Q Okay.

23 A And, like I said, it could -- it could -- it could --
24 like I said, if my brother wasn't there at the time, it
25 could have been another -- it could have been the other

1 way around. And -- and, yeah, if my brother wasn't there,
2 it could have -- it could have went a whole -- another
3 way. It could have did a whole 360.

4 MR. MITCHELL: That's all the questions I have for
5 this witness, Judge.

6 MR. ARIAIL: Thank you, Your Honor.

7 No further questions.

8 THE COURT: All right.

9 MR. MITCHELL: I would like to recall Mr. Quinn.

10 THE COURT: And I have -- I have no questions.

11 MR. MITCHELL: I apologize, Judge.

12 THE COURT: You can step down.

13 THE WITNESS: Thank you, sir.

14 THE COURT: All right. Is that -- is that it?

15 MR. ARIAIL: That's it, Your Honor.

16 THE COURT: You call Mr. Quinn back?

17 MR. MITCHELL: Yes, sir.

18 THE COURT: All right. Mr. Quinn, come on back.

19 You're still under oath.

20 (WHEREUPON, Mr. Thomas Quinn took the witness stand.)

21 THE COURT: All right.

22 DIRECT EXAMINATION

23 BY MR. MITCHELL:

24 Q Thank you for sticking around, Mr. Quinn.

25 So you heard the testimony from the Applicant's

1 brother just now. Are you aware of a statement that he
2 gave to police after this happened?

3 A Yes.

4 Q Okay. And what was the substance of that statement?

5 A The substance was similar to what he's describing
6 right now. That there was a party next door. That it
7 turned into a drunken party. That there was words between
8 them.

9 Justin's original statement said he went back in
10 because he didn't have his shoes on. He went back in to
11 get his shoes before he came back out to get in a fight.
12 But that he, Justin, stepped down off the back porch. He
13 met this fellow in the backyard. And then, suddenly, a
14 bullet comes whizzing past his ear. And it was John who
15 had shot from the back porch and killed the fellow that
16 was standing near Justin.

17 Q Okay.

18 A He did say there were -- that the number of people is
19 different. He said there were eight, I think, in his
20 original statement.

21 Q Okay. And based on your estimation, this was not
22 beneficial to your -- to the Applicant's case?

23 A Well, the other problem is that Justin and John then
24 got into an argument about whether John should have fired
25 a shot. Justin was saying to him, Why'd you shoot this

1 guy? I was just going to fight him. That was a problem.

2 Q Okay. And then, also, I think you testified earlier
3 that Mr. Cureton -- Justin, his fiancée or girlfriend, at
4 the time, also, gave a statement as well?

5 A And that was Brandy's statement. It was about the
6 argument between Justin and John about that there was no
7 need to shoot the fellow that Justin was going to fight.

8 Q Okay. And -- and based on, I guess, your experience,
9 you decided that this was -- was not going to be helpful
10 in presenting a stand your ground defense?

11 A That's correct.

12 MR. MITCHELL: Okay. Thank you, Judge.

13 That's all the questions I have for this witness.

14 THE COURT: Any cross-examination of Mr. Quinn,
15 Mr. --

16 MR. ARIAIL: No, Your Honor.

17 THE COURT: All right. I don't have any questions.
18 Thank you, Mr. Quinn.

19 You can step down.

20 MR. ARIAIL: That's it, Your Honor.

21 THE COURT: All right. Short argument from both
22 sides before the Court rules.

23 MR. ARIAIL: Your Honor, you've heard the case as
24 it's been presented. I don't have anything additional to
25 add to it.

1 THE COURT: All right.

2 MR. ARIAIL: Thank you.

3 MR. MITCHELL: I think the facts -- the facts speak
4 for themselves. Mr. Quinn has articulated to the Court
5 that it was strategy based on him interviewing witnesses.

6 He -- he articulated the stand your ground to the
7 Court. They, ultimately, decided that it didn't meet the
8 factors to grant and secure immunity.

9 In terms of the allegation regarding the indictment,
10 Mr. Quinn has articulated to the Court that he believes
11 there was a factual basis for that and for the charge
12 proceeding.

13 In terms of the preliminary hearing, Mr. Quinn
14 testified to that as well. He testified to a letter he
15 received from the Applicant. And notwithstanding that,
16 the case was directly indicted later on. So there
17 wouldn't be sufficient prejudice afforded not having a
18 preliminary hearing to begin with.

19 With that being said, Your Honor, the State would
20 submit to you that the Applicant has not met the first
21 prong of Strickland or the second prong of Strickland.
22 For those reasons, we'd ask that the application be
23 denied.

24 THE COURT: All right. Thank you, Mr. Mitchell.

25 The Court finds that it has jurisdiction of the

1 parties, as well as the subject matter of the action. I
2 had -- I had the opportunity to review the transcript,
3 particularly the portion where the Defendant pled guilty
4 to the offense after the reduction from what was the
5 murder charge to manslaughter. And -- and that was
6 probably midway in trial.

7 And I, also, had the opportunity to review the return
8 that was filed by the State, as well as the testimony of
9 the Applicant's Counsel, Mr. Quinn, as well as the
10 testimony of the Applicant and his brother.

11 And utilizing the two-prong test as set forth in the
12 Strickland case, I would respectfully submit that the
13 Applicant has failed to satisfy either the first prong in
14 Strickland or the second prong. And in his application,
15 he indicated that he was asserting ineffective assistance
16 of counsel on behalf of Mr. Quinn. My examination of the
17 record does not find that to be so.

18 So I'm going to deny the Applicant's application of
19 post-conviction relief.

20 And I request that you, Mr. Mitchell, prepare the
21 appropriate order.

22 MR. MITCHELL: Absolutely, Judge.

23 THE COURT: All right.

24 *****END OF TRANSCRIPT OF RECORD*****
25

CERTIFICATE OF REPORTER

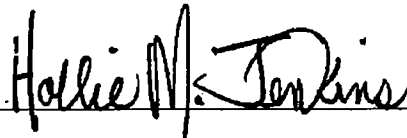
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit 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 and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 22nd day of October, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 20, 2019



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In August of 2016, the Greenville County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2016-GS-23-2374) and attempted murder (2016-GS-23-2373). Thomas J. Quinn, Esquire, represented Applicant. Elizabeth C. Major, Esquire prosecuted the case. On December 12, 2016, Applicant proceeded to trial before the Honorable Edward W. Miller and a jury. After the trial started Applicant decided to plead guilty to voluntary manslaughter and assault and battery first degree. The possession of a weapon during the commission of a violent crime was dismissed. Judge Miller sentenced Applicant to ten years imprisonment for the assault and battery first degree charge and fifteen years for the voluntary manslaughter charge.

Applicant filed a timely notice of appeal on December 14, 2016. The South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by SCACR Rule 203(d)(1)(B)(iv) by order filed March 2, 2017. State v. Cureton, App. Case No. 2016-002548. The remittitur was returned on February 13, 2017.

ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel; U.S. v. Cronin 104 SCT (1986) Deficiency of Plea Counsel so extreme prejudice showing is not required.
 - a. To be amended per Rule 71.1(d) (Attached pages 1-7)
2. Denied Immunity under SC State Statutes Protection of Persons and Property Act and Castle Doctrine 16-11-410
 - a. Defendant only acted to protect his family and castle. Defendant acted within guidelines of 16-11-140 (Attached pages 1-7)
3. Brady Rule 5 Violations Render Plea

- a. PCR Counsel to properly I.D. and amend cogent Factual Basis per Rule 11
(Attached pages 1-7)

On September 24, 2018, Applicant also filed a document entitled complaint for declaratory relief further alleging he was entitled to Immunity pursuant to SC State Statutes Protection of Persons and Property Act and Castle Doctrine

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified Plea Counsel represented him on his charges. Applicant testified after he was arrested he posted bond and was released from jail. He testified Plea Counsel discussed his case with him but that they only met twice during the course of Plea Counsel's representation. Applicant testified he wanted to discuss the case more with Plea Counsel and felt as though he did not get a chance to properly discuss his case. He testified once they entered trial, Plea Counsel misstated the law regarding his stand your ground rights. Applicant testified when the incident occurred he was at his brother's residence and a fight broke out and people started to attack his brother. He testified he did not provoke the fight and was minding his own business. Applicant testified he was charged with murder but there was no malice and that Plea Counsel should have made a motion to dismiss the indictments because of this. He testified he wanted a preliminary hearing but Plea Counsel failed to have one for him. Applicant testified prior to pleading guilty once his trial started he wanted Plea Counsel to impeach the State's witnesses. He testified Plea Counsel talked to his brother who was willing to testify in Applicant's defense.

On cross-examination, Applicant testified he only met with Plea Counsel twice during the course of the representation. He testified during these meetings they discussed possible defenses they could use at trial. Applicant testified he wanted Plea Counsel to talk to his brother which

Plea Counsel did because his brother could help with his defense.

Plea Counsel's Testimony

Plea Counsel testified he had practiced law for almost forty years and thirty-five of those years had been devoted to criminal law. He testified he was retained to represent Applicant and during the course of his representation he met with Applicant based on his notes seven or eight times and may have met with him more times than that. Plea Counsel testified during those meetings he discussed the indictments and the possible punishments Applicant was facing. He testified he discussed Applicant's constitutional rights with him and also the State's burden of proof. Plea Counsel testified he never had any indication Applicant did not understand their conversations about the charges or his rights. He testified in terms of investigation he spoke with Applicant's brother and the brother's girlfriend. Plea Counsel testified Applicant's charges centered around a shooting that took place at Applicant's brother's residence. He testified Applicant told him he shot the victim to protect Applicant's brother and his family after a large group of people had gathered next to his brother's residence. Plea Counsel testified both Applicant's brother and his brother's girlfriend gave statements to police about what happened that night. He testified these statements did not match up with Applicant's story and potentially showed Applicant or his family was not in imminent danger. Plea Counsel testified he did not think the statements helped Applicant's case. He testified Applicant's case proceeded to trial where he made a motion and argued Applicant was entitled to immunity based on stand your ground. Plea Counsel testified he raised this issue but ultimately the trial judge denied his motion and the case continued. He testified Applicant ended up pleading guilty. Plea Counsel testified he waived Applicant's preliminary hearing and that he received a letter from Applicant thanking him for not making him go to the preliminary hearing. He testified he saw no issue with the

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indictment as it contained sufficient facts and the State had witnesses who could testify to the facts.

On cross-examination, Plea Counsel testified he choose not to call Applicant's brother because his statement was not helpful to Applicant's defense. He testified he discussed Applicant's brother's statement and the brother's girlfriend's statement with Applicant prior to trial starting. Plea Counsel testified Applicant understood the information in his case and there were no other statements or witnesses that could have helped Applicant's case.

Justin Cureton's Testimony

Justin Cureton testified he was Applicant's brother and was present the night of the incident in which Applicant was charged with murder. He testified he gave a statement to police in which he stated his neighbors were having a birthday party. Mr. Cureton testified he opened his sliding back door to his home because of loud noise coming from the group outside and they started cussing at him. He testified the group started to approach his front porch so he went back inside. Mr. Cureton testified he went back outside and confronted the group and soon thereafter his brother fired a gun.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the

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allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance

of counsel. This Court finds as follows on the following grounds presented by Applicant at the evidentiary hearing:

Ineffective Assistance of Counsel

Failure to Properly Argue Immunity Statute

Applicant alleges Plea Counsel was ineffective in failing to argue that he was entitled to immunity from his prosecution under the Protection of Persons and Property Act. Whether a defendant is entitled to immunity under the Protection of Persons and Property Act ("Act") must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." Id. at 411, 709 S.E.2d at 665. S.C. Code § 16-11-440(C) states:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C).

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). "Section 16-11-450 [2015] provides immunity from prosecution if a person is found to be justified in using deadly force under the Act." Id. "Such immunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court . . ." Id. at 372, 752 S.E.2d at 267. If a defendant fails to make such a showing, then his claim of self-defense

“presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution.” Id.

Thus, a defendant seeking immunity under the Act must prove he was acting in self-defense by demonstrating: (1) he was not without fault in bringing on the difficulty of the situation; (2) he was in imminent danger of death or serious bodily injury, or believed he was in such danger; (3) if the defense is based on an actual belief of imminent danger, a reasonable person of ordinary firmness and courage would have held the same belief. Id. at 374, 752 S.E.2d at 268, n.8. However, the fourth element of self-defense—the duty to retreat—is excused under the Act. Id.

Here Applicant argues plea counsel was ineffective for failing to argue he was entitled to immunity. This court finds this allegation to be without merit. A review of the record shows during pre-trial, plea counsel indicated to the trial judge he had a motion regarding the stand-your ground issue. (Tr.p.35). Plea counsel then proceeded to call Applicant to testify about the incident that night and the State cross examined Applicant. (Tr.p.36-77). The State then called the investigating officer who was also cross examined by plea counsel. (Tr.78-84). Ultimately, the trial judge decided Applicant had failed to meet his burden for immunity. (Tr.p.87). It is clear from the record plea counsel made a motion to have the trial judge decide whether Applicant was entitled to immunity pursuant to the statute. The trial judge after hearing the evidence ultimately decided to deny Applicant’s motion for immunity. Furthermore, plea counsel testified both Applicant’s brother and his brother’s girlfriend gave statements to police about what happened that night. Plea counsel testified these statements did not match up with Applicant’s story and potentially showed Applicant or his family were not in imminent danger. Plea counsel testified he did not think the statements helped Applicant’s case. This court finds plea counsel made a

strategic decision to not call Applicant's brother during the pretrial hearing. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Therefore, this court finds Applicant has failed to meet his burden to prove plea counsel was deficient or that he suffered prejudice from this alleged deficiency. This allegation is denied and dismissed with prejudice.

Failure to Conduct Preliminary Hearing

Applicant alleges plea counsel was ineffective in failing to conduct a preliminary hearing for him. Applicant testified he wanted a preliminary hearing but plea counsel failed to have one for him. Plea counsel testified he waived Applicant preliminary hearing and that he received a letter from Applicant thanking him for not making him have the preliminary hearing. This court finds credible plea counsel's testimony regarding this issue and finds plea counsel was not deficient for failing to conduct a preliminary hearing on Applicant's behalf. Further this court finds Applicant has not demonstrated sufficient prejudice for plea counsel failing to have a preliminary hearing as Applicant was later directly indicted for the charges he was facing. Therefore, this court finds Applicant has failed to meet his burden to prove plea counsel was deficient or that he suffered prejudice from this alleged deficiency. This allegation is denied and dismissed with prejudice.

Failure to File Motion to Dismiss Indictment

Applicant testified in a cursory fashion that plea counsel was ineffective for failing to file a motion to dismiss his indictment. Applicant testified he was charged with murder but there was no malice and that plea counsel should have made a motion to dismiss the indictment because of

this. Plea counsel testified he saw no issue with the indictment as it contained sufficient facts and the State had witnesses who could testify to the facts. This court finds plea counsel was not ineffective for failing to file a motion to dismiss this indictment. In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). Upon a review of the indictment, this court finds no issue with the indictment and further finds it to contain sufficient facts. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

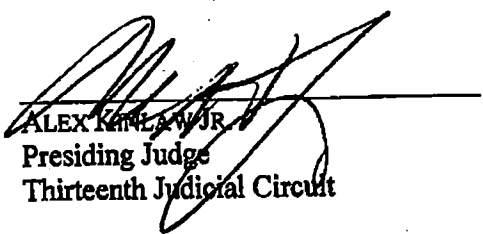
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the

denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15 day of November, 2018.



 ALEX KENLAW JR.
 Presiding Judge
 Thirteenth Judicial Circuit

Greenville, South Carolina

Copy mailed to
Attorney <u>Anzil and A.G.</u>
on <u>11 / 7 / 2018</u>