

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 17 2018

SC Court of Appeals

Appeal from Clarendon County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEREMIAH JERMAINE BRANDON SMITH, JR.,

APPELLANT

APPELLATE CASE NO. 2018-000100

RECORD ON APPEAL

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

Ernest A. Finney
Solicitor, Third Judicial Circuit

141 N. Main St.
Sumter, SC 29526
(803)-436-2185

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (Dated January 16-18, 2018)	1
MOTION TO EXCLUDE PHOTOGRAPHIC LINEUPS	2
TESTIMONY	
BRESHAUN PENDERGRASS (In Camera)	
Direct Examination by Mr. Durant	5
Cross-Examination by Mr. Griffith.....	8
CINDY CALVIN (In Camera)	
Direct Examination by Mr. Durant	9
Cross-Examination by Mr. Griffith.....	16
SONIA DANIELS (In Camera)	
Direct Examination by Mr. Durant	17
Cross-Examination by Mr. Griffith.....	25
RULING BY THE COURT.....	31
OPENING REMARKS BY THE COURT.....	34
OPENING STATEMENT BY MR. DURANT	42
OPENING STATEMENT BY MR. GRIFFITH	46
TESTIMONY	
SCOTT DANBACK	
Direct Examination by Mr. Durant	49
Cross-Examination by Mr. Griffith.....	58
BRESHAUN PENDERGRASS	
Direct Examination by Mr. Durant	59
Cross-Examination by Mr. Griffith.....	83
Re-Direct Examination by Mr. Durant	90
Re-Cross Examination by Mr. Griffith	92
FRITZ AGUON	
Direct Examination by Mr. Durant	93
Cross-Examination by Mr. Griffith.....	121
Re-Direct Examination by Mr. Durant	126

Re-Cross Examination by Mr. Griffith	129
BRUCE CROOKES	
Direct Examination by Mr. McMillan	130
Cross-Examination by Mr. Griffith.....	138
SHARDARA ABRAHAM	
Direct Examination by Mr. Durant	140
Cross-Examination by Mr. Griffith.....	153
Re-Direct Examination by Mr. Durant	157
CINDY CALVIN	
Direct Examination by Mr. Durant	158
Cross-Examination by Mr. Griffith.....	167
Re-Direct Examination by Mr. Durant	173
Re-Cross Examination by Mr. Griffith	176
SONIA DANIELS	
Direct Examination by Mr. Durant	178
Cross-Examination by Mr. Griffith.....	189
Re-Direct Examination by Mr. Durant	192
RICK ELMS	
Direct Examination by Mr. Durant	193
Cross-Examination by Mr. Griffith.....	202
Re-Direct Examination by Mr. Durant	205
Re-Cross Examination by Mr. Griffith	206
SIERRA SMITH	
Direct Examination by Mr. Griffith.....	207
Cross-Examination by Mr. Durant.....	210
Re-Direct Examination by Mr. Griffith	222
CLOSING ARGUMENT BY MR. DURANT	223
CLOSING ARGUMENT BY MR. GRIFFITH.....	235
CLOSING ARGUMENT BY MR. DURANT	241
CHARGE ON THE LAW	246
VERDICT	267
SENTENCING	268
STATE’S EXHIBIT NO. 1 (PHOTOGRAPHIC LINEUP DATED 12/31/14)	269

STATE’S EXHIBIT NO. 2 (PHOTOGRAPHIC LINEUP DATED 1/9/18)	270
INDICTMENT	271
CERTIFICATE OF COUNSEL	273

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT NO. 1 (PHOTOGRAPHIC LINEUP DATED 12/31/14)
STATE’S EXHIBIT NO. 2 (PHOTOGRAPHIC LINEUP DATED 1/9/18)

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.)
)
 Jeremiah Jermaine Brandon)
 Smith, Jr.,)
)
 Defendant,)
)
)

January 16 - 18, 2018

Manning, South Carolina

B e f o r e:

The Honorable D. Craig Brown, Judge

A p p e a r a n c e s:

Chris Durant, Esquire
Hugh McMillan, Esquire
Attorneys for the Plaintiff

Timothy Griffin, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

1 for lunch?

2 MR. DURANT: No sir, Your Honor.

3 (Off the record at 12:28 p.m.)

4 (On the record at 1:31 p.m.)

5 THE COURT: The State ready to proceed?

6 MR. DURANT: Your Honor, I'm still waiting on my
7 witnesses and the victim to come back.

8 (Brief pause.)

9 (Marked Plaintiff's Exhibit Nos. 1 and 2, six picture
10 photo lineup for identification.)

11 MR. DURANT: The State's ready to proceed, Your Honor.

12 THE COURT: Defense counsel?

13 MR. GRIFFITH: Your Honor, we would move to sequester
14 witnesses, and I don't believe the State has any objection
15 along with that.

16 But also, Your Honor, we would move to -- that the
17 photo lineups be excluded and testimony as to the photo
18 lineups not be admitted into the Court in that the -- one
19 of the photo lineups identified to you -- to identify the
20 Defendant by Cindy Calvin was --

21 MR. DURANT: Your Honor, I guess before he goes any
22 further, there are some witnesses in the courtroom. I -- I
23 believe Your Honor granted the motion earlier, so let me --
24 -

25 THE COURT: Yeah.

1 MR. DURANT: --- excuse them ---

2 THE COURT: Yeah. Go ahead.

3 MR. DURANT: --- before we go any farther.

4 MR. GRIFFITH: Can I approach, Your Honor?

5 THE COURT: Yeah.

6 (Bench conference.)

7 MR. DURANT: Your Honor, the victim, Mr. Pendergrass
8 of course, has stayed in the courtroom along with my lead
9 investigator, Rick Elms.

10 THE COURT: Okay. Go ahead, Mr. Griffith.

11 MR. GRIFFITH: Thank you, Your Honor. One of the
12 photo lineups, too, actually contains a -- a photo that was
13 not the picture of the Defendant at the time, but -- and
14 the witness, Cindy Calvin, selected this photo lineup on
15 1/9 of '18, which was just this month, Your Honor.

16 And having three years gone by, this witness, of
17 course, has gotten to hear about this case and to see this
18 witness, and there's a possibility that she has seen the
19 witness -- I mean, seen this Defendant and identified him
20 based on information provided to her by other witnesses.

21 And the -- so we would find that that would be
22 something that is just prejudicial to the Defendant and his
23 -- these photos, of course, not being of the time would --
24 it would be kind of hard to figure how she could find him
25 on the ...

As to the photo lineup on 12/30/2014, this was identified by the victim in the case who already knew the Defendant, and of course because he knew the Defendant, had said, "Well, this is the guy who did it."

Well, naturally he picked his picture out on -- on that photo lineup, and we would ask that those be excluded from the case.

THE COURT: Any case law you want me to look at?

(No audible response.)

THE COURT: Is there any case law you want me to look at, Mr. Griffith?

MR. GRIFFITH: I haven't -- no. I had -- had not pulled a case law on that yet, Your Honor.

THE COURT: All right. Mr. Durant, any response?

MR. DURANT: Your Honor, I would proffer testimony of the victim, Mr. Pendergrass, as well as my other lay witness, Cindy Calvin.

And just as a matter of procedure, Your Honor, the same officer showed the witnesses the photo lineups, eight witnesses the photo lineup. So I would propose that I call the two witnesses, and then that officer following their testimony.

THE COURT: All right. Call your witness.

MR. DURANT: Mr. Pendergrass, if you would.

BRESHAUN PENDERGRASS, having been

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 64

1 first duly sworn, testifies as follows:

2 DIRECT EXAMINATION

3 BY MR. DURANT:

4 Q Mr. Pendergrass, good afternoon. You would -- of
5 course, you were injured in an -- in an incident that
6 occurred back in December of 2014; is that right?

7 A Yes.

8 Q Where did that occur?

9 A Browntown Social Club.

10 Q Did you have occasion to meet with an investigator in
11 this case and identify the person that you believe shot you
12 that evening?

13 A Yes.

14 Q Okay. And who was that person?

15 A As far as who I talked to?

16 Q Who -- who was the person that -- that you identified
17 as the -- as the shooter that evening?

18 A Oh. Jeremiah Smith.

19 Q How do you know him?

20 A Childhood friend.

21 Q How long have you known him?

22 A Couple of years.

23 Q Couple of years?

24 A Yeah.

25 Q Now, this incident happened in 2014. How -- do you

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 65

1 mean a couple of years before the incident happened?

2 A Yes.

3 Q Okay. How often would you see him?

4 A Every now and then.

5 Q Do you know him well? Would you -- would you speak to
6 him if you saw him at Walmart?

7 A Yeah.

8 Q Okay. Did you ever hang out with him?

9 A Yes.

10 Q You ever socialize with him?

11 A Yes.

12 Q Do you remember meeting with an investigator in this
13 case, Lieutenant Daniels, after the incident happened, and
14 -- and identifying the Defendant in a photo lineup?

15 A Yes.

16 Q Okay. I'm going to show you what's been marked for ID
17 as State's Exhibit 1. Do you recognize that?

18 A Yes.

19 Q Okay. And there's a -- appears to be a six person
20 photo lineup. One of the individuals is circled and
21 there's some initials and a day on the bottom.

22 If you would tell the Court whose initials those are
23 first of all.

24 A Mine.

25 Q Those are your initials?

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 66

1 A Yes.

2 Q And that date, 12/31/2014, is that when you met with
3 Investigator Daniels?

4 A Yes.

5 Q All right. And did you circle the Defendant in this
6 case?

7 A Yes.

8 Q At any point when you met with Investigator Daniels --
9 Lieutenant Daniels, did she tell you who to pick out or in
10 any way suggest to you who to pick out of that photo
11 lineup?

12 A No.

13 Q Okay. How did you know who to pick?

14 A Because I know who shot me.

15 Q And how -- how did you know that the individual in
16 picture No. 5 was the individual that had shot you?

17 A Because there was a altercation and when I walked
18 away, the gunshot went off.

19 Q But you -- did you -- you knew him personally?

20 A Did I know him personally?

21 Q Yes.

22 A Yes.

23 Q All right. And on the day that this happened,
24 December 20, 2014, did -- could you have called him by
25 name?

CROSS-EXAMINATION BY MR. GRIFFITH - BRESHAUN PENDERGRASS 67

1 A Yes.

2 Q Okay. And what did you know him as?

3 A Brandon.

4 Q His first name is Jeremiah ---

5 A Jeremiah.

6 Q --- but he goes by middle name Brandon; is that right?

7 A Yes.

8 Q Any question in your mind that the individual you
9 picked out in the photo lineup is the one that shot you?

10 A Yes, he definitely shot me.

11 Q And again, did Lieutenant Daniels, or anybody else
12 associated with law enforcement, suggest to you who to --
13 who to identify in that photo lineup?

14 A No.

15 MR. DURANT: Your Honor, that's all the questions I
16 have for Mr. Pendergrass.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. GRIFFITH:

20 Q Mr. Pendergrass, again I'll show you this exhibit from
21 the State. Now, do you know any of the other fellas in
22 there?

23 A No.

24 Q But you already knew Mr. Brandon Smith. You -- you
25 don't know any of these other fellas?

DIRECT EXAMINATION BY MR. DURANT - CINDY CALVIN

68

1 A No.

2 MR. GRIFFITH: I have no other questions, Your Honor.

3 THE COURT: Any re-direct?

4 MR. DURANT: No sir, Your Honor.

5 MR. GRIFFITH: Your Honor --

6 THE COURT: Mr. Pendergrass, you're done, sir. You
7 can back over there.

8 (The witness complies.)

9 MR. DURANT: The State would call Cindy Calvin.

10 CINDY CALVIN, having been first
11 duly sworn, testifies as follows:

12 DIRECT EXAMINATION

13 BY MR. DURANT:

14 Q Ms. Calvin, good afternoon.

15 A How you doing?

16 Q I'm good. Do you know what we're here for today?

17 A Yes, sir.

18 Q And what's that?

19 A The shooting of Bray.

20 Q The shooting of -- when you say "Bray," you mean
21 Breshaun ---

22 A Yes, sir.

23 Q --- Pendergrass? And that happened back on December
24 20, 2014. Were you there that evening?

25 A Yes, sir.

1 Q Where did it happen?

2 A Browntown Social Club.

3 Q Inside or outside the club?

4 A Outside.

5 Q Okay. And you were there that night?

6 A Yes, sir.

7 Q Do you remember about what time of -- of day or -- or
8 night it happened?

9 A I don't know the time, but it was nighttime.

10 Q Okay. After midnight?

11 A Yes, sir.

12 Q Were there a lot of people at the club at -- at that
13 point?

14 A Yes, sir.

15 Q You said it happened outside the club?

16 A Yes, sir.

17 Q Were there a lot of people outside the club when it
18 happened?

19 A No, sir.

20 Q How many people were outside the club?

21 A It was me, my friend, Bray, about -- about nine
22 people.

23 Q Did you have occasion to see -- well -- well, first of
24 all, do you know the Defendant in this case, Brandon Smith?

25 A No, sir. I don't know him, but I know him. You know,

- 1 I don't --
- 2 Q Do you know him from the community?
- 3 A Yes, sir.
- 4 Q Do you know his name?
- 5 A Yes, sir.
- 6 Q Okay. And so what do you -- what do you mean you
- 7 don't -- you don't "know him, know him"? Y'all -- y'all
- 8 don't socialize together?
- 9 A No, we don't.
- 10 Q You're not friends with him?
- 11 A No.
- 12 Q But if you saw him on the street, could you identify
- 13 him?
- 14 A Yes, sir.
- 15 Q Did you know him back in 2014?
- 16 A Yes, sir.
- 17 Q If you saw him at Walmart back in 2014, would you have
- 18 -- have been able to identify him?
- 19 A Yes, sir.
- 20 Q Could you have called him by name?
- 21 A By name?
- 22 Q Yes.
- 23 A Just first name.
- 24 Q Just first name. And that first name is what?
- 25 A Brandon.

1 Q Brandon. You say you and your friend were there that
2 evening outside when an -- an incident occurred between
3 Brandon and Breshaun; is that right?

4 A Yes, sir.

5 Q Did you actually witness that incident?

6 A Yes, sir.

7 Q Tell the Court what happened.

8 A Well, when we got to the club, me an my friend was in
9 the car and then when we walked inside the club, we seen a
10 little -- you know, it didn't look right. So I told her, I
11 said, "Come on, let's walk back outside."

12 And when we walked back outside, we went back to the
13 car. But everything's so close, you know?

14 And Bray walked out, the other boys walk out, and Bray
15 and Brandon was talking and we heard a pop, Bray fall, and
16 they left.

17 Q Had you -- but you had seen Brandon inside the club
18 earlier that night?

19 A Yes, sir.

20 Q Uh-huh. And did you know -- did you have opportunity
21 to observe him and watch him in the club earlier that
22 evening?

23 A What do you mean by that?

24 Q Did you have opportunity to see him in the light of
25 the club earlier that evening?

DIRECT EXAMINATION BY MR. DURANT - CINDY CALVIN

72

1 A Yes, sir.

2 Q Okay. And -- and you knew him by name.

3 A First name.

4 Q Knew -- knew -- knew who he was. Knew him by Brandon.

5 A Uh-huh.

6 THE COURT: Is that a "yes"?

7 A Yes, sir.

8 Q So when you heard him outside of the club talking or
9 arguing with Breshaun, did you know it was Brandon then?

10 A Yes, sir.

11 Q And could you have called him by name?

12 A Yes, sir.

13 Q Based on your experience and your knowledge of him?

14 A Yes, sir.

15 Q Do -- do you remember meeting with Lieutenant Sonia
16 Daniels of the Manning Police Department on January 9 of
17 2018? This would have been last week.

18 A Yes, sir.

19 Q All right. Tell -- tell the Court what happened when
20 you met with Ms. Daniels.

21 A She asked me what happened and I told her.

22 Q Did she present you with a photo lineup when you met
23 with her last week?

24 A Yes, sir.

25 Q Let me show you what's been marked as State's Exhibit

1 2. Do you recognize that?

2 A Yes, sir.

3 Q Okay. It appears to be a lineup, includes photograph
4 of six individuals. One of them is -- is circled and has a
5 name beside it and a date and a time. Did -- have you ever
6 seen this before?

7 A Uh-huh.

8 Q Is that the lineup that Ms. -- that Lieutenant Daniels
9 showed you last week?

10 A Uh-huh.

11 THE COURT: Hold on a minute. Ma'am, I'll need a
12 "yes" or "no".

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay.

15 A Yes, sir.

16 THE COURT: Thank you.

17 THE WITNESS: Yes, sir.

18 Q Who circled the individual on the bottom left hand
19 corner?

20 A Sergeant Daniel.

21 Q Whose name is that beside it?

22 A Mine.

23 Q And the date and time?

24 A I put that.

25 Q Okay. Did you put that before or after you circled -

1 - she circled him?

2 A (No audible response.)

3 Q Did you -- did she suggest to you who to pick out?

4 A No.

5 Q Okay.

6 A What do you mean?

7 Q Did she tell you who -- who Brandon Smith or tell you
8 who the -- who the individual you saw that evening was?

9 A No, sir.

10 Q Okay. Well, who picked out No. 4 from the photo
11 lineup?

12 A Me.

13 Q You picked him out. And that based on your knowledge
14 of him?

15 A Yes, sir.

16 Q And your -- and have -- having seen him in the
17 community.

18 A Yes, sir.

19 Q Okay. Did Lieutenant Daniels or anybody else with the
20 Manning Police Department suggest to you in anyway who to
21 pick up -- pick out of that photo lineup?

22 A No, sir.

23 Q All right.

24 MR. DURANT: Your Honor, that's all the questions I
25 have of Ms. Calvin on this subject.

1 THE COURT: All right. Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. GRIFFITH:

4 Q Ms. Calvin, isn't it true that you were not actually
5 at the bar when the shooting occurred?

6 A At the bar?

7 Q At the place where you guys call "Browntown".

8 A No. I was there because I the one ran up to Bray and
9 -- and get the boys that took him on to the hospital.

10 Q But you didn't actually see who shot him, did you?
11 You didn't see the shooting itself? You heard the shooting,
12 but you didn't see it; is that right?

13 A Yeah, but I know what two been together.

14 Q So you didn't see the shooting, but you heard what had
15 happened and ---

16 A Heard? What you mean by "heard"?

17 Q You didn't see who shot him, correct?

18 A I mean, I didn't see who shot him, but eventually it -
19 - I mean, it -- I mean, how could you miss it when it was
20 just those two right there?

21 Q Didn't you say several fellas walked out of there
22 together?

23 A Yeah, but they got in the car.

24 Q But you didn't see the shooting or where it came from,
25 did you?

DIRECT EXAMINATION BY MR. DURANT - SONIA DANIELS

76

1 A No. I mean, I seen a -- I seen -- them two was
2 talking, I heard a shot, Bray fall, he ran and jumped in the
3 car, and that when I went up to Bray.

4 Q But someone suggested that it was Mr. Brandon Smith
5 that had done it; is that correct? And that's how you
6 decided to put him -- circle this?

7 A Naw. No sir, I mean.

8 MR. GRIFFITH: I have no more questions, Your Honor.

9 THE WITNESS: I'm sorry. I'm sorry.

10 THE COURT: That's okay. You're okay.

11 MR. DURANT: No further questions.

12 THE COURT: All right. Ma'am, you may step down.

13 Thank you.

14 THE WITNESS: Yes, sir.

15 (The witness exits the stand.)

16 MR. DURANT: Sonia Daniels.

17 SONIA DANIELS, having been first
18 duly sworn, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. DURANT:

21 Q Lieutenant Daniels, if you would just briefly
22 introduce yourself to the Court.

23 A I'm Captain Sonia Daniels with the Manning Police
24 Department.

25 Q How long have you worked there?

1 A Thirteen years.

2 Q Did you have occasion to participate or assist with
3 the investigation of a shooting that occurred at Browntown
4 Social Club back in December, 2014?

5 A I did.

6 Q Okay. Did you have occasion to meet with the victim
7 in that case, Breshaun Pendergrass?

8 A I did.

9 Q Where did that meeting take place?

10 A MUSC in Charleston.

11 Q All right. And the victim was hospitalized at that
12 point?

13 A He was.

14 Q Okay. Let me show you what's been marked as State's
15 Exhibit 1. Do you recognize that?

16 A I do.

17 Q What is it?

18 A It's a photo lineup.

19 Q Is that the lineup that you showed Mr. Pendergrass at
20 MUSC?

21 A It is.

22 Q All right. Is it -- do you know -- can you tell if
23 it's the lineup of -- of the day that you showed it to him?

24 A The date was December 31, 2014.

25 Q Okay. So that would have been 11 days after this

1 incident?

2 A Yes.

3 Q What, if anything, was Mr. -- Mr. Pendergrass told by
4 you concerning this crime before you showed him the photo
5 lineup?

6 A I don't -- I don't really recall. I know we talked
7 about the actual incident without giving any names. He knew
8 that we had some suspects, and the actual photo lineup was
9 given to him with one of the suspects in it.

10 Q Okay.

11 A And --

12 Q Okay. Did you meet with him and -- and -- and get his
13 version of the events ---

14 A I did.

15 Q --- and what happened?

16 A I did.

17 Q Was that -- do you know whether that's before or after
18 he ---

19 A It was after ---

20 Q --- he ---

21 A It was while he was at the hospital. That was my
22 first time meeting with him.

23 Q Okay. So he told you his -- his story. Did -- did
24 you show him the lineup before or after you got his story?

25 A After I had his story.

1 Q After he -- you had his story.

2 A Yes, sir.

3 Q When he -- when you spoke with him at the -- at MUSC,
4 at the hospital, did he tell you -- did he identify the
5 person that had shot him at -- at the Social Club?

6 A He did.

7 Q And who was that?

8 A Brandon Smith.

9 Q Did he identify him by name?

10 A Yes.

11 Q And did he tell you how he knew him?

12 A I don't recall him telling me how he knew him.

13 Q But he -- he didn't have any trouble telling you his
14 name and identifying him for you.

15 A Not at all.

16 Q What was the nature of the -- well, first of all, how
17 many photos were displayed in the lineup?

18 A Six.

19 Q Okay. And can you tell the Court about the -- the
20 process of -- of getting the lineup, how was it prepared?

21 A A photo lineup is prepared by pulling different
22 individuals with similarities so close that if you didn't
23 know, everybody would look the same on the lineup.

24 Q Okay.

25 A Because we try to get a lot of similarities. Like, if

1 beards or glasses, everybody on that lineup would have the
2 same things.

3 Q And the photos are presented side by side, all on one
4 sheet?

5 A Yes.

6 Q It's a six person lineup?

7 A That's how I do my lineups. Yes, sir.

8 Q And are they prepared in house at the Manning police
9 department, or does somebody else prepare them for you?

10 A This particular lineup was did inside -- in house by
11 Manning police department, but we do have other lineups that
12 we use SLED to generate for us.

13 Q All right. So you -- you helped prepare that -- that
14 lineup?

15 A I did.

16 Q And where did the photos come from?

17 A Our master ID system, the system that we have.

18 Q And do you know where the master ID photos come from?

19 A Uh-huh. It's our actual program that we use for law
20 enforcement, and as we get individuals, whether they're
21 convicted or charged with a crime or just anybody -- I'm in
22 the actual master ID, so...

23 Q Are they the same photos that are -- that are shown on
24 an individual's drivers license?

25 A Correct.

1 Q So they're DMV photos?

2 A Correct.

3 Q Did you -- when you showed the lineup to Mr.
4 Pendergrass, what did he do?

5 A He pointed Mr. Smith out of the lineup.

6 Q Was there any hesitation or delay on his part?

7 A There was not.

8 Q Okay. And did you in any way suggest to him who to
9 pick out?

10 A No, sir.

11 Q Okay. And did he initial -- put his initials beside
12 the individual that he picked out of the lineup?

13 A That's correct.

14 Q Were there any other officers present there with you
15 at that time?

16 A Our victim's advocate, Valerie Hilton.

17 Q Okay. Did she indicate to him who to pick out?

18 A No, she didn't.

19 Q Is the person that Mr. Pendergrass identified in that
20 lineup in the courtroom today?

21 A He is.

22 Q Will you point him out for the Court, please?

23 A (Indicating) Mr. Smith, right there.

24 Q All right. Next let me show you what's been marked
25 for ID as State's Exhibit 2. Do you recognize that one?

DIRECT EXAMINATION BY MR. DURANT - SONIA DANIELS

82

1 A Yes.

2 Q What is it?

3 A That's a SLED generated photo lineup.

4 Q All right. Did you have occasion to present that
5 lineup to somebody?

6 A I did.

7 Q And who was that?

8 A Cindy Calvin.

9 Q When was that done?

10 A January 9, 2018.

11 Q So just last week?

12 A Yes.

13 Q And how did it come about that you had a conversation
14 with Ms. Calvin?

15 A Ms. Calvin -- throughout our investigation of this
16 particular crime, Ms. Calvin has always been listed as a
17 witness.

18 Because it was getting close to the hearing, just
19 talking to her to touch -- to touch on base -- touch up on
20 some discrepancies and to hear her story because I'd never
21 spoken with her. That was my first time speaking with her.
22 So that's how I -- I got to speak with her. We were trying
23 to get prepared for the case.

24 Q Did you meet with her in person or ---

25 A I met with her in my office.

1 Q Okay. Did you speak to her on the phone before you
2 met with her in your office?

3 A Prior to coming to my office I did.

4 Q When you spoke to her on the phone, did she tell you
5 that she knew who the shooter was that night?

6 A She did.

7 Q All right. And was she able to identify him by name?

8 A She knew, I guess, what he goes by is Brandon, and
9 that's what she said.

10 Q Okay. When she -- and then you met with her in your
11 office after ---

12 A Correct.

13 Q And you presented that photo lineup that's ---

14 MR. GRIFFITH: Your Honor, could I object in that the
15 -- the testimony's gone far beyond the identification of
16 this photo and the -- and the purpose of this hearing.
17 Sounds like he's prepping her for trial.

18 THE COURT: I'm going to -- it's pre-trial at this
19 point. I'm going to allow it. Overruled.

20 (To Mr. Durant) Go ahead.

21 Q Lieutenant Daniels, when you met with Ms. Calvin in
22 your office January the 9th and presented her with that
23 lineup identified as State's Exhibit 2, what did she do?

24 A She immediately pointed Mr. Smith out.

25 Q Was there any hesitation on her part?

CROSS-EXAMINATION BY MR. GRIFFITH - SONIA DANIELS

84

1 A Not at all.

2 Q Did you or -- was anybody else present there with you?

3 A No, it was just me and her.

4 Q Did you in any way suggest to her who Mr. Smith was?

5 A No.

6 Q Or suggest to her -- indicate -- in any way influence
7 her to pick Mr. Smith out of the lineup?

8 A No, sir.

9 Q Okay. And the individual that she -- did she write a
10 name beside it?

11 A She just signed her name.

12 Q That's fine.

13 A Date and time.

14 Q All right. Is the individual that she put her name
15 beside, is he in the courtroom?

16 A He is.

17 Q And where is he.

18 A (Indicates) Mr. Smith right there.

19 MR. DURANT: That's all the questions I have.

20 CROSS-EXAMINATION

21 BY MR. GRIFFITH:

22 Q Lieutenant Daniels, the photo lineup -- this is what
23 you have in front of you right here, isn't it?

24 A Yes, sir.

25 THE COURT: Let's refer to the -- the actual, those

1 that have been identified as exhibits ---

2 MR. GRIFFITH: Two.

3 THE COURT: --- so the record is clear on that. Okay.

4 MR. GRIFFITH: State's Exhibit 2.

5 THE COURT: Okay. Thank you.

6 BY MR. GRIFFITH:

7 Q Who circled that? Did you circle it?

8 A No, sir.

9 Q Because Cindy Calvin said that you circled it
10 yourself.

11 A No, sir, I did not.

12 Q Okay. You said in this -- in this Exhibit 2 that that
13 was produced by SLED; is that correct?

14 A Yes, sir. This was a SLED generated one.

15 Q And is this Exhibit 1?

16 A It is.

17 Q And Exhibit 1, did you -- you produced that in house,
18 didn't you?

19 A That's correct.

20 Q If you look at those pictures, do you know any of
21 these gentlemen?

22 A (No audible response.)

23 Q The answer to that is yes, isn't it?

24 A Yes.

25 Q Okay. The answer is that you know these gentlemen

1 because some of them have -- are -- been around town and a
2 lot of people around here know these fellas, don't they?

3 A That's correct.

4 MR. GRIFFITH: I have no further questions at this
5 time.

6 THE COURT: Any re-direct?

7 MR. DURANT: No, sir, Your Honor.

8 THE COURT: Ma'am, you may step down.

9 (The witness complies.)

10 THE COURT: Are there any other witnesses?

11 MR. DURANT: No, sir, Your Honor.

12 MR. GRIFFITH: Your Honor, I would call the Defendant
13 as -- as to identifying some of these people that -- okay.
14 I withdraw that.

15 THE COURT: All right. Anything by way of argument
16 from Defense counsel?

17 MR. GRIFFITH: Excuse me, Your Honor?

18 THE COURT: Anything by way of argument? Any further
19 argument?

20 MR. GRIFFITH: Your Honor, *Neil v. Biggers* in this case
21 I would say that these local photos she knows who those
22 folks are. A lot of people know who those folks are. And I
23 would argue that -- and could bring evidence later to show
24 that even the victim knows who those people are.

25 But Your Honor, so I think it's prejudicial in that he

1 already knew my client, identified him out of some other
2 fellas he knew, and these fellas were all part of a group
3 that's local here.

4 My argument is that it would be unfair to bring this in
5 saying he definitely identified him here. He didn't
6 identify him from the photo. He identified him because he
7 knew him already. And it would be as if somebody asked me
8 to identify my daughter off the list of -- of girls. Yeah,
9 that's my daughter.

10 And so in that, the jury may find that this is, "Oh
11 yeah, well, he identified him right off of a sheet of
12 paper." That would be prejudicial against my client in that
13 case.

14 And then the other, this one was produced by SLED. I
15 don't know who these other fellas are, but it was produced
16 just recently. Three years have gone by, and so much time
17 has gone by that she may or may not have come to hear about
18 the case. A lot of things could have happened.

19 In statements she gave to the police, she said that she
20 didn't see who shot the person, but she's heard about who
21 shot the person. Three years have gone by, and I believe
22 that it would be prejudicial to my client if it were brought
23 -- if it were to be brought in front of a jury and say,
24 "She's -- she picked out the guy that shot him right out of
25 this circle right here." So that's why, of course, Your

1 Honor, I would ask that these be excluded.

2 THE COURT: All right. Mr. Durant?

3 MR. DURANT: Your Honor, I -- I think that the -- the
4 question -- the only question at this stage for the Court is
5 whether or not the identity -- the identification procedure
6 was unduly suggestive and it was -- whether the procedure is
7 conducted by -- used by the law enforcement agency were
8 unduly suggestive.

9 Your Honor, as to the -- has seen the lineups, it's
10 clear that the Defendant's photo does not stand out from the
11 others. All six photos in both lineups are -- depict
12 individuals that are similar in age, appearance, and
13 physical characteristics.

14 The -- the Defendant's name is not listed under his
15 photograph, doesn't indicate that he has a prior record, and
16 the -- and the -- the officer testified that neither she nor
17 any other officer that was present with her identified the
18 Defendant for the witnesses or in any way suggested to the
19 witness who to pick out.

20 The other factors that Mr. Griffith argues go to the
21 weight of the evidence, and he will have the opportunity,
22 through a rigorous cross-examination of the witnesses and
23 through arguments to the jury to make an issue out of those.
24 And those just go to the reliability of their testimony that
25 as to -- questions at this stage as to whether or not there

1 was any unduly suggestive procedures that were used by law
2 enforcement. I'm think, based on the officer's testimony
3 and the -- the photo lineups that Your Honor has reviewed,
4 that the answer to that's clearly not.

5 MR. GRIFFITH: One other thing, Your Honor, one witness
6 testified that the officer circled this picture on the one
7 that came from SLED.

8 In that the officer circled it, we have conflicting
9 testimony. The officer said that she did not circle it, but
10 the witness that supposedly picked out the person and whose
11 name is written there -- she said the officer wrote her name
12 and she wrote the date -- says that the officer did it and
13 the officer wrote her name.

14 So I would think that that would be undue influence,
15 Your Honor.

16 THE COURT: All right. Hold on just a moment.

17 (Brief pause.)

18 MR. DURANT: Your Honor, if I could just offer just one
19 piece of case law for Your Honor to consider? *State v.*
20 *Liverman*. That's 687 S.E. 2d 70. That -- that case stands
21 for the proposition that the rule as governing -- governing
22 the admission of out-of-court identifications apply only
23 where the Defendant and the victim -- or the witness or
24 victim are strangers to each other. They do not apply where
25 the witness knew the Defendant.

1 Your Honor, I would offer that in this case, both the
2 victim and the witness testified that they knew the
3 Defendant personally.

4 THE COURT: All right. Based on what I've heard here
5 today, I'm going to allow the photo ID's.

6 *State v. Singleton*, 395-SC-6, where victim had personal
7 knowledge of Defendant. *Neil v. Biggers* hearing is not even
8 required since there was no unduly suggestive ID process
9 that tainted her in-court identification.

10 The issue is whether or not the identification
11 procedure was unduly suggestive, and if so was the procedure
12 so suggestive as to give rise to the substantial likelihood
13 of irreparable misidentification under the totality of the
14 circumstances.

15 I do not find, based on what I've heard here today,
16 that there was any unduly suggestive identification
17 procedure.

18 Nor do I believe, based on what I've heard here today,
19 the procedure was so suggestive as to give rise to
20 irreparable misidentification.

21 As stated in *State v. Singleton*, 395-SC-6, that case
22 even offered the proposition that a *Neil v. Biggers* hearing
23 is not even necessary where the victim had personal
24 knowledge of the Defendant.

25 Furthermore, I would also reference, as cited by the

1 State, *State v. Liverman*. But your objection is so noted
2 for the record.

3 Okay? Anything further?

4 MR. DURANT: No, sir, Your Honor.

5 MR. GRIFFITH: No, sir, Your Honor.

6 THE COURT: All right. Anything before the jury gets
7 back?

8 MR. DURANT: Not on behalf of the State, Your Honor.

9 THE COURT: Anything, Mr. Griffith, before the jury
10 gets back?

11 MR. GRIFFITH: Nothing, Your Honor.

12 THE COURT: All right. We'll stand down. I've asked
13 the jury to be back here at 2:30. We have about 20 minutes.
14 We'll go from there.

15 If you all will get this other gentlemen on a bench
16 warrant.

17 (Off the record at 2:11 p.m.)

18 (On the record at 2:33 p.m.)

19 THE COURT: All right. It was brought to my attention
20 -- what's her number, again Ms. --

21 MR. DURANT: She'd be No. 6 on your list.

22 THE COURT: Ms. Harvin?

23 MR. DURANT: Ms. Harvin. She'd be No. 6 on your list.

24 THE COURT: Juror No. 75, Ms. Harvin, was selected as
25 the third overall juror. She is -- the Court has been

1 MR. GRIFFITH: Would that be necessary before with the
2 Defense brining in witnesses, or ...

3 THE COURT: I'm sorry?

4 MR. GRIFFITH: Would that be necessary during the
5 State's ---

6 THE COURT: Absolutely. Everybody's sequestered
7 throughout the trial of the case.

8 You know, I don't know the witnesses. Y'all know your
9 witnesses. I'll kind of put it in y'all's hands to police
10 that issue.

11 (Brief pause.)

12 THE COURT: All right. And the other thing is -- is
13 Mr. Griffith was object -- object -- renewing his objection,
14 so to speak, to State's Exhibit 1 and 2 which were
15 introduced for identification purposes or at least for
16 purposes of the hearing -- hold it down, please -- for
17 purposes of the hearing, *Neil v. Biggers* hearing yesterday.

18 All right. The State ready?

19 MR. DURANT: Yes, sir.

20 THE COURT: Defense counsel?

21 MR. GRIFFITH: Yes, Your Honor.

22 THE COURT: Bring me the jury, please.

23 (Jury enters at 10:22 a.m.)

24 THE COURT: All right. Madam Clerk, would you swear
25 the jury, please.

1 CLERK OF COURT: Ladies and gentlemen of the jury,
2 please stand and raise your right hand.

3 WHEREUPON the jurors are sworn by
4 the Clerk of Court.

5 THE COURT: All right. Ladies and gentlemen, we are
6 about to try the case of the State of South Carolina v. Mr.
7 Jeremiah Jermaine Brandon Smith.

8 Before we begin this trial, I want to tell you that
9 this trial will probably be different from what you might
10 expect. Many people do not have the chance to attend actual
11 court sessions as you're doing now and may think from
12 watching television or movies or reading books that trials
13 are always -- excuse me -- full of high drama, intense
14 action, and riveting circumstances.

15 And while all of these things may be true at times,
16 this trial is not for entertainment. It is a fundamental
17 part of our democracy. Excuse me. It's a fundamental part
18 of our democracy. It's an effort to make sure that justice
19 is done between the parties before the Court.

20 In making sure that justice is done between the
21 parties, the process is often slow, deliberate, and
22 repetitive; the opposite of what you may have seen on
23 television, in movies, or read in books.

24 This courtroom, ladies and gentlemen, is a place of
25 honor, dedicated to the protection and preservation of

1 citizens' rights through what many have called "the greatest
2 justice system ever created."

3 The attorneys appearing before you, ladies and
4 gentlemen, are advocates for the parties that they
5 represent. But first and foremost they are officers of the
6 Court, sworn to uphold the integrity and fairness of our
7 judicial system. You should expect them to be professional,
8 competent, and ethical in the representation of their
9 client's interests.

10 (Brief pause.)

11 THE COURT: What I will now say to you, ladies and
12 gentlemen, is intended to serve as an introduction to the
13 trial of this case. These remarks are not a charge on the
14 law in this case. I will instruct you on the law applicable
15 to this case at the end of the trial before you retire to
16 your jury room to begin your deliberations.

17 This, ladies and gentlemen, is merely an explanation of
18 the procedure that we will follow in the trial of this case
19 so that you may better understand what may be happening.

20 The Defendant in this case, ladies and gentlemen, is
21 charged, as I told you previously, by indictment with the
22 offense of attempted murder, the elements of which will be
23 explained to you later. The indictment is simply the
24 charging document by which this case is brought into this
25 court, and it is not in any sense evidence of any of the

1 allegations that it contains.

2 The Defendant has pled not guilty to this charge;
3 therefore, the State of South Carolina has the burden of
4 proving his guilt beyond a reasonable doubt. It will be
5 your duty, ladies and gentlemen, to decide whether the State
6 has met that burden. Your purpose, your purpose as jurors
7 is to find and determine the facts. You, you are the sole
8 and exclusive judge of the facts.

9 If at any time I make any comments regarding the facts,
10 you must disregard it. You are to determine the facts from
11 the testimony that you hear and other evidence introduced
12 here in Court. It is up to you to determine the inferences
13 which you feel may properly be drawn from the evidence.

14 It is especially important that you perform your duty
15 of determining the facts diligently and conscientiously.
16 Because ordinarily, ordinarily there is no way to correct an
17 erroneous determination of the facts by a jury.

18 On the other hand, and with equal emphasis, the same
19 law that makes you the judge of the facts makes me the judge
20 of the law. The law, as given by the Court, is the only law
21 that you may consider. You must accept and follow it even
22 though you may disagree with it.

23 I cannot tell you, ladies and gentlemen, what the facts
24 are in this case, and you cannot disagree with me about what
25 the law is or should be. Your job is to take the law as I

1 give it to you and apply it to the facts as you find them
2 from the testimony of the witnesses and any other evidence
3 introduced during the course of this trial. After doing
4 that, you will render your verdict under the solemn oath
5 that you just took as jurors.

6 Now, until I tell you all to begin your deliberations,
7 you must not, you must not discuss this case with anyone
8 including your fellow jurors, friends, family members, and
9 anyone involved in this case.

10 The attorneys and parties involved in this case have
11 been advised that they are not to talk to you at all. So if
12 you see any of them and they do not speak to you, they are
13 not being unfriendly. They are simply following this
14 Court's instructions.

15 Now, during your deliberations, ladies and gentlemen,
16 you may only discuss the case in the jury room with your
17 fellow jurors because they have seen and heard the same
18 evidence that you have. You must not discuss the case with
19 anyone other than your fellow jurors until you have returned
20 a verdict and the case is at an end.

21 I remind you that you must decide this case based
22 solely on the evidence presented here in this courtroom.
23 This means that during the trial you must not conduct any
24 independent research about the case, the facts of the case,
25 the evidence presented in the case, or the people or

1 organizations involved in any way in the case.

2 Please do not try to find out information from any
3 source outside of this courtroom. In other words, you must
4 not look at dictionaries or other reference materials,
5 search the internet, web sites or blogs, or use any other
6 electronic tools to get information about the case to help
7 you decide the case.

8 You may not use computers, telephones, cell phones,
9 smart phones, smart watches, tablets, the internet, or other
10 tools of technology with communication capabilities at any
11 time while you are in the courtroom or during deliberations.
12 Now, during your breaks for meals or overnight, if
13 necessary, you may use those devices; but you must not use
14 those devices to communicate with anyone about the case
15 until it is over.

16 This means you must not use phone calls, emails, text
17 messages, instant message, Twitter, or any blog, chat room
18 or web site including Facebook, Google, My Space, Linked,
19 YouTube, or any social media web site to send or receive
20 information about this case.

21 This includes information about a party, a witness, an
22 attorney or a court officer, news accounts about the case,
23 research on topics raised, any topics you may think would be
24 helpful in deciding the case, or any testimony presented by
25 any witness during the trial.

1 I don't think there's going to be any, but you're
2 instructed not to read, listen to, or watch any news reports
3 about this case. This includes anything that may be in the
4 newspapers or on the internet, radio, or television. You
5 must not consider anything that you may have heard or read
6 about the case outside of the courtroom whether before or
7 during the trial. Information on television, radio, the
8 internet, or from other sources might be wrong or
9 incomplete.

10 In our judicial system, it is important that you are
11 not influenced by anything or anyone outside of this
12 courtroom. If you become aware of another juror's violation
13 of these instructions, please inform the Court immediately.

14 It is important, ladies and gentlemen, that you keep an
15 open mind and not decide any issue in the case until all of
16 the evidence has been presented, the parties have made their
17 closing arguments, and I have instructed you on the law
18 applicable to this case.

19 It is your solemn responsibility, ladies and gentlemen,
20 to determine the guilt or innocence of the Defendant, and
21 your verdict must be based solely on the evidence as it is
22 presented to you in this trial and on the law as I instruct
23 you during and at the close of the trial.

24 Now, in just a moment, the Solicitor will make what is
25 called an "opening statement," in which the Solicitor will

1 explain to you the issues in this case or at least what the
2 Solicitor thinks the issues are in this case. The attorney
3 for the Defendant may also make an opening statement,
4 although he is not required to do so.

5 What the attorneys tell you, ladies and gentlemen,
6 during their opening statements is not evidence in this
7 case. It is only their contention as to what the issues
8 are. The evidence in this case, ladies and gentlemen, will
9 be presented to you by the sworn testimony of witnesses
10 and/or by exhibits that may be introduced into evidence.

11 Ladies and gentlemen, from time to time you may hear
12 one of the attorneys say something like, "Your Honor, I
13 believe that we have a question of law or a matter of law to
14 discuss with you," or "Your Honor, may we approach the
15 bench?" Or sometimes I, myself, might find it necessary to
16 excuse you from the courtroom for a short while so the
17 attorneys and I can discuss a matter of law.

18 The reason for this, ladies and gentlemen, is because
19 you, you are the judge of the facts in this case, and
20 sometimes when I am discussing matters of law with the
21 attorneys, it may be necessary for me to make some comment
22 as to the facts in connection with ruling whether or not a
23 particular law applies.

24 I am not, I am not supposed to tell you what I think
25 the facts are, so I'll excuse you from the courtroom while

1 these discussions take place so that in no way, in no way
2 will you be influenced by anything that I might say or do in
3 connection with the facts.

4 Now, in determining what the facts are in this case,
5 ladies and gentlemen, you, you must decide whether or not
6 the testimony of the witnesses is believable. It will be my
7 responsibility to rule as a matter of law as to whether
8 certain testimony is admissible or not. Once the testimony
9 is admitted, whether or not you believe it is solely for you
10 to determine.

11 Now, in -- in deciding whether or not to believe a
12 witness, you have the right to consider the interest of any
13 witness, the bias of any witness, the prejudice of any
14 witness, the opportunity for the witness to have seen the
15 matters and things about which the witness may testify, and
16 the way the witness acts on the witness stand. You have the
17 right to consider anything that is in the record that will
18 help you evaluate the testimony of the witness -- witnesses.

19 That means, ladies and gentlemen, it is your duty, it
20 is your duty to pay close attention to these witnesses, to
21 observe the witnesses, to listen to the witnesses, and to pay
22 close attention to the attorneys and to the Court.

23 Please, please don't let your thoughts wander, but give
24 strict attention to the testimony in this case so that at the
25 end of all the testimony, after the arguments of counsel and

1 this Court's instruction to you on the law, you will then be
2 in a position to determine what the facts are and to apply
3 the law to those facts and thus render a verdict.

4 Now, later in this case, ladies and gentlemen, a
5 foreperson will be selected to preside over deliberations in
6 the jury room. It will be the foreperson's added duty to be
7 the jury's spokesperson here in Court. It will also be the
8 foreperson's duty to write the verdict on the verdict form,
9 but I will give the foreperson further instructions about
10 that at the conclusion of the case.

11 Now, in order to preserve everyone's rights, I will
12 give the parties an opportunity to object to anything that I
13 have said.

14 Is there any objection or exception to anything that I
15 have said to the jury by the State?

16 MR. DURANT: No, sir, Your Honor.

17 THE COURT: Defense counsel?

18 MR. GRIFFITH: None, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, we will
20 now begin the trial of this case. The State is recognized
21 for opening statements.

22 MR. DURANT: Thank you, Your Honor. May it please the
23 Court?

24 THE COURT: Yes, sir.

25 MR. DURANT: Mr. Griffith, Madam Clerk.

1 Ladies and gentlemen of the jury, good morning.

2 THE JURY: Good morning.

3 MR. DURANT: This case is about a malicious, truly
4 senseless act of violence. It's about a shooting at a social
5 club just down the street.

6 An intentional malicious, inexplicable senseless act of
7 violence in which a 21-year-old-man, Breshaun Pendergrass,
8 was shot in the back, paralyzed, and left confined to a
9 wheelchair for the rest of his life.

10 My name is Chris Durant. I'm Assistant Solicitor here
11 in Clarendon County. I'm from Clarendon County, from the
12 Gable area. I grew up here. It's my great honor and
13 privilege to represent the interest of South Carolina,
14 represent the interest of our community in the Solicitor's
15 Office in prosecuting crimes.

16 The Supreme Court has said that the job of a solicitor,
17 the duty of the solicitor is not just to seek conviction.
18 That's not my job. My job is to ensure that justice is done.
19 And make no mistake about it, that's your job too. Your job
20 in this trial is to see that justice is done.

21 The burden that the State has in proving a case is to
22 prove -- and you've probably heard this phrase a lot -- to
23 prove the elements of the crimes charged beyond a reasonable
24 doubt. So let me go ahead and tell you what that means.

25 But before I do that, I want to remind you that Judge

1 Brown is the -- as he told you before, he is the sole judge
2 of the law. So if at any point I say something in regards to
3 the law that contradicts or conflicts in any way with what
4 Judge Brown tells you, then you need to disregard what I say
5 and apply the law as you hear it from Judge Brown.

6 But I submit to you that proof beyond a reasonable
7 doubt is proof that would leave you firmly convinced in the
8 Defendant's guilt, firmly convinced in the Defendant's guilt.

9 The crime that this young man, Brandon Smith, is
10 charged with is attempted murder. And briefly what that
11 means is it -- it's that a person with intent to kill
12 attempted -- there was some overt act -- he attempted to kill
13 another person with what we call "malice aforethought," and
14 that's a legal term. It -- it sounds more complicated than
15 it is. Malice is simply ill will towards another human
16 being, and aforethought -- it -- it doesn't have to be any --
17 any set period of time that the -- it's enough if it's only a
18 moment before you do that. So a person with intent to kill,
19 attempts to kill another person with malice aforethought.

20 And here are the facts of the case: On December 20,
21 2014, just over three years ago, at a social club, just down
22 the street, in the early morning hours -- Browntown -- it's
23 on Burgess Street, right across from CVS. You're heading
24 towards Walmart, turn left on Burgess Street, right across
25 from CVS, kind of go around the corner.

1 On Burgess Street, at Browntown Social Club, in the
2 early morning hours, Breshaun Pendergrass was there. Brandon
3 Smith came looking for him. He came with his buddies. He
4 came looking for Breshaun Pendergrass at Browntown.

5 They knew each other well. They had grown up together,
6 had gone -- had -- had -- had been -- grown up in the same
7 neighborhood, had known each other since childhood. There
8 was tension between them. So Brandon came looking for him
9 because Breshaun hung out with some guys that Brandon didn't
10 like. So Brandon came looking for Breshaun that night --
11 that early morning, at Browntown Social Club.

12 And as Breshaun went to leave, Brandon mouthed off at
13 him. He -- he made a smart remark to him. He tried to draw
14 him into an altercation outside -- outside the club.
15 Breshaun turned his back to walk away, to get away from the -
16 - from the situation, and as soon as he turned his back, he
17 was shot. And that bullet severed his spine and he has been
18 confined in a wheelchair ever since. It's just a senseless
19 act of violence. No explanation for it.

20 I told you a few minutes ago that this case was about
21 that malicious -- that senseless act of violence. I think
22 you'll also find -- and it is, it is. But I think you'll
23 also find that this case is about a few men and women that
24 were there that night with the character -- and maybe they
25 hadn't always done things right in their life -- but now,

1 with the character and the courage -- maybe they didn't have
2 it to begin with -- but the courage now to come in here and
3 tell you what happened, to tell you what they saw happen that
4 night at Browntown Social Club and to see that justice is
5 done.

6 Again, that's your goal, to see that justice is done.
7 I charge you, do not fall short. Thank you.

8 THE COURT: Mr. Griffith?

9 MR. GRIFFITH: Solicitor, Your Honor.

10 Ladies and gentlemen of the jury, my name is Attorney
11 Timothy L. Griffith. I represent Brandon Smith who is being
12 accused of this crime, and of course, as you know, heard it
13 all your life: You're innocent until the State proves that
14 you're guilty. They have to prove you're guilty beyond a
15 reasonable doubt.

16 And in this case, you're going to hear from a lot of
17 witnesses. You're going to hear people that knew -- that
18 know Mr. Smith, people that know and knew Mr. Pendergrass;
19 but a lot of those people have little issues that may cause
20 them to not tell the truth.

21 So it will be your job to kind of listen and find out
22 what the truth is, what the facts are. Witnesses that say
23 that there was some kind of altercation, but the State --
24 with what I've seen so far -- they have no witness that saw
25 somebody get shot.

1 And so there are no witnesses that saw Brandon Smith,
2 or whoever else, shot Mr. Pendergrass. Mr. Pendergrass did
3 get shot. He was grievously wounded. It's a tragedy, but
4 there's no proof as to who shot him. We don't know who shot
5 him, but it was not Brandon Smith.

6 Brandon Smith went there with some friends. He will
7 say that, "Yeah. I went to that bar. I went there with some
8 friends to have some drinks." They had some drinks, they
9 left. They don't know who did what. They are as shocked as
10 everybody else.

11 But in the meantime, Mr. Pendergrass is not an unknown
12 person in the town. He has enemies. There are people --
13 lots of people that may have something against Mr.
14 Pendergrass and that do, and we'll show that it could have
15 been any one of those people. It could have been one of a
16 lot of people that were there.

17 People would come and go at that bar. There were more
18 than one person there at the time, and there is no indication
19 that Brandon Smith was the person that perpetrated the crime
20 against Mr. Pendergrass.

21 If you don't find beyond a reasonable doubt that Mr.
22 Smith and nobody else committed this crime, well, of course,
23 those are the facts that you're going to have to weigh and
24 decide.

25 The State will present a lot of what's called,

1 "circumstantial evidence," evidence that -- "Well, you know,
2 he could have done it, and you know, he was there."

3 A lot of people were there, but being there is not a
4 crime and circumstantial evidence, unless it points directly
5 to and that no other person could have committed that crime,
6 then it is not enough to overcome the State's burden to show
7 beyond a reasonable doubt. And we will show that much of the
8 circumstantial evidence does not reach that level of beyond a
9 reasonable doubt.

10 We would ask that you listen, of course, to all the
11 testimony and keep it in mind that some people have different
12 reasons for saying different things. We don't know why they
13 do it. A lot of times they got something against somebody,
14 but keep -- you keep an open mind.

15 You don't have anything against anybody. You're just
16 here to hear the facts and make a decision, and we appreciate
17 your attention to the facts and to weigh the facts in their
18 totality.

19 Is this person believable? Is that person believable?
20 Did we show that this person tells some lies? Did we show
21 that that person tells lies? If they're going to lie under
22 oath, then, you know, so be it. But that's up to you to make
23 a decision as to who's telling the truth and who isn't.

24 I appreciate you being here and, of course, serving on
25 the jury is -- is -- really is a great privilege. And -- but

DIRECT EXAMINATION BY MR. DURANT - SCOTT DANBACK 134

1 we're sorry to take up your time. We'll try not to take more
2 than we have to, but thank you and I appreciate your work
3 that you're going to do for us here.

4 THE COURT: Call your first witness.

5 MR. DURANT: State calls Scott Danback.

6 SCOTT DANBACK, having been first
7 duly sworn, testifies as follows:

8 (Brief pause.)

9 DIRECT EXAMINATION

10 BY MR. DURANT:

11 Q Officer Danback, good morning.

12 A Good morning, Mr. Durant.

13 Q I want to be sure I'm calling you by the right title.
14 You -- you work for the Sheriff's Office now, correct?

15 A I do now, yes, sir.

16 Q And what is your position there?

17 A I'm a narcotics agent.

18 Q Okay. So you are Agent Danback; is that right?

19 A Now I'm Agent Danback, yes, sir.

20 Q All right. How long have you worked in law
21 enforcement?

22 A I've been in law enforcement for 11 years.

23 Q And before becoming Agent Danback, who were you?

24 A I was Lieutenant Danback with the Manning Police
25 Department.

1 Q Okay. And how long did you work for the Manning Police
2 Department?

3 A Ten years.

4 Q Were you working there back in December of 2014?

5 A Yes, sir.

6 Q Specifically, on December 20 of 2014, did you have
7 occasion to respond to an incident that occurred at the
8 Browntown Social Club?

9 A I did. I was contacted by telephone and asked to
10 respond to Browntown regarding an incident that took place
11 there.

12 Q And what was the nature of the call that you were asked
13 to respond to?

14 A I was responding to a "shots fired" and there was an
15 injured party.

16 Q Where is Browntown?

17 A Browntown's in the city limits of Manning, Holden and
18 Burgess intersection.

19 Q Is that in Clarendon County?

20 A It is.

21 Q Okay. Do you remember what time you were called to
22 respond?

23 A I was contacted about three o'clock in the morning. I
24 arrived on scene at 3:30 in the morning.

25 Q All right. I'm going to show you what's been

DIRECT EXAMINATION BY MR. DURANT - SCOTT DANBACK

136

1 previously marked as State's Exhibits 14 and 15.

2 MR. GRIFFITH: No objection, Your Honor.

3 THE COURT: What -- what exhibit number?

4 MR. DURANT: 14 and 15.

5 THE COURT: All right.

6 MR. DURANT: I'll show you State's 14 first of all, you
7 know, and I'd ask to admit both in -- into evidence. I
8 believe without objection.

9 THE COURT: Without objection, so admitted.

10 (State's Exhibits 14 and 15, photographs, admitted into
11 evidence.)

12 Q Let me show you State's 14 just to give you a -- the
13 jury a picture of where we're talking about here. If you
14 would, kind of point me to the direction of the Social Club
15 here.

16 A The -- if you start at the bottom of the picture ---

17 Q Uh-huh.

18 A --- the road, and just take you pen down to the end of
19 that road and to your left ---

20 Q Okay. Right here (indicates)?

21 A --- that's the actual club itself, yes, sir.

22 Q This back building?

23 A Yes, sir.

24 Q Okay. Now, is this 261 right here (indicates)?

25 A It is.

1 Q Okay. So CVS would be kind of ---

2 A It'd be

3 A out of the -- out of the picture, but at the top -- on
4 the top of 261, yes, sir.

5 Q All right. And again, this is in Clarendon County?

6 A Yes, sir.

7 Q And let me show you State's 15. This is a closer shot.
8 Is that of Browntown? You've identified it -- this building
9 back here with the pen on it, that -- is that fair to say
10 that's Browntown Social Club?

11 A That is Browntown Social Club, yes, sir.

12 Q And that's where you were called to respond that
13 evening on the -- or the early morning hours of December 20,
14 2014?

15 A Yes, sir.

16 Q Tell me the time that you arrived on scene again?

17 A 3:30 a.m.

18 Q Were you the first officer to arrive?

19 A I was not.

20 Q Other officers were already there on scene.

21 A There was already officers on the scene, yes, sir.

22 Q Was the victim there when you got there?

23 A The victim was not there.

24 Q Do you know where he was?

25 A I was told by officers that were on the scene the

1 victim had been transported to the hospital.

2 Q Here in Manning, Clarendon Memorial Hospital?

3 A Yes.

4 Q Were there witnesses still on the scene at the time?

5 A Yes, sir.

6 Q All right. Did you have occasion to talk to any
7 witnesses or interview them on the scene?

8 A I did interview witnesses on the scene, yes, sir.

9 Q And who were the witnesses that you talked to on the
10 scene?

11 A I spoke to a Ms. Calvin and a Ms. Abraham.

12 Q Is that Cindy Calvin?

13 A Yes.

14 Q And Shardara Abraham?

15 A Yes sir, on both of them.

16 Q And don't tell me what they said, but were you able to
17 get some information from them to further the investigation?

18 A I was able to obtain information that they had to
19 further the investigation. Yes, sir.

20 Q What was the nature of that information?

21 A They were able to identify a vehicle, and they were
22 also able to identify a number of people and specifically an
23 individual.

24 Q Did they identify for you the shooter?

25 A They did not.

1 Q Did not identify the shooter that -- that morning.

2 A They did not identify the shooter that morning to
3 myself. Yes, sir.

4 Q All right. Did you assist -- or did officers come to
5 process the crime scene that night?

6 A As I arrived on scene, there was officers in the
7 process of processing the scene, and because that was being
8 taken care of, that's why I went to the two individuals that
9 were standing there to ask them if they knew anything. Yes,
10 sir.

11 Q Let me show you just a couple more photographs.

12 THE COURT: Before you put those on -- hold on. Before
13 you put those on there, has he agreed to them?

14 MR. DURANT: I'm sorry, Your Honor. I believe that Mr.
15 Griffith agreed to these ---

16 MR. GRIFFITH: I have looked at these, Your Honor, and
17 without objection.

18 THE COURT: State the number on the exhibits ---

19 MR. DURANT: Yes, Your Honor.

20 THE COURT: --- before you put them up there.

21 MR. DURANT: They're exhibits -- this will be Exhibit
22 5.

23 Q Let me show you State's Exhibit 5 and admit into
24 evidence with the consent of Defense counsel.

25 THE COURT: Without objection, so admitted.

DIRECT EXAMINATION BY MR. DURANT - SCOTT DANBACK 140

1 Why don't you do this: List all the numbers that you
2 have in your hand that you're going to put up there, we -- so
3 we don't have to go through each one later.

4 MR. DURANT: Yes, sir, Your Honor.

5 THE COURT: Please.

6 MR. DURANT: That'd be -- well, first, Your Honor, it'd
7 be -- you know, Exhibits 3 through 13.

8 THE COURT: Okay. Exhibits 3 through 13, Mr. Griffith
9 has indicated is without objection; is that right?

10 MR. GRIFFITH: Without objection, Your Honor.

11 THE COURT: Without objection and they're -- so they
12 are so admitted without objection.

13 MR. DURANT: Thank you, Your Honor.

14 THE COURT: Thank you.

15 (State's Exhibits 3 through 13, photographs, in
16 evidence.)

17 Q Let me show you Exhibit 5, Mr. -- Agent Danback. If
18 you would, tell the Court what -- what's depicted in the
19 photograph.

20 A The Browntown Social Club is the white building,
21 without the screened in porch, that sits furthest back. In
22 this picture it actually looks like it's behind that pole.
23 And that would be Browntown Social Club.

24 Q (Indicates) This building?

25 A Yes, sir.

1 Q Okay. And that's where you responded that evening.

2 A Yes, sir.

3 Q And Exhibit 7, it's just a closer photograph of the
4 same building?

5 A That is correct.

6 Q And again, Exhibit 8, same thing. That's Browntown
7 Social Club, the back building?

8 A Back building, yes, sir.

9 Q Let me show you a -- this is State's Exhibit 12. If
10 you would, tell the Court what you see here.

11 A That was -- that's a white SUV. When I responded, that
12 vehicle was parked behind the yellow police tape when I
13 arrived on scene at 3:30.

14 Q That's -- that's where the vehicle was located when you
15 arrived on scene.

16 A Yes, sir. And then Browntown Social Club you can see
17 in the faint light set back off to the left.

18 Q (Indicates) Kind of back here?

19 A Yes, sir.

20 Q So this would be the -- the road going to -- the little
21 pathway to Browntown is right through here (indicates)?

22 A That's a -- that's a little driveway that customers use
23 to get to the front door of the club, yes, sir.

24 Q Okay. So we go -- if we go back to Exhibit 7, if you
25 would just point out for the jury where that -- where that

1 Tahoe would have been located.

2 A (Indicates) The Tahoe would have been located to the
3 right of that driveway. There's a fence there, but there's
4 actually -- there's actually a place to actually -- there's
5 places to park in front of that fence. It may not look that
6 way in the picture, but there is.

7 Where you're pointing is -- is approximately where that
8 would have been parked that evening.

9 Q Okay. And again, it was located there when you arrived
10 on the scene.

11 A Yes, sir.

12 Q All right. And Exhibit No. 13, again, just another
13 shot of the same -- of the -- the same area.

14 A That is -- that is correct.

15 Q Is that a fair representation of the scene as you
16 observed it that evening?

17 A Yes, sir.

18 Q Agent Danback, after you assisted with securing the
19 crime scene -- processing the crime scene that evening, did
20 you have any further involvement in the case?

21 A After speaking with the witnesses?

22 Q Yes, sir.

23 A No. I was able to take information that I have and
24 turn it over to the investigator that was in charge of that
25 incident.

1 Q That -- that was the extent of your involvement.

2 A Yes, sir.

3 Q Okay. That's all the questions I have. Please answer
4 any questions of Mr. Griffith.

5 A Yes, sir.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. GRIFFITH:

9 Q Agent Danback, you stated that you spoke with Ms.
10 Calvin at the scene; is that correct?

11 A Yes, Mr. Griffith.

12 Q You also spoke with Ms. Abraham; is that right?

13 A Yes, sir.

14 Q You said that they did not identify the shooter at that
15 time; is that correct?

16 A That is correct.

17 Q You did not see the body yourself; that -- isn't that
18 right?

19 A That is correct.

20 MR. GRIFFITH: I have no further questions.

21 THE COURT: Any redirect?

22 MR. DURANT: No, sir, Your Honor.

23 THE COURT: Sir, you may step down.

24 THE WITNESS: Thank you, Your Honor.

25 (The witness complies.)

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 144

1 THE COURT: Call ---

2 MR. DURANT: The State ---

3 THE COURT: --- your next witness.

4 MR. DURANT: The State would call Breshaun Pendergrass.

5 BRESHAUN PENDERGRASS, having been

6 first duly sworn, testifies as follows:

7 MR. DURANT: Beg the Court's indulgence.

8 DIRECT EXAMINATION

9 BY MR. DURANT:

10 Q Mr. Pendergrass, good morning.

11 A Good morning.

12 Q If you would, tell the Court -- or tell the jury, where
13 you live and what your date of birth is.

14 A Well, I stay by John Deere, live on [REDACTED] My
15 birthday is [REDACTED]

16 Q How old are you now?

17 A Twenty-four.

18 Q Okay. How old were you back on December 20 of 2014?

19 A Twenty-one.

20 Q Were you -- of course, you're confined to a wheelchair
21 now. Are you -- are you working anywhere?

22 A No, sir.

23 Q Were you working back in 2014?

24 A No, sir. I was looking for work.

25 Q You were looking for work.

1 A Yes, sir.

2 Q Have you -- have you held jobs in the past?

3 A Yes.

4 Q Where have you worked?

5 A Walmart, Way To Go. That's it.

6 Q Walmart and where?

7 A Way To Go.

8 Q Way To Go?

9 A Yes.

10 Q The early -- of course, you know what we're here about.
11 Did -- did you go to Browntown Social Club on December 20,
12 2014?

13 A Yes.

14 Q Who did you go with?

15 A Well, honestly, by myself. I got dropped off.

16 Q You got dropped off. And of course, the 20th would
17 have been after midnight. So this -- we're talking the 19th
18 going into the 20th of 2014.

19 A Yes. My father's birthday.

20 Q Tell the jury what you had done that evening.

21 A Repeat that. I didn't hear you.

22 Q Tell the jury what you did that evening.

23 A Well, it was my father's birthday. So I was just
24 hanging out with him at first that day earlier. After that,
25 I went to Browntown Social Club. I chilled there for a

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 146

1 couple hours. Well ...

2 Q Did you go to Browntown very often?

3 A Yeah. Maybe party two, three times on a week.

4 Q Is that -- how close is that to your house?

5 A Maybe 15/30 minutes away.

6 Q Did you drive there that night?

7 A No, sir.

8 Q How'd you get there?

9 A I got dropped off.

10 Q By a friend?

11 A Oh, yes, sir.

12 Q Did your friend stay?

13 A No, sir.

14 Q Did you know anybody else there?

15 A Yes, sir.

16 Q Did you have plans to meet anybody there that night?

17 A No, sir.

18 Q You were just going and figure you'd know some people
19 there?

20 A Yes, sir.

21 Q It wasn't unusual for you to go to Browntown?

22 A No, sir.

23 Q And tell the jury, in case they don't know, what
24 Browntown is.

25 A Well, it's a social club. People go there to hang out,

1 have drinks, you know, have a good time.

2 Q It's a bar?

3 A Yeah.

4 Q They serve alcohol there?

5 A It's a bar.

6 Q Did you have any drinks that night?

7 A I had one earlier.

8 Q At the birthday party or at Browntown?

9 A At the birthday party. Well, not birthday party, but
10 yeah.

11 Q Okay. And then went to the club. Do you -- you
12 remember what time you went to the club?

13 A Maybe 12:30/1. Little after midnight.

14 Q All right. And you knew some people at the club. Can
15 -- did -- can you identify any of the friends that you knew
16 at the club?

17 A Well, I know the owner personally. Maybe two or three
18 more friends, but I know pretty faces -- well, a good bit of
19 faces when I see them.

20 Q All right. Well, let me ask you this: Do you know the
21 Defendant, Brandon Smith?

22 A Yes, I do.

23 Q How do you know him?

24 A Childhood friends.

25 Q All right. Childhood since when?

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 148

1 A Maybe -- basically all my life.

2 Q You've grown up with him?

3 A Yes. Yes, sir.

4 Q Has he -- has he lived close to you?

5 A Yes, sir.

6 Q All right. Do you know whether -- is he -- he from
7 Manning?

8 A Yes, sir.

9 Q Known him all your life. Did y'all -- hung out
10 together, you ever socialize?

11 A Yes, sir.

12 Q And how often would you -- would you hang out together?

13 A Maybe three times out the week. Two or three times out
14 the week.

15 Q Did you know him by his full name?

16 A Yes. But I know him by "Brandon."

17 Q That's what -- that's what he goes by?

18 A Yes.

19 Q It's Jeremiah Jermaine Brandon Smith and he goes by
20 Brandon.

21 A Yes.

22 Q Was Brandon in the club that evening?

23 A Yes.

24 Q Who did he come with?

25 A Shawn Avant, Trey Smith, John Coard.

1 Q These are some other guys that you know?

2 A Yes.

3 Q All right. Did you know -- you know them personally?

4 A Oh. Maybe seen them around. No, don't -- know of
5 them.

6 Q What about a guy named "Fritz Aguon"?

7 A Yes. He was there, but I didn't see him.

8 Q You didn't see him?

9 A No. No, sir.

10 Q And do you know him personally?

11 A No, sir.

12 Q Okay. So you didn't -- tell me who -- who walked into
13 the club with Brandon. Did he actually come inside?

14 A Sir?

15 Q Did Brandon actually come inside the club?

16 A Yes, sir.

17 Q Who -- who came inside with him, the -- the guys you
18 already mentioned?

19 A Yes, sir.

20 Q Shawn Avant, John Coard, and Trey Smith?

21 A Yes, sir.

22 Q And Trey, is that Brandon's brother?

23 A Yes, sir.

24 Q Tell me what happened when Brandon and -- and the other
25 guys came into the club that night.

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 150

1 A Well, when I noticed they was in the club, I was in my
2 corner just minding my own business, doing what I would
3 normally do when I go to Browntown.

4 Q And what -- what is that? What would you normally do?
5 You have a couple of drinks?

6 A No, I didn't have any drinks.

7 Q All right.

8 A I -- I was sitting in the corner just listening to
9 music, watching them play pool as usual.

10 Q Who were you hanging out with?

11 A Maybe Juan Castro, Carmen Gamble.

12 Q And tell me what happened when Brandon and his boys
13 came in the club that morning.

14 A Well, when they came in the club, they was in their own
15 section, I was in mine, and honestly that was it.

16 Q Was there any type of altercation between y'all when
17 they came in?

18 A No. Until I left.

19 Q Until you left?

20 A Yes.

21 Q And when did you leave?

22 A Maybe a hour from when I got there.

23 Q Okay. And why did you decide to leave?

24 A Because honestly, it wasn't -- well, the club been died
25 down. It wasn't nothing going on.

1 Q So the club was dying down. Was it shutting down yet?

2 A No.

3 Q It wasn't closing time, it was dying down. You just
4 mean it was kind of dead. People weren't ---

5 A Yeah.

6 Q --- there weren't many people there.

7 A Yeah. There wasn't that many people there.

8 Q Do you remember about what time that was?

9 A Maybe 2/3ish.

10 Q Now, tell -- tell the jury what happened when you
11 decided to leave.

12 A Well, as I'm walking out to find me a ride home, I
13 couldn't find a ride. Brandon and whoever he was with was
14 outside. And as I'm walking back in the club because I
15 didn't find a ride, he said something to me. I ignored it.
16 From there I heard a gunshot.

17 Q All right. I'm going to get some details from you.
18 First of all, when you walked outside the club, Brandon and
19 his guys, the guys you already identified that -- were they
20 outside already?

21 A Yes. They was already outside.

22 Q Tell me -- tell the jury where they were.

23 A Well, they was -- their car was parked in -- the trunk
24 of the car was parked in, so he was at the back of the car;
25 and they were like, I guess, around it in the front, but not

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 152

1 close enough to me, but ---

2 Q Was anybody else outside the club besides you, Brandon,
3 and the guys he came with?

4 A Not that -- that I can recall.

5 Q Let me show you a couple of photographs that have
6 already been admitted into evidence. First of all, let me
7 show you State's Exhibit 7.

8 And if you could, can you tell on that map -- on the --
9 I'm sorry, on this photograph, where the Defendant's car
10 would have been parked?

11 A (Indicates) Right here in the front. Maybe right there
12 in the front.

13 Q In the front of what?

14 A Yes. Right there. Like, right there.

15 Q Okay. And -- and how -- how was it parked? How was it
16 situated?

17 A Well, it would've been backed in.

18 Q It would've been backed in? So the -- the back of the
19 car would have been this way (indicates)?

20 A Yes.

21 Q The front, was it out -- out here?

22 A Yes. The trunk of the car would've been back there.

23 Q I'm sorry, what?

24 A I said the trunk of the car would have been at the
25 back.

1 Q Back towards the club.

2 A Yes, sir.

3 Q (Indicating) And this is -- this is the road. It kind
4 of curves around here. So the -- the front of the car would
5 be facing the road.

6 A Uh-huh.

7 Q And the back facing the club?

8 A Yes, sir.

9 Q I want to show you Exhibit 12. Now, do you remember
10 that -- that Tahoe, was that on scene that evening?

11 A Yes, sir.

12 Q Okay. Where was the Defendant's car in relation to the
13 Tahoe?

14 A Right -- well, right in front of it -- of the Tahoe.

15 Q I'm sorry, what?

16 A A little bit in front of the Tahoe.

17 Q In front of the Tahoe?

18 A Well, on the side, but right there in the middle.

19 Q (Indicates) So in -- in this area?

20 A Yes, sir.

21 Q Up here?

22 A Yes, sir.

23 Q You just kind of direct me as to where -- where to move
24 my pointer.

25 A You can -- yeah. Come up.

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 154

1 Q Come up?

2 A Yes. Right -- a little bit more.

3 Q Closer to the road?

4 A Yeah. Closer to the road.

5 Q Okay. So it would have been in this area (indicates)?

6 A Yes, sir.

7 Q And the -- the trunk was facing the club, so it was
8 back here; is that right?

9 A Uh-huh.

10 Q So the trunk is -- is facing that, it's backed in. The
11 car's facing the highway out in this direction (indicates.)

12 A Yes, sir.

13 Q All right. When you went outside, where did you walk
14 to?

15 A I walked to the top of the road.

16 Q You walked all the way to the road.

17 A Yes, sir.

18 Q Just to make sure I understand you correctly, I'm going
19 to show you this map. If you would, kind of direct me on
20 this map as to where the cars were parked.

21 THE COURT: That's State's 15?

22 MR. DURANT: Yes, sir, Your Honor.

23 A Could you repeat the question?

24 Q If you would, kind of direct me as to where the cars
25 were parked on the map.

1 A Cars was parked all over, as far as --

2 Q The -- the -- well, specifically, where was the
3 Defendant's car parked?

4 A (No audible response.)

5 Q You see Browntown's been -- been identified. It's got
6 a pin on it back here (indicates). This is the road that
7 curves around. Tell me where the Defendant's car would have
8 been parked. You said it was backed -- it was facing the
9 road, so would it have been in this area?

10 A Yes.

11 Q All right. And where -- where was that Tahoe at that
12 time?

13 A On the side of it.

14 Q (Indicates) Over here, closer?

15 A Yes, sir.

16 Q Where did you walk to? You said you walked all the way
17 to the road. You walked all the way out here (indicates)?

18 A Yes. At the top. Like right in front of the
19 Defendant's car.

20 Q Okay. So you walked by the Defendant's car, between
21 the Defendant's car and the Tahoe?

22 A Yes.

23 Q All the way to the road?

24 A Uh-huh.

25 Q And what was your plan? What were you walking outside

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 156

1 for?

2 A Well, I was trying to find a ride home.

3 Q Okay. Why didn't you ask the Defendant for a ride home
4 if you knew him personally and grown up with him?

5 A Because, honestly, I just didn't want to. I would've
6 rather walk.

7 Q You would've rather walked than ride with the
8 Defendant? What -- why is that? Was there tension between
9 you?

10 A No, but the -- I honestly didn't want to ask him.

11 Q Okay. Are you aware of any tension? Any reason that
12 Brandon Smith would have been upset with you?

13 A Personally, no, but me being who -- who I hang around,
14 yes. That's probably -- could be the reason why.

15 Q What do you mean by that? Say so -- so -- somebody --
16 some of the guys that you hang around might be a reason that
17 Brandon Smith would have tension with you?

18 A Yes. Yes, sir.

19 Q Tell the jury what you mean by that.

20 A I just -- some guys he grew up with, I grew up with,
21 they don't get along anymore.

22 Q So some of your friends are people that Brandon Smith
23 doesn't get along with.

24 A Yes. Yes, sir.

25 Q Tell the jury what happened when you walked by Brandon

1 Smith that night at the club when you walked out to the road
2 with him.

3 A Well, when I went to go find a ride and couldn't find a
4 ride, I walked -- I was walking back in the club. He said
5 something. I know it wasn't nothing positive. I ignored it.

6 Q What do you mean? Let's back up. He -- he said
7 something. You said it wasn't anything positive. What do
8 you -- do you remember what he said?

9 A No, honestly, I don't. No, sir.

10 Q Okay. What do you mean that it wasn't anything
11 positive?

12 A As far as -- it wasn't -- it wasn't, "Do you need a
13 ride home" or anything like that. "Are you alright?"
14 Anything like that.

15 Q Was it an insult or was it a smart remark?

16 A It had to have been a smart remark.

17 Q Okay. When he said that -- when he said whatever he
18 said to you, this thing that wasn't positive, when he mouthed
19 off to you, what did you do?

20 A I ignored it, I walked away.

21 Q Okay. I mean, did you ever pause when you walked --
22 when you were walking and he said something to you?

23 A No, sir. I just walked away.

24 Q Okay. Tell me which way was Brandon situated. How was
25 he stand -- where -- where was he facing when he was out

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 158

1 there behind the car?

2 A He was facing towards me.

3 Q Facing you and if you're ---

4 A As I -- as I'm walking by.

5 Q Okay. And you're -- the remark -- the comment that he
6 makes -- you would have walked by him twice, on the way out
7 to the road and then back to the club; is that right?

8 A Yes. Yes, sir.

9 Q Did he say anything on your way out to the road?

10 A No, sir.

11 Q Okay. It was when you walked back to the club.

12 A Yes, sir.

13 Q Okay. Tell me how -- were y'all face to face? Were
14 you beside him when he said the remark? Where were you in
15 relation to him?

16 A I -- I had to have been on the side.

17 Q Okay. All right. How close did you walk by Brandon
18 Smith? I mean, you went to go back in the club ...

19 A Maybe 3 to 5 feet. It was very close.

20 Q Okay. So -- now, I'm 6 foot tall if I'm laying down,
21 so I'm probably 6 feet away from you now. If I come closer,
22 I mean, tell -- tell me how far away are you?

23 A Yes. Maybe that close.

24 Q Okay. So I'm that close.

25 A Maybe 5 feet.

1 Q Okay. So let's say you're Brandon Smith, and I'm
2 walking back to the club over here?

3 A Yes.

4 Q Would it be fair to say you were this close to him?

5 A Yes.

6 Q Okay. And where -- as I'm walking -- if I'm walking by
7 you and you're Brandon Smith, at what point does he mouth off
8 at -- at what point does he say that smart remark?

9 A Maybe -- one. Another step. Probably right there.

10 Q Okay. And tell the jury what you did when he said that
11 thing -- when he -- whatever he said to you, what did you do?

12 A I walked away. I ignored it.

13 Q Okay. Did you say anything back to him? Did you shrug
14 your shoulders? Did you do anything --

15 A Well, I waved my hand, like, whatever.

16 Q You waved your hand.

17 A Uh-huh.

18 Q So you would've waved your hand to him. And -- and
19 what did you mean by that?

20 A Whenever -- well, when he said what he said, I ignored
21 it. I just waved my hand, like, whatever.

22 Q Where were -- so you -- you walked by him, and you're
23 from me to you away from him. Where are his other friends at
24 that point?

25 A Had to be in the front of the car.

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 160

1 Q Okay. And where was Brandon?

2 A At the back of the car.

3 Q At the back of the car?

4 A Yes, sir.

5 Q Was he standing beside the back of the car, or was he -
6 - was he all the way behind it?

7 A Well, he was in front of it.

8 Q Okay. In front of it. So if the car would have backed
9 up, would -- would it have run over Brandon? Was he in the
10 way?

11 A Yeah. He was, like, on the trunk.

12 Q Okay. So he was in front of the trunk. The car
13 couldn't have backed up without hitting him.

14 A Yeah. Yes, sir.

15 Q And where are his other friends at that point?

16 A Maybe in the front, like at the top of the road.

17 Q Okay. So they're a little ways away from him.

18 A Yeah. Yes, sir.

19 Q Was there anybody else outside the club at that point
20 that you noticed?

21 A No, sir.

22 Q Tell the jury what happened after Brandon makes some
23 remark to you, you wave it off, you're walking back to the
24 club. What happened next?

25 A Well, before I couldn't even take another step, I heard

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 161

1 the gunshot go off.

2 Q Before you could take another step. How close were you
3 to Brandon at that point?

4 A Very close. Three to five feet.

5 Q Okay. How long after you had -- had waved him off, or
6 shrugged your -- or what -- that -- that motion that you told
7 me a minute ago, how long after that did you hear the
8 gunshot?

9 A Instantly.

10 Q Instantly. How loud was the gunshot?

11 A Close enough to where my ear could ring.

12 Q Close enough to ---

13 A To hear a gunshot ring off.

14 Q To hear a gunshot ring off in your ear.

15 A Yes. Yes, sir.

16 Q Was it loud?

17 A Yes, sir.

18 Q What happened after you heard the gunshot?

19 A Well, I tried to take another step and I realized I
20 couldn't.

21 Q And did you fall on the ground right there?

22 A Yes, sir.

23 Q What happened after you fell on the ground?

24 A Well, I tried to get up and realized I couldn't get up.
25 And then I remember Cindy coming towards me and she thought I

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 162

1 was drunk, but I told her I had just been shot.

2 Q You remember Cindy coming?

3 A Yes. Cindy Calvin.

4 Q How long after you got -- after the shot did -- did
5 Cindy come up to you, if you remember?

6 A Right afterwards.

7 Q Did you -- do you remember what happened next?

8 A Well, when I finally realized and seen the white car
9 gone, that's when she came and I told her I was shot. I told
10 her to get somebody to come help me.

11 Q And so the white car -- and what do you mean -- you
12 mean the Tahoe or the other car?

13 A No. The other car.

14 Q What kind of car was it?

15 A A Crown Vic or -- or something like that. It's one of
16 the -- like the police cars.

17 Q Okay. One of those big, old, boxy cars ---

18 A Yes.

19 Q --- that police used to drive?

20 A A white car with tinted windows.

21 Q Okay. And that's the car that Brandon was standing
22 behind?

23 A Yes, sir.

24 Q After you got shot, the car was gone?

25 A Yes, sir.

1 Q Did you see where the car went after?

2 A No, sir, because I had so much adrenaline pumping.

3 Q Did you go to the hospital that evening?

4 A Yes, sir.

5 Q I'm sorry, that morning? And tell me what happened to
6 you at the hospital. Did -- did they treat you here in
7 Clarendon?

8 A Yes, sir. But I was in and out of it, so they had to
9 ship me to Charleston.

10 Q Had to ship you to Charleston. MUSC?

11 A Yes, sir.

12 Q And you received treatment there?

13 A Yes, sir.

14 Q And you said -- testified a minute ago that you realized
15 after the gunshot that you -- you couldn't walk?

16 A Yes, sir. I couldn't get up.

17 Q You couldn't get up. Have you ever been able to get up
18 out of that chair since that day?

19 A No, sir.

20 Q Mr. Pendergrass, did you -- did you see the gun that
21 Brandon had that night?

22 A No, sir.

23 Q Or that whoever shot you. Did you see the gun?

24 A No, sir.

25 Q Did you see Brandon raise his hand to shoot?

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 164

1 A No, sir, but he was close enough to me.

2 Q And again, how -- tell this jury who you believe is the
3 person that shot you that evening.

4 A Brandon Smith.

5 MR. GRIFFITH: Objection, Your Honor. Calls for him to
6 speculate. He's already said he didn't see who shot him.

7 THE COURT: Overruled. I'll allow him to answer it.

8 Q Who is the person you believe shot you that evening?

9 A Brandon Smith.

10 Q Is he in the courtroom today?

11 A Yes, sir.

12 Q Point him out for the jury.

13 A (Indicates) He's right there.

14 Q In the blue --

15 A The blue shirt.

16 Q Blue sweater?

17 A Yes, sir.

18 Q And how far away was Brandon Smith from you when you got
19 shot?

20 A Three to five feet.

21 Q Three to five feet. And how long -- how loud was that
22 gunshot?

23 A To the point where my ear was ringing.

24 Q Your ear was ringing afterwards?

25 A Yes. Yes, sir.

1 Q When you were laying on the ground that evening, was
2 your ear still ringing?

3 A Honestly, I can't remember. It was too much adrenaline
4 pumping.

5 Q Do you remember meeting with Lieutenant Daniels of the
6 Manning Police Department --

7 A Yes, sir.

8 Q -- at MUSC ---

9 A Yes, sir.

10 Q --- Charleston?

11 A Yes, sir.

12 Q December 31, 2014, does that sound about right?

13 A Yes, sir.

14 Q Okay. And do -- did you tell Lieutenant Daniels what
15 happened that evening?

16 A Yes, sir.

17 Q And do you remember Lieutenant Daniels showing you a --
18 a line-up of individuals, certain individuals, a photo line-up
19 of six individuals?

20 A Yes, sir.

21 Q Okay. Let me show you what's been marked for ID as
22 State's Exhibit 1. Just tell me if you recognize that.

23 A Yes, sir.

24 Q What is it?

25 A It's a photo line-up.

DIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 166

1 Q A photo line-up?

2 A Yes, sir.

3 Q Of -- of who? Of what?

4 A Could you repeat that?

5 Q Do you know anybody in that photo line-up?

6 A Yes, sir.

7 Q Who do you know?

8 A I know Brandon Smith, and I know this guy right here
9 (indicates).

10 Q Okay. Who is this guy?

11 A James Brown.

12 Q When Lieutenant Daniels presented you with the line-up,
13 what did she tell you do to?

14 A She told me to -- well, she asked me did I know anybody
15 in the line-up and did I know who shot me.

16 Q Was the person that shot you in that line-up that --
17 that Lieutenant Daniels presented?

18 A Yes.

19 Q And did you put your initials underneath his picture?

20 A Yes.

21 Q And did you date it and circle him?

22 A Yes, sir.

23 Q Did Lieutenant Daniels in any way suggest to you who to
24 pick out of the line-up?

25 A No, sir.

1 Q Did she tell you who to pick?

2 A No, sir.

3 Q How do you know it was -- it was Brandon Smith who's the
4 individual who you wanted to -- to be circled? How did know
5 him?

6 A Because I know what happened at Browntown. I know the
7 altercation. I know how close he was towards me. I know he -
8 - I know anybody wouldn't just leave a person on the ground
9 shot.

10 Q Is there any question in your mind that the person that
11 you walked by, that was 3 to 5 feet from you, and that you
12 believe shot you is Brandon Smith?

13 A Yes, sir. He shot me.

14 Q How do you know it was Brandon? How do you know Brandon
15 is that particular individual?

16 A I know it was Brandon.

17 Q Right. But the person that -- that whoever was standing
18 -- was that close to you is clearly -- is who you believe shot
19 you, but how do you know that that person is Brandon Smith?

20 A He was the closest to me.

21 Q Had you had -- did you have a chance to see him, to see
22 his face?

23 A Yes.

24 Q And you grew up with him.

25 A Yes.

CROSS-EXAMINATION BY MR. GRIFFITH - BRESHAUN PENDERGRASS 168

1 Q In the same neighborhood.

2 A Yes, sir.

3 Q Since childhood.

4 A Yes, sir.

5 MR. DURANT: Beg the Court's indulgence.

6 (Brief pause.)

7 Q When you walked out to the car, did any -- or when you
8 walked out to go look for a ride and walked by Brandon at the
9 car, did anybody else that was with him mouth off at you or
10 say anything to you?

11 A No, sir.

12 Q Brandon was the one that said something to you.

13 A Yes, sir.

14 Q You're certain about that?

15 A Yes, sir.

16 Q Now, that's all the questions that I have. Please
17 answer -- answer any Mr. Griffith may have. Please answer any
18 questions of Mr. Griffith.

19 THE COURT: Cross-examination?

20 MR. GRIFFITH: Please the Court?

21 CROSS-EXAMINATION

22 BY MR. GRIFFITH:

23 Q Mr. Pendergrass --

24 A Good Morning.

25 Q You stated that you did not see the person that shot you

1 when you were shot; is that -- isn't that right?

2 A Yes, sir.

3 Q You didn't see a gun, did you?

4 A No, sir.

5 Q Your back was turned when you were shot. In other
6 words, you were shot in the back; isn't that correct?

7 A In my spine. Yes, sir.

8 Q You were not facing the person that shot you?

9 A No, sir.

10 Q You said you had not been drinking, but if I told you
11 there had -- were witnesses that will say you had been
12 drinking, would you say you were still not drinking?

13 A I wasn't drinking.

14 Q Pardon me?

15 A I wasn't drinking.

16 Q You didn't drink any that night?

17 A No. Once I got to Browntown, no.

18 Q You didn't drink any at -- that night, that is, you were
19 not intoxicated there at Browntown?

20 A At Browntown, no, I wasn't.

21 Q So there were other people outside besides Mr. Smith;
22 isn't that right?

23 A Yes, sir.

24 Q And in fact, you said that right after you got shot,
25 somebody else came running up to you; isn't that right?

CROSS-EXAMINATION BY MR. GRIFFITH - BRESHAUN PENDERGRASS 170

1 A Yes, sir.

2 Q But earlier you testified that you didn't see anybody
3 else out there except Brandon Smith and a couple of guys.

4 A Yes, sir.

5 Q So now you say that there were some other people
6 actually out there who came running up to you.

7 A No, sir.

8 Q Okay. And when the Solicitor told you that it was a
9 smart remark, you can't remember that remark, can you?

10 A No, sir. It was -- it was nothing positive.

11 Q But the Solicitor, of course, told you that it was some
12 smart remark.

13 When you met at the hospital with Lieutenant Daniels,
14 she showed you the photo line-up that is identified as State's
15 Exhibit 1 and this is the same one, right?

16 A Yes, sir.

17 Q And in a prior sworn testimony, you said you didn't know
18 any of those other people in there besides Brandon Smith;
19 isn't that right?

20 A I said I didn't recognize the photo line-up.

21 Q But now you say you know who they are; is that right?

22 A Yes, sir. I know another person.

23 Q Well, isn't it true that you know three of the other
24 people in that picture?

25 A Three?

1 Q Isn't that true?

2 A No, sir.

3 Q Do you know Jeremy Gardner?

4 A No, sir.

5 Q Jeremiah Gamble?

6 A No, sir.

7 Q But you admit you know Jasper Graham; is that right?

8 AKA "Jap"?

9 A James Brown? Yes, sir. I know him.

10 Q But prior -- in prior sworn testimony, you said you
11 didn't know any of those people; isn't that right?

12 A Yes. I didn't recognize the one other person that I
13 know.

14 Q But I -- but when she showed you that photo, did she ask
15 you to look at it carefully?

16 A Yes. She asked me did I recognize anybody in this photo
17 line-up.

18 Q She asked you if you recognized anybody in there and you
19 -- you didn't really look at it? You just saw Brandon and
20 said, "Yeah. I pick out Brandon." Is that what you did?

21 A Yes. I know who shot me.

22 Q So you knew some other guys, but you -- you didn't want
23 to point that you knew them. She asked if you knew them. You
24 said, "No, I don't know any of them," didn't you?

25 A I didn't recognize James Brown.

CROSS-EXAMINATION BY MR. GRIFFITH - BRESHAUN PENDERGRASS 172

1 Q Why didn't you recognize him?

2 A Because I know who shot me.

3 Q So you'd already made up your mind who shot you. You
4 were gonna just pick out the person that shot you -- that you
5 believe shot you no matter whether you knew anybody else in
6 that line-up or not that she was showing you that might have
7 been suspect. You just decided to pick out Brandon because
8 you had decided in your own mind that that's who shot you,
9 didn't you?

10 A No, sir.

11 Q But in fact, you knew other people in that photo line-
12 up, and you just had already decided you were not even going
13 to identify those people.

14 A No, sir. I didn't ---

15 Q You didn't even tell her who ---

16 THE COURT: Hold on a minute. Hold on a minute.

17 MR. GRIFFITH: I'm sorry.

18 THE COURT: Let him finish his answer before you go into
19 your next question. Okay?

20 A But I didn't recognize the first guy in the line-up.

21 Q Why wouldn't you recognize him? You hang out with him
22 all the time; isn't that right?

23 A No. No, sir.

24 MR. GRIFFITH: Your Honor, I would introduce exhibits
25 for Defense 1, 2, and 3.

CROSS-EXAMINATION BY MR. GRIFFITH - BRESHAUN PENDERGRASS 173

1 MR. DURANT: Your Honor, I object. May I approach?

2 THE COURT: Yeah.

3 (Bench conference.)

4 THE COURT: I'm going to sustain the objection. I going

5 -- I'm going to sustain the objection. Hold on a minute.

6 Hold on a minute.

7 (Brief pause.)

8 THE COURT: All right. Objection sustained.

9 BY MR. GRIFFITH:

10 Q Isn't it true, Mr. Pendergrass, that you knew Jasper
11 Graham quite well, one of the guys in the photo line-up; isn't
12 that right?

13 A Yes, I know him.

14 Q You have a Facebook account, don't you?

15 A Yes, sir.

16 Q Isn't it true that you have pictures on your Facebook
17 account with you and Mr. Graham?

18 A Yes, sir.

19 Q So obviously you know him pretty good.

20 But yet when she brought this picture to you, you didn't
21 bother saying I knew this man right on the top corner. You'd
22 already made up your mind is was Brandon Smith; isn't that
23 right?

24 A I said I didn't recognize him.

25 Q Grew up with him in the neighborhood, didn't you?

CROSS-EXAMINATION BY MR. GRIFFITH - BRESHAUN PENDERGRASS 174

1 A Yes.

2 Q You knew him as well as you knew Brandon Smith, didn't
3 you?

4 A Yes, sir.

5 Q But you recognized Brandon Smith, but you say you didn't
6 recognize the other fellas; isn't that right?

7 A Yes, sir.

8 Q And in fact, your exhibit -- here it is -- I'm going to
9 show you this exhibit again.

10 THE COURT: What exhibit number is that?

11 MR. GRIFFITH: This is Exhibit No. 1. The State's
12 Exhibit No. 1.

13 THE COURT: Thank you.

14 Q And in fact, you know -- (indicates) this is the fella
15 we've been talking about. You know him and you know him, too,
16 don't you? Look at them carefully.

17 A I do not.

18 Q Isn't it true that these fellas appear with you on
19 Facebook in several occasions?

20 A Not that I know of.

21 Q So you didn't see who shot you, but you'd made up your
22 mind who shot you; isn't that correct?

23 A I didn't see who shot me.

24 Q Isn't it true that you're a member of a group that has a
25 beef with Brandon Smith and some of his friends; isn't that

REDIRECT EXAMINATION BY MR. DURANT - BRESHAUN PENDERGRASS 175

1 right?

2 A No, that's not.

3 Q Wasn't there an argument inside of Browntown as well?

4 A No, there wasn't.

5 Q So if you kept walking after passing Brandon Smith --
6 and you say he was 5 feet behind you -- and there were other
7 fellas in front of that car that were also behind you; isn't
8 that right?

9 A Yes, sir.

10 Q And so there was more than one person behind you, wasn't
11 there? Isn't that right?

12 A Brandon Smith was, yes, sir.

13 Q And you didn't see who shot you; isn't that right?

14 A No, sir.

15 MR. GRIFFITH: I have no further questions at this time.

16 THE COURT: Any redirect?

17 MR. DURANT: Yes, sir, Your Honor. Just briefly.

18 REDIRECT EXAMINATION

19 BY MR. DURANT:

20 Q Breshaun, Mr. Griffith asked you a bunch of questions
21 about the photo line-up that you were shown by Lieutenant
22 Daniels. First of all, was anybody else in this line-up at
23 Browntown Social Club that night?

24 A No. No, sir.

25 Q I think he said that there's one other guy in the line-

RE-CROSS-EXAMINATION BY MR. GRIFFITH BRESHAUN PENDERGRASS 176

1 up that you know. Was he at Browntown?

2 A No, sir. I didn't see him.

3 Q Okay. Well, when Lieutenant Daniels showed you the
4 line-up, did she ask you whether you knew anybody else or did
5 she ask you who the shooter was?

6 A She asked who the shooter was.

7 Q Right.

8 A She asked me did I recognized who was in the line-up and
9 who the shooter was.

10 Q And who did you identify as the shooter?

11 A Brandon Smith.

12 Q All right. And I believe Mr. Griffith asked you
13 verbatim, "Isn't it true that when you were shown the line-up,
14 you went directly to Brandon Smith's photograph and picked him
15 out of the line-up."

16 A Right.

17 Q Isn't that true?

18 A Yes, sir.

19 Q Why did you do that?

20 A Cause I know who shot me.

21 Q And who was that?

22 A Brandon Smith.

23 MR. DURANT: No further questions.

24 THE COURT: Any re-cross?

25 MR. GRIFFITH: Redirect, Your Honor.

RE-CROSS BY MR. GRIFFITH - BRESHAUN PENDERGRASS

177

1 THE COURT: Any re-cross?

2 MR. GRIFFITH: Yes, Your Honor. Re-cross.

3 RE-CROSS EXAMINATION

4 BY MR. GRIFFITH:

5 Q Mr. Pendergrass, before she showed you that picture,
6 you'd already made up in your mind that it was Brandon that
7 had shot you, hadn't you?

8 A Because of the altercation, yes.

9 Q So no wonder, of course, you went straight to his
10 picture, correct?

11 A Yes, sir.

12 Q You were even looking for his picture on the sheet,
13 weren't you?

14 A No, sir.

15 MR. GRIFFITH: No further questions.

16 THE COURT: All right, sir. Take Mr. Pendergrass back
17 over to the State's table. Allow him to proceed back over
18 there.

19 (Brief pause.)

20 THE COURT: All right. Ladies and gentlemen, we've been
21 going about an hour and forty-five minutes. I'm gonna --
22 we're gonna take a break at this point. I'm gonna allow you
23 to step to the jury room. Do not, do not discuss the case at
24 all. I'll get you back out here as quickly as possible.

25 (Jury exits at 11:39 a.m.)

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

178

1 THE COURT: All right. We'll stand down just for a few
2 minutes.

3 (Off the record at 11:40 a.m.)

4 (On the record at 12:02 p.m.)

5 THE COURT: Okay. All right. Anything before I bring
6 the jury out, from the State?

7 MR. DURANT: No, sir, Your Honor.

8 THE COURT: Defense counsel?

9 MR. GRIFFITH: Nothing, Your Honor.

10 THE COURT: All right.. If you'll bring me the jury,
11 please.

12 (Jury enters at 12:02 p.m.)

13 THE COURT: All right. All the jurors present?

14 Mr. Durant, you're recognized. Call your next witness,
15 please.

16 MR. DURANT: Your Honor, State calls Fritz Aguon.

17 (Brief pause.)

18 FRITZ AGUON, having been first duly
19 sworn, testifies as follows:

20 THE COURT REPORTER: Would you spell your last name for
21 the record, please?

22 THE WITNESS: A-G-U-O-N.

23 DIRECT EXAMINATION

24 BY MR. DURANT:

25 Q If you would tell -- tell the jury how you -- how do you

1 -- how do you pronounce your last name?

2 A Are-gun.

3 Q Are-gun? First name is what?

4 A Fritz.

5 Q Fritz. Mr. Aguon, do you know why we're here?

6 A Yeah.

7 Q Why are we here?

8 A Because of a altercation that happened at a social club.

9 Q What social club?

10 A I think it was Browntown.

11 THE COURT REPORTER: I need you to speak up, sir.

12 THE COURT: Can you move towards the microphone, please,
13 sir?

14 (The witness complies.)

15 Q At Browntown Social Club, back on December 20, 2014?

16 A Yes, sir.

17 Q Explain to the jury what happened that night.

18 A Okay. I went out to the club and we get a drink. So --

19 Q Who did you go to the club with?

20 A Me and a couple of my friends.

21 Q Who were your friends?

22 A It was me, Brandon, and two more people.

23 Q Who were the other people?

24 A Oh, yeah. I think his name was Terrell, Terrell.

25 Something like that. I don't really know him like that.

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

180

1 Q But you know Brandon?

2 A Yes, sir.

3 Q How do you know him?

4 A From around the neighborhood.

5 Q All right. Is Brandon in the courtroom this morning?

6 A Yes, sir.

7 Q Where is he?

8 A Right there.

9 Q In the blue sweater?

10 THE COURT: I need a verbal response, please. I need a
11 verbal response. I see you shaking your head. I need you to
12 talk so my court reporter can hear it.

13 Q How about pointing out Brandon for us?

14 A The blue shirt.

15 Q Tell the jury what happened when you and Brandon and the
16 other guys -- your other friends, went to the club that
17 evening.

18 A Went and got a cup of liquor and I'm just sitting
19 outside, and I hear a altercation going on. And all I hear
20 was "pow-pow."

21 Q Where were you sitting outside?

22 A Out in the car.

23 Q Where?

24 A In the car.

25 Q In the car? In the same car that you rode to Browntown

1 in?

2 A Uh-uh.

3 Q Whose car were you in?

4 A My cousin.

5 Q Your cousin's car. That's not the car that you went to
6 Browntown in?

7 A No, sir.

8 Q Was that the car that Brandon went to Browntown in?

9 A He went in the white car.

10 Q He was in the white car? Is that the same car that you
11 were sitting in when you heard this altercation?

12 A Yes, sir.

13 Q So the car -- same car that Brandon had gone to the club
14 in is the car that you were sitting in.

15 A (No audible response.)

16 THE COURT REPORTER: Is that a "yes"?

17 THE COURT: Is that a "yes" or a "no"?

18 A Yes.

19 THE COURT: Thank you.

20 Q And where was that car parked?

21 A In the front.

22 Q In the front?

23 A Yes, sir.

24 Q I'm going to show you a map that's been previously
25 introduced as State's Exhibit 15. Can you tell me on this map

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

182

1 where that car was parked? You see Browntown has a pin on it
2 back here.

3 A I can't really see it.

4 Q All right. Let me show you State's Exhibit 7. It's a
5 photograph of Browntown. Can you tell me in that picture
6 where your car was parked?

7 A Over there by the fence.

8 Q This fence or this fence?

9 A (Indicates) That one.

10 Q This one?

11 A (No audible response.)

12 THE COURT REPORTER: Is that a "yes"?

13 A Yes, sir.

14 Q How was the car positioned? Which way was it facing?

15 A Outward.

16 Q Out towards the road? Was it backed in?

17 A Yes, sir.

18 Q What kind of car was it?

19 A It was a white car. I don't remember what kind it was.

20 Q A white car? Was it similar to a Crown Vic?

21 MR. GRIFFITH: Objection. He's leading the witness.

22 THE COURT: Objection overruled. I'll allow -- I'll --
23 I'll allow that question.

24 Answer the question, please, sir.

25 Q Sir, was it similar to a Crown Vic?

1 A No, sir.

2 Q It wasn't?

3 A No, sir.

4 Q You don't remember what kind of car it was?

5 A No, sir.

6 Q Where were you sitting in the car? What seat were you
7 in?

8 A In the back.

9 Q In the back? Okay. Tell the jury about this
10 altercation you heard.

11 A I mean, like, all I heard was arguing, but I couldn't
12 see who was arguing.

13 Q Where was it coming from?

14 A Behind -- behind me.

15 Q Behind you? So behind -- towards the club because the
16 car was backed in.

17 A Uh-huh.

18 THE COURT REPORTER: Is that a "yes"?

19 A Yes, sir.

20 Q What happened after that?

21 A All I see [sic] was cars coming this way, and I heard,
22 "pow, pow." And I said, "Oh." So I seen where Brandon jumped
23 in the car and I didn't know what was going on.

24 Q So you saw -- you say -- your testimony today is that
25 you saw cars pass in front of you?

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

184

1 A Uh-huh.

2 Q And it's at that point that you heard "pow, pow;" is
3 that right?

4 A (No audible response.)

5 THE COURT REPORTER: Is that a "yes"?

6 A Yes.

7 Q What was the 'pow, pow'? Was that a gunshot?

8 A That what it sounded like.

9 Q And after you heard the 'pow, pow,' what happened?

10 A I see people start leaving out of the club.

11 Q Leaving out the club?

12 A (No audible response.)

13 THE COURT: Is that a "yes"?

14 Q Where was Brandon at the time?

15 A Yes.

16 THE COURT: Thank you.

17 Q Where was Brandon at that time?

18 A He wasn't in the car.

19 Q Do you know where he was?

20 A Outside.

21 Q Do you know where outside?

22 A I know he was outside of the car.

23 Q I mean, was he in front of the car, was he behind the
24 car?

25 A Behind the car.

1 Q Did you see him?

2 A (No audible response.)

3 Q You didn't see him?

4 THE COURT REPORTER: Is that a "no"?

5 A No.

6 Q After the -- the shooting, what did Brandon do?

7 A Got in the car.

8 Q And then what happened?

9 A He left.

10 Q Did you go in the club that night?

11 A Uh-uh.

12 Q Did you see Breshaun Pendergrass that night? Do you
13 know him?

14 A Uh-uh.

15 THE COURT: Is that a "no"?

16 A No.

17 Q Did Brandon go in the club?

18 A Not that I know of.

19 Q Not that you know of. You don't know where Brandon came
20 from when he jumped in the car.

21 A (No audible response.)

22 THE COURT: Is that a "no"? I need a verbal response to
23 the questions, please, sir.

24 Q Mr. Aguon, do you -- is it your testimony today -- today
25 that when the shooting happened, you were in the car, some

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

186

1 cars passed by in front of you; and that Mr. Smith was outside
2 the car somewhere, but you don't know where; is that right?

3 A (No audible response.)

4 THE COURT: Is that a "yes"?

5 A Yes, sir.

6 Q But you do know -- you do know Mr. Smith, don't you?

7 A Not really, but I -- I know him from the neighborhood.

8 Q You were hanging out with him that night.

9 A I was playing pool inside of the pool hall that night,
10 and then we went to Browntown.

11 Q Y'all went together to Browntown; isn't that right?

12 A Yes, sir.

13 Q And do you know Breshaun Pendergrass?

14 A No, sir.

15 Q You don't know him? Never seen him before?

16 A I know him, but I don't know him personally.

17 Q You know who he is?

18 A I have seen him -- no.

19 Q You don't know who he is. I mean, if you saw him on the
20 street back then, in December of 2014, could you have
21 identified him?

22 A Uh-uh.

23 THE COURT: Is that a "no"?

24 A No, sir.

25 Q Mr. Aguon, do you remember meeting with Lieutenant

1 Daniels and Detective Elms at Manning Police Department back
2 on December 23, 2014? Just a few days after this incident, do
3 you remember meeting with them?

4 A Uh-huh.

5 THE COURT: Is that a "yes"?

6 A Yes, sir.

7 THE COURT: Hold on a second. I understand what you're
8 saying when you say, "uh-huh" and "uh-Uh-huh." See that
9 recording device right there in front of you?

10 THE WITNESS: Yes, sir.

11 THE COURT: I need a "yes" or a "no" to the questions,
12 whichever is applicable. I need a "yes" or a "no" so it's
13 clear on that recording device what your response is to the
14 attorneys' questions when they ask you a question. Okay?

15 THE WITNESS: Yes, sir.

16 THE COURT: Same thing about nodding your head. Me and
17 the jury and the other people in the courtroom see you nodding
18 your head in the affirmative or negative --

19 THE WITNESS: Yes, sir.

20 THE COURT: -- but I need it all on the record, as
21 everything that's being said in here is recorded. Okay?

22 THE WITNESS: Yes, sir.

23 THE COURT: And I don't want any -- any confusion as to
24 what your testimony is. Okay?

25 THE WITNESS: Yes, sir.

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

188

1 THE COURT: All right. Mr. Durant, you may continue.

2 BY MR. DURANT:

3 Q Mr. Aguon, before we go any further, you ended up being
4 charged in this incident, didn't you?

5 A Repeat it again, sir?

6 Q You ended up getting charged as a result of this
7 incident, didn't you?

8 A Yes, sir.

9 Q Okay. And you have an attorney, Ms. Deb -- Deborah
10 Butcher; is that right?

11 A Yes, sir.

12 Q And you understand that in order to compel your
13 testimony today, the State has offered you immunity; do you
14 understand that?

15 A What is immunity?

16 Q You understand that the State has agreed that it cannot
17 prosecute you for -- any further for this crime in order to
18 compel your testimony today.

19 A Yes, sir.

20 Q You understand that?

21 A Yes, sir.

22 Q So with that in mind, do you remember meeting with
23 Lieutenant Daniels and Detective Elms just a couple of days
24 after this incident on December 23 of 2014?

25 A Yes, sir.

1 Q You remember meeting with them. And do you remember
2 that they told you that that meeting -- that interview was
3 being recorded?

4 A (No audible response.)

5 THE COURT REPORTER: Is that a "yes"?

6 A Yes, sir.

7 Q Do you remember what you told them?

8 A Yes, sir.

9 Q What did you tell them?

10 A I told them that I went to the club, and I had a couple
11 of drinks, but I didn't went in.

12 Q But you didn't know what?

13 A I didn't went in. I was outside in the car.

14 Q Okay. Isn't it true that you told Detective Elms ---

15 MR. GRIFFITH: Objection, Your Honor. Leading the
16 witness.

17 THE COURT: Let him finish his question, please. Finish
18 your question, then -- then if there's an objection, I'll hear
19 it. Okay? Let him finish his question.

20 Q Mr. Aguon, isn't is true that you told Detective Elms
21 and Lieutenant Daniels that you actually saw the shooting?

22 MR. GRIFFITH: Objection, Your Honor. Leading.

23 THE COURT: Objection overruled. You may answer the
24 question, sir.

25 Q Didn't you tell them that?

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

190

1 A Yes. Yes, sir.

2 Q And who did you tell them shot Breshaun Pendergrass?

3 A Brandon.

4 Q Did you tell Lieutenant Daniels and Detective Elms that
5 before you went to Browntown that evening, that Brandon and
6 two other guys came by the pool hall that you were hanging out
7 at, and Brandon told -- said that he had a beef with somebody?

8 MR. GRIFFITH: Objection, Your Honor. He's -- he's
9 telling -- he's giving testimony rather than the witness
10 giving testimony.

11 MR. DURANT: Your Honor, may we approach?

12 THE COURT: Yes.

13 (Bench conference.)

14 (Bench conference with bailiff.)

15 THE COURT: Mr. Aguon, you understand that?

16 THE WITNESS: Yes, sir.

17 THE COURT: I need everybody on my jury to hear what
18 you're saying over there. So I need you to speak up loud and
19 clear. Okay?

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you. Mr. Durant, you may continue.

22 BY MR. DURANT:

23 Q Mr. Aguon, did you tell Lieutenant Daniels and Detective
24 Elms that the evening of this incident that you were hanging
25 out at the pool hall and that Brandon and the other guys came

1 by and asked you if you wanted to go to Browntown? Do you
2 remember -- do you remember telling them that?

3 A Yeah.

4 Q Do you remember telling the investigators that when
5 Brandon and the other guys came by the pool hall, they said
6 they had beef with somebody that was going to be at Browntown?

7 A Nah. They said they had -- they had beef with somebody,
8 but I didn't know where at.

9 Q Do you remember telling the investigators that Brandon
10 asked one of the other guys, specifically Shawn Avant, where
11 the individual that he had beef with could be located; and
12 then Mr. Avant replied, "At -- he's always at Browntown"?

13 A Uh-huh.

14 MR. GRIFFITH: Objection, Your Honor. Completely
15 putting testimony in the mouth of the witness.

16 THE COURT: Objection ---

17 Q Did you ---

18 THE COURT: --- overruled at this point. Answer the
19 question.

20 Q Did you tell the investigators that?

21 A No, sir.

22 MR. DURANT: Beg the Court's indulgence.

23 (Marked State's Exhibit No. 16, CD.)

24 Q Mr. Aguon, I'm going to show you State's Exhibit 16.
25 It's entitled "Fritz Aguon, 12/23/2014, Detective Elms," and

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

192

1 yet you testified that you gave a statement that day to
2 Detective Elms and Detective Daniels; you remember that?

3 A (No audible response.)

4 THE COURT REPORTER: Is that a "yes"?

5 A Yes, sir.

6 Q Brandon, before I play an excerpt from that tape, I want
7 to be clear that your testimony today is that Brandon and
8 whoever else was -- was with him, did not come by the pool
9 hall and say that they had beef with somebody and that that
10 person could be found at Browntown. That didn't happen; is
11 that right?

12 A No. I ain't said everybody. Brandon came into the pool
13 hall and two fellas came up and Brandon say he had beef with
14 somebody, but I don't know what ...

15 Q Did Brandon ask somebody else in the pool hall if they
16 knew where to find the person that he had beef with?

17 A Not that I recall.

18 Q Did you tell the officers that?

19 A Not that I recall, sir.

20 Q All right.

21 MR. GRIFFITH: Objection, Your Honor, to this video. It
22 hasn't -- it hasn't been -- has it been entered into evidence?

23 THE COURT: Hold on. What's your grounds for your
24 objection?

25 MR. GRIFFITH: Pardon?

1 THE COURT: What's the grounds for your objection?

2 MR. GRIFFITH: It has no basis -- no foundation has been
3 laid for this video, Your Honor.

4 THE COURT: Mr. Durant?

5 MR. DURANT: May we approach?

6 THE COURT: Yes.

7 (Bench conference.)

8 THE COURT: All right. Objection overruled.

9 All right. Pursuant to Rule 613, I'm going to allow it.
10 All right?

11 MR. GRIFFITH: Thank you, Your Honor.

12 (Audio plays.)

13 Q Mr. Aguon, before we go any further, was that you
14 talking on the video -- on the audio?

15 A (No audible response.)

16 THE COURT: Is that a "yes"?

17 A Yes, sir.

18 Q Now, that was your voice and your date of birth and --
19 and your address. And you are Fritz Jerome Aguon -- Aguon?

20 A (No audible response.)

21 THE COURT REPORTER: Is that a "yes"?

22 A Yes, sir.

23 (Audio plays.)

24 Q Mr. Aguon, before we go any further, you did, in fact,
25 tell investigators that day that Brandon came by the pool hall

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

194

1 and asked -- you identified him as "Trigger" -- where he could
2 find this individual that he had beef with. Didn't you tell
3 the detectives that?

4 A Yes.

5 Q Who is Trigger, by the way?

6 A That's a friend.

7 Q That's just a friend. Do you know his name?

8 A Uh-uh.

9 THE COURT REPORTER: Is that a "no"?

10 Q You don't know his name?

11 A No.

12 Q Was Trigger one of the guys that went to Browntown with
13 you and Brandon that evening?

14 A Not that I recall, sir.

15 Q Not that you recall. Well, let's see what you told the
16 investigators.

17 (Audio plays.)

18 Q Okay. So you -- you actually did, in fact, tell the
19 detectives that Trigger went into Browntown with Brandon,
20 didn't you?

21 A (No audible response.)

22 THE COURT: Is that a "yes"?

23 A Yes, sir.

24 Q Do you remember telling the detectives that after
25 Trigger and Brandon and Trey walked in the club, that you saw

1 Brandon and Breshaun arguing at the door of the club?

2 A I don't recall that, sir.

3 Q You don't remember telling them that?

4 A I don't recall that.

5 (Audio plays.)

6 Q So the truth is you did tell the investigators that you
7 saw Brandon and Breshaun arguing at the front of -- at the
8 door of the club, didn't you.

9 A Yeah.

10 Q You remember telling the investigators that they walked
11 out the club and they were still arguing?

12 A I don't remember that.

13 Q You don't remember that either.

14 A I don't remember, sir.

15 (Audio plays.)

16 Q The truth is you did tell the detectives that Brandon
17 and Breshaun were arguing outside the club.

18 A Yeah.

19 Q And didn't you tell this jury just a few minutes ago
20 that you don't know who Breshaun is?

21 A Nah. I -- I know about him after she asked me the
22 questions. She asked me did I know anything about Breshaun
23 getting shot in Browntown.

24 Q So you did know him -- you did -- you knew who he was
25 back then.

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

196

1 A I know about him. I didn't know him personally.

2 Q Okay. But you could -- you knew that's who Brandon was
3 arguing with, didn't you?

4 A Nah. Not until I see his face.

5 Q This person, the Breshaun that you didn't -- you don't
6 really know, but you respond -- you acted as if you knew when
7 the officer asked you, do you remember telling the officers
8 that Breshaun punched Brandon in the face and that Brandon
9 then pulled out a gun?

10 A No. No, sir.

11 Q You didn't tell them that?

12 A I don't remember.

13 (Audio plays.)

14 Q The truth is you told the investigators -- the detective
15 that you actually saw the altercation and that you saw Brandon
16 pull out a gun and shoot twice. You told them that, didn't
17 you?

18 A (No audible response.)

19 THE COURT: Is that a "yes"?

20 A Yes.

21 Q Three days after this incident, you told investigators
22 that your friend, that you had gone to the club with -- you
23 saw him pull out a gun and shoot Breshaun. Didn't you tell
24 them that?

25 A Uh-huh.

1 THE COURT: Yes? That's a "yes" or a "no"?

2 A Yes.

3 Q You remember telling the -- the detectives that after
4 Brandon shot, that he and the other guy jumped in the car and
5 y'all drove off?

6 A Yeah. I went home.

7 Q Is that what happened after Brandon shot? He and the
8 other boys got in the car and y'all left?

9 A Nah. I was already in the car, but once Brandon get in
10 the car, we left.

11 Q Brandon got in the car after he did what?

12 A After he shot him.

13 Q After he shot. So let's be clear because you said a
14 couple of different things. Who did you see pull out a gun
15 and shoot that evening?

16 A Brandon.

17 Q Brandon.

18 Why did you tell the jury a few minutes ago that he --
19 you didn't see him do it? Are you scared?

20 A No, sir.

21 Q Brandon your friend?

22 A Uh--uh. I know him.

23 Q Do you want to testify against him?

24 A (No response.)

25 Q Mr. Aguon, the truth is that you -- you're -- you're

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

198

1 actually in custody of law enforcement right now, aren't you?

2 A Uh-huh.

3 THE COURT REPORTER: Is that a "yes"?

4 THE COURT: Is that a "yes"?

5 A (No response.)

6 THE COURT: Is that a "yes", sir?

7 A I guess so. I -- I ain't -- I'm not too sure, but ...

8 THE COURT: Ask the -- hold on. Ask the question again.

9 Q The truth is that you are in custody of law enforcement
10 right now, aren't you? You -- you spent the night -- night in
11 jail last night, didn't you?

12 A Yeah. For a bench warrant.

13 Q For a bench warrant. And you understand that you are
14 under my subpoena to be here for trial and you didn't -- and
15 you didn't show up yesterday when you were directed to, did
16 you?

17 A No, sir.

18 Q And because you didn't show up yesterday when you were
19 directed to come to court, a bench warrant was issued and you
20 had to spend the night in jail. So the jail brought you here
21 this morning, didn't they?

22 A Yes, sir.

23 Q What happened after Brandon shot at the club that
24 evening?

25 A I went home.

1 Q How did you get home?

2 A I rode.

3 Q You rode with who?

4 A Brandon.

5 Q Who drove?

6 A Brandon was driving the car.

7 Q Brandon was driving the car. Whose car was it?

8 A I don't know who [sic] car it was.

9 Q You don't know. He took you home, though, after the
10 incident?

11 A Yeah, I went home.

12 Q Did anybody stop to check on Breshaun after the
13 shooting?

14 A Yeah. Ms. Cindy Calvin.

15 Q How do you know that?

16 A 'Cause she told my mom.

17 Q Okay. But you didn't see it, did you, 'cause y'all had
18 left.

19 A She told my mama on the phone that she the one who call
20 law enforcement --

21 Q Did you or Brandon or anybody else in your group stay to
22 check on Breshaun?

23 A Not that I recall, sir.

24 Q Y'all got in the car and left and they took you home.

25 A Well, I didn't have anything to do with it, but ...

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

200

1 Q You didn't have anything to do with it. What happened
2 after they took you home?

3 A Then I went in the house.

4 Q Mr. Aguon, truth is that you told Detective Elms and --
5 and Detective Daniels three days after this incident that you
6 saw your friend, Brandon Smith, shoot Breshaun Pendergrass in
7 the back. Didn't you tell them that?

8 A Yes, sir.

9 Q Is that what happened?

10 A Yes, sir.

11 Q You saw it with your own eyes.

12 A Yes, sir.

13 Q You told them you saw it with your own eyes, didn't you?

14 A I did.

15 Q You heard early in the -- in the audio that Detective
16 Elms was talking about a conversation that Lieutenant Daniels
17 had with you the day before. How did that come about?

18 A 'Cause I went up there -- well, she called Mr. Webb and
19 told him that she heard that I had something to do with it and
20 she needed me for questioning. So when I went up there and
21 she asked me what was going on, I told her.

22 Q So you called them and asked to go up there.

23 A No, she called.

24 Q She called you. She -- she was looking for you.

25 A Yeah.

1 Q Okay. And that's how you got up there to talk to her.

2 Do you remember in that -- during that interview, do you
3 remember Detective Elms showing you a photograph?

4 A No, sir.

5 Q Do you remember him showing you a photograph of Brandon
6 Smith and asking -- and confirming that that was the
7 individual that you were talking about?

8 A Nah. He didn't show me no picture. All he show me was
9 a picture, ask me did I know Breshaun.

10 Q And again, is the individual that you saw shoot
11 Breshaun, is he in the courtroom today?

12 A Yes, sir.

13 Q Where is he?

14 A In the blue shirt.

15 Q Blue shirt. The man in the blue shirt, Brandon Smith,
16 you saw him, with your own eyes, shoot Breshaun Pendergrass.

17 A Yes, sir.

18 Q What kind of gun was it?

19 A I couldn't remember what kind of gun it was, but I think
20 it was chrome.

21 THE COURT REPORTER: I'm sorry, "I think it was ..."

22 A Chrome.

23 Q You think it was chrome? Do you remember telling the
24 officers that it was a chrome and black gun?

25 A I remember telling them that, but I remember it was

1 chrome.

2 Q Do you remember telling them it was a 38 Cobra?

3 A Yeah. She asked what kind did it look like. I said it
4 had looked like a chrome 38 Cobra.

5 Q Okay.

6 A That's what I said.

7 Q Do you remember telling the officers what Brandon did
8 with the gun when he got back in the car?

9 A Yeah. I think he put it under the seat.

10 Q He put it under the seat. You remember that now.

11 A Yeah. Yes, sir.

12 Q Is that from your memory, or you trying to remember what
13 you told them?

14 A That's from my memory.

15 Q So after Brandon got back in the car, he put this silver
16 and black -- chrome and black gun under the seat, and they
17 left to take you home. Had you seen the gun before y'all got
18 to the club that evening?

19 A No.

20 Q Again, we -- and we heard you -- you tell the officers
21 that you saw him pull it out of his waistband; is that right?

22 A Yes, sir.

23 Q Mr. Aguon, that's obviously not the same story that you
24 started off telling us this afternoon, now. And in fact,
25 isn't it true that about 20 months after this happened, in

1 August of 2016, you wrote a letter to Detective Elms telling
2 him that, in essence, everything you told him earlier was a
3 lie and that you weren't really there that night. You wrote
4 him a letter telling him that, didn't you?

5 A Yes.

6 Q Why did you decide -- well, first of all, let -- let me
7 show you -- just let me mark this as an Exhibit.

8 (Marked State's Exhibit No. 17, letter, for ID.)

9 Q Let me show you what's been marked as State -- just for
10 ID, as State's Exhibit 17. You recognize that?

11 A Yes, sir.

12 Q That your handwriting?

13 A Yes, sir.

14 Q Does it have a date on it? What's the date?

15 A 8/22/16.

16 Q August 22 of 2016. This happened December 20, 2014, so
17 20 months later you sent a letter to the investigators telling
18 them that your first statement that you'd seen Brandon shoot
19 was a lie. Why did you send them that second statement?

20 A (No response.)

21 Q Before you answer that, I want to ask you another
22 question. This written statement in which you say that you
23 actually weren't there and everything you -- you told them
24 before you heard on the street, that's -- that actually -- now
25 we know now that's a lie, don't we, because you saw it, didn't

DIRECT EXAMINATION BY MR. DURANT - FRITZ AGUON

204

1 you?

2 A Yes.

3 Q So you were lying when you sent that written statement
4 to Detective Elms 20 months later. Did you send that because
5 you were scared?

6 MR. GRIFFITH: Objection, Your Honor. Guiding the
7 witness along is ---

8 THE COURT: Objection overruled. Answer the question,
9 please.

10 A No, sir.

11 Q Why did you send it?

12 A 'Cause like, I didn't have anything to do with it so ...

13 Q Did you get any pressure to send that statement?

14 A Uh-uh.

15 THE COURT: Is that a "no"?

16 A No, sir.

17 Q Did you get any pressure not to come to court and
18 testify today?

19 A No, sir.

20 Q Well, why didn't you show up yesterday?

21 A 'Cause I was working in Kingstree, and I didn't know
22 what time I would make it back here.

23 Q Actually, didn't your ride drop you off when you were
24 supposed to be here, and you walked away from the courthouse?

25 A Yeah, but it was late when I came.

1 Q Mr. Aguon, just to clarify -- because you -- obviously
2 you told a few different stories to law enforcement -- the
3 story that you first told to -- to law enforcement and then
4 confirmed this morning is that Brandon Smith shot Breshaun
5 Pendergrass and you saw him do it; is that right?

6 A Yes, sir.

7 Q Is that the truth?

8 A Yes, sir.

9 MR. DURANT: Court's indulgence.

10 THE COURT: Let me hold that exhibit.

11 Q Mr. Aguon, just one more question.

12 A Sir?

13 Q Just one more question. That -- that first statement
14 that you gave, that recorded statement that we heard pieces
15 of, that was given on December 23, 2014. That was obviously
16 before the State of South Carolina offered you immunity to
17 compel your testimony today, isn't it?

18 A Yeah.

19 MR. DURANT: No further questions.

20 THE COURT: All right. Can the lawyers approach for a
21 minute, please?

22 (Bench conference.)

23 THE COURT: All right. Cross-examination.

24 MR. GRIFFITH: Please the Court.

25 CROSS-EXAMINATION

1 BY MR. GRIFFITH:

2 Q Mr. Aguon, is it? Aguon?

3 A Aguon.

4 Q Aguon. Mr. Aguon, you were promised that you would not
5 be prosecuted if you testified; isn't that right?

6 A Repeat that again, sir.

7 Q You were promised that you would not be charged with any
8 part of this crime as long as you testified this for the
9 State; isn't that right?

10 A (No audible response.)

11 THE COURT: I need a verbal response. Hold on a ---

12 Q Do you know what ---

13 THE COURT: Hold on a minute, Mr. Griffith.

14 I need a verbal response. Okay?

15 THE WITNESS: Yes, sir.

16 THE COURT: Answer his question or do you need him to
17 repeat it?

18 A Repeat that again.

19 Q Do you know what "immunity" means?

20 A Yeah.

21 Q Okay. You were promised immunity. In other words, you
22 would not be charged with anything as long as you would
23 testify what that State wanted you to; isn't that correct?

24 A (No response.)

25 Q During your testimony, Mr. Aguon, you testified ---

1 THE COURT: Hold on a minute.

2 Q --- at one point that you ---

3 THE COURT: Hold on a minute.

4 MR. GRIFFITH: Okay.

5 THE COURT: Did you answer the question?

6 THE WITNESS: No, sir.

7 THE COURT: Okay. Go ahead, Mr. Griffith, then.

8 MR. GRIFFITH: Unresponsive.

9 Q During your testimony, you testified at one point that
10 you were in the front seat of the car, then couple minutes
11 later you testified that you were in the backseat of the car.
12 Which one was it?

13 A I said the backseat, sir.

14 Q Well, then why did you say you were in the front seat?

15 A I didn't.

16 Q You didn't actually see the shooting, did you?

17 A (No response.)

18 Q That would just be a "yes" or a "no."

19 THE COURT: Answer the question.

20 A (No response.)

21 MR. GRIFFITH: I'll move on.

22 THE COURT: All right.

23 Q You said that you were sitting in the car and you saw
24 two cars drive by and then you heard the shot; isn't that
25 right?

CROSS-EXAMINATION BY MR. GRIFFITH - FRITZ Aguon

208

1 A No. I -- I say I heard some cars pass by.

2 Q And then you heard the shot.

3 A That's right.

4 Q Isn't that right?

5 A That's right.

6 Q But you don't know where that shot came from, do you?

7 A No.

8 Q It could have come from those cars, couldn't it?

9 A (No audible response.)

10 THE COURT: Is that a "no"?

11 A No.

12 Q So your testimony also was that there was some kind of
13 argument between Mr. Smith and Mr. Pendergrass inside of
14 Browntown; is that correct?

15 A No, sir. I didn't say that.

16 Q And then you saw them arguing outside; isn't that
17 correct?

18 A That's correct.

19 Q You saw them arguing in the doorway.

20 A In the doorway is correct, sir.

21 Q And you testified at one point that you saw Mr.
22 Pendergrass punch Brandon in the mouth, didn't you? Did you
23 testify that?

24 A Yes, sir.

25 Q Mr. Pendergrass -- would it be a surprise to -- to you

1 if I told you he said there was no argument, that nothing like
2 that ever happened?

3 MR. DURANT: Objection, Your Honor. Pitting witnesses.

4 THE COURT: Objection sustained.

5 Q Isn't it true you testified that Cindy Calvin told your
6 mother about the incident; isn't that right?

7 A Uh-huh.

8 THE COURT: Is that a "yes"?

9 A Yes, sir.

10 Q And that's when you heard about it, isn't it?

11 A That's when I got back.

12 Q That's the first time you heard about it, wasn't it?

13 A Uh-huh.

14 Q The next day; isn't that correct?

15 A Yes, sir.

16 (Mr. Griffith confers with Mr. Durant briefly.)

17 MR. GRIFFITH: Your Honor, at this time I would
18 introduce as evidence Exhibit 4 for Defense.

19 (To Mr. Durant) Any objections?

20 MR. DURANT: Yes.

21 May we approach, Judge?

22 THE COURT: Yeah.

23 THE COURT REPORTER: What is it?

24 MR. GRIFFITH: It's his letter.

25 (Marked Defendant's Exhibit No. 4, letter from Fritz

CROSS-EXAMINATION BY MR. GRIFFITH - FRITZ Aguon

210

1 Aguon.)

2 (Bench conference.)

3 BY MR. GRIFFITH:

4 Q Sir, if you look at the -- the State -- Solicitor
5 already showed you that, didn't he, just now?

6 A Yes, sir.

7 Q Did you recognize it?

8 A Yes, sir.

9 Q And that's the letter that you sent; isn't that correct?

10 A Repeat it again, sir?

11 Q That's the letter that you sent, isn't it?

12 A Yes, sir.

13 Q Okay. So this is the same letter that the Solicitor was
14 discussing with you in which you said that you were never
15 there. You remember writing that in the letter?

16 A (No audible response.)

17 THE COURT: Is that a "yes"?

18 A Yes.

19 Q You were not present, you were at Roosevelt's house.

20 A (No audible response.)

21 THE COURT: Is that a "yes"?

22 A Yes.

23 Q You'd been staying there for 10 months.

24 A (No response.)

25 THE COURT: Need a verbal response.

1 A Yes, sir.

2 Q And that you didn't hear about it until the next day
3 from Cindy when she called your mom; isn't that correct?

4 A Yes, sir.

5 Q You didn't know anything about any kind of fight at
6 Browntown, did you? You didn't know anything about an
7 argument at Browntown. You never saw that argument, did you?

8 A (No response.)

9 Q You want me -- could you answer that "yes" or "no"? Did
10 you ever see that -- you never saw that argument; is that
11 right?

12 A No, sir.

13 MR. GRIFFITH: I have no further questions, Your Honor.

14 THE COURT: Any redirect?

15 MR. DURANT: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. DURANT:

18 Q Mr. Aguon, I just want to clarify a few things.

19 A Yes, sir.

20 Q Because obviously you've told a few different stories
21 and I thought that we had established after several questions
22 that you actually saw Brandon Smith shoot Breshaun. Didn't
23 you tell me that?

24 A Yes, sir.

25 Q Didn't you tell Detective Elms and -- and Detective

REDIRECT EXAMINATION BY MR. DURANT - FRITZ Aguon

212

1 Daniels that three days after the incident, before you ever
2 met me?

3 A Yes, sir.

4 Q Before any discussion about immunity was had, didn't you
5 tell the detectives that your friend, Brandon, shot Breshaun
6 and you saw it with your own eyes?

7 A I did, sir.

8 Q Sir?

9 A Yes, sir.

10 Q Did he shoot him?

11 A (No response.)

12 Q Mr. Aguon --

13 A Sir?

14 Q -- would you agree with Mr. -- with Brandon's lawyer --
15 and granted, he asked you, "Isn't it true that you don't know
16 who shoot -- who shot him," and you agreed with him. But
17 didn't you tell the detectives that you did know who shot him
18 and that it was Brandon Smith? Did you tell them that?

19 A Yes, sir.

20 THE COURT: Mr. Aguon, take your hand down from your
21 mouth and respond to the question, please.

22 Q Do you remember telling detectives, "So -- so when I
23 heard two gunshots, Trey jumped in the passenger seat, Trigger
24 jumped in the backseat with me, Brandon jumped in the driver's
25 seat. I already knew he shot the man. I saw it with my own

1 eyes." Didn't you tell the detectives that verbatim?

2 A I did.

3 Q You did. And you did see it with your own eyes, didn't
4 you?

5 A (No response.)

6 Q And isn't it true that it wasn't for -- until 20 months
7 after this incident that you decided to change your story?
8 And you knew that ---

9 A Yes, sir.

10 Q Didn't you know that your friend, Brandon Smith, had
11 been charged with attempted murder, and you knew that case was
12 pending.

13 And isn't it true that for the first time in your life,
14 the first time you ever told the officers that he didn't do it
15 was 20 months after it happened; isn't that true?

16 A Yes, sir.

17 Q For -- so for 20 months your friend was facing attempted
18 murder charges and now you're saying he didn't do it; but you
19 didn't tell the officers that, did you? You didn't correct
20 your story. Because the truth is Brandon Smith did shoot --
21 shoot Breshaun Pendergrass and you saw him do it like you told
22 the officers; isn't that true?

23 A (No response.)

24 MR. DURANT: No further questions.

25 MR. GRIFFITH: Re-cross, Your Honor, briefly.

REDIRECT EXAMINATION BY MR. DURANT - FRITZ Aguon

214

1 THE COURT: Yes.

2 RE-CROSS EXAMINATION

3 BY MR. GRIFFITH:

4 Q Mr. Aguon, you stated that Brandon Smith -- you -- he
5 wasn't really like a friend, you didn't really know him that
6 good; didn't you state that?

7 A Yes, sir.

8 Q All right. Just to make that clear.

9 MR. GRIFFITH: I have no further questions.

10 THE COURT: Sir, you may step down. Thank you.

11 (The witness complies.)

12 THE COURT: All right. Ladies and gentlemen, as he's
13 exiting the courtroom we're going to stop at this point. I'm
14 going to let you go to lunch. I'm going to ask you to be back
15 here at 2:30, 2:30. Do not discuss this case at all. I will
16 see you back at 2:30. We'll resume the trial of this case as
17 promptly at that time as possible. Thank you. You all have a
18 nice lunch.

19 (The jury exits at 1:01 p.m.)

20 THE COURT: All right. Hold it down, please. Anything
21 else from the State before we break for lunch?

22 MR. DURANT: No sir, Your Honor.

23 THE COURT: Defense counsel?

24 MR. GRIFFITH: No, Your Honor.

25 THE COURT: All right. It's my understanding Ms. --

DIRECT EXAMINATION BY MR. MCMILLAN - DR. BRUCE CROOKES 218

1 DR. BRUCE CROOKES, having been first
2 duly sworn, testifies as follows:

3 THE COURT REPORTER: Spell your last name for me.

4 THE WITNESS: It's Crookes, C-R-O-O-K-E-S.

5 MR. MCMILLAN: May it please the Court?

6 DIRECT EXAMINATION

7 BY MR. MCMILLAN:

8 Q Thank you for being here, Dr. Crookes. Will you state
9 your name for the record?

10 A So my name is Bruce Crookes.

11 Q And where are you employed?

12 A The Medical University of South Carolina.

13 Q And can you tell us a little bit about your educational
14 background?

15 A Sure. So I did my -- I went -- did my undergraduate
16 degree at The University of Michigan. I went to medical
17 school at Mt. Sinai School of Medicine in New York City. I
18 did a residency in general surgery at the New York University
19 College of Medicine as well as Abington Memorial Hospital.

20 Then I did a follow-up -- a fellowship in trauma and
21 surgical critical care at University of Miami Ryder Trauma
22 Center.

23 Q Okay. And where were you employed after you finished
24 all of your educational training?

25 A I worked at the University of Vermont for several years

DIRECT EXAMINATION BY MR. MCMILLAN - DR. BRUCE CROOKES 219

1 as a trauma surgeon.

2 Q And is that your speciality? Is that what type of
3 medical doctor you are?

4 A Yes, it is.

5 Q And how long have you practiced?

6 A Fifteen years. So I went from University of Vermont to
7 MUSC.

8 Q Okay. And you -- you perform surgeries. Have you
9 performed several surgeries?

10 A One or two, yeah.

11 Q And are you board certified?

12 A I am, yes.

13 Q And have you ever been qualified to testify as an expert
14 before?

15 A Yes, I have.

16 MR. MCMILLAN: Your Honor, at this time I would like to
17 enter Dr. Crookes as an expert in trauma.

18 THE COURT: Anything from Defense Counsel?

19 MR. GRIFFITH: Without objection.

20 THE COURT: Now, ladies and gentlemen, before we go any
21 further, let me give you this instruction real quick.

22 Normally a person cannot give opinion testimony.

23 Normally when a person testifies, they must testify as to what
24 they either saw, heard, or sensed by smell or something of
25 that nature.

DIRECT EXAMINATION BY MR. MCMILLAN - DR. BRUCE CROOKES 220

1 However, there is an exception when someone is qualified
2 because of education or experience. They are permitted to
3 give their opinion in certain areas if the Court qualifies
4 them to do so.

5 This witness is being qualified in the area of trauma to
6 give opinion testimony in that area. That does not mean -- it
7 does not mean that you must accept the opinion, but it is
8 evidence for you to use in any way that you see fit and give
9 it the weight and credibility that you believe is appropriate.

10 (To Mr. McMillan) You may continue.

11 MR. MCMILLAN: Thank you.

12 BY MR. MCMILLAN:

13 Q Now, in December of 2013 -- 2014, excuse me, where were
14 you practicing?

15 A At the Medical University of South Carolina.

16 Q And on December 20, 2014, do you recall seeing a Mr.
17 Breshaun Pendergrass?

18 A I do.

19 Q Now, were you one of the first physicians to see him?

20 A I was the initial responder at MUSC in the trauma bay,
21 yes.

22 Q And -- and what was he admitted for?

23 A A gunshot wound to the back.

24 Q And now, was it clear, when you viewed Mr. Pendergrass,
25 that it was a gunshot wound?

DIRECT EXAMINATION BY MR. MCMILLAN - DR. BRUCE CROOKES 221

1 A Yes, sir.

2 Q Okay. What -- what was his condition at that time when
3 you first saw him?

4 A At that point he had suffered his injury and was
5 transferred to us for care -- for definitive care. His blood
6 pressure was low, as often happens with people with spinal
7 cord injuries or those that are bleeding to death and you
8 can't tell which one it is.

9 He was on a breathing mask and was in obvious distress
10 or discomfort.

11 Q And what was your initial diagnosis of him after you
12 examined him then.

13 A So after -- after we examined, clearly he had an injury
14 -- a single bullet wound going into his spine from behind, up
15 in about his mid-back.

16 We number the vertebrae in someone's back. T1, or the
17 first thoracic vertebrae, is about the bottom of your neck and
18 it goes down to what we call your "lumbar spine," which is
19 down here (indicates). And his entrance was at about the
20 tenth -- roughly the tenth thoracic vertebrae. So about right
21 in this -- this point (indicates).

22 The other notable finding from his examination was that
23 he couldn't feel anything below his nipples on down and he
24 couldn't move his lower extremities. So that for us is an
25 easy diagnosis of a spinal cord injury.

DIRECT EXAMINATION BY MR. MCMILLAN - DR. BRUCE CROOKES 222

1 Q And can you tell the jury a little bit about the exams
2 that you performed on him?

3 A So we have a pretty regimented standardized exam. And
4 we kind of start from the top of your head running down to
5 your feet, and it's kind of a very -- a very patterned,
6 scripted exam that we do recording all those findings.

7 So he clearly didn't have any injuries to his head or
8 his -- his -- his neck. His lungs were clear. He was clearly
9 insensate from about here down (indicates) meaning he couldn't
10 feel anything and he couldn't move anything. And he had what
11 we call "no rectal tone or sphincter tone," which means that
12 we know that his spinal cord is severed at about -- above that
13 level or at about your mid-back because normally your body
14 shrinks down your sphincter so you're toned and keeps your
15 stool in. And when we find that that's lost, we know there's
16 a complete loss of your spinal cord from at least about the
17 mid-back down.

18 Q Okay. As a trauma surgeon, what's your immediate
19 concerns when you perform these tests and you're getting the
20 feedback that you got from Mr. Pendergrass?

21 A Right. So we have a couple. One is that we know his
22 spinal cord is injured and he can't feel himself from this
23 level down. And the thing that we worry about is that
24 someone's bleeding internally or has other injuries that he
25 just can't feel or identify.

DIRECT EXAMINATION BY MR. MCMILLAN - DR. BRUCE CROOKES 223

1 So our next logical step from that point is to go ahead
2 and get a CAT scan or get further imagining, make sure there's
3 not other injuries that we're missing at that point.

4 Q Okay. And what did the CAT scan or x-ray reveal?

5 A So his CAT scan showed multiple fractures of the spine
6 where the bullet had entered. It showed that his spinal cord
7 was completely severed and that the bullet was lodged in his
8 spine.

9 Q And now, did Mr. Pendergrass undergo any type of
10 procedures?

11 A He wound up undergoing two, one of which I performed.
12 People who have injuries to their spinal cord are very prone
13 to developing clots in their legs. If those clots break off
14 and shoot up to your lungs, it's a -- can be a fatal event.
15 So one of the things we do is we put a screen in the big blood
16 vessel that drains someone's legs to catch those clots and
17 prevent them from being fatal. That was my portion of the
18 procedure.

19 And then Dr. Bart Sachs, who's one of our orthopaedic
20 spine surgeons, did a fusion of the spine because with the
21 multiple levels that he had injured, his spine was unstable
22 which precludes someone with -- with a spinal cord injury from
23 performing rehab.

24 One of the things we know, unfortunately, is that when
25 someone comes in with a spinal cord injury, there's nothing we

DIRECT EXAMINATION BY MR. MCMILLAN - DR. BRUCE CROOKES 224

1 can do to fix the injury to the spinal cord. It's a permanent
2 injury, and there's nothing we can do for them unfortunately.

3 Q So he never regained any sensation or movement of his
4 lower extremities?

5 A No, sir.

6 Q And you said the bullet was lodged. Where -- where was
7 the bullet lodged?

8 A It was lodged in his spine. If I recall correctly, it
9 was about T9 - T10. I'd have to go back and look at the x-
10 ray.

11 Q And why couldn't that be removed?

12 A So typically, when you have a bullet wound or an
13 entrance point, the wound itself is about that big in diameter
14 (indicates). To get down and into the body cavity to get the
15 bullet, we usually have to make a pretty big incision and then
16 move everything out of the way to get to it. And what's
17 between us and that bullet, in this case is -- is the bone --
18 it's his spine and then his spinal cord. So we could just
19 injure everything further or cause more damage. So our
20 typical approach with most bullets is to just leave them in
21 place.

22 Q Now, do you have an opinion as to whether or not this
23 injury is permanent?

24 A It's a permanent injury, yes.

25 Q What other impacts does this type of injury leave on a

DIRECT EXAMINATION BY MR. MCMILLAN - DR. BRUCE CROOKES 225

1 person?

2 A Well, so people with spinal cord injuries, depending
3 upon the level -- and if we're talking about his particular
4 level, will have issues with developing sores on their --
5 their backside. They are incontinent in stool and urine.
6 They can't usually control their -- their bowel and bladder
7 function.

8 They're unable to walk and care for themselves and it's
9 a life-long dependance on other people for care. It's a life-
10 long dependance on a -- on a wheelchair or assisted devices to
11 move around, and unfortunately, we know that people who get
12 into this have shortened life expectancies because of their
13 risk for other complications from the cord -- the cord injury.

14 So while we can get people through the initial trauma,
15 this has major impacts on the rest -- huge impact on the rest
16 of his life. He essentially is -- has to take care of himself
17 very vigorously for the rest of his life. It's not an easy --
18 not an easy path.

19 MR. MCMILLAN: Beg the Court's indulgence.

20 (Brief pause.)

21 Q Just a couple more questions, Doctor.

22 A Uh-huh.

23 Q You testified that you've seen multiple gunshot wounds -
24 --

25 A Yes, sir.

CROSS-EXAMINATION BY MR. GRIFFITH - DR. BRUCE CROOKES 226

1 Q --- correct? What would you say is the severity of this
2 type of injury that Mr. Pendergrass has suffered?

3 A Well, it -- it has -- there's two components of this.
4 One is, you know, any -- any gunshot wounds has a chance to be
5 fatal. A millimeter or two in one direction or the other and
6 you're talking about injuries to life-threatening structures.
7 And if his had gone a centimeter over in one direction or the
8 other, he would never have survived. So that's one caveat to
9 all of this.

10 The second one is that -- and the more important thing
11 is while the initial insult here isn't fatal, you know, we
12 have a lot of technology and skills and ability to keep people
13 alive. That's what we do for a -- for a living.

14 On the other hand, I can't control the long-term
15 repercussions of the injury that the permanent -- the
16 permanent life-abling -- life dis -- disability that he'll
17 have to live with is -- it carries with it a burden of
18 mortality as well, and that's what's so difficult about spinal
19 cord injuries.

20 Q Thank you. No further questions. Please answer any
21 questions Defense counsel may have.

22 THE COURT: Cross-examination.

23 MR. GRIFFITH: Please the Court, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. GRIFFITH:

CROSS-EXAMINATION BY MR. GRIFFITH - DR. BRUCE CROOKES 227

1 Q Dr. Crookes --

2 A Uh-huh.

3 Q -- were you the first person to actually examine Mr.
4 Pendergrass?

5 A At MUSC, yes, sir.

6 Q Did you -- were you involved in removing, like -- you
7 left the bullet in there; is that correct?

8 A Yes, sir.

9 Q Could you tell by looking at it what angle the bullet
10 had come from for instance?

11 A Could I tell which? I'm sorry, sir.

12 Q Which direction it had come from.

13 A I'd have to lineup the bullet with the actual entrance
14 point or entrance wound. I can't say that I can recall that
15 or figure that out from the -- the records I've reviewed.

16 Q Well, really -- thank you, very much. I just wanted to
17 be sure that there was no way that you could tell where the
18 bullet came from.

19 And -- but -- and you -- the bullet had to go through
20 some skin, but could you tell what angle it got to the back
21 or -- or could you tell that or -- or was it just too much
22 damage, not sure?

23 A No -- yeah. It's difficult to tell in that
24 circumstance. I can't answer that question.

25 Q But of course, because this could have been fatal under

1 different circumstances or may make someone's life shorter,
2 you can't tell what the intent of the person -- or whoever
3 shot that bullet -- you -- you can't tell the intent of the
4 person by looking at the wound, can you?

5 A No, sir. I -- I've no -- no understanding of the
6 assailant's intent.

7 Q Exactly.

8 MR. GRIFFITH: I have no further questions.

9 THE COURT: Any redirect?

10 MR. MCMILLAN: No, Your Honor.

11 THE COURT: Sir, you may step down. Thank you.

12 THE WITNESS: Thank you.

13 (The witness exits the stand.)

14 MR. DURANT: State calls Shardara Abraham.

15 CLERK OF COURT: If you don't mind, spell your first
16 name for the Court.

17 THE WITNESS: S-H-A-R-D-A-R-A Abraham.

18 SHARDARA ABRAHAM, having been first
19 duly sworn, testifies as follows:

20 DIRECT EXAMINATION

21 BY MR. DURANT:

22 Q Ms. Abraham, good afternoon.

23 A Good afternoon.

24 Q Do you know what -- well, first of all, tell the jury
25 where you're from. You from Manning?

DIRECT EXAMINATION BY MR. DURANT - SHARDARA ABRAHAM

229

- 1 A Yes, sir.
- 2 Q All right. Do you know the Defendant, Brandon?
- 3 A Yes, sir.
- 4 Q How do you know him?
- 5 A Like, from around. Hanging around.
- 6 Q Okay. Do you know him by name?
- 7 A Yes, sir.
- 8 Q I mean, if you saw him at Walmart, you could call him --
- 9 call his name?
- 10 A Yes, sir.
- 11 Q And how long have you known him?
- 12 A For a long time.
- 13 Q How old are you, if you don't mind me asking?
- 14 A Thirty-three.
- 15 Q Thirty-three. Do you know what we're here for today?
- 16 A Yes, sir.
- 17 Q And what is that?
- 18 A The case of Breshaun.
- 19 Q The what? The case for Breshaun?
- 20 A Yes, sir.
- 21 Q What do you know about the case for Breshaun?
- 22 A Well, one night in -- one night in Browntown ---
- 23 Q Ma'am?
- 24 A In Browntown?
- 25 Q In -- in Browntown?

1 A Yes, sir.

2 Q Back in December of 2014?

3 A Yes, sir.

4 Q Were you actually there that night?

5 A Yes, sir.

6 Q Do you know what happened to Breshaun that night?

7 A Yes, sir.

8 Q What happened to him?

9 A Okay. I was sitting in the car. They must be didn't
10 notice that we was outside, and the only thing -- when we got
11 out the car only thing I heard was a "pow," but I never seen
12 no gun.

13 And I know when Cindy came and run over there and asked
14 Breshaun was he -- was he drinking or was he drunk, he was
15 like, "No, he got shot." And that's when Cindy went inside
16 and asked the boys to come get him and they took him to the
17 hospital.

18 Q Okay. All right. Now, you told me a few things just
19 now, so I want to kind of get some clarity.

20 First of all, you -- you stated that you were out -- I'm
21 going to show you -- this is a map ---

22 A Yes, sir.

23 Q --- that has been introduced as State's Exhibit 15. And
24 you see there's a pin on a building up there. Does that
25 appear to be Browntown Social Club to you?

DIRECT EXAMINATION BY MR. DURANT - SHARDARA ABRAHAM

231

1 A You said what was the club? I don't even see it.

2 Q Do you recognize this? So this -- this area where the --
3 - where the -- where the pin is located?

4 A Uh-huh.

5 Q This is Burgess Street here that goes -- goes around the
6 curve.

7 A Uh-huh.

8 Q Okay. Can you recognize Browntown in that photograph on
9 that map?

10 A A little bit.

11 Q Okay. And maybe -- I guess -- let me back up before we
12 go to the map. Let's look at a photograph.

13 This is State's Exhibit 7. Now, do you recognize that?

14 A That's better.

15 Q That's what -- what is that?

16 A That's Browntown.

17 Q Okay. Can you -- now, when the shooting happened, where
18 were you?

19 A I was on -- you see where the little white fence at
20 right there (indicates)? It's a little field, like, right
21 beside it. Yeah. It's a house --

22 Q Uh-huh.

23 A -- and it's a little fence. I guess they didn't notice
24 that we was in the car, but we was sitting in the car when it
25 happened.

1 Q Okay. So you were sitting in the car when it happened.
2 Let me show you -- on the other side of the white -- let me
3 show you State's Exhibit 6. Can you see where your car was in
4 that picture?

5 A Right up there in between that little -- right up there
6 in that little parking lot where that little field at.

7 Q Right here (indicates)?

8 A Uh-huh.

9 Q Okay. And just so we're clear, is this Browntown here
10 over -- over here (indicates)?

11 A Yes, sir.

12 Q And your car was parked over here somewhere (indicates.)

13 A Yes, sir.

14 Q You were outside -- in the car.

15 A We was inside the car.

16 Q Inside the car.

17 A Uh-huh.

18 THE COURT: Is that a "yes"?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay.

21 Q Okay. And when the shooting happened, where were you?

22 A When -- when they -- when we heard the "pow," we jumped
23 out the car.

24 Q Okay.

25 A And that's when Cindy run over there. I never run all

DIRECT EXAMINATION BY MR. DURANT - SHARDARA ABRAHAM

233

1 the way over there, but that's when Cindy run all the way over
2 there and she asked Bray was he drunk, and he said no, he got
3 shot. And that's when she went inside and get his people and
4 they took him to the hospital.

5 MR. GRIFFITH: Objection, Your Honor. This is not her
6 own words. This is hearsay.

7 THE COURT: Objection overruled. Go ahead.

8 Q Okay. Ms. Abraham, don't tell me what anybody else told
9 you, but let me ask you just a few questions to clarify.

10 You -- were -- when you heard the "pow," were you still
11 inside the car?

12 A No. We would have got out the car by then. When we
13 heard the "pow," we got out the car.

14 Q Okay. Well, I'm just trying to clarify, were you
15 outside the car -- do -- do you recall whether you were still
16 in the car or outside when you -- when the gunshot went off?

17 A When we heard the gunshot, we got out the car.

18 Q So you got out when you heard it.

19 A Yes, sir.

20 Q Did you notice -- how -- well, how long had you been in
21 the car?

22 A We was in the car for a minute. Like I said, they
23 didn't -- they never knew nobody was outside, I guess. But we
24 was sitting in the car and it was cold.

25 Q Had y'all gone inside the club that evening?

1 A We went inside the club before we came back outside.
2 And we was -- like a bunch of little racket going around on
3 the floor, and we came back outside in the car and got in the
4 car; and when we heard the gunshot, we got out the car.

5 Q Okay.

6 A And that's when Cindy went over there and asked Bray was
7 he alright.

8 Q When you went -- when you were inside the club earlier,
9 was Brandon in there?

10 A Uh-huh.

11 THE COURT: Is that a "yes"?

12 THE WITNESS: Yes, sir.

13 A Yes, sir.

14 Q So Brandon and Breshaun were both in the club earlier?

15 A Yes, sir.

16 Q And you say you heard some racket. What do you mean by
17 that?

18 A I mean I hear words back and forth, but I didn't really,
19 really pay it no attention. We just left out after we heard
20 all the little racket.

21 Q Who were the words back and forth between?

22 A It was just a group of them in a group saying all kind
23 of little something.

24 Q Just a group of people.

25 A Yes, sir.

DIRECT EXAMINATION BY MR. DURANT - SHARDARA ABRAHAM

235

1 Q Could you tell who was saying what?

2 A No, sir.

3 Q Okay.

4 A I left out after that.

5 Q When y'all went outside, was anybody else outside?

6 A No, sir.

7 Q Before the shooting, did you notice anybody else
8 outside?

9 A No, sir.

10 Q When y'all got out the club -- out the car, who was
11 outside.

12 A When we got out of the car? It was -- it was Brandon
13 and it was Breshaun and it was some other boys in the car.

14 Q All right. And where were they standing? What were
15 they doing?

16 A They was in the car.

17 Q They were inside the car.s

18 A Uh-huh.

19 Q Did you see Breshaun?

20 A Yes, sir. Because he ---

21 Q Did you see ---

22 A --- he was 'bout to walk back in the club when we heard
23 the "pow."

24 Q Okay. So you -- you -- you saw him outside before you
25 heard the "pow."

1 A We was -- we was outside, yes. Yes, sir.

2 Q But you were inside the car.

3 A But we was inside the car.

4 Q So y'all were outside. So you saw Breshaun before he
5 got shot?

6 A Uh-huh.

7 Q What was Breshaun doing?

8 A He was just standing beside the fence.

9 Q Standing beside the fence?

10 A Uh-huh.

11 THE COURT REPORTER: Is that a "yes"?

12 Q What fence?

13 A Yes, sir.

14 THE COURT: I need a "yes" or "no." Not an "uh-huh" ---

15 THE WITNESS: I keep -- okay.

16 THE COURT: --- or an "uh-uh." All right?

17 A The little fence.

18 Q Let me find the picture again. Look at State's 7 again.
19 Which fence was he beside?

20 A You know -- see where the little trash can at? Where
21 the trash can at?

22 Q This ---

23 A Yes, sir.

24 Q He was standing over here by this fence somewhere?

25 A Uh-huh.

DIRECT EXAMINATION BY MR. DURANT - SHARDARA ABRAHAM

237

1 THE COURT: Is that a "yes"?

2 A Yes, sir. I keep forgetting. My bad.

3 Q What -- what was he -- did you see anybody else outside
4 then?

5 A No. No, sir.

6 Q Breshaun was standing by the fence ---

7 A By hisself [sic]. Yes, sir.

8 Q At any point did you see Brandon outside?

9 A Yes, sir.

10 Q And where was he?

11 A By the car.

12 Q By the car.

13 A Uh-huh.

14 Q Was that before or after the shooting?

15 A That was after -- before the shooting.

16 Q Before the shooting?

17 A Uh-huh.

18 THE COURT: Yes?

19 A Yes, sir.

20 Q He was standing outside ---

21 A I keep --

22 Q I'm sorry.

23 A Okay.

24 Q And I -- and I can see you -- just like we're having a
25 conversation, so I can see your head nodding, and I'm -- try

1 with my next question. But you gotta say "yes" or "no" for
2 the benefit of the record. Okay?

3 Where was Breshaun standing before the shooting? I mean
4 -- I'm sorry -- where was Brandon before the shooting?

5 A He was -- Brandon was standing beside his car.

6 Q Where was his ---

7 A I guess that was his car. I don't know who [sic] car it
8 was.

9 Q Where was his -- where was the car ---

10 A The car was, like, where that little fence at on the
11 side where the house at, the car was backed in.

12 Q Of this fence?

13 A Uh-huh.

14 Q Backed in beside this fence.

15 A Yes, sir. Right there.

16 Q Okay. And where was Brandon standing?

17 A You say Brandon or Breshaun?

18 Q Brandon.

19 A You asked me was Brandon was standing?

20 Q Where was Brandon standing?

21 A By his car.

22 Q By his car.

23 A Uh-huh.

24 THE COURT: Yes.

25 A Yes, sir. I keep -- my mind -- I'm just ...

DIRECT EXAMINATION BY MR. DURANT - SHARDARA ABRAHAM

239

1 Q Was anybody else standing outside by Brandon's car at
2 that point?

3 A No, sir.

4 Q Where were the other boys?

5 A They was in the car.

6 Q They were in the car. So before the shooting, was
7 anybody else standing outside besides Brandon and Breshaun?

8 A I saw one little other dude. I guess his name Fritz?

9 Q Where was he?

10 A He was standing at the back of the car, by the back
11 door.

12 Q Okay. At the time of the shooting, where was he
13 standing?

14 A In -- he had got back in the car when he had -- when he
15 shot. And that's when Brandon jumped into the car and they
16 pull off.

17 Q How far -- so Brandon was standing -- where -- where --
18 where -- in relation to the car, where was Brandon? Was he
19 beside it? behind it?

20 A He was back behind the car, like, where that little
21 fence at, like standing right there behind the -- the car.

22 Q Okay. Do you know, at the time of the shooting, of
23 anybody else standing outside?

24 A No, sir.

25 Q And you mentioned that the other boy, Fritz, had been

1 outside earlier.

2 A Yeah. He was outside the car earlier, but he had got
3 back in the car once he had did the shooting.

4 Q All right. At the time of the shooting, who was
5 standing outside; do you know?

6 A Ain't nobody was standing out there but Brandon and
7 Fritz -- I mean Brandon and Breshaun.

8 Q Brandon and Breshaun.

9 A Uh-huh.

10 THE COURT: Is that a "yes"?

11 A Yes, sir.

12 Q After the shooting, what did Brandon do?

13 A Jump back in the car and they pull off.

14 Q And again, you didn't see a gun.

15 A No, sir. Only thing I can remember was a "pow." I
16 never seen no gun.

17 Q And Shardara, just for the sake of full disclosure,
18 you've been in trouble before, haven't you?

19 A Sir?

20 Q You've been in trouble with the law a couple of times
21 before, haven't you?

22 A Not like that, no, sir.

23 Q Not like that, but you got a shoplifting and some drug
24 charges.

25 A Yeah. I got a drug charge and shoplifting, but the

CROSS-EXAMINATION BY MR. GRIFFITH - SHARDARA ABRAHAM 241

1 shoplifting is a old charge. And I was -- I just got off
2 probation before this even happened.

3 Q All right. Is there any question in your mind that at
4 the time of the shooting that Brandon and Breshaun were the
5 only people standing outside?

6 A Sir?

7 Q Is there any question in your mind that at the time of
8 the shooting, Brandon Smith and Breshaun Pendergrass were the
9 only people standing outside?

10 A Uh-huh. Yes, sir.

11 MR. DURANT: That's all the questions I have.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. GRIFFITH:

15 Q Cassandra -- Shadra -- is that how you pronounce it?

16 A Shadara.

17 Q Shadara.

18 A Yes, sir.

19 Q I'm sorry. You state you were inside of a car when you
20 heard the "pop"; is that correct?

21 A Yes, sir.

22 Q And right here you're saying that you were -- where were
23 -- where was the car you were in?

24 A You have to move it up a little bit.

25 Q (Indicates) This way?

1 A No. The car was -- you see where this little white
2 picket fence is?

3 Q Yeah. Right over here?

4 A I was in the field right beside -- between -- it was --
5 it's two houses. It's that house, and a field, and a blue
6 house. Between them houses.

7 Q (Indicates) So you were way over here somewhere.

8 A It ain't far. It's right there.

9 Q Okay. And which direction was your car facing?

10 A (Indicates) We was facing this way, but we could see
11 everything that's going on. It ain't but so big.

12 Q You were facing --

13 A Straight up -- no.

14 Q (Indicates) You were facing this direction?

15 A No, sir.

16 Q (Indicates) This direction?

17 A The other way.

18 Q (Indicates) This direction?

19 A The other way.

20 Q (Indicates) That direction?

21 A Yes, sir.

22 Q That's the way you were facing?

23 A Uh-huh.

24 THE COURT: Is that a "yes"?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. GRIFFITH - SHARDARA ABRAHAM 243

1 Q So you really weren't looking at Browntown building,
2 were you?

3 A Yes, sir. It's right there. It's like you can't miss
4 it. It's right there.

5 Q Yeah, but you were just saying you're --

6 A If I'm facing that way, I still can see everything
7 that's going on on that side.

8 Q Okay. And now you say that you were in the car when you
9 heard the shots; is that correct?

10 A Uh-huh. Yes, sir.

11 Q It's been three years. Been quite awhile.

12 A Yes, sir.

13 Q Right after this incident, on 12/20/14, do you remember
14 being interviewed by Lieutenant Danback?

15 A Yes, sir.

16 Q Do you remember telling him at that time that you were
17 standing in the parking lot down the block?

18 A No, sir. I was not standing in no parking lot. I was
19 sitting in the car.

20 Q You don't remember saying that?

21 A Uh-uh. No, sir.

22 Q So if I told you that his report says that you were
23 standing in ---

24 MR. DURANT: Objection, Your Honor. Pitting witnesses.

25 THE COURT: Sustained.

1 Q We'll call him later.

2 Have you ever had any problem with the Smith family?

3 A Well, it was about a couple of years ago. Well, I
4 really didn't have a problem with them. They always had a
5 problem with me.

6 Q So ---

7 A Why I don't know.

8 Q So there have been some altercations between you and the
9 Smith's; is that right?

10 A Yes. One of his sisters.

11 Q But you didn't see who shot the gun, did you?

12 A Sir?

13 Q You didn't see the shooting, did you?

14 A I didn't see the gun, but I know who shot the gun.

15 Q You didn't see the shooting, did you?

16 A What you mean?

17 Q You did not see the shooting.

18 A What do you mean I ain't seen the shooting? When we
19 heard the "pow," that's when we got out the car. So we seen
20 it.

21 Q You did not see someone shoot a gun, did you?

22 A Yes, I did.

23 Q But you didn't see the gun?

24 A I didn't see the gun, but when I heard the "pow," I
25 already knew what it was.

REDIRECT EXAMINATION BY MR. DURANT - SHARDARA ABRAHAM 245

1 Q You heard a "pow," but you didn't see anything. But --
2 okay.

3 MR. GRIFFITH: No further questions at this time, Your
4 Honor.

5 THE COURT: Any redirect?

6 MR. DURANT: Briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. DURANT:

9 Q Ms. Abraham, just -- just briefly. He asked you about
10 some -- some animosity between you and the Defendant's sister.

11 A Sir?

12 Q He -- he asked you about some animosity between you and
13 -- and the Defendant's sister, some animosity she had ---

14 A That was about -- oh, goodness, about five or six years
15 ago. I mean, like I said, I've never had no problem with
16 them. They always had a problem with me.

17 Q All right. Have you been contacted by anybody on behalf
18 of the Defendant about your testimony here today?

19 A No, sir.

20 Q Okay. And again, just to clarify, at the time of the
21 shooting, was anybody else standing outside besides Brandon
22 Smith and Breshaun Pendergrass?

23 A No, sir.

24 MR. DURANT: No further questions.

25 THE COURT: Mr. Griffith, anything further?

1 MR. GRIFFITH: Nothing further, Your Honor.

2 THE COURT: Ma'am, you may step down. Thank you.

3 THE WITNESS: Thank you.

4 (The witness complies.)

5 MR. DURANT: The State calls Cindy Calvin.

6 CLERK OF COURT: State your name, please.

7 THE WITNESS: Cindy Calvin.

8 CINDY CALVIN, having been first duly
9 sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. DURANT:

12 Q Ms. Calvin, good afternoon.

13 A How you doing?

14 Q Good. Are you from Manning?

15 A Yes, sir.

16 Q Okay. Where do you live?

17 A I stay down the Kingstree Highway.

18 Q Okay. You grew up in Clarendon County?

19 A Uh-huh. Yes, sir.

20 Q Do you know what we're here for -- for today?

21 A Yes, sir.

22 Q And what is that about?

23 A The shooting of Bray.

24 Q Shooting of Bray, Breshaun --

25 A Yes, sir.

DIRECT EXAMINATION BY MR. DURANT - CINDY CALVIN

247

1 Q -- Pendergrass?

2 A Yes, sir.

3 Q Back in December of 2014?

4 A Yes, sir.

5 Q Tell the jury what you know about it.

6 A We went in the club and it was a complication. So I
7 told my friend, "Let's walk back outside."

8 We got in the car. When we got in the car, that's when
9 later on Mr. Brandon and his friends -- well, Bray walked out
10 first, and then they walked out behind him. And the rest of
11 them went to the car, and Brandon went to Bray and they was
12 talking, whatever, whatever. And then we heard a "pop," Bray
13 fall, Brandon ran got in the car.

14 Q Where -- where were you and Shardara parked in the car?

15 A Well, let's see. Well, it would be like coming back up
16 was -- it's a house right there. And then it's a little field
17 and we was right there.

18 Q Okay. And this -- can you see it on this picture?

19 A Yeah. We was right on the other side of this house
20 right here (indicates).

21 Q Right in this area?

22 A Uh-huh.

23 Q And is it common for people to park there?

24 A Uh-huh. Yes, sir.

25 Q That's -- that's kind of a parking lot for Browntown?

1 A Yes, sir.

2 Q All right. So -- and that -- is that where you and --
3 and Shardara parked that night?

4 A Yes, sir.

5 Q Who drove to the club?

6 A I did.

7 Q You did. So you were in your car?

8 A Yes, sir.

9 Q You mentioned earlier there was -- I think you said,
10 "complications inside the club." What did you mean by that?

11 A It looked like they was arguing against each other.

12 Q Who -- who was arguing?

13 A It was a group of boys with Brandon and a group of boys
14 with Bray.

15 Q Okay. Do you know specifically who -- who was talking
16 back and forth --

17 A Nah.

18 Q -- or what was said?

19 A No, sir. I ain't try to find out neither.

20 Q And again, that was the reason that you and Shardara
21 decided to leave?

22 A Yes, sir. Not leave, go back out the door.

23 Q Go back out the door. So when y'all went outside, you --
24 -- did -- you went to your car.

25 A Yes, sir.

DIRECT EXAMINATION BY MR. DURANT - CINDY CALVIN

249

1 Q All right. And tell the jury what you saw after you got
2 to the car.

3 A Well, we got to the car, we seen Bray walking out. They
4 was behind Bray. The rest of the boys got in the car and
5 Brandon was talking to Bray. We heard a "pow," Bray fall,
6 Brandon ran to the car, the car pull off, and I went to Bray.

7 Q Let me clarify a few details. First of all, you said
8 that Brandon and the other guys that were with him came out --
9 out of the club, and the other guys got in the car. First of
10 all, how many guys were there with Brandon?

11 A Let me see. I think it was about five or six of them.

12 Q Okay. And where was their car parked?

13 A They park -- car was parked right there, right there by
14 the fence.

15 Q (Indicates) By which -- this fence or this fence?

16 A Right where you had -- right -- right there where you
17 just -- right there.

18 Q Okay.

19 A Right there.

20 Q Which way was the car facing?

21 A Next to the road.

22 Q It was -- so it was backed in?

23 A Uh-huh.

24 Q The trunk was facing the club?

25 A Uh-huh.

1 THE COURT: Is that a "yes"?

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4 A Yes, sir. I'm sorry.

5 Q Now, did Brandon come out -- I mean, Breshaun -- did he
6 come outside club at the same time?

7 A What -- what you mean now?

8 Q Did -- did Breshaun come outside the same time that
9 Brandon and his boys came outside?

10 A No. Breshaun came out first.

11 Q Okay.

12 A And they was behind him.

13 Q And they came out behind him. Did anybody else come
14 outside the club with Breshaun?

15 A No, sir. "

16 Q What did Brandon and his boys do when they came outside?

17 A The other ones got -- got in the car, but he didn't.

18 Q The other ones got in the car.

19 A Yes, sir.

20 Q And how do you know it was Brandon that didn't get in
21 the car?

22 A 'Cause I know him. I just didn't know his name.

23 Q Okay. Tell the jury what happened after that.

24 A After what now?

25 Q After Brandon's boys got in the car and Brandon stayed

1 outside.

2 A He went up to Bray, they was talking, and we heard a
3 "pow," and Bray fell and he ran and got in the car and the car
4 shoot off.

5 Q Was anybody else standing outside the club when Brandon
6 -- when Breshaun was shot?

7 A No. 'Cause I ran to Bray and I told Bray, I said, "Get
8 up, man." I said, "You done got all drunk up." And that when
9 he told me, he said, "No. They done -- he shot me." And when
10 he say he shot him, that when I ran in the club, got his
11 friends and let -- they took him to the hospital.

12 Q When you heard the "pow," did you know what it was?

13 A No, sir.

14 Q Did you see a gun?

15 A No, sir.

16 Q Did -- did Breshaun fall down immediately after the
17 "pow"?

18 A Yes, sir.

19 Q Okay. And what did Brandon do?

20 A Ran to the car.

21 Q Was the car running?

22 A Yes, sir, it was.

23 Q Was it already running when he shot Breshaun?

24 A It sure was. Yes, it was.

25 Q How long after the shot was fired did Brandon run to the

1 car?

2 A Immediately.

3 Q And then what did -- what happened?

4 A And then, after the car pull off, that [sic] when I
5 jumped out and went to Bray.

6 Q Did the car pull off slowly and quietly?

7 A Uh-uh.

8 Q What did it do?

9 A Fast.

10 Q You remember meeting with an Officer Danback that night?

11 A Yes, sir.

12 Q Okay. You didn't tell him who the shooter was that
13 night, did you?

14 A No, sir.

15 Q Why not?

16 A Because I knew him, but I didn't know his name.

17 Q Now, did -- did you have occasion to meet with -- well,
18 I guess before I ask that question, you say you knew him but
19 you didn't know his name. Have you -- how long have you known
20 him?

21 A I -- I know him.

22 Q Do you ---

23 A I knew -- I mean --

24 Q What do you mean that you know him, but you didn't know
25 his name? Have you seen him around town?

DIRECT EXAMINATION BY MR. DURANT - CINDY CALVIN

253

1 A Yes, sir.

2 Q For how long have you been seeing him around town?

3 A Off and on.

4 Q Off and on for a few months? few years?

5 A Off and on. I -- I can't answer that question, cause I

6 ...

7 Q Did you have a chance to see Brandon inside the club?

8 A Yes, sir.

9 Q Okay. And had a chance to observe him and -- and know --
10 - you know that was him inside the club earlier that day?

11 A Yes, sir.

12 Q Is there any question that the person that you saw --
13 that you knew, but didn't know his name -- inside the club was
14 the -- was the person standing outside the club with Breshaun
15 when he was shot?

16 A Ask me that again.

17 Q Is there any question in your mind that the person that
18 you saw in the club earlier that evening, which you now know
19 to be Brandon, is the -- is the same person that was standing
20 outside the car with Breshaun when he was shot?

21 A Yes, sir.

22 Q That was the same person?

23 A Uh-huh.

24 THE COURT: Is that a "yes"?

25 THE WITNESS: Yes, sir.

1 A Yes, sir. I'm sorry.

2 Q Did you -- do you remember meeting with -- were you --
3 you told me a minute ago that you knew him, but didn't know
4 his name. Did you ever convey that information to Lieutenant
5 Daniels?

6 A Yes, sir.

7 Q Okay. And in response to that, what did she do?

8 A She showed me a line-up.

9 Q Okay. And that was just last week, wasn't it?

10 A Yes, sir.

11 Q Let me show you what's been marked as State's Exhibit 2.
12 Do you recognize that?

13 A Yes, sir.

14 Q What is it?

15 A A line-up.

16 Q When officer Daniels showed you that line-up, what did
17 she ask you?

18 A She asked me was the person who shot Bray on it. And I
19 told her yes, yes.

20 Q Is he on it?

21 A Yes, sir.

22 Q Okay. And did you put your -- write your name beside
23 his picture?

24 A Yes, sir.

25 Q Did you put the date and the time?

DIRECT EXAMINATION BY MR. DURANT - CINDY CALVIN

255

1 A Yes, sir.

2 Q Did Lieutenant Daniels -- in any way, did she suggest to
3 you who to pick out of that line-up?

4 A No, sir.

5 Q Okay. Were you -- were you certain that the person you
6 picked out is the person that shot -- shot Bray?

7 A Yes, sir.

8 Q All right. And is that individual in the courtroom
9 today?

10 A Yes, sir.

11 Q Where is he?

12 A Over there.

13 Q What's he wearing?

14 A Huh?

15 Q What's he wearing?

16 A Blue.

17 Q Blue sweater?

18 A (No response.)

19 Q All right. Ms. Calvin, that's all the questions I have.
20 Please answer any Mr. Griffith has.

21 THE COURT: Cross-examination?

22 MR. GRIFFITH: Please the Court.

23 CROSS-EXAMINATION

24 BY MR. GRIFFITH:

25 Q Ms. Calvin?

1 A Yes, sir.

2 Q Back in December of 2014, isn't it true that you told
3 Detective Danback that you were standing outside when you
4 heard a "pop"?

5 A No, sir.

6 Q Are you sure you didn't tell him you were standing in
7 the parking lot when you heard a "pop"?

8 A No, sir. I was in the car.

9 Q At that time, you did not identify anyone as shooting a
10 gun or anything, did you?

11 A No, sir.

12 Q In fact, you didn't see anybody shoot, did you?

13 A No, sir, but I heard it.

14 Q You heard a "pop," but you didn't see anybody shoot a
15 gun. That's correct, isn't it?

16 A No, sir. That's correct.

17 Q You didn't see a gun, did you?

18 A No, sir.

19 Q Then three years later, when Investigator Daniels spoke
20 to you, she brought you State's Exhibit 2 which was this
21 (indicates).

22 A Yes, sir.

23 Q And when we talked about this, you stated under oath
24 that Lieutenant Daniels circled his picture, wrote your name,
25 and then you wrote the date and time; isn't that correct?

CROSS-EXAMINATION BY MR. GRIFFITH - CINDY CALVIN

257

1 A No. I stated she circled the picture. I wrote my name
2 and date and time.

3 Q She circled the picture; is that correct?

4 A Yes, sir.

5 Q So you didn't circle the picture yourself, did you?

6 A Not as I can remember, no.

7 Q So you -- you got a little help identifying him, didn't
8 you?

9 A No, sir.

10 Q Now, isn't it true that you've known the Smith family
11 for a long time; isn't that true?

12 A I mean, yeah, I know them, but I don't know them like
13 that. This Manning.

14 Q Isn't it true that you've been in their house?

15 A Yeah. Yes, sir -- I'm sorry -- yes, sir.

16 Q So you know them pretty well.

17 A I mean, I know them, but I don't know them like that
18 because I didn't too much deal with them. I used to talk to
19 their mother.

20 Q Isn't it true that you've had actual physical
21 altercations with some of his sisters; isn't that true?

22 A That's true.

23 Q So you have some reason to stir up a little trouble with
24 them, don't you?

25 A No, I don't. That got nothing to do with this.

1 Q Now, you stated that Mr. Pendergrass came out first --

2 A Uh-huh.

3 Q -- then he walked over to the fence; is that correct?

4 A No.

5 Q Okay.

6 A He walked ---

7 Q But he came out first.

8 A He walked on this side -- you see where the white fence
9 at right there? On this side.

10 Q Over here (indicates)?

11 A Uh-uh. That where they car was at, parked right there.
12 He was over there.

13 Q He was right over here where I'm pointing (indicates)?

14 A Uh-uh. Further over, by that trash can, that black
15 trash can.

16 Q By that trash can there?

17 A Right there.

18 Q Okay. 'Cause we're getting a lot of different places
19 where he was.

20 He was there, and you're saying then that Mr. Smith
21 walked over to him; is that what you're saying?

22 A Yeah. He walked over, but he walked over 'cause the
23 other ones went to the car and he the only one didn't went to
24 the car.

25 Q And then you're saying they stood there and talked a

1 little bit?

2 A It wasn't a long talk. It was like they knew what they
3 was doing.

4 Q That's a good bit different story. But you were -- let
5 me get that picture again that shows -- the one where he was
6 at. This is State's Exhibit 6.

7 (To Mr. Durant) This is the one you had up just a moment
8 ago showing her -- where she was pointing out where she was.

9 A Uh-huh.

10 Q And you said you were parked over here; is that right?

11 A Uh-huh.

12 THE COURT: Is that a "yes"?

13 THE WITNESS: Yes.

14 A Yes, sir. I'm sorry.

15 THE COURT: That's okay.

16 A Yes, yes, sir.

17 Q And they were way over here; is that correct?

18 A Yes, sir. But it look far on that picture, but it sure
19 ain't that far like that. That picture look far, but it's not
20 that far like that.

21 Q I understand. And that car that Brandon had come in was
22 somewhere in here (indicates).

23 THE COURT: And you're referring to State's Exhibit 7?

24 MR. GRIFFITH: State's Exhibit 7.

25 THE COURT: Thank you.

1 Q On State's Exhibit 7. It was over here; is that
2 correct?

3 A They was back up.

4 Q That's what you're saying. Yeah. Okay.

5 Was it past the trash can?

6 A What? They [sic] car?

7 Q Yeah.

8 A No. No, sir.

9 Q It was back behind the trash can?

10 A Uh-uh. It was, like, right by that fence. It's a --
11 it's a fence right there.

12 Q Right there (indicate)?

13 A Not -- no. You -- over.

14 (Mr. Griffith indicates.)

15 A No, no.

16 Q Hard to say from here. I understand that.

17 But in other words, the story that we're hearing now is
18 Brandon walked over to Mr. Pendergrass, --

19 A But at first they ---

20 Q -- and then you heard the "pop."

21 A At first they car wasn't right there. They backed the
22 car there. First they car was parked right beside my car.

23 Q And the car then moved; is that right?

24 A They car moved.

25 Q Well, we appreciate your story, ma'am.

REDIRECT EXAMINATION BY MR. DURANT - CINDY CALVIN

261

1 MR. GRIFFITH: No further questions.

2 A Yes, sir.

3 THE COURT: Any redirect?

4 MR. DURANT: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. DURANT:

7 Q Ms. Cindy, I'm going to ask you if -- with the Court's
8 permission, of course -- to come down. I want you to point
9 out for me ---

10 A Okay.

11 Q --- where these cars were.

12 (The witness exits the stand.)

13 Q Let me -- let me show you State's Exhibit 5. Maybe
14 that's a better photo here to show the jury as to where
15 everything was.

16 First of all, now -- here, you can take my pen and just
17 --

18 A Okay.

19 Q -- show me about where you and Shardara were parked.

20 A (Indicates) Right by this house right there, where the
21 field ---

22 Q By this house here?

23 A Uh-huh. See, the gate from the other house is in the
24 way.

25 Q This is the gate from the other house. Y'all were

1 between that house and this gate.

2 A Yeah. It's another house right there, and we was in
3 between, in between this house and the other house where
4 there's a field.

5 Q Okay. And show me where Brandon's car was at the time
6 of the shooting.

7 A At the time of the shooting, his car was back up right
8 up in here (indicates). Right up in there, right by Mrs.
9 Sammy house.

10 Q Okay. And can you see where Breshaun was standing in
11 that photo?

12 A Bray was standing, like, right up in here (indicates).
13 Right up in -- right before -- where that trash can -- well,
14 he was up in here. He was on this side.

15 Q Okay. And you said that Brandon's car was moved.

16 A Uh-huh.

17 Q When was it moved?

18 A It was moved right before the shooting.

19 Q Okay. So you -- are you saying that ---

20 A It back up.

21 Q --- that the other guys that were with him came and got
22 in his car and backed it up to where the shooting ---

23 A Backed it up. All of them was in the car.

24 Q Where was the car the first time?

25 A Right beside my car because my car had stopped.

REDIRECT EXAMINATION BY MR. DURANT - CINDY CALVIN

263

1 Q Okay. So they took the car from over here (indicates) -

2 -

3 A And backed it up here.

4 Q -- and backed it ...

5 Did Brandon come with them to get the car?

6 A No.

7 Q Where did he stay?

8 A He still was right up in here. Then when Bray came, he
9 talked to Bray, we heard a "pow," then he ran to the car.

10 Q Now, you say Bray came. Did Bray -- where -- where were
11 they when they -- where was Bray standing when the shooting
12 actually happened?

13 A (Indicates) On this side.

14 Q Okay.

15 A I -- I really can't say which spot, but it was on this
16 side.

17 Q But you could see him.

18 A Yeah. Yes, sir.

19 Q Is there any question it was him?

20 A It was him.

21 Q Okay. When Brandon and his guys came and got the car
22 and backed it up, did anybody stay outside the car besides
23 Brandon?

24 A No, sir.

25 Q So Brandon was the only one in the car -- outside the

1 car.

2 A Yes, sir.

3 Q Was anybody standing outside the club besides Brandon
4 and Breshaun when the shooting happened?

5 A No, sir.

6 Q And after the shooting, what happened?

7 A After the shooting, he jumped in the car, the car went
8 back that way. It didn't come past us. It went back that
9 way. Bray fell. When the car left, that's when I jumped out
10 and I went up to Bray and I tell Bray -- I say, "Bray, please
11 get up." I say, "You must sat in there and got all drunk up."
12 like that." And he said, "No, Cindy." He said, "He just shot
13 me."

14 And when he said that, that when I ran in the club, got
15 his friends or his cousins or whoever came out, and I told
16 them -- I said, "Man, don't wait on the ambulance. Go ahead
17 and take him to the hospital." And they put him in the car
18 and took him to the hospital.

19 Q Okay. All right. Thank you, Ms. Calvin. That's all
20 the questions I have.

21 A Yes, sir.

22 THE COURT: Ma'am, if you -- any further questions?

23 MR. GRIFFITH: Just one.

24 THE COURT: Ma'am, if you'll come back around and be
25 seated, please, for just a second.

RE-CROSS-EXAMINATION BY MR. GRIFFITH - CINDY CALVIN

265

1 (The witness complies.)

2 RE-CROSS EXAMINATION

3 BY MR. GRIFFITH:

4 Q Ms. Calvin --

5 A Yes, sir?

6 Q -- What time was it?

7 A I don't know what time it was.

8 Q You think maybe it was two or three o'clock at night --
9 or morning?

10 A It was after 12.

11 Q It was after 12, wasn't it?

12 A Yes, sir.

13 Q It was dark outside, wasn't it?

14 A Yes, it was. But Browntown got a big light.

15 Q Got a big light.

16 A Uh-huh.

17 Q You were -- you were around this corner over here,
18 weren't you?

19 A Around the corner? I wasn't around the corner.

20 Q You were on this side of this -- this house or you on
21 this side of the ---

22 A I was where that I could see the club, they car and
23 anybody who come out it.

24 MR. GRIFFITH: Thank you. No further questions.

25 THE COURT: Ma'am, you may step down. Thank you.

1 THE WITNESS: Thank you.

2 (The witness steps down.)

3 THE COURT: Call your next witness, please.

4 MR. DURANT: State calls Lieutenant Sonia Daniels.

5 CLERK OF COURT: Raise your right hand, put your left
6 hand on the Bible, and repeat your name.

7 THE WITNESS: Sonia Daniels.

8 SONIA DANIELS, having been first
9 duly sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. DURANT:

12 Q Officer Daniels, if you would, tell the -- the jury
13 where you work.

14 A Manning Police Department.

15 Q And what's your position there?

16 A I'm the captain.

17 Q Oh. You're the captain. I keep giving you a demotion.
18 You're a -- you're not a lieutenant anymore. You're Captain
19 Daniels?

20 A Yes. I'm a captain now.

21 Q How long have you worked for the Manning Police
22 Department?

23 A Thirteen years.

24 Q And obviously you were working back in 2014, then.

25 A Yes.

DIRECT EXAMINATION BY MR. DURANT - SONIA DANIELS

267

1 Q December, 2014. And what was your position then?

2 A I think I was a lieutenant then.

3 Q Lieutenant. Okay.

4 Did you have occasion to assist with the investigation
5 of a shooting that occurred at Browntown?

6 A I did.

7 Q Tell the jury what -- did you have -- did you respond to
8 the scene that evening?

9 A I did not. I responded to the hospital.

10 Q Okay. But you're familiar with that location,
11 Browntown?

12 A I am.

13 Q And that's here in Clarendon County?

14 A It is.

15 Q What did you do when you went to the hospital?

16 A We were notified that we had a victim that had been
17 shot. So I went to see what his injuries were and to see if I
18 could speak with him at the moment.

19 MR. DURANT: Beg the Court's indulgence a moment.

20 THE COURT: Yes.

21 (Marked State's Exhibits 18 and 19, photographs, for
22 ID.)

23 Q Detective Daniels, I'm going to show you what's been
24 marked for ID as State's 18 and 19. Do you recognize those?

25 A I do.

1 Q And did you take those photos?

2 A I took those photos, yes.

3 Q All right.

4 THE COURT: What are the numbers again?

5 MR. DURANT: 18 and 19.

6 THE COURT: Okay.

7 THE COURT: And Your Honor, I'd ---

8 Q Are these -- first of all, what are the photos of?

9 A Mr. Breshaun Pendergrass's injuries when he was at MUSC.

10 Q Okay. So this is actually at MUSC, not the night of the
11 incident.

12 A The -- yeah. No. I was unable to actually speak with
13 him at Clarendon Memorial ---

14 Q Okay.

15 A --- at the time.

16 Q All right. While I'm going down this trail, let me just
17 go ahead ...

18 MR. DURANT: Your Honor, I -- I'd offer State's 18 and
19 into evidence. I believe Mr. Griffith ---

20 MR. GRIFFITH: Without objection, Your Honor.

21 THE COURT: Without objection, so admitted.

22 (State's Exhibits Nos. 18 and 19 in evidence.)

23 Q And let me just show you on State's 18, this is a photo
24 you took at MUSC of the victim's injuries?

25 A Yes.

DIRECT EXAMINATION BY MR. DURANT - SONIA DANIELS

269

1 Q Okay. And I know it's difficult to tell maybe under
2 this light, but ...

3 A It is.

4 Q Can you tell where the -- the gunshot wound appears to
5 be as far as the -- as his spine is concerned? Is it on the
6 left or right hand side of the spine?

7 A It would be on the right hand side.

8 Q Okay. The right hand side. So the spine -- looks like
9 the spinal column here. Would it be to -- to our right? his
10 right? his left?

11 A His right.

12 Q Okay. Now, you said you went to Clarendon Memorial that
13 evening, were not able to speak to Mr. Pendergrass.

14 A Correct.

15 Q All right. At some point did you have occasion to
16 assist with the interview of any of the suspects in the case?

17 A I did.

18 Q Okay. And did you assist with the interview of -- of a
19 -- of a individual identified as Fritz Aguon or Aguon?

20 A That's correct.

21 Q All right. Tell the jury how it came about that you and
22 the other detectives spoke with Mr. Aguon?

23 A I was notified by a Mr. Roosevelt Webb. He contacted me
24 in reference to Fritz.

25 Q Okay.

1 A Need me to tell you how?

2 Q And did -- did Fritz -- did he make the first contact
3 with you?

4 A Mr. Roosevelt Webb did.

5 Q Okay. And as a result of that conversation with Mr.
6 Webb, you interviewed Mr. Fritz.

7 A That's correct.

8 Q Okay. And did Fritz come up to the Manning Police
9 Department?

10 A He did.

11 Q Who brought him there?

12 A Mr. Roosevelt Webb.

13 Q All right. And did -- was it your understanding that he
14 had something to tell you?

15 A When I first spoke with him, he stated that they were
16 notified the day after the shooting that Mr. Fritz was
17 involved in this incident.

18 Mr. Fritz stated that he was with the individual that's
19 accused of this crime; however, he didn't have anything to do
20 with it.

21 Q Okay.

22 A He was just with him.

23 Q And so that's the first time you talked to him.

24 A Uh-huh.

25 Q Where was that?

DIRECT EXAMINATION BY MR. DURANT - SONIA DANIELS

271

1 A At the Manning Police Department.

2 Q And did you have occasion to talk to Mr. Aguon again
3 after that?

4 A I did.

5 Q When was that?

6 A I'm not sure. I spoke with him a couple of different
7 times.

8 Q Okay. Sometime during that first week?

9 A Yes.

10 Q Okay. And the second time you talked to him, was
11 Detective Elms involved in that conversation?

12 A He was.

13 Q All right. Was that recorded?

14 A I believe that one was.

15 Q Okay. How did it come about that you interviewed Mr.
16 Fritz again?

17 A When we first spoke with him, we allowed him to leave
18 the Manning Police Department in agreement that he would come
19 back and speak with us at a later date.

20 Q Okay. So he came to fulfill that promise and talked to
21 you again.

22 A He did.

23 Q And did his story change the second time he talked to
24 you?

25 A I think it did. It did.

1 Q Okay. He didn't tell you the same thing -- the first
2 time he said that -- he said he wasn't involved. He didn't
3 know anything about it. ✓

4 A No. The first time -- I've talked to him so many times.
5 One time he told me that he was with them, but he wasn't
6 involved. He was asleep in the vehicle. Then he said one
7 time he wasn't with them. So it -- it -- his -- his story
8 changed.

9 Q He came back in and -- and you and Detective Elms
10 interviewed him -- did -- on that -- the recorded interview,
11 did he tell you that he was there?

12 A I -- I can't recall.

13 Q Okay. You don't recall whether he told -- told you
14 about what -- what he told you about the shooting the second
15 time.

16 A He stated that -- by my remembrance, he stated that he
17 was in the vehicle, he was asleep; but once they left there,
18 he was told that Mr. Smith did something. Again, he stated he
19 was asleep, so he couldn't really tell us what happened.

20 Q So it's self serving.

21 A Yes.

22 Q You mentioned a statement in which he denied that he was
23 even there. That -- was that pursuant to a letter that he
24 wrote to the police department sometime after the incident?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. DURANT - SONIA DANIELS

273

1 Q Okay. Let me just show you what's been identified for
2 ID as State's 17, from Fritz Aguon to Investigator Rick Elms -
3 --

4 A Uh-huh.

5 Q --- on August 22, 2016. Is that the letter that he
6 wrote to you?

7 A He wrote it to Investigator Elms.

8 Q And that's when he stated he wasn't actually there.

9 A Right.

10 Q Okay. So prior to this letter, did Mr. Aguon indicate
11 to you and Investigator Elms that he actually did know who the
12 shooter was?

13 A Yes.

14 Q Because he had been there.

15 A Yes.

16 Q Who did he identify the shooter as?

17 A Mr. Brandon Smith.

18 Q When you met with Mr. Pendergrass at MUSC, did you --
19 was he alert and able to communicate with you then?

20 A He was.

21 Q And did you have occasion to present him a photo line-
22 up?

23 A I did.

24 Q All right. Let me show you what's been marked as
25 State's Exhibit 1. Do you recognize that?

1 A I do.

2 Q What is it?

3 A It's a photo line-up.

4 Q Is that the one that you showed Mr. Pendergrass at MUSC?

5 A It is.

6 Q What's the date on it?

7 A December 31, 2014.

8 Q Okay. Did Mr. Pendergrass pick out an individual from
9 the line-up?

10 A He did.

11 Q And who did he pick out?

12 A Mr. Smith.

13 Q Brandon Smith?

14 A Yes, sir.

15 Q Is that individual in the courtroom?

16 A He is.

17 Q Where is he?

18 A Sitting at the table right there (indicates).

19 Q And what was the context in which Mr. Pendergrass picked
20 out Brandon Smith from the photo line-up?

21 A He stated that Mr. Smith was the individual that shot
22 him.

23 Q Okay. And is that -- was that the information that you
24 were looking for?

25 A Yes.

DIRECT EXAMINATION BY MR. DURANT - SONIA DANIELS

275

1 Q That -- were you interested in whether or not Breshaun
2 Pendergrass happened to know socially anybody else in the --
3 in the photo line-up?

4 A No, sir.

5 Q Who --

6 A I mean --

7 Q You wanted the identity of the shooter.

8 A I needed the identity of the shooter.

9 Q Okay. And whose name did -- whose picture did Breshaun
10 pick out?

11 A Mr. Smith.

12 Q Okay.

13 A Brandon Smith.

14 Q Did you, in any way, suggest to him who to pick out?

15 A No, sir.

16 Q After -- I'm sorry. Just recently, have you had
17 occasion to interview a Cindy Calvin?

18 A I did.

19 Q And how did that come about?

20 A She was a witness that was actually at the scene during
21 the incident, and we knew that the case was coming up and we
22 were trying to get prepared for the case. I hadn't spoken to
23 her prior to this, but I did upcoming to the trial.

24 Q And did Ms. Calvin indicate to you that she knew -- knew
25 who the shooter was?

1 A She knew -- she stated that she knew his first name.

2 Q Knew his first name.

3 A Uh-huh.

4 Q Okay. And did you present her with a line-up?

5 A I did.

6 Q Why did you present her with a line-up?

7 A To be sure of who she saw at the location that night as
8 the shooter.

9 Q All right. Let me show you State's Exhibit 2. Do you
10 recognize it?

11 A I do.

12 Q And what is it?

13 A It's a photo line-up generated by SLED.

14 Q And is that the line-up that you presented to Ms.
15 Calvin?

16 A It is.

17 Q All the -- the pictures of the other individuals, are
18 they all similar in age and physical characteristics?

19 A They are.

20 Q All right. Did you in any way suggest to Ms. Calvin who
21 to pick out of the line-up?

22 A I did not.

23 Q And did she pick somebody out, put her name beside it,
24 and the date and time?

25 A She did.

DIRECT EXAMINATION BY MR. DURANT - SONIA DANIELS

277

1 Q And -- and whose name did she put her -- her -- whose
2 picture did she put her name beside?

3 A Mr. Brandon Smith.

4 Q And what was the context that she picked Mr. Smith out
5 of that line-up?

6 A She said the he was the shooter that night.

7 Q Okay. And again, you didn't suggest to her who to pick
8 out.

9 A I did not.

10 Q Was she -- was there any delay? Was she unsure about
11 who to pick out?

12 A No, she wasn't.

13 Q Now, tell me what happened when you presented her with
14 the line-up.

15 A As soon as I laid the photo line out -- line-up in front
16 of her, she picked Mr. Smith out immediately.

17 Q Okay. All right.

18 MR. DURANT: I beg the Court's indulgence.

19 (Brief pause.)

20 Q Lieutenant -- sorry, Captain Daniels, that's all the
21 questions I have. Please answer any Mr. Griffith has.

22 THE COURT: Cross-examination?

23 CROSS-EXAMINATION

24 BY MR. GRIFFITH:

25 Q Captain Daniels, when you went to speak to Cindy Calvin,

1 it had been three years since the incident occurred; isn't
2 that right?

3 A Yes, sir, when she came to me.

4 Q You said you went to interview her because you were
5 preparing for trial and so you wanted to go talk to her again;
6 is that correct?

7 A Yes, sir.

8 Q So you went to see her.

9 A No, sir.

10 Q Or she came to your office.

11 A She came to see me. Yes, sir.

12 Q I got you. And so by that time, of course, you had had
13 Brandon Smith as a suspect for three years; isn't that
14 correct?

15 A Yes, sir.

16 Q And of course, Ms. Calvin knew who the suspect was when
17 you showed her the picture; isn't that correct? She knew it
18 was Brandon Smith; isn't that correct?

19 A I -- I can't answer that, sir. I'm not sure how -- can
20 you --

21 Q Did you talk to her about the incident before you showed
22 her the picture?

23 A I had her -- no, I didn't talk to her about it. I had
24 her tell me what happened.

25 Q Okay.

1 A Yes, sir.

2 Q So she knew that she was supposed to be looking for
3 Brandon Smith in that picture, didn't she?

4 A She was looking for the shooter, yes, sir.

5 Q Who she believed that the person who had been accused,
6 that was Brandon Smith, after your discussion; isn't that
7 correct?

8 A She ID'd the shooter, yes, sir.

9 Q And she knows who Brandon Smith is. Did she tell you
10 that she had known Brandon Smith?

11 A She knew who he was. Yes, sir. That's what she said.

12 Q So it wouldn't be hard for her to pick his picture out
13 of a group of pictures, would it, in your opinion? Just your
14 opinion.

15 A No, sir.

16 Q Okay. And so when you spoke to her, she told us that
17 she wrote her name -- that you circled the picture and then
18 she wrote her name and the date on it; is that correct?

19 A Yes, sir. That's what you said she said.

20 Q That's what I said she said. Okay. Do you remember it
21 that way?

22 A No, sir.

23 Q All right. I have no further questions. Thank you,
24 Captain.

25 THE COURT: Any redirect?

1 MR. DURANT: Just briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. DURANT:

4 Q Captain Daniels, when you showed the line-up to Cindy,
5 you said that you got her story. She told -- you asked her
6 what happened that night?

7 A Yes, sir.

8 Q And she identified the person -- the -- the shooter, she
9 said she only knew his first name was Brandon?

10 A Yes, sir.

11 Q Okay. And how -- how did you know to put this Brandon
12 Smith in the line-up?

13 A Because he was one of our -- he was a suspect from the
14 beginning.

15 Q And she had told you that the person she had saw -- she
16 had identified as the shooter had the name Brandon.

17 A Yes, sir.

18 Q Okay. Any other suspects that were involved in his have
19 the name Brandon?

20 A No, sir.

21 Q Okay. That's all the questions I have.

22 THE COURT: Anything further, Mr. Griffith?

23 MR. GRIFFITH: Nothing, Your Honor.

24 THE COURT: Captain, you may step down.

25 THE WITNESS: Thank you.

DIRECT EXAMINATION BY MR. DURANT - RICK ELMS

281

1 (The witness complies.)

2 THE COURT: Call your next witness.

3 MR. DURANT: State calls Detective Rick Elms.

4 CLERK OF COURT: State your name, please.

5 THE WITNESS: Rick Elms.

6 RICK ELMS, having been first duly
7 sworn, testifies as follows:

8 DIRECT EXAMINATION

9 BY MR. DURANT:

10 Q Detective Elms, good afternoon.

11 A Good afternoon.

12 Q Tell the jury where you work.

13 A At the Manning Police Department.

14 Q How long have you -- have you been there?

15 A I've been there three years.

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

17 A Working on number 26.

18 Q All right. You close to retirement.

19 A I am. Well, I could technically if I wanted to.

20 Q Were you working for the Manning PD back on December 20,
21 2014?

22 A I was. Yes, sir.

23 Q All right. Did you have occasion to assist with the
24 investigation of a shooting that occurred at Browntown?

25 A I did. Yes, sir.

1 Q Did you actually go to the crime scene?

2 A I went to the -- went to the crime scene. Yes, sir.

3 Q And did you take photographs at the crime scene?

4 A I think Major Ridgeway took the photographs.

5 Q And did you assist with processing the crime scene?

6 A I did.

7 Q Did you look for evidence there?

8 A Yes, sir. I did.

9 Q Did you -- what were you looking for?

10 A Shell casings, weapon, anything that may have been
11 dropped or left behind by suspects and potential victim.

12 Q Did you find any shell casings or a weapon at the crime
13 scene?

14 A No, sir. We did not.

15 Q Did you have any assistance in -- in processing the
16 scene?

17 A Yes, sir. Lieutenant Danback and Major Ridgeway
18 assisted me while out there at the scene.

19 Q There have been a few -- few photographs that were
20 introduced. State's 12's been introduced earlier. Appears to
21 be a photograph with some police tape across the front of it.
22 Was this the crime scene that evening?

23 A Yes, sir, it was.

24 Q And was that white Tahoe -- was it there when you
25 arrived at the scene?

DIRECT EXAMINATION BY MR. DURANT - RICK ELMS

283

1 A It was.

2 Q I'm going to show you State's Exhibit 13. What is that?

3 A That's the crime scene of the social club. Also the
4 Tahoe that's still parked where it was at when I arrived.

5 Q And if you look -- if you'll notice in the -- in the
6 photograph on State's 13, there's a -- there's a pole here
7 with a sign on it says something to the effect of
8 "Jurisdiction of the Manning Police Department." Do you know
9 whether that -- that pole has a light on top?

10 A It -- it does.

11 Q All right. And do you know whether the light was
12 functioning at that time?

13 A Yes, sir. It was because I -- I believe I see it right
14 there in the photograph there.

15 Q Okay. So there's a light pole right here, and -- and --
16 let me just show you from another photo, from another angle.

17 Look at State's Exhibit 8. Is the -- is the light pole
18 in this photograph?

19 A Yes, sir. Should be with the sign right there, in front
20 of the ---

21 Q That's with the sign on it.

22 A That's correct.

23 Q So this telephone pole with the sign on it has a light
24 on the top.

25 A Yes, sir, it does.

1 Q That light was functioning at -- at the time.

2 A Yes, sir.

3 THE COURT: What exhibit is that?

4 Q When you arrived on scene that morning ---

5 THE COURT: What exhibit is that?

6 MR. DURANT: This is Exhibit 8. I'm sorry, Your Honor.

7 THE COURT: Thank you.

8 Q When you arrived on the scene that morning to process
9 the crime scene, the street light was actually still on, it
10 was still operating.

11 A Yes, sir. It was dark. Well, I mean, with the light --
12 it was working -- the light was still on.

13 Q And it was under the light of that street light that
14 y'all were able to process the crime scene.

15 A Yes, sir.

16 Q Didn't find any -- any bullets or any shell casings at
17 the crime scene?

18 A No, sir. We weren't able to.

19 Q And did you ever, as far as your investigation, locate a
20 weapon that may have been used in this crime?

21 A No, sir. We did not.

22 Q Were you able to -- to recover a -- the fired projectile
23 -- the bullet that struck Breshaun Pendergrass?

24 A No, sir. Because unfortunately it's still with Mr.
25 Pendergrass.

DIRECT EXAMINATION BY MR. DURANT - RICK ELMS

285

1 Q Okay. And it can't be removed.

2 A That's correct.

3 Q But even if you could remove it, you don't have the gun
4 to compare it to?

5 A That's correct. Yes, sir.

6 Q After you processed the crime scene, did you have
7 occasion to interview some suspects in this case?

8 A We did. Yes, sir.

9 Q All right. And did you assist with the interview of an
10 individual named Fritz Aguon or Aguon?

11 A Yes, sir, I did.

12 Q Okay. And when did that take place?

13 A Captain Daniels advised me on December 22 a Mr. Webb had
14 contacted her, stated Mr. Fritz Aguon -- that's how you
15 pronounce it correctly -- may have had something to do with
16 the incident and wanted to talk to us.

17 Q Okay. And so he came in on the 22nd?

18 A He came in on the 22nd --

19 Q All right.

20 A -- and spoke with us in reference to this case.

21 Q Is that the only time you talked to him?

22 A No, sir.

23 Q All right. What -- on the 22nd, what did he tell you?

24 A The 22nd it was pretty much a self-serving statement.

25 Puts him there at the -- at the incident location at

1 Browntown. States he was in the vehicle, did not know what
2 was going on. He did give us the name of the suspects or
3 potential suspects that were with him and that's about all
4 that happened with that statement. He then left with Mr.
5 Webb.

6 Q All right. Did he indicate that he knew anything about
7 the shooting?

8 A No, sir.

9 Q All right. Then did you interview him again?

10 A That's correct.

11 Q And when was that?

12 A That was the very next day, December 23rd. Captain
13 Daniels contacted me and said Mr. Webb had called her and said
14 Mr. Aguon wanted to again talk to us in reference to this
15 case.

16 We then met at the police department. This time we met
17 in my office which has a audio recording. We didn't have
18 video at the time. I advised Mr. Aguon of his rights, told
19 him -- advised him it was being recorded, and then he gave me
20 the statement y'all heard earlier today.

21 Q So you've been in the courtroom, and that was the
22 statement that we listened to when Mr. Aguon testified.

23 A That is correct.

24 Q You were ---

25 A I was there ---

DIRECT EXAMINATION BY MR. DURANT - RICK ELMS

287

1 Q You were the detective that was leading that interview.

2 A Yes, sir. That was me y'all heard on that.

3 Q During that interview, did Mr. Aguon indicate to you who
4 the shooter was?

5 A He did.

6 Q And who did he say that person was?

7 A Said Mr. Brandon Smith.

8 Q And -- and first of all, before they even got to the
9 club, did Mr. Aguon tell you anything about what happened
10 prior to going to the club that evening?

11 A Yes, he did. He stated to me this all started at a pool
12 hall, out -- located out in the county; in fact, where --p
13 close to where Mr. Aguon was staying at the time.

14 He stated the individuals came into the pool hall, Mr.
15 Smith seemed to have a beef with somebody, was wanting to know
16 where he was at. They stated he was probably staying -- was
17 at Browntown, and him and these other individuals then loaded
18 up the car and went to Browntown.

19 Q And what did -- what did Mr. Aguon tell you happened
20 after they got to Browntown?

21 A He advised me that -- well, he stayed in the car. I
22 don't think he ever went into the -- into the establishment.
23 They came out arguing. He advised me that Mr. Pendergrass and
24 Mr. Brandon was having words and all that, and Mr. Pendergrass
25 struck Mr. Smith. And next thing you know, "pow, pow," he

1 hears "pow, pow."

2 Q Okay. Did he tell you whether or not he actually saw
3 the gun?

4 A He did. He told me he -- Mr. Smith reached for the gun,
5 pulled it out of his waistband, and shot.

6 Q And did he take it a step further and describe the gun
7 for you?

8 A He did. He told me -- it was a silver and black Cobra
9 380 is what he told me.

10 Q And did you ask him to clarify whether or not he
11 actually personally saw with his own eyes the shooting?

12 A I did. I asked him the -- details -- he gave me very
13 vivid details of what happened. Told me Mr. Smith then jumped
14 in the car in the driver's seat and threw the gun under the
15 seat -- or placed the gun under the seat, and then they took
16 off.

17 Q And did he reiterate to you that, again, he saw it with
18 his own eyes, that he -- he ---

19 A He did.

20 Q --- knew who the shooter was?

21 A Because I wanted to be sure he was telling me the truth
22 and that it was, you know, what he saw.

23 Q Was Mr. Aguon under arrest at that time?

24 A No, sir. We -- we just brought him in for another talk.
25 But I did advise him of his rights because he could

DIRECT EXAMINATION BY MR. DURANT - RICK ELMS

289

1 potentially been involved or charged for this matter.

2 Q But he wasn't arrested that day, he was allowed to go
3 home.

4 A He was allowed to leave with Mr. Webb.

5 Q What was Mr. Aguon's demeanor in that interview?

6 A Think y'all saw it today. He's a nervous young man,
7 scared. Appeared to be wanting to do the right thing.

8 Q And did he -- he appear eager to share that information
9 with you?

10 A He was a little more talkative the second time he came
11 to us, but it was still kind of pulling teeth. Y'all heard me
12 asking the questions, and Captain Daniels also was involved in
13 the interview asking the questions.

14 Q All right. Detective Elms, no physical evidence was
15 ever recovered from the crime scene or a weapon of any kind
16 has ever been recovered.

17 A No, sir. Nothing of that sort.

18 MR. DURANT: I beg the Court's indulgence.

19 (Brief pause.)

20 Q Detective Elms, in that interview with Mr. Aguon, did he
21 ever indicate to you what the beef was about?

22 A Not so I can recall.

23 Q Okay. Did he ever say anything about -- about the guys
24 that Brandon hung out with or the guys that Breshaun hung out
25 with?

1 A Well, we was able to get the names of them. He did tell
2 me who the others were. I didn't know if I could tell the
3 Court right now.

4 Q Did he ever tell you that Brandon and his guys were part
5 of a group?

6 A No, sir, not that I recall.

7 Q Okay. You don't recall.

8 Do you know what The Five-Nine is?

9 A No, sir.

10 Q All right. That's all the questions I have. Please
11 answer any that Mr. Griffith may.

12 THE COURT: Cross-examination?

13 MR. GRIFFITH: Thank you, Your Honor. MPlease the
14 Court?

15 CROSS-EXAMINATION

16 BY MR. GRIFFITH:

17 Q Detective Elms, you told us, I believe, that Mr. Fritz
18 Aguon was interviewed several times; isn't that right?

19 A Just twice by me.

20 Q He was also interviewed, you may be aware, by Captain
21 Daniels; is that correct?

22 A Yes, sir.

23 Q And the first few times he was interviewed he denied
24 knowing anything about it, didn't he?

25 A Yes, sir. The first time.

1 Q Like, he said he was asleep one time.

2 A That's correct. Yes, sir.

3 Q Another time he said he didn't know anything about it.

4 A Yes, sir.

5 Q Then finally you got the answer you wanted, that he was
6 there and he knew who did it; isn't that correct?

7 A Well, no, sir. Just the first one was -- was he was
8 asleep in the backseat, and then he came in the next day and
9 that's one.

10 Q Did you record that first time he came in and told about
11 being asleep in the backseat?

12 A No, sir, we did not.

13 Q Did you record the time that he came in and said that he
14 wasn't involved at all?

15 A We didn't do one where he -- he stated that.

16 Q Well -- that's right, you said that -- that may have
17 been Captain Daniels.

18 Did you -- but you did record the one where he came in
19 and said pretty much what you guys wanted; is that correct?

20 A Well, I didn't want him to say that. I wanted him to
21 tell me the truth. He contacted us and came in on his own.

22 Q And your development of a suspect in the case was based,
23 in large part, by what Mr. Aguon told you; is that correct?

24 A Yes, sir. That's correct.

25 Q Okay. Now, when did you arrive at the crime scene,

1 Detective?

2 A Probably was approximately 3:30-ish. Twenty minutes
3 'til 4. Somewhere in that area.

4 MR. GRIFFITH: Please the Court.

5 Q This is exhibit -- State's Exhibit 13. What time did
6 you say, I'm sorry, Detective?

7 A Approximately 3:30 to a quarter to 4, somewhere in that
8 vicinity.

9 Q It was still dark out, wasn't it?

10 A Yes, sir. It was still dark.

11 Q This is kind of what it looked like when you got there,
12 isn't it?

13 A That's correct. Yes, sir.

14 Q It's pretty dark, isn't it?

15 A It is.

16 Q I can't see much in there, but of course, that's a
17 pretty picture, you know. Could be you could see better, but
18 ...

19 A Yeah.

20 Q But it is really dark.

21 A By that photo, it does look dark, yes, sir.

22 Q Kind of looks like -- looked like that, didn't it?

23 A Well, it was dark, but the lights -- I -- I don't know
24 if it's the flash from the camera making it -- looks more
25 shadowy.

CROSS-EXAMINATION BY MR. GRIFFITH - RICK ELMS

293

1 Q Yeah.

2 A But we did have a street light out there.

3 Q Yeah. You probably used some flashlights too, didn't
4 you?

5 A We used flashlights too.

6 Q You had to use flashlights because it was dark, right?

7 A Well, then, if I wanted to spot projectiles and all
8 that.

9 Q Exactly.

10 MR. GRIFFITH: I have no further questions.

11 THE COURT: Any redirect?

12 MR. DURANT: Just to clarify one point.

13 REDIRECT EXAMINATION

14 BY MR. DURANT:

15 Q Detective Elms, there were some questions posed to you
16 about a statement that Mr. Aguon may have given in which he
17 denied even being at the club. And Detective -- Captain
18 Daniels testified to that earlier, too.

19 Was -- was that the written statement that was sent to
20 you in August of 2016?

21 A Yes, sir. That -- that's the only statement I've ever
22 talked to Mr. Aguon where he denied being -- not being there
23 at all. I've only talked to him twice.

24 Q So ---

25 A And that was to ---

1 Q So he -- he -- the only time he ever denied not being
2 there was in a written statement that he wrote to you from the
3 jail 20 months later.

4 A To me, that's correct.

5 Q Okay. And the statement that -- that he stuck by for
6 those first 20 months was that he was at the jail -- I mean,
7 he was at the -- at the -- at the club the night of the
8 shooting.

9 A That's correct. Both times he talked to me he -- he
10 puts himself there at the club. And I don't know what changed
11 his mind the second day, but he came in and -- with Mr.
12 Roosevelt Webb and that's when we got to the whole truth, I
13 believe.

14 MR. DURANT: That's all the questions I have.

15 THE COURT: Mr. Griffith, anything further?

16 RE-CROSS EXAMINATION

17 BY MR. GRIFFITH:

18 Q Didn't you just tell us the first time that he came in
19 he denied any involvement?

20 A Yeah. He said he was asleep in the backseat, but he was
21 there.

22 MR. GRIFFITH: Okay. Nothing further.

23 THE COURT: Sir, you may step down. Thank you.

24 THE WITNESS: Thank you, Your Honor.

25 (The witness complies.)

DIRECT EXAMINATION BY MR. GRIFFITH - SIERRA SMITH

302

1 THE COURT: Before I sent you all out, ladies and
2 gentlemen, the State had rested it's case. We are at this
3 time going to proceed with the trial.

4 I will recognize Defense counsel. Mr. Griffith, if
5 you'll call your first witness, please, sir.

6 MR. GRIFFITH: Thank you, Your Honor. If it please the
7 Court, I would call Ms. Sierra Smith.

8 CLERK OF COURT: Raise your right hand and put your left
9 name on the Bible and spell your first name for the court
10 reporter.

11 THE WITNESS: Sierra Smith, S-I-E-R-R-A.

12 SIERRA SMITH, having been first duly
13 sworn, testifies as follows:

14 THE COURT: Mr. Griffith?

15 MR. GRIFFITH: Please the Court, Your Honor. Thank you.

16 DIRECT EXAMINATION

17 BY MR. GRIFFITH:

18 Q Please state your full name for the Court.

19 A Sierra Melody Leshay Smith.

20 Q And your address.

21 A [REDACTED] Manning, South Carolina.

22 Q And are you familiar with the Manning area?

23 A Of course. I grew up here.

24 Q And how do you know Mr. Smith?

25 A He's my brother.

1 Q He's probably been your brother all your life, hasn't
2 he?

3 A Yes.

4 Q And so you've been aware of this case as it's gone
5 along, haven't you?

6 A Yes.

7 Q And the charges against your brother?

8 A Yes.

9 Q And you know some of the people that were brought as
10 witnesses; is that correct

11 A Yes.

12 Q You've lived in Manning all your life.

13 A All my life.

14 Q You ever run into any of those people when you're out
15 and about?

16 A Yes. Especially yesterday.

17 Q Okay. Well, do you know Ms. Cindy Calvin?

18 A Yes.

19 Q How do you know her?

20 A Cindy Calvin -- she fought my sister a couple of years
21 ago, and she had false allegations about child protective
22 services.

23 And on yesterday I seen her in Piggly Wiggly. And I
24 didn't notice it were her, I was just walking in, and this
25 Caucasion lady that was with her she was like, "She -- she's

DIRECT EXAMINATION BY MR. GRIFFITH - SIERRA SMITH

304

1 looking at you." And she was like, "Oh, well, 'ef' her and,
2 you know, forget how they feel once I leave and do what I
3 gotta do ..." She was just going on, just being Cindy Calvin.

4 Q So do you think she has something against your family?

5 A Yes, she does.

6 Q Why do you think that is?

7 A Every time she sees us in the street she's saying
8 something, staring, rolling her eyes. It's -- it's just her.
9 She's -- I don't want to, like, discredit her or like, say
10 anything, but she's ---

11 Q Do you think that there would be a reason why ---

12 A --- she use drugs.

13 Q --- she would have something against your family that
14 she might not tell the truth?

15 A Because a couple of years ago my sister beat her up.
16 That's why she has this vendetta. Like, she -- she's just --
17 ever since she -- my sister got one, it's been a ongoing beef.
18 So it's like I guess she don't want to lose, I guess? I don't
19 know.

20 Every time she sees us she stare us down. I look at
21 her, I'm human. I can look wherever I want. I mean, you
22 know. But she stares us down and try to intimidate me. She
23 did it yesterday in Piggly Wiggly. So she -- it's a ongoing
24 thing. Even a couple of years ago. It's -- it's constant.

25 Q Okay.

1 MR. GRIFFITH: I have no further questions.

2 THE COURT: Cross-examination?

3 MR. DURANT: Yes, sir, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. DURANT:

6 Q Ms. Smith, good afternoon.

7 A Good afternoon.

8 Q You say you live on [REDACTED]

9 A Yes.

10 Q That's here in Manning?

11 A Yes.

12 Q That the same [REDACTED] that Fritz Aguon lives on?

13 A Yes.

14 Q Okay. You know him?

15 A Yes.

16 Q And he knows you and your family?

17 A Yes.

18 Q He knows your brother, Brandon?

19 A He know of him.

20 Q He knows of him?

21 A Uh-huh.

22 Q They don't socialize together?

23 A No, not really.

24 Q Okay. You've never seen them hanging out before?

25 A I seen them once or twice.

CROSS-EXAMINATION BY MR. DURANT - SIERRA SMITH

306

1 Q But no question that -- that Fritz knows who your
2 brother is.

3 A He knows of him.

4 Q He could identify him. If he saw him in the street, he
5 could say, "That's Brandon Smith."

6 A Yeah.

7 Q And likewise, your brother could -- could probably point
8 out Fritz Aguon?

9 A Yeah.

10 Q Does your brother live with you? Your brother, Brandon,
11 does he live with you on [REDACTED]

12 A No.

13 Q Where does he live?

14 A He lives in Jersey.

15 Q He lives in Jersey. Back when this happened in 2014,
16 did he live in Manning?

17 A He lived with me.

18 Q He lived with you.

19 A I was living on [REDACTED]

20 Q Okay. You were living on [REDACTED], and he
21 was living with you back then.

22 A Yes. Well, [REDACTED] I'm sorry. Excuse me.

23 Q [REDACTED]

24 A [REDACTED]

25 Q Is that in Manning?

1 A It's in Manning.

2 Q Okay. Now, this incident happened on December 20, 2014.
3 You weren't there that night, were you?

4 A No.

5 Q You -- do you ever go to Browntown?

6 A I mean, I've hung out to maybe get a shot or two, but
7 far as hanging at Browntown, that's just not my cup of tea.

8 Q All right. Is it your brother's cup of tea?

9 A No. He just came out to shoot a game of pool and get
10 something to drink, came back home.

11 Q Okay. So he was out there that night.

12 A Yeah.

13 Q But you weren't there. How do you know he was there?

14 A I mean, he told me.

15 Q He told you he was there that night.

16 A Yes.

17 Q So he told you -- he admitted to you he actually was at
18 the club, Browntown.

19 A Yes.

20 Q And he told you he just went to shoot a game of pool and
21 get a drink.

22 A Of course. He came back to the house.

23 Q Did he tell you ---

24 A He brought ---

25 Q --- who was with him?

CROSS-EXAMINATION BY MR. DURANT - SIERRA SMITH

308

1 A --- the liquor back to the house.

2 Q Did he tell you who was with him that night?

3 A I didn't really care about that.

4 Q You didn't care about that. You ---

5 A I knew ---

6 Q --- didn't ask that detail.

7 A Yeah, I didn't care about that.

8 Q Did he tell you about the shooting?

9 A No. I didn't know about the shooting until Sonia
10 Daniels bust in my house with another detective and she said
11 that she had a warrant out for his arrest.

12 Q So wait a minute, let me get this straight. So your
13 brother, Brandon Smith, who lived with you at the time --

14 A Uh-huh.

15 Q -- admitted to you, came and told you afterward that he
16 had been at Browntown that night, but he didn't say anything
17 about a shooting.

18 A He didn't say anything about a shooting ---

19 Q He just forgot to mention that detail, that while he was
20 at Browntown, a guy got shot in the back and is paralyzed. He
21 didn't tell you that.

22 A Maybe he wasn't there when it happened.

23 MR. GRIFFITH: Objection. Asked and answered, Your
24 Honor.

25 THE COURT: Objection overruled. I'll allow it. Go

1 ahead.

2 Q "Maybe he wasn't there when it happened," is that what
3 you said?

4 A Yes.

5 Q But he didn't tell you about it regardless?

6 A He didn't tell me about it because he ---

7 Q Told you he went there, but this didn't -- didn't ---

8 THE COURT: Hold on a minute. Hold on a minute. Let
9 her finish her answer ---

10 MR. DURANT: I'm sorry.

11 THE COURT: --- before you start again. All right? Go
12 ahead.

13 Q Didn't tell you about it.

14 A No, he did not.

15 Q But he told you he was there that night.

16 A Yes.

17 Q Tell me about this incident with Cindy Calvin and Piggly
18 Wiggly or Walmart or what -- which one was it?

19 A This was yesterday. I mean, I wasn't here -- I mean,
20 yesterday y'all had started trial, I wasn't here. But I went
21 to Piggly Wiggly to, you know, get some regular groceries or
22 whatever, and she was in the check-out, her and this Caucasian
23 lady. I don't know who she was with.

24 But I was walking in, and I went, like, to walk through
25 the aisles where there was a empty aisle to walk through while

CROSS-EXAMINATION BY MR. DURANT - SIERRA SMITH

310

1 she was at the cash register, and the lady tapped her and she
2 was like, "I don't give a 'ef'" -- excuse my language, but she
3 was like, "I don't give a 'ef' about them. I'm going to do
4 what I got to do. Come tomorrow they gonna be real mad."

5 What she said by that -- I don't know what she meant by
6 that.

7 Q You don't know what she meant by -- could be that, "I'm
8 going to go in there tomorrow and tell the truth and do what I
9 got to do."

10 A Or it could have been a lie.

11 Q Could have been, but you don't know that. And -- and
12 she didn't actually talk to you directly. She didn't say
13 anything to you.

14 A Yeah. She was speaking out loud for me to hear her.

15 Q Okay. And you mentioned, I -- I think you said her
16 sister -- your sister beat her up.

17 A Yeah.

18 Q Not the other way around. Your sister -- you're very
19 clear about that. Your sister won the fight, she beat Cindy
20 up.

21 A Yeah, of course.

22 Q Okay. And you're proud about that.

23 A I'm not proud, but this is where the ongoing beef comes
24 from. Cindy Calvin is -- she's this -- well, she wants to be
25 known as this Billy-bad person manner, so nobody can't mess

1 with her. And being that my sister did win the fight, she
2 can't sleep on that.

3 Q But the truth is she was a victim of your sister.

4 A She wasn't a victim.

5 Q She lost the fight.

6 A My sister was a victim. She start the fight --

7 Q Okay.

8 A -- my sister gave her what she asked for.

9 Q That -- so that's the way you identify victims in your
10 family, the person that wins the fight can be the victim.

11 A No. Not even.

12 Q Ms. -- Ms. Smith, you -- you've had some run-ins with
13 law-enforcement before, haven't you?

14 A Yes.

15 Q Okay. You've got some shoplifting's on your record.

16 A Shoplifting, traffic tickets, breach of peace,
17 interference with the police. I'm not saying that I'm this
18 saint person. I have a -- I have past. I have a past.

19 Q Interference with the police? What was that for?

20 A When I was -- I didn't give them my name because I felt
21 like I wasn't involved in the situation and I wasn't obligated
22 to give them my name, which, you know, I turn to find out I
23 was obligated to give them my name, but ...

24 Q You -- you also have some obtaining properties by false
25 pretenses.

CROSS-EXAMINATION BY MR. DURANT - SIERRA SMITH

312

1 A Oh, yeah.

2 Q Several counts of that.

3 A Yeah. Yes, sir.

4 Q So breach of -- getting property under false pretenses.

5 A Yes, sir.

6 Q Stealing.

7 A But that was me not knowing, but -- yeah.

8 Q That was when what?

9 A Me not knowing that the -- the merchandise was stolen.

10 Q Okay.

11 A See, I didn't have any knowledge of that, so yes, I -- I
12 had some charges for that.

13 Q Ms. Smith, do you own a firearm?

14 A Do I have a firearm?

15 Q Do you own a firearm?

16 A I don't have one, but I own one and I don't know where
17 it's at right now.

18 Q You don't know where it is.

19 A I told that to Sonia Daniels when she came to my house.
20 She asked me where my gun was, and I told her with me moving
21 to [REDACTED] in the mix of that, I didn't
22 know where my gun as at.

23 Q And this was ---

24 A It could have been at my old house, it could have been
25 at my present house.

1 Q This was actually right after when she came looking for
2 your brother --

3 A Uh-huh.

4 Q -- she asked you where your gun was.

5 A Yeah. But I -- I've owned a gun before that.

6 Q Okay. And it just so happens that that gun that she was
7 asking you about, that you couldn't locate right after this
8 incident happened ---

9 A No. I ---

10 Q --- was a 380 Cobra, the same gun that Fritz Aguon said
11 your brother had that night; isn't that true?

12 A I been couldn't find my gun. Before my brother came
13 home from prison, I had my gun. I misplaced my gun when I --
14 before I moved to [REDACTED] So he wouldn't have any kind
15 of contact with my gun because I been misplaced it.

16 Q You had -- you had already misplaced it.

17 A Yes. I was already ---

18 Q Before he came home from prison.

19 A --- moving from the other place to [REDACTED] So that
20 was nipped in the bud.

21 Q When did he come home from prison?

22 A He came -- I'm not sure of the dates, but I -- I know I
23 was living, in 2014, in [REDACTED] So I'm thinking around
24 that time, 2014, end of 2013.

25 Q So -- and this happened December 20, 2014. So your

CROSS-EXAMINATION BY MR. DURANT - SIERRA SMITH

314

1 brother had just recently come home from prison --

2 A Uh-huh.

3 MR. GRIFFITH: Objection, Your Honor. Has nothing to do
4 with his brother. He's asking questions that are ---

5 THE COURT: Can the lawyers approach over here, please?

6 (Bench conference.)

7 Q So back to 2014. December of 2014, your brother's
8 living with -- with you at the time, just come home; and your
9 380 Cobra, the same type of gun that was identified by Mr.
10 Aguon as in your brother's possession on the night of the
11 shooting, had gone missing.

12 A In my brother's possession? The gun was misplaced
13 before he even moved in my house, before he even got released
14 from prison.

15 Q You don't know -- but you don't know where it is.

16 A I don't know where it is.

17 Q But it ---

18 A To this day I don't know where it is.

19 Q But it was a 380 Cobra, wasn't it?

20 A To be honest, I can't even remember what gun I
21 purchased. It was just pretty and I purchased it.

22 Q It was just pretty.

23 A Yes.

24 Q Okay. And it's gone missing.

25 A It's missing. I moved numerous of times and I put it in

1 boxes. I'm not sure where it is. That's what -- that's the
2 only reason why I didn't put out a -- she asked was it stolen.
3 And I said the only reason why I didn't report it stolen
4 because I thought I misplaced it and it could be round either
5 that house or the current house that I was at.

6 Q And again, you weren't there that night.

7 A I haven't any -- I have no knowledge of what took place
8 that night.

9 Q You have no knowledge of it.

10 A The only time that I found out my brother was being
11 charged was when Sonia Daniels kicked in my door.

12 Q Kicked in your door. And -- and asked you about the gun
13 in the same conversation.

14 A Yes. Yeah, basically.

15 Q When you told her that it had -- you didn't know where
16 it was.

17 A I told her I didn't know where it was at. I'd been
18 misplaced it.

19 Q But you had never told law enforcement before that that
20 it was missing.

21 A Before when?

22 Q Before law enforcement came looking for your brother,
23 you didn't tell them that your 380 Cobra was missing, did you?

24 A I didn't feel the need to. I -- I was moving, so I was
25 pretty sure that I misplaced it.

CROSS-EXAMINATION BY MR. DURANT - SIERRA SMITH

316

1 Q You didn't think that was important. You didn't feel
2 the need to.

3 A I was moving. I misplaced it.

4 Q And you weren't there that night. Your brother was
5 there because he told you so; isn't that right?

6 A Yes.

7 Q But he didn't tell you about the shooting.

8 A He wasn't there when they -- it started shooting.

9 Q How do you know?

10 A Obviously, he --

11 Q You -- but you weren't there, so you don't ---

12 THE COURT: Hold on a minute. Hold on a minute.

13 THE WITNESS: He keeps asking ---

14 THE COURT: Hold on. Let him finish his question before
15 you start talking, and let her finish her response before you
16 start asking another question. Okay, Mr. Durant?

17 MR. DURANT: Yes, sir, Your Honor.

18 THE COURT: All right. Now, did you want to finish your
19 answer, ma'am?

20 THE WITNESS: No, I'm good.

21 THE COURT: Okay. Next question, please.

22 Q How do you know your brother wasn't there that night
23 when the shooting happened?

24 A He didn't tell me anything about a shooting, so I took
25 it as if he didn't -- he wasn't there.

1 Q No doubt he was -- he was there earlier?

2 A He was there, he got a drink, and he shoot a game of
3 pool. He brought back some liquor from ---

4 Q And again ---

5 A --- Browntown to my house.

6 MR. DURANT: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. DURANT: That's all the questions I have.

9 A Thank you.

10 THE COURT: Any redirect?

11 MR. GRIFFITH: Redirect, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. GRIFFITH:

14 Q How do you know the victim?

15 A The victim, Breshaun? He's -- I personally call him my
16 cousin. We all grew up together. I ate at his grandmother's
17 house, he ate at my grandmother's house. We're related, if
18 you ask me.

19 MR. GRIFFITH: No further questions.

20 THE COURT: Anything further, Mr. Durant?

21 MR. DURANT: (No audible response.)

22 THE COURT: Ma'am, you may step down. Thank you.

23 (The witness complies.)

24 THE COURT: Can the lawyers approach a minute, please?

25 Can the lawyers approach a minute, Mr. Griffith, please?

1 charge on the law, and then the case will be given to you all
2 to make your decision on.

3 Before we do that, Mr. Griffith, do you have any motions
4 that you want to make or renewal of such?

5 MR. GRIFFITH: Your Honor, we would renew the motion for
6 directed verdict.

7 THE COURT: All right. Very well. For the record, all
8 prior objections and motions are noted for the Defendant. The
9 Court's rulings as to each remain the same. All right.

10 All right. Ladies and gentlemen, we are going to move
11 forward at this point; and the order, in process in closing
12 arguments, under our law and under our rules of procedure, the
13 State is going to open on closing arguments on the law and the
14 facts, the Defense will have an opportunity to make a closing
15 argument, and the State will have an opportunity to argue a
16 final argument there.

17 I will remind you, ladies and gentlemen, what the
18 lawyers tell you during closing arguments is not evidence in
19 this case, is not evidence in this case. I told you from the
20 outset that the evidence in this case comes from sworn
21 witnesses on this stand and -- and/or exhibits that are
22 introduced during the course of this trial.

23 At this time I'm gonna recognize the State for closing
24 arguments.

25 MR. DURANT: Thank you, Your Honor. May it please the

1 Court. Mr. Griffith. Madam Clerk.

2 Ladies and gentlemen of the jury, good morning.

3 THE JURY: Good morning.

4 MR. DURANT: First of all, let me say thank you for your
5 time this week with us, for your patience, and your
6 attentiveness. We appreciate what y'all do. Appreciate you
7 giving us some time away from your families and your work.
8 And I know you maybe didn't have much choice in coming, but we
9 appreciate you none the less:

10 As the judge told you in his opening remarks, we've got
11 the best system of justice in the world, and we couldn't do it
12 without you, without a jury of the Defendant's peers, to hear
13 the case against him. So I appreciate what y'all do. Thank
14 y'all for coming.

15 All right. As y'all saw, we -- we had a few hiccups
16 selecting a jury the first -- first day. On Tuesday, we had
17 to select a jury. Then we had to come back and do it again
18 yesterday. And as you can probably tell, we go to great
19 lengths to make sure that we get the right 12 jurors to hear
20 cases in this court. We go to great lengths to make sure we
21 get the correct jurors to hear the case against defendants
22 which are charged with crimes in this -- in this court.

23 As you noticed during the selection process, some jurors
24 were struck. Some jurors were dismissed by the Court and by
25 the different parties in the case. And you all were kept, you

1 12 were kept to hear this case, you 12 and two alternates -- I
2 don't want to forget about y'all -- y'all were kept and -- to
3 hear this case. And we believe that based on your life
4 experiences and your common sense that you are uniquely suited
5 to hear this case, to hear the case against Jeremiah Jermaine
6 Brandon Smith.

7 And we don't ask you to leave those life experiences,
8 that common sense, at the door when you come in here. You
9 bring it with you, and I'm gonna ask you, at the end of this
10 case, to analyze the evidence, analyze the evidence that's
11 been presented to you with your common sense.

12 I told you in my opening remarks, the judge has -- has
13 told you, and we'll tell you that the State has the burden of
14 proving their case beyond a reasonable doubt. And I told you
15 before that beyond a reasonable doubt means proof that will
16 leave you firmly convinced of the Defendant's guilt. That's
17 the standard, that's the burden that the State is held to, to
18 prove the case beyond a reasonable doubt. It's not any and
19 all doubt, beyond a reasonable doubt.

20 What does "reasonable" mean? It means that it makes
21 sense. We ask you to use your common sense.

22 The crimes which Mr. Smith are charged with are -- is
23 attempted murder. I told you before attempted murder means
24 that a person with -- who -- with intent to kill attempts to -
25 - to kill another person with malice aforethought.

1 Intent to kill means that the person consciously
2 intended the completion of the act. They consciously intended
3 to -- to kill Brandon Smith. Now, intent is -- is obviously
4 subjective. That -- that -- that means we can't measure it.
5 It's hard to tell what's going on in another person's mind.
6 And so for that reason, we have to use the surrounding
7 circumstances -- the facts, the act, the words that were
8 exchanged -- to determine what a person's intent was because
9 we don't know what's going on in their mind.

10 Intent may be proven by the means or the instrument that
11 was used. A gun was used. And the manner in which it was
12 used, shooting a man from 3 to 5 feet away in the torso. You
13 heard the doctor say that if the -- if the bullet had been one
14 centimeter to either side, he wouldn't have survived.

15 What does -- what does the manner in which that gun was
16 used tell us about the Defendant's intent? When you shoot
17 somebody at close range in the torso, you intend to kill them,
18 that's what it tells us. So we know what the Defendant's
19 intent was from what he did.

20 What does malice mean? You heard me say that you -- you
21 must -- it's intent to kill -- an attempt to kill with malice
22 aforethought. Malice is the doing of a wrongful act
23 intentionally, without just cause or excuse. A senseless act,
24 senseless act like this one. Malice can be inferred from the
25 circumstances again, from the use of a deadly weapon, from

1 brutal force. The use of a deadly weapon 3 to 5 feet away --
2 malice can be inferred from that.

3 And aforethought, as I told you, is simply just a time
4 that evil is conceived. There's no set standard for how long
5 that -- that must be. It doesn't have to exist for an hour
6 before or 10 minutes ago. It can be formed the moment the act
7 -- that the action is done.

8 The judge is also going to tell you that if you find
9 that the State has not proven the -- the elements of attempted
10 murder, that you can consider whether the Defendant is guilty
11 of what we call "a lesser included offense," and that's
12 assault and battery of a high and aggravated nature. I submit
13 to you that -- that -- that the difference is the State
14 doesn't have to prove intent to kill for assault and battery
15 of a high and aggravated nature, but let me just go over that
16 charge with you quickly and then we'll get to the facts.

17 Assault and battery of a high and aggravated nature is
18 an unlawful injury to another person that results in great
19 bodily injury. Clearly, Mr. Pendergrass suffered great bodily
20 injury. That's defined in the law as an injury which causes a
21 substantial risk of death -- one centimeter either way he
22 wouldn't have survived -- or which causes serious permanent --
23 permanent disfigurement. He's in that wheelchair for the rest
24 of his life. That's great bodily injury.

25 Assault and battery of a high and aggravated nature is

1 an injury to another person that results in great bodily
2 injury. If you find that Mr. Pendergrass [sic] didn't intend
3 to kill him, you can consider whether or not he committed an
4 assault and battery of a high and aggravated nature.

5 Finally, at the end of the case, you're going to be
6 asked to render a verdict as to these two -- these two crimes.
7 A verdict comes from the Latin phrase "veredictum," which
8 means "to speak the truth." That's your job, to render a
9 verdict that speaks the truth.

10 So what is the truth in this case? Before we get there,
11 notice that when I went over the law I didn't -- I didn't
12 mention the word "motive." And when the judge charges you the
13 law in just a few minutes, he's not gonna mention the word
14 "motive" either. And the reason for that is that motive is
15 not an element which must be proven by the State. That's
16 popular to talk about on T.V. shows, these crime T.V. shows.
17 You always hear about motive, but motive is not an element the
18 State has to prove. We don't have to know why.

19 This was a senseless act. It doesn't make sense to us.
20 It doesn't make sense to a reasonable person why a man would
21 take a pistol to a nightclub and shoot his neighbor in the
22 back. That doesn't make sense to us. It's a senseless
23 shooting.

24 But we don't have to know why. We just have to know
25 who, and render a verdict that speaks the truth.

1 So what is the truth in this case? You heard from
2 several individuals that were there that night. They told you
3 their stories about what happened from their different
4 perspectives, admittedly, with a -- with a few differences.
5 The witnesses differed somewhat in what they told you.

6 But what do we know about that night? What did we --
7 what did we learn to be true from these witnesses, from their
8 different perspectives? Before I go any further, let me just
9 tell you that I submit to you that in cases like these, you
10 should expect for there to be differences, you should expect
11 that. If there weren't, you should be concerned because it's
12 natural when a group of people observe a common act -- observe
13 an act for there to be differences in what they saw or what
14 they heard, or differences in what -- in the highlights, what
15 they remembered. If they come in and tell you the exact same
16 story, that means they got together and they planned and they
17 worked on it. You should expect there to be differences. The
18 differences help us to understand that they're telling the
19 truth. If it was exactly the same, then they were coached and
20 they worked on it.

21 But what is -- what do we know from what -- the stories
22 they told, what do we know to be true about that night? What
23 did we learn from these witnesses? First of all, we learned
24 that Brandon was at the club. No question about it. Everyone
25 agrees Brandon was there that night. He's clearly well known

1 in the community. All four witnesses -- Breshaun, Cindy,
2 Shardara, and Fritz -- know him personally and saw him there.
3 We know beyond a shadow of a doubt that Brandon was there that
4 night. Brandon even told his sister he was there. Apparently
5 he forgot to mention the details that there was a shooting.
6 He didn't mention that to her. But he even told his sister he
7 was there that night. So every single person that testified
8 told you that Brandon was at the club.

9 What else do we know? We know that the car -- he rode
10 in a white car there, and that car was backed in to the club.
11 All four witnesses were extremely consistent about where that
12 car was parked, how it was situated. They told the exact same
13 story about the location of the car that Brandon Smith came in
14 -- came to the club in. And that interestingly enough, it was
15 backed in, ready to leave. Backed in because the occupants of
16 that car knew what was coming because this was planned in
17 advance. Just like Fritz told you, just like Fritz told the
18 officers. Doesn't the fact that the car was backed in, ready
19 to leave, corroborate what Fritz says that this was planned in
20 advance? I submit to you that it does.

21 What else do we know to be true from these witnesses?
22 Brandon was at the back of the car, having some type of
23 interaction with Breshaun. All four witnesses are consistent
24 with each other that standing behind the car were Brandon and
25 Breshaun, and they were interacting. Everybody told you that.

1 And the nature of that interaction may differ somewhat, but
2 all four say Brandon and Breshaun were standing behind that
3 car having an interaction at the time of the shooting.

4 What else did they tell you? What else do we know to be
5 true? That only Brandon and Breshaun were standing at the
6 back of that car. Only the two of them. Cindy, Shardara, and
7 Fritz all said that Brandon's friends were in the car already.
8 The car was running. They had it running, waiting from
9 Brandon to get in, waiting for Brandon, the one who said he
10 had beef and asked where to find Breshaun, the one who said he
11 had beef before they came there. They were all in the car
12 waiting from Brandon to handle his business. They were all
13 consistent that the only two people outside the car were
14 Brandon and Breshaun at the time of the shooting. Nobody else
15 was outside the club. Noone told you that Breshaun's friends
16 came outside. Nobody said that because they didn't. The only
17 two people outside the car, the witnesses are -- are all
18 consistent, were Brandon and Breshaun. We know that to be
19 true.

20 We also know that there was tension between Brandon and
21 Breshaun. And although that tension is described in different
22 terms, all four witnesses told you that there appeared to be
23 tension between the two. At the time of the shooting, there
24 appeared to be tension between the two. Breshaun says that
25 Brandon mouthed off at him. Cindy and Shardara said there

1 were some words exchanged in the club between some groups.
2 They don't know who said what or who it was directed to or
3 what was said. Breshaun said Brandon mouthed off to him
4 outside the club.

5 He also told you that he knew he couldn't ask for a ride
6 from Brandon because of the tension. And then he admitted,
7 and then later described it to Mr. Griffith, as an
8 altercation.

9 So all four witnesses -- Brandon -- I mean, Breshaun,
10 Cindy, Shardara, and Fritz -- told you Brandon was at the
11 club, the car was backed up, Brandon was standing beside it
12 interacting with Breshaun, they were the only two outside, and
13 there was tension between them. Everybody that was there
14 testified to that.

15 What else did everyone testify to? That they were
16 certain Brandon shot Breshaun. All four witnesses to the
17 shooting -- maybe not to a gun -- Mr. Griffith said in his
18 opening remarks that the State didn't have any witnesses to
19 the shooting. State doesn't have -- maybe Cindy and Shardara
20 weren't witnesses to the gun, but they were witnesses to the
21 shooting. They told you they were there. They saw the two of
22 them standing outside when the shot was fired. They were
23 watching them. They knew that nobody else was outside the
24 car. They were witnesses to the shooting, make no mistake
25 about it. They didn't see the gun, but they were witnesses to

1 the shooting.

2 All four witnesses to the shooting -- Breshaun, Cindy,
3 Shardara, and Fritz -- all four who had the opportunity to
4 observe the parties, who were aware of the surrounding
5 circumstances and the tension between them, all four said that
6 Brandon -- in no uncertain terms, all four said that Brandon
7 Smith was the shooter. I asked them if there was any doubt in
8 their minds, and they said "no." All four.

9 Mr. Aguon, Fritz, even described the gun. The same --
10 interestingly enough, the same, make, model, and caliber as
11 the Defendant's sister's gun who he had just moved in with
12 since getting home from prison. The same make, model, and
13 caliber that Mr. Aguon described for you that Brandon Smith
14 had that night is the gun that the Defendant's sister had --
15 had purchased, and Brandon was living with her. He had access
16 to it since coming home from prison that year.

17 Fritz said that he saw it with his own eyes. He gave
18 specific details about what happened that night and about what
19 happened next, about Brandon getting in the front -- in the
20 driver's seat of that car, putting the gun under the seat, and
21 speeding away.

22 Let's talk about Fritz's testimony for a minute. I -- I
23 submit to you that -- that -- that Fritz, Mr. Aguon, was a
24 scared and nervous young man. Your common sense will tell you
25 that, your observations of his demeanor. Remember the

1 officer's observations of his demeanor in -- in his first
2 interview: He was scared, he was nervous. What's he nervous
3 about? What's your common sense tell you? He's nervous about
4 testifying against his friend. He's nervous about breaking
5 the street code, about being a snitch. That's what Fritz
6 Aguon is nervous about.

7 And it took courage for him to go to law enforcement and
8 volunteer that information when they didn't have a case
9 against him. He wants to do the right thing. It took -- it
10 took courage for him to tell that story initially, and then in
11 the face of that pressure, to tell you again that his friend,
12 Brandon Smith, is the shooter and that he saw him do it.

13 Now, as y'all all know from your life experiences,
14 courage isn't -- isn't something that -- that -- that we -- we
15 always have. It comes and goes. It takes courage to tell
16 that story. Courage isn't everlasting. You may have courage
17 for a moment and then consider the consequences later and lose
18 that courage.

19 You had the opportunity to observe him and observe --
20 and observe his demeanor. Use your common sense. He was a
21 scared young man. That's the -- that's the reason he didn't
22 show up for court on Tuesday. That's the reason he changed
23 his story 20 months later because he's scared about
24 consequences when he goes home.

25 What else do we know to be true from that night? What

1 else did we learn from the witnesses? That Brandon fled the
2 scene immediately after the shooting. We know beyond a shadow
3 of a doubt that Brandon Smith was there that night, he was
4 there at the time of the shooting, that after his childhood
5 friend he'd grown up with -- Brandon Smith ran -- was shot,
6 Brandon Smith ran, jumped in the car, and sped away. All four
7 witnesses were consistent that Brandon jumped in that car,
8 that he was the driver.

9 He was the driver of that car. It was his decision as
10 to whether that car left or not. They all told you he was the
11 driver. He jumped in that car and they fled.

12 Ladies and gentlemen, I submit to you that the truth in
13 this case came out through those stories, came out from these
14 witnesses. I'd ask you to use your common sense as you
15 analyze their testimony, and at the end of this case, I'm
16 going to ask you to render a verdict that speaks the truth.
17 Thank you.

18 THE COURT: Mr. Griffith.

19 MR. GRIFFITH: Ladies and gentlemen, I'd also like to
20 thank you for your patience and your service. Back in the day
21 when we didn't have juries, people just got thrown in jail
22 just 'cause police said, "I'm pretty sure they did it. Let's
23 put them in jail." Happened all the time.

24 People are in jail now. They keep finding it out all
25 the time that they really didn't commit the crime. It's just

1 that, you know, somebody pushed them into it. That is to say
2 somebody said they did it, and it turned out after we found
3 out about certain things, like DNA, well, he didn't do it
4 after all. People go to jail all the time for things they
5 didn't do.

6 But because we have the system of law we do and because
7 we have juries like you folks -- we're all human. We just
8 have to look at the evidence, but we have to look at. We
9 can't just make a rash decision. It has to be -- put
10 everything together and there has to be enough evidence that
11 we just don't have any doubt, now, that is to say, beyond a
12 reasonable doubt that we just can't think of any other
13 reasonable way that this could happen.

14 In this case, Browntown -- a lot of shootings occur in
15 this area. Brandon's sister said he didn't tell her about the
16 shooting when he got home. A lot of shootings occur around,
17 so that's not unusual. She's from this town. She'd find out
18 right away.

19 State may have proven in your mind that Brandon was
20 present, remember Mr. Pendergrass was injured; but just being
21 there is not enough to remove doubt that Brandon Smith
22 committed the crime. Just being there isn't enough. It's
23 called "mere presence." If mere presence was enough,
24 everybody that was there needs to be put in jail for shooting.
25 You can be someplace when something happens. That doesn't

1 mean that you did it.

2 The fact that some people said they saw him leave there
3 is not enough to make him guilty of any offense. If I heard
4 shooting, I'd leave, too.

5 When we talked about beyond a reasonable doubt, the
6 State must prove beyond a reasonable doubt that only Brandon
7 Smith did commit this crime. It can't be a maybe. Can't even
8 be a probably. It needs to be pretty good -- pretty good set
9 in your mind to judge the course of all over what these things
10 mean. You would have to believe that there's no other way it
11 could happen.

12 Believe it or not -- well, of course, you won't believe
13 it -- the Solicitor is not a witness in this case. Can spin a
14 good tale. He's very good. But no matter what spin he puts
15 on it or places on the evidence, his words are not evidence.
16 Only the witnesses who testified gave evidence, and we have to
17 look at those witnesses and weigh in our mind what's going on.

18 You know, it's been three years since this happened.
19 The gun is not in evidence. Brandon's sister didn't mention
20 any kind of gun in particular. The Solicitor sure testified a
21 lot about it, but she didn't say she -- a certain gun or
22 anything like that.

23 There are a lot of contradictions in this case. The
24 Solicitor did mention that if a couple of people have exactly
25 the same story, something ain't right. And as it happens, a

1 couple of ladies got up and told exactly the same story. Law
2 enforcement questioned that at the time of the crime. Both of
3 them said they didn't see a shooter at the time of the crime.
4 And so after they -- three years went by, a couple of people
5 that might have grudges against the Smiths still said that
6 they did not see the shooting. They heard a pop, they saw
7 Brandon there, but they added one little thing that they both
8 added. They said Brandon Smith was over at the trash can
9 talking to Mr. Pendergrass, that they were talking over there.

10 Now, these people were around the corner and it was
11 dark. Yeah, there's a light over there by Browntown, but you
12 saw the pictures that the investigator took. And they used
13 flashlights to look around to see if they could find any
14 evidence because it's dark around there. You could barely see
15 that white car that was in that picture. Well, I couldn't,
16 maybe you saw it better.

17 But they added that they were talking there. Mr.
18 Pendergrass, the victim in this crime -- very unfortunate
19 crime; unfortunate a very young man was injured in this way --
20 he said they didn't talk. He's the victim. He said he was
21 just walking by him and that Brandon Smith said something and
22 he waved him off.

23 But both these two ladies, three years after the
24 incident -- after they'd already said they didn't know
25 anything about it -- said, yeah, they were standing over there

1 talking by the fence, by the trash can. They couldn't --
2 didn't see him talking.

3 So Mr. Fritz spent 20 months in jail. He came, he said,
4 "I didn't see anything." He was questioned again, and they
5 told him that they had heard that he was involved in the
6 crime. You saw he's a scared young man. He didn't know what
7 to do. He agreed that, well, I guess I was there. I was
8 asleep in the back seat. Then comes up with a story they want
9 to hear. They didn't record the times when he said, "I don't
10 know anything about it. I was over at Roosevelt's the whole
11 day." But they did record the one that they liked, and that's
12 when they developed their case.

13 He sat in jail and he thought, "This isn't right." So
14 then he said, "I wasn't involved. I don't know anything about
15 it. Before when I said that, I was lying."

16 And here on the stand, he was nervous. But when I asked
17 him, "It's not true, is it?" He said it was not true.

18 And so they gave him immunity, and he still says -- said
19 it wasn't true. So under these circumstances, there is some
20 doubt. We don't know.

21 Somebody at one point said, well, a car went by and they
22 heard shots. Some people said that Brandon and Mr.
23 Pendergrass were talking at the fence. Mr. Pendergrass said
24 they were not. Mr. Pendergrass said he barely knew Brandon.
25 Brandon's sister said he was like a cousin. He lived across

1 the street. So there are some inconsistencies here that make
2 us wonder, well, what exactly is the truth? There is doubt.

3 There's plenty of room to question some of these
4 witnesses who's stories didn't match the victim's and who told
5 exactly the same thing that didn't match anything else. Maybe
6 they, three years later -- it was three years. They were
7 questioned again and said, well, we do remember seeing Brandon
8 there, but they had to add that little part which wasn't --
9 which -- which made it sound pretty good, though. But it
10 wasn't part of their original story, and they didn't see the
11 shooting.

12 Nobody saw the shooting. Nobody said they saw the
13 shooting. Not one person said they saw the shooting. Mr.
14 Pendergrass, as horrible as it is, was shot in the back. So
15 obviously he was not looking at the person.

16 And so I would ask you to consider all these things, and
17 if you cannot say that there's just no other way that it could
18 happen, that is to say in your mind, there's no reasonable
19 doubt in your mind. But if there's a reasonable -- another
20 reasonable explanation or another reasonable way it could have
21 happened, you can't find him guilty. That's what we're all
22 about, that's what America's about.

23 The police can't just say, "You did it. You're going to
24 jail." Has to be beyond a reasonable doubt.

25 Now, again, thank you so much for your service, and of

1 course, this is -- it's not easy, but it is so necessary. And
2 I would ask that you find Mr. Brandon Smith not guilty. Thank
3 you.

4 THE COURT: Mr. Durant.

5 MR. DURANT: Ladies and gentlemen, I'll be quick. Mr.
6 Griffith spent a lot of time talking about the credibility of
7 witnesses just now. And in -- in criminal law and -- and any
8 law, really, in terms of evidence, we talk about sometimes the
9 -- certain statements that we have are what we call
10 "guarantees of trustworthiness or reliability." There --
11 y'all have probably heard about hearsay evidence and there --
12 there are -- there are exceptions to hearsay when statements
13 have guarantees of trustworthiness or reliability.

14 I submit to you -- and -- and the reason that -- that
15 statements have those guarantees of trustworthiness because we
16 know that there are certain types of statements, which we know
17 through our common sense based on the nature of the statement,
18 its content, and the message conveyed, that must be true
19 because a reasonable person wouldn't lie about that. There
20 are certain statements that have guarantees of trustworthiness
21 based on their content because a reasonable person wouldn't
22 make that statement up. I submit to you that's true in this
23 case.

24 A lot of talk about Fritz Aguon and his statement. Mr.
25 Griffith says that law enforcement didn't record when he said

1 that he wasn't even there. You -- y'all were paying
2 attention. Y'all know clearly that's not true. There was a
3 written statement -- that's where that story came from, the
4 written statement that he wrote to the officer 20 months
5 later. That was certainly recorded in Mr. Aguon's own
6 handwriting. So I -- I'm -- but that -- that's his spin. I --
7 I -- he said I was putting a spin on the story. That's his
8 spin.

9 But how do we know, based on the content of Mr. Aguon's
10 statement, that's reliable? I submit to you because it's
11 against his own interest -- because it was against his
12 interest to put himself with the shooter during the planning
13 stages of this crime. When law enforcement didn't have a case
14 against him, it was against his interest to put himself with
15 the shooter as it was being planned. That's accessory before
16 the fact.

17 It was against his interest to get in the car with the
18 shooter and to tell law enforcement that he got -- to
19 volunteer that information that he got in the car with Brandon
20 Smith when he knew about the plan. He knew why they were
21 going to Browntown. It was against his interest to go and
22 volunteer to law enforcement that, "I knew there was a plan.
23 I knew he had beef with somebody, knew that's the reason he
24 was going to Browntown, and I got in the car with him." It
25 was against his interest to do that.

1 It was against Mr. Aguon's interest to say that he was
2 with Brandon Smith when he fled from the scene. That's
3 accessory after the fact.

4 He volunteered all that information to law enforcement
5 when they didn't have a case against. He felt compelled to do
6 the right thing even though it would later hurt him, even
7 though he would go to jail for it and spend 20 months in jail.
8 He felt compelled to do the right thing. He gave a statement
9 against his interest, and that's how we know it's reliable.

10 What about Cindy and Shardara? If Cindy and Shardara
11 were lying, why didn't they say they saw the gun? Why didn't
12 they just say they saw it? If they wanted to come in here and
13 lie to you, wouldn't it be easy for them to say, "Yeah. I saw
14 the gun"? Why not make the case stronger against him? If
15 they had such angst against this family -- you heard from the
16 sister that they were clearly the victim, that Cindy was the
17 victim of -- of whatever was going on. She said that her
18 sister had hit her with a shoe or beat her up -- had beat
19 Cindy up. But if because of all that they wanted to send the
20 brother to jail, why not just come in here and tell you that
21 they saw the gun?

22 The fact that they -- and they were insistent that they
23 did not see it. I asked them every which way. No. They
24 maintained, did not see the gun.

25 "I saw Brandon and Breshaun talking, I heard the pop, I

1 saw Breshaun fall, and I saw Brandon jump in the car."

2 "Did you see the gun?"

3 "No."

4 "Are you sure you didn't see the gun?"

5 "No."

6 "But you didn't see him raise his arm or anything?"

7 "No, I didn't."

8 Why not say they saw the gun if they wanted to lie to
9 you?

10 What about Breshaun? How do we know he's telling the
11 truth? How do we know that his story about what happened is
12 reliable? I told you in my opening remarks that -- that my
13 job, the job of a prosecutor, is not just to seek convictions,
14 but to ensure that justice is done. I submit to you that the
15 -- the way that we can know that Breshaun's statement is
16 reliable is because a person in his position would not come
17 here to seek a conviction against a man who didn't put him
18 there. He came here to seek justice.

19 Same is true about the gun. Breshaun could've even
20 said, "I saw the gun." He didn't say that. He could've lied
21 and said that "I saw the gun."

22 But more importantly, more specifically, wouldn't a man
23 in Breshaun's position who had been shot that evening in the
24 back, why -- would he come here and tell you that that man is
25 the man that put him in that wheelchair if he didn't believe

1 it? We know that beyond a shadow of doubt. That is the most
2 absolute certainty in this trial is that Breshaun Pendergrass
3 believes in his heart that Brandon Smith is the one who shot
4 him. That is one thing that we can know for certain because
5 no man who had been shot in the back and paralyzed and who
6 would live in that wheelchair for the rest of his life would
7 come in here and point the finger at someone else when he gets
8 one shot to see that the man that put him there gets justice.
9 No man in his position, no reasonable person would come in
10 here and say, "It was that man," if he knew it was someone
11 else, if he believed it was someone else.

12 He knows that man personally, grew up with him. No
13 amount of angst or beef, disagreement between the two would be
14 enough for a person who is paralyzed permanently to come in
15 this courtroom and say, "It was a guy I got beef with,"
16 instead of the one who actually shot him and put him in that
17 wheelchair. That's how we know Breshaun's statement is
18 reliable. He believes that Brandon shot him, the man that was
19 3 to 5 feet away from him.

20 To everybody else, it was a "pop." Breshaun said the
21 shot range out in his ear. His ear was ringing from it. To
22 everybody else, it was a "pop," but not to Breshaun. He heard
23 it from close range, from the man that had just mouthed off at
24 him and had tension between them. If it was somebody else,
25 he'd tell you that. A reasonable person would.

1 Breshaun is here for justice, just like you are, just
2 like we all are. My job is to seek justice. Your job is to
3 find it and render a verdict that speaks it. That's what
4 y'all have to do now. Render a verdict that speaks the truth.
5 Render a verdict that speaks justice in this case. Thank you
6 very much.

7 THE COURT: All right. Ladies and gentlemen, it is now
8 my duty as a trial judge, under the constitution of this
9 state, to charge and instruct you on the law applicable to
10 this case. It is your duty as jurors to accept and apply the
11 law as I will now state it to you.

12 Furthermore, it is your duty, your exclusive duty, to
13 decide all the issues of fact in this case; and to determine
14 the effect, value, and weight of the evidence.

15 Both the State and the Defendant have a right to expect
16 that you will carefully consider and evaluate the evidence and
17 apply the law of this case to it so that in the end, both the
18 State of South Carolina and the Defendant will receive a fair
19 and impartial trial.

20 I want you to understand that when I use the word
21 "defendant," I refer to Mr. Jeremiah Jermaine Brandon Smith.

22 Furthermore, the charge alleged in the indictment is
23 attempted murder. To this charge, the Defendant has entered a
24 plea of not guilty. This plea of not guilty places the burden
25 of proof on the State to prove the guilt of the Defendant to

1 you, the jury, beyond a reasonable doubt.

2 Now, during this trial, ladies and gentlemen, you and I
3 have had separate duties to perform. As the trial judge, it
4 is my responsibility to preside over this trial, and I also
5 have the duty to rule upon the admissibility of the evidence
6 offered during the process of this trial.

7 In that regard, you are to consider only the competent
8 evidence before you, and you are to disregard from your mind
9 any testimony ordered stricken from the record of the case
10 during the progress of the trial if there was any. And you
11 are to consider only the testimony which has been presented
12 from this witness stand, together with any exhibits admitted
13 into the record of this case and any stipulations of counsel
14 made into the record if there were any.

15 Furthermore, I have the additional duty to charge you on
16 the applicable law of this case, and in that regard, I am the
17 sole judge of the law. It is your duty to accept and apply
18 the law as I state it to you.

19 If you have any preconceived ideas as to what the law is
20 or what the law ought to be and it does not agree with what I
21 tell you the law is, you are obligated under your oath to
22 abandon these preconceptions because you are sworn to accept
23 and apply the law precisely as I state it to you.

24 Now, ladies and gentlemen, I remind you that the fact
25 that the Defendant was arrested, charged, and indicted in this

1 case is not evidence in this case and cannot be considered by
2 you as evidence of guilt in this case. Nor does it create any
3 -- excuse me -- nor does it create any presumption or
4 inference of guilt. The indictment, ladies and gentlemen, is
5 simply the formal written instrument which contains the charge
6 made against the Defendant. It is the formal document by
7 which this case is brought into this court.

8 Now, ladies and gentlemen, it is vital to understand
9 that the Defendant is presumed under the law to be innocent of
10 the charge against him. The Defendant has no obligation to
11 prove his innocence. It is a fundamental rule of our law that
12 a Defendant, irrespective of the seriousness of the charge
13 against him, is always presumed innocent of the crime for
14 which he is charged unless and until his guilt has been proven
15 by evidence that satisfies you, the jury, beyond a reasonable
16 doubt.

17 The presumption of innocence, ladies and gentlemen, is
18 not a mere legal theory or a legal phrase. The presumption of
19 innocence is very important, and you need to understand that
20 this presumption accompanies the Defendant from the time of
21 his arrest and appearance in this court and continues with the
22 Defendant even after you retire to the jury room to
23 deliberate. In other words, the Defendant receives the
24 benefit of the presumption of innocence until the very end of
25 this trial when you, the jury, will deliberate upon the

1 evidence and decide whether the State has proven his guilt
2 beyond a reasonable doubt.

3 Now, ladies and gentlemen, what is a reasonable doubt in
4 the law? A reasonable doubt is the kind of doubt that would
5 cause a reasonable person to hesitate to act. Proof beyond a
6 reasonable doubt is proof that leaves you firmly convinced of
7 the Defendant's guilt.

8 Now, there are very few things in this world that we
9 know with absolute certainty. So even criminal cases, the law
10 does not require proof that overcomes every possible doubt.
11 If, based on your consideration of the evidence, you are
12 firmly convinced that the Defendant is guilty of the crime
13 charged, you must find him guilty. Now, there are very few
14 things in this world that we know with absolute certainty.

15 If, on the other hand, you think there is a real
16 possibility that he is not guilty, you must give him the
17 benefit of the doubt and find him not guilty.

18 Ladies and gentlemen, please understand that reasonable
19 doubt may arise from evidence which has been presented in the
20 case or from the lack of evidence in the case. It is your
21 responsibility to determine whether or not reasonable doubt
22 exists as to the guilt of this Defendant. I charge you that
23 the Defendant is entitled to every reasonable doubt arising in
24 the whole case.

25 If upon any issues of fact essential to conviction in a

1 verdict of guilty you have a reasonable doubt as to how that
2 issue should be resolved, it would be your duty to resolve
3 that reasonable doubt in favor of the Defendant. Thus, in
4 summary, it is important to understand that a Defendant is not
5 required to prove his innocence.

6 Instead, the State is required by law to prove every
7 essential element of the offense charged against the Defendant
8 by evidence which satisfies you of his guilt beyond a
9 reasonable doubt. Only then can you convict the Defendant and
10 find him guilty.

11 Now, ladies and gentlemen, there are two types of
12 evidence which are generally presented during a trial: Direct
13 evidence and circumstantial evidence. Direct evidence
14 directly proves the existence of a fact and does not require
15 deduction. Circumstantial evidence is proof of a chain of
16 facts and circumstances indicating the existence of a fact.

17 Crimes may be proven by circumstantial evidence. The
18 law makes absolutely no distinction between the weight or
19 value to be given to either direct or circumstantial evidence.
20 However, to the extent the State relies on circumstantial
21 evidence, all of the circumstances must be consistent with
22 each other and, when taken together, point conclusively to the
23 guilt of the accused beyond a reasonable doubt.

24 If these circumstances merely portray the Defendant's
25 behavior as suspicious, the proof has failed. The State has

1 the burden of proving the Defendant guilty beyond a reasonable
2 doubt.

3 This burden rests with the State regardless of whether
4 the State relies on direct evidence, circumstantial evidence,
5 or a combination of the two.

6 Now, as I told you, during the course of this trial, you
7 and I have separate duties, ladies and gentlemen. You -- as I
8 told you from the outset, you, ladies and gentlemen, are the
9 sole and exclusive judge of the facts; and as I told you, I'm
10 the judge of the law.

11 Do not, do not infer that I have any opinion about the
12 facts in this case from anything that I have said during the
13 course of this trial in ruling upon the admissibility of
14 evidence or otherwise or from anything that I say during the
15 course of this charge to you. In this regard, the law simply
16 does not permit me to have an opinion about the facts.

17 As jurors, it's your duty and your duty alone to
18 determine the effect, value, and weight of the evidence
19 presented during the course of this trial.

20 Now, in determining what the facts in this case are,
21 ladies and gentlemen, you must judge the credibility -- which
22 simply means the believability -- of the witnesses and the
23 value of weight to be given to their testimony. You alone
24 must decide the force and effect of the testimony.

25 In making this decision, there are many things that you

1 may and should take into consideration, such as the appearance
2 and manner of the witness on the stand, a characteristic often
3 referred to as the "demeanor" of the witness. Was the witness
4 forthright or hesitant? Was the witness's testimony
5 consistent or did it contain discrepancies? What was the
6 ability of the witness to know the facts about which he or she
7 testified? Did the witness have a cause or reason to be
8 biased and prejudiced in favor of the testimony that he or she
9 gave? Was the testimony of the witness corroborated or made
10 stronger by other testimony and evidence, or was it made
11 weaker or impeached by such other testimony and evidence?

12 As jurors, please understand that you have the right to
13 believe a small portion of a witness's testimony and discard
14 the larger portion or vice versa. You may believe all of a
15 witness's testimony or none. You may believe the testimony of
16 a single witness against that of many witnesses or the other
17 way around.

18 In exercising your mental processes in attempting to
19 decide the verdict, the law simply requires that you exercise
20 your good judgement, your common sense, your sense of logic
21 and reason, and your experiences in life. You then apply
22 these attributes to the evidence and apply the law as I state
23 it to you and thus arrive at a verdict.

24 Now, during the course of a trial, ladies and gentlemen,
25 you heard testimony concerning an individual or a witness's

1 prior criminal record. I will tell you that a person who has
2 a past criminal record is competent to testify during a trial.
3 A past record does not affect the ability of that witness to
4 testify. The past record may only be considered by you, if at
5 all, in determining the witness's believability. Remember,
6 you are the sole judge of the facts in this case and of the
7 believability of any and all of the witnesses.

8 Now, ladies and gentlemen, you also heard the testimony
9 of an individual that was qualified as an expert witness. I
10 gave you a charge at that time when he was qualified -- when
11 the Doctor was qualified as such. But I will tell you again,
12 the rules of evidence, the rules of evidence ordinarily do not
13 permit witnesses to testify to opinions or conclusions. An
14 exception of this rule exists for witnesses that we call
15 "expert witnesses." A witness, who by education and
16 experience, who has become -- excuse me -- an expert in some
17 art, science, profession, or calling may state an opinion as
18 to a relevant and material matter in which the witness claims
19 to be an expert and may also state the reasons for that
20 opinion.

21 Ladies and gentlemen, you should consider any expert
22 opinion received in evidence in this case, and like any other
23 evidence, give it the weight that you think it deserves. If
24 you decide that the opinion of an expert witness is not based
25 on sufficient education and experience or if you conclude that

1 the reasons given in support of the opinion are not sound or
2 that the opinion is outweighed by other evidence, you may
3 disregard the opinion entirely. Furthermore, an expert
4 witness's testimony is to be given no greater weight than that
5 of other witnesses simply because the witness is an expert.
6 Further, you are not required to accept an expert's opinion
7 even though it is not contradicted.

8 Now, ladies and gentlemen, in this case, as in any case,
9 the Defendant has decided not to testify in this case. I want
10 you to understand -- and I am instructing you and emphasize --
11 the fact that the Defendant did not testify is not a factor to
12 be considered by you in any way in your deliberations and in
13 your consideration on the question of the guilt or innocence
14 of the Defendant. It must not, it must not be considered by
15 you in any manner whatsoever. A defendant has the
16 constitutional right to remain silent, and the assertion of
17 this right must not be considered by you in your
18 deliberations.

19 I repeat, under your oath, you are to draw no conclusion
20 whatsoever from the fact that the Defendant in this case did
21 not testify. The fact that this defendant did not testify
22 should not even be discussed in the jury room. The burden of
23 proof, as I have stated, is on the State. The Defendant is
24 not required to prove his innocence. The burden of proof
25 remains on the State to prove guilt beyond a reasonable doubt.

1 Now, ladies and gentlemen, during the course of this
2 trial, you heard evidence that the Defendant was convicted of
3 a crime other than the one for which he is now on trial. This
4 evidence -- hold on a second -- let me say this: You must not
5 consider this prior record -- the Defendant's prior record as
6 any evidence, as any evidence of the Defendant's guilt of the
7 charge that we're in here for at this time.

8 Now, ladies and gentlemen, an issue in this case is the
9 identification of the Defendant as the person who committed
10 the crime charged. The State has the burden of proving
11 identity beyond a reasonable doubt. You must be satisfied
12 beyond a reasonable doubt of the accuracy of the
13 identification of the Defendant before you may convict the
14 Defendant.

15 Identification testimony is an expression of belief or
16 impression by a witness. You must determine the accuracy of
17 the identification of the Defendant. You must consider the
18 believability of each identification witness in the same way
19 as any other witness. You may consider whether the witness
20 had an adequate opportunity to observe the offender at the
21 time of the offense. This will be affected by things like how
22 long or short of time was available, how far or close the
23 witness was, the lighting conditions, and whether the witness
24 had the chance to see or know the person in the past.

25 Once again, I instruct you the burden of proof on the

1 State extends to every element of the crime charged, and this
2 specifically includes the burden of proving beyond a
3 reasonable doubt the identity of the Defendant as the person
4 who committed the crime.

5 If, after examining the testimony, you have a reasonable
6 doubt as to the accuracy of the identification, you must find
7 the Defendant not guilty.

8 Now, ladies and gentlemen, there's been evidence
9 presented that witnesses have made prior statements which are
10 not consistent with the witnesses's present testimony. You
11 may use this evidence to decide whether to believe the
12 witness. You may also use evidence of the earlier
13 contradictory statements to determine the truth of those
14 statements. It is up to you to decide whether to believe the
15 earlier statements or the testimony given at trial.

16 If a witness is shown to have knowingly testified
17 untruthfully concerning any material matter, you may consider
18 this in determining whether to trust the witness's testimony
19 as to other matters. You may reject all testimony of that
20 witness or give all or part of the testimony the weight that
21 you think it deserves.

22 Now, ladies and gentlemen, in order to establish
23 criminal liability, criminal intent is required. For example,
24 the mental state required to be proven by the State for a
25 particular crime might be purpose, intent, knowledge,

1 recklessness, or criminal negligence. Criminal intent must be
2 proven by the State beyond a reasonable doubt. Criminal
3 intent is always a matter that must be determined by the jury
4 from the circumstances surrounding the situation.

5 There is no way, ladies and gentlemen, to prove intent
6 to a mathematical certainty. There is no way that medical
7 science can dissect a person's brain and determine what the
8 person had in mind. So the law says that criminal intent may
9 be inferred from the circumstances shown to have existed.
10 This is how you make a determination of whether or not the
11 element requiring intent was present.

12 It is not necessary to establish intent by direct and
13 positive evidence, but intent may be established by inference
14 in the same way as any other fact, by taking into
15 consideration the acts of the parties and all the facts and
16 circumstances of the case.

17 Criminal intent is a mental state, a conscious wrong
18 doing. It is up to you to determine what the Defendant
19 intended to do based on the circumstances shown to have
20 existed.

21 Criminal intent can arise from action or a failure to
22 act. It may arise from negligence, recklessness, or an
23 indifference to duty or to consequences. That is considered
24 by the law to be the equivalent of criminal intent.

25 Now, ladies and gentlemen, I charge you that mere

1 presence, mere presence at the scene is not sufficient to
2 prove someone guilty of a crime. A defendant's presence where
3 a crime is being committed or mere association with a person
4 who commits a crime does not make a defendant an accomplice or
5 an aider and abetter of the person committing the crime. The
6 burden is -- is on the State to prove every element of the
7 crime charged.

8 If you find, after reviewing all the evidence, that the
9 State has proved that the Defendant was only present at the
10 scene of a crime and that they have not proved beyond a
11 reasonable doubt any other participation in the crime, then
12 you must find the Defendant not guilty. The law is that proof
13 of at the scene of the crime is not sufficient to find someone
14 guilty.

15 Now, ladies and gentlemen, as I've told you from the
16 outset, the Defendant is charged with attempted murder of
17 Breshaun Pendergrass. A person who, with intent to kill,
18 attempts to kill another person with malice aforethought,
19 either express or implied, commits the offense of attempted
20 murder. Intent is as previously defined in this charge.

21 In order to prove this crime, the State must prove the
22 Defendant attempted to kill Breshaun Pendergrass with malice
23 afore -- aforethought, either express or implied. A specific
24 intent to kill is an element of attempted murder. Specific
25 intent means that the Defendant consciously intended the

1 completion of the act.

2 Intent means intending the result which actually occurs,
3 not accidentally or involuntary. Intent may be shown by acts
4 and conduct of the Defendant and other circumstances from
5 which you may naturally and reasonably infer intent.

6 Evidence of the character of the act, the character of
7 the instrument used, the manner in which it was used, the
8 purpose to be accomplished, and the resulting wounds or
9 injuries may be considered in determining the intent with
10 which the act was committed.

11 Intent may also be inferred when it is demonstrated that
12 the Defendant voluntarily and willfully commits an act, the
13 natural tendency of which is to destroy another's life.

14 Now, if you find, ladies and gentlemen, that the State
15 has failed to prove beyond a reasonable doubt that the
16 Defendant is guilty of attempted murder as to Breshaun
17 Pendergrass, you must determine whether the State has proven
18 beyond a reasonable doubt the lesser included offense of
19 assault and battery of a high and aggravated nature. A person
20 commits the offense of assault and battery of a high and
21 aggravated nature if the person unlawfully injures another
22 person and great bodily injury to another person results, or
23 the act is accomplished by means likely to produce death or
24 great bodily injury.

25 Great bodily injury means bodily injury which causes a

1 substantial risk of death or which causes serious permanent
2 disfigurement or protracted loss or impairment of the function
3 of a bodily member or organ.

4 Now, ladies and gentlemen, I am now drawing near the end
5 of my charge and I want you to clearly understand that you are
6 not partisans or advocates for the State of South Carolina or
7 the Defendant. It is your duty to determine the facts and
8 then take the law which has been given to you by this Court
9 and thus arrive at a verdict.

10 Now, once you retire to the jury room, the bailiff will
11 give the verdict form to you, Mr. Foreman.

12 When you, the jury -- when you, the jury, arrive at a
13 verdict as to the offense charged in this case, the foreman
14 will indicate the verdict on the verdict form. If the State
15 has failed to prove the guilt of the Defendant beyond a
16 reasonable doubt, you will indicate your verdict by placing an
17 "x" beside "not guilty." Likewise, if the State has proven
18 the guilt of the Defendant beyond a reasonable doubt, your
19 verdict will be an "x" beside "guilty." You'll do this for
20 each -- for this charge listed on the verdict form.

21 Mr. Foreman, once a decision has been made, please knock
22 on the door, let the -- let the bailiff know you got a
23 verdict, and we'll get you back in this courtroom as quickly
24 as possible.

25 The verdict, ladies and gentlemen, that you render in

1 this case must be, must be the verdict of each and every
2 juror. It must be your unanimous verdict. All 12 of you must
3 agree on the verdict which you authorize the foreman to write
4 for the jury.

5 Ladies and gentlemen, I want you to further understand
6 that the order in which the choices of verdict appear on the
7 verdict form are not suggestive of any verdict on the part of
8 this Court. The verdict in this case is to be determined by
9 you, the jury, not the Court.

10 Furthermore, please understand that even though I will
11 give the verdict form to the foreman, it is not his verdict
12 alone. It is the verdict of all 12 of you, and I emphasize
13 again that it must be unanimous.

14 I am also, ladies and gentlemen, going to give you all a
15 copy of these instructions in written form. During your
16 deliberations, you may refer to the instructions to guide your
17 decision making. You must, you must consider the instructions
18 as a whole and not follow some and ignore others.

19 Mr. Foreman, please return these instructions to the
20 Court at the time your verdict is rendered.

21 Now, at this time, ladies and gentlemen, I am going to
22 ask you to step to the jury room, but do not begin your
23 deliberations. The law requires that I consult with the
24 attorneys to make sure that I have not left anything out of
25 these instructions.

1 After I have spoken with the attorneys, the bailiff will
2 bring in the items of evidence and a copy of these
3 instructions, along with the verdict form, and instruct you to
4 begin your deliberations.

5 Also, should you have any questions during your
6 deliberations, paper and pen should be in there. It will be
7 your responsibility, Mr. Foreman, if there are any questions
8 during your deliberations, to reduce such questions to
9 writing. Knock on the door, let the bailiff know that you
10 have a question, give him the question that you all may have.
11 He will give it to me, and I will answer it how I deem
12 appropriate.

13 Again, once you all have reached a verdict and filled
14 out the verdict form, knock on the door, let the bailiff know
15 you have a verdict. We'll get you back out here as promptly
16 as possible.

17 Now -- all right. Let me go over -- I'm gonna go over
18 this real quick with you, ladies and gentlemen, Mr. Foreman.
19 This is not the actual verdict form, but it's very similar to
20 what you're gonna get here.

21 On this particular verdict form that I have here, it
22 says (as read): "As to the charge of attempted murder, we,
23 the jury, unanimously find the Defendant ..." either not
24 guilty or guilty. Again, it must be your unanimous verdict.

25 I'm telling you this to say this: If you find that the

1 State has not proven the Defendant guilty beyond a reasonable
2 doubt as to attempted murder and you put "not guilty" here,
3 then you must answer question 2, which deals with the lesser
4 included offense of assault and battery of a high and
5 aggravated nature.

6 Once you decide the lesser included offense, you sign
7 and date it.

8 Now, on question 1 as to attempted murder, if you, the
9 jury, find unanimously that the State has proven guilt beyond
10 a reasonable doubt, then you mark "guilty." It tells you here
11 in your instructions below that question that you then go and
12 sign -- sign and date the verdict form, and you do not have to
13 consider question 2.

14 The only time you consider question 2 on this verdict
15 form is if you find the Defendant not guilty as to attempted
16 murder. Okay.

17 At this time I'm gonna ask you to step to the jury room.
18 Do not begin your deliberations until you're instructed to do
19 so.

20 Let me ask this -- hold on. Ho, ho, ho, ho, ho, ho.
21 Does everybody on the jury feel okay? Anyone not feeling
22 well?

23 (No audible response.)

24 THE COURT: Okay. If everyone will step to the jury
25 room. Do not, do not discuss the case until you're instructed

1 to do so.

2 (Jury exits the courtroom at 11:05 a.m.)

3 THE COURT: Any exception or objection to the charge by
4 the State?

5 MR. DURANT: No, sir, Your Honor.

6 THE COURT: Defense counsel?

7 MR. GRIFFITH: None, Your Honor.

8 THE COURT: All right. I will say on -- in the
9 conclusion portion of my charge, on page 15 -- I don't know if
10 you have a copy of the charge in front of you -- there's
11 something I'm gonna take out of there.

12 Last sentence in the second full paragraph under
13 conclusion. It says (as read): "You will do this for each
14 charge listed on the verdict form. Mr. Foreman, once the
15 decision has been made, you will indicate the -- the verdict
16 of the jury."

17 I'm gonna take that sentence out because there's only
18 one charge except for the lesser included offense.

19 Hold on a second here.

20 If you all will come up while I'm doing that, look at
21 items of evidence that need -- that are going back. Make sure
22 that everything is there from my court reporter, please.

23 (The attorneys comply.)

24 THE COURT: Also --

25 (Brief pause.)

1 THE COURT: Can -- can y'all approach here. Mr.
2 Griffith, can you come on up, please.

3 (Bench conference.)

4 (The Court confers briefly with the Clerk of Court.)

5 THE COURT: We'll stand down for just a second.

6 (Briefly off the record.)

7 THE COURT: This is going back now. You can take that
8 back to the jury and tell them they can start deliberating.
9 Okay.

10 (Evidence, charge on the law, and verdict form to the
11 jury at 11:25 a.m.)

12 (Briefly off the record.)

13 (Juror note at 11:39 a.m.)

14 THE COURT: Can the lawyers approach here at side bar,
15 please.

16 (Bench conference.)

17 (Marked Court's Exhibit No. 2, Juror note.)

18 (Jury in at 11:46 a.m.)

19 THE COURT: All right. All my jurors are present. I
20 received your note, Mr. Foreman. Only thing I can tell you is
21 you are to consider only the testimony and evidence that was
22 presented in this courtroom during the course of this trial.
23 All right. Therefore, please return to the jury room and
24 continue your deliberations.

25 This question will be made a Court's Exhibit, and I

1 shared the question at side bar with the attorneys.

2 (Jury exits at 11:48 a.m.)

3 THE COURT: Any exception or objection to anything I
4 said to the jury by the State?

5 MR. DURANT: No, sir, Your Honor.

6 THE COURT: Defense counsel?

7 MR. GRIFFITH: No objection, Your Honor.

8 THE COURT: All right. Very well. We'll stand at ease
9 with regards to this case.

10 (Off the record at 11:49 a.m.)

11 (On the record at 2:02 p.m.)

12 THE COURT: All right. I've been advised that the jury
13 has reached a verdict in the case the *State of South Carolina*
14 *vs. Jeremiah Jermaine Brandon Smith*.

15 Anything from the State before I bring the jury out?

16 MR. DURANT: No, sir, Your Honor.

17 THE COURT: Defense counsel?

18 MR. GRIFFITH: Nothing, Your Honor.

19 THE COURT: All right. I will tell everyone in the
20 courtroom that, regardless of what the verdict is, to keep
21 your emotions in check. Failure to do so can -- can result in
22 you being in contempt of court and being sentenced to a fine
23 and/or incarceration, and/or incarceration.

24 (To the bailiff) All right. Bring me the jury, please.

25 (Jury enters the courtroom at 2:03 p.m.)

1 (The foreperson hands the verdict form to the bailiff,
2 the bailiff hands it to the Clerk of Court, the Clerk of Court
3 hands it to the Court.)

4 THE COURT: (Hands verdict form to the Clerk of Court)
5 All right. Madam Clerk, you may publish the verdict.

6 CLERK OF COURT: (As read) "In Indictment No. 2015-GS-
7 14-189, the *State of South Carolina vs. Jeremiah Jermaine*
8 *Brandon Smith*, as to the charge of attempted murder, we, the
9 jury, unanimously find the defendant guilty." Signed Austin
10 Smith, Foreperson. Dated January the 18, 2018.

11 THE COURT: All right. Anything from Defense counsel
12 before I release the jury?

13 MR. GRIFFITH: We would ask that the jury be polled,
14 Your Honor.

15 THE COURT: All right.

16 (To unknown audience member) Ma'am, you need to be
17 seated, please. Need to be seated.

18 CLERK OF COURT: Ladies and gentlemen, of the jury, I'm
19 going to ask you two questions, beginning with your foreman.
20 And I need your answer when you're called.

21 If you'll stand, please, Mr. Austin Smith.

22 (The juror complies.)

23 CLERK OF COURT: Is this your verdict, sir?

24 THE JUROR: Yes, it is.

25 CLERK OF COURT: And still your verdict?

1 MR. GRIFFITH: -- Federal. And it was because of this
2 charge because he was yanked because he'd been charged with
3 this offense.

4 MR. DURANT: Again, Your Honor, I don't have the records
5 to confirm that his Federal probation revocation was connected
6 to this case. He did serve four months in the county jail
7 following his arrest.

8 THE COURT: You said 4 -- 14 months total?

9 MR. GRIFFITH: Yes, sir.

10 (Brief pause.)

11 THE COURT: All right. On Indictment 2015-GS-14-0189,
12 Defendant's hereby committed to the State Department of
13 Corrections for a period of 25 years. Given credit for four
14 months. Good luck to you, sir.

15 MR. DURANT: Thank you, Your Honor.

16 MR. GRIFFITH: Thank you, Your Honor.

17 (Off the record at 2:19 p.m.)

18

19 -- END OF TRANSCRIPT OF RECORD --

20

21

22

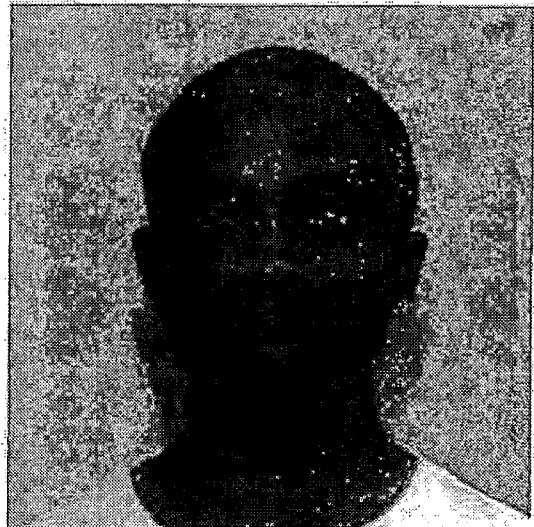
23

24

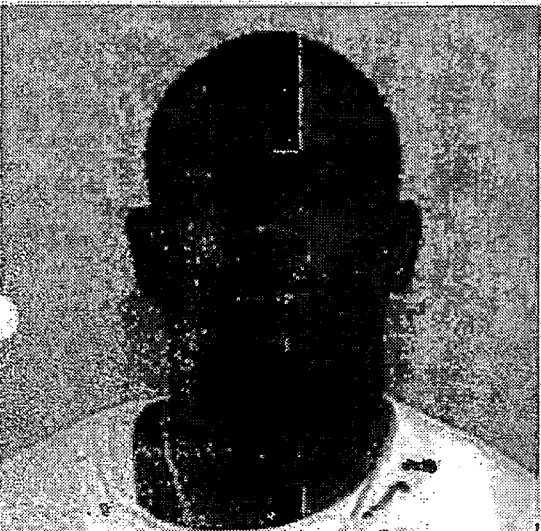
25



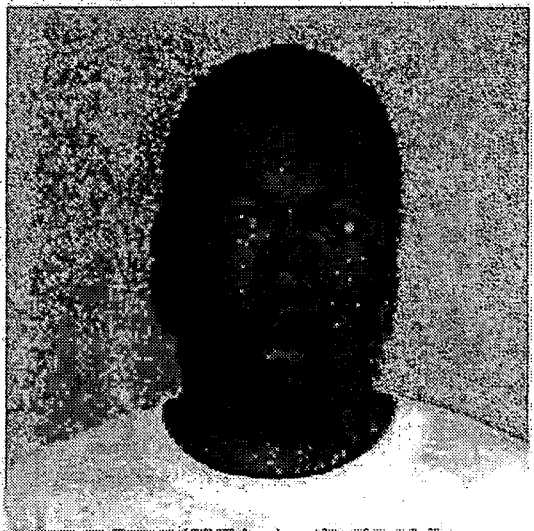
1



2



3

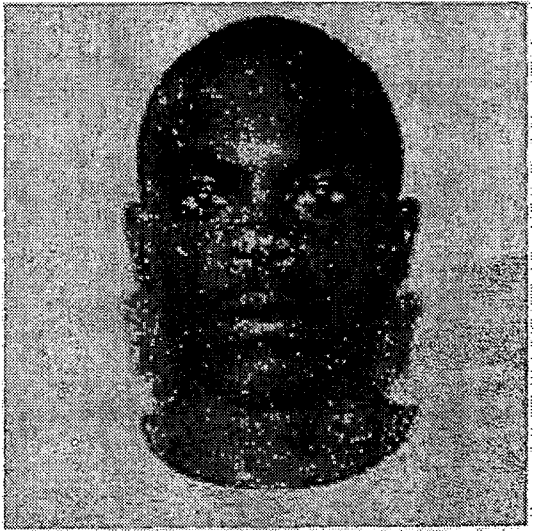


4

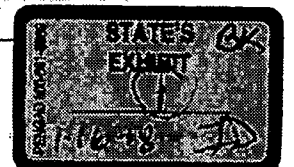


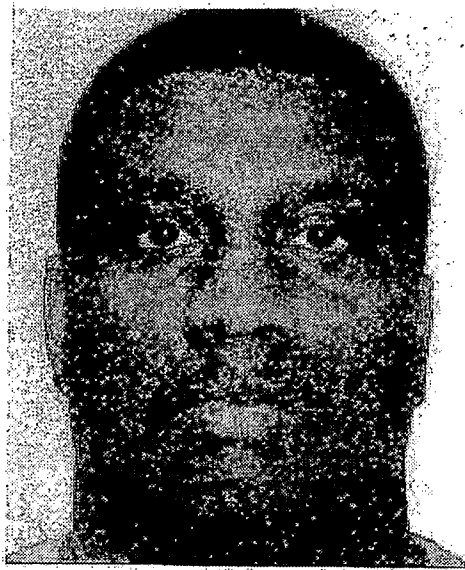
5

BA 12/31/14

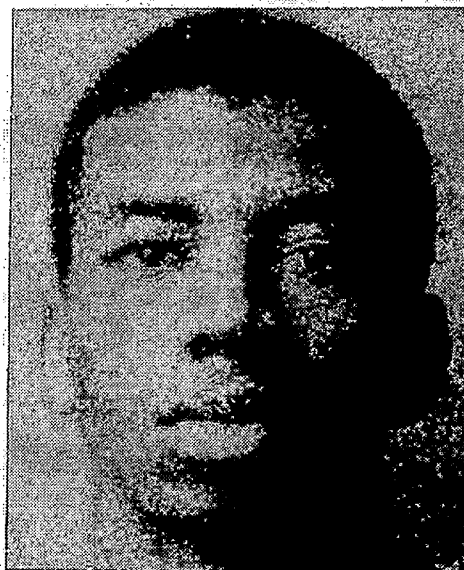


6





1.jpg



2.jpg



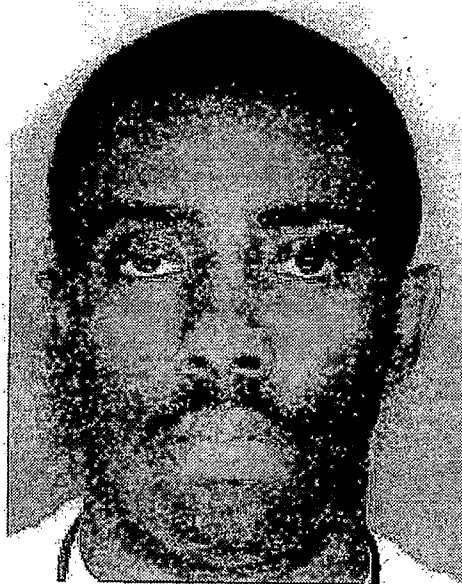
3.jpg



4.jpg

Calvin
1/19/18

3:07pm
1/19/18



5.jpg



6.jpg



WITNESSES

Det. Rick Elms, MPD

DOCKET NO. 2015-GS-14-0189

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

July TERM 2015

THE STATE

vs.

FRITZ GEROME AGUON

SHAWN EDWARD AVANT

JOHN EARL ONEAL COARD

JEREMIAH JERMAINE BRANDON SMITH, JR.

TRE DEONCE JEREMY SMITH

ARREST WARRANT NUMBERS

2014A1420100352, DIR00084, DIR00085, DIR00086,
DIR00087, DIR00088, DIR00089, DIR00090, DIR00091,
DIR00092

ACTION OF GRAND JURY

True Bill

Indictment for

1. CONSPIRACY TO COMMIT MURDER
2. ATTEMPTED MURDER
3. ACCESSORY AFTER THE FACT OF MURDER

Shawn B. Jolliffe
Foreperson of Grand Jury

Date: *7.2.15*

VERDICT

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

May. 7. 2018 9:58AM

No. 7144 P. 9/9 271

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)

INDICTMENT FOR

1. CONSPIRACY TO COMMIT MURDER
2. ATTEMPTED MURDER
3. ACCESSORY AFTER THE FACT OF MURDER

At a Court of General Sessions convened on July 2, 2015, the Grand Jurors of
 CLARENDON County present upon their oath:

COUNT ONE - CONSPIRACY TO COMMIT MURDER

That Fritz Gerome Aguon, Shawn Edward Avant, John Earl Oneal Coard, Jeremiah Jermaine Brandon Smith, Jr., and Tre Deonce Jeremy Smith, did in Clarendon County on or about December 20, 2014 combine with each other,, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object, to wit: Murder, in violation of Section 16-17-410, (S.C. Code of Laws, 1976, as amended).

COUNT TWO - ATTEMPTED MURDER

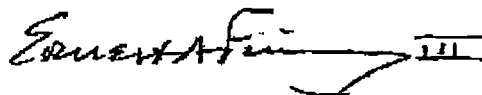
That Jeremiah Jermaine Brandon Smith, Jr. did in Clarendon on or about December 20, 2014, with intent to kill, attempt to kill another person, namely, Breshaun Pendergrass, with malice aforethought, either express or implied, by means of shooting the victim with a firearm, said acts in violation of Section 16-3-29, S.C. Code of Laws (1976, as amended).

COUNT THREE - ACCESSORY AFTER THE FACT TO ATTEMPTED MURDER

That Fritz Gerome Aguon, Shawn Edward Avant, John Earl Oneal Coard and Tre Deonce Jeremy Smith, did in Clarendon on or about December 20, 2014, knowing of the commission and completion of the felony of Attempted Murder, by the principal felon, Jeremiah Jermaine Brandon Smith, Jr., harbor or assist such felon after the fact with the intention of enabling the felon to escape detection or arrest or otherwise avoid the consequences of the crime, in violation of Section 16-1-55, S.C. 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.

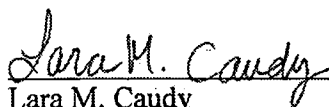
Solicitor



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in cursive script that reads "Lara M. Caudy". The signature is written in dark ink and is positioned above a horizontal line.

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of August, 2018.

RECEIVED

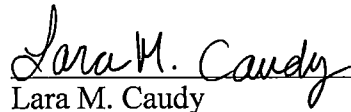
AUG 17 2018

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of August, 2018.