

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHARKEE ALEJANDRO MITCHELL,

APPELLANT

APPELLATE CASE NO 2019-000121

RECORD ON APPEAL

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

WILLIAM M. BLITCH
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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THE STATE OF SOUTH CAROLINA,)
)
)
 v.) TRANSCRIPT OF RECORD
)
 SHARKEE MITCHELL,)
)
)
 DEFENDANT.)
)

MONDAY, JANUARY 14TH, 2019
COMMENCING AT
BEAUFORT COUNTY COURTHOUSE
BEAUFORT, SOUTH CAROLINA
BEFORE THE HONORABLE CARMEN T. MULLEN, JUDGE.

APPEARANCES:

ASST. SOLICITOR SARAH FOWLER, ESQUIRE
ASST. SOLICITOR JACOB McFADDIN, ESQUIRE
FOURTEENTH CIRCUIT SOLICITOR'S OFFICE
BLUFFTON, SOUTH CAROLINA
Attorneys for the State of South Carolina

MS. COURTNEY GIBBS, ESQUIRE
MR. BENJAMIN TRIPP, ESQUIRE
FOURTEENTH CIRCUIT PUBLIC DEFENDER'S OFFICE
BEAUFORT, SOUTH CAROLINA
Attorneys for the Defendant

Rebecca H. Hill
Official Court Reporter

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EXHIBITS

NONE.

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1 THE COURT: All right. Ladies and gentlemen, unless
2 anyone needs a break, I would like to go ahead and just pull
3 this first jury. My goal is always to pull these first two
4 juries, and get you all out of here before 1:00 o'clock,
5 which is our typical lunchtime at the courthouse. Is that
6 acceptable to everyone, or does anyone have to have a break?

7 (NO RESPONSE.)

8 THE COURT: All right. I will also tell you that
9 Mondays always feel like a hurry up and wait. That seems to
10 be what we do in the courthouse. I can tell you that, once
11 you have been chosen as a juror in one of these trials,
12 things will move very smoothly, and you will know what to
13 anticipate. You'll be told when you're going to come and
14 go, and what you need to do. All right?

15 So, with that, this is Julie Bradshaw. She is, in
16 effect, my lawyer. She is a graduate of University of South
17 Carolina Law School, back in May. She passed the Bar in
18 October, on her first try, which is excellent.

19 She, in effect is my lawyer. She's the one that
20 assists me and helps me do my job. With that said, I am
21 going to ask the Solicitor, Ms. Fowler, if she'll go ahead
22 and call her case that we're going to try; and if will you
23 please announce the charges as well.

24 ASST. SOLICITOR FOWLER: Thank you, your Honor. The
25 State calls State of South Carolina versus Sharkee Mitchell.

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1 Indictments 2017-GS-07-01050, pointing and presenting a
2 firearm; 2017-GS-07-01049, assault and battery of a high and
3 aggravated nature; and 2017-GS-07-01748, possession of a
4 weapon during a violent crime.

5 THE COURT: And Ms. Gibbs and Ms. Fowler, will you all
6 come see me for just a brief minute?

7 (BENCH CONFERENCE, OFF THE RECORD, OUT OF HEARING OF
8 THE JURY. PRESENT: THE COURT, ASST. SOLICITOR FOWLER, AND
9 MS. GIBBS.)

10 THE COURT: All right. Also, Ms. Fowler, would you go
11 ahead and introduce yourself, and who's sitting at counsel
12 table with you? And then, the same thing, Ms. Gibbs, if you
13 would do that as well.

14 ASST. SOLICITOR FOWLER: Thank you, your Honor. My
15 name is Sarah Fowler. I'm a prosecutor with the Beaufort
16 County Solicitor's Office. Sitting with me on this case is
17 another prosecutor in this case, Mr. Jacob McFadden.

18 THE COURT: Ms. Gibbs?

19 MS. GIBBS: Yes. My name is Courtney Gibbs. I'm an
20 attorney with the Beaufort County Public Defender's Office.
21 Sitting with me is my colleague, Benjamin Tripp, also with
22 the Beaufort County Public Defender's Office.

23 THE COURT: All right. And it's my understanding, Ms.
24 Gibbs, your client will be here tomorrow; is that correct,
25 when we begin the trial of this case?

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1 MS. GIBBS: Yes, your Honor.

2 THE COURT: Thank you.

3 MS. GIBBS: Sharkee Mitchell.

4 THE COURT: Thank you. I appreciate it. Ladies and
5 gentlemen, as you've heard, the State has called the case
6 entitled the State of South Carolina versus Sharkee
7 Mitchell, who is charged by the Bill of Indictments of this
8 case with assault and battery of a high and aggravated
9 nature; pointing and presenting a firearm; and possession of
10 a weapon during the commission of a violent crime.

11 Ladies and gentlemen, the following is a list of
12 potential witnesses in this case, and it is a lengthy list,
13 ladies and gentlemen. So, my question is going to be to
14 you, are you related by blood, connected by marriage, have a
15 close personal friendship, or a special relationship with
16 any of these potential witnesses. Simply being an
17 acquaintance of them is not enough. It's someone that you
18 would actually maybe break bread with or dial on the phone
19 and speak with. All right?

20 The most important thing, ladies and gentlemen, is
21 understanding that, if they are witnesses, based on your
22 relationship, I want to make sure that you will be fair and
23 impartial, and not give them any specific weight, or their
24 testimony specific weight, because you know them.

25 And if any of these people are in the courtroom, I'm

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1 going to ask that they stand and face the panel. They are,
2 of course, the defendant in this case, Mr. Sharkee Mitchell,
3 who, as I told you, will be here tomorrow. Beverly Heyward.
4 Thomas Lee Washington. Rochelle Canada, Tabarus Ladson,
5 Isaac Madison, Adam Paul, Eric Calendine, and he's back
6 here on your left, ladies and gentlemen, if you'll just take
7 a look. Thank you.

8 Kiera Morris. Steven Mallory. Erin Lynn. Gary
9 Hansen. Robert DeCarlo. Joey, or JoJo, Woodward. William
10 White. Kirt Koronek. Benjamin Squires. Jeff Logger.
11 Michael Tannuzi. Joshua Shoemaker. Stewart Mankin and
12 April Winston.

13 Again, ladies and gentlemen, is anyone related by
14 blood, connected by marriage, a close personal friend, or
15 have a social or special relationship with any of these
16 potential witnesses? If so, please stand. Ma'am, give me
17 your name and juror number.

18 JUROR NUMBER 68: Colleen Chisolm, Juror 68.

19 THE COURT: Ms. Chisolm, who do you know?

20 JUROR NUMBER 68: The name Tabarus Ladson. My
21 grandkids live in that same household, which is something I
22 wasn't aware of, so.

23 THE COURT: Okay. All right. Ma'am, I'm going to go
24 ahead and excuse you from the trial of this first case.

25 JUROR NUMBER 68: Okay.

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1 THE COURT: However, you are going to be subject to the
2 next trial. All right?

3 JUROR NUMBER 68: Okay.

4 THE COURT: So you don't need to answer any more
5 questions about this case.

6 JUROR NUMBER 68: Okay.

7 THE COURT: When I ask about the next case, then you
8 are also subject. Okay? So we're going to excuse her from
9 this case. Anyone else? Sir, your name and juror number?

10 JUROR NUMBER 129: Timothy Good.

11 THE COURT: Yes, sir.

12 JUROR NUMBER 129: Juror Number 129.

13 THE COURT: Who do you know, sir?

14 JUROR NUMBER 129: Bob DeCarlo. He brings his car to
15 our shop to work on it. Jeff Logger, work on his car in our
16 shop.

17 THE COURT: Who else? Those two?

18 JUROR NUMBER 129: I know Mike Tanuzzi is one of the
19 officers at one of the schools that my niece and nephew
20 attended.

21 THE COURT: All right. Sir, I'm going to go ahead and
22 excuse you from the trial of this case. As I just told Ms.
23 Chisolm before that, I'm going to make you subject to the
24 next case. But I'm going to excuse you from the trial of
25 this case. Okay, sir? Anyone else? Yes, ma'am.

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1 JUROR NUMBER 355: I was a former 911 dispatcher for
2 the Sheriff's Office.

3 THE COURT: Okay.

4 JUROR NUMBER 355: However, during the past two years,
5 I took a job with the Beaufort County Sheriff's Office, but
6 I also know several of the officers.

7 THE COURT: All right. Are you working at the Beaufort
8 County Sheriff's Office right now?

9 JUROR NUMBER 355: Yes.

10 THE COURT: Okay. I'm going to excuse you from the
11 trial of this case, but I can tell you, the second case is,
12 I think, a Beaufort Police Department case. So unless you
13 know someone in your capacity as a 911 operator -- yes, sir?
14 What is your number again?

15 JUROR NUMBER 355: 355.

16 THE COURT: Thank you. I'm going to go ahead and
17 excuse you from this trial, but sit tight on the next one.
18 Okay? Anyone else? (NO JURORS STAND.)

19 Ladies and gentlemen, also, I should've asked you this
20 first. You've been introduced to the lawyers trying this
21 case. I need to know if anyone is related by blood,
22 connected by marriage, have a close personal relationship or
23 special friendship with any of these lawyers trying this
24 first case. If so, please stand. (NO RESPONSE.)

25 THE COURT: Ladies and gentlemen, has anyone ever been

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1 prosecuted by, represented by, or employed by either them or
2 their offices? If so, please stand.

3 (NO RESPONSE.)

4 THE COURT: Very good. Ladies and gentlemen, is any
5 member of the jury panel, or any member of your immediate
6 family ever been employed by, in the past or currently, a
7 law enforcement agency, an attorney general, or solicitor or
8 prosecutor's office; or are you attempting to gain
9 employment at any of these offices, or types of offices?
10 That would be a law enforcement office, again; or the
11 Attorney General's Office, the Solicitor's Office, or a
12 prosecutor's office. If so, please stand.

13 (NO RESPONSE.)

14 THE COURT: I need to know if you've ever been in law
15 enforcement, ladies and gentlemen. Or is any member of your
16 immediate family ever been in law enforcement? And we're
17 going to start with Ms. DeCarlo, because I know that she is
18 married to a Sheriff's Deputy, correct?

19 JUROR NUMBER: Yes. I'm Ms. DeCarlo, and that's
20 actually my husband sitting there up front.

21 THE COURT: All right. And as I told you earlier, I'm
22 going to excuse you from the trial of this first case,
23 because it's a Beaufort County Sheriff's Office case, but
24 we're going to make you subject to the next one that's a
25 Beaufort Police Department. All right?

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1 Thank you, ma'am.

2 JUROR NUMBER 73: I'm Juror Number 73. My ex-husband
3 was a police -- or is still a police officer. It's not here
4 in South Carolina though.

5 THE COURT: That's okay. Where is he a police officer?

6 JUROR NUMBER 73: In Texas. For the ---

7 THE COURT: Do you mind telling me how long you've been
8 separated or divorced?

9 JUROR NUMBER 73: Yes. For sixteen years.

10 THE COURT: All right. Ma'am, my question to you is,
11 is, can you be fair and impartial in the trial of this case?

12 JUROR NUMBER 73: Absolutely.

13 THE COURT: Thank you, ma'am. You may be seated. Sir?

14 JUROR NUMBER 200: Melvin Land, 200.

15 THE COURT: Yes.

16 JUROR NUMBER 200: I got six different members of my
17 immediate family that are in law enforcement. They're all in
18 Georgia.

19 THE COURT: They're all in Georgia.

20 JUROR NUMBER 200: And none here in South Carolina.

21 THE COURT: All right. Sir, can you be fair and
22 impartial in the trial of this case?

23 JUROR NUMBER 200: Yes, ma'am.

24 THE COURT: Thank you, sir. I appreciate it. Mr.
25 Brunson?

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1 JUROR BRUNSON: Yes, ma'am. My older brother was a
2 policeman in my hometown in New York, back in 1970 and 1971.

3 THE COURT: Thank you, sir. Can you be fair and
4 impartial?

5 JUROR BRUNSON: I can.

6 THE COURT: Thank you, sir. I appreciate that. Yes,
7 ma'am.

8 JUROR NUMBER 96: Jamie Delaney, 96.

9 THE COURT: Yes.

10 JUROR NUMBER 96: I had an uncle that was a sheriff,
11 that was in New York.

12 THE COURT: All right. Can you be fair and impartial
13 in the trial?

14 JUROR NUMBER 96: Yes, ma'am.

15 THE COURT: Thank you. I appreciate it. Yes, ma'am.

16 JUROR NUMBER 52: Kelly Burke, 52. My uncle's with the
17 Beaufort County Sheriff's Office.

18 THE COURT: Who is your uncle?

19 JUROR NUMBER 52: It's Joseph ---

20 THE COURT: Okay. And I'm sorry, I didn't mean to cut
21 you off.

22 JUROR NUMBER 52: Oh, no, you're fine. My brother's
23 father-in-law is with the Sheriff's Office.

24 THE COURT: Currently, here?

25 JUROR NUMBER 52: Brian Baird.

1 THE COURT: Yes. Okay. All right. Ms. Burke, I have
2 to excuse you from the trial of this first case because it
3 is a Sheriff's Office case. As I stated before, the next
4 case, I believe, is going to be a Beaufort Police Department
5 case. It's a different agency, or different prosecuting
6 agency. So I'd like you to be able to be subject to that,
7 if that's fine with you.

8 JUROR NUMBER 52: Yes, ma'am.

9 THE COURT: Very good. I appreciate it. So you don't
10 need to answer any more questions in regards to this one.
11 Okay? All right. Anyone else?

12 (NO RESPONSE.)

13 THE COURT: Ladies and gentlemen, is there any member of
14 the jury panel, or a member of your immediate family, who
15 has been a victim of an assault and battery of a high and
16 aggravated nature, or pointing and presenting of a firearm?
17 If so, please stand. Ladies and gentlemen, do I have anyone
18 here who is a ---

19 BAILIFF: There's one standing, your Honor.

20 THE COURT: Oh, I'm sorry, ma'am. I apologize.

21 JUROR NUMBER: Could you repeat the question?

22 THE COURT: Yes, ma'am. Is there any person on the
23 jury panel or any member of your immediate family ever been
24 the victim of the crime of assault and battery of a high and
25 aggravated nature, or pointing and presenting a firearm?

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1 JUROR NUMBER: I have.

2 THE COURT: You have?

3 JUROR NUMBER: Yes.

4 THE COURT: Give me your number, please.

5 JUROR NUMBER 187: My number is 187.

6 THE COURT: 187. Do you feel comfortable talking to me
7 about it right here? Is that okay?

8 JUROR NUMBER 187: Yes.

9 THE COURT: How long ago was it?

10 JUROR NUMBER 187: Almost three years ago.

11 THE COURT: Three years ago?

12 JUROR NUMBER 187: I would say.

13 THE COURT: And where did it occur?

14 JUROR NUMBER 187: It was on Hilton Head Island, at
15 Starbuck's.

16 THE COURT: Okay. Ma'am, do you feel comfortable
17 sitting in a case where those are roughly the allegations?
18 And what's most important is this: you need to understand,
19 one has nothing to do with the other; they are separate
20 incidents. But I want to make sure that you don't have
21 anything emotional, or anything in your background, that
22 makes you predisposed one way or the other in this case. Do
23 you feel comfortable, or would you prefer me to excuse you
24 from the trial of this case, and just make you subject to a
25 different one?

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1 JUROR NUMBER 187: If you could make me subject to a
2 different one.

3 THE COURT: I understand that, and I'm going to do
4 that. Okay? So you're Number 187; is that correct?

5 JUROR NUMBER 187: Yes.

6 THE COURT: I'm going to excuse you from this first
7 trial.

8 JUROR NUMBER 187: Okay.

9 THE COURT: But the next one, I would like it if you
10 could stay. Is that acceptable to you?

11 JUROR NUMBER 187: Yes.

12 THE COURT: All right. I appreciate it. Thank you.
13 Thank you. Sir?

14 JUROR NUMBER 215: My sister was, but I don't remember
15 if it was charged aggravated assault, or if it was domestic
16 violence.

17 THE COURT: Okay.

18 JUROR NUMBER 215: I don't remember which one.

19 THE COURT: Do you have any idea how long ago it was?

20 JUROR NUMBER 215: My nephew's four, so maybe four and
21 a half?

22 THE COURT: Okay. Sir, my question to you is, is, can
23 you be fair and impartial in the trial of this case?

24 JUROR NUMBER 215: I believe so.

25 THE COURT: Okay. You have to be sure. Are you sure?

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1 JUROR NUMBER 215: Yes.

2 THE COURT: All right. Thank you, sir. You may be
3 seated.

4 COURT REPORTER: What number would he be?

5 THE COURT: Sir, what is your juror number again? I
6 apologize.

7 JUROR NUMBER 215: 215.

8 COURT REPORTER: 215. Thank you.

9 THE COURT: Thank you. Anyone else?

10 (NO RESPONSE.)

11 THE COURT: All right. Ladies and gentlemen, is there
12 any member of the jury panel that is a member of or a
13 contributor to any group which has as its primary concern
14 law enforcement, or anti-crime advocacy? And this would
15 include such groups as MADD, Mothers Against Drunk Driving;
16 SADD, Students Against Drunk Driving; or maybe CAPA or CODA,
17 anything along those lines. So, is anyone here a member of
18 or contributor to any of those types of groups? If so,
19 please stand.

20 (NO RESPONSE.)

21 THE COURT: Ladies and gentlemen, is any member of the
22 jury panel or any member of your immediate family a member
23 of a neighborhood watch? If so, please stand.

24 (JUROR STANDS.)

25 THE COURT: Yes, ma'am. Your juror number?

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1 JUROR NUMBER 51: My juror number is 51.

2 THE COURT: And is it your or a family member?

3 JUROR NUMBER 51: It's myself.

4 THE COURT: Okay. And do you mind just telling me what
5 neighborhood you're in?

6 JUROR NUMBER: Mossy Oaks.

7 THE COURT: Thank you, ma'am. You may be seated. It
8 doesn't disqualify you, it's just information that the
9 lawyers want to know. Okay? Anyone else?

10 (NO RESPONSE.)

11 THE COURT: Is there any member of the panel, excuse me
12 -- or a member of your immediate family employed by, or have
13 been employed in the past, by the Fire Department, or any
14 emergency medical service corporation, EMS? In other words,
15 a responder: a paramedic, an EMT, anything along those
16 lines. All right? We'll start back with you again.

17 JUROR NUMBER 187: Currently, my husband's a
18 firefighter/paramedic.

19 THE COURT: Okay. Currently. I appreciate it. Give
20 me your number again.

21 JUROR NUMBER 187: 187.

22 THE COURT: All right. Thank you. You may be seated.
23 Yes, ma'am.

24 JUROR NUMBER: I was a volunteer EMS and medic ten
25 years ago.

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1 THE COURT: How long did you do that?

2 JUROR NUMBER: Ten years.

3 THE COURT: Ten years? All right. I appreciate it.
4 You may be seated. Ma'am, your number?

5 JUROR NUMBER 81: My husband's -- I'm Number 81. My
6 husband's cousin is head of all firefighters.

7 THE COURT: Your husband's cousin's involved in
8 firefighting. All right. Thank you, ma'am. I appreciate
9 it. Sir.

10 JUROR NUMBER 104: Number 104. My son is a
11 firefighter.

12 THE COURT: Where is he a firefighter?

13 JUROR NUMBER 104: Bluffton Township.

14 THE COURT: Bluffton Township?

15 JUROR NUMBER 104: Bluffton Township, yes.

16 THE COURT: All right. Thank you, sir. You may be
17 seated. Yes.

18 JUROR NUMBER 51: My brother was on Sheldon Fire
19 Department.

20 THE COURT: Okay.

21 JUROR NUMBER 51: He is retired now.

22 THE COURT: Thank you. I appreciate that. That was
23 Number 51.

24 (NO RESPONSE.)

25 THE COURT: All right. Ladies and gentlemen, is there

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1 any member on the jury panel, or any member of your
2 immediate family, that has ever volunteered for a law
3 enforcement agency, or participated in the Citizens' Police
4 Academy course, or attended a crime prevention seminar? If
5 so, please stand.

6 JUROR NUMBER 168: I participated in a number of
7 courses offered by the Bluffton Police Department.

8 THE COURT: Okay.

9 JUROR NUMBER 168: And some training that's coming up
10 about active shooters.

11 THE COURT: Okay.

12 JUROR NUMBER 168: How you behave in the presence of a
13 live shooter.

14 THE COURT: All right. Ma'am, give me your number
15 again. JUROR NUMBER 168: 168.

16 THE COURT: 168. All right. Thank you. You may be
17 seated. Anyone else?

18 JUROR NUMBER 76: Yes, ma'am.

19 THE COURT: Yes.

20 JUROR NUMBER 76: I'm juror 76. I'm not sure if this
21 really pertains.

22 THE COURT: That's okay.

23 JUROR NUMBER 76: I was a range master in Columbia,
24 South Carolina, and did work with the police department, and
25 do ride-alongs with them as well.

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1 THE COURT: Thank you, sir, I appreciate that. And
2 that did apply, yes. Absolutely. Ladies and gentlemen, is
3 there any member of the jury panel that follows the Beaufort
4 County Sheriff's Office or the Fourteenth Circuit
5 Solicitor's Office, or any other law enforcement agencies'
6 Facebook page, Instagram account, or any other social media
7 platform? If so, please stand. I just want to know if you
8 follow it on a regular basis.

9 JUROR NUMBER 168: Beaufort County and Bluffton.

10 THE COURT: Beaufort County and Bluffton. All right.
11 And you're Number 168; is that correct?

12 JUROR NUMBER 168: Yes, ma'am.

13 THE COURT: Okay. Thank you, ma'am. You may be
14 seated. Yes?

15 JUROR NUMBER 285: 285. Beaufort County.

16 THE COURT: Beaufort County? And give me your number
17 again.

18 JUROR NUMBER 285: 285.

19 THE COURT: 285. Thank you, ma'am. I appreciate it.
20 Sir?

21 JUROR NUMBER: Harper, 151. And it's not directly, but
22 indirectly. It's online social media site called Next Door;
23 and Beaufort County Sheriff's Department also.

24 THE COURT: Okay. Thank you, sir.

25 JUROR NUMBER 313: Robert Smith, 313. Same thing. I

1 do Next Door.

2 THE COURT: Next Door?

3 JUROR NUMBER 313: Yes.

4 THE COURT: All right. I haven't heard of that. I'm
5 going to have to figure out what that is. And you all are
6 going to say you do Next Door, right?

7 JUROR NUMBER: Well, it's the text messages that
8 Beaufort County sends out, the Sheriff's Department.

9 JUROR NUMBER: Right.

10 THE COURT: Oh.

11 JUROR NUMBER: Beaufort County Emergency Services.

12 THE COURT: All right. Ladies, I need you to give me
13 numbers again, just for the lawyers.

14 JUROR NUMBER 196: 196.

15 THE COURT: Okay.

16 JUROR NUMBER 84: 84.

17 THE COURT: All right. Yes, ma'am.

18 JUROR NUMBER 96: The same thing; 96.

19 THE COURT: So, is this something different than Next
20 Door, or is it just text messages from the Beaufort County
21 Sheriff's Office?

22 JUROR NUMBER 96: Next Door takes those text messages
23 and puts them out as well, yes.

24 THE COURT: Okay. All right.

25 JUROR NUMBER 84: If you're -- if you follow Beaufort

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1 County Emergency Services, you get it either -- you can sign
2 up for the text messages, or they'll post to Facebook or
3 your Next Door.

4 THE COURT: Okay.

5 JUROR NUMBER 246: I don't actively follow it, but I
6 get the messages sometimes.

7 THE COURT: Okay. Ma'am, give me your number again.

8 JUROR NUMBER: 246.

9 THE COURT: Okay. Are we losing a juror? Okay. Hold
10 on a second. Sir, is there something I can do for you?

11 JUROR: I'm just going to the restroom, your Honor.

12 THE COURT: Okay. Sir, are you okay?

13 JUROR: I'm fine.

14 THE COURT: All right. Thank you. I apologize. We'll
15 wrap this up, I promise. Ma'am, give me your number.

16 JUROR NUMBER 134: My number is 134, and I also receive
17 the ---

18 THE COURT: Text messages?

19 JUROR NUMBER 134: -- text messages.

20 THE COURT: Thank you. All right.

21 JUROR NUMBER 37: Number 37, the same.

22 THE COURT: 37, the same. Sir?

23 JUROR NUMBER 284: 284, same thing. I receive those
24 text messages.

25 THE COURT: Thank you. Ma'am, I should know your

1 number. You're in the fifties.

2 JUROR NUMBER 51: 51.

3 THE COURT: I knew you were in the fifties.

4 JUROR NUMBER 51: I follow Beaufort online messaging.

5 THE COURT: Thank you, ma'am. I appreciate it. Sir.

6 JUROR NUMBER: My wife and I are signed up for Beaufort
7 and Jasper County text alerts.

8 THE COURT: Thank you. Give me your number again.

9 JUROR NUMBER 177: 177.

10 THE COURT: Thank you, sir. All right. Yes, finally.

11 JUROR NUMBER 216: I get the texts. 216.

12 THE COURT: Okay. 216. All right. Is that everybody?
13 Oh, I missed you, in the back.

14 JUROR NUMBER 76: Robert Craig, 76. My wife follows
15 Next Door.

16 THE COURT: Okay. Thank you, sir.

17 Ladies and gentlemen, I know you know very little about
18 this case. The allegations is that it's an assault and
19 battery that occurred on June 27, 2017, in Beaufort County.
20 Ladies and gentlemen, is there anyone that has any
21 particular feelings about this type of case, an assault and
22 battery of a high and aggravated nature, or that involved a
23 gun in some way, that makes it so you cannot be fair and
24 impartial to both the State of South Carolina and the
25 defendant, Mr. Mitchell, in this case? If so, please stand.

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1 (NO RESPONSE.)

2 All right. Ladies and gentlemen, I find this panel
3 qualified. What is going to happen now -- and I apologize.
4 Is there anything further, questions, of this panel, from
5 the State?

6 ASST. SOLICITOR FOWLER: Nothing from the State, your
7 Honor.

8 THE COURT: From the Defense?

9 MS. GIBBS: Judge, just briefly, if you wouldn't mind
10 asking if the jury panel has been the victim of any crime of
11 violence.

12 THE COURT: Okay.

13 MS. GIBBS: I'd appreciate it. Thank you.

14 THE COURT: Thank you. I appreciate that. Ladies and
15 gentlemen, I'm going to open up the question a little but
16 broader. Has anyone ever been the victim of a violent
17 crime, or a crime of violence? That would include a
18 burglary, something along those lines; or it could be
19 anything, you know, more severe than that.

20 (JUROR STANDS.)

21 THE COURT: Yes, ma'am.

22 JUROR NUMBER 187: I was a victim of gun violence,
23 pointed at me.

24 THE COURT: From your previous incident, correct? You
25 said it was on Hilton Head Island?

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1 JUROR NUMBER 187: Yes, ma'am.

2 THE COURT: Okay. Give me your number again.

3 JUROR NUMBER 187: 187.

4 THE COURT: All right. Thank you. You may be seated.
5 Anyone else?

6 (NO RESPONSE.)

7 THE COURT: Anyone have their house broken into,
8 anything along those lines, ladies and gentlemen? Sir, I am
9 going back to you, Number 76.

10 JUROR NUMBER 76: Robert Craig, Number 76. Our vehicle
11 was stolen in Heritage Lakes when they were going through,
12 robbing houses there, and they stole our vehicle from the
13 house.

14 THE COURT: All right.

15 JUROR NUMBER 76: 76.

16 THE COURT: Thank you, sir. He's Number 76. Yes,
17 ma'am.

18 JUROR NUMBER 31: Theresa Bowman, Number 31. Attempted
19 rape and stalking.

20 THE COURT: Okay. How long ago was that, ma'am?

21 JUROR NUMBER 31: Fifteen years ago.

22 THE COURT: Can you be fair and impartial in the trial
23 of this case, understanding that one has nothing to do with
24 the other?

25 JUROR NUMBER 31: Yes, I can.

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1 THE COURT: Thank you, ma'am. You may be seated. Mr.
2 Brunson.

3 JUROR NUMBER: It's me again, Your Honor. I was
4 burglarized when I lived in Savannah, forty-five years ago,
5 back in the 1970's and '71. Then, back in 2009, I had some
6 valuable equipment stolen from my mailbox and -- at which I
7 filed a report with the Hilton Head Island Police
8 Department. Never did recover it. I have no feeling about
9 that, either.

10 THE COURT: Okay. All right. Thank you, sir. You may
11 be seated. Yes, ma'am? Give me your number again.

12 JUROR NUMBER 81: Number 81. I just remembered. When
13 you asked if anyone was convicted, my ex-husband.

14 THE COURT: That's okay. He doesn't count.

15 JUROR NUMBER 81: Yeah.

16 THE COURT: For, I guess, two reasons. Because he's an
17 ex; and also, because it's not you.

18 JUROR NUMBER 87: Okay.

19 THE COURT: So that's fine.

20 JUROR NUMBER 81: Okay.

21 THE COURT: That's absolutely fine. Give me your
22 number again.

23 JUROR NUMBER 81: 81.

24 THE COURT: Pardon?

25 JUROR NUMBER 81: 81.

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1 THE COURT: 81. All right. Thank you. Yes, ma'am.

2 JUROR NUMBER 220: Number 220. Our house was broken
3 into in 1986.

4 THE COURT: All right, ma'am. Can you be fair and
5 impartial in the trial of this case?

6 JUROR NUMBER 220: You bet.

7 THE COURT: Thank you, ma'am. Yes?

8 JUROR NUMBER 282: Juror 282. My house was broken into
9 in 1980.

10 THE COURT: Thank you, ma'am. You may be seated. Sir.

11 JUROR NUMBER 151: Yes, ma'am. 151, and our home was
12 also broken into back in the late '90's?

13 THE COURT: Can you be fair and impartial, sir?

14 JUROR NUMBER 151: I can.

15 THE COURT: Thank you, sir. You may be seated. Yes.

16 JUROR NUMBER: I do not remember my number.

17 THE COURT: Okay.

18 JUROR NUMBER: I'm sorry. I have a sister, I have a
19 sister, who is head of an agency in South Carolina, who had
20 several staff members murdered, but that was twenty-five
21 years ago.

22 THE COURT: Okay. What agency was that?

23 JUROR NUMBER: In -- it had to do with advocacy and
24 protection of children; I can't remember exactly.

25 THE COURT: Okay. Can you be fair and impartial in the

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1 trial of this case?

2 JUROR NUMBER: Yes.

3 THE COURT: Thank you, sir.

4 JUROR NUMBER 98: Number 98.

5 THE COURT: Yes, sir.

6 JUROR NUMBER 98: We found somebody stealing things
7 from my garage.

8 THE COURT: Can you be fair and impartial?

9 JUROR NUMBER 98: Yes.

10 THE COURT: Thank you, sir. I appreciate that. Anyone
11 else? All right. Anything further, Ms. Gibbs?

12 MS. GIBBS: No, your Honor. Thank you.

13 THE COURT: Anything further, Ms. Fowler?

14 ASST. SOLICITOR FOWLER: Nothing from the State.

15 THE COURT: All right. Ladies and gentlemen, what is
16 going to happen is this. We are going to draft a random
17 list of those of you that are qualified for this first jury.
18 What is going to happen is, when your name is called, I want
19 you to just stand and remain in place. Each side has an
20 opportunity to exercise strikes. If both of them accept
21 you, I'm going ask that you come around and sit here, in the
22 jury box. All right? That'll be your signal knowing that
23 you have been chosen as a juror. All right?

24 I will also tell you, too, I can see so many of you
25 have got your arms wrapped around each other. I know you're

1 cold. I apologize. We're going to try to do something with
2 the heat. I say all the time the only thing I can't control
3 in these courtrooms is the HVAC. So, I will tell you, if
4 you get chosen as a juror I tell people to wear layers. I
5 also have blankets if any of you are really cold right now
6 and need them.

7 So, actually, I may ask Norman or one of you all to go
8 grab some blankets, so that if anyone is really cold and
9 really need a blanket, we certainly have some. Okay? I
10 apologize. I always forget. I'm wearing a robe, so I'm
11 usually pretty warm. All right. So, Marlene, how long is
12 it going to take?

13 MADAM CLERK: Just a second. I'm printing it.

14 THE COURT: All right. My one gentlemen -- if anyone
15 absolutely needs to use the restroom right now, I'm going to
16 tell you to go. What I need you to do, though, is this.
17 Hand your badge right in the back to the bailiff, so I know
18 who I'm looking for. If you don't have to go to the
19 restroom, please don't leave, because I'd love to get this
20 done as quickly as possible. Okay? I'll also tell you,
21 there are a few other restrooms in some places -- sorry.
22 That was a little more than I anticipated. Let's take a
23 short break until they come back.

24 (Whereupon, the Court is in a brief recess; all jurors
25 return to courtroom and the following is held on the

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1 record.)

2 THE COURT: Ladies and gentlemen, I will tell you that
3 if you do get chosen as a juror, you're going to hear me say
4 this repeatedly. I can't start until every last person is
5 here, if you get chosen as a juror. So please understand
6 that timeliness is important.

7 I will also tell you, ladies and gentlemen, if anyone
8 has any transportation issues, I can take care of that as
9 well. If you need to get here and are having concerns with
10 that, we will help you. I will also introduce to you our
11 bailiff staff. We have Jessica, Tom, Norman, Rick. These
12 people are here to serve you. Please understand, also, you
13 are the most important people here this week. No one in
14 this courtroom can do their job, from the Clerk's Office, to
15 myself, to the lawyers in these cases. No one can do their
16 job without jurors willing to serve, and I appreciate that.
17 We want you to know how important you are, and how important
18 jury service is.

19 I do have to tell you that probably the most common
20 question I get from people that I know are, can you get me
21 out of jury service? I can tell you that I served as a law
22 clerk, just like Julia is to me, when I got out of law
23 school. I actually clerked for Casey Manning out of
24 Columbia, and he used to tell people -- and was very
25 poignant at the time, because he had three family

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1 members that were in the military. But other than fighting
2 for your country during wartime, this is the most important
3 thing you can do, and please understand that we appreciate
4 it. It is obviously the bedrock of our judicial system, is
5 to have jury trials. And clearly, twelve, thirteen,
6 fourteen heads are much better than just one person deciding
7 the case. So understand that we are grateful for you being
8 here. With that said, ladies and gentlemen, we are ready to
9 go.

10 Again, if your name is called, simply stand. You do
11 not say or do anything. If both sides accept you, they will
12 seat you, bring all of your belongings with you, and the
13 bailiffs will tell you where to sit. All right? So,
14 Marlene, I'll turn it over to you all.

15 MADAM CLERK: Juror 44, Arthur Brown. What says the
16 State?

17 ASST. SOLICITOR FOWLER: Please present this juror.

18 MADAM CLERK: What says the Defense?

19 MS. GIBBS: Please seat this juror.

20 BAILIFF: Come forward, sir, please.

21 MADAM CLERK: Juror 14, Clarence Atkins. What says the
22 State?

23 ASST. SOLICITOR FOWLER: Please excuse this juror.

24 MADAM CLERK: You can just sit down, sir.

25 MADAM CLERK: Juror 262, Peter Noonan. What says the

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1 State?

2 ASST. ASST. SOLICITOR FOWLER: Please present this
3 juror.

4 MADAM CLERK: What says the Defense?

5 MS. GIBBS: Please excuse this juror.

6 BAILIFF: You can sit down, sir.

7 MADAM CLERK: Juror 234, Laura Merrill. What says the
8 State?

9 ASST. SOLICITOR FOWLER: Please present this juror.

10 MADAM CLERK: What says the Defense?

11 MS. GIBBS: Please excuse the juror.

12 BAILIFF: Have a seat, ma'am.

13 MADAM CLERK: Juror 288, Andrew Roberts. What says the
14 State?

15 ASST. SOLICITOR FOWLER: Please present this juror.

16 MADAM CLERK: What says the Defense?

17 MS. GIBBS: Please excuse this juror.

18 BAILIFF: Just sit down, sir.

19 MADAM CLERK: Juror 364, Mildred Wilson. What says the
20 State?

21 ASST. SOLICITOR FOWLER: Please present this juror.

22 MADAM CLERK: What says the Defense?

23 MS. GIBBS: Please seat this juror.

24 BAILIFF: Come forward, please, ma'am.

25 MADAM CLERK: Juror 311, Michael Smalley. What says

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1 the State?

2 ASST. SOLICITOR FOWLER: Please present this juror.

3 MADAM CLERK: What says the Defense?

4 MS. GIBBS: Please seat this juror.

5 BAILIFF: Come forward, please, sir.

6 MADAM CLERK: Juror 216, Elizabeth Marcum. What says

7 the State?

8 ASST. SOLICITOR FOWLER: Please present this juror.

9 MADAM CLERK: What says the Defense?

10 MS. GIBBS: Please seat this juror.

11 BAILIFF: Come forward, please, ma'am.

12 MADAM CLERK: Juror 96, Jamie Delaney. What says the

13 State?

14 ASST. SOLICITOR FOWLER: Please present this juror.

15 MADAM CLERK: What says the Defense?

16 MS. GIBBS: Please excuse this juror.

17 BAILIFF: Sit down, please.

18 MADAM CLERK: Juror 313, Robert Smith. What says the

19 State?

20 ASST. SOLICITOR FOWLER: Please present this juror.

21 MADAM CLERK: What says the Defense?

22 MS. GIBBS: Please seat this juror.

23 BAILIFF: Come forward, sir.

24 MADAM CLERK: Juror 64, Raymond Charles. What says the

25 State?

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1 ASST. SOLICITOR FOWLER: Please present this juror.

2 MADAM CLERK: What says the Defense?

3 MS. GIBBS: Please seat this juror.

4 BAILIFF: Come forward, sir.

5 MADAM CLERK: Juror 215, Christopher Marcurelli. What
6 says the State?

7 ASST. SOLICITOR FOWLER: Please present this juror.

8 MADAM CLERK: What says the Defense?

9 MS. GIBBS: Please seat this juror.

10 BAILIFF: Come forward, sir.

11 MADAM CLERK: Juror 73, Kimberly Consalvi. What says
12 the State?

13 ASST. SOLICITOR FOWLER: Please present this juror.

14 MADAM CLERK: What says the Defense?

15 MS. GIBBS: Please seat this juror.

16 BAILIFF: Come forward, ma'am.

17 MADAM CLERK: Juror 177, Thomas Jenkins. What says the
18 State?

19 ASST. SOLICITOR FOWLER: Please present this juror.

20 MADAM CLERK: What says the Defense?

21 MS. GIBBS: Please seat this juror.

22 BAILIFF: Come forward, sir.

23 MADAM CLERK: Juror 249, Julia Morrall. What says the
24 State?

25 ASST. SOLICITOR FOWLER: Please present this juror.

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1 MADAM CLERK: What says the Defense?

2 MS. GIBBS: Please seat this juror.

3 BAILIFF: Come forward, ma'am.

4 MADAM CLERK: Juror 346, Amy Veloa. What says the
5 State?

6 ASST. SOLICITOR FOWLER: Please present this juror.

7 MADAM CLERK: What says the Defense?

8 MS. GIBBS: Please seat this juror.

9 BAILIFF: Come forward, please, ma'am.

10 MADAM CLERK: Juror 125, Louis Garcia. What says the
11 State?

12 ASST. SOLICITOR FOWLER: Please present this juror.

13 MADAM CLERK: What says the Defense?

14 MS. GIBBS: Please seat this juror.

15 BAILIFF: Come forward, sir.

16 THE COURT: All right. For alternates, strikes are one
17 and two. We're going to do two alternates. I've got plenty
18 of jurors to pull two juries.

19 MADAM CLERK: Okay.

20 THE COURT: Okay?

21 MADAM CLERK: Juror 313, Rashwanda Smith. What says
22 the State?

23 ASST. SOLICITOR FOWLER: Please present this juror.

24 MADAM CLERK: What says the Defense?

25 MS. GIBBS: Please seat this juror.

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1 BAILIFF: Come forward, please, ma'am.

2 MADAM CLERK: Juror 41, Janice Bristow. What says the
3 State?

4 ASST. SOLICITOR FOWLER: Please present this juror.

5 MADAM CLERK: What says the Defense?

6 MS. GIBBS: Please excuse this juror.

7 BAILIFF: You may sit down, ma'am.

8 MADAM CLERK: Juror 51, Cynthia Burke. What says the
9 State?

10 ASST. SOLICITOR FOWLER: Please present this juror.

11 MADAM CLERK: What says the Defense?

12 MS. GIBBS: Please excuse this juror.

13 BAILIFF: Just sit down, ma'am.

14 MADAM CLERK: Juror 85, Sonny Davis. What says the
15 State?

16 ASST. SOLICITOR FOWLER: Please present this juror.

17 MADAM CLERK: What says the Defense?

18 MS. GIBBS: Please seat this juror.

19 BAILIFF: Come forward, sir.

20 THE COURT: All right. Are there any matters of law we
21 need to take up regarding jury selection process, from the
22 State?

23 ASST. SOLICITOR FOWLER: Nothing from the State, your
24 Honor.

25 THE COURT: From the Defense?

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1 MS. GIBBS: Nothing from the Defense, Your Honor.

2 THE COURT: Welcome, ladies and gentlemen. As you
3 know, you're my jury for the trial of this first case. Sit
4 tight for just a moment. Okay? Ladies and gentlemen, who
5 out there did I excuse for all of the trials except for the
6 first one? I think there was a couple of you. Yes.
7 Ladies, you are excused. Thank you for being here. All
8 right. The rest of you sit tight. Yes, ma'am.

9 JUROR NUMBER: I'm confused about my status. Am I
10 excused from the second one?

11 THE COURT: Right. You can go ahead and go.

12 JUROR NUMBER: Now?

13 THE COURT: Yes. Thank you.

14 JUROR NUMBER: Bye.

15 THE COURT: All right. Mr. Stevens, are we ready with
16 your case?

17 MR. STEVENS: Yes, ma'am.

18 THE COURT: Okay. You all can go ahead and switch
19 spots. While you all are switching spots, does anyone need a
20 restroom break out here? No? Yes, sir. Just make sure you
21 give your badge to one of the bailiffs, so I know I need to
22 wait for you. Okay? If you all want -- indulge me, if you
23 all could just be as quiet as you can while you're switching
24 out, I'm just going to talk to the jury very quickly.

25 (THE COURT SPEAKS TO JURY SELECTED FOR MR. SHARKEE

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Instructions to jury by The Court

1 MITCHELL TRIAL.)

2 THE COURT: Again, welcome. You know you are my jury
3 for this first case. We are going to begin tomorrow
4 morning, ladies and gentlemen, at 9:30. Is that acceptable?
5 Can everybody get here by 9:30? If anyone needs
6 transportation issue, let Jessica know. When I excuse you
7 here, you're going to go back to the jury room. We're going
8 to get everyone's phone numbers, just in case we need to
9 contact you in the morning. I just need to make sure I know
10 what's going on.

11 I need to give you just a few brief instructions before
12 we begin about this trial. When you go home this afternoon,
13 tonight, you see a family member, friend, loved one, the
14 only thing that you're allowed to say is that you have been
15 chosen as a juror in the trial of a criminal case. You
16 can't say the lawyers involved, the charges, any potential
17 witnesses, or any of the parties, and the reason is this.
18 Someone is going to try to tell you something about
19 something, when they know nothing about this case. It would
20 be highly inappropriate to do that. So out of an abundance
21 of caution, I tell you, you can't speak to anyone.

22 Also, you're not to do any independent research in this
23 case about the charge, the person, or anyone involved.
24 Again, you're going to have everything you need to try this
25 case and determine the facts in this case while you're in

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Instructions to jury by The Court

1 the courtroom. And again, no one -- and there should be no
2 outside sources of influence. The parties, the lawyers, the
3 witnesses in this case have all been instructed, in coming
4 and going from the courthouse, they are not to speak to you,
5 and the reason is this. An innocent conversation outside of,
6 it's cold out today, will be reported back. I will tell you
7 that there are cameras throughout the courthouse. There are
8 cameras all over the parking lot, ladies and gentlemen. I'm
9 going to have to go back and look at them all, so out of an
10 abundance of caution, I tell them not to say hello, not to
11 even smile at you in the elevator, for that exact reason.
12 All right? We want to make sure that no one is unduly
13 influenced in any way.

14 Also, ladies and gentlemen, if anyone approaches you in
15 this courthouse about anything having to do with this case,
16 you are to immediately tell the bailiffs and come to me.
17 Don't talk amongst yourselves; you go straight to a bailiff.
18 I will as quickly as I can. All right? Also, if you were
19 able to get in with cell phones, ladies and gentlemen, the
20 reason is because you can get so much information off of
21 those smart phones these days, I don't want anyone tempted.
22 So what we ask is that you leave your phones back in your
23 cars while you're on jury duty.

24 Now, if you are expecting a very urgent phone call, in
25 other words, a message from your child, something along

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Instructions to jury by The Court

1 those lines, or you really are concerned, you can give your
2 phone to the bailiff for them to answer, understanding that
3 they're going to answer it. I will say, that's an
4 exception. So, please, not the rule. This has to be an
5 outstanding circumstance.

6 If you are worried about reaching you while you are
7 here, simply give them the Clerk of Court's phone number.
8 All they have to do is say you're a juror and give them your
9 name, and they will come straight to me, and I will come
10 straight to you. All right?

11 Ladies and gentlemen, also, because we're going
12 overnight, if you fall ill, for some reason, or feel
13 terrible, call into the Clerk's Office as early as you
14 possibly can tomorrow morning. In other words, 8:00
15 o'clock. I have two alternates, and that's the exact reason
16 I have them, but I'm going to be looking for all of you at
17 9:30 tomorrow morning. If you're not here, I'm going to
18 start getting worried, and we're going to start dialing up
19 every phone number you have. Okay?

20 All right, ladies and gentlemen. I truly appreciate
21 it. Last, I need to tell you, I don't think there's going
22 to be anything in the newspaper or the news about this case.
23 It hasn't been brought to my attention yet whether or not
24 there was anything this morning. I don't believe so. But
25 if, for some reason, you open up a newspaper tomorrow and

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1 it says anything about what's being tried here this week,
2 you are not to read it. You are not to watch anything,
3 listen to anything. Okay? All right. I appreciate it.
4 I'm going to go ahead and excuse you, to go back to your
5 jury room. They're going to give you a few more
6 instructions, tell you how to get into the courthouse
7 tomorrow. And anything else you need, simply ask them, and
8 they'll bring it to my attention. All right? 9:30, you're
9 sure, is okay?

10 THE COURT: I'd like to get an early start, because I
11 actually think that if we start by 9:30, that we should be
12 able to finish this case tomorrow. Okay? Thank you all.
13 You're excused.

14 BAILIFF: Follow me.

15 (JURY EXITS COURTROOM AT 12:20 P.M.)

16 (WHEREUPON, THE NEXT JURY IS SELECTED IN THE FOLLOWING
17 TRIAL. THEREAFTER, 2:00 P.M., THE PRE-TRIAL MOTION IN
18 REGARDS TO MR. SHARKEE MITCHELL IS READY AND THE FOLLOWING
19 IS HELD ON THE RECORD OUTSIDE THE PRESENCE OF THE JURORS.)

20 STATE OF SOUTH CAROLINA V. SHARKEE MITCHELL

21 PRE-TRIAL HEARING:

22 THE COURT: All right. Becky, if you're okay, we're
23 going to go back on the record for the case in our first
24 trial of State versus Sharkee Mitchell. This is, you tell
25 me first what you're going to use, Ms. Fowler, and then

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1 we'll see what your motion is. How about that?

2 ASST. SOLICITOR FOWLER: Yes, Your Honor.

3 THE COURT: How about that, you tell me what you're
4 intending to introduce.

5 ASST. SOLICITOR FOWLER: The State is intending to
6 introduce -- and it might make sense in the context of the
7 facts -- the victim in this case was living at ■ Marshland
8 Road. She had previously allowed her nephew, Sharkee, to
9 stay at the house. However, he did not have a key. He was
10 not supposed to be at the house this day. She returned home
11 from work and saw him in the living room with a friend. She
12 told police that he was smoking marijuana.

13 When I met with her, she confirmed that he was smoking
14 marijuana. She also added that he had a plastic bag and
15 appeared to be lifting whatever was in the bag to his nose,
16 ingesting it, snorting it. She wasn't sure what it was, but
17 she knew that he was using drugs and asked her to leave her
18 house. An argument ensued, and that's when the assault and
19 battery took place. Sharkee told the victim that if she
20 called the police he would shoot the house up, that he would
21 kill her, that he would burn the house down. So it's the
22 State's contention that this drug use is his intent, his
23 motive, for the assault. He believed the victim was going
24 to call the police.

25 While the State doesn't intend to introduce this, I

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1 think it is relevant that the defendant was on supervised
2 release from a previous charge, and this would have revoked
3 his release, so, had the police been called and found him
4 doing drugs, we believe that is why he made these threats,
5 why this assault occurred.

6 So the State is intending to introduce this as motive
7 evidence, as intent evidence, and also as res gestae. I
8 think the jury needs context for why this assault occurred -
9 --

10 THE COURT: And why she wanted to eject him.

11 ASST. SOLICITOR FOWLER: Correct.

12 THE COURT: I'm assuming not only was he not supposed
13 to be there that day, but because he was using drugs in her
14 home, correct?

15 ASST. SOLICITOR FOWLER: That's correct, your Honor.

16 THE COURT: Okay. Ms. Gibbs.

17 MS. GIBBS: Judge, I guess, obviously, the facts, we
18 don't agree. But everything she's saying about him not
19 having permission to be there, he says he gets his mail
20 there.

21 I would just argue, Judge, I think it's obvious, kind
22 of, as far as intent and motive, I believe the Solicitor is
23 trying to say that, you know, the whole point of -- like,
24 the intent of using drugs was why they -- she has -- he has
25 allegedly assaulted her was because of the drugs.

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1 It's my understanding the police -- the accusation that
2 he was going to call the police -- or telling her not to
3 call the police was due to the alleged assault. I don't
4 think it has anything to do with the drugs. One, the -- the
5 -- there was no evidence of marijuana found in the house.
6 It's my understanding the bag with the cocaine, or whatever
7 they're trying to say it is ---

8 THE COURT: They didn't apprehend him right after, did
9 they?

10 MS. GIBBS: No, he turned himself in several days
11 later.

12 THE COURT: Okay.

13 MS. GIBBS: It's my understanding this -- the vic --
14 the alleged victim gave a written statement. She was --
15 came the next day to the station to make a recorded
16 statement. Never mentioned anything about this baggie.
17 This came out, like, over a year, I believe in January of
18 2018. And, kind of, the theme is, you know, I assume this
19 won't come out in trial, but the theme, I believe, of the
20 alleged victim and one of the witnesses is, basically he's a
21 bad guy; he's a felon; he's violent; he uses drugs. That
22 statement has come out, and I think this is more a way to
23 get in propensity evidence. I don't think the motive and
24 the intent -- there's nothing to prove that there's any --
25 the drug use, if there was any drug use, had anything to do

1 with the intent to commit the crime by any means. And I
2 think the bottom line, it's just more prejudicial than
3 probative.

4 As far as res gestae, I believe that's the other
5 argument, it has to be so entwined that you can't prove one
6 without the other, and it's just not the truth at all. I
7 just don't think there's any connection. It's just a way to
8 have the jury believe he uses drugs and he was violent.
9 I've heard -- I mean, I just think that's a leap, and it
10 would be prejudicial under Rule 403.

11 THE COURT: I do think that your argument of res gestae
12 is appropriate, because there's got to be a reason, and your
13 defense is going to be that he is permitted to be there.
14 There's got to be a reason for her saying, "you need to get
15 out and get out today." I think she is permitted to come in
16 and say that she came home, he was in the house, he had been
17 smoking marijuana -- someone had been smoking marijuana.
18 I'm not sure that she saw him smoke it, but someone had been
19 smoking marijuana, because she either smelled it or she
20 didn't.

21 And she saw him ingest something, you know, out of a
22 bag, and she's not going to be able to say what it is,
23 because she has no idea. I guess it could be just snuff or
24 something along those lines. Who knows? But I think it
25 shows his intent and motivation of why he reacted so poorly.

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1 I also think it's important in the res gestae of this
2 because she's his aunt, correct?

3 ASST. SOLICITOR FOWLER: Correct, your Honor.

4 THE COURT: Which is a little hard to believe of why in
5 the world he would've done this to his aunt. I mean, I
6 think there -- and you know, I don't know. Maybe ---

7 MS. GIBBS: I guess I'd have to argue there's no
8 testimony unless there can be some expert testify that, you
9 know, marijuana causes somebody to be extremely angry, or
10 this random bag of ---

11 THE COURT: This ---

12 MS. GIBBS: --- goodies or whatever it is.

13 THE COURT: I don't think it's that. I think it's his
14 motivation of why he got so upset, is because he didn't want
15 to go to jail. I mean, that's what he's going to say.
16 We're not getting into that, being on parole or anything
17 like that, but he can just say he didn't want her calling
18 the police because he didn't want the police to come and
19 arrest him. I mean, that's ---

20 MS. GIBBS: And I believe her testimony -- or her
21 statement says that she started saying that after the
22 alleged -- he was saying that after the alleged assault:
23 "You better not call police." I would say it's more fear of
24 -- I mean, obviously it's her allegations, but it's not the
25 drug use that caused him to allegedly attack. There's no

1 cause and then effect. I think it's just what happened.

2 THE COURT: Well, probably not from smoking marijuana.
3 I don't know about anything else he may have ingested, but
4 that's all speculation as well, because we don't know what,
5 in fact, it was he was putting up to his nose. I don't
6 know. I mean, she'll be here in the morning?

7 ASST. SOLICITOR FOWLER: She will be here in the
8 morning, your Honor.

9 THE COURT: If we could just start at 9:00 o'clock. I
10 may have just a short proffer occur, just to -- just to hear
11 what she has to say about that. I mean, this is something
12 new that she's just talking about and it wasn't in the
13 original police report?

14 ASST. SOLICITOR FOWLER: It wasn't in the original
15 police report. I only -- this is what she disclosed to me
16 the first chance I got a chance to meet with her. But she
17 did tell police that he was smoking marijuana at the initial
18 time that they took the report.

19 THE COURT: Okay. Well, then, I'm going to have to
20 hear what she says about the second portion of having
21 anything to do with the plastic baggie, particularly when we
22 don't know what it was.

23 ASST. SOLICITOR FOWLER: No.

24 THE COURT: I think, in fairness to her, and I think in
25 fairness of res gestae, she can say, if she knows he was

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1 smoking marijuana, and she walked in and could smell it,
2 could see it, and she knows what it is, then I think she can
3 testify to that. I'm not so sure about whatever substance,
4 like I said, I don't know, you know, what else he snorted,
5 but, so, let's just take it up when she gets here tomorrow
6 morning, and we'll ask about it. You also asked for your
7 witnesses to be sequestered. Is that correct?

8 MS. GIBBS: Yes, your Honor.

9 THE COURT: So, any objection to that?

10 ASST. SOLICITOR FOWLER: No objection, your Honor.

11 THE COURT: All right. And there was one other ---

12 MS. GIBBS: And just to settle the records ---

13 THE COURT: --- settle on the record of anyone else
14 that's testifying.

15 MS. GIBBS: --- of the lay witnesses. I know the
16 victim; she does have a false information to police that I
17 believe will be in the timeframe I'd be able to get into.

18 THE COURT: Right.

19 MS. GIBBS: I'm not sure about Thomas or? There's one
20 witness I just don't know what his record is.

21 ASST. SOLICITOR FOWLER: I do have a copy of his
22 record, your Honor. He has no convictions.

23 THE COURT: Okay. So no convictions on him.

24 ASST. SOLICITOR FOWLER: But she is correct about the
25 victim's record.

1 THE COURT: And was that from within the last ten
2 years?

3 ASST. SOLICITOR FOWLER: It was, your Honor.

4 THE COURT: Okay. Well, I think she can get into it.
5 I think it's fair game. I mean, it's a crime of dishonesty,
6 so. Okay. Anything else?

7 ASST. SOLICITOR FOWLER: The victim also has a sale and
8 distribution of cocaine charge from -- or conviction,
9 rather, from the '90's. It would be the State's contention
10 that we can't get into that unless the victim were to open
11 the door somehow.

12 MS. GIBBS: And I would -- I would argue, I guess, she
13 is allowed to testify to this random bag of something with,
14 you know, that may open the door to us being able to get
15 into her -- if she's accusing him of drugs, I feel like, you
16 know, and if she's saying, I would never do that at my
17 house, I should be able to get into her distribution of
18 crack charge if the door is open with that, with drugs,
19 honestly, Your Honor. Really, with any of the drugs, even
20 the marijuana.

21 THE COURT: That's a good argument.

22 MS. GIBBS: So.

23 THE COURT: That's a good argument. I mean, she should
24 know. She's been convicted of distributing cocaine or crack
25 cocaine; she should know what was in the bag if she saw

State of South Carolina v. Sharkee Mitchell
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1 something in the bag.

2 ASST. SOLICITOR FOWLER: And your Honor, I would argue
3 that Ms. Gibbs can certainly cross her about her experience
4 with crack, but I would -- I don't want her conviction to
5 come in. It's not within the ten years, and I don't think
6 it's relevant to this case ---

7 THE COURT: Okay.

8 ASST. SOLICITOR FOWLER: --- unless something comes up
9 the State doesn't anticipate.

10 THE COURT: All right. Well, let's do a proffer with
11 her in the morning, and we'll find out the extent of her
12 knowledge. I mean, it might be something that you both stay
13 away from the whole, he was snorting something, just to keep
14 it out and keep it at bay. I think the marijuana is fair
15 game if she actually saw it, knew it, and knew what it was,
16 so. Let's just all be here, like I said, at 9:00 o'clock.
17 The jury's coming in at 9:30. We'll definitely begin here
18 at 9:00 o'clock, so we'll go ahead and get that resolved
19 with her, and we'll go from there.

20 ASST. SOLICITOR FOWLER: Yes, Your Honor.

21 MS. GIBBS: Yes, Your Honor.

22 (End of requested testimony for the day in the trial of
23 State of South Carolina v. Sharkee Mitchell.)

24

25

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had in the
hearing of the captioned case, in the Court of General
Sessions for Beaufort County, South Carolina, on the 14th
day of January 2019.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

March 25, 2019

Rebecca H. Hill
Rebecca H. Hill,
Official Court Reporter

1 In the Court of General Sessions for the
2 State of South Carolina, County of Beaufort

3

4 Case No.: 2017GS0701049
5 2017GS0701050
6 2017GS0701748

7 State of South Carolina,
8 Plaintiff(s),

9 vs. Transcript of Record

10 Sharkee Alejandro Mitchell,
11 Defendant(s).

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17 January 15, 2019

18 Beaufort, South Carolina

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23 BEFORE:

24 The Honorable Carmen T. Mullen

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APPEARANCES

REPRESENTING PLAINTIFF(S):

Sarah Fowler, Assistant Solicitor
Jacob McFadden, Assistant Solicitor
14th Judicial Circuit Solicitor's Office
39 Sheridan Park Circle, Suite 2
Bluffton, SC 29910
843-255-5880

REPRESENTING DEFENDANT(S):

Courtney Gibbes, Public Defender
Benjamin Tripp, Public Defender
1905 Duke Street, Room 260
PO Box 525
Beaufort, SC 29901-0525
843-255-5000

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1 PROCEEDINGS

2 THE COURT: This is the case of State V Sharkee
3 Mitchell. We were supposed to begin and it's 9:35 and
4 we don't have the Defendant and the victim is not here
5 yet either. Ms. Gibbes made a pretrial motion in
6 regards to alleged prior bad acts that kind of happened
7 contemporaneously with this assault and battery of a
8 high and aggravated nature. I was waiting for the
9 victim to give me a quick proffer about her reasoning
10 for telling her nephew, who is the Defendant in this
11 case, she is the victim, to leave.

12 I think what we are going to do, since she's not
13 here yet and we are still waiting. We are hoping that
14 everybody is on their way. I instructed Ms. Fowler in
15 opening statement just not to mention any drug use
16 until I get the victim here and get a quick proffer out
17 of her. Even if we just do openings, just don't
18 mention anything. I may allow you to use it. I just
19 need to know the context for it and whether or not the
20 other whole res gestae in the case and whether or not
21 what was her motivation.

22 I'm really looking for whether or not it was the
23 victim's notification telling her to leave that I guess
24 started the problem or the altercation, or if it's just
25 the drug use or just leaving. So, I read the case law

COLLOQUY

1 that you gave me Ms. Gibbes. We don't want to do
2 anything that will make us have to try this case twice.
3 So, with that said, tell me again the captions of the
4 two cases, obviously, State versus but --

5 MS. GIBBES: Sharkee Mitchell.

6 THE COURT: No, the two cases that you gave me
7 that are sitting in my car --

8 MS. GIBBES: One is --

9 THE COURT: That my son actually held up and asked
10 me, What is this, yesterday, and I said, Work.

11 MS. GIBBES: State v. Huff, and I think it is
12 Brognon.

13 THE COURT: Yes, I think so too. Okay. So, just
14 for appellate purposes I want to make sure that we put
15 it on the record. Was it Housaan, H-O-U-S-A-A-N?

16 THE BAILIFF: The jurors are all here, yes, ma'am.

17 THE COURT: Jurors are all here?

18 THE CLERK: Yes, ma'am.

19 THE COURT: Courtney, I'll give him until a
20 quarter till. We will then start our openings and we
21 will have Mr. Tripp grab him and tell him to be quiet
22 and quickly take his seat. You don't have to do it,
23 Mr. Tripp, but obviously the same thing, Mary Jordan,
24 just keep an eye out for the victim.

25 MS. LEMPESIS: We have an update, they should be

COLLOQUY

1 here in about 15.

2 THE COURT: Okay.

3 MS. LEMPESIS: As far as the victim, not the
4 Defendant.

5 THE COURT: I understand. I understand.

6 MS. LEMPESIS: Thank you.

7 THE COURT: I am going to step down for five
8 minutes. Anything that we need to put on the record?

9 (No response.)

10 (Brief recess.)

11 THE COURT: All right. Good morning. You are
12 late.

13 THE DEFENDANT: Yes.

14 THE COURT: Yes, you are. You are not going to be
15 late again, correct?

16 THE DEFENDANT: (Nods in the negative.)

17 THE COURT: Are you sure?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. Let's go ahead and do
20 openings, okay, and we will go from there. And the
21 jury is going to be sworn. I want to make sure that
22 everybody understands that. Okay.

23 Just to let you know, Mr. Mitchell, you were going
24 to be tried in your absence if you didn't show. Just
25 to let everybody know that we are going to start doing

COLLOQUY

1 that again. So, let's go ahead and bring the jury in.

2 And you will swear them in for me?

3 THE CLERK: Yes, Your Honor.

4 THE COURT: Okay. And we will get going.

5 (The jury enters the courtroom at 10:18 a.m.)

6 THE COURT: Good morning, ladies and gentlemen.

7 It is a pleasure to see you all. Thank you for waiting
8 on us this morning. What we are first going to do is
9 have you sworn in as the jury for the trial of this
10 case. I am going to make a few brief comments and then
11 the attorneys are going to make their opening
12 statements, all right. So, if you will please rise and
13 raise your right-hand to accept the juror oath.

14 (Whereupon, the jury was sworn by the clerk.)

15 THE COURT: Ladies and gentlemen, what I'll tell
16 you is intended to serve as an introduction to the
17 trial of the case. These remarks are not a charge on
18 the law of this case. I am going to charge you on the
19 law that is applicable to this case at the end of the
20 trial, before you begin your deliberations. This is
21 merely an explanation as to what is going to happen
22 during the trial so you can better understand what is
23 going on.

24 Ladies and gentlemen, the Defendant in this case,
25 Mr. Sharkee Mitchell, has been charged by indictments

OPENING REMARKS BY THE COURT

1 filed in this court for the offenses of assault and
2 battery of a high and aggravated nature, pointing a
3 firearm at a person, and possession of a weapon during
4 a violent crime.

5 Now, ladies and gentlemen, these indictments are
6 simply the charges by which a case is brought into the
7 courtroom, they are not in any sense evidence of any of
8 the allegations that they contain. Now, in this case
9 the Defendant, Mr. Mitchell, has pled not guilty to
10 these indictments. The State, therefore, has the
11 burden of proving each of the elements of each of the
12 indictments beyond a reasonable doubt. And it's your
13 duty, ladies and gentlemen of the jury, to determine
14 whether or not the State has met that burden.

15 Now, your purpose as jurors is to find and
16 determine the facts of this case. You the jury are the
17 sole judge of all facts in this case. If at any time I
18 make any comment regarding the facts of this case you
19 must disregard it because I'm not permitted to have an
20 opinion about the facts. That is for you and only you
21 the jury to determine. And you are to only determine
22 the facts of this case from the testimony of the
23 witnesses that you are going to hear from the witness
24 stand as well as any other evidence introduced or any
25 other stipulation the attorneys may enter into.

OPENING REMARKS BY THE COURT

1 Please understand that it is especially important
2 that you perform your duty of determining the facts
3 diligently and conscientiously, because ordinarily
4 there's no way to correct an erroneous determination of
5 the facts by a jury.

6 On the other hand, the same law that makes you,
7 the jury, the judge of the facts, makes me the judge of
8 the law. The law as given by the Court is the only law
9 which you may consider. You must accept and follow it
10 even though you may disagree with it. I cannot tell
11 you what the facts of this case are and you cannot
12 disagree with me about what the law is or what you
13 think the law ought to be.

14 Your job at the end of this trial is to take the
15 law as I give it to you and apply it to the facts as
16 you find them. And from there render a true and just
17 verdict at the end of the trial.

18 Now, until I advise you to begin your
19 deliberations, you must not discuss this case with
20 anyone, and that includes your fellow jurors until you
21 heard all of the testimony and seen all of the
22 evidence, you have heard the closing arguments from the
23 lawyers and I charge you on the law that is applicable
24 to this case.

25 Now, I have also instructed you that during the

OPENING REMARKS BY THE COURT

1 trial of this case you are not to read anything, watch
2 anything, do any independent research in any way in
3 regards to this case. As I told you yesterday, you
4 will have everything you need to determine the facts of
5 this case here in this courtroom. And it'll be highly
6 inappropriate for anyone to influence you in your
7 determination of the facts.

8 I do need to remind you though, ladies and
9 gentlemen, that it's important that you keep an open
10 mind and not decide any issue in this case until all of
11 the evidence has been presented, ladies and gentlemen,
12 and you have heard the closing arguments and my charge
13 on the law.

14 Now, in just a moment the solicitor is going to
15 make what is called an opening statement in which she
16 is going to explain to you what the issues are in this
17 case, or what she believes the issues are in this case.
18 And the defense attorney is also going to make an
19 opening statement. Ladies and gentlemen, I want to
20 tell you that what these lawyers tell you is not
21 evidence in this case. Again, it's just their
22 contention as to what they believe the issues will be
23 and what the evidence will show.

24 Again, I remind you, the evidence comes from the
25 witness stand and any other physical evidence that is

OPENING REMARKS BY THE COURT

1 entered in. And I want you also to know, from time to
2 time, the attorneys may say something to me like, Your
3 Honor, there's a matter of law that we need to take up.
4 I may motion them forward to talk to me, or I may send
5 you back to your jury room. I want you to understand
6 something, we are not hiding anything from you.
7 Oftentimes when I have to rule as a matter of law
8 whether or not certain evidence can be admitted, I may
9 make a comment on the facts of the case, and because I
10 don't want anything that I do to influence you and your
11 determination of the facts, out of an abundance of
12 caution we just do it outside of your presence.

13 Now, in determining what the true facts are in the
14 case you must decide whether the testimony of the
15 witnesses is believable. It's my responsibility to
16 rule as a matter of law whether or not certain
17 testimony is admitted, but once it's admitted, whether
18 or not you believe it is for you to determine.

19 In deciding whether to believe a witness, you have
20 the right to consider the interest of any witness, the
21 bias of any witness, the prejudice of any witness. And
22 you can look at also the opportunity that the witness
23 had to have seen, to have seen the things and matters
24 about which they are testifying. And you can also look
25 at the way that the witness acts on the witness stand.

OPENING REMARKS BY THE COURT

1 You have the right to consider anything that is in the
2 record that will help you evaluate the testimony of a
3 witness.

4 Ladies and gentlemen, it's vitally important that
5 you pay close attention to the testimony so at the very
6 end of the case you can accurately remember the
7 evidence that is given. Now, you have already
8 indicated to the bailiff that some of you would like to
9 take notes, and the bailiffs have given you note pads
10 and pens.

11 I need to just caution you, ladies and gentlemen,
12 that your notes are for your own personal use. And
13 when you come and go from the courtroom today, you are
14 going to be leaving your note pads in your seats. I'll
15 ask that you write your juror number on them. At the
16 very end of the trial you will have them back in the
17 jury room when you begin your deliberations.

18 I just want to caution you, though, some people
19 are better note takers than others. I don't want you
20 to rely on someone's notes simply because they took
21 notes. You are supposed to rely on and use your own
22 independent memory. But, again, you will have them
23 back there if you deem them important.

24 I will also tell you, ladies and gentlemen, Mona
25 is here taking down everything that is taking place in

OPENING REMARKS BY THE COURT

1 this trial, so at the very end of the case when you
2 begin your deliberations, if there's testimony that you
3 want played back, I'll bring you back in here and I can
4 replay the audio of that witness so you can rehear it
5 if you choose to. All right?

6 So, with that said, ladies and gentlemen, I am
7 going to ask the lawyers if there's exceptions or
8 additions, and if not we will go ahead and begin the
9 trial of the case with opening statements. Anything
10 from the State?

11 MS. FOWLER: Nothing from the State, Your Honor.

12 THE COURT: Anything from the Defense?

13 MS. GIBBES: No, Your Honor.

14 THE COURT: Very good, ladies and gentlemen, we
15 will begin the trial of the case. Ms. Fowler.

16 MS. FOWLER: Thank you, Your Honor. May it please
17 the Court.

18 THE COURT: Yes, ma'am.

19 OPENING STATEMENT BY THE STATE

20 MS. FOWLER: Members of the jury, we are here
21 today because on June 27th, 2017, the Defendant,
22 Sharkee Mitchell, pointed a gun at his aunt,
23 Ms. Beverly Heyward. He held a gun to her head, he
24 threatened to shoot her, he threatened to kill her, and
25 he threatened to burn the house down.

OPENING STATEMENT BY THE STATE

1 Now, Ms. Heyward was able to escape. She ran out
2 of the house. She saw her cousin, Thomas Washington,
3 outside. She was able to flag him down. She asked for
4 help. Call 911, she said, Sharkee just attacked me.
5 Thomas Heyward called 911. Thomas Washington, rather,
6 called 911.

7 When law enforcement arrived the Defendant had
8 already fled the scene. Law enforcement took pictures
9 of Beverly Heyward that day and they got a statement
10 from her. A week later the Defendant turned himself in
11 to law enforcement. He was charged with assault and
12 battery of a high and aggravated nature, pointing and
13 presenting a firearm, and possession of a weapon during
14 a violent crime.

15 Now, in order to understand this attack, you need
16 to understand what led up to this attack. Beverly
17 Heyward had allowed the Defendant, Sharkee, to live
18 with her at her home at ■ Marshland Road on Hilton
19 Head Island. This was her nephew. She allowed him to
20 stay with them, and he took advantage of her kindness.
21 She kicked him out. But he came back.

22 She came home on June 27th and she saw him in the
23 living room. She asked him to leave and a fight
24 started. He pinned her against the sink and he held a
25 gun to her head.

OPENING STATEMENT BY THE STATE

1 Now, let me tell you a little bit about the
2 witnesses that you will hear from today. You will hear
3 from law enforcement that initially responded to the
4 scene. You will hear from Deputy Madison from the
5 Beaufort County Sheriff's Office. He took pictures of
6 Ms. Heyward that day, he got a statement from her. And
7 you will hear from Investigator Calendine, he spoke to
8 Ms. Heyward the next day. He investigated the case.
9 He took out warrants. You will also hear from Thomas
10 Washington who saw Ms. Heyward minutes after the attack
11 happened. And then you will hear from Ms. Beverly
12 Heyward herself.

13 Now, members of the jury, Ms. Heyward is not a
14 perfect woman. Almost a decade ago she gave a fake
15 name to law enforcement in a traffic stop. But the law
16 does not require a perfect victim. What the law does
17 require is that I prove this case to you beyond a
18 reasonable doubt.

19 Now, what does reasonable doubt mean? It doesn't
20 mean beyond all doubt. It just means that you must be
21 firmly convinced at the end of this trial that the
22 Defendant, Sharkee Mitchell, did what he is accused of.

23 Now, today, Sharkee Mitchell is accused of three
24 crimes. He's accused of assault and battery of a high
25 and aggravated nature. And what that means is that he

OPENING STATEMENT BY THE STATE

1 unlawfully injured another person, and that this injury
2 was accomplished by means likely to produce death or
3 great bodily injury. In this case, the Defendant hit
4 Ms. Heyward in the head, he held a gun to her head, and
5 he threatened to kill her. She was in fear for her
6 life.

7 Mr. Mitchell is also charged with pointing and
8 presenting a firearm. And that means that he pointed a
9 loaded or unloaded gun at the victim. This happened
10 when he held a gun to her head. The Defendant is also
11 charged with possession of a weapon during a violent
12 crime.

13 If you believe that the Defendant committed
14 assault and battery of a high and aggravated nature and
15 used a gun in committing this assault you must find him
16 guilty of possession of a weapon during a violent
17 crime.

18 Now, at the end of this trial, after viewing the
19 evidence, after listening to the witnesses, after
20 looking at the pictures of Ms. Heyward on that day, you
21 will be convinced beyond a reasonable doubt that the
22 Defendant, Sharkee Mitchell, did point a gun at his
23 aunt's head, did threaten to kill her, did threaten to
24 shoot her, and did threaten to burn the house down.

25 And based on that, you should find him guilty of

OPENING STATEMENT BY THE STATE

1 all three crimes. Thank you.

2 MS. GIBBES: May it please the Court, Your Honor.

3 THE COURT: Yes, ma'am.

4 OPENING STATEMENT BY THE DEFENSE

5 MS. GIBBES: Good morning, I appreciate y'all
6 being here. I'm going to be brief because you have
7 heard the Judge. Obviously I can tell you Sharkee is
8 innocent. I can tell you exactly my theory of the
9 case, but what I'm saying right now is not evidence.
10 The State has the burden of proof to prove beyond a
11 reasonable doubt, one, whether a crime was committed at
12 all. And two, Sharkee committed the crime. And that
13 is really a high threshold, and you will hear about it.

14 So, basically even if you think that he did this,
15 that is not enough for guilt. It will be simple,
16 Sharkee is innocent. This involves family members.
17 And I'll just ask that you listen to witnesses and
18 think about motivation, think about the relationship of
19 the parties, think about if there's any physical
20 evidence that doesn't match what they are saying, are
21 they credible. You heard that, yes, the victim, the
22 alleged victim, is not perfect. Nobody is perfect.

23 I would just ask that she lied to the police one
24 time, why wouldn't she lie again, the victim? I ask
25 again for you to consider all of the motivation of the

OPENING STATEMENT BY THE DEFENSE

1 witnesses, or if they can even prove that Sharkee was
2 there. And I think after listening to the witnesses I
3 am going to let you speak for yourselves and make a
4 decision whether or not they have proved their case. I
5 don't think that there's much to it. I don't think
6 that they have much evidence. I think it is a family
7 member and a family drama that went wrong. And I think
8 that there's motivations to lie.

9 And then at the end I'll ask, you listen to what
10 everybody has to say and make your own judgement, and
11 then I am going to come back and ask you for you to
12 find Sharkee not guilty. Thank you.

13 THE COURT: Call your first witness.

14 MS. FOWLER: State calls Deputy Madison.

15 Thereupon,

16 ISAAC MADISON

17 was called as a witness, having been first duly sworn,
18 was examined and testified as follows:

19 THE CLERK: Please watch your step. And if you
20 would state your name for the Court.

21 THE WITNESS: Isaac Madison.

22 DIRECT EXAMINATION

23 BY MS. FOWLER:

24 Q Deputy Madison, where do you work?

25 A Beaufort County Sheriff's Office.

DIRECT EXAMINATION OF ISAAC MADISON BY MS. FOWLER

1 Q And what is your position there?

2 A Road patrol on the -- for the southern branch of
3 the department.

4 Q And is that Hilton Head Island?

5 A Yes.

6 Q And what are some of your duties there?

7 A Responding to calls for service, assisting
8 citizens, education, things like that.

9 Q Okay. And were you working in that capacity on
10 June 27th, 2017?

11 A Yes, I was.

12 Q Okay. Do you recall responding to an incident at
13 ■ Marshland Road on that date?

14 A Yes.

15 Q Is that in Beaufort County?

16 A Yes, it is.

17 Q And was this approximately at 3 p.m. in the
18 afternoon?

19 A Yes.

20 Q And can you state what happened on that day when
21 you responded to ■ Marshland Road?

22 A When I responded, the person who called came out
23 to the -- to my patrol car when I showed up to the residence
24 at ■ Marshland Road. He had called for his neighbor who
25 said that she had been assaulted. She had moved over to

DIRECT EXAMINATION OF ISAAC MADISON BY MS. FOWLER

1 a -- there are multiple properties on ■ Marshland Road,
2 there is the main house where the incident occurred and then
3 there are several trailers and she had been relocated to
4 another trailer for her safety. I went over to that
5 trailer, over to the trailer to interview her and figure out
6 what happened. She had stated that the -- that the
7 Defendant had assaulted her with a, with his fist, pointed
8 and presenting a firearm to her over an argument about him
9 using narcotics in the household. That when she asked him
10 not to do that, because she was living there, that that is
11 when he became irate and assaulted her.

12 Q When you say "her", who was she?

13 A Beverly Heyward.

14 Q Okay. Go on.

15 A After we conducted our interviews, Ms. Heyward and
16 the individual who called, they believed he was still in the
17 house. They didn't see him leave. To my knowledge, they
18 didn't see him leave. So, after more deputies responded to
19 the location we went inside and cleared the residence and he
20 was not inside the house. And then, following that, once it
21 was safe to do so, I was -- I examined her injuries further,
22 the injuries to her face and took photographs of those.

23 Q Can you describe more about these injuries to her
24 face that you observed?

25 A It was on the -- can I look at the report?

DIRECT EXAMINATION OF ISAAC MADISON BY MS. FOWLER

1 Q Sure. Would it help you to review your report?

2 A Yes.

3 MS. FOWLER: May I approach this witness, Your
4 Honor.

5 THE COURT: Yes.

6 THE WITNESS: Thank you. So, the injuries that I
7 observed were to the left portion of her face, it was
8 slight irritation, bruising on the eye and left side of
9 the cheek and jaw area.

10 BY MS. FOWLER:

11 Q Okay. And Deputy Madison, how soon after the 911
12 call did you respond; was it within minutes, an hour? It
13 was soon after, correct?

14 A Yes, it was relatively soon.

15 Q So, would you expect to see dark bruising to her
16 face?

17 A No.

18 Q Based on what she told you?

19 A No.

20 Q Okay. I'm going to show you what has been marked
21 as State's Exhibits 1 through 5 for identification purposes.

22 MS. GIBBES: Without objection.

23 MS. FOWLER: May I approach, Your Honor?

24 THE COURT: You may.

25

DIRECT EXAMINATION OF ISAAC MADISON BY MS. FOWLER

1 BY MS. FOWLER:

2 Q Deputy Madison, do you recognize these
3 photographs?

4 A Yes.

5 Q And if you could go through each one, one by one,
6 and describe what they are?

7 A The --

8 Q Or I guess, rather, these are pictures of the
9 victim's injuries, correct?

10 A Yes.

11 MS. FOWLER: Okay. Permission to publish, Your
12 Honor?

13 MS. GIBBES: Without objection.

14 THE COURT: Without objection, you may publish.

15 *(Whereupon, State's Exhibit No(s) 1-5 marked for*
16 *identification and received in evidence.)*

17 BY MS. FOWLER:

18 Q Deputy Madison, if you want to come down here so
19 that you can point out the injuries to the jury.

20 A The injuries that I was trying to take pictures of
21 were from here down the side of her face, slightly irritated
22 and bruised. Slightly swollen as compared to the other side
23 of her face.

24 Q Okay.

25 A With the quality of pictures it's kind of hard to

DIRECT EXAMINATION OF ISAAC MADISON BY MS. FOWLER

1 see.

2 Q Can you describe what you saw in person? I know
3 that the pictures are not great.

4 A It was areas that were darker on her skin
5 indicating that she had been assaulted. But, like I said
6 before, the bruises weren't fresh -- or weren't showing
7 because the injuries were fresh to her face. It was more
8 irritation.

9 Q And, again, this is just a picture of the victim's
10 face, correct?

11 A Yes.

12 Q And you observed swelling to the left side of her
13 face?

14 A Yes, to the left side.

15 Q Okay. And this is just a close-up of what you
16 observed?

17 A Yes, of the left side of her face.

18 MS. FOWLER: At this time the State moves Exhibits
19 1 through 5 into evidence.

20 THE COURT: Any objection?

21 MS. GIBBES: Without objection.

22 THE COURT: Without objection, they are in
23 evidence.

24 BY MS. FOWLER:

25 Q Deputy Madison, can you describe Ms. Heyward's

DIRECT EXAMINATION OF ISAAC MADISON BY MS. FOWLER

1 demeanor when you respond to the incident?

2 A Yes, when I responded and initially spoke to her
3 she was crying, seemed hysterical, was extremely scared and
4 afraid. She said that is why she was actually at one of the
5 other trailers on the property, believing that the Defendant
6 was still inside the residence and she didn't feel safe
7 being there.

8 MS. FOWLER: Court's indulgence.

9 (Pause.)

10 BY MS. FOWLER:

11 Q Did Ms. Heyward give a written statement to you
12 that day?

13 A She did.

14 Q Okay.

15 MS. FOWLER: Okay, no further questions.

16 MS. GIBBES: May it please the Court.

17 THE COURT: Yes, ma'am.

18 CROSS EXAMINATION

19 BY MS. GIBBES:

20 Q Good morning, Deputy.

21 A Good morning.

22 Q Okay. So, you were the first one who responded to
23 the scene after the 911 call?

24 A Yes.

25 Q Okay. And I have in my notes that the 911 call

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 was at 3:25 p.m., correct?

2 A Yes, ma'am.

3 Q Okay. So, in the middle of the daytime?

4 A Yes, ma'am.

5 Q Was it a sunny day?

6 A That, I don't recall.

7 Q I mean, you would remember if it was pouring down
8 rain?

9 A It wasn't raining, no.

10 Q Okay. And it seems like you already testified you
11 responded very quickly to this 911 call?

12 A Yes.

13 Q And it seems like the impression by the 911 call
14 was that this was an ongoing emergency, correct? And not
15 to -- if you don't mind, I'll just clarify. As far as the
16 belief was, there was an armed person in the house
17 currently, correct?

18 A Yes.

19 Q Okay. And so it seems like the whole -- I mean,
20 you have a video on your car, correct, patrol car?

21 A On the vehicle, yes.

22 Q Okay. And it was running the whole time that you
23 were at the scene?

24 A I know my camera was activated. I don't know the
25 time frame that it was -- I know that it was activated

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 during the -- during arriving on the scene initially.

2 Q It is pretty neat -- the cameras are so neat
3 because I can listen -- you can watch what is going on. I
4 mean, there's sound on your video, correct?

5 A Yes.

6 Q So by my calculations, I mean, how long do you
7 think that you were there? I mean, was it three hours or --

8 A I don't remember exactly how long we were there.

9 Q Okay. But when you got there you first talked to
10 Mr. Washington, correct?

11 A Yes.

12 Q And he's related to Ms. Heyward, correct?

13 A I don't know if they were related. I know that he
14 lives at another -- or at the time lived in another trailer
15 on the property.

16 Q To my understanding, as you said, there are
17 several properties on the piece of land on Marshland Road,
18 correct?

19 A Yes.

20 Q And there is more -- I mean, how many people would
21 you think live on the property, do you know?

22 A I don't know.

23 Q Okay. But they are all related? I mean, it seems
24 like it is a family relationship, as far as other people who
25 live on the property?

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 A That, I don't know.

2 Q You don't know. And so, how many cars -- I mean,
3 were there about five cars that responded to the scene?

4 A More, more than five.

5 Q Okay. And how does that work; did you put out
6 some sort of alert that we have a suspect that may be armed
7 inside the house and everybody responds at once? How does
8 that work?

9 A When the call is received and other individuals
10 hear it on the radio, depending on the nature of what
11 dispatch is relaying to us, then that would determine how we
12 respond, how many people respond, things like that.

13 Q Okay. But when you got there you never saw
14 Sharkee Mitchell, correct?

15 A I did not.

16 Q Okay. And I mean, how long -- I mean, there was a
17 time period where you understood that he was in that house,
18 correct?

19 A It was believed that he was still in the house.

20 Q Okay. And so you set up -- so, more than one
21 officer responded and you set up a perimeter around this
22 house?

23 A Yes.

24 Q And again, the whole time that you were there
25 nobody ever saw Sharkee Mitchell; correct?

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 A While we were there, no.

2 Q Yeah, no. All right. And this home -- and I mean
3 nobody that you know saw him running out of the house at any
4 time while you were there?

5 A No.

6 Q Okay. And as far as the, the home, prior to
7 anybody going inside, you actually -- I don't know if it was
8 you, but somebody got on the bull horn and was calling out
9 his name to come out of the house; is that right?

10 A Yes, I don't know who that person was.

11 Q Okay. Did you observe the bull horn -- somebody
12 calling out his name to come out of the house?

13 A Yes.

14 Q And at some point you brought in a K-9; you
15 brought in dogs to the scene?

16 A Yes.

17 Q And that decision was made based on you thought
18 that he was in the house and you wanted to put the dogs in
19 there to flush him out, basically?

20 A I don't know the, I guess, specifics of, you know,
21 what the dogs ultimate purpose is but other than they were
22 there to assist us.

23 Q Okay. Did you go into the house?

24 A I did.

25 Q And when you went in there, was the front door

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 open?

2 A I don't remember if the front door was open.

3 Q Okay. It was unlocked though?

4 A I believe it was unlocked. There was, you know,
5 the normal door and then the screen door. But I don't
6 remember if the front door was open.

7 Q Okay. And there was no kind of damage to that
8 door or anything like that?

9 A I don't recall if there was damage or not to the
10 door.

11 Q All right. There was that entrance, and then
12 there was also a back door, correct?

13 A I believe. I don't recall if there was a back
14 door or not.

15 Q Okay. But when you went in the home, I mean, you
16 were looking to see if he was hiding in there; correct?

17 A Yes.

18 Q So I'm assuming that you wanted to see where he
19 could have gotten in and out, correct?

20 A My main concern going in the house was that he was
21 still in there. So I wasn't --

22 Q Right. So you wouldn't know whether or not the
23 back door was locked or not?

24 A No.

25 Q Okay. Do you know if anybody checked that?

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 A I don't know.

2 Q Okay. So when you went in there, did you take --
3 you didn't take any pictures of inside the house?

4 A I did not, no.

5 Q Okay. And you didn't do any testing for DNA or
6 fingerprints or anything like that?

7 A I did not.

8 Q Okay. And when you went in, you did not see
9 Sharkee?

10 A I did not.

11 Q Now, it is my understanding you also, after
12 speaking to Ms. Heyward, there might have been some evidence
13 offered that there was another person in the house, a young
14 lady that was a friend of Sharkee's at some point. Do you
15 have any information about that?

16 A I do not.

17 Q Okay. After you realized that nobody was in the
18 house, did you -- I know that you interviewed the witnesses
19 that were there, correct?

20 A Yes.

21 Q And that would involve Ms. Heyward and then
22 Mr. Washington?

23 A Yes.

24 Q Now you mentioned a cousin, that Ms. Heyward went
25 to her trailer, or his trailer, something, a family member

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 where she was waiting.

2 A Yes.

3 Q Did you interview that family member?

4 A I did not. I just interviewed Ms. Heyward and
5 Mr. Washington.

6 Q Okay. And then, while you are in there -- I mean,
7 at a certain point you had a form signed by Ms. Heyward to
8 give you consent to search that house?

9 A Yes.

10 Q And did you conduct a search, or did you just walk
11 through looking --

12 A It was looking for Sharkee Mitchell.

13 Q Okay. But during that time, during your search
14 you didn't find a weapon?

15 A I did not, no.

16 Q And you found no ammunition?

17 A I did not, no.

18 Q And you found no drugs?

19 A No.

20 Q And you didn't interview -- I mean, it sounds like
21 at a certain point you realized that nobody was in the
22 house, so you wondered where Sharkee maybe was; correct?

23 A Yes.

24 Q Okay. And so did you put on, you know, like a
25 BOLO -- be on the look out for somebody around Marshland

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 Road running around or anything like that?

2 A I didn't. I don't recall what other individuals
3 did on scene.

4 Q All right. And you didn't talk to any of the
5 neighbors or do a sweep around the neighborhood looking for
6 him?

7 A I did not. I stayed at the incident location.

8 Q And, I mean, obviously this is on Marshland Road,
9 so there's Marshland around this area; correct?

10 A On Marshland Road, yes.

11 Q Okay. So you didn't send the dogs -- I'll back
12 up, the dogs, and I don't know if you can answer this, when
13 they go into the house are they trained to -- were they
14 smelling for Sharkee or anything?

15 A That, I don't know.

16 Q You don't know. So they just run through, maybe,
17 for your protection; was that the point?

18 A Without being trained how to handle the dogs, I
19 don't have any information about the dog.

20 Q Okay. But it sounds like some of the tactics of
21 using the dogs was trying to get him out of the house
22 because they are going to come in and bite you is kind of
23 what I was hearing on the audio. Is that correct, something
24 that you would shout out, Come out of the house because the
25 dogs are coming in to bite you?

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 A That was said, but I don't know what -- I don't
2 know anything about it.

3 Q Okay. So, really the dogs didn't uncover any
4 evidence that we need to know about?

5 A To my knowledge, no.

6 Q Okay. Now, you mentioned Ms. Heyward and we have
7 seen the pictures. I mean, she refused to go to the
8 hospital, correct?

9 A I don't remember.

10 Q You don't remember?

11 A If she refused, no.

12 Q But she didn't go to the hospital?

13 A No.

14 Q The ambulance did not come to the scene, correct?

15 A No.

16 Q So, EMS, EMS did not work on her or any of her
17 injuries, right?

18 A I do not know.

19 Q But you did take the pictures, which was
20 supposedly very soon after you got there, right?

21 A Yes.

22 Q Now, she came in to the station to make another
23 statement the day after, were you there for that or do you
24 know about that?

25 A I was not there for that.

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 Q Okay. Are you aware that there were no other
2 pictures taken of her face the next day?

3 A I'm not sure if there were or not.

4 Q Okay. Now, so it was fairly obvious that Sharkee
5 was not there, at a certain point -- and I don't know if it
6 was you, you guys got Ms. Heyward's cell phone, or
7 somebody -- one of your officers took the alleged victim's
8 cell phone?

9 A That -- I don't have any knowledge of that.

10 Q You didn't do anything with her cell phone?

11 A No.

12 Q Okay. Did you collect any physical evidence from
13 that home at all, besides the pictures?

14 A Besides the photographs?

15 Q Uh-huh. (Indicating affirmatively.)

16 A I did not.

17 Q And at a certain point -- were you there when
18 Sharkee turned himself in a few days later?

19 A I was not there for that either.

20 Q Okay. But you were aware that he turned himself
21 in?

22 A I don't know.

23 Q You were just not there?

24 A I wasn't.

25 Q And he did not make any statements, to your

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 knowledge; correct?

2 A Whose?

3 Q Sharkee didn't confess to anything, did he?

4 A To my knowledge, no.

5 MS. GIBBES: Okay. Beg the Court's indulgence.

6 THE COURT: Okay.

7 (Pause.)

8 MS. GIBBES: No further questions. Thank you.

9 MS. FOWLER: Nothing further of this witness, but
10 we would like him subject to recall.

11 THE COURT: Sir. You may go about your business
12 but you are subject to recall.

13 MS. FOWLER: Your Honor, may we approach?

14 THE COURT: You may.

15 (Off-the-record discussion held.)

16 THE COURT: We will take a brief break at this
17 time. Put your number on your note pads, ladies and
18 gentlemen, and leave them in your seat. And I will
19 remind you, do not discuss this case, it would be
20 inappropriate to do so. I have to speak with the
21 attorneys and we will bring you right back. Okay?
22 Thank you.

23 THE BAILIFF: Bring your notebooks and follow me.

24 (The jury exits the courtroom.)

25 THE BAILIFF: The jury is clear, Your Honor.

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 THE COURT: Very quickly, I understand that the
2 victim is here in this case. MS. Fowler, I want to
3 make sure that you understand -- and you need to talk
4 to her -- that we are not going to talk about anything
5 in the baggy or what she believed might have been in
6 the baggy. She said she came in, and from what I
7 understand she smelled some type of illegal substance
8 and she told him to leave. And she could probably go
9 so far to say that, if this is the truth, that she
10 didn't want any illegal drugs in the house which is why
11 she wanted him to leave.

12 But to that extent, I don't want to hear anything
13 about the plastic bag or her putting anything up to her
14 nose or anything like that. So, we are going to take
15 just ten minutes right now. If you will be back at ten
16 minutes until 11 and continue with this case.

17 I don't know if she's going to be next or who is
18 next. Who is your next witness?

19 MS. FOWLER: She -- the victim is next, Your
20 Honor.

21 THE COURT: She is the next witness, all right.
22 And how many more do you have after that?

23 MS. FOWLER: Two more after that.

24 THE COURT: Okay. It is moving along, so we will
25 be at ease for ten minutes or sometime, and I will be

CROSS EXAMINATION OF ISAAC MADISON BY MS. GIBBES

1 back with y'all. Thank you.

2 (Brief recess.)

3 MS. GIBBES: It seems like the victim didn't
4 obviously want to be here, and I mean, there's
5 something happening during this time period. They had
6 to go pick her up. I would ask you to allow me to
7 proffer the victim on what is going on or if there is
8 anything new, because I feel like there's an
9 unwillingness to testify. For any reason, it is
10 exculpatory.

11 THE COURT: Is she here?

12 MS. FOWLER: She is here, Your Honor.

13 THE COURT: She will be your next witness,
14 correct?

15 MS. FOWLER: She is my next witness.

16 THE COURT: All right. Can we go ahead and call
17 her and I am just going to talk to her, okay?

18 MS. FOWLER: Okay.

19 THE COURT: Come on in Ms. Heyward, right up here.

20 Thereupon,

21 BEVERLY HEYWARD

22 was called as a witness, having been first duly sworn,
23 was examined and testified as follows:

24 THE COURT: I'm Carmen Mullen. Obviously I am the
25 trial judge in this case. As you can see the jury is

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 not in here with us right now. I just wanted to talk
2 to you very briefly to make sure that you feel
3 comfortable and that you are okay. We were concerned
4 when you were not here this morning at 9:30 or so when
5 the trial was to begin. I just want to make sure that
6 nobody is threatening you in any way, whether to come
7 or not come to testify.

8 MS. HEYWARD: No.

9 THE COURT: Are you okay this morning? No one is
10 pressuring you either way, to testify or not testify;
11 is that correct?

12 MS. HEYWARD: Well, in a way they are pressuring
13 me.

14 THE COURT: Who is they?

15 MS. HEYWARD: I don't want to -- the last time I
16 talked, I told them that it was over with me and I
17 wasn't going to persue it and I didn't want to have any
18 more to do with this case. Because it's almost a year
19 to me and it's over.

20 THE COURT: Who did you tell that to?

21 MS. HEYWARD: To the solicitor.

22 THE COURT: To the solicitor or the victim's
23 advocate?

24 MS. HEYWARD: I don't remember which one. But
25 I'm not saying they are really pressuring, pressuring

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 me but I don't --

2 THE COURT: Okay. This is kind of, because where
3 we are at, Ms. Heyward, we are in the trial of the
4 case. And when the police were called out to the
5 scene, obviously they took a recorded statement from
6 you and you are under subpoena to come forward and tell
7 the truth. And I understand that for you it feels like
8 it's over, but in any criminal case the case is not you
9 versus someone, it is the State of South Carolina. So,
10 you are the victim in this case, or the alleged victim
11 in this case. And you have been subpoenaed to come by
12 the State to testify as to what happened, all right. I
13 just want to make sure that you can do that and you
14 don't feel any undue pressure either way. Do you
15 understand that?

16 MS. HEYWARD: Yes, ma'am.

17 THE COURT: I also understand -- is Mr. Mitchell
18 kin to you somehow?

19 MS. HEYWARD: That is my nephew.

20 THE COURT: And he is your nephew, so he's your
21 brother or sister's son?

22 MS. HEYWARD: My baby sister's son.

23 THE COURT: Your baby sister's son. And also,
24 correct me if I am wrong, at some point he was welcome
25 to live with you; is that correct?

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 MS. HEYWARD: Yes.

2 THE COURT: What more do you need me to ask her,
3 Ms. Gibbes?

4 MR. TRIPP: Your Honor, I would just like to ask,
5 yes or no, if she was told that she would go to jail if
6 she didn't appear here today to testify.

7 MS. HEYWARD: No, I was not. I was told that I
8 was subpoenaed and I had to be here.

9 THE COURT: Right, which is what it is. When you
10 received a subpoena, you are required to come and
11 testify. Again, you are required to testify
12 truthfully. And I want to make sure that you
13 understand that. You understand that?

14 MS. HEYWARD: Uh-huh. (Indicating affirmatively.)

15 THE COURT: All right. I'm convinced that it's
16 fine. So, what we are going to do is this,
17 Ms. Heyward, I am going to have you go and sit down in
18 the first row right there and you saw that there was no
19 jury there to hear any of that. So, what we are going
20 to do, when the jury comes in -- we were just taking a
21 break -- you are going to be called to the stand again
22 and we are going to swear you all over again in front
23 of the jury. Obviously the State is going to ask you
24 some question, and Ms. Gibbes on behalf of Mr. Mitchell
25 is going to ask you some questions. You are required

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 just to answer them truthfully. And when you are done,
2 you will be excused by me to leave. Okay?

3 MS. HEYWARD: What about questions that I don't
4 want to answer?

5 THE COURT: Ma'am, I will tell you that what they
6 will ask you are only things relevant to this case.
7 But one of the things that they are going to ask you
8 about, and you need to know, is it is my understanding
9 that you have on your record where you were pulled over
10 maybe at a traffic stop and a police officer said --
11 did you give a different name or no name? They can ask
12 you about that one incident. But other than that, they
13 are just going to ask you about what happened. Okay?
14 And you do need to answer the questions as to what
15 happened in this incident, all right? Do you
16 understand that?

17 MS. HEYWARD: Yes, ma'am.

18 THE COURT: All right. Anything else that I need
19 to tell her? One other thing that I can't have you
20 mention, and I just need to tell you this. My
21 understanding is that you gave some kind a statement to
22 the officers when they came to your home on the day
23 that Mr. Mitchell was there, that you believe or
24 someone was smoking marijuana in the house and that you
25 also saw him with some type of baggy, potentially.

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 It's my understanding that you can only guess what was
2 potentially in that bag and you do not know, so I can't
3 have you testifying about that. okay? Because you
4 don't know what it is. We talked about this before.

5 MS. HEYWARD: Yes, they explained that to me.

6 THE COURT: Okay. I want to make sure that you
7 know that. I want to make sure that we are not going
8 to get into that. So, do you feel comfortable? Are
9 you okay?

10 MS. HEYWARD: Yes.

11 THE COURT: I'll have her step down and sit next
12 to Ms. Jordan and we will do it all for the jury, okay?

13 MS. HEYWARD: All right.

14 THE COURT: All right. Let's bring the jury in,
15 okay.

16 (The jury enters the courtroom at 11:26 a.m.)

17 THE BAILIFF: The jury is entering the courtroom,
18 Your Honor.

19 THE COURT: Thank you. Y'all may be seated.
20 Welcome back, ladies and gentlemen. Call your next
21 witness.

22 MS. FOWLER: The State calls Beverly Heyward.

23 THE COURT: Come on forward Ms. Heyward and be
24 sworn.

25 Thereupon,

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 BEVERLY HEYWARD

2 was called as a witness, having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. FOWLER:

6 Q Good morning, Ms. Heyward.

7 A Good morning.

8 Q You don't really want to be here this morning, do
9 you?

10 A No, ma'am.

11 Q Do you know who Sharkee Mitchell is?

12 A Yes, he's my nephew.

13 Q Okay. So, he's part of your family; correct?

14 A Yes, ma'am.

15 Q Where were you living on June 27th, 2018?

16 A ■ Marshland Road Hilton Head Island, South
17 Carolina.

18 Q Okay. And who did you live there with?

19 A I lived there by myself.

20 Q Did this house belong to your mother?

21 A It was my mother's, but my mother is deceased and
22 my aunt took it over and she let me live in it.

23 Q Okay. And were you in the process of renovating
24 this house?

25 A My aunt was.

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 Q Okay. And this is heirs property, correct?

2 A Correct.

3 Q Can you describe for the jury what this property
4 looks like?

5 A It is a two-story brick house. It is two houses
6 in one. It is a flat and it is upstairs.

7 Q Okay. And are there trailers behind it?

8 A Yes, one trailer.

9 Q And there are other family members that live
10 around it?

11 A Correct.

12 Q Okay. I want to talk to you about an incident
13 that happened June 27th, 2017. You came home from work that
14 day, correct?

15 MS. GIBBES: Objection to leading, Your Honor.

16 THE COURT: Okay. Thank you. Let's keep leading
17 to a minimum, please.

18 BY MS. FOWLER:

19 Q Can you tell the jury what happened on June 27th,
20 2017?

21 A I came home from work and Sharkee was in the
22 house, and I didn't know that he was in the house. I had
23 the doors locked. I asked him how did he get in the house
24 and he just got mad and that was that.

25 Q Okay. Was there anyone else with Sharkee?

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 A My neighbor, she was just sitting there.

2 Q And do you know her name?

3 A Yes.

4 Q What is her name?

5 A Quanisha (phonetic).

6 Q What happened when you told Sharkee to get out of
7 the house?

8 A He just got upset, that is it. That is it.

9 Q Did he approach you?

10 A Yes.

11 Q And what did he do when he approached you?

12 A He just pulled out a gun and had a gun and that
13 was it. And he --

14 Q Did he say anything to you when he pulled the gun
15 out?

16 A No, he didn't threaten me with the gun.

17 Q And Ms. Heyward, do you remember giving a
18 statement to police?

19 A Uh-huh. (Indicating affirmatively.)

20 THE COURT: Say yes for the record. Is that a yes
21 for the record?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Thank you.

24 BY MS. FOWLER:

25 Q And do you remember what you told police on that

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 day?

2 A Yes.

3 Q And do you remember telling them that Sharkee
4 said --

5 MS. GIBBES: Objection, Your Honor.

6 THE COURT: Basis?

7 MS. GIBBES: Leading.

8 THE COURT: Okay. You can go ahead.

9 BY MS. FOWLER:

10 Q Do you remember telling the police that Sharkee
11 said he would shoot the fuck out of you if you called the
12 police, that he would shoot the house up?

13 MS. GIBBES: Your Honor, I apologize. There's no
14 foundation for this questioning.

15 THE COURT: Okay. You need to approach me very
16 quickly, both of you.

17 (Off-the-record discussion held.)

18 BY MS. FOWLER:

19 Q Ms. Heyward, I'm going to show you the statement
20 that you gave to police on June 27th. Do you recognize
21 this?

22 A Yes, ma'am.

23 Q And is that the statement that you gave to police
24 on that day?

25 A Correct.

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 Q That is your handwriting?

2 A Yes, ma'am.

3 Q And are you -- what did you say in this statement?

4 A I came home, asked him what he's doing in my
5 house. And he just started yelling and had me cornered on
6 the sink in my kitchen and hit me on the face and won't let
7 me go.

8 Q What did he say to you when he had the gun in his
9 hand?

10 A But when he -- he was saying that after I got
11 away, that about what he would do to the house. He didn't
12 say that -- I don't know, I can't remember. I don't know
13 whether Sharkee said it to me -- he said that afterwards,
14 after it was over. He just like made that statement.

15 Q But in your statement you said?

16 A Yeah, he said that he would shoot this whole house
17 up -- I don't curse -- if I called the police.

18 Q And that he would shoot you, correct?

19 A He said that he would shoot the house up and burn
20 it down.

21 Q And that he would shoot you, correct?

22 A No, he didn't say that he would shoot me.

23 Q But that is what your statement says, correct?

24 A I didn't say that. When I tried to get away, he
25 held me on the sink and held the gun to my head and told me

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 that he would shoot the fuck out of me -- excuse me -- yeah,
2 if I called the police.

3 Q Okay.

4 A But that statement shouldn't be the way it is, it
5 should be after that. Because he didn't threaten me when he
6 had the gun on me. When he had the gun in his hand he never
7 threatened me. He said that when I got away, as I was
8 leaving. He didn't threaten me with the gun, he didn't do
9 that.

10 Q But your statement on June 27th, 2017 right after
11 this incident occurred was that he had the gun in his
12 hand --

13 MS. GIBBES: Your Honor, object to leading.

14 THE COURT: Okay. Also, asked and answered.

15 MS. FOWLER: Your Honor, she's given inconsistent
16 statements and I have to impeach her with her prior
17 statement.

18 THE COURT: I think she said that that was her
19 statement, but I think she can still correct it. Her
20 testimony is that it shouldn't have been written that
21 way, which I think we have now explained to the jury.

22 BY MS. FOWLER:

23 Q So your statement today is different than what you
24 said happened minutes after it happened?

25 A Correct.

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 Q Okay. Ms. Heyward, did you have injuries from
2 this attack?

3 A No.

4 Q So you never had swelling to your face?

5 A It was just a little circle and that was it.

6 Q Okay.

7 A But I never saw the picture of it or anything.

8 Q Okay. So, you never --

9 A Okay. I really can't say exactly how it was
10 because I never looked in the mirror and I never saw a
11 picture.

12 Q You never told law enforcement that Sharkee hit
13 you in the face?

14 A Yes, they took a picture but I never saw the
15 picture, so I can't really say there was a mark because I
16 didn't ever see the mark.

17 Q Okay. So I'm showing you what's been entered as
18 State's 1 through 5.

19 A Yes, ma'am.

20 Q This is you, correct?

21 A Yes, ma'am.

22 Q Okay. And this is you the day that it happened?

23 A Uh-huh. (Indicating affirmatively.)

24 Q Okay. And you told police on that day that he hit
25 you in the head?

INQUIRY OF BEVERLY HEYWARD BY THE COURT

1 MS. GIBBES: Your Honor, leading again.

2 A On the side.

3 Q And you told Investigator Calendine on --

4 THE COURT: Ms. Fowler, all you say is, Did you
5 tell.

6 BY MS. FOWLER:

7 Q Did you tell Investigator Calendine on June 28th
8 that you iced your head?

9 A No, ma'am. I never told anybody that I iced my
10 head, because I never tend to my head.

11 Q Okay. Ms. Heyward, do you see Sharkee in the
12 courtroom today?

13 A Yes, ma'am.

14 Q Can you point him out?

15 A Right here.

16 Q Is he the one that held a gun to your head?

17 A Yes.

18 Q Okay.

19 MS. FOWLER: Court's indulgence.

20 (Pause.)

21

22 MS. FOWLER: Nothing further from this witness.

23 THE COURT: Ms. Gibbes.

24 MS. GIBBES: May it please the Court.

25 THE COURT: Yes.

CROSS EXAMINATION OF BEVERLY HEYWARD BY MS. GIBBES

1 CROSS EXAMINATION

2 BY MS. GIBBES:

3 Q How are Ms. Heyward?

4 A I'm fine, ma'am.

5 Q My name is Courtney Gibbes and I represent your
6 nephew Sharkee Mitchell. So, if you don't mind I just want
7 to ask you a few questions.

8 So, this property, you mentioned it is family
9 property; right?

10 A Right.

11 Q So, Sharkee you said is your baby sister's nephew?

12 A Son.

13 Q I am sorry, son, and your nephew?

14 A Uh-huh.

15 Q Now, are there other people who live on this
16 property besides you and Mr. Thomas?

17 A Well, after my mother -- Sharkee and his mother
18 were living in the house before I came in the house before
19 my mother passed, so really it wasn't like nobody had rights
20 to the house, anybody could come in the house.

21 Q Okay. So, there was no lease or anything like
22 that?

23 A Yes, before my mother passed.

24 Q Okay. So, Sharkee actually lived there before --

25 A He was living there before I got there.

CROSS EXAMINATION OF BEVERLY HEYWARD BY MS. GIBBES

1 Q Okay. And you no longer live at this house any
2 more?

3 A No, it's getting remodeled.

4 Q It is getting remodeled. Okay.

5 Now, just a little bit about the layout. Is
6 there a front door and a back door?

7 A Yes.

8 Q Okay. And are there any other besides -- like
9 windows?

10 A Yes, there's like garages that you can come
11 through different doors. There was a lot of ways that you
12 could get in there if it was not locked.

13 Q And did you have a cousin who lived -- I mean, is
14 there somebody who lives there that you went and sat with
15 that day; do you remember?

16 A No.

17 Q Okay. And basically what you are saying today is
18 that you didn't feel threatened, correct?

19 A No. At that point, no.

20 Q You didn't feel threatened.

21 A Scared, yes, but not threatened. Well, all -- I
22 don't know.

23 Q And you didn't go to -- you didn't go to the
24 hospital?

25 A No.

CROSS EXAMINATION OF BEVERLY HEYWARD BY MS. GIBBES

1 Q You didn't really have injuries, right?

2 A No.

3 Q Now, Thomas, Mr. Washington, are you related to
4 him?

5 A Yes, first cousins.

6 Q First cousins. And you didn't call 911, right?

7 A He did.

8 Q He did. Do you remember how quickly the police
9 came?

10 A Well, I was next door on my cousin's porch and I
11 didn't even know that he had called the police until the
12 police come to her house. So I don't know exactly how long.

13 Q It sounds like you didn't really -- you have
14 already said that you don't want to be here, right?

15 A Yes.

16 Q And you are saying that basically what they are
17 accusing Sharkee of is not true, correct?

18 A Not the whole story.

19 Q Right.

20 A Just little pieces that is missing out that is not
21 in there, and some things that didn't happen. If I wrote it
22 like that I don't remember writing like that because it
23 didn't happen totally like that.

24 Q I got you. And I know that we talked about this,
25 but you have been convicted of lying to the police before?

CROSS EXAMINATION OF BEVERLY HEYWARD BY MS. GIBBES

1 A Yes, ma'am, false identity.

2 Q I got you. And nobody else lived in the house
3 with you?

4 A No.

5 Q And is there a key to open the door? I mean, how
6 do you normally get in?

7 A It's just like a lot of different ways that we
8 know of to get into the house.

9 Q Okay.

10 A Sometimes the doors, I never used to lock it.
11 Sometimes I did and sometimes I didn't because the other
12 part of the house is opened up. If that is the part that
13 Sharkee used to come in the house, if the front is locked he
14 come in the side.

15 Q Okay. And I mean, this is a family home, it seems
16 like your family is in and out?

17 A Everybody had a right to it after my mother
18 passed.

19 Q Okay.

20 MS. GIBBES: Beg the Court's indulgence.

21 THE COURT: Yes, ma'am.

22 (Pause.)

23 MS. GIBBES: I have no further questions, thank
24 you.

25 THE COURT: Anything further?

CROSS EXAMINATION OF BEVERLY HEYWARD BY MS. GIBBES

1 MS. FOWLER: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. FOWLER:

4 Q Ms. Heyward, I want to ask you about the time that
5 you lied to the police, that was almost a decade ago;
6 correct?

7 A Correct.

8 Q And you lied then to get yourself out of trouble,
9 correct?

10 A Correct.

11 Q Okay.

12 MS. FOWLER: No further questions.

13 THE COURT: Anything else, Ms. Gibbes?

14 MS. GIBBES: No, Your Honor.

15 THE COURT: Any objection to Ms. Heyward being
16 excused from anyone?

17 MS. GIBBES: Without objection.

18 MS. FOWLER: No objection, Your Honor.

19 THE COURT: You are excused, ma'am. You are free
20 to go. The State will call the next witness.

21 MS. FOWLER: The State calls Thomas Washington.

22 THE COURT: Okay.

23 Thereupon,

24 THOMAS WASHINGTON

25 was called as a witness, having been first duly sworn,

DIRECT EXAMINATION OF THOMAS WASHINGTON BY MS.
FOWLER

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. FOWLER:

4 Q Good morning, Mr. Washington?

5 A Good morning.

6 Q Where do you live?

7 A [REDACTED] Marshland Road.

8 Q And is that on Hilton Head Island?

9 A Yes, ma'am.

10 Q And that is a property that has a lot of trailers
11 on it, correct?

12 A Yes, ma'am.

13 Q And you are cousins with Beverly Heyward and
14 Sharkee Mitchell, correct?

15 A Yes, ma'am, they are -- yeah.

16 Q Okay. I want to ask you about an incident that
17 occurred on June 27th, 2017. Can you describe what happened
18 that day?

19 A Yes, ma'am. I was checking my mail whenever I got
20 off of work. And then my cousin came up, Beverly came out
21 of the house crying and I said, What is wrong. She said --

22 MS. GIBBES: I would object to hearsay, Your
23 Honor.

24 THE COURT: All right. Ladies and gentlemen, he
25 can't say something that someone else said.

DIRECT EXAMINATION OF THOMAS WASHINGTON BY MS.
FOWLER

1 You have to rephrase your question or change it.

2 THE WITNESS: She was hysterical, so I said, What
3 is wrong. Again I asked her, What is wrong. That is
4 when I found out that Sharkee, Sharkee put a gun to her
5 head. And then I -- I went back to my house because I
6 didn't lock my door. I went back there. And when I
7 was walking back there I saw him exit out the back
8 door. And he ran to the neighbor's place and I saw him
9 with a gun on the side of him. And that is all that I
10 saw.

11 Q Okay. And the way that you saw him leave the
12 house, do you remember which direction he went?

13 A The left.

14 Q And is that towards woods?

15 A Yes, ma'am.

16 Q And did you call the police that day?

17 A I sure did.

18 Q And did you stay with Beverly until law
19 enforcement arrived?

20 A Yes, ma'am.

21 Q And can you, again, describe for the jury how
22 Beverly was when you saw her?

23 A Crying, hysterical and upset.

24 Q Okay. Now, Mr. Washington, you initially didn't
25 tell police about seeing Sharkee with the gun that day?

DIRECT EXAMINATION OF THOMAS WASHINGTON BY MS.
FOWLER

1 A No.

2 Q Why not?

3 A There was so much commotion going on. He didn't
4 ask me. I just told him that, you know, what I saw and that
5 was it.

6 Q Okay.

7 MS. FOWLER: Court's indulgence.

8 THE COURT: Okay.

9 (Pause.)

10 MS. FOWLER: Your Honor, may we approach?

11 THE COURT: You may.

12 (Off-the-record discussion held.).

13 BY MS. FOWLER:

14 Q Mr. Washington, what did Ms. Heyward say to you
15 when she saw you that day?

16 MS. GIBBES: Object to hearsay, Your Honor.

17 THE COURT: Overruled.

18 BY MS. FOWLER:

19 Q About what had happened.

20 A She went in the house and she noticed that someone
21 was in the house. She had locked the door. And that is
22 when I found out that Sharkee was in the house and that is
23 what -- she told me what happened.

24 Q And what did she say had happened?

25 A That he put a gun to her head and I couldn't make

DIRECT EXAMINATION OF THOMAS WASHINGTON BY MS.
FOWLER

1 the rest of it because she was crying so much.

2 MS. FOWLER: No further questions.

3 THE COURT: Ms. Gibbes?

4 MS. GIBBES: May I approach.

5 CROSS EXAMINATION

6 BY MS. GIBBES:

7 Q All right. How are you, Mr. Washington?

8 A Good.

9 Q Good. It's safe to say that you hate Sharkee,
10 correct?

11 A No.

12 Q You don't?

13 A Well, I don't like him. I mean, we never got
14 along too good.

15 Q All right. And you called 911, right?

16 A Yes, ma'am.

17 Q And are you -- you are aware that when the police
18 came, that you were being recorded on video; are you aware
19 of that?

20 A I don't know.

21 Q No. Well, you were recorded on video. And do you
22 recall saying you didn't see anything?

23 A Yes, ma'am. But like I say, they didn't ask me.
24 I mean, they didn't ask me what I saw -- what I saw.

25 Q What I am saying is, you were the first person

CROSS EXAMINATION OF THOMAS WASHINGTON BY MS. GIBBES

1 that police spoke to, right?

2 A Yes, I guess so.

3 Q You were standing on the road when they pulled up?

4 A Uh-huh. (Indicating affirmatively.)

5 Q And the understanding was that Sharkee was still
6 in the house, right, that is why they were trying to get him
7 out of the house?

8 A Uh-huh. (Indicating affirmatively.)

9 THE COURT: Is that a yes for the record?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Thank you.

12 BY MS. GIBBES:

13 Q So, while you were being recorded you don't
14 remember saying -- beg the Court's indulgence -- I hope that
15 you shoot his ass?

16 A Yeah.

17 Q And that you hate him?

18 A I didn't like him.

19 Q But that you didn't see nothing?

20 A I didn't say that. I didn't let them know because
21 they didn't ask me.

22 Q Okay. So, that whole time, the hours that the
23 police were there trying to get Sharkee out of the house, do
24 you remember that?

25 A Uh-huh. (Indicating affirmatively.)

CROSS EXAMINATION OF THOMAS WASHINGTON BY MS. GIBBES

1 Q And you remember that they had about five or six
2 police cars around that area?

3 A Yeah, there was a lot of them.

4 Q A lot of them?

5 A Uh-huh. (Indicating affirmatively.)

6 Q You remember somebody was on the bull horn saying,
7 Sharkee Mitchell, come out or the dogs will bite you; you
8 remember that?

9 A I remember they got on the horn.

10 Q And you remember they sent the dogs into the
11 house, right?

12 A Yes.

13 Q And you were standing there the whole time being
14 recorded, okay. And that whole time while the police was
15 there you never told them that Sharkee had left, right?

16 A No, ma'am.

17 Q Because you gave them the impression that he was
18 in the house, right?

19 A Yes, ma'am.

20 Q I mean, because you wouldn't waste the police
21 officer's time if you knew that he was somewhere else,
22 correct?

23 A No.

24 Q Okay. And you -- you told police that you never
25 saw Sharkee; you didn't see nothing?

CROSS EXAMINATION OF THOMAS WASHINGTON BY MS. GIBBES

1 A I didn't saw when he put the gun to her head.

2 Q You said that you didn't see him at all?

3 A Like I say, they didn't ask me.

4 Q Now, do you still live at this property?

5 A Yes, I do.

6 Q Okay. And that day you were there to check the
7 mail, right?

8 THE WITNESS: Uh-huh. (Indicating affirmatively.)

9 THE COURT: Is that a yes?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Thank you.

12 BY MS. GIBBES:

13 Q And again, when police arrived you didn't tell
14 them that you saw Sharkee?

15 A No. Like I said, it was a big commotion going on.
16 A lot of them came out there and everybody was so upset.

17 MS. GIBBES: Beg the Court's indulgence.

18 THE COURT: Okay.

19 (Pause.)

20 MS. GIBBES: I have no further questions.

21 THE COURT: Anything further?

22 MS. FOWLER: Briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. FOWLER:

25 Q Mr. Washington, you didn't see the actual assault,

REDIRECT EXAMINATION OF THOMAS WASHINGTON BY MS.
FOWLER

1 correct?

2 A No, ma'am.

3 Q But you did see Beverly after the assault?

4 A Yes, ma'am.

5 Q And you did see Sharkee, correct?

6 A Yes, after it was over.

7 MS. FOWLER: Okay, no further questions.

8 MS. GIBBES: Very briefly.

9 RE-CROSS EXAMINATION

10 BY MS. GIBBES:

11 Q Today is the first time that you have ever said,
12 in all of your communications with the police, that you saw
13 Sharkee leave out the back door, right?

14 A Uh-huh. (Indicating affirmatively.)

15 THE COURT: Is that a yes for the record?

16 THE WITNESS: Yes, ma'am.

17 BY MS. GIBBES:

18 Q You didn't feel like you should tell that to
19 officers that day on the scene when all of Beaufort County
20 was out there trying to get him out of the house because
21 they thought that he was in there, you didn't think that you
22 should tell them then; did you?

23 A Like I say, there was a big commotion out there,
24 and everybody was moving around. And I think that I went
25 back to my house to make sure that I locked the door.

RECROSS EXAMINATION OF THOMAS WASHINGTON BY MS.
GIBBES

1 Q And that day when you spoke to the police, when
2 you were being recorded, your words were, I saw nothing;
3 right?

4 A Yes.

5 MS. GIBBES: Okay, nothing further.

6 THE COURT: Anything further?

7 MS. FOWLER: Nothing further, Your Honor.

8 THE COURT: Thank you. Sir, you are excused.

9 Call your next witness.

10 MS. FOWLER: The State calls Officer Calendine.

11 THE COURT: Come on up.

12 Thereupon,

13 ERIC CALENDINE

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. FOWLER:

18 Q Good morning Investigator Calendine.

19 A Good morning.

20 Q Where do you work?

21 A I work for the Beaufort County Sheriff's Office.

22 Q What is your rank there?

23 A I am a staff sergeant in investigations.

24 Q And what are some of your duties there?

25 A I generally take all of the road reports that are

DIRECT EXAMINATION OF ERIC CALENDINE BY MS. FOWLER

1 generated and read them and assign investigators, or we get
2 called out to scenes to investigate crimes when the road
3 patrol needs our assistance.

4 Q Were you called out to a scene on ■ Marshland
5 Road on June 27th, 2017?

6 A I was.

7 Q And is that in Beaufort County?

8 A It is.

9 Q And can you describe the scene when you arrived
10 there?

11 A I arrived as they were setting up a perimeter
12 around the residence. I was advised that they were dealing
13 with an incident of assault and battery with a gentleman
14 with a firearm. And they had surrounded the residence,
15 multiple units, and they were trying to ascertain if he was
16 still inside or not. So they were using, obviously,
17 perimeter units around the residence itself. And they were
18 utilizing the bull horn to try to call the subject out. And
19 they were also trying to use other means to ascertain if he
20 was still inside.

21 Q And during the course of your investigation, did
22 you learn where Sharkee Mitchell was during the incidents?

23 A So, we were utilizing different means, to include
24 a cellular device to try to figure out where he -- his cell
25 phone was located at. And during the investigation while we

DIRECT EXAMINATION OF ERIC CALENDINE BY MS. FOWLER

1 were on scene trying to get him to come out it was learned
2 through cell phone technology that he was about a mile away
3 at a residence at [REDACTED] Marshland Road.

4 Q So, he was on the same road as where this incident
5 took place?

6 A He was within a mile of [REDACTED] Marshland Road, so
7 that could be a circle around [REDACTED] Marshland Road, a mile
8 away from there.

9 Q But he was on Marshland Road, correct?

10 A In that general area, yes.

11 Q Okay. And you did the follow-up investigation on
12 this case, correct?

13 A I did the secondary interview of the victim, yes.

14 Q And when did that interview take place?

15 A That should have been the next day, on the 28th.

16 Q Okay. And did she describe her injuries to you?

17 A She said that --

18 MS. GIBBES: Your Honor, that is hearsay. He can
19 testify to what he saw.

20 THE COURT: He can testify as to what he saw. He
21 was there.

22 BY MS. FOWLER:

23 Q Did she tell you that there was another girl in
24 the house?

25 A Yes.

DIRECT EXAMINATION OF ERIC CALENDINE BY MS. FOWLER

- 1 Q And was this an individual named Quaneisha?
- 2 A Yeah, or nickname Nash or Neisha we knew her as.
- 3 Q Did you attempt to locate this individual?
- 4 A We did.
- 5 Q And did you have any luck finding her?
- 6 A We did not.
- 7 Q Did you try to get in contact with the suspect,
- 8 Sharkee?
- 9 A Yes.
- 10 Q And did you have any luck getting in contact with
- 11 him?
- 12 A We did not.
- 13 Q After interviewing the victim in this case did you
- 14 take out warrants?
- 15 A I did.
- 16 Q And when did Sharkee turn himself in?
- 17 A It was like a week later, 7/4 of that -- yes, July
- 18 4th.
- 19 Q And are you aware of him making any statements?
- 20 A He did not make any statements.
- 21 Q Okay. Did you take any fingerprints or DNA from
- 22 the house?
- 23 A We did not.
- 24 Q And why not?
- 25 A We were advised that he possibly was living there

DIRECT EXAMINATION OF ERIC CALENDINE BY MS. FOWLER

1 or has lived there in the past, so we would expect that
2 stuff to be there.

3 Q Okay. During your interview with Ms. Heyward, can
4 you describe her demeanor?

5 A She was still upset about the incident, still, you
6 know, agitated by it, upset is how she was acting.

7 MS. FOWLER: Court's indulgence.

8 (Pause.)

9 BY MS. FOWLER:

10 Q Did the victim show you where her injuries were?

11 A She pointed to the left side of her face and also
12 to her back.

13 Q Okay.

14 MS. FOWLER: No further questions.

15 CROSS EXAMINATION

16 BY MS. GIBBES:

17 Q Good afternoon, Sergeant. How are you?

18 A Good. How are you doing?

19 Q Good thanks. You said that you went to the scene
20 that day?

21 A Yes.

22 Q And when you arrived, I think that you just said
23 this, but everybody was trying to -- the idea was that he
24 was still in the house; correct?

25 A Correct.

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 Q And most of the procedures and everything that was
2 done on the scene that day was to find out if he was in the
3 house and get him out of the house if he was there?

4 A Correct.

5 Q And did you interview any of the witnesses that
6 were there?

7 A I did not at that point. I was over at the
8 command post. We were down by NAPA Auto Parts trying to
9 deal with, obviously, all of the perimeter there and also
10 try to locate where Mr. Mitchell was, if he was still
11 inside. We were using cell phone technology to determine
12 where he was. So, we were trying to work in that sense. I
13 wasn't with the witnesses.

14 Q Okay. Were y'all radioing back and forth with
15 each other so you could kind of keep track of what is going
16 on there while you were down there?

17 A Certainly we were in radio contact so we could --
18 you know, if there was anybody that had information from the
19 scene itself to the perimeter it was being relayed back to
20 the command post, yes.

21 Q And, I mean, it seems like it was a couple of
22 hours. I mean, I might -- just watching how long the
23 recording went on on the video, it seems like it was a few
24 hours on the scene trying to figure out if he was in the
25 house and it wasn't until the end, right, that you realized

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 that he wasn't there at all; correct?

2 A I think that when we had the information come back
3 from the cell phone we determined that his cell phone wasn't
4 there. So, we had better of an idea that he wasn't there,
5 but we still had to make sure the residence was clear, so we
6 still had to go inside to clear the residence and make sure
7 that nobody was inside.

8 Q But on your radio, when you are listening to
9 what -- I guess, what everybody was focused on from, you
10 know, the scene where there were bull horns and dogs, and
11 you never had any inkling or anything offered to you that
12 anybody knew where he was or saw him leave or had seen him
13 at all after Ms. Heyward supposedly left the house, right?

14 A We had -- obviously we had the witnesses, the
15 victim who put him inside. But we didn't know if he was
16 still inside, didn't know if he left the property. So, you
17 know, at that point we were trying to determine if we needed
18 to get a search warrant. If he lived there versus he didn't
19 live there. So, there was a lot of things in place that we
20 had to go through before we could go inside. That is
21 probably why it took so long. We had to make sure that we
22 were abiding by the law.

23 Q Obviously if you had heard or gotten any evidence
24 that somebody had seen him leave the house, you would have
25 stopped trying to go into the home to see if he was there,

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 correct?

2 A We would have still had to clear the residence. I
3 mean, that would have still had to be done, but it would
4 have expanded the perimeter, absolutely. So, if we had
5 information that he had left out we would have expanded our
6 perimeter, but at that point we still had to go inside.

7 Q But at that point you thought that he was in the
8 house so you didn't expand the perimeter?

9 A Correct.

10 Q Okay. Now, the next day I believe that you
11 mentioned that you spoke to Ms. Heyward. You didn't take
12 any pictures of her?

13 A No, ma'am.

14 Q Okay. And the phone, you mentioned that the
15 phone, what you believed to be Sharkee's phone, it pinged at
16 [REDACTED] Marshland Road.

17 A In that area, you know, within a mile I think it
18 is [REDACTED] Marshland Road. Within a mile of [REDACTED].

19 Q So, nobody went to that address, or he was never
20 found or looked for?

21 A He was -- I can't recall anybody actually driving
22 down there because there were roadies there. There may have
23 been someone directed that way. I was not part of that.

24 Q Okay. And while you were on scene, you never saw
25 Sharkee Mitchell; right?

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 A No, ma'am.

2 Q And you never saw a gun?

3 A No, ma'am.

4 Q You never saw any drugs?

5 A No, ma'am.

6 MS. GIBBES: I have no further questions.

7 THE COURT: Anything further, Ms. Fowler?

8 MS. FOWLER: Nothing further, Your Honor.

9 THE COURT: You may step down, sir.

10 MS. FOWLER: At this time the State rests, Your
11 Honor.

12 THE COURT: Ladies and gentlemen, at this time the
13 State rests their case and I think that now is a very
14 good time to break for lunch, it is a little before
15 one. But what I am going to ask you to do, please
16 leave your pens and pads in your seat. It is roughly
17 five after, ladies and gentlemen, I am going to ask
18 that you be back in your jury room at 1:15. Then we
19 are going to go ahead and continue this case. I need
20 to remind you, do not discuss this case. It wouldn't
21 be appropriate to do so over the lunch hour. Don't do
22 any independent research. Just go get a bite to eat.
23 The bailiffs can tell you what is close by here to grab
24 a sandwich. I look forward to seeing y'all back in
25 your jury room at 1:15 where we will go ahead and wrap

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 up this case. Thank you.

2 THE BAILIFF: Please leave your notebooks and
3 follow me.

4 (The jury exits the courtroom at 12:07 p.m.)

5 THE BAILIFF: The jury is clear, Your Honor.

6 THE COURT: Is the defense putting up witnesses?

7 MS. GIBBES: I don't believe so. I would ask if I
8 can have the break to talk to him about testifying.
9 And I will have a motion, but I'll ask a little bit of
10 time to prepare for that.

11 THE COURT: Sure, why don't we go ahead and do
12 that. And also, I have a question for you as far as
13 jury charges are concerned. What are you asking for?
14 Obviously, there's the charges. Are you asking for a
15 lesser included?

16 MS. GIBBES: I mean, as far as what we have seen
17 as far as injuries, I mean, I would ask for a simple
18 assault and battery. Just by looking at the evidence
19 and the testimony from the victim, I would say that
20 that is appropriate.

21 MS. FOWLER: The State would be asking for all of
22 the lesser includes assault and batteries, Your Honor.

23 THE COURT: So you want assault and battery first
24 second and third?

25 MS. FOWLER: Yes, Your Honor.

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 MS. GIBBES: I would say that is a little
2 dishonest. I mean, they charged on ABHAN, so to say
3 that obviously we got it wrong so let's ask for every
4 single -- I think that misleads the jury.

5 MS. FOWLER: I don't think it is legally
6 dishonest. He threatened her and threatened her life
7 and pointed a gun at her. I think that the victim came
8 up here with a different testimony than what she said
9 to me before. Obviously she downplayed her injuries.
10 I think that is a question for the jury.

11 THE COURT: Let me look at it over the lunch hour
12 and let me compare the different ones. And I'll let
13 you guys know, okay. I just want to look at it, okay.
14 And we will go from there.

15 MS. GIBBES: All right.

16 THE COURT: Mr. Mitchell, you were an hour late
17 for court today.

18 THE DEFENDANT: I apologize. I apologize.

19 THE COURT: You understand you are --

20 THE DEFENDANT: It's hard though, because I don't
21 have a car. I have to pay people for a ride.

22 THE COURT: Okay. Well, we are going to make it
23 easier over the lunch hour, we are going to take you
24 into custody so there's no issue with you going and
25 coming. So, we are going to take you into custody.

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 I'm revoking your bond at this time. And we will feed
2 you over at the jail and we will have you back over
3 here at 1:15 and ready to go so I don't have to worry
4 about you being here. Okay?

5 (Lunch recess.)

6 THE COURT: All right. You have some motions, and
7 I think that probably the best way to go about this is
8 to talk through it a little bit. I understand what
9 your motions are. Obviously in preparing the jury
10 charge I have looked at that as well. But let's first
11 talk about your directed verdict motions and as to each
12 of the charges. So, let's go ahead and start right
13 now. And I think that maybe the best way is I am going
14 to help you make your directed verdict motion and you
15 are going to tell me why I can't.

16 But the first one that I have is that he's charged
17 with assault and battery of a high and aggravated
18 nature. The elements are that the person unlawfully
19 injures another person and the act is accomplished by
20 means likely to produce death or great bodily injury.
21 Great bodily injury means bodily injury which causes
22 substantial risk of death, or which causes serious
23 permanent disfigurement or protractive loss or
24 impairment of the function of a bodily member or organ.

25 I have got to tell you, my problem in this whole

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 case is this: She gave her statement to the police.
2 That is what I asked you all for. And in it it says,
3 He hit me on -- or in the face and wouldn't let me go.
4 And when I tried to get away he held me on the sink and
5 put the gun to my head. Okay, so if we are relying on
6 the first statement, that is put the gun to my head,
7 that is what I'm working with, based on appearances.
8 The problem is this: Great bodily injury did not occur
9 in this case as defined by the statute so we all know,
10 so that can be taken off of the table.

11 Because the statute goes clearly to define -- and
12 I can tell you, I don't even think that moderate bodily
13 injury in this case meets the definition, however, I do
14 think that the threat of it does bring some charge for
15 ABHAN or, I am sorry, for assault and battery. I can
16 just tell you, having read through the whole thing what
17 I think this is, and Ms. Gibbes, you tell me, I think
18 assault and battery of a high and aggravated nature,
19 the elements just aren't met here. Not by her
20 testimony either way, either on the stand here today or
21 in her previous statement.

22 So, I think ABHAN is gone because she didn't
23 suffer -- I don't even think that assault and battery
24 in the first degree is appropriate in this case.
25 Again, that's where a person commits the offense of

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 assault and battery in the first degree if the person
2 unlawfully offers or attempts to injure another person
3 with the present ability to do so and the act either is
4 accomplished by means likely to produce death or great
5 bodily injury. And that would be the only one that
6 would apply. And then it talks about great bodily
7 injury again, which is defined as substantial risk of
8 death which causes serious permanent disfigurement or
9 protracted loss or impairment of the function of a
10 bodily member of an organ. I don't think that that
11 applies either.

12 I mean, I can tell you I think if either one of
13 the situations -- I think what we are down to, and this
14 is what I'm looking at. If you look at assault and
15 battery in the second degree it says, A person commits
16 an offense of assault and battery in the second degree
17 if they injure another person or offer or attempt to
18 injure another person with the present ability to do so
19 and either moderate bodily injury to another results,
20 which under the definition it doesn't because she never
21 had any treatment.

22 And the statute goes on to define moderate bodily
23 injury. It says, Does not include scratches, cuts,
24 abrasions, bruises, burns, splinters, or any other
25 minor injuries that do not ordinarily require extensive

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 medical care. So, again, I don't even think you can
2 meet the definition. I think the offer to attempt is
3 appropriate, but I don't think that it resulted in even
4 moderate bodily injury according to the photographs and
5 what I saw as far as an abrasion is concerned.

6 So, in my mind the question becomes this: I think
7 that it's appropriate this jury believes that he held a
8 gun to her head, which is what her written statement
9 says. He held a gun to her head, that it could either
10 be assault and battery in the second degree, assault
11 and battery in the third degree as a lesser included.
12 But that is it. Now, if that's the case that takes
13 possession of a weapon during the commission of a
14 violent crime out the window because there's no violent
15 crime that he could be guilty of. And then it does,
16 though, still put out there the pointing and presenting
17 a firearm. So, but then again, the jury would have to
18 believe that he held a gun to her head or presented it.
19 Okay.

20 So, Ms. Gibbes, you kind of see where I am.

21 MS. GIBBES: And I agree with you. And what I
22 come down to is, I think, from the testimony and her
23 statement she said, He hit me.

24 THE COURT: And we can clearly see -- yeah.

25 MS. GIBBES: So, I mean, obviously, the

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 pictures -- I mean, he had trouble finding injuries on
2 the pictures.

3 THE COURT: I know.

4 MS. GIBBES: And my problem with assault and
5 battery second is, as you said, doesn't meet moderate
6 bodily injury.

7 THE COURT: But it says it is moderate bodily
8 injury occurred or moderate bodily injury could have
9 resulted. And just because it didn't result, I mean,
10 it could have resulted. I mean, he is a big strong
11 man. I mean, as far as the testimony is concerned he
12 hits her, regardless if it was an open hand. I don't
13 know if he pistol whipped her. I don't know what he
14 did. But what we heard is that he hit her. So,
15 moderate bodily injury could have occurred. It didn't
16 but it could have. So, that is where my question is.

17 MS. GIBBES: I'm sorry.

18 THE COURT: Go ahead.

19 MS. GIBBES: And I guess they made the effort to
20 obviously charge him with the pointing and presenting,
21 which involves a weapon.

22 THE COURT: Right.

23 MS. GIBBES: I think that that deals with a weapon
24 where he says -- she says, He hit me and then he
25 pointed a gun at me.

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 THE COURT: Right.

2 MS. GIBBES: To me I think that the actual injury
3 or the cause or the offer, or what could have happened,
4 to me has nothing to do with the gun. I don't think we
5 have any testimony -- one, we didn't find a gun. Two,
6 we don't know if it was loaded. Three, we --

7 THE COURT: It doesn't matter if it's loaded or
8 not.

9 MS. GIBBES: I mean, there is just the ability to
10 cause injury.

11 THE COURT: The pointing of the firearm. I mean,
12 I think that is more than appropriate in this case.
13 It's unlawful for a person to present or point at
14 another person a loaded or unloaded firearm. So, it
15 doesn't even have to be loaded. And present means to
16 offer to view in a threatening manner or to show in a
17 threatening manner. That is the definition of present.

18 So, I think that the facts and circumstances
19 clearly warrant that as a charge. To me there's no
20 issue as far as that is concerned. The issue is
21 whether or not we are charging assault and battery
22 second degree and assault and battery third degree.
23 There's no question assault and battery third degree is
24 appropriate in this case. The question is whether or
25 not assault and battery in the second degree is

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 appropriate. So, help me out.

2 MS. FOWLER: And, Your Honor, respectfully, I
3 would point to -- I would ask that you charge assault
4 and battery in the first degree. I understand if you
5 don't, but I believe that there was testimony from
6 Deputy Madison that she did have injuries. I
7 understand that the victim got up here and downplayed
8 her injuries, but she obviously when law enforcement
9 responded pointed out to law enforcement that she had
10 injuries to her face, otherwise he would have never
11 taken pictures of her face.

12 THE COURT: The problem is it requires great
13 bodily injury, though, for assault and battery in the
14 first degree.

15 MS. FOWLER: I think that it requires that great
16 bodily injury could have occurred. It says, means
17 likely to have produced death or great bodily injury.
18 And it is the State's position that this was a
19 continuous assault, that he punched her in the head and
20 then made the death threats. So, both of these coupled
21 together, I think we have the injury of him punching
22 her in the head and then immediately thereafter where
23 he held a gun to her head and made the threats.

24 MS. GIBBES: I mean.

25 THE COURT: Yes.

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 MS. GIBBES: I mean, obviously the testimony -- I
2 mean, obviously she -- you know, she's testifying that
3 he hit her. She even said on the stand, she didn't say
4 punched, she didn't say pistol whipped. She said, He
5 hit me and pointed a gun at me. To me that is a
6 separate -- I don't think that the gun should be
7 included in the attempted assault to be used, because
8 under A&B first says, Offer or attempt to injure with
9 the present ability to do so. I haven't heard any
10 testimony besides the fact that there was a gun, that
11 there was any ability -- I mean, again, I think that it
12 matters if it was loaded or not. We don't know
13 anything about --

14 THE COURT: He could have shot her. I mean, that
15 gets me past this hurdle.

16 MS. GIBBES: We don't know if there's ammo. We
17 don't know enough about the gun.

18 THE COURT: It doesn't matter, he can also pistol
19 whip her with it and that would cause or have the
20 ability to cause serious bodily injury or great bodily
21 injury.

22 MS. GIBBES: I just feel like it's not just one
23 combined gun and assault and pointing and presenting.
24 I mean, I think that there's a pointing and presenting
25 and an assault and battery third degree. She testified

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 he hit her, he hit me and he pointed a gun at me. I
2 think that they are separate.

3 THE COURT: I can tell you, again, in this case, I
4 see it as assault and battery in the second degree,
5 assault and battery in the third degree, and pointing
6 and presenting. That is how I see this case. That is
7 what I think it is. I think that's the appropriate
8 jury charge. I think taking her testimony at its very
9 best on the stand, was that he pointed a gun at me and
10 he hit me. That is -- I mean, those are the two things
11 that we know that she said. And she said those on the
12 stand.

13 And the other worry I have, again, you have to be
14 very careful. I mean, if you do get a conviction on
15 this you want to keep it. And I mean you have got her
16 recanting on the stand, which is something obviously
17 you have to deal with and address. But that's just --
18 that is what I see. I mean, that is what I think is
19 appropriate in this case. So, again, I just -- I don't
20 see it.

21 Talk to me, Ms. Gibbs, you talk about them being
22 two separate offenses. I just want to make sure that
23 he's not being punished twice for the same crime. If
24 they do find that he's charged -- I am sorry, I mean, I
25 know that they are two separate offenses and obviously

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 they had different elements. So I think technically
2 they can charge him with both. I guess my question is,
3 the pointing and presenting are the same exact facts
4 that make him allegedly guilty of the assault and
5 battery in the first degree. Because it would be
6 offers or attempts to injure another person with the
7 present ability to do so. And that is accomplished by
8 means likely to produce death, which would be the gun,
9 which would be the obviousness of the gun, which could
10 bring about the death.

11 MS. GIBBES: I guess I would just argue that, if
12 the jury is given instructions or they are charged on
13 something that is not assault and battery in the third
14 degree, that obviously leads to using a gun as one of
15 the elements, I would say that he can't be found guilty
16 of pointing and presenting. If they did -- I mean, if
17 we are going -- I mean, it sounds like we are going --
18 the testimony at this point is, you know, we don't know
19 enough about the gun. I mean, she got on the stand and
20 said, basically it was a separate, the threats and the
21 gun was a separate offense.

22 So I guess that I would be concerned if they are
23 told that assault and battery -- if they are charged
24 with anything but assault and battery third degree and
25 that assault is accomplished by whatever means

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 involving the gun, I agree I think, how can they find
2 him guilty of pointing and presenting if they are using
3 the gun as part of the assault.

4 THE COURT: The problem is that they are separate
5 elements. You can charge someone with an offense as
6 long as there are separate elements for each offense,
7 if one is not encapsulate -- even one out of three is
8 not in it, it can be charged as a separate offense and
9 a second offense.

10 MS. GIBBES: I think that's maybe why I'm arguing
11 assault and battery third degree, because that is just
12 hitting. I mean, hitting is assault and battery third
13 degree. And pointing and presenting a firearm, to me
14 it is separate the way that it was argued. I mean, the
15 way that the evidence and the testimony -- so, that is
16 my position is it is assault and battery third degree
17 and pointing and presenting.

18 THE COURT: I can tell you what I'm concerned
19 about, and I'll just tell the State this right now, if
20 I charge the assault and battery in the second degree I
21 am going to have to charge the definition of moderate
22 bodily injury, which of course does not include, as we
23 said, among those things, bruises, which is what you
24 showed to the jury. So, it is the idea -- if you are
25 arguing that only -- not even moderate bodily injury

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 occurred, but it could have is how you are going to try
2 to show that his striking her and threatening her with
3 a gun meets the elements of assault and battery second
4 degree.

5 MS. FOWLER: Right. To be honest, Your Honor, we
6 have always gone forward on the position that this was
7 an assault with the likelihood of death or great bodily
8 injury because he had a gun and made death threats. I
9 would agree, this is not a moderate bodily injury,
10 although there's an offer or attempt. He did punch her
11 in the face. But it's always been the State's position
12 that there was the threat of death so there was the
13 likelihood.

14 THE COURT: I mean, in her statement she said that
15 he would shout the F word out of me if I call the
16 police. I mean, it doesn't even say shoot, it says
17 shout. It is S-H-O-U. I am not quite sure what that
18 means, if she doesn't know how to spell shoot but --

19 MS. FOWLER: I think that she doesn't know how to
20 spell shoot because she told law enforcement shoot.

21 THE COURT: But we are all guessing here and that
22 is a problem. The other thing that I worry about is
23 that she did recant her statement. I mean, the jury
24 has the ability to decide on the first statement but --

25 MS. FOWLER: I don't think that she's recanted,

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 because she has always been consistent that there was a
2 gun. I mean, while she might have downplayed her
3 injuries, she was consistent that he held a gun to her
4 head.

5 THE COURT: All right. This is what I'm going to
6 do. I'm going to charge assault and battery in the
7 second degree. I'm going to charge assault and battery
8 in the third degree and I'm going to charge pointing
9 and presenting.

10 So, I'm granting the directed verdict motion on
11 assault and battery of a high and aggravated nature,
12 assault and battery in the first degree and the
13 possession of a weapon during the commission of a
14 violent crime. Okay?

15 So, that is how we are going to go forward and
16 let's just see what the jury does. Okay? Okay.

17 All right. Any other specific requests to charge?

18 (No response.)

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

20 THE COURT: I mean, I can tell you, I do think
21 that it's appropriate to put inconsistent statement, as
22 far as charge, because even Mr. Washington changed his
23 statement or whatever he said. So, I am going to
24 charge that as well. Other than that, I don't think
25 that there's anything, you know, extraordinary in this

CROSS EXAMINATION OF ERIC CALENDINE BY MS. GIBBES

1 case. Okay. So, do you know what you are doing? So
2 you know what we are doing? So, what we are putting in
3 there and just putting as a lesser, assault and battery
4 in the second degree and assault and battery in the
5 third degree and then pointing and presenting. And
6 here is that -- actually, if you want to, Julia, just
7 do the rest of the charge and don't put in -- actually
8 I need you to type it in. While they are doing their
9 closing arguments you can stick the other in, assault
10 and battery portion, or can you put it in pretty
11 easily?

12 (Off-the-record discussion.)

13 THE COURT: We need to talk to your client about
14 whether or not he wishes to testify. Mr. Mitchell,
15 stand up.

16 Thereupon,

17 SHARKEE MITCHELL

18 was called as a witness, having been first duly sworn,
19 was examined and testified as follows.

20 THE COURT: All right. Mr. Mitchell, you need to
21 keep standing. Mr. Mitchell, it's come to that point
22 in the trial where the State has rested its case where
23 you may present your defense. The fifth amendment to
24 the Constitution states that no person is required in a
25 criminal case to be a witness against themselves. What

RIGHTS GIVEN TO SHARKEE MITCHELL BY THE COURT

1 you need to understand is that you are not required to
2 testify in this case. But, of course, you can choose
3 to testify. I just need you to know that if you do
4 choose to testify you can be cross-examined and
5 questioned on any issue that I deem relevant to this
6 case. For instance, the circumstances and what
7 surrounds it. Additionally I haven't been through your
8 record so I don't know, but I trust that Ms. Gibbes has
9 and you understand that if you have any crimes that
10 were punishable by more than a year during the last ten
11 years, or if you have a crime of dishonesty or moral
12 turpitude the State can also ask you about that. So, I
13 want to make sure that you understand that you have the
14 right to testify or not to testify. But understanding,
15 again, if you choose to testify you will be questioned
16 by the State, again, about anything that I think is
17 relevant. Do you understand all of that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Have you had an opportunity to talk to
20 Ms. Gibbes about whether or not you wish to testify?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Do you want to testify?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Is that your choice?

25 THE DEFENDANT: Yes, ma'am.

RIGHTS GIVEN TO SHARKEE MITCHELL BY THE COURT

1 THE COURT: All right. I find that it's been
2 intelligently made. I appreciate it. Does the Defense
3 have any other witnesses to put up?

4 MS. GIBBES: No, Your Honor, the Defense will rest
5 at the appropriate time.

6 THE COURT: Okay. All right. Is the State ready
7 to go?

8 MS. FOWLER: Yes, Your Honor.

9 THE COURT: IS the Defense ready to go?

10 MS. GIBBES: Yes, Your Honor.

11 THE COURT: All ready to go. Bring the jury in
12 and you can do your closing arguments. And if I don't
13 have the charge and verdict form by the time that you
14 all are done we will take a break so I can get it.
15 Okay?

16 (Pause.)

17 THE COURT: Mr. Mitchell, did you get some lunch?

18 DETENTION CENTER PERSONNEL: Yes, ma'am.

19 THE COURT: Thank you. I appreciate it.

20 THE BAILIFF: The jury is entering the courtroom,
21 Your Honor.

22 THE COURT: Thank you.

23 (The jury enters the courtroom at 1:35 p.m.)

24 THE COURT: Ms. Gibbes, do you want to go ahead
25 and rest for the record?

RIGHTS GIVEN TO SHARKEE MITCHELL BY THE COURT

1 MS. GIBBES: Thank you, Your Honor. The Defense
2 will rest at this time.

3 THE COURT: Ladies and gentlemen, and we are just
4 going to go ahead and note for the record that you will
5 renew the same prior objections for the record and move
6 on and I will note that they have been preserved. All
7 right, Ms. Gibbs?

8 MS. GIBBES: Yes, Your Honor.

9 THE COURT: Ladies and gentlemen, what we have
10 left to do now is hear closing arguments from the
11 attorneys and I need to charge you on the law that is
12 applicable to this case. All right? I will also tell
13 you because the State -- actually, you get the last
14 argument, correct?

15 MS. GIBBES: Yes.

16 THE COURT: Okay, so we are going to go ahead and
17 have you go ahead and open, Ms. Fowler, thank you.

18 OPENING STATEMENT

19 MS. FOWLER: Thank you, Your Honor. May it please
20 the Court. Members of the jury, at the start of this
21 trial I told you that we were here because of what
22 Sharkee Mitchell, the Defendant, did on June 27th,
23 2017. On that day he showed a gun to his aunt. He
24 held that gun to his aunt's head. His own flesh and
25 blood. He hit her in the head. She ran outside and

RIGHTS GIVEN TO SHARKEE MITCHELL BY THE COURT

1 asked her cousin to call 911.

2 Now, you heard from Beverly today. You saw her
3 cry on the stand and you saw her hang her head. You
4 heard her say that she was scared. You heard her say
5 that Sharkee was the one that held a gun to her head.
6 You also heard her say that she didn't want to be here
7 today. Sharkee was her nephew, he is her family.

8 She may have given a fake name in a traffic stop a
9 decade ago, but that was to protect herself, get
10 herself out of trouble. What motive does she have to
11 lie now? She didn't even want to be here today. Now,
12 she was a little -- she wavered a little bit about her
13 injuries, but she showed those injuries to Deputy
14 Madison on that day. She said that her nephew hit her
15 in the head, and he took pictures of that. Now, what
16 she's constant about is the gun. He showed her a gun
17 and he pointed it at her head. She's also always been
18 consistent about the gun.

19 You also heard from Thomas Washington. He told
20 police that he didn't see anything because he didn't
21 see the attack happen, but what he did see was Beverly
22 Heyward minutes after the attack happened. He saw that
23 she was hysterical, that she was crying, that she was
24 upset. She said, Sharkee was the one who attacked me.
25 Call 911. And you heard that he doesn't like Sharkee.

RIGHTS GIVEN TO SHARKEE MITCHELL BY THE COURT

1 He doesn't like Sharkee because Sharkee pointed a gun
2 at his cousin's head. What motive does Thomas have to
3 lie?

4 The Defense kept talking about this theory about
5 fighting over property. Thomas has a house, that is
6 ridiculous. He has somewhere to live. And you heard
7 from Deputy Madison. You saw the injuries to the
8 victim's face. And you heard what Beverly Heyward told
9 him that day. Now, she may have downplayed what
10 happened on that day today, but she told Deputy Madison
11 what happened that day.

12 He said that she was upset, that she was crying.
13 And even Investigator Calendine said the next day she
14 was still terrified of Sharkee, and that was a day
15 later. What motive did Deputy Madison and Investigator
16 Calendine have? They didn't get up there and lie.
17 What motive do they have?

18 Now, at this point the State is going forward on
19 assault and battery in the second degree. And what
20 assault and battery in the second degree requires is an
21 offer or attempt to commit moderate bodily injury. And
22 the statute requires moderate bodily injury is -- and
23 I'll read straight from the statute although the Judge
24 will charge you exactly on what it is -- is a prolonged
25 loss of consciousness or temporary or moderate

RIGHTS GIVEN TO SHARKEE MITCHELL BY THE COURT

1 disfigurement that requires medical treatment, or it's
2 the offer or attempt for that to happen.

3 Now, she didn't have moderate bodily injury, but
4 we don't have to prove that. We just have to prove
5 that that could have happened. He held a gun to her
6 head and he hit her. She could have lost
7 consciousness, she could have had moderate bodily
8 injury. That's all that we have to prove.

9 Sharkee is also charged with pointing and
10 presenting. And what that requires is that he showed
11 the victim a loaded or unloaded gun. And what the
12 victim sat up here and said today, what she's been
13 consistent about the entire time, is that Sharkee
14 pointed a gun at her. That is all that the statute
15 requires. Even went a step further and held that gun
16 to her head.

17 Now, Members of the Jury, I want you to remember
18 the statement that Ms. Heyward gave that day when the
19 attack was still fresh in her mind. Now, this attack
20 happened on June 27th, 2017. A lot of time has
21 happened since then, but she was terrified that day.
22 She was scared for her life. She even cried when she
23 remembered what happened that day. And I want you to
24 remember how Thomas Washington described her that day.
25 She was hysterical. She was upset. She didn't want to

RIGHTS GIVEN TO SHARKEE MITCHELL BY THE COURT

1 go back to the house because she was terrified.

2 And I want you to remember all of that when you go
3 back into the jury room and think back to that day and
4 find Sharkee Mitchell guilty of assault and battery in
5 the second degree and pointing and presenting a
6 firearm. Thank you.

7 THE COURT: Thank you.

8 MS. GIBBES: May it please the Court.

9 THE COURT: Yes, ma'am.

10 CLOSING ARGUMENT BY THE DEFENSE

11 MS. GIBBES: Okay. I'm going to be brief because
12 this was a really quick trial. You haven't been here
13 very long. You haven't heard much evidence at all.
14 You heard from two people who are not officers. That
15 is Beverly Heyward, the victim in this case, and Thomas
16 Washington who called 911. They are related and they
17 are related to Sharkee Mitchell.

18 As I said, there's some family dynamics, there's
19 some drama that, you know, that is going on. But the
20 State must prove beyond a reasonable doubt that Sharkee
21 Mitchell assaulted and pointed a gun and the person who
22 should care the most was Beverly Heyward. She told you
23 there are things that you don't know. It didn't happen
24 like she said it happened or how they are saying it
25 happened. She doesn't want to be there.

CLOSING ARGUMENT BY THE DEFENSE

1 And just the fact that she said, There's more to
2 the story or, I mean, going back and forth, like there
3 are things that are being portrayed that didn't really
4 happen. That is reasonable doubt. That alone right
5 there is enough to say, We don't know what happened.
6 You were not there.

7 Thomas Washington, he lied. I mean, he straight
8 up lied to y'all. He got on that stand, put his hand
9 on the Bible, and lied to your face. He said out of
10 the blue when the whole time that he was interviewed he
11 didn't say anything. Nobody saw Sharkee. There was no
12 proof that Sharkee was at that house during that time,
13 during the stand-off for hours when police, they would
14 never say they lied. They got there as soon as they
15 could under the impression there was ongoing emergency,
16 that there's a possible person with a gun holdup in a
17 house on Marshland Road in the middle of the day with
18 traffic, pedestrians, cars, and bull horns, Sharkee
19 Mitchell come out of the house, Sharkee Mitchell, or we
20 will put the dogs in.

21 He was not there. They didn't find any guns.
22 They didn't find any drugs. They didn't find -- did
23 you hear any evidence of the scuffle or a fight? Are
24 there any pictures from the house? That doesn't make
25 any sense. There's no proof that it happened at all.

CLOSING ARGUMENT BY THE DEFENSE

1 And Thomas Washington, the whole time he was on
2 video and audio, you hear him say, I hate Sharkee, I
3 hope that you kill him. I hope that you shoot him. I
4 saw nothing, he said that. I saw nothing. Today he
5 could tell that maybe this prosecution isn't going the
6 way that he wants it to go and so he got up there today
7 and just made it up, Oh, by the way, I saw Sharkee with
8 a gun. That was never in evidence, never, whatsoever.
9 Never the whole time, not one officer saw Sharkee
10 there. There's no proof at all.

11 All you have is Beverly's statement and she told
12 you that it didn't happen the way that they say it
13 happened. This is an example of a prosecution train
14 that everybody wants off. The victim doesn't want to
15 be here. She doesn't want to prosecute. They are
16 trying to take away his liberties and charge him with a
17 serious offense and they can't prove it.

18 But all I would say is just, Think about
19 reasonable doubt. If you have listened to all of this
20 and you are like, You know what, I don't know what is
21 going on. Who didn't we hear from? Why didn't they
22 interview the neighbors? Wouldn't somebody have seen
23 Sharkee? He is a pretty big dude, running around
24 Marshland Road in the middle of the day with a gun.
25 When they pinged the phone that belonged to him

CLOSING ARGUMENT BY THE DEFENSE

1 hopefully, they had an address. Nobody went there.

2 And they didn't take pictures except for Ms.
3 Heyward's face. And when the deputy got up there he
4 said he couldn't even find the injuries. He said he
5 looked at those pictures and he was like, yeah, you
6 know. I mean, we don't know what happened. We just
7 don't know. We don't know enough for y'all to be
8 firmly convinced that he committed a crime this
9 serious.

10 Y'all have been really attentive. It is a short
11 case. And I would just ask you that you think about
12 it, think about what you heard. If you don't feel
13 right about convicting somebody with this evidence and
14 lack of evidence, I'm going to ask you to hold the
15 State of South Carolina to their burden and find
16 Sharkee Mitchell guilty -- not guilty. Not guilty of
17 any of these crimes. Thank you.

18 THE COURT: Thank you, Ms. Gibbes.

19 Ladies and gentlemen of the jury, we are going to
20 take a very brief recess before I charge you. And do
21 not discuss this case, it would be inappropriate to do
22 so. And I will bring you right back out in about ten
23 minutes or so and charge you and let you begin your
24 deliberations.

25 THE BAILIFF: Leave your notebooks and follow me.

CLOSING ARGUMENT BY THE DEFENSE

1 (The jury exits the courtroom at 1:50 p.m.)

2 THE COURT: I'm waiting on a verdict form. And I
3 will get it when it's printed. Just to let anyone out
4 here know, when I charge the jury they actually lock
5 the back courtroom doors, so if you try to go out they
6 will tell you to sit down. So, I just wanted you to
7 know that and not be scared or claustrophobic. I have
8 had people panic and they are locked in.

9 So, is the State ready?

10 MS. FOWLER: The State is ready, Your Honor.

11 THE COURT: Is the Defense ready?

12 MS. GIBBES: Yes, Your Honor.

13 THE COURT: All right. Let's bring the jury out.

14 (The jury enters the courtroom.)

15 THE COURT: Mr. Jenkins, I'll appoint you as the
16 foreperson of the jury for the trial of this case. The
17 foreperson has no more say than anyone else. When I
18 send this case to you for your deliberations you are
19 going to receive a verdict form, you are going to fill
20 the verdict form out and sign it when you are done and
21 date it and you will be the one that presents that
22 verdict back to me at the end of the case, all right.
23 And you are being appointed by virtue of sitting in the
24 foreperson's seat. Okay?

25 So, I appreciate you serving as the foreperson for

CLOSING ARGUMENT BY THE DEFENSE

1 me. And, sir, if there is anything that this jury
2 requires while you are deliberating, whether it be
3 food, if you have a question, or you want to hear
4 certain testimony played back, you can send me a note
5 and sign it with your name, sir, and the jury's wishes
6 of what they would like, all right.

7 JURY CHARGE

8 THE COURT: So, ladies and gentlemen at this time
9 I will thank you. You have followed very patiently and
10 listened very attentively to the presentation of the
11 evidence in this case, and again I want to thank you
12 for that.

13 It now becomes the duty of the trial judge under
14 the Constitution of this state to charge and instruct
15 you on the law that is applicable to this case. And it
16 is your duty as jurors to accept and apply the law as I
17 will now give it to you.

18 As jurors it is your exclusive duty to decide all
19 the issues of fact in this case. You must determine
20 the effect, the value, the weight, and the truth of the
21 evidence. Both the State of South Carolina and the
22 Defendant, Mr. Mitchell, have the right to expect that
23 you will carefully consider and evaluate the evidence
24 and apply the law of the case to the evidence. And by
25 doing that, both the State and the Defendant, Mr.

JURY CHARGE

1 Mitchell, will receive a fair and impartial trial in
2 this matter.

3 Now, ladies and gentlemen, the State of South
4 Carolina, by the bills of indictment in this case with
5 what we have left, charges the Defendant Sharkee
6 Mitchell with assault and battery in the second degree,
7 the lesser included of assault and battery in the third
8 degree, and a separate charge of pointing and
9 presenting a firearm.

10 Now, ladies and gentlemen, I remind you the fact
11 that the Defendant was arrested, charged, and indicted
12 in this case is not evidence in this case and cannot be
13 considered by you as evidence of guilt in this case,
14 nor does it create any presumption or inference of
15 guilt.

16 An indictment is simply the formal written
17 instrument which contains the charge made against the
18 Defendant. It is the formal documents by which a case
19 is brought into the courtroom.

20 Now, the Defendant has pled not guilty to these
21 indictments, and that plea puts the burden on the State
22 to prove the Defendant guilty beyond a reasonable
23 doubt. Ladies and gentlemen, a person charged with
24 committing a criminal offense in South Carolina is
25 never required to prove himself innocent.

JURY CHARGE

1 I charge you that it is an important rule of law
2 that the Defendant in a criminal trial, no matter what
3 the seriousness of the charges may be, will always be
4 presumed innocent of the crimes for which the
5 indictment was issued unless guilt has been proven by
6 evidence satisfying you, the jury, of his guilt beyond
7 a reasonable doubt.

8 Now, this presumption of innocence does not end
9 when you begin your deliberations, but it accompanies a
10 Defendant throughout the trial and remains with him
11 until you the jury reach a verdict of guilt based on
12 evidence satisfying you of that guilt beyond a
13 reasonable doubt.

14 Ladies and gentlemen, this presumption of
15 innocence is like a robe of righteousness placed about
16 the shoulders of a Defendant, and it remains with him
17 until it has been stripped away by evidence satisfying
18 you of the Defendant's guilt beyond a reasonable doubt.

19 So, what is reasonable doubt in the law?
20 Reasonable doubt is the kind of doubt that would cause
21 a reasonable person to hesitate to act in their most
22 important decisions. The State has the burden of
23 proving the Defendant guilty beyond a reasonable doubt.
24 And, again, the term "reasonable doubt" must be given
25 its plain and ordinary meaning.

JURY CHARGE

1 Again, to the extent that I may define it for you,
2 again, a reasonable doubt is the kind of doubt that
3 would cause a reasonable person to hesitate to act in
4 the most important of their personal decisions. The
5 Defendant in this case is entitled to every reasonable
6 doubt arising in this case.

7 If, upon any issue of fact essential to a
8 conviction you have a reasonable doubt as to how that
9 issue should be resolved, you must resolve that
10 reasonable doubt in favor of the Defendant.

11 Some of you may have served as jurors in civil
12 cases before where you were told that it was only
13 necessary to prove that a fact is more likely true than
14 not true. We call that by the greater weight or the
15 preponderance of the evidence.

16 Ladies and gentlemen, in criminal cases the
17 State's proof must be more powerful than that. It must
18 be beyond a reasonable doubt. Suspicion, no matter how
19 strong, is insufficient to convict a person charged
20 with a crime. That the facts and circumstances
21 presented may seem suspicious, and a Defendant's guilt
22 seem probable, this is not sufficient in the law to
23 convict. Proof beyond a reasonable doubt is proof that
24 leaves you firmly convinced of a Defendant's guilt.

25 Now, there are very few things in this world that

JURY CHARGE

1 we know with absolute certainty. And in criminal cases
2 the law does not require proof that overcomes every
3 possible doubt. If based on your consideration of the
4 evidence you are firmly convinced that the Defendant is
5 guilty of the crime charged, you must find the
6 Defendant guilty.

7 If, on the other hand, you think there is a real
8 possibility that the Defendant is not guilty, you must
9 give the Defendant the benefit of the doubt and find
10 him not guilty.

11 Now, I remind you that during this trial you and I
12 have certain duties to perform. It is my
13 responsibility to preside over the trial of this case,
14 and I also have the duty to rule on the admissibility
15 of the evidence that's offered during this trial. You
16 are to consider only the competent evidence that's
17 before you. You are to consider only the testimony
18 which was presented from the witness stand and any
19 other exhibits that were entered in this case.

20 I have the additional duty to charge you the law
21 that's applicable to this case. I'm the sole judge of
22 the law. It's your duty as jurors to accept and apply
23 the law as I now state it to you.

24 If you have any idea as to what you think the law
25 ought to be and it does not agree with what I now tell

JURY CHARGE

1 you the law is, you must abandon this idea because you
2 are sworn to accept the law and apply it exactly as I
3 state it to you.

4 Now, in every case tried in this Court before a
5 jury, the jury becomes the sole and exclusive judge of
6 the facts. A trial judge cannot intimate, comment on,
7 or make any statement to a trial jury about the facts
8 in a case. And since you, the jury, are the sole judge
9 of the facts in this case, you are not to infer from
10 what I have said during the progress of this trial in
11 ruling upon the admissibility of evidence or otherwise,
12 or anything that I now say to you during the course of
13 this instruction, that I have an opinion about the
14 facts in this case.

15 The law does not allow me to have an opinion about
16 the facts in this case. Again, this is a matter solely
17 for you, the jury, to determine.

18 Now, ladies and gentlemen, I have permitted you to
19 take notes during the trial. Please understand that
20 your notes should only be used as aids to your memory
21 and should not be allowed to take precedence over your
22 independent memory of facts. Each person's notes are
23 for their own personal use in refreshing recollection
24 of the evidence. When in deliberations at the end of
25 the case you are not to rely on the recollection of a

JURY CHARGE

1 juror who took notes about the testimony of a witness
2 solely because the juror took notes. And you should
3 not be unduly influenced by the notes of other jurors.
4 As we all know, notes can be wrong. Notes are not
5 entitled to any greater weight than each juror's memory
6 of the evidence.

7 Those jurors who do not take notes should rely on
8 their independent recollection of the evidence and
9 should not be influenced by the fact that another juror
10 has taken notes. I remind you again, every word spoken
11 in this courtroom is not only taken down but it is
12 being audio recorded. Ladies and gentlemen, if you
13 need certain testimony played back, I can bring you
14 back in the courtroom and replay that witness'
15 testimony. The only thing that I need to let you know
16 is that I am required to play that entire witness'
17 testimony. In other words, the direct exam, the cross,
18 any redirect, any recross.

19 Now, there are two types of evidence which are
20 typically presented during a trial, and that is direct
21 evidence and circumstantial evidence. Direct evidence
22 is testimony of a person who claims to have an actual
23 knowledge of a fact, such as an eyewitness. It is
24 evidence which immediately establishes a main fact to
25 be proven. Circumstantial evidence is proof of a chain

JURY CHARGE

1 of facts and circumstances indicating the existence of
2 a fact. It is evidence which immediately establishes
3 collateral facts on which the criminal act may be
4 inferred.

5 Circumstantial evidence is based on inference and
6 not on personal knowledge or observation. Crimes may
7 be proven by circumstantial evidence. The law makes no
8 distinction between the weight or value to be given to
9 either direct or circumstantial evidence. However, to
10 the extent the State relies on circumstantial evidence,
11 all of the circumstances must be consistent with each
12 other, and when taken together, point conclusively to
13 the guilt of the accused beyond a reasonable doubt.

14 If those circumstances merely portray a
15 Defendant's behavior as suspicious, the proof has
16 failed. The State has the burden of proving a
17 Defendant guilty beyond a reasonable doubt. And this
18 burden rests with the State regardless of whether the
19 State relies on direct evidence, circumstantial
20 evidence, or some combination of the two.

21 Now, as a jury it is your duty to determine the
22 credibility of witnesses who have testified in this
23 case. Credibility simply means believability. It is
24 your duty as jurors to analyze and to evaluate the
25 evidence and determine which evidence convinces you of

JURY CHARGE

1 its truth.

2 In determining the believability of witnesses who
3 have testified in this case, you may believe one
4 witness over several witnesses or just the opposite.
5 You may believe a part of the testimony of a witness
6 and reject the testimony of that same witness. You may
7 believe the testimony of a witness in its entirety or,
8 again, reject it. You may consider whether a witness
9 exhibited to you any interest, bias, prejudice, or
10 other motive in this case. You may also consider the
11 appearance and manner of a witness while on the witness
12 stand.

13 Now, there has been evidence presented that
14 witnesses may have made prior statement which are not
15 consistent with the witness' present testimony. You
16 may use this evidence to decide whether to believe the
17 witness. You may also use evidence of the earlier
18 contradictory statements to determine the truth of
19 those statements. It's up to you to decide whether to
20 believe the earlier statement or the testimony given at
21 trial. If a witness is shown to have knowingly
22 testified untruthfully concerning any material matter,
23 you may consider this in determining whether to trust
24 the witness' testimony as to other matters. You may
25 reject all testimony of that witness or give all or

JURY CHARGE

1 part of the testimony the weight that you think it
2 deserves.

3 Now, I instruct and emphasize the fact that the
4 Defendant in this case, Mr. Mitchell, did not testify
5 is not a factor to be considered by you in any way in
6 your deliberation and in your consideration of the
7 question of guilt or innocence of the Defendant. It
8 must not be considered by you in any manner whatsoever.

9 A Defendant has the constitutional right to remain
10 silent. And the assertion of this right must not be
11 considered by you in your deliberations. I repeat,
12 under your oath you are to draw no conclusion
13 whatsoever from the fact that the Defendant in this
14 case did not testify. The fact that the Defendant did
15 not testify should not even be discussed in the jury
16 room.

17 The burden of proof, as I have stated, is on the
18 State. The Defendant is not required to prove himself
19 innocent. And the burden of proof remains on the State
20 to prove guilt beyond a reasonable doubt.

21 Now, ladies and gentlemen, there are two remaining
22 indictments in this case. Each indictment charges a
23 separate and distinct offense. You must decide each
24 indictment separately based on the evidence and the law
25 that is applicable to it. The Defendant may be

JURY CHARGE

1 convicted or acquitted on one or both of the offenses
2 charged. And you will be asked to write a separate
3 verdict of guilty or not guilty for each indictments,
4 which will be two questions.

5 Ladies and gentlemen, to begin, the first charge
6 that you are going to consider as to the Defendant is
7 assault and battery in the second degree. Now, a
8 person commits assault and battery in the second degree
9 if a person unlawfully injures another person or offers
10 or attempts to injure another person with the present
11 ability to do so. And either moderate bodily injury to
12 another person results, or moderate bodily injury to a
13 person could have resulted.

14 Ladies and gentlemen, moderate bodily injury is
15 defined by statute and it says that it means a physical
16 injury that involves prolonged loss of consciousness or
17 that causes temporary or moderate disfigurement, or
18 temporary loss of the function of a bodily member or
19 organ, or injury that requires medical treatment when
20 the treatment requires the use of regional or general
21 anesthesia, or injury that results in a fracture or
22 dislocation. Moderate bodily injury does not include,
23 as defined by statute, one-time treatment or subsequent
24 observation for scratches, cuts, abrasions, bruises
25 burns, splinters, or any other minor injuries that do

JURY CHARGE

1 not ordinarily require extensive medical care. Now,
2 ladies and gentlemen, that is for assault and battery
3 in the second degree.

4 If you find that the State has failed to prove
5 that the Defendant committed Assault and Battery in the
6 second degree, you may then consider whether the State
7 has proved beyond a reasonable doubt that the Defendant
8 committed assault and battery in the third degree,
9 which is a lesser included offense of assault and
10 battery in the second degree. Ladies and gentlemen, a
11 person commits the offense of assault and battery in
12 the third degree if the person unlawfully injures
13 another person, or offers or attempts to injure another
14 person with the present ability to do so.

15 Ladies and gentlemen, also, to the extent that I
16 can define assault and battery for you. An assault
17 would be as if I pulled my hand back and I looked as if
18 I was attempting to strike you. Battery is the actual
19 touching part of it. So that is the definition so you
20 understand assault and battery second degree and third,
21 in total.

22 Lastly, ladies and gentlemen, the Defendant in
23 this case is also charged with pointing and presenting
24 a firearm. The State must prove this charge beyond a
25 reasonable doubt that the Defendant presented or

JURY CHARGE

1 pointed at another person a loaded or unloaded firearm.
2 Ladies and gentlemen, the definition under the Statute
3 of present means to offer to view in a threatening
4 manner or to show in a threatening manner.

5 Now, Mr. Foreperson, members of the jury, I wish
6 to express the hope that each of you are mindful of the
7 importance of your job here today. You're not required
8 very often to serve as jurors, and the proper
9 performance of that duty requires each of you to reach
10 the height of freeing your mind of all improper
11 influences. Please don't get the idea that I'm trying
12 to intimate to you how you should decide this case.
13 Again, as I told you before, under the laws of this
14 state you the jury are the sole judge of all questions
15 of fact. And it would be highly improper for me to
16 influence you in your performance of that duty.

17 However, ladies and gentlemen, as the presiding
18 officer of this Court, I am vitally concerned that
19 whatever verdict you reach will be the result of you
20 coming back into this courtroom after you have gone in
21 and deliberated this case, weighing the evidence and
22 the law that you heard here in this courtroom.

23 Mr. Foreperson, your verdict must be unanimous.
24 It must be the verdict of all 12 jurors. And to that
25 end, my law clerk has prepared a verdict form. It has

JURY CHARGE

1 two questions and the first part, or the first question
2 has two parts. So, just to explain it to you, it says
3 "verdict form" on it and it has the case caption. It
4 says, State of South Carolina versus Sharkee Mitchell,
5 Defendant. And then it says, Please answer each
6 question below.

7 The first question it has is this:

8 AS to the charge of assault and battery in the
9 second degree, we find the Defendant Sharkee Mitchell
10 and it either says not guilty or guilty. After that,
11 Mr. Foreperson, that says, If you answered guilty, go
12 to question number two. If you answered not guilty,
13 answer the second part of the same question of part
14 one. Again, only if you find the Defendant not guilty
15 of assault and battery in the second degree would you
16 then consider the lesser included offense of assault
17 and battery in the third degree. All right?

18 And you would then answer that question. And,
19 regardless, you would have to go forward and answer
20 question three. It is a separate and distinctive
21 class. All right? So, with that said, there is a
22 line, Mr. Foreperson, for you to sign and date this
23 verdict form.

24 When the jury has reached a unanimous verdict I
25 need you to knock on jury room door, we are going to

JURY CHARGE

1 accept you back into the courtroom to take your
2 verdict.

3 And, Mr. Foreperson, for the very last time I'm
4 going to send you back to your jury room, and I'm going
5 to tell you not to begin your deliberations. If there
6 is something further on the law the lawyers want me to
7 charge, I'm going to bring you back in further.

8 If not, you are going to get the verdict form, Mr.
9 Foreperson, as well as the other evidence that was
10 entered in this case and that's going to be your signal
11 to begin your deliberations.

12 I will tell you, ladies and gentlemen, if it is
13 not back in evidence and given to you, you are not
14 entitled to it. That is one of the questions I
15 normally get is, Can we see X, Y, or Z. If it wasn't
16 entered into evidence you cannot see it. AS I told you
17 before, if you want certain testimony played back,
18 ladies and gentlemen, I will bring you back into the
19 courtroom and just play the audiotape. Although Mona
20 is taking down everything that everyone has said there
21 is not a typed transcript of this. What she has is a
22 condensed, abbreviated version. All right?

23 Ladies and gentlemen, at this time I am going to
24 let you take your notes back with you. And, again, do
25 not begin discussing this case until you have the

JURY CHARGE

1 verdict form as well as the evidence that has been
2 introduced in this case. All right? Thank you.

3 (The jury exits the courtroom at 2:29 p.m.)

4 THE BAILIFF: The jury is clear, Your Honor.

5 THE COURT: Any exceptions or additions from the
6 State?

7 MS. FOWLER: Nothing from the State, Your Honor.

8 THE COURT: Any additions or exceptions from the
9 Defendant?

10 MS. GIBBES: No, Your Honor.

11 THE COURT: All right, I am sending the charge
12 back with them because I think this is confusing. So,
13 I will tell you that right now. I didn't tell him
14 that, but I am going to send it back. The verdict form
15 is just as I have explained it obviously. I hope that
16 they understand that they can't find him guilty or not
17 guilty -- or actually find him not guilty of both.
18 But, anyway, we are going to have the audio pulled out.
19 And do we have the evidence? I think that it is just
20 the photographs, right?

21 MS. FOWLER: Yes, Your Honor.

22 THE COURT: Let's give them that and let's just
23 get these photographs. Mona, do you have it all?

24 THE COURT REPORTER: Yes, if you guys want to
25 check it, it is just five photographs.

JURY CHARGE

1 THE COURT: Okay. Jody, I'll give you the
2 indictments so that I don't lose them. Okay. And we
3 are going to be at ease. Will you take him back and
4 put a monitor on him or whatever you are required to
5 do, you can do it. Sorry that I rushed y'all.

6 Anything else that we need from anybody? Y'all
7 okay, anybody need anything else? Okay. Stay close,
8 okay, and we will see what the jury does.

9 (The alternates excused.)

10 THE COURT: How are both. Ladies and gentlemen, I
11 didn't lose anybody which is pretty amazing. We are
12 all sick in the courthouse. You can hear me, I have no
13 voice left. I'll excuse you at this time and remainder
14 of the week. You are permitted to discuss this case if
15 you choose to. But if you made friends with the
16 jurors, I don't want you talking to them until they
17 reach a verdict. And I will also tell you that
18 sometimes the lawyers want to know your thoughts. You
19 are not required to talk to anybody if you don't want
20 to, but certainly you can if they ask you.

21 You all good? Thank you, we appreciate it. Thank
22 you.

23 (Jury deliberating.)

24 THE COURT: All right. The jury has reached a
25 verdict. Are you ready?

JURY CHARGE

1 MS. FOWLER: The State is ready, Your Honor.

2 MS. GIBBES: The Defense is ready.

3 THE COURT: Okay. We have an issue. Who gave
4 them the indictments? We never send the indictments
5 back any more. That is when we sent them back. I
6 don't know how in the world they got them. I gave them
7 to the clerk's office to hold. I don't know how they
8 got them. Let me do this, let the jury come out and
9 let me just see what the verdict form says and then we
10 will take it up. Okay?

11 (The jury enters the courtroom at 4:06 p.m.)

12 THE COURT: Thank you. Mr. Foreperson, the jury
13 has reached a verdict?

14 THE FOREPERSON: Yes, we have.

15 THE COURT: Would you please give us the verdict
16 form? All right. If you will please rise, sir. As to
17 the case of the State of South Carolina versus Sharkee
18 Mitchell, as to the charge of assault and battery in
19 the second degree, we find Defendant, Sharkee Mitchell,
20 not guilty. AS to the charge of assault and battery in
21 the third degree we find the Defendant, Sharkee
22 Mitchell, guilty. As to charge of pointing and
23 presenting a firearm, we find Defendant, Sharkee
24 Mitchell, guilty. You may be seated.

25 All right. Mr. Foreperson, I understand that

JURY CHARGE

1 potentially the bailiff gave you all copies of the
2 original indictments, is that correct, for you to sign
3 off; is that correct?

4 THE FOREPERSON: Yes, but the one didn't delineate
5 between second and third, or at least we couldn't -- I
6 couldn't figure it out.

7 THE COURT: Exactly. And you also understand that
8 one of the charges I had not even sent to you was
9 possession of a weapon during the commission of a
10 violent crime.

11 THE FOREPERSON: Right, we agreed on that.

12 THE COURT: Okay. But I see where you actually,
13 actually wrote something on that form, on the verdict
14 form, so --

15 THE FOREPERSON: Okay.

16 THE COURT: Okay. What I need to know is this,
17 regardless -- those indictments should not have gone
18 back to you. Back in the old, old days they used to go
19 back to you when we didn't have verdict forms like
20 this, and that is why there is still a space for
21 verdict or not verdict.

22 And what we typically do, after we get a verdict
23 in, we then have the foreperson come back and sign the
24 indictments, only the proper indictments that should
25 have gone to you. What I am going to do, ladies and

VERIFICATION OF VERDICT

1 gentlemen, I need to make sure that your verdict form
2 reflects your true verdict in this case. So, what I am
3 going to do, I am going to go through and ask each one
4 of you if this is your verdict and if it is still your
5 verdict. And I am going to ask specifically as to the
6 charge of guilty on assault and battery in the third
7 degree and on the charge of pointing and presenting a
8 firearm. All right?

9 So, that is what I'm going to do, and I'm going to
10 go through each of you. If you would, everyone, look
11 at the back of the tags so you know your numbers. I
12 don't have a juror list. I need a juror list. Thank
13 you. Thank you.

14 All right. And I'm going to go ahead and I assume
15 that the last two were -- yeah, they are. Okay.

16 Juror number 44, sir --

17 THE JUROR: Do you need us to stand?

18 THE COURT: If you don't mind. If you don't mind
19 standing, sir. It is a little unusual. I don't
20 typically go through and poll a jury, but I want to
21 make sure that what I received on your verdict form is
22 truly what the jury's finding is.

23 It says, As to the charge of assault and battery
24 in the second degree, we find the Defendant not guilty.
25 As to the charge of assault and battery in the third

VERIFICATION OF VERDICT

1 degree, we find the Defendant guilty. And as to the
2 charge of pointing and presenting a firearm, we find
3 the Defendant, Mr. Mitchell, guilty. Sir, is that your
4 verdict?

5 THE JUROR: Yes.

6 THE COURT: Is that still your verdict?

7 THE JUROR: Yes.

8 THE COURT: Thank you, sir. You may be seated.

9 Juror number 364. Yes, ma'am.

10 Ma'am, as to charge of assault and battery in the
11 second degree it says, We find the Defendant, Sharkee
12 Mitchell, not guilty. As to the charge of assault and
13 battery in the third degree, which is the lesser
14 included offense, we the jury find the Defendant
15 guilty. And then, lastly, as to pointing and
16 presenting a firearm it says, We find the Defendant,
17 Sharkee Mitchell, guilty. Ma'am, is this your verdict?

18 THE JUROR: Yes.

19 THE COURT: Is it still your verdict?

20 THE JUROR: Yes.

21 THE COURT: Thank you. You may be seated. Juror
22 number 311. Sir, you heard what I just said and I'm
23 going to repeat it each time.

24 THE JUROR: I understand.

25 THE COURT: You all know that we are a court of

VERIFICATION OF VERDICT

1 record and I'm required to go through each one of the
2 12 of you. Sir, the jury put on the verdict form that
3 as to the charge of assault and battery second degree,
4 we find the Defendant, Mr. Mitchell, not guilty. As to
5 the charge of assault and battery in the third degree,
6 the jury found Mr. Mitchell guilty. And as to the
7 charge of pointing and presenting a firearm it states
8 that, We find the jury also guilty. Sir, is this your
9 verdict?

10 THE JUROR: Yes.

11 THE COURT: Is it still your verdict?

12 THE JUROR: Yes.

13 THE COURT: All right. Juror number 216. Ma'am,
14 the jury found on the verdict form that as to the
15 charge of assault and battery in the second degree, we
16 find the Defendant, Mr. Mitchell, not guilty. As to
17 the charge of assault and battery in the third degree,
18 the jury found Mr. Mitchell guilty. And as to the
19 charge of pointing and presenting a firearm, the jury
20 found Mr. Mitchell guilty. Is this your verdict?

21 THE JUROR: Yes.

22 THE COURT: And is it still your verdict?

23 THE JUROR: Yes.

24 THE COURT: Thank you, ma'am. You may be seated.

25 Juror number 313. Sir, on the verdict form, as you

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1 know, the jury found Mr. Mitchell not guilty on assault
2 and battery in the second degree. Guilty on assault
3 and battery third degree. And also guilty on pointing
4 and presenting a firearm. Sir, is this your verdict?

5 THE JUROR: Yes.

6 THE COURT: Is it still your verdict?

7 THE JUROR: Yes.

8 THE COURT: Thank you, sir, you may be seated.

9 Juror number 64. Sir, as you understand I want to make
10 sure that you found that Mr. Mitchell was not guilty on
11 assault and battery in the second degree, guilty on
12 assault and battery in the third degree, and also
13 guilty on pointing and presenting a firearm. Is that
14 your verdict, sir?

15 THE JUROR: Yes.

16 THE COURT: Is that still your verdict?

17 THE JUROR: Yes.

18 THE COURT: Thank you, sir. You may be seated.

19 Juror number 215. Sir, again, did you find
20 Mr. Mitchell not guilty of assault and battery in the
21 second degree, guilty of assault and battery in the
22 third degree, and guilty of pointing and presenting a
23 firearm?

24 THE JUROR: Yes.

25 THE COURT: Thank you, sir. And is that your

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1 verdict?

2 THE JUROR: Yes.

3 THE COURT: And is that still your verdict?

4 THE JUROR: Yes.

5 THE COURT: Thank you, sir. You may be seated.

6 Juror number 73. Ma'am, did you find Mr. Mitchell not
7 guilty of assault and battery in the second degree,
8 guilty of assault and battery in the third degree, and
9 guilty of pointing and presenting a firearm?

10 THE JUROR: Yes.

11 THE COURT: Is that your verdict?

12 THE JUROR: Yes.

13 THE COURT: Is that still your verdict?

14 THE JUROR: Yes.

15 THE COURT: Thank you, ma'am. You may be seated.

16 My foreperson, number 177. Sir, on the charge of
17 assault and battery second degree, did you find
18 Mr. Mitchell not guilty? On assault and battery in the
19 third degree, did you find Mr. Mitchell guilty? And on
20 the charge of pointing and presenting a firearm, did
21 you find Mr. Mitchell guilty?

22 THE JUROR: Yes.

23 THE COURT: Sir, is this your verdict?

24 THE JUROR: Yes.

25 THE COURT: Is it still your verdict?

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1 THE JUROR: Yes.

2 THE COURT: Thank you. Juror number 249. Ma'am,
3 did the jury find Mr. Mitchell not guilty of assault
4 and battery in the second degree, guilty of assault and
5 battery in the third degree, and guilty of pointing and
6 presenting a firearm?

7 THE JUROR: Yes.

8 THE COURT: Ma'am, is this your verdict?

9 THE JUROR: Yes.

10 THE COURT: Is it still your verdict?

11 THE JUROR: Yes.

12 THE COURT: Thank you, ma'am, you may be seated.
13 Juror number 346. Ma'am, did you find Mr. Mitchell not
14 guilty of assault and battery in the second degree,
15 guilty of assault and battery in the third degree, and
16 guilty of pointing and presenting a firearm?

17 THE JUROR: Yes.

18 THE COURT: Ma'am, is this your verdict?

19 THE JUROR: Yes.

20 THE COURT: Is it still your verdict?

21 THE JUROR: Yes.

22 THE COURT: Thank you, ma'am. Lastly, juror
23 number 125. Sir, did you find Mr. Mitchell not guilty
24 of assault and battery in the second degree, guilty of
25 assault and battery in the third degree, and guilty of

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1 pointing and presenting a firearm?

2 THE JUROR: Yes, ma'am.

3 THE COURT: And sir, is this your verdict?

4 THE JUROR: Yes, ma'am.

5 THE COURT: Is it still your verdict?

6 THE JUROR: Yes, ma'am.

7 THE COURT: You may be seated. All right. Can I
8 see the lawyers very quickly?

9 (Off-the-record discussion held.)

10 THE COURT: All right. Anything further requested
11 of this jury from the State?

12 MS. FOWLER: Not from the State, Your Honor.

13 THE COURT: From the Defense?

14 MS. GIBBES: Sorry?

15 THE COURT: From the Defense.

16 MS. GIBBES: Oh, no, Your Honor.

17 THE COURT: Nothing further? All right. Ladies
18 and gentlemen, I want to thank you and I want to tell
19 you how much I appreciate you resolving this matter for
20 us. I am going to go ahead and excuse you for the
21 remainder of the week. I'm trying another case early
22 tomorrow morning as well. It'll be brief and we will
23 get rid of that case as well. And I will do a number
24 of guilty pleas tomorrow and also on Thursday. I told
25 you that I had a conference on Friday, so I won't be

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1 here.

2 But this time when you go home you can say what
3 you have been doing here in the courthouse, that is
4 permissible. The attorneys may want to know your
5 thoughts on the case. If you want to talk about it you
6 can, certainly you are not required to in any way. No
7 one is going to force this, I can assure you of that.
8 But at this time I am going to excuse you. You have
9 earned your exemption for the next three years, ladies
10 and gentlemen. And you are excused for the day and my
11 bailiffs will make sure that you get to your cars
12 safely. Okay? Thank you.

13 (The jury exits the courtroom at 4:19 p.m.)

14 THE BAILIFF: Jury is clear, door is closed, Your
15 Honor.

16 THE COURT: Thank you. All right, y'all. Mona,
17 for the record, just what exactly happened was
18 apparently the bailiff asked for the indictments from
19 Jody of the clerk's office. The bailiffs are charged
20 with the responsibility of signing -- the foreperson is
21 charged with signing the verdict form at the end of the
22 case after a verdict is returned, but nowadays we don't
23 give them the indictments anymore, or at least 99
24 percent of the judges don't give the indictments to the
25 jury anymore for this exact reason, because there are

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1 lesser includeds that are charged. And I would be more
2 concerned about this verdict, and when we talk about
3 consistency, there's no question with the verdict of
4 pointing a firearm at a person. Obviously, they found
5 him guilty on that. They wrote guilty on -- or the
6 foreperson signed it and wrote guilty on the verdict
7 form. And as well, nothing was written on the assault
8 and battery of a high and aggravated nature verdict
9 form. And the foreperson explained to us on the record
10 why, because they didn't see the lesser includeds, so
11 they kind of understood what they were doing.

12 So, I don't see any concerns with those. The
13 possession of a weapon during the commission of a
14 violent crime I had already directed a verdict on.
15 They indicated on here that it was guilty, but I think
16 that that's just null and void obviously. They didn't
17 need to find that, it wasn't for them, they didn't need
18 to consider it.

19 So, what I am going to do is this: I am going to
20 do a little research overnight just to make sure that
21 we are covered. I think that we are okay because the
22 fact that it couldn't be considered, they were not
23 charged on it. So, with that said, what I would like
24 to do, he has been convicted on the two charges,
25 correct me if I am wrong, the assault and battery in

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1 the third degree carries 30 days and the pointing and
2 presenting carries up to five years; am I correct on
3 that? And I have no idea what his prior record is.

4 MS. FOWLER: I have his prior record right now,
5 Your Honor, if you would like to hear that.

6 MS. GIBBES: Sorry, Judge, I guess, I mean, I
7 would like to make a mistrial motion at the appropriate
8 time. If you would like to do research, I want to make
9 sure that I'm preserving. At this time, I would move
10 for a mistrial. I think that the province of the jury
11 was invaded. They had these official looking
12 indictments and they may not understand what the grand
13 jury is. And they put a stamp on it saying, you know,
14 that includes in the body facts. And they found him
15 guilty of a charge that was not even supposed to go
16 back there, which is a weapons charge, which may have
17 correlated with this conviction of pointing and
18 presenting. And they may have seen a document that is
19 official and is coming from the Government and had
20 facts -- I mean, I don't have it in front of me. But
21 they may have seen that and say, Somebody has already
22 acted on this listening to these facts and gave it
23 additional --

24 THE COURT: In my jury charge, I actually talked
25 about the indictment and I actually charge the jury

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1 that they are not to consider indictments, that they
2 are just the formal document by which the case is
3 brought to Court and they are not evidence of anything
4 that it contains. Clearly it was error that they went
5 back. They should not have gone back. But I'm not
6 concerned that they overstepped. I guess that there's
7 some argument that they maybe got confused with the
8 pointing and presenting a firearm and the possession of
9 a firearm during the commission of a violent crime,
10 which of course I didn't charge because I didn't charge
11 them, first and foremost, that they were to even
12 consider a violent crime. Because, as it is
13 appropriate -- as I think they should have come back,
14 assault and battery in the third degree was
15 appropriate.

16 MS. GIBBES: I think my biggest concern is a gun,
17 they wrote guilty on a charge that they shouldn't have
18 seen and they also found him guilty on pointing and
19 presenting. They could have been confused it is
20 related. They may have addressed that. I mean, they
21 were not supposed to consider a violent crime and now
22 they have read -- they found him guilty of a violent
23 crime. I mean, they just shouldn't have seen it. It
24 was confusing. And we don't know what happened back
25 there. And I just -- I think it is confusing, Your

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1 Honor, and I would move for a mistrial.

2 THE CLERK: Excuse me. They didn't have the
3 indictments during deliberations. They didn't get the
4 indictments until they had reached a verdict.

5 THE COURT: They didn't get those until after they
6 reached their verdict?

7 THE CLERK: No. Just had them sign it. They
8 didn't have it.

9 THE COURT: Well, I need Jessica to come out and
10 testify to that if that is what happened. Go get
11 Jessica to testify.

12 (Pause.)

13 THE COURT: Did your client do any time when he
14 was arrested on this charge?

15 MS. GIBBES: He did 378 days, Your Honor.

16 THE COURT: Jessica. Can I get you up here and I
17 want your full name on the record. I will put you
18 under oath.

19 Thereupon,

20 JESSICA BROWN

21 was called as a witness, having been first duly sworn,
22 was examined and testified as follows.

23 DIRECT EXAMINATION

24 BY THE COURT:

25 Q All right. You served as the bailiff for the jury

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1 in the trial of the case, the State of South Carolina versus
2 Sharkee Mitchell?

3 A Correct.

4 Q I know that you are charged with the job of, after
5 a verdict is returned, taking the indictments to the jury or
6 to the foreperson to sign them; correct?

7 A Correct.

8 Q What I need to know from you, which was told to me
9 by Jody of the clerk's office is, did they actually come up
10 with a verdict and knock before you went in and gave the
11 indictments to the jury?

12 A Yes.

13 Q Or to the foreperson to sign; is that correct?

14 A The foreperson knocked on the door and told me, We
15 have a verdict. I said, Okay. I looked at the verdict to
16 make sure that it was signed and everything okay.

17 Q Okay.

18 A And I said, Okay. Get ready, we are going to be
19 going back in the courtroom. And then Norm was walking by,
20 our chief bailiff, and I said, Can you get the indictment
21 forms from Jody, because the clerk has the indictment forms
22 so I can have the foreman sign it. So, I had already seen
23 the form that you had sent back with the evidence.

24 Q The verdict form?

25 A The verdict form.

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1 Q Okay.

2 A And then the indictment went in and it was just
3 the foreperson and I off to the side. Jody gave them to
4 Norm and Norm gave them to me and then the foreperson and I
5 went to the side.

6 Q Okay.

7 A I didn't even look at them beforehand. I assumed
8 as much.

9 Q Okay. I appreciate that. Anyone want further
10 questioning of the bailiff?

11 MS. GIBBES: No, Your Honor.

12 THE COURT: Thank you. You are excused.

13 THE BAILIFF: May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 (Off-the-record discussion held.)

16 THE COURT: All right, well, that explains it.
17 There was no way that the jury could have considered
18 those indictments because they didn't get them until
19 after they had returned a verdict. So, let's go ahead
20 and, again, prepare a sentencing sheet in this case and
21 I need his prior record, if any.

22 MS. FOWLER: Your Honor, Mr. Mitchell's prior
23 record is a 2006 assault and battery high and
24 aggravated during which he had a gun. He served a YOA
25 sentence on that charge. It was revoked in 2009 when

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1 he was convicted of failure to stop for a blue light.
2 In 2010 he has a resisting arrest. 2011, simple
3 possession of marijuana. 2015, giving false
4 information to law enforcement. 2016, he has a
5 pointing and presenting charge and a possession of less
6 than one gram of cocaine.

7 THE COURT: Those are convictions?

8 MS. FOWLER: They are convictions. He served 215
9 days. The victim in that case is his other aunt during
10 which he held a gun to her head. So, he seems to have
11 a pattern of having guns and attacking family members.
12 It is my understanding the victim of his prior assault
13 and battery of a high and aggravated nature was a
14 cousin, so quite frankly the record that he has is
15 alarming, it is scary. While he was out on bond he is
16 seen on video --

17 THE COURT: On this case, that we just tried?

18 MS. FOWLER: Correct. While he was out on bond
19 for this case he is seen on video present at the murder
20 that occurred at the Hilton Head Gardens a couple of
21 weeks ago. A condition of his bond is that he was
22 supposed to be living with his father in Jasper County.
23 And I know for a fact that he was not living with his
24 father in Jasper County, however, no one would come
25 forward and say that he was living in the Gardens. So,

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1 he's not been obeying conditions of his bond while he
2 was out on bond. It is the State's position that he is
3 a danger to this community and that he will likely
4 eventually kill someone. So, the State is asking for 5
5 years.

6 MS. GIBBES: Your Honor, I would object to any
7 testimony about him being at a murder, any extraneous,
8 if that's the right word. But it is not relevant, Your
9 Honor. That is the first that we have heard of that.

10 THE COURT: How old is he, Ms. Gibbs?

11 THE DEFENDANT: Twenty-eight, about to turn 29 in
12 April.

13 THE COURT: Does he have any children?

14 THE DEFENDANT: Two. Actually, when I was
15 incarcerated for this charge I had a little girl. She
16 just turned one.

17 THE COURT: Do you pay child support for those
18 children, or do you have custody of either one of those
19 children?

20 UNIDENTIFIED SPEAKER: Am I allowed to speak?

21 THE COURT: Ms. Gibbs can speak on your behalf if
22 she can right now.

23 MS. GIBBES: I just need to sign.

24 THE COURT: Sure. And, again, do we know the
25 exact time that he did?

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1 DETENTION CENTER PERSONNEL: 370 days.

2 THE COURT: 370. All right. Ms. Gibbes, what
3 more would you like to tell me?

4 MS. GIBBES: Thank you, Your Honor.

5 THE COURT: Talk to your client about whether you
6 wish him to address me or not. He's certainly welcome
7 to if he wants to.

8 MS. GIBBES: Just briefly, Judge. As you heard,
9 he did do a lot of time in jail. Originally he did
10 have a plea. He's always asserted his innocence in
11 this case, from day one. He had a plea offer of
12 assault and battery second degree, recommendation of
13 three years, which was basically time served almost.
14 But he very strongly believed in his innocence.

15 And I think that this case is a little different.
16 I mean, we have a victim who recanted on the stand. I
17 think that there may have been some confusion as far as
18 the charges. I mean, I just think there's a lot going
19 on, Your Honor. But he has been convicted. And he
20 would like to address, Your Honor.

21 THE COURT: Certainly. What would you like to
22 tell me, sir?

23 THE DEFENDANT: Just -- I just don't want to be
24 judged on my past or any of these things that happened
25 because people change everyday. And I know that I am

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1 not a perfect person and, yes, I have done a lot of
2 things that I'm not proud of. I have done a lot of
3 things, I done did things that I have not been in jail
4 for. So this past situation, for me being locked up
5 for this situation, even though I know that I'm
6 innocent, but me sitting in there for those 13 months
7 for something that I didn't do, it changed me mentally
8 because I was actually sitting in there for something I
9 hadn't did. But there's things that I done did that I
10 haven't been guilty for, so it kind of messed with me
11 in a different sense.

12 And I just don't want to be judged for this when I
13 have already been down to 13 months. I already done
14 missed my daughter being born from this, everything. I
15 done missed -- I lost everything. After this, after
16 this I lost everything. When I got out of jail, I
17 didn't know where I was going, I'm lost, you know, I
18 didn't know what I was going to do. But I still keep
19 trying. And I don't want y'all to judge me over this,
20 when I done -- I done did my -- I feel like I done did
21 time for this. That is how I feel. You may not feel
22 that way, but I feel like I have. You may not feel
23 like I have changed, but I know that I have changed. I
24 know that I haven't changed fully, because I still have
25 a lot of work to do, but I have changed a lot. I am

SENTENCING

1 not the same person that I was. I am just hoping that
2 you can recognize it.

3 THE COURT: What do you do for a living; where do
4 you work?

5 THE DEFENDANT: Well, right now, it's so slow in
6 landscaping. I have arthritis in this knee and I have
7 a twisted leg in this knee, so there's only so much
8 stuff that I can actually do. There's a lot of things
9 --

10 THE COURT: Who did you work for in landscaping?

11 THE DEFENDANT: I can't tell you his company name,
12 but I can just tell you his name, Daniel Rivers. That
13 is my cousin. His dad got his own -- they own
14 landscaping.

15 THE COURT: Okay. Did you work on Hilton Head or
16 did you work?

17 THE DEFENDANT: Yes, I worked on Hilton Head.

18 THE COURT: Mostly Hilton Head?

19 THE DEFENDANT: Uh-huh. (Indicating
20 affirmatively.)

21 THE COURT: Okay. What else would you like to
22 tell me?

23 THE DEFENDANT: I just would -- I am sorry for
24 wasting y'all time for this, I just ask that you show
25 some leniency to me and just see that I did actually do

SENTENCING

1 13 months on this charge, so it's not like I didn't do
2 anything. So I did have time to think about things
3 that I done done in this situation. So, I would just
4 like you to take that in consideration.

5 MS. GIBBES: I will just say, he does have family
6 support. His mom was here. He does have family
7 support and people that love him, Your Honor.

8 THE DEFENDANT: This is something that I usually
9 don't -- I didn't even expect me to do this, I didn't
10 expect to get up and speak, but I feel like I have to
11 because I want people to understand that people do
12 change. Just because I done did things in the past,
13 you might look at me and just look at me like, oh, he
14 is this, he is that, but no, when you get to know me
15 I'm not who you think I am, I promise you.

16 THE COURT: I think that there are good people
17 that sometimes do bad things. I certainly have sat
18 here and it happens, no one is perfect. But my job is
19 to listen to the case, decide what is an appropriate
20 sentence. I am permitted to take into account your
21 previous record.

22 THE DEFENDANT: And another thing, the other
23 pointing and presenting that she's talking about, that
24 she said that I was charged with in 2016, those charges
25 were dismissed. Those were not even supposed to be

SENTENCING

1 brought up. And I was telling my other lawyer before
2 her that that was supposed to be situated, none of that
3 was supposed to come up. The only thing that I pled to
4 was possession of cocaine base. And, as a matter of
5 fact, which judge was it, Nettles, Nettles, Nettles, I
6 really initially went to plea for pointing and
7 presenting and assault and battery second and
8 possession of cocaine base. Judge Nettles dismissed
9 everything besides the cocaine base and I pled -- he
10 gave me two years' probation for that, but they brought
11 me back two days later because I had the YOA, so they
12 brought me back two days later and they terminated
13 regular probation and just let me deal with my YOA.

14 THE COURT: They revoked your YOA?

15 THE DEFENDANT: Yes, but I didn't plea to the
16 pointing and presenting.

17 THE COURT: Did he just plea to the drug charge?

18 MS. FOWLER: He has a pointing and presenting on
19 his rap sheet as a conviction.

20 THE DEFENDANT: Yeah, it is not supposed to be
21 there. Mr. Staggs was my first lawyer before her.

22 MS. FOWLER: It was handled by our office, so I
23 have spoken to the solicitor on the case.

24 THE COURT: Okay. It is what it is. Okay. All
25 right. On indictment 2017-1049 for assault and battery

SENTENCING BY THE COURT

1 in the third degree, the sentence of this court is that
2 you be committed to the county detention center for a
3 period of time served.

4 On indictment 2017-1050 for pointing and
5 presenting a firearm, the sentence of this court is
6 that you be committed to the Department of Corrections
7 for a period of five years. And I am giving you credit
8 for 370 days time served. Good luck to you.

9 We are going to be at ease until 8:30 tomorrow
10 morning when we start the second trial.

11 MS. GIBBES: Judge, I am sorry, I didn't make a
12 motion for a new trial and renew all of my prior
13 objections and motions. I would just like to put that
14 on the record.

15 THE COURT: Absolutely, let's go ahead and just do
16 that right now.

17 MS. GIBBES: Thank you. Again, I would just like
18 to renew all of my prior motions and objections. At
19 this time, also along with my mistrial motion, I renew
20 that, and I make a motion for a new trial based on the
21 inconsistencies of the witness statements, the issues
22 with whatever happened with the indictments. And I
23 just, I just think that a new trial would be
24 appropriate, Your Honor.

25 THE COURT: Okay. Well, I can tell you that I'm

SENTENCING BY THE COURT

1 confident, after hearing the bailiff's testimony, that
2 those indictments were only given to the foreperson
3 after the verdict was done and the verdict form was
4 completely filled out and signed. She testified that
5 she had actually seen it when she went in there, so I'm
6 confident that that is not an issue.

7 Clearly in this case I directed verdict on
8 everything that I thought potentially needed to be
9 done, which was the ABHAN charge and the assault and
10 battery first degree. And again, sent it to the jury
11 for assault and battery second degree. I truly believe
12 there was evidence that they could have convicted him
13 on that, but they didn't and I understand completely
14 why. They convicted him of assault and battery in the
15 third degree. And I believe that that was because of
16 the hitting and because of the bruise that you could
17 clearly see on the photograph.

18 And the pointing and presenting was certainly the
19 one thing that the victim didn't recant on. She did
20 say again on the stand that he had a gun and that it
21 was presented. So, I feel comfortable. I am going to
22 go ahead, based on my earlier rulings, keep them. And
23 I appreciate you making it for the record. And good
24 luck to you, Mr. Mitchell. Thank you.

25 The indictments need to be made a Court's exhibits

SENTENCING BY THE COURT

1 in the case. What Jerri may need to do for her file,
2 if she keeps them separately, is just Xerox them all
3 and then if you want me to I can sign that they are
4 exact copies of the original. So I'll just certify
5 that those are the exact copies of the original.
6 Because I know that she needs something for her file
7 and it has to be in the case file.

8 MS. STAGGS: She can keep a certified copy, I
9 believe, Judge. I think that because sometimes when
10 they are misplaced we will get certified copies from
11 them. So, I could be wrong, check with her, but I
12 think we get --

13 THE COURT: She is right here.

14 THE CLERK: I am sorry, I was dealing with the
15 feds. What was the statement?

16 THE COURT: What do you do with the verdict forms
17 and indictments?

18 THE CLERK: They go in the file.

19 THE COURT: In your file?

20 THE CLERK: Yes.

21 THE COURT: I need to make them a Court's exhibit
22 for appeal purposes, so can you make certified copies
23 of exactly as they are so you have a set and the
24 originals go with her?

25 THE CLERK: Yes, ma'am.

SENTENCING BY THE COURT

1 THE COURT: And I need all of those indictments
2 front and back and everything on there, and the verdict
3 form. Okay?

4 THE CLERK: We will do that.

5 THE COURT: Okay.

6 *(Whereupon, Court's Exhibit No(s). 1 marked for*
7 *identification and received in evidence.)*

8 *(Whereupon, Court's Exhibit No(s). 2-4 marked for*
9 *identification and received in evidence.)*

10 (Whereupon, the trial concluded.)

11

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SENTENCING BY THE COURT

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 26th day of June, 2019.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 14th Circuit

15

(850) 893-6662

16

mmanley@scccourts.org

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WITNESSES

Calendine BCSO

DOCKET NO. 2017GS0701050

The State of South Carolina

County of Beaufort

After being fully advised of my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

October Term 2017

I hereby appear in my own proper person and plead guilty to the withi indictment or to

THE STATE

vs.

Sharkee Alejandro Mitchell

Indictment For

Pointing Firearm at a Person

SC Code: 16-23-410

CDR Code: 0122

Defendant

Witness:

C.C.C. PLS. and G.S.

ARREST WARRANT NUMBER

2017A0720300116

ACTION OF GRAND JURY

True Bill

Hally B. Basworth
Foreperson of Grand Jury

Date: OCT 12 2017

VERDICT

8/1/17
1/15/19

Foreperson of Ret. Jury

Date:

INDICT

Certified - A True Copy

Jerr Ann Roseau - Clerk of Court
Beaufort County, SC

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

INDICTMENT

2017GS0701050

At a Court of General Sessions, convened on October 12, 2017 the Grand Jurors of Beaufort County present upon their oath:

Pointing Firearm at a Person

That in Beaufort County, South Carolina, on or about June 27, 2017, the Defendant, Sharkee Alejandro Mitchell, did present or point a firearm, whether loaded or unloaded, at Beverly Heyward, all in violation of Section 16-23-410, et al. of the Codes of Law of South Carolina.

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



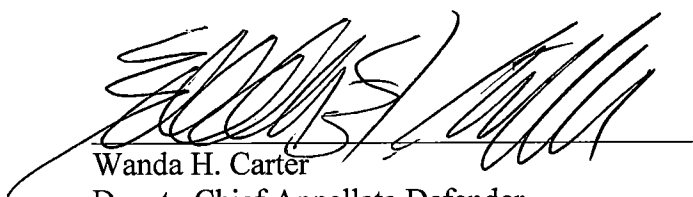
Solicitor

True Bill

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,



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 27th day of November 2019.