

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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May 28 2021
SC Court of Appeals

Appeal from Florence County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEIPO DERRICK LEWIN,

APPELLANT

APPELLATE CASE NO. 2019-001775

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT #34 (SURVEILLANCE VIDEO)**

1 State of South Carolina) In the Court
2 County of Florence) Of General Sessions
3 State of South Carolina,) Indictment No.: 2018-GS-21-01070
4 Plaintiff,)
5 vs.) Partial Transcript of Record
6 Deipo Derrick Lewin,)
7 Defendant.)
_____)

8

9

October 14, 2019

10

Florence, South Carolina

11

12 BEFORE:

13

The Honorable Michael G. Nettles, Judge, and a

14

Jury

15

16 APPEARANCES:

17

18

J. Ryan White, Assistant State Solicitor
Todd Tucker, Assistant State Solicitor
Attorneys for the State/Plaintiff

19

20

Matthew Sherrod Swilley, Esquire
Attorney for the Defendant

21

22 ALSO PRESENT:

23

Deipo Derrick Lewin

24

25

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Thereupon, the following proceedings were had,

THE COURT: Mr. White, call your first case.

MR. WHITE: Thank you, Judge. At this time the State will call the case of the State versus Deipo Lewin, indictment 2018-GS-21-01070.

THE COURT: Very good. Ladies and gentlemen of the jury pool, the defendant, Mr. Lewin, has been accused of attempted murder. The allegations arose out of an alleged event that took place on Christmas day, December 25th, 2017. It took place here in the city limits of Florence at the intersection of National Cemetery Road and Church Street at the 4 Way Stop Gas Station.

Ladies and gentlemen of the jury pool, Mr. Lewin stands before you accused of this crime, but in The United States America anybody who is accused of a crime is presumed to be innocent. I hold in my hand this indictment which brings this allegation forward, but this is merely just the written instrument that brings these accusations before the Court. Mr. Lewin as he sits at the defense table is presumed to be just as innocent as me or you or the Solicitor for that matter. That's the frame of reference that we start from. This indictment has absolutely no evidentiary value whatsoever. It's merely an accusation.

1 important case. It's an important case to the State of
2 South Carolina. It's an important case to the defendant.
3 And most importantly it's an important case to you
4 because you have taken a solemn oath to listen to the
5 evidence, determine what the truth is and apply it to the
6 law. Under these circumstances given the nature of the
7 case and the length of the case I'm gonna ask that you
8 not take notes so pay very close attention.

9 I'll recognize the State for opening statement.

10 MR. WHITE: Thank you, Your Honor. May it please
11 the Court.

12 THE COURT: Yes, sir.

13 MR. WHITE: A car crashes into a steel barrier that
14 protects the gas pump. The driver hops out with a .40
15 caliber pistol in his hand. He raises that pistol, aims
16 and starts firing at a man holding a bag. The man with
17 the bag retreats to his own vehicle, a red mini van.
18 That man with the pistol, he keeps firing and all tolled
19 ten shots are fired at that man in the minivan. The
20 shots hit first at the front of that minivan as it backs
21 away, and then it hits the side of the minivan as it
22 tries to exit the scene. One of the bullets enters the
23 vehicle, hits that man in the minivan in the jaw, blows
24 out several of his teeth and part of his tongue. He
25 escapes, drives to the hospital and is able to tell about

1 the story today.

2 Now, ladies and gentlemen, that's not a recap of a
3 summer blockbuster. That's not a trailer for the newest
4 NetFlix crime series. That incident occurred Christmas
5 day 2017 at a densely populated gas station in broad
6 daylight not two miles from where you are seated right
7 this minute.

8 You see, ladies and gentlemen, we like to believe
9 that the world of crime and violence takes place
10 somewhere else. A place separate and apart from our own
11 world, right? That it's happening on some dimly lit
12 street in someone else's neighborhood and it happens in
13 some back alley where no one dares go. But that's simply
14 not the case. That's simply not true.

15 On December 25th, 2017 a woman by the name of
16 Darlene Wingate who you're gonna hear from, she found out
17 just how untrue that is. For Ms. Wingate it was working
18 Christmas. She had just knocked off her shift at
19 McDonald's, a long shift, one of the only restaurants
20 open. She was headed home to family and a family member
21 called and said, hey, why don't you pick up some hotdogs.
22 She stops by the 4 Way Stop convenient store on Church
23 Street. She stops to get the hotdogs but also to use the
24 ATM and as she's using the ATM, she has a clear view of
25 the events that would transpire; that man crashing into

1 the barrier, hopping out, those shots being fired.
2 Fearing what would come next, she ran to the front door
3 and locked it. People outside scattered. They ducked.
4 They run for cover. For Darlene Wingate it's a Christmas
5 she will not soon forget.

6 Law enforcement arrived and when they did, that man
7 with the gun and his associate fled the scene on foot.
8 The man with the gun is named Deipo Lewin seated right
9 over there with his attorney. There is no doubt that he
10 fired those shots. His associate Charles Moore you're
11 also gonna hear from, he also fled the scene. He was
12 selling marijuana to the man with the bag, a drug deal
13 gone bad.

14 Ladies and gentlemen, this is gonna be a case
15 about a car crash, bullet casings and carnage and chaos
16 on Christmas day. It's gonna be a case about a
17 frightening ramifications when that world we want to
18 believe happens somewhere else happens right in front of
19 us. And make no mistake, ladies and gentlemen, this
20 could be a murder case. When those bullets went flying
21 and they're whizzing by the gas pumps and people are
22 ducking for cover, it could have been a murder case of
23 several counts. But at the end of this trial I'm gonna
24 ask you to find Mr. Deipo Lewin guilty of one count of
25 attempted murder for firing the shot that fractured the

1 jaw and shattered the jaw of that man in the minivan and
2 shattered the Christmas day of Darlene Wingate. Thank
3 you.

4 THE COURT: Thank you, Mr. White. Mr. Swilley,
5 you're recognized.

6 MR. SWILLEY: Thank you, Your Honor.

7 Christmas day, 2017, it's a clear Christmas day, not
8 too cold for Christmas. The 4 Way Stop that was over
9 there on the corner of National Cemetery Road and Church
10 Street, y'all know that area. Church Street is a one way
11 street. National Cemetery goes past Irby Street down
12 that way and that's where you run into the 4 Way Stop.
13 All right.

14 So, this young man right here, my client, Deipo
15 Lewin came into town to visit friends. One of those
16 friends is a guy by the name of Charles Moore. Now,
17 Deipo can drive. He had a car, and when he hung out with
18 Charles Moore, Charles Moore would rely on him for
19 transportation because Charles Moore couldn't drive. On
20 that particular afternoon, Christmas afternoon, Deipo was
21 at Charles Moore's apartment at the Mount Zion
22 Apartments. Now that's right behind the 4 Way Stop,
23 almost kind of catty-corner behind it. Not far. Walking
24 distance to the 4 Way Stop. But later that afternoon
25 Charles Moore asked Deipo to come pick him up at the 4

1 Way Stop in his car and Charles Moore proceeds to walk to
2 4 Way Stop.

3 Unbeknownst to anybody other than Charles Moore and
4 Phillip Hannah, Charles Moore and Phillip Hannah had been
5 in contact at some point about making a very, very small
6 drug deal. Now, when Phillip Hannah pulls up to the 4
7 Way Stop, he's driving his grandmother's red 2000 Ford
8 Sierra. He drives up to the pump, parks his vehicle,
9 puts it in park, he exits the driver's side of the
10 vehicle, passenger side to the pump. He gets out of that
11 vehicle with a baseball bat. He walks around to the
12 other side of the vehicle between the pump and the van.
13 With the baseball bat he waits on Charles Moore. And he
14 lays in wait for a minute, two minutes, something like
15 that, and as Charles Moore walks up to approach him and
16 attempts to sell him marijuana, within a matter of
17 seconds Phillip Hannah strikes Charles Moore with the
18 baseball bat and as Charles Moore proceeds to run away,
19 Phillip Hannah chases him in a dead sprint with that
20 baseball bat.

21 Now, Church Street is a one way street. In order to
22 get out of the Mount Zion Apartments, you have to take a
23 right on Irby Street and then a right onto National
24 Cemetery to come down if you're gonna come into the gas
25 station in that direction. Well, seconds after

1 Mr. Hannah chases Charles Moore with that baseball bat
2 and that deadly weapon, Deipo Lewin pulls into the gas
3 station at his friend's request to pick his friend up.
4 The first thing that Deipo sees is Phillip Hannah in a
5 dead sprint chasing after Charles Moore with a baseball
6 bat and Mr. Moore holding his head.

7 Charles Moore looks back. He sees Deipo. He
8 gestures to Deipo, gestures to Phillip, Mr. Hannah in
9 some kind of a rage tries to strike the car that Deipo is
10 driving. As Deipo tries to swerve, he tries to swerve
11 back, tries to pick up Charles Moore to get him out of
12 whatever he's in and is unable to take a left in time and
13 crashes into the guardrail at the pump. He crashes so
14 hard because he's trying to get around Phillip that the
15 car can't be driven, can't pull out, can't go anywhere.
16 The car is immobile.

17 So, Deipo gets out and he sees Phillip with that bat
18 and Phillip's not backing down. It's obvious to Phillip
19 at that point that Charles and Deipo know each other and
20 Phillip proceeds at him with the bat. Deipo takes his
21 gun out of the glove compartment, holds it at Phillip
22 with that bat, Phillip doesn't back down. Deipo fires to
23 the hood of his car, of that van to try to get him to
24 back down. He doesn't back down. Phillip's angry about
25 whatever has transpired between him and Charles and he

1 doesn't back down.

2 It's obvious that Deipo at that point, Phillip would
3 chase somebody with that bat, it's obvious -- Excuse me.
4 It's obvious to Deipo at that point that Phillip would
5 chase somebody with that but and it's obvious based on
6 what he's seen that he would hit somebody with that bat.
7 He does what he has to do to try to get Phillip to back
8 down. He fires at Phillip. He doesn't hit Phillip in
9 that car. Phillip only retreats when he gets struck.
10 It's not really obvious that he is struck. He runs back
11 to the car, he gets back in his van, and he runs away and
12 everybody runs away from the shooting scene.

13 Make no doubt about it that Deipo Lewin acted in
14 self defense and every single person in this state has a
15 right to defend themselves from death or great bodily
16 injury from somebody else. And not only that, the State
17 has to disprove somebody is acting in self defense if
18 they're trying to take somebody's freedom away from them,
19 and at the conclusion of this trial it should be obvious
20 that Deipo Lewin acted in self defense when he had to
21 fire at Phillip.

22 Phillip brought that bat to this transaction. He
23 got out of the car with that bat. He was gonna use that
24 bat. He did use that bat, and he tried to use that bat
25 on more than one person. And it's unfortunate that he

1 was shot. It's sad, but it's not a crime. And at the
2 conclusion of this trial I'm gonna ask that you find this
3 young man right here not guilty because he's not guilty
4 of attempted murder under the law. Thank you.

5 THE COURT: Thank you, Mr. Swilley. Mr. Foreman,
6 ladies and gentlemen of the jury, it's right at high
7 noon. We're gonna take a break. We're gonna allow you
8 to go and get some lunch. I'm gonna ask that you be back
9 at 1:15, 1:15 sharp. Before you leave, I'm gonna give
10 you some instructions. The first of which is that you're
11 to have no discussion amongst yourselves or with anyone
12 else about this case. If you were to go back to your
13 house or your work, people know that you're on the jury,
14 they say, well, tell me what's going on in court. This
15 is one occasion where you don't have to answer them. As
16 a matter of fact, I'm ordering that you not do that
17 because it might be that they know something about this
18 case; that they have an opinion about this type
19 litigation. You need to base your decision on what
20 transpires here in this courtroom and the law as I charge
21 it to you. Do not do that.

22 Mr. Foreman, there will be times throughout the
23 trial of this case where you are in the jury room and we
24 might be taking care of matters outside of your presence.
25 I'm gonna ask that you enforce the rule that there be no

1 discussion whatsoever about anything concerning - you
2 can't talk about the evidence. You can't talk about the
3 lawyers. You can't talk about anything about this case.
4 You can talk about Carolina/Clemson football. You can
5 talk about the weather. You can talk about anything you
6 want to talk about but you can't talk about this case.
7 I'm gonna ask that you enforce that rule. Will you do
8 that for me, Mr. Moore?

9 MR. MOORE: Yes, sir.

10 THE COURT: Very good. All right. In addition to
11 that, we all know where the allegations, the place where
12 these allegations arise out of. It's not too far from
13 here. Do not go by there and do any independent
14 investigation. Everything that you need to resolve this
15 case is gonna be presented to you in this courtroom. Do
16 not do any independent investigation. There's also
17 another instruction that I'm gonna give you is that
18 there's not anything in this world that you can't look up
19 on the Google. You can look up personalities. You can
20 look up events. You can look up individuals. Do not do
21 that. You need to base your decision on what transpires
22 here in this courtroom. Do not do that.

23 I'm gonna ask that you be back at 1:15. I do not
24 anticipate that there will be any media coverage with
25 regard to this case, however, if there was, something

1 came over the radio, I'm gonna ask that you divert your
2 attention from that. If there's anything in the paper
3 about it, I'm gonna ask that you divert your attention.
4 And the same with regard to the local news. Do not
5 listen to anything they have to say for a number of
6 reasons. Number 1, you're gonna hear all of the evidence
7 straight from the horse's mouth here in this courtroom
8 and to hear anything that somebody says about it would be
9 inappropriate and quite often is wrong. A lot of times
10 the media gets it wrong. So do not do that in any way,
11 shape or form.

12 I'll ask that everyone remain seated. I ask that
13 you be back at 1:15, 1:15 sharp. Everyone remain seated
14 as the jury exits the courtroom.

15 THE CLERK: Right this way.

16 (Whereupon, the jury was released to lunch break at
17 12:10 p.m.)

18 THE COURT: All right. Glad to hear from the State
19 and the defense with regard to the issue that we
20 discussed earlier in chambers.

21 MR. WHITE: Judge, we discussed a couple issues.
22 The first I would like to take up, Judge, is the
23 stipulation which I believe that Mr. Swilley covered, but
24 previously on the record Mr. Swilley did stipulate that
25 it's not a who done it. Judge, his client did fire those

1 shots and I believe we has steered this into self
2 defenses. The other issue is the stipulation. I believe
3 Mr. Swilley is willing to stipulate to the surveillance
4 video. We took up that issue, he and I a week ago. That
5 would kind of save some time in having to call the clerk
6 to testify, Judge.

7 THE COURT: First of all, let's deal with those one
8 at a time. You are not going to file a motion with
9 regard to Biggers? Identity is not an issue in this
10 case, Mr. Swilley?

11 MR. SWILLEY: That's correct, Your Honor.

12 THE COURT: All right. Are you in a position to
13 stipulate as to the authenticity of the video?

14 MR. SWILLEY: I am as long as it's the video that I
15 got, a copy that I got, I am, Your Honor.

16 THE COURT: Very good. All right. And the other
17 issue with regard to prior bad acts or prior violent
18 acts.

19 MR. SWILLEY: Your Honor, what I was planning on
20 doing was making a motion to admit evidence under Rule
21 404, I believe it's (a)(2) which is character of the
22 victim.

23 THE COURT: Doesn't that rule specifically say that
24 you can't introduce specific acts of violence?

25 MR. SWILLEY: No, Your Honor. I believe that

1 404(a)(2) says evidence of a pertinent trait of character
2 of the victim of the crime offered by accused or by the
3 prosecution are both the same or evidence of the
4 character trait or peacefulness of the victim offered by
5 the prosecution of the case to rebut are the same. But
6 if you go over to Rule 405 --

7 THE COURT: Okay. Well, what I'm saying is, is that
8 404(a)(2) or whichever subsection you're talking about
9 there specifically says that you can introduce testimony
10 with regard to peacefulness or violence is what that rule
11 allows for, not specific acts of violence. But 405 might
12 shed light on it. We do agree that 404 says that since
13 he's being accused of attempted murder, then he's allowed
14 to establish that the victim has a reputation for
15 violence. He can do that. Under that rule he cannot
16 introduce specific acts of violence, under that Rule 405.
17 What do you have to say about that?

18 MR. SWILLEY: Your Honor, 405 looking at subsection
19 (b) specific instances of conduct, the cases in which the
20 character or trait of a character of a person is an
21 essential element of a charge, claim, or defense. Proof
22 may also be made of specific instances of that person's
23 conduct. Your Honor, I think the case that I presented
24 would find it's most instructive is State versus -- I
25 have it here. State versus Graham Douglas.

1 Your Honor, what that case dealt with was a stand
2 your ground hearing, but the issue was pretty much the
3 same, I think, and, Your Honor, what it says is you can't
4 go with specific instances of conduct for violence of a
5 victim of a homicide. It does say that. But this is not
6 -- I can hand this up to the Court. This is not a
7 homicide case. It's an attempted homicide case and what
8 Douglas says, and it goes and it lists Rule 404(a)(2)
9 about specific character traits and it says and further
10 lists 405(b) talks about specific instances of conduct,
11 but then it goes into State v. Day and says, however,
12 this is on page 10, in a murder prosecution of one
13 pleading self defense against an attack by the deceased,
14 evidence of other specific instances of violence on the
15 part of the deceased are not admissible. But I don't
16 think Day is applicable in this situation because it's an
17 attempted murder and not a murder so I do think that any
18 specific instances of conduct on the alleged victim for
19 violence would be --

20 THE COURT: I think this case specifically says that
21 405 does not allow specific acts, and attempted murder
22 and murder is kind of a distinction without a difference
23 I would think.

24 MR. SWILLEY: Well, Your Honor, I think the big
25 difference is that the alleged victim isn't dead and I

1 think in a murder case the jury wouldn't be -- My
2 position on why I think the reasoning in State v. Day is
3 you can't introduce specific instances in a murder case
4 is because the victim is not here. He doesn't have a
5 chance to speak for himself. In this case he does and I
6 think that, and there's gonna be testimony that Mr. Lewin
7 was in imminent apprehension of death or great bodily
8 injury, and I think the specific instances of conduct,
9 this one specific instance of conduct of violence it is
10 probative on whether or not he was in fear of great
11 bodily injury or death.

12 So I think that this case says that this would be
13 admissible but for unless it's tied in with the actual
14 case at bar which in this case it was with Mr. Douglas,
15 but I don't think that that case about Day that Douglas
16 mentions, and that's State v. Day, 341SC410, Supreme
17 Court 2000, I don't think it's applicable to an attempted
18 murder case because in this case the victim can testify
19 for himself and the jury can make that deduction
20 themselves whether or not the specific instances of
21 conduct have any bearing.

22 THE COURT: Let's hear what the State has to say
23 about that.

24 MR. WHITE: Well, Judge, my first inclination is
25 that this case is still pending. This guy has a right to

1 have this thing fleshed out. I would object
2 wholeheartedly, Judge. If you recall back when we had
3 the hearing that led to the stipulation, Mr. Swilley's
4 concern was exactly the same but in reverse order. The
5 same exact situation. We're talking about a domestic
6 pending. Mr. Lewin had a domestic conviction after this
7 and Mr. Swilley conveyed to the Court he didn't want the
8 State to go into that particular matter and I said I
9 believe you're right. I don't intend to go into the
10 grounds or the background of that domestic. For that
11 reason he stipulated to it and we didn't call those
12 witnesses down from Vermont, Judge, and it feels like a
13 little bit of a shifting of feelings now that on the eve
14 of this trial he's trying to do the same thing with the
15 victim that I agreed was not necessary for the defendant
16 so for those reasons, Judge, I would wholeheartedly
17 object.

18 MR. SWILLEY: Judge, just to clarify there, evidence
19 of character of the accused can only be put in play by
20 the accused.

21 THE COURT: Right.

22 MR. SWILLEY: It's apple and oranges as far as the
23 victim or the alleged victim and the accused. Only we
24 can put in any kind of character of Mr. Lewin and they
25 can put in evidence of character to rebut the same per

1 the rule but I don't think - I think to feed the witness,
2 the accuser and the accused out of different spoons under
3 the law and that's why I think that --

4 THE COURT: Well, I'll tell you, I'm gonna give you
5 wide latitude with regard to introducing evidence about
6 the victim's reputation for violence and turbulence.
7 I'll allow you to do that. But I'm not gonna allow you
8 to get into specific instances.

9 MR. SWILLEY: Your Honor, do you want to hear from
10 these witnesses?

11 THE COURT: Well, we can, but what we're gonna do is
12 we're gonna take a break for lunch. We're gonna be back
13 at 1:15 and we're gonna proceed forward and at the
14 conclusion of the testimony today I'm gonna allow you to
15 proffer the testimony or you can proffer it or if y'all
16 can stipulate as to what the testimony would be, either
17 way.

18 MR. WHITE: The only problem with that is the victim
19 will have to testify at that point. He's gonna be my
20 first up.

21 THE COURT: Say that again.

22 MR. WHITE: The victim is gonna testify first for
23 the State.

24 THE COURT: Okay. Well, that's clear. We don't
25 have to deal with that right now because they're not

1 gonna be able to ask him about the specific instances so
2 that's not a problem.

3 MR. WHITE: You're correct, Judge.

4 THE COURT: And he's not gonna ask the victim
5 whether or not he has a reputation for peace and
6 tranquility or violence.

7 MR. WHITE: That's right. You're absolutely
8 right.

9 THE COURT: So that's not even at issue.

10 MR. WHITE: Yes, sir, Judge.

11 THE COURT: But he does have the right to proffer
12 the testimony for appellate review, but we aren't gonna
13 do it - we're gonna get through as much testimony as we
14 can today and then we're gonna release the jury and he
15 can call whatever witness he wants to with regard to this
16 specific instance so the Appellate Courts can review
17 it.

18 MR. WHITE: Sounds great, Judge.

19 THE COURT: Does that sound all right with you?

20 MR. SWILLEY: Yes, Your Honor. Can I ask what time
21 you want the witnesses here today?

22 THE COURT: Well, let's get them here about mid
23 afternoon and as soon as we turn the jury loose, we'll
24 proceed forward and give you wide latitude to put
25 everything on the record.

1 MR. SWILLEY: Judge, so I'm clear, based upon the
2 fact that Mr. Hannah has a pending charge prosecuted by
3 this office, are you - just the very fact that he has
4 that pending and that he's cooperating with the State I
5 think would be impeachment testimony just like a
6 co-defendant who has pending charges against him who is
7 testifying for the State, I think that the mere fact that
8 he has a pending CDV would be admissible for impeachment
9 purposes. Would the Court agree?

10 THE COURT: I think that has a ring of truth to it.
11 What do you have to say about that, Mr. White?

12 MR. WHITE: Again, I mean, you know, it's just a
13 mere allegation at this point.

14 THE COURT: If indeed he's cooperating with the
15 State, he's allowed to get into that. I'm not gonna
16 allow --

17 MR. WHITE: Judge, you know, cooperation, we put him
18 under subpoena. I don't know anything that he's got
19 going on. I haven't offered him any sort of deal or
20 anything. His cooperation is just like any other witness
21 that I'm gonna call.

22 THE COURT: See, that's what the jury needs to know.
23 They need to know and he can ask him questions about
24 that. What do you think about asking whether or not does
25 he have charges pending before the Solicitor's Office

1 here today and he can ask him have you been given any
2 deals with regard to your cooperation here today?

3 MR. WHITE: That's fair.

4 THE COURT: But not getting into the specific
5 instances.

6 MR. WHITE: That's fair, Judge.

7 THE COURT: What do you have to say about that, Mr.
8 Swilley?

9 MR. SWILLEY: Your Honor, I would agree as far as
10 that goes. I still just want to make sure I'm on the
11 record that I believe that specific instance should come
12 in, but I understand the Court's ruling and I'll proffer
13 that testimony in due time to preserve the record but as
14 far as what you just said I agree with that.

15 THE COURT: Okay. All right. So you'll be given
16 wide latitude. Isn't it true that you have charges
17 pending against you and this Solicitor's Office is
18 prosecuting you concerning that? And then you can either
19 ask him does he have a deal or not. But on their cross
20 examination or redirect or whatever, they can point out
21 we haven't given you any deal. Something completely
22 unrelated. Have we promised you anything? Have you
23 gotten any kind of... It can be done that way. I think
24 he's allowed to get into that.

25 MR. WHITE: Judge, we would likely take it up on

1 direct.

2 THE COURT: Okay. Very good. All right. And you
3 can ask him questions about that. You can probe as to
4 whether or not he's received any benefit. Has he talked
5 with them about it. Has he anything about that
6 particular aspect of it, but not the particulars of it.

7 MR. SWILLEY: Yes, sir.

8 THE COURT: I think that sounds good.

9 MR. WHITE: Thank you. Yes, sir.

10 THE COURT: What we'll do is we'll reconvene at
11 1:15, 1:15 sharp. Let's hit the road running.

12 MR. WHITE: Yes, sir, Judge.

13 (Lunch break.)

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1 (Whereupon, State's Exhibits #1 through #30 marked
2 for identification.)

5 MR. SWILLEY: Yes, Your Honor. I was here on time.
6 I just had to make two trips out to the car. I didn't
7 have anyone to help me.

9 (Whereupon, the jury entered the courtroom at 1:20
10 p.m.)

15 MR. WHITE: Thank you, Your Honor. At this time the
16 State would call Officer Russell of the Florence Police
17 Department.

22 Thereupon,

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

1 name for the record.

2 THE COURT: Be seated in that witness chair and pull
3 up real close to that microphone and speak loudly and
4 clearly and slowly. We want to hear everything that
5 you've got to say and let's start with your full name
6 please, sir.

7 THE WITNESS: Yes, Your Honor. My name is Lance
8 Corporal Kristopher Russell.

9 DIRECT EXAMINATION

10 BY MR. WHITE:

11 Q. Thank you. Officer Russell, if you could, tell us,
12 where are you employed?

13 A. I'm currently employed with the Florence Police
14 Department.

15 Q. How long have you been employed there?

16 A. About three and a half years right now.

17 Q. In what capacity are you employed?

18 A. Currently I am assigned to the crime scene unit.
19 Previous to that I worked with patrol.

20 Q. Now, back on December 25th, 2017, were you employed
21 in that capacity with patrol?

22 A. That's correct.

23 Q. Now, on that date did you have occasion to respond
24 to 714 South Church Street, the 4 Way Stop in Florence?

25 A. Yes, sir.

1 Q. Is that in the City of Florence?

2 A. Yes, sir. It is.

3 Q. Is it in the County of Florence?

4 A. It's also within the County of Florence.

5 Q. Now, Officer Russell, how exactly were you
6 dispatched to that location?

7 A. That day at approximately, shortly before 1:29 in
8 the afternoon I was dispatched by radio to that location in
9 reference to shots fired. Would you like me to read off my
10 incident report for the rest of everything?

11 Q. You said you responded to shots fired. That's when
12 you went to the location?

13 A. Yes.

14 Q. What, if anything, did you find upon your arrival
15 there?

16 A. Immediately when I arrived on scene, I found a car
17 that appeared to have crashed into, I don't know how to
18 describe it other than one of the steel bars that go around
19 the pump houses for the fuel pumps. A car wrecked into one of
20 those. Kind of appeared that chaos had previously occurred.
21 Random trash here and there and nobody around. That time of
22 day it's normally a lot of foot traffic, a couple people
23 hanging around the store. At that point I didn't see anybody
24 really hanging around outside. Found a small number of empty
25 firearm casings on the ground and when I was able to find

1 someone on scene, they had already locked themselves inside
2 the gas station and I was able to gain a little bit further
3 information of what had occurred.

4 Q. Who was that person that you spoke to that locked
5 the door?

6 A. That was the initial complainant who I believe is
7 the person who called 911. That would be a Ms. Darlene
8 Wingate.

9 Q. Now, at some point did other officers arrive on
10 scene?

11 A. Yes, sir. That's correct.

12 Q. Who would arrive next in your typical scenario?

13 A. Typically it would be other patrol officers, patrol
14 supervisor. If I remember correctly Lieutenant Hobgood and I
15 believe Lance Corporal Frye arrived on scene. Additionally,
16 there was an investigator who was out following up with a
17 unrelated crime who responded, Sergeant Clark. After we found
18 out roughly what had occurred, we notified for the on-call
19 investigator to come out who I believe was at the time
20 Corporal Banister now Sergeant Banister.

21 Q. When he arrived, did he take lead over the
22 investigation?

23 A. That's correct.

24 Q. Now, how about crime scene, did they arrive on
25 scene?

1 A. Yes.

2 Q. Did they begin processing the scene?

3 A. That's correct.

4 Q. You mentioned prior that usually it's patrol
5 deputies that kind of respond first?

6 A. Correct.

7 Q. More patrol deputies came to assist you; is that
8 correct?

9 A. Yes. More patrol officers came to assist. Our job
10 was to secure the crime scene, make sure it's safe, nothing is
11 disturbed, that there's no further threat on scene.

12 Q. Aside from that, securing that threat level, are you
13 making sure nobody comes in and out?

14 A. Correct.

15 Q. Are you preserving that crime scene?

16 A. Correct.

17 MR. WHITE: Officer Russell, I have nothing further.
18 Please answer any questions the defense may have.

19 THE COURT: Mr. Swilley, you're recognized.

20 MR. SWILLEY: No cross examination, Your Honor.

21 THE COURT: You may step down. Thank you, sir.

22 MR. WHITE: Your Honor, at this time I would ask
23 that Officer Russell be released from his subpoena.

24 MR. SWILLEY: No objection.

25 THE COURT: You're free to leave. Thank you, sir.

1 You may call your next witness.

2 MR. WHITE: Judge, at this time the State would call
3 Phillip Hannah.

4 Thereupon,

5 PHILLIP HANNAH
6 after having been first duly sworn, testified as follows,

7 THE CLERK: Please be seated and state your full
8 name for the record.

9 THE COURT: Mr. Hannah, please come around. Watch
10 your step. Have a seat in that witness chair. Pull up
11 real close to that microphone. Speak loudly and clearly
12 and slowly in order that we can hear everything that you
13 have to say, and let's start with your full name, please,
14 sir.

15 THE WITNESS: My name is Phillip Hannah.

16 THE COURT: Very good.

17 DIRECT EXAMINATION

18 BY MR. WHITE:

19 Q. Mr. Hannah, how are you doing?

20 A. I'm good today. How are you doing?

21 Q. Good. If you could, tell us where you live?

22 A. I live with my father.

23 Q. All right. Where is that located?

24 A. Uhm, Quinby, Patriot Place.

25 Q. Back on December 25th of 2017, is that the same

1 location you were living?

2 A. No, sir.

3 Q. Where were you living at that time?

4 A. Uhm, [REDACTED] Lane, Blue Granite.

5 Q. Now, that was December 25th, that was Christmas day,
6 correct?

7 A. Yes, sir.

8 Q. Do you recall what happened to you on that day?

9 A. Most of it. Yes, sir.

10 Q. Now, at some point you stopped by the 4 Way Stop on
11 Church Street. What were you doing there?

12 A. My mom asked me to go get some cigarettes and toilet
13 paper and most stores were closed and I wanted a little
14 weed.

15 Q. When you wanted weed, would you call a guy by the
16 name of Charles Moore?

17 A. Yes, sir. Nickname Black.

18 Q. Now, did you and Charles Moore engage in marijuana
19 transactions prior to this?

20 A. Yes, sir. We did.

21 Q. All right. And you arrived on the scene to engage
22 in another one?

23 A. Yes, sir.

24 Q. Now, about what time of day was this?

25 A. Uhm, early. Like not to - like noon or afternoon.

1 Not to -- it wasn't after two or three.

2 Q. Daylight?

3 A. Yes, sir.

4 Q. Cloudy? Sunny?

5 A. It was like cloudy, sunny.

6 Q. You could see well?

7 A. Yes, sir.

8 Q. All right. When you arrived on that location at

9 that scene, do you see Mr. Moore?

10 A. Yes, sir.

11 Q. What happens next? Do you guys engage in a

12 transaction?

13 A. Yes, sir.

14 Q. All right. Could you walk us through what happened

15 with you and Mr. Moore at that point?

16 A. Mr. Moore approached the vehicle. I had talked to
17 him on the phone prior before he met me and, uhm, he sounded a
18 little funny on the phone so I called my friend that normally
19 know him and so he was like, just leave, but I didn't and like
20 so when we met, we started, I was asking how much could I get
21 and we were talking about it and he just started going in my
22 pocket saying give me the money, give me the money and --

23 Q. Let me stop you right there. Where were you when he
24 was going through your pockets?

25 A. I was on the side of my van next to the gas station,

1 next to the gas pump.

2 Q. Was he able to retrieve any money?

3 A. Yes, sir.

4 Q. What did you do then?

5 A. I had a bat in my sleeve because I was wary of what
6 was going on because he sounded sketchy on the phone so when
7 he started running through my pocket, I pulled it out and I
8 started hitting him with the bat. I hit him like once or
9 twice. He threw his hood on, put his hands in his pocket and
10 started trying to run away. At that moment I started chasing
11 him with the bat.

12 Q. All right. What happened next?

13 A. A few seconds after chasing him in the parking lot
14 with the bat, he turned around, start running, threw up a sign
15 like this (indicating.) I looked. I don't know what that
16 mean so I turned around. When I turned around, I seen a Ford
17 Focus, a gray Ford Focus come straight at me from out of the
18 light coming off of National Cemetery straight into the 4 Way
19 Gas Station. He was coming straight at me. I got out of the
20 way. He hit the barrier. Once he hit the barrier, I was
21 scared. I was like, oh, crap. Oh, crap, you know. So I got
22 out of the way and just ran to my car. When I got in the car,
23 that's when Mr. Deipo Lewin got out of his vehicle he was
24 driving and he start shooting at me.

25 Q. All right. Now, I'm just gonna back up a little bit

1 and we'll get right back to that. When you were chasing after
2 him, is it because he took money out your pocket?

3 A. Yes, sir.

4 Q. All right. Now, once you got in the van, which
5 direction were you headed?

6 A. I didn't go straight down Church Street.

7 Q. It's simpler than that. Were you driving backwards
8 or forwards?

9 A. I reversed. I reversed because his car is right in
10 front of mine. He crashed right in front of mine.

11 Q. When the first shot hit the front of your van, are
12 you in drive or in reverse?

13 A. Reverse.

14 Q. All right. Did you continue in reverse?

15 A. Yes, sir.

16 Q. And did shots continue to hit your van?

17 A. Yes, sir.

18 Q. At some point did you change direction?

19 A. After I finish reversing and like spinned out, I put
20 it in drive and yes, sir, I did start driving forward down
21 National Cemetery.

22 (Whereupon, State's Exhibit #31 and #32 marked for
23 identification.)

24 BY MR. WHITE:

25 Q. Mr. Hannah, at some point when you were backing

1 away, Mr. Lewin holding that gun, were you shot?

2 A. Yeah. Yes, sir.

3 Q. And were you in reverse when you were shot?

4 A. Yes, sir.

5 Q. Were you trying to get away when you were shot?

6 A. Yes, sir.

7 Q. Where were you shot?

8 A. In my face. In my mouth.

9 Q. Where exactly on your face were you shot?

10 A. (Indicating.) Right here in my mouth and it took
11 about six or seven teeth, it lacerated my cheek and my tongue,
12 split my tongue in half. I had to have surgery.

13 Q. I'm gonna show you some photographs. Don't tell me
14 much about them. I'm gonna show you State's Exhibit 31 and 32
15 and just tell me do you recognize those photographs?

16 A. Yes, sir.

17 Q. Is that a fair and accurate depiction of your
18 injuries when you got to the hospital?

19 A. Yes, sir.

20 MR. WHITE: Judge, at this time I move 31 and 32
21 into evidence.

22 THE COURT: Have you seen them?

23 MR. SWILLEY: I have, Your Honor. No objection.

24 THE COURT: Okay. They're in evidence without
25 objection.

1 MR. WHITE: Judge, permission to publish these to
2 the jury.

3 THE COURT: Yes.

4 BY MR. WHITE:

5 Q. When you were shot, Mr. Hannah, what did you do
6 then?

7 A. Man, I had so much adrenalin going through me I
8 couldn't go home. The car is messed up. And I knew I was
9 hurt so I had to just face the fact and go to the hospital.

10 Q. Were you going to the hospital because you had just
11 tried to engage in a drug transaction?

12 A. No, sir. I needed medical attention.

13 Q. Okay. What did that medical attention consist of?

14 A. I was in the hospital three days. I had surgery on
15 my tongue. I can't get no dental work done until I raise
16 \$2000.00 so I can't get no dental work.

17 Q. Has it impacted you greatly?

18 MR. SWILLEY: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. WHITE:

21 Q. Just hold on one second, Mr. Hannah. At some point
22 do you speak with law enforcement regarding this matter?

23 A. Have I spoke to them?

24 Q. Did they come to the hospital and talk to you?

25 A. About showing me pictures and asking me questions

1 about what happened.

2 Q. Did they show you a lineup of several individuals?

3 A. Yes, sir.

4 Q. Were you able to pick out of that lineup the man who
5 shot you?

6 A. Yes, sir.

7 Q. Is the man who shot you in this courtroom today?

8 A. Yes, sir.

9 Q. If you could, could you point him out for me?

10 A. Over there (indicating.)

11 MR. WHITE: Judge, if the record could reflect he's
12 pointing to Mr. Deipo Lewin.

13 BY MR. WHITE:

14 Q. Now, when you recovered, when you're in reverse,
15 right, when you're driving away, when you back out and then
16 you turn to leave, could you hear bullets still hitting your
17 vehicle?

18 A. Yes, sir.

19 Q. Could you hear them hitting on the right side?

20 A. Yes, sir.

21 Q. Were you just trying to get out of there as fast as
22 possible at that point?

23 A. Yes, sir.

24 Q. Now, I know that you testified that you hit Mr.
25 Moore because he was going in your pockets, right?

1 A. Yes, sir.

2 Q. Did you ever hit Mr. Lewin?

3 A. No, sir. I never seen him a day in my life.

4 Q. Did you ever hit his car with your bat?

5 A. No, sir.

6 Q. Did you ever get close to his car?

7 A. No, sir.

8 Q. Did you ever get close to Mr. Lewin?

9 A. No, sir.

10 Q. When you're backing out, you may or may not know
11 this, I'm sure you were kind of dazed and confused, was he
12 stationary or was he walking towards you with that gun?

13 A. He was stationary.

14 Q. Okay. If he had been walking toward you, would you
15 have been able to tell the difference with all that
16 adrenalin?

17 A. No, sir. I was ducking until I got hit so I looked
18 up was and started trying to drive to get out of there. I was
19 ducking.

20 Q. So you weren't really looking to see where he was --

21 A. No, sir.

22 MR. WHITE: -- you were just trying to get out of
23 the way. Mr. Hannah, thank you. Please answer any
24 questions the defense may have.

25 THE COURT: Mr. Swilley, cross examination.

1 CROSS EXAMINATION

2 BY MR. SWILLEY:

3 Q. Mr. Hannah, you reached out to Charles Moore that
4 day yourself, did you not?

5 A. Yes, sir.

6 Q. And that was in order to buy marijuana, right?

7 A. Yes, sir.

8 Q. And you drove yourself up to 4 Way, correct?

9 A. Yes, sir.

10 Q. And you're grandma is Ms. Toya Seana, right?

11 A. Sir?

12 Q. You were in your grandma's van, right?

13 A. Yes, sir. My mom's van.

14 Q. Your mom's van. Okay. And you brought that
15 baseball bat with you; is that correct?

16 A. No, sir. My mom keeps a baseball bat in all her
17 cars, sir. It's her vehicle.

18 Q. You would agree with me you don't need a baseball
19 bat to purchase marijuana, do you?

20 A. No, sir.

21 Q. Okay. And you testified you drove up, you parked
22 your van in front of the pump, right?

23 A. Yes, sir.

24 Q. And you didn't pump any gas, did you?

25 A. No, sir. I did not.

1 Q. And you took that bat and you got out of that
2 driver's side seat, right?

3 A. Yes, sir.

4 Q. And you walk around to the passenger side of the
5 van; isn't that correct?

6 A. Yes, sir.

7 Q. All right. And you've got that bat with you still,
8 right?

9 A. Yes, sir.

10 Q. And then you wait for Charles Moore?

11 A. Yes, sir.

12 Q. When Charles Moore arrives, he walks up to you at
13 the pump; is that correct?

14 A. Yes, sir. He do.

15 Q. All right. And you would agree with me that it
16 takes about four to five seconds before you strike Mr. Moore
17 with that bat; is that correct?

18 A. No, sir.

19 Q. Okay. Tell me how long you think that transaction
20 took?

21 A. It took about as long as it took for him to rummage
22 through my pocket.

23 Q. You would agree with me that that took about five
24 seconds; is that correct?

25 A. No, sir.

1 Q. Ten seconds?

2 A. About 10 seconds for him to run my pocket. About
3 five seconds for me to slide the bat down and about three
4 seconds for me to him. About 20 for everything.

5 Q. About 20 seconds. Your testimony is that you were
6 standing in front of that pump with Mr. Moore for 20 seconds;
7 is that correct?

8 A. Yes, sir.

9 Q. And it's your testimony that Mr. Moore reached his
10 hand into your pants pocket?

11 A. Yes, sir. He did.

12 Q. Okay. And it's your testimony that he took
13 something out of your pocket; is that correct?

14 A. Yes, sir. He took money out of my pocket.

15 Q. In his hand; is that correct?

16 A. Yes, sir. He did.

17 Q. And if there was video surveillance, that would show
18 just that; is that correct?

19 A. Yes, sir.

20 Q. Okay. You haven't seen the video surveillance, have
21 you?

22 A. I haven't seen no evidence, sir.

23 Q. Okay. Now, you struck Mr. Moore on the head with
24 the bat; is that correct?

25 A. Yes, sir.

1 Q. Okay. And you reared back to hit him again; is that
2 correct?

3 A. Yes, sir.

4 Q. And that's when he took off, right?

5 A. Yes, sir.

6 Q. And that's when you took off with the bat after him;
7 is that correct?

8 A. Yes, sir. I did.

9 Q. And your intention was to hit Mr. Moore with the bat
10 again; is that correct?

11 A. Yes, sir. It was.

12 Q. And you were gonna hit Mr. Moore with the bat as
13 many times as the situation warranted; is that correct?

14 A. No, sir. I was not.

15 Q. I think you just testified that your intention was
16 to hit Mr. Moore again with the bat, right?

17 A. Yeah. But my intent wasn't to kill Mr. Moore with
18 no bat.

19 Q. It was certainly to strike Mr. Moore with the bat;
20 is that correct?

21 A. Yes, sir.

22 Q. Okay. And then you testified that all of a sudden
23 after you had chased Mr. Moore, the Ford Fusion pulls up,
24 right?

25 A. Yes, sir. It did.

1 Q. And that Ford Fusion had come all the way down
2 National Cemetery Road, right?

3 A. I don't know where that car came from so you can't
4 ask me that.

5 Q. The car wasn't sitting in the parking lot, was it?

6 A. No, sir. It was not.

7 Q. And Mr. Moore walked up by himself from the other
8 side of the gas station from where the car came, right?

9 A. He walked up on the opposite from Mount Zion, yes
10 sir.

11 Q. Okay. And that's how you get from Mount Zion to the
12 4 Way, right?

13 A. Yes, sir. That's one way.

14 Q. And he was alone, right?

15 A. Yes, sir. He came alone.

16 Q. Okay. When Mr. Lewin pulls in, Mr. Moore points at
17 Mr. -- Your testimony is that Mr. Moore pointed at
18 Mr. Lewin?

19 A. Say that clearly for me, sir.

20 Q. Your testimony is that Mr. Moore pointed at Mr.
21 Lewin at that time?

22 A. Yes, sir.

23 Q. Okay. And then you swung the bat at Mr. Lewin's
24 car, correct?

25 A. How is that possible, sir? Explain that.

1 Q. My question to you is, you swung the bat at Mr.
2 Lewin's car; is that correct?

3 A. No, sir.

4 Q. Okay. But all of a sudden some how Mr. Lewin ran
5 the car into the gas pump; is that correct?

6 A. Yes, sir. Do you have video footage of that?

7 THE COURT: One of the things, the way this operates
8 is he asks the question --

9 THE WITNESS: And I answer.

10 THE COURT: -- and you provide the answer. You
11 can't ask him questions. That's not the way it works.

12 THE WITNESS: Yes, sir.

13 THE COURT: Very good. Mr. Swilley.

14 BY MR. SWILLEY:

15 Q. All right. Mr. Hannah, it's your testimony that the
16 car just pulls into the 4 Way and then just crashes into the
17 guardrail, right?

18 A. Yes, sir. But it looks like the car is trying to
19 run me over.

20 Q. Okay. Now, that car didn't get anywhere near you,
21 right? That was your testimony to Mr. White?

22 A. That car did get near me.

23 Q. Okay. So it did get near you now and the car
24 crashed into the gas pump, right?

25 A. Not the gas pump, the gas barrier right next to the

1 pump.

2 Q. You still had that bat in your hand, right?

3 A. Yes, sir.

4 Q. Okay. Based on your observation everybody at that 4
5 Way would have seen you running after Mr. Moore with the bat,
6 right?

7 A. One more time.

8 Q. Based on what you know, everybody could have seen
9 you running after Mr. Moore with the bat, right, in your
10 hand?

11 A. If that's what they saw, yes, sir.

12 Q. No. I mean, from what you know that's what people
13 would have seen, right?

14 A. I don't know what anybody know.

15 Q. Okay. You chased Mr. Moore to the edge of the
16 parking lot, right?

17 A. Yes, sir.

18 Q. And at that time is when the car pulls in after you
19 were in the process of chasing Mr. Moore, right?

20 A. Yes, sir.

21 Q. Okay. And then it hits the gas rail, right?

22 A. Yes, sir.

23 Q. And at that point you don't run back to your car, do
24 you?

25 A. I do run back to my car.

1 Q. Okay. So it's your testimony that you ran back to
2 your car after the car wrecked into the gas rail, right?

3 A. Yes, sir.

4 Q. Okay. And, Mr. Hannah, correct me if I'm wrong, but
5 it's your testimony that you got back into your car and were
6 struck in the right side of your face, right?

7 A. Yes, sir.

8 Q. And it's your testimony that that bullet came in
9 through the driver's side of your door?

10 A. You asking me where did the bullet come through?

11 Q. Is it true that the bullet cam through the passenger
12 -- Is it your testimony that the bullet came through the
13 driver's side window?

14 A. That car been shot up with so many bullets, I don't
15 know where, which way it came in but I know it hit me.

16 Q. Okay. You don't know where the bullet came in,
17 right?

18 A. It had to come through the windshield.

19 Q. You're talking about the front windshield; is that
20 correct?

21 A. Windshield. Yes, sir. Got to.

22 Q. Okay. And that's -- Just so we're clear, that's the
23 front windshield of your minivan, right?

24 MR. WHITE: Judge, I object. I think he's answered
25 it. He doesn't know. It was shot so many times.

1 THE COURT: He can ask him -- I think he said it had
2 to come through the windshield I think is what he said.

3 MR. WHITE: Okay.

4 THE COURT: You can rephrase the question.

5 BY MR. SWILLEY:

6 Q. Mr. Hannah, when you were shot in that right side of
7 your mouth, right, that's the right side, on your right hand
8 side, correct?

9 A. Yes, sir. It is.

10 Q. Okay. And it's your understanding that there should
11 be a hole in the windshield that lines up to where you were
12 shot in the mouth; is that correct?

13 A. No, sir. Not technically. Bullets ricochet all the
14 time.

15 Q. So it's true to say your testimony is that you got
16 shot in the mouth in the car, but you don't know where the
17 bullet came from; is that correct?

18 A. No, sir. That's not what I'm saying.

19 Q. Okay. It's your testimony that you don't know where
20 the bullet came through the car and hit you in the mouth,
21 right?

22 MR. WHITE: Objection, Judge.

23 BY THE WITNESS:

24 A. No, sir. I know where the bullet came from.

25 THE COURT: He can answer that.

1 BY THE WITNESS:

2 A. I know where the bullet came from, sir.

3 BY MR. SWILLEY:

4 Q. The bullet came through the windshield; is that
5 correct?

6 A. Yes, sir. My car was shot up so many times. One
7 bullet did come through the windshield.

8 Q. Okay. And that bullet came through the windshield
9 on the left corner of the passenger, the far corner of the
10 passenger side, right?

11 A. Yes, sir.

12 Q. Okay. And it's your testimony that that's the
13 bullet that ricocheted somehow and hit you in the mouth?

14 A. Yes, sir.

15 Q. Okay. Now, you went right to the hospital after you
16 were shot, right?

17 A. Yes, sir. I did.

18 Q. You ran back to the car, you took the bat
19 with you?

20 A. Sir?

21 Q. You had the bat with you, right?

22 A. In the hospital?

23 Q. In the car on the way to the hospital, right?

24 A. Yes, sir.

25 Q. Okay. When you get to the hospital and you tell the

1 hospital staff that you were shot, right?

2 A. I didn't tell them, but I notified them on my way
3 because I couldn't speak with a bullet in my mouth, still in
4 my mouth.

5 Q. Mr. Hannah, it is true that you told the hospital
6 staff that you had, somebody had taken your wallet and that
7 people had guns and fired at you; is that correct?

8 A. Yes, sir.

9 Q. And you told the hospital staff that you got in your
10 car and when you peeked out the window, a bullet shot through
11 the window and hit you in the right lower jaw. That's what
12 you told the hospital staff, right?

13 A. I told the hospital staff I got a bullet in my
14 mouth.

15 Q. My question to you is, that you told the hospital --

16 A. No, sir. I did not tell the hospital that.

17 Q. All right. Do you know of any reason why that would
18 appear in your medical records?

19 A. Sir, the doctors can have any assumption they want
20 to have on what happened.

21 Q. My question to you is, do you have any reason why
22 that would appear in your medical records?

23 A. No, sir. I do not.

24 Q. Okay. And when you were at the hospital, I think
25 you eventually spoke with Investigator Banister, right? This

1 guy at the table.

2 A. Yes, sir. Later that day.

3 Q. And you told Investigator Banister what happened,
4 right?

5 A. Yes, sir.

6 Q. Okay. And you told Investigator Banister that when
7 you peeked out the window with a bullet - when you peeked out
8 the window, that's when the bullet shot you through the
9 window, right? And that was to Investigator Banister?

10 A. Sir?

11 Q. Isn't it true that you told Investigator -- All
12 right. This man right here on the end, you remember talking
13 to him, right?

14 A. Yes, sir.

15 Q. You told him what happened, right?

16 A. Yes, sir.

17 Q. This is still Christmas day 2017, correct?

18 A. Yes, sir.

19 Q. And you told Investigator Banister that Mr. Moore
20 walked up to your window while you were in the car, right?

21 A. No, sir. I did not.

22 Q. You didn't tell Investigator Banister that?

23 A. No, sir. I did not.

24 Q. You didn't tell Investigator Banister that you hit
25 Mr. Moore with the bat while you were still in your car; is

1 that correct?

2 A. No, sir. I did not.

3 Q. You didn't tell him that?

4 A. No, sir. That's changing my whole story. No,
5 sir.

6 Q. Okay. You don't know of any reason why that would
7 appear in any of the police reports, do you?

8 A. Sir?

9 Q. You don't know of any reason why that would appear
10 in the police reports, do you?

11 A. No, sir. Everybody doing their own investigation.
12 That's not a part of my jurisdiction.

13 Q. Okay. So there's no reason why that would appear in
14 the police materials, correct? Your testimony is that you
15 never said that to Investigator Banister?

16 A. I didn't say what you just asked me. No, sir.

17 Q. Okay. And the window to the driver's seat in that
18 van you were driving, that window was up, correct?

19 A. I don't remember.

20 Q. You don't remember if the window was up or down?

21 A. No, sir.

22 Q. Okay. Mr. Hannah, you agree this whole interaction
23 between you and Mr. Moore and Mr. Lewin lasted for about 25
24 seconds; is that correct?

25 A. No, sir. That's not what I said neither.

1 Q. Is that correct or not correct?

2 A. Not correct.

3 Q. Okay. Just so we're clear, Mr. Moore never tried to
4 assault you, right? Am I correct on that?

5 A. Running through my pockets for money is a crime and,
6 yes, sir, he did.

7 Q. Let me clarify it for you. Your testimony is Mr.
8 Moore never tried to harm you physically, did he?

9 A. Yes, sir. He did.

10 Q. He swung and punched at you?

11 A. Sir?

12 Q. Did he try to punch you?

13 A. A grown man age 37 runs a 19 year old's pocket --

14 Q. Mr. Hannah, let me just clarify.

15 A. -- that's harm to me. Yes, sir. It is.

16 Q. All right. He didn't strike you with any object,
17 correct?

18 A. No, sir. He did not hit me with no object.

19 Q. And based on what you saw, he didn't have any kind
20 of weapon with him, did he?

21 A. I don't know what he had with him.

22 Q. You didn't see any weapon, did you?

23 A. He was all hooded up. No, sir. I don't know what
24 he had on him.

25 Q. Okay. And he didn't hit you with a fist, did he?

1 A. No, sir.

2 Q. He didn't kick you with his foot, did he?

3 A. No, sir.

4 Q. He didn't push you, did he?

5 A. No, sir.

6 Q. So I'm correct when I say you were the one that
7 introduced violence in this situation; is that correct?

8 A. No, sir.

9 Q. Okay. Yet Mr. Moore didn't strike you, right?

10 A. No, sir.

11 Q. And you were not harmed before you used that bat; is
12 that correct?

13 A. I was harmed before I used that bat.

14 Q. Okay.

15 A. I wasn't harmed by physical actions of being hit by
16 another person, but I was harmed by another person before I
17 used my bat.

18 Q. Okay. And it's your testimony that bat belonged to
19 your mother, right?

20 A. Yes, sir. It did.

21 Q. Okay. And you brought that bat out of the car and
22 stood next to the pump so nobody could see the bat; is that
23 correct?

24 A. No, sir.

25 Q. Okay. You brought that bat out of the car and

1 brought it around in front of the pump and you leaned the bat
2 against the pump; is that correct?

3 A. No, sir.

4 Q. Okay. You testified you had the bat up your
5 sleeve?

6 A. Yes, sir.

7 Q. You had the bat up the sleeve of your jacket?

8 A. Yes, sir.

9 Q. Okay. That red bat that we see in the pictures, is
10 that the same bat?

11 A. Yes, sir.

12 Q. And that bat was up your sleeve?

13 A. Yes, sir.

14 Q. And your testimony is that once Mr. Moore went into
15 your pockets, that you pulled it out of your sleeve and struck
16 Mr. Moore with it?

17 A. Yes, sir.

18 Q. Okay.

19 A. Would you need a demonstration?

20 Q. Mr. Hannah, you've got a pending domestic violence
21 of a second degree charge --

22 MR. WHITE: Objection.

23 THE COURT: Sustained.

24 MR. WHITE: Judge, we need to take that matter up
25 outside the presence of the jury.

1 THE COURT: Mr. Foreman, ladies and gentlemen of the
2 jury, I'm gonna ask that you retire to the jury room.

3 (Whereupon, the jury entered the jury room at 1:55
4 p.m.)

5 THE COURT: Glad to hear from the State.

6 MR. WHITE: Judge, as much as it pains me to do it
7 truly, I believe I have to move for a mistrial. I don't
8 think the Court could have been any clearer.

9 THE COURT: We were very specific that we weren't
10 gonna mention specific act; that you could go into
11 reputation, nonspecific act.

12 MR. SWILLEY: Judge, it was my understanding that
13 the Court would allow me to ask him just about whether or
14 not something was pending but not the specifics.

15 THE COURT: No. No. I never said that. I said
16 that you could get into reputation but not a specific
17 incident. With regard to any kind of cooperation you
18 could ask him isn't it true there are pending charges
19 against you and you could ask has there been any deals.
20 I could not have been any clearer than that.

21 MR. SWILLEY: I misunderstood. I thought just the
22 mere fact that he had a pending charge of domestic
23 violence but without going into any specific act was
24 going to be admissible.

25 THE COURT: Say that again.

1 MR. SWILLEY: My understanding was just the mere
2 fact that he had a pending charge and I thought --

3 THE COURT: It's admissible, but not the fact that
4 it was criminal domestic violence.

5 MR. SWILLEY: I misunderstood. I thought just the
6 fact he had a charge pending without any facts and that
7 he was being prosecuted by the Solicitor's Office would
8 be ruled admissible.

9 THE COURT: I specifically said that you can bring
10 up the fact there's a pending charge but not a specific
11 act, not what it was. What was your understanding,
12 Mr. White?

13 MR. WHITE: That is correct, Judge, that he could
14 ask whether or not he had a charge pending but could not
15 point to the specificity of that charge I just thought,
16 too.

17 THE COURT: Mr. Tucker, what do you have to say
18 about that?

19 MR. TUCKER: Your Honor, I concur with what
20 Mr. White said. That's why we turned to each other at
21 the same time and said object. Again, your instructions
22 couldn't have been any clearer. I understood them
23 completely as did Mr. White. So again, I don't know that
24 the Court or the bench could have been any more
25 clearer.

1 MR. WHITE: Judge, I did say, as much as it pains
2 me, and it does, I don't want to mistry this case. I'm
3 open to any type of suggestion that the Court may have as
4 to how we can undue this issue.

5 THE COURT: Well, Mr. Swilley, it's really
6 disappointing that, you know, I made a very clear ruling
7 in that regard, there would be no specific instances and
8 you did it anyway which is very discouraging. I'm gonna
9 give them a curative charge. I'll pose this curative
10 charge. You have heard a question which suggests the
11 defendant was charged with a particular offense.
12 Disregard that testimony. The fact that the defendant
13 may be charged with an offense should not be considered
14 by you, the jury. What is the State's position?

15 MR. WHITE: That works for the State, Judge.

16 THE COURT: What about the defense?

17 MR. SWILLEY: That's fine, Your Honor.

18 THE COURT: All right. One of the things that
19 really from the State's standpoint it probably works, it
20 could have actually worked to the defense's advantage if
21 you just say that there is a charge and that can be
22 murder, it can be all kind of different things, have
23 something to do with the offense of, previous offense
24 that took place with the beating of Mr. Moore so to some
25 extent it's probably less prejudicial to the State by

1 saying what it is. Criminal domestic violence in the
2 scheme of things is less serious than a lot of other
3 things so I'm gonna charge that. I'm gonna ask that they
4 not consider the fact that he's being charged in and of
5 itself, however, the issue with regard to prejudice and
6 bias may be considered.

7 MR. WHITE: That sounds fair to me, Judge.

8 MR. SWILLEY: Yes, sir.

9 THE COURT: All right. We are not going to have any
10 discussion about anything about criminal domestic
11 violence. We are not gonna talk about that. You can
12 say, are there charges pending against you? Are there
13 charges pending against you by this office? Ready for
14 the jury.

15 (Whereupon, the jury entered the courtroom at 2:05
16 p.m.)

17 THE COURT: Mr. Foreman, ladies and gentlemen of the
18 jury, you have heard a question which suggests that the
19 defendant was charged with a particular offense.
20 Disregard that testimony. The fact that the defendant
21 may be charged with a particular offense is not to be
22 considered by you, the jury. You may proceed, Mr.
23 Swilley.

24 BY MR. SWILLEY:

25 Q. Mr. Hannah, you've got charges pending against you;

1 is that correct?

2 A. Yes, sir. I do.

3 Q. All right. And those charges are prosecuted by this
4 office; is that correct?

5 A. Yes, sir.

6 Q. That's a yes?

7 A. Yes, sir.

8 MR. SWILLEY: Okay. Thank you.

9 THE COURT: Any redirect?

10 MR. WHITE: Yes, sir, Judge. Just briefly.

11 REDIRECT EXAMINATION

12 BY MR. WHITE:

13 Q. Now, there's a lot of mention about running after
14 Mr. Moore with that bat in your hand and your intent. Was
15 your intent to stop the man who had just stolen money from
16 you?

17 A. Yes, sir.

18 Q. Now, when you were backing out, were you looking or
19 were you ducking as you were backing out?

20 A. I was ducking at first, and then I just had to look
21 up and see where I was at and I just had like a feel for the
22 road, for my environment where I was.

23 Q. But is it fair to say you don't know the exact
24 direction that bullet came in?

25 A. No, sir. I don't.

1 Q. But you do know that it hit you?

2 A. Yes, sir.

3 Q. Okay. Now, that charge pending in our office, is
4 that charge being prosecuted by me?

5 A. No, sir.

6 Q. Have I promised you anything in exchange for your
7 testimony?

8 A. No, sir.

9 Q. Have we discussed anything you have going on with
10 that charge whatsoever?

11 A. No, sir.

12 MR. WHITE: Mr. Hannah, thank you. I have nothing
13 further.

14 THE COURT: You may step down. You may call your
15 next witness.

16 MR. WHITE: Thank you, Judge. At this time the
17 State will call Stephen Starling.

18 THE COURT: Yes, sir. Please come forward and place
19 your left hand on the Bible and raise your right hand
20 while the clerk administers the oath.

21 Thereupon,

22 STEPHEN STARLING

23 after having been first duly sworn, testified as follows,

24 THE CLERK: Please be seated and state your full
25 name for the record.

1 THE COURT: Have a seat in that witness chair. Pull
2 up real close to that microphone, speak loudly and
3 clearly and slowly in order for us to hear everything
4 that you have to say and let's start with your full
5 name.

6 THE WITNESS: Thank you, Judge. Stephen Starling.

7 THE COURT: Very good.

8 MR. WHITE: Thank you.

9 DIRECT EXAMINATION

10 BY MR. WHITE:

11 Q. Officer Starling, if you could tell me, where are
12 you employed?

13 A. City of Florence Police Department.

14 Q. How long have you been employed there?

15 A. A little over 10 and a half years.

16 Q. What do you do for the City of Florence?

17 A. I'm currently assigned to the crime scene unit as
18 well as some IT related duties for the department.

19 Q. What is your involvement involved in the crime scene
20 unit detail?

21 A. For most of the past nine years I've been involved
22 in collecting and preserving evidence and processing evidence,
23 reconstructing scenes for the crime scene unit.

24 Q. Back on December 25th, 2017, were you similarly
25 employed?

1 A. Yes, sir.

2 Q. Did you have occasion to respond to 714 South Church
3 Street here in Florence?

4 A. I did.

5 Q. What is that location?

6 A. It's a gas station known as 4 Way Stop.

7 Q. When you arrive on this scene or any scene, what are
8 you looking for? What are your duties?

9 A. Typical procedure is when I arrive or another crime
10 scene technician should arrive, is that we do a brief walk
11 through of the scene, hands off, touch nothing, just get the
12 information from anyone that has information and then we see
13 what we can observe that might relate to that scene, where the
14 evidence, video surveillance, anything of that nature. We
15 just kind of make mental notes of what we will be gathering,
16 photographing or collecting, anything of that nature.

17 Q. Now, that's generally speaking. Did you do the same
18 thing specifically on this case?

19 A. Yes, sir.

20 MR. WHITE: And if you could, I'll tell you what I'm
21 gonna do. I'm gonna show you State's Exhibit 1 through
22 30 and, Judge, it's my understanding that defense is
23 stipulating to these and we would move these photographs
24 into evidence.

25 THE COURT: Have you seen these documents, Mr.

1 Swilley?

2 MR. SWILLEY: I have.

3 THE COURT: Did you have any objections?

4 MR. SWILLEY: No, Your Honor.

5 THE COURT: They are denominated as what?

6 MR. WHITE: Judge, 1 through 30.

7 THE COURT: 1 through 30 into evidence without
8 objection.

9 BY MR. WHITE:

10 Q. Officer Starling, can you see that okay?

11 A. I cannot. I believe my screen is off.

12 THE COURT: See if we can get that screen cranked
13 up.

14 BY THE WITNESS:

15 A. I can see that now.

16 BY MR. WHITE:

17 Q. Good. If it's all right with you, I'm just gonna go
18 one by one and we'll kind of walk everyone through the crime
19 scene. I'm gonna show you State's Exhibit 1. If you could,
20 tell us what we're looking at there?

21 A. That's the gas sign or the main sign for the
22 establishment there, the 4 Way Stop.

23 Q. And again, that's the 4 Way Stop on Church Street;
24 is that correct?

25 A. Yes, sir.

1 Q. All right. How about State's Exhibit 2?

2 A. This would be the same view from Church Street
3 looking at the 4 Way Stop. National Cemetery would be on the
4 right side of that photo.

5 Q. Is it your understanding that the incident, the
6 shooting happened on, I guess if we're looking at the
7 photograph, our side of the pumps?

8 A. Correct. The pump to the right, it would have been
9 on the photographer's side or my side of that pump.

10 Q. Now State's Exhibit 3.

11 A. This would be from the same view. To the left here
12 is the suspect vehicle in question that had been crashed into
13 the barrier around the gas pump.

14 Q. Now, when you arrived on scene, any suspects
15 there?

16 A. No, sir.

17 Q. Were you aware of any suspects that were around?

18 A. None at that time. I was told that everyone had
19 fled the scene --

20 MR. SWILLEY: Objection to hearsay.

21 THE COURT: Sustained.

22 BY MR. WHITE:

23 Q. Now I'll show you State's Exhibit 4, kind of a close
24 up of the same thing.

25 A. That's correct.

1 Q. State's Exhibit 5.

2 A. Same scene, different view.

3 Q. Close up of that vehicle. State's Exhibit 6.

4 A. As you can see from this direction the vehicle had
5 crashed into that barrier and from the damage it was obvious
6 it was with some force.

7 Q. Does it appear to you that it kind of narrowly hit
8 it with the front of the vehicle?

9 A. Correct.

10 Q. In the in middle of the vehicle, just clipped it?

11 A. Right. Right on the passenger side headlight forced
12 in behind that rail which kind of caused it to stick to gas
13 barrier.

14 Q. State's Exhibit 7.

15 A. Again, a close up picture. It disabled the vehicle
16 once it struck there.

17 Q. What, if anything, did y'all have to do with the
18 vehicle like that once it's disabled?

19 A. In this particular instance it was left as it was.
20 We had to get a tow truck and have it towed to our processing
21 lot where we would follow up with it later.

22 Q. State's Exhibit 8, look over that one.

23 A. Same vehicle, driver's side.

24 Q. That's the other side, correct?

25 A. Mm-hmm.

1 Q. Now, all the windows appear to me -- I'll just go
2 back to 7 and then to 8. Did all the windows appear to be
3 intact?

4 A. They are.

5 Q. State's Exhibit 9.

6 A. Just outside of our crime scene. We didn't find or
7 observe anything that appeared to be related to this scene
8 outside of where you see yellow tape so this is pretty much
9 the edge of our crime scene that we had found and marked
10 off.

11 Q. Investigator Starling, the pump opposite the car
12 that crashed, do you see that can in the roadway there?

13 A. Yes, sir.

14 Q. Is it your understanding that that's where the red
15 minivan was located?

16 A. Correct.

17 Q. Now, I'm showing you State's Exhibit 10. When you
18 find anything of evidentiary value, what, if anything, do you
19 do with it?

20 A. Sometimes we'll take photos of what we see before we
21 mark evidence. Normally in a scene of this nature though as
22 we do our initial walk through instead of just making mental
23 notes, we'll go ahead and put these numbered cones or marker
24 tents as we call them so that we don't have to try and find
25 what we have already discovered.

1 Q. Correct me if I'm wrong, is that 10 marker tents
2 there?

3 A. I believe it was 10.

4 Q. What do those marker tents indicate?

5 A. I believe all 10 of them related to a shell casing
6 or a fired projectile casing that we looked at.

7 Q. What I want to do is, I'll show you a close up
8 State's Exhibit 11. Is that a close up of the same picture.

9 A. Yes, sir.

10 (Whereupon, State's Exhibit #33 marked for
11 identification.)

12 BY MR. WHITE:

13 Q. What I want to do is show you what's been marked as
14 State's Exhibit 33. If you could, don't tell me too much
15 about it, just tell me if you identify that particular object.

16 A. This would be shell casings that were recovered from
17 the scene.

18 Q. Would that be all the shell casings pictured
19 there?

20 A. It should be all 10 of those. Yes, sir.

21 Q. What, if anything, were done with those shell
22 casings? How did they leave the scene and get here today?

23 A. From the scene the photographs are taken, close-ups
24 are taken, they're all collected individually and they're all
25 in little coin envelopes we call them, and then they are

1 either processed by us or sent to SLED's laboratory for
2 processing. In this case they were sent to SLED to be
3 processed further.

4 MR. WHITE: Your Honor, at this time I move State's
5 Exhibit 33 into evidence.

6 THE COURT: Which one is 33?

7 MR. WHITE: The shell casings, Your Honor. My
8 apologies.

9 THE COURT: Any objections?

10 MR. SWILLEY: No objection.

11 THE COURT: Into evidence.

12 BY MR. WHITE:

13 Q. Now we'll walk one by one but I'll do it kind of
14 fast if that's all right. State's Exhibit 1 --

15 A. That would be one shell casing.

16 Q. Is that a close-up there on State's Exhibit 13?

17 A. Correct.

18 Q. I said 1. State's Exhibit 12.

19 A. That would be the same shell casing.

20 Q. State's Exhibit 14 showing marker 2?

21 A. Yes. Same thing, another shell casing.

22 Q. These would also be separate shell casings as
23 they're marked?

24 A. Yeah. Close-up.

25 Q. (Indicating.) State's Exhibit 16.

1 A. Two more.

2 Q. (Indicating)?

3 A. Close-up.

4 Q. The reason I'm showing all these, it's kind of
5 repetitive, but does it appear to you that there are some
6 distance, there is some space between each of these 1 to 2, 2
7 to 3.

8 A. Correct.

9 Q. That is State's Exhibit 18.

10 A. Mm-hmm.

11 Q. State's Exhibit 19.

12 A. Mm-hmm.

13 Q. And then State's Exhibit 25.

14 A. Again, same shell casings, just separate.

15 Q. 21.

16 A. Yes. A close-up.

17 Q. And 22, these are cluster of?

18 A. Yes.

19 Q. But they are some distance away from 5, correct?

20 A. Correct.

21 Q. State's Exhibit 23.

22 A. Should be three close-ups as well.

23 Q. 24.

24 A. Mm-hmm.

25 Q. 25. And now State's Exhibit 26 is kind of a long

1 range right there?

2 A. That's correct.

3 Q. Close-up of 9 is State's Exhibit 27. State's
4 Exhibit 28.

5 A. That's a side shot just of all the same casings.

6 Q. State's Exhibit 29 and 30. Does that cover all the
7 shell casings recovered?

8 A. Yes, sir.

9 Q. Investigator Starling, how long have you been doing
10 this again?

11 A. I've been with the crime scene unit approximately
12 eight years now.

13 Q. Have you received any specialized training of any
14 sort?

15 A. I received specialized training for crime scene in
16 particular from the Criminal Justice Academy. I've also
17 received outsource training from expertly certified companies,
18 Bill Garner and Associates and that would be from training
19 forensic sources as well and shooting reconstruction, blood
20 stain pattern analysis, and crime scene reconstruction.

21 Q. And how many crime scenes do you think you have
22 processed and have been involved in?

23 A. I would say well over a hundred possibly.

24 Q. When you see a pattern like State's Exhibit 11, does
25 that seem to indicate that somebody is walking when they're

1 shooting?

2 MR. SWILLEY: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. WHITE:

5 Q. Let's go over your training one more time, if you
6 don't mind. Give me a run down.

7 A. Specific to the scene of this type I received a --

8 THE COURT: Might counsel approach the bench one
9 moment.

10 (Side bar off the record.)

11 BY MR. WHITE:

12 Q. Let's leave it like this. It'll be a lot easier.
13 If you had to guess from 1 to 9 about how many feet are
14 between marker 1 to 9?

15 A. I would say 12 to 15.

16 Q. And from let's say 9 to 10?

17 A. Approximately in the 10 to 12 foot range as well.

18 Q. How about 1 to 10?

19 A. Maybe another 12 to 15 as well.

20 Q. And then kind of three, one's on the outskirts and
21 everything is kind of scattered in between?

22 A. Roughly in between. Yes, sir.

23 Q. That's in your estimation a pretty good distance?

24 A. It's a fairly large area.

25 MR. WHITE: Investigator Starling, thank you so

1 much. Answer any questions the defense may have.

2 THE COURT: Cross examination.

3 CROSS EXAMINATION

4 BY MR. SWILLEY:

5 Q. Investigator Starling, the vehicle, the Ford Fusion
6 that wrecked into the gas pump railing, just to clarify, that
7 vehicle was disabled, correct?

8 A. I did not personally check to see if it would
9 operate. We did not enter the vehicle at all. We were
10 pending a search warrant to get inside that vehicle so it may
11 have ran but disabled in the fact that it couldn't drive on
12 its own ability just based on the damage on that wheel.

13 Q. Based on your observation it hadn't moved since it
14 had collided with that rail; is that correct?

15 A. It had not moved since I arrived on scene.

16 Q. Okay. All right. And as far as -- Now, these shell
17 casings that you testified about earlier, there's no way of
18 knowing whether or not those had been moved or had moved upon
19 hitting the ground after being discharged from the weapon, is
20 there?

21 A. I can't speak to what happened before I arrived to
22 the scene.

23 Q. I'm sorry?

24 A. I cannot attest to what happened before I arrive to
25 the scene. They had not moved since I arrived on scene.

1 Q. And you can't testify as to what happened from the
2 point they were ejected from the gun to the point you arrived
3 on the scene, right?

4 A. Not with accuracy.

5 MR. SWILLEY: Okay. Thank you.

6 THE COURT: Any redirect?

7 MR. WHITE: No, sir, Judge.

8 THE COURT: You may step down. Call your next
9 witness.

10 MR. WHITE: Thank you, Judge. At this time the
11 State calls Darlene Wingate.

12 THE COURT: Ms. Wingate, come forward to the front
13 of the courtroom, stand right beside the bailiff. Place
14 your left hand on the Bible and raise your right hand as
15 the clerk administers the oath.

16 Thereupon,

17 DARLENE WINGATE

18 after having been first duly sworn, testified as follows,

19 THE CLERK: Please be seated and state your full
20 name for the record.

21 THE COURT: Come around. Watch your step. Have a
22 seat in that witness chair. Pull up real close to that
23 microphone. Speak loudly and clearly and slowly in order
24 for us to hear everything that you have to say, and let's
25 start with your full name, please.

1 THE WITNESS: Darlene Lynn Wingate.

2 THE COURT: Thank you, Ms. Wingate. Mr. White.

3 MR. WHITE: Thank you, Judge.

4 DIRECT EXAMINATION

5 BY MR. WHITE:

6 Q. Ms. Wingate, how are you doing?

7 A. Fine. And you?

8 Q. I'm doing good. I see you've got your work shirt
9 on. Are you coming from work?

10 A. Yes. I am.

11 Q. Do you work at McDonald's?

12 A. I do.

13 Q. How often are you working there?

14 A. Five days a week.

15 Q. Now, do you live in Florence?

16 A. I do.

17 Q. Do you live in the City of Florence?

18 A. I do.

19 Q. Now, on December 25th, 2017, let me just ask you, do
20 you remember that Christmas?

21 A. I do.

22 Q. Is it one that's kind of emblazoned in your
23 memory?

24 A. Only because it was a nice day.

25 Q. It was a nice day?

1 A. It was a nice day.

2 Q. Anything out of the ordinary happen to you that
3 day?

4 A. Yes.

5 Q. Now, were you working at McDonald's that morning?

6 A. Yes.

7 Q. How was that shift?

8 A. Busy.

9 Q. Busy?

10 A. Up until 2:00 p.m.

11 Q. Is that when you knocked off or is that when the
12 lunch rush stopped?

13 A. That's when I knocked off.

14 Q. What did you do at that point?

15 A. I left. I got a phone call from a family member.
16 They wanted some hotdogs. Apparently they love them at this 4
17 Way Stop so I stopped at the 4 Way Stop to get hotdogs.

18 Q. Are they good hotdogs?

19 A. So they say.

20 Q. So you did indeed stop at the 4 Way Stop?

21 A. Yes. I did.

22 Q. Is that the 4 Way Stop on Church Street?

23 A. Yes.

24 Q. Did you go inside the 4 Way Stop?

25 A. Yes. I did.

1 Q. It's my understanding that you used an ATM while you
2 were there; is that correct?

3 A. That's correct.

4 Q. Now, while you were using the ATM, what if anything
5 -- Well, let me stop right there and let me ask you, how many
6 people were around?

7 A. It was crowded.

8 Q. It was crowded?

9 A. Inside, outside. It was crowded.

10 Q. More than 15? Less than 15?

11 A. A little over 15.

12 Q. A little over 15. About 20 people?

13 A. Give or take.

14 Q. Everybody was just kind of coming and going?

15 A. Coming and going. Had a few inside and out. Pretty
16 typical.

17 Q. All right. When you were getting money out of the
18 ATM, did you have a clear view of the outside?

19 A. Yes.

20 Q. What, if anything, did you see at that point?

21 A. Well, it was a nice day. Uhm, there were a few
22 people getting out of their cars coming in. There was a
23 burgundy truck parked at the pump.

24 Q. All right. I'll show you, I'm gonna find a
25 photograph that kind of gives your vantage point so we can be

1 clear about which pump we're talking about. What I will do is
2 show you State's Exhibit 9. If you'll just look on your TV
3 screen there, Ms. Wingate. Now, do you see that crashed
4 car?

5 A. Yes.

6 Q. Where was the red vehicle parked?

7 A. Right on the other side of the police car there.

8 Q. So right on the other side of that pump?

9 A. Yeah. Right back here.

10 Q. Okay. And if I told you that was a red minivan,
11 would you say that was correct?

12 A. Yes.

13 Q. Okay. Do you recall when that silver vehicle there
14 crashed into the barrier?

15 A. It came in, uhm, the parking lot and it came around
16 the burgundy vehicle, van or truck that was parked here, it
17 comes around and goes over to this section and then that's
18 when I heard a bang.

19 Q. And was that bang the vehicle crashing into the
20 barrier?

21 A. Yes.

22 Q. Okay. Do you hear any other loud noises after
23 that?

24 A. Gunshots.

25 Q. All right. Do you see the individual at that time?

1 Do you see the individual with a gun in their hand firing?

2 A. In the gray car.

3 Q. Yeah. You tell me.

4 A. In the gray car he's firing headed towards National
5 Cemetery.

6 Q. Are you saying that the man in the gray car was
7 firing the shots?

8 A. The man in the gray car was firing the shots.

9 Q. Was he firing the shots at somebody in the red
10 minivan?

11 A. Yes.

12 Q. Did you see that man standing there with a bat in
13 his hand?

14 A. Yes.

15 Q. Did you see that man strike anybody with the bat?

16 A. No.

17 Q. So you just saw him standing there with the bat in
18 his hand. All right. I want to ask you, and I should have
19 told you, I guess when you touch this thing, you mark like
20 crayons over it. We'll try to figure that out. If you're
21 looking at this photograph, when the shots are fired, okay,
22 I'm asking from your vantage point right now, when that man
23 with the gun is shooting, is he on the right side of that
24 vehicle or on the left side?

25 A. He's like, he's right behind his driver's side.

1 He's coming around the vehicle.

2 Q. Okay. He's coming around the vehicle?

3 A. He's on the back end of the vehicle.

4 Q. When you hear that first shot fired, where is the
5 man with the bat?

6 A. They're coming towards each other. They're coming
7 towards each other about to meet up in the center.

8 Q. When that shot is fired, what does the man with the
9 bat do?

10 A. The man with the bat then turns to go back to his
11 vehicle.

12 Q. Okay. When he gets in his vehicle, is the man from
13 the crashed car, is he still firing?

14 A. Yes. I can't see it, but I can hear it.

15 Q. Okay. Do you see the red van trying to get out of
16 the parking lot?

17 MR. SWILLEY: Your Honor, object to leading the
18 witness.

19 THE COURT: Sustained. You can ask her what she
20 saw, but you can't lead.

21 BY MR. WHITE:

22 Q. What do you see next?

23 A. Uhm, okay. They're coming towards each other. The
24 guy runs, gets in his car and then the burgundy car takes off.
25 Uhm, you could hear shots being fired but the car is gone.

1 Q. Okay. Did he leave out of where the cop car is?

2 A. Yes.

3 Q. So he was going - in which direction was he driving?
4 Was he driving away from the shooter or towards the shooter?

5 A. He did a U-ie in the parking lot and went out
6 towards National Cemetery.

7 Q. Driving away from the gas station?

8 A. That is correct.

9 Q. Okay. You said you could hear the shots being
10 fired. Could you still hear them being fired as he was
11 driving away from the scene?

12 A. Yeah. Or at least I thought I did. There was a lot
13 of commotion going on, shots were fired, and it was maybe one
14 or two after he pulled out of the parking lot going down
15 National Cemetery.

16 Q. Okay. Now, once he leaves, what, if anything, do
17 you do next?

18 A. The owner/operator, once it started, she just
19 started yelling lock the door, lock the door. Several folks
20 were able to get back inside but because nobody would lock the
21 door then I came from the ATM and locked the door.

22 Q. Okay. What was going through your head? What were
23 your emotions at that time?

24 MR. SWILLEY: Objection, Your Honor.

25 THE COURT: She can answer that.

1 BY THE WITNESS:

2 A. I just thought two idiots out there, uhm, on
3 Christmas day for whatever reason there were just two idiots
4 out there.

5 MR. WHITE: Okay. Thank you so much for taking the
6 time to be here with us today. Answer any questions the
7 defense may have.

8 THE COURT: Cross examination, Mr. Swilley.

9 CROSS EXAMINATION

10 BY MR. SWILLEY:

11 Q. Good afternoon, Ms. Wingate.

12 A. Good afternoon.

13 Q. Ms. Wingate, you were inside the 4 Way Stop when the
14 shots were fired; is that correct?

15 A. Yes.

16 Q. Now, I think that you were able to see the gentleman
17 with the bat chase another gentleman across the parking lot;
18 is that correct?

19 A. Yes. He was headed towards him. Yes.

20 Q. He was headed towards the - he was headed towards
21 the individual who was in the gray car?

22 A. Yes.

23 Q. Okay. Did he have the bat in his hand?

24 A. Yes.

25 Q. And, Ms. Wingate, I think previously you've referred

1 to the gentleman with the bat as the instigator; is that
2 correct?

3 A. Yes.

4 Q. By that am I correct that you mean that he was the
5 one that began the violent situation? Is that what you
6 mean?

7 A. He started the confrontation from what I can see
8 being inside the store.

9 Q. Okay. And that gentleman who you referred to as the
10 instigator, was he moving towards the gentleman in the silver
11 car with the bat?

12 A. Before he got the bat, I could see where there were
13 words being said. I can't hear what the words were because I
14 was on the inside but there were arm signals.

15 Q. On by the part, by the gentleman with the bat?

16 A. Correct. He didn't have the bat at first. There
17 were just, you can hear them arguing because of the door
18 opening back and forth. He was arguing with someone. I don't
19 know who, but he was arguing with someone and hand gestures
20 were going about.

21 Q. Okay. And at that time the gentleman who had the
22 bat, he approached the person in the car, is that correct,
23 that crashed?

24 A. Say that again.

25 Q. And at that point after that he approached the

1 person in the car with the bat. Is that what you recall?

2 A. There was some hand gestures. Some things were
3 being said. You could tell there was an argument because as
4 people come in and out of the store you can hear the noise.
5 The next thing you know you hear the bang of the car. The guy
6 in the burgundy car goes around his car and comes back with a
7 bat.

8 Q. Okay. And then he approaches the car, the silver
9 car?

10 A. They were going -- Yeah. They were coming to meet
11 each other.

12 Q. Okay. Now, the person in the burgundy car, the one
13 with the bat, is it true that he didn't go back to his
14 burgundy car until the shots were fired, until you heard
15 shots; is that correct?

16 A. No. He actually went around his car. His driver's
17 door was open so he went around, he reached in and when he
18 came out, he had the bat, then he was going towards the silver
19 car.

20 Q. Now, at that point when he's going towards the
21 silver car, he's got the bat, right, in his hand?

22 A. Mm-hmm.

23 Q. Okay. And as he approaches the silver car, the
24 silver car is already crashed, right?

25 A. Right.

1 Q. The man, this man gets out of the silver car at that
2 point; is that correct?

3 A. Yes.

4 Q. And then the man with the bat, when he exits the
5 silver car, is the man with the bat still approaching that man
6 who was in the silver car; is that correct?

7 A. I can't say. I didn't see that part. I know they
8 went to approach one another. He had - one hand the bat, one
9 had something in his hand. At the time you couldn't tell what
10 it was because he was coming around the back of the car so as
11 they went to go meet up and the guy raises the bat to swing,
12 the next thing you know you hear pow, pow, so everybody breaks
13 and goes their separate ways.

14 Q. So it's my understanding, just to I'm clear, the
15 last thing that happened before you heard gunshots was the bat
16 was raised?

17 A. Yes.

18 Q. And after that is when the man in the burgundy car
19 goes back to the burgundy car?

20 A. Goes back to the burgundy car. Yes.

21 Q. And drives away?

22 A. And drives away.

23 MR. SWILLEY: Thank you.

24 THE COURT: Any redirect?

25 MR. WHITE: Briefly, Judge.

1 REDIRECT EXAMINATION

2 BY MR. WHITE:

3 Q. Ms. Wingate, you say the man with the bat was the
4 instigator, but are you aware of what happened prior to that
5 car crashing?

6 A. No.

7 Q. So you can't say for certain that he is, in fact,
8 the instigator?

9 A. I don't know. Just by just what I saw right there
10 at that moment.

11 Q. But there's no doubt that once the shots were fired,
12 he retreats? He starts moving away from the man with the
13 gun?

14 A. He starts. Yes.

15 Q. Now, you say that they were moving towards each
16 other before the shots were fired. How close did they get to
17 one another?

18 A. They're pretty close. Not so close as to touch one
19 another. I mean, they come pretty close.

20 Q. Would you say 10 feet?

21 A. A little further back.

22 Q. A little further back. So like 15 feet?

23 A. About 15 feet.

24 Q. So not close enough that he could hit him with the
25 bat?

1 A. No.

2 Q. Unless he threw it?

3 A. Unless he threw it.

4 Q. Or unless he had a gun with a bullet?

5 MR. SWILLEY: Objection. Calls for speculation.

6 MR. WHITE: Judge, I withdraw that question. I have
7 nothing further. Thank you, Ms. Wingate. Thank you so
8 much.

9 THE COURT: You may step down. You may call your
10 next witness.

11 MR. WHITE: Judge, if it would be all right with the
12 Court, we would ask permission for about a five minute
13 recess.

14 THE COURT: Mr. Foreman, ladies and gentlemen of the
15 jury, I'm gonna ask that you retire to the jury room. Do
16 not discuss the case amongst yourselves or with anyone
17 else.

18 (Whereupon, the jury entered the jury room at 2:40
19 p.m.)

20 MR. WHITE: Judge, my apologies. I believe at this
21 point I'm going to enter a piece of evidence a little
22 early and that is a video. I'm just gonna run and grab
23 my computer and get everything hooked up real quick and
24 be ready. If it would be all right with the Court, I
25 would recall Investigator Starling for that purpose, for

1 that limited purpose only.

2 THE COURT: I thought -- Have we already agreed to
3 the authenticity of it?

4 MR. WHITE: Yes, Judge. It's just from a -- It
5 might be a little awkward. The next witness I have is
6 the co-defendant and I don't know that I want to play it
7 at that point but, Judge, I'm happy to do whatever
8 you want.

9 THE COURT: We can do that. We'll stand at ease for
10 five minutes.

11 MR. SWILLEY: Your Honor, I just wanted, it may be a
12 moot point at this point. I think maybe Mr. Moore is the
13 last fact witness they have. I would ask the Court to
14 sequester any witnesses. Obviously the investigator and
15 the alleged victim could be in the courtroom but I don't
16 see anybody else in here right now.

17 MR. TUCKER: There isn't anybody else.

18 MR. WHITE: And that's it. Investigator Starling is
19 here and as soon as I conclude with his testimony, I'll
20 certainly ask -- I think he'll be delighted to take his
21 leave.

22 THE COURT: I don't really think -- Is there a need
23 for sequestration? Of all the fact witnesses, we've only
24 got two fact witnesses who have already testified. They
25 didn't hear the other testimony. The last one there's

1 really no need, is there?

2 MR. SWILLEY: Unless they're gonna be putting on
3 some --

4 THE COURT: You know, I don't see the necessity for
5 that. We'll proceed forward.

6 MR. SWILLEY: Thank you, Judge.

7 MR. WHITE: Thank you, Your Honor.

8 (Whereupon, State's Exhibit #34 marked for
9 identification.)

10 (Short break.)

11 BAILIFF: All rise.

12 THE COURT: We're ready for the jury.

13 (Whereupon, the jury entered the courtroom at 2:55
14 p.m.)

15 THE COURT: Mr. White, call your next witness.

16 MR. WHITE: Thank you, Judge. The State recalls
17 Investigator Starling.

18 THE COURT: Mr. Starling, I remind you that you're
19 still under oath. Have a seat in the witness chair.
20 Start by stating your name for the record.

21 THE WITNESS: Stephen Starling.

22 REDIRECT EXAMINATION

23 BY MR. WHITE:

24 Q. Investigator Starling, I want to ask you about one
25 other thing from the crime scene. There was a surveillance

1 video that covered parts of that outside area; is that
2 correct?

3 A. Correct.

4 Q. Now, did that surveillance video capture the
5 entirety of the incident?

6 A. Not the entirety, but most of the initial incident
7 and the aftermath.

8 Q. I'm gonna show you what's been marked as State's
9 Exhibit 34. Is that the video that we're referring to?

10 A. Looks to be a copy of the evidence disk that we
11 made. Correct.

12 MR. WHITE: Judge, it's my understanding that that
13 evidence has been stipulated to and I move it into
14 evidence.

15 THE COURT: Mr. Swilley?

16 MR. SWILLEY: That's correct, Your Honor.

17 THE COURT: In evidence.

18 MR. WHITE: Judge, permission to publish that
19 particular video.

20 THE COURT: You may.

21 BY MR. WHITE:

22 Q. Investigator Starling, I'm gonna hit play and we'll
23 all watch it together, okay?

24 A. Sounds good.

25 (Playing State's Exhibit #34.)

1 BY MR. WHITE:

2 Q. Is that the red minivan in question?

3 A. It is.

4 Q. Was that being driven by Mr. Phillip Hannah?

5 A. As far as I understand it was.

6 Q. Now, you see the individual with the bat there on
7 the screen; is that correct?

8 A. Yes, sir.

9 Q. Do you see somebody approach him?

10 A. Yes, sir.

11 Q. At that point it appeared to me he responds to
12 something that that individual did behind the gas pump --

13 MR. SWILLEY: Objection, Your Honor. I move to
14 strike that question.

15 THE COURT: Sustained. You can ask him what
16 happened.

17 BY MR. WHITE:

18 Q. What happened, what appeared to you happened on that
19 video?

20 A. It appeared to me they were behind the pump and it
21 was difficult to say for sure, but it appears that there was
22 some type of interaction or altercation which would cause in
23 this case our victim to stumble backwards the way he did.

24 Q. Did you see that Fusion on the camera at any
25 point?

1 A. I did. I believe around 29:14, 29:48 seconds it
2 enters the view on the camera.

3 Q. What, if anything, did that red minivan do?

4 A. So after our victim and the co-defendant appears to
5 walk off screen or chases off screen with a bat, at that time
6 frame as you can see the silver Fusion does enter the screen.
7 I would imagine approximately two if not three seconds later
8 the victim is seen running back to his vehicle and jumping
9 into his vehicle, backing his vehicle up very quickly. I
10 would also like to note also in the video you can see patrons
11 in the parking lot and you also see right there at that same
12 mark what appears to be their reaction to another incident, in
13 this case I believe to be gun fire, and then they start
14 running off screen, the lower left of the screen and that is
15 happening as the victim backs the van away.

16 MR. WHITE: Thank you, Investigator Starling. I
17 have nothing further.

18 THE COURT: Recross examination.

19 RECROSS EXAMINATION

20 BY MR. SWILLEY:

21 Q. Investigator Starling, just so we're clear, that
22 video camera shot is not the only video camera shot you were
23 able to capture from the surveillance video, correct?

24 A. That's correct. It's the only one that shows
25 anything that relates to this incident. All the other cameras

1 do not show anything that I believe was relevant or that shows
2 the incident.

3 Q. That you believe was relevant?

4 A. Right.

5 Q. But you were able to get all the video shots,
6 correct?

7 A. I did pull all the cameras, correct.

8 Q. Right. And that includes -- They took it off --
9 That includes, I think, camera number 9; is that correct?

10 A. It should. I believe I gathered all the video
11 cameras. I'm not sure which ones are there, but 9 possibly
12 was one of them, yes, sir.

13 Q. And you watched all these videos, correct?

14 A. I believe I did. I take pride in trying to
15 thoroughly do my work. It has been two years though. I
16 believe I did watch them all.

17 Q. Based upon your recollection that one we just saw
18 was the only thing that captures anybody involved in this
19 incident; is that correct?

20 A. I can't say it captures anything involved in the
21 incident. It may have captured a co-defendant or defendant
22 leaving the scene or walking up to the scene. It captures the
23 incident in the best entirety that I can recall.

24 MR. SWILLEY: Nothing further.

25 THE COURT: Any redirect?

1 MR. WHITE: No, sir.

2 THE COURT: You may step down. You may call your
3 next witness.

4 MR. WHITE: Judge, at this time the State calls
5 Charles Moore.

6 THE COURT: Yes, sir. Please come forward. I'm
7 gonna ask you to approach the clerk, place your left hand
8 on the Bible and raise your right hand as the clerk
9 administers the oath.

10 Thereupon,

11 CHARLES MOORE

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

13 THE COURT: Watch your step. Have a seat in that
14 witness chair. Pull up real close to that microphone.
15 Speak loudly and clearly and slowly in order that we can
16 hear everything that you have to say.

17 THE WITNESS My name is Charles Moore.

18 DIRECT EXAMINATION

19 BY MR. WHITE:

20 Q. Thank you, Mr. Moore. I want to ask you a little
21 bit about December 25th, 2017. Do you remember that day?

22 A. Yeah.

23 Q. At that time were you in the business of selling
24 marijuana?

25 A. Yes. I was.

1 Q. On that date did you go to the 4 Way Stop on Church
2 Street?

3 A. Yes. I did.

4 Q. What were you going there for?

5 A. I was going to meet somebody to sell them some
6 marijuana.

7 Q. Now, do you know the man who is on trial here today
8 Deipo Lewin?

9 A. Yes. I do.

10 Q. Back on December 25th, 2017, what was the address
11 that you had on your South Carolina ID? Where were you
12 living?

13 A. I was living in Mount Zion at the time, but I had a
14 previous address on Pine Street that was still on my driver's
15 license.

16 Q. At any point during that time was Mr. Lewin living
17 with you?

18 A. Yes. Briefly.

19 Q. Where was he staying?

20 A. He was staying with me and my family.

21 Q. All right. Now, when you arrived at the 4 Way Stop,
22 who were you meeting?

23 A. I was meeting the victim.

24 Q. Okay. And do you know his name?

25 A. No.

1 Q. All right. What were you meeting him to do?

2 A. I was meeting him to sell him some marijuana.

3 Q. Okay. Did you sell him that marijuana?

4 A. No. Never got the opportunity to.

5 Q. At some point are you all involved in an
6 altercation?

7 A. Yeah. We started arguing, then after that he hit me
8 with the bat.

9 Q. What, if anything, happened at that point?

10 A. Flight. After he hit me with the bat, a pretty much
11 took flight.

12 Q. Okay. Were you running fast?

13 A. Yeah.

14 Q. All right. Did you hear anything at that point?

15 A. Not for the first couple of seconds. No.

16 Q. What happened after that?

17 A. After that all hell broke loose so to speak and the
18 shots got fired and people scattered everywhere.

19 Q. Okay. Who was shooting? Who was firing those
20 shots?

21 A. I don't know. The shots were behind me.

22 Q. You don't know who pulled up in that silver car?

23 A. I mean, I know who pulled up after the fact, but I
24 don't know during the time I was, everything was behind me so
25 I never seen the actual rest of the stuff. The only thing I

1 remember is getting hit with the bat and the shots and who ran
2 with me.

3 Q. I'm gonna show you State's Exhibit 6. Mr. Moore,
4 whose vehicle is this?

5 A. I don't know.

6 Q. You don't know whose vehicle that is?

7 MR. SWILLEY: Your Honor, I can't hear this witness.
8 I apologize.

9 THE COURT: I'm gonna ask you to speak up.
10 BY THE WITNESS:

11 A. I don't know.

12 BY MR. WHITE:

13 Q. So you've never been in that vehicle before?

14 A. Yeah. I've been in a vehicle like that, but you
15 asked me whose vehicle was this. I can't tell you exactly
16 whose vehicle this is.

17 Q. You don't know whose vehicle crashed into a gas
18 station that you were at?

19 A. Now they're saying it was Deipo, yes, but I didn't
20 know this at the actual crash scene and I didn't want to say,
21 oh, yeah, I know that's his vehicle and I don't know what the
22 crash scene looked like.

23 Q. But you two were associates at the time?

24 A. Yes. We were. We were friends.

25 Q. All right. Are you saying he just happened to show

1 up?

2 A. Yeah. And he just got that vehicle so it's not like
3 he been driving that vehicle.

4 Q. So you do know whose vehicle it is?

5 A. Yes. I been in that vehicle before. I was just not
6 sure if that was the actual vehicle you were showing me in
7 this picture.

8 Q. Okay. Are you aware if the driver of that vehicle
9 fired shots shortly after you fled the scene?

10 A. No.

11 Q. All right. After you get hit with the -- How many
12 times did you get hit with the baseball bat?

13 A. I got hit one time in the head.

14 Q. Where did you go after that?

15 A. I ran home.

16 Q. Did you go to the hospital?

17 A. No.

18 Q. Did you call law enforcement?

19 A. No.

20 Q. You didn't stick around, did you?

21 A. No. Definitely not.

22 Q. When you get there, when you're about to engage in
23 that marijuana transaction, why did you go into the victim's
24 pockets?

25 A. Why did I what?

1 Q. Why did you go in the victim's pockets?

2 A. What you mean go in his pockets?

3 Q. What would be the purpose of going in his pockets?

4 A. I never went in his pockets.

5 Q. Okay. So he just hit you for no reason at all?

6 MR. SWILLEY: Objection, Your Honor. He's leading
7 the witness. He's the State's witness.

8 THE COURT: Sustain the objection. Ask direct
9 questions. You can ask him what transpired.

10 MR. WHITE: Yes, sir, Judge.

11 BY MR. WHITE:

12 Q. Did you hear gunfire?

13 A. Yes. I did hear gun fire.

14 Q. How many shots did you hear?

15 A. I don't know. I wasn't counting.

16 Q. Do you recall hearing the last shot?

17 A. No. My ears were ringing. I got hit on the left
18 side of my head so it's not like - like really I was in a daze
19 the whole time I'm giving you.

20 Q. That's all right. But you did hear shots?

21 A. Yeah. I heard the shots.

22 Q. When you heard the first shot, how far away from
23 this pump were you?

24 A. By the next store.

25 Q. By the next store?

1 A. Yeah.

2 Q. What do you mean by that? I'm sorry.

3 A. There's a store beside the gas station.

4 Q. Okay. So when you -- I'm not trying to lead you. I
5 just want to make sure we're correct. When you heard the
6 first shot, you were at the store beside the gas station?

7 A. Yeah.

8 Q. Okay. Now, when you heard the second shot, where
9 were you?

10 A. I don't know.

11 Q. How about the last shot, where were you?

12 A. I don't know.

13 Q. Would you say you were further away from the next
14 store?

15 A. Yeah. From the first shot.

16 Q. A hundred yards away?

17 A. I don't know.

18 Q. Now, do you know Mr. Deipo Lewin by the nickname
19 D?

20 A. Yes. I do.

21 Q. Do you recall giving a statement to Investigator
22 Banister in this case?

23 A. Yes. I do.

24 Q. Do you recall telling Investigator Banister that you
25 saw D running with a gun?

1 A. Yes. I do.

2 Q. Okay. So you did see somebody with a gun?

3 A. Yeah. I never said I didn't.

4 Q. All right. Did you see him firing the gun?

5 A. No. And I did actually state that it was more than
6 one person I seen with a gun. They just asked me about
7 Deipo.

8 Q. Who else did you see with a gun?

9 A. Guys from the neighborhood. I didn't really have
10 anybody's official name except for Deipo because he stayed
11 with me, but there was enough people at the store that
12 scattered at that point and he was the only one that I knew of
13 so when the investigator asked me his name, I told him the
14 only one that I really knew was D. I don't even know, even
15 with him staying with me like that, I didn't know his
16 government name like that. It's not a common name.

17 Q. How many were firing shots?

18 A. I don't know who fired. I never seen the shooter.

19 Q. Now, you classified him as the victim earlier. You
20 didn't see the victim with a gun?

21 A. I didn't see the victim with a bat. I just bolted.
22 Yeah. I didn't see the victim with a bat or anything. We
23 were having a conversation and I got crushed. That's why you
24 asked me about patting down. I really don't remember any of
25 that. There was no time.

1 Q. All right. But you didn't see the victim with a
2 gun?

3 A. No.

4 MR. WHITE: Judge, I have nothing further. Thank
5 you.

6 THE COURT: Mr. Swilley.

7 CROSS EXAMINATION

8 BY MR. SWILLEY:

9 Q. Mr. Moore, if you could, I'm a younger guy, but my
10 hearing is terrible. Make sure you talk into that mic so I
11 hear you, please, and so the jury can hear you, okay?

12 A. Got you.

13 Q. Appreciate it. Now, Christmas afternoon, early
14 afternoon, you went up to the 4 Way to sell two grams of weed
15 to Phillip Hannah, right?

16 A. Yes. I guess so.

17 Q. He's not in here now. When you went up there, you
18 walked up to 4 Way, right?

19 A. Yes. I did.

20 Q. You didn't tell anybody what you were going up there
21 to do, right?

22 A. Not at all.

23 Q. Again?

24 A. Not at all.

25 Q. You lived with your wife at the time, right?

1 A. Yeah. I lived with my wife at the time.

2 Q. And that's Asha?

3 A. Yes.

4 Q. Okay. And Mr. Lewin here was hanging out at your
5 house that day, right?

6 A. Not that I recall. No. The year before, but not
7 that day.

8 Q. You're talking about earlier?

9 A. No.

10 Q. Okay. Now, isn't it true that Mr. Lewin, you had
11 asked Mr. Lewin to come pick you up at 4 Way early that day;
12 is that correct?

13 A. No. My house is probably like 300 yards from the
14 store.

15 Q. Okay. Is it your testimony that you never asked Mr.
16 Lewin to come pick you up?

17 A. No.

18 Q. Okay. Now, Mr. Moore, just so we're clear, you
19 never tried to take Mr. Hannah's wallet, did you?

20 A. No.

21 Q. And you never tried to stick your hand in any of his
22 pockets, did you?

23 A. No.

24 Q. You never tried to rob Mr. Hannah, did you?

25 A. No. I didn't.

1 Q. The sole purpose for that transaction was to sell
2 Mr. Hannah marijuana; isn't that correct?

3 A. Yes. It was.

4 Q. Okay. And that interaction you had with Mr. Hannah,
5 that took about five seconds, would you agree with that?

6 A. Yes. It did.

7 Q. And I believe, if I'm not incorrect, you said
8 something to Mr. Hannah along the lines of why should I sell
9 you marijuana; is that correct?

10 A. Yeah.

11 Q. And at that point he takes the bat and he strikes
12 you with the bat; is that correct?

13 A. As much as I can remember. Yeah.

14 Q. Just so we can see it correctly, Mr. Hannah is
15 parked next to the gas pump, right?

16 A. Yes.

17 Q. And he's standing there waiting on you, right?

18 A. Yes.

19 Q. And he's not pumping gas, is he?

20 A. I don't remember. He could have been. He was right
21 near the pump.

22 Q. But based on your recollection he's not doing
23 anything but waiting on you, right?

24 A. Yeah. He's just in between the pump and we engage
25 in conversation when I approach him.

1 Q. And what was the last part of that? I'm sorry.

2 A. He was waiting in between the pump and when I seen
3 him, we just engaged in conversation. When I talked with him,
4 that's when we started arguing. I didn't actually know I was
5 going to meet Mr. Hannah.

6 Q. Okay. And at that point that's when you said why
7 should I sell you marijuana?

8 A. No. At that point we started arguing back and forth
9 about a previous incident.

10 Q. Okay. And at that point is when he had the bat
11 after that, right?

12 A. At that point after I said why should I sell you
13 marijuana, I got struck. I never seen the bat. The bat was a
14 total surprise to me.

15 Q. He didn't reach in his car and grab that bat, did
16 he?

17 A. No. He didn't.

18 Q. He had the bat with him, right?

19 A. Yes. He did.

20 Q. Okay. And after he struck you, he chased you across
21 that parking lot; isn't that correct?

22 A. Yes. He did.

23 Q. And when he's chasing you, you said you got hit in
24 the left side of your head, right?

25 A. Yeah.

1 Q. That's a yes?

2 A. Yes.

3 Q. Okay. And you're holding your head as you were
4 running?

5 A. Maybe. Maybe not. I don't recall.

6 Q. You don't recall?

7 A. Mmm-mmm.

8 Q. And you see Mr. Lewin pulling in the gas station in
9 a car; is that right?

10 A. I didn't see Mr. Lewin pull in.

11 Q. Never pointed at Mr. Lewin?

12 A. No.

13 Q. Never pointed at Mr. Hannah --

14 A. No.

15 Q. -- to Mr. Lewin?

16 A. No.

17 Q. Okay. But based upon what you recall, it would have
18 appeared that you were, it would appear that somebody was
19 attempting to harm you, right?

20 A. Yeah. I mean, he was harming me. I don't know what
21 you mean by attempting.

22 Q. Excuse me. Let me rephrase my question. At that
23 point it would appear that Mr. Hannah was harming you, in the
24 process of harming you, right?

25 A. Yes.

1 Q. With a bat, correct?

2 A. Yes.

3 Q. Is that a yes?

4 A. Yes.

5 Q. Again --

6 A. Yes.

7 Q. Thanks. Mr. Moore, I think that Mr. White here
8 referenced you had a prior interview with law enforcement; is
9 that correct?

10 A. My original statement?

11 Q. That's what I'm talking about; is that correct?

12 A. Yes.

13 Q. You recall that, right?

14 A. Yes.

15 Q. You recall that was about an hour and 15 minutes
16 long which was recorded, right?

17 A. Yes. I do.

18 Q. You were in there for a long time; is that
19 correct?

20 A. Yes. I do.

21 Q. Now, it's true that you told Investigator Banister
22 that it appeared that Mr. Phillip went to reach for a gun. Do
23 you remember telling him that?

24 A. Not really.

25 Q. You don't recall that?

1 A. No. This is two years later, but I'm pretty sure
2 whatever I told him was like most detailed then than I can
3 give you now.

4 Q. Is it your testimony that it appeared that Mr.
5 Hannah reached for a gun at some point?

6 A. If that was my statement, yes, sir.

7 Q. I'm asking you based on your recollection do you
8 recall that?

9 A. Really I don't recall much other than our
10 conversation, me getting hit with the bat, where we both were,
11 stuff like that. I don't even remember the initial words and
12 the conversation, nothing like that, but I'm pretty sure I
13 seen him reach, but I don't - I don't know. It was fast. It
14 was like 10 seconds of us having an argument, getting hit with
15 a bat, and what other details I could get I gave him in that
16 interview, that initial interview.

17 Q. Now, Mr. Moore, you didn't direct anybody else to do
18 anything to Mr. Hannah?

19 A. No.

20 Q. That's correct?

21 A. No. That is correct. I didn't direct anybody.

22 Q. Okay. You yourself never assaulted Mr. Hannah, did
23 you?

24 A. No. I didn't.

25 Q. And you went up to that gas station to meet Mr.

1 Hannah by yourself, right?

2 A. Yes. I did.

3 Q. And that was the first you went from your house in
4 Mount Zion to the 4 Way; is that correct?

5 A. Yes. I did.

6 Q. Didn't talk to anybody on the way, right?

7 A. No. I didn't, besides Mr. Hannah.

8 Q. I mean on the way to meet Mr. Hannah?

9 A. Mr. Hannah.

10 Q. You didn't talk to anybody before you met with Mr.
11 Hannah; is that correct?

12 A. (Witness shaking head.)

13 Q. You've got to answer yes or no.

14 A. No.

15 Q. Okay. You never ran off once you were hit with the
16 bat with anything that belonged to Mr. Hannah, did you?

17 A. No. I didn't.

18 Q. That's a no?

19 A. That's a no. No. I didn't.

20 Q. Okay. You got struck with the bat and you ran off,
21 nothing in your hands, right?

22 A. Nothing in my hands.

23 MR. SWILLEY: May we approach for a moment?

24 THE COURT: Yes.

25 (Side bar off the record.)

1 BY MR. SWILLEY:

2 Q. Mr. Moore, you have been called here as a witness by
3 the State, do you understand that?

4 A. Mm-hmm. Yes. I do.

5 Q. Thank you. And you're currently charged with, in
6 this case you're currently charged with attempted murder, do
7 you understand that?

8 A. Yes. I do.

9 Q. Currently charged with robbery as well; is that
10 correct?

11 A. Yes. Yeah. It is.

12 Q. As well as possession with intent to distribute
13 marijuana?

14 A. Yes. It is.

15 Q. All right. And you don't want to be convicted of
16 any of those, do you?

17 A. Who would?

18 Q. Is that a no?

19 A. That's a no.

20 Q. Okay. And you understand you want to do everything
21 you can to help yourself, right?

22 A. Yes.

23 Q. Okay. And you've taken an oath to swear to the
24 truth and now you're on the witness stand. You understand
25 that, right?

1 A. Yes. I do.

2 Q. And you understand that you're looking at on
3 attempted murder anywhere up to 30 years. You understand
4 that, right?

5 A. Yes. I do.

6 Q. And on the robbery you're looking at up to 15 years;
7 isn't that right?

8 A. Yes.

9 Q. Is that a yes?

10 A. Yes.

11 Q. And with the weed charge you're looking up to five;
12 is that correct?

13 A. Yes.

14 Q. Okay. That's a total, in this case it's a total of
15 50 years you could get, correct?

16 A. Yes. It is.

17 Q. Okay. And you're willing to do anything you can to
18 put yourself in the best position possible, right?

19 A. I don't know how to answer that question, but I'm
20 here to answer the truth and whatever comes about.

21 Q. So just so I'm clear, Mr. Moore, you do want to help
22 yourself as much as possible, right?

23 A. Of course. Yes. I do.

24 MR. WHITE: Objection. Asked and answered at this
25 point and asked for a third time.

1 BY THE WITNESS:

2 A. I don't get where we're going. Anybody would want
3 to help theirsself. Yes.

4 BY MR. SWILLEY:

5 Q. But you're not gonna lie on the witness stand,
6 right?

7 A. No. I'm not.

8 Q. Mr. Moore, you never walked up to Mr. Hannah when he
9 was inside the car at the car window, did you?

10 A. Never was in the car.

11 Q. That you saw, right?

12 A. No.

13 Q. Okay. You gave one interview to the police,
14 right?

15 A. Two.

16 Q. You give two interviews to the police?

17 A. Yeah.

18 Q. All right. Now, is it your understanding that both
19 of these interviews were recorded?

20 A. Yes. They did.

21 Q. Mr. Moore, just to clarify, you didn't have anybody
22 there, you didn't arrange for anybody to watch your back
23 during this transaction, did you?

24 A. No. I didn't.

25 Q. Just a routine two gram drug transaction, right?

1 A. That's what you call it. Yes, sir.

2 MR. SWILLEY: Thank you, Mr. Moore.

3 THE COURT: Redirect?

4 MR. WHITE: No, sir, Judge.

5 THE COURT: You may step down. Call your next
6 witness.

7 MR. WHITE: Judge, may we approach?

8 THE COURT: Yes.

9 (Side bar off the record.)

10 THE COURT: Call your next witness.

11 MR. WHITE: All right. The State would call
12 Investigator Banister.

13 THE COURT: Investigator Banister, please come
14 forward and place your left hand on the Bible, raise
15 right hand as the clerk administers the oath.

16 Thereupon,

17 STEPHEN BANISTER

18 after having been first duly sworn, testified as follows,

19 THE COURT: Have a seat in that witness chair. Pull
20 up real close to that microphone. Speak loudly, clearly,
21 slowly in order that we can hear everything that you have
22 to say. Investigator Banister, give us your full name,
23 please, sir.

24 THE WITNESS: My name is Sergeant Stephen
25 Banister.

1 THE COURT: Thank you.

2 DIRECT EXAMINATION

3 BY MR. WHITE:

4 Q. Investigator Banister, where are you employed?

5 A. City of Florence Police Department.

6 Q. How long have you been employed there?

7 A. I've been employed coming up on 15 years and I have
8 almost 22 years in law enforcement.

9 Q. On December 25th, 2017, were you similarly
10 employed?

11 A. Yes. I was.

12 Q. Did you get called to the scene of an incident that
13 occurred on Church Street that day?

14 A. Yes. I did.

15 Q. Was that Christmas day?

16 A. Yes. It was.

17 Q. What did you find once you arrived on scene?

18 A. I arrived on scene and met with another
19 investigator, Investigator Clark. He briefly told me what he
20 was told because he was already on call that night so he came
21 in and he called me, looked over the crime scene. I was told
22 that the victim had checked in at the --

23 MR. SWILLEY: Objection. Hearsay.

24 THE COURT: Sustained.

25 BY MR. WHITE:

1 Q. Don't testify to anything that was told to you, just
2 anything that you observed personally.

3 A. I arrived, looked at the scene and then from there I
4 left to go to the hospital.

5 Q. What did you find once you arrived at the
6 hospital?

7 A. I went to the ER room and I found the victim in one
8 of the rooms, I cannot remember what room, by himself.

9 Q. Did you meet with the victim?

10 A. Yes. I did.

11 Q. Did you give him a photo lineup?

12 A. Not at that time I did not.

13 Q. At what point did you give him a photo lineup?

14 A. Later after we identified the defendant.

15 Q. Who did he pick out of that photo lineup?

16 A. He picked out Mr. Deipo Lewin.

17 Q. Were you able to ascertain the extent of his
18 injuries.

19 A. The victim's injuries?

20 Q. Correct.

21 A. To that point. I was told later that he had even
22 more --

23 MR. SWILLEY: Objection to hearsay.

24 THE COURT: Sustained.

25 BY MR. WHITE:

1 Q. Don't testify to anything that was told to you.

2 A. I'm sorry.

3 Q. Let me back you up. When you met with the victim
4 that night or that evening after he was shot and in the
5 hospital, was he able to communicate well?

6 A. Not very well, but he was able to talk to me.

7 Q. Did you have a hard time understanding what he was
8 saying?

9 A. I could identify everything he was telling me.

10 Q. All right. Did he identify the person he was
11 engaged in a drug transaction with?

12 A. Yes. He did.

13 Q. Who did he identify that person to be?

14 A. Mr. Moore.

15 Q. Were you able to track down Mr. Moore?

16 A. Yes. I was.

17 Q. All right. Did Mr. Moore give you a statement?

18 A. Yes. He did.

19 Q. Was he completely forthcoming?

20 A. No --

21 MR. SWILLEY: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. WHITE:

24 Q. Did he give you -- Well, at some point in the
25 interview did he tell you that he knew who the shooter was?

1 A. Yes. He did.

2 Q. Did he give you a nickname for that person?

3 A. Yes. He did.

4 Q. What was that nickname?

5 A. The letter "D".

6 Q. At that point was he willing to give you his full
7 name?

8 A. At that point he did not give me his full name.

9 Q. Was this being recorded?

10 A. At the time he gave me the name it was not being
11 recorded.

12 Q. Okay. But when he -- Who asked for the recording to
13 be stopped?

14 A. The co-defendant, Mr. Moore.

15 Q. What was the purpose for him asking for that?

16 A. He told me that he did not want --

17 MR. SWILLEY: Objection. Hearsay again.

18 THE COURT: Sustained.

19 BY MR. WHITE:

20 Q. All right. Let me ask it this way: After he asked
21 to stop the recording, did he then give you the name of Deipo
22 Lewin?

23 A. Yes.

24 Q. Now, were you involved in a search warrant of the
25 home of Mr. Moore?

1 A. Yes. I was.

2 Q. Do you have that information in front of you by
3 chance?

4 A. I have my narrative. I might have a copy of the
5 search warrant with me, otherwise it's back on the desk.

6 Q. Now, were you involved in a search warrant of the
7 vehicle that crashed there at the gas station?

8 A. Yes. I was.

9 (Whereupon, State's Exhibit #35 marked for
10 identification.)

11 BY MR. WHITE:

12 Q. I'm gonna show you what's been marked as State's
13 Exhibit 35. If you could, just take a look through there and
14 without telling me too much about it let me know if you
15 recognize those items?

16 A. Yes. I do.

17 Q. Where were those items retrieved from?

18 A. The defendant's vehicle.

19 Q. Okay. We've got two defendants here.

20 A. Defendant Mr. Deipo Lewin.

21 Q. Is that the vehicle that was crashed?

22 A. Yes. It was.

23 MR. WHITE: If we could, if you don't mind -- Well,
24 Judge, I would like to move those particular items into
25 evidence if I could.

1 MR. SWILLEY: May I see what's in that box?

2 THE COURT: Yes.

3 MR. SWILLEY: Your Honor, there's a matter of law we
4 need to take up as it pertains to the State's
5 introduction of this.

6 THE COURT: If y'all could approach the bench one
7 moment.

8 (Side bar off the record.)

9 BY MR. WHITE:

10 Q. I'm removing this one item. Can you tell me if you
11 recognize those items as the items we were previously
12 discussing?

13 A. Yes, sir.

14 MR. WHITE: Judge, I would now move State's 35 into
15 evidence.

16 THE COURT: Any objections?

17 MR. SWILLEY: Just to be sure of one thing, Your
18 Honor. No objection.

19 THE COURT: In evidence.

20 BY MR. WHITE:

21 Q. Investigator Banister, let's take one item at a time
22 and talk about each item as you found them.

23 A. Is it okay to remove them from the package?

24 Q. Just glove up for me and just identify these items
25 for me.

1 A. First there's a box of ammunition, handgun
2 ammunition, .40 caliber Smith and Wesson 38 grain, short out
3 of the box, seven rounds.

4 Q. What type of shell casings were recovered from the
5 scene?

6 A. From a small .40 caliber. One of the envelopes is a
7 9 millimeter from the center console of the car. We found
8 other ammunition separate from this box in the car.

9 Q. That's a 9 millimeter?

10 A. Yes. This is a 9 millimeter bullet. This one is a
11 projectile from the passenger front floor. This could be from
12 the other carton being the same box. There was also a Crown
13 Royal bag found in the vehicle.

14 Q. Hold on one second. Let's not discuss anything
15 about that Crown Royal bag, okay? Just skip right over that.

16 A. These are two different bullets also located in the
17 vehicle. These ones are 9 millimeter.

18 Q. Okay. I believe there was some identifying
19 documents in that recovery. Could you point to those
20 particular items?

21 A. There was also a traffic ticket summons from the
22 State of Georgia that was pulled from the vehicle with the
23 defendant's information listed on it.

24 Q. Could you pull that out for us?

25 A. (Witness complies.)

1 Q. If you could, read the address off of that
2 particular document.

3 A. [REDACTED] looks like Cassals or [REDACTED] Place, 33K, Bronx,
4 New York.

5 Q. Let's go to the next document, if we could.

6 A. This is a card and a DMV receipt from the center
7 console of the vehicle. One of the cards is a Fidelis Care or
8 Filas Care and the name on it is Deipo D. Lewin. The next one
9 is a Master Card credit card or at least appears to be a
10 credit card, it's different, and it also has the name Deipo
11 Lewin. Another credit card matching the same one, looks just
12 like it, it's also says Deipo Derrick Lewin. This is a
13 Department of Motor Vehicles. This is a road test evaluation
14 form and it also has the defendant's name at the top of it as
15 the person.

16 Q. Does it have an address?

17 A. I'm not seeing an address on here.

18 Q. That's all right. Move onto the next document.

19 A. This one is a receipt from the center console. It
20 also has the first name Deipo, last name Lewin, with a phone
21 number and a mailing address of [REDACTED] Circle, East
22 Decatur, Georgia with a email address. The last one, this is
23 a receipt, the title looks like F-e-n-d-i, Fendi. It's for
24 \$700.00. It's for it looks like sneakers or some kind of
25 leather clothing. The address is shown for the company.

1 There's the name. It says client name Deipo Lewin.

2 Q. Any other identifying information?

3 A. On that one, no. It's just a little bit of
4 information.

5 Q. Any other documents?

6 A. That should be the last of the documents.

7 (Whereupon, State's Exhibit #36 marked for
8 identification.)

9 MR. WHITE: I'll show you what's been marked as
10 State's Exhibit 36. Judge, I believe this item has been
11 stipulated to.

12 MR. SWILLEY: That's correct, Your Honor.

13 MR. WHITE: I would move State's Exhibit 36 into
14 evidence.

15 THE COURT: In evidence without objection from the
16 defense.

17 BY MR. WHITE:

18 Q. Can you tell us what we're looking at there.

19 A. This is a swab from the windshield of the
20 defendant's vehicle.

21 Q. A swab of what exactly?

22 A. The defendant's DNA.

23 Q. Okay. When you say the defendant, whose DNA
24 specifically was found inside that vehicle?

25 A. Defendant Deipo Lewin.

1 Q. Let me ask you about that vehicle. All those
2 things, the identifying information as well as the DNA, where
3 were they recovered from again?

4 A. They were recovered from the defendant Deipo Lewin's
5 Ford Fusion, the vehicle that crashed.

6 Q. You say his Ford Fusion. Was it in his name?

7 A. No. It was not.

8 Q. Was it in the name of someone else?

9 A. Yes. It was.

10 Q. All right. Now, when you met with the victim not
11 that night but later on did you give him a photo lineup?

12 A. Yes. I did.

13 Q. How does that work?

14 A. Either our crime scene or SLED, normally I would use
15 SLED unless it's after hours and I can't get a hold of them,
16 we give a picture, description, a name and all the personal
17 information to a person of interest and then they match close
18 people that look like him, same height, color, things of that
19 nature and create the lineup for us. They have multiple
20 pictures.

21 THE COURT: Counsel approach the bench for one
22 moment.

23 (Side bar off the record.)

24 BY MR. WHITE:

25 Q. Now, I interrupted you, Investigator Banister. My

1 apologies. The victim was shown a photographic lineup,
2 correct?

3 A. Yes.

4 Q. Did he pick Mr. Lewin out of that lineup?

5 A. Yes. He did.

6 Q. Did he identify him as the man who shot him?

7 A. Yes.

8 MR. WHITE: Investigator Banister, that's all the
9 questions I have at this moment. Please answer any
10 questions the defense counsel may have.

11 THE COURT: Mr. Swilley, you're recognized.

12 CROSS EXAMINATION

13 BY MR. SWILLEY:

14 Q. All right. Investigator Banister, you were the lead
15 investigator in this case, right?

16 A. Yes. I was.

17 Q. And I believe you were the only investigator that
18 was assigned to this case, right?

19 A. Yes. I was.

20 Q. Okay. So you're in charge of how the investigation
21 goes, right?

22 A. Yes.

23 Q. And as a lead investigator with an investigation,
24 that's a lot more duties than your average road officer,
25 right?

1 A. Yes. It is.

2 Q. And I think you have been an investigator for a
3 number of years, correct?

4 A. Yes.

5 Q. I think the City of Florence and Morrisville,
6 right?

7 A. Yes.

8 Q. You have gone to the CJ Academy, right?

9 A. Yes.

10 Q. And you have taken numerous classes on investigation
11 and continuing education on investigation; is that correct?

12 A. Yes.

13 Q. And you are well aware of how to properly interview
14 people, right?

15 A. Yes.

16 Q. And you know how to run a crime scene, right?

17 A. I don't have any training in crime scene. We leave
18 that to them, just experience of looking at crime scene, but I
19 have never been trained for crime scene itself.

20 Q. You know how to investigate a crime scene as a
21 police investigator; is that correct?

22 A. From what the Criminal Justice Academy taught, yes.
23 But no specialized training.

24 Q. Okay. And is it true to say in this case or really
25 in any case that interviews with people involved are

1 important, right?

2 A. Yes.

3 Q. Okay. And I think when you arrived at the 4 Way
4 that afternoon as investigator on call, there were several
5 people that were present, correct?

6 A. What do you mean by people?

7 Q. By lay people, civilians?

8 A. At the time I didn't meet with any civilians. I
9 don't remember seeing any. It's been two years. I just
10 remember speaking to the officers.

11 Q. Okay. And I think that you briefly spoke with the
12 store clerk; is that correct?

13 A. No. I did not speak to the store clerk that day.

14 Q. Okay. Typically you want to talk to as many eye
15 witnesses as possible as investigator, right?

16 A. If I have them. Correct.

17 Q. I'm sorry?

18 A. If I have some. Yes.

19 Q. And I believe in this case we know there were
20 several eyewitness; is that correct?

21 A. I know of one offhand. That's all.

22 Q. Okay. You were in court earlier when the video was
23 played, right?

24 A. Yes.

25 Q. And there were several other individuals that seemed

1 to have witnessed at least some part of this interaction; is
2 that correct?

3 A. Yes. But they were not on scene.

4 Q. Okay. And they were interviewed as a result of your
5 investigation?

6 A. No.

7 Q. And I believe that Ms. Wingate was actually
8 interviewed by one of the road officers; is that correct?

9 A. Yes.

10 Q. You never interviewed Ms. Wingate, did you?

11 A. No. I did not.

12 Q. I believe that after you arrived on scene, that you
13 spoke to people and then you headed out to McLeod Hospital,
14 right?

15 A. Yes.

16 Q. That was to meet with Mr. Hannah who was shot in the
17 face, right?

18 A. Yes.

19 Q. You wanted to gather as much information as you
20 could from Mr. Hannah at that time; is that correct?

21 A. Yes.

22 Q. And at that time you got Mr. Hannah's version of
23 events, right?

24 A. Yes.

25 Q. And I believe that other than that one time you

1 interviewed Mr. Hannah or met with Mr. Hannah several times;
2 is that correct?

3 A. Yes.

4 Q. Along with I think members of his family?

5 A. Briefly. They might have stepped outside at one
6 point when I went to meet with him, but I really did not meet
7 with his family, just him.

8 Q. So let me kind of change gears on you and go back.
9 Those people in the video or anybody else that would have been
10 an eyewitness to this, typically as part of investigation
11 you want to identify anybody who could be a witness, right?

12 A. Yes.

13 Q. And if you can identify them, you want to interview
14 them, right?

15 A. Yes.

16 Q. And if you interview them, you get the contact
17 information, correct, so you can contact them again if
18 necessary?

19 A. Yes.

20 Q. All right. In this case that wasn't performed; is
21 that correct?

22 A. No. We were unable to identify anyone.

23 Q. Okay. When you take interviews, it's always
24 important to memorialize these interviews, right?

25 A. What do you mean by memorialize them?

1 Q. Record them one way or another; is that correct?

2 A. Yes. If possible.

3 Q. You can have a written statement, correct?

4 A. You can.

5 Q. You can have an audio statement, right?

6 A. Yes.

7 Q. You have capacity to do a video statement, too,
8 right?

9 A. I don't know if we had it in our interview room at
10 the time. I don't think we did. Actually I can tell you that
11 we didn't. We did not have a video interview room at that
12 time. It came later on. I think we just got it last year.

13 Q. At this time you had the ability to perform audio
14 and written recordings as a part of the equipment with the
15 City of Florence, right?

16 A. Yes.

17 Q. I think you did an audio, you yourself did an audio
18 recording with Mr. Moore, right?

19 A. Yes.

20 Q. That took about, the recorded parts about an hour
21 and 15 minutes, right?

22 A. I can't remember the exact time but that could be
23 accurate.

24 Q. I think that was you and Officer Shelley were in
25 there, too, right?

1 A. Yes.

2 Q. And at some point Mr. Moore requested that the
3 recorder be turned off, right?

4 A. Yes.

5 Q. And I think you communicated with Mr. Moore about 15
6 minutes after that and that was unrecorded?

7 A. Yes. It was.

8 Q. That's correct?

9 A. Yes.

10 Q. Now, it's correct that there was never any actual
11 recorded interviews of Mr. Phillip Hannah; is that correct?

12 A. No.

13 Q. And I believe that for every time you ever met with
14 Mr. Hannah there was no recording made; is that correct?

15 A. No. There was not.

16 Q. Okay. And I think, am I correct in that after this
17 incident I think you took two days off for personal time?

18 A. I can't recall.

19 Q. Okay. Do you recall informing Mr. Moore of that in
20 the interview with Mr. Moore after about an hour?

21 A. Can you repeat your question please.

22 Q. Do you recall informing Mr. Moore of that during the
23 interview with Mr. Moore?

24 A. I don't recall, but it's possible. It was during
25 the holidays.

1 Q. Okay. And you typically take time off around the
2 holidays about like that, a couple days off?

3 A. Just Christmastime.

4 Q. So if you were to take two days off, nothing gets
5 done in the investigation if it's your case, right?

6 A. That's correct.

7 Q. That's because you're the lead investigator,
8 right?

9 A. Yes.

10 Q. You dictate what happens during the investigation,
11 correct?

12 A. Yes.

13 Q. And now before you went or any time when you
14 interviewed Mr. Hannah, I don't think you had actually viewed
15 the store footage, had you?

16 A. No. I had not.

17 Q. Okay. After you viewed the store footage -- Let me
18 ask you, when did you view the store footage?

19 A. I did not. It was pulled by the crime scene tech.
20 I asked them were any of the people identified. At the time I
21 was running on looking to identifying Mr. Deipo and the
22 evidence was all being obtained by crime scene during that
23 time.

24 Q. And, Mr. Banister, correct me if I'm wrong, today is
25 the first time you actually saw the store footage?

1 A. No. I saw it much later on. This is after warrants
2 were even completed and things, I was shown it just the one
3 video we just saw, but that was it. I did not look at all the
4 other footage.

5 Q. Okay. I think that was actually several months
6 after arrests were made in this case; is that correct?

7 A. No. Not actually served. This was after the
8 warrants went active so we're talking within -- I would have
9 to recall but it was under a month, probably within a couple
10 weeks of my investigation.

11 Q. Investigator Banister, do you remember testifying in
12 a previous hearing over at the City Center on May 31st of
13 2018?

14 A. I do not recall.

15 Q. Do you recall telling me that on that date you had
16 not watched video footage?

17 A. No. I do not recall.

18 Q. Okay. Investigator Banister, I'm gonna let you
19 listen to --

20 MR. SWILLEY: Well, can we approach?

21 (Side bar off the record.)

22 (Playing audio.)

23 BY MR. SWILLEY:

24 Q. Investigator Banister, is this your voice? Now, do
25 you recall telling me you had not seen the video footage on

1 May the 31st?

2 A. I don't recall, but after seeing the video today, I
3 remember seeing it.

4 (Playing audio.)

5 BY THE WITNESS:

6 A. I remember the testimony, but hearing your own voice
7 it sounds different but, yes, that would be me.

8 BY MR. SWILLEY:

9 Q. Okay. Thank you. I think that -- I want to go
10 back. You did produce an incident report as part of your
11 investigation; is that correct?

12 A. A supplemental. Yes.

13 Q. In that supplemental, in these reports, these
14 reports are a very important part of the investigation,
15 right?

16 A. Yes, sir.

17 Q. And that's because you've got to know, it's
18 important to take down and be able to recall what you did in
19 the investigation, right?

20 A. Yes.

21 Q. And that's not just for you, it's for the State and
22 the Solicitor's Office as well, correct?

23 A. Yes.

24 Q. Also, it's important to be able to recall who you
25 talked to, right?

1 A. Yes.

2 Q. And these reports, they have to be accurate,
3 right?

4 A. Yes.

5 Q. They have to be correct, right?

6 A. Yes.

7 Q. And they have to be thorough; is that correct?

8 A. Yes.

9 Q. And I think when you went and spoke with Mr. Hannah,
10 you were informed by Mr. Hannah that he was actually
11 approached while he was in the driver's seat; is that
12 correct?

13 A. Yes.

14 Q. And I believe Mr. Hannah informed you that he struck
15 Mr. Moore with a bat while he was in the driver's seat,
16 correct?

17 A. Yes. He did.

18 Q. That was information that was relayed to you?

19 A. Yes.

20 Q. And at that time when you got that version of the
21 events you hadn't seen the video then, right?

22 A. No. I had not.

23 Q. You weren't able to confront him with what the video
24 depicted; is that correct?

25 A. Yes.

1 Q. And it's true that had you seen the video at that
2 point that could have been helpful in your interview with Mr.
3 Hannah; is that correct?

4 A. Yes.

5 Q. I think you were able to examine the car that Mr.
6 Hannah was driving that day, right?

7 A. Yes.

8 Q. And I think that at that same hearing -- Well, let
9 me back up. You took photographs. I think you were present
10 when photographs were being taken at the police department of
11 the van; is that right?

12 A. Yes.

13 Q. And I believe with that van there was one single
14 bullet hole in the windshield, right?

15 A. I can't recall how many bullet holes there were.

16 Q. Okay. I think you previously testified that the
17 bullet holes would have matched up with him being struck in
18 the mouth; is that correct?

19 A. I didn't say it matched up. I said from what the
20 defendant told me in the vehicle one hole in particular it
21 could have been, but I don't know which holes would have
22 matched up to the defendant.

23 Q. Okay. I think you testified in that same hearing
24 that there were bullet holes in the vehicle that lined up with
25 him being hit; is that correct?

1 A. There was a bullet through the front windshield. He
2 stated to me that he was struck in the face while in the
3 vehicle so one of those bullets, which hole could have or
4 which bullet could have struck him or what hole struck him I
5 don't know, but it was consistent from what he was telling
6 me.

7 Q. My question to you is, did you tell me during that
8 hearing that there were bullet holes in the vehicle that lined
9 up with him being hit? Did you tell me that?

10 A. I don't recall.

11 Q. You don't recall. Okay. Investigator Banister, I'm
12 going to ask you if this is your voice.

13 (Playing audio.)

14 BY THE WITNESS:

15 A. Like I said, I say that they could have lined up.
16 Nothing was definite. That's why I used the words could have
17 lined up.

18 BY MS. SWILLEY:

19 Q. Okay. I don't think you were able to observe any
20 kind of bullet holes from the windshield that had ricocheted
21 anywhere else, did you?

22 A. I don't know what bullets could have done after
23 that.

24 Q. Would you agree with me that that bullet hole in the
25 windshield on the far right does not lineup with him being

1 shot in the mouth?

2 A. Like I said earlier, I don't know what holes lined
3 up with his mouth. It's just what was consistent from what he
4 said where he was shot and where holes were in the vehicle.

5 Q. And I think you, in the search warrant executed on
6 Mr. Moore's, I don't think you ever recovered any property
7 belonging to Mr. Hannah, did you?

8 A. No.

9 Q. I don't think you ever recovered any property
10 belonging to Mr. Hannah at all, did you?

11 A. From Mr. Moore's residence?

12 Q. Correct.

13 A. Yes. I mean no. We did not recover anything.

14 Q. Okay. I think you took that bat that was found in
15 Mr. Hannah's vehicle into evidence; is that correct?

16 A. Yes.

17 Q. And that remains in evidence in Florence City?

18 A. It's here in the courtroom.

19 Q. Okay. Investigator Banister, is it --

20 A. I'm guessing it's in the long bag to the right of
21 the crime scene investigator there.

22 Q. Okay. Investigator Banister, after Christmas 2017
23 you didn't go back out to the 4 Way Stop as part of this
24 investigation, did you?

25 A. I do not recall, but if I did, I didn't document

1 anything worth noting in the report of it.

2 Q. And you never showed any photographs or pictures
3 from the surveillance footage to anybody that worked there to
4 try to identify anybody, did you, witnesses?

5 A. No. I did not.

6 Q. And to your knowledge no one else with Florence City
7 police did that either, correct?

8 A. As far as I know. I'm not aware.

9 MR. SWILLEY: Okay. Thank Investigator Banister.

10 THE COURT: Any redirect?

11 MR. WHITE: Briefly, Judge. Two questions.

12 REDIRECT EXAMINATION

13 BY MR. WHITE:

14 Q. Through your investigation how many shooters did you
15 determine there to be?

16 A. How many shootings during this investigation?

17 Q. How many shooters?

18 A. Just one.

19 Q. Who did you determine was the lone shooter?

20 A. Deipo Lewin, the defendant.

21 MR. WHITE: Thank you very much. Nothing further.

22 THE COURT: You may step down.

23 THE COURT: You may call your next witness.

24 MR. WHITE: Judge, I believe that will be it for the
25 State for today.

1 THE COURT: All right. Might counsel approach the
2 bench for one moment.

3 (Side bar off the record.)

4 THE COURT: Mr. Foreman, ladies and gentlemen of the
5 jury, that's all the testimony that you're gonna receive
6 today. We're gonna stay here we. We've got some legal
7 matters that we need to tend to outside of your presence.
8 We'll continue to do that. I'm gonna ask that you be
9 back at 9:30, 9:30 sharp in the morning. I'm going to
10 remind you do not discuss the case amongst yourselves or
11 with anyone else. Does anybody have to go by the 4 Way
12 Stop on the way home? Nobody goes by there. Well, don't
13 divert your - do not go by there and look at that. I was
14 gonna see if anybody did have to go by there to have a
15 specific instruction in that regard. Do not do any
16 independent investigation either looking at the scene,
17 doing anything on the Internet.

18 One thing I failed to mention to you was there's a
19 thing I hear tell called social media. I don't
20 participate in it. It's called Facebook, tweeter,
21 twitter or whatever it is, that has no place in this
22 court system. Do not tweet or twit about your
23 participation in this trial. Do not put anything on
24 Facebook, Linked-in, Snapchap or anything such as that.
25 After the case is over once you're duty has been

1 released, you can tweet all you want to about it, but not
2 until then. Do not engage in social media with regard to
3 your participation in this case. Does everybody
4 understand that? All right. No discussion amongst
5 yourselves. No investigation and no discussion with
6 anyone else.

7 I did see someone from the media here. They were
8 here briefly. I'm not real sure if they were in the
9 wrong courtroom or not. If there is any coverage of this
10 trial, divert your attention from that. We'll see you at
11 9:30, 9:30 sharp. Be here on time. Thank you very much.

12 (Whereupon, the jury was released for the day at
13 4:10 p.m.)

14 THE COURT: Mr. Swilley, you may proffer any
15 testimony that you have.

16 MR. SWILLEY: Your Honor, I think the individuals
17 are outside.

18 THE COURT: You can go get them.

19 MR. SWILLEY: Okay.

20 THE COURT: Yes, ma'am. Please come forward.

21 Thereupon,

22 ALEN NEAL

23 after having been first duly sworn, testified as follows,

24 THE COURT: Have a seat in the witness chair. Pull
25 up real close to that microphone and speak loudly and

1 clearly and slowly, and let's start with your full
2 name.

3 THE WITNESS: My name is Alen Neal.

4 THE COURT: How do you spell the last name?

5 THE WITNESS: N-e-a-l.

6 DIRECT EXAMINATION

7 BY MR. SWILLEY:

8 Q. Ms. Neal, tell me how you're related Phillip David
9 Hannah?

10 A. That's my cousin but we grew up together because my
11 grandmother adopted him.

12 Q. Okay. Y'all grew up in the same house?

13 A. Mm-hmm.

14 Q. All right. You've got to answer yes or no for the
15 court reporter, okay?

16 A. Yes.

17 Q. Thank you. Ms. Neal, you have known Phillip your
18 whole life?

19 A. Yes.

20 Q. Tell me, does he have a reputation for violence with
21 people?

22 A. Yes.

23 Q. Okay. And let me ask you, Ms. Neal, was there an
24 episode on June the 24th of 2019 in which you were involved in
25 a violent episode with Mr. Hannah?

1 A. Yes. I pressed charges.

2 Q. All right. Now, I'm gonna ask you what happened
3 then and slowly and into that mic if you could just say what
4 happened that evening. Just give a story. Just tell me what
5 happened.

6 A. That evening his sister text me and --

7 Q. Who's his sister?

8 A. Phillip's sister named Krista Hannah.

9 MR. WHITE: Judge, Objection to hearsay.

10 THE COURT: He's just proffering testimony. He can
11 elicit anything he wants to at this juncture.

12 BY MR. SWILLEY:

13 Q. Just tell me what happened.

14 A. Okay. I got a text asking to come and get them out
15 of a situation because Phillip was fighting with his baby
16 mother.

17 Q. Who is his baby mother?

18 A. Jasmine McCallister.

19 Q. Tell me, when you want out there, tell me what
20 happened?

21 A. When I got over there, before I even got over there,
22 he was threatening me that if I come over there, he was gonna
23 to do me like he did my baby father Victor Barr.

24 Q. Okay. And how did he, quote, how did he do Victor
25 Barr?

1 A. The only thing he did to Victor was wrap around him
2 and try to slam Victor on his head.

3 Q. After you were threatened, tell me what happened
4 after that.

5 A. I explained to Phillip that if he put his hands on
6 me, that I was going to call the police and I was going to
7 press charges.

8 Q. Okay. What happened after that?

9 A. He did not care and Phillip still put his hands on
10 me. He grabbed me by my hair, dragged me throughout the
11 kitchen, pulled out a couple of my braids, slammed my head
12 into a sink and a chair. My mother tried to get him off of
13 me. He proceeded to hit my mother. My grandmother jumped in
14 it to try to get him off both of us. He proceeded to hit my
15 grandmother. I called the police. The police got involved.
16 Before they came, he ran so they had to go find him.

17 Q. Ms. Neal, tell me what the purpose of you going out
18 to that residence was that evening?

19 A. The purpose of me going out there was to remove my
20 mother and his sister out of the situation.

21 Q. His sister being the child?

22 A. Kristi.

23 Q. Okay.

24 A. And that was not the first time that he done put his
25 hands on them. There had been a situation before where he put

1 his hands on my grandmother and put a bat up against her
2 neck.

3 Q. Put a what up against her neck?

4 A. A bat.

5 Q. A baseball bat?

6 A. Yes, sir.

7 Q. Okay. And this particular evening though, and this
8 all happened against you, you alerted law enforcement,
9 correct?

10 A. Yes, sir.

11 Q. Is there anything about his conduct that you recall?
12 Did you see him assault Ms. McCallister?

13 A. I did not see the assault with Ms. McCallister.
14 They was locked in a room, but I had just got a call, the text
15 to come and get them because they already know the type of
16 person he is. If just fighting her wasn't enough, he would go
17 after the next smallest victim that he see.

18 Q. Okay. Just so the Court is aware, he was, Mr.
19 Hannah was charged with, against you, assault and battery
20 third?

21 A. Yes, sir.

22 Q. And what was he charged with with Jasmine?

23 A. She pressed assault and battery as well and so did
24 my grandmother.

25 Q. Okay. All right.

1 THE COURT: Is this the CDV that was improperly
2 admitted?

3 MR. SWILLEY: It is, Your Honor.

4 BY MR. SWILLEY:

5 Q. Ms. Neal, let me just ask you, what is Phil's
6 reputation for violence or what is his reputation pertaining
7 to violence?

8 A. Phillip is known to get mad and if you smaller than
9 him or he thinks he can beat you, he will try and fight you
10 and if he cannot, then I have known for him to try and hit
11 people with stuff. He is known for not getting his way and
12 thinking he can lay his hands on people.

13 MR. SWILLEY: Okay. All right. Thank you, Ms.
14 Neal. Please answer any questions the State Attorney
15 has.

16 THE COURT: All right. He has proffered this
17 testimony and I'm not gonna allow it. I think it's
18 testimony with regard to specific instance. However, you
19 can call her and you can ask her these questions; Do you
20 know Phillip Hannah? How do you know Phillip Hannah?
21 And she can go through it in great detail how she knows
22 him. Are you familiar with his reputation for turbulence
23 and violence in the community? And she can say what it
24 is. Cannot say about criminal domestic violence or talk
25 about beating up the baby's mama, the grandma or her.

1 But she can say that he is a violent person who is bad
2 about beating people up. But you can't get into specific
3 instances. Do you understand that?

4 THE WITNESS: I understand.

5 THE COURT: All right.

6 MR. SWILLEY: Understood, Judge.

7 THE COURT: Anything further?

8 MR. SWILLEY: Your Honor, that's all the matters I
9 have for today.

10 THE COURT: Okay. No other testimony you want to
11 proffer?

12 MR. SWILLEY: Judge, I know that her mother is here
13 who I believe will testify to the same thing. I don't
14 know if the Court ruled that was cumulative.

15 THE COURT: Well, I think if compelled to do so if
16 you feel like you need to present two witnesses with
17 regard to his reputation, you can do that, but the same
18 rules apply and I assume that the incident we were
19 talking about is the same incident she is referring to
20 here.

21 MR. SWILLEY: That's correct.

22 THE COURT: All right. That is testimony with
23 regard to specific instance. If you call the second
24 witness, you need to instruct them that, ask them do they
25 know Phillip Hannah, one. How do you know him, two.

1 Three, are you familiar with his reputation for truth and
2 veracity. What is it. That's the only questions you can
3 ask. They're restricted from talking about any specific
4 instance.

5 MR. SWILLEY: Judge, do you mean violence and
6 turbulence? You said truth and veracity.

7 THE COURT: Oh, yeah. I meant violence and
8 turbulence of their character. If he's bad to be a liar,
9 too, you can ask that, too. But to answer your question
10 turbulence and violence.

11 MR. SWILLEY: Yes, sir.

12 THE COURT: Two types of character testimony. Got
13 it wrong. All right. Anything else?

14 MR. WHITE: Judge, just briefly. I feel compelled
15 to put it on the record, I know that you said any
16 evidence of paraphernalia or anything that was pulled
17 from his car. Judge, I would like to get into that
18 information. I want to pass up the case. It's a new
19 case. It's on point and it basically says, Judge, and
20 I'm sure you're already aware of it, Your Honor, but
21 somebody who comes to a drug deal and engages in that
22 sort of business with a loaded pistol is not entitled to
23 a self defense charge.

24 THE COURT: First of all, he wasn't coming to a drug
25 deal. He was showing up when there was an altercation

1 that took place. Do you have a case where the Judge did
2 not let in the evidence of drugs and it was reversed
3 because of that?

4 MR. WHITE: No, sir.

5 THE COURT: I think I'm pretty safe on that.

6 MR. WHITE: That's certainly their theory that he
7 just showed up. The State's theory is that that's highly
8 improbable. This guy has got identifying information
9 from the Bronx, from Georgia, he's staying with this guy,
10 there's drugs in the house and this stuff that's pulled
11 out of the car, Judge, is a scale and a sandwich bag.
12 We're not talking about -- I think that's what it says, a
13 sandwich bag or Baggies. I mean, these are like little
14 dime size Baggies, 52 of them to be exact.

15 THE COURT: Well, you know, he was originally
16 indicted for possession with intent to distribute
17 marijuana and if there was any allegation there as to
18 conspiracy, he was involved in this drug deal, that would
19 be another matter altogether. He's not charged with
20 dope. This is a matter having to do with a shooting.
21 All of the relevant witnesses have already testified with
22 regard to that. All this would be unduly prejudicial and
23 not very probative as to what you charged him with.

24 MR. WHITE: Yes, sir. And I'm just, I would argue
25 that under accomplice liability like Mr. Moore is charged

1 with attempted murder and I don't have any evidence that
2 --

3 THE COURT: But he's not being charged as an
4 accomplice.

5 MR. WHITE: Yes, sir.

6 THE COURT: So for that reason, but you're protected
7 on the record in that regard.

8 MR. WHITE: Thank you, Judge.

9 THE COURT: Would you like to be heard on that?

10 MR. SWILLEY: I don't think so, Your Honor.

11 THE COURT: All right.

12 MR. SWILLEY: I think I agree with the Court's
13 ruling.

14 THE COURT: Very good. Anything else from anybody?

15 MR. WHITE: No, sir, Judge.

16 THE COURT: All right. We'll stand at ease. Let's
17 be here a little bit early because we're gonna start
18 right at the crack of 9:30 and we're gonna be hitting the
19 road running. All right. I'm gonna sit back and take a
20 look at the charge. What is the State's position with
21 regard to lesser included offenses?

22 MR. WHITE: Judge, the doctor will testify tomorrow.
23 I would ask for attempted murder and then assault and
24 battery high and aggravated and stop right there.

25 THE COURT: All right. What is the defendant's

1 position with regard to lesser included offenses?

2 MR. SWILLEY: Your Honor, I would ask the Court to
3 charge lesser included of ABHAN and assault and battery
4 first.

5 THE COURT: Assault and battery first. Isn't that,
6 isn't assault and battery first and there's some debate
7 on that, isn't that where you attempt deadly force and
8 it's not effectuated?

9 MR. WHITE: Or, Judge, there's an injury associated
10 with some sort of --

11 THE COURT: Sexual assault.

12 MR. WHITE: Or a robbery, I think. I would have to
13 pull the statute, Judge.

14 THE COURT: I think under this instance it would not
15 apply because he actually hit him.

16 MR. WHITE: That's my position as well, Judge.

17 MR. SWILLEY: Your Honor, I pulled up the statute
18 and it --

19 THE COURT: Read it out loud. Let's talk about it.

20 MR. SWILLEY: It defines great bodily injury,
21 moderate bodily injury to private parts and it goes on to
22 say that a person commits the offense of assault and
23 battery in the first degree if the person unlawfully
24 injures another person and the act, then there is a
25 colon, involves non consensual touching of private parts

1 occurred during the commission of a robbery, burglary,
2 kidnapping, or theft, or and then there's subsection (b)
3 offers or attempts to injure another person with present
4 ability to do so and the act is accomplished by means
5 likely to produce death or great bodily injury.

6 THE COURT: That's like shooting at somebody and
7 missing them or trying to hit them with a car and missing
8 them.

9 MR. SWILLEY: It says offers or attempts to injure
10 another person with present ability to do so.

11 THE COURT: But the fact is he didn't attempt. He
12 offered and he did it. It applies in all the robbery
13 cases. It applies with inappropriate sexual touching.
14 But in this instance I don't think it applies. But I'm
15 gonna let you look at it over the night. I believe that
16 it applies in a lot of different instances where there is
17 actually accomplished assault and battery, but it doesn't
18 apply to this situation, and once it's, once the injury
19 takes place and there is contact, then I don't think it
20 applies but I'll listen to you. You can educate me on it
21 in the morning but I think it does not apply. All right.
22 What defenses are you asserting? Self defenses and/or
23 defense of others?

24 MR. SWILLEY: That's correct, Your Honor. I'll have
25 all the defense's proposed charges tomorrow and I do have

1 a charge on right to act on appearances, self defense and
2 defense of others. The charge that pertains to the right
3 to fire until the threat is over. I'll have all those
4 for the Court.

5 THE COURT: All right. I think I saw the standard
6 charge and I'll take a look at it and I'll entertain any
7 that you might have. Any objection to the defense, self
8 defense and defense of others?

9 MR. WHITE: I think I will, Judge. I would ask to
10 be heard at the appropriate time.

11 THE COURT: Now is the appropriate time. What's
12 your objection?

13 MR. WHITE: Well, I think the evidence, especially
14 when you view the video, I think the evidence is clear
15 that the threat is over. The imminent danger has ceased.
16 And even at that, Judge, it's disproportionate to a bat.
17 I mean, you heard from Mr. Moore the first time he hears
18 the gunshot, he's at the next store over. That was the
19 first shot. It's nine more that follows.

20 THE COURT: I think those are all factual questions
21 and if a fellow comes at me with a bat, that is certainly
22 a deadly weapon and I think that the two apply and I
23 believe if I did not charge those, this would be what we
24 he call a preliminary hearing.

25 MR. WHITE: Okay. Thank you, Judge.

1 THE COURT: Very good. All right. We'll stand at
2 ease until 9:30. Let's be here on time.

3 (Whereupon, court was adjourned for the day at 5:00
4 p.m.)

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1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
 2 COUNTY OF FLORENCE) CASE NO.:2018-GS-21-01070
 3 Volume II of II

4 -----

5 October 15TH, 2019

6 **BEFORE:** The Honorable Michael Nettles

7 -----

8 STATE OF SOUTH CAROLINA,

9 Plaintiff,

10 vs.

11 DEIPO DERRICK LEWIN,

12 Defendant.

13 -----

14
 15 APPEARANCES:

16
 17 J. Ryan White, Esq.
 18 Todd Tucker, Esq.
 Attorneys for the State.

19 Matthew Swilley, Esq.
 20 Attorney for the Defendant.

21

22

23 Official Court Reporter
 24 Natalie Dahl, RPR

25 **Volume I was reported by Steven LeBlanc**

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1 **STATE'S EXHIBITS 1 THROUGH 36 WERE MARKED AND/OR
2 ADMITTED IN VOLUME I REPORTED BY MR. STEVEN LeBLANC**

STATE'S EXHIBITS	MARKED	ADMITTED
37-49 Photographs	4	14
50 Baseball bat	4	17
51-52 Photographs	4	35
53-54 Photographs	4	NA
55 Poster board	4	33

DEFENDANT'S EXHIBITS

NONE MARKED OR ADMITTED

COURT'S EXHIBITS

NONE MARKED OR ADMITTED

1 P-R-O-C-E-E-D-I-N-G-S

2 (State's Exhibits 37 through 55 marked.)

3 THE COURT: Let's have a discussion about the
4 assault and battery statute. You know, typically,
5 these matters come before judges in the form of a
6 plea. I think since I've been on the bench I only had
7 one occasion where I was trying a case similar to this
8 and similar issues came up. What do you all think
9 about -- I think whoever wrote the statute has a real
10 problem with moderate bodily injury and whatever the
11 other one is, high and aggravated. But I read both of
12 them, and when you read the statute, both of them
13 apply. But, to me, assault and battery second degree
14 is not somebody getting shot in the face, but the
15 definition very well could be that; is that not a
16 question of fact for the jury?

17 MR. WHITE: Yeah.

18 THE COURT: You see the problem with that?
19 Someone needs to straighten it out, but there is a
20 problem with the statute.

21 MR. WHITE: There is no doubt, and I have
22 struggled with it. I tried a case where there was a
23 dog involved and ripped a guy to shreds, and I tried a
24 burn case, and the jury brought back assault and
25 battery second. I see -- I see both sides of it. The

1 problem is I think that the great bodily injury
2 definition is quite clear, and if you look at the
3 facts --

4 THE COURT: Well, what happened to him -- what
5 happened to him fits moderate bodily injury as well.

6 MR. WHITE: And I can't argue with you there,
7 Judge.

8 THE COURT: Have you taken a look at assault and
9 battery first?

10 MR. WHITE: Yes, sir. I don't think it applies
11 here.

12 THE COURT: I do not think it applies. And what
13 do you think about that?

14 MR. SWILLEY: Well, Your Honor, I think there --
15 per the statute, they are all lesser included
16 offenses. Assault and battery second is a lesser
17 included offense of assault and battery first, which
18 is a lesser included offense of ABHAN.

19 THE COURT: No. No. I don't believe that to be
20 the case. If you think about it, assault and battery
21 first degree, I think, is a lesser sentence than
22 aggravated assault, and the reason for that is there
23 is no injury.

24 MR. SWILLEY: I understand, Your Honor, but I
25 think, if I'm not mistaken, I think it specifically

1 states in the statute that they are lesser included
2 offenses, if I'm not mistaken.

3 THE COURT: If you read assault and battery
4 first, it does not apply. I think the statute is
5 flawed. And you think requesting of assault and
6 battery first degree?

7 MR. SWILLEY: Sir?

8 THE COURT: Are you requesting a charge on
9 assault and battery first degree?

10 MR. SWILLEY: That's correct, Your Honor, yes.

11 THE COURT: All right. Well, I'll take a look at
12 it again, but I do not think it applies. What do you
13 think about assault and battery of a high and
14 aggravated nature, and assault and battery second
15 degree?

16 MR. SWILLEY: I would request the court charge
17 those as well.

18 THE COURT: What do think about that?

19 MR. WHITE: Obviously, I can't disagree with you.
20 I think it does fit. Unfortunately, I prefer you
21 didn't charge A&B second, because I agree with you, I
22 don't think that a gunshot to the face would apply to
23 assault and battery second.

24 THE COURT: Typically, in a plea situation, that
25 is not the set of circumstances that someone pleads to

1 assault and battery second degree.

2 MR. WHITE: Yes, sir. So it is tough for me to
3 consent, but I do agree that moderate bodily injury
4 does apply, so I'll leave it in the Court's
5 discretion. I can't disagree with you one way or
6 another. Poorly written statute, for sure.

7 THE COURT: Mr. Tucker, I would like to hear what
8 you have to say.

9 MR. TUCKER: Well, Judge, I echo what Mr. White
10 said. I think given the facts, moderate bodily injury
11 may apply, given the definition, if you look
12 specifically at it. Sir, I would tend to agree -- in
13 other words, we couldn't argue if the Court wanted to
14 include an assault and battery second charge with
15 regards to those submitted to the jury.

16 THE COURT: Say that again.

17 MR. TUCKER: We could not disagree with the Court
18 if you chose to submit A&B second as a lesser included
19 to the jury for their consideration.

20 THE COURT: My question to you is do you think it
21 is a reversible error if I did not?

22 MR. TUCKER: I think, certainly, appellant courts
23 would say it was within your sound discretion.

24 THE COURT: I don't think so. I think it is
25 either it is or isn't. I don't think that is a

1 discretionary thing. That is a question of law.

2 MR. TUCKER: And it may be a situation, Judge,
3 after we hear the doctor's testimony that we may be in
4 a better situation, because he will be able to argue
5 as to specifically what the injuries were, the extent,
6 and then based on his medical expert testimony, you
7 know, what his classification of the injury would be.
8 But I do agree, it is a poorly written statute and,
9 unfortunately, has its genesis here in Florence County
10 with regards of who wrote it.

11 THE COURT: Who did that?

12 MR. TUCKER: I believe Dr. Crawford had a lot to
13 do with the drafting of that statute, moderate bodily
14 injury and great bodily injury, and the like, so.

15 THE COURT: You know, I didn't know who did it,
16 but I had an inkling it was not a lawyer.

17 MR. TUCKER: That is correct. I couldn't agree
18 with you more.

19 THE COURT: Someone that didn't have any trial
20 experience.

21 Well, I want you to explain to me why you think
22 assault and battery first applies.

23 MR. SWILLEY: Well, Your Honor, I think it goes
24 to say through means that could cause death or serious
25 disfigurement, and I think that applies to this case.

1 I don't think that the statute says that there can't
2 be -- can't be any kind of physical injury or I guess
3 physical harm done. It just says with means likely to
4 accomplish death or great bodily injury, if I'm
5 paraphrasing it correctly. I'll have to look it up.

6 THE COURT: Now, you said that the assault and
7 battery first degree, the statute says it is a lesser
8 included offense. Assault and battery of a high and
9 aggravated nature is definitely, by statute, a lesser
10 included offense of attempted murder. It does say
11 assault and battery first degree is a lesser included
12 offense of assault and battery of a high and
13 aggravated nature as defined in Subsection B(1), and
14 attempted murder is defined -- well, that is
15 completely inconsistent. It does say that, doesn't
16 it?

17 MR. SWILLEY: Yes, sir.

18 THE COURT: So it is your position I charge
19 attempted murder, assault and battery first degree,
20 assault and battery of a high and aggravated nature
21 and assault and battery second degree?

22 MR. SWILLEY: Yes, sir; that is correct.

23 MR. WHITE: We're fine with that, Judge.

24 THE COURT: That is a real problem there.

25 All right. What is the sentence for assault and

1 battery first degree?

2 MR. WHITE: I believe it is ten years.

3 THE COURT: And assault and battery of a high and
4 aggravated nature?

5 MR. WHITE: 20.

6 THE COURT: See, that's why it seems to indicate,
7 to me, it is not a lesser included offense, because
8 assault and battery first degree, although it seems
9 like it is the most serious of them, it is a lesser
10 sentence so, therefore, it contemplates the fact there
11 was no injury.

12 MR. WHITE: I think it only contemplates injury
13 when the touching, I think, and then also if it
14 happens during the commission of a kidnapping,
15 burglary, robbery.

16 THE COURT: Right.

17 MR. WHITE: I mean, it is a tough statute to
18 grapple with.

19 MR. SWILLEY: Your Honor, I think it would
20 appears that ABHAN requires actual injury, and I think
21 that, of the facts, second degree would have to be
22 actual injury as well.

23 THE COURT: No question about that. We have
24 that. In both instances, we have it.

25 MR. SWILLEY: And I think under the Blockburger

1 test, in order for things not to be lesser included,
2 each has to have an element that the other doesn't
3 have. I think the statute specifically says that
4 lesser included -- I don't know if the requisite --
5 well, I just think --

6 THE COURT: I'm not saying that the sentence has
7 anything to do with whether it is lesser included or
8 not, I'm just saying it contemplates the fact that
9 there is no injury, that is why it is a less severe
10 sentence.

11 MR. WHITE: Much less severe.

12 THE COURT: Well, we'll revisit it.

13 Do we have the juror?

14 THE BAILIFF: Yes, sir.

15 THE COURT: We're ready to proceed. We'll resume
16 this conversation later.

17 (The jury enters at 9:37 a.m., and the
18 following is heard in the presence of the jury.)

19 THE COURT: Mr. Foreman, ladies and gentlemen of
20 the jury, thank you for being here and being here on
21 time.

22 I'm going to recognize the State to call your
23 next witness.

24 MR. WHITE: We call Investigator Mathews.

25 THE COURT: If you could please come forward and

1 place your left hand on the Bible, raise your right
2 hand as the clerk administers the oath.

3 (TIM MATHEWS, having been duly sworn,
4 testified as follows:) six

5 THE COURT: Have a seat in the witness chair.
6 Pull up real close in order that we can hear
7 everything you have to say, and let's start with your
8 full name.

9 THE WITNESS: Tim Mathews.

10 DIRECT-EXAMINATION

11 BY MR. WHITE:

12 Q Good morning, Investigator Mathews. Where you
13 are employed?

14 A Florence Police Department.

15 Q How long have you been employed there?

16 A Over 11 years.

17 Q In what capacity?

18 A I work in the Crime Scene Unit.

19 Q Back on 2017, December 25 to be exact, were you
20 similarly employed?

21 A Yes.

22 Q And what is your role in Crime Scene?

23 A We respond to scenes, process scenes. We can
24 process vehicles, any type of crime that was committed.
25 We also produce AV evidence for court, and different

1 things like that.

2 Q Do you typically process vehicles pursuant to
3 search warrants?

4 A Yes.

5 Q And were you involved in the case that brings us
6 here today?

7 A Yes.

8 Q And is that the incident that happened on Church
9 Street at Four Way Stop?

10 A Yes.

11 Q In what capacity were you involved in that
12 particular case?

13 A I was the crime scene technician that executed
14 the search warrant on the two vehicles involved in the
15 case.

16 Q Did you take photographs of the search warrants?

17 A I did.

18 Q I'll show you what is marked as State's 37
19 through 49; do you recognize those photographs? Flip
20 through them real quick.

21 A (Witness complied.) I do. Those are the
22 vehicles that were involved in the scene from the
23 search warrant.

24 Q Who took those photographs?

25 A I did.

1 Q Are they a fair and accurate depiction of the
2 search warrant and your findings?

3 A Yes.

4 Q Have there been any alterations or deletions
5 made?

6 A No.

7 Q Hand me those right back. Thank you so much.

8 MR. WHITE: At this time, I move State's 37
9 through 49 into evidence.

10 MR. SWILLEY: No objection.

11 THE COURT: Into evidence, 37 through 49.

12 (State's Exhibits 37 through 49 admitted.)

13 MR. WHITE: I ask to publish to the jury.

14 THE COURT: You may.

15 Q Okay. I'm just going to walk through one by one
16 these photographs and just talk about them a little
17 bit. I'll show you, first, State's Exhibit No. 37; is
18 this the red minivan in question?

19 A Yes, it is.

20 Q And is it your understanding that this red mini
21 van was involved in the altercation at Church Street at
22 Four Way Stop?

23 A Yes.

24 Q Now, I'll show you State's Exhibit No. 23; what,
25 if anything, are we looking at there?

1 A This will be the front of the van. It has
2 multiple defects from bullets entering into the
3 vehicle.

4 Q I'll show you 39; is that a close-up of one of
5 the bullet holes?

6 A Yes.

7 Q 40, more of the same?

8 A Yes.

9 Q 41 is a close-up of one of the bullet holes?

10 A Yes.

11 Q 42, this one kind of hits under -- right under
12 the hood; is that correct?

13 A Yes.

14 Q Now, did you eventually open that hood up?

15 A Yes, I did.

16 Q Did you photograph once the hood was opened?

17 A Yes, I did.

18 Q This is 43; is this a close-up of the same bullet
19 hole?

20 A Yes.

21 Q There was also a bullet hole to the windshield;
22 is that correct?

23 A Yes, there was.

24 Q State's Exhibit 44, is that that particular
25 bullet?

1 A Yes, it is.

2 Q Now, describe to us, if you could, State's
3 Exhibit 45. What do we see in there? I'll show you
4 State's Exhibit 44 for reference. This is next in that
5 series, and then (indicates).

6 A That would be the dash of the red Toyota van,
7 possibly damaged from the projectile entered into the
8 windshield, damaging the dash.

9 Q And 46, again, is that a close-up of that same
10 bullet hole?

11 A Yes, it is.

12 Q State's Exhibit No. 47, now we're -- we were on
13 the front of the vehicle; is this the side?

14 A Yes, it is.

15 Q And what is that in the bottom, right corner of
16 the door?

17 A That would be a defect from a projectile entering
18 the passenger's door on the bottom.

19 Q Is that a close-up of the same?

20 A Yes, it is.

21 Q That is State's 48.

22 Now, State's 49, is that the baseball bat?

23 A Yes, it is.

24 Q It is your understanding that that was involved
25 in the altercation?

1 A From my understanding, yes.

2 Q Was that bat recovered?

3 A Yes, it was.

4 Q Did you recover that bat?

5 A I did.

6 Q What, if anything, did you do with it then?

7 A I did not do anything with the bat. I believe
8 that I transferred the evidence that I collected from
9 that to Sergeant Starling, due to the fact he was the
10 lead crime scene technician on it.

11 Q Very good.

12 And I'll show you State's Exhibit 50, take a look
13 at that for me; do you recognize that item?

14 A I do. It is the red baseball bat.

15 Q Is that the same one in the photograph?

16 A Yes.

17 Q If you could, could you take it out -- hold on
18 one second.

19 MR. WHITE: I move that into evidence, Judge.

20 MR. SWILLEY: No objection.

21 THE COURT: Into evidence.

22 (State's Exhibit 50 admitted.)

23 MR. WHITE: permission to show it to the jury?

24 THE COURT: Yes.

25 Q (MR. WHITE) I'll get you a pair of gloves, just

1 in case. You can put those on. Can you hold it up so
2 the jury can see it?

3 A (Witness complied.)

4 Q Thank you very much, Investigator Mathews.

5 That wasn't the only vehicle involved in the
6 incident, correct?

7 A No.

8 Q Were you also involved in the search warrant of
9 the Ford Fusion that crashed at the scene?

10 A Yes.

11 Q Let me ask you: Was there any DNA recovered from
12 that particular vehicle?

13 A Yes.

14 Q Where was the DNA located?

15 A From the windshield.

16 Q Which windshield?

17 A Front windshield.

18 Q Inside or outside?

19 A Inside.

20 Q Whose DNA was that?

21 A I believe it came back to Deipo Lewin.

22 Q Is that the defendant in this case?

23 A Yes.

24 Q Did you also pull prints from that vehicle?

25 A I did.

1 Q Whose prints were on the vehicle?

2 A I don't remember. I don't have the SLED report
3 in front of me. I believe there was three.

4 Q I'll show you this report and hope this refreshes
5 your recollection.

6 A Thank you. Prints came back to Phillip Charles
7 Moore and Asia Graham.

8 Q Okay. You said Phillip Moore; the defendant is
9 Charles Moore.

10 A Sorry, Phillip Hannah. And then Charles Moore
11 was the other one.

12 Q Okay. Thank you very much.

13 MR. WHITE: Thank you, Investigator Mathews. I
14 have nothing further.

15 THE COURT: Thank you. Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. SWILLEY:

18 Q Good morning, Investigator Mathews. I think you
19 testified you were the one that took the photographs of
20 these vehicles from the outside?

21 A Yes.

22 Q The bullet holes. Okay.

23 And I believe that State's Exhibit 38 is the
24 front view of the -- I'll show -- State's Exhibit 38
25 is the front view of the red vehicle; is that correct?

1 A Yes.

2 Q And would it be true to say there is one actual
3 bullet hole through the windshield of that vehicle; is
4 that correct?

5 A Yes.

6 Q And that's just -- so we can all -- so we can all
7 see, that bullet hole is on the bottom, left-hand of
8 the passenger's side; is that correct?

9 A Yes.

10 Q And I think that you go and photograph the entry
11 point of the dashboard of where that bullet hole is,
12 and that's, I believe, this photograph; is that
13 correct?

14 A Yes.

15 Q That's that (indicates)?

16 A That's damage from the projectile entering the
17 windshield.

18 Q I mean, is that damage from the projectile after
19 it entered the windshield into the dash?

20 A Yes.

21 Q And that is where the slug, so to speak, the
22 bullet, entered into the dashboard; is that correct?

23 A It caused damage to the dashboard at that point
24 right there.

25 Q And that slug entered into the dashboard and

1 lodged within the dashboard; is that correct?

2 A I did not recover a projectile from the dash, so
3 I cannot say that it lodged or stayed in the dash.

4 Q Okay. It was never recovered?

5 A No, it was not recovered.

6 Q Okay. And based upon your observations, there
7 was no bullet entries to the door windows of the
8 vehicle; is that correct?

9 A No. Not from my observation, no.

10 Q And with that -- the entry of the windshield of
11 that Sienna, there was no other bullet entries into
12 that windshield, other than that one, correct?

13 A No.

14 Q Okay.

15 MR. SWILLEY: Thank you, Investigator Mathews.

16 THE COURT: Any redirect?

17 MR. WHITE: Briefly.

18 REDIRECT-EXAMINATION

19 BY MR. WHITE:

20 Q Investigator Mathews, you pulled prints from both
21 the Fusion and the red mini van, correct?

22 A Yes.

23 Q So when you were saying earlier that the prints
24 came back as Phillip Hannah's and Charles Moore's, that
25 could have been from either car, correct?

1 A Yes.

2 MR. WHITE: Thank you very much.

3 THE COURT: You may step down.

4 Call your next witness.

5 MR. WHITE: At this time we call Dr. Hyman.

6 THE COURT: If you would come forward, place your
7 right hand on the Bible and raise your right.

8 (DR. PETER HYMAN, having been duly sworn,
9 testified as follows:)

10 THE CLERK: State your full name for the record.

11 THE COURT: Have a seat in witness chair. Pull
12 up real close to the microphone. Speak loudly,
13 clearly and slowly in order we can hear everything you
14 have to say, and start with your full name.

15 THE WITNESS: Full name is Peter Dewitt Hyman,
16 Junior.

17 DIRECT-EXAMINATION

18 BY MR. WHITE:

19 Q Good morning.

20 A Good morning.

21 Q Thank you for being here with us.

22 If you could, tell us about yourself, what kind
23 of education and qualifications.

24 A I graduated from Emory University in an
25 undergraduate degree, and then went to the Medical

1 University of South Carolina for medical school, and
2 graduated in 1988. I did an emergency medicine
3 residency at -- at the time it was Richland Memorial in
4 Columbia, and have been employed or back in Florence
5 and worked at McCleod since 1992.

6 Q In what capacity are you currently employed?

7 A Currently, I'm associate vice president of
8 Workplace Health and Safety, but that is a new job
9 since June.

10 Q Now, back in December of 2017, how were you
11 employed at that time?

12 A I was employed as an emergency room physician for
13 McCleod.

14 Q In that role, do you have to go to continuing
15 education courses? Do you have to be recertified?

16 A Yes, sir.

17 Q What kind of education do you receive?

18 A We have to do 40 hours of continuing medical
19 education every two years. So, generally, it's trauma
20 updates, medicine updates, a variety of different
21 updates to stay certified.

22 Q I imagine that McCleod Emergency Room can be
23 quite busy on any given occasion?

24 A Yes, sir.

25 Q About how many gunshot wounds do you think you

1 have treated?

2 A Plenty.

3 MR. WHITE: Judge, at this time I move that
4 Dr. Hyman be qualified as an expert in the field of
5 emergency medicine.

6 THE COURT: Any inquiry with regard to his
7 qualifications?

8 MR. SWILLEY: No, Your Honor.

9 THE COURT: Mr. Foreman, ladies and gentlemen of
10 the jury, normally a person cannot give opinion
11 testimony. Normally, when a person testifies, they
12 must testify as to what they saw, heard or sensed by
13 smell or something of that nature. However, there is
14 an exception when someone is qualified because of
15 education or experience. They are permitted to give
16 opinions in certain areas if the Court qualifies them
17 that way. This witness is qualified as an expert in
18 the area of emergency medicine. He's allowed to give
19 his opinion in that area. Just by virtue of the fact
20 that a person is qualified as an expert, that does not
21 mean that you have to accept their opinions. You are
22 to evaluate and give it the weight you think it
23 deserves.

24 Mr. White.

25 MR. WHITE: Thank you, Judge.

1 Q (MR. WHITE) Dr. Hyman, back on December 25,
2 2017, I know that was some time ago --

3 A Yes, sir.

4 Q You might not recall specifics, but do you have
5 your report from that date?

6 A Yes, sir.

7 Q If you could, in the best layman's terms as
8 possible, describe to us the injury of Mr. Phillip
9 Hannah.

10 A He had a wound, basically, the right side of his
11 mouth involving a lot of his right, lower lip, missing
12 teeth, laceration to his tongue. Mostly, all of this
13 was focused to his right mouth area.

14 Q Is that a painful injury?

15 A Yes, sir.

16 MR. SWILLEY: Objection, Your Honor.

17 THE COURT: Yes, you can ask the question.

18 Q (MR. WHITE) Is that something that would cause
19 you, in emergency medicine, to administer certain
20 medications for severe pain?

21 A Yes, sir.

22 Q Now, I'm going to show you what has been entered
23 into evidence and marked as State's Exhibit No. 32.
24 I'll show it to everyone. If you will take a look.
25 That's a photograph that was taken by law enforcement

1 on that evening. Do you recall that particular injury?

2 A What it is looking like is the injury to the
3 mouth. That could be consistent to what I recall, yes,
4 sir.

5 Q What would be your recommendation for someone who
6 presents with that particular injury going forward once
7 he's treated? What kind of -- what would he have to go
8 through medically in the days following that particular
9 injury?

10 A Basically, part of the -- the work-up on that is
11 that it seems to have been isolated to that area. We
12 did a CT scan of his head to make sure -- because you
13 don't know if -- where all of the projectile went, so
14 we did a CT scan of his head to see if there was
15 anything that had gone to the brain. We did a CT scan
16 of his neck to make sure there was no injury to the
17 spinal cord, and also a CT scan to his facial bones to
18 look for fractures of the bones.

19 Q Thank you, Dr. Hyman. I think we have a pretty
20 good understanding of the extent of the injury. Now
21 I'm going to ask you to do something, I would like for
22 you to look at a statute that defines --

23 MR. SWILLEY: Objection, calls for a legal
24 conclusion.

25 THE COURT: No. No. That is a legal matter.

1 You can ask him what his findings are or any of that,
2 but his job is not the law. You can ask him what his
3 diagnosis was. You can ask him anything you want to
4 ask him, but you can't ask him to look at the statute
5 and see what applies; that is for the jury to resolve.

6 MR. WHITE: Yes, sir, Judge.

7 Q (MR. WHITE) Would you classify this particular
8 injury as one that would cause a substantial risk of
9 death?

10 A This specific injury could have, yes. Yes, sir.

11 Q Is this one that would have caused protracted
12 loss or impairment of a body member or organ?

13 A I don't see the long-term effects. I would
14 imagine that he could have problems down the road
15 eating, speaking, but I don't see -- my job is doing
16 the acute care. I don't do the long-term care. So I
17 don't see the follow-ups of what the injuries do.

18 Q But there is no doubt that he could have died
19 from this particular injury?

20 MR. SWILLEY: Objection, leading the witness.

21 THE COURT: Sustained.

22 Q (MR. WHITE) Could he have died from this
23 particular injury?

24 THE COURT: Ask him the nature of it.

25 A From this -- I can recall believing that he had

1 been lucky on this. If the bullet had gone a little
2 further, you know, this could have been something that
3 could have gotten to his spinal cord. This could have
4 been something that part of the bullet could have gone
5 it his brain. He was a lucky individual.

6 Q Thank you very much.

7 MR. WHITE: Answer any questions defense may
8 have.

9 THE COURT: Mr. Swilley.

10 CROSS-EXAMINATION

11 BY MR. SWILLEY:

12 Q Dr. Hyman, every time that someone comes to the
13 ER with an injury such as this, medical records are
14 produced; is that correct?

15 A Yes, sir.

16 Q And I think it is noted in the medical records
17 that all of the medical entries are made by Scribe; is
18 that correct?

19 A Correct.

20 Q And that is at your direction and personally
21 dictated by you?

22 A No, it's not. They go into the room and listen
23 to what I say, what the patient says.

24 Q And there is a Scribe attestation in those
25 records?

1 A Correct.

2 Q And that states all medical entries --

3 A That I have read it and attested to what they put
4 in there.

5 Q So they made the entries, and you check the work?

6 A Correct.

7 Q And those records include diagnoses; is that
8 correct?

9 A Yes, sir.

10 Q And they also include anything a patient would
11 have told you for purposes of medical diagnoses; is
12 that correct?

13 A Correct.

14 Q And are you familiar with these records
15 pertaining to Mr. Hannah?

16 A Yes, sir.

17 Q And I'll bring your attention to -- looks like
18 page -- eighth-page, Page 2 of 4, begins at the top and
19 continues from the previous page.

20 A Page 2 of 4? Okay.

21 Q Do you have that?

22 A I do have that.

23 Q And I believe it states that the patient stated
24 that he was at a gas station in Mount Zion trying to
25 buy weed; is that correct?

1 A It does.

2 Q And someone tried to take his wallet, and he hit
3 the person with a bat?

4 A Yes.

5 Q And he says when he turned around, the people had
6 guns and fired at him?

7 A Yes, sir.

8 Q And he got into his car, and when he peeked out
9 the window, a bullet shot through the window and hit
10 him in the right, lower jaw; is that correct?

11 A Correct.

12 Q And that was personally reviewed by you; is that
13 correct?

14 A This was not reviewed by me. This is -- if you
15 notice, this is the nursing assessment. That is put
16 incompletely different from what I put in. So this is
17 the nurse's notes, not my notes.

18 Q So that is what he told immediately to the first
19 medical personnel, the first nurse he saw?

20 MR. WHITE: Objection, I don't know that he can
21 testify --

22 THE COURT: I think he can. In the regular
23 course of business he can tell how that gets into the
24 record.

25 A That gets entered by the nurse.

1 Q (MR. SWILLEY) And the nurse -- is she the first
2 medical personnel that comes into contact with the
3 patient before yourself?

4 A Not necessarily. There are some -- a lot of the
5 times I'm in there before the nurse gets in there. It
6 depends what else the nurse is doing. I can tell you
7 -- I can't tell you the sequence of events that day.

8 Q And it is true to say that these nurses have to
9 make sure that what they get from the patients is
10 accurate to put in the record?

11 A Yes, sir.

12 Q And they have to pay close, diligent attention to
13 what is told to them?

14 A Correct.

15 Q And you would agree that is an essential part of
16 these records; is that correct?

17 A Yes.

18 Q And it would be true to say that these nurses
19 don't often make errors as to --

20 MR. WHITE: Objection, Judge.

21 THE COURT: Sustained.

22 MR. SWILLEY: Thank you. That is all I have.

23 THE COURT: Any redirect?
24
25

REDIRECT-EXAMINATION

BY MR. WHITE:

Q Just briefly. When someone presents with an injury such as this, and then sedated, as it were, is it common that their recollection may have been impaired?

MR. SWILLEY: Objection.

THE COURT: Sustained.

MR. WHITE: Nothing further. Thank you very much, Dr. Hyman.

THE COURT: Call your next witness.

MR. WHITE: At this time we call Stephen Banister.

THE COURT: I will remind you that you are still under oath. I ask you to have a seat in the witness chair. Pull up real close to the microphone, and once again state your full name.

THE WITNESS: My name is Stephen Banister.

DIRECT-EXAMINATION

BY MR. WHITE:

Q Thank you, Investigator Banister. We have already gone over your testimony before, but I wanted to ask you a few more things, if I could. I'll just show it to you briefly. Are you aware -- are you familiar with the area around Four Way Stop when this

1 incident occurred?

2 A Yes, I am.

3 Q You work there often?

4 A Yes.

5 Q In processing the scene, investigating the scene,
6 did you become even more familiar with that particular
7 area?

8 A Yes.

9 Q Do you recognize -- and tell me yes or no -- this
10 particular photograph?

11 A Yes, I do.

12 Q Is this a fair and accurate depiction of an
13 overhead view of the incident location?

14 A Yes, I believe so.

15 MR. WHITE: At this time I move State's 55 into
16 evidence.

17 THE COURT: Any objection?

18 MR. SWILLEY: No objection.

19 (State's Exhibit 55 admitted.)

20 Q (MR. WHITE) Now, that is an overview of the gas
21 station, correct?

22 A Yes.

23 Q And can you see exactly where I'm pointing now?

24 A Yep, I can see.

25 Q I'll tell you what, can you step down for just a

1 moment?

2 MR. WHITE: Judge, I ask permission for
3 Investigator Banister to step down.

4 THE COURT: Yes.

5 Q (MR. WHITE) Can you show me exactly where on the
6 photograph where the red minivan was parked?

7 A Parked underneath right here (indicates).

8 Q And where the silver car crashed?

9 A On an angle somewhere around here (indicates).

10 Q What do we have here?

11 A It's a power station. I don't know exactly what
12 it is. A power station with a fence around it.

13 Q Okay. If you could have a seat, thank you.

14 Now, I'm going to show you State's Exhibit 51 and
15 52; if you could, tell me if you recognize those two
16 photographs?

17 A Yes, I do.

18 Q And is that a fair and accurate reproduction of
19 the photographs from the crime scene taken on the day
20 of the incident?

21 A Yes, it is.

22 MR. WHITE: At this time I move those particular
23 items into evidence.

24 THE COURT: Have you shown them to defense
25 counsel?

1 MR. WHITE: Yes, sir, Judge.

2 (A brief pause in the proceedings while
3 Mr. Swilley examines the exhibits.)

4 MR. SWILLEY: No objection.

5 THE COURT: Into evidence.

6 (State's Exhibits 51 and 52 admitted.)

7 MR. WHITE: I ask to publish them as well.

8 THE COURT: You may.

9 Q (MR. WHITE) Now, State's 53 and 54; are you
10 familiar with those pictures?

11 A Yes, I am.

12 Q Are they a fair and accurate reproduction of the
13 area just outside of this aerial view on the same area?

14 A Yes, it is.

15 Q And you are intimately familiar with that
16 particular area?

17 A Yes. I've been there many times.

18 Q And it is a fair and accurate reproduction? No
19 alterations or deletions?

20 A I believe so.

21 MR. WHITE: Judge, I move those particular items
22 into evidence.

23 (A brief pause in the proceedings while Mr.
24 Swilley examines the exhibits.)

25 MR. SWILLEY: Your Honor, I'm going to object on

1 the basis of relevance.

2 THE COURT: Might Counsel approach the bench?

3 (Whereupon, a bench conference was had.)

4 Q (MR. WHITE) I'm going to show you State's 51 and
5 52 on the projection screen; what are we looking at
6 here?

7 A Gas pump at the location.

8 Q State's 51, what are those marks there on the
9 side of the gas pump?

10 A I believe them to be marks made by bullets
11 hitting.

12 Q And I'll show you State's 52; is that a close-up
13 of the same?

14 A Yes, it is.

15 Q Now, back to 51. If you will, look to just the
16 left of that gas pump, there is a white pole with
17 orange tip; do you see that?

18 A Yes, I do.

19 Q Now, is that the area just to the right of this
20 particular photograph, State's Exhibit 55?

21 A Yes, it is by -- adjacent to the power plant
22 area.

23 Q And what is that particular area? What is that
24 just beyond that white pole with orange tip?

25 A It is a grass area. There was a couple holes

1 from the previous picture you showed me. It's just a
2 grassy area with poles going down National Cemetery
3 Road.

4 Q Is there any place to park?

5 A You could park over there, yes. It is big enough
6 to hold a car. There is no driveway over there.

7 Q There is no driveway just beyond the white pole?

8 A Not by the pole or the power plant.

9 Q I want to talk a little bit about the touch DNA,
10 the prints that were recovered. Are you aware of the
11 prints that were pulled from the red mini van?

12 A Yes, I'm familiar with them.

13 Q And those prints, who did they belong to?

14 A The victim.

15 Q What was his name?

16 A Mr. Hannah.

17 Q And the prints pulled from the silver car, are
18 you aware of who those belong to?

19 A I can't fully recall, but I know they belonged to
20 the defendant's. Where exactly, what print was where,
21 I don't know, but I know that prints came back to that
22 vehicle, to the defendant.

23 Q Did these prints from that vehicle match Charles
24 Moore?

25 A I believe so. I would like to see the SLED sheet

1 again. I read over a lot of this. I want to be
2 accurate.

3 Q Do you have it in front of you?

4 A No, I do not.

5 Q If I showed it to you, would it refresh your
6 recollection?

7 A Yes, it would.

8 MR. WHITE: Permission to approach?

9 THE COURT: Yes.

10 A (Witness examines document.) Yes, it did
11 identify a print with Mr. Moore.

12 Q (MR. WHITE) All right. Thank you very much,
13 Investigator.

14 Now, do you have any idea how long it took you to
15 track down Mr. Lewin?

16 MR. SWILLEY: Objection, Your Honor.

17 THE COURT: Sustained.

18 Q (MR. WHITE) The gun that was used to fire those
19 ten bullets that laid on the ground that were
20 recovered at the scene, was that gun ever recovered?

21 A No, it was not.

22 Q Is it still out there somewhere?

23 A Yes.

24 MR. SWILLEY: Objection, calls for speculation.

25 MR. WHITE: Thank you. I have nothing further.

1 MR. SWILLEY: Beg the Court's indulgence for a
2 moment?

3 (A brief pause in the proceedings.)

4 MR. SWILLEY: No questions for this witness.

5 THE COURT: You may step down.

6 Call your next witness.

7 MR. WHITE: Beg the Court's indulgence for a
8 moment.

9 At this time the State rests.

10 THE COURT: Mr. Foreman, ladies and gentlemen --
11 I'll ask you, Mr. White, if you could pull down this.

12 MR. WHITE: Yes, sir. I'm sorry. My apologies.
13 It is a little easier to speak to them without this
14 thing blocking them.

15 (A brief pause in the proceedings.)

16 THE COURT: Very good. At this time we're
17 required to take up matters of law outside of your
18 presence. I'll ask you to retire to the jury room,
19 but do not discuss the case. Mr. Foreman, I'll ask
20 you to enforce that rule. There is to be no
21 discussion about the case in any way, shape or form.

22 Everyone remain seated as the jury exits the
23 courtroom.

24 (The jury exits at 10:14 a.m., and the
25 following is heard out of the presence of the jury.)

1 THE COURT: I'll entertain motions at this time.

2 MR. SWILLEY: I make a motion for a directed
3 verdict of not guilty as to the sole indictment of
4 attempted murder. Your Honor, I think that case law
5 states that the defendant is entitled to a directed
6 verdict when the State fails to produce evidence on
7 the offense charged. When the defendant claims
8 self-defense, the State is required to disapprove the
9 elements of self-defense beyond a reasonable doubt;
10 and that stems from State versus Wiggins.

11 The Court is well aware of the elements of
12 self-defense, the four elements. I think I found a
13 case on point here with State versus Jason Michael
14 Dickey. Your Honor, this is a matter in which the
15 supreme court ruled -- and I thought I had two copies,
16 but I have just one. This was released September 26,
17 2011. The Court ruled that the defendant was
18 convicted of voluntary manslaughter. The Court ruled
19 that when they tested for the four elements, the
20 testimony as to bring about difficulty, I don't think
21 there is any testimony in this case that Mr. Lewin had
22 any part of bringing about the difficulty that
23 transpired between Mr. Moore and Mr. Hannah. I don't
24 think there is any testimony, whatsoever, that
25 Mr. Lewin caused whatever issue that resulted in a

1 violent confrontation or what appeared to be an
2 exercise of violence on the part of Mr. Hannah against
3 Mr. Moore.

4 Your Honor, as it pertains to subjective belief
5 that you are in fear of imminent great bodily injury
6 or death, and the third element that a reasonable
7 person would have exercised the same belief. You
8 know, here we have testimony that Mr. Hannah chased
9 Mr. Moore. I think it is uncontested that Mr. Hannah
10 chased Mr. Moore with a bat. Objectively, it would
11 appear that, to everyone else, Mr. Hannah is chasing
12 Mr. Moore with a baseball bat after he struck
13 Mr. Moore. I think Mr. Moore testified he was holding
14 his head. He testified that he had been struck before
15 he was chased, and I think Mr. Hannah testified that
16 he was struck before he was chased as well.

17 As it appears to a normal ordinary person that
18 came into the scene, it would appear that Mr. Moore
19 was in fear of great bodily injury or death, and
20 certainly Mr. Lewin has a right of self-defense as it
21 shifts to the defense of others. I think by
22 Mr. Hannah's own testimony, Mr. Hannah testified that
23 when the car wrecked, he never dropped the bat and
24 that he didn't retreat until shots were fired. I
25 believe that -- I'm paraphrasing his testimony, Your

1 Honor. I think that subjective and objectively he
2 would have the right to exercise deadly force as he
3 did and, Your Honor, I think as far as the duty to
4 retreat is concerned, I think all evidence reflects
5 that the car was immobile once it wrecked, proceeded
6 to the use of force by Mr. Lewin, that Mr. Lewin, in
7 order to avoid any retreat, he would have had to
8 retreat on foot.

9 I think the evidence is clear that Mr. Hannah
10 already engaged in a foot chase with another
11 individual, who Mr. Lewin would have viewed. It's
12 perfectly reasonable to believe, and I think
13 Mr. Hannah even testified, that he was planning on
14 using the bat again on Mr. Moore after he had hit him
15 and after he had chased him.

16 Your Honor, I think that the video evidence shows
17 that whatever happened between Mr. Moore at the pump
18 and the car, Ford Fusion, enters the parking lot, I
19 think about eight to ten seconds after the interaction
20 with the bat is turned into a chase. I think that it
21 is reasonable, and I don't think there is any evidence
22 that Mr. Lewin would have to retreat on foot, and it
23 is perfectly reasonable and would appear that he would
24 be pursued with a deadly weapon by someone, as
25 Mr. Hannah was.

1 I don't think that there is any evidence in the
2 record to contradict that. I think the only evidence
3 that could, would be that of Mr. Hannah as to the
4 actual interaction between Mr. Lewin and Mr. Hannah
5 off camera. I don't think that Mr. Hannah ever denied
6 the fact that he had the bat the entire time and never
7 dropped the bat. He was in the car when he got in the
8 car and backed out of the driveway.

9 As it pertains to the testimony of Ms. Wingate,
10 and it was a bit nebulous, but Mr. Hannah testified
11 that Mr. Lewin remained stationary when he was using a
12 weapon. I don't believe that Ms. Wingate -- she said
13 that Mr. Lewin got out of the car and moved towards
14 the back, and I think she testified that Mr. Hannah
15 moved towards Mr. Lewin within, and she said that
16 after Mr. Hannah raised the bat is when she heard
17 gunshots.

18 THE COURT: Just by virtue of the fact that you
19 are talking about all of the facts and circumstances,
20 certainly it would seem to indicate that there is a
21 question of fact. I think that no question but that
22 the alleged victim had a deadly weapon, baseball bat.
23 It is, indeed, a deadly weapon. But one of the things
24 that creates a question of fact is, at least, is the
25 testimony of the eyewitness, Ms. -- what is her name?

1 MR. SWILLEY: Wingate.

2 THE COURT: Wingate. She was very favorable to
3 the defendant with the exception of one thing, that at
4 one point there were, you know, ten feet in between
5 them, and whether or not he could have had enough time
6 to retreat if he was ten feet away. Of course, if you
7 run a 40-yard dash in four seconds, then it only takes
8 a second to get there.

9 So, I mean, that it is a question of fact for the
10 jury, whether or not he is in reasonable fear for his
11 life at that juncture. So all of those are questions
12 of fact, in my estimation.

13 Would you like to be heard on that?

14 MR. WHITE: No, sir. I would echo the Court's
15 sentiments on it, Judge.

16 THE COURT: All right. I do, indeed, find that
17 there is a substantial question of fact for the jury
18 to resolve, and I deny your motion for directed
19 verdict.

20 Mr. Lewin, I'll ask you to stand where you are
21 and raise your right hand as the clerk administers the
22 oath.

23 (DEIPO LEWIN, having been duly sworn,
24 testified as follows:)

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EXAMINATION

BY THE COURT:

Q How are you doing today?

A I'm all right.

Q You can put your hand down. At this time, I'll explain to you certain of your rights. If you do not understand anything I say, please let me know. If you want me to explain anything in more detail, let me know and I'll do that. Do you understand me?

A Yes, sir.

Q We have now reached the stage of the trial where you may present your defense. You have a right to claim the protections given to you by the Fifth Amendment to the Constitution of the United States, which provides in relevant part, no person shall be compelled in any criminal case to be a witness against himself. This means that you cannot be required to testify in this case. You have the right to testify on your own behalf; however, no one can make you testify. This is a personal right, and no one can waive this right except you.

If you decide to testify, you will be subject to the same rules that govern other witnesses. You may be examined and cross-examined on any relevant issue

1 in this case. In addition, if you have any
2 convictions involving dishonesty or false statements
3 for crimes punishable by imprisonment for more than
4 one year, and this Court determines that the probative
5 value of admitting this evidence outweighs its
6 prejudicial effect to you, the Solicitor will be able
7 to introduce your record to attack your creditability.
8 If you decide to testify, this decision on your part
9 must be freely, voluntarily and intelligently made
10 with knowledge of the protections given to you by the
11 Fifth Amendment and the consequences of your decision
12 to testify.

13 If you decide not to testify, I will instruct the
14 jurors they cannot give the fact that you did not
15 testify any consideration, whatsoever, that there is
16 to be absolutely no prejudice to you because of the
17 fact that you did not testify. I'll instruct the
18 foreman to enforce that rule. There will be no
19 discussion about the fact that you do not testify if
20 you would like to do so. It is left entirely up to
21 you whether or not to testify. You may talk with your
22 attorney, your family, friends or anyone else. The
23 final decision will be left entirely up to you. Do
24 you understand what I have explained to you?

25 A Yes, sir, I do.

1 Q Do you have any questions of what I've explained
2 to you?

3 A No, sir, I don't.

4 Q Have you discussed this matter with your lawyer?

5 A Yes, sir.

6 Q Do you want to testify?

7 A Yes, sir.

8 Q You do?

9 A Yes, sir.

10 Q Very good.

11 THE COURT: All right. You may be seated.

12 MR. SWILLEY: Your Honor, I do anticipate putting
13 up additional witnesses that we heard yesterday
14 afternoon in the proffer testimony; if I could have a
15 moment to see if she's here.

16 THE COURT: Yes.

17 MR. SWILLEY: I would call her first, and then
18 call Mr. Lewin.

19 THE COURT: Very good. You can see. If she's
20 not here, we'll call Mr. Lewin.

21 MR. SWILLEY: Okay.

22 (A brief pause in the proceedings.)

23 MR. SWILLEY: The witness is here.

24 THE COURT: All right. We're ready for the jury
25 -- before we do that, just one moment.

1 You know, this really is not a -- this is not
2 really the time to have a jury charge, but the more I
3 contemplate this assault and battery first degree,
4 obviously we want to try this case and want some
5 finality to it. At first glance, you would say that
6 the only way you can get reversed is by not charging
7 it, but one of the things that gives my great
8 hesitation is that if we charge attempted murder,
9 assault and battery high and aggravated, first and
10 second degree, assault and battery and they convict
11 him of assault and battery first, then he would have
12 been acquitted of everything else, and there is a
13 great likelihood that he would be -- the supreme court
14 could reverse it because it doesn't meet the elements
15 of it and, therefore, he would be acquitted on
16 everything.

17 MR. SWILLEY: Your Honor, I believe if I ask for
18 it, I don't believe that is grounds for appeal. That
19 is an unpreserved issue if I request it, which I am.

20 THE COURT: But you don't understand what I'm
21 saying. If I submit it to them and they convict him
22 of the assault and battery first degree, then it can
23 be appealed because -- perhaps you are right in that
24 regard.

25 (A brief pause in the proceedings.)

1 MR. SWILLEY: I mean, Judge, I don't --

2 THE COURT: The fact that you asked for it would
3 preclude you from objecting to it later?

4 MR. SWILLEY: I believe that is correct.

5 THE COURT: What does the State have to say about
6 that?

7 MR. TUCKER: Judge, we were just discussing
8 perhaps if it was a PCR issue, but I don't think it
9 would rise to the level of ineffective assistance of
10 counsel.

11 THE COURT: It is certainly a lesser penalty.

12 MR. TUCKER: Like I said, I think if he's
13 requesting the assault and battery first charge,
14 certainly I don't know that he would have grounds for
15 an appeal should Mr. Lewin be convicted of the A&B
16 first. So I think it would then fall within the
17 Court's sound discretion whether or not you want to
18 submit it. But, certainly, I agree, the statute is so
19 confusing, it is hard to figure out, but it does say
20 it is a lesser included, and certainly on first blush,
21 when you look at the elements, the "or" language seems
22 that they are not mutually exclusive, the categories,
23 that if one of the elements is present, then perhaps
24 A&B first could go to the jury in terms of a lesser
25 included charge.

1 THE COURT: Are we -- we are ready for the jury.

2 (The jury enters at 10:32 a.m., and the
3 following is heard in the presence of the jury.)

4 THE COURT: Thank you for your patience.

5 Mr. Swilley, you are recognized.

6 MR. SWILLEY: Alayna Neal.

7 THE COURT: If you could, place your left hand on
8 the Bible and raise your right.

9 (ALAYNA NEAL, having been duly sworn,
10 testified as follows:)

11 THE COURT: If you could, have a seat in the
12 witness chair. Pull up close to the microphone.
13 Speak loudly, clearly and slowly so we can hear
14 everything. Start with your name.

15 THE WITNESS: Alayna Neal, N-E-A-L.

16 DIRECT-EXAMINATION

17 BY MR. SWILLEY:

18 Q Ms. Neal, do you reside in Florence?

19 A Yes.

20 Q Do you know Phillip Hannah?

21 A Yes.

22 Q How do you know Phillip Hannah?

23 A That is my cousin.

24 Q What degree of cousin?

25 A I believe my first cousin.

1 Q Okay. What is Mr. Hannah's reputation for
2 violence and turbulence in the community?

3 A He's known to get mad and try to fight people.

4 Q Does he have a reputation for violence and
5 turbulence?

6 A Yes.

7 MR. SWILLEY: Thank you.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION

10 BY MR. WHITE:

11 Q Good morning, Ms. Neal.

12 A Good morning.

13 Q Were you at Four Way Stop on December 25, 2017?

14 A No.

15 Q Do you have any knowledge firsthand of what
16 happened there that day?

17 A I just know what I was told.

18 Q But you have no firsthand knowledge?

19 A No.

20 Q Okay.

21 MR. WHITE: Thank you. I appreciate it.

22 THE COURT: Any redirect?

23 MR. SWILLEY: There is not. We ask her to be
24 excused.

25 THE COURT: You are free to leave.

1 MR. SWILLEY: We call Deipo Lewin.

2 (DEIPO LEWIN, having been duly sworn,
3 testified as follows:)

4 THE COURT: Watch your step. Have a seat in that
5 witness chair. Speak loudly, clearly and slowly in
6 order we can hear everything you have to say, and
7 start with your full name.

8 THE WITNESS: Deipo Lewin.

9 THE COURT: Spell that one last one.

10 THE WITNESS: L-E-W-I-N.

11 DIRECT-EXAMINATION

12 BY MR. SWILLEY:

13 Q Deipo, you recall Christmas of 2017?

14 A Yes, sir.

15 Q And when -- at the time, where did you reside?

16 A Decatur, Georgia.

17 Q Is that the Atlanta area?

18 A Yes, sir.

19 Q And when you -- around Christmastime -- do you
20 know people in Florence?

21 A Not too many. Not that -- I could count on one
22 hand how many people I know in Florence.

23 Q Okay. You drove, I guess -- did you drive to
24 Florence for the holidays?

25 A Yes.

1 Q When you got to Florence, were you staying at a
2 friend's house?

3 A Yes.

4 Q And who was that friend?

5 A It is actually my roommate's mother's house. My
6 roommate from Decatur, his mom stays in Florence, and I
7 was staying at her house.

8 Q Do you know Charles Moore?

9 A Yes, I do.

10 Q How long have you known Charles for?

11 A I've known Charles for quite a little while. I
12 don't recall how long exactly, but I know him.

13 Q Is he a friend of yours?

14 A Yes, he was.

15 Q How long had you been friends before that day?

16 A I would say about -- I really don't remember, to
17 be honest.

18 Q Did you consider him to be a good friend?

19 A Yes, he was.

20 Q Deipo, you are not -- where did you grow up?

21 A Well -- where did I go up?

22 Q Yeah.

23 A I grew up in New York.

24 Q Is that where you met Charles?

25 A Yes.

1 Q Okay. Now, on Christmas day, Christmas daytime,
2 where were you in the morning?

3 A I was at Charles' -- well, in the morning, I woke
4 up and I went to Charles Moore's house.

5 Q And you know about what time you got to Charles'
6 house?

7 A Probably about -- like around 11:00, 12:00.

8 Q What was going on over at Charles' house?

9 A His wife was cooking and I was playing with the
10 kids. Like, I was going from the living room -- we
11 were running around the house, from the living room to
12 the bedroom. He has three kids, two daughters and one
13 son, and we just be playing the whole time that day.

14 Q Okay. Does Charles Moore, does he drive?

15 A No, he does not.

16 Q When you all are hanging out, when you and him
17 are hanging out, who does he rely on for transportation
18 if you go somewhere?

19 A When I'm in Florence, me.

20 Q And that car that you had at the time, I think --
21 that Ford Fusion, how did you get that car?

22 A Well, a friend had the car and he told me -- I
23 needed a car, and he told me I could pay for it in
24 payments.

25 MR. WHITE: Objection as to what his friend said.

1 THE COURT: Sustained.

2 Q (MR. SWILLEY) Without telling what is said --
3 well, let me ask you this. At the time on Christmas
4 2017, who did that car belong to?

5 A A friend of mine named Adrian.

6 Q And were you trying to buy that car?

7 A Yes, I was.

8 Q Okay. All right. So tell me what happened --
9 can you tell me what happened about the time -- when
10 you were over at Charles' house, other than the kids,
11 how many adults were there?

12 A Including myself, his wife and that was it, at
13 the time.

14 Q Okay. Do you recall about what time Charles
15 left?

16 A No, I don't recall the time when he left?

17 Q Without telling me what anyone said, based on
18 your observations, did you or anyone -- well, what were
19 you -- when he left, tell me without saying what anyone
20 said, what were -- what was your understanding of what
21 you were going to do?

22 A I was just meeting him at the Four Way to give
23 him a ride, pick him up.

24 Q Was that at his request?

25 A Yes, it was.

1 Q Were you aware of anything of what would happen
2 at the Four Way?

3 A No, I was not.

4 Q Now, let me ask you, in order to get from Mount
5 Zion to Four Way, what route do you take?

6 A You take a right on Church Street, because his
7 apartment is on Church Street side, and make a right on
8 Church Street, and then you can make a right -- first
9 right that you see, and then -- I'm not good with
10 streets. You make the first right, and then you take
11 that straight back. You can only go straight for so
12 many blocks, and then you make another right and take
13 that to National Cemetery Road and make another right,
14 and when you take that down to National Cemetery Road,
15 the gas station is on the right-hand side.

16 Q Okay. Now, did Charles Moore -- how did he --
17 after he -- after you had spoken, how did he depart the
18 house, by what means?

19 A What do you mean by that?

20 Q Was he walking, driving, biking?

21 A Walking towards the four-way stop.

22 Q At that point, describe to me the -- well, I
23 guess, at that point, how long after he left did you
24 depart the house in the car?

25 A When I got -- wait, say that one more time.

1 Q Okay. About -- when he left, about how long --
2 when he left, tell me what you did after that.

3 A I put on my shoes and I told the kids I was
4 coming back, and when I got outside, he was already --
5 he was already like on Church Street walking towards
6 the Four Way.

7 Q Did you know at the time where he wanted you to
8 take him to at that time?

9 A No, I didn't. I didn't get a chance to ask him.

10 Q And, Deipo, tell me what happened from the time
11 -- describe to me in your own words, from the time you
12 left Mount Zion to when you got to the Four Way, what
13 did you observe? Tell me what happened.

14 A All right. When I got -- like, you want me to
15 explain from, like, how did I get to the Four Way to
16 that point, or we already got to the Four Way now?

17 Q Tell me -- let me ask you this. From Mount Zion
18 to Four Way, did you stop anywhere?

19 A No, I did not.

20 Q Did you park anywhere?

21 A No, I did not.

22 Q When you pulled into the Four Way, tell me what
23 you observed and what happened.

24 A Wait, to be clear, like, you want me to tell you
25 I'm at Four Way now, right?

1 Q Once you get to Four Way, tell me what happens.

2 A I got to the Four Way, and as I'm about to merge
3 into Four Way, I see Charles and someone chasing him
4 with a bat, and Charles is holding his head. Continue?

5 Q What happened after that? Yeah.

6 A So when I got into the Four Way, my idea, it was
7 like a quick thought in my mind of what I should do, so
8 what I thought to do was to get to Charles as quick as
9 I can and get him in the car and get back onto Church
10 Street to get him to safety. So when I got into the
11 Four Way, I made -- like I went around a red minivan,
12 and I lost site of both of them. When I got back
13 around the minivan, I just see Charles standing --
14 there was a little store right next to the gas station,
15 like they sell clothes and stuff there. He was just
16 standing there looking at me, like holding his head.
17 So as soon as -- how I wanted to go -- like right next
18 to the store there is an exit. The pump and the exit
19 is like -- I would have made like a half-U out the
20 exit. I didn't want to just come into the gas station
21 and make a Z. I wanted to go around and come out so
22 that once I got out right by the exit, I could just get
23 Charles in the car, he could open the door -- because
24 he was on the passenger's side -- he could open the
25 door and get in the car, and I could drive out.

1 As soon as I got to the pump, there was another
2 fast instant where Hannah appeared at the side of the
3 railing with the bat trying to hit my car. I had just
4 got the car, and I wasn't trying to have him hit my
5 car. So I hit the acceleration, but my mind wasn't
6 quick enough to turn the steering wheel before I hit
7 the acceleration, so I hit the acceleration first,
8 like I floored it. So all I heard was (indicates),
9 and I hit the railing. And then --

10 Q All right. When you hit the railing, was that
11 after you tried to avoid Phillip?

12 A Yes.

13 Q Did he swing the bat at the car?

14 A He didn't swing the bat at the car, that is why I
15 tried to -- I didn't really get to that point, because
16 I tried to accelerate past him before he would try to
17 swing the bat.

18 Q Is that what appeared was going to happen?

19 A Yes, it was.

20 Q And you recall that the car collided into the
21 fuel pump?

22 A Yes, it did.

23 Q And what happened right then when you collided?

24 A I hit my head hard on the windshield, and the
25 back of my car lifted up in the air.

1 Q When you hit your head on the windshield, what
2 happened to the windshield?

3 A It cracked.

4 Q At that point, was the car drivable?

5 A No, it was not. I tried to -- at a quick speed,
6 I tried to turn the key, but, really, when the car
7 shuts off -- when the key is in the ignition, you put
8 the car in park, then turn the car off. So I tried
9 that, but everything was just stuck. I couldn't move
10 nothing. The steering wheel couldn't move. The key
11 was stuck. The gear shifter was stuck.

12 Q At that point -- well, are you scared at this
13 point?

14 A Yeah, I was scared.

15 Q Now, tell me what happened from the time you --
16 after you realized that car wouldn't go anywhere, what
17 did you observe Phillip, Mr. Hannah, do, and what did
18 you do?

19 A I didn't see Hannah after I crashed my car. He
20 was in front of me when I crashed my car. Like when I
21 was doing everything, my head, I hit my head, I looked
22 up and he is not there. All I see is Charles Moore
23 standing at the same spot holding his head.

24 Q At any time before that, did you observe Charles
25 make a motion at you or anything like that?

1 A He didn't make a motion, but he -- when I got
2 into the gas station, he pointed to Hannah to let me
3 know that that is the dude that is chasing him right
4 now.

5 Q Going back to after he wrecked the car, tell me
6 what happened -- tell me what transpired at that point.
7 Tell me what you observed Mr. Hannah doing, and then
8 what you did.

9 A Can you break it down for me, please?

10 Q Tell me what you did -- tell me what you did and
11 why you did it.

12 A Like when I got out of the car?

13 Q Yeah, when you got out of the car.

14 A All right. So I can hear Hannah, but I don't see
15 him. So I grabbed the gun out of the glove compartment
16 box. As I got out of the car, I see him and he's
17 coming towards me.

18 Q Does he have a bat with him?

19 A Yes, he has the bat with him. So when he is
20 coming towards me, I started shooting at his car.

21 Q Whereabouts on his car?

22 A In the front of the hood. I tried to shoot away
23 from him. I wasn't trying to hit him when I first
24 started shooting.

25 Q Why were you doing that?

1 A Just to back him away from me.

2 Q Did he back away?

3 A No, he did not.

4 Q Then what happened?

5 A He kept coming at me.

6 Q With the bat?

7 A With the bat, yes.

8 Q And tell me what happened after that.

9 A After that, I felt like his hand was going down
10 by his waist, so I returned to fire on him and I
11 started shooting at him.

12 Q Did he ever drop the bat?

13 A No, he did not.

14 Q And then after -- then you shot, tell me what you
15 did after that.

16 A After I finished shooting, I turned and ran to --

17 Q Let me ask you. When you -- tell me, after the
18 shots happened, tell me what you did.

19 A After the shots happened, I turned around and ran
20 to Charles Moore, and when I got to Charles Moore, he
21 kept grabbing me, grabbing me, pulling me, telling me,
22 Yo, come on, let's go, let's go. I'm crying, because I
23 didn't know -- I was scared. I didn't know what was
24 really going down. So I'm scared, and he's pulling me,
25 pulling me, still holding his head, and we ran to his

1 friend's house on the side of Mount Zion.

2 Q Okay. Just a couple of follow-up questions,
3 Deipo. Did you, personally, observe when Phillip
4 Hannah was struck with any bullets?

5 A No, I did not, because he didn't fall. He didn't
6 hold his mouth, he just turned around and ran.

7 Q Did you feel like you -- let me ask this. Did
8 you ever -- did you ever shoot at Mr. Hannah when you
9 believed that he was not a threat to you?

10 A No, I did not.

11 Q Okay. Did you ever -- do you recall anything
12 that was said to you by Mr. Hannah at this time?

13 A What do you mean?

14 Q Do you recall anything he yelled at you or said
15 to you at this time or during this event?

16 A I don't remember any, like -- I hit my head hard,
17 because the crash was so bad, like when I -- I didn't
18 have my seatbelt on, so I hit my head so hard. My
19 adrenaline and fear was so much, my anxiety was so
20 much, I couldn't really hear what he was saying, but he
21 was loud, though.

22 Q Did Mr. Hannah -- what was his -- did he appear
23 to be angry?

24 A Yes, he was.

25 Q Did you know why he was chasing Charles Moore?

1 A No, I did not.

2 MR. WHITE: Objection, calls for speculation.

3 THE COURT: Sustained.

4 Q (MR. SWILLEY) Based on your observations, based
5 on everything you saw, based on purely what you
6 observed, did you -- were you aware of any issue?

7 MR. WHITE: Objection, still calls for
8 speculation.

9 THE COURT: He can ask him if he saw anything
10 that would cause a confrontation.

11 Q (MR. SWILLEY) Did you see anything that would
12 cause a confrontation between Mr. Moore and Mr. Hannah
13 initially?

14 A No, I didn't.

15 Q Okay. All right. And, Deipo, have you ever seen
16 Mr. Hannah before in your life?

17 A No. Yesterday was the first day I actually know
18 what he looks like. I didn't even know that he was
19 that tall until yesterday. Like, it was the first time
20 I ever made physical -- actually remembered him.

21 Q And do you recall how -- about how long this
22 interaction between you and Mr. Hannah took, how many
23 seconds?

24 A No.

25 Q Was it a matter of seconds?

1 A No. Like, to me, at the moment, it felt like a
2 long time.

3 Q But you don't know in actuality how many seconds
4 it took?

5 A No.

6 Q Deipo, were you in fear for your life or great
7 bodily harm when you had to use that gun?

8 A Yes, I felt I was.

9 MR. SWILLEY: One moment, please, Your Honor.

10 (A brief pause in the proceedings.)

11 MR. SWILLEY: Thank you. Answer any questions
12 that Mr. White has.

13 THE COURT: Cross-examination, Mr. White.

14 MR. WHITE: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. WHITE:

17 Q Mr. Lewin.

18 A Yes, sir.

19 Q You said you didn't know that many people in
20 Florence, right?

21 A Yes, sir.

22 Q You can count them on one hand?

23 A Yes, sir.

24 Q You were living in Georgia, right?

25 A Yes, sir. At the moment, yeah.

1 Q You had people in New York, right?

2 A Yes. My main family, yep.

3 Q And you can count those friends on one hand,
4 right?

5 A Yes, sir.

6 Q And one of them is Charles Moore?

7 A Yes, sir.

8 Q And one is his wife?

9 A Yes, sir.

10 Q And you testified, correct, that you don't even
11 really know Charles Moore that well, right?

12 A No, I did not.

13 Q You didn't say that just a minute ago?

14 A No, I did not.

15 Q You said you didn't even know how long you knew
16 him?

17 A I said I didn't know exactly the time frame of
18 how long I know him.

19 Q But he lets you play with his kids, right, on
20 Christmas day?

21 A Yes, sir.

22 Q Instead of you being at home with your family,
23 right?

24 A I had a job that I couldn't --

25 Q Just a yes or no question, and then you can

1 explain.

2 A Can you repeat the question?

3 Q You know what, I'll move on.

4 Let me ask you this. You were in the courtroom
5 when Charles Moore testified, right?

6 A Yesterday, yes, sir.

7 Q Were you in here when he said that he hadn't seen
8 you at all that day?

9 A Yes, sir.

10 Q But you are saying that you were, in fact,
11 playing with his children, right?

12 A Yes, sir.

13 MR. SWILLEY: Objection, pitting.

14 THE COURT: Sustained. You can't pit witnesses.
15 You can ask him his recollection of the events.

16 Q (MR. WHITE) You testified that you told his kids
17 you would be right back; isn't that right?

18 A Yes, sir.

19 Q I'll show you this map. That is the gas station
20 where this all occurred?

21 A Yes.

22 Q And then Mount Zion is right here, right
23 (indicates)? Mount Zion Apartments are just above the
24 gas station; isn't that correct?

25 A Yeah, but the way you make it seem, it is farther

1 than where your hand is at. If you would have printed
2 out the whole picture of Mount Zion and the gas
3 station, you would have seen the exact distance.

4 Q It is within walking distance, correct?

5 A Yes, it is.

6 Q And, in fact, Charles Moore walked there?

7 A Yes, he did.

8 Q Yet he wanted you to pick him up?

9 A Yes, he did.

10 Q To come right back to Mount Zion Apartments,
11 where you told the children you were going to be right
12 back; isn't that correct?

13 A But you don't -- when you say I'll be right back,
14 other things could have changed, but you are coming
15 right back to that destination. You're not going to
16 another destination to spend the rest of the day. You
17 are telling them you are coming right back.

18 Q So Charles Moore tells you he is going to walk,
19 and he wants you to pick him up from right there; why
20 didn't he get you to drive him there in the first
21 place?

22 MR. SWILLEY: Objection, calls for speculation.

23 Q (MR. WHITE) He didn't ask you to drive him there
24 in the first place, did he?

25 A What? Ask me to drive him to the Four Way? No.

1 Q He didn't ask you to drive him to a location
2 within walking distance, did he?

3 A No, he did not.

4 Q But he asked you to pick him up from the location
5 within walking distance?

6 A Yes, he did.

7 Q Okay. Thank you.

8 I want to ask you this before I put this map up.
9 That store, where you testified earlier that Mr. Moore
10 was just standing there, that is about right here
11 (indicates); isn't that correct?

12 A It is like where the dirt area is. There -- no.
13 Like to the street, in the dirt area.

14 Q Here (indicates)?

15 A Put your hand lower.

16 Q Here? That is the picture.

17 A A little bit lower.

18 Q So you are saying the store is here (indicates)?

19 A Yeah, just like right there.

20 Q You are saying the store is right here
21 (indicates)?

22 A Not on the concrete, but in the dirt area.

23 Q Dirt area here (indicates)?

24 A No. In the dirt area. Yes. Yes.

25 Q There is no store on this map.

1 A But that is probably not an update of the real
2 map, but I know there is a store on the side of the gas
3 station.

4 Q But that is where he was, right?

5 A Yes, he was.

6 Q All right. So you testified, right, that you
7 didn't even know Mr. Hannah, correct?

8 A Yes, I did.

9 Q And Mr. Hannah didn't even know you?

10 A Like he said yesterday, yes.

11 Q But as you pull into the gas station, right, you
12 said you were in fear that this man was about to strike
13 your vehicle with a bat?

14 A Yes.

15 Q How would he have known that you were even there
16 to be involved?

17 MR. SWILLEY: Objection, speculation.

18 THE COURT: Sustained, speculation.

19 Q (MR. WHITE) Regardless -- let me ask you this.
20 Back when you were playing with the children, did you
21 have a gun on safety at least?

22 A I didn't have the gun with me at all.

23 Q It was in the center console?

24 A No, it was in the glove compartment box.

25 Q Glove compartment box; is that on the passenger's

1 side?

2 A Yes, it was.

3 Q So you pull in and you crash your car, right?

4 A Yes, I did.

5 Q Because a man -- that you don't know, and he
6 doesn't know you -- was about to hit your car?

7 A Yes, he was.

8 Q So you crashed the car?

9 A Yep.

10 Q And you get out, okay?

11 A Yes.

12 Q And you hit your head on the windshield, correct?

13 A Yes.

14 Q And, at some point, you see your good buddy,
15 Mr. Moore, over here just standing still, correct?

16 A I didn't say over there. I said -- he was still
17 in the gas station, but the store is right there. The
18 store is right there, but he's on the pavement, but
19 he's right next to the store.

20 Q But he's standing still, right?

21 A Can I get up and point for you? Because you are
22 playing with my head right now.

23 Q I'm playing with your head, huh?

24 A He's standing right there. Can I show them?

25 Q Yeah, go ahead. Show them all you want to.

1 A He's still in the gas station right here
2 (indicates). The store is right here (indicates).

3 Q But he's standing still?

4 A Holding his head, yeah.

5 Q But not running?

6 A No.

7 Q Not running at all?

8 A Huh-huh.

9 Q So you crash the car, you hit your head?

10 A Yes.

11 Q Do you have the presence of mind to reach across
12 to the passenger's side, pull down the glove box, pull
13 out a .40 caliber pistol that is already loaded; is
14 that right?

15 A Yes.

16 Q You get out. At this point, he's on the other
17 side of your car; isn't that right?

18 A On the other side, back of my car.

19 Q The man with the bat, is he on the other side of
20 your vehicle?

21 A Yes, he is.

22 Q So wherever you want to point, here, there, here,
23 here, here (indicates), Mr. Moore is a good distance
24 away from --

25 A Can I see what you are doing?

1 Q Yeah. Sure. Correct me if I'm wrong, I'll be
2 generous. Say that Mr. Moore is here, stationary; is
3 that right?

4 A Yes.

5 Q Your car crashes here?

6 A Yes.

7 Q You pull out a .40 caliber handgun, correct?

8 A Yes.

9 Q You are on this side of the vehicle, correct?

10 A Yes.

11 Q The man with the bat is on this side of the
12 vehicle?

13 A He's not that far away.

14 Q Here? Is there a car between you and the man
15 with the bat?

16 A If he was that far away, he would have been on
17 camera by then.

18 Q That is a great point. Fantastic point. Thank
19 you for making that.

20 Is there a vehicle between you and the man in the
21 bat? Is there a vehicle between him and Mr. Moore who
22 is standing over here stationary?

23 A I don't get your question.

24 Q It is quite simple.

25 A Is there an actual vehicle between me and him?

1 Q Your vehicle.

2 A Yeah.

3 Q Is that right?

4 A Yes.

5 Q Thank you very much.

6 And, yet, instead of driving in and going over
7 here to your friend, picking him up and driving him
8 away, you crashed your car?

9 A I can't see it.

10 Q Crashed your car, right?

11 A Yeah, crashed my car.

12 Q You grab a .40 caliber handgun, right?

13 A Yes, I did.

14 Q Already loaded, right?

15 A Yes.

16 Q Safety was off, right?

17 A I don't remember all of that. I think so.

18 Q It won't fire with the safety on, right?

19 A It won't fire with the safety, no, it won't.

20 Q You got out of your car?

21 A Yes.

22 Q At this point, you get out of your car, and
23 Charles Moore is over there, right?

24 A Yes, he is.

25 Q The man with the bat is behind the car, right?

1 A He's not really behind the car, if you could say,
2 because the car was almost diagonally.

3 Q Okay. Diagonally, however you want to say it.

4 MR. WHITE: Beg the Court's indulgence for a
5 moment, Judge.

6 (A brief pause in the proceedings.)

7 Q (MR. WHITE) You can say diagonally if you want
8 to, but in this picture, look at the car; you see
9 where officers are standing?

10 A And you see where the store is at, too.

11 Q I see where the store is at. Is that where Mr.
12 Moore was?

13 A He was on the pavement side, though, of the
14 store.

15 Q And then you are on the left side of the car.
16 Mr. Moore is on the left side of the car. The man with
17 the bat is on the right side of the car; true or false?

18 A When I got out of the car, I came -- like where
19 you see the left headlight at, where the police are
20 standing, I'm out there a little more. I got out of my
21 car and I moved sideways.

22 Q When your driver's door is opened, right?

23 A Yes.

24 Q Left side of the car, right?

25 A Yeah, but Hannah was on the pavement side, too,

1 exactly -- like how me and you are standing now, that
2 is how he was to me when I got out of my car, to like
3 where the police officer is standing.

4 Q Be that as it may, you and Mr. Moore are on one
5 side of the car, Mr. Hannah is on the right side of the
6 car?

7 A Yes.

8 Q There is a car separating you and you still grab
9 a .40 caliber --

10 A No, he's not -- the car is not separated. If it
11 is separating, I would have been on the driver's side,
12 and he would have been on the passenger's side exactly
13 over the car. We wasn't over the car. We was out
14 passed the car. We was directly in front of each
15 other, just like how me and you are standing. There
16 was no car in between us, if that is what you are
17 saying, no, it wasn't like that.

18 Q So you fired that first shot, right, and he
19 haul-tailed to the minivan?

20 A No, I fired a couple shots at the car. I didn't
21 aim fire at him when I first got out of my car.

22 Q So you fired two shots; that's a couple, right?

23 A I don't remember how many shots I fired.

24 Q You fired three?

25 MR. SWILLEY: Objection, asked and answered.

1 Q (MR. WHITE) Did you fire three shots before he
2 went back to the minivan?

3 A I don't remember the exact amount of shots I
4 fired at the car. You can count, if you want to.

5 Q Oh, I think I will. Let me ask you this. You
6 don't know how many you shot before he got into the
7 minivan, can you tell us how many you shot after he got
8 in the minivan? How many times did you shoot him as he
9 was pulling out of the gas station?

10 A I don't remember if I did shoot him while he was
11 in his minivan, shoot at his car while he was in the
12 minivan.

13 Q You testified earlier that after that, you ran
14 over to your good friend, Charles Moore, and you were
15 scared, right? You were crying?

16 A Yes.

17 Q And you had just -- I mean, you still had a .40
18 caliber handgun on you, right?

19 A Yes, but it was empty.

20 Q But you had a box of bullets in your car?

21 A Silver bullets from the gun range, yes.

22 Q .40 caliber?

23 A In the trunk, yes.

24 Q But you were scared?

25 A Yes, I was scared.

1 Q The man who had the bat was shot and fled the
2 scene, and you were the one crying; is that right?

3 A Yes.

4 Q Now, you were so scared, in fact, you stuck
5 around, right? You stuck around the scene and talked
6 to law enforcement?

7 MR. SWILLEY: Objection, Your Honor, move for a
8 mistrial. There is a matter of law we need to take
9 up.

10 THE COURT: Hang on a second. Might Counsel
11 approach the bench.

12 (Whereupon, a bench conference was had.)

13 Q (MR. WHITE) You testified earlier that up until
14 you saw Phillip Hannah, you can't recall what he even
15 looks like; is that correct?

16 A Say that one more time.

17 Q You didn't know Phillip Hannah, right, when you
18 pulled into the gas station?

19 A No, I did not.

20 Q You didn't know him from Adam?

21 A I didn't know him from Adam?

22 Q You didn't know him from the next regular Joe on
23 the street?

24 A No, I didn't know him at all.

25 Q And then you testified on direct that up until

1 you saw him in the courtroom, you couldn't even tell
2 anyone what he looked like?

3 A Yes.

4 Q But you were so afraid of that man with a bat,
5 you didn't even get a good look at him?

6 A It happened so fast, I didn't actually stand
7 there to stare at his face to remember his face, no, I
8 did not.

9 Q But you were so afraid of that man with the bat
10 that you pulled out a .40 caliber handgun and fired ten
11 shots and, yet, you are sitting here telling us you
12 don't even remember what he looks like?

13 A Yes, that's exactly what I'm telling you.

14 MR. WHITE: Beg the Court's indulgence.

15 (A brief pause in the proceedings.)

16 Q (MR. WHITE) You testified earlier that you fired
17 about three shots before he got in the van?

18 A I didn't testify how many shots I let off at the
19 van.

20 Q Well, you did testify that you fired after he got
21 in the van, correct?

22 A No, I did not testify to that, that I shot when
23 he got in the van.

24 Q Okay. Did you testify as he turned to drive out
25 of the parking lot?

1 A No, I didn't testify to that.

2 Q Were you weaving from back and forth?

3 A What do you mean?

4 Q There was bullet holes in the front of the van,
5 right?

6 A Yes.

7 Q And bullet holes on the side of the van, right?
8 There were bullet dents in the gas pump, right?

9 A Off the pictures I saw, yeah.

10 Q But you didn't fire at the vehicle as it was
11 backing away or as it was --

12 A Not that I remember, no.

13 MR. WHITE: Judge, nothing further.

14 THE COURT: Redirect?

15 REDIRECT-EXAMINATION

16 BY MR. SWILLEY:

17 Q I want to ask you, Deipo, did you ever -- when
18 you fired that gun, did you ever fire the gun when you
19 did not believe that Mr. Hannah was a threat to you?

20 A No, I did not.

21 Q Did you fire the gun as fast as you could?

22 A Yes, I did.

23 Q Okay.

24 MR. SWILLEY: Thank you.

25 THE COURT: You may step down.

1 You may call your next witness.

2 MR. SWILLEY: At this time, the defense rests.

3 THE COURT: Very good.

4 Mr. Foreman, ladies and gentlemen of the jury,
5 once again we're required to take up matters of law
6 outside of your presence. I'll ask you to retire to
7 the jury room, but do not discuss the case.

8 Everyone remain seated as the jury exits the
9 courtroom.

10 (The jury exits at 11:10 a.m., and the
11 following is heard out of the presence of the jury.)

12 THE COURT: I'll take up motions at this time.

13 MR. SWILLEY: Your Honor, just to clarify and
14 protect the record, I want to reiterate to move for a
15 mistrial. The State inquired into the fact that my
16 client had exercised -- clearly established the
17 Constitutional right that he had exercised, and then
18 questioned against him. I think that is forbidden
19 unequivocally by *State versus Simmons*, 419 S.E.2d 225,
20 308 S.C. 481, Supreme Court, 1992. So I want to put
21 that on the record as well.

22 Also, Your Honor, if that motion is denied, I
23 would, again, renew my motion for a directed verdict
24 of not guilty as well.

25 THE COURT: Very good. Would you like to be

1 heard?

2 MR. WHITE: Yes, sir.

3 Obviously, I believe there is more than enough to
4 get this to a jury. As to the mistrial, Judge, he
5 testified on direct that he didn't feel that he had
6 done anything wrong, so to ask him whether or not he
7 stuck around to talk to law enforcement, when he's
8 taking a stand and asserting self-defense, I think it
9 is a legitimate line of inquiry.

10 THE COURT: I don't think so, that is why I
11 stopped the inquiry. I think we stopped it at the
12 appropriate time.

13 MR. WHITE: Yes, sir, Judge.

14 THE COURT: At this time, we'll have a charge
15 conference. I'll charge that the indictment is not
16 evidence, presumption of innocence. Reasonable doubt,
17 I'll charge both versions, the short and the longer.
18 Duty of the jury and the trial judge, direct and
19 circumstantial evidence, creditability of witnesses,
20 prior inconsistent statements, attempted murder. I'm
21 not going to charge inference of malice with use of a
22 deadly weapon in view of the fact that they have
23 asserted self-defense, as it is within that charge.
24 I'll charge assault and battery in the first degree;
25 is it your request that I charge that?

1 MR. SWILLEY: It is, Your Honor.

2 THE COURT: And have you discussed the
3 ramifications with your client?

4 MR. SWILLEY: Your Honor, I haven't gotten into
5 specifics, but I can confer with him.

6 THE COURT: Yeah, ask him if that's what he wants
7 me to do.

8 (A brief pause in the proceedings while Mr.
9 Swilley and Mr. Lewin confer.)

10 MR. SWILLEY: I have, Your Honor, and he's in
11 agreement with that.

12 THE COURT: I'll charge assault and battery of a
13 high and aggravated nature, assault and battery second
14 degree. With the assault and battery second degree,
15 I'll charge moderate bodily injury. I'm going to
16 define great bodily injury and moderate bodily injury.
17 Assault and battery second degree, I'll charge
18 self-defense, right to act on appearances. I'm going
19 to charge them how to evaluate a victim's violent
20 reputation. I'll charge increased risk of harm with
21 regard to the duty to retreat. I'll charge defense of
22 others, right to act on appearances, duty to retreat.

23 Any additional requests?

24 MR. SWILLEY: Yes, Your Honor.

25 THE COURT: And expert witnesses, I'll charge how

1 to evaluate expert witnesses.

2 MR. SWILLEY: Your Honor, I request the Court
3 also charge on degree of force from State versus Rye.

4 THE COURT: Do you have a written request?

5 MR. SWILLEY: I do.

6 THE COURT: Yeah, I'll charge that.

7 MR. SWILLEY: I also ask, Your Honor, that the
8 Court charge on words accompanied by hostile acts,
9 which is on the next page of --

10 THE COURT: What is the State's position on that?

11 MR. WHITE: I think the direct testimony was
12 there were no words.

13 THE COURT: I think he said they were loud, he
14 just didn't remember what they were he was so scared.

15 MR. WHITE: I think to get to a charge there
16 ought to be some specific utterances, some sort of
17 threat. Just that he was being loud and boisterous, I
18 don't know that that is enough.

19 THE COURT: I'm going to charge that. You can
20 argue that as a factual issue, that he didn't say I'll
21 kill you or hurt you, but he was loud.

22 MR. SWILLEY: Your Honor, I put in size and age
23 of the victim. I'm not asking the Court to decide
24 that. I think they are kind of the same size.
25 Threats by the victim, I think that, again, there

1 was -- if I can recall Ms. Wingate's testimony, I
2 don't think there is any testimony as to specific
3 words, but, again, back with the words accompanied by
4 hostile acts --

5 THE COURT: I don't think there were any threats,
6 so I'm not charging that.

7 MR. SWILLEY: I think you said charge of
8 increased risk of harm?

9 THE COURT: I will.

10 MR. SWILLEY: I ask the Court to charge on
11 continuing until the threat of harm ended.

12 THE COURT: I think that is within my charge, but
13 I'll ensure it is.

14 MR. SWILLEY: I think you said defense of others?

15 THE COURT: Correct.

16 MR. SWILLEY: Last page, I don't know if your
17 self-defense charge encompasses the law requires the
18 State to disprove self-defense once raised by the
19 defendant beyond a reasonable doubt.

20 THE COURT: It does.

21 MR. SWILLEY: Okay. And, Your Honor, just for
22 the record, I just want to put on the record that I am
23 requesting that -- the ones you refused to charge,
24 threats by the victim and words accompanied by hostile
25 acts, I'll ask that that be charged over objection.

1 THE COURT: Very good. Any additional requests?

2 MR. WHITE: I'm fine with all of that. The only
3 additional thing I would like to take up is the two
4 stipulations, you know, the stipulation that he did,
5 in fact, you know, fired the shots, and that each and
6 every shell casing recovered was, in fact,
7 Mr. Lewin's. It is my preference that that came from
8 you.

9 THE COURT: Have you written out the stipulation?

10 MR. WHITE: I had written out the original
11 stipulation and asked Mr. Swilley to sign it sometime
12 ago. I never received that back. But I haven't
13 written out the other one. I know at the bench you
14 said it would be something you wouldn't mind taking
15 up.

16 THE COURT: What exactly is the stipulation?

17 MR. WHITE: Simply that Mr. Lewin did, in fact,
18 fire the shots, one leading to the striking the
19 victim, and each and every shell casing came from
20 those shots, and Mr. Swilley can correct me if I'm
21 wrong.

22 MR. SWILLEY: I believe that is correct.

23 THE COURT: When we come back in, before the
24 final arguments, if you have no objection, I'll say:
25 The parties, the State and the defendant, stipulate

1 that Mr. Lewin did fire the weapon in question, the
2 bullets fired came from Mr. Lewin's weapon.

3 MR. WHITE: Very good.

4 THE COURT: It was in his opening statement and
5 testified and was uncontroverted in his testimony, but
6 you all agree to stipulate to that in order to avoid
7 ballistics, and I think it is appropriate to charge
8 the stipulation.

9 MR. WHITE: Yes, sir.

10 THE COURT: I will, indeed, do that.

11 How long do you anticipate closing arguments to
12 be?

13 MR. WHITE: I hope no longer than 20, 25 minutes.
14 That is always my hope. I don't think it would take
15 that long.

16 THE COURT: I think under these circumstances,
17 correct me if I'm wrong, with the new case law, you
18 open up in full?

19 MR. WHITE: Yes, sir.

20 THE COURT: He gives his closing argument, and
21 you have an opportunity to reply?

22 MR. WHITE: That is my understanding.

23 MR. SWILLEY: That's correct.

24 THE COURT: All right.

25 How long do you anticipate?

1 MR. SWILLEY: Judge, you know, I can't -- I don't
2 think more than 20 minutes.

3 THE COURT: I'll tell you what, we'll take a
4 five-minute recess, come back and do that. I
5 anticipate we'll get the jury -- Madam Clerk, we'll
6 get the jury something to eat, and I'll ask that it be
7 here at 1 o'clock.

8 What we'll do is get through -- see how we're
9 doing, but get the food here at 1:00, and it might be
10 that we complete arguments and then let them eat and
11 then charge them. But if we can do it before lunch,
12 we will.

13 Anything before we take a recess?

14 MR. WHITE: Nothing.

15 MR. SWILLEY: No, sir.

16 (A recess was taken.)

17 THE COURT: Be seated.

18 I'll give you an opportunity to review the
19 verdict form. I have never in my entire life -- I
20 take that back. On one occasion there was a complex
21 case and they asked for a definition and the parties
22 agreed, they actually asked for a written definition
23 of something that was in the charge, and the parties
24 agreed to it, so I sent it back, but given the number
25 of lesser included offenses and how they are

1 different, the definitions are different, I was --
2 would like to propose to give them the definition and
3 the substantive law with regard to each one of these
4 charges.

5 MR. SWILLEY: Take it back in the jury room?

6 THE COURT: Yes.

7 MR. SWILLEY: No problem with that.

8 MR. WHITE: The only issue is we can't even
9 determine what the law is. Sending it back --

10 THE COURT: So what we ought to do is just
11 confuse them?

12 MR. WHITE: Well, this is my take. I think it
13 will only further confuse them.

14 THE COURT: Well....

15 MR. WHITE: Sometimes gut instincts is the right
16 one, and I think they'll get back there and might
17 twist this around and around, just like we've been
18 doing for years with this statute.

19 THE COURT: Well, what you want to do is just
20 guess?

21 MR. WHITE: No. I want them to listen --

22 THE COURT: I'll tell you what, can you
23 imagine -- I mean, when we talk about it, we have to
24 look at the definition, don't you think they ought to
25 have that opportunity? We're going to be sitting up

1 here reading it to them a thousand different times.

2 MR. TUCKER: And, Judge, they can always ask to
3 be recharged on an element of law, or one law versus
4 another.

5 THE COURT: I know that, but that is what we want
6 to avoid. Some people learn by listening, and some
7 have to read it.

8 MR. TUCKER: As we discussed earlier, that is one
9 of the most confusing statutes.

10 THE COURT: You think by giving them a definition
11 of it makes it worse, or better?

12 MR. TUCKER: I think it forces them to rely on --
13 as Mr. White pointed out -- commonsense as opposed to
14 the analytical approach if they had it back there
15 chewing on what does this mean versus that.

16 THE COURT: What do you think?

17 MR. SWILLEY: Well, I think the best chance of
18 them applying the law to the facts in this case would
19 be for them to have it at their disposal. They can
20 either read it, or they can have it requested that you
21 read it to them if they have any questions. I think
22 they are entitled to -- I think it just probably be a
23 lot more time expedient to let them have it, but I
24 can't really say either position, I really can't say.

25 THE COURT: All right. I think I'm going to give

1 it some consideration. I might charge them and let
2 them go back, and the first time they ask for me to
3 define something, I'll give it to all of them.

4 MR. TUCKER: That sounds fair.

5 THE COURT: Let's do it that way. When the jury
6 comes back, I'll give them the stipulation.

7 MR. SWILLEY: Can I read it?

8 THE COURT: Yeah, I've already read it to you.

9 (A brief pause in the proceedings while Mr.
10 Swilley reads the stipulation.)

11 MR. SWILLEY: Yes, sir, that's fine.

12 THE COURT: Anything from the State before we
13 begin closing arguments?

14 MR. WHITE: No, sir, Your Honor.

15 THE COURT: From the defense?

16 MR. SWILLEY: No, Your Honor.

17 THE COURT: We're ready for the jury.

18 (The jury enters at 11:57 a.m., and the
19 following is heard in the presence of the jury.)

20 THE COURT: Mr. Foreman, ladies and gentlemen of
21 the jury, thank you for your patience. You have heard
22 all of the evidence that will be presented in this
23 case, and as I mentioned to you at the very beginning,
24 this is the opportunity where these very fine lawyers
25 give you their closing arguments, and although what

1 they say is not evidence, it will aid you immensely in
2 your deliberation process. You and I have dealt with
3 this case for a very short period of time, and they
4 have been dealing with it for an extended period of
5 time, and their observations and arguments will aid
6 you in your deliberation process, so I'll ask that you
7 pay close attention to what they have to say.

8 Mr. White.

9 MR. WHITE: Christmas chaos, I think we can all
10 agree to that. Ladies and gentlemen, like I said in
11 my opening, this is a case about what happens when
12 every day life overlaps with that criminal element,
13 and because of that, Deipo Lewin is charged with
14 attempted murder.

15 Attempted murder is the intent to kill another
16 person with malice aforethought. Malice means hatred,
17 ill-will or hostility towards another person --

18 THE COURT: Mr. White, I do hate to interrupt
19 you, but I neglected to publish the stipulation
20 between the parties.

21 A stipulation is a fact that the parties agree
22 to, and the parties have agreed that Mr. Lewin did
23 fire the weapon in question. The bullets fired from
24 the gun came from Mr. Lewin's weapon.

25 I do apologize for that.

1 MR. WHITE: No problem, Judge.

2 So what the Judge is saying is it is not a
3 who-done-it. We know who fired the shots, and we know
4 that the person who fired that shot -- those shots,
5 each and every shell casing came from his gun; that is
6 what the Judge is telling you.

7 Attempted murder. Malice means ill-will,
8 hostility towards another person. You would be hard
9 pressed to convince me that firing ten shots at
10 another person is not attempted murder.

11 But the Judge is also going to charge you on
12 lesser included offenses. One of those is assault and
13 battery of a high and aggravated nature, unlawful
14 injury to another person -- we got that, there is an
15 injury here, there is no doubt. Great bodily injury
16 to the other person results, and I believe what
17 happened to Phillip Hannah is great bodily injury. I
18 mean, you shoot someone in their mouth, knocks out
19 their teeth, part of their tongue, they have trouble
20 talking, that is great bodily injury. But even if it
21 is an act that is accomplished by means likely to
22 produce death or great bodily injury, you don't have
23 to take my word for it, you heard it from Dr. Hyman.
24 He said he is lucky to be alive, right? That is great
25 bodily injury. I think this is attempted murder, but

1 if you get back there, you have to say it is assault
2 and battery of a high and aggravated nature if you
3 don't say attempted murder.

4 Great bodily injury means bodily injury which
5 causes a substantial risk of death or which causes
6 serious permanent disfigurement or protracted loss or
7 impairment of the function of a body member or organ;
8 that is the definition of assault and battery of a
9 high and aggravated nature, okay. That is what we
10 have here. There you see it, there is his injury from
11 the hospital.

12 Now, the defense is asserting self-defense, all
13 right. Requirements of self-defense is that the
14 defendant is without fault in bringing about the
15 difficulty. I think the State disproved that, because
16 he brought a loaded handgun, all right. He knew that
17 when he got there he would hop out, help his buddy. I
18 think he's at fault. I don't think you should find
19 self-defense for that reason.

20 The State also has to disprove that the defendant
21 was in actual imminent danger of losing his life or
22 sustaining serious bodily injury. Ladies and
23 gentlemen, you heard from the defendant himself from
24 the stand. Charles Moore is over here, all right. He
25 pulls up, defendant is on the other side of the

1 vehicle. The man with the bat is right here. You
2 heard it from Ms. Darlene Wingate, who doesn't have a
3 dog in the fight. She said at that point, they are
4 about 10 to 15 feet apart. If the man with a bat is
5 15 feet away from the man with a gun, how far is he
6 from the man with the initial altercation? How could
7 he be in imminent fear of great bodily injury or death
8 to justify firing ten shots at a human being? A .40
9 caliber pistol firing ten times.

10 The State also has to disapprove that the belief
11 of imminent danger is reasonable. It is based on a
12 reasonable person standard. Would you, having been a
13 reasonable person, would have done the same?

14 MR. SWILLEY: Objection, move to strike that
15 comment.

16 THE COURT: I ask that you rephrase that.

17 MR. WHITE: If the defense is based on his belief
18 of imminent danger, the defendant must show that the
19 reasonable and prudent person of ordinary firmness, a
20 reasonable person would have acted in the same way.

21 And then, fourth, the State must disprove the
22 defendant had no other probable means of avoiding
23 danger. This is a big one. You heard it from him,
24 all he had to do was keep driving and pick up his
25 friend, who was right over here at the other store.

1 He didn't even have to stop, much less crash his car
2 and get out and start firing.

3 You heard it from Darlene Wingate, I think she
4 put it best, there was just two idiots out there. I
5 think she was absolutely right, except there was
6 three. Make no mistake, I'm not calling the victim a
7 sweetheart, okay. He brought a baseball bat to a drug
8 deal. He didn't deserve to get shot for it. She said
9 10 to 15 feet separating the defendant from Phillip
10 Hannah. She said Hannah was approaching with a bat.
11 What I believe she saw was the tail-end of him chasing
12 off Charles Moore who was going in his pockets. She
13 said the defendant kept shooting as Hannah was trying
14 to escape. The threat was over at that point. I
15 mean, he's getting out of Dodge.

16 You heard from Phillip Hannah. He was meeting
17 Charles Moore to buy marijuana. He testified he
18 didn't have a good feeling. I don't know about his
19 feelings. He definitely wasn't, you know, an angel,
20 but his feeling turned out to be right. He didn't
21 have a good feeling about it. He said Moore goes into
22 his pockets to steal his money.

23 In a moment, I'll show you a video that I think
24 proves it. He did not know Lewin. He never saw him
25 before. Ladies and gentlemen, I'll ask you this. If

1 Lewin is pulling up, and neither of them have known
2 each other, never seen the car that he drives, why --
3 you just see a random car crash, wouldn't you just
4 jump back and stop? What reason would he have to
5 attack Deipo Lewin? He doesn't know him.

6 He also testified to the same thing that Darlene
7 Wingate said, that he was shot while he was in the
8 car, car in reverse. You heard from Charles Moore,
9 Moore and Lewin were associates, is what he said.
10 Moore said he was hit with a bat once, but was able to
11 get away. You heard that from Lewin. He was up here
12 (indicates). He hadn't stopped running; he was just
13 standing. Moore testified that he was at the next
14 store over when he heard the first shot, the first
15 shot, and nine more followed. Moore fled the scene,
16 and he did not go to the hospital.

17 This is a video of the incident. Pay careful
18 attention to it, ladies and gentlemen. You want to
19 look at that pump, but also at the vehicle that enters
20 in just a few seconds. Everyone minding their own
21 business, Christmas day, people coming and going.
22 Here comes the Ford Fusion.

23 (A video is being published to the jury.)

24 MR. WHITE: Did you see that again, ladies and
25 gentlemen? I'll play it again. You can tell when the

1 first shot is fired, because that is when everyone
2 ducks, okay. Everyone ducks. Pay very close
3 attention, ladies and gentlemen. Where is that
4 vehicle, that van? Where is it when everyone ducks?
5 You can also see in that corner right there Phillip
6 Hannah. Again, no angel, but he looks like he is on
7 the defensive. He's jumping back. There is Moore
8 approaching. Watch Hannah jump back. He jumps back,
9 pulls the bat out. Watch everyone. Everyone is
10 coming out, they're watching. No one calls for help.
11 Watch them duck. That is a sign of a first shot, and
12 watch that red minivan. He was in his car. He was
13 leaving. Everyone is running for cover. Deipo is the
14 one crying?

15 See Camera 2, you can't see fully what is
16 going on behind this pump, ladies and gentlemen, but
17 it looks like Charles Moore is trying to go in Phillip
18 Hannah's pockets. You'll see it in a second. Here
19 comes Moore. Watch him jump back. You'll see people
20 come out. Pay close attention to when they duck.
21 He's in his car. First shots are fired. Doesn't seem
22 like self-defense to me.

23 Here is the photograph of the vehicle. Again,
24 imagine where that vehicle is. It is here. Moore is
25 up here. Man with a bat is here. Almost seconds

1 later he's in his vehicle, okay. The two defendants
2 are on the other side of the vehicle. How can they be
3 in fear of imminent danger at that point?

4 This is also of note, ladies and gentlemen,
5 look at the shell casings how far they are spread
6 apart, 10, 15 feet. Mr. Lewin testified that he was
7 right here when he was shooting. Do you know what
8 those shell casings show? That he was firing as he
9 was walking towards the vehicle as it was leaving. I
10 mean, I don't know how many of you have fired a gun,
11 no one shell casing falls in the same spot, but they
12 fall in the general vicinity, not 10 to 15 feet spread
13 out. Firing so wildly he was hitting the gas pump.
14 We're lucky this wasn't a fiery Christmas.

15 Then, the bullet holes. You heard it from
16 Deipo Lewin, he didn't fire as the car was leaving,
17 right? That's what he said. He only fired at the
18 front when no one was in it. You just saw the video
19 that proves that's not true. Shots. Shots. Shots.
20 Shots. This shot, look how it lines up with the mark
21 on the dash. If that bullet goes in and falls in that
22 trajectory, wouldn't it hit someone on the right side
23 of their face?

24 There is that bullet hole in the side. He
25 said he didn't fire at it from the side. Well, there

1 it is; there is the bullet hole. Ladies and
2 gentlemen, if you have any questions, watch this
3 video.

4 Here comes Lewin just as the altercation
5 begins. Now, that is a coincidence. That is a
6 Christmas miracle. They duck here, and he's gone. I
7 want you to pay special attention to these bullet
8 marks. Also, pay special attention to just beyond
9 that white pole with the red tip, there is a little
10 driveway right there. That is gravel. If one was
11 parked there, they would have a clear line of site,
12 right? I don't believe in coincidences. I believe
13 Mr. Lewin was parked right there and waiting for the
14 drug deal to go down, and he saw him pull out the bat
15 and he quickly drives up ready to fire.

16 Again, I hate to beat a dead horse, but,
17 ladies and gentlemen, do you believe in coincidences?
18 Just as he -- just as Mr. Hannah jumps back, here
19 comes Mr. Lewin. How long would it take you to put
20 your car in drive? Here it comes. He saw it. He saw
21 it going down. He was waiting on his good friend,
22 associate, to finish up, saw his struggle and he was
23 prepared. How could he not be without fault in
24 bringing on the difficulty?

25 Ladies and gentlemen, no matter what you think

1 about the victim in this case, okay, buying drugs, had
2 a bat, I think he was chasing off somebody who was
3 going in his pockets; I think that is clear. It
4 looked like he was on the defensive to me, but no
5 matter what you think about it -- and, to be honest,
6 the defense could have trotted up a thousand people to
7 say how bad he is, but he still didn't deserve to get
8 shot in the face. Be that as it may, when those shots
9 are fired, when the first shot -- not to mention the
10 tenth -- is fired, the threat is over. There are
11 people everywhere. All you had to do is say, Hey, can
12 I get a little help. I saw three or four grown men.
13 It didn't have to escalate like that, but this is a
14 prime example, ladies and gentlemen, of what happens
15 when that criminal world merges into your own. It can
16 be a scary thing.

17 I want you to go back there, put self-defense
18 out of your mind and call it what it is: The
19 attempted murder of another human in broad daylight on
20 Christmas day. Thank you.

21 THE COURT: Mr. Swilley, you are recognized.

22 MR. SWILLEY: Every time I get up here, I try to
23 tell some kind of a story to correlate with what we
24 have going on because most of you all never have been
25 involved in any kind of allegations like this or know

1 anything about how this stuff works. I try to tell a
2 story to bring it into perspective. I don't really
3 have a story, so to speak, but what I do have is an
4 old saying that came to my mind as I got involved in
5 this case: Life is all about timing. What the State
6 does is the State tries to get you to assume facts
7 that are not in evidence at all in order to take
8 Mr. Lewin's freedom.

9 You just heard Mr. White talk about there is a
10 driveway over here and he was lying in wait, I believe
11 he was lying in wait and knew he was waiting for the
12 drug deal to go bad. Where is the evidence of that?
13 In order to believe that, you have to make stuff up.
14 But where life is all about timing in this case is
15 this whole episode between -- from the point where
16 Charles Moore -- actually, from the point that Charles
17 Moore walks up to Phillip Hannah, to the point where
18 Phillip Hannah gets back in his car, and you have the
19 video in evidence, it is less than 30 seconds. Mount
20 Zion Apartments are right behind the gas station.
21 Lewin did exactly what his friend asked him to do.
22 Because he's a friend, he comes to pick him up at the
23 gas station. Charles Moore went up there. What
24 Charles Moore was going to do is sell weed because he
25 needed some money, right. This is not the thing you

1 announce to everyone that you know. He was like, hey,
2 come pick me up. That is what happened. It is not a
3 coincidence he was up there right then, because he
4 asked him to drive up to pick him up at Four Way
5 because he would be up at Four Way. He didn't tell
6 him why he was there. And there is a good reason: He
7 didn't want anyone to know. The only person he told
8 the reason he would be up there was Phillip Hannah.

9 Let's talk about Mr. Hannah for a second. Again,
10 Mr. Hannah got up here and he testified he hasn't seen
11 this video, and that is a good thing. Mr. Hannah told
12 you from this witness stand that he arrived, that he
13 took the bat because something was odd about Charles
14 on the phone, so he took the bat for protection. You
15 all don't know this, but -- well, you do, based on
16 your commonsense. Charles Moore is not the only
17 two-bit, penny-ante weed dealer around, and not the
18 only penny-ante, two-bit weed dealer around on
19 Christmas day. Drug dealers don't take days off. A
20 fellow has to smoke weed, he can surely find weed with
21 someone else. If Charles Moore feels sketchy, he's
22 not going to meet up with him; that is not true.
23 Phillip Hannah brought that bat for another reason,
24 and it is another reason we don't know. The reason we
25 don't know is because no one during the course of the

1 investigation asked him, and the reason why nobody
2 during the course of the investigation asked him is
3 because no one in the course of the investigation
4 watched the video and then went and talked to Phillip
5 Hannah.

6 So Phillip Hannah got up here and he said, Well,
7 I got out, and my mom keeps the bat in the car for
8 protection. I think it was a car that he drives
9 around that belongs to his mother, and she keeps a
10 baseball bat in. I take the bat out, and we know --
11 and Mr. White showed you that video a bunch of times,
12 but back it up to about 27:14, 27, you can see
13 Mr. Hannah get out of the car, walk all the way around
14 and no door opens to that car again, with that bat,
15 and he says up here he puts it up his sleeve like an
16 ACE of spades or something. Look, you are going to
17 hold it like this (indicates)? That's not what
18 happened. What happened is Phillip Hannah walks
19 around with this very bat here, aluminum bat that can
20 kill someone. There is no doubt about it. He walks
21 out and puts it somewhere out of view in camera at the
22 pump, and he lays in wait. It doesn't take but three
23 or four seconds before he sees some kind of erratic
24 move back there, and you see Charles Moore kind of
25 bend over. He doesn't go to anyone's pockets. He's

1 telling me that Charles Moore ran his pockets, and
2 then all of a sudden, he whips the bat out like
3 Inspector Gadget, and all of the sudden gets Charles
4 Moore. He comes back and hits him again and then
5 chases him down the parking lot; that is not true.

6 I don't have a gun and a badge, so he won't sit
7 up here and tell me the truth when confronted with the
8 truth. But what we do know from the testimony is that
9 Phillip Hannah told a police officer, an officer of
10 the law, he told the police officer that Moore came up
11 to him in his seat, right, while he was waiting. At
12 that point, Moore tried to steal his wallet. He
13 didn't run his pockets. He didn't reach and run his
14 pockets in the car. What he told Investigator
15 Banister the first time is he was sitting in his car
16 seat and then he hits him with the bat, and then he
17 gets out and chases him around. He doesn't say
18 anything about he got out of the car with the bat and
19 waited on Mr. Moore. Investigator Banister didn't
20 know it because he didn't watch the video. He has a
21 badge. He would be in a lot better position to get
22 the truth out of Mr. Hannah, but that didn't happen.
23 This is important.

24 You can purge your mind that Charles Moore did
25 anything that day except for be a penny-ante drug

1 dealer. I don't know why Mr. Moore got up here and
2 lied and said that Deipo wasn't at his house that day.
3 I don't know. Who knows, but he didn't rob Phillip
4 Hannah.

5 Let's talk about other prior inconsistent
6 statements. Phillip Hannah told the ER, and you heard
7 in Dr. Hyman's testimony, he tells the ER someone
8 tried to take his wallet -- he didn't say anyone was
9 in his pockets -- and when he turned around, the
10 people had guns and fired at him. He got in his car,
11 and when he peeked out the window -- not that he got
12 shot, but he peeked out the window and got shot in the
13 mouth. Phillip Hannah did not get shot in that car;
14 it didn't happen.

15 I think Mr. White -- and they are here -- brought
16 about the fact there was a bullet hole on the
17 passenger's side that went into where the dashboard
18 was, and somehow that could hit Mr. Hannah in the
19 mouth. It is not the magic bullet that killed JFK.
20 Mr. Hannah was shot when he was standing with that
21 bat, that he never put down, not one time until he got
22 in the car, in the parking lot, outside the view of
23 the camera.

24 Now, if Mr. Hannah would have been scared of
25 Mr. Lewin with the gun, he would have taken off a lot

1 sooner than he did. What it looks like is Mr. Hannah
2 saw Deipo with the gun and then saw him fire at the
3 car and still didn't think he would shoot him. He
4 said I don't know -- whatever he and Charles Moore had
5 that made Mr. Hannah so mad that he wanted to attack
6 Charles Moore with a bat, he was so mad he didn't
7 think that Deipo would employ self-defense, but when
8 he did and got shot in the mouth, that is when he goes
9 back. Look at the camera.

10 The State told you you can tell by the way people
11 react when he shot the gun, when Phillip Hannah was in
12 the car. That didn't happen. That really doesn't
13 make a whole lot of sense. Why would he get the gun
14 and wait for Phillip to turn around and get in the car
15 and then start shooting? That doesn't make any sense.
16 He fired at Phillip Hannah when Phillip Hannah was
17 going to use that deadly weapon on him.

18 Make no doubt about the fact that the State -- in
19 order for you to do what the State wants you to do,
20 you have to find that Phillip Hannah's testimony is
21 proof beyond a reasonable doubt, and Phillip Hannah,
22 Phillip Hannah only. Remember Darlene? She only saw
23 part of it. She wasn't real sure, but she did say at
24 some point, and she had to estimate about feet and how
25 far apart someone was, but the last thing that

1 happened before she heard shots fired was the bat got
2 raised. Imminent fear of death or great bodily
3 injury, and the law says you don't have to wait until
4 the attacker gets the jump on you. If you are in
5 imminent fear of death or great bodily injury, you can
6 employ deadly force to defend yourself. That is what
7 the law says. Don't take my word for it, listen to
8 the jury charges.

9 Mr. White talked about a whole slew of situations
10 where there is three, four grown men, you could have
11 yelled for help, but bear in mind, these are three or
12 four grown men that were never interviewed. You don't
13 hear any bullets on the video. You don't know by
14 watching the video when any bullets were fired. You
15 know they were fired, in general, but you don't know
16 when they started. That reaction to those people
17 could have been when they saw the gun, when they
18 realized there were gunshots. That is not, in and of
19 itself, proof of when the bullets were fired, when he
20 gets in the car and how he drives away, that is just
21 when he decides to shoot.

22 Again, life is all about timing. The State makes
23 a big deal about shooting a gun ten times. The law
24 says as long as there is a threat, you can still
25 shoot. The Judge will charge you on that. The fact

1 that there were ten bullets that were shot -- this
2 whole interaction between Deipo and Phillip, that is
3 like a matter of eight to ten seconds. You can watch
4 the video. Watch it. All it is is this (indicates).
5 You can do that ten times in two seconds as long as
6 the threat is still there. That is what it takes to
7 fire a gun, right there (indicates). You can do ten
8 of those in two or three seconds.

9 So don't think he's sitting behind his car
10 shooting at Phillip Hannah like that (indicates), when
11 Phillip is running to his back, because if that were
12 the case, he would have hit Phillip in the back on his
13 sprint back to the vehicle. Phillip went back to the
14 vehicle after -- and only after -- he was shot in the
15 face, in the right side of the face. There is no
16 bullet trajectory at all in that car to the right side
17 of the face. It is not there. If he had been shot in
18 the car, there would have been bullet holes that
19 showed that. There has been no evidence of any kind
20 of ballistics to show it ricocheted here and hit here.
21 No, there is none of that.

22 Let's talk about the shell casings. Mr. White
23 asserted that Deipo was walking towards the van like
24 some kind of commando. Phillip Hannah sat there and
25 told you he was stationary. He didn't move. He was

1 stationary, still. Those shell casings, they are
2 scattered all about. You have no idea what happened
3 between the time the casings left that gun, to the
4 time the police got there. You have no idea. We have
5 no idea if they rolled. If we have no idea if there
6 is a slope. We don't know if cars rolled over it. We
7 have no idea. They are scattered around and not one
8 thing about anybody testifying about the shell casings
9 to show you that he was walking towards Phillip
10 Hannah. It didn't happen.

11 All of this -- the interaction between Charles,
12 Phillip and Deipo -- happened in about 25 to 30
13 seconds, eight to ten seconds between Deipo and
14 Phillip. And when things like this happen, it seems
15 like it takes an eternity. Deipo even said it seemed
16 like a long time. But watch the video, it is not a
17 long time.

18 He has a right to use force until the threat of
19 that force is no longer there. Ms. Wingate only saw
20 part of that, only saw two people. Remember, she said
21 there were two idiots. She didn't watch it long
22 enough to know there were three individuals involved,
23 but what she did see is she saw Phillip Hannah, who
24 she described as the instigator, with a bat
25 aggressively moving towards Mr. Lewin. That is what

1 she testified to.

2 If you look at that video again about this whole
3 theory about being parked behind a power station
4 laying in wait, if you look at the video, I think it
5 is 14:29:32, you can see the car drive down National
6 Cemetery Road. He left Mount Zion, and the next place
7 he got to was the parking lot at Four Way Stop. He
8 didn't park. Didn't lay in wait. Didn't happen.
9 Charles Moore, who testified that he is looking all
10 this time, if he wanted to help himself -- he is not
11 dumb enough to know that he can help himself and you
12 can just tell all of that stuff; that didn't happen.
13 He wasn't completely truthful, but if that was really
14 the case and he wanted to help himself, he would have
15 told all of that and probably even made some stuff up.

16 Make no doubt about it, in order to convict this
17 man and take this man's freedom, you have to find what
18 Phillip Hannah said, because that's the only evidence
19 of what really happened at the interaction -- that is
20 the only person who gives you any kind of evidence of
21 what happens when the interaction started, and you
22 would have to find that Phillip was telling the truth
23 beyond a reasonable doubt. But he's not, because he's
24 lied before. He lied to the police. He lied to the
25 ER. He says whatever he says for what he thinks is

1 going to help him or put him in the best position at
2 any time. He has no qualms about telling anybody
3 lies, and he has no qualms about lying to you.

4 Last comment on Mr. Lewin over here. He didn't
5 have to get up here and tell you his story. In fact,
6 if he didn't, the Judge would say you can't take that
7 into consideration in your deliberations, but he did.
8 This young man, got up here and withstood questioning
9 from a professional lawyer, a professional
10 question-asker. He did that. He didn't have to, but
11 he did. He put his hand on the Bible and told what
12 happened. He didn't waiver or hesitate. He told the
13 story of what happened, and it makes sense. His story
14 is really the only one that makes sense, if you think
15 about it. It is not a coincidence that someone with a
16 bat who was going to harm somebody got shot. And
17 Mr. White says, Well, he didn't deserve that, but like
18 you were in elementary school, it's cause and effect.
19 When you introduce violence into a situation, you use
20 violence in a situation, you are going to get violence
21 done to you. It didn't happen like Phillip said it
22 happened. In order to believe what the State wants
23 you to believe, the way he said he wanted you to
24 believe it on his closing, you have to make stuff up.
25 You have to make stuff up, and the law doesn't allow

1 you to do that.

2 This person here exercised a right that he has,
3 that every one of you have in South Carolina and
4 America, to defend yourself from great bodily injury
5 and/or death by using force or great bodily injury
6 and/or death. That is what he did. He exercised that
7 right that we all have, every single human being in
8 this state, in this country.

9 I want you to also take a look at where Deipo
10 said that he was trying to turn around to Phillip --
11 tried to go around Phillip to go to the outside to go
12 get Charles Moore. Well, that front wheel is just
13 massacred. But if you take a look at this, he is
14 trying to go around, just like he said. That wheel,
15 the driver's side, is not injured, it is pointing
16 outward. That is State's Exhibit 8, and that backs up
17 what he said, that he is trying to go around to get to
18 Charles Moore, but unable to get around Phillip where
19 he wanted to go and crashed his car, which, by the
20 way, no one wants to crash their own car, especially a
21 car that you haven't had the title transferred to your
22 name yet.

23 It is such an impact that his head smashed into
24 the glass and cracked the glass. This was a violent
25 episode to Deipo before he even had Phillip Hannah

1 with a bat come up to him and have to use that gun.
2 Phillip Hannah caused him to crash his car and hurt
3 himself even before that. Remember what Darlene said,
4 he was angry. He was going to hurt somebody. By his
5 own admission, Phillip Hannah said I chased after
6 Charles Moore because I was going to hit him again,
7 never mind the fact that he said he stole his
8 wallet -- which, by the way, look at the video, do you
9 see anything in Charles Moore's hands? You don't.
10 That didn't happen. For whatever reason, Phillip
11 wanted to take whatever Charles had or hurt Charles
12 Moore, and we will never know why because no one got
13 that out of him.

14 I'll tell you this. The State has to disapprove
15 that someone acted in self-defense. It is not an
16 affirmative defense. We don't have to prove that. It
17 is presumed that he acted in self-defense and they
18 have to disapprove it. In this case, they didn't
19 disapprove it because he acted in self-defense.

20 I don't have a PowerPoint presentation and a
21 bunch of blown-up photos to show you and tell you
22 ideas that are not in evidence, but I'll tell you
23 this. I've been in charge of Deipo's defense for
24 almost two years. When I sit down in a second, I
25 can't do anything else. I'm powerless. Any influence

1 over this case transfers to you all, and I'm asking
2 you to come back with a verdict of not guilty, because
3 that is the right verdict. If you do, your duties as
4 jurors, like you swore to do yesterday, that is what
5 you'll do.

6 THE COURT: Thank you, Mr. Swilley.

7 Mr. White, you are recognized.

8 MR. WHITE: Thank you, Judge.

9 Ladies and gentlemen, witnesses misremember.
10 Witnesses lie. I'm not painting Phillip Hannah as an
11 angel, and I don't know what was going on between him
12 and Mr. Moore. I know he jumped back, pulled a bat
13 out, right? I know that. But they say a picture is
14 worth a thousand words, and what is the value of the
15 video, you know? Don't take my word for it. He says
16 he don't hear the shots, but I'm not asking you to
17 make stuff up, just asking you to use commonsense.
18 What do people do when they hear gunfire? They duck.
19 It certainly looks like Moore is going for something.
20 He backs Hannah up. Here comes the vehicle. I
21 noticed that he has to crash, hit his head, grab the
22 gun, he's back in the car, now they duck. I'll show
23 you the other video, too, because Mr. Swilley said
24 something I thought was interesting. He said I'm
25 making all of this up because he came from National

1 Cemetery Road, he couldn't park and lay in wait. Let
2 me tell you something, ladies and gentlemen, this is
3 National Cemetery. This is the power station. This
4 is where that little road is, and you can see it on
5 the photographs. I'll go back and show you. This is
6 National Cemetery Road. That is where he could have
7 parked, there. Let's see where he comes from.
8 National Cemetery Road here. Don't take Hannah's
9 words for it, don't take mine, take the defendant's.
10 He says he crashes his car, hits his head, reaches to
11 the glove box, grabs his gun. He may or may not have
12 taken the safety off. He gets out of the car, walks
13 around and then fires. Think about that, and look at
14 the seconds. Here comes the car down National
15 Cemetery. As soon as he sees the altercation, crash.
16 See him jump back? Now, they duck. What was that?
17 Look at the car backing out. They duck as soon as the
18 car is backing out, ladies and gentlemen. Again,
19 don't take my word for it. I'm not making anything
20 up. I'm asking you to use your commonsense; you can
21 use that back there.

22 So let's talk about Mr. Lewin and what he said.
23 What did he say? When he pulls into the parking lot,
24 he sees a man with a bat in his hand. What did he
25 say? He never saw anyone swinging it. What does he

1 say? He sees Mr. Moore stationary, holding his head.
2 That is all he sees. According to him, that is all he
3 sees. He sees a man with a bat here, and you just
4 heard from Mr. Swilley, he says he drives around him
5 and cuts him off. So he drives around a man he never
6 met before in his life holding a baseball bat, he
7 crashes his car, sees his good buddy over here holding
8 his head, and that is enough to jump out of the car
9 and fire ten shots from a .40 caliber handgun?

10 Goodness gracious. Mr. Swilley said that's our right
11 in this country. If that's our right, then I'm in the
12 wrong profession. I know you had a right to defend
13 yourself, but good gracious, ladies and gentlemen,
14 there's an extent to that.

15 If you get back there and want to see this video
16 again, come back and I'll play it as many times as you
17 want to. It won't change. Yeah, you are not going to
18 hear the shots, but use your commonsense. When shots
19 are fired, you see him jump back, and you can tell
20 when that car hits the pillar. They jump back. Then,
21 a moment later, what do they do? They duck.

22 On the other video, you can see people hiding
23 behind cars. Almost simultaneous to that, the car is
24 backing out. The first shot. Mr. Hannah, he said he
25 was stationary, but then I asked him on cross, but you

1 also said that you were ducking, so could you see?
2 Well, not really. He was stationary when I started to
3 pull out, but, yeah, then I started ducking. So he
4 wouldn't have known if he was walking. He is doing
5 his best to drive him back up, but shell casings don't
6 lie. How can you be on the defensive as you are
7 walking forward?

8 Mr. Swilley wants to make a big deal about this,
9 and I don't understand it, a bullet goes in, it's
10 there, and then you see the damage that it does to the
11 dash as it heads right towards the driver's seat. It
12 seems to line up to me. Again, I'm not asking you to
13 make stuff up. I'm saying that as soon as Mr. Hannah
14 jumps back -- I mean as soon as he jumps back and
15 moves forward, here comes the vehicle down National
16 Cemetery Road. I think that is one heck of a
17 coincidence. He comes in and testifies that all he
18 sees is a man with a bat. He turns in, and at some
19 point between there and him crashing, he sees his
20 friend way over here holding his head. He cuts that
21 man off with a bat. The danger is over. Or, he could
22 have just picked him up and kept on going. He cuts
23 him off, hops out, fires at him as that van backs up
24 and drives away. In that chaos, a man -- angel,
25 devil, whatever -- is shot in the face, and that is

1 attempted murder, ladies and gentlemen, it is not
2 self-defense. When you go back there, I would like
3 you to find him guilty of it.

4 THE COURT: Mr. White, could you take down this
5 board?

6 MR. WHITE: Yes, sir. I apologize, I keep doing
7 that to you.

8 THE COURT: Mr. Foreman, ladies and gentlemen of
9 the jury, you have heard all of the evidence in this
10 case, you have heard the closing arguments. I noticed
11 throughout the trial when the lawyers asked questions,
12 you would look at the lawyer. When the witnesses
13 speak, you paid attention to what they said. You paid
14 close attention. In order for you to fulfill your
15 sworn duty, you have to understand what the law is. I
16 wish that there was an easy way to do it. It is sort
17 of like taking medicine, there is not an entertaining
18 way to do it, but it is very important. I'll ask that
19 you perk up a bit. We're getting close to lunch here.
20 This is the last thing we'll do here in the courtroom,
21 charge you on the law and then you'll retire to the
22 jury room. When we give you instruction, we'll have
23 you begin deliberations. We'll have lunch there about
24 1 o'clock. I was considering taking a break and
25 allowing you to eat and then come back in and do this,

1 but I want to ask you is everyone all right? Are you
2 painfully hungry? Can you handle it?

3 All right. It's going to take a little bit
4 longer than 15 minutes. Bear with me and pay close
5 attention. Is everyone all right with that?

6 Okay.

7 Mr. Foreman, ladies and gentlemen of the jury,
8 the indictment charges the defendant with attempted
9 murder. I remind you that the fact that the defendant
10 was arrested, charged and indicted is not evidence and
11 cannot be considered by you as evidence of guilt, nor
12 does it create any presumption or inference of guilt.
13 The document is simply the formal written instrument
14 which contains the charge made against the defendant.
15 It is a formal document by which this case is brought
16 before the Court.

17 Ladies and gentlemen of the jury, I remind you
18 that during this trial you and I have certain duties
19 to perform. As trial judge, it is my responsibility
20 to preside over the trial, and I have the duty to rule
21 on the admissibility of evidence. You are to consider
22 only the competent evidence before you. You are to
23 consider only the testimony which has been presented
24 from this witness stand, any exhibits made a part of
25 the record and any stipulations of Counsel.

1 I have the additional duty to charge you the law.
2 As the presiding judge, I am the sole judge of the
3 law. It is your duty as jurors to accept and apply
4 the law as I state it to you. If you already have an
5 idea of what the law is or ought to be, and it does
6 not agree with what I now tell you what the law is,
7 you must abandon this idea because you're sworn to
8 accept the law and apply the law exactly as I state it
9 to you.

10 In every case tried in this court before a jury,
11 the jury becomes the sole and exclusive judge of the
12 facts. A trial judge cannot intimate, state, comment
13 on or make any statement to a trier jury about the
14 facts. Since you, the jury, are the sole judges of
15 the facts, you're not to infer from what I said during
16 the progress of this trial in ruling upon the
17 admissibility of evidence, or otherwise, or anything
18 that I say during the course of this instruction to
19 you, that I have any opinion about the facts. The law
20 simply doesn't allow me to have an opinion about the
21 facts. This is a matter solely for you, the jury, to
22 determine. It is your duty to determine the effect,
23 value, weight and truth of the evidence presented
24 during this trial.

25 The defendant has pled not guilty to this

1 indictment, and that plea puts the burden on the State
2 to prove the defendant guilty. A person charged with
3 committing a criminal offense in South Carolina is
4 never required to prove himself innocent. I charge
5 you that as an important rule of law that the
6 defendant in a criminal trial, no matter what the
7 seriousness of the charge may be, will always be
8 presumed to be innocent of the crime for which the
9 indictment was issued, unless guilt was proven by
10 evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 This presumption of innocence does not end when
13 you begin your deliberations, but accompanies the
14 defendant throughout the trial until you reach a
15 verdict of guilt based on the evidence satisfying you
16 of that guilt beyond a reasonable doubt. Presumption
17 of innocence is like a robe of righteousness placed
18 about the shoulders of the defendant, which remains
19 with the defendant until it has been stripped from the
20 defendant by evidence satisfying you of the
21 Defendant's guilt beyond a reasonable doubt. The
22 presumption of innocence is not a mere legal theory.
23 It is not just a legal phrase. It is a substantial
24 right to which every defendant is entitled, unless
25 you, as the jury, are satisfied from the evidence of

1 the Defendant's guilt beyond a reasonable doubt.

2 What is reasonable doubt in the law? A
3 reasonable doubt is the kind of doubt that would cause
4 a reasonable person to hesitate to act. The State has
5 the burden of proving the defendant guilty beyond a
6 reasonable doubt. Some of you may have served as
7 jurors in civil cases where you were told that it is
8 only necessary to prove that a fact is more likely
9 true than not true, such as by the greater weight or
10 preponderance of the evidence. In criminal cases, the
11 defendant's -- the State's proof must be more powerful
12 than that. It must be proof beyond a reasonable
13 doubt.

14 Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the Defendant's guilt.
16 There are very few things in this world that we know
17 with absolute certainty, and in criminal cases, the
18 law does not require proof that overcomes every
19 possible doubt. If, based on your consideration of
20 the evidence, you are firmly convinced that the
21 defendant is guilty of the crime charged, you must
22 find the defendant guilty. If, on the other hand, you
23 think there is a real possibility that the defendant
24 is not guilty, you must give the defendant the benefit
25 of the doubt and find him not guilty.

1 There are two types of evidence which are
2 generally presented during a trial: Direct evidence
3 and circumstantial evidence. Direct evidence is
4 testimony of a person who claims to have actual
5 knowledge of a fact, such as an eyewitness.
6 Circumstantial evidence is proof of a chain of facts
7 and circumstances indicating the existence of a fact.
8 The law makes absolutely no distinction between the
9 weight or value to be given to either direct or
10 circumstantial evidence, nor does a greater degree of
11 certainty -- nor is a greater degree of certainty
12 required of circumstantial evidence than of direct
13 evidence. You should weigh all of the evidence in the
14 case. After weighing all of the evidence, if you are
15 not convinced of the Defendant's guilt beyond a
16 reasonable doubt, you must find the defendant not
17 guilty. There are two -- crimes may be proven by
18 circumstantial evidence. The law makes no distinction
19 between the weight or value to be given to either
20 direct or circumstantial evidence.

21 To the extent the State relies on circumstantial
22 evidence, all of the circumstances must be consistent
23 with each other, and when taken together, point
24 conclusively to the guilt of the accused beyond a
25 reasonable doubt. If the circumstances merely portray

1 the Defendant's behavior as suspicious, the proof has
2 failed. The State has the burden of proving the
3 defendant guilty beyond a reasonable doubt. This
4 burden rests with the State regardless of whether the
5 State relies on direct evidence, circumstantial
6 evidence or some combination of the two.

7 Ladies and gentlemen of the jury, necessarily,
8 you must determine the creditability of witnesses who
9 have testified. Creditability simply means
10 believability. It becomes your duty as jurors to
11 analyze and evaluate the evidence and determine which
12 evidence convinces you of its truth. In determining
13 the believability of witnesses who have testified, you
14 may believe one witness over several witnesses, or
15 several witnesses over one witness. You may believe a
16 part of the testimony of a witness, and reject the
17 remaining part of the testimony of that same witness.
18 You may believe the testimony of a witness in its
19 entirety, or reject the testimony of a witness in its
20 entirety. You may consider whether a witness has
21 exhibited to you any interest, bias, prejudice or
22 other motive in the case. You may also consider the
23 appearance and manner of the witness while on the
24 witness stand.

25 The rules of evidence ordinarily do not permit

1 witnesses to testify to opinions or conclusions. An
2 exception to this rule exists for witnesses we call
3 "expert witnesses." A witness who by education or
4 experience has become expert in some art, science,
5 profession or calling may state an opinion as to
6 relevant or material matter in which the witness
7 claims to be an expert and may also state the reason
8 for the opinion. You should consider any expert
9 opinion received in evidence in this case, and like
10 any other evidence, give it the weight you think it
11 deserves. If you decide that the opinion of a witness
12 is not based on sufficient education and experience,
13 or if you conclude that the reasons given in support
14 of the opinion are not sound or that the opinion is
15 outweighed by other evidence, you may disregard the
16 opinion entirely. An expert witness' testimony is to
17 be given no greater weight than that of other
18 witnesses simply because a witness is an expert.
19 Further, you are not required to accept an expert's
20 opinion even though it is not contradicted.

21 There has been evidence presented that witnesses
22 have made prior statements which are not consistent
23 with witness' present testimony. You may use this
24 evidence to decide whether to believe the witness.
25 You may also use the evidence of the earlier

1 contradictory statements to determine the truth of
2 those statements. It is up to you to decide whether
3 to believe the earlier statements or testimony given
4 at trial. If a witness has shown to have knowingly
5 testified untruthfully concerning any material matter,
6 you may consider this in determining whether to trust
7 the witness' testimony as to other matters. You may
8 reject all of the testimony of that witness, or give
9 all or a part of the testimony the weight you think it
10 deserves.

11 Ladies and gentlemen, I'm going to charge you the
12 law with regard to attempted murder. The defendant is
13 only charged with one offense of attempted murder, but
14 there are what we, in the law, call "lesser included
15 offenses." So the first thing you'll be called upon
16 to do as a jury is to look at the elements of
17 attempted murder, and I'll explain that to you. You
18 are to make a determination whether the State has
19 proven him guilty of attempted murder beyond a
20 reasonable doubt. If you find that they have not met
21 that burden, you will check "not guilty," and then you
22 will consider the lesser included offense. What he is
23 charged with is attempted murder. Then there is
24 assault and battery of a high and aggravated nature.
25 There is going to be assault and battery in the first

1 degree, and assault and battery in the second degree.
2 You need to pay attention as I define the substance of
3 each of these -- of this offense and the lesser
4 included offenses.

5 The defendant is charged with attempted murder.
6 In order to prove this crime, the State must prove the
7 defendant attempted to kill another person with malice
8 aforethought, either expressed or implied. "Malice"
9 is hatred, ill-will or hostility towards another
10 person. It is an intentional doing of a wrongful act
11 without just cause or excuse and with intent to
12 inflict an injury or under circumstances that the law
13 will infer an evil intent.

14 Malice aforethought doesn't require that the
15 malice exists for any particular time before the act
16 is committed, but malice must exist in the mind of the
17 defendant just before and at the time of the act is
18 committed; therefore, there must be a combination of
19 previous evil intent and the act. Malice aforethought
20 may be expressed or inferred. These terms,
21 "expressed" and "inferred," don't mean different kinds
22 of malice, but merely the manner in which malice may
23 be shown to exist. That is either by direct or by
24 inference from the facts and circumstances which are
25 proved.

1 Expressed malice is shown when a person speaks
2 words which express hatred or ill-will for another,
3 and when the person prepared beforehand to do the act
4 which was later accomplished; for example, lying in
5 wait for a person or any other acts or preparation
6 going to show that the deed was within the Defendant's
7 mind would be expressed malice.

8 A specific intent is not an element of attempted
9 murder. There must be a general intent to commit
10 serious bodily injury. "Intent" means intending the
11 result which actually occurred, not accidentally or
12 involuntarily. Intent may be shown by acts and
13 conduct of the defendant and other circumstances which
14 you may naturally and reasonably infer intent.
15 Evidence of the character of the act, the character of
16 the instrument used, the manner in which it was used,
17 the purpose to be accomplished and the resulting
18 wounds or injuries may be considered in determining
19 the intent with which the act was committed.

20 I'll charge you the substance of the lesser
21 included offense of assault and battery of a high and
22 aggravated nature. Pay very close attention. A
23 person commits the offense of assault and battery of a
24 high and aggravated nature if a person unlawfully
25 injures another person, and great bodily injury

1 results or the act is accomplished by means likely to
2 produce death or great bodily injury.

3 "Great bodily injury" means bodily injury which
4 causes a substantial risk of death or causes a serious
5 permanent disfigurement or protracted loss or
6 impairment of the function of a bodily member or
7 organ.

8 I'll charge you the law with regard to assault
9 and battery first degree. A person commits the
10 offense of assault and battery in the first degree if
11 the person unlawfully offers or attempts to injure
12 another person with the present ability to do so, and
13 the act is accomplished by means likely to produce
14 death or great bodily injury. Great bodily injury
15 means bodily injury which causes a substantial risk of
16 death or which causes serious permanent disfigurement
17 or protracted loss or impairment of the a function or
18 body member or organ.

19 I'll charge you the law with regard to assault
20 and battery second degree. Pay very close attention.
21 A person commits the offense of assault and battery in
22 the second degree if the person unlawfully injures
23 another person or offers or attempts to injure another
24 person with the present ability to do so, and moderate
25 bodily injury to another person results, or moderately

1 bodily injury could have resulted.

2 "Moderate bodily injury" means physical injury
3 that involves prolonged loss of consciousness or that
4 causes temporary or moderate disfigurement or
5 temporary loss of the function of a body member or
6 organ or the injury that requires medical treatment
7 when the treatment requires the use of regional or
8 general anesthesia or injury that results in a
9 fracture or dislocation. Moderate bodily injury does
10 not include one-time treatment and subsequent
11 observation of scratches, cuts, abrasions, bruises,
12 burns, splinters or any other minor injuries that do
13 not ordinarily require extensive medical care.

14 I'll charge you on the law with regard to
15 self-defense. Once again, pay attention. The
16 defendant has raised the defense of self-defense.
17 Self-defense is a complete defense, and if it is
18 established, you must find the defendant not guilty.
19 The State has the burden of disproving self-defense by
20 proof beyond a reasonable doubt. If you have a
21 reasonable doubt of the defendant's guilt after
22 considering all of the evidence, including the
23 evidence of self-defense, then you must find the
24 defendant not guilty. On the other hand, if you have
25 no reasonable doubt of the Defendant's guilt after

1 considering all of the evidence, including the
2 evidence of self-defense, then you must find the
3 defendant guilty.

4 The following elements required to establish
5 self-defense: One, being without fault. First, the
6 defendant must be without fault in bringing on the
7 difficulty. If the Defendant's conduct was the type
8 which was reasonably calculated to and did provoke a
9 deadly assault, the defendant would be at fault in
10 bringing on the difficulty and not entitled to
11 acquittal based on self-defense.

12 The second element of self-defense is imminent
13 danger. The second element of self-defense is that
14 the defendant was actually in imminent danger of death
15 or serious bodily injury, or that the defendant
16 actually believed he was in imminent danger or death
17 or serious bodily injury. If the defendant was
18 actually in imminent danger, it must be shown that the
19 circumstances would have warranted a person of
20 ordinary firmness encouraged to strike the fatal blow
21 to prevent death or serious bodily injury.

22 If the defendant believed he was in imminent
23 danger of death or serious bodily injury, it must be
24 shown that a reasonably prudent person of ordinary
25 firmness and courage would have had the same belief.

1 In deciding whether the defendant actually was or
2 believed he was in imminent danger of death or serious
3 bodily injury, you should consider all of the facts
4 and circumstances surrounding the crime, including the
5 physical condition, characteristics of the defendant
6 and the victim.

7 Thirdly, the final element of self-defense is
8 that the defendant had no other probable way to avoid
9 danger or death or serious bodily injury than to act
10 as the defendant did in this particular instance. The
11 defendant does not have to show that he was actually
12 in danger. It is enough if the defendant believed he
13 was in imminent danger, and a reasonably prudent
14 person of ordinary firmness and courage would have had
15 the same belief.

16 The defendant has the right to act on appearances
17 even though the Defendant's beliefs may have been
18 mistaken. It is for you to decide whether the
19 Defendant's fear of imminent danger or death or
20 serious bodily injury was reasonable and would have
21 been felt by an ordinary person in the same situation.
22 Words accomplished or -- words accompanied by hostile
23 acts may, depending upon the circumstances, establish
24 self-defense.

25 The degree of force. A person cannot be required

1 to make an exact calculation as to the degree or
2 amount of force which may be needed to avoid death or
3 serious bodily harm; therefore, in self-defense the
4 defendant has the right to use the force needed to
5 avoid death or serious bodily harm. The force used in
6 self-defense does not have to be limited to the degree
7 or amount of force used by the victim. The defendant
8 has the right to use so much force as appeared to be
9 necessary for complete self-protection in which a
10 person of ordinary reason and firmness would have
11 believed to be needed to prevent death or serious
12 bodily harm.

13 Once the right to fire in self-defense arises, a
14 defendant is not required to wait until his adversary
15 is on equal terms or until he has fired or aimed his
16 weapon in order to act. A defendant doesn't have to
17 wait until his assailant gets the drop on him. He has
18 a right to act under the law of self-preservation to
19 prevent his assailant from getting the drop on him.
20 When a person is justified in shooting the first shot,
21 he is justified in continuing to shoot until the
22 apparent danger of death or serious bodily injury has
23 ceased.

24 The reputation of the victim as a violent person
25 may be considered in deciding whether there was a need

1 for force, whether the defendant had reason to believe
2 there was a need to force or whether the deadly force
3 was reasonably December. The defendant has no duty to
4 retreat if by doing so the danger of being killed or
5 suffering serious bodily injury would increase.
6 Closely akin to self-defense, citizens have the right
7 to defend others. Pay close attention to this. Under
8 the law of self-defense, the defendant may take
9 another's life in defense of others. The right to
10 intervene, to protect another person is subject to the
11 same rights and limitations as the right to
12 self-defense. The defendant may take the life of a
13 person who assaults a friend, relative or bystander if
14 that friend, relative or bystander would have had the
15 right of self-defense. To show that the person being
16 defended had the right of self-defense, it must first
17 be shown that the person being defended, and the
18 defendant, were both without fault in bringing on the
19 difficulty. If the conduct of the person defended or
20 the defendant was the type which was reasonably
21 calculated to and did provoke a deadly assault, a
22 person would be at fault in bringing on the difficulty
23 and would not have the right to self-defense;
24 therefore, the defendant would not have the right to
25 use deadly force in defending that person.

1 Defense of another person is excusable if the
2 defendant had reasonable grounds to believe, and in
3 good faith did believe, the person being defended was
4 in imminent danger of death or serious bodily harm
5 from the victim. In deciding whether the person
6 defended actually was, or that the defendant actually
7 believed the person was in imminent danger of death or
8 serious bodily injury, you should consider all of the
9 facts and circumstances surrounding the crime,
10 including the physical condition and characteristics
11 of the parties.

12 In defending the rights to others, once again,
13 the defendant has the right to act on appearances.
14 Once again, in defending others, the victim's violent
15 reputation comes into play as it did in the
16 self-defense. In defense of others, there is, indeed,
17 a duty to retreat, and the same limitations as with
18 self-defense. With regard to the defense of a third
19 person, they are not required to retreat if doing so
20 would increase the chance of serious bodily injury,
21 harm or death.

22 I'll come forward and share with you the verdict
23 form. Mr. Foreman, I'll ask you to stand as I go over
24 the verdict form with you. This verdict form seems to
25 be rather imposing, but you will notice there is

1 really one offense that is being charged, attempted
2 murder, which is Roman Numeral I. There are lesser
3 included offenses, which are subcategories to that.

4 It is very explanatory. First thing to determine
5 is whether or not the State proved beyond a reasonable
6 doubt that the defendant is guilty of attempted
7 murder. There are two choices: Not guilty or guilty.
8 If you were to find him guilty, discontinue
9 deliberations because you can't find him guilty of
10 more than one. It has to be guilty of the one, or one
11 of the lesser included, or not guilty of all. So if
12 you find the person guilty of any of these offenses,
13 stop deliberation; it is over. You can find him not
14 guilty of all, or you can find him guilty of one; do
15 you understand?

16 FOREPERSON: I do.

17 THE COURT: It has two choices: Not guilty,
18 guilty. It says if you find the defendant not guilty
19 of attempted murder, consider the following lesser
20 include offenses, and you go forward in that fashion.

21 There is a place for you to sign. It is very
22 important -- you can have a seat and I'll let you hold
23 on to the verdict form -- it is very important that
24 you understand that the verdict must be unanimous. It
25 can't be six to six, eleven to one, eight to four.

1 Everyone has to agree. It must be unanimous.

2 During your deliberation process, if someone gets
3 up to use the restroom, stop deliberations, because
4 everyone has to participate in all of the deliberation
5 process. If during your deliberations a question
6 develops, I'll tell you from the outset that the
7 difficult question in this case, you all have to
8 resolve. It is your job to resolve the factual
9 dispute in this case. I can't help you with that. As
10 a matter fact, I explained the law and the law doesn't
11 allow me to even have an opinion about the facts; that
12 is your job.

13 If you have a question and can't decide whether
14 it is a question of law or fact, write it down. I'll
15 ask you to communicate that question or concerns,
16 reduce it to writing, give it to the bailiff, and if
17 it is something can I assist you with, I will. I
18 won't anticipate there will be any questions because
19 you paid close attention to the witnesses, testimony
20 here in this case. You paid close attention to the
21 charge on the law, and you have all of the tools
22 necessary to resolve this case, and I'm convinced you
23 will do that.

24 Once again, I'm going to be here momentarily and
25 ask the alternates to remain with us and ask that you

1 return to the jury room. Once again, do not begin
2 deliberations because I have to talk to these fine
3 lawyers to determine whether or not they have an
4 objection as to the manner I charged the law. If
5 there is something I left out or incorrectly stated,
6 we'll bring you back in and resolve those issues. If
7 not, we'll gather all the documentary evidence. The
8 bailiff will bring those back to you, along with pad
9 and pencils, and tell you to begin deliberations. But
10 do not begin deliberations until such time as we give
11 you instructions to do so.

12 So, Mr. Foreman, I'll ask you to carry the jury
13 back to your jury room. Once again, do not begin
14 deliberations.

15 (The alternate jurors remain seated in the
16 jury box while the jury exits at 1:11 p.m., and the
17 following is heard out of the presence of the jury.)

18 THE COURT: I want to thank you all for your
19 participation in this trial. Have you ever served on
20 a jury before.

21 ALTERNATE JUROR: Not in General Sessions.

22 THE COURT: Good. Well, hopefully it was a
23 learning experience. I've practiced law for 20 years
24 and been on the bench for 14 and every case I learn
25 something, so hopefully it has been a learning

1 experience for you.

2 Do you have any questions?

3 ALTERNATE JUROR: No, sir.

4 THE COURT: I know you feel like you have been
5 invited to a dance and didn't get to dance, but this
6 is a public forum and you are welcome to stay here and
7 wait for the jury to deliberate and find out what the
8 result is.

9 I told you not to discuss the case amongst
10 yourself or with anyone else, but I'm releasing you
11 from that responsibility now that the trial is over.
12 You can talk to anyone you want to about it, but if
13 you don't want to talk about it, you don't have to.
14 If they persist, get their name, identify them as best
15 you can, report it to me and I'll deal with it
16 accordingly.

17 I'll ask the State, is there any other cases to
18 be tried this week?

19 MR. TUCKER: Yes, Your Honor. I think that the
20 instruction is for them to call the number tonight.

21 THE COURT: It might not be that there is another
22 case, but in an abundance of caution, we'll ask you --
23 when you go home, after 6 o'clock, call the number
24 given to you and follow those instructions.

25 Thank you so much for your time and attention in

1 this matter. You are free to leave at this time.
2 Thank you all.

3 (The alternate jurors exit the courtroom.)

4 THE COURT: I'll ask the State, is there any
5 objection with regard to the jury charge from the
6 State?

7 MR. WHITE: No, Your Honor.

8 MR. SWILLEY: Am I correct in that you charged
9 attempted murder as a general intent offense?

10 THE COURT: Well, let's look at it. I think --
11 yes, I think I did.

12 MR. SWILLEY: Your Honor, I think it is incumbent
13 upon me to put my objection on the record as to that.
14 I think State versus King, which is 810 S.E.2d 18,
15 came out from the Supreme Court in 2017, says that
16 attempted murder is a specific intent offense, and
17 adopts that law.

18 THE COURT: I think you very well might be right.
19 Do you agree with that?

20 MR. TUCKER: That's correct, Your Honor. In
21 fact, we were discussing that.

22 THE COURT: Well, let me have the relevant
23 language.

24 MR. SWILLEY: You want me to hand it up, or read
25 it? I should have brought my computer, but.

1 THE COURT: Read it to me slow.

2 MR. SWILLEY: Okay. It says that attempt --
3 well, it says, parentheses, Attempted murder would
4 require the specific intent to kill, and specific
5 intent means that the defendant consciously intended
6 the completion of the acts compromising the --

7 THE COURT: Back up. Say it slower. Completion
8 of the act of murder?

9 MR. SWILLEY: I believe so, Your Honor, yes.

10 THE COURT: Attempted murder requires specific
11 intent to kill. "Specific intent" means that the
12 defendant consciously intended the completion of the
13 act of murder.

14 MR. SWILLEY: I believe that is correct.

15 THE COURT: Are you all right with that?

16 MR. SWILLEY: Yes, sir.

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

18 (The jury enters at 1:19 p.m., and the
19 following is heard in the presence of the jury.)

20 THE COURT: Ladies and gentlemen of the jury, I
21 erred in stating that attempted murder was a general
22 intent offense. But this is the law, pay very close
23 attention.

24 Attempted murder requires the specific intent to
25 kill. "Specific intent" means that the defendant

1 consciously intended the completion of the act of
2 murder.

3 I ask that you return to the jury room.

4 (The jury exits at 1:20 p.m., and the
5 following is heard out of the presence of the jury.)

6 THE COURT: Any further objections from the
7 defense?

8 MR. SWILLEY: No, Your Honor.

9 THE COURT: I'll ask each of you all to come up
10 here and we'll take a look at the evidentiary -- the
11 documentary evidence. I'll ask that everything be put
12 in a pile and ask if everything is in evidence?
13 Mr. White, is everything in that box in evidence?

14 MR. WHITE: Yes, sir, I believe it is.

15 THE COURT: Is everything -- is there anything in
16 the box that is not in evidence?

17 MR. WHITE: No, sir. The only thing we removed
18 out of there was the evidence of drug paraphernalia.

19 THE COURT: And I'm talking -- so everything that
20 is right here on the counter is in evidence?

21 MR. WHITE: Yes, sir.

22 THE COURT: There is nothing in the pile not in
23 evidence?

24 MR. WHITE: Right. It is.

25 THE COURT: And the poster. Is that everything?

1 Do you agree, Mr. Swilley, everything in the box
2 and the poster has been introduced?

3 MR. SWILLEY: I would agree with that.

4 THE COURT: Is there anything in the box that is
5 not in evidence?

6 MR. SWILLEY: Does not appear there is.

7 THE COURT: And everyone agrees the bat is in
8 evidence?

9 MR. WHITE: Yes.

10 THE COURT: I'll ask you to take the documentary
11 evidence to the jury and tell them to begin
12 deliberations.

13 THE BALIFF: Yes, sir.

14 THE COURT: And pizza is on the way.

15 (Deliberations start at 1:24 p.m.)

16 THE COURT: I understand they've reached a
17 verdict. Anything from the State before we bring the
18 jury out?

19 MR. WHITE: No, Your Honor.

20 THE COURT: Anything from the defense?

21 MR. SWILLEY: No, Your Honor.

22 THE COURT: We're ready for the jury.

23 (The jury enters at 2:13 p.m., and the
24 following is heard in the presence of the jury.)

25 THE COURT: Mr. Foreman, have you reached a

1 verdict?

2 MR. FOREMAN: We have.

3 THE COURT: Is it unanimous?

4 FOREPERSON: It is.

5 THE COURT: I'll ask you to bring the verdict
6 form to the clerk.

7 (A brief pause in the proceedings.)

8 THE COURT: The verdict is in proper order. I'll
9 ask the clerk to publish it.

10 THE CLERK: State of South Carolina, County of
11 Florence County of General Sessions, 2018-GS-21-1070.
12 State of South Carolina versus Deipo Derrick Lewin.
13 As to the offense of attempted murder, we the jury
14 unanimously find the defendant, Deipo Lewin, not
15 guilty.

16 As to the offense of assault and battery of a
17 high and aggravated nature, we the jury unanimously
18 find the defendant guilty.

19 Dated: October 15, 2019.

20 Signed: Roger Moore, foreperson.

21 Members of the jury, if this is your verdict,
22 please raise your right hand.

23 THE COURT: Any additional request for polling?

24 MR. SWILLEY: I request polling the jury.

25 THE CLERK: I'll call each one of your names,

1 please stand and I'll ask you two questions.

2 Amanda Poston, was this your verdict then, back
3 in the jury room?

4 JUROR NO. 184: Yes, ma'am.

5 THE CLERK: Is this still your verdict now?

6 JUROR NO. 184: Yes, ma'am.

7 THE CLERK: Jolie Collins, is this your verdict
8 then?

9 JUROR NO. 46: Yes, ma'am.

10 THE CLERK: Is this still your verdict now?

11 JUROR NO. 46: Yes, ma'am.

12 THE CLERK: Joseph Touchberry, was this your
13 verdict then?

14 JUROR NO. 226: Yes.

15 THE CLERK: Is this your verdict still?

16 JUROR NO. 226: Yes, ma'am.

17 THE CLERK: Roger Moore, was this your verdict
18 then?

19 JUROR NO. 226: Yes.

20 THE CLERK: Is this still your verdict now?

21 JUROR NO. 226: Yes.

22 THE CLERK: Edwin Powers, was this your verdict
23 then?

24 JUROR NO. 189: Yes, ma'am.

25 THE CLERK: Is this still your verdict now?

1 JUROR NO. 189: Yes.

2 THE CLERK: Nichol Witherspoon, was this your
3 verdict then?

4 JUROR NO. 244: Yes.

5 THE CLERK: Is this still your verdict now?

6 JUROR NO. 244: Yes.

7 THE CLERK: Mike Martin, was this your verdict
8 then?

9 JUROR NO. 139: Yes, ma'am.

10 THE CLERK: Is this still your verdict?

11 JUROR NO. 139: Yes.

12 THE CLERK: Bryan Coleman, was this your verdict
13 then?

14 JUROR NO. 44: Yes.

15 THE CLERK: Is this still your verdict?

16 JUROR NO. 44: Yes.

17 THE CLERK: Hailey McCutcheon, was this your
18 verdict then?

19 JUROR NO. 143: Yes.

20 THE CLERK: Is this still your verdict?

21 JUROR NO. 143: Yes.

22 THE CLERK: Kirk Rupnik, was this your verdict
23 then?

24 JUROR NO. 198: Yes.

25 THE CLERK: Is this still your verified now?

1 JUROR NO. 198: Yes.

2 THE CLERK: Miranda Yarborough, was this your
3 verdict then?

4 JUROR NO. 249: Yes.

5 THE CLERK: Is this still your verdict now?

6 JUROR NO. 249: Yes.

7 THE CLERK: Kay Baggett, was this your verdict
8 then?

9 JUROR NO. 8: Yes.

10 THE CLERK: Is this still your verdict now?

11 JUROR NO. 8: Yes.

12 THE CLERK: That is everyone, Judge.

13 THE COURT: I'll ask the defendant to come
14 forward.

15 MR. WHITE: I have the sentencing sheets coming
16 back right now.

17 THE COURT: Mr. Foreman, ladies and gentlemen,
18 you have discharged your duty, and at the very
19 beginning I told you if you had any questions about
20 the trial itself or anything, if you have any
21 questions, I'll be happy to answer them. Do you have
22 any questions?

23 How many have never served on a jury?

24 Hopefully, it has not been that inconvenient, and
25 hopefully a learning experience for you. I was saying

1 earlier I practiced law for 20 years and been on the
2 bench for 14, and every trial I learn a little
3 something. So, hopefully, it has been a learning
4 experience.

5 I told you from the very beginning not to discuss
6 the case with anyone; however, I'm going to release
7 you from that order. You can talk to anyone you want
8 to. If someone were to try to contact you or talk to
9 you about the case, you can talk to them about it; if
10 but you, you don't have to. If they persist in their
11 efforts to talk to you when you tell them you don't
12 want to talk, identify them as best you can and
13 contact me, and I'll deal with them accordingly; is
14 that fair?

15 Very good.

16 I wish that I could tell you that you are
17 released for the week. There is a remote possibility
18 we have a trial in the morning. We'll know by 6
19 o'clock this afternoon. I'll ask that you call the
20 number that is provided to you and follow the
21 instructions. If there is no trial, I assume the
22 instructions will tell you that you completed your
23 jury duty. If that is, indeed, the case, then you
24 would have earned a three-year exemption for your
25 service here this week. If called upon to serve in

1 this court, either Common Pleas or General Sessions,
2 tell them you served this week and you will earn an
3 exemption, and you can exercise that if you would like
4 to do so.

5 You'll also be paid handsomely for your service.
6 I believe it is \$25 a week and mileage -- I mean a
7 day?

8 THE CLERK: Ten dollars a day.

9 THE COURT: That is hardly just compensation, but
10 it is a small token of my appreciation and truly a
11 service. Thank you so much for your time. Thank you
12 for your efforts. You are free to leave at this time.
13 This is a public forum. Part of my job is to sentence
14 Mr. Lewin, and I will, indeed, do that. You have a
15 right to watch that, if you would like. You are
16 invested in it, and if you would like to do that, that
17 is fine; otherwise, you are free to leave. Those of
18 you who would like to stay here, you can have a seat
19 on the front row. The rest can be excused through the
20 back.

21 We'll stand at ease for those of you who would
22 like to go, and those of you who would like to watch
23 can have a seat on the front row.

24 MR. WHITE: May we approach?

25 THE COURT: Yes.

1 (Whereupon, a bench conference was had.)

2 THE COURT: Mr. Swilley.

3 MR. SWILLEY: Your Honor -- well, I probably need
4 to apprise the Court that Mr. Lewin is 24 years old.
5 Judge, he's been I think incarcerated on this matter
6 for 311 days.

7 THE COURT: Have Mr. Lewin stand beside you.
8 How many days?

9 MR. SWILLEY: I think he's been incarcerated 311
10 days. The bench warrant that was issued pertained to
11 another matter that was issued 356 days ago.

12 Judge, this young man born in Jamaica, actually.
13 He lived a bit of a transient lifestyle with his
14 mother, who has fallen ill and who is unable to be
15 here and resides up North.

16 I'm very disappointed in the outcome, but I'm
17 asking the Court, you know, you've heard all of the
18 evidence, everything that happened. Mr. Hannah is not
19 here, not surprisingly. Mr. Lewin I think has a
20 misdemeanor drug infraction that happened on a college
21 campus as a teenager, and then he had the issue with
22 the mother of his child that you know about up in
23 Vermont, but other than that, there is no other
24 issues.

25 Judge, I'm asking, based on circumstances that

1 the Court has heard, Mr. Lewin's youth, the fact that,
2 you know, he -- his father died when he was a small
3 child. Both of his parents are Jamaican. They
4 immigrated here where he was born. There was a time
5 where he had to move back there to Jamaica as a
6 teenager to live with family. So there has been times
7 where he has really had to live hand-to-mouth, is what
8 my understanding is. I think he had some ambitions to
9 work on an oil rig in Texas with a relative when these
10 matters were cleared up. I'm asking the Court to
11 impose a sentence on the lesser end of the spectrum.
12 I think -- that is what I'm asking the Court to do.

13 THE COURT: All right.

14 Mr. Lewin, it is not necessary if you speak, but
15 if you would like to, I would hear from you.

16 MR. LEWIN: I ask that you take what I said and
17 take it in, because I have a daughter who is two years
18 old and she doesn't have a dad, just like I didn't
19 have my dad when I was younger. So I wanted to be
20 there for her. I was supposed to go along with my
21 uncle in Texas. He got a job. He's a manager of an
22 oil company, and he is allowing me to come down there
23 and putting me into school and house me in his home
24 and put me back in society the right way.

25 I have a mom that is sick. She has sickle cell,

1 she has carpal tunnel and other diseases. I have
2 sickle cell myself. I just want you to just help me
3 out, if that is the case, if I say it like that.

4 MR. WHITE: The State would like to be heard
5 regarding the sentencing, if possible.

6 THE COURT: Very good.

7 MR. WHITE: Judge, I know they made a lot about
8 the victim in this case, and there is no denying that
9 this victim is not a sweetheart. I still maintain he
10 didn't deserve to be shot, but the real victim on this
11 case, and all these cases when these young people have
12 reckless disregard to just jump out and shoot in broad
13 daylight, is the community. It's happened too much in
14 Florence, Lake City and all over. I haven't been
15 doing this very long, but if there is one thing I
16 know, if someone will hop out of their car in broad
17 daylight in Christmas and shoot up a gas station,
18 they'll do anything. For that reason, I would ask for
19 a sentence at the higher end of the max here. You
20 heard his record, but I also want you to keep in mind
21 he had to be extradited back from Vermont after he
22 bonded out originally. Up there he was charged with
23 an offense where he was in a domestic with his
24 girlfriend, who I believe is the mother of one of the
25 children he's referring to, who does not want to ever

1 see him again, scared for her life because of the
2 threats he made against her own life in -- saying, I
3 just shot someone in Florence, what makes you think I
4 won't shoot you.

5 I appreciate what Mr. Swilley is saying and what
6 Mr. Lewin is saying, but I just don't know if that is
7 an adequate portrayal.

8 THE COURT: I'll hear from the defense.

9 MR. SWILLEY: I'll add that Mr. Lewin, after he
10 found out there was a warrant for him about this
11 matter, he voluntarily came from out-of-state. I
12 turned him in over at the city center that day. At
13 the bond hearing, he didn't run from law enforcement
14 or make it so they had to seek him out to get him. He
15 recognized the gravity of the situation, and I think
16 that speaks to his character, at least.

17 You know, the legislature wrote that statute in a
18 sense to have a large disparity for a myriad of
19 situations, and I think, in my opinion, this dictates
20 on the lower end, so I ask the Court to take that into
21 consideration as well. Mr. Lewin didn't want to have
22 to go through this process, I can tell you that. He
23 didn't want to have to put all of these people up and
24 take up two days in court. He wanted to have the
25 matter resolved in some form or fashion I believe,

1 but, nevertheless, that is all I have to say.

2 THE COURT: On Indictment 2018-GS-21-01070,
3 assault and battery of a high and aggravated nature,
4 the sentence of the Court is that you be committed to
5 the State Department of Corrections for a period of 90
6 months, and you are given credit for 311 days.

7 Good luck to you.

8 Anything further from the State?

9 MR. WHITE: No, sir, Judge.

10 (Whereupon, the proceedings in the case of State
11 of South Carolina versus Deipo Lewin concluded.)
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25 CERTIFICATE OF REPORTER

WITNESSES

Stephen Banister Florence Police Department

DOCKET NO. 2018-GS-21-01070

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2018

THE STATE

vs.

DEIPO DERRICK LEWIN

CHARLES EDWARD MOORE

ARREST WARRANT NUMBER

2017A2120202327 2017A2120202313
2018A2120200073 2018A2120200074

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

ATTEMPTED MURDER
(TWO COUNTS);
STRONG ARM ROBBERY; AND
POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 ATTEMPTED MURDER
 (TWO COUNTS);
 STRONG ARM ROBBERY; AND
 PWID MARIJUANA

At a Court of General Sessions, convened on JUNE 7, 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ATTEMPTED MURDER

CDR: 3410 16-03-0029

That DEIPO DERRICK LEWIN did in Florence County on or about December 25, 2107, with intent to kill, fire a .40 caliber handgun at the victim, Phillip David Hannah, striking him in the face in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

COUNT TWO- ATTEMPTED MURDER

CDR: 3410 16-03-0029

That CHARLES EDWARD MOORE did in Florence County on or about December 25, 2107, with intent to kill, fire a .40 caliber handgun at the victim, Phillip David Hannah, striking him in the face in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

COUNT THREE - STRONG ARM ROBBERY

CDR: 0137 C/L, 16-11-0325

That DEIPO DERRICK LEWIN did in Florence County on or about December 25, 2017, take personal property from or in the immediate presence of Phillip Hannah with the intent to deprive him of possession through the use of force, threats of force, or intimidation, and did carry away the property taken, in violation of the Common Law crime of Strong Arm Robbery.

COUNT FOUR- POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

CDR: 0186 44-53-0370(b)(2)

That DEIPO DERRICK LEWIN did in Florence County on or about December 25, 2017, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Marijuana, a controlled substance under the provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-370(b), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

May 28 2021

CERTIFICATE OF COUNSEL FOR APPELLANT

SC Court of Appeals

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,

s/ Taylor D. Gilliam

Taylor D Gilliam

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 28th day of May, 2021.