

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

BILAL S. HAYNESWORTH,

RECEIVED

MAR 06 2020

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001249

APPENDIX

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State of South Carolina)
County of Lexington)

In the Court
Of Common Pleas

Indictment No. 2013-GS-32-02376
2013-GS-32-02377
2013-GS-32-02378

State of South Carolina,)
Plaintiff,)
vs.)
Bilal Haynesworth,)
Defendant.)

Transcript of Record

Indictment No. 2013-GS-32-02373
2013-GS-32-02374
2013-GS-32-02375

State of South Carolina,)
Plaintiff,)
vs.)
Lywone Shatete Capers,)
Defendant.)

Transcript of Record

May 19-21, 2014
Lexington, South Carolina

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B E F O R E:

The Honorable Thomas A. Russo, Judge and a jury.

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

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1 MONDAY, MAY 19, 2014

2 THE COURT: All right. I'll recognize the State to
3 call the first case.

4 MS USRY: Yes, sir, Your Honor, thank you. The
5 State calls The State versus Lywone Shatete Capers,
6 Indictment Number 2013-GS-32-02376 for Attempted Murder;
7 Indictment 2013-GS-32-02377, Possession of a Firearm During
8 the Commission of a Violent Crime; Indictment
9 2013-GS-32-02378 for Conspiracy.

10 The State also calls the State -- the case against
11 Bilal Sincere Haynesworth, Indictment 2013-GS-32-02373 for
12 Attempted Murder; Indictment 2013-GS-32-02374 Possession of
13 a Firearm During the Commission of a Violent Crime; and
14 Indictment 2013-GS-32-02375 for Conspiracy.

15 THE COURT: Thank you.

16 **JURY VOIR DIRE**

17 THE COURT: All right, ladies and gentlemen, let
18 me -- before I get into these cases, or these indictments,
19 let me first note for you, the State has called these
20 indictments against Mr. Lywone Capers and Bilal
21 Haynesworth. And you've heard Madame Solicitor call out
22 these three charges on each of these young men and what the
23 charges are. We refer to these as indictments. What is
24 important for you to understand is this: Is that these
25 pieces of paper, which we call indictments, they are the

1 allegations -- they contain the allegations that the State
2 has made against these defendants. They are not evidence
3 in this case. They are not evidence of the allegations
4 that they contain. They are merely the allegations, or the
5 charges, that the State has brought against these
6 defendants.

7 To these charges, these defendants have pled not
8 guilty. And that plea of not guilty places the burden of
9 proof on the State to prove each element of these offenses
10 beyond a reasonable doubt. But I am going to read to you
11 what the allegations are so that I can ask you questions
12 regarding your knowledge, if any, of any of the things that
13 are associated with this case.

14 Now, what I'm going to do, ladies and gentlemen,
15 because Mr. Capers and Mr. Haynesworth are both charged --
16 they're charged, obviously, in separate indictments, but
17 each of them are charged with the same allegations or the
18 same charge. So what I'm going to do is, I am going to
19 read to you what the allegations are, but instead of
20 reading to you six different indictments, I'm going to read
21 three and just include the names of both Mr. Capers and Mr.
22 Haynesworth.

23 For example, in Indictment 2013-GS-32-2373, that
24 charges Mr. Haynesworth with the offense of Attempted
25 Murder; and Indictment 2013-GS-32-02376 charges Mr. Capers.

1 And what those allegations are is that those defendants, in
2 Lexington County, South Carolina, on or about January the
3 3rd of 2013 did, with the intent to kill, attempt to kill
4 another person with malice aforethought, either expressed
5 or implied, to wit shooting into an occupied dwelling, in
6 violation of Section 16-3-29 of the South Carolina Code of
7 Laws 1976, as amended.

8 That is the allegation against both defendants on
9 the charge of Attempted Murder.

10 Now, Indictment 2013-GS-32-2374 charges Mr.
11 Haynesworth with Possession of a Firearm During the
12 Commission of a Violent Crime; and 2013-GS-32-2377 charges
13 Mr. Capers with that same offense. And those allegations
14 are that those defendants did, in Lexington County, South
15 Carolina, on or about January the 3rd of 2013, did
16 knowingly and willfully possess a firearm, or visibly
17 display what appeared to be a firearm, during the
18 commission of a violent crime or attempt to commit a
19 violent crime to wit Attempted Murder, such weapon
20 described as a gun, in violation of Section 16-23-490 of
21 the South Carolina Code of Laws of South Carolina 1976, as
22 amended.

23 And the final two indictments charge Mr.
24 Haynesworth in Indictment 2013-GS-32-2375 and Mr. Capers
25 under Indictment 2013-GS-32-2378, charges them with the

1 offense of Conspiracy. And these indictments allege that
2 these defendants did, in Lexington County, South Carolina,
3 on or about January the 3rd of 2013, knowingly and
4 willfully unite, combine, conspire, confederate, agree, and
5 have a tacit understanding with each other and/or with
6 Nehemiah Wayne Dixon, for the purpose of accomplishing a
7 criminal or an unlawful object and/or an object neither
8 criminal nor unlawful, but by criminal or unlawful means,
9 to wit shooting into an occupied dwelling in violation of
10 the common law and punishable under Section 16-17-410 of
11 the South Carolina Code of Laws 1976, as amended.

12 That's the Conspiracy charge against these two
13 defendants.

14 Now, ladies and gentlemen, as I told you earlier,
15 these defendants have pled not guilty to these charges, or
16 these allegations. But what I need to ask you as members
17 of the jury panel Is there any member of the jury panel who
18 knows anything about these charges or this case at all? If
19 so, please stand. You either know something or have heard
20 anything about it.

21 Sir, could I get your name, please?

22 THE JUROR: Michael Bloom.

23 THE CLERK: No. 16.

24 THE COURT: Juror number 16.

25 THE JUROR: Yes, sir.

1 THE COURT: Mr. Bloom, if you don't mind, I'm going
2 to get you to come forward and speak with me about what you
3 know or what you've heard.

4 (WHEREUPON the following took place out of the
5 hearing of the jury venire.)

6 THE COURT: 16. Mr. Bloom? What is it you know or
7 you have heard?

8 THE JUROR: I had heard about somebody getting shot
9 at in a dwelling. I think that's my niece's home. I don't
10 know the two officers over here.

11 THE COURT: Do you know the address?

12 MR. MAULDIN: [REDACTED] Avenue.

13 THE COURT: All right, sir. I'm going to excuse
14 you from being involved in this case. But I'm going to get
15 you to stay with me. We have another case we're going to
16 need the jury's help with. So you're excused for this
17 case. I would ask that you would have no conversation with
18 anyone about it, okay?

19 THE JUROR: Yes, sir.

20 THE COURT: Thank you, sir.

21 THE JUROR: Take my seat?

22 THE COURT: Yeah, if you'll just have your seat and
23 then we'll have you in the panel for the next case.

24 THE JUROR: Yes, sir.

25 THE COURT: Anyone else?

1 (WHEREUPON there was no response from the jury
2 venire.)

3 THE COURT: All right. Now, ladies and gentlemen,
4 what I'm going to do is I'm going to have the attorneys
5 introduce themselves to you, and then I'll have questions
6 to ask you as it relates to the lawyers.

7 And we'll start with the State.

8 MS. USRY: Thank you, Your Honor. My name is Kate
9 Usry. I'm an employee with the Lexington County
10 Solicitor's Office and Donald Myers, our Solicitor.
11 Working with me is Gill Bell with our office, Assistant
12 Solicitor. Also with our office is Investigator Matt
13 Martin and Victim Advocate Vicky Baynham.

14 THE COURT: Thank you, ma'am.

15 Ladies and gentlemen, is there any member of the
16 jury panel who is related by blood, connected by marriage,
17 or who has any close business or personal relationship with
18 either Ms. Usry or Mr. Bell, who are prosecuting the case
19 on behalf of the State? If so, please stand.

20 Thank you, there are none. All right. Mr.
21 Mauldin, Mr. Drylie.

22 MR. MAULDIN: Thank you, Your Honor.

23 THE COURT: And if you would, I'm going to need you
24 to introduce your client as well.

25 MR. MAULDIN: Yes, sir.

1 THE COURT: Thank you.

2 MR. MAULDIN: My name is David Mauldin, and I
3 represent Bilal Haynesworth.

4 THE COURT: All right.

5 MR. DRYLIE: My name is Erik Drylie, and I
6 represent Lywone Capers. And also, we have Lisa Williams
7 here. She's an investigator with our office.

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

10 Ladies and gentlemen, is there any member of the
11 jury panel who is related by blood, connected by marriage,
12 or has any close business or personal relationship with, or
13 who has ever been represented by, either Mr. Mauldin or Mr.
14 Drylie? If so, please stand.

15 Thank you, there are none.

16 Now, you've met -- I'll begin with Mr. Haynesworth.
17 Is there any member of the jury panel who is related by
18 blood, connected by marriage, or has any close business or
19 personal relationship with Mr. Haynesworth? If so, please
20 stand.

21 Thank you, there are none.

22 You've also met Mr. Capers. Is there any member of
23 the jury panel who is related by blood, connected by
24 marriage, or has any close business or personal
25 relationship with Mr. Capers? If so, please stand.

1 Thank you, there are none.

2 Now, folks, I'm going to call out some names.

3 These are potential or possible witnesses that may appear
4 during the course of this trial. The question that I just
5 asked you, as it related to Mr. Haynesworth and then Mr.
6 Capers, and that is -- the question is, are you related by
7 blood or have any close business or personal relationship
8 with, that's the question I'll be asking as it relates to
9 these possible or potential witnesses.

10 There are several names I'm going to be calling
11 out. Please listen carefully. If you hear a name, and
12 that question would apply to you for that name that I
13 called, go ahead and stand. But, if you do stand, keep
14 listening, because it may be that you know more than one
15 person on this list.

16 The following folks are possible or potential
17 witnesses who may or may not testify during the course of
18 this trial. At this point, I have no idea who is going to
19 testify. But these are presented to the Court as possible
20 witnesses.

21 And if any of these witnesses are in court, I would
22 get you -- I would ask you to please stand, face the jury
23 panel for just about a minute or so and then have a seat.

24 JayQuan L. Bell, Frankie Jerod Lawton, Clara Lawton
25 Williams, Jennie L. Childs, Tammy Coleman, Sam Patel,

1 Nehemiah Wayne Dixon, Leslie Hightower, Matthew Martin,
2 Cliff Hayes, Rodney McCaw, Roger Snuffer.

3 Any member of the panel related by blood, connected
4 by marriage, or have any close business or personal
5 relationship with any of those folks?

6 All right. Thank you, there are none.

7 Also, possible or potential witnesses would be
8 Vanessa Yost or Lisa Williams.

9 All right, no one has stood.

10 Ladies and gentlemen, is there any member of the
11 jury panel who has ever been a contributor either by way of
12 financial means or of volunteering of your time who has
13 been a contributor to any law enforcement organization or
14 organizations that concern themselves -- that their main
15 concern are victims or victims' rights, or that promote
16 stricter law enforcement?

17 And let me just give you an example of some of
18 those types of organizations that I'm referring to. You've
19 heard of MADD, Mothers Against Drunk Drivers, SADD,
20 Students Against Drunk Drivers, CAV, Citizens Against
21 Violence, the Fraternal Order of the Police, the South
22 Carolina Troopers Association, the South Carolina Sheriffs
23 Association, any of those types of organizations.

24 Any member of the panel who has been a contributor
25 either by way of monetary means or of volunteering of your

1 time; if so, please stand.

2 All right, and I'm going to start here at the very
3 front.

4 Yes, ma'am? Your name, please?

5 THE JUROR: Ginger Harmon.

6 THE COURT: All right. Ms. Harmon, the fact that
7 you've been a contributor to any one of those types of
8 organizations, would that in any way affect your ability to
9 be fair and impartial in giving both the State and the
10 Defense a fair trial?

11 THE JUROR: No, sir.

12 THE COURT: Thank you very much, ma'am. You may
13 have a seat.

14 Ma'am, your name, please?

15 THE JUROR: Gloria Heffner.

16 THE COURT: All right. Juror No. 94. Ms. Heffner,
17 as a contributor to any one of those types of organizations
18 would that in any way affect your ability to be fair and
19 impartial?

20 THE JUROR: I'm afraid I'll have flashbacks, Your
21 Honor.

22 THE COURT: All right. I'm going to excuse you,
23 ma'am, from being a juror for this particular trial, but
24 I'm going to get you to stay with us because it may be that
25 you could help us with the next trial. All right?

1 Juror 94 is excused from this trial.

2 THE CLERK: Yes, sir.

3 THE COURT: Yes, ma'am. Your name, please?

4 THE JUROR: Michelle Matlock, Juror 135.

5 THE COURT: All right. And, ma'am, the fact that
6 you're a contributor to those types of organizations, would
7 that in any way affect your ability to be fair and
8 impartial.

9 THE JUROR: I believe it will.

10 THE COURT: All right, ma'am. Let me get you to
11 step forward if you would, please.

12 Is it just this particular case or you can't serve
13 on criminal juries?

14 THE JUROR: I don't know if I can be objective with
15 the drive-by shootings in my neighborhood. That had --

16 THE COURT: That's the reason I'm asking is because
17 I understand for purposes of this case, but if we have
18 another case that doesn't involve drive-by shooting would
19 -- could you be fair and impartial?

20 THE JUROR: I'm really not sure. I would lean more
21 toward guilty than not guilty.

22 THE COURT: Before you hear anything?

23 THE JUROR: If they have a rap sheet, I don't know
24 if I could be impartial.

25 THE COURT: I'm going to transfer Ms. Matlock to a

1 week of common pleas court.

2 Ma'am, I'm going to put you in civil court.

3 THE JUROR: Okay.

4 THE COURT: You're excused and we'll just transfer
5 your service to common pleas court.

6 All right. You're excused, and let's just transfer
7 your service.

8 All right. I'm going to start on this side.

9 Sir, your name, please?

10 THE JUROR: James McGraw.

11 THE COURT: All right.

12 THE CLERK: He's 141.

13 THE COURT: 141. All right, Mr. McGraw. Sir, the
14 fact that you're a contributor to those types of
15 organizations, would that in any way affect your ability to
16 be fair and impartial, to give both the State and the
17 defense a fair trial.

18 THE JUROR: I have no problem serving on this
19 trial.

20 THE COURT: Thank you very much, sir. You may have
21 a seat.

22 Sir, your name, please.

23 THE JUROR: Yes, 125, Les Lauziere.

24 THE COURT: All right. And, Mr. Lauziere, would it
25 in any way affect your ability to be fair and impartial.

1 THE JUROR: Sir, I've worked in Federal law
2 enforcement for 40 years. I believe I can be impartial,
3 but I have that in my background.

4 THE COURT: Well, and I do appreciate that. But,
5 with that background, do you believe that you could give
6 both the State and the defense a fair trial.

7 THE JUROR: I believe I could, sir.

8 THE COURT: All right. Thank you very much. You
9 may have a seat.

10 Ma'am, your name, please.

11 THE JUROR: Meredith Koss, Juror 122.

12 THE COURT: All right. And ma'am, would that --
13 the fact that you're a contributor -- in any way affect
14 your ability to be fair and impartial.

15 THE JUROR: No.

16 THE COURT: Thank you, ma'am. You may have a seat.
17 Sir, your name, please.

18 THE JUROR: Gary Woodall, 224.

19 THE COURT: All right, Mr. Woodall, would the fact
20 that you're a contributor to those types of organizations
21 in any way affect your ability to be fair and impartial,
22 sir?

23 THE JUROR: No, sir.

24 THE COURT: Thank you, Mr. Woodall. I appreciate
25 that.

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And, sir, your name, please.

THE JUROR: 158, Jeff Payne.

THE COURT: All right, Mr. Payne --
Mr. Woodall, you may have a seat, sir. Thank you.
Mr. Payne, would it in any way affect your ability
to be fair and impartial, sir?

THE JUROR: No, it would not.

THE COURT: Thank you, Mr. Payne.
Sir, your name, please?

THE JUROR: Juror 26, Jermaine Caldwell.

THE COURT: All right, Mr. Caldwell, would it in
any way affect your ability to be fair and impartial, sir?

THE JUROR: No, sir.

THE COURT: Thank you, Mr. Caldwell.
Ma'am, your name, please?

THE JUROR: 88, Laura Harmon.

THE COURT: Ms. Harmon, would that in any way
factor into your ability to be fair and impartial, ma'am?

THE JUROR: I believe it might.

THE COURT: All right, let me get you to step up if
you could, please.

(WHEREUPON there was a bench conference out of the
hearing of the jury venire.)

THE COURT: Is it just this particular case or any
type of case?

1 THE JUROR: I have volunteered for four years at a
2 battered women's shelter and in cases where women are
3 injured violently, I believe that might affect my ability
4 to judge a person.

5 THE COURT: Before you hear any facts?

6 THE JUROR: Not before I hear any facts, but I
7 would be -- I would be leaning toward having sympathy for
8 the victims especially.

9 THE COURT: I'm going to transfer your service to a
10 term of court where it will be civil court or common pleas
11 court, not criminal court.

12 No. 87.

13 THE CLERK: 87, Ginger?

14 THE JUROR: 88.

15 THE COURT: Oh, is it 88? I'm sorry.

16 THE CLERK: We'll send you another summons in the
17 mail.

18 THE COURT: All right. Sir, your name, please?

19 THE JUROR: Allen Rooks, No. 173.

20 THE COURT: All right. Mr. Rooks, the fact that
21 you're a contributor to those types of organizations would
22 that in any way affect your ability to be fair and
23 impartial, sir?

24 THE JUROR: No, sir.

25 THE COURT: Thank you, sir. You may have a seat.

1 Ma'am, your name, please?

2 THE JUROR: 179, Susanne Sanders-Baker.

3 THE COURT: All right. And, would that, ma'am, in
4 any way affect your ability to be fair and impartial.

5 THE JUROR: No, sir.

6 THE COURT: Okay. Thank you so much, ma'am.

7 Ladies and gentlemen, is there any member of the
8 jury panel, or a member of your close and immediate family,
9 who has ever either been the victim of a crime or accused
10 of committing a crime? And when I say accused, I mean
11 formally, through -- by law enforcement.

12 Okay? If so, please stand.

13 (WHEREUPON no one stood.)

14 THE COURT: All right. We're going to -- And, I
15 apologize if you stood and I don't remember your name, I'm
16 just going to have to get you to say your name and your
17 juror number if you know it, say it again for me.

18 THE JUROR: Gloria Heffner, No. 94.

19 THE COURT: All right. Ms. Heffner, you've already
20 been excused for purposes of this matter. So I'm going to
21 let you have a seat. Thank you.

22 Yes ma'am.

23 THE JUROR: Lauren Ard, No. 5.

24 THE COURT: All right. And, Ms. Ard, was it and --
25 I'm not going to go into any details about anything other

1 than simply to ask this if it was either yourself or a
2 family member and whether they were either a victim of a
3 crime or accused of a crime.

4 THE JUROR: My brother.

5 THE COURT: Okay, and was a victim or accused of.

6 THE JUROR: He was accused.

7 THE COURT: Victim, okay -- accused?

8 THE JUROR: Uh-huh. (Affirmative Response)

9 THE COURT: All right. And, ma'am, would that
10 experience in any way affect your ability to be fair and
11 impartial, to give both the State and the Defense a fair
12 trial?

13 THE JUROR: No, sir.

14 THE COURT: Thank you very much, ma'am. You may
15 have a seat.

16 Sir, your name, please?

17 THE JUROR: Russell Stump, 202.

18 THE COURT: All right. And was it a family member
19 or a friend?

20 THE JUROR: Is this immediate family, or if like my
21 cousin was --

22 THE COURT: That's fine. All right. And, a victim
23 or accused of a crime?

24 THE JUROR: Accused of a crime.

25 THE COURT: All right. And would that in any way

1 affect your ability to be fair and impartial, sir?

2 THE JUROR: No, sir.

3 THE COURT: Thank you, sir. You may have a seat.

4 THE JUROR: Ernest Kidd, 117.

5 THE COURT: Mr. Kidd, was it a family member or
6 yourself?

7 THE JUROR: Family member, and she was a victim.

8 THE COURT: Okay. All right. And would that, sir,
9 in any way affect your ability to be fair and impartial?

10 THE JUROR: It would not.

11 THE COURT: Thank you, sir. You may have a seat.

12 Yes ma'am?

13 THE JUROR: 191 Renee Smalley, victim.

14 THE COURT: All right. And, ma'am would that in
15 any way affect your ability to be fair and impartial?

16 THE JUROR: No, it would not.

17 THE COURT: Thank you very much. You may have a
18 seat.

19 Sir, your name, please?

20 THE JUROR: Michael Russ, Juror 175.

21 THE COURT: All right, sir. And --

22 THE JUROR: Victim.

23 THE COURT: And would that experience in any way
24 affect your ability to be fair and impartial, sir?

25 THE JUROR: No, Your Honor.

1 THE COURT: Thank you very much, sir. You may have
2 a seat.

3 Right here. Yes, sir. Your name, please?

4 THE JUROR: Roger Hoover, 104.

5 THE COURT: All right. Mr. Hoover, yourself or a
6 family member?

7 THE JUROR: Myself.

8 THE COURT: And, victim or accused of?

9 THE JUROR: Victim.

10 THE COURT: And, sir, would that in any way affect
11 your ability to be fair and impartial?

12 THE JUROR: No, sir.

13 THE COURT: Thank you, sir. You may have a seat.

14 Ma'am, if I could get your name, please.

15 THE JUROR: Sharon Grant, Juror No. 78.

16 THE COURT: Yes, ma'am. Was it yourself or a
17 family member?

18 THE JUROR: Family member.

19 THE COURT: And, accused of or a victim of?

20 THE JUROR: Accused.

21 THE COURT: And would that, ma'am, in any way
22 affect your ability to be fair and impartial?

23 THE JUROR: No, sir.

24 THE COURT: Thank you, ma'am. You may have a seat.

25 All right, coming across, sir.

1 THE JUROR: 129.

2 THE COURT: All right. And, sir, would that --
3 yourself or a family member?

4 THE JUROR: Family member.

5 THE COURT: And, accused of or a crime.

6 THE JUROR: Accused.

7 THE COURT: All right. And, would that in any way
8 affect your ability to be fair and impartial?

9 THE JUROR: No, sir.

10 THE COURT: Thank you, sir. You may have a seat.
11 Sir, your name, please?

12 THE JUROR: Jerome Clark. No. 35.

13 THE COURT: All right. Mr. Clark, yourself or a
14 member of your family?

15 THE JUROR: A member of my family.

16 THE COURT: Victim or accused of.

17 THE JUROR: Victim.

18 THE COURT: And would that, sir, in any way affect
19 your ability to be fair and impartial?

20 THE JUROR: Yes, sir. It may.

21 THE COURT: All right, sir. I'm going to -- Mr.
22 Clark, let me get you to step up real quick so I can ask
23 you something a little further.

24 (WHEREUPON there was a bench conference out of the
25 hearing of the jury venire.)

1 THE COURT: Mr. Clark, is it based on particular
2 circumstances like this case or do you think you would have
3 a problem sitting in a criminal case?

4 THE JUROR: Maybe this case because of the nature
5 of this case.

6 THE COURT: Because of the nature of this case?

7 THE JUROR: Yeah.

8 THE COURT: Okay. Yeah, I get that. But if it was
9 another type of case that didn't involve shooting and stuff
10 you feel like you'd be okay?

11 THE JUROR: Yeah.

12 THE COURT: Well, why don't I do this. I'm going
13 the excuse you from this case, but I think the next case
14 we've doesn't involve anything like this, so I'm going to
15 let you stay with us, but I'm going to excuse you from this
16 case.

17 THE JUROR: Okay.

18 THE COURT: Thank you, sir.

19 Mr. Clark is going to be excused for purposes of
20 this trial only, Hope.

21 THE CLERK: Yes, sir.

22 THE COURT: Okay. All right, in the back, yes sir.

23 THE JUROR: I'm juror 26, Jermain Caldwell.

24 THE COURT: All right, and, yes sir, yourself or a
25 member of the family?

1 THE JUROR: A family member.

2 THE COURT: And, was it the victim or accused of.

3 THE JUROR: Victim.

4 THE COURT: And, would that in any way affect your
5 ability to be fair and impartial?

6 THE JUROR: Possibly.

7 THE COURT: All right. If I could get you to come
8 up so I could talk to you a little further about that.

9 While you're doing that, let me ask the next
10 gentleman.

11 THE JUROR: 158, Jeff Payne.

12 THE COURT: Mr. Payne, was it yourself or a family
13 member?

14 THE JUROR: Family member.

15 THE COURT: Were a victim of or accused of?

16 THE JUROR: Accused.

17 THE COURT: And, sir, would that experience affect
18 your ability to be fair and impartial?

19 THE JUROR: Possibly.

20 THE COURT: All right. I'm going to get you to
21 come up as well.

22 Sir, your name, please.

23 THE JUROR: Gary Woodall, No. 224.

24 THE COURT: Yes, sir, Mr. Woodall. Was it yourself
25 or a member of your family?

1 THE JUROR: Both.

2 THE COURT: All right, and victim or accused of.

3 THE JUROR: Accused -- I mean, victim.

4 THE COURT: Victim. Yes, sir. Would that in any
5 way affect your ability to be fair and impartial, sir?

6 THE JUROR: No.

7 THE COURT: Thank you, sir. You may have a seat.

8 (WHEREUPON there was a bench conference out of the
9 hearing of the jury venire.)

10 THE COURT: All right. And I apologize. What I
11 wondered, is it because of the nature of this particular
12 case involving a shooting or is it --

13 THE JUROR: My cousin was murdered in a drive-by
14 shooting.

15 THE COURT: Okay. And I can certainly understand
16 that. Do you think you could be able to serve on a case if
17 it did not have a shooting, like a burglary or something
18 like? That anything that wouldn't -- if it was criminal?

19 THE JUROR: Just to be honest, possibly. I don't
20 want to be impartial to anyone.

21 THE COURT: All right. I'm going to transfer your
22 service to term of civil court where there won't be any of
23 this type of stuff, okay.

24 THE JUROR: Okay.

25 THE COURT: All right. I'll do that. So I'm going

1 to excuse you and they'll just send you another notice at a
2 later date. Thank you, sir.

3 THE BAILIFF: Your Honor, you've got one right
4 there that just --

5 THE COURT: Oh, ma'am, I'm sorry. Your name,
6 please.

7 THE JUROR: Donna Dooley, Juror 60.

8 THE COURT: Yes, ma'am. Was it yourself or a
9 member of your family?

10 THE JUROR: It's a family member, and it's pending.

11 THE COURT: All right. Is it pending in this court
12 or this circuit? Is it in Lexington?

13 THE JUROR: Yes.

14 THE COURT: All right.

15 THE JUROR: For Judge Morgan.

16 THE COURT: Okay, and let me just ask, ma'am. It's
17 a member of your family you said?

18 THE JUROR: It is a member of my family.

19 THE COURT: All right. Would that in any way
20 affect your ability to sit as a juror and give both the
21 State and the defense a fair trial in this case?

22 THE JUROR: No, sir, it would not.

23 THE COURT: Thank you, very much, ma'am. You may
24 have a seat.

25 And, Mr. Payne is coming up.

1 (WHEREUPON there was a bench conference out of the
2 hearing of the jury venire.)

3 THE COURT: What I wanted to ask is it this
4 situation or the facts of this particular case or would it
5 be just in any criminal case?

6 THE JUROR: Probably this case.

7 THE COURT: And I've had a couple that have said
8 that. If you were to be on a panel of a different type of
9 case you think it wouldn't affect your ability?

10 THE JUROR: No, sir.

11 THE COURT: Okay. I'm going to protect you from
12 this case, but I'm going to get you to stay with us. We
13 have another case that Judge Early is going to try that
14 doesn't involve this type of situation.

15 THE JUROR: That's fine.

16 (WHEREUPON, there was a bench conference out of the
17 hearing of the jury and the Court Reporter.)

18 THE COURT: Ms. Dooley, let me get you to step up
19 real quick so I can ask you a little bit more in-depth
20 question about that.

21 (WHEREUPON there was a bench conference out of the
22 hearing of the jury and the Court Reporter.)

23 THE COURT: Here's what I'm going to do. I'm go
24 for this case, but let you just remain with us. But Im
25 going to let you be on a panel that goes before Judge Early

1 that doesn't involve Mr. Drylie. That's who represents the
2 defendant.

3 All right. Thank you.

4 Ladies and gentlemen, is there any member of the
5 jury panel who has either heard anything -- and I think I
6 might have asked this when we started, but just so I can
7 make sure -- has either heard anything about this case or
8 read about this case or knows anything about this case
9 other than what I've shared with you here in the courtroom?
10 If so, please stand.

11 All right, Ms. Ard, I'm going to get you to come
12 forward if I could, please.

13 (WHEREUPON there was a bench conference out of the
14 hearing of the jury.)

15 THE COURT: Hi there.

16 THE JUROR: I didn't know if it mattered, I live
17 close to where this happened. And my brother was
18 represented by the public defender's office. Ms. Zmroczek
19 represented him. I knew it was coming to trial this week.

20 THE COURT: All right. Do you know anything about
21 it.

22 THE JUROR: No.

23 THE COURT: Other than it's coming up this week.

24 THE JUROR: We didn't talk about it very much.

25 THE COURT: Okay. But you understand that if you

1 were to serve on any case that involves the public
2 defenders -- you can't serve on any case with her at all.
3 Do you understand that?

4 THE JUROR: Yes, sir.

5 THE COURT: Now, would this affect your ability to
6 be fair and impartial?

7 THE JUROR: No.

8 THE COURT: Okay. You can stay. Thank you.

9 Ladies and gentlemen, as you can tell, there's kind
10 of a theme that runs along with all these questions that
11 I'm asking. You notice that anytime I ask a question that
12 there's always a follow-up question. The follow-up
13 question is whether or not it would affect your ability to
14 be fair and impartial. And that's the whole purpose of
15 asking questions. I can sit here probably and ask you
16 questions all afternoon about various things to determine
17 whether or not your ability to be fair and impartial would
18 be compromised.

19 And so, rather than continuing to do that -- I just
20 want you to understand before I ask this last question,
21 every time we try a case in this courtroom, and that's
22 whether it is a criminal case or a civil case, it doesn't
23 matter the nature of the case, anytime we select a jury,
24 our purpose is to select a panel of folks who can set aside
25 anything that has occurred outside these courtroom doors

1 and, for purposes of the trial that is before you, listen
2 to the evidence and to the facts that are presented during
3 the course of that case and give both the State and the
4 defense a fair and impartial hearing. That's our goal
5 every time we try a case. And every time we select a
6 panel, that is our purpose is to select a panel that can be
7 fair to both the State and the Defense.

8 And so, keeping that in mind, I'm going to simply
9 ask this, is there any member of the jury panel who knows
10 of any reason why you would not be able to be fair to both
11 the State and the defense and impartial in serving as a
12 juror? If so, please stand.

13 Thank you. There are none.

14 Any additional questions from the State?

15 MS. USRY: No sir, Your Honor.

16 THE COURT: Anything further from the defense?

17 MR. MAULDIN: Your Honor, I'd request that you ask
18 the number two on my proposed voir dire, regarding past law
19 enforcement.

20 THE COURT: I didn't ask that?

21 MR. MAULDIN: No, sir.

22 THE COURT: Well, if I didn't, I will do it now.

23 Thank you, Mr. Mauldin.

24 Ladies and gentlemen, is there any member of the
25 jury panel who has a family member or a very close,

1 personal friend who is currently a law enforcement officer,
2 or who has been employed as a law enforcement officer, or
3 who has the power of arrest? If so, please stand.

4 All right, let me start right here. This is.

5 THE JUROR: 125, Les Lauziere.

6 THE COURT: 125. Yes, sir.

7 THE JUROR: I have worked as a federal law
8 enforcement officer and as a state law enforcement officer.

9 THE COURT: Right. And sir, are you currently Are
10 you retired.

11 THE JUROR: I'm currently a contractor for the
12 United States government.

13 THE COURT: Yes, sir.

14 THE JUROR: In criminal cases.

15 THE COURT: Okay. With all that experience, would
16 you be able to still be fair and impartial and give both
17 the State and the Defense a fair trial.

18 THE JUROR: Yes, I would.

19 THE COURT: Thank you very much, sir. You may have
20 a seat.

21 Sir, your name, please?

22 THE JUROR: Joseph Nunnally, No. 151.

23 THE COURT: All right, sir. And is it a member of
24 the family or a close friend.

25 THE JUROR: My father is retired law enforcement

1 with the highway patrol, and my sister works as a sheriff's
2 deputy.

3 THE COURT: All right, sir. And would that in any
4 way affect your ability to be fair and impartial?

5 THE JUROR: No it won't, sir.

6 THE COURT: Thank you very much, sir.

7 And ma'am, again your name?

8 THE JUROR: Susan Smalley, 191.

9 THE COURT: Yes, Ms. Smalley.

10 THE JUROR: My ex-husband was with public safety.

11 THE COURT: All right. And would that in any way
12 affect your ability to be fair and impartial, ma'am?

13 THE JUROR: It would not affect it.

14 THE COURT: All right. Thank you so much. You may
15 have a seat.

16 THE JUROR: Tracy Sharpe. My brother works for
17 SLED in the fingerprint lab department.

18 THE COURT: All right. And Ms. Sharpe, would that
19 in any way affect your ability to be fair and impartial?

20 That's juror 186, Ms. Sharpe.

21 All right. Anything further from the defense,
22 there? Mr. Mauldin.

23 MR. MAULDIN: None from me, Your Honor.

24 THE COURT: Mr. Drylie?

25 MR. DRYLIE: No, Your Honor.

1 THE COURT: All right.

2 (WHEREUPON there was a bench conference out of the
3 hearing of the jury venire and the court reporter.)

4 THE COURT: Ladies and gentlemen, let me give you a
5 little rundown of the way select juries in general sessions
6 court. Your names -- as you went through role call and --
7 your names appear on a list, which is the jury roster, and
8 your names appear in alphabetical order.

9 What we're going to do now is some of you have been
10 excused from the trial of this case, and so your names have
11 been removed for the purposes of this trial. And so the
12 remaining list is then put into a computer program and they
13 hit a button, and it takes this list of alphabetical names,
14 and it completely and randomly reorders them.

15 For example, I may be Tommy Russo, juror number 134 on the
16 alphabetical list. I may show up on this list as juror
17 number 14. It's just a random -- it takes your name --
18 it's like the way we used to draw juries. If you put
19 everybody's name in a cigar box and you just reach in and
20 pull one out. That's basically what this computer does,
21 and it reorders your names and puts up a new list.

22 Well, what Madame Clerk will do when she gets that
23 new list is, she'll start with that new list, and she'll
24 start at the top of that list and call out the first name.
25 Like I said, let's say it's Juror No. 1, Tommy Russo. I'll

1 come forward, so you'll leave your seats, and you'll come
2 forward and you'll stand in front of this podium.

3 Tommy, if you would stand there.

4 Just as Tommy's doing, you'll come up. You'll
5 stand right as he's standing and face the back of the
6 courtroom.

7 Madame Clerk will first inquire of the State words
8 along the lines of, What say you for the State? The State
9 has two options. They can either present you, and then
10 you'll remain standing, or they can excuse you. And if
11 they excuse you, then you'll just go back and have a seat
12 out in the jury panel. If they present you, then she'll
13 look to the defense, and again ask of the defense. And the
14 defense has two options. They can either excuse you, and
15 if they excuse you, you'll go back and you'll have a seat,
16 or they can seat you. If they seat you, then you'll come
17 around, and you'll have a seat in the jury box. And we'll
18 go through that process until we've selected our jurors.

19 Now, there is no way that any of us know, as we sit
20 here now, whether if your name is called, whether they're
21 going to excuse you or whether they're going to seat you.
22 So understanding that, if your name is called, please bring
23 with you anything that you brought to the courtroom here
24 today. Okay? Any pocketbook, book, coat, jacket,
25 anything. Bring that with you when your name is called.

1 If you get excused, you'll just carry it all back to your
2 seat. But if you're selected over here, then you'll be
3 coming over here and you won't be returning to your seat.
4 So just bring those items with you if your name is called.
5 Okay?

6 And before we get to that. Real quick, one more
7 time, let me get the lawyers to step up. Let me mention
8 something, and then we'll get started.

9 (WHEREUPON there was a bench conference out of the
10 hearing of the jury venire and the court reporter.)

11 THE COURT: All right. Is the State ready to
12 proceed with the jury selection?

13 MS. USRY: Yes sir, Your Honor.

14 THE COURT: Is the defense ready?

15 MR. DRYLIE: We are, Your Honor.

16 MR. MAULDIN: Yes, Your Honor.

17 THE COURT: All right.

18 **JURY SELECTION**

19 THE CLERK: Proceed, sir?

20 THE COURT: Yes, ma'am.

21 THE CLERK: As I call your name, please come
22 forward.

23 No. 173, Allen Rooks.

24 What say for the State?

25 MS. USRY: Please present the juror.

1 THE CLERK: What say for the defense?
2 MR. MAULDIN: Please seat the juror.
3 THE CLERK: Have a seat in the jury box, sir.
4 No. 172, Joseph Rogers.
5 What say for the State?
6 MS. USRY: Please present the juror.
7 THE CLERK: What say for the defense?
8 MR. MAULDIN: Please seat Mr. Rogers.
9 THE CLERK: Have a seat in the jury box, sir.
10 145, Loressa Mohammed.
11 What say for the State?
12 MS. USRY: Please present the juror.
13 THE CLERK: What say for the defense?
14 MR. MAULDIN: Please seat Ms. Mohammed.
15 THE CLERK: Have a seat in the jury box, ma'am.
16 154, Stacy Parker.
17 What say for the State?
18 MS. USRY: Please excuse this juror.
19 THE CLERK: Return to your seat please, sir.
20 72, Douglas Gibbons.
21 What say for the State?
22 MS. USRY: Please present this juror.
23 THE CLERK: What say for the defense?
24 MR. MAULDIN: Please seat Mr. Gibbons.
25 THE CLERK: Have a seat in the jury box, sir.

1 186, Tracy Sharpe.
2 What say for the State?
3 MS. USRY: Please present this juror.
4 THE CLERK: What say for the defense?
5 MR. MAULDIN: Please excuse Ms. Sharpe.
6 THE CLERK: Return to your seat please, ma'am.
7 156, Jeremy Parriot, Parriott, I'm sorry.
8 What say for the State?
9 MS. USRY: Please present this juror.
10 THE CLERK: What say for the defense?
11 MR. MAULDIN: Please seat Mr. Parriott.
12 THE CLERK: Have a seat in the jury box, sir.
13 No. 209, Patricia Thain.
14 What say for the State?
15 MS. USRY: Please present this juror.
16 THE CLERK: What say for the defense?
17 MR. MAULDIN: Please excuse Ms. Thain.
18 THE CLERK: Return to your seat please, ma'am.
19 Number 14, Christopher Bennett.
20 What say for the State?
21 MS. USRY: Please present this juror.
22 THE CLERK: What say for the defense?
23 MR. MAULDIN: Please excuse Mr. Bennett.
24 THE CLERK: Return to your seat please, sir.
25 123, Sidney Kutsch.

1 What say for the State?
2 MS. USRY: Please present this juror.
3 THE CLERK: What say for the defense?
4 MR. MAULDIN: Please seat Ms. Kutsch.
5 THE CLERK: Have a seat in the jury box, ma'am.
6 78, Sharon Grant.
7 What say for the State?
8 MS. USRY: Please present this juror.
9 THE CLERK: What say for the defense?
10 MR. MAULDIN: Please seat Ms. Grant.
11 THE CLERK: Have a seat in the jury box, ma'am.
12 110, Kristi James.
13 What say for the State?
14 MS. USRY: Please excuse this juror.
15 THE CLERK: Return to your seat please, ma'am.
16 No. 224, Gary Woodall.
17 What say for the State?
18 MS. USRY: Please present this juror.
19 THE CLERK: What say for the defense?
20 MR. MAULDIN: Please excuse Mr. Woodall.
21 THE CLERK: Return to your seat please, sir.
22 180, Sandra Sayarath.
23 What say for the State?
24 MS. USRY: Please present this juror.
25 THE CLERK: What say for the defense?

1 MR. MAULDIN: Please seat Ms. Sayarath.
2 THE CLERK: Have a seat in the jury box, ma'am.
3 134, Melissa Martin.
4 What say for the State?
5 MS. USRY: Please present this juror.
6 THE CLERK: What say for the defense?
7 MR. MAULDIN: Please seat Ms. Martin.
8 THE CLERK: Have a seat in the jury box, ma'am.
9 25, Kelli Butler.
10 What say for the State?
11 MS. USRY: Please present this juror.
12 THE CLERK: What say for the defense?
13 MR. MAULDIN: Please seat Ms. Butler.
14 THE CLERK: Have a seat in the jury box, ma'am.
15 No. 46, George Corley.
16 What say for the State?
17 MS. USRY: Please present this juror.
18 THE CLERK: What say for the defense?
19 MR. MAULDIN: Please excuse Mr. Corley.
20 THE CLERK: Return to your seat please, sir.
21 87, Ginger Harmon.
22 What say for the State?
23 MS. USRY: Please present Ms. Harmon.
24 THE CLERK: What say for the defense?
25 MR. MAULDIN: Please excuse Ms. Harmon.

1 THE CLERK: Return to your seat please, ma'am.
2 133, Jennifer Lyon.
3 What say for the State?
4 MS. USRY: Please present Ms. Lyon.
5 THE CLERK: What say for the defense?
6 MR. MAULDIN: Please excuse Ms. Lyon.
7 THE CLERK: Return to your seat please, ma'am.
8 53, Peter Creighton.
9 What say for the State?
10 MS. USRY: Please excuse this juror.
11 THE CLERK: Return to your seat please, sir.
12 175, Michael Russ.
13 What say for the State?
14 MS. USRY: Please present this juror.
15 THE CLERK: What say for the defense?
16 MR. MAULDIN: Please excuse Mr. Russ.
17 THE CLERK: Return to your seat please, sir.
18 63, David Dufries.
19 What say for the State?
20 MS. USRY: Please present this juror.
21 THE CLERK: What say for the defense?
22 MR. MAULDIN: Please seat Mr. Dufries.
23 THE CLERK: Return -- excuse me. Have a seat in
24 the jury box.
25 82, Michelle Guidry.

1 What say for the State?

2 MS. USRY: Please present this juror.

3 THE CLERK: What say for the defense?

4 MR. MAULDIN: Please excuse Ms. Guidry.

5 THE CLERK: Return to your seat please, ma'am.

6 179, Susanne Sanders-Baker.

7 What say for the State?

8 MS. USRY: Please excuse this juror.

9 THE CLERK: Return to your seat please, ma'am.

10 No. 45, Brian Cooper.

11 What say for the State?

12 MS. USRY: Please present this juror.

13 THE CLERK: What say for the defense?

14 MR. MAULDIN: Please seat Mr. Cooper.

15 THE CLERK: Have a seat in the jury box, sir.

16 Alternates, Your Honor?

17 THE COURT: Yes, ma'am. We'll pick two.

18 THE CLERK: 65, Marquia Edwards.

19 What say for the State?

20 MS. USRY: Please present the juror.

21 THE CLERK: What say for the defense?

22 MR. MAULDIN: Please seat Ms. Edwards.

23 THE CLERK: Have a seat in the jury box, ma'am.

24 Number 210, Ryan Tidwell.

25 What say for the State?

1 MS. USRY: Please present Mr. Tidwell.

2 THE CLERK: What say for the defense?

3 MR. MAULDIN: Please seat Mr. Tidwell.

4 THE CLERK: Have a seat in the jury box.

5 That's the two alternates, Your Honor.

6 THE COURT: Any motions regarding jury selection
7 from the State?

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

9 THE COURT: Anything from the defense regarding
10 jury selection?

11 MR. MAULDIN: Not from me, Your Honor.

12 MR. DRYLIE: No, Your Honor.

13 THE COURT: All right. Thank you, ladies and
14 gentlemen.

15 Now, for the balance of the panel, I am -- Judge
16 Early is going to be here this afternoon. I'm going to
17 excuse you to go to lunch. And I would ask you to please
18 be back. And when you return, I'm going to ask you to
19 please return to Courtroom 3B. Okay? 3B. And I would
20 ask, if you would please, make sure that you're in there
21 ready to go at 2:15.

22 Now, Judge Early wants everybody to be prompt, so
23 please be back there in Courtroom 3B at 2:15. And so this
24 panel, ladies and gentlemen, you're excused to go to lunch,
25 and we'll see you back at 2:15 -- excuse me -- at 2:15 in

1 3B. 2:15 3B. Ms. Hinton -- is Ms. Hinton out there?

2 THE JUROR: Samantha Hinton.

3 THE COURT: Ms. Hinton, I need you to step up here
4 real quick.

5 THE CLERK: Ms. Ard, I need to see you real quick.

6 (WHEREUPON there was a bench conference out of the
7 hearing of the jury venire and the court reporter.)

8 THE COURT: All right. Now, folks, I'm going to
9 excuse you to go to lunch as well. But what I'm going to
10 ask, I'm going to have to send you with some further
11 instructions.

12 You are selected on this case, so it's very
13 important that you follow these instructions. And that is
14 this, that you do not talk with anybody about this case.
15 Do not allow anyone to talk with you about this case. When
16 you leave here and go to lunch -- and that's the reason
17 we've given you these juror badges. That signifies -- it
18 lets people know in and around the courthouse that you are
19 a member of a jury panel. And so -- and that should let
20 them know that they are not speak with you about any case
21 that's going on. So if you would do that for me, have no
22 conversation.

23 Also, and this is very important, and that is that
24 you do not attempt to do any private or individual
25 investigation into the case. We used to not have to say

1 that because no one would even think of that. But you
2 know, we live in an age now of computers and Google and all
3 this other stuff. And it's important because you as jurors
4 are going to take an oath to try this case and to judge
5 this case and decide this case based solely on the evidence
6 that is presented in this courtroom. And so it's very
7 important that your decision in this case is not influenced
8 by anything other than what's presented here in this
9 courtroom. So please, I encourage folks, and I tell them
10 all the time, when you leave here to go to lunch, just
11 enjoy your lunch. Kind of put this out of your mind, and
12 when you return, you should not know one more thing about
13 this case than you know right now. Okay?

14 And when you do return, I'm going to ask you to --
15 when you leave here, I'm going to get you follow Tommy out,
16 and he's going to show you where the jury room is. And
17 when you come back, I'm going to ask you to report straight
18 back to that jury room. Okay?

19 And, let me -- Let me talk with the lawyers real
20 quick about something.

21 (WHEREUPON there was a bench conference out of the
22 hearing of the jury venire and the court reporter.)

23 THE COURT: I'm going to get y'all to come back at
24 2:30. Okay? So that gives you a couple of hours there for
25 lunch. And then we'll get started once everybody's

1 reconvened. So if I could get everyone else to remain
2 seated, ladies and gentlemen, I'm going to get y'all to
3 follow Tommy. He'll show you where that jury room is, and
4 then we'll see you back there at 2:30. Okay?

5 (WHEREUPON the jury venire left the courtroom at
6 12:10 p.m.)

7 THE COURT: Mr. Rooks?

8 THE JUROR: Yes, sir?

9 THE COURT: As they go out, I'm going to get you to
10 hang back. I just have a question I need to ask you if I
11 may.

12 THE JUROR: Okay.

13 THE COURT: Well, no, you can stand right here.
14 We'll talk -- it was brought to our attention -- and let me
15 just preface this by saying you've done nothing wrong.
16 Okay? I didn't want you sitting there thinking, Uh-oh.
17 What have I done? You've done nothing wrong. But it is my
18 understanding that one of the members of the solicitor's
19 office is a neighbor of yours.

20 THE JUROR: Yes, sir.

21 THE COURT: Okay. And I think it's Mr. Samellas;
22 is that right?

23 MS. USRY: Yes sir, Your Honor.

24 THE COURT: Okay. And of course he's not involved
25 in this case at all. As a matter of fact, I think he's on

1 vacation this week. But the fact that you -- you know Mr.
2 Samellas; is that correct?

3 THE JUROR: Yes, sir.

4 THE COURT: All right. The fact that you know Mr.
5 Samellas and he's a neighbor of yours and works for the
6 solicitor's office, would that in any way affect your
7 ability to be fair and impartial or in any way affect your
8 decision on this case?

9 THE JUROR: No, sir.

10 THE COURT: All right. You'd be just as
11 comfortable voting in favor of the defense over the State
12 or the State over the defense, regardless of that
13 relationship?

14 THE JUROR: Yes, sir.

15 THE COURT: Okay. All right. Thank you very much.
16 I appreciate that. So if you'll catch Tommy out there,
17 he'll show you where to go, and then we'll see you back
18 there.

19 THE JUROR: Okay.

20 THE COURT: All right. Let me -- are there any
21 motions regarding Mr. Rooks?

22 MR. MAULDIN: Your Honor, I would request that he
23 be excused from the jury panel. Had I known of that
24 relationship, I believe I would have exercised one of my
25 strikes. I believe that we had an abundance of them left

1 that we could have exercised had we known, and I ask that
2 he be excused.

3 THE COURT: Mr. Drylie, do you have a position on
4 that?

5 MR. DRYLIE: I would join in that motion.

6 THE COURT: All right. Ms. Usry, does the State
7 have a position on it?

8 MS. USRY: No sir, Your Honor. They did have an
9 abundance of strikes left, and I understand their position
10 on that.

11 THE COURT: Is there any way we can catch Mr. Rooks
12 before he's gone from the building?

13 THE BAILIFF: The gentleman that was just here?

14 THE COURT: Yeah.

15 THE BAILIFF: He's back in the jury room, Your
16 Honor.

17 THE COURT: All right. Go ahead and just stop him.
18 Get him to hang back. I'm going to excuse him based on
19 your objection. And when I come back, we'll see whatever
20 alternate is -- I believe the rule says in general sessions
21 cases, if you've got two alternates, you have to put them
22 both in a hat and pull one out. So we'll do that when I
23 get back. I'm going to explain to him that he doesn't have
24 to come back for this case, but that he does need to be
25 back at 2:15. Okay?

1 THE BAILIFF: Yes, sir.

2 THE COURT: All right. Now, have we -- Do we have
3 a -- Are we ready to pull an alternate.

4 THE CLERK: I'll fix that.

5 THE COURT: You don't even need to put the names.
6 Just put 1 and 2 because I have them listed as 1 and 2.

7 THE CLERK: I am. That's what I'm going to do.

8 (WHEREUPON the Court pulled a number for the
9 alternate.)

10 THE COURT: All right. I've pulled 1, so Ms.
11 Edwards is the alternate that we move to the main panel,
12 and we'll proceed with it. And we'll just inform her of
13 that when they return before we get started.

14 Now, where do we need to pick up pretrial -- Any
15 motions that I need to address? Any pretrial matters.

16 **PRETRIAL MOTIONS**

17 MS. USRY: Yes, sir. Your Honor, it might be best
18 to go ahead and address the severance motion that Mr.
19 Drylie has filed on behalf of his client, Mr. Capers,
20 first.

21 THE COURT: All right.

22 MS. USRY: We do also -- the State also will have
23 some Jackson v. Denno, a Neal v. Biggers hearing, Your
24 Honor.

25 THE COURT: Okay. All right. Mr. Drylie, I'll be

1 happy to hear from you with regards to your motion for
2 severance.

3 **MOTION FOR SEVERANCE**

4 MR. DRYLIE: I've got a copy of that I can pass up
5 to you.

6 THE COURT: If you don't mind. Thank you. I
7 appreciate that.

8 MR. DRYLIE: It's what I filed last week.

9 (WHEREUPON there was a pause in the proceedings
10 while the Court looked over the motion.)

11 THE COURT: All right. Mr. Drylie, I'd be happy to
12 hear from you, sir.

13 MR. DRYLIE: Thank you, Your Honor. And our point
14 is simple. Essentially, as Your Honor knows, that
15 severance is improper unless the trial right of the
16 defendant is going to be prejudiced, if the balance of the
17 judicial economy and the moving cases that -- Your Honor,
18 it would be our argument that Mr. Haynesworth possesses
19 exculpatory information on Mr. Capers, that the trial of
20 this case together we would be unable to call Mr.
21 Haynesworth as a potential alibi witness for Mr. Capers.

22 We argue that that trial right, the prejudice of
23 that trial right, would trump the judicial economy in this
24 instance, and we ask that Mr. Capers's trial be severed
25 from the trial of Mr. Haynesworth.

1 Now, there is a case, not in South Carolina, that
2 does discuss this. It's Gregory Williams versus the United
3 States. The cite is 884 8 2d 587.

4 THE COURT: I'm sorry, 884.

5 MR. DRYLIE: 8 2d.

6 THE COURT: Okay.

7 MR. DRYLIE: 587. Your Honor, and this is one of
8 the few cases I could find that actually discussed this
9 matter. But they did say that there were factors that you
10 had to consider over judicial economy when balancing
11 whether or not to grant a motion for severance in the event
12 that a codefendant has exculpatory information.

13 They also said that -- because, obviously, one of
14 the concerns of the Court would be, Well, even if I granted
15 severance, there's no way I can -- you can guarantee then
16 Mr. Haynesworth would testify at the next trial if his
17 trial hadn't been already called. And they said that there
18 are ways around that, that the trial judge could -- that
19 there are ways around it, that the analysis that would
20 place that -- that the only way would be to try Haynesworth
21 first, is too simple that there are ways around that.

22 And Your Honor, our argument is that Mr.
23 Haynesworth would testify that Mr. Capers isn't there. And
24 so we'd be losing an alibi witness if the case is tried
25 together.

1 THE COURT: All right. Ms. Usry?

2 MS. USRY: Thank you, Your Honor. The State
3 believes that it's proper to try these two defendants
4 together. Just to give Your Honor some background, because
5 I know that you don't know anything about this case and the
6 facts of this case.

7 This involves a drive-by shooting in Swansea, South
8 Carolina. It involves three defendants. The evidence that
9 the State plans to present is that an eyewitness from the
10 location sees both defendants that are being tried today
11 drive by his house and shoot into the residence.

12 The State plans to present that information as well
13 as information from that same witness and another witness,
14 Ms. Clara Williams, who indicates they saw the two
15 defendants before you today, earlier that morning at
16 Swansea High School, then again at a gas station in
17 Swansea, at the Exxon; that during those two incidents,
18 threats were made in their direction. In other words,
19 threats by the defendants in the presence of each other.
20 One may have made it or the other may have made it, but
21 they were together when the threats were made, were lodged
22 for Ms. Clara Williams. And my other witness was JayQuan
23 Bell, who I was referencing earlier. And they perceived
24 those threats as threats to their safety.

25 They went back to their home at [REDACTED] Avenue in

1 Swansea, and shortly thereafter, they heard some cars drive
2 by. JayQuan Bell looked outside the door of that residence
3 and saw what -- Mr. Haynesworth drive by first and shoot
4 into his house. They all got down. He looked back out the
5 door and saw Mr. Capers, as a passenger in another car,
6 drive by his house. And then more shots were fired at the
7 house, and then those two cars drove off.

8 So very similar evidence, exact same witnesses will
9 be presented. For Your Honor and for the -- I guess
10 knowledge, we have already tried Mr. Dixon this past Fall.
11 He was the driver of the second car. He's on our witness
12 list. You read his name out today, Nehemiah Dixon. He is
13 another coconspirator, and he was convicted of conspiracy
14 in this case. We also plan to have him as a witness in
15 this case and him give statements in regards to being with
16 these two and being with these two at the scene of the
17 crime. So the same witnesses will be involved in both of
18 their cases.

19 Additionally, there's State v. Crowe in South
20 Carolina, it's 258 South -- SC -- Excuse me, 258 SC 258.
21 And that case held that the defendant does not have, as a
22 matter of right, to a separate trial in order to make a
23 codefendant available to testify. And so, Your Honor, we
24 can hand this case up. I only have one copy, and I have
25 made some notes on it. But just the summary at the top of

1 it.

2 THE COURT: Let's see if I can pull that up real
3 quick.

4 MS. USRY: But, in general, the State argues
5 judicial economy. We'd be presenting this exact case
6 pretty much twice, Your Honor. In addition, it would
7 increase the burden on our witnesses and our victims who
8 will have to be here again.

9 THE COURT: That was a South Carolina Supreme Court
10 case?

11 MS. USRY: Yes sir, Your Honor. That's a South
12 Carolina Supreme Court case.

13 THE COURT: All right.

14 MS. USRY: State v. Niles Crowe, C-r-o-w-e.

15 (WHEREUPON there was a pause in the proceedings.)

16 THE COURT: Mr. Drylie, have you had an opportunity
17 to review the State versus Crowe?

18 MR. DRYLIE: I did, Your Honor.

19 THE COURT: All right. It required, obviously, for
20 you to be able to show some prejudice arising out of simply
21 not making the codefendant available. You're going to have
22 to show some prejudice that arises out of that.

23 MR. DRYLIE: It -- Your Honor, just for the record,
24 our argument would be that the Sixth Amendment right to
25 present a complete defense would trump the argument that

1 the State's making, that it is extremely prejudicial to not
2 be able to call one of our alibi witnesses when you're
3 presenting an alibi defense in a case.

4 MS. USRY: Your Honor, just to add -- both
5 defendants have served me with alibi notice, and they've
6 both listed witnesses in addition to each other. And some
7 of those witnesses overlap. For example, Tammy Coleman is
8 on both of their alibi lists. They each have an additional
9 person that the other doesn't have, but they have
10 additional witnesses to this alibi defense in addition to
11 each other. But I also think that goes to the fact that
12 their defenses are not antagonistic in nature. It is the
13 same exact defense.

14 I think that would go further to support that this
15 trial should be moved forward together.

16 MR. DRYLIE: I'd like to respond to that, please.

17 THE COURT: Yeah.

18 MR. DRYLIE: Your Honor, we've never claimed that
19 the defenses are antagonistic, but the simple fact that
20 we're presenting an alibi defense, the more witnesses you
21 have towards an alibi, the more believable it is. You take
22 one of those off, it's my argument that it will prejudice
23 Mr. Capers.

24 THE COURT: All right. I'm going to respectfully
25 deny the motion on that basis. There's been no showing of

1 prejudice. There's been no showing that, were he
2 available, Mr. Haynesworth would either testify at a
3 separate trial or that whatever testimony he would present
4 would exculpate his codefendant. And I believe that's
5 necessary to be shown. It hasn't been shown here, and so
6 I'm going to respectfully deny the motion.

7 MR. DRYLIE: Thank you.

8 THE COURT: Mr. Mauldin, yes sir?

9 MR. MAULDIN: Thank you, Your Honor. I hadn't
10 anticipated making a motion for severance, but in seeing
11 the codefendant's appearance and demeanor today, I feel
12 compelled to. He looks unkempt and disheveled. His
13 attitude, his behavior is laconic and lethargic. Even
14 though it's not a State action, I think that either the
15 State or the Court requiring Mr. Haynesworth to proceed to
16 trial with a codefendant with such an appearance and
17 demeanor could impact his right to a fair trial, and that
18 it may be having a negative impact on the jury, and Mr.
19 Haynesworth would be painted with the same brush as that.

20 And of course, that would be a substantial trial
21 right -- right to a fair trial under the Sixth Amendment of
22 the U.S. Constitution, Article 1 Section 14 of the State
23 Constitution, and under due process grounds of the Fifth
24 and Fourteenth Amendment of the U.S. Constitution and
25 Article 1 Section 3 of the State Constitution.

1 THE COURT: The State have a response?

2 MS. USRY: Your Honor, I don't think that that
3 affects this case in the fact that the facts are the same
4 that we are going to present throughout this case. I don't
5 think it affects us going forward.

6 MR. MAULDIN: And I would note, for the record,
7 Your Honor, that Mr. Capers' appearance is unkempt. His
8 hair is unkempt and disheveled. His demeanor has been
9 laconic and lethargic. For the record, I would note that,
10 that's my observations. I don't know if that's the Court's
11 observations as well, but...

12 THE COURT: Well, I mean, I -- It's hard for me to
13 make any -- I don't know anyone -- any of the -- either of
14 the defendants. The way Mr. Haynesworth's hair is, the way
15 Mr. Capers's hair is, whether that's the way they wear it
16 all the time or whether there's a reason that it's that --
17 I just don't know that this rises to the level of
18 prejudice. The jury's going to be instructed that they are
19 to consider the cases against each defendant separately and
20 that they're separate charges.

21 So I'm going to respectfully deny the motion. I
22 don't believe there's been shown to the level that -- and
23 if there is any prejudice at all, that it interferes or
24 compromises specific trial right or that the jury's verdict
25 would result in a more favorable result if it were severed.

1 So I'm going to respectfully deny that motion.

2 Is there anything further on those issues?

3 As far as -- any further -- I know that we talked
4 about Jackson v. Denno or Neal v Biggers. Do we have
5 anything else from a defense standpoint?

6 MR. MAULDIN: Your Honor, we don't object to the
7 line-up as far as Mr. Haynesworth is concerned. We don't
8 intend to object under the Neal v Biggers issues. I don't
9 believe that Mr. Haynesworth gave any inculpatory
10 statements and I've discussed it with him, and we're
11 prepared to admit that his statements were given with the
12 benefit of Miranda and were given voluntarily without any
13 kind of threats of consequences.

14 MR. DRYLIE: Your Honor, as far as Jackson v. Denno
15 goes, I don't believe that Mr. Capers gave any statements
16 at all whatsoever. So I don't expect we have anything with
17 that issue. There was a photo line-up with Mr. Capers. I
18 do believe they plan to offer in-court identification of
19 him.

20 So, Your Honor, we would request one motion that we
21 have is that the witnesses will be sequestered, with the
22 exception of their lead investigator. That's the only
23 other thing we have for the defense.

24 THE COURT: And I just assume you join him in that?

25 MR. MAULDIN: Yes, Your Honor. And I wanted to

1 clarify what I said before. The benefit of Miranda and the
2 voluntariness, that only applies to any statements that
3 have been provided to us so far in discovery which were the
4 two written statements that were made by him at the Swansea
5 Police Department on January 7th, 2013. Any other
6 statements --

7 THE COURT: If they intend offer anything else --

8 MR. MAULDIN: Yeah, we haven't been provided with
9 any other verbal statements or anything of that nature.

10 THE COURT: Okay. All right. Ms. Usry?

11 MS. USRY: Yes sir, Your Honor. I believe that
12 will clear up our Jackson v Denno and Neal v Biggers
13 hearing. The only other statements that are made, and
14 these aren't law enforcement officers, I just bring them to
15 Your Honor's attention and to the defense counsel in case
16 there are any -- I don't anticipate any Bruton issues in
17 these statements, but in the victim's handwritten statement
18 to officers, JayQuan Bell's, that victim's, handwritten
19 statement to officers -- he makes some statements as to
20 what was said to them at Swansea High School in the parking
21 lot. And the exact quotes, Your Honor, for the record, is
22 "All y'all niggas is dead," and, "You dead too, bitch."
23 Those are the two statements. I just want to bring --
24 those are the other statements that we anticipate that the
25 victim testify to at trial.

1 THE COURT: All right. But nothing to law
2 enforcement.

3 MS. USRY: That's right. Nothing with law
4 enforcement. Yes sir.

5 THE COURT: Other than what you've already shared
6 with Mr. Mauldin and Mr. Drylie.

7 MS. USRY: That's correct. I just want be extra
8 clear on the statements though.

9 MR. MAULDIN: And it's my understanding that the
10 statements that she just alluded to are attributed to Mr.
11 Capers and not Mr. Haynesworth; is that correct?

12 MS. USRY: That would be our understanding as well.
13 Yes, sir.

14 MR. MAULDIN: Okay. All right.

15 THE COURT: All right. And both Mr. Mauldin and
16 Mr. Drylie, you don't have any issues with regards to the
17 statements she's referring to, to law enforcement that
18 you've received; is that correct?

19 And, I'm sorry. Mr. Drylie, your client has not
20 made any statements?

21 MR. DRYLIE: No statements.

22 THE COURT: So that -- okay. But --

23 MR. MAULDIN: Well, Your Honor, my client had
24 provided two written statements. We have no issues with
25 those.

1 THE COURT: Right.

2 MR. MAULDIN: We do know at the last trial, the day
3 before the trial, the officer came up with the supplemental
4 verbal statement that that defendant gave that had not been
5 in discovery before. If anything like that happens here,
6 I'm not agreeing to that.

7 THE COURT: Correct.

8 MR. MAULDIN: And we'd have to have a separate
9 hearing.

10 THE COURT: Correct. The purposes of these
11 purposes in the record, your only understanding is there's
12 two written statements --

13 MR. MAULDIN: That's correct.

14 THE COURT: -- and nothing further.

15 MR. MAULDIN: Or, a two-page written statement.
16 It's either two or three-pages. It's hard to --

17 THE COURT: Well, y'all know what we're talking
18 about.

19 MR. MAULDIN: Yes, sir.

20 THE COURT: Ms. Usry, is there anything else, like
21 a verbal comment or --

22 MS. USRY: There will be nothing further, no
23 further evidence for them two defendants.

24 THE COURT: Okay.

25 MS. USRY: That I'm aware of at this point.

1 THE COURT: All right. All right. Anything
2 further. Anything else we need to take up?

3 MS. USRY: Your Honor, the State would concur with
4 the sequestration of the witnesses. The only other thing
5 that we wanted to touch base was, and the Clerk of Court is
6 aware of this, is that in the first trial we entered -- the
7 State entered some evidence in during the first trial that
8 we'd like to enter in to this trial. But we can, I don't
9 know if we need to take that up on the record, but we
10 can -- but in particular, I talked to Ms. Hope Frick on
11 Friday, and she has brought that evidence today from the
12 past trial.

13 That trial is over. There are no appeals in that
14 case, so it is -- there should not be any further motions
15 or appeals, decisions on that matter. But she didn't know
16 if we needed to make true copies and put them with the last
17 trial so we could use the originals in this trial. For
18 instance, the codefendant's statement, the original, Mr.
19 Nehemiah Dixon's. It was entered in the last trial. I
20 don't anticipate it being entered in this trial, but I may
21 need to use it for impeachment evidence, and I would like
22 to have the ability to use it. Of course, we can use a
23 copy, but I'd like to use the original if possible.

24 THE COURT: All right.

25 MS. USRY: And there's a shell casing that was

1 entered in the last trial.

2 THE COURT: Why don't --

3 MS USRY: But she has a list.

4 THE COURT: Why don't we make true, certified
5 copies of those things --

6 THE CLERK: Yes, sir.

7 THE COURT: -- and enter those into the file on the
8 first case. And then allow the originals to be available
9 for use if -- you know, again, all of this is subject to
10 any objections that may be made.

11 THE CLERK: Yes, sir.

12 THE COURT: Okay.

13 THE CLERK: I've got the file. I've already got
14 certified true -- I've certified copies made.

15 THE COURT: Okay.

16 THE CLERK: I haven't trued them yet.

17 THE COURT: All right.

18 THE CLERK: But I have made copies. The only thing
19 I haven't made a copy of is the bullet. Which I can -- I
20 guess photograph it on a copier.

21 THE COURT: Sure, sure. And these will be, so the
22 originals will be available. Of course, obviously pending
23 any objections to their admissibility, but they'll be
24 available to you.

25 MS. USRY: Yes, sir. That sounds great. Other

1 than that, I'll talk with defense counsel over break, and
2 we'll try to pre-mark exhibits since we've been able to
3 agree on all the hearings I thought we were going to have.
4 So, I'll have a few ready.

5 THE COURT: Okay. All right. Is there anything
6 else that we need to take up just to kind of help us when
7 we get started?

8 MS. USRY: I don't -- I cannot think of anything
9 right now, Your Honor.

10 THE COURT: Okay.

11 MS. USRY: The defense counsel may think of
12 something that I've missed.

13 THE COURT: Well, and here's what I'm going to do.
14 We've got a little bit of extended time because they're
15 coming back at 2:30. So you know, if you want to grab
16 something, a bite, and then come back, I'll be here. So if
17 anything comes up, y'all can let me know --

18 And Brenda, I mean, if you're back around between
19 2:00 and 2:30.

20 THE COURT REPORTER: I'll be here.

21 THE COURT: If we have something, we'll go on the
22 record and take it up.

23 MS. USRY: And, Your Honor, the only scheduling
24 issue that we're going to bring to the Court's attention is
25 that JayQuan Bell, in our case, could not be here today.

1 So we are prepared to present openings and the first two to
2 three witnesses, we may have someone else we can get here,
3 and then we have to break and start tomorrow afternoon as
4 far as our testimonies.

5 THE COURT: Okay. And then again, and I've shared
6 this with y'all. I have to be at the hospital in Florence
7 in the morning for lab work, and then -- so I anticipate
8 that we'll start tomorrow afternoon at one o'clock. I'll
9 have the jury come at one. But we'll do as much as we can
10 this afternoon, and we'll break whenever you get through.

11 MS. USRY: Thank you, Your Honor.

12 THE COURT: All right? If there's nothing else,
13 then we'll be at ease. Like I said, I'm going to grab
14 something and come back. So if y'all need me, I'll be
15 here. And we'll take up anything we need to.

16 (WHEREUPON court was in recess for lunch.)

17 THE COURT: All right. Folks, anything we need to
18 take up before we bring the jury out?

19 MS. USRY: Your Honor, I think that both defense
20 counsels have agreed to States 1 through 14 being
21 appropriate to come in as evidence.

22 THE COURT: All right. Is that correct, gentlemen?

23 MR. DRYLIE: Yes, Your Honor.

24 MR. MAULDIN: Yes, Your Honor.

25 THE COURT: Now, that's States 1 through 14 without

1 objection into evidence? Or just for purposes of marking
2 them.

3 MS. USRY: I was going to see if we could go ahead
4 and put them into evidence. I mean, but I'll obviously lay
5 the proper foundation as they go along, but...

6 THE COURT: Right. Any objection, then?

7 MR. DRYLIE: No, Your Honor.

8 MR. MAULDIN: No, Your Honor.

9 THE COURT: All right. Well, then, State's 1
10 through 14 is in evidence without objection. And again,
11 obviously, Ms. Usry, if you'll lay the foundation for
12 whatever it is.

13 (WHEREUPON State's Exhibits 1 through 14 were
14 entered into evidence.)

15 THE COURT: How about the witnesses, now? We've
16 got the witnesses sequestered?

17 MS. USRY: Your Honor, I informed defense counsel
18 that the State intends to have, in the courtroom, Chief
19 Hayes with Swansea Police Department as our chief
20 investigating officer --

21 THE COURT: Okay.

22 MS. USRY: Matt Martin with our office is here. He
23 is on the witness list, but he's more for reply. He talked
24 to one of the defendants as part of the investigation of
25 our case, so we threw him on there in abundance of caution,

1 but -- and then, our two victims are Ms. Clara Williams,
2 she's here today, and then JayQuan Bell is coming tomorrow,
3 so he'll be in the courtroom tomorrow, but -- if that's
4 okay.

5 THE COURT: Okay. All right. And defense-wise,
6 anyone that might testify, other than the defendants, are
7 they out of the courtroom?

8 MR. DRYLIE: They are, Your Honor.

9 THE COURT: Okay. All right. Well, we're ready
10 for the jury then?

11 Is the State ready?

12 MS. USRY: The State's ready, Your Honor.

13 THE COURT: Is the defense ready?

14 MR. MAULDIN: Yes, Your Honor.

15 THE COURT: All right, folks. We'll get started,
16 then.

17 Please bring the jury in.

18 THE BAILIFF: Yes, Your Honor.

19 (WHEREUPON the jury entered the courtroom at 2:42
20 p.m.)

21 THE COURT: All right, folks. Ms. Edwards? Ms.
22 Edwards, you have been moved from the alternate slot to the
23 main panel. Okay?

24 Ladies and gentlemen, Mr. Rooks was excused from
25 service on this case, and so Ms. Edwards, you --

1 That's the reason we have alternates. So you'll
2 move into the main panel.

3 And Mr. Tidwell, you'll remain as an alternate
4 unless there's a reason for you to be moved to the main
5 panel.

6 Ladies and gentlemen, let me -- just a few things
7 before we get started. If you have -- during the course of
8 the trial, it's important that you're able to hear. So if
9 you have trouble hearing any of the witnesses or the
10 attorneys, if you'll get my attention and let me know, I'll
11 make sure that they repeat it or that they speak up loudly
12 or whatever. Please don't hesitate to let me know if you
13 can't hear what's going on.

14 Also, if at any time during the course of the
15 trial, you know, at any time Mother Nature can call. If
16 Mother Nature calls, you let me know. We'll stop anywhere
17 we are. It doesn't matter if we're right in the middle of
18 a response to a question. We'll stop. We'll take a break,
19 let you go back to the jury room, and we can always start
20 back where we left off. Okay? So don't hesitate, if you
21 become uncomfortable, to let me know that you need a break.
22 And we'll do that.

23 To the extent we have control over the temperature,
24 if you're cold we'll try to get it warmer, if you're hot
25 we'll try to cool it off. But I really -- it's important

1 for everyone that you folks are comfortable. And so
2 there's no way for me to know whether you're comfortable or
3 not unless you let me know, so don't hesitate to let me
4 know if I can do anything to help make you more
5 comfortable.

6 We are going to get started here now. And ladies
7 and gentlemen, before we get started, we're about to begin
8 the trial. I want to share with you some things before we
9 get started.

10 Most people don't have the opportunity that you
11 have this week. And that is to sit in on an actual jury
12 trial. Most folks' experience with regards to jury trials
13 are what they've seen on television or read in books or
14 what they've seen in the movies. And as we all know, those
15 trials are always filled with intense action, riveting
16 circumstances, and a lot of drama. That's Hollywood.

17 Now, during the course of this trial, while any one
18 of those things may occur, what is important for you to
19 understand and to keep in your mind throughout the course
20 of this trial is that this case is not for your
21 entertainment. This trial is a fundamental part of our
22 democracy. It is a search for the truth in an effort to
23 make sure that justice is done between the parties that
24 appear before the Court. Searching for the truth and
25 making sure that justice is done oftentimes can be slow,

1 deliberate, sometimes it can be repetitive. In other
2 words, it's very different from what you may have seen in
3 the movies, read in books, or seen on television.
4 This courtroom is a place of honor. It is dedicated to the
5 protection and to the preservation of citizens' rights
6 through what many have called the greatest justice system
7 ever created.

8 The attorneys that appear before you are advocates
9 for the parties that they represent. But first and
10 foremost, they are officers of the court, sworn to uphold
11 the integrity and the fairness of our judicial system and
12 to help you in your search for the truth. You should
13 expect them to be professional, competent, and ethical in
14 the representation of their clients' interests.

15 Now, in just a moment you're going to take an oath
16 to try this case and to reach a fair and a just verdict.
17 And so you are also expected to be professional,
18 reasonable, and ethical in the performance of your duty.

19 Now, I want to take this opportunity to thank you
20 for your service to our community here in Lexington County.
21 Now, before we go any further, I'm going to ask you to give
22 Ms. Frick your attention. She's going to place you under
23 your oath for your role as jurors in this case. Okay?

24 (WHEREUPON the jury was sworn.)

25 ///

1 **OPENING REMARKS BY THE COURT**

2 THE COURT: Now, ladies and gentlemen, what I'm
3 going to share with you for just a moment here, are some
4 remarks that are not a charge on the law. These are
5 remarks that are basically -- I'm going to go through with
6 you kind of an explanation as to what the procedure is
7 we're going to follow as we go through the course of this
8 trial so that you can better follow what's going on.

9 The defendants, Mr. Haynesworth and Mr. Capers, in
10 this case, are charged by these indictments that I read to
11 you earlier today. And each young man is charged with the
12 offense of attempted murder, possession of a weapon during
13 the commission of a violent crime, and conspiracy. The
14 elements of those charges, I will explain to you later.
15 What is important for you to understand, as I said earlier,
16 is that the indictments in this case are simply the charges
17 by which the case is brought into court, and they are not,
18 in any sense, evidence of any of the allegations that are
19 contained in these indictments.

20 The defendants have pled not guilty to these
21 indictments. And that plea of not guilty places upon the
22 State the burden of proving each of the elements of the
23 indictments beyond a reasonable doubt. It's going to be
24 your duty, ladies and gentlemen, to decide whether or not
25 the State has met that burden. Your purpose as jurors is

1 to find and to determine the facts in this case. You are
2 the sole judges of the facts in this case. If at any time
3 I make any comment regarding the facts, you must disregard
4 those comments. You are to determine the facts from the
5 testimony that you hear from the witness stand and then any
6 other evidence that may be introduced during the course of
7 this trial. It is up to you, ladies and gentlemen, to
8 determine the inferences which you feel may be properly
9 drawn from that evidence. It is especially important that
10 you perform your duty of determining the facts diligently
11 and conscientiously, because ordinarily there is no way
12 that we can correct an erroneous determination of facts by
13 a jury.

14 Now, on the other hand, but with equal emphasis,
15 the same law that makes you the judges of the facts makes
16 me the judge of the law. The law, as given to you by the
17 Court, is the only law that you may consider. You must
18 accept and follow it. Even though you may disagree with
19 it. I cannot tell you what I think about the facts in this
20 case, and you're not allowed to disagree with me about what
21 the law is, or what you think the law should be. Your job
22 is to take the law as I give it to you, and apply it to the
23 facts as you find the facts to be, from the testimony of
24 the witnesses and any other exhibits that are introduced
25 throughout the trial.

1 Now, until I advise you it's okay to begin your
2 deliberations, you are not to discuss this case with
3 anyone, and that includes even amongst yourselves. Now,
4 sometimes juries will look at me a little funny when I say
5 that because they think, Well, I thought we were supposed
6 to discuss it. Well, you are, but you're not to discuss
7 the case at all until all of the evidence has been placed
8 into the record, the attorneys have had an opportunity to
9 address you with their closing remarks, and I've given you
10 the charge of the law. Only then is it appropriate for you
11 to have any discussion at all about the case with anyone
12 else.

13 Now, it's important that throughout this trial,
14 ladies and gentlemen, that you keep an open mind and that
15 you do not decide any issue in this case until all of the
16 parties -- excuse me -- until all of the evidence has been
17 presented, the parties have had an opportunity to address
18 you with their closing remarks, and I've given you the
19 instruction on the law. It is your solemn responsibility
20 to determine the guilt or innocence of the defendants, and
21 your verdict must be based solely on the evidence as it is
22 presented to you during this trial and on the law as I
23 instruct it to you at the close of the trial.

24 Now, in just a moment, I'm going to recognize the
25 solicitor. And the solicitor will have an opportunity to

1 make what we call an opening statement. In that
2 statement -- I don't know who's going to give the opening.
3 Okay?

4 He will explain to you the issues that are involved
5 in this case, or at least what he believes the issues are
6 in this case. Once the solicitor has had an opportunity to
7 make an opening statement, each of the attorneys for the
8 defendants will have an opportunity as well to make an
9 opening statement, if they choose to do so. They are not
10 required to give an opening statement, however.

11 What is important, and what you need to keep in
12 your mind as you listen to the attorneys, ladies and
13 gentlemen, is that what they tell you in their opening
14 statements is not evidence. It is what their contention
15 the evidence in this case will show. They are not under
16 oath. The evidence in this case will be presented to you
17 by the testimony of witnesses who are placed under oath and
18 testify from the witness stand. And then any other
19 exhibits that may come in throughout the course of the
20 trial.

21 Now, during the course of the trial, from time to
22 time, you may hear one of the attorneys say something along
23 these lines, Judge, we've got a matter of law we need to
24 take up with the Court; or, Your Honor, may we approach the
25 bench? During those times, if I can resolve whatever issue

1 it is up here at the bench, I'll do that. But, depending
2 on what the legal issue is, I may have to ask you to step
3 back into your jury room while I take up a matter of law
4 with the attorneys. If I do that, the only reason I would
5 ask you to do that is simply this: When I'm discussing a
6 matter of law with the lawyers, on occasion, it may require
7 for me to make a comment on the testimony or on some of the
8 evidence that has been presented, in connection with a
9 ruling that I'm required to make. As I told you earlier,
10 I'm not going to have any influence over you with regards
11 to the evidence in this case. So to protect you from those
12 comments, I may ask you to step back into the jury room so
13 that I can make the ruling on the law and then bring you
14 back out and let the trial proceed at that point.

15 In determining what the true facts are in this
16 case, ladies and gentlemen, you're going to have to decide
17 whether or not the testimony of the witnesses is
18 believable. It's going to be my role and my job to decide
19 whether certain testimony is allowed into this record at
20 all or not. But once testimony is allowed into this
21 record, whether or not you believe it is solely up for you
22 to decide. In deciding on whether to believe a witness,
23 you have the right to consider the interest that a witness
24 may have, the bias of any witness, the opportunity for that
25 witness to have seen the matters and the things about which

1 that witness testifies, and the way the witness acts on the
2 witness stand. You have the right to consider anything
3 that is in this record that will help you in evaluating the
4 testimony of the witnesses. That means that it's your duty
5 to pay very close attention to the witnesses, observe the
6 witnesses, listen carefully to them, pay close attention to
7 the attorneys and to the Court. Please do not let your
8 thoughts wander, but give strict attention to all of the
9 testimony in this case so that at the end of the trial,
10 after all of the testimony and the evidence has been
11 presented, the lawyers have had an opportunity to address
12 you with their closing remarks, and I've given you the law,
13 after all of that, you'll then be in a position to go back
14 into the jury room, take all this with you, and deliberate,
15 discuss, and decide the case.

16 Now, before I turn it over to the attorneys, let me
17 first inquire of the State, are there any objections or
18 exceptions to the Court's opening remarks?

19 MS. USRY: No sir, Your Honor.

20 THE COURT: Anything from the defendants with
21 regards to the Court's opening remarks?

22 MR. DRYLIE: Nothing from me at this time, Your
23 Honor.

24 MR. MAULDIN: Yes, Your Honor. I'd like to take up
25 a matter outside the presence of the jury.

1 THE COURT: All right. Ladies and gentlemen, let
2 me get you to step back into the jury room briefly. Have
3 no conversation about the case.

4 (WHEREUPON the jury left the courtroom at 2:48
5 p.m.)

6 THE COURT: Yes sir, Mr. Mauldin.

7 MR. MAULDIN: Thank you, Your Honor. Respectfully,
8 I believe in your opening comments to the jury that you
9 mentioned the phrase, justice done for all the parties
10 involved in the case, and I refer to the State v Gregory
11 Daniels 41 SC 251 where similar language was placed in a
12 jury charge, obviously at the end of the case and this is
13 in the opening remarks, but -- That issue was not held to
14 be preserved because the defendant didn't object to that
15 language, but it was held that it could be seen as burden
16 shifting by the jury, and I would object to -- that comment
17 would be a burden shifting kind of comment that it relieves
18 the State of the burden of proof beyond a reasonable doubt
19 when you talk about justice for all the parties involved.

20 And I would say it would be prejudicial because it
21 was one of the first things that the jury heard in this
22 matter, and I would respectfully move for a mistrial.

23 THE COURT: And I'm looking to see that area where
24 it discusses the language. I'm trying to see where it is.
25 I talk about -- was it at the beginning, or --

1 MR. MAULDIN: Well it, yes, Your Honor. It's at
2 the very beginning. You mentioned the search for the
3 truth --

4 THE COURT: It says, "a search for the truth in an
5 effort to make sure that justice is done between the
6 parties before the court."

7 MR. MAULDIN: Yes sir.

8 THE COURT: All right. Well, that's the language
9 that I've taken that comes straight from our Supreme Court
10 in our charges from the Chief Justice Commission on the
11 Profession it recommends that the following charge be given
12 prior to any trial in a case.

13 I remember the Daniels case very clearly because
14 that was my case, and that charge -- I don't think that
15 decision was rendered simply because of the comment that
16 "justice be done between the parties," if I recall that
17 whole charge that I used to do.

18 MR. MAULDIN: Well, it also discussed, basically a
19 verdict for the community. That was separate language that
20 they discussed as well. But I believe that the main
21 opinion ruled that the argument as far as that language is
22 "justice for the parties" was not preserved by the
23 defendant, whereas the consenting opinion by Justice Toal
24 said that it was preserved, however they found it to be
25 harmless there due to the evidence, the overwhelming

1 evidence involved.

2 THE COURT: Well, I'm going to respectfully deny
3 your motion, but I want to note your exception to that.

4 MR. MAULDIN: Yes, sir.

5 THE COURT: As I said, that language has come
6 straight from the Chief Justice's Commission on the
7 Profession, and it's a recommendation from our Supreme
8 Court that this charge is to be given prior to every trial
9 and every case. That's the guidance that I take in using
10 that charge, and so I'm going to respectfully deny your
11 motion, but I'll certainly note your exception to that.

12 MR. MAULDIN: Yes, sir.

13 THE COURT: Okay? And -- anything else? Anything
14 further?

15 MR. DRYLIE: Your Honor, you already denied it, but
16 I was going to put that I join Mr. Mauldin's motion as far
17 as that's concerned, for the record.

18 THE COURT: You just want to join his?

19 MR. DRYLIE: Yeah.

20 THE COURT: Even though earlier you had no
21 objection? You have one now?

22 MR. DRYLIE: I do, Your Honor.

23 THE COURT: All right. It's noted for the
24 record.

25 All right. Let's bring the jury out.

1 (WHEREUPON the jury entered the courtroom at 3:03
2 p.m.)

3 THE COURT: All right. Ladies and gentlemen, thank
4 you for your indulgence there. We recognize the solicitor
5 for your opening statement.

6 **OPENING STATEMENTS**

7 MR. BELL: Thank you, Your Honor. May it please
8 the Court?

9 THE COURT: Yes, sir.

10 MR. BELL: "All a y'all niggas is dead." I hope
11 you can forgive me for using that language, especially
12 right off the bat. But the evidence will show that that's
13 a statement said by one of the defendants in this case. A
14 statement, that the evidence will show, was intended as a
15 threat. A threat that these two brothers did their very
16 best to make good on.

17 January 3rd of 2013 started off as a promising day.
18 Ms. Clara Williams goes to pick up her grandson, Mr. Bell,
19 and they go to Swansea High School to register for classes.
20 Well, after taking care of that, they go to leave. And as
21 they head to the parking lot, they run into a group of
22 individuals. One of those individuals is Mr. Lywone
23 Capers, one of the defendants here today. And that's when
24 that, among other words exchanged, that is when that threat
25 was made.

1 Now, I want to be transparent with you. I want to
2 be honest. I want you to know both sides of the story, not
3 just ours. And with that said, there is some evidence out
4 there that one of the young men that was threatened with
5 that statement, Mr. Bell, he's gotten into little word
6 fights with some of those individuals before. Whether it
7 be on Facebook or text messaging, they've had little
8 arguments, like most people do.

9 However, on this day, he and his grandmother do the
10 smart thing. They keep their mouths shut, they immediately
11 go to the vehicle, and they leave. On the way home, they
12 decide to stop at a gas station. Pump some gas. And we're
13 going to show you a surveillance video from that Exxon.
14 And there's no audio, but we've all heard it before,
15 actions speak louder than words.

16 That video's going to clearly show Mr. Bell and Ms.
17 Williams parked at the gas pump. You're going to see a
18 green Camaro pull up, driven by one of the defendants, Mr.
19 Bilal Haynesworth. Shortly after the Camaro pulls up with
20 Mr. Haynesworth driving, a white SUV pulls in with Mr.
21 Lywone Capers as a passenger.

22 Now, it doesn't take Mr. Haynesworth long to get
23 out of his vehicle and immediately start pointing and
24 gesturing at Ms. Williams' and Mr. Bell's vehicle. They
25 apparently pick up on that pretty quick, as the video will

1 show that they almost immediately leave the gas station.
2 However, as they're leaving, Mr. Capers gets out of the
3 white SUV, gestures to a third car that's now arrived. As
4 he gestures to that car, he points at the victims, Mr. Bell
5 and Ms. Williams, as they drive away.

6 It's at that point in time that that third car that
7 was gestured at then also exits the gas station and follows
8 the same direction as the victims' vehicle leaves. That
9 third car, minutes later, comes back to the gas station,
10 zips up in between the defendants' two vehicles that are
11 parked. It's very obvious that some communication occurs
12 between all the parties, they all get into their vehicles,
13 and they take off in the direction that we see the victims'
14 car leave in.

15 Now, you're going to hear the most frightening part
16 of the story from the people who lived it. You're going to
17 hear it from Mr. Bell and Ms. Williams. Mr. Bell's going
18 to tell you that it wasn't long after they got back at home
19 at [REDACTED] Avenue, that Ms. Williams went to go use the
20 restroom and he was just settling in. Less than 10 minutes
21 go by, or 15 minutes, and he hears vehicles roaring up the
22 street. He sticks his head out the door to see what the
23 commotion is. He sees at least two of those same vehicles,
24 that he saw at the gas station, on the road outside his
25 home.

1 And then, that's when the real terror strikes him.
2 That's when he notices that that green Camaro with Bilal
3 Haynesworth in it, has Bilal holding his arm out the window
4 with a gun. And he fires, twice.

5 Now, JayQuan and the other four individuals inside
6 of the household all hit the floor. And what probably
7 seemed like an eternity later, Mr. Bell decides to poke his
8 head back out the door and see if it's safe. It's at that
9 point he realizes it's not. And he sees the white SUV with
10 Lywone Capers hanging out the side, holding his arm over
11 the top of the vehicle, again with a gun. And he fires,
12 twice.

13 Now, quite literally after the dust settles, one
14 thing is abundantly clear, everyone in that house, all five
15 individuals, are exceedingly lucky to be alive. Because
16 the evidence will show you that one of those bullets fired,
17 entered the little girl's bedroom window that lived at that
18 house, and that it ricochets and lands and finally comes to
19 rest mere feet from where Ms. Williams had just exited the
20 bathroom.

21 I told you earlier I want to be transparent. I
22 want to be honest. So I want to concede some other things
23 to you. The police weren't perfect in this case. The
24 police made mistakes. From typographical errors in the
25 incident reports to misplacing a bullet fragment that was

1 recovered from the scene, they made mistakes. And you're
2 going to hear that from their own mouths when they're on
3 the stand, over the course of the next day or so. And
4 you're also going to be able to tell, when you hear them
5 talk about it, that they're not proud of it. They're not
6 proud that they made some mistakes. But they'll still tell
7 you that they're confident that the evidence they have is
8 still incredibly sufficient for you to rest your
9 convictions upon.

10 Now, I don't want to take up too much more of your
11 time. But I do want to share a short anecdote with you. I
12 was born and raised here in South Carolina. Been here my
13 whole life. And with that, I've been raised around
14 firearms. And one thing that you're always told when
15 you're raised or trained around firearms, is trigger
16 discipline. Now, what trigger discipline is, is it's
17 something my dad's told me a billion times, and if he lives
18 to be a hundred, he's going to tell it a million more.
19 Trigger discipline is the idea that you should never, ever
20 put your finger on the trigger of a gun unless you are one
21 hundred percent certain that you intend to fire at whatever
22 is in front of it.

23 Two shooters. Four shots. This was no mistake.
24 This was not a slip of the trigger. This was attempted
25 murder. This was an attempt to make good on a threat the

1 defendants made earlier in the day, "All a y'all niggas is
2 dead."

3 THE COURT: All right.

4 MR. MAULDIN: Thank you, Your Honor.

5 Ladies and gentlemen of the jury, Bilal Haynesworth
6 and JayQuan Bell used to be friends. They used to be cool.
7 Mr. Bell had been over to Mr. Haynesworth's house. He
8 knows what kind of cars they drive. Sometime in December
9 of 2012, that relationship went sour. It went sour real
10 bad. Mr. Haynesworth started getting threats, not only
11 from Mr. Bell but from a bunch of his cronies, too. Over
12 Facebook, on the phone, calling his mother saying that
13 they're going to beat him up. In a lot worse than what the
14 solicitor mentioned in this threat made in the parking lot.

15 It got to the point where school was going to go
16 back in session on January 3rd, after the Christmas break,
17 that his mother, Tammy Coleman, was so afraid for his
18 safety that she was going to chaperone him to school that
19 day. He drove -- they knew he didn't have a parking place
20 at school, and they knew that he parked in these apartments
21 or over near this Exxon station that is mentioned. And
22 they had threatened that they were going to jump him.
23 So his mother said, Well, let's kind of go on your regular
24 routine. You drive to those apartments, and I'll follow
25 with your brother Lywone and a friend in the car, just to

1 make sure that you'll be all right. And they go there.
2 And except for his mother and these people following, he
3 follows his normal routine.

4 He parks in this parking lot. He goes across to
5 the Exxon, gets a biscuit. His brother walks across with
6 him. And his mother drives across the street there. It
7 starts to drizzle a little bit, so she decides that she's
8 going to drive him the couple blocks to school instead of
9 just letting him walk like he normally does. And they drop
10 him off at school. And then they leave in her Mercedes
11 SUV.

12 While they're leaving and heading back towards
13 these apartments, she gets another call on her phone. And
14 that's it. That's the last straw for her. She just can't
15 take it anymore, with these constant threats over these
16 couple weeks, a month, period of time. She says, I just
17 can't take anymore. I'm going to go withdraw him from
18 school, and we're going to put him a different school to
19 get him away from these people.

20 And that's what she did. She turned around and
21 went to that school. And Bilal, who had a confrontation
22 with one of Mr. Bell's cronies that day in school, was told
23 that he had to go to the Office. And he went to the
24 office, and he found out he was being signed out of school.
25 So his mother takes him in the SUV back to his car at the

1 apartments. And they decide to come back to the gas
2 station.

3 Well, lo and behold, Mr. Bell, who had been making
4 threats against him, is there. And Mr. Haynesworth, you
5 know, just -- he was worried about getting jumped that day.
6 He got in a confrontation at school. His mother made the
7 decision, you know, without asking or telling him that he
8 was going to be moved out of the school with the people
9 that he's with. He was very upset.

10 And he did motion and say some things towards that
11 car. That car went off. And the family tried to do what
12 they normally do, which was that when he was released from
13 school he would go pick up his friend from the Alternative
14 School down the street. Well, he wasn't thinking that he
15 was signed out of school early because of all the stuff
16 going on. And when they get there, they realize, Well,
17 it's too early. He's got school right now. And they get
18 in the car, and they go home, which is 15 minutes away.

19 They didn't go there. His mother didn't drive him
20 in the SUV and chaperone him to a drive-by shooting. He's
21 not guilty of these crimes.

22 THE COURT: Mr. Drylie.

23 MR. DRYLIE: Lywone Capers did not fire the shot
24 that entered into [REDACTED] Avenue on January 3rd, 2013.
25 And the evidence that's going to be presented shows that,

1 not only did Lywone Capers not fire a shot that entered
2 into that house, but he wasn't there that day. And he
3 wasn't involved with anything that happened at that
4 residence.

5 You see, all evidence tells a story. And it helps
6 us to evaluate a case. And over the next few days, you're
7 going to hear from a lot of people from that witness stand,
8 and they're all going to bring in their slants and their
9 biases. They're going to bring in their loved ones, and
10 they're going to tell you certain things.

11 But then there's another type of evidence. There's
12 physical evidence and there's video evidence. And you
13 can't question the video evidence because you're going to
14 see it with your own two eyes. And what you're going to
15 see with your own two eyes on that screen right up there is
16 that, shortly before it's claimed that this drive-by
17 shooting occurred, that Lywone Capers got into a Mercedes
18 SUV at that Exxon gas station out in Swansea with his
19 mother. He's riding in the car with his mother.

20 Now, JayQuan Bell is the main witness that you're
21 going to hear from. And he's going to get right up there,
22 and he's going to look at Lywone. And he's going to say, I
23 saw him hanging out the top of an SUV, firing at my house.
24 Well, what JayQuan's also going to tell you is that he and
25 Bilal used to be cool and that he knew who Lywone was. He

1 may not have known his full name, but he knew him as
2 Bilal's brother. He knew him as Sonny. He had met Ms.
3 Coleman, Bilal's mother and Lywone's mother, before. He
4 had gone over to their house and used to hang out. He's
5 going to tell you that he used to ride around in that same
6 Mercedes.

7 And what's going to happen throughout the course of
8 this case is that the physical and the video evidence that
9 we have isn't going to match up with the story that JayQuan
10 and his family are telling from that witness stand.

11 Now, this whole thing started as a feud between
12 JayQuan and Bilal. And things were said back and forth.
13 There's some of that on Facebook. You've heard about that
14 from the other lawyers. Now, on January 3rd, Lywone went
15 with his mom to sign his brother out of school. And
16 JayQuan's going to tell you that Lywone threatened him.
17 After that, they go to the gas station. And shortly
18 thereafter from the gas station, shots are -- supposedly
19 have rung out at [REDACTED] Avenue.

20 And what you're going to see with your own two eyes
21 is that Lywone is riding in a Mercedes, leaving that gas
22 station right before that happened, with his mother.
23 They're the only two people in that car. There's three
24 cars that you're going to see. You're going to see a green
25 Camaro that has Bilal Haynesworth in it. You're going to

1 see a Nissan that has a gentleman by the name of Nehemiah
2 Dixon in it. And you're going to see a Mercedes that's
3 carrying Lywone's mother and himself in it.

4 Now, there's another type of evidence that doesn't
5 bring in biases, and that's physical evidence. And the
6 physical evidence that we're going to have in this case,
7 that they're going to present, isn't going to match the
8 story that's coming from that witness stand. And at the
9 close of this case, we're going to ask you to return a
10 verdict of not guilty on all counts for Lywone Capers.
11 Thank you.

12 THE COURT: Thank you, sir.

13 Call your first witness.

14 MS. USRY: Thank you, Your Honor. The State calls
15 Clara Williams.

16 CLARA WILLIAMS,

17 HAVING BEEN SWORN, TESTIFIES AS FOLLOWS:

18 THE CLERK: Have a seat up there, Ms. Williams.
19 Once you're seated, speak up loud and clear. State your
20 full name, spelling your last for the record, please.

21 THE WITNESS: Clara Williams. Last name
22 W-i-l-l-i-a-m-s.

23 MS. USRY: Ms. Clara, will you pull that microphone
24 a little bit closer? Thank you.

25 ///

Clara Williams - Direct Examination by Ms. Usry

DIRECT EXAMINATION

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BY MS. USRY:

Q Ms. Clara, where do you currently live?

A Springfield.

Q How long have you lived there?

A About 16 years.

Q And do you know JayQuan Bell?

A Yes.

Q How do you know him?

A I raised him.

Q Is he related to you?

A Yes, my grandson.

Q And did you see JayQuan Bell on January 3rd of
2013?

A Yes.

Q Was he living with you on that date?

A No.

Q Where was he living?

A He was living in Swansea, Roach Avenue.

Q Who was he living with?

A Jennie Childs.

Q And how did you come to see him on January 3rd of
2013?

A Well, I picked him up to enroll him in school.

Q And where did you pick him up from?

Clara Williams - Direct Examination by Ms. Usry

- 1 A Jennie Childs's, Roach Avenue.
- 2 Q And, Ms. Clara, I'm going to show you what's been
3 marked State's Exhibit 1. Do you recognize that?
- 4 A Yes.
- 5 Q What is that?
- 6 A My Ford Focus.
- 7 Q Is this the car you were driving on January 3rd of
8 2013?
- 9 A Yes.
- 10 Q Is it the car you still own?
- 11 A Yes.
- 12 Q And what time did you go pick up JayQuan Bell on
13 January 3rd?
- 14 A Around 8.
- 15 Q And you said, you mentioned you were going to go
16 pick him up to enroll him?
- 17 A Yes.
- 18 Q Did you go take him to be enrolled?
- 19 A Yes. We went. I took him.
- 20 Q How far is Swansea High School from Roach Avenue?
- 21 A About 15 minutes.
- 22 Q And where did you go at Swansea High School to
23 enroll JayQuan Bell?
- 24 A At Swansea High.
- 25 Q Is there a particular building at that location?

Clara Williams - Direct Examination by Ms. Usry

- 1 A No.
- 2 Q It's just the administration office?
- 3 A Right.
- 4 Q And were you able to enroll him?
- 5 A No. They said his mother would have to do it.
- 6 Q So when you were unable to enroll him, what'd you
7 do?
- 8 A Well, we left out. He got some papers, and then we
9 left out.
- 10 Q And where did you go?
- 11 A Well, we was headed towards the car.
- 12 Q And what happened when you were headed towards the
13 car?
- 14 A Some people was walking up and was swearing about
15 something.
- 16 Q Had you seen those people before?
- 17 A Never.
- 18 Q And can you describe how many people?
- 19 A It was about three of them.
- 20 Q And tell me, were they male or female?
- 21 A It was two males and a lady.
- 22 Q How old was the lady? If you know?
- 23 A I would guess, in her thirties? I'm not sure.
- 24 Q Was she old enough to be going to Swansea High
25 School?

Clara Williams - Direct Examination by Ms. Usry

- 1 A No. No.
- 2 Q Older than that?
- 3 A Older than that.
- 4 Q And what about the two males, did they appear to be
5 high school age? Or older?
- 6 A Older? I guess.
- 7 Q But younger than the lady? Or the same age?
- 8 A Yes, younger than the lady.
- 9 Q And you said earlier that they said some things to
10 you?
- 11 A Yes.
- 12 Q How did those words they said make you feel?
- 13 A Threatened.
- 14 Q And when they said those words to you, what did you
15 do?
- 16 A Well, I just got in my car, and we left.
- 17 Q And was JayQuan with you at this time?
- 18 A Yes, he was.
- 19 Q What did he do when they said those words?
- 20 A He didn't say nothing. He just tell me, "Let's get
21 in the car. Let's just go."
- 22 Q And when you left Swansea High School, where did
23 you go?
- 24 A We went back to Jennie's -- Jennie Childs's
25 house --

Clara Williams - Direct Examination by Ms. Usry

- 1 Q Back to Roach?
- 2 A -- on Roach Avenue.
- 3 Q That's the one on Roach Avenue?
- 4 A Right.
- 5 Q What did you do there?
- 6 A Well, I used the bathroom and got myself together
7 and went to the Exxon to get some gas.
- 8 Q So you went back to Ms. Jennie Childs's house?
- 9 A Yes, yes. We went back to Jennie Childs's house.
- 10 Q And then you left from there to go get gas again?
- 11 A We went to get gas. Yes.
- 12 Q And where -- What kind of gas station did you go
13 to?
- 14 A An Exxon.
- 15 Q And Ms. Clara, I'm going to show you what's been
16 marked as State -- It's marked and entered as State's
17 Exhibit 2. Do you recognize that?
- 18 A Yes.
- 19 Q What is this a picture of?
- 20 A That's the gas station, and that's.
- 21 Q Is this a map of the area?
- 22 A A map of the area, yes.
- 23 Q Okay. And so you say that's the gas station?
- 24 A Yes.
- 25 Q Point to me. Point to it for me.

Clara Williams - Direct Examination by Ms. Usry

1 A (Pointing.)

2 Q So you're pointing to the top left-hand corner of
3 the map?

4 A Yes.

5 Q Is that the gas station that you traveled to?

6 A Yes. Yes.

7 Q Okay. And make sure when I'm talking to you, I
8 know I'm close, speak into the microphone, and speak up,
9 okay?

10 And then, in the bottom right-hand corner of this
11 map, what is that a picture of?

12 A Jennie Childs's house.

13 Q Do you see where Jennie Childs's house is located
14 on this map? I'll turn it to you, and then I'll turn it
15 out?

16 A No.

17 Q No, you can't from this location. Maybe, trace to
18 clarify -- trace from -- and I'm going to hold it close to
19 you and then I'll back up for the jury since I know it's
20 hard for you to see. Trace from the Exxon to her house.
21 Maybe that will help you.

22 A Oh. Right there.

23 Q Right there? Okay. Now, I'm going to hold it out,
24 okay? And then, speak up a little bit. And can you trace
25 it again for me? And then, actually, do you mind stepping

Clara Williams - Direct Examination by Ms. Usry

1 down for me?

2 MS. USRY: Your Honor, can I have the witness step
3 down from the stand? I think it might be clearer.

4 THE COURT: That's fine. She just needs to keep
5 her voice up for the court reporter.

6 MS. USRY: Yes, sir.

7 BY MS. USRY:

8 Q Now, Ms. Clara, will you stand right here for me?
9 Okay. Now, looking at this map, just trace again from the
10 gas station, you pointed to this corner up here, how you
11 went.

12 A Gas station, and you turn right here on this road.

13 Q And so you said, "Turn right here on this road"?

14 A Yeah. Turn right here. We came and turned there
15 and right here.

16 Q Thank you, Ms. Clara. You can go back to the
17 microphone. And, Ms. Clara, what you just described for me
18 was the route between Ms. Jennie Childs's house and the
19 Exxon?

20 A Yes.

21 Q Is that correct?

22 A Yes.

23 Q Tell me what happened when you got to the Exxon?

24 A Well, I pumped - was pumping gas, and I saw a
25 Camaro pull up. So when I got through pumping the gas, I

Clara Williams - Direct Examination by Ms. Usry

1 just -- we got in the car and left, went back to the Roach
2 Avenue.

3 Q Well, why was that Camaro -- Why did you notice
4 that Camaro? Why was that significant to you?

5 A Because the guy got out and was pointing and
6 swearing.

7 Q How did that make you feel?

8 A Threatened.

9 Q And what did you do when he was pointing and
10 swearing at you?

11 A I just got in the car and left.

12 Q Was anybody with you?

13 A Yes, JayQuan was with me.

14 Q And what did JayQuan do?

15 A He just said, "Let's go."

16 Q And where did you go?

17 A Back to Roach Avenue.

18 Q So you had just left Roach Avenue and gone to the
19 Exxon --

20 A Right.

21 Q -- and you went straight back there?

22 A We went straight back to Roach Avenue.

23 Q And when you got back to Roach Avenue, tell me what
24 you did.

25 A Well, I went in the house, and I went back to the

Clara Williams - Direct Examination by Ms. Usry

1 bathroom. And about 10 minutes after that I left out the
2 bathroom, and I heard some gun shots.

3 Q You heard gun shots when you got out of the
4 bathroom?

5 A About 10 minutes after I got out of the bathroom.

6 Q What did you do?

7 A I ran in the laundry room and got down.

8 Q How many shots did you hear?

9 A Lots of them. Two. Maybe more.

10 Q So two or more shots?

11 A Yes.

12 Q And when you went in the laundry room, what did you
13 do?

14 A Well, I got down, and I called 9-1-1.

15 Q And did officers respond?

16 A Yes.

17 Q How long did it take them?

18 A Well, Swansea Police was there within 10, 15
19 minutes at the most.

20 Q Ms. Clara, how did you feel when those shots went
21 off into the house you were in?

22 MR. MAULDIN: Objection, Your Honor. It's not
23 relevant.

24 THE COURT: Overruled.

25 ///

Clara Williams - Cross-Examination by Mr. Mauldin

1 BY MS. USRY:

2 Q Ms. Clara, how'd you feel when the shots went off?

3 A Scared.

4 Q Had you experienced anything like this before?

5 A Nope. Never.

6 Q Were you alone in the house?

7 A No.

8 Q Who was with you?

9 A JayQuan was in there, Jennie Childs, and Frankie
10 Lawton, and her little niece.

11 Q So a total of five people were in the house?

12 A Yes.

13 Q Ms. Clara, answer any questions that defense
14 counsel has.

15 **CROSS-EXAMINATION**

16 BY MR. MAULDIN:

17 Q Ms. Williams, do you remember testifying at a prior
18 hearing in this matter in October of last year? A prior
19 trial in this case for Mr. Dixon?

20 A In October.

21 Q Oh, no. I'm sorry. Earlier this year?

22 A Yes. January of last year. In thirteen.

23 Q Do you recall Ms. Usry asked you what the fellow
24 did when he got out of the green Camaro at the gas station,
25 and you said, "He was just looking towards us"?

Clara Williams - Cross-Examination by Mr. Mauldin

1 A No.

2 Q You never testified that he pointed at you or did
3 anything like that, did you?

4 A Yes. He did.

5 Q Okay. Thank you.

6 MR. MAULDIN: Your Honor, I have a copy of the
7 transcript of the matter. May I approach the witness.

8 THE COURT: If you're using it for impeachment
9 purposes.

10 MR. MAULDIN: Thank you, Your Honor.

11 BY MR. MAULDIN:

12 Q On the transcript, when Ms. Usry asked, "And what
13 did he do when he got out," what was your response?

14 A "And we got in the car and left."

15 Q After the question, "What did he do when he got
16 out?"

17 A "He was just looking towards us."

18 Q You didn't say that he pointed at you, did you?

19 A I didn't say that.

20 Q When she asked you if you had any kind of
21 conversation or anything with the person in the other car,
22 you said no; is that correct?

23 A I guess.

24 Q Okay.

25 A I mean, they said something. And he was swearing.

Clara Williams - Cross-Examination by Mr. Drylie

1 Q But you did say there was no conversation at the
2 other hearing?

3 MR. MAULDIN: All right. Thank you. No further
4 questions.

5 **CROSS-EXAMINATION**

6 **BY MR. DRYLIE:**

7 Q Good afternoon, Ms. Williams. Now, after you left
8 that gas station, did you ever see Lywone again that day?

9 A JayQuan.

10 Q After you left the gas station, you never saw
11 Lywone Capers again that day, did you?

12 A No.

13 Q Okay. And at any point during that day, you never
14 Lywone with a gun?

15 A No. I was on the floor.

16 Q Now I'm talking about at Swansea High School or at
17 the gas station, you never saw him with a gun, did you?

18 A Oh. No. No.

19 Q And you didn't see any of the cars that drove by
20 the house, did you?

21 A I didn't see no cars.

22 Q And you can't say for certain how many cars drove
23 by the house, can you?

24 A No.

25 Q Okay. You can't say who was driving them?

Clara Williams - Redirect Examination by Ms. Usry

1 A No.

2 Q You can't say who was riding when them?

3 A No.

4 MR. DRYLIE: No further questions, Your Honor.

5 THE COURT: Anything on redirect?

6 REDIRECT EXAMINATION

7 BY MS. USRY:

8 Q And Ms. Clara, you mentioned that you didn't see
9 any of the cars. What you were doing when the gun shots
10 went off?

11 A I was on the floor in the laundry room.

12 MS. USRY: No further questions, Your Honor.

13 THE COURT: Thank you very much, ma'am. You may
14 step down.

15 MR. MAULDIN: Your Honor, may we take a short
16 break, a five minute break to use the restroom.

17 THE COURT: All right. Ladies and gentlemen,
18 please, if you'll step back into the jury room. Have no
19 conversation about the case, please.

20 (WHEREUPON the jury left the courtroom at 3:39
21 p.m.)

22 (WHEREUPON a brief recess was observed.)

23 THE COURT: All right. Are we ready to come back.

24 MS. USRY: Yes, sir. Your Honor, just for my
25 clarification, I know with the exhibits, we already moved

Clara Williams - Redirect Examination by Ms. Usry

1 them into evidence. Do you want me to do anything on the
2 record formally? When I was just doing the witness, I
3 didn't formally again in front of the jury enter them. I
4 can.

5 THE COURT: Well, they're, I mean, they're in
6 evidence by agreement.

7 MS. USRY: Yes, sir. I just wanted to make sure I
8 didn't miss anything. Okay.

9 THE COURT: No, State's 1 through 14 are in
10 evidence.

11 MS. USRY: Yes, sir. All right. Thank you.

12 THE COURT: So, let's bring the jury out please.

13 (WHEREUPON the jury entered the courtroom at 3:48
14 p.m.)

15 THE COURT: All right. Ladies and gentlemen, thank
16 you for that indulgence. And we will pick up with the
17 State's next witness.

18 MS. USRY: Thank you, Your Honor. The State calls
19 Jennie Childs.

20 JENNIE CHILDS,

21 HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

22 THE CLERK: Now, sit up there please, ma'am. Once
23 you're seated, state your full name, spelling the last for
24 the record, please.

25 THE WITNESS: My name is Jennie Childs. Last name,

Jennie Childs - Direct Examination by Ms. Usry

1 Childs, C-h-i-l-d-s.

2 DIRECT EXAMINATION

3 BY MS. USRY:

4 Q Thank you, Ms. Jennie. Ms. Jennie, where do you
5 currently live?

6 A I currently live in Swansea.

7 Q Where did you live on January 3rd of 2013?

8 A January 3rd, I lived on [REDACTED] Avenue.

9 Q And since January 3rd of 2013, you've moved from
10 that location?

11 A Yes.

12 Q How long did you reside at [REDACTED] Avenue?

13 A About a year.

14 Q Is that location in Lexington County?

15 A Yes.

16 Q It's in the town limits of Swansea?

17 A Yes.

18 Q And on January 3rd of 2013, who lived with you?

19 A Myself, my son Frankie, my daughter Frantia, my
20 niece Tyana, and JayQuan Bell, which is my cousin.

21 Q And do you know Ms. Clara Williams?

22 A Yes.

23 Q How do you know her?

24 A She's JayQuan's grandmother, but she's also my
25 kids' aunt.

Jennie Childs - Direct Examination by Ms. Usry

1 Q So y'all are related?

2 A Yes.

3 Q Now, Ms. Jennie, I'm going to show you what's been
4 marked as State's Exhibit 4. Can you tell me what this is
5 a picture of?

6 A That is the picture of the house that I lived in.

7 Q Is this the house at [REDACTED] Avenue?

8 A Yes.

9 Q So this is where you lived on January 3rd of 2013?

10 A Yes.

11 Q And tell me what the different rooms on this
12 diagram show?

13 A It shows the floor plan of the whole house.

14 Q Okay.

15 MS. USRY: And, Your Honor, permission to let this
16 witness come down from the witness stand and testify.

17 THE COURT: Sure.

18 MS. USRY: Thank you.

19 THE COURT: Yes. Please keep your voice up for the
20 court reporter. Okay?

21 BY MS. USRY:

22 Q Ms. Jennie, just stand over here. And so you can
23 talk towards the court reporter. Okay?

24 A Okay.

25 Q Now, you told me there were multiple people living

Jennie Childs - Direct Examination by Ms. Usry

1 in your house?

2 A Yes.

3 Q Tell me where their bedrooms were located?

4 A Okay. This is my daughter's bed -- Frantia's room,
5 on the front end of the house. My son Frankie's room was
6 also on the front end of the house. Him and JayQuan shared
7 a room. Tyana and Frantia shared a room, master bedroom
8 was mine.

9 Q And where's the front of the house? Which -- You
10 said the front of the house. This is the front of the
11 house?

12 A Yes, this is the front of the house.

13 Q And would you write, "Front," for me on the bottom
14 of this, so it's clear? And when you say, "Front of the
15 house," this is what would've looked out towards Roach
16 Avenue?

17 A The road. Yes.

18 Q And does this diagram correctly show your house?

19 A Yes, all but the -- It's a door leading from the
20 bathroom to the laundry room, and the side door was a
21 little further down.

22 Q Okay. Will you mark just the corrections for me on
23 there then? Where's the door between the laundry room and
24 the bathroom? And then will you show me where the door on
25 the side of the house should have been located? And this

Jennie Childs - Direct Examination by Ms. Usry

1 diagram is not to scale?

2 A No. Correct.

3 Q But it generally shows the outline of your house?

4 A Yes.

5 Q Okay. That's all. You can go back to your seat.

6 Thank you. Thank you, Ms. Jennie. Now, Ms. Jennie, did
7 you have a chance to see Ms. Clara on January 3rd of 2013?

8 A Yes.

9 Q When did you see her?

10 A It was around 9:30. Somewhere up in there. 9:30,
11 10 o'clock that morning.

12 Q What were you doing that morning?

13 A Well, I was off. I was in the bed, and my son told
14 me she was there to take me grocery shopping.

15 Q Do you work?

16 A Yes.

17 Q Where do you work?

18 A At the Shell station in Swansea.

19 Q Is that the other gas station in Swansea? Is that
20 another gas station?

21 A That's another gas station.

22 Q Okay. Because there's also an Exxon in Swansea,
23 correct?

24 A Yes.

25 Q And did you happen to see Ms. Clara when she first

Jennie Childs - Direct Examination by Ms. Usry

1 came by?

2 A No. I was in the bedroom.

3 Q When -- Okay. So you didn't see her when she came
4 by earlier. Were you aware she came by her house earlier?

5 A Yes. My son told me she came by.

6 Q And then when did you -- Then you saw her later?

7 A Yes. After the incident.

8 Q Well, tell me about that. When you -- Who all was
9 in the house that day?

10 A My son Frankie, myself, and my niece Tyana.

11 Q And when you saw Ms. Clara come back to your house,
12 was she with anybody or by herself?

13 A She was with JayQuan.

14 Q And tell me what happened that day?

15 A What you mean, what happened.

16 Q Tell me, you said you saw Ms. Clara, you saw
17 JayQuan. What happened on the morning of January 3rd of
18 2013?

19 A On the morning of January 3rd, Clara came to the
20 house to enroll JayQuan in school. And she was to take me
21 grocery shopping because I was going to let him live with
22 me to finish out this school year. They left to go to the
23 school. I got dressed, they came back, and that's when the
24 incident occurred.

25 Q And so they came back. And you said that the

Jennie Childs - Direct Examination by Ms. Usry

1 incident occurred? Tell me about that. What happened?

2 A They had altercation with some people at the
3 school.

4 MR. MAULDIN: Objection, Your Honor. The basis of
5 her knowledge would be hearsay.

6 MS. USRY: And Your Honor, we can move on from
7 that.

8 THE COURT: All right.

9 BY MS. USRY:

10 Q So, you said -- Just tell me, when they came back,
11 actually what happened? What did you hear and see?

12 A Well, JayQuan was upset, and he was telling my son,
13 you know.

14 Q And without saying what he was saying, what
15 happened after that? He was upset. What happened?

16 A We heard gunshots.

17 Q And where were you when you heard gunshots?

18 A Down the hallway. In front of Frantia's room.

19 Q Now, I'm bringing you State's 4 again. Put an X
20 where you were in the hallway.

21 A (Marking.)

22 Q And that location in the hallway is where you were
23 when you heard gunshots?

24 A Yes.

25 Q Who was with you in that location?

Jennie Childs - Direct Examination by Ms. Usry

- 1 A My son Frankie and Tyana.
- 2 Q What did you do when you heard those shots?
- 3 A Got on the floor.
- 4 Q How many shots did you hear?
- 5 A About two shots.
- 6 Q Is this total? Two shots total? When you hit the
7 floor?
- 8 A Two shots the first round. I guess the first car.
9 And --
- 10 Q You heard two, and then what happened?
- 11 A We got on the floor.
- 12 Q Okay. And then what happened?
- 13 A We heard more shots.
- 14 Q How many more shots did you hear?
- 15 A It was about two more shots.
- 16 Q How did that -- How did you feel at that time?
- 17 A I was scared.
- 18 Q What happened after the shots went by?
- 19 A We called 9-1-1.
- 20 Q Did the officers show up?
- 21 A Yes.
- 22 Q Did any of those shots enter the house?
- 23 A One shot entered into my daughter's room, window.
- 24 Q Did you see the entry point of that shot?
- 25 A Yes.

Jennie Childs - Direct Examination by Ms. Usry

1 Q Where did that shot go? Did you see that?

2 A It came in through the window, hit through the door
3 frame of her room, went into the bathroom, and ricocheted
4 off the wall and dropped down on the floor.

5 Q All right, Ms. Jennie. I'm going to show you
6 what's been entered into evidence --

7 MS. USRY: And Your Honor, beg the Court's
8 indulgence while I attempt to lower the document screen.

9 THE COURT: Can you see those?

10 BY MS. USRY:

11 Q Ms. Jennie, while the document camera is warming
12 up, I'm showing you State's 5 which has been entered into
13 evidence. Do you recognize that?

14 A Yes. That's the window the bullet came in.

15 Q Can you circle where the bullet came in on State's
16 5 for me?

17 A (Marking.)

18 Q And tell me where that window is located.

19 A That's in Frantia's room.

20 Q So when I hold up State's 4 and point to this
21 middle bedroom that says "Frantia's Room" in red, that's
22 the room?

23 A Yes.

24 Q And there's a window in that room?

25 A Yes.

Jennie Childs - Direct Examination by Ms. Usry

1 Q And what we're looking at in State's 5, that's that
2 location?

3 A Yes.

4 Q And now I'm going to show you State's 6. What does
5 that show?

6 A That is her door frame.

7 Q Where is that point towards? In the glare, it's I
8 know a little difficult to see, but that's the door
9 frame -- you said, "Her." Who do you mean by that?

10 A Frantia's. Frantia's door frame.

11 Q That's Frantia?

12 A Yes.

13 Q And then my first -- And then back to my other
14 question?

15 A The glare is the light from the bathroom across
16 the --

17 Q From the hall? So that doorway is -- Where is the
18 person taking this picture standing?

19 A In Frantia's room.

20 Q And then what's the doorway that we see in the
21 background?

22 A That's the bathroom.

23 Q And State's 7, what is that?

24 A The door frame.

25 Q And State's 8, tell me what that is?

Jennie Childs - Direct Examination by Ms. Usry

- 1 A That is the hallway.
- 2 Q And where is that picture taken from?
- 3 A The living room.
- 4 Q So if I hold up State's 4, the living room is this
5 area?
- 6 A Yes.
- 7 Q And that picture is taken in this direction,
8 towards --
- 9 A Yes.
- 10 Q -- is that Frankie's room down there?
- 11 A Frankie's room. Yes.
- 12 Q So is that Frankie's room at the end of the
13 hallway?
- 14 A Yes.
- 15 Q Now, we can kind of see, in State's 8, two door
16 frames. What are -- in the front of the picture. What are
17 those? One on the left and one on the right, really to the
18 front of the picture?
- 19 A The one on the left is Frantia's door frame. The
20 one on the right is my room door frame.
- 21 Q And where are you when the shots go off? In this
22 picture, where would you be?
- 23 A Further down the hall in front of Frantia's room
24 doorway.
- 25 Q Towards where we're standing and looking at this

Jennie Childs - Direct Examination by Ms. Usry

- 1 picture?
- 2 A Yes.
- 3 Q I guess, better said, towards the direction the
4 picture is taken from?
- 5 A Yes.
- 6 Q Okay. And State's 9, what is that? And I can --
7 do you want me to bring it to you?
- 8 A That is the hallway.
- 9 Q That's the hallway? Do you see anything of
10 significance in State's 9?
- 11 A The bullet hole.
- 12 Q I'm going to bring it to you since you have a hurt
13 foot. Can you circle, in State's 9, where you see the
14 bullet hole? And that doorway to the left, where is that
15 headed?
- 16 A That is the bathroom.
- 17 Q And State's 10 is a close-up of State's 9?
- 18 A That's the bullet hole in the bathroom.
- 19 Q And State's 11, what's that?
- 20 A Bullet hole in the bathroom.
- 21 Q Is this the same angle that we just saw the picture
22 from? Let's go back to State's 9?
- 23 A No, ma'am. That's the outside of the bathroom
24 wall.
- 25 Q Okay. And how is that different from State's 11?

Jennie Childs - Direct Examination by Ms. Usry

1 A That's on the inside.

2 Q So it's just on the other side of the wall. Same
3 hole, two different angles?

4 A Yes.

5 Q What does State's 12 represent?

6 A Where the bullet hit the wall but didn't go
7 through.

8 Q Where I'm pointing?

9 A That's the bullet hole. Well.

10 Q Where is that located?

11 A In the bathroom, over the toilet.

12 Q And then, finally, State's 14. What is that?

13 A That is the shell casing on the floor.

14 MS. USRY: May I have the Court's brief indulgence?

15 BY MS. USRY:

16 Q The State's 14, Ms. Jennie, I'm showing you this
17 close-up. Is that what -- Where is that located?

18 A In front of the bathtub.

19 Q It's in your house?

20 A In the bathroom.

21 Q And is that what you -- Did you happen to see that
22 in the bathroom?

23 A I didn't see it, but it's clearly on the picture.

24 Q Who took -- Were you present when these pictures
25 were taken?

Jennie Childs - Direct Examination by Ms. Usry

- 1 A No, ma'am.
- 2 Q But does this -- Do these pictures represent your
3 house?
- 4 A Yes.
- 5 Q And Ms. Jennie, did these pictures that were taken
6 in your house and the holes in your house -- Were these
7 still in your house when you moved out?
- 8 A The holes? Yes.
- 9 Q Were you able to have these fixed?
- 10 A No.
- 11 Q So you saw these every day?
- 12 A Yes.
- 13 Q And just to clarify, Ms. Jennie, I'm showing you
14 State's 2. Do you see the picture in the bottom, when
15 you're looking at it, right hand side of that? That
16 picture?
- 17 A Yes.
- 18 Q What does that represent to you?
- 19 A That was the home that we lived in.
- 20 Q And that's where you lived on January 3rd of 2013?
- 21 A Yes.
- 22 Q That's [REDACTED] Avenue?
- 23 A Yes.
- 24 Q And can you see the window that the bullet went
25 through in this picture?

Jennie Childs - Cross-Examination by Mr. Drylie

1 A Yes. A little bit over the porch.

2 Q Is it the room on the porch?

3 A No, ma'am. On the side of the porch.

4 Q On the side?

5 A Yes.

6 Q Kind of to the right of the door? Or to the left

7 of the door when you're looking at it?

8 A Uh-huh.

9 Q How far is your house from the Exxon in Swansea?

10 A Maybe a half a mile? I'm not sure.

11 Q It's close?

12 A It's close.

13 MS. USRY: No further questions for this witness,

14 Your Honor.

15 THE COURT: Cross?

16 MR. MAULDIN: I have no questions for this witness,

17 Your Honor.

18 MR. DRYLIE: Briefly, Your Honor.

19 **CROSS-EXAMINATION**

20 **BY MR. DRYLIE:**

21 Q Afternoon, Ms. Childs.

22 A Hey.

23 Q You never saw Lywone on January 3rd, 2013.

24 Correct?

25 A No.

Leslie Hightower - Direct Examination by Ms. Usry

1 Q And you never saw any of the cars that drove down
2 the street?

3 A No.

4 Q And you don't know how many cars there were.
5 Correct?

6 A No.

7 Q And you don't know who fired a gun?

8 A No.

9 Q And you don't know who was driving the cars?

10 A No.

11 MR. DRYLIE: No further questions.

12 THE COURT: Thank you, ma'am. You may step down.

13 You may call your next witness.

14 MS. USRY: Thank you, Your Honor.

15 The State calls Leslie Hightower.

16 LESLIE HIGHTOWER,

17 HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

18 THE CLERK: Have a seat right up there. Once
19 you're seated, state your full name and spell your last for
20 the record please.

21 THE WITNESS: Leslie Hightower, H-i-g-h-t-o-w-e-r.

22 DIRECT EXAMINATION

23 BY MS. USRY:

24 Q Thank you, Ms. Hightower. Where do you work?

25 A I'm the principal at Swansea High School in

Leslie Hightower - Direct Examination by Ms. Usry

1 Lexington School District 4.

2 Q How long have you been the principal of that high
3 school?

4 A Since August 2008.

5 Q And in your capacity as principal at Swansea High
6 School, do you have the opportunity to keep the records
7 there?

8 A Yes. I am the person responsible, ultimately, for
9 all student records at Swansea High School.

10 (WHEREUPON State's Exhibit 15 was marked for
11 identification.)

12 BY MS. USRY:

13 Q And I'm going to show you what's been marked as
14 State's Exhibit 15. Do you recognize that document?

15 A Yes. It's a withdrawal transfer form for Lexington
16 School District 4.

17 Q And is that a document that you keep during the
18 normal course of business at Swansea High School?

19 A Yes. It is.

20 Q And who is that withdrawal form for?

21 A It's for Bilal Sincere Haynesworth.

22 Q Does it appear to have been altered in any way
23 since that document was created?

24 A No.

25 Q And it's a total of how many pages?

Leslie Hightower - Cross-Examination by Mr. Mauldin

1 A The transfer form is one page, and then there are
2 some PowerSchool documents, which is our database at
3 Swansea High School in Lexington 4, that are related to the
4 withdrawal.

5 Q And are they, those also are documents that are
6 kept in the regular course of business?

7 A Yes, they are.

8 Q And what date was the withdrawal made on?

9 A The withdrawal was made on -- The date was January
10 4th, 2013.

11 MS. USRY: Beg the Court's brief indulgence.

12 BY MS. USRY:

13 Q Does it say a reason for withdrawal?

14 A It does. The transfer reason says that the family
15 is moving. "Transfer Reason: Moved."

16 MS. USRY: No further questions for this witness,
17 Your Honor.

18 THE COURT: Okay. Questions for this witness?

19 MR. MAULDIN: Yes sir, Your Honor.

20 **CROSS-EXAMINATION**

21 BY MR. MAULDIN:

22 Q On that form, the date is signed under the Guidance
23 Signature of M. Jones. Is that correct?

24 A Yes.

25 Q Did you date that form?

Leslie Hightower - Cross-Examination by Mr. Mauldin

1 A I did not.

2 Q Were you there when Ms. Jones dated that form? Or
3 Mr. Jones?

4 A I was in -- in the presence -- in school, yes, that
5 day.

6 Q Okay. And you're sure it was on the 4th?

7 A Yes. Typically, students -- Sometimes students
8 will come to school, or their parents will come and
9 withdraw. It may take a day or two to actually complete
10 the form and sign off on all the documentation.

11 Q So the parent could have filled out a form and it
12 was not signed or dated until the next day?

13 A Correct.

14 MR. MAULDIN: Okay. No further questions.

15 MR. DRYLIE: Nothing for this witness, Your Honor.

16 THE COURT: Any redirect?

17 MS. USRY: Nothing further, Your Honor.

18 THE COURT: Thank you very much, ma'am. You may
19 step down.

20 THE WITNESS: Thank you.

21 THE COURT: You may step down.

22 MS. USRY: Your Honor, may we briefly approach.

23 THE COURT: Yes, ma'am.

24 (WHEREUPON there was a bench conference out of the
25 hearing of the jury and the court reporter.)

1 THE COURT: Ladies and gentlemen, the -- We've got
2 a witness that the State would be calling next who can't be
3 here until first thing in the morning, so we're going to
4 adjourn for the afternoon. So I'll let you get off work a
5 little early today. And I'm going to let you sleep in
6 tomorrow.

7 What I'm going to need you to do, and this has
8 nothing to do with this case, it has to do with me
9 personally. I have to be in Florence in the morning, and
10 so we're not going to start this trial until one o'clock
11 tomorrow. Okay? So if you would, I'm going to need you
12 back here at 1:00.

13 Now, you're about to go home and be around family,
14 friends, and loved ones, and they're going to be curious as
15 to whether or not you were selected to be on a panel, and
16 you can tell them that you have been selected and that
17 you're involved in a trial. And obviously their next
18 question, they're going to be curious as to what kind of
19 case is it and who's involved and all of these things.
20 They're going to want to know about it. And what you have
21 to do at that point is you have to tell them that you're
22 not allowed to discuss the case at all. Saying something
23 as innocently as, Well, it's a -- it involves a charge of
24 an attempted murder and conspiracy. Even something as
25 innocent as that could possibly illicit a response that may

1 compromise your ability to be fair and impartial.

2 And so I tell folks all the time, you just have to
3 ask anyone who's curious to just be patient. When the
4 trial is over, you can tell them everything they want to
5 know. But until that point, you're not to have any
6 discussion at all about this case. And so please ask them
7 to be patient and understand that you can't -- You can't
8 even tell them what the charge is. You're just not allowed
9 to talk about it at all.

10 I tell jurors all the time, I encourage you to go
11 home and just relax if you can. Get a good meal. You
12 know, take it easy this evening. Try to get a good night's
13 rest. You haven't been here terribly long today, but you
14 may can tell from the short time that you've been here that
15 listening to testimony can sometimes be physically taxing
16 from a mental standpoint. So please, if you can, get a
17 good night's sleep and come well rested when you come back
18 tomorrow.

19 And again, I'll ask you if you would to be in your
20 jury room at one o'clock, by one o'clock tomorrow. And
21 we'll start at that time. Okay?

22 So if everyone will please remain seated, ladies
23 and gentlemen, we'll see you back here tomorrow at one
24 o'clock.

25 (WHEREUPON the jury left the courtroom at 4:27

1 p.m.)

2 THE COURT: All right. Now, the issue with regard
3 to the defendants and their custody. The jury's been
4 sworn, so Mr. Mauldin have you been able to find out
5 anything?

6 MR. MAULDIN: I called my paralegal to contact the
7 bonding company, it's A1 Bonding Company, and she's going
8 to see if they can fax something to the Clerk's Office.
9 I'll check with her again. That was between the two
10 witnesses, Ms. Williams and Ms. Childs. If I could be
11 allowed to call her --

12 THE COURT: Yeah.

13 MR. MAULDIN: -- and get an update.

14 THE COURT: Mr. Drylie, let me just tell you
15 that --

16 MR. DRYLIE: Before -- we got the message too. Ms.
17 Williams called everybody, and they said they wouldn't fax
18 anything over. So -- oh, she is faxing it. She's going to
19 put in writing that A1's going to stay on the bond, so then
20 I don't think there's any need for her to fax anything
21 over.

22 THE COURT: They're not willing to.

23 MR. DRYLIE: They're not willing to.

24 THE COURT: All right. And that's true. They
25 don't have to send anything because, and gentlemen just for

1 your understanding, it's my understanding you were both out
2 on bond?

3 THE DEFENDANTS: Yes, sir.

4 THE COURT: Once a jury is sworn, that extinguishes
5 the bond. That means that the bond has been fulfilled.
6 The obligation of the bondsman has been fulfilled.

7 Now, a bondsman can agree to stay on the bond
8 through the trial if they choose to. They're not obligated
9 to. They don't have to. But if they do agree to, then
10 I'll hear from both sides as to whether or not they object
11 to you remaining on bond. But if they don't agree to stay
12 on the bond, then you're in custody until the end of the
13 trial.

14 THE DEFENDANTS: Yes, sir.

15 THE COURT: So, in Mr. Capers's situation, they're
16 not going to stay on the bond, correct?

17 MR. DRYLIE: My understanding is that it's for both
18 of them. All of this came from Mr. Capers, but Ms.
19 Williams called A1 back because they're both on bond there.

20 THE COURT: Okay. I understand. But you're
21 speaking -- So, we'll get a final on that. But if that's
22 the case, then both young men will be in custody. If they
23 are allowed to stay on bond -- well, if the bonding company
24 is willing to do that or consider it, then I'll consider
25 whether or not to allow them to stay on bond. Okay?

1 All right. Anything before we adjourn? Mr.
2 Mauldin?

3 MR. MAULDIN: I don't know if you could give us a
4 couple of minutes on the issue. My paralegals seem to --
5 should hopefully be talked with A1 and may have indicated
6 the opposite. They were going to fax something to the
7 clerk's office. She's on her way here to see if it's
8 arrived or not.

9 THE COURT: Yeah, I'll give you -- I'll be here for
10 a little bit.

11 MR. MAULDIN: Yes, sir.

12 THE COURT: Anything else?

13 MS. USRY: The only thing the State would ask is
14 that our witnesses that testified today could be released.

15 THE COURT: Any objection?

16 MR. MAULDIN: No, Your Honor.

17 THE COURT: All right. They're relieved of their
18 obligation under the subpoenas.

19 MS. USRY: Thank you.

20 THE COURT: All right. Then court will be in
21 recess until one o'clock tomorrow. But I'll hang around a
22 little bit, guys.

23 MR. MAULDIN: Thank you, Your Honor.

24 (WHEREUPON Court was in recess for the day.)

25 ///

1 TUESDAY, MAY 20, 2014

2 THE COURT: All right. Is there anything we need
3 to take up before we bring the jury out?

4 MS. USRY: Nothing from the State, Your Honor.

5 THE COURT: Anything from the defense?

6 MR. DRYLIE: Not from me, Your Honor.

7 MR. MAULDIN: No, Your Honor.

8 THE COURT: All right. Thank you, gentlemen.

9 We'll bring the jury out.

10 (WHEREUPON the jury entered the courtroom at 1:17
11 p.m.)

12 THE COURT: All right. Ladies and gentlemen,
13 welcome back. I hope everyone had a good evening and
14 morning, and if you recall when we adjourned yesterday we
15 were on the State's case. They were presenting their
16 witnesses and their case, so we'll resume now with the
17 State's case.

18 Ms. Usry, you may call your next witness.

19 MS. USRY: Thank you, Your Honor. The State calls
20 JayQuan Bell.

21 THE COURT: Mr. Bell, if you'd please come around
22 and be sworn, sir.

23 JAYQUAN BELL,

24 HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

25 THE CLERK: Have a seat please, sir. Once you're

JayQuan Bell - Direct Examination by Ms. Usry

1 seated, speak up loud and clear. State your full name,
2 spelling your last for the record, please.

3 MR. BELL: JayQuan Bell. Spelling the last,
4 B-e-l-l.

5 DIRECT EXAMINATION

6 BY MS. USRY:

7 Q Thank you, JayQuan. JayQuan, what area do you
8 currently live in?

9 A Spartanburg.

10 Q And how long have you been in the Spartanburg area?

11 A I just recent moved down there.

12 Q What are you doing there?

13 A I work down there.

14 Q Where do you work?

15 A At this plant called MS.

16 Q And what do you do there?

17 A I make the seats for BMWs.

18 Q And where did you grow up?

19 A Springfield.

20 Q Who'd you grow up with?

21 A My grandma.

22 Q Who is that?

23 A Clara Williams.

24 Q Clara Williams?

25 A Yes, ma'am.

JayQuan Bell - Direct Examination by Ms. Usry

1 Q Just make sure you're talking into the microphone.

2 Okay?

3 A Yes, ma'am.

4 Q And how long -- You grew up in Springfield. How
5 long did you live there?

6 A Twenty years.

7 Q Where did you live on January 3rd of 2013?

8 A Swansea, South Carolina. [REDACTED] Avenue.

9 Q And who did you live with?

10 A My Aunt Jennie.

11 Q Was anyone else in the house when you lived with
12 your Aunt Jennie?

13 A Yes, ma'am.

14 Q Who's that?

15 A Myself, Frankie Lawton, Jennie, Frantia, and my
16 little cousin, Tyana.

17 Q You say little cousin, Tyana. What was her full
18 name?

19 A I'm not sure what her full name is.

20 Q But you called her Tyana? How old was she?

21 A Two at the time.

22 MR. DRYLIE: Objection, Your Honor. I don't think
23 there's any relevance in this.

24 THE COURT: Solicitor, any relevance to this.

25 MS. USRY: Your Honor, that's who's in the -- lives

JayQuan Bell - Direct Examination by Ms. Usry

1 in the house and who's in the house on -- later on January
2 3rd of 2013.

3 MR. DRYLIE: Your Honor, can we approach.

4 THE COURT: Yeah.

5 (WHEREUPON there was a bench conference out of the
6 hearing of the jury and the court reporter.)

7 THE COURT: All right. Overruled. You may ask the
8 question.

9 BY MS. USRY:

10 Q And how -- I believe the last question I asked you
11 was how old Tyana was.

12 A I think she was two at the time.

13 Q And on January 3rd of 2013 did you have the
14 opportunity to see your grandmother, Clara Williams?

15 A Yes, ma'am.

16 Q When did you see her?

17 A Early that morning.

18 Q And why did you see her?

19 A She came down to enroll me back in Swansea.

20 Q Back into Swansea, where?

21 A Swansea High School.

22 Q Why did she do that?

23 A Because I wanted to graduate with the school I
24 started with.

25 Q Where were you going to school previous to this?

JayQuan Bell - Direct Examination by Ms. Usry

- 1 A Hunter-Kinard-Tyler High School.
- 2 Q I'm sorry. Can you say that again? I didn't
3 understand you?
- 4 A Hunter-Kinard-Tyler High School.
- 5 Q Where's that?
- 6 A In Neeces.
- 7 Q Had you previously gone to school at Swansea High
8 School?
- 9 A Yes, ma'am.
- 10 Q And so, January 3rd, what was the purpose of going
11 to Swansea High School?
- 12 A To enroll.
- 13 Q Who went with you?
- 14 A My grandmother.
- 15 Q And when you went that morning -- I'm showing you
16 State's Exhibit Number 1. Do you recognize that?
- 17 A Yes, ma'am.
- 18 Q What is in State's Exhibit Number 1?
- 19 A My grandmother's car.
- 20 Q That's your grandmother's car?
- 21 A Yes, ma'am.
- 22 Q Was that the car that you rode in that day?
- 23 A Yes, ma'am.
- 24 Q And tell me what happened next?
- 25 A Well, we was leaving out because they told her that

JayQuan Bell - Direct Examination by Ms. Usry

1 she couldn't enroll me. My mom would have to do it.

2 Q Okay, let me stop you there. Who told you that you
3 couldn't be enrolled?

4 A The lady at Swansea High.

5 Q And why couldn't you be enrolled?

6 A Because my grandmother wasn't -- she's my grandma,
7 but she's not my mother. So they said my mom had to do it.

8 Q And what time of day was this?

9 A Like morning. It was 8 o'clock, like 8:30.

10 Q And after the lady told you, you couldn't enroll,
11 where did you go?

12 A We was walking out toward the cars to go back to
13 Jennie house.

14 Q Tell me what happened next?

15 A Well, as we was walking out toward the car, I
16 noticed a Mercedes truck pulling into the parking lot, and
17 Bilal's mama and his brother and Nehemiah was coming out
18 the car. And some words were, you know, said.

19 Q Okay. Let me ask you some questions about that.
20 Had you, did you know Bilal, his mother, his brother, and
21 Nehemiah before?

22 A Yes, ma'am.

23 Q Tell me how you knew Bilal Haynesworth?

24 A From school.

25 Q When in school?

JayQuan Bell - Direct Examination by Ms. Usry

- 1 A I met him in middle school.
- 2 Q Were you currently, on January 3rd of 2013, going
3 to school with him?
- 4 A No, ma'am.
- 5 Q Because you were still enrolled in another school?
- 6 A Yes, ma'am.
- 7 Q And see -- you new that -- And again, I'm sorry.
8 You told me when -- When did you first meet Bilal?
- 9 A In middle school.
- 10 Q And did you previously know his mother?
- 11 A You know when I started hanging with him, I did.
12 When I went to they house.
- 13 Q So you had a chance to meet his mother before?
- 14 A Yes, ma'am.
- 15 Q And what was her name?
- 16 A Princess.
- 17 Q That's -- Is that her full name?
- 18 A I'm not sure. That's what I know her by.
- 19 Q You knew her by "Princess?"
- 20 A Yes, ma'am.
- 21 Q And had you seen his brother before?
- 22 A Yes, ma'am.
- 23 Q When had you see his brother before?
- 24 A When I went to they house and he had a little
25 gathering over there.

JayQuan Bell - Direct Examination by Ms. Usry

1 Q So you were familiar with these people before the
2 morning of January 3rd of 2013?

3 A Yes, ma'am.

4 Q And you also mentioned Nehemiah Dixon. Did you
5 know Nehemiah Dixon before this date?

6 A Yes, ma'am.

7 Q How did you know him?

8 A I also met him in middle school.

9 Q And, JayQuan, can you tell me if Bilal Haynesworth
10 is in this courtroom today?

11 A Yes, ma'am.

12 Q Can you point him out to me?

13 A Do you want me to stand up.

14 Q No. Just from where you're seated.

15 A (Pointing.)

16 Q Thank you. Can you tell me what he's wearing?

17 A Like a navy blue Tommy Hilfiger shirt.

18 Q And you're looking at the table, it's the second
19 person from the right? Is that who you're looking at? And
20 you said you were familiar with his brother. Correct?

21 A Yes, ma'am.

22 Q What did you know his brother as?

23 A By his name?

24 Q At this time, at January 3rd of 2013, what did you
25 know his brother as? Yes, his name?

JayQuan Bell - Direct Examination by Ms. Usry

- 1 A Sonny.
- 2 Q That's what -- Did you know his full name?
- 3 A No, ma'am.
- 4 Q But you knew who he was?
- 5 A Yes, ma'am.
- 6 Q And do you see that person that you knew as "Sonny"
- 7 in this courtroom today?
- 8 A Yes, ma'am.
- 9 Q Can you point him out to me? And can you tell me
- 10 what he's wearing?
- 11 A A blue-jean jacket.
- 12 Q And when you look at that table to the left of the
- 13 courtroom, he's the last person on the left. Is that
- 14 correct?
- 15 A Yes, ma'am.
- 16 Q And JayQuan, you said you knew these people before.
- 17 Had you had any confrontations with them before?
- 18 A No, ma'am.
- 19 Q Had you had any arguments with them before?
- 20 A No, ma'am.
- 21 Q Had you had any words with them before?
- 22 A No, ma'am.
- 23 Q And on this date, tell me what happened after you
- 24 saw them in the parking lot?
- 25 A Well, after we saw them in the parking lot, we left

JayQuan Bell - Direct Examination by Ms. Usry

1 to go back to Jennie house.

2 Q Well, and I kind of jumped ahead. There in the
3 parking lot, what happened? You mentioned it before, but
4 tell me again. What happened in the parking lot when you
5 saw them?

6 A Well, when they was entering the school, Bilal
7 mama, she was saying some stuff, but it wasn't really much
8 of a threat. And Mr. Capers, he started, you know, going
9 off or whatever.

10 Q And who's Capers to you at this time?

11 A Who is he?

12 Q What did you know him as on January 3rd of 2013?

13 A Sonny. And well, he started mentioning -- or
14 saying some little things. His words were threats, so I
15 had to make sure that my grandma was safe getting in the
16 car before, you know, I was.

17 Q And what, do you recall what exactly he said to
18 you?

19 A Yes, ma'am.

20 Q And can you tell me what he said to you that
21 morning?

22 A The exact words?

23 Q Yes, please?

24 A Well, he was like, "All you niggas are dead," and
25 he looked at my grandma and was like, "Bitch, you dead,

JayQuan Bell - Direct Examination by Ms. Usry

1 too."

2 Q When he said the first statement, "All you niggas
3 is dead," who did he look at?

4 A Me.

5 Q Who did you perceive, at that time, the threat to
6 be addressed to?

7 A Me.

8 Q And the next statement that he made to you, or that
9 he made -- Who was that addressed to?

10 A My grandma.

11 Q And did you say anything back at this time?

12 A No, ma'am.

13 Q What did you do?

14 A Get in the car after she got in the car.

15 Q Is there any reason for them to make the statements
16 this morning to you?

17 A No, ma'am. I was shocked when I saw the car?

18 Q And so, where did y'all go when y'all left that
19 location?

20 A Back to Jennie's house.

21 Q And what'd you do there?

22 A Well, when we got there, I ran in real quick to
23 tell them that my grandma was going to get gas, but I told
24 them what had took place at school, so I didn't want her to
25 go to the gas station by herself. So I ran in real fast

JayQuan Bell - Direct Examination by Ms. Usry

1 and ran out.

2 Q And so when y'all -- And did y'all leave and go to
3 the gas station?

4 A Yes, ma'am.

5 Q What gas station did you go to?

6 A The Exxon.

7 Q Now, JayQuan, I'm going to show you what's been
8 marked as State's Exhibit 2. Do you recognize that?

9 A Yes, ma'am.

10 Q What does that show -- Try to talk into the
11 microphone, I'm pulling you away from it a little bit.
12 What do you recognized this as?

13 A The store.

14 Q The store?

15 A Yes, ma'am. That's Jennie's house.

16 Q Okay. So when you were pointing to the store, is
17 that the gas station in the picture?

18 A Yes, ma'am.

19 Q Is that the gas station you went to this morning of
20 January 3rd of 2013?

21 A Yes, ma'am.

22 Q And then you said Jennie's house. Is that the
23 address at [REDACTED] Avenue?

24 A Yes, ma'am.

25 Q And on the big picture -- I'm going to hold it a

JayQuan Bell - Direct Examination by Ms. Usry

1 little close to you and then pull it back out. Do you see
2 the gas station and Roach Avenue?

3 A Yes, ma'am.

4 Q Can you trace your finger the route you took from
5 Jennie's house to the gas station?

6 A (Tracing.)

7 Q And then to the gas station up here?

8 A Yes, ma'am.

9 Q What did you do at the gas station when you got
10 there?

11 A Well, I was watching my grandma pump her gas, and
12 then that's when I noticed the truck come by us that we saw
13 at school. So I was telling her to get in the car. And
14 then, I'd say a couple seconds later, the green Camaro
15 pulled up.

16 Q When you went to the gas station -- I'm showing you
17 State's Exhibit 3. Is that where you went? The same
18 location?

19 A Yes, ma'am.

20 Q And can you circle for me on State's Exhibit 3
21 where you parked?

22 A (Marking.)

23 Q Were you in the same car that you went to earlier
24 that day?

25 A Yes, ma'am.

JayQuan Bell - Direct Examination by Ms. Usry

1 Q Or that you went to the school in earlier that day?

2 A Yes, ma'am.

3 Q And it was the blue car in State's 1?

4 A Yes, ma'am.

5 Q And at the gas station, you said you were pumping
6 gas. What happened?

7 A Well, when they pulled up, my grandma got in the
8 car. And we just drove off, but we noticed them getting
9 outside the cars. But we just left and went back to
10 Jennie's house.

11 Q What did you see pull up? Describe the cars?

12 A The first car that pulled in was a green Camaro.
13 And then right after that one, the green Mercedes, I mean,
14 excuse me, the grey Mercedes truck.

15 Q How are you familiar with the green Camaro?

16 A I seen him when he comes through my baby mama
17 neighborhood a couple times.

18 Q And who's he?

19 A Bilal.

20 Q So you were familiar with the green Camaro before
21 this date?

22 A Yes, ma'am.

23 Q And who did you know to normally drive the green
24 Camaro?

25 A Bilal.

JayQuan Bell - Direct Examination by Ms. Usry

- 1 Q And then tell me again, the second car was what?
- 2 A That grey Mercedes truck.
- 3 Q And how did you know that grey Mercedes truck?
- 4 A When I've been to his house a few times.
- 5 Q Whose house?
- 6 A Bilal.
- 7 Q And who did you know that owned the grey Mercedes
- 8 truck?
- 9 A His mom.
- 10 Q Had you seen that truck before you saw it at the
- 11 gas station that morning?
- 12 A Yes, ma'am.
- 13 Q Where did you see it?
- 14 A I saw it earlier that morning at school, and like I
- 15 said before when I used to go to they house.
- 16 Q You saw the grey truck at school and at the Exxon?
- 17 A Yes, ma'am.
- 18 Q Did you see -- you said you saw the cars. Now, my
- 19 next question is, did you see any people at the gas
- 20 station?
- 21 A Yes, ma'am.
- 22 Q And who did you see?
- 23 A Bilal and Mr. Capers.
- 24 Q And describe that for me?
- 25 A Like, what you mean? I don't understand the

JayQuan Bell - Direct Examination by Ms. Usry

1 question.

2 Q And it wasn't clear. When you saw Bilal, where did
3 he come from?

4 A Across the street.

5 Q And -- walking or driving?

6 A Driving.

7 Q And what was he driving?

8 A The green Camaro.

9 Q And did, did he stay in his car when you saw him?
10 Or did he get out?

11 A He got out.

12 Q And what did he do when he got out?

13 A We drove off.

14 Q That's what you did. And what did he do?

15 A Just throwing little hand gestures like.

16 Q Did he say anything to you?

17 A Well, he was yelling, but we couldn't really make
18 out the words he was saying.

19 Q And you said you saw some hand gestures?

20 A Yes, ma'am.

21 Q Did that, if anything, mean anything to you?

22 A Basically, telling me to stop, turn-around.

23 Q And then you said you saw Capers. And who's Capers
24 to you?

25 A He's nothing to me.

JayQuan Bell - Direct Examination by Ms. Usry

- 1 Q I mean, but, what's like -- On January 3rd, 2013,
2 what did you know him as?
- 3 A Sonny.
- 4 Q And when you saw him, what was he doing?
- 5 A Basically the same thing Bilal was doing.
- 6 Q And what car did he get out of?
- 7 A A grey Mercedes truck.
- 8 Q The grey Mercedes truck? Is that what you're
9 saying?
- 10 A Yes, ma'am.
- 11 Q Or the green -- Okay, I just wanted to clarify.
12 And so you left the location?
- 13 A Yes, ma'am.
- 14 Q They both got out of their cars, and y'all got in
15 your car and left?
- 16 A Yes, ma'am.
- 17 Q And who else was with you besides your grandmother?
- 18 A That's it, just me and my grandma.
- 19 Q And where did you go?
- 20 A Back to Ms. Jennie's house.
- 21 Q How far is that distance, from your house -- excuse
22 me -- from the Exxon to -- and I'll hold -- How far is that
23 distance from the Exxon to Ms. Jennie's house?
- 24 A Like five minutes.
- 25 Q So it's a pretty quick drive?

JayQuan Bell - Direct Examination by Ms. Usry

1 A Yes, ma'am.

2 Q And while we're talking about distances, how far is
3 your house from Swansea High School? Or where you were
4 living that day, Ms. Jennie's house?

5 A Driving, I'd say about the same distance.

6 Q About five minutes?

7 A Yes, ma'am.

8 Q And when you went back to [REDACTED] Avenue, what
9 happened?

10 A Well, when we walked in the house, my grandma went
11 to use the bathroom, and we was just talking about the
12 incident that already took place at school, and then we
13 noticed -- Well, we heard engines roaring. So we, I kind
14 of opened the door -- It sound like cars coming past. And
15 when I opened the door, I noticed the green Camaro, Bilal.
16 I closed the door when I saw the gun and told everybody to
17 get down.

18 Q Okay. So you said you heard the cars. How did you
19 hear them?

20 A The engines.

21 Q And what did you do when you heard the cars?

22 A Opened the side door.

23 Q And tell me what you saw?

24 A The green Camaro.

25 Q Describe that for me. What did you see about the

JayQuan Bell - Direct Examination by Ms. Usry

1 green Camaro?

2 A When I opened the door, he had his -- Bilal had his
3 arm hanging out the window with his gun, so I just closed
4 the door.

5 Q Where was Bilal in the car?

6 A The driver seat.

7 Q And what did you see next? Or what happened next?

8 A All I saw was the gun, and I just closed the door
9 and told my grandmother to get down. That's when the shots
10 was fired.

11 Q Do you know, if you do, how many shots were fired?

12 A If I recall, I think like two.

13 Q And what happened after that?

14 A It got quiet for a minute, so I got up and opened
15 the side door again. That's when I noticed the grey
16 Mercedes truck pulling up and Mr. Capers hanging over the
17 top with his gun. So I told everybody to get down again,
18 and then shots was fired.

19 Q And who was in the grey Mercedes truck?

20 A Mr. Capers.

21 Q Was anybody else in that car?

22 A Mr. Dixon.

23 Q And when had you see Mr. Dixon earlier that day?

24 A At the school house.

25 Q And where was Mr. Dixon located in that truck?

JayQuan Bell - Direct Examination by Ms. Usry

- 1 A The driver seat.
- 2 Q Did he have a gun?
- 3 A No, ma'am. He didn't.
- 4 Q Who had the gun in that car?
- 5 A Mr. Capers.
- 6 Q And how was he shooting that gun?
- 7 A Across the top of the hood.
- 8 Q And when you saw that, what'd you do?
- 9 A When I saw the gun, I just closed the door again
10 and told everybody to get back down. That's when the shots
11 was fired.
- 12 Q Did you get down?
- 13 A Yes, ma'am.
- 14 Q And what happened next?
- 15 A Well, it got quiet again, so I checked the scene
16 out. That's when I spotted the third car, and they was
17 leaving out.
- 18 Q And describe that for me. What kind of third car?
- 19 A It was like a tan, I think it was a Nissan. It was
20 kind of dirty like it just came off a muddy road.
- 21 Q And which way were they going?
- 22 A They was leaving out of the cul-de-sac, like
23 straight up -- I have to show you.
- 24 Q Okay. And that's -- you mentioned a cul-de-sac?
- 25 A Yes, ma'am.

JayQuan Bell - Direct Examination by Ms. Usry

1 MS. USRY: Actually, Your Honor, may the witness
2 step down from the stand, please.

3 THE COURT: Yes, ma'am.

4 MS. USRY: That may be easier.

5 THE COURT: Just need to keep his voice up.

6 MS. USRY: Yes, sir.

7 BY MS. USRY:

8 Q Stand over here, and look towards me. Okay. Now,
9 you said there is a cul-de-sac. Describe that for me.
10 Where is that?

11 A Right here.

12 Q Right here? And is this road Roach Avenue?

13 A Yes, ma'am.

14 Q In fact, it's labeled Roach Avenue on this map,
15 correct?

16 A Yes, ma'am.

17 Q Okay. And when you first saw -- When you saw the
18 cars, you said that they were leaving, which way were they
19 headed?

20 A Out this way.

21 Q Out?

22 A Yes, ma'am.

23 Q When you go where this house -- where Ms. Jennie's
24 house is located, is there any way once you come into the
25 neighborhood to leave?

JayQuan Bell - Direct Examination by Ms. Usry

1 A No, ma'am.

2 Q So you said a cul-de-sac. What does that mean to
3 you?

4 A A dead-end.

5 Q A dead-end? And can you point to the dead-end?

6 A (Pointing.)

7 Q So when you heard the cars and saw the gunshots,
8 which way were they headed?

9 A This way, towards the house.

10 Q Towards this -- Out? Is that what you said? Or
11 the house?

12 A The house.

13 Q Okay. Where were they coming from?

14 A The green Camaro.

15 Q I'm sorry. What direction?

16 A Are you asking from the left or right?

17 Q I guess I'm asking, which way were the cars headed.
18 Like, were they driving this way, towards the end of the
19 cul-de-sac? Or back out?

20 A Back out.

21 Q Back out?

22 A Yes, ma'am.

23 Q You can go back to you seat. Thank you.

24 A You're welcome.

25 Q What's that area of the neighborhood called,

JayQuan Bell - Direct Examination by Ms. Usry

1 JayQuan? Where Roach Avenue is located, does it have a
2 nickname?

3 A The Bottom.

4 Q And JayQuan, when you saw the green Camaro with
5 Bilal Haynesworth in it shooting out of the driver's side
6 door, are you a hundred percent sure that, that's Bilal
7 Haynesworth in the driver's seat with a gun?

8 A Yes, ma'am.

9 Q Is there any doubt in your mind that, that's what
10 you saw?

11 A No, ma'am.

12 Q That you saw him in that car?

13 A No, ma'am.

14 Q And when you saw the grey Mercedes with Mr. Capers
15 shooting over the top of the car and Mr. Dixon driving, are
16 you a hundred percent sure that, that's what you saw?

17 A Yes, ma'am.

18 Q Is there any doubt in your mind that you saw those
19 people in that location at that time?

20 A No, ma'am.

21 Q What happened after the shots were fired?

22 A After the shots was fired, after we checked the
23 scenery and everything was clear, we made sure everybody
24 was okay, and then my grandma and Ms. Jennie, they got on
25 the phone with the police.

JayQuan Bell - Direct Examination by Ms. Usry

- 1 Q And I didn't ask you this -- How many shots were
2 fired the second time? From the second car?
- 3 A I think three.
- 4 Q And you said that Ms. Jennie and Ms. Clara got on
5 the phone for the police. Did they come? Did the police
6 come?
- 7 A Yes, ma'am.
- 8 Q How long did it take them to get there?
- 9 A I can't really recall the time, but it felt like a
10 long time, but they did show up.
- 11 Q And did you tell them what happened?
- 12 A Yes, ma'am.
- 13 Q And did you give a verbal statement that morning?
- 14 A Yes, ma'am.
- 15 Q And did you see the police again later that day?
- 16 A Yes, ma'am.
- 17 Q Where did you see them?
- 18 A At the police station.
- 19 Q And what did you do at the police station later
20 that day?
- 21 A Wrote the statement.
- 22 Q You wrote a statement for them?
- 23 A Yes, ma'am.
- 24 Q And did you tell them what happened?
- 25 A Yes, ma'am.

JayQuan Bell - Direct Examination by Ms. Usry

1 Q And did you ever see the police again?

2 A That following morning.

3 Q And why did -- Where did you see them the following
4 morning?

5 A They came to the house.

6 Q And when you say the following morning, January
7 4th?

8 A January 4th. Yes, ma'am.

9 Q And why did they come to your house?

10 A To show me a line-up.

11 (WHEREUPON State's 16 and 17 were marked for
12 evidence.)

13 BY MS. USRY:

14 Q I'm going to hand you State's 16 and State's 17.
15 Just tell me if you recognize those documents?

16 A Yes, ma'am.

17 Q Are these the line-ups that were shown to you that
18 morning?

19 A Yes, ma'am.

20 Q And when the officer showed you these line-ups --
21 before I ask you that question, is your handwriting on this
22 line-up?

23 A Yes, ma'am.

24 Q And when the officers showed you that line-up, what
25 did they tell you?

JayQuan Bell - Direct Examination by Ms. Usry

1 A They asked me did I recognize any of these
2 suspects.

3 Q If you recognized any one of these pictures?

4 A Yes, ma'am.

5 Q And were you able to recognize anyone in those
6 pictures?

7 A Yes, ma'am.

8 Q And let's start with State's 16. Who were you able
9 to recognize in State's 16?

10 A Bilal.

11 Q And did -- what did you do when you recognized him?

12 A Circled the picture and initialed it.

13 THE COURT REPORTER: I'm sorry?

14 THE WITNESS: Circled the picture and initialed it.

15 BY MS. USRY:

16 Q And does this -- Does State's 16 appear to be in
17 the same condition as it did that morning after you circled
18 the picture and initialed it?

19 A Yes, ma'am.

20 MS. USRY: Your Honor, the State moves State's 16
21 into evidence.

22 THE COURT: Any objection?

23 MR. MAULDIN: No objection, Your Honor.

24 MR. DRYLIE: No objection.

25 THE COURT: No objections. State's 16 is entered.

JayQuan Bell - Direct Examination by Ms. Usry

1 (WHEREUPON State's Exhibit No. 16 was entered into
2 evidence.)
3 BY MS. USRY:
4 Q And JayQuan, looking at State's 17, do you
5 recognize that?
6 A Yes, ma'am.
7 Q And were you able to pick anyone out of that, those
8 pictures?
9 A Yes, ma'am.
10 Q Who were you able to pick out?
11 A Nehemiah.
12 Q And what did you do when you picked him out?
13 A Circled it and initialed it.
14 Q And does that appear to be in the same condition as
15 it did that morning after you circled the picture and
16 initialed it?
17 A Yes, ma'am.
18 MS. USRY: Your Honor, the State moves State's 17
19 into evidence.
20 THE COURT: Any objections to State's 17?
21 MR. DRYLIE: No objections, Your Honor.
22 THE COURT: All right.
23 MR. MAULDIN: No objections.
24 THE COURT: Without objection, State's 17 is in
25 evidence.

JayQuan Bell - Direct Examination by Ms. Usry

1 (WHEREUPON State's Exhibit No. 17 was entered into
2 evidence.)

3 BY MS. USRY:

4 Q And JayQuan, were you able to give police -- when
5 they came to your house on January 3rd, were you able to
6 give them the full names of all the parties involved that
7 you saw shooting out of the cars?

8 A Yes, ma'am. Not the full names, but just the
9 first.

10 Q Just the first name?

11 A Yes, ma'am.

12 Q Of who?

13 A Bilal and Nehemiah.

14 Q The two people in State's 16 and 17?

15 A Yes, ma'am.

16 Q Were you able to give them the name of Mr. Capers
17 at that time?

18 A No, ma'am.

19 Q Why not?

20 A Because I knew by Sonny, not his government.

21 MS. USRY: Beg the Court's brief indulgence, Your
22 Honor.

23 THE COURT: Yes, ma'am.

24 BY MS. USRY:

25 Q JayQuan, had you ever had any arguments with any of

JayQuan Bell - Direct Examination by Ms. Usry

1 these parties on Facebook prior to this date?

2 A Yes, ma'am.

3 Q What were those arguments about?

4 A Well, I mean, the argument with me and Bilal was
5 about the mother of my child.

6 Q Did you have any arguments with anyone else besides
7 Bilal?

8 A No, ma'am.

9 Q And on January 3rd of 2013, was that argument still
10 ongoing?

11 A Say that again, please.

12 Q Was it, were y'all still in an argument? Or was it
13 over on January 3rd of 2013?

14 A We was over it, basically.

15 MS. USRY: Your Honor, permission to publish
16 State's 13.

17 THE COURT: Go ahead.

18 MS. USRY: It's previously been entered into
19 evidence.

20 THE COURT: It's in evidence. Without objections,
21 you may publish it.

22 BY MS. USRY:

23 Q JayQuan, did you have an opportunity to view video
24 footage from the Exxon gas station?

25 A Yes, ma'am.

JayQuan Bell - Direct Examination by Ms. Usry

1 Q Did you have the opportunity to see if your and
2 your grandma, or the car you and grandmother traveled in on
3 January 3rd of 2013, was in that footage?

4 A Yes, ma'am.

5 Q And did the footage that you saw accurately reflect
6 what happened when you were at the gas station on January
7 3rd of 2013?

8 A Yes, ma'am.

9 (WHEREUPON the video was set up to be played for
10 the jury.)

11 BY MS. USRY:

12 Q JayQuan, is this the video that you viewed before?

13 A Yes, ma'am.

14 Q And before I start playing the video, do you see,
15 if at all, your car that day?

16 A Yes, ma'am.

17 Q Can you tell me what screen?

18 A The bottom 2nd.

19 Q This screen?

20 A Yes, ma'am.

21 Q Is that it right here? Or the first car in the
22 front? Where do you park?

23 A By the gas station.

24 Q Up here? JayQuan, as I play this video, I'm going
25 to pause it so you can ID the different screens, okay?

JayQuan Bell - Direct Examination by Ms. Usry

1 What you see.

2 A Yes, ma'am.

3 Q If it will work with me.

4 (WHEREUPON the video was playing.)

5 BY MS. USRY:

6 Q I paused it, JayQuan. What do you see of any

7 significance in this picture now?

8 A I see the cars pulling in now.

9 Q Okay. What cars?

10 A The green Camaro and the grey Mercedes truck.

11 Q What -- Okay. And what frame is the green Camaro

12 in?

13 A The bottom 3rd.

14 Q Camera 11?

15 A Yes, ma'am.

16 Q And where do you see the grey Mercedes truck?

17 A The bottom. Camera 9.

18 Q So these three bottom cameras is where you see the

19 cars that's?

20 A Yes, ma'am.

21 Q The grey Mercedes truck, that's the same one you

22 saw at Swansea High School earlier that morning?

23 A Yes, ma'am.

24 (WHEREUPON the video is playing.)

25 ///

JayQuan Bell - Direct Examination by Ms. Usry

1 BY MS. USRY:

2 Q Now, I've paused it again. Tell me what you see in
3 Camera 11?

4 A I see Bilal getting out of his vehicle.

5 Q In what direction is he approaching?

6 A He is approaching my view.

7 Q What do you see in Camera 10?

8 A The Mercedes truck.

9 Q And what's this right here?

10 A Bilal.

11 Q Is this a different angle? Camera 10 is a
12 different angle from -- Excuse me. Camera 10 is a little
13 bit different angle than Camera 11? That's Camera 11, and
14 that's Camera 10.

15 A Yes, ma'am.

16 Q I'm going to play it again. What are you doing in
17 this shot?

18 A We're leaving.

19 Q Now, I'm looking at Camera 10. Tell me what's
20 happening there?

21 A We're leaving, and Bilal's trying to come near our
22 car.

23 Q And I've paused it -- I was about to say I'd play
24 it one more time. I've paused it again. Tell me what you
25 see in Camera 11?

JayQuan Bell - Direct Examination by Ms. Usry

- 1 A I see Mr. Capers getting out of his car.
- 2 Q And did you see him that day?
- 3 A Yes, ma'am.
- 4 Q Were you driving? Or was your grandmother driving?
- 5 A My grandma was driving.
- 6 Q And that's what he was wearing that day? Does he
- 7 appear the same in this picture as he did that day on
- 8 January 3rd?
- 9 A Yes, ma'am.
- 10 Q What do you see in Camera 10?
- 11 A I notice the tan Nissan, it look like.
- 12 Q Is that the tan Nissan that you referred to that
- 13 drove by your house or that you saw when you looked back
- 14 out the window after the shooting?
- 15 A Yes, ma'am.
- 16 Q I'll play it again. And JayQuan, tell me, when you
- 17 left the gas station -- and that's the top right of this
- 18 picture, okay?
- 19 A Yes, ma'am.
- 20 Q Here's the gas station. This is Highway 321. This
- 21 is Highway 692, from the map. Which way -- What street did
- 22 you originally pull onto?
- 23 A On 692.
- 24 Q Is that the road towards your house?
- 25 A Yes, ma'am.

JayQuan Bell - Direct Examination by Ms. Usry

- 1 Q But you take --
- 2 A We had to pull on 321 first, then we had to make
3 that right, right there. I'm --
- 4 Q You're fine. Take your time.
- 5 A Yeah. A left right there onto 692 and then come
6 down the road to Ms. Jennie house.
- 7 Q So you said you had to get on -- I think. Correct
8 me if I'm wrong. I heard -- You're talking low.
- 9 A Yes, ma'am. We gotta get on --
- 10 Q You said -- well did you get on 321?
- 11 A Yes, ma'am.
- 12 Q And then what did you do?
- 13 A Make a left on 692 to go home.
- 14 Q And go towards what road?
- 15 A We was driving home.
- 16 Q So when you pulled out the gas station, you first
17 got on Highway 321, and then you said turned onto?
- 18 A Yes, ma'am, 692.
- 19 Q JayQuan, who do you see in Camera 11, again?
- 20 A Mr. Capers, Bilal and his mama.
- 21 Q In Camera 11?
- 22 A Yes, ma'am.
- 23 Q Okay. What side of the photograph in Camera 11 is
24 Bilal?
- 25 A On the left.

JayQuan Bell - Direct Examination by Ms. Usry

- 1 Q Near the Camaro?
- 2 A Yes, ma'am.
- 3 Q And where's his mom?
- 4 A Standing right beside him.
- 5 Q And where's Mr. Capers?
- 6 A On the right.
- 7 Q I'll play it again. And what just happened,
8 JayQuan? What just happened there?
- 9 A The Nissan came speeding in.
- 10 Q And they came from Camera 9?
- 11 A Yes, ma'am.
- 12 Q And they're in Camera 11 now where I paused it?
- 13 A Yes, ma'am.
- 14 Q In Camera 11, what road is that those cars are
15 turning on?
- 16 A 321.
- 17 Q And then in Camera 11 they -- Is that the same
18 cars?
- 19 A Yes, ma'am.
- 20 Q We skip Camera 10. And then Camera 9, what road is
21 that?
- 22 A 692.
- 23 Q Is that the same road that you and your grandmother
24 had just ridden up?
- 25 A Yes, ma'am.

JayQuan Bell - Cross-Examination by Mr. Mauldin

1 Q And JayQuan, when you and your grandmother left
2 Exxon, where did you go?

3 A Back to Jennie's house.

4 Q And how long after you left this Exxon, and you
5 were back at Jennie's house, were the shots fired?

6 A Like 5 minutes. It wasn't even that long, I don't
7 think.

8 Q JayQuan, I have no further questions. Please
9 answer any questions that defense counsel has?

10 A Yes, ma'am.

CROSS-EXAMINATION

11
12 BY MR. MAULDIN:

13 Q Now, Mr. Bell, you testified earlier today that you
14 had no confrontation before with these people, no
15 arguments, and no words with them before. Is that correct?

16 A No, sir.

17 Q You did say that earlier.

18 A We was cool at first.

19 Q Are you saying -- You had testified earlier that
20 you had no confrontation with them before and no words, but
21 then later on you said there was something on Facebook;
22 isn't that correct?

23 A Yes, sir. But I didn't understand the question. I
24 thought she was talking about before the incident. We was
25 cool way before this even happened.

JayQuan Bell - Cross-Examination by Mr. Mauldin

1 Q You also testified in the parking lot that you were
2 shocked by the statements made and that they had no reason
3 to make any of those kinds of statements to you; didn't
4 you?

5 A No, sir. I was shocked that I saw the car.

6 Q You said that you were shocked that Mr. Capers made
7 some statements, and you believed they had no reason to
8 make those statements?

9 A No, sir. I said I was shocked that I seen the car
10 when I walked out.

11 Q And, in fact, even though you and Bilal had been
12 cool before, you and your friends had been threatening him
13 over December of 2012, hadn't you?

14 A No, sir.

15 Q You didn't send him threats on Facebook?

16 A No, sir. I was responding to the messages.

17 Q Okay. On December 15th of 2012, you didn't send a
18 message --

19 MS. USRY: Objection, Your Honor. Can we approach
20 on this briefly.

21 THE COURT: Yes, ma'am.

22 (WHEREUPON there was a bench conference out of the
23 hearing of the jury and the court reporter.)

24 (WHEREUPON Defendant's Exhibit No. 1 was marked for
25 identification.)

JayQuan Bell - Cross-Examination by Mr. Mauldin

1 BY MR. MAULDIN:

2 Q I'm going to show you what's been marked for
3 identification as Defendant's Exhibit 1. Do you recognize
4 that Facebook message?

5 A Yes, sir. I do.

6 Q Is it a message that you sent to Mr. Haynesworth?

7 A Actually, it's a status that I wrote. It's not a
8 message.

9 Q You sent -- You wrote it on his timeline?

10 A No, sir. It's a status. He commented on the
11 status. I never wrote a name. Actually, maybe I did in a
12 ways.

13 Q Well, what did you tell him on your message?

14 A He said --

15 THE COURT: All right. I need you to speak loudly
16 and clearly.

17 THE WITNESS: My status says, "Niggas tryn to jump
18 u hahaha b real boi u bitch made till it aint funny ill
19 make yo ass eat dirt nigga u a rat in a snake's pit which
20 mean u food step ya c00keies up - u playn A part dat u cnt
21 handle fuk [this] facebook [nonsense] everybdy think dey
22 apes den wats up lets go to WAR YB [YOUNG BITCHES] Laughing
23 my ass off, wat a team, shaking my head."

24 BY MR. MAULDIN:

25 Q Okay. And he responded to your message. Is that

JayQuan Bell - Cross-Examination by Mr. Mauldin

1 correct?

2 A Yes, sir.

3 Q And what was your response to his response?

4 A He said, "WERE YU COME FROM" I said, "Fuk u mean
5 way i cOme frm u messn wit my fam dat cnt ride and u beefin
6 bout wat a bitch say man be real wit yoself bruh." He
7 said, "AIITE \$AY NOMORE."

8 Q And you recognize this as messages and
9 conversations between you and Mr. Haynesworth; is that
10 correct?

11 A Yes, sir.

12 MR. MAULDIN: Defense moves Defense 1 into
13 evidence.

14 MS. USRY: Objection, Your Honor. Could we
15 approach on it.

16 THE COURT: Yeah.

17 (WHEREUPON there was a bench conference out of the
18 hearing of the jury and the court reporter.)

19 THE COURT: Ladies and gentlemen, we need to go a
20 little bit further with this issue. If you could please
21 step back into the jury room. Please have no conversation
22 about the case. We'll take up this matter, and then I'll
23 bring you back out.

24 (WHEREUPON the jury left the courtroom at 2:13
25 p.m.)

1 THE COURT: Yes, Mr. Mauldin.

2 MR. MAULDIN: Well, I think it was the State's
3 objection.

4 THE COURT: Okay. I'm sorry.

5 MS. USRY: Yes, sir. Your Honor, the State's
6 objecting under Rule -- Excuse me -- The Rules of Evidence
7 613(B), extrinsic evidence, prior inconsistent statements.
8 The State's position that this evidence should not be
9 admitted because the witness had a chance to review the
10 statement, he admitted to the statement being his, and I
11 actually let defense go a little further to talk about the
12 statement. I think I could've objected earlier. But
13 extrinsic evidence of the statement, actually admitting the
14 actual statement into evidence is not -- it does not come
15 in. Because he agreed to it, said it was his words. You
16 know, earlier in his testimony, it's my recollection that
17 when I ultimately asked him about arguments on Facebook, he
18 admitted to arguments on Facebook. And then when defense
19 counsel, when they crossed him, he denied.

20 But when his memory was refreshed and he was shown
21 the statement, he remembered it, admitted to it, he
22 actually discussed it. I don't think the actual printout
23 of the statement is admissible into evidence.

24 THE COURT: All right. Mr. Mauldin?

25 MR. MAULDIN: Thank you, Your Honor. I believe

1 that the rule the State is citing, which is 801(B)(1),
2 prior statement of a witness. That applies when a witness
3 testifies in a courtroom and then a party seeks to
4 introduce a prior different statement made that is
5 consistent with what they testified to in the courtroom,
6 such as if the State attempted to introduce the written
7 statement that Mr. Bell had made to law enforcement some
8 time earlier, that would be a separate, different, prior
9 consistent statement. What I am seeking to introduce is
10 the actual statement that he made, which is the Facebook
11 message. This is not a statement that he made here in
12 court and this is a prior consistent statement with that.
13 This is the actual statement that he made at that point in
14 time on December 15th of 2012. I believe that's what the
15 rule is for is a prior separate statement that is
16 consistent.

17 This isn't a separate statement; this is the actual
18 statement that he acknowledged on the stand that it was
19 what he sent, and this is a capture of what he sent. And
20 we believe it should be admitted into evidence. And of
21 course, this goes with the 6th Amendment right to present a
22 defense and Article 1 Section 14 of the South Carolina
23 Constitution and Due Process under the 5th and 14th
24 Amendments of the U.S. and Article 1 Section 3 of the State
25 Constitution.

1 THE COURT: All right. Good to hear, but all of
2 that is -- You're going toward the fact that -- Under 801,
3 you're arguing that this evidence is not hearsay or it
4 falls under an exception.

5 MR. MAULDIN: It's not hearsay. It's a statement
6 that he made.

7 THE COURT: I understand. I'm not disagreeing with
8 it. I'm not disagreeing with that. But the objection from
9 the State is that there's -- You asked Mr. Bell about
10 Facebook or prior confrontations, prior arguments, or prior
11 dealings, and even mentioned Facebook. And he denied that.
12 You then took that evidence that you have there, and you
13 showed it to him, and you asked him -- You let him read it,
14 and you said, "Is this not your -- Did you not make these
15 statements?" or, "Is this not your communication
16 back-and-forth?" And he said, "Yes, it is." He admitted
17 it was. And the argument, and the State's position is,
18 under Rule 613, that's extrinsic evidence, which is not
19 admissible because the witness does admit to making the
20 prior statement. He reviewed it. He agrees, "Yes, that
21 is, I did make that statement." And it was actually read
22 into the record.

23 MR. MAULDIN: Your Honor, it's my understanding the
24 State's argument was made under a prior consistent
25 statement by a witness.

1 THE COURT: No.

2 MR. MAULDIN: She kept saying, "prior consistent
3 statement" in her arguments up at the bench, Your Honor.

4 THE COURT: Well, she just argued under 613 prior
5 and inconsistent statement.

6 MR. MAULDIN: Yes, sir.

7 THE COURT: That being, when you asked him if he
8 made those and he denied it.

9 MR. MAULDIN: Yes, sir.

10 THE COURT: And then you showed it to him, and then
11 he read it, and he admitted it.

12 MR. MAULDIN: I take exception to your ruling if
13 you rule against me.

14 THE COURT: Well, I am going to rule against you
15 under 613. The rule says, "However, if a witness admits to
16 making the prior statement, extrinsic evidence that the
17 prior statement was made is inadmissible." So I'm going to
18 respectfully deny the request to admit that.

19 Or, basically I'm going to sustain the objection of
20 it coming into evidence. But I will note your exception to
21 that. All right.

22 MR. DRYLIE: Can I --

23 THE COURT: I was going to say, if anybody wants
24 to, while the jury is out, let's just take this opportunity
25 if anybody needs to be excused, let's just take a few

1 minutes.

2 (WHEREUPON a brief recess was observed.)

3 MR. DRYLIE: The Facebook documents, Your Honor --

4 THE COURT: Yes, sir?

5 MR. DRYLIE: I'm going to try to move those, and I
6 didn't know if you wanted to hear that now before but I
7 have a different argument than the one that David just
8 postulated to you.

9 THE COURT: All right. Maybe we ought to just go
10 ahead and take that up while the jury's out.

11 MR. DRYLIE: That's what I was thinking.

12 THE COURT: We can do that. Let's go ahead and do
13 that.

14 MR. DRYLIE: Your Honor, under rule 801(C), a
15 hearsay statement of the one made by the declarant or
16 testifying at the trial or hearing, offered in evidence to
17 prove the truth of the matter asserted. I would argue that
18 that statement is hearsay with an exception. And I would
19 say that the exception is the then existing mental and
20 emotional condition of Mr. JayQuan Bell upon the date that
21 he posted that Facebook page.

22 It doesn't say a statement different than the one
23 already offered in trial, so I'm not offering it as a prior
24 consistent statement. I'm saying it's a statement other
25 than the one he just made here, and I'm saying it's a

1 hearsay with an exception. And that exception would be
2 803(3) -- the then existing mental and emotional condition
3 of JayQuan Bell on that day.

4 THE COURT: 803(3)?

5 MR. DRYLIE: Yes, Your Honor.

6 THE COURT: All right. Ms. Usry.

7 MS. USRY: Thank you, Your Honor. I don't think
8 we've had in the record yet when the statement was made?
9 It's provided to me, and I believe the document that's in
10 evidence, the bottom date is 5/12/14, which is -- in the
11 computer which was this month. I don't think we know when
12 this was made at all. There's been no questions as to when
13 this was and how soon to the actual incident we're talking
14 about this was made.

15 And I'm assuming "then existing" would refer to the
16 actual incident we're here for, "then existing." I mean, I
17 guess he could argue that "then existing," if this was made
18 a week or two weeks or whenever before this incident, would
19 still come in that he was angry, I guess, two or three
20 weeks before, but I don't think that that exception applies
21 to this particular statement and what we know at this
22 point.

23 THE COURT: Is there any -- Well, at this point,
24 this is kind of hard to take up. There hasn't been any
25 testimony Or, I don't know. I'm not sure. I'm trying to

1 recollect the testimony when Mr. Mauldin was questioning
2 the witness.

3 MR. MAULDIN: I asked him if he had sent that
4 message on December 15th of 2012.

5 THE COURT: Okay.

6 MS. USRY: I understand that. Okay.

7 THE COURT: All right.

8 MR. DRYLIE: And my argument is, if you're going to
9 use language like that, words like that, then it's
10 obviously an emotionally-charged message. And it's -- it
11 goes to the mental condition, Your Honor, in that message,
12 that anger is behind that message. And I would offer that
13 under that exception.

14 MS. USRY: Your Honor, my arguments in response is
15 December 15th, 2012 is two weeks before this happened, and
16 if I remember correctly, Mr. Bell testified that he thought
17 they were fine on the morning of January 3rd, 2013. So I
18 don't think this would come in as.

19 THE COURT: Mr. Drylie, if -- That's, I mean, I
20 remember. I think the testimony that he said was that he
21 thought they were cool. So this is being offered to show a
22 state of mind. I'm not sure I understand how it relates to
23 this incident. I mean, it's two weeks prior to this
24 incident. And there was testimony that at the time of the
25 incident he thought everything was cool. So --

1 MR. DRYLIE: But then at that point, Your Honor, I
2 think that a statement made two weeks before an incident
3 like this is still relevant. You're taking the word that
4 he thought they were cool at that point, whereas two weeks
5 before he's saying this. So I still think -- In which
6 case, then there becomes more impeachment value in it. I
7 think it's admissible under this exception.

8 MR. MAULDIN: And I would join in Mr. Drylie's
9 motion.

10 MS. USRY: Your Honor, it's no longer impeachment
11 evidence if he's admitted to the statement. Just to --

12 MR. DRYLIE: Well, there's testimony that says they
13 were cool.

14 MS. USRY: Your Honor, I think they could put
15 evidence to the contrary of that if they want to impeach
16 him on that -- that -- contrary, through other witnesses.

17 MR. DRYLIE: That's exactly what this is, is
18 evidence to the contrary.

19 THE COURT: Well, I'm inclined to agree with you.
20 But the problem I'm having is with the timeframe. Is the
21 relevance in showing that someone was angry or upset two
22 weeks prior, and then an incident occurs two weeks later.
23 I don't get the connection.

24 MR. DRYLIE: I would say it goes to bias, Your
25 Honor.

1 THE COURT: I'm going to let you question, and if
2 the testimony goes as I suspect it will, I'm going to allow
3 it.

4 MR. DRYLIE: Thank you.

5 THE COURT: All right. Let's bring the jury out.

6 MS. USRY: Your Honor, we may want to There's
7 another, the other statement that we dealt with. I don't
8 know if we want to address that before we bring the jury
9 back in. But they've marked for ID. I don't know if
10 they're going to try to enter this one too. We should
11 probably argue before they come back in.

12 THE COURT: Well, what is it?

13 MS. USRY: Yes, sir. I thought that was -- I'll
14 hand it up so you can see it. Where is it? Here's both of
15 them so Your Honor can see them. It's Defendant's Exhibit
16 2.

17 THE COURT: And these are the two we're talking
18 about?

19 MS. USRY: Yes, sir. Your Honor, the first one is
20 Defense 1. The stickers are on the back, I believe.

21 THE COURT: Okay. I got it, yeah.

22 All right. What's the objection.

23 MS. USRY: And, Your Honor, we may need to just
24 proffer the questions because I'm not sure how -- I'm
25 assuming -- I'm assuming he's going to enter it. My

JayQuan Bell - Cross-Examination by Mr. Mauldin

1 objection would still be the same argument. But he -- if
2 he wants to proffer the testimony, I maybe could pinpoint
3 my objection. But it would be under the same rules as --

4 THE COURT: Hold on, let me get y'all to recollect
5 my -- We're still on your Cross-Examination.

6 MR. MAULDIN: Yes, sir.

7 THE COURT: I'm just going to deal with it when we
8 get to it.

9 MS. USRY: Okay.

10 THE COURT: Let's go ahead and bring the jury back
11 out.

12 (WHEREUPON the jury entered the courtroom at 2:40
13 p.m.)

14 THE COURT: All right. We're picking up where we
15 left off when the jury was excused. I am going to sustain
16 the objection of Ms. Usry.

17 And Mr. Mauldin, you may continue with the Cross.

18 MR. MAULDIN: Thank you, Your Honor.

19 BY MR. MAULDIN:

20 Q And besides that threat on December 15th of 2012,
21 you and your friends continued to threaten Mr. Haynesworth
22 over the Christmas Break from school, didn't you?

23 A No, sir. Not that I recall.

24 Q You would call up and threaten him; isn't that
25 correct?

JayQuan Bell - Cross-Examination by Mr. Mauldin

1 A No, sir.

2 Q And you would call his mother and threaten her?

3 A No, sir.

4 Q And in fact, on the day of this incident, you and
5 your friends called up her phone and threatened to jump
6 Bilal when he went to school that day?

7 A No, sir.

8 Q That you knew where he parked and that y'all were
9 going to get him?

10 A No, sir.

11 Q And this behavior of yours continued beyond that
12 day. In fact, you sent him a threatening message January
13 9th of this year wanting to beat him up; isn't that
14 correct?

15 A I responded to an inbox message that I got from
16 Bilal.

17 Q Uh-huh. And what did you say in the messages that
18 you responded to him?

19 A Well, in the message that I recall him writing me,
20 he wrote me and said, "Keep my name out your mouth, pussy.
21 Cause I'm in court for you already." And I responded, "We
22 wouldn't be in this situation if you just would've fought
23 me instead of shooting. So where is your location?"

24 Q Let me show you what's been marked as Defense
25 Exhibit 2 for identification. That?

JayQuan Bell - Cross-Examination by Mr. Drylie

1 A Yes, sir.

2 Q Now that isn't exactly what you just said. Is it?

3 A I mean, I told you a little bit that I remember. I
4 can't remember the message word for word.

5 Q Does that -- looking at the exhibit, refresh your
6 recollection?

7 A Yes, sir. It does.

8 Q And what was your message to Mr. Haynesworth?

9 A "Nigga if u wuda f0ught me u wudnt ben in c0urt u
10 pussy 1m1 FUK OUT MY INBOX IF U WANNA FITE YALL NIGGAS IN
11 NORTH CUM TO SPRINGFIELD IF U NOT BOUT THAT BANGN SHIT STOP
12 TLKN WATS YO [MOTHERFUCKING] LOCATION [I'M DONE WITH THE
13 CHIT CHAT.]"

14 Q And that was this year. Is that correct?

15 A Yes, sir. But in the message, you can see I said,
16 "Get out my inbox."

17 Q I have no further questions.

18 A Yes, sir.

19 THE COURT: All right. Mr. Drylie?

20 **CROSS-EXAMINATION**

21 **BY MR. DRYLIE:**

22 Q JayQuan, this whole thing originally started as a
23 feud between you and Bilal. Correct?

24 A Yes, sir.

25 Q And you guys -- We've been talking about this. You

JayQuan Bell - Cross-Examination by Mr. Drylie

1 guys have been saying bad stuff back and forth on Facebook,
2 right?

3 A Yes, sir.

4 Q And on December 15th of 2012, you weren't cool with
5 Bilal. Right?

6 A I can't remember the exact dates of the stuff that
7 took place. The only date I remember is January 3rd.

8 Q Well, I'm going to show you what Mr. Mauldin was
9 just talking about, and it's Defense Exhibit, or marked for
10 identification purposes as Defense Exhibit 1. It's on
11 here. You stated that you sent that on December 15th,
12 2012. Correct?

13 A I don't remember the dates.

14 Q Did you not answer Mr. Mauldin's testimony saying
15 that you sent that on December 15th, 2012?

16 A I said I sent it, but I didn't admit to a date. I
17 admit that I sent it.

18 Q Can you tell me what that date is right there?

19 A December 15th, 2012.

20 Q So on December 15th, 2012, you and Bilal were not
21 cool. Correct?

22 A I understand -- I think -- But before that, after
23 that --

24 Q I'm asking you --

25 A Yes, sir. We wasn't, but what you don't know is

JayQuan Bell - Cross-Examination by Mr. Drylie

1 that after that, that we actually talked. That's why I
2 thought we was cool.

3 Q So you're saying that after December 15th you guys
4 had a talk?

5 A Yeah. It was squashed?

6 MR. DRYLIE: Your Honor, I'd move this into
7 evidence.

8 MS. USRY: Your Honor, the State objects.

9 THE COURT: I'm going to allow it. Overruled.

10 (WHEREUPON Defendant's Exhibit No. 1 was admitted
11 into evidence.)

12 BY MR. DRYLIE:

13 Q Now, on January 3rd, on the date of the incident,
14 you said that Lywone had said some stuff to you. Right?

15 A Yes, sir.

16 Q But on this day, you didn't say anything back to
17 him?

18 A No, sir. I ain't never had no words with Mr.
19 Capers.

20 Q Even though you've been trading these insults back
21 and forth with Bilal, you didn't say anything back?

22 A Not to Lywone Capers. My argument was with Bilal.

23 Q You just walked on your way, even though he
24 supposedly said these things to you?

25 A Can you repeat the question.

JayQuan Bell - Cross-Examination by Mr. Drylie

1 Q You just walked on your way outside of Swansea High
2 School, even though he supposedly said that to you?

3 A Yes, sir.

4 Q Okay. Now, I want to talk about how you knew
5 Lywone for a minute. You didn't know him as Lywone Capers.
6 Did you?

7 A No, sir.

8 Q How'd you know him?

9 A I know him by Sonny, when I first met Bilal.

10 Q And you stated -- You've stated before that you and
11 Bilal used to be cool. Right?

12 A Yes, sir.

13 Q And you had gone over to his house?

14 A Yes, sir.

15 Q And in fact, you had ridden in that Mercedes truck?

16 A Yes, sir.

17 Q And during those times, that's when you met Sonny?

18 A Yes, sir.

19 Q So you knew who he was?

20 A Yes, sir.

21 Q You knew him as Sonny? Or Bilal's brother?

22 A Sonny.

23 Q Okay. But you knew he was Bilal's brother as well.
24 Right?

25 A Yes, sir.

JayQuan Bell - Cross-Examination by Mr. Drylie

1 Q Okay. Have you had a chance to review your
2 statement?

3 A Yes, sir.

4 Q Can you tell me -- Nowhere in your statement do you
5 write down that you saw Sonny, or Bilal's brother. Do you?

6 A No, sir. I said I saw a young man step out of the
7 vehicle.

8 Q Anywhere in that statement, do you see the words
9 "Sonny" or "Bilal's brother"?

10 A No, sir.

11 Q Okay. Now, you didn't write that statement
12 directly after the shooting. Did you?

13 A Sir?

14 Q You didn't write that statement directly after the
15 shooting. Did you?

16 A No, sir.

17 Q You had some time to sit back and think about what
18 happened?

19 A No, sir.

20 Q And you went down to the police station later that
21 day and wrote that statement?

22 A Yes, sir.

23 Q And even though you knew who Sonny was, and you
24 knew he was Bilal's brother, you didn't write his name in
25 your statement. Did you?

JayQuan Bell - Cross-Examination by Mr. Drylie

1 A Cause I don't know his government.

2 Q But you didn't write his nickname. You didn't
3 write in there that it was Bilal's brother?

4 A No, sir.

5 Q Now, let's walk through the day of the incident
6 again. So you get back to your house, and less than five
7 minutes later, you hear shots?

8 A Yes, sir.

9 Q And your testimony is that, when you hear cars
10 drive by, you walk and you open the door?

11 A Yes, sir.

12 Q And it's not the front door that you open, it's the
13 side door to the house. Correct?

14 A Yes, sir.

15 Q And when you open that side door, you see Bilal in
16 a green Camaro?

17 A Yes, sir.

18 Q And you see him holding his arm out the window with
19 a gun. Right?

20 A Yes, sir.

21 Q And you tell people to get down?

22 A Yes, sir.

23 Q And you hear shots?

24 A Yes, sir.

25 Q And you're scared?

JayQuan Bell - Cross-Examination by Mr. Drylie

- 1 A Yes, sir.
- 2 Q And things are going crazy?
- 3 A Yes, sir.
- 4 Q And you're telling me that it's your testimony that
5 after you hear shots and things are going crazy, you go
6 back and you open the door again and look out?
- 7 A Yes, sir.
- 8 Q So you go back, you open the door again, and that's
9 when you supposedly see Lywone hanging over the top of a
10 car?
- 11 A Yes, sir.
- 12 Q But yet you don't write his name down anywhere in
13 your statement?
- 14 A Yes, sir. I say, "young man."
- 15 Q You're right. You say, "young man." You don't
16 say, "Sonny." You don't say, "Bilal's brother." Correct?
- 17 A No, sir.
- 18 Q And you knew him from before?
- 19 A Yes, sir.
- 20 Q Okay. Now, do you remember being at the -- Do you
21 remember having to come to court before? Last year?
- 22 A Yes, sir.
- 23 Q Now, do you remember Mr. Taylor asking you some
24 questions?
- 25 A I don't remember his exact questions, but I

JayQuan Bell - Cross-Examination by Mr. Drylie

1 remember being her.

2 Q And he was asking you why, in that same statement,
3 Nehemiah Dixon's name isn't mentioned?

4 A Yes, sir.

5 Q Okay. And what did you -- Do you remember what you
6 answered him?

7 A Yes, sir.

8 Q What'd you tell him?

9 A I was more focused on the shooters.

10 Q Okay. You were more focused on the shooters, yet
11 nowhere in there do you have Sonny's name?

12 A No, sir.

13 Q Okay. Now, do you remember telling Mr. Taylor you
14 weren't looking at the Mercedes when shots were being
15 fired?

16 A No, sir. I do not.

17 Q So, it's your testimony here today that you were
18 more focused on the shooters but didn't write their names
19 down in the statement?

20 A Can you repeat the question? I don't understand
21 it.

22 Q It's your testimony here today that you were
23 focused on shooters, but you didn't write their names down
24 in your statement?

25 A I wrote the names that I knew.

JayQuan Bell - Cross-Examination by Mr. Drylie

- 1 Q Well, you didn't write Nehemiah's name.
- 2 A Cause I just said, I wasn't really focused on him.
- 3 Q And you didn't write Sonny's name?
- 4 A Because I didn't know his government, and I
- 5 probably wouldn't have been able to find it, but I know his
- 6 face.
- 7 Q And you didn't write, "Bilal's brother." Can you
- 8 tell me who you identified to law enforcement on that day?
- 9 A Bilal and Nehemiah.
- 10 Q Did you tell them Sonny was there?
- 11 A Yes, sir. I told them there was another guy.
- 12 Q Okay. So you did tell law enforcement that there
- 13 was a guy named Sonny there?
- 14 A Yes, sir.
- 15 Q Then you told them that was Bilal's brother?
- 16 A Yes, sir. Well, not really. I ain't say it was
- 17 his brother, cause I mean, everybody call each other
- 18 brothers. I wasn't sure if that was his blood brother or a
- 19 guy he just call his brother.
- 20 Q So you gave that name to the police officers?
- 21 Correct?
- 22 A No, sir.
- 23 Q I want to make sure you're a hundred percent sure
- 24 clear on this.
- 25 A No, sir.

JayQuan Bell - Redirect Examination by Ms. Usry

1 Q And that's the person that you're sure you saw the
2 second time you opened that door?

3 A I'm positive.

4 MR. DRYLIE: Okay. Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 MR. DRYLIE: We have no further questions, Your
7 Honor.

8 THE COURT: Any redirect?

9 MS. USRY: Briefly, Your Honor.

10 **REDIRECT EXAMINATION**

11 **BY MS. USRY:**

12 Q JayQuan, did you know Bilal's mother's number?

13 A No, ma'am.

14 Q Have you ever called her?

15 A No, ma'am.

16 Q Have you ever threatened her?

17 A No, ma'am.

18 Q This defendant -- Defense Exhibit 1. You testified
19 that this is your Facebook page?

20 A Yes, ma'am.

21 Q And you said you -- I think you said you posted it
22 on your wall or something like that? What does that mean?

23 A Repeat the question.

24 Q So you said you posted that comment on your wall
25 but not directly --

JayQuan Bell - Redirect Examination by Ms. Usry

- 1 A No, I wrote --
- 2 Q -- to him?
- 3 A Yeah, I wrote -- I think it was a status.
- 4 Q It's a status. What does that mean?
- 5 A Like, if you login on Facebook, at the beginning it
- 6 ask you what's on your mind. Like, you just can write you
- 7 a status.
- 8 Q So you just write it. Can you also directly
- 9 message someone on Facebook?
- 10 A Yes, ma'am.
- 11 Q Did you do that with this statement?
- 12 A I mean, I put his name in it, but I didn't put it
- 13 in his inbox.
- 14 Q And when you're talking about this argument with
- 15 Bilal, was it your -- ever -- ever your intention to
- 16 involve guns?
- 17 A No, ma'am.
- 18 Q What did you mean during your argument?
- 19 A Well, my intention was -- or what I thought, we was
- 20 going to fight and just get it over with. I go about my
- 21 business. He go about his business.
- 22 Q And by fight, what were you going to fight with?
- 23 A My hands.
- 24 Q And you also testified that you posted this and
- 25 then you talked with Bilal?

JayQuan Bell - Redirect Examination by Ms. Usry

1 A Yes, ma'am.

2 Q Tell me about that.

3 A Well, it was supposed to be a party with another
4 person at our school named Jonation. And she told me, she
5 was -- well -- I don't know if I can speak on what she
6 said.

7 Q That's good. Just tell me -- Just generally tell
8 me. You thought -- you talked to him. What happened as a
9 result of that?

10 A Well, we was like, I let him know, like, basically,
11 "I ain't got no issue with you." Because he had those
12 issues with other people before I even came down this way.
13 And basically, we was like cool. We squashed it.

14 Q What does "squashed it" mean?

15 A Bygones be bygones. I let it go, he let go,
16 supposedly.

17 Q And that was shortly after you posted this?

18 A Yes, ma'am. It was like a couple days.

19 Q And so on January 3rd of 2013, had you already
20 squashed it?

21 A Yeah, cause we ain't talk no more.

22 Q So you didn't have any arguments with him on
23 January 3rd?

24 A No, ma'am.

25 Q JayQuan, do you own a gun?

JayQuan Bell - Redirect Examination by Ms. Usry

- 1 A No, ma'am.
- 2 Q Have you ever owned a gun?
- 3 A No, ma'am.
- 4 Q Was there a gun in your home on, at [REDACTED]
5 Avenue, on January 3rd of 2013?
- 6 A No, ma'am.
- 7 Q On January 3rd of 2013, you were in your home.
8 Correct?
- 9 A Yes, ma'am.
- 10 Q And you saw outside your door -- when you were
11 looking outside your door, you were standing in your home?
- 12 A Yes, ma'am.
- 13 Q And you saw Bilal Haynesworth drive by?
- 14 A Yes, ma'am.
- 15 Q And he had a gun?
- 16 A Yes, ma'am.
- 17 Q And what was he doing with that gun?
- 18 A Well, when I noticed it, he had his hand hanging
19 out the window, so I just closed the door and told
20 everybody to get down.
- 21 Q And you closed the door to your home? Is that
22 where you were?
- 23 A Yes, ma'am.
- 24 Q And then, you said you saw Mr. Capers. Correct?
- 25 A Yes, ma'am.

JayQuan Bell - Recross Examination by Mr. Mauldin

1 Q Where were you when you saw him?

2 A Standing in the doorway.

3 Q Of your home?

4 A Yes, ma'am.

5 Q And what did he have?

6 A A gun.

7 Q And you clearly saw that?

8 A Yes, ma'am. That's why I closed the door again.

9 Q Any doubt in your mind?

10 A No, ma'am.

11 MS. USRY: Nothing further, Your Honor.

12 THE COURT: Anything further from the defense?

13 MR. MAULDIN: Well, just a touch of recross, Your
14 Honor.

RECROSS EXAMINATION

15
16 **BY MR. MAULDIN:**

17 Q You call this place your home. When did you move
18 there from Springfield?

19 A I can't remember the exact date.

20 Q Was it a couple weeks before? A month or two
21 before? A year before?

22 A I can't remember the exact date. Sorry.

23 Q I'm not asking for the exact date. I'm just
24 talking about a general period of time?

25 A Well, I don't remember when I moved down there. I

JayQuan Bell - Recross Examination by Mr. Drylie

1 mean, it probably was a week before. I don't remember.

2 Q So it wasn't even a month before, maybe a week or
3 so?

4 A Maybe. I don't remember.

5 Q Okay. All right. And you say that, that was a
6 status on your Facebook. Is that correct?

7 A Yes, sir.

8 Q Now, when you post a status on Facebook, anybody
9 that's been friends with you on Facebook, that pops up on
10 their timeline too, doesn't it?

11 A I mean, I guess. I'm not sure.

12 Q It pops up on the notices, the messages?

13 A Yes, sir. You can see what everybody posts that
14 day.

15 Q Okay. And you put his name in it?

16 A Yes, sir.

17 MR. MAULDIN: No further questions.

18 THE COURT: Anything further?

19 MR. DRYLIE: Yes, Your Honor. Briefly.

20 **RECROSS-EXAMINATION**

21 **BY MR. DRYLIE:**

22 Q When -- you testified it takes less than five
23 minutes to get from the gas station to your house?

24 A Repeat that, please.

25 Q You testified it takes less than five minutes to

JayQuan Bell - Recross Examination by Mr. Drylie

1 get from the gas station to your house?

2 A I'm not sure exactly. Maybe five minutes.

3 Q Okay. Now, you watched the same video I did.

4 Correct?

5 A Yes, sir.

6 Q And who was driving the Mercedes-Benz in that
7 video?

8 A On the video, his mom was driving it.

9 MS. USRY: And, Your Honor, I think this is outside
10 of the scope of Redirect.

11 MR. DRYLIE: Your Honor, I don't think it is
12 because she was asking, she asked what -- she was asking
13 about him seeing Lywone inside the car. And I'm asking who
14 was driving that car.

15 THE COURT: All right. Overruled.

16 MS. USRY: Yes, sir.

17 BY MR. DRYLIE:

18 Q So, you heard the shots about five minutes -- I
19 believe your testimony was, you don't even think it was
20 five minutes after you get home?

21 A No, sir.

22 Q And when we watched the end of that video, Lywone's
23 leaving that gas station with his mom. Correct?

24 A Yes, sir.

25 Q And you're a hundred percent sure that Nehemiah

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 Dixon was driving that car the second time you opened that
2 door?

3 A I'm positive.

4 MR. DRYLIE: No further questions.

5 THE COURT: Thank you very much, sir. You may step
6 down.

7 THE WITNESS: Thank you.

8 THE COURT: Thank you.

9 All right. You may call your next witness.

10 MS. USRY: Thank you, Your Honor. The State calls
11 Nehemiah Dixon.

12 NEHEMIAH DIXON,

13 HAVING BEEN SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: Have a seat please, sir. Once you're
15 seated, speak up loud and clear, state your full name,
16 spelling the last for the record, please.

17 THE WITNESS: Wayne Dixon. Dixon, D-i-x-o-n.

18 **DIRECT EXAMINATION**

19 **BY MS. USRY:**

20 Q Nehemiah, how do you know Bilal Haynesworth?

21 A I went to school with him.

22 Q When did you go to school with him?

23 A Since intermediate school.

24 Q Intermediate, since intermediate school?

25 A Yes.

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

- 1 Q And how do you know Lywone Capers?
- 2 A That's Bilal's brother.
- 3 Q And how did you get the chance to know him?
- 4 A Just coming around, speaking to him, that's it.
- 5 Q And do you know their mother?
- 6 A Yes, ma'am.
- 7 Q Do you date Bilal Haynesworth and Lywone Capers's
- 8 sister?
- 9 A Yes.
- 10 Q How long have y'all been dating?
- 11 A I give at least -- going on a year or two.
- 12 Q And is she in the courtroom today?
- 13 A Yes.
- 14 Q On January 3rd of 2013, were you with them?
- 15 A Yes.
- 16 Q Where were you with them? When did you first see
- 17 them?
- 18 A I first saw them this morning because I had car
- 19 problems.
- 20 Q So you saw them the morning of January 3rd of 2014
- 21 because of car problems?
- 22 A That's right.
- 23 Q And where were you?
- 24 A I was at their house.
- 25 Q And who was present at their house during that

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 time?

2 A When I woke up it was me, Bilal, his brother, his
3 mother, and his -- I think little brother. I'm not really
4 sure.

5 Q But you said you woke up, you woke up there?

6 A Uh-huh.

7 Q What'd y'all do that morning?

8 A We took Bilal to school.

9 Q And what did -- Who's we? Who went?

10 A Me, Bilal, his brother, and his mother.

11 Q And what car did y'all go in?

12 A I don't remember what car we drove in all together.

13 Q What did you do after that?

14 A We took Bilal to school, I believe. Yes, we took
15 him to school.

16 Q And did you drop him off?

17 A Yes, ma'am.

18 Q And what did you do after you dropped off Bilal?

19 A We left back and went back to the house. Me, his
20 mother and brother went back to the house.

21 Q And what happened next?

22 A I believe his mother received a text, and he just
23 felt uncomfortable with everybody because everybody was
24 looking at him like attention -- kind of picking on Bilal
25 and he didn't feel comfortable there.

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 Q So what'd y'all do?

2 A Went and go try to sign him out.

3 Q And who's we? Who went?

4 A Me, his mother, and brother.

5 Q And where did y'all go?

6 A Back to the school.

7 Q And by the school, do you mean Swansea High School?

8 A Right.

9 Q And when you got there, what happened?

10 A After we got to the school, we pulled in and
11 parked. She went to go withdraw him out of school, and I
12 guess they seen JayQuan walking out, or walking in, signing
13 out, something like that. He was --

14 Q Did you see him?

15 A No. I didn't see him.

16 Q Where were you?

17 A I was in the truck facing the road. So I was in
18 the opposite direction.

19 Q And where was his brother at this point?

20 A I believe he was outside the truck. Yeah.

21 Q And by his brother, I'm referring to Lywone Capers;
22 is that correct?

23 A Correct.

24 Q And did -- what do you know Lywone Capers as?

25 A When I first got there, it was, I just called him,

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 "Big bruh."

2 Q Big, big bro?

3 A Big bruh, big bro, same thing.

4 Q Okay. And, does he have any other nicknames?

5 A I knew him -- JayQuan always called him Sonny for
6 some reason. So I guess that was his name, nickname.

7 Q Did he go by "Warren" ever?

8 A No.

9 Q Did -- did you overhear Lywone Capers say anything
10 in the parking lot?

11 A All I remember was something about settling.
12 That's all I ever heard, something about settling.

13 Q So you heard Capers say something about settling
14 some things? That's what you heard?

15 A Settling? Yeah.

16 Q What happened after that?

17 A We sat there for a minute because she was
18 withdrawing him out of school.

19 Q Where did -- you said you never saw JayQuan? Was
20 he -- were you -- or did you?

21 A No.

22 Q You never saw him?

23 A I didn't see him.

24 Q So you sat in the parking lot for a little while?

25 A Yes, ma'am.

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 Q After Bilal was withdrawn from school, what did you
2 do?

3 A And we left out, I think she was still there at the
4 school when we left out, it was me -- me, his brother, and
5 like, we left him. We went to pick up his car, I think.

6 Q Who's she? Who's still at the school?

7 A His mother is she.

8 Q And you said that you and his -- and Capers, Lywone
9 Capers, and Bilal Haynesworth left the school together?

10 A I believe that's how it went, yes. Because she
11 wasn't in the truck with us at the time.

12 Q She wasn't or was?

13 A She wasn't.

14 Q Wasn't, okay. And the truck, what truck?

15 A The Mercedes-Benz.

16 Q So y'all left in the Mercedes-Benz?

17 A Right.

18 Q So that's the car you actually drove there then?

19 A Yes.

20 Q Okay. And where did the three of y'all go?

21 A I remember we went back to the house. I'm not for
22 sure whether we was -- went to the apartments to pick up
23 his car or went to the house to pick up the car.

24 Q Explain that for us. What's the -- what's the
25 difference? Where's the house?

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 A The house is somewhere outside of Swansea.

2 Q And where are the apartments?

3 A Basically, like three or five minutes down the way
4 from the Exxon. Like, they live over the railroad track.
5 That's where it's at.

6 Q I'm going to show you a map. See if you can point
7 out where the apartments are.

8 I'm going to hold it up close to you, and then I'll
9 back away. So first show me where you think -- do you see
10 it on this map? If at all?

11 A No. Not at all.

12 Q Can you --

13 A Yes, ma'am.

14 Q I'm going to orient you. If this is the gas
15 station up here, the Exxon, and this area is where Swansea
16 High School would be.

17 A Right.

18 Q Does that help orient you to this map?

19 A Uh-huh.

20 Q Where -- what direction would the apartments be?

21 A Out to the side this way.

22 Q Okay. I'm going to turn around and the same
23 question so you can show the jury without my back to them.

24 What direction would the apartments be?

25 A Out this way.

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 Q Out this way?

2 A Yeah.

3 Q Okay. And where was the house? What direction
4 would that be?

5 A You can still take the same way going to the
6 apartments, like going still out that way.

7 Q Okay. So just hold the microphone a little closer
8 to you, sorry. I know I'm close, but keep your voice up.
9 Okay?

10 So the apartments, you said, were farther out?

11 A Yes, ma'am.

12 Q What direction would you go?

13 A Out towards that way in the corner.

14 Q This way up out here?

15 A Right.

16 Q Okay. So you're not sure where you went, but you
17 left the school in the Mercedes-Benz with Lywone Capers and
18 Bilal?

19 A Right.

20 Q What did you do next?

21 A I remember -- I don't remember exactly what we did
22 after that. It's still kind of -- I don't remember
23 exactly.

24 Q Okay. Well what is the next thing that you
25 remember?

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 A I remember -- and then we went back up to pick up
2 his mother from the school because she had to do some
3 paperwork to sign him out, or withdraw him. And I don't
4 remember how we separated in cars. I don't remember that.

5 Q Okay. You separated cars. Tell me about that?

6 A Well, the part I remember was, we just went to the
7 gas station to get some gas, and we was all in different
8 cars.

9 Q Okay. So you don't know how, you don't recall how
10 it happened. But at some point you went back to the school
11 and picked his mom up, and it's -- in the Mercedes SUV.
12 And the next thing you remember, you're at a gas station in
13 separate cars?

14 A It's a blur. It happened so long ago, so I'm not
15 really trying to stick to it -- I mean...

16 Q What, well tell me this, what car were you in when
17 you went to the Exxon?

18 A I was in the Nissan.

19 Q What car was Bilal Haynesworth in when you went to
20 the Exxon?

21 A His Camaro.

22 Q What color is his Camaro?

23 A Green -- green. Yeah.

24 Q And what car was Lywone Capers in?

25 A Let's see, the Mercedes-Benz I believe.

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

- 1 Q And was Bilal Haynesworth and Lywone Capers's
2 mother still with them?
- 3 A Can you repeat that again.
- 4 Q Was she -- was she at the gas station?
- 5 A Yes.
- 6 Q And I haven't asked you this, but what's her name?
- 7 A Tammy.
- 8 Q What's her last name?
- 9 A Coleman? Yeah, Coleman.
- 10 Q Tammy Coleman?
- 11 A Uh-huh.
- 12 Q What do you call her?
- 13 A Mommy.
- 14 Q Do you call her Princess?
- 15 A Yeah, sometimes.
- 16 Q So where was she at the Exxon? Was she at the
17 Exxon?
- 18 A Yes.
- 19 Q What car was she in?
- 20 A The Mercedes-Benz.
- 21 Q And what happened at the Exxon?
- 22 A Well, we pulled in and we saw -- we all three saw
23 JayQuan at the gas station.
- 24 Q Was he by himself?
- 25 A I believe he was with some lady.

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

- 1 Q Well, was he in a car or walking?
- 2 A A car.
- 3 Q What kind of car?
- 4 A A little sedan.
- 5 Q Do you remember what color it was?
- 6 A Blue? Blue.
- 7 Q And when you saw him, what happened?
- 8 A I believe some words was said, I believe.
- 9 Q Who said words?
- 10 A It was between JayQuan and Bilal.
- 11 Q And what did you do?
- 12 A I was in the car.
- 13 Q Did you get out of the car?
- 14 A No.
- 15 Q What did you do?
- 16 A Just sat there.
- 17 Q And, well -- did anything -- What happened next?
- 18 A I believe he left out the gas station -- JayQuan
- 19 did. And after a few minutes that's why I came behind him.
- 20 Q You came behind him?
- 21 A Yes, ma'am.
- 22 Q By that do you mean you followed him?
- 23 A Yes, ma'am.
- 24 Q And where'd you go?
- 25 A Well, I was headed down towards that way, because I

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 felt some type of way about him, and I just lost sight of
2 his car. Excuse me.

3 Q You lost sight of his car?

4 A Uh-huh.

5 Q Where did you lose sight of his car? And try to
6 speak in the microphone -- actually. I'm going to pull it
7 a little bit that way, so you make sure you still do when
8 you turn your head. Okay?

9 A Basically, in front of the -- in front of the
10 school.

11 Q Say that again?

12 A In front of the school, basically. In front of the
13 school, basically.

14 Q Point to --

15 A Right there.

16 Q So you lost track of him there?

17 A Yes, ma'am.

18 Q What did you do?

19 A I went back to the gas station.

20 Q And what happened next?

21 A I saw they was still at the gas station. I pulled
22 back in. And I don't recall what I told -- what I said.

23 Q But you had a conversation?

24 A I don't recall having a conversation. Probably
25 something quick I said, but it wasn't a conversation.

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

- 1 Q You don't recall what you said?
- 2 A No, ma'am.
- 3 Q Do you recall who you said something to?
- 4 A No, ma'am.
- 5 Q So you just know you pulled in the gas station and
6 there was a conversation? It could've been to anyone?
- 7 A Right.
- 8 Q Anyone at the gas station?
- 9 A Anyone.
- 10 Q Okay. Was it to Bilal Haynesworth?
- 11 A I don't remember.
- 12 Q Did you say anything to Lywone Capers?
- 13 A I just remember I just pulled in the gas station.
- 14 Q And you had a conversation?
- 15 A Yes, but I don't remember --
- 16 Q But you don't remember anything about it?
- 17 A I don't remember who I said something to.
- 18 Q Well, after that what did you do?
- 19 A Well, I pulled back out and went up 692 as I was
20 saying. And as I'm driving down the road, I got basically
21 almost to -- in front of the school, the school district
22 office, then I heard two shots. Then I heard two more.
- 23 Q So you were driving down -- let me get this again?
24 MS. USRY: Your Honor, permission for the witness
25 to step down?

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 THE COURT: Yes, ma'am.

2 MS. USRY: Thank you.

3 THE COURT: Sir, if you would, just keep your voice
4 up loud so our court reporter can hear you.

5 BY MS. USRY:

6 Q Stand right here. Back up a little bit. Okay, and
7 talk towards me so she can take down what you're saying.

8 Okay? But speak up.

9 Here's the gas station. Okay?

10 A Right.

11 Q And this is 692?

12 A Huh?

13 Q It's labeled right there?

14 A Yeah.

15 Q Tell me what happened?

16 A Well, as I left out first, we come down this road
17 right here.

18 Q Who's we?

19 A Well, I was in the car by myself. I was in the
20 Nissan first.

21 Q Okay, first. Who was behind you?

22 A Bilal's car, the green Camaro.

23 Q The green Camaro was behind you?

24 A Yes.

25 Q Anybody else in line?

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

- 1 A The Mercedes-Benz.
- 2 Q The Mercedes-Benz?
- 3 A Yes.
- 4 Q Okay. So y'all were all in line going down 692?
- 5 Okay. What happened?
- 6 A Well, as I'm driving, going down 692, I got this
- 7 area, basically in front of the school right here, that's
- 8 when I heard two shots. Then I heard two more. And I
- 9 ain't about to stop because I was hearing kind of like
- 10 commotion all up around here. So I kept on going, and I
- 11 saw Bilal's car turn into like the Freshman Academy, right
- 12 here he turned in.
- 13 Q So you were just driving down the street, and you
- 14 heart two shots?
- 15 A Yes, ma'am.
- 16 Q And the school is right here, up here. Right?
- 17 A Yes, ma'am.
- 18 Q So you're just driving. You hear two shots and two
- 19 more?
- 20 A Yes, ma'am.
- 21 Q Did you see where the shots came from?
- 22 A No, ma'am.
- 23 Q Did you call the police?
- 24 A I been living in Swansea eight - basically eighteen
- 25 years. That's nothing new. So, when I was I was going to

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 school, I just heard the school would shutdown the school
2 just say they hear shots and I guess in this little area.
3 So that's nothing new.

4 Q Nothing new to you. So you just kept on driving?

5 A It's normal.

6 Q And you, and where did you go?

7 A Cause I keep on going down this way. Basically, my
8 house up a little dirt road right there. I take it and go
9 home.

10 Q Where did the two cars behind you go?

11 A Well, like I said, I seen his Camaro pull in at the
12 Freshman Academy, the Alternative School.

13 Q You saw the Camaro turn in to the Alternative
14 School?

15 A Yes, ma'am.

16 Q And where did the Mercedes-Benz go?

17 A I can't recall if it turned in too or turned back
18 around going towards back their house way. That's where I
19 just see his car pull in at.

20 Q So, just to clarify, the first time you left the
21 gas station, you followed JayQuan Bell down this way;
22 correct?

23 A Right.

24 Q And you somehow -- is this a long distance
25 between -- because you're familiar with this area, correct?

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

- 1 A Right.
- 2 Q So, between the gas station and this school area,
3 is that a long distance?
- 4 A You mean, going the speed limit.
- 5 Q Going, I don't want to know how long it takes you
6 to drive. I want to know, is it a mile?
- 7 A I can put it in time like that.
- 8 Q I want to know, is it a mile or two miles? That's
9 what I'm asking. Five miles? Ten miles?
- 10 A I'm guessing a mile.
- 11 Q About a mile. Are there any stoplights?
- 12 A No, ma'am.
- 13 Q So, between the gas station and this area, you lost
14 sight of JayQuan Bell?
- 15 A Right.
- 16 Q And, this bright blue car, that's the car they were
17 in?
- 18 A Yes, ma'am.
- 19 Q State's 1.
- 20 A Yes, ma'am.
- 21 Q And then you go -- what -- what did you do after
22 you lost sight of him?
- 23 A Excuse me. When I lost sight, I just turned back
24 around. I went back to the gas station.
- 25 Q And then what did you do?

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

- 1 A Like I said, I pulled back into the gas station.
- 2 Q Pulled back in the gas station --
- 3 A Yes, ma'am.
- 4 Q -- and had your conversation, and what did you do
5 after that?
- 6 A I left back out, coming down this way, going home.
- 7 Q This way, 692?
- 8 A Yes, ma'am.
- 9 Q Okay.
- 10 A Yes, ma'am.
- 11 Q And you just went on home?
- 12 A Yes, ma'am.
- 13 Q You can have a seat. Thank you.
- 14 (WHEREUPON State's Exhibit No. 18 was marked for
15 identification.)
- 16 BY MS. USRY:
- 17 Q Nehemiah, I'm going to show you what's been marked
18 as State's Exhibit 18. Do you recognize that?
- 19 A Yes, ma'am.
- 20 Q What is it?
- 21 A My statement.
- 22 Q Is that your handwriting in your statement?
- 23 A Yes.
- 24 Q Read that statement for me.
- 25 A "It was on..."

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 MR. MAULDIN: Your Honor, I --

2 MS. USRY: But not out loud. I meant to himself.
3 I'm sorry. I didn't clarify.

4 Just read it to yourself. I apologize.

5 THE COURT: Read it just -- familiarize yourself
6 with it.

7 THE WITNESS: Yes, sir.

8 (WHEREUPON there was a pause in the proceedings
9 while the witness was reading his statement.)

10 THE WITNESS: Okay.

11 BY MS. USRY:

12 Q Is everything in that statement true?

13 A Umm --

14 Q Does it appear as when you wrote it? As it did
15 when you wrote it?

16 A Nothing has changed on it. If that's what you're
17 asking.

18 Q That statement appears as you wrote it, I believe
19 it's dated January 7th of 2013?

20 A Yes, ma'am.

21 Q So that's four days after --

22 A Yes, ma'am.

23 Q -- when you were at the gas station?

24 A Yes, ma'am.

25 Q Does reading that statement refresh your memory as

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 to what happened on January 3rd of 2013?

2 A Somewhat. Yes.

3 Q Tell me what "the bottom" means to you?

4 A "The bottom" means, what y'all call 692.

5 Q 692?

6 A Basically that whole little strip right there.

7 Q This area?

8 A No, the road.

9 Q Just the road?

10 A Yes.

11 Q That's all that means to you? And does this
12 statement refresh your memory as to whether you actually
13 located the car that JayQuan Bell was in?

14 A Ma'am?

15 Q Does it refresh your memory as to whether or not
16 you located the car that JayQuan Bell was in?

17 A I don't think I understand the question.

18 Q Were you able to -- were you -- after you left the
19 Exxon --

20 A Right.

21 Q -- Nehemiah, were you ever able to locate this car?

22 A After we left the gas station?

23 Q Yeah.

24 A No, ma'am.

25 Q You weren't?

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 A No, ma'am.

2 MS. USRY: Your Honor, State moves State's 18 into
3 evidence.

4 MR. MAULDIN: I object. I don't think the
5 foundation's been laid.

6 THE COURT: Is that the statement he just testified
7 to.

8 MS. USRY: Yes sir, Your Honor. We can briefly
9 approach on that.

10 THE COURT: Sure.

11 MS. USRY: If we need to, I can go through--

12 (WHEREUPON there was a bench conference out of the
13 hearing of the jury and the court reporter.)

14 BY MS. USRY:

15 Q Nehemiah, can you look at the -- the very last --
16 very bottom of your statement?

17 A Uh-huh.

18 Q The last three lines.

19 A All right.

20 Q Did you write those lines?

21 A Yes, ma'am.

22 Q And did you find the blue Nissan?

23 A No, ma'am.

24 Q You never did?

25 A No, ma'am.

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 MS. USRY: Your Honor, State moves State's 18 into
2 evidence.

3 THE COURT: Objections?

4 MR. MAULDIN: I would make the same objection, Your
5 Honor.

6 THE COURT: Overruled. I'll allow it.

7 BY MS. USRY:

8 Q Nehemiah, read from the part, from "I drove," right
9 there. Read that out loud for me?

10 A "I drove back to the Exxon and drove back to the
11 bottom looking for a car, spotted the car and then two
12 shots were fired and two more shots and we drove home."

13 Q So you said, "I drove back to the Exxon and drove
14 back to the bottom looking for the car. We spotted the car
15 and two shots was fired," wait, "And two shots was shot.
16 Then two more shots, and we drove off and went home."

17 Is that what's in front of you?

18 A In front of me, yes.

19 Q And that's what you wrote? That's your
20 handwriting?

21 A Yes, ma'am.

22 Q Nehemiah, do you recall, when you wrote that
23 statement on January 7th of 2013, do you recall talking
24 with Chief Hayes of the Swansea Police Department?

25 A Yes, ma'am.

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 Q Do you recall talking about this incident with him?

2 A The reason we was at the police station, cause my
3 story about something at my house didn't fit right from the
4 victims's, I guess, statements. So he put me in handcuffs
5 and, he didn't like my story, so that's why I was at the
6 police station.

7 Q He -- it didn't fit with what was seen on the Exxon
8 video?

9 A It didn't fit with what the victim wrote on his
10 statement.

11 Q So he discussed with you what happened and you told
12 him your version; correct?

13 A Yes.

14 Q And then, he showed you the Exxon video. Correct?

15 A Right.

16 Q The video from the Exxon. And then you changed
17 your statement; correct?

18 A No. He told me to write it first. And then after
19 I wrote it, that's when he showed me. And then I had to
20 keep rewriting the statement.

21 Q After he shows you the video? And then you changed
22 your statement; correct? To what's written in front of
23 you?

24 A Well, I was trying to tell him at first, but he
25 said still rewrite it over. And it didn't sound right, so

Nehemiah Wayne Dixon - Direct Examination by Ms. Usry

1 I had to keep writing my statement over again.

2 Q And did you openly tell him what order the cars
3 were in when they went by [REDACTED] Avenue?

4 A I remember I -- I said I was first. Yeah, I said I
5 was first. Yeah, I remember that.

6 Q So you told him that. You verbally told him that?
7 Chief Hayes?

8 A Yeah. I --

9 Q Do you need -- didn't you see Chief Hayes?

10 A I know I go see him.

11 Q So you met with him?

12 A Right.

13 Q And you told him the order the cars were in when
14 they drove by [REDACTED] Avenue? Correct? Verbally?

15 A Before or after I saw the video? Is what you're
16 asking me?

17 Q I'm just asking whether you talked with Chief Hayes
18 and told him that information?

19 A What I told him was, I was in a Nissan, not a
20 Mercedes-Benz.

21 Q And you told him the order the cars went in down
22 Roach Avenue when they shot. Correct?

23 A The video showed him that. I didn't say anything.

24 Q You didn't verbally tell him that information?

25 A No, ma'am.

Nehemiah Wayne Dixon - Cross-Examination by Mr. Drylie

1 Q Nehemiah, you don't want to be here today; correct?

2 A Correct.

3 Q And you're friends with Lywone Capes and Bilal
4 Haynesworth; correct?

5 A Back then, yes.

6 Q You are?

7 A Back then, yes. I was.

8 Q And you currently -- and you still date their
9 sister?

10 A Right.

11 MS. USRY: Nothing further, Your Honor.

12 THE COURT: Anything on cross?

13 MR. MAULDIN: No, Your Honor.

14 MR. DRYLIE: Beg the Court's indulgence for just a
15 second.

16 **CROSS-EXAMINATION**

17 **BY MR. DRYLIE:**

18 Q Nehemiah, you and I talked out in the hall;
19 correct?

20 A Sir?

21 Q You and I just talked out in the hall before this
22 today?

23 A Yes, sir.

24 Q And did you ever see Lywone Capers fire a shot that
25 day?

1 A No, sir.

2 MR. DRYLIE: No further questions.

3 MS. USRY: Nothing further for this witness, Your
4 Honor.

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

6 All right. Ladies and gentlemen, we're going to
7 take a little bit of a break here. Probably about 10 or 15
8 minutes. If you need anything while you're back there,
9 just let the bailiffs know. They've got whatever you might
10 need. Please have no conversation about the case, and
11 we'll bring you back out in a little bit.

12 (WHEREUPON the jury left the courtroom at 3:43
13 p.m.)

14 THE COURT: All right. We'll be at ease for about
15 15 minutes.

16 (WHEREUPON a brief recess was observed.)

17 MR. MAULDIN: Your Honor, I have a matter to take
18 up.

19 THE COURT: Sure. Yes, sir.

20 MR. MAULDIN: The State said they intended to call
21 Chief Hayes. And I guess this is kind of prophylactic in a
22 sense.

23 THE COURT: Okay.

24 MR. MAULDIN: It's my understanding from the last
25 trial that Chief Hayes has testified about an oral

1 statement that Mr. Dixon gave to him. During the State's
2 direct with Mr. Dixon, the only piece of information they
3 asked him if he told Chief Hayes or not is what order the
4 cars were in when they went down Roach Avenue.

5 And I guess we're falling back to that Rule 16 --
6 613(B) about extrinsic evidence of a prior inconsistent
7 statement. That was the only thing that she asked him
8 about, did he tell Chief Hayes this, and it was the order
9 that the cars drove down Roach Avenue.

10 So I believe it would be proper if there is an
11 inconsistent statement about the order of those cars, but
12 anything beyond that I would object to because that
13 doesn't -- because she hasn't confronted him with the
14 content of any other inconsistent statement for him to
15 either admit, deny, or explain. And because she hasn't
16 done that, I don't believe they can put it in, it's
17 extrinsic evidence.

18 THE COURT: I'm not -- I don't have the benefit of
19 where y'all have been with the case, but Ms. Usry I'll be
20 happy to hear from you. And I don't know if you intended,
21 or what you intend to do with this witness.

22 MS. USRY: Yes sir, Your Honor. Gill Bell is going
23 to direct this witness, but I can tell Your Honor, just to
24 give you a general overview of what happened, Nehemiah
25 Dixon was arrested on January 7th, and Mirandized, and

1 taken to the Swansea Police Department. And that's where
2 those statements were made in the presence of Chief Hayes
3 that I was referring to during his Direct.

4 THE COURT: Okay.

5 MS. USRY: He made -- And actually, well -- I don't
6 want to misstate.

7 (WHEREUPON there was a pause in the proceedings.)

8 MS. USRY: He made some statements, and I believe
9 Chief Hayes is prepared to testify that, and I asked him
10 this on -- when I questioned Dixon, that he first told a
11 statement to Chief Hayes about, and then once he was shown
12 the video at Exxon, he changed his story.

13 THE COURT: Right.

14 MS. USRY: And he would never really admit to that.
15 And it wasn't an unequivocal admission of what exactly he
16 said to Chief Hayes. So I think that Chief Hayes could get
17 up there and say what happened and clarify what, that "he
18 gave me a statement, I confronted him with that Exxon
19 video, and then he changed his statement. And he gave me
20 the order of the cars and who was in them and who shot."

21 That's what I was trying to get out of Nehemiah
22 Dixon when I directed him. He wasn't very forthcoming. I
23 did ask him about those statements. But that's my
24 understanding -- that's what he should go into.

25 He also did the written statement, which is already

1 in evidence. But that's what I believe verbally Chief
2 Hayes would say he told him that wasn't in the written
3 statement. I hope that's clear.

4 THE COURT: Okay. All right. I think I understand
5 what you're saying. I don't know if that addresses Mr.
6 Mauldin's concern.

7 MR. MAULDIN: No, Your Honor. I think the rule
8 says that they have to be advised of the substance of the
9 statement. So I think she would have had to ask him,
10 "Didn't you tell Chief Hayes so-and-so at such a time in
11 such a place," and he would either have to deny or explain
12 it. And then she could put it in extrinsic evidence. The
13 only statement she asked did he give to Chief Hayes -- the
14 only specific substance that she gave him to either admit
15 or deny or explain was the order of the cars going down
16 Roach Avenue.

17 MS. USRY: Your Honor, I oriented him, and I even
18 asked if he remembered talking to Chief Hayes and pointed
19 him out in the courtroom. And he said, "Yes." And I asked
20 him multiple questions about that encounter to lay that
21 foundation. And I asked him, specifically, about the cars.
22 But I definitely asked him, "Did you make a statement. You
23 were shown a video. Did you change your statement?" His
24 response was, "He made me write multiple statements."

25 THE COURT: Right. I remember that testimony.

1 MS. USRY: And the Chief is going to testify that,
2 you know, he's going to clarify that for us and say whether
3 or not he made him write multiple statements and what
4 exactly happened in that encounter. So that's what -- we
5 do plan to ask questions about that and clarify that,
6 because Mr. Dixon was not forthcoming.

7 My understanding in the case law on that rule, is
8 that if it is not an unequivocal admission of what
9 happened, it can come in. And I can cite the case if I
10 could find it.

11 MR. DRYLIE: Your Honor, I would join in Mr.
12 Mauldin's motion, just for the record.

13 THE COURT: Sure. Yes, sir.

14 MR. MAULDIN: Just in brief response, Your Honor,
15 saying, "Didn't you give a statement to Chief Hayes that is
16 different," does not advise him of the substance of the
17 statement to be able to admit or deny. That's what I'm
18 going into. The only substance that she mentioned was the
19 order of cars going down Roach Avenue.

20 MS. USRY: And just to put on the record, Your
21 Honor. This case that I've looked at is Stave v. Vlalock,
22 V-1-a-1-o-c-k. 357 South Carolina 74.

23 THE COURT: You got a copy of that?

24 MS. USRY: I have multiple copies.

25 (WHEREUPON the Court was looking at the case

1 cited.)

2 THE COURT: All right. I'm reviewing the Court of
3 Appeals case that you passed up, State versus Vialock, 591
4 SE 2d 632, and here the Court's held that, "in determining
5 whether a witness has admitted making a prior inconsistent
6 statement, and thereby obviated the need for extrinsic
7 proof, the Courts of our state and other jurisdictions have
8 held that the witness must admit making the prior
9 statement, unequivocally and without qualification." It
10 goes further to say, "generally, where the witness has
11 responded with anything less than an unequivocal admission,
12 trial courts have been granted wide latitude to allow
13 extrinsic evidence proving the statement."

14 My recollection of the testimony was, when she
15 asked about that "changing your statement after the video,"
16 he said, his response was simply, "Well, they had me write
17 several statements." And she again questioned about,
18 "Well, didn't you change your testimony after, or change
19 your statement after seeing the video?" And he kept
20 responding, "Well they just made me do several statements."

21 MR. MAULDIN: Yes, Your Honor. But, the thing is,
22 even in Vialock, he was not confronted as to what he
23 changed his statement to, the substance or the content of
24 the statement, to be able to admit or deny the substance or
25 the content of the statement. And it says here that they

1 presented her with a copy of her statement, and read aloud
2 the sentences, and that's when she made -- They didn't give
3 him anything to admit or deny.

4 She just asked if he changed his statement, not
5 what the substance of this purported change would be. "Did
6 you say this to Chief to Hayes?" And he was given an
7 opportunity to admit or deny. That's the substance, the
8 content. "Didn't you tell Chief Hayes this?" And he
9 admits or denies that. He wasn't given the chance to admit
10 or deny any substance of the statement, just the fact that
11 a statement was made. And I think that's where the
12 distinction lies here.

13 THE COURT: Ms. Usry.

14 MS. USRY: Your Honor, we plan to focus on what I
15 said; and we can advise Chief Hayes to limit his answers to
16 the fact that he spoke with Nehemiah Dixon. He gave an
17 original statement. When confronted -- and I crossed --
18 and I did direct on this -- Then he showed him the Exxon
19 video, and thereafter, Mr. Dixon gave a statement regarding
20 the order of the cars, who was in -- and who was in them.
21 That's what we plan, what I asked is what we plan to ask
22 Chief Hayes about.

23 Now, there are -- there is a statement that Mr.
24 Dixon made originally, and I wasn't -- We weren't going to
25 go into detail about what the original statement was. But

1 he said he went the other direction down the highway as
2 opposed to going towards Roach Avenue. It's details like
3 that. Chief Hayes is going to limit his answers to the
4 fact of, "I, you know, he gave me a statement. I presented
5 him with the Exxon video. He then changed his statement,
6 and this is what he said."

7 So we're not going to go into the other statements
8 that -- and that's what -- that's what I asked him about.

9 MR. MAULDIN: And it's -- And it's, "this is what
10 he said," is the part that he did not have a chance to
11 admit or deny. That's the substance --

12 MS. USRY: I asked him about the cars. I didn't --
13 I asked him about the cars and the order. I asked him.

14 MR. MAULDIN: The only thing she asked is what
15 order they were when they went down Roach Avenue. That's
16 it.

17 MS. USRY: And he wouldn't even go into that with
18 me. I guess I could've asked --

19 THE COURT: But he wouldn't admit or deny it. She
20 asked him about the order of the cars.

21 MR. MAULDIN: And that's it. She didn't say, "Was
22 the cars -- did you say the cars were in this order?" She
23 didn't say, "Didn't you say to Chief Hayes that so-and-so
24 was in this car and so-and-so was in this car with you?"
25 And that's the substance of the statement. He wasn't

1 allowed to admit or deny the substance of the statement.

2 MS. USRY: Your Honor, I asked him, "Didn't you
3 tell Chief Hayes the cars and who was in the cars?" I
4 asked him those questions.

5 THE COURT: Right.

6 (WHEREUPON there was a pause in the proceedings.)

7 MS. USRY: I think I -- I think the question I
8 asked was, "Did you tell Chief Hayes where the cars and the
9 order when they went down Roach Avenue?" I can't,
10 unfortunately, remember. I'm sorry, Your Honor. I didn't
11 write it down.

12 THE COURT: You don't have to. You don't have to.
13 I can get it right here.

14 MS. USRY: Yes, sir.

15 THE COURT: Can you get back to that, Brenda?

16 THE COURT REPORTER: I'm getting there.

17 MS. USRY: The State's position is whatever I asked
18 him is enough to get into the statement. Sorry. Oh, I'm
19 sorry.

20 THE COURT REPORTER: He said -- she said, "I'm
21 just asking whether you talked with Chief Hayes and told
22 him the information." And he said, "What I told him was, I
23 was in the Nissan, not a Mercedes-Benz." And then she
24 asked, "And you told him the order down Roach Avenue when
25 they shot; correct?" And he answered, "The video showed

1 him that. I didn't say that." And she said, "You didn't
2 verbally tell him that information?" And he said, "No,
3 ma'am."

4 THE COURT: All right.

5 MR. MAULDIN: Your Honor, and that's exactly what I
6 said she did ask him. And that's the only fact I believe
7 that Chief Hayes can elicit. Any other statements that he
8 made besides the order of the cars.

9 THE COURT: Well, I think that's what she said
10 that's all she's going into.

11 MR. MAULDIN: Well, I just want to be sure of that.

12 THE COURT: Is that not correct?

13 MS. USRY: Yes, sir. That's -- we want to know --

14 MR. MAULDIN: So then she was talking about who was
15 in the cars, and --

16 MS. USRY: Well, I think I asked him the order and
17 who, the order that they shot. And I asked him, it was one
18 sentence, but I think that information that covers I
19 oriented him to the statement.

20 THE COURT: All right. When we get to it, you can
21 make your objection. I'll rule on it.

22 MS. USRY: Yes, sir.

23 THE COURT: And we will note any exceptions, if
24 there are any.

25 MR. BELL: Your Honor, may I ask for one moment to

Clifton Hayes - Direct Examination by Mr. Bell

1 speak with co-counsel, with that said.

2 THE COURT: Yeah but -- yeah that's fine.

3 (WHEREUPON there was a pause in the proceedings.)

4 THE COURT: All right. Let's bring the jury in,
5 please.

6 (WHEREUPON the jury entered the courtroom at 4:26
7 p.m.)

8 THE COURT: All right. Ladies and gentlemen, thank
9 you for your patience.

10 The State may call your next witness.

11 MR. BELL: Thank you, Your Honor. State calls
12 Chief Cliff Hayes to the stand.

13 CLIFF HAYES,

14 HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

15 THE CLERK: Once you're seated, state your full
16 name, Chief, spelling your last for the record, please.

17 THE WITNESS: It's Clifton Hayes. Last name,
18 H-a-y-e-s.

19 DIRECT EXAMINATION

20 BY MR. BELL:

21 Q Chief, who are you employed by?

22 A The Town of Swansea, Swansea Police Department.

23 Q And what is your rank and title there at the
24 Swansea Police Department?

25 A I'm currently the Chief of Police.

Clifton Hayes - Direct Examination by Mr. Bell

1 Q Okay. Now, briefly would you just describe your
2 law enforcement history?

3 A I started at Lexington County Sheriff's Department
4 in 1996 as a deputy, and I left the Sheriff's Department in
5 2003 and went to the Town of Swansea. I've been there ever
6 since. I started out, in 2003, as the Assistant Chief.
7 And in 2007, took over as Chief.

8 Q So were you Chief on January 3rd of 2013?

9 A Yes, sir.

10 Q Okay. Did you have reason to respond to [REDACTED]
11 Avenue?

12 A I did.

13 Q And what town is that in?

14 A It's in the Town of Swansea.

15 Q Okay, and what jurisdiction is that in?

16 A It's in Swansea Police Department jurisdiction and
17 Lexington County.

18 Q Okay. Why did you respond to that location?

19 A I had a call, I was actually working that day, and
20 I got a call in reference to a shooting at [REDACTED]
21 Avenue.

22 Q Do you remember roughly what time you received that
23 call from dispatch?

24 A It was roughly around 9:20, 9:23.

25 Q Okay. And how long did it take you to arrive at

Clifton Hayes - Direct Examination by Mr. Bell

1 the scene?

2 A Just a couple minutes. I think, approximately
3 9:25.

4 Q Okay. Now, upon arrival, did you meet with anybody
5 that was at the location?

6 A I did.

7 Q And who was that?

8 A It was JayQuan Bell.

9 Q Okay. Now, when you first met with Mr. JayQuan
10 Bell, what sort of emotional state did he appear to be in?

11 A He appeared to be a little concerned, you know,
12 excited that, you know, there was a shooting just happened.
13 He was concerned that they were going to come back. That
14 was his main point.

15 Q And, once again, how much time had elapsed between
16 when you were initially called and when you arrived on the
17 scene?

18 A Approximately two to three minutes.

19 Q Okay. Now, what did you ask Mr. Bell?

20 A I asked Mr. Bell can he describe what had happened.

21 Q Okay. What did he tell you?

22 A He told me that he had just gotten home from the
23 Exxon station and that, while he was in the house, he heard
24 several vehicles come up past his road, [REDACTED] Avenue.
25 As you -- [REDACTED] Avenue, when you come in from town,

Clifton Hayes - Direct Examination by Mr. Bell

1 it's a cul-de-sac at the end of the road. So what
2 happened, he says that he heard the vehicles go up the
3 road, turn around in the cul-de-sac because there was no
4 way out, and then they came back in front of the house.
5 And at that time, he heard the vehicles come back up, and
6 he looked out of the -- one of the side doors, and he
7 noticed that green colored Camaro driven by Bilal, a Bilal
8 subject. He said when he looked outside he saw Bilal with
9 the handgun. He then --

10 Q I'm sorry to interrupt you. I'm just going to slow
11 it down a little bit?

12 A Okay.

13 Q What vehicles did he say that he saw?

14 A He saw a green color Camaro, a silver in color
15 Mercedes, and then kind of a tannish looking color Nissan.

16 Q Okay. And was he able to identify either the
17 drivers or the passengers in those vehicles?

18 A He was able to identify two of them.

19 Q And which ones were they?

20 A The driver of the first and second vehicle. And he
21 put -- he told me that Bilal was actually driving the first
22 vehicle, which was the green Camaro. And then the gray or
23 silver SUV Mercedes was driven by Mr. Dixon.

24 Q And that Mercedes, what order was it in?

25 A It was the green Camaro first, and the silver or

Clifton Hayes - Direct Examination by Mr. Bell

1 gray Mercedes second, followed-up by the Nissan.

2 Q Okay. Now, you said that you had a name of Bilal
3 and a name of Nehemiah. Did you have last names?

4 A I did not.

5 Q Okay. Did he mention anybody else in these
6 vehicles or in this procession of vehicles?

7 A He did not.

8 Q Okay. Did he mention that there was a passenger in
9 the Mercedes?

10 A He did mention there was another passenger in the
11 Mercedes, but he did not -- at that time, he didn't know
12 the name.

13 Q Okay. Now, at the house at [REDACTED] Avenue,
14 including JayQuan, how many people total were at that
15 house?

16 A Approximately five.

17 Q And is it your understanding that all five were
18 there earlier in the day?

19 A It's my understanding. That's correct.

20 Q Now, after speaking to Mr. Bell, what else did you
21 do out there at the incident location?

22 A Well, once I, you know, got the initial assessment
23 of what really happened, I then began to see if I could
24 collect evidence that would support the fact that there
25 actually was a shooting. And at that point, I was able to

Clifton Hayes - Direct Examination by Mr. Bell

1 go out to the roadway directly in front of the residence
2 and retrieve a spent shell casing.

3 Q And when you say "the residence," what address are
4 you referring to?

5 A [REDACTED] Avenue.

6 Q Okay. And how many casings did you recover?

7 A Only one.

8 Q Okay. What sort of condition did that casing
9 appear to be in?

10 A It appeared to be a freshly spent casing.

11 Q Now, is there any reason that you can think of that
12 you wouldn't have found additional casings?

13 A Several reasons why. One of the reasons is, you
14 know, some --

15 MR. MAULDIN: Objection, Your Honor. Calls for
16 speculation.

17 MR. DRYLIE: I'd join in that.

18 MR. BELL: Your Honor, may I simply argue point for
19 a second.

20 THE COURT: All right.

21 MR. MAULDIN: I'd rather approach, Your Honor.

22 (WHEREUPON there was a bench conference out of the
23 hearing of the jury and the court reporter.)

24 BY MR. BELL:

25 Q Chief, in your time with law enforcement, have you

Clifton Hayes - Direct Examination by Mr. Bell

1 been through firearms training?

2 A Yes, I have.

3 Q Do you train on a variety of firearms?

4 A I have trained on a variety of firearms. That's
5 correct.

6 Q Do all firearms eject a shell casing when fired?

7 A They do not.

8 Q Now, after you located a shell casing, what did you
9 do with it?

10 A I bagged it and conserved it.

11 Q And how did you bag it?

12 A I took it, and what I usually do is take a pen and
13 put it into a Ziploc bag, and I put it in my vehicle.

14 Q Okay. Did you bring that shell casing with you
15 today?

16 A I did.

17 (WHEREUPON State's Exhibit 19 was marked for
18 identification.)

19 MR. BELL: May I approach the witness, Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. BELL:

22 Q Could you take a moment to look at that, Chief? Is
23 that the same shell casing, in the same bag as the day of
24 the incident?

25 A That is correct.

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1 Q Are there any other markings or labels that have
2 been added to that bag since the time that you collected
3 it?

4 A No, sir.

5 MR. BELL: Your Honor, at this time, we would ask
6 to move State's 19 into evidence.

7 THE COURT: Objections?

8 MR. DRYLIE: Without objection.

9 MR. MAULDIN: No, Your Honor.

10 THE COURT: All right. Without objection, State's
11 19 is in evidence.

12 (WHEREUPON State's Exhibit 19 was entered into
13 evidence.)

14 MR. BELL: Thank you, Your Honor.

15 BY MR. BELL:

16 Q Chief, after collecting that shell casing, what
17 else did you do on scene?

18 A After determining that a shooting had occurred, I
19 then went up to the residence to see if an actual
20 projectile made entry into the residence.

21 Q Were you able to locate anything?

22 A I was. I noticed that one of the front windows
23 just left-side of the porch, top left-hand corner, that a
24 hole had went through the actual glass, part of the house.
25 And at that point, I went inside. And you go into the

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1 living room, you look down the hallway, it's the first
2 bedroom on the left. And I noticed that it went inside
3 that room, went into the door casing in the hallway, it
4 crossed the hallway going into another wall, which is
5 adjacent -- the adjacent wall to run down this hallway, and
6 it went into the bathroom.

7 Q Did the bullet penetrate multiple walls in that
8 home?

9 A Yes, sir.

10 Q Did you eventually find the resting place of that
11 bullet?

12 A I did.

13 Q And where was it located?

14 A It was in the bathroom.

15 Q Okay. After finding that bullet, how did you
16 proceed?

17 A At that point, I began taking pictures of
18 everything. I took pictures of the actual -- the round,
19 the bullet laying on the floor in the bathroom.

20 Q Did you eventually collect that bullet?

21 A I did. I actually collected that bullet and placed
22 it in my vehicle also.

23 Q Do you have that bullet with you here today?

24 A I do not.

25 Q Where is it?

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- 1 A That, I don't know.
- 2 Q When you say you don't know, what does that mean?
- 3 A That means that, clearly we misplaced it.
- 4 Q Did you make a mistake?
- 5 A Absolutely. Absolutely.
- 6 Q Is that something that is typical in the course of
7 your police work?
- 8 A Not normal.
- 9 Q Now, was the firearm ever recovered in this case?
- 10 A It was not.
- 11 Q As you looked around the exterior and the interior
12 of the house, did you find any other bullet holes?
- 13 A I did not.
- 14 Q Okay. So after you collected the casing and
15 collected the bullet, did you locate anything else of note
16 in that house?
- 17 A No, I did not.
- 18 Q At that point, what did you do?
- 19 A Well, we -- I began talking to Mr. Bell again to
20 try to identify the people that were involved in the case.
- 21 Q And what were the two names that you had to work
22 from?
- 23 A The first one was Bilal for the first name, and
24 then it was Nehemiah.
- 25 Q How did you go about further identifying who those

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1 two individuals were?

2 A I actually went to the Swansea High School. I sent
3 one of my officers up there to Swansea High School to be
4 able to identify them through school records, and we were
5 able to do that.

6 Q Okay. Now, I want to back up real quick and just
7 ask you one more question about your time at the house.
8 During your inspection of the house and during your
9 interview of the witnesses there on scene, at any point in
10 time, did anything appear to be a hoax to you?

11 A As far as a joke?

12 Q That's correct.

13 MR. MAULDIN: Objection, Your Honor.

14 THE COURT: What basis?

15 MR. MAULDIN: Calling for speculation. He can just
16 say what he saw and heard, not what his opinion of the
17 situation is.

18 MR. DRYLIE: I'll join him.

19 MR. BELL: I'll withdraw the question, Your Honor.

20 THE COURT: Go ahead.

21 BY MR. BELL:

22 Q Now, a moment ago you testified you went to the
23 high school. What happened when you got to the high
24 school?

25 A Well, actually, I sent one of my officers there to

Clifton Hayes - Direct Examination by Mr. Bell

1 get the school records, and we were able to positively
2 identify the -- or we was able to identify a Bilal and a
3 Nehemiah subject, with the last name Bilal Haynesworth and
4 Nehemiah Dixon.

5 Q Okay. And what did you do when you had those
6 names?

7 A What we did is we -- I had my Officer McCall
8 contact SLED to produce a photo lineup. One photo lineup
9 with Bilal Haynesworth in the lineup and another separate
10 photo lineup with Nehemiah Dixon.

11 Q Did you receive those lineups back from SLED?

12 A That night.

13 Q And what date was that?

14 A That's on the 3rd.

15 Q Okay. Once you received those photo lineups back
16 the night of January 3rd, what did you do with them?

17 A I held on to them until the very next morning, and
18 then I made contact the very next morning with JayQuan Bell
19 and presented those lineups to JayQuan Bell with the -- to
20 see if he could identify the subjects that were involved.

21 Q Now, just to be clear, what exactly is a photo
22 lineup?

23 A A photo lineup -- the ones that we get from SLED --
24 it's a sheet with six people on it, one being one of our
25 subjects and most of them -- everybody on the sheet are

Clifton Hayes - Direct Examination by Mr. Bell

1 characteristically, look the same. They're not identical,
2 but they -- it's made where one person will not stick out
3 above the rest. So if someone was to be able to identify
4 the subject, they would, I mean, it would be them.

5 Q Now, did you have an opportunity to examine those
6 photo lineups after they came back from SLED?

7 A Yes, I did.

8 Q Did all of the pictures appear to be similar?

9 A Close.

10 Q Did any one stand out above the rest?

11 A No.

12 Q Did you bring those two photo lineups with you to
13 court today?

14 A I did.

15 MR. BELL: Your Honor, may I approach.

16 THE COURT: Yes, sir.

17 BY MR. BELL:

18 Q I'm handing you State's 16 and 17. Would you take
19 a moment and look at those. Have you had a second to look
20 at them?

21 A Yes, sir.

22 Q Do those appear to be the exact same photo lineups
23 that you used on the day of the incident, or the day that
24 you presented them to Mr. Bell?

25 A Yes, sir.

Clifton Hayes - Direct Examination by Mr. Bell

1 MR. BELL: Beg the Court's indulgence.

2 BY MR. BELL:

3 Q Now, while we're waiting on this, Chief, when you
4 present a photo lineup to somebody, how exactly do you go
5 about doing it?

6 A You basically got to tell him that this is a photo
7 lineup that was prepared by SLED. And I asked him to try
8 to identify the subjects that were involved in the
9 incident.

10 Q And if they are to locate somebody, how are they
11 supposed to select them?

12 A They're supposed to look at the picture, and I
13 asked them if they can positively identify one of the
14 subjects in there to circle it and initial the bottom of
15 it.

16 MR. BELL: Your Honor, permission to publish to the
17 jury State's 16 and 17.

18 THE COURT: All right. Granted. Put it in
19 evidence.

20 (WHEREUPON State's Exhibits 16 and 17 were entered
21 into evidence.)

22 BY MR. BELL:

23 Q Chief, once again, what is this a picture of?

24 A This is a photo lineup prepared by SLED.

25 Q Is this the same photo lineup you presented to Mr.

Clifton Hayes - Direct Examination by Mr. Bell

1 Bell?

2 A Yes, sir.

3 Q Okay. Now, in this picture, which number is the
4 defendant?

5 A Number 4.

6 Q Okay. And who is that defendant?

7 A It's Bilal Haynesworth.

8 Q Okay. Now, does there appear to be a circle around
9 that head?

10 A That is correct.

11 Q Who put that circle there?

12 A JayQuan Bell.

13 Q And there appears to be some writing right here?

14 A That's correct. That's his initials.

15 Q Whose initials?

16 A JayQuan Bell.

17 Q Now, when he picked out Mr. Haynesworth, how long
18 did it take him?

19 A It was almost immediate.

20 Q Was there any hesitation?

21 A None whatsoever.

22 Q Did he pick out any of the other numbers prior to
23 picking out number four?

24 A He did not.

25 Q Briefly, I'd also like to show you what is marked

Clifton Hayes - Direct Examination by Mr. Bell

1 as State's 17 in evidence. What is that a picture of?

2 A That's another photo lineup prepared by SLED.

3 Q Is that another photo lineup that you presented to
4 Mr. Bell?

5 A That is correct.

6 Q Who is suspect number two in this lineup?

7 A It's Nehemiah Dixon.

8 Q Did he testify earlier today?

9 A He did.

10 Q Did Mr. Bell select anybody out of this photo
11 lineup?

12 A He selected number two, Nehemiah Dixon.

13 Q Is that his markings around number two?

14 A Yes, sir.

15 Q Are those his initials?

16 A Yes, sir.

17 Q How long did it take him to pick out?

18 A Once again, it was immediate.

19 Q Once again, presenting State's 16.

20 Now, upon presenting a photo lineup, or presenting
21 this photo lineup to Mr. Bell, did you do anything
22 suggestive in nature?

23 A Absolutely not.

24 Q Did you in any way imply which suspect was the
25 defendant?

Clifton Hayes - Direct Examination by Mr. Bell

1 A No, sir.

2 Q Now, ultimately, after you speak to Mr. Bell, is
3 anybody arrested in this case?

4 A On the 3rd.

5 Q When did you testify that you showed the photo
6 lineup to Mr. Bell?

7 A I showed the photo lineup on the 4th, the morning
8 of the 4th.

9 Q Okay. Was anybody thereafter arrested based on
10 these lineups?

11 A There was.

12 Q Who was that?

13 A It was Bilal Haynesworth and Nehemiah Dixon.

14 Q Now, who actually arrested Mr. Dixon?

15 A Officer Snuffer with the Lexington County Sheriff's
16 Department.

17 Q Did you hear Mr. Dixon be read his Miranda Rights?

18 A I did.

19 Q Did he appear to understand them?

20 A Yes.

21 Q After Mr. Dixon was arrested, what happened?

22 A He was transported to our Swansea Police Department
23 by Officer Snuffer.

24 Q Now, at that point in time, did you have an
25 opportunity to speak with Mr. Dixon?

Clifton Hayes - Direct Examination by Mr. Bell

1 A I did.

2 Q And did he initially make any statements to you?

3 A He did.

4 Q What did he tell you, Chief?

5 A He initially told me that he.

6 Q What did he tell you in regards to any vehicle that
7 might have proceeded down Roach Avenue?

8 A He told me there was three vehicles.

9 Q Did he identify what kind of vehicles they were?

10 A He did.

11 Q And what was the make and model of those vehicles?

12 A He said it was a green, green Camaro, it was a gray
13 in color Mercedes, and then a white Nissan. Of course, he
14 had the white Nissan second, and then the third was the
15 gray Mercedes.

16 Q And that was what he initially told you?

17 A That's right.

18 Q Now, earlier we viewed a video from the Exxon gas
19 station. Have you had an opportunity to view that video?

20 A I did.

21 Q Now, the first time you had spoken to Mr. Dixon,
22 had you already seen that video?

23 A Yes.

24 Q And how did you proceed after Nehemiah, excuse me,
25 Mr. Dixon gave you the original statement?

Clifton Hayes - Direct Examination by Mr. Bell

1 A I then took him into my office and began showing
2 him the video at the Exxon.

3 Q Who else was present while y'all were viewing that
4 video?

5 A His mom.

6 Q Was Mr. Dixon restrained?

7 A He was not.

8 Q Was he under duress?

9 A He was under arrest. That's correct.

10 Q Was he under duress, was he being threatened?

11 A No, he was not.

12 Q Now, did he have an opportunity to view the video?

13 A He did.

14 Q At that point in time, did he alter his story
15 concerning the vehicles?

16 A He altered the -- his action in that, the way it
17 went down in the beginning, he altered that, the direction
18 he left the Exxon in.

19 Q Once again, to make sure we're clear, the order
20 that you gave a moment ago, what was that order of vehicles
21 again?

22 A It was the green Camaro, the white Nissan, and then
23 the gray SUV.

24 Q Now, in viewing the video with Mr. Dixon, was he
25 able to identify people in that video?

Clifton Hayes - Direct Examination by Mr. Bell

1 A Yes.

2 Q Was he able to identify the vehicles?

3 A Yes.

4 Q What vehicles did he identify in the video at

5 Exxon?

6 A He identified the green Camaro, the white Nissan,
7 and then the gray SUV Mercedes.

8 Q Did he identify who was -- who got out of the green
9 Camaro?

10 A Yes. He identified Bilal as the one that exited
11 the green Camaro.

12 Q Who else did he identify in that video?

13 A He identified Lywone Capers.

14 Q And what vehicle did Mr. Capers get out of?

15 A The SUV.

16 Q Now, did he admit at any point in time to being in
17 that video himself?

18 A He admitted to driving the white Nissan, or the
19 tan-colored, muddy-colored Nissan.

20 Q Now, after leaving the Exxon, did Mr. Dixon admit
21 to you that he went down Roach Avenue?

22 A He did. But not initially he didn't.

23 Q Chief, I'm handing you what is marked as State's
24 18. Would you review that for a moment?

25 MR. MAULDIN: Your Honor, may we approach while

Clifton Hayes - Direct Examination by Mr. Bell

1 he's reviewing that?

2 THE COURT: Yes, sir.

3 (WHEREUPON there was a bench conference out of the
4 hearing of the jury and the court reporter.)

5 BY MR. BELL:

6 Q Chief, have you had a chance to review that
7 statement?

8 A Yes, I have.

9 Q And who wrote that statement?

10 A Nehemiah Dixon.

11 Q Who was present when it was written?

12 A That was in front of Deputy Snuffer.

13 Q Once again, very briefly, was he being threatened
14 when he wrote that statement?

15 A No, sir.

16 Q Was he under any duress?

17 A No, sir.

18 Q Okay.

19 MR. BELL: Your Honor, permission -- Your Honor,
20 permission to publish State's 18.

21 THE COURT: That's the --

22 MR. BELL: The statement from Mr. Nehemiah Dixon.

23 THE COURT: And that's in evidence?

24 MR. BELL: That's correct, Your Honor.

25 THE COURT: Yes.

Clifton Hayes - Direct Examination by Mr. Bell

1 BY MR. BELL:

2 Q It's tough to see, Chief. But very briefly --

3 MR. DRYLIE: Your Honor --

4 THE COURT: Yes?

5 MR. DRYLIE: At this point, I'm going to object.

6 He's going to ask about what's in the statement. I don't
7 believe --

8 THE COURT: The statement's in evidence.

9 MR. DRYLIE: I understand that, but if he's going
10 to ask to translate it, he didn't take the statement.

11 THE COURT: I'm going to let him put the statement
12 up. I'm going to let him ask questions. If he goes into
13 somewhere that's objectionable, then make your objection,
14 because you're making an objection to a question that
15 hasn't been asked yet.

16 MR. DRYLIE: Okay.

17 THE COURT: So, I'll be happy to entertain your
18 objection, but at this point, the statement's in evidence.
19 And all he's ask me to do is if he can publish the
20 statement.

21 MR. DRYLIE: Yes, sir.

22 BY MR. BELL:

23 Q Chief, once again, what does this appear to be?

24 Chief, what does this appear to be?

25 A This is a written statement.

Clifton Hayes - Direct Examination by Mr. Bell

1 Q By who?

2 A By Nehemiah Dixon.

3 Q Okay. Are you able to see this word at the top of
4 my pen?

5 A Yes, Warren.

6 Q Do you know what that refers to?

7 MR. DRYLIE: Objection. This is exactly what I was
8 He didn't take that statement. I understand that it's in
9 evidence, but he can't say what Nehemiah referred to in
10 that statement for a statement he didn't take.

11 THE COURT: The statement speaks for itself. Does
12 it not?

13 MR. DRYLIE: Yeah.

14 THE COURT: How are you going to ask this witness
15 if he knows what that means. You're asking does he know
16 what that means.

17 MR. BELL: That's correct. Being the investigating
18 officer, he does know what these gentlemen go by as far as
19 their nicknames. Would you like us to approach, Your
20 Honor.

21 THE COURT: Yeah.

22 (WHEREUPON there was a bench conference out of the
23 hearing of the jury and the court reporter.)

24 THE COURT: Sustain your objection.

25 BY MR. BELL:

Clifton Hayes - Direct Examination by Mr. Bell

1 Q Chief, in your time speaking to Nehemiah Dixon, did
2 he make reference as to who he was with?

3 A He did.

4 Q How did he identify those individuals in speaking
5 with you?

6 A He identified the individual with him was Warren,
7 inside the vehicle with him. And he also identified Ms.
8 Tammy Coleman as Princess.

9 Q Did he further explain to you who Warren was?

10 A He did. He refer --

11 MR. DRYLIE: Objection, Your Honor. I'm going to
12 object to hearsay at this point.

13 THE COURT: Sustained.

14 MR. BELL: Your Honor, beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 (WHEREUPON there was a pause in the proceedings.)

17 BY MR. BELL:

18 Q Thanks for your patience, Chief. Chief,
19 ultimately, did you arrest a third person in this case?

20 A We did.

21 Q How did you come about the third person to arrest?

22 A We arrested him based on the fact that he was
23 identified as Bilal's brother, and on the day of the arrest
24 of Nehemiah Dixon, Ms. Coleman, along with Lywone Capers
25 and Bilal, showed up at the police department. We were

Clifton Hayes - Direct Examination by Mr. Bell

1 able to identify him in the vehicle with him and confirm
2 that that was Bilal's brother. So -

3 Q And what is Bilal brother's, Bilal's brother's
4 name?

5 A Lywone Capers.

6 Q Was Lywone Capers arrested in this case?

7 A He was.

8 Q Okay. Thank you, Chief.

9 Now, Chief I'm going to show you what's marked as
10 State's No. 2. I'll ask you to keep your voice up even
11 though I've moved close to you.

12 THE COURT: All right. Here's what we're going to
13 do. Take that down there, put it on that easel, have the
14 Chief come down, and ask him your questions.

15 MR. BELL: Certainly, Your Honor. Chief, can you
16 step down with me?

17 THE CLERK: The easel's right there.

18 MR. BELL: Thank you.

19 THE COURT: Chief, if you would, I'm going to get
20 you to stand on that side and face the Court Reporter so
21 that she can listen to your testimony.

22 THE WITNESS: Yes, sir.

23 BY MR. BELL:

24 Q Chief, what I'd like to do is just briefly identify
25 a few different areas?

Clifton Hayes - Direct Examination by Mr. Bell

- 1 A Okay.
- 2 Q First off, this picture in the bottom left, which
3 has an A with a circle around it, what is that?
- 4 A That is the Exxon station.
- 5 Q Okay. And on the bottom right of this poster with
6 a B circled, what is that?
- 7 A That is the residence at [REDACTED] Avenue.
- 8 Q And the top left, this area right here, what is
9 that?
- 10 A That is the Exxon.
- 11 Q This area right here?
- 12 A That is the -- that's the Monroe-Pinkney Building,
13 which is tied in with the school district.
- 14 Q Okay. Now, the two major roads we see, which road
15 is this here?
- 16 A This is Highway 321.
- 17 Q Okay. And what road is this here?
- 18 A Highway 692.
- 19 Q Can you locate Roach Avenue for me?
- 20 A Yes. It's right here.
- 21 Q Where, roughly, is the incident location?
- 22 A It's -- It's going to be right around in here.
23 Yeah, it's right there.
- 24 Q From the Exxon station to Roach Avenue, roughly how
25 far is that?

Clifton Hayes - Cross-Examination by Mr. Mauldin

- 1 A I would say less than a mile.
- 2 Q Do you know roughly how long it would take you to
3 get there with traffic?
- 4 A Five, six minutes tops.
- 5 Q Thank you, Chief. You can take a seat.
- 6 A Thank you.
- 7 Q Chief, I'm going to take up one more moment of your
8 time. You mentioned earlier that you collected a bullet
9 that was misplaced. What I'm showing you is State's 14.
10 What is this object in the center of this picture?
- 11 A That's the projectile that came from the round into
12 the residence.
- 13 Q For clarification --
- 14 A The bullet.
- 15 Q I'm sorry?
- 16 A The bullet.
- 17 Q For clarification, that is not a casing. Is that
18 correct?
- 19 A That is correct.
- 20 Q Please answer any questions the defense may have
21 for you?
- 22 THE COURT: Mr. Mauldin?
- 23 CROSS-EXAMINATION
- 24 BY MR. MAULDIN:
- 25 Q Did you lose the bullet the same day you found it?

Clifton Hayes - Cross-Examination by Mr. Mauldin

- 1 A I'm not sure. I can't answer that.
- 2 Q Okay. And that was on January 3rd?
- 3 A It was January the 3rd.
- 4 Q The day you found it?
- 5 A I'm not sure it was misplaced -- I don't know if it
6 was misplaced during the evidence process or --
- 7 Q But you found it on January 3rd?
- 8 A I recovered it on January the 3rd. That's correct.
- 9 Q Okay. And you didn't make any report of finding a
10 bullet and losing it until October of last year; is that
11 correct?
- 12 A I'm not sure. I'm not sure when that was done.
- 13 Q Well, it was much later, that you let the
14 Solicitor's Office know?
- 15 A It could be. Okay. It could be. I'm not sure.
- 16 Q You're not sure?
- 17 A I'm not sure when an exact time that was.
- 18 Q And you showed these photo lineups to Mr. Bell the
19 next morning on the 4th; is that correct?
- 20 A Yes, sir.
- 21 Q Showed them to him at his house?
- 22 A Yes, sir.
- 23 Q That's correct? And, he already knew who the
24 people were that he said shot at the house. You just
25 wanted to verify who the last names were, basically by

Clifton Hayes - Cross-Examination by Mr. Mauldin

1 then; is that --

2 A He was able to identify them by their first name,
3 so what I did was I put their picture with their last name
4 once I got their last name, I put their picture in a photo
5 lineup. That's correct.

6 Q But the purpose of the lineup was -- it was to
7 establish the full identity --

8 A That's correct.

9 Q -- of the persons involved. It wasn't like he was
10 picking out a stranger or anything like that?

11 A He was picking out the people that were involved in
12 the incident; that's correct.

13 Q Okay. And you had developed their last names by
14 getting their school records?

15 A That is correct.

16 Q That's correct? And so you had their identities on
17 May 4th? I mean, not May 4th, January 4th?

18 A It was actually January the 3rd. It was the same
19 day.

20 Q Well, you confirmed their full identities, who they
21 were --

22 A On the 3rd; that's correct.

23 Q -- on the 4th after the photo lineup?

24 A Well, I got their information from the school on
25 the 3rd --

Clifton Hayes - Cross-Examination by Mr. Mauldin

- 1 Q Right. Okay.
- 2 A -- and I presented the photo lineup on the 4th.
- 3 Q Okay. And then you had verification from Mr. Bell?
- 4 A That is correct.
- 5 Q Okay. And so, after that verification, you knew
- 6 which perpetrators you were looking for, which subjects you
- 7 were looking for in this case?
- 8 A Based on the identification through JayQuan Bell;
- 9 that's correct.
- 10 Q And that was on the 4th?
- 11 A That was on the 4th.
- 12 Q Now, on the 7th, you to Mr. Dixon's house; is that
- 13 correct?
- 14 A That is correct.
- 15 Q And you call the Sheriff's Office to come assist.
- 16 Is that right?
- 17 A That is correct.
- 18 Q And after you're back at the police station, Mr.
- 19 Haynesworth and his mother and some other individuals come
- 20 up to the police station in their own car; is that correct?
- 21 A Shortly thereafter; that is correct.
- 22 Q You didn't go out to their house and pick them up
- 23 and bring them back?
- 24 A I did not.
- 25 MR. MAULDIN: No further questions.

Clifton Hayes - Cross-Examination by Mr. Drylie

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THE COURT: Mr. Drylie?

CROSS-EXAMINATION

BY MR. DRYLIE:

Q Afternoon, Chief.

A Good afternoon.

Q You've been the Chief of Police for Swansea for about 6 years. Right?

A Actually, 7 years this past February.

Q Seven years now, okay. And you've got about 18 years of law enforcement experience; correct?

A That's correct.

Q And you were the first officer to respond to the scene?

A Yes, sir.

Q And I think, according to the CAD reports, it looks like the call came in around 9:20; correct?

A 9:20, 9:23, something like that; that is correct.

Q And the first person you talked to was JayQuan?

A Yes, sir.

Q And at the scene, JayQuan gave you two names?

A Yes, sir.

Q He gave you Nehemiah and Bilal?

A Bilal.

Q Bilal?

A Yes, sir.

Clifton Hayes - Cross-Examination by Mr. Drylie

- 1 Q And at no point at the scene did he give you the
2 name Sonny, Bilal's Brother, or Lywone. Did he?
- 3 A He did not.
- 4 Q Okay. And -- because I mean, that's something you
5 would've written down. Right?
- 6 A Right.
- 7 Q I mean, you've been to law enforcement training;
8 correct?
- 9 A Yes, sir.
- 10 Q And you've been to the criminal justice seminars
11 and what not?
- 12 A Some.
- 13 Q And they teach you how to write incident reports
14 through your training and experience?
- 15 A Yes, sir.
- 16 Q You want to be fair, correct?
- 17 A Yes, sir.
- 18 Q And you want to be accurate?
- 19 A Yes, sir.
- 20 Q And you want to be truthful?
- 21 A Yes, sir.
- 22 Q And you've written probably thousands of incident
23 reports over the course of your law enforcement career;
24 correct?
- 25 A Quite a few.

Clifton Hayes - Cross-Examination by Mr. Drylie

1 Q So even if it's only a nickname, it's something
2 that would go in the incident report if it said, "This
3 person shot at me." Correct?

4 A That's correct.

5 Q Okay. Now, just real briefly, and we've been over
6 most of this, but only one bullet entered into the house;
7 correct?

8 A That is correct, sir.

9 Q Okay. And we don't have the bullet here today?

10 A That is correct, sir.

11 Q And you found one shell casing outside the house?

12 A Yes, sir.

13 Q And did you test the shell casing for fingerprints?

14 A I did not.

15 Q Okay. So, there's no way to say if Lywone Capers
16 ever handled that shell casing. Is there?

17 A That is correct.

18 Q Okay. Now, you were never able to match that
19 bullet with that shell casing. Were you?

20 A No, sir.

21 Q Did you test any of the cars in this for gunshot
22 residue?

23 A I did not.

24 Q Test any hands or any people's clothes?

25 A No, sir. It was several days -- several days after

Clifton Hayes - Cross-Examination by Mr. Drylie

1 the fact.

2 Q But you didn't test any of the cars or any of the
3 clothes?

4 A We did not.

5 Q And so, you have no physical evidence that Lywone
6 Capers was ever at that house, do you? No physical
7 evidence?

8 A I don't have any evidence that would tie him to the
9 residence. That's correct.

10 Q Okay. And you have no physical evidence that
11 Lywone ever shot a gun. You never found a gun in this
12 case. Did you?

13 A I did not.

14 Q So you have no physical evidence that Lywone ever
15 shot a gun. Do you?

16 A I don't. I've just got the victim's statement.

17 Q And you've got no physical evidence that he ever
18 handled the shell casing?

19 A No, sir.

20 Q Okay. And in the victim's statement, he doesn't
21 list Sonny or Bilal's brother or Lywone. Does he?

22 A No, sir.

23 Q And you don't have that written down in your
24 incident report?

25 A No, sir.

1 MR. DRYLIE: I don't have any further questions,
2 Your Honor.

3 MR. BELL: Nothing from the State, Your Honor.

4 THE COURT: Thank you very much, sir. You may step
5 down.

6 Y'all step up here real quick.

7 (WHEREUPON there was a bench conference out of the
8 hearing of the jury and the court reporter.)

9 THE COURT: All right. You may call your next
10 witness.

11 MS. USRY: Thank you, Your Honor. At this point,
12 the State rests.

13 THE COURT: All right. Thank you very much.

14 Ladies and gentlemen, the State has rested their
15 case. And in all trials, at the close of the State's case,
16 I have to take up legal matters, motions. And it's after
17 five o'clock. I'm going to -- we're going to break for the
18 evening. I'm going to ask you to continue to ask your
19 family, friends, and loved ones to be patient. Tell them
20 that you're still in trial and you're still not allowed to
21 talk about the case. I would ask, if you would, please be
22 back in the morning, be in the jury room at 9:30, and once
23 we get everybody reconvened, we'll get started then. Okay?

24 So if everyone else would please remain seated,
25 ladies and gentlemen we'll see you back tomorrow morning at

1 9:30.

2 (WHEREUPON the jury left the courtroom at 5:17
3 p.m.)

4 THE COURT: All right. At this time, I'll take up
5 motions at the close of the State's case.

6 **MID-TRIAL MOTIONS**

7 MR. MAULDIN: Thank you, Your Honor. At this time,
8 on behalf of Mr. Haynesworth, I'd like to make a directed
9 verdict motion, that taking the evidence in the light
10 that's most favorable to the State, that sufficient
11 evidence hasn't been presented to the case to the trier of
12 facts.

13 THE COURT: All right, sir. I'm going to
14 respectfully deny that motion. Mr. Mauldin, I think it --
15 I think it's a weight issue. I think there is evidence in
16 the record, depending on how the jury views it and what
17 weight they give it. And so I think it is a jury issue.

18 MR. DRYLIE: I respectfully make the exact same
19 motion for Mr. Capers, that there's -- taken in the light
20 most favorable to the State, there's not enough evidence in
21 the record for this to go to a jury. I ask for a directed
22 verdict on all three charges.

23 THE COURT: All right. Thank you. Again, Mr.
24 Drylie, it's a fact issue I think. Depending on how the
25 jury views the testimony and the evidence, so I'm going to

1 respectfully deny that motion.

2 Anything further motion wise from anybody.

3 MS. USRY: Nothing from the State, Your Honor.

4 MR. MAULDIN: No, Your Honor.

5 THE COURT: Let me, have -- At this point, and
6 we're adjourned for the evening as far as the case. We're
7 not going to go any further today. But have you talked
8 with your clients with regards to their constitutional
9 rights to, either to testify or to remain silent?

10 MR. MAULDIN: I have done so, Your Honor, but not
11 since the trial has proceeded today.

12 THE COURT: Okay.

13 MR. MAULDIN: I'd kind of like to review things
14 again before any kind of decision is made. It was --

15 THE COURT: All right. Mr. Drylie.

16 MR. MAULDIN: -- depending on how the State's case
17 goes.

18 THE COURT: Sure.

19 MR. DRYLIE: And I have talked to Mr. Capers as
20 well.

21 THE COURT: Let me, let's do this. Y'all can do
22 that this evening.

23 MR. MAULDIN: Yes, sir.

24 THE COURT: And then, if you would just let me know
25 first thing in the morning as to that issue, as to whether

1 or not you're going to put up a case.

2 MR. MAULDIN: Yes, sir.

3 THE COURT: Now, and if you are, great. We'll take
4 care of that. If you're not, then we're going to need to
5 talk about the charge. But we don't need to do that at
6 this point --

7 MR. MAULDIN: Yes, sir.

8 THE COURT: -- until we know what's going to go on.
9 But let me ask you this, well then, Mr. Drylie I got
10 your -- what you submitted. And I've reviewed both of
11 them. I have both of these charges in there. It's not the
12 exact verbiage, but it's the exact content. And I'll let
13 y'all look at it before, obviously. But I do have both of
14 those, and I think they're both appropriate. So those are
15 in there. I've got my charge on Attempted Murder,
16 Possession of a Weapon During the Commission of a Violent
17 Crime, and Conspiracy.

18 I also have a charge, this is a charge dealing with
19 multiple defendants. And I have that. But I've also got a
20 charge dealing with multiple charges. And it's very
21 similar. It just basically tells the jury that each
22 charge, each indictment, has to be considered on its own
23 merit as well. I'm trying to think -- excuse me -- if
24 there's anything else.

25 MR. MAULDIN: Well, Your Honor, I haven't typed it

1 out, but I would be requesting a charge of a lesser
2 included Assault and Battery First Degree as a lesser
3 included to Attempted Murder.

4 THE COURT: Ms. Usry, does the State have a
5 position on that?

6 MS. USRY: I guess when you see what the defense
7 puts up, but it's my understanding they're going to put up
8 an alibi defense. And if they do that, there's no
9 indication to the record, it's either they did it or they
10 didn't. That's -- So I would say that, that wouldn't be
11 appropriate in this case, but it depends on what evidence
12 comes forward if they up a case in the stand.

13 THE COURT: All right.

14 MS. USRY: That's my understanding from their
15 opening arguments and what they've asked so far.

16 MR. MAULDIN: Well, Your Honor, I think that the
17 difference is the intent level of the crime. Attempted
18 Murder has the specific intent to kill and malice
19 aforethought, whereas Assault and Battery in the First does
20 not. There's no -- There's circumstantial evidence from
21 which the jury could or could not infer the intent as far
22 as the evidence presented by the State.

23 THE COURT: All right. I'll look at those.

24 MS. USRY: Your Honor, the only brief thing I would
25 add to that is, if you're shooting in the -- If you're

1 shooting, you're there, shooting into a house, and you know
2 people are in that house because you just saw the car at
3 the gas station, the same car that you followed back to
4 that location per Mr. Dixon's statement, you're shooting
5 with the intent to kill if you're shooting into that house.

6 Your Honor, the State defers to whatever you
7 normally would charge.

8 THE COURT: Okay. And I'll look at it. Other than
9 the request for that, Mr. Mauldin, is there anything else
10 that you can think of that --

11 MR. MAULDIN: Not at this time, Your Honor. I may
12 do some research tonight.

13 THE COURT: Yeah.

14 MR. MAULDIN: And I'll --

15 THE COURT: Okay. Keep in mind that I send my
16 charge back in with the jury. So anything you want to add
17 or whatever, I'll be happy to do it. I'm just going to
18 need a little bit of time to put it in so it's in a file
19 for them.

20 MR. MAULDIN: I understand, Your Honor.

21 THE COURT: All right.

22 MR. DRYLIE: Thank you, Judge.

23 THE COURT: All right, folks. Then we'll be in
24 recess until 9:30 in the morning.

25 MR. BELL: Thank you, Judge.

1 (WHEREUPON Court was in recess for the evening.)

2 WEDNESDAY, MAY 21, 2014

3 THE COURT: All right, Mr. Mauldin and Mr. Drylie,
4 have y'all discussed with your clients whether or not they
5 intend to testify or put up a case?

6 MR. DRYLIE: We -- I have, Your Honor.

7 THE COURT: All right.

8 MR. MAULDIN: Yes sir, Your Honor.

9 THE COURT: All right. And Mr. Mauldin, how about
10 with Mr. Haynesworth.

11 MR. MAULDIN: He intends to testify, Your Honor.

12 THE COURT: He is going to?

13 MR. MAULDIN: Yes, sir.

14 THE COURT: All right. And Mr. Drylie, with
15 regards to Mr. Capers?

16 MR. DRYLIE: He intends to not testify, Your Honor.

17 THE COURT: All right. Okay. That sounds good.

18 Mr. Haynesworth, let me address you first, sir,
19 with regards to the decision you've made. You understand
20 that, in talking with Mr. Mauldin I'm sure he's explained
21 to you that, every person who's charged with a criminal
22 offense has, well, has many constitutional rights. But one
23 of those rights is the right to testify in your behalf as
24 well as which the right to not testify. Do you understand
25 that?

1 DEFENDANT HAYNESWORTH: Yes, sir.

2 THE COURT: You have a constitutional right to
3 remain silent if you choose to do that, but you also have
4 the right to take the stand in your own defense.

5 Now, let me at first address with regards to the
6 right to remain silent. Every person that's charged with a
7 criminal offense has the right to remain silent and to not
8 testify and cannot be forced to testify. If, for example,
9 if you were to exercise your right to remain silent, such
10 as Mr. Capers is going to do, what I would do is I would
11 tell the members of the jury that the fact that you chose
12 not to testify is a constitutional right that you have and
13 that they could not in any way hold that against you. Do
14 you understand that?

15 DEFENDANT HAYNESWORTH: Yes, sir.

16 THE COURT: I would explain to the members of the
17 jury that the State carries the burden of proof and that
18 you don't have to prove anything. And the fact that you
19 chose to not testify could not be considered by them in any
20 way in their deliberations. I would tell them that the
21 fact that you chose not to testify is your constitutional
22 right and that it could not even be discussed in the jury
23 room at all. Do you understand, sir?

24 DEFENDANT HAYNESWORTH: Yes, sir.

25 THE COURT: Okay. And I would give them that

1 instruction as it relates to you if you did exercise that
2 right to not testify. But you've indicated that you wish
3 to testify, and so I also want to address some issues with
4 regards to that.

5 First, let me ask, Mr. Mauldin, are there any -- Is
6 there any type of criminal history that would be subject to
7 examination?

8 MR. MAULDIN: No, Your Honor. The State hasn't
9 provided me with any, and I believe he has no prior record.

10 THE COURT: Okay.

11 MS. USRY: No sir, Your Honor.

12 THE COURT: All right. Well, that wouldn't be an
13 issue.

14 But you understand, though, Mr. Haynesworth, if you
15 take the stand, obviously you'll answer questions. You'll
16 be placed under oath, and you'll answer questions from your
17 attorney. Do you understand that?

18 DEFENDANT HAYNESWORTH: Yes, sir.

19 THE COURT: You would also have to, though, respond
20 to questions from both Mr. Drylie as well as the State. Do
21 you understand that?

22 DEFENDANT HAYNESWORTH: Yes, sir.

23 THE COURT: And that you would be required to
24 answer those questions just as you would answer the
25 questions that your own lawyer asks. Do you understand,

1 sir?

2 DEFENDANT HAYNESWORTH: Yes, sir.

3 THE COURT: Okay. Now, a person's right to testify
4 or right to not testify, as I said earlier, is a
5 constitutional right. And no one can make that decision
6 for you. What is important for you to understand is this,
7 you have an outstanding lawyer, Mr. Mauldin. And he -- his
8 job is to give you his best advice, his thoughts as far as
9 your case goes, and to assist you throughout the case. And
10 I'm sure he's done that. But when it comes down to making
11 the decision, do you want to testify or do you want to
12 remain silent, the only -- he can give you his thoughts on
13 that. But the bottom line, that decision must be your
14 decision. Do you understand that?

15 DEFENDANT HAYNESWORTH: Yes, I do.

16 THE COURT: And it must be your decision without
17 anybody coercing you or threatening you or forcing you to
18 do that. Do you understand?

19 DEFENDANT HAYNESWORTH: Yes, sir.

20 THE COURT: Now, the decision to testify, that you
21 have made, has that in fact been your decision?

22 DEFENDANT HAYNESWORTH: Yes, sir. It is.

23 THE COURT: And no one has forced you or threatened
24 you or caused you to make that decision, other than
25 yourself?

1 DEFENDANT HAYNESWORTH: No, sir.

2 THE COURT: All right, sir. All right. Thank you
3 very much.

4 DEFENDANT HAYNESWORTH: You're welcome.

5 THE COURT: You may have a seat.

6 Mr. Capers, we need to address your decision. My
7 understanding is, you have decided to not testify. Is that
8 correct?

9 DEFENDANT CAPERS: Yes, sir.

10 THE COURT: All right. And you've heard what I've
11 shared with Mr. Haynesworth. And I'll share it with you as
12 well. You understand that you have the right to testify if
13 you wanted to. You understand that?

14 DEFENDANT CAPERS: Yes, sir.

15 THE COURT: And just as I said earlier with regards
16 with Mr. Haynesworth, it's the same with your situation.
17 If you did decide to testify, you would have to respond to
18 questions not only from your lawyer but from the other
19 attorneys involved. Do you understand that?

20 DEFENDANT CAPERS: Yes, sir.

21 THE COURT: Now, you've indicated you wish to
22 exercise your right to remain silent. And I will tell you
23 that, if you do go forward with your right to remain
24 silent, I will give the jury the instruction as it relates
25 to you, and I will tell the members of the jury that they

1 cannot in any way consider your right to remain silent,
2 they cannot consider the exercise of that right in any way
3 in their deliberation. Do you understand that?

4 DEFENDANT CAPERS: Yes, sir.

5 THE COURT: I will tell them that it is the State's
6 burden to prove guilt and that you don't have to prove
7 anything. And the fact that you exercised that
8 constitutional right cannot in any way be used against you,
9 nor can they even discuss that in the jury room. Do you
10 understand that?

11 DEFENDANT CAPERS: Yes, sir.

12 THE COURT: All right, sir. And as I said with Mr.
13 Haynesworth, this decision to remain silent and to exercise
14 that constitutional right, has that been your decision,
15 sir?

16 DEFENDANT CAPERS: Yes, sir.

17 THE COURT: I know you've talked with your attorney
18 and possibly with other folks, and that's good. It's good
19 to talk to people and get their perspective. But you
20 understand that the final decision must be yours and yours
21 alone. Do you understand that?

22 DEFENDANT CAPERS: Yes, sir.

23 THE COURT: Now, has anybody forced you or
24 threatened you in any way to make this decision?

25 DEFENDANT CAPERS: No, sir.

1 THE COURT: This decision to exercise your
2 constitution right to remain silent, has that been your
3 decision, sir?

4 DEFENDANT CAPERS: Yes, sir.

5 THE COURT: And has that been made of your own free
6 will, sir?

7 DEFENDANT CAPERS: Yes, sir.

8 THE COURT: All right. Great. Thank you very
9 much, sir. You may have a seat.

10 All right. And so we'll proceed.

11 Now, is there anything that we need to take up
12 before we move to the Defense's case? Anything from the
13 State?

14 MS. USRY: Yes sir, Your Honor. Defense Counsel
15 showed me an exhibit he plans to enter in with his witness,
16 and I would object to that. I think we can go ahead and
17 take that up now before his witness takes the stand. It
18 is -- and we can hand it up so Your Honor knows what
19 exactly the defense -- I believe it's been marked as
20 Defense 3.

21 THE COURT: Okay. All right.

22 MS. USRY: It's my understanding, I'm assuming he
23 plans to get it in through his defendant as a message that
24 his defendant received. From looking at what he's provided
25 me, and I'm assuming it's the exact same thing you have in

1 your hand, Your Honor, there's no indication of when this
2 message was sent or who it's from. There's no -- there's
3 not going to be, and it's my understanding he's not going
4 to have anyone here to lay a foundation for the message
5 indicating it definitely came from a particular individual.
6 Because with these type of messages, as Your Honor is
7 aware, anybody can create a Facebook account and send a
8 message. And the State has serious concerns about it being
9 entered.

10 Now, that said, I do believe he could -- if he
11 wants to talk about Facebook threats, he can talk about
12 those. I'm objecting to actually entering this statement
13 into evidence.

14 THE COURT: All right. Mr. Mauldin.

15 MR. MAULDIN: Thank you, Your Honor. Mr.
16 Haynesworth is prepared to testify that he received this
17 message on December 30th, 2012, which is what it indicates
18 on the upper-right hand next to his face. He is prepared
19 to testify that the message did come from Frankie Lawton,
20 that -- that, that is his Facebook handle and that he
21 received the message on that day and this is a screenshot
22 from his phone reflecting the message that was sent that
23 day and it's printed out.

24 The other concerns the State is mentioning, I think
25 that goes to the weight of the evidence and not to the

1 admissibility. And they can cross-examine him about
2 whether or not he made it up. But I think that goes to
3 weight, not admissibility.

4 THE COURT: What -- You're going to have to give me
5 a little bit -- What relevance is this.

6 MR. MAULDIN: Frankie Lawton is friends with
7 JayQuan Bell. In the case, it goes to bias. Also, this
8 threat made explains the family's actions on why the mother
9 and the brother followed him to school that day in their
10 own vehicle. It's because the threat was made.

11 MR. DRYLIE: And, Your Honor, on that foundation.
12 Mr. Lawton was actually in the house. They didn't call
13 him, but he was actually in the house and is listed as an
14 alleged victim in this.

15 MR. MAULDIN: The message does say, "I know where
16 the F you park in the morning. I see you every day." And
17 that explains why they followed him to school that morning.
18 This was made December 30th, which is just a few days
19 before the incident date.

20 THE COURT: I don't understand, in this message --
21 This is a message from a person who -- I mean, what's the
22 purpose? I don't understand the purpose. This is a --
23 There's no testimony about this individual.

24 You shake your head, Mr. Drylie. But you may know
25 that the person was in the house. But that hasn't been in

1 this record. Has it?

2 MR. DRYLIE: It actually has. They've asked, I
3 believe, Clara Williams and Jennie Childs as well as
4 JayQuan Bell who was in the house. That's been the opening
5 for their testimony the entire time, including the point.

6 THE COURT: Was this person listed as one of the
7 people in the house?

8 MS. USRY: Your Honor, we did say that he was in
9 the house. He's talked about as Frankie and in the house.
10 So we have, because we have-- five people are in the house.
11 That has been our argument the whole time, that there were
12 five people.

13 THE COURT: Okay.

14 MS. USRY: And when we talked about the house
15 diagram, she talked about who lived in which bedroom. So
16 that is there. I don't see -- we don't have a -- I have
17 never seen any connection with this name and this message
18 coming in as Frankie Lawton. I mean, he can talk about,
19 I'm not saying he can't talk about these threats he's
20 receiving when he's up there.

21 But I don't think this message can come in as
22 evidence because I don't see how they're laying the
23 foundation to say he definitely received this message from
24 this person. And how this name connects to Frankie Lawton,
25 that this is his profile and that he sent this message.

1 Now, as opposed to when the victim took the stand
2 and he said, "Yes, I sent that message," and agreed to it
3 and it came in, I don't see -- We don't have this witness
4 here to say, "This is my message." I don't see how this
5 comes in. He can talk about it. He can, you know, ask him
6 direct questions about it, but then he has to move on. He
7 can't enter it into evidence.

8 THE COURT: Mr. Mauldin.

9 MR. MAULDIN: I believe, as I said before, that Mr.
10 Haynesworth is willing to testify that this message is from
11 Frankie Lawton and that the arguments --

12 THE COURT: Well, I'm sure he's willing to testify
13 to that, but --

14 MR. MAULDIN: Yes, sir.

15 THE COURT: -- what evidence is there, other than
16 his testimony.

17 MR. MAULDIN: Well, I think that goes to the weight
18 and not the admissibility.

19 THE COURT: And what's the purpose in this
20 evidence.

21 MR. MAULDIN: Mr. Lawton is friends with JayQuan
22 Bell. They had been making threats toward my client. And
23 it explains the family's actions on the day, why the whole
24 family was together and went to school together that day.

25 THE COURT: Well, why isn't it enough that he can

1 testify to this.

2 MR. MAULDIN: Well, he can, but we wanted to put
3 that in as a document approved other than him just saying
4 it, that here's a screenshot of it as well. Even though he
5 doesn't have to prove anything, we just want to demonstrate
6 that there is actual evidence other than his testimony.
7 And of course, I would cite his right to present a defense
8 under the 6th Amendment and due process under the
9 provisions of the South Carolina Constitution.

10 THE COURT: All right. I think Mr. Mauldin may be
11 correct that it goes to the weight of the evidence. He
12 certainly would be subject to cross-examination. So I'm
13 inclined to allow it if that proper foundation is
14 presented.

15 Anything else before we bring the jury out?

16 MR. MAULDIN: Not from me, Your Honor.

17 MR. DRYLIE: Nothing from me, Your Honor.

18 THE COURT: Anything else from the State?

19 MS. USRY: Nothing further, Your Honor.

20 THE COURT: All right. Let's bring the jury out.

21 (WHEREUPON the jury entered the courtroom at 9:52
22 a.m.)

23 THE COURT: Good morning, folks. I appreciate
24 everyone being prompt, and on time, and here. I've taken
25 up the matters of law that I need to take up that I

Bilal Haynesworth - Direct Examination by Mr. Mauldin

1 discussed and told you about yesterday. We've taken care
2 of those matters, and we're now ready to proceed with the
3 case.

4 If you recall, when we adjourned yesterday, the
5 State had rested their case. And so I would recognize the
6 defense.

7 Mr. Mauldin.

8 MR. MAULDIN: Thank you, Your Honor. I would call
9 Bilal Haynesworth.

10 THE COURT: Mr. Haynesworth, if you would please
11 come around to be sworn, sir.

12 BILAL HAYNESWORTH,

13 HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

14 THE CLERK: Once you're seated, speak up loud and
15 clear. State your full name, spelling your last, please.

16 THE WITNESS: Bilal Haynesworth.

17 H-a-y-n-e-s-w-o-r-t-h.

18 DIRECT EXAMINATION

19 BY MR. MAULDIN:

20 Q You're going to have to speak up, Bilal. Okay?

21 A Yes, sir.

22 Q Well, not that loud?

23 THE COURT: That's good. That's good.

24 MR. MAULDIN: That's good. But it was a little
25 loud.

Bilal Haynesworth - Direct Examination by Mr. Mauldin

1 BY MR. MAULDIN:

2 Q All right. Mr. Haynesworth, around the timeframe
3 of December 2012, what kind of messages, what kind of
4 communications had you been getting from JayQuan Bell and
5 his friends and relatives?

6 A Lots of threats through Facebook, text messages,
7 phone calls.

8 Q And that kind of thing?

9 A Yes, sir.

10 Q And when did that happen?

11 A It started around Christmas Break when school let
12 out for like two, three weeks, almost a month.

13 Q Okay. I'm going to show you what's been marked as
14 Defendant's 3 for identification. Do you recognize that?

15 A Yes, sir.

16 Q Now, without saying what's in it, what is it?

17 A It's a screenshot that I, that I took on my cell
18 phone, which is a iPhone.

19 Q Okay, and how did you create that paper?

20 A I screenshot it on my cell phone, then I went to
21 UPS and I printed it out.

22 Q And who is it a message from?

23 A Frankie Jerod Lawton.

24 Q And how do you know that?

25 A Because I know that through his name, his Facebook

Bilal Haynesworth - Direct Examination by Mr. Mauldin

1 name, which was JayQuan friend.

2 Q Okay. And what's the Facebook name on that?

3 A Frankie Jerod Lawton.

4 Q Okay. And what name did he put on -- What name is
5 on his Facebook message there?

6 A Jerod Imherhubby Lawton.

7 Q And what significance is the name Jerod?

8 A That's his middle name.

9 Q Okay. And when was that message sent?

10 A December 30th, 2012.

11 Q Okay. And is the Exhibit -- Look at both pages,
12 please. Is that a true and accurate representation of the
13 messages he sent you on Facebook?

14 A Yes, sir.

15 MR. MAULDIN: Defense would move Defendant's 3 into
16 evidence.

17 MS. USRY: Your Honor, I'd just like to see it real
18 quick. I think it's different than what I have.

19 THE COURT: Yeah.

20 MS. USRY: Thank you.

21 THE COURT: It's two pages, so make sure you see
22 both.

23 MS. USRY: Yes, sir. No objection, Your Honor.

24 THE COURT: All right. Without objection. That's
25 Defense Exhibit 1; is that correct?

Bilal Haynesworth - Direct Examination by Mr. Mauldin

1 THE COURT REPORTER: 3.

2 THE COURT: 3. I'm sorry.

3 MR. MAULDIN: 3.

4 THE COURT: Defense Exhibit 3.

5 MR. MAULDIN: Thank you, Your Honor.

6 BY MR. MAULDIN:

7 Q Now, Mr. Haynesworth I know there's some salty
8 language in there, but could you read the message that you
9 got sent?

10 A Yes, sir.

11 Q Please read it.

12 A He started off, "Yo fuck boy!! Screenshot dis!
13 You sending subliminals, nigga? Fuck dat net bangin bitch.
14 I'm a see you in da street, boy. Ask about me. I don't
15 take too kind threats bitch! Who you sending headshots
16 to?"

17 THE COURT: Okay, I want you to read it, but slow
18 down just a little bit. Okay?

19 THE WITNESS: All right.

20 THE COURT: So the Court Reporter can get it all.

21 THE WITNESS: Start over?

22 THE COURT: No. You're okay. Just slow it down a
23 little bit. Okay?

24 THE WITNESS: "Who you sending headshots to? Cause
25 if it's me and mine, we got a big fuckin problem! I let

Bilal Haynesworth - Direct Examination by Mr. Mauldin

1 that shit slide with that young boss shit, but now you
2 violating when my God daughter came in the picture. She
3 ain't got shit to do with this bitch nigga. I could've
4 been dumb yo ass up. We got rid of some other fuck niggas
5 from round here. It's nothing to lace up and duke it out
6 bruh. You ain't fucking with no rookies. I know where the
7 fuck you park at in the morning. I see you every day. So
8 keep on with that fuck shit. Ask about big 902 round this
9 bitch. I don't disrespect nobody every. But niggas like
10 you young bitches be so sloppy. Stop fuckin screamin box
11 cause that shit don't fit you fuck niggas. And remember
12 fuck boy, I'm watching you. Da real boss."

13 BY MR. MAULDIN:

14 Q Now, what relation is Frankie Lawton to JayQuan
15 Bell?

16 A That's his friend or cousin.

17 Q Okay. And on the day of January 3rd of 2013, a
18 couple days after this, what kind of communications did you
19 receive from these people?

20 A More threats.

21 Q Okay. And how are these communications conveyed to
22 you?

23 A Threatening. I received them through the cell
24 phone.

25 Q Okay. It was over the phone?

Bilal Haynesworth - Direct Examination by Mr. Mauldin

1 A Yes, sir.

2 Q And you heard these threats?

3 A Yes, sir.

4 Q And who was making these threats?

5 A Frankie, JayQuan Bell, and a few other of his
6 friends. I can't quite catch their voice.

7 Q And based on that, what did you and your family
8 decide to do as you going to school that day?

9 A My mom decided to follow behind me.

10 Q Okay. And why did she do that?

11 A For my safety.

12 Q Okay. Now, as you said, when you say followed
13 behind you, exactly what do you mean?

14 A Her car was behind my car.

15 Q Okay.

16 A When I parked and got out, she was behind me.

17 Q So how did y'all travel to school?

18 A Two cars.

19 Q Okay. Two cars. And where do you park when you go
20 to school?

21 A I park in front where my homeboy Ryan Bush live at,
22 which is the apartments across from the Exxon.

23 Q All right. Now, before this day, what was your
24 habit in the morning as far as going to school and parking?

25 A I couldn't park in the school parking lot because,

Bilal Haynesworth - Direct Examination by Mr. Mauldin

1 at the time, I didn't have a license, which you need a
2 license to park in the school parking lot which gave you a
3 permit, so therefore, I parked where my friend lived which
4 is the apartments because I had a permit. I parked my car
5 and got out, and I walked to school every day. I grabbed
6 breakfast which is, you know, a few honey wings and I
7 continued my journey to school.

8 Q Okay. When you say you had a permit, you didn't
9 have a full driver's license but a beginner's permit or --

10 A A beginner's permit.

11 Q Okay. So on this day, your family decided to come.
12 Is that correct?

13 A Yes, sir.

14 Q And who was in the car that followed behind you?

15 A Lywone, Mr. Dixon, and Tammy Coleman.

16 Q And who's Tammy Coleman?

17 A My mother.

18 Q And who was driving that car?

19 A She was.

20 Q All right. So when you -- after you parked your
21 car, then what happened? Where did you go?

22 A I got out and walked across the street to the Exxon
23 station with my brother.

24 Q Okay. And what did you do at the Exxon?

25 A I went in, grabbed a little something, and I left

Bilal Haynesworth - Direct Examination by Mr. Mauldin

1 out.

2 Q Okay. And who was with you when you left out?

3 A My brother.

4 Q Okay. And then what happened?

5 A My mom drove me to Swansea High School.

6 Q Okay. Now why did she drive you instead of just
7 letting you walk like you normally do?

8 A It started raining and drizzling, so she decided to
9 drive me to school.

10 Q Okay. And how long were you in school that day?

11 A Til the end of first period. But I got out early,
12 it was like a few left til the bell rings which dismiss you
13 to second period.

14 Q All right. Why, what happened? Why were you
15 released? How did that happen, you getting released from
16 school? What happened to let you know that?

17 A I didn't know that I was getting released from
18 school. I was surprised and shocked that they just called
19 me to the office.

20 Q And who was at the office?

21 A My mom.

22 Q Okay. And what was your understanding of why you
23 were getting out of school early that day?

24 A They said that I was being transferred, that type
25 of thing, withdrew.

Bilal Haynesworth - Direct Examination by Mr. Mauldin

1 Q And whose decision was that?

2 A My mother's.

3 Q Okay. And after that you left the school. Right?

4 A Yes, sir.

5 Q And where did you go? How did you go there? And
6 who did you go with?

7 A I went with my mom to the apartments.

8 Q Okay. And where -- what were you in when you went
9 to the apartments?

10 A Her truck.

11 Q And who was with you?

12 A My mom, Mr. Dixon, and Lywone.

13 Q Okay. And what did you do when you got to the
14 apartments?

15 A I got in my vehicle, which is the green Camaro.
16 And I drove to the gas station to get gas.

17 Q All right. And what happened at the gas station?

18 A At the gas station, when I pulled up, I seen
19 JayQuan Bell and his aunt or grandmother. I don't know who
20 she was.

21 Q And how long did they stay there after you got
22 there?

23 A Not long.

24 Q Did you do anything towards them or their car?

25 A When I got out my car, he was, JayQuan was saying,

Bilal Haynesworth - Direct Examination by Mr. Mauldin

1 "Get out, bitch!" You know, cursing. So I cursed back at
2 him, stuck up my middle finger at him, and I walked in the
3 store to get gas.

4 Q Okay. And who else ended up at that Exxon?

5 A My mom ended up at the Exxon, and Mr. Dixon.

6 Q Okay. What about your brother?

7 A He was there, too.

8 Q Okay. And what vehicles were they in?

9 A My brother was in a Mercedes with my mother.

10 Q And who was driving that?

11 A She was.

12 Q Okay. How did Mr. Dixon end up there in a Nissan?

13 A I don't know, sir.

14 Q Okay. And what, if any, interaction did you have
15 with your mother at the gas station?

16 A I talked to her.

17 Q Okay. And what, if any, interaction did you have
18 with Mr. Dixon at the gas station?

19 A None.

20 Q And your brother?

21 A None.

22 Q Okay. And what happened after you left the gas
23 station?

24 A After I left the gas station, my normal thing I do
25 every day, I went to go pick up my friend from the

Bilal Haynesworth - Direct Examination by Mr. Mauldin

1 Alternative School.

2 Q Okay. Where is that?

3 A That's just down the street from the Exxon station.

4 Q I'm going to show you what's State's Exhibit 2.

5 That's the gas station. About how far down the street is
6 the Alternative School?

7 A Up this area.

8 Q Okay. How long does it take to get there?

9 A About two minutes, three minutes, I'm not sure.

10 Q And what did you do at the Alternative School that
11 day?

12 A I pulled up in the parking lot. My car was still
13 running. I blew the horn a few times. Beep-beep, normal
14 thing. Then I realized it was too early to get him out of
15 school cause I had got, you know, I got released early. So
16 it slipped my mind. I then leaned over my passenger seat,
17 wind down my window, and let my mom know it's too early to
18 get Hakim out of school. I rolled my window back up, then
19 left and headed back towards the Exxon station.

20 Q Okay. And where did you go after that?

21 A I made a left, and I went home.

22 Q Okay. And how long does it take you to get home?

23 A Approximately 15, 10 minutes.

24 Q Okay. Now, who -- your mother followed you to the
25 Alternative School? Is that what you're saying?

Bilal Haynesworth - Direct Examination by Mr. Mauldin

1 A Yes, sir.

2 Q And who -- And what kind of vehicle was she in?

3 A A Mercedes truck.

4 Q And who was with her in that car?

5 A Lywone.

6 Q Where was Mr. Dixon?

7 A I have no idea.

8 Q Okay. Did you see him drive off? I mean --

9 A Yes, sir.

10 Q Okay. So, he wasn't with you there?

11 A No, Mr. Dixon was not. He was ahead of me.

12 Q Now a couple of days later, you went up to the

13 Swansea Police Station; is that correct?

14 A Yes, sir.

15 Q Who forced you to go there?

16 A No one.

17 Q Why did you go there?

18 A I went to go there because I heard that my friend

19 had got arrested for driving my mom Mercedes truck.

20 Q When, if ever, did you ever go down to Roach Avenue

21 and shoot at a house?

22 A Never.

23 Q When, if ever, did you and your family plan to go

24 and do a drive-by?

25 A Never.

Bilal Haynesworth - Cross-Examination by Ms. Usry

1 Q When, if ever, did your mom switch out with
2 somebody in this Mercedes and let them drive her truck
3 behind you and go shoot at somebody?

4 A Never.

5 MR. MAULDIN: No further questions.

6 THE COURT: Mr. Drylie?

7 **CROSS-EXAMINATION**

8 BY MR. DRYLIE.

9 Q I just have one question for you, Bilal?

10 A Yes, sir.

11 Q At any point that morning did you see Lywone, other
12 than when he went into the Exxon store, leave the Mercedes
13 truck?

14 A No, sir.

15 Q Not until you got back to the house?

16 A Yes, sir.

17 MR. DRYLIE: No questions. No further questions.

18 THE COURT: All right. Ms. Usry?

19 **CROSS-EXAMINATION**

20 BY MS. USRY:

21 Q Bilal, do you know Lywone Capers?

22 A Yes, ma'am.

23 Q He's your brother?

24 A Yes, ma'am.

25 Q Tammy Coleman is your mother; correct?

Bilal Haynesworth - Cross-Examination by Ms. Usry

- 1 A Yes, ma'am.
- 2 Q You know Nehemiah Dixon; correct?
- 3 A Yes, ma'am.
- 4 Q He's -- dates your sister?
- 5 A Yes, ma'am.
- 6 Q Y'all hang out a lot; correct?
- 7 A Not really. He works.
- 8 Q During -- on January 3rd of 2013, y'all hung out a
9 lot; correct?
- 10 A On January 3rd, 2013, we did not hang out a lot.
- 11 Q You didn't prior to that?
- 12 A No.
- 13 Q Didn't he spend the night at your house that night
14 before?
- 15 A Yes, ma'am.
- 16 Q So you saw him?
- 17 A Yes, ma'am.
- 18 Q Had he spent the night at your house before?
- 19 A He always spend the night, once in a blue.
- 20 Q So you see him quite regularly?
- 21 A Yes, ma'am.
- 22 Q And you were enrolled, in 2013, the school year
23 2012-2013, at Swansea High School; correct?
- 24 A Yes, ma'am.
- 25 Q JayQuan Bell was not enrolled there. Is that

Bilal Haynesworth - Cross-Examination by Ms. Usry

1 right?

2 A I'm not sure. That day when I started school, I
3 did not see JayQuan Bell.

4 Q He wasn't at school that day?

5 A He never was at school that day. I didn't ever see
6 him at school that day. I can't tell you if he was or not.

7 Q Have you seen him at school?

8 A I can't tell you if he was or not.

9 Q Had you seen him at school prior to January 3rd of
10 2013, at Swansea High School?

11 A I seen him at school 2011.

12 Q So you didn't see him early in 2013 or in 2012?

13 A No, ma'am.

14 Q And you didn't see Frankie Lawton at school that
15 day. Did you?

16 A No, ma'am.

17 Q Did you see Frankie Lawton at all on January 3rd of
18 2013?

19 A No, ma'am.

20 Q And you went from the school to the Exxon; correct?

21 A I went from the school to the apartments to get my
22 car, which was running low on gas, to the gas station. My
23 gas in my car's messed up. Can't tell if it was full or
24 not full. Therefore, so I don't breakdown on the side of
25 the road, I get gas.

Bilal Haynesworth - Cross-Examination by Ms. Usry

1 Q And you saw this car at the Exxon; correct?

2 A Yes, ma'am.

3 Q And you saw JayQuan Bell and Ms. Clara in this car,
4 or a woman in this car?

5 A Yes, ma'am.

6 Q And that's State's 1. And when you drove into the
7 Exxon, that car left. Didn't it?

8 A It stayed for a little bit, then it proceeded off.

9 Q And when you got to the Exxon, you got out of your
10 car and approached the blue car. Didn't you?

11 A I did not approach the blue car.

12 Q That's not what the video from the Exxon's going to
13 show?

14 A The video from the Exxon shows me backing up, stick
15 up my middle finger, not approaching that vehicle.

16 Q You were making gestures -- You were making
17 gestures toward the blue car?

18 A I was not making gestures towards the blue car.

19 Q Well, what is sticking your middle finger up at the
20 blue car doing?

21 A When I pulled up, JayQuan Bell said words to me, I
22 said, words to him. Then I stuck up my middle finger.

23 Q And your brother got out the car at the Exxon too;
24 correct?

25 A I'm not sure. If that's what the video show -- I

Bilal Haynesworth - Cross-Examination by Ms. Usry

1 wasn't paying attention to my brother at all.

2 Q And you talked to Nehemiah Dixon at the Exxon.

3 Didn't you?

4 A No, ma'am.

5 Q So when that car pauses at the -- When the car that
6 Nehemiah Dixon's in, comes back to the Exxon and pauses on
7 the video?

8 A I gets in my vehicle and closes my door, which is
9 shown on the video.

10 Q And then you followed him out; correct?

11 A I did not follow him out.

12 Q You didn't go the same direction that he went on
13 the way out?

14 A We went towards the same direction, but I did not
15 follow him out.

16 Q You turned onto 321, and then you turned onto 692?

17 A Yes, ma'am.

18 Q And that was the same direction that Nehemiah Dixon
19 went. Wasn't it?

20 A Yes, ma'am.

21 Q And you went down the same road he did; correct?

22 A Yes, ma'am.

23 Q And you were behind him; correct?

24 A Yes, ma'am.

25 Q And then you remember being -- that you stayed in

Bilal Haynesworth - Cross-Examination by Ms. Usry

1 school one period; correct?

2 A Yes, ma'am. And got dismissed.

3 Q So you're telling me that you got out after one
4 period and then went to the Alternative School to pick up
5 your friend?

6 A I had gotten out of school, went to get my car from
7 the apartments, went to the gas station, got into an
8 argument with JayQuan Bell. Then I left the gas station.
9 Mr. Dixon was in front of me. He kept driving. I made a
10 left into the Alternative School parking lot. And blew my
11 horn.

12 Q At nine o'clock in the morning, 9:30 in the
13 morning, you went to the Alternative School to pick up your
14 friend?

15 A Yes, ma'am. I wasn't sure of the time, like I
16 said.

17 Q On January 3rd?

18 A On January 3rd. I got out early. I wasn't sure of
19 the time.

20 Q And your mom actually followed you?

21 A Yes, ma'am.

22 Q So she also thought that y'all were going to get
23 this kid out of school at 9:30 in the morning?

24 A I can't tell you what she thought. I'm not her.

25 Q And you testified you received threats on Facebook.

Bilal Haynesworth - Cross-Examination by Ms. Usry

1 You said lots of them?

2 A Yes, ma'am.

3 Q But you only have --

4 A Phone calls as well. Text messages as well.

5 MR. MAULDIN: Your Honor, may we approach.

6 THE COURT: Yeah.

7 (WHEREUPON there was a bench conference out of the
8 hearing of the jury and the court reporter.)

9 MS. USRY: Beg the Court's brief indulgence, Your
10 Honor.

11 THE COURT: That's fine.

12 (WHEREUPON there was a pause in the proceedings.)

13 BY MS. USRY:

14 Q Bilal, Defense Exhibit 3: Where did this picture
15 come from?

16 A It came from Facebook. I screen shotted it on my
17 iPhone.

18 Q You took a picture of this on your phone; correct?

19 A You don't take a picture on your phone; correct.
20 You screenshot. You press the power button and you press
21 your send button, which takes the picture of what you're
22 looking at.

23 Q It is -- But so it's a picture?

24 A It's a screenshot, not a picture.

25 Q But it takes a picture of what you're looking at.

Bilal Haynesworth - Cross-Examination by Ms. Usry

1 Correct?

2 A It's a screenshot of what I'm looking at. Then
3 which is printed out onto paper at UPS.

4 Q So this is from your phone?

5 A That is from my Facebook.

6 Q It is a screenshot of the front of your phone;
7 correct?

8 A It is not a screenshot of my phone.

9 Q This -- but this is a -- what is this then?

10 A It is a screenshot of a message on my Facebook
11 page, sent from Frankie Jerod Lawton.

12 Q What device did this screenshot come from?

13 A iPhone.

14 Q Okay. On your phone. So it's your phone?

15 A It's my phone, my Facebook.

16 Q And are you -- you're familiar with Facebook
17 because you have an account; correct?

18 A Yes, ma'am.

19 Q And when you create that account, all you need is a
20 e-mail address; correct?

21 A Em ail, password, but now it's different when
22 you're setting up the account for Facebook, cell phone
23 number, that type of thing.

24 Q So all you need is a cell phone number and a e-mail
25 address to setup a Facebook account?

Bilal Haynesworth - Cross-Examination by Ms. Usry

- 1 A Yes, ma'am.
- 2 Q And anybody can do it?
- 3 A Anyone.
- 4 Q And there -- how many friends do you have on
5 Facebook?
- 6 A Thousands.
- 7 Q So anyone could create an account on Facebook and
8 send a message from it; correct?
- 9 A Anyone can; correct. But anyone is not going to
10 send you threats like that on Facebook. I don't receive
11 thousands of threats from thousands of my friends on
12 Facebook.
- 13 Q And you own a green Camaro?
- 14 A I do not own a green Camaro.
- 15 Q Your mom owns a green Camaro?
- 16 A Yes, ma'am.
- 17 Q And you drive it?
- 18 A Yes, ma'am.
- 19 Q And your mom owned -- on January 3rd of 2013, a
20 Mercedes truck; correct?
- 21 A Yes, ma'am.
- 22 Q And you owned a Nissan. Correct?
- 23 A I do not own a Nissan.
- 24 Q Who owns a Nissan?
- 25 A I can't tell you who own a Nissan.

Tammy Coleman - Direct Examination by Mr. Mauldin

1 Q Well how about -- Nehemiah Dixon was driving a
2 Nissan on January 3rd of 2013?

3 A Yes, ma'am.

4 MS. USRY: No further questions, Your Honor.

5 THE COURT: Anything further with this witness?

6 MR. MAULDIN: No, Your Honor.

7 THE COURT: Thank you very much, sir. You may step
8 down.

9 You may call your next witness.

10 MR. MAULDIN: Thank you, Your Honor. We would call
11 Tammy Coleman. She's outside.

12 THE COURT: Okay. All right. They've gone to get
13 her, right?

14 MR. MAULDIN: Yes, sir.

15 TAMMY COLEMAN,

16 HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

17 THE CLERK: Have a seat up there please, ma'am.

18 Once you're seated, state your full name, spelling the last
19 on the record please.

20 THE WITNESS: Yes, my name is Tammy G. Coleman.

21 First name T-a-m-m-y, middle initial G, last name

22 C-o-l-e-m-a-n.

23 DIRECT EXAMINATION

24 BY MR. MAULDIN:

25 Q Thank you, Ms. Coleman. What relationship do you

Tammy Coleman - Direct Examination by Mr. Mauldin

1 have to Bilal Haynesworth?

2 A My son.

3 Q Okay. And what do you do?

4 A Nursing.

5 Q Okay. And where do you work at?

6 A Comfort Home Care Nursing Staffing.

7 Q Okay. And on the morning of January 3rd, 2013,
8 what happened that morning?

9 A Well --

10 Q At your house?

11 A We received some threatening calls. Can you give
12 me a second?

13 I'm in the nursing field, and my patient almost
14 died this morning, so I'm a little emotional.

15 Q Yes, ma'am.

16 THE COURT: Ladies and gentlemen, let me get you to
17 step back in the jury room please. Have no conversation
18 about the case. Okay?

19 (WHEREUPON the jury left the courtroom at 10:23
20 a.m.)

21 THE WITNESS: I'm sorry.

22 THE COURT: All right. We're going to just take a
23 few minutes.

24 MR. MAULDIN: Yes, sir. I was unaware of this.

25 THE COURT: That's okay.

Tammy Coleman - Direct Examination by Mr. Mauldin

1 And ma'am, you may step down. And we'll start back
2 in about 10 or 15 minutes. Okay? And you're not to have
3 any conversation with anybody about your testimony. Okay?
4 Thank you, ma'am.

5 All right, folks, we'll just remain at ease for a
6 few minutes if anyone needs to take a break or whatever.

7 (WHEREUPON a brief recess was observed.)

8 THE COURT: All right, folks. We're going to get
9 started back.

10 Now, are you ready to proceed, ma'am?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. If you would, just come
13 back and have a seat on the stand. And we'll just pick up
14 from where we left off. Do you need any water?

15 THE WITNESS: Yes, thank you.

16 THE COURT: Okay. All right. Let's bring the jury
17 back out, please.

18 (WHEREUPON the jury entered the courtroom at 10:40
19 a.m.)

20 THE COURT: All right. Ladies and gentlemen, I
21 thank you for your understanding and consideration of that
22 break. And we will now proceed. Mr. Mauldin, you may pick
23 up your direct examination where you left off.

24 MR. MAULDIN: Thank you, Your Honor.

25 ///

Tammy Coleman - Direct Examination by Mr. Mauldin

1 BY MR. MAULDIN:

2 Q Ms. Coleman, where we left off, I believe we were
3 talking about the morning of January 3rd, 2013 and this
4 phone call that you received at your house that morning?

5 A Yes.

6 Q What was that phone call about?

7 A Some children threatened my son. That "we know
8 where he parks his car at." I heard them.

9 Q All right. And what did you do -- decide to do
10 that day based on that phone call?

11 A Me, recognizing knowing of the kids that was on the
12 phone, I figured I'd ride behind my son to school and try
13 to see the kids and talk to them.

14 Q Okay. And why don't you describe, actually, how
15 did you and Bilal and everybody get to school that day?

16 A Bilal drove his, my green Camaro car. I drove my
17 Mercedes. Me, my son Lywone, and Nehemiah.

18 Q And where did you go first?

19 A We drove to where Bilal parks the car at every
20 day --

21 Q Okay.

22 A -- located at apartments.

23 Q And did it -- and where did you go next?

24 A After that, we didn't see anybody, so I told Bilal
25 to do his normal routine. Go to school, he walked -- him

Tammy Coleman - Direct Examination by Mr. Mauldin

1 and his brother walked towards the Exxon where he stop and
2 get breakfast every morning before he go to the school.

3 Q Okay. And what did you do?

4 A I followed behind my son in the car.

5 Q Okay. And then how did y'all get to the school?

6 A Well, we got to the Exxon and went in the store and
7 came back out. It was drizzling, so I told him to come on,
8 instead of walking to school, I told him to come on, and I
9 drove him to the school.

10 Q Okay. And after you dropped Bilal off, where did
11 you go?

12 A I was getting ready to go to the supermarket, but I
13 went back past the apartments --

14 Q Uh-huh.

15 A -- to roll up his window of the car. He left one
16 slightly cracked, and it was drizzling a little.

17 Q Okay. And what happened during that drive back?

18 A That -- during that time, I received more calls
19 saying that they was going to kill Bilal and he signed his
20 own death warrant.

21 Q And what did you do after getting that?

22 A I was upset. I got myself together as I was
23 driving. I went to the school.

24 Q So you went back to the school?

25 A Yes.

Tammy Coleman - Direct Examination by Mr. Mauldin

1 Q Okay. And when did you -- what were you intending
2 to do when you were going back to the school?

3 A I was withdrawing my son from school because I was
4 upset. I had several threats. We had several threats
5 constantly, calls over the phone, saying they was going to
6 kill Bilal, they was going to hurt him.

7 Q Now, when you mean withdraw, do you mean for that
8 day or permanent?

9 A No. Permanent.

10 Q So you were going to move him out of that area?

11 A Yes. I moved. I was moving. And I was moving out
12 of the area.

13 Q Okay. Now, where did you go once you got back to
14 the school?

15 A I went to the school. I went into the office.

16 Q Okay. Did you see anybody on the way to the
17 office?

18 A Yes, sir.

19 Q And who did you see?

20 A JayQuan, and I seen the lady with him.

21 Q And what were you thinking when you saw JayQuan?

22 A I was saying hi. I wasn't thinking nothing. I
23 was -- He looked at me. He said, "What is you doing here?"
24 I said, "What you mean, what is I'm doing here?" And I
25 just left it at that and entered on into the school.

Tammy Coleman - Direct Examination by Mr. Mauldin

1 Q Okay. And you went into the school to withdraw
2 Bilal. You talked with the lady at the desk for a period
3 of time?

4 A Yes.

5 Q Okay. And how long did that take?

6 A It didn't take -- it took a few minutes. I
7 explained to her the reason why I was taking Bilal out of
8 the school and that I was moving because I feared for his
9 safety? Because all this same group of kids is in the same
10 school.

11 Q Did you know whether or not JayQuan went to school
12 there at that time?

13 A No. I did not know.

14 Q And how did you get -- Who was with you when you
15 went back to the school?

16 A When I went into the school, it was me and my son
17 Lywone.

18 Q Okay. Where was Mr. Dixon?

19 A In the car.

20 Q And when you left the school, who was with you?

21 A Me, my son, and Nehemiah.

22 Q Okay. Which son?

23 A Lywone and Bilal.

24 Q And where did you go after you left the school?

25 A When I left the school, I went back so Bilal could

Tammy Coleman - Direct Examination by Mr. Mauldin

1 get his car.

2 Q Uh-huh. And then where did you go after that?

3 A Pardon?

4 Q Where did you go after that?

5 A After that, we went to the store. Bilal had to get
6 gas.

7 Q And who went with you to the store?

8 A Me and Lywone.

9 Q Okay. Where did Mr. Dixon go? Do you know?

10 A Mr. Dixon, he was standing there talking to some of
11 his friends, someone he knew.

12 Q And did you have a conversation with Bilal at the
13 gas station?

14 A Yes.

15 Q And what did you tell him?

16 A I was telling him, explaining to him that I
17 withdraw him from school because he didn't know I withdraw.
18 He thought I just picked him up. I was explaining that to
19 him, and I was telling him, "Enough with the arguing. Just
20 don't go back and forth with them. Enough is enough. It
21 need to be left alone."

22 Q So you saw them arguing, and you told him to stop
23 that?

24 A Yeah.

25 Q Now, when Mr. Dixon came back in this Nissan, what

Tammy Coleman - Direct Examination by Mr. Mauldin

1 did he say to you?

2 A I didn't notice it was him at first, but when he --
3 when I was going back to the car and I noticed it was
4 Nehemiah, he was asking me was we okay.

5 Q Okay. And what did you do after that?

6 A I got into the car, and Bilal got into his car.
7 And I followed behind Bilal.

8 Q And where did y'all go?

9 A We went to Alternative School.

10 Q Okay. And what happened at the Alternative School?

11 A He, Bilal pulled up. He blew the horn, and Hakim
12 didn't come out, and he realized, he screamed out the
13 window, he said, "Mom, it's too early to get Hakim. It's
14 not time for him to get out of school right now."

15 Q Didn't you realize it was too early to get Hakim?

16 A No. With everything that was going on, I didn't
17 even pay it no mind. He used to picking Hakim up every
18 day.

19 Q Okay. And after he said that it's too early to
20 pick up Hakim, where did you go?

21 A We went home.

22 Q Okay. And how does Bilal get home?

23 A Bilal drove the car, the green Camaro.

24 Q Okay. And what did you drive?

25 A My Mercedes.

Tammy Coleman - Cross-Examination by Mr. Drylie

- 1 Q And who was in the Mercedes with you?
- 2 A Me and Lywone.
- 3 Q And did, what was the order of the cars when you
- 4 went home?
- 5 A Bilal drove first.
- 6 Q Okay.
- 7 A I followed behind him.
- 8 Q And how long does it take you to get home?
- 9 A Fifteen minutes.
- 10 Q Okay. And when you got home, Bilal was there
- 11 already?
- 12 A Yes. I was right behind Bilal. Yeah.
- 13 Q All right.
- 14 MR. MAULDIN: No further questions.
- 15 **CROSS-EXAMINATION**
- 16 **BY MR. DRYLIE:**
- 17 Q Good morning, Ms. Coleman?
- 18 A Morning.
- 19 Q You've gone through everything with Mr. Mauldin,
- 20 but I just want to hit on a couple points real quick. Now,
- 21 Lywone was in your car the entire time that day?
- 22 A Yes, sir.
- 23 Q And he was in the passenger seat, and you were
- 24 driving?
- 25 A Yes.

Tammy Coleman - Cross-Examination by Ms. Usry

1 Q Okay. At any point during that day did you let
2 Nehemiah drive that Mercedes truck?

3 A No, sir.

4 Q Okay. Now, at any point during that day did Lywone
5 Capers have a gun in your car?

6 A No, sir.

7 Q Did you take your son, Lywone Capers, on a drive-by
8 shooting?

9 A No, sir.

10 MR. DRYLIE: No further questions.

11 THE COURT: Cross.

12 MS. USRY: Yes, sir. Thank you.

13 Beg the Court's brief indulgence, Your Honor.

14 THE COURT: Yes, ma'am.

15 **CROSS-EXAMINATION**

16 **BY MS. USRY:**

17 Q Ms. Coleman, Bilal Haynesworth and Lywone Capers
18 are your children; correct?

19 A Yes.

20 Q And they have grown up with you; correct?

21 A Yes.

22 Q And you raised them?

23 A Yes.

24 Q And you love them?

25 A Yes.

Tammy Coleman - Cross-Examination by Ms. Usry

- 1 Q And you know Nehemiah Dixon?
- 2 A Yes.
- 3 Q He dates your daughter?
- 4 A He's a friend of my daughter's.
- 5 Q And he spent the night some at your house?
- 6 A No.
- 7 Q He's never spent the night at your house?
- 8 A Actually, no. With my knowledge, no.
- 9 Q So the morning of January 3rd of 2013, he didn't
- 10 wake up at your house?
- 11 A No. He came in real late.
- 12 Q He came there real late in the morning?
- 13 A Yes, ma'am.
- 14 Q How did he get there, and how did he go with you to
- 15 the school if he got there late in the morning?
- 16 A His car had a flat, and so he came -- he made it to
- 17 where I live at, to my home.
- 18 Q And you drove your Mercedes SUV, or truck; correct?
- 19 A Yes, my Mercedes.
- 20 Q And you also own a green Camaro; correct?
- 21 A Yes.
- 22 Q And your son, Bilal Haynesworth, drives that car?
- 23 A Yes.
- 24 Q And you just testified that when you got to the
- 25 school that day you saw JayQuan Bell inside the school?

Tammy Coleman - Cross-Examination by Ms. Usry

1 A No. I didn't see him inside the school. I seen
2 him -- him and that lady coming outside of the school.

3 Q You just testified when you went into the
4 administration office, you saw him in the office?

5 A No. I didn't see him in the office. I saw him
6 coming out of the building of the school.

7 Q And when you saw him, you had your son Lywone
8 Capers and Nehemiah Dixon with you? Or just Lywone Capers?

9 A No. Just Lywone was with me.

10 Q So the two of y'all actually went into the school
11 together?

12 A Yes.

13 Q And Nehemiah Dixon stayed in the car?

14 A Yes.

15 Q And you received phone calls at home?

16 A On my cell phone.

17 Q On your cell phone?

18 A Yes.

19 Q And you personally received these threatening
20 calls?

21 A My kids uses my phone. That's the phone all of
22 their friends call.

23 Q So y'all just have the one phone between all three
24 of you?

25 A At that time, yes.

Tammy Coleman - Cross-Examination by Ms. Usry

1 Q And after you pulled your son out and went to the
2 Exxon, you went to go get another child out of school at
3 nine o'clock in the morning?

4 A No, ma'am.

5 Q You didn't go to the Alternative School and try to
6 get another kid out of school?

7 A I didn't try to get him out. Bilal picks him up.

8 Q Okay, but you went about nine o'clock in the
9 morning to that other school?

10 A I was behind -- I followed behind Bilal.

11 Q So in the course of an hour, you had taken your
12 son, followed him to school, gone home, back, picked him up
13 from school, gone to the Exxon, and then went back to
14 another school to get another child out? All on January
15 3rd of 2013?

16 A No, ma'am. I never went back home. I went to -- I
17 went to the school. I dropped my son -- My son got dropped
18 off. He did his regular routine. As I was leaving, I was
19 getting threatening phone calls again, which is my son's
20 friends at the time, from them. I just got so upset and
21 scared I went back to get my son from the school. I didn't
22 want my son walking from the school to his car, and I had
23 to be the one to sign him out. And I never went back home
24 again until after we left from the Alternative School.

25 MS. USRY: Nothing further from this witness, Your

1 Honor.

2 THE COURT: Anything further?

3 MR. MAULDIN: No, Your Honor.

4 THE COURT: All right. Thank you very much, ma'am.
5 You may step down. Watch your step coming down.

6 MR. MAULDIN: Your Honor, at this time, the defense
7 would rest.

8 THE COURT: All right. Mr. Drylie?

9 MR. DRYLIE: Your Honor, we rest.

10 THE COURT: All right. The defense rests.

11 All right. Ladies and gentlemen, the defense has
12 rested their case, so I'm going to ask you -- Now, we have
13 to take up matters of the law at the close of the Defense's
14 case. And so I need to ask you to step back into the jury
15 room. But before I do that, Ms. Mohammed.

16 THE JUROR: Mohammed?

17 THE COURT: Yes, ma'am. Ms. Mohammed, would you be
18 so kind as to serve as the forelady of the jury? I'll
19 explain to you a little bit about what that entails. Okay?
20 And then you can tell me. The foreperson of the jury is
21 simply the person that basically is the communicator
22 between the jury panel and the Court. Whenever you're back
23 in the jury room and you're going through your
24 deliberations, if there are any -- if anybody has any
25 questions or anything for the Court, the foreperson

1 basically will write that question out and send it out to
2 me. Depending on the question, I may just write back my
3 response, or I may have you come out as a whole and respond
4 to it. But the bottom line is, what the foreperson's main
5 role is, is to be the communicator between the jury panel
6 and the Court. It's just easier to deal with one person on
7 behalf of the group than it is to deal with every person
8 individually.

9 Then the other role that the foreperson plays is
10 that, when you do begin your deliberations, there needs to
11 be somebody who can start and stop the deliberations. What
12 I mean by that is this, when you begin your deliberations,
13 anytime the jury is deliberating on a case, everyone must
14 be present for those deliberations. So at some point
15 during the deliberations, if someone needs to excuse
16 themselves to use the restroom or something of that nature,
17 then you need to, the foreperson would say, "Okay, we need
18 to stop talking about the case, and let's allow that person
19 to return." And then, upon return, "Okay, now let's go
20 ahead and start back."

21 One of the things that everyone needs to be aware
22 of is this -- your verdict in this case must be unanimous.
23 So the foreperson's vote or opinion carries no more weight
24 than anyone else on the jury because you're all equal
25 members of the jury. And so the foreperson's -- I tell

1 juries all the time, you need to listen carefully to
2 everyone's opinion with an open mind and receive those
3 opinions and give them whatever consideration you feel is
4 appropriate throughout the deliberation process. And no
5 one person's opinion carries any more weight or authority
6 than anyone else because you're all equal members of the
7 jury.

8 But that's pretty much the role of the foreperson,
9 and then when you go back into the jury room, I'll have
10 verdict forms for you, and then the foreperson would be the
11 one who would just, there will be options on the verdict
12 form, and whatever the verdicts -- the jury's verdict is,
13 the foreperson would just reflect that on the verdict form.
14 So that's essentially the role of the foreperson.

15 Would you be willing to do that for me.

16 THE JUROR: Yes. That's fine.

17 THE COURT: Thank you very much. And so when you
18 do return back into the courtroom in just a little bit, if
19 you would occupy this first chair right here, and then
20 everyone else just sit wherever you're comfortable. Okay?

21 So while I take up these matters of law, let me get
22 you to step back into the jury room. If you need anything,
23 just let the bailiffs know. Okay?

24 (WHEREUPON the jury left the courtroom at eleven
25 o'clock a.m.)

1 THE COURT: All right. At this time, I'll take up
2 any motions at the close of the evidence.

3 **POST-TRIAL MOTIONS**

4 MR. MAULDIN: Thank you, Your Honor. At this time,
5 I would renew my motion for a directed verdict. After we
6 presented our evidence and taking the evidence in the light
7 most favorable to the State, that sufficient evidence
8 hasn't been presented to submit to the trier of the facts.

9 THE COURT: All right, sir.

10 MR. DRYLIE: I would make the same motion for Mr.
11 Capers and renew all objections made throughout the course
12 of the trial.

13 THE COURT: All right. I'm going to respectfully
14 deny the motion. As I said earlier, I really think this is
15 a question of fact for the jury to decide. I think there
16 are facts in evidence, depending on how the jury views it,
17 where they could go either way with their decision. I
18 think there are facts that are supportive of any decision
19 the jury would make, depending on how they view those
20 facts. And I think they're the ones that have to make that
21 call.

22 Anything further.

23 MR. MAULDIN: No, Your Honor.

24 **JURY CHARGE CONFERENCE**

25 THE COURT: All right. Now, we do need to talk

1 about the charge. And one of the things we touched on
2 yesterday was the fact, I think -- and I got your requested
3 charge, Mr. Mauldin. And I thank you for sending that to
4 me.

5 In that request, Kate, I don't know if y'all got
6 that as well.

7 MS. USRY: I did. Yes sir, Your Honor. He sent
8 it. Thank you.

9 THE COURT: The defense is asking for a charge on
10 Assault and Battery First Degree; correct?

11 MR. MAULDIN: Yes sir, Your Honor.

12 THE COURT: Mr. Drylie, are you joining in that?

13 MR. DRYLIE: I'm joining in that motion.

14 THE COURT: Okay. And so we had a brief discussion
15 on that yesterday. The State had a concern about
16 addressing that issue until all the evidence was in. And
17 so we're at the point now where all the evidence is in.
18 And so I would ask Ms. Usry, does the State have an
19 objection to that charge.

20 MS. USRY: Yes sir, Your Honor. The State would
21 argue, essentially what I argued yesterday, that the
22 defense that was put up is a defense of alibi. That they
23 weren't even near [REDACTED] Avenue on January 3rd of 2013.
24 I think, because of that, I don't see how we get to the
25 lesser-included charge. Their argument's either they did

1 it or they didn't.

2 In addition to that, looking at the evidence that
3 was put up through the State's case, it's clear that Roach
4 Avenue is a cul-de-sac. It's the end street. To get
5 there, you're not driving through anywhere. You have to go
6 there with a purpose, or the intention to be on that
7 street. There is no evidence that there were any friends
8 there or any other reason the defendants had to be in that
9 location.

10 Also, the State would argue that the use of the gun
11 in this case is the intent to kill and would bring with it
12 that, the shooting into the house would bring with that --
13 that inference. When they shot, when the shots were fired
14 at the house, there was an intent to kill the victim. They
15 knew there was a blue car outside, the evidence shows that
16 there was a blue car outside. That was Ms. Clara's car.
17 Everybody recognized that car. They saw it at the gas
18 station. Shots were fired at that residence, they knew
19 that more than one person was in that residence.

20 THE COURT: All right. Mr. Mauldin.

21 MR. MAULDIN: Yes, Your Honor. Obviously the
22 difference in the two charges would be a matter of the
23 intent, the malice level of intent and the specific intent
24 to kill. And that is a jury issue. It's not a foregone
25 conclusion from the evidence that there is malice or an

1 intent to kill. That is up for the jury to decide based on
2 their weight and the evaluation of the testimony of the
3 witnesses. They would be free to believe that somebody
4 shot at the house but they didn't really mean to hit
5 anybody inside. And the State would argue to the contrary,
6 but I think that's a jury issue. And I think this is a
7 proper charge to be submitted to the jury.

8 THE COURT: Anything further from the State?

9 MS. USRY: Your Honor, the only thing that I would
10 further add is, under the State v. Belcher case and the
11 State v. Miller case -- State v. Belcher is 385 SC 597, and
12 State v. Miller is 397 SC 630 -- that the inference of
13 malice can be used in this case because there's no
14 indication of mitigation evidence in this case. Whereas
15 there's no self-defense argument or anything like that. So
16 I would say that malice could be inferred in that act, and
17 I would also argue that charge would come in, in your jury
18 charge.

19 MR. MAULDIN: And my argument to -- counterargument
20 to that would be that if malice is inferred it's not --
21 it's an inference. It's not a per se that they must find
22 that there's malice involved. That, again, is a jury
23 issue. It's an inference. It's not a per se.

24 THE COURT: I was looking at a case yesterday --
25 I'm trying to find -- I was up reviewing some cases. There

1 was a case that I thought was on point. And I've just
2 talked to Hannah to see if she can recall how we found it.
3 But it deals with --

4 (WHEREUPON there was a pause in the proceedings.)

5 THE COURT: All right. I've reviewed some cases
6 and talked with the attorneys. And with regards to the
7 Defense's motion to charge Assault and Battery in the First
8 Degree, I'm going to grant that motion, and I am going to
9 charge that. It's appropriate. And my understanding is
10 that the State does have an exception to that ruling. Is
11 that correct?

12 MS. USRY: Yes sir, Your Honor.

13 THE COURT: Okay. Well, I'm going to note that
14 objection. But I think the evidence in the case, the way
15 the case has been presented, the evidence that's before the
16 jury, there is evidence which would completely support a
17 conviction of Assault and Battery First Degree as well
18 evidence that I think would completely support a conviction
19 on Attempted Murder, depending on how the jury views the
20 evidence, or an outright acquittal -- depending on how the
21 jury views the evidence. So I'm going to grant the motion
22 and note the objection.

23 All right. Anything else that we need to take up
24 before -- I'm going to give you a copy of a proposed charge
25 that I've put together. Was there anything else we needed

1 to take up before we move to closing arguments.

2 MS. USRY: Nothing from the State, Your Honor.

3 MR. DRYLIE: Nothing from me, Your Honor.

4 MR. MAULDIN: No, Your Honor.

5 THE COURT: And just so we're all on the same page,
6 with regards to closing arguments, Mr. Mauldin, you can
7 address the jury. I'd like to keep our order, unless
8 there's a reason y'all don't want to do that.

9 MR. DRYLIE: Fine by me.

10 THE COURT: If you'll address, then Mr. Drylie
11 you'll have an opportunity, and then Ms. Usry you'll have
12 an opportunity to close.

13 MS. USRY: That sounds good, and I do not plan to
14 open on the law.

15 THE COURT: All right. Well let me get this to you
16 guys so that y'all can look it over. Let me add the things
17 I need to add.

18 MR. MAULDIN: Are we at ease?

19 THE COURT: We are at ease. We'll just be at ease
20 while we do this.

21 Ms. Usry, we discussed...

22 MS. USRY: The State's thought -- I've reviewed it,
23 Your Honor, and I don't believe we have any objections.

24 THE COURT: All right. Other than to note your
25 objection to the Assault and Battery charge.

1 MS. USRY: Yes, sir.

2 THE COURT: All right. And that's noted. Okay.
3 Mr. Drylie?

4 MR. DRYLIE: I'd ask that you change the word
5 "failure" of Defendant Capers not to testify to "decision"
6 of Defendant Capers not to testify.

7 THE COURT: All right. I will do that.

8 MR. DRYLIE: Thank you, Your Honor.

9 THE COURT: Other than that, Mr. Drylie. Is there
10 anything else about the charge that we need to address?

11 MR. DRYLIE: Your Honor, I'm fine with the rest of
12 the charge.

13 THE COURT: Okay. I'm going to make that change
14 right now.

15 MR. DRYLIE: Thank you, Your Honor.

16 THE COURT: I think that the only place that
17 appeared was in the caption of that section. Is that...

18 MR. DRYLIE: That's correct.

19 THE COURT: Because I was looking through the body
20 of it. I don't think it appears anywhere else.

21 MR. DRYLIE: It doesn't, Your Honor. And that's
22 the only...

23 THE COURT: Okay. All right. We're good. I've
24 made that.

25 Mr. Mauldin, any?

1 MR. MAULDIN: I'm still reading it.

2 THE COURT: All right.

3 (WHEREUPON there was a pause in the proceedings.)

4 THE COURT: Mr. Mauldin.

5 MR. MAULDIN: Yes, sir.

6 THE COURT: Yes, sir.

7 MR. MAULDIN: I've had an opportunity to review it,
8 and I have a couple of issues.

9 THE COURT: All right. Let me pull it up real
10 quick here. All right, sir. Go ahead.

11 MR. MAULDIN: Thank you, Your Honor.

12 THE COURT: If you could refer to the page number,
13 I can get to it quickly.

14 MR. MAULDIN: I will, sir. The first issue I have
15 revolves around two, page number, but the same topic.

16 THE COURT: Okay.

17 MR. MAULDIN: On the charge for the Attempted
18 Murder --

19 THE COURT: All right.

20 MR. MAULDIN: -- the statute for Attempted Murder
21 says, "a person who, with intent to kill, attempts to kill
22 another person with malice aforethought, either expressed
23 or implied, commits the offense of Attempted Murder."

24 Going to page 11, the charge reads that "a specific intent
25 to kill is not an element of Attempted Murder," and in the

1 statute it says, "a person who, with intent to kill." I
2 believe that, that is a specific intent. To kill another
3 person, maybe not a specific person, but the intent is
4 specifically to kill another person. So that intent is not
5 addressed on page 9.

6 I think it says -- I believe it should say, "the
7 State must prove the defendant, with intent to kill,
8 attempted to kill another person with malice aforethought,"
9 as the statute does. And the language on page 11 in the
10 third paragraph that that language should be removed that
11 "specific intent to kill is not an element to kill is not
12 an element of Attempted Murder, but there must be a general
13 intent to commit serious harm." I think that was true in
14 the old Assault and Battery with Intent to Kill statute. I
15 believe that's changed. Or I think it must be changed to
16 "intent to kill is an element of Attempted Murder," and
17 then go into the sentence intent means...

18 THE COURT: All right. Ms. Usry, do you agree with
19 that?

20 MS. USRY: That's fine. That change is fine with
21 us.

22 THE COURT: Here's what I'm -- I think I'm going to
23 rule with you, Mr. Mauldin. I'm going to put "a specific
24 intent to kill is an element of Attempted Murder," period.
25 And then pick up where, "intent means intending a result

1 which actually," da da da.

2 MR. MAULDIN: Yes, sir.

3 THE COURT: Okay.

4 MR. MAULDIN: That's sounds good.

5 THE COURT: All right.

6 MR. MAULDIN: Moving on to page 13, Your Honor.

7 THE COURT: Hang on. Let me correct -- let me do
8 this real quick.

9 MR. MAULDIN: Okay. I'm sorry.

10 THE COURT: Now, if I make that correction we just
11 discussed on page 11, then the rest of it's fine. Is that
12 correct?

13 MR. MAULDIN: That looks good, Your Honor.

14 THE COURT: And then you said the next one is on
15 page 13?

16 MR. MAULDIN: Page 13, Your Honor, the third
17 paragraph, describing the Possession of a Weapon During a
18 Violent Crime, it says, "for the purposes of the SC law,
19 Attempted Murder, Assault and Battery of a High and
20 Aggravated Nature, and Robbery are considered violent
21 crimes." I didn't -- and they're not charged with those
22 other ones, I didn't --

23 THE COURT: They don't -- Yeah -- They don't need
24 to be listed. That came from another charge on that. I'm
25 going to take those out and simply list, "for the purpose

1 of South Carolina law, Attempted Murder is considered a
2 violent crime."

3 All right. And what else.

4 MR. MAULDIN: On page 15, it's the alibi charge --

5 THE COURT: Yes, sir.

6 MR. MAULDIN: -- that you have. It says, "mere
7 denial of presence at the scene of the crime does not
8 constitute an alibi." I believe in this case we've not
9 only presented the defendant, but we've presented his
10 mother as well, who testified as an alibi witness. And I
11 don't think that that sentence should apply or should be
12 charged to the jury.

13 THE COURT: Do you have a position on that, Ms.
14 Usry?

15 MR. BELL: Your Honor, I would just very briefly
16 state that the mother's testimony wasn't exactly in line
17 with the testimony of Mr. Haynesworth. Aside from that, we
18 have no strong position.

19 THE COURT: Well, here's the thing -- Mr. Mauldin,
20 that is the law in South Carolina. Merely denying presence
21 at the scene of a crime does not constitute an alibi. In
22 this case you did have more.

23 MR. MAULDIN: Yes, sir.

24 THE COURT: And so that's not an improper charge on
25 the law, nor is it a statement of facts, or a statement on

1 the facts of this case. It's just -- the law is, the
2 defendant can't simply deny that they were there. There
3 has to be something more to constitute an alibi, which you
4 have in fact produced.

5 MR. MAULDIN: It also concerns me, Your Honor,
6 because -- in my opinion -- my opinion, it sounds like
7 almost a burden shift type of thing that they're -- other
8 than him denying that he was there, a defendant denying
9 that he was present, that there has to be something else.
10 If there's not, it's not an alibi defense. That seems to
11 be somewhat burden shifting to me. I also object to the
12 sentence in there.

13 THE COURT: Well, I'll note your exception to that,
14 but that is the law, that mere denying presence without
15 anything more does not constitute an alibi.

16 MR. MAULDIN: Yes, sir. I do take exception to
17 that ruling, and --

18 THE COURT: All right.

19 MR. MAULDIN: -- under his right to a fair trial
20 and due process under the relevant provisions of the U.S.
21 and South Carolina Constitutions.

22 THE COURT: All right. Anything else, Mr. Mauldin,
23 regarding the charge?

24 MR. MAULDIN: I believe that's it.

25 THE COURT: Okay. Let me go over with y'all real

1 quick this verdict form that I've got. Here's what I've
2 done. I've got the caption of the case, and so the first
3 matter I have is Conspiracy and whatever decision they make
4 on that charge. Then the next one I have listed as
5 Attempted Murder/Assault and Battery First Degree, and then
6 I have their options being either "guilty of Attempted
7 Murder," or "guilty of Assault and Battery in the First
8 Degree," or "not guilty." And then I wrote -- which takes
9 up the first page.

10 So then I go to the second page, and I have
11 written, and this is obvious subject to y'all's thoughts as
12 far as wording it better or whatever. I have, "If you find
13 the defendant either guilty of Assault and Battery in the
14 First Degree or not guilty of either Attempted Murder or
15 Assault and Battery in the First Degree, then stop your
16 deliberations. If you find the defendant guilty of
17 Attempted Murder, then proceed to the charge listed below.
18 And then the charge listed below is "Possession of a Weapon
19 During the Commission of a Violent Crime."

20 MS. USRY: That's fine with the State, Your Honor.

21 MR. DRYLIE: It's fine with me, Your Honor.

22 MR. MAULDIN: Let me think about it a second, Your
23 Honor. I don't mean to be -

24 THE COURT: That's okay.

25 MR. MAULDIN: -- but if they don't proceed down to

1 the bottom, have they rendered a verdict on that charge?
2 Or is it just automatically "not guilty?"

3 THE COURT: If they --

4 MR. MAULDIN: Do you see what I'm saying?

5 THE COURT: Right. But you see, I guess what I'm
6 saying here is, let's say they either find him not guilty
7 at all or find him guilty of Assault and Battery.

8 MR. MAULDIN: Well, I guess what I'm saying is, if
9 everyone's stipulating that if they don't proceed to that
10 charge, it's automatically a verdict of "not guilty" on
11 that charge.

12 THE COURT: Well, they're not to consider that
13 charge because they didn't find him guilty of a violent
14 crime.

15 MR. MAULDIN: So that's the way we're -- I just
16 wanted to make sure that the procedure of how we're going
17 to deal with it. We don't want it to be a situation where
18 someone else could say, "Well a verdict was never rendered
19 on that charge."

20 MS. USRY: Your Honor, the State will concede that,
21 if they don't convict on Attempted Murder, that obviously
22 that next charge cannot be considered and that would be a
23 "not guilty" verdict. I would concede that.

24 THE COURT: I appreciate that.

25 MR. MAULDIN: I'll accept that, Your Honor.

1 THE COURT: Okay.

2 MR. MAULDIN: I don't mean to be difficult.

3 THE COURT: No, I understand what you're saying.

4 And I get that. You don't want to leave that charge
5 hanging that a decision wasn't rendered on that charge.

6 MR. MAULDIN: Yes, sir.

7 THE COURT: But I do that, that would be
8 dispositive of that charge. But I think where you would
9 really get confusing is to then instruct them that they
10 have to mark that charge as "not guilty" if they find
11 Assault and Battery.

12 MR. MAULDIN: I understand. I think the State's
13 stipulation --

14 THE COURT: All right.

15 MR. MAULDIN: -- that would automatically --

16 THE COURT: So we're agreed to that, Ms. Usry, that
17 if they find either "not guilty" or "guilty of Assault and
18 Battery in the First Degree," then by default of not having
19 found him guilty of a violent crime, that he is "not guilty
20 of the Possession of a Weapon During the Commission of a
21 Violent Crime."

22 MS. USRY: Yes, sir. We agree, and we can also
23 agree that, you know, at the conclusion, if that does
24 happen, the foreperson can sign as such on the indictment
25 and fill that out as necessary.

1 THE COURT: All right. Okay. All right, now.

2 Come on up here, guys.

3 (WHEREUPON there was a bench conference out of the
4 hearing of the court reporter.)

5 THE COURT: All right. All right. We ready for
6 the jury now?

7 MR. BELL: Your Honor?

8 THE COURT: Yes, sir.

9 MR. BELL: Can we have one additional moment.

10 MS. USRY: Two seconds. I'll be back in two
11 seconds. Sorry, Your Honor.

12 THE COURT: All right.

13 (WHEREUPON a brief recess was observed.)

14 THE COURT: All right. We ready?

15 MS. USRY: The State's ready, Your Honor.

16 THE COURT: Would you bring our jury in, please,
17 sir.

18 (WHEREUPON the jury entered the courtroom at 12:53
19 p.m.)

20 THE COURT: All right, folks. We are now ready to
21 proceed. I've taken up all of the matters that I need to
22 take up at the close of the evidence. And so we're now
23 ready to proceed to what we call closing arguments or final
24 summation.

25 Ladies and gentlemen, when we started this trial I

1 believe I told you that what the attorneys share with you
2 in their opening statements was not evidence. They're not
3 under oath. They're simply advocates for their party --
4 the clients that they're representing. Well, that same
5 thing applies to their closing arguments. Their closing
6 arguments is not evidence.

7 The evidence in this case is closed. The evidence
8 in this case that you are to have to consider is the sworn
9 testimony from the witness stand and any exhibits that came
10 in during the course of the trial. That's the evidence of
11 the case.

12 But this is the lawyers' opportunity to argue to
13 you what they believe that the evidence in this case has
14 shown. And so it's important that you listen very
15 carefully to what they have to share with you. They will
16 present their closing remarks to you, and then when they've
17 concluded those remarks or those arguments, I will then
18 give you the charge on the law that is applicable to this
19 case.

20 And then once you have all of those things, you
21 will then be in a position to go back into the jury room
22 and deliberate and decide this case. And as you know,
23 we've ordered lunch for you. That's going to be coming,
24 and so we'll have that for you. But right now, we're going
25 to proceed and recognize the attorneys for their closing

1 arguments.

2 **CLOSING ARGUMENTS**

3 THE COURT: Mr. Mauldin.

4 MR. MAULDIN: Thank you, Your Honor.

5 Ladies and gentlemen of the jury, Bilal Haynesworth
6 did not do a drive-by shooting. His mother did not
7 chaperone him to a drive-by. She didn't agree with other
8 people and let them use her Mercedes SUV to commit a
9 drive-by shooting. But that's what the State would have
10 you believe, because that's what JayQuan Bell would have
11 you believe.

12 He's the only witness in this case who is pointing
13 fingers over at our table. That Bilal stuck a gun out of a
14 green Camaro, he shut the door and he heard shooting. That
15 Lywone, sticking over the top of a Mercedes, he shuts the
16 door and hears shooting. He's the only one pointing
17 fingers at these two gentlemen. Nobody else in this case
18 does that.

19 And why would they do that? The State will say
20 that they don't have to prove motive. And that's true,
21 they don't have to prove motive. But I think it would help
22 us have a context and understanding of all the events in
23 this case.

24 And when Solicitor Usry cross -- well, direct
25 examined Mr. Bell, "Well, have you had any problems with

1 these people before?" "No, I've had no confrontation
2 before. No arguments. No words with them before." He
3 said that. And when he said that Mr. Capers said something
4 to him at school it shocked him because they had no reason
5 to do that. If they had no reason, why would they go do
6 that? They don't have to prove that they had a reason, but
7 that just doesn't make any sense. And that would cause you
8 to question Mr. Bell's testimony.

9 She did try to fix it later on. She moved on to
10 different topics. And then later on she, "Are you sure you
11 didn't have a problem with Bilal?" And he said that they
12 had some issue over his baby's mama, or something like
13 that. So they had met sometime soon and that was squashed.
14 Squashed. It was only with Bilal, and it was squashed
15 sometime before this day. But yet, Bilal is so hot about
16 it, his mom's so hot about it, his brother's so hot about
17 it, this Nehemiah Dixon is so hot about it, that they're
18 going to go by and shoot his house.

19 And when did they plan to do this? They had no
20 idea that he was in school. Bilal testified that he wasn't
21 even going to that school. He test -- JayQuan Bell
22 testified that he only moved to that location about a week,
23 he couldn't be exact, but he had only been there about a
24 week. There's no testimony they knew where he lived or
25 anything of that nature. He sees them at the school. He

1 and his grandmother go home. They don't follow him then.
2 There was no plan then to go do any shooting. They come
3 back to the gas station, and Bilal and his family have to
4 come back to the gas station. That's the only time that
5 any kind of plan to go do some drive-by shooting could've
6 happened.

7 And you even watched the video that's in evidence.
8 It would be those bottom three that you saw on the screen,
9 screens that show the area of the pumps where most of the
10 action is occurring. But I'd also ask you to look at the
11 very top of the screen on the left at the time. When you
12 watch the screen, when you watch these cars come up,
13 there's no time for them to sit there and make some kind of
14 plan to go do some kind of shooting. These cars are
15 whizzing in and out. There's no communication,
16 significantly, between these people to coordinate three
17 cars to go into a caravan down in this area to shoot at
18 this house.

19 Look at the videos, they leave there about 9:12.
20 The call comes in to law enforcement around 9:20. That's
21 eight minutes. So it takes about five or six minutes to
22 get there, and then the shooting has to happen, that
23 incident, that takes time too. And then the call to law
24 enforcement. In that short period of time, Bilal's mother
25 would've been in the middle of this. She was driving that

1 Mercedes SUV out of the gas station.

2 So sometime between the time those cars leave that
3 gas station on that video, they had to pull over on the
4 side of the road and, "Oh, okay, well you, Nehemiah, you
5 drive my Mercedes, and Lywone can hang out the side and
6 shoot out of my Mercedes, and I'll follow up in Nehemiah's
7 crappy little Nissan." Because that's what he said, he
8 said all three cars were at the house. He didn't testify
9 about anybody else, just those four people. And if it's
10 just Nehemiah and Lywone in that Mercedes, that third car
11 had to have that mother in it. That didn't happen.

12 Mr. Bell has something out for Mr. Haynesworth. He
13 denied having any problems with him. The State comes back,
14 "Oh, well I did have a problem, but it was squashed." And
15 then I show him his threatening messages to Mr.
16 Haynesworth, which he denied at first, and then he had to
17 admit that he did send that. And he read it out, and it
18 was threatening. But it was squashed. He had Frankie, his
19 cousin, his brother is sending him another message on
20 December 30. That's not being squashed.

21 And even after this case, he sends a message
22 earlier this year, "If you just fought me, you wouldn't be
23 in court." "If you had just fought me, you wouldn't be in
24 court." Now, he tried to say that he put something in
25 there, "You didn't shoot at my house, you shouldn't have

1 shot at my house." When he actually read the message, and
2 you can hear on the tape, there is nothing in the actual
3 message about that. It's, "If you had fought me, you
4 wouldn't be in court." And we only have his word to go on
5 because he's the one pointing fingers at Bilal and his
6 brother.

7 I looked at this -- Now, I did show that there were
8 threats being made by him and his friends to Bilal and his
9 family, and the State may want to come back and say, "Well,
10 they did the drive-by shooting as retaliation for those
11 threats." Figured, they got those threats, and so they
12 were going to go and drive-by for those threats. But if
13 they say that, they're saying that Mr. Bell didn't tell the
14 truth. And if they're saying he didn't tell the truth
15 about that, then he's not telling the truth about anything
16 else.

17 And what did they do to make sure that he's telling
18 the truth so we could be satisfied beyond a reasonable
19 doubt that it was Bilal and Lywone involved in this
20 incident? Chief Hayes responds, he responds very quickly,
21 he says "a couple of minutes." He talks to JayQuan, gets a
22 statement from him, and that's pretty much it as far as
23 that. Did he go to neighbors at this house, this house,
24 this house, this house, this house, this house, this house,
25 this house, this house, this house, this house, this house,

1 to say, ask them, "Have you heard any shooting? Did you
2 see any cars go by?" No. All these houses. Neighborhood.
3 Middle of the morning. Right in the middle of the morning.
4 Not under the cover of darkness. As far as we know, nobody
5 else heard a thing or saw it.

6 So he goes and gets these names. He goes and gets
7 school records, and he does a lineup. He says he gets the
8 lineup at night, we don't know what time at night, but he
9 waits 'til the next morning to go show it to Mr. Bell.
10 This isn't a lineup where a description's been made and
11 they've developed some other evidence on the suspect and
12 they're putting a lineup and they're picking out somebody
13 that they don't know. He knew who they were; he's known
14 them since middle school. He knows what their faces looked
15 like. Of course he picked them out right away. That was
16 on the morning of the 4th.

17 So on the morning of the 4th, they have the ID
18 made. They have their full names and school records. They
19 had to have their addresses. Well, these people are
20 running around Swansea shooting, committing the violent
21 crime of Attempted Murder. We need to go out and arrest
22 them right away. Did they do that? No. Could they have
23 done that? Yes. And if they'd done that, what else could
24 they have done? They could've gotten a search warrant for
25 these people's houses, see if they could try to find a gun

1 or some other shell casings. They could've done GSR tests
2 on these people that he couldn't do three days later. They
3 could've done all that to confirm what Mr. Bell said, but
4 they didn't do it. They haven't proved it.

5 He does find a shell casing. He doesn't get it
6 fingerprinted. He says it's fresh; we don't know how he
7 knows it's fresh. I guess he's trying to help out now
8 because he didn't do so much before. He finds a bullet,
9 loses it. Does the bullet even go with that shell casing.
10 You find one shell casing, one bullet hole through the
11 house, and one bullet.

12 They'll probably try to say that one of them had an
13 automatic to discharge shell and one of them had a
14 revolver, but we don't know that. One did two shots, and
15 one did two shots. We don't know who did shooting. He
16 just opens the door, says he sees a gun, and shuts it.

17 Now, they waited not only the whole day of the 4th,
18 but the 5th and the 6th, and it wasn't 'til the 7th that
19 they go to pick up Nehemiah Dixon. And once that's done,
20 my client hears about it, and he voluntarily goes up to the
21 police station. He and his family go up there to see
22 what's going on. If somebody is shooting in a neighborhood
23 and shooting at peoples' houses and try to kill themselves,
24 are they going to just drive up to the police station and
25 see what's going on? Nobody testified he got arrested or

1 anything like that. Those are the actions of a guilty
2 person.

3 What really happened is what Bilal and his mother
4 said from the stand. They'd been getting these threats,
5 Facebook, phone. She got worried about it, so she decided
6 to chaperone him to school. She followed behind the car
7 and went and dropped him off at school. When she left, she
8 got more threats, and decided to go back and sign him out
9 to get him out of there. She didn't want him involved in
10 any kind of confrontation. She wanted to protect him. Not
11 only out of the school that day, but trying to transfer to
12 another school and move away so he could get away from
13 these people. Is she then going to turn around and say,
14 "Well, let's not get away, let's just go try to shoot up
15 their house." That doesn't make sense.

16 They go back to the gas station. She sees Bilal
17 having a confrontation with his car, waving his arm,
18 flipping the finger. And she goes up to him and says, "No.
19 We're not doing that. We're transferring you out of
20 school, and we're moving you away." And that's what they
21 did. They left that day, they went up to the Alternative
22 School, and they went home.

23 She didn't -- She didn't drive down here. They
24 didn't switch cars or anything like that so that her sons
25 could go do a drive-by shooting and then drive out. That

1 just doesn't make sense.

2 "If you had fought me, you wouldn't be in court."
3 Well, maybe if Bilal had fought him, none of us would be in
4 court today either. His mother did not chaperone him to a
5 drive-by, and he's not guilty of these charges.

6 THE COURT: Mr. Drylie.

7 MR. DRYLIE: Thank you, Your Honor.

8 I told you when we started this case that the
9 physical evidence and the evidence you were going to see
10 wasn't going to match what you heard from that witness
11 stand. And it still doesn't match what you heard from that
12 witness stand. It especially doesn't match what you heard
13 from JayQuan Bell.

14 Now, this is the last chance I'm going to get to
15 talk to you. When I'm done, she's going to come up here.
16 She's going to her job and try and poke holes into
17 everything that I say. And after that, the judge, he's
18 going to charge you on the law. He's going to tell you a
19 couple things. Some of them, I want to highlight right
20 now.

21 First and foremost, he's going to tell you that you
22 have to consider the evidence against each defendant
23 separately. He's also going to talk to you about
24 reasonable doubt, and I'll talk some more about that later.
25 But what I said at the beginning still holds true now. The

1 evidence that we have doesn't match what JayQuan told us
2 from that witness stand.

3 Going through the case and the testimony that we've
4 heard over the past couple of days, the first two witnesses
5 you heard from were Jennie Childs and Clara Williams. Now,
6 neither of them could identify Lywone Capers. Neither of
7 them could say whether he was there. And that's to be
8 expected.

9 Then, then we get to JayQuan. What are we going to
10 hear from JayQuan? The first thing we hear from JayQuan is
11 that Lywone made these obscene threats to him outside of
12 the school that day. Well, I'll tell you the only person
13 we know in this trial who uses that language was JayQuan.
14 We've got it right here. You're going to take it back into
15 your jury room. He said those things to Bilal on Facebook.
16 Then, we hear that, that day, JayQuan just doesn't say
17 anything back. Although he's been sending messages, he
18 doesn't say anything back. He just walks away. Even
19 though his cousin, Frankie Lawton, who they asked three
20 times if he was in the house, and he was, sent Bilal a
21 Facebook message three days before, he just walks away. He
22 doesn't say anything.

23 That's what JayQuan tells you. He tells you that
24 he goes to the gas station, and not less than five minutes
25 after getting home from that gas station, he hears cars

1 outside his house. He opens the door. He says he sees
2 Bilal holding a gun outside of his car window shooting into
3 that house. He tells everyone to get down. They get down.
4 Shots are fired. This is according to JayQuan. He's
5 scared. He doesn't know what's going on. And he goes
6 back, and he opens that door again? You're only opening
7 that door unless you're shoot -- if you're shooting back.
8 We know JayQuan wasn't shooting back. You don't open that
9 door twice when shots are being fired at your house..

10 And then he describes something that's a scene out
11 of a movie. He describes Lywone Capers, hanging out the
12 top of a Mercedes truck, shooting into the house? He never
13 saw that. JayQuan told you, and he testified to it, that
14 he was focused on the shooters, which is why he never gave
15 them the name Nehemiah Dixon. Nehemiah Dixon, who was
16 supposedly driving that Mercedes truck. Well, nowhere in
17 JayQuan's statement or in the police report that Chief
18 Hayes did, do you see the name Sonny, do see the name
19 Bilal's brother, or do you see the name Lywone. If he had
20 seen that, he would've given him his names. They would've
21 been in there. They're not there.

22 Following from that, you know what else we didn't
23 hear from Clara Williams or Jennie Childs? That JayQuan
24 opened that door twice. Didn't testify to it. If you're a
25 grandmother, and you see your child -- your grandchild

1 putting himself in danger, you're going to scream, "Don't
2 do it! Stay down!" Make sure the danger has passed. We
3 didn't hear that. What JayQuan described he saw was
4 something like a scene out of a movie. It wasn't real. He
5 didn't see it.

6 Now, going from there, we have some physical
7 evidence in this case. We have one bullet that went into
8 that house. We have one shell casing outside the house.
9 To me, that signifies that we have one shooter. Now, they
10 can say that there's something else going on, but I can
11 tell you who that shooter's not -- That shooter's not
12 Lywone Capers.

13 You guys saw for yourself on that video from the
14 gas station that Lywone Capers, when he left that gas
15 station, is in the car with his mother. Your mom is not
16 going to take you on a drive-by. I don't care who you are.
17 And Ms. Coleman, she's a nursing assistant. She works in
18 the field of nursing. She's got too much to lose, but more
19 than that, she's those boys' mother. She loves them.
20 She's not taking them on a driveway -- she's not
21 chaperoning him on a drive-by. She's not giving them her
22 car to let them use on a drive-by. It didn't happen.

23 Now, Lywone's charged with a few different things.
24 He's charged with Attempted Murder, Possession of a Weapon
25 During a Violent Crime, and Criminal Conspiracy. In order

1 to find him guilty of Attempted, you're going to have to
2 believe that that lady took him on a drive-by or that she
3 knew about the drive-by just minutes before and said,
4 "Here, take my car. Go use it." And Lywone, you can see
5 on that gas station video, he gets out of the car, he walks
6 in the store, he buys something, he goes back to that car.
7 He doesn't talk to anybody else. He doesn't pay attention
8 to how upset his brother is.

9 There's no conspiracy here. To have a conspiracy,
10 you have to have a joint mind. You have one shell casing,
11 one bullet, and my argument is you have one shooter.

12 Now, Chief Hayes made a bigger mistake than losing
13 that bullet that day. The biggest mistake -- and law
14 enforcement does a good job, they try. But the biggest
15 mistake that he made was operating on assumptions that he
16 didn't know to be true. He went there, and he talked to
17 JayQuan Bell, and he took him at his word. JayQuan's the
18 one pointing the finger at my client.

19 Now -- and JayQuan's pointing that finger later
20 because he doesn't tell Chief Hayes about him that day.
21 You heard that from Chief Hayes on the stand, that he
22 didn't give him the name. That's why it's not in the
23 report. And that backs up what Chief Hayes said because
24 it's not in JayQuan's statement either.

25 We have no gunshot residue. They never tested for

1 it. They never tested the shell casing for fingerprints.
2 There's nothing tying Lywone Capers to this. What you see
3 on the video is what happened. He gets into the car with
4 his mother, with his mother.

5 I told you at the beginning of this case that the
6 physical evidence that we were going to have wasn't going
7 to match what JayQuan told us. He told us there were four
8 or five shots, we have one shell casing. He told us he
9 opened that door twice. He didn't do that.

10 Now, I want to talk to you for a minute about
11 reasonable doubt. And what is reasonable doubt? Because
12 it can be a tough concept to grasp at times. Reasonable
13 doubt is doubt that -- it is proof beyond a reasonable
14 doubt leaves you firmly convinced of someone's guilt. You
15 can't think he's probably guilty and find him guilty. You
16 can't think he's possibly guilty and find him guilty. You
17 have to have proof beyond a reasonable doubt. What does
18 that mean?

19 When I was in law school, I lived down in Miami,
20 and one night after exams I came home, and we had to park
21 in a parking complex. And I was looking for a spot. I
22 drove around a few times, and I finally found a spot. I
23 pulled in. I go inside, catch a few hours' sleep. I come
24 back out that morning. That next morning, there's a car
25 parked so close to my car I can't even open the door. It's

1 like four inches away. I got a test in an hour, I'm ticked
2 off, I feel like I've been wronged, and I want something
3 done. I start scribbling down words on a piece of paper,
4 and I'm giving that person a piece of my mind. I'm going
5 to leave it under his windshield. I go, I walk over to the
6 car, I lift up the windshield wiper, and I go to put it
7 down. I go to put it down, and I stop. I look over. The
8 space next to him is empty, but the night before, there had
9 been a big old SUV in that spot. What if that person was
10 just doing the only thing that they could do? What if they
11 had to park there because that was the only way they could
12 pull into that space because that SUV was over that line?

13 I paused for a minute. And that's a rare moment of
14 clarity for me. That's when I wasn't firmly convinced. I
15 grabbed that piece of paper, I crumbled it up, and I put it
16 in my pocket. Because I didn't know for sure that, that
17 car that was parked next to me did that on purpose and did
18 that there. I had to stop.

19 There's a lot of big what-ifs in that case, this
20 case. What if JayQuan was not telling you the truth from
21 the stand? What if Lywone was with his mother like he said
22 he was, like she said he was? Lywone Capers is not guilty
23 of this. They haven't come close to meeting their burden
24 of "beyond a reasonable doubt." He's not guilty of
25 Attempted Murder. His mom didn't take him on a drive-by.

1 He didn't have a weapon that day. He's not guilty of
2 Possession of a Weapon During a Violent Crime. He's not
3 guilty of Criminal Conspiracy.

4 Criminal Conspiracy, you got to have two minds
5 joined together, know what they're doing, and helping each
6 other out. That didn't happen here. You see on that
7 video, Lywone gets in the passenger seat of that Mercedes,
8 and he doesn't do anything else.

9 Now, you can believe what you hear from the witness
10 stand. Or you can believe what you see with your own two
11 eyes on that video. What you hear from the witness stand
12 from JayQuan Bell doesn't make sense with what we know.
13 The cars are out of line, Nehemiah Dixon was not driving
14 that Mercedes. What you see on that video is my client,
15 Lywone Capers, getting into the car with his mother, and
16 your mom is not going to take you on a drive-by. She's not
17 going to condone a drive-by, and she's not going to
18 chaperone you on a drive-by. And for that, I'm asking you
19 to return a verdict of not guilty for these people.

20 I have one other thing I want to let you know
21 before we leave here today, and I want to implore you, that
22 if you have a doubt for which you have a reason, if you
23 have one of those what-ifs, have it today. When you drink
24 your coffee and you're reading the paper tomorrow, it is
25 entirely too late to have a doubt. Decades from now, when

1 you're telling someone about the time you were on the jury
2 in Lexington County, it's too late to have a doubt. If you
3 have that doubt, have it today, and return a verdict of not
4 guilty for Lywone Capers on Attempted Murder, Possession of
5 a Weapon During a Violent Crime, and Criminal Conspiracy.

6 THE COURT: Thank you, Mr. Drylie. Solicitor.

7 MS. USRY: Your Honor, I beg the Court's brief
8 indulgence for one moment.

9 THE COURT: All right.

10 (WHEREUPON there was a pause in the proceedings.)

11 MS. USRY: Sorry, Your Honor.

12 Your Honor, may it please the Court.

13 THE COURT: Yes, ma'am.

14 MS. USRY: January 3rd, 2013, [REDACTED] Avenue.

15 Shots are fired. People hit the floor. Shots are fired,
16 and one rips through a building. Five people are in [REDACTED]
17 [REDACTED] Avenue. Five. A bullet enters the window of a
18 little girl's room, goes through a hallway where two people
19 are, and into a bathroom where, moments before, Clara
20 Williams had been located. Shot are fired. A bullet rips
21 through [REDACTED] Avenue. We're here on Attempted Murder
22 because no one was hit with that bullet.

23 Ladies and gentlemen, the State has the burden of
24 proof in this case, and we welcome that burden. We need to
25 prove this case beyond a reasonable doubt. Beyond a

1 reasonable doubt is not beyond all doubt. It is proof that
2 leaves you firmly convinced of the defendant's guilt. Our
3 supreme court has not burdened us with proving a case to
4 absolute certainty because that is an impossible burden.
5 We will never have a video camera at [REDACTED] Avenue. We
6 will not have that, ladies and gentlemen. But we present
7 direct evidence from testimony on this stand,
8 circumstantial evidence that you can draw -- inferences
9 that you can draw from the evidence that we give you.

10 Attempted Murder -- attempted killing with malice
11 aforethought, the intent to kill, a wicked intent. Wicked.
12 Without just cause or excuse. Aforethought, that's part of
13 the charge of Attempted Murder -- aforethought. It's a
14 legal term. Malice before the attempt, and it can be the
15 moment before. It can be the moment you put your finger on
16 the trigger of a gun, and you decide to pull it. It can be
17 that moment. At that moment, you have the decision to
18 either pull or not. Or it can back up to a gas station,
19 and you can make a decision then to ride by someone's house
20 with your buddies.

21 Conspiracy -- two or more people combining for a
22 purpose and accomplishing that purpose. Two people, three
23 people. Two brothers. Ladies and gentlemen, a silent,
24 mutual understanding of what you're doing is enough.
25 Now, the defense wants you to believe that they weren't

1 there. They didn't do this. They were somewhere else.
2 That the victims are making this all up. That in the time
3 that JayQuan Bell and his grandmother left the Exxon and
4 got home, they made this decision to call the police, I
5 guess they shot up their own house, and they made all this
6 up and -- and that's what happened. No one -- none of them
7 went by. These two were never on Roach Avenue. They want
8 you to believe that.

9 Ms. Tammy Coleman, their mother, the person that
10 they live with, took the stand. I submit to you that they
11 have spoken since this incident. They've lived together
12 still. They want you to believe they went to another
13 school after leaving the Exxon to withdraw someone else
14 from school at nine o'clock in the morning. And they just
15 accidentally forgot that school wasn't over and they
16 couldn't withdraw someone yet. They just forgot it was
17 early.

18 Ladies and gentlemen, it's January 3rd. Nine
19 o'clock in the morning and January 3rd. Not like this
20 morning when you wake up at six o'clock and it's already
21 sunny or the sun's already coming up, it's January 3rd.

22 Let's talk a minute about JayQuan Bell. Let's talk
23 about his testimony. Ladies and gentlemen, JayQuan Bell
24 unequivocally from the stand identified Bilal Haynesworth
25 and Lywone Capers as the two drivers who went by his house.

1 If he was making this up, when the officers responded to
2 his house on January 3rd, wouldn't you think he'd be ready
3 with the full name? "This is who came by my house." No.
4 He gives the first names. He gives what he knows. His
5 house was shot. He saw who it was. They called 9-1-1.
6 Officers got there within minutes, and he tells them what
7 he can tell them, which is two first names and how many
8 cars. He gives you that information. He tells you that
9 from the stand. If he was lying, he would tell them
10 everything. He would tell them full names.

11 And I submit to you that Ms. Clara Williams is not
12 making her testimony up. And I submit to you that Ms.
13 Jennie Childs is not. Because they are doing -- and you
14 can tell from their testimony, they are doing the best they
15 can to testify to what they know. If they were all in this
16 together making it up, wouldn't they all say they were
17 looking out the window and saw these cars drive by?

18 They're testifying what they can testify to what
19 they know. And Ms. Clara Williams didn't know these people
20 from Adam.

21 She goes to the school, and someone threatens her.
22 She's with her grandson, someone threatens her. She says
23 she was, you know, "felt threatened." That's what she
24 testified to. She goes to the gas station. Again,
25 leaving, sees these people, doesn't know them, knows that

1 words are exchanged, and she leaves and then goes back
2 home, to her home where she has a right to be.

3 Ms. Jennie Williams testifies she's in a hallway.
4 They're hitting the floor when a bullet comes through. She
5 put an X where she was. And we know, ultimately, a bullet
6 was found in this bathroom. Ms. Jennie Childs was here.
7 Ms. Clara Williams testified that she had just been in the
8 bathroom. Just been in there, they left. We're lucky
9 we're here on Attempted Murder, ladies and gentlemen.
10 Bullets fly through their house. They call the police.

11 Chief Hayes gets on the stand, says they got the
12 call. They were there within minutes. Short period of
13 time. He gets there. He does his job. He meets with
14 who's on scene. He takes down their information. He then
15 looks to see if he can find evidence of what they're
16 saying. Goes out in the street, finds a shell casing.
17 Goes in the house, takes pictures of the hole through the
18 house. Ladies and gentlemen, there is a bullet hole
19 through the house. And then finds, ultimately, the
20 projectile in the bathroom. Collects that. Small town
21 police office, he loses the bullet. He admits to that. He
22 takes full responsibility.

23 But what else does he do? He takes down all the
24 statements. He does his investigation. He gets the names.
25 He actually goes to the school. He gets full names,

1 creates a photo lineup, goes back, "Are you sure this is
2 who we're talking about?" He's doing his job to the best
3 of his abilities. He gets the Exxon video that's here
4 today, and I was going to play that for you, but I can't
5 get the computer to work. You will be able to play that in
6 your jury room. And I want you to watch it.

7 And let's talk about who defense counsel doesn't to
8 talk about. No one wants to mention Nehemiah Dixon and his
9 testimony. Everybody wants to jump on JayQuan Bell, but no
10 one wants to mention Nehemiah Dixon. And that's because he
11 sinks an alibi. He sinks that ship.

12 And you'll have his statement, what he wrote for
13 officers. It'll be back in the jury room with you. I want
14 you to read it. I want you to read it out loud, and then I
15 want you to pass it around. And I want you to read that
16 and think about what's in that statement compared to what
17 else you've heard on this -- in this jury (sic) room. And
18 I want you to look in his statement. I want you to count
19 how many times he says "we." Conspiracy. We. And I want
20 you to read his statement because there's more in there
21 than what he said on the stand.

22 And to say he was hesitant to testify I think is an
23 understatement. He didn't want to be here. He didn't want
24 to testify against his friends. He didn't want to testify
25 with his girlfriend here. This is essentially part of his

1 family. He's been dating her, his girlfriend for two
2 years. He's stayed at their house. This is part of his
3 family. He did not want to be here. But he wrote a
4 statement. And in his statement, which you'll have in the
5 jury room, he wrote towards the end, "JayQuan pulled out,
6 and I was in the Nissan, followed him, but I didn't see
7 where the house he went to was. JayQuan pulled out,"
8 pulled out of the Exxon. In the full statement will make
9 it clear.

10 "Pulled out of the Exxon. I was in the Nissan. I
11 didn't see where the house he went to was. I drove back to
12 the Exxon and drove back to the Bottom looking for the car.
13 Looking for the car." This bright blue car in State's 1.
14 "We spotted the car and two shots was shot. Then two more
15 shots. And we drove off and went home." Malice
16 aforethought. Conspiracy. Can't get around that, and you
17 will have that in your jury room.

18 Ladies and gentlemen, driving by someone's house
19 and shooting in the house is a far cry different from
20 posting and arguing on Facebook, and I submit to you that
21 the argument on Facebook was back-and-forth. Lord knows
22 what people put on Facebook these days. It is a far cry
23 from getting in your car, driving to a location that is not
24 a through-street, purposefully driving. There's a dead end
25 here. You have to drive in, turn around, and drive back

1 out.

2 I submit to you, ladies and gentlemen, that the two
3 entries or Facebook posts or whatever they are, that were
4 submitted by defense counsel, are motive to go back to that
5 house and shoot a gun. We don't even know if this "Jerod
6 Imherhubby La" has anything to do with this case. Bilal
7 Haynesworth said it's from his phone, and he admitted that
8 anybody with an address, an e-mail address or a phone
9 number, could make a Facebook account. So it's his word
10 that this is what -- I mean, we don't even know that.
11 Besides what he said, that's what he's saying.

12 And JayQuan Bell admitted that he had words on
13 Facebook. He tried to explain that when he was asked about
14 it in detail. But he admits it, and he said, "I thought
15 that bygones be bygones, squashed." It was over. He
16 thought it was over. And this is dated December 15th of
17 2012, weeks before, weeks before January 3rd.

18 When you get back to your jury room, watch the
19 Exxon video. Watch the video from the Exxon. It can't be
20 denied. It has to be given some lip service in closing
21 arguments, because that happened. And what you will see,
22 that blue car, JayQuan Bell's car was there. The green car
23 comes in. You will see Bilal Haynesworth get out of his
24 car and approach the blue car. The blue car leaves. And
25 you know, I think that's important because at the school,

1 JayQuan and Ms. Clara, they leave. And at the Exxon, they
2 leave immediately. They're trying to remove themselves
3 from these people. They're trying to get away. That's
4 important, ladies and gentlemen, because he may -- JayQuan
5 Bell may talk big on Facebook or whatever this is, but when
6 push comes to shove and these people are here, he's
7 leaving. He's trying to get away back to his home.

8 The threats made at Swansea High School, malice.
9 The threats made at the Exxon, malice. The conversations,
10 which we can't hear, that happened at that Exxon,
11 conspiracy. Watch Nehemiah Dixon's car when you watch that
12 video. It will leave. It comes back in the parking lot
13 fast, and then everybody follows him out. Defense wants us
14 to believe they all do that, they all follow out, and then
15 they all just go their separate ways, and that's the end of
16 it. Everybody goes home. I submit to you that's not what
17 happened. Because moments later, officers get a 9-1-1
18 call. Minutes.

19 Conspiracy at the Exxon. Pulling out onto 321,
20 malice. Taking a left down 692, malice. Driving into this
21 neighborhood and down Roach Avenue, malice. Riding in a
22 line together, conspiracy. Turning around in the
23 cul-de-sac, driving back out of that neighborhood, picking
24 up your gun, malice. Pointing your gun out the window,
25 malice. And pulling the trigger, malice.

1 Ladies and gentlemen, I submit to you that the
2 State has proved, beyond a reasonable doubt, that these
3 defendants are guilty of Attempted Murder, they are guilty
4 of Possession of a Weapon During a Violent Crime, and they
5 are guilty of Conspiracy. And I ask when you go back to
6 your jury room, that you review the evidence, and you
7 return a verdict of guilty. Thank you.

8 THE COURT: Thank you, ma'am.

9 **JURY CHARGE**

10 THE COURT: All right, ladies and gentlemen. When
11 this case started, I told you that you were the judges of
12 the facts of the case. And so during the course of the
13 trial, it's been appropriate for me to be up on the bench
14 and be out of the way while the lawyers present to you the
15 facts and the evidence of the case.

16 We've now reached the portion of this trial where
17 you and I are in this together, you as the judges of the
18 facts and me as the judge of the law. I'm going to read
19 this to you verbatim so that I don't leave anything out or
20 misquote anything.

21 Madame Forelady and members of the jury, you have
22 heard all of the evidence, and you've heard the arguments
23 of both sides. I will now explain to you the law which
24 applies to this action. The indictments charge the
25 defendants, Lywone Shatete Capers and Bilal Sincere

1 Haynesworth, with the charges of Attempted Murder,
2 Possession of a Weapon During the Commission of a Violent
3 or Attempted Commission of a Violent Crime, and Conspiracy.
4 I remind you that the fact that the defendants were
5 arrested, charged, and indicted in this case is not
6 evidence in this case, and it cannot be considered by you
7 as evidence of guilt in this case. Nor does it create any
8 presumption or inference of guilt. The indictments are
9 simply the formal written instruments which contain the
10 charges made against the defendants. They are the formal
11 documents which brings this case into court.

12 Now, I am going to give you a copy of these
13 instructions in written form to have with you in the jury
14 room during your deliberations. You may refer to the
15 instructions to guide you in your decision making. You
16 must consider these instructions as a whole and not follow
17 some and ignore others.

18 Now, the defendants have pled not guilty to the
19 charges in these indictments, and that plea puts the burden
20 on the State to prove the defendants guilty. A person
21 charged with committing a criminal offense in South
22 Carolina is never required to prove him or herself
23 innocent. I charge you that it is an important rule of law
24 that the defendant in a criminal trial, no matter what the
25 seriousness of the charges may be, will always be presumed

1 to be innocent of the crimes for which the indictment was
2 issued, unless guilt has been proven by evidence satisfying
3 you of that guilt beyond a reasonable doubt.

4 This presumption of innocence does not end when you
5 begin your deliberations, but it accompanies the defendants
6 throughout the trial until you reach a verdict of guilt
7 based on evidence satisfying you of that guilt beyond a
8 reasonable doubt. The presumption of innocence is not a
9 mere legal theory. It is not just a legal phrase, but it
10 is a substantial right to which every defendant is
11 entitled. Unless you, the jury, are satisfied by the
12 evidence of the defendant's guilt beyond a reasonable
13 doubt.

14 Now, the State has the burden of proving a
15 defendant's guilty beyond a reasonable doubt. Some of you
16 may have served as jurors in civil cases where you were
17 told that it is only necessary to prove that a fact is more
18 likely true than not true, such as by the greater weight or
19 the preponderance of the evidence. In criminal cases, the
20 State's proof must be more powerful than that; it must be
21 beyond a reasonable doubt.

22 Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the defendant's guilt.
24 There are very few things that we know with absolute
25 certainty. And in criminal cases, the law does not require

1 proof that overcomes every possible doubt. If, based on
2 your consideration of the evidence, you are firmly
3 convinced that the defendants are guilty of the crimes
4 charged, you must find the defendants guilty. If, on the
5 other hand, you think that there is a real possibility that
6 the defendants are not guilty, you must give the defendants
7 the benefit of that doubt and find them not guilty.

8 I'll remind you that during this trial you and I
9 have certain duties to perform. As the trial judge, it is
10 my responsibility to preside over the trial of this case,
11 and I also have the duty to rule on the admissibility of
12 evidence offered during this trial. You are to consider
13 only the competent evidence that is before you. You are to
14 consider only the testimony which has been presented from
15 the witness stand, any exhibits which may have been a part
16 of the record of this case, and any stipulations or
17 agreements of counsel.

18 I have the additional duty to charge you the law
19 applicable in this case. As the presiding judge, I am the
20 sole judge of the law in this case, and it is your duty as
21 jurors to accept and to apply the law as I now state it to
22 you. If you already have an idea as to what the law is or
23 what the law ought to be, and it does not agree with what I
24 now tell you the law is, you must abandon your idea because
25 you are sworn to accept the law and apply the law exactly

1 as I state it to you.

2 Now, in every case that is tried in this court
3 before a jury, the jury becomes the sole and the exclusive
4 judge of the facts of the case. A trial judge cannot
5 intimate, state, comment on, or make any statement to a
6 trial jury about the facts of a case. Since you, the jury,
7 are the sole judge of the facts in this case, you are not
8 to infer from what I have said during the progress of this
9 trial and ruling on the admissibility of evidence or
10 otherwise or anything that I say now during the course of
11 this instruction to you, that I have any opinion about the
12 facts of this case. The law does not allow me to have an
13 opinion about the facts. This is a matter solely for you,
14 the jury, to determine. As jurors, it is your duty to
15 determine the effect, value, weight, and truth of the
16 evidence that was presented during this trial.

17 Now, there are two types of evidence which are
18 generally presented at a trial. There is direct evidence,
19 and there's circumstantial evidence. Direct evidence is
20 the testimony of a person who claims to have actual
21 knowledge of a fact, such as an eyewitness. It is evidence
22 which immediately establishes the main fact to be proof.
23 Circumstantial evidence is proof of a chain of facts and
24 circumstances, indicating the existence of a fact. It is
25 evidence which immediately establishes collateral facts.

1 from which the main fact may be inferred. Circumstantial
2 evidence is based on inference and not on personal
3 knowledge or observation.

4 Now, the law makes absolutely no distinction
5 between the weight or value to be given to either direct or
6 circumstantial evidence. Nor is a greater degree of
7 certainty required of circumstantial evidence than of
8 direct evidence. You should weigh all of the evidence in
9 this case. After weighing all of the evidence, if you are
10 not convinced of the guilt of the defendants beyond a
11 reasonable doubt, you must find the defendants not guilty.
12 However, if after weighing all of the evidence, you are
13 convinced of the defendants' guilt beyond a reasonable
14 doubt, then you would find the defendants guilty.

15 Now, in this case, there are allegations of
16 spoliation or destruction of evidence. The State not only
17 has the burden of proof of guilt, but it also has the
18 burden of producing evidence which could establish the
19 innocence of defendants. When evidence is lost or
20 destroyed by a party, you may infer that the evidence which
21 was lost or destroyed by that party would have been adverse
22 to that party. If you find that the evidence was spoiled
23 or destroyed, and if you further find that the evidence
24 could help establish the innocence of the defendants, you
25 may then consider those facts in deciding whether or not

1 the State has met its burden of proof.

2 So necessarily, you have to determine the
3 credibility of the witnesses who have testified in this
4 case. And ladies and gentlemen, credibility simply means
5 believability. It becomes your duty as jurors to analyze
6 and to evaluate the evidence and determine which evidence
7 convinces you of its truth. In determining the
8 believability of witnesses who have testified in this case,
9 you may believe one witness over several or several
10 witnesses over one. You may believe a part of the
11 testimony of a witness and reject the remaining part of the
12 testimony of that same witness. You may believe the
13 testimony of a witness in its entirety or reject that
14 testimony in its entirety. You may consider whether any
15 witness has exhibited to you any interest, bias, prejudice,
16 or other motive in this case. You may also consider the
17 appearance and the manner of a witness while on the witness
18 stand.

19 Now, I instruct you, and I emphasize, that the fact
20 that the defendant Lywone Capers did not testify in this
21 case is not a factor to be considered by you in any way in
22 your deliberations and in your consideration on the
23 question of guilt or innocence of Mr. Capers. It must not
24 be considered by you in any manner whatsoever. A defendant
25 has the constitutional right to remain silent, and the

1 assertion of this right must not be considered by you in
2 your deliberations. I repeat, under your oath, you are to
3 draw no conclusions whatsoever from the fact that Mr.
4 Capers did not testify in this case. The fact that Mr.
5 Capers did not testify should not even be discussed in the
6 jury room. The burden of proof, as I have stated to you,
7 is on the State. A defendant is not required to prove his
8 innocence. The burden of proof remains on the State to
9 prove guilt beyond a reasonable doubt.

10 Now, I charge you that there are two defendants in
11 this case, each of whom is charged with Attempted Murder,
12 Possession of a Weapon During the Commission or Attempted
13 Commission of a Violent Crime, and Conspiracy. The case of
14 each defendant and the evidence and the law concerning that
15 defendant should be considered separately and individually.

16 Our verdict does not have to be the same for both
17 defendants. The fact that you may find one defendant
18 guilty or not guilty should not control your verdict as to
19 the other defendant. Where more than one person is charged
20 with a crime, if the evidence warrants it, you may convict
21 one and acquit the other, or you may acquit both, or you
22 may convict both. It will depend upon your view of the
23 testimony and the evidence, but you must take each
24 defendant and consider the evidence as to that defendant,
25 and my instructions to you on the law. You will then write

1 a separate verdict of guilty or not guilty for each
2 individual defendant.

3 Now, there are also -- the indictments in this case
4 allege several different offenses against each defendant.
5 The charges, as I said, are Attempted Murder, Possession of
6 a Weapon During the Commission or Attempted Commission of a
7 Violent Crime, and Conspiracy. Each indictment charges a
8 separate and a distinct offense. You must decide each
9 offense separately on the evidence and the law applicable
10 to it, uninfluenced by your decision as to any other
11 offense. Each defendant may be convicted or acquitted on
12 any one or all of the offenses charged. You will be asked
13 to write a separate verdict of guilty or not guilty for
14 each indictment or offense in this case.

15 Now, the defendants are charged with Attempted
16 Murder. In order to prove this crime, the State must prove
17 the defendants attempted to kill another person with malice
18 aforethought, either express or implied. Malice is hatred,
19 ill will, or hostility toward another person. It is the
20 intentional doing of a wrongful act without just cause or
21 excuse and with the intent to inflict an injury or under
22 circumstances that the law will infer an evil intent.

23 Malice aforethought does not require that malice
24 exist for any particular time before the act is committed,
25 but malice must exist in the mind of the defendant just

1 before and at the time that the act is committed.

2 Therefore, there must be a combination of the previous evil
3 intent and the act.

4 Malice aforethought may be express or inferred.

5 These terms express and inferred do not mean different
6 kinds of malice but merely the manner in which malice may
7 be shown to exist. That is, either by direct evidence or
8 by inference from facts and circumstances which are proved.
9 Express malice is shown when a person speaks words which
10 express hatred or ill will for another, or when the person
11 prepared beforehand to do the act which was later
12 accomplished. For example, lying in wait for a person or
13 any other acts of preparation going to show that the deed
14 was within the defendant's mind would be express malice.

15 Malice may be inferred from conduct showing a total
16 disregard for human life. Inferred malice may also arise
17 when the deed is done with a deadly weapon. A deadly
18 weapon is any article, instrument, or substance which is
19 likely to cause death or great bodily harm. Whether an
20 instrument has been used as a deadly weapon depends on the
21 facts and the circumstances of each case. The following
22 are examples of instruments which may be deadly weapons: A
23 pistol, a shotgun, a rifle, a dagger, a knife, a slingshot,
24 metal knuckles, a razor, gasoline, or a firebomb. A gun
25 may be a deadly weapon even if it's not operating.

1 If facts are proved beyond a reasonable doubt
2 sufficient to raise an inference of malice to your
3 satisfaction, this inference would be simply an evidentiary
4 fact to be considered by you, the jury, along with other
5 evidence in the case. And you may give it whatever weight
6 you decide it should receive.

7 A specific intent to kill is an element of
8 Attempted Murder. Intent means intending the result which
9 actually occurs. Not accidentally or involuntarily.

10 Intent may be shown by acts and conduct of the defendants
11 and other circumstances from which you may naturally and
12 reasonably infer intent. Evidence of the character of the
13 act, the character of the instrument used, the manner in
14 which it was used, the purpose to be accomplished, and the
15 resulting wounds or injuries may be considered in
16 determining the intent with which the act was committed.

17 Intent may also be inferred when it is demonstrated
18 that the defendant voluntarily and willfully commits an
19 act, the natural tendency of which is to destroy another's
20 life.

21 Now, if you find that the State has failed to prove
22 all of the elements of Attempted Murder beyond a reasonable
23 doubt, you may consider whether the State has proved the
24 lesser included offense of Assault and Battery in the First
25 Degree beyond a reasonable doubt. A person commits the

1 offense of Assault and Battery in the First Degree if the
2 person unlawfully offers or attempts to injure another
3 person with the present ability to do so and the act is
4 accomplished by a means likely to produce death or great
5 bodily injury. Great bodily injury means bodily injury
6 which causes a substantial risk of death or which causes
7 serious permanent disfigurement or protracted loss or
8 impairment of the function of a bodily member or organ.

9 The defendants are also charged with Possession of
10 a Weapon During the Commission or Attempt to Commit a
11 Violent Crime. The State must prove beyond a reasonable
12 doubt that the defendants were in possession of a firearm,
13 or visibly displayed what appeared to be a firearm, during
14 the commission of a violent crime. A firearm means any
15 machine gun, automatic rifle, revolver, pistol, or any
16 weapon which will or which is designed to or made to be
17 readily converted to expel a projectile. In order to find
18 the defendant guilty of Possession of a Weapon During the
19 Commission of a Violent Crime, you must first find the
20 defendant guilty of either committing a violent crime or
21 attempting the commission of a violent crime. For purposes
22 of South Carolina law, Attempted Murder is considered a
23 violent crime.

24 Lastly, the defendants are charged with Conspiracy.
25 The State must prove beyond a reasonable doubt that the

1 defendants combined with one or more persons for the
2 purpose of committing an unlawful act or of committing a
3 lawful act by unlawful means. There must be a mutual
4 understanding, agreement, or common intention and plan.
5 Mere passive knowledge of or consent to the criminal
6 conduct of another is not enough to make a person a
7 conspirator. There must be guilty knowledge and
8 participation.

9 Similarly, the mere fact that the defendants may
10 have associated with another person or met with another
11 person and discussed common aims and interests does not
12 necessarily establish proof of the existence of a
13 conspiracy or that the conspiracy or that the defendant was
14 involved in the conspiracy.

15 On the other hand, it's not necessary that the
16 agreement be a formal one, that it be in writing, or that
17 the persons hold a meeting and expressly state the terms of
18 the common plan, or that the agreement be stated in words
19 between them. The agreement of a criminal conspiracy may
20 come into being through an implied mutual understanding.
21 The willful, intentional, and knowing adoption by two or
22 more persons of a common plan is sufficient. No overt acts
23 need to be shown to establish a conspiracy. A conspiracy
24 may be shown by circumstantial evidence and the conducts of
25 the parties. In order to convict the defendants of

1 conspiracy, the State must prove beyond a reasonable doubt
2 that, not only -- Excuse me -- not only that the defendants
3 knew of the unlawful conduct, but that the defendant agreed
4 to combine with the other person for the purpose of
5 accomplishing the unlawful conduct.

6 Now, the defense has raised the defense of alibi.
7 In order to establish an alibi, it must be shown that the
8 defendant was at another specified place at the time the
9 crime was committed, and that it was, therefore, impossible
10 for the defendant to have been at the scene of the crime.
11 There is no burden on the defendant to prove an alibi. The
12 burden is on the State to prove beyond a reasonable doubt
13 that the defendant was actually present at the scene of the
14 crime, actually participated in it, and was not somewhere
15 else. In other words, the State has the burden of
16 disproving the defendants' alibi defense.

17 Now, Madame Forelady and members of the jury, as
18 you retire to begin your deliberations, I want to express
19 to you the hope that each of you will be mindful of the
20 importance of your responsibility. You're not called upon
21 to serve as jurors very often, and the proper performance
22 of the duty requires each of you to reach the height of
23 freeing your mind of all improper influences. As the
24 presiding officer of this court, I am vitally concerned
25 that whatever verdict you find will be the result of your

1 going into the jury room and confining your consideration
2 to the evidence and to the law as you've heard in this
3 courtroom, weighing it fairly and impartially, as I have
4 every confidence you'll do.

5 Your verdict in this case cannot be based on
6 sympathy, compassion, prejudice, or emotion, or some other
7 consideration that's not found in the evidence. And
8 remember, ladies and gentlemen, and I told you earlier,
9 your verdict in this case must be unanimous.

10 Now, Madame Forelady, this notebook will be in the
11 jury room with you, and in the front cover I've put the
12 verdict forms. There are two verdict forms, one for Mr.
13 Capers and one for Mr. Haynesworth. And the forms are the
14 same, it's just there's one for each of the defendants,
15 because as I told you, you have to consider the defendants
16 individually and you consider the charges individually. So
17 I will just go over one of the forms, but they're both the
18 same.

19 The first charge, and you can take them in any
20 order you wish, but the first charge I have is Conspiracy,
21 and you will either find that the defendants are either not
22 guilty or guilty of Conspiracy. Those are the two options.
23 Whatever verdict that the jury reaches, ma'am you'll just
24 mark the appropriate selection. Then, there is Attempted
25 Murder slash Assault and Battery First Degree, and under

1 this charge there are three possible forms of verdict,
2 either that the defendants are guilty, or either one of the
3 defendants, they don't operate together, you take each one
4 independently, but the defendant is either guilty of
5 Attempted Murder or guilty of Assault and Battery in the
6 First Degree or not guilty. Okay?

7 Now, then you'll go to page 2, and when you get to
8 page 2 there's an instruction. And the instruction simply
9 says this, and I think it's self-explanatory, "If you find
10 the defendant either guilty of Assault and Battery in the
11 First Degree or not guilty of either Attempted Murder or
12 Assault and Battery in the First Degree, then you would
13 stop your deliberations and sign the verdict form. If you
14 find the defendant guilty of Attempted Murder, then you may
15 proceed to the charge listed below. If you find the
16 defendant guilty of Attempted Murder, you may then consider
17 the charge of Possession of a Weapon During the Commission
18 of a Violent Crime."

19 If you get to that charge, then again you have the
20 two options, either not guilty or guilty. Those are your
21 two options.

22 So -- and then, Madame Forelady, once the jury has
23 reached a unanimous verdict on the cases as they relate to
24 Mr. Haynesworth as well as they relate to Mr. Capers, then
25 you'll just -- if you'll knock on the door and let us know

1 you have the verdict, and we'll bring you out and receive
2 that. Okay?

3 Now, ladies and gentlemen, what I want to do -- I'm
4 confident your lunch is probably here.

5 Your lunch is here.

6 I'm going to let you go back into the jury room.
7 What I'm going to do is this, I'm going to ask you to not
8 start your deliberations yet. I need to confer with the
9 attorneys to just to make sure that the charge is complete,
10 that I haven't left anything out or misstated anything. If
11 I need to bring you back out to make any corrections or
12 additions or whatever, I'll do that. But if the charge is
13 okay, I will get the exhibits here and this notebook. When
14 you receive these items, that's when you begin your
15 deliberations. And as far as your lunch, y'all can do what
16 you want to do. You can either eat lunch and then start
17 your deliberations, or you can deliberate while you eat.
18 I'll just leave that up to y'all to decide how y'all want
19 to do that. Okay?

20 But if you would, return to the jury room. Have no
21 conversation about the case until you receive these items.
22 Okay?

23 (WHEREUPON the jury left the courtroom at 2:15
24 p.m.)

25 THE COURT: Any objections or exceptions to the

1 charge from the State?

2 MS. USRY: No sir, Your Honor.

3 THE COURT: All right. And I will note your
4 exception to the Assault and Battery charge.

5 MS. USRY: Yes, sir.

6 THE COURT: Anything from the defense regarding the
7 charge?

8 MR. MAULDIN: No, Your Honor.

9 MR. DRYLIE: None from me, Your Honor.

10 THE COURT: All right. Folks, if y'all would get
11 together with Brenda and make sure that all of the exhibits
12 are here that need to go back, and then we can send them
13 back and let them get started.

14 MS. USRY: Your Honor?

15 THE COURT: Yeah.

16 MS. USRY: The only thing I was going to bring up
17 is the video. I don't know if you want them to request --
18 The computer we have is the one we sent back last time with
19 this charge. I can pull it up, or you can wait and see if
20 they want the video and send it in with the video pulled
21 up, they can play it and then hand back out the computer.
22 I know everybody does it a little differently.
23 Unfortunately --

24 THE COURT: Do y'all have a position, gentlemen?

25 MR. MAULDIN: Is it an empty computer? They can't

1 Like fiddle around and --

2 MS. USRY: I mean, it's a computer, so but -- I
3 guess --

4 THE COURT: It doesn't have Internet access. Does
5 it?

6 MR. BELL: I think it might, Your Honor.

7 MS. USRY: It could be hooked up. I don't know if
8 we want to bring them out and say, "If you want this, we
9 can send back the computer, but you're instructed not to
10 use the computer except for reviewing this video."

11 THE COURT: Well, what else is on the computer?

12 MS. USRY: I don't think anything. I think it's
13 the one we don't have any files or things used for the
14 courtroom. But I'll double-check it real quick.

15 THE COURT: My concern with sending it back, I mean
16 if it's pretty much a blank computer other than what
17 they're going to be looking at, I don't have a problem, but
18 as long as it doesn't have Internet access. I mean, it may
19 be capable of it, but does it -- Can they wirelessly
20 connect to the Internet from in there?

21 MR. BELL: Your Honor, if we disabled the wireless
22 adapter, would that be sufficient.

23 THE COURT: Yeah. I just, you know, I just -- And
24 I'm not saying that they'll go on the Internet, but I just
25 don't want them to have access to it.

1 MS. USRY: We'll let defense counsel check it over
2 and see if they objections.

3 THE COURT: Y'all look at it and tell me, and in
4 the meantime, because there's several of you. Why don't a
5 couple of y'all get with Brenda and verify we've got all
6 the exhibits that we need and then one of y'all can deal
7 with the computer issue.

8 (WHEREUPON the exhibits and notebook were sent back
9 to the jury room and deliberations began at 2:24 p.m.)

10 (WHEREUPON it was reported to the Court that the
11 jury had reached a verdict at 4:57 p.m.)

12 THE COURT: All right. Ladies and gentlemen, I've
13 been informed that the jury has indicated that they've
14 reached a verdict. I sit here as you do and have no idea
15 what that may be. So we all are in the same position as
16 far as not knowing what that verdict may be, but I do want
17 everyone to understand that I expect -- I don't ever ask
18 folks to agree with a jury's verdict. I simply ask that
19 their verdict be received in a professional manner and in a
20 respectful manner.

21 If there are any -- I guess what I'm trying to say
22 is, and I say this before every case whether it's a
23 criminal case or a civil case. I don't expect there to be
24 any outburst or any disturbance in the court upon the
25 reading of the jury's verdict. You don't have to agree

1 with the verdict, but it is the verdict of this jury, and
2 they deserve to have their verdict received in a
3 professional manner.

4 If you do not feel that you can contain your
5 emotions, then I would suggest that you go outside the
6 courtroom and let someone inform you of the verdict out
7 there because if there are any disturbances in the
8 courtroom, whoever creates that disturbance, I'm going to
9 hold you in contempt and have you taken into custody. So I
10 would ask that you please keep that in mind. And again,
11 the only reason I say these things is because the jury's
12 verdict, whatever it may be, deserves to be received with
13 respect and professionalism. So, having said that, is the
14 State ready to receive the jury verdict?

15 MS. USRY: Yes sir, Your Honor.

16 THE COURT: Is the defense ready?

17 MR. DRYLIE: We are, Your Honor.

18 MR. MAULDIN: Yes, Your Honor.

19 THE COURT: All right, if you would please, bring
20 the jury in.

21 (WHEREUPON the jury entered the courtroom at 5:04
22 p.m.)

23 THE COURT: Madame Forelady, has the jury reached a
24 unanimous verdict, ma'am?

25 THE JUROR: Yes, we have.

1 VERDICT

2 THE COURT: All right. If you would, please pass
3 that to the bailiff for me. All right.

4 All right. Madame Clerk if you would publish the
5 verdicts of the jury please, ma'am.

6 THE CLERK: Yes, sir. Indictment 2013-GS-02373,
7 02374, and 02375, in the matter of the State of South
8 Carolina versus Bilal Sincere Haynesworth, we the jury find
9 the defendant, Bilal Sincere Haynesworth, on the charge of
10 Conspiracy, guilty of Conspiracy. Charge of Attempted
11 Murder slash Assault and Battery in the First Degree, we
12 the jury find the defendant, Bilal Sincere Haynesworth,
13 guilty of Attempted Murder. In the matter of Possession of
14 State, excuse me, Possession of Weapon During Commission of
15 a Violent Crime, we the jury find the defendant, Bilal
16 Sincere Haynesworth, guilty of Possession of a Weapon
17 During Commission of a Violent Crime. If this is your
18 verdicts on Mr. Haynesworth, please indicate so by raising
19 your right hand.

20 All hands raised on defendant Haynesworth, Your
21 Honor.

22 THE COURT: All right.

23 THE CLERK: Indictment Numbers 2013-GS-02376,
24 02377, and 02378, matter of the State of South Carolina
25 versus Lywone Shatete Capers, on the charge of Conspiracy,

1 we the jury find the defendant, Lywone Shatete Capers,
2 guilty of Conspiracy. Charge of Attempted Murder or
3 Assault and Battery First Degree, we the jury find the
4 defendant, Lywone Shatete Capers, guilty of Attempted
5 Murder. Charge of Possession of a Weapon During Commission
6 of a Violent Crime, we the jury find the defendant, Lywone
7 Shatete Capers, guilty of Possession of a Weapon During
8 Commission of a Violent Crime.

9 Ladies and gentlemen of the jury, if this is your
10 verdict, please indicate so by raising your right hand on
11 defendant Capers.

12 All hands raised, Your Honor.

13 THE COURT: Thank you.

14 THE CLERK: Yes, sir.

15 THE COURT: All right. Are there any motions or
16 any matters to take up upon the reading of the verdict.

17 MR. MAULDIN: I'd request a polling of the jury.

18 MR. DRYLIE: I would as well.

19 THE COURT: All right. Madame Clerk, if you would
20 do so using the jury numbers.

21 THE CLERK: Jury numbers. All right, sir.

22 (WHEREUPON there was a bench conference with the
23 Court and the clerk.)

24 **POLLING OF THE JURY**

25 THE COURT: Ladies and gentlemen, we're going to

1 poll you. And what Madame Clerk is going to do is -- It's
2 two questions. And what she'll do is she'll call your
3 juror number out. And she'll say, "As to juror number "
4 whatever. "The verdict that" words to this effect, "The
5 verdict that I read in court, was it your verdict? And is
6 it still your verdict?" And you can indicate either "Yes"
7 or "No" to the question.

8 THE CLERK: You want me to just do it as one
9 blanket for --

10 THE COURT: Yes.

11 THE CLERK: All right.

12 Juror Number 173 -- excuse me -- he was excused,
13 172 as to the verdicts, were these your verdicts? And are
14 they still your verdicts?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: 145. As to the verdicts, were these
17 your verdicts? And are they still your verdicts.

18 THE JUROR: Yes.

19 THE CLERK: 72. Please, thank you. I'm sorry. I
20 just told you to hold your hand up so I could recognize you
21 please. As to the verdicts, were these your verdicts? And
22 are they still your verdicts?

23 THE JUROR: Yes, ma'am.

24 THE CLERK: 156. As to the verdicts, were these
25 your verdicts? And are they still your verdicts.

1 THE JUROR: Yes, yes they are.

2 THE CLERK: 123. As to the verdicts, were these
3 your verdicts? And are they still your verdicts.

4 THE JUROR: Yes.

5 THE CLERK: 78. As to the verdicts, were these
6 your verdicts? And are they still your verdicts.

7 THE JUROR: Yes.

8 THE CLERK: 180. As to the verdicts, were these
9 your verdicts? And are they still your verdicts.

10 THE JUROR: Yes.

11 THE CLERK: 134. As to the verdicts, were these
12 your verdicts? And are they still your verdicts.

13 THE JUROR: Yes, ma'am.

14 THE CLERK: 25. As to the verdicts, were these
15 your verdicts? And are they still your verdicts.

16 THE JUROR: Yes, ma'am.

17 THE CLERK: 63. As to the verdicts, were these
18 your verdicts? And are they still your verdicts.

19 THE JUROR: Yes.

20 THE CLERK: 45. As to the verdicts, were these
21 your verdicts? And are they still your verdicts.

22 THE JUROR: Yes.

23 THE CLERK: 65. As to the verdicts, were these
24 your verdicts? And are they still your verdicts.

25 THE JUROR: Yes.

1 THE CLERK: All jurors polled, Your Honor.

2 THE COURT: Ladies and gentlemen, I want to thank
3 you for your service this week. Some good news for you is
4 that this concludes your service for the week. We have
5 other matters that we have to take up on other cases, but
6 they don't involve jury issues. So we have other things,
7 probation matters and things such as that, so this will
8 conclude your service for this week. And I want to thank
9 you for your service. You've been very attentive
10 throughout this case. I've watched you, and I've been very
11 impressed by the way you've paid attention to the
12 proceedings.

13 Thank you for your promptness. You've been here
14 when we've asked you to be here, and you know, sometimes
15 court doesn't go as smooth. We've had some delays as far
16 as me having to take up matters and send you back to the
17 jury room, but you've all seemed to be very agreeable and
18 patient with regards to that, and I want to thank you.

19 You have earned an exemption. If you remember from
20 Monday when I told you that state law requires that you
21 serve on jury only once every three calendar years. So you
22 have earned this exemption so that if you do receive a
23 summons for jury service here in state court over the
24 next -- the balance of this year and for the next two
25 years, you can claim that exemption and be excused. I do

1 tell folks, though, that it is just an exemption. It
2 doesn't mean you're not qualified to serve. And if you do
3 receive a summons for jury service in state court during
4 that timeframe, and you would like to serve, I would
5 certainly encourage you to do that. I think you've gotten
6 your notices for work purposes, and so that does conclude
7 your service.

8 Now, in just a little bit we're going to proceed to
9 the sentencing phase of this case. Those of you who wish
10 to stay for that, you're welcome to. You have worked this
11 case, and if you'd like to stay for that, you're welcome to
12 do that. But you're also welcome to go and leave if you're
13 ready to do that as well. Okay? So I'm going to let you
14 make that decision whether or not you would like to stay or
15 leave.

16 But what I'm going to do is, Ms. Mohammed, if I
17 could, the Clerk is just going to need to get you to sign
18 the indictments that and --

19 THE CLERK: I'll bring them to her.

20 THE COURT: -- she'll bring them over to you. And
21 if you would, do that. At this time, I'll take up any
22 motions at the close of the reading of the verdict.

23 **POST-TRIAL MOTIONS**

24 MR. MAULDIN: Thank you, Your Honor. At this time,
25 on behalf of Mr. Haynesworth, as to all charges, I would

1 move for a new trial and make that motion based on all my
2 prior motions and objections, both singularly and as taken
3 together as a cumulative whole.

4 THE COURT: All right, sir. And, Mr. Drylie?

5 MR. DRYLIE: I would make the same motion for Mr.
6 Capers and move for a new trial based on all prior
7 objections.

8 THE COURT: All right. Gentlemen, I'm going to
9 respectfully deny the motions. I said it earlier, and I do
10 think it's the case, I think the evidence that was
11 presented during the course of this trial certainly was, as
12 is usually the case, it's for the jury to decide. I think
13 they were all factual issues for the jury to decide, and I
14 think the evidence that was presented certainly supports
15 the verdicts that have been returned. And so I'm going to
16 respectfully deny the motion for a new trial.

17 Anything further?

18 MR. MAULDIN: No further motions, Your Honor.

19 MR. DRYLIE: None.

20 THE COURT: Is the State ready to proceed to
21 sentencing?

22 MS. USRY: Your Honor, I just need to go get the
23 paperwork from my office. I did not bring it. It will
24 take me just a few minutes to print that out.

25 THE COURT: All right. If you would do that, and

1 we'll just remain at ease for a few minutes while you get
2 that.

3 MS. USRY: Yes, sir.

4 THE COURT: Mr. Bell, and I don't want to interfere
5 with Ms. Usry's presentation, did she need to be here for
6 the State's presentation? Or can you do that?

7 MR. BELL: Your Honor, I do believe that Ms. Usry
8 does wish to handle that.

9 THE COURT: Okay. All right. That's no problem.
10 Ms. Usry, the things you're doing right now, is that
11 something Mr. Bell could do for you.

12 MS. USRY: Yes, sir. He can do half of it.

13 THE COURT: Let him do it all. And I'll hear from
14 you --

15 MS. USRY: Oh, I'm sorry. Yes, sir.

16 THE COURT: -- because I'd like to go ahead and get
17 the proceedings out of the way.

18 MS. USRY: Yes, sir.

19 **SENTENCING**

20 THE COURT: All right. And I'll be happy to hear
21 from the State on the issue of sentencing.

22 MS. USRY: Yes sir, Your Honor. We think the
23 evidence in this case speaks for itself. I will tell Your
24 Honor that neither defendant has a prior record in this
25 case, and from speaking with JayQuan Bell, he had to go

1 back to work today and couldn't be here, but I know one
2 thing that he's always been afraid of is retaliation. And
3 I just, you know, he has a constant fear of that. He's
4 moved out of town and tried to get away and has started a
5 job in a different area of the state. But he has family
6 here. He's been concerned for his grandmother, and that's
7 something he's consistently, throughout the pending of this
8 case, been concerned.

9 He, last week, was concerned about coming to
10 testify. And I had to talk him into that. I just wanted
11 to bring that to Your Honor's attention because he
12 perceives a real threat from these individuals and the
13 people they're associated with, which obviously we have no
14 control with in this courtroom. But that is something that
15 he is concerned with.

16 THE COURT: Sure.

17 MS. USRY: Yes, sir.

18 THE COURT: All right.

19 MS. USRY: The State takes no position on
20 sentencing, Your Honor.

21 THE COURT: All right. Mr. Mauldin and or Mr.
22 Drylie, I'll be more than happy to hear from y'all. I'm
23 happy to hear from your clients if they wish to address the
24 Court, and then if there's anyone who's here on their
25 behalf that would like to address the Court, I'll happy to

1 hear from them as well.

2 MR. MAULDIN: Thank you, Your Honor. As to Mr.
3 Haynesworth, he's 18 years old now. He was 17 years old at
4 the date of the incident. He was in high school at the
5 time, as the evidence had showed. He was in the twelfth
6 grade at Swansea High School. Looking at the transfer
7 form, he was in four classes at that time, and he had two
8 93's, a 90, and an 83, which looks to be three A's and a B.
9 He's mentioned to me that, at a previous school, he had
10 been on Honor Roll.

11 Since his arrest, he was discharged from school.
12 He's most recently been working at a temporary service
13 called Zeus Staffing for the past two months, and he did
14 work at the fair sometime last year.

15 He does have one child on the way, Your Honor. The
16 child is due in October.

17 And just for the Court's notification, he has been
18 out on bond for most of the entirety of the pending of this
19 case, and there's been no allegations that he or his family
20 has sought any kind of retaliation or anything.

21 THE COURT: Okay.

22 MR. MAULDIN: So it's not a matter that he's been
23 in jail or anything like that. He's been out on the
24 street, and I have had no indication from the State that
25 there's been any issues with that.

1 THE COURT: Okay.

2 MR. MAULDIN: He did spend some time in jail. Your
3 Honor, he was originally charged with Discharging a Firearm
4 in a Dwelling, and I believe the State direct indicted
5 these charges on him. I would request, perhaps, that any
6 time that he may have on that warrant, that he be given
7 credit on these charges, Your Honor.

8 And he does not wish to address the Court at this
9 time.

10 THE COURT: Mr. Drylie?

11 MR. DRYLIE: Thank you, Your Honor. Mr. Capers is
12 actually 26 years old. He was 25 when I met him. He only
13 went through the tenth grade in school. At the time of
14 this incident, his fiancé had just given birth to a newborn
15 child. He's actually a father of two at the moment. He
16 lives out in Gaston at this point, with his grandmother.

17 He too, like Mr. Haynesworth, has been out on bond,
18 and there's been no issue that I've been made aware of at
19 all for any sort of retaliation or anything like that.

20 Your Honor, he does not wish to address the Court,
21 but we would ask for as much mercy as Your Honor is able to
22 show this morning.

23 THE COURT: Thank you, sir. You know, folks --

24 MR. DRYLIE: Your Honor? I apologize.

25 THE COURT: I'm sorry.

1 MR. DRYLIE: Ms. Coleman would like to address you.

2 THE COURT: All right. And this is Ms. Tammy
3 Coleman who is the mother of Mr. Haynesworth and Mr.
4 Capers.

5 MR. DRYLIE: Can I have one second.

6 THE COURT: Yeah.

7 Yes, ma'am. Ms. Coleman?

8 MS. COLEMAN: Both of them is my sons, and --

9 THE COURT: Ms. Coleman, could I get you to come
10 around here and stand up here by this microphone? I want
11 to make sure the Court Reporter can hear everything that
12 you have to say. Yes, ma'am?

13 MS. COLEMAN: Yes, sir. Both of them is my sons.
14 And Bilal's my youngest son, and I just say have mercy on
15 my -- on both of my sons. He had a lot going for himself.
16 Actually, both of them, but Bilal is my youngest. He was a
17 A student in school. And during this time, his school was
18 even token from him. He couldn't even graduate. I just
19 say have mercy on both of my kids. That's it.

20 THE COURT: Thank you, ma'am. I'm sorry that you
21 have to be here. Folks, it's just the most difficult part
22 of my job is to have young people come into this court and
23 face, what I call, these foolish actions. You know, I --
24 When this case began on Monday -- and that's one of the
25 things that I appreciate about my work is -- and ladies and

1 gentlemen, I don't know how much you know about this -- but
2 I knew as much about this case on Monday as you did. We
3 don't assign cases to particular judges. We just, we hear
4 cases that are assigned to the term of court. So we show
5 up. We're presiding over the case. And I knew little to
6 nothing other than what you heard me say on Monday.

7 But as I listened to the testimony and to
8 everything, it was fairly clear to me, I appreciate the
9 jury's insight. I agree with their verdict. I think the
10 evidence was clear that you both were involved in this
11 activity. And I don't understand it. The disturbing thing
12 to me is, I read and saw the evidence that was presented,
13 the way and the disrespect and the language that you used
14 and the Facebook posting I guess you call them, I guess,
15 back-and-forth.

16 It's, you know, Mr. Haynesworth, according to what
17 I'm told here, you know, you made good grades in school,
18 and then I read that garbage and I'm thinking, why don't
19 you apply that education in your personal life and talk
20 like a decent young man and quit being a thug? Because
21 that's what this is. That right there is a gangster
22 mentality. All of that. That whole thing. Everybody
23 involved in this thing.

24 Here's the thing, and this is the thing that is
25 disturbing to me, and that is that -- and I think someone,

1 it might've been Ms. Usry might've said it, we're lucky
2 that we're here simply on an Attempted Murder charge,
3 because all it would've taken is for one of those bullets
4 to find a vital organ of one of those people inside of that
5 house, and you're looking at -- Number one, you're looking
6 at Murder. Number two, someone's dead. And over what? I
7 don't know.

8 I don't know what caused the problems between
9 y'all. But whatever it is, we live in a day, and we live
10 in an age that -- and I'm just going to call it like I see
11 it, guys -- We're raising a whole generation of cowards.
12 Everybody wants to walk around with a gun now. Everybody
13 wants to settle their differences, shooting at people. No
14 one has the courage to stand up face-to-face and confront
15 somebody. In some of that gibberish that was written, one
16 of the guys said, "If you'd have fought me, you wouldn't be
17 in court."

18 You know what, that's probably true. That's
19 probably true. If you'd have just hooked up outside the
20 store there, or wherever y'all were, and just went at it,
21 somebody would've got their butts whipped, but that
22 would've been the end of it, or should've been the end of
23 it. Instead, we put peoples' lives at risk. Clearly
24 you're not -- you're in unlawful possession of weapons.
25 People carry weapons now, and if you ask people why are you

1 carrying weapons and it's illegal, almost unanimously,
2 they'll tell you, "for my own protection."

3 Well, I think it's a very sad state that we live in
4 that people feel that the only way they can survive in
5 their communities is to carry weapons. But I can tell you
6 this, it's not the answer. It's reckless, and it's
7 senseless.

8 Here's two young men, 18, 26 years of age, looking
9 at spending whatever -- the I believe the Attempted Murder
10 charge carries a maximum penalty of up to 30 years; is that
11 correct?

12 MS. USRY: Yes sir, Your Honor.

13 THE COURT: And the Possession of a Weapon During
14 the Commission of a Crime of Violence, up to five?

15 MS. USRY: Five years, Your Honor.

16 THE COURT: And the Conspiracy, five.

17 MS. USRY: Yes, sir.

18 THE COURT: Or is the Conspiracy half of the
19 substantive.

20 MS. USRY: The Conspiracy, I believe, is five, Your
21 Honor. I'll double-check, but I believe it's five.

22 THE COURT: I know the General Conspiracy, but I
23 believe this was indicted under the Criminal Conspiracy,
24 which might be half of the substantive. Which, I'm not
25 going there, but I'm just saying, it's a exposure of

1 probably another 15 years.

2 And I -- It's a sad state of affairs that we live
3 in. And I'm seeing it throughout the courts of the state,
4 and this crazy behavior, it doesn't know gender lines,
5 racial lines, ethnic lines. It just seems to be young
6 people in general that I'm seeing day in and day out with
7 this type of activity. I feel I have an obligation to the
8 people of this community to protect them from this type of
9 activity to the extent I have that authority.

10 Have you got the sentencing sheets finished.

11 MS. USRY: Yes sir, Your Honor.

12 THE COURT: What was the Conspiracy?

13 MS. USRY: Your Honor, I have it as five years on
14 this particular charge that I.

15 THE COURT: Okay. All right. That's a 40-year
16 exposure, gentlemen, for stupid conduct that could've led
17 to the death of somebody. And may still yet, may still
18 yet, because people won't let things go. And I hope to God
19 this doesn't end up escalating beyond where we're at today.
20 That if anybody tries to retaliate as the fear was
21 expressed.

22 And I appreciate what has been said that, during
23 the pendency of this action, there hasn't been anything.
24 But if, you know, it makes me wonder, is that simply
25 because we were awaiting this day? And now that this day

1 is over, hopefully there will be nothing. Because I will
2 tell you, if there is, and you get caught and you get
3 charged and you're brought before the Court and you're
4 convicted, there's a price to pay. So, if you'll just give
5 me a minute.

6 On Indictment 2013-GS-02373 regarding Mr.
7 Haynesworth, and 02376 regarding Mr. Capers, on the charge
8 of Attempted Murder, the sentence of the Court is that each
9 of you be committed to the South Carolina Department of
10 Corrections for a period of 12 years. You'll be given
11 credit for any time that you have served.

12 As to Indictment 2013-GS-02374 regarding Mr.
13 Haynesworth, and 02377 regarding Mr. Capers, as to the
14 Possession of a Weapon During the Commission of a Violent
15 Crime, the sentence of the Court is that you be committed
16 to the South Carolina Department of Corrections for a
17 period of 5 years.

18 And on Indictment 2013-GS-02375 as applies to Mr.
19 Haynesworth, and 02378 as applies to Mr. Capers, on this
20 charge of Conspiracy, that you committed to the South
21 Carolina Department of Corrections for a period of 5 years.

22 Those are to run concurrent with each other. And
23 as I said earlier, you are to be given credit for any time
24 that you have served. I was going to -- I was going to
25 consider a split sentence to -- However, I don't think the

1 Attempted Armed Robbery -- the Attempted Murder charge
2 allows for that. So that's the sentence of the Court.
3 Good luck to you, gentlemen.

4 MR. MAULDIN: Thank you, sir.

5 MR. DRYLIE: Thank you, Your Honor.

6 MR. BELL: Thank you, Judge.

7 THE COURT: Ladies and gentlemen, just for your
8 understanding, under South Carolina law, when I said "split
9 sentence," my initial thought was that I could sentence
10 each young man for a period of time to the Department of
11 Corrections and then suspend that upon the service of some
12 active time and then probation thereafter. So that when
13 they get out of the Department of Corrections, they are
14 going to be under some probation-type authority. South
15 Carolina law does not provide for that on the Attempted
16 Murder charge. That carries -- It's a felony that carries
17 up to 30 years, and it provides for no suspension of the
18 sentence, no probation, no parole. It is what is
19 considered a non-parolable offense. And what that means
20 is, the young men will have to serve 85 percent of that
21 sentence before they're considered for early release.

22 And with the other charges, I ran those concurrent,
23 so the end result was, would've been basically a 12 year
24 sentence, of which they'll have to serve 85 percent before
25 they're considered for release. My thought process on that

1 Ladies and gentlemen, as you heard, our law provides for a
2 range of zero to thirty. And my understanding, or at least
3 my belief, the reason the legislature gives us that is, for
4 example, you heard these two young men had no prior record.
5 There are times that I have folks in front of me on this
6 charge and they have a prior record. They have robberies
7 or burglaries or other things in their past, and so I think
8 the legislature gives us this leeway so that someone who
9 comes in, has a bad prior history, or an aggravated
10 situation, probably should end up more in the higher end of
11 that scale, whereas someone who has other mitigating
12 factors should come down the lower end of that scale.
13 It's a wide range and a wide discretion, and I guess if you
14 have 15 judges, you may end up with 15 different sentences.
15 My thought process is, and I don't know, I consider this a
16 very serious crime. No one was hurt, as far as physically,
17 but it was so -- I've had these cases, and you've read
18 about them, where you have a drive-by shooting, and you're
19 having a funeral for people who were killed that night.

20 I've tried to give consideration to the fact that
21 neither one of these young men had prior records. But I
22 also had to weigh that against my belief of sending a
23 message to the community that this type of action can't be
24 tolerated. We can't allow folks to think that you can go
25 out and unload a gun into somebody's house and there's not

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a serious consequence for doing that.

And so I tried to -- I didn't feel because of their prior history that they deserved to be on the upper end of that scale. Although, I also didn't feel that they deserved to be down on the lower end of that scale, based on the facts and circumstances surrounding this case. And so that's how I arrived at the verdict. I tell people all the time, I don't ever expect folks to agree with my verdict (sic), I just hope they understand how I went about arriving at that. And that's kind of the thought process that I went through as I was thinking about this case and trying to decide this case.

So again, I want to thank you for your service. If you have any questions, I'll be happy to answer those. If you don't, then you're free to go. You don't have to call back; your service is complete for the week, so you don't have to return. Thank you very much.

All right. So is there anything that y'all need for the day?

MS. USRY: No sir, Your Honor.

THE COURT: All right.

* * * * * END OF TRANSCRIPT * * * * *

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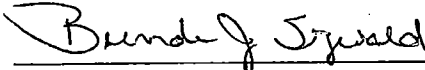
State of South Carolina)
County of Aiken.) **Certificate of Reporter**

I, THE UNDERSIGNED, Brenda J. Sigwald,
Official Court Reporter for the Fifth Judicial Circuit of
the State of South Carolina, do hereby certify that I
reported the proceedings in the captioned case in the Court
of Common Pleas in and for the State of South Carolina on
the 19th through the 21st days of May, 2014.

I FURTHER CERTIFY that the foregoing pages,
constitute a true, accurate and complete transcript of said
hearing.

I FURTHER CERTIFY that I am neither kin, counsel,
nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal at Aiken County, this 15th day of November, 2014.


Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

WITNESSES

Swansea Police Department

C. C. Hayes

Law Enforcement Case #: 130004

KWU

ARREST WARRANT NUMBER

13-STR-00076

ACTION OF GRAND JURY

TRUE BILL

Ron Brasinger
Foreperson of Grand Jury

Date: 8-5-13

VERDICT

Guilty

Louisa A. McDaniel
Foreperson of Petit Jury

Date: 5/21/14

DOCKET NO. 2013GS3202373

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2013

THE STATE

vs.

Bilal Sincere Haynesworth

CDR #: 3410

Indictment for

Attempted Murder

§ 16-03-0029

DONALD V. MYERS, SOLICITOR

A TRUE COPY

[Signature]
Lex. Co. C.C.P., G.S. & F.C.

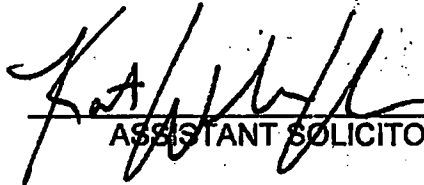
STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Attempted Murder
§ 16-03-0029

At a Court of General Sessions, convened on August 2013, the Grand Jurors of Lexington County present upon their oath:

That Bilal Sincere Haynesworth, with co-defendnats, in Lexington County, South Carolina, on or about January 3, 2013, did, with the intent to kill, attempt to kill another person with malice aforethought, either express or implied, to wit: shooting into an occupied dwelling , in violation of §16-03-0029 of the South Carolina Code of Laws of 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Swansea Police Department

C. C. Hayes

Law Enforcement Case #: 130004

KWJ

ARREST WARRANT NUMBER

13-STR-00077

ACTION OF GRAND JURY

TRUE BILL

Pat Braxington
Foreperson of Grand Jury
Date: 8-5-13

VERDICT
Guilty

Louisa A. Mohamud
Foreperson of Petit Jury
Date: 5/21/14

DOCKET NO. 2013GS3202374

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2013

**THE STATE
vs.**

Bilal Sincere Haynesworth

CDR #: 0549

Indictment for

**Possession of Firearm or Knife
During the Commission of a Violent Crime**

§ 16-23-0490

DONALD V. MYERS, SOLICITOR

A TRUE COPY
[Signature]
Lex. Co. C.C.P., G.S. & F.C.

1472202014

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

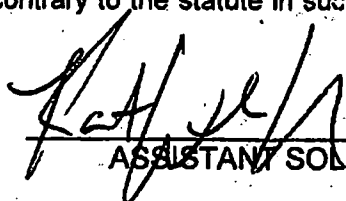
INDICTMENT FOR
Possession of Firearm or Knife
During the Commission of a Violent Crime

§ 16-23-0490

At a Court of General Sessions, convened on August 2013, the Grand Jurors of Lexington County present upon their oath:

That **Bilal Sincere Haynesworth** did in Lexington County, South Carolina on or about January 3, 2013 knowingly and willfully, possess a firearm, or visibly display what appeared to be a firearm during the commission of a violent crime or attempt to commit a violent crime, to wit: Attempted Murder such weapon described as a gun in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Swansea Police Department

C. C. Hayes

Law Enforcement Case #: 130004

KWU

ARREST WARRANT NUMBER

13-STR-00078

ACTION OF GRAND JURY

TRUE BILL

Ron Brasinger
Foreperson of Grand Jury
Date: 8-5-13

VERDICT

Guilty

Yousa A. Mohanna
Foreperson of Petit Jury
Date: 5/21/14

DOCKET NO. 2013GS3202375

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2013

THE STATE

vs.

Bilal Sincere Haynesworth

CDR #: 0049

Indictment for

Conspiracy

§ 16-17-0410

DONALD V. MYERS, SOLICITOR

A TRUE COPY
[Signature]
Lex. Co. C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Conspiracy
§ 16-17-0410

At a Court of General Sessions, convened on August 2013, the Grand Jurors of Lexington County present upon their oath:

That **Bilal Sincere Haynesworth** did in Lexington County, South Carolina on or about January 3, 2013 knowingly and willfully unite, combine, conspire, confederate, agree and have tacit understanding with **Lywone Shatete Capers** and/or **Nehemiah Wayne Dixon**, for the purpose of accomplishing a criminal or unlawful object and/or an object neither criminal nor unlawful but by criminal or unlawful means; to wit: shooting into an occupied dwelling in violation of the common law and punishable under Section 16 -17- 410 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

(0-30yrs)

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 STATE VS.)
Bilal Sincere Haynesworth)
 AKA:)
 Race: Black Sex: M Age: 18)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED])
 City, State, Zip: [REDACTED])
 DL#: [REDACTED] SID#: [REDACTED])
 *CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2013GS3202373
 A/W#: 13-STR-00076
 Date of Offense: 1/3/2013
 S.C. Code §: 16-03-0029
 CDR Code #: 3410

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:

[Signature] Solicitor 160221 SC Bar# [REDACTED] Defendant [REDACTED] Attorney for Defendant [REDACTED] SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 12 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2013-65-32-2374 + 2375
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
 Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk [Signature]
 Court Reporter: [Signature]
 SCCA217 (03/2011)

Obtain GEO
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning _____
 Substance Abuse Counseling
 Lex. Co. O.C.P., G.I.S. & F.O.
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund

Other: [RECEIVED]

Appointed PD or appointed to the court § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature]
 Judge Code: 2141
 Sentence Date: 5-21-2014

414

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Bilal Sincere Haynesworth

AKA:

Race: Black Sex: M Age: 18

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

(Syr)
IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3202374

A/W#: 13-STR-00077

Date of Offense: 1/3/2013

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

CONVICTED OF or PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Leslie M. [Signature] Solicitor *100021* SC Bar# Defendant *[Signature]* Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years; and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2013-GS-32-2373 + 2375

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fec: \$ _____

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$130.00

Clerk of Court/ Deputy Clerk *[Signature]*
Court Reporter: *[Signature]*
SCCA/217 (03/2011)

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve AV/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be paid in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: **RECEIVED**

MAY 30 2014

SC Court of Appeals *[Signature]*
§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge *[Signature]*

Judge Code: 2141

Sentence Date: 5-21-2014

(0-5 yrs) 9/0 (\$25,000) 415

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)
STATE VS.)
Bilal Sincere Haynesworth)
AKA:)
Race: Black Sex: M Age: 18)
DOB: [REDACTED] SS#: [REDACTED])
Address: [REDACTED])
City, State, Zip: [REDACTED])
DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3202375
A/W#: 13-STR-00078
Date of Offense: 1/3/2013
S.C. Code §: 16-17-0410
CDR Code #: 0049

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

CONVICTED OF or PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant [Signature] SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2013-65-32-2373+2374
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforc. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$
TOTAL		\$ <u>130.00</u>

_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

TRUE COPY

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2141
Sentence Date: 5-21-2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF
GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
vs.)
)
BILAL SINCERE HAYNESWORTH,)
DEFENDANT.)
_____)

VERDICT FORM
INDICTMENT NOS.
2013-GS-32-2373; 2374; 2375

CONSPIRACY

We the Jury, find the Defendant **BILAL SINCERE HAYNESWORTH,**

 GUILTY OF CONSPIRACY

OR

 NOT GUILTY OF CONSPIRACY

ATTEMPTED MURDER/ASSAULT AND BATTERY 1ST DEGREE

We the Jury, find the Defendant **BILAL SINCERE HAYNESWORTH,**

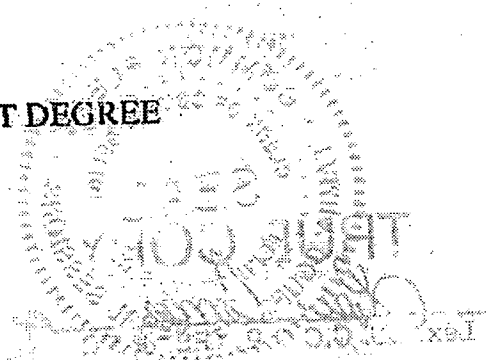
 GUILTY OF ATTEMPTED MURDER

OR

 GUILTY OF ASSAULT AND BATTERY IN THE FIRST DEGREE

OR

 NOT GUILTY OF ATTEMPTED MURDER



If you find the defendant either guilty of Assault and Battery 1st Degree or Not Guilty of either Attempted Murder or Assault and Battery 1st Degree then STOP your deliberations.

If you find the defendant guilty of Attempted Murder then proceed to the Charge listed below.

POSSESSION OF WEAPON DURING COMMISSION OF A VIOLENT CRIME

We the Jury, find the Defendant **BILAL SINCERE HAYNESWORTH,**

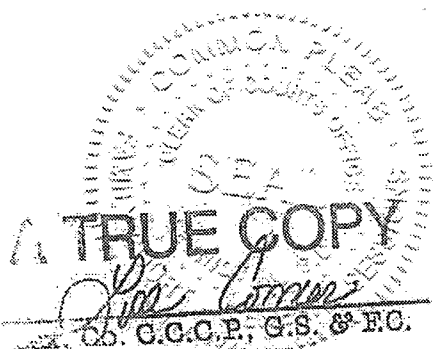
✓ **GUILTY OF POSSESSION OF A WEAPON DURING COMMISSION OF A VIOLENT CRIME**

OR

 NOT GUILTY OF POSSESSION OF A WEAPON DURING COMMISSION OF A VIOLENT CRIME

MAY 21, 2014
DATE

Louessa A. Mohammed
LORESSA A. MOHAMMED, FORELADY



2018CP3200397

STATE OF SOUTH CAROLINA)

County of LEXINGTON)

BILAL S. HAYNESWORTH, 360072)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF

CLERK OF COURT
LEXINGTON, SC

2018 FEB -2 PM 3:46

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention lee correctional institution

2. Name and location of Court which imposed sentence LEXINGTON COUNTY GEN. SESSION COURT

3. Name(s) of co-defendant(s) (if any) LYWONE S. CAPERS
NEHE MIAH W. DIXON

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) POSS OF WEAPON, 13-GS-32-02374, CONSPIRACY, 13-
 - (b) GS-32-02375, MURDER/ATTEMPTED MURDER, 13-GS-32-02373

A TRUE COPY

Lex. Co. C.O.C.P., C.S. & P.O.

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 5/21/2014
 - (b) _____
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty XXXX
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. SC COURT OF APPEALS
 - ii. SC SUPREME COURT
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. AFFIRMED SENTENCE COURT OF APPEALS
 - ii. APPEAL DENIED SC SUPREME COURT
 - iii. _____
 - (c) the date of each such result:
 - i. AS FILED
 - ii. AS FILED
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. BY MEMORANDUM OF LAW
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/a
 - (b) _____

A TRUE COPY

[Handwritten Signature]

Lex. Cb. C.C.C.P., G.S. & P.G.

(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) SEE ADDENDUM ATTACHED _____

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) SEE ADDENDUM ATTACHED _____

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction: NO

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

A TRUE COPY

PCR ADDENDUM 1

10(a) APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, RIGHTS THAT ARE GUARANTEED BY THE SIXTH AND FOURTEEN AMENDMENT TO THE U.S. CONSTITUTION AND BY ARTICLE I, §§ 3 AND 14 OF THE S.C. CONSTITUTION, BEFORE TRIAL, DURING TRIAL, AND THE CRITICAL STAGES OF BEING REPRESENTED BY THE COUNSEL, etc. DURING GUILT OR INNOCENCE PHASE OF TRIAL BEING REPRESENTED BY TRIAL COUNSEL.

11(a) **SUPPORTING FACTS:** TRIAL COUNSEL PERFORMANCE DURING HIS REPRESENTATION WAS BOTH UNREASONABLE AND PRE-JUDICIAL, see STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984). COUNSEL'S ACTS OR OMISSIONS INCLUDED, BUT WERE NOT LIMITED TO THE FOLLOWING:

1. COUNSEL FAILED TO FILE PRETRIAL AND POSTTRIAL MOTIONS,
2. BRADY VIOLATION, RULE 5 DISCLOSURE VIOLATIONS, etc.;
3. COUNSEL FAILED TO CONDUCT INDEPENDENT INVESTIGATION TO INCLUDE HIRE AN INVESTIGATOR TO DO A PROPER EXAMINATION OF THE CASE PURSUANT TO THE APPLICABLE LAWS TO CASE MATTER, AS THE CASE CONSISTED OF MULTIPLE FELONY CHARGES,
4. COUNSEL FAILED TO INTERVIEW CREDIBLE DEFENSE WITNESSES AND HAVE AT TO TESTIFY ON DEFENSE BEHALF, PURSUANT TO HAVE WITNESSES TO TESTIFY AT TRIAL FOR THE PURPOSES TO DEFEND AGAINST CHARGES NOT GUILTY OF,
5. COUNSEL FAILED TO SERVE THE 10 DAY NOTICE FOR A ALIBI DEFENSE INCLUDING THE TRIAL COUNSEL DID NOT CALL ON PRIMARY WITNESS TO TESTIFY AT APPLICANT'S TRIAL,
6. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, FAILED TO RAISE MERITIOUS ISSUES THAT ARE PRESERVED IN TRIAL RECORD, etc.,

A TRUE COPY

Lex. Co. C.C.O.R., G.S. & EC.

PCR ADDENDUM 2.

7. ACTUAL INNOCENCE CLAIM (SEE EXPLANATION), IMPROPERLY CHARGED AND OR INDICTED FOR THE ATTEMPT MURDER OFFENSE, etc.
8. NO BIND OVER HEARING AS JUVENILE, DUE PROCESS RIGHTS VIOLATED.

A TRUE COPY

John Corcoran

Lex. Co. C.C.C.P., G.S. & P.D.

STATEMENT OF SUPPORTING FACTS OF PCR :

ISSUE 1) COUNSEL FAILED TO FILE PRETRIAL AND POSTTRIAL MOTION FOR THE PURPOSES TO A FAST SPEEDY TRIAL, IMMEDIATE CHARGE DISPOSITION FOR DISMISSALS, AND FOR THE PURPOSES TO HAVE THE COURT TO DISALLOW THE PROSECUTION TO CHARGE FOR MURDER/ATTEMPT MURDER BASED UPON THE LACK OF EVIDENCE AND JUST ON STATEMENTS THAT WAS GIVEN THROUGH COERCION TACTICS.

ISSUE 2. STATE FAILED TO DISCLOSED STATE WITNESS'S STATEMENTS TO DEFENDANT PRIOR TO TRIAL, COUNSEL ALLOWED THIS VIOLATION TO BE COMMITTED BY THE STATE AND DID NOT MOVE TO THE COURT TO HAVE THE SANCTION APPLIED TOWARD STATE FOR THE BRADY AND RULE 5 VIOLATIONS, AS THIS VIOLATED THE APPLICANT'S RIGHTS TO A FAIR TRIAL.

ISSUE 3. COUNSEL VIOLATED THE ABA, NBA, AND THE STRICKLAND COURT WHEN COUNSEL FAILED TO INVESTIGATE AND HIRE AN INVESTIGATOR FOR INVESTIGATION AND EXAMINATION PURPOSES AND FOR THE ULTIMATE STANCES TO SOUGHT AND ESTABLISH A DEFENSE FOR THE APPLICANT AT TRIAL.

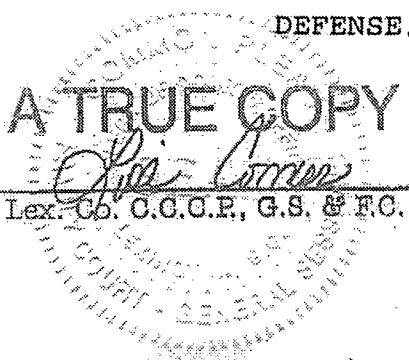
INGLE V. STATE (2002) AND SIMPSON V. MOORE, (2006).

ISSUE 4. COUNSEL FAILED TO INTERVIEW AND EXAMINE POTENTIAL DEFENSE WITNESSES TO BE BENEFICIAL AND FOR TRIAL BECAUSE THE JURY WOULD NOT HAVE CONVICTED APPLICANT IF COUNSEL WOULD HAVE PRESENTED VITAL WITNESSES TO TESTIFY FOR THE DEFENSE.

ISSUE 5. COUNSEL FAILED TO GIVE NOTICE FOR APPLICANT TO PLACE FORMAL ALIBI DEFENSE, AND COUNSEL FAILED TO COMPLY TO RULES OF TRIAL PURSUANT TO AN ALIBI DEFENSE NOTICE AND OR DEFENSE UTILIZING ALIBI DEFENSE.

A TRUE COPY

[Signature]
 Lex. Co. C.C.C.E., G.S. & F.C.



PCR ADDENDUM 4

ISSUE 6. APPELLATE COUNSEL FAILED TO RAISED THE AVAILABLE MERITIOUS RECORD ISSUES TO THE APPELLATE COURT AT THE TIME THEY SHOULD HAVE BEEN RAISED ON APPEAL AND APPELLATE COUNSEL FAILED TO DO SO, PLAINLY AND CLEARLY IGNORING THE FIXED LAW, POLICIES, INSTRUCTION THROUGH THE STATE SUPREME COURT, SEE AT GILCHRIST V. STATE, (2005); ANDERSON V. STATE, (2003); SOUTHLAND V. STATE, (1990). APPLICANT WILL SIMPLY TAKE THE STANCE PURSUANT TO WELL SETTLED LAWS THAT HE IS ENTITLED TO EFFECTIVE ASSISTANCE OF THE APPEAL AND APPELLATE COUNSEL SO THE PROPER APPEAL EXHAUSTION DOCTRINE CAN PROPERLY FOLLOWED AND COMPLIED WITH IN APPLICANT'S CASE MATTERS.

ISSUE 7. APPLICANT MOVES WITH A CLAIM OF ACTUAL INNOCENCE BASED ON THE FACTUAL AND EVIDENTIALS ACCORDING TO COURT RECORDS THAT THE PRIMARY CHARGE OF MURDER /ATTEMPT MURDER IS WITHOUT BASIS AND CLEAR EVIDENCE DUE TO THE LACK OF EVIDENCE AND THE ONLY EVIDENCE WAS BY FALSE STATEMENTS GIVEN BY PERSONS OF ILL INTENTS AGAINST THE APPLICANT AND THE CASE FAILED EXAMINE THE AFFIDAVITS ACCORDINGLY TO THE DUTIES OF THE COUNSEL, etc. SEE AT SCHLUP C, DELO, (1995); HOUSE V. BELL, (2006).

ISSUE 8. APPLICANT WAS THE AGE OF SEVENTEEN (17) AND CHARGES IN THE NATURE BEING MURDER ACCORDING TO THE MANDATES OF AIKEN V. BYARS COURT MAKES IT CLEAR THAT THE APPLICANT SHOULD HAVE HAD A HEARING TO DETERMINE IF HE COULD HAVE BEEN CHARGED FOR SUCH OFFENSE BUT THE CASE COUNSEL FAILED TO SEEK SUCH HEARING FOR APPLICANT AS A PRETRIAL MOTION FOR BINDING OVER THE APPLICANT TO FACE CHARGES CONVICTED FOR.

A TRUE COPY

Lex. Co. C.C.C.R., G.S. & E.C.

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify: N/ A

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

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16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) PURSUANT TO THE PROPER EXHAUSTION DOCTRINE AND
- (b) APPEAL REMEDIES REQUIRED TO BE PERUSED BY LAW
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? XXX
- (c) your sentencing? XXX
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? XXX
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. DAVID M. MAULDIN, LEXINGTON CO.
 - ii. ROBERT M. PACHAK, APPELLATE DEFENDER
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. TRIAL
 - ii. APPEAL
 - iii. _____

A TRUE COPY

[Handwritten Signature]

Lex. Co. C.C.C.R., G.S. & F.C.

19. State clearly the relief you seek in filing this application:

CHARGES DISMISSED AND RELEASED AND RESTORED WITH MY
RIGHTS TO LIVE WITHOUT BEING FALSELY PROSECUTED.

20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)
)
County of LEE)

VERIFICATION

I, BILAL S. HAYNESWORTH, 360072, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

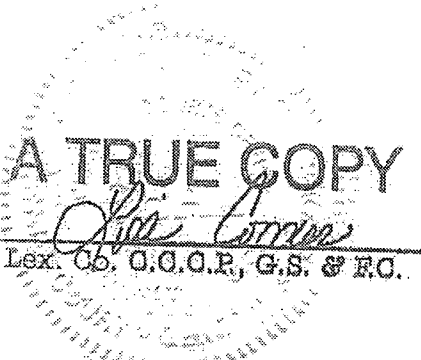
Bilal S. Haynesworth

BILAL S. HAYNESWORTH
990 WISACKY HWY.
BISHOPVILLE, S.C.
29010

SWORN to and subscribed before me this 23rd
day of January, 2018.

Uniqua Greene (L.S.)
Notary Public

My Commission Expires: 9-29-2027



APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Bilal Haynesworth "360072", hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Bilal Haynesworth
Applicant

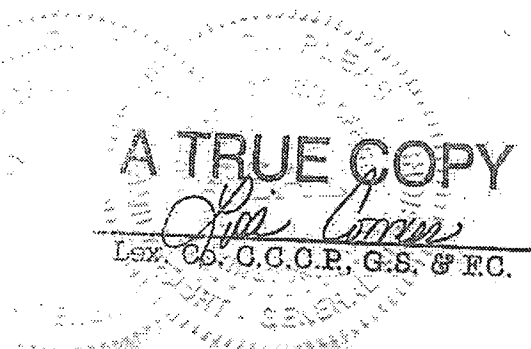
SWORN or affirmed to and subscribed before me this
23rd day of January, 2018.

BILAL HAYNORTH
990 WISACKY HWY.
BISHOPVILLE, SC

Uniqua Sneene
Notary Public

29010

My Commission Expires: 9-29-2027



STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
)
 Bilal S. Haynesworth, #360072,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-32-00397

**RETURN, PARTIAL MOTION
 DISMISS AND MOTION FOR A
 MORE DEFINITE STATEMENT**

Respondent, making its Return to the application for post-conviction relief filed on February 2, 2018, would respectfully show this Court:

I.

Bilal S. Haynesworth (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its August 2013 term, the Lexington County Grand Jury indicted Applicant for attempted murder (2013-GS-32-02373), possession of a firearm or knife during the commission of a violent crime (2013-GS-32-02374), and conspiracy (2013-GS-32-02375). Assistant Public Defender David M. Mauldin, of the Lexington County Public Defender’s Office, represented Applicant on these charges. Assistant Solicitors Kate W. Usry and Gil Bell, both of the Eleventh Circuit Solicitor’s Office, prosecuted the case. On May 19-21, 2014, Applicant appeared before the Honorable Thomas A. Russo and a jury. On May 21, 2014, the jury convicted Applicant as indicted on all counts. Judge Russo sentenced Applicant to a term of imprisonment of twelve years for attempted murder, five years for the weapons charge, and five years for conspiracy. All sentences were to run concurrently.

Applicant filed a timely notice of appeal, and Appellate Defender Robert M. Pachak, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected an appeal on Applicant's behalf. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. *State v. Haynesworth*, Op. No. 2016-UP-119 (S.C. Ct. App. Filed Mar. 2, 2016). Thereafter, Applicant petitioned for a writ of certiorari in the South Carolina Supreme Court. By written Order dated March 8, 2017, the Supreme Court denied the petition for writ of certiorari. The Remittitur was issued on March 17, 2017.

II.

Applicant and his brother, Lywone Capers, fired into the residence where JayQuan Bell lived as retribution for a series of disrespectful communications between Bell and Applicant. Fortunately, no one was hurt.

On January 3, 2013, Clara Williams, Bell's grandmother, picked up Bell from his aunt's house to enroll at Swansea High School. Williams drove him to school in her Ford Focus. They were unable to complete the enrollment without Bell's mother, so they headed back to the car. Williams testified that two young men and a woman approximately in her thirties approached and threatened them. Williams did not know any of these people. Williams testified she felt threatened. Bell told Williams they should just go back to the car and leave, which they did. Williams and Bell drove back to the aunt's house briefly and then to the Exxon station to fill the car up with gas. Tr. pp. 95-99.

While pumping gas, a Camaro pulled into the station, and the man who cursed at them exited the Camaro and started to point at Bell and Williams. Bell said, "Let's go." They left and returned to the aunt's house. Williams was in the bathroom when she heard gunshots. Williams

went into the laundry room and bent down. She heard "lots" of shots. She confirmed that a total of five people were in the house when the shots were fired. Tr. pp. 102-103.

Jennie Childs, the aunt, testified she let Bell live with her while Bell went to school at Swansea. Williams picked Bell up to enroll him at school and was going to also take him grocery shopping. When Bell returned, Childs noticed he was upset. Then she heard gunshots. Everyone got down on the floor. She confirmed that one of the shots entered her daughter's room. Tr. pp. 109-115.

Bell explained he was raised by Williams but was living with his aunt, Childs, for residency purposes because he wanted to enroll for his last semester of high school in Swansea, where he originally started high school. While trying to enroll in the school, Bell and Williams were approached by Applicant, Capers, and their mother, Princess. Capers threatened them. Capers said, "All you niggas are dead" and looked at Williams and told her, "Bitch, you dead." Tr. pp. 133-141.

Bell and Williams left the school and returned to Childs' house briefly before they went to the Exxon station. While at Exxon, he saw Princess' Mercedes-Benz truck and Applicant's green Camaro. Applicant came out of the Camaro and began gesturing for Bell to turn around as Williams and Bell pulled away. Capers exited the truck and made gestures too. Tr. pp. 141-147. Bell and Williams went back to the house again, and while inside the house, Bell heard engines outside. He opened the door and saw Applicant with his arm hanging out of the window holding a gun. Bell told everyone to get down and then two shots were fired. Tr. pp. 149-150.

Bell looked out the door and saw Nehemiah Dixon (who he also had seen at the school) and Capers, who was holding a gun, in the Mercedes-Benz truck. More shots were fired. Bell also saw a muddy tan Nissan. Tr. pp. 150-151.

The motive apparently was an argument between Bell and Applicant over the mother of Bell's child. However, according to Bell, the argument was over. On cross-examination, defense counsel elicited testimony about threatening Facebook messages that suggested an active dispute and helped prove the defendants' motive for the drive-by shooting. This evidence included threats Bell made to Applicant over Christmas break. Tr. pp. 160; pp. 167-170; pp. 180-181. No evidence suggesting self-defense was presented to the jury. After the shooting, Bell sent Applicant a message complaining they should have fought instead of Applicant bringing guns into the dispute. Tr. p. 181. Bell testified he does not own a gun. Tr. p. 194.

Nehemiah Dixon was obviously a reluctant witness for the State. Dixon dates Applicant's sister, and he was with them on January 3, 2013. Dixon, Princess, and Capers took Applicant to school and dropped him off. They received a text that he was not comfortable there, so they went back to sign him out. Dixon testified he did not see Bell at the school because he stayed in the truck. Dixon admitted he overheard Capers say something about settling some things. They left Princess at the school, perhaps to complete paperwork, and Applicant, Capers, and Dixon went back to the house. Dixon did not recall how they ended up in separate cars, but Dixon recalls he drove the Nissan to Exxon. Applicant was in the Camaro. Capers in the Mercedes-Benz truck. Princess was also with them. They saw Bell there with a lady. Bell left the station and Dixon followed him. Tr. pp. 198-208.

Dixon testified that he lost sight of Bell's car. Dixon drove back to the Exxon. The others were still there. Dixon claimed more memory problems in describing whether he spoke with the defendants at the gas station. Dixon claimed he pulled away from the gas station and then heard two shots while driving down the road, followed by two more shots. Tr. pp. 208-210.

Dixon was impeached by the State with his prior statement provided on January 7, 2013. Tr. pp. 215-216. Dixon's statement stated, in part, the following: "I drove back to the Exxon and drove back to the bottom looking for a car, spotted the car and then two shots were fired and two more shots and we drove home." Tr. p. 219, lines 10-12.

Clifton Hayes, the Swansea Chief of Police, testified he responded to the scene of the shooting. Bell was in an excited state. Tr. pp. 234-235. Chief Hayes recovered a freshly discharged shell casing in the driveway. Tr. p. 238. He found a bullet hole in the glass of a window, the bullet went through the walls and rested in the bathroom. Tr. p. 241. No firearm was recovered. Tr. p. 242.

Applicant testified on his own behalf. Helping prove an apparent motive for his actions, Applicant testified about a nasty, threatening Facebook communication sent to him by Bell. Tr. pp. 287-289. He confirmed that he, Princess, Dixon, and Capers went to Swansea High School. He confirmed that Princess took him out of school. They went to the Exxon station where, Applicant maintained, Bell yelled at him. Tr. pp. 290-293. Applicant claimed they then went to pick up his friend from an alternative school. Tr. p. 295. Applicant's "alibi" fell apart with this testimony, because Applicant was claiming he picked up his friend from alternative school at the extremely early hour of 9:00 a.m. – 9:30 a.m. Tr. p. 302.

Tammy "Princess" Coleman nonetheless joined in this absurd story, testifying that when they arrived at the alternative school, Applicant blew his horn, and when the friend did not come out, Applicant told Princess, "Mom, it's too early to get [Applicant's friend]." Tr. p. 314, lines 11-14. When asked by defense counsel if she realized it was too early to pick up the friend, Princess testified, "No. With everything that was going on, I didn't even pay it no mind. He used to picking

[the friend] up every day.” Tr. p. 314, lines 15-18.

During closing argument, the prosecutor pointed out the absurdity that they accidentally forgot it was only 9 a.m. and school was not over when they went to pick up this friend. Tr. p. 358, lines 9-21.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. “Applicant was denied the right of effective assistance of counsel, rights that are guaranteed by the Sixth and Fourteenth Amendment to the U.S. Constitution and by Article I, §§ 3 and 14 of the S.C. Constitution, before trial, during trial, and the critical stages of being represented by the counsel, etc. during guilt or innocence phase of trial being represented by trial counsel.”
 - a. “Supporting Facts: Trial Counsel performance during his representation was both unreasonable and pre-judicial [sic], *see Strickland v. Washington*, 466 U.S. 668 (1984). Counsel’s acts or omissions included, but were not limited to the following:”
 - i. “Counsel failed to file pretrial and posttrial [sic] motions,”
 1. “Counsel failed to file pretrial and posttrial [sic] motion for the purposes to a fast speedy trial, immediate charge disposition for dismissals, and for the purposes to have the court to disallow the prosecution to charge for murder/attempted murder based upon the lack of evidence and just on statements that was given through coercion tactics.”
 - ii. “Brady violation, Rule 5 disclosure violations, etc.,”
 1. “State failed to disclosed [sic] State witness’s statements to [Applicant] prior to trial, counsel allowed this violation to be committed by the State and did not move the court to have the sanction applied toward State for the Brady and Rule 5 violations, as this violated the Applicant’s rights to a fair trial.”
 - iii. “Counsel failed to conduct independent investigation to include hire [sic] an investigator to do a proper examination of the case pursuant to the applicable laws to case matter, as the case consisted of multiple felony charges,”
 1. “Counsel violated the ABA, NBA, and the Strickland court when counsel failed to investigate and hire an investigator for investigation and examination purposes and for the ultimate stances to sought [sic] and establish a defense for the Applicant at trial. *Ingle v. State* (2002) and *Simpson v. Moore*, (2006).”

- iv. "Counsel failed to interview credible defense witnesses and have at [sic] to testify on defense behalf, pursuant to have witnesses to testify at trial for the purposes to defend against charges not guilty of,"
 - 1. "Counsel failed to interview and examine potential defense witnesses to be beneficial and for trial because the jury would not have convicted Applicant if counsel would have presented vital witnesses to testify for the defense."
- v. "Counsel failed to serve the 10 day notice for a [sic] alibi defense including the trial counsel did not call on primary witness to testify at Applicant's trial,"
 - 1. "Counsel failed to give notice for Applicant to place formal alibi defense, and counsel failed to comply to rules of trial pursuant to an alibi defense notice and or defense utilizing alibi defense."
- 2. "Ineffective assistance of appellate counsel, failed to raise meritorious issues that are preserved in trial record, etc.,"
 - a. "Appellate counsel failed to raised [sic] the available meritorious record issues to the appellate court at the time they should have been raised on appeal and appellate counsel failed to do so, plainly and clearly ignoring the fixed law, policies, instruction through the State Supreme Court, see at *Gilchrist v. State*, (2005); *Anderson v. State*, (2003); *Southland v. State*, (1990). Applicant will simply take the stance pursuant to well settled laws that he is entitled to effective assistance of the appeal and appellate counsel so the proper appeal exhaustion doctrine can properly followed and complied with in Applicant's case matters."
- 3. "Actual innocence claim . . . , improperly charged and or indicted for the attempt murder offense, etc."
 - a. "Applicant moves with a claim of actual innocence based on the factual and evidentials [sic] according to court records that the primary charge of murder/attempt [sic] murder is without basis and clear evidence due to the lack of evidence and the only evidence was by false statements given by persons of ill intents against the Applicant and the case failed examine affidavits accordingly to the duties of the counsel, etc. see at *Schlup C, Delo*, (1995); *House V. Bell*, (2006)."
- 4. "No bind over hearing as juvenile, due process rights violated."
 - a. "Applicant was the age of seventeen (17) and charges in the nature being murder according to the mandates of *Aiken v. Byars* court makes it clear that the Applicant should have had a hearing to determine if he could have been charged for such offense but the case counsel failed to seek such hearing for Applicant as a pretrial motion for binding over the Applicant to fact charges convicted for."

Attached to this Return and incorporated by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's trial, Applicant's appellate records, and the post-conviction relief application. Respondent reserves the right to amend this

Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRPC.

IV.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness

under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test, particularly in light of Applicant’s complete failure to list any facts to support his general allegations. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent submits Applicant’s allegations of ineffective assistance of appellate counsel are without merit. A criminal defendant is entitled to effective assistance of appellate counsel. *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, “appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing *Jones v. Barnes*, 463 U.S. 745, (1983)). “For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy.” *Jones*, 463

U.S. at 754.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the *Strickland* test of deficiency and prejudice just as it would when analyzing a claim of ineffective assistance of trial counsel. *See Southerland*, 337 S.C. at 616, 524 S.E.2d at 836. To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). Respondent submits that Applicant cannot satisfy either requirement of the *Strickland* test. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

Respondent also hereby moves for a more definite statement on this issue. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

Applicant further asserts "actual innocence" in that there was "a lack of evidence and the only evidence was by false statements given by person of ill intents against the Applicant." Respondent

submits Applicant's claim is merely a challenge to the sufficiency of the evidence presented at trial; and, therefore, this Court should dismiss for failure to state a claim cognizable in post-conviction relief. The post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (2016) (“[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.”). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. *Irick v. State*, 264 S.C. 632, 216 S.E.2d 545 (1975); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, this Court should summarily dismiss this allegation.

VII.

Applicant also asserts his due process rights were violated in that he was denied his right to a “bind over hearing as juvenile,” as required by *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). Respondent submits this allegation should be summarily dismissed as moot. “Any juvenile offender who receives a sentence of *life without the possibility of parole* is entitled to the same constitutional protections afforded by the Eighth Amendment’s guarantee against cruel and unusual punishment.” *Byars*, 410 S.C. at 544, 765 S.E.2d at 577 (emphasis added). When such a juvenile offender faces a sentence of life without the possibility of parole, “the sentencing authority [must] ‘take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.’” *Id.* at 544, 765 S.E.2d at 576 (citing *Miller v. Alabama*, 567 U.S. 460, 480 (2012)). Here, Applicant was not facing a sentence of imprisonment of life without the possibility of parole. Indeed, Applicant was charged with attempted murder, a penalty which carries a maximum of thirty years imprisonment. Therefore, such a hearing pursuant to *Aiken v. Byars* was not necessary at Applicant’s trial. Accordingly, this Court should dismiss this allegation as moot.

VIII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

IX.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel.

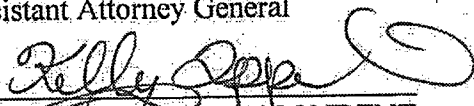
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 9, 2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 BILAL S. HAYNESWORTH, #360072)
)
 Applicant,)
))
 vs)
))
 STATE OF SOUTH CAROLINA,)
)
 Respondent,)
 _____)

IN THE COURT OF COMMON PLEAS


2018-CP-32-00397

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Arthur K. Aiken, Esquire
Aiken & Hightower
2231 Devine St. Ste. 201
Columbia, SC 29205

DATED this the 9th day of May, 2018.


 Tamiaka Russell-Brown, Legal Assistant
 For Respondent

FILED

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON2018 JUL 31 PM 12:18
COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

<p>Bilal S. Haynesworth #360072</p> <p>Applicant</p> <p>vs.</p> <p>State of South Carolina,</p> <p>Respondent.</p>	<p>LISA M. DOHER CLERK OF COURT LEXINGTON, SC</p> <p>Case No.: 2018-CP-32-00397</p> <p>AMENDMENT TO PCR APPLICATION</p>
--	--

The Applicant, Bilal Haynesworth (Haynesworth), amends his PCR Application filed in the above captioned case as follows:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Haynesworth amends his response to item 10 to add the following:

a. Ineffective assistance of counsel

11. State concisely and in the same order the facts which support each of the grounds set forth in (10):

Haynesworth amends his response to Item 11 to add the following:

a. Ineffective assistance of counsel

i. Trial counsel rendered ineffective assistance when he failed to cross-examine Nehemiah Dixon, and this ineffective assistance prejudiced Haynesworth.

ii. Trial counsel rendered ineffective assistance when he failed to object to the admissibility of Nehemiah Dixon's statement, and this ineffective assistance prejudiced Haynesworth.

19. State clearly the relief you seek in filing this application:

Haynesworth amends his response to Item 19 to add the following:


Order vacating conviction and sentence.

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

BY: 
ARTHUR K. AIKEN
2231 Devine Street, Suite 201
Columbia, SC 29205
Phone: 803-799-5205
Fax: 803-799-5206
Email: art@aikenandhightower.com
ATTORNEYS FOR APPLICANT

Columbia, South Carolina
July 27, 2018

A TRUE COPY

Lex. 05, C.C. 0121, G.S. 8-30.

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTONCOURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

<p>Bilal S. Haynesworth #360072</p> <p>Applicant</p> <p>vs.</p> <p>State of South Carolina,</p> <p>Respondent.</p>	<p>Case No.: 2018-CP-32-00397</p> <p>SECOND AMENDMENT TO PCR APPLICATION</p>
--	---

The Applicant, Bilal Haynesworth (Haynesworth), makes the following second amendment to his PCR Application:

11. State concisely and in the same order the facts which support each of the grounds set forth in (10):

Haynesworth amends his response to Item 11 to add the following:

a. Ineffective assistance of counsel

iii. The trial court erred in giving a jury instruction that "[I]nferred malice may also arise when the deed is done with a deadly weapon." (Tr. p. 374 ll. 16-17) State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). Trial counsel rendered deficient representation to Haynesworth at trial when he failed to object to the trial court's jury instruction permitting the jury to infer malice from the use of a deadly weapon. Haynesworth was prejudiced by that failure.

iv. Trial counsel rendered deficient performance to Haynesworth by failing to call Haynesworth's sister, Monisha Coleman, as a witness in support of Haynesworth's alibi. Haynesworth was prejudiced by this deficient performance.

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

BY: 

ARTHUR K. AIKEN

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ATTORNEYS FOR APPLICANT

Columbia, South Carolina

July 27, 2018

A TRUE COPY

168.06 G.G.P.B. G.S.W.R.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

FILED
2019 JAN 24 AM 11:53

Bilal S. Haynesworth #360072

Case Number: 2018-CP-32-00397

Applicant,

vs.

State of South Carolina

Respondent.

CERTIFICATE OF SERVICE

I certify that on January 21, 2019 I served the Applicant's Amendment to PCR Application in this case on the government by delivering a copy of the Amendment to the Office of the Attorney General by mail addressed to Assistant Attorney General Kelly Oppenheimer PO Box 11549, Columbia, SC 29211.



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Columbia, South Carolina
January 14, 2019

A TRUE COPY
Lex. Co. C.O.P.R., G.S. § 8-1-100

State of South Carolina
 County of Lexington

Court of Common Pleas

Bilal S. Haynesworth)	
)	
Applicant,)	Transcript of Record
v.)	2018-CP-32-00397
)	
State of South Carolina)	
)	
<u>Respondent.</u>)	

April 5, 2019
 Lexington, South Carolina

B E F O R E:

The Honorable Walton J. McLeod, IV, Judge.

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

Arthur Aiken, Esquire
 Attorney for the Applicant

Johnny Ellis James, Jr., Esquire
 Attorney for the Respondent

Bethanie K. Creppon
 Circuit Court Reporter

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NO.

DESCRIPTION

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EVD.

(No Exhibits.)

P R O C E E D I N G S

* * *

1
2
3 MR. JAMES: If it may please the Court.

4 THE COURT: Yes, sir.

5 MR. JAMES: Your Honor, this is the matter of
6 Bilal S. Haynesworth vs. State of South Carolina,
7 Docket No. 2018-CP-32-00397. Mr. Haynesworth is
8 present here in the courtroom today and is
9 represented by Mr. Art Aiken, Esquire.

10 Mr. Haynesworth was indicted at the August 2013
11 term of the Lexington County Grand Jury for
12 attempted murder, possession of a weapon during the
13 commission of a violent crime, and conspiracy. He
14 was represented on that charge by David M. Mauldin,
15 who is present here in the courtroom today. And he
16 was prosecuted on that charge by assistant
17 solicitors Kate Usry and Gill Bell. And Ms. Usry is
18 in the courtroom today. My apologies if I butchered
19 anybody's names.

20 Mr. Haynesworth proceeded to trial on May 19th,
21 2014, before the Honorable Thomas A. Russo. The
22 jury convicted him on May 21st, 2014, on all
23 charges, and Judge Russo sentenced him to 12 years
24 for attempted murder, five years for the weapons
25 charge, and five years for the conspiracy, with all

1 of those sentences to run concurrently.

2 He filed a timely notice of appeal and
3 appellate defender Robert M. Patrach [phonetic]
4 perfected that appeal. The South Carolina Court of
5 Appeals affirmed the conviction in an unpublished
6 opinion filed March 2nd, 2016. He, thereafter,
7 petitioned for a writ of certiorari in the South
8 Carolina Supreme Court. And, by written order dated
9 March 8th, 2017, the Supreme Court denied that
10 petition and issued its remittitur on March 17th,
11 2017.

12 This application was timely filed on February
13 2nd, 2018. I believe Your Honor, hopefully, already
14 has -- there are two amendments, a first and a
15 second.

16 THE COURT: All right.

17 MR. JAMES: All right. Excellent. With that
18 set forth, I'll give the ground over to Mr. Aiken.

19 MR. AIKEN: Just very briefly, Your Honor.
20 Mr. Haynesworth filed an application raising several
21 issues -- actually, looks like eight issues. We're
22 going to be proceeding on select ones of those
23 issues. And then, of course, we'll be proceeding on
24 the issues that are raised in the amendment and the
25 second amendment.

1 The only one I need to -- think I need to give
2 some intro for you, Your Honor, is the issue
3 concerning the charge that inferred malice may also
4 rise when the deed is done with a deadly weapon.
5 This was an attempted murder case. And that charge
6 was given by Judge Russo. State vs. Belcher, which
7 was decided in 2009, that is 685 S.E. 2d 802.

8 In that case, the Supreme Court held that in a
9 murder case or an assault and battery with intent to
10 kill case, you can't give the inference of malice
11 from use of a deadly weapon if the defendant has
12 some claim to justification or mitigation of the
13 offense.

14 In this particular case, Your Honor, the lawyer
15 for Mr. Haynesworth requested an instruction on
16 assault and battery in the first degree as a lesser
17 included offense of attempted murder. So that would
18 be a plea in mitigation of the original charge of
19 attempted murder. And assault and battery with
20 intent to kill is no longer an offense in South
21 Carolina. It was superceded by the assault statute
22 or by the attempted murder statute which was passed
23 along with the assault statute.

24 The assault and battery with intent to kill
25 that was referenced in Belcher, the elements of that

1 were, basically, a murder without death; a murder,
2 but the victim doesn't die. That's assault and
3 battery with intent to kill.

4 Attempted murder, as it's defined in this
5 statute, is essentially the same thing as assault
6 and battery with intent to kill; it just requires a
7 specific intent to kill somebody. So our position
8 is that, under Belcher, in an attempted murder case
9 where a plea in mitigation is made -- in other
10 words, a lesser included offense is charged to the
11 jury -- the Court cannot give the inference of
12 malice from use of a deadly weapon charge.

13 Now, there is a case -- and I will tell you,
14 Your Honor, in all candor, this case was actually
15 decided after the trial of this particular case,
16 Mr. Haynesworth's case. It's a case called State
17 vs. Shands. That's 817 S.E. 2d 524. And the last
18 name is spelled S-H-A-N-D-S, Shands. And that case
19 was decided -- was filed -- the opinion was filed
20 June 13th of 2018.

21 And in that case, the Court of Appeals held
22 that -- held what I just said; that in an attempted
23 murder case, if you have a plea in mitigation for a
24 lesser included offense, you can't give the
25 inference of malice from use of a deadly weapon.

1 Now, of course, the question then becomes, am I
2 not just demanding that Mr. Haynesworth's lawyer be
3 clairvoyant? Am I not just demanding that he
4 speculated in his mind about future changes in the
5 law? Because the PCR cases in South Carolina say
6 you can't do that. Okay? You got to go with what
7 the law was; you can't go with what the law became
8 after the trial. In other words, the lawyer is
9 responsible for keeping up with the law as it is,
10 not the law as it ought to be. Okay?

11 But my point is this, Your Honor: If you look
12 at Belcher and you look at the way it describes the
13 holding as including both murder and assault and
14 battery with intent to kill, you look at that
15 holding. That holding is broad enough to encompass
16 attempted murder as well. So my position is the law
17 was, in fact, settled back at the time that Belcher
18 was decided, and I don't need to rely on Shands,
19 which was decided after the trial of
20 Mr. Haynesworth's case. That's really all I need to
21 cover by way of introduction, Your Honor.

22 THE COURT: All right.

23 MR. AIKEN: And we call Mr. Bilal Haynesworth
24 to the stand, please.

25 THE COURT: Have you discussed with your client

1 the risks of --

2 MR. AIKEN: Yes, sir. Yes, sir. I explained
3 to him that he could be looking at 30 years on the
4 attempted murder and, also, you know, additional
5 time on some of the other charges.

6 So you understand all that, don't you,
7 Mr. Haynesworth?

8 THE COURT: You want to proceed forward and --

9 THE APPLICANT: Yes, sir.

10 THE COURT: -- take that risk?

11 MR. AIKEN: You're willing to take that risk?

12 THE APPLICANT: Yes, sir.

13 MR. AIKEN: Okay. Because you got 12 years
14 after a trial, which is not a bad sentence. Okay?

15 THE COURT: Attempted murder is -- that would
16 be --

17 MR. AIKEN: Zero to 30.

18 THE COURT: Yes. But is it a day-for-day
19 sentence?

20 MR. AIKEN: No, sir.

21 THE COURT: It's 85?

22 MR. AIKEN: Murder is day for day, but not
23 attempted.

24 THE COURT: Okay. So, in theory, he could get
25 out approximately when?

1 MR. AIKEN: 22 years, maybe, on a 30-year
2 sentence.

3 THE COURT: No, no, no; the current sentence.

4 MR. AIKEN: Oh, the current sentence. Let's
5 see --

6 THE APPLICANT: 2024.

7 THE COURT: 2024. Okay. So you're halfway
8 done.

9 THE APPLICANT: Yes, sir.

10 THE COURT: Okay. You want to proceed?

11 THE APPLICANT: Yes, sir.

12 MR. JAMES: Just to clarify for the record, it
13 looks to me that his present scheduled max-out date
14 is July 27, 2024.

15 THE COURT: Okay. Thank you.

16 BILAL HAYNESWORTH

17 being first duly sworn, testified as follows:

18 THE APPLICANT: Yes, ma'am. Yes, sir.

19 DIRECT EXAMINATION.

20 BY MR. AIKEN:

21 Q. How are you doing today, Mr. Haynesworth?

22 A. I'm doing well.

23 Q. Good. I'm going to go over some of the
24 allegations you made in your initial PCR
25 application. Okay?

- 1 A. Yes, sir.
- 2 Q. Do you have that in front of you or do you need
3 me to give you a copy?
- 4 A. I have it in front of me.
- 5 Q. Okay. Number one: Failure to file pretrial
6 and posttrial motions. Explain to me what you mean
7 by that.
- 8 A. All right. Give me a second, sir. Counsel
9 failed to file pretrial and posttrial motions for
10 the purpose to a fast and speedy trial, immediate
11 charge disposition for dismissal, and for the
12 purpose to the have Court to disallow the
13 prosecution to charge for murder, slash, attempted
14 murder based upon the lack of evidence and just on
15 the statements that was given through coercion
16 tactics.
- 17 Q. What do you mean by all that?
- 18 A. I mean, by the -- well, my codefendant was
19 coerced to give the statements that he gave.
- 20 Q. You're talking about who? Nehemiah Dickson?
- 21 A. Nehemiah Dickson, sir.
- 22 Q. He was one of your codefendants?
- 23 A. Yes, sir.
- 24 Q. And the other codefendant was named what?
- 25 A. LaJuan Capers [phonetic].

1 Q. And LaJuan Capers is your brother?

2 A. Yes, sir.

3 Q. Okay. Anything else having to do with that
4 initial Issue 1 you've got in your application?

5 A. I'm checking the lines right now. Yes, sir.
6 It's just basically showing that he was forced to
7 keep rewriting his statement numerous times under
8 the pressure from law enforcement.

9 Q. Okay. Your Issue 2: State failed to disclose
10 State witness' statements prior to trial. Tell me
11 what you mean by that.

12 A. All right. State failed to disclose State's
13 witness' statements to Defendant. Prior to trial,
14 Counsel allowed this violation to be committed by
15 the State and did not move to the Court to have this
16 sanction applied toward the State for the Brady and
17 Rule 5 violation as this violated the Applicant's
18 right to a fair trial.

19 Basically what I mean, that during trial, the
20 State's victim used names. And those person --
21 those people was never in my motion, never in my
22 Rule 5. They was never able to come and take the
23 stand to say whether or not what the State's victim
24 was saying was true or false.

25 Q. Okay. I'm going to ask you about Issue No 3.

1 And I don't need you to read the issue because the
2 Court can read what the issue is. Just tell me what
3 you mean by what you say in Issue No. 3.

4 A. Issue 3 is basically dealing with, at the time,
5 my lawyer failing to investigate, hire an
6 investigator to talk to my alibi, my alibi defense,
7 my family, and just things like that.

8 Q. Who did you have in mind for an investigator to
9 talk to?

10 A. My sister, the people that was in the house
11 that morning, the names on the list that I gave
12 them.

13 Q. People in the house. You mean in your house?

14 A. Yes, sir.

15 Q. Okay. All right. So you gave them a list?

16 A. Yes, sir.

17 Q. And who was on that list?

18 A. I gave him my mom, my sister, my brother, my
19 nephew, my brother baby mother. And that's it, sir.

20 Q. What's your sister's name?

21 A. Monasia Comer [phonetic].

22 Q. Okay. And I think there was somebody named
23 Jonasia [phonetic].

24 A. Jonasia is dealing with the situation of not
25 being called and not being properly -- dealing with

1 Issue 2 --

2 Q. Okay.

3 A. -- not being able to call and come testify on
4 my behalf. You know, her name was just thrown into
5 the trial and she wasn't here.

6 Q. Okay. Did you tell your lawyer, Mr. Mauldin,
7 about Jonasia?

8 A. Yes, sir, during trial. He said it was nothing
9 he could do about it because that's the -- Jonasia
10 is the person that Jaquan Bell said me and him met
11 up at a party and squashed the beef. That's what
12 the State used. They tried to say that, you know,
13 bygones be bygones. That's what's in the
14 transcript. And none of that never happened, sir.

15 Q. Now, Issue No. 4, what do you mean by Issue
16 No. 4? Is that sort of related to the witness
17 situation and the investigation?

18 A. Yes, sir.

19 Q. So as part of the investigation, you would have
20 expected them to actually interview the witnesses?

21 A. Yeah. I would have expected them to interview
22 my defense witness. They only interviewed one of
23 them.

24 Q. Who did they interview?

25 A. My mom. Well, she was the only one that took

1 the stand.

2 Q. And your mother is Tammy Coleman, right?

3 A. Yes, sir.

4 Q. All right. Now, Issue No. 7. Tell me what you
5 mean by Issue No. 7.

6 A. Which one? Is it just in the original?

7 Q. In the original.

8 A. Oh, the actual innocent claim?

9 Q. Yeah. Tell me about that.

10 A. Dealing with -- dealing with effects of law,
11 you have to have evidence to convict somebody of
12 discharging a firearm into a dwelling, attempted
13 murder, or any of those sort of charges. The State
14 lacked forensics; they lacked fingerprints; they
15 lacked things of that --

16 MR. JAMES: I would respectfully object.
17 Actual innocence claims aren't cognizable in an
18 application for postconviction relief, absent some
19 kind of newly discovered evidence.

20 THE COURT: Anything, Counsel?

21 MR. AIKEN: I believe he's right about that,
22 Your Honor.

23 THE COURT: I'll sustain the objection.

24 BY MR. AIKEN:

25 Q. Did you have a specific conversation with

1 Mr. Mauldin about -- Mr. Mauldin was your defense
2 lawyer, right?

3 A. Yes, sir.

4 Q. Your trial lawyer?

5 A. Yes, sir.

6 Q. Did you have a specific conversation with him
7 about Monasia Coleman?

8 A. Yes, sir. My sister came down to the -- to --
9 what is it -- his office, because I had -- plenty of
10 times, I had to come prep for court. And me, my
11 mom, my sister, we came numerous times. I wasn't in
12 the room to know exactly what they talked about or
13 what they discussed, but -- as far as prepping for
14 trial.

15 Q. Thank you, Mr. Haynesworth. If you would
16 answer any questions Mr. James might have.

17 CROSS-EXAMINATION

18 BY MR. JAMES:

19 Q. Your argument at trial was that you were in a
20 different place at the time of the shooting,
21 correct?

22 A. Yes, sir.

23 Q. Okay. And so your argument is simply that
24 you're not the person who was there doing the
25 shooting, correct?

1 A. Yes, sir.

2 Q. All right. Was Monasia Coleman with you at the
3 time of the incident?

4 A. The time of the incident, sir, I was never
5 nowhere near Swansea. I was at my mother's house.

6 Q. Okay. And was Ms. Coleman with you at that
7 time?

8 A. At what time, sir?

9 Q. At your mother's house --

10 A. Yes, sir.

11 Q. -- at the time that you were said to have been
12 committing this shooting.

13 A. Yes, sir.

14 Q. Okay. What were y'all doing at your mother's
15 house?

16 A. Typical morning watching TV. I left from
17 school, went home, watched TV.

18 Q. Do you remember what was on TV?

19 A. No, sir.

20 Q. Y'all have cable or satellite or just a set of
21 bunny ears?

22 A. DirectTV.

23 Q. DirectTV. All right. Doing better than I am.

24 MR. JAMES: I have no further questions of this
25 witnesses.

1 THE COURT: All right.

2 Any redirect?

3 MR. AIKEN: No redirect, Your Honor.

4 THE COURT: All right. The witness may step
5 down.

6 MR. AIKEN: I call Monasia Coleman, please,
7 Your Honor.

8 MONASIA COLEMAN

9 being first duly sworn, testified as follows:

10 THE WITNESS: I do.

11 DIRECT EXAMINATION

12 BY MR. AIKEN:

13 Q. Ms. Coleman, how are you?

14 A. I'm doing good.

15 Q. How old are you, Ms. Coleman?

16 A. I'm 19 years old.

17 Q. You working?

18 A. Yes, sir.

19 Q. Where?

20 A. I work at Lowe's.

21 Q. How long have you been working at Lowe's?

22 A. I actually just started. I'm in the middle of,
23 like, my -- the evaluation for, like, my
24 orientation.

25 Q. Sorry for getting you out of work.

1 A. You're fine.

2 Q. Okay. It's an important day.

3 Okay. Do you remember the day when they claim

4 that Bilal shot up somebody's house? Do you

5 remember that day?

6 A. Yes, sir.

7 Q. Okay. Now, did you see Bilal at all that day?

8 A. As far as the -- the -- the day of the

9 shooting?

10 Q. Yes. The day that they claim that the shooting

11 occurred.

12 A. Yes, sir.

13 Q. Did you see him that day?

14 A. Uh-huh.

15 Q. Okay. What time did you first see him?

16 A. This probably had to have been around 9:00,

17 9:10.

18 Q. 9:00 or --

19 A. 9:00 or 9:10.

20 Q. And what was he doing at the time and where was

21 he?

22 A. We were actually home.

23 Q. Okay.

24 A. He was probably -- he was -- I think he was

25 just coming back from school because my mom had

1 actually went in and signed him out of school. And
2 I was home from school due to the fact that I was
3 under evaluation with mental health because I was
4 actually going through depression and my anxiety and
5 stuff. So I stayed home because I wasn't feeling
6 well.

7 Q. So you were home sick?

8 A. Yes, sir.

9 Q. And he comes home about 9:10 or so?

10 A. Uh-huh.

11 Q. All right. And did he stay at the house after
12 he showed up at 9:10?

13 A. Yes, sir.

14 Q. Okay. And where was he in the house? In the
15 same room as you? In another room? Where was he?

16 A. When he came in, I was actually in the living
17 room. When he had come in, he had went straight to
18 his room. Usually when he comes in, he be on his
19 phone all the time, watching TV, listening to music.

20 Q. So you heard the music playing in his room?

21 A. Uh-huh.

22 Q. And he had walked back to his room?

23 A. Uh-huh.

24 Q. Was there any way for him to leave his room and
25 go outside the house without you seeing him?

1 A. No. The house that we were in at the time, it
2 wasn't a pretty big space because the front door and
3 the back door was actually literally, like, right
4 there. So...

5 Q. So if he had been in his room and he decided to
6 leave and decided to walk out, you would have seen
7 him, right?

8 A. Yes.

9 Q. Okay. And you didn't see him leave at any
10 time?

11 A. No, sir.

12 Q. How long was he there, until when?

13 A. He was there all the way up until my mom came
14 back home, because she wasn't there due to the fact
15 that she was out food shopping and had to pick up my
16 medication. And she got home probably, like, around
17 11:30, close to 12:00 that day.

18 Q. And that's about when Bilal left, about 11:30
19 or 12:00?

20 A. No. He was -- he was still home --

21 Q. Still home. Okay.

22 A. -- when my mom got there. He was still home.

23 Q. And how long was he at home, until when they
24 day?

25 A. Probably 'til about at least 2:00 that

1 afternoon.

2 MR. AIKEN: May I have one moment, please, Your
3 Honor?

4 THE COURT: Yes, sir.

5 MR. AIKEN: Thank you, Ms. Coleman. Please
6 answer any questions Mr. James might have.

7 CROSS-EXAMINATION

8 BY MR. JAMES:

9 Q. Good morning, Ms. Coleman.

10 A. Good morning.

11 Q. You said you saw your brother at around 9:10.

12 A. 9:00, 9:10.

13 Q. 9:00 or 9:10?

14 A. Yes, sir.

15 Q. You didn't see him before that?

16 A. No.

17 Q. When you saw him at around 9:00, 9:10, that was
18 when -- was he just there at the house or had he
19 come back from school or --

20 A. He was coming from school.

21 Q. Okay. And you didn't see him leave for school?

22 A. No, sir.

23 Q. Okay. You said you weren't feeling well. Were
24 you still asleep or resting or --

25 A. No. I wouldn't say it was due to necessarily

1 because I was sick. I was just going through a lot
2 at that time. So it was like school and everything
3 else was kind of stressing on me, so I didn't
4 even -- I wasn't up to it. I didn't want to go to
5 school.

6 Q. Okay. So what did you do, just, like, stay in
7 bed and say I ain't going?

8 A. Yeah.

9 Q. Okay. We've all been there.

10 Did your mother try to make you go to school
11 that day?

12 A. No. I actually -- when she woke me up for
13 school, I told her I wasn't -- I wasn't really up to
14 it, you know. As always, she asked me am I all
15 right, whatever the case might be. And I just told
16 her, like, I was feeling, like, real down. And she
17 said, okay, that I can stay home and I can rest.

18 Q. Do you recall about what time it was that Mom
19 came in and said, Honey, let's go to school?

20 A. It was probably about -- it was at least
21 probably, like, 6:00, 6:45, close to 7:00, because
22 the bus came around that time.

23 Q. You normally rode the bus to school?

24 A. Uh-huh.

25 Q. Okay. Did Mr. Haynesworth normally take the

1 bus?

2 A. No. He drove.

3 Q. When you first saw Mr. Haynesworth, did you
4 just see him when he walked in the door or did you
5 see him when they pulled up?

6 A. From the inside of the house, you can hear when
7 somebody pull up. So, you know --

8 Q. Okay.

9 A. -- his car was really loud. So I knew it was
10 him. He had walked in with his stuff and he went
11 straight to his room.

12 Q. Okay. And you could hear his car?

13 A. Uh-huh.

14 Q. And what kind of car does he drive again?

15 A. He -- I don't want to get it wrong. At the
16 time, I think it was either a Mustang or a Camaro.

17 Q. Okay. But it was a big muscle car?

18 A. Uh-huh.

19 Q. Okay. And was both he and your mother in the
20 Camaro or did they take separate vehicles?

21 A. They were in -- he came home by himself.

22 Q. Okay. He came home by himself?

23 A. Uh-huh.

24 Q. Okay. So Mom didn't come home with him?

25 A. No. My mom was still out.

- 1 Q. Mom stayed out shopping?
- 2 A. Uh-huh.
- 3 Q. Okay. So it was just you and Mr. Haynesworth
- 4 there at the house?
- 5 A. It was me -- it was me, him, my eldest brother,
- 6 his baby mama, and my niece and my nephew was home
- 7 at the time I was home.
- 8 Q. Sorry. That was a quick list. I had to make
- 9 sure my associate got that all down for me.
- 10 What were y'all doing there at the house?
- 11 A. Nothing.
- 12 Q. Nothing?
- 13 A. I was in the living room. My brother and his
- 14 baby mother, they were in their room with the kids.
- 15 So it was like everybody was still kind of, you
- 16 know, lounging around at the time.
- 17 Q. Everybody still waking up?
- 18 A. Pretty much.
- 19 Q. Okay. Were y'all watching TV?
- 20 A. I was -- I was, in the living room.
- 21 Q. You were, in the living room?
- 22 A. Yeah.
- 23 Q. Was Mr. Haynesworth in there with you in the
- 24 living room watching TV, as well?
- 25 A. At a point in time, like, afterwards, when he

1 came in, he was probably in there for a little bit
2 due to the fact that he was in and out of the -- as
3 far as, like, the kitchen part. And then he went
4 back to his room.

5 Q. Do you remember what you were watching that
6 morning?

7 A. Not exactly.

8 Q. Did you see your mother leave to go get
9 Mr. Haynesworth from school?

10 A. At the moment that I spoke to her that morning
11 about that I wasn't feeling well to go to school, I
12 actually went back to sleep. And at that moment, I
13 was located in the room, so I did not.

14 Q. Okay.

15 MR. JAMES: If I may beg the Court's
16 indulgence?

17 BY MR. JAMES:

18 Q. Ms. Coleman, did you ever have an opportunity
19 to speak with Mr. Haynesworth's attorney?

20 A. Not that I recall. No.

21 Q. Do you recall talking to anybody on his staff,
22 maybe a paralegal or an assistant?

23 A. No. I actually -- matter of fact, I been down
24 there with him and my mom.

25 Q. All right. Where is there?

- 1 A. Lexington. I cannot remember exactly the
2 place.
- 3 Q. Okay.
- 4 A. But I know it was in Lexington.
- 5 Q. But was it an office?
- 6 A. Yeah, it was an office.
- 7 Q. Was it the attorney's office?
- 8 A. It had to have been. It was a place of
9 business. But I just can't recall.
- 10 Q. And did you tell anybody about your
11 recollection of that day at that time when you went
12 to that office?
- 13 A. I didn't directly speak to his attorney. But
14 it was -- it was a -- it was a -- a black female
15 that I remember speaking to.
- 16 Q. Did you ever speak to law enforcement about
17 your recollection of that day?
- 18 A. Not that I recall. As far as me speaking to
19 anybody, it was only the lady. And she had gotten
20 me to write down as far as what happened that
21 morning and current events that happened before that
22 day.
- 23 Q. So you actually wrote out a statement to the
24 lady?
- 25 A. As I remember, yes.

1 Q. Okay. Were you familiar with the victim in
2 this case?

3 A. And the victim is who?

4 Q. The fellow who was shot. I apologize. His
5 name escapes me right now.

6 Were you aware of any feuds or disputes between
7 Mr. Haynesworth and anybody else in the community?

8 A. No. But one incident, it was me, my brother,
9 and my sister. We was actually coming from a
10 basketball game. And we were at the gas station and
11 it was -- it was a -- it was a whole bunch of boys
12 and it was a few cars. Like, basically, I'm
13 guessing they were -- they were all out there
14 fighting at the gas station because they kind of
15 like, you know, pulled up and surrounded the car.
16 As far as that, that's the only -- only incident
17 that I can actually recall him about to get into a
18 feud with, like, a whole few -- with multiple
19 people, actually.

20 Q. Was that close in time to the day we've been
21 talking about or was that ancient history or...

22 A. I don't recall. I know it was -- this was
23 around school time though. School was going on.

24 Q. I apologize that I blanked a few minutes ago.
25 We have to go through one case after another here,

1 and sometimes I get the names mixed up. Are you
2 familiar with the name Jaquan Bell?

3 A. Yes, sir.

4 Q. Okay. Were you aware of any disputes between
5 Mr. Bell and Mr. Haynesworth?

6 A. I wasn't. I actually thought that -- you know,
7 that they were friends. I didn't know that it was
8 any disputes going on between them two.

9 MR. JAMES: I have no further questions for
10 this witness. Thank you very much.

11 MR. AIKEN: No redirect, Your Honor, and the
12 Applicant rests.

13 THE COURT: I'm sorry. You may step down.

14 MR. AIKEN: May Ms. Coleman be released from
15 her subpoena?

16 MR. JAMES: Certainly no objection from the
17 State, Your Honor.

18 THE COURT: All right. She's free to go.

19 MR. AIKEN: You're free to go, Ms. Coleman.
20 Thank you.

21 MR. JAMES: The State calls Mr. David Mauldin.

22 DAVID MAULDIN

23 being first duly sworn, testified as follows:

24 THE WITNESS: Yes, ma'am.

25 DIRECT EXAMINATION

1 BY MR. JAMES:

2 Q. Good morning, Mr. Mauldin.

3 A. Good morning.

4 Q. You are an attorney licensed to practice in the
5 state of South Carolina, correct?

6 A. That's correct.

7 Q. And how long have you been licensed?

8 A. Since 1970- -- 1997.

9 Q. I was going to say you're looking good for the
10 1970s.

11 A. I got it mixed up.

12 Q. Since 1997, about what portion of your practice
13 has been criminal law?

14 A. About 20 years.

15 Q. How did you come to represent Mr. Haynesworth?

16 A. He was appointed to our office a couple months
17 after his arrest. He was appointed March 21st of
18 '13.

19 Q. Just to be clear, your office is the Public
20 Defender's Office?

21 A. That is correct.

22 Q. Okay. Do you recall about how many times you
23 met with Mr. Haynesworth?

24 A. Six or seven.

25 Q. Did you file motions pursuant to Rule 5 and

1 Brady?

2 A. Yes, I did.

3 Q. Did you receive any materials responsive to
4 those motions?

5 A. I did.

6 Q. And to the extent of your knowledge, were those
7 materials complete?

8 A. I reckon so. People always testify at trial
9 that they don't write down everything they say in
10 written statements that are provided by the State.
11 But I don't think there was anything totally out of
12 the ordinary that came up at trial.

13 Q. Did you review all of the materials provided in
14 discovery?

15 A. Yes.

16 Q. Did you review all of those materials with your
17 client Mr. Haynesworth?

18 A. Yes, I did.

19 Q. Did Mr. Haynesworth provide you with any leads
20 or witnesses to investigate?

21 A. Well, this involved a -- I guess you'd call it
22 a drive-by shooting at a house. Nobody was hit.
23 Nobody was hit at all at the house. And, basically,
24 the thrust was -- of his defense was that he'd been
25 having some issues with these fellows; a lot of

1 threats were being made; he had gone to school that
2 day, more threats were being made.

3 His mother went with -- came to the school
4 after he had initially parked and was going to the
5 school. She decided to withdraw him from school
6 that day. They all went to the gas station. And
7 then after that, they went from the gas station,
8 they went home and did not participate in the
9 shooting.

10 And I think the people with him at that time
11 would have been him, his codefendant LaJuan Capers,
12 the codefendant Nehemiah Dickson, and his mother,
13 Tammy Coleman, who all testified at the trial.

14 There was a confrontation at a gas station that
15 I was discussing. And that was on video. And it's
16 alleged that the drive-by shooting occurred shortly
17 after that involving all three of the cars. So...

18 Q. Did you ever interview Ms. Coleman who
19 testified moments ago?

20 A. I did not. My paralegal has a note that
21 reflects that she did meet with, on September 26th
22 of '13, Tammy Coleman, Monasia, and LaJuan Capers,
23 who was the codefendant. LaJuan was represented by
24 Erik Drylie of my office. They were tried jointly
25 in this trial. And we talked with both and we had a

1 joint defense, so we all kind of participated.

2 Q. Okay. Do you recall why you did not call
3 Ms. Coleman at trial?

4 A. Well, I believe it was -- she was there when
5 they had all gotten home. The mother had testified
6 and told us that she had followed him home right
7 after the gas station and picking him -- signing him
8 out of school that day and that she followed him
9 home and didn't see him go anywhere and that she had
10 gotten home, like, right behind him. So I thought
11 we had kind of a complete chain of where he'd gone
12 that day.

13 Q. Now, when you say she followed him home, the
14 mother followed?

15 A. Yes. He drove home in his car and she followed
16 him in her black Mercedes.

17 Q. Okay.

18 A. And I think she testified to that at trial.

19 Q. Okay. And she was there at the house when --
20 after they got --

21 A. Right. She went home with him after.

22 Q. All right. She didn't testify that she then
23 left somewhere else?

24 A. No. And, like I said, I don't think there was
25 a big time frame between the confrontation at the

1 gas station and the alleged shooting. It was almost
2 happening right after that. And the black Mercedes
3 that the mother drives was identified by the
4 witnesses at the house and the shooting. So she
5 would have been with him at the time of the shooting
6 or somebody driving her car would have been. But
7 she said nobody else was driving her car.

8 Q. We've kind of touched around it: Do you recall
9 what the State's evidence was against your client?

10 A. Basically, it was Jaquan Bell identifying them
11 and the vehicles, the demonstration of the
12 confrontation at the gas station prior between
13 Jaquan and my client and some other people there.

14 Q. And is there any dispute that a shooting, in
15 fact, took place?

16 A. Well, there were bullet holes in the house.
17 They said something about finding a shell. I can't
18 remember if they had lost that shell or whatever,
19 but they had mentioned finding a shell.

20 Q. When you say they, are you referring --

21 A. The police. The police.

22 Q. Okay.

23 A. And I think there were other witnesses in the
24 house that testified the shooting was going on, it
25 was just that they didn't look out or identify

1 anybody doing the shooting.

2 Q. Do you recall the testimony of Nehemiah Dickson
3 at trial?

4 A. Vaguely. I've read it over. He was kind of
5 all over the place. It was very confusing. He
6 didn't identify my client or Mr. Capers as being
7 anybody perpetrating any kind of shooting. He had
8 actually gone to trial some months before, and he
9 had been found guilty of conspiring with them to do
10 the shooting, although not as a principal in the
11 shooting itself.

12 And his testimony was so disjointed and not
13 damaging that I felt like it wouldn't be worth it to
14 go poke the bear, I guess, and to any further give
15 the State any kind of attempt to kind of shore up
16 what he said, because reading it in the transcript
17 is kind of confusing. I think to the jury, it was
18 even more confusing out in real life, because
19 sometimes what's on the page doesn't really
20 translate what actually happened.

21 Q. I can barely make heads or tails of the
22 transcript of the testimony. So...

23 But you made the tactical decision that there
24 was nothing to be gained by cross-examining him?

25 A. That's correct.

1 Q. Do you recall a statement from Mr. Dickson
2 being introduced at trial?

3 A. Yes.

4 Q. Did you object to that statement?

5 A. Yes, I did. I think they were trying to get it
6 in as a prior refresh recollection. But, really, it
7 was prior inconsistent kind of statement or a
8 statement that had more information than what he
9 had. And I objected to that foundation of that and
10 the judge allowed them to go into it. And then they
11 moved to introduce it, which I objected to under the
12 same grounds. They could have had him publish it or
13 whatever; they didn't actually have to have paper go
14 in, would have been my opinion.

15 MR. JAMES: And, Judge, for the Court's
16 information, we're referring to pages 218 to 219 of
17 the trial transcript which deals with State's
18 Exhibit No. 18 which is the statement in question.

19 BY MR. JAMES:

20 Q. What was your theory of the case, your trial
21 strategy?

22 A. Well, basically, that it was Jaquan Bell and, I
23 think it was, Frankie Lawton, and -- there's a group
24 of people that Bilal said he had had a problem with
25 and had been threatening him. That's why his mom

1 pulled him out of school that day. And then there
2 was this confrontation at the gas station. And
3 then, from their point of view, they just went home,
4 there was no shooting, and, basically, that they
5 were fabricating something to get him in trouble,
6 you know, to further along this beef or
7 confrontation between the two groups.

8 Q. How did you go about executing that strategy
9 and advancing that theory at trial?

10 A. Well, you know, the main thrust was the alibi,
11 of course. And we had that by having Bilal testify
12 and his mother testify as to what happened and to
13 point out things in the video, point out things
14 somewhat inconsistent that Mr. Bell had said
15 regarding the confrontations that they had had
16 prior.

17 I think we put in some evidence of Facebook
18 communications between the one group and
19 Mr. Haynesworth's group, as well as testimony from
20 Mr. Haynesworth and Ms. Coleman regarding the phone
21 calls that had been made of a threatening nature.

22 Q. And you felt that Mr. Haynesworth and his
23 mother were adequate to establish that alibi
24 defense?

25 A. Correct. Because when they left the gas

1. station and went home, the shooting happened very
2 shorty after that. It involved -- it was alleged to
3 have involved the car Mr. Haynesworth was driving,
4 the car -- the Mercedes that his mother had, and the
5 car that Mr. Dickson had.

6 Q. Why not call additional witnesses to try to
7 establish this alibi and shore it up? Were there --

8 A. I thought it --

9 Q. Were there anybody --

10 A. -- had been covered. She -- she had no idea
11 where they were or what they were doing when they
12 were out in the cars by the time they got home. So
13 they couldn't testify as to what they did in the
14 cars, whether they were involved in the shooting or
15 not, just that they had come home.

16 Q. And just to make clear, when you're referring
17 to she, you're referring to Ms. Coleman --

18 A. That is correct.

19 Q. -- who testified today?

20 A. That is correct.

21 Q. Okay. I wish we could have hand gestures in
22 the transcript. But...

23 This trial was in 2014, correct?

24 A. Yes.

25 Q. By that time, were you familiar with the case

1 State vs. Belcher?

2 A. Yes, I was.

3 Q. And you managed to obtain a charge of a lesser
4 included offense of assault and battery in the first
5 degree, correct?

6 A. That is correct. I requested it and it was
7 granted.

8 Q. Okay. Do you have a copy of the transcript up
9 there with you?

10 A. Yes, I do.

11 Q. Flip over to pages 374 and 375.

12 A. All right. I'm there.

13 Q. All right. Starting at line 15 and then,
14 really, all the way down to next page, line 6 on
15 375 -- I'm going to start at line 16. And if you'll
16 just read along silently, I'll read it aloud. The
17 Court charged: Inferred malice may also arise when
18 the deed is done with a deadly weapon. A deadly
19 weapon is any article, instrument, or substance
20 which is likely to cause death or great bodily
21 harm --

22 THE COURT REPORTER: Can you slow down, please?

23 MR. JAMES: Absolutely.

24 THE COURT REPORTER: Thank you.

25 MR. JAMES: Whether an instrument has been used

1 as a deadly weapon depends on the facts and
2 circumstances of each case. The following are
3 examples of instruments which may be deadly weapons:
4 A pistol, a shotgun, a rifle, a dagger, a knife, a
5 slingshot, metal knuckles, a razor, gasoline, or a
6 fire bomb. A gun may be a deadly weapon, even if
7 it's not operating.

8 THE COURT: Hold on.

9 Are you getting all that?

10 THE COURT REPORTER: Yes, sir.

11 THE COURT: All right.

12 MR. JAMES: If facts are proved beyond a
13 reasonable doubt, sufficient to raise an inference
14 of malice to your satisfaction, this inference would
15 simply be an evidentiary fact to be considered by
16 you, the jury, along with other evidence in the
17 case, and you may give it whatever weight you should
18 receive -- you decide it should receive.

19 Did you consider objecting to that jury charge?

20 THE WITNESS: No, I did not.

21 BY MR. JAMES:

22 Q. All right. Was there a reason why you did not
23 object to that jury charge?

24 A. Well, my interpretation of Belcher, I guess at
25 that time, was that the evidence of reducing,

1 excusing, and mitigate would be something along the
2 lines that it was evidence that it would be
3 something in self-defense or an accident or
4 something of that nature.

5 The fact that I requested and was allowed a
6 lesser included, I did not contemplate that as such
7 a thing to object to by charge. Basically, our
8 defense was alibi and not that he was shot at and he
9 shot back or that he was waving a gun out of a car
10 and it accidentally went off or anything like that.
11 The thrust of the defense was, basically, that he
12 had this alibi-type thing where they had left the
13 gas station and had gone home.

14 Q. So the trial strategy was that he didn't do
15 this at all; not that he did some lesser act?

16 A. That's correct.

17 Q. But, nonetheless, you got the charge --

18 A. Yes.

19 Q. All right.

20 MR. JAMES: And I apologize, Madam Court
21 Reporter, for rushing through that.

22 BY MR. JAMES:

23 Q. Did your client ever ask you to file a speedy
24 trial motion?

25 A. Not that I recall. No. He was out on bond.

1 The case was going to be tried, I think, in
2 September of the year previous, but it got continued
3 for some reason. I don't recall why. There might
4 have been some other case with more importance that
5 went first. I can't recall. It might have been
6 lower on the trial list.

7 Q. Did you perceive any basis to try and quash the
8 indictment?

9 A. No.

10 Q. Okay. And at trial it came out -- if I may
11 scratch that and step back to clarify my question.

12 One of the allegations is that there were
13 statements produced by way of coercion. And I
14 believe Mr. Haynesworth is referring to the
15 statements of Mr. Dickson. Is that correct?

16 A. I guess that's who he's referring to.

17 Q. Okay. And that he had to produce multiple
18 statements. Is that correct?

19 A. Well, there was some testimony during the trial
20 about having him watch the video and write
21 statements and that kind of thing. Like I said, he
22 was mainly confused. He, obviously, didn't want to
23 be there. He was subpoenaed to be there. But I
24 don't think he added anything to the State's case or
25 his case too much. It was a bunch of gobbledegook.

1 Q. Did you utilize the services of an investigator
2 in this case?

3 A. No, I did not.

4 Q. Okay. Did you investigate the facts and
5 circumstances yourself?

6 A. Yes, we did. Mr. Drylie and I went out to the
7 scene of the shooting and the scene of the gas
8 station. We had Mr. Haynesworth's and Mr. Capers'
9 witnesses come to the office and discuss the
10 matters.

11 MR. JAMES: Beg a moment of the Court's
12 indulgence.

13 I have no further questions of this witness.

14 Please answer any questions Mr. Aiken may have
15 for you.

16 CROSS-EXAMINATION

17 BY MR. AIKEN:

18 Q. Hello, Mr. Mauldin. How are you?

19 A. I'm fine. How about you?

20 Q. I'm good. Let's talk about Belcher for a
21 moment. Okay?

22 A. Okay.

23 MR. AIKEN: May I approach the witness, Your
24 Honor?

25 THE COURT: Certainly.

1 BY MR. AIKEN:

2 Q. I think -- and I want to show you this because
3 I want to make sure we agree that it says: Today we
4 return to the rationale. And then it cites some
5 cases. And then it says: And hold.

6 After that would be the holding of the case; is
7 that correct?

8 A. The holding of Belcher.

9 Q. Of Belcher.

10 A. Okay.

11 Q. Is that correct?

12 A. Okay.

13 Q. Okay. That where evidence is presented that
14 would reduce, mitigate, excuse, or justify a
15 homicide or assault and battery with intent to kill
16 caused by the use of a deadly weapon, jurors shall
17 not be charged that malice may be inferred from the
18 use of a deadly weapon.

19 A. Right.

20 Q. Did I read that correctly?

21 A. Yes.

22 Q. Okay. Well, let me ask you this: If I'm
23 charged with attempted murder and I've got a claim
24 that's going to be decided by a jury that I'm
25 actually guilty of assault and battery first, that's

1 a reduction in the charge, isn't it?

2 A. It is.

3 Q. And, also, it refers to reduce, mitigate,
4 excuse, or justify. If you get a lesser charge than
5 what you're actually charged with, that's a
6 mitigation of the charge, isn't it?

7 A. Well, as I testified on direct, my
8 interpretation of it was for maybe a self-defense or
9 an accident. It didn't occur to me that requesting
10 a lesser-included would negate the charge.

11 Q. But the lesser-included would be a reduction in
12 the charge?

13 A. Right. And, also, you know, if he had said,
14 well, I shot at the house and I wasn't really trying
15 to kill them, I was just trying to scare them, that
16 might have been a different thing, if that was our
17 defense. But his defense was something totally
18 different.

19 So I didn't think there was evidence in the
20 record to excuse or mitigate. And, like I said, I
21 didn't contemplate requesting and being granted a
22 lesser-included would be part of that, as it became
23 later on, as you said.

24 Q. Well, on the charge of attempted murder, one of
25 the elements is malice aforethought, express or

1 implied, right?

2 A. That's correct.

3 Q. That's what the statute says.

4 A. Uh-huh.

5 Q. So malice was a critical issue in the case, was
6 it not?

7 A. It's one of the issues in the case. Yes.

8 Q. And having the correct charge on malice is
9 important in an attempted murder case, isn't it?

10 A. It would be. Yes.

11 Q. And especially a charge that has to do with
12 the -- an inference of malice from some other fact,
13 right?

14 A. That's correct.

15 Q. Now --

16 MR. AIKEN: May I approach the witness, Your
17 Honor?

18 THE COURT: Yes, sir.

19 BY MR. AIKEN:

20 Q. I'm showing you part of the transcript here.
21 This is some of Nehemiah Dickson's testimony.

22 THE COURT: Which page?

23 MR. AIKEN: Excuse me, Your Honor. Page 220.

24 THE WITNESS: Uh-huh.

25 BY MR. AIKEN:

1 Q. And the question was: The video from the Exxon
2 and then you change your statement, correct?

3 Is that right?

4 A. That is the question.

5 Q. And he said: No. He told me to write it
6 first. And then after I wrote it, that's when he
7 showed me, and then I had to keep rewriting the
8 statement.

9 A. Right.

10 Q. Is that right?

11 After he shows you the video and then you
12 change your statement, correct, to what's written in
13 front of you.

14 Right?

15 A. Right.

16 Q. Well, I'm trying to tell him at first. But he
17 said, still rewrite it over. And it didn't sound
18 right, so I had to keep writing my statement over
19 again.

20 A. Yes.

21 Q. In other words, they were badgering Mr. Dickson
22 about his statement, right?

23 A. Well, that's right. And it came out on direct.
24 And if I made something out of it on cross, they
25 would correct it and say, well, what you wrote was

1 the truth, wasn't it? That's an extreme
2 possibility. And since that had come out on direct,
3 I felt no need to highlight it again on cross.

4 MR. AIKEN: May I have a moment, please, Your
5 Honor?

6 THE COURT: Yes, sir.

7 MR. AIKEN: Thank you.

8 BY MR. AIKEN:

9 Q. In the discovery that you got from the
10 Government, did you get multiple iterations of
11 Mr. Dickson's statement?

12 A. I'd have to take a look.

13 Q. Okay. If you don't mind.

14 A. All right. I have a written statement that was
15 given in January of '13. Let's see. I have a
16 letter from the solicitor dated October 4th
17 regarding some statements he made as well as some of
18 the other evidence. I have a two-page summary of an
19 interview with Mr. Dickson. The top of it is dated
20 May 16th, 2013, page 1 of 2. It's Swansea PD case.
21 Page 2 of 2. And then I have a page from discovery
22 investigative notes where they conducted an
23 interview with Mr. Dickson. I also got a copy of
24 the trial transcript of Mr. Dickson's trial.

25 Q. Did you get any partially completed statements

1 of Mr. Dickson, like they started one and stopped
2 and rewrote it and did something else?

3 A. I see one word crossed out on his initial
4 written statement that I discussed from the 16th.
5 And I don't have any other written statements from
6 him.

7 Q. All right. Thank you very much, Mr. Mauldin.

8 THE COURT: Any redirect?

9 MR. JAMES: Nothing from the State, Your Honor.

10 THE COURT: All right. The witness may step
11 down.

12 MR. JAMES: The State would next call Ms. Usry.

13 KATE USRY

14 being first duly sworn, testified as follows:

15 THE WITNESS: I do.

16 DIRECT EXAMINATION

17 BY MR. JAMES:

18 Q. Good morning.

19 A. Good morning.

20 THE COURT: Good afternoon, that is.

21 Q. Oh, yes. It is very much after noon. How are
22 you doing today?

23 A. I'm good. Thank you.

24 Q. Okay. You are an employee of the 11th Circuit
25 Solicitor's Office, correct?

1 A. I am.

2 Q. And you're an assistant solicitor?

3 A. I am.

4 Q. And were you an assistant solicitor assigned to
5 the case of State vs. Haynesworth?

6 A. I was. Yes.

7 Q. All right. Were you the lead prosecutor or
8 second chair to Ms. Bell [sic]?

9 A. I was lead prosecutor.

10 Q. Okay. Did you receive motions pursuant to Rule
11 5 and Brady from Mr. Haynesworth's attorney?

12 A. I did.

13 Q. All right. And did you produce materials
14 responsive to those motions?

15 A. Yes.

16 Q. Did you produce all materials responsive to
17 those motions?

18 A. Yes; everything that was in my possession. And
19 I recall going to the Swansea Police Department to
20 meet with Chief Hayes to make sure I had everything
21 that was in his file as well and would have turned
22 that over as well.

23 Q. Did you discover anything after trial that you
24 realized, oh, I should have handed this over?

25 A. I don't -- I did not, that I'm aware of. No..

1 Q. Do you recall a number of statements that
2 Mr. Dickson provided to law enforcement?

3 A. Off memory -- and it's been a little bit of
4 time. But I do believe he did start a statement
5 indicating he gets blamed for other things in the --
6 there's an original statement. And then there was
7 another statement, was the one we introduced at
8 trial, which was my understanding at the time, he
9 wrote that the 2nd.

10 And also, in preparation for this case, he and
11 his attorney, Heath Taylor, came to our office and
12 met at one point and he spoke with us then and then
13 decided not to speak with us further. And I had the
14 investigator that sat with us at that time create a
15 report from that meeting and provide it to defense
16 counsel for Mr. Haynesworth and Mr. Capers as well
17 as Mr. Dickson's attorney. I believe those are the
18 various statements that I had.

19 Q. And you made all of them available to
20 Mr. Haynesworth's attorney?

21 A. Yes, sir.

22 Q. All right.

23 MR. JAMES: I have no further questions for
24 this witness, Your Honor.

25 MR. AIKEN: No cross-examination, Your Honor.

1 THE COURT: All right. The witness may be
2 excused.

3 MR. JAMES: That would be the State's showing,
4 Your Honor.

5 THE COURT: All right.

6 MR. AIKEN: No reply.

7 THE COURT: All right. I have the matter under
8 advisement. Thank you.

9 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 5th of April, 2019.

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

October 14, 2019

s/Bethanie K. CrepponBethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
)	
Bilal S. Haynesworth,)	Case No.: 2018-CP-32-00397
S.C.D.C. No. 360072,)	
)	
Applicant,)	
)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

FILED
 2019 JUN 27 PM 2:40
 LEXINGTON, SOUTH CAROLINA
 CLERK OF COURT

This matter comes before the court by way of an application for post-conviction relief filed by Bilal S. Haynesworth (“Applicant”) on February 2, 2018. Respondent made its return on or about May 9, 2018. The court convened an evidentiary hearing into the matter on April 5, 2019, at the Marc H. Westbrook Judicial Center in Lexington, South Carolina. Bilal S. Haynesworth (“Applicant”) was present at the hearing and represented by Arthur K. Aiken, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General’s Office, represented the State of South Carolina (“Respondent”).

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, David M. Mauldin, Esq. (“Counsel”), and Applicant’s sister, Monisha Coleman, also testified. The court had before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records, and the pleadings. The court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the August 2013 term of the Lexington County Grand Jury for attempted murder (2013-GS-32-02373), possession of a firearm or knife during the commission of a violent crime (2013-GS-32-02374), and conspiracy