

**IN THE CIRCUIT COURT FOR THE NINTH JUDICAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

STATE OF FLORIDA,

CASE NO.: 2014-CF-007184-A-O

Plaintiff,

v.

JOHNATHAN ANDREW COLEMAN,

Defendant.

**MOTION FOR POST-CONVICTION RELIEF PURSUANT TO
RULE 3.850 OF THE FLORIDA RULES OF CRIMINAL PROCEDURE**

COMES NOW, the Defendant, JOHNATHAN ANDREW COLEMAN (Mr. Coleman), by and through undersigned counsel, and pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure, hereby moves this Court to vacate and set aside the sentence in this matter due to a denial of Mr. Coleman's constitutional rights. The following exhibits are included and incorporated in the instant motion:

Exhibit A – Hearing Transcript on a Motion for a New Trial dated August 20, 2015

Exhibit B – Trial Court Order denying Motion for a New Trial dated September 17, 2015

Exhibit C – Trial Testimony of Johnathan Coleman dated June 24, 2015

Exhibit D – Pretrial Proceedings and Motion in Limine Transcripts dated June 22, 2015

Exhibit E – Testimony of Johnathan Coleman during the Stand Your Ground Hearing dated March 6, 2015

Exhibit F – Testimony of Vince Johnson, Aimee Guillory, and Nicholas Salcedo dated June 23, 2015

Exhibit G – Testimony of Michael Stanley, Carlos Nieves Cruz, Junella Uadan, and Destini Hudson dated June 23, 2015

Exhibit H – Testimony of Myeshia Williams, Marquis Jolly, Sherron Fort, and Matthew Phillips dated June 24, 2015

Exhibit I - Police report from Orange County Case 2014-MM-004628 dated May 5, 2014

Exhibit J - Police report from Orange County Case 2016-CF-013229 dated October 16, 2016

Exhibit K – Trial transcript of closing arguments dated June 24, 2015

PROCEDURAL HISTORY

1. Mr. Coleman was arrested on May 29, 2014, and subsequently charged by Information with Shooting At, Within, or Into an Occupied Vehicle in violation of Florida Statute § 790.19 on July 23, 2014.

2. On November 21, 2014 an Amended Information was filed to add the charge of Aggravated Battery with a Firearm in violation of Florida Statutes §§ 784.045(1)(a)(2) and 775.087(2).

3. On March 15, 2015 a second Amended Information was filed including new facts alleging that Mr. Coleman “did carry, display, use, threaten to use, or attempt to use a firearm...” The addition of this fact increased the twenty (20) year minimum mandatory to a twenty-five (25) year minimum mandatory.

4. Defendant retained John Adams, Esq., who entered a notice of appearance on June 22, 2014, and Ernest Mullins, Esq., who entered a notice of appearance on February 5, 2015.

5. On February 2, 2015 a motion for an order declaring the Defendant immune from prosecution pursuant to Florida Statutes §§ 776.012 and 776.032 was filed. A memorandum of law in support of the same motion was filed on March 4, 2015.

6. A Stand Your Ground hearing was held on March 6, 2015 and on March 13, 2015. On March 16, 2015 the trial court denied the defense motion.

7. The case was tried before this court and a jury between June 22-24, 2015. The jury returned a verdict on June 24, 2015, finding Mr. Coleman guilty of Aggravated Battery with a Firearm by special verdict (Count 1) and Shooting At, Within, or Into an Occupied Vehicle (Count 2).

8. A motion for a new trial was filed on July 2, 2015 by Josh Adams, Esq. and Ernest Mullins Esq. The motion, alleged, among other issues ineffective assistance of counsel by Ernest Mullins, Esq.

9. A hearing was held on August 20, 2015 on the motion for a new trial, where Mr. Mullins testified as to his ineffectiveness during trial. Mr. Mullins filed a motion to withdraw as co-counsel on August 21, 2016. The motion for a new trial was subsequently denied.

10. Mr. Coleman was sentenced on September 4, 2015 to twenty-five (25) years as to Count 1 and fifteen (15) years as to Count 2 to run concurrent with Count 1.

11. A timely Notice of Appeal was filed on September 4, 2015 by the Office of the Public Defender. Josh Adams subsequently filed a motion to withdraw.

12. The trial court denied the defense motion for a new trial on September 18, 2015.

13. On January 5, 2016 Mr. Coleman retained undersigned counsel's office to prosecute the direct appeal to the Fifth District Court of Appeal, Case # 5D15-3259. Multiple issues were raised on appeal: 1) the trial court abused its discretion in denying Mr. Coleman's motion to declare him immune from prosecution under Florida Statute §776.032; 2) the trial court abused its discretion in granting the State's motion in limine to prevent the expert testimony of Charles Drago; 3) the trial court abused its discretion in denying Mr. Coleman a new trial on the basis that

his trial attorney, Ernest Mullins, provided ineffective assistance of counsel; and 4) the trial court erred when it gave a confusing instruction on self-defense.

14. The Fifth District Court of Appeal issued an order, per curiam, affirming the lower court judgment on March 21, 2017.

15. On April 5, 2017 undersigned counsel filed a motion for rehearing and for issuance of a written opinion, which was denied on May 4, 2017. This motion follows.

STATEMENT OF FACTS

Underlying Incident and Arrest

16. On May 28, 2014, Mr. Coleman was working as an armed security guard at the Palm Grove Apartments located at 3955 Wd Judge Drive, Orlando, Florida in the area of West Colonial Drive.

17. At approximately 8:15 p.m Mr. Coleman heard a loud commotion that sounded like arguing on Wd Judge Drive, right outside of the Palm Grove Apartments. (Exhibit A, Pg. 426).

18. After hearing the arguing for about thirty (30) seconds, Mr. Coleman proceeded toward Wd Judge Dr and noticed a black male, now known as Vincent Johnson, walking on the side walk and a gray/silver Audi driving alongside him. (Exhibit A, Pg. 427).

19. Mr. Coleman then noticed the male begin to run down the street and cut behind a dumpster on the edge of the Palm Grove Apartments property and Mr. Coleman heard a female yelling from the Audi. (Exhibit A, Pg. 428).

20. The vehicle then continued on Wd Judge Dr. and recklessly entered the Palm Grove Apartments at a high of speed past Mr. Coleman further into the development. (Exhibit A, Pg. 429).

21. Mr. Coleman began walking in the direction the Audi drove and about a minute later the car appeared from the direction it had come. (Exhibit A, Pg. 430).

22. At this point as the Audi was speeding back from the direction it came Mr. Coleman flagged the vehicle down to tell the driver, Aimee Guillory, to slow down before she hit someone. (Exhibit A, Pg. 431).

23. Ms. Guillory continued to drive around the property and Mr. Coleman, in his company issued patrol vehicle, decided to drive toward the direction Ms. Guillory drove. (Exhibit A, Pg. 432).

24. Mr. Coleman eventually saw both Mr. Johnson in the apartment complex courtyard and Ms. Guillory in her vehicle still attempting to locate Mr. Johnson. At that point Ms. Guillory proceeded to drive around the complex and Mr. Coleman parked his patrol vehicle to make contact with Mr. Johnson to ascertain the situation between Mr. Johnson and Ms. Guillory. (Exhibit A, Pg. 434-435).

25. Mr. Coleman made contact with Mr. Johnson who ignored him, so Mr. Coleman returned to his patrol car that was now parked near the entrance of the apartment complex. (Id.).

26. At this point he observed Mr. Johnson walk toward the entrance of the complex and Ms. Guillory came careening around a corner and as Mr. Johnson was on a median right at the entrance Mr. Johnson evasive action to avoid being hit by Ms. Guillory in her Audi. Ms. Guillory sped off out of the line of sight of Mr. Coleman however, Mr. Coleman still had a line of sight to Mr. Johnson and Wd Judge Dr.

27. Mr. Coleman observed Mr. Johnson crossing Wd Judge Dr and just as Mr. Johnson was doing so, Mr. Coleman heard tires squealing and Ms. Guillory hit Mr. Johnson with her car causing Mr. Johnson to fly on the hood and roll off the vehicle. At this point Mr. Coleman drove

his vehicle off property to block traffic as Mr. Johnson was lying in the road way. Mr. Coleman also observed Ms. Guillory pull into a parking lot across the street to turn her car back out on to Wd Judge Dr. (Exhibit A, Pg. 438-439).

28. After he noticed Mr. Johnson beginning to get out of the street, Mr. Coleman than proceeded to drive his patrol vehicle toward the entrance of the parking lot. Ms. Guillory pulled into and subsequently attempted to exit from the parking lot. As he pulled up his vehicle to the entrance Ms. Guillory continued driving and aimed her car once again at Mr. Johnson. At that point Mr. Coleman jumped out of his vehicle and yelled at Ms. Guillory to stop her vehicle and get out of her car. (Exhibit A, Pg. 443-444).

29. At that point Ms. Guillory stopped and exited her vehicle. Once she exited the vehicle, Mr. Johnson and Ms. Guillory once again begin arguing. Mr. Coleman was able to defuse the situation, however there were bystanders who were yelling that Mr. Coleman did not have the authority to detain the two individuals. In defusing the situation Mr. Coleman hoped to get the parties to remain on scene as he had called for assistance from police and fire/rescue. Shortly after hearing the bystanders yell those comments, Ms. Guillory got back in her vehicle and Mr. Coleman heard a car accelerate as he was talking with Mr. Johnson. In an effort to protect those around him Mr. Coleman quickly pushed Mr. Johnson and another individual out of the way of Ms. Guillory's car. After Mr. Coleman pushed the men out of the way, Ms. Guillory accelerate toward Mr. Coleman. (Exhibit A, Pg. 448-449).

30. Mr. Coleman yelled for Ms. Guillory to stop her vehicle, but she proceeded to drive toward Mr. Coleman striking his lower leg and knee with the front driver side bumper and fender of the vehicle. As the car struck Mr. Coleman, in fear of his life and to protect those around him,

he drew his legally-owned firearm and fired at the vehicle. Once fire rescue arrived they transported Mr. Coleman to the hospital (Exhibit A, Pg. 451-453).

31. Following the incident, Mr. Coleman was arrested on May 29, 2014, for aggravated battery with a firearm and transported to the Orange County Booking and Release Center without incident.

Stand Your Ground Hearing

32. Before trial, counsel filed a motion seeking to have Mr. Coleman declared immune from prosecution under Florida's Stand Your Ground law, Florida Statutes §§ 776.012 and 776.032. A hearing was held on the motion on March 6, 2015 and March 13, 2015.

33. Ms. Guillory testified Mr. Coleman, upon hearing the argument between herself and Mr. Johnson, approached her and asked if she was okay to which she responded she was but did not want Mr. Johnson to go to her house. (Exhibit E, Pg. 42). After this conversation, she said she was about the drive out of the apartment complex when Mr. Johnson jumped out in front of her car and she hit him with the car. (Exhibit E, Pg. 34). It was at this point that Mr. Coleman drove over and stopped behind her car. Id.

34. Ms. Guillory said Mr. Coleman approached in his company vehicle with his lights on. (Exhibit E, Pg.31). Mr. Coleman stopped and got out of his car and according to Ms. Guillory immediately pulled out his weapon and demanded she exit her car. Id. She said she complied and the two engaged in a conversation about what had happened to Mr. Johnson. Id. She said she repeated to Mr. Coleman that Mr. Johnson jumped in front of her car and that she did not hit him. Id.

35. Ms. Guillory said she was standing talking to Mr. Coleman for roughly twenty to thirty minutes "going back and forth" about whether or not she hit Mr. Johnson with her car. (Exhibit E,

Pg. 33). She told Mr. Coleman that she was leaving the scene and Mr. Coleman told her that police were coming already. Id. Ms. Guillory said she got back in her car and put it into gear and at that point Mr. Coleman “tried to grab me at my arm.” (Exhibit E, Pg. 34). She said she leaned away from him and he lost his grip. Id. When she looked in her mirror, she said she saw Mr. Coleman “struggling to get his gun out.” Id.

36. At one point, Mr. Coleman had turned his back to Ms. Guillory to deal with the people telling her she should leave and that is when Ms. Guillory took advantage and got into her car. (Exhibit E, Pg. 70-71, 85). When she pulled her car forward as if she was going to do a three-point turn, Mr. Coleman then stepped in front of her car and pulled his weapon. (Exhibit E, Pg. 71; 86). Ms. Hudson said when Ms. Guillory saw the gun, she drove around Mr. Coleman. (Exhibit E, Pg. 72). Mr. Coleman, she said, was trying to get her to stop her car, telling her to stop and she refused to do so. (Exhibit E, Pg. 74).

37. Mr. Coleman, a veteran of the United States Marine Corps and United States Army National Guard, and a certified National Rifle Association pistol instructor and an expert in the handling of firearms, also testified at the hearing. (Exhibit E, Pg. 94). He said on the evening of the incident, he saw Ms. Guillory driving recklessly through the complex and as a result stopped her to tell her to slow down before she hurt someone. (Exhibit E, Pg. 98). Prior to stopping her the first time, Mr. Coleman said he had seen Mr. Johnson and Ms. Guillory engaged in some kind of argument before watching Mr. Johnson run off in one direction while Ms. Guillory was heading in a different direction. (Exhibit E, Pg. 98-99).

38. Mr. Coleman said he saw Mr. Johnson walking across the street toward the exit from the property and he tried to stop Johnson to determine what was going on between he and Ms. Guillory. (Exhibit E, Pg. 103). Mr. Coleman said Mr. Johnson ignored him and continued to walk

toward the property exit. (Exhibit E, Pg. 104). Mr. Coleman said Mr. Johnson had reached the curb on WD Judge (the road that circles the complex) and saw Ms. Guillory in her car cross the median of the road and narrowly miss Mr. Johnson before pausing and then driving past him. Id., at 440. He said Ms. Guillory turned her car around and Mr. Coleman said he could hear tires squealing and then saw Mr. Johnson start running and Ms. Guillory hit him with the car causing him to come up onto the hood and then roll off. (Exhibit E, Pg. 106).

39. It was at this point Mr. Coleman crossed the street to assess the situation. (Exhibit E, Pg. 106). He said once he saw Mr. Johnson hit by the car, he radioed seeking emergency services. Id. He said he saw Mr. Johnson laying in the road and then saw him try to get to his feet. Id. He also saw Ms. Guillory apparently backing up as if she was going to make another turn so it was then he stopped his vehicle and demanded that she get out of her car. (Exhibit E, Pg. 109).

40. Mr. Coleman said he asked Ms. Guillory three times to get out of her car and she eventually complied. (Exhibit E, Pg. 110). Mr. Johnson was sitting on the curb at the corner of the Northwest Community Center parking lot and WD Judge. (Exhibit E, Pg. 109). At some point, Mr. Coleman said he had turned his back to Ms. Guillory and heard a vehicle accelerator and immediately pushed Mr. Johnson and another male who was present out of the way. (Exhibit E, Pg. 110). Mr. Coleman started backing up toward the safety of his vehicle. (Exhibit E, Pg. 110-111).

41. The car, Mr. Coleman said, was moving faster than five miles per hour. (Exhibit E, Pg. 111). He said he drew his firearm. Id. He said the car appeared to be picking up speed and he fired four rounds. (Exhibit E, Pg. 112). He said he fired because he was concerned for his own safety and that of others in the path of the vehicle. Id. He said as he was backing up, he initially

felt pain in his shin and then his knee and leg started to buckle. (Exhibit E, Pg. 113). He said he then felt the weight of the vehicle on his foot. Id.

42. Mr. Coleman said he tried to stop Ms. Guillory because he had just seen her hit Mr. Johnson with her car and that he was attempting a citizen's arrest. (Exhibit E, Pg. 121). He also said he heard Mr. Johnson yell at Ms. Guillory, "why did you hit me, I can't believe you hit me, you're going to jail." (Exhibit E, Pg. 124). He said once he felt the weight of the vehicle on him, he then pulled out his weapon from the holster and fired. (Exhibit E, Pg. 130).

The Trial

43. The case was tried before a jury from June 22, 2015 until June 24, 2015.

State's Case-in-Chief

44. The State called VINCE JOHNSON to testify about the night in question. Mr. Johnson testified that Ms. Guillory and he were in an argument because she had not eaten. (Exhibit F, Pg. 68). Mr. Johnson testified that he was arguing with Ms. Guillory over the phone as he was walking to Ms. Guillory's apartment. (Exhibit F, Pg. 69). As the arguing ensued, Mr. Johnson walked across the street to the Northwest Center. (Exhibit F, Pg. 72). After walking across the street Mr. Johnson claimed that Ms. Guillory drove over to his location and he slapped the hood of Ms. Guillory's car and then they started talking. (Exhibit F, Pg. 73). Mr. Johnson denied being hit by the car or rolling up on the hood of the car. Id. As to the injury sustained on his wrist, Mr. Johnson testified that it was sustained while playing basketball several days before. Id. Mr. Johnson testified that after he was talking with Ms. Guillory, Mr. Coleman approached them and attempted to detain them. (Exhibit F, Pg. 74). Mr. Johnson was then questioned regarding the position of Ms. Guillory's vehicle and Mr. Coleman patrol car. (Exhibit F, Pg. 77). During questioning Mr. Johnson testified that at some point after being pulled out of her vehicle, Ms. Guillory got back in

her car. (Exhibit F, Pg. 78). After she got in her car, Mr. Johnson claimed he saw Mr. Coleman grab onto the vehicle and subsequently fire shots as the vehicle continued to move. (Exhibit F, Pg. 79). Mr. Johnson gave conflicting testimony as to the speed of the vehicle.

Q But when she started to drive away, was that when Mr. Coleman pulled his firearm?

A Yes.

Q How fast was the car going then?

A No more than 20 miles per hour.

Q Was it going slow or fast?

A Fast -- I mean slow.

(Exhibit F, Pg. 80).

45. During trial the State also called the alleged victim AIMEE GUILLORY. She testified that she pulled up and drove next to her boyfriend Mr. Johnson as he was walking outside of the Palm Groves Apartment. She stated that they were arguing as she was driving alongside him all the way to her apartment. (Exhibit F, Pg. 111). The two interacted briefly there, although they never went inside, and then Mr. Johnson left her house and walked across the street to the Northwest Community Center on the edge of the complex property. (Exhibit F, Pg. 71-72; 130). Ms. Guillory admitted that she was being "a little nasty about the situation." (Exhibit F, Pg. 72; 111). After the interaction at her apartment, Ms. Guillory got in her car and attempted to drive away from Mr. Johnson. At that point in time Ms. Guillory admitted she was not listening to Mr. Johnson and he slapped the hood of her car. (Exhibit F, Pg. 73; 83; 111). Ms. Guillory denied that she hit Mr. Johnson with the car or that he rolled up on the hood. (Exhibit F, Pg. 73;83;111). Ms. Guillory stated that she had seen Mr. Coleman in the apartment complex as she left in her car. (Exhibit F, Pg. 112). When she had left apartment complex she testified that she was across the street in her vehicle while Mr. Johnson was in the street, when Mr. Coleman showed up in his patrol car. (Id.). Ms. Guillory testified that Mr. Coleman approached her, told her to get out of

the car, and ultimately had her stand next to his car for thirty (30) minutes. (Exhibit F, Pg. 113). She testified that she told Mr. Coleman she was going to leave because it was taking too long and as she got in her car he tried to grab her through the window and her car was already in motion. (Exhibit F, Pg. 114-115). As she was driving away she heard about five shots. (Exhibit F, Pg. 117). Over objection Ms. Guillory testified to the gunshot wounds she received on the night in questions as well as testified to photos the state introduced. (Exhibit F, Pg. 119-121).

46. Orlando Police Officer NICHOLAS SALCEDO responded to the call at the Mercy Mart, where Ms. Guillory went after being shot. (Exhibit F, Pg. 157). When he arrived, Ms. Guillory was being treated already and it appeared she had been shot in the upper left arm. Id. He also said he observed two small holes in the partition between the front and rear windows on the driver's side that looked like bullet holes. Id., at 160. He said the car was secured. (Exhibit F, Pg. 158).

47. Officer Salcedo said he never went to the crime scene at the apartment complex because his focus was Ms. Guillory. (Exhibit F, Pg. 160). He said during the course of the investigation, Ms. Guillory was not charged with any crime. (Exhibit F, Pg. 163). He also said he was never able to locate Mr. Johnson. (Exhibit F, Pg. 163).

48. Detective MICHAEL STANLEY responded to the complex. (Exhibit G, Pg. 179). When he arrived, he said there were already three or four police officers in marked cruisers on scene and the crime scene was taped off. Id. He said he noticed shell casings on the ground that were collected by a crime scene technician. Id. The firearm was also seen on the ground. (Exhibit G, Pg. 181). He said Mr. Coleman did have an injury to his leg but that there were just scrapes up and down the right leg. (Exhibit G, Pg. 190; 199).

49. Orlando Police Department crime scene technician CARLOES NIEVES CRUZ performed a forensic examination on Ms. Guillory's vehicle by using wood dowels placed into the bullet holes to determine trajectory. (Exhibit G, Pg. 202). He said three of the four shots did not penetrate the car. (Exhibit G, Pg. 203; 205). He said the weapon used was a Luger 9mm firing hollow point bullets. (Exhibit G, Pg. 213). He said he could not say how far away the shooter was from the vehicle when the shots were fired. (Exhibit G, Pg. 225). The weapon, he said, was found on the ground when he took pictures. (Exhibit G, Pg. 227).

50. Orange County Sheriff's Office CSI JUNELLA UADAN was called by the State and she testified that she went to the hospital to retrieve projectiles after being notified by a surgeon. After collecting the projectiles she discovered they were for an O.P.D. case and turned them over to the correct agency. (Exhibit G, Pg. 232-235).

51. DESTINI HUDSON was called to testify following CSI Uadan. Ms. Guillory is Ms. Hudson's "god sister." (Exhibit G, Pg. 239). Ms. Hudson said she went outside and crossed the street to the community center. (Exhibit G, Pg. 242). She testified that when she arrived, Ms. Guillory was standing behind her car and Mr. Coleman was behind her with his lights on "similar to if someone was getting stopped for a traffic ticket." Id.

52. Ms. Hudson stated that at that time a crowd was gathering. (Exhibit G, Pg. 243). Ms. Hudson was walking toward where Ms. Guillory was and Mr. Coleman told her to stay back. (Exhibit G, Pg.244). She said Ms. Guillory at the time was sitting on the hood of her car. (Exhibit G, Pg.245). She said Mr. Johnson was only a few feet away and was telling Ms. Guillory she did not have to stay and that she could leave. Id.

53. Ms. Hudson stated that unidentified woman drove up and told Ms. Guillory the same thing – she did not have to stay there, that Mr. Coleman did not have any authority to detain her.

(Exhibit G, Pg. 245). Ms. Hudson testified that Mr. Coleman turned his back to Ms. Guillory to speak to the unidentified woman and that was when Ms. Guillory got in her car and was trying to make a U-turn to leave. (Exhibit G, Pg. 245). Ms. Hudson said when Ms. Guillory was doing that, Mr. Coleman approached the front of her car and her car was moving as she is trying to leave. (Exhibit G, Pg. 247). She said she did not see any weapons out at that time. Id.

54. MYESHIA WILLIAMS was called to testify by the State. She testified that she was visiting Destini Hudson at the Palm Groves Apartments when there was banging at her door for Ms. Hudson to go outside. Shortly after Ms. Hudson stepped outside, Ms. Williams followed. (Exhibit H, Pg. 294-295). After stepping outside of Ms. Hudson's apartment, Ms. Williams exited the Palm Groves apartment and headed to the Northwest Community center entrance. (Exhibit H, Pg. 297). She testified that as she approached the Northwest Community center she saw Ms. Guillory's car facing out toward the street and Mr. Coleman's patrol car trying to block Ms. Guillory's car. Id. While Ms. Williams was present an unidentified individual told Ms. Guillory she did not have to stick around and Ms. Williams saw Ms. Guillory then get into her car and try to give gas, but the car wouldn't go. (Exhibit H, Pg. 298). She further testified that when Ms. Guillory did get the car to move it was just rolling and not moving fast and it looked like Mr. Coleman was trying to grab on to the car. (Exhibit H, Pg. 299). Ms. Williams stated that it was not until Mr. Coleman fired his weapon that Ms. Guillory took off speeding. (Exhibit H, Pg. 300).

55. The State then called MARQUIS JOLLY to the stand. Mr. Jolly testified that he was working at the Northwest Community Center on the night in question. (Exhibit H, Pg. 322). Mr. Jolly stepped outside after a patron told him that there was a commotion going on outside with police. Id. While outside he observed Ms. Guillory and Mr. Johnson arguing. (Exhibit H, Pg. 324). Mr. Jolly was questioned as to whether Ms. Guillory drove her car at Mr. Coleman or if the

front tire hit him and Mr. Jolly was not able to tell from where he was standing. (Exhibit H, Pg. 325). He further testified that her car was going approximately ten (10) miles per hour. (Exhibit H, Pg. 326). When she began moving her car Mr. Coleman repeatedly asked Ms. Guillory to stop and when she didn't Mr. Coleman grabbed onto the car and shot the vehicle. Id.

56. SHERRON FORT was the final State witness called. Mrs. Fort was just getting off of work at the Northwest Community center at the time the events took place. She was walking to her car when she noticed the flashing lights from Mr. Coleman's patrol vehicle. (Exhibit H, Pg. 346-347). When she walked up to the commotion outside of the community center, she heard Mr. Coleman yell for Ms. Guillory to get out of her car. (Exhibit H, Pg. 347). After Ms. Guillory initially got out of the vehicle Mrs. Fort heard Mr. Johnson yell to Ms. Guillory to get back in her car and leave. (Exhibit H, Pg. 348). At that time Ms. Guillory attempted to leave and at that time Mr. Coleman was standing next to the car on the driver side. (Exhibit H, Pg. 349). Once she began to try to leave the property, Mr. Coleman moved toward the vehicle and tried to grab onto the car, which was rolling out of the parking lot. (Exhibit H, Pg. 351-352). Mr. Coleman grabbed onto Ms. Guillory's vehicle as Ms. Guillory continued to drive forward and shortly after Mr. Coleman fired the shots into the vehicle. (Exhibit H, Pg. 352-353).

57. The State then rested, and trial counsel moved for a Judgment of Acquittal which was denied by the trial court.

Defense Case

58. The defense called MATTHEW PHILIPS to the stand. Mr. Philips testified that he was employed with the same company as Mr. Coleman and was an area supervisor. On the night in question he got a call from the owner of the company to respond to an incident that Mr. Coleman was involved in to gather information on scene. (Exhibit H, Pg. 397). When Mr. Philips arrived

on scene there were many Orlando Police Department cars present as well as an ambulance (Exhibit H, Pg. 399). Mr. Philips also testified to seeing fire rescue standing and kneeling right next to him. (Exhibit H, Pg. 402).

59. Following Mr. Philips's testimony, the defense called JOHNATHAN COLEMAN to testify.

60. Mr. Coleman was working for Urban Enforcement and Protection as an armed security guard on May 28, 2014. (Exhibit C, Pg. 418). He was a supervisor with approximately twelve people under his command. (Exhibit C, Pg.422-423). He said he did not recall what time he started work that day but recalled arriving at Palm Grove around 8:15 p.m. (Exhibit C, Pg. 423). He said when he arrived there, he observed two males he recognized from his patrols that were talking. Mr. Coleman went over to them, parked his vehicle, and joined the conversation. (Exhibit C, Pg. 425).

61. Mr. Coleman said about two to three minutes later, he said he heard a commotion in the area near Mercy Drive and WD Judge but said it did not appear to be on the property so he did not pay much attention. (Exhibit C, Pg. 425-426). He said it sounded like arguing and that it was loud but he could not determine if the yelling was two males or a male and a female. (Exhibit C, Pg. 426). He said after hearing this, he crossed over a small grass median and looked down toward where the arguing was coming from and saw a silver/grey Audi driving alongside a black male wearing shorts and a t-shirt who was walking on the side of the road. (Exhibit C, Pg. at 427).

62. Mr. Coleman testified that he saw the male running and then cut in behind a dumpster, disappearing out of his view. (Exhibit C, Pg. 428). He said he heard the female yelling and she continued to enter the property at a high rate of speed, drove past him, and continued to the west side of the property out of his view. (Exhibit C, Pg. 429). He said the vehicle then continued to

come back around and Mr. Coleman said he stepped out from in between a few parked cars and waved the car down. (Exhibit C, Pg. 430). The car stopped and the woman driver (Ms. Guillory) rolled down the window. Id. Mr. Coleman said he warned her to slow down before she hit someone. Id. She apologized and continued on her way. (Exhibit C, Pg. 431).

63. Mr. Coleman said he then returned to his vehicle and started his initial patrol to check the property and also looking for the vehicle he had just encountered. (Exhibit C, Pg. 433). He did not see the car so figured it had “made the loop.”¹ Id. He continued his patrol and said the next time he saw the car, he said it appeared she was stopped because he saw the brake lights. (Exhibit C, Pg. 433-34). He said he could see the black male (Mr. Johnson) peering out from an obscured position as the car slowly started moving past where he was. (Exhibit C, Pg. 434). The vehicle then disappeared and Mr. Johnson disappeared back into the complex courtyard. Id.

64. Mr. Coleman stopped his vehicle and went on a foot patrol. (Exhibit C, Pg. 434). He said he saw Mr. Johnson emerge from the courtyard and so Mr. Coleman said he approached to find out what was going on. Id. He said Mr. Johnson ignored him and continued walking. (Exhibit C, Pg. 435). He said he watched Johnson look towards the east and then cross the parking lot to the grassy median. (Exhibit C, Pg. 436). As Mr. Johnson stepped off the grassy media into the roadway, Mr. Coleman said he saw the silver car careen by into the opposite line of travel, Mr. Johnson leaped backwards and the car continued and never stopped traveling further out of his line of sight. (Exhibit C, Pg. 436-437).

65. Mr. Coleman said he saw Mr. Johnson again attempt to step off the medium and at that time heard tires squealing. (Exhibit C, Pg. 437). According to Mr. Coleman, Mr. Johnson started to cross the street and that was when Ms. Guillory came around the corner and hit Mr. Johnson,

¹ There is a single road that circles the Palm Grove apartment complex beginning and ending at as single entry point.

causing his to roll up onto the hood and roll off onto the ground. (Exhibit C, Pg. 438). He said Mr. Johnson appeared to be injured, laying in the roadway. (Exhibit C, Pg. 439). According to Mr. Coleman, Mr. Johnson was not wearing a cast. Id.

66. Mr. Coleman said Ms. Guillory pulled her vehicle into the parking lot of the Northwest Community Center and he then pulled his vehicle in behind Ms. Guillory to block traffic so Mr. Johnson, still in the roadway in a fetal position “kind of upright rocking,” would not be hit again. (Exhibit C, Pg. 439). Mr. Coleman said he believed he was acting to protect Mr. Johnson from further harm. (Exhibit C, Pg. 439- 440). Mr. Coleman said he saw Ms. Guillory starting to turn around so he pulled his vehicle in behind hers in the parking lot. (Exhibit C, Pg. 440).

67. Mr. Coleman said as he was exiting his vehicle, he saw Mr. Johnson attempting to get to his feet and that Ms. Guillory was heading toward him again. (Exhibit C, Pg. 443). Ms. Guillory was driving toward Mr. Johnson and so Mr. Coleman yelled for the car to stop and for Ms. Guillory to get out of the car. (Exhibit C, Pg. 445-446). Ms. Guillory eventually complied and exited her vehicle at which point Mr. Coleman ordered her to lay on the ground. Mr. Coleman said he had not pulled his weapon from his holster but did have his hand on it. (Exhibit C, Pg. 446). Mr. Coleman said Mr. Johnson was “limping around yelling” at Ms. Guillory. Id. Mr. Coleman said Mr. Johnson was very upset and that he tried to get Mr. Johnson and Ms. Guillory to calm down and stop yelling at each other. (Exhibit C, Pg. 447). Mr. Coleman informed Mr. Johnson that he had already called for Orlando Fire Rescue. Id. Mr. Coleman was trying to get Mr. Johnson to calm down and to sit and wait for help so he would not hurt himself anymore. Id.

68. Mr. Coleman stated there were several people telling Ms. Guillory to leave, that he lacked any authority to detain her. (Exhibit C, Pg. 448). Mr. Coleman turned his back to Ms. Guillory to speak to the unidentified woman and that was when Ms. Guillory got in her car and

was trying to make a U-turn to leave. When Mr. Coleman had his back to the car, he said he heard the car accelerate and it was then he quickly looked and realized he and Mr. Johnson, along with another man, were right in the line of the car coming at them and so he pushed them out of the way because Ms. Guillory was not stopping. Id. Mr. Coleman said Ms. Guillory was “coming at me” and so he was back-peddling to get to safety. (Exhibit C, Pg. 449). As he was back-peddling, he was yelling at Ms. Guillory to “stop, stop, stop” and could hear the vehicle accelerate which is when he “withdrew my firearm.” (Exhibit C, Pg. 451).

69. Mr. Coleman testified as the car was moving, it hit him in the lower leg and knee and then continued on passed him. (Exhibit C, Pg. 452-453). Mr. Coleman had pulled his weapon and said he fired four shots in rapid succession. (Exhibit C, Pg. 453). Mr. Coleman stated after the shots were fired, he felt severe pain in his leg and leaned against his car and went down to the ground at the same time he was calling over the radio for help. (Exhibit C, Pg. 454). Mr. Coleman said once everyone was out of the way and there was no longer a threat, he stopped firing, re-loaded his weapon, and re-holstered it. (Exhibit C, Pg. 457; 459).

Verdict

70. Following summations and jury deliberations, Mr. Coleman was found guilty as charged on both counts.

Motion for a New Trial

71. Trial counsel filed a motion for a new trial on July 2, 2015, alleging three claims of error, including ineffective assistance of counsel claimed by attorney Mullins against himself.

72. Following filing of the motion a ten-page memorandum of law was filed. In the motion trial counsel argued that Defendant was entitled to a new trial because: 1) the weight of the evidence did not support the verdict; 2) The jury instructions were confusing in reference to self-

defense; and 3) trial counsel was ineffective under Strickland for not requesting a jury instruction that a private citizen may use force, including deadly force, to effectuate an arrest or prevent the escape of a felon pursuant to Florida Statute §776.07.

73. On August 20, 2015 a hearing was held upon the motion. Here, during the motion for a new trial, the Defendant's Trial Counsel admitted that he never discussed with the Defendant or prepared a defense relating to use of force when effectuating a citizen's arrest. Therefore, because this defense was not raised Trial Counsel did not request a complete justifiable use of force jury instruction. At no point in time was the failure to request this instruction part of a strategy or tactic. When questioned about the failure to request the instruction, the following ensued:

Q: All right. Did you -- after the trial, did you determine that you -- that you had -- were deficient in your performance as a lawyer?

A: Yes, I did, because I was asked about the -- the Court -- for the first time, I was asked, did you -- well, how did the argument go with regard to the use of force and the citizen's arrest. And I indicated that I didn't argue that because that -- I didn't think that applied to his situation.

Q: What, in your professional judgment as a lawyer for 20 25 years practicing in the area of criminal defense -- criminal law, what instructions should you -- had you been rendering effective assistance of counsel, what instructions should you have requested of the jury after the facts were all in, prior to the Court -- when the Court was considering jury instructions, what should you have asked, if you did your job right?

A: Well, I should have probably read some case law as it relates to 776.07 and found the Howell case and asked for the instruction that a citizen is allowed to use force to effect an arrest of a person committing a felony in the citizen's presence, and that the citizen has a right to use force to prevent that felon from escaping the scene of the arrest, and then under some circumstances, that force can be deadly force. I would have asked for an instruction in that vein.

Q: Well, did you ask for that instruction?

A: I did not.

Q: Do you believe that you were deficient as a lawyer for not asking for that instruction?

A: I do.

Q: Was there any tactical reason whatsoever for not asking for that instruction?

A: Tactical reason, no. No. There was no tactical reason. I wasn't aware of the law as it relates to that issue. So there was no decision to be made, because I wasn't aware of the law.

Q: All right. So it wasn't a strategic reason not to ask for it. You didn't ask for it because you missed it?

A: Well, a strategic reason would be, you know, we have this defense over here, we have this line of defense over here, and we're aware of all those lines of defenses. But we choose one over the other because of some perceived advantage that may be obtained. In this case, I sought self-defense, okay, but I did not even recognize, or see, or acknowledge the existence of the other line of defense, that being use of force and citizen's arrest.

(Exhibit A, Page 24-25).

74. The motion was denied on September 4, 2015, the same date Defendant was ultimately sentenced. In the order denying a motion for a new trial, the court reasoned that at no point was there testimony that Mr. Coleman was attempting to prevent the complainant from escaping following an alleged felony she committed. (Exhibit B, Page 18). The Court also expressed concern that the claim of using force to prevent a felon from fleeing was refuted by the complainant and her boyfriend who alleged that no felony occurred and the only testimony that alleged a felony occurred came from the Defendant. (Exhibit B, Pg. 17).

Sentencing

75. Prior to sentencing, several family members submitted letters to the Court, pleading for leniency for the Defendant. Mr. Coleman was sentenced September 4, 2015, to twenty-five (25) years in the Florida Department of Corrections on Count One and fifteen (15) years in the Florida Department of Corrections on Count Two, to run concurrently.

Direct Appeal

76. After filing a notice of appeal, Mr. Coleman prosecuted a direct appeal to the Fifth District Court of Appeal, Case #: 5D15-3259. Mr. Coleman argued that 1) the trial court abused its discretion in Denying Mr. Coleman's motion to declare him immune from prosecutions, 2) that

the trial court abused its discretion in granting the state's motion in limine to prevent the expert testimony of Charles Drago, 3) that the trial court abused its discretion by denying Mr. Coleman a new trial on the basis that his trial attorney provided ineffective assistance of counsel, and 4) that the trial court erred when it gave a confusing instruction on self-defense.

77. On March 21, 2017 the Court per curiam affirmed Mr. Coleman's sentence. On April 5, 2017 undersigned counsel filed a motion for rehearing and issuance of a written opinion pursuant to Fla. R. App. Pro. Rule 9.330(a). The Court denied the motion on May 4, 2017.

ARGUMENT

THE DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO REQUEST A COMPLETE JUSTIFIABLE USE OF FORCE JURY INSTRUCTION; WHEN TRIAL COUNSEL FAILED TO PREPARE A DEFENSE AND CALL A MEDICAL EXPERT BASED ON THE DEFENDANT'S POST-TRAUMATIC STRESS DISORDER; WHEN TRIAL COUNSEL FAILED TO ELICIT TESTIMONY OF COMPLAINANT'S PRIOR CRIMINAL RECORD; AND WHEN TRIAL COUNSEL FAILED TO IMPEACH AIMEE GUILLORY AND VINCE JOHNSON

78. It is axiomatic that both the United States Constitution and the Florida Constitution guarantee each defendant in a criminal prosecution the right to the effective assistance of counsel. The fundamental right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive due process of law in an adversarial system of justice. United States v. Cronin, 466 U.S. 648, 658 (1984).

79. The United States Supreme Court has held that "[t]he benchmark of judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial [court] cannot be relied on having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984). Under the Strickland standard, ineffective assistance of counsel is made out when the defendant shows that (i) trial counsel's performance

was deficient, i.e., that he or she made errors so egregious that they failed to function as the “counsel guaranteed the defendant by the Sixth Amendment;” and (ii) the deficient performance prejudiced the defendant enough to deprive him of the due process of law. Id. at 687.

80. A court deciding a claim of ineffective assistance of counsel must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct. “The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” Strickland, 466 U.S. 668, 690.

81. Under Strickland, a defendant must establish the following two components to demonstrate that counsel was ineffective: (1) counsel’s performance was deficient and (2) counsel’s deficient performance prejudiced the defense. Strickland, 466 U.S. at 686.

82. Under the deficiency prong, the defendant must establish that “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. To prove the prejudice prong, the defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 686. A reasonable probability is a probability sufficient to undermine the confidence in the outcome. Id. at 694.

*A. Failure to Request a Complete Jury Instruction as to
Jury Instruction 3.6(h) Justifiable Use of Force*

83. In setting forth a claim of ineffective assistance of counsel, a defendant must demonstrate that trial counsel’s conduct was not a sound trial strategy. Dufour v. State, 905 So.2d 42, 51 (Fla. 2005) (citing Strickland, 466 U.S. at 689). “Judicial scrutiny of counsel’s performance

must be highly deferential.” Id. (citing Strickland, 466 U.S. at 689). However, “a trial strategy to do nothing . . . is not an acceptable one.” Williams v. State, 507 So.2d 1122, 1124 (Fla. 5th DCA), rev. denied, 513 So. 2d 1063 (Fla. 1987).

84. In this instant case trial counsel failed to request the following relevant instruction, which, failure of, greatly prejudiced Mr. Coleman,

To prevent escape from custody. § 776.07(1), Fla. Stat. Give if applicable.

A law enforcement officer or other person who has an arrested person in [his] [her] custody is justified in the use of any force that [he] [she] reasonably believes to be necessary to prevent the escape of the arrested person from custody.

Fla. Std. Jury Instr. (Crim.). 3.6(h) (emphasis added).

85. Here, during the motion for a new trial, the Defendant’s trial counsel admitted that he never discussed with the Defendant or prepared a defense relating to use of force when effectuating a citizen’s arrest. Therefore, because this defense was not raised trial counsel did not request a complete justifiable use of force jury instruction. At no point in time was the failure to request this instruction part of a strategy or tactic. When questioned about the failure to request the instruction, the following ensued:

Q: All right. Did you – after the trial, did you determine that you – that you had – were deficient in your performance as a lawyer?

A: Yes, I did, because I was asked about the – the Court – for the first time, I was asked, did you – well, how did the argument go with regard to the use of force and the citizen’s arrest. And I indicated that I didn’t argue that because that – I didn’t think that applied to his situation.

Q: What, in your professional judgment as a lawyer for 20 25 years practicing in the area of criminal defense – criminal law, what instructions should you – had you been rendering effective assistance of counsel, what instructions should you have requested of the jury after the facts were all in, prior to the Court – when the Court was considering jury instructions, what should you have asked, if you did your job right?

A: Well, I should have probably read some case law as it relates to 776.07 and found the Howell case and asked for the instruction that a citizen is allowed to use force to effect an arrest of a person committing a felony in the citizen's presence, and that the citizen has a right to use force to prevent that felon from escaping the scene of the arrest, and then under some circumstances, that force can be deadly force. I would have asked for an instruction in that vein.

Q: Well, did you ask for that instruction?

A: I did not.

Q: Do you believe that you were deficient as a lawyer for not asking for that instruction?

A: I do.

Q: Was there any tactical reason whatsoever for not asking for that instruction?

A: **Tactical reason, no. No. There was no tactical reason. I wasn't aware of the law as it relates to that issue. So there was no decision to be made, because I wasn't aware of the law.**

Q: All right. So it wasn't a strategic reason not to ask for it. You didn't ask for it because you missed it?

A: Well, a strategic reason would be, you know, we have this defense over here, we have this line of defense over here, and we're aware of all those lines of defenses. But we choose one over the other because of some perceived advantage that may be obtained. In this case, I sought self-defense, okay, but I did not even recognize, or see, or acknowledge the existence of the other line of defense, that being use of force and citizen's arrest.

(Exhibit A, Page 24-25) (emphasis added).

86. Strickland cautions courts to refrain from second-guessing counsel's strategic decisions from the superior vantage point of hindsight. Id. at 689. "Strategic choices made **after a thorough investigation of law and facts relevant to plausible options** are virtually unchallengeable." Id. at 690-691 (emphasis added). At the same time, "virtually unchallengeable" does not mean wholly unchallengeable. See Pavel v. Hollins, 261 F.3d 210, 218 (2d Cir. 2001), see also Phoenix v. Matesanz, 233 F.3d 77, 82 (1st Cir. 2000). "Certain defense strategies, however, may be so 'ill-chosen' as to render counsel's overall representation constitutionally defective." Adams v. Balkcom, 688 F.2d 734, 738 (11th Cir. 1982). "So called 'strategic' decisions that are based on a mistaken understanding of the law, or that are based on a misunderstanding of the facts

are entitled to less deference.” Hardwick v. Crosby, 320 F.3d 1127, 1186 (11th Cir. 2003) (citations omitted).

87. In the order denying a motion for a new trial, the Trial Court reasoned that at no point was there testimony that Mr. Coleman was attempting to prevent the complainant from escaping following an alleged felony she committed. (Exhibit B, Pg. 18). The Court also expressed concern that the claim of using force to prevent a felon from fleeing was refuted by the complainant and her boyfriend who alleged that no felony occurred and the only testimony that alleged a felony occurred came from the defendant. (Exhibit B, Pg. 17).

88. “A defendant is entitled to have his jury instructed on the law applicable to his theory of defense if there is any evidence presented supporting such a theory, even if the only evidence supporting the defense theory comes from the defendant’s own testimony.” Bozeman v. State, 714 So.2d 570, 572 (Fla. 1st DCA 1998).

89. The error by trial counsel in not requesting a proper jury instruction to be read based on forcibly preventing a felon from escaping is apparent on the face of this record. See Shedd v. State, 137 So. 3d 456 (Fla. 4th DCA 2014) (holding failure to request a prescription defense instruction constitutes ineffective assistance of counsel on the face of the record); See also Ramirez v. State, 125 So. 3d 171 (Fla. 4th DCA 2013).

90. During the trial Mr. Coleman testified that while observing the events between complainant and another third-party individual he radioed his office to call emergency services to his location. The following testimony ensued during direct examination:

Q: You are getting out and attending to Mr. Johnson? Wait a minute. I took away the frame of reference here. Let me put that back. Wait a minute.
A: Move it down a little bit.
Q: (Complies)

A: Once I entered here (indicating) and I could see the vehicle coming in a direction back towards the male laying in the road, Mr. Johnson, as I exited the vehicle, I could see Mr. Johnson getting to his feet.

Q: Are there other bystanders by now?

A: At this time?

Q: Yes.

A: There's the two males that were over here that I previously spoken with (indicating).

Q: Anybody else?

A: At that time there was no one else.

Q: So he's getting to his feet and then what –

A: Mr. Johnson is getting to his feet, I see the vehicle and I perceive the vehicle to be more of a danger than even Mr. Johnson getting to his feet. The man is starting to stand up, but the vehicle is starting to go towards him again. I jump out of my vehicle and yell stop, get out of the car, stop your car.

Q: So you did order her out of her car?

A: Yes.

Q: In a commanding voice you told her to get out of her car?

A: That is correct.

Q: Your purpose in doing that was what?

A: **To stop her from possibly injuring Mr. Johnson again. I just observed a forcible felony –**

...

Q: After she got out of the car, what did you do?

A: I told her to have a seat on the curb.

Q: Did she do that?

A: No. She did mention that she was wearing a skirt. I happened to look, she was wearing a black tank top and leopard or cheetah skirt.

Q: You have her sit somewhere else?

A: She actually asked to lean on the front of my vehicle.

Q: Did you let her do that?

A: Yes.

Q: What happened after that?

A: After that, she was out of the vehicle. Mr. Johnson is actually limping around over here (indicating) yelling at Ms. Guillory.

Q: They are still having this argument?

A: Yeah. He's pretty pissed. Someone just hit him with the vehicle.

Q: So he's – they are still having this exchange, then what?

A: **That's correct. Finally I get him to stop yelling, I get Ms. Guillory to stop yelling back at him, and I told them that Fire Rescue is on the way.**

Q: Did you ask someone from Urban Enforcement to summon the emergency services?

A: Correct. When I was parked here (indicating) and I first watched the incident happen where the vehicle made contact with Mr. Johnson, our practice sometime, to provide better response, is to call over the radio for another officer to get the ambulance or police started even quicker, and we could render aid, if that's what we needed to do.

Q: So you took the appropriate action in that regard?

A: That is correct.

(Exhibit C, Page 442-443; 446-447) (emphasis added).

91. While the words “citizen’s arrest” were not used, the testimony provided by Mr. Coleman shows that he was attempting to detain the complainant until law enforcement arrived for the felony he observed the complainant commit. Therefore, because trial counsel elicited testimony that lends itself to a citizen’s arrest defense a complete jury instruction should have been requested and read to the jury.

92. In this instant case not requesting a complete jury instruction greatly prejudiced Mr. Coleman. In Ramirez, 125 So. 3d 171, the court held,

Where a jury is not instructed on the law of a crucial defense, a “defendant is deprived of a fair trial if the error divests the defendant of his or her ‘sole, or ... primary, defense strategy’ and that defense is supported by evidence adduced at trial that could not be characterized as ‘weak.’” *McCoy*, 56 So.3d at 40 (quoting *Martinez v. State*, 981 So.2d 449, 455–57 (Fla.2008)). The justification for this rule follows logic. “An affirmative defense does not concern itself with the elements of the offense at all; it concedes them. In effect, an affirmative defense says, ‘Yes, I did it, but I had a good reason.’” *State v. Cohen*, 568 So.2d 49, 51–52 (Fla.1990). Therefore, if a jury is not instructed as to a defendant’s affirmative defense, and that affirmative defense remains the defendant’s sole or primary defense to the charge, then the jury, confining itself to the instructions provided by the court, would be *required* to convict.

Id. at 176.

93. While Mr. Coleman had a self-defense argument available to him, the defense of a justifiable use of force in effectuating a citizen's arrest should have been utilized as a primary defense to the charge.

94. Defense counsel's most important duty is to protect the client's overall interests. "Counsel's concern is the faithful representation of the interest of his client." Tollett v. Henderson, 411 U.S. 258, 268 (1973). Therefore, counsel must investigate "all reasonable lawful means to attain the objectives of the client." Nix v. Whiteside, 475 U.S. 157, 166 (1986); see also Strickland, 466 U.S. at 688 ("From counsel's function as assistant to the defendant derive[s] the overarching duty to advocate the defendant's cause....").

95. Trial counsel performed deficiently when he did not request this jury instruction. Therefore, Mr. Coleman was greatly prejudiced and had the jury received the instruction as to the defense of effectuating a citizen's arrest by use of force, Mr. Coleman would have been found **not** guilty on both counts.

B. Failure to Properly Prepare and Call an Expert Witness to Present a Mental Health Defense as to the Defendant's PTSD

96. It is well-settled that under the United States and Florida Constitutions, effective assistance of counsel requires that trial counsel conduct a reasonable investigation into the facts of the case. Shelito v. State, 121 So.3d 445 (Fla. 2013); Davis v. State, 928 So.2d 1089 (Fla. 2005); Freemen v. State, 858 So.2d 319, 325 (Fla. 2003); see also Coles v. Peyton, 389 F.2d 224, 226 (4th Cir. 1968) (holding "the defendant's right to representation does entitle him to have counsel conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial"); Scott v. Wainwright, 698 F.2d 427, 429-30 (11th Cir. 1983) (defense counsel's failure to familiarize himself with the facts and relevant law made him so ineffective that the petitioner's guilty plea

was involuntarily entered); Washington v. Strickland, 693 F.2d 1243, 1257 (5th Cir. 1982) (when counsel fails to conduct a substantial investigation into any of his client’s plausible lines of defense, the attorney has failed to render effective assistance of counsel). Moreover, “[t]rial counsel has a duty to investigate any potential . . . exculpatory evidence that may assist his or her client.” Bell v. State, 965 So.2d 48, 62 (Fla. 2007). An evidentiary hearing is warranted where the Defendant’s postconviction motion alleges trial counsel failed to investigate. Greeson v. State, 729 So.2d 397 (Fla. 1st DCA 1998).

97. Rule 702 of the Federal Rules of Evidence, mirrored in the State of Florida pursuant to Fla. Stat. § 90.702 governs the admissibility of expert testimony:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

See Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 588 (1993). Whether the testimony will assist the trier of fact is essentially a determination concerning relevance. Id., at 591; see also United States v. Downing, 753 F.2d 1224, 1242 (3d Cir. 1985) (whether expert testimony proffered in the case is sufficiently tied to the facts of the case that will aid the jury in resolving a factual dispute.) A trial court is to be afforded broad discretion in determining the subject on which an expert may testify in a particular trial. See Angrand v. Key, 657 So.2d 1146, 1148 (Fla. 1995). The proponent of expert testimony always bears the burden to demonstrate, therefore, that the expert is qualified to testify, the matters upon which he wishes to opine are relevant and the basis for the opinion is reliable, and that his testimony will help the jury understand some fact at issue because it is beyond the understanding of an average lay person. See United States v. Frazier, 387 F.3d 1244, 1260 (11th Cir. 2004).

98. A defendant has a fundamental right to present witnesses and offer evidence relevant to his defense. Washington v. State, 737 So.2d 1208, 1221 (Fla. 1st DCA 1999) citing Chambers v. Mississippi, 410 U.S. 284, 302, (1973)). This is especially true in the case of self-defense. In Florida, expert testimony offered to aid the jury in interpreting the surrounding circumstances as they affected the reasonableness of the defendant's actions in defending himself is admissible. Hawthorne v. State, 408 So.2d 801, 806 (Fla. 1st DCA 1982). The Court in Hawthorne distinguished expert testimony to support a theory of self-defense from expert testimony in insanity or diminished capacity defenses.

99. In Hawthorne, the defendant shot her husband and sought the testimony of a clinical psychologist who would have testified as an expert on battered woman syndrome. Id. at 805. "The purpose of such testimony would have been to give the jury a basis for considering whether appellant suffered from the battered-woman syndrome, not in order to establish a novel defense, but as it related to her claim of self-defense. Id. The Court stated:

We think there is a difference between offering expert testimony as to the mental state of an accused in order to directly "explain and justify criminal conduct," and the purpose for which the expert testimony was offered in the instant case. In this case, a defective mental state on the part of the accused is not offered as a defense as such. Rather, the specific defense is self-defense which requires a showing that the accused reasonably believed it was necessary to use deadly force to prevent imminent death or great bodily harm to herself or her children. The expert testimony would have been offered in order to aid the jury in interpreting the surrounding circumstances as they affected the reasonableness of her belief. The factor upon which the expert testimony would be offered was secondary to the defense asserted. Appellant did not seek to show through the expert testimony that the mental and physical mistreatment of her affected her mental state so that she could not be responsible for her actions; rather, the testimony would be offered to show that because she suffered from the syndrome, it was reasonable for her to have remained in the home and, at the pertinent time, to have believed that her life and the lives of her children were in imminent danger.

Id. at 806-807 (citations omitted).

100. The Florida Supreme Court has similarly held such testimony is admissible. See State v. Hickson 630 So.2d 172, (1993). Trial counsel's decision to not investigate or hire experts to assist in Coleman's defense is scrutinized by a Strickland analysis.

101. Prior to trial, the defendant provided trial counsel with information of his military service. Mr. Coleman had been deployed to Ethiopia and a number of hostile cities in Iraq, specifically, Baghdad and Fallujah.

102. Mr. Coleman had conveyed to trial counsel that he had been diagnosed with PTSD upon returning from deployments during routine psychiatric evaluations. Additionally, the defendant also began psychotherapy in mid-2005 to examine his difficulty related to coping with vivid flashbacks from his time in service.

103. Defense counsel did not call any experts to establish a self-defense claim for Mr. Coleman, despite possessing the knowledge provided by Mr. Coleman. Trial counsel was deficient in providing a viable self-defense case because they failed to present evidence that Mr. Coleman suffered from PTSD. The jury instruction for self-defense was provided by the trial court in part:

In deciding whether defendant was justified in the use of deadly force, you must judge him by the circumstances by which he was surrounded at the time the force was used- The danger facing the defendant need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real.

...

In considering the issue of self defense, you may take into account the relative physical abilities and capacities of the defendant and Aimee Guillory.

104. When trial counsel failed to properly prepare and investigate a potential defense Mr. Coleman was denied the effective assistance of counsel. Here, counsel failed to prepare a defense based on the Defendant's PTSD he experienced as a result of the time he served in the United States Marines.

105. To succeed with a self-defense claim in this case, the most crucial aspects were Mr. Coleman's perception of Ms. Guillory's actions, Mr. Coleman's state of mind, and why he fired at the vehicle. Among other things Mr. Coleman had to establish that he reasonably believed he was in danger of Ms. Guillory in her vehicle and that belief justified firing Ms. Guillory's car. The only way to explain Mr. Coleman's justification was through expert opinion.

106. In Paine v. Massie, 339 F.3d 1194 (10th Cir. 2003) defense counsel's performance was found to be deficient where he did not offer expert testimony on battered woman syndrome to support a claim of self-defense. In Massie the defendant shot her husband at their home. Id. at 1196. Her attorney called witnesses who testified that she was verbally, mentally, and physically abused by the husband. Id. Her attorney offered an expert psychologist who gave an opinion that Ms. Paine was in genuine fear for her life at the time of the shooting but did not offer expert testimony regarding the effects of battered woman's syndrome or "how such a condition might have affected the objective reasonableness of her subjective fear." Id. at 1197.

107. The State acknowledged "that Ms. Paine's counsel labored extensively to establish that Ms. Paine's subjective fear was genuine... However, [the Court stated] the State points to not one instance of counsel attempting to establish the reasonableness of that fear in the context of Ms. Paine's being a [battered woman's syndrome] sufferer... Counsel's failure to offer expert [battered woman's syndrome] testimony to provide context for the jury on the reasonableness of Ms. Paine's subjective fear amounts to objectively unreasonable performance." Id. at 1201.

108. In this case, trial counsel argued self-defense through Mr. Coleman’s actions, but like Massie failed to show Mr. Coleman’s fear in the context of his PTSD. Massie demonstrates that counsel must investigate outside the courtroom to present a complete defense inside the courtroom. Not providing jurors with Mr. Coleman’s mental condition to justify his actions was the equivalent of a doctor describing to a patient his symptoms, but never giving a diagnosis. The patient (in this case jurors) are left without an explanation.

109. “Trial counsel has a duty to investigate a defendant’s mental state if there is evidence to suggest that the defendant is impaired.” Douglas v. Woodford 316 F.3d 1079, 1085 (9th Cir. 2003). In Woodford, trial counsel became aware that a psychiatric defense could be helpful early in the case. Id.

110. Trial counsel should have investigated this possible defense to present during trial. Evidence of PTSD is relevant on the question of self-defense. In State v. Mizell, 773 So.2d 618 (Fla. 1st DCA 2000) the court held:

...That PTSD evidence is relevant on the question of self-defense. The standard jury instruction for self-defense, which the trial judge quoted during the hearing, indicates that a defendant’s perceptions are relevant when assessing applicability of self-defense. See Fla. Std. Jury Instr. (Crim.) 45, 48 (“Based upon appearances, the defendant must have actually believed that the danger was real.”). The cases that admit evidence of BSS do so to help the jury understand why the victim would subjectively fear increased aggression against her. See Hawthorne v. State, 408 So.2d 801, 806-07 (Fla. 1st DCA 1982) (“The expert testimony would have been in order to aid the jury in interpreting the surrounding circumstances as they affected the reasonableness of her belief ... that because she suffered from the syndrome, it was reasonable for her to have remained in the home and at the pertinent time, to have believed that her life and the lives of her children were in imminent danger.”).

Id. at 621.

111. A medical expert could have determined and testified to the degree of severity to which Mr. Coleman suffers from PTSD and the likelihood that an event, such as getting hit by a car, can trigger adverse reactions in PTSD sufferers.

112. It is not unreasonable to surmise that when the complainant drove her vehicle toward the defendant, she triggered flashbacks in Mr. Coleman which led to the events that transpired from this case.

113. Although there is a strong presumption that trial counsel's decision to not call a witness is strategic, "counsel prejudices his client's defense when counsel fails to call a witness who is central to establishing the defense's theory-of-the-case." Harrison v. Quarterman, 496 F.3d 419, 427-28 (5th Cir. 2007); see Moore v. Johnson, 194 F.3d 586, 604 (5th Cir.1999) ("The Court is ... not required to condone unreasonable decisions parading under the umbrella of strategy."). Furthermore, this complete lack of representation in and of itself bears forth the argument that trial counsel was ineffective per se.

114. Courts have continued to flesh out the responsibilities and actions counsel must take to be considered effective under the Sixth Amendment. The duty to investigate and prepare a defendant for an impending legal proceeding is at "the heart of effective representation." Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir. 1982); see also Arredondo v. United States, 178 F.3d 778, 788 (6th Cir. 1999). This tenant stands particularly true for pre-trial preparation because it is considered to possibly be the most critical stage when it comes to preparing on behalf of a client. See Von Moltke v. Gillies, 332 U.S. 708, 721-23 (1948); Powell v. Alabama, 287 U.S. 45, 57 (1932).

115. As a consequence, trial counsel's deficient performance in presenting a mental health, self-defense argument greatly prejudiced Mr. Coleman. This warrants a presumption of prejudice and a finding that he received ineffective assistance of counsel under the framework of Strickland.

C. Failure to introduce Complainant's Criminal Record through Reverse Williams Rule evidence by the Questioning of Diandra Reeves

116. The complainant was previously prosecuted in an unrelated case in Orange County, Florida (Case No: 2014-MM-004628). In that case the complainant used her vehicle to strike the victim. (Exhibit I). Initially, trial counsel attempted to depose the victim in that case, Mrs. Reeves, to question her about the events surrounding that case however she had become unavailable. (Exhibit D, Pg. 17).

117. During a pre-trial hearing on a motion in limine with respect to testimony elicited by Mrs. Reeves the following ensued:

MR. ARCKEY: Yes, Your Honor. My last motion in limine is in regards to the Williams Rule evidence and the witness of the – Diandra Reeves. She was subpoenaed for a deposition. She failed to appear for that deposition. They also are using Williams Rule evidence as a – essentially, a propensity argument. I believe it's not relevant under 401 and under 403, as it involves a battery case that victim is involved in against a Diandra Reeves. Their claim is, is that it was done in a similar fashion by using a car to basically accost the victim in that case, who is Ms. Reeves. The State's position on that is that that is not relevant to this case. There's different factual circumstances. She's also only charged with battery in that case. I think the facts of that case are substantially different than what we have here at hand. And that because the State wasn't able to do a depo, the State can't really contest what's going to be said in that, and that this also was not in the mind of the – of Mr. Coleman at the time, so, therefore, it does not go to any self-defense theory because that is not a – a case that he was aware of at the time of this incident.

THE COURT: Defense?

MR. ADAMS: Judge, we haven't had any contact with Diandra Reeves. We had tried several times to subpoena her and we've made other efforts to communicate with her also. I think the – I'd ask the Court to reserve. I think the most likely scenario that we would use

her, if we hypothetically found her during this trial, would be as a potential rebuttal witness. I don't think we're going –

THE COURT: For what purpose?

MR. ADAMS: A rebuttal witness. I think we're – we have a motion in limine we're going to address next. We are – we do think we're allowed to ask – ask Aimee Guillory about the fact that she does have pending criminal charges with the Orange County State Attorney's Office; probably limited to that. If she were to answer that a certain way, or if she were to open the door at some point during her testimony, we – we think that Diandra's testimony could be relevant.

118. During trial Mrs. Reeves became available. When it was brought to trial counsel's attention that Mrs. Reeves was available, trial counsel should have sought a recess to call her to testify as a defense witness through reverse Williams rule evidence.

119. As held in Williams v. State, 110 So.2d 654 (Fla. 1959), Williams rule evidence is evidence of prior bad acts or crimes of the defendant presented by the State used as character evidence of the accused when relevant to prove a material fact in issue. It has since been codified under Florida Rules of Evidence 404(2)(a).

120. It has been held under Williams that evidence of another crime is irrelevant unless it has direct probative value to the crime charged. In this case the testimony of Mrs. Reeves, regarding the case in which she was a victim of the complainant, would have shown that on the night in question; the complainant acted in a manner consistent with her behavior of hitting individuals with her car during altercations. It is highly likely that this testimony would have led the jury to infer that the State's witness, in this instance the complainant, was the aggressor and not Mr. Coleman. See Moreno v. State, 418 So.2d 1223, 1225 (Fla. 3rd DCA 1982).

121. In Rivera v. State, 561 So. 2d 536 (Fla. 1990), the Florida Supreme Court held:

We agree with the Third District Court in Moreno that where evidence tends in any way, even indirectly, to establish a reasonable doubt of defendant's guilt, it is error to deny its admission. § 90.404(2)(a), Fla.Stat. (1985). However, the admissibility of this

evidence must be gauged by the same principle of relevancy as any other evidence offered by the defendant.

Id. at 539.

122. In this instant case, failing to call Mrs. Reeves when she became available was prejudicially deficient performance by trial counsel. This ineffectiveness prevented Mr. Coleman from showing that he would have been justified in his self-defense claim because it was unlikely that he was the aggressor given the circumstances surrounding the events that transpired. Had Mrs. Reeves been called to testify, her testimony would have cast doubt on the testimony of the complainant thereby justifying Mr. Coleman's claim of self-defense and leading to a verdict of not guilty. In fact, another event occurred following the resolution of this case which substantiates the self-defense claim by Mr. Coleman. On October 17, 2016 Ms. Guillory was arrested for Aggravated Assault with a Deadly Weapon and Criminal Mischief in case 16-CF-013229. Mr. Johnson, the same individual that was hit by Ms. Guillory's car in this instant case was also the victim in 16-CF-013229. (Exhibit J). While 16-CF-013229 clearly occurred after the close of this instant case, this shows Ms. Guillory's propensity toward violence, which had Mrs. Reeves been called would have shed light on the violent nature of Ms. Guillory. (Exhibit J).

D. Failure to Properly Impeach Aimee Guillory and Vince Johnson

123. "An ineffective assistance of counsel claim consists of a performance component and a prejudice component." Kegler v. State, 712 So.2d 1167, 1168 (Fla. 2d DCA 1998). "The performance component requires a showing by the defendant that counsel's performance was not reasonable under the circumstances." Id. The prejudice component requires a showing by the defendant that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. (citing Strickland, 466 U.S. at 694).

124. Failure to impeach a witness is a ground for a claim of ineffective assistance of counsel. Isidore v. State, 181 So.3d 1227 (Fla. 3rd DCA 2015); see also Kelly v. State, 198 So.3d 1077 (Fla. 5th DCA 2016) (holding failure to impeach a witness may amount to ineffective assistance of counsel, warranting relief). A failure to impeach a witness is especially crucial when the credibility of witnesses becomes central to the trial. Id. at 1078.

125. In Kegler, trial counsel failed to impeach two crucial state witnesses, whose testimony's, led to the conviction of the defendant. The testimony of one of the witnesses significantly contradicted their statement that was given during the night of the murder. The court found that the trial counsel's **failure to impeach one of the witnesses that testified was not reasonable under the circumstances of this case.** Id. at 1169 (emphasis added).

126. As in Kegler, two of the State' key witnesses, Guillory and Johnson offered contradicting testimony that cast doubt on their credibility. In fact, during closing arguments trial counsel submitted to the jury that both Guillory and Johnson were lying:

MR. MULLINS: He didn't go to the hospital, nowhere to be found. They go looking for him, they can't find him. But you know, it's funny when she files her civil case and he's available to testify, the cops come up to the witness stand the other day and testifies about oh, yeah, all this happened, she wasn't doing anything and she didn't hit me and I was wearing a cast, and the Judge is going to tell you that you can believe or disbelieve all or any part of the testimony given by any witness. We submit to you that they are both lying.

(Exhibit K, pg. 556).

127. Guillory's testimony elicited that Guillory was transported to the hospital to have surgery on her arm following the events that transpired. Trial counsel failed to elicit any testimony from Johnson or Guillory as to why Johnson did not visit Guillory in the hospital as she was recovering from surgery. This line of questioning would have been vital to the determination of

the credibility of both Guillory and Johnson as to why Mr. Coleman was attempting to intervene during the violent interaction between Guillory and Johnson.

128. If Johnson was questioned as to why he did not go to the hospital following the incident, his testimony would have shown that Johnson made the decision because he was injured by the vehicle that Guillory hit him with.

129. If Johnson went to the hospital with the injury to his arm he may have been seen by Police Officers handling the investigation of Guillory and inadvertently implicate her in a battery. Johnson's motives to protect Guillory were made known to trial counsel during a deposition and during trial. During Johnson's testimony the following ensued:

[Mr. Mullins]: Okay. Sir, in an earlier statement did you not indicate that you would be willing to take any charges that Ms. Guillory might have coming her way?

A I did at the time.

Q You said that? Now you just heard the testimony that you gave earlier; is that right?

A Correct

(Exhibit F, Pg. 97)

130. Clearly, failure to elicit this line of testimony was completely unreasonable, an egregious error, and greatly prejudiced Mr. Coleman. Failure to inquire further as to why Johnson failed to visit the mother of his child in the hospital was not a sound trial strategy employed by trial counsel. Trial counsel knew that Johnson was trying to protect Guillory and yet trial counsel did not properly impeach him with questioning of the hospital. If the jury was allowed to hear testimony of this nature, a shadow would have been cast on the credibility of both Guillory and Johnson. The claim that Guillory did not hit Johnson would have been refuted and the jury would have seen that Johnson and Guillory were less than truthful. If these two witnesses were properly impeached it is highly likely that the jury would have returned a verdict in favor of Mr. Coleman.

E. Prejudice

131. The cumulative effect of the errors outlined above denied Mr. Coleman his Sixth Amendment right to effective assistance of counsel because each error, individually, rose to the level of deficient performance on trial counsel's part, which prejudiced Mr. Coleman. See Hurst v. State, 18 So.3d 975 (Fla. 2009) (where multiple errors are found, even if deemed harmless individually, the cumulative effect of such errors may deny to defendant a fair and impartial trial). But for trial counsel's errors, there is a reasonable likelihood that the outcome of Mr. Coleman's case would have been different.

RELIEF REQUESTED

132. The Florida Supreme Court explained that "if the trial court finds that the motion is facially sufficient, that the claim is not conclusively refuted by the record, and that the claim is not otherwise procedurally barred, the trial court should hold an evidentiary hearing to resolve the claim." Jacobs v. State, 880 So.2d 548, 551 (Fla. 2004).

133. Furthermore, trial courts should grant evidentiary hearings on 3.850 motions unless the motion, files, and records conclusively show that the prisoner is entitled to no relief. Jones v. State, 478 So. 2d 346, 346-47 (Fla. 1985).

134. Therefore, the judgment and sentence entered against Mr. Coleman on September 4, 2015, should be vacated and set aside as it is in violation of the United States and Florida Constitutions.

WHEREFORE, the Defendant respectfully requests that this Court grant the instant motion and enter an order:

(1) vacating the judgment of conviction and sentences entered against him on September 4, 2015, and dismiss the charges against him; or in the alternative;

(2) vacating the judgment of conviction and sentences entered against him on September 4, 2015, and grant him a new trial; or in the alternative;

(4) Set this matter for an evidentiary hearing on the claims raised herein, and

(5) grant such other and further relief as this Court may deem just, proper and equitable.

Dated: April 26, 2018

Respectfully Submitted,

/s/ Patrick Michael Megaro

Patrick Michael Megaro, Esq.

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New Jersey Bar ID # 3634-2002

New York Bar ID # 4094983

North Carolina Bar ID # 46770

Texas Bar ID # 24091024

Washington State Bar ID # 50050

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 26, 2018, I did cause a copy of the foregoing to be served upon the Office of the State Attorney, via the Florida E-Portal.

Dated: April 26, 2018

Respectfully Submitted,

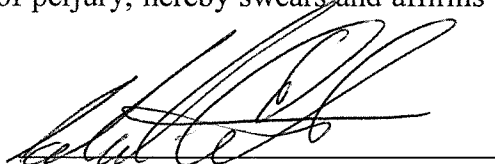
/s/ Patrick Michael Megaro

Patrick Michael Megaro, Esq.

NOTARIZED VERIFICATION

STATE OF FLORIDA
COUNTY OF Santa Rosa

Before me, the undersigned authority, personally appeared JOHNATHAN COLEMAN, who first being duly sworn, says that he: (1) is the Defendant in the above-styled proceeding; (2) has read the foregoing Motion for Post-Conviction Relief and has personal knowledge of the facts and matters therein set forth and alleged and understand the contents; (3) the motion is filed in good faith and with a reasonable belief that it is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court, (4) reads, writes and understands English; and (4) under the penalties of perjury, hereby swears and affirms that the foregoing is true and correct.



Signature

Johnathan A. Coleman

Printed Name

The foregoing was acknowledged before me this 18 day of April, 2018, by Halscott Megaro, who produced sufficient identification, and who did take an oath. Dept. of Corrections ID# X89810



Notary Public

My Commission Expires:



KRISTI JACOBSEN
MY COMMISSION # FF 237395
EXPIRES: June 4, 2019
Bonded Thru Budget Notary Services

Exhibit A

**IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION**

STATE OF FLORIDA,

Plaintiff,

CASE NUMBER: 2014-CF-7184-A-OR

vs.

DIVISION NUMBER: 16

JOHNATHAN ANDREW COLEMAN,

Defendant./

MOTION HEARING

BEFORE

THE HONORABLE GREG A. TYNAN

In the Orange County Courthouse
Courtroom 6D
Orlando, Florida 32801
August 20, 2015
Transcribed by Gillian Lawrence

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

ERIC R. ARCKEY

Assistant State Attorney
415 North Orange Avenue
Orlando, Florida 32801
On behalf of the State

ERNEST J. MULLINS

Attorney at Law
519 Patrick Street
Kissimmee, Florida 34741
On behalf of the defendant

WARREN W. LINDSEY

Attorney at Law
1150 Louisiana Ave., Su. 2
Winter Park, Florida 32801
On behalf of the defendant

JOSHUA E. ADAMS

Attorney at Law
33 E. Robinson St., Su. 111
Orlando, Florida 32801
On behalf of the defendant

I N D E X

(AUGUST 20, 2015; 9:04 A.M.)

MOTION HEARING

TESTIMONY OF ERNEST MULLINS

Direct Examination by Mr. Lindsey

20

Cross-Examination by Mr. Arckey

31

Redirect Examination by Mr. Lindsey

36

CERTIFICATE OF COURT REPORTER

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2 P R O C E E D I N G S

3 (August 20, 2015; 9:04 a.m.)

4 **THE COURT:** All right. State of Florida vs.
5 Johnathan Coleman. It's 2014-CF-7184-A-O. Parties
6 announce your appearance for the record, please.

7 **MR. ARCKEY:** Assistant State Attorney Eric Arckey
8 for the State.

9 (Pause)

10 **THE COURT:** All right. Counsel for Mr. Coleman, for
11 the purposes of the motion for new trial, please announce
12 your appearance for the record.

13 **MR. LINDSEY:** Your Honor, Warren Lindsey and Ernie
14 Mullins for Mr. Coleman. And Josh Adams is also present.

15 **THE COURT:** All right. For the purposes of the
16 motion for new trial --

17 **MR. LINDSEY:** Yes, Judge, we filed --

18 **THE COURT:** -- has anybody -- well, I guess, before
19 we get started, I know that you had filed a limited
20 notice of appearance for the purposes of representing him
21 for the motion for new trial. I have some concerns and
22 reservations about co-counsel being participants and
23 witnesses in the same proceeding.

24 **MR. LINDSEY:** Right. That's why we came, because I
25 got involved after the motion for new trial was filed. I

1 did not -- my involvement, my knowledge of the case, came
2 after the motion for new trial was called, and I would be
3 calling Mr. Mullins as a witness to support matters that
4 were raised, and confessions of error, that he raised in
5 his motion for new trial.

6 **THE COURT:** Okay.

7 **MR. LINDSEY:** I just -- go ahead.

8 **MR. MULLINS:** Judge, I -- if it pleases the Court, I
9 can always -- I'll file a motion to withdraw from the
10 case, you know, pending permission from my client to do
11 that, as well. I'm sure Mr. Adams would do the same, if
12 it makes it a little cleaner.

13 **THE COURT:** I don't know what ethical issues may
14 arise from this scenario. I've been doing this 20 years.
15 It's the first time I've ever seen it happen. I've heard
16 rumors of something of this happening in the past, but
17 I've never actually seen it happen. And I don't, quite
18 frankly, know what ethical issues there may or may not
19 be.

20 So I'm not going to tell you how to proceed one way
21 or another, because I don't think it's my position to do
22 so. I just have some concerns, and I think you recognize
23 those, and that's why Mr. Lindsey's here, in being able
24 to be the lawyer, as well as a witness in a case, since
25 the professional conduct rules indicate that that's a no-

1 no.

2 **MR. MULLINS:** Judge, I agree. I don't know that
3 I -- either myself or Mr. Adams can have any further
4 involvement with respect to the case. I can tell you
5 that I did contact the Florida Bar on this matter, and
6 they seemed to indicate that as to minor matters like the
7 bond motion that Mr. Adams filed, things that are
8 unrelated to this proceeding, that those things, we can
9 certainly go forward on. With respect to sentencing,
10 though, that, you know -- I didn't file my motion -- any
11 motions, with respect to my continued involvement in the
12 case, until I can see how this turns out.

13 **MR. LINDSEY:** Judge, what I did is after I was --
14 became involved, I got a -- an estimate of the cost of
15 the transcript, because I've never seen the transcript.
16 But I talked to Mr. Arckey earlier this week and he said
17 he was going to object to a postponement of the hearing.
18 I was going to ask for a postponement. I would not have
19 been able to get a transcript in time for the hearing to
20 come up to speed as to what occurred, other than what I
21 -- what has been represented to me as the facts in the
22 case, because I wasn't there. But I was -- because he
23 can't be a witness and a -- and the representative for
24 purposes of this motion, that's why I became involved.

25 **MR. ARCKEY:** And, Your Honor, that is a conversation

1 I've had with Mr. Lindsey. And involving my case
2 research and everything that has been involved up to this
3 point, the State is prepared to go forward on the motion
4 for new trial, but we would be asking for a legally
5 sufficient 3.850 to be filed, when it's currently filed
6 under the 3.600(b)(2) category.

7 **THE COURT:** Isn't there a case out there --

8 **MR. LINDSEY:** Judge, did you get our -- did you get
9 our memo or --

10 **THE COURT:** No.

11 **MR. LINDSEY:** Okay. Can I give you a copy that I
12 filed?

13 **THE COURT:** Sure. But there's a case out there that
14 says you can't file a 3.850 until after sentencing. This
15 is pre-sentencing.

16 **MR. ARCKEY:** And -- yes, Your Honor. And the
17 State's argument would be that this is not right. There
18 is a case out there, Jefferson v. State, that says that a
19 3.600(b)(2) can be filed as a 3.850. However, that was
20 a post --

21 **THE COURT:** And there's probably two or three other
22 cases that say that.

23 **MR. ARCKEY:** And that -- and most, or at least that
24 case was post-appeal. And so the State would be asking
25 that a 3.850 be filed post-conviction and during appeal.

1 **THE COURT:** What about the cases that say that you
2 can raise ineffective assistance of counsel in a motion
3 for new trial, and that if it is heard, that it can be
4 heard on direct appeal, although the consequence would be
5 that the defendant is precluded from raising the same
6 issue later on in a post-conviction motion? Have you
7 seen those cases?

8 **MR. ARCKEY:** I believe those were cases that were
9 sent to me yesterday, at approximately 2:00 p.m., by
10 Defense.

11 **MR. LINDSEY:** Judge, I think the purpose of being
12 allowed to raise -- you know, to raise an issue like this
13 in a motion for new trial is for conservation of
14 resources when it's fresh in everyone's mind. When it
15 just happened, there's no reason not to -- you know, not
16 to do it in this context of the parties are here and the
17 cases, I believe, permit the Court to hear it. I agree
18 with the Court's analysis of the way it works.

19 **THE COURT:** Well, I can tell both parties that I
20 have looked into that issue. I am comfortable that under
21 a 3.600 motion that ineffective assistance of counsel can
22 be raised. There are at least three opinions that I have
23 read, that indicate, although rare, it is a vehicle that
24 can be used under those circumstances.

25 And there seems to be a case, if I'm not mistaken,

1 out of the First DCA that indicates that the consequence
2 of doing that is if it's fully adjudicated as -- at a
3 hearing here on a motion for new trial, he would be
4 precluded at a later time after conviction, sentence and
5 appeal, of raising the same issue via a 3.850 since its
6 already been heard once. So I'm not concerned that this
7 is the inappropriate vehicle. I think it can be done
8 this particular way, based upon what I've seen, although
9 it's highly unusual.

10 **MR. ARCKEY:** Your Honor, the other concern from the
11 State is that we received a witness list, I believe,
12 Tuesday night -- or Tuesday afternoon, not night, with
13 only one of the counsels involved in this case. Having
14 just received the witness list, I have not been able to
15 set a deposition to figure out what that testimony was
16 going to be, and there has not been a witness list filed
17 with the other counsel to discuss a deposition, or to do
18 a deposition, regarding what their testimony is going to
19 be. And there are some important facts that I need to
20 get out regarding that, in order to proceed on the last
21 part of the 3.600 motion, in order to be able to defend
22 it properly.

23 **THE COURT:** Okay. With respect, Mr. Lindsey, to the
24 transcripts, are the transcripts needed for what portion
25 of the motion for new trial? The ineffective --

1 **MR. LINDSEY:** I could probably do it without them.

2 I mean, it's always preferred to have them, but --

3 **THE COURT:** Well, I mean --

4 **MR. LINDSEY:** I wasn't --

5 **THE COURT:** I guess, I'm asking -- there are three
6 claims made in the motion for new trial.

7 **MR. LINDSEY:** Correct.

8 **THE COURT:** One is that the greater weight of the
9 evidence doesn't support the verdict, which requires me
10 to reevaluate, kind of like a -- in this case, I think it
11 would be a seventh juror -- the evidence, and make a
12 determination of whether or not the evidence that I
13 observed during the course of the trial is unsupported by
14 the verdict. The second issue that was raised had to do
15 with the jury instructions reference self-defense. And
16 the third issue is the ineffective assistance of counsel
17 claim. For what purposes would you need the transcript?

18 **MR. LINDSEY:** Well, you were there. It would just
19 be to familiarize myself with the -- what occurred,
20 because I was not there. Because of the uniqueness of
21 the case. I mean, I've talked to counsel for the -- you
22 know, that represented Mr. Coleman. They've advised me.
23 I, you know, reviewed the file of Mr. Mullins, but
24 whenever you're not there, you know, you're always at a
25 little bit of a disadvantage in terms of knowledge of

1 exactly what happened. I believe I know what happened
2 based upon my conversations and the review of what I was
3 able to review, but there's nothing -- it's always better
4 to have the transcript, I think, in my professional
5 judgment. I did not -- I stopped it, because -- I
6 stopped, because I knew I wouldn't get it in time. But
7 my preference is always to have it.

8 **THE COURT:** All right.

9 **MR. LINDSEY:** But that would take -- I'm not sure
10 how long it would take. I would have to find out how
11 long it would take to get that.

12 And I mean, I read -- obviously, Mr. Mullins would
13 have to testify at the hearing. I -- out of an abundance
14 of caution, I did -- Mr. Arckey's right, I listed as a
15 witness -- I thought it was pretty implicit that he would
16 be making representations, either sworn or unsworn, at
17 the hearing, because of what he put in the motion for new
18 trial prior to me being advised. So out of an abundance
19 of caution, I listed him as a witness so there would be
20 no question that I would be calling him.

21 **THE COURT:** All right. And then, State, your
22 concern is you haven't deposed the witness?

23 **MR. ARCKEY:** I haven't deposed him or the other
24 attorney who was actually on the case from the very
25 beginning of the case, which would be important, who was

1 also not put on -- or was not put on that witness list.

2 So the State's concern is that there are some
3 clarifications in what was filed that I need to go
4 through. And the only way -- the only real remedy I have
5 for that is a deposition due to the nature of how this
6 was done. Normally in a 3.850 case, I would just call
7 the opposing counsel and talk to them. But given how
8 this was done, I would feel more comfortable doing it
9 under a deposition format and being able to get all the
10 questions I need to ask at that point.

11 And, Your Honor, that also creates an issue, because
12 we do have, as you're well aware, sentencing coming up
13 and whether or not this motion needs to be heard prior to
14 sentencing or postpone sentencing.

15 **MR. LINDSEY:** Well, it would have to be -- I think
16 it would have to be heard before. Because if you grant
17 it, there wouldn't be a sentencing.

18 **THE COURT:** True.

19 **MR. LINDSEY:** So --

20 **THE COURT:** And if I grant it after, it would be a
21 vacation of the sentence.

22 **MR. LINDSEY:** True.

23 **THE COURT:** So I --

24 **MR. LINDSEY:** True.

25 **MR. MULLINS:** Why waste the time, though?

1 **THE COURT:** All right. So what are you all asking
2 me to do?

3 **MR. LINDSEY:** Judge, we're prepared to go forward if
4 -- we're not asking for a postponement. We're prepared
5 to go forward.

6 **THE COURT:** Okay. State, prepared to go forward?

7 **MR. ARCKEY:** Not on the third claim today. I can go
8 forward on the first two claims. I'm not prepared on the
9 third claim today. I got a memorandum of law at 2:00
10 p.m. yesterday. I got a witness list after our
11 discussion of saying that I was ready to go on this on
12 Tuesday afternoon.

13 And then also there's the issue that one of the co-
14 counsels who was here for the entirety of the case, and
15 the individual who was on the case from the very
16 beginning, was not listed on that witness list. And
17 given the facts and circumstances on everything, the
18 State believes they need to do a deposition of both
19 counsels in this case.

20 And, Your Honor, we also have a concern of whether
21 or not there's been a waiver of privilege between both
22 counsels and their client so that these depositions can
23 go forward and that this hearing can go forward.

24 **THE COURT:** Mr. Lindsey, your request or desire to
25 review the transcript would be in relation to the

1 ineffective assistance of counsel?

2 **MR. LINDSEY:** No, I don't need it for that. I can
3 go forward right now without that.

4 **THE COURT:** Okay. And as -- so you're telling me
5 you're not requesting a copy of the transcript at this
6 point?

7 **MR. LINDSEY:** No. No, I can just go forward without
8 it. Unless you postpone it for some other reason. Then
9 I would try to get it.

10 **THE COURT:** All right. I'm going to take a five
11 minute recess, look at something, and then I'll come back
12 and let you all know what I'm going to do.

13 **THE COURT DEPUTY:** Everyone, please rise.

14 (Recess from 9:17 a.m. to 9:24 a.m.)

15 **THE COURT DEPUTY:** All rise. Court will come to
16 order.

17 **THE COURT:** All right. Go ahead and have a seat.

18 All right. What I think we're going to do is we're
19 going to go ahead and proceed forward with the hearing
20 today that is set and scheduled. Essentially -- or, the
21 third claim is essentially an ineffective assistance of
22 counsel claim. Generally speaking, discovery is not
23 permissible and isn't conducted absent good cause in
24 3.850 hearings.

25 Witness lists and other discovery aren't required,

1 so the fact that you haven't deposed those witnesses, I
2 don't think is a reason for us to delay the proceeding at
3 this point. I will also note that you originally
4 objected to a continuance of the hearing and then wanted
5 to continue it for purposes of taking those depositions. Mr.
6 Lindsey originally wanted to continue it and now doesn't
7 want to continue it. So I'm going just go forward with
8 the hearing then.

9 **MR. LINDSEY:** All right. Your Honor, we would call
10 Ernie Mullins.

11 **ERNEST MULLINS**

12 **being called as a witness, and having first been duly sworn,**
13 **testified as follows:**

14 **THE WITNESS:** I do.

15 **MR. ARCKEY:** Your Honor, may I interject briefly?
16 At this point, I'm still concerned about the waiver of
17 privilege from the defendant and his counsel taking the
18 stand. If I get up there and ask questions, he's going
19 to be able to say that he doesn't have to answer my
20 questions, if there's no waiver of privilege.

21 **MR. LINDSEY:** Well, Your Honor, Mr. Coleman is not
22 attacking his counsel. His counsel is confessing error.
23 His counsel -- the specific reason that -- if it is
24 raised, it allows this to be presented to you in this
25 context of a motion for new trial, is that something

1 happened, that it was at no fault of the client.

2 And so he's -- it's not a situation -- normally, I
3 agree with the State, that there's a waiver. And -- but
4 in this particular situation, you know, we're talking
5 about something that counsel has admitted that he did,
6 which was below the performance standards set forth in
7 Strickland and the other cases.

8 So I don't think that there is a waiver. I don't
9 think -- in this unique situation, it doesn't really come
10 up.

11 **THE COURT:** Well --

12 **MR. LINDSEY:** It definitely comes up if a -- if the
13 client attacks the performance of the lawyer. Of course
14 it does. This is a very unique situation that is --

15 **THE COURT:** But doesn't Mr. Mullins, at some point
16 during this proceeding, have to admit to conversations
17 that --

18 **MR. LINDSEY:** Yes.

19 **THE COURT:** -- he had to the client?

20 **MR. LINDSEY:** Yes. So I think that --

21 **THE COURT:** And doesn't the client have the
22 privilege to assert that you can't discuss those or not?

23 **MR. LINDSEY:** Yes, I agree.

24 **THE COURT:** So how does Mr. Mullins have the ability
25 to disclose those confidential communications unless I

1 know that Mr. Coleman --

2 **MR. LINDSEY:** Sure.

3 **THE COURT:** -- is willing to allow that and permit
4 that to happen?

5 **MR. LINDSEY:** Well, I've talked to Mr. Coleman and I
6 think for purposes of the hearing -- of course, the issue
7 of waiver of privilege is not a blanket waiver of
8 privilege either.

9 Just like in Bar cases -- I've done many Bar cases
10 where I represent an attorney, and even if a client
11 attacks an attorney, the attorney in response is not
12 allowed to retaliate to the attacks by bringing up
13 everything in the world that the lawyer -- it has to be
14 limited to the context of the issue that is being
15 complained of.

16 So I agree with the Court that there has to be a
17 limited waiver. And I've explained that to Mr. Coleman
18 and he understands that, but for purposes of bringing
19 this to the attention. But I don't think that there's a
20 complete waiver for all purposes, but a limited waiver
21 for certain communications that would be relevant to the
22 issues that the Court would be addressing.

23 **THE COURT:** State?

24 **MR. ARCKEY:** Your Honor, they're asking for --
25 basically, to handcuff the State into what they can ask

1 about this. And, as I had previously pointed out to Your
2 Honor, there are questions that are left up to
3 interpretation on how that motion was filed.

4 And this is the State's concern, is they can bring
5 out whatever they wish to bring out, and the State's
6 handcuffed to the extent that I can't discuss anything
7 outside what they have discussed. And that could be a
8 serious complication when we get through this hearing,
9 because I could get to a point where I need to ask
10 questions that are slightly outside, or drastically
11 outside even, that go to what this issue is, which is
12 conversations on whether or not they had trial strategy
13 regarding this, and conversations to whether or not
14 various other things were discussed. I've shown too much
15 of my hand right now.

16 **MR. LINDSEY:** Well, I mean, I think that implicit --
17 if I ask a question and the Court determines that that's
18 a question that opened a realm that would require a
19 finding of a waiver for purposes of the State being able
20 to properly respond, then so be it. But I don't think
21 that it's a -- I mean, I -- there's -- the case law is
22 clear, you don't completely waive everything in the
23 world, but you -- but there would be something that would
24 be -- that would be relevant for them to answer, then the
25 Court, you know, would let them ask the question.

1 **THE COURT:** All right. Well, I think the issue, for
2 the third issue raised in the motion for new trial, is
3 whether or not there was ineffective assistance of
4 counsel. In order to establish that claim, I think
5 there's going to be some testimony about what discussions
6 the lawyers had with the client about available defenses.

7 **MR. LINDSEY:** I agree.

8 **THE COURT:** And so what I need to know, I guess,
9 from you, Mr. Lindsey, is have you discussed with Mr.
10 Coleman the fact that during this proceeding, is he okay
11 with his lawyers disclosing what conversations they had
12 with him concerning the defense of this case?

13 **MR. LINDSEY:** Yes, because it's necessary in order
14 for the Court to hear the issues.

15 **THE COURT:** Okay. Let's go ahead and have Mr.
16 Coleman sworn in.

17 (The defendant sworn.)

18 **THE COURT:** All right. Mr. Coleman, tell me your
19 full name and date of birth, please.

20 **THE DEFENDANT:** Johnathan Andrew Coleman, 5/17/1979.

21 **THE COURT:** All right. Have you heard the
22 representations of Mr. Lindsey, your lawyer, for the
23 purposes of this motion for new trial?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** Okay. And have you discussed with him

1 the potential privileges that you have reference to
2 communications that you had with the two attorneys that
3 tried the case for you?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Okay. And you understand that during
6 the course of this proceeding that you have the right to
7 assert a privilege and not permit your lawyers to speak
8 about those discussions?

9 **THE DEFENDANT:** I do not understand that question.

10 **THE COURT:** I said, do you understand that you have
11 a right to assert your privilege to maintain the
12 confidentiality of your discussions with your lawyer
13 during the course of these proceedings if you want to?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Do you also understand that in order to
16 establish the allegations that it may be necessary for
17 your lawyers to discuss those confidential
18 communications?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** And then you understand that by doing
21 so, that would permit the State to inquire into questions
22 about what strategic decisions and what discussions you
23 and your attorneys had reference the defense in this case
24 and what theories may or may not be employed?

25 **THE DEFENDANT:** Yes, sir.

1 spelled E-R-N-E-S-T. My last name is spelled M-U-L-L-I-N-S.

2 Q And what is your business address?

3 A 519 Patrick Street, Kissimmee, and the courthouse
4 parking lot.

5 Q What is your occupation?

6 A I'm an attorney.

7 Q Are you a member of the Florida Bar?

8 A I am.

9 Q And how long have you been a member of the Florida
10 Bar?

11 A I've been a member of the Florida Bar since December
12 19th, 1986.

13 Q All right. So how many years have you been a member
14 of the Florida Bar?

15 A Nineteen years, almost. I mean, 29. I'm sorry, 29
16 years.

17 Q And what type of practice do you have?

18 A Primarily, criminal defense.

19 Q All right. Did you represent Johnathan Coleman, the
20 defendant in this case?

21 A As co-counsel, I did.

22 Q All right. And what were the charges against Mr.
23 Coleman?

24 A Mr. Coleman was charged with aggravated battery with
25 a firearm, shooting at or into an occupied conveyance.

1 **Q** All right. And you were one of the counsel of
2 records in the case?

3 **A** Yes.

4 **Q** Yes. Did you, subsequent -- well, Mr. Coleman was
5 convicted?

6 **A** He was.

7 **Q** And subsequent to the trial, did you file a motion
8 for new trial?

9 **A** I did.

10 **Q** And that's the motion for new trial that's pending
11 before the Court?

12 **A** Yes.

13 **Q** And when you filed the motion for new trial, did you
14 file that on your own?

15 **A** Did I file it --

16 **Q** Did you file it on your own?

17 **A** Yes.

18 **Q** Did you file it without the assistance or request of
19 Mr. Coleman?

20 **A** Yes.

21 **Q** And tell the Court why you filed the motion for new
22 trial and why you put the representations in it that you did.

23 **A** Well, we tried this case on the theory of -- that
24 Mr. Coleman was defending himself in having to use deadly
25 force, because deadly force was being exerted against him.

1 And there was a citizen's arrest issue, but only as it relates
2 to Mr. Coleman's presence at the location where all this
3 happened. We never, ever brought about the -- or discussed,
4 or thought of, or prepared anything with respect to the
5 citizen's arrest use of force correlation. Now, this case, of
6 course, you know, was a three day trial. And my son, who's
7 not even a law student -- not a lawyer --

8 **MR. ARCKEY:** Objection, Your Honor, as to narrative.

9 **THE COURT:** Sustained.

10 **BY MR. LINDSEY:**

11 **Q** All right. Did you -- after the trial, did you
12 determine that you -- that you had -- were deficient in your
13 performance as a lawyer?

14 **A** Yes, I did, because I was asked about the -- the
15 Court -- for the first time, I was asked, did you -- well, how
16 did the argument go with regard to the use of force and the
17 citizen's arrest. And I indicated that I didn't argue that
18 because that -- I didn't think that applied to his situation.

19 **Q** What, in your professional judgment as a lawyer for
20 25 years practicing in the area of criminal defense --
21 criminal law, what instructions should you -- had you been
22 rendering effective assistance of counsel, what instructions
23 should you have requested of the jury after the facts were all
24 in, prior to the Court -- when the Court was considering jury
25 instructions, what should you have asked, if you did your job

1 right?

2 **A** Well, I should have probably read some case law as
3 it relates to 776.07 and found the Howell case and asked for
4 the instruction that a citizen is allowed to use force to
5 effect an arrest of a person committing a felony in the
6 citizen's presence, and that the citizen has a right to use
7 force to prevent that felon from escaping the scene of the
8 arrest, and then under some circumstances, that force can be
9 deadly force. I would have asked for an instruction in that
10 vein.

11 **Q** Well, did you ask for that instruction?

12 **A** I did not.

13 **Q** Do you believe that you were deficient as a lawyer
14 for not asking for that instruction?

15 **A** I do.

16 **Q** Was there any tactical reason whatsoever for not
17 asking for that instruction?

18 **A** Tactical reason, no. No. There was no tactical
19 reason. I wasn't aware of the law as it relates to that
20 issue. So there was no decision to be made, because I wasn't
21 aware of the law.

22 **Q** All right. So it wasn't a strategic reason not to
23 ask for it. You didn't ask for it because you missed it?

24 **A** Well, a strategic reason would be, you know, we have
25 this defense over here, we have this line of defense over

1 here, and we're aware of all those lines of defenses. But we
2 choose one over the other because of some perceived advantage
3 that may be obtained. In this case, I sought self-defense,
4 okay, but I did not even recognize, or see, or acknowledge the
5 existence of the other line of defense, that being use of
6 force and citizen's arrest.

7 **Q** All right. When did you discover for the first
8 time, that that legal defense and that jury instruction would
9 have been the right thing, the legally appropriate thing for
10 you to have requested the Court? When was the first time, and
11 point in time, that you discovered that?

12 **A** Well, I had some discussion -- I got an e-mail from
13 an attorney. There was a -- counsel will recall, but there
14 was a group, a citizen's group, that came in here to witness
15 the reading of the verdict. And in that citizen's group was a
16 guy named Adam Sudbury. He was an -- he's an attorney. He
17 used to be down in Osceola County. And he sent me an e-mail
18 and said, did you argue the use of force as it relates to
19 citizen's arrest. And, no, I -- you know, that was the first
20 time, really -- that and the conversation I had when I got
21 home, with my son, about use of force -- same thing. So two
22 days later, I started researching the law, and that's when I
23 found that Howell case.

24 **Q** All right. And do you believe, in your professional
25 judgment, that had you known that that law existed, like you

1 said in the Howell case, that you had known that -- that you
2 could have requested an instruction that a person making a
3 citizen arrest could use force, including deadly force, if
4 they had reason to believe it was necessary to effect an
5 arrest or prevent an escape of a fleeing felon, would you have
6 asked for it?

7 **A** Without a doubt, I would have absolutely asked for
8 that instruction.

9 **Q** And do you believe that there was substantial --
10 substantial evidence in the record to have supported the
11 request for that instruction?

12 **A** Yes.

13 **Q** And what would that be?

14 **A** Well, the fact is that he was effecting a citizen --
15 Mr. Coleman was effecting a citizen's arrest. We got an
16 instruction with regard to that. There was evidence to
17 support the fact that she -- the she being Aimee Guillory,
18 who's the complaining witness in the case, was leaving the
19 scene, and she was told by others to leave the scene, of what
20 was a citizen's arrest. And she left the scene and he used
21 force that could have been perceived by a jury to have been
22 used to prevent her from leaving the scene.

23 **Q** All right. And was the -- there was the failure of
24 you to request the instruction we've talked about, in any way
25 or form, the fault of Mr. Coleman?

1 **A** No. He didn't even know about it.

2 **Q** Did -- had you known about the instruction, would
3 you have talked to him about it?

4 **A** Oh, yeah, absolutely.

5 **Q** And would you have developed additional facts and
6 evidence to additionally support it from what was already in
7 the record?

8 **A** I think it was implicit in the facts of the case
9 that he had that defense that was available to him. And,
10 yeah, I would have definitely talked to him about it.

11 **Q** And would you have -- would you have tailored your
12 arguments to the Court and to the jury around that argument
13 and making that argument, in terms of the presentation of
14 evidence, an argument to the jury?

15 **A** Yes, I would have.

16 **Q** Definitely?

17 **A** Absolutely.

18 **Q** All right. And after you found out about the law --
19 after you found out about this after -- after the trial, after
20 the jury had come back, did you make the decision yourself to
21 file a motion for new trial?

22 **A** Well, I looked at that case and I thought about my
23 argument, how we presented this case, and the first thing that
24 I thought about was that Strickland chronic standard, the two-
25 prong test, of ineffective assistance. And so I didn't see

1 how it didn't meet that standard, so I thought it appropriate
2 to file the motion.

3 **Q** All right. Are you familiar with the Strickland
4 case that is from the Supreme Court?

5 **A** Yes. It's a Supreme Court case from 1985. It deals
6 with the standard for ineffective assistance.

7 **Q** And are you familiar with the prevailing standards
8 of attorneys -- defense attorneys in the Ninth Judicial
9 Circuit in Florida, in terms of defending accused citizens in
10 these types of cases?

11 **A** Yes.

12 **Q** And do you believe without question that your
13 performance that you've discussed was substandard, that it was
14 -- that it was deficient under the Strickland v. Washington
15 standard?

16 **A** I believe it was.

17 **MR. ARCKEY:** Your Honor, this is going to ultimate
18 issue of fact that's for you to decide.

19 **THE COURT:** Response?

20 **MR. LINDSEY:** I think that he's allowed to -- as a
21 lawyer, as a professional, you're allowed to in effect --
22 he's been -- he's already testified in the record that
23 he's been a lawyer for 29 years. He practices primarily
24 in criminal law. I think that the Court is allowed to
25 hear testimony concerning his background, whether or not

1 he feels that he was deficient. I think that that's --
2 it is the ultimate and you have to make that decision
3 yourself, but I think that he is certainly qualified to
4 testify. In effect, it's some -- he's admitting
5 something against himself, so it even has much more
6 heightened credibility to it.

7 **THE COURT:** Well, he's already testified to that.
8 The question was, is whether or not he has an opinion as
9 to whether the standard in the community would be
10 deficient.

11 **MR. LINDSEY:** Right. I mean, he's -- I agree. He's
12 practiced for 29 years. I think that he's been -- he's
13 -- and he said in that time, in the area of criminal law,
14 I think he is -- he is competent to answer the question.

15 **THE COURT:** I'll overrule the objection. Whatever
16 weight, and evidence, or credibility that I put on it is
17 going to be based upon what I think.

18 **MR. LINDSEY:** Okay.

19 **BY MR. LINDSEY:**

20 **Q** All right. Under the Strickland v. Washington
21 standard, do you believe -- do you acknowledge that your
22 conduct that's been described was deficient to satisfy the
23 first prong of Strickland?

24 **A** Yes, I do, Mr. Lindsey. I think that any competent
25 attorney would have fleshed out that issue, and at least to

1 some extent, when I didn't do it at all.

2 Q And in terms of that -- I mean, after the trial,
3 after somebody had brought it to your attention, you
4 researched it, right?

5 A I did.

6 Q And you were able to find it without --

7 A It took me about five minutes to find that Howell
8 case.

9 Q All right. And had you found it, you would have --
10 you would have requested the instruction?

11 A Yes, I would have.

12 Q The -- and then in terms of -- in terms of you
13 sitting through the trial, do you believe it had an adverse
14 affect on the outcome?

15 A Yes, because the jury was only given one theory of
16 defense when they could have had two to consider. So I
17 believe it did.

18 Q All right. In terms of -- in terms of preparing a
19 criminal case for trial, as a criminal defense lawyer for 29
20 years, is researching the law in terms of a -- in a case like
21 this where there's a shooting, is that the basic elementary
22 practice?

23 A It is.

24 Q And is it, you know, in terms of this particular
25 issue about citizen's use of force to prevent -- to make an

1 arrest to prevent a escape of a felon, do you think it's just
2 basic -- a basic thing that you should have picked up on?

3 **A** I think so.

4 **Q** The -- all right. During any of your meetings with
5 Mr. Coleman, was this defense ever brought up or discussed?

6 **A** No.

7 **Q** Did he have -- did you ever discuss it with him at
8 any time?

9 **A** I did not.

10 **Q** And so there was never a decision by him, as the
11 client, not to go forward or explore it?

12 **A** That's correct.

13 **Q** And it was -- and then you've testified previously
14 there was zero strategy or tactical reason in not doing it,
15 correct?

16 **A** It -- that's correct. It can't be a strategic
17 decision if you're not aware of the choice that you have to
18 make. So I -- because I wasn't aware, I just plodded along
19 with self-defense. That's it. And I -- there was no decision
20 to be made, because I didn't -- I wasn't aware of the law in
21 this area.

22 **MR. LINDSEY:** That's all I have. Thank you, Your
23 Honor.

24 **THE COURT:** All right. Any cross-examination?

25 **MR. ARCKEY:** Yes, Your Honor.

CROSS-EXAMINATION

BY MR. ARCKEY:

Q Mr. Mullins, when did you get on this case?

A Mr. Arckey, I can't remember exactly, but I think it was around February of this year.

Q And when you got on this case, you were there for the stand your ground hearing, correct?

A I was there. Yes, sir.

Q You assumably looked through all the discovery, correct?

A Yes, sir.

Q Okay. Did you read -- or, the transcript and the statement of Mr. Coleman that night -- the night of the incident?

A For the -- are you talking about the statement that he made to police detective Stanley?

Q Yes.

A Okay. Yes.

Q You did read that?

A Yeah, I did.

Q It's your testimony here today that you never thought about this possible angle of defense?

A Believe it or not, Mr. Arckey, I didn't.

Q Mr. Mullins, you wrote the motion for new trial.

A I did.

1 **Q** And you were the one who authored it.

2 **A** Yes, sir.

3 **Q** You're the signatory on it.

4 **A** I am.

5 **Q** And in that, you admit that you were ineffective,
6 correct?

7 **A** I am. I was ineffective. Yes, sir. It's not
8 something I take lightly.

9 **Q** Paragraph 7 of that, you say that you were
10 misapprehended to the law on this point.

11 **A** That's right.

12 **Q** You didn't say that you didn't know the law on this
13 point, you said you were misapprehended on the law at this
14 point, correct?

15 **A** Yeah, I -- it's part and parcel the same thing. I
16 didn't know the law. If I'd have known the law, it would have
17 been different.

18 **Q** You also said that there was no testimony that he
19 was trying to make an arrest and that it wasn't available to
20 him in paragraph 7, correct?

21 **A** That's right. That's what I said.

22 **Q** Because there was no testimony at trial that he was
23 trying to make an arrest of her as she was leaving, correct?

24 **A** There was no -- he did not testify to that, but he
25 didn't need to testify to that.

1 **Q** You also said there -- or, there was also no
2 testimony in the transcript from the night of the incident
3 that he was trying to make an arrest of her, correct?

4 **A** That's right. He didn't say that.

5 **Q** And there was also no testimony at the stand your
6 ground hearing that the reason he was shooting his gun at her,
7 was to prevent her from escape, correct?

8 **A** That's right. So far, you're thinking about it the
9 same way I was.

10 **Q** During this trial, you had made multiple comments
11 regarding my approach to it, including that I had said that he
12 was acting like a police officer, or a cop, correct?

13 **A** I -- you know, I don't remember that.

14 **Q** Okay. Having a defense that he was trying to shoot
15 an escapee with -- would be inconsistent with him acting in
16 self-defense, isn't that correct?

17 **A** Not necessarily. I don't think so.

18 **Q** You said you've been a lawyer for 29 years?

19 **A** Yes, sir.

20 **Q** Have you done cases like aggravated battery before?

21 **A** Not this particular kind of case where you have an
22 aggravated battery with the shooting of a firearm and 10, 20,
23 life situation. No. But I have -- I have represented people
24 in aggravated battery cases that did not involve a fact
25 situation like this.

1 Q Have you represented people in shooting cases?

2 A Maybe, like, two or three. Yeah.

3 Q Now, did you also talk to Mr. Adams about this case
4 extensively?

5 A Oh, sure.

6 Q And Mr. Adams was on this case from pretty much the
7 inception, correct?

8 A Yes, I would agree.

9 Q So you don't know what the prior conversations that
10 were had with Mr. Adams before the February date that you got
11 in on this case in 2015, correct?

12 A The conversations that he had with -- with whom?

13 Q With your client.

14 A Oh. I wasn't privy to those conversations, but we
15 -- I'm pretty well aware of what conversations took place or
16 pretty much the substance of those conversations.

17 Q In your conversations with Mr. Coleman, did he ever
18 say he was trying to shoot her to prevent her from escaping?

19 A No.

20 MR. ARCKEY: May I have a moment, Your Honor?

21 (Pause)

22 BY MR. ARCKEY:

23 Q Mr. Mullins, do you know how many hours you or --
24 and Mr. Adams spent on legal research regarding this case?

25 A You know, we always charge flat fees. We don't keep

1 the log of hours. Civil lawyers do that. I'd say,
2 probably -- maybe, 20 hours. I don't know.

3 Q For you?

4 A Yeah.

5 Q How many hours did you spend researching this issue?

6 A Like, maybe, 10 minutes.

7 (Pause)

8 MR. ARCKEY: No further questions, Your Honor.

9 THE COURT: Redirect?

10 MR. LINDSEY: Just briefly.

11 **REDIRECT EXAMINATION**

12 **BY MR. LINDSEY:**

13 Q Mr. Mullins, now in your -- as the trial counsel,
14 and analyzing your acknowledgment of providing inadequate
15 counsel in this situation, do you believe that -- in your
16 analysis of the evidence, it was implicit in the evidence --
17 and there are lots and lots of evidence, that in effect, the
18 shooting was to prevent an escape?

19 A Yeah. And that's where -- I don't think he had a
20 say, or that had to be his narrative. That was my thinking,
21 which you just heard on cross.

22 Q Right.

23 A And that is that it's for the jury to determine
24 that. Okay? There are facts from which they could have
25 gotten an instruction and that instruction may have led them

1 to a not guilty verdict. So it's -- the facts -- the other
2 facts in the case support the giving of that instruction. It
3 does not have to be his testimony. So I believe that it's
4 implicit in the other facts of the case.

5 **Q** But you never even asked him -- you never question
6 -- you never even questioned or asked him about it anyway.

7 **A** I never -- it never crossed my mind to go down that
8 road. And then I should have. And I'm sorry I didn't.

9 **Q** All right.

10 **MR. LINDSEY:** That's all I have. Thank you, Mr.
11 Mullins.

12 **THE COURT:** All right. May the witness be excused?

13 **MR. LINDSEY:** Yes, for us.

14 **MR. ARCKEY:** Yes, Your Honor.

15 **MR. LINDSEY:** Judge, we don't have any other
16 evidence from our side.

17 **MR. ARCKEY:** Your Honor, may I have a moment?

18 **THE COURT:** You may.

19 (Pause)

20 **THE COURT:** All right. While they're discussing
21 that, Mr. Lindsey, do you have any other witnesses or any
22 other evidence reference either of the three issues in
23 the motion for new trial that you want to raise, or
24 bring, or put forth?

25 **MR. LINDSEY:** Pardon me?

1 **THE COURT:** I said, do you have any other witnesses
2 or evidence reference the three issues in the motion for
3 new trial that you want to present other than the
4 testimony of Mr. Mullins?

5 **MR. LINDSEY:** No, Your Honor.

6 **THE COURT:** Okay.

7 (Pause)

8 **MR. ARCKEY:** Your Honor, the only other thing that
9 the State would like you to take notice of is the jury
10 instructions that were rendered that day, and that -- the
11 special instruction regarding the --

12 **THE COURT:** Citizen's arrest.

13 **MR. ARCKEY:** -- citizen's arrest was included.

14 **THE COURT:** I reviewed a copy of the jury
15 instructions from the trial that are in the court file,
16 as well. So it's part of the record in the case.

17 Any witnesses or evidence from the State reference
18 any of the issues in the motion for new trial?

19 **MR. ARCKEY:** No, Your Honor.

20 **THE COURT:** All right. Any argument from the
21 Defense?

22 **MR. LINDSEY:** Your Honor, we supplied the Court and
23 counsel with a memorandum of law that basically sets
24 forth the issue in terms of arguing from back before the
25 ineffective claim. And the standard, of course, is set

1 forth in Strickland. It's at two-prong standard. The
2 first is to show that counsel's performance was deficient
3 -- unreasonable under the circumstances. And usually, in
4 -- from my experience and, I think, from the cases that
5 I've reviewed, in the vast majority of cases, the issue
6 comes -- the issue, when considering the first prong of
7 Strickland is whether or not there was some sort of
8 strategic or tactical reason. And usually what happens
9 is the State calls, rather than the Defense -- like this
10 case, the State calls the Defense lawyer at a hearing
11 such as this and elicits from them, well, I didn't do
12 this because there was a strategic reason for it, or
13 there was a tactical reason.

14 In this case -- and that's usually the basis for not
15 finding the first prong. But this case is, obviously, a
16 case that is very unique. You know, you have a lawyer of
17 long-standing practice, 29 years, who after the verdict
18 comes in, discovers that he made a mistake and feels so
19 horrible about the mistake that he writes a motion for
20 new trial because he professionally realizes that he made
21 a mistake and that it had an enormously negative outcome
22 -- or out -- in terms of the outcome of the case.

23 So I think that the -- I think that the -- it's --
24 the Court first has to look at whether performance was
25 deficient. And I think it -- I think that that is a --

1 something that was easily shown to the Court, there was
2 no tactical, no strategic decision, and that the argument
3 is even stronger by the fact that the Defense lawyer,
4 himself, brings it to the attention of the Court, which
5 is a -- which is a very rare -- very rare thing. But I
6 think that -- I think that in cases like this, the Court
7 was -- allowed Mr. Mullins to testify that, you know,
8 that in his 29 years of experience that getting the jury
9 instructions right, knowing the law that could arguably
10 relate to the facts, is just basic 101 criminal defense,
11 and that he made a mistake. And so, I think that that
12 standard is -- has been satisfied.

13 The second prong is that we have to show that there
14 was a quote reasonable probability that the result of the
15 proceeding would have been different absent the deficient
16 performance. And I think that when you look at
17 Strickland and the cases that follow, it's very important
18 that that standard is less than a preponderance of the
19 evidence. It's very, very low standard. Because we
20 don't know -- from what has been described to me about
21 the case, this is a case where Mr. Coleman was a licensed
22 security guard, he was permitted to carry a weapon, and
23 was on the job. He didn't know any of the people
24 involved. It was a -- you know, just a tragic situation
25 all the way around.

1 So, I think that in my analysis of the case and what
2 I've seen, there is a very, very large void in terms of
3 what the jury -- what a reasonable jury, in a situation
4 like this, which -- and I think it was probably a close
5 call back there in the jury room. But the jury didn't
6 have anything other than the Court -- the Court granted
7 the Defense a limited instruction on -- which they
8 requested, on the issue of citizen's arrest. So the
9 issue -- that issue came up that there was, because there
10 was some -- the Court gave it. But it wasn't anything
11 even remotely like the instruction that trial counsel
12 acknowledges should have been given.

13 So you have this vacuum where a jury could say,
14 well, you know, that maybe one of the shots occurred
15 after Mr. Coleman no longer would have any reasonable
16 apprehension of a fear for him that would be applicable
17 to a self-defense instruction or a use of deadly force in
18 self-defense. And so that's the problem you have. You
19 have this void, but if they had been provided with the
20 instruction that, from my review, and from the
21 unrebutted, you know, testimony -- of course, you were
22 there, that the jury, had they known, that, well, even if
23 we reject that, we can consider whether, under the
24 circumstances of this case, whether or not Mr. Coleman
25 would have been justified in using even deadly force to

1 effect an arrest or prevent an escape of someone who had
2 committed a felon -- or, felony or felonies in the
3 presence of the citizen.

4 And, again, it dovetails into the incomplete
5 instruction that was requested and asked. But there's
6 this vacuum in the evidence. A big vacuum in the -- in
7 terms of what the jury could do had they been provided
8 the instruction. And the -- and then it -- this
9 dovetails in to the arguments that -- in the cases that
10 we have provided to the Court that talks about -- because
11 some of the -- some of the cross-examination of the State
12 today was around the issue of whether or not this would
13 have been something that -- that there was evidence in
14 the record, in effect. At least that's how I interpreted
15 that.

16 But I think the case law is that -- you know, if the
17 evidence -- even if the evidence is introduced and
18 supported the Defense theory -- even if it is weak or
19 flimsy, or improbable, the defendant is still entitled to
20 have the jury instruction -- instructed on the law
21 applicable to available theories. And I think that --
22 clearly that that is shown in this particular case.

23 So the -- and we've cited and provided to the Court,
24 you know, the Nelson v. Howell case. And if you look at
25 Nelson v. Howell, it's important, because a lawyer --

1 because, you know, in looking at the different statutes,
2 if you didn't do a little bit of basic research, you
3 would not necessarily go the second route, which is what,
4 you know, Mr. Mullins professionally did after the trial,
5 you know, to realize, oh, my God, I missed -- I missed
6 it. I missed a big monster thing that I should have
7 brought up that would have been relevant to the issue.

8 So the -- and then that -- that sort of -- that sort
9 of -- kind of sort of dovetails into, you know, to the
10 other issues, because in -- you know, the Court -- you
11 know, we would argue that the verdict was against the
12 greater weight of the evidence. The Court listened. The
13 Court observed the witnesses and everything like this.
14 From what has been told to me by counsel, that this was a
15 very close case. That they were shocked that the jury
16 came back with a guilty verdict.

17 That -- and then you have what makes the prejudice
18 more, even though the prejudice prong is less than a
19 preponderance of the evidence, is you have -- in
20 paragraph 2 of the motion for new trial, that the Court
21 gave an instruction that was confusing to the jury over
22 the defendant's objection. The specific instruction is
23 contained in the statutory language of 776.041, Florida
24 Statute, 2014, instructing the jury that the use of
25 deadly force is not justified if the jury finds that Mr.

1 Coleman initially provoked the use of force against him.
2 So we would add that argument, but that argument sort of
3 adds additional weight to the argument of the deficient
4 counsel, because, again, they don't have -- there's a
5 void. There's a big vacuum, that they don't have before
6 them the law to apply to the unique facts of Mr.
7 Coleman's case.

8 And kind of -- this is not really that -- Judge,
9 kind of a recent -- may I approach?

10 Only for illustrative purposes, you know, this -- a
11 recent case that just came out on August 14th, the Jason
12 Rodriguez case. It's sort of an interesting case because
13 in that case they were talking about -- it was a case in
14 front of Judge Perry. It was a murder case where a --
15 there were two different types of insanity instructions
16 that were given. One was given over the objection of the
17 Defense.

18 And it was one that -- it was -- the issue -- that
19 ultimately the Court, the Fifth DCA, found that it didn't
20 apply because the law had changed and this instruction
21 would only have been applicable for cases during a
22 certain time period. But it's important because it shows
23 how a jury can be confused if they don't have -- if they
24 have countervailing type of jury instructions that don't
25 necessarily dovetail and seem to contradict each other

1 and could be potentially confusing. So I think that that
2 adds to the mix.

3 So, Your Honor, based upon those grounds -- and we
4 would ask the Court to grant Mr. Coleman a new trial.
5 Thank you.

6 **THE COURT:** All right. State?

7 **MR. ARCKEY:** Your Honor, may I approach with case
8 law?

9 **THE COURT:** You may.

10 **MR. ARCKEY:** I've provided the Defense with the
11 packet.

12 Your Honor, going through the bullet points of what
13 was outlined in the motion for new trial, the first piece
14 was that the verdict was against the greater weight of
15 the evidence under 3.600(a). The State's position is
16 that the State had put forth six witnesses who all saw
17 what occurred. Two witnesses who saw the original, one
18 being the victim -- the original incident, and that there
19 were issues of whether or not someone -- whether or not
20 there was a criminal infraction to begin with, let alone
21 a felony, involved in the initial encounter. The
22 defendant said he perceived it, but neither here nor
23 there.

24 We get to the point of whether or not this was --
25 there was evidence supporting the greater weight of the

1 verdict. I submit to you, Your Honor, that there was
2 plenty of evidence supporting the verdict. Your Honor
3 heard a stand your ground on this. You were able to
4 evaluate all the witnesses, not once, but twice. And
5 there were multiple credibility issues upon the defendant
6 in this case that were brought to light during trial.

7 The second part was that the instruction that was
8 requested and objected or requested by the State and
9 objected to by Defense, was confusing, Your Honor, as the
10 Florida Standard Jury Instruction. There was testimony
11 put forth regarding that bit. The State's position, it
12 was not confusing given in light of all of the arguments
13 that Defense had made, including the argument of
14 citizen's arrest.

15 The defendant did request that the special
16 instruction that a private citizen has the right to
17 arrest the person who commits a felony in his presence,
18 or to arrest the person where the felony has been
19 committed, and where the arresting citizen had probable
20 cause to believe and does believe that the person
21 arrested to be guilty. That immediately plays into the
22 defendant was not engaged in a lawful -- unlawful
23 activity and was attacked in a place he had a right to
24 be.

25 As you recall, Your Honor, from both the stand your

1 ground hearing and from the trial, as things progressed,
2 things got more and more embellished in the fact that Mr.
3 Coleman was pushing two people out of the way as the car
4 was barreling at him, and his foot was run over, and that
5 his only recourse was to shoot into the car at a angle
6 where the car was leading away from him in order to stop
7 that force. At no point was there any testimony
8 regarding him arresting her or trying to prevent her
9 escape.

10 So the State puts forth not only that too, but also
11 falls into the third prong and the State puts forth
12 several issues here. One is in the stand -- or, in the
13 contents for the motion for a 3.850, understanding that
14 this is filed under 3.600. It says that this rule does
15 not authorize relief based on grounds that could have or
16 should have been raised at trial and on direct appeal of
17 the judgment and sentence.

18 The State's position is this is a could have, should
19 have situation and I point to -- may I have one moment to
20 find -- the case Vining v. State, granted on a slightly
21 different scale as this is aggravating factors and a
22 homicide trial, but on page 14, top paragraph, it starts
23 with a cite, with Florida 2000, and it goes into that.
24 And it states, stating that substantive challenges of
25 jury instructions are procedurally barred in post-

1 conviction challenges because the claims could and should
2 be raised on direct appeal. Further, counsel cannot be
3 deemed ineffective for failing to object to a jury
4 instruction or to request a special jury instruction.

5 So it's the State's position that they would have
6 been requesting a special jury instruction in this case,
7 and that they can't be deemed ineffective for that. I
8 was not able to print off this due to some issues with
9 Westlaw this morning. However, in Cherry v. State, 659
10 So.2d 1069, the cite at -- or, on the further end of the
11 1073, it says that the Florida Supreme Court has
12 explained that the test when assessing the actions of
13 trial counsel is not how, in hindsight, present counsel
14 would have proceeded.

15 Your Honor, hindsight is 20/20. We can go through
16 and review everything we have done on every single trial
17 and choose things that we would have done differently,
18 choose things that we would have thought of differently,
19 things that I probably would have charged differently in
20 this trial, had I known them, and had I been in the
21 position I am now, to when I was at the beginning of
22 this trial.

23 The State's position is that the counsel
24 performance must be shown to be deficient. And the
25 State's position on that is that it's not deficient.

1 It's not deficient by any means. There was no testimony
2 regarding whether or not he was shooting at her to
3 prevent her escape.

4 Additionally -- second, the deficient performance
5 must have a prejudiced defendant ultimately depriving him
6 of the right to a fair trial with a reliable result.
7 Your Honor, they got a special instruction regarding
8 whether or not there was a citizen's arrest. They got an
9 instruction regarding whether or not he had a place -- a
10 -- the right to be where he was at. The jury came back
11 guilty on this case for the reason known to the jury.
12 And he was not deprived of a right to raise these issues
13 at trial, and that he did raise substantially similar
14 issues.

15 And it's my position that this was a tactical
16 decision ultimately that they didn't want him to seem
17 like he was trying to be a police officer, which was the
18 issue throughout this trial, was whether or not he was
19 exceeding his bounds.

20 Your Honor, I also put forth Gibbs v. State, 604
21 So.2d 544, which goes into the valuation of whether or
22 not Your Honor takes what Defense counsel has said
23 into light and how Your Honor can take that into light.
24 And the general premise in that case is that whether
25 or not the counsel takes the stand and admits that he

1 is ineffective, is not determinative on your judgment
2 call.

3 Additionally, we've heard nothing from the Defense,
4 which the burden is on the Defense in this case -- or,
5 this part of this proceeding, from Mr. Adams, who was
6 on this case from the very beginning. And there was
7 no discussion as to whether or not he had talked to
8 him about this, whether or not he had researched this,
9 and the State believes that the motion for new trial
10 should be denied and -- I believe that's it, Your
11 Honor.

12 **MR. LINDSEY:** Just very briefly, Your Honor. The
13 -- I think the evidence is unrebutted. The State
14 presented no evidence. The argument about the --
15 there's no -- there's zero evidence -- it's the opposite
16 that there was any tactical or strategic reason for --
17 this is the opposite.

18 They requested a instruction on citizen's arrest,
19 but they missed the other -- the most important part of
20 it. So there was no -- that was part of it, but they
21 missed the important part which was the vacuum. They
22 said that these hearings shouldn't be could have, should
23 have.

24 That's what these hearings are. The issue is that
25 something happened that was not -- it was that the

1 lawyers should have known and should have done, which has
2 been shown in an unrebutted form that was prejudicial by
3 the standard which is below a preponderance of the
4 evidence. And that's it. It's not a -- there's nothing
5 -- there's nothing there at all.

6 So it's our position, Your Honor, that based upon
7 the record, and based upon the trial, that you should
8 grant the motion for new trial.

9 **THE COURT:** All right. As it relates to the
10 ineffective assistance of counsel claim as part of the
11 grounds for new trial and the jury instruction issue
12 being tied up in that, as to whether or not that was
13 misleading, I'm going to take those two issues under
14 advisement. You all have provided me probably an inch
15 worth of case law that you want me to read, so I,
16 obviously, haven't read that yet and I will need to do
17 so.

18 As it relates to the first ground in the motion for
19 new trial, being under 3.600(a)(2) that the verdict is
20 contrary to law or to the weight of the evidence, I'm
21 going to deny the motion for new trial on that basis.
22 And the reason is, is during the course of the trial, the
23 victim and the victim's boyfriend both testified that
24 there was no conduct committed by the victim that would
25 constitute a forcible felony, or any felony, at that

1 point.

2 And the defendant's testimony was contrary to that.
3 So you had a conflict in the testimony as to whether or
4 not a felony did, in fact, occur. There was some
5 impeachment matters that came out on both the victim and
6 the boyfriend, and quite candidly, there was some
7 impeachment matters that came out of some of what would
8 be characterized as possibly embellishment by the
9 defendant, based upon the statements he had made. So
10 there was impeachment material on both sides, reference
11 both witnesses.

12 The -- even if the instruction that the Defense had
13 requested had been granted, the greater weight of the
14 evidence doesn't support the fact that the jury would
15 have decided this case differently. The fact of the
16 matter is, is you had, like I said, two witnesses that
17 say no felony had been committed, and you had the
18 defendant that said a felony had been committed.

19 In order to have believed that defense, they would
20 have had to have believed that a felony had been
21 committed. And then, they would have also had to have
22 believed that he was placing her under arrest, that she
23 was, in fact, in custody, and that while she was in
24 custody, she attempted to escape. The only individual
25 that made those claims was the defendant's testimony.

1 The testimony of the victim and the boyfriend were
2 contrary to that.

3 As it relates to the self-defense claim that was put
4 forward, there were about six or seven witnesses in this
5 case who all testified that the vehicle did not strike
6 Mr. Coleman, that the vehicle, at the time that it was
7 moving past him or in his direction, was only going
8 between two and five miles an hour, and that, coupled
9 with the fact that the shots that were fired in this case
10 appear to come in from the back lefthand side through the
11 what is called, I think, the B pillar, between the front
12 passenger -- or, front driver's door and the back
13 driver's door.

14 So given all of the facts and the evidence that this
15 Court heard during the course of the trial, even if the
16 instruction had been given, I don't believe that the
17 verdict is contrary to the law or to the weight of the
18 evidence, considering there was a conflict in the
19 evidence, both sides had impeachment material, and the
20 overwhelming majority of the evidence that was presented
21 was in line with what the verdict was, and the only
22 testimony presented was the defendant's testimony to the
23 contrary.

24 So, in essence, I would basically be saying that I
25 don't believe seven or eight witnesses' testimony and I

1 believe the defendant's. And having sat through that
2 trial, I don't believe that the weight in this case is
3 contrary to the evidence that was presented. So I'm
4 going to deny the motion for new trial on that ground.

5 As it relates to the other two grounds, I will take
6 those under advisement. I will read the case laws you
7 provided and the other stuff that you've given to me, and
8 I'll prepare a written order on that. Okay?

9 **MR. LINDSEY:** Okay.

10 **MR. MULLINS:** Judge, as to the sentencing then, we
11 moved to continue that part of it, pending the Court's
12 decision on the --

13 **THE COURT:** I anticipate that I will have a ruling
14 before the sentencing.

15 **MR. MULLINS:** Okay. Very good. Thank you, Your
16 Honor.

17 **THE COURT:** Yep.

18 **MR. MULLINS:** I think Mr. --

19 **MR. ADAMS:** I don't know if you're willing to
20 address the bond issue, Judge. I know your JA indicated
21 that you did not have time. I certainly do want to bring
22 that motion as soon as possible.

23 **THE COURT:** You can schedule that and set it with my
24 assistant. That's going to require some other testimony
25 and some other things that are going to have to come out,

1 based upon the case law there. So I don't have the time
2 to do it today. I have other cases that are set coming
3 in here, and I've got stuff from 8:30 that I still
4 haven't finished, that I've been waiting for you.

5 **MR. ADAMS:** Yes, Your Honor.

6 **THE COURT:** So if you want to set it, you can go
7 ahead and contact my assistant and get it set.

8 (The proceeding concluded at 10:20 a.m.)

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C E R T I F I C A T E

STATE OF FLORIDA:
COUNTY OF ORANGE:

I, Gillian Lawrence, being a Digital Court Reporter as authorized by Rule 2.535(h)(3), Florida Rules of Judicial Administration, and the Administrative Order of the Ninth Judicial Circuit numbered 07-98-43, certify that the foregoing transcription is true and correct.

Dated this 1st day of March, 2016, in the City of Orlando, County of Orange, State of Florida.



Gillian Lawrence, CER-255, CET-255
Lawrence Court Transcription & Video, LLC

Exhibit B

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

JOHNATHAN COLEMAN,

Defendant.

CASE NO.: 2014-CF-007184-A-O
DIVISION NO.: 16

ORDER DENYING MOTION FOR NEW TRIAL

THIS MATTER is before the Court on Defendant's "Motion for New Trial" filed through counsel on July 2, 2015, pursuant to Florida Rule of Criminal Procedure 3.850, 3.590 and 3.600.¹ After reviewing Defendant's Motion, the court file, the record, Defendant's Memorandum of Law, and the testimony, arguments, and case law presented at the August 20, 2015, hearing, the Court finds as follows:

PROCEDURAL HISTORY

On March 13, 2015, Defendant was charged by Amended Information with Aggravated Battery with a Firearm (Count One) and Shooting, at within, or into an Occupied Vehicle (Count Two). On June 24, 2015, after a jury trial, Defendant was found guilty as charged with a special finding on Count One that Defendant did actually possess and discharge a firearm, and as a result of discharge, great bodily harm was inflicted upon the Victim. That same day, Defendant was adjudicated guilty, remanded to custody, and a Pre-Sentence Investigation was ordered. Sentencing was set off for August 31, 2015, and was subsequently reset for September 4, 2015.

On July 2, 2015, the instant Motion for New Trial was filed by counsel. A "Memorandum of Law in Support of Motion for New Trial" was filed on August 19, 2015. An evidentiary

¹ Ernest Mullins, Defendant's counsel at trial, filed the Motion on behalf of himself and co-counsel, Joshua Adams. However, because Mr. Mullins was a testifying witness as to Ground Three, Warren Lindsey represented Defendant at the hearing and authored the Memorandum of Law filed on August 19, 2015.

hearing was held on the Motion on August 20, 2015. On August 21, 2015, Co-Counsel Ernest Mullins filed a Motion to Withdraw as Co-Counsel alleging a conflict of interest.

RULING AND ANALYSIS

In the instant Motion for New Trial, Defendant alleges: (1) the verdict was against the greater weight of the evidence pursuant to Florida Rule of Criminal Procedure 3.600(a)²; (2) the jury instruction consistent with the statutory language in § 776.041, Florida Statutes (2014), was confusing to the jury under Florida Rule of Criminal Procedure 3.600(b)(7); and (3) counsel, through no fault of Defendant, provided ineffective assistance by failing to request a jury instruction relating to the common law right of a private citizen to use force, including deadly force, which is reasonably believed to be necessary to prevent the escape of a felon in custody pursuant to a “citizen’s arrest.”³

GROUND TWO

The Jury Instructions were Confusing

In Ground Two, Defendant alleges the jury instruction consistent with the statutory language in § 776.041, Florida Statutes (2014) was confusing to the jury. Defendant contends “the jury was told basically to disregard the entire defense (justifiable use of deadly force for Mr. Coleman to stand his ground or to defend himself or others) if they find that he somehow provoked the use of force against himself . . .” The jury instruction provided was as follows:

“[T]he use of deadly force is not justifiable if you find JOHNATHAN COLEMAN initially provoked the use of force against himself, unless the force asserted toward the defendant was so great that he reasonably believed that he

² Ground One was denied for the reasons as stated on the record at the August 20, 2015, hearing. Accordingly, this Ground will not be addressed herein.

³ Ground Three is raised pursuant to Florida Rule of Criminal Procedure 3.600(b)(8) and 3.850. See *Jefferson v. State*, 440 So. 2d 20 (Fla 1st DCA 1983); *Combs v. State*, 403 So. 2d 418 (Fla. 1981).

was in imminent danger of death or great bodily harm and had exhausted every reasonable means to escape the danger, other than using deadly force on AIMEE GUILLORY.

In deciding whether defendant was justified in the use of deadly force, you must judge him by the circumstances by which he was surrounded at the time the force was used. The danger facing the defendant need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real.

If the defendant was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and he had the right to stand his ground and meet force with force, including deadly force, if he reasonably believed that it was necessary to do so to prevent death or bodily harm to himself or another, or to prevent the commission of a felony.

A person who unlawfully and by force enters or attempts to enter another's occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

A private citizen has the right to arrest a person who commits a felony in his presence, or to arrest a person where a felony has been committed, and where the arresting citizen has probable cause to believe, and does believe, the person arrested to be guilty . . .”

Testimony from witnesses presented by the State at trial indicated the Defendant was the initial aggressor by pointing his firearm at the Victim (aggravated assault with a firearm) and reaching into the Victim's vehicle and grabbing, or attempting to grab, the Victim (burglary of a conveyance with an assault or battery) as she drove away. Accordingly, based on this testimony, the jury was instructed they could find the Defendant was the initial aggressor, his activity was unlawful, and he was not justified in using deadly force. In addition to the Florida Standard Jury Instructions relating to Justifiable Use of Deadly Force, the Court, at the request of the defense, gave a special jury instruction relating to a citizen's right to arrest a person who commits a felony in their presence. That instruction, supported by the Defendant's testimony at trial, instructed the jury they could find the Defendant's activities were lawful if he was making a

citizen's arrest. The lawfulness of the Defendant's actions was ultimately an issue for the jury in light of the conflicting testimony. The jury instructions as provided were a correct statement of the law and were not confusing. Accordingly, the Defendant is not entitled to a new trial on this Ground.

GROUND THREE
Ineffective Assistance of Counsel

In Ground Three, counsel alleges ineffective assistance for failing to request a jury instruction relating to the common law right of a private citizen to use force, including deadly force, which is reasonably believed to be necessary to prevent the escape of a felon in custody pursuant to a "citizen's arrest." In the Motion, counsel contends that Defendant "was effecting a citizen's arrest of the State's complaining witness, Aimee Guillory, at the time that he ordered her out the car and commanded her to stand fast." Additionally, counsel avers that the second component to the citizen's arrest is the Defendant's "authority to use any force reasonably calculated to prevent the felon's (Aimee Guillory) escape from arrest." The Motion further alleges:

"[t]his was neither presented to the Court nor argued to the jury because counsel for the defense misapprehended the law on this point. Counsel's belief was if Mr. Coleman fired his weapon for purposes of self defense as he testified and there was no testimony that his purpose was in preventing the complaining witness's escape, then that defense was not available to him. Counsel's critical error in this regard is in not realizing that that purpose can be inferred by the jury based on other evidence in the case . . . [t]he defense read 776.07 (Fla. Stat. 2014) to require some testimony that the use of deadly force by Mr. Coleman was in furtherance of his reasonable belief that that level of force was necessary to prevent Aimee Guillory's escape from arrest. Since Mr. Coleman did not testify that that was his specific purpose, but instead testified that his fear was in being killed or severely injured or that injury might be suffered by others and that it was that fear that occasioned the use of deadly force, the use of deadly force in furtherance of a citizen's arrest aspect was never presented and, frankly, wasn't even considered. As it turns out, there is no authority that requires actual testimony as to purpose and that the defense can be established by other evidence that would have supported the giving of an instruction related to the relationship between a citizen's arrest and the use of force."

The Motion suggests defense counsel was aware prior to trial of a defense relating to a citizen's right to use force to recapture a felon attempting to escape from their custody after having effectuated a citizen's arrest. The Motion further suggests the defense was not pursued because defense counsel believed that defense was "not available" to the Defendant since he claimed to have fired in self-defense. Thus, it appears the Motion is alleging defense counsel failed to thoroughly investigate or research the viability of a defense counsel knew about prior to trial.

At the hearing on the Motion⁴, Mr. Mullins, Defendant's trial co-counsel, testified he had been licensed to practice law in Florida since 1986 and his practice was primarily criminal. He explained that the defense theory at trial was self-defense and that Defendant was effectuating a citizen's arrest. He further testified that a defense as it related to a citizen's arrest coupled with use of force (to recapture a felon trying to flee from custody) was never explored because they did not believe the defense applied in Defendant's situation, consistent with the allegation in the pending Motion. Mr. Mullins testified that he should have requested an instruction based on § 776.07, Florida Statutes (2014),⁵ and because he did not, he was deficient. Mr. Mullins testified there was no tactical or strategic reason in not requesting the instruction because he was not aware of the law at the time of trial and he only learned of the law after the trial had concluded. However, once he learned of the law, he researched and located case law to support the instruction. Mr. Mullins contends that had he known of the law at the time of the trial he would have asked for the instruction and believes there was enough evidence to support it. Mr. Mullins

⁴ Defendant, under oath, waived the attorney-client privilege at the beginning of the hearing as it related to any communication with counsel regarding Ground Three of the Motion.

⁵ Florida Standard Jury Instruction 3.6(h) pertaining to Florida Statute, Section 776.07 did not apply in this case since the Defendant was not a Law Enforcement Officer or acting under the direction of a Law Enforcement Officer at the time of the offense. See, *Nelson v. Howell*, 455 So. 2d 608, 610 fn.1 (Fla. 2d DCA 1984). Nevertheless, *Nelson* seems to indicate a similar instruction based upon the common law may have been appropriate, but it was never requested. *Id.*

believes his performance was deficient for failing to request the instruction and that this deficiency had an adverse effect on the outcome of the trial. Additionally, he testified he never discussed the defense with the Defendant, and that it never crossed his mind to go down that avenue to pursue this defense at trial because he was not aware of the law.

Based upon the testimony presented, it isn't entirely clear what acts or omissions of Mr. Mullins formed the basis for the assertion that the Defendant is entitled to a new trial because of ineffective assistance of counsel. At one point, Mr. Mullins testified the defense was not pursued because he did not believe the defense applied in Defendant's situation since the Defendant claimed to have fired in self-defense, and did not claim he was attempting to capture an escaping felon. However, Mr. Mullins also testified he never discussed the defense with his client and that it never crossed his mind to pursue the defense because he was not aware of the law until another attorney, Adam Sudbury, brought it to his attention two (2) days after the verdict. The former suggest Mr. Mullins was aware of the defense and, perhaps, failed to thoroughly investigate or research its viability in this case while the later suggests Mr. Mullins was not aware of the defense at all, but rather was completely ignorant of the defense prior to and during the trial.

Whether Mr. Mullins knew of the defense but failed to thoroughly investigate its viability or was completely ignorant of the defense doesn't really matter much. The issue is whether, given the facts and circumstances of this case, Mr. Mullins' failure to request a special jury instruction pertaining to a citizen's right to use deadly force to recapture a felon escaping their custody constitutes ineffective assistance of counsel and sufficient prejudice to warrant the granting of a new trial.

Legal Standard for Ineffective Assistance of Counsel Claims

In the instant case, counsel for Defendant is affirmatively claiming they were ineffective, which is extremely uncommon. Generally, a defendant who files a rule 3.850 motion is alleging

himself that counsel was ineffective. In those cases, a court's analysis turns to whether a defendant has established that counsel provided constitutionally ineffective assistance under *Strickland v. Washington* by identifying specific acts or omissions of counsel that are "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." 466 U.S. 668, 687 (1984). To prevail on an ineffective assistance of counsel claim under *Strickland*, a defendant is required to satisfy a two-part test.

First, a defendant must show his attorney's "performance was deficient" and "fell below an objective standard of reasonableness." *Id.* 687-88. The Court "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. Considerable deference is afforded to an attorney's strategic decisions and "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690.

Second, a defendant must demonstrate they have been prejudiced by trial counsel's deficient performance, which requires a showing that there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is a "probability sufficient to undermine confidence in the outcome." *Id.* To prove prejudice, a defendant must show more than simply that counsel's unreasonable conduct might have had "some conceivable effect on the outcome of the proceeding." *Strickland*, 466 U.S. at 693. Additionally, prejudice is established only with a showing that the result of the proceeding was fundamentally unfair or unreliable. *Lockhart v. Hill*, 506 U.S. 364 (1993).

Deficient Performance Prong

To show counsel's performance was unreasonable, a defendant must establish that "no competent counsel would have taken the action that his counsel did take." *Grayson v. Thompson*,

257 F. 3d 1194, 1216 (11th Cir. 2001) (emphasis omitted). This standard is objective, and “it matters not whether the challenged actions of counsel were the product of a deliberate strategy or mere oversight.” *Gordon v. United States*, 518 F. 3d 1291, 1301-02 (11th Cir. 2007). Because this standard is objective, again it matters not whether the challenged actions of counsel were the product of a deliberate strategy or mere oversight. *Chandler v. United States*, 218 F. 3d 1305, 1315 n. 15 (11th Cir. 2000) (en banc). The issue is not what is possible or “what is prudent or appropriate, but only what is constitutionally compelled.” *Burger v. Kemp*, 483 U.S. 776 (1987).

The test is also not what the best lawyers would have done or even what most good lawyers would have done, but rather whether a reasonable lawyer could have acted in the circumstances as defense counsel acted. *Williamson v. Moore*, 221 F. 3d 1177, 1180 (11th Cir. 2000), *cert. denied*, 534 U.S. 903 (2001). An attorney's performance must be reasonable under the prevailing professional norms, considering all of the circumstances, and viewed from the attorney's perspective at the time of trial. *Id.*

Similarly, the relevant question is not what actually motivated counsel, but what reasonably could have motivated counsel. *See Roe v. Flores-Ortega*, 528 U.S. 470, 481 (2000) (“The relevant question is not whether counsel's choices were strategic, but whether they were reasonable.”). “Even if many reasonable lawyers would not have done as defense counsel did at trial, no relief can be granted on ineffectiveness grounds unless it is shown that no reasonable lawyer, in the circumstances, would have done so.” *Rogers v. Zant*, 13 F. 3d 384, 386 (11th Cir. 1994). That’s because “[n]o lawyer can be expected to have considered all of the ways [to provide effective assistance].” *Chandler*, 218 F. 3d at 1315 n. 16.

An attorney's own admission that he or she was ineffective is not determinative of the ineffective assistance issue. *See Routly v. State*, 590 So. 2d 397, 401 n. 4 (Fla. 1992); *Gibbs v. State*, 604 So. 2d 544 (Fla. 1st DCA 1992); *Kelley v. State*, 569 So. 2d 754, 761 (Fla. 1990)

(citing *Johnson v. Wainwright*, 463 So. 2d 207 (Fla. 1985)). See also *Harris v. Dugger*, 874 F. 2d 756, 761 n. 4 (11th Cir.), *cert. denied*, 493 U.S. 1011 (1989). Moreover, “[a] lawyer’s lack of knowledge is not alone enough to amount to deficient performance.” *State v. Sessions*, 342 P.3d 738, 743 (Utah 2014). “The operative inquiry is whether the ‘actual representation would still have been within the range of objectively reasonable representation,’ even if counsel had been ‘aware of [the law].’ ” *Id.* (citing to *Bullock v. Carver*, 297 F.3d 1036, 1049 (10th Cir. 2002)).

Accordingly, “[i]f a defense lawyer pursued course A, it is immaterial that some other reasonable courses of defense (that the lawyer did not think of at all) existed and that the lawyer’s pursuit of course A was not a deliberate choice between course A, course B, and so on. The lawyer’s strategy was course A. And [the Court’s] inquiry is limited to whether this strategy, that is, course A, might have been a reasonable one.” *Chandler*, 218 F. 3d at 1315 n. 16.

Bullock v. Carver
Applying the Strickland Standard to the Issue Presented in this Case

Having reviewed the cases submitted by the parties and many other cases regarding this issue, the case of *Bullock v. Carver*, 297 F.3d 1036 (10th Cir. 2002) does an excellent job of outlining the issue presented in this case. The analysis outlined in *Bullock* is set forth in its entirety below:

C. Role of Presumptions in Ineffective Assistance of Counsel Analysis

A threshold issue underlying Mr. Bullock’s ineffective assistance of counsel argument, then, is how trial counsel’s alleged strategy, or lack thereof, influences our analysis under *Strickland’s* deficient performance prong. As will be discussed below, the overriding question under the first prong of *Strickland* is whether, under all the circumstances, counsel performed in an objectively unreasonable manner. Two presumptions inform our objective reasonableness inquiry. First, we always start the analysis that an attorney acted in an objectively reasonable manner and that an attorney’s challenged conduct *might* have been part of a sound trial strategy. Second, where it is shown that a particular decision was, *in fact*, an adequately informed strategic choice, the presumption that the attorney’s decision was objectively reasonable becomes “virtually

unchallengeable.” However, it is important to remember that these presumptions are simply tools that assist us in analyzing *Strickland's* deficient performance prong and they do not, in and of themselves, answer the ultimate question, which is whether counsel performed in an objectively reasonable manner. So, for example, even though counsel's strategy was ill-informed and thus does not qualify for the virtually unchallengeable presumption of reasonableness, a court reviewing the record before it might still conclude that counsel performed in an objectively reasonable manner. And, conversely, it is also possible on rare occasions to conclude that counsel's fully-informed strategic choices were unreasonable if “ ‘the choice was so patently unreasonable that no competent attorney would have made it.’ ” *Phoenix v. Matesanz*, 233 F.3d 77, 82 n. 2 (1st Cir.2000) (quoting *Washington v. Strickland*, 693 F.2d 1243, 1254 (5th Cir.1982)).

1. *General Presumption of Reasonableness*

As we have often explained, a petitioner raising an ineffective assistance of counsel claim carries a “heavy burden.” *E.g.*, *Gonzales v. McKune*, 247 F.3d 1066, 1072 (10th Cir.2001), *vacated in part on other grounds by Gonzales v. McKune*, 279 F.3d 922 (10th Cir.2002) (en banc), *petition for cert. filed* (U.S. May 7, 2002) (No. 01-10243); *Fox v. Ward*, 200 F.3d 1286, 1295 (10th Cir.2000). Generally speaking, “[t]here is a ‘strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.’ ” *Romano*, 278 F.3d at 1151 (quoting *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052); *see also Brecheen v. Reynolds*, 41 F.3d 1343, 1365 (10th Cir.1994) (explaining “presumption that counsel's conduct was constitutionally effective”); *United States v. Haddock*, 12 F.3d 950, 955 (10th Cir.1993) (“[P]roof [of deficient performance] must overcome the ‘strong presumption’ that counsel was effective.”) (citation omitted). This presumption derives from our common experience that attorneys, as a whole, usually represent their clients in a professional, competent, and reasonable manner. *See, e.g., Bell v. Cone*, 535 U.S. 685, 122 S.Ct. 1843, 1863, 152 L.Ed.2d 914 (2002) (Stevens, J., dissenting) (“[A] presumption that every lawyer in every capital case has performed ethically, diligently, and competently is appropriate because such performance characterizes the members of an honorable profession.”).

Put another way, the Supreme Court has explained, the general presumption of objective reasonableness requires a petitioner to “overcome the presumption that, under all the circumstances, the challenged action ‘might be considered sound trial strategy.’ ” *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101, 76 S.Ct. 158, 100 L.Ed. 83 (1955)) (emphasis added); *see also Kimmelman v. Morrison*, 477 U.S. 365, 385, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986) (applying *Strickland* presumptions); *Romano*, 278 F.3d at 1151 (noting general presumption of effectiveness requires petitioner to overcome presumption the counsel have acted as he did for valid strategic reasons); *Boyd*, 179 F.3d at 914 (explaining that, in light of the presumption of effectiveness, a petitioner must overcome presumption that challenged actions might have been part of a sound trial strategy). Thus, the

Strickland decision “places upon the defendant the burden of showing that counsel's action or inaction was not based on a valid strategic choice.” Wayne R. LaFave et al., *Criminal Procedure* § 11.10(c) at 715 (West 2d 1999); *see also Darden v. Wainwright*, 477 U.S. 168, 186-87, 106 S.Ct. 2464, 91 L.Ed.2d 144 (1986) (discussing presumption that counsel acted strategically); *Gonzales*, 247 F.3d at 1072 (explaining that ineffective assistance of counsel claimant must “overcome the presumption that defense counsel's actions were sound trial strategy”); *Fox*, 200 F.3d at 1295 (same). Thus, when we review an ineffective assistance of counsel claim, we start by presuming, absent a showing to the contrary, that an attorney's conduct is objectively reasonable because it could be considered part of a legitimate trial strategy. *Boyd*, 179 F.3d at 914.

2. *Presumption of Reasonableness where Attorney Made Adequately Informed Strategic Choice*

Beyond the general presumption of objective reasonableness, *Strickland* further presumes that “strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable.” 466 U.S. at 690, 104 S.Ct. 2052; *see also Barrett v. United States*, 965 F.2d 1184, 1193 (1st Cir.1992) (distinguishing between presumption that counsel acted objectively reasonably and in a way that might be considered strategic and presumption of validity for strategic choices made after thorough investigation). Indeed, we have explained that “[s]trategic or tactical decisions on the part of counsel are presumed correct, unless they were completely unreasonable, not merely wrong.” *Moore*, 254 F.3d at 1239 (citations and quotation omitted); *see also Romano*, 278 F.3d at 1151 (explaining the difficulty in challenging an attorney's strategic choices). Unlike the general presumption that an attorney acted objectively reasonably because his decision *might* have been made for legitimate strategic reasons, which automatically applies in all cases, *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052, this second, “virtually unchallengeable” presumption of reasonableness operates only where it is shown (1) that counsel made a strategic decision and (2) that the decision was adequately informed. *Id.* at 690-91, 104 S.Ct. 2052.

3. *Ultimate Inquiry into Objective Reasonableness*

Strickland's presumptions—the presumptions (1) that counsel's actions were objectively reasonable because they *might* have been part of a sound trial strategy and (2) that actual strategic choices made after thorough investigation are “virtually unchallengeable,” *Strickland*, 466 U.S. at 689-90, 104 S.Ct. 2052 should not obscure the overriding, and ultimately determinative, inquiry courts must make under *Strickland's* deficient performance prong: whether, after “considering all the circumstances,” counsel's performance fell “below an objective standard of reasonableness.” *Id.* at 688, 104 S.Ct. 2052; *see Darden*, 477 U.S. at 184, 106 S.Ct. 2464; *Roe v. Flores-Ortega*, 528 U.S. 470, 477, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); *Fisher v. Gibson*, 282 F.3d 1283, 1292 (10th Cir.2002); *Brecheen*, 41 F.3d at 1365; *Denton v. Ricketts*, 791 F.2d 824, 826 (10th Cir.1986). As the Supreme Court recently explained when discussing *Strickland's*

first prong, “[t]he relevant question is not whether counsel's choices were strategic, but whether they were reasonable.” *Roe*, 528 U.S. at 480, 120 S.Ct. 1029 (citing *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052); see *Chandler v. United States*, 218 F.3d 1305, 1315-16 (11th Cir.2000) (en banc) (explaining how ultimate inquiry under *Strickland's* first prong is whether counsel's performance was objectively reasonable), *cert. denied*, 531 U.S. 1204, 121 S.Ct. 1217, 149 L.Ed.2d 129 (2001).

Consequently, even where an attorney pursued a particular course of action for strategic reasons, courts still consider whether that course of action was objectively reasonable, notwithstanding *Strickland's* strong presumption in favor of upholding strategic decisions. See *Fisher*, 282 F.3d at 1296 (explaining that “‘the mere incantation of “strategy” does not insulate attorney behavior from review’ ” (quoting *Brecheen*, 41 F.3d at 1369 (further citation omitted))); *Phoenix v. Matesanz*, 233 F.3d 77, 82 n. 2 (1st Cir.2000) (“We should note that ‘virtually unchallengeable’ does differ from ‘unchallengeable.’ Our overall task according to *Strickland* is to determine whether the challenged ‘acts or omissions [are] outside the wide range of professionally competent assistance.’ ” (quoting *Strickland*, 466 U.S. at 690, 104 S.Ct. 2052)); *Washington v. Hofbauer*, 228 F.3d 689, 703-04 (6th Cir.2000) (explaining that even if a court concludes that counsel chose not to cross-examine a witness for strategic reasons, the court “cannot stop there, [but] ... must also assess if this strategy was constitutionally deficient”).

By the same token, an attorney's unawareness of relevant law at the time he made the challenged decision does not, in and of itself, render the attorney's performance constitutionally deficient. When discussing *Strickland's* deficient performance component, for example, we have emphasized that “[t]he Sixth Amendment does not guarantee an errorless trial, and ‘prevailing professional norms’ do not require perfection at trial.” *Haddock*, 12 F.3d at 956 (citing *Denton*, 791 F.2d at 828). Cf. *Long v. McKeen*, 722 F.2d 286, 289 (6th Cir.1983) (“[T]he Constitution guarantees only a fair trial and competent attorney. It does not mandate that trial counsel will recognize and raise every conceivable constitutional claim. This is true whether the failure to raise the constitutional claim is based upon ignorance of the law or a mistake in judgment” (internal quotation and citation omitted)). Similarly, the Supreme Court has cautioned federal courts that even in circumstances where an attorney erred, “[i]t will generally be appropriate for a reviewing court to assess counsel's overall performance throughout the case in order to determine whether the ‘identified acts or omissions’ overcome the presumption that counsel rendered reasonable professional assistance.” *Kimmelman*, 477 U.S. at 386, 106 S.Ct. 2574, a position echoed in our decision in *United States v. Smith*, 10 F.3d 724 (10th Cir.1993) (per curiam).

In *Smith*, we found an attorney's representation “objectively reasonable,” even though the attorney failed to request a lesser-included-offense jury instruction and was “unaware of the availability of the lesser included offense [instruction] and thus necessarily ignorant of the consequences of his conduct.” *Id.* at 728. We justified this conclusion on “*Strickland's* focus on objectively

reasonable representation considering all circumstances” and reasoned that “counsel's representation as a whole should be considered when determining whether the defendant received a fair trial.”^{FN6} *Id.* As we explained:

FN6. *Smith* acknowledged that, “at first blush,” certain language in *Strickland* could be construed as holding that an attorney's conduct is objectively unreasonable where the attorney was “unaware” of the availability of a lesser-included-offense instruction. *Smith*, 10 F.3d at 728. The court specifically referenced language in *Strickland* discussing an attorney's duty to investigate: “[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes a particular investigations unnecessary.” *Strickland*, 466 U.S. at 690-91, 104 S.Ct. 2052. Ultimately, however, we concluded in *Smith* that “*Strickland's* focus on objectively reasonable representation considering all circumstances” meant that an uninformed decision could still be objectively reasonable. 10 F.3d at 728.

We are satisfied that even if Defense Counsel had been aware of the availability of the lesser included offense [instruction] ..., Counsel's actual representation would still have been within the range of objectively reasonable representation. Consequently, we are of the view that where counsel's representation is objectively reasonable under all the circumstances of a case and ensured that the defendant received a fair trial overall, it makes no difference that certain decisions may have been unreasonable or made without a full recognition of the consequences.

Id. at 729; *see also Chandler*, 218 F.3d at 1315-16 & nn. 16-17 (explaining that to satisfy *Strickland's* deficient performance prong, “a petitioner must establish that *no* competent counsel would have taken the action that his counsel did take,” and that deficiency will not be found where fully informed and competent “hypothetical counsel” could have taken the same action) (emphasis added); *Harich v. Dugger*, 844 F. 2d 1464, 1470-71 (11th Cir. 1988) (en banc) (holding that attorney's ignorance of potential defense under state law did not establish deficient performance under *Strickland* because fully competent attorney aware of the defense “could well have taken action identical to counsel in this case”), *partial overruling on other grounds by Romano v. Oklahoma*, 512 U.S. 1, 114 S.Ct. 2004, 129 L.Ed.2d 1 (1994), *recognized in Davis v. Singletary*, 119 F.3d 1471, 1482 (11th Cir.1997). *Cf. Dixon v. Snyder*, 266 F.3d 693, 703 (7th Cir.2001) (finding that if counsel had been aware of relevant state law, his actions would have been “even more unreasonable”).

Certainly, an attorney's ignorance will affect a court's ineffective assistance of counsel analysis. An attorney's demonstrated ignorance of law

directly relevant to a decision will eliminate *Strickland's* presumption that the decision was objectively reasonable because it might have been made for strategic purposes, and it will often prevent the government from claiming that the attorney made an adequately informed strategic choice.^{FN7} *See, e.g., Williams v. Taylor*, 529 U.S. 362, 395, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000) (observing that attorney's failure “to conduct an investigation that would have uncovered extensive records graphically describing [the defendant's] nightmarish childhood” could not be considered strategic where counsel “incorrectly thought that state law barred access to such records”); *Dixon*, 266 F.3d at 703 (holding that where counsel was unaware of a state statute governing cross-examination, “his decision not to cross-examine [the witness] cannot be accorded the same presumption of reasonableness as is accorded most strategic decisions”); *Pavel v. Hollins*, 261 F.3d 210, 218 n. 11 (2d Cir.2001) (collecting cases and discussing how decisions made in ignorance of relevant facts and law cannot be characterized as strategic under *Strickland*); *see also Bryan v. Gibson*, 276 F.3d 1163, 1183 (10th Cir.2001) (*reh'g en banc granted*, April 26, 2002) (Henry, J., concurring part and dissenting in part) (arguing that counsel's decision not to present certain mitigation evidence could not be considered strategic because the defense attorney “did not even realize that he could present” the evidence at issue) (emphasis omitted).

FN7. Analogously, we have often held that an attorney's failure to present a defense theory or mitigation evidence cannot be considered strategic where that decision was influenced by inadequate preparation and investigation. *Fisher*, 282 F.3d at 1296 (concluding that counsel's “accidental[] elicitation[] [of] damaging testimony” during a capital murder trial could not be considered strategic where the attorney did not “undertake substantial pretrial investigation,” and where the testimony was “produced by the happenstance of counsel's uninformed and reckless cross-examination”); *Battenfield v. Gibson*, 236 F.3d 1215, 1229 (10th Cir.2001) (explaining that an attorney's failure to investigate potential mitigation evidence could not be dismissed as strategic where the attorney “was ignorant of various other mitigation strategies he could have employed”). Nothing in our decision should be construed as affecting an attorney's obligation to investigate particular defenses or seek out mitigation evidence. *See, e.g., Stouffer v. Reynolds*, 168 F.3d 1155, 1167 (10th Cir.1999); *Brecheen*, 41 F.3d at 1366.

In many cases, a lawyer's unawareness of relevant law will also result in a finding that counsel performed in an objectively deficient manner. *See, e.g., Kimmelman*, 477 U.S. at 385-86, 106 S.Ct. 2574 (explaining that counsel's failure to conduct pretrial discovery was objectively unreasonable because counsel had a “startling ignorance of the law” and mistakenly believed “that the State was obliged to take the initiative and turn over all of its inculpatory evidence to the defense and that the victim's preferences would determine whether the State proceeded to trial after an indictment had been returned”); *Magana v. Hofbauer*, 263 F.3d 542, 550 (6th Cir.2001) (“[Counsel's] complete ignorance of the relevant law under which his client was charged, and his consequent gross misadvice to his client regarding the client's potential prison sentence, certainly

fell below an objective standard of reasonableness under prevailing professional norms.”); *Baker v. Barbo*, 177 F.3d 149, 154 (3d Cir.1999) (holding that “a trial attorney's error with respect to his ignorance of the sentencing law [at issue in the case] has satisfied the first prong of the *Strickland* test”); *United States v. Glover*, 97 F.3d 1345, 1349 (10th Cir.1996) (“The illegal-sentence issue counsel failed to raise was clearly meritorious under the existing [United States Sentencing] [G]uidelines and elementary burden-of-proof principles, surely both matters within the requisite expertise of a practicing member of the criminal defense bar.”); *United States v. Kissick*, 69 F.3d 1048, 1056 (10th Cir.1995) (“An attorney's failure to challenge the use of a prior conviction to classify the defendant as a career offender when that prior conviction is facially insufficient to satisfy the definition of a ‘controlled substance offense’ under USSG § 4B1.2 therefore constitutes deficient performance under *Strickland*.”); *see also* LaFave et al., *Criminal Procedure* § 11.10(c) at 720 (explaining that “clearly negligent treatment of a crucial deficiency in the prosecution's case or an obvious strength of the defense” will render an attorney's overall performance inadequate).

Even where an attorney's ignorance of relevant law and facts precludes a court from characterizing certain actions as strategic (and therefore presumptively reasonable), however, the pertinent question under the first prong of *Strickland* remains whether, after considering all the circumstances of the case, the attorney's representation was objectively unreasonable. *See Roe*, 528 U.S. at 481, 120 S.Ct. 1029; *Kimmelman*, 477 U.S. at 386, 106 S.Ct. 2574; *Strickland*, 466 U.S. at 688-90, 104 S.Ct. 2052; *Chandler*, 218 F.3d at 1315-16 & n. 16; *Smith*, 10 F.3d at 729; *Harich*, 844 F. 2d at 1470-71; *see also Pavel*, 261 F.3d at 219-23 (concluding that trial counsel's decision not to call a witness could not be considered strategic but then considering whether attorney's performance was unreasonable). If the performance was objectively reasonable, then the ineffective assistance claims fails. *See Strickland*, 466 U.S. at 697, 104 S.Ct. 2052.

In summary, whether a counsel's actions can be considered strategic plays an important role in our analysis of *Strickland's* deficient performance prong. As a general matter, we presume that an attorney performed in an objectively reasonable manner because his conduct *might* be considered part of a sound strategy. Moreover, where it is shown that a challenged action was, in fact, an adequately informed strategic choice, we heighten our presumption of objective reasonableness and presume that the attorney's decision is nearly unchallengeable. **The inapplicability of these presumptions (because, for example, the attorney was ignorant of highly relevant law) does not, however, automatically mean that an attorney's performance was constitutionally inadequate. Instead, we still ask whether, in light of all the circumstances, the attorney performed in an objectively reasonable manner.**

Id. at 1045-1051 (emphasis added).

In support of his Motion, Defendant relies on *Michel v. State*, 989 So. 2d 679 (Fla. 4th DCA 2008) which held that the ineffective assistance of counsel claim was apparent on the face of the record and trial counsel's failure to request an instruction on justifiable use of non-deadly force deprived the defendant of a defense. *See also Aversano v. State*, 966 So. 2d 493 (Fla. 4th DCA 2007). In *Michel*, however, the only defense available to the defendant was justifiable use of non-deadly force, and therefore, the court found counsel's failure to request the instruction negated the only defense. *Michel*, 989 So. 2d at 681-82.

Similarly, in *Platt v. State*, 697 So. 2d 989 (Fla. 4th DCA 1997), the court opined that the failure of defense counsel to request an instruction on excusable homicide has been deemed to be an "unreasonable omission which severely prejudiced his client's case" where the error complained of "negated the only defense put forth by trial counsel." *Spaziano v. State*, 522 So. 2d 525, 527 (Fla. 2d DCA 1988), *receded from on other grounds*, *Tobey v. State*, 533 So.2d 1198 (Fla. 2d DCA 1988) (en banc), *review denied*, 542 So. 2d 990 (Fla. 1989). *See also Cabrera v. State*, 766 So. 2d 1131 (Fla. 2d DCA 2000) (rejecting the legal conclusion that the decision to forego a defense was a reasonable trial tactic when defense counsel acknowledged it was legally available and that there was no other defense to present.).

However, the instant case is distinguishable from the above cited cases because the pursued theory of self-defense was a viable and reasonable defense based on the facts and evidence presented at trial. The Defendant confessed to police shortly after the shooting and admitted he fired his gun at the victim in self-defense. Several months later, during a stand your ground hearing, the Defendant again testified under oath that he fired at the victim in self-defense. Given the Defendant's own statements, the pursuit of a self-defense claim was certainly a viable and reasonable defense to pursue when viewed from counsel's perspective at the time of trial.

Counsel performed in an objectively reasonable manner in this case

The law is clear. Counsel's unawareness of relevant law concerning another potential defense at the time he decided to pursue a theory of self-defense at trial does not, in and of itself, render his performance constitutionally deficient. To satisfy *Strickland's* deficient performance prong, the Defendant "must establish that *no* competent counsel would have taken the action that his counsel did take." *Chandler*, 218 F.3d at 1315-16 & nn. 16-17 (emphasis added). Where fully informed and competent "hypothetical counsel" could have taken the same action, counsel's actions do not constitute deficient performance. *Id.* (emphasis added). And counsel's ignorance of a potential defense does not establish deficient performance under *Strickland* if a fully competent attorney aware of the defense "could well have taken action identical to counsel in this case." *Harich v. Dugger*, 844 F. 2d 1464, 1470-71 (11th Cir. 1988) (en banc).

The Defendant in this case admitted to shooting the victim prior to trial; therefore, his reasonable defenses were limited to offering some legal justification for his actions. At trial, counsel presented the defense of justifiable use of deadly force based upon self-defense. However, counsel now asserts he should have pursued the defense of justifiable use of deadly force based upon attempting to recapture a felon fleeing from his custody. Regardless of the defense pursued, the Defendant's credibility was a critical issue for the jury to consider.

In light of the Defendant's prior statements to police and sworn testimony at a stand your ground hearing, the clear and obvious defense for reasonably competent counsel would be to assert justifiable use of deadly force based upon self-defense, just as counsel did in this case, because that's precisely what the Defendant claimed prior to trial as his reason for firing his weapon at the victim. Counsel's pursuit of that defense, to the exclusion of any other defense – including the one counsel now asserts should have been raised, was objectively reasonable

because it was consistent with the Defendant's prior statements and testimony, which would tend to make him more credible in the eyes of the jury.

On the other hand, pursuit of the defense that counsel now asserts should have been presented, either by itself or in conjunction with the defense actually pursued at trial, might have diminished the Defendant's credibility. The only testimony suggesting the victim in this case committed a felony came from the Defendant, who testified he saw the victim hit her boyfriend with a car before making contact with the victim. The victim and her boyfriend testified he was never hit by the victim's car and the remaining witnesses did not observe that event, which occurred minutes prior to the encounter where the Defendant shot the victim. Thus, the viability of a justifiable use of deadly force defense based upon attempting to recapture a felon fleeing his custody would necessarily be dependent upon a jury finding the Defendant's testimony more credible than the victim and her boyfriend.

While the Defendant's testimony may have provided sufficient facts to support an instruction regarding such a defense, the fact of the matter is the Defendant on two occasions prior to trial stated he fired his weapon in self-defense. He never stated he fired his weapon at the victim because she was a felon in his custody attempting to escape. Defense counsel clearly recognized this as a problem prior to trial. Counsel's testimony at the hearing and allegations in the pending Motion indicate counsel had questions about the viability of such a defense because "Mr. Coleman fired his weapon for purposes of self-defense" and "there was no testimony that his purpose was in preventing the complaining witness's escape." The presentation of such a defense under these circumstances would have subjected the Defendant to impeachment by omission during cross examination by the prosecutor.⁶ In light of the Defendant's stated purpose for firing his weapon, a reasonably objective attorney, with full knowledge of the defense that

⁶ The prosecutor used the Defendant's prior statements at trial to impeach him by omission on other matters. Any additional omissions for the prosecutor to exploit would have been used to further assail the Defendant's credibility.

counsel now claims he should have presented at trial, might have elected to forego that defense and to have defended this case in the very same manner as counsel had done.

This Court finds that based on the settled law in this area, and the testimony and arguments presented at the August 20, 2015, hearing, that counsel's performance was not deficient, and therefore, there was no prejudice. Accordingly, Defendant is not entitled to a new trial.

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendant's Motion for New Trial is **DENIED**.
2. Defendant has thirty (30) days from the date of rendition of this Order within which to appeal.
3. The Clerk of the Court shall promptly serve a copy of this Order upon Defendant, including an appropriate certificate of service.


DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 4th day of September, 2015.



GREG A. TYNAN
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Order has been furnished by U.S. Mail or hand delivery to **Warren Lindsey, Esq.**, P.O. Box 505, Winter Park, Florida 32790; **Ernest J. Mullins, Esq.**, 519 W. Patrick Street, Kissimmee, Florida 34741; **Joshua Adams, Esq.**, 33 East Robinson Street, Suite 112, Orlando, Florida 32801; and to **Eric Arckey**, Assistant State Attorney, 415 North Orange Avenue, Post Office Box 1673, Orlando, Florida 32801, on this 17th day of September, 2015.



Jeramy Beasley
Judicial Assistant

Exhibit C

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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA,

PLAINTIFF,

vs.

JOHNATHAN ANDREW COLEMAN,

DEFENDANT. /

CASE NUMBER: 2014-CF-7184-A-O

DIVISION NUMBER: 16

VOLUME VI of VII (P.M.)

TRIAL PROCEEDING

BEFORE

THE HONORABLE GREG TYNAN

In the Orange County Courthouse
Courtroom 6-D
Orlando, Florida 32801
June 22-24, 2015
Bobby V. Timms, RPR

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

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On behalf of the Defendant

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I N D E X

TESTIMONY OF JOHNATHAN COLEMAN	
Direct Examination by Mr. Mullins	418
Cross Examination by Arckey	464
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CERTIFICATE OF REPORTER	523

1 P R O C E E D I N G S

2 - - - -

3 THE COURT: This is State of Florida
4 versus Johnathan Coleman.

5 On the record.

6 Both State Attorneys are present.

7 Defense counsel is present.

8 Mr. Coleman is present.

9 Anything we need to address with you-all
10 before I bring the jurors back in and continue
11 with the defense's case in chief?

12 MR. ADAMS: Assuming you don't want to
13 talk about the jury instructions now, we have
14 some --

15 THE COURT: No. I wanted to give it to
16 you ahead of time so I would have time to think
17 about it.

18 MR. ADAMS: We're ready then.

19 THE COURT: The only witness you have left
20 is Mr. Coleman, correct?

21 MR. ADAMS: That's right, Judge.

22 THE COURT: Let's have Mr. Coleman sworn
23 in.

24 Whereupon,

25 JOHNATHAN COLEMAN

1 being first duly sworn, was examined, and testified
2 as follows:

3 THE COURT: You can have a seat, please.

4 Thank you.

5 Have you had an opportunity to speak with
6 your attorneys about the pros and cons about
7 testifying?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You understand if you would
10 choose to exercise your right to testify in the
11 case, that you would be treated just as any
12 other witness?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All the rules that apply to
15 the other witnesses are going to apply to you.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You would be asked questions
18 by your attorney that would be subjected to
19 cross-examination by the prosecutors.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: If there's any impeachment
22 answers out there, you understand they could
23 ask you that as well?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: By the same token, you have a

1 right to not testify if you don't want to; you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: At the beginning of the trial
5 when I went through the panel, I was talking
6 with them about that constitutional right under
7 the 5th Amendment that says you don't have to
8 be a witness against yourself or testify. You
9 heard all the things I informed the Jury,
10 correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Also in the preliminary
13 instructions I did something similar, told them
14 you don't have to testify if you don't want to,
15 and you understood all of that as well?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand you don't have
18 to testify if you don't want to, and if you
19 choose to make that decision, I will again at
20 the close of the case tell the jurors that they
21 are not to conceal that as any proof of guilt
22 or anything like that; you understand that as
23 well?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you had an opportunity to

1 talk with your attorneys about the pros and
2 cons of testifying and cons of not testifying?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: After having discussed that
5 with your attorneys, have you reached a
6 decision that you would like to do?

7 THE DEFENDANT: I will testify, sir.

8 THE COURT: Has anyone forced you or
9 promised you anything for that decision?

10 THE DEFENDANT: No, sir.

11 THE COURT: Have you made that decision of
12 your own free will?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: No one else is making you make
15 that decision?

16 THE DEFENDANT: No, sir.

17 THE COURT: You also understand that from
18 after you testify, that there will not be no
19 other witnesses called on your behalf other
20 than the witnesses that testified just before
21 lunch with Mr. Phillips and yourself?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: There will be no other
24 evidence other than the ones stipulated to,
25 that would be the medical records; is that

1 correct?

2 MR. ADAMS: Yes, sir.

3 THE COURT: Is there any other evidence
4 things to --

5 MR. ADAMS: No, sir.

6 THE COURT: You understand your testify
7 and Mr. Phillips' testimony and your evidence,
8 you understand there will be no other evidence
9 in your case?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is there any other evidence
12 that you would like presented that is not
13 presented?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right.

16 We have to wait for the trial clerk to get
17 us the evidence back.

18 (court at ease)

19 THE COURT: All right. If there's nothing
20 further from either the State or defense, then
21 I will bring the Jury back in and get started
22 with the remainder of the case in chief.

23 (Whereupon, the jury was returned to the
24 courtroom and the proceedings continued as
25 follows)

1 THE COURT: Ladies and Gentlemen, when we
2 broke for lunch we had finished with one
3 witness during the State's case in chief.

4 Same question reference the lunch break.
5 Did anybody do any investigation of their own?

6 THE JURY: No.

7 THE COURT: Did anybody have any contact
8 with you about this case other than the court
9 deputy that brought you back into the jury
10 room?

11 THE JURY: No, sir.

12 THE COURT: I am going to ask you that
13 every time, so get used to it.

14 With that said, we're going to continue on
15 with the defense case in chief.

16 Defense, you may call your witness.

17 MR. MULLINS: At this time the defense
18 calls Johnathan Coleman.

19 whereupon,

20 JONATHAN COLEMAN

21 being first duly sworn, was examined, and testified
22 as follows:

23 THE COURT: Tell me your full name and
24 tell me your last name and --

25 THE WITNESS: Johnathan Coleman,

1 J-O-H-N-A-T-H-A-N, C-O-L-E-M-A-N.

2 THE COURT: You may inquire of the
3 witness.

4 - - -

5 DIRECT EXAMINATION

6 BY MR. MULLINS:

7 Q Mr. Coleman, where do you reside?

8 A I reside in St. Cloud.

9 Q How long have you lived there?

10 A Approximately four years, three or four
11 years now.

12 Q And you have a firearm?

13 A Yes.

14 Q Back in May of last year, where were you
15 working?

16 A With Urban Enforcement and Protection.

17 Q What is Urban Enforcement and Protection?

18 A It is a security company that provides
19 armed security and unarmed security to several
20 locations throughout the Orlando area.

21 Q You say they provide armed and unarmed
22 security?

23 A One on site, but, yes, onboard as well,
24 yes.

25 Q Were you an armed or unarmed security

1 officer for them?

2 A I was armed.

3 Q Could you tell the Jury what the
4 qualifications are for being an armed security
5 officer in the State?

6 A As far as arms security, you have to go
7 through the 40 hours security course just like the
8 unarmed security officers, and then on top of that
9 you have to qualify for another, I believe, 28 hours
10 for your armed. Several tests over weapon safety,
11 handling and range time.

12 Q What other qualifications do you need for
13 that?

14 A Clear background check, no felonies. You
15 have to be able to legally possess a firearm. In
16 the State of Florida you could be -- you can do
17 security starting at the age of 18.

18 Q So you met all the qualifications. Tell
19 us about your background with respect to firearms?

20 A As far as background with firearms,
21 professionally was the -- my time in the United
22 States Marine Corps.

23 After my time in the Marine Corps, I went
24 into the Army National Guard. With both the Marine
25 Corps and National Guard, I was with a

1 reconnoissance unit as a sniper section leader.

2 Q So it's fair to say then that you have
3 extensive experience with firearms?

4 A Yes, sir, I do.

5 Q Did you go to any schools, training?

6 A Yes. I went through -- besides just basic
7 training, as well as sniper school, small-arm
8 weapons, classify as anything that could be fired
9 from a shoulder to just being held in a single hand.

10 Q Do they also train you in the use of small
11 arms?

12 A All small arms.

13 Q When I say small arms, I mean handguns?

14 A Correct.

15 Q Now before even going into the service,
16 how long were you in the service?

17 A Total of ten years.

18 Q And you are how old?

19 A I am 36.

20 Q And did you have experience with firearms
21 even prior to your entry into the United States
22 Military Service?

23 A Yes. Before then my father was in law
24 enforcement. He would take us kids out shooting all
25 the time. I've been handling firearms since I was

1 five or six years old, maybe seven, as well as being
2 a police explorer with the local law enforcement
3 where I grew up, where we taught boyscouts, and then
4 after that, like I said, my time in the military.

5 Once I had gotten out of the military, I
6 worked in the cable industry for a while, as well as
7 I'm a certified N. R. A. instructor.

8 Q In the course of -- first off, as an
9 N. R. A. instructor, how much range time do you have
10 to have, if any, for that?

11 A It is a three-day course, a lot of written
12 exams. A lot of the course is on weapon safety.
13 Not only do you have to practice safe weapon
14 handling, you also have to be able to teach the
15 common person or a layperson how to properly
16 maintain and issue the firearm, to have fun.

17 Q When you say the N. R. A., you mean the
18 National Rifle Association?

19 A Yes, sir.

20 Q Now as -- in the course of your employment
21 as a security officer for Urban Enforcement, did you
22 have to have a certain amount of range time for
23 that?

24 A Yes. Each year -- you have to qualify
25 once a year. Your licenses are good for two years,

1 but once a year you have to qualify for -- to be
2 able to carry your firearm. For unarmed security
3 you only have to renew once every two years.

4 So approximately every six months you are
5 at the range training, qualifying, and that was just
6 mandatory stuff that you would do to stay in shape
7 besides your extra curricular activities.

8 Q Okay. Now let's talk about May 28th of
9 last year. You recall going to work that day?

10 A Yes, sir.

11 Q When you went to work, do you go to the
12 office first and then report out or do you go right
13 to the scene where you are supposed to be?

14 A No, sir. You have an office, but there's
15 no need to go there. Basically you get dressed at
16 home in your full uniform and you go to work.

17 Q Do they issue you like a patrol unit, a
18 car?

19 A As far as I'm concerned, yes. I was a
20 supervisor for the company. So, yes, I had a patrol
21 vehicle.

22 Q You were a supervisor, you say?

23 A Yes.

24 Q How many people did you have under your
25 charge?

1 A At that time approximately 12.

2 Q Okay. Now that particular day, you went
3 directly from home in St. Cloud to Palm Grove
4 Apartments?

5 A No. I had actually been -- I had -- I
6 don't remember what time I started work, but I had
7 already been at work for a few hours. I started off
8 at another property that we have that's
9 approximately a mile and a half to two miles from
10 Palm Grove.

11 Q Your company was under contract for
12 somebody else and you were providing security there?

13 A Correct.

14 Q What time did you get over to Palm Grove?

15 A I arrived at Palm Grove approximately
16 8:15, 8:20 in the evening.

17 Q Okay. And what was the first thing you
18 did when you got there?

19 A Um --

20 Q Let me show you, first off --

21 MR. MULLINS: Your Honor, if I may.

22 BY MR. MULLINS:

23 Q Okay, let's look at this again. Can you
24 show us where you pulled in, where the entry is, and
25 where you went from there?

1 A The entrance to the property to Palm Grove
2 Apartments is right here (indicating). It's the
3 only entrance for the entire property.

4 Q It looks like there's a little island
5 there and maybe an entryway on the other side?

6 A There's an entryway/exit-way.

7 Q Are they designated as such? This is the
8 entrance and this is the exit (indicating)?

9 A No.

10 Q Just use whatever is available at the
11 time, right?

12 A Yes.

13 Q When you went in, where did you go from
14 there?

15 A As I entered the property, I came in and
16 went -- this here would be north, south, east and
17 west. I had come to the west.

18 Q Okay. Where did you park your car?

19 A I parked -- I observed a couple of
20 individuals talking that I had seen on property
21 before. I came over here, did a U-turn, there's a
22 dumpster right here in the corner, and there's a
23 little area where people can pull in to back up and
24 do a U-turn without hitting anything. I parked
25 approximately here (indicating).

1 Q So you had your car parked there
2 (indicating).

3 Now did you have a pretty clear view of
4 the community center driveway right there
5 (indicating)?

6 A Yes, at that time, yes.

7 Q In fact, that's directly across the
8 street, it appears, from that photo, isn't it?

9 A Correct.

10 Q And what did you do when you parked?

11 A Once I parked, I had got out of my vehicle
12 and actually approached the two gentlemen I had seen
13 standing there and struck up -- just struck up a
14 brief conversation with them.

15 Q Okay. So far everything is normal; is
16 that right?

17 A Correct.

18 Q What was the first thing -- what, if
19 anything, unusual happened shortly after that?

20 A I would have to say two or three minutes
21 after being on property I could hear a commotion
22 coming from -- it would be the west area, that would
23 be Mercy Drive and W. D. Judge -- I heard a
24 commotion that was coming from that area
25 (indicating), nothing big. It wasn't on property,

1 so I wasn't worried about it.

2 Q What did it sound like to you when -- when
3 you say commotion, what do you mean?

4 A It just sounded like a -- I couldn't be
5 100 percent specific, but it sounded like possibly a
6 little arguing. I could distinctly hear a male, but
7 it's common, it's just loud.

8 Q It sounded like a what?

9 A Just a male being loud, verbal.

10 Q Okay.

11 A I couldn't distinctly hear anything or
12 hear anyone say anything specific. After about a
13 minute of hearing that, I wouldn't even say a
14 minute, probably 20 or 30 seconds, with the
15 commotion, I actually crossed a grassy median that's
16 right here (indicating) and happened to look down
17 that way.

18 Q So you went up almost to the edge of the
19 road?

20 A Correct.

21 Q Just to kind of have a clearer view of
22 what was to your left?

23 A Correct.

24 Q And what did you see?

25 A At that time I observed a silver/gray

1 Audi, a silver/gray car driving, it would be
2 eastbound, a black male, with dreadlocks, shorts and
3 a t-shirt on. The male was walking down the side of
4 the road and a vehicle driving alongside.

5 Q Is there a sidewalk on that particular
6 stretch of road there, Mr. Coleman?

7 A There's a short sidewalk. There's a canal
8 that is approximately right here that belongs to the
9 department of transportation (indicating). Right
10 here (indicating) in the corner there's a fence line
11 that is supposed to separate all of that property.
12 Like I said before, there's a dumpster right here
13 (indicating).

14 Q When you were looking, you saw this man
15 who later became known to you as whom?

16 A As Vince Johnson.

17 Q Was he wearing a shirt?

18 A He was wearing a white t-shirt.

19 Q At that time?

20 A At that time, correct.

21 Q And then what happened? He's walking
22 towards you; is that correct?

23 A That's correct. Like I said, I'm standing
24 approximately here, the two residents -- the two
25 males were standing here (indicating) that I was

1 previously conversing with. So I walked out here
2 (indicating). I could see the male running down
3 this way towards me towards the east and then cut in
4 behind the dumpster.

5 Q He cut in behind the dumpster?

6 A Yes.

7 Q What else did you see at that time?

8 A At that time the grayish silver car had
9 gotten to approximately this area when I could hear
10 a female yelling (indicating).

11 Q Okay. Was it apparent that they were
12 having an argument of some sort?

13 A It was getting that way, yes.

14 Q And could you hear specifically what they
15 were talking about, or was it just an argument?

16 A The male, Mr. Johnson, had disappeared out
17 of my view. Like I said, I am now back over here
18 talking to some residents. Mr. Johnson disappeared
19 out of my view.

20 Q Now after that, did -- this person driving
21 the gray/silver car, that was later somebody who
22 became known to you as Aimee Guillory?

23 A Yes, sir.

24 Q Did she come on the property?

25 A She had slowed down right here

1 (indicating) and said don't let him into my
2 apartment.

3 Q Then what happened after that?

4 A After that, the vehicle continued to enter
5 the property and at a high rate of speed or a
6 reckless speed, drove past from where I was standing
7 and continued around the west side of the property
8 out of my view.

9 Q Now all that is connected by roadway,
10 right? You could get from one end to the other just
11 in a continuous loop?

12 A Yes. It is one large outer parking lot
13 with little parking lots in between, and then each
14 apartment quad. So there's four apartment buildings
15 per quad.

16 Q What you are pointing at there? Those are
17 courtyards?

18 A Yes.

19 Q So you could get from one side to the
20 other either on the northern portion of the roadway
21 in the middle or even on the southern portion?

22 A You could not go all the way through the
23 property here (indicating). If you live here and
24 you want to drive here, you either have to go all
25 the way around that way (indicating) or come all the

1 way down and over (indicating).

2 Q And your testimony is, you did not see
3 where Vince Johnson went to?

4 A Correct.

5 Q Now she -- did you try to slow her down at
6 all?

7 A Approximately within a minute or so, the
8 vehicle -- I started walking this way (indicating)
9 just because of the vehicle was driving a little
10 recklessly or driving recklessly, and I could not
11 see the male part anymore. I had reached
12 approximately here (indicating), so not very far,
13 but I reached about here (indicating), and the
14 vehicle had started to come back around.

15 Q The same way she went?

16 A From the same area. So if she came from,
17 disappeared to the right or to the left --

18 Q Then came back the same way?

19 A Came back out.

20 Q Now when she came back out, did
21 Mr. Johnson reappear at that point?

22 A At that point I did not see Mr. Johnson.
23 My concern was just telling this person to --

24 Q When she came back out, at some point did
25 you stop her and say slow down or anything like

1 that?

2 A Yes, I stepped in between parked cars that
3 would be right here (indicating). I stepped between
4 the parked cars, waved my arm, the vehicle came to a
5 stop and she put down her passenger window, and I
6 told her to slow down before she hit somebody.

7 Q Do you know her to live in that apartment
8 complex?

9 A I had personally only seen her once, and I
10 knew she lived in this building.

11 Q One of those apartments in that area?

12 A Correct.

13 Q Okay. You don't know Ms. Guillory
14 personally, do you?

15 A Correct.

16 Q You know any of the people who testified
17 personally, who testified today and in the last
18 couple of days?

19 A Just besides Mr. Phillips.

20 Q Okay. Now when -- did she exit the
21 property at that point?

22 A At that point she apologized and continued
23 to where I assumed she was going to leave the
24 property.

25 Q Where did she go?

1 A She actually made it past the
2 entrance/exit area and started to round the corner
3 here (indicating) when she left my --

4 Q So she didn't leave the property, she's
5 still at Palm Groves?

6 A That's correct.

7 Q What happened after that?

8 A With that, and Mr. Johnson not in my line
9 of sight, I assumed that there was possibly going to
10 be a meeting back here (indicating), that
11 Mr. Johnson, although I didn't know who he was, was
12 attempting to possibly cut through the property.
13 Outside this treeline here (indicating) there is
14 housing back there (indicating).

15 Q That's outside the frame of that picture?

16 A Correct. You do have the occasional
17 person that comes through, jumps the fence and cuts
18 through. The vehicle had disappeared around the
19 corner. I assumed I needed to go back here and take
20 a look (indicating).

21 Q Did you go back there?

22 A Yes. At that time I got back in my
23 vehicle, since I had not done an initial patrol yet,
24 figured I might as well check out the area while I'm
25 at it.

1 Q So what did you do?

2 A Got in my vehicle and drove down the north
3 side of the property to the east, came around the
4 corner. As I got to the corner I no longer saw the
5 vehicle.

6 Q Okay.

7 A So I continued my vehicle patrol, my
8 initial patrol, checking in the parking lot here
9 just visually. I did not drive in there. Checking
10 that to see if I could see the car. Didn't see the
11 vehicle, got to this point and just continued my
12 patrol around the property.

13 Q So you are basically making the loop
14 around?

15 A Correct.

16 Q When did you next see Ms. Guillory and her
17 vehicle?

18 A I next saw the vehicle approximately here
19 (indicating) with her brake lights on. I had
20 rounded the corner here (indicating). So that
21 vehicle would have been here (indicating).

22 Q So you are coming up from behind her?

23 A Correct.

24 Q Was she stopped?

25 A The brake lights were on. It appeared

1 that she was stopped for a little bit, but I wasn't
2 that close to say for sure.

3 Q When you got to that point, did you
4 continue up to where she was?

5 A Before I moved, and I could see the brake
6 lights on on the vehicle. I could see the black
7 male with dreadlocks and white shirt looking out of
8 the opening here (indicating).

9 Q So he was in the courtyard?

10 A Right. You have two entrances to each
11 courtyard on opposite corners. He was looking out
12 this way as the vehicle had slowly started moving
13 this way (indicating).

14 Q So she's past him and he comes out; is
15 that correct?

16 A Correct.

17 Q All right. Any yelling? Was it apparent
18 that she had seen him or no?

19 A It did not appear so. I didn't hear
20 anymore yelling at that point.

21 Q So after that, does she leave the property
22 then?

23 A After that the vehicle disappears on the
24 north side again --

25 Q What does Mr. Johnson do?

1 A Mr. Johnson disappears and goes back into
2 the courtyard. I no longer see him. I figured I'll
3 go ahead and park back over here and do a foot
4 patrol.

5 I got to about this point (indicating)
6 when I see Mr. Johnson emerge from the courtyard
7 again and look around this corner here (indicating).

8 Q What does he do after that?

9 A At that time I parked my vehicle to get
10 out to figure out what's going on with this guy.

11 Q Did you address Mr. Johnson?

12 A I actually did. I asked him to -- I asked
13 him what's going on.

14 Q What was his response?

15 A He ignored me.

16 Q Did he just continue walking?

17 A Yes, he continued walking along the
18 sidewalk here (indicating), got to the roadway here
19 (indicating), looked --

20 Q There's a dumpster there, right?

21 A There's a dumpster here (indicating).

22 Q All right.

23 A This is all a part of the curb area for
24 the apartment (indicating).

25 Q When he got there, what did he do?

1 A I watched him looking towards the east and
2 then cross the parking lot and got to the grassy
3 median.

4 Q But he's still on your side of W. D.
5 Judge?

6 A Correct.

7 Q And do you see Aimee Guillory in response
8 to this or in connection with that, where he is?

9 A At that time, like I said, I'm sitting in
10 my vehicle or I'm back in my vehicle taking notes.
11 At that time I watched Mr. Johnson start to step off
12 the grassy median into the roadway.

13 Q What happened when he's in the roadway?

14 A As he's looking to the east, the silver
15 car comes careening by into the opposite line of
16 travel.

17 Q She's now driving in the wrong lane?

18 A Correct. She's driving in the eastbound
19 direction.

20 Q Any ongoing traffic?

21 A No. Just Mr. Johnson attempting to cross
22 the road.

23 Q What did that look like to you?

24 A I saw Mr. Johnson leap backwards like he
25 realized he -- I couldn't tell you what, but he

1 leaped backwards.

2 Q Was there yelling back and forth still
3 going on?

4 A At that time the car continued, it never
5 stopped. The car continued past Mr. Johnson, got
6 out of my line of sight. So my view is only from
7 here (indicating) -- my view is only from here
8 (indicating) to here (indicating).

9 Q Because you have those obstructions of the
10 trees and stuff?

11 A Yes, the trees.

12 Q You saw right in front of you then,
13 Mr. Johnson take evasive action to avoid the silver
14 Audi hitting him?

15 A That is correct.

16 Q If he had not done that, there probably
17 would have been a collision, right?

18 A That is correct.

19 Q So he steps out of the way, she goes past,
20 now she's going towards Mercy again; is that right?

21 A Correct.

22 Q What does he do?

23 A At that time I heard tires squealing
24 coming from this direction (indicating).
25 Mr. Johnson started to cross the road. This time

1 he's looking to the west. As he gets to right here
2 (indicating) the silver Audi comes into my line of
3 sight and hits Mr. Johnson, causing him to come up
4 on top of the hood of the vehicle.

5 Q At the point that she did that, she,
6 again, crossed into the left-hand lane; is that
7 right?

8 A Correct.

9 Q This is a two-lane road, is it not?

10 A One lane each direction, correct; two
11 lanes.

12 Q Here she goes crossing over, and you are
13 saying she actually impacted his body with her car?

14 A That is correct.

15 Q What happened to him?

16 A Mr. Johnson rolled off of the vehicle. So
17 I would be looking at the passenger side of the
18 vehicle. When he came off of the hood, he rolled
19 off and landed off on the driver's side of the
20 vehicle out of my line of sight for a brief moment.

21 Q Did it appear to you that Mr. Johnson had
22 been injured?

23 A Yes.

24 Q What gave you that indication?

25 A I just watched a human being being hit by

1 a car.

2 Q Did you think there was something maybe
3 wrong with his hand?

4 A At that time Mr. Johnson was actually
5 laying in the roadway.

6 Q Was Mr. Johnson wearing a cast?

7 A No.

8 Q Now when you went across -- did you go
9 across the street then?

10 A At that time I observed the, the car that
11 hit Mr. Johnson pull into the -- this parking lot
12 here (indicating). I still, being in my vehicle,
13 leave the property, come out here (indicating) to
14 block traffic or attempt to block traffic so
15 Mr. Johnson in the roadway wouldn't get hit by any
16 other oncoming traffic.

17 Q Did Mr. Johnson get up and move around?

18 A At that time Mr. Johnson was still in the
19 roadway.

20 Q Did you have a chance to observe him lying
21 prone in the roadway?

22 A He was more in the fetal position, kind of
23 upright rocking.

24 Q Did you feel like your actions were
25 necessary to protect him?

1 A Yes.

2 Q Okay. And where is she at this point?

3 A At this point she's inside the Northwest
4 Community Center parking lot still facing this
5 direction (indicating).

6 Q Facing which direction?

7 A She was facing the north direction before
8 I managed to pull in.

9 Q She was facing in towards the community
10 center or was the nose of her car coming out?

11 A As I got here (indicating) her vehicle was
12 coming into this direction (indicating) and starting
13 to turn around.

14 Q Okay. So she was already starting to face
15 out when you came in?

16 A Correct.

17 Q All right. And what did you do at that
18 point?

19 A At that point, seeing Mr. Johnson in the
20 fetal position, it appeared that he was starting to
21 get out of the roadway, and that vehicle doing a
22 U-turn in here (indicating) narrowly missed him
23 once, hit him the second time, doing a U-turn. I
24 parked my vehicle right here in the entranceway
25 (indicating) and --

1 Q How far off the entrance were you,
2 Mr. Coleman?

3 A My vehicle was approximately right there
4 (indicating).

5 Q Let's get a better picture. Let's look at
6 this one (indicating).

7 MR. MULLINS: May I approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 BY MR. MULLINS:

11 Q Could you show the Jury -- I -- could you
12 show the Jury where you were parked and where she
13 was?

14 A I was parked right here (indicating).

15 Q Okay.

16 A 99.9 percent of my vehicle still on the
17 entrance side of the yellow lines. Her vehicle was
18 starting to at an angle come towards the exit side.
19 Mr. Johnson was right here (indicating).

20 Q If I understand this photograph correctly,
21 there's one lane going in and two lanes going out,
22 one to turn in either direction?

23 A Correct.

24 Q Going out?

25 A Correct.

1 Q So she has all of this room, right, and
2 you have this little bit here (indicating)?

3 A Correct.

4 Q Okay. So you are getting out, the
5 driver's side of your vehicle is facing towards the
6 outbound lanes, correct?

7 A That's correct.

8 Q You are getting out and attending to
9 Mr. Johnson? Wait a minute. I took away the frame
10 of reference here. Let me put that back. Wait a
11 minute.

12 A Move it down a little bit.

13 Q (Complies)

14 A Once I entered here (indicating) and I
15 could see the vehicle coming in a direction back
16 towards the male laying in the road, Mr. Johnson, as
17 I exited the vehicle, I could see Mr. Johnson
18 getting to his feet.

19 Q Are there other bystanders by now?

20 A At this time?

21 Q Yes.

22 A There's the two males that were over here
23 that I previously spoken with (indicating).

24 Q Anybody else?

25 A At that time there was no one else.

1 Q So he's getting to his feet and then
2 what --

3 A Mr. Johnson is getting to his feet, I see
4 the vehicle and I perceive the vehicle to be more of
5 a danger than even Mr. Johnson getting to his feet.
6 The man is starting to stand up, but the vehicle is
7 starting to go towards him again. I jump out of my
8 vehicle and yell stop, get out of the car, stop your
9 car.

10 Q So you did order her out of her car?

11 A Yes.

12 Q In a commanding voice you told her to get
13 out of her car?

14 A That is correct.

15 Q Your purpose in doing that was what?

16 A To stop her from possibly injuring
17 Mr. Johnson again. I just observed a forcible
18 felony --

19 MR. ARCKEY: Objection, Your Honor. He's
20 giving his opinion. It's leading and giving
21 his opinion as to what the thing is under the
22 status of the law.

23 MR. MULLINS: If he knows the answer to
24 the --

25 THE COURT: Approach.

1 (Whereupon, a bench discussion was had out
2 of the hearing of the Jury as follows)

3 MR. MULLINS: Your Honor, my response to
4 that would be that he has some training and
5 he's testified to his training, and with
6 respect to firearms, if he knows what a
7 forcible felony is, then he should be able to
8 testify to that. It's just something within
9 his knowledge.

10 THE COURT: You -- don't I tell the Jury
11 what forcible felonies is?

12 MR. MULLINS: You do, Your Honor.

13 THE COURT: Why don't I have him testify
14 as to what facts might support a forcible
15 felony.

16 I will sustain the objection.

17 MR. MULLINS: Thank you, Your Honor.

18 (Whereupon, bench discussion was
19 concluded, and the proceedings continued in the
20 hearing of the Jury as follows)

21 MR. ARCKEY: Your Honor, could we have
22 that answer stricken?

23 THE COURT: To the extent there was some
24 comment about a forcible felony, that's a legal
25 question, and I will give you a legal

1 instruction on that, if it becomes appropriate
2 at that point in time.

3 Okay.

4 BY MR. MULLINS:

5 Q Mr. Coleman, when you got out of your car,
6 Mr. Johnson is coming to his feet, if I understand
7 your testimony thus far, are you helping him in some
8 way?

9 A Physically, no.

10 Q Are you talking to him?

11 A At that point, like I said, my concern was
12 the vehicle that had just struck him attempting to
13 hit him again.

14 Q Then you tell her to get out of her car?

15 A The vehicle finally comes to a stop. I --
16 before she even got out of the vehicle I --

17 MR. ARCKEY: Objection, Your Honor.

18 Nonresponsive.

19 THE COURT: Sustained.

20 MR. MULLINS: Okay.

21 BY MR. MULLINS:

22 Q She came to a stop; is that right?

23 A Correct.

24 Q Now you order her out of the car?

25 A That is correct.

1 Q Did you use your firearm at all at that
2 point?

3 A I did have my hand on my weapon, but my
4 weapon was still in the holster.

5 Q Did she get out of the car?

6 A Yes.

7 Q After she got out of the car, what did you
8 do?

9 A I told her to have a seat on the curb.

10 Q Did she do that?

11 A No. She did mention that she was wearing
12 a skirt. I happened to look, she was wearing a
13 black tank top and leopard or cheetah skirt.

14 Q You have her sit somewhere else?

15 A She actually asked to lean on the front of
16 my vehicle.

17 Q Did you let her do that?

18 A Yes.

19 Q What happened after that?

20 A After that, she was out of the vehicle.
21 Mr. Johnson is actually limping around over here
22 (indicating) yelling at Ms. Guillory.

23 Q They are still having this argument?

24 A Yeah. He's pretty pissed. Someone just
25 hit him with the vehicle.

1 Q So he's -- they are still having this
2 exchange, then what?

3 A That's correct. Finally I get him to stop
4 yelling, I get Ms. Guillory to stop yelling back at
5 him, and I told them that Fire Rescue is on the way.

6 Q Did you ask someone from Urban Enforcement
7 to summon the emergency services?

8 A Correct. When I was parked here
9 (indicating) and I first watched the incident happen
10 where the vehicle made contact with Mr. Johnson, our
11 practice sometime, to provide better response, is to
12 call over the radio for another officer to get the
13 ambulance or police started even quicker, and we
14 could render aid, if that's what we needed to do.

15 Q So you took the appropriate action in that
16 regard?

17 A That is correct.

18 Q And then at some point did you see
19 Ms. Guillory get back into her car?

20 A No, sir.

21 Q No. What was your first indication, then,
22 that she got back into the car?

23 A I was standing over here (indicating)
24 trying to get Mr. Johnson to calm down and sit down
25 so he wouldn't hurt himself anymore.

1 Q He didn't hurt himself in the first place,
2 right; she did?

3 A Correct.

4 Q But you were concerned for his safety?

5 A Correct. I didn't want him to fall over.

6 Q All right.

7 A So I'm talking to him, and at that time I
8 heard a vehicle accelerate.

9 Q Now before she got into her car, was there
10 an exchange where they were talking about your
11 authority to stop?

12 A There were several people saying I did not
13 have the right to detain and he's just a rent-a-cop,
14 he can't do anything, yes.

15 Q So -- all right, but that was before she
16 got into her car; is that right?

17 A Correct.

18 Q At the point that you first heard the
19 motor accelerate; is that your testimony?

20 A Yes.

21 Q Was your back to her?

22 A Yes.

23 Q And she -- what happened after that
24 immediately?

25 A After that, it's with the vehicle -- the

1 vehicle was behind me on my right side. Once I
2 heard the vehicle accelerate, I could only do a
3 quick glance at the same time, realized that
4 Mr. Johnson, myself, and another black male, one of
5 the males that was previously over here
6 (indicating), had made his way closer. We were
7 standing right there (indicating), vehicle is
8 pointed at us, and I pushed them out of the way.

9 Q After you pushed them out of the way, were
10 they pushed to safety then?

11 A They were pushed to safety.

12 Q Was she stopping?

13 A No.

14 Q Now you heard some testimony earlier that
15 she was going two or three or four miles per hour?
16 Was she going that speed or was she going faster
17 than that?

18 A I could not tell you how fast she was
19 going, I just heard the acceleration of a vehicle.

20 Q Was she coming at you?

21 A That is correct.

22 Q What were you trying to do? Were you
23 trying to take any evasive measures?

24 A I was back paddling trying to get to the
25 safety of my vehicle.

1 Q Now your car is here (indicating), the tip
2 pointing in; is that right?

3 A Correct.

4 Q All right. And then her vehicle is coming
5 this way (indicating)?

6 A Her vehicle was -- the front of her
7 vehicle was -- it was further up.

8 Q It's back here off the screen, okay
9 (indicating).

10 A The front of her vehicle was approximately
11 here (indicating). So this is the entranceway
12 (indicating). You have the exit lane right here
13 (indicating).

14 Q Where are you standing?

15 A Myself and Mr. Johnson and the other male
16 are standing right here (indicating).

17 Q So you are standing directly in the path
18 of her oncoming car?

19 A Of the vehicle, correct.

20 Q Now are there by now people standing by
21 the stop sign?

22 A There are several people in the area.

23 Q When I say the stop sign, I mean showing
24 you again what's been marked as Exhibit 1 -- I
25 actually introduced into evidence as Exhibit 1.

1 We're talking about this stop sign right here
2 (indicating)?

3 A Correct.

4 Q There's still people standing around in
5 this area here I'm indicating (indicating)?

6 A There were people standing here
7 (indicating), people standing here (indicating),
8 people kind of in the roadway, and a few people
9 right here (indicating) in the crosswalk area.

10 Q Okay. And she's coming forward?

11 A Correct.

12 Q What did you do at that point,
13 Mr. Coleman?

14 A At that point, as I'm backing up, I'm
15 yelling to Ms. Guillory to stop, stop, stop. The
16 vehicle is coming towards us. I could just hear the
17 vehicle accelerate. I withdrew my firearm, and as
18 the --

19 Q At the point at which you withdrew your
20 firearm from your holster -- first off, are you
21 right-handed or left-handed?

22 A I'm right-handed.

23 Q So your holster and firearm are kept on
24 the right side of your service belt; is that right?

25 A That is correct.

1 Q She's coming this way right at you
2 (indicating); is that right?

3 A Correct.

4 Q Are you more towards her driver's side or
5 more in the middle, or on the passenger side?

6 A I was initially. When I was talking to
7 Mr. Johnson, we were initially almost in line with
8 the center of her vehicle. When I pushed them out
9 of the way and I started to back up, I was moving
10 towards her; it would have been towards her driver's
11 side.

12 Q Were you trying to get to your car?

13 A I was just trying to get out of the way,
14 yes.

15 Q Was it apparent to you that she was going
16 to stop?

17 A No.

18 Q When you drew your firearm, was she still
19 in front of you?

20 A Yes.

21 Q Then what happened after that?

22 A After that, before I could even fire, the
23 vehicle actually hits me, starting at the bumper
24 area. I feel it in my lower leg, my knee. The
25 vehicle continued past, skimming cross the front of

1 my body.

2 Q Now is that when -- did you kind of roll
3 around or not?

4 A Yeah. A 4000-pound vehicle was starting
5 to crush me, yes.

6 Q So between the time that you drew your
7 weapon and the time that you fired, she had covered
8 some ground; is that right?

9 A That is correct.

10 Q Did all of this happen -- how long did all
11 of this take?

12 A From the time that I noticed the
13 acceleration of the vehicle, to the time that I
14 fired my weapon --

15 Q Yes.

16 A -- was approximately two and a half, three
17 seconds. I don't know. Time does slow down in
18 events like that.

19 Q All right. Okay. After the shots were
20 fired -- now you saw some of those photographs,
21 right?

22 A Yes, correct.

23 Q In one of them, this one (indicating).

24 MR. MULLINS: This is, for the record
25 Exhibit Number 2, Defense Exhibit Number 2.

1 BY MR. MULLINS:

2 Q You see that these three seem to be fairly
3 tight; is that right?

4 A That is correct.

5 MR. ARCKEY: Objection, Your Honor.
6 Leading.

7 THE COURT: Sustained.

8 MR. MULLINS: Okay.

9 BY MR. MULLINS:

10 Q There's one back here (indicating)?

11 A Correct.

12 Q Did you fire your weapon three times and
13 then once, or did you fire all four shots at one
14 time?

15 A No, it was all four rapid succession.

16 Q Was it apparent to you that the vehicle
17 was speeding up as you were firing?

18 A Yes, correct.

19 Q After the shots were fired, what did you
20 do?

21 A After the shots were fired, that's when I
22 felt the severe -- even more pain in my leg. It was
23 almost like a rush -- everything started rushing.

24 Q Did you go back to your car?

25 A I leaned up against my car and went down

1 to the ground, at the same time called over the
2 radio that shots were fired, I was hit -- actually,
3 I don't -- I didn't even say I was hit by a vehicle,
4 I just said shots were fired, suspect is gone,
5 officer down, need help.

6 At that time, I believe it was Ms. Fort,
7 Sherron Fort, had come around the front of my
8 vehicle and asked if I needed help. I said yes,
9 call 911.

10 Q And you've heard, I think Destini Hudson
11 testified that you chased her down W. D. Judge on
12 foot. Did that happen?

13 A No, sir.

14 Q How tall are you, Mr. Coleman?

15 A Six-foot-two.

16 Q How much do you weigh?

17 A 350, let's say, right now. I was 300 at
18 the time.

19 Q Is running your forte?

20 A No, it's not.

21 Q Okay. Were you about that size at that
22 time back last year?

23 A Yes, correct.

24 Q All right. Were you -- did emergency
25 services actually get there?

1 A I actually called 911 as well while I was
2 up against the vehicle. Approximately two minutes
3 after --

4 Q You called 911 yourself?

5 A Yes.

6 Q Was that after you instructed the
7 people -- that was in response after you called
8 Urban Enforcement and told them to call emergency
9 services?

10 A Yes, I had called Urban Enforcement, no
11 more than five minutes before that, to initially get
12 emergency services out there.

13 Q All right. And now at some point you
14 ended up in the hospital; is that right?

15 A That is correct.

16 Q And Detective Stanley, you saw him testify
17 here the other day; is that right?

18 A Yes, sir.

19 Q Actually, yesterday. You made your
20 statement to him?

21 A Yes, I did.

22 Q You cooperate with law enforcement?

23 A Yes, I did.

24 Q Mr. Coleman, you didn't have any quarrel
25 with Aimee Guillory prior to this?

1 A No, I did not.

2 Q Did you even know this woman?

3 A I had seen her once before.

4 Q Was there any difficult with respect to
5 that encounter?

6 A It was a brief moment where it was --
7 there was a large group of women out there and I
8 told them they needed to disperse the area.

9 Q Did you have any reason to fire your
10 weapon at her other than she's trying to run you
11 over with her car?

12 A Besides the safety of myself and the
13 safety of the people in front of me, no, sir.

14 Q There were still other people coming out
15 even after you fired the shots?

16 A Yes.

17 Q Mr. Coleman, did you keep firing the shots
18 in your gun?

19 A No, sir. Once everyone was out of the way
20 and the vehicle was no longer a threat to myself, I
21 stopped firing. No one else was in front of the
22 vehicle at that time.

23 Q So it was apparent to you at the point of
24 which you stopped firing, that she was no longer a
25 threat to you or to them?

1 A Or anyone else, correct.

2 Q Was Mr. Johnson's arm injured in the
3 accident?

4 A He was holding his hands or -- he was
5 holding his right forearm and his left leg.

6 Q Okay. Now you saw those evidence photos
7 where your weapon is out and they have all the
8 bullets laid out and everything?

9 A Yes, sir.

10 Q They have that on the ground, I think, at
11 one of the markers; is that right?

12 A That is correct.

13 Q Did you holster your weapon back?

14 A Yes.

15 Q Do you ever leave your weapon out on the
16 ground like that?

17 A Never.

18 Q Was it apparent that someone else might
19 have done that?

20 A Someone had to, I did not.

21 Q Okay. So in consideration with gun
22 safety, you re-holstered your weapon?

23 A Yes.

24 Q Do you always do that?

25 A Yes. Immediately after she had made

1 her -- once she left my line of sight onto westbound
2 W. D. Judge, I did a reload, I reloaded my weapon
3 from training, years of training. It was habit, I
4 reloaded my weapon, saw that there was no other
5 threat, people are running all over the place. Once
6 I realized there was no other threat, I re-holstered
7 my weapon.

8 Q Now you see that in the community
9 center -- let's look at that photograph again. The
10 community center, where is that?

11 A The community center is here (indicating).

12 Q Back in there (indicating)?

13 A Until today I thought the entire building
14 was the community center, but, yes, this is the
15 community center here (indicating).

16 Q Where, again, are you and Ms. Guillory and
17 all that? Right up near the front (indicating)?

18 A Yes, correct.

19 Q You heard Sherron Fort testify earlier
20 that it was further back a little bit?

21 A Yes.

22 Q Is that accurate?

23 A No, it's not.

24 Q Would she have been able to see from where
25 you are?

1 A If she was on the sidewalk, she would have
2 been on the passenger side, passenger rear side of
3 Ms. Guillory's car.

4 Q Did Ms. Guillory have to make a U-turn or
5 turn around in either direction?

6 A No, she did not.

7 Q Had she already made that turn?

8 A Yes, she did.

9 Q Did you watch her make the turn?

10 A Yes, I did.

11 Q Okay. You said that Vince Johnson had a
12 white shirt on?

13 A Correct.

14 Q Was he still wearing that white shirt when
15 he was injured?

16 A When I asked him to sit on the fence,
17 he -- or sit on the curb, he had a white shirt on
18 his right arm. I don't know if he was using it as a
19 brace or whatever, but I just remember him having it
20 in his right arm.

21 Q Is that the same arm he was holding
22 apparently in pain?

23 A Correct.

24 Q Okay. How long did it take emergency
25 services to get there?

1 A From the initial -- when she impacted him
2 with the vehicle?

3 Q Yeah, from the time you called.

4 A I would have to say approximately seven
5 minutes.

6 Q Was that after the shooting had happened
7 they got there?

8 A Yes. Emergency services showed up within
9 two minutes after the shooting.

10 Q Was it an ambulance, a fire truck and all
11 of that?

12 A I --

13 Q Do you remember which came in first?

14 A When I was on the -- when I was up against
15 my vehicle, the first person that I saw come onto
16 the property was O.P.D. police officer, come from
17 W. D. Judge.

18 Within another minute the ambulance had
19 pulled in and pulled onto the property and crossed
20 their rear bumper was with the front bumper of my
21 vehicle.

22 Q That's an ambulance?

23 A Yes, that was the ambulance.

24 Q Was that before it was marked off and the
25 crime scene people got there?

1 A Yes, it was.

2 Q And they drove right over where the shell
3 casings were?

4 A Yes, they did.

5 Q Okay.

6 MR. MULLINS: If I may have a moment, Your
7 Honor?

8 THE COURT: You may.

9 BY MR. MULLINS:

10 Q Let me ask you this. What color were the
11 lights on your vehicle?

12 A The lights on the vehicle are green and
13 amber for security personnel.

14 Q There's a legal requirement -- never
15 mind --

16 A Yes, there is a legal requirement -- a.

17 MR. ARCKEY: Objection, Your Honor --

18 THE COURT: Sustain the objection, and you
19 are to disregard the question and answer.

20 MR. MULLINS: I withdraw the question
21 anyway.

22 No further questions of this witness.

23 MR. ARCKEY: Approach?

24 THE COURT: Yes.

25 (Whereupon, a bench discussion was had out

1 of the hearing of the Jury as follows)

2 THE COURT: Okay.

3 MR. ARCKEY: Restroom?

4 THE COURT: Yes.

5 (Whereupon, bench discussion was
6 concluded, and the proceedings continued in the
7 hearing of the Jury as follows)

8 (Whereupon, the jury was escorted from the
9 courtroom and the proceedings continued in
10 their absence as follows)

11 THE COURT: Court's in recess for five or
12 ten minutes.

13 (Whereupon, a break was taken at 2:35
14 p.m., after which the proceedings resumed as
15 follows)

16 (Whereupon, the jury was returned to the
17 courtroom and the proceedings continued as
18 follows)

19 THE COURT: For planning purposes, does
20 anybody have a conflict for this evening?

21 THE JURY: No.

22 THE COURT: I don't want you rushing your
23 deliberations, but I would like to try to keep
24 my promise to you to get out of here by today
25 with this case. If you don't reach your

1 verdict this evening, we can come back tomorrow
2 morning, but I wanted to check with you about
3 any difficulty past five this evening at this
4 point?

5 THE JURY: No.

6 THE COURT: Thank you.

7 State you may cross.

8 - - -

9 CROSS EXAMINATION

10 BY MR. ARCKEY:

11 Q Mr. Coleman, in preparation for this trial
12 today you've read through discovery in this case,
13 correct?

14 A Correct.

15 Q So you knew what the witnesses were going
16 to say, correct?

17 A What they should have said, yes, sir.

18 Q You knew what they were going to say?

19 A No, sir.

20 Q You didn't know?

21 A I'm not a mind reader, no.

22 Q You've never read their statements?

23 A I have read their statements, yes.

24 Q So you knew what they had written down,
25 correct?

1 A Correct.

2 Q You also had reviewed their testimony from
3 a prior hearing?

4 MR. MULLINS: Your Honor, I am going to
5 object at this point. Mr. Coleman -- you want
6 me to speak the objection?

7 THE COURT: Objection is overruled.

8 BY MR. ARCKEY:

9 Q You also reviewed all their testimony from
10 prior hearings?

11 A Correct.

12 Q And all of the depositions?

13 A Correct.

14 Q Now, when you are operating as a security
15 guard, an armed security guard, you carry a gun on
16 you, correct?

17 A Yes, I do.

18 Q You carry a taser on you?

19 A Yes.

20 Q You carry a baton?

21 A Yes.

22 Q You carry something called O. C. Spray,
23 which is essentially pepper spray?

24 A Correct.

25 Q You carry handcuffs?

1 A Yes, sir.

2 Q You carry a badge?

3 A Yes.

4 Q You carry a flashlight?

5 A Yes.

6 Q You put that on a class-three utility
7 belt?

8 A No, it's a duty belt.

9 Q The duty belt is similar to a law
10 enforcement belt?

11 A That is correct.

12 Q Now, Mr. Coleman, you said you also have
13 military training, correct?

14 A Yes, sir.

15 Q And in that military training you're
16 trained how to use firearms?

17 A That is correct.

18 Q Specifically semiautomatic to handguns?

19 A Yes.

20 Q You know how the action of a semiautomatic
21 handgun works, too, don't you?

22 A Yes.

23 Q You know through the gas operation of that
24 weapon when you fire, that it projects and ejects a
25 cartridge; is that correct?

1 A That's correct.

2 Q Those cartridges can go anywhere, correct?

3 A Correct.

4 Q With wind and people moving around, they
5 can blow all over the place, correct?

6 A That is correct.

7 Q And you said that you didn't have your
8 hand on the weapon when you stopped Aimee Guillory
9 at the community center, correct?

10 A That is correct.

11 Q Now let's go back to one thing you said
12 earlier. You said that you saw Mr. Johnson walking
13 into the street and saw the silver Audi come from
14 the eastbound and try to hit him and swerve over the
15 lanes as he was crossing from Palm Grove?

16 A Correct.

17 Q Can you show me with the laser pointer
18 which way is eastbound on this map?

19 A Eastbound would be this direction right
20 here (indicating).

21 Q So when you said they were going
22 eastbound, are you saying that they are going from
23 left to right on that map?

24 MR. MULLINS: Objection, that's not his
25 testimony. He said he was coming from the

1 east.

2 MR. ARCKEY: I'm trying to clarify what
3 that meant.

4 THE COURT: Overruled. It's an open-ended
5 question. He can answer it.

6 BY MR. ARCKEY:

7 Q Is that what you mean, from left to right?

8 A Ask your question again, please.

9 Q Can you show me whichever way is
10 eastbound?

11 A North, south, east, and west (indicating).

12 Q When you say someone is coming eastbound,
13 do you mean they are driving east or they are coming
14 from the east?

15 A If I said she was coming from the east,
16 she would be driving westbound.

17 Q Okay. So at that time you said that she
18 swerved across the lane and tried to hit Mr. Johnson
19 as he is crossing on the south side of W. D. Judge,
20 correct?

21 A Mr. Johnson was here on the south side of
22 W. D. Judge. The vehicle would be coming from this
23 direction the first time (indicating).

24 Q Okay. And they miss at that point?

25 A At that point, yes.

1 Q So when you say eastbound, the person is
2 actually driving west?

3 A Correct.

4 Q And misses?

5 A The first time, yes.

6 Q Because he jumps back.

7 Now, you said that she turns around,
8 correct?

9 A Correct.

10 Q And at that point she's going, what you
11 would now call, westbound?

12 A She would be coming from the west.

13 Q And then swerves across the lane again and
14 hits Mr. Johnson?

15 A In a northern side of W. D. Judge, yes,
16 that's correct.

17 Q So each time she crosses the line?

18 A The double line, yes.

19 Q Mr. Coleman, you gave a statement to law
20 enforcement that night, correct?

21 A That is correct.

22 Q And you talked to Detective Stanley about
23 what happened that night, correct?

24 A Yes, sir.

25 Q And was that a fair and accurate statement

1 that night?

2 A To the best of my knowledge, at that time,
3 yes, sir.

4 Q And you had time to reflect on what had
5 happened?

6 A Yes, sir.

7 Q Because you were at the hospital when you
8 were interviewed, correct?

9 A Correct.

10 Q So it had been a while since the incident
11 had occurred?

12 A Correct.

13 Q And it was still fresh in your mind,
14 correct?

15 A Correct.

16 Q Okay.

17 MR. ARCKEY: I'm showing defense what is a
18 statement, or a transcript of the statement
19 given to law enforcement. If I can point then
20 to page five in the middle of the page.

21 MR. MULLINS: Okay.

22 BY MR. ARCKEY:

23 Q This would technically be paragraph eight
24 that I'm showing the witness.

25 Would you please review paragraph eight,

1 and actually go ahead and review the two paragraphs
2 before that also.

3 A (complies)

4 MR. ARCKEY: Your Honor, I would ask
5 defense counsel to keep their voices down. If
6 I can hear them when I'm this close to the
7 Jury, then I believe the Jury can, too.

8 When you are done you can look up.

9 (Pause)

10 BY MR. ARCKEY:

11 Q Now, Mr. Coleman, is this a fair
12 representation of what you told the law enforcement
13 officers that night?

14 A As I can remember, yes.

15 Q And you actually said that she was going
16 eastbound when she struck them, not westbound, as
17 you had testified here today, correct?

18 A Yes, that's correct.

19 Q And, actually, you never told them that
20 there was a prior incident where she nearly missed
21 him?

22 A Actually, I believe I did, yes, sir.

23 MR. ARCKEY: May I approach the witness?

24 THE COURT: You may.

25

1 BY MR. ARCKEY:

2 Q Can you find that in that transcript for
3 me.

4 A The entire transcript?

5 Q Take your time.

6 A Yes, sir. (Pause)

7 I do not see it so far, no, sir.

8 Q So you don't recall telling them that that
9 night?

10 A Not for that night, no, sir, I do not
11 remember.

12 Q As a matter of fact, it wasn't until a
13 hearing later on that you told that, correct?

14 A Yes, if it's not in there, correct.

15 Q And that would add to statements that
16 you -- well, you just didn't make that statement
17 that night when it was fresh in your mind, correct?

18 A That's correct.

19 Q As a matter of fact, you didn't make that
20 statement until almost nine months later, correct?

21 A I don't know the timeframe, but it's
22 possible, yes.

23 Q But you did make that statement on a
24 hearing in March 6, 2015, correct?

25 A That is correct.

1 Q Now, do you recall Mr. Johnson holding his
2 wrist while he was walking around Palm Groves?

3 A At that time?

4 Q Yes.

5 A No.

6 Q So you don't recall Mr. Johnson holding
7 his wrist prior to getting hit by the vehicle?

8 A When I gave my testimony to the officer I
9 do remember that I had misspoken about that, yes.

10 Q You had misspoken at that time?

11 A Correct. I was still in the hospital
12 injured and in pain.

13 Q So you remember telling then that he was
14 running alongside of the vehicle on W. D. Judge
15 holding his wrist prior to this incident?

16 A I believe I do remember that, yes.

17 Q Okay.

18 A Actually, I think I told him his left arm,
19 if I'm not mistaken.

20 Q Now on the 5/28 interview, did you ever
21 tell Detective Stanley that there were two people,
22 including Ben Johnson, standing next to you, that
23 you pushed out of the way to save them from that
24 car?

25 A Yes. There was one other male besides

1 Mr. Johnson and myself.

2 Q Did you tell Detective Stanley that that
3 night?

4 A I believe I did. I do not remember.

5 Q Again, Mr. Coleman, I'm going to hand you
6 the same transcript, a copy. Can you find that in
7 there.

8 A (Reviewing document) I did not see it in
9 here so far.

10 Q Mr. Coleman, you didn't say anything about
11 two people that you pushed out of the way that night
12 to Detective Stanley on 5/28, did you?

13 A As far as that goes, no, I do not
14 remember.

15 Q Buy that transcript is a fair and accurate
16 representation of what you told Detective Stanley
17 that night, and you reviewed that transcript with
18 your counsel, right?

19 A Not recently.

20 Q But you have reviewed it at some point,
21 correct?

22 A Probably nine months ago, yes, sir.

23 Q You never stated that you pushed two
24 people out of the way of a speeding car?

25 A I did not see it in that transcript at the

1 time of that interview.

2 Q As a matter of fact, the first time you
3 said that was at a hearing on March 6, 2015; is that
4 correct?

5 A If that would be the correct transcript,
6 then, yes.

7 Q Now that was a separate hearing nine
8 months later, roughly, from when you talked to law
9 enforcement?

10 A That's correct.

11 Q Now, Mr. Coleman, you said that your right
12 foot was run over, correct?

13 A That is correct.

14 Q It's your testimony that your right foot
15 being run over was from you backing up and pushing
16 two people out of the way, and your right foot being
17 run over as she was coming at you with the car;
18 correct?

19 A Once I moved the other two males out of
20 the line of her vehicle and I backed up to my
21 vehicle, the front of her vehicle made contact with
22 my lower leg, continuing down my road, which would
23 be her front tire, would have run over my foot as
24 she's continuing down, yes.

25 Q And is it your testimony that you were at

1 the corner of that vehicle?

2 A I would be on the driver's side of the
3 vehicle, yes.

4 Q And earlier, correct me if I'm wrong, you
5 would be standing somewhere like this to the vehicle
6 (demonstrating)?

7 A No, sir.

8 Q How?

9 A A little farther forward. Come more
10 towards me and move more towards the center.

11 Q As you are backing up, this car is coming
12 towards you?

13 A The vehicle would be technically farther
14 off to the -- if my body was -- it's hard to --

15 Q How about if you hop down and demonstrate
16 for us.

17 A Yes, sir.

18 Q Being that this corner would be the
19 headlight (indicating), passenger driver's side.

20 A Okay. I'm over here with Mr. Johnson,
21 approximately over here (indicating) talking to
22 Mr. Johnson and another male party that I don't
23 know. It would have been when I heard the vehicle
24 accelerate.

25 At that time, look over my shoulder, push

1 him out of the way back up to where my vehicle would
2 have been, approximately right here (indicating) as
3 her vehicle is coming right this way (indicating).

4 Q It's at that point your right foot is run
5 over as you are backing up?

6 A As I'm backing up, that's when it hits my
7 right leg, yes, sir.

8 Q Now, you said that you have to go through
9 a lot of training?

10 A Yes.

11 Q Part of that training is what some people
12 would be targeting as discrimination, correct?

13 A Yes.

14 Q What is that?

15 A That's being able to identify friend from
16 foe.

17 Q It requires you to make quick decisions on
18 shoot or not shoot, correct?

19 A That's correct.

20 Q You are well versed in firearms, as you
21 previously testified to?

22 A Yes, sir.

23 Q Would it be a fair description to say that
24 for a Glock, a trigger-pull would be five and a half
25 pounds to six pounds?

1 A I believe it is from four and a half to
2 five and a half pounds, yes.

3 Q Four and a half to five and a half pounds
4 for trigger-pull. You have to put four and a half
5 to five and a half pounds to that trigger?

6 A For semiautomatic, yes.

7 Q Now a Glock doesn't have double-action or
8 single-action, correct?

9 A It is a striker-fire -- there's three
10 safeties inside of a Glock.

11 Q And there's actually no real outer safety
12 on a Glock?

13 A No manual safety except for the trigger
14 safety.

15 Q And the trigger safety is essentially
16 don't put your finger on the trigger, correct?

17 A That would be rule number one. But there
18 is another safety on the trigger.

19 Q But it's easy to operate?

20 A You have to have your finger fully
21 depressed on the trigger, yes.

22 Q And it's fewer steps than many firearms
23 that have an external safety?

24 A Correct.

25 Q Now I am going to show you two photos

1 here.

2 Those your magazines from that night?

3 A It appears to be. I cannot tell you with
4 100 percent certainty, but it appears to be.

5 Q You heard Carlos Nieves testify here,
6 correct?

7 A Yes.

8 Q Is that the same type of ammunition you
9 use?

10 A I could not tell, the color is off.

11 Q Mr. Coleman, is this the same kind of
12 magazine you use for your firearm?

13 A Yes, it appears to be.

14 Q Is that your magazine?

15 A I do not know. It's not labeled with my
16 name on it.

17 Q Do you normally label your magazines with
18 your name on it?

19 A Most times, yes, you label the magazine
20 plate.

21 Q With your name on it?

22 A Or initials.

23 Q Did you label your magazines that night
24 with your name on it?

25 A Some might be labeled and some might not

1 be, if I hadn't gotten to it yet.

2 Q Does it appear to be the ammunition you
3 used?

4 A Yes, that would be correct.

5 Q Does this appear to be the firearm you
6 used that night?

7 A If I may see the back plate, I could tell
8 you for sure.

9 Q (Complies)

10 A Yes, that is my firearm.

11 Q So is it safe to say this is the firearm
12 you used that night, the magazines you used that
13 night, with the ammo you used that night?

14 A Yes.

15 Q You said you fired four rounds, correct?

16 A That is correct.

17 Q How many rounds are in each one of those
18 magazines?

19 A There will be, if all the magazines, which
20 appear to have the actual finger grip, up to 19
21 rounds per magazine.

22 Q Then you have something called plus one,
23 correct?

24 A That would be with a round in your
25 chamber, that's correct.

1 Q Do you keep a round in your chamber at all
2 times?

3 A All times.

4 Q So that's why you could shoot what you see
5 on the right side with four rounds left over,
6 correct?

7 A Correct.

8 Q That's how you can get an even number,
9 correct, because, otherwise, it would be 19, if you
10 just had a magazine?

11 A If you had just a magazine, a full
12 magazine, then, yes it would be just 19.

13 Q And you would have 20 --

14 A With the plus one like you called it, yes.

15 Q You had one locked and ready to go at all
16 times?

17 A Correct.

18 Q On a gun without an external safety,
19 correct?

20 A That is correct.

21 MR. ARCKEY: May I have a moment, Your
22 Honor?

23 THE COURT: You may.

24 (Pause)

25

1 BY MR. ARCKEY:

2 Q Now you also testified extensively today
3 about how you watched Ms. Guillory drive around the
4 neighborhood and appeared to be meeting up with
5 Mr. Johnson?

6 A That's correct.

7 Q Again, did you ever tell law enforcement
8 that?

9 A I do not know, sir.

10 Q Would looking at your statement that night
11 help refresh your recollection?

12 MR. MULLINS: Your Honor, objection. He
13 has nothing to refresh. He answered the
14 question.

15 THE COURT: Overruled.

16 BY MR. ARCKEY:

17 Q Would looking at your statement that night
18 help refresh your recollection?

19 A It would tell me whether or not it's in
20 that statement at that time, but like I said, in
21 pain, in the hospital, I had just shot a person that
22 hit me with a 4000-pound vehicle, I do not remember
23 100 percent of what I told the detective.

24 Q You don't remember how much the weight
25 is --

1 A The curb weight is 4000 pounds.

2 Q How did you find that out?

3 A Google.

4 Q In preparation for this trial?

5 A I've known it for a while, but, yes, it's
6 been in all preparation for this trial, yes, sir.

7 Q Now you said that you saw Mr. Johnson hit
8 with the vehicle, correct?

9 A That's correct.

10 Q How fast was she going?

11 A I could not tell you. It was, from where
12 I was sitting, it appeared to be greater than 15 to
13 20 miles per hour.

14 Q Greater than 15 to 20 miles per hour?

15 A That's correct.

16 Q You saw him hit the hood and roll up on
17 the windshield?

18 A He did not roll up on the windshield. I
19 saw him hit the hood and then roll off the side of
20 the driver's side of the vehicle.

21 Q You remember giving a statement to law
22 enforcement in this case?

23 A Yes, sir.

24 Q Okay.

25 MR. ARCKEY: Showing defense what is page

1 five, paragraph eight.

2 BY MR. ARCKEY:

3 Q It's the same paragraph I asked you
4 earlier to read, paragraph five on page eight. Look
5 up when you are done.

6 A (Complies) Yes, sir.

7 Q You recall telling law enforcement that
8 night that he hit the windshield, too?

9 A In this testimony, yes.

10 Q You ever grab the car that night?

11 A I do remember at one point as I'm telling
12 her to stop and getting ready to -- I had my weapon
13 out, I had what would be my left hand somewhere near
14 the driver's side of the vehicle.

15 Q Possibly through the driver's window?

16 A I do not remember her driver's window
17 being down.

18 Q Now you said that you had your weapon out
19 at that point?

20 A Yes.

21 Q When did you draw your weapon?

22 A When I realized that the vehicle was
23 coming at us and she was a threat.

24 Q Was this before or after you pushed two
25 people out of the way?

1 A When I shot her, it would be after --

2 Q When did you draw your weapon in relation
3 to when you pushed the two people out of the way?
4 Did you pull it before you pushed the two people out
5 of the way?

6 A No, I pushed the two people out of the way
7 and started to back out --

8 Q At that point you draw your weapon,
9 correct?

10 A Correct.

11 Q You spin off the car, correct?

12 A I wouldn't say spin. I guess it would be
13 spin. The vehicle was on my body.

14 Q So at six-two, 300 pounds, your foot is
15 trapped underneath the wheel of the front of the
16 car, you just pushed two people out of the way, you
17 have your foot trapped under the wheel, you do a
18 spin off the car, have your weapon in your hand all
19 the time and then start firing at the car; is that
20 your testimony here today?

21 A No, it is not correct.

22 Q When did you draw your weapon?

23 A Once I realized that she was a threat and
24 the vehicle was hitting me.

25 Q Did you have your weapon in your hand when

1 your foot -- before your foot was trapped underneath
2 the car?

3 A I had my hand on my weapon getting ready
4 to pull it out of the holster, if I hadn't had it
5 out of the holster already.

6 Q And after you had spun off the vehicle,
7 you pointed your weapon at the vehicle, correct?

8 A My weapon was already pointed at the
9 vehicle. I never had time to bring the weapon up
10 like a traditional shooter would do.

11 Q You drew your weapon, you point it at the
12 vehicle, the vehicle is going away from you at this
13 point, correct?

14 A Incorrect.

15 Q Your foot is no longer trapped underneath
16 it, correct?

17 A The vehicle is still on my body, though.

18 Q So was your leg ran over?

19 A Was the leg ran over by the tire, no. My
20 foot was ran over by the tire. The vehicle was --
21 you'd have to -- if your leg is standing there and
22 you are starting to buckle -- my leg is starting to
23 buckle underneath the vehicle.

24 Q So let me get this straight now. You push
25 two people back, correct?

1 A Correct.

2 Q Your foot is trapped underneath the wheel
3 of the car, correct?

4 A Correct.

5 Q Your knee starts to buckle?

6 A Correct.

7 Q You spin off the car, correct?

8 A Incorrect.

9 Q So you never spun off the car?

10 A Not until after I fired.

11 Q So was your foot trapped underneath the
12 wheel while you were firing?

13 A No, sir.

14 Q So the car was going away from you at that
15 point when you fired?

16 A The car, when I fired, the driver side
17 window, the front driver's side door was crossing my
18 body. So as I had my weapon fired from the hip, all
19 my rounds would have been at essentially the
20 driver's side window.

21 Q Now it's your testimony that this car is
22 going fast at this point, correct?

23 A Like I said, sir, I did not know how fast
24 she was going, just that I heard the vehicle
25 accelerate, and it was moving.

1 Q Okay.

2 MR. ARCKEY: One moment, Your Honor.

3 THE COURT: You may.

4 (Pause)

5 BY MR. ARCKEY:

6 Q You recall -- actually, you weren't happy
7 that people around there were telling her to leave,
8 correct? You wanted to detain her for law
9 enforcement; is that correct?

10 A No, sir. I didn't care what other people
11 were saying or even thought.

12 Q Why did you tell her to stop multiple
13 times?

14 A Because she was a threat to Mr. Johnson.

15 Q Why did you pull someone out of the car?

16 A Once again, she was a threat.

17 Q Now you're trained in the military to
18 shoot to kill, correct?

19 A You shoot to stop the threat, yes.

20 Q You are not trained to shoot to wound?

21 A Correct.

22 Q You had several other options that day, to
23 use a taser; correct?

24 A No, sir.

25 Q You had other options that day, to use

1 O. C. spray; correct?

2 A No, sir.

3 Q So as a car is going away from you, your
4 only option is to shoot at that car to neutralize
5 that threat; is that correct?

6 A No, sir.

7 MR. ARCKEY: No further questions, Your
8 Honor.

9 THE COURT: Redirect?

10 MR. MULLINS: Your Honor, just briefly.

11 - - -

12 REDIRECT EXAMINATION

13 BY MR. MULLINS:

14 Q Mr. Coleman, do things like this happen to
15 you every day?

16 A No, sir.

17 Q It's a pretty traumatic experience, you
18 think?

19 A Yes, it was.

20 Q Were you real happy about this situation?

21 A No, I was not.

22 Q Were you upset?

23 A Yes.

24 Q Your foot was injured in this incident?

25 A That's correct.

1 Q Did they have you on any medications at
2 the hospital?

3 A Yes, they did.

4 Q I want you to take a look --

5 MR. MULLINS: Your Honor, if I may, same
6 transcript.

7 THE COURT: Yes.

8 MR. MULLINS: May I approach the witness?

9 THE COURT: Yes.

10 BY MR. MULLINS:

11 Q Okay. When you say -- first off, when you
12 say coming from the east, which way is she going, if
13 she's coming from the east?

14 A She's coming from the east.

15 Q And which way would she be going, which
16 direction would she be headed if she's coming from
17 the east?

18 A It would be westbound.

19 Q She's coming from the east heading
20 westbound. If she's coming from the west, which way
21 is she coming?

22 A Eastbound.

23 Q Now take a look at this transcript that
24 counsel just had you look at.

25 A (Complies)

1 Q That's your testimony to Detective Stanley
2 that evening; is that right?

3 A Yes, I believe so.

4 Q You see anything about, any direct
5 questions about how many people you pushed out of
6 the way?

7 A No, sir.

8 Q All right. In fact, what -- look at all
9 the questions. What are a lot of those questions?

10 A Okay.

11 Q All right --

12 A I can't read them out loud, correct?

13 MR. ARCKEY: Objection, Your Honor.
14 Improper bolstering at this point.

15 THE COURT: Can you-all approach, and
16 bring me a copy of the transcript.

17 (Whereupon, a bench discussion was had out
18 of the hearing of the Jury as follows)

19 THE COURT: What are you trying to do?

20 MR. MULLINS: I had asked, Your Honor, I'm
21 redirecting with respect to that transcript.
22 Counsel made some points with regard to
23 testimony not rendered in that statement which
24 was given, which were given here today. I want
25 to ask him, I think to paint a full picture of

1 it, but how many questions -- look at all these
2 objects. He is not asking him any questions.

3 The fact that he's not even asking any
4 questions should reflect on what answers he's
5 giving. He's not asking direct questions about
6 it. It's an unfair question to say what you
7 didn't tell Detective Stanley about that.

8 THE COURT: It appears he's giving a
9 narrative response. It looks like the officer
10 is saying okay, as he's giving a narrative
11 response. He didn't include that information
12 in his narrative response, as far as I can see.

13 MR. MULLINS: He didn't, but -- that's the
14 point I wanted to make, was he wasn't -- if I'm
15 not going to be permitted to do it, I certainly
16 won't do it, but I wanted to ask if he was
17 asked any direct questions about it.

18 THE COURT: Well, you can ask that.

19 What's the objection?

20 MR. ARCKEY: Your Honor, it is improper
21 bolstering at this point. What I was doing is
22 negatively impeaching, which is acceptable, off
23 of a prior statement that was given by the
24 defendant. Whether or not he included details
25 that they did ask about, but not in the way

1 they were doing it --

2 THE COURT: I agree. I am going to
3 sustain the objection to the procedure that was
4 used.

5 I don't think there is anything improper
6 about you asking that question, but not the way
7 you were doing it.

8 (Whereupon, bench discussion was
9 concluded, and the proceedings continued in the
10 hearing of the Jury as follows)

11 BY MR. MULLINS:

12 Q Mr. Coleman, take a look at that.

13 A (Complies)

14 Q Was this statement played to Detective
15 Stanley right after these events?

16 A A few hours actually, I believe.

17 Q Were you still upset by this whole
18 experience?

19 A Yes.

20 Q Are you still upset about this, by this
21 whole experience?

22 A Yes.

23 MR. ARCKEY: Objection, Your Honor. This
24 is calling for sympathy at this point.

25 THE COURT: I'll overrule the objection.

1 Move on.

2 BY MR. MULLINS:

3 Q Now you weren't asked any direct questions
4 with respect to who you pushed out of the way or
5 details as to that, were you?

6 A No, I was not.

7 Q All right. Okay. Thank you.

8 What did you say? Just so I'm clear -- is
9 the number one rule of safety -- you said something
10 about rule number one?

11 A Always keep your finger straight and off
12 trigger until you are ready to fire.

13 Q Did you do that in this case?

14 A Correct.

15 Q All right.

16 MR. MULLINS: I don't have anything else,
17 Judge.

18 MR. ARCKEY: I have two questions, Judge.

19 THE COURT: Okay.

20 - - -

21 RECROSS EXAMINATION

22 BY MR. ARCKEY:

23 Q How long were you in the hospital for?
24 You were discharged that night; correct?

25 A I think it was close to 12 or 1:00 in the

1 morning. I do not have --

2 Q The incident happened around 8:30, you
3 were discharged by the next day; that morning?

4 A It would have been the next morning, yes.

5 Q Did you have any major surgeries?

6 A No major surgeries.

7 Q You had a contusion on your foot?

8 A And a possible broken foot, yes.

9 Q But it wasn't a broken foot, correct?

10 A Yes, correct. They said it was a possible
11 fracture.

12 Q Did you ever put a cast on it?

13 A They did not give me a cast, they took me
14 to jail.

15 Q Was that reflected in your medical
16 records?

17 A They took me to jail, so they didn't give
18 me a casting job.

19 MR. ARCKEY: No further questions.

20 MR. MULLINS: Nothing further, Your Honor.

21 THE COURT: You can have a seat back over
22 at counsel's table.

23 THE WITNESS: Okay.

24 THE COURT: Ladies and Gentlemen, I gave
25 you an instruction earlier about what

1 stipulation means. The defense is moving into
2 something I made reference to that was
3 stipulated to in reference to the medical
4 records of Mr. Coleman. If you want to hand
5 that to me.

6 It will be marked as Defense Exhibit F for
7 Identification. It will be moved into
8 evidence, I assume, without objection from the
9 State.

10 MR. ARCKEY: Without objection.

11 THE COURT: As defense 6.

12 You can publish it to the Members of the
13 Jury.

14 MR. ADAMS: If I can publish to the Jury
15 from up here. Specifically page 38 of 43, let
16 me see how good of a quality it is going to be
17 here.

18 These records will be in evidence, Judge.

19 THE COURT: All right. Defense, call your
20 next witness.

21 MR. MULLINS: Defense rests, Your Honor.

22 THE COURT: Okay. State wish to provide a
23 rebuttal case?

24 MR. ARCKEY: No, Your Honor.

25 At this time the State rests.

1 THE COURT: All right. Ladies and
2 Gentlemen of the Jury, State and defense have
3 now rested their cases.

4 In a few minutes I am going to send you
5 out to the jury room. The attorneys and I are
6 going to finalize the jury instructions, and
7 then we will bring you back in and have them
8 present their final arguments to you.

9 What I am going to do is send you back
10 into the jury room now with a menu from the
11 court deputies and for you to place your order
12 of what you want for dinner. By the time you
13 get back to deliberate, it will be in the jury
14 room for you.

15 If you will excuse us and let us finish
16 the jury instructions and we will bring you
17 back in for closings.

18 (whereupon, the jury was escorted from the
19 courtroom and the proceedings continued in
20 their absence as follows)

21 THE COURT: Before we start with the jury
22 instructions, any other motions from the State
23 or defense?

24 MR. ADAMS: Yes, Judge. At this time the
25 State would -- the defense would renew our

1 motion for judgment of acquittal. At this
2 point, Judge, our argument is that the State
3 has presented no credible evidence to dispute
4 the theory of defense, that its only evidence
5 they had to actually dispute the theory of
6 defense, would be Aimee Guillory and Vince
7 Johnson, and their testimony is not credible,
8 that the Court shouldn't take their testimony
9 as credible based on impeachment they've had
10 here today.

11 The rest of the testimony received did not
12 contradict his testimony. None of the
13 witnesses were in a place to see what
14 Mr. Coleman testified, and that no reasonable
15 jury could find him guilty at this point.

16 THE COURT: State?

17 MR. ARCKEY: Your Honor, I believe take
18 even at this point, what defense has put forth
19 is actually a credibility question for the
20 Jury, and that this case should proceed to the
21 Jury as to credibility on this matter, and that
22 Your Honor should not grant the J.O.A.

23 THE COURT: As it relates to the motion
24 for judgment of acquittal, based upon the
25 standard applicability at this point in time

1 and evidence presented at the close of all the
2 evidence, the Court is going to deny the
3 judgment of acquittal as to all counts.

4 MR. ADAMS: We would renew our motion to
5 declare him immune for prosecution based on the
6 stand your ground law.

7 THE COURT: As it relates to your stand
8 your ground motion, the Court has previously
9 conducted a hearing on this case and previously
10 entered an order in that regard. I'm denying
11 your motion for stand your ground immunity.

12 At that point in time nothing that has
13 been presented here today changes the Court's
14 mind as it relates to the evidence presented at
15 the hearing then or now, and this motion would
16 still be denied.

17 All right. I haven't given you the
18 standard instructions yet. Before I print out
19 a copy and send it to everybody, I want to get
20 these first.

21 With regard to the justifiable use of
22 deadly weapon instruction, I want to discuss
23 it. Why don't we go about it paragraph by
24 paragraph, and let me know if there's anything
25 you-all want to add or delete and the reasons

1 why you-all would want me to do that.

2 The first paragraph talks about, an issue
3 from this case is whether the defendant acted
4 in self-defense, or anything that either side
5 wants to say about that particular paragraph?

6 MR. ARCKEY: No, Your Honor.

7 MR. MULLINS: No, Your Honor.

8 THE COURT: The next paragraph is the
9 definition of what deadly force means.

10 Any objection to that?

11 MR. ARCKEY: No, Your Honor.

12 MR. MULLINS: No, Your Honor.

13 THE COURT: The next paragraph includes
14 two subparagraphs one and two. What is
15 anybody's believe as it relates to that
16 paragraph?

17 MR. MULLINS: No, Judge.

18 MR. ARCKEY: Keep one and lose two, Your
19 Honor.

20 MR. ADAMS: Our argument, of course, is
21 that Aimee Guillory is committing an aggravated
22 battery against Mr. Coleman and also an
23 aggravated assault against the numerous
24 bystanders, aggravated assault --

25 MR. MULLINS: At least an aggravated

1 battery with regard to Mr. Johnson. There's
2 some evidence of that.

3 MR. ADAMS: Aggravated battery against him
4 at the time she uses the force.

5 MR. MULLINS: Right, she committed it
6 twice.

7 THE COURT: Defense, assertion is
8 subparagraph two should be in under the theory
9 that there was the imminent commission of an
10 aggravated battery, as well as an aggravated
11 battery?

12 MR. MULLINS: At least an aggravated
13 battery -- possibly an aggravated assault as
14 well. Aggravated assault, two counts of
15 aggravated battery. One being against
16 Mr. Johnson and one being against Mr. Coleman.
17 There's certainly evidence to support that.

18 MS. GONG: There's no evidence about
19 aggravated assault. None of the participants
20 saw Aimee Guillory coming at them.

21 MR. MULLINS: There's evidence that
22 Mr. Coleman testified to that Mr. Johnson
23 jumped out of the way when the car was coming
24 his way.

25 MS. GONG: He allegedly pushed him away.

1 Mr. Johnson did not say that.

2 THE COURT: I don't think the standard for
3 giving a jury instruction is one way, didn't
4 say it and one witness did say it.

5 The standard is if there's any evidence to
6 support a theory of the defense, then I'm going
7 to give the instruction.

8 MS. GONG: I don't believe they asked
9 Mr. Coleman or Mr. Johnson, or the other males,
10 see the car coming after them and that's an
11 element of assault, is they have to know --

12 THE COURT: There is certainly evidence
13 that he testified to that the car was coming at
14 him and he was aware of it.

15 MS. GONG: But not for Mr. Johnson and the
16 other unidentified male.

17 THE COURT: So what you are objecting to
18 is -- or another phrase at the end of
19 subparagraph two.

20 MS. GONG: Yes.

21 THE COURT: So it should be the imminent
22 commission of a forcible felony against the
23 defendant?

24 MS. GONG: Yes.

25 MR. ADAMS: Judge, I would argue that the

1 word for word language is the imminent
2 commission of an applicable forcible felony.
3 It doesn't say an actual commission, but the
4 imminent commission, so as far as the element
5 for the aggravated assault of them knowing, the
6 imminent, I think, may limit that.

7 MR. MULLINS: There's certainly until
8 circumstantial evidence that if Mr. Johnson is
9 jumping out of the way, it's certainly because
10 a car is coming in his way --

11 THE COURT: Are you referring to the
12 incident that happened --

13 MR. MULLINS: In the roadway, yes.

14 THE COURT: Well, that's way before the
15 shooting evidence.

16 MR. MULLINS: I would say it's kind of in
17 the res gestae of that whole incident.

18 THE COURT: I don't think that applies.
19 That was an incident where there was a near
20 miss, the car going down the street and coming
21 back and hitting him. Imminent means that it's
22 about to happen, not that it's already
23 occurred. So I don't think that that theory
24 flies.

25 MR. MULLINS: What if there's evidence

1 that he's pushing them out of the way, then it
2 would be the assault as to them?

3 MR. ADAMS: Judge, Destini testified, as
4 well as Myeshia Williams, there were other
5 friends. As far as Mr. Coleman is concerned,
6 this is a driver who is willing to hit people,
7 and as far as he's concerned, didn't because he
8 was shot by him. They would have obviously
9 seen the car coming and testified they did see
10 the car coming.

11 THE COURT: As it relates to subparagraph
12 two, I am going to leave in the imminent
13 commission of an aggravated battery or
14 aggravated assault against himself or another.

15 I don't think there has to be proof that
16 it actually happened. Imminent means the
17 attempt to hit them. The Jury may conclude
18 that he attempted to run over the three of them
19 as they were standing there if they believe the
20 testimony of the defendant, which means I will
21 need to put the definition of that in.

22 The next paragraph is the one that starts
23 with the word "however" --

24 MR. MULLINS: Judge, we would object to
25 that because --

1 THE COURT: Hang on. I haven't finished.
2 Starts with the word "however" and has two
3 subparagraphs, and subparagraph two has two
4 other paragraphs, A and B. Let's talk about
5 the first subparagraph one.

6 MR. ADAMS: Judge, we don't believe,
7 reading over the case law, starting with the
8 cite of Giles 831 So2d 1263, it's already cited
9 in there, we also read Davis v. Florida, 804
10 So2d 400 --

11 MS. GONG: I don't think subparagraph one
12 applies.

13 THE COURT: We will take out subparagraph
14 one.

15 Subparagraph two.

16 MR. ADAMS: Add the defense does not think
17 either one of those paragraphs apply, A or B.

18 THE COURT: State?

19 MS. GONG: Judge, by Mr. Coleman reaching
20 into the car, one would argue that he provoked
21 the use of force.

22 MR. MULLINS: Force has to be so great
23 that he reasonably believed he presented
24 imminent danger, death or great bodily harm and
25 exhausted every reasonable means to escape the

1 danger other -- we're talk about he initially
2 provoked the use of force --

3 MR. ADAMS: There was no testimony, Judge,
4 that Ms. Guillory did this because of
5 Mr. Coleman reaching in the vehicle. The only
6 evidence that can support his actions would be
7 that that was all part of him, at the most,
8 even in the light most favorable to the State,
9 at the most, trying to get her to stop and out
10 of the vehicle, and, obviously, a lot of the
11 testimony would be that's after he's already
12 been struck by the car. He's in the progress
13 of still making contact with the car --

14 MR. MULLINS: In fact, it's their whole
15 theory she didn't after use any force at all,
16 she was just leaving. It would be incongruous
17 for them to say she was just trying to leave,
18 and then for them to say wait a minute now, if
19 she used force against him, that was because he
20 provoked it. That's not sensical.

21 MS. GONG: I'm sure the defense's theory
22 is he got in front over by the front tire. The
23 State's theory is he possibly may have gotten
24 run over by the back tire.

25 So him reaching into the driver's window

1 would be him provoking it, and if he did,
2 indeed, by chance, get run over by the back
3 tire, then it was preceded by him provoking, by
4 grabbing onto her, and that technically is a
5 burglary of a conveyance with an assault or
6 battery.

7 So we would be asking for subparagraph
8 two.

9 MR. MULLINS: If they want to concede that
10 she used that force against him just to get
11 that --

12 MS. GONG: That's what they are arguing,
13 and that's what we may have to argue back.

14 THE COURT: Any objection to that?

15 MR. MULLINS: Judge, I don't think there
16 is -- the force asserted towards the defendant
17 was initially provoked, what we are -- we're
18 going to still object because we think that's
19 confusing. It's not enough for them to --
20 there's no evidence at all that Aimee Guillory
21 utilized deadly force against him because he
22 reached into the car. She was just trying to
23 get away. We think that that would be
24 confusing, we're not going to ask for that.
25 We're going to ask that that be stricken.

1 MR. ADAMS: And I would point out, Judge,
2 that Aimee Guillory's own testimony was that
3 she was trying to drive away, not that she did
4 it in a reaction to Mr. Coleman's reaction.

5 THE COURT: Is there any real dispute that
6 this is -- that she was the aggressor? This
7 instruction is given when there's a dispute
8 over who is the initial aggressor?

9 MS. GONG: She was not the initial
10 aggressor.

11 MR. MULLINS: We say she was.

12 THE COURT: If you guys are disputing that
13 she's the initial aggressor, then why shouldn't
14 I give the instruction, because that is what
15 this is about?

16 MR. ADAMS: What the State argues is they
17 believe that our client was the initial
18 aggressor. They are saying that he's the
19 aggressor because he's reaching into that
20 vehicle. Even though they want to argue that
21 now, nobody said that. The only people that
22 they would cite for their argument is trying to
23 say she's trying to drive away.

24 MR. MULLINS: Initially provoked the use
25 of force against him -- are we trying to say

1 she's -- then she's justified in using deadly
2 force against him because he initially provoked
3 it, that's not -- no, that's confusing.

4 MS. GONG: If they are arguing that she's
5 the initial aggressor by wanting to drive away
6 and wanting to swerve away from him, then, you
7 know, the State's counterargument may be that
8 he's the initial aggressor because he reached
9 into her car and by way of reaching in, she may
10 have had to react.

11 MR. MULLINS: If they want to say she's
12 the initial -- it looks like they want to have
13 it both ways. They want to be able to say
14 she's just this innocent person, she's driving
15 away, she's minding her own business, he's the
16 one who is shooting her unjustifiably, but on
17 the other hand, if he did reach in, well, that
18 makes him the initial aggressor and now she's
19 justified in using deadly force.

20 I don't think we can have an alternative
21 argument like that without it being confusing
22 to the Jury.

23 MR. ADAMS: We would cite Davis v. State,
24 804 So2d 400. It's a case where the jury
25 instructions were found to be confusing because

1 they tried a husband and wife together and the
2 language they infer one and -- they found it
3 confusing --

4 THE COURT: It has nothing to do with
5 this.

6 MR. ADAMS: It was cited in the Giles
7 case, it can be confusing, that's a reason to
8 take it out. I can -- if it's going to confuse
9 the Jury more than it's going to help, you can
10 take it out.

11 THE COURT: All right. I am going to
12 leave that paragraph in. There is testimony in
13 the record that the defense is claiming that
14 Ms. Guillory attempted to commit a forcible
15 felony, which is subparagraph two that we gave
16 earlier of either aggravated battery or
17 aggravated assault. So there is some evidence
18 in the record that you are claiming that the
19 victim was the aggressor.

20 The State is entitled to counter that and
21 claim that the defendant can make an argument
22 that he was the initial aggressor, and that's
23 where the Jury needs to determine whether or
24 not the victim or the defendant is the initial
25 aggressor. So I am going to go ahead and leave

1 that in.

2 MR. MULLINS: Subparagraph two A is in?

3 THE COURT: Yes. What do you say about
4 two B?

5 MR. ADAMS: Two A is in?

6 THE COURT: Absolutely.

7 Paragraph two B, thoughts?

8 Defense?

9 State?

10 Anyone?

11 MR. ADAMS: I think that probably would
12 apply more when there's like a physical fight.
13 It probably should still come in, the way it's
14 languaged there.

15 MS. GONG: I'm fine with taking two B out.

16 THE COURT: Defense?

17 MR. ADAMS: It doesn't apply in this case.

18 THE COURT: Both sides agree to take two B
19 out?

20 MR. MULLINS: Wait a minute. He
21 clearly -- well, leave that in. If they --
22 let's just -- B -- well, I don't know. I
23 think -- I don't think there's any evidence --

24 THE COURT: What do you --

25 MR. MULLINS: We're going to ask that it

1 be stricken.

2 So is the Court going to strike B then?

3 THE COURT: Correct. I am going to give
4 just two A.

5 The next paragraph starts with in deciding
6 whether -- any objection to that paragraph?

7 MS. GONG: No, Judge.

8 MR. ADAMS: What was the question, top
9 paragraph of the second page?

10 THE COURT: The paragraph that starts with
11 in deciding whether or not the defendant was
12 justified in the --

13 MR. MULLINS: That's a standard
14 instruction, Your Honor --

15 THE COURT: So no objection?

16 MR. MULLINS: No objection.

17 THE COURT: The next paragraph talk about
18 if the defendant was attacked, stand your
19 ground portion --

20 MR. MULLINS: That's acceptable. I think
21 it's a standard instruction in these types of
22 cases.

23 THE COURT: State?

24 MS. GONG: That's fine.

25 THE COURT: What about the bracket, was

1 engaged in an unlawful activity?

2 MR. ADAMS: Well, Judge, I think argument
3 has been there's been no testimony to support
4 that he was, and so that language should be
5 removed.

6 THE COURT: Anybody bothered to read the
7 Novak case?

8 MR. ADAMS: By that statement, Judge, I'm
9 guessing that it --

10 MS. GONG: I would ask that it stay in.

11 THE COURT: What other crimes, other than
12 the crimes that he is alleged to have
13 committed, that he's charged with in this case
14 is there?

15 Novak says it's reversible error to give
16 that portion unless there's some other crime
17 he's committed outside --

18 MS. GONG: I don't recall whether or not
19 it has to be charged, because clearly it's a
20 burglary of a conveyance with a battery.

21 MR. MULLINS: Um --

22 MS. GONG: It's --

23 MR. MULLINS: Judge, I think it has to be
24 charged. I must confess I haven't read the
25 Novak case.

1 THE COURT: So your theory, State, is that
2 he was engaged in an unlawful activity by doing
3 what?

4 MS. GONG: By reaching into the car and
5 grabbing her without permission.

6 MR. MULLINS: I don't know that there's
7 any evidence that he actually grabbed her --

8 MS. GONG: And detaining her.

9 MR. MULLINS: That's where you get into
10 the citizen's arrest.

11 THE COURT: If they ask for that, then you
12 are going to get that as an instruction.

13 MR. MULLINS: Okay. Fair enough.

14 THE COURT: Then I will leave the
15 bracketed section in.

16 MR. MULLINS: We're asking --

17 THE COURT: There is some evidence that
18 could be relied upon by a jury that he did
19 reach into the car and grab onto her. Whether
20 or not a jury believes that that is a burglary
21 of a conveyance with a battery or whether he
22 was justified in doing so because it's a
23 citizen arrest, is a question for them to
24 decide and not me.

25 So I'm going to go ahead and leave the

1 bracketed language in on that
2 no-duty-to-retreat paragraph.

3 The next paragraph talks about person
4 unlawfully by force enters or attempt to enter
5 an occupied vehicle with an intent to commit an
6 unlawful act involving force or violence.

7 MS. GONG: I would ask to leave it in.

8 MR. ADAMS: Literally all the evidence
9 shows that, at the most, he's trying to get her
10 to stop her vehicle. There's absolutely -- all
11 the evidence shows that he was not intending
12 to, at that point, to commit any violence
13 against her. His testimony was that he thought
14 it was --

15 MS. GONG: He entered her vehicle through
16 the window and he grabbed on to her and
17 committed a battery without her permission and
18 tried to drag her out. So it applies.

19 MR. MULLINS: It would have to be unlawful
20 by force. There's no evidence that it was
21 unlawful or by force.

22 THE COURT: Isn't that a legal conclusion
23 or a jury question, to figure out why something
24 is unlawful or not?

25 Based upon the law, I am going to give

1 them?

2 MR. ADAMS: It's a standard instruction --

3 THE COURT: It is part of the standard
4 instruction. If you noticed, the very next
5 paragraph is your proposed jury instruction,
6 which says that it is lawful to conduct a
7 citizen's arrest. So you are getting -- able
8 to argue that it's lawful and they can argue
9 that it's unlawful and the Jury can make that
10 decision.

11 So I am going to go ahead and leave that
12 portion that says a person who unlawfully
13 enters by doing the force or violence, and
14 immediately thereafter I am going to insert the
15 jury proposed instruction by citizen arrest.
16 Although it's not part of the standard
17 instruction, it is supported by some of the
18 evidence in this case.

19 It is not misleading, but assists the Jury
20 in deciding what is lawful conduct or not
21 lawful conduct and supported by some of the
22 evidence, so I am going to go ahead and leave
23 that.

24 Then there's the definition of what a
25 vehicle is.

1 MS. GONG: No objection.

2 THE COURT: Then the remainder of the
3 instructions just talks about physical
4 abilities and what not.

5 Any objection to the remainder of the
6 instruction?

7 MS. GONG: No, Judge.

8 MR. MULLINS: No, there's no objection to
9 that. That's fine.

10 Are they going to get written
11 instructions, Your Honor?

12 THE COURT: Yes. I'm working on them
13 right now.

14 MR. MULLINS: They are going to get one
15 copy to take back with them?

16 THE COURT: Every single one of them will
17 get a copy.

18 MR. MULLINS: Okay. Thank you.

19 MR. ADAMS: Judge, are you going to be a
20 minute? Can my client use the restroom?

21 THE COURT: Yeah, go ahead.

22 (court at ease)

23 THE COURT: Have both sides had an
24 opportunity to review the proposed
25 instructions?

1 MR. ARCKEY: Yes, Your Honor, the State
2 has.

3 THE COURT: Any objection?

4 MR. MULLINS: We're still looking at them.

5 THE COURT: For purposes of the State, any
6 objection to the proposed instructions?

7 MR. ARCKEY: I don't believe I asked for
8 battery, but --

9 THE COURT: Defense did. It's a category
10 one, so I'm giving it.

11 Other than that, any objections?

12 MR. ARCKEY: The other thing, the shooting
13 or into a dwelling -- I think it's confusing,
14 given the fact that it's an occupied vehicle.

15 THE COURT: I can change the title.

16 MR. ADAMS: Okay.

17 MR. ARCKEY: Other than that, from my
18 review of all of them --

19 MR. ADAMS: The rest of the standard
20 instructions, Judge, I think --

21 MR. MULLINS: I'm still looking at five
22 and six.

23 THE COURT: How long does each side want
24 for closings?

25 MR. ARCKEY: Your Honor, conservatively I

1 would say an hour, but I don't think I am going
2 to use it all.

3 THE COURT: Defense?

4 MR. MULLINS: About the same, Your Honor.

5 THE COURT: Each side one hour then.

6 MR. ARCKEY: Your Honor, just for closing
7 purposes, can I get a new page three with the
8 corrected title, otherwise, I think I'm good
9 with what Your Honor has provided.

10 THE COURT: Defense, you had an
11 opportunity to go through the jury
12 instructions?

13 MR. MULLINS: Oh, yes, Your Honor, with
14 the objections that we made earlier, would be
15 that --

16 THE COURT: As it relates to the
17 self-defense instruction?

18 MR. MULLINS: As to that, we would still
19 object, but, otherwise, yeah.

20 THE COURT: Other than the objections
21 previously and overruled by the Court, as to
22 deadly force instruction, there are no other
23 objections from the defense as it relates to
24 the jury instruction, correct?

25 MR. ADAMS: That's accurate, Judge.

1 THE COURT: We went through the verdict
2 forms and special verdict forms yesterday.
3 Everybody agree and were in agreement with
4 those; is that correct?

5 MR. ADAMS: We were okay with those, Your
6 Honor.

7 THE COURT: State?

8 MR. ARCKEY: That's correct, Your Honor.

9 THE COURT: Mr. Coleman, you've had an
10 opportunity to review the jury instructions and
11 go over them with your attorneys?

12 THE DEFENDANT: As much as I understood,
13 yes, sir.

14 THE COURT: You have any questions about
15 any of them?

16 THE DEFENDANT: No, sir.

17 THE COURT: Okay. And you understand that
18 on count one I'm giving the two category-one
19 lesser included offenses, felony battery, as
20 well battery.

21 THE DEFENDANT: Yes, sir, I just don't
22 know what the sentence -- we haven't discussed
23 what the sentence would be.

24 THE COURT: Felony battery is punishable
25 by up to five years in prison, \$5000 fine.

1 Battery, misdemeanor of the first degree,
2 misdemeanor, one year in jail, \$1000 fine.

3 You agree with the decision to have the
4 felony battery and the battery listed as lesser
5 included offenses?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You understand for count two
8 there are no lesser included offenses and no
9 one has requested a category two, and I'm not
10 sure they would be applicable under this,
11 because they are not alleged in the information
12 and no facts to support; you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: You agreement with the jury
15 instructions, as well as the verdict forms?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: One last thing before we get
18 started. I anticipate that your attorneys may
19 make the same argument they made in opening.
20 They are claiming you on the theory that you
21 were in self-defense. You agree with that in
22 closing?

23 THE DEFENDANT: Yes.

24 THE COURT: Anything else before I bring
25 the Jury in to start with the closings?

1 MR. ARCKEY: Nothing from the State, Your
2 Honor.

3 MR. MULLINS: Nothing from the defense.

4 THE COURT: Let's go ahead and bring in
5 the Jury.

6 MR. ARCKEY: Are you going to read the
7 jury instructions prior or post?

8 THE COURT: At this point post, because I
9 don't have copies of them yet.

10 MR. ARCKEY: That's fine, Your Honor.

11 (Continued in Volume VII)

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1 C E R T I F I C A T E

2 STATE OF FLORIDA:

3 COUNTY OF ORANGE:

4 I, Bobby V. Timms, Official Court Reporter
5 of the Ninth Judicial Circuit of Florida, do
6 hereby certify pursuant to Florida Statute 29,
7 that I was authorized to and did report in
8 stenographic shorthand the foregoing
9 proceedings, and that thereafter my stenograph
10 shorthand notes were transcribed to typewritten
11 form by the process of computer-aided
12 transcription, and that the foregoing pages
13 contain a true and correct transcription of my
14 shorthand notes taken therein.

15 Witness my hand this 14TH day of December
16 2015, in The City of Orlando, County of Orange,
17 State of Florida.

18

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20

Bobby V. Timms, RPR-CP

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Exhibit D

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I N D E X

STATE'S MOTION IN LIMINE	12
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DEFENSE MOTION IN LIMINE	20
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P R O C E E D I N G S

(June 22, 2015; 9:16 a.m.)

THE COURT: All right. State of Florida versus
Johnathan Coleman.

The Coleman case. We ready?

MR. ARCKEY: State's ready, Your Honor.

MR. MULLINS: Defense ready, Your Honor.

THE COURT: All right. Then we'll be calling up a
panel in the next five minutes.

THE CLERK: Do you need 40?

THE COURT: Yeah.

MR. ARCKEY: Your Honor, there are some pretrial
matters, some motions in limine that the State would
like to argue beforehand, but they shouldn't take much
time.

THE COURT: That's fine. We'll do that when the
jury's on the way up. She's going to call for a panel
now.

(The Court handled unrelated matters from 9:17 a.m.
to 9:23 a.m., after which the proceedings were as follows:)

THE COURT: Mr. Coleman, if you want to make your
way up here to the counsel's table.

THE DEFENDANT: Yes, sir.

(Pause in proceedings.)

1 **THE COURT:** And then when you're ready, let me
2 know.

3 **THE COURT REPORTER:** Yes, Your Honor.

4 **THE COURT:** We'll go on the record and take care of
5 our preliminary matters while the jury's on the way up.

6 (There was a pause on the record from 9:23 a.m.
7 until 9:27 a.m., after which the proceedings were as
8 follows:)

9 **THE COURT:** All right. Let's go back on the
10 record. This in on State of Florida versus
11 Johnathan Coleman, Case Number 2014-CF-7180-A-0 [sic].
12 The parties, starting with the State, will announce your
13 appearance for the record.

14 **MR. ARCKEY:** Assistant State Attorney Eric Arckey
15 for the record, along with Assistant State Attorney
16 Lisa Gong Guerrero.

17 **THE COURT:** Defense?

18 **MR. MULLINS:** Ernie Mullins on behalf of the
19 Defense, Your Honor, Mr. Coleman. We also have
20 Joshua Adams.

21 **THE COURT:** All right. And I'll note for the
22 record that Mr. Coleman is present. Mr. Coleman's not
23 incarcerated, so he is in civilian clothes and he is not
24 shackled in any way, shape or form in the presence of
25 any of the jury during the course of this trial.

1 **MR. MULLINS:** Mr. Coleman, can you bring your chair
2 around this way, please?

3 **THE COURT:** All right. As far as -- has there been
4 a plea offer extended in this case?

5 **MR. ARCKEY:** We had offered ten years prior to
6 trial today. We didn't really discuss at that point
7 what charge it would be. The sticking point was that it
8 would be a ten-year offer, and I believe that's been
9 declined by Defense.

10 **THE COURT:** All right. Let's go ahead and have
11 Mr. Coleman --

12 **MR. MULLINS:** That's been declined. That's
13 correct, Your Honor. It has been communicated to
14 Mr. Coleman. It has been declined.

15 **THE COURT:** All right. Let me go ahead and
16 communicate with him.

17 **MR. MULLINS:** All right.

18 **THE COURT:** Let's go ahead and have Mr. Coleman
19 sworn in.

20 (The defendant was duly sworn.)

21 **THE COURT:** All right. Sir, can you go ahead and
22 tell me your full name and date of birth?

23 **THE DEFENDANT:** Johnathan Andrew Coleman,
24 5/17/1979.

25 **THE COURT:** All right. Mr. Coleman, I think we've

1 gone through this before, but I'm going to go ahead and
2 do it again. You're charged by an amended information
3 in this case with two counts. The first count is
4 aggravated battery with a firearm. That is a second
5 degree felony. It's punishable by up to 15 years in
6 prison and a \$10,000 fine. However, because of the way
7 it's charged, it also carries a 25-to-life minimum
8 mandatory, which means that even though it's a
9 second-degree felony and that's normally only punishable
10 by up to 15 years, if the jury were to come back and
11 make a finding that you possessed, discharged and caused
12 great bodily harm, you would be looking at 25-to-life;
13 you understand that?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Okay. And you understand that that's a
16 day-for-day sentence?

17 **THE DEFENDANT:** What? I'm sorry, sir.

18 **THE COURT:** A day-for-day sentence, meaning there's
19 no gain time that's allowable on that sentence.

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** All right. On Count 2, you're charged
22 with shooting at, within or into an occupied vehicle.
23 Again, that's a second-degree felony. It's punishable
24 by up to 15 years in prison and a \$10,000 fine. Do you
25 understand what the charges are in these two counts

1 pending against you are?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Do you understand what the maximum
4 sentence is for a second-degree felony could be?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** And do you understand what the
7 mandatory minimum is in Count 1?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** All right. Any questions that I can
10 answer for you about any of that information at this
11 point?

12 **THE DEFENDANT:** No, sir.

13 **THE COURT:** All right. Now, you understand that
14 the offer potentially to resolve the case would be a
15 ten-year prison sentence, which means that the State
16 would be waiving a mandatory minimum, which means you
17 would be entitled to some gain time on that. And I
18 don't know what charge they would pick of the two, but
19 you understand that the offer, if you wanted to resolve
20 it today, would be a ten-year prison sentence?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Have you had the opportunity to discuss
23 the -- your maximum exposure, the charges and the
24 minimum mandatories with your attorneys?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** And have you had an opportunity to
2 discuss the offer with your attorneys?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** And after having discussed the offer
5 with your attorneys, as well as what the -- your maximum
6 exposure is, have you reached the decision on what you
7 want to do in reference to that offer?

8 **THE DEFENDANT:** I decline, sir.

9 **THE COURT:** All right. So you do understand that
10 you're declining the offer and exercising your right to
11 go to trial; is that correct?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Okay. All right. State, can you
14 please read the witness list.

15 Mr. Coleman, I want you to listen to the names of
16 the witnesses for me, okay?

17 **THE DEFENDANT:** Yes.

18 **MR. ARCKEY:** The State's witness list is:
19 Sherron Fort, Aimee Guillory, Destini Hudson,
20 Marquis Jolly or Marquis John, Carlos Nieves Cruz,
21 Vincent Johnson, Wanda Russell, Nicholas Salcedo with
22 the Orange -- or with Orlando Police Department,
23 Detective Michael Stanley with the Orlando Police
24 Department, CSI Junella Uadan from Orange County
25 Sheriff's Office, Linzee Willette with FDLE, and

1 Myeshia Williams, who -- who's not affiliated with any
2 law enforcement agency.

3 **THE COURT:** All right. Mr. Coleman, did you hear
4 all the names of the witnesses that were listed on the
5 State's witness list?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** All right. Has the Defense filed a
8 witness list in this case?

9 **MR. MULLINS:** We have, Judge.

10 **THE COURT:** Would you please read the names so
11 Mr. Coleman can hear them?

12 **MR. ADAMS:** In addition to the State's witnesses,
13 it is Vincent Kinlan, Matthew -- Vincent Kinlan,
14 Matthew Phillips, Diandra Reeves -- although we can get
15 into that in a second, Judge -- and is it -- what's the
16 female's name, John?

17 **THE DEFENDANT:** Brittney Kilroy.

18 **MR. ADAMS:** Yeah. What's her last name?

19 **THE DEFENDANT:** Kilroy.

20 **MR. ARCKEY:** And Brittney Kilroy, Judge. However,
21 I don't expect Brittney Kilroy to testify and I don't
22 expect Diandra Reeves to testify. I think the State has
23 a motion in limine regarding that. That -- that relates
24 to some Williams Rule evidence and we have not been
25 successful in having any communications with her. The

1 State would ask that, I think, she be stricken from the
2 witness list, or something like that. I would just ask
3 the Court reserves. If for, hypothetically, we produce
4 her at some point, we should address it at that point.

5 **THE COURT:** All right. Well, I'm not going to -- I
6 just want to make sure we get the witnesses out.

7 All right. Mr. Coleman, did you understand all the
8 witnesses or hear all the witnesses that your defense
9 attorney listed?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** All right. So you understand that
12 during the course of the trial, the only witnesses that
13 are going to be called to testify are the witnesses that
14 were listed by the State and/or the Defense?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Are you aware of any other witnesses
17 not named by either your attorneys or this prosecutor?

18 **MR. MULLINS:** Are -- are you aware of anybody else
19 that we should have listed that we didn't?

20 **THE DEFENDANT:** No, sir.

21 **THE COURT:** All right.

22 **MR. MULLINS:** Okay.

23 **THE COURT:** So you understand that other than
24 yourself, the only witnesses that will be called were
25 those named by the prosecutor off their witness list, or

1 by your attorney off your witness list?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Okay. All right. And, Defense, is --
4 are -- I know that we've already done the stand your
5 ground motion in this case, but are you aware of any
6 other motions to suppress or any other motions in limine
7 that would suppress any evidence or any statements
8 seized from your client --

9 **MR. MULLINS:** No, Your Honor.

10 **MR. ADAMS:** No.

11 **THE COURT:** -- as a result of your investigation of
12 this case?

13 **MR. MULLINS:** There's nothing -- there's nothing
14 that would be suppressible that we -- that we've been
15 able to discover, Your Honor.

16 **THE COURT:** All right. Mr. Coleman, you understand
17 that your attorneys have reviewed your case, they don't
18 believe that there is any evidence that they would have
19 a good-faith basis to file any motions to suppress or
20 motions in limine to suppress any statements you may
21 have made or to suppress any evidence that may have been
22 seized from you; you understand that?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Okay. All right. Anything else that I
25 need to address from either party before the jury comes

1 up?

2 **MR. ARCKEY:** Your Honor, the State has a few
3 motions in limine we previously discussed outside. I'll
4 reiterate them for the Court.

5 There are several times where Mr. Coleman alludes
6 to people around the apartment complex saying things
7 like, that's typical Palm Groves [sic]. This is all
8 going on while there's an argument going on between the
9 victim in this case and her boyfriend.

10 This goes into what the State believes is kind of
11 similar to when this -- if the State went into this as
12 a high crime area, and that this kind of stuff happens
13 all the time. It can mislead the jury.

14 Additionally, it goes to propensity evidence, which
15 I believe is not admissible under not only relevance,
16 but also more prejudicial than it is probative. And it
17 doesn't have -- it doesn't go to any fact that is being
18 disputed here in this case.

19 The second one -- and, Your Honor --

20 **THE COURT:** Well, let's go ahead and --

21 **MR. ARCKEY:** -- do you want to go one at a time?

22 **THE COURT:** Yeah.

23 **MR. MULLINS:** Judge on that, with respect to it
24 being a high crime area, the statement, typical, you
25 know, Palm Grove, those kinds of things really aren't

1 hearsay in -- in the sense that it would be -- it would
2 go into effect on -- on Mr. Coleman's actions later.

3 One of the things that you're going to tell the
4 jury, is that in deciding whether the defendant was
5 justified in the use of deadly force, he has to be
6 judged by the circumstances in which he found himself.
7 And those may go -- that -- the fact that this is a high
8 crime area that these kinds of things happen, may -- may
9 go into his thinking with respect to the actions that he
10 took later. So that's -- that's what we would offer
11 in -- in opposition to the State's motion.

12 **MR. ARCKEY:** If I could just clarify. These are
13 people who are unrelated and are on the witness list and
14 you can't identify them. I'm not discussing the
15 statements made by any witnesses being called here
16 today, that that could be admissible under the various
17 theories that Defense has proposed here. But the people
18 who are standing around and talking about it before the
19 collision ever occurs and before the shooting ever
20 occurs, there are people that have been -- or where
21 Mr. Coleman has said that they were saying things along
22 the lines of, well, that's typical Palm Groves, or this
23 is typical. And it doesn't say that, it doesn't go to
24 any fact at issue here and doesn't go to whether or not
25 his reasonable mindset during the actual altercation

1 that occurred -- or it doesn't go to that. This is well
2 before the incident, this is stuff that -- that has
3 really no bearing on what ends up happening.

4 **THE COURT:** All right. What I'm going to do is I'm
5 going to reserve ruling on that, subject to proper
6 objections during the course of the trial so I can take
7 it in context. I kind of -- I could see in some
8 circumstances where what you're saying might be
9 admissible, I can see in certain circumstances where it
10 may not be admissible, so I'm going to -- not going to
11 rule on that at blanket at this point in time. I'm
12 going to wait for appropriate objections during the
13 course of the trial. I'll have more information
14 available to make a more informed decision as they come
15 on that issue.

16 **MR. ARCKEY:** Okay.

17 **MR. MULLINS:** Okay.

18 **THE COURT:** All right. Next issue?

19 **MR. ARCKEY:** Your Honor, while the State believes
20 that Mr. Coleman's military background is a part of this
21 case and that goes to a -- a lot of issues in this case,
22 the State would be asking to exclude any merits or
23 honors or awards that Mr. Coleman has received as a part
24 of his service. This is similar to how we don't go into
25 whether or not people have been awarded things for their

1 service within OCSO or -- or any type of law enforcement
2 agency. So the State would be asking to exclude any
3 military background that goes into any facts outside of
4 his training and experience with firearms, and his --
5 any type of certifications that he has to use for -- for
6 his training in firearms.

7 But things outside of that, that include any type
8 of awards, accolades; for instance, purple hearts,
9 bronze stars, anything like that. The State would be
10 asking that -- that is not relevant, one, is more
11 prejudicial than it is probative, and is going towards a
12 line of sympathy in this case more than the -- and it's
13 improper bolstering.

14 **THE COURT:** Defense?

15 **MR. ADAMS:** Judge, I think we'd generally agree as
16 far as specific awards go, but we would ask for leeway
17 when it gets into any kind of specific training and
18 experience related to firearms, which he does have
19 significant amount and we do plan on going into
20 detail --

21 **THE COURT:** I don't think they have any objection
22 to that.

23 **MR. ADAMS:** -- in his training and experience.

24 **MR. ARCKEY:** And I don't believe I have --

25 **MR. ADAMS:** And I don't know that necessarily any

1 of his awards are going to be specifically relevant, but
2 it's possible -- it's possible that they could. I think
3 he -- I think he has a -- a purple heart from being
4 wounded, from a firearm, possibly. I mean --

5 **MR. MULLINS:** He's got quite a few awards, but --

6 **MR. ADAMS:** That -- that could -- I don't know,
7 perhaps that could become relevant at some point. But
8 generally, we're agreeing, Judge.

9 **THE COURT:** All right. I will generally rule in
10 the State's favor, but I'm going to take objections as
11 they come during the course of the trial. If you think
12 that there's something that's objectionable, make your
13 objection. You'll have a chance to respond, and I'll
14 rule on specific issues at that point.

15 **MR. ARCKEY:** Yes, Your Honor.

16 My last motion in limine is in regards to the
17 Williams Rule evidence and the witness of the --
18 Diandra Reeves. She was subpoenaed for a deposition.
19 She failed to appear for that deposition.

20 They also are using Williams Rule evidence as a --
21 essentially, a propensity argument. I believe it's not
22 relevant under 401 and under 403, as it involves a
23 battery case that victim is involved in against a
24 Diandra Reeves. Their claim is, is that it was done in
25 a similar fashion by using a car to basically accost the

1 victim in that case, who is Ms. Reeves.

2 The State's position on that is that that is not
3 relevant to this case. There's different factual
4 circumstances. She's also only charged with battery in
5 that case. I think the facts of that case are
6 substantially different than what we have here at hand.
7 And that because the State wasn't able to do a depo, the
8 State can't really contest what's going to be said in
9 that, and that this also was not in the mind of the --
10 of Mr. Coleman at the time, so, therefore, it does not
11 go to any self-defense theory because that is not a -- a
12 case that he was aware of at the time of this incident.

13 **THE COURT:** Defense?

14 **MR. ADAMS:** Judge, we haven't had any contact with
15 Diandra Reeves. We had tried several times to subpoena
16 her and we've made other efforts to communicate with her
17 also. I think the -- I'd ask the Court to reserve. I
18 think the most likely scenario that we would use her, if
19 we hypothetically found her during this trial, would be
20 as a potential rebuttal witness. I don't think we're
21 going --

22 **THE COURT:** For what purpose?

23 **MR. ADAMS:** A rebuttal witness. I think we're --
24 we have a motion in limine we're going to address next.
25 We are -- we do think we're allowed to ask -- ask

1 Aimee Guillory about the fact that she does have pending
2 criminal charges with the Orange County State Attorney's
3 Office; probably limited to that. If she were to answer
4 that a certain way, or if she were to open the door at
5 some point during her testimony, we -- we think that
6 Diandra's testimony could be relevant.

7 So we're not asking that -- we're asking that you
8 don't exclude her completely, but that you simply
9 reserve to hear any motions if she does appear.

10 **THE COURT:** And at this point, you don't have any
11 basis to believe that you're going to be calling her
12 'cause you don't have any contact with her?

13 **MR. ADAMS:** Correct.

14 **THE COURT:** All right. So I'm not going to rule on
15 it at this point. In the event that you do find her
16 during the course of the trial and she will be attempted
17 to be called, then we'll readdress this issue. So I'll
18 reserve ruling on that issue at this point since there's
19 no indication that she's going to be testifying at this
20 point.

21 **MR. ARCKEY:** And the last one from the State is
22 that, prior to this incident, or prior to the shooting
23 occurring and the car issue -- the car accident, there
24 is an altercation that Mr. Coleman oversees. At that
25 point, he actually waives down the victim and he states

1 that the victim stated at that time that she was mad at
2 the -- the -- Mr. Johnson -- Mr. Vincent Johnson -- or
3 Vince Johnson. Again, later on, the -- the --
4 Mr. Coleman, again, says that she states that to him.
5 The State would be asking to exclude that -- both
6 incidences, because they are not really dealing with the
7 issue at hand involving the shooting, and that it has
8 nothing to do with whether or not justifiable reasonable
9 deadly force was used.

10 **THE COURT:** Defense?

11 **MR. ADAMS:** Judge, she's going to testify, assuming
12 consistent with her previous hearing testimony, that she
13 did not purposely hit him, that she was in a fight.
14 It's going to be relevant, we think, probably to impeach
15 her, if she doesn't want to agree to that because she
16 will say that she was in a fight with him. She will
17 say, probably, that she did not purposely run him over
18 with a car. That alone would make that testimony
19 relevant, I think.

20 And then, of course, the -- once Mr. Coleman
21 testifies, it's going to be very important to determine
22 what was going through his mind. The fact that she
23 would hit someone in the -- with a car because she was
24 mad at them is relevant to his determinations of what he
25 needs to do. So, I mean, I think it's going to be

1 relevant on its own, but definitely as impeachment.

2 **THE COURT:** All right. I'm going to not rule on
3 that at this point in time. I'm going to reserve that.
4 If there's an objection that's made at trial, I'll take
5 it up at that time. But it would seem to me that under
6 certain circumstances that it would be admissible, under
7 certain circumstances it wouldn't. So --

8 All right. Anything further from the State?

9 **MR. ARCKEY:** Nothing further from the State at this
10 time.

11 **THE COURT:** Defense?

12 **MR. ADAMS:** Judge, yeah, we have two motions in
13 limine here. One of them relates to us being able to
14 inquire about the pending charges of Aimee Guillory.
15 I've got a Florida Supreme Court case here. It is
16 *Larkins v. State*, 655 So.2d 95. I have a copy right
17 here. Point you to page -- can I approach, Judge?

18 **THE COURT:** I'm familiar with the law.

19 **MR. ADAMS:** Okay.

20 **MR. MULLINS:** You're familiar with the case, Judge?

21 **THE COURT:** Um-hmm.

22 **MR. MULLINS:** Okay.

23 **MR. ADAMS:** Specifically, in that case, there was a
24 jailhouse person who testified. The Court said that
25 that -- that the State -- the Defense should have been

1 able to inquire about the fact that they had pending
2 criminal charges. It is relevant to show bias. And we
3 would intend to inquire about that. Obviously, we're
4 not going to go into details, but we do have the right
5 to inquire about it.

6 She was in pretrial diversion, she's recently
7 kicked out, and she has pending active charges with the
8 Orange County State Attorney's Office.

9 **THE COURT:** Is that a fair statement?

10 **MR. ARCKEY:** It is a fair statement, Your Honor.

11 **THE COURT:** I think the case law is pretty clear.

12 **MR. ADAMS:** Okay. The other one, Judge, is,
13 Mr. Coleman just got served with a civil complaint
14 related to this. She has hired a civil law firm and
15 there are -- there is a pending civil lawsuit against
16 Mr. Coleman and the security company. We also believe
17 that we are allowed to inquire again, somewhat
18 limitedly, that -- that she has hired an attorney and
19 there is a civil complaint related to monetary damages.
20 And I have the case law on that.

21 **MR. ARCKEY:** And that was actually sent to me over
22 the weekend. I reviewed the document. This seems to be
23 a -- it's something that I knew was going to happen
24 eventually, so that's not a surprise to the State.

25 Again, with both of these issues, I think there's a

1 very narrow scope that they can go into without crossing
2 the line into issues like that, but I'll make the
3 appropriate objection --

4 **THE COURT:** Okay.

5 **MR. ARCKEY:** -- when needed.

6 **MR. MULLINS:** That's all.

7 **THE COURT:** It doesn't look like I needed to rule
8 on much there.

9 **MR. ADAMS:** Doesn't really seem so.

10 **THE COURT:** All right. All right. Anything else
11 from either the State or Defense?

12 **MR. MULLINS:** No, Your -- we have nothing further,
13 Judge, at this time.

14 **MR. ARCKEY:** Nothing further from the State.

15 **THE COURT:** All right. I'm assuming that the
16 Defense in this case is self-defense, from what I heard
17 at the stand your ground motion?

18 **MR. ADAMS:** Yes, Your Honor.

19 **THE COURT:** All right.

20 **MR. ARCKEY:** And, Your Honor, we do have some
21 stipulations. Most of it's evidentiary at this point.
22 But I imagine we'll bring those up when the time is
23 appropriate for both sides. And --

24 **THE COURT:** Have you put those in writing?

25 **MR. ARCKEY:** We have not at this -- this point.

1 One of the --

2 **THE COURT:** I'm going to suggest if you have
3 stipulations as to evidence, that they be put in writing
4 and that Mr. Coleman be given an opportunity to review
5 the document and sign off on it.

6 **MR. MULLINS:** Right.

7 **THE COURT:** That just makes it cleaner for
8 everybody.

9 **MR. ARCKEY:** Okay. I'll -- I'll do that over the
10 lunchtime.

11 **THE COURT:** Okay. And in anticipation for purposes
12 of trial, how long do you-all expect? Wednesday?

13 **MR. ARCKEY:** I think we talked about it. We expect
14 to --

15 **MR. MULLINS:** Three days.

16 **MR. ARCKEY:** -- finish on Wednesday.

17 **THE COURT:** Okay. And in terms of today, my
18 intention is to pick a jury today, maybe do openings and
19 a witness. I have somewhere I have to be at 4:00 this
20 afternoon, so we're going to stop around 3:30 today.
21 And then tomorrow and Wednesday I have no bars or
22 impediments, and we'll go forward from there.

23 **MR. ARCKEY:** And just --

24 **THE COURT:** Just to give everybody a heads-up.

25 **MR. ARCKEY:** Depending on some of the stipulations

1 and -- and whatnot, I believe the State's only going to
2 end up calling nine to ten witnesses at this point. But
3 it may be less if this -- we have some stuff that I
4 don't think is a material issue at this point.

5 **MR. MULLINS:** Specifically, what Mr. Arckey is
6 referring to, Your Honor, is the existence of a firearm.
7 You know, that he would not have to call an expert
8 witness firearm guy from sheriff's office saying, yeah,
9 it's a functioning firearm. Like I said out there, if
10 it weren't, we wouldn't be here. So --

11 **THE COURT:** Okay.

12 **MR. MULLINS:** -- you know?

13 **THE COURT:** All right. Well, whatever stipulations
14 you guys reach, if you'll just put them in writing. And
15 then you let me know when in the case in chief you want
16 me to read them, I will read them to the jury. And I
17 usually like to have the defendant sign off on those so
18 that there's no question that they've had an opportunity
19 to see what you're going to stipulate to and they agree
20 with it.

21 **MR. MULLINS:** Okay. Thank you, Your Honor.

22 **THE COURT:** All right. Is the panel on the way up?
23 Are they outside?

24 **THE COURT DEPUTY:** They're on their way up, Judge.

25 **THE COURT:** All right. All right. Then, with that

1 said, Court's in recess until such time as the panel is
2 ready, and then we'll get started.

3 (The digital portion of this matter concluded at
4 9:48 a.m., and any further matters held in this case would be
5 captured by the official court reporter.)

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C E R T I F I C A T E

I, Christine Lively, being a Digital Court Reporter of the Ninth Judicial Circuit as authorized by Rule 2.535(h)(3), Florida Rules of Judicial Administration, and the Administrative Order of the Ninth Judicial Circuit numbered 07-98-43, certify that the foregoing transcription is true and correct.

WITNESS my hand this 8th day of October, 2015, in the City of Orlando, County of Orange, State of Florida.

CHRISTINE LIVELY, CER, CET

Exhibit E

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**IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION**

STATE OF FLORIDA,

Plaintiff,

vs.

JOHNATHAN ANDREW COLEMAN,

Defendant./

CASE NUMBER: 48-2014-CF-7184-A-O

DIVISION NUMBER: 16

TESTIMONY OF JOHNATHAN ANDREW COLEMAN

BEFORE

THE HONORABLE GREG A. TYNAN

In the Orange County Courthouse
Courtroom 6D
Orlando, Florida 32801
March 6, 2015
Crista Porter Werth, CER

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On behalf of the State

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7 On behalf of the Defendant

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I N D E X

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P R O C E E D I N G S

(The following is a requested excerpt of the proceedings.)

(March 6, 2015; 3:27 p.m.)

(The defendant was duly sworn.)

THE COURT: All right. Have a seat, sir.

THE DEFENDANT: Thank you, sir.

THE COURT: And then go ahead and tell me your first and last name, and spell both for the court reporter.

THE DEFENDANT: Johnathan Coleman,
J-O-H-N-A-T-H-A-N C-O-L-E-M-A-N.

THE COURT: All right. You may inquire.

MR. MULLINS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MULLINS:

Q Mr. Coleman, where do you live?

A In St. Cloud, Florida.

Q Okay. And are you employed?

A Yes, I am.

Q And where are you employed?

A Urban Enforcement & Protection.

Q How long have you been with Urban Enforcement & Protection?

A As of current, two years; just about two years.

1 Q All right. And where did you work before that?

2 A Before that -- before I did security, I worked in
3 the cable industry for a few years, and before that I was a
4 member of the Marine Corps and Army National Guard, deployed
5 to Iraq.

6 Q All right. So let's talk about your -- your
7 training with respect to firearms and in your job as a
8 security officer. Can you tell -- tell us about that, with
9 your -- with your training with respect to firearms?

10 A Been handling firearms since I was approximately
11 six -- seven years old, you know, with family members,
12 hunting --

13 Q But let's talk about the -- the training specific
14 to --

15 A Training as far as the --

16 Q -- the security business.

17 A As far as the security business, the state of
18 Florida requires all security officers to have 60 hours of
19 training, 40 of which are with your Class D, which is your
20 security guard card, and then 20 -- 28 hours, approximately,
21 for your G license, which is the -- your safe firearms
22 license.

23 Q Okay. And before that you were in the
24 Marine Corps; is that right?

25 A Correct.

1 **Q** Okay. And what were your duties in the
2 Marine Corps --

3 **A** In the --

4 **Q** -- with respect to firearms?

5 **A** In the Marine Corps, I was a small weapons expert
6 on a recognizance team, and as well as a scout sniper for the
7 Marine Corps.

8 **Q** Okay. And did you also handle firearms extensively
9 when you -- when you did your hitch in the Army National
10 Guard?

11 **A** Yes, I did.

12 **Q** Okay.

13 **A** I was in charge of a sniper section.

14 **Q** Have you ever been an instructor with regard to
15 firearms?

16 **A** Yes. I am a certified NRA instructor --

17 **Q** Are --

18 **A** -- pistol instructor.

19 **Q** Are you an expert at handling firearms?

20 **A** Yes, I am.

21 **Q** Have you been certified by anybody to be an expert
22 in handling firearms?

23 **A** Yes, I have.

24 **Q** Who would that be?

25 **A** That would be the National Rifle Association, as

1 well as the Marine Corps and the United States Army.

2 **Q** Okay. Okay. Now, on May 28th, you were working in
3 your capacity as a security -- armed security guard; is that
4 right?

5 **A** Yes.

6 **Q** Where were you?

7 **A** At approximately 8:15 -- 8:20ish, I was at the
8 Palm Grove Gardens Apartments on W. D. Judd [sic] Drive in
9 Orlando.

10 **Q** Okay. Now, is that across the street from the
11 Orange County Community Center?

12 **A** Yes, it is.

13 **Q** Okay. Now, there's a -- when you were -- when you
14 first got on duty, what did you do?

15 **A** As far as duty for the day or upon arrival of the
16 property?

17 **Q** When you got there that day.

18 **A** Okay. When I arrived to the property, to
19 Palm Grove, I observed two residents that I don't know by
20 name, but I know by face and I've seen them around. They,
21 from time-to-time, help provide information on who's who
22 around the property and what kind of trouble there's been.
23 So I seen them, I put my window down, and I said, hey, how
24 you doing. I'll be right back. Let me just turn around.

25 So I drove past them, which would be going in the

1 west, and did a U-turn, parked at the end of the -- or right
2 there on the corner, on the northwest corner.

3 Q Okay. Now, this apartment complex is kind of laid
4 out in a square; right?

5 A It's -- it's a square. The entire property is a
6 square, and inside the property it's basically quad
7 buildings.

8 Q Okay. And there's a -- there's a dumpster off to
9 the side in -- in the what? That's, like, the northwest
10 corner?

11 A Yes, northwest corner; yes.

12 Q Okay. And you're park -- you're parked in the
13 front area; is that right?

14 A That is correct.

15 Q Did you turn around at some point and go down the
16 side -- down the west end of the property?

17 A Just to turn around and make my U-turn there.

18 Q Okay. Was anything -- did anything out of the
19 ordinary happen at that point?

20 A At that point, no. I parked my vehicle and went
21 and made my way over to communicate with the two males that I
22 previously stated.

23 Q All right. And then at some point you heard an
24 individual yelling?

25 A Yes, maybe within two minutes of getting in the

1 conversation, there was apparent yelling coming from -- it
2 would be the west side of the property. I could not make out
3 whether it was a male versus male or a male versus female,
4 but you could distinctly hear two voices yelling.

5 **Q** All right. Now, did that cause you any concern at
6 that time?

7 **A** At that time, one of the -- one of the male
8 residents that was standing there, you know, started
9 laughing. He's, like, typical Palm Grove. And I said, yeah,
10 and I started making my way that way to see if there was any
11 physical altercation or anything that I needed to be aware of
12 going on. I didn't make it 10 -- 20 feet from the two males
13 that I was talking to when I observed Mr. Johnson make his
14 way off the property --

15 **Q** Okay.

16 **A** -- near the northwest dumpster, and Mrs. Guillory
17 leave in a gray or silver Audi.

18 **Q** Okay. So she's coming down, what, eastbound on
19 W. D. Judge?

20 **A** She's -- at this -- at this moment right now, she's
21 leaving property, and she heads westbound --

22 **Q** Okay.

23 **A** -- down W. D. Judd.

24 **Q** Toward Mercy?

25 **A** Toward Mercy Drive.

1 **Q** Okay.

2 **A** The same direction that Mr. Johnson had gone. So
3 there was no other cause, there was no other altercation
4 going on, so I went back and started up the conversation
5 again with the -- the two gentlemen.

6 **Q** Okay. Did you see Mr. Johnson later appearing at
7 the -- in -- in the apartment?

8 **A** Yes. It -- it couldn't have been more than two to
9 three minutes later when we heard tires squealing, coming
10 from the Mercy Drive area, which would be to the west of the
11 property.

12 **Q** Okay.

13 **A** At that time, I was a little nosy, so I walked
14 through -- I walked off of the sidewalk, through the driveway
15 into the grassy, median area and looked to the west, where I
16 observed Mr. Johnson running, holding his arm, and a -- the
17 silver Audi driving next to him. They were running eastbound
18 towards -- back towards the property.

19 **Q** Okay. And was there any yelling going on at that
20 point?

21 **A** At that moment -- not until Mr. Johnson had made it
22 onto the property where I realized that the -- whatever's
23 going on is coming back.

24 **Q** Okay. Did she continue -- did she, meaning
25 Ms. Guillory and the Audi, did she continue going --

1 **A** She continued and she slowed down for a minute on
2 W. D. Judd and she yelled out something to the effect of,
3 don't let him go to my apartment, or he better not go to my
4 apartment.

5 **Q** Okay. So where is Mr. Johnson? Where did he go?

6 **A** Mr. Johnson disappeared off to -- which would be my
7 left -- the west side of the property. He disappeared around
8 the corner where I no longer had eyes on him.

9 **Q** Okay. Did she come back?

10 **A** She actually entered the property, where she was
11 driving at a very high, reckless speed --

12 **Q** Yeah.

13 **A** -- in a parking lot. So I actually attempted to
14 step out, not -- there was -- there were a few vehicles
15 parked there. I stood basically in the middle of the
16 vehicles, trying to waive her -- you know, tried to get her
17 to slow down and get her attention. She continued past me.
18 And at that time, that's when one of the males I was talking
19 to said, you know, she's going to kill somebody.

20 **Q** All right. So did -- did she want --

21 **MR. ARCKEY:** Objection, Your Honor; hearsay.

22 **THE COURT:** I'll sustain that objection.

23 **BY MR. MULLINS:**

24 **Q** All right. She -- she went around the west end of
25 the property?

1 **A** She went around the west end of the property in the
2 same direction towards --

3 **Q** Well, was that going toward the same way that
4 Mr. Johnson had earlier gone?

5 **A** Yes, it was.

6 **Q** Okay. Now, you saw them all again; is that right?

7 **A** That's correct.

8 **Q** Tell us about that.

9 **A** I started walking towards that direction, walking
10 pretty fast to see what was going on, see what I can view at
11 that time. Before I could even get to the corner -- the
12 northwest corner of the property, the silver Audi is now
13 driving north and making the corner to head east onto the
14 property. This time I was able to get her to stop, and she
15 put her window down, and she goes, hey, you know, I'm sorry.
16 I'm just mad at him. So I was, like, all right.

17 **MR. ARCKEY:** Objection, Your Honor; hearsay.

18 **MR. MULLINS:** I don't think we're offering it for
19 the truth of what we -- of what -- and I think it's all
20 been testified to earlier, Your Honor.

21 **THE COURT:** I'll overrule the objection.

22 **THE WITNESS:** I told her to slow down before she
23 hit some little kid that's running around in the area.

24 **BY MR. MULLINS:**

25 **Q** Okay. So she -- she and you were having this --

1 you and she, I suppose I should say -- are -- are having this
2 conversation; is that right?

3 **A** Yes.

4 **Q** Is it civil? Is it --

5 **A** Yes.

6 **Q** Is it -- did you have any quarrel with her?

7 **A** No.

8 **Q** You didn't, you know, have any kind of argument or
9 anything?

10 **A** No, sir.

11 **Q** Oh. Okay. So off she goes -- did she go off
12 somewhere else?

13 **A** She -- she continued east to where I -- or where --
14 I actually assumed that she was going to be leaving property.

15 **Q** Okay.

16 **A** So as I started walking back towards the two men
17 again, I observed the vehicle continue around and go past the
18 entrance. The entrance and exit are right next to each
19 other --

20 **Q** Right.

21 **A** -- just divided by a -- an island.

22 She drove past it, and continued east and now was
23 making the corner to head south on the property.

24 At that time, I said out loud, you know, they're
25 going to go to the back and fight. So I went to my vehicle,

1 considering I haven't done a patrol yet, on property. I just
2 got there and started making conversation.

3 Q Okay.

4 A So I got into my vehicle.

5 Q Now -- wait a minute. Let's talk about your
6 vehicle.

7 A Okay.

8 Q You're situated at a point where you can see
9 directly across the street to the community center; is that
10 right?

11 A At this point, my vehicle's actually on the north
12 side of the property, facing east.

13 Q Okay. So you couldn't see the community center
14 there?

15 A Well, no. You can look directly across the street
16 and see the community center; it's approximately -- the
17 roadway is --

18 Q Okay.

19 A -- a little bit past the doors there.

20 Q But you -- the point is, you could see the
21 community center. It's right across the street?

22 A Correct.

23 Q Everything's kind of close; is that right?

24 A Yes, within a few hundred yards, but good
25 visibility.

1 **Q** Okay. And at some point Mr. Johnson crossed the
2 street; is that right?

3 **A** Yes. After I drove through the property looking
4 for Mr. Johnson and Mrs. Guillory, whereas I didn't see until
5 I reached the west side of the property, and I was now
6 heading north.

7 **Q** Okay.

8 **A** I looked forward, and I could see the --

9 **MR. ARCKEY:** Objection; narrative.

10 **THE COURT:** Sustained.

11 **MR. MULLINS:** Okay.

12 **THE WITNESS:** What does that mean? I'm --

13 **MR. MULLINS:** Okay. Just wait for the question.

14 **THE WITNESS:** Okay.

15 **MR. MULLINS:** All right. Don't -- all right.

16 **THE WITNESS:** Yes, sir.

17 **BY MR. MULLINS:**

18 **Q** Now, you can see across the street to the -- to the
19 community center?

20 **A** Yes.

21 **Q** Is this where Mr. Johnson's walking?

22 **A** At this time, no.

23 **Q** Okay. But at some point he did walk across the
24 street to the community center?

25 **A** Yes, that's correct.

1 Q Okay. Are they still having words and she's going
2 back and forth on -- on W. D. Judge?

3 A At this time she had departed the property. She
4 was no longer in view --

5 Q Okay.

6 A -- and off of the property.

7 Q So he crosses the street?

8 MR. ARCKEY: Objection; leading.

9 BY MR. ADAMS:

10 Q Or did he cross -- well -- okay. Did he cross the
11 street at that point?

12 A No.

13 Q Okay.

14 A He -- he had attempted to cross the street when --
15 I was actually in my vehicle, I -- I tried to stop him before
16 he left the property to see what's going on.

17 Q Okay.

18 A Before --

19 Q Did you ask him if he needed any kind of medical
20 attention?

21 A At this time, he wouldn't even acknowledge me.

22 Q Okay.

23 A He -- he ignored me and continued to walk north off
24 the property. So --

25 Q Did -- did anything appear to be wrong with his

1 arm?

2 **A** He was holding his arm.

3 **Q** At -- later?

4 **A** At his waist.

5 **Q** No. No. No. I mean --

6 **A** I'm sorry.

7 **Q** -- before he got hit by the -- well, okay. Never

8 mind. Scratch -- just strike that question, Your Honor.

9 I -- I'm getting ahead of myself.

10 Okay. So let's go -- at some point you see Ms. --

11 did you ever see Ms. Guillory come back into the scene?

12 **A** Yes.

13 **Q** When was that?

14 **A** Mr. Johnson was leaving the property --

15 **Q** Okay.

16 **A** -- and he was walking north. He had just reached

17 the -- the curb line, where the grass meets the -- the

18 pavement on W. D. Judd.

19 **Q** Okay.

20 **A** Mr. Johnson went to take a step out onto the

21 roadway when -- at that time, I -- I observed him jump

22 backwards, thinking, you know, what's going on? The silver

23 Audi had come onto the opposite side of the road into what

24 would be oncoming traffic, and narrowly missed him. And he

25 just stood there --

1 **MR. ARCKEY:** Objection; narrative.

2 **MR. MULLINS:** Okay. I'll --

3 **THE COURT:** I'll sustain this. Ask him.

4 **MR. MULLINS:** All right.

5 **THE WITNESS:** Okay.

6 **BY MR. MULLINS:**

7 **Q** So -- okay. So at some point then, you saw she
8 was -- she was coming his way. She crossed the median of the
9 road?

10 **A** She -- she crossed the -- the center line of the
11 road and narrowly missed him --

12 **Q** Okay.

13 **A** -- pausing to drive past him.

14 **Q** Did he go across the street then?

15 **A** At that time he started to cross the road again
16 when --

17 **Q** Okay. Did he make it into the community center?

18 **A** No. He made it to the edge of the community
19 center.

20 **Q** Okay. What happened at the edge of the community
21 center?

22 **A** Ms. Guillory had turned her car around, where we
23 could hear her tires squealing, just yards from where all
24 this was happening, and turned around and I see Mr. Johnson
25 attempt to start running at that time, and Ms. Guillory hit

1 him causing him to come up and land on the hood of the
2 vehicle.

3 Q Okay.

4 A Roll off.

5 Q Okay. Where does she go, then, from there?

6 A She continued into the -- into the center, into the
7 community center, where is -- where the rest of this took
8 place. She drove into the community center.

9 Q Okay. Did you go across the street at that time?

10 A Yes.

11 Q Okay. And what did you do when you got there?

12 A I immediately tried to assess the situation,
13 because I do know W. D. Judd; not a lot of people pay
14 attention to the speed limit there, which is approximately
15 30 miles an hour.

16 MR. ARCKEY: Objection, Your Honor, it's not
17 relevant and a generalization of people not paying
18 attention to the speed limit has nothing to do with this
19 case.

20 THE COURT: Overruled. Ask the next question.

21 BY MR. MULLINS:

22 Q Okay. So you go across the street -- did you go
23 across the street at that time?

24 A Yes. I --

25 Q All right.

1 **A** The moment I seen her hit him with the vehicle, I
2 called over my radio to other officers to, in effect, get
3 emergency service rolling as fast as possible.

4 **Q** Where -- it -- did you know at that point whether
5 Mr. Johnson had been injured or to what extent those injuries
6 may --

7 **A** At that point he was --

8 **Q** -- (indiscernible) involved?

9 **A** -- laying on the ground.

10 **Q** You didn't -- okay. He was laying on the ground?

11 **A** Yes.

12 **Q** All right. And -- and when you got out -- did you
13 get out of your vehicle?

14 **A** No. I -- I drove my vehicle across to, in effect,
15 stop traffic if there was any oncoming traffic because
16 Mr. Johnson was laying in the road. As I neared the center,
17 or the community center, I observed him attempting to get
18 towards -- get to his feet. So I pulled into the community
19 center along the -- along the fence.

20 **Q** Okay. And where is Ms. Guillory's vehicle at that
21 time?

22 **A** Ms. Guillory's vehicle had already -- she was
23 attempting to back up and --

24 **Q** Okay.

25 **A** -- do another turn.

1 **Q** Did you get her to stop or to come out of her
2 vehicle?

3 **A** Yes. I -- I parked my vehicle. I stopped my
4 vehicle and I get out yelling at her, you know, stop the car,
5 stop the car, stop the car. She stops and I asked her if she
6 was okay. She said, yes, I'm just mad at him. I said, okay,
7 do me a favor, get out of your car. Get out of the car. Get
8 out of the car. So --

9 **Q** So you had to tell her several times to get out?

10 **A** I told her three times to get out of her car.

11 **Q** Did she finally exit her car?

12 **A** Yes.

13 **Q** All right. And where was she standing at that
14 point?

15 **A** At that point when she exited her vehicle, we were
16 standing right there.

17 **Q** All right.

18 **A** I -- I turned around to look at Mr. Johnson, who
19 still had not fully --

20 **Q** Did you -- did you communicate to Ms. Guillory
21 or -- or anyone else that you had emergency services coming
22 that way?

23 **A** Yes.

24 **Q** Okay. And then you turned to see Mr. Johnson; is
25 that right?

1 **A** Yes, that's correct.

2 **Q** Is Mr. Johnson in front of you?

3 **A** Mr. Johnson would -- as far as body position, would
4 be behind me on the corner of the community center and
5 W. D. Judd --

6 **Q** Okay. So he's --

7 **A** -- on the curb.

8 **Q** -- in the intersection of the driveway going into
9 the community center --

10 **A** Correct.

11 **Q** -- and the roadway?

12 **A** Correct.

13 **Q** Is that right?

14 **A** Yes.

15 **Q** So he's a little bit further back; is that right?

16 **A** Yes.

17 **Q** Okay.

18 **MR. ARCKEY:** Objection, Your Honor; leading.

19 **MR. MULLINS:** Judge --

20 **THE COURT:** Let's ask open-ended questions.

21 **MR. MULLINS:** Okay. I'm just asking if -- okay.

22 I'll -- I'll ask some more questions, Your Honor. I'm
23 sorry if I'm leading.

24 **BY MR. MULLINS:**

25 **Q** Okay. So -- so -- what happened next?

1 **A** Okay. Upon Ms. Guillory exiting her vehicle, I
2 told her to go have a seat on the curb, which would be -- as
3 I'm facing her, it would be to our left, so the west side of
4 the entrance exit.

5 **Q** Okay.

6 **A** I told her to have a seat on the curb.

7 **Q** Did he sit on the curb?

8 **A** No.

9 **Q** All right. And then when -- at some point when you
10 were talking to Ms. Guillory, did she get back into her
11 vehicle?

12 **A** Yes, later.

13 **Q** Later.

14 **A** Yes.

15 **Q** Was your back to her?

16 **A** When she entered the vehicle, yes.

17 **Q** Okay. What was the first thing you heard after
18 she -- after, you know, that caused you some concern?

19 **A** The accelerator of -- of a vehicle.

20 **Q** Okay. What did you do?

21 **A** I immediately pushed Mr. Johnson and another male
22 party that was standing within two -- two feet of me -- I
23 pushed them out of the way of the exit side of the -- the
24 driveway, and I started to back up. At that time, the
25 vehicle was turning right in towards my direction, so I'm

1 trying to backpedal to the safety of my vehicle.

2 Q Okay. And it's moving at this point --

3 A Yes.

4 Q -- the car. Was it moving faster than five miles
5 per hour?

6 A Yeah, I'd have to say so.

7 Q Okay. At the point at which -- at some point you
8 drew your -- your firearm; is that right?

9 A Yes.

10 Q Was the vehicle in front of you at that -- or
11 directly in front of you at that time?

12 A When I drew my firearm, the vehicle was to the
13 front and I would have to say I was near the front and the
14 driver's side. So the left side of her vehicle facing me --

15 Q Okay.

16 A -- as I'm trying to get to my vehicle.

17 Q Okay. Had you just witnessed Ms. Guillory run over
18 or impact Mr. Johnson?

19 A Yes.

20 Q Okay. Had she -- did she make contact with you?
21 Did her vehicle make contact with you?

22 A Yes.

23 Q Okay. Did she seem to slow down or show any kind
24 of concern for that?

25 A No.

1 **Q** Okay. Were there other bystanders by the roadway
2 where it intersects that were in her path?

3 **A** Yes.

4 **Q** Okay. Is that when you -- when you fired your
5 weapon?

6 **A** Yes.

7 **Q** All right. Was the car accelerating? Was it
8 moving faster or -- or was it slowing down?

9 **A** It was -- it seemed -- it appeared to be picking up
10 speed.

11 **Q** Okay. But by then, you had already -- had you
12 already fired your -- your -- your rounds?

13 **A** Yes.

14 **Q** How many rounds did you fire?

15 **A** I fired four.

16 **Q** Okay. And you had -- did you have any quarrel at
17 that time with Ms. Guillory when you were asking her to get
18 out of the car or anything?

19 **A** No.

20 **Q** Okay. Were you -- were -- were you concerned for
21 the safety of others in -- in the path of the vehicle?

22 **A** Yes.

23 **MR. MULLINS:** Excuse me, Your Honor. If I may?

24 (Pause in proceedings.)

25

1 **BY MR. MULLINS:**

2 **Q** Did she at some point run over your foot?

3 **A** Yes.

4 **Q** What was the nature of the impact? How -- how were
5 you --

6 **A** When --

7 **Q** -- impacted by this -- her vehicle?

8 **A** As walking -- or as trying to get out of the way,
9 my body was bladed in a direction to where she was on my
10 right side, my -- my gun side. So I'm trying to back up to
11 the safety of my vehicle, which I was already right there; it
12 was pretty tight. So I initially felt -- I initially felt
13 pain in my shin and my -- my knee as my leg started to
14 buckle. And then the next thing I felt was weight. I felt
15 the vehicle on my foot where I'm trying to pull out. At the
16 same time, my leg is still buckling, because I feel it --
17 I -- it feels like I'm being sucked underneath the vehicle.

18 **Q** Okay.

19 **A** So at that time the -- where I began to fire was
20 where the -- the driver had -- or Ms. Guillory, her -- I
21 guess she would have just broken the -- the center line of my
22 body when I had my firearm right at my hip or my waist area
23 and just fired.

24 **Q** Okay. And -- now, you saw the -- the -- there's
25 a -- a trajectory going into the back window; the rear most

1 round that was -- entered the vehicle.

2 **A** Yes.

3 **Q** Okay. But the -- you -- I -- if I understand it,
4 was the vehicle accelerating at that time and going faster?

5 **A** Yes, sir.

6 **Q** Okay. Did you at -- at any point, take aim at her
7 and try to shoot her from behind?

8 **A** No, sir. There was not enough time.

9 **Q** Okay. Did everything happen within a -- a second
10 or two?

11 **A** Yes, I'd have to say so.

12 **MR. MULLINS:** All right. A moment, Your Honor?

13 (Pause in proceedings.)

14 Okay. We have nothing further, Your Honor.

15 **THE COURT:** Cross?

16 **CROSS-EXAMINATION**

17 **BY MR. ARCKEY:**

18 **Q** Good afternoon, Mr. Coleman.

19 **A** Good afternoon, sir.

20 **Q** You said you were a -- you said you were a recon
21 Marine?

22 **A** Yes, sir.

23 **Q** As a part of the recon Marines, do you do shoot
24 houses?

25 **A** Yes.

1 **Q** Can you describe what a shoot house is?

2 **A** A shoot house can be either live fire, simunition
3 rounds, or fake weapons. And it allows you to do a scenario.
4 So, say you have a special mission, you can -- you can set
5 bad guys throughout the -- throughout the building and have
6 your team come in and enter and clear it out.

7 **Q** As part of shoot houses -- when they make them so
8 that, one, they're stressful; correct?

9 **A** That's correct.

10 **Q** They make them so that you also have to identify
11 objects to shoot quickly or not?

12 **A** That's correct.

13 **Q** So, conceivably, if you went into a shoot house,
14 you would turn a corner and see whether or not someone was a
15 threat or not a threat; correct?

16 **A** Yes.

17 **Q** Okay. And you have to make a split-second decision
18 on to shoot or not shoot; correct?

19 **A** Yes.

20 **Q** Okay. So in part of your training, you were
21 trained to make spilt second decisions whether or not you
22 should shoot someone or you should not shoot someone;
23 correct?

24 **A** Yes.

25 **Q** You said you were also in the Army reserves. I'm

1 assuming that's more of the same -- just after you got out of
2 the military?

3 **A** Correct.

4 **Q** Okay. How tall are -- are you and how much do you
5 weigh?

6 **A** 6'2", and I weigh -- at the time of the incident
7 probably -- or approximately 300 pounds.

8 **Q** Now, you gave a very lengthy, detailed description
9 of how you followed this Audi throughout this parking lot and
10 around this building. Did you tell any of that to the
11 officer or to Detective Stanley?

12 **A** I believe so.

13 **Q** You've also had the ability to sit here today and
14 listen to everyone who testified against you; is that
15 correct?

16 **A** That is correct.

17 **Q** What was your service pistol or -- when you were in
18 the recon Marines?

19 **A** It really depend -- we had a choice. But common
20 practice was the Beretta 9mm.

21 **Q** And what gun were you using on the day of the
22 incident?

23 **A** A Glock 9mm --

24 **Q** What's the difference between --

25 **A** -- Glock 72.

1 **Q** Is there a difference between the safety on a Glock
2 and the safety on a Beretta?

3 **A** The manual safety on a Beretta, you have to
4 actually actuate with your thumb, and to an upward motion,
5 which -- which disengages any safety or hammer blocks that
6 there are. As far as a Glock, there's three internal
7 safeties: a striker safety, a trigger safety, and something
8 else that I'm not very familiar with.

9 **Q** So a trigger pull on a Glock --

10 **A** It's called a crucible.

11 **Q** A trigger pull on a Glock is much more than a
12 trigger pull on a Beretta with the safety off; correct?

13 **A** I'm sorry. Say your question -- I don't
14 understand.

15 **Q** To pull the -- the amount of pounds per square inch
16 that you have to pull the trigger --

17 **A** Yes, sir.

18 **Q** -- is that heavier or lighter on a Glock than a
19 Beretta?

20 **A** Really, it -- it depends, sir, because triggers are
21 adjustable.

22 **Q** Did you adjust your trigger on your --

23 **A** No, sir.

24 **Q** So you had a standard trigger on your Glock?

25 **A** Yes, sir.

1 Q Do you have a standard trigger on your Beretta?

2 A Yes, sir.

3 Q Okay. So in the Beretta you can actually put in
4 single action, double action; correct?

5 A Yes.

6 Q Okay. And if something's a single action it takes
7 a lot less to pull the trigger than if it's a double action;
8 correct?

9 A Correct.

10 Q And a Glock has even more mechanisms than that to
11 pull the trigger?

12 A Correct.

13 Q Okay. So it would take more to pull the Glock
14 trigger than it would --

15 MR. ADAMS: Objection to relevance, Judge. It's a
16 comparison.

17 THE COURT: Overruled.

18 BY MR. ARCKEY:

19 Q So it would take more to pull a Glock trigger than
20 it would a Beretta trigger?

21 A No.

22 Q Would it take less?

23 A No. Really I couldn't say. There's -- it's two
24 different functions. On the Beretta, if -- you know, if you
25 have to employ the weapon, you have to bring the weapon up to

1 a position to where you can manipulate the safety and begin
2 to fire.

3 Q Do you keep the safety on when you have a round in
4 the chamber when you're on patrol?

5 A What's that? I'm sorry.

6 Q Do you -- would you -- when you were on patrol, did
7 you keep your safeties on?

8 A Yes.

9 Q Even when you were in a combat zone?

10 A Yes. We were taught the Number 1 safety is your
11 finger.

12 Q Well, that would be inconsistent with keeping your
13 safety on.

14 A Well, you keep your finger away from the trigger,
15 the gun won't go off.

16 Q But you could have your safety on if you keep your
17 finger away from the trigger?

18 A Uh-huh. Yes, sir.

19 Q How many fire -- how many shots did you fire that
20 day?

21 A Four shots, four rounds.

22 (Pause in proceedings.)

23 Q Do you remember telling Detective Stanley at one
24 point that after you heard the victim talking to Mr. Johnson,
25 that you were now knowing that she did maliciously hit him?

1 **A** I'm sorry. Say it again, sir.

2 **Q** Did you remember telling Officer Stanley -- or
3 Detective Stanley at one point, that after the victim got out
4 and addressed Mr. Johnson, that you knew now that she
5 maliciously hit him?

6 **A** Once she said that he pissed her off, yes.

7 **Q** Okay. So initially you didn't think it was -- this
8 was a malicious thing?

9 **A** Going off of feelings, yes, I did, and the
10 reason -- do you want a reason for that or wait?

11 **Q** I was --

12 **A** Okay.

13 **Q** -- asking a very simple question.

14 **A** Yes.

15 **Q** Now, you pulled your car up and pulled over the
16 Audi; correct?

17 **A** No.

18 **Q** How'd that happen?

19 **A** The Audi was doing a -- was attempting a turn,
20 which appeared to go back in the direction of where
21 Mr. Johnson was laying. I had pulled into the property, and
22 as soon as thought hit me, applied the brakes and got out of
23 my vehicle.

24 **Q** So you cut off the Audi?

25 **A** No.

1 Q How did you get in front of the Audi?

2 A I was never in front of the Audi.

3 Q Okay. So you were behind the Audi?

4 A That's correct.

5 Q So you pulled over the Audi?

6 A No, sir.

7 Q You got out of your car. Where did you go to
8 first?

9 A I immediately turned towards Mr. Johnson.

10 Q And you, at no point, ordered the victim out of the
11 car?

12 A Yes. When I --

13 Q Hold. Hold. One second, please.

14 Did you order the victim out of the car at that
15 point?

16 A I told the -- I told her to stop her vehicle and
17 then told her to exit her vehicle.

18 Q What authority do you have to do that?

19 A Upon seeing a forceable felony, which is aggravated
20 battery with a deadly weapon, which would be her vehicle,
21 gives me, as a civilian -- to enact a citizen's arrest.

22 Q Is that what you told Detective Stanley?

23 A That I enacted a citizen's arrest?

24 Q Or is that something that you have since come up
25 with?

1 **A** No, sir. It's always been -- that's something that
2 you learn in class. We don't have the same powers as law
3 enforcement, but that still does not give us our rights to
4 enact a citizen's arrest if need -- if need be.

5 **Q** So you ordered her out of the vehicle at gunpoint;
6 correct?

7 **A** I did not order her out at gunpoint.

8 **Q** But you did order her out of the vehicle?

9 **A** I ordered her out of the vehicle three times.

10 **Q** So you never pulled your gun on her at any time
11 until after she was trying to leave?

12 **A** Not until the vehicle was barreling down towards
13 us.

14 **Q** So where did you go first to talk to Mr. Johnson,
15 when -- in relation to the Audi?

16 **A** As far as --

17 **Q** Where -- you said you got out of the vehicle and
18 you went to go talk to Mr. Johnson; correct?

19 **A** I -- I looked at Mr. Johnson as he was still
20 attempting to get to his feet, because the vehicle -- the
21 driver of the vehicle was still a threat towards Mr. Johnson
22 and whoever else was around. My immediately -- or my
23 immediate action --

24 **Q** Why didn't you --

25 **A** -- is to tell her --

1 **Q** Why didn't you shoot then? If you have an active
2 threat then, why didn't you shoot then?

3 **A** 'Cause I -- I demanded she stop. If she wouldn't
4 have stopped and she still perceived [sic] a threat towards
5 myself or Mr. Johnson --

6 **Q** But you said that there was a perceived threat
7 because she was still operating a motor vehicle.

8 **A** She -- she was still the more dangerous of the
9 situation versus -- a guy laying on the ground, versus a
10 woman that I just observed hit a guy still behind the wheel
11 of her vehicle.

12 **Q** You said that she was still a threat. At that
13 point you never pulled your gun?

14 **A** No.

15 **Q** So the individual who's sitting behind the car and
16 is still a threat didn't trigger the response to pull the
17 gun?

18 **A** My hand was on my weapon, yes. It was still
19 holstered.

20 **Q** And it's then you told her to get out of the
21 vehicle?

22 **A** Yes.

23 **Q** And she complied?

24 **A** After the third time.

25 **Q** Did you address Mr. Johnson at that point?

1 **A** Yes.

2 **Q** And what did you tell the victim in this case to --
3 where to go?

4 **A** Mr. Johnson or Mrs. [sic] Guillory?

5 **Q** Ms. Guillory.

6 **A** I instructed Ms. Guillory to go have a seat on the
7 curb --

8 **Q** Good.

9 **A** -- so I can deal with Mr. Johnson, where she said
10 she was wearing a skirt and she didn't want to sit down --

11 **Q** Okay.

12 **A** -- at that time. She asked me if she could lean on
13 the front of my car, and I told her, sure.

14 **Q** And where was your car? Behind her car?

15 **A** My car was off to the -- yeah. I -- it's her --
16 the front of her car was starting to face towards the outside
17 so we were parked somewhat like this.

18 **Q** So in her --

19 **A** Where my car --

20 **Q** In her direct travel?

21 **A** My car was -- no, sir.

22 **Q** Okay.

23 **A** She had -- she had plenty enough room to exit
24 the -- to exit without hitting my vehicle, or she should have
25 had.

1 **Q** Did you hear Mr. Johnson tell Ms. Guillory that she
2 could leave the victim?

3 **A** I heard him yell at her, why did you hit me. I
4 can't believe you hit me. You're going to jail.

5 **Q** That wasn't the question.

6 **A** That's what I heard him say. The -- the time that
7 I heard him say that he didn't want her to go to jail was at
8 the same time --

9 **Q** And that's not the question.

10 **A** Okay.

11 **MR. ADAMS:** I think that was the question.

12 **MR. ARCKEY:** It was (indiscernible).

13 (Pause in proceedings.)

14 **BY MR. ARCKEY:**

15 **Q** So at no time did Mr. Johnson tell the victim that
16 she should leave?

17 **A** Not that I heard, sir.

18 **Q** Were other people telling him [sic] that?

19 **A** Yes. There was several other people telling her
20 that.

21 **Q** That make you angry?

22 **A** No, sir.

23 **Q** Why did you try to prevent her to leave then?

24 **A** I just said fire -- fire rescue and police were on
25 the way.

1 **Q** So it's your testimony here today that your back
2 was to the Audi when she got back?

3 **A** Yes, it was --

4 **Q** And you weren't trying to address her?

5 **A** No, not at that time that she started to drive off.

6 **Q** Okay. How far were you away from the Audi at that
7 point?

8 **A** At that point, approximately 15, 20 feet.

9 **Q** So you were 15 or 20 feet away from her when she
10 got back into the Audi?

11 **A** Like I said, sir, when I turned around, that's -- I
12 heard the accelerator of the vehicle, which caused me to turn
13 towards her direction and see her car coming towards me.

14 **Q** And it's your testimony here today that she
15 drove -- after -- after hearing the accelerator, she drove
16 15 to 20 feet towards you?

17 **A** Yes, sir.

18 **Q** At no time did you try to tell her to stop?

19 **A** At -- as -- as I noticed the vehicle coming my
20 direction, my first instinct was to get Mr. Johnson and an
21 unknown male party out of -- out of the way of her vehicle.
22 So I pushed them in one direction and I started to backpedal,
23 walking backwards towards my vehicle, being -- we're always
24 trained that our vehicle was the safer point.

25 **Q** So it's your testimony here today that she drove

1 her car directly at you?

2 **A** At myself and Mr. Johnson and another male party;
3 yes, sir.

4 **Q** Do you know who that male party was?

5 **A** No, sir.

6 **Q** Someone in the neighborhood you see?

7 **A** Yes, sir.

8 **Q** Seem to know a lot of people in the neighborhood,
9 but you don't know this person?

10 **A** I know he's an unauthorized occupant of
11 Palm Grove Gardens, but no, sir, I do not know his name.

12 **Q** You ever try to figure out who it was?

13 **A** Yes, sir.

14 **Q** So as your back is turned to this vehicle, you say
15 that this vehicle hit you?

16 **A** From -- from my backside, no, sir.

17 **Q** So you had turned around and confronted the
18 vehicle?

19 **A** I started to turn towards the vehicle, realizing
20 that the vehicle was coming towards me, and I pushed
21 Mr. Johnson and this other male out of the way and started
22 walking --

23 **Q** So --

24 **A** -- backwards towards my vehicle, which is off to --
25 if I'm facing this way, at Mr. Johnson, and my vehicle is

1 directly behind me, I had to turn this direction to see the
2 vehicle coming at me.

3 Q Okay. So your testimony here today is that you
4 turned and faced towards the vehicle; correct?

5 A I tried to get out of the vehicle's way, sir.

6 Q Okay. So you -- you said you were backpedaling
7 earlier; correct?

8 A Backpedaling, yes.

9 Q But you had turned to look towards the vehicle?

10 A No, sir. You don't have to turn your body to
11 back -- to walk backwards, you just turn your head.

12 Q But -- well, I'm not saying -- I'm saying, were you
13 facing the vehicle or not?

14 A When I observed the vehicle coming at me, no, sir.
15 There was --

16 Q So you were looking over your shoulder during this?

17 A Yes, sir.

18 Q Okay. And you don't turn at all?

19 A I try to get out of her way.

20 Q So what direction do you move away from the vehicle
21 to get out of her way?

22 A Whatever way you think is safest.

23 Q What direction did you turn --

24 A I --

25 Q -- away from the vehicle?

1 **A** I stepped backwards, because I knew walking
2 backwards --

3 **Q** So if the car is coming directly to you, and it's
4 at your back, you stepping backwards would get you closer to
5 the vehicle; correct?

6 **A** No, sir. The vehicle was not -- her vehicle was
7 not 100 percent directly south of my position. She was a
8 little -- she was off -- off center. My vehicle was directly
9 behind me, so to get to my vehicle, all I had to do was walk
10 backwards. I still had to turn my head to see her vehicle
11 coming.

12 **Q** So you stepping backwards would still put you
13 closer to her vehicle; correct?

14 **A** No, sir. It -- it would open up the gap so she
15 would have more room --

16 **Q** You were hoping she would overshoot; correct?

17 **A** -- so she had more room to get out without hitting
18 me or the people in the driveway.

19 **Q** Did you have your gun? And how does your holster
20 work?

21 **A** I have what is called a Level 3 holster. It has a
22 hood that goes over the back of the pistol. And there is
23 also a switch that you have to activate to release the pistol
24 from the holster.

25 **Q** Now, is this a button switch or is it a -- more

1 complicated?

2 **A** It's just -- it's just activated by a thumb. You
3 can move it half an inch.

4 **Q** And it pops it open?

5 **A** Yes.

6 **Q** Was your gun locked down with the switch connected?

7 **A** With the -- with the switch active -- when the
8 weapon is in the holster, the switch is always activated.

9 **Q** So it was secure?

10 **A** Yes.

11 **Q** So you couldn't just pull it out?

12 **A** Correct.

13 **Q** How fast do you think the car was going at this
14 point?

15 **A** I -- I couldn't tell you, sir. I just know it was
16 moving faster than I was.

17 **Q** At this point, you decided to draw your firearm?

18 **A** At this point, once the vehicle was -- once I felt
19 the weight of the vehicle on me, is when I pulled it out of
20 my holster and fired.

21 **Q** Now, you're a relatively tall guy. Typically, cars
22 front wheels are well in front of the driver's door; correct?

23 **A** Approximately a foot; yes, sir.

24 **Q** Maybe more in some cars?

25 **A** Maybe a 1980's Lincoln or something. I don't know,

1 sir, I'm not a car expert.

2 Q This car was going really fast; correct?

3 A Yes, sir.

4 Q So it running over your foot would have taken a
5 very, very small amount of time; correct?

6 A I don't know, sir. It -- it felt like the vehicle
7 was on my foot forever.

8 Q So is the vehicle going fast or was the vehicle
9 going slow? Because if it felt like it was on your foot
10 forever, it seems like it would have been a longer time.

11 A Sir, when -- it's been my experience when you're in
12 situations that are potentially life threatening, that time
13 slows down and you have no concept of time. So I cannot tell
14 you if the vehicle was doing 200 miles an hour or one mile an
15 hour. It just all happened at the same time, sir.

16 Q And -- so it's your testimony here today that
17 the -- as you're backpedaling, the car runs over your foot
18 and scrapes your leg, and just the wheel and nothing else,
19 the wheel and maybe a piece of the car hit you; correct?

20 A I have no idea what all hit me, sir, but, yes, I
21 know -- I realized the pain, I would have to say possibly
22 from the front corner of her bumper first before the pressure
23 of the tire on my foot.

24 Q So you don't know what hit you?

25 A I just know I was hit by a vehicle.

1 **Q** Could it have been the back wheel that hit you?

2 **A** No, sir, not -- not at first.

3 **Q** It's your testimony also that you fell that day;
4 correct?

5 **A** What's that, sir?

6 **Q** That you fell that day?

7 **A** After she ran me over, yes, sir.

8 **Q** So you fell that day after the front wheel hit you,
9 the car -- you're able to pull your firearm, shoot four
10 rounds into it and then you fall; correct?

11 **A** I -- it took -- I would have to say it would take a
12 moment, but, yes, I went -- I sat on my butt up against the
13 back side of my vehicle or the side of my vehicle.

14 **Q** You're 6'2"; correct?

15 **A** Approximately, yes, sir. Between 6'1", 6'2", or
16 6' -- 6'2".

17 **Q** Mr. Coleman, you see the first two green rods
18 there?

19 **A** Yes, sir.

20 **Q** Would those be consistent with you shooting from
21 your hip?

22 **A** Yes, sir, approximately.

23 **Q** This first yellow rod, would that be a little bit
24 higher?

25 **A** The --

1 **MR. MULLINS:** Your Honor, we're going to object at
2 this point. I think that the -- the State is asking
3 for -- for expert testimony. Basically, we're getting
4 into expert testimony here and he hasn't been qualified
5 to render that kind of testimony.

6 **MR. ARCKEY:** I'm asking where he was shooting from
7 and I think this can show that it's at issue.

8 **THE COURT:** I'll overrule the objection.

9 **BY MR. ARCKEY:**

10 **Q** The second one, it's a little higher; right?

11 **A** Yes, sir.

12 **Q** The fourth one is even higher; correct?

13 **A** Actually, the second one -- the angle might be a
14 little higher, but it's still on line with the first two
15 green ones. The farther one -- wherever that's at on the --
16 on the vehicle there, yes, sir, that -- that appears a little
17 higher.

18 **Q** Is that consistent with falling down?

19 **A** That's consistent with -- I have no idea, sir. I
20 mean, all I know is the vehicle was there and I'm firing to
21 stop her from killing me or ripping my leg off or hurting
22 someone else.

23 **Q** All right. The question was, was that consistent?

24 **A** Okay.

25 **Q** It's your testimony here today that you never

1 grabbed onto the car; correct?

2 **A** That's correct, sir.

3 **Q** It's your testimony here today that you never
4 confronted her when she got back into the car; is that
5 correct?

6 **A** Besides asking her to stop, stop, stop.

7 **Q** It's your testimony here today that after you fired
8 those shots, you fell down?

9 **A** I -- probably within a second or two, yes, sir, I
10 sat down.

11 **Q** And that's not because you were holding onto the
12 car; correct?

13 **A** Correct.

14 **Q** And it's not because you got ran over by the back
15 wheel because you were holding onto the car; correct?

16 **A** I'm sorry, sir, what?

17 **Q** It's not because you were holding -- after holding
18 onto the car, you pulled your firearm and you got hit by --
19 by the back wheel; is that correct?

20 **A** No. I don't -- no, the back wheel -- I'd already
21 fired before the back wheel would have hit me.

22 **Q** And then you subsequently fell down; correct?

23 **A** Correct, after the vehicle turned off the property.

24 **Q** So you didn't fall down when you got ran over by
25 the first wheel; correct?

1 **A** I felt my leg buckling, that was all. I never once
2 said I fell down instantly.

3 **MR. ARCKEY:** Okay. Can I have a moment,
4 Your Honor?

5 **THE COURT:** You may.

6 (Pause in proceedings.)

7 **MR. ARCKEY:** No further questions, Your Honor.

8 **MR. MULLINS:** Just real briefly, Your Honor.

9 **THE COURT:** Go ahead.

10 **REDIRECT EXAMINATION**

11 **BY MR. MULLINS:**

12 **Q** This is all kind of happening a little fast, is it?

13 **A** Yes, sir.

14 **MR. MULLINS:** Okay. I'm sorry, Your Honor. May I
15 approach --

16 **THE COURT:** Uh-huh.

17 **MR. MULLINS:** Okay.

18 **BY MR. MULLINS:**

19 **Q** Mr. Coleman, we were looking at these photographs
20 earlier. Okay. Now, the State asked you if the yellow rod
21 was higher than the other two. That's -- okay, don't look at
22 where the -- the rods -- the -- this end, that -- at the
23 right end, look at where the left end goes --

24 **A** It's --

25 **Q** -- because that's where the bullet is; right?

1 **A** Right.

2 **Q** Okay. Is that about the same -- all about the same
3 distance?

4 **A** Yes. It's like I said --

5 **Q** Could --

6 **A** -- it's all on line.

7 **Q** Could that higher angle be because it's angled back
8 in the photograph?

9 **A** The rod?

10 **Q** Yes.

11 **A** Possibly, yes, sir.

12 **Q** Okay. We're looking -- you understand, we're
13 looking at a two-dimensional thing here?

14 **A** Yes, sir.

15 **Q** Okay. But it describes a three-dimensional event;
16 right?

17 **A** Yes, sir.

18 **Q** So there's a thing called perspective; right? What
19 about back here, this one, is it about the same -- it's a
20 little bit higher, with maybe the same angle as these two?

21 **A** It's the same angle as far as direction --

22 **Q** Okay.

23 **A** -- from what I can tell.

24 **Q** Are you an expert in -- in angles and geometry and
25 all that?

1 **A** No, sir.

2 **Q** Okay. You -- you fired -- did you fire because you
3 just felt like you needed to to avoid being killed?

4 **MR. ARCKEY:** Objection, Your Honor; it's the
5 ultimate fact at issue.

6 **MR. MULLINS:** Ultimate facts are permitted to be
7 drawn by the Court, Your Honor. The -- the witness can
8 testify to the ultimate fact. That's 703, I think.

9 **MR. ADAMS:** 90.7 --

10 **MR. MULLINS:** 90.703 says clearly that testimony in
11 the form of opinion or inference otherwise admissible is
12 not objectionable because it includes an ultimate issue
13 to be decided by the trier of fact.

14 **THE COURT:** I'll go ahead and overrule the
15 objection.

16 **MR. MULLINS:** Thank you.

17 **THE COURT:** He can give whatever answer his -- that
18 he wants.

19 **MR. MULLINS:** That's all I have.

20 **THE COURT:** Okay. Mr. Coleman, if you'll have a
21 seat back at counsel table.

22 **THE DEFENDANT:** Yes, sir

23 (The requested excerpt of the proceedings concluded
24 at 4:23 p.m.)

25

C E R T I F I C A T E

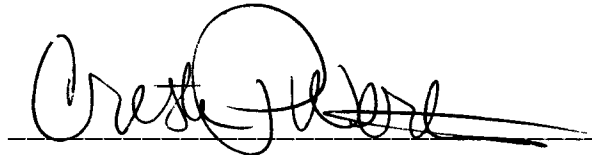
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STATE OF FLORIDA:

COUNTY OF ORANGE:

I, Crista Porter Werth, CER, being a Digital Court Reporter as authorized by Rule 2.535(h)(3), Florida Rules of Judicial Administration, and Administrative Order of the Ninth Judicial Circuit numbered 07-98-43, certify that the foregoing transcription is true and correct.

Witness my hand this 26th day of March, 2015, in the City of Orlando, County of Orange, State of Florida.



Crista Porter Werth, CER

Exhibit F

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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION

CASE NUMBER: 48-2014-CF-7184-O

STATE OF FLORIDA,

DIVISION NUMBER: 16

Plaintiff,
vs.

VOLUME III

JOHNATHAN ANDREW COLEMAN,

Defendant.

JURY TRIAL

BEFORE

THE HONORABLE GREG TYNAN

In the Orange County Courthouse
425 North Orange Avenue
Courtroom 6D
Orlando, Florida 32801
June 23, 2015
Tracy Anderson
Official Court Reporter

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

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P R O C E E D I N G S

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* * * * *

(June 23, 2015 9:13 a.m.)

THE COURT: We have all our jurors back?

All right. Are we all ready to proceed on the continuation of our trial from yesterday on Mr. Coleman?

MR. ARCKEY: Your Honor, there is an additional motion in limine due to some of the things we discussed yesterday regarding the lawful citizen's arrest, in addition to the fleeing felon instruction. The State would be asking for a motion in limine to prohibit defense from raising that in their opening statement. I have case law on that matter.

Also, as an officer of the Court, the State also wants to bring to your attention another piece in this case which was an accidental discovery when doing my research on this case. It seems to be that given the way this is charged, and I may be corrected by Your Honor, but that we were entitled to 10 peremptories. I don't believe that was preserved at this point. But I --

THE COURT: I never said anybody had six. You-all just chose to exercise six. Everybody left them on the table.

1 **MR. ARCKEY:** Okay. And that's the only thing we
2 wanted to address prior to.

3 **THE COURT:** At no time during the jury selection
4 did the Court ever advise anybody that there was only
5 six strikes. The defense chose to exercise six strikes.
6 And they exercised a seventh during the alternate. They
7 asked me if they could have another, I said sure, as
8 they had other ones still available on the table. And
9 the State, I believe, only used three.

10 **MR. ARCKEY:** And, Your Honor, just for the argument
11 of the motion in limine, the defense is only entitled to
12 a special instruction; one, when the special instruction
13 is supported by the evidence. Two, that the standard
14 instruction did not adequately cover the theory of
15 defense; and three, the special instruction was a
16 correct statement of law. And I believe the motion in
17 limine should be granted as to there's been no evidence
18 at this point for them to discuss any type of special
19 instruction and any type of information regarding the
20 ability to have that special instruction, ability of the
21 defendant to -- or argue that a lawful citizen's arrest
22 was made, and that this was detaining an individual
23 during, basically, a felony action.

24 **THE COURT:** Mr. Mullins?

25 **MR. MULLINS:** Judge, my -- I can tell you my

1 intention. My intention wasn't really to go into
2 instructions on those things, other than to inform the
3 jury that they will likely get instructions to those
4 things.

5 Obviously, we do believe that Mr. Coleman is going
6 to testify. We believe these instructions will be
7 relevant and come in. I don't see any harm in informing
8 them at this point that they -- we believe that they are
9 going to receive instructions. It's based on what we
10 believe is reasonably likely for the evidence to show,
11 that it is going to be supported by those instructions.

12 In fact, I think a fleeing felon instruction is
13 part of the standard of self-defense, which obviously
14 we've made no secret we are going to raise.

15 **THE COURT:** What is it specifically, State, you're
16 trying to exclude them from referencing?

17 **MR. ARCKEY:** That he was doing a lawful citizen's
18 encounter or citizen's arrest and that him --

19 **THE COURT:** If they made that argument wouldn't
20 that be argumentative during opening because. . .

21 **MR. ARCKEY:** Well, just anything down that line,
22 Your Honor.

23 **THE COURT:** Isn't that what they got to decide is
24 whether or not he was justified in using force or not?

25 **MR. ADAMS:** Judge, maybe a better way to handle it

1 is just to reserve on that. We won't say anything about
2 citizen's arrest on opening. But if the evidence comes
3 out --

4 **THE COURT:** The opening should be to discuss what
5 facts you-all think. Don't be making legal conclusions
6 in your openings. So I don't think it should be an
7 issue there. During the course of the trial you're
8 entitled to bring out whatever facts you think are
9 necessary to the extent you think they're relevant. And
10 then we'll decide at the end of the case whether or not
11 the instruction's appropriate. And in closing is the
12 time when you can make those arguments if that
13 instruction is going to be given.

14 **MR. ARCKEY:** Yes, Your Honor.

15 **THE COURT:** Anything else that we need to address
16 before we bring the jurors back in and get started with
17 the trial?

18 **MR. ARCKEY:** Nothing further from the State,
19 Your Honor.

20 **MR. MULLINS:** I don't think so, Judge.

21 **THE COURT:** Then let's go ahead and bring our
22 jurors back in.

23 (The jury entered the courtroom.)

24 **THE COURT:** All right, ladies and gentlemen,
25 welcome back. Sorry for the delay. There was a couple

1 things that I had to handle this morning but we're done
2 with those and ready to go.

3 I just need to make sure that everybody complied
4 with the instructions I gave you last night. You-all
5 went home and didn't do anything but think about this
6 case, right? Nobody did any research or
7 Inspector Clouseau or some other investigation on your
8 own, right? Okay. And did anybody have any contact
9 with you last night or this morning other than the court
10 deputies who placed you back into the jury room?

11 **THE JURY:** No.

12 **THE COURT:** Okay. Then with that said, we're ready
13 to start with the opening statements of the attorneys.
14 And I've already given you the instruction on that.

15 State, you may provide your opening statement, if
16 you wish, at this time.

17 **MR. ARCKEY:** Thank you, Your Honor.

18 Four shots. Four shots is how many times the
19 defendant shot into a vehicle that was driving away from
20 him.

21 On 5-28-2014 at approximately 8:30 at night, you're
22 gonna hear that the victim, Aimee Guillory, was in an
23 argument with her boyfriend. She was in an argument
24 with Mr. Johnson, Vince Johnson, who you'll also hear
25 from today. They were in an argument over whether or

1 not she ate enough that day because she was pregnant.

2 That argument went on for some time. Mr. Vincent
3 ended up leaving the neighborhood. At that point
4 Ms. Guillory was in her car and drove away. She drove
5 past Mr. Vincent who ended up trying to stop her again
6 and give her another lecture on "to go eat, she needs to
7 eat, she's pregnant." At which point Mr. Vincent
8 stepped out in front of the victim's car in this case
9 and was struck by the vehicle. Mr. Vincent got right
10 back up, started continuing the argument with the
11 victim.

12 That's when a security guard from Palm Groves
13 Apartment across the street, where Vince Johnson and
14 Aimee Guillory reside, got involved. Got involved in
15 something he shouldn't have. Got in his vehicle, turned
16 on his overhead lights, left the apartment complex,
17 drove around the block, pulled into the Northwest
18 Community Center and essentially conducted a stop on the
19 victim.

20 Ordered her out of the car, told her to get on the
21 ground. Ms. Guillory said, I'm pregnant; I'm not
22 getting on the ground; I have a short dress; I'm not
23 getting on the ground. So she eventually sat on the
24 curb.

25 During this encounter, a crowd gathers, people are

1 around. She decides that she's going to leave and gets
2 back in the car. She begins to turn the car out of the
3 Northwest Center -- Community Center there, to get back
4 on WD Judge to go right down the road.

5 As she's pulling away, the defendant --

6 (Cell phone ringing.)

7 **MR. ADAMS:** Oh, no. I'm sorry, Your Honor. That
8 wasn't supposed to happen.

9 **THE COURT:** Now is a good time to remind everybody
10 in the courtroom, that if you have a cell phone, make
11 sure it is in the off position.

12 **MR. ADAMS:** I apologize to the Court and to the
13 jury, Your Honor. I'll make sure that doesn't happen
14 again.

15 **MR. ARCKEY:** As she's pulling away, the defendant
16 approaches the car and tries to pull her out of the car,
17 at which point she continues to roll slowly away. He
18 pulls his gun and fires four shots into the car. One
19 striking Mrs. Guillory, the victim in this case, going
20 through her arm and into her wrist and stopping.

21 By the end of the presentation of evidence here
22 today, you're gonna hear from multiple witnesses who
23 were gathered there that day. You're gonna hear from
24 Mr. Johnson. You'll hear from Ms. Guillory. You're
25 gonna see a large amount of physical evidence.

1 And we believe by the end of the culmination of all
2 this evidence here today, that the only reasonable
3 verdict will be a verdict of guilty on both counts.

4 Thank you.

5 **MR. MULLINS:** May I, Judge?

6 **THE COURT:** You may.

7 **MR. MULLINS:** The shooting is not disputed. There
8 obviously was a shooting here. It didn't happen like
9 the State just told you. Mr. Coleman was acting in
10 self-defense.

11 Now, I'm not gonna tell you every detail because I
12 want to give you a reason to make sure you're taking
13 notes and I want you to wait for it. I want you to
14 anticipate it. So I'm not gonna tell you every little
15 thing you're gonna hear. But I want to start off giving
16 you three main bullet points so you know the important
17 things to focus on.

18 First, Aimee Guillory's handling of the car.
19 There's a lot more to it than what the State just told
20 you.

21 Mr. Coleman's position of the cars.

22 And Johnathan Coleman's handling of the gun.

23 Now, start with Aimee Guillory.

24 State would have you think they're just having a
25 light -- a light disagreement. No. They were in an

1 extreme argument. Aimee Guillory is speeding through
2 the complex. She's cursing at him. She's aggressive.
3 She's violent.

4 Coleman, who had just recently arrived to work,
5 sees the car speeding through the complex as he's
6 conversing with some of the residents, as he does
7 normally. Tells her to slow down. At that point he
8 just sees someone a little angry, a little aggressive,
9 driving too fast for safety and tells her to slow down.
10 She does.

11 At about that time, Vince Johnson had gotten --
12 apparently gotten off a bus nearby and he was walking
13 down the street when Aimee Guillory had seen him. She's
14 cursing. She's yelling at him. She's speeding through
15 the complex. Coleman tells her to slow down.

16 And then a short time later, Johnson comes through
17 the apartment complex. She's looking for him. She's
18 cursing. They're obviously in a very extreme argument
19 at that point.

20 He goes to leave. She turns right, which is the
21 east direction out of the apartment complex. She comes
22 back towards where now Vince Johnston had left the
23 apartment complex and is walking across the street. She
24 swerves out of the lane she's traveling in and just
25 passes him.

1 Down the road, Mr. Coleman hears the tires screech.
2 And she has turned around now. She's coming back at --
3 back at Vince Johnson. This time she doesn't miss him.
4 This time she hits him with her car to the point he
5 flies up onto the hood and hits the ground. He's
6 holding his arm on the ground as if it's broken.

7 At that point, Mr. Coleman decides to get involved.
8 He's security and he sees a guy laying on the ground of
9 a busy street and he's just been hit by a car. That's
10 when Mr. Coleman decides to get involved.

11 Ms. Guillory at that point had pulled into the
12 community center and she had started to turn around.
13 Mr. Coleman doesn't know she's coming back at him for a
14 third time. He goes in there, he positions his car in a
15 way he can possibly protect Mr. Johnson and he orders
16 Ms. Guillory out of the vehicle at that point.

17 So just to give you some context of the events that
18 happened. Now, this happened in a small area. Not much
19 bigger than from me to you in your little area.
20 Mr. Coleman's car is parked. At this point,
21 Ms. Guillory's car is parked kind of in a T-bone shape
22 where she could leave. Mr. Johnson is over here. He's
23 directing his attention over there. Ms. Guillory gets
24 back in her car after he ordered her out. He calls for
25 91 -- he calls for help over his radio. Ms. Guillory

1 gets back in the car.

2 Now, over a couple-second period of time, the
3 important events happen. There's a roar of an engine.
4 Mr. Coleman is getting pinned by his car. His foot gets
5 runned [sic] over. He gets dragged by a car.

6 Now, obviously there's a little bit more to it and
7 you'll hear about it.

8 Now, as far as Mr. Coleman's position, this is
9 gonna be disputed by virtually all of the witnesses.
10 There are several witnesses to this, most of whom
11 represent a chain of family and friends of Vince Johnson
12 and Aimee Guillory. Some of them were standing in a
13 position where they could see some things and some were
14 not.

15 Mr. Coleman was standing with his back to
16 Aimee Guillory's vehicle now. You'll probably hear
17 something different from Aimee Guillory.

18 He's pinned -- as the vehicle comes, he's pinned so
19 that the vehicle is coming and it's swerving at him to
20 the point where he will get pinned between the vehicles.

21 Mr. Coleman is kind of a big guy. You can see
22 that. He's not the quickest, but he's a big, strong
23 guy, so he took the only evasive actions he could. He
24 tried to get people out of the way the best he could.
25 He did what he thought he had to do.

1 Now, Coleman's handling the firearm. That's the
2 third point. This isn't some Paul -- mall cop security
3 guard. You're gonna hear about Mr. Coleman's training.
4 It's extensive. He's a weapon -- he trained other
5 Marines as a Scout Sniper and Recon Marine. He knows
6 what he's doing with firearms. He has rules of weapon
7 safety that he has significant training driven into his
8 head. And he exercised those reasonable conditions of
9 safety, like keeping your fingers straight and off the
10 trigger until you're ready to fire. Never point a
11 weapon at anything you don't intend to shoot.

12 But once he was in that position and he had to use
13 his weapon, he didn't hesitate. It happened quick. And
14 when he pulled out his firearm, he shot, boom, boom,
15 boom, boom. And the threat -- the threat, at that
16 point, had been negated. There was nobody else in front
17 of her. The car had stopped for a second. It was no
18 longer coming at him. That's when Aimee Guillory took
19 off and left.

20 Law enforcement, emergency personnel were on scene
21 very quickly after. You're gonna see pictures, you're
22 gonna hear from the witnesses, and you're gonna get
23 instructions from the Judge.

24 Now, like I said, the shooting isn't instruct -- is
25 not contested. So the instructions that the Judge is

1 gonna give you are very important in a case like this.
2 So I ask that you just take -- listen to the facts, make
3 notes, decide what happened the best you can, and then
4 listen to the instructions that the Judge gave you.
5 They're gonna be a little bit complicated but I know
6 you're able to understand them and you're gonna be able
7 to interpret them.

8 Thank you.

9 **THE COURT:** Ladies and gentlemen, can I have
10 you-all step out for a minute? There is something I
11 need to address with the attorneys outside your
12 presence.

13 **COURT DEPUTY:** All rise.

14 (The jury exited the courtroom.)

15 **THE COURT:** Mr. Coleman, I just wanted to
16 double-check with you. I know that from the discussions
17 we've had in this case and from the hearings that we've
18 had in the past, that it's been a self-defense case from
19 in the beginning.

20 I just wanted to confirm with you that, during the
21 open statement, your attorney conceded that basically
22 the shooting had happened but that you were justified in
23 doing so. And I want to make sure that you were on
24 board with that as your defense.

25 **THE DEFENDANT:** Um, yes, sir.

1 **THE COURT:** Okay. I just wanted to make sure that
2 you understood that's what they were going to do and
3 make sure you were with okay with it. So that's
4 correct, right?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Okay. That's all I need.

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** What I'm gonna do is I'm gonna go ahead
9 and take about a five-minute recess for the court
10 personnel before we get started with the testimony of
11 the witnesses, that way everybody has a comfort break
12 before we get started with testimony. Okay?

13 (A brief recess was taken.)

14 **THE COURT:** Ready to proceed?

15 **MR. ADAMS:** Yes, Your Honor.

16 **THE COURT:** Let's go ahead and bring the jury in
17 and get started with the first witness.

18 (The jury entered the courtroom.)

19 **THE COURT:** Have a seat.

20 State, you may call your first witness.

21 **MR. ARCKEY:** Your Honor, at this time the State
22 would call Vince Johnson.

23 **THE COURT:** Mr. Mullins, do you need that device
24 again today?

25 **MR. MULLINS:** Your Honor, I have my hearing aids

1 working today, so thank you.

2 **THE CLERK:** Please raise your right hand to be
3 sworn.

4 **VINCE JOHNSON**

5 **was called as a witness and, having first been duly sworn,**
6 **testified as follows:**

7 **THE WITNESS:** Yes.

8 **THE COURT:** You may put your hand down, sir.

9 Go ahead and tell me your full name and spell your
10 first and last name for the court reporter, please.

11 **THE WITNESS:** My first name is Vince, V-I-N-C-E,
12 Johnson, J-O-H-N-S-O-N.

13 **THE COURT:** All right.

14 State, you may inquire of the witness.

15 **MR. ARCKEY:** Thank you. May I have one moment?

16 **THE COURT:** You may.

17 **DIRECT EXAMINATION**

18 **BY MR. ARCKEY:**

19 **Q** Good afternoon, Mr. Johnson. Um -- sorry about
20 that.

21 Can you, um, tell us, uh, who -- or, actually, let
22 me rewind a little bit.

23 Who is Aimee Guillory to you?

24 **A** She's -- she's my lady, my baby mother.

25 **Q** And you-all have a child together?

1 **A** Yes.

2 **Q** Okay. Do you currently live with her?

3 **A** No, sir.

4 **Q** So you live at a different location?

5 **A** Yes.

6 **Q** Now, I draw your attention to May 28, 2014. Do you
7 remember that day?

8 **A** Yes.

9 **Q** Okay. Do you recall what occurred around 8:30 that
10 night or a little bit before that? Were you and Ms. Guillory
11 in a fight?

12 **A** I wouldn't say a fight --

13 **MR. MULLINS:** Your Honor, if I could ask counsel
14 maybe to step to the side just a little bit so I can
15 see.

16 **THE COURT:** You can slide that wherever you need
17 to.

18 **MR. MULLINS:** I know the podium is kind of in a bad
19 spot. That's better. Thank you.

20 **THE COURT:** And the chair doesn't move, so you'll
21 have to either scoot up -- there you go.

22 **BY MR. ARCKEY:**

23 **Q** You can move the microphone a little bit higher so
24 it's closer to you.

25 Were you all in a fight that night?

1 **COURT REPORTER:** I'm sorry?

2 **BY MR. ARCKEY:**

3 **Q** Were you both in a fight that night?

4 **A** Argument.

5 **Q** And what was the argument about?

6 **A** Her not eating.

7 **Q** Okay. And why were you in an argument about that?

8 **A** Because I really wanted her to eat. I had just got
9 off work. She hadn't ate all day --

10 **COURT REPORTER:** I'm sorry. I can't hear you.

11 **THE WITNESS:** She -- she hadn't ate all day, so I
12 had got up -- a little upset. She hadn't really ate all
13 day. I really wanted her to eat.

14 **BY MR. ARCKEY:**

15 **Q** And if you could just speak up a little bit. It's
16 kind of hard to hear and the courtroom kind of echoes.

17 And why did you want her to eat?

18 **A** Because she haven't ate all day.

19 **Q** Okay.

20 **A** And she was pregnant at that time.

21 **Q** Okay. And so did that argument start at her -- in
22 her -- inside her apartment complex?

23 **A** No.

24 **Q** Okay. Where did that argument start?

25 **A** I was on the way -- I was coming from work and we

1 was already on the phone talking and arguing and stuff.

2 Q Where do you work?

3 A I was working at Sweetwater Car Wash at the time.

4 Q Okay. Now, when did you first meet up with
5 Ms. Guillory?

6 A I was on WD Judge. That's when we first met up. I
7 was meeting up at her house. And that's what I do when I get
8 off work --

9 COURT REPORTER: I'm sorry?

10 THE WITNESS: When I get off work, we always meet
11 up at her house.

12 BY MR. ARCKEY:

13 Q Okay. And at some point did you go to her house?

14 A Yes.

15 Q Go to her apartment?

16 A (Nods.)

17 Q And where is that apartment at?

18 A On WD Judge Road.

19 Q Do you know the name of the apartment complex?

20 A Palm Grove Apartment.

21 MR. ARCKEY: May I approach the clerk?

22 THE COURT: You may.

23 MR. ARCKEY: I'm showing the defense State's C for
24 Identification.

25 May I approach the witness, Your Honor?

1 **THE COURT:** You may.

2 **BY MR. ARCKEY:**

3 **Q** Mr. Johnson, can you just please take a look at
4 that? Can you tell me what that is of?

5 **A** It's the map of the apartment complex.

6 **Q** Okay. And is that a fair and accurate depiction
7 from an aerial view of that apartment complex?

8 **A** Yes.

9 **MR. ARCKEY:** Your Honor, at this time the State
10 would move State's Identification C as State's 1.

11 **MR. ADAMS:** No objection, Your Honor.

12 **THE COURT:** All right. What's been marked as
13 State's Exhibit C for Identification will be moved into
14 evidence as State's 1 without objection from the
15 defense.

16 (State's Exhibit 1 received in evidence.)

17 **MR. ARCKEY:** Permission to publish, Your Honor?

18 **THE COURT:** You may.

19 (The exhibit was published to the jury.)

20 **BY MR. ARCKEY:**

21 **Q** All right, Mr. Johnson --

22 **MR. ARCKEY:** Your Honor, may I approach with the
23 laser pointer? Your Honor?

24 **THE COURT:** Pardon me?

25 **MR. ARCKEY:** May I approach with a laser pointer?

1 **THE COURT:** Okay.

2 **BY MR. ARCKEY:**

3 **Q** Mr. Johnson, what you're viewing behind you is the
4 photo I just showed you. Can you kind of describe where the
5 apartment complex is? It's got a little button on the side.

6 **A** Apartment complex right here where --

7 **COURT REPORTER:** I can't hear.

8 **THE WITNESS:** The apartment complex is right here
9 where we stay at.

10 **BY MR. ARCKEY:**

11 **Q** That's Ms. Guillory's --

12 **A** Yes.

13 **Q** -- apartment? And do you know where the Northwest
14 Community Center is?

15 **A** Back this way.

16 **Q** All right. Now, when you first were talking with
17 Ms. Guillory, where were you at?

18 **A** Coming down this road right here.

19 **Q** And then where did you go next?

20 **A** Went to her house.

21 **Q** Then after that, did you leave?

22 **A** Yes.

23 **Q** Where did you go?

24 **A** I walked across --

25 **COURT REPORTER:** I'm sorry, I can't hear.

1 **THE WITNESS:** I walked across the street to the
2 Northwest Center.

3 **BY MR. ARCKEY:**

4 **Q** Okay. And where were you heading at that point?
5 What direction? Were you heading --

6 **A** I was going --

7 **COURT REPORTER:** I can't hear, Judge.

8 **THE WITNESS:** I was going this way.

9 **BY MR. ARCKEY:**

10 **Q** Do you recall why you were leaving?

11 **A** Because I really didn't want to be there no more
12 because we was arguing so much, I just wanted to calm
13 everything down, so I was just leave -- I was just trying to
14 leave and stuff.

15 **BY MR. ARCKEY:**

16 **Q** And when you were walking across the street, did
17 you see Ms. Guillory get in her car?

18 **A** Yes.

19 **Q** And what happened next?

20 **A** She drove over there by me and we started talking
21 from there.

22 **Q** Okay. And so where did she come in contact with
23 you while on WD Judge?

24 **A** Right there.

25 **Q** Okay. What happened there?

1 **A** We were just having -- we was just talking there.

2 **Q** And at any time were you hit by a vehicle?

3 **A** No.

4 **Q** Were -- can you describe what happened with the
5 vehicle?

6 **A** She -- she droved up and I slapped the hood of the
7 car and that's basically it. I was talking to her from
8 there.

9 **Q** At any time did you roll up on the hood of the
10 vehicle?

11 **A** No.

12 **Q** At any time were you injured by the vehicle?

13 **A** No.

14 **Q** Now, did you have an injury that day?

15 **A** Yes.

16 **Q** Can you describe what happened with that injury?

17 **A** My wrist was already broke, so, um, I already had
18 like a cast on my wrist.

19 **Q** How did that happen?

20 **A** I was playing basketball.

21 **Q** Now, was that injury from several days before?

22 **A** Yes.

23 **Q** As a matter of fact, had you seen or had the
24 security guard seen you with an injured wrist before?

25 **A** Yes. We had just seen him a couple nights before

1 everything happened.

2 Q Now, what happened after you all were there in the
3 front of the Northwest Community Center? What happened next?

4 A Johnathan came over and he was -- he was just
5 trying to detain us. He pulled his gun out and stuff, trying
6 to detain us, tell us we can't go anywhere --

7 MR. MULLINS: Your Honor, can I ask the witness to
8 please speak up? I'm having, even with my hearing aids,
9 I'm having trouble hearing him.

10 THE COURT: Mr. Johnson, I want you to be as loud
11 as possible, okay?

12 THE WITNESS: Yes.

13 THE COURT: I'm not gonna get mad if you're loud.
14 So I want you to speak up as loud as you can, okay?

15 THE WITNESS: Yes.

16 THE COURT: Louder. Okay?

17 THE WITNESS: Yes.

18 THE COURT: Thank you.

19 BY MR. ARCKEY:

20 Q So were you all inside the Northwest Center parking
21 lot, at that point, in the entrance?

22 A Yes.

23 Q Okay. And can you describe how Mr. Coleman pulled
24 up to you both?

25 A Um, he pulled up behind the car but we both was

1 already out of the car.

2 Q Did he have his lights on?

3 A Yes.

4 Q Did he get out of the car?

5 A Yes.

6 Q What did he do when he got out of the car?

7 A He pulled his gun.

8 Q Did he tell you anything?

9 A First -- first, um, he told Aimee Guillory to get
10 out of the car.

11 Q What did he do after he told her to get out of the
12 car?

13 A He was --

14 **COURT REPORTER:** He was what? I'm sorry.

15 **THE WITNESS:** He was walking towards her but he was
16 trying to tell her to get on the ground but she had a
17 skirt on, so she's like, I'm not getting on the ground,
18 so she sat on the car.

19 **BY MR. ARCKEY:**

20 Q Okay. Did a crowd ever start gathering?

21 A Yes.

22 Q And where were you standing during all this?

23 A I was standing behind both cars.

24 Q Okay.

25 **MR. ARCKEY:** I'm showing defense what's been

1 previously marked for Identification I.

2 **MR. ADAMS:** Composite?

3 **MR. ARCKEY:** Composite.

4 **MR. ADAMS:** No objection, Your Honor.

5 **THE COURT:** Okay.

6 **MR. ARCKEY:** Permission to publish to the jury,

7 Your Honor?

8 **THE COURT:** You want to move it in evidence first?

9 **MR. ARCKEY:** Yes, Your Honor. State's I --

10 **MR. ADAMS:** When I say no objection, I mean after
11 it comes in.

12 **THE COURT:** Understood.

13 **MR. ARCKEY:** May I approach the witness?

14 **THE COURT:** You may.

15 **BY STATE:**

16 **Q** Take a look over those photos real quick. Is that
17 a fair and accurate depiction of the -- where the --
18 Mr. Coleman's car was that night?

19 **A** Yes.

20 **Q** Now, you didn't place all the placards and
21 everything there. That's just where the car was, correct?

22 **A** Yes.

23 **MR. ARCKEY:** At this time State would move what's
24 Identification I in as State's 2.

25 **THE COURT:** Any objection from defense?

1 **MR. ADAMS:** No objection.

2 **THE COURT:** What's been marked as State's Exhibit I
3 for Identification will be moved in evidence as
4 State's 2 without objection from defense.

5 (State's Exhibit 2 received in evidence.)

6 **MR. ARCKEY:** Permission to publish, Your Honor?

7 **THE COURT:** You may.

8 **BY MR. ARCKEY:**

9 **Q** Mr. Johnson, if you could take a look at this
10 photo. Can you tell us where this is?

11 **A** Yes. Northwest Center.

12 **Q** This is in the entrance area?

13 **A** Yes.

14 **Q** Is that how Mr. Coleman's car was parked when he
15 pulled over Ms. Guillory?

16 **A** It was kind of slanted a little bit.

17 **Q** Okay. And where was Ms. Guillory's car? You can
18 use the laser point to show.

19 **A** Right here.

20 **Q** Okay. So did he pull up kind of on the
21 passenger -- or on the driver's side of her car?

22 **A** Behind it.

23 **Q** Behind it. At that point, what ended up happening?
24 What did Ms. Guillory end up doing?

25 **A** Can you repeat the question?

1 Q Did Ms. Guillory get up off the ground at some
2 point?

3 A Yes.

4 Q What did she do when she got up off the ground?

5 A She started getting in the car.

6 Q Okay. Where were you standing, at that time, in
7 relation to this picture?

8 A Okay. Her car was right here. I was on the other
9 side of the car.

10 Q Okay. So you're back behind the car?

11 A Yes.

12 Q You're not standing in between her car and the
13 other vehicle?

14 A No.

15 Q Where is Mr. Coleman at this point?

16 A He was right here.

17 Q And did he try to approach the car?

18 A Yes.

19 Q What did he do?

20 A When she drove off, he was trying to hold onto the
21 car.

22 Q And can you describe where on the car she was
23 trying to hold onto? Or he was trying to hold onto?

24 A On this part of the car.

25 Q But on Ms. Guillory's car?

1 **A** Yes.

2 **Q** Is that essentially the doorjamb?

3 **A** Yes.

4 **Q** And what was he trying to do while he was hanging
5 onto the doorjamb?

6 **A** I just know he was running behind the car holding
7 on. I guess he was trying to stop her at the time.

8 **Q** Now, did you ever see Mr. Coleman get hit by the
9 front driver's side wheel at any point?

10 **A** No.

11 **Q** Was he even close enough to the car to get hit by
12 the front driver's side wheel?

13 **A** From my angle, I couldn't really tell, but no.

14 **Q** Did he -- did you watch him -- um, after holding
15 onto the doorjamb, what did he do next?

16 **A** He fired a couple of shots.

17 **Q** Do you remember how many shots he fired?

18 **A** I think five or four.

19 **Q** Now, can you tell us where the car was at when he
20 started firing shots? Where was it going?

21 **A** The car was going down WD Judge.

22 **Q** Okay. So it was taking a right onto WD Judge?

23 **A** Yes.

24 **Q** From the community center?

25 **A** Yes.

1 Q Was there anyone in front of the vehicle?

2 A No.

3 Q Was there anyone that was in danger of the vehicle?

4 A No.

5 Q Was -- how fast was the car going when she got back
6 in the car and started moving it?

7 A The car wasn't moving at the time.

8 Q It wasn't moving at all?

9 A Huh-uh.

10 Q But when she started to drive away, was that when
11 Mr. Coleman pulled his firearm?

12 A Yes.

13 Q How fast was the car going then?

14 A No more than 20 miles per hour.

15 Q Was it going slow or fast?

16 A Fast -- I mean slow.

17 **MR. ARCKEY:** May I have a moment, Your Honor?

18 **THE COURT:** You may.

19 (Speaking with cocounsel.)

20 **BY MR. ARCKEY:**

21 Q Was Ms. Guillory's car being driven away from the
22 defendant when the shots were fired?

23 A Yes.

24 Q And do you see the individual in the courtroom
25 today that fired those shots?

1 **A** Yes.

2 **Q** Will you please point him out and say an article of
3 clothing?

4 **A** Johnathan Coleman.

5 **Q** And have you seen him before?

6 **A** Before the shooting, yes.

7 **Q** Yes. And he's a security guard inside Palm Groves?

8 **A** Yes.

9 **Q** Do you know what county and state this all occurred
10 in?

11 **A** Orange County, Florida.

12 **Q** What state?

13 **A** Florida.

14 **Q** During your argument with Ms. Guillory, did it ever
15 get physical between you two?

16 **A** No.

17 **Q** No one ever threw a punch at anyone?

18 **A** No.

19 **Q** You didn't hit her?

20 **A** No.

21 **Q** At any time were you bleeding --

22 **A** No.

23 **Q** -- from anything? At any time did you yell for
24 help?

25 **A** No.

1 (Speaking with cocounsel.)

2 **BY MR. ARCKEY:**

3 **Q** Did she ever yell for help?

4 **A** No.

5 **Q** Was she bleeding prior to being shot?

6 **A** No.

7 **MR. ARCKEY:** No further questions at this time,
8 Your Honor.

9 **THE COURT:** Cross-examination?

10 **MR. ADAMS:** Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 **BY MR. ADAMS:**

13 **Q** Good morning, Mr. Johnson.

14 **A** Good morning.

15 **Q** You were coming on foot down -- I guess you were
16 coming eastbound on WD Judge; is that right?

17 **A** Right.

18 **Q** You were arguing rather violently with Ms. -- or
19 yelling -- at least yelling verbal -- when I say violently, I
20 mean verbally violent, okay, with Ms. Guillory; is that
21 accurate?

22 **A** Correct.

23 **Q** I'm sorry?

24 **A** Correct.

25 **Q** Okay. And you had this argument where she is in

1 the car basically following you and you're on foot; is that
2 right?

3 A No.

4 Q You're not on foot?

5 A She wasn't following me on foot.

6 Q She wasn't in the car?

7 A She wasn't following me on foot.

8 Q You were on foot. She was in the car.

9 A Yes, but she wasn't --

10 Q You're going in the same direction; is that right?

11 A Right.

12 Q Okay. And you go off into the apartments, she
13 passes up the apartments and comes back?

14 A Yes.

15 Q Okay. We're still having this argument?

16 A Yes.

17 Q You cross into the -- at some point cross over
18 across the street into the community center; is that right?

19 A Yes.

20 Q Okay. She follows you into the community center;
21 isn't that right?

22 A Yes.

23 Q Okay. She contacts your body -- no, she doesn't.
24 She -- you jump out and slap her hood; is that right?

25 A Yes.

1 Q You did that with both hands, slapped her hood; is
2 that right?

3 A One hand.

4 Q That's correct?

5 A One hand.

6 Q One hand, you slap her -- okay -- her hood. Did
7 you kneel down in front of the car after that?

8 A No.

9 Q Okay. Did you fall down?

10 A No.

11 Q Okay. Now, this argument is still going on at this
12 point, correct?

13 A No.

14 Q Oh, okay, so now we're all -- we're all better; is
15 that right?

16 A Yes.

17 Q But the argument that caused this -- this
18 disturbance was over, gee, baby, you're just not eating
19 enough; is that right?

20 A Yes.

21 Q And she took exception to the fact, I guess, that
22 you thought she wasn't eating enough.

23 A Yes.

24 Q Okay. Now, across the street, Mr. Coleman here,
25 he -- he's never had a quarrel with you or Ms. Guillory, to

1 your knowledge, has he?

2 **A** Right.

3 **Q** Okay. So he's coming over to see what's going on?

4 He just comes over?

5 **MR. ARCKEY:** Objection, Your Honor; calls for
6 speculation.

7 **THE COURT:** Sustained.

8 **MR. MULLINS:** Okay.

9 **BY MR. MULLINS:**

10 **Q** He comes over across the street; is that right?

11 **A** Right.

12 **Q** Okay. You have her car -- is his car positioned
13 much as what you see behind you right then? His car.

14 **A** His car was kind of slanted a little bit.

15 **Q** Okay. So it's not positioned in the way that's
16 shown there?

17 **A** No.

18 **Q** So somebody must have moved it at some point.

19 **A** I know his car was like -- how the entrance is,
20 both of the cars is, like, kind of making a U a little bit,
21 how he pulled up --

22 **Q** She's -- you have her behind him; is that right?

23 **A** Yes. No. She -- she's in the front of him.

24 **Q** She's be -- she's ahead of him?

25 **A** Yes. Her car is in the front of him.

1 Q That's pretty close to the stop sign, isn't it? To
2 the street, WD Judge?

3 A Yes.

4 Q Okay. Now, when the shots were fired, if I
5 understood, the shots were fired when she was going down
6 WD Judge?

7 A Leaving out --

8 Q Sorry?

9 A She was leaving out the apartment -- not the
10 apartment complex. The Northwest Center.

11 Q She was leaving out and going down WD Judge when
12 the shots were fired?

13 A Yes.

14 Q Okay. And your testimony is that you never -- she
15 never contacted your body with her car.

16 A Right.

17 Q She's the mother of your child; is that right?

18 A Yes.

19 Q You're her boyfriend?

20 A Yes.

21 Q Now, you talked to her about this case before
22 coming in here today, have you not?

23 A No.

24 Q Never talked about it?

25 A We --

1 **Q** You're her boyfriend, her -- the father of her
2 child. This has been going on since May of last year, and
3 you've never talked once with her about this case?

4 **A** No.

5 **Q** No? You'll say really anything to help her, won't
6 you?

7 **A** No.

8 **Q** You won't.

9 **A** If it's -- if it's the truth, it's the truth.

10 **Q** Do you remember taking -- having your deposition
11 taken March 6th when we were here?

12 **A** Yes.

13 **Q** Do you remember that? Were you under oath at that
14 time? Did you promise to tell the truth --

15 **A** Yes.

16 **Q** -- when Mr. Adams and I took your deposition?

17 **A** Yes.

18 **MR. MULLINS:** Your Honor, if I may?

19 **THE COURT:** Yes.

20 (Speaking with cocounsel.)

21 **BY MR. MULLINS:**

22 **Q** Were you willing to take any charges --

23 **MR. ARCKEY:** Objection, Your Honor; improper
24 impeachment.

25 **MR. MULLINS:** Judge, I have to establish something.

1 **THE COURT:** Why don't you-all approach.

2 (The following conference was held at the bench.)

3 **MR. MULLINS:** Okay. Judge, we don't have a written
4 transcript of this. So what I was gonna ask the Court
5 to do is, I was just gonna establish the first part, you
6 know, where he said these things, where he testified
7 under oath, and then ask him -- ask the jury to retire
8 just so we can play back that part of the deposition for
9 him. He can listen to it. All right? Then we can --
10 then I ask -- we can bring the jury back in. I ask the
11 question again. Then if he doesn't answer correctly, as
12 he did on deposition, then we would be asking the Court
13 to allow us to publish the deposition to, you know, the
14 audio portion of it to the jury.

15 **THE COURT:** What's the question gonna be?

16 **MR. MULLINS:** The question is gonna be, didn't
17 you -- are you willing to take any charges that she
18 might have had coming at that time, because it might
19 have appeared to him at that time that she might be
20 charged with something. And she -- he did say that he
21 would be the -- he would say anything he had to say to
22 help her. So I already asked that part of it. But I
23 want to ask the second part.

24 **MR. ADAMS:** He also --

25 **THE COURT:** No. Whoever is doing the cross is who

1 speaks.

2 **MR. MULLINS:** That is correct.

3 **THE COURT:** No double teaming.

4 **MR. MULLINS:** That's right. So I wanted to ask
5 that question and see what his answer would be. And
6 then refer to the deposition, refer again that he's
7 under oath. And then, because we don't have a written
8 transcript, I think the proper procedure would be to
9 send the jury out, publish it. He also said something
10 different in terms of Ms. Guillory hitting him with the
11 car. So I want to ask him about those things. But he
12 has to hear the deposition before he -- that can happen.

13 **THE COURT:** All right. Any objection?

14 **MR. ARCKEY:** Your Honor, I'm also objecting to
15 improper impeachment. Additionally, he hasn't been
16 confronted with that. But also, the line of questioning
17 they're going down is whether or not he would take
18 charges for her, which isn't relevant and is way more
19 prejudicial than probative at this point for any sort of
20 bias. No one was charged in that case. No one was even
21 ran up the case for their conceived case. I just --
22 where is the line of fabricating bias and creating
23 actual bias when coming into a deposition and saying
24 would you be willing to take charges for someone. I
25 think that's incredibly more prejudicial than probative

1 in this case. And it's not relevant whether or not --
2 because there is no -- there's no charges to be taken.

3 **MR. MULLINS:** I didn't ask about that. He
4 volunteered that at the deposition. I think it shows
5 bias. It certainly shows prejudice. There's no
6 question that it's relevant. You know. And I think
7 we're following the proper procedure here.

8 **THE COURT:** What's your argument as it relates to
9 the second issue?

10 **MR. ARCKEY:** I would have to hear -- I mean, I have
11 a copy of that depo. But I would have to hear what
12 they're trying to do with that, because they haven't
13 asked any questions about -- well, they haven't tried to
14 impeach him yet with that part.

15 **THE COURT:** Why don't we do this? Why don't we
16 send the jury out and give the witness an opportunity to
17 listen to those two items so that he at least has some
18 frame of reference? Before you impeach him, he's
19 entitled to hear or read the transcript before you do
20 that. So let's send the jury out, have him have a
21 chance to do that, and then we'll go from there.

22 **MR. MULLINS:** Okay. Thank you.

23 (The following proceedings were held on the record
24 in open court.)

25 **THE COURT:** All right. Ladies and gentlemen, I

1 need you-all to step out so that I can address another
2 issue with the parties, okay?

3 **COURT DEPUTY:** All rise.

4 (The jury exited the courtroom.)

5 **THE COURT:** Everyone have a seat.

6 The defense wants to cue up those two portions of
7 Mr. Johnson's deposition.

8 **MR. ADAMS:** May I bring the computer up there?
9 Because he is a little soft-spoken in the deposition
10 also.

11 **THE COURT:** Sure.

12 **MR. ADAMS:** And so I'll put it as loud as I can.
13 We may have to get creative as far as trying to --

14 **THE COURT:** And if the State needs to move, you can
15 move, as well.

16 **MR. ADAMS:** I'm gonna play what's the first portion
17 related to the alleged contact with the car.

18 Let me make sure the volume is up.

19 (The CD was played, and because of the inaudibles
20 and inability to distinguish between speakers, and/or the
21 speed of the conversation, the following transcription of the
22 CD by this court reporter should NOT be considered a verbatim
23 record of said CD:)

24 She didn't hit me with the car.

25 You rolled up onto the hood, correct?

1 (Inaudible) hood (inaudible) tapped the car but she
2 like hit my arm (inaudible).

3 You weren't wearing a cast at the time, were you?

4 Yes (inaudible).

5 Okay. Did you go up on top of the car to some
6 extent?

7 Not that I (inaudible).

8 Okay. Afterwards you hit the ground, correct?

9 No. I kneeled to the ground.

10 Why would you kneel to the ground?

11 (Inaudible) just looking (inaudible).

12 Still on the street at the time?

13 (Inaudible) center (inaudible).

14 **MR. ADAMS:** Can you hear that okay, Judge?

15 **THE COURT:** Barely.

16 After the incident where shots were fired, why do
17 you leave the scene?

18 Because she and her mother told me to check on the
19 child --

20 **MR. ADAMS:** I'm gonna fast-forward to the next
21 portion that is relevant.

22 Has nothing to do with it.

23 (Inaudible) security guard.

24 He's only a security guard, he doesn't matter.

25 (Inaudible) not a police officer.

1 Okay. So he can go -- so you can go, you don't
2 have to listen to him.

3 I told (inaudible) if she's in trouble, I will take
4 all the charges (inaudible).

5 You're gonna take all the charges for her.

6 That's what I told him. If she -- if she did get
7 in trouble (inaudible) I'll take (inaudible).

8 Okay. You don't want her in any trouble, you want
9 to take it all (inaudible).

10 (CD stopped.)

11 **THE COURT:** Okay. As it relates to the first
12 portion of that deposition transcript, what is it the
13 defense intends to elicit?

14 **MR. MULLINS:** Judge, I want to establish the fact
15 that he testified differently than he did -- he's just
16 testified live in front of the jury that he did not
17 kneel to the ground. I asked him that question
18 specifically. It was very clear, he said he did not.
19 At the deposition, he said he did. Okay. So I think I
20 can ask him about that.

21 As to the second portion --

22 **THE COURT:** Hang on.

23 State, your response to that?

24 **MR. ARCKEY:** I would ask that he proffer the
25 question. I guess he already has asked that question.

1 But what question is he going to be asking him at
2 this point regarding that?

3 **MR. MULLINS:** Judge, what I would be asking, in
4 answer to the State's question is, you've had an
5 opportunity to hear your -- your -- your recorded
6 deposition from earlier. You were under oath at that
7 time. I want to ask you now, did -- I'm gonna ask you
8 again, did you -- did you kneel in front of the car.
9 He'll answer the question. If he says yes, then we're
10 done. If he says no, then we're gonna be asking the
11 Court to allow that portion of the trans -- of the
12 deposition audio to be played to the jury.

13 **THE COURT:** Okay. State?

14 **MR. ARCKEY:** That's fine, Your Honor.

15 **THE COURT:** Okay. As to the second issue, the
16 issue of taking charges?

17 **MR. MULLINS:** Judge, we think -- I'm gonna ask him
18 that question. If he -- if he would be -- if he was at
19 that time willing to take any charges that she might
20 have coming, to show -- to show bias that he's
21 willing -- the inference there, the obvious inference is
22 that he would be willing to say anything he needs to say
23 to make sure she's not in trouble.

24 **THE COURT:** All right.

25 State, response?

1 **MR. ARCKEY:** Your Honor, I would be asking for
2 another proffer on what questions are gonna be asked.

3 **MR. MULLINS:** I'm gonna ask one question. Isn't it
4 true, sir, that you would be willing to say whatever you
5 have to say in order that she not face any charges.
6 And -- or I could ask the question just as I asked it
7 there. Or, actually, he volunteered. That wasn't even
8 in response to any question. It was just, sir, aren't
9 you -- aren't you willing to say anything you have to
10 say to make sure that she's not facing any charges. Or,
11 at that time, weren't -- didn't you tell Mr. Coleman
12 that you were willing to take any charges that she might
13 have coming.

14 I could ask it that way. Either way, I think is a
15 fair assessment of his testimony -- his prior testimony.

16 **MR. ARCKEY:** I don't know which question he's gonna
17 ask at this point. Some of those are highly suggestive
18 that he's going to fabricate everything and then some of
19 them are not. So -- and it's not impeachment at this
20 point. At this point -- I still go back to it's not a
21 4 -- it's a 401 and 403 argument because in any
22 deposition someone could ask, as a witness, would you be
23 willing to take charges for someone. But I believe in
24 this case that's --

25 **THE COURT:** The question during the deposition was

1 in context of when she left, he was willing to take or
2 accept any charges that might have been pressed against
3 her at that point in time.

4 So to the extent that the question is asked the way
5 it was asked at the depo, I'm gonna overrule defense --
6 or State's objection. Clearly, in the Court's opinion,
7 it goes to a motivation and some type of bias for that
8 particular reason. So the State's objections are gonna
9 be overruled. But I will confine the question to "at
10 the deposition, did you say X?"

11 **MR. MULLINS:** Did you say that you would be willing
12 to take any charges that she might have coming. That's
13 how I'm gonna ask it.

14 **THE COURT:** All right. Let's go ahead and bring
15 the jurors in.

16 (The jury entered the courtroom.)

17 **THE COURT:** All right. Have a seat.

18 Mr. Mullins, you may continue.

19 **MR. MULLINS:** Thank you, Your Honor.

20 **BY MR. MULLINS:**

21 **Q** Okay. Mr. Johnson, I'm gonna ask you again. Okay.
22 You've had an opportunity here to review your testimony. Did
23 you kneel in front of the car?

24 **A** No.

25 **Q** No. You didn't.

1 Okay. Sir, in an earlier statement did you not
2 indicate that you would be willing to take any charges that
3 Ms. Guillory might have coming her way?

4 **A** I did at the time.

5 **Q** You said that? Now you just heard the testimony
6 that you gave earlier; is that right?

7 **A** Correct.

8 **Q** Okay. Did you not say in there that you knelt in
9 front of the car?

10 **A** I did not kneel in front of the car.

11 **Q** You didn't say that?

12 **MR. MULLINS:** Judge, may we approach?

13 **THE COURT:** Come on up.

14 (The following conference was held at the bench.)

15 **MR. MULLINS:** Judge, I believe from an evidentiary
16 standpoint here, where we are is, he's just heard that
17 he said that he knelt in front of the car. And now he's
18 saying he didn't. He's had the opportunity to cure that
19 defect. I've asked him twice. I've given him two
20 opportunities to cure it. He persists that he did not
21 kneel in front of the car. We have an -- I'm gonna ask,
22 at this time, that the audio portion of that portion of
23 the testimony, just that portion, be published to the
24 jury.

25 **THE COURT:** Response from the State?

1 **MR. ARCKEY:** Your Honor, I believe this is improper
2 impeachment. I believe it's a collateral issue at this
3 point. I don't believe it's been established that he
4 said that in depo at this point.

5 **THE COURT:** As to improper impeachment, I'm gonna
6 overrule the objection. The defense's theory is that he
7 was hit. If there's evidence that seemed to suggest he
8 might have been hit because he was kneeling down, that
9 might support their theory of defense. So I don't
10 believe it's impeachment on a collateral matter.

11 As it relates to the phrasing of the question, I
12 don't believe the question has been clearly stated that
13 at the deposition he said that. You said in a "prior"
14 statement. Was that today? Was that at the depo? Or
15 was that some statement he gave to the police? I don't
16 know.

17 **MR. MULLINS:** Okay. I'll take care of that,
18 Your Honor.

19 (The following proceedings were held on the record
20 in open court.)

21 **BY MR. MULLINS:**

22 **Q** The prior statement I'm referring to, Mr. Johnson,
23 is the deposition that you gave outside the courtroom in
24 March. Do you remember talking to us about that case?

25 **A** Yes.

1 Q Do you remember the deposition that --

2 A Yes.

3 Q -- Mr. Adams and I had and Mr. Arckey was present;
4 do you remember that?

5 A (Nods.)

6 Q Yes?

7 A Yes.

8 Q Okay. You swore to tell the truth at that time?

9 A Yes.

10 Q Okay. And -- okay. Now, do you remember saying
11 that you knelt down in front of the car?

12 A I said I didn't remember, not that I know of, that
13 I -- when you asked me the question, I told you I didn't -- I
14 didn't remember, not that I know of.

15 MR. MULLINS: Your Honor, if I may?

16 (Speaking with cocounsel.)

17 BY MR. MULLINS:

18 Q Now that we've had a chance to refresh your
19 recollection -- did listening to that testimony refresh your
20 recollection of it?

21 A Kinda sorta.

22 Q I'm sorry?

23 A Kinda sorta.

24 Q Kinda sorta? Did it refresh your recollection or
25 not?

1 **A** Not.

2 **Q** Huh?

3 **A** I understand a little bit of it. It was kind of --

4 **Q** What?

5 **A** I understand a little bit of it. It's kind of low.

6 The tape.

7 **Q** Do you need to hear it again?

8 **A** Yes.

9 **Q** You need to hear it again? Okay.

10 **THE COURT:** All right. Ladies and gentlemen, can I
11 have you step back in the jury room for me, please.

12 **COURT DEPUTY:** All rise.

13 (The jury exited the courtroom.)

14 **THE COURT:** Have a seat.

15 All right. Cue up that portion.

16 **MR. ADAMS:** May I approach?

17 **THE COURT:** You may. Listen very carefully. If
18 you need to have it played again, ask to do so.

19 For the record, we're playing a portion of the
20 deposition transcript that Mr. Johnson gave previously
21 that relates to whether or not he indicated he had knelt
22 by the car.

23 (Inaudible.)

24 You rolled up onto the hood, correct?

25 (Inaudible) hood. Just like tapped the car

1 (inaudible) hit my arm (inaudible) just broke my arm.

2 Were you -- you weren't wearing a cast at the time,
3 were you?

4 Yes (inaudible.)

5 Okay. Did you go up on top of the car to some
6 extent?

7 Not that I remember.

8 Okay. Afterwards you hit the ground, correct?

9 No. I kneeled to the ground.

10 Why would you kneel to the ground?

11 (CD stopped.)

12 **MR. ADAMS:** Did you hear that, Judge?

13 **THE COURT:** I could.

14 Did you need to hear it again, Mr. Johnson?

15 **THE WITNESS:** (Shaking head.)

16 **THE COURT:** You're good? Okay.

17 Let's go ahead and bring the jurors back in.

18 **COURT DEPUTY:** He said he needed to use the
19 restroom.

20 **THE COURT:** Do you need to use the restroom?

21 **THE WITNESS:** Yes.

22 **THE COURT:** All right. Let's take a five-minute
23 recess where the witness can take a restroom break and
24 then we'll bring the jurors back in.

25 (A brief recess was taken.)

1 **THE COURT:** All right. Go ahead and bring the
2 jurors back in.

3 (The jury entered the courtroom.)

4 **THE COURT:** Have a seat.

5 Mr. Mullins, you may continue.

6 **MR. MULLINS:** Thank you.

7 **BY MR. MULLINS:**

8 **Q** Okay, Mr. Johnson, you remember your deposition of
9 the --

10 **A** Yes.

11 **Q** -- 6th of March. Okay. I'm gonna ask you again.
12 Okay? Did you kneel in front of the car?

13 **A** Yes.

14 **Q** Okay. Thank you.

15 Mr. Johnson, what -- what arm did you hit the hood
16 with?

17 **A** My left arm.

18 **Q** Left. So if I understand your testimony in just
19 this last bit, she's pretty far away when he's shooting at
20 her; is that right?

21 **A** No.

22 **Q** She's close to him.

23 **A** From me to you.

24 **Q** Pardon?

25 **A** From me to you.

1 Q From me to you.

2 Let the record show --

3 Well, I'm gonna ask you. Is that about ten feet?

4 A About ten feet.

5 Q Okay. His car is in between? He's in between her
6 car and his car, right?

7 A He's on the side of her car.

8 Q Okay. So he's not close to his car?

9 A No.

10 Q She's taking off, you said about 20 miles an hour
11 by the time she hit the stop sign?

12 A No. The car was already parked.

13 Q Pardon?

14 A The car was already parked. He started shooting
15 when she got in the car and drove off.

16 Q He started shooting when she got in the car?

17 A And drove off.

18 Q And drove off. So she's already in motion when the
19 first shot's fired?

20 A Yes.

21 Q Okay. And so, she's -- she's pretty far down the
22 road before the first shot's fired?

23 A No.

24 MR. ARCKEY: Objection, Your Honor; asked and
25 answered.

1 **THE COURT:** Overruled.

2 **BY MR. MULLINS:**

3 **Q** Okay. Is she at about the stop sign when the last
4 one is fired?

5 **A** When the last one fired, she was already on
6 WD Judge.

7 **Q** She was already on WD Judge. She was going down
8 the road and he fired that last shot.

9 **A** The last shot was -- probably she was already down
10 WD Judge.

11 **Q** They was already on WD Judge; is that right?

12 **A** Yes.

13 **Q** Okay.

14 **MR. MULLINS:** If I may have a moment, Your Honor?

15 **THE COURT:** You may.

16 **MR. MULLINS:** Your Honor, I have no further
17 questions of this witness.

18 **THE COURT:** Any follow-up or redirect from the
19 State?

20 **MR. ARCKEY:** Yes, Your Honor.

21 **REDIRECT EXAMINATION**

22 **BY MR. ARCKEY:**

23 **Q** This incident happened about a year ago, correct?

24 **A** Correct.

25 **Q** And you recall in the deposition that you gave to

1 defense that they asked you multiple times whether or not you
2 rolled up on the hood of the car, correct?

3 **A** Correct.

4 **Q** What was your answer to that --

5 **A** I told --

6 **MR. MULLINS:** Your Honor, objection as to the
7 deposition. I think that's improper --

8 **MR. ARCKEY:** Your Honor --

9 **MR. MULLINS:** -- inquiry.

10 **THE COURT:** Come on up.

11 (The following conference was held at the bench.)

12 **MR. ARCKEY:** I'm trying to put his statement in
13 context here because they asked him if he rolled up on
14 the hood, touched the hood, did he roll off the hood,
15 was he on the ground. And then he finally says he
16 kneels. But he said multiple times that he had not.
17 rule of completeness, I believe I can ask those
18 questions.

19 **MR. MULLINS:** I don't think, Judge, that the way
20 it's asked about a deposition transcript -- getting in
21 deposition testimony is tricky. You just can't say,
22 hey, didn't you testify at such and such a time you said
23 this, then you said that, and then you said the other
24 thing. It's not like that. I think he has to ask the
25 question as if it's the first time the witness is being

1 asked. Then he answers the question. And then, if he
2 needs to be refreshed, or if it's being offered for
3 purposes of impeachment, then we get into the
4 deposition.

5 **THE COURT:** I'm gonna sustain the objection.

6 **MR. MULLINS:** Thank you.

7 (The following proceedings were held on the record
8 in open court.)

9 **BY MR. ARCKEY:**

10 **Q** And when you were asked or when you stated to
11 Mr. Coleman that night, the defendant, you said "if she's in
12 trouble, I'll take the charges" --

13 **MR. MULLINS:** Your Honor, I object to the leading
14 nature of the question.

15 **THE COURT:** I'll sustain. You may rephrase.

16 **BY MR. ARCKEY:**

17 **Q** Did you say "if she's in trouble, I'll take the
18 charges"?

19 **A** Yes.

20 **Q** Did you ever roll up on the hood of the car?

21 **A** No.

22 **Q** Did you ever collapse in the fetal position on the
23 ground --

24 **A** No.

25 **Q** -- from being hit by the car?

1 **A** No.

2 **Q** Who hit the car with -- or did you hit the car with
3 your hand?

4 **A** Yes.

5 **Q** Were you injured at all by the car?

6 **A** No.

7 **Q** Now, can you describe how quickly this whole
8 incident occurred?

9 **A** Can you repeat the question?

10 **Q** So, when -- after she got back in the car and she
11 started to drive off and shots were fired, how quickly did
12 that all happen?

13 **A** It happened real quick.

14 **Q** And this was over a year ago now?

15 **A** Yes.

16 **MR. ARCKEY:** May I have a moment, Your Honor?

17 **THE COURT:** Yes, you may.

18 (Speaking with cocounsel.)

19 **MR. ARCKEY:** No further questions, Your Honor.

20 **MR. MULLINS:** Nothing further, Your Honor.

21 **THE COURT:** May the witness be excused?

22 **MR. ARCKEY:** Yes.

23 **THE COURT:** Thank you, sir.

24 State, call your next witness.

25 **MR. ARCKEY:** Your Honor, at this time the State

1 will call Aimee Guillory.

2 **MR. ADAMS:** If we haven't done so, may we invoke
3 the rule of sequestration?

4 **THE COURT:** You may. Both sides are now
5 responsible for advising their witnesses. If you need
6 to take a few minutes to do so, go ahead and do it.

7 **COURT DEPUTY:** Raise your right hand, face the
8 clerk to be sworn.

9 **AIMEE GUILLORY**

10 **was called as a witness and, having first been duly sworn,**
11 **testified as follows:**

12 **THE WITNESS:** Yes.

13 **THE COURT:** Have a seat, for me, ma'am, please.
14 All right. Can you tell me your full name and
15 spell your first and last name for the court reporter?

16 **THE WITNESS:** Aimee Renee Guillory. First name is
17 spelled A-I-M-E-E, last name spelled G as in great,
18 U-I-L-L-O-R-Y.

19 **THE COURT:** All right. Ms. Guillory, if you want
20 to move that microphone, you can move it a little bit
21 closer to yourself. And I'm just gonna ask that you
22 speak up so we can all hear you, okay?

23 **THE WITNESS:** Okay.

24 **THE COURT:** No one's gonna get mad at you if you're
25 too loud. I might get mad at you if you're not loud

1 enough. Okay?

2 **THE WITNESS:** Okay.

3 **THE COURT:** All right. Thank you.

4 **DIRECT EXAMINATION**

5 **BY MR. ARCKEY:**

6 **Q** Good morning, Ms. Guillory.

7 **A** Good morning.

8 **Q** Are you related to Vince Johnson in any way?

9 **A** No. That's my child's father.

10 **Q** That's your child's father.

11 And let me turn your attention to 5-28-2014. Did
12 something happen that day?

13 **A** Yes.

14 **Q** Okay. At approximately 8:00, maybe give or take a
15 little bit, did you see Mr. Johnson?

16 **A** Yes.

17 **Q** And were you having an argument with Mr. Johnson
18 that day?

19 **A** We were having a disagreement. I wouldn't say
20 argument but --

21 **Q** And what was that about?

22 **A** Because I didn't eat and at the time I was pregnant
23 and I had trouble eating, so he wanted me to eat.

24 **Q** And --

25 **MR. ARCKEY:** Your Honor, may I approach the clerk?

1 **THE COURT:** Yes, you may.

2 **MR. ARCKEY:** I'm showing defense what is marked as
3 State's Exhibit 1.

4 **BY MR. ARCKEY:**

5 **Q** I'm showing you a photo. Do you recognize this at
6 all?

7 **A** Yes.

8 **Q** What do you recognize here?

9 **A** My apartment and where I got shot, the
10 Northwest Center across the street.

11 **Q** And there's actually a laser pointer in front of
12 you. Can you show us where your house is?

13 **A** My house is here.

14 **Q** Okay. And where did the altercation with
15 Mr. Coleman ultimately occur?

16 **A** It happened over here.

17 **Q** Now, Ms. Johnson [sic], leading up to the events,
18 where -- and the disagreement that you and Mr. Johnson had,
19 where did that initially start?

20 **A** It was over here on the road.

21 **Q** Is that WD Judge?

22 **A** Yes.

23 **Q** And did that argument continue to your apartment?

24 **A** Yes.

25 **Q** Did Mr. Johnson ultimately leave?

1 **A** Yes, we both left.

2 **Q** And were you in your vehicle at the time?

3 **A** Yes.

4 **Q** Where did Mr. Johnson go when you left?

5 **A** When I left out -- I have to go this way to leave.
6 He walked this way across the street to go through -- to go
7 to the houses.

8 **Q** Did you end up going down WD Judge and meeting with
9 Mr. Johnson?

10 **A** When I left out WD Judge, we interacted and that's
11 when I stopped.

12 **Q** And what happened at that point?

13 **A** When I -- I was getting ready to leave out and he
14 was asking me if I was still going to go and get something to
15 eat, and I guess I was being a little nasty about the
16 situation but I was like, yeah, I guess. And when I tried to
17 drive off, he slapped the top of the car for me to stop
18 because I wasn't really listening. I just was answering to
19 get him to stop talking, pretty much.

20 **Q** Did you ever hit Mr. Johnson with your car?

21 **A** No.

22 **Q** Did he ever roll up on the hood of your car?

23 **A** No.

24 **Q** At any point did you try to reverse and run him
25 over?

1 **A** No.

2 **Q** Now, where did you end up during this?

3 **A** Before, during or after the shooting?

4 **Q** This is before, right after he hit -- he slapped
5 the --

6 **A** We were still in the same spot across the street at
7 the center, across the street from my house.

8 **Q** Do you remember seeing where Mr. Coleman was at
9 that point?

10 **A** When I first seen him, he was by my house.

11 **Q** And can you show us where that would be?

12 **A** He was in this area here.

13 **Q** Was he in his car at that point?

14 **A** No.

15 **Q** Did he ultimately get in his car?

16 **A** At some point he got in the car but I never -- I
17 never seen him get in the car. I just seen him flash his
18 lights and then leave out of the apartment complex and come
19 to where I was.

20 **Q** And did he essentially pull you over?

21 **A** Yeah. Yes.

22 **Q** What did you do when he came in contact with you?

23 **A** When he pulled -- when he walked up to me, he
24 pulled his gun out and told me to get out of the car. And I
25 got out of the car and he told me to lay on the ground.

1 And --

2 Q Why didn't you lay on the ground?

3 A Because I was pregnant and I had a -- the skirt
4 that I had on was small. So I told him that, you know, my
5 skirt is small and I'm pregnant, so I won't lay on the
6 ground. So then he told me to step to the side, to the right
7 side of the car, which is where we stood at for, like, 30
8 minutes.

9 Q Okay. And you stayed there for a little while?

10 A Yes. We were -- when we first -- when it first
11 happened, it was still sunny outside. And by the time I was
12 shot and sent off in the ambulance, it was nighttime.

13 Q And at some point was there a crowd gathering?

14 A Yes. We were at the children's center.

15 MR. ARCKEY: Your Honor, may I approach the clerk?

16 THE COURT: You may.

17 MR. ARCKEY: I'm showing what's been previously
18 marked as defense -- or State's Exhibit 2.

19 MR. ADAMS: Composite?

20 MR. ARCKEY: Composite.

21 BY MR. ARCKEY:

22 Q Ms. Guillory, I'm showing you a picture. Do you
23 recognize this picture?

24 A That's the Northwest Center parking lot where I got
25 shot.

1 Q And whose vehicle is that in that picture?

2 A That looks like Coleman's car but the graphics on
3 the side makes it kind of look like an Orange County car but
4 that's his car.

5 Q If I show you another picture, will that help?

6 A That's his car. Yes, that's his car.

7 Q Using the laser pointer, can you show us where you
8 were parked initially?

9 A Here.

10 Q And go through what happened after he had you sit
11 on the curb.

12 A He had me sit on the curb. And then it was taking
13 too long for the situation to be as severe as he came off to
14 be because, like I said, there was sun outside and it was
15 dark. So after awhile I made a statement that I was gonna
16 leave because he knew where my unit number was, which is my
17 apartment number. So I'm like, if you have any questions or
18 concerns, you can go to my unit number, but I'm about to go.
19 So when I proceeded on to walk around the car to get in the
20 car, he, like, when I got in the car, my car was already
21 running --

22 MR. ADAMS: Objection; narrative.

23 THE COURT: Overruled.

24 THE WITNESS: When I got in the car and closed the
25 door, he came and, like, tried to grab me through the

1 window.

2 **BY MR. ARCKEY:**

3 Q And just -- on the car that's in the picture, where
4 did he -- where was he at on your car when he tried to grab
5 you?

6 A He was here when he tried to grab me through the
7 window.

8 Q What was he trying to do?

9 A I don't know if he was trying to pull me out of the
10 car but he grabbed like -- he grabbed at my arm but I was
11 moving to the side, like I was shifting my body to the side
12 as he was reaching in the car.

13 Q Was your car rolling at this point?

14 A Yes, I was already in motion to be moving like a
15 foot off the brake but not on the gas.

16 Q So how fast were you going?

17 A I can't even say. It was just that slow like a --

18 Q Had you put your foot on the accelerator yet?

19 A No. I had just pulled my foot off the brake and
20 that's when he was reaching through the window.

21 Q And at any time did you swerve the car at him?

22 A No. I had no reason to.

23 Q At any time -- actually, tell us how you were
24 proceeding to leave.

25 A When I got in my car, there's like a little curb

1 that sits right to the right. I could have -- my front tire
2 would have barely tapped the curb. But the way that I
3 swivelled a little bit, it didn't. But where I was when I
4 drove off, there was no one there.

5 Q Okay.

6 A It just was like a straight shot out of the
7 Northwest Center.

8 Q Now, were you trying to go -- in this picture,
9 knowing that we're kind of reversed, which direction, using
10 the laser pointer, were you trying to leave?

11 A I was leaving out to the right.

12 Q Okay. Can you show us, using the laser pointer,
13 what you mean by that?

14 A I was leaving out here to go this way.

15 Q So you were going away from the vehicle?

16 A Yes.

17 Q Now, were there people around that area?

18 A In the front of the Northwest Center towards this
19 area, there had begun to be a big crowd. But on the side
20 where I was leaving -- the side where I was curving to leave
21 out, there was no one there because it's a ditch and a big
22 sign.

23 Q And at any point did you -- did you ever rev your
24 engine at any point?

25 A No.

1 Q Did you ever take off speeding?

2 A After shots were fired.

3 Q Was there anyone in front of your vehicle --

4 A No.

5 Q -- when you got back in your vehicle?

6 A No.

7 Q Where was Mr. Coleman at that point?

8 A Reaching through the window. He made it to my side
9 when I made it to my side. I just was like a few seconds
10 quicker to be able to close the door before he made it
11 completely to proceed on.

12 Q Did you ever hit him with the front wheel of your
13 vehicle?

14 A No.

15 Q Did you ever hit him with the tire or -- well, with
16 the car at all?

17 A No.

18 Q As you started to drive away, what happened?

19 A When I started driving away, that's when I heard
20 the first gunshot. And that's the first shot, shot me, and I
21 slammed on the brakes and then it was like boom, boom, boom,
22 boom, boom after that.

23 Q Do you know how many gunshots were or I mean --

24 A It was between four and five. It was no more than
25 five and no less than four.

1 **Q** Can you describe what your injuries were?

2 **A** I was shot in this arm. The bullet pierced through
3 twice and came out in two different sides and I was shot in
4 my right wrist, as well.

5 **Q** Now, did you have to have any surgeries?

6 **A** Yes. I had to get the bone in this arm --

7 **MR. ADAMS:** Judge, I'm gonna object as to the
8 extent that they qualify as an expert medical opinion.

9 **THE COURT:** Approach.

10 (The following conference was held at the bench.)

11 **MR. ARCKEY:** Your Honor, we're gonna stipulate that
12 the medical records are coming in. I mean, it's gonna
13 say that there's a fracture, in the medical records. I
14 believe, I'm gonna argue it. And I mean, she knows the
15 injuries that she has. I mean, she has a big incision
16 on her arm that wasn't there and wasn't -- is not gonna
17 be in the photos. That happened prior to this. That's
18 not -- as far as expert testimony, we're not saying
19 that -- that -- we're not offering it as an expert
20 testimony at this point.

21 **THE COURT:** She can testify to the fact she had
22 surgery. She can testify to the fact she was shot.

23 **MR. ARCKEY:** I'll clarify.

24 **THE COURT:** But as to -- I think the distinction is
25 gonna be as to what the doctor told her and what she has

1 personal knowledge of. So I'll sustain the objection
2 and you can rephrase.

3 (The following proceedings were held on the record
4 in open court.)

5 **BY MR. ARCKEY:**

6 **Q** How many days did you have to stay in the hospital?

7 **A** I was in the hospital for about a week because I
8 had to get surgery and then go through the healing process
9 and my pregnancy.

10 **Q** Now, if you don't mind, could you please stand up
11 and step off the stand to show what the scars are?

12 **A** (Complied.)

13 **Q** What's on your left wrist?

14 **A** I have a plate in this arm in -- I have to get the
15 nerves redone over.

16 **Q** And is that scarring from --

17 **A** From when I got shot and the surgery.

18 **Q** Are there scars on your left arm?

19 **A** Yes. This is from me being shot. This is from the
20 surgery from me being shot. And this back here is from where
21 the bullet went through.

22 **Q** You can have a seat.

23 **MR. ARCKEY:** I'm showing what's been previously
24 marked as State's Identification G, to defense.

25 May I approach the witness, Your Honor?

1 **THE COURT:** You may.

2 **BY MR. ARCKEY:**

3 **Q** Ms. Guillory, if you could, just take a look at
4 these photos. When you're done looking at them, I will ask
5 you some questions. Okay?

6 Now, Ms. Guillory, after looking at those photos,
7 what are those photos of?

8 **A** My gunshot wounds.

9 **Q** Were those sustained on the night of 5-28-2014?

10 **A** Yes.

11 **Q** Is it a fair and accurate depiction of the wounds
12 that night?

13 **A** Yes.

14 **MR. ARCKEY:** At this time the State would move
15 State's Identification G as State's Exhibit 3.

16 **MR. ADAMS:** Judge, obviously we're gonna object
17 based on 403, the prejudicial effect outweighs the
18 probative value. It's not contested --

19 **THE COURT:** Approach. Let me look at them.

20 (The following conference was held at the bench.)

21 **MR. ADAMS:** Judge, it's not -- it's not -- it's
22 obviously not contested here that there was a --

23 **COURT REPORTER:** Get up to the mic, please.

24 **MR. ADAMS:** It's obviously not contested there was
25 a shooting. We don't see any real probative value here

1 other than to prejudice the defense to show them the
2 groups of pictures.

3 **THE COURT:** All right. I'm gonna go ahead and
4 overrule the objection. One of the things the State has
5 to do is prove that there's great bodily harm. And
6 stipulation as to it's not unfairly prejudicial to show
7 the injuries that are depicted in these four
8 photographs. They're not overly gruesome. There is
9 one, two photographs of a bullet wound to the center of
10 her left -- right wrist. And then it looks like two
11 pictures of the injury to her biceps.

12 **MR. ARCKEY:** Thank you.

13 (The following proceedings were held on the record
14 in open court.)

15 **THE COURT:** All right. What's been marked as
16 State's Exhibit G for Identification will be moved into
17 evidence as State's 3 over defense objection.

18 (State's Exhibit 3 received in evidence.)

19 **MR. ARCKEY:** Permission to publish to the jury,
20 Your Honor?

21 **THE COURT:** You may.

22 (The exhibit was published to the jury.)

23 **MR. ARCKEY:** Your Honor, I'm showing -- well,
24 previously showed defense State's Identification H.

25 May I approach the witness, Your Honor?

1 **THE COURT:** You may.

2 **BY MR. ARCKEY:**

3 **Q** Ms. Guillory, if you could take a look at these
4 photographs. And just take a look at them, then I'll ask you
5 some questions about them.

6 Thank you. After looking at those photos, what are
7 those photos of?

8 **A** Of my car.

9 **Q** What type of car do you drive?

10 **A** A 2007 A4 Audi 2.0T.

11 **Q** Are those pictures of your car after the incident?

12 **A** Yes.

13 **Q** Is it a fair and accurate depiction of what your
14 vehicle looked like that day?

15 **A** Yes.

16 **MR. ARCKEY:** Your Honor, at this time the State
17 would move into evidence State's Identification H in as
18 State's 4.

19 **MR. ADAMS:** Judge, we're gonna object to it. We
20 don't believe she was present at the time they were
21 taken --

22 **THE COURT:** Why don't we approach and not make
23 speaking objections, please.

24 (The following conference was held at the bench.)

25 **MR. ADAMS:** We don't think it's been authenticated

1 at this point.

2 **THE COURT:** Step over to the mic.

3 **MR. ADAMS:** We believe there's an authentication
4 problem at this point, Judge. She's obviously not
5 present. She has no personal knowledge of the photos.
6 Obviously she can identify her car, but she doesn't know
7 anything about the crime scene or most of the
8 information in those pictures.

9 **MR. ARCKEY:** Your Honor, the individual who stuck
10 all the dowel rods through everything will be testifying
11 this afternoon. Just alleviates the necessity of having
12 to have him come back -- have her come back. I believe
13 that she can say this fairly and accurately depicts her
14 vehicle.

15 **THE COURT:** All right. What's been marked as
16 State's Exhibit H for Identification as a composite of
17 24 photographs, each photograph depicts the victim's
18 car, Ms. Guillory's car in various stages and shows
19 various parts of her car. She has indicated that the
20 photos fairly and accurately depict how her car looked
21 after the accident. The only thing that is in some of
22 these photos but not all the photos is some dowel rods
23 that appear to show the trajectory. And those are
24 obviously not placed there by her but by the witness who
25 will be testifying this evening or later this afternoon.

1 So I will go ahead and overrule the objection at
2 this point in time, because they clearly depict the
3 damage to her car that she testified is a fair and
4 accurate depiction of the damage to her car that was
5 done after this incident, that was done during the
6 incident. And they will be admitted subject to some
7 additional testimony from the person who placed the
8 dowel rods in there.

9 **MR. ARCKEY:** And just for defense and me, I'm just
10 gonna show her the pictures without the dowel rods at
11 this point --

12 **THE COURT:** What?

13 **MR. ARCKEY:** I'm just gonna show her pictures
14 without the dowel rods at this point, and I'll have
15 Carlos Nieves describe what's going on with that.

16 **THE COURT:** Okay.

17 (The following proceedings were held on the record
18 in open court.)

19 **THE COURT:** All right. What's been marked as
20 State's Exhibit H for Identification will be moved into
21 evidence as State's 4 over defense objection.

22 (State's Exhibit 4 received in evidence.)

23 **BY MR. ARCKEY:**

24 **Q** Now, Ms. Guillory, what happened after you were
25 shot and you drove away? Or what direction did you leave?

1 **A** When I left out of the center, I drove to the
2 right. There's a light that comes up on Mercy Drive, where I
3 made another right and went to the corner store, Mr. Lee's.

4 **Q** Is that where you ended up stopping?

5 **A** That's where I stopped to use the Lee's phone.

6 **Q** And at that point -- well, did, ultimately, EMS
7 arrive? Emergency services?

8 **A** After awhile. I was there for quite some time.

9 **Q** I'm showing you a photo of your vehicle. Where is
10 that?

11 **A** That's in front of Ms. Lee's store.

12 **Q** And do you notice the front of your hood?

13 **A** It has blood on it.

14 **Q** Why is there blood on the front of your hood?

15 **A** While we were waiting for the emergency truck to
16 get there, they were trying to stop the blood in my arm
17 because it kept flowing, so they had me sitting on the front
18 of my car while they tied shirts and stuff to stop the
19 bleeding. So that's why there's blood on the front of the
20 car.

21 **Q** And is that -- the damage that's on the front of
22 your car, was that all preexisting?

23 **A** Yes, I purchased it that way.

24 **Q** I'm showing you a second photo. Is that your
25 license plate on your car?

1 **A** Yes.

2 **Q** The damage on the back of the car, what's that
3 from?

4 **A** Two weeks before the incident, from me being shot,
5 I was in an accident where I backed out.

6 **Q** That damage wasn't from the night of --

7 **A** No. That wasn't even from me.

8 **Q** I'm showing you another photo here. What is that a
9 photo of?

10 **A** The side of my car. The driver's side of my car.

11 **Q** And did your car have any damage like that prior to
12 this incident?

13 **A** No.

14 **Q** Are those bullet holes from this incident?

15 **A** Yes.

16 **Q** Do you know what this is a photo of?

17 **A** The bullet.

18 **Q** Is that in the back of the car?

19 **A** From this picture, it's really kind of hard to
20 tell, but the bullets were, like, in the panel of the door.
21 They came through the panel of the passenger side. So that's
22 where that is. I mean the driver's side. I'm sorry.

23 **MR. ARCKEY:** Your Honor, may I have a moment to
24 confer?

25 **THE COURT:** Yes, you may.

1 (Speaking with cocounsel.)

2 **BY MR. ARCKEY:**

3 **Q** Ms. Guillory, do you see the person here today that
4 you have identified as Mr. Coleman or have talked about as
5 Mr. Coleman?

6 **A** Yes.

7 **Q** Can you please state an article of clothing he's
8 wearing and point him out?

9 **A** Black and white suit and tie.

10 **Q** Have you had contact with him before?

11 **A** I haven't had contact with him, but I've seen him
12 numerous times.

13 **Q** And is it from his working in the apartment
14 complex?

15 **A** Yes.

16 **Q** Do you know what county and state this all occurred
17 in?

18 **A** Orlando, Orange County.

19 **Q** What state?

20 **A** Florida.

21 **MR. ARCKEY:** No further questions.

22 **THE COURT:** Cross-examination?

23 **CROSS-EXAMINATION**

24 **BY MR. ADAMS:**

25 **Q** Ms. Guillory, you currently have -- the Orange

1 County State Attorney's Office is currently prosecuting you
2 for criminal charges, correct?

3 A Yes.

4 Q And you have filed a civil lawsuit against
5 Johnathan Coleman, correct?

6 A Yes.

7 Q That asks for monetary damages, correct?

8 A Yes.

9 Q Okay. Now, you'll agree that when you were driving
10 that day over by the apartments that you live at, you were
11 angry at Vince Johnson and you were screaming and you were
12 cursing at him, correct?

13 A No.

14 Q No, you weren't angry at him?

15 A No. He was angry at me.

16 Q So you weren't -- it's your testimony here today
17 that you were not cursing at him?

18 A No. He was angry at -- he was mad at me because I
19 didn't eat --

20 Q Okay --

21 A -- I had no reason to be mad --

22 Q Okay. Were you cursing at him?

23 A No. I had no reason to be mad.

24 **COURT REPORTER:** Okay. One at a time, please.

25 **THE COURT:** Exactly.

1 **BY MR. ADAMS:**

2 **Q** So it's your testimony today, for the jury, that
3 you were not cursing at Mr. Johnson?

4 **A** No.

5 **Q** And you were not screaming at Mr. Johnson?

6 **A** No. He was screaming at me.

7 **Q** And you were not angry at Mr. Johnson?

8 **A** Sir, no.

9 **MR. ARCKEY:** Objection; asked and answered.

10 **THE WITNESS:** You asked me the same thing.

11 **THE COURT:** Overruled. Next question.

12 **BY MR. ADAMS:**

13 **Q** Now, where were you coming from that day when you
14 came to your apartment?

15 **A** Someone's house.

16 **Q** Whose house?

17 **A** A friend.

18 **Q** What's that person's name?

19 **A** I just was coming from someone's house. I don't --

20 **Q** Do you not want to tell us --

21 **A** Is that part --

22 **Q** -- or do you not remember --

23 **A** -- relevant, whose house I was coming from?

24 **THE COURT:** Ma'am, answer the questions that are
25 asked. Okay?

1 **THE WITNESS:** I was coming from my cousin Nina's
2 house.

3 **BY MR. ADAMS:**

4 **Q** Okay. And what was the purpose of you coming to
5 your apartment?

6 **A** To go home.

7 **Q** Okay. And did you ever actually go inside your
8 house?

9 **A** No.

10 **Q** Okay. Now, so you're coming to your apartment. At
11 what point do you start speaking to Vince Johnson on the
12 phone?

13 **A** I never said I spoke to him on the phone. I seen
14 him walking down the sidewalk.

15 **Q** Okay. So you were not actually speaking to him on
16 the phone before you made contact with him?

17 **A** No. We made contact when I seen him walking on the
18 sidewalk.

19 **Q** And where -- was he headed to your apartment?

20 **A** Yes.

21 **Q** And did he actually ever go inside your apartment?

22 **A** No.

23 **Q** So you went to your apartment that day and he went
24 to your apartment that day. Neither one of you ended up
25 actually going into your apartment, correct?

1 **A** We went to the apartment complex, so you can say.

2 **Q** Okay. Now, as you come into your apartment, would
3 you agree that you -- you're not arguing and you're not angry
4 but you're conversing with Vince Johnson as you drive through
5 your apartment complex, correct?

6 **A** Yes.

7 **Q** And Vince Johnson goes into kind of like a little
8 center area in between apartments, correct?

9 **A** Where -- I don't understand. What do you mean?

10 **Q** Does he attempt to go into your apartment? Does he
11 go actually towards your apartment in attempts to go into
12 them?

13 **A** No. He just walked into the apartment complex,
14 like -- I can't necessarily say he was going to my apartment
15 because he has relatives that lives by my apartment. So
16 he --

17 **Q** Did you, at some point, scream to Johnathan Coleman
18 "he better not be going to my apartment"?

19 **A** No, I didn't scream at all. He said, are you okay,
20 I say, yeah, I just don't want him going to my apartment.

21 **Q** Did he tell you to slow down as you're driving
22 through that apartment complex?

23 **A** No.

24 **Q** Okay. He never told you that?

25 **A** No. I wasn't speeding.

1 Q Why didn't you want Vince Johnson going to your
2 apartment?

3 A Because I wasn't going there. How would he have
4 gotten in with my key --

5 Q You just said that you were going from your
6 friend's house to your apartment. So you could have let him
7 in.

8 A I could have but --

9 Q But you didn't want him there.

10 A No, because I was gonna go get something to eat
11 after we had that altercation. That's what the whole thing
12 was about. So once we had that conversation, there was no
13 point in me going to my apartment. I just left to go and get
14 me something to eat.

15 Q Why didn't he get in the car with you?

16 A Because I didn't want him in my car with me.

17 Q Because you were angry at him?

18 A No. Because he was angry at me about going to eat.
19 I wasn't. . .

20 Q Okay. Now, as you come out of the apartment
21 complex, you first take a right, correct?

22 A When I first leave out of the apartment complex --

23 Q Yes.

24 A -- I go to the left, which is where the
25 Northwest Center is.

1 **Q** Okay. When you turn out of the apartment complex,
2 at some point, Vince Johnson is crossing the street and your
3 car comes and you make contact with him, correct?

4 **A** No. I did not touch him with my car, if that's
5 what you're saying.

6 **Q** That is what I'm saying.

7 **A** That is not what happened.

8 **Q** Okay. And after you did not make contact with him
9 with your car, he kneeled on the ground as if he was injured,
10 correct?

11 **A** He hit my car. I didn't --

12 **Q** He kneeled on the ground as if he was injured,
13 correct?

14 **THE COURT:** All right. I'm gonna stop you-all right
15 now. You don't answer until he's done with the
16 question. You don't interrupt until she's done
17 answering the question. Okay?

18 **MR. ADAMS:** Yes, sir.

19 **THE WITNESS:** I rode around and I was gonna pass.
20 He said something to me. I was already going slow. He
21 slapped the car when I proceeded to drive off, and that
22 was that. And, of course, that's when Coleman came
23 across the street.

24 **BY MR. ADAMS:**

25 **Q** Then he kneeled on the ground as if he was injured,

1 correct?

2 **A** No.

3 **Q** Do you recall giving testimony --

4 **A** I don't remember saying he --

5 **Q** -- on March --

6 **A** -- kneeled on the ground.

7 **Q** Do you remember giving testimony on March 15th in
8 this case?

9 **A** I remember giving testimony --

10 **Q** Okay.

11 **A** -- but I don't --

12 **Q** And did -- do you recall giving -- swearing to tell
13 the truth prior to giving that testimony?

14 **A** Yes.

15 **MR. ADAMS:** Judge, may I approach the witness?

16 **THE COURT:** You may. Are you gonna let the State
17 know what line and page number you're referencing?

18 **MR. ADAMS:** Yes. I'm going to bring her attention
19 to Page 24, Line 11.

20 **BY MR. ADAMS:**

21 **Q** Do you know --

22 **MR. ADAMS:** May I approach the witness, Judge?

23 **THE COURT:** You may.

24 **BY MR. ADAMS:**

25 **Q** I want you to go ahead and take a look at this and

1 verify that this is an accurate transcript of your testimony.
2 And I want you to read, not to the jury, but to yourself,
3 Line 10 through 23.

4 **A** (Complied.)

5 **Q** Is this an accurate transcript of your testimony?

6 **A** I guess that's what I said.

7 **Q** Okay. Does it appear to be an accurate transcript
8 of your testimony?

9 **A** (Nods.)

10 **Q** Okay. And you swore to tell the truth on May 6th?

11 **A** (Nods.)

12 **Q** Okay. Did -- after he -- after your car did not
13 make contact with him, did he kneel to the ground as if he
14 was injured?

15 **A** I can't remember that part. I said it there, so --
16 but I cannot remember that.

17 **Q** Okay. Having had a chance to review it, does it
18 refresh your memory at all?

19 **A** A little, to the extent -- but I don't remember him
20 kneeling.

21 **Q** Okay.

22 **A** I don't remember that part. This was a year ago.

23 **Q** Okay.

24 **MR. ADAMS:** Judge, can I approach? Can we
25 approach?

1 (The following conference was held at the bench.)

2 **MR. ADAMS:** I've asked her if it refreshes her
3 recollection. She has not been able to indicate it
4 does. I'm gonna ask that she read that portion of the
5 transcript.

6 **THE COURT:** Response?

7 **MR. ARCKEY:** Your Honor, I'm gonna object at this
8 point. I think she's acknowledged that's what she said
9 on that day. And I believe that's as far as they can
10 inquire.

11 **THE COURT:** She's saying that she doesn't currently
12 remember that. She did acknowledge that she made that
13 statement at the deposition already.

14 **MR. MULLINS:** Past recollection recorded.

15 **MR. ADAMS:** I still think it would impeach her,
16 Judge. It is a past recorded --

17 **THE COURT:** You already impeached her. She's
18 indicated that she made the statement at the depo. You
19 already asked her that and she admitted it.

20 **MR. ADAMS:** Okay. I think she's minimized it. I
21 would just ask to clarify that she agrees she did
22 previously testify to that.

23 **MR. ARCKEY:** I'll make the appropriate objection.

24 (The following proceedings were held on the record
25 in open court.)

1 **BY MR. ADAMS:**

2 **Q** Ms. Guillory, would you agree that you did testify
3 on March 6 --

4 **MR. ARCKEY:** Objection; asked and answered.

5 **THE COURT:** Overruled.

6 **BY MR. ADAMS:**

7 **Q** -- that Mr. Johnson did kneel as if he was injured?

8 **A** I said that in the -- in that --

9 **Q** Yes. The answer is yes?

10 **A** (Nods.)

11 **Q** When you pulled into the apartment complex the
12 first time, did you see Coleman, the security guard?

13 **A** Yes, by my apartment.

14 **Q** Where was -- where was he -- was he by his car or
15 was he in his car?

16 **A** I never seen -- I didn't see his car until he came
17 across the street. When I seen him, he was standing outside,
18 just on the sidewalk, talking to somebody right by my door,
19 my -- well, the picture is not up there. But my house is,
20 like, directly across the street from where I got shot.

21 **Q** So he was able to observe you driving through the
22 apartment complex?

23 **A** He -- after awhile he walked off somewhere and
24 wherever he went, he went and got in his car, because he
25 circled around the apartment complex while we were across the

1 street talking.

2 Q Okay. Where are you across the street talking when
3 Mr. Coleman is circling around the apartment complex?

4 A We were in the area where I got shot. And I just
5 so happened to glance and see him driving his car around the
6 apartment complex, I guess, patrolling. I don't know.

7 Q Now, after the incident where Mr. Johnson had to
8 kneel down as if he was injured, at that point Mr. Coleman
9 gets in his car and speeds over to the area, correct?

10 A I wouldn't say right then and there that it
11 happened. It was like maybe a few minutes later because he
12 was still riding around. So at some point he did come across
13 the street.

14 Q What would cause him, at that point, to come over
15 and order you out of the vehicle?

16 A I can't say, because I told you my story. I
17 didn't --

18 Q Does that make sense to you that after -- after
19 this incident where Mr. Johnson touches your car --

20 MR. ARCKEY: Objection; calls for speculation.

21 MR. ADAMS: She was there. She can testify.

22 THE COURT: Approach.

23 (The following conference was held at the bench.)

24 THE COURT: What's the question gonna be? Because
25 the objection came halfway through the question. I

1 don't even know what the question is.

2 **MR. ADAMS:** I was gonna ask, does it make sense to
3 you that he would rush over there and order you out of
4 the car having not seen anything to provoke any kind of
5 reaction.

6 **THE COURT:** The objection?

7 **MR. ARCKEY:** Was speculation. And, I mean, it's
8 asking for something that's not within her knowledge.
9 It's asking her to put her in the shoes of the
10 defendant, here in this case, and doesn't really make
11 much sense.

12 **THE COURT:** I'm gonna sustain the objection.
13 You're asking her to comment on the actions of somebody
14 else.

15 (The following proceedings were held on the record
16 in open court.)

17 **BY MR. ADAMS:**

18 **Q** Okay. So it's your testimony that after several
19 minutes pass, he rushes over there -- he is in a hurry,
20 correct?

21 **A** Yes. But it possibly could have been because Vince
22 was yelling at me in the window. We were --

23 **Q** But he's --

24 **A** He was fussing at me about not eating. So he was
25 there at my window.

1 Q So Mr. Coleman, he's coming over pretty fast and
2 directly, correct?

3 A (Nods.)

4 Q At that point you had pulled into the community
5 center and you had started to turn your car around, correct?

6 A We were already there.

7 Q Okay. But when you came into the community center,
8 you turned your car around a little bit, correct?

9 A Yes.

10 Q Okay. So you were not facing directly in the
11 community center, correct?

12 A No. I was, like, curved in because I was -- it
13 wasn't like a stop and park. It was like a
14 see-what-he's-saying-keep-going-type thing. It wasn't a stop
15 and park. Like, I didn't park to sit. I paused to see what
16 he said, to keep going, but not to stop traffic in the road.
17 Just like a pull-to-the-side type of thing.

18 Q So you pulled in, you looped around, so you could
19 have left relatively easily. You --

20 A Uh-huh.

21 Q -- wouldn't have had to --

22 A Yes.

23 Q You would not have had to do a three-point turn --

24 A Yes. Just a straight shot out of the center.

25 Q Okay. And then that's when Coleman comes over in a

1 hurry and he parks, would you agree, at like a 90-degree
2 angle to you?

3 **A** I guess, like, bumper to my tail.

4 **Q** So there's a 90-degree angle, correct? Like a T
5 almost?

6 **A** No. It was like -- like -- probably like a V,
7 maybe. I can't --

8 **Q** Okay.

9 **A** I can't really remember.

10 **Q** And when he does, he appears to be concerned,
11 correct?

12 **A** When Coleman walks up, yes.

13 **Q** He believes -- he's acting as if he believes that
14 Vince Johnson is injured, correct?

15 **A** Yes.

16 **MR. ARCKEY:** Objection, Your Honor; speculation at
17 this point. I'd ask it be struck and disregarded.

18 **THE COURT:** Overruled.

19 **BY MR. ADAMS:**

20 **Q** And he directs attention towards Mr. Johnson to see
21 if he's okay, correct?

22 **A** When he first came up, he didn't say anything to
23 Vince. He immediately pulled me out of the car at gunpoint.

24 **Q** He was ordering you out of the car, correct?

25 **A** He was ordering me out of the car.

1 Q And you did get out of the car, correct?

2 A Yeah -- well, if he had a gun to you, you'd get out
3 of the car, too.

4 Q But you didn't get on the ground.

5 A No.

6 Q Now, you're there sitting on a curb; is that
7 accurate?

8 A I didn't -- I stood by the curb.

9 Q You're standing against Mr. Coleman's car.

10 A No.

11 Q So you're just standing there.

12 A His car was to the left, my car was in the middle,
13 and our bodies, as in me and Vince, were to the right of my
14 car.

15 Q Are you sitting or standing?

16 A Standing by the fence.

17 Q Okay. So your testimony is the guy at gunpoint
18 tells you to get on the ground and you don't even sit down.

19 A No. He pulled me out -- he told me to get out of
20 the car, at gunpoint. As I was getting out of the car, he
21 put the gun back in his holster. And that's when he told me
22 to lay on the ground. And I said no, I'm pregnant and my
23 dress is very short, so I won't lay on the ground. He's,
24 like, well, you can just stand over here then.

25 Q Okay. At gunpoint. Are you talking about like

1 this?

2 **A** No. That's not what I said. I said he made --
3 when he told me to get out of the car, he had me at gunpoint.
4 As I was getting out of the car, he put the gun back in his
5 holster and that's when he was telling me to get on the
6 ground. I said, I'm pregnant and my skirt is small, so I
7 will not lay on the ground. So that's when he told me to
8 stand to the side where Vince was.

9 **Q** When he tells you to get out of the car, I want you
10 to -- has he got his gun out like this when you say gunpoint?

11 **A** Yes. Like, he was like -- this is my driver's
12 window. He was at my driver's window but at like an angle,
13 like. Where the bullets are there now, he was kind of
14 standing to an angle.

15 **Q** Protect -- as if like someone was protecting
16 themselves from a driver, if they were to do something?

17 **MR. ARCKEY:** Objection, Your Honor; calls for
18 speculation.

19 **THE WITNESS:** I don't know.

20 **THE COURT:** Sustained.

21 **BY MR. ADAMS:**

22 **Q** Now, once you're out of the vehicle, there's other
23 people around, correct?

24 **A** Yes.

25 **Q** And people are telling you to leave, correct?

1 **A** I said -- I told him that I was gonna leave --

2 **Q** What about other people?

3 **A** Once I said it, then everybody chimed in like, you
4 know, he doesn't have authority to make you stay, he can't
5 hold you --

6 **Q** How many people are saying that?

7 **A** It was -- I can't even put an accurate number on it
8 because it was a lot of people out there that day.

9 **Q** Okay. And when you go back and you get in your
10 car, Coleman's back is turned to you at that point, correct?

11 **A** No. As I'm walking to my car, he's walking behind
12 me. We were basically walking to my driver's door together.
13 I just made it there first.

14 **Q** And when you get in your car and you hit the gas,
15 the engine roars loudly, correct?

16 **A** No.

17 **Q** Okay. And when you get in your car and you take
18 off, you have to -- you would have to have swerved in order
19 to avoid Coleman, correct?

20 **A** No.

21 **Q** Okay. And when -- as -- as you pass Coleman, he
22 was right against your car touching your car, correct?

23 **A** As I pass Coleman -- as I'm in my car taking my
24 foot off the brake, I hadn't hit the gas, he was reaching in
25 my car to grab at my arm. Like all -- all I could feel was

1 his fingertips on my arm when I moved to the side. I seen
2 him out my side mirror.

3 Q After the shots rang off, he was close enough that
4 he had -- he actually rolled against your car, correct?

5 A When he held on, like when he --

6 Q After the shots were fired.

7 A -- tried to grab onto the car?

8 Q After the shots were fired.

9 A No.

10 Q He was close enough --

11 A No.

12 Q And prior to you leaving, he was in front of your
13 car, correct?

14 A He was never -- when I got in my car to drive off,
15 Coleman was at point -- at no point in front of my car, at
16 all, was he ever in front of my car when I got in my car to
17 leave.

18 Q So if another witness were to say that --

19 MR. ARCKEY: Objection, Your Honor; improper
20 impeachment.

21 THE COURT: Sustained.

22 MR. ADAMS: Can I have a moment, Judge?

23 THE COURT: You may.

24 (Speaking with cocounsel.)

25 BY MR. ADAMS:

1 Q What arm did Vince Johnson hit your car with?

2 A He hit the car with his right arm. With his right
3 hand, I guess.

4 Q Was he wearing a cast at the time?

5 A It wasn't a cast. He had, like, something on it
6 like a wrapping or something.

7 Q What arm was his cast on?

8 A The right one.

9 Q The one he hit your car with?

10 A Uh-huh.

11 Q Now, why did you ever go into the community center
12 in the first place?

13 A Because Vince said something to me as I was getting
14 ready to pass by. He said something to me and that's what
15 made me stop. I wasn't -- I already expected him to say
16 something as I passing by anyway, so I just was trying to see
17 what he was saying. That was it. But once he said what he
18 had to say, I was like okay, whatever.

19 Q You had already been, I don't want to use the word
20 arguing, because you don't agree with that. You'd already
21 been talking to him from your car --

22 A Yes.

23 Q -- while he's out of your car, from the time you
24 pulled into the community -- to the apartment complex, drove
25 through the complex, and then exited, correct?

1 **A** From us talking?

2 **Q** Why did he -- why did you both enter the complex
3 with you in the car and him on foot and then end up both,
4 again, outside the complex, him on foot and you in the car?

5 **A** When we were coming to my apartment complex, like I
6 stated, I seen Vince walking on the sidewalk. And like I
7 also stated, I'm not the only person that he knows that lives
8 in that apartment complex. I got shot, so we never got the
9 chance to have that conversation as to why he was even going
10 there in the first place. I just seen him walking. We had
11 the conversation about me eating and why I hadn't ate with my
12 pregnancy and everything I had going on. We never got to
13 discuss, oh, where are you going in the apartment complex.
14 We never got to that part because everything escalated so
15 fast and before you know it, I was shot three times.

16 **Q** Okay. But he was coming in as you were coming in,
17 correct?

18 **A** Uh-huh.

19 **Q** And he was leaving as you were leaving, correct?

20 **A** Yes.

21 **Q** Okay. How long did you spend in the apartment
22 complex?

23 **A** I wasn't even there five minutes. I rode in and
24 Johnathan asked me whatever he asked me, and I left out right
25 after that. Like, we started leaving out after that. I was

1 just gonna go --

2 Q Was he running -- was Vince Johnson running after
3 you the entire time?

4 A No.

5 Q Where did he go when you drove in the apartment
6 complex?

7 A When I drove in the apartment complex, he just was
8 like -- there used to be a dumpster there. He just was
9 walking. Just walking down the road. Like I said, he has
10 family that lives on my same side.

11 Q Did he -- was that his purpose of going there that
12 day?

13 A I just told you we never got to that part. I never
14 knew his original reason for being there.

15 Q Have you discussed this since that day with Vince
16 Johnson?

17 A No. Not as to why he was going there in the first
18 place.

19 Q Any of the details of what happened that day?

20 A The most part is the shooting.

21 Q So you have discussed the shooting with him?

22 A Yes, but not, like, as if, like, to talk about it
23 as if, I don't know, some things to say. But it just was,
24 like, oh, that was crazy that day and told the story as far
25 as like how it --

1 Q Do you speak about it regularly?

2 A No. We don't -- I don't talk about that at all.

3 Q How many times have you spoken with Vince Johnson
4 about it?

5 A Every time in the beginning when it first happened.
6 We don't talk about it now.

7 Q When it first happened, though, you spoke regularly
8 about it?

9 A I wouldn't say regularly as, like, we had
10 situations where we had to do, like, depositions and things
11 like that. And I would speak to my mom about it and he was
12 there helping, so he would -- it would all be a conversation
13 but not like a --

14 Q So he would be able to listen to everything you
15 told your mom about what happened?

16 A But it wasn't like a telling-type thing. It was
17 more so like, I got shot and da, da, da, da, this, that and
18 just more so about my injuries. Like, never about what
19 actually happened that day.

20 Q Okay.

21 A Just the scare of everything.

22 Q Okay. Now, when you went -- when you left to pull
23 out of there, would you agree that you would have been going
24 about 20 miles an hour?

25 A When I left out my apartment complex?

1 Q Out of the community center.

2 A Well, no.

3 Q How fast would you say --

4 A Once the shots were fired, I can't tell you how
5 fast I was going to get away.

6 Q So once the shots started, would you say you hit
7 the gas?

8 A No. Once the shots -- before the shots were fired,
9 I hadn't put my foot on the gas yet to go. It wasn't until
10 the first shot was fired that I hit the gas and left.

11 Q The car was moving, though, prior to the shots
12 happening, correct?

13 A Yes, it was in motion.

14 Q Okay. Now, I think you testified that as you left,
15 your tire hit a curb; is that accurate?

16 A No. I said it could have possibly hit a curb
17 because of the way the curb comes out. But it wasn't -- I
18 wasn't that close to it.

19 Q Had you gone straight, would you have hit the curb?
20 Did you have to turn in order to avoid a curb?

21 A No. Not really. Not really.

22 Q Why did you mention the curb then?

23 A Because the curb is right there by the exit. Like,
24 it's not, like, in-curb. The curb is, like, out.

25 Q What time was this?

1 **A** I can't tell you the approximate time because I
2 don't know the time. I just know that when it happened, the
3 sun was out. When it ended, it was nighttime.

4 **Q** 8 p.m. sound accurate?

5 **A** I just said I can't give you an accurate time. I
6 wouldn't know.

7 **MR. ADAMS:** I seek to admit in evidence what's been
8 marked Defense's Exhibit A for Identification.

9 **COURT REPORTER:** A?

10 **MR. ADAMS:** Yes.

11 **THE COURT:** Any objection from the State?

12 **MR. ARCKEY:** No objection from the State,
13 Your Honor.

14 **THE COURT:** What's been marked as State's -- or
15 Defense Exhibit A for Identification will be moved into
16 evidence as Defense 1 without objection from the State.

17 (Defense Exhibit 1 received in evidence.)

18 **MR. ADAMS:** May I approach the witness, Judge?

19 **THE COURT:** You may.

20 **BY MR. ADAMS:**

21 **Q** Ms. Guillory, actually if you're up to it, I would
22 ask if you can hold the picture right here and show me where
23 your car was in that picture.

24 **A** My car was, like, coming out this way --

25 **COURT REPORTER:** I'm sorry, use the mic.

1 **A** My car --

2 **MR. ARCKEY:** Let me shut this off.

3 **A** Okay. We were, like, turned in, like, kind of
4 making short of a broken U. My car was facing this way to
5 leave out. Do you see how the curb is here? I could have
6 hit the curb but I was positioned fine to not hit the curb.
7 But once I came out this way, I had to bust that sharp right
8 because the road -- well, you can't really tell, but the road
9 is, like, very tight. It's a small road. So that's the only
10 curb that came in on my car as I'm going around --

11 **Q** So you remember --

12 **A** -- that tight right coming onto this road.

13 **Q** You remember specifically taking a tight right as
14 you came out?

15 **A** Yes. You can always remember that. I live there.
16 I go to -- my daughter goes to the school. I'm making that
17 right every day.

18 **Q** But it sticks out in your mind that you could have
19 hit the curb on the way you were exiting.

20 **A** No. Because my car -- the way my car was
21 positioned, I couldn't have hit the curb.

22 **Q** Okay. Now, Coleman, according to your testimony,
23 had just ordered you out of the vehicle at gunpoint.

24 **A** Yes.

25 **Q** You said you complied because he had a gun,

1 correct?

2 **A** Yes.

3 **Q** Now, when he ordered you out of the car the second
4 time --

5 **A** He didn't --

6 **Q** -- why didn't you comply?

7 **A** He didn't order me out of the car the second time.
8 The first time he ordered me out of the car at gunpoint,
9 that's when the situation took place as to why I wasn't
10 getting on the ground. I stood over there. And anybody
11 thinking in their right mind, you're not gonna think that a
12 security guard is going to shoot you, so I'm not gonna --

13 **Q** If you can answer the question. Answer the
14 question. Did he order you to stop?

15 **A** Out of the car, no, he just automatically
16 started pulling -- when I got in the car, he didn't even,
17 like, speak on me saying if you have any further questions,
18 you can go --

19 **Q** Is it your testimony that when you got back in the
20 car and even though he's up at your car, according to you,
21 reaching in, he didn't say a word to you --

22 **A** He didn't say anything --

23 **Q** -- to try to get you out of the car --

24 **A** -- he just -- he just started grabbing me.

25 **THE COURT:** All right. I'm gonna remind you-all

1 again, if you want an accurate record, you need to stop
2 talking over each other.

3 **BY MR. ADAMS:**

4 **Q** Not a single word that you recall?

5 **A** Not that I recall.

6 **MR. ADAMS:** Nothing further.

7 **THE COURT:** Any redirect?

8 **MR. ARCKEY:** Yes, Your Honor.

9 **REDIRECT EXAMINATION**

10 **BY MR. ARCKEY:**

11 **Q** Defense just asked you about your conversations
12 with Mr. Johnson. When you're describing those, you're
13 talking about you had talked about the incident but not what
14 you're going to testify here today --

15 **A** Yes. Never that. Never that.

16 **Q** At any time did you make a threat to Mr. Coleman?

17 **A** No.

18 **Q** At any time did you make a threat to Mr. Johnson?

19 **A** No.

20 **Q** At any time did you say that you were gonna hit
21 Mr. Coleman with the car?

22 **A** No.

23 **Q** At any time did you drive the car at Mr. Coleman?

24 **A** No.

25 **MR. ARCKEY:** No further questions, Your Honor.

1 **THE COURT:** May the witness be excused?

2 **MR. ARCKEY:** She may be, subject to re-call.

3 **THE COURT:** Thank you, ma'am.

4 **MR. ARCKEY:** May we approach?

5 **THE COURT:** Come on up.

6 (The following conference was held at the bench.)

7 **MR. ARCKEY:** I do have Salcedo outside. I think
8 he's gonna probably take longer than 20 minutes. But we
9 can try to fit him in. I don't know if you want to cut
10 early for lunch or you want to wait.

11 **MR. ADAMS:** I think he may take longer than 30
12 minutes, though.

13 **MR. ARCKEY:** Twenty minutes.

14 **MR. MULLINS:** Who you getting next?

15 **MR. ARCKEY:** Twenty minutes.

16 **MR. ADAMS:** Twenty minutes.

17 **MR. ARCKEY:** Total.

18 **MR. ADAMS:** Total. All right.

19 **THE COURT:** Any reason you can't do the direct now
20 and do the cross --

21 **MR. ARCKEY:** I can do that. I just wanted to try
22 to keep you aware of the status.

23 (The following proceedings were held on the record
24 in open court.)

25 **THE COURT:** All right. State, call your next

1 witness.

2 **MR. ARCKEY:** Your Honor, at this time the State
3 will be calling Officer Salcedo.

4 **THE CLERK:** Please raise your right hand to be
5 sworn.

6 **OFFICER NICHOLAS SALCEDO**
7 **was called as a witness and, having first been duly sworn,**
8 **testified as follows:**

9 **THE WITNESS:** I do.

10 **THE COURT:** All right. Have a seat for me, sir.
11 Tell me your full name and spell your first and
12 last name for our court reporter.

13 **THE WITNESS:** Nicholas Salcedo. N-I-C-H-O-L-A-S,
14 S-A-L-C-E-D-O.

15 **THE COURT:** All right.
16 State, you may inquire.

17 **DIRECT EXAMINATION**

18 **BY MR. ARCKEY:**

19 **Q** Thank you, Your Honor.

20 Office Salcedo, who do you work for?

21 **A** The Orlando Police Department.

22 **Q** How long have you worked there?

23 **A** Since June of 2011.

24 **Q** And what is your job with the Orlando Police
25 Department?

1 **A** I'm a patrol officer in the northwest quadrant of
2 Orlando.

3 **Q** Were you working on the night of May 28, 2014?

4 **A** Yes.

5 **Q** Or the day and the night --

6 **A** Yes.

7 **Q** -- of that day? Did you ever have a call for
8 service that night?

9 **A** I did.

10 **Q** Where did that call for service take you?

11 **A** To the 1430 block of Mercy Drive in front of the
12 Mercy Mart.

13 **Q** And when you got on scene, what did you see?

14 **A** I observed a female had been -- was bleeding from
15 the arms. She was being treated by some security officers
16 that were located in a neighborhood just behind the
17 Mercy Mart. It appeared she had been shot in the upper
18 left-hand arm.

19 **Q** Did you also see a car there that day?

20 **A** Yes. It was a gray four-door sedan, Audi.

21 **Q** Did you also see any damage to that vehicle?

22 **A** Yes. I observed two small holes in the bar
23 partition that separates the front driver's and rear driver's
24 side of the vehicle.

25 **Q** And as a part of your training and experience, have

1 you been trained in securing crime scenes?

2 **A** Yes.

3 **Q** Okay. And did you secure that scene?

4 **A** Yes.

5 **Q** Why do you secure scenes?

6 **A** To preserve evidence.

7 **Q** And was part of your job that day to secure that
8 Audi?

9 **A** Yes.

10 **Q** Was that Audi eventually turned over to a CSI?

11 **A** Yes, sir.

12 **Q** Do you remember who that was?

13 **A** It was Nieves. CST Nieves.

14 **MR. ARCKEY:** Your Honor, I'm approaching defense
15 with State's Exhibit 4.

16 Your Honor, approach the witness?

17 **THE COURT:** Yes, you may.

18 **BY MR. ARCKEY:**

19 **Q** Office Salcedo, if you could just briefly look
20 through those photos and I'll ask you some questions.

21 **A** Okay.

22 **Q** Officer Salcedo, I'm showing you what's been marked
23 as State's Exhibit 4 composite. Is that how you saw the
24 crime scene that day?

25 **A** Yes, sir.

1 Q Is that the vehicle you saw that day?

2 A Yes, sir.

3 Q Is that a fair and accurate depiction of that
4 vehicle?

5 A Yes, sir.

6 Q Where was Ms. Guillory when you arrived on scene?

7 A When I arrived, she was standing near her vehicle.
8 She was being treated by the security officers. They were
9 bandaging her arms. And she was sitting on the front of the
10 vehicle.

11 Q And does it look like the blood from that vehicle
12 was from her treatment?

13 A Yes.

14 Q Officer Salcedo, I'm showing you another picture
15 which is actually picture 9. Do you recall where that was
16 from?

17 A Yes. That's from the driver's side of the vehicle.

18 Q And what area on the car is this?

19 A That's the bar partition that separates the front
20 driver's and rear driver's side of the vehicle.

21 Q Now, Officer Salcedo, do you have a firearm you
22 use?

23 A I'm sorry?

24 Q Do you have a firearm you use --

25 A Yes.

1 Q -- during the course of your duty? Have you seen
2 what a bullet hole is before?

3 A Yes.

4 Q Do those look like bullet holes to you?

5 A Yes, sir. They do.

6 Q And do you recall where this is from?

7 A Yes, that appears to be the bar partition.

8 Q Officer Salcedo, when -- through the course of your
9 investigation, did you determine that a shooting had happened
10 at another area?

11 A Yes, sir.

12 Q And did you ever respond to that area?

13 A I did not.

14 Q So your main focus was at that mini mart?

15 A Was at the mini mart with the initial victim.

16 **MR. ARCKEY:** May I have one moment, Your Honor?

17 **THE COURT:** You may.

18 **BY MR. ARCKEY:**

19 Q Officer Salcedo, are you familiar with the area of
20 WD Judge?

21 A Yes.

22 Q Are you familiar with the area of the Northwest
23 Community Center?

24 A Yes.

25 Q Is this your normal area of operation?

1 **A** Yes, sir, it is.

2 **Q** If you were coming out of the North [sic] Community
3 Center, what direction would you have to turn to get to the
4 mini mart?

5 **A** You would have to turn right, which would be
6 westbound.

7 **Q** Okay.

8 **MR. ARCKEY:** May I have one moment?

9 (Speaking with cocounsel.)

10 **BY MR. ARCKEY:**

11 **Q** During the course of your investigation, did you
12 ever determine that anyone at the scene needed to be charged
13 with anything?

14 **MR. MULLINS:** Objection, Your Honor; calls for a
15 legal conclusion.

16 **THE COURT:** Approach.

17 (The following conference was held at the bench.)

18 **THE COURT:** Response?

19 **MR. ARCKEY:** Your Honor, they -- first of all, I'm
20 asking if they've been charged, not prosecuted or
21 anything like that. They have opened the door already
22 to whether or not someone needed to be or someone was
23 facing charges and whether or not someone was gonna take
24 charges for someone. This investigation never went down
25 the path that they have put forward as though it has.

1 And I think I have a right to discuss that at this
2 point. This investigation was into the shooting and not
3 to anyone else.

4 **MR. MULLINS:** Judge, I think they're trying to
5 bolster her case. He's testifying as a fact witness.
6 He testifies as to what his investigation revealed.
7 Okay. Whether charges are appropriate, that's
8 something, you know, that's attempting to basically give
9 credibility to the charging process and creating in the
10 minds of the jury, potentially, that this -- that others
11 have, you know, weighed in on this and that their
12 decision should be affected by it. He should be -- his
13 testimony -- he's being called here as a fact witness,
14 having conducted an investigation. He can testify as to
15 what he did, as to what investigative techniques he
16 used. Certainly no objection there. But as to the
17 legal conclusion of whether somebody should be charged,
18 I think that's an improper bolstering technique used to,
19 basically, create in the minds of the jury, the fact
20 that this -- that this is an appropriate decision, when
21 it's up to them to decide that.

22 **THE COURT:** I'm gonna sustain the objection subject
23 to it being rephrased.

24 **MR. MULLINS:** Thank you.

25 (The following proceedings were held on the record

1 in open court.)

2 **BY MR. ARCKEY:**

3 **Q** Officer Salcedo, during the course of your
4 investigation, did you charge Aimee Guillory with anything?

5 **A** No, I did not.

6 **Q** During the course of your investigation, did you
7 charge anyone by the name of Vince Johnson with anything?

8 **A** No, sir.

9 **Q** Why not?

10 **MR. MULLINS:** Objection, Your Honor; same objection
11 as earlier.

12 **THE COURT:** Overruled.

13 **THE WITNESS:** Sorry. Can you repeat the question?

14 **BY MR. ARCKEY:**

15 **Q** Why did you not charge either of those individuals?

16 **A** We were not -- we did not locate anybody by the
17 name of Vince Johnson. And based on investigation of what we
18 had with Detective Mike Stanley, we did not determine charges
19 needed to be filed with Ms. Guillory.

20 **MR. ARCKEY:** No further questions, Your Honor.

21 **MR. MULLINS:** Judge, my cross will be brief.

22 **THE COURT:** Go ahead.

23 **MR. MULLINS:** I don't know if you want to do it
24 later.

25 **THE COURT:** Go ahead.

1 **MR. MULLINS:** Thank you, Your Honor.

2 **THE COURT:** We'll finish up this witness and then
3 we'll take our lunch break. Okay?

4 **CROSS-EXAMINATION**

5 **BY MR. MULLINS:**

6 **Q** Officer Salcedo, I had you promoted to detective.

7 **A** Yes, sir. Thank you.

8 **Q** Okay. You're a patrol officer, right?

9 **A** Yes, sir.

10 **Q** Okay. So you kind of work that area, as you say,
11 on a regular basis?

12 **A** Yes, sir.

13 **Q** That's sort of your area, has been for a while?

14 **A** Yes, sir. About, at least, two years.

15 **Q** Okay. Okay. You know a lot of the people
16 around -- who live around there?

17 **A** I know some people.

18 **Q** You've gotten to know some? Do you know any of the
19 people involved in this personally?

20 **A** No, sir. I do not.

21 **Q** Have you heard of any of them?

22 **A** At the time, no, sir, I did not.

23 **Q** No. Okay.

24 Now, you secured the crime scene evidence that you
25 had over there at the little mart on --

1 **A** The mart, yes, sir.

2 **Q** What street?

3 **A** It's called the Mercy Mart.

4 **Q** Mercy Mart.

5 **A** On Mercy Drive.

6 **Q** Catchy. It's on Mercy Drive, right?

7 **A** Yes, sir.

8 **Q** Okay. So -- now, you didn't have any involvement,
9 I think, over at the community center.

10 **A** I did not.

11 **Q** On that crime scene.

12 **A** Correct. I did not.

13 **Q** Okay. Okay. You talked, I guess, at some length
14 to Aimee Guillory, right?

15 **A** I was in the hospital room with Detective
16 Mike Stanley briefly, in and out. I was dealing with other
17 portions of the investigation --

18 **Q** But you had access to her and you could question
19 her if you wanted?

20 **A** Yes, sir.

21 **Q** Okay. But you never talked to Vince Johnson.

22 **A** We could not locate Vince Johnson that night.

23 **Q** Okay. So Mr. Johnson -- nobody told you where
24 Mr. Johnson could be found, right? Including Aimee Guillory,
25 nobody told you anything about Mr -- where -- Mr. Johnson's

1 whereabouts?

2 **A** Nobody -- based on when we spoke to witnesses on
3 the scene, nobody knew his whereabouts, no.

4 **Q** Ah, okay. But you attempted to find that -- doing
5 good police work and all, you wanted to talk to him.

6 **A** We did.

7 **Q** Sure. Okay. That you -- you talked to several
8 witnesses about this case, did you not?

9 **A** I did receive, I believe it was four written
10 statements from witnesses that were on scene at the community
11 center.

12 **Q** You -- okay. Do you know -- do you know Johnathan
13 Coleman Coleman?

14 **A** Yes, sir.

15 **Q** You do? Did you know him before all this?

16 **A** Yes. He's -- was, at the time, a security officer
17 in a couple of the neighborhoods that were in my sector of
18 operations.

19 **Q** Okay. Had you worked with him professionally at
20 any level at all?

21 **A** Yes. There were, on occasion, times he would call
22 for an individual if -- of the neighborhood that he was
23 working, to be trespassed, for example.

24 **Q** Okay. Did you always find him to be professional
25 and accommodating --

1 **MR. ARCKEY:** Objection, Your Honor; improper
2 bolstering.

3 **THE COURT:** Sustained.

4 **BY MR. MULLINS:**

5 **Q** Okay. Now, you, of course, yourself, never
6 witnessed any of the incident --

7 **A** I did not.

8 **Q** -- that we're here on today?

9 **A** Correct.

10 **Q** Okay. How many times would you say you worked with
11 Mr. Coleman?

12 **MR. ARCKEY:** Objection; relevance.

13 **MR. MULLINS:** I think it's relevant to go to --

14 **THE COURT:** Come on up.

15 (The following conference was held at the bench.)

16 **THE COURT:** I just don't want to do speaking
17 objections in front of the jury so it's like a closing
18 argument. All right. Why do you think it's relevant?

19 **MR. MULLINS:** I think it's relevant because it goes
20 to his relationship with Mr. -- his perception of what
21 Mr. Coleman -- how he might handle a situation such as
22 this.

23 **THE COURT:** How is this officer's perception of
24 Mr. Coleman relevant to the charge in question?

25 **MR. MULLINS:** Well, if he has an overall

1 favorable --

2 **THE COURT:** His state of mind. How is the
3 officer's state of mind relevant?

4 **MR. MULLINS:** I see, Your Honor. I'll withdraw the
5 question.

6 **THE COURT:** Okay.

7 (The following proceedings were held on the record
8 in open court.)

9 **THE COURT:** I'll sustain the objection.

10 **BY MR. MULLINS:**

11 **Q** Did you otherwise ever attempt to contact or locate
12 Mr. Johnson --

13 **MR. ARCKEY:** Objection; asked and answered.

14 **MR. MULLINS:** This is a different. . .

15 **THE COURT:** I'll go ahead and overrule.

16 **MR. MULLINS:** Different -- it's --

17 **BY MR. MULLINS:**

18 **Q** Did you try to employ other investigative
19 techniques to try to find Mr. Johnson?

20 **A** Outside of that night, no, as the initial responder
21 I did not.

22 **Q** How about since then?

23 **A** I, personally, I have not.

24 **Q** Okay.

25 I may have asked this, and forgive me if I did,

1 because I'm getting a little older and I forget. But the
2 Northwest Community Center, do you know who secured that one?

3 A No. There was a crime scene list that I -- I
4 believe it's in here, but I don't know specifically --

5 Q Okay. So if I understand, Officer Salcedo, your
6 involvement is dealing with Ms. Guillory at the Mercy Mart?

7 A Correct.

8 Q And then maybe accompanying her to the hospital
9 with some other police personnel?

10 A No. At the hospital it was just myself and
11 Detective Stanley.

12 Q You and Detective Stanley went to the hospital?

13 A Yes. Correct.

14 Q Okay. You didn't accompany her there. She went
15 probably by way of an ambulance.

16 A Yes.

17 Q Okay. And then you talked to the other witnesses
18 involved.

19 A No. I received the -- I spoke to the two security
20 officers and I received the sworn written statements from the
21 other witnesses.

22 Q Okay. All right.

23 **MR. MULLINS:** If I may, Your Honor, briefly?

24 **THE COURT:** Yes.

25 (Speaking with cocounsel.)

1 **MR. MULLINS:** Your Honor, I have no further
2 questions.

3 **THE COURT:** Any redirect from the State?

4 **MR. ARCKEY:** No redirect from the State,
5 Your Honor.

6 **THE COURT:** All right. May the witness be excused?

7 **MR. ARCKEY:** Yes, Your Honor.

8 **THE COURT:** Thank you, Officer.

9 **THE WITNESS:** Thank you.

10 **THE COURT:** All right, ladies and gentlemen, this
11 is a little bit past noon, so what I'll do is recess
12 you-all for lunch.

13 The same two rules from last night apply during
14 your lunch break. Please don't do any research, looking
15 up of names or maps or investigation on your own. And
16 if you happen to see any of us and we don't speak to you
17 or don't pay attention to you, again, it's not a sign of
18 disrespect. We're just maintaining our distance. Okay?

19 I'll go ahead and ask you to come back at 1:15.
20 You'll come back to the same location you did this
21 morning. They'll bring you back into the jury room and
22 we'll get started once you-all are here with the
23 remainder of the case for today. Okay? Enjoy your
24 lunch and we'll see you back at 1:15.

25 (The jury exited the courtroom.)

1 **THE COURT:** All right. Have a seat.

2 All right. Anything I need to address from either
3 State or Defense before we recess for lunch?

4 **MR. MULLINS:** I don't have anything.

5 **MR. ARCKEY:** Nothing from the State.

6 **MR. ADAMS:** I do --

7 **THE COURT:** I just want to make sure that I remind
8 you-all -- this goes for both sides, your record is not
9 clean and that's because you-all are talking over each
10 other. The court reporter, on a number of occasions,
11 has had to stop it. I've had to remind people. Just be
12 cognizant of it if you want to make sure you have a
13 clear record in the event that something happens and one
14 side or another wants to appeal, we need to make sure we
15 allow people to finish speaking before we start our next
16 question. Okay?

17 **MR. ADAMS:** Judge --

18 **THE COURT:** Just a friendly reminder.

19 **MR. ADAMS:** I do have a proposed jury instruction.
20 I think it probably is still premature because it
21 relates to citizen arrest, but I can go ahead and give
22 it to you just so you have it.

23 **THE COURT:** Go ahead and give a copy to the State
24 and myself and I'll look at it.

25 **MR. ADAMS:** If I may approach?

1 **THE COURT:** You may.

2 All right. If there's nothing further, court will
3 be in recess until 1:15 on this case.

4 (Lunch recess taken at 12:05 p.m.)

5 (See Next Volume)

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C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OF ORANGE:

I, Tracy Anderson, Official Court Reporter of the Ninth Judicial Circuit of Florida, do hereby certify, pursuant to Florida Rules of Judicial Administration 2.535(h)(3), that I was authorized to and did report in stenographic shorthand the foregoing proceedings, and that thereafter my stenographic shorthand notes were transcribed to typewritten form by the process of computer-aided transcription, and that the foregoing pages contain a true and correct transcription of my stenographic shorthand notes taken therein.

WITNESS my hand this _____ day of _____ 2015, in the City of Orlando, County of Orange, State of Florida.

TRACY ANDERSON

Exhibit G

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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION'S

STATE OF FLORIDA,

PLAINTIFF,

vs.

JOHNATHAN ANDREW COLEMAN,

DEFENDANT. /

CASE NUMBER: 2014-CF-7184-A-O

DIVISION NUMBER: 16

VOLUME IV of VII (P.M.)

TRIAL PROCEEDING

BEFORE

THE HONORABLE GREG TYNAN

In the Orange County Courthouse
Courtroom 6-D
Orlando, Florida 32801
June 22-24, 2015
Bobby V. Timms, RPR

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

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On behalf of the State

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On behalf of the Defendant

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1 P R O C E E D I N G S

2 - - - -

3 THE COURT: We got all our jurors back?

4 THE DEPUTY: Yes, sir.

5 THE COURT: Both sides ready to proceed?

6 MR. ARCKEY: May I have one moment to tell
7 them about the rule of sequestration? I want
8 to make sure that that's clear, and also I just
9 brought a firearm into the courtroom, and I
10 want to make sure that they are clear with
11 that.

12 MR. ADAMS: May I step outside to use the
13 restroom too, Judge?

14 THE COURT: I don't know if you guys want
15 to secure the firearm.

16 Any objection to it being opened?

17 MR. MULLINS: No objection. It's going to
18 have to be opened at some point.

19 THE COURT: I would rather do the clearing
20 of it outside the presence of the jury.

21 MR. MULLINS: Yeah, that demobilizes it
22 and all of that.

23 MR. ADAMS: May I step out briefly?

24 THE COURT: Yes, sir.

25 (Pause)

1 THE COURT: Bring the jurors back in.

2 (Whereupon, the jury was returned to the
3 courtroom and the proceedings continued as
4 follows)

5 THE COURT: Ladies and Gentlemen of the
6 Jury, welcome back. I trust that everybody
7 abided by my instructions. You didn't do any
8 research or investigation on your own, correct?

9 THE JURY: Correct.

10 THE COURT: Nobody had any contact with
11 you other than the court deputy who brought you
12 back into the courtroom; is that correct?

13 THE JURY: Yes.

14 THE COURT: State, you may call your next
15 witness.

16 MR. ARCKEY: Your Honor, at this time the
17 State would call Detective Stanley.

18 Whereupon,

19 MICHAEL STANLEY

20 being first duly sworn, was examined, and testified
21 as follows:

22 THE COURT: Tell me your full name, and
23 spell your first and last name.

24 THE WITNESS: Michael Stanley,

25 M-I-C-H-A-E-L, S-T-A-N-L-E-Y.

1 night?

2 A Yes, I did. I responded to an incident
3 that occurred on W. D. Judge and Mercy Drive.

4 Q Is there some sort of Orlando facility
5 there?

6 A There is on W. D. Judge Drive, on
7 Northwest Community Center.

8 Q When you arrived on scene, can you
9 describe what the scene looked like?

10 A Absolutely. I arrived on scene and there
11 were three or four police officers in their marked
12 police vehicles on the scene, some crime scene tape
13 around the area where the incident occurred, and
14 there was additionally a white Ford Crown Victoria
15 there as well.

16 Q Now in your investigation of this case,
17 when you went on scene, what did you see?

18 A I noticed some shell casings that were
19 there on the ground; additionally noted the vehicle
20 as I had mentioned, the Ford Crown Victoria there;
21 additionally noted several other people there
22 obtaining statements from witnesses.

23 Q Were there still several people in the
24 area?

25 A Yes, there were.

1 Q Did you ever meet with a person that
2 became known to you as the person who fired the
3 firearm?

4 A Yes, I did.

5 Q And do you see that person here in the
6 courtroom here today?

7 A Yes, I do.

8 Q Could you please point them out and state
9 an article of clothing.

10 A The gentleman sitting in the middle
11 between the other two gentlemen over there, a white
12 shirt, black blazer.

13 Q And who did that person become known to
14 you as?

15 A Johnathan Coleman.

16 Q Now you said that you had seen some shell
17 casings?

18 A That's correct.

19 Q Okay.

20 MR. ARCKEY: I'm showing defense what's
21 been previously marked as State Exhibit L.

22 Your Honor, may I approach the witness?

23 THE COURT: You may.

24 MR. ARCKEY: Your Honor, may I move about
25 freely about the courtroom?

1 THE COURT: You may.

2 BY MR. ARCKEY:

3 Q Would you open that up and take a look
4 inside, out of the presence of the jury.

5 A Absolutely. (complies) Okay.

6 Q After reviewing those items, are those
7 items you saw on that day?

8 A They are separately packaged inside here
9 as well.

10 Q Go ahead and open those up.

11 A Absolutely. Okay (complies).

12 Q Now are those the items that you saw that
13 day?

14 A Yes, I did observe four shell casings on
15 the ground on that day.

16 Q Those shell casings, were they ultimately
17 collected at the direction of you on the scene by a
18 C.S.I.?

19 A Yes, they were.

20 Q Who would that have been?

21 A Carlos Nieves.

22 Q Are they in the same or substantially the
23 same condition as they were that day?

24 A Yes, they are.

25 MR. ARCKEY: State would move Exhibit L

1 into evidence.

2 THE COURT: Any objection?

3 MR. ADAMS: Could I inquire related to
4 that, Judge?

5 THE COURT: Go ahead.

6 MR. ADAMS: Detective Stanley, are you the
7 one that actually packaged that evidence?

8 THE WITNESS: No, I'm not.

9 MR. ADAMS: How do you know that those are
10 the same shells that were on the scene?

11 THE WITNESS: I would assume, based on my
12 trust and faith and confidence of Carlos Nieves
13 that they are, in fact, the ones he had at that
14 point in time.

15 MR. ADAMS: For now we would object. I
16 assume Mr. Nieves would be the best one to
17 provide that.

18 THE COURT: Approach.

19 (Whereupon, a bench discussion was had out
20 of the hearing of the Jury as follows)

21 MR. ARCKEY: Your Honor, he can say that
22 he saw these on the scene and that these are
23 the items that he saw on the scene. Whether or
24 not he packaged them, I believe, is just
25 another chain in the step, but ultimately the

1 other witness is outside, so I will just get
2 them in through them.

3 THE COURT: I will sustain the objection
4 at this point.

5 (Whereupon, bench discussion was
6 concluded, and the proceedings continued in the
7 hearing of the Jury as follows)

8 BY MR. ARCKEY:

9 Q Those appear to be the items that you saw
10 there on that day?

11 A Yes, they are.

12 MR. ARCKEY: Your Honor, I'm showing
13 defense what's been previously marked as
14 State's Identification N -- let me ask the
15 question first.

16 BY MR. ARCKEY:

17 Q Did you also see a firearm that was on the
18 scene that day?

19 A Yes, I did.

20 Q And would you be able to recognize that
21 firearm if you saw it again?

22 A Yes, I would.

23 Q Was that firearm the one that was linked
24 to the defendant in this case?

25 A Yes, it was.

1 Q Okay.

2 MR. ARCKEY: Showing you what's been
3 previously marked as State's Composite N for
4 Identification purposes.

5 BY MR. ARCKEY:

6 Q Detective Stanley, could you please go
7 ahead and review the items in this box and also open
8 up the sealed items and take a look at them.

9 A Okay. (complies) Okay.

10 Q Detective Stanley, did you see those items
11 on the scene that day?

12 A Yes, I did.

13 Q You recognize those items as the items you
14 had directed C.S.I. Nieves to collect that day?

15 A Yes, I did.

16 Q Were those items in the same or
17 substantially the same condition as they were that
18 day?

19 A Yes, they are.

20 Q I just have a few more questions about the
21 scene.

22 When you were on the scene, did you see
23 any blood on the scene?

24 A I did not see any blood on the scene at
25 the Northwest Community Center.

1 Q But you did end up going to the
2 convenience store where a vehicle was found?

3 A Yes, I did.

4 Q Okay.

5 MR. ARCKEY: Showing what's been
6 previously marked as State Exhibit Number 2,
7 also what's been marked as State Exhibit 3, and
8 State Exhibit 4.

9 BY MR. ARCKEY:

10 Q Detective Stanley, there's a laser pointer
11 in front of you. I'm having trouble focusing right
12 now, but it will take a second.

13 Is this the scene that you came onto that
14 night?

15 A Yes, it is.

16 Q What's in that yellow line in the back?

17 A The line going across here (indicating)?

18 Q Yes.

19 A That would be crime scene tape.

20 Q Is that typical when crime scene is
21 secured?

22 A Absolutely.

23 Q What else do you see in this photo?

24 A I see a white colored crown Ford Victoria
25 with some kind of markings on the side and rear.

1 Q Are those O.R.P.D. markings?

2 A Yes, they are.

3 Q Would you like to take a closer look?

4 Take a look at the composite.

5 A No, it is not.

6 Q Take a look at some of those other photos.

7 A (Complies)

8 Q Are those all photos from the crime scene
9 that night?

10 A From the crime scene on W. D. Judge, yes.

11 Q Whose vehicle was that identified to?

12 A It was identified as Johnathan Coleman's
13 vehicle.

14 Q I'm showing you what's been marked as
15 State Exhibit 4, specifically H 8, H 24, and H 9.
16 Just take a look at those real quick and I will ask
17 you some questions.

18 A (complies)

19 Q Now Detective Stanley, what is that a
20 picture of?

21 A That is a picture of the vehicle, the Audi
22 that was driven by Aimee Guillory.

23 Q What is that a picture of?

24 A That would be the impact mark on
25 Ms. Guillory's vehicle that was on the seat pillar

1 at the rear of the -- that's adjacent to the rear of
2 the rear door.

3 Q How about that (indicating)?

4 A That would, again, be her door with the
5 impact on the B pillars in between the two doors.

6 Q Did you also go to the hospital?

7 A Yes, I did.

8 Q Did you inspect Ms. Guillory?

9 A Yes, I did.

10 Q Flip through those photos.

11 A (Complies)

12 Q Now are those photos taken the night of
13 the incident?

14 A Yes, they were.

15 Q Did those photos accurately reflect the
16 injuries that Ms. Guillory sustained on October 28,
17 2014?

18 A Yes, they did.

19 Q Showing you what's been previously marked
20 as State's D and State's F.

21 Detective Stanley take a look at State's D
22 and F, and when you are done, I will ask you some
23 questions.

24 A (complies) Okay.

25 Q Now Detective Stanley, in referring to

1 State's D, are those items that you saw that day on
2 the crime scene?

3 A Yes, they are.

4 Q And is that a fair and accurate depiction
5 of the gun, the security belt, and a picture of the
6 car from that night?

7 A Yes, they are.

8 MR. ARCKEY: At this time the State would
9 move into evidence State's Identification D,
10 into evidence as Exhibit 5.

11 MR. ADAMS: Can I voir dire the witness
12 related to those pictures?

13 THE COURT: Yes.

14 MR. ADAMS: Did you take those pictures?

15 THE WITNESS: No.

16 THE COURT: You are assuming those are the
17 same pictures that you saw based on being part
18 of this case package?

19 THE WITNESS: They are in the vehicle
20 there, in the position that I observed them.

21 MR. ADAMS: Without comparing any serial
22 numbers or notes, you can't say -- you are
23 basing your knowledge off of what you just
24 said; is that correct?

25 THE WITNESS: That's correct.

1 MR. ADAMS: At this point we would object
2 to chain of custody.

3 THE COURT: Overruled.

4 What's been marked as State Exhibit D for
5 Identification will be moved into evidence as
6 State's 5, over the defense's objection.

7 BY MR. ARCKEY:

8 Q Did you also go and see Mr. Coleman that
9 night?

10 A Yes, I did.

11 Q Did you see some of the injury that
12 Mr. Coleman said he sustained from this incident?

13 A Yes, I did.

14 Q And did you look over those photos as
15 identified in State Exhibit F?

16 A Yes.

17 Q Are those a fair and accurate depiction of
18 the injuries you received that night?

19 A Yes.

20 MR. ARCKEY: State would move State
21 Exhibit F into evidence as State Exhibit 6.

22 THE COURT: Any objections?

23 MR. ADAMS: No objection.

24 THE COURT: State's F will be moved into
25 evidence as State's 6 without objection from

1 the defense.

2 MR. ARCKEY: Permission to publish to the
3 Jury, Your Honor?

4 THE COURT: You may.

5 (Exhibits published to the Jury)

6 BY MR. ARCKEY:

7 Q Now do you recall which leg Mr. Coleman
8 had sustained those injuries on?

9 A His right leg.

10 Q Now Detective Stanley, what county and
11 state did this crime scene -- where was that
12 located?

13 A At the County of Orange, The City of
14 Orlando.

15 MR. ARCKEY: No further questions, Your
16 Honor.

17 THE COURT: Cross-examination?

18 MR. ADAMS: Yes, please, Judge.

19 - - -

20 CROSS EXAMINATION

21 BY MR. ADAMS:

22 Q Detective Stanley, did you personally
23 attempt to take statements while you were on the
24 scene at the Community Center?

25 A I was advised that statements --

1 responding officers had obtained those statements.

2 Q So other officers were in charge of that?

3 A Absolutely.

4 Q As a detective is your job more to run the
5 investigation rather than do those kind of small
6 details?

7 A Those are as equally important, but as far
8 as -- they certainly had the ability to go out and
9 do that while I focused on the scene and the victim.

10 Q Did you have any contact with Vince
11 Johnson while you were on scene, or do you recall
12 that?

13 A I was never able to locate Mr. Johnson.

14 Q Did you make specific effort or direct
15 efforts of attempts to locate him?

16 A We did, but those were unsuccessful.

17 Q What type of efforts were made?

18 A I let the patrol officer in the area, if
19 they see him, for him to come forward.

20 Q Were you aware that Aimee Guillory may
21 have had some personal relationship with him?

22 A I was made aware through other statements
23 that they may have had a relationship, yes.

24 Q Were other efforts made to find out if
25 Aimee Guillory could help find him?

1 A No.

2 Q Do you know if there were any difficulty
3 obtaining statements on scene? Were their people on
4 scene who weren't cooperative of not giving
5 statements?

6 A I was not informed that so and so would
7 not provide a statement. I was just informed that
8 there were four or so people that were willing to
9 come forward and make a statement about what they
10 saw.

11 Q Is it your understanding that there was
12 about four people then on scene, or was it your
13 understanding that there were more people than that?

14 A I know there were at least four people.
15 There may have been more, I'm not certain on that.

16 Q Do you know if there was ever any gun
17 powder residue tests ordered for John Coleman to
18 determine whether or not he had gun powder on him?

19 A I did not personally order it and I know,
20 as a matter of practice, the Florida Department of
21 Law Enforcement does not currently accept gun powder
22 residue tests.

23 Q Do you know if -- tell me if they would be
24 in the discretion, obviously there's a crime scene
25 analyst who did stuff, but do you know if

1 fingerprints were attempted to be taken off the
2 vehicle, Aimee Guillory's vehicle?

3 A I think that question would be best
4 directed at C.S.I. Nieves.

5 Q Okay. Now the pictures, if I may -- State
6 Exhibit 5, I don't know if that could be adjusted or
7 not. Can you see that?

8 A Barely.

9 Q You can see it enough to know it's not a
10 holster, right?

11 A If that was the picture I was shown
12 previously, then I would recall that it's a Glock,
13 9mm, with a light attached to it.

14 Q You can see that one a little better
15 (indicating)?

16 A Yes. That's a duty belt.

17 Q Is the firearm currently in that picture
18 in the duty belt or no?

19 A I can't tell looking at that picture up
20 there (indicating).

21 Q Okay. You know if the firearm was removed
22 from the duty belt for the purpose of taking
23 pictures?

24 A I do not know that answer.

25 Q You can't tell me one way or another

1 whether it was or was not in the duty belt prior to
2 pictures?

3 A No, I cannot.

4 Q You testified that it was determined that
5 that vehicle was John Coleman's. I want to clarify,
6 that was not his personal vehicle; correct?

7 A I don't know who the actual registrant was
8 on that vehicle. He was in control of operating it
9 that night.

10 Q Are you saying that that's your
11 understanding that that was the vehicle he was
12 driving that day?

13 A That's correct.

14 Q You are not saying that you ran the
15 vehicle and determined it was his personal vehicle,
16 correct?

17 A That's correct.

18 Q Okay. This is State Exhibit 6. You
19 referenced that you were able to particularly
20 observe some of Mr. Coleman's injuries. Where is
21 that injury that we're looking at on that picture?

22 A Um, his right leg.

23 Q And is that some sort of abrasion, or a
24 break of the skin?

25 A I would have to look at that picture

1 again, but I did not see any breaks in the skin, any
2 bleeding.

3 MR. ADAMS: May I approach the witness,
4 Judge?

5 THE COURT: Yeah.

6 BY MR. ADAMS:

7 Q You can probably see it better looking at
8 it that way (indicating).

9 A Yes, this is his lower right leg
10 (indicating), outer portion of his lower right leg
11 (indicating).

12 Q Did it appear like a fresh injury to you?

13 A That portion right there, yes, scratches
14 in a downward manner (indicating).

15 Q Okay. You can kind of see this one from a
16 better context -- I'm going to hand it to you
17 personally, because I think it's better quality.

18 MR. ADAMS: May I approach?

19 THE COURT: You may.

20 BY MR. ADAMS:

21 Q Is there two different injuries in that
22 picture?

23 A It appears to me there is -- there's a set
24 of injuries, certainly a series of scratch marks in
25 a downward manner on the outer right part of his leg

1 (indicating), and there appears to be kind of a
2 diagonal mark on his shin area.

3 Q The one that's diagonal from the long
4 scrapes, would you describe that as being a little
5 bit deeper?

6 A No, I would not.

7 Q The -- the scrape marks then, the scrape
8 marks that are going down his leg, would you agree
9 that those are consistent with a person who is
10 dragged?

11 A I would not. I have seen some dragged
12 injuries on people, and they were much more severe
13 than the ones that I've previously observed.

14 Q Mr. Coleman was wearing long pants when
15 this happened, correct?

16 A That's correct.

17 Q Was he wearing long pants when you visited
18 him in the hospital?

19 A Those had been removed. As I see him here
20 is an accurate representation of our meeting.

21 Q You were aware of he was wearing some type
22 of long pants at the time?

23 A Correct.

24 MR. ADAMS: May I have a moment, Judge?

25 THE COURT: You may.

1 (Pause)

2 BY MR. ADAMS:

3 Q Are you aware of how long it would have
4 taken you, from the time the incident happened,
5 before you arrived on scene?

6 A I was -- at the time that the incident
7 went out I was downtown at our headquarters at
8 church and Hughey. So driving time from there to
9 the scene on W. D. Judge, ten or 15 minutes.

10 Q Were you the first one on scene?

11 A No, I was not.

12 Q When you got on scene, can you describe to
13 me what had already occurred?

14 A Absolutely. There were patrol officers
15 there in their marked vehicles and crime scene tape
16 was up, and the scene where the vehicle that
17 Mr. Coleman had been operating was inside the crime
18 scene tape.

19 Q State Exhibit 2, I don't know which one is
20 upside down for you. When you arrived at the scene,
21 there's obviously -- I don't see any O.P.D. vehicles
22 or any other emergency personnel vehicles. Were
23 there vehicles on scene that would have been within
24 that frame?

25 A No, they would have been outside the

1 frame.

2 Q When they arrived, is it fair to say that
3 they may have driven through that area prior to you
4 arriving?

5 A I certainly don't think they would have.

6 Q Okay. Where were the vehicles stationed
7 when you arrived to the scene?

8 A In this photo you are looking -- it's
9 facing north on the road. W. D. Judge runs
10 perpendicular on the road they were on, W. D. Judge,
11 the emergency vehicles (indicating).

12 Q Were they inside the community entrance?

13 A No, that photo was probably taken right on
14 the edge of the entrance to the community center and
15 the road of W. D. Judge itself, so they would have
16 been outside the frame.

17 Q And what type of vehicles do you recall
18 being present?

19 A Marked Orlando Police Department vehicles,
20 Crown Victoria, Impalas.

21 Q Do you specifically recall seeing any --
22 what are traditionally called ambulances or fire
23 trucks?

24 A No.

25 Q So if any of those had been present, they

1 were not on scene anymore by the time you had gotten
2 there?

3 A That's correct.

4 MR. ADAMS: Nothing further.

5 THE COURT: Any redirect?

6 MR. ARCKEY: Briefly, Your Honor.

7 Showing defense what's been marked as
8 State Exhibit 6.

9 - - -

10 REDIRECT EXAMINATION

11 BY MR. ARCKEY:

12 Q Now you said that there was another injury
13 that was going across. Does that look like a fresh
14 injury to you?

15 A No, it does not.

16 Q Just the scrapes going up and down?

17 A Just the scrapes going up and down of the
18 right leg, correct.

19 MR. ARCKEY: No further questions, Your
20 Honor.

21 THE COURT: Witness excused?

22 MR. ARCKEY: The witness is on recall.
23 Witness excused.

24 THE COURT: Thank you, detective.
25 State, call your next witness.

1 MR. ARCKEY: Your Honor, at this time the
2 State would call Carlos Nieves Cruz.

3 whereupon,

4 CARLOS NIEVES CRUZ
5 being first duly sworn, was examined, and testified
6 as follows:

7 THE COURT: Have a seat for me.

8 Go ahead and tell me your full name, and
9 spell your first name and last name for the
10 court reporter.

11 THE WITNESS: N-I-E-V-E-S, Carlos Cruz
12 Nieves.

13 - - -

14 DIRECT EXAMINATION

15 BY MR. ARCKEY:

16 Q Could you please tell us who you work for?

17 A Crime scene investigator for The City of
18 Orlando, Orlando Police Department.

19 Q How long have you worked as a crime scene
20 investigator?

21 A Since February 2001. I retired in
22 January, December or January 1st of 2011, and I
23 returned in October of 2013.

24 Q And is it because they kind of changed
25 your job?

1 A Yes, I retired because I have 26 years
2 with the city and economy-wise, the city needed a
3 crime scene investigator. Instead of hiring
4 full time, they called me back and offered me a
5 contract. So having experience and no need to
6 train, I took it.

7 Q Can you give us a ballpark number of how
8 many crime scenes you've been to and worked?

9 A Lost count, hundreds.

10 Q Were you operating as a crime scene
11 investigator on May 28, 2014?

12 A Yes, sir, I did.

13 Q Were you called to a scene that night?

14 A I did.

15 Q I'm going to show you some photos.

16 MR. ARCKEY: Showing you what's been
17 previously marked as State Exhibit 4.

18 MR. ADAMS: Okay.

19 BY MR. ARCKEY:

20 Q Mr. Nieves, can you please take a look at
21 those.

22 A Yes, sir (complies).

23 Q Mr. Nieves, is it pretty safe to say you
24 took all the photos on this crime scene?

25 A Yes, sir, I did.

1 Q Now C.S.I. Nieves, did you take all those
2 photos?

3 A I did.

4 Q And in some of these photos, they have
5 rods in them?

6 A Yes, sir.

7 Q Okay.

8 MR. ARCKEY: Showing defense what's been
9 marked as H 22.

10 BY MR. ARCKEY:

11 Q C.S.I. Nieves, is this the gray Audi that
12 you came in contact with that night?

13 A Yes, sir, I did.

14 Q And can you tell us what is being done
15 here in a -- why you do this?

16 A It is the easiest way to show the
17 trajectory of a bullet that went through a car that
18 night, and it's done with a real simple dowel. It
19 could be made out of fiberglass or wood. It shows
20 the trajectory of the path of travel.

21 Q With those dowel rods, are you able to
22 tell which ones penetrated through the car and which
23 ones do not?

24 A Yes, I could. You can see that the two
25 first green ones, I call that pillar B, pillar B and

1 pillar C in the back. The first two green ones
2 didn't go through. The third one on the pillar B
3 did go all the way through, and number four, it
4 didn't. So it just -- they hit the car, they went
5 through, as of one.

6 Q Now when you recover a car like this,
7 where do you do this --

8 A We use an impound called -- can I mention
9 the name?

10 Q Yes.

11 A It's called Johnson's Wrecker. There's an
12 impound that Orlando Police Department uses, and we
13 have secured bays, which it means I will follow the
14 car, if I'm not able to work on the car the same
15 night due to time constraint or I have to do
16 another assignment, I will seal the car in a secure
17 bay. Nobody has access except me.

18 Q Did you secure that car in that fashion?

19 A Yes, sir, I did.

20 Q Did you do this investigation that day?

21 A Yes.

22 Q Now I'm showing you a different angle,
23 similar picture. Can you just describe a little bit
24 of what is going on here?

25 A Okay. You can see pillar B and you can

1 see the two green rods, they hit the door on the
2 frame, and then number three, which is the light
3 colored rod, that one went through the window.
4 That's what causes the damage on the window, the
5 break of the window, and then that's actually inside
6 the pillar inside the car, the plastic color that
7 covers that pillar inside.

8 Q Okay. Now I'm going to show you H 11. Is
9 that an interior shot of the car?

10 A Yes.

11 Q That's the same yellow rod?

12 A The same yellow rod as one piece.

13 Q That's just another angle of the same rod?

14 A Another angle of the same rod.

15 Q And I'm showing H ten?

16 A Same.

17 Q Now in this picture, where is this one at?

18 A That's the back of the car, which would be
19 pillar number C.

20 Q Now did you also canvas this car for
21 anything?

22 A Yes, I did. I tried to look for --
23 actually, I was trying to look for the trajectory
24 inside the car, we always do it, what's the -- it's
25 cursory, so we always do this as part of the

1 investigation.

2 Q Were you actually able to recover any of
3 the projectiles?

4 A I recovered pieces of it on the frame,
5 pillar B, but it was fragments. It was fragmented.
6 That's the one that didn't penetrate the car, it was
7 way in pillar number B.

8 Q That would be referring to the green?

9 A The second one. Actually in this case,
10 from this view, it would be the middle one.

11 MR. ARCKEY: Showing defense what's been
12 previously marked as State's Identification K.

13 BY MR. ARCKEY:

14 Q Very quickly, what is a projectile?

15 A It's the front part of a bullet. It is
16 meant to hit somebody, creating harm.

17 Q I'm showing you State Exhibit K. If you
18 could just look at that. You recognize that
19 packaging?

20 A Yes, I do.

21 Q How do you recognize that packaging?

22 A I'm the one who put it here. That's my
23 writing and those are my initials (indicating). The
24 date and my initials are here (indicating).

25 Q It's been unopened since you packaged it?

1 A It's been unopened since I packaged it,
2 because nobody has opened it. They have to write
3 date, time, who opened it, who did, and for what
4 reason.

5 Q You mind opening that briefly, take a look
6 inside, and then I will ask you a question.

7 A (complies)

8 Q And go ahead and open up the smaller
9 packages.

10 A (complies)

11 Q Are those the fragments you recovered from
12 the car?

13 A Yes, sir.

14 Q Are those in the same or substantially the
15 same condition as the day you collected them?

16 A They are.

17 MR. ARCKEY: At this time the State would
18 move State Exhibit K into evidence as State's
19 7.

20 THE COURT: Any objection?

21 MR. ADAMS: No objection.

22 THE COURT: It will be moved into evidence
23 as State's 7 without objection from the
24 defense.

25

1 BY MR. ARCKEY:

2 Q Now did you also go to the scene that was
3 off of W. D. Judge?

4 A Yes, I did.

5 Q And on that scene --

6 MR. ARCKEY: Showing defense what's State
7 Exhibit 2.

8 BY MR. ARCKEY:

9 Q Is this a fair and accurate depiction of
10 the scene that day as you recall it?

11 A Yes, it is.

12 Q I'm also showing the witness State Exhibit
13 5.

14 Now take a look through those, and I'm
15 going to put some up over on the overhead and ask
16 you some questions.

17 A Okay.

18 Q When you get on scene and you process the
19 scene, what do you do?

20 A I -- first of all, I get a briefing or
21 short story of what happened by the primary officer,
22 or in this case, Detective Stanley. By the time I
23 show up to the scene, he was there already. I
24 try -- it's my goal to depict the whole scene with
25 pictures in a way that when anybody would see the

1 pictures, have a clear understanding or try to have
2 an understanding of what happened.

3 So I do overalls of the scene, minimum
4 shots and closeups. Some of them will have markers,
5 letters or numbers, and then I will have overall,
6 minimums and a closeup of everything I mark on the
7 scene.

8 Q And if you see in this particular picture,
9 there are white placards. I understand they may be
10 difficult to see on this system; however, I will
11 bring it closer.

12 Now looking at those placards, tell me
13 what those placards represent?

14 A They are numbered one through five; one
15 being a shell casing; two a shell casing; three, a
16 shell casing; and five is found on the floor.

17 Q They are as you found them on the floor?

18 A As I found on the floor.

19 Q Do you know what type of firearm was used
20 in this case?

21 A If I recall, it's a 9mm.

22 MR. ARCKEY: May I approach, Your Honor?

23 BY MR. ARCKEY:

24 Q Showing what's previously marked as State
25 Exhibit N. Would you like to take a look --

1 MR. ADAMS: No objection.

2 BY MR. ARCKEY:

3 Q Take a look at that.

4 A Uh-huh.

5 MR. ADAMS: Can I approach so I can view
6 it, Judge?

7 THE COURT: Absolutely.

8 BY MR. ARCKEY:

9 Q Do you recognize these items?

10 A Yes, I do.

11 Q How do you recognize these items?

12 A I found them at the scene that night.

13 Q Are those in substantially the same
14 condition as they were that day?

15 A Yes.

16 Q Okay. And what is in that package?

17 A This package contains two 9mm magazines
18 with -- one with 18 cartridges or bullets, to make
19 it easy. The other one has 17, that's another
20 magazine, and then, of course, a weapon.

21 Q Now do you know how the operation works on
22 a semiautomatic weapon like this?

23 A Yeah. You load it, you use a slide, put
24 the first round in the chamber, that one
25 (indicating). Depends on the brand of the weapon,

1 it will either be a single or double squeeze.

2 Once you expel the first one, the same
3 gases pushes the slide back and the pressure of the
4 spring on the slide will push it forward, loading
5 the second round, which means all you have to do is
6 pull the trigger.

7 Q What happens to a shell casing after a
8 shell casing has been shot?

9 A It expels out --

10 Q Those could --

11 A Depends on the brand of the bullet,
12 quality of the bullet, how many grains of powder the
13 bullet has, it could fly different. If you buy
14 something cheap -- weapons has something called a
15 misfire --

16 MR. ADAMS: Objection as to predicate,
17 Judge.

18 THE COURT: Approach.

19 (Whereupon, a bench discussion was had out
20 of the hearing of the Jury as follows)

21 MR. ADAMS: Judge, he may well be
22 qualified to testify about trajectory, but I
23 don't know if there's any testimony about his
24 training and experiences when it comes to that.

25 MR. ARCKEY: I could lay that.

1 THE COURT: Sustained.

2 (Whereupon, bench discussion was
3 concluded, and the proceedings continued in the
4 hearing of the Jury as follows)

5 BY MR. ARCKEY:

6 Q Have you come into firearms in your life?

7 A I have been a member of the coastguard and
8 been a federal officer and a --

9 Q Have you fired a semiautomatic?

10 A I have to go to the range twice a year. I
11 carry a nine -- a .40 caliber Sig Sauer, qualified
12 for an 870 -- an M-16.

13 MR. ARCKEY: At this time the State would
14 be asking that he be able to give his opinion
15 in how a weapon operates.

16 THE COURT: Defense?

17 MR. ADAMS: No objection as to the
18 operation.

19 THE COURT: Okay.

20 BY MR. ARCKEY:

21 Q Now have you shot different types of
22 ammunition out of semiautomatics before?

23 A Yes.

24 Q And you know that -- and the shell casing,
25 the projectiles can go pretty much in?

1 A They do. As I was saying, part of our
2 training with weapons is handling misfires, which it
3 means that depends on the brand of the weapon and
4 the quality and the grain of powder or the casing
5 inside, we have misfires, which could be squeezed
6 and it doesn't go, that's what we have fires --

7 MR. ARCKEY: At this time the State would
8 move into evidence State's Identification N as
9 State Exhibit 8.

10 THE COURT: Any objection?

11 MR. ADAMS: No objection.

12 THE COURT: M would be moved into evidence
13 as State's 8 without objection from the
14 defense.

15 MR. ARCKEY: I'm showing the witness
16 what's been marked as State's Identification E.

17 BY MR. ARCKEY:

18 Q Showing you what's marked as State's
19 Identification E. Take a moment to look at that.

20 A (complies)

21 Q Now what are those pictures?

22 A They are showing how many rounds were
23 still on each magazine.

24 Q Does one of those pictures have the spent
25 shell case?

1 A It does.

2 Q Are those a fair and accurate depiction of
3 the items that you collected that night?

4 A Yes, sir, they are.

5 MR. ARCKEY: At this point the State would
6 move identification E into evidence as State's
7 9.

8 THE COURT: Any objection?

9 MR. ADAMS: No objection.

10 THE COURT: E will be moved into evidence
11 as State's 9 without objection from the
12 defense.

13 MR. ARCKEY: Your Honor, publish?

14 THE COURT: You may.

15 BY MR. ARCKEY:

16 Q Mr. Nieves, what type of ammunition is
17 that?

18 A I don't remember exactly what I packaged,
19 I'd like to see the package. I marked the
20 envelopes.

21 Q Is there a certain style of projectile --

22 A Yes. It is a hollow point 9mm Luger.
23 Yes, that's what it is, and they are hollow point.

24 Q I'm showing you what's State Exhibit E
25 one. These are a closeup. What are these a closeup

1 of?

2 A The back of a spent shell casing. Once
3 you fire, the projectile goes, that stays behind.
4 That is what gets ejected from the weapon. So you
5 are looking at the backside.

6 Q And how do you know if one is fired or
7 not?

8 A It will have an indentation right in the
9 center where the primer is; it will have a dent.

10 Q We were speaking about projectiles
11 earlier. Can you describe which part is the
12 projectile?

13 A From your fingers, it will be the last
14 section of the bullet.

15 Q I believe there's a laser pointer up
16 there. If you could use that to show.

17 A (complies) Right here (indicating), from
18 here all the way up to there (indicating).

19 Q And on impact, do these normally stay
20 together?

21 A They are suppose -- they are meant to
22 transfer force from that bullet into your body to
23 stop you. It has the stopping power. The reason
24 why they are hollow is when they penetrate, they
25 motion out and passes that impact into you. That's

1 what -- of course, if I hit soft tissue, it just
2 motions out. If I hit something hard and solid, it
3 destroy. They will disintegrate, it becomes
4 fragmented.

5 MR. ARCKEY: May I have one moment, Your
6 Honor.

7 (Pause)

8 MR. ARCKEY: I'm showing defense what's
9 been marked as Identification L.

10 MR. ADAMS: Can I approach to view it,
11 Judge?

12 THE COURT: You may.

13 BY MR. ARCKEY:

14 Q I am showing you what's been previously
15 marked as State's Identification L. You recognize
16 this?

17 A Yes, I do.

18 Q How do you recognize it?

19 A I marked it. It's the same. I package
20 it, that's my writing, my description, my initials
21 and the date.

22 Q And are those in the same or substantially
23 the same condition as the day you collected it?

24 A They are. There's only a difference in
25 this. There's a second seal, which it means

1 somebody else had opened it.

2 Q But they are in the same or substantially
3 the same condition?

4 A Yes.

5 Q You are the one that collected them on the
6 scene that night?

7 A Yes.

8 Q These are numbered one through four?

9 A One through four.

10 Q On the placards?

11 A Yes.

12 MR. ARCKEY: At this time the State would
13 move into evidence what's marked as State's L
14 as State's 10.

15 THE COURT: Any objection?

16 MR. ADAMS: No objection.

17 THE COURT: L will be moved into evidence
18 as State's 10 without objection from the
19 defense.

20 BY MR. ARCKEY:

21 Q Those are the same spent shell casings
22 that are in these photos?

23 A Yes, sir.

24 Q Now I'm showing you what's been previously
25 marked as State's Identification J.

1 MR. ARCKEY: Showing the witness what's
2 been marked as State's Identification J.

3 BY MR. ARCKEY:

4 Q You recognize this?

5 A Yes, I do.

6 Q How do you recognize this?

7 A The writing, my initials and the date I
8 packaged it.

9 Q You are the one who placed this into
10 evidence?

11 A Yes.

12 Q Was this collected from O.R.M.C.?

13 A This was collected. Somehow O.R.M.C.
14 notified Orange County. Orange County picked up the
15 bullet and they realized it wasn't their bullet,
16 so --

17 MR. ADAMS: Objection, hearsay.

18 THE COURT: Response.

19 MR. ARCKEY: Your Honor, this just goes
20 into how it became into possession.

21 THE COURT: Overruled.

22 THE WITNESS: Okay. So I met with one of
23 the Orange County investigators at the Orange
24 County forensic lab, which is located on the
25 corner of John Young Parkway on Colonial, and

1 she gave me the recovered projectile.

2 Q Could you please open that?

3 A All right. (complies)

4 MR. ADAMS: May I approach, Judge, just to
5 view him?

6 THE COURT: Yes.

7 BY MR. ARCKEY:

8 Q If you could view it out of the presence.
9 Go ahead and keep it in the bag.

10 A Okay.

11 Q Now looking at that item, is that the item
12 that you were given by Orange County?

13 A Yes, sir.

14 MR. ADAMS: I object, authentication.

15 THE COURT: Overruled.

16 BY MR. ARCKEY:

17 Q Was that the item you were given by Orange
18 County?

19 A Yes.

20 Q You put that into evidence?

21 A I did.

22 Q Has it remained in evidence since then?

23 A Yes, sir.

24 Q It has not been opened since then?

25 A No, this has not been opened.

1 Q You are the one who brought it to the
2 courtroom today?

3 A Yes, sir.

4 MR. ARCKEY: Your Honor, at this time the
5 State would move into evidence State's
6 Identification J as State's 11.

7 THE COURT: Any objection?

8 MR. ADAMS: No.

9 THE COURT: It will be received as State's
10 11, without objection from the defense.

11 MR. ARCKEY: Your Honor, may I have a
12 moment to confer?

13 THE COURT: You may.

14 (Pause)

15 MR. ARCKEY: No further questions, Your
16 Honor.

17 THE COURT: Cross-examination.

18 - - -

19 CROSS EXAMINATION

20 BY MR. ADAMS:

21 Q Mr. Nieves, I think some of these pictures
22 are already in evidence. I just wanted to admit
23 these into evidence separately.

24 MR. ADAMS: May I approach the witness,
25 Judge? There's no objection to it being

1 entered into evidence, Judge what's been marked
2 defense identification C, D, and B.

3 THE COURT: Any objections, State?

4 MR. ARCKEY: No objections from the State.

5 THE COURT: What's marked as Defense
6 Exhibit C for Identification will be moved into
7 evidence without objection from the State as
8 Defense 2. Defense D will be moved into
9 evidence as defense 3, and B will be moved into
10 evidence without objection as 4, all without
11 objection from the State.

12 BY MR. ADAMS:

13 Q Mr. Nieves, is that one of the pictures
14 that you took?

15 A Yes, sir.

16 Q That front rod has some sort of styrofoam
17 cone on it; is that correct?

18 A The one that's going all the way across or
19 the one in the pillar?

20 Q I think it's the one in the pillar, the
21 one closest, has styrofoam; is that accurate?

22 A It is.

23 Q What is that?

24 A I have to think, in -- it's not actually
25 styrofoam, it's like a spacer, which helped me to

1 keep the rod in place; otherwise, the hole will
2 shatter and you put the rod, it will fall.

3 Q So it would give you more of an accurate
4 representation of what the projectile was?

5 A No, you put the spacer into the hole and
6 you put the dowel rod into it. So you have nothing
7 to do with the hole.

8 Q If you didn't put the cone first, the rod
9 might --

10 A -- will fall because that projectile per
11 se, it didn't penetrate the metal hardly whatsoever.
12 So if you put the dowel rod, it will fall.

13 Q And if it falls, it's not going to give
14 you the accurate representation?

15 A It will not give you anything -- exactly.

16 Q Can you tell me about your kits? What do
17 you have in your kit, your rod kit?

18 A It has those spacers and different
19 colored -- I think it was fiberglass.

20 Q Fiberglass rods?

21 A Yeah.

22 Q Do those colors mean anything?

23 A No, not particularly.

24 Q Some of them are yellow and some green;
25 that doesn't mean anything?

1 A No, sir.

2 Q Do you know how many rods you have in your
3 kit?

4 A Not right offhand, but I think between six
5 and ten.

6 Q You know how many of those cones you have?

7 A Not right offhand.

8 Q You have several of them?

9 A Yes, sir.

10 Q Where do you get your kits from?

11 A I think -- I think our man who does the
12 orders, I think he gets them from Versa.

13 Q If you were to need anymore supplies and
14 to add to your kit to make it whole, would you need
15 a place to go? You could go and get more to make
16 sure you have a full kit?

17 A I would go to another van if I was
18 shorthanded, yes.

19 Q You know what a Plumb Bob is?

20 A Yes.

21 Q What is a Plumb Bob?

22 A It's a line with a weight at the bottom.

23 Q What is that used for?

24 A To seek levels. You can do measurements,
25 too. You can use it for construction.

1 Q Do people in your line of work ever use
2 them to take any kind of measurements, angles,
3 anything to that effect?

4 A We use them when we do body recoveries,
5 excavation, such as when you try to find out the
6 difference in ground level.

7 Q Do you have any devices that you use on
8 occasion to determine angles of projections?

9 A We do, if necessary.

10 Q What type of equipment would you use for
11 that?

12 A I don't know the name right now, but we do
13 angles, yeah --

14 Q If you can describe what it is?

15 A Basically it's like a ruler that you point
16 and you can find an angle.

17 Q Okay. Did you use that to determine the
18 precise angle in this case?

19 A No, I didn't.

20 Q And are you familiar with
21 shooterscalculator.com? Is that something you use?

22 A No, I don't.

23 Q Describe taking pictures to determine
24 angles; would you agree that in order to get an
25 accurate representation of an angle, the best way

1 would be to take a picture from all angles?

2 A Yes.

3 Q The front, back, up and down?

4 A Yeah.

5 Q Were you ever instructed, or did you take
6 or attempt to get any samples of gun powder residue
7 from Mr. Coleman to try to show how far away he was
8 from the vehicle?

9 A We couldn't do it, because F.D.L.E. were
10 not working.

11 Q Do you have training regarding gun powder
12 residue?

13 A Yes, we do.

14 Q And by taking samples of gun powder
15 residue, according to your training, is that one
16 method that you could determine how far away
17 somebody was from an object when they shoot?

18 A The answer will be yes, but there's a lot
19 of variables to that.

20 Q Okay.

21 MR. ADAMS: May I approach the witness
22 with Exhibit 10? These are shell casings that
23 have already been entered into evidence.

24 BY MR. ADAMS:

25 Q These are already in evidence. Can you

1 take out the four shell casings.

2 A (complies)

3 Q Can you take them out of the packet and
4 view them?

5 A Uh-huh.

6 Q Okay. Nothing about those shell casings
7 can tell you how far away he was when he shot the
8 vehicle, correct?

9 A Nothing.

10 Q And where they were found, can't give you
11 any accurate information as far as where he was
12 standing when he shot, correct?

13 A Correct.

14 Q That's because, as you testified, you
15 don't know where the gun was, correct?

16 A Exactly.

17 Q As you were on scene, you said you took
18 the shell casings as you found them, right?

19 A Yes, sir.

20 Q They are spread out?

21 A They are.

22 Q But that doesn't tell you much as far as
23 where the person was or if he was moving at the
24 time?

25 A Correct.

1 Q How long did it take you to get to that
2 scene?

3 A I would say, leaving O.P.D., I would say
4 between 20, 30 minutes.

5 Q So you don't know exactly what happened to
6 that crime scene prior to you getting there?

7 A Correct.

8 Q You don't know if any emergency vehicles
9 had driven through there prior to evidence being
10 preserved?

11 A Correct.

12 Q From the evidence that you took in,
13 including -- you can put those away or do whatever
14 you want to do -- from the evidence that you took,
15 including the magazines and the rounds, were you
16 able to determine that it was likely exactly four
17 shots that were fired?

18 A That's what I found, yes, sir.

19 Q So all four shots that were fired were
20 then accounted for in your investigation?

21 A Yes, sir.

22 Q The dowel rods, there's a yellow, and the
23 green ones, are they all the same width?

24 A Yes.

25 Q Do they come in different calibers, too?

1 A No, sir.

2 Q So they are designed to fit a pretty small
3 caliber, correct?

4 A Yes.

5 Q The .22 caliber, would the dowel rods fit
6 in that?

7 A Most likely, yes.

8 Q So the dowels you use could fit in a
9 substantially small caliber; is that correct?

10 A Yes.

11 Q I'll take those away from you.

12 I'm going to show you what's already been
13 entered into evidence as State Exhibit 5. If you
14 want to, I will give you the picture because the
15 quality isn't great on there. That's a firearm you
16 took a picture of, correct?

17 A Yes, sir.

18 Q Before you took -- you also took a picture
19 of this gun belt?

20 A Yes, sir.

21 Q Do you recall if you removed the firearm
22 for the purpose of taking a picture from the belt?

23 A No, it was found. The way I have to take
24 the pictures is the way I found the scene. So
25 somebody, I don't know who, already had the firearm

1 placed on the ground.

2 MR. ADAMS: Nothing further, Judge.

3 THE COURT: Redirect?

4 - - -

5 REDIRECT EXAMINATION

6 BY MR. ARCKEY:

7 Q Defense asked you about using a laser to
8 take the trajectories. You take photos of laser
9 beams very easily?

10 A No.

11 MR. ADAMS: I object as to relevance.

12 THE COURT: Overruled.

13 BY MR. ARCKEY:

14 Q So do you use these types of instruments
15 to be able to take photos and be able to adequately
16 describe trajectories?

17 A Yes, sir.

18 Q Are these stable, in that they don't slide
19 out or move?

20 A They are stable.

21 Q These are based on the way you find where
22 the bullet is, if there's a bullet there and how the
23 holes were all the way through?

24 A That's right.

25 Q Now they talked a lot about gun powder

1 residue. Can you tell us why gun powder residue is
2 not a good indicator?

3 A Weather, wind conditions. Once again,
4 quality of the bullet, what type of powder, the
5 grain they use.

6 Q When a bullet is fired, what happens to
7 the gases?

8 A They go all over.

9 Q So they are not a good indicator because
10 you don't know how far it could be because of that?

11 A True.

12 Q Is that also why F.D.L.E. doesn't approve
13 of those?

14 A That, and I'll say budget problems, cost.

15 MR. ARCKEY: No further questions, Your
16 Honor.

17 - - -

18 RECROSS EXAMINATION

19 BY MR. ADAMS:

20 Q The first picture, the picture you just
21 looked at, the first rod had that cone we talked
22 about, didn't it?

23 A Yes, sir.

24 Q Is that because it did not penetrate it at
25 accuracy?

1 A You can say that, because it didn't
2 penetrate the metal. Based on my experience, low
3 quality bullets. It's amazing, I've been on
4 shootings, I've been on a homicide, this person got
5 shot several times and bullets went through that
6 frame like nothing. Somehow these bullets, they
7 barely dented the car and to -- the only way to hold
8 in place is to use that adapter otherwise.

9 MR. ADAMS: Thank you.

10 THE COURT: May the witness be excused?

11 MR. ADAMS: Yes.

12 THE COURT: You may be excused.

13 MR. ARCKEY: Approach?

14 (Whereupon, a bench discussion was had out
15 of the hearing of the Jury as follows)

16 MR. ARCKEY: Can we take a break?

17 THE COURT: Yes.

18 (Whereupon, bench discussion was
19 concluded, and the proceedings continued in the
20 hearing of the Jury as follows)

21 THE COURT: Ladies and Gentlemen, if you
22 will go back to the jury room, we will excuse
23 you for a little while. Report back to the
24 jury room, please.

25 (whereupon, the jury was escorted from the

1 courtroom and the proceedings continued in
2 their absence as follows)

3 THE COURT: Court's in recess for ten
4 minutes.

5 (Whereupon, a break was taken at 2:45
6 p.m., after which the proceedings resumed as
7 follows)

8 THE COURT: Ready to bring the Jury back
9 in?

10 MR. ARCKEY: Yes, Judge.

11 THE COURT: Let's go ahead and bring the
12 jurors back in.

13 (whereupon, the jury was returned to the
14 courtroom and the proceedings continued as
15 follows)

16 THE COURT: State, call your next witness.

17 MR. ARCKEY: At this time the State would
18 be calling Junella Uadan, U-A-D-A-N.

19 whereupon,

20 JUNELLA UADAN

21 being first duly sworn, was examined, and testified
22 as follows:

23 THE COURT: Could you tell me your full
24 name, and spell your first and last name for
25 the record.

1 THE WITNESS: Junella Uadan,

2 J-U-N-E-L-L-A, U-A-D-A-N.

3 - - -

4 DIRECT EXAMINATION

5 BY MR. ARCKEY:

6 Q C.S.I. Uadan, who do you work for?

7 A Orange County Sheriff's Office.

8 Q How long you worked there?

9 A Approximately a year and a half now.

10 Q What do you do for them?

11 A Crime scene investigator.

12 Q As a part of your duties, what do you do
13 as a crime scene investigator?

14 A Document, photograph, collecting and
15 preserve evidence.

16 Q As a part of the collecting and preserving
17 evidence, do you sometimes go to hospitals?

18 A Yes.

19 Q Were you at a hospital on the night of
20 either May 28, 2014 or May 29, 2014?

21 A Not those dates. May 30th is when I
22 responded to the hospital.

23 Q When you responded to the hospital, was
24 there something there that you were called there
25 for?

1 A Yes.

2 Q And what was the reason?

3 A They had several items of evidence for us,
4 mostly projectiles.

5 Q Were you given a projectile while you were
6 there?

7 A Yes.

8 Q Okay.

9 MR. ARCKEY: May I approach the witness?

10 THE COURT: Yes.

11 BY MR. ARCKEY:

12 Q Show you what's been previously marked as
13 State Exhibit 11 for Identification purposes. Would
14 you take a look at that.

15 A (complies)

16 Q You recognize that?

17 A I never took it out of its original
18 packaging out of the hospital, but it sounds like a
19 projectile.

20 Q Did you turn that over to a C.S.I. with
21 the Orlando Police Department?

22 A Yes.

23 Q Was that all your involvement in this
24 case?

25 A Yes.

1 MR. ARCKEY: No further questions.

2 - - -

3 CROSS EXAMINATION

4 BY MR. MULLINS:

5 Q I don't want to mispronounce your name.

6 Uadan?

7 A Uadan.

8 Q Let's do that again. I got them up on

9 freeze.

10 Do it again?

11 A Uadan.

12 Q Spell that again?

13 A U-A-D-A-N.

14 Q Okay. Ms. Uadan, you got something -- you

15 responded, somebody gave you something, right?

16 A Yes.

17 Q You don't know what that is, you just

18 received it; is that right?

19 A I was informed by the surgeon that it was

20 a projectile.

21 Q All right. Without saying who said what,

22 without that being here, let me ask you. You

23 received something that looked like bullet

24 fragments, right?

25 A Yes.

1 Q And with that, you just -- you don't have
2 any idea where that came from or any of that; right?

3 A No.

4 Q You just take that over to -- was it
5 Nieves over at O.P.D. that you gave it to?

6 A No, it stayed secured at my locker over at
7 the Orange County Sheriff's Office until I was able
8 to figure out that it wasn't one of our cases, it
9 was actually an O.P.D. case.

10 Q It's an O.P.D. case? As far as you know,
11 you put it in your locker and waited and found out
12 who is supposed to get it and you went and gave it
13 to that individual?

14 A Yes.

15 Q That's it?

16 A Yes.

17 Q Okay.

18 MR. MULLINS: That's all I have, Your
19 Honor.

20 THE COURT: Okay. Any redirect?

21 MR. ARCKEY: No, Your Honor.

22 THE COURT: May the witness be excused?

23 MR. ARCKEY: Yes, Your Honor.

24 THE COURT: Thank you, ma'am.

25 State, call your next witness.

1 MS. GONG: Your Honor, the State will call
2 Destini Hudson.

3 MR. ARCKEY: Your Honor, may we approach?

4 THE COURT: Come on up.

5 (Whereupon, a bench discussion was had out
6 of the hearing of the Jury as follows)

7 MR. ARCKEY: These last three witnesses
8 were a lot quicker than I thought. I had a
9 couple of witnesses who were scheduled to come
10 in tomorrow morning. One had a doctor's
11 appointment. I'm not sure we're going to take
12 two hours today, so I might try to get my other
13 three witnesses in this afternoon, given the
14 time constraints.

15 MS. GONG: We're going to rest tomorrow
16 morning.

17 THE COURT: How many do you intend to call
18 in the morning?

19 MR. ARCKEY: Two or three; two of which
20 has conflicts this afternoon.

21 MS. GONG: They are pretty brief.

22 THE COURT: How many witnesses for the
23 defense?

24 MR. MULLINS: Two, possibly three.

25 MR. ADAMS: I have a hearing on a capital

1 sexual battery on Thursday. What's your policy
2 on going late, if tomorrow afternoon?

3 THE COURT: I've been here until 3:00 in
4 the morning the day before Labor Day weekend.
5 I don't have a problem staying late.

6 MR. ADAMS: I would prefer to go late on
7 Wednesday, if it comes to that.

8 THE COURT: You have any other short
9 witnesses? How many live bodies?

10 This is what I have on the calendar for
11 tomorrow morning. I can start at 8:30.

12 MS. GONG: We have a status hearing
13 tomorrow.

14 THE COURT: That will take two seconds.
15 Thursday, I think I may have a plea.

16 We start at 9:00.

17 MR. ADAMS: We may try to get one more
18 here.

19 THE COURT: Try to get him over here. If
20 not, we will recess until tomorrow morning. I
21 would like to try to close the evidence by
22 lunch, if we can, and do the closings, send
23 them out after lunch.

24 MR. ARCKEY: Mr. Coleman is going to take
25 a while, but the other two won't.

1 (Whereupon, bench discussion was
2 concluded, and the proceedings continued in the
3 hearing of the Jury as follows)

4 whereupon,

5 DESTINI HUDSON

6 being first duly sworn, was examined, and testified
7 as follows:

8 THE COURT: Have a seat. All right. You
9 are very soft spoken, so I need you to speak up
10 loudly, okay?

11 THE WITNESS: Okay.

12 THE COURT: If you think you are being too
13 loud, you are probably not loud enough.

14 Tell me your full name, and spell your
15 first and last name for the court reporter.

16 THE WITNESS: Destini Hudson,
17 D-E-S-T-I-N-I, H-U-D-S-O-N.

18 - - -

19 DIRECT EXAMINATION

20 BY MS. GONG:

21 Q How old are you?

22 A Twenty-two.

23 Q What is your occupation?

24 A Stay-at-home mom.

25 Q You know a person by the name of Aimee

1 Guillory?

2 A Yes.

3 Q Who is she?

4 A She's my god-sister.

5 Q You know a person by the name of Vince

6 Johnson?

7 A Yes.

8 Q Who is he?

9 A He's her son's dad.

10 Q You know a person by the name of Johnathan

11 Coleman?

12 A I know him as a security guard over where

13 we stayed at at the apartment complex.

14 Q What's that apartment complex?

15 A Palm Grove.

16 Q You still live there today?

17 A Yes.

18 Q How long have you lived in that apartment

19 complex?

20 A November will be two years.

21 Q That apartment complex is on W. D. Judge

22 near Mercy Drive?

23 A Yes.

24 Q And Aimee Guillory stays at that apartment

25 complex, right?

1 A Yes.

2 Q Now Mr. Coleman, you said he was a
3 security guard of that complex?

4 A Yes.

5 Q How long has he worked there from May of
6 last year?

7 A I'm not sure. He wasn't there anymore
8 after the incident happened. I didn't see him
9 anymore on the property.

10 Q Before the incident happened, was he there
11 a month before, two months before or --

12 A It was over two months before, before the
13 incident happened, because I had seen him around
14 quite a few times.

15 Q When you see him around, you see him
16 around patrolling the apartment complex?

17 A Yes.

18 Q You know he was a security guard?

19 A Yes.

20 Q The date of this incident was May 28th of
21 last year, correct?

22 A Yes.

23 Q Where were you before walking over to the
24 community center?

25 A Home sleep.

1 Q And why did you decide to leave your
2 apartment?

3 A Because my neighbors knew that I knew her,
4 and I guess whatever happened before I went outside,
5 they came and told me about it and they woke me up
6 because they knew I knew her.

7 Q Somebody came to the door and woke you up?

8 A Yes.

9 Q After you woke up, what did you do?

10 A I went outside to see what was going on,
11 but I put on shoes first before I went outside.

12 Q Now I'm going to put on the overhead
13 State's 1 in Evidence. You recognize this map?

14 A Yes.

15 Q And your apartment complex is right over
16 here (indicating), correct?

17 A Yes.

18 Q And then over here across the street is
19 the community center?

20 A Yes.

21 Q And this street right here is W. D. Judge
22 (indicating)?

23 A Yes.

24 Q And this street right here on the side is
25 Mercy Drive (indicating)?

1 A Correct.

2 Q Your building is where?

3 A My building is over here towards this side
4 (indicating).

5 Q There's a laser pointer right in front of
6 you. If you press that little dot, you can point to
7 it.

8 A My building is right here (indicating).

9 Q Did you walk from there to the community
10 center?

11 A Yes. I was right here (indicating).

12 Q So you walked across the street. When you
13 got across the street where were you standing?

14 A I was more over here in this area right
15 here (indicating).

16 Q That's kind of reddish brown. What is
17 that area (indicating)?

18 A The mulch.

19 Q When you got to that point, what did you
20 see?

21 A Johnathan Coleman had Aimee up here in
22 this area here (indicating).

23 Q What do you mean?

24 A He was behind her with his lights on and
25 he had her outside of his car over here in this area

1 right here (indicating).

2 Q So similar to if someone was getting
3 stopped for a traffic ticket, the cop would be
4 behind the car; right?

5 A Yes.

6 Q So Aimee's car was in front of his car?

7 A Yes.

8 Q Mr. Coleman's car?

9 A Yes.

10 Q Were the lights on?

11 A His lights were on on his car.

12 Q Meaning the flashing lights to his car?

13 A Yes.

14 Q Was there anyone else around besides those
15 two vehicles?

16 A The people that was outside the community
17 center, the kids, and the parents, and then the
18 people that were over in the apartment complex that
19 were just out here just spectating everything.

20 Q So a crowd had gathered at that point; is
21 that fair to say?

22 A Yes.

23 Q Is this daytime or nighttime?

24 A It's daytime, going on like dawn.

25 Q So it's still light outside?

1 A Yes.

2 Q When you walked across the street, did
3 anyone instruct you to do anything?

4 A When I walked across the street, he told
5 me to stay back because I was approaching -- I was
6 trying to approach Aimee to find out what was going
7 on.

8 Q Who is this "he"?

9 A Johnathan Coleman.

10 Q He told you to stay back. Did he just
11 tell you to stay back or did he motion or do any
12 body language?

13 A He said stay back. He walked towards me
14 like I had to stay back from the scene of what was
15 going on.

16 Q When you stayed back, did you stay in that
17 mulch area you were talking about?

18 A Yes. I backed up about two or three feet,
19 but I was still in the mulch area.

20 Q You told us where those two vehicles were.
21 Where was Mr. Coleman standing?

22 A He walked off from Aimee's car and he was
23 approaching me. He was walking more so towards the
24 front of his car on his driver's side.

25 Q The front of his driver's side?

1 A Uh-huh.

2 Q Aimee's car, is it parked or in motion at
3 that time?

4 A It's parked.

5 Q Where is Aimee at that time?

6 A She was sitting on the hood of her car.

7 Q She was sitting on the front hood of her
8 car?

9 A Uh-huh.

10 Q And was Vince around?

11 A Yes, he was a few feet away telling her
12 that she didn't have to -- basically like trying to
13 get her to leave and calm the situation down also.

14 Q So Vince told her that she could leave?

15 A Yes.

16 Q Was anyone else telling her that she could
17 leave?

18 A Yes. It was a lady. I think it was a
19 silver or black car, she was pulling up to the stop
20 sign leaving out of the center area, and she was
21 like baby you don't have to be here, he is not a
22 police officer, he is just a security officer, you
23 don't have to stay here, you can get in your car and
24 leave.

25 Q What was Mr. Coleman's demeanor?

1 A That she doesn't have to get in the car
2 and go on.

3 Q Was he telling that to the lady in the
4 silver car?

5 A Yes.

6 MR. MULLINS: Objection, hearsay.

7 THE COURT: Sustained.

8 BY MS. GONG:

9 Q As Mr. Coleman is speaking to this lady in
10 the silver car, what is Aimee doing?

11 A When he makes the motion to speak to her,
12 he turns his back from Aimee and Vince. She gets in
13 her car and she makes the motion to try to like do a
14 U-turn when she got in her car. She pulled up to do
15 a U-turn to turn her car around and leave out.

16 Q Could you point on your screen and tell us
17 what direction Aimee was going and how she was doing
18 that U-turn?

19 A She was up in this area right here because
20 his car is behind her. She has a compact car, so in
21 the process she had to do a U-turn. Her car wasn't
22 that big to where she had to do the extra stuff to
23 turn the car around. So she did the U-turn, and
24 that's where she came here to come out. She turned
25 around in this area right there (indicating).

1 Q So she's facing the entrance now in front
2 of her car?

3 A Yes.

4 Q When she did that, what did Mr. Coleman
5 do?

6 A When she did that, he started to approach
7 her car, he started to like start to approach the
8 front of her car.

9 Q And is Aimee's car in motion at this time
10 when he's approaching her car?

11 A Yes. She's trying to leave out, she's
12 trying to leave.

13 Q Her car is making a U-turn trying to go
14 out?

15 A She's not going no more than five to seven
16 miles. I wouldn't even give it seven.

17 Q Very slow?

18 A Yes. Like I say, there were people
19 outside and leaving out. There's a stop sign, so
20 she can't just run through the stop sign.

21 Q When you went to the scene, did you see
22 anyone carrying any weapons?

23 A No, I didn't see any weapons out when I
24 walked across the street to the scene.

25 Q Was Aimee armed?

1 A No.

2 Q Did she have any weapons on her?

3 A No.

4 Q Did you see anyone fighting, like physical
5 altercation?

6 A No, I didn't see any physical altercation.

7 Q Did you see anyone try to hit Mr. Coleman?

8 A No.

9 Q Did you see Aimee hit Mr. Coleman?

10 A No.

11 Q Did you see Aimee hit Vince?

12 A No.

13 Q Did you see anyone threatening Mr. Coleman
14 or hear anyone threatening Mr. Coleman?

15 A No.

16 Q Was anyone approaching Mr. Coleman?

17 A No.

18 Q Okay. Were people standing back, away?

19 A Yeah, because he told everybody to back
20 up, like not approaching what was going on, and so
21 everybody is standing back watching what's going on.

22 Q How many people would you say were
23 standing out there at that time?

24 A It was over -- it had to be over ten
25 people. I don't know the exact number, but it had

1 to be over ten people, because like I say, you have
2 people standing outside. Because in the front of
3 the complex you have the apartment that's facing the
4 center and you have kids outside and you have people
5 outside that's watching, and then you have people at
6 the center, and there's a basketball court over to
7 the side. There's a basketball court right here
8 (indicating) --

9 MR. MULLINS: Your Honor, I object to the
10 narrative at this time.

11 THE COURT: Sustained.

12 BY MS. GONG:

13 Q When Aimee is making that U-turn out, you
14 said Mr. Coleman is walking towards her car?

15 A Yes.

16 Q Where does he walk towards?

17 A He walk towards like the front of the car
18 to try to get inside -- I guess he figured if he was
19 in front of the car --

20 MR. MULLINS: Objection to state of mind,
21 Your Honor.

22 THE COURT: Sustained as to that.

23 BY MS. GONG:

24 Q When you say he was walking to the front
25 of the car, are you saying that he's directly in the

1 front hood? Where in the front are you talking
2 about?

3 A Like more so towards the right of her car,
4 the front grill of her car, but on her side, the
5 right. Her car is like -- this is the front of the
6 car and he was more so by the headlight on the front
7 of the car.

8 Q Are you saying the headlight by the
9 driver's side?

10 A Yes.

11 Q That's where he is standing as she's
12 trying to make the U-turn?

13 A Yes, that's how he ended up in the process
14 of her turning, because he walked to her car.

15 Q He's now standing near the corner --
16 driver's side of the corner of her car. Does he do
17 anything?

18 A He reaches his hand inside of her car, I
19 don't know if he grabbed her or not. I know he made
20 a motion to reach inside the car like he was
21 grabbing at something.

22 Q When you say grabbing her car, where is he
23 grabbing at?

24 A Like the door area.

25 Q Is this the driver's side?

1 A Yes.

2 Q Is Aimee's driver's side window up or
3 down?

4 A Her window is down.

5 Q Does he reach into that window?

6 A Yes.

7 Q Do you see what he's grabbing at?

8 A No.

9 Q How long does he reach in there for?

10 A It wasn't no longer than five to ten
11 seconds, because he realized that that wasn't
12 getting her to stop the car.

13 Q You said -- is the car continually moving
14 at this point?

15 A Yes -- no more than like five minutes.

16 Q Is he moving along with the car?

17 A Yes, he's walking with the car.

18 Q What makes him let go?

19 A When he realized that she wasn't going to
20 like stop for him, when she realized that he --

21 MR. MULLINS: Objection as to what

22 Mr. Coleman realized.

23 THE COURT: Sustained.

24 BY MS. GONG:

25 Q When he is putting his -- when he reaches

1 into the car, did he make contact with the car, did
2 the car hit him?

3 A I didn't see anything like that. I didn't
4 see the car hit him or anything.

5 Q Did you see him fall to the ground at that
6 point?

7 A Not when he reached into the car I didn't,
8 no.

9 Q Did you hear him yell ouch, ouch, ouch,
10 I'm hurt?

11 A No.

12 Q Did you see him motion for help at that
13 point?

14 A No.

15 Q Did you see him back away?

16 A He backed away and pulled out his gun.

17 Q Okay. Did you see him motion for his foot
18 or grab his foot?

19 A No.

20 Q So after five seconds he let's go,
21 correct?

22 A Yes.

23 Q After he let's go, does Aimee stop or does
24 she keep on going?

25 A She's still proceeding at her normal

1 speed. She's not going no more than five miles per
2 hour like she was going. All of this is happening
3 in the process of her turning her car around and
4 everything. She turned her car around and heading
5 towards this area right here (indicating).

6 Q There's a stop sign at the corner?

7 A Yes. This is like a stop sign right here
8 (indicating).

9 Q Did you hear a gunshot?

10 A I heard three or four gunshots.

11 Q Did you see who fired the gunshots?

12 A Mr. Andrew (sic) fired the gunshots.

13 Q Where are you standing?

14 A I'm still standing in the same area.

15 Q How far are you away at the point where
16 he's reaching into her car; how far is that
17 distance?

18 A I'm standing right here (indicating) and
19 maybe they are about like right here in this area
20 right here (indicating).

21 Q How many feet, you think?

22 A Maybe like ten to 15 feet, probably.

23 Q When you heard the gunshot or when you saw
24 him fired the gun, where was Aimee's car?

25 A Her car was in motion still -- her car was

1 facing this way (indicating). When he fired the
2 gun, that's when she ended up pausing, because he
3 broke the back window of her car on the driver's
4 side.

5 Q So she's driving away from him still?

6 A Yes.

7 Q And where is he positioned in relation to
8 her car window?

9 A More or so like the tail end of the car by
10 where the gas tank is. He was back in that area
11 (indicating).

12 Q At that time when the first shot fired,
13 did you see him make any act with the car? Was he
14 hit by the car?

15 A No.

16 Q Was he falling down?

17 A No, not when the gun was fired, no.

18 Q So he was still standing?

19 A Yes, he was still standing.

20 Q So how many gunshots did you see him fire?

21 A I seen him fire three or four.

22 Q From what direction?

23 A Inside her car.

24 Q You said at some point Aimee stopped?

25 A Yes. After her car window bursted, she

1 made a pause and so she stopped like up right in
2 this area right here (indicating). When she made
3 the pause, I guess she realized that she was hit and
4 she sped off --

5 MR. MULLINS: Objection, Your Honor. What
6 she realized --

7 THE COURT: Sustained.

8 BY MS. GONG:

9 Q So you saw the car stopped, right?

10 A Yes.

11 Q Stopped, how long? A couple of second?

12 A Yes, a couple of seconds.

13 Q After a couple of seconds, where did the
14 car go?

15 A When she got here, she sped off and then
16 she made a right onto W. D. Judge.

17 Q So she went a little faster than five
18 miles per hour?

19 A Yes.

20 Q What did Mr. Coleman do after Aimee turned
21 out of the community center?

22 A He still made a motion to go after her.
23 Even as she sped out, he still was trying to go
24 after her. He was striding towards like the back of
25 her car. He was following behind her leaving out of

1 the center.

2 Q Was he jogging, sprinting out?

3 A Yes.

4 Q How far did he jog or sprint out to?

5 A He sprinted out to maybe like right here
6 (indicating).

7 Q What area is that?

8 A This is on W. D. Judge Drive. It's like a
9 canal right here (indicating) and it's like some
10 metal poles that's like blocking the canal from the
11 sidewalk. He stopped right here (indicating), and
12 that's when he made the motion to fall down like he
13 was hit or hurt by something.

14 Q When he was jogging out after Aimee's car,
15 how far would you say he had to jog out from?

16 A He ran from like right here where the car
17 was to about right here (indicating).

18 Q As he's running, is he bleeding?

19 A No, I don't see any blood from him.

20 Q As he's running, is he holding his leg?

21 A I didn't see him hold his legs.

22 Q Did he run like he was fine?

23 A To me, yes, he did.

24 Q As he's running, did he yell out I'm hurt,
25 I'm hurt?

1 A No.

2 Q As he's running, does it seem like he's
3 tripping on anything?

4 A No.

5 Q So he gets out to that ditch, that rail,
6 you said, and then he falls down?

7 A Yes, by the time he makes it out here
8 (indicating), like I said, she sped off. She had an
9 Audi. By the time he makes it out here, she's at
10 the light to make the motion to go down Mercy Drive
11 itself.

12 When he realized she was gone, he turned
13 around then to proceed to walk back towards his car,
14 and that's when he made the motion to fall on the
15 ground, like he grabbed the railing that's right
16 here (indicating). He grabbed on the railing and
17 fell to the ground like he had hurt his leg.

18 Q When he turned around were there
19 spectators behind him?

20 A Yes.

21 Q So the crowd was behind him?

22 A Yes.

23 Q When he turned around, would he be able to
24 see those people behind him?

25 A Yes.

1 MR. MULLINS: Objection, Your Honor, as to
2 what Mr. Coleman sees.

3 THE COURT: Overruled.

4 BY MS. GONG:

5 Q And at no time did he ask any of those
6 people for help; correct?

7 A Then he was calling out for help then, but
8 everybody was like he's faking. So nobody believed
9 him, nobody --

10 MR. MULLINS: Objection, Your Honor, to
11 what other people thought or said.

12 THE COURT: Sustained.

13 MR. MULLINS: Move to strike.

14 THE COURT: Comment will be stricken from
15 the record.

16 MR. MULLINS: The Jury will be instructed,
17 Your Honor?

18 THE COURT: I've instructed them. When I
19 sustain the objection, that they are to
20 disregard the answer, as well as the question.

21 BY MS. GONG:

22 Q Now after Aimee drove off, what did you
23 do?

24 A After she drove off, I walked back home.
25 I called her mom on my phone and I was walking back

1 to my car to get into my car.

2 Q When you walked off, were the police
3 already on the scene?

4 A No.

5 Q Why did you not wait for the police?

6 A Because I wanted to go see if she was
7 okay. I didn't care if he was okay or not, I'm
8 sorry, I didn't.

9 Q Why were you worried if she was okay?

10 A Because she's my god-sister and he shot
11 three or four times into her car and he busted her
12 back window out with that first shot. When she sped
13 off, that let me know then that something was wrong
14 with her.

15 Q Did you find out she eventually stopped at
16 a convenience store; correct?

17 A Yes.

18 Q How did you find out she was at that
19 location?

20 A I just so happened to get in my car and
21 drive that way. You could see the car from the
22 store from the light. I seen her car up there to
23 the store and I drove there.

24 Q You waited for the police with her at that
25 location?

1 A Yes.

2 Q And you stayed at the scene and gave a
3 statement to the police?

4 A Yes.

5 Q You told the police what you saw?

6 A Yes.

7 Q Now when Mr. Coleman was reaching into
8 Aimee's car, was there anyone standing next to him?

9 A No. No one was around the car.

10 Q How far was the closest person to
11 Mr. Coleman at that time?

12 A I'd say probably, like I say, ten to
13 15 feet. Everyone had backed up at that moment
14 because she was moving her car. Vince had walked
15 over here on this side (indicating). As she was
16 moving her car, even he had moved over here
17 (indicating). We all had backed away to see what
18 was going on.

19 Q So everyone is about ten to 15 feet away
20 from Mr. Coleman as he's reaching into the car?

21 A Yes.

22 Q Do you see the person who fired those
23 shots at Aimee's car in the courtroom here today?

24 A Yes.

25 Q Could you point to him and tell me what

1 color clothing he's wearing?

2 A He has on the black and white suit,
3 Mr. Coleman.

4 Q What color tie?

5 A It looks purple or burgundy from here.

6 MS. GONG: Let the record reflect that the
7 witness has identified the defendant.

8 I have no further questions, Judge.

9 THE COURT: Cross-examination.

10 - - -

11 CROSS EXAMINATION

12 BY MR. MULLINS:

13 Q You say Aimee is your god-sister?

14 A Yes.

15 Q What does that mean?

16 A Her mom is my god-mom.

17 Q Okay. So you have known her your whole
18 life, right?

19 A Yes.

20 Q You are close to her?

21 A Pretty much.

22 Q Okay. Um, okay. Now you were across the
23 street at the time that this all began; is that
24 right?

25 A Yes.

1 Q You are in the southwest corner of the --

2 MR. MULLINS: May I, Your Honor?

3 THE COURT: You may.

4 BY MR. MULLINS:

5 Q Maybe it's better to look at it this way.

6 Now your apartment, can you get that laser pointer

7 and show us where the apartment is again.

8 A To down here (indicating).

9 Q You are in the back from where these
10 events may have occurred, right?

11 A Yes.

12 Q You didn't hear the earlier altercation
13 that might have happened between Vince and Aimee?

14 A No, I didn't hear anything.

15 Q You didn't hear any of that?

16 A No.

17 Q And you say you were sleeping?

18 A Yes.

19 Q All right. So at some point this became
20 known to you, you went across the street?

21 A Yes.

22 Q All right. The first thing you see is
23 Ms. Guillory being held by Mr. Coleman?

24 A Yes.

25 Q She's outside the car already?

1 A Yes.

2 Q You don't see what happened before any of
3 that?

4 A No.

5 Q She's outside the car and he has his gun
6 holstered, or is it out?

7 A He has his gun holstered at this point.

8 Q Holstered.

9 Now Mr. Coleman is facing W. D. Judge,
10 right?

11 A No. Mr. Coleman is facing inside of the
12 center.

13 Q But at some point he had his back to Aimee
14 when the car started moving; is that right?

15 A Yes.

16 Q So he had his back to Aimee and he's
17 tending to Mr. Johnson; is that right?

18 A No, he had his back to Aimee tending to
19 the person at the stop sign. Mr. Johnson is by
20 Aimee. They are over here in this area (indicating)
21 because he was already at the car with Aimee when he
22 had them pulled over.

23 Q You are talking about Mr. Johnson in the
24 back where you just indicated with the pointer?

25 A Yes.

1 Q You had Mr. Coleman up near the
2 intersection by the stop sign?

3 A I have his car right here, and Aimee's car
4 is a little in front of him.

5 Q Where is Mr. Coleman?

6 A He's -- like I say, he started walking
7 towards the front. He never made it up here
8 (indicating), in here in this area (indicating),
9 process of starting with the lady, if he realized
10 that Aimee is getting in her car.

11 Q She got into her car and turned around?

12 A Yes.

13 Q And she's coming in his direction?

14 A Yes.

15 Q And his back is still towards her?

16 A No, he turned around.

17 Q He turned around and he's facing her now?

18 A Yes.

19 Q Okay. Now did she drive straight out or
20 did she swerve?

21 A She drove straight out here, but she had
22 to turn, but she made an abrupt turn.

23 Q She swerved around Mr. Coleman?

24 A Yes, so she wouldn't make contact, because
25 he ran towards her car. So she did swerve.

1 Q Your testimony before this jury here today
2 is that he had at no point contacted her vehicle; is
3 that correct?

4 A Yes, that is correct.

5 Q Do you remember testifying on November 6th
6 with regard to this incident here in this courtroom?

7 A Yes.

8 Q You remember that?

9 A Yes.

10 Q Were you under oath at that time?

11 A Yes.

12 Q And you promised to tell the truth?

13 A Yes.

14 Q Okay.

15 MR. MULLINS: Your Honor, at this time I
16 would like to approach the witness.

17 MS. GONG: If we could have a page and
18 line number, Judge.

19 MR. MULLINS: I'd like to show the State,
20 Your Honor.

21 THE COURT: Okay.

22 MR. MULLINS: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25

1 BY MR. MULLINS:

2 Q Ma'am, I want you to take a look through
3 that for a minute and see if you recognize if that
4 is your deposition testimony on November 6th. It
5 was a deposition, not a court hearing. I'm sorry.

6 A What am I looking at?

7 Q Take a look at it and see if that reflects
8 your testimony. Is that your testimony?

9 A Yes.

10 Q And that's a transcription of your
11 testimony that you gave at your deposition?

12 A Yes.

13 Q Okay. Now I want you to take a look at
14 this, page 12, read that to yourself and read up to
15 line 16.

16 A (Complies) Okay.

17 Q Now, I'm going to ask you again. Did
18 at -- at some point did Ms. Guillory's vehicle make
19 contact with Mr. Coleman?

20 MS. GONG: I object. Approach?

21 THE COURT: Come on up.

22 (Whereupon, a bench discussion was had out
23 of the hearing of the Jury as follows)

24 MS. GONG: Page 16, there is nothing
25 inconsistent about it. His question was did

1 you see him make contact with her vehicle, and
2 there's nothing inconsistent from what she said
3 in the depo.

4 THE COURT: He hasn't asked her about the
5 depo. He just asked her the same question
6 again. She's going to give an explanation of
7 whatever her response is. You can't seek to
8 impeach her at this point.

9 MS. GONG: He's going to say at the
10 depo --

11 THE COURT: He hasn't said that yet.

12 (Whereupon, bench discussion was
13 concluded, and the proceedings continued in the
14 hearing of the Jury as follows)

15 BY MR. MULLINS:

16 Q Ma'am, did her car make contact with him?

17 A I see in the thing it says that he was
18 drug. I didn't necessarily mean drug.

19 Q You mean dragged?

20 A Right, I didn't mean dragged. He was
21 walking with the car, that's what I mean by the
22 motion of her in her car, dragging him or whatever
23 it said in there, but it wasn't like she hit him
24 with her car or anything like that. Anything
25 physical that he made contact with her car, it was

1 him sticking his hand in her car holding on to her
2 car doors and was moving with the car as the car was
3 moving.

4 Q You said at the deposition that it caused
5 her to drag him, right?

6 A I probably was a little off then, but
7 that's why I'm correcting myself.

8 Q You were off then, but you are on today?

9 A I'm correcting myself today, yes.

10 Q If I understand you correctly, you said
11 after she left, after the shots were fired, he is
12 running down W. D. Judge Road -- he's actually
13 running down W. D. Judge Road chasing her?

14 A He ran out of the center to about here
15 (indicating). He didn't go down W. D. Judge, but
16 right here (indicating).

17 Q 100 feet down W. D. Judge?

18 A Maybe.

19 Q And you say she was going five to seven
20 miles an hour?

21 A As she was approaching the stop sign, yes,
22 as he was shooting at her and everything, yes.

23 Q She was going five to seven miles an hour?

24 A Yes.

25 Q You have him immediately prior to that

1 he's in front of her car, by the headlight?

2 A Yes.

3 Q Okay. Now that's the first time you saw
4 him pull out the gun, is that right, the first time
5 when he started shooting?

6 A He had an object drawn at first when he
7 was by the headlight, and I told her that it could
8 have been a gun, it could have been a cell phone.
9 Like I say, I'm correcting myself now. It was an
10 object drawn at that point in time, but --

11 Q Wait a minute. It wasn't a gun now, it
12 might have been a cell phone?

13 A I'm saying I don't know what it was,
14 because I just seen an object in his hand drawn, but
15 how it was drawn, it was like a gun, that's why I'm
16 saying it could have been a gun, because he pointed
17 it towards her car. Nobody points cell phones at
18 nobody --

19 Q So it wasn't a cell phone --

20 A I wasn't in his hand to see what it was in
21 his hand. I'm close enough to see something in his
22 hand, but I can't see exactly what it is.

23 Q Now when Aimee Guillory got into her car,
24 Mr. Coleman's back was turned?

25 A In the process of her getting into her

1 car, yes.

2 Q And he held on for --

3 A A few seconds.

4 Q For two to three feet, does that sound
5 about right?

6 A Yeah.

7 Q Ms. Hudson, all of these events occurred
8 within seconds; is that fair to say?

9 A Yes.

10 Q We're talking about a relatively short
11 distance there, W. D. Judge? Let me show you
12 something else --

13 MR. MULLINS: May I, Your Honor?

14 THE COURT: You may.

15 MR. MULLINS: May I approach the witness?

16 THE COURT: You may.

17 MR. MULLINS: Thank you.

18 BY MR. MULLINS:

19 Q This has been admitted into evidence as
20 Defense Exhibit 1. Can you tell us what that is?

21 A The entrance to the center.

22 Q Now come along this side. Um, this is
23 the -- what is this (indicating)?

24 A This is W. D. Judge.

25 Q What's the rest of this (indicating)?

1 A That's the community center.

2 Q She's coming out of this lane

3 (indicating), is that right?

4 A Uh-huh.

5 Q And how fast is she moving? You said she
6 was moving about five to seven?

7 A Yes.

8 Q At this point --

9 A She pauses up in this area right here
10 (indicating).

11 Q Up here (indicating)? Is that where the
12 shooting happened?

13 A She pauses up here in this area right here
14 because she was close to the stop sign.

15 Q This was after she paused, after she was
16 shot, right?

17 A She paused after she was shot, yeah.

18 Q She didn't take off or anything?

19 A After her pause, that's when she took off,
20 after she paused.

21 Q But the shooting happened back in here
22 (indicating); is that right?

23 A The shooting happened up in this area
24 right here (indicating). She was approaching this
25 (indicating). As the shooting was going on, the car

1 was still moving. Her car was in motion. So she's
2 approaching the entrance -- the exit.

3 Q The shooting is back here, right
4 (indicating)? She stops, he's running, she --

5 A He's on the side of her car. How he shot
6 into the car, he's on the back of the car by the gas
7 tank area. Being that she's approaching this, he's
8 more so back here (indicating). She is more so
9 right here (indicating).

10 Q He was hanging on to the car near the back
11 area?

12 A He was hanging on to the car near the
13 driver's window. He let go of her car to grab his
14 holster. As he's grabbing his gun, she's still
15 moving her car. He's back towards the gas tank area
16 now.

17 Q And then she pauses, he is chasing after
18 her, right?

19 A Yes.

20 Q That's your testimony?

21 A Yes.

22 Q Then she makes this right-hand turn down
23 W. D. Judge?

24 A Yes.

25 Q He's still chasing after her?

1 A He goes down to the sidewalk, yes.

2 Q She didn't drive straight out, she swerved
3 to miss him, right?

4 A Yes.

5 Q Now you recall that deposition, we talked
6 about November 6th, right?

7 A Yes.

8 Q You were under oath and all of that?

9 MR. MULLINS: Approach the witness, Your
10 Honor?

11 THE COURT: Yes.

12 BY MR. MULLINS:

13 Q Take a look at lines four through ten on
14 this page. Tell me if you recognize that as your
15 testimony.

16 A (Complies) Yes.

17 Q Okay. Now let me ask you again. Have you
18 had sufficient time to review it?

19 A Uh-huh.

20 Q The only time you saw the gun out, your
21 testimony is, when he was shooting, firing the gun,
22 except for the first time where it might have been a
23 cell phone?

24 A Yes.

25 Q But at first, back on November 6th, you

1 indicated that he pulled the gun out in front and he
2 puts the gun back?

3 A Uh-huh.

4 Q Then he pulls it out again?

5 A That's what I was referring to when I said
6 I don't know what object he had in his hand, but he
7 made the motion to put it back and just grabbed it
8 again, that's what I told you a few minutes ago.

9 Q And you -- he was in front of the car
10 blocking her way; is that right?

11 A At first. That's why I say she went
12 around him.

13 Q She was going a little faster than he
14 could walk?

15 A Not more than seven miles.

16 Q About seven miles?

17 A Yes.

18 Q You know what seven miles per hour look
19 like?

20 A I drive, so I could tell, yes.

21 Q Okay.

22 MR. MULLINS: Excuse me, Your Honor. If I
23 may?

24 THE COURT: You may.

25 (Pause)

1 MR. MULLINS: Nothing further, Your Honor.

2 THE COURT: Redirect?

3 MS. GONG: Yes. Just briefly, Judge.

4 - - -

5 REDIRECT EXAMINATION

6 BY MS. GONG:

7 Q When Aimee -- after Aimee made that turn
8 and was heading out of the complex, did it look like
9 that she was driving in Mr. Coleman's direction?

10 A No, not -- like I said, he seen the car
11 turning around. She wasn't coming at him at all.
12 That's why I say he was more in the front towards
13 like the headlight area of the car on the driver's
14 side, because he wasn't necessarily coming at her.

15 Q When you are saying he's at the headlight
16 towards the driver's side, is he standing in front
17 of the car or is he standing to the side --

18 A Yes, he's in the front of the car, and
19 like I say, she went around him, that's how he got
20 on the driver's side of the car.

21 Q So she went around him and he ended up on
22 the driver's side of her car, towards the front?

23 A Yes.

24 Q Did it appear that she was -- when she was
25 driving out, does she have to swerve to avoid him or

1 does she go right towards him?

2 A Like I say, she was doing a U-turn, so she
3 did swerve. He was standing near in front -- when
4 she turned around he was in front of her car, so she
5 did have to swerve to not hit him.

6 Q Where did she swerve to?

7 A She went around to his right.

8 Q Okay. Now when you heard those three or
9 four gunshots, was there a pause in between or was
10 it a quick bam-bam-bam?

11 A It was a quick bam-bam-bam. It wasn't a
12 pause.

13 Q Okay.

14 MS. GONG: I have no further questions,
15 Judge.

16 THE COURT: May the witness be excused?

17 MS. GONG: Subject to recall.

18 MR. MULLINS: If I may follow up for now.

19 THE COURT: Go ahead.

20 - - -

21 RECROSS EXAMINATION

22 BY MR. MULLINS:

23 Q You said there were three or four shots?

24 A Yes.

25 Q They were real close to each other?

1 A Yes, they were shot repeatedly.

2 Q Would you say they were fired within a
3 second or two?

4 A Like two seconds between each of them.

5 Q All of them were fired two seconds between
6 each other?

7 A Yes, he fired rapidly --

8 MR. MULLINS: That's all I have.

9 THE COURT: Witness excused?

10 MS. GONG: Yes, subject to recall.

11 THE COURT: Thank you, ma'am.

12 MR. ARCKEY: Your Honor, may we approach?

13 THE COURT: Come on up.

14 (Whereupon, a bench discussion was had out
15 of the hearing of the Jury as follows)

16 MR. ARCKEY: I apologize for not being
17 able to get another person in at this point. I
18 have three more people tomorrow morning. They
19 shouldn't be much longer than this one.

20 MR. MULLINS: Who do you have?

21 MR. ARCKEY: Jolly, Johnson and Myeshia.

22 MR. MULLINS: No, that's not going to be
23 long. No surprises there.

24 THE COURT: Okay. All right.

25 (Whereupon, bench discussion was

1 concluded, and the proceedings continued in the
2 hearing of the Jury as follows)

3 THE COURT: Ladies and Gentlemen, we've
4 gone through all the witnesses that we had
5 scheduled for today, so we're ahead of
6 schedule. There could be up to possibly six
7 witnesses tomorrow, may be shorter than that,
8 so I anticipate we will be done with the
9 testimony of witnesses hopefully by lunch, and
10 then we can do closing arguments, instructions
11 and have you out deliberating sometime tomorrow
12 afternoon. So we're on schedule.

13 What I'm going to do is send you-all home
14 and work with the attorneys on what we need to
15 get ready with tomorrow for you, and ask you to
16 come back tomorrow morning at 9:00 a.m. I have
17 a few things I need to take care of, but by
18 9:00 we should be ready to go.

19 Same rules apply. Do not do any research,
20 maps or investigation on your own. If you see
21 us, we're not trying to be disrespectful, just
22 maintaining our distance. Come back the same
23 time tomorrow morning, same spot.

24 Enjoy your evening.

25 (Whereupon, the jury was escorted from the

1 courtroom and the proceedings continued in
2 their absence as follows)

3 THE COURT: Anything that we need to
4 address before we adjourn for the evening?

5 MR. ADAMS: Nothing from the defense, Your
6 Honor.

7 MR. ARCKEY: Nothing from the State.

8 THE COURT: Has the defense seen the
9 proposed verdict forms?

10 MR. ADAMS: I haven't seen them.

11 THE COURT: In terms of lesser included
12 offense, have you-all thought about that?

13 MR. MULLINS: Can we advise the Court on
14 that tomorrow, Your Honor?

15 THE COURT: What I've done at this point
16 in time, there are no lesser included category
17 ones on the shooting charge in count two.

18 In count two, lesser included are felony
19 battery, as well as simple battery.

20 MR. MULLINS: I think those are probably
21 appropriate, Your Honor. Those are category
22 two lessers.

23 THE COURT: Category one lessers.

24 MR. MULLINS: Yeah, I think those are
25 appropriate.

1 THE COURT: Here is a copy of the verdict
2 forms. If you will take a look at those over
3 the evening and let me know if there are any
4 problems with them.

5 The next question is, on the weighing the
6 evidence instruction, the one where there's --
7 six through ten paragraphs -- I think six,
8 seven, eight, apply based upon the one witness
9 having pending charges.

10 I think one can argue preferred treatment
11 or pressure, which would be six or seven.

12 I think there's been inconsistencies, so
13 eight would stay.

14 My question to any of you, would be nine
15 and ten, felony or misdemeanor --

16 MR. ADAMS: I don't think there's any
17 testimony related to that.

18 THE COURT: I think I can take that out.

19 What about general reputation for honesty
20 and truthfulness?

21 MR. ADAMS: I don't expect that to come
22 in.

23 THE COURT: I think I can take those out.

24 MR. ARCKEY: I don't think so either.

25 THE COURT: I am going to have to hear

1 what the testimony is tomorrow, that is, as far
2 as proposed jury instruction for citizen's
3 arrest, kind of enlighten me what the theory or
4 idea is --

5 MR. ADAMS: It's really more of a counter
6 to what we think the State is arguing. They
7 have already argued in their opening
8 statements, and I anticipate the
9 cross-examination of Mr. Coleman, that he had
10 no business in ever getting involved in the
11 first place. I don't think it goes into the
12 elements of self-defense.

13 If the State's is going to argue that he
14 had no business being there in the first place,
15 legally he had the ability to do what he did.
16 Half of their opening statement was about him
17 getting involved in something that he had no
18 business getting involved in.

19 THE COURT: Okay. State?

20 MR. ARCKEY: Your Honor, I believe that
21 there has to be a commission of a felony for
22 there to be, or a disorderly situation, breach
23 of the peace for a felony --

24 THE COURT: There has to be at least some
25 evidence in the record to support that theory.

1 MR. ARCKEY: Yes.

2 The State is also arguing that even if
3 that is put into the record, it confuses
4 issues, and I believe it's adequately put forth
5 by any self-defense instruction that he is
6 going to put forth in this case. This adds an
7 element to this case where the State has to
8 pretty much disprove that a felony or a breach
9 of peace has occurred, and I don't think that
10 that is something that -- there's a reason why
11 there's no standard jury instruction for a
12 private citizen to arrest someone.

13 Additionally with the case I provided
14 earlier, the Buchanan v. State, which I will
15 say, has to deal with a -- someone trying to
16 execute an arrest warrant that runs into the
17 similar issues we have here, that there is no
18 citizen's arrest in this case, and at this
19 point it's the State's position that there is
20 none and it shouldn't be added, but I believe
21 it confuses issues and is meant to kind of
22 confuse the Jury, and I'm sure we will get to a
23 point where there's enough in the record where
24 I don't have that argument with it not being
25 a part of the record.

1 THE COURT: I'm not asking anyone to make
2 a definitive argument. I'm just trying to get
3 your thoughts and do some research when I'm
4 confused with all the evidence tomorrow.

5 The Buchanan case you cited, it says the
6 use of any force to effectuate an arrest by
7 bonding somebody out on bond is not permissible
8 because they track one of the languages that
9 effectuates an arrest.

10 My question is, is that in part of the
11 standard jury instruction? There is a portion
12 that talks about, um, no duty to retreat, and
13 if the defendant was not engaged in an unlawful
14 activity and assaulted in a place where he had
15 a right to be, then there's no duty to retreat
16 and meet force with force.

17 Why would an instruction that's exercising
18 the right to arrest somebody as a citizen is
19 really not be appropriate to counter an
20 argument that was engaged in an unlawful
21 activity, I guess, is my question for the
22 State?

23 MR. ARCKEY: Your Honor, because you still
24 can't use deadly force to detain someone, and
25 there's case law on that where I know in a

1 Supreme Court case where someone is jumping a
2 fence in a burglary and an officer shoots him
3 and they say that's an unlawful use of deadly
4 force.

5 The fact of the matter is, I believe that
6 there -- depending on how the testimony comes
7 out, that deadly force is not something that
8 you can use to detain someone in a citizen's
9 arrest.

10 THE COURT: We're not suggesting that the
11 instruction say that you can use deadly force
12 to detain someone. They are suggesting that I
13 advise the jurors that, as a matter of common
14 law, a private citizen has the right to arrest
15 somebody who commits a felony in their
16 presence, we're not asking to say then that
17 then justifies the use of deadly force.

18 MR. ARCKEY: I thought that's where they
19 were going with it with the discussion they had
20 yesterday when we were standing around here.

21 MR. ADAMS: If I can quote that case,
22 Campbell v. State --

23 THE COURT: There's about 20 that stands
24 for that proposition, taken back to the '70's
25 and '60's. I'm not concerned that that's the

1 State of the law, I'm sure that's the state of
2 the law that's used all the time by the State.
3 So I'm not concerned about that.

4 My concern is, how is it applicable to the
5 defense in this case and he -- but I'm not
6 going to give an instruction that that
7 justifies the use of deadly force.

8 MR. ADAMS: Campbell relates specifically
9 to when it is appropriate to add a jury
10 instruction. It says if there is any evidence
11 to support such an instruction, that he's
12 entitled to it, and if it's valid law.

13 THE COURT: As long as it doesn't mislead
14 the Jury. I know what the standard is.

15 MR. ADAMS: He hasn't testified yet, but
16 he is going to testify.

17 THE COURT: Assuming that there's some
18 evidence to support the instruction, that's why
19 I'm having the discussion with you-all. I want
20 you-all to kind of look at specifically the
21 portion of the standard jury instruction that
22 talks about the duty to retreat or no duty to
23 retreat, where it says if the defendant was not
24 engaged in an unlawful activity, one could
25 argue on your side that the deputy was engaged

1 in unlawful activity by trying to detain them,
2 to counter that, it seems that he was
3 exercising his right to conduct a citizen's
4 arrest. That's a question of fact for the
5 Jury, whether they believe that or not, but I
6 don't think I can limit that as a potential
7 theory of defense, if that's where we're going.

8 So I invite you-all to look at that, if
9 there's any case law out there one way or
10 another, but am I correct in stating that
11 that's the reason you want the citizen arrest
12 instruction?

13 MR. MULLINS: Yes, Your Honor, we want
14 that.

15 THE COURT: Any reasons other than that --

16 MR. MULLINS: So that it was clear that he
17 was lawfully in a place where he was allowed to
18 be.

19 THE COURT: Other than for that purpose,
20 is there any other purpose for which you wanted
21 that instruction?

22 MR. ADAMS: And also the State has already
23 made the arguments, even if there wasn't a duty
24 to retreat argument in the jury instructions,
25 I'm sure there will be, but we would still want

1 it because of things that has already been
2 said.

3 THE COURT: I'm not sure you get an
4 instruction because the State argued something.

5 MR. ADAMS: And there's going to be
6 testimony.

7 THE COURT: Okay. All right.

8 MR. MULLINS: I think the scintilla
9 standard, if there's any evidence at all that
10 support, supported by law, as the Court already
11 indicated, then I believe we're entitled to it.

12 THE COURT: And let's see. Is there any
13 evidence of any prior threats or difficulties
14 between Ms. Guillory and Mr. Coleman.

15 MR. MULLINS: No. There aren't any prior
16 threats.

17 THE COURT: I didn't anticipate there
18 were, but I wanted to know before I started
19 taking things out.

20 What about reputation evidence as it
21 relates to the victim?

22 MR. ADAMS: It doesn't look like it's
23 going to come in at this point.

24 MR. MULLINS: Reputation, no.

25 THE COURT: Then I've deleted that from

1 C E R T I F I C A T E

2 STATE OF FLORIDA:

3 COUNTY OF ORANGE:

4 I, Bobby V. Timms, Official Court Reporter
5 of the Ninth Judicial Circuit of Florida, do
6 hereby certify pursuant to Florida Statute 29,
7 that I was authorized to and did report in
8 stenographic shorthand the foregoing
9 proceedings, and that thereafter my stenograph
10 shorthand notes were transcribed to typewritten
11 form by the process of computer-aided
12 transcription, and that the foregoing pages
13 contain a true and correct transcription of my
14 shorthand notes taken therein.

15 Witness my hand this 14TH day of December
16 2015, in The City of Orlando, County of Orange,
17 State of Florida.

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 Bobby V. Timms, RPR-CP

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Exhibit H

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**IN THE CIRCUIT COURT, OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION**

STATE OF FLORIDA,

PLAINTIFF,

VS.

JONATHAN ANDREW COLEMAN,

DEFENDANT./

CASE NO.: 48-2014-CF-7184-A-O

DIVISION NO.: 16

VOLUME V OF VII

JURY TRIAL

BEFORE

THE HONORABLE GREG TYNAN

JUNE 24, 2015
ORANGE COUNTY COURTHOUSE
ORLANDO, FLORIDA 32801
CATHY L. MATTA, RPR

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

**ERIC ARCKEY and
LISA GONG GUERRERO
ASSISTANT STATE ATTORNEYS**

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1 June 24th, 2015

2 (Commencing at 9:26 a.m.)

3 **THE COURT:** That gets us back to our trial case.

4 **THE COURT DEPUTY:** Judge, they're in the
5 conference room. I'll go get them.

6 **THE COURT:** State of Florida versus Jonathan
7 Coleman, 2014-CF-7184-A-O. The State attorneys are
8 present. Both defense counsel are present.
9 Mr. Coleman is present. All of our jurors are back.

10 Anything from either the State or defense before
11 we bring the jury back in and continue with the trial?

12 **MR. ADAMS:** Nothing from the defense, Judge.

13 **THE COURT:** State ready to proceed?

14 **MR. ARCKEY:** State is ready, Judge.

15 **THE COURT:** Bring the jury in.

16 (The jury entered the courtroom at 9:27 a.m.)

17 **THE COURT:** All right. Have a seat, please. All
18 right. Good morning, ladies and gentlemen. I know
19 you-all -- I was ready to go at nine. I know you-all
20 were ready to go at nine. Some lawyers on some other
21 cases weren't ready for 8:30. By the time they got
22 ready, it was nine. I'm going to have a discussion
23 with them about that because that's not fair to
24 you-all. But needless to say, that's the reason why
25 we're late. We're ready to proceed now at this point.

1 **A.** Good morning.

2 **Q.** How old are you?

3 **A.** Eighteen now.

4 **Q.** Where do you live?

5 **A.** I live on Silver Star.

6 **Q.** Do you currently have a job?

7 **A.** I do.

8 **Q.** What do you do?

9 **A.** Walmart overnight stocker.

10 **Q.** Ms. Williams, were you a witness to an event that
11 occurred on May 28th, 2014?

12 **A.** Yes, sir.

13 **Q.** And can you describe what you saw first that day
14 or what happened that day?

15 **A.** I remember waking up. I was visiting one of my
16 baby daddy people. I was visiting his side of the family
17 over there in Palm --

18 **THE COURT REPORTER:** I'm sorry, in what?

19 **THE WITNESS:** In Palm Groves. That's what the
20 apartment complex is called.

21 **BY MR. ARCKEY**

22 **Q.** So you were at Palm Groves?

23 **A.** Yes, sir.

24 **Q.** At some point was there a commotion that took your
25 attention?

1 **A.** There was a knock on the door. There was a knock
2 on the door. Someone was banging on the door for Destiny to
3 come out. By that time I was sitting on the couch. I let
4 her walk out first. When she didn't come back in, I put on
5 my slides and walked out behind her.

6 **Q.** Now, do you know an Aimee Guillory?

7 **A.** I didn't know her like that, but I was familiar of
8 her from Destiny.

9 **Q.** Can you describe your relationship with Aimee
10 Guillory?

11 **A.** Never hung with her, just hey and bye when I saw
12 her.

13 **Q.** Now, who is related -- do you have anyone that you
14 know that's related to her?

15 **A.** Well, Destiny is like her godsister and my baby's
16 father is like her cousin from, like, childhood. They grew
17 up together.

18 **Q.** Do you know a Vince Johnson?

19 **A.** No, sir.

20 **Q.** Have you ever spoken to Ms. Guillory about this
21 case?

22 **A.** No, sir.

23 **Q.** Have you talked to her about court dates or
24 anything like that?

25 **A.** Yes, we mentioned about one court date. That's

1 when she first got a court date in the mail, and I didn't
2 receive it because I had a address change.

3 Q. But you never talked about the facts or anything?

4 A. No, sir.

5 Q. Now, after that knock on the door, where did you
6 go?

7 A. I started walking towards the front of the
8 complex.

9 Q. Okay. And if I show you a picture, an aerial
10 picture, will you be able to identify what that is?

11 A. Yes, sir.

12 MR. MULLINS: May I get those? I just want to
13 snag one of those.

14 MR. ARCKEY: Oh, okay.

15 MR. MULLINS: Thank you.

16 BY MR. ARCKEY

17 Q. Ms. Williams, what are we looking at here?

18 A. Not sure.

19 Q. Do you recognize Palm Groves at all or the
20 community center?

21 A. No.

22 Q. Now, when you walk out of Palm Groves, where did
23 you go?

24 A. To the front.

25 Q. To where?

1 **A.** To the front like north towards the --

2 **THE COURT REPORTER:** Towards the what?

3 **THE WITNESS:** The Northwest Center.

4 **BY MR. ARCKEY**

5 **Q.** Did you go towards the entrance of the Northwest
6 Center?

7 **A.** Yes, sir.

8 **Q.** I'm showing defense what's been previously marked
9 as Defendant's Exhibit 1. Does this appear to be the front
10 of the Northwest Center?

11 **A.** Yes, sir.

12 **Q.** And where did you go that day?

13 **A.** I was coming like where the grass is. I was
14 coming straight across.

15 **Q.** You can use that. It's a pointer. You can point
16 to it.

17 **A.** Facing back this way is the apartment complex. I
18 was walking straight across.

19 **Q.** Okay. And what corner were you standing on?

20 **A.** This one (indicating).

21 **Q.** Now, what did you see when you first got there?

22 **A.** I saw Aimee and a patrol officer, both their cars.

23 **Q.** Can you describe how the cars were set up?

24 **A.** Aimee's car was like facing towards -- it was
25 going out and his car was like facing -- it was somewhat

1 trying to block her in but it was like on the side of her
2 too.

3 Q. Okay. And where -- did Aimee go back to her car
4 at any point?

5 A. Yes, sir.

6 Q. And what happened when Aimee went back to her car?

7 A. She got in her car -- well, first it was a lady
8 that came up. I don't know her. She told Aimee that she
9 didn't have to stay and he didn't have the right to hold
10 her. So Aimee hesitated for a little, and then she walked
11 back to her car and got in. She tried to hit on the gas.
12 The car didn't grasp, so it didn't take off.

13 Q. So someone had come up and said something, and
14 then Aimee walked back to her car?

15 A. Yes, sir.

16 Q. When she got back in the car, where was the
17 security guard?

18 A. On the passenger side. I don't really recall but
19 I think on the passenger -- on the driver's side I mean,
20 like by the back door.

21 Q. Okay. And when you say that you heard the car rev
22 a little bit, did the car go off fast?

23 A. No. It was rolling, though.

24 Q. And do you know approximately how many miles per
25 hour it was going?

1 **A.** Say --

2 **MR. ADAMS:** Objection, speculation.

3 **THE COURT:** Overruled.

4 **THE WITNESS:** Not sure.

5 **BY MR. ARCKEY**

6 **Q.** But was it going fast?

7 **A.** Not at all.

8 **Q.** Was the security guard able to keep up with the
9 vehicle?

10 **A.** At the pace he was walking at first, no. But then
11 she tried to like go a little faster, but he was still like
12 on the side of the car by the car.

13 **Q.** What did you see him do?

14 **A.** Well, it looked like he was trying to grab ahold
15 of the car; but I wasn't standing that close to get a clear
16 picture of him.

17 **Q.** Did you ever see him get hit by the front tire?

18 **A.** No, sir.

19 **Q.** Was he ever close enough to the front tire to be
20 hit by the front tire?

21 **MR. ADAMS:** Objection, she just testified she
22 wasn't that close to see.

23 **THE COURT:** Overruled.

24 **BY MR. ARCKEY**

25 **Q.** Was he ever close enough to the front tire to be

1 hit by the front tire?

2 **A.** No.

3 **Q.** After you saw him come up to the door, what
4 happened?

5 **A.** She then tried to push on the gas and he took --
6 took the gun out of his holster, and that's when the shots
7 were fired.

8 **Q.** How fast is the car doing at this point?

9 **A.** Not as in speeding fast.

10 **Q.** Is it still rolling?

11 **A.** Still rolling.

12 **Q.** When you saw him take his gun out, what did you
13 see happen next?

14 **A.** He fired shots and she panicked and pressed on the
15 gas, and that's when she sped off.

16 **Q.** And at any point did she drive her car in the
17 direction of Mr. Coleman?

18 **A.** No, she was swerving right, to turn right onto WD
19 Judge.

20 **Q.** At any time did you hear Aimee Guillory make any
21 threats to Mr. Coleman?

22 **A.** No, sir.

23 **Q.** At any time was there anyone standing in front of
24 that vehicle?

25 **A.** No. They was standing like on the grass, like on

1 Palm Grove grass, on that side.

2 Q. Was anyone standing around Mr. Coleman?

3 A. Not around him but there was people at the center
4 but they weren't close to them.

5 MR. ARCKEY: May I have one moment to confer, Your
6 Honor?

7 THE COURT: You may.

8 BY MR. ARCKEY

9 Q. Did Aimee ever try to drive at Mr. Coleman?

10 A. No, sir.

11 Q. Did it appear that she was trying to head out
12 right and get around Mr. Coleman?

13 A. Yes, sir.

14 Q. Do you see the individual in the courtroom today
15 that shot those shots?

16 A. Yes, sir.

17 Q. Could you please point him out and state an
18 article of clothing he's wearing?

19 A. Gray, white, right there (indicating). The guy
20 that's in the middle.

21 MR. ARCKEY: No further questions at this time.

22 THE COURT: Cross-examination?

23 MR. ADAMS: Yes, please.

24 CROSS-EXAMINATION

25 BY MR. ADAMS

1 **Q.** Now, Ms. Williams, you did see, to be clear, Aimee
2 Guillory have to swerve around Jonathan Coleman, correct?

3 **A.** Yes, sir.

4 **Q.** You just said that you didn't -- you don't know
5 who Vince Johnson is. That's not accurate, correct?

6 **A.** I don't know who he is. Like at the time I did
7 know who he is but now I'm familiar with him but I still
8 don't know him personally to tell you about him.

9 **Q.** Have you met him personally? Have you spoken to
10 him?

11 **A.** I saw him around with Aimee. That's it.

12 **Q.** Have you conversed with him personally?

13 **A.** No, sir.

14 **Q.** He actually gave you a tattoo, didn't he?

15 **A.** Yeah.

16 **Q.** So when I ask you if you've actually spoken to
17 him, the answer is he actually gave you a tattoo one time
18 recently, correct?

19 **A.** Yes, that was before all this happened.

20 **Q.** That was before all this happened?

21 **A.** Yes.

22 **Q.** So you have spoken to him?

23 **A.** Not like spoken to him. I wrote him on Facebook
24 and I asked him how much he charged and I went to his house
25 and he just gave me a tattoo.

1 **Q.** Once you met up with him, was there any words
2 exchanged or just a head nod and went straight to business?

3 **A.** He asked me what I wanted and I showed him a
4 picture and he did it and that was that.

5 **Q.** So you've spoken to him?

6 **A.** Well, you can say -- if you call it spoken to,
7 then, yeah, I've spoken to.

8 **Q.** Okay. And this person who we've established you
9 know, Vince Johnson, you don't have any recollection of ever
10 having seen him on the scene; is that correct?

11 **A.** Never seen him on scene.

12 **Q.** When you say there was other people present on the
13 scene, there's a lot -- there's at least ten, if not more
14 than that, other people on the scene, correct?

15 **A.** Yes.

16 **Q.** And you're standing -- sorry, can you point out
17 again where you're standing?

18 **A.** Right in front of the sign.

19 **Q.** Right there?

20 **A.** Over there.

21 **Q.** This side?

22 **A.** Yes.

23 **Q.** So you're standing in front of the sign; and the
24 cars are over here, correct?

25 **A.** Yes.

1 **Q.** And right there -- directly right there is
2 Jonathan Coleman's car, correct?

3 **A.** Not sure.

4 **Q.** For the record, I had just held up what's been
5 marked as Defendant's Exhibit 1. And now I'm showing you
6 what's been one of the pictures that are part of State's
7 composite Exhibit 5. Does that look like -- it's upside
8 down for you. Does that look like Mr. Coleman's car?

9 **A.** Yes.

10 **Q.** And in the background, is that the sign that
11 you're standing by?

12 **A.** Can't really tell.

13 **Q.** Okay. Well, if you compare those two pictures,
14 you can see the fence here. You can see that that's the
15 entrance.

16 **A.** Yes.

17 **Q.** So that's probably the -- that's probably the
18 fence in the background, correct?

19 **A.** Not sure.

20 **Q.** Okay. Now, in this picture next to the sign, what
21 is this metal thing right here? Is that a fence?

22 **A.** Yes.

23 **Q.** And in front of the fence, is that a tree?

24 **A.** Yes.

25 **Q.** And behind the fence, are those bushes?

1 **A.** Yes.

2 **Q.** And Mr. Coleman's car would be right there,
3 correct?

4 **A.** Can I see the picture?

5 **Q.** Sure. I'll show it without the overhead if you
6 prefer. Let me know.

7 **A.** Yes.

8 **Q.** And those little white marks on the ground where
9 crime scene analysts found some rounds, is that about where
10 the shooting happened?

11 **A.** Not sure.

12 **Q.** Okay. Now, you mentioned it briefly; but you
13 didn't really describe it very well. When Aimee Guillory
14 got back in her car, you could actually hear the engine rev
15 up pretty loud as if it was going to go pretty fast,
16 correct?

17 **A.** Correct.

18 **Q.** And if a person was not looking at the car but was
19 standing right there, they would have believed that there
20 was a car about to go very fast, correct?

21 **A.** Correct.

22 **Q.** You said the car was going fast but not that fast.
23 What do you mean by that? What do we mean by fast but not
24 that fast? I don't know what that means to you.

25 **A.** In-between.

1 **Q.** Now, as the shots go off, you actually did see him
2 touch the car. You actually saw him rolling against the
3 car, didn't you?

4 **A.** Yes.

5 **Q.** I just want to draw that out a little bit and
6 figure out exactly what it was you saw. So you see the
7 shots go off. He's standing at the front driver side window
8 at that point?

9 **A.** Towards the back.

10 **Q.** Okay. When the shots start firing, she hits the
11 gas, right?

12 **A.** Yes.

13 **Q.** And as she hits the gas and as the shots stop
14 going, you actually see him rolling against the car like
15 that, right?

16 **A.** Yes.

17 **Q.** And then you saw him fall down by his car after
18 that, correct?

19 **A.** After he walked to the car and just fell down.

20 **Q.** Immediately after him rolling off Aimee Guillory's
21 car, correct?

22 **A.** Yes.

23 **Q.** When I say "he," you saw Jonathan Coleman fall
24 next to his car after that, correct?

25 **A.** Yes.

1 Q. When you came up, Aimee Guillory's car was facing
2 the exit, correct?

3 A. Yes.

4 Q. And Mr. Coleman would not have been able to keep
5 up with Aimee Guillory's car just by walking; would you
6 agree with that?

7 A. I would say he can and then he couldn't. At
8 first --

9 **THE COURT REPORTER:** Could you repeat that? At
10 first, what?

11 **THE WITNESS:** At first when she hit the gas, I
12 would say he could have caught up with the car on feet.
13 Second time she hit the gas, when she sped off, no.

14 **BY MR. ADAMS**

15 Q. Now, you actually heard Jonathan Coleman tell
16 Aimee Guillory that the police were on their way, didn't
17 you?

18 A. Yes.

19 Q. Was that because he had already called for backup?

20 A. I'm not sure. That's all I heard him tell her.

21 Q. Okay. Now, before you came outside your apartment
22 or someone's apartment, it was not your apartment, correct?

23 A. No.

24 Q. Who's apartment was it?

25 A. Destiny's.

1 **Q.** So you're in the apartment with Destiny. At some
2 point when you're in there, do you actually hear tires
3 squealing?

4 **A.** No.

5 **Q.** You don't have any recollection of tires
6 squealing?

7 **A.** No.

8 **Q.** Do you recall taking a deposition with me on
9 March 3 -- March 6th? Sorry.

10 **A.** I'm not sure.

11 **Q.** Do you recall sitting down and being asked
12 questions by myself and cocounsel and the state attorney to
13 be present?

14 **A.** Yes.

15 **Q.** And did -- everything you said during that
16 deposition was that -- did you tell the truth during that?

17 **A.** Yes.

18 **MR. ADAMS:** Judge, can we approach?

19 **THE COURT:** All right.

20 Ladies and gentlemen, can I have you-all step out
21 for a second.

22 (The jury exited the courtroom at 9:48 a.m.)

23 **THE COURT:** All right. Have a seat. Before we
24 get to that matter, let me stop you. Let me address an
25 issue.

1 (An unrelated case was addressed.)

2 **MR. MULLINS:** Your Honor, I'm going to go get
3 cocounsel with the Court's permission.

4 **THE COURT:** Okay.

5 **MR. ADAMS:** May we approach? Are we back on the
6 record?

7 **THE COURT:** We're on the record. There's no need
8 to approach. There's no jury in here.

9 **MR. ADAMS:** You're right. I ask to refresh her
10 recollection. She said something inconsistent with my
11 last question. I have it in a sworn deposition that's
12 audio recorded. I'd ask to play it for her in an
13 attempt to give her an opportunity to correct her
14 statement.

15 **THE COURT:** That's fine.

16 **MR. ADAMS:** May I approach the witness, Judge?

17 **THE COURT:** You may.

18 **MR. ADAMS:** I'll bring it back a little bit so you
19 have some context. You can tell it is your deposition.

20 **(The deposition was published in open court and because**
21 **of the nature of playing audio recordings and the inability**
22 **to distinguish between speakers, the following transcription**
23 **of the audio by this court reporter should NOT be considered**
24 **a verbatim record of said audio recording:)**

25 (Unintelligible) witness, correct?

1 Yes, sir.

2 Okay. Why did you come (unintelligible) going on?

3 Well, (unintelligible) cousin (unintelligible) and
4 she say she heard tires scratching. So she went
5 out there first and she walked outside and the patrol
6 officer got angry. So I put on my shoes, and I ran out
7 the door.

8 So someone you were with heard tires scratching.
9 It's someone in the apartment complex?

10 Yes, sir.

11 Do you know where that tire scratching came from?

12 No, sir, not really.

13 Okay. Okay. So by the time -- by the time you
14 got outside --

15 (The audio recording was stopped.)

16 **MR. ARCKEY:** Your Honor, at this point, the State
17 would be objecting to hearsay. She said that someone
18 told her that she heard tires squealing, not that she
19 heard tires squealing?

20 **THE COURT:** Okay. Response to that?

21 **MR. ADAMS:** She's saying that that's what caused
22 her to go outside, Judge. So she's saying somebody
23 told her that's what happened and that's what caused
24 her to go outside.

25 **THE COURT:** Okay.

1 **MR. ADAMS:** If she didn't hear it herself, then
2 that someone told her would be admissible, to determine
3 that that's the reason that she went outside and went
4 across the street because someone told her they heard
5 squealing tires.

6 **THE COURT:** Why is her state of mind or the effect
7 on her relevant at this point?

8 **MR. ADAMS:** Because she had no reason to go
9 outside. There was something -- there was some impetus
10 that got her from being in the apartment to go over
11 there. I think it is relevant that there was visual
12 evidence from outside the apartment.

13 Aimee Guillory testified that she was driving nice
14 and slow, that she wasn't driving through the apartment
15 fast. She also testified that several minutes had
16 passed before the incident where allegedly Vince
17 Johnson hit her car with his hand. They pulled in.
18 Everything was nice and calm, and that's when
19 Mr. Coleman came over.

20 This is inconsistent with that because it suggests
21 some kind of immediate thing going outside.

22 **THE COURT:** So you want it to be in for the truth
23 of the matter asserted, there was actually some
24 squealing of tires by her to disprove what she said.

25 **MR. ADAMS:** No. I want to show there was

1 something that caused her to all of a sudden change
2 what she was doing inside of an apartment and
3 immediately go out there.

4 **THE COURT:** But her state of mind is not relevant
5 to that.

6 **MR. ADAMS:** Not her state of the mind but the fact
7 that there was something, an auditory -- some noise
8 outside that caused her to go outside.

9 **THE COURT:** That she didn't hear. Somebody else
10 told her there was a noise.

11 **MR. ADAMS:** Yes. Yes.

12 **THE COURT:** All right. I'm gonna sustain the
13 State's objection.

14 All right. Let's go ahead and bring the jurors
15 back in.

16 (The jury entered the courtroom at 9:57 a.m.)

17 **THE COURT:** Everyone have a seat. Defense, you
18 may proceed.

19 **MR. ADAMS:** I have no further questions for this
20 witness.

21 **THE COURT DEPUTY:** Okay. Any redirect?

22 **MR. ARCKEY:** Briefly, Your Honor.

23 **REDIRECT EXAMINATION**

24 **BY MR. ARCKEY**

25 **Q.** When you're on scene and all this was going on,

1 did you ever collect any evidence?

2 **A.** No.

3 **Q.** Did you ever take any photographs?

4 **A.** No.

5 **Q.** So you don't know what angle some of these
6 photographs are?

7 **A.** Correct.

8 **Q.** And you're not quite sure of exactly where this
9 vehicle was that day?

10 **MR. ADAMS:** Objection, leading.

11 **THE COURT:** Sustained.

12 **BY MR. ARCKEY**

13 **Q.** Did you know that the pictures that were shown to
14 you are accurate from what you recall that day?

15 **A.** As me staring at and focused on the pictures, it
16 did show like what I saw.

17 **THE COURT REPORTER:** Did you say did or didn't?

18 **THE WITNESS:** Did.

19 **BY MR. ARCKEY**

20 **Q.** Okay. When you said that he rolled against the
21 car, what area of the car did he roll against?

22 **A.** The driver side between -- I say he went no
23 farther than the headlights, like from the headlight on
24 back.

25 **Q.** So was this after he tried to grab Ms. Guillory?

1 **A.** After he was trying -- I didn't see him try to
2 grab hold of the car. It looked like that's what he was
3 trying to do.

4 **Q.** Did he roll off the car at that point?

5 **A.** Yes.

6 **Q.** But you never saw him get struck by the vehicle?

7 **A.** No, sir.

8 **Q.** He was never hit by the front tire of the vehicle?

9 **A.** No, sir.

10 **Q.** And was the defendant actually trying to keep up
11 with the vehicle to --

12 **MR. ADAMS:** Objection, leading.

13 **THE COURT:** Overruled.

14 **BY MR. ARCKEY**

15 **Q.** Can you describe -- or was the defendant trying to
16 keep up with the vehicle as she was rolling down the street?

17 **A.** Yes.

18 **Q.** And when you saw him firing at the vehicle, was he
19 standing back from the vehicle?

20 **A.** Like, he was like steady walking towards the
21 vehicle firing shots.

22 **Q.** And was that vehicle heading away from Mr. Coleman
23 at that point?

24 **A.** Yes, sir.

25 **MR. ARCKEY:** No further questions, Your Honor.

1 **MR. ADAMS:** If I can follow up, Judge?

2 **THE COURT:** Briefly.

3 **RECROSS-EXAMINATION**

4 **BY MR. ADAMS**

5 **Q.** Did you previously write a statement on the date
6 this happened, on May 28th, 2014?

7 **A.** Yes, sir.

8 **Q.** You just testified that he was walking towards the
9 vehicle as he's firing shots. Did you put that in your
10 statement?

11 **A.** No, sir.

12 **Q.** Okay. So today is the first time you're saying
13 he's walking towards the car firing shots?

14 **A.** No, not really. I said it previous times.

15 **Q.** Did you give sworn testimony on March 13th?

16 **A.** I don't recall.

17 **Q.** Okay.

18 **MR. ADAMS:** May I approach the witness, Judge?

19 **THE COURT:** You may.

20 **BY MR. ADAMS**

21 **Q.** I'm going to ask you to take a look at that
22 transcript. It appears to be a transcript of sworn
23 testimony you gave on the 13th. If you'd hold this open and
24 look through it, if that appears to be sworn testimony that
25 you gave on March 13th of 2015 and it goes on several pages.

1 Feel free to flip through.

2 **A.** Yes.

3 **Q.** Okay. Can you show me in there where you say that
4 he was walking towards the car shooting? Feel free to flip
5 through and read as much as you'd like. I think your
6 testimony starts on Page 5.

7 **MR. ARCKEY:** I'll argue this is improper
8 impeachment at this point.

9 **THE COURT:** Overruled.

10 **BY MR. ADAMS**

11 **Q.** You can flip through.

12 **A.** I'm doing it now. I don't recall.

13 **Q.** You can't find it in there?

14 **A.** No.

15 **Q.** Just to clarify something you told the prosecutor,
16 that he started rolling against the car by the headlight.
17 Are you referring to the front headlight?

18 **A.** Yes.

19 **Q.** And would you agree --

20 **MR. ARCKEY:** Objection, Your Honor,
21 mischaracterization of what she said.

22 **THE COURT:** Overruled.

23 **BY MR. ADAMS**

24 **Q.** And would you agree that after he stopped rolling,
25 he had already fired shots and he did not fire any

1 additional shots; is that correct?

2 **A.** Don't recall.

3 **MR. ARCKEY:** Objection, Your Honor,
4 mischaracterization of what she said.

5 **THE COURT:** Overruled.

6 **BY MR. ADAMS**

7 **Q.** Your answer is you do not recall?

8 **A.** Right.

9 **Q.** You recall him rolling off the car but you do not
10 specifically have any recollection of him firing his gun
11 after that. That's accurate, correct?

12 **A.** Don't remember. Don't recall. I remember him
13 rolling off the car, but I don't recall.

14 **MR. ADAMS:** Thank you. Nothing further.

15 **MR. ARCKEY:** Your Honor, may I --

16 **THE COURT:** You may.

17 **MR. ARCKEY:** -- do a redirect?

18 **THE COURT:** Go ahead.

19 **FURTHER REDIRECT EXAMINATION**

20 **BY MR. ARCKEY**

21 **Q.** Were you ever asked previously if you saw him
22 walking towards the car while shooting to your recollection?

23 **A.** Can you clarify?

24 **Q.** Were you ever asked previously if you saw him
25 walking towards the car while shooting?

1 **A.** No.

2 **Q.** And it's your testimony here today that you saw
3 him --

4 **MR. ADAMS:** Objection, leading.

5 **THE COURT:** Go ahead and finish the question.

6 **BY MR. ARCKEY**

7 **Q.** What area of the car did you see him roll off?

8 **A.** From like by the headlight no farther than the
9 headlight of the front of the car like going towards the
10 back of the car.

11 **Q.** So is this while he's trying to grab at the car --
12 at Ms. Guillory?

13 **A.** Yes.

14 **Q.** He wasn't hit by the front wheel, though?

15 **A.** No.

16 **Q.** And it was from his actions of walking towards the
17 car, not Ms. Guillory's actions --

18 **MR. ADAMS:** Objection, leading.

19 **THE COURT:** Sustained.

20 **MR. ARCKEY:** Judge, he initiated that.

21 **MR. ADAMS:** Objection, leading.

22 **THE COURT:** Sustained.

23 **BY MR. ARCKEY**

24 **Q.** Did he initiate that contact with the car?

25 **A.** Right.

1 Q. Is that a yes or no?

2 A. Yes.

3 MR. ARCKEY: No further questions, Your Honor.

4 MR. ADAMS: Can I follow up on that, judge?

5 THE COURT: Can we approach?

6 (There was a bench conference as follows:)

7 THE COURT: How long is this going to go on?

8 MR. ADAMS: She just said something that's
9 completely inconsistent with that. She just said that
10 she had never been asked if he was walking towards the
11 car. She had just said two minutes earlier that she
12 previously said that under sworn testimony. That's
13 something new.

14 MR. ARCKEY: There was never a question asked of
15 her.

16 MR. ADAMS: That's not what she said.

17 MR. ARCKEY: There was never a question asked of
18 her regarding that. I've read through the transcript
19 multiple times. There was never a question asked, was
20 he walking towards the car while firing the gun. Never
21 a questioned asked.

22 MR. ADAMS: That's not what she just said, though.
23 That's new information she just said.

24 MR. ARCKEY: He's already impeached on that. He's
25 already flipped through the whole transcript.

1 **THE COURT:** What is it you intend to try and bring
2 out?

3 **MR. ADAMS:** When the prosecutor asked you just
4 now, you just agreed with him that no one had ever
5 asked you that question. Five minutes earlier you told
6 me before I gave you this transcript that you had
7 previously testified under oath that he was walking
8 towards the car.

9 **THE COURT:** How is that not duplicitous of what
10 you already got out?

11 **MR. ADAMS:** Because that was before he stood up
12 there and asked her if anyone had asked her that
13 question.

14 **MR. ARCKEY:** And when she was asked before whether
15 she said that before, that's not -- it wasn't that it
16 was said under oath before. It was that she said that
17 before.

18 **THE COURT:** We're done. That information is
19 already out.

20 (The bench conference concluded.)

21 **THE COURT:** All right. Ma'am -- may the witness
22 be excused?

23 **MR. ARCKEY:** Yes, Your Honor.

24 **THE COURT:** Thank you, ma'am.
25 State, call your next witness.

1 **MR. ARCKEY:** Your Honor, at this time the State
2 would be calling Marquis Jolly.

3 **MARQUIS JOLLY**
4 **was called as a witness and, having first been duly sworn,**
5 **testified as follows:**

6 **THE COURT:** Sir, have a seat for me, please. Go
7 ahead and tell me your full name and spell your first
8 and last name for me.

9 **THE WITNESS:** Marquis Jolly, M-A-R-Q-U-I-S. Last
10 name Jolly, J-O-L-L-Y.

11 **THE COURT DEPUTY:** Okay. State, you may inquire
12 of the witness.

13 **DIRECT EXAMINATION**

14 **BY MR. ARCKEY**

15 **Q.** Good morning, Mr. Jolly. Tell us who you work
16 for.

17 **A.** I work for the City of Orlando.

18 **Q.** And on May 28th, 2014, were you still working for
19 the City of Orlando?

20 **A.** Yes.

21 **Q.** What do you do for the City of Orlando?

22 **A.** A program coordinator.

23 **Q.** What was your responsibility?

24 **A.** Organize programs for youth, making sure
25 facilities was maintained, keeping the grounds calm, just

1 basically making sure everything ran smoothly.

2 Q. Where were you working on 5/28/2014?

3 A. Northwest Community Center.

4 Q. Do you know anyone by the name of Aimee Guillory?

5 A. No.

6 Q. Are you friends with anyone by the name of Aimee
7 Guillory?

8 A. No.

9 Q. Vince Johnson?

10 A. No.

11 Q. Do you know anyone by the name of Myeshia
12 Williams?

13 A. No.

14 Q. Do you know anyone by the name of Destiny Hudson?

15 A. No.

16 Q. Do you know anyone by the name of Jonathan
17 Coleman?

18 A. No.

19 Q. On 5/28/2014, what was happening that night around
20 8:00 or 8:30?

21 A. I was inside at the front desk and I got a tip
22 from one of the gentlemen that come into the facility to
23 play basketball, saying there was police outside and a
24 commotion going on outside. I told him I would go and see
25 what was going on, unaware of one of the other supervisors

1 already being outside.

2 Q. Who was that supervisor?

3 A. Sherron.

4 Q. What's her last name?

5 A. Fort.

6 Q. So what did you do?

7 A. I stood out -- I went outside. I walked -- I'd
8 say I got about 75 to a hundred yards away and I stood and I
9 just surveilled.

10 Q. If I showed you an aerial map of this area, would
11 you be able to recognize it?

12 A. Yes.

13 Q. Mr. Jolly, I'm providing you with a laser pointer.

14 A. Sure.

15 Q. Can you tell us where the Northwest Community
16 Center is?

17 A. That's it right there.

18 Q. Where did you walk to?

19 A. I walked from this front entrance about right
20 here.

21 Q. Okay. And at that point, what did you see?

22 A. Just disturbance, just arguing. Security guard
23 was standing there. That's when I realized it was not a
24 police officer. It was, in fact, a security guard. He was
25 standing there. The young man and the lady they were

1 arguing.

2 Q. Now, the security guard, does he work for
3 Northwest Community Center?

4 A. No.

5 Q. Did you know why he was there?

6 A. I had no clue.

7 Q. When you saw that, can you describe what happened
8 after you initially saw that?

9 A. Just initial arguing for about I'd say 15 minutes
10 or so. Upon that, the other gentleman was a tall,
11 dark-skinned gentleman with dreadlocks. He was a part of
12 the commotion. He just told her to get in her car and leave
13 because he wasn't a police officer.

14 Q. Where was that person standing?

15 A. He was actually on the fence at this exit right
16 here. He was on that fence. He was standing by that fence.

17 Q. Was he behind all the commotion?

18 A. I would say it was all -- it was more of a -- he
19 wasn't behind it, but it was a confrontation with the three.

20 Q. Was he in front of any of the cars?

21 A. He was on the side. He wasn't in front of any
22 car.

23 Q. Now, were there other people gathered there?

24 A. In that area?

25 Q. Yes.

1 **A.** Or off in the distance?

2 **Q.** Anywhere.

3 **A.** Off in the distance, as in across the street and
4 then the front of the facility there were spectators.

5 **Q.** That's off WD Judge?

6 **A.** WD Judge.

7 **Q.** Now, when you heard what was said, what happened?

8 **A.** The young lady actually -- she presumed to get in
9 her car, make a u-turn and leave the property.

10 **Q.** Now, if I show you a picture of the front of the
11 community center, is that a accurate depiction of the front
12 of the community center?

13 **A.** Yes.

14 **Q.** Can you show members of the jury what you mean by
15 doing a u-turn?

16 **A.** Well, she was parked, I would say -- he was parked
17 here blocking her. So she got in her car. She presumed to
18 make a u-turn and come out this way in front of his car to
19 come out.

20 **Q.** And at any time, did she drive the car at the --

21 **A.** From my angle, no.

22 **Q.** Anytime did the front tire hit the security guard?

23 **A.** From my angle, I could not tell.

24 **Q.** Now, was he standing a little bit back from the
25 vehicle?

1 **A.** Yes, I would say.

2 **Q.** Now did she end up going away from the security
3 guard when she was driving?

4 **A.** Correct.

5 **Q.** Can you describe how fast she was going?

6 **A.** I would say no more than ten miles an hour.

7 **Q.** Would you describe it as more of a speeding off or
8 roll?

9 **A.** More of a roll off.

10 **Q.** Did you ever see him try to approach the driver?

11 **A.** Once she got into the car to leave, yes.

12 **Q.** And he was standing at the side of the car?

13 **A.** Correct.

14 **Q.** As he was standing -- or as he was standing at the
15 side of the car, what did you see?

16 **A.** I heard him repeated times ask her to stop. She
17 did not oblige. She just kept rolling. At this point he
18 reaches and grabs the side panel of the driver's door, and
19 she did not stop then as well. So then the next step, from
20 what I saw, he pulled out the firearm and shot into the
21 vehicle.

22 **Q.** Do you recall how many shots were fired?

23 **A.** Four.

24 **Q.** Were these shots fired as the car was going away
25 from him?

1 **A.** Yes.

2 **MR. ARCKEY:** May I have a moment, Your Honor?

3 **THE COURT:** You may.

4 **BY MR. ARCKEY**

5 **Q.** Did any of the body language or the way the
6 security guard was standing make you believe that he was
7 injured?

8 **MR. ADAMS:** Objection, calls for speculation.

9 **THE COURT:** Overruled.

10 **THE WITNESS:** At the moment when he discharged his
11 weapon and fired, he got about to the stop sign and
12 then he came back to his squad car and then sat on the
13 ground. So he looked like he was injured, yes, sir.

14 **BY MR. ARCKEY**

15 **Q.** So did he chase after the car a little bit?

16 **A.** More so of pulled, in the instance of he was still
17 holding on while she was rolling away and he let go at that
18 point and discharged his weapon.

19 **Q.** So it wasn't until after everything -- after the
20 firing that he fell down?

21 **A.** Correct.

22 **Q.** And then he returned back all the way to his car
23 before he fell down?

24 **A.** Correct.

25 **Q.** Do you see the individual in the courtroom here

1 today that fired those shots?

2 **A.** Yes, sir.

3 **Q.** Can you please point him out and state an article
4 of clothing?

5 **A.** It's the gentleman in the gray suit (indicating).

6 **MR. ARCKEY:** Let the record reflect that the
7 witness has identified the defendant. No further
8 questions.

9 **THE COURT:** Cross?

10 **MR. ADAMS:** Yes, Your Honor.

11 **CROSS-EXAMINATION**

12 **BY MR. ADAMS**

13 **Q.** Mr. Jolly, I'm going to show you what's been
14 marked as State's Exhibit 1. You just took a look at it and
15 identified it as a pretty accurate rendering of the
16 apartment complex and the community center?

17 **A.** Correct.

18 **Q.** I'll show you another picture in a second to give
19 more ground level. You identified the apartments across the
20 street from the community center down at the bottom, the
21 bottom middle?

22 **A.** I know it's directly across from the entrance. I
23 don't know much about the apartment complex.

24 **Q.** When you look at that, you can clearly tell where
25 the community center is?

1 **A.** Yes.

2 **Q.** I see a white building, a long, white building
3 facing away from the apartment complex. What is that
4 building?

5 **A.** That's a preschool family services center.

6 **Q.** Is that part of the community center?

7 **A.** No, it's not.

8 **Q.** That's not the building you were in, correct?

9 **A.** Correct.

10 **Q.** The building you were in is that big square one?

11 **A.** Yes.

12 **Q.** And then the parking lot that leads from where you
13 were, that's that area right there?

14 **A.** Yes.

15 **Q.** How long -- how far away is that do you think?

16 **A.** From the door?

17 **Q.** From the door where you left.

18 **A.** I would say about 150 yards.

19 **Q.** So it's pretty far.

20 **MR. ADAMS:** Judge, can I approach the witness?

21 **THE COURT:** You may.

22 **BY MR. ADAMS**

23 **Q.** Outside the jury -- this has not been admitted
24 into evidence -- can you take a look at this picture?

25 **A.** Right.

1 Q. Do you recognize what you see in this picture?

2 A. Yes.

3 Q. Okay. Look like a very familiar area to you that
4 you have a lot of knowledge of?

5 A. Yes, sir.

6 Q. And the picture is pretty good quality?

7 A. Yep.

8 Q. Would you agree that that is a fair and accurate
9 depiction of the community center looking at the community
10 center from the area the incident would have happened --

11 A. I agree.

12 Q. -- the day of this incident?

13 A. I agree.

14 MR. ADAMS: Judge, I'd seek to admit what's been
15 marked as Defendant's Exhibit E for identification into
16 evidence.

17 THE COURT: Any objection from the State?

18 MR. ARCKEY: No objection, Your Honor.

19 THE COURT: What's been marked as Defendant's
20 Exhibit E for identification will be moved into
21 evidence as defense five without object from the State.

22 (Defendant's Exhibit No. 5 is received in
23 evidence.)

24 BY MR. ADAMS

25 Q. I'll get back to that. While we're waiting on

1 that, Mr. Jolly, you -- as you're walking, at some point you
2 hear an argument, correct?

3 A. (Nods head.)

4 Q. And you said just a minute ago it was a young man
5 and a young woman. When you say young man, you're not
6 talking about Jon Coleman, correct?

7 A. Not at all.

8 Q. You did mention a tall, thin man with dreads. Is
9 that the guy you're talking about?

10 A. That's who I'm referring to.

11 Q. The young woman, is that the person who later on
12 you saw get in the car?

13 A. Yes.

14 Q. And get shot?

15 A. Yes.

16 Q. Okay. So those two were arguing?

17 A. Yes.

18 Q. Mr. Coleman, was he screaming at them?

19 A. No.

20 Q. You testified that you heard him asking her to get
21 out of the car?

22 A. Right.

23 Q. Was he cursing?

24 A. No.

25 Q. The argument, as you characterized it, that you

1 heard between the male and Aimee Guillory, were they
2 cursing?

3 **A.** Yes.

4 **Q.** Okay. Were they aggressive towards each other?

5 **A.** No, just yelling.

6 **Q.** Just yelling?

7 **A.** Aggressive yelling.

8 **Q.** Not physically aggressive?

9 **A.** Not physically.

10 **Q.** Verbally aggressive?

11 **A.** Verbally aggressive, yes.

12 **Q.** How far away were you when you heard that?

13 **A.** I would say 75 to a hundred yards away.

14 **Q.** Okay. And it was both of them?

15 **A.** Yes.

16 **Q.** Male and female?

17 **A.** Male and female.

18 **Q.** The male is giving it, and the female is yelling
19 back?

20 **A.** Yes.

21 **Q.** Okay. Now, that picture, would the vehicle have
22 been -- would Mr. Coleman's vehicle or Ms. Guillory's
23 vehicle have been in this picture? Would they have just
24 been outside the picture?

25 **A.** From where I was standing I would say they were

1 slightly outside of this picture.

2 Q. Right here?

3 A. Yes.

4 Q. Okay. Now, I'm going to show you the other
5 picture that you already identified just a minute --

6 A. Yes, sir.

7 Q. The other picture is kind of like the other frame,
8 right?

9 A. Yes, sir.

10 Q. If you're looking out from over here, this one is
11 closer up. You testified when Ms. Guillory went to leave
12 she did a u-turn according to you?

13 A. Right.

14 Q. That is in this direction?

15 A. Right.

16 Q. It wasn't in that direction?

17 A. No, it was not.

18 Q. It was in that direction?

19 A. Correct.

20 Q. Okay. I'm approaching with what's been marked as
21 Defendant's Exhibit 1. This is the other picture we're just
22 referring to?

23 A. Uh-huh.

24 Q. Okay. Now would you agree this is pretty much
25 what we just talked about but farther back?

1 **A.** Correct.

2 **Q.** And in this picture John Coleman's vehicle and
3 Aimee Guillory's vehicle they would be in this picture?

4 **A.** Yes, sir.

5 **Q.** And would you agree that Mr. Coleman's vehicle was
6 parked right about there next to those yellow lines?

7 **A.** Yes.

8 **Q.** So when Ms. Guillory's vehicle turned around,
9 would she have been in this other picture if she had turned
10 around?

11 **A.** She would have been in the other picture as she
12 turned.

13 **Q.** She would have been in that direction?

14 **A.** Correct.

15 **Q.** As she was coming out she would have had to have
16 obviously passed by John Coleman's vehicle, correct?

17 **A.** Yes.

18 **Q.** Now, you're standing back out of this picture?

19 **A.** Correct.

20 **Q.** So you're standing out -- is there a sidewalk?

21 **A.** I'm actually in the street. I'm in the parking
22 lot.

23 **Q.** Okay. You can see an entrance there. You're
24 standing back there?

25 **A.** Yes, I'm in the parking lot.

1 Q. Mr. Coleman, at that point, where is he standing?

2 A. He's actually -- he's standing on the front driver
3 side of his car.

4 Q. Okay. As the vehicle comes past him?

5 A. Uh-huh.

6 Q. So from what you just described, had Aimee
7 Guillory actually ran over Mr. Coleman's foot, you were not
8 in a position where you would have seen her run over his
9 foot, correct?

10 A. No, I wasn't.

11 Q. Do you have a time reference where you could
12 figure out what time that would have been?

13 A. I have no clue.

14 Q. Do you have a regular scheduled work?

15 A. 10:00.

16 Q. You work until ten?

17 A. Yes.

18 Q. What time do you come in normally?

19 A. About two.

20 Q. About two. So it was a good bit later than two?

21 A. Yeah.

22 Q. But you don't know?

23 A. I couldn't say the time. I'm sorry.

24 Q. The young man -- I don't know if you know him by
25 his name. You know what I'm talking about when I say the

1 young man, thin, with dreads, that you described in an
2 argument?

3 **A.** Yes.

4 **Q.** Do you recall him having a cast on his arm?

5 **A.** No.

6 **Q.** No, he didn't; or no, you don't recall?

7 **A.** No, he didn't.

8 **Q.** And I think you just mentioned where he was
9 standing, but would you point out to me again so I'm clear?

10 **A.** Yes, he was on this fence right here. He was
11 sitting right here. This fence is usually like this one,
12 it's propped own. This one is open. He was standing up
13 next to that, yes, sir.

14 **Q.** You know this area pretty well. This fence, does
15 this protrude farther than this sign?

16 **A.** Yes.

17 **Q.** If I was standing right next to that sign, would
18 this fence be blocking my sight somewhat?

19 **A.** Somewhat, yes.

20 **Q.** If I was looking at the incident over here?

21 **A.** Depending on where you were standing. Were you
22 standing?

23 **Q.** If a person was standing right in the corner of
24 this sign.

25 **A.** Yeah, you would be visually obstructed, yes.

1 **MR. ADAMS:** May I have a moment, Judge?

2 **THE COURT:** You may.

3 **MR. ADAMS:** No further questions.

4 **THE COURT:** Any redirect?

5 **MR. ARCKEY:** Yes, Your Honor.

6 **REDIRECT EXAMINATION**

7 **BY MR. ARCKEY**

8 **Q.** Now, Mr. Jolly, when you saw the car leave, what
9 way did it turn onto WD Judge?

10 **A.** It turned west.

11 **Q.** And if you're facing out from the community
12 center, what direction is that?

13 **A.** It would be west. If you're facing, the exit of
14 it -- I'll show you on the map.

15 **Q.** Okay. Which way did it turn?

16 **A.** If you're on the inside facing the street, it went
17 left.

18 **Q.** So it went that way out?

19 **A.** Uh-huh.

20 **Q.** Mr. Jolly, at any point did you see Aimee Guillory
21 drive her car at the security guard?

22 **A.** I did not.

23 **Q.** At any point did you see her swerve towards the
24 security guard?

25 **A.** No, I did not.

1 **MR. ARCKEY:** No further questions.

2 **THE COURT:** May the witness be excused?

3 **MR. ARCKEY:** Yes, Your Honor.

4 **THE COURT:** Thank you, sir.

5 **THE WITNESS:** Thank you.

6 **THE COURT:** State, call your next witness.

7 **MR. ARCKEY:** At this time we would move in our
8 stipulations.

9 **THE COURT:** Okay. Which are? All right.

10 Ladies and gentlemen, the information I'm going to
11 give you is some joint trial stipulations that the
12 attorneys for the State and defense, as well as
13 Mr. Coleman, have all agreed to. When lawyers agree
14 that certain facts are true in the course of a trial,
15 that's what we call a stipulation of fact. You must
16 accept the stipulated facts as have been proven -- or
17 as having been proven. However, the significance of
18 these facts, as with all facts, is up for you to
19 decide.

20 In this case the stipulated facts that you must
21 assume or accept as true are as follows: One, that the
22 firearm that has been entered into evidence is a
23 functional firearm that can expel a projectile by the
24 action of an explosive. Two, the medical records from
25 the Orlando Regional Medical Center are true and

1 correct medical records of the victim in this case,
2 Aimee Guillory. And three, the medical records from
3 Florida Hospital are true and correct medical records
4 of the defendant Jonathan Andrew Coleman.

5 This has been signed by a representative from the
6 State Attorney's Office. It has been signed by both
7 the defense counsels and has been signed by Mr. Coleman
8 and dated Monday's date. Okay.

9 And at this point in time, what has been marked as
10 State's Exhibit B for identification, I'm assuming, is
11 being moved into evidence without objection from the
12 defense as State's 11, correct?

13 **MR. ADAMS:** That's correct.

14 **MR. ARCKEY:** Yes, Your Honor.

15 In addition, State would move in State's
16 identification A in accordance with that stipulation.

17 **THE COURT:** Any objection from the defense?

18 **MR. ADAMS:** No objection.

19 **THE COURT:** State's Exhibit B for identification,
20 which is the stipulation, will be moved in without
21 objection as State's 12.

22 (State's Exhibit No. 12 was received in evidence.)

23 **THE COURT:** And the other one you said was State's
24 A?

25 **MR. ARCKEY:** Yes, Your Honor, the medical records

1 from Aimee Guillory.

2 **THE COURT:** State's A will be moved into evidence
3 without objection from the defense as State's 13.

4 (State's Exhibit No. 13 is received in evidence.)

5 **MR. ARCKEY:** May I have a moment to publish the
6 medical records?

7 **THE COURT:** Go ahead.

8 **MR. ARCKEY:** Just for the record, I've discussed
9 with defense counsel of publishing an exact copy of the
10 medical records I had previously tabbed in preparation
11 of this, as opposed to the medical records that are in
12 evidence, just due to time constraints.

13 **THE COURT:** Okay.

14 (The exhibit was published to the jury.)

15 **MR. ARCKEY:** For the record, the State is showing
16 the business certification, which is Page 1 from
17 Orlando Regional Medical Center.

18 At this point the State is showing the adult
19 trauma flow sheet.

20 For the record, the State is showing a narrative
21 from the Orlando Fire Department.

22 For the record, the State is showing another
23 Orlando Fire Department record.

24 For the record, the State is showing Orlando
25 Health records and Page 1 of that document regarding

1 the description of operation. State is showing the
2 continuation of that document on to Page 2 from Orlando
3 Health.

4 Next, the State is showing Page 1 of 12 regarding
5 some of the procedure description. This is a Orlando
6 Regional Medical Center pre-op record.

7 State is now showing Page 6 of 12 of the nursing
8 pre-op record. Finally, the State is showing Page 1 of
9 one the Orlando Health Department of Radiology.

10 May we approach for a moment?

11 **THE COURT:** Come on up.

12 (There was a bench conference as follows:)

13 **MR. ARCKEY:** Could we take a short break? We have
14 one witness who's running a little bit late. She had a
15 surgery yesterday. She was trying to get in. She
16 should be here by now. And I'm just going to check
17 with the ASA to see if that's the case.

18 (The bench conference concluded.)

19 **THE COURT:** Ladies and gentlemen, what we're going
20 to do is take our mid-morning break for about five or
21 ten minutes for everybody to use the restroom and court
22 personnel as well. So if you'll excuse us, step out
23 into the jury room and we'll bring you back when we're
24 ready to get started. Okay.

25 (The jury exited the courtroom at 10:41 a.m.)

1 **THE COURT:** All right. Court's in recess for ten
2 minutes.

3 (A brief recess was taken from 10:42 to 10:55.)

4 **MR. ARCKEY:** May we have just an extra minute or
5 two? The witness just showed up. She's outside in the
6 hallway.

7 **THE COURT:** Okay.

8 (Court is at ease.)

9 **MR. ADAMS:** I have something I want to address
10 before we start again.

11 **MS. GONG GUERRERO:** I have a witness.

12 **MR. ADAMS:** We have one State witness. His
13 testimony is going to take five minutes. If it gets to
14 the point, I'll ask if we can stay for five minutes.

15 **THE COURT:** A State witness?

16 **MR. ADAMS:** Defense witness.

17 **THE COURT:** We should get to that this morning.
18 I imagine you have one witness left?

19 **MR. ARCKEY:** We have one, Your Honor.

20 **THE COURT:** Okay. All right. Ready to proceed?

21 **MS. GONG GUERRERO:** Yes, Judge.

22 **THE COURT:** Bring in the jury.

23 (The jury entered the courtroom at 10:58 a.m.)

24 **THE COURT:** Everyone, have a seat.

25 State, call your next witness.

1 **MS. GONG GUERRERO:** State will call Sherron Fort.

2 **SHERRON FORT**

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

5 **THE COURT:** Ma'am, have a seat for me. Can you
6 tell me your name and spell your first and last name
7 for our court reporter.

8 **THE WITNESS:** Sherron Fort, S-H-E-R-R-O-N,
9 F-O-R-T.

10 **DIRECT EXAMINATION**

11 **BY MS. GONG GUERRERO**

12 **Q.** Ms. Fort, who are you employed by?

13 **A.** The City of Orlando.

14 **Q.** How long have you worked for the City of Orlando?

15 **A.** Almost four years.

16 **Q.** And what capacity?

17 **A.** I'm the team program coordinator and night
18 supervisor.

19 **Q.** At the Northwest Community Center?

20 **A.** That's correct.

21 **Q.** That community center is located on WD Judge Road?

22 **A.** Yes.

23 **Q.** And how old are you?

24 **A.** I'm 38.

25 **Q.** Do you know a person by the name of Aimee

1 Guillory?

2 **A.** I do now, yes.

3 **Q.** Did you know her March of 2014?

4 **A.** No.

5 **Q.** Did you know a person by the name of Vince
6 Johnson?

7 **A.** Yes.

8 **Q.** How do you know Vince?

9 **A.** I know his father.

10 **Q.** Have you ever spoken to Vince before May of 2014?

11 **A.** In passing.

12 **Q.** Just like hello, hey?

13 **A.** Right.

14 **Q.** Nothing in depth?

15 **A.** No.

16 **Q.** Just pleasantries?

17 **A.** Right.

18 **Q.** Okay. How about Jonathan Coleman?

19 **A.** No.

20 **Q.** So I'm going to turn your attention to May 28th of
21 last year. Were you working around 8:00 in the evening?

22 **A.** I was getting off at that time.

23 **Q.** Okay. And you were walking out of the Northwest
24 Community Center?

25 **A.** Yes.

1 **Q.** Okay. I'm going to show on the overhead State's 1
2 in evidence. That's behind you. Is that a aerial layout of
3 the Northwest Community Center?

4 **A.** It looks like it, yes.

5 **Q.** There's a laser pointer that is in front of you,
6 that pen, if you press the little button. Can you point to
7 us what exit you came out of?

8 **A.** It's only one exit in and out of the building, so
9 right there.

10 **Q.** When you were walking outside of the building,
11 where were you? What direction were you walking out from?

12 **A.** I was walking from the front of the building,
13 which is here; and my car was parked there.

14 **Q.** Is it fair to say that there's only one entrance
15 and exit to the Northwest Community Center?

16 **A.** By driving, yes. There's only one car entrance
17 and exit.

18 **Q.** Where is that entrance and exit?

19 **A.** Right there where I just pointed, right there.

20 **Q.** So there's no way out by car except for that
21 entrance and exit?

22 **A.** No.

23 **Q.** Now, when you were getting off of work on that day
24 and walking out, did anything catch your attention?

25 **A.** Yes. I saw the lights from the vehicle, from the

1 security vehicle, which I thought was a police car at first.

2 Q. And the lights you're talking about are, what,
3 blue and red lights, flashing lights?

4 A. They were flashing lights. I don't know if it was
5 blue and red. I just remember flashing lights.

6 Q. Were you able to see who was standing outside?

7 A. I could see them, yes.

8 Q. Who was it? Can you describe who you saw?

9 A. There was the tall, white guy and a black male and
10 there was a female but I couldn't see her until she got out
11 of the vehicle.

12 Q. The tall, white guy, did you know who he was?

13 A. No.

14 Q. Did he look like he was law enforcement?

15 A. Right.

16 Q. Or security?

17 A. I thought he was law enforcement at first.

18 Q. Okay. But you later found out that he was a
19 security guard?

20 A. Right.

21 Q. Okay. And the female you said was in the car?

22 A. She was in the vehicle.

23 Q. Okay. And then there was another black male. Did
24 you know his name?

25 A. I didn't know who it was at first.

1 **Q.** Okay. Did you later learn that this person was
2 Vince Johnson?

3 **A.** Yes.

4 **Q.** Okay. But you didn't know that was Vince when you
5 saw him?

6 **A.** No.

7 **Q.** When did you find out that was Vince?

8 **A.** When I got to the end of the sidewalk, just about
9 to the end of the sidewalk. He looked familiar to me. I
10 didn't place him right away but he looked familiar to me and
11 then after everything happened, they were telling me who it
12 was.

13 **Q.** Now, when you saw these three people, you say you
14 were standing at the edge of the sidewalk right by where
15 your car is parked?

16 **A.** Yes.

17 **Q.** Okay. What were these three people doing?

18 **A.** They were -- they were talking. He was telling
19 them to -- telling her to get out of the car.

20 **Q.** Was he saying it nicely, or were you able to hear?

21 **A.** He said it with some command. He said, get out of
22 the car.

23 **Q.** And besides these three people, were [sic] there
24 anyone else around?

25 **A.** There were spectators or people standing in the

1 entrance. I guess a crowd had started to form.

2 Q. Were they standing right next to them?

3 A. No.

4 Q. Were they standing at a distance?

5 A. They were standing probably 20 feet maybe.

6 Q. Now, these three people, did it appear like anyone
7 was getting physical with each other?

8 A. No.

9 Q. Did anyone touch anyone at that time?

10 A. Not that I saw, no.

11 Q. No punching, no fighting?

12 A. No.

13 Q. Okay. Were they arguing back and forth?

14 A. Vince seemed to be yelling at Aimee. He seemed to
15 be yelling at her to just go, just go. And she was saying
16 back to him, what do you want me to do? You want me to
17 leave? He's telling her get out of the car. So they were
18 exchanging words between each other.

19 Q. Were Vince or Aimee yelling at the security guard
20 that you were able to hear?

21 A. Not that I remember.

22 Q. So once you got closer, did you see Aimee, who you
23 mentioned, did you see her drive off?

24 A. Yes.

25 Q. Okay. What was she doing? What direction was she

1 going?

2 **A.** She turned around. She had to turn around because
3 she was facing into the property. So she had to make a
4 u-turn to go back out. So she started to turn around.

5 **Q.** So she turned around and made a u-turn to go out
6 the exit, right?

7 **A.** Yes.

8 **Q.** At that time how fast was her vehicle going?

9 **A.** Not very fast, maybe a couple miles an hour, not
10 really fast. It's not a lot of space. So you can't go
11 fast.

12 **Q.** At that time did it appear like that car was going
13 to hit anyone or was anyone standing by that car?

14 **A.** The officer or the security guard was standing
15 near the car, but it didn't appear she was going to hit him.

16 **Q.** When you say he was standing near the car, where
17 was he standing?

18 **A.** He was standing on the driver side by the window
19 of the car.

20 **Q.** Was he touching the car at that time when she's
21 making that turn?

22 **A.** I don't know. I don't think so, but I'm not sure.

23 **Q.** Okay. Is there some distance between him and the
24 car?

25 **A.** He was pretty close on the car, maybe from here to

1 here.

2 Q. Okay. Would you say that's, what, about one or
3 two feet away?

4 A. About one or two feet away.

5 Q. He's standing one or two feet away as she's making
6 the turn, right?

7 A. Right.

8 Q. And as she straightens up, does she drive off the
9 property or does something happen?

10 A. She proceeded to leave the property. He was
11 moving. He wasn't just standing there. He was moving back
12 and forth. He just wasn't standing in that one position.
13 He moved a couple times.

14 Q. Where was he moving to?

15 A. Closer to the car, away from the car. He's
16 talking, so he's stepping up and stepping back.

17 Q. So he's physically making a movement to move
18 towards the car --

19 MR. MULLINS: Objection, Your Honor. That's a
20 leading question.

21 THE COURT: Sustained.

22 BY MS. GONG GUERRERO

23 Q. What direction was he going towards?

24 A. He's moving towards the car.

25 Q. At that time when he's moving towards the car, is

1 there anyone -- is there any fighting going on?

2 **A.** No.

3 **Q.** Is he injured, the security guard?

4 **A.** No, not that I saw, no.

5 **Q.** Okay. Is the female yelling at him or making any
6 threats to him?

7 **A.** No.

8 **Q.** Anyone around the security guard that has any
9 weapons around him?

10 **A.** Not that I saw, no.

11 **Q.** Okay. So he's about a foot to two feet away from
12 the car. You said the car keeps on going and --

13 **MR. MULLINS:** Objection, counsel's summarizing the
14 witness' testimony.

15 **THE COURT:** Sustained.

16 **BY MS. GONG GUERRERO**

17 **Q.** How far is that car going at that time?

18 **A.** How far?

19 **Q.** I'm sorry, how fast?

20 **A.** The car never gained speed. She never -- she
21 didn't speed out of the parking lot. She just turned around
22 and went out. Even after the shots were fired, she didn't
23 go fast.

24 **Q.** How fast do you think?

25 **A.** Maybe five miles an hour.

1 Q. Just a slow roll?

2 A. Yeah, a slow roll, yeah.

3 Q. Okay. So at some point do you see the security
4 guard make contact with the car?

5 A. What do you mean?

6 Q. Did he try to grab into the car?

7 A. Yes.

8 Q. Okay. How did that happen?

9 A. He was holding onto the driver side, like the
10 inside of the window. He was holding onto that and the
11 door. He was holding onto the doorjamb and window.

12 Q. Okay. And at that time is the female in the car
13 making any threatening movements to him?

14 A. She stated, get off my car.

15 Q. Was she holding any weapon?

16 A. I didn't see any weapons.

17 Q. Was she threatening him?

18 A. I didn't hear her threaten him.

19 Q. Okay. So he's holding onto the car. What happens
20 next?

21 A. And then he stepped back from the car, and he shot
22 into the driver side.

23 Q. When he was holding onto the car, did it appear
24 like the car was stopping?

25 A. No.

1 Q. Kept on going?

2 A. She kept going.

3 Q. Kept rolling?

4 A. Yes.

5 Q. That same speed you were telling us?

6 A. Yes.

7 Q. And at what point do you hear shots fired?

8 A. Maybe 30 seconds later.

9 Q. How far -- where was the security guard positioned
10 in relation to the vehicle?

11 A. At that point he was standing near the driver side
12 window.

13 Q. Near the driver side window?

14 A. Yes.

15 Q. Slightly behind where he was?

16 A. Right, yes.

17 Q. Now, at that point when he's firing the gun, where
18 is he firing it at?

19 A. Into the car.

20 Q. Okay. When he's firing the gun into the car, is
21 he making contact with the car; or is he a little bit away
22 from the car?

23 A. I never -- he wasn't making contact with the car
24 at this point. He's holding his gun and shooting.

25 Q. Okay. When he opens -- when he takes out his gun

1 and shoots, was anyone threatening him?

2 **A.** I didn't hear any threats.

3 **Q.** Okay. Was anyone hitting or punching him?

4 **A.** No.

5 **Q.** How many shots did you hear?

6 **A.** Maybe four, five.

7 **Q.** And once the shots were fired, were they still
8 directed at the car?

9 **A.** Yes.

10 **Q.** Okay. What happened to the car once the shots
11 were fired?

12 **A.** She kept going.

13 **Q.** How fast was she going at that time?

14 **A.** She picked up a little speed, and then she made a
15 right at the stop sign.

16 **Q.** What did the security guard do right after he
17 fired the shot?

18 **A.** He followed behind the car. He chased behind the
19 car. He didn't run like a sprint, but he was chasing behind
20 the car.

21 **Q.** When you say chase, did he go on foot?

22 **A.** Yeah, he was on foot.

23 **Q.** Okay. As he's moving on foot after the car, how
24 was he moving?

25 **A.** He was jogging behind the car, trying to -- I

1 don't know if he said stop. I can't recall if he said
2 anything. I don't remember because I was in shock at that
3 point.

4 **Q.** After he's jogging after the car, did you notice
5 anything about his -- the way he was moving? Did it seem
6 like it was odd or awkward or if he was injured?

7 **A.** He just seemed out of breath.

8 **Q.** Okay. And how far did he chase after the car for?

9 **A.** To the stop sign.

10 **Q.** When he stopped at the stop sign, what did he do?

11 **A.** He turned around and he came back and he told me
12 to call 911.

13 **Q.** Is he walking back or jogging back?

14 **A.** He's walking back.

15 **Q.** When he's walking back, you're looking at him
16 face-to-face?

17 **A.** Yes.

18 **Q.** Do you see any blood on him?

19 **A.** No.

20 **Q.** Did it look like he was injured?

21 **A.** No.

22 **Q.** Is he holding his leg at that point near the stop
23 sign?

24 **A.** No, not then.

25 **Q.** Okay. Is he screaming for help?

1 **A.** Yes.

2 **Q.** At the stop sign?

3 **A.** I mean, he turned back to face me at this point,
4 so he was coming towards me.

5 **Q.** He's walking towards you?

6 **A.** Yes.

7 **Q.** As he's walking towards you, did he then say
8 something to you?

9 **A.** Call 911.

10 **Q.** Okay. At that time when he's walking towards you,
11 what did he do, besides call 911?

12 **A.** Well, he made it to his vehicle and he slid down
13 the side of the vehicle and he grabbed his leg and he said,
14 call 911, again.

15 **Q.** Okay. So he physically walks from the stop sign,
16 walks to the car. How far was it?

17 **A.** That's a good 20, 25 feet.

18 **Q.** Okay. You are his car. I'm the stop sign. Tell
19 me to stop when you think it's about the same distance.

20 **A.** Probably about right there.

21 **Q.** Okay. So the distance between us?

22 **A.** Maybe a little further back. About right there.

23 **Q.** Okay. The distance between us is the distance
24 from his patrol car or his car to the stop sign, correct?

25 **A.** Yes.

1 Q. Okay. And he turns around, faces you, correct?

2 A. Yes.

3 Q. And is walking towards you?

4 MR. MULLINS: Your Honor, I would ask that counsel
5 not lead the witness quite so much. I'm going to
6 object at this point.

7 THE COURT: Sustained.

8 BY MS. GONG GUERRERO

9 Q. If I am the security guard that night, what is the
10 security guard doing?

11 A. He's walking towards me. He's out of breath. He
12 wasn't casually walking. He's making his way back towards
13 me. He walked to his vehicle. He slid down the side of the
14 vehicle and said, call 911.

15 Q. This is the vehicle right here?

16 A. On this side.

17 Q. On that side. If I'm standing on that side, he
18 slid down?

19 A. He slides down the vehicle.

20 Q. Okay. The whole body slides down?

21 A. Yes. He hit the ground.

22 Q. Right before he slides down, did anyone touch him?

23 A. No. No one -- I didn't see anyone in our
24 immediate right where we were. It was just he and I.

25 Q. Did anyone -- was anyone even around him?

1 **A.** No.

2 **Q.** Okay. And then after he slid down, did you call
3 911?

4 **A.** I did.

5 **Q.** And did you go over there and talk to him?

6 **A.** Yes. He said his leg, his leg.

7 **Q.** Did you see any blood around him?

8 **A.** I did not.

9 **Q.** Now, you don't know where he works, right? You've
10 never seen him before, the security guard?

11 **A.** I've never seen him before.

12 **Q.** Now, the car that this black female was driving,
13 at any point did she appear to aim her car towards the
14 security guard?

15 **A.** Not that I saw, no.

16 **Q.** Did you see that she was trying to avoid the
17 security guard?

18 **A.** No.

19 **Q.** She was just rolling her direction, right?

20 **A.** Yes.

21 **Q.** Do you see the person who fired into the vehicle
22 four times in the courtroom here today?

23 **A.** Yes.

24 **Q.** Can you point to him and tell me what color of
25 clothing he's wearing?

1 **A.** Yes.

2 **Q.** Okay. So you would have seen these events about
3 five or 6:00 in the afternoon?

4 **A.** It was getting dark. It was summertime. So I
5 know it was pretty late, but it was getting dark.

6 **Q.** You're pretty sure it was between five and six?

7 **A.** I don't remember. I think it was later than that,
8 but I'm not sure.

9 **Q.** Okay. Do you remember giving some testimony when
10 you were here on March 6th?

11 **A.** I do.

12 **Q.** You remember that when Mr. Adams and I took your
13 deposition?

14 **A.** Yes.

15 **Q.** You were under oath at that time?

16 **A.** Yes.

17 **Q.** Would listening to the deposition help you
18 remember?

19 **A.** No. I remember saying that. I remember it being
20 about five or six.

21 **Q.** Okay.

22 **A.** But I know it was -- by the time everything was
23 over, it was dark outside.

24 **Q.** So you acknowledge that earlier you said you got
25 off about five or six?

1 **A.** Yes.

2 **Q.** And that's when this happened?

3 **A.** Yes.

4 **Q.** Okay. Now you saw some lights on Mr. Coleman's
5 vehicle; is that right?

6 **A.** Yes.

7 **Q.** And they were green lights?

8 **A.** I don't remember the color.

9 **Q.** Were they blue lights?

10 **A.** I thought they were blue lights.

11 **Q.** Blue lights. Okay. Now, I want to show you --
12 I'm not real sure how this thing turns on. There. It's
13 already on. Presto. Let me see that laser thing. Thank
14 you. Thank you. Press the button. Okay. Okay. The
15 entrance to the community center is right here, right?

16 **A.** It's jumpy but yeah.

17 **Q.** That's where you work, right?

18 **A.** That's correct.

19 **Q.** This building is something else; is that correct?

20 **A.** It's all one facility; but it's a different
21 organization there, yes.

22 **Q.** Okay. But you don't work for them?

23 **A.** No, that's Orange County.

24 **Q.** You always work in this building over here?

25 **A.** That's correct.

1 **Q.** Now, you testified on direct examination that the
2 only way out of here is this entrance right here I'm
3 indicating with the red pen?

4 **A.** Yes.

5 **Q.** Okay. Now, there's another way out; but you can't
6 get there by car. What other vehicle is the other way out?
7 How do you get out?

8 **A.** It's the opposite direction. There's a fence that
9 the kids walk through.

10 **Q.** Okay. You can walk through the fence, or there
11 may be a gate or something?

12 **A.** Right. There's a gate there.

13 **Q.** Okay. I got you. Everything happened --
14 everything happened, would you not agree, right about here?

15 **A.** That's true.

16 **Q.** Do I have this right?

17 **A.** Yes.

18 **Q.** Okay. And you're coming out of here and you're
19 standing say -- your car you said was right about here?

20 **A.** Yes.

21 **Q.** So now between you and the -- you didn't go around
22 and start looking at all this or did you?

23 **A.** Yes.

24 **Q.** Did you stay by your car?

25 **A.** No, I was on the sidewalk.

1 Q. You went up the sidewalk?

2 A. Right -- no, in the middle.

3 Q. Here. I tell you what, I'm going to give you
4 the -- press that button right there and just show us where
5 you walked.

6 A. Up the middle.

7 Q. Okay. Did you go -- show us the path you went.

8 A. I came -- I was standing here when they came in.

9 Q. Uh-huh. Now, you come out to your car?

10 A. I'm not going to my car. I wasn't going to my car
11 because I see the lights and because I'm a night supervisor,
12 I'm walking to the altercation.

13 Q. So did you know immediately that there was an
14 altercation?

15 A. No. No, I did not. But whenever there's police,
16 we have to report that. So if there's something going on,
17 whether I'm off or whatever, I'm going to walk over there
18 and make sure everything is okay.

19 Q. Okay. So how long did it take you to get over
20 where you ended up being able to see all this?

21 A. Not very long.

22 Q. Okay. All right. Okay. Thank you. Now, you
23 saw -- you know Aimee Guillory now; is that right?

24 A. That's right.

25 Q. Have you gotten to know her since all this

1 happened?

2 **A.** Gotten to know her?

3 **Q.** Yeah. Do you hang out with her?

4 **A.** No.

5 **Q.** Okay. You just know her through this case?

6 **A.** I met her through this case.

7 **Q.** Do you -- have you met her in other social
8 contexts since this?

9 **A.** She's come into the community center.

10 **Q.** Okay. For purposes of talking to you?

11 **A.** No, sir. I think she used the computer lab a
12 couple times.

13 **Q.** Okay. Have you ever talked to her since then
14 about this case?

15 **A.** We talked about the dates; but this was back in
16 maybe right before she had the baby, which was in December.

17 **Q.** Okay. And did you talk about the facts of the
18 case, what your proposed testimony might be?

19 **A.** We talked about it, yes.

20 **Q.** Okay. All right. Are you aware of the fact that
21 she has a civil case going?

22 **A.** No, sir.

23 **Q.** Where she's suing for money?

24 **A.** No, sir.

25 **Q.** All right. Vince Johnson, you say you didn't know

1 him before but you knew his father; is that right?

2 **A.** That's correct.

3 **Q.** But you saw Vince Johnson there?

4 **A.** Right.

5 **Q.** That night?

6 **A.** Yes.

7 **Q.** Was there anything about him that appeared to be
8 out of the ordinary?

9 **A.** He didn't have on a shirt.

10 **Q.** No shirt. Did he have a cast on or anything like
11 that?

12 **A.** Yes, he did have a cast on.

13 **Q.** He did have a cast?

14 **A.** Yes, he did.

15 **Q.** You talked to Aimee Guillory about that?

16 **A.** About his cast?

17 **Q.** Yeah.

18 **A.** I don't know.

19 **Q.** You don't know?

20 **A.** I may have.

21 **Q.** You don't remember that?

22 **A.** I may have.

23 **Q.** Okay. What arm is this cast in?

24 **A.** I want to say --

25 **Q.** Or leg?

1 **A.** I want to say it was the right arm. I think it
2 was the right arm. I might be mistaken, but I think it was
3 the right arm.

4 **Q.** All right. Now -- I don't think I have anything
5 that really would serve as a -- let me see a pen. Let me
6 see.

7 **MR. MULLINS:** May I, Your Honor?

8 **THE COURT:** (Nods head.)

9 **BY MR. MULLINS**

10 **Q.** Let me do this first. I'm going to show you
11 what's been admitted into evidence as Defendant's Exhibit 5.

12 **MR. MULLINS:** May I approach, Your Honor?

13 **BY MR. MULLINS**

14 **Q.** You see this area right here?

15 **A.** Yes.

16 **Q.** Okay. Now, is this a community center back in
17 here?

18 **A.** Yes.

19 **Q.** Okay. Is this where everything was?

20 **A.** Yes.

21 **Q.** All right. Now, okay. I'm gonna just come back
22 to this and see if I can get you to tell me. If I
23 understand, her car was -- you say was it facing in or out?

24 **A.** It was facing in.

25 **Q.** In toward the community center. It would be

1 facing where this pen -- where this end is, the front,
2 that's her car; is that right?

3 **A.** I think it was a little more straight.

4 **Q.** Sorry?

5 **A.** I think it was a little more straight.

6 **Q.** Straight like that?

7 **A.** More so like that. I think so.

8 **Q.** And Mr. Coleman's vehicle, the one that you
9 thought was initially a police car, is over here?

10 **A.** I think so.

11 **Q.** You don't remember?

12 **A.** I mean --

13 **Q.** If you don't know?

14 **A.** Yeah, I think so.

15 **Q.** Okay. So --

16 **A.** No, no, no, because she had to go around his car.
17 So his car was on the inside.

18 **Q.** His car was over here?

19 **A.** Yeah. His car was on the inside of her car
20 because she went around his car. He was more behind -- she
21 was in front and he was more behind her.

22 **Q.** Okay. So like this?

23 **A.** I don't know if he was directly or side by side.
24 It was more like that.

25 **Q.** Like that?

1 **A.** Yeah, maybe more like that.

2 **Q.** So this pen, this one here is Mr. Coleman's
3 vehicle; and this pen here is Ms. Guillory's vehicle?

4 **A.** Yes.

5 **Q.** Is that about accurate?

6 **A.** That's about accurate.

7 **Q.** Okay. Now, you say your testimony is she went
8 around his vehicle?

9 **A.** She went around. She made a u-turn.

10 **Q.** Follow this. Did she go this way?

11 **A.** Yes.

12 **Q.** To go around?

13 **A.** Yes.

14 **Q.** So she would have made a left u-turn to go around
15 his vehicle to get out?

16 **A.** Yes.

17 **Q.** Okay. The one that's not broken is yours.

18 Okay. Now, in terms of the distances between what
19 you just saw, that exhibit, you know, where this all was
20 over here, where these cars were parked, right?

21 **A.** Yes.

22 **Q.** And the stop sign going out, which would be over
23 here. Let me show you -- let me show you Defendant's
24 Exhibit No. 1. The stop sign we're talking about is right
25 here; is that right?

1 **A.** Yes.

2 **Q.** Okay. And so the area where this all happened is
3 back in here; is that correct?

4 **A.** It was more to the right but basically, yes.

5 **Q.** Why don't you tell us.

6 **A.** You know what? It's right here in front of the
7 stop sign -- not stop sign, end of the sidewalk. They were
8 right here.

9 **Q.** Oh, so everything happened right here?

10 **A.** Yes.

11 **Q.** Gotcha. All right. And you said it was about
12 20 feet away from the stop sign?

13 **A.** Yeah. I'm just gauging because I'm not --

14 **Q.** Well, you just showed the State?

15 **A.** Yes.

16 **Q.** Did you do that just to watch her trip over that
17 box?

18 **A.** No.

19 **Q.** Okay. But it was about -- it was about as far as
20 I am from you now?

21 **A.** Yeah, a little bit further back but yeah.

22 **Q.** So everything happened in a very short and
23 confined space?

24 **A.** When you say confined, I think of this space right
25 here. That's not right.

1 **Q.** No, no, no. I'm saying in terms of vehicles and
2 cars, vehicular travel and everything, we're talking
3 about --

4 **A.** It was all within a 50-foot radius, I would guess.

5 **Q.** It started where you are?

6 **A.** Right.

7 **Q.** And ended up where I am?

8 **A.** Yeah, give or take a few feet.

9 **Q.** Okay. And she was going about, you say -- did you
10 say five?

11 **A.** Maybe five miles an hour. I'm gauging because I
12 don't know for sure, but I'm thinking she was going maybe
13 five miles an hour.

14 **Q.** I thought you started to say five maybe ten, but I
15 think you were cut off. I don't want to put words in your
16 mouth.

17 **A.** I want to say five maybe ten, but I don't know.
18 I'm guessing that she wasn't going faster than that.

19 **Q.** So let's say five miles per hour.

20 **A.** Uh-huh.

21 **Q.** Be conservative.

22 **A.** Okay.

23 **Q.** Okay. Five miles per hour would you say is about
24 seven to eight feet per second?

25 **A.** I don't know.

1 **Q.** You don't know. Point is she would have closed
2 that distance in about a couple seconds at five miles an
3 hour?

4 **A.** I guess so. I don't know.

5 **Q.** Okay. Now, let's get to the meat and potatoes of
6 this. Did you see her actually exit the car?

7 **A.** Yes.

8 **Q.** She got out?

9 **A.** She got out of the car.

10 **Q.** Okay. When she got out, Mr. Coleman had not drawn
11 his weapon at that time?

12 **A.** No.

13 **Q.** Okay. She's out. So far everything is good.
14 She's getting out of the vehicle. You didn't see what
15 happened to Mr. Johnson earlier?

16 **A.** No. To this day I don't really know what
17 happened. I heard some things but not from them.

18 **Q.** So you don't really know what all this is about?

19 **A.** No.

20 **Q.** When you're walking out, you're just minding your
21 own business?

22 **A.** Walking towards them, though.

23 **Q.** All right. So she gets out. He's moving from
24 between his vehicle and her vehicle and other areas or
25 somewhere around there. He's kind of walking around?

1 **A.** Yes.

2 **Q.** Okay. Is he tending to Mr. Johnson?

3 **A.** I think, if I recall correctly, he told him to
4 have a seat or because there was a curb right there --

5 **Q.** Uh-huh.

6 **A.** -- not too far from where they were standing and
7 he was kind of commanding the situation a little bit.

8 **Q.** Now, if I understand, you didn't see her. You had
9 some children there, right?

10 **A.** My children.

11 **Q.** You had your own children?

12 **A.** Yeah.

13 **Q.** There were four of them, right?

14 **A.** I have four children, but I only had two there.

15 **Q.** You only had two of your children there, but there
16 were other children who were there as well?

17 **A.** There were children because it's a community
18 center, children on the basketball courts. It's summertime.
19 People are everywhere.

20 **Q.** There's people. And you're responsible for these
21 children. It's part of your job as event coordinator and
22 supervisor there?

23 **A.** True.

24 **Q.** Okay. So your attention is also you're watching
25 this but you're also kind of trying to pay attention to

1 what's going on with the kids?

2 **A.** No.

3 **Q.** No, you're not paying attention at all to what's
4 going on with the kids?

5 **A.** No, because my attention is focused on what was
6 going on.

7 **Q.** Okay. Yeah. But you did not see her get back in
8 the car?

9 **A.** I didn't.

10 **Q.** Did you hear the engine rev?

11 **A.** No.

12 **Q.** Did -- okay. I didn't ask that question very
13 artfully. I apologize. Is it that you did not hear it, or
14 that it did not rev?

15 **A.** It did not rev.

16 **Q.** Okay. Okay. At the point at which she was in her
17 car, was Mr. Coleman's back toward her?

18 **A.** Was his back towards her?

19 **Q.** Yeah.

20 **A.** What do you mean? Say that again.

21 **Q.** You know, like my back is to you right now.

22 **A.** Right.

23 **Q.** Was it like that?

24 **A.** His back was -- his back was sort of toward me.
25 He was facing the car, if that's what you're asking me.

1 **Q.** Okay. When she's coming, she starts moving,
2 right?

3 **A.** Oh, in the vehicle. Okay. Now I'm with you.

4 **Q.** She's going in the vehicle. She's making this
5 left around his vehicle, right?

6 **A.** Uh-huh.

7 **Q.** He's standing in close proximity to his car?

8 **A.** He's in-between her car and his car.

9 **Q.** He's in-between. He's in-between her car and his
10 car?

11 **A.** Yeah.

12 **Q.** Is that when he turns around to see her coming at
13 him?

14 **A.** I don't understand what you're saying.

15 **Q.** Well, did he keep his back to her while she's
16 going around?

17 **A.** He was turning around. He never stayed standing
18 there.

19 **Q.** Yeah.

20 **A.** He's moving and talking at the same time.

21 **Q.** Okay. So he's turning around and at some point
22 she's in front of him coming in his direction?

23 **A.** Right. He's walking towards the car.

24 **Q.** Okay. Now, you did not see exactly what happened
25 prior to the gun being fired; is that right?

1 **A.** When he was holding onto the car?

2 **Q.** Did you see what happened immediately prior to the
3 weapon being fired?

4 **A.** I thought I did.

5 **Q.** You thought you did?

6 **A.** I mean, I don't understand what you're saying.

7 **Q.** Did you see -- okay. There's a point in time
8 prior to the gun -- to the weapon being fired, right?

9 **A.** Not much.

10 **Q.** Okay. That not much portion, that period of time
11 right there, did you see what happened between Ms. Guillory
12 and Mr. Coleman at that time?

13 **A.** It went from him holding onto the car, letting go
14 of the car, to him shooting into the car. It wasn't much to
15 not see or see.

16 **Q.** All right. Let's see here. Okay. Did he ever
17 jump in front -- was he ever in front of the vehicle?

18 **A.** He was in front of the vehicle, not directly in
19 front of the vehicle; but he was in front of the driver
20 headlight on the corner of the car.

21 **Q.** So the driver's headlights coming at him, right?
22 It's coming in his direction, and he's in front?

23 **A.** Yes.

24 **Q.** Okay. She's not -- you said earlier, I believe,
25 she's not stopping?

1 **A.** No.

2 **Q.** She just keeps coming?

3 **A.** She's going in that direction.

4 **Q.** His car is over here; is that right? His car --

5 **A.** Yes.

6 **Q.** If he's facing her --

7 **A.** Yes.

8 **THE COURT REPORTER:** I can only get one at a time.

9 I'm sorry.

10 **BY MR. MULLINS**

11 **Q.** Okay. Yeah. Just wait for the question. Yes,
12 ma'am. If he's coming -- if he's coming at her, his car is
13 to her -- is to his right?

14 **A.** Correct.

15 **Q.** All right.

16 **MR. MULLINS:** Your Honor, if I may just real
17 briefly?

18 **THE COURT:** Go ahead.

19 **MR. MULLINS:** Thank you.

20 **BY MR. MULLINS**

21 **Q.** You're saying you saw -- your testimony here today
22 is that you saw everything that happened right up until the
23 time that the weapon was fired into the vehicle?

24 **A.** I saw what I saw. When you say everything that
25 happened, I saw it from the point where he was holding onto

1 the car. He let go of the car, and he shot into the car.

2 Q. Okay. Do you remember the deposition of
3 March 6th?

4 A. Yeah, I guess so.

5 Q. You remember we were out in this little anteroom
6 over here?

7 A. Yes.

8 Q. And we were talking about this case?

9 A. Yes.

10 Q. You remember Mr. Adams and I and Mr. Arckey
11 meeting with you?

12 A. Yes.

13 Q. Okay. You were under oath at that time?

14 A. Yes.

15 Q. Did you give truthful testimony at that time?

16 A. Yes.

17 **MR. MULLINS:** Okay. Your Honor, may we approach?

18 **THE COURT:** Come on up.

19 (There was a bench conference as follows:)

20 **MR. MULLINS:** Judge, we want the same thing.

21 We've got an audio file of her. This won't take long.

22 **MS. GONG GUERRERO:** What are they trying to
23 impeach her on?

24 **MR. MULLINS:** She said she didn't see what
25 happened. Her attention was diverted. And she

1 fired -- she saw the gun fired. Now she's saying she
2 saw everything in continuous time span right up until
3 the time the weapon was fired. That's inconsistent
4 with what she testified to earlier.

5 **MS. GONG GUERRERO:** Judge, it's not inconsistent.
6 She said she saw what she saw. She saw the gun. She
7 saw him holding onto the -- it's not inconsistent.

8 **THE COURT:** I don't know what's on the depo. But
9 if she did at some point in time say that, then
10 potentially it is. Is there any reason why we don't
11 have transcripts of depos that were taken in March?

12 **MR. ADAMS:** I had a motion if you remember to --
13 for sanctions and they showed up at the hearing. So we
14 didn't have a court reporter. It was done informally.
15 We didn't have a court reporter or anything.

16 **THE COURT:** But you had a recording. You could
17 have hired a court reporter to transcribe it between
18 now and then to make things much quicker and easier.

19 **MR. MULLINS:** Here's the problem: We took it on
20 Mr. Adams' personal -- I don't know if they can certify
21 that but Mr. Arckey did administer the oath.

22 (The bench conference concluded.)

23 **THE COURT:** All right. Ladies and gentlemen, if
24 you'll please excuse us. Step out for a few seconds,
25 please.

1 (The jury exited the courtroom at 11:38 a.m.)

2 **THE COURT:** Everybody, have a seat.

3 **MR. ADAMS:** Can we approach, Judge?

4 **THE COURT:** Go ahead.

5 **MR. MULLINS:** Give her a little bit ahead of time
6 so she can identify it.

7 **MR. ADAMS:** I'll give you a little bit.

8 **(The exhibit was published in open court and because of**
9 **the nature of playing audio recordings and the inability to**
10 **distinguish between speakers, the following transcription of**
11 **the audio by this court reporter should NOT be considered a**
12 **verbatim record of said audio recording:)**

13 And normally if the police come on the premises,
14 we have to do an incident report. I'm trying to see if
15 there's something I can just go home (unintelligible)
16 stay for. So that's why I'm walking around. I
17 wasn't -- like I said, I wasn't feeling like a sense of
18 urgency or anything.

19 **BY MR. MULLINS**

20 **Q.** Is that your testimony?

21 **A.** Yes.

22 **(The exhibit was published in open court and because of**
23 **the nature of playing audio recordings and the inability to**
24 **distinguish between speakers, the following transcription of**
25 **the audio by this court reporter should NOT be considered a**

1 **verbatim record of said audio recording:)**

2 When I saw him pull the gun out (unintelligible),
3 so I looked around for my kids. Then I hear the gunshots.
4 So -- and I saw -- I could see the flash from the gun. It
5 happened really fast though. It really did. It wasn't
6 something (unintelligible).

7 (The audio recording was stopped.)

8 **PROFFER EXAMINATION**

9 **BY MR. MULLINS**

10 **Q.** He pulled the gun out?

11 **A.** Uh-huh.

12 **Q.** You looked away for your kids, right?

13 **A.** Uh-huh.

14 **Q.** Then you heard the gunfire?

15 **A.** Yes.

16 **Q.** Okay. So you didn't see everything up until the
17 time the gun fired?

18 **A.** Yes. I mean, when a gun goes off, pow, pow, pow,
19 it's not like -- I don't know. I don't know what you're
20 trying to say. I don't understand what you're saying.

21 **Q.** You said -- did you hear your testimony?

22 **A.** Absolutely.

23 **Q.** You said your attention was at least at some point
24 diverted to the children?

25 **A.** Right.

1 Q. So you were doing that?

2 A. A matter of seconds is what you're talking.

3 Q. That's what I'm asking about, those couple of
4 seconds.

5 A. Okay.

6 Q. Did you see what happened in those couple of
7 seconds?

8 A. Probably not.

9 Q. Okay. That's what I want to establish. That's
10 all.

11 A. Okay.

12 **THE COURT:** Bring them back in.

13 (The jury entered the courtroom at 11:41 a.m.)

14 **THE COURT:** All right. Go ahead and have a seat.
15 Mr. Mullins, you may continue.

16 **MR. MULLINS:** Thank you, Your Honor.

17 **CROSS-EXAMINATION (CONTINUING)**

18 **BY MR. MULLINS**

19 Q. Ms. Fort, you've had an opportunity to review your
20 earlier testimony?

21 A. Uh-huh.

22 Q. Yes?

23 A. Yes.

24 Q. Okay. I want to ask you again. Just a few
25 seconds between the time that the weapon was drawn and the

1 time that the shots were fired you didn't -- your attention
2 was diverted to your children?

3 **A.** You said a few seconds, yes.

4 **Q.** Okay. That's it. So you didn't see what happened
5 in those few seconds?

6 **A.** Okay.

7 **Q.** No. Okay. Now, you -- you also said, if I
8 understand your testimony, that you did not see him get hit
9 by the vehicle?

10 **A.** I did not.

11 **Q.** You did not. Whether he did or not, you don't
12 know?

13 **A.** Exactly. Whether he did or not, I did not see him
14 get hit by the vehicle.

15 **Q.** Okay. Now, it's -- the verbally aggressive
16 yelling that was between -- no, I'm sorry. That was a
17 different -- let me just ask you: You could hear -- could
18 you hear an argument between Vince Johnson and Aimee
19 Guillory?

20 **A.** I heard them exchange words, yes.

21 **Q.** Were those words friendly?

22 **A.** No, he was telling her to just leave, just leave.

23 **Q.** Did you see any of the argument that happened
24 before any of that? That was just --

25 **A.** No.

1 **Q.** No, you wouldn't have because you were still at
2 work, right?

3 **A.** Right.

4 **Q.** Okay. I'm sorry. Thank you.

5 **MR. MULLINS:** If I may have a moment, Your Honor?

6 **THE COURT:** You may.

7 **BY MR. MULLINS**

8 **Q.** Yes. I did have one other question. The shots
9 that you heard, were they tightly grouped or were they
10 spread out?

11 **A.** It seemed that they were tightly grouped.

12 **Q.** So there was one right after another in very quick
13 succession?

14 **A.** I believe so.

15 **MR. MULLINS:** Okay. That's all I have, Your
16 Honor.

17 **THE COURT:** Any redirect?

18 **MS. GONG GUERRERO:** Yes, Judge, just briefly.

19 **REDIRECT EXAMINATION**

20 **BY MS. GONG GUERRERO**

21 **Q.** Ms. Fort, you stayed at the scene when the police
22 arrived, correct?

23 **A.** Yes.

24 **Q.** And you wrote a sworn statement for the police,
25 correct?

1 **A.** I did.

2 **Q.** Right after the police came to the scene?

3 **A.** Yes.

4 **Q.** Okay. And when you wrote that statement, you
5 didn't know who Aimee --

6 **MR. MULLINS:** Your Honor, I'd object to leading.

7 **THE COURT:** Sustained.

8 **BY MS. GONG GUERRERO**

9 **Q.** When you wrote that statement, did you know who
10 Aimee was?

11 **A.** No.

12 **Q.** Did you know who that female who drove off was?

13 **A.** No.

14 **Q.** Okay. And in your statement, did you tell the
15 police what happened?

16 **A.** Yes.

17 **Q.** Pretty much what you're saying right now?

18 **A.** Yes.

19 **Q.** Now, when you were saying, you know, the car was
20 going about five -- maybe five to ten miles per hour, did
21 you have a radar gun with you?

22 **A.** No.

23 **Q.** Did you pace the car with your car?

24 **A.** No.

25 **Q.** Okay. So when you were saying five to ten miles

1 per hour, that's just an estimate of how you think?

2 **A.** That was me trying to guesstimate how fast the car
3 was going because it wasn't going very fast.

4 **Q.** Okay. So it wasn't going very fast, and you say
5 it was a rolling a slow roll before?

6 **A.** Yes.

7 **Q.** Okay. And Vince Johnson, when you saw him, he was
8 standing up, right, when you first saw him?

9 **MR. MULLINS:** Objection, leading.

10 **THE COURT:** Sustained.

11 **BY MS. GONG GUERRERO**

12 **Q.** When you first saw Vince Johnson, what was he
13 doing?

14 **A.** He was standing near the car.

15 **Q.** Okay. And after a while, did he stay in the same
16 place; or did he move?

17 **A.** He moved towards the curb.

18 **Q.** So was he walking around?

19 **A.** He was walking around, yes.

20 **Q.** Okay. Did you notice anything odd about his
21 movement?

22 **A.** No.

23 **Q.** Walking fine?

24 **A.** Yes.

25 **Q.** Now, do you know Destiny Hudson?

1 **A.** No.

2 **Q.** Do you know Myeshia Williams?

3 **A.** No.

4 **Q.** Do you know Marquis --

5 **MR. MULLINS:** I'll object to this. This is
6 outside the scope of cross-examination.

7 **THE COURT:** As to that ground, overruled.

8 **BY MS. GONG GUERRERO**

9 **Q.** Do you know Marquis Jolly?

10 **A.** Marquis Jolly?

11 **MR. MULLINS:** I'll object on the grounds of
12 relevance.

13 **THE COURT:** Overruled.

14 **BY MS. GONG GUERRERO**

15 **Q.** Marquis Jolly?

16 **A.** Yes.

17 **Q.** Who's he?

18 **A.** He was a co-worker at the time.

19 **Q.** Now, when you saw Aimee's car making a u-turn and
20 coming back out, did the defendant -- or did the security
21 guard's car stay in one place; or did it move?

22 **A.** It didn't move.

23 **Q.** Okay. The gap between the security's car and
24 Aimee's car, how far of a gap was it?

25 **A.** Maybe from here to the podium there.

1 **Q.** Here to the podium. How far would you say in
2 feet?

3 **A.** Maybe five, ten.

4 **Q.** Five to ten feet. So there was a five-to-ten-foot
5 gap between Aimee's car and the security officer's car while
6 she's pulling out?

7 **A.** Yes.

8 **Q.** When you said that he was at the front of her car,
9 you said that he was at the front headlight?

10 **A.** Yes.

11 **Q.** Okay. So if this podium is Aimee's car and it's
12 going out of the community center, this is -- the left side
13 is the driver's side, correct?

14 **A.** Correct.

15 **Q.** Okay. Where is the security guard standing? I'm
16 the security guard.

17 **A.** He's standing -- come closer to the podium, a
18 little more and turn that way, a little more to the left.
19 Like in front of it.

20 **Q.** Right here?

21 **A.** Right there.

22 **Q.** So he's standing right here, and did it appear the
23 car was going to hit him?

24 **A.** I never -- I didn't think that the car was going
25 to hit him.

1 Q. Why not?

2 A. She wasn't going very fast, and it just didn't
3 appear she was going to hit him.

4 Q. Were you able to see his demeanor at that time
5 when he was standing right here?

6 A. His facial expression, no.

7 Q. His body language?

8 A. Yes.

9 Q. Okay. Did it appear if his body language --

10 MR. MULLINS: Objection to body language, unless
11 she's qualified to interpret that.

12 THE COURT: Let me hear what the question is.

13 BY MS. GONG GUERRERO

14 Q. Did it appear from his body language that he was
15 going to be hit?

16 MR. MULLINS: Objection, Your Honor, that's a
17 question that calls for speculation.

18 THE COURT: Overrule the objection.

19 THE WITNESS: It didn't look -- he didn't look
20 fearful to me.

21 BY MS. GONG GUERRERO

22 Q. Did it look like he had to scoot back?

23 A. No.

24 Q. He just stayed there?

25 A. Yes.

1 **Q.** Okay. Now, I know defense asked you about those
2 few seconds where you said you looked down. Can you just
3 walk us through the sequence of what you saw, from holding
4 onto the door to those few seconds that he was talking to
5 you about and then from you seeing the gunshot flashes?

6 **A.** From the point -- say that again one more time.

7 **Q.** Can you walk us through the sequence of what you
8 saw?

9 **A.** Okay. Walking up the sidewalk, I didn't feel like
10 it was about to be what it turned out to be. So I'm not
11 running to the scene but I'm walking pretty fast and I saw
12 him -- I heard him telling her to get out of the car, to
13 stop the vehicle. She did not stop the vehicle.

14 He was holding onto the doorjamb and the window
15 and he's telling her to stop the vehicle. She still doesn't
16 stop the vehicle. And he walked from the window of the car
17 to the front of the car still telling her to stop the
18 vehicle and she didn't. Then he walks back to the side.
19 This all happened very fast. He walked back to the side of
20 the car. He pulled out his gun, and then he shot. But the
21 second that he was saying --

22 **MR. MULLINS:** Your Honor, I'll object to the
23 narrative form of the testimony.

24 **MS. GONG GUERRERO:** I think she was finishing her
25 question [sic].

1 **THE COURT:** Overruled. Go ahead.

2 **THE WITNESS:** From the seconds that he was talking
3 about, when you hear -- when I see the gun, I'm looking
4 around for my children. There's gunshots, and then
5 there's nobody but me and the guy.

6 **BY MS. GONG GUERRERO**

7 **Q.** Okay. So when you -- you physically saw the gun?

8 **A.** Yes, I saw the gun. I saw him draw the gun.

9 **Q.** And then did you see him shoot, or did you hear?

10 **A.** I saw the flashes from the gun.

11 **Q.** From where you're standing?

12 **A.** From where I'm standing.

13 **Q.** When you first saw the flashes of the gun, what
14 did you do?

15 **A.** I recall looking and you know, just seeing all the
16 people that were once standing there, nobody's standing
17 there.

18 **Q.** And at that time when the flashes of the gun go
19 off, Aimee's car was already in the front, correct?

20 **A.** Yes. She never stopped.

21 **MS. GONG GUERRERO:** I have no further questions.

22 Thank you.

23 **MR. MULLINS:** Just a couple for clarification. I
24 promise I'm not going to be more than a minute.

25 **THE COURT:** Go ahead.

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RECROSS-EXAMINATION

BY MR. MULLINS

Q. From the time she makes that left-handed u-turn -- let me get this off of here. It's too loud for my own voice. She made this left-hand u-turn from the time she got back in, which you didn't see her get back in?

A. Right.

Q. She's making this left-handed u-turn around his vehicle. She never stopped?

A. No.

Q. And you have her -- you have Mr. Coleman right here?

A. Right.

Q. And she's still -- she's still in motion?

A. That's correct.

MR. MULLINS: Nothing further.

THE COURT: May the witness be excused?

MS. GONG GUERRERO: Yes, Judge.

THE COURT: Thank you, ma'am.

State, call your next witness.

MR. ARCKEY: Your Honor, at this time the State rests.

THE COURT: If I can have the attorneys approach.

(There was a bench conference as follows:)

THE COURT: We're almost at noon. How long do we

1 anticipate for the JOA argument? I have to send them
2 out to do the JOA argument.

3 **MR. ADAMS:** Not long.

4 **THE COURT:** Then you have one witness you want to
5 get on. How long is that going to take?

6 **MR. MULLINS:** Probably five minutes, five or ten.

7 **MR. ARCKEY:** Just so you're aware, I'm concerned
8 what this witness is going to testify to. He wasn't on
9 scene that night. He reported way after the fact. He
10 went to the hospital and saw Coleman and then talked to
11 him at work several days later. I don't know what he's
12 going to testify to.

13 **MR. MULLINS:** He knows what he knows. That would
14 be a matter of cross-examination, Your Honor.

15 (The bench conference concluded.)

16 **THE COURT:** Ladies and gentlemen, we have one
17 witness that the attorneys are telling me is maybe five
18 or ten minutes. There's a legal matter I need to take
19 up outside of your presence. Should take about five or
20 ten minutes. I'm hopeful by about 12:15 or 12:20 I can
21 send you out to lunch so we can accommodate that
22 witness. If you'll step into the jury room for a few
23 minutes, we'll bring you back in and get started with
24 that witness.

25 (The jury exited the courtroom at 11:54 a.m.)

1 **THE COURT:** Go ahead and have a seat.

2 **MR. MULLINS:** Judge, at this time defense would
3 make a motion for judgment of acquittal. The State has
4 the burden not only of proving the substantive
5 offense -- offenses in both Count 1 and Count 2 but
6 they also have the burden of proving beyond a
7 reasonable doubt that Mr. Coleman did not act in -- or
8 did not act in self-defense or it was not otherwise
9 justified in his -- in his actions.

10 So one of the things that the jury instructions
11 says is, in deciding whether the defendant was
12 justified in the use of deadly force, you must judge
13 him by the circumstances in which he had found himself.
14 Nothing in the State's proof, even viewed in the light
15 most favorable to the State, discounts the possibility
16 that he was -- that he was acting in self-defense or
17 that he was not justified in firing his weapon into the
18 vehicle occupied by Ms. Guillory at that time.

19 Your Honor, because of that -- because the
20 evidence, even viewed in the light most favorable to
21 the State, does not discount the possibility that he
22 was acting in self-defense and that he was not
23 justified in using deadly force in this instance, we
24 think that that judgment of acquittal is appropriate.

25 **THE COURT:** State?

1 **MR. ARCKEY:** Your Honor, it's not just that the
2 light is -- it's in the light most favorable to the
3 State; but it's also all reasonable inferences.
4 Additionally, there's been zero evidence put forth that
5 self-defense should be claimed at this point.
6 Therefore, the State doesn't have to prove anything
7 beyond a reasonable doubt. That is a question for the
8 jury once they put forth evidence that there is a
9 self-defense claim.

10 I believe that every witness who was there on the
11 scene that night has said that he was not hit by the
12 car or they did not see him hit by the car and that he
13 was the one who initiated contact with the vehicle.

14 Additionally, I believe the photos in evidence
15 clearly show that the time that the gun was fired, the
16 car was moving away from the defendant, which puts
17 forth, I believe, in the light most favorable to the
18 State, with all reasonable inferences, that force was
19 used beyond what could be claimed in self-defense and
20 that this should be a matter that goes to the jury.

21 **THE COURT:** All right. Anything further from the
22 defense?

23 **MR. MULLINS:** Nothing further, Your Honor.

24 **THE COURT:** Based upon the standard that is
25 appropriate at this point in time and based upon the

1 evidence that's been presented throughout the course of
2 the State's case in chief, the Court does believe
3 there's enough evidence for the case to go forward.
4 And at this point in time, I'll deny the judgment of
5 acquittal.

6 The defense wants to present a case; is that
7 correct?

8 **MR. ADAMS:** Yes, Your Honor.

9 **THE COURT:** Let's bring the jury back in and put
10 on the one witness before lunch, and we'll address the
11 other matters after.

12 (The jury entered the courtroom at 11:58 a.m.)

13 **THE COURT:** All right. Go ahead and have a seat.
14 Defense wish to present a case?

15 **MR. ADAMS:** Yes, Your Honor.

16 **THE COURT:** Call your first witness.

17 **MR. ADAMS:** Defense first witness is Matthew
18 Phillips.

19 **MATTHEW PHILLIPS**

20 **was called as a witness and, having first been duly sworn,**
21 **testified as follows:**

22 **THE COURT:** Have a seat for me, sir. Tell me your
23 full name, and spell your first and last name for me.

24 **THE WITNESS:** Matthews Phillips, M-A-T-T-H-E-W,
25 P-H-I-L-L-I-P-S.

1 **THE COURT:** Defense may inquire of the witness.

2 **DIRECT EXAMINATION**

3 **BY MR. ADAMS**

4 **Q.** Good afternoon, Mr. Phillips. Back on May 28th,
5 2014, what kind of work were you doing?

6 **A.** At the time I was employed as I currently am at a
7 firearms shop.

8 **Q.** Okay. Were you also working for a security
9 company at that point?

10 **A.** On a part-time, as-needed basis.

11 **Q.** Okay. What were your duties at that point, and
12 what had they been in the past for that security company?

13 **A.** At that point, it was basically just as needed, if
14 somebody called out the last minute or if there was an
15 emergency on property and I needed to get there quicker than
16 the owner was able to and cover it until he was there.

17 **Q.** Okay. Is that because you had a pretty good
18 relationship with the owner?

19 **A.** Well, at the time that's what my duties were. In
20 the past when I was working full time for him, I was the
21 area supervisor. I covered all the different shifts,
22 responded to any emergencies on the properties.

23 **Q.** Okay. And then any administrative duties as part
24 of supervisor?

25 **A.** Yes.

1 **Q.** On May 28, did you get a call from your
2 supervisor?

3 **A.** I got a call from the owner of the company.

4 **Q.** The owner of the company. And did he ask you to
5 respond to a scene where Jonathan Coleman had been part of
6 an incident?

7 **A.** Yes.

8 **Q.** Okay. And why did he call you if you were off
9 duty?

10 **A.** He knew I was the closest to the property.

11 **Q.** Okay.

12 **A.** And being as I have -- I had an admin. role in the
13 past, he knew I would be able to gather information for him
14 until he was able to get there because he lives further away
15 from the property than I do where the incident occurred at.

16 **Q.** And you would have actually been closer than any
17 other security who would have been working to support
18 Jonathan Coleman?

19 **A.** I don't know that. I don't have access to any of
20 the schedules.

21 **Q.** Okay. But so he calls you, he asks you to respond
22 to the scene?

23 **A.** Yes.

24 **Q.** What would your duties have been responding to the
25 scene at that point?

1 **A.** Basically, from what he -- from I was informed --

2 **MR. ARCKEY:** Objection, Your Honor. I don't know
3 how this is all relevant.

4 **THE COURT:** Overruled.

5 **BY MR. ADAMS**

6 **Q.** What are your duties at the scene?

7 **A.** Basically, just to gather information because what
8 he had to go on was there was a possible shooting at the
9 property and that he had --

10 **MR. ARCKEY:** Objection, Your Honor, this is all
11 hearsay.

12 **THE COURT:** Sustained.

13 **BY MR. ADAMS**

14 **Q.** Okay. So you get on the scene. Did it appear
15 that it still pretty recently happened when you got there?

16 **MR. ARCKEY:** Objection, Your Honor, calls for
17 speculation.

18 **THE COURT:** Overruled.

19 **BY MR. ADAMS**

20 **Q.** Did it appear it was still pretty recent?

21 **A.** It was still pretty chaotic. There's still a lot
22 of Orlando Police arriving on scene. The majority of the
23 street was filled with police department vehicles and there
24 was fire rescue on the scene, as well as probably, I
25 couldn't say how many, residents from the property.

1 **Q.** Are you familiar with the area of WD Judge Drive
2 and Mercy?

3 **A.** Yes.

4 **Q.** Are you familiar with the entrance of this
5 community center?

6 **A.** Yes. It's across the street from the property.

7 **Q.** Are you familiar with that property --

8 **A.** Yes.

9 **Q.** -- those apartment buildings?

10 Okay. And looking at this, does this appear where
11 the scene would have been?

12 **A.** Yeah. The patrol car for the company was in the
13 entrance lane and when I arrived, there was a fire -- there
14 was a ambulance that had -- was actually pulled past the
15 patrol car into the property and there was fire rescue and
16 police and Mr. Coleman sitting on the ground.

17 **Q.** For the record, I'm showing you what's been marked
18 as Defendant's Exhibit 1 in evidence. Okay. You say a fire
19 truck was in there?

20 **A.** No, an ambulance.

21 **Q.** An ambulance. Okay. Did the ambulance
22 actually -- would it have turned into the community center
23 and driven through those lanes?

24 **A.** From what --

25 **MR. ARCKEY:** Objection, calls for speculation.

1 **THE COURT:** Sustained.

2 **BY MR. ADAMS**

3 **Q.** Would the emergency vehicle have been visible in
4 this picture?

5 **A.** Yes.

6 **Q.** Okay. Could you please identify where that
7 emergency vehicle would be in this picture?

8 **A.** It was approximately right here in this location
9 (indicating).

10 **Q.** Okay. For the record, you identified a little bit
11 to the left of those double yellow lines towards the top of
12 them?

13 **A.** Yes.

14 **Q.** I'm showing you what is part of State's composite
15 Exhibit 5 for identification. If you can look behind you.
16 It comes into focus. Okay. Does that appear to be
17 Mr. Coleman's work vehicle?

18 **A.** That's the company patrol vehicle, appears to be.

19 **Q.** Would that have looked somewhat similar to the
20 scene when you arrived or was there additional --

21 **A.** There was -- where all those evidence markers are,
22 there was an ambulance parked there.

23 **Q.** Right there?

24 **A.** Yes, sir.

25 **Q.** Do you know if that would have been prior to those

1 evidence markers being placed?

2 **A.** I would assume so. There was an ambulance right
3 where those were.

4 **MR. ADAMS:** May I have a moment, Judge?

5 **THE COURT:** You may.

6 **BY MR. ADAMS**

7 **Q.** Did you see any tape, any evidence tape at that
8 point?

9 **A.** There was crime scene tape up.

10 **Q.** Where was that at, do you remember?

11 **A.** It was mostly in front of the entrance to the
12 property to the community center.

13 **Q.** Okay. So to the area, to keep unwanted cars
14 driving into the community center?

15 **A.** I don't know.

16 **Q.** Okay. In the area where you just described where
17 you saw the evidence markers on the ground and you described
18 the evidence being, could you see any evidence markers at
19 that point?

20 **A.** No, I could not.

21 **Q.** And Mr. Coleman was still on scene at that point?

22 **A.** Yes. He was seated on the ground with his back
23 towards the patrol vehicle with fire rescue and police
24 around him.

25 **Q.** Okay. Could you tell if he was being treated by

1 medical professionals at that point?

2 **A.** Fire rescue was standing around him, kneeling next
3 to him. I don't know for sure. I wasn't able to get close
4 to him.

5 **Q.** Where was he actually seated at?

6 **A.** I believe he was near the rear tire on the
7 driver's side.

8 **Q.** Of his vehicle?

9 **A.** Yes.

10 **MR. ADAMS:** Thank you. Nothing further.

11 **THE COURT:** Cross?

12 **CROSS-EXAMINATION**

13 **BY MR. ARCKEY**

14 **Q.** Mr. Phillips, you know Mr. Coleman, correct?

15 **A.** Yes.

16 **Q.** How long have you known Mr. Coleman?

17 **A.** I know him through limited interaction through the
18 security company.

19 **Q.** And I believe your friend who owns the security
20 company, his name is Mr. Mercer, right, if I'm not mistaken?

21 **A.** Yes.

22 **Q.** Joshua Mercer?

23 **A.** Yes, sir.

24 **Q.** He's a good friend of yours for a long time,
25 correct?

1 **A.** A couple years.

2 **Q.** He's the owner of the company?

3 **A.** Yes.

4 **Q.** And stands to lose in any type of lawsuit against
5 his company?

6 **A.** I don't know.

7 **Q.** You don't want to see anything bad happen to any
8 of your friends, correct?

9 **A.** I don't like to see anything bad happen to anyone.

10 **Q.** And you've worked for Urban Enforcement before?

11 **A.** Yes.

12 **Q.** And you have no idea what time this event
13 occurred?

14 **A.** No.

15 **Q.** You know nothing about the facts of this event?

16 **A.** I just know what -- I don't know when he called
17 me. I can give you a time frame. It would be a couple
18 hours, but I couldn't tell you exactly.

19 **Q.** So you don't know if this scene was processed
20 beforehand?

21 **A.** I don't know. I don't know how scenes are
22 processed.

23 **MR. ARCKEY:** No further questions, Your Honor.

24 **THE COURT:** Redirect?

25 **MR. ADAMS:** No, Your Honor.

1 **THE COURT:** May the witness be excused?

2 **MR. ADAMS:** Yes, Your Honor.

3 **THE COURT:** All right. Thank you, sir.

4 **THE WITNESS:** You're welcome.

5 **THE COURT:** All right. Ladies and gentlemen,
6 we're at three minutes and the 45 seconds earlier than
7 I thought it would be. With that said, I'll send
8 you-all to lunch and have you come back at 1:30. That
9 will give you about an hour and 20 minutes or so. And
10 I'll give the court personnel enough time to get out
11 and get anything they need to get done.

12 Don't do any investigation on your own. If you
13 see any of us, please forgive us. Enjoy your lunch.
14 Come back to the same place you did this morning. When
15 you're all here, we'll get you started with the
16 afternoon. Okay.

17 (The jury exited the courtroom at 12:10 p.m.)

18 **THE COURT:** Everyone, have a seat. In terms of
19 this afternoon, how many witnesses left do we have?

20 **MR. ADAMS:** I think we expect just Mr. Coleman to
21 testify this afternoon, and we're going to admit in our
22 medical records. We won't spend more than a couple
23 minutes on those.

24 **THE COURT:** Okay.

25 **MR. ADAMS:** Probably take an hour maybe.

1 **THE COURT:** When we get back, I'll have a
2 conversation with Mr. Coleman when we come back from
3 lunch just to give him the additional time to talk to
4 you about when I ask about your decision to testify and
5 make sure it's free and voluntary and all that kind of
6 stuff. I want to give you the lunch break to speak
7 with your attorneys. You don't need to stand. We're
8 good. So I'll give you the opportunity to do that.

9 In terms of the verdict forms that I handed out to
10 the defense last night, any special reference to those?

11 **MR. MULLINS:** I think the verdict form is fine.

12 **THE COURT:** No objections to the verdict forms
13 from either the State or defense?

14 **MR. ADAMS:** None from defense, Judge.

15 **THE COURT:** All sides are in agreement that
16 there's no lesser on Count 2 and lesser of felony
17 battery and battery on Count 1, correct?

18 **MR. ARCKEY:** Yes.

19 **MR. ADAMS:** Yes, sir.

20 **THE COURT:** Both sides want me to give those two
21 category one lessers on Count 1?

22 **MR. ARCKEY:** State would be asking for the felony
23 battery.

24 **MR. MULLINS:** We are asking for felony battery and
25 battery.

1 **THE COURT:** Then I'll give them all.

2 Then that means the only unresolved issue is the
3 stuff here. I have a copy for each of you—all of what
4 I have narrowed down the justifiable use of deadly
5 force instruction to; although, there are some items
6 that we need to look at. What I would like you—all to
7 do is kind of take a look at this on the lunch break.
8 When we get to it later this afternoon, I will address
9 whatever other issues there are.

10 **MS. GONG GUERRERO:** Judge, regarding the jury
11 instruction, I just thought of something. We may need
12 to distinguish whether it's a deadly weapon or if it's
13 a serious bodily injury that they're finding the
14 aggravated battery because then that would determine
15 whether or not it's enhanceable from an F-2 --

16 **MR. MULLINS:** I think counsel is referring to
17 maybe a special finding on the verdict form.

18 **MS. GONG GUERRERO:** Because if it's a deadly
19 weapon, then we're not allowed to enhance it with the
20 weapons reclassification; but if it's a serious bodily
21 injury or great bodily injury, then we're allowed to
22 enhance the weapons reclassification.

23 **THE COURT:** Right. There are two ways to prove an
24 aggravated battery. One is by intentionally causing
25 great bodily harm. The other one is by using a deadly

1 weapon. Is that what you're referring to?

2 **MS. GONG GUERRERO:** Yes.

3 **THE COURT:** The way you have charged your
4 information, you have charged your information as a
5 battery with a deadly weapon.

6 **MS. GONG GUERRERO:** Okay.

7 **THE COURT:** It was not charged as great bodily
8 harm. The great bodily harm language is in there
9 because of the 25-to-life language.

10 **MS. GONG GUERRERO:** Okay.

11 **THE COURT:** So that issue is not -- I looked at
12 that when I was doing the instruction, when I looked at
13 it yesterday to see if that was the issue but the only
14 portion of 775.087 that's been cited is subsection two,
15 which is the 25 to life. Subsection one, the weapons
16 reclassification, was not used.

17 **MS. GONG GUERRERO:** Okay. That's why I didn't put
18 in the weapons reclassification special verdict form.
19 I wanted to make sure.

20 **THE COURT:** That issue has been taken care of.

21 In terms of the jury instructions, if you'd be
22 ready to talk to me and discuss with me the
23 self-defense instruction after we close or finish the
24 case, I would appreciate it.

25 We'll be in recess until 1:30 on this case.

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(A luncheon recess was taken at 12:15 p.m.)
(Continued in Volume V.)

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C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OF ORANGE:

I, CATHY L. MATTA, RPR, OFFICIAL COURT REPORTER
OF THE NINTH JUDICIAL CIRCUIT OF FLORIDA,
DO HEREBY CERTIFY, PURSUANT TO FLORIDA STATUTE 29,
THAT I WAS AUTHORIZED TO AND DID REPORT IN
STENOGRAPHIC SHORTHAND THE FOREGOING PROCEEDINGS
AND THAT THEREAFTER MY STENOGRAPHIC SHORTHAND NOTES
WERE TRANSCRIBED TO TYPEWRITTEN FORM BY THE PROCESS
OF COMPUTER-AIDED TRANSCRIPTION AND THAT THE
FOREGOING PAGES CONTAIN A TRUE AND CORRECT
TRANSCRIPTION OF MY SHORTHAND NOTES TAKEN THEREIN.

WITNESS MY HAND THIS 30TH DAY OF NOVEMBER,
2015, IN THE CITY OF ORLANDO, COUNTY OF ORANGE,
STATE OF FLORIDA.

CATHY L. MATTA, RPR
OFFICIAL COURT REPORTER

Exhibit I

Orange County		ICJIS Arrest Affidavit			Division #: CRA			
Arrested <input checked="" type="checkbox"/> At-Large <input type="checkbox"/> JRA <input type="checkbox"/>		Document #: 604910			Court Case #: 48-2014-MM-004628-A-O			
Document Date: 05/05/2014		Location of Defendant Vehicle: NOT APPLICABLE			Date-Time Booked: 05/05/2014 11:45			
(ORI) : FL0480400		Agency Name: ORLANDO POLICE DEPT			Agency Case Number: 201400186568			
Address of Arrest: S KIRKMAN RD/ RALEIGH STREET		FCIC/NCIC Check: <input checked="" type="checkbox"/>			Date-Time of Arrest: 05/05/2014 11:16			
DEFENDANT		Adult <input checked="" type="checkbox"/> Juvenile <input type="checkbox"/> Jacket Number:			Inmate Number: 14015111			
NAME (L,F,M): GULLORY, AIMEE RENEE		A.K.A:			Language: ENGLISH			
Height: 5'07"		Weight: 158		Hair: BLK		Eyes: BRO		
RES Street#: 3958 WD JUDGE DR 132		City: ORLANDO			State: FL		Zip: 32808	
Scars/Tattoos: 36 ASSORTED TATOOS		Ethnicity: NON HISPANIC			SSN #: [REDACTED]		Year Expires: 2021	
Driver's License/ State ID No: G460-016-88-956-0		State: FL			Year Expires: 2021		SSN #: [REDACTED]	
Business and Occupation:		City:			State: FL		Zip:	
Next of Kin Name:		City:			State: FL		Zip:	
AGGRAVATORS:		Firearm <input type="checkbox"/>		Weapon <input type="checkbox"/>		Mask <input type="checkbox"/>		
OFFENSES:		Felony <input type="checkbox"/>		Misd. <input checked="" type="checkbox"/>		ORD. <input type="checkbox"/>		
No. 1		GOC Code		Description		Bond Amt \$ / Status		
1				BATTERY 784.03-7		500.00		
DCF Notified? <input type="checkbox"/>		By Whom?		On Probation? <input type="checkbox"/>		Miranda Warning? <input type="checkbox"/>		
Notary Public		Law Enforcement Officer		I swear or affirm the above statements are correct and true		(407) 246-2470		
Personally Known		Notary Public		Officer's Signature		Officer's Bus. Phone No.		
Type of Identification		Notary Public		Signature		WILLIAMS, ARTAVIOUS / 19007		
Notary Signature		Notary Name		Notary Commission # / Exp. Date		Notice to Defendant Regarding Social Security Number: This Law Enforcement Agency has collected your social security number (SSN) as required by FSS 119.071. This agency will use it for the purpose of confirming your identity, and sharing it with other governmental agencies to identify records linked to that SSN. This collection and use of your SSN is required by this agency to fulfill its lawful duties and responsibilities.		

Orange County		ICJIS Arrest Affidavit (continued)
Arrested <input checked="" type="checkbox"/> At-Large <input type="checkbox"/> JRA <input type="checkbox"/>	Document #: 604910	Division #: CRA
Document Date: 05/05/2014		Court Case #: 48-2014-MM-004628-A-O
Defendant's Name: GUILLORY, AIMEE RENEE		Agency Case Number: 201400186568

NARRATIVE: The undersigned has probable cause to believe the above-named defendant on the 05 of May 2014 at 11:27 at RALEIGH STREET/ S KIRKMAN ROAD (Zone: G-7) in Orange County did

On 05/05/2014, at 0910 hours, I Officer Williams #19007 responded to Raleigh Street and S. Kirkman Road reference a battery involving Aimee R. Guillory (arrestee) Shane M. Carter (witness) and Diandra Reeves (victim).

Upon my arrival I met with Reeves who verbally stated she was battered by Guillory in the grass median located at Raleigh Street and S kirkman Road. Reeves stated while waiting for the bus, Guillory pulled up and then chased her in the vehicle into the grass median heading towards Metro Place Apartments. Reeves stated Guillory got out of the vehicle and started hitting her in the face. She left in a gray Audi with tag #486QLD southbound on S Kirkman Road. Reeves provided a sworn written statement and is willing to prosecute.

Upon meeting with Guillory she verbally stated Reeves had previously sprayed her pepper spray a few days prior to this incident. She also stated her and Reeves have had several verbal altercations in the past three months. She stated that this is the first time she has seen Reeves since being sprayed with pepper spray. Guillory stated Reeves attempted to punch her but missed and then ran into traffic and Guillory followed her on foot into the grass median. Guillory stated she let go of Reeves and returned to her vehicle. Guillory provided a sworn written statement.

Carter provided a sworn statement for officers. Carter stated he saw Guillory on top of Reeves hitting her in the head. Carter followed Guillory's vehicle until officers conducted a traffic stop. Guillory was traveling at a normal rate of speed.

Guillory was arrested for Simple Battery and transported to BRC for booking.

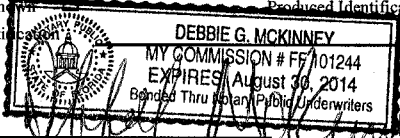
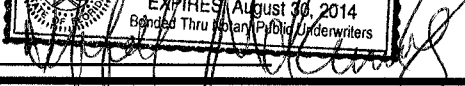
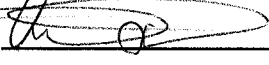
Sworn to and subscribed before me, this <u>05th</u> day of <u>May</u> year <u>2014</u> Notary Public <input checked="" type="checkbox"/> Law Enforcement or Corrections Officer <input type="checkbox"/> Personally Known <input checked="" type="checkbox"/> Produced Identification <input type="checkbox"/> Type of Identification:  Notary Signature: 	I swear or affirm the above statements are correct and true Officer's Signature:  Officer's Bus. Phone No. <u>(407) 246-2470</u> Officer's Name/ID <u>WILLIAMS, ARTAVIOUS / 19007</u> Notice to Defendant Regarding Social Security Number: This Law Enforcement Agency has collected your social security number (SSN) as required by FSS 119.071. This agency will use it for the purpose of confirming your identity and sharing it with other governmental agencies to identify records linked to that SSN. This collection and use of your SSN is required by this agency to fulfill its lawful duties and responsibilities. Notary Name: _____ Notary Commission # / Exp. Date: <u>/</u>
---	---

Exhibit J

Orange County ICJIS Arrest Affidavit

Arrested At-Large JRA Document #: 732195 Division #: 17 Court Case #: 16-CF-13229-0

Document Date: 10/16/2016 Location of Defendant Vehicle: Date-Time Booked: 10/16/2016 13:47 Agency Case Number: 201641003132

(ORI) : FL0480100 Agency Apopka Police Department Name: FCIC/NCIC Check: Date-Time of Arrest: 10/16/2016 12:47

Address of Arrest: 959 S APOPKA BLVD APOPKA, FL 32703

DEFENDANT Adult Juvenile Jacket Number: Inmate Number: 16030942 Language: ENGLISH

NAME (L,F,M): GUILLORY, AIMEE RENEE A.K.A.: Race: B Sex: F DOB: 12/16/1988 Age: 27

Height: 5'07" Weight: 180 Hair: BLK Eyes: BRO POB City: POB State: POB Country: US

RES Street#: 3958 WD JUDGE DR APT 132 Citizenship: US

City: ORLANDO State: FL Zip: 32808 Home Phone: Other Phone: (407) 450-9330

Scars/Tattoos: Ethnicity: UNKNOWN

Driver's License/ State ID No: G460016889560 State: FL Year Expires: 2021 SSN #: [REDACTED]

Business and Occupation: Bus Street#: City: State: Zip:

Next of Kin Name: UNKNOWN Phone:

Next of Kin Street #: City: State: Zip:

AGGRAVATORS: Firearm Weapon Mask Vest Convicted Sex Batterer Hate Crime Special Victim: Domestic Violence? Y

OFFENSES: Felony Misd. ORD. Traffic Out of County Court Location: CIRCUIT Originating State/County:

Table with 10 columns: No., GOC Code, Description, Count, Bond Amt \$ / Status, FSS/ORD, FDLE Rec#, Drug Name, Citation Number. Contains two rows of offense details.

DCF Notified? Y By Whom? AGERARDI On Probation? N Miranda Warning? N By Whom? Invoked? N

Large empty rectangular area for notes or signatures.

Sworn to and subscribed before me, this 16 day of October year 2016

Notary Public Law Enforcement or Corrections Officer Personally Known Produced Identification

Type of Identification

Notary Signature: [Signature] NOTARY PUBLIC STATE OF FLORIDA

I swear or affirm the above statements are correct and true

Officer's Signature: [Signature] Officer's Bus. Phone No. GERARDI, AARON / ap2284

Officer's Name/ID

Notary Name: PADILLA, LAURA Notary Commission # / Exp. Date: FF901283 / 07/19/2019

Orange County	ICJIS Arrest Affidavit (continued)	
Arrested <input checked="" type="checkbox"/> At-Large <input type="checkbox"/> JRA <input type="checkbox"/>	Document #: 732195	Division #:
Document Date: 10/16/2016		Court Case #:

Defendant's Name: GUILLORY, AIMEE RENEE	Agency Case Number: 201641003132
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NARRATIVE: The undersigned has probable cause to believe the above-named defendant on the 16 of October 2016 at 11:03 at 959 S APOPKA BLVD (Zone: 1) in Orange County did

On 10/16/2016 I, Officer Gerardi, was dispatched to 959 South Apopka Blvd. in reference to a verbal disturbance.

On arrival I was able to observe two cars in the driveway. Aimee Guillory was standing by her car with 3 children inside, arguing with the father of her children, Vince Lamar Johnson, who was standing up on the balcony attached to the house. There was a 2X4 and a vehicle jack that was lying on the ground in front of the Vehicles.

Both parties were arguing back and forth when I arrived about who was taking the children. I was able to talk to the parties involved who stated the following.

Vince Johnson stated in a sworn statement that Aimee arrived at the residence and began shouting and wanted Vince to enter the vehicle. After Vince informed Aimee that he was not going to get in the vehicle unless it had to do with his kids. Aimee exited the vehicle, approached Vince and attempted to strike him with her fist. Aimee was unsuccessful and proceeded to pick up a 2X4 that was on the ground and proceeded to attempt to strike Vince. When she was unsuccessful she put down the 2X4 and picked up a brick. Aimee threw the brick at Vince missing him and hitting the vehicle parked in the driveway. Aimee then picked up the car jack and threw it at Vince. By that time Vinces's brother Viran was outside the house on the balcony. Vince advised that he was afraid for his life at the time of the threat. Vince wished to press charges as stated in his sworn statement.

Viran Johnson stated in a sworn written statement that he emerged from the house with his firearm as Vince told him Aimee was damaging his vehicle. As Viran emerged from the house he saw Aimee in the driveway next to the vehicles. Aimee began to make threats to both Viran and Vinces life stating "I got something for you they gonna be at your job waiting on him". Viran in fear of his life fired a shot from his Smith and Wesson M&P45, Serial Number MPY0382. Viran and Lance stated that the weapon was fired in a direction away from where Aimee was on the side of the house. Aimee then was reported not affected by the shot fired, which Viran then fired a second. At that time Viran's wife came and retrieved the weapon from him and called the Apopka Police Department.

Aimee was arrested for Aggravated Domestic Assault and Criminal Mischief. Viran wished to press charges for the threats made to his life. Viran wishes to press charges for the damage to his vehicle and the threats made to his life.

The firearm used in the incident was confiscated due to the fact that this was a domestic incident. The firearm was surrendered without incident and willingly by the owner Viran Johnson. The Smith and Wesson M&P45, serial number MPY0382, was ran through FCIC/NCIC and yielded negative results. Viran was provided a property form and submitted to evidence.

The vehicle door was documented and Viran Johnson reported the damage to the door in his statement at \$150-\$200.

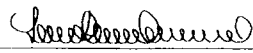
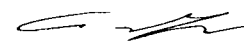
Sworn to and subscribed before me, this <u>16</u> day of <u>October</u> year <u>2016</u> Notary Public <input checked="" type="checkbox"/> Law Enforcement or Corrections Officer <input type="checkbox"/> Personally Known <input type="checkbox"/> Produced Identification <input type="checkbox"/> Type of Identification _____ Notary Signature: 	I swear or affirm the above statements are correct and true Officer's Signature:  Officer's Bus. Phone No. _____ GERARDI, AARON / ap2284 Officer's Name/ID _____ _____ NOTARY PUBLIC STATE OF FLORIDA Notary Name: PADILLA, LAURA Notary Commission # / Exp. Date: FF901283 / 07/19/2019
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Exhibit K

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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA,

PLAINTIFF,

vs.

JOHNATHAN ANDREW COLEMAN,

DEFENDANT. /

CASE NUMBER: 2014-CF-7184-A-O

DIVISION NUMBER: 16

VOLUME VII of VII (P.M.)

TRIAL PROCEEDING

BEFORE

THE HONORABLE GREG TYNAN

In the Orange County Courthouse
Courtroom 6-D
Orlando, Florida 32801
June 22-24, 2015
Bobby V. Timms, RPR

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

ERIC ARCKEY
LISA GONG
Assistant State Attorneys
415 North Orange Avenue
Building B
Orlando, Florida 32801
On behalf of the State

ERNEST MULLINS
JOSHUA ADAMS
Assistant Public Defenders
435 N. Orange Avenue
Suite 400
Orlando, Florida 32801
On behalf of the Defendant

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I N D E X

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1 P R O C E E D I N G S

2 - - - -

3 (Trial Continuation)

4 (Whereupon, the jury was returned to the
5 courtroom and the proceedings continued as
6 follows)

7 THE COURT: Ladies and Gentlemen, you've
8 all had an opportunity to place your dinner
9 orders; is that correct?

10 THE JURY: Yes.

11 THE COURT: You've made arrangements and
12 let your family members know I am going to hold
13 you captive this evening?

14 THE JURY: Yes.

15 THE COURT: Both attorneys have rested
16 their cases. They are going to present to you
17 their final arguments. What the attorneys say
18 is not evidence nor your instructions on the
19 law. You should listen closely to what the
20 attorneys say. Their argument is intended to
21 aid you in understanding the case.

22 Each side has equal time, but the State is
23 entitled to divide that time between an opening
24 and closing after the opponent has spoken.

25 State wishes to give their closing at this

1 time?

2 MR. ARCKEY: Yes, Your Honor.

3 Permission to move about freely?

4 THE COURT: Absolutely.

5 MR. ARCKEY: Four shots going diagonally
6 down the side of a car as it's going away. On
7 May 28th the defendant pulled his firearm, shot
8 four hollow-point rounds, 9mm, into a side of a
9 car as it was driving away from him.

10 The culmination of the evidence here in
11 the past two days, you see photos of the bullet
12 holes, you saw photos of the dowel rods that
13 Carlos Nieves has placed into it. You seen the
14 location of bullet holes in the back frame.
15 You saw a car -- and these pictures will go
16 back with you when you deliberate.

17 No damage to a windshield, no dents in the
18 front of the hood, nothing like that. There
19 are multiple angles which you can see how far
20 the defendant was back on the end of that car
21 before he fired his four shots.

22 You see the inside of the car with the
23 dowel rod showing the trajectory of the bullet
24 and the blood from Ms. Guillory's right hand.
25 The bullet that pierced the car, another angle

1 of that dowel rod, showing you the trajectory
2 and how high that gun was when it was being
3 fired for an individual that was six-two in a
4 downward angle, someone who is standing up
5 firing into a car.

6 More pictures showing you the trajectory,
7 three well-placed shots in a tightknit area,
8 not consistent with the car speeding away.

9 Then a fourth shot through the back,
10 another angle of the car showing more of the
11 trajectory and how high that firearm had to be
12 held.

13 Again, trajectory of the sedan, a 4-door
14 sedan and how high that firearm was held.
15 Again, you got the firearm that was used, 9mm,
16 Glock, no safety, shooting hollow points, one
17 in the chamber ready to go at all times, photos
18 of the crime scene.

19 You heard from various people today that
20 when a 9mm shoots, it uses the gas operated
21 from the projectile and the explosion to eject
22 a shell and it can roll anywhere, but they are
23 all on the side of the car, his vehicle, which
24 you will notice that it's marked up to look
25 like a police vehicle.

1 He carries a belt to look like a police
2 officer, he orders people out of the car like
3 he's a police officer. The fact is, he's not a
4 police officer, and again, these will go back
5 with you.

6 The injuries sustained by Aimee Guillory,
7 a through-and-through in the arm that fractured
8 her arm, where it ended up in the wrist on the
9 other arm and that's all corroborated by the
10 medical records here too. You saw her step
11 down from the stand. You saw the amount of
12 scarring she had. A car that runs almost the
13 full length of her arm to help impair the
14 damage caused from her leaving the scene of a
15 security guard who was trying to detain her as
16 if he was a police officer.

17 Now the Judge is going to instruct you on
18 the law in this case and as I started Monday
19 off or we talked about Monday during jury
20 selection, the State has to prove certain
21 things beyond a reasonable doubt and those
22 things are the elements of the crime.

23 In here the elements of the crime are
24 relatively simple. On the count of aggravated
25 battery, and you-all do not have to write this

1 down, you will get your own set, it says to
2 prove the crime of aggravated battery, the
3 State must prove the following two elements
4 beyond a reasonable doubt. The first element
5 is a definition of battery. In one, that
6 Johnathan Coleman intentionally touched or
7 struck Aimee Guillory against her will, or
8 caused bodily harm to Aimee Guillory. So
9 either or there; and, two, that in committing
10 the battery he used a deadly weapon -- in
11 committing the battery he used a deadly weapon,
12 deadly weapon to-wit: Here a firearm.

13 Obviously Aimee Guillory didn't want to
14 get shot. Obviously there's bodily harm, and
15 obviously the battery was done by the
16 projectile fired from the defendant's weapon.

17 It goes on for a lengthy discussion about
18 the discharge causing great bodily harm, and
19 the important thing to really get out in this
20 instruction is what is great bodily harm. I
21 submit to you that great bodily harm is a
22 fracture in your arm, horrible scars in -- or
23 through-and-through gunshot wounds, scars on
24 your wrist from having a bullet lodged in your
25 wrist. Those aren't going to go away.

1 She was in the hospital for an extended
2 period of time. She had to undergo surgery,
3 all because the defendant wanted to detain her
4 and didn't want her to leave.

5 The Judge will also instruct you on what
6 the State has charged in count two. Count two,
7 shooting at, within or into an occupied
8 vehicle, and just like in the cheeseburger
9 example, one, Johnathan Coleman shot a firearm.
10 So it's like the bun, the cheese, the
11 hamburger.

12 Part two is that he did so within or into
13 a vehicle of any kind that was being used or
14 occupied by a person. She was driving the car,
15 the bullet holes are in the car. She has a
16 trajectory dowel rod consistent with her
17 injuries.

18 Three, the act was done wantonly or
19 maliciously. It means consciously,
20 intentionally and reckless indifference to the
21 consequences.

22 Every time he pulled that trigger, he had
23 to put around five pounds of pressure on that
24 trigger, four times, 20 pounds of pressure for
25 four shots, maliciously, wrongfully, to without

1 legal justification or excuse.

2 As you heard -- well, two types of
3 evidence, there's multiple types of evidence,
4 but two types I want to discuss right now.
5 There's the physical evidence that we have here
6 today, all the pictures, the items, the things
7 that you can touch, feel, see. There's also
8 the testimonial evidence.

9 All the evidence that you heard coming
10 from the witness stand, from all the witnesses,
11 and the testimony from this witness stand, I
12 submit to you, corroborates what the physical
13 evidence is.

14 You heard from multiple people here today,
15 today, yesterday. You heard from Vince
16 Johnson, who told you what happened, that they
17 were in an argument, he's crossing the road,
18 they are still in an argument, banged on the
19 hood of the car.

20 Aimee Guillory took the stand and
21 testified that they were in an argument, they
22 argued about how she was pregnant and she
23 needed to go eat, that when she was going down
24 W. D. Judge, they were continuing to argue as
25 she's driving down the road, and he bangs on

1 the hood of the car.

2 When the defendant gets in his vehicle,
3 essentially conducts a traffic stop on her into
4 the community center and pulls her out of the
5 car, he says his hands were on his firearm.
6 She says he pulled the firearm, but pulls her
7 out of the car with some show of force.

8 She complies, gets out of the car, someone
9 drives by and says he's not a real cop, you
10 don't have to stay, and she decides to get back
11 in the car.

12 Then you heard from not only Aimee
13 Guillory, not only Vince Johnson, not only
14 Myeshia Williams, Destini Hudson, Officer
15 Sherron Fort, Marquis Jolly, some of these
16 people who have no real connection with anyone,
17 and they told you what they saw, said the car,
18 the car is rolling, the car wasn't a threat,
19 the car wasn't a threat, the car was moving
20 relatively slow.

21 An individual who continued to yell stop,
22 stop, stop, get out of the car, I submit to
23 you, is not consistent with the defendant's
24 testimony.

25 Now the Judge is also going to instruct

1 you on some lesser includeds, and it's the
2 State's position that the State has proven the
3 highest crime. However, I will talk about the
4 lesser includeds of count one, that Johnathan
5 Coleman actually or intentionally touched Aimee
6 Guillory against her will, this is felony
7 battery, and Johnathan Coleman caused Aimee
8 Guillory great bodily harm, permanent
9 disability or permanent disfigurement; scar on
10 her arm, fractured arm.

11 There's one other lesser included, and
12 that's battery, and that's simply that
13 Johnathan Coleman touched or struck her against
14 her will or caused bodily harm. The difference
15 in that is great bodily harm.

16 Now defense, we anticipate, is going to
17 use justifiable use of deadly force as their
18 defense, and the State's position is that it
19 doesn't apply. The car was not going at him.
20 There are one, two, three, four, five, six,
21 witnesses who are all there who said she was
22 going right down W. D. Judge going away from
23 him, trying to go around him and he's the one
24 who continued to pursue, continued to try to
25 grab her out of the vehicle and continued to

1 make contact with her when she was going away
2 from the altercation.

3 She's retreating, she's trying to get
4 away, and when she didn't stop, that's when the
5 defendant decided that he was going to stop.

6 Now when weighing the evidence in a case,
7 the Judge is going to instruct you too on the
8 various things you can look at. I'm just going
9 to go over them briefly now.

10 Did the witness have an opportunity to
11 see -- seem to have an opportunity to see and
12 know the things about which the witness
13 testified.

14 Did the witness seem to have an accurate
15 memory? Was the witness honest and
16 straightforward in answering the attorneys'
17 questions?

18 Did the witness have some interest in how
19 the case should be resolved?

20 Did the witness' testimony agree with the
21 other testimony and other evidence in the case?

22 Has the witness been offered or received
23 any money to be a witness to testify?

24 Is there any pressure or threat used
25 against the witness that affected the truth of

1 the witness' testimony?

2 And did the witness at some other time
3 give a statement that was inconsistent with the
4 testimony he or she gave in court?

5 Now when considering all the witnesses,
6 considering the age of the case, it happened in
7 May of last year, this was just like when I was
8 in jury selection standing up in front of the
9 other members of the venire panel asking how
10 tall am I and how much do I weigh, and then I
11 asked the one gentleman about him not
12 remembering who the third person he shook hands
13 with.

14 There are going to be differences, there
15 are going to be things that are inconsistent
16 between multiple people at different angles
17 standing and watching the same thing, there are
18 going to be. Memories fade when time elapses.

19 The true issue here is whether or not
20 Aimee Guillory tried to drive away and
21 deescalate the situation. It's the State's
22 position that through all of the physical
23 evidence, all the testimony, and all the
24 information that you've received not only from
25 law enforcement officers, but from witnesses

1 who were there that night, that you should find
2 the defendant guilty of the aggravated battery
3 against Aimee Guillory because the defendant
4 touched Aimee Guillory against her will or
5 caused bodily harm to Aimee Guillory and that
6 he did it while using a firearm.

7 You are also going to see a special
8 verdict as to count one, which you will get a
9 copy of this, too, sent back. This lays out
10 several special findings that you as the
11 members of the jury must contemplate, and it's
12 the State's position that the first line has
13 been fulfilled by the evidence here today, is
14 that we, the jury, find that during the
15 commission of crime the defendant did actually
16 possess and discharge a firearm, and that as a
17 result of the discharge of a firearm, great
18 bodily harm was inflicted upon Aimee Guillory.

19 There are others, that during the
20 commission of the crime the defendant did
21 actually possess and discharge a firearm, and
22 that during the commission of the crime, the
23 defendant actually possessed a firearm, and
24 then there is that he did not possess a
25 firearm.

1 Additionally, State believes that's proven
2 beyond a reasonable doubt in count two, that
3 Johnathan Coleman shot a firearm, he did so at,
4 within, or into a vehicle, specifically here
5 into a vehicle, and that the act was done
6 wantonly and maliciously.

7 The State would be asking you to return a
8 verdict on both those crimes and in the highest
9 degree.

10 Thank you.

11 THE COURT: Defense, you wish to do
12 closing arguments at this time?

13 MR. MULLINS: Thank you, Your Honor.

14 May it please the Court, counsel, Ladies
15 and Gentlemen of the Jury.

16 Well, it's been a long trial, it's not
17 over yet. We thank you for your time and
18 attention you've given us. This is an
19 important matter.

20 We're in circuit court, and this is a
21 felony prosecution, very important that you
22 think critically about this case, that you
23 remember the instruction that the Court gave
24 you with regard to reasonable doubt.

25 The defendant is not guilty unless that

1 presumption is overcome by the State's evidence
2 in the case, and they just spent quite a bit of
3 time talking about the aggravated battery with
4 a firearm and the shooting at or within an
5 occupied vehicle.

6 We're going to talk about what we have
7 here on the chart a little later, but right
8 now, this is my only chance that I get to talk
9 to you. So the State's going to have a chance
10 to make another closing argument, a rebuttal
11 argument. So when that happens, I would ask
12 you to think about some of the responses that I
13 would make in response to what they are saying.

14 Now the bit about the crimes charged is
15 one thing, but what they didn't tell you is an
16 issue in this case is whether Mr. Coleman acted
17 in self-defense. It is a defense to the
18 offense for which Johnathan Coleman is charged
19 if the injury to Aimee Guillory resulted in the
20 justifiable use of deadly force.

21 So they want to talk about the elements of
22 the offense, that's one thing, but they are not
23 done -- if you are satisfied that they proved
24 the elements of the offense, they are still not
25 done.

1 Now you got to consider -- or even if you
2 find that any of the lessers apply, you still
3 have to consider this, because the Court is
4 going to read this to you, and this is what you
5 are required to apply.

6 Remember, you raised your right hands and
7 you swore -- this is my left hand -- but you
8 raised your right hands and you swore that you
9 would well and truly try the case, and that
10 means applying the law to the facts and to the
11 evidence that has been adduced here in this
12 trial.

13 Now, an issue in this case is whether
14 Johnathan Coleman acted in self-defense. Is it
15 a defense to the offense for which Mr. Coleman
16 is charged if the injury to Aimee Guillory
17 resulted from the justifiable use of deadly
18 force? Deadly force means force likely to
19 cause death or great bodily harm.

20 A person is justified in using deadly
21 force -- let me get that to you -- a person is
22 justified in using deadly force if he
23 reasonably believes that such force is
24 necessary to prevent imminent death or great
25 bodily harm to himself or another or the

1 imminent commission of an aggravated battery or
2 aggravated assault against himself or another,
3 and then it gives some definitions.

4 Now it's our contention, as it has been
5 all along, that Mr. Coleman acted in
6 self-defense and was, therefore, justified in
7 using deadly force.

8 Now there's some more instructions that go
9 with this. I'm going to talk about this one in
10 a minute, but -- now as it's used with regard
11 to self-defense, they give the definition of a
12 vehicle, which we're pretty sure 2007 Audi A4
13 is a vehicle.

14 In consideration of self-defense, you may
15 take into account the relative physical
16 abilities and capacities of the defendant and
17 Aimee Guillory. Mr. Coleman, it's his body
18 against Aimee Guillory's car. You can take
19 that into account. A car can be used as a
20 deadly weapon. You can kill somebody with a
21 car, and there's that.

22 So in consideration -- if in your
23 consideration of the issue of self-defense you
24 have a reasonable doubt on the question of
25 whether the defendant was justified in the use

1 of deadly force, then you should find the
2 defendant not guilty.

3 Now here's the thing. To get to guilty on
4 the main offense or on any of the lesser
5 included offenses for which the Court will
6 instruct you, to get to a guilty verdict, you
7 have to find beyond a reasonable doubt, okay.
8 That means as sure as Ohio State beating
9 Rollins, you got to be that sure that
10 Mr. Coleman over here (indicating) did not act
11 in self-defense, that he was not justified in
12 the application of deadly force in this
13 situation. How do you get there?

14 Now he testified that the car is coming at
15 him, he is right-handed, he reaches for his
16 weapon as it's passing him and contacting his
17 body -- and we will get to the medical records
18 in a minute -- he goes away and fires the
19 weapon. Now that is sufficient by itself to
20 establish -- she's coming at him with a car,
21 he's trying to defuse the threat by shooting
22 her. That would be sufficient by itself to
23 establish the justifiable use of deadly force
24 such that it would require you to come back
25 here with a not guilty verdict.

1 To go the other way, you have to find that
2 he was not justified in the application of
3 deadly force and that you know that for sure,
4 you know that beyond a reasonable doubt.

5 Okay. Now to get to that, how do you get
6 there? Well, you have to consider the physical
7 evidence, okay, and we talk about, you know
8 what we have here, and this is, for the record,
9 Defense Exhibit Number 2 that's in evidence.
10 Take a look at this.

11 We're going to talk about the physical
12 evidence, we will get to the witnesses in a
13 minute, but right now I want to talk about
14 this, because the State brought it up in their
15 part of it. This little area, this rod right
16 here (indicating), is stabilized by the
17 stabilizing cone that Nieves testified to
18 yesterday, whenever he was here.

19 See, that shows -- that's a much
20 straighter shot than these other ones that
21 don't have those cones, and we submit to you
22 that those cones are there for a reason,
23 because then there's -- you don't get this.

24 (Demonstrating) put that in there and then
25 it can move around. The idea is to get the

1 angle, not just how the bullet entered, but
2 what the angle was, that's the whole point of
3 this. It's funny that he uses a cone here
4 (indicating), but he doesn't use the cones in
5 the other locations.

6 So if you look at this one (indicating),
7 that's more straight on than if you look at --
8 here it is again (indicating). I am going to
9 move this for a second and get back to those in
10 a minute. You can see that cone right here
11 (indicating), but none of these other ones have
12 that. So why is that important?

13 See, the further back the shots are, the
14 more that helps the State, right, but the more
15 forward the shots are, the more it helps the
16 defense. So it's real important that they
17 correct this evidence. We don't have access to
18 that. They have to preserve and collect the
19 evidence, they are charged with that.

20 MR. ARCKEY: Objection. It's
21 mischaracterization of what he has access to.

22 THE COURT: Come here.

23 (Whereupon, a bench discussion was had out
24 of the hearing of the Jury as follows)

25 THE COURT: State an objection, grounds,

1 and then we come up to the bench.

2 MR. ARCKEY: I apologize.

3 He could have done whatever he wanted to.

4 That's a mischaracterization --

5 MR. MULLINS: We don't have access to the

6 collection of the evidence, those are police

7 officers that have --

8 MR. ARCKEY: That's not what you said.

9 MR. MULLINS: I will correct that.

10 (Whereupon, bench discussion was
11 concluded, and the proceedings continued in the
12 hearing of the Jury as follows)

13 THE COURT: Sustain the objection.

14 MR. MULLINS: We don't have access to the
15 collection of the evidence. They have to
16 collect that when they do these investigations,
17 and they've got these without these stabilizing
18 cones that we should have.

19 We submit to you that it's professionally
20 appropriate for them to have that in each one
21 of these. There's that.

22 Now that fourth -- one more thing about
23 that. The witnesses who testified, Sherron
24 Fort, and some of the others, testified,
25 Mr. Coleman said that all the shots were

1 tightly grouped.

2 This one comes a little further back
3 (indicating). Why is that? That would be
4 consistent with her speeding away. If he's
5 firing that fourth shot as she's speeding away,
6 it doesn't take much to see that it's going to
7 be further back. But he quit firing once the
8 threat was defused, and that's important as
9 well.

10 So we submit to you that those photographs
11 do not get you to a guilty verdict, because if
12 it's consistent with his testimony that he is
13 rolling away and firing as he's being contacted
14 by the vehicle, as Myeshia Williams said
15 earlier today -- remember her testimony is he's
16 rolling away, he's firing a weapon at that
17 time. That's consistent with her testimony as
18 well.

19 Now let's talk about -- really -- the rest
20 of this stuff is just a gun and the bullets,
21 and you got all these things, photographs, a
22 lot of that we don't contest, the photographs,
23 how this was all laid out.

24 What we do contest is the placement of the
25 vehicles, that's all over the place, and that

1 brings me to the chart. We think that for an
2 application of self-defense, we're going to
3 submit to you that there's three things that
4 are important, three things that are really
5 important to the nuts and bolts of whether he
6 acted in self-defense and what that is, is
7 Aimee Guillory's operation of her car, his body
8 position, vis-à-vis Aimee Guillory's car, and
9 his handling of a firearm, okay. Those three
10 components really more than anything else tell
11 us whether he acted in self-defense.

12 There's no doubt she's coming at him with
13 a car, and before I get to these, I want to
14 talk a little bit about kind of the background
15 or the setting of this.

16 Johnathan Coleman is going to work that
17 day. He doesn't expect any of this. He's just
18 talking to these two guys over at the front and
19 he hears all this commotion down here, all
20 right, off this come. She's going eastbound at
21 that point on W. D. Judge. Mr. Johnson is
22 running away, runs into the apartments, makes
23 himself scarce for a few minutes, she comes
24 back out.

25 You heard his testimony today, she stays

1 in the apartment complex, comes around, goes
2 back outside, goes back outside the apartment,
3 goes the other way. He's crossing the street,
4 she's coming, he narrowly escapes being struck
5 by the car, she comes around, he crosses the
6 street, she hits him.

7 Now, she hits him with her car. He just
8 witnessed this woman -- she's driving
9 recklessly throughout, he already stopped her,
10 she goes outside and she hits this man with her
11 car and he sees that. So it's the context of
12 that that she goes over there -- that he goes
13 over there to restore order as much as he can.

14 Now Aimee Guillory and Vince Johnson both
15 said that never happened. See, out of all the
16 witnesses that the State called, only three
17 witnesses saw the collision between Aimee
18 Guillory's car and Vince Johnson's person. Two
19 of those people, we submit to you, Aimee
20 Guillory, and Vince Johnson are being less than
21 candid with you about what happened.

22 Johnson says oh, no, nope, never happened,
23 I didn't kneel in front of the car, I tapped
24 the hood, tapped it with my left hand
25 because -- yeah, tapped it with my left hand

1 because my right hand was in a cast.

2 After being confronted with his earlier
3 statement, he turned around and said, okay, I
4 didn't kneel in front of the car, all right.
5 Here's that.

6 Aimee Guillory says I wasn't -- he jumped
7 out in front of me, he jumped out in front of
8 me and tapped my car, he did with his right
9 hand, which has the cast on it. Nobody else
10 sees this guy in a cast except for Sherron
11 Fort, who, by the way, has been talking to
12 Aimee Guillory and admitted she discussed her
13 testimony and discussed the facts of the case
14 with Aimee Guillory earlier.

15 So we're going to submit to you Aimee
16 Guillory is under criminal prosecution by the
17 State Attorney's Office for another crime. So
18 we're going to submit to you that that results
19 in bias, because she could expect to receive
20 favorable treatment possibly for her own crime,
21 and she's also got a civil suit going in
22 circuit court for money damages in this case
23 against Mr. Coleman and presumably the company.

24 So those are things that you have to
25 consider when thinking about her testimony.

1 You should be taking that into account. You
2 should be applying that critically to her
3 testimony and basically discounting it.

4 Now we talk about justifiable use of
5 deadly force. Let's talk about some more of
6 these witnesses. We had Marquis Jolly today
7 testifying about the positioning of the cars,
8 and his recollection was that Aimee Guillory
9 made a right hand U-turn to get out of the
10 complex.

11 Sherron Fort's testimony was, no, she made
12 a left-hand turn to get out of the complex.
13 Now that's important because now we're talking
14 about Johnathan Coleman's body position,
15 vis-à-vis the car, her car.

16 If he's standing between these cars and
17 she's coming this way, then it's reasonable for
18 him to, if he's seeking the safety of his own
19 vehicle, to go this way, he pulls his weapon
20 out and begins firing, but he does that at a
21 point in time when she's coming at him, and
22 that's important because he reasonably fears
23 for his own safety.

24 Yesterday when Vince Johnson, I think it
25 was yesterday, when Vince Johnson testified --

1 it might have been Monday -- he said that, um,
2 the car was already turning out and it was
3 going 20 miles per hour when it gets to the
4 stop sign. Sherron has it going very slowly.
5 Destini said seven miles per hour.

6 Now it's important to understand, that if
7 you do the arithmetic, we're talking about a
8 space from the witness stand over there by the
9 fingerprint stand over there, according to
10 Sherron Fort's testimony. You can see from the
11 photographs introduced into evidence, that we
12 are, in fact, talking about -- this is Defense
13 Exhibit 1 -- we are, in fact, talking about a
14 very short distance. This is the line in that
15 photograph of Ms. Guillory's car (indicating).
16 We're talking about a few feet right here
17 (indicating).

18 At five miles per hour, if you take, you
19 can do this, it's not a hard calculation to
20 make, 5280 feet in a mile, multiply it, you get
21 like 20,000 something -- it works out to about
22 seven feet per second. So it's moving, even at
23 five miles per hour even in a confined space
24 like that, it's fairly fast, things are
25 happening quickly.

1 Mr. Coleman has to decide immediately what
2 to do, and that's another instruction that you
3 are going to get from the Court. Right here,
4 in deciding whether the defendant was justified
5 in the use of deadly force, you must judge him
6 by the circumstances by which he was surrounded
7 at the time the force was used. The danger
8 facing the defendant need not have been actual,
9 but it was actual, but even if it wasn't, it
10 doesn't have to be, however, to justify the use
11 of deadly force, the appearance of danger must
12 have been so real that a reasonable cautious
13 and prudent person under the same circumstances
14 would have believed that the danger could have
15 been avoided only through the use of that
16 force. Based upon appearances, the defendant
17 must have believed that the danger was legal.

18 If she's actually contacting him with her
19 car, he would think that that's reasonable,
20 especially, folks, when he just witnessed her
21 run over another human being. That has to
22 account for something.

23 Now let's get those medical records.
24 These are in evidence, you can take them back
25 there. Here we go. See right here where it

1 says hypertension to be confirmed (indicating),
2 contusion of a foot (indicating). Okay. To be
3 confirmed, contusion of the foot, they did
4 confirm that, that's in here. So that's
5 consistent with he got run over by a car, it
6 hit his foot. You saw the marks on his leg.

7 He says there was an abrasion between the
8 car and his leg. You have a contusion of your
9 foot, this causes local pain, swelling,
10 sometimes bruising, there are no broken bones,
11 this injury may last a few weeks to heal. You
12 can see it right there (indicating).

13 So the medical records that are introduced
14 into evidence and are available for your review
15 are consistent with his testimony that she hit
16 his foot with her tire.

17 Now, folks, if she's running him over with
18 a car, what's he supposed to do? You know --
19 then -- here's the thing about this: This case
20 could just have easily be State of Florida
21 versus Aimee Guillory.

22 MR. ARCKEY: Objection.

23 THE COURT: Come on up.

24 (Whereupon, a bench discussion was had out
25 of the hearing of the Jury as follows)

1 MR. ARCKEY: This is completely improper
2 at this point. There's no basis for what they
3 are arguing and whether or not --

4 MR. MULLINS: Judge, she committed two
5 aggravated batteries. Of course there's a
6 basis for it. It's part of my argument.

7 MR. ARCKEY: This is improper argument --

8 MR. MULLINS: They don't like it, but --

9 THE COURT: Confine ourselves to the facts
10 of the case.

11 MR. MULLINS: I will do that, Judge.

12 (Whereupon, bench discussion was
13 concluded, and the proceedings continued in the
14 hearing of the Jury as follows)

15 MR. MULLINS: Well, the facts of the case
16 are, there's evidence to point to the fact that
17 she herself, who, A, wants to obviously be
18 referred to as a victim, actually went out and
19 committed first an aggravated assault, if
20 Mr. Coleman's testimony is to be accepted by
21 you when you go back and deliberate against
22 Vince Johnson, and then she committed an
23 aggravated assault with a deadly weapon, the
24 car being the deadly weapon, against Vince
25 Johnson, and then she commits an aggravated

1 battery with a deadly weapon when she impacts
2 Mr. Coleman's body with her car, but you know,
3 we don't hear about that.

4 What we did hear was Vince Johnson's
5 unavailability. Both officers testified from
6 the witness stand, Salcedo first, said we
7 couldn't find Mr. Johnson, we couldn't -- we
8 want to investigate that, we want to check that
9 out, but he was nowhere to be found. He didn't
10 even go to the hospital when he found out that
11 his --

12 MR. ARCKEY: Objection. Facts not in
13 evidence.

14 THE COURT: Come on up.

15 (Whereupon, a bench discussion was had out
16 of the hearing of the Jury as follows)

17 MR. ARCKEY: That was never asked why he
18 went to the hospital, from my recollection.

19 MR. MULLINS: It's apparent from the other
20 evidence that they went to the hospital to talk
21 to Mr. Coleman and talk to Aimee Guillory and
22 he wasn't there. He wasn't there.

23 THE COURT: Overrule the objection.

24 MR. MULLINS: Thank you.

25 (Whereupon, bench discussion was

1 concluded, and the proceedings continued in the
2 hearing of the Jury as follows)

3 MR. MULLINS: He didn't go to the
4 hospital, nowhere to be found. They go looking
5 for him, they can't find him. But you know,
6 it's funny when she files her civil case and
7 he's available to testify, the cops come up to
8 the witness stand the other day and testifies
9 about oh, yeah, all this happened, she wasn't
10 doing anything and she didn't hit me and I was
11 wearing a cast, and the Judge is going to tell
12 you that you can believe or disbelieve all or
13 any part of the testimony given by any witness.
14 We submit to you that they are both lying.

15 MR. ARCKEY: Objection, Your Honor.

16 MR. MULLINS: I submit they are.

17 THE COURT: Both of you come up here.

18 (Whereupon, a bench discussion was had out
19 of the hearing of the Jury as follows)

20 THE COURT: You-all two need to calm down.
21 Take a deep breath and relax. We don't need to
22 be having this sniping -- this is
23 unprofessional. It's going to stop right now.

24 MR. MULLINS: What do you need me to do
25 specifically? Basically I'm saying she's

1 lying.

2 THE COURT: My problem was with making a
3 response in front of the Jury, basically
4 arguing with the objection. That's got to be
5 done up here. They don't need to be hearing
6 the legal objections or the legal grounds for
7 that.

8 Now, as it relates to the objection?

9 MR. ARCKEY: He can't in closing sit there
10 and say that one witness is lying. That's a
11 determination of fact for the Jury,
12 determination for the Jury to determine who is
13 being truthful or not. He can't say one
14 witness is lying --

15 MR. MULLINS: I don't think there is
16 anything in the book that says I can't call her
17 a liar. If she's saying something that's
18 obviously -- she changed her testimony from --
19 I think there's a basis for saying that, and if
20 the Jury don't want to accept that, then they
21 don't have to. This is argument.

22 THE COURT: I think there's a distinction
23 between submitting that someone hasn't been
24 truthful as opposed to calling them a liar.

25 MR. MULLINS: I won't do it.

1 Thank you.

2 (Whereupon, bench discussion was
3 concluded, and the proceedings continued in the
4 hearing of the Jury as follows)

5 MR. MULLINS: Let's just say this. She's
6 less than truthful, we will put it that way.

7 Now their whole theory of the case up
8 until I guess -- well, maybe even still, is
9 that she wasn't a threat, she was trying to go
10 away, she was trying to get away from him, he
11 had no authority to order her out of the car.

12 Here's another instruction the Judge is
13 going to give you -- first off, let's talk
14 about this one. A private citizen has a right
15 to arrest a person who commits a felony in his
16 presence or to arrest a person where a felony
17 has been committed and where the arresting
18 citizen has probable cause to believe and does
19 believe that the person arrested to be guilty.

20 If she's committing what we submit is an
21 aggravated battery with a deadly weapon right
22 in front of him, then he has the authority as a
23 private citizen to effect an arrest and she has
24 a duty to comply with that. So their whole
25 theory about he ordered her out of the car, he

1 had no legal basis for doing that, that's not
2 right, because if you find that -- a private
3 citizen does have a right to effect an arrest,
4 it's called a citizen arrest. You are getting
5 an instruction on it.

6 The thing they are going to say is that a
7 person who unlawfully and by force enters or
8 attempts to enter another person's occupied
9 vehicle is presumed to be doing so with the
10 intent to commit and unlawful act involving
11 force or violence.

12 So reaching into her car is what they are
13 going to try to say or reaching toward her car,
14 and there's conflicting evidence about that.
15 There's -- Aimee Guillory said he reached
16 toward her but never really got in there.
17 Somebody else said, I think it was Sherron
18 Fort, said he grabbed the doorjamb.

19 There's really no hard evidence that he
20 actually reached inside her car, but even if he
21 did, you remember the -- the six of you will
22 remember the evidence better than I will, but I
23 submit to you that there was no hard evidence
24 that he actually reached inside her car.

25 It says here a person who unlawfully and

1 by force, "unlawfully" being the key. It's not
2 unlawful if -- it's not unlawful if it's that.
3 So pay attention to these instructions that the
4 Court is going to give you, because they are
5 important.

6 Now there is another instruction in here I
7 want to talk about. A weapon is a deadly
8 weapon -- it talks about aggravated battery,
9 potential touching or striking another. Then
10 there's a deadly weapon involved, and it gives
11 a definition of a deadly weapon, and it talks
12 about the -- it talks about -- I have the wrong
13 page. Let me get the right page. This is in
14 connection with the justifiable use of deadly
15 force.

16 So deadly force means -- and gives a
17 definition of deadly force, a person is
18 justified in using deadly force if he
19 reasonably believes that force is necessary to
20 prevent imminent death or great bodily harm to
21 another or the imminent commission of
22 aggravated battery or aggravated assault
23 against himself or another.

24 Then it goes on to say however, the use of
25 deadly force is not justifiable if you find

1 that Johnathan Coleman initially provoked the
2 use of force against himself.

3 Now the important thing to consider and
4 remember here, folks, is now we're talking, in
5 this paragraph and this part of the
6 instruction, we're talking about Aimee
7 Guillory's use of force against him. So the
8 State, if they say on the one hand she didn't
9 use force, she was rolling, she was trying to
10 get away, there was no force used, they are
11 forced on their own pitard because they can't
12 turn around and say if she did use force, they
13 are justified because he initially provoked it
14 against himself. That's the same thing as
15 saying she didn't do it but if she did, he had
16 it coming, and I think you know what to do with
17 that argument, just come on back in here with
18 your not guilty verdict on both counts.

19 Remember, you have to judge him by the
20 circumstances in which he found himself. It's
21 easy for us to come in here, nice
22 air-conditioned courtroom on a nice day to talk
23 about and produce evidence and spend a couple
24 of days dissecting all of this, but remember,
25 he only had a few seconds to act.

1 He only had maybe two or three seconds to
2 make a decision that might affect the rest of
3 his life and maybe the lives of others who were
4 nearby. You have to consider from his
5 circumstances, from his vantage point, how he
6 should act in that situation.

7 Now here's where we get into this, and
8 Aimee Guillory's operation of the car drove
9 slowly, tapped Johnson, drove out straight, and
10 this witness said -- she -- this witness didn't
11 see that part of it, she didn't see the tap of
12 Vince Johnson, tap. Swerved to the right, she
13 says he swerved to the right, that Aimee
14 Guillory swerved to the right, that's what
15 Destini said.

16 Sherron Fort, she drove out straight, and
17 she drove no more than two or three miles per
18 hour and she didn't see this part here
19 (indicating) about the contact with Vince
20 Johnson.

21 Johnathan Coleman's body position, Aimee
22 Guillory said he never touched the vehicle, he
23 was reaching in, but nothing about getting
24 inside. Walked alongside her car, because at
25 one point she says he ordered her out at

1 gunpoint, and another point he's got the gun
2 holstered and he's following her back into her
3 car. We submit that doesn't even make sense.
4 His hand's in the driver's side window, that's
5 Destini Hudson; back towards Aimee Guillory
6 when Aimee got back in her car. Destini Hudson
7 said she was dragged. That would be consistent
8 with what Myeshia Williams said and what
9 Mr. Coleman himself said.

10 But see, the thing about that is, she
11 comes into court and she said well when I said
12 dragged, I didn't mean dragged, I didn't mean
13 what I said, I meant this, he was just going
14 along. Drag is not a \$10 word, folks. We
15 don't know what drag means? A five-year-old
16 kid knows what that means.

17 Johnathan Coleman hand is on the firearm,
18 gun out immediately, gun never re-holster. This one
19 said gun out at first, re-holstered and back out,
20 that's Destini. Sherron Fort said gun only came out
21 when he shot the -- she didn't see what happened
22 before.

23 So we submit to you that she missed the
24 part about -- she may have missed what was happening
25 to him before he fired that firearm. See, the thing

1 that's important here is really none of us were
2 there, we don't know, we don't know what happened.
3 We're depending on them, their witnesses, the
4 State's witnesses, to come into court to tell us
5 what happened, but in order to get to a guilty
6 verdict, you have to be sure, you have to be sure
7 beyond a reasonable doubt that Mr. Coleman is guilty
8 and that he does not have -- that he did not act in
9 justifiable self-defense to get to that guilty
10 verdict. You have to be that sure.

11 Here's my question. Can you be that sure
12 on this kind of evidence? Can you be that sure when
13 these witnesses really are not -- yeah, the State's
14 going to make the point you forget who you shook
15 hands with, the third person you saw at your uncle's
16 wedding. You know what, that's not important, but
17 this stuff is important, you have to know, and it
18 has to be produced in a cohesive and consistent
19 manner. The evidence has to be consistent
20 throughout in its main points. It can be Sherron
21 Fort forgets the lights were green, she thought they
22 were blue. Those are minor things, just as the
23 State will tell you, except that there's a lot of
24 those minors -- she didn't see, not that I recall.
25 You will remember as much as she said that, she

1 didn't recall all the events. She didn't see that
2 part of it.

3 Folks, when you consider everything that
4 you are going to get, all the witness testimony, the
5 physical evidence, which again there's no doubt that
6 shots were fired, but to the extent that he's being
7 impacted, actually being struck at that point, he's
8 justified in his application of deadly force by
9 using the firearm to shoot this woman. That last
10 shot, that is just purely her picking up speed.
11 That could be just she's picking up speed, so that
12 last shot would be back here.

13 Again, you can -- you can do these
14 calculations yourself to find out how many feet per
15 second. That's a lot of feet per second, as much as
16 ten feet per second, depending on how many minutes
17 she was going, ten feet per second, you are going to
18 cover 20 feet in the two seconds.

19 A car is a deadly weapon. There's nothing
20 that says well, you know what, if the car is being
21 driven at one mile per hour, it's not a deadly
22 weapon, but if it's being driven at ten miles per
23 hour, now it is a deadly weapon. It's just how the
24 situation in which Mr. Coleman found himself at the
25 time.

1 You know, the State for all their -- for
2 all their information gathering, you know, this is
3 kind of interesting, Defendant Exhibit 2. You get
4 to take this back and look at it.

5 There's this rather large scrape on her
6 car. How do you think that got there? Look at
7 that. That's in evidence. No testimony on it, but
8 that's about where his body hit, and that's where
9 the shots went. She speeds up and there's that last
10 one.

11 Remember, all the witnesses said that the
12 shots were tightly grouped, there wasn't a trailing
13 shot. It's these little things. You got to pay
14 attention to that.

15 We submit to you that the State has not
16 proved beyond a reasonable doubt that he did not act
17 in justifiable self-defense, that he was not in fear
18 for his safety at the time.

19 How are you going to find that they proved
20 beyond a reasonable doubt when first off on -- they
21 didn't take any measurements, there were no
22 measurements testified to. You got all these shell
23 casings, you got -- we don't know how far this is
24 from that. We don't know how far this is from
25 there. None of that was measured, so none of that

1 was testified to, because that evidence wasn't
2 collected. All right. It wasn't testified to.

3 Whose burden is it to prove that? The
4 State's burden. They have to disprove the existence
5 of any defense. They have to prove beyond a
6 reasonable doubt that Mr. Coleman did not act in
7 self-defense, did not act with legal justification.

8 If the vehicle was not going to hit
9 Mr. Coleman, then why do we have evidence that it
10 swerved to the right? Why do we have Destini
11 Hudson's testimony that it is swerved to the right?
12 It could be that Destini Hudson is the god-sister.
13 She testified she didn't care about Mr. Coleman, she
14 wanted to go check on her god-sister.

15 If she doesn't care about Mr. Coleman's
16 wellbeing, what's she going to say on the witness
17 stand? That's a fair assumption you can talk about.
18 When you have this kind of detergence of testimony,
19 you can't be as sure what happened, you just can't.

20 I mean, did they prove that he used the
21 firearm? Yeah, they proved the elements of the
22 offenses for which they charge, but they did not
23 disprove the existence of a defense, and it's up to
24 you to decide, of course, but we submit to you that
25 there's really no evidence -- there's no hard

1 evidence that he did not act in self-defense.

2 Again, I don't have any other opportunity
3 to address you, but we're trusting that you are
4 going to fulfill your duty, you are going to do what
5 you said you are going to do, you are going to well
6 and truly try this case, you are going to apply the
7 standards that the Court sets forth for you that
8 justice requires, you are going to apply the rule of
9 law, and the rule of law requires that you find
10 Mr. Coleman not guilty of the offenses for which
11 he's been charged.

12 That second one, throwing at, within,
13 again, that's without legal justification. These
14 are lesser included.

15 Possession of a firearm with discharge
16 causing great bodily harm. We talked about that.
17 That special verdict form, you only get to if you
18 find guilty of count one. We're submitting to you
19 that they haven't proved guilty as to count one,
20 because they haven't proved that Mr. Coleman did not
21 act in self-defense, they did not prove that beyond
22 a reasonable doubt.

23 These are the lessers that you have, and,
24 again, the State probably proved some of this,
25 except for the fact of the defense. See, except for

1 the defense, and because they did not disprove --
2 because they did not prove the lack of legal
3 justification, you must find the defendant not
4 guilty. That's what justice requires, and there's
5 a -- I don't know why I don't have it.

6 Here we go. This is what I was looking
7 at. Shooting at or within -- see the thing about
8 this one, the act was done wantonly or maliciously.
9 Wantonly means maliciously, reckless means with
10 knowledge that the damage is likely to be done. The
11 defense applies to that case. Maliciously means
12 wrongfully. It's not wrong if he's acting within
13 his legal justification.

14 So if you pay attention to these
15 instructions, and I know you will, and if you
16 consider the fact that the testimony of the
17 witnesses who were there, Aimee Guillory and Vince
18 Johnson, are interested parties, the police officers
19 very professional in the discharge of their duties,
20 cannot testify -- did not offer any testimony with
21 respect to the defense, because they weren't there,
22 they don't know.

23 Mr. Coleman told you what happened.
24 Mr. Coleman's testimony was not meaningfully
25 impeached by the State. They want to talk about,

1 well, you said earlier he rolled up on the
2 windshield. That doesn't matter, whether he rolled
3 up on the windshield, on the left side, or right
4 side. The fact is, the man was hit by a car.
5 Again, Mr. Coleman is viewing all of this and he's
6 taking actions within the context of just having
7 witnessed Vince Johnson being hit by that vehicle.

8 With this kind of testimony and the fact
9 that the police cannot help the State with regard to
10 the justifiable use of deadly force, and the fact
11 that the bystander witnesses, Sherron Fort, Marquis
12 Jolly, Destini Hudson, and the rest of them, there's
13 too many holes, too many inconsistencies in their
14 testimony, that you cannot discount legal
15 justification beyond a reasonable doubt, you just
16 can't do it, and we're asking you, no matter what,
17 what the State says, they can't make the evidence
18 any better than it is.

19 What the Judge is going to tell you,
20 lastly, what we say, what I tell you is not
21 evidence. What the State tells you is not evidence.
22 Evidence comes from the witness stand, evidence
23 comes in the form of exhibits, and that's it.

24 Also the last thing that you are to apply
25 is the law that the Judge gives you. If you do

1 that, if you are serious about discharging your
2 obligations as jurors here of this case, we're
3 confident that you will come back with a verdict of
4 not guilty.

5 Thank you very much.

6 THE COURT: State, you wish to give your
7 rebuttal at this point?

8 MR. ARCKEY: Yes, Your Honor.

9 THE COURT: Go ahead.

10 MR. ARCKEY: Defense says there's no
11 consistency. Six people took the stand and
12 said what they saw. They saw her turn out to
13 the right on W. D. Judge. They saw her drive
14 to the right on W. D. Judge. They never saw
15 the defendant get hit by a car. Those are the
16 two consistencies in which six people were
17 consistent.

18 Another consistency. They saw the
19 defendant pull the gun and shoot at a car as it
20 was driving away from it, another consistency.

21 Let's talk about the inconsistencies in
22 the defendant's statements. Not only did we
23 have an inconsistency in what he told the
24 police officer, which he said on the stand he
25 didn't tell them about the first time the car

1 went by, crossed over a bunch of lanes, which
2 he said he didn't tell them, and almost struck
3 Mr. Johnson.

4 Now, instead, that comes out much later
5 when he's facing charges, a year later on the
6 witness stand, it comes out.

7 Let's talk about another inconsistency.
8 Never tells Detective Stanley, according to his
9 own admission, that he was holding back and
10 pushed two people to save them out of the way.

11 Now that happens a year later. I submit
12 to you that those inconsistencies show the
13 defendant trying to bolster his self-defense,
14 add more people that he was trying to save, add
15 more instances where he saw things.

16 He talked about how he was roaming around
17 the whole Palm Groves and watching Vince
18 Johnson peep out behind buildings, bolstering
19 his self-defense argument.

20 Another interesting thing. He sat down
21 there on the witness stand and told you he
22 could possibly have a broken foot, that he
23 needed X-rays. I think defense just showed you
24 page 14, right at the end of that sentence
25 there. There are no broken bones. Oh, he

1 needed an X-ray, right. He didn't get an X-ray
2 because they took him off to jail. Complete.
3 Who has bias here? The person sitting here
4 standing charges? They gave you the time.

5 He drove over into that complex because he
6 saw two people continuing to have an argument.
7 He got involved in something he shouldn't have.
8 He drives a car that has "canine" on the back
9 of it, he dresses like a police officer, he
10 wears a police officer's belt, turns on his
11 lights, pulls over a car, pulls someone out of
12 the car, and then when she doesn't do exactly
13 what he says and gets back in the car, he
14 continues to yell stop, stop, stop, stop, stop,
15 not ouch, my foot, ouch I can't walk.

16 Everyone sees him stand up and shoot into
17 the car instead of seeing pain. So interesting
18 that Sherron Fort saw Vince Johnson that day
19 and he was walking around fine. Most people
20 saw Vince Johnson that day standing behind, not
21 standing up with him almost being struck by a
22 vehicle, the defendant holds back Vince
23 Johnson, and some unknown person, and saves
24 them.

25 I submit to you also when you go back to

1 the jury room, look at the leg, look at the
2 damage to it, look at the right foot right
3 there (indicating), contusion, not black and
4 blue, not broken, contusion, medical term. He
5 got hit by a car going -- speeding past him at
6 an unknown miles per hour, according to him,
7 and he has a mild abrasion that looks like it
8 was rubbing -- according to the defense's
9 theory, there's an aggravated assault of
10 someone walking through a Publix store, whether
11 they are sitting in the parking lot and a car
12 passes by ten miles per hour, because it's
13 going seven feet per second.

14 No one here said there was a single person
15 near the defendant when this happened. Again,
16 showing that the defendant has bias here and
17 has said enough conflicting things himself.

18 One thing that's consistent though is she
19 went out on W. D. Judge and she didn't hit
20 anyone.

21 Defense also spoke at great length about
22 the various photos and how the cones, something
23 about the cones, and how they are not accurate.
24 I recall my geometry days and the easiest way
25 to make a straight line is to connect two

1 points and bullet holes when they go through
2 something, connect points and make a line, and
3 if you stick a dowel through it, it shows a
4 trajectory.

5 So when the bullet hole gets stuck in the
6 doorframe, you have to figure out where the
7 trajectory is, because using a cone, because
8 there's not two holes, because you don't know
9 where the exit is, it's just stopped, so you
10 use a cone.

11 So the thing is going to be where they are
12 going through the cone in a straight line. I
13 don't submit that those are inaccurate, it's
14 just they are harder to judge, because they are
15 stuck in the side of a car and you have to put
16 a cone in to get it to fit right so it could
17 sit out. That's for the scratch -- and as for
18 the scratch on the car, it's all the way down
19 on the passenger side, he's already firing
20 bullets by that point, according to trajectory.

21 Additionally, he already has some old
22 injuries on his leg, as you heard Detective
23 Stanley say, so who is to say that this
24 contusion came from that night except for the
25 defendant, who has a stake in this, and it's

1 something that you can consider.

2 Defense made a big deal about the civil
3 lawsuit. Well, defendant's friend getting
4 sued, he's getting sued, he's got bias for that
5 too, and he's the one standing trial here
6 today. Inconsistent statements. It wasn't
7 about whether or not someone took a knee in
8 front of a car, it's about how he didn't have
9 an X-ray, about how he had a possible broken
10 foot.

11 The report said he didn't have a broken
12 foot and he did have X-rays. When he didn't
13 tell the same story here today, is when he did
14 to Detective Stanley.

15 I submit to you that many of the witnesses
16 who came in here today doesn't really have, or
17 don't have an interest in how this is decided.
18 They are not the ones who were shot or did the
19 shooting.

20 State still contends the self-defense
21 isn't here, it's just not. There was no
22 aggravated assault with a car, and even if
23 there was, there's 15 or 20 minutes after the
24 fact before, on Vince Johnson, according to the
25 defense, 15 minutes or 20 minutes after the

1 fact was when the whole issue was going on when
2 she got back behind the wheel. Their argument
3 at that point was just leave, he's not a cop,
4 he's a security guard.

5 Now defense did bring up that it's the
6 State's burden to prove beyond a reasonable
7 doubt that self-defense didn't apply. You can
8 also find that self-defense didn't apply
9 straight out. The inconsistencies in the
10 defendant's testimony is bias, leads to where
11 we get with their defense.

12 MR. MULLINS: Judge, I am going to object.

13 THE COURT: Grounds?

14 MR. MULLINS: Grounds are, it's not a fair
15 characterization of the instruction.

16 THE COURT: Approach.

17 MR. MULLINS: Shifts burden.

18 (Whereupon, a bench discussion was had out
19 of the hearing of the Jury as follows)

20 MR. MULLINS: Judge, in this situation --
21 I try not to object to counsel's argument,
22 because it is argument, I get that, but here
23 he's telling you that you don't have to follow
24 the Court's instructions, you can just find on
25 your own, just on your own, it doesn't apply,

1 self-defense doesn't apply to this situation.

2 Self-defense does apply. The Court is
3 going to read the instruction that says they
4 have to prove that, they have to prove beyond a
5 reasonable doubt that Mr. Coleman did not act
6 in self-defense, did not act with legal
7 justification.

8 I think -- I'm going to ask the Court for
9 a curative instruction on that, that they do
10 have to prove that. The Court -- the Jury
11 never has the right to disregard the law, and
12 that's what counsel is asking them to do.

13 MR. ARCKEY: I think I asked them that
14 they can decide on the bias and everything,
15 that the State can still prove beyond a
16 reasonable doubt by not trusting the
17 defendant's testimony as to whether or not it
18 applies. I think that's a valid point of the
19 law. I think they can distrust his testimony
20 to the point where he's the only witness who
21 puts forth self-defense and they don't think
22 that he's being truthful, then they can
23 discount that.

24 MR. MULLINS: I think they are still
25 duty-bound by law to go through that analysis.

1 THE COURT: I think he's saying if you
2 don't believe the defendant's version of the
3 events, then how could he prove self-defense,
4 argument about his version.

5 MR. ARCKEY: It's our burden, I admit it.

6 MR. MULLINS: They need to be made to
7 understand that the State still carries that
8 burden though.

9 THE COURT: That's the instructions.

10 MR. MULLINS: I don't think -- okay. If
11 that's the Court's ruling --

12 THE COURT: I don't think he has said to
13 disregard the law. I heard him start to say,
14 when he was interrupted -- the objection was
15 that they can, getting to disregard his
16 testimony if they did --

17 MR. MULLINS: He said to the Jury, Your
18 Honor, that you can find -- the State's burden,
19 the burden is for us to prove -- I forget the
20 exact words --

21 MR. ARCKEY: Beyond a reasonable doubt --

22 MR. MULLINS: But you can also do this,
23 you can also get away from that instruction by
24 just doing this, by doing this --

25 MR. ARCKEY: By --

1 THE COURT: I am going to overrule the
2 objection.

3 (Whereupon, bench discussion was
4 concluded, and the proceedings continued in the
5 hearing of the Jury as follows)

6 MR. ARCKEY: Again, the defense said that,
7 him going back and forth on whether Vince hit
8 the windshield. Again, I show that's
9 embellishment to law enforcement that's been
10 changed here today, which again shows more to
11 the bias. You can disregard any and of the
12 defendant's testimony, if you choose to.
13 That's your right as the Jury.

14 Again, it's the State's position that
15 justifiable use of deadly force wasn't the case
16 in this situation. There's a car driving away,
17 taking a right on W. D. Judge, avoiding the
18 defendant, as that car is going away, four
19 bullets are pumped into it and you can tell by
20 the trajectory that that car is going away.

21 That car is retreating, that car is going
22 away. Aimee Guillory has three holes in her
23 body because of it, massive scarring, fractured
24 bone, and it was done by the firearm that's in
25 evidence.

1 You believe that the evidence, the
2 testimony, all corroborates the remaining of
3 the testimony, and that the only reasonable
4 verdict is a verdict of guilty on aggravated
5 battery with a firearm and verdict of guilty on
6 shooting into an occupied vehicle, including
7 the special instruction or special verdict
8 finding that during the commission of the crime
9 the defendant did actually possess and
10 discharge a firearm, and as a result of the
11 discharge, the firearm, or the discharge of the
12 firearm, great bodily harm was inflicted upon
13 Aimee Guillory.

14 Thank you for your time.

15 THE COURT: Ladies and Gentlemen, I am
16 going to hand the court deputies copies of the
17 jury instructions. Each of you are going to be
18 provided a copy to read along with me. I'm
19 required to read them to you out loud.

20 I also provide the members of the jury
21 with a written copy that you can each take back
22 with you into the jury room when you
23 deliberate.

24 So this is all the law that apply to this
25 particular case, and you will have it with you

1 when you go back into the jury room. Okay.

2 Members of the Jury, I thank you for your
3 attention during this trial. Please pay
4 attention to the instructions I am about to
5 give you.

6 Johnathan Coleman, the defendant in this
7 case, has been accused of the crimes of
8 aggravated battery with a firearm and shooting
9 at, within, or into an occupied vehicle.

10 Count one, aggravated battery. To prove
11 the crime of aggravated battery, the State must
12 prove the following two elements beyond a
13 reasonable doubt: The first element is a
14 definition of battery.

15 One, Johnathan Coleman intentionally
16 either:

17 A, touched or struck Aimee Guillory
18 against her will or.

19 B, caused bodily harm to Aimee Guillory.

20 Two, Johnathan Coleman, in committing the
21 battery, used a deadly weapon to-wit: A
22 firearm.

23 A weapon is a deadly weapon if it is used
24 or threatened to be used in a way likely to
25 produce death or great bodily harm.

1 If you find that Johnathan Coleman
2 committed aggravated battery, and you also find
3 beyond a reasonable doubt that during the
4 commission of the crime he discharged a
5 firearm, and in doing so, caused great bodily
6 harm to Aimee Guillory, you should find the
7 defendant guilty of aggravated battery with
8 discharge of a firearm causing great bodily
9 harm.

10 If you find that Johnathan Coleman
11 committed aggravated battery and you also find
12 beyond a reasonable doubt that during the
13 commission of the crime he discharged a firearm
14 but did not cause great bodily harm, you should
15 find the defendant guilty of aggravated battery
16 with discharge of a firearm.

17 If you find that Johnathan Coleman
18 committed aggravated battery and you also find
19 beyond a reasonable doubt that during the
20 commission of the crime he actually possessed a
21 firearm but did not discharge a firearm, you
22 should find the defendant guilty of aggravated
23 battery with actual possession of a firearm.

24 A firearm is legally defined as any
25 weapon, which will, is designed to or may

1 readily be converted to expel a projectile by
2 action of an explosive or frame or receiver of
3 any such weapon.

4 To actually possess a firearm means that
5 the defendant:

6 A, carried a firearm on his person.

7 B, had a firearm within immediate physical
8 reach with ready access with the intent to use
9 the firearm during the commission of the crime.

10 Count two, shooting at, within or into an
11 occupied vehicle.

12 To prove the crime of shooting at, within
13 or into an occupied vehicle, the State must
14 prove the following three elements beyond a
15 reasonable doubt:

16 One, Johnathan Coleman shot a firearm.

17 Two, he did so at, within, or into a
18 vehicle of any kind that was being used or
19 occupied by any person.

20 Three, the act was done wantonly or
21 maliciously.

22 Wantonly means consciously and
23 intentionally, with reckless indifference to
24 consequences to consequences and with the
25 knowledge that damage is likely to be done to

1 some person.

2 Maliciously means wrongfully,
3 intentionally, without legal justification or
4 excuse, and with the knowledge that injury or
5 damage will or may be caused to another person
6 or the property of another person.

7 A firearm is legally defined as any
8 weapon, which is designed to, or may readily be
9 converted to expel a projectile by the action
10 of an explosive or the frame or receiver of any
11 such weapon.

12 Now in considering the evidence, you
13 should consider the possibility that although
14 the evidence may not convince you that the
15 defendant committed the main crimes of which he
16 is accused, there may be evidence that he
17 committed other acts that would constitute a
18 lesser included crime or crimes. Therefore, if
19 you decide that the main accusation has not
20 been proved beyond a reasonable doubt, you will
21 next need to decide if the defendant is guilty
22 of any lesser included crime.

23 The lesser crimes indicated in the
24 definition of aggravated battery are felony
25 battery and battery. There are no lesser

1 included crimes indicated in the definition of
2 shooting at, within, or into an occupied
3 vehicle.

4 Count one, lesser included offenses.
5 First one is a felony battery. To prove the
6 crime of felony battery, the State must prove
7 the following two elements beyond a reasonable
8 doubt:

9 One, Johnathan Coleman actually and
10 intentionally touched or struck Aimee Guillory
11 against her will.

12 Two, Johnathan Coleman caused Aimee
13 Guillory permanent bodily harm, permanent
14 disability, or permanent disfigurement.

15 The second lesser included offense is
16 battery. To prove the crime of battery, the
17 State must prove the following element beyond a
18 reasonable doubt:

19 One, Johnathan Coleman intentionally
20 either A, touched or struck Aimee Guillory
21 against her will or; B, caused bodily harm to
22 Aimee Guillory.

23 Now an issue in this case is whether the
24 defendant acted in self-defense. It is a
25 defense to the offense with which Johnathan

1 Coleman is charged if the injury to Aimee
2 Guillory resulted from the justifiable use of
3 deadly force.

4 Deadly force means force likely to cause
5 death or great bodily harm.

6 A person is justified in using deadly
7 force if he reasonably believed that such force
8 is necessary to prevent:

9 One, imminent death or great bodily harm
10 to himself or another.

11 Two, the imminent commission of an
12 aggravated battery or aggravated assault
13 against himself or another.

14 An aggravated battery is an actual or
15 intentional touching or striking of another
16 person against that person's will or the
17 intentional causing of bodily harm to another
18 person, or during the commission of a battery
19 the deadly weapon is used.

20 An aggravated assault is an intentional
21 and unlawful threat, either by word or act, to
22 do violence to another at a time when the
23 person making the threat appeared to have the
24 ability to carry out the threat and his or her
25 act created a well-founded fear in another

1 person that the violence was about to take
2 place, when an assault was made with a deadly
3 weapon.

4 A weapon is a deadly weapon when it is
5 used or threatened to be used in a way likely
6 to produce death or great bodily harm.

7 However, the use of deadly force is not
8 justifiable if you find Johnathan Coleman
9 initially provoked the use of force against
10 himself unless the force asserted towards the
11 defendant was so great that he reasonably
12 believed that he was in imminent danger of
13 death or great bodily harm and had exhausted
14 every reasonable means to escape the danger
15 other than using deadly force on Aimee
16 Guillory.

17 In deciding whether defendant was
18 justified in the use of deadly force, you must
19 judge him by the circumstances by which he was
20 surrounded at the time the force was used. The
21 danger facing the defendant need not be actual;
22 however, to justify the use of deadly force the
23 appearance of danger must have been so real
24 that a reasonably cautious or prudent person
25 under the circumstances would have believed

1 that the danger could only be avoided only
2 through the use of that force. Based upon
3 appearances, the defendant must have actually
4 believed that the danger was real.

5 If the defendant was not engaged in an
6 unlawful activity and was attacked in any place
7 where he had a right to be, he had no duty to
8 retreat and had the right to stand his ground
9 and meet force with force, including deadly
10 force, if he reasonably believed it was
11 necessary to do so to prevent death or great
12 bodily harm to himself or another, or to
13 prevent the commission of a forcible felony.

14 Since I did not define that with you, I
15 will tell you that a forcible felony would
16 constitute aggravated battery and/or aggravated
17 assault. Both of those are constituted as
18 forcible felonies, and I gave you the
19 definition of those earlier in the instruction.

20 A person who unlawfully or by force enters
21 or attempts to enter another occupied vehicle
22 is presumed to be doing so with intent to
23 commit an unlawful act involving force or
24 violence.

25 A private citizen has the right to arrest

1 the person who commits a felony in his presence
2 or to arrest a person where a felony has been
3 committed and where the arresting citizen has
4 probable cause to believe and does believe the
5 person arrested is guilty.

6 I will also tell you that an aggravated
7 battery and an aggravated assault both
8 constitute felonies.

9 As used with regard to self-defense,
10 vehicle means a conveyance of any kind, whether
11 or not motorized, which is designed to
12 transport people or property.

13 In considering the issue of self-defense,
14 you may take into account the relative physical
15 abilities and capacities of the defendant and
16 Aimee Guillory.

17 If in your consideration of the issue of
18 self-defense you have a reasonable doubt on a
19 question of whether the defendant was justified
20 in the use of deadly force, you should find the
21 defendant not guilty.

22 However, if from the evidence you are
23 convinced that the defendant was not justified
24 in the use of deadly force, you should find him
25 guilty if all the elements of the charge have

1 been proved.

2 The defendant in this case has entered a
3 plea of not guilty. This means that you must
4 presume or believe the defendant is innocent.
5 The presumption stays with the defendant as to
6 each material allegation in the information
7 through each stage of the trial unless it has
8 been overcome by the evidence to the exclusion
9 of and beyond a reasonable doubt.

10 To overcome the defendant's presumption of
11 innocence, the State has the burden of proving
12 the crime with which the defendant is charged
13 was committed and the defendant is the person
14 who committed the crime.

15 The defendant is not required to present
16 evidence or prove anything.

17 Whenever the words reasonable doubt are
18 used, you must consider the following:

19 A reasonable doubt is not a mere possible
20 doubt, a speculative, imaginary or forced
21 doubt. Such a doubt must not influence you to
22 return a verdict of not guilty if you have an
23 abiding conviction of guilt. On the other
24 hand, if, after carefully considering,
25 comparing, and weighing all the evidence, there

1 is not an abiding conviction of guilt, or if
2 having a conviction, it is one which is not
3 stable but one which wavers or vacillates, then
4 the charge is not proved beyond every
5 reasonable doubt and you must find the
6 defendant not guilty because the doubt is
7 reasonable.

8 It is to the evidence introduced in this
9 trial, and to it alone, that you are to look
10 for that proof.

11 A reasonable doubt as to the guilt of the
12 defendant may arise from the evidence, conflict
13 in the evidence, or the lack of evidence.

14 If you have a reasonable doubt, you must
15 find the defendant not guilty. If you have no
16 reasonable doubt, you should find the defendant
17 guilty.

18 Now it is up to you-all to decide what
19 evidence is reliable. You should use your
20 common sense in deciding which is the best
21 evidence and which evidence should not be
22 relied upon in considering your verdict. You
23 may find some of the evidence not reliable or
24 less reliable than other evidence.

25 You should consider how the witnesses

1 acted, as well as what they said. Some things
2 you should consider are:

3 One, did the witness have the opportunity
4 to see and know the things about which the
5 witness testified?

6 Two, did the witness seem to have an
7 accurate memory?

8 Three, was the witness honest and straight
9 forwarding in answering the attorneys'
10 questions?

11 Four, did the witness have some interest
12 in how the case should be decided?

13 Five, does the witness' testimony agree
14 with the other testimony and other evidence in
15 the case?

16 Has the witness been offered or received
17 any money, preferred treatment, or other
18 benefit in order to get the witness to testify?

19 Seven, had any pressure or threat been
20 used against the witness that affected the
21 truth of the witness' testimony?

22 Eight, did the witness at some other time
23 make a statement that is inconsistent with the
24 testimony he or she gave in court?

25 Whether the State has met its burden of

1 proof does not depend upon the number of
2 witnesses it has called or upon the number of
3 exhibits that are offered, but instead, upon
4 the nature and quality of the evidence
5 presented.

6 The fact that a witness is employed in law
7 enforcement does not mean that his or her
8 testimony deserves more or less consideration
9 than that of any other witness.

10 Expert witnesses are like other witnesses
11 with one exception -- the law permits an expert
12 witness to give his or her opinion. However,
13 an expert's opinion is only reliable when given
14 on a subject in which you believe him or her to
15 be an expert. You may believe or disbelieve
16 all or any part of the expert's testimony.

17 The defendant in this case has become a
18 witness. You should apply the same rules to
19 consideration of his testimony that you apply
20 to the testimony of the other witnesses.

21 It is entirely proper for a lawyer to talk
22 to a witness about what testimony the witness
23 would give if called to the courtroom. The
24 witness should not be discredited by talking to
25 a lawyer about his or her testimony.

1 You may rely upon his or her conclusion
2 about the testimony of any witness. A juror
3 may believe or disbelieve all or any part of
4 the evidence or the testimony of any witness.

5 Now a statement claimed to have been made
6 by the defendant outside of court has been
7 placed before you. Such a statement should
8 always be considered with caution and weighed
9 with great care to make certain it was freely
10 and voluntarily made.

11 Therefore you must determine from the
12 evidence that the defendant's statement was
13 voluntarily and freely made.

14 In making this determinations, you should
15 consider the total circumstances including but
16 not limited to:

17 One, whether when the defendant made the
18 statement he had been threatened in order to
19 get him to make it.

20 Two, whether anyone had promised him
21 anything in order to get him to make it.

22 If you conclude the defendant's out of
23 court statement was not freely made, you should
24 disregard it.

25 Now these are some general rules that

1 apply to your discussion. You must follow
2 these rules in order to return a lawful
3 verdict.

4 One, you must follow the law as spelled
5 out in these instructions. If you fail to
6 follow the law, your verdict will be a
7 miscarriage of justice. There is no reason for
8 failing to follow the law in this case. All of
9 us are depending upon you to make a wise and
10 legal decision in this matter.

11 Two, this case must be decided only upon
12 the evidence that you have heard from the
13 testimony of the witnesses and have seen in the
14 form of the exhibits in evidence and these
15 instructions.

16 Three, this case must not be decided for
17 or against anyone because you feel sorry for
18 anyone or are angry at anyone.

19 Four, remember, the lawyers are not on
20 trial. Your feelings about them should not
21 influence your decision in this case.

22 Five, your duty is to determine if the
23 defendant has been proven guilty or not in
24 accord with the law. It is the judge's job to
25 determine a proper sentence if the defendant is

1 found guilty.

2 Six, whatever verdict you render must be
3 unanimous, that is, each juror must agree to
4 the same verdict.

5 Seven, your verdict should not be
6 influenced by feelings of prejudice, bias or
7 sympathy. Your verdict must be based on the
8 evidence and on the law contained in these
9 instructions.

10 Deciding a verdict is exclusively your
11 job. I cannot participate in that decision in
12 any way. Please disregard anything that I have
13 said or done that makes you think I preferred
14 one verdict over another.

15 You may find the defendant guilty as
16 charged in the information or guilty of such
17 lesser included crime as the evidence may
18 justify, or not guilty. If you return a
19 verdict of guilty, it should be for the highest
20 offense which has been proven beyond a
21 reasonable doubt. If you find that no offense
22 has been proven beyond a reasonable doubt,
23 then, of course, your verdict must be not
24 guilty.

25 Only one verdict may be returned as to

1 each crime charged. This verdict must be
2 unanimous, that is, all of you must agree to
3 the same verdict.

4 The verdict must be in writing, and for
5 your convenience, the necessary forms of
6 verdict have been prepared for you. They are
7 as follows: I have three sheets of papers
8 here. I will send them back with you when you
9 go back to deliberate. The verdict forms are
10 identical on the top third and bottom third.

11 The top third is what we call the caption
12 of the case, and it reads as follows:

13 In the Circuit Court of the Ninth Judicial
14 Circuit in and for Orange County, Florida;
15 State of Florida versus Johnathan Coleman,
16 defendant. It has the case number, assigned to
17 this particular file, it has the division,
18 which is this courtroom, and it has the charges
19 listed in count one, it's aggravated battery
20 with a firearm, and in count two it's shooting
21 at, within, or into an occupied vehicle. So
22 that does not change on the verdict forms.

23 The bottom third of the verdict forms are
24 also the same. It says so say we all, dated at
25 Orlando, Orange County, Florida, on this blank

1 day of June 2015, and a place for the
2 foreperson to sign.

3 The only information that charges on these
4 three verdict forms is the information in the
5 middle. So what you should do when you go back
6 to deliberate, is consider verdict on count one
7 first. The verdict form as to count one has
8 four options. The first option is: We, the
9 jury, find the defendant guilty of aggravated
10 battery with a firearm as charged in the
11 information.

12 The second option is: We, the jury, find
13 the defendant guilty of the lesser included
14 offense of felony battery.

15 And the third option: We, the jury, find
16 the defendant guilty of the lesser included
17 offense of battery.

18 And the fourth option is: We, the jury,
19 find the defendant not guilty.

20 When you-all have decided on a verdict in
21 this case, as to count one, your foreperson
22 should select one of those four options, one
23 only. I've had a jury come back with multiple,
24 and I had to send them back. So pick one and
25 one only.

1 Make sure the foreperson dates it with
2 today's date and they sign it. If you do not
3 have one of these options dated and sign, I
4 have to send you back to the jury room and have
5 you complete the form.

6 I'm also going to send back, on count one,
7 a special verdict form. You do not need to
8 fill out this special verdict form unless you
9 find Mr. Coleman guilty as charged on count one
10 on the aggravated battery with a firearm.

11 If you find him guilty of any lesser
12 included offense, meaning felony battery or
13 battery, or you find him not guilty, you do not
14 have to fill out the special verdict form as to
15 number one.

16 If there's a guilty verdict as charged as
17 to aggravated battery, count one, then I will
18 need you to consider the special verdict form
19 as to count one, and that provides you with
20 four options. We, the jury, find during the
21 commission of the crime the defendant did
22 possess and discharge a firearm, and as a
23 result of the discharge of the firearm great
24 bodily harm was inflicted upon Aimee Guillory.

25 Second option, during the commission of

1 the crime, the defendant did actually possess
2 and discharge a firearm.

3 Third option, we, the jury, find that
4 during the commission of the crime, the
5 defendant did actually possess a firearm.

6 The fourth option, we, the jury, find that
7 during the commission of the crime, the
8 defendant did not actually possess or discharge
9 a firearm.

10 As you would have done with the first
11 verdict form, and if it's necessary for you to
12 fill out this special verdict form, your
13 foreperson will select one of those four
14 options, one only. Make sure they date it and
15 then sign it.

16 Once you are done with those forms, then
17 go on to the verdict form for count two. The
18 first option, we, the jury, find the defendant
19 guilty of shooting at, within, or into an
20 occupied vehicle as in the information.

21 Second option, we, the jury, find the
22 defendant not guilty.

23 And as you have done for the first verdict
24 form, select one of those two options and date
25 it and have the foreperson sign it.

1 Once you've completed all the verdict
2 forms necessary for you to complete, have them
3 dated and signed, knock on the door and we will
4 bring you in and accept the verdict at that
5 point in time.

6 A separate crime is charged in each count
7 of the information, and while they have been
8 tried together, each crime and the evidence
9 applicable to it must be considered separately
10 and a separate verdict returned as to each.

11 A finding of guilty or not guilty as to
12 one crime must not affect your verdict as to
13 the other crime charged.

14 In just a few moments you will be taken to
15 the jury room by the court deputy. The first
16 thing you should do is choose a foreperson, who
17 will preside over your deliberations. The
18 foreperson should see to it that your
19 discussions are carried on in an organized way
20 and that everyone has a fair chance to be
21 heard. It is also the foreperson's job to sign
22 and date the verdict forms when all of you have
23 agreed on a verdict, and to bring the verdict
24 form back to the courtroom when you return.

25 During deliberations, jurors must

1 deliberate about the case only with one another
2 and only when all jurors are present in the
3 jury room. You are not to communicate with any
4 person outside the jury about this case. Until
5 you have reached a verdict, you must not talk
6 about this case in person or through the
7 telephone, writing or electronic communication,
8 such as a blog, Twitter, email, text message or
9 any other means.

10 Now many of you have had your cell phones,
11 tablets, laptop or other electronic devices in
12 the courtroom with you. The rules do not allow
13 you to bring your phone or any of those types
14 of devices into the jury room. Kindly leave
15 those devices with the court deputies where
16 they will be guarded while you deliberate.

17 Do not contact anyone to assist you during
18 these deliberations. These communications
19 rules apply until I discharge you at the end of
20 the case.

21 If you become aware of any violation of
22 these instructions or any other instruction
23 I've given you in this case, you must tell me
24 by giving a note to the court deputy. If you
25 need to communicate with me, you can send a

1 note through the court deputy signed by the
2 foreperson.

3 If you want to talk to me, send a note
4 through the court deputy, signed by the
5 foreperson. If you have any questions, I need
6 to talk with the attorneys before I answer, so
7 it may take some time. I will answer any
8 questions, if I can, in writing or orally here
9 in open court.

10 During the trial, items were received in
11 evidence as exhibits. You may examine whatever
12 exhibits you think you need to in your
13 deliberations. These exhibits will be sent in
14 the jury room with you when you begin to
15 deliberate.

16 In closing, let me remind you it is
17 important that you follow the law as spelled
18 out in these instructions as you decide your
19 verdict. There are no other laws that apply to
20 this case. If you do not like the laws that
21 must be applied, you must use them.

22 For two centuries we have agreed to live
23 by the law, and no juror has the right to
24 violate the rules we all share.

25 Any objections by the State?

1 MR. ARCKEY: No, Your Honor.

2 THE COURT: Defense?

3 MR. ADAMS: No, Your Honor.

4 THE COURT: All right. With the exception
5 of Mr. Walters, and Mr. Filer, if the two of
6 you will remain seated there.

7 The remaining six are free to go back and
8 deliberate your verdict.

9 (Whereupon, at 6:40 p.m. the jury was
10 escorted from the courtroom to begin
11 deliberation, and the proceedings continued in
12 their absence as follows)

13 THE COURT: Mr. Filer and Mr. Walters, you
14 were selected as our alternate jurors.
15 Sometimes something happens and somebody is not
16 able to make it back or get sick, or something
17 happens, for whatever reason, they don't come
18 back. Had that happened in this case, one of
19 you would have been asked to step in and assume
20 the duties of the main jurors to deliberate the
21 case.

22 It looks like everybody is healthy and
23 back in the jury room deliberating, so this
24 will conclude your jury service. You can take
25 the dinner home with you, all right? Sometimes

1 they will order and sometimes they know that
2 you are not going to be with the Jury, so they
3 won't. It appeared that they did this time.

4 I know it's been three days here with us
5 and I know it's been a little inconvenient for
6 you, but as you can see from having sat through
7 this case, it's really important that we have
8 members of our community come in and help us
9 make these kind of decisions.

10 For your service for the last two days, we
11 thank you for that. In the envelope are two
12 documents. One of them is a certificate
13 showing that you were here the last three days
14 for your employer, if you need that.

15 The second item in there is a letter from
16 myself on how to conduct myself. If you need
17 anything further for purposes of your employer,
18 just contact my office and I will make whatever
19 arrangements, even if I have to contact your
20 employer.

21 The other reason I provide letters is, if
22 there's anything you think we can do here at
23 the court system to help the other jurors for
24 future service, as to anything I can do here in
25 the courtroom to make your stay with us the

1 next time better, or other jurors in the
2 future.

3 I know the complaint I've gotten in the
4 past is about a coffee machine back there. The
5 county has started paying for those. We have
6 one on the way, and with that said, you guys
7 are excused, and I thank you for your service.

8 (Whereupon, the alternate jurors were
9 excused)

10 THE COURT: State and defense, start
11 looking through the evidence here to make sure
12 you are in agreement of what goes back to the
13 jurors.

14 (Whereupon, court was at ease at 6:45
15 p.m., awaiting jury verdict, after which the
16 proceedings resumed as follows)

17 THE COURT: Both state and defense in
18 agreement with what's going back?

19 MR. ARCKEY: Yes, Your Honor.

20 MR. MULLINS: Yes, Your Honor.

21 THE COURT: Mr. Coleman, I have a few
22 questions for you. You can have a seat.

23 You've been present throughout the entire
24 course of the trial; is that true?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And are you satisfied with
2 your lawyers' representation of you?

3 THE DEFENDANT: Yes.

4 THE COURT: Have they done everything you
5 wanted them to do?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have they failed to do
8 anything you wanted them to do?

9 THE DEFENDANT: No, sir.

10 THE COURT: So it would be safe to say you
11 are completely satisfied with their service at
12 this point?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I think you should be, they
15 did a good job.

16 Anything further from the State or
17 defense?

18 MR. ARCKEY: Nothing further, Your Honor.

19 MR. MULLINS: Nothing further.

20 THE COURT: Court will be in recess until
21 we have a question or verdict from the Jury.

22 (Whereupon, court was further at ease at
23 6:48 p.m. awaiting jury verdict, after which at
24 8:15 p.m., the proceedings resumed as follows)

25 THE COURT: For the record, a

1 representative for the state attorney is
2 present.

3 Defense counsel is present, as well as
4 Mr. Coleman.

5 We have a question from the Jury.

6 Question reads: What is the difference
7 between great bodily harm and bodily harm?"

8 Any suggestions?

9 MR. MULLINS: Great bodily harm, isn't
10 that a matter of statute? Is it 784?

11 MR. ARCKEY: I think it's the definition
12 that involves permanent disfigurement and
13 permanent disability. Isn't that part of the
14 instruction? On the felony battery, kind of
15 laid it out.

16 MR. MULLINS: Great bodily harm, a person
17 who commit felony battery, it's not defined.
18 Let's see if the jury instruction said
19 something about it on felony battery. Isn't
20 there something about permanent disfigurement,
21 permanent disfigurement and --

22 THE COURT: You-all are missing the boat
23 on the question. I know exactly where they are
24 hung up.

25 (Whereupon, a discussion was had off the

1 record)

2 MR. MULLINS: They are asking what's the
3 difference between great bodily harm and bodily
4 harm, right? What is the question again?
5 Great bodily harm and bodily harm?

6 (Discussion off the record)

7 MR. ARCKEY: Your Honor, I'm looking at
8 774 So2d 844 Heck v. State, which a similar
9 incident had occurred, defined great bodily
10 harm, subject, they said that great bodily harm
11 in the context of aggravated battery means
12 great, as distinguished from slight, trivial,
13 minor, or moderate harm and does not include
14 mere bruises as are likely to be inflicted
15 in a simple assault and battery.

16 THE COURT: On Coronado versus State,
17 Allen versus State and -- Coronado versus
18 State, which is 654 So2d 1267, Second District
19 Court of appeal, says that great bodily harm
20 has been defined as follows, and then they have
21 a quote, great bodily harm defines itself and
22 means great as distinguished from slight,
23 trivial, moderate harm, does not include mere
24 bruises as are likely to be inflicted in a
25 simple assault or battery.

1 Whether the evidence described in such
2 harm is inquiry within the meaning of the
3 statute is generally a question of fact for the
4 Jury. So I propose that that's the instruction
5 I give them.

6 MR. MULLINS: How are you going to define
7 bodily harm?

8 MR. ARCKEY: I think that differentiates
9 the two. I think defining one did lead to a
10 conclusion of some kind --

11 MR. MULLINS: They asked the question of
12 about what's the difference.

13 THE COURT: What's the difference between
14 great bodily harm and bodily harm. If I give
15 them the difference of what great bodily harm
16 is, and any other harm to the body, is bodily
17 harm.

18 MR. MULLINS: I got it.

19 THE COURT: Let's go ahead and bring them
20 in.

21 (Whereupon, at 8:15 p.m., the jury was
22 returned to the courtroom and the proceedings
23 continued as follows)

24 THE COURT: The question read, "what is
25 the difference between great bodily harm and

1 bodily harm"? I got your question right?

2 THE FOREPERSON: Yes, sir.

3 THE COURT: What I will do for you is
4 define for you the definition of great bodily
5 harm as it's set forth in the cases here in the
6 State of Florida. Great bodily harm defines
7 itself, it means great as distinguished from
8 slight, trivial, minor or moderate harm, and as
9 such, does not include mere bruises as are
10 likely to be inflicted in a simple assault or
11 battery, whether the evidence describing such
12 harm or injury is within the meaning of the
13 statute, is generally a question of fact for
14 the Jury. Okay. All right.

15 The next question I have for you all is,
16 it's about 8:15. I'm not trying to rush
17 you-all in any way, shape, or form. I guess I
18 want to know from you-all two things. At some
19 point I am going to send you home because I
20 don't think it's fair to keep you here too
21 late, so I kind of what to know how -- estimate
22 of how long you want to go tonight, if you are
23 close, or do you want to come back tomorrow --

24 THE FOREPERSON: We're close, about a half
25 hour away.

1 THE COURT: Then I will send you back. I
2 don't need to know anymore than that.

3 (Whereupon, the jury was escorted from the
4 courtroom and the proceedings continued in
5 their absence as follows)

6 THE COURT: We will be in recess until
7 such time we have a question or a verdict.

8 (Whereupon, court was further at ease at
9 8:16 p.m. awaiting jury verdict, after which,
10 at 8:45 p.m. the proceedings resumed as
11 follows)

12 THE COURT: Go back on the record.

13 I will note for the record the assistant
14 state attorney's office is present.

15 Both defense counsel is present.

16 Mr. Coleman is present.

17 I've been notified that the Jury has
18 reached a verdict; is that correct?

19 THE DEPUTY: Yes, sir.

20 THE COURT: Go ahead and bring the Jurors
21 in and let's take the verdict.

22 Just to let everybody know in the
23 courtroom, I don't know what the verdict is or
24 what it's going to be, so no outbursts and we
25 need to have the Jury's decision.

1 (Whereupon, the jury was returned to the
2 courtroom and the proceedings continued as
3 follows)

4 THE COURT: State recognize the presence
5 of the Jury?

6 MR. ARCKEY: We do, Your Honor.

7 THE COURT: Defense recognize the presence
8 of the jury?

9 MR. ADAMS: Yes, Your Honor.

10 THE COURT: Have you reached a unanimous
11 verdict?

12 THE FOREPERSON: Yes, we have.

13 THE COURT: Hand the verdicts to the court
14 deputy, please.

15 THE FOREPERSON: (complies)

16 THE COURT: Madam Clerk, announce the
17 Jury's verdict.

18 THE CLERK: In the Circuit Court of the
19 Ninth Judicial Circuit, in and for Orange
20 County, Florida; case number 2014-CF-7184;
21 Division 16; State of Florida versus Johnathan
22 Coleman; Verdict as to count one:

23 We, the jury, find the defendant guilty of
24 aggravated battery with a firearm, as charged
25 in the information.

1 Special verdict as to count one: We, the
2 jury, find that during the commission of the
3 crime, the defendant did actually possess and
4 discharge a firearm, and as a result of the
5 discharge of the firearm, great bodily harm was
6 inflicted upon Aimee Guillory.

7 Verdict as to count two: We, the jury,
8 find the defendant guilty of shooting at,
9 within, or into an occupied vehicle, as charged
10 in the information.

11 So say we all, dated at Orlando, Orange
12 County, Florida, on this 24th day of June,
13 2015; signed by the foreperson.

14 THE COURT: You-all may have a seat. We
15 need to discuss sentencing in a few minutes.

16 Either side wish to have the Jury polled?

17 MR. MULLINS: We would like to have the
18 Jury polled, Your Honor.

19 THE COURT: Poll the Members of the Jury.

20 THE CLERK: Juror one, is this your true
21 and correct verdict?

22 A JUROR: Yes.

23 THE CLERK: Juror two, is this your true
24 and correct verdict?

25 A JUROR: Yes, it is.

1 THE CLERK: Juror three, is this your true
2 and correct verdict?

3 A JUROR: Yes.

4 THE CLERK: Juror four, is this your true
5 and correct verdict?

6 A JUROR: Yes, it is.

7 THE CLERK: Juror five, is this your true
8 and correct verdict?

9 A JUROR: Yes.

10 THE CLERK: Juror six, is this your true
11 and correct verdict?

12 A JUROR: Yes.

13 THE COURT: I wish to advise you of a very
14 unique privilege. No juror can ever be
15 required to talk about discussions that
16 occurred inside of the jury room, unless
17 there's a court order ordering you to do so.

18 For many centuries our jury has relied
19 upon juries for difficult cases. We have
20 recognized for hundreds of years that a jury's
21 deliberations, discussions and votes should
22 remain their private affairs so long as they
23 wish it. Therefore the law gives each of you
24 the unique privilege not to speak about each
25 other's work.

1 You are at liberty to refuse to speak to
2 anyone. A request to discuss either your
3 verdict or your deliberations may come from
4 those who are simply curious or from those who
5 might seek to find fault with you, from the
6 media, from the attorneys, or elsewhere.

7 It will be up to each one of you
8 individually to decide whether to preserve your
9 privacy as a jury.

10 I wish to thank you for your time and
11 consideration. I know this was a difficult
12 case. I know you-all have been here for three
13 days, and I know that there are probably things
14 and other matters you would rather have done
15 the last three days, but as you can tell from
16 this particular case, it's important that we
17 have members in our community like yourselves
18 to come in and assist us to making these type
19 of decision.

20 For your service here, I thank you on
21 behalf of the citizens of Orange County.

22 In just a few minutes we're going to
23 discharge you. The court deputy is going to
24 hand you some envelopes. Inside the envelope
25 are two pieces of paper. The first piece of

1 paper is a certificate indicating that you have
2 been here with us for the last three days. You
3 can use that as an excuse for work, if you need
4 to. That's your documentation of your service.

5 The other thing in there is a letter on
6 how to contact my office with some thoughts
7 from me about how you feel about your service.

8 The reason I provide that letter to you is
9 so you can have a contact number. If the
10 certificate is not sufficient for your
11 employer, please feel free to contact my
12 judicial assistant or myself and I will make
13 whatever arrangements I can to provide a phone
14 call or provide you with additional
15 documentation to give to your employers to take
16 care of that for you.

17 And if you have any comments on things we
18 could do to improve your stay as future jurors
19 or get called to service again, I will welcome
20 those so I could pass them along to our Chief
21 Judge and to the staff downstairs. That would
22 go for how you were treated when you got your
23 summons, how you were treated when you got down
24 to the Jury Assembly Room or how I could make
25 your stay or of other future juries in this

1 courtroom during the proceedings better.

2 The one comment I've gotten in the past
3 has to do with a coffeemaker. You would be
4 happy to know they are on the way. The county
5 has paid for those and they are on the way.
6 They are on order.

7 If there's anything you can think of that
8 would make your stay in the future more
9 convenient, let me know and I will do
10 everything I can to incorporate that.

11 With that said, you are excused with our
12 sincere thanks.

13 All rise for the Jury.

14 (Whereupon, the jury was escorted from the
15 courtroom and the proceedings continued in
16 their absence as follows)

17 THE COURT: Have a seat.

18 I'll hear from both parties in reference
19 to sentencing.

20 Is there a prior criminal history for
21 Mr. Coleman?

22 MR. ARCKEY: There is not, Your Honor.

23 THE COURT: He's entitled to a Presentence
24 Investigation?

25 MR. ARCKEY: There is.

1 MR. MULLINS: We're asking for it, Your
2 Honor.

3 THE COURT: I am going to order a
4 Presentence Investigation. I will set
5 sentencing -- how much time you-all think you
6 are going to need for sentencing, on either
7 side?

8 MR. ARCKEY: I don't believe I need much,
9 Your Honor, just as long as the P.S.I. and a
10 date, and I can make sure that my victim can be
11 present if she wants to be present.

12 THE COURT: Defense, how much time?

13 MR. MULLINS: How ever long it takes --

14 THE COURT: I'm talking about the
15 sentencing proceeding itself.

16 MR. MULLINS: I will probably have some
17 witnesses, Your Honor. We may need about two
18 hours.

19 THE COURT: Okay. So what I will do is
20 set an afternoon.

21 MR. MULLINS: There may also be a motion
22 for new trial for outstanding verdict that will
23 be coming pretty soon.

24 THE COURT: I'll set sentencing for
25 August 31st at 1:30. That will involve the

1 afternoon.

2 In the meantime, Mr. Coleman, I am going
3 to have you remanded to the Orange County
4 Sheriff's Office pending sentencing.

5 THE DEFENDANT: Sir, may I have a few
6 moments with my family?

7 THE COURT: Not at this time, sir.

8 (Pause)

9 THE COURT: Anything further from the
10 State or defense?

11 MR. ARCKEY: Nothing further from the
12 State, Your Honor.

13 MR. MULLINS: Nothing further, Your Honor.

14 THE COURT: All right. Court is in
15 recess.

16 (Whereupon, at 9:00 p.m., court was in
17 recess)

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1 C E R T I F I C A T E

2 STATE OF FLORIDA:

3 COUNTY OF ORANGE:

4 I, Bobby V. Timms, Official Court Reporter
5 of the Ninth Judicial Circuit of Florida, do
6 hereby certify pursuant to Florida Statute 29,
7 that I was authorized to and did report in
8 stenographic shorthand the foregoing
9 proceedings, and that thereafter my stenograph
10 shorthand notes were transcribed to typewritten
11 form by the process of computer-aided
12 transcription, and that the foregoing pages
13 contain a true and correct transcription of my
14 shorthand notes taken therein.

15 Witness my hand this 14TH day of December
16 2015, in The City of Orlando, County of Orange,
17 State of Florida.

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Bobby V. Timms, RPR-CP

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