

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Robert J. Bonds, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOSEPH DECORIYUS BURTON,

APPELLANT

APPELLATE CASE NO. 2021-000619

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
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2 IN GENERAL SESSIONS
3 COUNTY OF BEAUFORT

4 State of South Carolina,
5 Plaintiff,

6 vs. Transcript of Record
2018-GS-07-01273 &
2018-GS-07-00262

7 Joseph Decoriyus Burton,
8 Defendant.
9

10
11 June 1, 2021
12 Beaufort, South Carolina
13 Volume I of III

14 B E F O R E:

15 The HONORABLE ROBERT J. BONDS

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

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18 Carolina

19 Scott Wayne Lee, Representing the Defendant
20
21

22 SHARON G. HARDOON, CSR
23 Official Circuit Court Reporter, III
24
25

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1 instruct you that, as matter of law, a defendant
2 has no duty or obligation whatsoever to present
3 evidence, testify, cross-examine witnesses, or
4 prove anything at all, and that the State has the
5 sole burden of presenting evidence that convinces
6 you beyond a reasonable doubt that the defendant
7 committed the crimes for which he is charged.
8 Would any of you be unable to both accept that law
9 as the law, and apply that standard in your
10 deliberations? If so, please stand.

11 Does any jury believe that the mere fact
12 that the defendant has been charged with a serious
13 crimes means that he is probably guilty?

14 All right. Given the nature of the
15 allegations in the present case, would you find it
16 difficult or uncomfortable to serve as a jury in
17 this case? If so, please stand.

18 All right. Ladies and Gentlemen, does any
19 juror have any concern as it relates to COVID-19 and
20 your ability to be safe as a juror in this case?

21 All right. Thank you.

22 And, Ladies and Gentlemen, can you think of
23 any reason why you couldn't be a fair and impartial
24 juror in this case? If so, please stand.

25 Yes, come on up.

1 MS. JONES: That's correct.

2 THE COURT: All right. Does that have
3 that one resolved, Mr. Lee?

4 MR. LEE: Yes, Your Honor.

5 THE COURT: Thank you.

6 MR. LEE: Now, to a little more heavy
7 lifting, Your Honor. The next one is a motion to
8 determine the admissibility of photographs. I
9 think there's only one photograph that Mary and I
10 disagree on that oppose the introduction of. I
11 think it's Number 5.

12 MS. JONES. Yes. Your Honor, it's
13 State's Number 5. Mr. Lee and I met prior to
14 trial. I showed him all the photographs that I
15 intended on admitting. He objected to three, I
16 believe. I did take out two, but I did leave in
17 State's 5.

18 This case, Your Honor, I'm happy to pass
19 it up, Your Honor.

20 THE COURT: Yes, ma'am.

21 MS. JONES: And along with these are the
22 two that I will not be -- would you like to see
23 those as well?

24 THE COURT: Sure. I see two that you've
25 agreed not to. One has a phone, some pants, some

1 Nab crackers, some shoes and a water bottle. You
2 have agreed to exclude that?

3 MS. JONES: Yes, Your Honor.

4 THE COURT: All right, Solicitor.

5 And then I see one that seems to have some
6 sheriff department's vehicle in the background, some
7 gas pumps, and it looks like a shell casing, and this
8 photograph you also are agreeing to not admit or place
9 into evidence; is that correct?

10 MS. JONES: Yes, Your Honor. And I could
11 label those as Court's exhibits if we need to.

12 THE COURT: That's all right. I was
13 looking for an exhibit. I didn't see it, but I'm
14 not worried about it.

15 So the one that's, I guess, in
16 controversy is State's Exhibit 5?

17 MS. JONES: Yes, Your Honor.

18 THE COURT: Is that correct, Mr. Lee?

19 MR. LEE: Yes, sir, I believe it is.

20 THE COURT: This photograph right here?

21 MR. LEE: Yes, sir. This one. That's
22 the one in controversy.

23 THE COURT: All right. I'm happy to hear
24 from Mr. Lee.

25 MR. LEE: Judge, when you try these cases

1 it seems like more and more that the standard is
2 up to the sound discretion of the trial judge.
3 And, you know, based on the facts, the totality of
4 the circumstances, and the case law on this
5 admissibility of crime scene photographs is that
6 exactly.

7 My position would be that the blood --
8 the obvious blood that's in there, the fact that
9 his shoes had been taken off by, I assume, medical
10 personnel, the fact that they had to take his
11 pants off, just the sheer amount of blood in that
12 picture I believe is clearly prejudicial.
13 Clearly, it could tend -- have a jury tend to get
14 emotional, decide it on an emotional basis.

15 I think under the Rule 403, I think
16 there's plenty of prejudicial effect to the
17 picture with very little, if any, probative value.

18 Obviously, there's a lot of loss of
19 blood, and speaking with the solicitor, I don't
20 want to argue for her, but told me that one of the
21 reasons for one of these pictures was to
22 corroborate a medical personnel's testimony that
23 he lost a lot of blood. There's no doubt he lost
24 a lot of blood. We'd be willing to stipulate that
25 he lost a lot of blood. I'm talking about

1 Mr. Fells who is the victim. He needed a
2 transfusion of, I think they said, five or six
3 liters, which is a lot.

4 So, again, I just don't see really any
5 probative value in showing this, and there's
6 certainly some prejudicial effect. Just the scene
7 of it with all the blood there, with the blood on
8 tennis shoes, and the pants obviously have been
9 cut off. You know, he's already gone.

10 So it's not even something that's going
11 to show the position of a body. There were no
12 pictures taken of that. All it really is, is,
13 kind of, the aftermath of a terrible injury to
14 this young man, and I just don't see any probative
15 value that outweighs the prejudicial effect that
16 this could and very well would have on a jury.
17 That's our position, Your Honor.

18 THE COURT: Solicitor.

19 MS. JONES: Thank you, Your Honor. As
20 Your Honor can see, State's 5 is a farther away
21 photograph, as opposed to one the other two that I
22 decided not to attempt to admit. The other one, I
23 believe, is a closer-up image of the same general
24 area. That photograph, State's 5, does show a
25 substantial amount of blood loss that Mr. Fells

1 suffered. That would corroborate medical
2 testimony. If it's not showing the same thing,
3 then I may be wrong.

4 THE COURT: No, I believe it is.

5 MS. JONES: Okay, thank you.

6 THE COURT: I was just looking. Go
7 ahead.

8 MS. JONES: Your Honor, that also shows
9 where the victim was treated, where Mr. Fells was
10 treated. That location is important because of
11 the video. It coincides with the video where the
12 shooting victim happened to fall. That's where he
13 was treated because that's where he fell. That
14 picture shows where he was treated.

15 Additionally, I would just refer
16 Your Honor to the Collins case, State v. Collins,
17 involved very graphic photographs from an autopsy
18 of a child who was mauled by a vicious animal
19 attack and the Court held that those photographs
20 were admissible.

21 Your Honor, we deal with graphic and
22 gruesome, and I'm not attempting to elicit
23 emotions from the jury by the admitting of this
24 photograph. Its sole purpose is to corroborate
25 other testimony, show where the victim happened to

1 fall when he was struck because the video does
2 show that once he was struck, he immediately fell,
3 Your Honor, and I believe that that photograph
4 helps corroborate that testimony.

5 THE COURT: Any further, Mr. Lee?

6 MR. LEE: No, sir. The totality of the
7 circumstances, and it's certainly within your
8 discretion.

9 THE COURT: All right. Mr. Lee, I'm
10 going to deny your motion. I'm going to allow
11 State's Exhibit 5 to come into evidence. I think
12 the photograph mirrors the unfortunate reality
13 there. And I believe that under the Collins case
14 the standard is not simply whether the evidence is
15 prejudicial or whether -- basically, whether
16 there's danger of unfair prejudice or
17 substantially outweighs the probative value of the
18 evidence, and I just don't think that this
19 photograph does that.

20 MR. LEE: Yes, sir.

21 THE COURT: So I will deny your motion,
22 Mr. Lee, with regards to State's Exhibit 5.

23 MR. LEE: Yes, sir.

24 MS. JONES: Thank you. I can grab
25 those.

1 well, he was being monitored without a jury
2 automatically thinking -- people aren't monitored
3 for sake of being monitored.

4 THE COURT: All right.

5 MR. LEE: So that would be our position,
6 Your Honor.

7 THE COURT: All right. I'm going to deny
8 the GPS monitory. I believe that there is danger
9 of unfair prejudice. I believe that it is going
10 to go, through the backdoor, and look at --
11 basically getting into improper character evidence
12 that I believe is important in this matter.

13 And so, to that extent, we'll grant the
14 motion to suppress the GPS tracking.

15 All right. What's next?

16 MR. LEE: Your Honor, motion to determine
17 the admissibility of prior convictions. I think
18 we can agree what convictions are at issue here.

19 The first one is a providing false
20 information to law enforcement. I think it was
21 2012. He was 19. Certainly, that falls under the
22 dishonesty or false statement. I can't really
23 argue against the admission of that.

24 THE COURT: Do you agree with that,
25 Solicitor?

1 MS. JONES: Yes, Your Honor.

2 THE COURT: All right. Go ahead,
3 Mr. Lee.

4 MR. LEE: The one -- the second one, Your
5 Honor, is a July 28, 2011 conviction for two
6 counts of attempted armed robbery. The sentence
7 that was past down on Mr. Burton was Youthful
8 Offender Act, sentence not to exceed six years
9 suspended upon time served and three years
10 probation. So on July 28, 2011, he got a
11 suspended YOA, and, again, it's three years --

12 THE COURT: I'm sorry, Solicitor. I was
13 writing and not listening. What date did you just
14 give me?

15 MR. LEE: July 28, 2011 was the
16 disposition date of the two charges. So it was
17 9 years and 10 months ago.

18 THE COURT: Okay. July 28th of 2021
19 would be the 10-year anniversary. As you know,
20 that 10 years is significant as a guidepost under
21 an analysis under South Carolina Rules of Evidence
22 609. So we have -- I'll be glad to pass up the
23 rule, Your Honor. I don't know if you have your
24 rule book with you or not.

25 THE COURT: You know, I have my rule book

1 but it's in my chambers. Somebody let me walk out
2 here without it. Now, who would that be?

3 MR. LEE: Rule Number 2 for law clerks,
4 right?

5 THE COURT: And it's absolutely my
6 responsibility to bring my rule book out, not
7 hers. I want you all to know that.

8 MR. LEE: So judge what we would be
9 talking about on this particular -- these two
10 convictions, is 609(a)(1). And what it says is
11 that, evidence that an accused has been convicted
12 of such a crime shall be admitted if the Court
13 determines the probative value of admitting the
14 evidence outweighs the prejudicial effect to the
15 accused.

16 So they, kind of, give you that 10-year
17 guidepost, and really the only reason I believe
18 for that to be in there is because, if it's more
19 than 10 years, then the solicitor has to give you
20 notice that they intend to try to use it -- a
21 conviction more than ten years old.

22 The method as far as the counting was
23 clarified in 2019 in a case State vs. Shands
24 because 609 doesn't define when you're supposed to
25 start counting, about what conviction -- about

1 what conviction means. And this State vs. Shands
2 case, which I will be glad to pass up, cleared
3 that up.

4 And Shands says --

5 THE COURT: Thank you.

6 MR. LEE: -- that incarceration means
7 being in jail. And this parole, probation,
8 anything that follows either a sentencing or a
9 prison term or a jail term is not confined. So
10 confinement does not equal parole or probation.

11 So for the purposes of this rule, we have
12 to look at the date of conviction, which is
13 July 28, 2011. So it's nine years and 10
14 months -- less than ten months ago -- more than 10
15 months ago. Less than two months shorter than the
16 10 years.

17 When it is within the 10 years, the Court
18 still needs to undertake a 403 analysis to
19 determine whether the probative value of admitting
20 the evidence outweighs its prejudicial effect to
21 the accused. And, again, it's one of those tests,
22 you know, it's in the discretion of the judge.

23 But there is a standard under which to
24 make that determination when essentially doing
25 that probative versus prejudicial test, and that

1 is under State vs. Colf, C-o-l-f, and it sets
2 fourth five-point test, which I'm sure everyone
3 here is aware of. And I'll pass up
4 State vs. Robinson, State vs. Stephon Robinson,
5 which cites Colf and tells us that the five-point
6 analysis the Court is to use in its analysis.

7 And some of these, again, require the
8 Court to make some leaps of logic and faith and
9 everything else, but the Colf factors under Rule
10 609 -- and again, Colf, was a more than 10-year-old
11 case, but the Court in Robinson said that these
12 factors still apply.

13 The first thing to look at is what's
14 called the impeachment value of the prior crime.
15 And what that means is, how much is that prior
16 crime really helping a jury in determining how
17 much impeachment of a defendant's testimony they
18 should place on it. And so there's a variety of
19 things you can look at on that.

20 The first being the nature of the charge.
21 And the attempted armed robbery charge, there's
22 plenty of law out there saying that robberies,
23 armed robberies, that sort of thing do not involve
24 dishonesty or false statements. And there's some
25 law -- they're saying that -- really that how

1 those crimes affect whether somebody is telling
2 the truth, or how much they believe is very, very
3 low because of the nature of the crime.

4 So we have two attempted armed robberies
5 which I would suggest to you -- really, someone
6 who commits and is convicted of an attempted armed
7 robbery, that crime in and of itself, the acts
8 that led to that crime really have nothing to do
9 on whether or not someone is telling the truth and
10 whether they're believable or not. If it had been
11 something involving stealing, or taking something
12 away, or hiding something it would be a lot more
13 indicative of the person's a trustworthiness and
14 reliability.

15 So, the fact -- the nature of the crime,
16 which is attempted armed robbery, plus the fact
17 that if he had pled two months earlier, we would
18 be in a whole different -- it would outside the 10
19 years, then we have to show it substantially
20 outweighed -- the probative value substantially
21 outweighs the prejudicial effect.

22 I would also point out to Your Honor when
23 he was arrested was October 6th of 2010. Ten days
24 earlier he had just turned 17. So he was
25 literally 17 years old and 10 days. Had it

1 happened 11 days earlier, he would have been 16,
2 and -- I know this is a lot of "ifs" -- they
3 changed the juvenile age now and a 16-year-old
4 nowadays being charged with attempted robbery is
5 going to be in juvenile court and stay in juvenile
6 court. I don't think they can waive that up, even
7 with a petition unless it involved -- unless it
8 was murder.

9 So just to say it's close. And then,
10 obviously, you can't just say, hey, magic line,
11 10 years exactly, I'm going to do all or nothing
12 on it. That's, kind of, what they do for
13 suggestion.

14 The second factor under Colf is the point
15 in time of the conviction, the witnesses
16 subsequent history. The point in time of the
17 conviction was nearly 10 years ago. Joseph Burton
18 was 17 years old. And the fact that he got a
19 suspended YOA on two attempted armed robberies, I
20 think, would indicate to all of us that they
21 weren't serious -- as serious as a lot of real
22 attempted armed robberies. In fact, they
23 apparently involved a BB gun as far as the facts
24 go.

25 And the witnesses in Mr. Burton's subsequent

1 history, since then -- Miss Jones, please correct me
2 if I'm wrong -- I believe he's got that conviction
3 from when he was 19 for providing false information to
4 law enforcement, or providing a false ID, a fake ID to
5 law enforcement. That was when he was 19. And then
6 he has an unlawful carrying of a pistol, I believe,
7 2014.

8 MS. JONES: That's correct.

9 MR. LEE: And that appears to be his
10 subsequent history charge-wise.

11 The third factor, Your Honor, is the
12 similarity between the past crime and the charged
13 crime. And what you look at on that is ironically
14 enough, that Colf, kind of, stood apart from,
15 they're saying that, perhaps ironically, the
16 similarity -- the more similarities between the
17 prior crime and the crime in which the person is
18 charged for, the more damaging it is to let it in.
19 It would almost seem like it would be the other
20 way, but they're saying, if there's similarities
21 between the two crimes, the danger of the jury
22 using that as propensity evidence rather than just
23 saying, this only -- we're going to look at this
24 for whether he's telling the truth or not, the
25 propensity of danger is a lot more if there are

1 similarities between the crime they are attempting
2 to admit versus the crime the person is charged
3 with.

4 So, looking at the crimes, attempted
5 armed robbery from 9 years 10 months ago,
6 obviously, robbery, the taking away of something,
7 or at least attempting to do it and being armed,
8 that's what the elements of armed robbery are.
9 The elements that they have here, obviously, a
10 murder, it's a murder allegedly done with a gun.
11 So the similarity between two uses of a firearm,
12 it makes it dangerous for propensity evidence to
13 go into the minds of the jurors. Even trying to
14 tell them, hey, only look at this for impeachment
15 purposes, everybody knows they look at it, and
16 that's why the Court warns against that, and say
17 look at the similarities between the two.

18 If it's a brief of trust with fraudulent
19 intent and an armed robbery, there's no
20 similarity. There wouldn't be any issue about
21 that.

22 And then four and five, kind of, go
23 together as far as the factors. One is the
24 importance of the defendant's testimony and one is
25 the centrality of the credibility issue. And it's

1 sort of hard to differentiate exactly what they're
2 talking about, because -- on the importance of the
3 defendant's testimony in some ways it seems like,
4 well, if it's really important to the defendant to
5 be able to the testify versus not being able to
6 testify, that's just leaning towards keeping it
7 out, you know.

8 But it also suggests that, if the
9 defendant's testimony is important, the jury
10 probably needs to know as much as they can about
11 it, assuming that it is something it breeds
12 impeachment, or evidence of someone not telling
13 the truth.

14 And then the last one is centrality of
15 the credibility issue. I would submit to you that
16 this case -- the issue of whether Mr. Burton
17 testifies is going to be a very, very, big one for
18 us. Bigger than it usually is. And the reason,
19 Judge, for a lot of reasons, the video at play in
20 this, there is no sound.

21 THE COURT: Right.

22 MR. LEE: So we're not blessed or cursed
23 with the sound being on the video, so you can't
24 hear what anybody is saying throughout. The
25 people that are there, a lot of them that are

1 there aren't going to be coming to court.

2 And Mr. Burton's state of mind, what he
3 might have said and what he might have heard, et
4 cetera, is a big issue, is a big -- is going to be
5 a big thing in this case. So his -- the
6 credibility issue and the importance of his
7 testimony in this case if he testifies could be
8 very, very big because there's a lot of, you know,
9 like you just heard, you know, they can't find
10 Mr. Radel, I guess, or Mr. Burden didn't show up.
11 Mr. Paez may or may not come back or may or may
12 not be called. So there's a lot of things there,
13 Your Honor, that if he testified his testimony
14 could be very, very important in getting to the
15 bottom of exactly what happened and putting a fair
16 and full ribbon on this entire thing. You know,
17 particularly when it's mainly proven by video that
18 has no sound.

19 For those reasons, Judge, I mean, it's
20 that close to being more than 10 years old. He
21 was, essentially, a juvenile when it was
22 committed. He's had a fake ID and a gun charge,
23 that's all since then. The crimes both involved
24 firearms, and the danger for propensity is very,
25 very high for a jury to say, oh, armed robbery, I

1 mean, he's a bad dude. I mean, they say he
2 shot -- you know, they said he did it. He used a
3 gun before, he's using a gun again.

4 And according to the testimony, the
5 centrality of the credibility, I just went over
6 that as far as, if he testifies, it's going to be
7 very, very important, and it's going to, again,
8 make a big distance whether or not that -- whether
9 or not it comes in or not would make a big
10 difference on whether or not he testifies.

11 THE COURT: All right. Solicitor.

12 MS. JONES: Thank you, Your Honor.

13 Your Honor, just for clarification, he
14 does have the 2014 unlawful carrying. I do not
15 believe that that comes in under the rules unless
16 he does take the stand and I can use it for
17 impeachment purposes based on what he says.

18 I believe we both agree to giving false
19 information. It does come in.

20 Regarding the attempted armed robberies,
21 Your Honor, the Colf factor is only applied when
22 the sentence -- when the crime conviction is
23 outside of the 10 years. That 10 years is there
24 for a reason. We are within the 10 years. We
25 don't even have to get to the Colf factors because

1 we are within the 10-year time limit.

2 Your Honor, 609 allows it. I understand
3 it's in your discretion whether it's admissible or
4 not admissible, but I think the rules are there
5 for a reason. 609 says that, shall be admitted.
6 And I believe that, because of the date, we are
7 within the 10 years, you don't have to apply the
8 Colf factors, that it should be admissible.

9 MR. LEE: Judge, I can't put my hands on
10 what it says, but Robinson says, even though Colf
11 was a more than 10-year-old 609 analysis, the same
12 analysis is to be used for convictions that are
13 less than 10 years old.

14 THE COURT: All right.

15 MR. LEE: And I can find it if you give
16 me a minute.

17 THE COURT: So the providing false
18 information to a law enforcement, certainly I
19 think is fair game.

20 The reference as it relates unlawful
21 carrying, if he opens the door -- if he takes the
22 stand and opens some type of door at it relates to
23 that, obviously, I think could have impeachment
24 value there, assuming that's the case.

25 As it relates to -- as it relates to the

1 prior convictions, I'm going to agree with Mr. Lee
2 in terms of the timeliness -- the timing of this
3 matter. And so to that extent, the defendant was
4 17 years old at the time by some 10 days, I
5 think.

6 MR. LEE: Yes, sir.

7 THE COURT: That the defendant was given
8 a YOA sentence, and that he ended up -- I believe
9 the disposition of the case was July 28, 2011.

10 This matter that he's here for today,
11 took place allegedly on August 4, 2018.

12 MS. JONES: Yes, sir.

13 THE COURT: I think that given the nature
14 of the prior charges, the YOA sentence, his age,
15 that being 17 and 10 days, I think that while the
16 rules say 10 years, I don't know that it's a hard
17 and fast rule as it relates to that. And so
18 within my discretion, I am going to exclude, for
19 that purpose.

20 Now, the charges: As it relates to the
21 Colf factors contained in the Robinson case, I
22 think there is -- while I think there is an
23 impeachment value to the prior crime, I believe
24 the point in time and the subsequent history I
25 think certainly merits the scales of exclusion to

1 the defendant in this matter. I'm concerned about
2 the similarity between the crimes.

3 I believe -- I think there's a lot of
4 different ways you can look at this, but the way I
5 would look at it is, I think that the closer they
6 are, the higher scrutiny that's got to be given,
7 and I think that, in this case, we're dealing with
8 a prior armed robbery, gun, whether it's a BB gun
9 or not, a gun here, I just -- I'm just concerned
10 about the fact that the circumstances surrounding
11 the prior conviction are, while similar, in my
12 opinion, are not similar enough such that this
13 wouldn't be unduly prejudicial.

14 I believe that it is important to the
15 defendant's testimony, and the credibility is a
16 central issue in this matter and both sides have
17 indicated that to me in the motions that we've
18 argued this morning, or this afternoon.

19 So, as a result, I am not going to let
20 the prior convictions about the two attempted
21 armed robberies into evidence.

22 I will say, however, that if the
23 defendant takes the stand, I mean, if there is any
24 even the slightest brushing up to that line and
25 perhaps crossing it, I think it is very fair game

1 to come into evidence to impeach and for the
2 Solicitor to use any purposes under law.

3 Any questions concerning my ruling?

4 MS. JONES: No, Your Honor.

5 THE COURT: Solicitor we good? I know
6 you may not agree, but is there anything else
7 concerning this ruling?

8 MS. JONES: Respectfully, I disagree, but
9 I understand your ruling.

10 THE COURT: All right. Mr. Lee, anything
11 else concerning my ruling as it relates to this
12 matter?

13 MR. LEE: Not on this matter,
14 Your Honor.

15 THE COURT: All right. What's next?

16 MR. LEE: I think the last one we had
17 was, I filed a motion to exclude two jail calls
18 that the Solicitor provided me a month ago, three
19 weeks ago.

20 MS. JONES: Roughly.

21 MR. LEE: Within the last month or so.
22 There's two jail calls that I understand that she
23 -- made by my client that she intends to -- or
24 wants to introduce into evidence. One of them is
25 to my client's girlfriend, Chrissie Martinez. The

1 other is between him and his sister.

2 I have to both substantive objections to
3 stuff coming as well as procedural 4th Amendment
4 arguments to the jail calls in general and the
5 manner in which they are recorded, retrieved,
6 seized, and that sort of thing.

7 So, one of them is -- and I can -- I
8 guess I can do my best to very quickly summarize
9 what -- the contents of the calls. Or maybe it
10 would be quicker if Miss Jones, kind of, said why
11 she wanted them in and the parts she thought were
12 important, because I can tell you -- like the one
13 between him and his sister, they're talking about
14 the lawyer hasn't called every single one of them
15 and told him what's going on, and there's some
16 conversation that JoJo is saying, yeah -- because
17 they're supposed to call him on schedule -- it got
18 continued and we don't know whether there's going
19 to be masks, because my lawyer is saying this, my
20 lawyer is saying that. There's a lot of things
21 about my lawyer saying this. He hadn't come to
22 see you enough. That sort of thing.

23 And there's some -- there's a lot of
24 stuff in there that I think is totally, not only
25 irrelevant, but highly prejudicial. It has

1 nothing to do with the case. I don't know the
2 exact content -- I kind of do, I guess -- of what
3 Mr. Jones wants to get in, particularly with the
4 phone call to the sister. But there's just a lot
5 of superfluous, gratuitous stuff in there.
6 There's some things said, you know, some language
7 that would not play well on my client or the other
8 party that called that the jury simply doesn't
9 need to hear.

10 I'd rather Miss Jones can say -- tell us
11 what she thinks is most important, we can argue '
12 the substance of it before we need to see if we
13 need to get into the actual foundation.

14 THE COURT: All right. Solicitor.

15 MS. JONES: Absolutely, Your Honor. I am
16 happy to omit any reference to what Mr. Lee
17 may have told at the beginning of this phone call.
18 That is not the meat of the call that I'm
19 interested in.

20 On the phone conversation with his
21 sister -- the call in its entirety is about
22 11 minute and 28 seconds. A lot of that will be
23 redacted. I'm happy to do that based on what they
24 have said about Mr. Lee in that phone call.

25 However, he does tell his sister, yes, yes, I

1 was on the video but that's all they got. He also
2 says, they have enough to hold me on that video.

3 I believe that those statements -- this
4 is on the surveillance video, Your Honor. He's
5 admitting to being on the video in this particular
6 phone call to his sister.

7 I feel because of that, the substance of
8 those statements alone to his sister are
9 admissible.

10 And I'm happy to go into the,
11 4th Amendment and the South Carolina
12 constitutional argument.

13 THE COURT: Well, do you want her to go
14 into the 4th Amendment and the South Carolina
15 constitution as it relates to her argument?

16 MR. LEE: Well, I'm prepared to argue
17 that to say that shouldn't have these jail calls
18 anyway because of the way that they're --

19 THE COURT: I understand that.

20 My position, or what I'm thinking is, I
21 think the jails calls are in.

22 However, as it relates to superfluous
23 cursing, as it relates to comments concerning whether
24 the lawyers visiting, as to what his lawyers advised
25 him, I can't believe that you all can't, A, agree to

1 most of it, and, B, if you cannot agree to it, then
2 I'll make a ruling on that.

3 As it relates to things that he said they
4 got me on -- I don't have a problem with that.
5 I'm sorry. I think that's allowed.

6 And Mr. Lee, I'm happy to let you make
7 any motion you want to exclude for the record.
8 But, I mean, whatever you guys want to do, but I'm
9 just going to tell you, my experience with those
10 types of calls, generally they're going to be in.
11 To that extent, I think as it relates to some of
12 the cursing and some of the things that you
13 brought, clearly you all can agree to redact that
14 out.

15 MR. LEE: She does say that I'm a big dog
16 in Beaufort, so I'd like to have that part in.

17 THE COURT: If you want that in, I'm sure
18 the solicitor would agree on that. But I think
19 that -- do you think that you all can work that
20 out, and we take this up sometime tomorrow as it
21 relates to what, if anything, you might not be
22 able to work out? Mr. Lee.

23 MR. LEE: With the understanding that
24 there's not going to be any mention of in opening
25 statements until we get a final determination.

1 MS. JONES: I don't bring up phone calls
2 in my opening.

3 THE COURT: That's fine. Is that
4 agreeable with you Mr. Lee?

5 MR. LEE: It is agreeable, Your Honor.
6 But I do think that --

7 THE COURT: I'll allow you to put
8 anything you want on the record.

9 MR. LEE: Let me find out exactly what
10 she wants to put in and listen to it again and see
11 exactly what it says.

12 But, at some point, it may not be in this
13 case, we do need to have a hearing on the use of
14 phone calls without them getting a warrant in the
15 solicitor's office. They have a direct pipeline
16 to the jail. They are listening to calls live, is
17 my understanding. Again, we would present this
18 testimony.

19 THE COURT: I've seen it. I've been to
20 their offices.

21 MR. LEE: That is my fundamental problem.
22 I don't believe they are entitled to get those
23 without a warrant. My objection would be to any
24 use of phone calls at all.

25 THE COURT: So, for the record, your

1 objection is any phone calls at all, because,
2 basically, the phone calls were obtained without a
3 warrant; is that correct?

4 MR. LEE: Correct.

5 THE COURT: All right.

6 MR. LEE: And, again, if you want to hear
7 that tomorrow during a break something, or
8 something like that --

9 THE COURT: Yeah, let's go ahead and hear
10 that tomorrow. Is there something else you want
11 me to take before the jury comes in? Its 10 to
12 3:00. Is this the last motion?

13 MR. LEE: That's all I got.

14 THE COURT: Well, what do you want to do?
15 Do you want to have it heard now or do you want to
16 wait until you have heard it?

17 Let's wait. My sandwich is here. Is
18 that all right?

19 MR. LEE: Sure. I mean, I can't tell you
20 not to eat lunch.

21 THE COURT: Go ahead and make it. My
22 sandwich is here, but I'm fine. I promise. I'm
23 not going to take it out on you.

24 MR. LEE: Judge, I don't want you to rule
25 on an empty stomach.

1 THE COURT: I know. Let me hear -- give
2 me your argument, I'll hear from her, and then
3 I'll rule.

4 MR. LEE: If you want to eat your
5 sandwich --

6 THE COURT: No, go ahead. I can't bring
7 good in here. I'll get reprimanded. I'm just
8 joking about being reprimanded.

9 All right, Mr. Lee. I'm happy to hear from
10 you.

11 MR. LEE: Judge -- and I think the way
12 that I had wanted to do it, it's not up to me, but
13 there is an officer from the jail who is, kind of,
14 in charge of the phone system and he's is the one
15 that always comes over her and testifies, and then
16 there's somebody from the solicitor office who
17 can, kind of, do the background.

18 So what I kind of thought and I can
19 generally tell you what the position is and then
20 have some brief testimony and then make a closing
21 argument on it.

22 THE COURT: However you want to do it,
23 sir.

24 MR. LEE: Judge, there's two phone calls
25 that the Solicitor wants to use, and these were

1 both made by my client. There's no question about
2 that.

3 But basically, jail calls -- the jail
4 record these phone calls to maintain institutional
5 security, not provide prosecutors with a huge
6 repository of communication involving incarcerated
7 people and their family and friends to later be
8 mined for potential evidence in criminal
9 prosecutions.

10 The reason they record phone calls is to
11 make sure things are safe at the jail. It's not
12 to be in and around for the prosecutor to be able
13 to mine through there and look for incriminating
14 statements and they're going to do an ah-ha moment
15 when they go to trial.

16 And what the State is attempting to do,
17 as they attempt to introduce these recorded phone
18 calls is, they essentially want to launder an
19 unconstitutional search through the Beaufort
20 County Detention Center's security protocols,
21 because they're recording them for safety purposes
22 but they want to bypass the constitutional issues
23 by staying they're recording them anyway.

24 So, you look at a 4th Amendment issue,
25 Article 1, Section 10 of the South Carolina

1 constitution is like the 4th amendment but
2 provides that additional prohibition against
3 unreasonable invasions of privacy.

4 And neither one of those, Your Honor,
5 allow this state to sidestep the judicial
6 oversight, i.e, getting a warrant, by delegating
7 an intermediary, the jail, to do its bidding.

8 All we're all asking is saying, they got
9 to get a warrant before they can get those phone
10 calls. They need a neutral and detached
11 magistrate before they invade someone's 1st
12 Amendment right. They need to get a neutral and
13 detached magistrate to say, okay.

14 What they're doing is, they're listening
15 to everything, and I think the testimony would say
16 they have all kinds of people listen to them.
17 When they find something, then they just go and
18 get it and then they subpoena it to court. I
19 guess they're thinking the subpoena cures. The
20 problem is, the initial search and seizure. The
21 getting it without a warrant.

22 Listening in on phone calls is fine for
23 institutional security. If somebody says, hey,
24 I'm going to blow up this place, I'm getting ready
25 to get in, you know, a fight with my pod mate,

1 that's fine that they use it for that, but then
2 they're reporting it back to the solicitor's
3 office, or the solicitor office having a direct
4 line listening to these things is clearly a
5 warrant for search, and I don't believe that the
6 State can establish an exception to the
7 warrantless search law. And clearly they have to
8 have one.

9 So, the only way that those calls should
10 come in or be allowed to come in is if somebody
11 essentially -- a pretrial detainee as soon as he
12 goes to the jailhouse gates gives up all of their
13 constitution rights, and clearly they don't do
14 that.

15 There's studies that have shown that
16 phone calls or important, maintaining contact with
17 family is important, and essentially a happy
18 inmate is a good inmate. They want them to
19 communicate with their family and to remain with
20 those ties and communications while they're
21 incarcerated.

22 And so these calls, however, are
23 recorded, they're preserved, they're not going
24 anywhere. It's not like they're going to all of
25 sudden disintegrate so they got to get them fast.

1 They're there. But the State through the
2 solicitor's office needs to get a warrant to do
3 that, unless there's imminent threat to public
4 safety or someone's health while they're
5 incarcerated.

6 But, again, the process that's in place
7 over here essentially would require a court to
8 categorically dispense with the warrant
9 requirement for access to jail calls, and that's
10 just not -- it's just not the way to do it. I'm
11 not saying they can't get them. I'm not saying
12 that they don't help the State. I'm saying, if
13 they're going to get them, they got to find a
14 different way to do it, and all they need to do is
15 get a warrant. But to get the warrant, obviously,
16 they have to go through some steps as well.

17 For them to listen every single phone
18 call, not to mention the issues about calling your
19 lawyer -- I mean, I guess I can ask the
20 Solicitor's representative here about how do they
21 know they're calling a lawyer. Do they have all
22 our cell phones. Do they hang up as soon as they
23 hear it. There's all kinds of issues that I think
24 are relevant to this and need to be heard and at
25 least made public for some type of ruling on this.

1 Again, the states can provide additional
2 protections. The state of South Carolina does
3 under Article 1, Section 10, and I think that this
4 is -- because it involves first amendment rights,
5 it also involves Fifth and Sixth Amendment.
6 People talk about their cases. They talk about
7 witnesses. They talk about private pin numbers on
8 their phone. And if the solicitors listen to
9 every little thing, they go and get stuff they
10 couldn't normally get. Just like in this case;
11 he's having a conversation with his girlfriend and
12 with his sister.

13 And the admonition for when you're making
14 a phone call, the automatic thing says, this call
15 is subject to being monitored and recorded.
16 That's what it says. It doesn't say, this is
17 subject to being used by the same people that are
18 trying to put you in jail. It doesn't say the
19 solicitor's office is going to be able to sift
20 through this like they're on gold mine and find
21 out exactly what you're saying and what you're
22 doing. It says, this is subject to being
23 monitored or recorded.

24 Well, what's a normal person to think?
25 Well, yeah, they don't want me saying, hey, I'm

1 getting ready to blow this place up, or Johnny
2 come bust me out of jail two o'clock next week, or
3 I'm getting ready to shank my roommate. Those are
4 the things that is institutional security, and
5 those are not present here.

6 So again, I think the way to analyze it
7 is clearly a search and seizure under the 4th
8 Amendment, Article 1, Section 10. It's a basic
9 rule. You got to have a warrant. If you're going
10 to engage in a search like this, you don't need a
11 warrant if you meet one of the exceptions. The
12 only exception I think they can raise at all is
13 consent, and then the question is: Did he, in
14 fact, consent, was it voluntary, and was the
15 scope, if it was a consent, was it voluntarily,
16 and if it was voluntarily, was the scope exceeded.
17 It's our position that any consent that he gave
18 was clearly involuntarily. He had no choice.

19 And the Simmons case I passed up,
20 Your Honor, talks about it is intolerable -- the
21 U.S. Supreme Court says, it is intolerable to
22 require someone to give up or surrender one
23 constitutional right in order to assert another
24 one.

25 And in that case, the defendant wanted to

1 testify at the pretrial hearing, but then didn't
2 want them to use that against him at trial. The
3 Court says, they absolutely cannot use it against
4 you. You're asserting your right to challenge
5 this search, and you don't have to give up your
6 right against self-incrimination at trial, and
7 they can't use it against you. So it says, and
8 the language, it is intolerable essentially to
9 have to pit one constitutional right against the
10 other.

11 That's exactly what Mr. Burton and
12 everybody making phone calls is having to do; in
13 order to exercise your 1st Amendment right to
14 talk, particularly to family members, lawyers,
15 friends, et cetera, and your Fifth and Sixth
16 Amendment right involving counsel, yeah, you can
17 exercise those, but you got to completely give up
18 your right to have it unreasonably searched and
19 seized because you're in jail.

20 And, clearly, that is a -- it's not even
21 a Hobson's choice. It's a terrible choice to make
22 and it's not fair for the State to put him in that
23 position. And, therefore, the unreasonable
24 search, if the reason is because he had -- the
25 only way he could talk to anybody was to, you

1 know, was to press whatever number on the phone
2 and say, hey, it's being recording, well, who's
3 listening to it. They don't have any way of
4 knowing. It doesn't tell them the State is going
5 to use everything you say against you if you slip
6 up and say something.

7 So, again, we're not saying they can't
8 use jail phone calls if they're able to get a
9 warrant and find out what's on there. But what
10 they're doing is, they're getting all the
11 evidence, sifting through it, and find out
12 something they want, and then they go and subpoena
13 Maxwell to come in here on a recorded phone call.

14 I believe the testimony would be that
15 they have people at the solicitor's office
16 listening to recorded phone calls, listening to
17 live phone calls, volunteers, interns, law clerks,
18 investigators, et cetera without securing a
19 warrant. And somehow they have some process where
20 they have access to this.

21 And, again, no warrant was obtained, and
22 it's our position that is clearly an
23 unconstitutional search and seizure and the only
24 remedy is to not allow them to use those tapes
25 regardless of what they say.

1 THE COURT: All right.

2 MR. LEE: If he was on trial for
3 assaulting another inmate in jail and they had a
4 call that he said, hey, I'm getting ready to
5 assault another inmate and it was for
6 institutional security, sure. That's fine.
7 That's a legitimate one.

8 But when they just start listening to all
9 of them and turning them over with no judicial
10 oversight, they're doing it in run around the
11 constitution by getting all this information and
12 then using it later on.

13 For that reason -- those reasons, I would
14 respectfully asked that the phone calls not be
15 admitted at all.

16 THE COURT: All right. Mr. Lee, do you
17 want to call witnesses? You indicated about
18 calling witnesses as it relates to this motion. I
19 want you to be able to fully set forth and pursue,
20 at this point, everything you want at this time.
21 What I don't want to do is, I don't want to come
22 back later and have to address that. I'm not
23 asking you necessarily to do it, but if you want
24 to do, sir, now is the time.

25 MR. LEE: Okay. I would like to do it.

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1 THE COURT: Go right ahead.

2 MR. LEE: I will call Jeffrey Maxwell.

3 THE COURT: All right. Mr. Maxwell, come
4 around and have the clerk swear you in, sir.

5 THE CLERK: Please raise your right hand.
6 Do you solemnly swear or affirm to truthfully
7 answer all questions asked of you by this court so
8 help you God?

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Thank you. Have a seat. If
11 you can please speak directly into the microphone.
12 State your name and spell your last name for the
13 record.

14 THE WITNESS: Lance Corporal Jeffrey
15 Maxwell, M-a-x-w-e-l-l.

16 THE COURT: All right. Mr. Maxwell,
17 thank you. Your witness, Counsel.

18 WHEREUPON:

19 LANCE CORPORAL JEFFREY MAXWELL,
20 after having been sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. LEE:

23 Q Hello, Mr. Maxwell.

24 A Hello, sir.

25 Q I'm having a little bit of trouble hearing you.

1 A Is that better?

2 Q That's better. You are a lance corporal you said?

3 A Yes, sir.

4 Q What is your position at the jail?

5 A I am the intel officer.

6 Q Intel officer?

7 A Yeah, intelligence officer.

8 Q How long have you been an intel officer?

9 A Five years.

10 Q Okay. And can you briefly describe what that job

11 entails?

12 A Part of that is the inmate phone system.

13 Q Right.

14 A I make sure there's no problems with the

15 phones. I've been the liaison person to get any

16 hardware fixed and stuff like that, and I also

17 monitor the phones.

18 Q All right. And what type of phone system do you

19 have over there at the BCDC?

20 A It is a company called IC Solutions.

21 Q The letter I, the letter C, and then solutions?

22 A Yes, sir.

23 Q And how long have that phone system been in

24 place?

25 A 2014.

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1 Q All right. Can you briefly describe what an
2 inmate does in order to be able to access or use the
3 phone system?

4 A When a person gets booked into the facility,
5 they're given a PIN number.

6 Q Okay.

7 A And then they go through a voice verification
8 process and set up their account.

9 Q Okay. Are they provided with any type of brochure
10 or pamphlet or explanation of what the phone system is
11 all about?

12 A When they first do the initial setup, there
13 is instructions and stuff on the wall.

14 Q On the wall, okay. And what do those instructions
15 on the wall say regarding the recording of phone
16 calls?

17 A It tells them the set-up process for the
18 phone and that the calls are recorded.

19 Q Okay. Does it say who's recording them?

20 A No.

21 Q Does it tell them who's going to be able to get
22 those recordings?

23 A No, sir.

24 Q Does it say that those recordings will be able to
25 be used against them in a court of law?

1 A No, sir.

2 Q Is the ability to make a phone call dependent on
3 an inmate agreeing to being monitored or recorded?

4 A Yes, sir.

5 Q Okay. Is there any way to make a phone call from
6 the jail where you do not agree to be recorded or
7 monitored?

8 A The only phone call that's not recorded is to
9 the attorneys.

10 Q Now, we'll talk about that in a second.

11 A Okay.

12 Q Now, would you agree that the basis for these
13 recording and monitoring of phone calls is for
14 institutional security? In other words, what people
15 are saying on the phone?

16 A Yes, sir.

17 Q Okay. So it's there to make everybody safe. I
18 mean, the CO is safe, employees, inmates, right?

19 A Yes, sir.

20 Q Okay. And then also protect -- I mean, there are
21 some -- I mean, people at the jail to protect them
22 from potentially dangerous inmates that are saying
23 things on the phone, right?

24 A Yes, sir.

25 Q And it's just to prevent fights, escape plans,

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1 that sort of thing, right?

2 A I can be. Yes, sir.

3 Q Okay. So that's the reason that they're recorded,
4 as they are in any jail, correct?

5 A Yes, sir.

6 Q For institutional security?

7 A Yes, sir.

8 Q Okay. And I probably -- how are jail employees
9 able to monitor the conversations that are made on the
10 phone?

11 A I'm the liaison, the person that sets up the
12 account. So anybody that has access to the
13 recordings, I have to set them up with an account
14 in the system.

15 Q So --

16 A But it's not everybody that has access to the
17 phone calls.

18 Q So, who is set up to have access to the phone
19 calls?

20 A Myself, my supervisor, command staff.

21 Q So how many people would you say that is?

22 A Ten, probably.

23 Q Ten?

24 A Yeah.

25 Q Okay. And is there anybody whose job it is to

1 just listen to phone calls?

2 A No.

3 Q Is every phone call listened to?

4 A Not every one.

5 Q Do you make an effort to listen to as many as
6 possible?

7 A Yes, sir, I do.

8 Q Okay. And there's 10 people that are attempting
9 to do that on a daily basis?

10 A It's up to 10, yeah.

11 Q Are they doing another job to have play in the
12 background, or are they looking at a screen, or how
13 are they listening?

14 A I don't know how they do it, but, with me, I
15 have a headphone on my computer. I'm in the
16 office.

17 Q Okay. And you probably heard a little bit of
18 everything, I can imagine?

19 A Yes, sir.

20 Q As we say, you can't make this stuff up.

21 A No, sir.

22 Q Who else besides employees at the jail that you
23 mentioned have access to the live stream calls?

24 A Investigators throughout the county through
25 our policy.

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1 Q Investigators throughout the county?

2 A Uh-huh.

3 Q Okay. So from the sheriff's office, from the
4 Beaufort PD, that sort of thing?

5 A Yes, sir.

6 Q And that's through you all's policy?

7 A Yes, sir.

8 Q And what policy is that?

9 A It's part of our SOP.

10 Q Does the solicitor's office have access directly
11 to the calls?

12 A Yes, sir.

13 Q Okay. And do they utilize that, as far as you
14 know?

15 A Yes, sir.

16 Q Okay. Have you ever been to the solicitor's
17 office to see the setup they have for listening to
18 phone calls?

19 A No, I have not.

20 Q And so suppose you're listening to a phone call
21 and you hear something that's really juicy, I mean,
22 something that, you know, somebody's making an
23 admission, or something like that, what do you do?

24 A I will contact my supervisor and let him know
25 what I found, and then I will contact the agency

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1 for that facility for that charge.

2 Q Are you aware of any type of warning to the
3 inmates using the call that their phone call could be
4 used against them criminally? Are you aware of
5 anything that advises them that the recording and
6 monitoring could be used against them in court?

7 A The system says that the calls can be
8 monitored and recorded.

9 Q Okay. But that's all it says, though. It doesn't
10 say, and later used in court, or it doesn't read them
11 their Miranda rights, or anything like that, does it?

12 A No, sir.

13 Q It just says it may be monitored or recorded?

14 A Yes, sir.

15 Q Okay. Have you ever received any type of search
16 warrant from the solicitor's office for jail calls?

17 A A search warrant?

18 Q A search warrant.

19 A No, sir.

20 Q Have you ever received a subpoena?

21 A All the time. Yes, sir.

22 Q All right. And the horse is already out of the
23 barn when you get a subpoena, though, is it not?
24 That's essentially to come to court and bring the
25 recording with you, right?

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- 1 A Uh-huh.
- 2 Q Because they already have it, right?
- 3 A Yeah.
- 4 Q Now, do you all have all the attorneys' phone
5 numbers?
- 6 A No.
- 7 Q So how do you know somebody is talking to their
8 lawyer?
- 9 A The inmates will give me a request form
10 saying, hey, my attorney's number is this and then
11 I'll call that number to verify that it is an
12 attorney, and then I'll put the number in the
13 system to be monitored -- or that way, it's not
14 monitored, or have a "do not record" if it's an
15 attorney call.
- 16 Q So it's not recorded, if it goes to a number
17 that's listed to an attorney; is that right?
- 18 A Yes, sir.
- 19 Q And when was -- this process of automatically
20 giving all the phone calls to law enforcement, when
21 was this started? When did the SOP start?
- 22 A I believe it was updated in 2019, but the
23 previous revision was 2014.
- 24 Q 2014?
- 25 A Yes.

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1 Q And was that done -- I mean, do you know, was it
2 done at the request of law enforcement? Did the jail
3 say, hey, we got this stuff and we want to help you
4 out, or what?

5 A I have no idea. That would be way before my
6 time.

7 Q Okay.

8 A I just know the policy when I took the
9 position.

10 Q Okay. Is there any policy that the jail has, I
11 mean, if an inmate says something that's helpful -- I
12 mean, for example, you know, if I'm representing
13 somebody and somebody else over the phone confessed to
14 a crime for which I'm representing somebody, do you
15 all have any policy for going that to defense lawyers
16 or defendants if there's something good for their
17 case?

18 A I don't understand the question. I'm sorry.

19 Q Suppose I'm representing somebody for armed
20 robbery, okay, Joe Blow.

21 A Okay.

22 Q And then John Doe confesses on the phone that he
23 committed the burglary or the robbery which my client
24 is charged with, would anybody send me that tape since
25 I represent him and somebody else confessed to it?

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- 1 A If I heard that, then I would pass that on.
- 2 Q You would?
- 3 A Uh-huh.
- 4 Q To me or the solicitor?
- 5 A Excuse me?
- 6 Q Would you send it to the solicitor?
- 7 A I would send to whoever the person -- well, I
- 8 would have the inmate -- because sometimes when
- 9 they go through that, hey, so and so said this on
- 10 the phone, I'll tell them to contact their
- 11 attorney for the subpoena to get the call to help
- 12 them out.
- 13 Q Okay. But, I don't have the ability to just mine
- 14 through phone calls, do I?
- 15 A No, sir.
- 16 Q Okay.
- 17 MR. LEE: That's all I have for Lance
- 18 Corporal Maxwell, Your Honor.
- 19 THE COURT: Thank you.
- 20 Cross.
- 21 MS. JONES: Just a couple follow-up
- 22 questions, Your Honor.
- 23 CROSS-EXAMINATION
- 24 BY MS. JONES:
- 25 Q These phone calls that these inmates are making,

1 are they in private locations of the detention
2 center?

3 A They're in a dayroom, open area. There's no
4 privacy booths, or nothing like that.

5 Q Okay. You said an open area, so other inmates are
6 around them during these phone calls?

7 A They can be close to them, yes.

8 Q How about other COs?

9 A Yes.

10 Q There's nowhere in the jail that they can make a
11 private phone call that cannot be overheard by anybody
12 else?

13 A No, ma'am.

14 Q Now, everything is recorded aside from
15 communications with defense attorneys?

16 A Everything else is recorded.

17 Q And that's phone calls, as well as now -- I don't
18 know if it's just because of COVID, but there's also
19 the face-to-face virtual communication.

20 A Yeah, we started the video visitation in
21 August of last year because of COVID.

22 Q And are those recorded as well?

23 A Yes.

24 Q Does the warning come prior to those statements as
25 well?

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1 A Yes. And also when the -- the visitor has to
2 be the one to set those up and there's a consent
3 form and stuff they have to go through when they
4 set that account up.

5 Q As with the phone calls?

6 A Yeah.

7 Q You said consent forms?

8 A It's something like an agreement. You're not
9 going to expose yourself, or nothing like that on
10 the video.

11 Q Okay. Are they alerted in these consent forms
12 that their calls are subject to monitoring and
13 recording?

14 A Yes.

15 Q Are there any signs posted about the calls being
16 recorded and monitored?

17 A Just in the booking area.

18 Q And everybody is booked in through this booking
19 area?

20 A Yes.

21 Q Is that where they set up their pin and their
22 phone account?

23 A Yes, that's where they set everything up.

24 Q So warning signs are visible to those setting up
25 their pin account, their accounts?

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1 A Yes.

2 MS. JONES: I don't think I have any more
3 questions, Your Honor.

4 THE COURT: All right. Thank you.
5 Any other redirect?

6 MR. LEE: Just one.

7 THE COURT: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. LEE:

10 Q So without waiving your right to have a phone call
11 recorded and/or monitored, if you don't waive that
12 right, you cannot use the phone at the jail,
13 correct?

14 A Correct.

15 Q So someone has to give up their 1st Amendment
16 right -- or their 4th Amendment right against having
17 it recorded and seized in order to exercise their 1st
18 Amendment, right?

19 MS. JONES: Your Honor, objection. I
20 don't think he has any --

21 THE COURT: Sustained.

22 MR. LEE: That's all I have,
23 Your Honor.

24 THE COURT: All right, sir. Thank you,
25 Officer Maxwell. You may step down.

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1 Mr. Lee, anybody else?

2 MR. LEE: I briefly call Dylan Hightower
3 who is with the solicitor's office.

4 THE COURT: Okay.

5 MR. LEE: Briefly, I promise.

6 THE CLERK: Do you solemnly swear or
7 affirm to truthfully answer all questions ask of
8 you by the Court so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Can you please speak directly
11 into the microphone? State your name and spell
12 your last name for the record, please.

13 THE WITNESS: My name is Dylan Hightower,
14 H-i-g-h-t-o-w-e-r.

15 WHEREUPON:

16 DYLAN HIGHTOWER,
17 after having been sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. LEE:

20 Q Good afternoon, Dylan. Are you familiar with an
21 inmate phone system at the Beaufort County Detention
22 Center?

23 A Yes, sir, I am.

24 Q And how long has the solicitor had an agreement
25 with the detention center for the live broadcast of

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1 phone calls by inmates, do you know?

2 A So in 2014 is when Inmate Calling Solution
3 was installed here at the detention center here in
4 Beaufort. Prior to that, it was called Securus
5 Technologies, which is what Jasper County
6 Detention Center also used at that time.

7 Essentially, when I became hired as an
8 intelligence analyst through the solicitor's office,
9 the agreements were made with all five counties to
10 have access to each of the detention center's
11 systems.

12 Q Did you essentially go out and find the IC system
13 to use on the five counties in the circuit?

14 A No, sir. So what happened is, the detention
15 centers develop, you know, whatever program they
16 want to use and whatever they want to purchase,
17 and then they would invite law enforcement
18 personnel throughout the area to come and train on
19 the program, and that's when your log-in and
20 password was generated. And then you would have
21 the ability to have live access, as well as
22 recorded access.

23 Q Would I be allowed to have live recorded access to
24 the phone system?

25 A That's not up to me. I doubt it.

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1 Q Okay.

2 A I don't make the log-ins for each of the
3 programs.

4 Q Well, I mean, who determines who gets to listen to
5 these things?

6 A So I contact the representative from each of
7 the agencies. In this particular instance, I
8 would call Mr. Maxwell from the jail. Also, if
9 anyone in my office would like acces, if they're
10 an attorney, an investigator, or volunteer staff,
11 we would have them create log-ins for that.

12 Q I was going to ask you, people listen at the
13 solicitor's office. Where do they listen to it?

14 A At our facility.

15 Q At your facility. Is it something called the
16 fusion room?

17 A Intel room.

18 Q Intel room. And are there numerous TVs and
19 electronics in there?

20 A Yes, sir, there is.

21 Q Okay. And so, there's investigators over there
22 listening to the calls, right?

23 A Yes, sir.

24 Q Okay. There's interns and law clerks who listen
25 to them; is that right?

1 A Yes, sir.

2 Q The actual solicitors can listen to them if they
3 want to; is that right?

4 A Yes.

5 Q Can other staff listen to it, if they want to?

6 A Yes, sir.

7 Q Okay. And then you have these volunteers. These
8 are people that have no association with the
9 solicitor's office, other than they go in help, right?

10 A Right, that's one of their job duties. If
11 they want to come in and volunteer, we have some
12 programs for that. If they want to listen to jail
13 calls, they can listen to jail calls. If they
14 want to do something --

15 Q So these people from the outside, I mean, are
16 these people that are usually retired that, you know,
17 same ones that volunteer at the hospital and stuff
18 like that? Is that safe to say?

19 A We have a lot of the same volunteers the
20 sheriff's office would have. They, kind of, split
21 their day up.

22 Q So these volunteers, who have no dog in the fight
23 as far as being employed by the solicitor's office or
24 having any law enforcement background, are able to
25 listen to these calls?

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1 A That's correct. Yes, sir.

2 Q Okay. And when they find something that's
3 helpful, do they then go to you or somebody else, or
4 what do they do?

5 A They go to someone else in our office, the
6 outreach coordinator. Essentially what they do,
7 we supply them with a template for, per se, like a
8 record writing system. They identify the context
9 of the call, a 10-minute call, put a brief
10 synopsis of what was said, as well as time and
11 date and the SCN number the individual called.

12 Q Okay.

13 A That report is then generated, sent to our
14 community outreach coordinator, she then in turn
15 sends it to myself or the other prosecutor that
16 I'm working the case with on. Outside of that, I
17 also conduct my own listening of the jail calls
18 whenever I have some down time.

19 Q If you wanted to listen to my client's telephone
20 conversation and he was out of jail at his house, what
21 would you have to do in order to listen to his
22 personal phone call if he's making it from his
23 house?

24 A I have to get a search warrant.

25 Q A search warrant, okay. And what would you have

1 to show in that search warrant?

2 A I would need -- first off, it's very tough to
3 do. In most cases, a judge would have to sign off
4 on a wire intercept, and then that would be done.
5 I would not do anything locally here, any wire
6 intercepts.

7 Q But you would agree, it is tough get to search
8 warrant to wiretap or intercept?

9 A Yes, it is.

10 Q And of the problem you have is, convincing a
11 judge, a magistrate that there's going to be
12 information on there that's helpful or relevant or
13 certainly indicative of a crime, right?

14 A Yes, sir.

15 Q And it's just a lot of easier if you can just get
16 it anyway and then sort through it and figure out what
17 you need, right, like what they do at the jail?

18 A I believe that's a big difference; a wire
19 intercept versus a recording.

20 Q Well, if he was at this instead of jail, would you
21 have to get a wire intercept warrant?

22 A Yes, sir.

23 Q Okay. So the only difference is, he's in jail
24 versus he's at home, right?

25 A In a sense, yes.

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1 Q Okay. In one, it's very, very hard to get a
2 warrant. He has substantial rights. You know,
3 judges -- 1st Amendment, 4th Amendment, all that kind
4 of stuff. So it's very hard to get one if he's at his
5 own house and it's a simple, already done deal if he's
6 making a call from the jail, right?

7 A I believe so, yes, sir.

8 Q All right.

9 MR. LEE: I don't have any other
10 questions, Your Honor.

11 THE COURT: Cross.

12 MS. JONES: Briefly.

13 CROSS-EXAMINATION

14 BY MS. JONES:

15 Q You mentioned the federal wiretap statute. Are
16 you familiar with any of the exceptions to the
17 statute?

18 A Yes, ma'am, I am.

19 Q Do you know that there are exceptions to it?

20 A Yes, ma'am.

21 Q So do you always have to have a judicial order
22 prior to listening to any sort of communication?

23 A Yes, ma'am.

24 Q But there are exceptions.

25 A Absolutely.

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1 Q And would two of those exceptions be the law
2 enforcement exception?

3 A That's correct, yes.

4 Q Consent?

5 A Correct.

6 MS. JONES: I have no further questions.

7 THE COURT: All right. Mr. Lee, any
8 redirect?

9 MR. LEE: No, sir.

10 THE COURT: All right, sir.

11 MR. LEE: That would be last witness I
12 would be calling.

13 THE COURT: You may step down.

14 All right. Is there anything else,
15 Mr. Lee?

16 MR. LEE: Just in closing, I can, kind
17 of, repeat what I said in the beginning.

18 Basically, what they're doing is basically a
19 fishing expedition and they're bypassing --
20 they're certainly violating the 4th Amendment.
21 They're forcing someone to give up their 1st
22 Amendment right in order to exercise -- give up
23 their 4th Amendment to exercise their 1st
24 Amendment right.

25 And, you know, being able to -- there's

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1 no question that -- a telephone call, there's an
2 expectation of privacy to a telephone call.
3 Whether it's from a public pay phone like it is in
4 the Katz case I pulled up. To buy what they're
5 saying, you have to say you give up all your
6 rights when you go inside the jail, and that
7 simply is not the case.

8 And when you're looking at the giving up
9 or the waiver of a 1st Amendment right to talk to
10 your loved ones and family and communicate, that
11 is a big right to give up. It's a very heavy
12 burden the State should have to show in order to
13 say, well, if you want to talk on the phone, you
14 got to give up your right to -- if you want to
15 exercise your 1st Amendment right you got to give
16 up your 4th Amendment right. The Simmons Court
17 said that that is intolerable to do that; to have
18 to pit one constitutional right against another.

19 And in fact -- you heard it. This is
20 widespread. This is every single conversation in
21 the jail is being tapped into and listened to by
22 law enforcement in an attempt to gain evidence
23 against them. The fact that they are pretrial
24 detainees doesn't mean they give up all their
25 rights. This is a huge problem, and a huge hit,

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1 and it's as unconstitutional as it can be for them
2 to do, again, indirectly what they can't do
3 directly.

4 They would have a heck of a time getting
5 a judge to sign a search warrant and listen to
6 somebody's telephone call. But they say, hey,
7 fair game in the jail because there's this little
8 voice that says, this call is subject to recording
9 or monitoring. That doesn't tell him or anybody
10 else anything. It says that -- the real logical
11 thing is, yeah, it might be recorded because if I
12 say I'm going to blow this you know what up, sure,
13 they can hear that. But to suggest that they're
14 going to use it and try to pick out little pieces
15 to say well, he said there that he was on the
16 video, and, you know, well, I'm going to use that
17 to be able to prove his presence in the case, that
18 is improper for them to even gather that evidence
19 and then to overlook and allow them to use it in a
20 substantive case to prove an element of the crime
21 is just -- it just can't work that way.

22 THE COURT: All right.

23 MR. LEE: It cannot be right for them to
24 be able to absolutely get around the 4th Amendment
25 by saying, well, yeah, there's warrant to search,

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1 there's consent. There's really not consent. And
2 if there is consent, it's not voluntarily. And if
3 it is voluntarily, which how could it be, they're
4 exceeding the scope of the consent.

5 And so for those reasons clearly, these
6 phone calls should be kept out. It's fruit of the
7 poisonous tree that's being seized unlawfully.
8 It's great that they have this county-wide or
9 circuit-wide thing where all the jails are on
10 board, you know, and they're letting little out
11 ladies are aren't in Walmart come listen in on
12 these jail phone calls, and then, hey, look, what
13 I heard. I heard so and so say this. These are
14 people from the community that are given all this
15 jail call information and it's just put out there.

16 I mean, it's bad that they're getting it.
17 It's bad the way they're getting it, and that
18 they're completely going around the constitution
19 the way they're doing it.

20 And so for that reason, we respectfully ask
21 that all jail calls be excluded from this case.

22 THE COURT: Solicitor, I'm happy to hear
23 from you.

24 MS. JONES: Thank you, Your Honor.

25 Your Honor, I do have some case that I

1 wanted to hand up as well. I would say
2 ironically, but I don't actually think ironically,
3 there's not any South Carolina law on the issue.
4 And I don't think that that is to say that this is
5 something that South Carolina courts are not
6 concerned with. I think that that just shows that
7 South Carolina courts just -- it's just
8 unfathomable to think that they are going to
9 recognize a reasonable expectation of privacy in
10 someone's -- and inmate's phone calls at a public
11 detention center.

12 Your Honor, this is not a violation of
13 the 4th Amendment. This is not a violation of
14 Article 1, Section 10 of our constitution. In
15 order to be a violation of one or the other, or
16 both, there has to be a reasonable expectation of
17 privacy. It has to objective, subjective. We
18 don't have either of that here in any of these
19 instances.

20 Specifically, objectively, Mr. Burden is
21 in a public jail. He is in the Beaufort County
22 Detention Center. He's speaking opening.

23 Maxwell testified that other inmates can
24 hear his conversations. Other corrections
25 officers can hear his conversations.

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1 Prior to setting up his phone account, he
2 is warned -- he has to give consent. He is warned
3 that these phone conversations are going to be
4 recorded. It is common knowledge throughout the
5 detention center that the solicitor's office
6 intercepts these jail phone calls.

7 Regarding to subjective expectation of
8 privacy, I believe that's not satisfied either
9 because, again, he's warned prior, to any phone
10 call he makes, every phone call has these phone
11 calls are subject to monitored and recorded. If
12 he didn't it monitored and recorded, then he could
13 just hang up the phone. He didn't have to follow
14 up the conversation, or not say anything that can
15 be used against him at a later date in court.

16 I did hand up the United States vs.
17 Hammond. I was able to hand up -- State vs.
18 Martin was a South Carolina case. It was an
19 unpublished opinion. I looked at that case and
20 they cited this Hammond case.

21 The Hammond case goes in, it allows the
22 phone calls, and it goes into great detail into
23 the wire tapping statute. It is 4th Circuit Court
24 of Appeals case, Your Honor.

25 And, in that case, the Court found that

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1 there was no reasonable expectation of privacy in
2 these phone calls because it fell under two
3 exceptions to the wire tapping statute; the law
4 enforcement exception, as well as the consent
5 exception.

6 I would argue that both of those have
7 been met here as well. Maxwell testified that
8 they used the -- they listen to these recordings
9 for security to ensure secure operations of the
10 jail itself. And then we also have consent. He
11 consents to have these calls recorded and
12 monitored by the continuation of each of these
13 phone calls. He has that recording. He hears
14 that recording every phone calls he makes. He is
15 adequately warned that that is happening. By
16 continuing the phone call, he has consented to
17 that being allowed. The Hammond Court says that
18 falls under both of those exceptions.

19 I know Mr. Lee argued that we should have
20 to have a search warrant in order to get those
21 phone calls. We secured them by subpoena.

22 Now, the Hammond Court says that once the
23 initial interception, the initial procurement of
24 these recordings has been made and it does fall
25 within an exception, there needs to be no further

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1 limitations on the recordings themselves.

2 So, because of that, we feel that we
3 don't need to get a search warrant prior to it.
4 This is not something that is a violation of one's
5 reasonable expectation of privacy. It is
6 unreasonable that any inmate in a public jail
7 after being warned, speaking openly in front of
8 other inmates, in front of other correction
9 officers, in front of god knows who else over
10 there that those phone calls are not going to be
11 listened to.

12 This is not a violation. They're
13 admissible, Your Honor.

14 I've handed up the Hammond case, also
15 United States v. Frank also held that the calls
16 were admissible because of the consent exception
17 as well as the law enforcement exception.

18 No, I do not have a South Carolina case
19 specifically on point, but I think that that is
20 because this expectation of privacy is not one
21 that South Carolina is going to recognize; not
22 today or in the future.

23 THE COURT: All right. Mr. Lee.

24 MR. LEE: Very briefly.

25 THE COURT: Please.

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1 MR. LEE: I never heard of the law
2 enforcement exception for warrants. I mean, law
3 enforcement has to get warrants. There is no law
4 enforcement exception for getting a warrant.
5 There is a consent one. There's no law
6 enforcement exception that means that law
7 enforcement can go and get it.

8 I mean, I would ask you to look at this.
9 Suppose he's in his room and Mr. Hightower comes
10 busting in his room at the jail and starts
11 searching through all his stuff looking for stuff
12 that is related to this case. I mean, maybe he
13 wrote something in a notebook. Maybe he has
14 jotted down some things for trial. And if the
15 solicitor's office came into room and searched his
16 room looking for incriminating evidence and seized
17 it and brought him in court, I don't think you'd
18 allow that in.

19 But by their argument, he's given
20 everything up. He's given up all his rights when
21 he goes to jail.

22 And the stuff that everybody can hear it
23 and stuff, there's no testimony that somebody can
24 hear all these things. Who knows.

25 THE COURT: All right.

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1 MR. LEE: There's no testimony that
2 somebody else could hear these phones calls.

3 But to say it's a blanket waiver because
4 it says, may be recorded or monitored simply is
5 throwing the baby out with the bath water and is
6 allowing them to bypass the 4th Amendment and it
7 shouldn't be allowed, particularly with such a bad
8 waiver.

9 THE COURT: All right. Counsel, is there
10 any reason I have to make a decision on this now?
11 Is there going to be anything coming up in opening
12 that's going to reference this.

13 MR. LEE: I don't know.

14 MS. JONES: I'm not referencing them.

15 THE COURT: Then what I'm going to do is,
16 I'm going to -- in your first witness or two, is
17 it something that I have decide today so that I
18 think about it and do that tomorrow, or is it
19 something I need to do today? I'm asking. I can
20 do it either way. I'm just asking.

21 MS. JONES: No, it would not be until
22 later on in the case.

23 THE COURT: All right. Then what I'm
24 going to do is, we're going to take five minutes
25 and then we're going to get the jury in here.

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1 I've heard everybody. I've looked at everything.
2 Well, I haven't had a chance to look at everything
3 and I'll make a decision on that in the morning.
4 Okay?

5 MR. LEE: Sure.

6 THE COURT: Thank you.

7 MR. LEE: Thanks for hearing me on that.

8 THE COURT: Yes, ma'am.

9 MS. JONES: Your Honor, I did have one
10 other case that I would like you to consider when
11 I did my researching. Hudson v. Palmer, 104
12 S.Corp. 3194, our Supreme Court said there's no
13 reasonable expectation of privacy in jail cells.

14 THE COURT: All right. Thank you. We'll
15 be at ease or five minutes and then we'll get the
16 jury in here.

17 Anything else we need to take up before
18 we bring the jury in? State?

19 MS. JONES: No, Your Honor?

20 THE COURT: Mr. Lee.

21 MR. LEE: No, sir.

22 THE COURT: Thank you.

23 (A break was taken from 3:39 p.m. to 3:45 p.m.)

24 THE COURT: Anything before we bring the
25 jury in? Mr. Lee?

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1 MR. LEE: No, sir.

2 THE COURT: Let's get the jury.

3 Counsel, approach for a minute. This can be off the
4 record.

5 (Off the record.)

6 THE BAILIFF: Jury is entering the
7 courtroom.

8 THE COURT: Thank you.

9 (Jury enters the courtroom at 3:48 p.m.)

10 THE BAILIFF: Jury is seated,
11 Your Honor.

12 THE COURT: Thank you, sir.

13 All right. Ladies and Gentlemen, what I
14 will now say is intended to serve as an
15 introduction to the trial of the case. These
16 remarks are not a charge of the law in this case.
17 I will instruct you on the applicable law to this
18 case at the end of the trial before you retire to
19 consider your verdict. This is merely an
20 explanation of the procedure that we will follow
21 in the trial of this case so that you may better
22 understand what may be happening.

23 Ladies and Gentlemen, the defendant is
24 charged by an indictment filed in this court with
25 the crime of murder and the crime of possession of

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1 a weapon during a violent crime. The elements of
2 which will be explained to you later. The
3 indictment is simply the charge by which the case
4 is brought into court and it is not in any sense
5 evidence of any of the allegations it contains.

6 The defendant has pled not guilty to this
7 indictment. The State, therefore, has the burden
8 of burden of proving each of the elements of the
9 indictment beyond a reasonable doubt, and it will
10 be your duty, Ladies and Gentlemen, to decide
11 whether the State has met that burden.

12 Your purpose of jurors is to find and
13 determine the facts. You are the sole judges of
14 the facts. If at any time I make a comment
15 regarding the facts, you must disregard it. You
16 are to determine the facts from the testimony you
17 hear and the other evidence introduced in this
18 court. It is up to you to determine the
19 inferences which you feel may be properly drawn
20 from the evidence. It's especially important that
21 you perform your duty of determining the facts
22 diligently and conscientiously because ordinarily
23 there is no way to correct an erroneous
24 determination of the facts by a jury.

25 On the other hand with equal emphasis,

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1 the same law that makes you the judges of the
2 facts, makes me the judge of the law. The law has
3 given by the Court is the only law you may
4 consider. You must accept it and followed it even
5 though you may disagree with it. I cannot tell
6 you what the facts are and you cannot disagree
7 with me about what the law is or should be. Your
8 job is to take the law as I give to you and apply
9 it to the facts as you find them from the
10 testimony of the witnesses and any other evidence
11 that's introduced.

12 After doing that, you will render your
13 verdict, a just verdict under the solemn oath that
14 you took as jurors.

15 And, Ladies and Gentlemen, I'm going to
16 stop right now, because I forgot to do something
17 that I need to do. And I need the clerk, if she
18 would, please allow the jurors to stand and swear
19 them in. Thank you.

20 THE CLERK: If all you can please stand
21 and raise your right hand. Do you solemnly swear
22 or affirm that you shall well and truly try in
23 true deliverance make between the State of South
24 Carolina and the accuses and a true verdict give
25 according to the evidence so help you God?

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1 JURY PANEL: I do.

2 THE COURT: Thank you. Is there anybody
3 that didn't take the oath. Thank you so much,
4 Ladies and Gentlemen. I apologize for that. And
5 I'm sorry we got such a late start today. I was
6 hoping to start at 3:00 and I know it's a lot
7 closer to 4:00 and I apologize for that. We were
8 working trying to pair this matter down.

9 Again, as I stated earlier, you are the
10 judges of the facts. I am the judge of the law.
11 I will instruct you as to the law. And to that
12 extent, I appreciate your listening carefully to
13 these facts.

14 I want to go back and say again that
15 determining the facts diligently and
16 conscientiously because ordinarily there is no way
17 to correct an erroneous determination of facts by
18 the jury. And again, repeating what I just said a
19 few moments ago, and I apologize for that, on the
20 other hand and with emphasize the same law that
21 makes you judges of facts makes me the judge of
22 the law. The law as given by the Court is the
23 only law you may consider. You must accept and
24 follow it even though you may disagree with it. I
25 cannot tell you what the facts are and you cannot

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1 disagree with me about what the law is or should
2 be. Your job to take the law as I give it to you
3 and apply it the facts, and from there the
4 testimony of a of witness and any evidence that is
5 introduced. After doing that, you will remedy
6 your verdict. A just verdict under the solemn
7 oath that you just took as jurors.

8 Until I advise you to begin your
9 deliberations, you must not discuss the case.
10 Ladies and Gentlemen, that's extremely important.
11 And that's with anyone, including your fellow
12 jurors, friends, family members, and anyone
13 involved in the case. This includes discussions
14 face-to-face and those by telephone, email, text,
15 blogs, or other methods of communications.

16 You may not use a computer, cellular
17 phone, or other electronic device with
18 communication capabilities at any time while in
19 the courtroom or during deliberation. During your
20 breaks for meals or overnight, if necessary, you
21 may use these devices. However, you may not at
22 any time use them to get or send information about
23 the case. That includes information about a
24 party, a witness, an attorney, a court officer,
25 news accounts about the case, research on any

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1 topics raised, any topics you may think would be
2 helpful in deciding the case, or any testimony
3 presented by any witness.

4 During the trial, do not read, listen to,
5 or watch any news reports about the case. This
6 includes anything that may be in the newspapers,
7 or on the Internet, radio, or television. You
8 must not consider anything you may have read or
9 heard about the case outside of the courtroom
10 whether before or during the trial.

11 After the case is submitted to you, must
12 discuss it only in the jury room with your fellow
13 jurors. The attorneys and parties in this case
14 have been advised that they are not to talk with
15 you at all. So if you see one involved in the
16 case and they don't even say hello, they are not
17 being unfriendly, they're just following again my
18 instructions. It's important that you keep an
19 open mind and not decide any issues in the case
20 until all of the evidence has been presented, the
21 parties have made their closing arguments, and I
22 have instructed in the law of this case.

23 It is your solemn responsibility, Ladies
24 and Gentlemen, to determine the guilt or innocence
25 of the defendant and your verdict must be based

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1 solely on the evidence as it is presented to you
2 in this trial and on the law as I instruct you
3 during and at the close of the trial.

4 In just a moment, the Solicitor will make
5 what is called an opening statement in which the
6 Solicitor will explain to you the issues in this
7 case, or, at least, what the solicitor thinks the
8 issues in the case are.

9 The attorney for the defendant may also
10 make an opening statement, although he is not
11 required to do so.

12 What the attorneys tell you during their
13 opening statements, Ladies and Gentlemen, is not
14 evidence in the case. It's only their contention
15 as to what the issues are. The evidence of the
16 case will be presented to you by the testimony of
17 sworn witnesses from this witness stand and/or
18 exhibits that may be introduced into evidence.

19 From time to time during the trial, you
20 may hear one of the lawyers say something like,
21 Your Honor, I believe we have a question of law or
22 a matter of law to discuss with you, or, Your
23 Honor, may we approach the bench, or sometimes, I,
24 myself, might find it necessary to excuse you from
25 the courtroom for a short while so the attorneys

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1 and I can discuss the matter of law. The reason
2 for this is because you are the judges of the
3 facts in the case. And sometimes when I am
4 discussing matters of law with the attorney, it
5 may be necessary for me to make some comment as to
6 those facts in connection with a ruling of whether
7 or not a particular law applies. I'm not supposed
8 to tell you what I think the facts are, so I will
9 excuse you from the courtroom while these
10 discussions take place so that in no way will you
11 be influenced by anything that I might say or do
12 in connection with the facts.

13 In determining what the facts are in this
14 case, you must decide whether or not the testimony
15 of the witnesses is believable. It will be my
16 responsibility to rule as a matter of law as to
17 whether certain testimony is admissible at all or
18 not. But once the testimony is admitted, whether
19 or not you believe it is solely for you to
20 determine. In deciding whether to believe a
21 witness, you have the right to consider the
22 interest of any witness, the bias of any witness,
23 the prejudice of any witness, the opportunity for
24 the witness to have seen the matters and things
25 about which witness may testify, and the way

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1 witness acts on the witness stand. You have a
2 right to consider anything that is in the record
3 that will help you evaluate the testimony of the
4 witnesses. That means it's your duty to pay close
5 attention to these witnesses, to observe the
6 witnesses, to listen to witnesses, and to pay
7 close attention to the attorneys and the Court.
8 Don't let your thoughts wonder but give strict
9 attention to the testimony in this case so that
10 the end of the all are testimony after the
11 argument of counsel and the charge of the law by
12 the Court you will then be in a position to
13 determine what the facts are and to apply the law
14 to those facts and thus render a just verdict.

15 It is your added duty -- ladies and
16 Gentlemen, what I'm going to do in regard to a
17 foreman, when we have an afternoon break, you'll
18 go back to the jury room, and what I will do is --
19 and I'll remind you of this -- I'm going to ask
20 that you all select a foreperson. And the
21 foreperson's responsibility will basically be to
22 be a spokesman for the jury. Basically, if
23 there's a question. If something needs to be
24 written, write it down, give to the bailiff, who
25 will then present it to me. So the foreperson

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1 doesn't have any greater vote. The foreperson is
2 just there to make certain that everybody has an
3 opportunity to have their voices heard. And if
4 there's any notes that need to be passed, the
5 foreperson would pass those notes to the bailiff.

6 So I'm going to ask that you go and that
7 you elect a foreperson during our break. Again,
8 I'll remind you of that before we go and take our
9 afternoon break.

10 All right. Any objections to the
11 information that I provided to the jury by way of
12 opening remarks from the State?

13 MS. JONES: No, Your Honor.

14 THE COURT: Any objections, additions
15 from the defense?

16 MR. LEE: No, sir.

17 THE COURT: All right.

18 Well, Ladies and Gentlemen, we will now
19 begin the trial of this case. Solicitor.

20 MS. JONES: Thank you, Your Honor. May I
21 remove my mask?

22 THE COURT: Absolutely. I would prefer,
23 while you're making any opening, addressing this
24 Court, cross-examination or examining any witness,
25 that you would remove your mask for these

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1 purposes. Just be cognizant of how close you get to
2 the jury. Thank you.

3 MS. JONES: Absolutely. Thank you, Your
4 Honor.

OPENING STATEMENT

5 MS. JONES: A picture is worth a
6 thousands words. So how much is video worth?

7 In today's society of 24-hour
8 surveillance, someone, somewhere is always
9 watching. There's always a camera at someone's
10 fingertip and a surveillance camera in every
11 corner. It's 2021 and someone is watching. And
12 that's no different on August 4th of 2018 when
13 Christopher Sean Fells is murdered.
14

15 It's a Friday night and Sean was out with
16 his friends. The bars close about two o'clock in
17 the morning and they go to a nearby gas station,
18 Kangaroo Express on 6 Palmetto Bay Road. It's
19 over on Hilton Head over the bridges.

20 They're not the only ones that had been
21 out that night that end up at that gas station.
22 Another group of people are also at the gas
23 station with Sean. Chrissie Martinez is in the
24 white shirt back here. Her sister, Crystal Hobbs,
25 a man name Derrick Frazier, a man name Shaquille

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1 Green, and the defendant. This man right here,
2 Joseph Burton. They are all at the same gas
3 station that night. Everything seems to be okay.
4 The groups are in and out outside. They're
5 intermingling. Everything seems to be okay until
6 Chrissie Martinez decides it's not.

7 She goes outside. Her boyfriend, the
8 defendant, Joseph Burton, is outside with his
9 friends and she tells him something. We don't
10 know what she says to him. There's no audio, but
11 we see her talking to him. Whatever she says to
12 him, though, makes him and his friends go back
13 inside and confront somebody.

14 Now, one thing leads to another and this
15 confrontation turns into a fight. It gets
16 physical. Punches are thrown, but it's quickly
17 broken up. Nobody is really injured. It seems to
18 end after a few punches are thrown. But,
19 unfortunately for Sean Fells, it wasn't over.

20 But there's one thing I want you to know
21 that's very important, though. I told you that
22 Chrissie Martinez, whatever she said, sent her
23 boyfriend and his friends inside. It wasn't to
24 confront or to talk to Sean Fells. It was to
25 confront another man, another man she said had

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1 gotten too close to her. Not Sean Fells.

2 When Sean sees that there's a fight, that
3 things are about to get bad inside, know what he
4 does, he backs up and walks away. He has nothing
5 to do with the fight that happens inside the gas
6 station. How do we know that? Because it's all
7 on video.

8 You're going to see that after the
9 parties have separated some go outside, some stay
10 inside, they finish their purchases, whenever
11 they're going to get, and Sean Fells is already
12 outside. He's back up against his friend's car
13 and he's just waiting. He's standing there alone,
14 minding his own business, when the rest the people
15 come outside.

16 First, it's that man, Joseph Burton. He
17 wearing black pants and a white t-shirt. He
18 casually walks past Sean Fells to his car.

19 Next you'll see Derrick Frazier who is in
20 all white walk out with his then girlfriend
21 Crystal Hobbs. She has on a maroon colored tank
22 top. And behind them is Chrissie Martinez.
23 Again, lady in white t-shirt, and her two sons,
24 Abraham and Michael. Now, Sean Fells, again,
25 standing by himself is just standing there

1 waiting.

2 And what the video shows next is
3 Derrick Frazier start saying something to him.
4 Again, we don't have the audio. We don't know
5 what he's saying to him, but it's obviously not
6 friendly. It's not something nice because the
7 thing we see is Crystal Hobbs trying to pull him
8 back. Trying to pull Derrick Frazier back from
9 confronting Sean.

10 But before she can even do that,
11 Shaquille Green -- he's wearing a red t-shirt and
12 jeans -- comes out of nowhere and blind sides Sean
13 Fells. Sean didn't even have an opportunity to
14 defend himself because he knows it, these two are
15 on top of him attacking him.

16 And while this is happening the
17 defendant, Joseph Burton, emerges from the car,
18 the very car that he arrived in, the very seat he
19 arrived in, and he starts running towards
20 Sean Fells.

21 When he does next is scary, it's violent,
22 and it's deadly. Because what he does is he has a
23 gun in his hand and as he is running toward
24 Sean Fells, he fires over and over and over. At
25 least five times. Sean immediately drops.

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1 Everyone scatters and everyone runs.

2 Sean hang on for 175 days until he passes
3 on January 26th of 2019 in Tallahassee, Florida.

4 You're going to see this video. You're
5 going to see all of the people I just named and
6 what they are wearing. You're going to see that
7 Joseph Burton is in black pants and a white
8 t-shirt. And that's when you're going to see him
9 go to his car, get something, lift his arm, and as
10 he's advancing on Sean, firing. You're going to
11 see the fire coming out of his gun.

12 And you're going to see, before any of
13 that even happened, what was Sean doing, nothing.
14 He was minding his own business.

15 Now, the before every trial, I like to
16 tell the why. Why are we here? Why did this
17 fight happen? Why did it escalate? Why did this
18 person die? I can't give you that today, because
19 what happened on August 4th of 2018 was senseless.
20 And you can't make sense of a senseless act of
21 violence.

22 You say a picture is worth a thousand
23 words, but this video that you're going to see is
24 worth one; guilty.

25 THE COURT: Mr. Lee.

OPENING-LEE

1 MR. LEE: Thank you, Your Honor. May it
2 please the Court, Miss Jones?

3 THE COURT: Yes, sir.

4 OPENING STATEMENT

5 MR. LEE: Good afternoon everybody. I
6 know most of you probably would rather be
7 someplace else but here's where we are.

8 A second grader came home from school the
9 other day and was learning about Sherlock Holmes.
10 And he's fascinated by Sherlock Holmes, the
11 detective and the follower of truth, and made me
12 -- it made start thinking about some of Sherlock
13 Holmes favorite stories. And there's one called
14 Silver Blaze.

15 Sherlock Holmes was this detective. He
16 would go and investigate these crimes in London
17 and in English and in Ireland and Scotland, and he
18 had this little sidekick named Watson. And Watson
19 just thought that Sherlock Holmes was the
20 brightest, smartest, best dude he had ever met
21 before. And the way that the author got to the
22 reader to explain things was through Watson.
23 Watson never understood it. Holmes was so smart.
24 So the author through Watson to the reader this is
25 how he figured it out. So the case that Sherlock

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1 Holmes solved was this case called the case of the
2 silver blaze.

3 Silver Blaze was this prize race horse
4 that the night before the biggest race, Silver
5 Blaze was in the stable. There was a dog that
6 always slept out there too. And then the next
7 morning was the big race.

8 Well, low and behold, they go out there
9 the next morning to get Silver Blaze to get him
10 ready for this big race and he's gone, and they
11 can't figure out happened to this horse. They
12 can't figure out -- you know, they see some horse
13 tracks and some human tracks walking away so they
14 said, well, who would have done this? Who could
15 have done this?

16 So Sherlock Holmes is sitting here and
17 goes through everything and he realizes that one
18 of important things that the Scotland Yard
19 overlooked was, there was a dog there and the dog
20 never barked when the horse was taken.

21 And the way Holmes figured it out was,
22 the person who took the horse, the dog knew him
23 because the dog didn't bark at the person because
24 they knew him.

25 And so Watson is like, well, you know, I

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1 don't understand what you're saying. And so
2 Holmes said to Mr. Watson, Watson, most times in
3 finding the truth what's most important is not
4 what you see or hear, but what you don't see and
5 you don't hear. Just like no one heard a dog
6 barking, because the dog didn't bark because they
7 knew the person who went and took the horse.

8 So most times in finding the truth what's
9 most important is not what you see or hear, but
10 what you don't see and you don't hear.

11 I mean, we're in a courtroom and you're
12 saying, what does that mean for us in here. Well,
13 it means a lot, particularly on a case where you
14 have a video that has no sound. I mean, clearly
15 we're not going to have any sound. And the
16 solicitor is telling tell she doesn't know things
17 and those things.

18 Well, why does it matter about things
19 that you don't see and don't hear. Well, because,
20 in order for the State to get you to say guilty on
21 a charge like this, whether it's Joseph Burton or
22 anybody else, they have to convince you of beyond
23 a reasonable doubt. You all have a tough job.
24 They're asking you to sign something on
25 Joseph Burton saying we're finding you guilty of

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1 murder. They want you to finish the job. Fair
2 enough. Juries do that all the time. They find
3 them guilty or not guilty.

4 But what they aren't going to do is,
5 they're not going to give you what you need to do
6 it because it doesn't exist. They're not going to
7 give you proof beyond a reasonable doubt. And
8 it's mainly going to be what you don't see and
9 don't hear that gives you that reasonable doubt.

10 Well, what is reasonable doubt? Well,
11 the judge is going to tell you that reasonable
12 doubt is type of doubt that causes a reasonable
13 person in making one of life's important decisions
14 to hesitate to act, to hesitate to act. So, if
15 there is evidence -- there's some evidence but
16 you're still hesitating about they haven't
17 convinced me absolutely that this happened and
18 that he's guilty, the verdict has to be not
19 guilty.

20 You say, well, golly, so you're telling
21 me that the State, even though they have all the
22 resources at the sheriff's office, all the
23 resources at the solicitor's office, all the time,
24 all the money, but you're still telling me that
25 they have to prove to us, all 12 of us beyond a

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1 reasonable doubt that this guy did this so that
2 none of us hesitate to act, because we're making a
3 very important decision here, you're telling me
4 that's the standard? Well, yeah, it is.

5 So why is the standard that high. 12
6 people beyond reasonable doubt, yeah, that's
7 exactly what they have to do. And not only do
8 they have to tell you stuff, and what you see in
9 here, but what you don't see and don't hear.

10 Why is it that high? Well, before the
11 State through the solicitor's office and through
12 you can take away somebody's reputation, their
13 name, their freedom, their liberty, their family,
14 they got to prove it. They got to really, really
15 prove it beyond a reasonable doubt. That's why
16 the stand is so high, because the stakes are so
17 high. They have to prove beyond a reasonable
18 doubt to all 12 you all's satisfaction, because
19 the stakes are so high, particularly for Joseph
20 Burton and his family. So, they have to do that.

21 We can sit over there on our hands and,
22 you know, play Tic-tac-toe all day if we want to.
23 We're not going to. I assure you we're not going
24 to.

25 But when you're thinking about this case

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1 and you're watching things, pay attention to what
2 comes out on the witness stand, what the State's
3 testify to, what you see and hear. But perhaps
4 more importantly, think about and pay attention to
5 what you don't see and you don't hear. That
6 usually come out through cross-examination. The
7 things the State didn't tell you, didn't want you
8 to know. Maybe they forgot. The things that they
9 may be hiding. The things they didn't do. The
10 things that make you hesitate, that make you
11 worry, hey, they want me to do this, and they
12 haven't done what they're supposed to do. That's
13 what you're going to see.

14 And the important things that's comes out
15 from witnesses, cross-examination, the things you
16 don't see and don't hear. Things that aren't
17 done. Those, again, can be just as important as
18 the things that are done.

19 The Bible says, to whom much is given,
20 much is expected. As a jury, there's a lot
21 expected of you all because you do have a lot of
22 power.

23 There's also a lot expected of the
24 prosecutors's office, because we give them a lot.
25 To whom much is given, much is expected.

1 There's also a lot expected of law
2 enforcement; to do the right thing, to fully
3 investigate cases, to be fair, and to present the
4 evidence to the solicitor's office and they can
5 present it to you beyond a reasonable doubt so you
6 can do what you need to do.

7 That ain't what happened in this case.
8 The investigation leads to reasonable doubt and
9 the presentation at trial, I can tell you without
10 hearing a single witness, is going to leave
11 reasonable doubt in your mind to exactly what
12 happened and what didn't happen. And what didn't
13 happen -- the State will not prove this case
14 beyond a reasonable doubt. There's a lot more to
15 it. There's a lot more to it that you're not
16 going to hear until we bring it out, the defense.
17 The people who don't have to do anything or say
18 anything, the Judge told you that, but we are.

19 So when you watch the video, I'm sure the
20 video will play very soon. The shock value, oh my
21 gosh, somebody got shot. Hang on. We got a
22 couple days. You'll hear and we'll put it in
23 perspective. We'll try to fill in some of the
24 holes that the solicitor should be filling in.

25 At the end of the case, we'll ask you to

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1 come back with a not guilty verdict on both counts.

2 And we look forward to working with you this week.

3 Thank you.

4 THE COURT: All right. Solicitor, you
5 can call your first witness.

6 MS. JONES: The State calls
7 Allison Moreira.

8 THE CLERK: If you would please raise your
9 right hand. Do you solemnly swear or affirm that you
10 shall truly answer all questions asked of you by this
11 court, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: If you can please speak
14 directly into the microphone and state your name
15 and spell your last name.

16 THE WITNESS: Allison Moreira,
17 M-o-r-e-i-r-a.

18 THE COURT: Thank you.

19 WHEREUPON:

20 ALLISON MOREIRA,
21 after having been sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. JONES:

24 Q Miss Moreira, where do you work?

25 A Beaufort County Sheriff's Office.

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1 Q And what do you do for the Beaufort County
2 Sheriff's Office?

3 A I am the 911 audio clerk.

4 Q And what does that mean?

5 A I locate all the 911 calls for evidence.

6 Q Are all of the 911 calls kept in the ordinary
7 course of business?

8 A They are.

9 Q And were you asked to provide a copy of the 911
10 for the case we're here for today?

11 A Yes.

12 MS. JONES: Your Honor, permission to
13 approach?

14 THE COURT: Yes, ma'am.

15 BY MS. JONES:

16 Q I'm going to show you what's been marked as
17 State's 1.

18 STATE. EXH. 1, 911 audio, was marked for
19 identification.)

20 BY MS. JONES:

21 Q Do you recognize that exhibit?

22 A I do.

23 Q And what is that?

24 A The 911 audio.

25 Q Is that a fair and accurate recording of the 911

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1 call you provided?

2 A It is.

3 MS. JONES: Your Honor, at this time,
4 State moves to admit State's 1.

5 THE COURT: Any objection?

6 MR. LEE: No objection.

7 THE COURT: Admit without objection.

8 STATE. EXH. 1, 911 audio, was entered into
9 evidence.)

10 MS. JONES: Permission to publish?

11 THE COURT: Any objection?

12 MR. LEE: No objection.

13 THE COURT: No objection.

14 MS. JONES: Thank you.

15 (State's Exhibit 1 played in its entirety.)

16 MS. JONES: Your Honor, I have no further
17 questions for this witness.

18 THE COURT: All right. Any cross?

19 CROSS-EXAMINATION

20 BY MR. LEE:

21 Q Do you know who made that phone call?

22 A It was transferred from 209. They have
23 dispatch.

24 Q Do you know the person who actually called, the
25 girl that called?

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1 A No.

2 Q Do you have her phone number on there?

3 A No.

4 MR. LEE: No questions, Your Honor.

5 THE COURT: Anything else?

6 MS. JONES: Nothing further.

7 THE COURT: All right. Thank you. You
8 can be excused.

9 MS. JONES: The State calls
10 Lance Corporal Cushman.

11 THE CLERK: Please raise your right hand.
12 Do you solemnly swear or affirm that you shall
13 truly answer all questions asked of you by this
14 court, so help you God?

15 THE WITNESS: Yes, ma'am.

16 THE CLERK: Please speak into the
17 microphone and state your name and spell your last
18 name.

19 THE WITNESS: My name is Zachariah
20 Cushman. My last name is spelled C-u-s-h-m-a-n.

21 THE COURT: Your witness.

22 MS. JONES: Thank you, Your Honor.

23 WHEREUPON:

24 ZACHARIAH CUSHMAN,
25 after having been sworn, testified as follows:

TESTIMONY-CUSHMAN
DIRECT EXAMINATION

218

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BY MS. JONES:

Q Lance Corporal Cushman, where do you work?

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

Q And what do you do for the sheriff's office?

A I'm currently a criminal investigator in the southern division.

Q How long have you been with the sheriff's office?

A Since 2015.

Q So you were working there on August 4th of 2018?

A Yes, ma'am.

Q And what were you doing back in 2018?

A In 2018, I was road patrol deputy. On this night, I was working bar detail, which is an overtime detail.

Q What does that mean, bar detail?

A On Saturday and Friday nights, depending on the time of year, Hilton Head contracts sheriff's office to provide additional deputies for the bars on Hilton Head normally between 10:00 and four o'clock in the morning just to provide extra coverage in case of any disturbances.

Q And are those bars on Hilton Head, are they called

1 something?

2 A There's a certain set of bars located at
3 Southern Greenwood Drive called the Triangle.
4 That's the common area that is patrolled during
5 that time.

6 Q And is Hilton Head here in Beaufort County?

7 A It is.

8 Q Now, Southern Greenwood Drive, did you get called
9 out to another incident after that?

10 A I believe there were several small incidents
11 on Greenwood Drive. I don't recall, but we were
12 patrolling that area that night.

13 Q After patrolling the triangle, did you go
14 somewhere else?

15 A I did. After patrolling the Triangle, we
16 received a call of shots fired at 6 Palmetto Bay
17 Drive -- excuse me, 6 Palmetto Bay Road, which is
18 the Kangaroo Express on Palmetto Bay Road.

19 Q And is that in close proximity to Triangle area?

20 A Yes. It's approximately a quarter of a mile
21 by the way crow flies.

22 Q If I had a map, would that help?

23 A Yes.

24 MS. JONES: Your Honor, if I could have
25 this witness step down from the stand.

TESTIMONY-CUSHMAN

220

1 THE COURT: Sure.

2 BY MS. JONES:

3 Q Lance Corporal Cushman, is this a fair and
4 accurate depiction of that area of Hilton Head?

5 A Yes, it is.

6 MS. JONES: Your Honor, at this time,
7 State moves 2 into evidence.

8 MR. LEE: No observation.

9 THE COURT: Admitted without objection.

10 STATE. EXH. 2, Map, was marked for
11 identification and entered into evidence.)

12 MS. JONES: And permission to publish.

13 THE COURT: Yes, ma'am. Any objection to
14 publishing?

15 MR. LEE: No, sir.

16 BY MS. JONES:

17 Q If you could show us where on this map you were?

18 A So this is 7 Greenwood Drive, the Triangle.

19 This group of bars here is referred to as the
20 Triangle. I believe we were patrolling this small
21 private driveway that runs between the Triangle
22 and the bank that's right here about the time of
23 the incident. This area over here would be
24 6 Palmetto Bay Road, or the gas station
25 Kangaroo Express.

TESTIMONY-CUSHMAN

221

1 Q And did you hear anything while you were
2 at 7 Greenwood related to this incident that we're
3 here for?

4 A Yes. We heard -- I was with multiple other
5 deputies. We heard shots coming from behind us,
6 which we believe was coming from Six Palmetto Bay
7 Road.

8 Q So shortly after hearing those shots, were you
9 dispatched to Palmetto Bay Road?

10 A We were.

11 Q You can have a seat back up on witness stand.

12 When you get to -- you said it was a Kangaroo
13 gas station?

14 A Yes, ma'am.

15 Q When you get there, what do you see?

16 A There's a group of people surrounding the
17 victim who was on the ground near the gas pumps.

18 Q About what time of day was this when you respond?

19 A It was about 2:25 in the morning on the
20 4th of August.

21 MS. JONES: Your Honor, permission to
22 approach the witness?

23 THE COURT: You may.

24 STATE. EXH. 3, Photo, was marked for
25 identification.)

TESTIMONY-CUSHMAN

222

1 STATE. EXH. 4, Photo, was marked for
2 identification.)

3 STATE. EXH. 5, Photo, was marked for
4 identification.)

5 STATE. EXH. 6, Photo, was marked for
6 identification.)

7 STATE. EXH. 7, Photo, was marked for
8 identification.)

9 STATE. EXH. 8, Photo, was marked for
10 identification.)

11 STATE. EXH. 9, Photo, was marked for
12 identification.)

13 STATE. EXH. 10, Photo, was marked for
14 identification.)

15 STATE. EXH. 11, Photo, was marked for
16 identification.)

17 STATE. EXH. 12, Photo, was marked for
18 identification.)

19 STATE. EXH. 13, Photo, was marked for
20 identification.)

21 STATE. EXH. 14, Photo, was marked for
22 identification.)

23 BY MS. JONES:

24 Q I'm going to hand you what's been premarked as
25 State's 3 through 14. Can you recognize those items?

TESTIMONY-CUSHMAN

223

1 A They appear to be evidence photos from the
2 State.

3 Q And is that what 6 Palmetto Bay Road looked like
4 when you arrived?

5 A Yes, ma'am.

6 Q Do they appear to be altered in any way?

7 A No, ma'am.

8 MS. JONES: Your Honor, at this time, the
9 State moves 3 through 14 into evidence.

10 THE COURT: Any objection?

11 MR. LEE: I don't think he's the one that
12 took those pictures. I don't think she's laid
13 authenticity or a foundation basis.

14 THE COURT: I'm going to overrule you.
15 Go ahead.

16 MR. LEE: The only objection I would
17 have, I'm sorry, the one picture we had a previous
18 discussion about. That's my only objection.

19 THE COURT: All right. We will preserve
20 all that argument for the record. Thank you,
21 sir.

22 MR. LEE: Thank you, sir.

23 THE COURT: Go ahead.

24 MS. JONES: State's 3 through 14, at this
25 time the State would ask to publish 3 through 14.

TESTIMONY-CUSHMAN

224

1 THE COURT: Any objection?

2 MR. LEE: To publishing? It's already
3 been admitted, so I would have no objection to
4 publishing.

5 THE COURT: All right.

6 MS. JONES: Your Honor, we are actually
7 going to be able to display them on these big
8 monitors.

9 THE COURT: Okay.

10 BY MS. JONES:

11 Q Mr. Cushman, could you just tell me what these
12 photos show. State's 3, what is this photo showing
13 us?

14 A This is the front of the gas station as you
15 look at it from the pumps. The pump would be --
16 as you can see, the beginning of the one pump
17 there to your right, and this would be looking at
18 the gas station from the parking lot, looking back
19 toward it.

20 Q State's 4?

21 A This would be the gas pump at which the
22 victim was found, the large pile of debris on the
23 ground would be some of the medical -- some of the
24 medical equipment that was used in the wound
25 dressing, and I believe the victim's clothing.

1 Q State's 5?

2 A That's going to be the same area, just a
3 closer up picture of the victim's clothing and the
4 blood on the ground.

5 Q And State's 6?

6 A It's going to be a pillar next to the gas
7 pump.

8 Q State's 7?

9 A I believe that's the same pillar in a
10 close-up picture, and possibly a mark where a
11 projectile might have entered into.

12 Q And 8, State's 8? In the center of State's 8, if
13 we zoom in on State's 8?

14 A I believe that is a piece of a projectile.

15 Q Okay. And State's 9? That's just another
16 close-up?

17 A Another picture of it.

18 Q Thank you. And State's 10?

19 A A shell casing from the scene.

20 Q And what is shell casing?

21 A When a firearm is fired, it can sometimes,
22 depending on the make of the firearm, expel a
23 shell casing. A shell casing contains the
24 projectile and powder that causes the ignition of
25 the bullet to travel down the barrel.

TESTIMONY-CUSHMAN

226

1 Q So, to dumb it down for me.

2 A The shell casing is the trash that the gun
3 produces when it fires.

4 Q So the bullet goes one way and the shell casing
5 goes the other way?

6 A Depending on the gun.

7 Q Okay. And State's 11?

8 A It's going to be another shell casing that
9 was located and marked.

10 Q Okay. State's 12?

11 A Another shell casing that was located and
12 marked.

13 Q And State's 13?

14 A Another shell casing that was located and
15 marked.

16 Q And State's 14?

17 A Another shell casing that was located and
18 marked.

19 Q I can take those photos back from you. Thank you.

20 When you get on scene, after you've seen what
21 has happens and you see somebody appears to be shot,
22 what do you do?

23 A Myself and other deputies that are arriving
24 on scene, we went over to the victim and tried to
25 render first aid to him. There was two males that

TESTIMONY-CUSHMAN

227

1 were holding him and yelling when I first got
2 there and trying give him first aid treatment. It
3 appeared he had been shot.

4 Q And after that, after you appeared to -- you
5 attempted to help the victim in this case, what
6 happened next?

7 A I noted he was breathing and his eyes were
8 open. I noted his shirt was soaked in blood. We
9 were trying to find the entry wound to him, or the
10 wounds, and then also we could attempt to bandage
11 them and apply pressure. We located one entry
12 wound at the top of his shoulder. We tried to
13 bandage that and maintain pressure on it,
14 supported his head and neck while PFC Wauters
15 pulled the bandages out of his kit and tried to
16 apply them to the victim. We turned them over on
17 his side while supported his neck and looked for
18 any exit wounds on his back. I don't find any
19 exits wounds. I did find a large black and blue
20 bruise on his lower back.

21 When EMS arrived, we were just getting
22 his shirt cut off and they were able to locate
23 three more suspected wounds to him. They arrived
24 at the same time we were getting the shirt cut
25 off.

TESTIMONY-CUSHMAN

228

1 Q Did they take over care for Mr. Wells?

2 A They did.

3 Q Now, you mentioned two men were holding him up
4 when you arrived. Were you able to later learn their
5 identities?

6 A I don't know. I don't know who they were.

7 Q How were they acting?

8 A Everyone on scene was hysterical and yelling
9 and screaming and trying to get help for him.

10 Q Okay.

11 MS. JONES: I have no further questions
12 for you. Thank you.

13 THE COURT: Cross.

14 CROSS-EXAMINATION

15 BY MR. LEE:

16 Q Corporal Cushman, were you the first one there?

17 A I do not believe so. I believe PFC
18 Wauters was.

19 Q And you say you got there 2:25 a.m.?

20 A I believe at 2:25 is when we were dispatched.
21 I don't know exactly what time I arrived. I'd
22 have to review my in-car video.

23 Q Are you aware that the shooting happened at
24 2:19?

25 A That sounds correct.

TESTIMONY-CUSHMAN

229

1 Q All right. So you don't know who the guys were?
2 You don't know if Christian Paez was one of the people
3 that was there?

4 A I wouldn't be able to identify him.

5 Q Okay. He's, kind of, indistinguishable. He's
6 about six-four and weighs 400 pounds. He was here
7 earlier. Did you see him out there?

8 A I did not see him out there. I remember
9 there was a larger guy there. I don't remember
10 exactly which two persons were with the victim
11 when I first got there.

12 Q Okay. And so you don't know if one is **Austin
13 Radel and one was Carl Burton either?

14 A I'm not sure.

15 MR. LEE: That's all the questions I
16 have, Your Honor.

17 THE COURT: Anything on redirect?

18 MS. JONES: No, Your Honor.

19 THE COURT: All right. Thank you, sir.
20 You can be excused.

21 MS. JONES: The State calls
22 Corporal Kaase.

23 THE CLERK: Will you please raise your
24 right hand, sir. Do you solemnly swear or affirm
25 to truthfully answer all questions asked by this

TESTIMONY-KAASE

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1 court, so help you God

2 THE WITNESS: Yes, ma'am.

3 THE CLERK: Thank you. If you can,
4 please speak directly into the microphone. State
5 your name and spell your last name for the
6 record.

7 THE WITNESS: Brian Kaase, K-a-a-s-e.

8 WHEREUPON:

9 BRIAN KAASE,
10 after having been sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. JONES:

13 Q Good afternoon, Sergeant Kaase. How are you?

14 A I'm well. How are you?

15 Q I believe I called you corporal. My apologies for
16 that.

17 A It's all right.

18 Q I didn't mean to demote you on your way to the
19 stand.

20 Where do you work?

21 A Beaufort County Sheriff's Office, ma'am.

22 Q What do you do with the sheriff's office?

23 A I'm a patrol sergeant.

24 Q What does that mean?

25 A Now, I supervise -- I assist in supervising a

TESTIMONY-KAASE

231

1 team of patrol deputies in the southern portion of
2 the county.

3 Q What constitutes the southern portion of the
4 county?

5 A From the Broad River Bridge to all the way
6 down; Hilton Head, Okatie, Callawassie.

7 Q How long have you been with the sheriff's
8 office?

9 A Since 2015, ma'am.

10 Q So back in 2018, what were you doing with BCSO?

11 A I was a patrol deputy. I was a corporal at
12 the time assigned to work bar detail with then
13 Lance Corporal Cushman.

14 Q And is that who we just saw testify?

15 A Yes.

16 Q So tell me about bar detail. What does that mean?

17 A To reiterate what he said, at the time,
18 Hilton Head Beaufort County Sheriff's Office to
19 provide additional deputies to respond to the
20 influx of disturbance calls in that area bars
21 Friday and Saturday night throughout the year.

22 Q And would that entail the area known as the
23 Triangle?

24 A Yes, ma'am.

25 Q And is that where you were, right here, the

TESTIMONY-KAASE

232

1 Triangle on State's 2?

2 A Yes, ma'am.

3 Q Back on August 4th of 2018?

4 A Yes, ma'am.

5 Q While you're at the Triangle, do you get called to
6 another incident?

7 A While we were at the Triangle, yes, ma'am. I
8 believe patrol deputies were dispatched to a
9 report of a gunshot victim at 6 Palmetto Bay. We
10 were extremely close. We responded as well.

11 Q And did you actually hear what you believe to have
12 been gunshots that night?

13 A Yes, ma'am.

14 Q Do you know how many?

15 A Multiple. I couldn't tell you how many.

16 Q When you get on scene, what do you do?

17 A When I got on scene, there were a couple
18 deputies in front of me that went directly into
19 the parking lot. The parking lot was two
20 driveways, I guess, kind of connected. I saw a
21 van was trying to leave one of the exits. I went
22 over blocked the exit.

23 Q Okay. Who was in this van?

24 A It was a taxi and there was a couple people
25 inside. I'm not -- I would have to see my report.

1 Without my report --

2 Q If I gave you your report, would that help refresh
3 your recollection?

4 A Absolutely, it would.

5 MS. JONES: Permission to approach,
6 Your Honor.

7 THE COURT: Granted.

8 THE WITNESS: Thank you.

9 BY MS. JONES:

10 Q Who was in the taxi van?

11 A It appears -- I documented
12 Mr. Shaquann Lawyer, Cedrick Gardner, and Jordan
13 Ashby was the driver.

14 Q Did you speak with them?

15 A Yes. They essentially said they came,
16 observed the scene, and decided to leave. They
17 didn't observe what happened.

18 Q Okay. They came after the shooting?

19 A Yes, ma'am.

20 Q Did you ask them to stick around and stay on
21 scene?

22 A I did, yes, until I was able to determine
23 they weren't needed anymore.

24 Q And then what happened?

25 A They were relieved.

TESTIMONY-KAASE

234

1 Q Okay. Did you speak to anybody else while you
2 were on scene?

3 A I spoke to -- yes, a couple of people in
4 another vehicle. Roger Burnette, Brieanna
5 Grissom, and Natalia Dipasquale, and Cedrick
6 Greene.

7 Q And based on speaking with them, what did you do?

8 A Provided the information to Investigator
9 Reynells.

10 Q And were they released?

11 A Yes.

12 Q And why is that?

13 A Can you clarify for me why they were
14 released.

15 Q After speaking with yourself, were they able to
16 provide information that helped in the investigation?

17 A They provided a little bit. I believe the
18 general consensus of theirs was they arrived after
19 the fact.

20 Q Did one of those individuals call 911 to your
21 knowledge?

22 A Yes. I wrote to Miss Brieanna Grissom called
23 911. She stated she called 911.

24 Q After speaking with those individuals, what did
25 you do next?

TESTIMONY-KAASE

235

1 A After that, after informing
2 Sergeant Reynells, assisted with security in
3 dealing with another individual, Mr. Kyle Burton,
4 who was very uncooperative and then remained on
5 scene.

6 Q Describe to me Kyle Burton. What was he doing
7 that you indicated was being uncooperative.

8 A He was just extremely angry, didn't want to
9 cooperate, didn't want to wind up by himself.

10 Q And being with the sheriff's office for all these
11 years, is it common to confront people that don't want
12 to cooperate?

13 A Yes, ma'am.

14 Q Pretty common?

15 A When alcohol is involved, yes.

16 Q Okay.

17 MS. JONES: I have no further questions
18 for this witness Your Honor.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. LEE:

22 Q There's lots of reasons people don't want to
23 cooperate, aren't there?

24 A Yes, absolutely.

25 Q Guilty conscience, alcohol, hiding something, all

TESTIMONY-KAASE

236

1 those things, right?

2 A Yes, sir.

3 Q You don't know which one of those, if not all of
4 them, were true about Kyle Burton, right?

5 A That's correct.

6 Q Okay. So Burton was here when all went down,
7 right?

8 A Yes, sir.

9 Q Okay. But he didn't want to identify himself, or
10 provide Id, and he was uncooperative?

11 A Uncooperative?

12 Q Yes, uncooperative.

13 A Yes, sir.

14 Q Did he ever speak to you or tell you anything
15 about it?

16 A He became upset and yelled, "Dude just died
17 straight..." F-word, "...in front of me."

18 Q Which didn't really help the investigation, did
19 it?

20 A Not for me, no, sir.

21 Q And then there's also a part in your report that
22 indicates that there was a shirtless black male, who I
23 think is Burton, and then the big guy in the blue
24 shirt, Christian Paez, right?

25 A Yes.

TESTIMONY-KAASE

237

1 Q And the interview with Cedrick Greene says that
2 those two went and banged on his vehicle telling him
3 to call 911, right?

4 A Yes, sir.

5 Q So Paez and Burton were knocking on somebody's
6 door saying call 911, call 911.

7 A I believe so, yes, sir.

8 Q Which, again based on your experience, would
9 indicate that they did not have a phone to call 911.

10 A They could, yes. I don't have an answer for
11 that. Some people just panic.

12 Q Got you.

13 MR. LEE: That's all I have, Your Honor.

14 THE COURT: Thank you. Redirect?

15 MS. JONES: No, Your Honor.

16 THE COURT: All right. Thank you, sir.

17 The State calls Crowley with the Beaufort County
18 Sheriff's Office.

19 THE CLERK: Please raise your right hand,
20 sir. Do you solemnly swear or affirm that the
21 testimony you give to the Court will be the truth,
22 so help you God?

23 THE WITNESS: I do.

24 THE CLERK: If you can please speak
25 directly into the microphone and state your name

TESTIMONY-CROWLEY

238

1 and spell your last name for the record.

2 THE WITNESS: Corporal Wallace Crowley,
3 C-r-o-w-l-e-y.

4 WHEREUPON:

5 CORPORAL WALLACE CROWLEY,
6 after having been sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. JONES:

9 Q Corporal Crowley, I see you're in uniform. Where
10 do you work?

11 A Beaufort County Sheriff's Office.

12 Q What do you do for the sheriff's office?

13 A Currently, I'm assigned to marine patrol and
14 the environmental crimes unit. At the time of
15 this incident, I was assigned to the southern
16 enforcement and my shift was working at the
17 Triangle.

18 Q On August 4, 2018?

19 A Yes, ma'am.

20 Q Did you respond to 6 Palmetto Bay Road?

21 A Yes, ma'am.

22 Q At the Kangaroo Express gas station?

23 A Yes, ma'am.

24 Q And why did you respond?

25 A I received reports of shots fired with a

TESTIMONY-CROWLEY

239

1 victim with a gut shot wound.

2 Q About what time did you respond?

3 A Approximately, 0224 hours on
4 August 4, 2018.

5 Q And when you get there, what do you see?

6 A At the time, Lance Corporal Cushman and
7 PFC Wauters provided first aid to the victim.
8 There was also a large crowd forming as usually
9 happens in these incidents.

10 Q Were you able to identify the victim in this
11 case?

12 A Yes, ma'am. I located his Colorado driver's
13 license. He was identified as Christopher Sean
14 Fells.

15 Q And did you speak to anybody on scene? Any
16 potential witnesses?

17 A Yes, ma'am. After the scene was secured, I
18 spoke with Austin Radel.

19 Q And how was he acting?

20 A He was showing an array of emotions. He was
21 irate. He was very uncooperative with us at the
22 time, but, you know, mostly head in his hands,
23 just couldn't believe what happened.

24 MS. JONES: I have nothing further for
25 this witness. Thank you.

TESTIMONY-CROWLEY

240

1 THE COURT: All right. Cross-examination.

2 CROSS-EXAMINATION

3 BY MR. LEE:

4 Q So Austin Radel was uncooperative with you that
5 night?

6 A Yes, sir.

7 MR. LEE: That's all I have.

8 THE COURT: Any redirect?

9 MS. JONES: No, Your Honor.

10 THE COURT: Thank you, sir. You can be
11 excused.

12 MS. JONES: The State calls Erik Hardy.

13 THE CLERK: Please raise your right hand,
14 sir. Do you solemnly swear or affirm that the
15 testimony you give to the Court will be the truth,
16 so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Thank you. You can please
19 speak directly into the microphone and state your
20 name and spell your last name for the record.

21 THE WITNESS: My name is Erik Hardy,
22 E-r-i-k, H-a-r-d-y.

23 WHEREUPON:

24 ERIC HARDY,
25 after having been sworn, testified as follows:

TESTIMONY-HARDY
DIRECT EXAMINATION

241

1

2 BY MS. JONES:

3 Q Good afternoon, where do you work?

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

6 Q And what do you do for the sheriff's office?

7 A Currently, I'm assigned to the courthouse for
8 courthouse security.9 Q And how long have you been with the sheriff's
10 office?

11 A Since 1995.

12 Q Back in 2018, what were you doing with the
13 sheriff's office?14 A I was acting patrol supervisor, shift
15 supervisor assigned to the team at the time.

16 Q And would that encompass the Hilton Head area?

17 A Yes, that is correct.

18 Q And did your respond to 6 Palmetto Bay Road that
19 night?

20 A I did.

21 Q And when you get there, do you have an opportunity
22 to meet with somebody named Christian Paez?

23 A Yes, ma'am, I did.

24 MS. JONES: Permission to approach,
25 Your Honor.

TESTIMONY-HARDY

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1 THE COURT: Yes, ma'am.

2 STATE. EXH. 17, Photo, was marked for
3 identification.)

4 BY MS. JONES:

5 Q I'm going to show you a copy of State's Exhibit 17
6 Do you see Mr. Paez in that picture?

7 A I do. Second from the left.

8 Q And is that what you looked like the night you
9 interviewed him or spoke with him?

10 A Yes, it is.

11 Q So second from the left on State's 17?

12 A Yes, ma'am.

13 Q Do you recognize anybody else in that photo from
14 that night?

15 A I don't.

16 Q Okay. Was your primary concern Mr. Paez that
17 night?

18 A It was. My primary concern, obviously, was
19 security, trying to get crime scene tape up, make
20 sure deputies were able to get the crime scene
21 tape up, preserving evidence, making phone calls
22 to investigations -- or to the command officer
23 letting him know what was going on. And during
24 that time, Mr. Paez was acting up to say the
25 least.

1 Q What was he doing exactly?

2 A He was screaming profanities at us, the law
3 enforcement, claiming that we weren't doing
4 anything to save the victim's life. While all
5 that was occurring, deputies were attending to the
6 victim.

7 Q Did you ultimately do something with Mr. Paez that
8 night?

9 A Yes. I pled with him to please, you know, as
10 best as he can to relax, settle down, maybe step
11 away from the area, he was detracting from our
12 being able to perform my duties. I ended up
13 arresting him because he wouldn't settle down and
14 he continued yelling at various deputies and
15 cursing.

16 Q Did you place him under arrest?

17 A I did.

18 Q For what?

19 A For public disorderly conduct.

20 Q Would you describe him as uncooperative that
21 night?

22 A Yes, ma'am.

23 Q As far as you know, has he remained that way?

24 A I couldn't tell you after that time. I don't
25 know.

TESTIMONY-HARDY

244

1 Q But that night when law enforcement was there, the
2 sheriff's office was there, he was just scheming at
3 you the entire time?

4 A That is correct, throughout the duration.

5 MS. JONES: I have no further questions.

6 THE COURT: Cross-examination, Mr. Lee.

7 CROSS-EXAMINATION

8 BY MR. LEE:

9 Q I can't remember if you, did you write that Paez
10 was screaming for justice for his friend?

11 A I don't recall that. I don't remember
12 specifically.

13 Q And what time did you get there?

14 A It was sometime after two is when we got
15 dispatched, so it wouldn't been after that.

16 Q But isn't it true that it was -- let me ask you
17 this: What time was Paez arrested, do you know?

18 A Again, without my report in front of me, I
19 don't know.

20 Q But isn't it at least 20 to 30 minutes before he's
21 actually arrested for this public disorder?

22 A Twenty, 30 minutes before?

23 Q Between when the shooting happened and when he was
24 actually arrested. He was on the scene that long
25 before he was arrested, does that sound right?

TESTIMONY-HARDY

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1 A He was on the scene from the time that we
2 arrived, law enforcement arrived, or at least when
3 I arrived, and that's what got my attention, him
4 acting wildlly.

5 Q I guess the point I'm trying to make, it was a
6 long time before he got arrested. It wasn't, you walk
7 in, he's acting crazy, you arrest him.

8 A It was probably about 15, 20 minutes, give or
9 take.

10 Q And do you remember him about -- do you remember
11 him screaming for justice for his friend?

12 A Again, I don't recall.

13 Q Okay. He was mainly screaming at law
14 enforcement?

15 A Yes.

16 Q Okay. But he was not cooperative to you or anyone
17 else as far as helping the investigation?

18 A That's correct.

19 Q Do you know why he wasn't helping?

20 A He was claiming it was his friend that got
21 shot. He felt that we weren't doing enough to
22 save him.

23 Q But he wasn't doing anything to try and help with
24 the case, though, was he?

25 A As far as answering questions?

TESTIMONY-HARDY

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- 1 Q Providing information, answering simple questions.
2 Because he was there, right?
- 3 A Correct.
- 4 Q Again, he wasn't answering any questions about the
5 scene, anything like that?
- 6 A He wasn't.
- 7 Q Okay. Has he to this day?
- 8 A Not that I'm aware of.
- 9 Q Are you aware that -- and he went to jail that
10 night, right?
- 11 A That's correct.
- 12 Q Are you aware that the next morning they tried to
13 talk to him as well and he wouldn't cooperate?
- 14 A I'm not aware of that.
- 15 Q All right. You work in downstairs security,
16 right?
- 17 A Correct.
- 18 Q Have you seen Christian Paez today?
- 19 A I did.
- 20 Q He's been here today?
- 21 A Yes, sir.
- 22 Q Do you know where he is?
- 23 A I don't know at this time.
- 24 MR. LEE: That's all I have, Your Honor.
- 25 THE COURT: Is there any redirect?

TESTIMONY-KILLIAN

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1 MS. JONES: No, Your Honor.

2 THE COURT: Thank you, sir.

3 THE WITNESS: Thank you.

4 MS. JONES: The State calls Daniel
5 Killian.

6 THE COURT: Okay.

7 THE CLERK: Would you please raise your
8 right hand? Do you solemnly swear or affirm the
9 testimony you give this court will be the truth,
10 so help you God?

11 THE WITNESS: Yes, ma'am.

12 THE CLERK: Thank you. If you will
13 please state your name and spell it for the
14 record.

15 THE WITNESS: Daniel Killian,
16 K-i-l-l-i-a-n.

17 WHEREUPON:

18 DANIEL KILLIAN,
19 after having been sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. JONES:

22 Q Mr. Killian, good afternoon. Where do you work?

23 A At the time, I worked at the Kangaroo Express
24 at Six Palmetto Bay Road.

25 Q And what did you do there?

TESTIMONY-KILLIAN

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1 A I was the store manager.

2 Q And you were working there on August 4th of 2018?

3 A Yes.

4 Q And as manager, what are some of your duties?

5 A Staffing, doing ordering. Basically, dealing
6 with the public just like the regular CSRs do.

7 Q Was the Kangaroo Express equipped with
8 surveillance cameras?

9 A Yes.

10 Q And tell me about those.

11 A At the time of the incident, everything was
12 working properly with them. They record and hold
13 up to 30 days' worth of footage.

14 Q And were they located in various areas of the gas
15 station?

16 A Yes, inside and outside.

17 Q Do you remember how many cameras you all had?

18 A I do believe it was 12.

19 Q And do those cameras, are they filming
20 contemporaneously with what's going on?

21 A They record 24 hours a day, seven days a
22 week.

23 Q Okay. And, as far as you know, they were in
24 working order on August 4th of 2018?

25 A Yes.

TESTIMONY-KILLIAN

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1 Q And were you asked to provide that surveillance
2 footage to Beaufort County Sheriff's Office?

3 A Yes, I was.

4 Q And did you, in fact, provide that to the Beaufort
5 County Sheriff's Office?

6 A Yes, I did.

7 MS. JONES: Permission to approach?

8 THE COURT: Yes, ma'am.

9 STATE. EXH. 15, copy of surveillance disk,
10 was marked for identification.)

11 STATE. EXH. 16, copy of surveillance disk,
12 was marked for identification.)

13 BY THE COURT:

14 Q I'm going to hand you what I've previously shown
15 to defense as State's 15 and State's 16.

16 Regarding State's 15, do you recognize that
17 item?

18 A Yes, I do.

19 Q And regarding State's 16, do you recognize that?

20 A Yes, I do.

21 Q How do you recognize those items?

22 A Those are the copies of the disks that I
23 submitted to the police I handed them that night,
24 or that morning.

25 Q Were you asked to review those disks prior to

TESTIMONY-KILLIAN

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1 court?

2 A Yes.

3 Q And do those disks fairly and accurately depict
4 the surveillance from the night -- from the early
5 morning hours of August 4th of 2018?

6 A Yes.

7 Q It doesn't appear to be altered in any way?

8 A No.

9 Q Aside from, I believe, State's 16, placing the
10 clips in a chronological order, does everything else
11 appear to be as it was handed over by yourself?

12 A Yes.

13 MS. JONES: At this time, the State would
14 move to admit 15 and 16 into evidence.

15 THE COURT: Any objection to the
16 admission of State's 15 and 16 into evidence from
17 the defense?

18 MR. LEE: Your Honor, I have no objection
19 to the raw footage. But the montage or whatever
20 the solicitor's office has done, I don't think
21 there's been a proper foundation laid for that.

22 THE COURT: All right.

23 Ladies and Gentlemen, I'm going to send
24 you out back to your jury room.

25 MR. LEE: Judge, I'll withdraw that

TESTIMONY-KILLIAN

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1 objection. To get things along, I'll withdraw.

2 THE COURT: Well, thank you very much.

3 MR. LEE: Yes, sir.

4 THE COURT: So then you have no objection
5 to State's 15 or 16 being entered into evidence;
6 is that correct?

7 MR. LEE: That's correct.

8 THE COURT: Thank you. Admitted without
9 objection.

10 STATE. EXH. 15, copy of surveillance disk,
11 was entered into evidence.)

12 STATE. EXH. 16, copy of surveillance disk,
13 was entered into evidence.)

14 BY MS. JONES:

15 Q One of these disks, State's 15, has all of the
16 camera views you provided to the sheriff's office,
17 correct?

18 A Yes.

19 Q And were you asked to also review State's 16?

20 A Yes.

21 Q And was it, in fact, the same camera views that
22 are contained on the other disk?

23 A Yes.

24 Q And they had just been placed in a chronological
25 order?

TESTIMONY-KILLIAN

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1 A That's correct.

2 MS. JONES: Your Honor, at this time, the
3 State will move to publish 16.

4 THE COURT: Any objection?

5 MR. LEE: No objection.

6 THE COURT: Without objection.

7 BY MS. JONES:

8 Q And, again, there's no audio recording on you
9 all's system, is there?

10 A No.

11 (Surveillance disk, State's Exhibit 16, was
12 published to the jury from 5:00 p.m. to 5:09 p.m.)

13 MS. JONES: Your Honor, I have no further
14 questions of this witness

15 THE COURT: All right.
Any cross-examination?

16 MR. LEE: Can you show the cash register,
17 if you can? Just pause it for me.

18 CROSS-EXAMINATION

19 BY MR. LEE:

20 Q Mr. Killian, the video that we just watched, you
21 didn't turn that over to -- you didn't turn that
22 version over the solicitor's office -- or law
23 enforcement, did you?

24 A That version, no.

25 Q That's what they thought was important, they put

TESTIMONY-KILLIAN

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1 together? What you gave them was the actual raw
2 footage from each of the cameras, correct?

3 A Yes, I gave them a whole kilometer.

4 Q So that was a collection that the solicitor's
5 office put together.

6 Looking at this picture right here, in the
7 upper right corner of the store of that picture, is
8 that where the bathroom is?

9 A Yes.

10 Q Okay, a bathroom goes back there?

11 A Yes, sir.

12 Q And it looks like a storage shed?

13 A Yes, and the cooler doors on the right-hand
14 side and then you go back into our electrical room
15 in the back of the store.

16 Q Got you.

17 All right. Do you know, how often is the
18 trash taken out at Kangaroo?

19 A At least twice a day.

20 Q How about in the bathroom?

21 A At least once a day.

22 Q Who does that?

23 A Either first shift or third shift does it.

24 Q And do you know who did it?

25 A I don't know who did it that day.

1 Q Is it just a big trash can in the bathroom?

2 A Yes. There's one trash can in each of the
3 bathrooms. We had two separate bathrooms.

4 Q Okay. So I assume it's a pretty big trash can if
5 there's only one in the bathroom.

6 A Yes.

7 MR. LEE: That's all I have.

8 THE COURT: Any redirect?

9 MS. JONES: Not for this witness Your
10 Honor.

11 THE COURT: Thank you, sir. You are
12 excused.

13 MS. JONES: Judge, if we may approach.

14 THE COURT: Certainly.

15 MS. JONES: I don't know what time you
16 wanted to break today. My next witness would go
17 past 5:30, though. I'm happy to call him.

18 MR. LEE: I want to break.

19 THE COURT: We're going to go ahead and take
20 a break. I'm going to have them -- I want them to be
21 here at 9:30. Is that all right?

22 MR. LEE: Yes, sir.

23 THE COURT: Thank you.

24 All right. Ladies and Gentlemen, I'm
25 told that the next witness will take some period

1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF BEAUFORT

4 State of South Carolina,
5 Plaintiff,

6 vs. Transcript of Record
7 2018-GS-07-01273 &
8 2018-GS-07-00262

9 Joseph Decoriyus Burton,
10 Defendant.

11 June 2, 2021
12 Beaufort, South Carolina
13 Volume II of III

14 B E F O R E:

15 The HONORABLE ROBERT J. BONDS

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

17 Mary C. Jones, Representing the State of South
18 Carolina

19 Scott Wayne Lee, Representing the Defendant

20

21

22

23

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

24

25

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1 THE BAILIFF: All rise. Court is now in
2 session. The Honorable Bobby Bonds presiding.

3 THE COURT: Be seated.

4 All right. Good morning, folks. Is there
5 anything we need to take up on behalf of the State
6 this morning? I know there's an argument that I'm
7 going to go ahead and rule on that was made yesterday,
8 but anything else on behalf of the State before we
9 proceed?

10 MS. JONES: Just regarding the jail phone
11 calls, Your Honor. Mr. Lee And I were able to
12 agree on portions that we wanted, that we both
13 agreed were admissible; however, not everything.

14 So in the event Your Honor is inclined to
15 allow the jail phone calls, the substance of the
16 jail phone calls would still need to be argued.

17 THE COURT: Okay.

18 MR. LEE: Judge, I haven't agreed that
19 these are admissible. I said, if they are
20 admitted, this is how I -- these are the portions
21 substantively that I wouldn't object to.

22 THE COURT: Yes, sir, I understand.

23 MR. LEE: I may have misspoke.

24 MS. JONES: That's what I --

25 THE COURT: That's what my understanding

1 was, that you're not admitting that they come
2 in.

3 MR. LEE: Right.

4 THE COURT: My understanding is, if I do
5 allow them in, then there may be some issue
6 concerning on what actually comes in; is that
7 correct?

8 MR. LEE: Yes, sir. And I appreciate
9 them typing all this stuff and getting it to us.

10 THE COURT: All right. Other than the
11 issue concerning the phone calls, is there
12 anything else on behalf of the defendant that we
13 need to take up before we bring the jury in.

14 MR. LEE: No, Your Honor.

15 THE COURT: Well, I've looked -- Mr. Lee,
16 I appreciate the argument that you made. I think
17 you make, quite frankly, valid points; however, I
18 believe, as I read the law and particularly the
19 Katz vs. United States case, 389 U.S. 347, 1967, I
20 believe the law requires to establish a
21 4th Amendment privacy claim. The defendant must
22 demonstrate that he had an actual subjective
23 expectation of privacy, and that his expectation
24 of privacy is objectively reasonable.

25 In this case, and in other cases that I

1 have looked at, including Smith vs. Maryland,
2 442 U.S. 735, 1979, I just don't believe that the
3 defendant in this case had an expectation of
4 privacy; nor do I think that it's subjectively
5 reasonable in this case. He was in jail. He was
6 informed that each call was subject to being
7 recorded and monitored. He was in a room that had
8 multiple people in the room; guards and other
9 inmates. And to that extent, I just don't believe
10 that he's got a legitimate expectation of privacy.

11 So it would be my ruling that the phone
12 calls, the jail phone calls come in. I do not
13 believe that it violates his 4th Amendment rights
14 to unreasonable search and seizure. And I think
15 that would be my ruling on this matter.

16 All right.

17 MR. LEE: I understand the explanation,
18 Your Honor. Just for the record, your ruling is,
19 there is no reasonable expectation of privacy
20 under the circumstances; objectively or
21 subjectively, and so we don't even get to the
22 analysis as far as -- clearly, it was a
23 warrantless search, but we don't even get to the
24 analysis of whether or not one of the exceptions
25 applies, whether or not there was consent, and

1 what the scope of any consent -- we don't even get
2 to that point based on your ruling; is that
3 correct?

4 THE COURT: Yes, sir.

5 MR. LEE: All right.

6 Judge, I would ask, when these calls do
7 come in, that I just be allowed to say, Judge, I
8 object for the reasons set forth earlier so that I
9 don't have to rehash --

10 THE COURT: Of course.

11 MR. LEE: Can I just make one objection
12 as to both calls.

13 THE COURT: Absolutely.

14 MR. LEE: Okay. I just wanted to make
15 sure for the record.

16 THE COURT: Is that fine with the State?

17 MS. JONES: Absolutely, Your Honor.

18 Thank you.

19 THE COURT: All right.

20 MS. JONES: Regarding the substance of the
21 calls themselves, we have an issue with that. And I
22 do not believe that this witness would be until after
23 lunch, if that's something we want to take up at lunch
24 since it is almost 10:00.

25 THE COURT: Well, let's go ahead and get

1 started, because I'm not going to pull the jury in
2 here until 10:00, so we got 10 minutes.

3 MS. JONES: Okay.

4 THE COURT: I also understand we want to
5 stop or break around 4:45 today; is that correct?

6 MR. LEE: If that suits Your Honor. I
7 mean, if we can't, we can't.

8 THE COURT: I will do my best to do that.
9 And is that all right, Solicitor?

10 MS. JONES: Absolutely. I think we're
11 moving well.

12 THE COURT: So tell me what's going on
13 about what can't be agreed upon as it relates to
14 the calls.

15 MS. JONES: So we have two phone calls in
16 this particular case, Your Honor. One to
17 Mr. Burton's sister, Nicole, and one to his
18 girlfriend, Chrissie Martinez.

19 In the phone call to Nicole -- well, both
20 phone calls, I wanted the jury to hear the
21 introduction of the phone call where Mr. Burton
22 says his name, he agrees to have it recorded and
23 whatnot. There's no real substance aside from him
24 giving his name, entering his information, we
25 don't know what he's entering, and agreeing to the

1 phone call. If I'm correct there, I don't think
2 there's any objection.

3 MR. LEE: Subject to my general
4 objection, I have no objection I think 1 through
5 28 or 29.

6 MS. JONES: - 1 through 28 and 1 through 29
7 is Nicole's call and Chrissie's call.

8 MR. LEE: No objection to either one.

9 THE COURT: Thank you.

10 MS. JONES: And then, starting with the call
11 to his sister -- and I have it broken down in line.
12 Mr. Lee has the transcript. My computer decided to
13 break on me, so I'm going to have to use
14 Mr. Hightower's computer.

15 Starting with line 295.

16 MR. LEE: Will that help?

17 MS. JONES: Yes, thank you.

18 Starting with line 295, it says, "Agents
19 feel like they can hold you because they got
20 video. It's the only evidence they got."

21 THE COURT: And I'm sorry. Who is saying
22 this?

23 MS. JONES: This is Mr. Burton and his
24 sister. Communication between them.

25 THE COURT: Okay. And you're reading to

1 me, and so -- and I'm sorry, I can really --

2 MS. JONES: I can play the call, if that
3 would be easier.

4 THE COURT: No, I don't have a problem
5 with that, but just tell me who's speaking as
6 you're reading.

7 MS. JONES: Nicole, the sister: "They
8 just feel like they can hold you because they got
9 a video."

10 Mr. Burton: "It's the only evidence they
11 got. Just like my lawyer said, they have enough
12 evidence to hold me from the video."

13 Nicole: "Okay. Yes, yes."

14 Mr. Burton: "I was on the video, blah, blah,
15 blah."

16 And that would be the extent of what I
17 want to play from that portion.

18 MR. LEE: My objection is, clearly he
19 says, that's what my lawyer said. I mean,
20 Number 1, it's hearsay. I mean, I can't go in
21 there and say, no, I didn't say that. This is
22 what I said, so there's a hearsay issue, as well
23 as -- I mean, he's repeating attorney/client
24 privilege conversations that we had. That's
25 what -- he said, "Just like my lawyer said."

1 "Just like my lawyer said." I mean, that's
2 referencing a conversation I had with him in
3 confidence at the jail and that's the kind of
4 stuff, Judge, that simply shouldn't come in.

5 THE COURT: Can I have a copy of that?

6 MS. JONES: Yes. And, Your Honor, it's
7 starting with line 295 going down to 301.

8 THE COURT: Thank you, sir.

9 THE COURT: All right. I mean, I
10 think -- I think 298, "Just like my lawyer said.
11 They have enough evidence to hold me from the
12 video." I don't think that's appropriate. I
13 mean, that's -- the they -- excuse me.
14 Tongue-tied here this morning. "They just feel
15 like they can hold you because they got a video.
16 It's the only evidence they got." Okay. But now
17 when he goes on and says, "Just like my lawyer
18 said, they enough evidence to hold me from the
19 video." I mean, what's the significance of adding
20 that line -- those lines right there when he's
21 referencing just what his lawyer told him?

22 MS. JONES: Your Honor -- I'm sorry to
23 interrupt you. He is accepting that statement,
24 adopting that statement as his own. By him
25 saying, "Just like my lawyer said, they have

1 enough to hold me on the video," he is admitting
2 that there is enough evidence based on that video
3 for this charge. I can omit the "just like my
4 lawyer said," and then have the, "They have enough
5 to hold me from the video. Okay, yes, yes. I was
6 on the video. He does say, blah, blah, blah."

7 That's not just --

8 MR. LEE: He's not in a position to make
9 any kind of legal statement like that. For the
10 State to say that they've proven their case
11 because he somehow admitted under a legal theory
12 by some admission is just improper. There's no
13 probative value at all. It's clearly prejudicial.
14 We really get in the weeds here as far as clients
15 repeating what their lawyers say without being
16 able to put it in context, and it's hearsay. They
17 don't want to get into what they need to keep
18 somebody in jail versus prove it.

19 THE COURT: Hold on. Yes, Solicitor, go
20 ahead.

21 MS. JONES: I'm trying to pull up my
22 rules. Your Honor, I don't believe it is hearsay.
23 803(6), this is the business record. That's how
24 it's coming in. That's how it's being
25 authenticated. I think that alleviates any

1 hearsay problems. I believe that this is an
2 adopted admission by the defendant. It would be
3 an admission by party opponent. You could get in
4 that way, I feel. Your Honor, he's accepting this
5 as true by saying it.

6 MR. LEE: Your Honor, writing a hearsay
7 statement down in a business record does not get
8 you around the hearsay problem. You have to
9 satisfy all of the hearsay exceptions, and this
10 clearly does not.

11 THE COURT: All right. I am not going to
12 allow -- I'm not going to allow the 298 and 299
13 in. I don't think it's appropriate. I agree with
14 Mr. Lee's arguments as it relates to those lines.

15 As it relates to 297, 300, 301, but 297 --
16 excuse me, 298 and 299. I don't think that's
17 appropriate.

18 MR. LEE: Your Honor?

19 MS. JONES: Okay. So we're -- just so I
20 can get this clear, to put the context -- to put
21 300 and 301 into context, I think we need 295,
22 296, and 297 to where they're talking about the
23 video, omitting the next two, 298 and 299, and
24 then picking back up with, "Okay. Yes, yes, I was
25 on the video."

1 THE COURT: Right.

2 MR. LEE: And my position is that 298 and
3 297 explains 298 because it's a continuous
4 sentence. "It's the only evidence they got, just
5 like my lawyer said." I mean, what he's saying
6 is, my lawyer said it's the only evidence they
7 got. So have to look back to that as to what the
8 lawyer said.

9 THE COURT: Well --

10 MR. LEE: It's just like my lawyer said,
11 he repeating that. So you got back to see what
12 he's talking about what the lawyer said.

13 THE COURT: I think that can be
14 interpreted a couple different ways. I understand
15 who you're arguing, Mr. Lee.

16 MR. LEE: Yes, sir.

17 THE COURT: I understand that.

18 MR. LEE: Okay.

19 THE COURT: But I think that that could
20 be -- he could be saying that it's the only
21 evidence they got. And like my lawyer said, I
22 mean he could be acknowledging that that's the
23 only evidence they got. I mean, we're splitting
24 here, but I think it could be read more than just
25 the way you're reading it, sir.

1 MR. LEE: Okay. Well, that's one of the
2 problems, is that if you read it the way I'm
3 suggesting you read it, that's what makes it
4 problematic. To me, that's a reasonable
5 interpretation of it.

6 If you read 297 through 299 as one sentence,
7 "It's the only evidence they got, just like my lawyer
8 said. They got evidence to hold me from the video"
9 So 299 is the same as 297, and 298 is where both of
10 those came from, what his lawyer said.

11 THE COURT: All right. I understand your
12 objection.

13 MR. LEE: Okay.

14 THE COURT: For the record.

15 MR. LEE: Okay.

16 THE COURT: Solicitor.

17 MS. JONES: Your Honor, I would just say
18 that in order to put it into context, we need to
19 have 295, -96, -97 and pick up at the 300 and 301.
20 The only statement that is being relayed -- that's
21 being attributed to a statement made by his
22 attorney is 298 and 299.

23 THE COURT: That's correct. That would
24 be my ruling.

25 MR. LEE: Let me make sure. Which lines

1 between 295 and 301 are you letting in?

2 THE COURT: 295, 296, 297, 300, 301.

3 MS. JONES: Okay.

4 MR. LEE: Not to drag this out --

5 THE COURT: Go ahead.

6 MR. LEE: But I think that one relevant
7 inquiry ought to be the purpose for which this
8 Solicitor seeks this to be introduced. And,
9 obviously, she's seeking to, I guess, some kind of
10 admission or for the truth of the matter asserted,
11 but I think the Court should at least inquire as
12 to the purpose as to which she intends to use the
13 evidence because I think that is a valid
14 consideration.

15 THE COURT: Solicitor.

16 MS. JONES: 801-2 is an admission by a
17 opponent. The shooting in the video, he admits to
18 being on the video.

19 THE COURT: Okay.

20 MR. LEE: They have a video.

21 THE COURT: I'm sorry?

22 MR. LEE: They have a video. They're
23 identifying him through other people, so it's just
24 accumulative testimony. They're going to identify
25 him, I believe, through his wife, through his

1 sister, sister-in-law, through Detective Reynells,
2 through other witnesses. So it's cumulative
3 testimony as well. I mean, he's showing people
4 these pictures, these still shots saying that's
5 Joseph Burton. It's just piling on.

6 And the danger of it is, is because
7 they're going to try to spin that into some kind
8 of admission that he's made. Admission of guilt.
9 That's the problem. They don't need this.

10 I mean, there's plenty of other ways
11 they're going to establish through testimony that
12 he's on the video. The danger of the prejudice is
13 that if you're letting cumulative evidence in
14 that's already been established, or will be
15 established through their witnesses, it makes it
16 even less probative. And so why let it in because
17 of the potential danger of interpreting it
18 different ways, as we talked about, so that would
19 be my last argument.

20 THE COURT: All right. You need to add
21 anything?

22 MS. JONES: No.

23 THE COURT: All right. I understand your
24 argument. I'm going to stick with my ruling. I
25 appreciate your argument. You make a good

1 argument.

2 MR. LEE: I understand.

3 THE COURT: But, in this case, it's not
4 persuasive to me based on my prior ruling about
5 the admissibility, about the expectation of
6 privacy not existing, and about what this
7 statement is. I disagree -- I understand your
8 issue concerning that cumulative of it. I think
9 this is -- I don't think this is cumulative. I
10 think this is different. And, to that extent, I'm
11 going to allow it.

12 All right. What I want to do is -- and I
13 understand you can object to anything you want on
14 the record at any time. We'll go back and I'll
15 consider all that included at that time.

16 Is that all right with you, Solicitor?

17 MS. JONES: Absolutely, Your Honor.

18 THE COURT: Okay.

19 MR. LEE: Yes, Your Honor. And I would
20 just add for the purpose of this -- that's one
21 copy I have, but I can make another one. I'd ask
22 that this be a Court's Exhibit at some point.

23 THE COURT: Sure.

24 MS. JONES: There's another phone call
25 Your Honor, and I don't think --

1 THE COURT: Well, we can talk about that.
2 I want to get the jury in here. I'd like to start
3 less than five minutes late one day. I don't
4 think I've done that yet since I've been on the
5 bench.

6 So anything before we bring the jury in
7 from the State?

8 MS. JONES: No, Your Honor.

9 THE COURT: Mr. Lee?

10 MR. LEE: No, sir.

11 THE COURT: Let's bring the jury in. Do
12 we have everybody?

13 THE BAILIFF: Yes, Your Honor.

14 THE COURT: We got a note. They have
15 elected the foreman, Amanda Holland. I know
16 generally we don't use name, but that's what's
17 written on the note and I asked her to do that.
18 Juror 149 is the forelady. So I want to go ahead
19 make this a Court's Exhibit Number 1.

20 Any objection to making this a Court's
21 Exhibit from the State?

22 MS. JONES: No, Your Honor.

23 THE COURT: Anything from the defense?

24 MR. LEE: No, Your Honor.

25 THE COURT: All right.

1 MR. LEE: One last thing that I just
2 thought about, the second phone call involved is
3 Chrissie Martinez. It's my understanding she's
4 going to be called as a witness this morning, so
5 we may want to address what's admissible in her
6 phone call because she's going to be on the stand
7 and, you know, may need to be asked about it.

8 MS. JONES: She is my first witness,
9 Your Honor.

10 THE COURT: All right. Well, let's go
11 ahead.

12 MS. JONES: Okay. Your Honor, her phone
13 call to Mr. Burton is very short and it involves,
14 again, the introduction, while he still felt it
15 was inadmissible, substantive, he didn't disagree
16 as to Mr. Lee. So it's starting with line 137,
17 which is expletive. I'm happy to omit that. He
18 did not want it in. I'm happy to omit that.

19 Going down to line 138, and this is
20 Chrissie speaking: "I'm just going to go and get
21 my number changed and you don't have to call me no
22 more and I don't have to worry about nothing
23 else."

24 Joseph Burton: "Bitch, I'm in here for
25 you."

1 Chrissie -- and again, there is vulgar
2 language, "F you talking about, change your number
3 here."

4 I apologize.

5 Mr. Burton: "You are the F..." I'm
6 going to hand to Your Honor to read because it is
7 easier and it does say where Mr. Burton is
8 speaking. Essentially, he's saying he's in jail
9 because of Chrissie. "I'm in here because of
10 you."

11 THE COURT: Chrissie is who? Remind me,
12 Solicitor. There's a lot of players here.

13 MS. JONES: Girlfriend, wife, significant
14 other.

15 THE COURT: Okay.

16 MS. JONES: And I was seeking to admit
17 138 to 153.

18 THE COURT: All right. Solicitor, so you
19 want 1 -- did you say 48? What did you tell me,
20 Solicitor? I'm sorry.

21 MS. JONES: 138.

22 THE COURT: Is it all right if I mark on
23 this copy? Is this -- is there something special
24 about that copy?

25 MR. LEE: No, sir.

1 MS. JONES: No, sir. You can have that copy.

2 THE COURT: Thank you all.

3 MS. JONES: Mr. Lee did provide it. I
4 have additional copies.

5 THE COURT: Thank you, Mr. Lee.

6 All right. So this is -- what, Solicitor,
7 lines are you looking to get in?

8 MS. JONES: 138.

9 THE COURT: To what?

10 MS. JONES: To the end, Your Honor.

11 THE COURT: To the end. All right. So
12 what is your purpose of wanting to get this in,
13 Solicitor?

14 MS. JONES: So this is a conversation
15 between Mr. Burton and Chrissie Martinez. The
16 State's theory of the case and based on what
17 Chrissie Martinez told Investigator Reynells and
18 what the video shows is that Chrissie Martinez --
19 one of the men inside the gas station, who is
20 later determined to be Austin Radel, gets too
21 close to her while they're at the gas station.

22 She has described to Investigator
23 Reynells a prior incident involving Mr. Radel at
24 the bar or at the club where they were at earlier
25 in the night. She goes outside. There's no

1 audio, but she moves her arm on the video
2 indicating -- that I have interpreted as, he was
3 too close to me. And the video does show him
4 standing close behind her at the cash register.

5 At that point, Mr. Burton along with his
6 two co-defendants go inside the gas station,
7 confront Mr. Radel and the fight starts. This
8 conversation corroborates that, that the reason
9 that this whole thing instigated and escalated was
10 because of Chrissie Martinez, and this is
11 Mr. Burton acknowledging that and accepting that.
12 The only reason that he took it as far as he did
13 and is in jail is because of what
14 Chrissie Martinez told him and what happened to
15 her. And that is what that conversation shows.

16 THE COURT: Let me hear from you,
17 Mr. Lee.

18 MR. LEE: Judge, it's an interesting
19 theory, but, you know, Miss Martinez is getting
20 ready to testify. Investigator Reynells in his
21 report when he talked to her, she's told him that
22 night, I didn't know the guy was behind me. She
23 says that to him the next morning. And the video
24 shows that there's not that much distance between
25 Radel and Chrissie Martinez. So his report says

1 that she didn't even realize that he was -- that
2 he touched her.

3 So while it's an interesting theory, I
4 mean, again, the prejudicial value -- not to
5 mention, I don't know why -- you know, 152 says,
6 "Stupid Ass Bitch." I mean, that shows you what
7 they want in. That shows you what they want to do
8 with the jury. There is no benefit to that at
9 all. All that does is impugn his character.

10 Look -- I mean, he's talking to her and,
11 you know, it may support what they think they can
12 interpret from a video with no sound on it, but --
13 you know, again, they're saying this is some kind
14 of admission and they're going along with this
15 and, you know -- it's just too much.

16 I mean, while it may fit their theory --
17 maybe they're coming up with their theory based on
18 this, but it's not consistent with the evidence.
19 It's not consistent with what testimony is going
20 to be. And I think that, you know, the use of
21 this is evident by the parts they wanted in.

22 You know, let them prove their case
23 through witnesses, not through some questionable
24 jail call that means -- you know, I guess the part
25 they like is that -- I mean, "All this 'F'

1 happened because of you."

2 THE COURT: All right.

3 MR. LEE: I mean, that could mean a
4 thousand things, Judge. It might mean while he's
5 still in jail. It might be something else they're
6 talking about. I don't know.

7 THE COURT: All right.

8 MR. LEE: It's not clear at all.

9 THE COURT: I'm going to exclude that,
10 138 to 153. I agree with Mr. Lee's argument on
11 this one. I think that the probative value here
12 is not enough to overcome the language. I think
13 we're reading a lot into what he's saying. And if
14 she's going to be here -- she's going to testify;
15 is that right?

16 MS. JONES: She is.

17 THE COURT: She certainly can be
18 cross-examined on that. I'm going to exclude
19 that.

20 I'm happy to hear anything else from you
21 as it relates to the record.

22 MS. JONES: Well, your Honor, we can take
23 the expletives out of it. We can omit those, and
24 just have the comment, "I'm in here because of
25 you," and "All this happened -- "All this...,"

1 blank, "...happened because of you and you know
2 that." I am happy to stop at that and not put in
3 anything before it or anything after it and take
4 out the expletives within those two lines.

5 THE COURT: No, ma'am. I'm going to keep
6 that out. Thank you.

7 MS. JONES: Your Honor, am I allowed to
8 ask her about this on her --

9 THE COURT: Yeah. Well, you can
10 cross-examine her however -- or direct examine her
11 however you want to do. I mean, we'll have to see
12 how -- I'm not going to make a ruling on that
13 matter before -- at this time. I think it's
14 premature as it relates to how you're going to
15 cross-examine or direct examine this witness. I'm
16 not going to sit here now, I don't think, and make
17 a ruling.

18 MR. LEE: Certainly, she's not going to
19 be allowed to ask her, what did you say to him,
20 what did he say to you about being in jail, and
21 just essentially giving the information out that
22 you just excluded.

23 THE COURT: Well, I'm excluding the tape,
24 sir. I'm excluding the recording of this. I
25 understand that this is a recording, correct?

1 MR. LEE: Yes.

2 MS. JONES: Yes.

3 THE COURT: I'm excluding it, the
4 recording. I don't know why she can't ask him
5 what he told her. How in the world could a -- if
6 the defendant sits there and tells her something,
7 how can that be excluded if she is asking the
8 witness what he told her, and -- I don't
9 understand that. I think it's a statement against
10 interest for sure. I'm not following that
11 argument.

12 MR. LEE: I'm saying the substance was
13 the issue of what was in there, but I understand
14 the ruling.

15 THE COURT: Okay. All right, thank
16 you.

17 MS. JONES: And if Mr. Lee wants to have
18 a full, clean copy, we can admit it as a Court's
19 exhibit if necessary.

20 THE COURT: That's fine.

21 MR. LEE: I'm happy to let you put that in
22 there.

23 MS. JONES: Well, I have both.

24 MR. LEE: Okay.

25 (COURT EXH. 3, Full jail recording, was

1 marked and entered as Court's exhibit.)

2 THE COURT: All right. Anything else
3 before we bring the jury in?

4 MR. LEE: No, sir.

5 THE COURT: Anybody need to use the
6 restroom?

7 MR. LEE: No, sir.

8 THE COURT: Let's get the jury in here,
9 please.

10 (COURT. EXH. 4, Foreperson selection,
11 was marked for identification.)

12 (Jury enters the courtroom at 10:16 a.m.)

13 THE COURT: Thank you. You all can be
14 seated.

15 Ladies and Gentlemen, good morning. And
16 I understand -- thank you for being on time.
17 Thank you for electing a foreperson. And
18 Juror 149, thank for agreeing to serve as
19 foreperson in this case.

20 We are ready to proceed, and the State is
21 going to call their next witness.

22 MS. JONES: Thank you, Your Honor.

23 The State calls Chrissie Martinez.

24 THE CLERK: Please raise your right. Do
25 you solemnly swear or affirm you're about to give

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1 this Court will be the truth, so help you God?

2 THE WITNESS: Yes, sir.

3 THE CLERK: Thank you. Please step on here.
4 You can take your mask off. Please speak up the best
5 you can and state your name and spell your last name
6 for the court reporter.

7 THE WITNESS: Christine Martinez,
8 M-a-r-t-i-n-e-z.

9 MS. JONES: Thank you, Your Honor.
10 WHEREUPON:

11 CHRISTINE MARTINEZ,
12 after having been sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. JONES:

15 Q Good morning, Miss Martinez. How are you?

16 A Oh, good.

17 Q Where do you live?

18 A In Bluffton, ■ Fuller --

19 THE COURT: Hold on. Can everybody hear
20 her? No, ma'am. You're going to have to speak
21 up.

22 THE WITNESS: ■ Fuller Court in
23 Bluffton, South Carolina.

24 BY MS. JONES:

25 Q Thank you. That plexiglas keeps you in that

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1 bubble and it's hard to hear you.

2 THE COURT: Hold on one second. Folks,
3 by the way, if there's a problem and you can't
4 hear, please raise your hand because I want to
5 make sure everybody is hearing everything. And if
6 the witness will just speak up and as close to the
7 mic as you can.

8 Thank you. Go ahead, I'm sorry.

9 MS. JONES: Thank you, Your Honor.

10 BY MS. JONES:

11 Q Back in 2018, where did you live?

12 A █ Graham's Road.

13 Q And who did you live there with?

14 A Joseph Burton.

15 Q And who is Joseph Burton to you?

16 A My husband.

17 Q Your husband.

18 A Uh-huh.

19 Q Are you all married?

20 A I mean, if you want to say it like that.

21 Q Okay. You consider him your husband?

22 A Yeah.

23 Q You love him?

24 A Oh, yeah.

25 Q Now, do you remember August 4th of 2018?

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1 A I mean -- that night?

2 Q Yes, ma'am.

3 A I mean, I know why I'm here because of that
4 night.

5 Q Okay. And before we start back, I want to ask you
6 another question: What is your cell phone number
7 right now?

8 THE WITNESS: Do I have to give that out?

9 THE COURT: Yes, ma'am.

10 THE WITNESS: [REDACTED].

11 BY MS. JONES:

12 Q Thank you.

13 Now, do you remember the morning of
14 August 4, 2018 about a little before lunch you met
15 with this man right here, Investigator Reynells?

16 A Yes, ma'am.

17 Q And you spoke to him about what you remember from
18 the night before?

19 A Yes, ma'am.

20 Q Okay. Where were you the early morning hours
21 August 4th of 2018?

22 A What do you mean? Like, we were at the
23 club.

24 Q Okay. And what is the club?

25 A The Triangle.

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1 Q And where is that?

2 A On the south end. That's the only thing I
3 can tell you.

4 Q Is that Hilton Head?

5 A Yes, ma'am.

6 Q And I'm sorry. Some people here are on the
7 Beaufort side and we don't know what all that is
8 called.

9 A Okay.

10 Q So who were you there with?

11 A It was -- according to Mr. Burton, my sister,
12 my son -- both of my sons, and my god-brother, and
13 that's was about it.

14 Q And I'm going to ask you for their names. Who is
15 your sister?

16 A Crystal Hobbs.

17 Q How about your sons?

18 A Abraham Martinez and Michael Martinez.

19 Q And where are they today, Abraham and Michael?

20 A I have no idea.

21 Q Does Abraham still in live in South Carolina?

22 A No, ma'am.

23 Q How about Michael?

24 A No.

25 Q You don't talk to your sons?

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1 A Not like that, no.

2 Q Now, after the club -- you call the Triangle the
3 club?

4 A Yes, ma'am.

5 Q Where do you all go after that?

6 A We went to the gas station.

7 Q What gas station was that?

8 A I don't --

9 Q Would that be the Kangaroo Express?

10 A Probably.

11 Q Why did you all go to the gas station?

12 A To get something to eat, and plus I had to go
13 to the bathroom.

14 Q Okay. When you get there, what do you remember
15 about being at the gas station?

16 A Just that I went and got something to eat and
17 went to the bathroom.

18 Q And did something happen while you were inside the
19 gas station that you remember?

20 A The only thing I can remember is the
21 gentleman in all white telling me that -- well,
22 tell the person that I was behind to back away,
23 and I looked back and I seen somebody behind me.

24 Pretty much, I don't remember anything else
25 after that.

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1 Q Do you remember what the person standing behind
2 you was wearing? What he looked like?

3 A Just a red shirt, and I was remembering he
4 was kind of short.

5 Q Do you remember when you met with Investigator
6 Reynells he showed you some photographs?

7 A Yes, ma'am.

8 (PLF. EXH. 18, Photo, was marked for
9 identification.)

10 (PLF. EXH. 19, Photo, was marked for
11 identification.)

12 (PLF. EXH. 20, Photo, was marked for
13 identification.)

14 (PLF. EXH. 21, Photo, was marked for
15 identification.)

16 (PLF. EXH. 22, Photo, was marked for
17 identification.)

18 (PLF. EXH. 23, Photo, was marked for
19 identification.)

20 (PLF. EXH. 24, Photo, was marked for
21 identification.)

22 (PLF. EXH. 25, Photo, was marked for
23 identification.)

24 (PLF. EXH. 26, Photo, was marked for
25 identification.)

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1 (PLF. EXH. 27, Photo, was marked for
2 identification.)

3 BY MS. JONES:

4 Q I'm going to show you States 18 through 27 that
5 have previously been shown to defense.

6 MS. JONES: Permission to approach, Your
7 Honor.

8 THE COURT: Yes, ma'am.

9 BY MS. JONES:

10 Q Now, could you look at those photographs and tell
11 me if you recognize those photos?

12 A Yes, ma'am.

13 Q What are those?

14 A Just pictures of my sister.

15 Q Okay. Without showing them to the jury.

16 A Sorry.

17 Q That's all right. Are those the photographs that
18 Investigator Reynells showed you when you came and
19 spoke with him on August 4th?

20 A Yes, ma'am.

21 Q Okay. And, in fact, on some of those you wrote
22 your name?

23 A My initials.

24 MS. JONES: Your Honor, at this time, the
25 State moves State's --

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1 BY MS. JONES:

2 Q And these are fair and accurate copies of the
3 pictures?

4 A Yes, ma'am.

5 Q And that's actually your initials?

6 A Initials, yes, ma'am.

7 Q And the date?

8 A Yes.

9 MS. JONES: Okay. Your Honor, at this
10 time the State moves 18 to 27 into evidence.

11 THE COURT: Any objection?

12 MR. LEE: No, sir.

13 THE COURT: All right. State's 18
14 through 27 are admitted into evidence without
15 objection.

16 (PLF. EXH. 18, Photo, was entered into
17 evidence.)

18 (PLF. EXH. 19, Photo, was entered into
19 evidence.)

20 (PLF. EXH. 20, Photo, was entered into
21 evidence.)

22 (PLF. EXH. 21, Photo, was entered into
23 evidence.)

24 (PLF. EXH. 22, Photo, was entered into
25 evidence.)

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1 (PLF. EXH. 23, Photo, was entered into
2 evidence.)

3 (PLF. EXH. 24, Photo, was entered into
4 evidence.)

5 (PLF. EXH. 25, Photo, was entered into
6 evidence.)

7 (PLF. EXH. 26, Photo, was entered into
8 evidence.)

9 (PLF. EXH. 27, Photo, was entered into
10 evidence.)

11 BY MS. JONES:

12 Q I want to go through these pictures with you,
13 Miss Martinez, because you said a lot of names here.

14 So I'm going to through with you State's 18.
15 Can you see it or do you want to hold it?

16 A I see it.

17 Q You can see it.

18 Okay. Who is that in State's 18?

19 A Crystal Hobbs.

20 Q That's you you have circled there?

21 A Yes, ma'am.

22 Q Okay. And State's 19.

23 A Abraham Martinez.

24 Q That's your son?

25 A Yes, ma'am.

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1 Q Okay. And State's 20, who is that?

2 A I call him Trey. I cannot pronounce his
3 name.

4 Q Who is he to you?

5 A That's my god-brother.

6 Q Okay. And how do you know him or his family?

7 A Because I used to baby-sit him when he was
8 little.

9 Q Okay. Now, State's 21?

10 A That's me, of course.

11 Q And you wrote that "me," and you initialed it.
12 State's 22?

13 A That's Michael Martinez or Austin, whatever
14 you want to call him.

15 Q Austin. Okay. I'm sorry, because there's another
16 Austin involved. Austin is also one of the last
17 names?

18 A Yes.

19 Q But he's your son?

20 A Yes.

21 Q State's 23, who is that?

22 A Joseph Burton.

23 Q What is he wearing in this photo?

24 A Back pants and a white shirt.

25 Q And how about the man in all gray, do you

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- 1 recognize him? Have you ever seen him before?
- 2 A I don't know. I mean, they could have been
- 3 at the club. I don't know.
- 4 Q Okay. But you don't know that man?
- 5 A No.
- 6 Q Now, State's 24, do you know anybody in that
- 7 photograph?
- 8 A I know the one in the red, I know he was at
- 9 the club. The one with the -- with the shirt off,
- 10 he was at the club. And then the one in the
- 11 white, he was at the club too.
- 12 Q Okay. The one in the white, do you know his
- 13 name?
- 14 A At the time there, no, but, I mean, I do
- 15 know.
- 16 Q What is his name?
- 17 A Derrick.
- 18 Q Do you remember his last name?
- 19 A Frazier.
- 20 Q Derrick Frazier?
- 21 A Yes.
- 22 Q Now, is he with you and your group of friends at
- 23 the club at that night?
- 24 A Yeah, because we all left to go to the
- 25 store.

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1 Q And did he ride with you?

2 A Yes, sir.

3 Q Who drove you all from the club to the store?

4 A I don't remember.

5 Q Okay. Do you know what car you were in?

6 A If you asked me, I don't even know what kind
7 of car. I just know it was a gray car.

8 Q Okay. I don't mean make and model, that's fine.

9 Was it a car or an SUV?

10 A A car.

11 Q A car. And it was gray?

12 A Yes.

13 Q From the club to gas station, who is in that
14 car?

15 A It was me, Joseph, my sister, Abraham, and
16 the boy in the white, Derrick Frazier.

17 Q Thank you. Where was the defendant Joseph Burton
18 seated in that car?

19 A In the front.

20 Q In the front?

21 A He was in the front?

22 Q You tell me. Where was he seated in the car when
23 you all go from the club to the gas station?

24 A He was in the front on the passenger side.

25 Q How about this gentleman -- how about this man in

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1 the red jersey tank top with the gray hat, do you
2 recognize him?

3 A Like I said, I've seen him at the club.

4 Q Okay. Is anybody in this photo the one that got
5 too close to you at the gas station?

6 A The guy in the red.

7 Q The tank top. I don't think that's a jersey. The
8 tank top?

9 A Yeah, whatever.

10 Q Describe him getting too close to you?

11 A Like, he was in the back of me. When I look
12 back, I seen him in the back of me.

13 Q Okay. Did you say something to him?

14 A I didn't say anything to him just that night
15 when we were at the club, you know, he was trying
16 to talk to me and I told him I had somebody. And,
17 of course, he scratched me on my neck.

18 Q And when he scratched you on your neck at the
19 club, what did you do after that?

20 A I just brushed it off. I just walked to the
21 car.

22 Q You didn't talk to anybody about it? You didn't
23 tell your boyfriend?

24 A Nope.

25 Q That another man grabbed you by the neck?

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1 A No.

2 Q Now, how about State's 25, who is in that
3 photograph?

4 A I could just see myself, Crystal, and
5 Derrick.

6 Q How about State's 26, do you know that man?

7 A I did not know that man. But by asking
8 around, that is Jamal. Don't ask me his last
9 name.

10 Q Okay.

11 A But his name is Jamal.

12 Q Was he with you and your friends?

13 A No.

14 Q Okay. Do you know who was he with? Was he by
15 himself?

16 A That, I have no idea.

17 Q You don't know, okay.

18 How about State's 27, who is that man?

19 A The one that's walking in?

20 Q Yes.

21 A I mean, I don't know him. I mean, as far as
22 with everything that's going on, that's
23 Shaun Fells.

24 Q Okay. Is that the man that got too close to you
25 at the club?

TESTIMONY-MARTINEZ

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1 A No, ma'am.

2 Q Is that the man that got too close to you at the
3 gas station?

4 A No, ma'am.

5 Q State's 28? Oh, my apologies. I just handed you
6 State's 17. My apologies. Thank you.

7 When you're in the gas station, do you
8 remember what happens inside?

9 A The only thing I can remember is a fight that
10 broke out.

11 Q Do you know who the fight was between?

12 A I don't remember. It happened a long time
13 ago, so I don't remember.

14 Q Okay. After the fight, what do you do?

15 A I go outside.

16 Q And what do you do when you go outside?

17 A Just talk to Mr. Burton.

18 Q What are you all talking about?

19 A That, I don't remember either.

20 Q How about, do you eventually leave the gas station
21 that night?

22 A I mean, we left after whatever happened.

23 Q Okay. What happened?

24 A I mean, I guess, the fight that happened and
25 the shooting.

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- 1 Q Okay. Tell me about what you remember from the
2 shooting.
- 3 A All I know is I heard three shots.
- 4 Q Did you see where the shots were coming from?
- 5 A No, ma'am.
- 6 Q Did you see where the shots were going?
- 7 A No, ma'am.
- 8 Q After you hear the shots, what do you do?
- 9 A I panicked and I got in the car and left.
- 10 Q In the same car that you got there in?
- 11 A Yes, ma'am.
- 12 Q Were you driving?
- 13 A Yes, ma'am.
- 14 Q Where did you go after you hear the shots?
- 15 A I know we went to go jump off somebody down,
16 I think, Marchman Road, and then after that, we
17 went home.
- 18 Q To █ Greens Road?
- 19 A Yes, ma'am.
- 20 Q Who was with you when you went home?
- 21 A Well, Shaquille had been in the car with us,
22 so that's who we went to go drop off.
- 23 Q Okay.
- 24 A Down on Marchman Road, and then we went home
25 in Derrick's car.

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1 Q Who is Shaquille?

2 A Shaquille Green.

3 Q Let me show you one more picture. And you know
4 Mr. Green?

5 A No, ma'am. I mean, now, I do know. I mean,
6 after. But at the time when we were at the club,
7 no, ma'am, I didn't.

8 MS. JONES: Beg the Court's indulgence.

9 Permission to approach?

10 THE COURT: Yes, ma'am.

11 (PLF. EXH. 37, Photo, was marked for
12 identification.)

13 BY MS. JONES:

14 Q Miss Martinez, I'm going to show you State's 37,
15 do you recognize that?

16 A Yes, ma'am.

17 Q Who is that?

18 A Shaquille Green.

19 Q Okay. And that is a fair picture of Mr. Green
20 that night?

21 A Yes, ma'am.

22 MS. JONES: Your Honor, at this time the
23 State moves 37 into evidence.

24 THE COURT: Any objection?

25 MR. LEE: No objection.

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1 THE COURT: All right. State's 37 is
2 moved into evidence without objection.

3 (PLF. EXH. 37, Photo, was entered into
4 evidence.)

5 BY MS. JONES:

6 Q And which individual in this photo is
7 Mr. Shaquille Green?

8 A The guy in the red shirt.

9 Q And do you know who the man with no shirt on is?

10 A I don't know who that is. I just know he was
11 at the club that night.

12 Q Okay. You don't know if he was gentleman you had
13 seen earlier. How about the lady next to the ice
14 cream box?

15 A That's Crystal Hobbs, my sister.

16 Q Now, I want to go through -- we saw the stills. I
17 want to go through the video with you. If we could
18 see State's 16, please.

19 MS. JONES: Tom, if we could dim the
20 lights a little bit.

21 BY MS. JONES:

22 Q All right. We're going to start at the beginning
23 and 12 seconds in. Well, first, this car at the top
24 right corner, whose car is that?

25 A I can't really see it.

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1 Q Okay. Well, let's see who comes out.

2 MS. JONES: If we can play State's 16.

3 If we can pause it, please.

4 THE WITNESS: That's mine.

5 BY MS. JONES:

6 Q That's you in the red checkered shirt?

7 A Yes.

8 Q Who is that behind you?

9 A I want to say Joseph Burton.

10 Q Okay.

11 A I can't really see.

12 Q How about we'll play a little bit more.

13 MS. JONES: Okay, pause it.

14 THE WITNESS: Yes.

15 BY MS. JONES:

16 Q Who is that?

17 A Joseph Burton.

18 Q And if we can play a little bit more, who is that
19 behind Mr. Burton?

20 A That's my sister, Crystal Hobbs.

21 MS. JONES: If we can go to about one
22 minute, five seconds in.

23 (Video played.)

24 BY MS. JONES:

25 Q Who is that man?

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1 A Derrick Frazier.

2 MS. JONES: If we can fast forward to
3 four minute, seven seconds.

4 (Video played.)

5 BY MS. JONES:

6 Q Who is that man in the red jersey?

7 A That's my son, Abraham Martinez.

8 MS. JONES: If we can go to four minutes,
9 26 seconds. And I want to pause for a second. If
10 you can pause it.

11 BY MS. JONES:

12 Q You all are all in this back area. What area of
13 the gas station is that?

14 A Where the bathroom is at.

15 Q Okay.

16 MS. JONES: If we could play it, 4:26.
17 Okay, if we could stop it.

18 BY MS. JONES:

19 Q Who is that man that just came in in the gray?

20 A Shaun Fells.

21 MS. JONES: If we could play it a little
22 bit more. If we can pause it.

23 BY MS. JONES:

24 Q Who is he talking to right there in front of
25 him?

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1 A I have no idea.

2 Q Okay. Who is the man in a black pants and the
3 white shirt standing in front of him?

4 A Who's what? I'm sorry.

5 Q That's all right. The man in the black pants and
6 white t-shirt?

7 A That's Joseph Burton.

8 Q Okay.

9 MS. JONES: If you we can fast forward to
10 four minutes, 31 seconds.

11 (Video played.)

12 BY MS. JONES:

13 Q And the man with the Afro-style hair?

14 A That's my son, Michael Martinez.

15 MS. JONES: How about 4:41?

16 (Video played.)

17 BY MS. JONES:

18 Q The man right there in the khaki pants and the
19 black t-shirt?

20 A That's Trey.

21 Q Okay. Do you know where Trey is right now?

22 A No, ma'am.

23 MS. JONES: Seven minutes and 16 seconds.
24 We can play it a little bit more.

25 (Video played.)

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1 MS. JONES: Okay, if we can pause it.

2 BY MS. JONES:

3 Q What are you telling the defendant in this clip?

4 A I don't remember.

5 Q What does this mean (indicating)?

6 A I don't remember.

7 Q Okay.

8 MS. JONES: How about eight minutes
9 and -- eight minutes flat.

10 BY MS. JONES:

11 Q Who is that man?

12 A Shaquille Green.

13 Q What is he doing? When he goes inside the gas
14 station, who he is talking to?

15 MS. JONES: You can play a few more
16 seconds.

17 THE WITNESS: Who he's talking to, I
18 don't know. He's just talking to both of them, as
19 far as I can see right here.

20 BY MS. JONES:

21 Q And who's that man that just walked in?

22 A The one that just walked in, Joseph Burton.

23 Q Okay.

24 MS. JONES: If we can go in to eight
25 minutes and 33 seconds.

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(Video played.)

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MS. JONES: If we can pause it.

BY MS. JONES:

Q The man right there in the red tank top, who is he? Again, you don't know his name, but in this scenery and this night, who was he to you?

A Who is he to me?

Q Is that the man that got too close to you at the gas station and at the club?

A Yeah.

MS. JONES: We can go to nine minutes and roughly 33 seconds. Pause it for a second.

BY MS. JONES:

Q Do you know this large gentleman in the back of the group?

A Yes, that's Christian.

Q Do you know Christian's last name?

A It starts with a P.

Q Okay.

MS. JONES: We can play it.

BY MS. JONES:

Q That man that's leaving during the fight, who is that in all gray?

A That's Shaun Fells.

MS. JONES: Now, if we can go to about

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1 ten minutes -- about ten minutes.

2 BY MS. JONES:

3 Q What happening at that point, everybody leaving
4 out from inside the store?

5 A Yes, ma'am.

6 Q Okay.

7 MS. JONES: We can play it,
8 Mr. Hightower.

9 BY MS. JONES:

10 Q Where is Mr. Burton walking to right now?

11 A To the car.

12 MS. JONES: Play a little bit more. We
13 can pause it.

14 BY MS. JONES:

15 Q Who is that confronting Shaun Fells in the all
16 white?

17 A I mean, I can't really see. But who is
18 wearing all white was Derrick Frazier.

19 Q Okay. At this time point, where is the
20 defendant?

21 A Back there.

22 Q Walking towards your car?

23 A Yes, ma'am.

24 MS. JONES: If we can play it a little
25 bit longer. Okay, pause it.

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1 BY MS. JONES:

2 Q Who is the man in the red shirt that just punched
3 Mr. Fells?

4 A Shaquille.

5 MS. JONES: Okay, If we can play it a
6 little more.

7 BY MS. JONES:

8 Q And who is that in the front --

9 MS. JONES: We can pause it.

10 BY MS. JONES:

11 Q Who is that in the front passenger seat of your
12 car in the white shirt and black pants?

13 A Right there by the passenger side?

14 Q Yes, ma'am. Right there.

15 A Joseph.

16 Q Okay. Where are you?

17 A Right there by my sister.

18 Q Kind of in the middle of the frame right there?

19 A Yes, ma'am.

20 Q What is the defendant doing at this point?

21 A I have no idea.

22 Q Okay.

23 MS. JONES: If we can play it a little
24 more. Pause it.

25 BY MS. JONES:

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1 Q Do you know what's happening right there?

2 A No, ma'am.

3 Q Okay.

4 A You can see I'm by the car.

5 Q So you're not looking over there?

6 A No, ma'am.

7 Q So you don't know what your boyfriend is doing?

8 A No, ma'am.

9 MS. JONES: If you could play it a little
10 bit longer.

11 BY MS. JONES:

12 Q What's happening right now?

13 A Everyone is jumping in the car.

14 Q Okay.

15 MS. JONES: If we can play it.

16 BY MS. JONES:

17 Q Is that you running to the driver's seat?

18 A Yes, ma'am.

19 Q Where do you all go?

20 A We headed out to go drop the boys off and
21 then go straight home.

22 Q Okay. Do you remember a conversation you had with
23 the defendant on April 7th of this year?

24 A No, ma'am.

25 Q April 7, 2021, and he tells you -- he tells you --

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1 MR. LEE: Your Honor, she's leading the
2 witness.

3 THE COURT: I agree.

4 BY MS. JONES:

5 Q Do you remember any conversations with your
6 boyfriend back on April 7th of 2021?

7 A No, ma'am.

8 Q Any conversations where he tells you information
9 and, perhaps, a reason why?

10 A No, ma'am.

11 MS. JONES: Your Honor, if we may
12 approach.

13 THE COURT: Yes, ma'am.

14 MS. JONES: I'm trying to lay the
15 foundation to impeach her with a prior statement.
16 She's failing to admit it. I have to lay the
17 substance of the statement in order to impeach her
18 with it under 613(b).

19 MR. LEE: What she's trying to do is
20 refresh her recollection with something that --

21 MS. JONES: No.

22 THE COURT: Hold on. Go ahead.

23 MR. LEE: She's trying to refresh her
24 recollection with a document that she didn't
25 adopt. It isn't like she wrote up some statement.

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1 She's just trying to back it with a statement. I
2 mean, if she had a written statement and she
3 denied making a statement, she can show her the
4 statement. But if it was a statement that she
5 adopted as the truth -- this is a jail call. I
6 needless jail call.

7 MS. JONES: I'm trying to impeach her
8 under 613(b) with a prior statement. She was in
9 here. She heard all about the prior statement.
10 She knew this was going to be asked. She's
11 denying it. 613(b) and the case law, and I have
12 the case. It's State v. Stokes and State v.
13 Blalock. I just have to lay the substance, the
14 time and place, who and where the statement was
15 made, and then I can ask her about it. If she
16 does anything but unequivocally admit it, I can
17 impeach with extrinsic evidence.

18 THE COURT: Hold on, hold on.

19 MR. LEE: I'm sorry.

20 THE COURT: Okay. Go ahead.

21 MR. LEE: She's trying to get to his
22 statement and not hers. If she was trying to get
23 in something she said, it would be properly
24 impeachable. She's trying to get in what he said,
25 and that's not the way to do that.

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1 MS. JONES: Well --

2 MR. LEE: She --

3 THE COURT: All right. Go ahead.

4 MS. JONES: By that point, it's an
5 admission by a party opponent. I should be able
6 to ask her what he said and have her deny it. I
7 can leave out the expletives. I can just say, did
8 the reason he told you he was in here was because
9 of you? It's a statement he made.

10 THE COURT: All right. Ladies and
11 Gentlemen, I'm going to send you back to the jury
12 room for a few moments. I've got a matter of law
13 I need to take up with counsel. And, to that
14 extent, I would instruct you, please don't discuss
15 the case, don't conduct any research, and I hope
16 to have you back in here as soon as I can. Thank
17 you.

18 (Jury exits the courtroom at 10:40 a.m.)

19 THE BAILIFF: Jury is clear, Your Honor.

20 THE COURT: Thank you. The witness can
21 step down. Any objection to the witness stepping
22 down?

23 Ma'am, you can step down and have a seat.
24 You can't talk with anybody about the case or
25 about your testimony. Okay?

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1 All right. I'm happy to hear from the
2 State on this.

3 MS. JONES: Thank you, Your Honor. We
4 left with me asking Miss Martinez about a
5 statement in a conversation she had with the
6 defendant while he was incarcerated that was the
7 subject of an earlier motion, the jail phone call
8 which Your Honor held inadmissible based on that
9 avenue of evidence.

10 Here, I am asking her about a statement
11 made by the defendant by her. That statement was,
12 I'm in here for you. Of course, it was a lot more
13 colorful than that, but I do not have to ask her
14 all of the specific expletives involved in that
15 statement.

16 Under 801(d)(2), statements which are not
17 hearsay, admission by party opponent. This is a
18 statement by him. A statement offered against a
19 party and is a party's own statement in either an
20 individual or representative capacity.

21 This is a statement by my party opponent
22 that I am trying to elicit through her. In the
23 event that she fails to admit that statement, I
24 believe I'm allowed to impeach her for the whole
25 conversation under 613(b) because she has not --

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1 she had to unequivocally admit it. And if she
2 doesn't, then I can impeach her with extrinsic for
3 evidence. And I would cite Stokes and Blalock for
4 the 613(b) analysis.

5 THE COURT: All right. Hand that up and
6 I'll hear from Mr. Lee.

7 MR. LEE: Your Honor, with all due
8 respect, she has her rules mixed up.

9 THE COURT: I'm sorry.

10 MR. LEE: I said, with all due respect,
11 she has her rules mixed up. 613, prior statement
12 of a witness, (a), examining the witness
13 concerning a prior statement. "In examining a
14 witness concerning a prior statement made by the
15 witness, whether written or not, the statement
16 need not be shown nor its contents disclosed to
17 the witness at that time," et cetera, et cetera.
18 That's how you impeach somebody. That's how you
19 get somebody's statement in that they made that
20 they're denying making in the first Place. Then
21 you get to what she's talking about, get into the
22 substance of the date and time. That's how you
23 impeach them. And then you show them their
24 statement and say, look here. I can -- you know,
25 it's extrinsic evidence.

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1 If she impeaches her and says, isn't it
2 true you said such and such, and she says yes.
3 She's stuck with that answer. If she says, no, I
4 never made that statement, that's how you 613.
5 That's where you use extrinsic proof to prove what
6 the prior inconsistent statement was, but it's for
7 the witness's own statement.

8 So using that to try to get in something
9 that was said to her is improper use of the
10 rule.

11 801 -- the other one she cited was
12 801(d)(2), admission by a party opponent, this is
13 the wrong way to do it, Judge. You don't do that
14 through another witness. You do this if the
15 defendant is testifying. The statement is offered
16 against the party and is, A, the party's own
17 statement in either individual or representative
18 capacity, a statement of which the party's
19 manifested adoption or belief are true, a
20 statement by a person authorized, et cetera, a
21 statement by the party's agent or servant. This
22 isn't the way you do it, Judge.

23 If she wanted to try to get in something
24 that Mr. Burton said that she deemed to be
25 admission by a party opponent, she does that while

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1 he is on the stand. She is not -- she's not
2 allowed to get it in through his wife of something
3 that he said. That's just the wrong way to do it.

4 THE COURT: All right. Anything else?

5 MS. JONES: Just for quick follow-up. If
6 the rule was encompassing any statement made by
7 the defendant was only admissible when that
8 particular defendant took the stand; we would have
9 no need for Jackson v. Denno hearings. Those
10 statements come in through the people that those
11 statements were provided to. It's an admission by
12 a party opponent. Admission is a statement by a
13 party opponent. That is what this is. I am
14 allowed to ask her what he said to her, and I, of
15 course, can edit for appropriateness.

16 THE COURT: All right. We'll be at ease
17 for five minutes.

18 (A break was taken from 10:48 a.m. to 11:00 a.m.)

19 THE BAILIFF: All rise. This court is
20 back in session.

21 THE COURT: All right. Thank you. Be
22 seated.

23 All right. Solicitor, I appreciate you
24 bringing this matter to my attention as to what
25 your desire was as you were moving forward given

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1 the response that you received from the witness.

2 I agree with Mr. Lee's argument as it

3 relates to 613(b). This is not her statement.

4 And, to that extent, I'm not going to allow -- I

5 mean, I think you can ask her, Solicitor, if this

6 statement refreshes, or that she recognizes it,

7 that statement. And if it does, it does. If it

8 doesn't, it doesn't.

9 But to that extent as it relates to them

10 trying to get this statement in, I'm not going to

11 allow the statement to come in. If she does

12 not -- if she doesn't recollect that. As I

13 understand, I think the testimony was that she

14 doesn't remember having that conversation.

15 And so, as it relates to having the

16 conversation, if she is shown that, and to that

17 extent then she remembers the conversation, then I

18 think that moving forward as it relates to that,

19 yes. As it relates to the statement trying to

20 come in if she doesn't, no, ma'am.

21 MR. LEE: Can I add one, Your Honor.

22 THE COURT: Yes, sir.

23 MR. LEE: I know you ruled in my favor,

24 but I wanted to add something to it. Well, I

25 mean, for the record.

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1 THE COURT: I just thought --

2 MR. LEE: Maybe I should learn when to
3 shut up. But while you were out, I would take the
4 position as well that it certainly is a hearsay
5 statement. She says it's an admission of a party
6 opponent. There is no admission. That not the
7 type of admission that you're talking about
8 against one's own interest.

9 Now, it may be what they think what
10 happened, but, technically, it's not even an
11 admission to fall outside of the hearsay -- fall
12 within the hearsay statements which are not
13 hearsay under 801(d)(2). And the case, ironically
14 enough, that she handed up says, the admission --
15 this is --

16 THE COURT: Stokes vs. Blalock.

17 MR. LEE: Stokes. In headnote Number 6,
18 the admission of testimonial hearsay statements
19 against an accused, which is what we have here,
20 violates the confrontation clause if, one, the
21 declarant is unable to testify at trial. Okay, he
22 obviously has a 5th Amendment right. He's deemed
23 unavailable under the hearsay rules.

24 THE COURT: Yes, sir.

25 MR. LEE: And, two, the accuser has no

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1 prior opportunity to cross-examine the declarant,
2 which obviously we have. There's been no
3 cross-examination of Chrissie Martinez and any
4 type of -- in any type of hearing, or anything
5 like that. It says, and has had no prior
6 opportunity to cross, we haven't had any prior
7 opportunity to cross-examine her. So I think
8 Stokes is right point.

9 But for our proposition that admission of
10 testimonial or hearsay statements, which is what
11 this is, violates the confrontation clause, if,
12 and then both of those things are present here.
13 So I don't think it even fits within admission by
14 a party opponent. I think clearly it's hearsay,
15 and they haven't satisfied any type of exception
16 to the hearsay rule for the admissibility of that
17 statement anyway.

18 THE COURT: All right.

19 MR. LEE: And it's not testimonial, too.
20 If it was testimonial to a police officer, like
21 she points out, it would be different.

22 THE COURT: Well, I think the
23 confrontation clause does not bar admission of
24 declarant prior inconsistent through another
25 witness as long as the declarant is present at

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1 trial to defend or explain it. And I'm reading
2 U.S. v. Davis, 484 U.S. 554.

3 So as it relates to your confrontation
4 clause issue, I mean, I think that it can be
5 admitted and I think that case stands for the
6 proposition that it can be admitted when the
7 declarant, is present at trial to explain or
8 defend.

9 But I understand your argument. Is there
10 anything else, Solicitor. I'm happy to hear from
11 you.

12 MS. JONES: Well, I would just contend
13 that it doesn't have to be an admission. Again,
14 if that was the standard, any statement that we
15 play, whether that be the defendant gave to a law
16 enforcement officer, whether it be a lie, a
17 statement in refute, an alibi, those would be
18 admissible. The standard is not a flat out
19 admission. It is just a statement offered against
20 the party. I am offering it against Mr. Burton.

21 I want to adhere to your ruling. I do
22 not create any problems in my questioning of
23 Miss Martinez. When she takes the stand, I intend
24 to ask her -- show her just that part of the
25 conversation and ask her if she remembers his

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1 response. And depending on what she says --

2 THE COURT: Well, I think she needs to
3 remember -- does she remember the -- does that
4 help her remember the conversation. I mean, that
5 ought to be -- I mean, that was the question that
6 was left. She doesn't remember the conversation.

7 But to that extent, I mean, either she
8 does or she doesn't. And so if she does, then I
9 think she can testify as to what -- that was said.
10 If she doesn't, then we move on.

11 MS. JONES: Okay.

12 THE COURT: That's my ruling.

13 MR. LEE: She already testified she didn't
14 remember that conversation.

15 THE COURT: Well, I think he can hand her
16 that -- excuse me. She can hand her that and see
17 if that refreshes her memory or provides her with
18 some type of recollection as it relates to the
19 conversation. She's already testified that it's
20 been a long time, so forth and so long. I don't
21 see any harm in that aspect coming in.

22 MR. LEE: Would Your Honor consider
23 allowing us to do that on the record but not in
24 front of the jury, because I think it's
25 prejudicial if she's handing her something and,

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1 don't you remember this conversation, and she
2 says, no, they still get their point across and
3 it's prejudicial to my client. Would you consider
4 allowing her without the jury present to ask that
5 question on the record, everybody is protected,
6 and have her decide. If she says she doesn't
7 remember it, then there's no need to go any
8 further. If she does remember it, then she can
9 proceed the way she wanted to proceed.

10 THE COURT: Solicitor?

11 MS. JONES: Your Honor, I don't think out
12 of the jury presence is necessary. I think I can
13 ask her. The rules allow me to refresh your
14 recollection and that's what I'm doing.

15 I was trying to tiptoe around the fact
16 that the conversation took place while Mr. Burton
17 was in jail and it was recorded. Again, I don't
18 have to specify those details, but specifically --
19 that generally would be provided to a witness in
20 order for them to attempt to remember a
21 conversation.

22 THE COURT: All right. I'm going to deny
23 your motion, sir. I'm going to allow her to hand
24 that --

25 MR. LEE: In front of the jury.

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1 THE COURT: To the jury. Your request as
2 it relates that, Mr. Lee.

3 MR. LEE: Okay.

4 MS. JONES: Okay.

5 MR. LEE: I'm just wondering how she's
6 going to not suggest to the jury that she said
7 something just by handing up a piece of paper. I
8 mean, I would ask if she be limited. Instead of
9 saying, do you remember this? Just say, do you
10 remember a phone conversation that you had with
11 your husband on April 7th of 2021? If she says
12 no, I think she needs to move on.

13 THE COURT: I think she can hand her the
14 paper, sir. I think she's going to be able to
15 hand her the paper and say -- the question before
16 was, does she remember -- doesn't remember having
17 this conversation; no.

18 And I think that -- to that extent, I
19 think the Solicitor can go and say, let me hand
20 you this, let me ask you to take a second to look
21 at it, does that help you recall anything
22 concerning the conversation?

23 MR. LEE: I understand your ruling.
24 Again, my point is that I don't think that needs
25 to be done in front the jury because of the

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1 potential taint it puts on it. It certainly
2 suggests that something was said and that is she
3 now saying she doesn't remember. I don't think we
4 need to do that in front of the jury.

5 THE COURT: All right. I'll tell you
6 what, we're going to do it without the jury,
7 Solicitor. I want to bring the witness up, and I
8 want you to go ahead and do that. I want to see
9 what's going to be said. That's fine.

10 All right. Mr. Lee?

11 MR. LEE: Sure, thank you.

12 THE COURT: Mr. Lee, I got to stop giving
13 you last argument, okay?

14 All right. I'm going to do that. Let's
15 get the witness back on the stand, please.

16 All right. Ma'am, if you can remove your
17 mask for me, please, for the purposes of your
18 testimony. And, of course, I want to remind you
19 that you are still under oath. Okay?

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you. Your witness,
22 yes, ma'am.

23 MS. JONES: Thank you, Your Honor.

24 PROFFER

25 BY MS. JONES:

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1 Q Miss Martinez, do you remember having a
2 conversation with Joseph Burton on April 7th of 2021,
3 this year?

4 A No, ma'am.

5 Q Did you have any conversations with him in the
6 month of April?

7 A I don't remember.

8 Q Okay. I'm going to hand you something. And if
9 you could, again, tell me what your phone number is?

10 A [REDACTED].

11 (COURT'S EXH. 5, Jail phone call
12 transcript, was marked for identification.)

13 BY MS. JONES:

14 Q Okay. I'm going to hand you Court's Exhibit 5.
15 Do you recognize -- if you could take a look at that.
16 Read that document and see if you recognize that
17 document, the conversation contained in that
18 document?

19 A To be honest with you, I don't remember this
20 conversation at all.

21 Q You don't remember having that conversation, but
22 that's your phone number at the top?

23 A Yeah, but I don't remember this conversation.
24 I can't remember, really, the conversation from
25 the time he got in there either. There's plenty

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1 of times we've been talking, but I don't remember
2 none of the conversations.

3 Q Okay.

4 MS. JONES: Your Honor, she's failing to
5 admit the conversation, the statements. I believe
6 that her part of the conversation is admissible
7 under 613(b). His part is admissible under an
8 admission of a party opponent.

9 THE COURT: I'm going to overrule your
10 objection. I'm not going to let that in. We
11 can move forward.

12 MR. LEE: You're going to overrule my
13 objection or hers?

14 THE COURT: She didn't -- she did not --
15 she looked at the document. She said that it
16 doesn't help her recall any conversation. And so,
17 to that extent, I'm not going to allow the State
18 to go beyond that and question about what the
19 defendant may have told her.

20 I think -- my understanding of the rules
21 at this point is that the State is going to be
22 stuck with her response to that. If she just said
23 that it refreshed her memory and so forth and so
24 on, that's what he said, okay. But she hasn't
25 done that. And she says she doesn't remember it.

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1 And so I'm not going to allow you, at
2 this point, to move forward and try to inquire
3 from her -- or enter that document into evidence
4 or question her about that document in any way as
5 to what he may have said. Or, for instance, say
6 didn't she have this phone conversation on this
7 date where he told you X, I'm not going to allow
8 any of that based on her response. Okay?

9 MS. JONES: Okay.

10 THE COURT: All right. Anything further
11 before we bring the jury in.

12 MR. LEE: No, sir.

13 THE COURT: From the plaintiff?

14 MS. JONES: The State, Your Honor.

15 No, sir.

16 THE COURT: State. Doggonit. I'm sorry.
17 I apologize. I had a civil case last case.

18 Anything from the defense?

19 MR. LEE: No, sir.

20 THE COURT: Bring us the jury, please.

21 (Jury enters the courtroom at 11:15 a.m.)

22 THE BAILIFF: Jurors are in the
23 courtroom, Your Honor. Jury is seated, Your
24 Honor.

25 THE COURT: You all can be seated.

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1 Ladies and Gentlemen, thank you.

2 Solicitor, you may proceed with this
3 witness.

4 MS. JONES: Thank you, Your Honor.

5 (STATE EXH. 50, Photo, was marked for
6 identification.)

7 BY MS. JONES:

8 Q Miss Martinez, you identified some people for us
9 in some photographs and in at that video. I'm going
10 to hand you what has been previously marked as State's
11 50.

12 MS. JONES: Permission to approach, Your
13 Honor.

14 THE COURT: Yes, ma'am.

15 BY MS. JONES:

16 Q Do you recognize those individuals?

17 A Yes, ma'am.

18 Q And are those the people that identified on the
19 video and in the stills?

20 A Yes.

21 Q Again, who are those people that you identified?

22 A Crystal Hobbs, myself, Shaquille and
23 Derrick.

24 THE COURT: You need to speak up.

25 THE WITNESS: I'm sorry.

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1 THE COURT: That's all right.

2 THE WITNESS: My sister, Crystal Hobbs,
3 myself, Shaquille and Derrick.

4 MS. JONES: Okay. Your Honor, at this
5 time, the State moves 50 into evidence.

6 THE COURT: Any objection?

7 MR. LEE: No objection.

8 THE COURT: State 50 admitted into
9 evidence without objection.

10 (STATE EXH. 50, Photo, was entered into
11 evidence.)

12 BY MS. JONES:

13 Q Now, Miss Martinez, is this what I just showed you
14 but a smaller version on it?

15 A Yes, ma'am.

16 Q Okay. And, again, the man in all white is who?

17 A Derrick.

18 Q The man in red?

19 A Shaquille.

20 Q And the plaid shirt?

21 A Myself.

22 Q And the maroon tank top?

23 A Crystal.

24 MS. JONES: Beg the Court's indulgence.

25 THE COURT: Yes, ma'am.

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1 (STATE EXH. 51, Photo, was marked for
2 identification.)

3 (STATE EXH. 52, Photo, was marked for
4 identification.)

5 MS. JONES: Permission to approach,
6 Your Honor.

7 THE COURT: Yes.

8 BY MS. JONES:

9 Q Miss Martinez, I'm going to show what is marked
10 State's 51 and State's 52. Do you recognize the man
11 in those photos?

12 A Yes. Joseph Burton.

13 Q And is that what Joseph Burton looked like today
14 and back in 2018?

15 A Yes, ma'am.

16 Q And is that fair and accurate copies of photos of
17 Joseph Burton?

18 A Yes, ma'am.

19 MS. JONES: Your Honor, at this time, the
20 State moves State's 51, 52 into evidence.

21 THE COURT: Any objection?

22 MR. LEE: No, sir.

23 THE COURT: All right. State's 51 and 52
24 are admitted without objection.

25 (STATE EXH. 51, Photo, was entered into

1 evidence.)

2 (STATE EXH. 52, Photo, was entered into
3 evidence.)

4 (STATE. EXH. 53, Photo, was marked for
5 identification.)

6 BY MS. JONES:

7 Q Now, I'm going to hand you what's marked as
8 State's 53. Do you recognize the man in the white
9 shirt and black pants in those photographs?

10 A I mean, yeah. It's blurry, but yeah.

11 Q And who is that?

12 A Joseph Burton.

13 Q And those other two images, who is that?

14 A Joseph Burton.

15 Q And those are all images of Mr. Burton?

16 A Exactly, I really can't tell you who that is
17 because it's very blurry.

18 Q That's from the surveillance that we saw
19 earlier?

20 A Yeah, that's very blurry.

21 Q Okay.

22 A I can't even tell you who that could be. But
23 other than that, yeah.

24 Q Okay. But that is an image from the surveillance
25 that we saw earlier.

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- 1 A (Witness nods head up and down.)
- 2 Q Sorry. The court reporter has to -- you have to
- 3 say yes or no for the court reporter.
- 4 A Yes, ma'am.
- 5 MS. JONES: Okay. Your Honor, the State
- 6 moves 53 into evidence.
- 7 THE COURT: Any objection, Mr. Lee?
- 8 MR. LEE: No, sir.
- 9 THE COURT: All right. State's 53 is
- 10 admitted without objection.
- 11 (STATE. EXH. 53, Photo, was marked for
- 12 identification.)
- 13 MS. JONES: Permission to publish?
- 14 THE COURT: Any objection, sir?
- 15 MR. LEE: No objection.
- 16 THE COURT: No objection.
- 17 BY MS. JONES:
- 18 Q And Miss Martinez, these two images on the end,
- 19 are those State's 51 and 52 I showed you earlier?
- 20 A Yes, ma'am.
- 21 Q And those are who?
- 22 A Joseph Burton.
- 23 Q And you've identified this man in white and black
- 24 as Joseph Burton?
- 25 A Yes, ma'am.

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1 Q Miss Martinez, do you remember when I came to your
2 house and tried to talk with you?

3 A Yes, ma'am.

4 Q And did you want to speak with me?

5 A About what?

6 Q Did you want to talk to me?

7 A When you all came, I told you I was not
8 talking until I spoke with my lawyer.

9 Q He's actually Mr. Burton's lawyer?

10 A Yeah, but you might as well say he's mine
11 too.

12 Q Okay. Do you see Mr. Burton in the courtroom?

13 A Yes.

14 Q Can you please point him out?

15 A (Indicating).

16 Q What is he wearing?

17 A Black shirt, I think.

18 Q Okay. Is he seated at that table with Mr. Lee?

19 A Yes.

20 MS. JONES: May the record reflect the
21 witness did identify the defendant.

22 THE COURT: So reflected.

23 MS. JONES: Thank you, Your Honor. Your
24 Honor, I don't have any more questions for
25 Miss Martinez.

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1 THE COURT: All right. Thank you,
2 Solicitor.

3 Mr. Lee, do you have any questions of
4 this witness?

5 MR. LEE: Just a couple.

6 THE COURT: Okay. Yes, sir.

7 MR. LEE: And lawyers always say just a
8 couple. I may have more than just a couple.

9 THE COURT: I understand that, sir. And
10 could you remove your mask for the purposes of
11 asking these questions.

12 MR. LEE: Yes, sir.

13 THE COURT: Thank you.

14 CROSS-EXAMINATION

15 BY MR. LEE:

16 Q All right. Chrissie, there was a little bit of, I
17 guess, confusion about your relationship with Joe-Joe
18 as you all call him; is that right?

19 A Yes, sir.

20 Q You consider yourself to be his wife?

21 A Yes.

22 Q Okay. And actually, I think in 2015 or '16,
23 didn't you all actually go to the probate court and
24 sign some documents to get married?

25 A Yes, sir.

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1 Q Okay. And then were you supposed to go back to do
2 something or fill something out? Is that right?

3 A Yes, sir.

4 Q Was that ever done?

5 A No.

6 Q Okay. So I guess, technically, under the law you
7 all are not married?

8 A No, but we been --

9 Q But you hold yourself out --

10 THE COURT: Hold on one second. What
11 happens is, in normal conversation you're
12 answering and you kind of cut each other off.
13 Please --

14 THE WITNESS: I'm sorry.

15 THE COURT: Please allow Mr. Lee to
16 finish his question and then you can answer that
17 question however you want assuming you to
18 understand it. Okay, ma'am?

19 THE WITNESS: Yes.

20 THE COURT: Thank you.

21 BY MR. LEE:

22 Q So I guess, technically, under the law you're not
23 technically married but hold yourself out as husband
24 and wife?

25 A Yes.

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- 1 Q And do you live with Mr. Burton?
- 2 A We did.
- 3 Q Okay. And who else was living with you all at the
- 4 time?
- 5 A His sister.
- 6 Q And that's who?
- 7 A Nicole Burton.
- 8 Q All right. Do you remember talking with
- 9 Detective Reynells? I believe you talked about that
- 10 earlier?
- 11 A Yes, I did.
- 12 Q Do you remember telling him that you were unaware
- 13 that the male from the club was leaning over you at
- 14 the gas station?
- 15 A I don't recall.
- 16 Q Okay. Now, this guy that nobody seemed to
- 17 identify, the guy in the Montreal Expos uniform, do
- 18 you know who he was?
- 19 A I found out who he was.
- 20 Q Jamal Simmons?
- 21 A Yes.
- 22 Q How did you find that out?
- 23 A Just asking around.
- 24 Q Okay. Was it hard to do?
- 25 A No.

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1 Q Jamal lives on Hilton Head?

2 A Yes.

3 Q Chrissie, let me ask you: So you've been with
4 Joe-Joe six-plus years you said?

5 A Yes, sir.

6 Q During that time, has he ever worn glasses?

7 A No.

8 Q But he's wearing glasses now?

9 A Yes.

10 Q Do you know when he got them?

11 A I can't remember when, but I know it was
12 through him being in Beaufort County.

13 Q Okay. Would July of 2020 sound about right, about
14 a year or so?

15 A I want to say. I think.

16 Q Tell me this. As being around him, has he needed
17 glasses?

18 A Yes.

19 Q He has?

20 A I had took him to Walmart to get his eyes
21 checked out, and they said he really did need
22 them.

23 Q Okay. But he never did get them until probably a
24 year ago?

25 A Yes.

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1 Q Do you know if he's nearsighted or farsighted?

2 A He's like -- he's got to see everything up
3 close.

4 Q So he's not good at seeing things far away?

5 A No, he's not.

6 Q And he's been like that as long as you've known
7 him?

8 A Yes.

9 Q Did he ever have any issues or needed glasses as
10 far as driving? Did you feel unsafe driving with him
11 sometimes?

12 A He's a good driver, but, yeah, it was kind
13 of -- you know, because he couldn't really see
14 unless he had glasses.

15 Q Oka. Well, I guess the question is: If he can't
16 see very good, how could he pass the vision exam at
17 the DMV?

18 A Because, God rest his soul, he wore his
19 father's glasses when he passed the test.

20 Q To look into the machine?

21 A Yes.

22 Q He had a license, but he shouldn't be driving
23 without glasses?

24 A Glasses, yes.

25 Q Safe to say you love Joe-Joe?

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1 A I do.

2 Q Okay. Despite the fact that you love him, would
3 that cause you to come in here and lie to this jury?

4 A No.

5 Q You realize you're under oath?

6 A Yes.

7 Q You know the consequences of not telling the
8 truth?

9 A Yes, I do.

10 Q And you're not lying to save him?

11 A No.

12 MR. LEE: That's all I have, Judge.

13 THE COURT: All right. Any redirect?

14 MS. JONES: No, Your Honor.

15 THE COURT: Okay, great.

16 All right, ma'am. Thank you, you can
17 step down.

18 Yes, Solicitor.

19 MS. JONES: The State calls
20 Crystal Hobbs.

21 THE COURT: All right.

22 THE CLERK: Please raise your right hand.
23 Do you solemnly swear or affirm the testimony
24 you're about to this Court will be the truth, so
25 help you God?

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1 THE WITNESS: Yes, sir.

2 THE CLERK: Thank you. Be careful coming
3 up. Take off your mask. You're pretty
4 soft-spoken. Speak as best you can and as close
5 to the microphone. State your name and spell your
6 last name for the Court reporter.

7 THE WITNESS: Crystal Hobbs, H-o-b-b-s.

8 THE COURT: Go ahead. Your witness.

9 MS. JONES: Thank you, Your Honor.

10 WHEREUPON:

11 CRYSTAL HOBBS,
12 after having been sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. JONES:

15 Q Good afternoon -- good morning, Miss Hobbs. How
16 are you?

17 A Good.

18 Q Good. Who are you to Miss Martinez?

19 A Sister.

20 Q That's your sister?

21 A Uh-huh.

22 Q Are you her baby sister?

23 A No.

24 Q Are you older?

25 A Second to youngest.

1 Q She's older than you, though?

2 A Yes.

3 Q Now, back in 2018, who was your sister's
4 boyfriend, or husband?

5 A Joseph Burton.

6 Q Okay. And were you with Miss Martinez and
7 Mr. Burton on the night of August 3rd, the morning of
8 the 4th, 2018?

9 A I don't remember the date, but I was with
10 them.

11 Q For why we're here today?

12 A Yes.

13 THE COURT: Please try to speak up. You
14 got to be louder.

15 BY MS. JONES:

16 Q You're very soft-spoken, and that plexiglas, it
17 keeps it all contained. Everyone has to hear you?

18 What were you all doing that night?

19 A We went out that night.

20 Q Where did you all go?

21 A Hilton Head.

22 Q Where on Hilton Head?

23 A The Triangle.

24 Q And what is the Triangle?

25 A A club.

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- 1 Q Is it a group of bars?
- 2 A Yes.
- 3 Q Okay. So it's not just one club. It's a group?
- 4 A Yes.
- 5 Q And who were you there with?
- 6 A Family and friends.
- 7 Q What are their names?
- 8 A Chrissie, Joe-Joe, Abraham, Michael, Trey.
- 9 Q Chrissie, is that your sister?
- 10 A Yes.
- 11 Q Joe-Joe, who is that?
- 12 A Brother-in-law.
- 13 Q Mr. Burton?
- 14 A Yes.
- 15 Q Did you call him or did you call him Joe-Joe?
- 16 A Yes.
- 17 Q And after you all go to the Triangle, where do you
- 18 all go?
- 19 A I guess we went to the gas station.
- 20 Q Okay. And do you remember what happened at the
- 21 gas station?
- 22 A No, ma'am.
- 23 Q Why is that?
- 24 A Because I was intoxicated.
- 25 Q Okay. Do you -- the next morning, you met with

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1 this man right here, Investigator Reynells. Do you
2 remember that?

3 A I mean, I remember going there. I just don't
4 remember his face.

5 Q Okay. You remember speaking with somebody at the
6 sheriff's office?

7 A Yes.

8 Q And you told him that you were intoxicated the
9 night before?

10 A Oh, absolutely.

11 Q Do you remember being shown some photographs?

12 A Yes, ma'am.

13 (STATE EXH. 28, Photo, was marked for
14 identification.)

15 (STATE EXH. 29, Photo, was marked for
16 identification.)

17 (STATE EXH. 30, Photo, was marked for
18 identification.)

19 (STATE EXH. 31, Photo, was marked for
20 identification.)

21 (STATE EXH. 32, Photo, was marked for
22 identification.)

23 (STATE EXH. 33, Photo, was marked for
24 identification.)

25 (STATE EXH. 34, Photo, was marked for

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1 identification.)

2 (STATE EXH. 35, Photo, was marked for
3 identification.)

4 (STATE EXH. 36, Photo, was marked for
5 identification.)

6 BY MS. JONES:

7 Q I'm going to show you State's 28 through 36
8 previously shown to the defense.

9 MS. JONES: Permission to approach,
10 Your Honor.

11 THE COURT: Yes, ma'am.

12 BY MS. JONES:

13 Q Miss Hobbs, if you could look at these photos and
14 see if you recognize these.

15 A Yes, ma'am.

16 Q And how do you recognize those photos?

17 A My initials is on them.

18 Q And did you indicate on some of those photos that
19 recognize some people in those photos?

20 A Yes, ma'am.

21 Q Okay. And those fair copies of the photos that
22 were shown to you that morning?

23 A Yes, ma'am.

24 MS. JONES: Your Honor, at this time --

25 BY MS. JONES:

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1 Q I need to take those from you, Miss Hobbs.

2 MS. JONES: -- State moves 28 to 36 into
3 evidence.

4 THE COURT: Any objection?

5 MR. LEE: No objection.

6 THE COURT: All right. State's 28 to 36
7 admitted without objection.

8 (STATE EXH. 28, Photo, was entered into
9 evidence.)

10 (STATE EXH. 29, Photo, was entered into
11 evidence.)

12 (STATE EXH. 30, Photo, was entered into
13 evidence.)

14 (STATE EXH. 31, Photo, was entered into
15 evidence.)

16 (STATE EXH. 32, Photo, was entered into
17 evidence.)

18 (STATE EXH. 33, Photo, was entered into
19 evidence.)

20 (STATE EXH. 34, Photo, was entered into
21 evidence.)

22 (STATE EXH. 35, Photo, was entered into
23 evidence.)

24 (STATE EXH. 36, Photo, was entered into
25 evidence.)

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1 MS. JONES: Permission to publish?

2 THE COURT: Any objection?

3 MR. LEE: No objection.

4 THE COURT: All right. Granted.

5 BY MS. JONES:

6 Q Starting with State's 28, Miss Hobbs, who is that
7 in the center of this photograph?

8 A Myself.

9 Q Okay. And State's 29, who is that in the red
10 jersey?

11 A My brother.

12 Q And what is his name?

13 A Aby.

14 Q What is his full name?

15 A Abraham.

16 Q Is that Chrissie's son?

17 A Yes.

18 Q Moving on to State's 30, who is that, ma'am?

19 A Trey.

20 Q Do you know where Trey is today?

21 A Absolutely not.

22 Q And State's 31, who is that in the center that you
23 circled?

24 A Chrissie.

25 Q State's 32, who is that?

1 A Michael.

2 Q I'm sorry?

3 A Michael.

4 Q Who is Michael to you?

5 A My nephew.

6 Q Is that Chrissie's other son?

7 A Uh-huh.

8 Q Thank you. And State's 33, who is that man?

9 A Which one?

10 Q The one that you circled?

11 A Joe-Joe.

12 Q Do you know his full name?

13 A Joseph Burton.

14 Q And do you know the man in the gray with the black

15 cap on?

16 A No, ma'am.

17 Q Have you seen him before?

18 A No.

19 Q How about State's 34, do you recognize anybody in

20 this photo?

21 A I mean, Chrissie.

22 Q Okay.

23 A I guess. I can't see that far, I'm sorry.

24 THE COURT: You need to speak up,

25 please.

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1 THE WITNESS: Chrissie. I'm sorry. I
2 can't see that far.

3 BY MS. JONES:

4 Q Here, I can hand you the smaller version to look
5 at.

6 A Chrissie, myself, and Trey.

7 Q Okay. And the man in the red tank top, did you
8 know him?

9 A No.

10 Q Had you seen him before?

11 A No.

12 Q How about the man in the back with no shirt on and
13 the tan hat on his head?

14 A No.

15 Q You've never seen him before?

16 A No.

17 Q I can take that back from you. Thank you.

18 State's 35, who do we see there?

19 A Chrissie, myself.

20 Q Okay. And how about the man in all white?

21 A At that time, I didn't know who that was. I
22 know now who it is. Derrick Frazier.

23 Q State's 36, this man in the jersey?

24 A I don't know.

25 Q And that's it for those photographs.

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1 Okay. Now, I want to show you a few
2 different clips of this video. If you could describe
3 to me what you remember happening, okay?

4 A Okay.

5 MS. JONES: If we could go in to about 30
6 seconds in.

7 (Video played.)

8 BY MS. JONES:

9 Q Is that you walking into the -- inside of the gas
10 station?

11 A Yes, ma'am.

12 MS. JONES: Okay. If we can keep playing
13 it a little bit more.

14 (Video played.)

15 BY MS. JONES:

16 Q Where are you going at this point in the gas
17 station?

18 A It looks like I'm going to the bathroom.

19 Q Okay. Are you still in that back corner during
20 this video, possibly in the bathroom?

21 A I guess so.

22 Q Who is back there with you?

23 A I don't know.

24 Q Are you just waiting at this time to pay for what
25 you're buying?

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1 A Yes, ma'am.

2 MS. JONES: If we could fast forward to
3 about 7 minutes and 16 seconds in.

4 (Video played.)

5 BY MS. JONES:

6 Q Who is that man in the red t-shirt right there?

7 A That man, I didn't know. Come to found out
8 that's Shaquille.

9 Q Miss Hobbs, is that you at the -- I guess I'll
10 call it the ice cream cooler?

11 A That's what it looks like.

12 Q But that's you?

13 A That's what it looks like, yes.

14 MS. JONES: If we can pause for a second.

15 BY MS. JONES:

16 Q Why did you just jump in front of that man in the
17 red?

18 A I absolutely do not know.

19 MS. JONES: If we could play it,
20 please.

21 (Video played.)

22 BY MS. JONES:

23 Q And you're telling me that this day you don't know
24 who that man in the red was?

25 A That day, no.

TESTIMONY-HOBBS

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1 Q The man who you are holding?

2 A Yeah.

3 Q Why would you pull a man back you didn't know who
4 was trying to fight with somebody else?

5 A Ma'am, I told you. I was intoxicated. I
6 don't remember that night.

7 Q Okay.

8 MS. JONES: We can keep playing it,
9 please.

10 BY MS. JONES:

11 Q Do you know who that large man is in the center of
12 the group?

13 A Christian.

14 Q Do you know his last name by chance?

15 A No, ma'am.

16 MS. JONES: And pause it for a second.

17 BY MS. JONES:

18 Q That man in the white whose hand you just tried to
19 hold, who is that?

20 A Derrick.

21 Q But your testimony is that on this night you
22 didn't know who he was?

23 A No.

24 Q How about this man in the gray with the 12-pack of
25 beer in his hand?

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1 A I don't know who that is.

2 Q Had you seen him before?

3 A No.

4 MS. JONES: 'If you can play it, please.

5 (Video played.)

6 BY MS. JONES:

7 Q And you don't know that man right there with the
8 red tank top?

9 A No, ma'am.

10 Q Do you remember what's happening right now?

11 A No, ma'am.

12 MS. JONES: If we can pause it.

13 BY MS. JONES:

14 Q What did you just try to do to that man in all
15 white?

16 A Reach out to him.

17 Q Okay. Why?

18 A I mean, that's what I'm seeing, is me trying
19 to reach out to him. I don't know. Like I said,
20 I was intoxicated. I don't remember that night.

21 Q Okay.

22 MS. JONES: If we can play it, please.

23 (Video played.)

24 BY MS. JONES:

25 Q Whose car is that that you get in? Do you know?

1 Do you remember?

2 A No, ma'am.

3 Q Miss Hobbs, when you came into this courtroom,
4 where did you go sit when you first came in here?

5 A On the left side.

6 Q Can you point in the general area where you were
7 seated when you came in?

8 A (Indicating).

9 Q When you say in that row, what did do you?

10 A What do you mean, what did I do?

11 Q What did you say to the defendant when you sat
12 down in that row?

13 A I love him.

14 Q That's what you told him?

15 A Yes.

16 Q Do you see Joseph Burton in the courtroom today?

17 A Yes.

18 Q Can you please point him out?

19 A (Indicating).

20 Q What is he wearing, please?

21 A It looks like a blue shirt.

22 MS. JONES: Let the record reflect the
23 witness has identified the defendant.

24 THE COURT: So reflected.

25 BY MS. JONES:

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1 Q One more question: Miss Hobbs, when you were
2 served with your subpoena, who was there when you
3 served with your subpoena?

4 A I was at work.

5 Q Who served you, do you remember?

6 A No.

7 Q Do you remember me attempting to come and talk to
8 you?

9 A I guess that was you.

10 Q Okay. And would you talk to me?

11 A No, ma'am.

12 MS. JONES: I have no further
13 questions.

14 THE COURT: All right. Thank you,
15 Solicitor.

16 Cross-examination, Mr. Lee.

17 MR. LEE: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. LEE:

20 Q So the Solicitor personally served the subpoena on
21 you?

22 A Yes, at my job.

23 Q Did you know they were coming?

24 A No.

25 Q Did you, like, raise your hand and volunteer to

1 want to come to court today?

2 A No.

3 Q Okay. And that subpoena said that you had to be
4 here all week?

5 A No.

6 Q It didn't say it was from the 1st to the 4th?

7 A She told me the 1st I would not have to be
8 here, but make sure I am here on the 2nd.

9 Q But the subpoena is a legal document requiring you
10 to come to court, right?

11 A I guess, yes.

12 Q Do you know what happens if you don't show up?

13 A I get locked up.

14 Q All right. So you're here because they --

15 A They told me to be here on the 2nd.

16 Q Okay. Just like they can do with any witness.
17 They subpoenaed you saying, Crystal, you got to be
18 here?

19 A Yes.

20 Q Okay. I know that you say that details are, kind
21 of, fuzzy.

22 A Uh-huh.

23 Q I want to ask you about when everybody is leaving,
24 okay, leaving out of there. You're in the silver
25 sedan, right? You went over there, and I guess you

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1 sit in middle seat in the back?

2 A Yeah, I ran to the back.

3 Q Okay. So you're sitting in the middle seat,
4 right?

5 A Uh-huh.

6 Q And then Shaquille Green comes in the right rear
7 passenger seat --

8 A Sits right behind me.

9 Q -- and sits besides you, correct?

10 A Right behind me on the left side.

11 Q On the left side.

12 A Left side.

13 Q So you're in the middle?

14 A Uh-huh.

15 Q Shaquille is right here?

16 A Yes, sir.

17 Q Your right leg is against his left leg?

18 A Uh-huh.

19 THE COURT: Hold on, hold on. You have to
20 answer with not a uh-huh or an unh-unh.

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you.

23 BY MR. LEE:

24 Q And there's three of you all across the back or
25 four, do you remember?

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1 A I can't remember.

2 Q At least three, okay. So you're sitting here.
3 He's sitting there, correct?

4 A Yes.

5 Q The next morning after you woke up and that kind
6 of stuff, did you have a chance to examine the clothes
7 that you were wearing this night?

8 A No.

9 Q Did you ever look at those clothes or the jeans
10 that you were wearing the next day?

11 A Yes.

12 Q Okay. Did you ever look at the shoes you were
13 wearing that day?

14 A Yes.

15 Q And what did you find, or what did you discover on
16 the right leg of your pants and your right shoe?

17 A Blood.

18 Q Blood. Was it your blood?

19 A Absolutely not.

20 Q Okay. Do you know for a fact where it came from?

21 A The only person that was on my side was
22 Shaquille.

23 Q Okay. And him sitting on this side, you sitting
24 here, it's on your right side --

25 A Uh-huh.

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1 Q Now, did you observe Shaquille at any time with
2 any type of cut on his left arm?

3 A Yes.

4 Q When was that?

5 A Early that morning.

6 Q Okay. So it was several hours after that?

7 A Yes.

8 Q What did you observe? Just tell us what you saw.
9 You said he had a cut on his left arm.

10 A All I seen was him remove something from his
11 arm and his shirt and that was it.

12 Q Like a bandage or something?

13 A I can't remember what it was.

14 Q But it was his left arm?

15 A Yes.

16 Q Okay. So, again, he's sitting in the car, his
17 left arm is here, you're sitting here, your right leg
18 there, so you're surmising, because you have no
19 explanation, that that blood came from Shaquille
20 Green?

21 A Yes.

22 Q Okay.

23 MR. LEE: That's all I have, Your
24 Honor.

25 THE COURT: Any redirect, Solicitor?

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1 MS. JONES: No, Your Honor.

2 THE COURT: All right. Thank you, ma'am.
3 Please step down.

4 THE COURT: Solicitor.

5 MS. JONES: Your Honor, may we approach
6 for timing, scheduling.

7 THE COURT: Sure. I didn't know what
8 time you wanted to break for lunch and my witness
9 is my investigator and he's going to be lengthy.

10 THE COURT: I'm not going to break for
11 lunch now.

12 MS. JONES: Okay.

13 THE COURT: Let's go ahead and call him.

14 MR. LEE: At least do his direct.

15 MS. JONES: That's fine.

16 THE COURT: Reynells.

17 MS. JONES: Yes.

18 THE COURT: Thank you.

19 MS. JONES: The State calls
20 Investigator Seth Reynells.

21 THE CLERK: Raise your right hand. Do
22 you solemnly swear or affirm the testimony you're
23 about to give this Court will be the truth, so
24 help you God?

25 THE WITNESS: I do.

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1 THE CLERK: Thank you. Be careful. Step
2 up here.

3 THE CLERK: Please state your rank and
4 your name. Spell your last name for the court
5 reporter.

6 THE WITNESS: My name is Sergeant Seth
7 Reynells, S-e-t-h, R-e-y-n-e-l-l-s.

8 WHEREUPON:

9 INVESTIGATOR SETH REYNELLS,
10 after having been sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. JONES:

13 Q Good morning, Investigator Reynells.

14 A Good morning.

15 Q Where do you work?

16 A I work with the Beaufort County Sheriff's
17 Office in criminal investigations on the southern
18 part of the county.

19 Q And what is the southern part of the county?

20 A From the Broad River through Okatie,
21 Pritchardville, Bluffton, and ultimately
22 Hilton Head.

23 Q And how long have you been with the sheriff's
24 office?

25 A I was hired in May of 2009, so actually it's

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1 been 12 years now.

2 Q So back in 2018, what did you do with the
3 sheriff's office?

4 A I was a criminal investigator at the time
5 with the sheriff's office.

6 Q And on the early morning hours of August 4th of
7 2018 were you working?

8 A I was the duty investigator, so I received
9 the call.

10 Q What does that mean, duty investigator?

11 A We have a rotating schedule in which we're
12 trying to cover all 24 hours should there be a
13 major or something that requires further
14 investigation that happens outside of normal
15 working business hours.

16 Q And because you are on call essentially, did you
17 respond to 6 Palmetto Bay Road?

18 A Yes. I responded to the 6 Palmetto Bay Road
19 on Hilton Head, Beaufort County at approximately
20 0230 hours on August 4th, 2018.

21 Q And when you get there, what do you see?

22 A When I pulled up, crime scene tape was up.
23 There was a vehicle parked within the crime scene
24 area. There was a bunch of medical and clothing
25 items on the ground next to a gas pump, and the

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1 deputies on scene were in the process trying to
2 ascertain witnesses at that point.

3 Q And, at this point, had Mr. Fells already been
4 taken away by EMS?

5 A Yes. The victim was not on scene when I
6 arrived.

7 Q If I can show you State's Exhibit 4, is this what
8 the scene looked like when you arrived?

9 A Yes, it is.

10 Q And that debris in the -- somewhat in the center
11 of the photograph, what is that?

12 A Well, there's two. There's a couple of
13 different things there. If you're talking about
14 closest to the gas pumps and just below the marked
15 patrol vehicles, all of that was the medical
16 supplies and clothing that were either used or cut
17 off the victim by deputies and EMS.

18 Q These folded pieces of paper that we see closer to
19 the bottom of the photograph, what are those?

20 A Those are actually marking shell casings that
21 were on the scene. They had been put up by guys
22 that were already there and had identified them
23 and wanted them to be identified as people were
24 moving around the scene.

25 Q When you get there, is it just Beaufort County

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1 Sheriff's Office on scene?

2 A When I get there, it is just Beaufort County
3 Sheriff's Office on scene.

4 Q But prior to that, were there other people on
5 scene?

6 A Yes. There were fire and EMS personnel on
7 scene.

8 Q Okay. And was there a time between the shooting
9 and Beaufort County arriving that it wasn't secure?

10 A Absolutely.

11 Q Now, these shell casings, what is a shell casing?

12 A A shell casing is what gets expelled from a
13 semi-automatic pistol or rifle when it is fired.
14 The shell casing holds the primer, the gun powder,
15 and the projectile, and then when it fires it gets
16 ejected outside. So it's essentially the trash
17 from the gun.

18 Q Okay. Did you collect these shell casings?

19 A I collected five. I photo-documented and
20 collected five shell casings at that point, yes.

21 Q When a gun fires a bullet, where does the shell
22 casing eject from?

23 A Typically, the top -- if you're holding the
24 gun in your hand, it's going to be the right side
25 of the slide nearest your hand, so it's going to

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1 kick out to the right. Sometimes right back a
2 little bit, sometimes right and upward.
3 Generally, to the right.

4 Q Okay. And it would, in your experience of law
5 enforcement, not be in the same general area as where
6 the bullet lands?

7 A Absolutely.

8 Q Okay. And these shell casings, you said you
9 collected five?

10 A That's correct.

11 Q When you collected these, did you collect any
12 other sort of firearm evidence on the scene?

13 A I collected the five shell casings that were
14 all the same caliber, and then I also collected
15 what appeared to be a deformed projectile that was
16 located nearest -- it was located actually on that
17 concrete base of the platform at the gas pumps
18 there.

19 MS. JONES: If we can see State's 8.

20 Zoom in to the center of that photograph.

21 THE WITNESS: Yes, that's the deformed
22 projectile I'm talking about.

23 BY MS. JONES:

24 Q Is a projectile a bullet?

25 A Yes, it's a bullet for lack of a better term.

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1 Q Okay. And I may be using the wrong terminology.

2 A No, you're fine.

3 MS. JONES: Permission to approach,

4 Your Honor.

5 THE COURT: Yes, ma'am. Yes,

6 Solicitor.

7 (STATE EXH. 46, Photo, was marked for
8 identification.)

9 BY MS. JONES:

10 Q Investigator Reynells, I'm going to show you what
11 has been marked for ID only as State's 46. Do you
12 recognize what's in that item?

13 A Yes, ma'am.

14 Q What is that?

15 A This is the evidence bag that I sealed and
16 signed on August 4th at 0735 hours -- or excuse
17 me, August 4th at 1030 hours.

18 Q Okay. Are those the actual shell casings and
19 bullet you collected?

20 A Yes, ma'am.

21 Q Okay. And aside from physically collecting them
22 and placing them in an evidence bag, did you change
23 them, or alter them, or manipulate them in any way?

24 A No, ma'am.

25 Q And when you collected these, what did you do with

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1 them after you collected them?

2 A I collected them. I submitted them into
3 evidence on Hilton Head, which then gets
4 transferred to the main evidence facility in
5 Beaufort, and then I completed a SLED request for
6 the projectile and the collected shell casings to
7 be examined.

8 Q What sort of examination did you request?

9 A A firearms examination, which basically they
10 can look at markings on the casings and the primer
11 strike and determine if the shells were fired by
12 the same firearm.

13 Q Did you request any other sort of examination by
14 SLED?

15 A I requested examination of the projectile and
16 some other projectiles that were recovered in
17 January of 2019.

18 Q But this evidence, you just asked that the firearm
19 section of SLED analyze it, correct?

20 A Correct.

21 Q And why is that? SLED has other departments,
22 don't they?

23 A They do.

24 Q Such as DNA?

25 A The DNA, which we would handle in-house with

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1 the sheriff's office. They handle GSR. If you --
2 which is short for gunshot residue. If you can
3 come in contact with individuals within the
4 allotted amount of time to retain the GSR kit for
5 analysis.

6 Q And do you know what that time is?

7 A Six hours.

8 Q And we're going to fast-forward a little bit.
9 Because you brought it up, did you come into contact
10 with the defendant, Joseph Burton, within six hours of
11 the shooting?

12 A No, I did not.

13 Q Okay. So as far as you know, there was no GSR
14 test done on him?

15 A That's correct.

16 Q Okay. So why weren't these shell casings
17 submitted for fingerprint analysis or DNA analysis?

18 A Typically, because of the heat involved with
19 the firing of the weapon and the extreme pressure
20 blowback when it comes out of the chamber, excuse
21 me, it's not a reliable source. Plus, I have no
22 idea not -- I don't now know nor did I then whose
23 -- how many people that the firearm came into
24 contact with.

25 Q Okay. You mentioned you collected a couple of

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1 other projectiles. While we are on that topic --

2 (STATE EXH. 54, Bags in container, was
3 marked for identification.)

4 MS. JONES: Permission to approach.

5 THE COURT: Yes, Solicitor.

6 BY MS. JONES:

7 Q -- I'm going to hand you what has been marked as
8 State's 54. If you could identify those bags within
9 that container?

10 A Yes.

11 Q And what are those?

12 A These bags were sent to me by the Lee County
13 Sheriff's Office in Florida, and these were two
14 projectiles that were recovered from the victim,
15 Shaun Fells, after he succumbed to his injuries of
16 January 2019.

17 Q Okay. Were those collected during his autopsy?

18 A They were collected during his autopsy and
19 taken into custody by the Lee County Sheriff's
20 Office.

21 Q And aside from you sealing those evidence bags --

22 A They actually sealed them in these evidence
23 bags and I added my own over the top.

24 Q Okay. But they were sealed when they came into
25 your custody and control?

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1 A Right.

2 Q And when did they came into your control, did you
3 manipulate changes or alter them in any way?

4 A No. I literally squeezed the bags to make
5 sure it felt like there was a projectile inside
6 and then submitted them to evidence.

7 Q Okay. And did you submit those for testing as
8 well?

9 A I did. I submitted them for comparison
10 against the recovered shell casings.

11 Q Okay. Now, when you are on scene, do you have a
12 chance to interview anybody?

13 A I had an opportunity, briefly, to speak
14 with -- or I should say, I attempted to speak with
15 Mr. Christian Paez and was unable to do so because
16 he was a little fired up that evening. After
17 that, I spoke --

18 MR. LEE: I didn't hear that, I'm sorry.
19 He was a little?

20 THE WITNESS: I said he was upset.

21 MR. LEE: Upset.

22 THE WITNESS: Upset, sir. Sorry.

23 MR. LEE: Thank you.

24 THE WITNESS: And I did conduct a brief
25 interview of Mr. Austin Radel on scene.

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1 BY MS. JONES:

2 Q And how was he acting?

3 A He was also very upset, very emotional.

4 Angry, sad, kind of a mix of everything.

5 Q Now, you've been in law enforcement for how many
6 years again?

7 A Twelve now.

8 Q And you deal with an array of emotions with
9 witnesses.

10 A Uh-huh.

11 Q On both side of the fence.

12 A Uh-huh.

13 Q I'm sorry. You're going to have to say yes.

14 A Yes, I do. I'm sorry.

15 Q And do you come into contact with people who don't
16 want to cooperate with law enforcement?

17 A Regularly.

18 Q And what are some reasons people don't want to
19 cooperate?

20 A Loyalty, concern about getting in trouble,
21 loss of income. I mean, there's a lot of --
22 there's any number of reasons why they don't want
23 to. They don't want to be labeled a snitch in
24 some cases. They don't think you're going to help
25 them in any way, or the streets will handle it,

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1 not the police. It's almost limitless as to why
2 they do or don't want to talk with us.

3 Q And on the night when you were on the scene, would
4 you characterize Austin Radel and Christian Paez as
5 cooperative or uncooperative?

6 A I would characterize Mr. Paez as
7 uncooperative and Mr. Radel as moderately
8 cooperative.

9 Q And how about throughout this investigation up
10 until court today?

11 A For both those gentlemen?

12 Q Yes.

13 A The one conversation I had on scene with
14 Mr. Radel was, in fact, the only one I was ever
15 able to have with them. There were numerous
16 attempts made after the fact to follow up with
17 him. They were unsuccessful on my part.

18 Q Okay.

19 A And I was also unsuccessful in getting any
20 kind of formal statement out of Mr. Paez with
21 attempts after the fact.

22 Q Now, how about a Kyle Burden, did you speak with
23 him on scene?

24 A Yeah, I identified Mr. Burden on scene. He
25 was actually standing there with Mr. Radel when I

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1 arrived and was immediately next to Mr. Radel
2 while I was talking to him.

3 Mr. Burden was also very emotionally upset,
4 angry, sad. He did not wish to speak with me at that
5 time. He was very anxious to get to the hospital to
6 check on the status of his friend, which in an
7 instance like this is very -- not unusual at all for
8 people to be focused on the victim as opposed to, you
9 know, being interviewed by law enforcement.

10 Q And have you had the opportunity to see him since
11 then and tried to interview him about this case?

12 A No.

13 Q After attempting to talk to those potential
14 witnesses, what do you do next?

15 A Well, I collected the surveillance video from
16 the store manager. And after I obtained the
17 surveillance video, I returned to my office to
18 turn in the evidence I had collected as well as to
19 start a review of the surveillance video.

20 And as soon as I watched the surveillance
21 video, I recognized a handful of people in it that
22 appeared to be involved, or at least part of the group
23 that was there. And once I did that, I was able to
24 quickly work my way through Facebook, my own, you
25 know, law enforcement database records and whatnot to

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1 determine who the other associates were.

2 Q So you were able to determine parties from -- were
3 you able to determine that there were two groups
4 involved in this incident?

5 A Yes. There are -- there's a small -- small.
6 There's a silver sedan that shows up and a group
7 gets out of that sedan and enters into the
8 business, and is in there without any interaction
9 with what I'm going to call the victim's vehicle
10 that shows up about six or seven minutes later
11 with their own individuals, and then they go
12 inside. But prior to that, there's clearly two
13 different groups.

14 Q Okay. And I'm going to show you what has already
15 been admitted as State's 50. Are these the
16 individuals that came out of silver sedan?

17 A Mr. Frazier did in all white, Miss Martinez
18 did in the plaid sleeveless shirt, and Miss
19 Crystal Hobbs did in the maroon tank top.
20 Mr. Shaquille Green actually showed up on a
21 bicycle or on foot a few moments after they
22 arrived.

23 Q Okay. And there was another passenger in that
24 car, wasn't there?

25 A There was.

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1 Q I'm going to show you State's 53 previously
2 identified as Joseph Burton, was he the other
3 passenger in that car?

4 A He got out on the front passenger side
5 door.

6 Q And we see a photograph in here that Miss Martinez
7 said was very blurry. I'm going to show you that
8 photograph.

9 (STATE EXH. 49, Photo, was marked for
10 identification.)

11 MS. JONES: Permission to approach,
12 Your Honor.

13 THE COURT: Yes, Solicitor.

14 BY MS. JONES:

15 Q I'm going to hand you what has been marked as
16 State's 49. Do you recognize that?

17 A That is a still from the surveillance video
18 obtained from the Kangaroo Express.

19 Q What does that still show?

20 A That still shows the defendant just up to the
21 right-hand -- off the right-hand corner of that
22 vehicle, his arm extended and there's like muzzle
23 flash.

24 Q And is that a fair and accurate copy of a still
25 from that surveillance?

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1 A It is.

2 MS. JONES: Your Honor, at this time the
3 State moves 49 into evidence.

4 THE COURT: Any objection?

5 MR. LEE: No objection.

6 THE COURT: All right. State's 49
7 admitted without objection.

8 (STATE EXH. 49, Photo, was entered into
9 evidence.)

10 MS. JONES: Permission to publish, Your
11 Honor?

12 THE COURT: Mr. Lee?

13 MR. LEE: No objection.

14 THE COURT: Yes, ma'am.

15 BY MS. JONES:

16 Q Is this what we were just seeing in State's 49?

17 A Yes.

18 Q Again, could you explain what's happening in that
19 top corner, what this image shows?

20 A Yes. In that top corner, you see the
21 vehicle -- high and to the right side is the
22 silver vehicle that the defendant and his party
23 showed up in. This is after the fight inside of
24 the gas station. All the parties have exited
25 outside.

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1 And I know you've shown it a couple of
2 different times, but the defendant, who's seen in
3 the white t-shirt and black pants, had walked up
4 to that vehicle, gone into the front passenger
5 side, that door is still standing open, and come
6 out of that vehicle, and he is -- he is advancing
7 towards the victim who is just behind, or what I
8 call over the hood of that silver SUV parked in
9 the foreground, and he's currently engaged in like
10 a fistfight or physical altercation with
11 Mr. Shaquille Green and Mr. Derrick Frazier during
12 which time the defendant fires at him as he
13 advances.

14 Q Okay. Now, you said you obtained the surveillance
15 from the manager of the gas station?

16 A I did.

17 Q Did you review it?

18 A I did.

19 Q More than once?

20 A At length, yes.

21 Q Okay. Is it multiple clips from different angles?

22 A Yes, there are three different angles that
23 were included. This is camera three, which is
24 mounted near the entrance looking back towards the
25 gas pumps, and then there were two cameras from

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1 the inside, cameras 11 and 12. One was looking to
2 capture people coming in and out of the front door
3 from inside, and then the second one was mounted
4 more over like in the corner by the front door
5 with an angle to look back at the cash registers,
6 the shelving, kind of, you know, a good chunk of
7 the interior of the business.

8 Q And you reviewed all of those films, those camera
9 views?

10 A I did.

11 Q Camera angles?

12 A Yes.

13 Q Were there any interactions between
14 Mr. Shaun Fells and the defendant shown on those
15 views?

16 A When Mr. Fells enters into the business --
17 you'll have to bear with me for a second because I
18 do have a note in here for the time stamp and the
19 specific camera. They do appear standing three or
20 four feet from each other to have, like, a brief,
21 like -- I don't know what's said, but, based on
22 the body language, there doesn't seem to be any
23 animosity there.

24 Q Okay.

25 MS. JONES: Okay. If we could see about

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1 to 4:23 into State's 16.

2 BY MS. JONES:

3 Q Okay.

4 A So that was the interaction I was talking
5 about. That was the only interaction I could find
6 between the victim and the defendant.

7 Q Okay. So based on speaking with Miss Martinez and
8 Miss Hobbs, as well as your knowledge, you were able
9 to identify all of these people, correct?

10 A That's correct.

11 (STATE EXH. 17, Photos, was marked for
12 identification.)

13 BY MS. JONES:

14 Q I'm going to show you what has been marked as
15 State's 17, a smaller version of it.

16 MS. JONES: Permission to approach,
17 Your Honor.

18 THE COURT: Yes, Solicitor.

19 BY MS. JONES:

20 Q Let me hand you what has been marked as
21 State's 17. Do you recognize that?

22 A Yes.

23 Q And who is depicted in that photo array?

24 A The victim, Mr. Christopher Shaun Fells,
25 Christian Paez, and, in the middle there,

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1 Austin Radel wearing the red tank top, and
2 Mr. Kyle Burden, shirtless with the blue shirt
3 draped over his shoulders.

4 Q And that's what all four of these individuals
5 looked like on August 4th of 2018?

6 A Yes. I didn't physically see Mr. Fells, but,
7 obviously, that day he was wearing long pants.

8 Q Okay.

9 A The rest of those gentlemen, I came into
10 contact with.

11 MS. JONES: Your Honor, at this time, the
12 State moves 17 into evidence.

13 THE COURT: Any objection, Mr. Lee?

14 MR. LEE: No objection.

15 THE COURT: All right. State's 17 is
16 admitted into evidence without objection.

17 (STATE EXH. 17, Photos, was entered into
18 evidence.)

19 BY MS. JONES:

20 Q Is this just a larger view?

21 A That is a bigger view of what you just showed
22 me, yes.

23 Q Okay. And again, who do we have depicted here?

24 A That's the victim, Mr. Christopher Shaun
25 Fells, Mr. Christian Paez, Austin Radel, and

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1 Kyle Burden all the way to the right.

2 Q Okay. And you have indicated that at least these
3 three were not cooperative with you?

4 A Correct. Yes.

5 Q Mr. Paez, Mr. Radel, and Mr. Burden.

6 A Yes.

7 Q After reviewing this video, what did you do?

8 A Just a second. After reviewing the video and
9 recognizing Mr. Derrick Frazier and
10 Mr. Shaquille Green, as I'm familiar with them, I
11 started to research and determined who their
12 associates and close friends were on the island,
13 to include Mr. Joseph Burton. Quickly connected
14 Mr. Burton to Miss Martinez because they are, you
15 know, in a relationship, and then started looking
16 closely at what I could observe of Miss Martinez's
17 tattoos in the surveillance video against what I
18 could obtain from her publicly available Facebook
19 page. Actually, I was able to find a relatively
20 recent photo at that time of her wearing the same
21 shirt.

22 And so once I had, kind of, made that
23 connection and then confirmed that Mr. Burton did have
24 a 2006 Nissan Ultima, silver in color, registered to
25 him at █ Greens Road. So I swung by █ Greens Road

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1 later that morning at approximately 0900 hours and
2 observed the Silver Nissan Ultima backed into the
3 driveway, but -- and confirmed, because I was able to
4 get around to the backside on an adjacent road, that
5 it was, in fact, registered to Mr. Burton.

6 Q Okay.

7 MS. JONES: Beg the Court's indulgence.

8 BY MS. JONES:

9 Q I'm going to show you -- you eventually get arrest
10 warrants for these individuals, the persons in the
11 vehicle, correct?

12 A Correct.

13 Q And who was that?

14 A I obtained arrest warrants -- two arrest
15 warrants for Mr. Joseph Burton for attempted
16 murder and possession of a weapon during the
17 commission of a violent crime, and I obtained an
18 arrest warrant, one each, for assault and battery
19 in the 2nd degree for Mr. Shaquille Green and
20 Mr. Derrick Frazier based on the fact that they
21 were attacking the victim just prior to the
22 shooting.

23 MS. JONES: If we could play State's 16
24 from here on.

25 (Video played.)

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1 BY MS. JONES:

2 Q Where is that inside the gas station, those two
3 individuals?

4 A The gentlemen in red is Austin Radel and the
5 other gentleman is Mr. Christian Paez.

6 Q Who is that in all gray?

7 A That's the victim, Mr. Christopher Shaun
8 Fells.

9 MS. JONES: If we can pause it.

10 BY MS. JONES:

11 Q What has happened? What did Shaquille Green just
12 do?

13 A Shaquille Green just gave him a haymaker from
14 the side that I don't believe he could have
15 anticipated was coming because Mr. Fells was
16 retreating as Mr. Derrick Frazier in all white was
17 advancing towards him in an aggressive manner.

18 Q And who is in that area with Mr. Fells?

19 A Right now?

20 Q Yes.

21 A Trevonte Middleton, Michael Martinez,
22 Crystal Hobbs, Chrissie Martinez.

23 Q Who are the two individuals closest to
24 Shaun Fells?

25 A The two individuals closest to him are

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1 Derrick Frazier and Shaquille Green.

2 Q Where is Joseph Burton at this time?

3 A He is actually leaning down into the open
4 front side of the passenger's door of the silver
5 car.

6 MS. JONES: If we can continue it.

7 (Video played.)

8 MS. JONES: Can you pause it?

9 BY MS. JONES:

10 Q What's happening right there?

11 A He's shooting the victim.

12 Q Who is shooting the victim?

13 A The defendant, Mr. Joseph Burton.

14 Q Okay.

15 MS. JONES: If we can play it.

16 (Video played.)

17 BY MS. JONES:

18 Q Okay. I'm going to show you what has been marked
19 as State's 4, admitted as State's 4. That piece of
20 paper closest to the bottom of the page, what is that
21 marking?

22 A That's marking the spent shell casing.

23 Q And is that in the area of where defendant was
24 advancing on the victim?

25 A Yes, it is.

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1 Q And at a later time, are the charges against the
2 defendant upgraded?

3 A Yes. They were upgraded to murder in January
4 of 2019.

5 Q And why was that?

6 A When Mr. Fells passed away in a long-term
7 care facility in Tallahassee, Florida, the medical
8 examiner -- I won't speak to all the medical
9 terms, he just deemed based on his condition and
10 list of issues that he had physically at the time
11 as a result of his having received all the
12 injuries related to the gunshots.

13 Q All right. And do you see Joseph Burton in the
14 courtroom today?

15 A I do.

16 Q Can you please point him out?

17 A Right over there (indicating).

18 MS. JONES: May the record reflect, the
19 defendant, who is laughing, has been identified by
20 Investigator Reynells.

21 MR. LEE: I'm sorry. What was the
22 identification she just said? The defendant was
23 laughing?

24 THE COURT: Counsel, approach. Counsel
25 approach.

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1 THE COURT: Counselor, what did you just
2 say?

3 MS. JONES: I said, the defendant who is
4 laughing.

5 THE COURT: The defendant's mask was off?

6 MS. JONES: Yes.

7 THE COURT: And you saw him laughing?

8 MS. JONES: Yes.

9 THE COURT: Mr. Lee.

10 MR. LEE: That's outrageous to suggest
11 something like that.

12 THE COURT: I think that's inappropriate.

13 Mr. Lee, I'm going to instruct the jury to
14 disregard that statement. I'll do whatever you want
15 me to do. It's inappropriate.

16 MR. LEE: I would ask for a curative
17 instruction. And then, at that point, I think I
18 would have to say that I'm not satisfied with that
19 and ask for a mistrial and then get a ruling on
20 that. For the record, I think I need to do that.
21 You can deny it.

22 THE COURT: And I would.

23 MS. JONES: I can apologize for my
24 comment.

25 THE COURT: No, no.

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1 By way of a curative instruction, do you
2 have one, or what is it that you -- I want to make
3 sure.

4 MR. LEE: I'd just ask that it be
5 stricken from record.

6 THE COURT: I'll instruct them, I want
7 the comment -- Solicitor's comment to be stricken
8 from the record, and then -- you're okay with
9 that?

10 MR. LEE: Yes, sir.

11 THE COURT: Then what we're going to do
12 is, we're going proceed with your
13 cross-examination. And when you finish, you can
14 make a motion for a mistrial. Do you want to do
15 that? We'll send the jury out so you can make
16 your motion.

17 MR. LEE: I'm not going to make that
18 motion.

19 THE COURT: You do whatever you want to
20 do.

21 MR. LEE: It's inappropriate. She's
22 apologized.

23 THE COURT: Counsel, step back.

24 THE COURT: Ladies and Gentlemen, I'm
25 instructing you to disregard the last statement of

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1 the Solicitor, and do not consider that statement
2 at all.

3 And we are ready to move forward.

4 Does that conclude your direct
5 examination, Solicitor?

6 MS. JONES: That does, Your Honor.

7 THE COURT: All right. Does that cover
8 everything we discussed at the bench?

9 MR. LEE: It does, Your Honor.

10 THE COURT: All right. Are you ready to
11 cross-examine?

12 MR. LEE: Yes. May we approach on a
13 timing issue?

14 THE COURT: Yes, you may.

15 MS. JONES: Yes, sir.

16 MR. LEE: I think my cross will be an
17 hour. I did want to show the video. It's going
18 to take a long time. This might be a good time to
19 stop for lunch. Also, I'll get my computer stuff
20 set up.

21 THE COURT: Any objection to taking a
22 break for lunch now from the State?

23 MS. JONES: No.

24 THE COURT: All right. Step back. Thank
25 you.

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1 Ladies and Gentlemen, I'm informed that
2 this is going to be a good place to take break for
3 lunch, and so what I'm going to do is, it's 20
4 after 12:00, so how about if you will be back in
5 the jury room at 1:30 and we will be able to
6 commence from there.

7 Folks, again, thank you for your
8 attention. Everybody has been paying attention.
9 I appreciate that. But also, it's very important,
10 again, that you do not discuss this case amongst
11 yourselves, that you don't discuss it with anyone
12 else. And then, of course, that you conduct any
13 research in this matter in any way.

14 All right. Anything from the State
15 concerning my instructions to the jury?

16 MS. JONES: No, Your Honor.

17 THE COURT: Anything from the defense?

18 MR. LEE: No, Your Honor.

19 THE COURT: All right. Ladies and
20 Gentlemen, we will see you back in the jury room
21 at 1:30. Thank you.

22 (Jury exits the courtroom at 12:21 p.m.)

23 THE BAILIFF: Jury is clear, Your
24 Honor.

25 THE COURT: Counsel be seated.

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1 THE WITNESS: Yes, sir, Your Honor.

2 THE COURT: Thank you.

3 (Jury enters the courtroom at 1:24 p.m.)

4 THE BAILIFF: Jury is seated, Your
5 Honor.

6 THE COURT: All right. Thank you.
7 Everybody can be seated. Ladies and Gentlemen, I
8 hope you had a good lunch. Thank you for being
9 here.

10 I'm ready now for cross-examination from
11 the defense. Mr. Lee.

12 MR. LEE: Thank you. May it please the
13 Court?

14 CROSS-EXAMINATION

15 BY MR. LEE:

16 Q Did you have a good lunch, Mr. Reynells?

17 A I had a pack of crackers. Very satisfying.

18 Q What is your rank right now?

19 A Sergeant.

20 Q Sergeant.

21 A Yes, sir.

22 Q I always mix that up. Sergeant Reynells.

23 If you're like me, a lot of times you go to
24 lunch during the testimony and you think of things
25 that you wish you would have said or that you would

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1 have asked. Did you have a chance, while you're
2 eating crackers, to think about your testimony that
3 you gave earlier on direct examination?

4 A Yeah.

5 Q Okay. Is there anything else that the jury -- you
6 know, do you want to amend your answers, change them,
7 add something, correct something that may have been
8 misunderstood for the jury based on the questions you
9 were asked?

10 A No.

11 Q Okay. So is it fair to say that the answers you
12 gave to the Solicitor's question were accurate?

13 A Correct.

14 Q And they were complete?

15 A Uh-huh, yes.

16 Q Now, as -- have you been on a jury before?

17 A Yes, sir, I have.

18 Q You have?

19 A You mean seated on the jury?

20 Q Yes.

21 A I have not.

22 Q I haven't either. You testified at trial before,
23 correct?

24 A Yes.

25 Q Okay. So you, kind of, know what the jury's job

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1 is?

2 A Yes.

3 Q Okay. To hear all the evidence and to then
4 ultimately make a decision at the end, correct?

5 A It sounds good, yes.

6 Q Okay. And wouldn't you agree that in order for
7 the jury to do that tough job that they should be
8 advised as much as possible?

9 A Yes, I would agree.

10 Q I would too.

11 All right. Now, you work for the
12 Beaufort County Sheriff's Office?

13 A I do.

14 Q And part of the Beaufort County Sheriff's Office,
15 they have some spin-off departments, spin-off
16 divisions that help or assist in the criminal
17 prosecutions of the State, right?

18 A In reference to what?

19 Q There's a DNA lab now in Beaufort County, right?

20 A There is, yes.

21 Q Is there a fingerprint lab or are they still
22 sending those to SLED?

23 A They still send those out.

24 Q Okay. There's a drug lab?

25 A There is.

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1 Q There is, I guess, what they call a crime lab.

2 There's all kinds of departments and things that

3 assist in the investigation of a crimes, right?

4 A Correct.

5 Q Okay. Including, I think, two planes and a

6 helicopter?

7 A Yeah, correct.

8 Q I saw the helicopter flying over the sandbar the

9 other day.

10 So are you aware that the yearly budget at

11 the sheriff's office is about \$32,000,000?

12 A I would have no idea, but I would assume it's

13 substantial.

14 Q Okay. Is it safe to say that as an investigator

15 you pretty much -- what you need day to day they

16 provide?

17 A Within reason, yeah.

18 Q Sure, I understand. You're not driving some

19 \$200,000 car.

20 A No.

21 Q Now, you were the lead investigator on this case,

22 right?

23 A Right.

24 Q And by lead investigator what we are talking about

25 is, kind of, the buck stops with you. You amass

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1 everything, you head up the investigation, and you're
2 what's known as the lead investigator, correct?

3 A Right.

4 Q So everything comes through you?

5 A Yes.

6 Q Those other officers, they usually do something
7 with the report, send them to you, and you, kind of,
8 incorporate them into a report?

9 A Yes.

10 Q In this case, you did, in fact, do a report. I
11 think it's 52-page report. Does that sound correct?

12 A Yeah. Fifty-two pages wasn't all me. It was
13 my supplemental investigation, along with the
14 original report and everybody else's.

15 Q All right. And have you had a chance to review
16 that report, that 52-page report?

17 A I have.

18 Q And you reviewed it before coming to court, I
19 assume?

20 A Yes, I did. I'm sorry.

21 Q And would you agree that that report that you
22 prepared is truthful?

23 A Yes.

24 Q It's accurate?

25 A Yes.

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1 Q And it's complete?

2 A Yes.

3 Q Is there anything that you, at this point, would
4 like to add to that report that's not in there?

5 A No, not that I can think of off the top of my
6 head.

7 Q So as lead investigator, and personally, as an
8 investigator, your job obviously is to investigate
9 alleged crimes, correct?

10 A Correct.

11 Q And you recognize and you would admit that part of
12 the job of an investigator is really two-fold; one is
13 to amass evidence against guilty people, correct?

14 A Correct.

15 Q But also investigate and amass evidence that might
16 be what we call exculpatory or helping someone who may
17 be accused of a crime, correct?

18 A Yes.

19 Q Fair enough?

20 A Yes.

21 Q So it's just as important to free the innocent as
22 it is to convict the guilty, right?

23 A Absolutely. Yes, sir.

24 Q All right. In your original testimony, you said
25 that there was a vehicle in the crime scene area?

1 A Yes.

2 Q Is that that silver --

3 A Ford Escape.

4 Q It's an Escape. That's like the little SUV?

5 A Yes, it was a silver Ford Escape.

6 Q And that's Christian Paez's vehicle?

7 A Yes.

8 Q So the big guy with a little car?

9 A Yes.

10 Q And I think you said that it was in the crime
11 scene area. Is that inside the tape?

12 A Inside the tape.

13 Q All right. Because a lot of stuff happened right
14 by that vehicle, right?

15 A It did.

16 Q That's how those four guys, apparently, got to the
17 scene, correct?

18 A Correct.

19 Q And that was the same car that originally had been
20 parked off screen that, for some reason, Paez pulls
21 around so it's in the screen in front of the gas
22 pumps, right?

23 A At some point, he moves the vehicle, yes.

24 Q As we're talking, right there in the middle of the
25 screen.

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- 1 A Yeah.
- 2 Q Where Paez exits that vehicle, right?
- 3 A Yes.
- 4 Q Okay. Now, what did you find when you searched
- 5 that vehicle?
- 6 A I did not search that vehicle.
- 7 Q It wasn't searched at all?
- 8 A No.
- 9 Q And Paez was arrested, I think, maybe 45 hours
- 10 after the actual shooting for disorderly conduct?
- 11 A Correct.
- 12 Q And that was his ride. That was his car, right?
- 13 A Uh-huh. Yes.
- 14 Q So wouldn't you agree, not always, but often, when
- 15 someone is arrested for a crime, be it DUI, burglary,
- 16 whatever, that their car is towed if that's how they
- 17 got to the location in the public place?
- 18 A Oftentimes, that's the case, yes.
- 19 Q All right. But on this night, that car wasn't
- 20 seized or towed was it?
- 21 A It was not.
- 22 Q What is the sheriff office's policy in releasing a
- 23 vehicle that is possibly involved in a crime for
- 24 transportation or whatever, what is Beaufort County
- 25 Sheriff's Office's policy on releasing those vehicles

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1 without towing it as far as who you release it to?

2 A I would have to look at the policy to answer
3 that.

4 Q Okay.

5 A I'm sorry.

6 Q Well, first can we assume that the person that
7 it's released to needs to have a valid South Carolina
8 driver's license? Is that fair?

9 A That would be fair.

10 Q Is it fair to suggest that maybe the car has to
11 have insurance on it?

12 A That would also be fair.

13 Q Okay. And you can check those two things, or any
14 officer there could have checked those two things on
15 their computer, correct?

16 A Yes, sir.

17 Q Make sure that it's registered where it's supposed
18 to be and the right tab, that can be checked right
19 there, right?

20 A Correct.

21 Q Okay. Would you also agree that -- let me back
22 up.

23 Austin Radel, the kid with the red.

24 A Yes.

25 Q There seems to some testimony about people being

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1 drunk that we've heard so far. Would you agree that
2 Austin Radel was drunk that night?

3 A I think that was -- he was upset. I don't
4 know what level inebriated he was.

5 Q Did you look into that or ask him -- he didn't
6 take a breath reading, or anything like that?

7 A No.

8 Q It appears there had been some drinking going on
9 by everybody. They been out at the club or the
10 Triangle, or whatever they call it, right?

11 A Yes.

12 Q So assuming Austin Radel was drunk, would it make
13 sense or would it be policy to release this vehicle
14 that's inside the tape to someone who -- do you know
15 whether he was licensed or not?

16 A I do not know.

17 Q Okay. You don't know his license was suspended?

18 A No.

19 Q Did you check the public index at any time to see
20 that he had a driving under suspension that happened
21 right before this?

22 A I did not. No, sir.

23 Q But anyway, he took the car.

24 A Correct.

25 Q So for investigative purposes, it's gone, right?

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1 A Yes.

2 Q Okay. Did you ever go, Sergeant Reynells, to see
3 if there was any footage, video footage from the
4 Triangle area, from the club they call it?

5 A I did not.

6 Q Okay. Because that's where apparently everybody
7 said they were before, right?

8 A Yes.

9 Q Okay.

10 A And I can give you an explanation if needed.

11 Q Yeah.

12 A When I was interviewing Miss Chrissie
13 Martinez, she indicated that they were out of the
14 club earlier, but the altercation that occurred
15 between herself and the gentleman who she didn't
16 know but recognized as the man in the tank top
17 that we now know as Austin Radel occurred in the
18 parking lot.

19 Q Okay?

20 A And there are no cameras that cover the
21 parking lot of that plaza.

22 Q But if you just wanted to see who was there at the
23 club, cameras could have helped?

24 A They might have, yeah.

25 Q Well, what if there had been any other previous

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1 problems that you hadn't been advised of, that could
2 have shown that, right?

3 A Uh-huh.

4 Q The projectile -- and I know what numbered it was
5 that the Solicitor introduced in the form of --

6 A The one that was recovered at the gas
7 station.

8 Q Yeah, yeah, yeah.

9 A Yes, sir.

10 Q Was that sent for any kind of analysis for blood
11 or DNA?

12 A It was sent for firearms analysis to SLED.

13 Q Was it sent for blood or DNA analysis?

14 A No, sir.

15 Q Did it have blood on it?

16 A I believe that it did.

17 Q You believe it did.

18 A Yes.

19 Q Did you swab any of the blood off of it?

20 A No.

21 Q At any point, did you search the store -- the
22 inside of the store for evidence?

23 A Beyond the initial entryway and back to about
24 where the physical altercation took place as far
25 as searched the store.

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1 Q So from like the front door towards the cash
2 register?

3 A Fair enough, yes, sir.

4 Q Did you search the bathroom?

5 A I did not.

6 Q Did you search the laundry room or the utility
7 room they talked about?

8 A No, sir. I did not.

9 Q Did you search the trash cans?

10 A No, I did not.

11 Q Did you search any other part of the story other
12 than from the cash register to the door?

13 A No.

14 Q Did you search where Christian Paez was standing
15 away from the cash register?

16 A No, sir, I did not.

17 Q Did anybody?

18 A Not that I'm aware of.

19 Q Just real quick. It appears on your report, as
20 far as responding officer, it looks like there's 1, 2,
21 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 including you, does
22 that sound about the right of number officers who were
23 on the scene?

24 A Yeah, that sounds right.

25 Q Okay. Did any of those other 11 officers search

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1 the store or search the bathroom, anything like
2 that?

3 A Not that I'm aware of, no.

4 Q If they had searched, as the lead investigator,
5 you would have known about it, correct?

6 A I would hope so, yes.

7 Q So, time-wise, the shooting happens at 2:19 and
8 zero seconds a.m., right?

9 A Correct.

10 Q What is that, 0219 hours in military time?

11 A Yes.

12 Q So it was actually 2:19, is when they're showing
13 us.

14 A Right.

15 Q And you arrive at, like, 0250, I think you said?
16 Is that what you said?

17 A No. Roughly, 0230.

18 Q 0230, okay. So about 11 minutes afterwards.

19 Okay. What time and day did you get the
20 warrant, when you take the warrant to the judge
21 for signature to get the warrant for attempted
22 murder on Joseph Burton?

23 A It was at early morning hours. Bond court on
24 the following day, August 5th.

25 Q Okay. It looks like warrant by Judge Scott on

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1 8/5/2018.

2 A Yeah, that would been the bond court the
3 following morning.

4 Q So when was the warrant prepared?

5 A The warrant was prepared on 8/4.

6 Q Okay.

7 A And I spend the better part of my afternoon
8 driving around the northern side of the county
9 trying to obtain a judge to get them signed.

10 Q So what time on 8/4 was it that you actually
11 prepared the warrant, do you know?

12 A I can't physically prepare it. I wrote the
13 affidavits.

14 Q Okay.

15 A And I initially responded to meet with Judge
16 Tupper, and he did not have any warrant paper at
17 his residence so I could not do it. And then I
18 called Judge Scott --

19 Q Okay.

20 A And she was not able to respond because she
21 was out of town with family, and she indicated I
22 could meet with her first thing tomorrow
23 morning.

24 Q I guess the question is: What time did you do
25 that affidavit which essentially was the end of your

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1 initial investigation? You said early morning
2 hours?

3 A I would say following the interview of
4 Chrissie Martinez and Crystal Hobbs. So sometime
5 after lunch on the 4th.

6 Q The 4th, okay.

7 A So moved them around. The last thing I did
8 was like at 12:45.

9 Q Okay. So we're talking about 2:00 a.m. until
10 12:45, right?

11 A Roughly.

12 Q So 10 hours and 45 minutes?

13 A Roughly, yes.

14 Q All right. It appears that you were the one that
15 went to Mr. Killian to get the camera footage.

16 A Yes, sir. I met with him at the store about
17 0400 hours.

18 Q Let me back up. You said that there was no DNA or
19 fingerprint analysis performed on the five shell
20 casings in the parking lot, correct?

21 A Yes, sir.

22 Q And you said that you didn't think that there was
23 a good chance of something being on it?

24 A Yes.

25 Q Would there be any reason to not do it, though? I

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1 mean, do you lose anything by doing it and they say we
2 don't see anything?

3 A No.

4 Q Okay. And you didn't do any GSR, gunshot residue
5 on anyone, did you?

6 A I did not.

7 Q Did you consider doing it on Christian Paez?

8 A No, I did not.

9 Q Okay. Because GSR doesn't necessarily indicate
10 that you had to fire a firearm, but if you handled a
11 firearm the same lead ware antinomies that GSR tests
12 would show up on your hand, even if you handled a
13 firearm but not shot one, right? Do you agree with
14 that?

15 A It is possible, yes.

16 Q Possible.

17 A But that firearm would have to have been
18 fired relatively recently in order to have that on
19 round on it for transfer.

20 Q Right. Obviously --

21 A It's possible, yes.

22 Q -- the firearm throws stuff everywhere, including
23 on the gun. So if you have a gun there and you touch
24 it, you very well could have GSR on you without having
25 fired the firearm?

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1 A Yes, sir. You can possibly have that.

2 Q All right. Back up. That was, sort of, a
3 diversion.

4 You are the one who got the footage from the
5 Kangaroo, right?

6 A Correct.

7 Q And I think Mr. Killian even testified yesterday
8 he's the one that provided that to you?

9 A That is correct.

10 Q Are you the one that downloaded and submitted
11 evidence eventually?

12 A Yes. All I did was take his copy -- his CDs
13 that he gave me and turn them into evidence.

14 Q Okay. But before doing that, you reviewed it in
15 full and you said you didn't review it at length?

16 A Yeah.

17 Q Obviously, from your report, as far as some of the
18 times and stuff -- I mean, obviously, you had to watch
19 everything and watch it maybe a couple times to narrow
20 down times and that stuff, right?

21 A Correct.

22 Q So you reviewed all of the footage that you
23 received at length?

24 A Yes.

25 Q Okay. And you reviewed what happened before the

1 shooting, right?

2 A Yes, sir.

3 Q Essentially, during the shooting?

4 A Yes.

5 Q Okay. How about after the shooting?

6 A I reviewed the reactions of the gentleman
7 still in the store and the cashier that was
8 running outside on her phone, and that's about
9 it.

10 Q We'll talk about that.

11 But wouldn't you agree that things that
12 happened after -- things that happened after the
13 shooting could be very relevant and very important to
14 put in proper focus or proper picture as to what
15 happened before?

16 A It can be, yes.

17 Q So all three of those times, before, during, and
18 after are probably equally as important from an
19 investigation standpoint?

20 A Yes, sir. They can be, absolutely.

21 Q And obviously the things that happened closer to
22 the actual shooting are probably more important than
23 things that happened -- I mean, watching than the
24 tape, six hours later, isn't really going to help you
25 on the crime, does it?

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1 A Generally not, no.

2 Q So you watched this highlight reel that the
3 Solicitor played, 11-minute montage, or whatever, you
4 watched that, right?

5 A I have.

6 Q Okay. Did you play any part in creating that?

7 A No, sir.

8 Q Okay. Did you have any input as to what clips
9 went into there?

10 A Absolutely, not. That was the first time I
11 saw it, yes, sir.

12 Q Do you believe that the clips as shown are a fair
13 depiction of what happened?

14 A I do.

15 Q Do you think they're an accurate depiction of what
16 happened?

17 A I do.

18 Q Do you think they're a complete depiction of what
19 happened that night?

20 A The videos collected?

21 Q Yes, sir. No. The video presented, the 11-minute
22 highlights, I guess.

23 A Ask your question again, please.

24 Q Do you believe that the clips shown are a complete
25 depiction of what happened that night?

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1 A I believe that they show the altercation and
2 subsequent shooting of Shaun Fells, yes, sir.

3 Q Do you think they contain -- video-wise, do you
4 think they contain everything that a jury should know
5 about this case?

6 A That's a good question. I don't know.

7 Q We'll get to that in a minute.

8 All right. So the footage that you got was
9 what we call raw footage. It wasn't any type of
10 putting-it-together thing like they did.

11 A I have a pile of files for each of three
12 cameras broken up into, like, the specific
13 minutes.

14 Q So there's one that, kind of, looks out into the
15 parking lot towards Paez's car?

16 A Correct.

17 Q There's one that, kind of, looks towards the cash
18 register and the ice cream machine or ice cream thing
19 that the lady got pushed against, right?

20 A Yes.

21 Q And there's one that, kind of, looks back the
22 other way.

23 A And when you say the other way, you mean back
24 towards the rest of the store?

25 Q Yeah. Back towards going to the bathrooms?

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1 A Yes.

2 Q I think camera 3, 11, and 12. I'm not sure which
3 ones are which.

4 And none of these had any sound on them.

5 A That is correct.

6 Q And so, you had to attempt to ascertain or surmise
7 some things by only being able to see the video,
8 correct?

9 A Correct.

10 Q Okay. And some things you had to speculate or
11 guess or guesstimate, is that right, because there's
12 no sound?

13 A Yes.

14 Q Okay. Like body language?

15 A Yes, correct.

16 Q All right. Do you have any special training,
17 experience, education as to reading body language?

18 A I don't have any formal training. It's just
19 a regular part of my job, essentially.

20 Q So let's talk real quick, and I think it's in your
21 report, when Fells enters the store, okay?

22 A Yes, sir.

23 Q He's standing here, Joe-Joe is standing here.
24 They have a little bit of a conversation, right?

25 A Yeah.

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1 Q Hey, what's up. And wouldn't you agree that, in
2 fact, it even appears this Mr. Burton smiled at
3 Mr. Fells?

4 A It, kind of, seems that way. Yes.

5 Q And I think your language was something about --
6 the body language exhibited by both Fells and Burton
7 would not indicate an issue or negative interaction.

8 A That sounds like exactly what I wrote.

9 Q Because, in fact, he is smiling.

10 Okay. And then later on in one of the
11 videos, it actually shows Mr. Burton stepping between
12 Austin Radel and Shaquille Green who are, kind of,
13 squared up with each other, right?

14 A Correct.

15 Q That's in your report.

16 And there's also something where -- I guess
17 when Kyle Burden got -- shows up, the guy with no
18 shirt, it really looks like he's drunk. He, kind
19 of -- he's there and somebody comes, it looks like
20 Burden, he goes outside and he's all like hugging up
21 on him and stuff, right? Hugging up on his buddy.

22 A Correct. I mean, he was definitely having
23 interactions with Mr. Burton outside the store.

24 Q Okay. And all was positive?

25 A Yeah.

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1 Q All right. I'm going to ask you about the three
2 guys that it's determined arrived and were friends
3 with Christopher Shaun Fells. Each one of them, I
4 think, you described as being non-cooperative, right?

5 A Essentially, yes, sir.

6 Q Let's start with Radel, however, you pronounce his
7 name. He's the guy with the red t-shirt with the
8 Mickey Mouse hat on sideways?

9 A Correct, yes.

10 Q And he's the one who was involved in the physical
11 altercation in the car -- in the store with
12 Shaquille Green?

13 A That is correct, yes.

14 Q Now, there's some indication that somebody told
15 him he was getting too familiar with
16 Chrissie Martinez, right?

17 A Yes.

18 Q Now, did you review the footage to check that
19 out?

20 A I did review the footage.

21 Q Okay.

22 A And we can read that part, if you'd like.

23 Q Let me find where I'm going to ask you about that.
24 There's really two angles that show that, him behind
25 Chrissie Martinez, right?

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1 A Correct. One from inside the store looking
2 at the front door, and one, kind of, looking back
3 towards the rest of the store.

4 Q And you looked -- you watched both of those.

5 A I did.

6 Q When you talked to Chrissie Martinez during your
7 interview, she told you she was unaware that this guy
8 was leaning on her, right?

9 A She said she became aware of it when the
10 gentleman in all white, who we identified as
11 Derrick Frazier, said something like, hey, man,
12 back off, or something to that effect.

13 Q But he wasn't rubbing up on her, or anything like
14 that?

15 A No, there was a gap between them.

16 Q Okay. I was going to say, if you look at the
17 other angle from this way, there's actually probably a
18 gap probably that wide between them, right?

19 A Correct.

20 Q So you saw and you looked at part of the video to
21 see if there was an actual --

22 A I did not see any physical contact between
23 Mr. Radel and --

24 Q And as part of your investigation as well, didn't
25 you determine that Mr. Radel was attempting to

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1 distract the cashier?

2 A That was my conclusion, yes, sir.

3 Q Okay. Based on your reading of body language, et
4 cetera?

5 A Yes.

6 Q And why was he trying to distract the cashier?

7 A I believe that the victim was moving multiple
8 cases of beer out of the store without paying for
9 it.

10 Q Okay. Which we call shoplifting?

11 A Yes, sir.

12 Q So it appeared that they were working in concert
13 to shoplift beer?

14 A It would appear that way, yes.

15 Q Was he successful in shoplifting the beer?

16 A Yes, he was.

17 Q All right. I am now going to attempt to show
18 you -- it will not be nearly as smooth as the
19 Solicitor's presentation. I'm going to attempt to
20 show you some clips of the video, so please bear with
21 me. I probably need my 8-year-old or 10-year-old
22 daughter. I don't have anybody else to do it. Bear
23 with me one second.

24 I'm going to play some video clips and ask
25 you to -- bear with me one minute. This is one of the

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1 camera views we talked about, right?

2 A That is correct.

3 Q Okay. I am going to fast-forward. You told me
4 that you thought that 2:19 and zero seconds is when
5 the shots were fired, correct?

6 A I think that's the number you picked. I can
7 go back and find that in my notes.

8 Q Let's go see.

9 (Video played.)

10 BY MS. JONES:

11 Q This would be -- so 2:19 is right now, correct?

12 A Yes, sir.

13 Q So Paez is still in the store, right?

14 A Yes.

15 Q All right. Keep watching. 2:19:13, does that
16 appear to be when Kyle Burden comes in and tells Radel
17 something happened in the parking lot?

18 A Yes.

19 Q Radel leaves. 2:19:17, Paez is still in the
20 store?

21 A He is.

22 Q And there's no way out the back? There's one way
23 in and one way out, right?

24 A As far as I know, yes, sir.

25 Q Did you investigate to see if there's a way out or

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1 a second door?

2 A No, I didn't.

3 Q You didn't see one?

4 A No.

5 Q So let's -- this thing is going to end, so let's
6 keep watching it. This is post shooting. It appears
7 Paez right there for a second in the corner, do you
8 see that?

9 A That lower right-hand corner?

10 Q Yeah.

11 A Possibly.

12 Q Okay.

13 A The other angle would show it better.

14 Q We'll show that in a minute. 2:19:45, 45 seconds
15 after this happened, right?

16 A Correct.

17 Q The lady on the clerk is the clerk, Autumn Lynn?

18 A Yes.

19 Q She looks like she's on a cell phone?

20 A Yes.

21 Q Okay. And it's probably not a crazy assumption to
22 assume she's on with 911?

23 A Yes, sir.

24 Q And then the guy that walks by is Kyle Burden,
25 right?

1 A Correct.

2 Q Going back in the store?

3 A Yes.

4 Q Okay. Paez is still in the store?

5 A Yes.

6 Q Okay. Cashier is going outside. This is going to
7 end in 12 seconds at 2:20:19. So 2:20:19 --

8 A Correct.

9 Q A minute and 19 seconds, Paez is still in the
10 store, right?

11 A Yes, sir.

12 Q Did you watch this video by the way?

13 A Yes.

14 Q Okay. And Burden went out of the store. So let
15 me go to Paez. Paez, what's the time on there?

16 A 2:20 and 31 seconds, about 12 seconds after
17 the other one.

18 Q So, assuming 2:19:00, a minute and 31 seconds Paez
19 leaves the store?

20 A Yes, sir.

21 Q Okay. And left before then, right?

22 A Yes, sir.

23 Q Okay. And heads outside? Did you watch this
24 video?

25 A Yup. Yes.

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1 Q So, what does Paez do next when he goes outside,
2 do you know? Do you remember?

3 A I believe he wanders over in front of his car
4 to the gas pumps.

5 Q All right. This is the view looking out towards
6 the parking lot, right?

7 A Correct.

8 Q This is 2:14:17. This is well before 2:19,
9 right?

10 A Correct.

11 Q Okay. So, in order to see what Paez does when he
12 goes out of the door, we have to -- we have to forward
13 this approximately six minutes.

14 A That's correct. That's the clerk walking
15 around.

16 Q Perfect timing. That was lucky. So that's Paez
17 walking out, correct?

18 A Right.

19 Q 2:20:35. The clerk is out there. He walks out.
20 That's his car, right?

21 A Yes.

22 Q We don't know why he moved it there, do we?

23 A We do not, no.

24 Q He appears to be leaning over. Did you watch
25 this?

1 A Yes.

2 Q Okay. Is there anything, as you watched, that
3 you, as an investigator, think you're going to follow
4 up on or look into or were concerned about or
5 something the jury needs to hear, or anything like
6 that?

7 A No, sir.

8 Q Okay, let's keep watching. Right here, what is he
9 doing?

10 A He's going into his car.

11 Q Okay. What's he doing going into his car?

12 A I have no idea.

13 Q Is he picking something up, hiding something,
14 leaving something, do you know?

15 A I don't know.

16 Q Okay. And law enforcement has not arrived yet,
17 right?

18 A Correct.

19 Q But he leans into his car. Gets out of his car.
20 Do you know what he's doing there?

21 A I don't.

22 Q Okay. I'm stalling while I'm trying to figure out
23 my next clip. I apologize.

24 A Law enforcement is on the scene now.

25 Q I'm sorry?

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- 1 A I said, law enforcement is on the scene now.
- 2 Q 2:23:23, is when they get there?
- 3 A Yeah.
- 4 Q Okay. This is different view of the store looking
5 the other way towards the back, right?
- 6 A Right.
- 7 Q And in the back top right corner of this, that's
8 where the bathroom and the storage area and the mop
9 room, whatever you call it, is, right?
- 10 A Yes, sir.
- 11 Q Did you and go look at the store?
- 12 A Yes, I did.
- 13 Q Okay. So I'm going to fast forward this to the
14 time of the shooting, 2:19. All right?
- 15 A Yup.
- 16 Q This is Paez and Radel, right?
- 17 A Correct.
- 18 Q Okay. So the shooting should happen right then.
19 Paez is still in the store wandering around over there
20 for some reason, apparently.
- 21 2:19:13 is when Burden came in and told Radel
22 about the shooting, right?
- 23 A Correct.
- 24 Q So this is Paez. He turns around and walks by the
25 clerk, right?

1 A Yes.

2 Q He walks to the back of the store it looks like,
3 correct?

4 A Yeah.

5 Q Kind of disappears, right. The clerk is on the
6 phone probably with 911, right?

7 A Yeah.

8 Q Is that Burden that came back in just then?

9 A That is.

10 Q Okay. Burden walks back to where Paez is?

11 A Yes.

12 Q Okay. Still no Paez. At this point, it's 2:20,
13 so it's over a minute since the shooting; is that
14 right?

15 A Yes, sir.

16 Q Okay. This is going to end.

17 2:20:19, it looked like Paez was just
18 starting to walk out the back, did you see that?

19 A Yes, sir.

20 Q Let me go to the next one. That's Paez walking
21 out?

22 A Yes, sir.

23 Q So it was 2:20:30, right?

24 A A minute and 30 seconds, yes.

25 Q A minute, 30. So it's 90 seconds before he even

TESTIMONY-REYNELLS

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1 walks out there to check on his friend, right?

2 A Correct.

3 Q Okay. So you saw this as part of your
4 investigation?

5 A Yes, sir.

6 Q Do you know where Paez went during that minute,
7 30?

8 A I don't. Just off camera.

9 Q Did you search anyplace he might have been --

10 A No, sir.

11 Q -- in the store?

12 A No, I did not.

13 Q Didn't you describe earlier -- let me ask you:
14 Was Paez, quote, demanding justice for his friend
15 outside in the parking lot?

16 A That's what I wrote because the few minutes
17 following my arrival on scene, he was, kind of,
18 shouting that.

19 Q So those are your words?

20 A Those are my words, yes, sir.

21 Q All right. Demanding justice for
22 Christopher Shaun Fells?

23 A Correct.

24 Q And then he wouldn't cooperate.

25 A Correct.

TESTIMONY-REYNELLS

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1 Q You testified earlier -- the Solicitor was trying
2 to get you to give reasons why people may not
3 cooperate. And while there's plenty of them that you
4 talked about, wouldn't you think self-preservation is
5 a very strong motivation for not cooperating?

6 A Self-preservation is probably near the top.

7 Q Yeah, looking out for Number 1.

8 A Yeah.

9 Q And so after 20 or 30 minutes on scene, after he
10 finally walked out to check on his friend and went to
11 his car, Paez is arrested for public disorderly
12 conduct, right?

13 A Correct.

14 Q It was about 20 or 30 minutes after the shooting
15 that he got arrested, right?

16 A Yes.

17 Q Okay. And during all that time, he's walking
18 around, he's, you know, apparently saying some things,
19 demanding justice, he's talking to people, but it
20 wasn't, like, instantaneous, as soon as you show up,
21 he was just out of control. I mean, he's a big dude,
22 right?

23 A I got there after everybody else did, and it
24 was my impression that it was already an issue
25 upon my arrival.

TESTIMONY-REYNELLS

432

1 Q Okay.

2 A He didn't get -- he got arrested shortly
3 after my arrival.

4 Q Right.

5 A And I attempted to reason with him and calm
6 him in down in the interim. It was to no avail.

7 Q And his take on it was, he was so upset by what
8 happened that he couldn't control his emotions and
9 that he just wasn't going to cooperate with the
10 police, right?

11 A You're saying that's what he said?

12 Q Is that what he essentially is saying?

13 A I think his emotions were running the show
14 that night, yes, sir.

15 Q You think his emotions were what?

16 A I think his emotions were preventing him from
17 communicating that night, yes.

18 Q Preventing him from communicating, okay.

19 A Yeah. I mean, he is angry. He was upset.
20 He was saddened.

21 Q Is that consistent with someone who hangs out for
22 a minute and a half inside of a store after his
23 buddy's been shot?

24 A That's a great question because everything --
25 you're assuming that everybody reacts the same way

TESTIMONY-REYNELLS

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1 to something, and they don't.

2 Q I know people react differently.

3 A I would say it is not the -- not -- I can't
4 say if it's normal or not normal. I know that his
5 emotions are normal, yes.

6 Q In fact, once he finally decided to go out there,
7 he walked over, looked down a little bit, and then
8 what he decided to do, walk back to his car, open up
9 the door, do something in the car, and then walk back
10 over there, right?

11 A Yes.

12 Q But you're saying at some point he became so
13 emotional that he couldn't talk?

14 A Correct.

15 Q Okay. To the extent you had to arrest him for
16 public disorderly conduct?

17 A Unfortunately, yes.

18 Q Why unfortunately?

19 A Because I was concerned that his arrest would
20 further make it -- it would make it more difficult
21 for him to trust us and talk with us, honestly.

22 Q If you arrested him.

23 A Yeah.

24 Q Is that why you didn't tow his car to maybe like
25 you a little bit?

TESTIMONY-REYNELLS

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- 1 A No.
- 2 Q Okay. All right. So he was taken off to jail by
- 3 Hardy, right?
- 4 A I believe so, yes, sir.
- 5 Q So the next morning, you go by the detention
- 6 center, correct?
- 7 A Yes.
- 8 Q And as lead investigator, you get Officer Muhomon
- 9 to go over there and talk to him, right?
- 10 A Or to see if he's willing to talk about the
- 11 events from the night before, yes, sir.
- 12 Q Everything has settled down. He's had a chance to
- 13 get a night's sleep and see if he wants to talk,
- 14 right?
- 15 A Correct.
- 16 Q What did he say?
- 17 A He said, no way, but not that nicely.
- 18 Q Was he still out of control emotionally at that
- 19 point?
- 20 A It was described to me that he was still very
- 21 upset, but I don't think he was out of control. I
- 22 wasn't there.
- 23 Q Okay. This is the guy who's demanding justice for
- 24 his friend.
- 25 A Correct.

TESTIMONY-REYNELLS

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1 Q This is the guy that was here yesterday. Did you
2 see him in here yesterday?

3 A I did.

4 Q Under subpoena.

5 A Uh-huh.

6 Q Demanding justice for his friend?

7 A No.

8 Q So he's still around, Paez.

9 A Yesterday was the first time I had seen him
10 in many, many months.

11 Q Well, obviously, somebody found him to serve a
12 subpoena and to say you better be in court, right?

13 A Correct.

14 Q Okay. So he wasn't cooperative then, and he
15 hasn't been -- well, he wants no part of this.

16 A Correct.

17 Q All right. Let's talk about the other guy.
18 Austin Radel, or Radel, however you say it.

19 A Yes, sir.

20 Q The guy with the Mickey Mouse hat turned sideways.

21 A Yes.

22 Q He at least goes out after Burden comes in when he
23 hears the guy get shot, right?

24 A Yes.

25 Q He probably wanted justice for his friend, too,

TESTIMONY-REYNELLS

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1 didn't he?

2 A I would hope so.

3 Q Did he act like he wanted justice for his friend?

4 Did his actions indicate that he wanted justice for
5 friend?

6 A How would you determine that?

7 Q Help the police.

8 A He spoke with me when asked, yes, briefly.

9 Q And, in your report, your 52-page report, you kind
10 of list all the witness at the end, right?

11 A Correct.

12 Q And let's see. You got an address for him,
13 right?

14 A Yes, sir.

15 Q All right. Did you go and try to talk to him the
16 next day?

17 A I did, and very many days after that.

18 Q Okay. And in a nice way he told you to get lost,
19 didn't he?

20 A Yeah.

21 Q You don't know his motivation for that?

22 A I don't.

23 Q Was it self-preservation?

24 A Could have been.

25 Q Maybe hiding something?

TESTIMONY-REYNELLS

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1 A If you say so. I mean...

2 Q I'm asking you. Could he have been hiding
3 something?

4 A He could have been.

5 Q Okay. Like Kyle Burden, the guy with no shirt on
6 who obviously apparently was intoxicated. What did
7 you do with him that night?

8 A He was not -- he was very emotionally upset
9 and did not wish to speak with any of us on the
10 scene.

11 Q He wouldn't even tell you who he was at first,
12 would he?

13 A He wouldn't tell those other guys, yes.

14 Q You're an investigator.

15 A I showed up after all that.

16 Q Okay.

17 A However, I was able to get a phone number for
18 him, an address, and attempted to follow up after
19 the evening and he politely declined to provide
20 any input.

21 Q He politely refused to cooperate?

22 A Yeah.

23 Q Do you have witnesses who refuse to cooperate?

24 A All the time.

25 Q And if they refuse to cooperate with you --

TESTIMONY-REYNELLS

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1 A You can't force them.

2 Q -- they just don't.

3 A You can't force them to cooperate. You just
4 hope they do it.

5 Q Because they're not compelled to cooperate,
6 right?

7 A Correct.

8 Q They may not cooperate because they might
9 incriminate themselves, right?

10 A Yes, sir.

11 Q But when a case goes to court and they get
12 subpoenaed, they have to cooperate or be held in
13 contempt of court, right?

14 A That is correct.

15 Q Have you ever seen anybody be held in contempt of
16 court?

17 A Once or twice in magistrate, yes, sir.

18 Q So, if they're subpoenaed and they come to court
19 and they won't talk, they get found in contempt and go
20 to jail, right?

21 A Yes, sir.

22 Q And then they go stand there and swear to tell the
23 truth, and whether they want to tell it or not,
24 they're swearing to tell the truth, right?

25 A Yes, sir.

TESTIMONY-REYNELLS

439

1 Q All right. Moving on to a different subject. I

2 don't remember hearing about this in direct, but

3 didn't you find a droplet of blood inside the

4 convenience store that night?

5 A I did.

6 Q And where did you find that?

7 A It was -- if you'll just give me a second, I

8 will find that in my report.

9 Q I think it's on -- well, I won't -- page 14.

10 A It's on the floor inside the business.

11 Q Okay.

12 A What did you say, page 14?

13 Q Fourteen.

14 A Fourteen, okay.

15 Q At the bottom, "I then responded inside the

16 business."

17 A All right. A large drop of the blood located

18 just inside the doorway. It was round, indicating

19 it dropped straight to the floor, and the cashier

20 didn't believe it was present prior to. And later

21 on when reviewing for surveillance video, I was

22 able to determine it was Mr. Shaquille Green's.

23 Q Let's back up a second. You went inside the store

24 to review the video footage. It says, "From entering

25 the store, you entered a large droplet of blood

TESTIMONY-REYNELLS

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1 located just inside the door." The same door we've
2 been watching on the video?

3 A Correct.

4 Q It was round, indicating it dropped straight to
5 the floor. Okay. Just the way it splattered?

6 A There wasn't a lot of movement. Meaning it
7 dropped while someone was in transit, which tends
8 to make it get drawn out.

9 Q Like when it drips off of someone.

10 A Like down, as opposed to in direction --

11 Q Okay. So it wasn't like a smudge of blood or
12 anything. It was an actual droplet of blood that
13 dropped to the floor?

14 A Correct.

15 Q Okay. You're, just based on your experience,
16 saying that it dropped to the floor into the ground?

17 A Yes. Work experience. No formal training.

18 Q Okay, right. And then you actually -- when you
19 saw that, you went to the cashier whose name was
20 Autumn Lynn and later on the 911 call, and you
21 confirmed with her it was not in the store prior to
22 the altercation inside the store, right?

23 A Correct.

24 Q So you say to yourself, self, I guess this must
25 have dropped while everybody was in the store,

1 right?

2 A Yeah.

3 Q And then you went back and did what's called a
4 close review of the exit footage?

5 A Yes.

6 Q Okay. And I think those are your words, "close
7 review of the exit footage." Okay. And you observed
8 the exit footage of people going out of the store and
9 you can confirm that the blood sample collected
10 belonged to Shaquille Green?

11 A Correct.

12 Q And just to go back: It appears that the time of
13 the fight inside the store was August 4th, 2018 at
14 about 2:18 and 16 seconds. Does that sound right?
15 And if you need to refer to something, it's on page 17
16 of your report, second paragraph.

17 A 2:18 and 16 seconds.

18 Q 2:18 and 16 seconds.

19 A Roughly, yeah. That was the fight.

20 Q That's the time of the fight. So that fight --
21 those fights include Shaquille Green going after
22 Austin Radel and Radel coming back at him, right?

23 A And mixed with some other people trying to
24 get in between everybody and hold them back.

25 Q It also includes Christian Paez pushing

TESTIMONY-REYNELLS

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1 Shaquille Green probably three or four feet?

2 A Back against the ice cream cooler.

3 Q Yeah, knocked him into the ice cream cooler. And
4 by the way, Paez, 400 pounds, 420, what do you think?

5 A Easily 400.

6 Q Easily, okay. So we're looking at 2:18 and
7 16 seconds.

8 Now, let's fast-forward from there to
9 August 6th of 2018. So almost exactly 48 hours.

10 A Okay.

11 Q Okay. At 2:20 hours, okay -- and I'm on page 25
12 of your report. You probably know where I'm going to
13 go with this. Shaquille Green called Prusinowski --

14 A Yes.

15 Q And advised him he wanted to turn himself in,
16 Shaquille Green did, right?

17 A Correct.

18 Q And he did so?

19 A He did, yes, sir.

20 Q Did you meet with him?

21 A Yes. I responded out to -- south of
22 Park Drive and just conducted an interview
23 Mr. Green as he turned himself in.

24 Q We're talking 48 hours from the incident in the
25 store to Shaquille Green in Reynells car going to

1 jail.

2 A Actually -- well, no. I talked to him on the
3 hood of the car. He rode with somebody else, but,
4 yes, roughly 48 hours.

5 Q Okay. And you talked to him at that point, right?

6 A I did.

7 Q Okay. And one thing that he seemed to be
8 concerned about was a cut on his left arm, right?

9 A Correct.

10 Q Did he show it to you?

11 A He didn't.

12 Q He didn't?

13 A He just, kind of, indicated, I got a cut on
14 my left arm.

15 Q Did you look for it?

16 A He had a Band-Aid.

17 Q He had a Band-Aid. And you didn't it pull off and
18 take any pictures?

19 A No.

20 Q So it appeared he did have some type of cut?

21 A Yes.

22 Q And that would have been on his left arm.

23 A Correct.

24 Q About right here (indicating)?

25 A Yes, sir.

TESTIMONY-REYNELLS

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1 Q But no picture of that and no picture of his
2 bandage, or anything like that?

3 A Correct.

4 Q I'm almost done.

5 Did you ever speak to the cashier named
6 Autumn Lynn?

7 A I never spoke to her in person, no. I tried
8 to track her down after the fact.

9 Q I wanted to see if you confirmed with her that
10 there wasn't blood on the floor?

11 A Yes. I mean, follow-up. I didn't have any
12 follow-up with her, no.

13 Q Got you. Did you do a poster in an attempt to
14 locate Austin Radel?

15 A I don't remember.

16 Q Do you remember April 28, 2019 that Deputy Lyle
17 Harris saw Radel --

18 A Yes.

19 Q -- at Parkers?

20 A Yes. And that is --

21 Q -- based on your wanted poster?

22 A I may have done a poster. Oftentimes, if we
23 need to talk to somebody in reference to an
24 investigation, we add a little note in our records
25 system saying, if in contact, or if contact is

TESTIMONY-REYNELLS

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1 made please call so and so in reference to this.

2 Q This isn't like a lost dog thing where you're
3 putting it on the telephone pole or anything?

4 A No.

5 Q Did you do the same thing to try to talk to Paez,
6 or did you give up on Paez?

7 A I gave up on Paez.

8 Q Okay. How about Kyle Burden?

9 A Kyle Burden, I've had people looking for him
10 for the last two years.

11 Q Last two years?

12 A Yeah.

13 Q Did you look in the public index to see if he's
14 been arrested recently?

15 A I have not recently, no. I bumped into him
16 on an unrelated case and didn't have a chance to
17 speak with him before he left on foot while I was
18 dealing with something else.

19 Q Is that a nice way of saying he ran from you?

20 A No. It's just a nice way of saying he did
21 the right thing by calling us to get us going on
22 this other issue, and then he -- once he was done
23 with the initial stuff with the deputies on scene,
24 he left before I could revisit this with him.

25 Q You have the capability essentially, Mr. Reynells,

TESTIMONY-REYNELLS

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1 of, like, putting a little note out there to all of
2 the -- how many deputies, 300 or so now?

3 A Yeah, north and south of Broad, maybe a
4 couple hundred.

5 Q So you have capability of putting, I guess, a
6 bulletin out there saying, see these guys, call me,
7 right?

8 A Correct.

9 Q And you also have a license plate reader through
10 the sheriff's office, correct?

11 A We do.

12 Q Or access to it.

13 A We do.

14 MR. LEE: That's all I have, Your
15 Honor.

16 THE COURT: All right. Thank you,
17 Mr. Lee.

18 Solicitor, any redirect?

19 MS. JONES: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. JONES:

22 Q The blood that Mr. Lee was asking you about, was
23 that the spot on the floor on the inside?

24 A Yes.

25 Q Was that -- did that happen before or after the

1 shooting?

2 A It happened before.

3 Q Okay. And now we have these two groups of people.

4 Essentially, we have victim's friends, who -- right

5 here in State's 17. Okay? And then we also have the

6 second group of people, two of which were charged,

7 with Chrissie Martinez and Crystal Hobbs.

8 A Correct.

9 Q And then, of course, we have the defendant,

10 Joseph Burton.

11 A Yes, ma'am.

12 Q Okay. And through your investigation, were you

13 able to determine that anybody in these two groups

14 actually knew each other beforehand?

15 A No.

16 Q Looking at the video, does it look like anybody

17 from the friends of the victim group knows

18 Joseph Burton?

19 A It would appear that Mr. Burden does, Kyle

20 Burden.

21 Q Okay. So the video at least shows that Mr. Burden

22 knows Joseph Burton?

23 A Correct.

24 Q When you were testifying earlier you mentioned the

25 word "snitch," what is that?

TESTIMONY-REYNELLS

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1 A It's street slang for somebody who talks to
2 cops, gives up, you know, potentially damaging
3 information on someone else.

4 Q Is that a -- how would you describe that term if
5 somebody is labeled that term, a snitch?

6 A They are looked down upon by their peers.

7 Q And, Kyle Burden, were you actually -- do you know
8 if he was served with a subpoena in this case?

9 A He was.

10 Q Okay. And have you seen him in court this week?

11 A I have not. I have not, no, ma'am.

12 Q And, in fact -- today is Wednesday. Yesterday,
13 what did you sent out to local deputies regarding
14 Mr. Burden?

15 A An attempt to locate him in reference to the
16 bench warrant that was signed for his failure to
17 appear.

18 Q So there's a bench warrant out there for
19 Mr. Burden because he didn't come pursuant to that
20 subpoena?

21 A That is correct.

22 Q Okay.

23 MS. JONES: Beg the Court's indulgence.

24 I have no further questions. Thank you.

25 THE COURT: Anything else, Mr. Lee?

TESTIMONY-BROOME

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1 Please raise your right hand. Do you solemnly swear
2 or affirm that the testimony you're about to give this
3 Court will be the truth, so help you God

4 THE WITNESS: I affirm.

5 THE COURT: Thank you. Sit right there.
6 You may take off your mask. Speak as loud as you
7 can and as close to the microphone as you can.
8 State your full name and spell your last name for
9 the Court report.

10 THE WITNESS: Donna M. Broome,
11 B-r-o-o-m-e.

12 WHEREUPON:

13 DONNA BROOME,
14 after having been sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. JONES:

17 Q Good afternoon, Miss Broome. Where do you work?

18 A South Carolina Department of motor
19 vehicles.

20 Q What do you do for the DMV?

21 A My current title is assistant regional
22 manager for the Lowcountry.

23 Q And does the DMV keep records in the ordinary
24 course of business?

25 A Yes, ma'am.

TESTIMONY-BROOME

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1 Q And what's types of records would those be?

2 A All types.

3 Q Driver's license?

4 A Absolutely. Registration.

5 Q Driving records.

6 A Absolutely.

7 Q People's addresses?

8 A Yes, ma'am.

9 Q Were you asked to provide some records to the
10 State for court today?

11 A Yes.

12 MS. JONES: Permission to approach.

13 THE COURT: Yes, ma'am.

14 BY MS. JONES:

15 Q I'm going to hand you what has been marked at
16 State's 61 and State's 62. Do you recognize those
17 items?

18 A Yes, ma'am.

19 Q What are those?

20 A The picture comes out of a database. It's
21 called bail view. It's after taking a picture for
22 a driver's license.

23 Q Okay. And that would be State's 61. How about
24 State's 62?

25 A That's a vehicle record for all vehicles

1 listed under a particular name.

2 Q Okay. And are those State's 61 and State's 62
3 fair copies of records that the DMV keeps?

4 A Yes, ma'am.

5 MS. JONES: Your Honor, at this time, the
6 State moves 61 and 62 into evidence.

7 THE COURT: All right. Any objection
8 from the defense?

9 MR. LEE: No objection.

10 THE COURT: All right. Then 61 and 62
11 are admitted without objection.

12 (STATE EXH. 61, Driver's licence, was marked
13 and entered into evidence.)

14 (STATE EXH. 62, Vehicle record, was marked
15 and entered into evidence.)

16 MS. JONES: If we could publish,
17 Your Honor.

18 THE COURT: Any objection?

19 MR. LEE: No objection.

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

21 BY MS. JONES:

22 Q State's 61, is that a driver's license photo of
23 Mr. Joseph Burton?

24 A Yes, ma'am.

25 Q And what is his home address?

TESTIMONY-BROOME

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1 A █ Greens Road, Hilton Head, South Carolina.

2 Q Okay. And is he wearing glasses in that photo?

3 A No, ma'am.

4 Q If we can go to State's 62. What is that?

5 A Vehicle record.

6 Q If we can go down to the second vehicle listed,
7 what is that car?

8 A That's a 2004 Nissan Altima.

9 Q And who is it registered to?

10 A Joseph Burton and also Chrissie Martinez.

11 Q Okay. And I have no further questions for you,
12 Miss Broome. I can take those back from you. Thank
13 you.

14 THE COURT: All right. Mr. Lee, do we
15 have any cross?

16 MR. LEE: No questions, Your Honor. She
17 can go back to Columbia.

18 THE COURT: Thank you. Thank you very
19 much.

20 THE WITNESS: Thank you.

21 MS. JONES: The State calls James Green.

22 THE CLERK: Do you solemnly swear or
23 affirm the testimony you're about to give this
24 Court will be the truth so help you God?

25 THE WITNESS: Yes, sir.

TESTIMONY-BROOME

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1 THE CLERK: Be careful coming up. All
2 right. Speak directly into the microphone. Spell
3 your last name and say your full.

4 THE WITNESS: James William Green,
5 G-r-e-e-n.
6 WHEREUPON:

7 JAMES WILLIAM GREEN,
8 after having been sworn to tell the truth, testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MS. JONES:

12 Q Good afternoon, Mr. Green. Where do you work?

13 A I'm employed by the South Carolina Law
14 Enforcement Division, commonly referred to as
15 SLED.

16 Q And what do you do at SLED?

17 A I'm a forensic firearms examiner in the
18 forensic services laboratory.

19 Q And what does that mean?

20 A We look at fired bullets and fired cartridge
21 cases and try to determine if they were fired by a
22 particular firearm if a firearm was submitted. If
23 no firearm was submitted, we try to tell the
24 investigators how many firearms may be present.

25 Q And did you have to receive specialized training

TESTIMONY-BROOME

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1 or education to obtain this position at SLED?

2 A Yes, ma'am.

3 Q Can you please tell me a little bit about that?

4 A When I started back at SLED -- actually 16
5 years ago today. So June 2nd, 2005, I started the
6 SLED firearm and tool mark course instruction.
7 It's about a three- to three-and-a-half-year
8 course of instruction studying under
9 court-qualified firearm examiners learning to do
10 what I do now.

11 There's a lot of learning about the history
12 of firearms and ammunition, how firearms are made.
13 Because if we understand how they're made, we can
14 understand how they work. And then there were
15 thousands upon thousands microscopic examinations and
16 comparisons along with written and oral testing.

17 Q And have you ever testified in court before?

18 A Yes, ma'am.

19 Q And have you ever been qualified as an expert?

20 A Yes, ma'am.

21 Q Roughly, how many times?

22 A Actually, 90. Eighty-eight times in state
23 court and twice in federal.

24 MS. JONES: Your Honor, at this time, the
25 State moves James Green in as an expert in

1 firearms.

2 THE COURT: Let me hear from you,
3 Mr. Lee.

4 MR. LEE: I know Agent Green and have no
5 questions about his expertise and do not object to
6 his qualifications.

7 THE COURT: So you want him admitted as
8 an expert in?

9 MS. JONES: Firearms.

10 THE COURT: Okay. I'm going to allow
11 Mr. Green to testify as an expert in firearms.

12 Ladies and Gentlemen, the rules of
13 evidence ordinarily do not permit witnesses to
14 testify to opinions or conclusions. An exception
15 to the rules exist for witnesses we call expert
16 witnesses. And a witness who by education and
17 experience has become an expert in some art,
18 science, or profession may also give the reasons
19 for opinions. You should consider any expert
20 opinion given by a witness like any other
21 evidence. Give it the weight you think it
22 deserves. An expert witness's testimony is to be
23 given no greater weight than that of other
24 witnesses simply because the expert -- or because
25 he is an expert in firearms?

TESTIMONY-BROOME

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1 (STATE EXH. 46, external packaging; five
2 fired cartridges and bullet, was marked for
3 identification.)

4 (STATE EXH. 54, 2 Bullets, was marked for
5 identification.)

6 BY MS. JONES:

7 Q I'm going to hand you what has been previously
8 identified as State's 46 and State's 54. Do you
9 recognize those items?

10 A State's 46 is the external packaging for the
11 evidence I examined in this case, or part of the
12 evidence I examined in this case. State's Exhibit
13 46 is made up of five fired cartridge cases and
14 one fired bullet.

15 Ladies and Gentlemen of the jury, if you
16 see me roll to the evidence around my hands,
17 whenever the firearms evidence comes into the
18 firearms department, if it's big enough, we get an
19 electric pencil and scribe it with our lab number,
20 our item number and our initials so we know if it
21 comes back to us or if we go to court that that's
22 the evidence we actually looked at.

23 This package -- the internal package age
24 of State's 46 is still sealed, so I know it's my
25 evidence I examined.

TESTIMONY-BROOME

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1 State's Exhibit 54, is the other two bullets
2 I examined in this case.

3 Q And do those items all have your markings on them
4 that you were the examiner of these items?

5 A Yes, ma'am.

6 Q And aside from examining them yourself, did you
7 change them in any way?

8 A No, ma'am.

9 MS. JONES: Your Honor, at this time, the
10 State moves 46 and 54 into evidence.

11 THE COURT: Any objection?

12 MR. LEE: No, sir.

13 THE COURT: All right. State's 46 and 54
14 are admitted into without objection.

15 (STATE EXH. 46, External packaging; five
16 fired cartridges and bullet, was entered into
17 evidence.)

18 (STATE EXH. 54, 2 Bullets, was entered into
19 evidence.)

20 BY MS. JONES:

21 Q And, Agent Green, what were your findings
22 regarding first what's contained within State's 46,
23 the casings and the one bullet?

24 A Yes, ma'am.

25 Q Projectiles. My apologies.

TESTIMONY-BROOME

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1 A The primary tool we use is a comparison
2 microscope. It's two microscopes connected by a
3 single optical bridge that lets us look at two
4 objects simultaneously.

5 When a firearm is produced, the manufacturer
6 determines what type of markings -- general markings
7 or class characters are going to happen. What they
8 don't intend is the individual characteristics that
9 are caused by a manufacturer and the subsequent end
10 user use.

11 So when we're looking through the comparison
12 microscope, we're looking at tiny scratches, almost
13 like a fingerprint of a particular firearm to see if
14 the cartridge cases or bullets are fired by the same
15 firearm.

16 So when I examined the cartridge cases in
17 State's Exhibit 46, I concluded that all five
18 cartridge cases were fired by the same firearm. The
19 projectile in State's 46, I didn't have anything at
20 that time to compare them to, so was able to determine
21 the caliber, 40SW, 410-millimeter auto, because they
22 used the same bullet, and I was able to provide a list
23 of firearms that could have fired the bullet.

24 However, due to damage, it's so damaged with
25 such limited markings that even if you said, James,

TESTIMONY-BROOME

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1 this is the gun that did it, I could never tell you it
2 did. I could only say possibly.

3 Q How about State's 54, the two bullets that were
4 reflected in the autopsy that you later examined?

5 A Yes, ma'am. State's Exhibit 54, those two
6 bullets were also 40SW, 410-millimeter auto and
7 they were inconclusive of each other, which means
8 I don't know if they were fired by the same gun or
9 not. They're the same class characteristics.
10 They're the same caliber. But with all those
11 three reasons, I was unable to determine if they
12 were fired by the same firearm or not.

13 Then I compared, microscopically, the bullets
14 in State's Exhibit 54 to the bullets in State's
15 Exhibit 46, and that was also inconclusive.

16 Q But back to the shell casings, you were able to
17 conclude the one gun, the same gun fired all of the
18 same bullets, all five of the shell casings?

19 A Yes, ma'am.

20 MS. JONES: I have no further questions
21 for Agent Green.

22 THE COURT: All right, thank you.

23 Any cross-examination?

24 CROSS-EXAMINATION

25 BY MR. LEE:

TESTIMONY-BROOME

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1 Q You can't tell under what circumstances a gun is
2 fired, can you?

3 A No, sir.

4 Q And you can't tell when it was fired unless they
5 tell you, right?

6 A I'm sorry. One more time.

7 Q You don't know the timing when something was
8 fired. You can't look at a microscope and say it was
9 fired two months ago?

10 A Oh, no, sir.

11 MR. LEE: That's all I have, Your Honor.

12 THE COURT: Any redirect?

13 MS. JONES: No, Your Honor.

14 THE COURT: All right, sir, thank you.

15 You're excused.

16 MS. JONES: Your Honor, the State calls
17 Jeffrey Maxwell.

18 THE CLERK: Do you solemnly swear or
19 affirm the testimony you're about to give this
20 Court shall be the truth, so help you God?

21 THE WITNESS: Yes, sir.

22 THE CLERK: Please step up. Be careful.
23 Removing your mask, speak up for us and state your
24 full name spell your name for the court
25 reporter.

TESTIMONY-MAXWELL

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1 THE WITNESS: Jeffrey Maxwell,

2 M-a-x-w-e-l-l.

3 WHEREUPON:

4 JEFFREY MAXWELL,

5 after having been sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. JONES:

8 Q Good afternoon, Lance Corporal Maxwell. How are
9 you?

10 A Good.

11 Q Where do you work?

12 A At the Beaufort County Detention Center.

13 Q And what do you do over at the detention center?

14 A My job title is intelligence officer.

15 Q What are some your duties as an intelligence
16 officer?

17 A I take care of the phone system and the video
18 visitation system.

19 Q Tell me about the phone system.

20 A When somebody comes into our facility, they
21 are booked in and given a PIN number, and then
22 they go through a voice verification process to
23 set up their account with IC Solutions, which is
24 our company.

25 Q And were you asked for a phone call for the case

TESTIMONY-MAXWELL

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1 we're here for today?

2 A Yes, ma'am.

3 Q And did you provide that phone call?

4 A Yes, ma'am.

5 Q And these phone calls that are made at the
6 detention center, are they recorded?

7 A Yes, ma'am.

8 Q And are those recordings kept in the ordinary
9 course of business?

10 A Yes, ma'am.

11 (STATE EXH. 55, Jail phone call, was marked
12 for identification.)

13 BY MS. JONES:

14 Q I'm going to hand you what has been marked
15 State's 55.

16 MS. JONES: Permission approach,
17 Your Honor.

18 THE COURT: Yes, Solicitor.

19 BY MS. JONES:

20 Q And what is that?

21 A This is a phone call that I reviewed.

22 Q And is that a fair and accurate copy of the phone
23 call?

24 A Yes, ma'am.

25 MS. JONES: Your Honor, at this time,

TESTIMONY-MAXWELL

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1 State moves 55 into evidence.

2 THE COURT: Any objection?

3 MR. LEE: No objection, other than
4 previously stated.

5 THE COURT: I understand.

6 MR. LEE: Yes, sir.

7 THE COURT: Thank you. I'm going to
8 admit that subject to the objection that has been
9 previously stated by defendant's counsel.

10 MS. JONES: Thank you, Your Honor. And
11 permission to publish.

12 THE COURT: Yes. Permission to publish.

13 MR. LEE: No objection.

14 (STATE EXH. 55, Jail phone call, was entered
15 into evidence.)

16 (Phone call recording played in its entirety
17 at 3:16 p.m.)

18 MS. JONES: I have no further questions
19 for this witness, Your Honor.

20 THE COURT: All right, thank you.

21 Cross-examination?

22 MR. LEE: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. LEE:

25 Q Mr. Maxwell, are all jail calls recorded and

TESTIMONY-MAXWELL

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1 monitored coming out of the jail?

2 A Except for those to attorneys, yeah.

3 Q Other than attorneys?

4 A Right.

5 Q Is it safe to say inmates like to use the phone?

6 A Yes, sir.

7 Q It's a privilege that is sought after by
8 inmates?

9 A Yes, sir.

10 Q And how many calls is an inmate allowed per day or
11 per week?

12 A As long as they're out for their recreation
13 time and the funds available, they can get on the
14 phone list in the ending that they're in, and
15 they'll make a phone call.

16 Q So they can make multiple, multiple phone calls if
17 they have an account and they behave their self.

18 A Yes.

19 Q So I want to address -- on good behavior is needed
20 to have them use the phone. What do you think the
21 average number of calls per day is over there, like,
22 for an average inmate?

23 A Five, I would say.

24 Q Five a day?

25 A Five a day.

TESTIMONY-MAXWELL

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1 Q All right. And are you aware that Mr. Burton has
2 been in jail since his arrest the August 5, 2018?

3 MS. JONES: Your Honor?

4 A Yes.

5 MS. JONES: He answered it.

6 BY MR. LEE:

7 Q Do you know how many phone calls he's made during
8 that time?

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

10 MR. LEE: That's all the questions I
11 have.

12 THE COURT: All right. Solicitor, any
13 redirect?

14 MS. JONES: No, Your Honor.

15 THE COURT: All right, thank you.

16 All right, sir. You can step down. Thank
17 you?

18 Solicitor.

19 MS. JONES: State calls Lieutenant Steven
20 Kenyon.

21 THE COURT: Okay.

22 THE CLERK: Raise your right hand. Do
23 you solemnly swear or affirm the testimony you're
24 about to give this Court will be the truth so help
25 you God?

TESTIMONY-KENYON

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1 THE WITNESS: I do, sir.

2 THE CLERK: Careful coming up. You may
3 remove your mask. State your full name and spell
4 your last name for the court reporter.

5 THE WITNESS: Steven Kenyon, Jr.,
6 K-e-n-y-o-n.

7 THE COURT: Your witness.

8 MS. JONES: Thank you, Your Honor.

9 WHEREUPON:

10 STEVEN KENYON, JR.,
11 after having been sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. JONES:

14 Q Lieutenant Kenyon, where do you work?

15 A Hilton Head Island Fire and Rescue.

16 Q And what do you do for Fire and Rescue?

17 A I'm a lieutenant firefighter paramedic.

18 Q Were you with Fire and Rescue back on August 4th
19 of 2018?

20 A Yes, ma'am.

21 Q And what were you doing there at that time?

22 A Responding to emergency calls.

23 Q Were in the same position of firefighter and
24 paramedic?

25 A Yes, ma'am.

TESTIMONY-KENYON

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1 Q And what are some of your duties as a paramedic?

2 A Pre-hospital care, emergent calls, emergent
3 care. There's a variety of them from picking
4 people up off the ground to any range of emergency
5 medicine.

6 Q Did you respond to 6 Palmetto Bay Road in the
7 early morning hours of August 24, 2018?

8 A Let me find that. Yes, ma'am.

9 Q And what time did you respond?

10 A 0226.

11 Q And why did you go to Palmetto Bay Road that
12 night?

13 A We were dispatched to gunshot wounds.

14 Q And when you get there, what do you see when you
15 get there?

16 A Upon arriving on the scene, I was in the
17 passenger seat in the ambulance so we pulled into
18 the gas pumps. I had a clear view of
19 Deputy Cushman rendering aid to a gentleman that
20 was laying supine on his back in front of the gas
21 pumps.

22 Q After that, what do you do?

23 A I relieved Deputy Cushman and I stopped the
24 bleeding around Mr. Fells' neck.

25 Q Okay. Were you able to locate wounds on his

TESTIMONY-KENYON

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1 neck?

2 A Yes, ma'am. There was three on each side,
3 and I had three fingers and some clogging in each
4 of them.

5 Q And what do you do with Mr. Fells when you are
6 there?

7 A What else did we do?

8 Q Yes.

9 A We, what we call, load and go. We loaded him
10 up in the ambulance very quickly. There was a
11 large amount of blood on the ground. So because
12 my fingers were in his neck, I couldn't do much of
13 anything else. It fell on my other team members.

14 Q Load and go. The goal is to get Mr. Fells to
15 medical care as soon as possible?

16 A He needed a trauma center. Trauma wounds,
17 gunshot wounds, stab wounds, they require surgical
18 interventions.

19 Q Okay. So after when -- you loaded him into an
20 ambulance, is that what happened?

21 A Yes, ma'am.

22 Q Okay. What happens then?

23 A We requested a helicopter, a medical
24 helicopter. They declined due to weather.
25 Because Mr. Fells lost so much blood, we needed to

TESTIMONY-KENYON

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1 stabilize him, so we have to ground transport him
2 to Hilton Head ER, which is not a trauma center.

3 Q So what was the reason for the stop at Hilton
4 Head?

5 A To stabilize him. He had lost a large amount
6 of blood. We don't carry blood on our ambulances.
7 The best thing we can give him is saline, and that
8 doesn't do much good in a situation like this.

9 Q Okay. So, from Hilton Head -- you take him to
10 Hilton Head Hospital?

11 A Yes.

12 Q And do you stay there while he's being --

13 A Stabilized?

14 Q Stabilized.

15 A Yes, ma'am.

16 Q And after that, what do you do?

17 A We then -- most of the same crew, plus an
18 additional couple other members transported him
19 from Hilton Head to Savannah.

20 Q Okay. Why Savannah?

21 A Savannah level one trauma center. They can
22 deal with any emergency. They have surgeons on
23 staff 24 hours a day and a wide variety of
24 services.

25 MS. JONES: Judge, I don't have any more

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1 questions for you, sir, at this time. Thank you.

2 THE COURT: Cross-examination, Mr. Lee.

3 CROSS-EXAMINATION

4 BY MR. LEE:

5 Q Lieutenant, you don't have any testimony regarding
6 what happened prior to when you got there?

7 A No, sir.

8 MR. LEE: No further questions.

9 THE COURT: Any redirect?

10 MS. JONES: No, Your Honor.

11 THE COURT: Thank you, sir. You can be
12 excused.

13 MS. JONES: State calls Dr. Van Gauby.

14 THE COURT: All right.

15 THE CLERK: Please raise your right hand.

16 Do you solemnly swear or affirm the testimony
17 you're about to give this Court will be the truth,
18 so help you God?

19 THE WITNESS: Yes.

20 THE CLERK: Thank you, sir. Be careful
21 coming up. Remove your mask, speak loudly into
22 the microphone and give your full name and spell
23 your last name for the court reporter.

24 THE WITNESS: Van Alan Gauby, G-a-u-b-y.

25 WHEREUPON:

TESTIMONY-GAUBY, M.D.
VAN ALAN GAUBY, M.D.,

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after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MS. JONES:

Q Good afternoon, Dr. Gauby.

A Good afternoon.

Q Where do you work?

A Hilton Head Hospital.

Q And what do you do at the hospital?

A I'm the attending emergency room physician.

Q What does that mean?

A Basically, I'm the physician on duty in the emergency department during my scheduled shift.

THE COURT: Doctor, if you would, please speak up a little bit louder for us. Thank you.

THE WITNESS: I work in a scheduled shift, I'm the emergency department physician on duty at the time.

BY MS. JONES:

Q How long have you been an emergency room physician?

A Twenty-eight years.

Q And did you ever receive specialized training and education to become an emergency room physician?

A Yes.

TESTIMONY-GAUBY, M.D.

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1 Q Could you please go into a little bit of your
2 background?

3 A Four years of under-graduate study, four
4 years of medical school, and five years of
5 training in both family medicine, and then board
6 residency training in emergency medicine, also an
7 instructor of advanced trauma life support.

8 Q Have you testified in court before?

9 A I have.

10 Q And have you been qualified as an expert before?

11 A No.

12 Q Okay. So how long, total, have you been in
13 emergency room medicine?

14 A More than 28 years.

15 Q Do you have continuing education with regard to
16 emergency room medicine?

17 A I do.

18 Q And advances in medicine?

19 A Yes.

20 MS. JONES: Your Honor, at this time, the
21 State moves to admit Dr. Van Gauby as an expert in
22 emergency medicine.

23 MR. LEE: I'm happy to consent to his
24 first expert witness qualification.

25 THE COURT: All right. He's admitted as

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1 an expert in emergency medicine within
2 objection.

3 MS. JONES: Thank you, Your Honor.

4 BY MS. JONES:

5 Q Dr. Gauby, were you working the early morning
6 hours of August 4th, 2018?

7 A Yes.

8 Q And where were you working?

9 A Hilton Head Hospital, emergency department.

10 Q And did you have an opportunity to stabilize or
11 render aid to a man named Christopher Shaun Fells?

12 A Yes.

13 Q Okay. Could you tell me about that?

14 A We received communication from paramedics in
15 the field that they were en route. They weren't
16 able to apply a patient to the trauma center with
17 the multiple gunshot wounds to the neck, and they
18 would be there shortly. We were preparing our
19 trauma bay to attend to this patient when they
20 arrived.

21 Q And when Mr. Fells arrives by EMS, what do you
22 do?

23 A We initially took to stabilize him, make an
24 assessment of his acute injuries. Initially, our
25 goal was to establish an airway to confirm that he

TESTIMONY-GAUBY, M.D.

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1 was breathing. We were trying to manage and
2 improve circulation, stabilize him. Based on just
3 the description alone, we anticipated we would
4 likely have to transfer him to a facility that has
5 the capabilities of handling multiple gunshot
6 wounds.

7 Q When Mr. Fells came in, what was your main concern
8 with him?

9 A Stabilizing him and establishing an airway.
10 When he arrived, they were providing bag mask
11 ventilation. Basically, applying a mask with
12 oxygen to his face and blowing air to assist with
13 breathing. He was bleeding from all four gunshot
14 wounds, so our goal was to control the acute
15 bleeding and establish an airway to provide him
16 oxygen.

17 Q Was Mr. Fells ever alert or awake when you were
18 with him?

19 A He was not.

20 Q Was he ever responsive?

21 A This happened in 2018. I have limited
22 recollection of this. It seemed to me that I do
23 recall that we were -- he moved his extremities
24 minimally. Like, what we call flexion. We moved
25 his arm just a little in response to some

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1 activity. But beyond that, no meaningful verbal
2 response or following commands.

3 Q No purposeful movement?

4 A No purposeful movement.

5 Q Were you able find him somewhere to go at a local
6 -- a nearby trauma center?

7 A I was.

8 Q And tell me about that process.

9 A So, in the process of -- while trying to
10 stabilize him, we make a contact to a telephone
11 center that handles trauma centers. We have to
12 then identify our patient and what their needs
13 are. They then put us in touch with the trauma
14 surgeon. It takes a little bit of time. Once we
15 contact the trauma surgeon, we present the case
16 briefly and succinctly. And then if they have the
17 capabilities and care for that patient, then
18 they'll accept the patient.

19 We can't transport the patient there until we
20 have assurance that they can accept the patient there
21 without having the capabilities to manage the
22 patient.

23 Q Was Mr. Fells transported to a trauma center?

24 A He was.

25 Q Was that Memorial Health in Savannah?

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1 A That is, correct.

2 MS. JONES: I have no further questions
3 for Dr. Gauby.

4 THE COURT: All right. Thank you,
5 Solicitor.

6 Mr. Lee?

7 MR. LEE: No questions, Your Honor.

8 THE COURT: Thank you, Doctor, so much
9 for being here.

10 MS. JONES: The State calls Dr. Anthony
11 Clark.

12 THE CLERK: Do you solemnly swear or
13 affirm the testimony you're about to give this
14 Court shall be the truth, so help you God?

15 THE WITNESS: Yes, I do.

16 THE CLERK: Thank you, sir. Please come
17 around. Be careful. Remove your mask, speak up
18 loudly, give your full name, and spell your last
19 name for the court reporter.

20 THE WITNESS: Dr. Anthony J. Clark,
21 C-l-a-r-k.

22 WHEREUPON:

23 ANTHONY J. CLARK, M.D.,
24 after having been sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. JONES:

2 Q Good afternoon, Dr. Clark.

3 A Good afternoon.

4 Q Where do you work?

5 A I work for KWB Pathology Associates as an
6 associate medical examiner, autopsy pathologist,
7 in Tallahassee, Florida.

8 Q What do you do as a pathologist?

9 A As an associate medical examiner, I'm a board
10 certified forensic pathologist that performs --
11 part of my investigation is performing the autopsy
12 examination of a dead individual determining the
13 cause and manner of death.

14 Q And how long have you been in this field of work?

15 A Since 1992.

16 Q And did you ever receive specialized training and
17 education to become a certified pathologist?

18 A Yes, I did.

19 Q And can you tell me a little bit about that?

20 A Again, my bachelor of science degree is from
21 the Massachusetts Institute of Technology. I did
22 two years of animal research at MIT, and then was
23 accepted at Jefferson Medical College in
24 Philadelphia. I graduated from the college and
25 did a three-year surgical -- general surgical

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1 internship at the Britain General Hospital in
2 Britain, Connecticut.

3 I then went on to anatomic and clinical at
4 Hartford Hospital in Hartford, Connecticut. I then
5 graduated from that program and traveled down to a
6 Atlanta, Georgia where I did a two-year forensic
7 pathology fellowship with the Fulton County Medical
8 Examiner's Office in association with the university.

9 I finally got my first real job. I worked
10 for the Georgia Bureau of Investigation, division of
11 forensic science at the Southwest Regional Medical
12 Examiner located at the Moultrie Crime Lab in
13 Moultrie, GA. And then I traveled a little further
14 south, and I'm at Tallahassee now covering a
15 ten-county area.

16 Q And have you ever testified in court before?

17 A Yes, ma'am.

18 Q And have you been qualified as an expert?

19 A Yes, ma'am.

20 MS. JONES: And, Your Honor, at this
21 time, the State moves Dr. Clark in as an expert in
22 forensic pathology.

23 THE COURT: All right. Any objection?

24 MR. LEE: No objection, sir.

25 THE COURT: All right. We will stipulate

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1 that he is, without objection, an expert in
2 forensic pathology.

3 Go ahead, Solicitor.

4 MS. JONES: Thank you, Your Honor.

5 BY MS. JONES:

6 Q Dr. Clark, did you perform an autopsy on
7 Christopher Shaun Fells?

8 A Yes, I did.

9 Q And when did that take place?

10 A We performed the autopsy on January 30, 2019.
11 We started the procedure 9:30 a.m.

12 Q And prior to conducting this autopsy, did you
13 receive any information regarding Mr. Fells or what
14 could have lent to his injuries?

15 A Yes, ma'am. There was a delay -- he actually
16 died, I believe, on the 26th, 2019, and had
17 separate -- had many medical issues, but they've,
18 kind of, forgotten what the initial -- or why he
19 had all these medical issues. It took a while for
20 them to, kind of, call us. And the information we
21 initially we had was, he had suffered several
22 gunshot wounds. One particularly in the neck
23 resulting in his paralysis, what are called
24 quadriplegic, meaning he couldn't move his arms or
25 legs.

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1 Q And is that why you, at this time, performed an
2 autopsy on Mr. Fells?

3 A That's correct. And then the South Carolina
4 coroner stated that they believe that there were
5 still some bullets in him and that they would like
6 us to perform an autopsy. So I was more than
7 happy to do that.

8 Q When you begin your autopsy of Mr. Fells, do you
9 notice any remnants of previously medical care?

10 A Oh, yes, ma'am.

11 Q Could you describe what you saw?

12 A Particularly, on him, he had what's called a
13 G-tube, or gastronomy tube, and that's a feeding
14 tube that's put in about where the stomach area
15 is.

16 Just below this, he had a colostomy bag. His
17 colon had gotten injured. From where the gunshot
18 wound was, it dried the colon out. So that he could
19 evacuate his bowels in a more clean fashion, and also
20 allow the lower parts to heal up.

21 He had a wound in the middle of his abdomen
22 that had -- it looked like it had been healing, but
23 then opened up on its own. Probably some of infection
24 going on there.

25 Let's see. He had a tracheostomy tube. That

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1 was tube -- that breathing tube that's in the front of
2 the neck. And then he had, let's see, needle
3 punctures. And I think was -- oh, he had some
4 dressings on his elbows and on his feet for what are
5 called decubitus ulcers or bedsores. He had a
6 particularly nasty bedsore on his sacral iliac, which
7 is the lower part of the back or the top part of the
8 buttocks area.

9 Q You mentioned the needle marks. What were those
10 indications of?

11 A They were possibly blood draws, or IV
12 fluids.

13 Q Were you provided an historical -- any historical
14 information regarding Mr. Fells?

15 A Eventually, I was able to, after talking to
16 the coroner and getting medical records from the
17 Hilton Head emergency room, the Memorial Hospital
18 in Savannah, and the Capital Regional Center where
19 he finally wound up where he died in Tallahassee.

20 Q Okay.

21 A I was able to get more information at that
22 time.

23 Q And did you use this information to help come to
24 your conclusions when you're performing your
25 autopsy?

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1 A Oh, yes, I had to.

2 Q And why would you say you have to?

3 A Because this is five months later, and I was
4 at a great disadvantage in determining where the
5 gunshots actually occurred. I had information
6 from the medical records where they happened, but
7 the scars -- some scars looked like gunshot
8 wounds, some of the scars did not. I wasn't sure
9 what was a bullet wound or what may be a surgical
10 procedure, or some kind of large catheter, et
11 cetera.

12 Q What injuries did you see and did you notate on
13 Mr. Fells?

14 A Well, the gunshot wounds that I described in
15 the autopsy report were of the neck, shoulders,
16 pelvis, and right foot.

17 Q Okay. I want to go into these gunshot wounds that
18 you discovered. How many did you discover in total?

19 A I discovered one in the right side of the
20 neck. I saw a scar in what's called the
21 supraclavicular area. This is your clavicle.
22 Supra means above the clavicle, so in this area
23 here. I found the bullet in his neck axium, soft
24 tissue; the armpit. I found a scar on the right
25 heel of the right foot and his shin area, and I

TESTIMONY-CLARK, M.D.

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1 found the bullet in the right heel of the right
2 foot.

3 Q So that would be five that you documented?

4 A Yeah, approximately. Yes, ma'am.

5 Q I want to -- the injuries to his shoulder, his
6 ankle, anything below the neck, would you have
7 considered those immediately fatal wounds?

8 A No, ma'am.

9 Q Now, did they eventually become fatal?

10 A Yes, ma'am.

11 Q What potentially could have caused that?

12 A The most significant one was the gunshot
13 wound to the right hip and buttock area that
14 transfers and injures the rectum. That's why he
15 had a colostomy, but his rectum got injured and
16 the bullet wound up coming off the left side of
17 his hip.

18 Q And now I want to bring your attention to the
19 gunshot wound to his neck. What were your findings
20 regarding the injuries caused by that gunshot wound?

21 A Again, based on the medical records, there
22 were injuries to the right carotid artery on the
23 right here (indicating), and what's called the
24 left vertebral artery on this side. That bullet
25 had gone through the C4 vertebral body, which is

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1 part of the cervical spinal column, and it caused
2 the paralysis that we saw because of the spinal
3 cord injury at that point.

4 Q When you are performing your autopsy on Mr. Fells,
5 do you notate anything else that was a result of this
6 particular gunshot wound to the neck?

7 A Well, I saw that there was surgical repair
8 with clips and stuff like that, yes, ma'am.

9 Q Okay. Sepsis, is that a common term used in the
10 medical field?

11 A Yes, ma'am.

12 Q And what is that?

13 A Sepsis is an overwhelming infection whether
14 it's from a lung infection, a bladder infection,
15 or a skin infection, something like that.

16 Q And did you notate that in Mr. Fells?

17 A Yes, ma'am.

18 Q Were you able to pinpoint that infection?

19 A Yes, ma'am.

20 Q And where was that?

21 A That infection was in his lungs.

22 Q And what led to that infection?

23 A That infection was a result of his paralysis.
24 He's unable to protect his airway and he actually
25 couldn't breathe because of the tracheostomy tube

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1 that was in place. He was obviously being
2 ventilated. Once you start sticking tubes into
3 parts of the body, it puts you at a higher risk of
4 getting an infection.

5 Also, with that kind of injury, you wind up
6 not being able to protect his airway. Just like when
7 we aspirate something, when you're drinking something
8 and you start to cough, he couldn't do that. So
9 anything that he swallowed wrong or went into his
10 airway, it just went down and could cause an
11 infection.

12 He had a diffused bronchopneumonia in both
13 lobes -- in both lungs, right and left, and then he
14 had a large abscess in the upper and lower lobe of the
15 right lung. Again, from his chronic aspiration.
16 Couldn't clear his airways. Secretions were going
17 down there, et cetera, et cetera.

18 Q You mentioned bronchopneumonia?

19 A Yes, ma'am.

20 Q In your report, do you refer to it as necrotizing
21 bronchopneumonia?

22 A Yes, ma'am.

23 Q And what is necrotizing?

24 A It's actually destroying the lung tissue.

25 You can get pneumonia and your body takes care of

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1 it and it doesn't really distort the architecture
2 of the lung itself. But when you have necrotizing
3 pneumonia, it's actually destroying lung tissue
4 and that's why you end up with an abscess.

5 Q And what was the initial cause of this, this
6 pneumonia?

7 A Again, I relate it back to the C4
8 quadriplegic.

9 Q Which is caused by what?

10 A By the gunshot wound of the neck.

11 Q Were you able to determine a cause of death for
12 Mr. Fells?

13 A Yes, ma'am.

14 Q And what was the cause of death?

15 A I put the cause death down as sepsis, wound
16 infection due to bilateral, both sides,
17 necrotizing bronchopneumonia as a consequence of
18 C4 quadriplegia as a result of the gunshot wound
19 to the neck.

20 Q But for this gunshot wound --

21 A That's correct.

22 Q -- that's what caused his death?

23 A That's correct.

24 Q Now, the manner of death. Were you able to
25 determine the manner of death of Mr. Fells?

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1 A The manner of death would be homicide.

2 Q And, Dr. Gauby, I have no further questions for
3 you.

4 THE COURT: Solicitor -- Mr. Lee?

5 MR. LEE: No questions, Your Honor.

6 THE COURT: All right. Doctor, thank you
7 so much.

8 THE WITNESS: Thank you.

9 THE COURT: You're excused.

10 THE COURT: All right. Solicitor.

11 MS. JONES: Your Honor, at this time, the
12 State rests.

13 THE COURT: Okay.

14 Ladies and Gentlemen, the State has
15 rested its case. There are matters that I have to
16 now take up with the attorneys outside of your
17 presence. I would ask that you, please, go back
18 to the jury room. Again, don't discuss this case.
19 Don't research this case. And I'll have you back
20 with us as soon as we can. All right? Thank you.

21 (Jury exits the courtroom at 3:44 p.m.)

22 THE BAILIFF: Jury, is clear,
23 Your Honor.

24 THE COURT: Thank you. Let me ask you,
25 Solicitor, any objection to the information that I

1 just provided the jury, the instructions?

2 MS. JONES: No, sir.

3 THE COURT: All right. And from the
4 defense?

5 MR. LEE: No, sir.

6 THE COURT: All right, thank you.

7 I take it that you have some motions. Does
8 the State have any motions at this time?

9 MS. JONES: No, sir.

10 THE COURT: Does defense have some
11 motions they'd like to make?

12 MR. LEE: Yes, sir. I'd like to make a
13 directed verdict motion.

14 THE COURT: Okay.

15 MR. LEE: Your Honor, at this time,
16 pursuant to Rule 19, we would respectfully ask for
17 a directed verdict on the murder charge. As you
18 know, the elements required to prove are the
19 intentional killing of another with malice
20 aforethought, and it is our position that the
21 State has failed to establish any evidence rising
22 to the level of showing malice aforethought.

23 The standard, as you know, for directed
24 verdict is any direct evidence or substantial
25 circumstantial evidence, and I don't think the

1 State has satisfied its burden in showing any
2 direct evidence or substantial circumstantial
3 evidence of malice aforethought. We would
4 respectfully ask for a directed verdict on the
5 murder charge.

6 And obviously, if that is granted, the
7 gun charge has to follow as well. We respectfully
8 do that as well.

9 At this time, I also would review all my
10 previous objections that have been made throughout
11 this trial, including -- to the jail calls and the --
12 I believe that was it.

13 THE COURT: All right. Thank you.

14 Solicitor, I'm happy to hear from you.

15 MS. JONES: Respectfully, I disagree. I
16 believe that there was substantial circumstantial
17 evidence as well as direct evidence. The shooting
18 was on video. It shows that the man who has been
19 identified by multiple witnesses as Joseph Burton
20 retrieved a gun and took open fire on Shaun Fells.
21 I believe that that is ample evidence to send it
22 to the jury, Your Honor.

23 THE COURT: All right. I'm going to deny
24 your motion for directed verdict. I think there
25 is ample evidence from which a jury could

1 conclude, both direct and incorrect, as it relates
2 to this matter.

3 I think there is a video that's been
4 identified wherein the defendant has been identified
5 as retrieving something from the vehicle, a gun from
6 the vehicle, and certainly, from the video, a jury
7 could conclude that he was pointing a gun at and
8 firing directly at the defendant in this case.

9 So I'm going to deny your motions.

10 I certainly understand your reviewing all
11 motions as it relates to matters that we've
12 already heard at this time. We'll take that and
13 consider that done.

14 All right.

15 MR. LEE: Judge, we have a very big
16 decision to make.

17 THE COURT: Yes, sir.

18 MR. LEE: Joe-Joe and I. And I would
19 respectfully ask maybe stopping court today to
20 give us the evening to review what we heard
21 yesterday and today and for us to be able to
22 discuss his decision about whether or not he
23 wishes to testify or not.

24 I've talked to him about it a lot,
25 including about ten minutes ago, but, quite

1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF BEAUFORT

4 State of South Carolina,
5 Plaintiff,

6 vs.

Transcript of Record
2018-GS-07-01273 &
2018-GS-07-00262

7 Joseph Decoriyus Burton,
8 Defendant.

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10
11 June 3, 2021
12 Beaufort, South Carolina
13 Volume III of III

14 B E F O R E:

15 The HONORABLE ROBERT J. BONDS

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

17 Mary C. Jones, Representing the State of South
18 Carolina

19 Scott Wayne Lee, Representing the Defendant
20
21

22 SHARON G. HARDOON, CSR
23 Official Circuit Court Reporter, III
24
25

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1 THE BAILIFF: All rise. The
2 Honorable Bobby Bonds presiding.

3 THE COURT: Good morning. I want to put
4 a couple things on the record. We had a bench --
5 or had a conference in chambers a few moments ago,
6 and it's my understanding from that, that, in the
7 event that the defendant decides to testify, that
8 the State will stay away from -- or, actually, the
9 State is going to stay away from any type, in
10 closing -- or in any questioning any type of
11 alleging the ability of the victim to speak; is
12 that correct?

13 MS. JONES: That's correct, Your Honor.

14 THE COURT: And then also in the event
15 that the defendant decides to testify, the State
16 is not going to address or make any references to
17 the first time of hearing this story in three
18 years or some extended period of time; is that
19 correct?

20 MS. JONES: That's correct as well.

21 THE COURT: All right.

22 MR. LEE: I want to put on the record,
23 that's pursuant to the Dalton vs. Ohio, and he was
24 Mirandized immediately upon arrest.

25 THE COURT: All right, thank you.

1 MR. LEE: Yes, sir.

2 THE COURT: And then also we had a charge
3 conference, and I believe that there was basically
4 general consent to the charges that I proposed
5 that each party brought modifications to, except
6 for one matter.

7 And, Mr. Lee, you want to go ahead and
8 state what that matter was on the record, sir?
9 And I'll give you a chance, once you get the final
10 charges to again. But what I'm really doing is, I
11 just want to make sure that my comments are
12 reflecting accurately what we discussed in
13 chambers.

14 MR. LEE: Yes, sir.

15 THE COURT: I always want to have that on
16 the record, so that if there's any -- no one can
17 go back later and say that there was something
18 that we talked about that wasn't.

19 Do you want to state your objection, sir?

20 MR. LEE: Yes, sir. Under the section
21 that is titled murder, the very last sentence in
22 that, right before you get to the possession of a
23 weapon during the commission -- the last sentence
24 in murder, the charge, as I understand it, is
25 going to read, "Malice may be shown -- or "Malice

1 may be shown from conduct showing a total
2 disregard for human life."

3 That is -- the defense objects to that,
4 Your Honor, for a couple reasons. One is, we
5 believe that that amounts to a comment on the
6 facts, which clearly is inappropriate. And under
7 Article V, Section 21 of the South Carolina
8 constitution, as well as the ground swell of cases
9 that have come up in the last several years
10 dealing with inferences, particularly inferences
11 of malice, the cases, which I will -- if I can
12 hand it up to the court reporter and make it a
13 court's exhibit after I finish, includes
14 State vs. Burdette, which says the inference
15 charge use of a deadly weapon is never
16 appropriate. State vs. Grant, which deals -- you
17 can't charge that flight is indicative of guilt.
18 State vs. Hughey, H-u-g-h-e-y, which says that
19 it's improper for a judge to charge specific
20 instances of conduct and give examples that would
21 amount to legal provocation. That actually was a
22 proposed charge by the defense that was deemed to
23 be inappropriate. State vs. Cheeks, it involved
24 the actual knowledge of drugs and showing an
25 inference for defendant's intent to control his

1 disposition or use. Again, State vs. Burdette.
2 And then a brand new case, State vs. Stewart, which
3 just came out a couple weeks ago, which talks
4 about defendant's ownership of property, the fact
5 that it controlled the property upon which -- in
6 this case, drugs were found, that that does not
7 equate to, or infer, or show knowledge and
8 possession of the drugs found on the property.
9 Again, it was deemed to be an improper charges on
10 the facts.

11 So it's our position that charging that
12 malice may be shown from conduct showing a total
13 disregard for human life amounts to a comment on
14 the facts of the case and that the jury -- by
15 highlighting that, the jury could necessarily
16 place undue emphasis on that, and that that is not
17 appropriate.

18 THE COURT: All right.

19 MR. LEE: I think I have one more I would
20 like to -- and under Burdette, just briefly,
21 quoting from Burdette, "The trial court tells the
22 jury it may use certain evidence to establish an
23 element of the crime charged. It has directly
24 commented upon facts and evidence, elevated those
25 facts and emphasized them to the jury." Going on

1 it says, "Even telling the jury that it is to give
2 evidence of a certain fact adduced or presented at
3 trial, the weight the jury determines it should be
4 given does not remove the taint of the trial
5 court's injection of its commentary upon that
6 evidence." And again, that's State vs. Burdette.
7 And I'd like to pass those cases up to the court
8 reporter to be marked as a Court's exhibit. I
9 have copies for the Solicitor, and Your Honor as
10 well.

11 THE COURT: That's fine.

12 MR. LEE: I'll pass them up.

13 (COURT EXH. 5, Copies of cases, was marked
14 for identification as Court's Exhibit.)

15 THE COURT: Solicitor, you heard the
16 arguments of Mr. Lee. Is it my understanding that
17 you want the language that is in the charge, the
18 proposed charge that I presented to each of you to
19 review, is that the language you, in fact, want in
20 and to remain in the charge? I'm leaving that to
21 you at this point.

22 MS. JONES: Yes, Your Honor. I think
23 that is appropriate. I do not believe it's a
24 comment on the facts. The original proposed
25 charge had the word "inferred" as opposed to

1 "showed." I agree that any reference to the word
2 "inference," "inferred," that could be
3 problematic. However, I think by changing that
4 out with the word "showed," I think that
5 alleviates any issue that could arise from that.
6 I do not think it's a comment on the facts, and I
7 think it's an appropriate charge.

8 THE COURT: All right. Thank you.

9 In that case, I'm going to deny or
10 motion, Mr. Lee. I'll give you a chance, once you
11 have the final document, the final draft from my
12 clerk to look at it. If there's any additional
13 information that you all need to bring to the
14 Court's attention, I'm happy to listen to it, and,
15 at that point, if there's anything additional you
16 want to add to your argument, I'm happy to hear
17 it. Okay?

18 MR. LEE: Yes, sir.

19 THE COURT: All right. Thank you.

20 MR. LEE: Thank you.

21 THE COURT: Now, is Nicole Burton in the
22 courtroom? Miss Burton, please stand.

23 Miss Burton, I understand that you
24 received a phone call last night from the
25 defendant in this matter, and there were certain

1 jury in, from the State?

2 MS. JONES: Yes.

3 THE COURT: Defense?

4 MR. LEE: Yes, sir.

5 THE COURT: All right.

6 THE BAILIFF: Jury is entering the
7 courtroom, Your Honor.

8 (Jury enters the courtroom at 10:24 a.m.)

9 THE BAILIFF: The jury is seated,
10 Your Honor.

11 THE COURT: All right. Thank you,
12 Mr. Bailiff.

13 Ladies and Gentlemen, good morning. And
14 the State, as you know, rested their case
15 yesterday and we are now ready to move forward.

16 And I believe the defense is ready to
17 present their case. Is that correct, Mr. Lee?

18 MR. LEE: That's correct, Your Honor.

19 THE COURT: All right. Before the
20 defense presents their case, what I do want you to
21 know -- or before Mr. Lee addresses the Court, I
22 want you to know that the parties have entered
23 into a stipulation that I want to inform you of
24 now. And a stipulation basically is this: The
25 parties are working to try to streamline this

1 case, and so what's happened is, basically, they
2 have agreed upon an issue that's going to end up
3 resulting in not having to call a particular
4 witness to the stand.

5 And so what the agreement is, and what
6 the stipulation is, and this is something that was
7 entered into by both parties, is that Mr. Burton
8 was seen at Eye Care One in Beaufort on
9 July 8, 2020, and that this exhibit, which is
10 going to be Defense Exhibit 1.

11 MR. LEE: 1, yes, sir.

12 THE COURT: And is this going to be
13 entered into evidence?

14 MR. LEE: Yes, sir.

15 THE COURT: And entered into evidence
16 reflects his eyeglass prescription. Okay? So
17 this is a stipulation that's been freely entered
18 into by both parties. That is, Mr. Burton was
19 seen at Eye Care One in Beaufort on July 8, 2020,
20 and that this exhibit reflects his eyeglass
21 prescription. All right? So we can have this
22 marked as Defense 1.

23 (DFT. EXH. 1, Stipulation; Eye Care One
24 prescription, was marked for identification.)

25 THE COURT: And then we are ready to hear

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1 from you, Mr. Lee.

2 MR. LEE: Thank you, Your Honor.

3 The defense calls Joseph Burton.

4 THE BAILIFF: Raise your right hand. Do
5 you solemnly swear or affirm the testimony you're
6 about to give the Court will be the truth so help
7 you God?

8 THE WITNESS: Yes, sir.

9 THE CLERK: Step up carefully. Remove
10 your mask. Make sure you speak up into the
11 microphone. State your name and spell your last
12 name for the court reporter.

13 THE WITNESS: Can everybody hear me?

14 WHEREUPON:

15 JOSEPH BURTON,
16 after having been sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. LEE:

19 Q We need your name and spell your last name.

20 A First name is Joseph, last name is Burton.

21 First name J-o-s-e-p-h, and last name B-u-r-t-o-n.

22 MR. LEE: Judge, can I move these
23 exhibits that are left over here?

24 THE COURT: You can. Yes, sir.

25 BY MR. LEE:

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- 1 Q Good morning, Mr. Burton. What name do you go by?
2 What do your friends and family call you?
- 3 A Joe-Joe.
- 4 Q Is that ever since you've been a kid?
- 5 A Yeah.
- 6 Q Make sure you talk loud enough so everybody can
7 hear you, okay?
- 8 A Okay.
- 9 Q All right. How old are you?
- 10 A Twenty-seven.
- 11 Q How old were you on August 4, 2018?
- 12 A Twenty-four.
- 13 Q At the time -- on that date, where were you
14 living?
- 15 A Hilton Head, █ Greens Road.
- 16 Q Joe-Joe, do you have any children?
- 17 A Yeah.
- 18 Q How old?
- 19 A I got a 7-year-old daughter and a 10-year-old
20 son. He'll be 10 in July.
- 21 Q Okay. On August 4th, 2008, were you working
22 anywhere?
- 23 A Yes, sir.
- 24 Q Where were you working?
- 25 A At a restaurant on the south end of

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1 Hilton Head called Fish.

2 Q On the south end of Hilton Head called Fish?

3 A Yes, sir.

4 Q What were you doing there?

5 A Line cook.

6 Q Now, let's go to -- well, let's see. In 2012, how
7 old were you?

8 A I don't know.

9 Q Well, when's your birthday?

10 A [REDACTED]/93.

11 Q [REDACTED]/93.

12 A Yeah.

13 Q So on June 21st of 2012, you would not have turned
14 -- you would be 18 years old, right? You wouldn't
15 have turned 19 yet; is that right?

16 A Correct.

17 Q So, isn't it true that on June 21, 2012 that you
18 were convicted of giving a police officer a fake ID?

19 A Yes, sir.

20 Q And I think the formal charge is providing false
21 information, right?

22 A Yes, sir.

23 Q And you pled guilty to that?

24 A Yes, sir.

25 Q In 2012?

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1 A Yeah.

2 Q Now, on August 4, 2018, we've seen all the
3 exhibits, and videos, and stuff, you went out with
4 some friends, right?

5 A Right.

6 Q And was there any special occasion that night?
7 Did you go out for any reason or just hanging out?
8 Was there any reason you all were out celebrating or
9 anything?

10 A I had a boxing match and I won it, and we
11 were celebrating. So I don't usually go out, but
12 that night, you know, we wanted to go out and get
13 a drink.

14 Q All right. So, you said you had a boxing match.

15 A Yeah.

16 Q Is that one of your hobbies?

17 A When I'm not working.

18 Q Okay. But you're not a professional boxer or
19 anything like that, are you?

20 A No. I'm still an amateur.

21 Q An amateur. How long have you been into boxing?

22 A Since about 2011.

23 Q And who got you into boxing?

24 A My trainer. Dwight Ball and Sampson Collin.

25 Q And what weight did you box at?

1 A Lightweight.

2 Q Lightweight. I'm not familiar with how they do
3 it. What's the weight range for lightweight?

4 A Lightweight is between 125 -- between, like,
5 115 to 125.

6 Q Is that about what you weigh? You got to be in
7 that range to box, right?

8 A Yeah, back then. I'm probably like -- the
9 last time I got checked, last month, I'm 165
10 now.

11 Q Okay. So you wouldn't be in the same weight class
12 as Christian Paez, would you?

13 A No.

14 Q So, you all were out. You had won a boxing match.
15 Did you win any kind of trophy or award, or anything
16 like that?

17 A No. It's posts to your record. In the
18 amateur book, they mark it down.

19 Q Got you. So you all were out celebrating that.

20 A Uh-huh.

21 Q And where did you go first that night?

22 A Before the Triangle?

23 Q Yeah. Well, start at Triangle.

24 A When I was at the Triangle?

25 Q What time did you go to the Triangle?

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- 1 A 11:30.
- 2 Q Okay. And how long did you stay there?
- 3 A Until closing time.
- 4 Q Closing time, okay. What did you do after? Well,
- 5 what time is closing time?
- 6 A They close about two o'clock, 2:30.
- 7 Q So then you went somewhere else. Where did you go
- 8 next?
- 9 A After that, I went to the gas station.
- 10 Q You're talking about the Kangaroo gas station?
- 11 A Yeah.
- 12 Q The one that we've been watching on the video?
- 13 A Yes, sir.
- 14 Q And why did you all go to the gas station?
- 15 A We went to the gas station. Wife had to use
- 16 the bathroom.
- 17 Q Okay. You're talking about Chrissie Martinez?
- 18 A Yeah. There was a few significant others
- 19 that was with us. And to get some snacks or
- 20 whatever. Everybody was hungry, so we stopped at
- 21 the gas station.
- 22 Q Who were the significant others?
- 23 A Well, my wife.
- 24 Q Say them by name.
- 25 A Chrissie Martinez's kids.

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1 Q Chrissie Martinez's kids. Who's that?

2 A Abraham Martinez and Michael Martinez.

3 Q Did they ride in your car?

4 A Abraham Martinez, the oldest.

5 Q Michael rode with someone else?

6 A With Trey.

7 Q All right. And then who else was in the car?

8 A It was me, Derrick Frazier,

9 Chrissie Martinez, Crystal Hobbs, and

10 Abraham Martinez.

11 Q Okay. When you all got to the gas station, that's
12 who was there?

13 A Yeah.

14 Q No question about that? That's never been an
15 issue?

16 A (Witness moves head from side to side.)

17 Q Okay. So you get there, and we've all, kind of,
18 seen that the video. But I, kind of, want to walk you
19 through a little bit. I'm going to see if I can make
20 the computer work two days in a row. I want to show
21 you part of this video, Joe-Joe, and have you talk me
22 through it.

23 (Video played.)

24 BY MR. LEE:

25 Q Do you know where this is? Do you know where this

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1 is by looking at it?

2 A Yeah.

3 Q That's at the Kangaroo store, right?

4 A Correct.

5 Q So I'm going to fast forward this -- let's see.

6 Watch this for a few seconds, and I want you to

7 explain your interaction with that guy right there in

8 the gray. Do you see him?

9 A Yeah.

10 Q All right. Right here. Watch that. Okay. Do
11 you see that?

12 A Yes, sir.

13 Q Okay. Do you know that guy? Have you ever seen
14 him before?

15 A No, I never seen him before.

16 Q What did you say?

17 A That night, I said -- when I walked in, I was
18 like, yo, what's up? You good? You drinking
19 tonight? He was like, yeah, we're about to get
20 something to drink and go back to house. I was
21 like, all right, we're about to do the same
22 thing.

23 Q Okay. So that's the interaction you had with
24 Fells?

25 A Yeah.

1 Q Just being friendly?

2 A Excuse me?

3 Q Just being friendly with him?

4 A Correct.

5 Q And, actually, it looks like -- I don't know if he
6 said something, but you, kind of, smiled at him,
7 didn't you?

8 A Yeah, I told him to be safe, and we left.

9 Q All right. So I'm going to fast forward this to
10 218 and 170. That's when the scuffold, fight,
11 whatever they want to call it, happened.

12 Q Right.

13 Q Initially. That guy in the bottom left of camera,
14 the big dude with, like, the two shirts on, the loose
15 shirts.

16 A Right.

17 Q Do you know him as Christian Paez?

18 A Yes, sir.

19 Q You saw him that night?

20 A Correct.

21 Q I'm going to keep -- it looks like you, kind of,
22 got your eye on him; is that right?

23 A Correct.

24 Q Okay. Keep playing that. Right there, who are
25 you looking at? Who are you pointing at?

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1 A Christian Paez.

2 Q Okay. Why are you pointing at him?

3 A Because he looked like he was about to come
4 up and try to -- try to do something.

5 Q So you just didn't like the way he was acting?

6 A No.

7 Q Okay. You already seen push Shaquille Green,
8 correct?

9 A Correct.

10 Q You're still looking at Paez, correct?

11 A Correct.

12 Q Is there any reason why you're looking at him
13 right now? Did you see him push Shaquille Green?

14 A Yeah, I seen him push Shaquille.

15 Q Why are you looking at him, Paez?

16 A Because he was clutching, you know, like he
17 had some --

18 Q I don't know "clutch." What does clutch mean?

19 A Like (indicating).

20 Q Can he stand up and explain?

21 THE COURT: Yes.

22 BY MR. LEE:

23 Q All right. Come down here. We don't know what
24 clutch means.

25 A He was like this the whole time, like he had

1 something (indicating).

2 Q Okay. Now, he had on baggie clothes, right?

3 A Yeah.

4 Q Were any of hands underneath at any time?

5 A Yeah.

6 Q Okay. And you described that as clutching.

7 A Yeah.

8 Q Clutching what?

9 A Clutching like reaching for a weapon or
10 something.

11 Q Did you see a weapon? Do you know what he was
12 clutching for?

13 A Something silver was on his waist.

14 Q How did you see -- you can get back on the stand.
15 Joe-Joe, how did you see it if he had his shirt on and
16 stuff?

17 A When he pushed Shaquille, I seen his shirt,
18 like --

19 Q Come up?

20 A When he pushed Shaquille Green, the 'impact
21 from that, his clothes went up a little bit.

22 Q Right.

23 A And I seen something on his waist.

24 Q Okay. Now, you're pretty close to him at that
25 point, right?

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1 A That's correct.

2 Q So you keep watching. Let's keep playing this a
3 little bit. So what does Paez do right there?

4 A He walks in the back behind the group of
5 people.

6 Q So the biggest guy there by about 200 pounds is,
7 kind of, getting away from what's going on?

8 A Correct.

9 Q Did that strike you as odd?

10 A Excuse me?

11 Q Did that strike you as odd, that he was, kind of,
12 backing away like that?

13 A Yeah.

14 Q What about it was odd?

15 A He took something from his left side and he
16 reached like -- like I said, clutching, and put
17 something behind his back.

18 Q Okay.

19 A That's why in the video you see me not even
20 interacting. I'm in the back. I'm looking at
21 him.

22 Q Okay.

23 A Not doing nothing.

24 Q All right. You're not looking behind you. You're
25 looking stratight ahead, aren't you?

1 A No. Straight ahead.

2 Q Okay. And he's not backing away from everybody,
3 correct?

4 A Correct.

5 Q Let's keep watching him. You're still looking at
6 him. Does he put, at one point, one or both of his
7 hands behind his back?

8 A He put one behind his back.

9 Q Okay. Do you know why he did that?

10 A It looks like he removed something, like off
11 his hip towards the back of his trousers.

12 Q All right. So you're still looking at him, aren't
13 you?

14 A Correct.

15 Q Okay. Let's play it a little longer. Whoa, okay.
16 It looks like you go like this, Joe-Joe, towards him
17 (indicating). What does that mean?

18 A I told him, I said, I know you got something
19 on you.

20 Q And that's when you pointed to him.

21 A Correct.

22 Q When you saw him moving back, you saw he had
23 something behind him.

24 A Correct.

25 Q You started pointing at him like that?

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- 1 A Correct.
- 2 Q Why did you point at him like that?
- 3 A Because I told him, I said, I know you got
- 4 something on you.
- 5 Q Did your -- everybody hear you say that?
- 6 A No, not at the moment.
- 7 Q Okay. You don't think any of those people heard
- 8 that, though?
- 9 A No.
- 10 Q Okay. You pointed at him like that, and then
- 11 let's keep playing. You start going out the door,
- 12 right?
- 13 A Correct.
- 14 Q And you're the first one out the door?
- 15 A Yeah. Yes, sir.
- 16 Q All right. It looked like you point again and,
- 17 kind of, went like this. Is that telling your people
- 18 to come with you?
- 19 A I told my people, everybody come outside.
- 20 Q Okay. Paez is still over there.
- 21 A Correct.
- 22 Q All right. You went out the door and everybody,
- 23 including Shaquille Green, even followed you out,
- 24 right?
- 25 A Correct.

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1 Q All right. Let me take one second to find this.

2 MR. LEE: Beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 BY MR. LEE:

5 Q Do you recognize where that is?

6 A Correct.

7 Q Your car is already there?

8 A Correct.

9 Q Let's see. I apologize. All right. Sorry for
10 the delay.

11 All right. This picked up where you just
12 walked out of the store, or going out the store and
13 told everybody to get out of there, right?

14 A Correct.

15 Q You're still looking behind you, aren't you?

16 A Correct.

17 Q Why are you looking behind you?

18 A To watch my surroundings.

19 Q Okay. To watch your surroundings, okay.

20 All right. And then you continue walking
21 out, right?

22 A Correct.

23 Q Going to your car.

24 A Correct.

25 Q At that point, what are you thinking? What are

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1 you feeling?

2 A At that point, I'm walking -- like, walking
3 towards the car. Fast walking, I should say.

4 Q Ready to get out of there?

5 A Correct.

6 Q Okay. You turned around. Why did you turn
7 around?

8 A I heard footsteps. I heard Shaquille Green
9 saying, "That bitch cut me."

10 Q You heard Shaquille Green says, "That bitch cut
11 me?"

12 A Yes, sir.

13 Q Now, you turn back. Planning on leaving right
14 there?

15 A Excuse me?

16 Q At this point, are you still planning on getting
17 in the car and going?

18 A Correct.

19 Q And your anxious to get out, correct?

20 A Correct.

21 Q All right. And it looks like something is getting
22 ready to start happening right behind you by that car;
23 is that right?

24 A Right.

25 Q That's where it happens, okay?

1 A Correct.

2 Q Did you hear any of that fighting going on?

3 Anybody yell and scream, anything like that?

4 A Correct.

5 Q You heard it?

6 A Yeah.

7 Q Okay. At that point, you're just starting to go
8 in the car?

9 A Correct.

10 Q And you heard that?

11 A Correct.

12 Q What went through my mind?

13 A I was scared. I heard impacts, punching. I
14 heard -- first he opened the door, I heard the gun
15 click.

16 Q You were scared for who, Joe-Joe?

17 A My safety, for the safety of others that was
18 out there with me.

19 Q Okay. At this point, did you know where Paez
20 was?

21 A No, sir.

22 Q So you've got a good bit of family and friends in
23 that parking lot at that time, don't you?

24 A Yes, sir.

25 Q People that they're close with that you've been

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1 celebrating with, all of them in that parking lot,
2 aren't they?

3 A Yes, sir.

4 Q Did you have your glasses on right here?

5 A No, sir.

6 Q How well do you see without your glasses?

7 A I can't see at all.

8 Q What?

9 A I can't see at all. I mean, I try.

10 Q Yeah.

11 A Like they said, I'm nearsighted. I can't far
12 away.

13 Q You can see things close within several feet, but
14 not far away.

15 A Correct.

16 Q Okay. So based on what you've heard, what did you
17 do next?

18 A I walked to the vehicle.

19 Q Yeah. You went to the vehicle. Yeah.

20 A I retrieved --

21 Q And, at this point, looking at the video, is it
22 safe to say there was chaos going on in the parking
23 lot?

24 A Correct.

25 Q You don't where, or who's who, or what's what,

1 right?

2 A I don't know nobody's position.

3 Q That's when you make the decision, you're going to
4 get that gun out of the car?

5 A Correct.

6 Q And you did that?

7 A Correct.

8 Q All right. At that point, is it still a bad
9 situation?

10 A Correct.

11 Q You're still scared?

12 A Yes, sir.

13 Q How well can you see to figure out everything
14 that's going on?

15 A That night?

16 Q What's that?

17 A That night?

18 Q Right here.

19 A I couldn't really see at all.

20 Q So there's no question, Joe-Joe, that you're the
21 guy wearing the white t-shirt, right?

22 A Correct.

23 Q There's no question about who all these people are
24 at this point, right?

25 A Correct.

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1 Q And there's no question that you fired a gun?

2 A Right.

3 Q Christopher Fells, the guy that you said, what's
4 up with, and smiled at him like that, had you ever met
5 the guy before?

6 A No.

7 Q Did you have any reason dislike him?

8 A No, sir.

9 Q Do you have any hatred in your heart for him?

10 A No.

11 Q Did you at the time?

12 A No, sir.

13 Q Okay. Any reason at all to want to injure him?
14 Let me rephrase it. Did you have any evil intent in
15 your heart that you would consider injuring
16 Christopher Fells?

17 MS. JONES: Your Honor, objection. He's
18 leading the witness. This is direct.

19 THE COURT: I would ask -- I will sustain
20 that objection.

21 MR. LEE: Fine.

22 BY MR. LEE:

23 Q Let me just rephrase it. Did you have any hatred
24 or animosity --

25 MS. JONES: Your Honor?

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1 THE WITNESS: No, sir.

2 THE COURT: Hold on. She's addressing
3 the Court.

4 MS. JONES: I believe it still -- he's
5 still leading the witness, Your Honor.

6 THE COURT: All right. I'll sustain
7 that. Try to rephrase.

8 MR. LEE: Okay.

9 BY MR. LEE:

10 Q What emotions, if any, did you feel towards
11 Shaun Fells?

12 A None at all, sir.

13 Q Okay. And after the shooting, you all left
14 there?

15 A Correct.

16 Q Why did you leave?

17 A I was scared.

18 Q Okay. All right.

19 MR. LEE: Beg the Court's indulgence.

20 BY MR. LEE:

21 Q Joe-Joe, we've talked about -- we talked about you
22 testifying, right?

23 A Yes, sir.

24 Q You know what it means to testify, do you not?

25 A Correct.

TESTIMONY-BURTON

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1 Q To go into court and promise to tell the truth.

2 A Yes, sir.

3 Q And do you also -- do you know that if you testify
4 that the law says that certain things --

5 MS. JONES: Your Honor, objection.

6 THE COURT: I don't know what question
7 he's asking. I'm going to overrule your
8 objection.

9 MR. LEE: I'll withdraw that.

10 THE COURT: I understand your concern.
11 You're going to withdraw that question, sir?

12 MR. LEE: I'll withdraw that question.

13 THE COURT: All right. Thank you.

14 MR. LEE: That's all I have, Your Honor.

15 THE COURT: All right, Mr. Lee.

16 Solicitor, do you have any questions for
17 the witness?

18 MS. JONES: Yes, Your Honor.

19 THE COURT: All right. I'm happy to hear
20 from you. Go ahead. Your witness.

21 MS. JONES: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. JONES:

24 Q Good morning, Mr. Burton.

25 A Good morning.

1 Q How are you?

2 A I'm well. You?

3 Q I'm well. Thank you very much.

4 So you go by Joe-Joe?

5 A Yes, ma'am.

6 Q And you're 27?

7 A Yes, ma'am.

8 Q Back in 2018, when you killed Christopher Fells,

9 you were 24?

10 A Yes.

11 Q You are a prised fighter?

12 A Not a prised fighter. Boxer. Amateur boxer.

13 Q You won that night.

14 A Yes.

15 Q So you're good at your sport.

16 A Yes, ma'am.

17 Q You were winning. You were celebrating. You were

18 amped up that night.

19 A I wouldn't say I was amped up. I mean, I was

20 excited. I've been boxing before.

21 Q And you won before?

22 A Yes, ma'am.

23 Q So you can handle things with your fists, can't

24 you?

25 A Sometimes.

TESTIMONY-BURTON

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1 Q You were at the bars for about --

2 THE COURT: Hold on one second. Sir, you
3 need to speak up. I need to make sure everybody
4 is hearing you.

5 MS. JONES: Thank you, Your Honor.

6 BY MS. JONES:

7 Q So you were at the bar -- you called it the club,
8 the Triangle at the club?

9 A I call it the Triangle.

10 Q Okay. Do other people call it the club?

11 A Yes.

12 Q So you got there about 11:30 that night?

13 A Yes, ma'am.

14 Q And you were there about two and a half hours or
15 so?

16 A Yes, ma'am.

17 Q Drink and hanging out and having a good time with
18 your friends?

19 A Yes, I had a few drinks.

20 Q Okay. And then you go to the gas station and
21 you -- everything seems to be okay at first, right?

22 A Yes, ma'am.

23 Q You're smiling, casually walking around,
24 everything is fine.

25 A At the beginning.

TESTIMONY-BURTON

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1 Q At the beginning, yes. We're at the beginning
2 right now, okay?

3 A Yes.

4 Q And you see the man you later kill, Shaun Fells,
5 and you all have a cordial, nice conversation; is that
6 correct?

7 A Yes, ma'am.

8 Q And you tell him to be safe.

9 A Yes, ma'am.

10 Q You actually prevented that from happening, didn't
11 you?

12 A Excuse me?

13 Q You actually prevented him from being safe that
14 night, didn't you?

15 A I don't have no comment on that.

16 Q I'm sorry?

17 A I don't have no comment on that.

18 Q Okay. No comment, okay.

19 So you know Christian -- we'll move on.

20 You know Christian Paez.

21 A I don't know him.

22 Q You don't know him personally, but you know who he
23 is.

24 A Yeah.

25 Q And he's pretty identifiable. I mean, he's a big

TESTIMONY-BURTON

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1 dude, right?

2 A Yes.

3 Q I'm going to show you State's 17. I mean, he's so
4 much bigger than the rest of these people, than
5 Shaun Fells, Austin Radel, and Kyle Burden that we
6 couldn't even really fit his picture on here, could
7 we?

8 A You got it on there.

9 Q But he's substantially larger than the rest of
10 these people.

11 A Correct.

12 Q Yes. He weighs about 400, 450 pounds.

13 A Correct.

14 Q And he's wearing completely different clothes than
15 anybody else in this photo array, correct?

16 A Correct.

17 Q There's no way you could mistake him for
18 Austin Radel?

19 A Not Austin Radel, but Christopher Fells and
20 Christian Paez.

21 Q Okay. I asked you about Austin Radel. No way you
22 could confuse him for Austin Radel.

23 A No.

24 Q Or Kyle Burden.

25 A No.

TESTIMONY-BURTON

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1 Q And he was substantially larger than Shaun Fells.

2 A Correct.

3 Q And Shaun Fells is wearing a hat and
4 Christian Paez is not.

5 A Right.

6 Q Their different sizes, different builds, wearing
7 different hats.

8 THE COURT: Sir, you're going to have to
9 speak up. I'm having trouble hearing you, and so
10 please speak up.

11 THE WITNESS: I got you.

12 BY MS. JONES:

13 Q They're different builds. We're talking about
14 Shaun Fells and Christian Paez. They are built
15 differently.

16 A Correct.

17 Q And Christian Paez is much larger than
18 Shaun Fells.

19 A Correct.

20 Q They were wearing different clothes that night.

21 A Correct.

22 Q And Shaun Fells had a hat on and Christian Paez
23 did not.

24 A Not at the incident.

25 Q I'm sorry.

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1 A During the time of the fight with
2 Derrick Frazier and Shaquille queen, he didn't
3 have a hat on.

4 Q Right. Christian Paez was not wearing a hat.

5 A No, I'm talking about Shaun Fells didn't have
6 a hat on at the time.

7 MS. JONES: Okay. Can we see that video?
8 It's around 7:53 in. If we can just play this. I
9 believe Shaun Fells is going to walk around in a
10 second.

11 (Video played.)

12 BY MS. JONES:

13 Q And that's your buddy, Shaquille Green. Is that
14 Shaquille Green?

15 A Yes, that's my friend.

16 MS. JONES: If we could pause it.

17 BY MS. JONES:

18 Q Christian Paez's hands are empty, aren't they?

19 A That's right.

20 MS. JONES: If we could keep playing
21 it.

22 (Video played.)

23 MS. JONES: And if we could pause it
24 again.

25 BY MS. JONES:

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1 Q Christian Paez is standing there with his hands on
2 his chest empty, correct?

3 A Correct.

4 MS. JONES: If we could play it again.

5 THE WITNESS: Can you hear me?

6 THE COURT: Yes, sir.

7 (Video played.)

8 BY MS. JONES:

9 Q That's you in the white t-shirt?

10 A Correct.

11 Q And you're going after Austin Radel, correct?

12 A No, I'm not going to after him. I'm
13 diffusing the situation. I'm trying to break it
14 up.

15 Q You're trying to break it up?

16 A That's correct.

17 (Video played.)

18 Q Okay. Well, I'm going to pause it again. Doesn't
19 it appear that Kyle Burden is holing you back from
20 Austin Radel?

21 A Absolutely not.

22 MS. JONES: We can keep playing it.

23 (Video played.)

24 MS. JONES: And again pause it.

25 BY MS. JONES:

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1 Q Again, Christian Paez's hands are empty and on his
2 chest?

3 A Correct.

4 MS. JONES: Play it.

5 (Video played.)

6 MS. JONES: If we could pause it.

7 BY MS. JONES:

8 Q What's on top of Shaun Fells' head in that
9 video?

10 A A hat.

11 Q So he was wearing a hat that night.

12 MS. JONES: Now, if we could play it a
13 little bit longer.

14 (Video played.)

15 MS. JONES: Pause it.

16 BY MS. JONES:

17 Q You're pointing and your friend, Derrick Frazier,
18 is pointing as well, correct?

19 A I don't know.

20 Q He's pointing and his hand is raised in the air in
21 that direction.

22 A I didn't see that until just now when you
23 showed it to me.

24 Q Okay. But you agree that both of you all are
25 pointing in the same direction.

1 A Correct.

2 Q And you're pointing in the direction of
3 Christian Paez.

4 A Correct.

5 Q But you're also pointing in the direction of
6 Austin Radel who's in front of Christian Paez.

7 A I'm pointing at Christian Paez.

8 Q But you're also pointing toward and in the
9 direction Austin Radel, aren't you?

10 A Correct.

11 MS. JONES: We can play it a little bit
12 more.

13 (Video played.)

14 MS. JONES: Pause it.

15 BY MS. JONES:

16 Q Christian Paez's hands are still empty?

17 A Correct.

18 MS. JONES: Keep playing it.

19 (Video played.)

20 MS. JONES: Pause it.

21 BY MS. JONES:

22 Q And would you say at this time now you're maybe
23 amped up?

24 A No.

25 Q Okay. You just had to defend your girlfriend's

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1 honor from this man in the red tank top who was too
2 close to her, there was a fight inside with people you
3 didn't know, and you're not amped up at this time?

4 A No.

5 Q You're calm, cool, and collected?

6 A I'm just telling him I know he had something
7 on him.

8 Q Okay. And that didn't make you excited,
9 anxious?

10 A It made me scared.

11 Q Okay. So when you're scared, you still remain
12 calm and even.

13 A Level.

14 Q Level headed, okay.

15 MS. JONES: If we could play it. Play
16 the video, please.

17 (Video played.)

18 MS. JONES: If we could pause it.

19 BY MS. JONES:

20 Q This is 2:18:52. A few seconds before you shoot
21 Shaun Fells, who's inside the gas station?

22 A Right now, Austin Radel and Christian Paez.

23 Q And who stays inside the gas station when you
24 shoot Shaun Fells?

25 A After looking at the video, Christian Paez.

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1 MS. JONES: You can play it, please.

2 (Video played.)

3 MS. JONES: Pause it.

4 BY MS. JONES:

5 Q That man to your left is not Christian Paez, is
6 it?

7 A No, ma'am.

8 Q And you walk right next to him, don't you?

9 A I walk next to him.

10 Q And you're walking to your car.

11 A Correct.

12 Q To the front passenger seat where you were seated
13 when you arrived.

14 A Correct.

15 Q And you go and get a gun.

16 A Correct.

17 Q And you brought that gun with you.

18 A Correct.

19 Q You knew that gun was in your car.

20 A Correct.

21 Q And you said that you heard fighting, you heard
22 punches being thrown, and the sound of a gun click.

23 A Correct.

24 Q What's the sound of a gun click?

25 A Like (indicating).

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1 Q So that would have be relatively close to you.

2 A Correct.

3 MS. JONES: Okay. If you could play it a
4 little bit more.

5 (Video played.)

6 MS. JONES: If we can pause it.

7 BY MS. JONES:

8 Q There's nobody around you.

9 A Yeah. But, at the time, my mind is just
10 scared.

11 Q When you get that gun, there is nobody around you.
12 You could have stayed in that car. Could you have
13 just stayed in that car?

14 A Not while my significant other is being
15 assaulted.

16 Q You didn't hear a gun click, did you?

17 A I heard a gun cocked. Same thing.

18 MS. JONES: We can play it. Continue the
19 video.

20 (Video played.)

21 BY MS. JONES:

22 Q And at 12:19 that's when you shot Shaun Fells.

23 A Correct.

24 Q And Christian Paez was inside.

25 A At the time, he was.

1 Q He never walked outside.

2 A I thought he did.

3 Q And Shaun Fells looks like nothing like
4 Christian Paez, does he?

5 A (No response.)

6 Q Now, I have a couple other questions for you.

7 A Okay.

8 Q This actually started because of your wife,
9 Chrissie Martinez, coming out and saying something to
10 you. That's what made you go back inside the gas
11 station, right?

12 A No. I went inside because Shaquille went
13 inside, and he went to confront Austin Radel.

14 Q Because of Chrissie coming out and saying
15 something about him.

16 A Correct.

17 Q And she did this (indicating), meaning he was too
18 close to her, right?

19 A She did that.

20 Q We can play that for you.

21 MS. JONES: Can we have the defendant
22 talking to Chrissie? And that's about 7:17.

23 (Video played.)

24 MS. JONES: I want to pause it for a
25 second.

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1 BY MS. JONES:

2 Q You see Shaquille Green right here?

3 A Correct.

4 Q He's waiving his arm around.

5 A Correct.

6 Q And he has this extra t-shirt that he keeps
7 putting on his arm and his hand?

8 A He's rubbing it.

9 MS. JONES: Okay. Can we rewind a little
10 bit to Shaquille Green and that t-shirt, please?
11 Okay, we can play it now.

12 (Video played.)

13 BY MS. JONES:

14 Q Is Shaquille Green looking at his hand? He's
15 showing you all his hand?

16 A I'm not paying attention at the time.

17 Q Okay. Is he showing somebody his hand in that
18 image, in that video?

19 A Yes, ma'am.

20 Q And he's describing something pretty animated?

21 A Yes.

22 Q He showed his hand as if it was maybe injured
23 already.

24 A At the time of the incident, he didn't have
25 an injury.

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1 Q But he's wiping it off right there, as if he's
2 wiping maybe some blood off his hand from an injury he
3 already had? He was looking at it?

4 A I didn't see him bleeding that night.

5 Q Okay. Let's go to -- Miss Martinez, I believe,
6 walks out there shortly.

7 THE WITNESS: Can you still hear me?

8 THE COURT: Yes, sir. Thank you. Can
9 everybody hear him?

10 THE WITNESS: Okay.

11 BY MS. JONES:

12 Q You look inside.

13 A Correct.

14 Q She's telling you someone got too close to me.

15 A Correct.

16 Q And who was that person? That was Austin Radel?

17 A Correct.

18 Q Shaquille went in first.

19 A Correct.

20 Q And then you go in.

21 A Correct.

22 Q You don't have anyone getting too close to your
23 wife, do you?

24 A I'm not.

25 Q No. So go in and confront him.

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1 MS. JONES: We can stop it right here.

2 BY MS. JONES:

3 Q You've been in here this whole trial and we've
4 heard part of the phone call you had with your sister
5 where you said, yeah, that's me on the video.

6 A Yeah.

7 Q But you also talked to other people, didn't you?

8 A Since I've been in here?

9 Q Uh-huh.

10 A That's correct.

11 Q And you talked to Chrissie?

12 A Correct.

13 Q And you told her, "Bitch, I'm in here for you."

14 A I don't remember that conversation. I mean,
15 we argued sometimes. We get frustrated and stuff
16 of me being in jail so long. There's so many
17 phone calls. I been in here three years.

18 Q Okay.

19 A So there's so many phone calls. I mean, I'm
20 going to argue. It's confusing. Some days I'll
21 be in a good mood and some buys I'm in a bad
22 mood.

23 Q This happened April 7th of 2021, so a little over
24 a month ago. Almost two months are.

25 A I don't remember.

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1 Q You don't remember telling her, "Bitch, I'm in
2 here for you."

3 A No.

4 Q Okay. And you later tell you her -- and apologies
5 for my language --

6 A You can use it.

7 Q -- but I want to say exactly what you said. Okay?

8 A That's fine.

9 Q "The fuck, all this shit happened because of you
10 and you know that."

11 A I don't remember that.

12 Q Okay. And then you proceeded to -- she said,
13 "Okay." You said, "Stupid ass bitch," and then the
14 conversation ended.

15 A I don't remember.

16 Q You don't remember --

17 MR. LEE: Judge, I'm going to object. We
18 previously ruled on that the redacted part, the
19 cuss words --

20 THE COURT: Hold on, hold on. I'm going
21 to overrule your objection. You're ready to move
22 on?

23 MS. JONES: Yes, that was it for that.

24 THE COURT: All right.

25 MR. LEE: And my motion would be to have

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1 stricken from the record because it was previously
2 ruled as improper.

3 THE COURT: I understand. I'm going to
4 overrule that.

5 MR. LEE: Thank you.

6 BY MS. JONES:

7 Q So we saw -- there's a prescription floating
8 around here somewhere that you wear glasses. You had
9 to get glasses while you were at the jail.

10 A Yes, ma'am.

11 Q And, on this night, you didn't have glasses.

12 A No.

13 Q But you still felt the need to protect yourself
14 and protect your family and your friends?

15 A Yes, ma'am.

16 Q And you would do that at all cost.

17 A Yes, ma'am.

18 Q Even though you can't see what you're doing.

19 A Yes.

20 Q Wouldn't you agree that blindly shooting into a
21 crowd is a total disregard for human life?

22 A Yes, I'd agree with that.

23 MS. JONES: I have no further questions,
24 Your Honor.

25 THE COURT: All right. Any redirect,

TESTIMONY-BURTON

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1 sir?

2 MR. LEE: I have some follow-up.

3 REDIRECT EXAMINATION

4 BY MR. LEE:

5 Q The Solicitor said something about you can handle
6 stuff with your fist. Can you handle -- could
7 somebody handle a box cutter with their fist?

8 A No, sir.

9 Q Could somebody handle a knife with their fist?

10 A No, sir.

11 Q Could somebody handle a gun with their fist?

12 A No, sir.

13 Q Boxer or not, it doesn't matter, doesn't it?

14 A It doesn't.

15 Q One other thing. When she showed that stuff, it
16 appears that Christian Paez moves his car from over
17 off screen to by the gas pumps. Did you notice that,
18 when he moved his car around like that?

19 A Correct.

20 Q Because it appears you look at it. What, if
21 anything, did that indicate to you or what went
22 through your mind when you saw Paez move his car from
23 over there to right by the gas pumps closer to the
24 exit door?

25 A I kind of knew something was going down.

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- 1 Q You knew something would go down.
- 2 A Kind of.
- 3 Q Okay. It started to go through your mind.
- 4 A Yes, sir.
- 5 Q And then you see him get out of his car, right?
- 6 A Correct.
- 7 Q And that's right about when you went in after
- 8 Shaquille Green, right?
- 9 A Correct.
- 10 Q Okay. Do you have phone privileges at the jail?
- 11 Can you use the phone?
- 12 A Yeah.
- 13 Q Okay. And how many times a day do you think on
- 14 average you use the phone?
- 15 A I use it a bunch of times.
- 16 Q A bunch?
- 17 A Yeah.
- 18 Q How many times do you think you use it a day, on
- 19 average?
- 20 A Probably ten, fifteen times. We got two
- 21 recs.
- 22 Q Right.
- 23 A We got -- we come out for six hours a day.
- 24 The first three hours -- you know, sometimes
- 25 certain CO's do all this, but now we got -- the

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1 capacity at the jail is -- like getting people
2 released and stuff like that, so there's not that
3 much people in the top. So inside the dorm,
4 there's two tiers. You got the top tier and the
5 bottom tier. The top tier and the bottom tier
6 don't come out together because, you know, they
7 could have a problem with somebody, you could have
8 a co-dependent, so they keep us separate.

9 So top tier come out for three hours. They
10 lock us down. The bottom tier come out for three
11 hours. They lock them down. Then you come back out
12 for three hours. Then they lock us down and the
13 bottom tier gets let out. So between --

14 Q Well, my question was: Would you be considered a
15 prolific or frequent user of the phone?

16 A Yeah.

17 Q And you would say, conservatively, 10 times a
18 day?

19 A Correct.

20 Q Okay. And you certainly have heard that all those
21 jail phone calls are recorded, correct?

22 A Correct.

23 Q And you heard that they go directly to the
24 solicitor's office?

25 A Right, yeah.

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1 Q You heard that this week, though, right?

2 A Yeah, correct.

3 Q And law enforcement. They have direct access to
4 every single phone call that comes out of that jail.
5 Did you learn that?

6 A I learned that, correct.

7 Q All right. Are you sorry about what ultimately
8 happened to Shaun Fells?

9 A Correct.

10 Q And his family?

11 A Excuse me?

12 Q And his family?

13 A Correct.

14 Q Okay. So it was a bad night for you and him, was
15 it not?

16 A Correct.

17 MR. LEE: No further questions,
18 Your Honor.

19 THE COURT: Solicitor, anything else?

20 MS. JONES: No, sir.

21 THE COURT: All right. Thank you, sir.
22 You can step down.

23 THE WITNESS: Okay.

24 MR. LEE: At this time, I think it's
25 appropriate for me to enter Defendant's Exhibit

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1 Number 1, which is the prescription for the
2 eyeglasses that we have stipulated to -- a copy.
3 So I would ask that Defendant's Exhibit Number 1
4 be introduced, and I don't think I need to publish
5 it to the jury. I'll let them look at.

6 THE COURT: Okay, great. And that is
7 admitted as Defense 1 per stipulation.

8 MS. JONES: Yes, thank you.

9 (DFT. EXH. 1, Stipulation; Eye Care One
10 prescription, was entered into evidence.)

11 MR. LEE: Your Honor, at this time, the
12 defense rests.

13 THE COURT: All right, thank you.

14 Ladies and Gentlemen, the defense has
15 rested their case, and, as a result, there is
16 going to be some matters that I need to take up at
17 this time outside of your presence. I'm going to
18 ask that you please retire to the jury room.
19 Again, don't discuss the case amongst yourselves,
20 with anybody else, and, of course, don't do any
21 research on that.

22 Any additions as it relates to my
23 instructions to the jury from the State?

24 MS. JONES: No, Your Honor.

25 THE COURT: From the defense?

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1 MR. LEE: No, sir, Your Honor.

2 THE COURT: All right. Thank you all.

3 (Jury exits the courtroom at 11:16 a.m.)

4 THE BAILIFF: Jury is clear,
5 Your Honor.

6 THE COURT: Thank you. You can be
7 seated.

8 Any motions from the State at this time?

9 MS. JONES: No, Your Honor.

10 THE COURT: All right. Mr. Lee, any
11 motions?

12 MR. LEE: Your Honor, I would, of course,
13 renew my previous motion for directed verdict
14 based on the same grounds as before, specifically
15 that there's been a failure for the State to
16 provide any direct evidence or any substantial
17 circumstantial evidence of malice, which is an
18 essential element of murder, and we, respectfully,
19 ask for a direct verdict on that ground.

20 THE COURT: All right. Solicitor, any
21 response?

22 MS. JONES: I would rely on my earlier
23 argument that, respectfully, I disagree with
24 Mr. Lee. I believe that there was both direct and
25 substantial circumstantial evidence to send this

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1 case to the jury.

2 THE COURT: All right. I certainly
3 believe that there is evidence enough to send this
4 case to the jury. I think I outlined some of my
5 reasoning earlier.

6 And so, Mr. Lee, I'm going to deny your
7 motion and we will move forward.

8 It's my understanding that my clerk has
9 the copies of the charge and the verdict form that
10 I'm going to have her provide to each of you at
11 this time. I'd like you to look at it. And my
12 understanding is that we are going to basically
13 move forward with closing and then charging.
14 Mr. Lee, will open in full. Counsel, you will
15 respond then in full and have, for lack of a
16 better word, some final argument here. I will
17 then charge. And it's my understanding that I
18 will not be sending the charges back with the
19 jury.

20 I know you may or may not agree with my
21 ruling as it relates to that, but does that
22 reflect what we discussed and do you have anything
23 to put on the record as it relates to that from
24 the State?

25 MS. JONES: No, Your Honor.

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1 THE COURT: Any issues regarding the
2 verdict form from the defense?

3 MR. LEE: No, Your Honor.

4 THE COURT: And each have had an
5 opportunity to review what I'm calling the final
6 draft from the jury charge.

7 Have you had an opportunity to review it
8 from the State?

9 MS. JONES: Yes, sir.

10 THE COURT: And from the defense?

11 MR. LEE: Yes, Your Honor.

12 THE COURT: I understand -- does the
13 State have any objections to the jury charge that
14 I intend to read to the jury?

15 MS. JONES: No, Your Honor. I think it
16 reflects what we all discussed.

17 THE COURT: All right. Mr. Lee, do you
18 have any objection?

19 MR. LEE: Yes, sir. Just one.

20 THE COURT: All right. Is that the
21 objection you've already made for the record?

22 MR. LEE: I'm just renewing the one.

23 THE COURT: I'm sorry?

24 MR. LEE: I'm renewing the one I made
25 earlier in chambers. And Monica has fortunately

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1 put page numbers on this, so it is on page 26
2 under the malice charge. It says, "Malice may be
3 shown from conduct showing a total disregard for
4 human life." I object to that because I think
5 it's an improper statement of the facts.

6 I also would add, since we talked about
7 it in chambers and my client has testified,
8 Miss Jones has asked my client specific questions
9 talking about the total disregard for human life,
10 which is the exact problem, which I was
11 pinpointing is, when it's charged on the facts and
12 she directs her questions to my client, a
13 hypothetical, isn't that a total disregard for
14 human life when someone blindly shoots into a
15 crowd, that's what the courts are talking about.
16 That's the problem.

17 She's inserted it into the case now. I'm
18 sure she'll argue that in her closing, ah-ha, he
19 said this. That's the problem with the charge,
20 and that's -- it's made even worse because there's
21 been direct testimony on cross --

22 THE COURT: All right.

23 MR. LEE: -- that mirrors that, which is
24 a fact in evidence, and this refers to a fact that
25 she brought out in evidence, specifically by me,

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1 and so I would say that that prejudice that I
2 believe is improper has been enhanced since we
3 spoke in chambers.

4 THE COURT: And you are addressing the
5 one sentence in the charge on that page, correct?

6 MR. LEE: Yes, sir.

7 THE COURT: All right. Solicitor?

8 MS. JONES: I still don't think it's
9 commenting on the facts. I asked him a question
10 and he answered it, that's correct.

11 THE COURT: I've had this in the charge,
12 but you've heard the arguments of Mr. Lee. I'm
13 happy to keep it in the charge. You want this to
14 remain in the charge; is that correct?

15 MS. JONES: Yes.

16 THE COURT: All right.

17 MS. JONES: I think it's something that
18 has been charged before and it should be charged
19 today.

20 THE COURT: That's fine.

21 All right. I'm going to overrule you. I'll
22 note your objection for the record.

23 Anything before we bring the jury back
24 from the State?

25 MS. JONES: No, Your Honor.

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1 THE COURT: Anything from the defense?

2 MR. LEE: The only thing, if I could ask
3 the bailiff for a little bit of water. It would
4 be much appreciated.

5 THE COURT: Sure. Great.

6 Get the jury for us, sir.

7 (Jury enters the courtroom the 11:46 a.m.)

8 THE BAILIFF: Jury is entering the
9 courtroom, Your Honor.

10 Jury is seated, Your Honor.

11 THE COURT: Thank you. Be seated.

12 Ladies and Gentlemen, the parties have
13 presented their evidence in this case. It's now
14 time for the attorneys to make their closing
15 arguments. The arguments of the attorneys are not
16 evidence in this case. Their statements and
17 arguments are meant to help you understand the
18 evidence and apply the law to the evidence. You
19 should disregard any remark, statement, or
20 argument which is not supported by the evidence
21 presented during the trial or the law that I will
22 explain to you after the arguments.

23 At this time, we're happy to hear from
24 the defense.

25 MR. LEE: Thank you. May it please

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1 Court, Miss Jones

2 THE COURT: Yes, sir.

3 CLOSING ARGUMENT

4 MR. LEE: Good almost afternoon. One
5 of the things that they teach you in law school is
6 always be prepared and be ready for court, and
7 about five minutes ago, I realized I violated that
8 rule because I spent a lot of time last night and
9 before writing out a really awesome closing
10 argument for you all. Single spaced. It was good
11 to go. And, as I coming over here, I changed
12 briefcases and I left it in my office.

13 But, I don't need that to sit here and
14 talk to you all. And I wish we were friends or
15 had kids that were in school together, or we, you
16 know, could sit around in a restaurant and talk
17 and share experiences, but we never met each
18 other. Even though I've been doing this a long
19 time, 27 years, every case is different, every
20 case scares me a little bit, particularly one like
21 this.

22 I've gotten to know Joe-Joe and his
23 family as I've gone through this case, and I'm a
24 little worried that I'm not going to live up what
25 he deserves. I'm going to try to. I've tried to.

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1 I fumbled around with the video stuff. I mean,
2 I'm not good with computers. I don't have these
3 shiny exhibits that the Solicitor has. I don't
4 have the budget that the solicitor's office or the
5 sheriff's office and all these departments to get
6 things. But, what Joe-Joe and I do have is the
7 facts and the common sense and the truth.

8 So I'd ask for you all to excuse me if I
9 appear nervous or I leave something out. And I'm
10 going to go through a bunch of stuff that I
11 believe shows reasonable doubt in this case, but
12 I'm going to leave stuff out. I'm sure I am. I'm
13 going to go sit down and say, golly, I can't I
14 didn't -- so I would ask you all, as jurors, to
15 kind of be mine and Joe-Joe's voice in the jury
16 room, to talk about reasonable doubt. If I forget
17 something say, well, remember there was this
18 testimony and they didn't do this, or he didn't
19 see that, or he didn't hear that. And I'd ask you
20 to do that. Hey, jury, you need to discuss at
21 length the things are missing.

22 So let's go back. It was only two days
23 ago. It seems like a lot longer. We started this
24 trial and Miss Jones got up and told you a little
25 bit about her case and I wrote it down. She said,

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1 we don't know what was said, we don't know why
2 anything happened, and this is senseless.
3 Essentially, they didn't understand it.

4 Well, words have meaning and words have
5 consequences and her saying that on that first day
6 ought to tell you -- ought to have told you what
7 was coming. And that is what came. It's not what
8 should have come. It should have been, look,
9 we're here. We have done everything we have,
10 we've done a thorough investigation. We know you
11 got a tough job. We're getting ready hand the
12 baton to you all because we want you to convict
13 Joe-Joe Burton.

14 We've done everything and here it is on a
15 silver platter. Because we know, we embrace, we
16 accept the fact that our burden as the State is to
17 prove each and every case, each and every element
18 of the charge, must less in a most serious case
19 like this, beyond a reasonable doubt. They ought
20 to be welcoming the challenge. They call the
21 cases. They ought to welcome -- you know, we know
22 what the backlog is. We all heard about that.
23 This is the case they picked. They ought to
24 embrace the challenge. We got this. They should
25 say, here's all our evidence. We're not going to

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1 leave a stone unturned. We're not going to miss
2 anything. We're not going to leave it to
3 conjecture or speculation or guesswork or
4 estimation, or sort ofs and maybes, and probablys,
5 because they can't. Because that's reasonable
6 doubt. All those words.

7 She started off by saying, a picture is
8 worth a thousand words. And she ended it by
9 saying, the video is worth one word. Remember
10 that? Guilty.

11 Well, that video, and even the highlight
12 reel that they did, for lack of a better thing,
13 there's a lot of words for that video, and it
14 ain't guilty. It's incomplete. It's lacking. It
15 is disengenuous. It is not what you need. That's
16 ain't a good word for it. It's all these words;
17 imperfect, incomplete, speculative. That's what
18 the word is for that video. The one that they
19 spent all the time making and kept showing, kept
20 showing, kept showing.

21 So they say, we don't know what happened.
22 But, we've got an idea because our investigator,
23 our lead investigator who works at the sheriff's
24 office, \$34 million budget a year, with two
25 planes, a helicopter, a DNA lab, and a crime lab,

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1 and a fingerprint lab and all that, he said, we do
2 all right. We have the money and resources. He
3 had a plan. And he was going to look at this
4 video, and figure it out.

5 And most of the time he spent was what,
6 trying to identify people. And he did. He
7 identified everybody, except for the one guy in
8 the Expo's thing they never could identify. I
9 think Chrissie Martinez said, well, that's
10 Jamal Simmons. He lives on Hilton head. It took
11 three years to figure out that guy. They didn't
12 bring him to court.

13 So, anyway, he comes up with this theory
14 based on looking at the videos. I assume he
15 looked at all of them. But those vidoes -- it
16 must have taken hours to look at those videos,
17 hours.

18 So he gets there at 2:30 in the morning
19 on the 4th. Okay? He gets the videos I think at
20 6:00 p.m. -- 6:00 a.m. Excuse me. He looks at
21 them. He then -- Chrissie Martinez and
22 Crystal Hobbs and everybody come in and talk to
23 him. He talks to them. 12:45, what does he do?
24 He writes out the warrant for Joseph Burton for
25 attempted murder. He has spent 10 hours and

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1 15 minutes in his investigation. And there's a
2 lot of things that you can do in 10 hours and
3 15 minutes, but decide an investigation is not one
4 of them. Ten hours and 15 minutes.

5 And really nothing has changed since
6 then. His theory about what happened, well, there
7 was this, you know, getting too close to this
8 girl, and then they went in, and there's just no
9 reason -- you know, shocking.

10 So the State, what they've done is, they
11 run with that. Even though -- and they made this
12 video. Well, the most important thing I think
13 about that video is what you don't see and you
14 don't hear. Obviously, it doesn't have audio.
15 It's nobody's fault. They didn't cause that. But
16 that requires a little bit more -- no sound.
17 Doesn't it require a little bit more maybe to kind
18 of dig up some facts to present to you all what
19 you need.

20 Well, we'll do a video, you know, we'll
21 put in there what we want to put in there. And
22 they did, and they showed it, and showed it, and
23 showed it. And they kept identifying people, and
24 they kept making the posters, this is so and so,
25 this is so and so, this is so and so, this is so

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1 and so. What did they prove that wasn't already
2 uncontested. The identity of everybody. We all
3 knew that. And they spent days doing that. Days.
4 There's no question about that.

5 So, what's the most important about that
6 video is not what's on there, what they want you
7 to see, it's what's not on there. Things that
8 made the cutting room floor. That didn't quite
9 make it into the 11-minute video. What were
10 those? Well, if I didn't cross-examine Reynells,
11 you'd never know. You would never know.

12 I'm not -- I consider all these people at
13 this table my friends. I work with them. I know
14 them socially as well as professionally. None of
15 this is personal. But this is business, and this
16 is court, and this is serious. It's not personal
17 at all.

18 But, what didn't make the video? It
19 might be important to the investigation.

20 Immediately after the shooting,
21 Christian Paez stays inside the store for a minute
22 and a half. Not only stays in there, walks to the
23 back and disappears. A minute and a half. That's
24 a lot of time to do something. You know, there's
25 four minutes between the shooting and law

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1 enforcement. There's four minutes 23 seconds. So
2 he knows a couple things. He knows his car is
3 parked right out there, and he knows the cops are
4 on the way.

5 I can't read his mind, but I think we can
6 assume some things. That guy's dirty. He won't
7 even come to court for his friend, the one that
8 got arrested for public disorderly conduct because
9 he was demanding justice for his friend in the
10 parking lot. Demanding justice. He's using the F
11 word a lot. So he gets hooked up. He goes to
12 jail that night. But he won't come to court, even
13 though he was here. You heard testimony he was
14 here Tuesday. The big 'ol guy. You can't miss
15 him. So they subpoenaed him. They had him here.
16 They found him. They didn't call him as a
17 witness. No, sir. Why not? Inconvenient truths.

18 So Paez, if you watch that part of the
19 video of him walking to the back, meanwhile his
20 friend is laying in the parking lot shot,
21 investigator says, maybe I should go check and see
22 what's in the trash back there or in the mop
23 bucket. Because I'm sure when they empty the
24 trash at the Kangaroo, they don't go through the
25 trash and look for knives, or guns, box cutters,

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1 or anything like that. So a great place to put
2 it, the restroom. Good thinking.

3 And if that's not enough, maybe he didn't
4 put it back there, whatever he was clutching.
5 Maybe he didn't want to lose it. He wanted to
6 keep it. So maybe that's why he went outside,
7 walking around, looked at his friend. And what
8 did he do next? Walked back to his car which was
9 right there inside the tape, as they say, opened
10 the door, leaned inside the car, did something, we
11 don't know, left the door open, and then kind of
12 walks around. Getting something, hiding
13 something. I don't know. But you don't know
14 either. We don't know. We have no way to know,
15 unless the prosecutor or the investigator or
16 somebody figures it out, presents it to you,
17 clears up that reasonable doubt. And that's just
18 one of many things.

19 Again, they spent two days having shiny
20 exhibits that keep showing people who they are.
21 We know who everybody was.

22 And so who did they decide to call?
23 Well, they called Joe-Joe's significant other and
24 her sister, and then, you know, I guess that, sort
25 of, supports their theory about some big plan

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1 because Radel said something to her at the
2 previous place, and then was leaning -- we watched
3 the video and he was that far away from her.

4 What he was doing was trying to distract
5 the clerk so that they could shoplift the beer.
6 They did figure that part out. So they had those
7 witnesses.

8 Who did they not have? Well, there were
9 at least six officers that were there they didn't
10 call. Did they know something? Who knows.

11 Derrick Frazier, the kid in white who was
12 in the fight. Where's he? Subpoena power. They
13 can go find these people. They can serve a
14 subpoena. If they don't show up, law enforcement
15 goes and picks them up and brings them to court
16 and puts them on that stand. If they choose not
17 to testify, they can choose not to testify, but
18 you don't even have them here. Derrick Frazier.

19 Shaquille Green, the guy who had the cut
20 on his arm, on his left arm that apparently got on
21 the right leg of Crystal Hobbs in the car. She
22 saw it spurt out the next morning. They told
23 Reynells about it. Did he take a picture? Did he
24 memorialize it? No. Said he had a Band-Aid on
25 it. So why is that important? Well, because they

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1 made a big deal about this spot of blood inside --
2 inside the station -- I mean, inside the gas
3 station. After an exhaustive review, I decided
4 that -- I determined that was Shaquille Green's
5 blood. That's important. Shaquille Green somehow
6 got cut inside that gas station.

7 Who's the 400-pound, 450-pound monster
8 that pushes Shaquille Green from here to there?
9 The guy who's that clutching, the guy who's
10 backing away from the fight, the guy who doesn't
11 go out when his friend gets shot? Well, maybe
12 they say he won't come in. He's got something
13 better to do, or whatever. They didn't explain
14 that one. The State didn't explain that one.

15 Well, how about -- you know who would be
16 really good to hear from him in the tough job you
17 all have, who was on the scene, how about his
18 three friends? Those three friends?

19 Austin Radel, he's the guy with the
20 Mickie Mouse hat turned sideways who supposedly is
21 the start of all this stuff. He was there.
22 Well -- I forgot what -- I think they did tried to
23 get Radel. They weren't sure where Radel was.
24 The guy who was uncooperative at least twice.
25 Uncooperative and then they can't find him.

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1 Okay. Well, there was another guy named
2 Kyle Burden there. He knows Joe-Joe. He would be
3 a good help to, kind of, put these things in
4 perspective so we're not guessing, so we're not
5 telling a jury to, you know, run the ball when we
6 haven't done what we're supposed to do.
7 Kyle Burden. Oh, well, Kyle Burden got
8 subpoenaed, but he's got bench warrants. He
9 didn't show up. That's the excuse I'm going to
10 tell you.

11 Okay. Well, it would be nice to have
12 those guys, wouldn't it, to, kind of, fill in
13 holes. Because they're the ones who got to put
14 the puzzle together for you. They're the ones who
15 have to remove all reasonable doubt. They should
16 embrace it. They should do it. They should be
17 good at it. They should know they can do it
18 before they call a case and get a jury and go
19 after somebody like this on a murder charge.

20 Okay. Well, another issue, you know,
21 Paez, we know he was here Tuesday. They admitted
22 he was here. So they found him. He's under
23 subpoena. There's a lot of questions I would like
24 to ask that fellow. Holy smokes. Maybe he could
25 explain all the stuff that we had to pick up off

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1 the cutting room floor from the video. He could
2 explain those things. You know, I was getting my
3 cell phone out of car. You know, getting my phone
4 charger. I had my wallet down there. That's why
5 I went to the car. You know, all of a sudden I
6 decide I need to go bathroom after my buddy got
7 shot. That's why I was in the back like that.
8 And, you know, I always wear my clothes baggy, and
9 that's just, kind of, how I walk on a normal
10 basis. I do that and then I figit around a little
11 bit like that. Come on.

12 Why is he not here? Because they don't
13 want you to hear from them. They want you to say,
14 that's fine, let's just keep watching this video.
15 Let's keep having people identify all these people
16 over and over and over and over.

17 Who else wasn't here? Remember the
18 cashier, you can see her on the tapes. She's
19 going out. She's on 911. She's right here. She
20 heard the shots. She saw the entire thing.
21 Autumn Lynn is her name. The 911 call they played
22 was well after Autumn Lynn had called 911. I
23 would have loved to have talked to the cashier.
24 Wouldn't you all? Maybe she could put some of the
25 puzzle together. Nope. Autumn Lynn, we don't

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1 know why she's not here.

2 So, you know, what are we going to know
3 from the State. Well, let's call
4 Chrissie Martinez and Crystal Hobbs, who told
5 them, hey, I drank a lot that night. That's their
6 star witnesses that they're trying to use against
7 Joseph Burton. That's it.

8 And so that's what -- they told you, hey,
9 we don't know why, we don't know what they said,
10 it's senseless, but we know he's guilty because of
11 the video that we're going to play for you.

12 What do we say? Most times in finding
13 the truth, what's most important is not what you
14 see and hear, but what you don't see and what you
15 don't hear. That's what we say. And this is a
16 perfect example of it.

17 The other thing I said was, to whom much
18 is given, much is expected. Well, the sheriff's
19 office has given a lot; access to things,
20 resources. The solicitor's office has given a
21 lot.

22 I mean, look, me and Joe-Joe -- I got a
23 lap top that I'm not very good at using. Okay?
24 And I put one exhibit in and it was the
25 prescription for his glasses, and you're getting

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1 ready to see my exhibit here. It's not too
2 impressive either as far as being shown.

3 What do they have? Two lawyers, an
4 investigator from the solicitor's office, and an
5 investigator from the sheriff's office sitting at
6 the table. They have all these fancy things up
7 here. They have all the fancy diagrams and maps.
8 So why do they do that? Well, because they want
9 to distract you from the real issue; and that is,
10 they can't prove this case, they didn't prove the
11 case, and they didn't give you anything not even
12 close to reasonable doubt.

13 So, we told you, think of all the things
14 you would have never heard had I not
15 cross-examined those witnesses. Things that would
16 just -- you would have made a decision having not
17 known any of that stuff.

18 Oh, and then they also made a big deal
19 because Joe-Joe, who's been in jail for 1031 days
20 made two phones calls. You're going to get these
21 phone calls. You won't believe these phone calls.
22 This proves our case.

23 He talks to his sister and he says, I'm
24 on the video. Yes, he is on the video. We admit
25 that. We've admitted it from the beginning. So

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1 if he makes 10 calls a day for 1031 days, he has
2 made, on average, 10,300 phone calls that every
3 one of them the solicitor has access to, the
4 sheriff's office has access to, and the jail has
5 access to.

6 The second one talking to Chrissie and
7 said something along the lines, it's your fault
8 I'm in here. But that wasn't enough. Because she
9 had to read the next line, and you tell me why.
10 She had to read the last line of that. What did
11 he call her, a stupid ass bitch. You tell me what
12 evidence that is other than her trying to divert
13 your attention from the real issues. She's trying
14 to make him out as a bad dude who's cussing out
15 his old lady. There is absolutely -- now, I don't
16 want to tell you a lie, okay, what people are
17 doing and what people are thinking. Because they
18 want you to go down these rabbit holes with all
19 these red herrings. Because otherwise, just like
20 Christian Paez, you got to want to hide the ball a
21 little bit, kind of stay out of trouble, stay out
22 of the middle of things. He didn't want to come
23 to court, didn't want to say what he was doing, he
24 was getting stuff out of his car, he's going in
25 the back, that doesn't work.

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1 It doesn't make common sense, it isn't
2 fair, and it sure does not satisfy the burden that
3 they have in a murder case to prove the case
4 beyond a reasonable doubt.

5 But, we tell you -- okay. We did not
6 literally have to say a word if we didn't want to,
7 and the judge will say the defense has no burden
8 at all. They don't have to do anything. They
9 don't have to say anything. In fact, he didn't
10 even have to show up, technically. And even if we
11 don't say anything or do anything or show up, they
12 still have to prove to you beyond a reasonable
13 doubt -- beyond a reasonable doubt that the crime
14 was committed and they proved every one of the
15 elements, and they didn't do it. At the end of
16 their case, they didn't do it.

17 We pointed out as much as we could,
18 through their witnesses. The ones they -- at
19 least the ones with you all here. Not the ones
20 that hid from you. Didn't want you here. Didn't
21 get here. Didn't want to come, whatever. Loads
22 of them.

23 So at the end of their case, they still
24 have the burden. You know what we could have done
25 as a defense, we could say, Judge, we're good.

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1 We're not going to present a case. We'll send it
2 to the jury. There's reasonable doubt. And he
3 would have told you all, had we done that, in very
4 strong terms during the charge, he'd say, look, in
5 this case the defendant chose not to testify. He
6 exercised what's called his Fifth Amendment right
7 not to testify. And anybody can do it. And most
8 people do for various reasons.

9 And he would have told you all as a jury,
10 you cannot even discuss the fact that the
11 defendant chose not to testify in his own defense.
12 He would specifically tell you, don't even talk
13 about it. If somebody talks about it, tell them
14 they can't talk about it. And we knew we had that
15 protection. We knew we are recovered. We trusted
16 you all as a jury that you all would take that to
17 heart, and that you all wouldn't hold it against
18 him if he chose not to testify, and you wouldn't
19 have heard about his giving a fake ID at age 19 to
20 a cop, which they, I assume, want you say, well,
21 you know, that's called providing false
22 information to law enforcement. You can't trust
23 him because he gave a fake ID. He lied to law
24 enforcement. You would have never heard about
25 that, because he would have never been on the

1 stand.

2 But we called it. We said, here's the
3 time for him to say what he needs to say, say what
4 he wants to say, say what happened, and let you
5 all hear it. And so he completely took a risk by
6 doing that.

7 And he went up there, and he's, kind of,
8 a soft spoken guy. Nobody's perfect. But he told
9 you what happened. You would have never known
10 that. You would have had to go decide this case
11 with never hearing from Joe-Joe Burton, and you
12 did. And he wasn't perfect. He didn't -- he
13 spoke from the heart. He got confused probably a
14 couple times, but he was legit.

15 He said he was scared, and, of course, he
16 was scared. Why would he not be scared. He said
17 he was sorry that it happened. It's a shame. I
18 mean, from everything you see from the videos, it
19 appears that Burton and Fells are the good guys of
20 the two groups. They don't even know each other.
21 They, kind of, smiled at each other and said, hey,
22 man, be safe. And that's what's such a shame, is
23 that these two ended up with having such a
24 horrible night.

25 It's not Derrick Frazier. It's the

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1 Shaquille Green. It's not Paez. It's not Radel.
2 Those guys ought to be in here answering some
3 questions and probably be on trial, not Joe-Joe
4 Burton. But, he is.

5 So, he said, yeah, you know, I did say
6 that. It's tough being in jail sometimes. You
7 get, kind of, frustrated and stuff. Yeah, I'm
8 sure you do. But the Solicitor wants you to think
9 that's an admission. Oh, that right there. He
10 said it on the stand. He proved what we thought
11 all along. He did. He told the truth. Even if
12 it hurt him about being there, about shooting a
13 gun, he told you. We got nothing to hide. He did
14 the best he could and he told the truth. You
15 could tell that wasn't rehearsed. It wasn't BS.
16 It wasn't telling you what you wanted to hear. It
17 was legit.

18 And, you know, I think the Solicitor
19 thought she had a got-cha moment, and she's
20 certainly going to argue this, I'm sure, she goes,
21 well, don't you think that it's a disregard for
22 human life to blindly fire into a crowd of people?
23 He said, yeah. That is. But that isn't what
24 happened. That isn't what happened in this case.

25 Yes, they had a shooting in Miami the

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1 other day where they're blindly shooting into a
2 crowd of people at a concert. That is a total
3 disregard for human life. That's what malice is
4 talking about. A wicked heart, an evil intent,
5 hatred for somebody. That's what malice is, and
6 that's the key to this case.

7 They've chosen to bring a murder charge
8 against him for murder, that's the killing of
9 another person with malice. Somebody did die. No
10 question about that, but it wasn't a malicious
11 killing. There was no malice. He had no beef at
12 all with Christopher Fells.

13 And what they're trying to do is say,
14 well, friends of Joe-Joe's had a problem with
15 friends of Christopher Fells. That's not what
16 it's about. Hatred for another person. Evil
17 intent. Wickedness. A heart deprived of its
18 social functions and duties. That's what it
19 means. No malice in this case at all. Zero.

20 And how much did they talk about that
21 during their three days. None. They tried to get
22 the got-cha moment up there, which I told you
23 doesn't apply to this case.

24 Instead of showing malice, what did they
25 -- the whole time, they treated this as an

CLOSING-LEE

599

1 identity case pointing out who people are. I
2 mean, how many times did she have somebody say, do
3 you recognize Joseph Burton in the courtroom?
4 Three, four, how many witnesses there were. Yeah,
5 he's right over there. Listen, that's Joe-Joe
6 Burton. That's Joseph Burton. Okay? Do we need
7 to say it again? That is Joseph Burton. We will
8 stipulate and agree to that. He's a 27-year-old
9 guy. He's got bad eyesight. Probably hangs
10 around with the wrong people sometimes, but he
11 doesn't have malice. He didn't have malice this
12 night.

13 He calls people all the time from the
14 jail. Ten thousand times probably. They listen
15 to every one. They got nothing. Give me, give
16 you all something, State. Something. They
17 haven't done it.

18 And I don't want to tell you all how to
19 feel or how to act, but I will say this: To use
20 an eyesore, I would be ticked off if I was facing
21 you all's way looking at this, rather than facing
22 you all. As a juror, besides the fact you get
23 paid 10 or 12 bucks a day and you have to wait on
24 us and all that kind of stuff, you have been
25 presented a case which is full of holes, which is

CLOSING-LEE

600

1 full of problems, which the Solicitor wants you to
2 do the dirty work, and they haven't given you any
3 tools, any evidence, any proof, much less
4 convinced you beyond a reasonable doubt.

5 Remember we talked about that in opening?
6 A reasonable doubt is a type of doubt that would
7 cause a reasonable person making one of life's
8 important decisions to hesitate to act.
9 Reasonable doubt is everywhere.

10 Not only was it established through what
11 wasn't presented in the State's case, we went out
12 of our way to call Joseph Burton to tell you what
13 happened and it made sense. I mean, he says, they
14 didn't say, hey man, why is somebody -- why is he
15 pointing like that? He's pointing at Paez because
16 he saw him with a weapon. He explained that.
17 He's walking out like this (indicating). That's
18 not how you walk out of a gas station, unless
19 you've seen or heard something.

20 He's the first one out. He's trying to
21 get his -- trying to herd up those cats, let's get
22 out of here. He's the first one. He's going back
23 to the car. Then what does he say? Of course,
24 there's no sound. We can't verify it. He says he
25 hears (indicating), like that. And at two o'clock

CLOSING-LEE

601

1 in the morning on Hilton Head with nothing else
2 going on and in an open parking lot, I bet you can
3 hear it plenty good from the distance he was from
4 them, and then it was chaos. He was scared, and
5 he did what he had to do.

6 I know he hates that he's here. I know
7 he hates that this happened. A lot of people do.
8 It is a terrible, terrible thing.

9 He never intended to hurt Shaun Fells.
10 He never had any malice towards Shaun Fells. The
11 Judge will charge you with all these things about
12 the law. It is not a murder. It is not a murder.
13 They have not proven it beyond a reasonable doubt.
14 There is no malice. There is no hatred. There is
15 no wickedness. There's no evil intent in this.
16 It is a tragedy about what happened for a lot of
17 people for different reasons.

18 So, I know you all are tired of hearing
19 me. I probably left out a bunch of stuff. Let me
20 just look at some of my notes. Two more things.

21 The only thing I can really liken this to
22 is when my kids were really little, a few years
23 ago. They had one of those toys and it teaches
24 you shapes. And didn't like manipulations. So it
25 was this little wooden thing. It has like a

CLOSING-LEE

602

1 circle and then a square and then a rectangle and
2 then like a little star and it has these pegs.
3 And the kids have to look at the thing and then
4 look at the peg and they'd match it through there.
5 So a round peg goes in a round hole. A square peg
6 goes in a round hole -- in a square peg. The
7 square peg doesn't go in the round hole. It
8 doesn't matter how hard -- they have a little tiny
9 wooden hammer -- it doesn't matter how hard you
10 hit it with that hammer. That square peg is not
11 going in that round hole. You see them try it.
12 It won't work.

13 That's exactly what the Solicitor is
14 trying to do. And they're trying to convince you
15 this square peg fits in this round hole. We're
16 not going to tell you everything. We're going to
17 tell you what we want you to see. We're going to
18 give you a little bit, but not enough. We want
19 you to put that square peg in that round hole.

20 So I spent a lot of time talking about
21 their case. That's, kind of, rule 101; don't
22 about the other side's. We haven't hid anything
23 from you guys. We told you more than people ever
24 do. We've taken it and we've given it to you.

25 So, I'm going to do this -- again, I

CLOSING-LEE

603

1 don't have the technology or the intel to do this,
2 so, this is what I brought. Reasonable doubt.
3 What I'm going to do is, I'm going to read these
4 real quick, and then I'm going to leave this up
5 here when I'm done. Right there.

6 And the Solicitor gets to talk next and I
7 don't get to talk again, so I'm hoping you all
8 hear what I say and go in the jury room and talk
9 it up about what we talked about. But I'm going
10 to leave this here after I read them. So the
11 Solicitor is here. She'll have plenty of
12 opportunity to be able to see that, be able read
13 it, and really to be able to -- really be able to
14 answer these questions for you because these are
15 the reasonable doubts, at least some of them, not
16 all of them, that we have. I submit to you she
17 ought to be able to answer every single one of
18 these, individually and collectively to remove the
19 reasonable doubt from your mind.

20 And if she chooses not to do that, you
21 need to take that for what it's worth, which is
22 probably she can't answer them and she wants to
23 talk about something else. But they're up here
24 for her. We'll read them real quick, run through
25 them.

CLOSING-LEE

604

1 Number 1, why did the trial video, the
2 11-minute -- why did the trial video admit so
3 much? Fortunately, we were able to fill in the
4 blanks.

5 What was in Paez's car?

6 What was in the store bathroom in that
7 trash can that was dumped out that day that -- you
8 know, we'll never know.

9 Why didn't Christopher Fells' friends
10 cooperate? Again, they had plenty of chances.
11 They were are demanding justice for him and they
12 won't show up. They wouldn't talk to the cops
13 that night, the next day, or any time since.

14 How did Shaquille Green get cut? There's
15 a big thing about the blood in the store and we
16 know that Paez pushed him. I mean, unfortunately,
17 we don't know because it wasn't investigated. No
18 picture was taken. We can't kind of -- I know the
19 Solicitor suggested that he had already cut his
20 hand or something, but that was right hand. His
21 left arm is what was cut, not his right hand, that
22 that white t-shirt was wrapped on.

23 Where's the hatred, evil intent, malice
24 between Joseph Burton and Christopher Fells?
25 There isn't. There isn't. There isn't. There

CLOSING-LEE

605

1 isn't.

2 Why are the essential witnesses not here?

3 We been through that.

4 Why did the defense have to bring out the
5 inconvenient truths? Think about -- you learned
6 more about this case from what you saw and heard
7 than what you didn't see and didn't hear. We had
8 to tell you about what you didn't see and didn't
9 hear.

10 Why was so much devoted to uncontested
11 issues? Identity was never an issue. The people
12 in the video were never an issue. The fact that
13 Christopher Fells was severely injured and then
14 died five and a half months later. The lady came
15 all the way from the DMV to establish that -- to
16 show Joe-Joe Burton's driver's license and show
17 that there was a car registered to him and
18 Chrissie Martinez. They didn't go to Columbia to
19 get her. They didn't -- there was also some
20 discussion about, well, one of these guys might
21 have moved or been might have been out of state.

22 Well, Tallahassee, Florida is out of
23 state the last time I checked and they were able
24 to get that doctor to come here with no problem.
25 They got the lady from Columbia from the DMV.

CLOSING-LEE

606

1 This would be good use of our time. Let's get the
2 lady from the DMV to say this is -- again, this is
3 Joe-Joe Burton, Joseph Burton, and this is his
4 driver's license, and there's a car, a silver
5 Altima registered to him and Chrissie Martinez.
6 That's what they're spending their time on because
7 they don't have the substance. They don't have
8 the real things.

9 Last: 10 hours and 15 minutes, is that
10 sufficient time to fairly and fully investigate
11 this case? And that question right there should
12 be on the forefront of your mind. That was it.
13 For them, that's enough. For you, it's not. For
14 justice, it's not. For fairness, it's not.

15 You all know what the right thing to do
16 is. I don't have to say, please, do this. You
17 all got -- being jurors isn't fun. You take an
18 oath and listen to everything and to do the right
19 thing. I will tell you this, and then I'll sit
20 down.

21 When a jury -- what a case is appealed to
22 the Court of Appeals or the Supreme Court, a basis
23 for defending it from the defense standpoint, you
24 know, if a jury finds somebody guilty, a basis for
25 appealing is not -- there is not a basis saying,

CLOSING-LEE

607

1 well, the jury got it wrong. The jury, you know,
2 just didn't pay enough attention or they made a
3 mistake. That is not a ground for appeal. That
4 is not how cases get overturned and brought back.

5 In order for a case -- if there's a
6 guilty verdict, in order for a case to come back
7 to get overturned, to get what we call overturned,
8 there has to be an error of law. And the only
9 person that controls the law is Judge Bonds. So
10 there would have to be some legal issue that we
11 argued and he ruled against me and it ends up I'm
12 right, and the Court of Appeals would say, hey,
13 the defense is right, send that case for another
14 trial. They don't have -- they can't send cases
15 back because the jury didn't quite get it right,
16 or improperly convicted someone.

17 So not that you need any more pressure,
18 but you got to think, this is -- this is -- this
19 is his last chance unless there's some error of
20 law. So, don't be -- oh, cases get appealed, you
21 know, get overturned all the time. These people
22 get convicted, the next thing you know they get
23 another trial, that's not the way it happens.

24 So as the conscience of the community,
25 I'm asking you to do the right thing, to send a

CLOSING-LEE

608

1 message that this isn't enough. We know what the
2 law is. This isn't enough.

3 And in Beaufort County, we're not going
4 to convict people based on lack of evidence. And
5 a not guilty verdict, this means he's found not
6 guilty. It doesn't bring anybody back. It
7 doesn't give him back the three years he's spent
8 waiting on this day. It doesn't really make
9 anything better.

10 But what it does, in the case, is it
11 prevents a second tragedy. And to conflict
12 Joseph Burton on these charges would, in fact, be
13 a tragedy.

14 So I'm asking you all, on behalf of
15 Joe-Joe and his family and everybody else, to do
16 the right thing. I think we all know what that
17 is. And to deliberate, talk about reasonable
18 doubt, and to come back with the appropriate
19 verdict, the only verdict, really, under your
20 oath, and that verdict is not guilty.

21 Thank you.

22 THE COURT: Thank you. Solicitor.

23 MS. JONES: Thank you, Your Honor.

24 CLOSING ARGUMENT

25 MS. JONES I want to first go over this

CLOSING-JONES

609

1 list that Mr. Lee left for you all up here.

2 Reasonable doubts, that's the standard we
3 have and that's the standard I welcome because I
4 know that we have met it. I know the State has
5 met it and have proven beyond a reasonable doubt
6 that Joseph Burton is guilty of murder.

7 Why did the trial video admit so much?
8 You have it all in evidence. We showed you a
9 chronological order of the different camera views
10 put together. Every view in the video. And the
11 defense showed you some of those views. And they
12 showed you Mr. Paez on the inside of the store
13 and, I believe, Austin Radel on the inside of the
14 store, and a couple of the friends going over to
15 Mr. Fells' body. You have it all.

16 What was in Paez's car? It doesn't
17 matter. It doesn't matter what was in Paez's car,
18 because, had it been something that would have
19 incriminated Paez -- he got in his car, why didn't
20 he just leave. He could have left. He had over
21 four minutes to leave between that 911 call and
22 the time that the Beaufort County Sheriff's Office
23 got to the gas station that night. If he had
24 something to hide, I guarantee you he would not
25 have stuck around.

CLOSING-JONES

610

1 What was in the store bathroom? That
2 goes back to what's in the car. It's nothing.
3 There's nothing in there.

4 Why didn't Shaun Fells' friends
5 cooperate? Because Shaun Fells' friends are also
6 friends with that man over there, Joseph Burton.
7 You saw Kyle Burden hugging him. They were
8 talking. They were laughing. They were hugging.
9 Kyle Burden has been subpoenaed. No, we can't
10 find him. You can't find somebody that doesn't
11 want to be found. No matter how much money and
12 how much resources you may have, if somebody
13 doesn't want to be found, they're not going to be
14 found. So, yeah, he was subpoenaed, he didn't
15 show, and now there's a bench warrant out for him.
16 So if he ever is found, he's going to have to
17 answer to that bench warrant.

18 How did SG -- I believe that's
19 Shaquille Green -- get cut? He was already
20 injured. I showed you the videos of him flailing
21 his arm around, showing his friends how he --
22 moving his arm around. He was acting really
23 animated. He had it wrapped up in a t-shirt.
24 That's where the blood came from. That's where
25 the cut came from. It didn't happen any other way

CLOSING-JONES

611

1 that the defense would want you to think.

2 They talk a lot about malice. Now, the
3 Judge is going to instruct you on malice, and what
4 he says is the law. So if I mistake anything he
5 says, please go with what Judge Bonds says.

6 The defense brought up hatred and evil
7 intent, and he said there was no evil intent
8 between Joseph Burton and Shaun Fells.

9 Now, the Judge is going to tell you what
10 malice is, and the defense picked out evil intent
11 and hatred. Well, it's more than that. Malice is
12 hatred, ill will, or hostility towards another
13 person. It is the intentional doing of a wrongful
14 act without just cause or excuse. And with an
15 intent to inflict an injury, it is an evil intent.
16 Malice is wrongful intent to injure another
17 person. It indicates a wicked, or depraved spirit
18 intent on wrongdoing. Malice is a legal term
19 implying wickedness and excluding a just cause or
20 excuse. The term malice indicates a formed
21 purpose and design to do a wrongful act under
22 circumstances that exclude any legal right to do
23 it. There is more to malice than what they want
24 you to believe, and that exists here. He had the
25 purpose to go and get that gun, aim it at a group

CLOSING-JONES

612

1 of people, and pull the trigger at least five
2 times.

3 Essential witnesses not here? We already
4 addressed that with the subpoenas, and we did put
5 Chrissie Martinez up there and you did hear from
6 her and you heard from Crystal Hobbs, and the
7 others are going to have to answer to their not
8 coming to court at later time.

9 Why did defense have to bring out the
10 inconvenient truths? I don't think there are any
11 inconvenient truths. The only inconvenient truth
12 out there is inconvenient for Mr. Burton, and
13 that's that he murdered Shaun Fells. That's the
14 truth. That's always been the truth. And the
15 only person it's inconvenient for is
16 Joseph Burton.

17 Why was so much time devoted to
18 uncontested issues? Because I am improving this
19 to you beyond a reasonable doubt. There needs to
20 be no doubt in your mind who was there, who they
21 were, and what they did. No doubt. If Chrissie
22 is going to tell you that they lived at █ Greens
23 Road and she had a silver car that matched the one
24 in the video, we're going to corroborate that.
25 I'm going to say, yeah, that's true.

CLOSING-JONES

613

1 Why did the investigation only take
2 10 hours and 15 minutes? Because that's all it
3 took for people to be identified on that video and
4 for the truth to be seen.

5 I told you at the start of this case that
6 a picture is worth a thousands words. Well, you
7 saw the video that is worth one, and that's
8 guilty. Joseph Burton is guilty. He's guilty of
9 murder. He's not guilty of anything else. He's
10 guilty of murder and nothing less.

11 And he's also guilty of possession of a
12 weapoin during the commission of a violent crimes
13 because he's used a gun to murder Shaun Fells.
14 This is not DNA case. It's not a fingerprint
15 case. It's not a science case, but we still know
16 the truth of what happened.

17 Now, they also brought up Derrick Frazier
18 and Shaquille Green and where are they. Well, you
19 also heard that they were charged as well.
20 They're going to be held accountable for what they
21 did that night, but it's not today. Today is
22 Joseph Burton's day in court. It's his turn to
23 answer. Not Shaquille Green's and not
24 Derrick Frazier's.

25 And you honestly think that if I

CLOSING-JONES

614

1 subpoenaed them and I got them on that witness
2 stand, they're going to tell the truth. They're
3 going to go into self-preservation mode and
4 protect themselves.

5 We know the truth of what happened that
6 night. We went through the power of technology in
7 the year we live in, you all were there. I'm
8 going to play the video and I may have played ad
9 nauseum this week, but it's the truth and it takes
10 you back to August 4th of 2018.

11 The first thing we see is that car in the
12 upper right-hand corner that Joseph Burton arrives
13 in and he gets out of the front passenger seat.
14 He is with Chrissie Martinez, Derrick Frazier,
15 Crystal Hobbs, Abraham Martinez, Chrissie's son,
16 they all get out of that car.

17 They go inside, and they're inside that
18 gas station for roughly you four, four and a half
19 minutes before the second group of people come.
20 And, yeah, I have these shiny exhibits for you
21 because you deserve to see everything, and you
22 deserve to see everybody and see what they look
23 like, and see how they compare to each other.

24 So let's go to four minutes and 24
25 seconds in. Pause it.

CLOSING-JONES

615

1 That's Christopher Shaun Fells. In no
2 way, shape, or form could he be mistaken for
3 anybody else on this video, on this board,
4 espectially not Christian Paez, 6'4, 6'5, 400 plus
5 pounds. No way. Not even by somebody who is
6 nearsighted. There's no threats. There's no
7 fear. There's nothing.

8 4:41. There's Austin Radel. You can
9 pause it. In the grand scheme of things, he's the
10 reason this happened. You will see in a little
11 bit, he gets close to Chrissie Martinez. He gets
12 too close to Chrissie Martinez, absolutely. So
13 what she does is, she goes out there and tells her
14 boyfriend and her boyfriend's friends and sends
15 them inside. And how do we know that's what
16 happened? Because Joseph Burton blames her for
17 this entire night. "I'm in here for you." "All
18 this happened because of you." Why else would he
19 say that?

20 We can play it. There's Kyle Burden.
21 He's our other friend, so to say, of the victim,
22 of Shaun Fells. He's also friends with
23 Joseph Burton, and we know that because of their
24 embrace that we see later on in the video, about
25 5:52 in. There's Austin holding his hands up in

CLOSING-JONES

616

1 defense. I didn't mean to get too close to you
2 and she walks out. And this is where it all goes
3 south.

4 Here's Kyle Burden and here's
5 Joseph Burton. You really that man is going to
6 obey a subpoena that this court issued to come on
7 this witness stand and point the finger at
8 Joseph Burton? Absolutely not. He's not going to
9 risk being labeled a snitch. You heard
10 Investigator Reynells tell you about a snitch and
11 what that means. He's not going to do it. He's
12 just not going to show up, and that's what he did.
13 We can issue subpoenas. We can give people court
14 dates. We can tell them to come. They can be
15 court ordered to appear in this very courthouse.
16 I cannot physically make someone get in that
17 witness stand and tell you the truth.

18 You can go to 5:36. Here's where
19 Austin starts the whole situation. He gets too
20 close to Chrissie. Absolutely. He holds his
21 hands up in defense. He's not trying to start an
22 altercation or start a fight or anything. He's
23 not trying to touch her. He's not trying to get
24 familiar with her. And she doesn't even appear to
25 be very scared of him. She just looks at him and

CLOSING-JONES

617

1 just, kind of, walks outside. Nor does anybody
2 else in there, including her son, Michael in the
3 purple shirt, her sister, Crystal Hobbs, and then
4 that man, Derrick Frazier. None of them appear to
5 be concerned with whatever this interaction was.
6 The only person that was concerned was Chrissie.
7 And, again, that who Joseph Burton blames for
8 being here.

9 You can go to 6:13. Here comes
10 Shaquille Green. He comes from the -- he was
11 seated on the hood of that black car back at the
12 stop, and he's showing everyone his hands. I
13 submit to you that's where the blood came from.
14 That's his injury. What else is he doing? Why
15 would you go up and do this to somebody and show
16 them your hand. You have a t-shirt there. That's
17 where the blood came from. He's already injured
18 when he goes inside that goes station. He's
19 already injured when he punches Austin Radel
20 inside. He's already injured when he punches --
21 blind sides Shaun Fells. Joseph Burton never
22 heard Shaquille Green say, man, he cut me. I just
23 got cut. That didn't happen, because he was
24 already cut before this all started.

25 6:56. There's Mr. Shaun Fells again. He

CLOSING-JONES

618

1 walks in. He's not bothering anybody. He's
2 minding his own business. And in no way, shape,
3 or form could he ever be mistaken for
4 Christian Paez.

5 Christian Paez starts moving his car.
6 There's nothing nefarious. This is nothing
7 questionable. He's at a gas station and he moves
8 his car to a gas pump. That's not suspicious.
9 That's just what he did.

10 Go to 7:16, please. There's
11 Chrissie Martinez starting it all. She's telling
12 everybody about Austin Radel. He got too close to
13 me. She's pointing. They're looking.
14 Shaquille Green is the first to go inside and
15 confront him. He's already amped up. He's
16 already been involved in something where he's
17 sustained an injury. He's amped up. He's ready
18 to go. She continues to talk to him -- to the
19 defendant, Joseph Burton, and now he says, well now
20 I'm going to go handled it. I'm going to go in
21 there. So he does.

22 And her comes Christian Paez. Christian
23 Paez is -- if we can play it. Christian Paez is
24 pulling up his pants. He's not clutching. He's
25 not reaching for something. He's not hiding a

CLOSING-JONES

619

1 weapon. He's pulling up his pants.

2 If we can go to 8:01, please. Here comes
3 Shaquille Green to confront Austin Radel. What do
4 you think that motion means? Come outside. Kyle
5 Burden tries to diffuse the situation, as does
6 Chris Hobbs, but it's on at that point. Here
7 comes Joseph Burton to defend his woman's honor.
8 And there's Christian Paez with hands empty. He's
9 not clutching anything. He's not holding on to
10 anything. His hands are clapsed on his chest
11 empty. He's not threatening anybody. He doesn't
12 have a gun. He doesn't have a weapon. He doesn't
13 have a knife.

14 Austin Radel is who they are confronting,
15 not Christian Paez. And here comes the fight.
16 Again, Christian Paez's hands are empty. He tries
17 to get away from it and he walks to the back. Who
18 throws the first punch and who starts it?
19 Shaquille Green. Shaun Fells in the bottom corner
20 sees what's happening and he walks away. He backs
21 up and walks away. He wants nothing to do with
22 what is going on.

23 If we could rewind it a little bit to
24 where Joseph Burton and Derrick Frazier are
25 pointing. Pause it.

CLOSING-JONES

620

1 There's no pointing at Christian Paez.
2 They're pointing to Austin Radel. Austin Radel is
3 the reason they were in there fighting. He's the
4 one that got too close. They're just trying to
5 blame it on Christian Paez. He just happens to be
6 behind Radel, sure. That's not who they're
7 pointing at. That's not who they had the beef
8 with. That's not who they had the fight with.
9 They're pointing at Austin Radel.

10 And they brought up body language. What
11 can you tell from this body language? Who's
12 standing, hands down, defenseless, not instigating
13 anything, not doing anything? Certainly not
14 Joseph Burton and Derrick Frazier. They're the
15 ones with the aggressive pointing.

16 If we can play it. Everyone walks
17 outside, except Austin Radel and Christian Paez.
18 And, again, Christian Paez's hands are empty. And
19 I want you to look, Shaquille Green is about to
20 walk out. And after he walks out, that's when you
21 see the blood. There's no spot on the floor. He
22 looks at his hand. There's the spot right next to
23 the wet floor sign. That's the blood. The blood
24 was there before the shooting. The cut on the
25 hand had nothing to do with what happened to

CLOSING-JONES

621

1 Shaun Fells.

2 If you can play it. Christian Paez,
3 hands empty. Not threatening anybody. No gun, no
4 weapon, nothing.

5 Shaun Fells, he goes to Christian's car.
6 He puts the beer in through the window. And pause
7 it. What do we see Joseph Burton doing? And he
8 told you. He was calm. He was casually walking
9 to the car he arrived in, to the car where he knew
10 his gun was. He knew where had put it. He knew
11 where to get it from. There is no threat outside
12 at this point. I would say there's no threat at
13 all anywhere, but especially not once everyone
14 goes outside. Where's the threat? Where's the
15 threat? There is no threat.

16 And pause it. This is when things start
17 to get chaotic. Chaos was the word that was used.
18 Do you really think in a chaotic moment like this,
19 people are yelling, they're screaming, they're
20 fighting, that he's going to hear the click of a
21 gun when there's nobody around him? Not a gunshot
22 that possibly he could have heard. He told you he
23 heard the click of the gun. That's just not true.
24 No one else had a gun that night except for him.

25 Play it. Pause it. Shaun Fells drops.

CLOSING-JONES

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1 Shaun Fells is shot five times and he's shot five
2 times by Joseph Burton, a man who tried to tell
3 you that he has this terrible vision and can't see
4 far away, but that he also agreed that it was a
5 total disregard to fire blindly into a crowd of
6 people. He told you he couldn't have mistaken
7 Shaun Fells for Christian Paez. There's no way.

8 Joseph Burton fired five shots that day,
9 and you know how many hit Shaun Fells? Dr. Clark
10 told you; five. Somebody who can't see what
11 they're doing is not going to get lucky and hit
12 their victim every single time.

13 Play it. Now, the defense wanted you to
14 question Paez -- that's the end of the video --
15 and to question his motives and his being there
16 that night and what he may or may not have had.
17 If he had something he shouldn't have had, he
18 would have left. He got in his car. He could
19 have left. He's certainly not going to leave a
20 gun in a car within a crime scene. No, he's not
21 going to put it into a gas station trash can where
22 the sheriff's office could potentially find it.
23 No. If he had something, he would have left. He
24 had four and a half minutes to do so. He didn't
25 leave.

CLOSING-JONES

623

1 He stayed there because he wasn't up to
2 no good, like they want you to believe. He's not
3 hiding anything. And whatever is going through
4 his head and the mind of Kyle Burden and the mind
5 of Austin Radel in the moments after this, God
6 only knows. It could be a million different
7 things going on in their head. They had just seen
8 their friend gunned down in front of them. Their
9 erratic behavior, their running back and forth,
10 their being upset and not wanting to cooperate,
11 wanting justice, and just wanting to get to the
12 hospital, it's not surprising. It's not bad
13 behavior. It's not guilty. They just saw their
14 friend gunned down for no reason. Of course
15 they're going to be acting like that.

16 Shaun Fells was no threat to anyone that
17 night. He could not have been more less involved
18 with the fight inside the gas station that night.
19 Wrong place, wrong time has never rung more true
20 than it did for Shaun Fells on this night.

21 This is not a self defense case or a
22 defense of others. Joseph Burton was not in fear.
23 No one was in danger that night, except for who
24 Joseph Burton decided needed to be. The last
25 words he said to Shaun Fells was, "Be safe." And

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1 who was the very man that made sure that that would
2 not come true? Joseph Burton.

3 Now, you don't have audio from that
4 night. But you know what, you don't need the
5 words that were spoken to know what happened
6 because you can watch it. You can relive it and
7 you can see the truth. And the truth is,
8 Shaun Fells was attacked and he was murdered. He
9 never stood a chance that night.

10 Once Joseph Burton made up his mind to go
11 to his car and get his gun, Shaun Fells did not
12 stand a chance, and he probably never even saw it
13 coming. But you did. You watched it. And now
14 you know, while a picture may be worth a thousand
15 words, that video is worth one. Guilty.

JURY CHARGE

16
17 THE COURT: All right. Ladies and
18 Gentlemen, it's now my duty as the trial judge
19 under the constitution of this state to charge and
20 instruct you on the law applicable to this case.
21 It's your duty as jurors to accept and apply the
22 law as I will now state it to you. Furthermore,
23 it's your exclusive duty to decide all issues of
24 fact in this case and to determine the effect,
25 value, and weight of the evidence. Both the State

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1 and the defendant have a right to expect that you
2 will carefully consider and evaluate the evidence
3 and apply the law of the case to it so that, in
4 the end, both the State of South Carolina and the
5 defendant will receive a fair and impartial trial.

6 I want you to understand that when I use
7 the word "defendant," I refer to Mr. Joseph
8 Decoryios Burton. Furthermore, it's important to
9 understand that the State of South Carolina
10 charges the defendant with the offense as known as
11 murder and possession of a weapon during the
12 commission of a violent crime. To these charges,
13 the defendant has entered a plea of not guilty.
14 The plea of not guilty places the burden of proof
15 on the State to prove the guilt of the defendant
16 to you, the jury, beyond a reasonable doubt.

17 I remind you that the fact that the
18 defendant was arrested, charged, and indicted in
19 this case is not evidence in this case and cannot
20 be considered by you as evidence of guilt in this
21 case, nor does it create any presumption or
22 inference of guilt. The indictment is simply the
23 formal written instrument which contains the
24 charge made against the defendant. It is the
25 formal document by which this case is brought into

JURY CHARGE

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1 this court.

2 The indictment, Ladies and Gentlemen, in
3 this case alleges several different offenses
4 against the defendant. The charges are, on
5 indictment one, murder, and indictment number two,
6 possession of a weapon during the commission of a
7 violent crime.

8 Ladies and Gentlemen, each indictment
9 charges a separate and distinct offense. You must
10 decide each indictment separately on the evidence
11 and the law applicable to it uninfluenced by your
12 decision as to any other indictment. The
13 defendant may be convicted or acquitted on any or
14 all of the offenses charged. You will be asked to
15 write a separate verdict of guilty or not guilty
16 for each indictment.

17 Now, during this trial, you and I have
18 had separate duties to perform. As a trial judge,
19 it's my responsibility to preside over this trial,
20 and I also have the duty to rule upon the
21 admissibility of evidence offered during the
22 process of this trial. In that regard, you are to
23 consider only the competent evidence before you
24 and you are to disregard from your mind any
25 testimony ordered stricken from the record of this

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1 case during the process of the trial, if there was
2 any, and you are to consider only the testimony
3 which has been presented from this witness stand
4 together with any exhibits admitted into the
5 record of this case and any stipulations of
6 counsel made into the record, if there were any.

7 Furthermore, I have the additional duty
8 to charge you on the applicable law on this case,
9 and, in that regard, I am the sole judge of the
10 law of this case. It's your duty to accept and
11 apply the law as I state it to you. If you have
12 any preconceived ideas as to what the law is or
13 what the law ought to be and it does not agree
14 with what I tell you the law is, you're obligated
15 under your oath, Ladies and Gentlemen, to abandon
16 those preconceptions because you are sworn to
17 accept the law precisely as I state it to you.

18 Ladies and Gentlemen, in this trial, you
19 are the sole and exclusive judge of the facts and
20 I am the judge of the law. Do not infer that I
21 have any opinion about the facts in this case from
22 anything I have said during the course of this
23 trial in ruling upon the admissibility of
24 evidence, or otherwise, or from anything that I
25 say during the course of this charge to you. In

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1 this regard, the law simply does not permit me to
2 have an opinion about the facts. As jurors, it's
3 your duty alone to determine the effect, value,
4 and the weight of the evidence presented during
5 the course of this trial.

6 In determining what the facts in this
7 case are, you must judge the credibility, which
8 simply means the believability of the witnesses
9 and the value of weight to be given their
10 testimony. You alone must decide the force and
11 effect of the testimony.

12 In making this decision, there are many
13 things you may and should take into consideration,
14 such as the appearance and manner of the witness
15 on the stand, a characteristic often referred to
16 as the demeanor of the witness. Was the witness
17 forthright or hesitant? Was the witness's
18 testimony consistent or did it contain
19 discrepancies? What was the ability of the
20 witness to know the facts about which he or she
21 testified? Did the witness have cause or reason
22 to be biased or prejudiced in favor of the
23 testimony he or she gave? Was the testimony of
24 the witness corroborated or made stronger by other
25 other testimony and evidence, or was it made

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1 weaker or impeached by such other testimony in
2 evidence.

3 As jurors, please understand you have the
4 right to believe a small portion of a witness's
5 testimony and disregard the larger portion or vice
6 versa. You may believe all of the witness's
7 testimony or none. You may believe the testimony
8 of a single witness against that of many witnesses
9 or the other way around.

10 In exercising your mental processes in
11 attempting to decide to the verdict, the law
12 simply requires that you exercise your good
13 judgment, your common sense, your sense of logic
14 and reason, and your experiences in life. You
15 then apply these attributes to the evidence and
16 apply the law as I state it to you and thus arrive
17 at a verdict.

18 It's vital to understand, Ladies and
19 Gentlemen, the defendant is presumed under the law
20 to be innocent of these charges. The defendant
21 has no obligation to prove his innocence. It's a
22 fundamental rule of our law that a defendant
23 irrespective of the seriousness of the charges
24 against him is always presumed innocent of the
25 crimes for which he is charged unless and until

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1 his guilt has been proven by evidence that
2 satisfies you, the jury, beyond a reasonable
3 doubt.

4 The presumption of innocence is not a
5 mere legal theory or phrase. The presumption of
6 innocence is very important and you need to
7 understand that this presumption accompanies the
8 defendant from the time of his arrest and
9 appearance in this court and continues with the
10 defendant even after you retire to the jury room
11 to deliberate.

12 In other words, the defendant receives
13 the benefit of the presumption of innocence until
14 the very end of this trial when you, the jury,
15 will deliberate upon the evidence and decide
16 whether the State has proven guilt beyond a
17 reasonable doubt.

18 Ladies and Gentlemen, what is a
19 reasonable doubt in the law? A reasonable doubt
20 is a kind of doubt that would cause a reasonable
21 person to hesitate to act. Proof beyond a
22 reasonable doubt is proof that leaves you firmly
23 convinced of the defendant's guilt. There are
24 very few things in this world that we know with
25 absolute certainty. So even in criminal cases,

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1 the law does not require proof that overcomes
2 every possible doubt. However, if based on your
3 consideration of the evidence, you are firmly
4 convinced the defendant is guilty of the crimes
5 charged, you must find him guilty. If, on the
6 other hand, you think there is a real possibility
7 that he's not guilty, you must give him the
8 benefit of the doubt and find him not guilty.

9 Jurors, please understand that reasonable
10 doubt may arise from the evidence which has been
11 presented in the case or from the lack of evidence
12 in the case. It's your responsibility to
13 determine whether or not reasonable doubt exists
14 as to the guilt of this defendant. I charge you
15 that the defendant is entitled to every reasonable
16 doubt arising in the whole case. If, upon any
17 issues of fact essential to conviction and a
18 verdict of guilty, you have a reasonable doubt as
19 to how that issue should be resolved, it would be
20 your duty to resolve that reasonable doubt in
21 favor of the defendant.

22 Thus, in summary, it's important to
23 understand that a defendant is not required to
24 prove his innocence. Instead, the state is
25 required by law to prove every essential element

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1 of the offense charged against the defendant by
2 evidence which satisfies you of his guilt beyond a
3 reasonable doubt. Only then can you convict the
4 defendant and find him guilty.

5 Ladies and Gentlemen, there are two types
6 of evidence which are generally presented during a
7 trial; direct evidence and circumstantial
8 evidence. Direct evidence directly proves the
9 existence of a fact and does not require
10 deduction. Circumstantial evidence is proof of a
11 chain of facts and circumstances indicating the
12 existence of a fact. Crimes may be proven by
13 circumstantial evidence and the law makes no
14 distinction between the weight or value to be
15 given either to direct or circumstantial evidence.

16 However, to the extent the State relies
17 on circumstantial evidence, all the circumstances
18 must be consistent with each other and, when taken
19 together, point conclusively to the guilt of the
20 accused beyond a reasonable doubt. If these
21 circumstances merely portray the defendant's
22 behavior as suspicious, the proof has failed. The
23 State has the burden of proving the defendant
24 guilty beyond a reasonable doubt. This burden
25 rests with the State regardless of whether the

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1 State relies on direct evidence, circumstantial
2 evidence, or some combination of the two.

3 In order to establish criminal liability,
4 intent is required. For example, the mental state
5 required to be proven by the State for a
6 particular crime might be purpose, intent,
7 knowledge, recklessness, or criminal negligence.
8 Criminal intent must be proven by the State beyond
9 a reasonable doubt. Criminal intent is always a
10 matter that must be determined by the jury from
11 the circumstances surrounding the situation.

12 There is no way to prove intent to a
13 mathematical certainty. There is no way medical
14 science can dissect a person's brain and determine
15 what the person had in mind. So the law says that
16 criminal intent may be shown from the
17 circumstances shown to have existed.

18 This is how you make a determination of
19 whether or not the element requiring intent was
20 present. It's not necessary to establish intent
21 by direct and positive evidence, but intent must
22 be established in the same any as any other fact
23 by taking into consideration the acts of the
24 parties and all the facts and circumstances of
25 this case.

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1 Criminal intent is a mental state of
2 conscience wrongdoing. It is up to you to
3 determine what the defendant intended to do based
4 on the circumstances shown to have existed.
5 Criminal intent can arise from action or a failure
6 to act. It may arise from negligence,
7 wrecklessness, or an indifference to or to
8 consequences that is considered by the law to be
9 the equivalent of criminal intent.

10 An issue in this case is the
11 identification of the defendant. As the person
12 who committed the crime charged, the State has the
13 burden of proving identity beyond a resonable
14 doubt. You must be satisfied beyond a reasonable
15 doubt of the accuracy of the identification of the
16 defendant before you may convict the defendant.
17 The identification testimony is an expression of
18 belief or impression by the witness. You must
19 determine the accuracy of the identification of
20 the defendant. You must consider the
21 believability of each identification witness in
22 the same way as any other witness. You may
23 consider whether the witness has had adequate
24 opportunity to observe the offender at the time of
25 the offense. This will be affected by things like

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1 how long or short a time was available, how far or
2 close the witness was, the lighting conditions,
3 and whether the witness had the chance to see or
4 know the person in the past.

5 Once again, I instruct you the burden of
6 proof on the State extends to every element of the
7 crime charged, and this specifically includes the
8 burden of proving beyond a reasonable doubt the
9 identity of the defendant as the person who
10 committed the crime. If, after examining the
11 testimony, you have a reasonable doubt as to
12 accuracy of the identification, you must find the
13 defendant not guilty.

14 Ladies and Gentlemen, the rules of
15 evidence ordinarily do not permit witnesses to
16 testify to opinions or conclusions. An exception
17 to this rule exists for witnesses we call expert
18 witnesses, a witness who by education and
19 experience has become expert in some art, science,
20 profession, or calling may state an opinion as to
21 a relevant and material matter in which the
22 witness claims to be an expert and may also state
23 the reason for his opinion.

24 You should consider an expert opinion
25 received into evidence in this case like any other

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1 evidence. Give it the weight that you think it
2 deserves, Ladies and Gentlemen. If you decide
3 that the opinion of an expert is not based on
4 profession, education, and experience, or if you
5 conclude that the reasons given in support of the
6 opinion are not sound, or that the opinion is
7 outweighed by other evidence, you may disagree --
8 disregard, excuse me, the opinion entirely. An
9 expert witness's testimony is to be given no
10 greater weight than that of other witnesses simply
11 because the witness is an expert. Further, you
12 are not required to accept an expert's opinion
13 even though it is not contradicted.

14 Ladies and Gentlemen, during the trial
15 you heard witnesses testify they had a past
16 criminal record. A person who has a past criminal
17 is competent to testify during a trial. A past
18 criminal record does not affect the ability of
19 that witness to testify. The past record may only
20 be considered by you, if at all, in determining
21 the witness's believability. Remember, you are
22 the sole judges of the facts in the case and of
23 the believability of any and all of the witnesses.

24 Ladies and Gentlemen, mere presence at
25 the scene is not sufficient to prove someone

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1 guilty of a crime. The defendant's presence where
2 a crime is being committed or mere association
3 with a person who commits a crime does not make a
4 defendant an accomplice or an aider or abetter of
5 the person committing the crime. The burden on
6 the State is to prove every element of the crime
7 charged. If you find, after reviewing all the
8 evidence, that the State has proved that the
9 defendant was only present at the scene of the
10 crime and that they have not proved beyond a
11 reasonable doubt any other participation in the
12 crime, then you must find the defendant not
13 guilty. The law is that proof of at the scene of
14 the crime is not sufficient to find someone
15 guilty.

16 Ladies and Gentlemen, where a person
17 inflicts a fatal injury on another person and that
18 other person dies at a later time, you must be
19 convinced beyond a reasonable doubt that the
20 infliction of the first injury was the proximate
21 cause of the victim's death. Proximate cause is
22 the direct cause. It is the immediate cause. It
23 is the efficient cause. It is that cause without
24 which the death of the victim would not have
25 resulted. There must be a chain of causation from

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1 the time of injury inflicted by the defendant
2 until the time of the victim's death. Proximate
3 cause does not necessarily mean that it occurred
4 immediately prior to death. There may be more
5 than one proximate cause. The acts of two or more
6 person combined together may be the proximate
7 cause of the death of a person. The defendant's
8 act may be regarded as the proximate cause if it
9 is a contributing cause of the death of the
10 victim. The fact that other causes may also
11 contribute to the death of the victim does not
12 relieve the defendant from this responsibility.
13 The defendant's act need not be the sole cause of
14 the death, but must be a proximate cause
15 contributing to the death of the victim.

16 It is not a defense to show that the
17 victim might have recovered -- it is not a defense
18 to show that the victim might have recovered had
19 he been treated according to the most approved
20 surgical or medical standards.

21 The defendant is charged with murder.
22 The State must prove beyond a reasonable doubt
23 that the defendant killed another person with
24 malice aforethought. Malice is hatred, illwill,
25 or hostility towards another person. It is the

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1 intentional doing of a wrongful act without just
2 cause or excuse and with an intent to afflict an
3 injury. It is an evil intent. Malice is the
4 wrongful intent to injure another person. It
5 indicates a wicked or depraved spirit intent on
6 doing wrong. Malice is a legal term implying
7 wickedness and excluding a just cause or excuse.
8 The term malice indicates a formed purpose and
9 design to do a wrongful act under the
10 circumstances that exclude any legal right to do
11 it.

12 Malice aforethought does not require that
13 malice exists for any particular time before the
14 act is committed, but malice must exist in the
15 mind of the defendant just before and at the time
16 the act is committed. Therefore, there must be a
17 combination of the previous evil intent and the
18 act.

19 Malice aforethought may be expressed or
20 implied. These terms "expressed" and "implied" do
21 not mean different kinds of malice, but merely the
22 manner in which malice may be shown to exist
23 either by direct evidence or by circumstantial
24 evidence from the facts and circumstances which
25 are proved.

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1 Express malice is shown when a person
2 speaks words which express hatred or illwill for
3 another, or when the person prepared beforehand to
4 do the act which was later accomplished. For
5 example, lying in wait for a person, or any other
6 acts of preparation going to show that the deed
7 was within the defendant's mind would be express
8 malice. Malice may be shown from conduct showing
9 a total disregard for human life.

10 Ladies and Gentlemen, the defendant is
11 also charged with possession of a weapon during
12 the commission of or attempt to commit a violent
13 crime. The State must prove beyond a reasonable
14 doubt the defendant was in possession of a firearm
15 or visibly displayed what appeared to be a firearm
16 during the commission of a violent crime. A
17 firearm means a machine gun, automatic rifle,
18 revolver, pistol, or any weapon which is -- which
19 will is designed to or may be readily converted to
20 expel a projectile. In order to find the
21 defendant guilty of possession of a weapon during
22 the commission of a violent crime, you must first
23 find the defendant guilty of murder. The State
24 must prove beyond a reasonable doubt that a weapon
25 further advanced or helped in the commission of

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1 the crime.

2 Ladies and Gentlemen, I want you to
3 clearly understand that you are not partisans or
4 advocates for the State of South Carolina or the
5 defendant. It's your duty, Ladies and Gentlemen,
6 by your joint deliberations to determine the facts
7 in this case, giving to the defendant the benefit
8 of every reasonable doubt on each and every issue.

9 Then to the facts which you determine to
10 be true, you should take and apply the law which
11 has been given to you by this Court and thus
12 arrive at a verdict in this case. When you have
13 accomplished those responsibilities, you will have
14 satisfied your oath as jurors and you will have
15 discharged your duty to this Court.

16 Once you retire to the jury room, the
17 bailiff will give you the verdict form -- will
18 give the form to the foreperson. When you, the
19 jury, arrive at a verdict as to the offenses
20 charged in the case, the foreperson will select
21 the verdict as to that offense on the verdict
22 form.

23 If the State has failed to prove guilt of
24 the defendant beyond a reasonable doubt, your
25 verdict will be not guilty. Likewise, if the

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1 State has proven guilt of the defendant beyond a
2 reasonable doubt, your verdict will be guilty.

3 Once a decision has been made, the
4 foreperson will check whichever choice is the
5 verdict of the jury to the offenses charged. The
6 verdict that you render in this case, Ladies and
7 Gentlemen, must be the verdict of each and every
8 juror. It must be your unanimous verdict. All 12
9 jurors must agree on the verdict, which you
10 authorized the foreperson to write for the jury.

11 Ladies and Gentlemen, I also want you to
12 further understand, that the order of the choices
13 of the verdict that appear on the verdict form are
14 not suggestive of the verdict on the part of this
15 Court. The verdict in this case is to be
16 determined by you, the jury, not the Court.

17 Furthermore, Ladies and Gentlemen, please
18 understand that even though I will give the
19 verdict form to the foreperson, it is not her
20 verdict alone. It is the verdict of all 12 of
21 you, and I emphasize again this verdict must be
22 unanimous.

23 I now ask you to please retire to the
24 jury room, but do not begin your deliberations
25 until you are told to do so. The law requires

1 that I now consult with the attorneys to
2 make sure that I have not left anything out of
3 these instructions. After I've checked with the
4 attorneys, the bailiff will bring in a copy -- or,
5 excuse me, the bailiff will notify you, and, at
6 that time, bring the verdict form, any exhibits
7 that are entered into evidence, and, at that
8 point, will authorize you to then begin
9 deliberations.

10 The Court will have a bailiff that will
11 be placed immediately outside the jury room during
12 your deliberations, Ladies and Gentlemen. And
13 once you've reach your verdict, please knock on
14 the jury room door and ask the bailiff to advise
15 the Court that you've have reached a verdict and
16 we will return you to the courtroom as soon as
17 possible.

18 Thank you, Ladies and Gentlemen, you may
19 now retire to your jury room. But, again, do not
20 begin deliberations until you have been advised to
21 do so. Thank you.

22 (Jury exits the courtroom at 1:20 p.m.)

23 THE BAILIFF: Jury is clear,
24 Your Honor.

25 THE COURT: Thank you. Be seated.

1 All right. Any exceptions or any
2 additions to the charges that I instructed the
3 jury -- or that I gave to the jury from the State?

4 MS. JONES: Your Honor, I hate to do
5 this, but I believe you mistakenly skipped over
6 the part about if they have questions, "Also,
7 should you have any questions during
8 deliberations, you must put them in writing and
9 send them to me by the bailiff."

10 THE COURT: I did skip over over that and
11 I apologize for that. Yeah, I did that, and I
12 apologize. I got a little -- we're not going to
13 send the form back, so the bailiff will have a
14 copy of the instructions. And so when I realized
15 that, I skipped and I skipped the next sentence.

16 So I do agree that I did not instruct the
17 jury that they should also know that, should you
18 have any questions during your deliberations, you
19 must put them in writing and send them to me by
20 the bailiff, and I would instruct them of that.

21 Any objection of me instructing them of
22 that from the defense?

23 MR. LEE: No, sir. Quite frankly, if you
24 want to just stick your head in there and tell
25 them that, I'm okay with that. Instead of

1 bringing them all back out.

2 THE COURT: I'd rather bring them out.

3 MR. LEE: Okay.

4 THE COURT: And let me ask you this:

5 From the defense, any exception or additions as it
6 relates to my charges?

7 MR. LEE: Just to renew the one that I've
8 made, Judge, which is on page 26 which says,
9 quote, "Malice may be shown from conduct showing a
10 total disregard for human life," just renew my
11 objection to that. It was charged. It has
12 "infer," and you changed to "shown." I would just
13 renew my objection, again, because I do believe
14 it's a comment on the facts which the courts have
15 really tried to cut out, the appellate courts.

16 And it has been -- the possible taint has
17 been enhanced by the prosecutor eliciting and
18 asking that question to my client on
19 cross-examination, as well as her closing
20 argument. She made an argument about total
21 disregard for life.

22 So that's the very problem that that
23 language I read earlier in Burdette talks about,
24 is that placing that emphasis on a fact by the
25 judge tends to give it additional weight. That

1 would be my only objection.

2 THE COURT: All right. I'll note your
3 objection for the record.

4 Solicitor, same argument?

5 MS. JONES: Yes, sir.

6 THE COURT: Is there anything else you
7 want to put as it relates to that issue?

8 MS. JONES: No, Your Honor.

9 THE COURT: All right. That's great.

10 Anything further before I bring the jury
11 back in and I'm going to tell them that I failed
12 to instruct them that should they have any
13 questions during their deliberation that they are
14 to put them in writing and send them to me by the
15 bailiff.

16 MR. LEE: Yes, sir.

17 THE COURT: Is that adequate for both
18 parties?

19 MS. JONES: Yes, sir.

20 MR. LEE: Yes, sir.

21 THE COURT: All right. We'll bring the
22 jury back in.

23 (Jury enters the courtroom at 1:26 p.m.)

24 THE BAILIFF: Jury, is in the courtroom,
25 Your Honor. Jury is seated, Your Honor.

1 THE COURT: All right. Please be seated.

2 Ladies and Gentlemen, the reason I
3 didn't -- the reason I instructed you not to
4 deliberate was because I wanted to make sure that
5 there was nothing that I left out. And I
6 apologize for having to bring you back out here
7 because I did leave something out.

8 And, Madame Forelady, what I wanted to
9 let you know is that, in the event that any
10 questions should arise, that is if the jury has
11 any questions during your deliberations, you must
12 put them in writing and send them to me by the
13 bailiff. So, in the event that any questions
14 arise, that those will be in writing, given to the
15 bailiff, and then he will direct that question to
16 me. I forgot to include that. I'm sorry for
17 that.

18 I'm going to now allow you to return to
19 the jury room. But, again, please don't begin
20 deliberations until the bailiff tells you to do
21 so. He will bring the verdict form and the
22 various exhibits that were entered into evidence.

23 All right. Thank you.

24 (Jury exits the courtroom at 1:26 p.m.)

25 THE BAILIFF: The jury is clear.

1 THE COURT: All right. Thank you.

2 Anything further from the State?

3 MS. JONES: No, sir.

4 THE COURT: Anything further related to
5 my charges from the defense?

6 MR. LEE: No, Your Honor.

7 THE COURT: What I'd like to do is -- I
8 got a verdict form right here. I'd like hand this
9 to the court reporter. And the exhibits, if you
10 all could -- if you want to come up and caucus
11 with her as to what's going to go back to them, we
12 can get that to the jury. And when the bailiff
13 goes and gives those to the jury, I need the
14 bailiff to bring me the two alternates.

15 THE BAILIFF: Yes, sir.

16 THE COURT: Does that meet with the
17 State's approval?

18 MS. JONES: Yes, sir.

19 THE COURT: Does that meet with the
20 defense approval?

21 MR. LEE: Yes, sir.

22 THE COURT: Please go ahead and do that.
23 Thank you.

24 (Off the record.)

25 THE COURT: Please take that back and get

1 the two alternates and bring them into courtroom,
2 please, sir.

3 THE BAILIFF: Yes, sir.

4 (Jury begins deliberations at 1:39 p.m.)

5 THE COURT: Okay. Hey, Ladies. I want
6 to thank you all so much for your service this
7 week. I cannot over emphasize how important your
8 willingness to come, give of your time is to this
9 process. I'm serious about serving the week. It
10 would not work without you being here.

11 Because you are alternates, now that this
12 case has gone to the jury and we have authorized
13 the jury to begin deliberations, unfortunately, or
14 maybe fortunately, I don't know, it's my job to
15 pull you out, and, at this point, dismiss you from
16 your service for the week.

17 Your service -- you know, you're not
18 called on very often. I think you've got a
19 three-year exemption as it relates to serving, at
20 least in circuit court.

21 I would also tell you that if someone
22 approaches you and wants to talk to you about this
23 matter, that's completely up to you. Okay? So if
24 someone approaches you now and they want to
25 discuss this case with you or what your thoughts

1 were, that's absolutely fine, if you want to do
2 that. If you don't want to do it, you don't have
3 to.

4 What I would also tell you is this, if
5 somebody approaches you and you don't want to talk
6 to them about the case, you tell them no. If they
7 come and they continue to ask you, you just let
8 the clerk know, they'll let me know, and we'll
9 take care of it, and that person is not going to
10 bother you. Okay?

11 I would ask one favor, please, I would
12 ask that you hold off on talking with anyone about
13 this case until this jury completes they're
14 deliberations. So, hopefully, that will be soon.
15 You will be able to find out. But if you would
16 just not talk with other people until the jury
17 reaches their -- or completes they're
18 deliberations. All right?

19 Listen, thank you all so much.

20 Are they going to get their lunch? We're
21 not going to send you away hungry. All right.
22 Have a great rest of the week. Thank you
23 all.

24 (Alternates are excused from the jury and
25 exit the courtroom.)